

MINUTES of a Special Meeting of the Village Board of Trustees held Friday, February 6, 2015 at 1:00PM Village Hall, 111 Elm Street, Room 202, Penn Yan, NY 14527

PRESENT: Mayor L MacKerchar; Trustees W. Allison; C. Christensen; D. Reeve; R. Stewart; Attorney Ed Brockman; Clerk/Treasurer G. Meeks; Director of Public Works B. Bodine;

ABSENT Trustees B. Church; C. Benedict; Police Chief M. Hulse; Assistant Director of Public Works B. Jensen; CEO B. Lyon; Fire Chief J. Housel

News Media present: Gwen Chamberlain, Chronicle Express, David Specksgoor, and Dundee Observer

PUBLIC: Bob Hawley

Mayor MacKerchar called the Special Village Board meeting to order at 1:00 PM

Mayor MacKerchar thanked Gary Meeks, Clerk/Treasurer, Trustee Allison for serving on the committee and researching this in length, along with the Jerusalem Board Supervisor Pat Killen, Councilman Mike Steppe and Carrie Wheeler, Clerk for the Keuka Park Sewer & Water Department. The Mayor feels they have come to an agreement which is fair to all parties involved. Trustee Allison commented Councilman Jones felt they shouldn't have to pay back the \$42,000. When Jerusalem took us to court – our lawyer failed to file on time and the Judge could not rule on it and Jerusalem felt that they did not owe it. Trustee Allison stated back in 1995 both sides were in good faith with the agreement. We have had many meetings for this and thanks to Pat Killen, Mike Steppe and Carrie Wheeler to help resolve this it's fair on all sides. Bob Hawley asked about the law suit. Mayor MacKerchar stated that any and all law suits will be withdrawn within 30 days after the signing of the agreement by both parties. Mayor mentioned back in the 90's it was a fair agreement and it needed to be adjusted and to be fair to them. Trustee Reeve feels this is a long time coming and many hours have been spent on this, he applauded the Mayor and everyone who worked together on this.

MOTION by Trustee Allison, seconded by Trustee Reeve to authorize Mayor MacKerchar signs the Modification of Sewage Disposal Agreement between the Village of Penn Yan and Town of Jerusalem.

THIS MODIFICATION AGREEMENT IS DATED the 6th day of February, 2015 by and between the Village of Penn Yan, a municipal corporation with offices at 111 Elm Street, Penn Yan, New York 14527 (hereinafter referred to as "Penn Yan") and, the Town of Jerusalem, a Municipal corporation with offices at 3816 Italy Hill Road, Branchport, New York 14418 (hereinafter referred to as "Jerusalem").

WHEREAS, the Village of Penn Yan and the Town of Jerusalem previously entered into a "Sewage Disposal Agreement" dated November 08, 1995 with respect to Penn Yan receiving and treating sewage from a sewer district in Jerusalem; and"

WHEREAS, said "Sewage Disposal Agreement" contains certain terms and conditions which define and control the relationship between Penn Yan and Jerusalem with respect to the receiving and treating of such sewage, including the method for determination of charges to be paid to Penn Yan by Jerusalem with respect thereto; and

WHEREAS, on or about February 13, 2002, Penn Yan and Jerusalem entered into an "Addendum To Sewage Disposal Agreement" with respect to creation of "Keuka Park Sewer District Extension #2"; and

WHEREAS, certain differences have arisen between Penn Yan and Jerusalem with respect to the terms and conditions of the "Sewage Disposal Agreement" and the "Addendum To Sewage Disposal Agreement", which has resulted in lengthy litigation between Penn Yan and Jerusalem; and

WHEREAS, Penn Yan and Jerusalem have agreed upon certain modifications to the "Sewage Disposal Agreement" with the understanding that upon execution of a modification agreement any and all litigation between Penn Yan and Jerusalem, as well as Notices of Claim which have been filed and served relating to issues which are collateral to the differences between Penn Yan and Jerusalem, shall be discontinued, terminated and cancelled.

NOW, THEREFORE, IT IS AGREED BETWEEN PENN YAN AND JERUSALEM AS FOLLOWS:

1. The entirety of section "5" of the 1995 "Sewage District Agreement" is amended to

provide as follows:

5. Jerusalem agrees to pay an annual sewage disposal charge to Penn Yan for Penn Yan receiving, conveying, treating and disposing of sewage from the Town of Jerusalem, which annual charge shall be computed and paid as follows:

5.1. A sum representing a hereinafter specified share of the actual costs each year of that portion of the Village of Penn Yan sewer budget attributable to the waste water treatment plant, including capital, operation, maintenance, repair and re-placement costs of that facility, plus costs attributable to vehicle use at the waste water treatment plant. Specifically excluded therefrom are the portions of the sewer department's costs attributable to meter reading, customer billing, capital for the in-village sewer system, and operation and maintenance of the in-village sewer system, except as otherwise provided in the 2002 "Addendum To Sewage Disposal Agreement", which prescribes separate and additional charges to be paid by Jerusalem.

5.1.1 The share of the said costs to be paid by Jerusalem for the **2014/2015** Penn Yan fiscal year shall be 31% (.31).

5.1.2. Subsequent to the **2014/2015** Penn Yan fiscal year the share of said sewer costs to be paid by Jerusalem shall be modified as follows:

5.1.2.1. For the **2015/2016** Penn Yan fiscal year the share of said sewer costs to be paid by Jerusalem shall be 28% (.28).

5.1.2.2. For the **2016/2017** Penn Yan fiscal year the share of said sewer costs to be paid by Jerusalem shall be 27% (.27).

5.1.2.3. For the **2017/2018** Penn Yan fiscal year the share of said sewer costs to be paid by Jerusalem shall be 26% (.26).

5.1.2.4. For the **2018/2019** Penn Yan fiscal year the share of said sewer costs to be paid by Jerusalem shall be 25% (.25).

5.1.2.5. For each fiscal year after the **2018/2019** Penn Yan fiscal year the share of said sewer costs to be paid by Jerusalem shall be 25% (.25).

5.2. The annual sewage disposal charge payable by Jerusalem shall be remitted by Jerusalem to Penn Yan in equal monthly installments within fifteen (15) days of being invoiced. Any payment received by Penn Yan from Jerusalem more than twenty-five (25) days after Jerusalem has been invoiced shall be subject to a late charge of 9% per annum (0.75% (.0075) per month, un compounded (simple interest).

5.2.1. The monthly billing by Penn Yan to Jerusalem shall be based upon the budget for the applicable Penn Yan fiscal year. At the end of each budget (fiscal) year, a reconciliation of the actual costs of the sewer department to which Jerusalem is obligated to contribute, shall be computed and an adjustment made for any overpayment or underpayment by Jerusalem in that budget (fiscal) year. The adjustment shall be either credited or debited to the Jerusalem sewage disposal account on the first regular monthly billing subsequent to completion of the reconciliation. In computing the annual reconciliation, actual costs shall be reduced by the proceeds of the sale of any assets, including vehicles, to the extent that they had been previously included in the calculation of such actual costs.

2. The terms and conditions hereof shall not be applicable to, nor modify the provisions contained in paragraphs "5." and "6." of the "Addendum To Sewage Disposal Agreement" dated on or about February 13, 2002. This modification Agreement is a revision of the 1995 "Sewage Disposal Agreement" as anticipated and referenced in paragraph "4" of the 2002 "Addendum To Sewage Disposal Agreement"
3. Upon execution hereof, Jerusalem shall pay to Penn Yan the sum of \$42,000.00 representing the settlement of all prior claims by Penn Yan against Jerusalem with respect to the "Sewage Disposal Agreement" and the "Addendum To Sewage Disposal Agreement" .
4. Within thirty (30) days of the execution hereof, Jerusalem and Penn Yan shall execute and file such documents as are necessary to discontinue any and all litigation pending between themselves, as well as withdraw or cancel any Notices of Claim for any potential cause of

action allegedly arising out of issues related to the 1995 "Sewage Disposal Agreement" or the 2002 "Addendum To Sewage Disposal Agreement".

5. The content of paragraph "7" of the 2002 "Addendum To Sewage Disposal Agreement" shall be subject to the amendment of paragraph "5" of the 1995 Sewage Disposal Agreement" as embodied herein.
6. All other terms and conditions of the 1995 "Sewage Disposal Agreement" and the 2002 "Addendum To Sewage Disposal Agreement" not modified by the provisions hereof are hereby ratified and affirmed. Penn Yan and Jerusalem further ratify and affirm that, pursuant to the 1995 "Sewage Disposal Agreement" and the 2002 "Addendum To Sewage Disposal Agreement", Jerusalem may convey and transmit from its sewer system a total of up to 265,000 gallons of sewage per day, measured at the master meter computed on a monthly average daily basis, to the Penn Yan sewer system for treatment and disposal through the Penn Yan wastewater treatment plant. The 265,000 gallons of sewage per day, measured at the master meter computed on a monthly average daily basis, includes the 205,000 gallons of sewage per day provided for in the 1995 "Sewage Disposal Agreement" and the additional 60,000 gallons of sewage per day provided for in the 2002 "Addendum To Sewage Disposal Agreement". The 265,000 gallons of sewage per day, measured at the master meter computed on a monthly average daily basis, includes sewage from Jerusalem's present sewer system and may also include sewage from any expansion of such sewer system to add additional customers within the Town of Jerusalem. At any time that the total received by Penn Yan from Jerusalem exceeds 265,000 gallons of sewage per day, measured at the master meter computed on a monthly average daily basis, such excess shall be subject to the surcharge provisions contained in paragraphs 3.4,3.4.1 and 3.4.2 of the 1995 "Sewage Disposal Agreement".
7. Jerusalem and Penn Yan each acknowledge that the term of the 1995 "Sewage Disposal Agreement" and the 2002 "Addendum To Sewage Disposal Agreement" ends in 2035 and that such forty (40) year term, measured from the date of the 1995 "Sewage Disposal Agreement" is based upon GML §119-0.(2)0), Local Finance Law §15.00.(b)(7), and Local Finance Law §11.00(a)(4).
8. Penn Yan and Jerusalem each represent, covenant and warrant to the other that such actions required as a precedent in order to enter into this Modification Agreement have been performed and/or have been duly adopted by the Municipal Board of each.

ADOPTED Ayes 5 MacKerchar, Allison, Christensen, Reeve, Stewart
Nays 0 Abstain 0 Absent Benedict, Church

MOTION by Trustee Reeve, seconded by Trustee Christensen to authorize Resolution No13-2015 Execution and Delivery of that Certain Amendment to Development agreement and Authorizing Access of the Keuka Outlet Development LLC to Certain Village for the Purpose of Conducting Environmental Inspection.

WHEREAS, pursuant to Village of Penn Yan Resolution No. _____, the Village of Penn Yan (the "Village"), together with Yates County (the "County") and Keuka Outlet Development LLC ("Keuka"), entered into that certain Development Agreement dated as of February 26, 2014 (the "Original Development Agreement"), governing the terms and conditions of the redevelopment of approximately 14.7 acres of land located on the east bank of the Keuka Outlet in the Village (the "Property"); and

WHEREAS, certain terms and conditions for the remediation and redevelopment of the Property (the "Project") and the responsibilities of the Village, the County, and Keuka have changed since the execution and delivery of the Original Development Agreement and the parties wish to formally amend the Original Development Agreement to memorialize those changes; and

WHEREAS, the Village has determined that such changes are in furtherance of the Original Development Agreement and beneficial to the Village such that the Village is willing to execute an amendment to the Original Development Agreement memorializing the changes; and

WHEREAS, in furtherance of its obligations under the Original Development Agreement, as may be amended by that certain amendment to development agreement, Keuka requires access to certain real property that is contiguous to the Property as shown, hatched, on *Exhibit A* attached to this Resolution (the "Additional Property"), for the purpose of conducting testing, including soil borings, required in connection with the Project; and

WHEREAS, the Village is willing to grant Keuka the right to access that portion of the Additional Property, which it is owned by the Village, for the purpose of conducting testing, including soil borings, required in connection with the Project; and to memorialize such right by entering into an access agreement with Keuka that will govern Keuka's access to the Additional Property;

NOW THEREFORE IT IS HEREBY RESOLVED THAT:

The Mayor is hereby authorized to execute and deliver an amendment to the Original Operating Agreement subject to approval of the Village legal counsel, the Village DPW Director and the Mayor, as to form and content, that memorializes the recent changes to the terms and conditions for the Project; and

IT IS HEREBY FURTHER REOLVED THAT:

The Village does not acknowledge, claim or assert ownership of or to any lands located northerly and/or westerly from the centerline of Hicks Street, nor with respect to any lands located northerly and/or westerly from a straight line extension to the northwest of the centerline of Hicks Street, so far as the Keuka Lake Outlet.

IT IS HEREBY FURTHER RESOLVED THAT:

The Village enter into an access agreement with Keuka that will govern Keuka’s access to the portion of the Additional Property owned by the Village for the purpose of conducting testing, including soil borings, required in connection with the Project, and that the Mayor is hereby authorized to execute and deliver such access agreement, subject to approval of such agreement by Village legal counsel, the Village DPW Director and the Mayor as to the form and content thereof.

IT IS HEREBY FURTHER RESOLVED THAT:

These Resolutions take effect immediately.

Discussion: Atty. Brockman explained they had a meeting this week with Mayor MacKerchar, Gary Meeks, Brent Bodine, Trustee Allison, along with Chris Iverson, and a couple of his lawyers and Atty. Brockman they made a few modification to the original agreement between the Village, County and Iverson Development Group. Atty. explained the Village does not claim ownership of any property at the Penn Yan Marine site. The Iverson Development Group will be cleaning up a small south west portion of land approximately 64’x 100’ by the boat basin. They are asking now for permission to do testing on it and will improve the land and will then dedicate it back to the Village. Mayor MacKerchar explained they do have use of this small section of land they will not be getting it; it’s for public use and will also have a public dock for use.

ADOPTED Ayes 5 MacKerchar, Allison, Christensen, Reeve, Stewart
Nays 0 Abstain 0 Absent Benedict, Church

Atty. Brockman asked if the signing of the Development Agreement could be placed on hold until February’s Board meeting so he may review it in full.

ADJOURNMENT:

At 1:17 PM, MOTION by Trustee Allison, seconded by Trustee Reeve to adjourn the Special Village Board meeting

Mary Ann Martin, Deputy Clerk