

MINUTES of the Pembroke Town Board Special Meeting held on December 19, 2011 at the Pembroke Town Hall, 1145 Main Road, Corfu, NY.

PRESENT: James H. Tuttle, Supervisor Gary L. DeWind, Councilman
John Worth, Councilman Peter Sformo, Councilman

ABSENT: Edward G. Arnold, Jr., Councilman

OTHERS PRESENT: Nicole Begin, Town Clerk; Tom Carpenter & Tim Webber, Clark Patterson Lee; Attorney Mark Boylan, Boylan Law Office; Ed Mileham; Todd Skeet & Al Graham, Village of Corfu; Duane Schmigel; Jeffrey Smith, Municipal Solutions.

Notice of the special meeting was advertised in the Daily News and written notification given to all Board Members as required by Town Law.

Supervisor Tuttle declared the Special Meeting open at 6:05 P.M.

Tom Carpenter of Clark Patterson Lee explained the revised map which would include residents on Main Road up to the Thruway overpass.

Mr. Carpenter spoke with the GCEDC and said that the GCEDC may be willing to contribute to updates for the Village of Corfu sewer plant. The Village is in need of additional funds to update the sewer plant to a membrane system which would then be capable of quicker and easier expansions in the future.

Attorney Mark Boylan had concerns in regards to the project being split into three districts. Mr. Boylan said that the New York State Comptrollers Office likes to see contiguous districts. Mr. Carpenter said they could work on making a contiguous sewer district with out of district users in some of the outlying areas. Clark Patterson will get back to the Town with the final drawings and numbers before submitting to the New York State DEC.

On **MOTION** of Councilman Sformo, seconded by Councilman DeWind, the following **RESOLUTION** was **ADOPTED** by roll call vote: Councilman Worth, AYE; Councilman Sformo, AYE; Councilman DeWind, AYE; Supervisor Tuttle, AYE.
ALL AYES - MOTION CARRIED

RESOLUTION # 61 of 2011 – Undertaking with New York State Department of Transportation for sewer

WHEREAS the Town of Pembroke is required to enter into an undertaking with the New York State Department of Transportation for installation, future adjustments and any other utility work for the Town of Pembroke; **NOW THEREFORE BE IT**

RESOLVED the Town Board of the Town of Pembroke authorizes the Town Supervisor to enter into the attached undertaking with the NYSDOT for a period of twenty years.



UNDERTAKING

For the benefit of

The New York State Department of Transportation

In connection with work affecting state highways
(For use by Municipalities)

WHEREAS, the undersigned Town of Pembroke from time to time receives permits from the New York State Department of Transportation (hereinafter referred to as the "NYSDOT") and otherwise conducts activities and operations upon highways and/or within right-of-way controlled by the State of New York for such purposes as the obstruction, installation, construction, maintenance and/or operation of facilities; and

WHEREAS, Permittee's access and operation upon state right-of-way is conditioned compliance with Highway Law Sections 52, 103, 203 and/or 234, including the conditions that Permittee assume all responsibility for (a) the temporary control of all modes of traffic (including motorized and non-motorized travel) affected by Permittee's operations, (b) complete restoration of state facilities to their condition prior to permitted use or activity, and (c) all claims, damages, losses and expenses,

NOW, THEREFORE, in relation to all operations and/or actions undertaken within state right-of-way, Permittee hereby agrees to the following terms and conditions:

1. Permit Applications. Excepting only activities undertaken to protect public safety because of emergency conditions or incidents, Permittee shall provide timely written notice to NYSDOT of operations or activities affecting state right-of-way. Under normal circumstances, a minimum of five business days notice shall be provided. Notification of emergency activities shall be provided to NYSDOT as soon as practicable after the activity. The Permittee shall apply for project-specific permits for activities not allowed under any existing annual permit. Such application shall identify proposed project locations, desired dates/hours, proposed work/activities, traffic control, and site restoration

2. Applicable Rules, Regulations & Conditions. Permittee shall comply with all of the laws, rules and regulations applicable to construction, maintenance activities and operations and shall further comply with such terms and conditions that may be imposed by NYSDOT in connection with permitted activity or operations. Temporary Traffic Control, highway safety appurtenances, and restoration of state facilities shall be completed in accordance with NYSDOT regulations and standards.

3. Site Restoration. Permittee shall, at its own expense, promptly complete the work allowed under each permit and, within a reasonable time, restore State property damaged by its work/activities to substantially the same or equivalent condition as existed before such work was begun as determined by the Commissioner or his/her designee, in the event that the Permittee fails to so restore damaged State property within what the Commissioner deems to be a reasonable time, the Commissioner, after giving written notice to the Permittee, may restore the property to substantially the same or equivalent condition as existed before the Permittee's work/activities, in which case, Permittee agrees to reimburse the reasonable expenses in connection therewith.

4. Payment & Release of Liens. Permittee shall be responsible for the payment of all costs and materials relating to improvements in the public right-of-way, and agrees to defend and save harmless NYSDOT against any and all claims for the value of public improvements.

5. Indemnity. In addition to the protection afforded to NYSDOT under any available insurance, NYSDOT shall not be liable for any damage or injury to the Permittee, its agents, employees, or to any other person, or to any property, occurring on the site or in any way associated with Permittee's activities or operations; whether undertaken by Permittee's own forces or by contractors or other agents working on Permittee's behalf. To the fullest extent permitted by law, the Permittee agrees to defend, indemnify and hold harmless the State of New York, NYSDOT, and their agents from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of any claim, Including but not limited to claims for personal injuries, property damage or wrongful death and/or environmental claims, in any way associated with the Permittee's, activities or operations, no matter how caused.

FURTHERMORE, Permittee hereby warrants that the obligations of this Undertaking are backed by the full faith and credit of Permittee. Permittee may insure or bond any of the obligations set forth herein, or may rely upon self-insurance, budgeted funds, or funds for general operations.

This Undertaking shall be applicable to all permitted activities and operations undertaken after the date of execution and work initiated while this Undertaking is in effect. This Undertaking may be revoked upon thirty days written notice but will continue to apply to all permitted activities/operations that were permitted by virtue of this Undertaking. Unless terminated for the purpose of future activities/operations, this Undertaking shall have a term of twenty (20) years and shall be kept on file to facilitate the issuance of future permits to which it will apply.

The meeting was adjourned at 6:45 P.M.

Respectfully Submitted,

Nicole M. Begin

Nicole M. Begin
Town Clerk

<p>These minutes are a draft only of the Town Board Workshop of December 19, 2011 and are subject to change and/or revision prior to approval by the Town Board</p>
