

**DECEMBER 16, 2009  
REGULAR TOWN BOARD MEETING**

**Town Hall**

**7:00 P.M.**

Dan Underhill, Deputy Supervisor led the pledge to the flag.

**Roll Call**

**Present:** Supervisor Post  
Deputy Supervisor Underhill  
Councilman Lang  
Councilwoman Michalak  
Councilman Gerace

**Others**

**Present:** Town Clerk Morasco  
Building Inspector Worthington  
Roger Muehlig, Daily News Reporter

The Supervisor called the meeting to order at 7:00P.M.

**November 17, 2009 Public Hearing-2010 Town Budget:** Motion Councilman Lang, second Deputy Supervisor Underhill to approve the minutes as written.

**Ayes:** Lang, Underhill, Michalak, Gerace, Post

**MOTION CARRIED by unanimous vote (5-0)**

**November 17, 2009 Regular Town Board Meeting:** Motion Deputy Supervisor Underhill, second Councilman Lang to approve the minutes as written.

**Ayes:** Underhill, Lang, Michalak, Gerace, Post

**MOTION CARRIED by unanimous vote (5-0)**

**RESOLUTION NO. 159:**

Councilman Lang offered the following:

**AUTHORIZING AGREEMENT FOR  
FIRE PROTECTION SERVICES FOR FISCAL YEAR 2010**

**WHEREAS**, there has been duly established in the Town of Batavia a Fire Protection District known as the "Town of Batavia Fire Protection District" as such territory is more fully described in the Resolution establishing such District as was duly adopted by the Town Board of the Town of Batavia, Genesee County, New York, on March 24, 1948;

**WHEREAS**, it is proposed that a Contract be entered into with the Town of Batavia Fire Department, Inc. for the furnishing of fire protection in said District by said Town of Batavia Fire Department, Inc.; and

**WHEREAS**, due notice has been given of a Public Hearing held at the Town Hall of the Town of

**DECEMBER 16, 2009**  
**REGULAR TOWN BOARD MEETING**

Batavia, New York on the 16<sup>th</sup> day of December, 2009, at 6:45 P.M. to consider such Contract, the notice thereof duly specifying the time and place of the Public Hearing as aforesaid and describing the time and place of the Public Hearing as aforesaid and describing in general terms and proposed Contract; and

**WHEREAS**, said Public Hearing was duly conducted as advertised and all persons interested therein and presenting themselves were heard; now, therefore, be it

**RESOLVED**, it is in the public interest for this Board to contract with the Town of Batavia Fire Department, Inc., and be it further

**RESOLVED**, upon receiving certified copies of resolutions duly adopted by said Town of Batavia Fire Department, Inc., membership and Directors approving the terms and conditions of said Contract that this Town Board shall contract with said Town of Batavia Fire Department, Inc. for the furnishing of fire protection to such District according to the terms of said Contract, a copy of which is annexed to this Resolution and is make a part thereof, and be it further

**RESOLVED**, such contract shall be executed on behalf of the Town of Batavia, New York by its Supervisor and Town Clerk.

**Second by:** Deputy Supervisor Underhill  
**Ayes:** Lang, Underhill, Michalak, Gerace, Post  
**APPROVED by unanimous vote (5-0)**

**TOWN OF BATAVIA FIRE DEPARTMENT AGREEMENT**

**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the **TOWN OF BATAVIA, NEW YORK**, (hereinafter designated as "Town") and the **TOWN OF BATAVIA FIRE DEPARTMENT, INC.** of Batavia, New York, (hereinafter designated as "Fire Department").

**WITNESSETH:**

**WHEREAS**, there has been duly established in the said Town of Batavia a fire protection district known as the "Town of Batavia Fire Protection District" as such' territory is more fully described in the Resolution establishing such District and duly adopted by the Town Board of the said Town of Batavia, Genesee County, New York on 24th day of March, 1948; and

**WHEREAS**, following a public hearing duly called, the said Town has duly authorized a Contract with the Fire Department for fire protection in said District upon the terms and conditions herein set forth; and

**WHEREAS**, this Agreement has also been duly authorized by the Directors and membership of the Fire Department, and the Fire Department has provided to the Town certified copies of Resolutions of

**DECEMBER 16, 2009**  
**REGULAR TOWN BOARD MEETING**

approval of this Agreement by the Town of Batavia Fire Department Board of Directors and by its membership.

**NOW, THEREFORE**, the Town does engage the Fire Department to furnish fire protection to said District and the Fire Department agrees to furnish such protection in the manner following, to wit:

1. The equipment and personnel of the Fire Department shall at all times during the term of this Agreement be subject to call for attendance upon any fire occurring in such District, and when notified by any means of a fire within the District, said Fire Department shall respond and attend upon the fire without delay with one or more companies and with suitable fire-fighting equipment and apparatus of the Fire Department. Upon arriving at the scene of the fire, the firefighters of the Fire Department attending shall proceed diligently and in every way reasonably suggested under the circumstances to the extinguishments of the fire and the saving of life and property in connection therewith.

2. The Fire Department covenants and agrees at all times to maintain in force on and in respect to vehicles and equipment owned by it or subject to its control or use, while responding to, attending at or leaving from fires, alarms or calls both inside and outside said District, including, but not limited to, responses in connection with Mutual Aid Plan referred to in Paragraph 5 of this Agreement, an underlying public liability insurance policy for injury to persons and property, including wrongful death, with limits of \$500,000.00 for each person, \$1,000,000.00 for each accident and \$250,000.00 property damage for each accident and an excess public liability policy in the amount of \$3,000,000.00 insuring the Fire Department and the Town against any loss by reasons of personal injury including wrongful death, or property damage caused or contributed to by the negligent operation of said vehicles and/or equipment in connection with a fire, alarm or call in or from said District or in connection with a mutual aid response. In addition, the Fire Department agrees at all times to maintain in force public liability insurance to protect itself and the Town from all other losses occurring in its operations other than those arising out of the use and operation of said vehicles and/or equipment to persons for injury, including wrongful death, and to property in amounts for underlying and excess liability similar to that maintained for vehicles and/or equipment. All liability insurance policies must be obtained through insurance companies licensed to do business within the State of New York, must name the Town of Batavia as insured and must be maintained for the life of this Agreement.

The Fire Department shall deliver a copy of the policy of said insurance to the Town prior to the execution of this Agreement, covenants to pay the premiums thereon in timely fashion and to have said insurance policies provide for thirty (30) days written notice to the Town prior to cancellation. If the Fire Department shall fail to pay said premiums due hereunder in a timely fashion, the Town shall have the right to pay the same and to deduct the cost thereof from the amounts due the Fire Department under paragraph 7 of this Agreement.

In addition, the Fire Department hereby covenants and agrees to indemnify and hold the Town harmless from any and all losses and damages which the Town may sustain, suffer or be required to pay by reason of any claims made against said Town for injury to persons or property, including wrongful death, arising out of the performance of this agreement by the Fire Department to the extent that said losses and damages are not fully covered and paid by the insurance referred to herein.

3. Should any loss or damage whatsoever be sustained to the fire apparatus or other equipment, said loss or

**DECEMBER 16, 2009**  
**REGULAR TOWN BOARD MEETING**

damage, including the cost of materials and any other special or incidental expenses incurred in the operation of the fire apparatus or equipment of the Fire Department in answering, attending upon or returning from a call for assistance in said Town of Batavia Fire Protection District, irrespective of the cause thereof, shall be a charge upon the Fire Department and not against the Town or against the Town of Batavia Fire Protection District. This fact is taken into consideration by both parties in arriving at the consideration to be paid to the Fire Department pursuant to this Agreement.

4. To the extent that the same is not otherwise provided for by the Genesee County Mutual Aid Plan, by the county of Genesee or by some other source, the Town of Batavia shall pay at its own expense or provide necessary insurance coverage at its expense for any and all claims authorized by law for medical expenses, loss of wages, compensation or other claims arising by reason of the injury or death of a fireman, or member of the Fire Department Emergency Relief Squad, a Fire Police Squad or a Fire Patrol sustained while answering or attending upon or returning from any such call in said District.

5. The Fire Department is hereby authorized by the Town to participate in the Genesee County Mutual Aid Plan and to answer calls for aid and assistance according to said Mutual Aid Plan and System. Nothing contained in this Agreement shall be deemed to prevent the Fire Department from securing reimbursement from any entities other than the Town and the Town of Batavia Fire Protection District for either any loss or damage to its fire apparatus, equipment or materials used for the locality that issues a call for aid or for payments to injured or deceased firemen as provided by any law of the State of New York.

6. In the event that the fire-fighting equipment owned by the Fire Department is in such condition that said Fire Department is unable to fulfill its obligations under this contract to answer or attend any fire occurring in said Town of Batavia Fire Protection District for a period of twenty-one (21) days or longer, the Fire Department covenants to reimburse the Town on a pro rata basis the sums provided to be paid to the Fire Department pursuant to this Agreement retroactive to the first day of said twenty-one (21) day period for the entire period of time during which it is unable to fulfill its obligations under this Agreement.

7. A. The Town covenants and agrees to pay to the Fire Department in consideration for services to be performed pursuant to this Agreement the sum of Seven Hundred Ten Thousand One Hundred Thirty Four and 00/100 Dollars (\$710,134.00).

B. The sums as stated in this paragraph to be due and payable on the 1<sup>st</sup> day of February, 2010, upon presentation to the Town of a duly verified voucher therefore.

8. The Town covenants to provide snowplowing services for the parking and driveway area to the Fire Hall owned by the Fire Department, as well as routine maintenance of said parking lot and driveway area, both only to the extent that the Superintendent of Highways of the Town determines that said services can be provided. The Fire Department agrees to provide all materials and supplies for said maintenance services; acknowledges that said routine maintenance services shall be provided only during normal business hours of the Town of Batavia Highway Department and as other Town Highway Department functions permit. The Fire Department further acknowledges that said snowplowing services shall be provided only after the Town's Superintendent of Highways is satisfied that the highways of the Town of Batavia are reasonably free and clear of ice and snow and that men and machinery under his supervision

**DECEMBER 16, 2009**  
**REGULAR TOWN BOARD MEETING**

and control are free to provide said services. The Fire Department hereby covenants to indemnify and to hold the Town harmless for any injury, loss or damage which the Fire Department or any other person, firm or corporation may suffer, sustain or be required to pay by reason of the Town not providing or failing to provide adequate snowplowing and/or maintenance services under the provisions of this Paragraph.

9. A. The Fire Department will provide an independent, certified audit of the financial affairs of the Fire Department.

B. Upon the Fire Department complying with the requirements of section A of this paragraph, the Town shall immediately pay to the Fire Department all remaining sums owing under the terms of this Agreement.

10. A. The Fire Department shall provide written notice to the Town of capital purchases as early as possible, but in no event not less than 30 days prior thereto; provided, however, that this provision shall not be construed as requiring or constituting any municipal approval or involvement in the corporate affairs of the Fire Department by the Town.

B. The Fire Department shall continue to exercise sound financial practices and planning, including maintenance of capital reserve accounts where feasible.

11. All moneys to be paid under any provision of this Agreement, as well as other payments which may be made from time to time according to applicable provisions of law which regulate the terms and provisions of this Agreement, shall be a charge upon the said Fire Protection District to be assessed and levied upon the taxable real property in said District and collected with the Town Taxes.

12. This Agreement shall become operative and effective from 12:01 a.m. January 1, 2010, and shall continue for a term of one (1) year which will expire at midnight on December 31, 2010.

13. It is understood and agreed that this contract is subject to the provisions of Section 184 of the Town Law of the State of New York.

**IN WITNESS WHEREOF**, the parties have duly executed and delivered this Agreement in duplicate the day and year first above written.

TOWN BOARD OF THE TOWN OF BATAVIA

BY \_\_\_\_\_  
GREGORY H. POST

(SEAL)

**DECEMBER 16, 2009**  
**REGULAR TOWN BOARD MEETING**

ATTEST:

\_\_\_\_\_  
TERESSA M. MORASCO, TOWN CLERK

TOWN OF BATAVIA FIRE DEPARTMENT, INC.

BY \_\_\_\_\_  
MICHAEL JONES, PRESIDENT

(SEAL)

**STATE OF NEW YORK)**  
**COUNTY OF GENESEE) ss:**

On the \_\_\_\_ day of \_\_\_\_\_, 2009, before me came GREGORY H. POST, to me known, who, being by me duly sworn, did depose and say that he resides at 8472 Seven Strings Road in the Town of Batavia, New York; and he is the Supervisor of the **TOWN OF BATAVIA, NEW YORK** the municipal corporation described in and who executed the foregoing Agreement; that he knows the seal of said Town; that it was affixed by order of the Town Board of said Town; and that he signed his name thereto by like order.

\_\_\_\_\_  
**NOTARY PUBLIC**

**STATE OF NEW YORK)**  
**COUNTY OF GENESEE) ss:**

On the \_\_\_ day of \_\_\_\_\_, 2009, before me came Michael Jones, to me known, who, being by me duly sworn, did depose and say that, he resides at 17 Lincoln Avenue, Batavia, New York; and he is the President of the **TOWN OF BATAVIA FIRE DEPARTMENT, INC.** the corporation described in and which executed the foregoing Agreement; that he knows the seal of said Corporation; that it was affixed by order of the Board of Directors of said Corporation; and that he signed his name thereto by like order.

\_\_\_\_\_  
**NOTARY PUBLIC**

**RESOLUTION NO. 160:**

Deputy Supervisor Underhill offered the following:

**DECEMBER 16, 2009  
REGULAR TOWN BOARD MEETING**

**AUTHORIZATION TO EXECUTE  
MEMORANDUM OF UNDERSTANDING FOR USAGE OF TOWN HALL**

**RESOLVED**, the Batavia Town Board hereby authorizes the Supervisor to execute the Memorandum of Understanding, (attached) regarding the usage of Town facilities for the purpose of New York State Department of Motor Vehicle Hearings.

**Second by:** Councilwoman Michalak  
**Ayes:** Underhill, Michalak, Gerace, Lang, Post  
**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 161:**

Supervisor Post offered the following:

**CONTRACT TO PROVIDE ASSISTANCE TO EMPLOYEES WHO  
HAVE ALCOHOL, DRUG, FINANCIAL AND OTHER PERSONAL PROBLEMS**

**WHEREAS**, at the November 15, 1995 Town Board Meeting the Town Board adopted an Alcohol and Drug Testing Policy;

**WHEREAS**, the Town wishes to provide assistance to employees who have alcohol, drug, financial and other personal problems;

**WHEREAS**, Royal Employer Services will provide these services to the Town at a cost of two hundred, seventy dollars (\$270.00) annually (contract attached).

**RESOLVED**, the Batavia Town Board hereby authorizes the Supervisor to execute the contract between the Town of Batavia and Royal Employer Services to provide assistance to employees who have alcohol, drug, financial, and other personal problems.

**RESOLVED**, this contract runs from January 1, 2010 to December 31, 2010.

**Second by:** Councilman Gerace  
**Ayes:** Post, Gerace, Lang, Underhill, Michalak  
**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO.162:**

Councilwoman Michalak offered the following:

**DRUG AND ALCOHOL TESTING SERVICES**

**WHEREAS**, at the November 15, 1995 Town Board Meeting the Town Board adopted an Alcohol and Drug Testing Policy;

**DECEMBER 16, 2009**  
**REGULAR TOWN BOARD MEETING**

**WHEREAS**, the Town needs to contract for these testing services;

**WHEREAS**, WorkFit Medical, LLC, will provide these services, for employees holding safety sensitive positions (costs attached).

**RESOLVED**, the Batavia Town Board hereby retains WorkFit Medical, LLC for drug and alcohol testing services, for employees holding safety sensitive positions per costs above;

**RESOLVED**, this service runs from January 1, 2010 to December 31, 2010.

**Second by:** Councilman Lang

**Ayes:** Michalak, Lang, Underhill, Gerace, Post

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 163:**

Councilman Gerace offered the following:

**AUTHORIZING BUDGET TRANSFERS FOR 2009**

**RESOLVED**, the Batavia Town Board hereby authorizes the following Budget Transfers:

**General Fund:**

| <b><u>From</u></b>                       | <b><u>Amount</u></b> | <b><u>To</u></b>                         |
|------------------------------------------|----------------------|------------------------------------------|
| A1010.404 Town Board/Contr./Lang         | 233.41               | A1010.403 Town Board/Contr./Gerace       |
| A1110.107 Justices/Pers. Svc./ Clerk     | 700.00               | A1110.106 Justices/Security/Cleveland    |
| A1110.107 Justices/Pers. Svc./ Clerk     | 400.00               | A1110.105 Justices/Security/ Williams    |
| A5132.400 Trans./Garage/Utilities        | 247.80               | A5132.402 Trans./Garage/ Operating Exp.  |
| A5182.400 Trans./Street Lighting/Contr.  | 248.27               | A5132.401 Trans./Garage/Telephone        |
| A8010.401 ZBA/Contr./Legal Fees          | 57.18                | A8010.400 ZBA/Contr.                     |
| A8020.404 Planning /Contr./ Code Update  | 453.45               | A8020.400 Planning /Contr./Supplies      |
| A8164.406 Landfill/Contr./Post Closure   | 30.00                | A8164.404 Landfill/Contr./Legal          |
| A8165.403 Superfund/Contr./ Env. Testing | 195.95               | A8165.102 Superfund/Pers. Svc./PT        |
| A8165.403 Superfund/Contr./ Env. Testing | 7.17                 | A8165.404 Superfund/Contr./Legal         |
| A8165.403 Superfund/Contr./ Env. Testing | 135.72               | A8165.406 Superfund/Contr./Post Closure  |
| A9089.802 Emp. Benefit/Staff Development | 1731.35              | A9089.800 Emp. Benefit/In Lieu of Health |
| Ins                                      |                      |                                          |

**Highway**

|                                          |         |                                         |
|------------------------------------------|---------|-----------------------------------------|
| DA5110.400 Trans./General Repairs/Contr. | 3734.55 | DA5110.100 Trans./General Repairs/Pers. |
| Svc                                      |         |                                         |
| DA5110.400 Trans./General Repairs/Contr. | 682.21  | DA5110.101 Trans./Gen. Repair/Pers.     |
| Svc-PT                                   |         |                                         |

**DECEMBER 16, 2009  
REGULAR TOWN BOARD MEETING**

**Sewer District 1**

SS1-8120.400 Sanitary Sewer/Contr.            477.00            SS1-8120.404 Sewer/Contr./Pump Replace

A9901.900 Interfund Trs./Highway            150,000.00       DA5031 Interfund Trs./Trs. from Other  
Funds

**Second by:** Councilman Lang

**Ayes:** Gerace, Lang, Underhill, Michalak, Post

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 164:**

Councilman Lang offered the following:

**APPROVAL OF CHANGE ORDER 2009-01  
OPERATION & MAINTENANCE- TOWN OF BATAVIA  
LANDFILL SUPERFUND SITE**

**WHEREAS,** Arcadis is under contract with the Town of Batavia and the City of Batavia to provide Engineering Services at the Town of Batavia Landfill Superfund Site; and

**WHEREAS,** by agreement the Town of Batavia and City of Batavia are requested to fund the Operation and Maintenance activities at the Site; and

**WHEREAS,** Arcadis has submitted a letter detailing the scope of work and cost estimate for providing Operation and Maintenance Engineering Services at the Site for 2010 (attached); and

**WHEREAS,** the cost for the service is estimated at seventeen thousand, three hundred, five dollars (\$17,305.00), seventy-five percent (75%) to be incurred by the City of Batavia and twenty-five percent (25%) to the Town.

**RESOLVED,** the Town of Batavia hereby authorizes the Supervisor to execute the attached Change Order Approval Form for the aforementioned Engineering Services to be performed by Arcadis, at the Town of Batavia Landfill Superfund Site.

**Second by:** Deputy Supervisor Underhill

**Ayes:** Lang, Underhill, Michalak, Gerace, Post

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 165:**

Deputy Supervisor Underhill offered the following:

**APPROVAL OF CHANGE ORDER  
TOWN HALL RENOVATIONS**

**DECEMBER 16, 2009**  
**REGULAR TOWN BOARD MEETING**

**WHEREAS**, Mucher Erectors, Inc. is under contract with the Town of Batavia for the Town Hall Renovations project, and

**WHEREAS**, Mucher Erectors, Inc. has completed additional work as requested by the Town Engineer on a Time and Materials basis (Summary of Work and Costs and backup attached), and

**WHEREAS**, the total change order amount of \$7,500.00 is within the project monies available, and

**WHEREAS**, the Town Engineer has reviewed all work and costs and recommends approval of the change order request.

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Town of Batavia hereby approves the Change Order for the project in the amount of \$7,500.00.

**Second by:** Councilwoman Michalak

**Ayes:** Underhill, Michalak, Gerace, Lang, Post

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 166:**

Supervisor Post offered the following:

**CALLING FOR PUBLIC HEARING**  
**AGRICULTURAL & FARMLAND PROTECTION PLAN**

**WHEREAS**, the Town of Batavia Farmland Protection Plan Committee has performed a study and created a Town of Batavia Agricultural Farmland Protection Plan; and

**WHEREAS**, the draft of the Agricultural & Farmland Protection Plan has been completed and filed in the Town Clerk's Office.

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby authorizes and orders that a Public Hearing on the Proposed Agricultural & Farmland Protection Plan be conducted at the Batavia Town Hall, 3833 West Main Street Road, Batavia, New York, beginning at 6:30 P.M. on Wednesday, January 20, 2010 at which time and place all interested persons will be heard; and be it further

**RESOLVED**, that the Town Clerk is hereby authorized and directed to publish such public notice of the subject Public Hearing as required by law.

**Second by:** Councilman Gerace

**Ayes:** Post, Gerace, Lang, Underhill, Michalak

**DECEMBER 16, 2009**  
**REGULAR TOWN BOARD MEETING**

**APPROVED by unanimous vote (5-0)**

**NOTICE OF PUBLIC HEARING**  
**AGRICULTURAL & FARMLAND PROTECTION PLAN**

**PUBLIC NOTICE IS HEREBY GIVEN** that the draft copy of the Agricultural and Farmland Protection Plan is complete and has been filed in the Office of the Town Clerk of the Town of Batavia, where it is available for public inspection during regular business hours and via the Town of Batavia Website at [www.townofbatavia.com](http://www.townofbatavia.com).

Notice is also given that the Town Board of the Town of Batavia will hold a Public Hearing on the Agricultural Farmland Protection Plan at the Batavia Town Hall, 3833 West Main Street Road, Batavia, New York beginning at 6:30 P.M. on Wednesday, January 20, 2010 at which time and place any person will be heard.

**By order of the Batavia Town Board.**

**Dated:** December 16, 2009

Teresa M. Morasco  
Batavia Town Clerk

**RESOLUTION NO. 167:**

Councilwoman Michalak offered the following:

**RESOLUTION TO INTRODUCE PROPOSED LOCAL LAW #1 OF 2010**

**WHEREAS**, the Town Board of the Town of Batavia, New York desires to consider adopting legislation to assist the development of infrastructure in order to allow the Genesee County Industrial Development Agency, d/b/a Genesee County Economic Development Center (GCEDC) to develop two projects known as the Upstate Med & Tech Park, and the Genesee Valley Agricultural Business Park, and

**WHEREAS**, the Town Attorney has reviewed the proposed mechanism for the Town of Batavia to assist in these projects, and

**WHEREAS**, it has been determined that the Town of Batavia has authority pursuant to its Municipal Home Rule Law powers to enter into an agreement with GCEDC in order to authorize a grant to this Industrial Development Agency for the purpose of facilitating the planning, design and construction of sewer and electrical utility improvements for the Upstate Med & Tech Park and the Genesee Valley Agricultural Business Park, and

**WHEREAS**, the Town had included in its 2009 budget finds in the sum of \$100,000.00 to assist the GCEDC to develop a housing project, but this project has been delayed.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Board of the Town of Batavia, New York that proposed Local Law #1 of 2010 entitled "A Local Law to Authorize a Grant to the Genesee County Industrial Development Agency to Develop the Upstate Med & Tech Park and the Genesee Valley

**DECEMBER 16, 2009**  
**REGULAR TOWN BOARD MEETING**

Agricultural Business Park", which proposed Local Law is now in its final form as appears by a copy thereof hereto attached, be and the same hereby is introduced for adoption; and

**BE IT FURTHER RESOLVED** that said proposed Local Law be laid upon the desks of the members of this Town Board on this date and remain there and a copy thereof be kept on file in the office of the Town Clerk until January 20, 2010, and that a public hearing be held before this Town Board on the 20<sup>th</sup> day of January, 2010, at 6:50 p.m. at the Batavia Town Hall, 3833 West Main Street Road, Batavia, New York, on the advisability of enacting said proposed Local Law; and

**BE IT FURTHER RESOLVED** that a copy of said proposed Local Law be mailed to each member of the Town Board not in attendance at this meeting in a postpaid, properly addressed and securely closed envelope in a post box within the Town of Batavia, New York not less than ten (10) calendar days, exclusive of Sunday, prior to the date of said public hearing; and

**BE IT FURTHER RESOLVED** that the Town Clerk shall cause notice of said public hearing to be published once in The Daily News at least five (5) days prior to the date of said public hearing, which notice shall contain the time and place of said hearing, the title and purpose thereof, as well as a statement that a copy of said proposed Local Law is on file in the Town Clerk's Office.

**Second by:** Councilman Gerace

**Ayes:** Michalak, Gerace, Lang, Underhill, Post

**APPROVED by unanimous vote (5-0)**

**NOTICE OF PUBLIC HEARING BY THE TOWN BOARD**  
**OF THE TOWN OF BATAVIA, NEW YORK**  
**TO CONSIDER ADOPTING A PROPOSED LOCAL LAW**

**PUBLIC NOTICE** is hereby given that there has been presented to the Town Board of the Town of Batavia, New York on the 16<sup>th</sup> day of December, 2009, proposed Local Law #1 of 2010 entitled "A Local Law to Authorize a Grant to the Genesee County Industrial Development Agency to Develop the Upstate Med & Tech Park and the Genesee Valley Agricultural Business Park". Said Local Law will authorize the Town of Batavia to grant the sum of \$113,000.00 to the Genesee County Industrial Development Agency, d/b/a Genesee County Economic Development Center (GCEDC) in order to allow the GCEDC to plan, design and construct sewer and electrical utility improvements to facilitate the establishment of two projects in the Town of Batavia entitled the Upstate Med & Tech Park and the Genesee Valley Agricultural Business Park.

**PLEASE TAKE FURTHER NOTICE** that on 20<sup>th</sup> day of January, 2010, at 6:50 o'clock in the afternoon of that day the Town Board of the Town of Batavia, New York will conduct a public hearing at the Batavia Town Hall located at 3833 West Main Street Road in the Town of Batavia, New York for the purpose of considering the advisability of enacting said proposed Local Law, at which time and place all persons interested will be heard.

**DECEMBER 16, 2009**  
**REGULAR TOWN BOARD MEETING**

**PLEASE TAKE FURTHER NOTICE** that this notice represents only a summary of the proposed Zoning Law Amendment. A complete copy of the Local Law is on file at the office of the Batavia Town Clerk, 3833 West Main Street, Batavia, New York and is open for public inspection during regular office hours.

Dated: Batavia, New York  
December 16, 2009

---

Teresa M. Morasco, Town Clerk  
Town of Batavia, New York

**RESOLUTION NO. 168:**

Councilman Gerace offered the following:

**SMART GROWTH PLAN UPDATE**  
**RECOMMENDATIONS TO THE COUNTY**

**WHEREAS**, the Genesee County Department of Planning is beginning the process of reviewing and updating the County's Smart Growth Plan; and

**WHEREAS**, the Town Board and the Town Engineer met with the Director of Planning on Wednesday, December 9, 2009 to discuss some recommendations to be included in the plan.

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby authorizes the Supervisor to send the (attached) letter of recommendations for the Smart Growth Plan update on behalf of the Batavia Town Board to the Genesee County Department of Planning and the Genesee County Legislature .

**Second by:** Deputy Supervisor Underhill  
**Ayes:** Gerace, Underhill, Michalak, Lang, Post  
**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 169:**

Councilman Lang offered the following:

**TOWN OF BATAVIA PREMIUM PAYMENT PLAN**  
**CHIPRA AMENDMENT**

**RESOLVED, that the CHIPRA Amendment** to the Town of Batavia Premium Payment Plan, the purpose of which is to enable mid-year election changes under Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), is hereby approved effective as of April 1, 2009 (attached).

**Second by:** Deputy Supervisor Underhill

**DECEMBER 16, 2009  
REGULAR TOWN BOARD MEETING**

**Ayes:** Lang, Underhill, Michalak, Gerace, Post  
**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 170:**

Deputy Supervisor Underhill offered the following:

**RESOLUTION SUPPORTING LEGISLATION  
TO RESCIND NEW NYSDEC OPEN BURN LAWS**

**WHEREAS**, on October 14, 2009 new legislation on “Open Burn” went into effect; and

**WHEREAS**, prior to this new legislation, open burning of garbage, refuse and rubbish in rural communities was a longstanding means of eliminating waste material, as many rural communities do not have waste management facilities and/or apparatus to transport waste material to such facilities; and

**WHEREAS**, under the current law the DEC adopted regulations banning open burn and removing the previous exemption for Towns with populations of 20,000 or less; and

**WHEREAS**, rescinding the recently adopted legislation would significantly help the rural residents and communities during this difficult financial time.

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby supports efforts to rescind the new “Open Burning Regulations” banning burning in Towns with a population of 20,000 or less; and be it

**FURTHER RESOLVED** that the Town Clerk is hereby directed to forward copies of this resolution to Governor David Paterson, Assemblyman Stephen Hawley, Senator Michael Ranzenhofer, and Robert K. Sweeney, Chair of the Committee on Environmental Conservation.

**Second by:** Councilwoman Michalak

**Ayes:** Underhill, Michalak, Gerace, Lang, Post

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 171:**

Supervisor Post offered the following:

**APPLICATION X-TENDER/QUICK SCAN PRO  
MAINTENANCE AGREEMENT  
BETWEEN BIEL’S AND THE TOWN OF BATAVIA**

**WHEREAS**, the Town purchased Documentum 5.4 Software (Application X-tender & Quick Scan Pro in January 2009 from Beil’s for records management; and

**WHEREAS**, the annual maintenance cost for this software is seven, hundred, seventy-seven

**DECEMBER 16, 2009  
REGULAR TOWN BOARD MEETING**

dollars (\$777.00) (agreement attached), the current agreement expires January 13, 2010.

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby authorizes the Supervisor to execute the annual Maintenance Agreement for the Documentum Software between the Town of Batavia and Biel's at a cost of seven hundred, seventy-seven dollars for one (1) year starting January 14, 2010.

**Second by:** Councilman Gerace

**Ayes:** Post, Gerace, Lang, Underhill, Michalak

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 172:**

Councilwoman Michalak offered the following:

**HEALTH INSURANCE FOR  
NON-BARGAINING EMPLOYEES**

**WHEREAS**, the Town of Batavia currently provides Health Insurance to the non-bargaining employees through MVP Healthcare (formerly Preferred Care); and

**WHEREAS**, as of January 1, 2010 the current EPO plan will no longer be available; and

**WHEREAS**, the Town received quotes from MVP Healthcare for the new EPO plans that will be available and still maintain the level of benefits to the employees; and

**WHEREAS**, the monthly cost for the single plan is \$396.09, two-person plan is \$792.17 and the monthly cost for the family plan is \$1,067.45; and

**WHEREAS**, the Town Board of the Town of Batavia supports maintaining the level of benefit to the non-bargaining employees by reimbursing them in full for medical co-pays by continuing to have a Health Reimbursement Arrangement (HRA) through EBS Benefit Solutions, Fairport, New York.

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby authorizes MVP Healthcare Insurance coverage through CPP, Inc. at the aforementioned monthly costs to the non-bargaining employees who are eligible for health insurance in accordance with the Town's policies and procedures; and be it

**FURTHER RESOLVED**, that the Supervisor is hereby authorized to execute the attached Health Insurance Services Quote between the Town of Batavia and MVP Healthcare.

**Second by:** Deputy Supervisor Underhill

**Ayes:** Michalak, Underhill, Gerace, Lang, Post

**APPROVED by unanimous vote (5-0)**

**DECEMBER 16, 2009  
REGULAR TOWN BOARD MEETING**

**SUSPEND THE RULES**-Motion Deputy Supervisor Underhill, second Councilman Lang to suspend the rules to introduce additional resolutions.

**Ayes:** Underhill, Lang, Michalak, Gerace, Post

**MOTION CARRIED by unanimous vote (5-0)**

**RESOLUTION NO. 173:**

Councilman Gerace offered the following:

**SEWER AGREEMENT  
BETWEEN TOWN OF BATAVIA AND  
WESTERN REGIONAL OFF-TRACK BETTING CORPORATION**

**WHEREAS**, the Town is the owner of Sanitary Sewer District #2 in the Town of Batavia, New York, which Sewer District provides service to residents and properties of the Town in general; and

**WHEREAS**, Western Regional Off-Track Betting Corporation's wishes to become a customer of Sanitary Sewer District #2 and has requested to connect to the Town of Batavia Sewer District #2; and

**WHEREAS**, Western Regional Off-Track Betting Corporation is located partially in the Town and City of Batavia; and

**WHEREAS**, in order to simplify City and Town usage charges, the City of Batavia will invoice the Town for Western Regional Off-Track Betting Corporation sewer usage(based upon water usage) and the Town will in turn pay the City of Batavia usage charge; and

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby authorizes the Supervisor to execute the attached sewer agreement between the Town of Batavia and Western Regional Off-Track Betting Corporation, located at 8315 Park Road, Batavia, New York.

**Second by:** Deputy Supervisor Underhill

**Ayes:** Gerace, Underhill, Michalak, Lang, Post

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 174:**

Councilman Lang offered the following:

**RESOLUTION TO APPROVE AN AGREEMENT FOR THE  
PARK ROAD CONSTRUCTION PROJECT**

**WHEREAS**, improvements for Park Road in the Town of Batavia, located between New York State Route 98 and New York State Route 63, P.I.N. 4754.86, (hereinafter referred to as the "Project"), are eligible for funding under Title 23 U.S. Code, as amended, that allows for the apportionment of the cost of this Project to be borne at the ratio of 80% federal funds and 20% non-federal funds, and

**DECEMBER 16, 2009**  
**REGULAR TOWN BOARD MEETING**

**WHEREAS**, the New York State Department of Transportation, (hereinafter referred to as “NYSDOT”), administers this funding program, and has proposed a “Standard Federal-Aid Highway and Marchiselli-Aid Local Project Agreement”, (hereinafter referred to as the “Agreement”), and

**WHEREAS**, this Agreement and the annexed Schedules and Appendixes refers to the initial phases of the project regarding preliminary engineering, incidental right of way work and right of way acquisition, and

**WHEREAS**, the Agreement requires the Town of Batavia to advance 100% of the cost for the initial phases as set forth in the Agreement in the amount of \$363,000.00, subject to reimbursement for the federal share of these costs, and thereafter, potentially New York State Marchiselli-Aid grant, which is not guaranteed.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Board of the Town of Batavia, New York, that the aforesaid “Standard Federal-Aid Highway and Marchiselli-Aid Local Project Agreement”, with Schedules A and B and Appendixes A and B annexed thereto, is hereby approved, and the Town will comply with all of the terms and conditions therein, and it is further

**RESOLVED** that the Town Board does hereby authorize initial payment of 100% of both the federal and non-federal share of the cost of \$363,000.00 for the work on the Project covered by the Agreement with the sum of \$290,400.00 to be reimbursed by Federal aid, leaving the sum of \$72,600.00 as the local share, and it is further

**RESOLVED** that the aforesaid sum of \$363,000.00 is hereby appropriated and made available to cover the cost of participation in the above phase of the Project set forth in the Agreement, and it is further

**RESOLVED** that in the event that the full federal and non-federal share cost of the Project exceeds the amount appropriated above, the Town Board of the Town of Batavia shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the NYSDOT thereof, and it is further

**RESOLVED** that the Town Supervisor and the Town Attorney are hereby authorized and directed to execute the aforesaid Agreement and any and all other Agreements, certifications or documents needed for Federal-Aid and/or Marchiselli-Aid, on behalf of the Town of Batavia with the NYSDOT in connection with the advancement or approval of the Project, and providing for the administration of the Project and the Town’s initial funding of the Project cost and permanent funding of the local share of the federal-aid and state-aid eligible Project costs and all Project costs within appropriations thereof that are not so eligible, and it is further

**RESOLVED** that a certified copy of this Resolution be filed with the New York State Commissioner of Transportation by annexing it to any necessary Agreement in connection with the Project, and it is further

**DECEMBER 16, 2009**  
**REGULAR TOWN BOARD MEETING**

**RESOLVED** that this Resolution shall take effect immediately.

**Second by:** Deputy Supervisor Underhill

**Ayes:** Lang, Underhill, Michalak, Gerace, Post

**APPROVED by unanimous vote (5-0)**

**Abstract No. 12-2009:** Motion Councilman Lang, second Deputy Supervisor Underhill to authorize the Supervisor to pay the following vouchers:

|                |                     |
|----------------|---------------------|
| General        | \$ 91,486.91        |
| Highway        | 24,977.13           |
| Sewer No. 1    | 4,168.26            |
| Sewer No. 2    | 4,758.19            |
| Water          | 20,942.16           |
| Alexander/Pike | 10,470.75           |
| Saile Drive    | 1,375.00            |
| Rose           | 8,385.50            |
| Wortendyke     | <u>759.15</u>       |
| <b>TOTAL</b>   | <b>\$167,323.05</b> |

Check numbers 14378 thru 14383, 14385 thru 14459, online \$1306.58

**Ayes:** Lang, Underhill, Michalak, Gerace, Post

**MOTION CARRIED by unanimous vote (5-0)**

**DEPARTMENT REPORTS:**

**Building Inspector** reported on the following:

**Census Material-** He received and is working on the Census 2010 material. Mr. Worthington commented on how helpful the GIS program is with compiling the information for the Census.

**CODE CONFERENCE-** Motion Deputy Supervisor Underhill, second Councilman Lang authorizing Clinton Worthington to attend the Northern Adirondack Code Enforcement Annual Educational Conference, March 1, through March 4, 2010 and Bruce Gerould to attend Finger Lakes Building Officials Annual Conference March 15 through March 18, 2010.

**Ayes:** Underhill, Lang, Michalak, Gerace, Post

**MOTION CARRIED by unanimous vote (5-0)**

**Supervisor's Report:**

**Status Report** on expenditures and revenues is available for the Board's review. The investment sheets will be entered into the minute book. The monies are invested in CD's and are paying a rate of .23%.

**Organizational Meeting** will be held Wednesday, January 6, 2010 at 7:00 P.M. and a Special Meeting to follow, if needed, for any unfinished business.

**DECEMBER 16, 2009**  
**REGULAR TOWN BOARD MEETING**

**GAM meeting** is tomorrow at 7:00 P.M., hosted by the Village of Oakfield at the Town of Oakfield Town Building on Drake Street.

**COMMUNICATIONS:**

The Town Clerk reported on the following:

**November Town Clerk monthly report** collected a total of \$7,136.48 remitted \$5,568.48 to the Supervisor for the Local Share.

**Niagara River Watershed Workshops** will be held in January 9, 2010 and January 16, 2010. If anyone wishes to attend, reservations needed to be made by December 31, 2009.

The Supervisor wished everyone Merry Christmas and Happy New Year!

**ADJOURNMENT:**

Motion Councilman Lang, second Councilman Gerace to adjourn the Regular Town Board Meeting at 7:35 P.M.

**Ayes:** Lang, Gerace, Underhill, Michalak, Post

**MOTION CARRIED by unanimous vote (5-0)**

Respectfully submitted,

Teresa M. Morasco  
Town Clerk