

**MINUTES** of a Regular Meeting of the Village Board of Trustees held Tuesday evening, March 23, 2004 at 7:00 PM in the Maxwell Building, 127 Main Street, Penn Yan, New York.

**PRESENT:** Mayor D. Marchionda; Deputy Mayor W. Allison, Trustees M. Christensen, L. Sackett, N. Koek, and R. Schwingle; Street Supt. R. Jensen; Director of Public Works E. Balsley; Village Attorney E. Brockman; CEO B. Lyon; Police Chief Hill; Recreation Director D. Doyle and Cemetery Superintendent Trenchard

**ABSENT:** Trustee G. Smith, Asst. Director of Public Works R. Osgood, Village Treasurer Rogers and Fire Chief Pallar

Public Attendees: Nancy Taylor, Diane Lenzo, Hal Rubin and Jon Loe from DVI, Mike Carmel, Larry Strickland, Bonnie Barkley, Elizabeth Armstrong and Anne Gunn

News Media present: Connie Murphy, Chronicle Express; Peg Thompson, Dundee Observer and Gina Muscato, Finger Lakes Times

The Mayor called the meeting to order at 7:05 PM and led the Pledge Allegiance to the Flag.

**CALL FOR EXECUTIVE SESSION:**

MOTION by Trustee Koek, seconded by Trustee Allison to hold an *Executive Session* at the end of the meeting concerning personnel and litigation matters. Unanimously Carried.

**MINUTES:**

MOTION by Trustee Sackett, seconded by Trustee Koek to approve the minutes of the March 9, 2004 regular Village Board meeting as submitted. Unanimously Carried.

**PUBLIC HEARING:**

At 7:05 PM, as advertised.....

MOTION by Mayor Marchionda, seconded by Trustee Sackett to open the 2<sup>nd</sup> of 2 public hearings relative to the Village submitting an application for a 2004 Small Cities Grant to be used by St. Mark's Terrace. Unanimously Carried.

The Mayor asked if anyone would like to speak about the Small Cities Grant. No one spoke – the hearing was left open.....

**GUESTS, PUBLIC REQUESTS & COMMENTS:**

Bonnie Barkley, representing the Women's Softball League, was present to request some help from the Village in maintaining the Indian Pines sports field. She believes it would only be fair for them to receive the same consideration as given to the fields the men and other organizations use. The Mayor suggested that she attend the Parks & Recreation meeting, scheduled for tomorrow (Wednesday) at 4:00 PM in the P.Y. Middle School, Room 229 for further discussion.

Anne Gunn, 402 Elm Street, cautioned the Board that DVI and/or other companies incorporated in the State of Nevada, but has its' office in another state, could be a "fly by night" operation, and to be aware. She found it curious that the web site stated DVI was serving broadband to 3,500 customers in Penn Yan. She doubted there were even that many computers in Penn Yan. She suggested to the Board that an investigation might be wise. One of the advantages of being incorporated in Nevada is that officers and directors of a Nevada corporation would be protected from personal liability for lawful acts of the corporation. DVI has an office in Rome, NY. Mayor Marchionda informed Ms. Gunn that two gentlemen from DVI were present in the room, Hal Rubin and Jon Loe, and that she could direct her questions to them. The Mayor was not pleased with Ms. Gunn's insinuations, and followed with reading parts of an article written in the Wall Street Journal counter-acting her negative statements. The Mayor said if DVI dissolved tomorrow, Penn Yan would not be out any money.

► Mayor Marchionda asked if anyone would like to speak concerning the application for the 2004 Small Cities grant. No one commented.....

MOTION by Trustee Christensen, seconded by Trustee Allison to close the above mentioned public hearing. Unanimously Carried.

► MOTION by Trustee Allison, seconded by Trustee Sackett to adopt RESOLUTION NO. 11-2004 SMALL CITIES Grant Application. Unanimously Carried.

**MAYOR:**

MOTION by Trustee Koek, seconded by Trustee Schwingle to approve the Mayor's appointment of Larry Strickland to the Penn Yan Planning Board as an "alternate member" for a 1-year term. (LL No. 01-2004) Unanimously Carried.

The Data Ventures, Inc. Agreement (for 10 years and the Village would receive 10% of the revenues) needs a few minor changes at the advice of Attorney Brockman.....

MOTION by Trustee Allison, seconded by Trustee Schwingle to authorize the Mayor to sign the above mentioned agreement with Attorney Brockman's final approval.....

After further discussion, MOTION by Trustee Christensen, seconded by Trustee Koek to table the above motion until the April 6<sup>th</sup> Village Board meeting. Unanimously Carried.

Mayor Marchionda read the following press release.....

A decision on March 19, 2004 by the Supreme Court of the State of New York, Appellate Division, Fourth Department, was handed down that upheld the decision of the Honorable W. Patrick Falvey of the Yates County Supreme Court dated July 28, 2003. All five of the State Supreme Court Justices on the panel unanimously agreed with Judge Falvey's order to dismiss the lawsuit against the Village of Penn Yan brought by Karl Czymmek, a Potter resident who owns several apartment houses within the Village. The original lawsuit was filed against the Village of Penn Yan, the Mayor, the Village Board of Trustees, and Brian Zerges. Mr. Zerges, a local developer, has been trying to build a new Best Western Inn and Suites in the Village. The project that has been held up by the lawsuits can now move forward, giving our local economy a boost. To date, the Village of Penn Yan has spent over \$75,000 defending this frivolous lawsuit. This does not include the moneys spent by Mr. Zerges. Once again the Village of Penn Yan has been vindicated by the courts decision.

MOTION by Trustee Koek, seconded by Trustee Allison to call for a Public Hearing on the *tentative* 2004-2005 Village Budget to be held on Tuesday, April 6<sup>th</sup> at 8:00 PM in the Maxwell Building. Unanimously Carried.

Mayor Marchionda announced that the next regular Village Board meeting (after April 6<sup>th</sup>) would be the fourth Tuesday in the month, April 27, skipping the 13<sup>th</sup>.

**ATTORNEY:**

MOTION by Trustee Koek, seconded by Trustee Schwingle to authorize the Mayor to sign the “Storm Water Control Facility Maintenance Agreement” with the Family Dollar Store. Unanimously Carried.

Old Business: Attorney Brockman wrote a letter to the New York State Attorney General’s Office inquiring about the Fire Department’s alleged delinquency in filing with the State any donations, gifts and/or contributions received. Attorney Brockman has received word that the Village is probably correct, however, they are requesting a letter signed by the Mayor stating that the Penn Yan Volunteer Fire Department does not use professional fundraisers.....

MOTION by Trustee Koek, seconded by Trustee Schwingle to authorize the Mayor to sign said letter prepared by Attorney Brockman. Unanimously Carried.

**CORRESPONDENCE:**

None

**AUDIT:**

MOTION by Mayor Marchionda, seconded by Trustee Schwingle to pay the current bills as submitted:

Village:	Paid before audit: General	57.00	
	General Fund	15,980.05	
Municipal:	Paid before audit: Electric	287,061.85	
	Paid before audit: Water	8,793.28	
	Paid before audit: Sewer	240.00	
	Electric Fund	66,622.99	
	Water Fund	27,520.58	
	Sewer Fund	22,341.89	
	Capital Projects: Water	16,176.88	
	Sewer	44,564.80	Unanimously Carried.

**FINANCE & ADMINISTRATION:** G. Smith, Chair  
Trustee Smith will be returning from China on or about April 16<sup>th</sup>.

**PERSONNEL:** N. Koek, Chair

Trustee Koek informed the Board that the committee has received four resumes for the position of Village Treasurer. They all seem to be very qualified. The Clerk was asked to set up interviews with the applicants as soon as possible.

MOTION by Trustee Allison, seconded by Trustee Koek suggested that Friday, March 26<sup>th</sup> be the last day to receive applications. Unanimously Carried.

**PARKS & RECREATION** – R. Schwingle, Chair

The next meeting will be held tomorrow, Wednesday, March 24, 2004 in the PY Middle School, Room 229, at 4:00 PM.

**PLANNING & DEVELOPMENT:** M. Christensen

The last meeting was held yesterday, Monday, March 22<sup>nd</sup> in the Village Office at 7:00 PM. Trustee Christensen reported that the committee is continuing its work with definitions and permitted uses. It’s an arduous task but very important.

**AD-HOC BUILDING COMMUNITY:** D. Marchionda, Chair

The last meeting was held on Wednesday, March 10<sup>th</sup> at 5:30 PM in the Village Office. Local artists and Arts Council personnel were present to discuss the artwork to be affixed upon the dome as a lightning arrester for the new Village office building. There were many questions as to the size and means of attachment. The Mayor was pleased with the artists’ enthusiasm and interest in this project.

**PUBLIC SAFETY:** L. Sackett, Chair

Trustee Sackett did not run for re-election, therefore, a new Public Safety Chair will be appointed at the Organizational Meeting on April 6<sup>th</sup>. The date, time and location for meetings could change. At present, meetings are scheduled on the first Thursday of each month at 6:00 PM in the Fire House.

**Police Department:**

MOTION by Trustee Sackett, seconded by Trustee Christensen to accept the one and only bid received and to sell a 1985 *abandoned* Chevrolet Caprice 4-door sedan, for \$65.00 to Jeffrey Stempien, Keuka Park, NY. Unanimously Carried.

Police Chief Hill reported that he and Street Superintendent Jensen inspected the handicap parking spaces on Main Street and found no obstacles to interfere with exiting a car. They found the ramps to be at the crosswalks, except for the one located in mid-block. The next time the street is refurbished, a curb cut will be made.

**Fire Department:**

Trustee Allison informed the Board that a new hot water tank had to be purchased and installed for the Fire House under emergency conditions. The cost will be approximately \$1,500.

**Code Enforcement Office:**

MOTION by Trustee Sackett, seconded by Trustee Koek to approve CEO Lyon to attend a seminar entitled “Erosion & Sediment Control Requirements for Residential Homesite Construction” in Geneva, NY on April 6<sup>th</sup>. Unanimously Carried.

CEO Lyon informed the Board at the March 9<sup>th</sup> meeting that the street where the Tennis Club and the Wastewater Treatment Plant are located has to be named. Mayor Marchionda challenged the Trustees to return to this meeting with a name. Trustee Schwingle contacted the Tennis Club members and they suggested.....

MOTION by Trustee Christensen, seconded by Trustee Schwingle to adopt the name of *Elmwood Avenue* (in remembrance of the Elmwood Theater building where the tennis club began). CEO Lyon will notify 911 for their agreement. Unanimously Carried.

► At this time, Mayor Marchionda read the following letter:

Dear Lee, Thank you for being a loyal and dedicated Trustee for the past four years. It has been a pleasure getting to know you, and working with you. You have always carried out your responsibilities with efficiency and thoroughness. You were both knowledgeable and cooperative on various committees and projects. We have shared some interesting experiences. You have truly been an asset to the Village of Penn Yan, and it's too bad to lose you. However, we all understand why you chose not to seek re-election. We shall miss you. Thanks again.

► Also at this time, Mayor Marchionda welcomed newly elected Trustee Nancy Taylor to the Board.

**PUBLIC WORKS:**

The meeting scheduled for March 15<sup>th</sup> was canceled; the next meeting is scheduled for Monday, April 19<sup>th</sup> at 1:00 PM in the Village Office, 2<sup>nd</sup> floor.

**Streets:**

Street Superintendent announced that March 31<sup>st</sup> is the deadline to receive Sidewalk Repair/Replacement applications.

After receiving complaints concerning the storm sewer grates being to deep on Maiden Lane, Street Superintendent Jensen stated they would be corrected this Spring.

**Cemetery:**

Superintendent Trenchard brought to the Board's attention that according to Village Law §15-1502, Resolution No. 06-A-2004 is incorrect. The law reads "Interment charges, after the purchase of a lot, should be borne equally by residents and non-residents". This matter will be further reviewed.

**MUNICIPAL:**

The last meeting was held on Thursday, March 18, 2004 at 2:00 PM in the Maxwell Building; the next meeting is scheduled for April 22<sup>nd</sup>.

MOTION by Trustee Allison, seconded by Trustee Koek to authorize the Municipal to purchase a *John Deere Gator* under the MEUA M.A.P. Vehicle Program for a price not to exceed \$6,000.....

MOTION by Trustee Allison, seconded by Trustee Koek to table the above mentioned purchase until further review.  
Unanimously Carried.

MOTION by Trustee Allison, seconded by Trustee Koek to approve the MUB obtaining a quote from *Updates and Designs* for the conversion of diagrams and schematics for the Welker Electric Substation.....

After discussion, the motion was amended to "obtaining quotes from Updates and Designs, as well as other companies".  
Unanimously Carried.

MOTION by Trustee Allison, seconded by Trustee Schwingle to authorize up to four employees to attend the Finger Lakes Water Works Conference on Thursday, April 1<sup>st</sup>.  
Unanimously Carried.

MOTION by Trustee Allison, seconded by Trustee Schwingle to authorize up to three employees to attend the Everett J. Prescott, Inc. Conference in Painted Post, NY (the date is not known at this time).  
Unanimously Carried.

MOTION by Trustee Allison, seconded by Trustee Schwingle to authorize one or two employees to attend the MEUA semi-Annual Meeting in Liverpool, NY on April 21<sup>st</sup> and 22<sup>nd</sup>.  
Unanimously Carried.

MOTION by Trustee Allison, seconded by Trustee Schwingle to recommend that the MUB refund \$55.50 for bills charged the last six months to the First Baptist Church for a security light that had been disconnected.  
Unanimously Carried.

MOTION by Trustee Allison, seconded by Trustee Koek to approve the bid that the Municipal accepted from Land Surveyor David Anderson in the amount of \$1,500 to \$1,700, to prepare a topographic survey of the approximately 30 acres of the recently purchased Patchett property.....

MOTION by Trustee Allison, seconded by Trustee Schwingle to table the above mentioned motion for further review.  
Unanimously Carried.

At 8:20 PM, MOTION by Trustee Koek, seconded by Trustee Schwingle to adjourn into *Executive Session* concerning litigation and personnel matters.  
Unanimously Carried.

(20-minute break)

At 10:40 PM, MOTION by Trustee Schwingle, seconded by Trustee Allison to adjourn the Executive Session and return to the Regular Board meeting.  
Unanimously Carried.

At 10:41 PM, MOTION by Trustee Schwingle, seconded by Trustee Koek to adjourn the meeting.

\_\_\_\_\_  
Linda K. Banach, Village Clerk