

**MINUTES** of a Special Meeting of the Village Board of Trustees held Friday, May 8 at 11:00AM Village Hall, 111 Elm Street, Room 202, Penn Yan, NY 14527

**PRESENT:** Mayor L MacKerchar; Trustees W. Allison; C. Benedict; C. Christensen; B. Church; R. Stewart; Attorney Ed Brockman; Clerk/Treasurer G. Meeks; Police Chief M. Hulse

**ABSENT:** Trustee D. Reeve; Director of Public Works B. Bodine; 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:** Chris Iversen, Atty. Kevin McAuliffe, Bob Hawley

Mayor MacKerchar called the Special Village Board meeting to order at 11:00 AM

Mayor MacKerchar explained this meeting is to address the Penn Yan Boat Company and Waterfront Development property. We have had a couple of Resolutions already to deal with this. We now have further information pertaining to this issue and have another Resolution. Mayor asked Mr. Hawley if he would like to address the Board regarding his e-mail and Mr. Hawley declined. The Mayor read Mr. Hawley's e-mail in full, Mr. Hawley feels the Mayor and Atty. Brockman gave Mr. Iversen the Waterfront property and feels Resolution 41-2015 is a scam and is not legal. Mayor feels we have been doing the right thing for this project, the Mayor understands there have been many interpretations on this small piece of property. Mayor MacKerchar question to Mr. Hawley is it seems everything has been met – so what is the problem. Mr. Hawley mentioned in 1962 the Village Board passed a Resolution that a trail would never go from Lake Street to the Lake and in front of the American Legion. He states a survey was done years ago that the Village didn't own the property and some reason they thought they owned it. Mr. Hawley stated the Mayor stated he just found out about it in January and in February you passed a Resolution wouldn't claim the land and wouldn't survey because it's too difficult – no boundary lines. I am sure Mr. Iversen didn't know this. Mr. Hawley is saying you have to go to the State to show what land you're going to replace it with. You have to follow the rules. Mayor states he appreciates Mr. Hawley's efforts but we feel we have a solution; a lot of work has been done by a lot of people. Mayor stated we are trying to do something good for the community and can only see positive things coming from this project. Mr. Hawley stated the land is for the purpose of the people and all of NY State and the land you are saying is not being used. People fish, walk their dogs – he feels does not have to be a trail can be a woods. Atty. Brockman question the date of the Local Law, Mr. Hawley thought it was either a Local Law or Motion but the board passed it back in 1962. Atty. Brockman stated the board needs to rescind Resolution No 41-2015.

**MOTION** by Trustee Benedict, seconded by Trustee Allison to rescind Resolution No 41-2015 which was adopted on April 29, 2014 at a Special Village Board meeting.

**WHEREAS**, pursuant to prior Village of Penn Yan resolutions, the Village of Penn Yan (the "Village"), together with the County of Yates (the "County") and Keuka Outlet Development LLC ("Keuka"), entered into that certain Development Agreement dated as of February 26, 2014 (the "Development Agreement") governing the terms and conditions of the redevelopment of the former Penn Yan Marine site on the east bank of the Keuka Outlet (the "Property"), which Development Agreement has since been amended by the parties thereto, but which such amendment is not relevant for purposes of this resolution; and

**WHEREAS**, in furtherance of their obligations under the Development Agreement, the County and Keuka have entered into a Brownfield Clean-up Agreement with the New York State Department of Environmental Conservation ("DEC") and the Property has been accepted into the DEC's Brownfield Clean-Up Program, and

***WHEREAS**, the other conditions precedent contained in the Development Agreement which were to be completed prior to the conveyance of title to the Property from the County to the Village have been fulfilled or waived, the County has resolved to convey the Property to the Village and the Village is prepared to accept title to the Property from the County; and*

**WHEREAS**, in 1972, the NYS Legislature authorized the transfer of certain lands at Chapter 353 page 783 to the former owner of the Property, Penn Yan Boats, Inc. and their discontinuance as parkland, in exchange for other parcels of land; and

**WHEREAS**, it has been determined in the course of the examination of title, that the legal description of the lands included in the 1972 legislation erroneously left out a portion of the lands to be conveyed to the Penn Yan Boats, Inc. (the "Boat Company"), and that such lands are still titled in the Village even though the lands were used and occupied by the Boat Company and its successors in title, at all times after the 1972 land transfers; and

**WHEREAS**, the Village has not occupied, claimed title to, improved, or exercised control over the lands which are the subject hereof since at least 1972; and

**WHEREAS**, the Village is prepared to convey by deed to Keuka the entire Property, including the lands which were inadvertently omitted from the 1972 transfers, upon the receipt of approval of the NYS Legislature and pursuant to the terms of the Development Agreement and Keuka has informed the Village that it is prepared to close on the transfer of title, undertake its obligations under the Brownfield Clean-up Agreement and move forward with the balance of its obligations under the Development Agreement, but the property conveyed must include the missing lands; and

**WHEREAS**, the land inadvertently omitted from the 1972 transfer consists of less than one-half (1/2) acre and the lands received by the Village of Penn Yan from the Boat Company in 1972 more than compensate for the subject parcel of less than one-half (1/2) acre.

**NOW THEREFORE BE IT RESOLVED:**

That the Village shall file with the New York State Legislature a Home Rule Request pursuant to Article IX of the New York State Constitution, in a form satisfactory to the Village Attorney, which request is to correct the legal description of the lands included in the 1972 legislation (Chapter 353) utilizing the legal description of the two parcels attached hereto and authorizing the Village to convey title utilizing the corrected legal descriptions, to Keuka Outlet Development LLC; and be it further resolved

That, upon the receipt of approval from the NYS Legislature, the Village shall convey the property by deed to Keuka, subject to the terms of the Development Agreement, the Property including the lands inadvertently omitted in the 1972 transfer, that the form of the transfer instruments shall be approved by the Village Attorney, and that the Mayor is authorized to execute the deed and the ancillary documentation necessary for the recordation of the deed in the Yates County Clerk's Office.

That these Resolutions take effect immediately.

**ADOPTED** Ayes 6 MacKerchar, Allison, Benedict, Christensen, Church, Stewart  
Nays 0 Abstain 0 Absent Reeve

Atty. Kevin McAuliffe represents Mr. Iversen, Keuka Outlet Development, LLC. We did not realize until lately there was a problem with the title to the part of this property. To resolve this problem the Village Board will ask the NYS Legislation for the power to deed the property to Keuka Outlet Development, LLC about the same time when the County deeds the Village the other property, in turn the Village will sign the Development Agreement and will deed over to Keuka Outlet Development, LLC. The process is the Village decides if they want to take that action and then ask NY State Legislation to deliberate, they will ask the Parks Department to rule on this modification of 1972 alienation. Atty. McAuliffe we need to look at the SEQR if there is anything different than what was done before. Atty. McAuliffe explained the laws does not mandate that there be a swap parcel of land each time there is a alienation or modification to a previous approved alienation. The Parks Department and Legislation will review the transfer and history and look at the requested action and what the consideration is or does there need to be any additional land swap in order for the Village to have the authorized to convey this parcel to Keuka Outlet Development LLC. Atty. McAuliffe gave a description that encompassed both parcels. Mr. Iversen has offered to use a lot of his money to do things to better this Community. Atty. McAuliffe explained Mr. Iversen will pay for the trail that will run from Boat Company and expand the Marine on the edge, over the fireman's field and a break wall and dock and continue pass the hotel and restaurant. We have had 4-5 descriptions where the waterfront edge was. Trustee Church asked with this Resolution the State will tell us if we have permission to do this and seconded if we do have permission if we have to replace any new land is this correct. Atty. McAuliffe replied yes that is correct.

Atty. Brockman questioned if we need a separate SEQRA review as opposed to the Comprehensive review on the entire project. Atty. Brockman reminded the Board Atty. Bob Tyson was present at a board meeting and he went line by line over the Full Environment Assessment form with us. Atty. Brockman mentioned we did everything except the infrastructure. Mr. Hawley questioned if this land was ever discussed in Executive Session and if so what did you decide. Trustee Church stated if it was part of Executive Session would have to be a part of the motion. Mayor stated we are trying to clear this issue up. Atty. Brockman mentioned yes Parks Department was notified. Trustee Church mentioned there have been plenty of times for Public input to discuss this. Atty. Brockman asked to be sure Mr. Hawley had a copy of the Resolution and the new description. Mr. Hawley mentioned he asked for a copy of this the day before but never received it. Atty. Brockman and Mayor stated it was not completed until 10:00 AM this morning. Atty. Brockman will read the Resolution aloud line by line so people have a chance to review it before a vote. Atty. Kevin McAuliffe wanted to clarify the records what matters is now – it doesn't matter who used it in the past need to focus on now. Atty. Brockman explained the small piece of land is North of Hicks Street down to the firemen's filed.

Mayor MacKerchar stated this will go to the State and they will make the determination. The pathway is being installed by Mr. Iversen's firm without a cost to the Village. The Village will maintain it and it's a benefit to the Community. A reminder this was in Comprehensive plan and has been approved by the Planning Board. Trustee Church has spoken with Brett Oakes he has been very accommodating with the walkway.

Atty. McAuliffe mentioned regarding the SEQRA the easiest is if the board makes a clean record. The village makes a determination that there are no additional environmental issues raise by this proposed home rule request and Mr. Iversen has identified this on various plans which have been submitted.

**MOTION** by Trustee Benedict, seconded by Trustee Christensen that the Board of Trustee has reviewed the original the SEQRA action respect to the Keuka Outlet Development plan including the transfers of the Seneca Grape Juice parcel which is North of the South line of Hicks Street and that environmental review include this parcel and therefor no additional environmental impact are complicated and no further SEQRA review is required.

**ADOPTED** Ayes 6 MacKerchar, Allison, Benedict, Christensen, Church, Stewart  
Nays 0 Abstain 0 Absent Reeve

**MOTION** by Trustee Benedict, seconded by Trustee Alison to authorize Resolution No 42-2015

**WHEREAS**, pursuant to prior Village of Penn Yan resolutions, the Village of Penn Yan (the "Village"), together with the County of Yates (the "County") and Keuka Outlet Development LLC ("Keuka"), entered into that certain Development Agreement dated as of February 26, 2014, as subsequently amended from time to time (the "Development Agreement") governing the terms and conditions of the remediation and redevelopment of the former Penn Yan Marine site (the "Keuka Development Project") on the east bank of the Keuka Outlet (the "Property"); and

**WHEREAS**, in furtherance of their obligations under the Development Agreement, the County and Keuka have entered into a Brownfield Clean-up Agreement with the New York State Department of Environmental Conservation ("DEC") and the Property has been accepted into the DEC's Brownfield Clean-Up Program, and

**WHEREAS**, the other conditions precedent contained in the Development Agreement that were to be completed prior to the conveyance of title to the Property from the County to the Village have been fulfilled or waived, the County has resolved to convey the Property to the Village and the Village is prepared to accept title to the Property from the County; and

**WHEREAS**, in 1972, the New York State Legislature at Chapter 353 page 783 of the Laws of 1972 (the "1972 Legislation"), authorized the transfer of certain lands by the Village to the former owner of the Property, Penn Yan Boats, Inc. (the "Boat Company") and the discontinuance of those lands as parkland, in exchange for other parcels of land received by the Village from the Boat Company; and

**WHEREAS**, it has been determined in the course of the examination of title, that the Village retained title to a strip of land along the shoreline conveyed to the Village by the Seneca Grape Juice Company in 1965 (the "Seneca Grape Juice Parcel") and that the legal description of the lands included in the 1972 legislation erroneously described a portion of the lands conveyed to Boat Company; and

**WHEREAS**, the Boat Company continuously since 1972 occupied and used, to the exclusion of the Village, the portion of the Seneca Grape Juice Parcel contiguous to the Boat Company's property, northerly of a straight line extension to the west of the southerly line of Hicks Street (hereinafter referred to as the "Above Described Portion of the Seneca Grape Juice Parcel" as part of its driveway and other uses, providing ingress to and egress its manufacturing facility; and

**WHEREAS**, the Village has not improved, occupied or used for any purpose the Above Described Portion of Seneca Grape Juice Parcel since the 1972 land swap, and the current Trustees were unaware that the Village retained ownership of the Above Described Portion of the Seneca Grape Juice Parcel; and

**WHEREAS**, the Village has received a request from Keuka seeking a quit claim deed to the Above Described Portion of the Seneca Grape Juice Parcel, which request from Keuka also details Keuka's investment in the Project, and additional investment by Keuka resulting from planned improvements by Keuka to Firemen's Field; and

**WHEREAS**, the Village has discussed the value of the Above Described Portion of the Seneca Grape Juice Parcel and balanced that value against the positive attributes of the Keuka Development Project, including the creation of real property tax revenue to be granted by the residential structures to be constructed, the value of the improvements to Firemen's Field including the Waterfront Pathway to be constructed by Keuka across the Keuka property and Firemen's Field, as well as the dock and break wall, and determined that the Village is being more than fairly compensated for delivering to Keuka a quit claim deed to the Above Described Portion of the Seneca Grape Juice Parcel; and

**WHEREAS**, pursuant to the terms of the Development Agreement, the Village is prepared to convey by deed to Keuka the entire Property including the Above Described Portion of the Seneca Grape Juice Parcel, upon the receipt of approval of the New York State Legislature and Keuka has informed the Village that, provided the Property includes the Above Described Portion of the Seneca Grape Juice Parcel, Keuka is prepared to close on the transfer of title, undertake its obligations under the Brownfield Clean-up Agreement and otherwise move forward with the balance of its obligations under the Development Agreement, but the property conveyed must include the missing lands.

**NOW THEREFORE BE IT RESOLVED:**

That the Village shall file with the New York State Legislature a Home Rule Request pursuant to Article IX of the New York State Constitution, in a form satisfactory to the Village Attorney, which request is to seek authorization to: (i) quit claim the Village's title to the Above Described Portion of the Seneca Grape Juice parcel, (ii) amend the legal description of the lands included in the 1972 Legislation by replacing the original description with the legal description of the two parcels attached hereto, and (iii) convey title to the Property to Keuka Outlet Development LLC utilizing the corrected legal descriptions,; and be it further resolved

That, upon the receipt of approval from the New York State Legislature, the Village shall convey by deed to Keuka the Property, including the Above Described Portion of the Seneca Grape Juice Parcel, subject to the terms of the Development Agreement, that the form of the transfer instruments shall be approved by the Village Attorney, and that the Mayor is authorized to execute the deed and the ancillary documentation necessary for the recordation of the deed in the county Clerk's Office.

That these Resolutions take effect immediately.

Description for  
Corrective Legislation

ALSO, ALL THAT OTHER TRACT OR PARCEL OF LAND situate in the Village of Penn Yan, Town of Milo, County of Yates, State of New York, bounded and described as follows: Beginning at a point on the Westerly line of Hicks Street which is nine hundred forty-three and fourteen hundredths feet (943.14') along the Westerly line of Hicks Street extended from the Westerly line of Lake Street and thence running North 49°00'06" West seventy feet (70.00') (83 .65" Meas.) more or less along the Westerly line of Hicks Street extended to a point on the Easterly line of the lands of Seneca Grape Juice Corporation; thence continuing North 49°00'06" West one hundred nine and eighty hundredths (109.80") to a point on the westerly bank of the former Crooked Lake Canal: thence North 03 °30'45"" West one hundred ten and thirty-one hundredths (110.31 ' ) along the westerly line of Seneca Grape Juice Corporation and which is also the westerly bank of the former Crooked Lake Canal: thence North 02°34'12"" East seventy-five and thirty-nine hundredths (75.39") along the westerly line of Seneca Grape Juice Corporation and which is also the westerly bank of the former Crooked Lake Canal: thence North 18°10'31" East eighteen and fourteen hundredths (18.14 ' ) along the westerly line of Seneca Grape Juice Corporation and which is also the westerly bank of the former Crooked Lake Canal: thence South 72°14'52" East passing through chaining station 2.5 in the center line of original location of the siding known in the records of the New York Central Railroad Company as Track No. 14 seventy-eight and thirty-one hundredths (78.31") to a point on the easterly line of Seneca Grape Juice Corporation and which is also the so-called Blue Line of the original Crooked Lake Canal said point is also the Southeast corner of lands of Penn Yan Boats, Inc.; thence North 18°11'34"" East seventy-six and twenty hundredths (76.20') along the easterly line of Penn Yan Boats, Inc. and the so-called Blue Line of the Crooked Lake Canal, and thence running North 31 °09'0 1" East eighteen feet (18.00') more or less along the Easterly line of lands of Penn Yan Boats, Inc. and the so-called Blue Line of the Crooked Lake Canal to a point, which is another Southwest corner of Penn Yan Boats, Inc.; thence running South 58°45 '06" East along the Westerly boundary line of Penn Yan Boats, Inc. one hundred sixty feet (160.00') more or less to a point; thence running South 42°44'54" West thirty-three and sixty-six hundredths feet (33.66') along the line of lands as described in the above parcel and thence running South 15° 14' 54" West two hundred ninety-seven feet (297.00') along the westerly line of lands described above to the place of beginning, containing 1.329 acres of land more or less.

Discussion: Trustee Church stated we have two things with this. They will tell us what we are doing is OK and seconded if they feel if the deeds are covered the State will tell us. Atty. Kevin McAuliffe asked if anyone that is present is there any additional information since we have been down this road several times. Is there anything that we have discussed today is contradictory of any other records out there, historical files Mr. Hawley files or any other documents will appear after the facts. That anyone that is present is aware of. Atty. McAuliffe asked Mr. Hawley if he has anything else. Mr. Hawley unsure would have to check his files. Atty. McAuliffe asked Mr. Hawley and the Board today you are unaware that anything we did today is incorrect is that a fair statement – you're not bringing documents in tomorrow. Mr. Hawley stated not at this time.

Mayor asked for a roll call vote:

Mayor MacKerchar	Aye	
Trustee Allison	Aye	
Trustee Benedict	Aye	
Trustee Christensen	Aye	
Trustee Church	Aye	
Trustee Reeve	Absent	
Trustee Stewart	Aye	Adopted

Trustee Allison question Mr. Iversen and Atty. McAuliffe you own the property where the Hotel will be and the restaurant property is up to Red Jacket. Also the trail will be for public use Mr. Iversen yes I own all that property I do not own the house that is next to Lake Street and yes/correct the trail is for public use. The walk way will not hinder any other Development that may occur over there.

**ADJOURNMENT:**

At 12:05 PM, **MOTION** by Trustee Church, seconded by Trustee Allison to adjourn the Special Village Board meeting

**ADOPTED** Ayes 6 MacKerchar, Allison, Benedict, Christensen, Church, Stewart  
Nays 0 Abstain 0 Absent Reeve

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Mary Ann Martin, Deputy Clerk