TOWN OF CLARKSTOWN
SPECIAL TOWN BOARD MEETING

Town Hall 11/5/09 7:05 P.M.

Present: Supervisor Alexander J. Gromack
Council Members John Maloney, Shirley Lasker, & George Hoehmann
Amy Mele, Town Attorney
Pamela Sitomer, Deputy Town Clerk

Absent: Frank Borelli

Supervisor declared Town Board meeting opened. Assemblage saluted the flag.

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Public Hearing #1 re: Town of Clarkstown Preliminary Budget for 2010. On motion of Co. Hoehmann, seconded by Co. Maloney, hearing opened 7:05 P.M. On motion of Co. Maloney, seconded by Co. Hoehmann, and unanimously adopted, the public hearing was closed 9:35 P.M. RESOLUTION NO. (543-2009).

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Supervisor opened the meeting to public comments regarding agenda items, with no one wishing to be heard.

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RESOLUTION NO. (543-2009)
Co. Maloney offered and Co. Hoehmann seconded

RESOLUTION ADOPTING THE 2010 BUDGET FOR THE TOWN OF CLARKSTOWN

WHEREAS, a public hearing pursuant to Town Law Section 108, to consider the Town of Clarkstown Preliminary Budget for the year 2010, was duly scheduled and noticed for November 5, 2009 at7:00 p.m., in the Auditorium of the Clarkstown Town Hall, and

WHEREAS, the Town Board met at the time and place specified in the Notice of the Public Hearing and heard all persons desiring to be heard;

NOW, THEREFORE, be it

RESOLVED, that such Preliminary Budget, a copy of which is attached hereto, be and is hereby adopted as the Annual Budget of the Town of Clarkstown for the fiscal year beginning the lst day of January, 2010, and that such Budget, as so adopted, be entered in detail in the proceedings of the Town Board, and be it

FURTHER RESOLVED, that the Town Clerk of the Town of Clarkstown shall prepare and certify, in duplicate, copies of such Annual Budget as adopted by this Town Board, together with Assessment Rolls for benefit improvements, if any, adopted pursuant to Section 202-a, Subd. 2, and Section 231, Subd. 2 of the Town Law, and deliver two copies thereof to the Supervisor of this Town to be presented by him to the Legislature of Rockland County, pursuant to Section 115 of the Town Law and other applicable sections of the Town Law.

On roll call the vote was as follows

Co. Lasker ..... Yes
Co. Maloney ..... Yes
Co. Hoehmann..... Yes
Co. Borelli.....Absent
Supervisor Gromack ..... Yes

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RESOLUTION NO. (544-2009)
Co. Hoehmann offered and Co. Lasker seconded

RESOLVED, that the Town Board Minutes of October 20, 2009 are hereby accepted as submitted by the Town Clerk.

On roll call the vote was as follows

Co. Lasker ..... Yes
Co. Maloney ..... Yes
Co. Hoehmann..... Yes
Co. Borelli.....Absent
Supervisor Gromack ..... Yes

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RESOLUTION NO. (545-2009)
Co. Lasker offered and Co. Maloney seconded

RESOLUTION WAIVING THE NOTICE REQUIREMENT IN SECTION 64 OF THE NEW YORK STATE ABC LAW WITH RESPECT TO A LIQUOR LICENSE FOR SMOKIN BULL INC.

WHEREAS, SMOKIN BULL INC. advised that they intend to apply for an on-premises liquor license for property located at 60 Route 303, Valley Cottage, New York, for which thirty days advance notice of such application must be sent to the municipality, and

WHEREAS, the notice required by Section 64-2(a) ABC Law may be waived by the Town Board, and

WHEREAS, the Clarkstown Town Board does not intend to comment upon the application referred to herein;

NOW, THEREFORE, be it

RESOLVED, that the Town Board hereby waives the thirty day notice requirement contained in Section 64 of the Alcoholic and Beverage Control Law, and states that it does not intend to offer any comments regarding the application of SMOKIN BULL INC. for a liquor license at the premises referred to herein.

RESOLUTION NO. (545-2009) continued

On roll call the vote was as follows
Co. Lasker . . . . . Yes
Co. Maloney . . . . . Yes
Co. Hoehmann... . . . . Yes
Co. Borelli... . . . . Absent
Supervisor Gromack . . . . . Yes
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RESOLUTION NO. (546-2009)
Co. Lasker offered and Co. Hoehmann seconded

RESOLUTION GRANTING CERTIFICATE OF REGISTRATION PURSUANT TO SECTION 236-48 OF THE TOWN CODE

WHEREAS, the following has applied for a Certificate of Registration pursuant to Section 236-48 of the Town Code of the Town of Clarkstown : DeSIMONE & SONS, INC., 35 Madison Avenue, Garnerville, NY 10923
Paul DeSimone, President

NOW, THEREFORE, be it
RESOLVED, that the following Certificate of Registration be issued: No. 09-31 - DeSIMONE & SONS, INC.

On roll call the vote was as follows
Co. Lasker . . . . . Yes
Co. Maloney . . . . . Yes
Co. Hoehmann... . . . . Yes
Co. Borelli... . . . . Absent
Supervisor Gromack . . . . . Yes
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RESOLUTION NO. (547-2009)
Co. Maloney offered and Co. Lasker seconded

RESOLVED, that the Town Board of the Town of Clarkstown hereby approves or ratifies a Stipulation of Settlement of Grievance with the Civil Service Employees Association dated October 5, 2009.

On roll call the vote was as follows

Co. Lasker . . . . . Yes
Co. Maloney . . . . . Yes
Co. Hoehmann... . . . . Yes
Co. Borelli... . . . . Absent
Supervisor Gromack . . . . . Yes
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RESOLUTION NO. (548-2009)
Co. Hoehmann offered and Co. Maloney seconded

RESOLUTION AUTHORIZING AN INCREASE IN THE SCOPE OF WORK FOR BID #20-2009 VIRGINIA STREET/CAROLINA DRIVE DRAINAGE IMPROVEMENTS

Whereas, the Town Board of the Town of Clarkstown has previously awarded a contract for Bid #20-2009 Virginia Street/Carolina Drive Drainage Improvements to Pinebrook Industries, Inc. of New City, New York; and
Whereas, the plans for said project call for the removal of temporary asphalt berms previously installed by the Town of Clarkstown within the existing right-of-way limits of three (3) driveways on the north side of Virginia Street and construction of permanent raised asphalt berms within existing the right-of-way limits at the same locations; and
Whereas, the Department of Environmental Control has examined the design of the proposed raised asphalt berms and recommends that their construction be extended beyond the existing right-of-way limits resulting in a more acceptable change in grade insofar as ingress and egress is concerned while still preserving their proposed surface drainage benefits; and
Whereas, the Department of Environmental Control has negotiated an acceptable proposal with Pinebrook Industries, Inc. in the amount of $10,701.25 to perform the additional work associated with this increase in the scope of work for this project; and
Whereas, all additional work is to be done in accordance with the contract specifications for this project;
Now, Therefore, Be It Resolved that the Town Board of the Town of Clarkstown hereby authorizes an amendment to the contract amount for Bid #20-2009 Virginia Street/Carolina Drive Drainage Improvements in the amount of $10,701.25; and
Be It Further Resolved that the total cost of the project shall not exceed $328,341.25 without further Town Board resolution and it shall be a proper charge to account # H 8755- 409-0-79-34; and
Be It Further Resolved, that no additional work beyond the existing right-of-way limits shall be performed without the receipt by the Town of Clarkstown of all necessary agreements, as determined and prepared by the Town Attorney's office and signed by the affected property owners.

On roll call the vote was as follows

Co. Lasker . . . . . Yes
Co. Maloney . . . . . Yes
Co. Hoehmann... . . . . Yes
Co. Borelli... . . . . Absent
Supervisor Gromack . . . . . Yes
****

RESOLUTION NO. (549-2009)
Co. Lasker offered and Co. Hoehmann seconded

RESOLUTION AUTHORIZING THE PURCHASE OF A PARCEL OF PROPERTY FOR THE WEST NYACK DOWNTOWN REVITALIZATION PROJECT MAP 65.05-2-24

WHEREAS, the Town of Clarkstown is in the process of designing the revitalization of downtown West Nyack; and
WHEREAS, the Town has identified certain parcels for potential acquisition which may be of value in the revitalization process; and
WHEREAS, the owner of certain property located at 733 West Nyack Road, West Nyack, New York, one of the properties identified by the Town (the "Parcel"), has indicated a willingness to negotiate a sale of said parcel;
NOW, THEREFORE, be it
RESOLVED, that the Town Attorney's office is hereby authorized and directed to pursue the acquisition of the Parcel; and be it
FURTHER RESOLVED, that the Supervisor is hereby authorized to enter into a Purchase and Sale Agreement for the acquisition of said premises, and is further authorized to execute any ancillary documents necessary to effect the purchase.

On roll call the vote was as follows
Co. Lasker . . . . . Yes
Co. Maloney . . . . . Yes
Co. Hoehmann... . . . . Yes
Co. Borelli... . . . . .Absent
Supervisor Gromack . . . . . Yes
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RESOLUTION NO. (550-2009)
Co. Maloney offered and Co. Hoehmann seconded

WHEREAS, the Superintendent of Highways has received complaints and requests from residents for the installation of "Dog Waste Prohibited" and "No Dumping" signs in certain areas where violations of Town Code Chapters 125-4F (Nuisance by failure to clean up) and 216-3A (Property Maintenance, illegal dumping) are frequently observed, and
WHEREAS, inspections of the areas involved have been conducted by the Code & Zoning Enforcement Officer per the Superintendent's requesting resulting in findings that the complaints are substantiated, and
WHEREAS, controlling signage to better notify errant dog walkers and illegal dumpers to facilitate enforcement and better protect the green space in the neighborhood has been recommended by the Superintendent,
NOW, THEREFORE, be it RESOLVED, that the Superintendent of Highways is hereby authorized to install:

1.) 'Dog Waste Prohibited' signs along Birchwood Terrace, Nanuet between N. Middletown Road and Smith Road at the intersections of Forest Avenue, Brookside Drive and Lisa Lane
2.) "No Dumping" signs at the following locations:
   a.) The Dead End of Stegmeyer Lane, New City (private road) which abuts Town Property known as 221 Pineview Ave, Bardonia (51.18-3-7)
   b.) The Dead End of Dolton Street, Valley Cottage between 877 & 878 Dolton Street (52.20-2-25 & 26)
   c.) In front of Town Property (Heaton Pond) at 314 Old Mill Road, Valley Cottage across from Deer Track Lane

On roll call the vote was as follows
Co. Lasker . . . . . Yes
Co. Maloney . . . . . Yes
Co. Hoehmann... . . . . Yes
Co. Borelli... . . . . .Absent
Supervisor Gromack . . . . . Yes
****

RESOLUTION NO. (551-2009)
Co. Lasker offered and Co. Hoehmann seconded

WHEREAS, Resolution #524-2009 authorized the Supervisor to enter into a renewal agreement with Spotless Contracting to adopt three segments of Town roadways from October 1, 2009 to October 1, 2011; and
WHEREAS, the owner of Spotless Contracting has just informed us that the company has closed and a new company, Impact Industrial Services, Inc., has opened and said new company wishes to continue to adopt the same three segments of Town roadways;
NOW, THEREFORE, be it
RESOLVED, that Resolution No. 524-2009 is hereby amended to change the company name and address of the sponsor as follows:
Sponsor: Impact Industrial Services, Inc., 44 Thiells Mt. Ivy Road, Pomona, NY 10970

On roll call the vote was as follows
Co. Lasker . . . . . Yes
Co. Maloney . . . . . Yes
Co. Hoehmann... . . . . Yes
Co. Borelli... . . . . .Absent
Supervisor Gromack . . . . . Yes
****

RESOLUTION NO. (552-2009)
Co. Maloney offered and Co. Hoehmann seconded

RESOLUTION AMENDING RESOLUTION NO. 539-2009 WITH RESPECT TO AUTHORIZING AN AGREEMENT WITH H2M GROUP FOR ENGINEERING SERVICES CONCERNING LAKE NANUET PARK

WHEREAS, the Town Board, by Resolution No. 539 adopted by the Town Board on October 20,

RESOLUTION NO. (552-2009) continued

2009, authorized an amendment to an agreement with respect to alleviating flooding condition at Lake Nanuet Park with the H2M Group, and

WHEREAS, there was a typographical error in that the resolution omitted a reference to H2M's October 9, 2009 proposal;

NOW, THEREFORE, be it

RESOLVED, that the Town Board hereby amends Resolution No. 539-2009, by authorizing the H2M Group to perform additional engineering services pursuant to its proposal dated February 11, 2009 and October 9, 2009 for an additional cost of $55,800.00, and be it

FUTHER RESOLVED, that all other terms of Resolution No. 539-2009 shall remain the same.

On roll call the vote was as follows
Co. Lasker ..... Yes
Co. Maloney ..... Yes
Co. Hoehmann..... Yes
Co. Borelli..... Absent
Supervisor Gromack ..... Yes

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RESOLUTION NO. (553-2009)
Co. Maloney offered and Co. Lasker seconded

WHEREAS Bardonia Associates, L.P., a New York limited partnership ("Bardonia Associates") is a redevelopment company, formed under Article 5 of the N.Y. Private Housing Finance Law ("NYPHFL") to own and operate the housing project known as Monterey Gardens, located in Bardonia, Town of Clarkstown, New York (the "Project");
WHEREAS the Project is presently subject to a HUD Insured mortgaged loan, and is an "Old Regulations" project under the Section 8 housing program;
WHEREAS the use of the Project as a complex which meets housing needs of low income senior citizens receiving governmental housing assistance payments, including under the federal Section 8 program, is an important interest of the Town of Clarkstown (the "Town");
WHEREAS the Town Board of the Town of Clarkstown (the "Town Board") is the supervising agency of the Project pursuant to NYPHFL, and the Town Board desires and Bardonia Associates has sought various acknowledgments, approvals, and authorizations from the Town Board regarding, among other things, the continued use and availability of housing meeting the needs of senior citizens, the refinancing of its existing mortgage, and the amount of past and future funds to be kept in its residual receipts account;
WHEREAS by Resolution No. 284-2008 adopted at a Town Board of the Town of Clarkstown ("Town Board") meeting of April 15, 2008 (the "Prior Resolution"), the Town Board made certain determinations; and
WHEREAS the Town Board wishes to substitute and amend the Prior Resolution so as to substitute entirely the terms and conditions of this Resolution in the place of the Prior Resolution with regard to the rights and responsibilities of the Town Board and Bardonia Associates; and
WHEREAS Bardonia Associates has proposed and agreed in consideration for this Resolution to pay an impact fee to the Town in the amount of $650,000.00 on account of the impacts upon the Town, and upon the Town's interest in ensuring future availability of housing meeting the needs of senior citizens plus reimbursement of the actual final amount of the Town's outside legal fees incurred by the Town in connection with Bardonia Associate's proposal (approximately $30,000);
WHEREAS the acknowledgments, approvals, and authorizations sought by Bardonia Associates also concern, to a certain extent, a payment in lieu of taxes agreement of January 29, 1979, entitled "Tax Exemption Agreement" (hereinafter "PILOT Agreement") made pursuant to NYPHFL and relating to tax obligations payable to the County, the Town, and to the local School District;
WHEREAS the Project is situated on property designated on the Clarkstown Tax Map as Map 35, Block B, Lot 4.10, for which a Zone Change was previously approved by Town Resolution from R-15 to MF-3 and whereas the property is currently zoned MF-3 (the "Current Zoning") and has certain other permits and approvals, including a special permit to operate a 106-unit senior housing complex pursuant to Section 290-17(O) of the Town Code (the "Special Permit") , and whereas Bardonia Associates made improvements to the property in reliance on the Current Zoning as a consequence of which Bardonia Associates has vested rights with respect to the residential improvements made pursuant to the Special Permit;
IT IS HEREBY RESOLVED, subject to the conditions set forth below, unless otherwise mandated by federal law or federal authorities, as follows:

The Mortgage Refinancing

1. Pursuant to the authority vested by the NYPHFL upon this Town Board as the supervising agency, it is acknowledged and approved that:

a. Bardonia Associates has certified and certifies that the (i) actual costs of the original construction of the Project (including cost of purchasing land) plus the certified actual costs of improvements made by the owner since completion total $5,411,118.28 (the "Original Costs") and (ii) the estimated costs to renovate the Project total $644,777.40 (the "Rehab Costs"); and

b. Based on Bardonia Associates' certification, and in accordance with Section 111 of the NYPHFL, the Town Board consents that Bardonia Associates may refinance the Original Costs and finance the Rehab Costs through reputable private Lenders in an amount of up to $6,055,895.65 (collectively, the "Initial Refinancing");

c. In accordance with Section 111 of the NYPHFL, upon such Initial Refinancing, the new mortgage shall constitute a "federally-aided mortgage" as referenced in the PILOT Agreement and NYPHFL § 102, so long as and provided that the Project is continued as a Section 8 project;

d. Bardonia Associates may subsequently refinance the Original Costs and the Rehab Costs (the "Subsequent Refinancing"), provided, however, that the amount of the Subsequent Refinancing does not exceed the sum of the Original Costs and the Rehab Costs. The intent of this paragraph is to allow Bardonia Associates to refinance the Original Costs and the Rehab Costs for the sole purpose of obtaining a lower interest rate and/or to refinance any portion of the Initial Refinancing, if available, without changing or altering Bardonia Associates' agreements, covenants and restrictions under this Resolution. In addition, in the event that Bardonia Associates seeks to refinance for any amount greater than the sum of the Original Costs and the Rehab Costs, then Bardonia Associates shall provide the Town with accountant, certified and audited proof of the actual costs of any

improvements made subsequent to the Initial Refinancing, and the Town may, but shall not be required to, approve and consent to such refinancing as "supervising agency" without payment of an additional impact fee, and further provided that the Impact Fee (as defined below) with respect to the Initial Refinancing has already been paid.

The Residual Receipts Account

2. The Town Board acknowledges that:

a. because the Project is an "Old Regulation" Section 8 project., it is not subject to a limitation on distributions, or requirements to maintain a residual receipts account, under Section 8 program regulations;

b. pursuant to the provisions of section *524(f)* of the federal Multifamily Assisted Housing Reform and Affordability Act of 1997 (Pub.L, 105-65, Title V, Subtitle A, 111 Stat. 13 84-1409, published as amended as a note to 42 U.S.C. § 1437f(note) (2000)), otherwise known as relevant portions of the Mark-Up-To-Market program, entitled *"Preemption of conflicting State laws limiting distributions,"* the residual receipts provisions and the 6% limitation on distribution provisions of Section 107 of the NYPHFL are federally preempted as against any sums accrued on or after October 20, 1999, the enactment date of the federal preemption statute; and

c. accordingly, unless otherwise required by federal law or directed by federal authorities, upon the Initial Refinancing in accordance with paragraph 9 Bardonia Associates is permitted to withdraw from the residual receipts account any sums accrued on or after October 20, 1999, and the restrictions of Section 107 of the NYPHFL concerning limitation and retention of newly-accrued residual receipts and limiting distributions to 6% are federally preempted and shall no longer apply.

d. The Town agrees that the vested rights of Bardonia Associates are to the total square footage of residential space constructed pursuant to the Special Permit. In the event there are market rate dwelling units as hereinafter permitted pursuant to condition 6 (a) hereunder on the property, Bardonia Associates shall have the right to continue to utilize said square footage of residential space, but in a configuration that allows for the total number of residential units allowed under Current Zoning or the applicable zoning at the time the market rate units are in effect, whichever is greater. The Town and Bardonia Associates further agree, at the expense of Bardonia Associates, to submit to a Court of appropriate jurisdiction all necessary legal papers and process in order to obtain a non-appealable "So-Ordered Stipulation" in the form annexed hereto as Exhibit A reflecting the vested rights set forth in this Resolution.

3. Pursuant to section 107 of the NYPHFL and the authority vested thereby with this Town Board as the supervising agency, and after due consideration of the matter, it is determined that upon the Initial Refinancing in accordance with paragraph "1" above, residual receipts reserve funds of Bardonia Associates accrued prior to October 20, 1999 may be used by Bardonia Associates for the purpose of payment of future interest on and amortization of any mortgage indebtedness and depreciation charges, and distributions (to be used solely for operating expenses and capital improvements), and that the use of such funds for such purposes is necessary.

Conditions of Resolution

4. The approvals, acknowledgments, and authorizations set forth above are subject to all of the conditions set forth hereinabove and below.

5. Until January 29, 2019, Bardonia Associates shall use commercially reasonable efforts to remain a redevelopment company organized under and subject to the NYPHFL, and to continue to use and maintain the Project in the same manner in which it is presently used in respect of providing housing to low income senior citizens receiving governmental housing assistance payments, under the current federal Section 8 Mark-Up-To-Market program or an alternative or successor program that provides rental assistance on terms comparable to the current Section 8 Mark-Up-To-Market program (and which includes provisions for contract rents at market comparable levels, and the right to distribute surplus cash and preemption of state limitations on distributions as currently provided for under the current Section 8 Mark-Up-To-Market program). Nothing set forth herein shall be construed as requiring Bardonia Associates to commence or maintain litigation against a third party.

6. a. Bardonia Associates further agrees to use commercially reasonable efforts to continue to use and maintain the Project subsequent to January 29, 2019 (when the tax exemption period under the PILOT Agreement and in accordance with NYPHFL §125(1)(a) will currently expire) in the same manner in which it is presently used in respect of providing housing to low income senior citizens receiving governmental housing assistance payments, provided that, conditional upon and so long as (1) the current Section 8 Mark-Up-To-Market program (including the current provisions for contract rents at market comparable levels, the right to distribute surplus cash and preemption of state limitations on distributions as currently provided for under the current Section 8 Mark-Up-To-Market program ("Key Provisions") is renewed and/or extended or an alternative or successor program is enacted that provides rental assistance on terms comparable to the current Section 8 Mark-Up-To-Market program (and which includes the Key Provisions) and (2) the tax abatement currently available pursuant to the PILOT Agreement continue. If either of the foregoing do not occur or (1) the subsidies provided by the Section 8 Mark-Up-To-Market program or any alternative or successor program are reduced in an amount in excess of 10% of the then existing contract rates or any Key Provisions are materially changed adversely to Bardonia Associates, or (2) the current level of tax abatement is reduced, then and in such event, Bardonia Associates' Special Permit shall expire but not the vested rights thereunder as previously set forth in this Resolution, the property shall revert to residential use allowed under the Current Zoning, and Bardonia Associates shall have the right to charge market rate rents for all the dwelling units in the Project and to adopt a condominium plan for the Project, permitting the sale of all the dwelling units at market rate prices. Nothing set forth herein shall be construed as requiring Bardonia Associates to commence or maintain litigation against a third party.

b. In connection with the continuation of the PILOT Agreement subsequent to January 29, 2019, Bardonia Associates shall cooperate with all reasonable efforts by the Town, including all good faith, legislative, lobbying and policy initiatives by the Town, to extend the 40 year deadline currently set forth in NYPHFL §125(1)(a) and to continue the tax abatement at the current level.

7. At any time upon request by the Town as supervising agency, Bardonia Associates shall provide the Town with accountant certified and audited proof of the actual costs of any construction or improvements made subsequent to the Initial Refinancing, together with such other and additional financial and accounting information which the Town, in its sole and exclusive discretion, shall reasonably determine is necessary to ensure compliance with this Resolution.

8. As proposed by Bardonia Associates, at the closing of the Initial Refinancing, Bardonia Associates shall pay the previously described fee to the Town, which shall be in the amount of $650,000.00, plus reimbursement of the Town's outside legal fees (approximately $30,000) incurred in connection herewith, the "Impact Fee."

RESOLUTION NO. (553-2009) continued

9. Notwithstanding and subsequent to the Initial Refinancing, Bardonia Associates shall continue to maintain and make contributions to the reserve for replacement funds at the greater of either (a) the amounts that are currently required as of the date of this Resolution in the event Bardonia Associates were still subject to a HUD insured mortgage Loan, or (b) the amounts that are required by Bardonia Associates' replacement mortgagee.

10. The conditions listed herein shall be recorded as covenants and restrictions against the land upon which the Project is located, and shall be deemed to run with the land, but shall be subject and subordinate to any mortgage made in connection with a Refinancing by a bonafide lender unrelated to the owner of the Project.

11. This Resolution, and the acknowledgment, approvals, and authorizations hereunder, shall not take effect until all of the following shall have been satisfied and completed: (a) the covenants and restrictions, in the form annexed as Exhibit B hereto, have been duly signed by Bardonia Associates, and duly recorded (with proof thereof) to the satisfaction of the Town Attorney; (b) the Impact Fee set forth in condition 8 above has been paid; (c) the closing of the Initial Refinancing; and (d) execution of the Stipulation annexed as Exhibit A.

On roll call the vote was as follows
Co. Lasker . . . . . Yes
Co. Maloney . . . . . Yes
Co. Hoehmann... . . . . Yes
Co. Borelli... . . . . Absent
Supervisor Gromack . . . . . Yes
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RESOLUTION NO. (554-2009)
Co. Lasker offered and Co. Maloney seconded

RESOLUTION AUTHORIZING THE SUPERINTENDENT OF HIGHWAYS TO PROCURE A CONTRACTOR TO RESURFACE SAW MILL ROAD, BUENA VISTA ROAD AND CONKLIN DRIVE

WHEREAS, the Rockland County Sewer District #1 has awarded a bid to a contractor to perform certain sewer district upgrades in the vicinity of Saw Mill Road, Buena Vista Road and Conklin Drive in New City, New York; and

WHEREAS, under the Sewer District's contract, the contractor is only required to repair and repave one lane of the affected roadways, and

WHEREAS, the Superintendent of Highways has recommended that the Town repave the unaffected lanes, so that the roadway surface is level and uniform; and

WHEREAS, the Sewer District's contractor has provided the Town with a proposal to a) resurface the additional lanes at a cost of $76/ton (for a total lump sum of $88,540) or b) reimburse the Town the sum of $94,470, which represents the contractor's cost to repave the affected lanes, which the Town could use to offset the cost of paving both lanes; and

WHEREAS, the Sewer District contractor's cost is substantially less than the per ton cost under the Town's current paving bid;

NOW, THEREFORE, BE IT

RESOLVED, that the Superintendent of Highways is hereby authorized to retain a contractor to resurface certain portions of Saw Mill Road, Buena Vista Road and Conklin Drive; and be it

FURTHER RESOLVED, that the Superintendent of Highways shall have the discretion to proceed with either option a) or b) above; and be it

FURTHER RESOLVED, that the retention of said contractor shall be done in a manner legally acceptable to the Town Attorney, and be it

FURTHER RESOLVED, that the Supervisor is hereby authorized to execute any contracts, amendments, or Intermunicipal Agreements necessary for the performance of said work, which documents shall be in a form legally acceptable to the Town Attorney; and be it

FURTHER RESOLVED, that the total cost of said project shall not exceed $88,540 without further authorization from the Board and shall constitute a proper charge to account no. H8760-409-0-84-33.

On roll call the vote was as follows
Co. Lasker . . . . . Yes
Co. Maloney . . . . . Yes
Co. Hoehmann... . . . . Yes
Co. Borelli... . . . . Absent
Supervisor Gromack . . . . . Yes
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The Supervisor opened the meeting for general public comments, with no one wishing to be heard.

On motion of Co. Hoehmann, seconded by Co. Lasker, and unanimously adopted, Town Board Meeting was closed 9:38 P.M.

Respectfully submitted,

Pamela Sitomer

Pamela Sitomer
Deputy Town Clerk

TOWN OF CLARKSTOWN
PUBLIC HEARING #1

Town Hall 11/5/09 7:05 P.M.

Present: Supervisor Alexander J. Gromack
Council Members John Maloney, Shirley Lasker, & George Hoehmann
Amy Mele, Town Attorney
Pamela Sitomer, Deputy Town Clerk
Absent: Frank Borelli

Re: Town of Clarkstown Preliminary Budget for 2010

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On motion of Co. Hoehmann, seconded by Co. Maloney, hearing opened 7:05 P.M.

Supervisor Gromack

Stated that the Town of Clarkstown's tax rate has increased by 1.6% and there have been 23 positions eliminated for next year, including 8-10 police positions. The most savings to the budget were done through personnel cuts, with 39 cuts total since 2005. Many municipalities are facing mortgage tax reductions. The town has to contribute $200,000 to the payroll tax to the MTA, which we should not be paying and are fighting vigorously. We have to pay $1.5 million more in healthcare. 29 cents of every tax dollar goes to the town and 71 cents of every tax dollar goes to the school districts and county. Schools will be struggling because less federal money is coming in. The Town Board received $15 million in federal and state grants. Thanked Senator Morahan and Assembly members Jaffe and Zebrowski for their assistance in obtaining funding for Clarkstown. The federal funding from President Obama's administration has funded the revitalization projects in Clarkstown. Thanked Superintendent of Highways Wayne Ballard for obtaining over $1 million dollars in federal stimulus funding. Congratulated the individuals who won their respective elections and expressed regrets for those that did not. For the year 2010, none of the Town Board members will take any raise in salary. We realize these are difficult times. We will continue to look at ways to cut expenses and maintain services throughout 2010.

Guy Gervasi- West Nyack

Asked what guidelines were given to department heads when creating the budget?

Supervisor Gromack

Stated that there was a 5% cut from the 2009 level in discretionary funding, but we cannot control contractual salary agreements. For 2010, there is a $775,000 savings from the 5% cut and an additional $1.5 million dollars in personnel cuts in the Clarkstown Police Department, as there are an anticipated seven to twelve people retiring and we have defunded approximately ten positions.

Ed Duer- Comptroller

Stated that the increase in spending from the 2009 to the 2010 budget is roughly $3.9 million.

Supervisor Gromack

Stated there was approximately a $450,000 loss on interest that we get from investments, because of the lower interest rates. We have to pay $200,000 to the MTA that we never had to pay before. There is $1.5 million that went up in mandated costs to New York State through pension and healthcare. There is $210,000 less coming in from the county, due to the reduced sales tax. There was approximately a $700,000 cut in revenues. When you factor in all those negatives, this is one of the lowest increases in a decade. From 2005-2008, we consolidated positions and worked aggressively to reduce personnel. For instance, the positions of Assistant Superintendent and Superintendent of the Recreation & Parks Department were consolidated. Savings procedures have been going on since 2005 or else we wouldn't be able to be in our current position.

Joe Tradullo- New City

Asked if there would be any open positions in 2010, if any early retirement incentives will be offered, if there were a cap for salaries and what percent of the budget is the payroll, including benefits?

Supervisor Gromack

Stated there would not be any new positions created in 2010, but we may have to hire in case there are retirements. There have been 39 net reductions in positions over four years. Early retirement incentives do not pertain in Clarkstown and 2002 was the last time the state allowed them.

Ed Duer- Comptroller

Stated that payroll is 61% of the budget, including benefits, and the salaries were based on length of service for CSEA employees and the police.

Supervisor Gromack

Stated there are longevity steps, and once you reach a certain longevity step, there are no further increases, other than negotiated cost of living increases.

Joe Tarangelo- New City

Asked about the payment for the MTA tax and stated he told Senator Morahan that the tax was a disgrace.

Supervisor Gromack

Stated we just pay for the payroll for the Town of Clarkstown, which is calculated at $200,000, and that we have to conform to state mandate. Stated he attended a meeting with our representatives in the Assembly and State Senate, we wrote a letter in protest of the payroll tax to the Governor, and we have to work with the county and other municipalities to repeal the payment into the MTA tax. Our representatives voted against it, but they were out voted in Albany. The state intends to reimburse the school districts, but there will be no reimbursement to the towns.

Joe Tarangelo - New City

Spoke about prescription drugs and stated that many in the county do not have to pay for them.

Supervisor Gromack

Stated we have nothing over the county or the schools, but Clarkstown's employees pay a copay for their prescription drug plan.

Joe Angelo - New City

Asked if there would be wage freezes?

Supervisor Gromack

Stated that the CSEA has two years to go on their contract. We have had discussions and negotiations will begin in 2011. The PBA contract expired in 2008. We negotiated with the PBA, but have not come up with a resolution, so are looking for arbitration in January. The town offered a 0% increase in salaries to the PBA and they offered 5.5%. There is Binding Arbitration for the PBA, but no other unions have this. We have to live with whatever the arbitrator decides. The CSEA contributed 10% in the last negotiations, which is a lot, since they never paid before. This was before the downturn in the economy. Management pays 15%, so we got a higher number for them. We need to see reforms on the state level. Arbitration laws in New York State typically benefit the PBA. The biggest factor that will hurt us is that our 1.6% tax rate is so low and that we have a triple bond rating. This will be used against us. The Town Board is committed to carry this forward to deal fairly with the PBA.

Co. Hoehmann

Stated that past arbitrations are on the NYS Public Employment Relations Board (PERB) web site and we need to challenge the Taylor Law.

Jack Barowski- Clarkstown

Congratulated the Town Board for taking a 0% pay raise. Stated that 206 employees earn over $100,000 and that 157 members out of 173 union members earn over $100,000. There should be fairness in contributions towards benefits. Stated that he does not see us being able to get to a 0% increase in police salaries, if they are asking for so much higher, because the arbitrator will award a number in between. It becomes a safety issue if we have to decrease the police force. Expressed concern for our officers' safety if we cut back. Asked the Town Board to reconsider their request for a 0% increase. The counter offer should be higher and we should ask for a 5-7% decrease. Asked how equipment allowances for officers was decided.

Co. Hoehmann

Stated that on the PERB web site, you will not find one arbitration where a negative amount was requested. Established amounts were decided standard across the state for equipment allowances for police departments.

Ed Duer- Comptroller

Stated an $850 stipend is given for additional equipment.

Supervisor Gromack

Stated the Town Board is in agreement and are trying to reduce or eliminate the equipment allowances.

Amy Mele- Town Attorney

Stated that to put a number in a budget for what an arbitrator may award is detrimental to the arbitration process. If anything over 0% is awarded, we will have to find the money elsewhere.

Tom Leonard- Congers

Asked if the eliminated positions were eliminated permanently? Stated that equipment allowances do not make sense and that vouchers should have to be submitted when equipment needed. Complained about the excessive amount of heat used in the building.

Supervisor Gromack

Stated the positions were eliminated permanently and we have eliminated 39 since 2004. The Town Board will follow-up on how the equipment is allocated. It is a good question whether the allowance is an enhancement to the salary or not. Stated this is his second time taking a pay freeze, as he also did so in 2005.

Pete Drower - New City

Asked what is preventing the town from having layoffs and why we can't fire people. Is there anything stopping us from saying, "Let's get rid of 10% of employees?"

Amy Mele- Town Attorney

Stated that we have unions and contracts and can only eliminate the last hired at the lowest paid.

Supervisor Gromack

Stated we have tried to find ways to save money through retirements and consolidation. There may come a time when we have to consider firing in the future. We have done a lot that other communities have not done to reduce.

Wayne Ballard- Superintendent of Highways

Stated that the Highway Department is staffed at 85 people, down from 98 people, and that they are at bare bones. The Highway Department has measurable goals, like snow and leaf removal, and we can't eliminate further, in case of emergencies.

Supervisor Gromack

Stated that 39 less employees is good, but we will look for more savings. We have actively gotten over $15 million in grants and we were the only town locally to get close to $2 million in federal stimulus money.

Co. Lasker

Stated that Supervisor Gromack has gone through every budget and department, line by line. Stated that Clarkstown has a AAA rating from Standard & Poor's and is the best managed town in the county. We are better managed than the county. It is a balancing act and we will cut where we can, but we have to worry about the safety and welfare of the residents. There is a lot of crime associated with the Palisades Mall and home invasions that you don't hear about. We have to be fiscally responsible and maintain safety.

Co. Hoehmann

Stated that this budget is a good start and we will push harder for more savings, line by line, department by department, beyond the Police Department.

Pete Drower - New City

Asked for a taxpayer report card to be placed on the town's web site.

Supervisor Gromack

Stated that the town gets calls asking for us to spend more on certain things too, like paving, walking trails, and drainage. Everybody has different needs and it is important to find balance. There was talk to cut the DARE Program and many fought not to cut it. Resource Officers save lives in school, while others say on paper it's easy to cut that position.

Joe Tradullo- New City

Asked if we are obligated to do the DARE Program?

Supervisor Gromack

Stated that the town is reimbursed at some level for the DARE Program. The officer is not in the school 100% of the time and fulfills other duties when not in the schools. It is up to the School Board to hire resource officers other than Clarkstown employees.

Joe Tradullo- New City

Asked if we have to go to Binding Arbitration?

Co. Hoehmann

Stated that the last recourse for the PBA is Binding Arbitration. You have to declare an impasse to go to arbitration.

Joe Tradullo- New City

Spoke about the large proportion of crime in the county being committed at the Palisades Mall and asked what Clarkstown can do to get a bigger reimbursement for policing it.

Supervisor Gromack

Stated that the town is reimbursed by the mall for police overtime, so overtime amounts may seem higher than they actually are. The mall is entitled to some basic service, as they pay taxes, of which, $15 million in property taxes goes to the school districts, $2.5 million in property taxes goes to the county, and $60 million is county sales tax. The schools provide no services to the mall and the county does not provide many. The Town of Clarkstown provides all services to the mall and we get the lowest amount, $5 million. We would like more.

Co. Lasker

Stated that the town made a case to the County Executive and County Legislators that we are not getting a fair share. There is a lot of credit card fraud and shoplifting at the Palisades Mall and the police officers often have to take overtime to go to court. Suggested the residents speak to the County Legislature about this.

Supervisor Gromack

Stated that the majority of sales tax that the county gets is generated by Clarkstown. Estimated that if the county gets about $150 million in sales tax, about $100 million of it is generated by Clarkstown. The Clarkstown Police Department makes people feel safe at the mall and the county benefits the most. The county should help us with reimbursement, because the mall is their piggy bank, but the County Legislature refused. The County Executive recognized there was an imbalance and the five town supervisors convinced the county to give full reimbursement for the Narcotics Task Force in 2010. Before, we were only reimbursed 40%. All counties with sales tax contribute to schools and towns, sometimes 50%. We are at the bottom. The county is stingy towards Clarkstown.

Co. Hoehmann

Stated that the County Legislators have dual agendas; they represent the county and Clarkstown.

Co. Lasker

Stated that the county should be fighting to give us a fair share.

Supervisor Gromack

Stated that every two years, the county has to get reapproval for sales tax, and we said we would tell our state legislators that if we don't get equity, we will hold the sales tax bill hostage. For every day that it didn't get passed, they would lose millions of dollars. The threat of holding back that bill enabled us to get an extra eight to nine hundred thousand dollars per year to reimburse us. The Clarkstown Police Officers that are on the Narcotics Task Force are doing an outstanding job and we should have been fully reimbursed, which now we are.

Kevin Hobbes- New City

Stated that his kids can't afford to live here. The Clarkstown Police Department is great, but what will we do in the future to get out of the cycle with contract renewals and future arbitration?

Supervisor Gromack

Stated that we can break the cycle and give people what they want, like past Supervisor Holbrook did. This Town Board said that we are not going to do it as in the past and started negotiating, saying no to demands. One choice is Binding Arbitration, as we cannot impose a contract. Clarkstown has gone to Binding Arbitration twice in its history. We may not get what we want, but we will go again and again until we have cooperation by the PBA. The reason we don't have a contract with the PBA is because we held tough and didn't give them everything they wanted. We didn't win for 25 years with negotiation with the way Holbrook did it. We will need the help of citizens. Spoke about the great job the Clarkstown Police Department does.

Kevin Hobbes- New City

Stated that his friends in the Clarkstown Police Department tell him they know they are overpaid.

Supervisor Gromack

Asked Mr. Hobbes if his friends in the Clarkstown Police Department are telling him they are overpaid, because they don't tell the Town Board that.

Kevin Hobbes- New City

Asked Superintendent of Highways Wayne Ballard if the stimulus money we received was unconditional or if we have to give any money back?

Wayne Ballard- Superintendent of Highways

Stated that it is a grant and we do not have to give the stimulus money back.

Guy Gervasi- West Nyack

Asked if sales tax can be imposed?

Supervisor Gromack

Stated that we would have to become a city to impose sales tax. Asked those present if they thought it would be okay to be called the City of Clarkstown? Some people like being called a city, some don't.

Guy Gervasi- West Nyack

Asked if it was up to the Chief of Police who performs the job of School Resource Officers and DARE Officers? Stated it can be a retired officer.

Supervisor Gromack

Stated that we have civilian police dispatchers and we can look into suggestion for School Resource Officers and DARE Officers

Captain Michael Sullivan- Clarkstown Police Department

Stated that DARE is a national program. We could have teachers do it, but the idea is to have the impact of an actual officer in school. School Resource Officer Intelligence is mandatory to gather evidence, get to know the kids, and for prevention. He cited the recent incidents in the Pearl River and Monroe Schools and said the officers are not there for show. The Clarkstown Police Department uses civilians, as much as possible, for dispatchers and fleet maintenance. Fleet maintenance is not just mechanics and officers are needed to work with the mechanics to make sure the vehicles contain what the police need, so they have to understand police work. There is a part-time SWAT Team and Car Seat Unit, but when the officers are not working in these divisions, they are used elsewhere. The staff is pretty lean, as far as the supervisor to officer ratio. 5% of the budget was cut and personnel have been cut, but we want to maintain a level of service. Safety comes first.

Tom Leonard

Stated that School Resource Officer and DARE Programs are wonderful and that officers in classrooms impress the kids. The reality is that certain programs are needed. Other towns have cut back on police and it could be done by replacing them with state police. Hopefully, that won't happen in Clarkstown.

Supervisor Gromack

Stated that there were past referendums to replace local forces with county police, but they didn't pass.

Mary J. O'Connor- New City

Stated that the overtime is obscene and there needs to be 0% tolerance, so that if it is not approved, the employee does not get it. The Clarkstown Police Department is becoming unaffordable. They are valuable and needed, but are bleeding us dry. When people are losing jobs in this economy, the credibility of our police is being questioned. Suggested there should be a civilian review board.

Supervisor Gromack

Stated that there are monthly overtime meetings with all departments and that the hours have been reduced by 14-16% at the Clarkstown Police Department. The goal is to reduce the hours further. Some overtime is reduced by mall reimbursements and grants. Officers sometimes have to appear in court on their day off, and under contract, we cannot change their schedule.

Sandy Barowski- New City

Asked how many of the Town board have relatives that work for the town and asked about relatives of Nick Longo and Anne Marie Smith working for the town. There are a lot of patronage jobs amongst people who have been in politics in the town. We have to look at the whole town, not just the Clarkstown Police Department.

Co. Maloney

Stated that he never has had a relative work for the town.

Town Board

Stated that Nick Longo and Anne Marie Smith haven't been working for the town for some time.

Co. Hoehmann

Stated that we are looking department by department for additional savings.

Jack Barowski- New City

Spoke about Captain Sullivan's salary. Asked why anyone is entitled to a 10% increase within the PBA? Asked if there were any co-chairs or chairs of political parties working for the town?

Supervisor Gromack

Stated that Captain Sullivan is not part of the PBA negotiations, which cannot be commented on by the Town Board. There are two captains and one chief in Clarkstown and they are under individual contracts, with a year remaining. The captains and the chief do not get overtime. Stated that Mary Loeffler, Director of Personnel [Co-Chair of the Conservative Party], and Marsha Coopersmith, First Deputy Town Attorney [Chair of the Independence Party], have been working for the Town of Clarkstown for over twenty years, and he does not know if they were chairs when they were employed, but we do not ask employees what their party affiliation is. Employees are free to pursue that as they wish.

Frank Randel- New City

Asked who dictates terms for salaries in contract negotiations for the captains and the chief?

Supervisor Gromack

Stated that the Town Board negotiates these contracts, and to their credit, the captains and the chief have taken cuts, which they have never done before.

Frank Randel- New City

Stated that little cuts are not enough and that Captain Purtill [retired] is still looking for more money. The pension system can bankrupt a town.

Supervisor Gromack

Stated that the pension system can bankrupt a state and much of the system is on the state level.

Frank Randel- New City

Spoke about the Clarkstown Police Department salaries being out of control and cutting back the SRO Program. Suggested having one SRO Officer and having the state police cover Clarkstown, saying that an option may be the elimination of the Clarkstown Police Department.

Supervisor Gromack

Stated that $1.5 million will be saved and that the Town Board agrees with the speaker about police salaries, which is why they are going to arbitration and trying to make changes on the state level.

Frank Randel- New City

Asked why the town is hiring an on-site manager for the Hamlet Revitalization Project and asked if Ed Lettre was overseeing it?

Supervisor Gromack

Stated that there is an Advisory Committee that meets voluntarily, which is not town sponsored. A project manager comes through an engineering and construction project.

Wayne Ballard- Superintendent of Highways

Stated that we need independent testing for Public Works Projects and we do not want the contractors doing it. It is a common practice to have independent experts.

Supervisor Gromack

Stated that Ed Lettre, Public Works Administrator, is overseeing the project as part of his position. This is being done in house to save money.

Amy Durbin- Congers

Asked if the payments for pension, vacation days and sick days, when an officer retires, comes out of our budget? Asked who makes the presentation to the arbitrators?

Supervisor Gromack

Stated that pension is paid by the state and that buybacks are allowed in the contract from the town, which the Town Board is trying to reduce in negotiations. The Town Board would not have approved what is in the contract now. That is why we have such a difficult time with negotiations with the PBA. The Town Board is trying to reduce buybacks and benefits. We have to arbitrate. You have to start somewhere. The Taylor Law needs to be reformed. The Town Board is not popular with the PBA, but we are trying to be fair with the PBA and responsible for the town. Expressed his respect for the job the Clarkstown Police Department does, but said that the Town Board has a big difference of opinion on compensation. The contracts are for two years, and in June, we'll negotiate a new contract. The town has been waiting six months for a date for arbitration, which may be in January or February.

Amy Mele- Town Attorney

Stated that the town is deciding if there'll be a citizen panel for the arbitration.

Dan Peterson- West Nyack

Asked who the arbitrators are?

Amy Mele- Town Attorney

Stated that the state arbitrators are chosen like a jury. The Taylor Law was drafted to come up with a number. The municipality's ability to pay is under Taylor Law.

Sandy Barowski- New City

Commended the Town Board and Supervisor Gromack, but asked how did this happen?

Co. Maloney

Former Supervisor Holbrook's leadership was different than Supervisor Gromack's. In 1983, we had Binding Arbitration and the PBA was given twice what the Town Board wanted. He gave credit to Supervisor Gromack for being open with the Town Board and being involved every step of the way.

Supervisor Gromack

Stated that we need to move forward. This Town Board is united and he wouldn't be as strong on this issue without their support, including the new Town Board member, Stephanie Hausner, who is starting in January.

Bill Vanslyte- Valley Cottage

Asked if Clarkstown is the place to invest his home improvement loan, which will increase his taxes?

Supervisor Gromack

Stated that the town provides many services and eliminating something may anger some residents. We need to strive for balance. We need drainage, roads fixed, seniors want more clubs, and many need Mini Trans, and we can cancel these services, but another group needs them. We have to blend needs in a way that is affordable. There is a large cost to education and the Town Board does not control that. The residents have the most control on school budgets, which usually pass. The schools are not making cuts and their budgets go up. Schools are dependent on state and federal money. If Albany turns off the spigot to the schools, your tax dollars will skyrocket. Governor Patterson gave millions in stimulus money to schools, but no cuts were made by the schools. We made cuts in our town. We cut jobs. We cut paving roads. This dialog helps us, but you need to make your voice heard at the School Board and the County Legislature. It's a partnership.

Joe Trudullo- New City

Suggested putting ideas about what the town needs and how the residents can help on the town's web site.

Co. Lasker

Stated that the Town Board needs the residents help and that she and Co. Hoehmann will work on Mr. Trudullo's suggestion.

Supervisor Gromack

Stated that Co. Borelli was on personal business this evening, but fully supports this budget.

On motion of Co. Maloney, seconded by Co. Hoehmann, and unanimously adopted, the public hearing was closed 9:35 P.M. RESOLUTION NO. (543-2009)

Respectfully submitted,

Pamela Sitomer

Pamela Sitomer
Deputy Town Clerk