

**JULY 20, 2011
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

Absent: Councilman Gerace

Others

Present: Town Clerk Morasco
Roger Muehlig, Daily News Reporter

The Supervisor called the meeting to order at 7:05 P.M.

The Supervisor requested a "Moment of Silence" for the recent passing of Robert Rumble, Town of Batavia Planning Board Member. Mr. Rumble served from 1966 to the present time. He dedicated 45 years of his life to the betterment of the community. Our condolence goes out to the family.

June 15, 2011 Regular Town Board Meeting: 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)

RESOLUTION NO. 113:

Councilman Lang offered the following:

IN HOUSE EMAIL EXCHANGE

WHEREAS, Pervasive Solutions currently hosts the Town of Batavia Email Exchange; and

WHEREAS, the Town of Batavia has the SonicWall equipment to host the email exchange in-house; and

WHEREAS, the Town will need to purchase a subscription for Email Security at a cost of approximately one thousand, four hundred dollars (\$1,400.00) for a three year subscription, after the one year warranty period.

NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board hereby authorizes in-house email exchange; and be it

FURTHER RESOLVED, the Supervisor is hereby directed to notify Pervasive Solutions, in writing, per agreement terms, that the Town of Batavia will no longer need the email exchange service.

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

RESOLUTION NO. 114:

Deputy Supervisor Underhill offered the following:

WEBSITE HOSTING SERVICE
HURRICANE TECHNOLOGIES, INCORPORATED

WHEREAS, currently the Town of Batavia website is hosted by Millennium Computers; and

WHEREAS, this has created some difficulties when the Town has had updates to email exchange and servers; and

WHEREAS, Hurricane Technologies, Incorporated has provided a quote to host the Town of Batavia website at a cost of nine dollars and ninety-nine cents (\$9.99) per month plus a one hundred dollar (\$100.00) domain fee (quote attached).

NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board wishes to retain Hurricane Technologies, Incorporated to host the Town of Batavia website at a cost of nine dollars and ninety-nine cents (\$9.99) per month plus a one hundred dollar (\$100.00) domain fee; and be it

FURTHER RESOLVED, the Supervisor is hereby authorized to execute the quote acceptance.

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

RESOLUTION NO. 115:

Supervisor Post offered the following:

MONITORING NETWORK SERVICE
HURRICANE TECHNOLOGIES, INCORPORATED

WHEREAS, over the past several months, Hurricane Technologies, Incorporated has provided, on a trial basis, a monitoring network service, which included inventory tracking, patching security updates, alerting when issues arise and reports; and

WHEREAS, the service proved to be very valuable to the Town; and

WHEREAS, Hurricane Technologies, Incorporated will continue to provide this service at a cost of one hundred, nine dollars and ninety-six cent (\$109.96) per month (quote attached).

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NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board wishes to retain Hurricane Technologies, Incorporated for the Monitoring Network Service at a cost of one hundred, nine dollars and ninety-six cent (\$109.96) per month; and be it

FURTHER RESOLVED, the Supervisor is hereby authorized to execute the quote acceptance.

Second by: Councilman Lang

Ayes: Post, Lang, Underhill, Michalak

APPROVED by unanimous vote (4-0)

RESOLUTION NO. 116:

Councilwoman Michalak offered the following:

**RESOLUTION TO ADOPT
TOBACCO-FREE AND SUBSTANCE-FREE PROPERTY POLICY**

WHEREAS, smoking is responsible for the premature deaths of over 430,000 Americans each year from lung cancer, heart disease, respiratory illness and other diseases; and

WHEREAS, secondhand smoke is responsible for over 50,000 deaths among nonsmokers each year; and

WHEREAS, tobacco kills more Americans each year than alcohol, cocaine, crack heroin, homicide, suicide, accidents, fires, and AIDS combined; and

WHEREAS, 80% of smokers started smoking before the age of 18, and the average initiation age is 12 years old; and

WHEREAS, everyday an estimated 3,900 young people under the age of 18 try their first cigarette and one-third of these children will die prematurely from tobacco-related illnesses; and

WHEREAS, to help role model non-smoking and non-substance use behavior to children and youth; and

WHEREAS, to provide children, youth and their families with a safe tobacco-free and substance-free environment.

NOW, THEREFORE, BE IT

RESOLVED that the Town of Batavia hereby adopts the attached Tobacco-free and Substance Free Property Policy, effective September 1, 2011; and be it

FURTHER RESOLVED that the Highway Superintendent is hereby directed to administer the posting of the signs on all Town property; and be it,

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FURTHER RESOLVED, the signs will be provided to the Town through the Genesee Council on Alcoholism and Substance Abuse Smoke Free Now Program.

Second by: Deputy Supervisor Underhill

Ayes: Michalak, Underhill, Lang, Post

APPROVED by unanimous vote (4-0)

TOWN OF BATAVIA
TOBACCO-FREE AND SUBSTANCE FREE
PROPERTY POLICY

Purpose

This policy has been established to protect and promote the health and well being of employees and visitors. Tobacco use is responsible for the premature deaths of over 430,000 Americans each year. Secondhand smoke is responsible for over 50,000 deaths among non-smokers each year. This policy will help to reduce the death and disease caused by tobacco and substance use such as heart attacks, lung cancer, oral cancer and other serious and costly diseases and illnesses. The Town of Batavia has an obligation to its employees and the public to take action known to protect peoples' health. The use of tobacco products by employees or visitors compromises the mission of the Town of Batavia providing a safe and healthy place to conduct business. The policy set forth below is effective *September 1, 2011* for Town of Batavia.

Tobacco-Free and Substance-Free Areas

The workplace and Town properties are now tobacco-free, alcohol and any illegal substance free without exception. Specifically the building and grounds, parks and recreational areas, and Town of Batavia – owned vehicles at all times, and any vehicles on the property.

Sign Requirements

Signs stating the policy will be clearly posted on the perimeter of the property, at all entrances, and other prominent places. No ashtrays or other collection receptacles for tobacco trash will be placed on the property.

Compliance

Compliance with the smoke-free and substance-free policy is mandatory for all employees and persons visiting, with no exceptions. Enforcement of this policy is the shared responsibility of all Town of Batavia personnel. All employees are authorized and encouraged to communicate this policy with courtesy, respect, and diplomacy, especially with regard to visitors. If difficulties arise with compliance of this policy, notify department head. Incidents of smoking, tobacco, and substance use by employees are to be documented for supervisor follow-up, as well as evaluated for trends and patterns of noncompliance.

Tobacco and Substance Cessation Opportunities – The Town of Batavia encourages all employees who use tobacco and/or substances to quit. The Town of Batavia Employee Assistance Program offers

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support for employees who are trying to quit smoking or chewing tobacco. Tobacco cessation information is also available from Royal Employer Services, the Town of Batavia EAP, toll-free number 1-888-244-0680, or by contacting the EAP Program Coordinator at lpfalzer@gcasa.org.

Questions

Any questions regarding the tobacco-free and substance free property policy should be directed, in writing to the Batavia Town Clerk's Office.

RESOLUTION NO. 117:

Councilman Lang offered the following:

APPROVAL OF CHANGE ORDER NO. 1
WORTENDYKE AND PIKE ROADS WATER DISTRICT

WHEREAS, Cayuga Excavating, Incorporated from Interlaken, New York is under contract with the Town of Batavia for the Wortendyke and Pike Roads Water Project, and

WHEREAS, Cayuga Excavating, Incorporated has submitted a change order, requesting contract change items as well as over/under quantity adjustments in the amount of Four Thousand Ninety-Five dollars and Fifty-four cents(\$4,795.54) (increase), as shown on the attached Change Order No.1, and

WHEREAS, the Town Engineer has recommended approval of the change order request.

NOW, THEREFORE, BE IT

RESOLVED, the Town of Batavia hereby authorizes the Supervisor to execute the attached Change Order.

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

RESOLUTION NO. 118:

Deputy Supervisor Underhill offered the following:

RESCIND RESOLUTION #91 OF 2011
NAMING OF STREET LOCATED IN GENESEE COUNTY ECONOMIC DEVELOPMENT
CENTER'S AGRIBUSINESS PARK
AGPARK DRIVE

RESOLVED, the Batavia Town Board hereby rescinds resolution #91 of 2011, "Naming of Street Located in Genesee County Economic Development Center's Agri-Business Park- "Ag-Park Drive".

Second by: Councilman Lang
Ayes: Underhill, Lang, Michalak, Post

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APPROVED by unanimous vote (4-0)

RESOLUTION NO. 119 :

Supervisor Post offered the following:

**NAMING OF STREETS LOCATED IN GENESEE COUNTY ECONOMIC DEVELOPMENT
CENTER'S AGRI-BUSINESS PARK
AGPARK DRIVE NORTH AND AGPARK DRIVE WEST**

WHEREAS, pursuant to Town Law, the Town Board has the responsibility of naming streets; and

WHEREAS, the Genesee County Economic Development Center has requested the roads be named "AgPark Drive North" (for the north/south portion) and "AgPark Drive West" (for the east/west portion).

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Town Law, the Batavia Town Board hereby names the roadways within the Genesee Agri-Business Park, "AgPark Drive North" and "AgPark Drive West"; and be it

FURTHER RESOLVED, that the Batavia Town Clerk is hereby directed to notify the Assessor, Planning Board, Genesee County Clerk, Genesee County Engineer, Genesee County Emergency Management Services, Genesee County Sheriff's Department, Town of Batavia Fire Department, and the Batavia Post Office of these road names within ten days of this adoption.

Second by: Councilman Lang

Ayes: Post, Lang, Underhill, Michalak

APPROVED by unanimous vote (4-0)

Discussion- The Supervisor explained that the purpose of this resolution is to clarify and identify the North and West for emergency management, 911 responses.

RESOLUTION NO. 120:

Councilwoman Michalak offered the following:

**TEMPORARY LABORER
FOR HIGHWAY DEPARTMENT**

WHEREAS, the Highway Superintendent would like to hire David Bobzin as a temporary laborer to assist the Highway Department in completing construction projects this summer. Mr. Bobzin would be hired from July, 2011 through October, 2011; and

WHEREAS, the 2011 Town Budget reflects appropriations to hire a temporary laborer to assist the Highway Department during the summer months.

NOW, THEREFORE, BE IT

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RESOLVED, the Batavia Town Board hereby authorizes the Highway Superintendent to hire David Bobzin as a temporary laborer for 40 hours per week from July, 2011 thru October, 2011 at an hour rate of \$10.00 per hour for the Highway Department; and be it

FURTHER RESOLVED, the expenditure will be appropriated from line item DA5110.101.

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

RESOLUTION NO. 121:

Councilman Lang offered the following:

RESOLUTION TO AMEND RESOLUTION #86 OF 2011
RESOLUTION TO APPROVE AMENDED AGREEMENT
FOR DEVELOPMENT OF RECREATIONAL FIELDS

RESOLVED the funds in the amount of \$58,687.00, as set forth in the amended agreement, is hereby authorized to be expended from line item A7110.402 rather than A6460.410.

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

RESOLUTION NO. 122:

Deputy Supervisor Underhill offered the following:

PROPOSAL OF SERVICES AGREEMENT –
BETWEEN THE TOWN OF BATAVIA AND STUART I. BROWN ASSOCIATES
ENVIRONMENTAL PROTECTION FUND GRANT APPLICATION

WHEREAS, the Town of Batavia is planning to submit an application for a grant under the Environmental Protection Fund (EPF) for funding to acquire and develop one or more sites for recreation; and

WHEREAS, Stuart I. Brown Associates submitted a proposal to prepare the EPF grant at a cost of One Thousand Eight Hundred dollars (\$1,800.00) (proposal attached).

NOW, THEREFORE, BE IT RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to retain Stuart I. Brown Associates to prepare the 2011 Environmental Protection Fund Grant Application at a cost of One Thousand Eight Hundred dollars (\$1,800.00) and to execute the agreement between the Town of Batavia and Stuart I. Brown Associates.

Second by: Councilman Lang
Ayes: Underhill, Lang, Michalak, Post

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APPROVED by unanimous vote (4-0)

RESOLUTION NO. 123:

Supervisor Post offered the following:

**AMENDMENT OF SERVICES AGREEMENT –
BETWEEN THE TOWN OF BATAVIA AND STUART I. BROWN ASSOCIATES
RURAL DEVELOPMENT PRE-ELIGIBILITY DETERMINATION
WEST MAIN SANITARY SEWER**

WHEREAS, the Town has retain Stuart I. Brown Associates to prepare the Town’s Pre-Eligibility Determination (PED) for submission to Rural Development to determine the Town’s eligibility for loan and grant assistance for the proposed extension of public sewer service to serve areas along West Main Street; and

WHEREAS, the cost to prepare the PED’s was \$1,000.00; and

WHEREAS, additional requirements to the PED have since been required from Rural Development which result in an increase in scope of work and as such, Stuart I. Brown Associates has requested an amendment to their contract in the amount of \$4,500.00.

NOW, THEREFORE, BE IT RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to amend Stuart I. Brown Associates contract for the preparation of the Pre-Eligibility Determination (PED) for submission to Rural Development at an additional cost not to exceed four thousand, five hundred dollars (\$4,500.00).

Second by: Deputy Supervisor Underhill

Ayes: Post, Underhill, Michalak, Lang

APPROVED by unanimous vote (4-0)

RESOLUTION NO. 124:

Councilwoman Michalak offered the following:

**AUTHORIZATION TO ENTER INTO AGREEMENTS FOR THE IMPLEMENTATION OF A
COMMUNITY DEVELOPMENT BLOCK GRANT RECEIVED FROM THE NEW YORK
STATE HOUSING TRUST FUND CORPORATION**

WHEREAS, the Town of Batavia (“Town”) has received Federal grant assistance in the amount of seven hundred fifty thousand dollars (\$750,000.00) (the “Grant”) from the New York State Housing Trust Fund Corporation (“HTFC”) represented by the New York State Office of Community Renewal (“OCR”) through the Community Development Block Grant (“CDBG”) Program (OCR Grant #83ED761-11) for the purpose of providing financing to assist Alpina Foods, LLC in establishing operations in the Genesee Agri-Business Park at in the Town of Batavia, New York; and

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WHEREAS, a portion of the Grant proceeds is to be used to provide a grant and a term loan to Alpina Foods, LLC to finance land acquisition, working capital, and job training to support the development of a dairy processing facility (the “Project”), which Project is more particularly described in the application submitted by the Town to OCR on May 16, 2011; and

WHEREAS, a portion of the Grant proceeds is to be used to fund administrative and program delivery costs associated with the implementation of the Grant; and

WHEREAS, the Genesee Gateway Local Development Corporation (the “Corporation”) has the capacity to provide such financing and to administer the Grant in the best interests of the Town, and

WHEREAS, the Corporation is a not-for-profit corporation eligible to receive grants of CDBG funds pursuant to Section 105(a)(15) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. §5305),

NOW, THEREFORE BE IT

RESOLVED, that the Batavia Town Board hereby authorizes the Supervisor to execute the agreement between HTFC and the Town evidencing the Grant and all forms and documents related thereto, and be it further

RESOLVED, that the Town hereby authorizes the Supervisor to enter into an agreement with the Corporation for implementation and administration of the Grant under terms and conditions subject to review and approval by the Town Attorney, and be it further

RESOLVED, that the Town Supervisor is hereby designated as the Town’s Certifying Officer for all environmental review decisions made pursuant to the National Environmental Policy Act of 1969, as amended for all existing and future CDBG grants received by the Town.

Second by: Deputy Supervisor Underhill

Ayes: Michalak, Underhill, Lang, Post

APPROVED by unanimous vote (4-0)

The Supervisor removed from the agenda resolution entitled – “Resolution to Purchase Park Road Property”- unprepared to complete the resolution with the dates at this time.

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

Ayes: Underhill, Lang, Michalak, Post

MOTION CARRIED by unanimous vote (4-0)

RESOLUTION NO. 125:

Councilman Lang offered the following:

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**RESOLUTION TO RETAIN SPECIAL COUNSEL TO DEFEND THE TOWN IN THE
LAXMI HOSPITALITY ASSESSMENT PROCEEDING**

WHEREAS, a Notice of Petition was filed in the Genesee County Clerk's Office on June 24, 2011, and served upon the Town of Batavia on June 29, 2011, for the tax assessment case entitled Laxmi Hospitality, Inc. vs. Town of Batavia Assessor, et. al., Index No. 61115, and

WHEREAS, the Town Attorney, Kevin D. Earl, has recommended in a letter, dated July 18, 2011, 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 July 11, 2011, 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: Deputy Supervisor Underhill

Ayes: Lang, Underhill, Michalak, Post

APPROVED by unanimous vote (4-0)

Abstract No. 7-2011: Motion Councilman Lang, second Deputy Supervisor Underhill to authorize the Supervisor to pay the following vouchers:

General	\$144,889.40
Highway	17,627.85
Sewer No. 1	4,704.45
Sewer No. 2	11,780.11
Water	168,072.35
Sewer 1 Improvements	19,005.00
Wortendyke	34,097.70
Park Road	7,097.04
Total	\$407,273.90

Check numbers 16050-16072, 16074-16078, 16080-16117, 16119-16137, online \$998.78

Ayes: Lang, Underhill, Michalak, Post

MOTION CARRIED by unanimous vote (4-0)

DEPARTMENT REPORTS:

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The Supervisor reported on the following:

Highway-The roadside mowing and paving is ongoing. The Highway Superintendent is working with the volunteer fire department with planning.

Water- The installation of the radio reads is 99% complete. The new water/wastewater truck has been delivery and is in commission.

Planning- Moving forward with approvals for Alpina Foods, LLC in the Agri-Park. Continuing to attract commerce and keeping a safe environment for our constituents.

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 General and Reserve Funds are invested in a CD's paying a rate of .22% and .40%.

NYS-CDBG Grant-Alpina Foods, LLC- Received notification from NYS Homes & Community Renewal of the grant award of \$750,000.00 for Alpina Foods, LLC.

NYS-Video Lottery Terminals- Received \$104,000 from New York State for the Video Lottery Terminal aid.

GENESEE COMMUNITY COLLEGE-THE BEST CENTER LETTER OF SUPPORT- Motion Deputy Supervisor, second Councilwoman Michalak authorizing the Supervisor to send a letter of support for Genesee Community College-The BEST Center's grant application.

Ayes: Underhill, Michalak, Lang, Post

MOTION CARRIED by unanimous vote (4-0)

COMMUNICATIONS:

The Town Clerk reported on the following:

June Town Clerk monthly report collected a total of \$6,447.03 remitted \$5,942.01, to the Supervisor for the Local Share.

Liquor License Renewal -Received notification from Jim's Saloon that they have applied for their renewal of their liquor licenses.

ADJOURNMENT:

Motion Deputy Supervisor Underhill, second Councilwoman Michalak to adjourn the Regular Town Board Meeting at 7:35 P.M.

Ayes: Underhill, Michalak, Lang, Post

MOTION CARRIED by unanimous vote (4-0)

Respectfully submitted,

Teressa M. Morasco
Town Clerk