

DATE OF MEETING: October 19, 2009

PLACE OF MEETING: Village Hall, Pawling, New York

MEMBERS PRESENT: Mayor Robert Liffland
Trustee Tracy Durkin
Trustee Wayne Osborn
Trustee Robert Murphy
Trustee Colette Zito

The meeting was called to order at 7:00 P.M. with the Pledge of Allegiance.

MOTION by Trustee Durkin to close the regular session and go into the Public Hearing on proposed Local Law #4 of 2009 entitled "A Local Law to Update Minimum Stormwater Management Requirements and Controls by revising Article XVII "Stormwater Management" of the Village Code." **SECONDED** by Trustee Osborn. There was no discussion; all were in favor and the motion carried.

Mayor Liffland reported there was a typographical error made in the previous proposed Local Law under Section 98.90 "Maintenance, Inspection and Repair of Stormwater Facilities" with "Section 2.2.2" being changed to "98.88(A)(2)". Mayor Liffland stated everything else remained the same however the Public Hearing would remain open.

MOTION by Trustee Durkin to leave the Public Hearing open and return to regular session. **SECONDED** by Trustee Osborn. There was no discussion; all were in favor and the motion carried.

Mayor Liffland asked Joe Berger, Village Bonding Engineer, to go over the procedure of pulling the bond for the Baxter Green development and said after that the Board would take questions.

Mr. Berger said he had been working on the project for the last year and basically the procedure was, once it began moving forward, to do a complete inspection of the facilities that were out there to see where the construction was. He said he had been doing that during the day, during the night and on weekends to ascertain what condition the site was in. He stated he talked to as many residents as he could find and included the deficiencies in the project, among which were: cracks in the sidewalks, trip hazards, issues with low pavement causing flooding and ponding, cracked catch basins, curb lines needing to be fixed and missing trees and signs. Mr. Berger said he developed a punch list with all the items that were needed along with a cost estimate and provided it to Traveler's, the bonding company, with a request for them to perform the work. He said that was the normal procedure which unfortunately was very lengthy and riddled with long delays, caused not by the village, but by the process itself because the bonding company did not want to pay out. Mr. Berger said the developer gets a bond and

presents it to the village when they are approved and builds the project. Mr. Berger said if the developer built it 100% right and to the specs the village would be able to accept it, however it was not built 100% to the specs and there were a lot of deficiencies and over time more deficiencies occurred. He said the village called the bond and the bonding company, if everything was perfect in the world, would run out and fix the deficiencies but bonding companies do not do that. He said he worked with bonding companies in other towns where the same situation happened and bonding companies jobs, in general, was not to spend their money and to fight in a procedural manner of "Why do we need to do this" with the village responding back. Mr. Berger explained he reaffirmed to the bond company what needs to be done in the hopes that they will hire a contractor to get the work done. Mr. Berger said the village cannot go out and hire a contractor to fix it without going through the due process which the attorney could speak on. Mr. Berger said he was working on everything as diligently and quickly as the process would allow, unfortunately the village was not in the driver's seat. He said Traveler's was more in the driver's seat because they had legal methods of delaying the process even though the village gave them a list of what needed to be done.

Mr. Michael Hayes, a village attorney, said his experience with bonding companies was the same as Mr. Berger's experience. He said the village staked a claim against the bond, formally made the claim, submitted a detailed list of the problems, responded to all requests for follow up information and the good news was the bond was in place, because there had been questions about that, and it was fairly clear that Traveler's was not going argue that the bond expired because the village would have heard that already. He said the bond was there and the funds were there and while it was a lengthy and frustrating process the village was in the midst of, Mr. Berger was doing what needed to be done to move it forward. He said his experience with bonding companies and the delay involved with going through the due process to ultimately get paid out on the claim was frustrating enough that the village preferred getting a letter of credit. Mr. Hayes explained that a letter of credit was a simple one page form that needed to be filled out and submitted to the bank and upon presentation to the bank they were obligated to give the village the money. He said that was a superior device for the village to get if they could however they were not always able to get that. Mr. Hayes said the village was dealing with a Performance Bond and the funds were there and secure and he was confident that at some point the village would get access to those funds but it was a time consuming and frustrating process. Mr. Hayes apologized for the process and said municipalities throughout the state struggle with it.

Mayor Liffland asked Mr. Berger if the procedure was that the village gives all the information to the bonding company and they go back to the contractor and ask him if the information was correct or incorrect. Mayor Liffland asked how the developer comes back into play in the procedure. Mr. Berger said the bonding company wants to use their power of credit to force the developer to finish the work. He said the bonding company would threaten the developer with their credit

line and credit history. He said when the bonding company decides they cannot go any further they will try to hire a contractor themselves, they have that option, and they will negotiate with the contractor to try to finish the project for less than what the village says. Mr. Berger said they would try to negotiate because it would mean less liability, which they had the right to do, and that the village could not stop them from doing that. He explained that all the village could do was make sure they understand that he would be inspecting the work and making sure that the work he identified would be done. Mr. Berger said he would make sure everything he had on the list would be done completely and thoroughly. He explained that took up a lengthy period of time because he did not want to go out to the development one time and come up with a short list – he went out there numerous times in different conditions to identify the issues and he made the effort to reach as many people as possible to get information from the residents. Mr. Berger said the bonding company has the two-fold right to pressure the existing contractor or to hire their own and if they cannot accomplish that then is when the village finally gets the funds and hires a contractor to finish the work. Mr. Berger said unfortunately it was a lengthy process and he wished he could give the residents better news but other municipalities were dealing with these issues and it was the same. Mr. Berger assured the residents that the village, he and the attorney were working very diligently to make sure that he was pushing the timeline and every time they asked for something he responded back and kept pushing the bonding company however it was in their hands more than he would like it to be. He said the bonding company was trying to push the developer, assure the cost the village supplied to try and reduce their liability. Mr. Berger said that was the goal of any negotiation – they identify the work there is and limit the liability and loss.

Mayor Liffland asked the audience for any questions.

Mr. Jimmy Dolan asked what time frame there was for getting it done. He said it had been going on for a long time and now everybody was trying to push to get it done but there was no answer. He said Mr. Berger explained what purpose the bond serves but what did that do for Baxter Green. Mr. Dolan asked what that did for the residents of Baxter Green with the winter coming. Mr. Berger said he had been pushing since last winter and it was not something that was new to him. Mr. Dolan said he understood that but there had to be some sort of time frame. Mr. Berger said he did not know of any because it was unfortunately a process that did not have a clock that stops. Mr. Dolan asked Mr. Berger from his experience what kind of time frame – he said Mr. Berger said he had been through the process many times and he had to have an idea how long it would take. Mr. Berger responded that the way Traveler's was pushing their feet down and fighting he would say at least six months more before the village would see anything. He said he did not see anything happening in the next month or so which was just his gut feeling and because Traveler's was one of the bigger bonding companies. He said it was possible to be done in a couple of months and the village was not going to let up on them which was why he didn't want to say six months and have it

sound like he was giving up because he was not. Mr. Berger said he did not want to give up and he was hoping... Mr. Dolan said he was relying on his experience of dealing with this. Mr. Berger said sometimes you could push them into doing it when you get this far into the end of the asphalt season...Mr. Dolan said that was not going to happen because it was already the middle of October with bad weather coming so there would be another winter. Mr. Berger said he could use that deadline to push them and did he think it would get done before winter – no-but the last thing he wanted was for Traveler's to know that he knows that. Mr. Berger said he would keep saying up until the end that he wants it paved this year to put added pressure on them.

Mr. Louis Iannacelli asked what state of deterioration the road and sidewalks were in and what was it really going to cost to do the work and would the bond cover it. Mr. Berger said the bond would cover the amount and he believed the number was \$145,000.00. He said he looked at some of the deterioration that could occur to some of the sidewalks so when they looked at that and thought about this year they included the possible additional deterioration.

Mr. Greg Felice asked if there was any legal recourse or any pressure to put on Traveler's as far as safety issues and things like that. He asked if the village could go to Traveler's and [inaudible]. Mr. Hayes said they did have the right to sue the bond company but it was an expensive process and attorney fees could not be recovered. He said it might be a bit of a stretch to argue that they would be responsible for any injuries that were caused and if Traveler's were to deny the claim and say they would not pay because they did not think it was their responsibility then certainly the village would bring litigation but even if you sue a bonding company and win and the judge says it was clear from the outset that the bonding company should have paid on the claim you still could not get your attorney's fees. Mr. Felice asked if the Board politically had any way to put any pressure on Traveler's. Mr. Berger said Traveler's was a big company and he did not think it would do anything because the company was compartmentalized and did a wonderful job of shuffling papers. He said he had not seen political pressure placed on a bonding company but there were larger bonds out there and he did not see how it would do anything. Mr. Berger said the bonding company knows its rights and they are going to take every step they can.

Trustee Murphy asked if Traveler's disputed any of the work to be done that Mr. Berger submitted - did they send anyone over to review what was identified. Mr. Berger said that was what they wanted Traveler's to do however at this point they were still disputing paperwork and doing the paperwork shuffle. He said he was trying to get them to come out which was the next step – to have them come out with their consultant, usually a local bonding consultant totally independent from Traveler's, who would act as their agent to hire a contractor. He said that agent would walk the site with him and agree or disagree with the issues and at the end the village would not back off any items however Traveler's would try but at that point the village would know they were moving forward. Trustee Murphy asked if

that step would come when they realized they were not going to get a lower number. Mr. Berger said the village was close to that point but Traveler's was exhausting what they could ask for – they were asking for things they already had. Mr. Berger said they were asking for a blanket FOIL saying give us everything you have even though they have it. He said he was telling them if there was something they wanted that they did not already have to tell the village exactly what it was they wanted but Traveler's just said they need everything and that was not how FOIL works but they keep playing with revolving requests. Mr. Berger said the paperwork was completed and given and he told Traveler's that the next step was for them to come out and talk with him and once they did that they would use that last effort with him to go back to the developer and say we now have our own contractor who will do the work for \$95,000.00 and the village says it costs \$150,000.00 and if you (the developer) do not pony up and do it we will go after your credit rating. He said Traveler's would use that against the developer and when he declines then they would come back to the village again and try to negotiate and when that negotiation stops then they are at the point where they usually give in. Trustee Murphy said a similar analogy would be when a person files a claim with an insurance company. Mr. Berger said that was exactly right. Trustee Murphy said people have insurance to cover accidents but the insurance companies aren't going to just cut a check they want data, backup information and in cases that are not cut and dry they are going to fight and want more information. Mr. Hayes said the village was not filing a claim with its own insurance company it was filing with somebody else's insurance company. Mr. Berger said that was a good analogy – a person filing a claim with someone else's insurance company that does not want to give up the money.

Ms. Tara Lombardo said she understood what they were saying but why did the village wait to file the claim when it should have been done six years ago when it started so the village would be a little further along in the process. Mr. Berger said he could not answer that. Ms. Lombardo said that they asked many times to pull the bond and were told that the village couldn't pull the bond. Mr. Hayes said the village had been through a lot with the property and project and there were other issues with the Sewer Commission and the roads and the affordable housing. Mr. Hayes said the project did not happen in a vacuum and it did no good to finish the roads and then have to dig them back up to finish the water and sewer improvements. Mr. Berger said the bonding company would stop any pulling of the bond while the village was doing any infrastructure work so if the infrastructure was being done by the Sewer Commission under separate bonding issues those must be clear. He said the village cannot pull the bond if the contractor was not given the opportunity to finish – that the first step was giving the contractor the opportunity to finish. Mr. Berger said if the village did not give them the opportunity to finish then no claim could be filed against them – so the village could not say if there was something still going on with the water and the sewer that the opportunity was there. Mr. Hayes said that was why the bond was so timely because the time does not begin to run until the point comes for the project to be complete. Mr. Hayes said it was not to say that the Board did not have

communications with the bonding company and that the bonding company was not aware of the problems occurring but the formal Notice of Claim process was occurring over the past year with Mr. Berger going out to do inspections and filing the paperwork but the Board had to resolve other items before taking that step. Mr. Berger said unfortunately the developer left the site very uncompleted and the sewer, water and roads were all in different levels of chaos and while it does make sense to ask why the Board can't go after the bond for the road while doing other things, unfortunately legally and through the bonding process things do become linear so the Board can't do this action until this is done and you can't multitask – you can't go after curbs and sidewalks until they waived themselves of all their rights. Mr. Berger said the process looks slow and it is but in the grounds of bonding it was normal. He said he apologized for having to say that but the arduous process was no different than any of the other ones he was filing in other communities.

*****During this part of the meeting the taping of the audience members was mostly inaudible so I am relying on my notes and any parts I could hear on the tape.*****

Ms. Christine Walters asked what date the paperwork was officially submitted. Mr. Berger said he submitted his estimate in June on what he believed was wrong. He said it took him all of spring and summer to come to that conclusion and even though it seemed like a long process he had to go through paperwork at the Health Department and he did not want to rush through. Mr. Hayes said the claim was filed approximately last fall and inspections could not be done in the winter. Ms. Walters said it was filed by the fall. Mr. Berger said he believed it was the fall because that was about when he was hired but he did not know the exact date. There was discussion on what information the bonding company looks for. Ms. Walters asked how often phone calls were made to the bonding company. Mr. Berger said he spoke with them about three weeks ago because after the village responds to a request he makes a phone call to them to make sure they received what was sent. Mr. Berger said the bonding company also will make calls after office hours or to the hall number knowing they are looking for him to try and slow down the process. Ms. Walters asked a question regarding a total loss. Mr. Berger said bonding does not have that type of a process. He said it was similar to insurance but it was not exactly the same. Ms. Walters asked something about the bonding company coming back to Mr. Berger. Mr. Berger said they had not and that would be the next step because the village was at the paperwork stage and when he finally got them to the point where they say they have all the paperwork the next step would be for them to agree to a meeting at the site with their representative – a bonding agent – who would interface with them and a local contractor, which was done to insulate themselves from the contractor. Mr. Berger said that person would be the person charged with coming up with the adjusted number and usually it was 70 – 80%. Trustee Zito asked Mr. Berger if when he spoke with them three weeks ago did they not send [inaudible]. Mr. Berger responded no because they were asking for more information. Trustee Zito asked

if three weeks ago they were asking for more information. Mr. Berger said that was correct. Trustee Zito asked what specific information they were asking for. Mr. Berger said they were not giving specifics – what they were asking for, as they did again that day, was for all information and his response was that they were given all the information. Trustee Zito asked what information, from back in June 2009. Mr. Berger responded that was correct. Trustee Zito asked if they had not received it. Mr. Berger said they received it. Trustee Zito asked if that was the information they requested three weeks ago. Mr. Berger said they keep requesting over and over... Mayor Liffland said it was a delay. Mr. Berger stated it was a delay tactic – give us everything you have and they were told over and over that was everything. Trustee Zito asked where Traveler's was located because the village should hand deliver the information. Mr. Berger said they had the information. Mayor Liffland reiterated it was a delay tactic. Mr. Berger said they had the information and were looking for things the village does not have. Trustee Zito asked if three weeks ago when Mr. Berger called for a site visit because he did everything he needed to do if they spoke as though they had not received the documents. Mr. Berger said that was not correct Traveler's was asking for more information. Trustee Zito asked what information. Mr. Berger said information that does not exist – they were just fishing and saying that they believe there is more information and the village tells them there is no more information. Trustee Zito asked if Mr. Berger was not saying that they need to respond specifically to what information they need and stop the game. Mr. Berger said he had. Mr. Hayes concurred. Mr. Berger said he has asked Traveler's to tell him what they want and the latest request was cost estimates from the original engineer that designed the project. Trustee Zito said that was one of her other thoughts – had Mr. Berger taken the original documents from the whole plan and everything they were discussing and what the developer was supposed to do and submit that with his detailed list. Mr. Berger said he had done that. Trustee Zito asked why they were asking for it again. Mr. Berger said they scanned in specifically plans they should have since they are the bonding company and he went through the expense of scanning them in and gave it to them with the evaluation and they were asking for documents that would not be within the ownership of the village. Mr. Berger said they were asking for documents that the design engineer would have. Trustee Zito said from the developer's end. Mr. Berger agreed and said he told Traveler's that but it was a delay tactic because they wanted the village to try to find documents they should have. Mr. Berger said they knew it was unreasonable but it was the process. Mr. Hayes said Traveler's did not expect the village would produce the documents but they would kill 2-3 weeks going through the exercise and then move on to something else. Trustee Zito said it did not make sense that they were getting away with it because if they issued a bond on those plans then the plans are in that house. Mr. Berger said he understood that. Mr. Hayes said that was right. Trustee Zito said from a lawyer's point of view they should not be able to get away with that. Mr. Hayes said they should not be able to in a perfect world but this was the way the process worked and the village was fighting through. Mr. Berger said unfortunately the law does not give any recourse. Trustee Zito asked if a letter had been submitted from Mr. Hayes' office saying he

was aware the bond was issued on the original plans and what was coming through with the additional list. Mr. Hayes said he was happy to send a letter but he did not think it would put the fear of God into them. Mr. Berger said his experience was that it did not make anything happen. He said in Dover every letter he wrote to the bonding company would be mirrored by the attorney and all it did was increase costs to the town and the bonding company's response to the attorney's letter was the same as the response to his letter – indifference. Trustee Zito said on that note in the cost estimate of \$145,000.00 plus contingencies were Mr. Berger's fees included for reimbursement once the bond money came in. Mr. Berger said they were not because in bonding all that could be put down was the cost of the renovation to the road not the time of the engineers. Trustee Zito said the costs for Mr. Berger's time...Mr. Berger said was not allowed in the bond. Mr. Hayes said and if the village sued them the cost of his time would not be allowed. Mr. Berger said it was not in the bond and all he could put in the bond was the cost...Trustee Zito said the village must pay. Trustee Murphy said the village was paying. Trustee Zito said she knew. Mr. Berger said that was why he was trying to handle it as much as possible however he and Mr. Hayes spoke frequently on what he wrote to not double costs. Trustee Zito agreed since the village would not recoup those costs. Mr. Berger said that was what he was thinking because he had the experience in other towns and it did not accomplish anything so he knew not to spend money when they shouldn't have to. Trustee Zito asked when Mr. Berger dealt with other towns with this specific insurance company, while she realized it wasn't an apple to an apple, but even if it was an apple to an orange what would they suggest to move it through. Mr. Hayes responded he was not known as a glass half full kind of guy but there was good news in the fact that the bond was there and one way or another it was going to get fixed. He said he knew it was little consolation after all the years but there was an alternative if the bond was not there and the village would never recover the money. He said the bonding company was going to get its pound of flesh out of the village and there would be some cost to the village, his time and Joe's time, but they were doing their best to keep those non-reimbursable costs to a minimum and push the issue as quickly as it could be pushed but to recognize that they could not make a promise they could not keep like it would get done the next day. He said if it was about how much people wanted it to be done it would have been a long time ago; if it was about how much effort people were willing to put into it it would have been done a long time ago but with a developer who stops and stalls and with a bonding company with no incentive to handle the case any more quickly than any other case it has – it would get handled, it would get paid, it would ultimately be resolved but obviously not to the satisfaction...Mr. James Mansfield said here they were in the winter of 2009 and would they say in 2010 there would be roads up there. Mr. Hayes said he thought so. Mr. Mansfield asked if the village would just string them along for another year. Mr. Hayes said he was not stringing anyone along. Mr. Berger said they had gone a long way in the last year and a year ago the village did not have the negotiations.

Mr. Earl Slocum said the folks needed to understand that Stu Berelson was also a lawyer. The audience responded they all knew that.

Mayor Liffland said he had the answer to Ms. Walters' question as to when all this started and he had the letter which was dated August 21, 2008. He said it was probably two years ago that the developer said he was going to blacktop the roads and the contractor he hired said he would hold the prices to do it and that came and went. Mayor Liffland stated he never stopped putting pressure on the man and now he was promising again – there were four quotes out there again and Mayor Liffland told him they were running out of time to get blacktop. Mayor Liffland said the developer had four estimates and whether he was going to do it or not – as you can see Zarecki was out there surveying and giving him everything he needed to get the roads paved and the ball was again in his court. Mayor Liffland said if he comes through or not he did not know but he did put the pressure on him because if he could do that the village could have the roads plowed, salted and sanded and have the school buses could go up. Someone from the audience asked if the developer was still around. Mayor Liffland responded you could get a hold of him, send him emails... An audience member asked if the village could put a lien on him. Mr. Berger said it was not possible. Mayor Liffland said he kept hoping he would come through and get it done. Someone asked if it was between the developer and the bonding company. Mayor Liffland said no, it was still the developer doing the work because he could go do the work any time he wanted to but the problem was the village could not tell the developer how fast he had to build. Mayor Liffland said they had all dealt with the developer and it had not been a pleasant experience for any of them and he was trying the hardest he could. Mr. Berger said the village's pressure on the developer was obviously making some inroads or he wouldn't be getting prices to move it. He said the developer was feeling the pressure of the bonding company saying you have no credit because if we pull the bond your credit history is [inaudible]. Mr. Berger said when the bonding company pulled the bond they would not just forget it they would pull the developer's assets down the road. He said as bad as they were to the village once they finally gave the village what they had to pay they would turn it on the developer and he knew that so it was best for him to fix it rather than get to the cross where the bonding company negotiated and got it done because then the developer had a problem with the bonding company. Someone asked how long he would be able to string them along. Mayor Liffland said he hoped it was not another tactic where the developer says he has the four bids and then says that the blacktop plant closed and it would get done in the spring so that would give the bonding company more leverage to say the developer is going to do it in the spring so they would wait for that. Trustee Zito said he had the prices before and... Mayor Liffland said the developer knew he was getting to the deadline again and had four more prices and he hoped the developer was not using it as a tactic again and telling the bonding company he had his contractor but the blacktop plants were closed. Mr. Hayes said the village did not know what conversations were going on between the bonding company and the developer and that might be an incentive for the developer to get it done

but the village did not have that information. Mr. Berger said he would be constantly in contact with them to keep pressuring them. He said there was a chance to get it done in the spring and he hadn't given up and he wasn't going to let the bonding company know that it might be too late because his conversations with the bonding company would be that the village wants it done and the plants were going to close and what were they going to do. Mr. Berger said maybe it would work but he wasn't going to let this "tactic" put anything on a sidecar because they were still working on it.

There was a question on the sewer pump station. Trustee Murphy explained it was a separate bond and the Commission decided to negotiate with Mr. Berelson and were waiting on title clearance.

Mayor Liffland asked Mr. Hayes if due to safety and welfare issues was there anything in the law that would allow the village to go in to the development, be it service for the ambulance, fire protection or to get to the well and keep the roads open. Mr. Hayes said under the law the village was not supposed to be plowing private roads. Mayor Liffland said legally the village could not go on there but was there somewhere in the law that due to the safety and welfare of the community would that override the other law. Mr. Hayes said no. Mayor Liffland said that was not the answer he wanted to hear. Mr. Hayes responded he knew that was not what Mayor Liffland wanted to hear but as the village's legal advisor he could not tell the village to do it. He said if due to a discreet instance, like if an ambulance needed to get up there and the road was impassable and someone in a village truck drove out and made access, he would say that could be done under a public safety and welfare analysis, but if as a general approach could the village take over the plowing for the upcoming winter he could not tell the Board to do that. Mayor Liffland said but on a safety issue the village could go in there for the ambulance. Mr. Hayes said yes. Mayor Liffland said he thought there were women up there that were pregnant. Mr. Hayes said if there was a specific instance that needed to be dealt with that could be done. Mayor Liffland said if there was someone up there close to their due date and the village plows because of that...Mr. Hayes said as the village's legal advisor he would take a pass.

Mr. Matt Fitzgerald said he asked in the spring before the mowing started if the developer was a taxpayer on the green and the Board did not have an answer. He explained what he was getting at was if the Board could compel him through some of the laws, like if you don't take care of your lawn that you would be fined and eventually the village would take care of it for you, would that be a situation to exert some sort of pressure. Mr. Fitzgerald said he would also like to know what taxes the developer was paying for the open space and was there something in the tax laws that would put pressure on him. Mr. Hayes said he was not aware of the county having taken over the property for taxes because they just had their tax auction the previous week and the property was not on the block. Mr. Hayes said he believed the developer was paying taxes on it and in terms of laws and going onto private property when it was not being properly maintained the village could

do that but the grass had to be 10 inches tall before it could be done. Trustee Zito asked how high the snow had to be. Mr. Fitzgerald said he was thinking about the winter and if there were any loopholes in the law to put pressure on the developer. He said if the developer was paying taxes and was not taking care of his property could the village enact something or if the village could not plow maybe there was a way the village could legally start saying they were getting serious and would take him to court over it. Mr. Fitzgerald asked Mr. Hayes what his fees were because he would be willing to pay for the letter to be written. Mr. Hayes said it was a good creative idea and he would take it under consideration - the analogy between the grass and the snow. There was discussion about state laws versus local laws that was inaudible.

Ms. Walters said her understanding was that she could go to Dutchess County Court the next day and file an Action for Declaratory Judgment [inaudible] for taxpayers and children that are in immediate and irreversible risk [inaudible] and as a homeowner she could go to the county and under the judgment it would require the village protect them. Ms. Walters said that would cost money for her to go and do that and was litigation against the developer and not the village which in turn would require the village to take care of the roads. [Much of this section was inaudible.] Mr. Hayes said he thought the summary was not exactly accurate and she might have the ability to go to the courthouse and get an injunction to require Berelson to take certain actions but the injunction granted would not then carry over to the village being impelled to do something it was not allowed to do. Mr. Hayes said there were a lot of people in similar situations in other villages and towns and the courts, the Attorney General and the NYS Comptroller had looked at it and it was universally said that under the State Constitution the Board was not allowed to pass the burden of taking care of a private road along to the taxpayers. Mr. Hayes said the day the roads were brought up to spec and were certifiable the Board would accept the dedication and take care of the roads.

Trustee Zito said Mr. Hayes said the village cannot use tax dollar money to go plow a street if an injunction was placed on the developer and he was not taking care of the road. Mr. Hayes said not a private road. Trustee Zito said but the municipality could pay and use tax dollars for what they were doing right then and didn't that seem a little contradictory under the law. She said if the Board was using tax dollars then to get to the point of having the decision come down with the bond why couldn't they do the same thing with the roads because they were still using tax dollars. Mr. Hayes said he could not always defend the logic of the law he could just say in those situations judges look at it and draw lines and... Trustee Zito said they could use tax dollars for this thing but not for that. Mr. Hayes said he assumed the justification was that over the course of time and maintaining a private road that was brought up to spec that the costs associated with that long term maintenance would greatly exceed the part of the process the village was going through in trying to pull the bond. Mr. Hayes said in balancing equities the village had to have some ability to enforce its laws and enforce bonds that were posted so it would allow village taxpayers as a whole to foot that cost but the

underlying problem would not be allowed. Trustee Zito asked if that had ever been challenged. Mr. Hayes said it was challenged numerous times. Trustee Zito asked if it always came out to the same...Mr. Hayes said there was no gray area. Trustee Murphy said he assumed the ability to expend taxpayer money was because in the end the village wants to take over the road. Mr. Hayes said if it was a dispute between neighbors about a private road and somebody wanted the village to intercede the village could not get involved but in this instance it was part of a larger effort for the village to finally get ownership of the road. Mr. Felice said everyone brought the houses with the intention of having village services.

Mr. Fitzgerald said he had been paying his full taxes since 2002 and a certain percentage of that was allotted for plowing and he wanted to know if the village could give a tax credit for the current year (not retroactive) so they could offset the costs of hiring a private plowing company. Mr. Hayes said legally the courts would not allow it under the theory that the taxes they were currently paying didn't include the costs of maintaining that road because it was not in the highway budget since it was a private road. Mr. Hayes said even though they brought the houses with the expectation that by now that private road would be rendered a public road the fact that the expectation wasn't met did not allow the village to give a credit. Someone asked if the taxes would go up once it was done. Mr. Hayes said he did not know how much but the cost that the village would pay for the highway maintenance would by some increment go up once the roads were taken over.

Ms. Lee Crapa said as far as she was concerned this was the fault of the village for allowing something to be built without the infrastructure in first. She asked if a bill was passed to ensure it would never happen again. Mayor Liffland said to answer her question the development did not happen on his watch...Ms. Crapa said she was not saying that. Mayor Liffland said on his watch the Planning Board knows that the infrastructure has to be done before they allow one building permit. Mr. Fitzgerald asked if something needed to be passed. Mayor Liffland said it was being done through the update of the Master Plan. Mr. Hayes said it was actually the Village Planning Board that approved the project and the bond and the Village Board was now dealing with trying to solve the problems that arose but the approvals, including the bonding, were done through the Planning Board. Ms. Crapa said she lived in other towns where if you build a house it must be done by a certain amount of time before there are fines.

Mr. Jeff Asher asked if the issue could be put to referendum where the village people said this is a wrong that is being done and we can help get through it faster if we in fact say it is okay to do that - would that be sufficient. Mr. Hayes said legally it could not be done because the ability to schedule a referendum was not a free falling ability the village had. He said there had to be a specific statute authorizing a referendum or a specific question.

Ms. Nicole Agopian said \$145,000.00 seemed like a low amount to her – how much of that was for paving. Mr. Berger responded the road paving was about \$55,000.00. Ms. Agopian asked if the developer did that...Mr. Berger said they would still go after everything else. Mr. Berger said they still had the as-builts, the storm sewer cleaning, the sanitary sewer fixing, site drainage concerns, road paving, site lighting, site landscaping, striping and signs, sidewalk and curb repairs to take care of.

Mr. Fitzgerald said if they were having someone to come in and plow the property are they in violation of something – are they endangering anything with the bond with the developer saying you ruined the road when you brought your plows in. Mr. Hayes said he did not think so because they had to plow the road. Mayor Liffland asked if they could be reimbursed the money they put out for the plowing through the bond. Mr. Hayes said they could try but he thought the bonding company would deny it. Mr. Berger said he did not think it would work. Mr. Berger said in a case where citizens went after the developer for payment the bonding company used it as a stall tactic as pending litigation and stopped negotiation.

Mr. Drew Nicholson asked how many linear feet were involved in the paving. Mayor Liffland said it was about 600 tons of blacktop. Mr. Nicholson said \$55,000.00 was not very much...Mr. Berger said it was just a top course and was not repaving the entire road.

Trustee Zito asked if there was any money left over from the developer in escrow. Mr. Hayes said there was not and there were a lot of bills that did not get paid.

Ms. Walters stated that there was no recourse the village had to help the residents out with plowing. Mr. Hayes said the law said it was a private road and it was not the village's responsibility to plow the road because it was the responsibility of the people who live on the road to plow the road. Mayor Liffland said they were going to look into the grass versus the snow issue. Mr. Hayes said someone refusing to or not being able to plow their driveway did not create a safety problem and would not allow the village to plow the driveway absent some sort of emergency. Mr. Hayes said he would look into other options but with the direct question the village was not allowed to plow the road.

Trustee Murphy said he was trying to get a sense of what argument they were trying to make with the grass versus snow analogy. Mr. Hayes said he was going to see if there was something in the State Code somewhere that said if the road next to the sidewalk had not been dedicated yet – his research would be an analogy that if there was a specific code provision that once the grass on private property gets to be 10 inches then the village can step in he would go back and see if there was some section of the code that says the village could step in under public health and safety concerns. Trustee Murphy asked if that would hinder the village's case – could the developer and bonding company say “you plowed it, you own it”. Mr. Hayes said it was a risk. Trustee Zito said if they do find a way to get

up there it could kill the whole bond. Trustee Murphy said that was why he asked Mr. Hayes the question. Mr. Hayes said it could pose risks to the bond overall. Mr. Berger said those were questions the bonding company asked – have you been maintaining it and are there any records of maintenance. Trustee Zito asked if that was already asked. Mr. Berger said it was asked and the response was there were no records of that. Trustee Zito asked if they were asking the developer the same question and noticing that he was answering no. Mr. Berger said he did not know.

An audience member asked if there was an ordinance charging the owner for sidewalk clean up. Mayor Liffland said the village charges so much a foot to shovel the sidewalk. The audience member asked if that could translate into the village plowing the road. Mr. Hayes said he would have to look into that. Mr. Fitzgerald said to also remember that the village was dependent on the water source in the development and perhaps the village could plow just to that location.

Trustee Murphy asked Mr. Berger to send an update every couple of weeks and perhaps before meetings to let the Board know what was happening. Mr. Berger said he could take care of that.

Mr. Joe Zarecki, a village engineer, gave an update on the various road and water projects.

Mayor Liffland stated he received a letter from the DOT regarding lane changes to the Quaker Hill and Route 22 intersection in response to his numerous inquiries about making the intersection safer. Trustee Durkin read the letter (see attached).

Mr. Drew Nicholson, Village Historian, thanked Mayor Liffland, Trustee Durkin and Trustee Zito for attending the 200th Anniversary celebration for the Methodist Church. Mr. Nicholson showed the Board the restored sign which hung in front of the Post Office. He showed the Board a photo donated by Elmer Smith's family of men from Pawling who served in World War I,

Trustee Zito stated the potential dates for the abatement process and the new installment of the roof were mobilization on November 3rd - as a potential, meaning weather potential and meaning that the notice comes in legally for the posting of the work on Village Hall roof. She said it was asked at the Pre-Construction meeting on October 14th by all attendees, whether or not, and it was not a decision the Board would want to make then, but whether or not they would want to consider since DMV was closed on November 3rd if the Board would want to consider, and she did not know if the Board had ever changed the Holiday Schedule plan meaning that the Village Hall was open on Election Day (November 3rd) but if it did all come together the process could take place with the employees in the building, all measures would be followed by the law, but it was an issue that came up in the meeting and she thought she would bring it forward in case the Board wanted to consider it. Trustee Zito said, again, there was no decision then

because the dates were not in stone but if the Board did come... Trustee Durkin stated the dates were coming up and the next Board meeting was November 1st and it would be too late to announce such an [inaudible]. Trustee Murphy commented Trustee Zito said they would mobilize on the 3rd – did Trustee Zito mean mobilize on the 2nd and the abatement start on the 3rd. Trustee Zito said that was right. Trustee Zito said it was not something... She said she was working originally around what the schedule was and what the staff was. Trustee Durkin asked if Trustee Zito was aware that the Village Hall was a polling place. Trustee Zito said yes but again everything was happening on the roof, no one was going to the roof, everything would be blocked off and was in the back. Trustee Murphy said Trustee Zito was talking about closing the offices. Trustee Zito said only the back that was right. Trustee Murphy reiterated that it would only be the offices. Trustee Zito responded that was what came up in discussion but also there would be... the building would be open, could be open it was just the back building entrance would be closed off – the DMV entrance, that was it. Trustee Zito said she just wanted to bring it to the Board's attention and what was discussed at the pre-construction meeting and that also for the Board's review was an issue for the material and if the Board wanted to consider upgrading the roofing material. Trustee Zito said the Board would see on correspondence sent by LEED the thickness difference and the price difference. Trustee Zito explained she just received the correspondence due to computer problems and she wanted to bring it up for the Board's consideration. Trustee Zito said the Board had time to decide it but it was thoughts that came out. Trustee Murphy asked if they were all individual things the Board would have to approve or were they all separate. Trustee Zito said they were all separate: number three – if you were to choose the third item you would receive a twenty year material and labor warranty on a non-pro-rated basis and it would include the thicker material and that was on its own which was exactly what that \$3,000.00 on its own includes. Trustee Murphy asked if that would include one and two or just one or no.... Trustee Zito responded no, just one on its own would be.... Trustee Durkin said it would include the cost of number one. Trustee Murphy said that was what he was trying to figure out because he couldn't tell by the [inaudible]... Trustee Durkin said she assumed, also the pro-rated warranty it sounded like it would be extended [inaudible]. She said it definitely took into account the thicker membrane. Trustee Durkin said she had a question on the memo about where it mentioned the attic space under the roof repair area must have plastic sheeting hung to collect any debris and if the project had to have it because it was not part of the original quote. Trustee Zito said that was correct. She said the Board had to have it and when they sat and discussed with the project monitor that if the Board did not have it people at other jobs who did not put it in could potentially have a major debris issue and costly cleanup. Trustee Durkin said that seemed like something that should have been caught in the original quote. Trustee Zito said in the original RFP, when the entire Board reviewed it not one of them caught it, that was correct, but it was caught at the pre-construction meeting. Trustee Murphy said that was number 4 on the sheet. Trustee Durkin said the Board kind of had to do it. Trustee Zito highly recommended it. Trustee Murphy said it was number 4 which was referred to in

Mr. Johnson's memo. Trustee Zito said that was correct. Trustee Zito said that was what the pre-construction meeting was – to go back over and fine line everything to be sure....and then with the project monitor that was at the meeting – she highly recommended the Board do that – it was an option they did not have. Trustee Zito said it made sense. Mayor Liffland said the amount was a little high but the clean up after that – he wondered if they could lower it a little. Trustee Murphy said Mr. Johnson mentioned in his memo he would talk to the contractor and the Board could approve it not to exceed. Trustee Zito said that was what she would recommend. Trustee Murphy said Curt could negotiate with them however he was still trying to get a handle on one, two and three. Mayor Liffland said it was definitely good to have that poly underneath there. Trustee Durkin said it seemed like one, two and three were sort of a la carte but three included all of them – three was price fix and one and two were a la carte. Trustee Murphy said if they approved three that included one and two which was included in the \$3,000.00. Trustee Zito said that was how she read it. Trustee Murphy said not number four but numbers one and two were included. Trustee Durkin asked if the warranty was worth the extra \$2,200.00. Trustee Zito responded that because it was non-pro-rated...Trustee Durkin asked pro-rated to when? Mayor Liffland said it was for twenty years. Trustee Durkin said one was pro-rated and one was non-pro-rated. Trustee Murphy said number two probably did not include [inaudible] because number two was the membrane and number three was the roofing system. Trustee Murphy said he thought three included one but two and four were separate. The public asked clarification questions. Mayor Liffland asked Trustee Zito to clarify what company would warranty the product and the labor. Mayor Liffland said Trustee Zito would ask Curt Johnson to negotiate to lower the \$2,200.00 price. Trustee Murphy said it looked like the Board wanted numbers two, three and four. Mayor Liffland said he thought if the Board took just number three and avoided numbers one and two...Trustee Durkin said she thought three included one and two. Trustee Zito said that was the way she understood it when she spoke with Curt – three included it. Trustee Zito said she would clarify not only that point but also that it would be labor and certified...Trustee Murphy said the second item would give the material only warranty on the .045 roof which the Board was not going to go with so the Board probably did not want two. He said the third item would give a 20-year material and labor warranty, non pro-rated and would include the upgrade to the .060 thickness. Mayor Liffland said it was just number three – one and two do not include number three. Trustee Murphy asked if the Board wanted three and four. Mayor Liffland said the Board definitely had to do four but he wanted to see if the price could be lowered. Trustee Durkin said she would also question what the materials were in the third item. Trustee Zito said she asked for the breakdown and was waiting for that. Trustee Zito said the Board agreed that on number four that if there were any debris issues what would save the Board or prevent the Board from any sort of major cleanup – and the examples she was given by the project manager that the costs far exceed that number on same size jobs – it was a great insurance for \$2,200.00 – can we reduce it, she would ask again. Mayor Liffland said to ask them on both not to settle on one - ask them to reduce three and four. Trustee Durkin said especially if

the Board was going to go with three and four it was a pretty big nut and was increasing costs over another 10%. Trustee Zito said that was why the Board went with the \$60,000.00 BAN. Trustee Durkin asked how they would stand by their cleanup. Trustee Zito said they would wrap it up and take it away.

MOTION by Trustee Murphy to approve the cost of the polyethylene tarp not to exceed \$2,200.00. **SECONDED** by Trustee Zito. Mayor Liffland said he thought the Board was going to negotiate. Trustee Murphy said they were. Trustee Zito said the price would not exceed \$2,200.00. There was no further discussion; all were in favor and the motion carried.

MOTION by Trustee Zito for the roofing system with 20 year labor and material warranty (not pro-rated) including the .060 EPDM not to exceed \$3,000.00 – to break out material, labor and certification for installation. **SECONDED** by Trustee Osborn. There was no further discussion; all were in favor and the motion carried.

MOTION by Trustee Durkin to approve the proposal received from Underwater Solutions, Inc. for the inspection and cleaning of the Aquastore 500,000-gallon glass lined water storage tank in the amount of \$4,240.00. **SECONDED** by Trustee Osborn. Trustee Durkin asked if the company had the state contract. Mayor Liffland said they did. There was no further discussion; all were in favor and the motion carried.

Trustee Murphy went over the 2010 preliminary Garbage Budget (see attached).

MOTION by Trustee Murphy to approve the \$60,000.00 BAN for the Roof Repair Project at Putnam County Savings Bank at a 2% rate. **SECONDED** by Trustee Durkin. There was no discussion; all were in favor and the motion carried.

MOTION by Trustee Durkin to approve the waiver to Water Account #096 for a penalty in the amount of \$41.12 due to the customer not receiving the bill. **SECONDED** by Trustee Osborn. There was no discussion; all were in favor and the motion carried.

MOTION by Trustee Murphy to adjourn the meeting at 9:08 P.M. **SECONDED** by Trustee Durkin. There was no discussion; all were in favor and the motion carried.

Village Clerk