

**AUGUST 15, 2012  
REGULAR TOWN BOARD MEETING**

**Town Hall**

**7:00 P.M.**

Al Lang, Councilman led the pledge to the flag.

**Roll Call**

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

**Others**

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

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

**July 11, 2012, 2012 Public Hearing- CDBG NY Craft Malt:** Motion Deputy Supervisor Underhill, second Councilman Lang to approve the minutes as written.

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

**MOTION CARRIED by unanimous vote (4-0)**

**July 11 2012, 2012 Special Town Board Meeting:** Motion Councilwoman Michalak, second Councilman Lang to approve the minutes as written.

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

**MOTION CARRIED by unanimous vote (4-0)**

**July 18, 2012, 2012 Regular Town Board Meeting:** Motion Deputy Supervisor Underhill, second Councilwoman Michalak to approve the minutes as written.

**Ayes:** Underhill, Michalak, Post

**Abstain:** Lang

**MOTION CARRIED (3-ayes, 1-abstain)**

**August 1, 2012 Special Town Board Meeting:** Motion Councilwoman Michalak, second Councilman Lang to approve the minutes as written.

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

**MOTION CARRIED by unanimous vote (4-0)**

**RESOLUTION NO. 135 :**

Councilman Lang offered the following:

**RESOLUTION TO AUTHORIZE SUBMITTAL OF GRANT APPLICATION  
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS**

**"RESOLVED**, that the Town Supervisor of the Town of Batavia, Genesee County, New York, is hereby authorized as the official representative of the Town of Batavia to execute and submit a Community Development Block Grant application to the administrative agency for the Fiscal Year 2012 program, all understandings and assurances contained therein, and is hereby directed and authorized to act in connection with the submission of the application and to provide such additional information as may be required.

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**Second by:** Councilwoman Michalak  
**Ayes:** Lang, Michalak, Underhill, Post  
**APPROVED by unanimous vote (4-0)**

**RESOLUTION NO. 136:**

Deputy Supervisor Underhill offered the following:

**RESOLUTION TO INTRODUCE PROPOSED LOCAL LAW #2 OF 2012**  
**AND TO SCHEDULE A PUBLIC HEARING**

**WHEREAS**, the Town Board of the Town of Batavia, New York desires to consider adopting legislation to override the limit on the amount of real property taxes that may be levied by the Town of Batavia pursuant to General Municipal Law § 3-c, and to allow the Town of Batavia to adopt a town budget for fiscal year 2013 that requires a real property tax levy in excess of the tax levy limit, also known as Town of Batavia Local Law #2 of 2012.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Board of the Town of Batavia, New York that proposed Local Law #2 of 2012 entitled "A Local Law to Override the Tax Levy Limit Established in General Municipal Law § 3-c for Fiscal Year 2013", 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 September 12, 2012, and that a public hearing be held before this Town Board on the 12th day of September, 2012 at 6:55 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 Lang  
**Ayes:** Underhill, Lang, Michalak, Post  
**APPROVED by unanimous vote (4-0)**

**NOTICE OF PUBLIC HEARING BY THE TOWN BOARD**

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**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 15<sup>th</sup> day of August, 2012 proposed Local Law #2 of 2012 entitled "A Local Law to Override the Tax Levy Limit Established in General Municipal Law § 3-c for Fiscal Year 2013". Said Local Law will allow the Town of Batavia to override the limit on the amount of real property taxes that may be levied, pursuant to General Municipal Law § 3-c, and to allow the Town of Batavia to adopt a town budget for fiscal year 2013 that requires a real property tax levy in excess of the tax levy limit.

**PLEASE TAKE FURTHER NOTICE** that on 12<sup>th</sup> day of September, 2012, at 6:55 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.

A copy of said proposed Local Law is on file at the office of the Batavia Town Clerk, 3833 West Main Street Road, Batavia, New York and is open for inspection during regular Office hours.

Dated: Batavia, New York  
August 15, 2012

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

**RESOLUTION NO. 137:**

Supervisor Post offered the following:

**PURCHASE NEW 10 WHEEL PLOW TRUCK FOR  
HIGHWAY DEPARTMENT**

**WHEREAS**, the Highway Superintendent sold a 2010 10 wheel plow truck in May, 2012 for \$160,000 as part of the Highway Department's 20 year equipment replacement plan. This money was to be used to purchase a new 10 wheel plow truck.

**WHEREAS**, 10 wheel plow trucks are no longer available for purchase on State bid.

**WHEREAS**, the Highway Superintendent recommends purchasing a 2013 Mack Granite GU713 truck chassis using the Onieda County bid from Beam Mack Sales and Service, 2674 W. Henrietta Road, Rochester NY 14609 at a price of \$120,021.22. To complete the truck, the superintendent also recommends purchasing a one way plow, wing, Beau Roc dump body and smith spreader using the Genesee County bid from Viking Cives, 2917 Judge Road, Oakfield, NY 14125 for \$78,247.00. The total

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purchase price for this complete truck is \$198,368.22.

**WHEREAS**, the additional \$38,368.22 required to purchase this plow truck was not included in the 2012 Town budget but can be taken from the highway equipment reserve funds that are available.

**RESOLVED**, the Batavia Town Board hereby authorizes the purchase of a new 2013 Mack Granite GU713 truck chassis using the Onieda County bid from Beam Mack Sales and Service, 2674 W. Henrietta Road, Rochester NY 14609 at a price of \$120,021.22 and a one way plow, wing, Beau Roc dump body and smith spreader using the Genesee County bid from Viking Cives, 2917 Judge Road, Oakfield, NY 14125 for \$78,247.00. The total purchase price for this complete truck is \$198,368.22, and be it

**FURTHER RESOLVED**, the additional \$38,368.22 will be appropriated from the highway equipment reserve funds.

**Second by:** Councilman Lang  
**Ayes:** Post, Lang, Underhill, Michalak  
**APPROVED by unanimous vote** (4-0)

**RESOLUTION NO. 138**

Councilwoman Michalak offered the following:

**AMENDMENT TO RESOLUTION 2 OF 2012**  
**ADOPTION OF SALARIES FOR 2012**

**RESOLVED**, the Batavia Town Board hereby amends resolution number 2 of 2012, entitled “Adoption of Salaries for 2012”, as follows:

- \* Transfer Station Attendant: the hourly rate for the Transfer Station should be a range from \$12.00 to \$14.08 rather than a single hourly rate of \$14.08
- \* Additional Assessment Personal Service Salary for the Assessor - \$5,833.00

**Second by:** Deputy Supervisor Underhill  
**Ayes:** Michalak, Underhill, Lang, Post  
**APPROVED by unanimous vote** (4-0)

**RESOLUTION NO. 139:**

Councilman Lang offered the following:

**CONSENT TO ASSIGNMENT OF CONTRACT**  
**BETWEEN THE TOWN OF BATAVIA AND WENDEL DUCHSCHERER**  
**(GEOGRAPHICAL INFORMATIONAL SYSTEM) GIS PROGRAMMING, MAINTENANCE**  
**AND TRAINING**

**WHEREAS**, the Town of Batavia entered into one or more contracts with Wendel Duchscherer

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Architects and Engineers, P.C.; and

**WHEREAS**, Wendal Duchscherer Architects and Engineers, Wendel Engergy Services, LLC and Wendel Construction, Incorporated are undertaking a corporate restructuring; and

**WHEREAS**, as part of the restructuring, contracts with Wendel Duchscherer need to be assigned to the newly formed New York professional corporation, "Audubon Architecture, Engineering, Land Surveying & Landscape Architecture, P.C (Assignment of Contract Agreement attached).

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby authorizes the consent to assign the current contracts with Wendel Duchscherer to Audubon Architecture, Engineering, Surveying & Landscape Architecture, P.C.; and be it

**FURTHER RESOLVED**, the Town Supervisor is hereby authorized to execute the Assignment of Contract Agreement.

**Second by:** Councilwoman Michalak  
**Ayes:** Lang, Michalak, Underhill, Post  
**APPROVED by unanimous vote (4-0)**

**RESOLUTION NO. 140:**

Deputy Supervisor Underhill offered the following:

**AUTHORIZING BUDGET TRANSFERS FOR 2012**

**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>	
A1990.400	Contingency	\$5,500.00	A1110.407	PT Court Clerk
A1990.400	Contingency	\$5,833.00	A1355.101	Assessment Personal Services
A1410.401	Records Mgmt Contractual	\$3,369.00	A1410.201	Records Mgmt Equipment
A1410.200	Town Clerk -Equipment	\$304.00	A1410.101	Town Clerk - PT
A1410.200	Town Clerk - Equipment	\$779.00	A1410.201	Records Mgmt Equipment
A1410.400	Town Clerk Contractual	\$301.00	A1410.201	Records Mgmt Equipment
A1220.400	Supervisor Contractual	\$500.00	A1220.402	Sec to Supv Contractual
A8165.403	Superfund Env Testing	\$2,000.00	A8165.402	Superfund Engineering
A8165.403	Superfund Env Testing	\$300.00	A8165.406	Superfund Post Maint
A8030.400	Research and Development	\$5,000.00	A9060.801	Health Ins Medical Exp

**Second by:** Councilman Lang  
**Ayes:** Underhill, Lang, Michalak, Post  
**APPROVED by unanimous vote (4-0)**

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**RESOLUTION NO. 141:**

Supervisor Post offered the following:

**RESOLUTION TO RETAIN**  
**PART-TIME TEMPORARY COURT CLERK**

**WHEREAS**, the Town of Batavia received a Local Government Records Management Improvement Fund (LGRMIF) Grant for document conversion and access of the Planning Board and Zoning Board of Appeals minutes and the Court records ; and

**WHEREAS**, Katelyn Parmenter worked on preparing the Court records for this project; and

**WHEREAS**, the grant period ended June 30 and there are approximately 24 cubic feet of records remaining to be prepared for conversion (which entails approximately 384 labor hours).

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby retains Katelyn Parmenter as the temporary Court Clerk at a salary of \$14.00 per hour, not to exceed 19 1/2 hours per week, appropriated from line item A1110.107 to prepare the 2008 through 2012 court records for conversion.

**Second by:** Councilman Lang

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

**APPROVED by unanimous vote (4-0)**

**RESOLUTION NO. 142:**

Councilwoman Michalak offered the following:

**TRANSFER STATION ATTENDANT**

**WHEREAS**, the Town's Transfer Station Attendant passed away; and

**WHEREAS**, the Highway Superintendent would like to hire Eric Olson as the part-time Transfer Station Attendant.

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby authorizes the Highway Superintendent to hire Eric Olson as the Town of Batavia Transfer Station Attendant at a rate of \$13.00 per hour, not to exceed 19 1/2 hours per week.

**Second by:** Deputy Supervisor Underhill

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

**APPROVED by unanimous vote (4-0)**

**RESOLUTION NO. 143:**

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Councilman Lang offered the following:

**TOWN INSURANCE  
BROKER AUTHORIZATION**

**WHEREAS**, Pat Comerford, with McManus-Peard-Gesl, Incorporated has been the Town's Insurance Broker; and

**WHEREAS**, they are in the process of being sold and Franz Manno Service Corporation will be taking over the accounts; and

**WHEREAS**, the Town of Batavia wishes Pat Comerford to remain our agent.

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby recognizes and desires Franz Manno Service Corporation as the Broker of record.

**Second by:** Deputy Supervisor Underhill

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

**APPROVED by unanimous vote (4-0)**

**RESOLUTION NO. 144:**

Deputy Supervisor Underhill offered the following:

**RENEWAL RESOLUTION TO APPOINT  
A TOWN COUNCILMAN TO FILL A VACANCY**

**WHEREAS**, Councilman John Gerace previously submitted a written letter of resignation which was filed with the Town Clerk, thereby creating a vacancy for this position, and

**WHEREAS**, pursuant to Section 64(5) of the Town Law, the Town Board is authorized, but not required, to fill this vacancy, and

**WHEREAS**, on July 18, 2012, Resolution No.132 of 2012 entitled "Resolution to Appoint a Town Councilman to Fill a Vacancy", was introduced and seconded, and

**WHEREAS**, the votes of the three Town Board Members present at this meeting, were two Councilpersons in favor and one Councilperson in opposition, and thereby the Resolution was not adopted, since it did not receive the required three affirmative votes, and

**WHEREAS**, the Councilperson offering the current Renewal Resolution desires to offer the same motion as was previously addressed in the prior Town Board meeting on July 18, 2012, which pursuant to Robert's Rules of Order is designated as a renewal motion.

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**NOW, THEREFORE, BE IT RESOLVED** by the Town Board of the Town of Batavia, New York, that pursuant to Section 64(5) of the Town Law, Chad Zambito is hereby appointed as a Town Councilman to fill the vacancy in this office, to serve until midnight on December 31, 2012.

**Second by:** Councilman Lang

**Ayes:** Lang, Michalak, Post

**Nays:** Underhill

**APPROVED** (3-ayes, 1-nay)

**Discussion-** Councilman Lang expressed that he has been a resident for 72 years and is committed to look out for the best interest of the Town. He stated that in the best interest of the Town he supports the appointment of Chad Zambito to the Town Board.

**RESOLUTION NO. 145:**

Supervisor Post offered the following:

**COURT SECURITY**

**RESOLVED**, the Batavia Town Board hereby appoints Gerald A. Casper to the position of Court Security Officer to serve on an as needed basis at a rate of eighteen dollars per hour (\$18.00).

**Second by:** Deputy Supervisor Underhill

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

**APPROVED by unanimous vote** (4-0)

**RESOLUTION NO. 146-DIED DUE TO LACK OF SECOND:**

Councilwoman Michalak offered the following:

**AUTHORIZATION FOR ADVERTISEMENT**  
**BUFFALO BUSINESS FIRST**

**WHEREAS**, the Buffalo Niagara Enterprise is partnering with Buffalo Business First on a special publication titled "Buffalo Niagara: Collaborating to Compete"; and

**WHEREAS**, since 1999 the Buffalo Niagara Enterprise has been collaborating with public and private partners, helping 271 companies invest more than \$2.9 billion while creating and retaining more than 37,000 jobs; and

**WHEREAS**, on Friday, September 14<sup>th</sup>, 2012 the Special Publication will be published and will feature the Buffalo Niagara region, and the programs, people and services that support our economic development and business attraction efforts; and

**WHEREAS**, this is a unique opportunity to promote the strength of the community as well as the unique characteristics that make the Town a great place to live, work, learn and play by placing an



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advertisement in this Special Edition.

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby authorizes a \_\_\_\_\_ page advertisement in The Buffalo Business First Newspaper's at a cost of \_\_\_\_\_ dollars (\$\_\_\_\_\_); and be it

**FURTHER RESOLVED**, the expenditure will be expended from line item A6410.400.

**Second by: MOTION DIED DUE TO LACK OF SECOND**

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

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

**MOTION CARRIED by unanimous vote (4-0)**

**RESOLUTION NO. 147:**

Councilman Lang offered the following:

**RESOLUTION TO RETAIN SPECIAL COUNSEL TO DEFEND THE TOWN IN THE  
COR VMD COMPANY, LLC ASSESSMENT PROCEEDING**

**WHEREAS**, a Notice of Petition was filed in the Genesee County Clerk's Office on July 27, 2012, and served upon the Town of Batavia on July 30, 2012, for the tax assessment case entitled COR VMD Company, LLC c/o Lowe's Home Centers, Inc. vs. Board of Assessment Review and/or Assessor of the Town of Batavia and the Town of Batavia, Genesee County, New York, Index No. 62160, and

**WHEREAS**, the Town Attorney, Kevin D. Earl, has recommended in a letter, dated August 15, 2012, a copy of which is annexed hereto, that the Town Board retain the Law Firm of Bennett DiFilippo & Kurtzhalts, LLP.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Board of the Town of Batavia, New York, that Joel R. Kurtzhalts, Esq. of the Law Firm Bennett, DiFillippo & Kurtzhalts, LLP, be retained as special counsel to defend the Town in the above-named tax assessment litigation, upon the terms and rates as set forth in his letter to the Town Attorney, dated August 14, 2012, a copy of which is annexed hereto, and

**BE IT FURTHER RESOLVED** that payment is hereby authorized for his attorney's fees, as billed, together with all necessary disbursements, fees and expenses, including expert witness fees.

**Second by:** Councilwoman Michalak

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

**APPROVED by unanimous vote (4-0)**

**RESOLUTION NO. 148:**

Deputy Supervisor Underhill offered the following:

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**ESTABLISH LINE ITEM**

**RESOLVED**, the Batavia Town Board hereby establishes following line item to account for expenditures:

A1355.101 – Assessment Personal Services

**Second by:** Councilwoman Michalak  
**Ayes:** Underhill, Michalak, Lang, Post  
**APPROVED by unanimous vote** (4-0)

**Abstract No. 8-2012:** Motion Councilman Lang , second Deputy Supervisor to authorize the Supervisor to pay the following vouchers:

General	\$94,580.88
Highway	11,790.30
Sewer No. 1	18,018.84
Sewer No. 2	53,946.91
Water	12,861.66
West Main Sewer	5,742.24
<b>Total</b>	<b>\$196,940.83</b>

Check numbers 17161 thru 17224, Online \$5,991.22

**Ayes:** Lang, Underhill, Michalak, Post  
**MOTION CARRIED by unanimous vote** (4-0)

**DEPARTMENT REPORTS:**

**The Supervisor reported for the Building Department:**

**Building:** Report from Dan Lang:

- Day to day operations are very busy and the permit applications are steadily being processed.
- We have been dealing with many Code Violations in regards to Property Maintenance Code.
- Dave Sharrick who is the owner of the pigs that were located on Lewiston Road has appeared before the Town Justice and was fined in the amount of \$430.00. He has removed all of the pigs and is removing the structure.
- Communication with the Supervisor of the Town of Pavilion continues and I have been working on several updates for their Code and Fee structure, permitting process, ect.
- Fire Inspections are taking place on a weekly basis.
- Reviewing all budget materials.
- Completing plan review on several projects.

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- Working on a daily basis with Project Wave in regards to several questions and submittals that they have sent to us for review.
- Completing inspections on a day to day basis.
- Alpina foods now have power to the building. Inspections continue.
- I have received some Emails and have had some phone conversations about the Re Zoning of the parcel on the corner of Wortendyke and West Main St. Road. From what I am gathering the location on the corner is being looked at for the placement of a new Convenient Mart.
- I have been in contact with Mr. Wagner and am setting up a time with him and James Parlavecchio from Clark Patterson Lee to do a full assessment of Mr. Wagner's Building.
- Perry Vet clinic is framing and continues to move along at a fast pace.
- It has been a very busy month to date.
- I will be meeting with another Manager that is in Town from Mueller Quaker on Thursday to review the process equipment that will be installed on site.

**Supervisor's Report:**

**MOMENT OF SILENCE-** There was a moment of silence for Darlene Shipley, long time employee for the Town Highway Department who passed away July 22, 2012. Supervisor Post expressed that Ms. Shipley had an enormous sense of pride in her work and with great sadness will be missed.

**Status Report on expenditures and revenues** is available for the Board's review. The investment sheets will be entered into the minute book. The General and Reserve Funds are invested in a CD's paying a rate of 15%.

**September Regular Town Board Meeting** has been changed from September 19 to September 12 and will be held at Kiwanis Park which will include a dedication of the Canoe Launch

**Work Session** for Wednesday, August 29 has been cancelled.

**GENESEE COMMUNITY COLLEGE-THE BEST CENTER LETTER OF SUPPORT-** Motion was made by Deputy Supervisor Underhill, seconded by Councilman Lang authorizing the Supervisor to send a letter of support for Genesee Community College-The BEST Center's grant application.

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

**MOTION CARRIED by unanimous vote (4-0)**

**Discussion-** The Supervisor commented that this is a highly regarded program that is very beneficial for the Town Staff.

**COMMUNICATIONS:**

**The Town Clerk reported on the following:**

**July Town Clerk monthly report collected a** total of \$81,117.60, remitted \$80,836.46 to the Supervisor for the Local Share.

**GLOW Household Hazardous Waste/Pharmaceutical Collection** will be Saturday, September 15, 2012 in Rock Glen NY .

**COMMITTEE REPORTS:**

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**Fire Department-**Deputy Supervisor Underhill reported that the East Pembroke Fire Department's annual fundraiser, mud racing, is Saturday and encourages everyone to support our volunteer fire departments.

**ADJOURNMENT:** Motion Councilman Lang, second Councilwoman Michalak to adjourn the Regular Town Board Meeting at 7:33 P.M.

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

**MOTION CARRIED by unanimous vote (4-0)**

Respectfully submitted,

Teressa M. Morasco  
Town Clerk