

**TOWN OF WESTERLO
REGULAR TOWN BOARD MEETING
OF
TUESDAY, AUGUST 20, 2024**

The Town of Westerlo Town Board held a regular meeting on Tuesday, August 20, 2024, at 6:02 PM at the Town Hall 933 CR 401, Westerlo, NY. Supervisor Kryzak opened the meeting with the Pledge of Allegiance to the Flag.

ATTENDING WERE: Supervisor Matthew Kryzak
 Councilman Peter Mahan
 Councilman Joshua Beers
 Councilwoman Lorraine Pecylak
 Councilwoman Amie Burnside

Also attending were: Previous Highway Superintendent Jody Ostrander, Acting Highway Superintendent David Pecylak and Highway Employee Justin Case, Previous Highway Employee Chuckie Benninger, Town Justices; Joshua Ostrander & Kenneth Mackey, Previous Justice Bob Carl, Clerk to the Justices & Deputy Town Clerk Jaimee Motschmann, Clerk to the Code Enforcement Officer, Clerk to the Assessor & Clerk to the Planning/Zoning Board of Appeals; Claire Marshall, Zoning Board of Appeals Alternate Bill Hall, Previous Planning Board Member and Library Trustee Angela Carkner, Confidential Administrator Lisa DeGross, Library President Maureen Sikule & Library Trustee Mary Ann Witt, Westerlo Volunteer Fire Co. Members Allan Clickman, Palma Schloer, Jim Brush, Betty Filkins, Previous Town Board Member Al Field, Deputy Town Clerks; Michelle Rose and Kathleen Spinnato, Town Clerk Deputy Kathleen Spinnato, Town Clerk Karla Weaver and approximately 16 residents and/or interested individuals.

OPEN MEETING

Supervisor Kryzak made a motion to open the regular Town Board meeting of Tuesday, August 20, 2024. Councilman Mahan seconded; all in favor motion carried.

APPROVAL OF MINUTES

Supervisor Kryzak made a motion to approve the July 16, 2024, meeting minutes. Councilwoman Pecylak seconded; all in favor motion carried.

TOWN CLERK REPORT - JULY 2024

Town Clerk Weaver reviewed the Town Clerk report for July 2024. Supervisor Kryzak made a motion to approve the Town Clerk report for July. Councilman Beers seconded; all in favor motion carried.

SUPERVISOR'S REPORT - JULY 2024

Mr. Kryzak reviewed the Supervisor's report for July 2024. He reported that the second quarter sales tax has come in and was \$375,502.32. The bank reconciliation balances for July were \$317,813.80. The monthly ending balance for all accounts is \$4,201,943.80. He advised that the budget vs actual is tracking well, and all departments are looking fine. Supervisor Kryzak made a motion to approve the Supervisor's report for July. Councilwoman Pecylak seconded; all in favor motion carried.

INVESTMENT REPORT – JULY 2024

Supervisor Kryzak reported on the investment report that the Town earned \$8,091.99 in interest with the Bank of Greene County (BOGC) for July and year to date received \$62,752.76 in interest. Mr. Kryzak indicated only \$2.04 was received in interest with NYCLASS for the month of July as there is not much money there. Supervisor Kryzak made a motion to approve the investment report for July.

Councilwoman Pecylak seconded; all in favor motion carried.

BUDGET AMENDMENT #1

Supervisor Kryzak mentioned the first Budget Amendment deals with the ARPA money. The ARPA money was earmarked for infrastructure such as broadband or water. As of right now, the USDA grant mixed with some of the grants from the county, the town has pretty much met or will meet full coverage for the town for broadband without using the remainder of the ARPA funds. Mr. Kryzak proposed transferring the remaining ARPA funds to the water district. Supervisor Kryzak read and made a motion to adopt the following budget transfer:

WHEREAS: the Town of Westerlo has had unforeseen expense in the following account;
and
WHEREAS: the Chief Fiscal Officer has determined that in order to maintain proper balances within various accounts, a budget amendment is necessary; now therefore be it
RESOLVED: that the Town Board of the Town of Westerlo does hereby authorize Town Supervisor Matthew Kryzak to make the following transfers.

General Fund (2024)

<u>Amount</u>	<u>From Account</u>	<u>To Account</u>
\$283,417.00	(A) 688 – Other Liabilities ARPA	230.6 Water District Repair Reserve Fund

Councilwoman Pecylak seconded; a vote resulted as follows:

AYES: Supervisor Kryzak, Councilwoman Pecylak, Councilwoman Burnside, Councilman Mahan, Councilman Beers

NAYS: None

RESOLUTION # 85 - 2024 was thereby duly adopted.

BUDGET AMENDMENT #2

Supervisor Kryzak read and made a motion to adopt the following resolution:

WHEREAS: the Town of Westerlo has had unforeseen expense in the following account;
and
WHEREAS: the Chief Fiscal Officer has determined that in order to maintain proper balances within various accounts, a budget amendment is necessary; now therefore be it
RESOLVED: that the Town Board of the Town of Westerlo does hereby authorize Town Supervisor Matthew Kryzak to make the following transfers.

General Fund (2024)

<u>Amount</u>	<u>From Account</u>	<u>To Account</u>
\$15,400.00	230.8 – Cap. Improvement Reserve	(A) 1620.2 Buildings Capital Outlay – Other

Councilwoman Burnside seconded; a vote resulted as follows:

AYES: Supervisor Kryzak, Councilwoman Pecylak, Councilwoman Burnside, Councilman Mahan, Councilman Beers

NAYS: None

RESOLUTION # 86 - 2024 was thereby duly adopted.

PAYMENT OF MONTHLY BILLS – AUGUST 2024

Supervisor Kryzak asked if all Town Board members had a chance to review and sign the monthly bills and if there were any questions, comments or concerns, there being none, Supervisor Kryzak then made a motion to adopt the following resolution:

WHEREAS: the Town Board has audited the August 2024 bills, be it hereby

RESOLVED: the following bills be paid Voucher # 384 through Voucher # 448 in the amount of \$191,424.25.

Councilwoman Burnside seconded; a vote resulted as follows:

AYES: Supervisor Kryzak, Councilwoman Burnside, Councilwoman Pecylak, Councilman Beers, Councilman Mahan

NAYS: None

RESOLUTION # 87 – 2024 was thereby duly adopted.

COMMITTEE AND DEPARTMENT REPORTS

Mr. Kryzak mentioned he had already received written reports from the Assessor, CEO and Justice Court.

ASSESSOR REPORT

ASSESSOR'S MONTHLY DEPARTMENTAL REPORT

To: Westerlo Town Board

From: Melanie Bunzey, Assessor

Date: August 15, 2024

Re: Monthly Report

A "New Sales Transmittal Report" was submitted to the State with 17 sales since last submittal.

The following 2024 STAR reports have been received from New York State and processed:

Report #1 – Enhanced STAR Eligibility Report

Report #2 – Income Greater than \$250,000 Report

Report #3 – Voluntary Exemption Removal Report – Initial

Report #4 – Tentative Roll Corrections Report

Report #5 – STAR Delinquency Report

Report #6 – Voluntary Exemption Removal Report

Report #7 – Final Roll Corrections Report

Report #8 – STAR Credit Markers Report

The STAR Credit markers were processed so that the school districts and NERIC could have the current assessment information to start preparing for school tax bills. Reports were provided to Greenville CSD, BKW CSD and NERIC.

I will be registering for a couple of courses to meet my annual continuing education requirements for 2024-2025.

The County sent letters to all residents within the municipalities requesting updated information if there was any. Any changes are being sent to my attention and RPS is being updated and school districts informed of changes for the school tax bills.

Address changes are made on a regular basis as well as bank escrow information. Routine calls and emails are received and answered on nearly a daily basis.

The system is checked for property owners listed on death notices received, exemptions are then removed if necessary and notifications of exemption change mailed.

*Respectfully submitted,
Melanie Bunzey*

CODE ENFORCEMENT OFFICER REPORT

Report - Building/ Zoning -Jeffry Pine BI/CEO – for July 2024

Applications processed or pending before the boards

Special use – 2 / Variance request- 1 / Sub– divisions – 1

Building permits issued – 5

New houses – 0 / Swimming Pools – 1 / Additions, renovations - 1

Accessory structures – 2 Solar Pv – 1 / Other – 0 Cell tower / commercial - 0

Construction inspections- 25

Site visits – 11 / Fire calls – 3 / Fire safety inspections and follow ups - 2

0 - In-service Training hours. 18 hrs. YTD (24 hours required to maintain certification)

JUSTICE COURT

No report was read or provided to the Town Board. The information is as follows:

Justice Ostrander \$901.00

Justice Mackey \$1,243.00

LIBRARY REPORT

Library Trustee Angela Carkner reported the following on the Library:

- Every Wednesday, there is story time at 10:30 am followed by Coffee with Neighbors from 12 pm - 2 pm
- On the 2nd and 4th Saturday between 12 pm – 2 pm there are Fiber Arts gatherings
- 8/21 from 12 pm - 2 pm Coffee with ACCORD
- 9/5 Thursdays through the school year, 3:30 pm – 5 pm STEAM - registration is required
- 9/9 Mondays through the school year 3:30 pm – 5 pm LEGO and more after school activities
- 9/21 Library will be at the Fall Festival

- 10/9 at 1 pm informational on Medicare

HIGHWAY REPORT

Acting Highway Superintendent Dave Pecylak mentioned the highway department has done cleanup on Tan Hollow and Dunbar Hollow after the last storm and replaced pipes. They paved Albany Hill and Albany Hill Ext. and are getting a shoulder machine lined up with Albany County. They sold some equipment on auction, a welder for \$340, bucket for an excavator \$560 didn't go for quite enough so will keep that bucket, Daywo excavator for \$15,100, a truck went for \$3,550, sweeper \$3,500, metal recycling went for \$3,500, John Deer lawn mower went for \$2,100.00.

APPROVAL OF COMMITTEE AND DEPARTMENT MONTHLY REPORTS

Supervisor Kryzak made a motion to approve the Committee and Department reports as read or submitted. Councilwoman Pecylak seconded; all in favor motion carried.

OLD BUSINESS

TEMPORARY DOG HOLDING FACILITY

Mr. Kryzak indicated there was no update on a potential temporary dog holding facility, it's on the backburner. He mentioned he is looking to set up meetings with Columbia Greene Humane Society. They may be able to help the Town out instead of having our own holding facility. He hopes to have a meeting soon with the president to see if they can meet the Town's needs.

ROOFING CONTRACTS

Mr. Kryzak indicated the justice court roof was installed and is complete. The Town did receive bids for the Town Hall roof. All Board members indicated they reviewed the bids, no questions/comments were heard. The lowest bid was \$36,720 from Grace Roofing, the second lowest was \$44,500 from ACT Construction. James Edgar came in at \$52,800 and Collie Roofing was at \$150,000. Supervisor Kryzak made a motion to adopt the following resolution:

WHEREAS: The Town Hall roof is in need of repair, and
WHEREAS: The Town Board received bids for the repair, be it hereby
RESOLVED: The Town Board awarded the project for the Town Hall roof to Grace Roofing in the amount of \$36,720.

Councilwoman Pecylak seconded; a vote resulted as follows:

AYES: Supervisor Kryzak, Councilwoman Pecylak, Councilwoman Burnside, Councilman Mahan, Councilman Beers

NAYS: None

RESOLUTION # 88 - 2024 was thereby duly adopted.

Mr. Kryzak mentioned Grace Roofing was the low bidder for the Justice Court roof as well.

AC MINI SPLITS

Mr. Kryzak indicated a packet was given to the Town Board with pricing for mini splits. Due to the large range in pricing, he feels they need to table this so he can have a conversation with the companies. The bids came in between \$5,500 and \$23,564. The level of detail provided in the bid doesn't necessarily outline everything included for everybody. In the interest of making sure what the Town is getting and

what it's paying for, he would like to table it for now to do post proposals, so everyone understands what is being requested.

PROPOSED RIGHT TO FARM LAW

The proposed Right to Farm Law was previously briefly discussed. Supervisor Kryzak mentioned he received feedback from residents and provided that to the Board in their packets so they could review it. He would like to discuss this further at the workshop meeting on September 3rd and hopes to have a better draft put together then.

OVER THE RAIL MOWER

Mr. Kryzak indicated the highway departments over the rail mower has died. The Acting Highway Superintendent received quotes for a new mower. The best quote received was for \$114,675 originally, but with the state contracting discount of \$24,081.75, it will bring the total down to \$96,368.25. Unfortunately, attachments are also needed and will cost \$113,764.65 with the discount. The total cost for everything will be \$210,132.90. Mr. Kryzak advised, there was \$200,000 already set aside in the highway budget to be used on equipment so this is right in line for what was set aside budget wise. He suggested that the Town Board by resolution authorize the purchase of the tractor and attachments as well as transferring the remaining required balance and some cushion from the general fund into the equipment cost code to pay for this. He would like a cushion in there for some of the extras that might be needed for the remainder of the year. The season on the mower is ending but it will be ready to go for next season. Mr. Pecylak indicated it should be delivered sometime next week. The Town will rent the brush hog to make sure they like it before purchasing one. Supervisor Kryzak made a motion to adopt the following resolution:

WHEREAS: The Highway Department is in need of a new over the rail mower and attachments as the old one is no longer operable, be it hereby

RESOLVED: The Town Board authorizes the purchase of a new over the rail mower, New Holland TS6110 cab 4-wheel drive and the necessary attachments for the total contract price of \$210,132.90.

Councilwoman Burnside seconded; a vote resulted as follows:

AYES: Supervisor Kryzak, Councilwoman Pecylak, Councilwoman Burnside, Councilman Mahan, Councilman Beers

NAYS: None

RESOLUTION # 89 - 2024 was thereby duly adopted.

The Town Clerk asked if the Town Board intended to do a budget transfer next month before the bills get paid since the total is more than what is allotted in the budget. Mr. Kryzak responded yes. Mr. Beers asked if he was transferring just the overage of \$10,132.90; Mr. Kryzak responded he would like to transfer a little extra, so probably \$20,000 in case there are other parts/pieces left out of this. He indicated it's easier to transfer whole numbers.

CAMERA SYSTEM FOR TRANSFER STATION

The Town Board previously spoke about only installing two cameras at the transfer station to try to keep the cost down. Mr. Kryzak wondered if the Town Board wanted to table the cameras for the transfer station for now, do two views which will cover the majority of the transfer station but not everything, or they can accept the quote as is. Supervisor Kryzak explained that eliminating cameras won't reduce cost

that much, about \$600. Councilwoman Burnside felt they should either do all or table for now; Councilwoman Pecylak agreed. Mr. Kryzak mentioned maybe they could get a different view that would get everything. Town Clerk Weaver indicated the cost is the setup, not necessarily the cameras. Councilwoman Burnside indicated one camera would reduce man hours too though. The Town Board agreed to table the cameras for the transfer station for now.

ALBANY WATER BOARD

Mr. Kryzak indicated the Board received the challenge for this year from Albany Water Board, regarding the parcels owned by the Albany Water Board. Essentially, this is the same thing they provided in 2023, challenging the Town's assessment and looking for the Town to lower the cost of their taxes. The Town is currently in litigation with them. Mr. Kryzak mentioned the Albany Water Board has 2,397.9 acres of property; they don't want to pay their fair share of taxes. He advised they haven't provided any of the information that was requested. First, they will have to value the resource and then prove that it's not worth what the Town says. Albany Water Board paid \$36,897 in taxes on their 2397.9 acres. He mentioned this has happened in several towns, people who end up fighting end up paying more in the end.

UNION UPDATE

Supervisor Kryzak read a letter to the Town from Brian Kremer from Goldberg Kremer Law firm. (See attached). He indicated they are still gathering information on all sides and hopefully can come to the table in September. He advised, it's slow but that's the process.

NEW BUSINESS

AC MINI SPLIT – TOWN CLERK'S OFFICE

Mr. Kryzak indicated he can request a price for the installation of a mini split system for the Clerk's office. Councilwoman Pecylak mentioned she had done some research on AC units and the newer air conditioners have a u shape that the condenser is on the outside of the window and goes over the sill. She indicated they are quiet. The Town Clerk explained, although sound is an issue, security is also a concern with any window unit. Mr. Kryzak mentioned that the Board had prioritized projects off the Capital Improvement project list. He knows they wanted to get a lot of the exterior work done first. He is okay with getting quotes for the AC unit though. Mr. Beers indicated if they wait, it will be more expensive. Town Clerk Weaver indicated it was okay to wait, but she thought it would be best to do it when the other ones are installed. Mr. Kryzak requested permission from the Board to price one for the Clerk's office; the Board agreed.

ALBANY COUNTY PARKS AND REC GRANT

Supervisor Kryzak discussed a potential grant from Albany County parks and rec. The grant would reward up to \$19,000 and would provide for park improvements. Some ideas have come from the park improvement committee on what to use it for if awarded. There are some cracks in the tennis court. It will mainly be written to resurface the tennis courts. Mr. Kryzak mentioned the tennis courts should probably be locked and closed for maintenance in the meantime. He will temporarily close them until they can put in some cold patch if the Board is okay with it. Supervisor Kryzak made a motion to adopt the following resolution:

WHEREAS: Albany County Parks and Rec has a grant available for up to \$19,000 to be used for park improvements; be it hereby

RESOLVED: The Town Board authorizes the grant writer to apply and write for the Albany County Municipal Park Improvement Initiative Grant for up to \$19,000 which is to be used for park improvements.

Councilwoman Burnside seconded; a vote resulted as follows:

AYES: Supervisor Kryzak, Councilwoman Pecylak, Councilwoman Burnside, Councilman Mahan, Councilman Beers

NAYS: None

RESOLUTION # 90 - 2024 was thereby duly adopted.

NEW DOG BOX

Mr. Kryzak provided the Town Board with pricing for a new dog box. The current dog box will only carry two dogs. If the Town had to pick up more than two dogs, it couldn't. The box must be inspected by Ag and Markets. The price is \$1,526 and would give the Town the ability to pick up five dogs between the two different dog boxes. Once the Town has this, the Dog Control Officer can then transfer dogs legally per Ag and Markets. Supervisor Kryzak made a motion to adopt the following resolution:

WHEREAS: The Town Board discussed the need to purchase an additional dog box to transport more than two dogs at a time, be it hereby

RESOLVED: The Town Board authorizes the purchase of a dog box that can hold three dogs at a cost of \$1,526 which will need to be inspected by Ag and Markets.

Councilwoman Burnside seconded; a vote resulted as follows:

AYES: Supervisor Kryzak, Councilwoman Pecylak, Councilwoman Burnside, Councilman Mahan, Councilman Beers

NAYS: None

RESOLUTION # 91 - 2024 was thereby duly adopted.

RETAINING SPECIAL LITIGATION COUNSEL FOR ARTICLE 78 LAWSUIT DUE TO LOCAL LAW NO. 3

Supervisor Kryzak indicated he's looked at a few firms and it's down to Tabner, Ryan, Keniry LLP. They are looking to handle the Article 78 lawsuit regarding Local Law No. 3. They have agreed to waive the retainer which is generally \$5,000 and will have an hourly rate of \$325/hr. which Mr. Kryzak noted is lower than the ranges of others at \$375-\$395/hr. Supervisor Kryzak indicated they specialize in litigation, Article 78's and municipal work. He would like to retain them to handle the Article 78 for Local Law No. 3 of 2024. Supervisor Kryzak made a motion to adopt the following resolution:

WHEREAS: The Town is in need of hiring an outside attorney due to an Article 78 lawsuit regarding Local Law No. 3 of 2024, be it hereby

RESOLVED: The Town Board approve and retains Tabner, Ryan and Keniry LLP to handle the litigation regarding the Article 78 lawsuit on Local Law No. 3.

Councilwoman Burnside seconded; a vote resulted as follows:

AYES: Supervisor Kryzak, Councilwoman Pecylak, Councilwoman Burnside, Councilman Mahan, Councilman Beers

NAYS: None

RESOLUTION # 92 - 2024 was thereby duly adopted.

RESIGNATION OF CHAIR OF PLANNING BOARD/ZONING BOARD OF APPEALS

Mr. Kryzak indicated the Town had received the resignation of the Planning Board/Zoning Board of Appeals Chair George Spahmer. He advised that Alternate Member Bill Hall is very experienced on the Planning Board. He would like to appoint him from August 22nd through December 31st, 2027. He spoke to Mr. Hall already about this. Supervisor Kryzak made a motion to adopt the following resolution:

WHEREAS: There is a vacancy on the Planning Board/Zoning Board of Appeals due to the resignation of Chairperson George Spahmer, be it hereby

RESOLVED: The Town Board appoints Bill Hall, as Chairperson of the Planning Board/Zoning Board of Appeals to fill George Spahmer's unexpired term, expiring 12/31/27.

Councilwoman Pecylak seconded; a vote resulted as follows:

AYES: Supervisor Kryzak, Councilwoman Pecylak, Councilwoman Burnside, Councilman Mahan, Councilman Beers

NAYS: None

RESOLUTION # 93 - 2024 was thereby duly adopted.

TOWN OF WESTERLO FIRE CO. CALENDAR AD

Supervisor Kryzak mentioned that the Town of Westerlo Fire Co. is selling ads for their calendar, but they are due tomorrow. This supports the Fire Co. for anyone interested.

CIVILIAN RESPONSE TO ACTIVE SHOOTER EVENT

The Albany County Sheriffs are holding a civilian response to active shooter event on September 14th from 9 am – 12 pm. Free refreshments are being served. No need to sign up.

SUMMARY OF BUDGET CALENDAR

Supervisor Kryzak reviewed the following budget calendar:

- September 30th - Supervisor submits Tentative Budget to Town Clerk.
- By or before October 5th – Town Clerk presents Tentative Budget to Town Board.
- By or before November 15th – Schedule Public Hearing on Preliminary Budget.
- By or before November 20th – Town Board adopts final budget.

Mr. Kryzak mentioned his goal is to be able to present the Tentative budget to the Town Clerk early so she can present it to the Town Board early.

ADVERTISE FOR THE ALTERNATE TO THE PLANNING/ZONING BOARD

Supervisor Kryzak would like to advertise for an alternate member to the Planning Board/Zoning Board of Appeals now that Mr. Hall is the Chairperson, leaving a vacancy. Councilman Beers asked if Mr. Kryzak was advertising for one or two alternates; Mr. Kryzak responded one for now. Mr. Kryzak advised that an alternate can step in if another board member is out and if someone resigns, they can get first dibs on the position as well. He would like to open it up to the public for anyone interested in applying. Town Clerk Weaver commented that the alternate position wasn't advertised last time; Mr. Kryzak responded, it's being advertised now. Councilman Beers asked who the attorney would be for the upcoming Planning/Zoning meeting. Mr. Kryzak advised that Mr. McHugh can work with the Planning Board/Zoning Board of Appeals on basically your run of the mill procedures, but they can retain representation if required at the cost of the applicant if a legal decision is needed. Supervisor Kryzak explained, the reason that is being done, is that moving forward, if there is another issue where the Town Board doesn't agree with something, the Town Board can Article 78 the other Board, and the Town Attorney wouldn't be

conflicted. The way everything is written in the Town's current law, if an attorney or engineer is hired, the applicant would pay for it and the Town would collect an escrow for that. If there was a legal opinion that needed to be rendered, it would be paid for by the applicant through escrow and would only be needed for commercial applications. The Planning Board/Zoning Board of Appeal can retain an attorney that would need to be approved by the Town Board. Supervisor Kryzak believed it would eliminate any conflict of interest for an Article 78 between the Town Board and the combined board. The current Town Attorney can advise on procedure but wouldn't give a legal opinion, that would need to be retained by the applicant. Clerk to the Board's Claire Marshall asked if the Town Attorney would be present at the upcoming combined board's meeting. Mr. Kryzak indicated he doesn't have to be, the chair could reach out and he could give advice on legal issues but won't give a legal decision at a meeting. Again, if a legal decision needs to be made, that would be paid for by the applicant. Supervisor Kryzak advised that Mr. McHugh had already provided Mr. Spahmer with the name of an attorney that would do it. The combined board could explore other options, but an attorney would ultimately need to be approved by the Town Board. Mr. Kryzak also mentioned he responded to Mrs. Marshall's email she sent about who handles subdivisions. He advised that currently, that's been transferred to the Planning Board/Zoning Board of Appeals. He mentioned that the Town Board would just need to approve their decision when they submit their monthly report at the monthly meeting. He indicated Mr. Hall has had training in subdivisions, other Board members have had some. He believed it's a good move for Mr. Hall to be the chair as there are four people around him that are familiar with zoning and he is very familiar with planning. Now he believed the Town has a well-rounded Board. It was mentioned that the newly combined board had a 2.5-hour training and were provided a binder.

PROTONMAIL

Councilman Beers thought the Town got rid of Proton Mail, the Town's old email provider. Mr. Kryzak indicated they have. Mr. Beers wondered why the Town was paying \$404.55 for Proton Mail then and asked if it's a monthly charge or yearly charge. Mr. Kryzak understood that it's just to retain access for FOIL purposes. Mr. Kryzak indicated it's not a monthly charge. Mr. Beers and Ms. Weaver both advised they cannot access those emails. Confidential Administrator Lisa DeGross mentioned it would only be the Town Clerk that would need to get into them, and she had expressed difficulty trying to get in so Mrs. DeGross would investigate it.

PUBLIC COMMENT

Previous Town employee Chuckie Benninger commented regarding the Town Board's interest in putting cameras at the transfer station. Supervisor Kryzak indicated it was a recommendation from the Town's insurance company. It protects the Town, having video documentation. Mr. Benninger wondered if the people bidding on the AC units knew about the asbestos in the building. Supervisor Kryzak indicated no; he wasn't aware there was asbestos in the walls. Mr. Kryzak advised he will need to address that before they put in the units. He asked if they opened the walls when they did the work, Town Clerk Weaver believed they drilled. Mrs. DeGross mentioned that one company indicated they would seal off the basement from any work being done upstairs. Mr. Kryzak will ask CEO Pine if there are any files on that. This will be investigated since the AC units were tabled. Mr. Benninger also wanted to know if the Town is done with supplying internet and cable because now, the Town Board passed a resolution to give the rest of the ARPA money to the Water District. He mentioned some people still don't have internet. He advised that the Water District is supposed to be self-sufficient, and now that's \$200,000 plus the last \$60,000 the Town gave them; that's for 80 houses, and he wondered about the rest of the people in

town. Mr. Kryzak advised the ARPA money is earmarked for infrastructure. Originally, it was earmarked for broadband. He commented, the Town will have full coverage for internet because of the USDA and the county but unfortunately it's slow. The ARPA money can't sit unused forever and needs to be used on infrastructure. The only other infrastructure is the water.

Previous Planning Board Member Angela Carkner wondered who was responsible for dealing with the union, asking if that was the Supervisor or the Town Board. Mr. Kryzak responded, right now, he has been going back and forth with Ryan from Goldberg and Kremer getting them the information that they need but the decision is going to come back to the Town Board. She was curious to know if the Confidential Administrator was working on it because they say in the letter that they will reach out to Lisa and Matt. Mr. Kryzak responded that Mrs. DeGroff has been providing that documentation. Mrs. Carkner also asked why the Town Board got rid of previous Town Attorney Javid Afzali. Mr. Kryzak indicated back when Mr. Afzali was here the Town Board agreed that he wasn't the best for the Town and they were looking at cost savings, because they had been promised they wouldn't exceed a certain amount per month and that wasn't taking place. It was to try to contain spending as well as the Town Board was not satisfied. She remembers he wasn't attending the meetings he was supposed to be at and believed Councilwoman Burnside recommended terminating him. She also mentioned Mr. Kryzak wanted to save money by hiring George McHugh who gets \$28,000 a year that way he can handle any other law items that come up, but she didn't know how many lawsuits the Town had right now, Supervisor Kryzak responded three. None of that \$28,000 of Mr. McHugh's salary was being used towards those lawsuits because he isn't representing the Town. Mr. Kryzak advised there are specialties involved in litigation, so the best advice is to use a specialty attorney depending on the area of law. Mr. McHugh acts as a liaison in finding attorneys and is involved. She wondered if he thought the Town Board should be reconsidering the \$28,000 salary since one Board he was representing has been abolished, the other he all of a sudden can't represent, which she indicated was very confusing to her because every other municipality that exists in NYS has an attorney that shows up and represents those Board members to provide them with information so a town doesn't get an Article 78 filed against them. That attorney is supposed to help the board understand the municipal laws of the Town and NYS laws. She questioned if the Town is being further exposed to another Article 78 by another board not having any type of legal counsel. Mr. Kryzak indicated no, right now the Town is doing a lot more legal work including the Article 78, the fight with Albany County Water Board, and the union. He's glad that he retained that cost and will not exceed that cost. She didn't think that made sense because Mr. McHugh isn't representing the Town in any of the lawsuits. She believed his salary should be reconsidered if he is not doing any of these job duties that were assigned in a job description or originally in his engagement letter. She asked why the Town was paying someone to do a service that he is not providing. His job was to cover the Town for these things. She indicated Mr. Kryzak is a businessman and mentioned the Town Board fired the previous Town Attorney for doing the same thing Mr. McHugh is doing right now. She's wondering if he will be having a pay adjustment at budget time or if he will be terminated. Mr. Kryzak indicated he hasn't addressed any of that yet but just like in business you have general counsel; Mr. McHugh participates in those cases, but he needs special litigation. She would like the Town to review this during the budget season since it would be a great place to save money, and they need to pay three other attorneys now. There wasn't a line item for that last year, and she doesn't know where the money is coming from to pay for it.

Mrs. Carkner asked about the budget amendment. Mr. Kryzak mentioned it's easier to transfer whole numbers, but Mrs. Carkner indicated the State Comptroller does not recommend transferring whole

numbers, they recommend transferring the exact number that is associated with the cost. Mr. Kryzak indicated he doesn't want to leave a cost code bare, wants to leave some money in there. His understanding is that the transfer can be done on a single basis. Yes, they'd like to see exact numbers, but he doesn't want to leave the code bare. Regarding ARPA funds being moved to the Water District, she wondered if there was a plan for that money. Supervisor Kryzak advised there is a ton of maintenance that needs to be done. There is a leak somewhere in the system that there is no information on. They need an outside engineer to review the system that is in place to recommend the repairs that need to be done. There is also grant money that the Town will try to go after but a lot of times they are matching funds so all that money could be used for the repair of that system which is antiquated, outdated and needs a lot of work. She thought the money needed to be used by 2025. Mr. Kryzak indicated he hopes to use the money this year. Based on the rules and using it for infrastructure, she asked if the Town was going against the purposes of the grant by utilizing it for one tiny district instead of something that benefits the entire community: Mr. Kryzak did not believe so.

Regarding the AUD, Mrs. Carkner wondered if it was correct and if it was the final version. Mr. Kryzak indicated that is the most final version at this time. He advised the Office of the State Comptroller (OSC) reviews it and they will reach out with any questions they might have and then the Town may need to revise things here and there. She indicated there is nothing in investments which she didn't think was correct. He explained you may need to dig deep to see where each separate investment for each bank account goes. She wondered who completes the AUD; Mr. Kryzak advised him, and Mrs. DeGroff compile all the information and transfer to BST the accountants who then handle, compute the numbers, and file their audit with OSC.

A resident wondered about the status of a potential dog holding facility. She indicated the dogs in town were out again. Supervisor Kryzak indicated a holding facility is on hold as he is trying to get an appointment with Columbia Greene Humane Society. The Town Board just approved the purchase of another dog box. Trying to make arrangements with Columbia Greene. The current facility can't help with multiple dogs. He hopes to have the new box by September, have Ag and Markets inspect the box, and make arrangements with Columbia Greene so that the next time there is an issue the Town can execute the judge's order to take all the dogs. Discussion continued regarding specifics of the dog case in town. Mr. Benninger wondered where the police were with this. Mr. Kryzak advised that the sheriffs are also looking to build an animal control facility. It was mentioned that no other town wanted to get in on it.

Maureen Sikule President of the Library mentioned Mr. Kryzak was talking about how applicants before the Planning Board/Zoning Board of Appeals needed to pay for the lawyer themselves but it must get approved by the Town Board and she wondered if it would lengthen the process. Mr. Kryzak responded no, the combined board would retain one attorney for the year and then would collect escrow from the applicant just like the Town does for the engineer. It would be on demand. Most of the applications wouldn't need that but it would be for larger commercial applications.

Mrs. Sikule inquired about the tennis courts if there was talk about making one a pickle board court. Mrs. DeGroff reminded the Supervisor that some of the items already purchased were new posts for the court, a pickle ball net and tennis net. Someone else asked when the court would be resurfaced. He responded it would have to be advertised and put out for bid. He advised the Town has the funds but there were other items first, now this is on the list.

Betty Filkins asked if the Highway Department could fix the driveway at the Westerlo Rural Cemetery. Acting Highway Superintendent Pecylak advised he can help with that.

The neighbor of the resident who has the dog issue in town wondered if she were to get attacked and she injured the dog she wondered if she gets in trouble. Supervisor Kryzak responded that he is not an attorney and can't answer that question. The Dog Control Officer advised she has the right to protect herself.

Town resident Mr. Sherman wondered when the rest of the town is going to stop paying for the Water District. Mr. Kryzak indicated the ARPA money was not directly funded by the Town's budget. Mr. Sherman mentioned Mr. Kryzak made Mr. Pecylak the Acting Highway Superintendent, made his pay retroactive but he wasn't doing the job. Wondered why they were paying two people for one job. Supervisor Kryzak responded; the previous Highway Superintendent had been training Mr. Pecylak to do that job while working for him. He indicated he had been doing the job that he had been trained to do and he should be getting paid for that position. Resident Palma Schloer indicated Mr. Ostrander was in the job for 30+ years. Mr. Kryzak advised the pay is based on the position, not the individual. There is a salary that comes with the position. She indicated not always, it goes with the knowledge that goes with the position, experience. Lisa DeGroff believed they were getting into personnel issues when you talk about an individual's experience, Mr. Kryzak indicated absolutely.

Barbara Russell wanted to know where the Town stood with job descriptions for these high-priced people that are being paid. She knows the Town Clerk has one. Mr. Kryzak advised there is one for the Confidential Administrator and they have one for highway. She wondered if it was available online. Mr. Kryzak indicated she should look at the highway manual. The Confidential Administrator's job description was approved at a meeting. She wondered if they were comparable to the Town of Berne or Knox. Mr. Kryzak advised the Town does pay more than the county, but we have the best personnel for highway, they do a great job, better than any other town. She asked why the Town pays a somewhat novice individual the same as someone with 30 years' experience. Supervisor Kryzak indicated he's not going to talk about any one person's pay that can come up during budget season; it's about paying the position not the person, especially an elected position. He explained further, before there is an election, everyone knows what they are signing up for. Budget goes to the Town Clerk on September 30th. The Town Clerk advised, as soon as she receives it, she will be giving it to the Town Board and posting it on the website for the public to view. The resident asked if she compiled a spreadsheet with lane miles if the Supervisor would allow her to present it to the public, he offered to sit down with her, but she wanted to do it publicly.

Lisa DeGroff advised that Mr. Pecylak did know about job descriptions which were started with Mr. Ostrander. Mr. Pecylak currently has a draft of them which he must edit. The Association of Towns Highway manual is for highway superintendents.

A resident mentioned transfer station permits, commenting that only 3 of 10 cars have a permit displayed. They wondered if there was a way to have someone check permits all the time. Supervisor Kryzak doesn't want employees confronting people as there have been problems with that in the past. Jim Brush advised that many towns have stickers for permits. It would be hard to get away from having some type of dump permit, Mr. Kryzak advised. Maybe the fee could be reduced, which is in the

works. The Town Clerk advised the reason the Town Board at the time didn't do stickers was because people had multiple vehicles.

Councilwoman Pecylak announced she was done and made a motion to close the meeting, but others were speaking. No second was made. Motion did not carry.

Councilman Mahan asked if someone applies for a highway position and never had experience do they get the same pay, Mr. Kryzak advised, no, but the hope is that they would come with experience and there was a scale.

Angela Carkner mentioned the Town voted on special litigation counsel, but she is confused because someone from the Town of Westerlo already engaged in services with that attorney. She wondered how the Town could engage in services previously but then vote to engage in services tonight. Mr. Kryzak indicated they had a conversation with that attorney and the agreement was once they approved this they could move forward; they were not retained. She indicated they were asking for an extension which means they were already engaged. He advised they could do that when it is required in certain situations like this. She questioned how someone from the Town can engage an attorney and then after the fact can have the Town Board vote to engage that attorney. Mr. Kryzak indicated in this situation it was required due to the expeditious nature of her lawsuit. She advised that the whole purpose of the lawsuit was so the town government does what it's supposed to do by law. So, she was asking if they are following the law and doing the right thing here. Mr. Kryzak responded, absolutely.

Court Clerk Jaimee Motschmann asked, given Mr. McHugh has served as Town Attorney for several towns, and town supervisor previously how was it discovered that he could no longer be the attorney for the Zoning and Planning Board. Mr. Kryzak indicated they had written to the BAR association with the issue basically wondering what the BAR Association's stance was in a case when there is no agreement between a town board, and a planning or zoning board. He wondered what the issue would be if the same attorney gave a legal opinion to both. The BAR Association believed that was a conflict and recommended not having the same attorney giving legal opinions to the same board because then that attorney couldn't represent either. The BAR Association indicated that there is already a law that says you can collect escrow for legal fees and wondered why the town wasn't doing that. Mr. Kryzak indicated it made the most sense if there is ever a legal issue. Mrs. Carkner asked if the Town Attorney had been subpoenaed. Mr. Kryzak advised Mr. McHugh was the one who reached out to the BAR Association because the Town Board was talking about what to do when you have cases where there may be lawsuits back and forth between two boards. She then questioned if every other municipality was doing it wrong. She wondered what law the Town had been violating. He indicated not every Town has the same contentious atmosphere so it's a recommendation. She advised that the law is the law and can be applied in different ways and what she believed he was saying was that this new board is going to have no legal representation. He responded no, the Town Attorney can give advice on procedure he is not going to issue a legal opinion about any application. If an application comes along that requires advice regarding that application, they will need to get escrow from the applicant for the attorney who is being retained. He indicated then there won't be a conflict between two different boards. She wondered if there was a law she can FOIL that indicated all of this.

Mrs. Sikule questioned if Mr. Kryzak was saying that Mr. McHugh shouldn't have given an opinion in the Planning Boards decision. Mr. Kryzak indicated moving forward he would like to remove that situation, so the Town Attorney doesn't give an opinion on any application. She wondered if he's saying the attorney shouldn't have given an opinion. Mr. Kryzak responded no, you can because other Towns do it that way, just like Mrs. Carkner mentioned, but he's trying to be different in that they are going to follow the law, that the applicants are now going to pay for an attorney to deal with legal questions for that case.

Barbara Russell wondered what Coeymans does since they also have a joint board, Mr. Kryzak doesn't know what Coeymans does. She wondered if he should reach out to other municipalities who do it. Councilman Beers indicated there are only four other municipalities in the state, that's how good of an idea it was.

Ms. Russell advised the Freese house has still not been mowed. She also commented that the old business was much better this time on the agenda. She commented on the Fall Festival After Party fireworks which are being held in the hamlet. She believed fireworks in general should be restricted. It's in the hamlet, PTSD, asking all the people in the hamlet to leave, turn up music, all to celebrate fall. She asked what the big deal was and if they were going to celebrate the other seasons as well. She indicated everyone knows why they are doing it; she would think the Hometown Heroes group would be opposed to this in Veterans Memorial Park. Mr. Kryzak indicated they had gotten requests from people to do fireworks, it was expensive but this year they went out and got sponsors. He advised he will give it a whirl.

ADJOURNMENT OF MEETING

Supervisor Kryzak made a motion to adjourn the meeting. Seconded by Councilwoman Pecylak. Councilman Mahan indicated he had a question for Mr. Pecylak. He wondered when he would attend to the culvert situation on Gregory Hill Rd. He responded when they get caught up with the rest of their jobs. Councilman Beers and the Town Clerk advised they still had questions. Supervisor Kryzak asked if all were in favor. The meeting adjourned at 7:29 pm. No vote was made by Councilmen Beers and Mahan.

Respectfully submitted,

Karla J. Weaver, Town Clerk



18 CORPORATE WOODS BOULEVARD, SUITE 8
ALBANY, NEW YORK 12211

TRKLAW.COM

PHONE: (518) 465-9500
FAX: (518) 465-5112

WILLIAM F. RYAN, JR.
WILLIAM J. KENIRY*
ERIC N. DRATLER**
ANDREW E. CLARK
GRAHAM A. THOMPSON
*ALSO ADMITTED IN THE STATE OF MASSACHUSETTS
**ALSO ADMITTED IN THE STATE OF FLORIDA

JOHN W. TABNER
(1951-2021)
HON. WILLIAM H. KENIRY
RETIRED JUSTICE OF THE SUPREME COURT OF NY
OF COUNSEL

FAX AND EMAIL SERVICE NOT ACCEPTED

August 1, 2024

CONFIDENTIAL

Via E-Mail Only:

Town of Westerlo
Town Supervisor
Attn: Hon. Matthew Kryzak

**Re: Angela Carkner, Gerald J. Boone and Richard Kurylo v.
Town of Westerlo Town Board et al.
Index No.: 907233-24**

Dear Supervisor. Kryzak:

We are providing you with this written letter of engagement pursuant to the Rules of the Appellate Divisions of the Supreme Court.

The anticipated scope of our services is to: defend all of the municipal respondents to wit: the Town of Westerlo Town Board, the Town of Westerlo Planning Board and the Town of Westerlo Zoning Board of Appeals, in the above referenced lawsuit commenced against these respondents.

The scope of our services is subject to change and does not include appeals or any unusual or extraordinary services as not all legal work necessary to accomplish a result is necessarily foreseeable. Sometimes work becomes necessary that could not have been anticipated. In any event, we will keep you apprised and will act in a manner to advance your best interests. The rules of our profession prohibit any guaranty of a particular outcome or result.

You are retaining our firm, consisting of a number of attorneys, law clerks, paralegals and support staff, all of whom will be providing or assisting in your legal representation. William J. Keniry, Esq., will be in charge of the administration of your case, but other attorneys and persons may also participate in your representation. The hourly rate for our work on this matter is \$325.00.

Generally, we assign case responsibilities and tasks based on the degree of experience and expertise required for a particular component of your representation. We will continue to assign and direct work and research needed on this matter to the most effective and economical level in the legal team.

We will keep you informed of the status of the matter, explain the pertinent law, the available courses of action, and the attendant risks. We will notify you of significant developments and will be available for meetings and telephone conversations with you at mutually convenient times.

Copies of all papers will be supplied to you as they are prepared, for which you may be billed a reasonable photocopy charge.

In order for us to begin representation, we will require a retainer payment of **-WAIVED- Five Thousand and 00/100 (\$5,000.00)**. The amount of the eventual fee will be based upon our regular schedule of hourly time charges, and any out-of-pocket disbursements (such as messenger services, transcripts of proceedings, legal research charges, and significant photocopying and postage) incurred on your behalf.

The billing practice in your case will be to bill you monthly for work performed on an hourly basis. Billing is itemized to reflect the nature of the services, the persons performing the services, the total time spent on the matter and the total fees and disbursements. The hourly rate for the partners ranges from \$375.00 to \$395.00 per hour, the hourly rate for associates ranges from \$225.00 to \$275.00 per hour and the hourly rate for legal assistants ranges from \$125.00 to \$290.00 per hour. These rates are subject to change.

Bills are expected to be paid within thirty (30) days of the date of the invoice. Upon receipt of our bill, you should review the bill and bring to our attention any questions you may have. You will not be charged for time expended in discussing any aspect of a bill. We will extend our best efforts on your behalf, but we do not guarantee a favorable outcome. Payment of legal fees in such matters is NOT contingent upon obtaining a favorable outcome or determination. We apply monthly interest charges at nine (9 %) percent per year on past-due balances.

In the event that you dispute any fees, you may exercise the right to arbitrate fee disputes under Part 137 of the Rules of the Chief Administrator of the Courts, a copy of which will be provided to you upon written request.

We reserve the right to withdraw from the representation whenever withdrawal is required or permitted by ethical standards of practice. In the event a substitution of attorneys becomes necessary, you are expected to provide the necessary consent for substitution of attorneys of your choice and cooperate fully in effecting such substitution.

You may discharge us at any time and, in such event, you will be charged only for time and disbursements actually incurred up to the point of discharge.

We retain files for a period of seven (7) years from when the work on the matter is completed. At any time thereafter, files may be destroyed without further notice. If, after the matter is completed, you wish to receive a copy of those portions of the file that are considered the client's, please let us know, in writing, and we will provide you with a copy at your expense.

TABNER, RYAN & KENIRY, LLP

August 1, 2024

Page 3

This letter of engagement is provided to you to comply with the rules of one of the many courts in which we practice as well as to establish a positive and constructive commencement of our professional relationship. We look forward to working with you.

With best wishes.

Very truly yours,

TABNER, RYAN & KENIRY, LLP

William J. Keniry

William J. Keniry

Direct Dial: (518) 512-5304

wjk@trklaw.com

WJK/kkf