

TOWN OF CLARKSTOWN  
TOWN BOARD MEETING

Town Hall

2/23/93

8:00 P.M.

Present: Supervisor Holbrook  
Council Members Dusanenko, Maloney, Mandia & Smith  
Murray N. Jacobson, Town Attorney  
Patricia Sheridan, Town Clerk

Supervisor declared Town Board Meeting open.  
Assemblage saluted the Flag.

Supervisor declared public portion of the meeting open.

Appearance: Ms. Ellen Antonio  
Congers, New York

Ms. Antonio spoke regarding a sign to read "Children - Slow" to be erected at her corner.

Appearance: Mr. Tom Trevor  
New City

Mr. Trevor spoke regarding Agenda Item #13 (relocation of Metro North's Woodbine trainyard to Nanuet). He urged acceptance of Mr. Geneslaw's proposal.

Appearance: Ms. Marie Bouchard  
Congers, New York

Mrs. Bouchard spoke regarding the Canada geese and suggested a fine for anyone feeding these animals.

Appearance: Mr. Robin Stark  
New Hempstead, New York

Mr. Stark spoke regarding Agenda Item #13 (relocation of Metro North's Woodbine trainyard to Nanuet).

Appearance: Mr. Daniel Cea  
Congers, New York

Mr. Cea spoke regarding assignment of Town cars. He also spoke regarding unnecessary plowing of already cleaned streets.

Appearance: Mr. Bob Jackson  
Nanuet, New York

Mr. Jackson spoke regarding Agenda Item #13 (relocation of Metro North's Woodbine trainyard to Nanuet). He was in favor of the proposed resolution in opposition to Metro North.

Appearance: Mr. Ed Duffy  
Nanuet, New York

Mr. Duffy spoke regarding Agenda Item #13 (relocation of Metro North's Woodbine trainyard to Nanuet). He was in favor of the proposed resolution in opposition to Metro North.

Councilman Dusanenko noted that he was very proud that all of his colleagues on this Town Board had unanimously adopted a resolution requesting the Board of Trustees and the Acting College President of Rockland Community College to

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reconsider raising tuition fees on resident students of Rockland County and also increases in taxes. He noted that he and Supervisor Holbrook, as legislators of Rockland County, had attempted to do the same thing on the County level but it had been voted to submit it to committee for study. He said he was happy to report that the Board of Trustees did rescind that and there will be no tuition hikes for our students. He said our having that resolution sent to other communities and starting the phones and all, through the efforts of Mrs. Sheridan, was instrumental in them reversing that decision.

Appearance: Mrs. Frances Caponigro  
Congers, New York

Mrs. Caponigro spoke regarding the possibility of an amendment and an addition to the general use in the zoning for noise abatement for industrial. Supervisor assured her that after the adoption of this noise abatement amendment that would be the next thing.

RESOLUTION NO. (111-1993) ADOPTING MINUTES OF  
TOWN BOARD MEETING OF  
FEBRUARY 9, 1993

Co. Dusanenko offered and Co. Smith seconded

RESOLVED, that the minutes of the Town Board Meeting of February 9, 1993, are hereby accepted as submitted by the Town Clerk.

On roll call the vote was as follows:

Councilman Dusanenko.....Yes  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....Yes

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RESOLUTION NO. (112-1993) AUTHORIZING RELEASE OF  
PERFORMANCE BOND  
(CROPEY ESTATES  
SUBDIVISION)

Co. Smith offered and Co. Maloney seconded

RESOLVED, that upon the recommendation of the Director of the Department of Environmental Control, performance bond secured by a Letter of Credit to guaranty the completion of the public improvements in the Cropsey Estates Subdivision may be released as sufficient escrows are being held by the Town of Clarkstown to complete certain remaining items.

On roll call the vote was as follows:

Councilman Dusanenko.....Yes  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....Yes

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RESOLUTION NO. (113-1993)

ACCEPTING DEED FROM  
CONKLIN ASSOCIATES  
(CONKLIN PARK) - LAND  
ALONG PIPETOWN HILL  
ROAD, SPRING VALLEY

Co. Maloney offered and Co. Smith seconded

WHEREAS, as a condition to the approval of the final map with regard to a site known as Conklin Park, the Planning Board of the Town of Clarkstown requested a deed for road widening purposes along Pipetown Hill Road, Spring Valley Section of Clarkstown, New York;

NOW, THEREFORE, be it

RESOLVED, that upon the recommendation of the Director of the Department of Environmental of the Town of Clarkstown, deed dated January 15, 1993, from Conklin Associates to the Town of Clarkstown gratuitously conveying a strip of land along Pipetown Hill Road, Spring Valley, New York, is hereby accepted and ordered recorded in the Rockland County Clerk's Office.

On roll call the vote was as follows:

- Councilman Dusanenko.....Yes
- Councilman Maloney.....Yes
- Councilman Mandia.....Yes
- Councilwoman Smith.....Yes
- Supervisor Holbrook.....Yes

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RESOLUTION NO. (114-1993)

AUTHORIZING TOWN  
ATTORNEY TO DEFEND  
PROCEEDING (CRAIG A.  
HICKCOX)

Co. Maloney offered and Co. Smith seconded

WHEREAS, a proceeding has been instituted against the Town of Clarkstown entitled:

In the Matter of the Proceeding of  
CRAIG A. HICKCOX,

Petitioner,

-against-

CHARLES HOLBROOK, SUPERVISOR, WILLIAM  
J. COLLINS, CHIEF OF POLICE, TOWN OF  
CLARKSTOWN, POLICE DEPARTMENT;  
POLICE COMMISSION, TOWN OF CLARKSTOWN,  
and TOWN BOARD OF THE TOWN OF CLARKSTOWN,  
and POLICE OFFICER HARRY A. RAUMANN,

Respondents.

FOR A JUDGMENT PURSUANT TO ARTICLE 78  
of the CIVIL PRACTICE LAW AND RULES.

NOW, THEREFORE, be it

RESOLVED, that the Town Attorney is hereby authorized to take all necessary steps to defend said proceeding.

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RESOLUTION NO. (114-1993) Continued

On roll call the vote was as follows:

Councilman Dusanenko.....Yes  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....Yes

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RESOLUTION NO. (115-1993)

AUTHORIZING TOWN  
ATTORNEY TO DEFEND  
PROCEEDING (RALPH  
WIDMAIER)

Co. Maloney offered and Co. Smith seconded

WHEREAS, a proceeding has been instituted against  
the Town of Clarkstown entitled:

In the Matter of the Application of

RALPH WIDMAIER

Petitioner,

-against-

TOWN OF CLARKSTOWN, PLANNING BOARD  
and BUILDING DEPARTMENT,

Respondent.

NOW, THEREFORE, be it

RESOLVED, that the Town Attorney is hereby  
authorized to take all necessary steps to defend said  
proceeding.

On roll call the vote was as follows:

Councilman Dusanenko.....Yes  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....Yes

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RESOLUTION NO. (116-1993)

AUTHORIZING TOWN  
ATTORNEY TO DEFEND  
PROCEEDING (HEMSTREET,  
INC.)

Co. Maloney offered and Co. Smith seconded

WHEREAS, a proceeding has been instituted against  
the Town of Clarkstown entitled as follows:

In the Matter of

CHARLES HEMSTREET, INC.

Petitioner,

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RESOLUTION NO. (116-1993) Continued

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules,

-against-

JOHN J. DANAHY, EDWARD J. HEED, WENDY  
GANNON, CLAIRE McCUE CINCOTTA and  
MARTIN J. MICHAELSON, Constituting  
the Sanitation Commission of the Town  
of Clarkstown and the TOWN OF CLARKSTOWN,

Respondents.

NOW, THEREFORE, be it

RESOLVED, that the Town Attorney is hereby  
authorized to take all necessary steps to defend said  
proceeding.

On roll call the vote was as follows:

Councilman Dusanenko.....Yes  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....Yes

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RESOLUTION NO. (117-1993)

TRANSFER OF FUNDS FROM  
CONTINGENCY ACCOUNT A  
1990-505 TO  
APPROPRIATION ACCOUNT  
NO. A 8730-409

Co. Maloney offered and Co. Smith seconded

WHEREAS, Ira Wickes/Arborists has been contracted  
to remove a boulder from the right-of-way on Balmoral Drive at  
a cost of \$212.00,

NOW, THEREFORE, be it

RESOLVED, to decrease Contingency Account No. A  
1990-505 and increase Appropriation Account No. A 8730-409  
(Environmental Control--Fees for Services) by \$212.00.

On roll call the vote was as follows:

Councilman Dusanenko.....Yes  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....Yes

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RESOLUTION NO. (118-1993)

AUTHORIZING ATTENDANCE  
AT STATE RECREATION  
AND PARK SOCIETY  
CONFERENCE (JO ANNE  
OLDENBURGER) - CHARGE  
TO ACCOUNT NO.  
7141-414 AND ACCOUNT  
NO. 7310-414

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RESOLUTION NO. (118-1993) Continued

Co. Smith offered and Co. Maloney seconded

RESOLVED, that Jo Anne Oldenburger, Recreation Supervisor and Elaine Apfelbaum, Sr. Recreation Leader, are hereby authorized to attend for three days, the New York State Recreation and Park Society Conference to be held April 18, 1993 through April 21, 1993 in Niagara Falls, New York, and be it

FURTHER RESOLVED, that all necessary expenses be allocated against Accounts Nos. 7141-414 and 7310-414.

On roll call the vote was as follows:

Councilman Dusanenko.....No  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....Yes

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RESOLUTION NO. (119-1993)

AUTHORIZING EXTENSION  
OF AGREEMENT WITH  
AMBULANCE CORPS FOR  
1993

Co. Smith offered and Co. Maloney seconded

WHEREAS, the Town of Clarkstown desires to enter into an agreement with the Ambulance Corps which serve the incorporated and unincorporated portions of the Town of Clarkstown;

NOW, THEREFORE, be it

RESOLVED, that the Supervisor is hereby authorized and directed to enter into an agreement, in a form approved by the Town Attorney, with the following Ambulance Corps, in order to provide for emergency ambulance service to the Town of Clarkstown for the calendar year 1993, upon payment of sums set forth below in quarterly installments at the beginning of each quarter during the calendar year 1993, which shall be charged to the following accounts:

<u>AMBULANCE CORPS</u>	<u>PAYMENT</u>	<u>ACCOUNT NO.</u>
Congers-Valley Cottage Volunteer Ambulance Corps, Inc.	\$136,200.00	A-4540-580
New City Volunteer Ambulance Corps Rescue Squad, Inc.	100,000.00	A-4540-582
Nanuet Community Ambulance Corps, Inc.	140,301.00	A-4540-581
Nyack Community Ambulance Corps	65,819.00	A-4540-583
Spring Hill Ambulance Corps	50,000.00	A-4540-584
<b>TOTAL BASIC AMBULANCE SERVICE</b>	<b>\$492,320.00</b>	

On roll call the vote was as follows:

Councilman Dusanenko.....Yes  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....Yes

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RESOLUTION NO. (120-1992)

REQUESTING ROCKLAND  
COUNTY LEGISLATURE TO  
AUTHORIZE BUS SHELTER  
(ROUTE 50/MIDDLETOWN  
ROAD, NANUET)

Co. Smith offered and Co. Maloney seconded

RESOLVED, that the Town Board of the Town of Clarkstown hereby request the Rockland County Legislature to authorize the construction and installation of a bus shelter at the location of Route 59 and Middletown Road, in front of the tuxedo store, in order to protect commuters from inclement weather.

On roll call the vote was as follows:

Councilman Dusanenko.....Yes  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....Yes

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RESOLUTION NO. (121-1993)

AMENDING TOWN CODE RE:  
SECTION 143-11 (FIRE  
CODE - MULTIPLE  
RESIDENCE)

Co. Mandia offered and Co. Maloney seconded

WHEREAS, the Town Board of the Town of Clarkstown by resolution adopted on November 24, 1992, provided for a public hearing on December 31, 1992, at 12:05 P.M., to consider the adoption of the following proposed Amendment to the Town Code of the Town of Clarkstown, and

WHEREAS, notice of said public hearing was duly published and posted as required by law, and said public hearing was duly held at the time and place specified in said notice, and

WHEREAS, the Town Board of the Town of Clarkstown has received a Short Environmental Assessment Form pursuant to SEQRA, from our consultant Robert Geneslaw, which the Board has discussed and considered such report in making their decision herein;

NOW, THEREFORE, be it

RESOLVED, that based upon the report of Robert Geneslaw, dated December 30, 1992, acting as staff to the Town Board as lead agency, the Town Board hereby determines that the Amendment to the Town Code is not subject to the State Environmental Quality Review Act (SEQRA), and no further processing pursuant to SEQRA is required, and be it

FURTHER RESOLVED, that the Town Code of the Town of Clarkstown be and it hereby is amended as follows:

Amend Section 143-11. Permits, to read as follows:

From: "Multiple residence, including condominiums."

To: "Multiple residence, including condominiums, but excluding those condominiums whose units have

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RESOLUTION NO. (121-1993) Continued

individual outside entrances without any common hallways."

and be it

FURTHER RESOLVED, that the Town Attorney is hereby authorized and directed to prepare notice of this Amendment to the Town Code and that the Town Clerk cause the same to be published in the official newspaper of the Town and file proof thereof in the Office of the Town Clerk, as required by law.

On roll call the vote was as follows:

Councilman Dusanenko.....Yes  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....No  
Supervisor Holbrook.....Yes

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RESOLUTION NO. (122-1993)

AUTHORIZING PLANNING BOARD TO APPLY SECTION 281 (J & R SARNA SUBDIVISION)

Co. Smith offered and Co. Maloney seconded

WHEREAS, Atzl, Scatassa & Zigler, P.C., engineers for the applicants J. & R. SARNA, have made written application for the use of Town Law Section 281 in connection with a subdivision shown on a map entitled, "Standard Layout, Subdivision of Property for J. & R. Sarna, Town of Clarkstown, Rockland County, New York," dated October 1, 1992, prepared by Atzl, Scatassa & Zigler, P.C., and

WHEREAS, the Planning Board of the Town of Clarkstown has recommended approval of the use of Town Law Section 281 in connection with this subdivision because the standard layout provides for a better design, and

WHEREAS, the Town Board of the Town of Clarkstown finds that it would be a benefit to the Town of Clarkstown if Town Law Section 281 authorization is granted for the development of the property for J. & R. SARNA;

NOW, THEREFORE, be it

RESOLVED, that the Planning Board of the Town of Clarkstown is hereby authorized to use Town Law Section 281 for the proposed subdivision as shown on a map entitled, "Standard Layout, Subdivision of Property for J. & R. Sarna, Town of Clarkstown, Rockland County, New York," dated October 1, 1992, prepared by Atzl, Scatassa & Zigler, P.C.

On roll call the vote was as follows:

Councilman Dusanenko.....Yes  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....Yes

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RESOLUTION NO. (123-1993)

GRANTING CERTIFICATE  
OF REGISTRATION (NO.  
93-6 - MONSEY  
EXCAVATING, INC.)

Co. Dusanenko offered and Co. Mandia seconded

WHEREAS, the following has applied for a  
Certificate of Registration pursuant to Section 236-48 of the  
Code of the Town of Clarkstown:

MONSEY EXCAVATING, INC.  
18 Laura Drive  
Monsey, New York 10952  
PRINCIPAL: Albert Lepori

NOW, THEREFORE, be it

RESOLVED, that the following Certificate of  
Registration be issued:

No. 93-6 MONSEY EXCAVATING, INC.

On roll call the vote was as follows:

Councilman Dusanenko.....Yes  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....Yes

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RESOLUTION NO. (124-1993)

GRANTING EXTENSION OF  
SICK LEAVE OF ABSENCE  
TO CUSTODIAN I - PARKS  
BOARD AND RECREATION  
COMMISSION (EDWARD  
DAVIS, JR.)

Co. Maloney offered and Co. Mandia seconded

RESOLVED, that in accordance with Article XVIII,  
Section 3(k) of the Labor Agreement between the Town of  
Clarkstown and the Clarkstown Unit of the C.S.E.A., Edward  
Davis, Jr., P.O. Box 110, Nyack, New York - Custodian I - Parks  
Board and Recreation Commission - is hereby granted an  
extension of his Sick Leave of Absence - at one-half pay -  
effective and retroactive to February 22, 1993 to March 8, 1993.

On roll call the vote was as follows:

Councilman Dusanenko.....Yes  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....Yes

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RESOLUTION NO. (125-1993)

GRANTING EXTENSION OF  
SICK LEAVE OF ABSENCE  
TO LABORER - HIGHWAY  
DEPARTMENT (JEFFREY  
MEARA)

Co. Maloney offered and Co. Mandia seconded

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RESOLUTION NO. (125-1993) Continued

RESOLVED, that in accordance with Article XVIII, Section 3(k) of the Labor Agreement between the Town of Clarkstown and the Clarkstown Unit of the C.S.E.A., Jeffrey Meara, 686 Sierra Vista Lane, Valley Cottage, New York - Laborer - Highway Department - is hereby granted an extension of his Sick Leave of Absence - at one-half pay - effective and retroactive to February 22, 1993 to March 22, 1993.

On roll call the vote was as follows:

Councilman Dusanenko.....Yes  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....Yes

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RESOLUTION NO. (126-1993)

GRANTING SICK LEAVE OF  
ABSENCE TO KATHLEEN  
McDERMOTT - ASSESSOR'S  
OFFICE

Co. Maloney offered and Co. Mandia seconded

RESOLVED, that in accordance with Article XVIII, Section 3(k) of the Labor Agreement between the Town of Clarkstown and the Clarkstown Unit of the C.S.E.A., Kathleen McDermott, 54 Basswood Court, Bardonia, New York, is hereby granted a Sick Leave of Absence - at one-half pay - effective and retroactive to February 18, 1993 to March 18, 1993.

On roll call the vote was as follows:

Councilman Dusanenko.....Yes  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....Yes

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RESOLUTION NO. (127-1993)

REAPPOINTING TO  
POSITION OF MEMBER -  
CLARKSTOWN DRUG ABUSE  
PREVENTION COUNCIL  
(JOSEPH PANTANO)

Co. Maloney offered and Co. Mandia seconded

RESOLVED, that Joseph Pantano, 265 South Little Tor Road, New City, New York, is hereby reappointed to the position of Member - Clarkstown Drug Abuse Prevention Council - to serve without compensation - term effective and retroactive to January 1, 1993 and to expire on December 31, 1993.

On roll call the vote was as follows:

Councilman Dusanenko.....Yes  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....No

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RESOLUTION NO. (128-1993)

AUTHORIZING STUDY OF  
PROPOSED RELOCATION OF  
WOODBINE YARD - METRO  
NORTH COMMUTER  
RAILROAD (ROBERT  
GENESLAW CO.) - CHARGE  
TO ACCOUNT NO. B  
8020-409

Co. Dusanenko offered and Co. Maloney seconded

WHEREAS, Metro North Commuter Railroad has a proposal to relocate the Woodbine Engine Yard, which proposal is to move the existing Spring Valley station to the hamlet of Nanuet in the Town of Clarkstown, and

WHEREAS, the Town Board of the Town of Clarkstown is concerned about the potential impact of this proposal on the Town and the Nanuet Community, and

WHEREAS, the Town Board wishes to examine, evaluate and study the proposed relocation on the Nanuet area and the Town of Clarkstown

NOW, THEREFORE, be it

RESOLVED, that the Town Board hereby approves letter proposal from Robert Geneslaw Co. dated January 21, 1993 to undertake a study to assist the Town Board in evaluating the impact of the proposal, and to initially evaluate alternatives, at a cost not to exceed \$15,000.00, and be it

FURTHER RESOLVED, that the fee for the planning study shall be charged to Account No. B 8020-409.

Before roll call Councilwoman Smith said Mr. Geneslaw and Mr. Yacyshin have worked very diligently on this but we would be remiss if we did not recognize Oren Goetz of Clarkstown who has been in the forefront of all of the discussion and without him much of this would have slipped right by us. What we are doing is correct but she did not think that the Town of Clarkstown should be bearing the total burden of this \$15,000.00 study. Fortunately the developers in the area are sharing it with us. This is one of the transportation issues that affect the region and certainly the County should have been right in on this with us.

On roll call the vote was as follows:

Councilman Dusanenko.....Yes  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....Yes

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RESOLUTION NO. (129-1993)

AUTHORIZING SUPERVISOR  
TO ENTER INTO CONTRACT  
WITH ORGANIC  
RECYCLING, INC. -  
CHARGE TO ACCOUNT NO.  
SR 8160-409

Co. Dusanenko offered and Co. Maloney seconded:

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RESOLUTION NO. (129-1993) Continued

WHEREAS, the Town of Clarkstown has established a Sanitation Refuse and Garbage District as part of an overall program for solid waste management, and

WHEREAS, the Town Board of the Town of Clarkstown is desirous of continuing a leaf composting program for the unincorporated portion of the Town of Clarkstown, and

WHEREAS, a proposal has been made by Beng Leong Ooi, and Organic Recycling Inc., to provide technology and other assistance to the Town of Clarkstown for the purposes of managing the Town composting project to reduce leaves to usable humus or topsoil, at the same fee schedule of the existing agreement, and

WHEREAS, the Town Board of the Town of Clarkstown wishes to retain the services of Organic Recycling Inc., to obtain the technology necessary to successfully compost leaves;

NOW, THEREFORE, be it

RESOLVED, that the Supervisor is hereby authorized to enter into a contract in a form approved by the Town Attorney which shall provide technological assistance from Organic Recycling Inc., to manage the Town of Clarkstown leaf composting project for the period April 1, 1993 through March 31, 1998 at the same fee and payment schedule as the current contract as set forth in said proposal, and be it

FURTHER RESOLVED, that the revenue from the sale of compost, if any, shall be equally divided between the Town and Organic Recycling Inc., in accordance with said proposal, and be it

FURTHER RESOLVED, that charges pursuant to this resolution shall be paid from Account No. SR-8160-409.

On roll call the vote was as follows:

- Councilman Dusanenko.....Yes
- Councilman Maloney.....Yes
- Councilman Mandia.....Yes
- Councilwoman Smith.....Yes
- Supervisor Holbrook.....Yes

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RESOLUTION NO. (130-1993)

AUTHORIZING LEASE OF  
CATERPILLAR D5HLGP  
BULLDOZER FOR SOLID  
WASTE FACILITY -  
CHARGE TO ACCOUNT NO.  
SR 8160-443

Co. Smith offered and Co. Maloney seconded

WHEREAS, a Bulldozer is required for the continued maintenance of cover at the Clarkstown Solid Waste Facility and for general site maintenance at the French Farms and Route 59 composting site

NOW, THEREFORE, be it

RESOLVED, that Leslie F. Bollman, Director, Department of Environmental Control, has been authorized to

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RESOLUTION NO. (130-1993) Continued

lease one new Caterpillar D5HLGP Bulldozer for twenty five months at a cost of \$6,350.00 for the first twenty four months and \$635.00 for the final month subject to the Town Attorney's review of proposal, and be it

FURTHER RESOLVED, that all proper charges be charged against Account No. SR 8160-443.

On roll call the vote was as follows:

Councilman Dusanenko.....Yes  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....Yes

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RESOLUTION NO. (131-1993)

ESTABLISHING PART-TIME  
SALARIES FOR PARKS  
BOARD AND RECREATION  
FOR 1993

Co. Smith offered and Co. Maloney seconded

RESOLVED, based upon the recommendation of the Clarkstown Parks Board and Recreation Commission and the Acting Superintendent of Recreation and Parks that the following 1993 part-time salaries be established:

<u>PART-TIME</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>
Recreation Aide	\$ 4.25/hr.	\$ 4.25/hr.
Recreation Assistant	\$ 4.50/hr.	\$12.00/hr.
Recreation Leader	\$ 7.00/hr.	\$15.00/hr.
Recreation Specialist	\$ 7.00/session	\$35.00/session
Refreshment Stand Attendant I	\$ 4.25/hr.	\$ 7.00/hr.
Refreshment Stand Attendant II	\$ 6.00/hr.	\$10.00/hr.
Lifeguard	\$ 7.00/hr.	\$10.00/hr.
Head Lifeguard	\$ 8.50/hr.	\$12.00/hr.
Water Safety Instructor	\$ 8.50/hr.	\$10.50/hr.
Head Water Safety Instructor	\$ 9.00/hr.	\$11.00/hr.
Laborer-Student	\$ 6.00/hr.	\$ 9.00/hr.
Groundswoker (L)	\$ 8.00/hr.	\$11.00/hr.
Custodial Worker (Seasonal) (L)	\$ 5.00/hr.	\$11.00/hr.
Senior Citizen's Leader (Part-time)	\$10,790./year	\$21,580./year
Swim Area Supervisor (Seasonal)	\$ 9,894./season	\$14,870./season
Senior Recreation Leader (Seasonal)	\$ 4,959./season	\$ 7,795./season
Senior Recreation Activity Specialist (Seasonal)	\$ 3,546./season	\$ 6,378./season

There was dialogue between Councilman Mandia and Mr. Connington regarding changes in the schedule from last year. Councilman Dusanenko felt that paying \$11.00 an hour for unskilled work was ridiculous at this point in time.

On roll call the vote was as follows:

Councilman Dusanenko.....No  
Councilman Maloney.....Yes  
Councilman Mandia.....No  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....Yes

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With regard to Agenda Item No. 17 (Bid for Court Stenographer Services) Councilwoman Smith said she would ask that this be the final time that this comes up without receiving the specs and seeing what the responsibilities are. If this is such an urgent matter please have them sent to us before the next Town Board Meeting and we will act on it. Councilman Dusanenko said instead of just asking, let's direct that it be done and returned at the next meeting. Councilman Mandia said he would also like to make sure that all four judges agree with the terms of what is in those specs. He said he thinks they do but let's not have any more questions on it. Councilwoman Smith said she was not going to move this tonight but she would request that the Town Attorney, since we are in the middle of a few law suits over this, thoroughly review the specs that have been prepared as well as the Deputy Town Attorney's report to us on the same matter.

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RESOLUTION NO. (132-1993)

AWARDING BID FOR BID  
#14-1993 - BITUMINOUS  
CONCRETE (COUNTY  
ASPHALT, PLAZA  
MATERIALS CO., TILCON  
NEW YORK AND STONE  
INDUSTRIES)

Co. Dusanenko offered and Co. Maloney seconded

RESOLVED, that based upon the recommendation of the Director of Purchasing that

BID #14-1993  
BITUMINOUS CONCRETE

is hereby awarded to

COUNTY ASPHALT  
PO BOX 96  
WEST MAIN ST  
TARRYTOWN NY 10591  
PRINCIPALS: FRANK D COONEY JR  
JOHN T COONEY SR  
JOHN T COONEY JR  
MICHAEL S CESTONE  
MURRAY FLEISCHMAN

PLAZA MATERIALS CO  
969 MIDLAND AVE  
YONKERS NY 10704  
PRINCIPAL: CARL E PETRILLO  
  
STONE INDUSTRIES  
PO BOX 8310  
CENTRAL AVE  
HALEDON NJ 07538  
PRINCIPAL: JANET R BRAEN

TILCON NEW YORK  
PO BOX 362  
HAVERSTRAW NY 10927  
PRINCIPAL: PUBLIC CORPORATION

as per the attached item/price schedule

(Item/price schedule on file in Town Clerk's Office)

On roll call the vote was as follows:

Councilman Dusanenko.....Yes  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....Yes

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RESOLUTION NO. (133-1993)

AWARDING BIDS FOR BID  
#15-1993 - CRUSHED  
STONE (TILCON NY,  
INC., LONE STAR  
INDUSTRIES, PLAZA  
MATERIALS CO., M.J.  
LUND TRUCKING INC.,  
AND STONE INDUSTRIES)

Co. Dusanenko offered and Co. Maloney seconded

RESOLVED, that based upon the recommendation of the  
Director of Purchasing that

BID #15-1993  
CRUSHED STONE

is hereby awarded to:

TILCON NY INC.  
PO BOX 362  
HAVERSTRAW NY 10927  
PRINCIPAL: PUBLIC CORPORATION

LONE STAR INDUSTRIES  
162 OLD MILL ROAD  
WEST NYACK NY 10994  
PRINCIPAL: PUBLIC CORPORATION

PLAZA MATERIALS CO  
969 MIDLAND AVE  
YONKERS NY 10704  
PRINCIPAL: CARL E. PETRILLO

M.J. LUND TRUCKING INC  
BRISMAN DRIVE  
THIELLS NY 10984  
PRINCIPAL: MARTIN J. LUND

STONE INDUSTRIES  
PO BOX 8310  
CENTRAL AVENUE  
HALEDON NJ 07538  
PRINCIPAL: JANET R. BRAEN

as per the attached item/price schedule

(Item/price schedule on file in Town Clerk's Office)

On roll call the vote was as follows:

Councilman Dusanenko.....Yes  
Councilman Maloney.....Yes  
Councilman Mandia.....Yes  
Councilwoman Smith.....Yes  
Supervisor Holbrook.....Yes

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RESOLUTION NO. (134-1993)

GRANTING PERMISSION TO  
ANCIENT ORDER OF  
HIBERNIANS FOR USE OF  
SHOWMOBILE SUNDAY  
MARCH 21, 1993

Co. Dusanenko offered and Co. Mandia seconded

WHEREAS, the Ancient Order of Hibernians has  
requested use of the Town of Clarkstown showmobile on Sunday,  
March 21, 1993, for the Annual St. Patrick's Day Parade to be  
held in Pearl River, New York,

NOW, THEREFORE, be it

RESOLVED, that permission is hereby granted to the  
Ancient Order of Hibernians to use the Town of Clarkstown

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RESOLUTION NO. (134-1993) Continued

showmobile on Sunday, March 21, 1993, for the above purposes and subject to the provision of the necessary insurance policies.

On roll call the vote was as follows:

- Councilman Dusanenko.....Yes
- Councilman Maloney.....Yes
- Councilman Mandia.....Yes
- Councilwoman Smith.....Yes
- Supervisor Holbrook.....Yes

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On motion of Councilman Maloney, seconded by Councilman Mandia and unanimously adopted, the public hearings re: Local Law No. 1-1993 - Repeal of Chapter 205 - Peace and Good Order of the Town Code of the Town of Clarkstown and Local Law No. 2-1993 - Noise Abatement, were opened, time: 8:30 P.M.

On motion of Councilman Maloney, seconded by Councilwoman Smith and unanimously adopted, the public hearings re: Local Law No. 1-1993 - Repeal of Chapter 205 - Peace and Good Order of the Town Code of the Town of Clarkstown and Local Law No. 2-1993 - Noise Abatement, were closed, time: 9:20 P.M.

Councilman Maloney said he would move the resolutions to repeal and adopt with the idea that we would look into the agricultural matter later on.

RESOLUTION NO. (135-1993)	LOCAL LAW NO. 1-1993 - REPEAL OF CHAPTER 205 (PEACE AND GOOD ORDER)
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Co. Maloney offered and Co. Smith seconded

WHEREAS, a proposed local law entitled:

"REPEAL OF CHAPTER 205 (PEACE AND GOOD ORDER)  
OF THE TOWN CODE OF THE TOWN OF CLARKSTOWN"

was introduced by Councilman Maloney at a Town Board meeting held on January 26, 1993, and

WHEREAS, the Town Board of the Town of Clarkstown by resolution adopted on January 26, 1993, directed that a public hearing be held on February 23, 1993, at 8:35 P.M., and

WHEREAS, a notice of said hearing was duly prepared and published in the Journal News on February 12, 1993, and

WHEREAS, a copy of the proposed local law in final form was placed on the desks of the Supervisor and the Councilmen at their office at the Clarkstown Town Hall, 10 Maple Avenue, New City, New York, on January 25, 1993, and

WHEREAS, a public hearing was held by the Town Board of the Town of Clarkstown on February 23, 1993;

NOW, THEREFORE, be it

RESOLVED, that Local Law No. 1 - 1993, entitled:

"REPEAL OF CHAPTER 205 (PEACE AND GOOD ORDER)  
OF THE TOWN CODE OF THE TOWN OF CLARKSTOWN"

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RESOLUTION NO. (135-1993) Continued

is hereby ADOPTED and passed by an affirmative vote of the Town Board of the Town of Clarkstown, the vote for adoption being as follows:

- Charles E. Holbrook, Supervisor.....
- John R. Maloney, Councilman.....
- Ralph F. Mandia, Councilman.....
- Ann Marie Smith, Councilwoman.....
- Theodore R. Dusanenko, Councilman...

The Clerk of the Town of Clarkstown was directed to file the local law pursuant to Section 27 of the Municipal Home Rule Law.

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RESOLUTION NO. (136-1993)

LOCAL LAW NO. 2-1993 -  
NOISE ABATEMENT

Co. Maloney offered and Co. Smith seconded

WHEREAS, a proposed local law entitled:

"NOISE ABATEMENT"

was introduced by Councilman Maloney at a Town Board meeting held on January 26, 1993, and

WHEREAS, the Town Board of the Town of Clarkstown by resolution adopted on January 26, 1993, directed that a public hearing be held on February 23, 1993, at 8:40 P.M., and

WHEREAS, a notice of said hearing was duly prepared and published in the Journal News on February 12, 1993, and

WHEREAS, a copy of the proposed local law in final form was placed on the desks of the Supervisor and the Councilmen at their office at the Clarkstown Town Hall, 10 Maple Avenue, New City, New York, on January 25, 1993, and

WHEREAS, a public hearing was held by the Town Board of the Town of Clarkstown on February 23, 1993, and

WHEREAS, the Town Board of the Town of Clarkstown has received a report, pursuant to SEQRA, from our consultant Robert Geneslaw, which the Board has discussed and considered such report in making their decision herein;

NOW, THEREFORE, be it

RESOLVED, that based upon the report of Robert Geneslaw, dated February 3, 1993, acting as staff to the Town Board as lead agency, the Town Board hereby determines that the Amendment to the Zoning Ordinance shall not have any significant impact on the environment and no further processing pursuant to the State Environmental Quality Review Act (SEQRA) is required, and be it

FURTHER RESOLVED, that Local Law No. 2 - 1993, entitled:

"NOISE ABATEMENT"

is hereby ADOPTED and passed by an affirmative vote of the Town Board of the Town of Clarkstown, the vote for adoption being as follows:

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RESOLUTION NO. (136-1993) Continued

- Charles E. Holbrook, Supervisor.....
- John R. Maloney, Councilman.....
- Ralph F. Mandia, Councilman.....
- Ann Marie Smith, Councilwoman.....
- Theodore R. Dusanenko, Councilman...

The Clerk of the Town of Clarkstown was directed to file the local law pursuant to Section 27 of the Municipal Home Rule Law.

Before a vote could be taken on either of these motions the following resolution was proposed

RESOLUTION NO. (137-1993) FAILED                      TABLING RESOLUTIONS  
 NOS. 135 (REPEAL OF  
 PEACE AND GOOD ORDER  
 AND 136 (NOISE  
 ABATEMENT)

Co. Dusanenko offered and Co. Mandia seconded

RESOLVED, that Resolution No. (135-93) "Repeal of Chapter 205 (Peace and Good Order)" and Resolution No. (136-93) Adoption of Local Law No. 2-1993 "Noise Abatement" are hereby tabled.

On roll call the vote was as follows:

- Councilman Dusanenko.....Yes
- Councilman Maloney.....No
- Councilman Mandia.....Yes
- Councilwoman Smith.....No
- Supervisor Holbrook.....No

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The tabling resolution having failed the vote on Resolutions 135-93 and 136-93 was as follows:

RESOLUTIONS (135-1993 and 136-1993) Continued

On roll call the vote was as follows:

- Councilman Dusanenko.....No
- Councilman Maloney.....Yes
- Councilman Mandia.....No
- Councilwoman Smith.....Yes
- Supervisor Holbrook.....Yes

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Councilman Dusanenko said let the minutes indicate that he had attempted to table adoption of this local law until we had the ramifications. He said he would like to publicly commend both John Maloney and John Costa and Mr. Geneslaw for the vast amount of input into this. After hearing from the public and some of the concerns they address he would prefer to have this tabled to study a local law before adopting. For those who think I am not making sense how would you like to have your doctor do an operation on you before he does the diagnosis because that is what we are basically doing to some small degree. There are good controls in this law but if we are going to do it rather than going to the cost of readvertising and rehearing and making adoptions let's find out where it's going to hurt people like the farmers and others in

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RESOLUTIONS NOS. (135-1993 and 136-1993) Continued

the community first and change it. It may take a whole big two months before those active lawn mowers come out to get a law that we all could live with and for that reason he would be forced to vote no at this time.

Councilman Maloney said sometimes we can delay but he thinks that a lot of study has been done and we have listened to the people tonight and he thinks it encompasses most of the things. We can't make any law that is going to cover every single iota of every kind of a noise that we might think of. But in general if we have something in force now or soon, then people will know that you cannot start a lawn mower before a certain time. In terms of the farmers, we can look at that and maybe two or three months down the road we can make an amendment. We have to start. Sometimes we are criticized and people say why don't you do something about the noise? Why is this person permitted to use a lawn mower? All these professional people that are coming in - pretty soon these kids that operate these lawn mowing services - they don't give a damn about what time they come. The more laws they cut the more money they are going to make so they will start at 6:00 A.M. or 7:00 A.M. on a Saturday or Sunday. He said he figures it is best to do something now and let's worry about the other problems down the road and he is voting yes.

Councilman Mandia said on the issue of the agricultural people he agrees with Councilman Maloney that can be handled down the road if in fact it is a problem. As Mr. Costa said the equipment typically used on a farm is not part of the designated equipment in this law. It more comes under the general purpose of annoying noises. The situation with the police enforcement, frankly, is the thing that he is concerned about. He voted to table it specifically because he wants to chat a little bit, as a Police Commissioner, with members of the Police Department to see how they would feel about this. The law is a good one. The idea is a good concept and he thinks it can work. He does have some concerns, however, about this judgment call. He said Mr. Duffy, as you heard him say earlier, has had some problems with Lauderdale. He has met with the Police Commission on several occasions. There are some problems with enforcement. If we deal with something that is a complete judgment call, until I am satisfied that the police can live with that, I'd be more comfortable to delay a decision on this for another week for that one reason alone. He said he would vote no on this point although he does congratulate Mr. Costa on writing a fine document. His only objection is he would like not three months - another week would be plenty.

Councilwoman Smith said she was going to vote yes. She said she knew that many of the complaints that come to us on the noise problem have been answered with this law. Personally, she said she would not have a problem with exempting the agricultural profession tonight. If the legal people think it is a significant change from what was advertised than I would wait for them to review it again. She said she did not know that any of the farmers, in their operations, have ever been abusive to the surrounding areas so she thinks it would be quite legitimate to exempt them. She said she would vote yes for the law.

Supervisor Holbrook said he is going to support the law because he thinks that we have played around with this idea of controlling noise in the Town for ever and anon. People

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RESOLUTIONS NOS. (135-1993 and 136-1993) Continued

have been frustrated over the years because of instances where they have had unreasonable neighbors. And that is what we are really dealing with here - not the 99.9% of people who are courteous and respectful of their neighbors but those that are not and those who don't care whether they disturb the peace and tranquility which people have moved to this area for and invested a lot of money in their homes and properties. This gives our Police Department the opportunity to actually go out there and provide to these citizens, who pay a lot of taxes to try to enjoy their homes, a possible remedy to the problems that they have been experiencing. He thinks the law makes sense. He thinks the agricultural thing can be taken care of if it proves to be a problem which he doesn't think it will be and he thinks this will provide for those long suffering residents at least an opportunity or hope that they don't have to listen to excessive burglar alarms that are running for hours and hours where someone is living in Long Island and they don't even care because they don't hear the thing. These are things that this Town Board has wrestled with for a long time and the law makes sense. It is our job to help the peace and tranquility of our citizens here in the Town and to protect that. He said he thinks this law does that so he votes yes.

Councilman Dusanenko said it is a fait accompli and it is not a personal vindictiveness - in fact he said he gave praise in this but at the same time since Mr. Mandia as a Police Commissioner and Mr. Maloney is also a Police Commissioner, he (Councilman Dusanenko) has been yelling and screaming for the last fourteen months about street lights in this Town. It is the responsibility of the Police Department to find street lights. They don't have time to report street lights now. What are they going to do when they have less time on streets lights that could cause accidents, could cause deaths whether it is a noisy neighborhood or a quiet neighborhood does have accidents at intersections, causes more volunteer first aid and EMT people to be there. They can't do that now and you are going to burden them. And yes, I respect Mrs. Caponigro and everyone else with the individual complaints but if you don't fine tune it a little bit you're making a farce. You are giving everyone false hope, false encouragement and less public services that we can't provide and only those police can provide to us when we really need it.

Supervisor said he thinks the essential difference is a policeman is called out to a situation where there is excessive noise right now and finds that all he can do is empathize with the citizen rather than provide that citizen with a remedy and he thinks that is the difference. The street lights are out and he agrees that the police and highway and whoever should be reporting them in. We have provided phones and everything else but that will be taken care of. This is a situation where police are already responding to situations and it needs to be done.

There being no further business to come before the Town Board and no one further wishing to be heard, on motion of Councilwoman Smith, seconded by Councilman Maloney and unanimously adopted, the Town Board Meeting was declared closed, time: 9:30 P.M.

Respectfully submitted,

PATRICIA SHERIDAN  
Town Clerk

TOWN OF CLARKSTOWN  
PUBLIC HEARING

Town Hall

2/23/93

8:30 P.M.

Present: Supervisor Holbrook  
Council Members Dusanenko, Maloney, Mandia & Smith  
John Costa, Deputy Town Attorney  
Patricia Sheridan, Town Clerk

Re: Local Law No. 1-1993 - Repeal of Chapter 205 (Peace and  
Good Order  
Local Law No. 2-1993 - Noise Abatement

On motion of Councilman Maloney, seconded by Councilman Mandia and unanimously adopted, the public hearings were declared open. Town Clerk read notices calling public hearings and testified as to proper postings and publications.

Deputy Town Attorney stated that it is proposed to repeal Chapter 205 which is presently entitled "Peace and Good Order." This local law has been on the books since 1974 and it seeks to regulate use of radios, amplifiers and other devices that produce sound. The standard in this current local law is to outlaw any loud or excessive noise in the operation or use of any radio, phonograph, etc. It has not been successful in suppressing that type of noise. We have had some difficulties in the local court and it did not cover the broad range of noise nuisance that you can encounter. This is proposed to repeal that and replace it with a new local law entitled "Noise Abatement." The noise abatement as proposed is much broader and it defines certain sounds as being unreasonable and certain sounds as being unnecessary. When you have the combination of an unreasonable sound as well as an unnecessary sound it becomes a violation of law under the new local law.

He said in drafting this law he consulted the current case law and focused primarily on two cases in the Court of Appeals in 1982 and 1983. The first case declared a noise abatement law to be unconstitutional because its standard revolved around an unreasonable or unnecessary noise as perceived by a single person which the court felt was an invitation to prosecution under a standard that was too subjective. The second case law referred to unreasonable noise as perceived by a reasonable person of normal sensitivities and that was found to be constitutional and not void for vagueness and that is the approach he took in writing this proposed local law.

He said there are certain sounds deemed to be unnecessary and the sound caused by these activities would be per se violations under any circumstances. If you look at proposed Section 205-4 you see that it refers to sounds that are caused by lawn mowers, leaf blowers, chain saws, hedge clippers, mulching or chipping machines prior to 8:00 A.M. in the morning and after 8:00 P.M. in the evening in any residential zone or prior to 7:00 A.M. or after 9:00 P.M. in any other zone. Certain other activities such as earth moving equipment, bulldozers, the sound a gasoline diesel engine would produce when it is not properly equipped with a muffler - these are the types of sounds that are intrusive and would be something that would constitute a nuisance and therefore should be illegal, per se.

Mr. Costa said the second part of this proposed local law prohibits any unnecessary noise which occurs within the unincorporated portion of the Town of Clarkstown. However, the noise produced by a siren, alarm or warning device of any ambulance service, police or fire department when it is

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PH - Re: Local Law No. 1-1993 - Repeal of Chapter 205 (Peace and Good Order) and Local Law No. 2-1993 - Noise Abatement  
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necessary to warn the public is excepted. This section 205-5 is a general section and it will allow enforcement of nuisance type noise which is not necessary and is of a level to be deemed unreasonable.

Mr. Costa stated that the heart of the local law is the definition of unreasonable noise. It says any sound whether produced by human voice or any instrument or equipment or by the operation of machinery or by the use of any mechanical or electronic device which is audible to any person when such sound threatens to or actually annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of any reasonable person of normal sensitivities, which he believes is the standard that the Court of Appeals has recognized as being a valid standard to use - when we have that type of noise for which there is no exception in the local law then that can become unnecessary noise which would be a violation.

Councilman Mandia said in talking about diesel engines, which is someplace in the proposed law, what comes to mind is earlier we were talking about this railroad yard. He asked do you know if the government, whether it is the federal or the state government, deals with that kind of equipment? Could that be deemed an interstate piece of equipment? In the beginning it talks about what is reasonable and what isn't. He said he is concerned that this issue is going to raise a lot of complaints. If the Police Department is going to deal with this appropriately what are some of the arguments we are going to get about that issue?

Councilman Mandia said in the opening remarks within the law - unreasonable noise - any sound whether produced by the human voice, instrument, equipment - I know you talked about it but please clarify how we are going to enforce this - you know, someone having an argument at home, yelling at their child - a couple of kids arguing with one another - I am only concerned and I know you are too. If we can't enforce something which is the problem with the current law we are not going to get anywhere.

Mr. Costa said he would deal with Councilman Mandia's second question first which deals with the method of enforcement. This proposed local law is written in such a way that no specialized equipment would be necessary to commence enforcement. We don't need decibel meters. We don't have to measure the point of the sound to the point of the property line, etc. It can be enforced by the Police Department and they would have to apply a reasonable manned test. Let's say the sound is produced by a domestic quarrel and it results in a telephone call to the Police Department and an officer is dispatched. The police officer is going to have to make a judgment as to whether or not that sound is of a nuisance level which impinges upon the sensitivities of a reasonable person. If it offends a single individual, who may be the next door neighbor, that does not necessarily mean that results in enforcement. The officer is going to have to make a discretionary judgement call if there is probable cause and he can write it up. He said he would think that the sound produced from a domestic quarrel would have to be of such nature and duration and sound as to be offensive to a number of individuals and not a single individual before enforcement can commence. Once enforcement has commenced it is up to the local Justice Court to make the determination based on the evidence on a case by case basis as to whether or not a violation has occurred.

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PH - Re: Local Law No. 1-1993 - Repeal of Chapter 205 (Peace and Good Order) and Local Law No. 2-1993 - Noise Abatement  
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Mr. Costa said, for example, if someone in the middle of the night turns on a chipping machine or a leaf blower of some sort and is making quite a racket which produces a call to the Police Department that happens to be a per se violation. The law deems that activity to be an unnecessary and unreasonable noise level. There the standard doesn't require the application of anyone's discretion. It is simply outlawed. So we have a number of those sounds that are outlawed and then we have areas where it is going to depend on the case by case basis. The Town Attorney's office would be available to assist the police in making some determinations. Obviously, not during the middle of the night but as we experience this local law if adopted, we will work out some procedures that will assist in enforcement. It is going to depend on the reception the law receives in the Justice Court and decisions that we might get there would provide further guidances as to how this will operate.

Mr. Costa said with regard to the diesel engine situation in Section 205-3 which is the per se violation section the sound produced by gasoline or diesel engine or the sound produced by the operation of any motor vehicle as defined by Vehicle and Traffic Law when the engine (and that means all of the engines) or vehicle is not properly equipped with a muffler or which has defective equipment or is operated so as to produce a sound not commonly associated with the operation of such vehicle which is of a level which constitutes unreasonable noise. Mr. Costa said the problem that you raise with respect to the Metro North facility with the use of the diesel engines would not fall within this section, in his opinion. If there was a noise violation there it would have to come under the other section where you have to have noise of such a level that it becomes a nuisance interfering with normal people of reasonable sensitivities. That is going to have to depend on a case by case basis and there is no question that an issue of interstate commerce may be involved. Regulation of interstate commerce is not really possible by local jurisdiction so that is an issue. Until confronted with the problem it is not one that we would know how it would turn out.

Councilman Mandia said with regard to the current law (Peace and Good Order) about a year or so ago he attended a meeting in Nyack where residents expressed concerns about the activities of some of the kids. They raised the question isn't there an ordinance or a local law about noise? It turns out that the police were in attendance and couldn't enforce the law because the Village didn't enact the same local law. Our Town Attorney helped them with that and sent ours to the Village Attorney there and they have enacted the Peace and Good Order law. He said his only comment is, that should this be adopted, we notify the Villages.

Mr. Costa said the Village of Nyack recently did revise their noise ordinance and he did review it. It is quite different from the Peace and Good Order that we propose to repeal. Councilman Mandia said did they make it better than ours? Mr. Costa said he happens to think that the one he drafted is better than theirs.

Mr. Bollman said it was his understanding that this did not apply to the garbage trucks which start at 5:30 A.M. or the recycling trucks. He said both he and the Supervisor have had some complaints with regard to this. Mr. Costa said when you first raised that question what he indicated was that there is no prohibition against starting to pick up garbage or

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PH - Re: Local Law No. 1-1993 - Repeal of Chapter 205 (Peace and Good Order) and Local Law No. 2-1993 - Noise Abatement  
2/23/93 Page 4.

recyclables at 5:00 A.M. There is no restriction on that in this law. However, if the activity produces a sound level which rises to the nuisance level, not that we define it that way, but rises to the point where it interferes with that reasonable person test, then that sound can be subject to enforcement but it is not a per se violation. He said what he suggested when he responded to Mr. Bollman's question was that we should tell the carters not to rattle the cans a whole lot and it will be okay. Mr. Bollman said he was hoping that would be listed as an exception. Mr. Costa said then you open the door to any sound that is produced by that activity and that was not his intention. The intention here is to make any sound that could rise to the level of a nuisance illegal but not to restrict legitimate commercial and necessary public service activities.

Supervisor said if the carters are picking up the recyclables and the trash under the contract with the Town of Clarkstown, which they are, do they still fall within the context of the law here? Mr. Costa said yes. That is a permitted activity and there is no restriction on that activity. It's just that if they produce a sound that is unreasonable to a number of individuals then there could be enforcement. He said he really thinks that the chances of that happening are very slight under the law.

Supervisor asked if there was anyone present wishing to make a comment or ask a question?

Appearance: Marjorie Wittenberg  
New City, New York

Ms. Wittenberg said motorcycles on Friday and Saturday nights in the summer start at 11:00 P.M. She said she has no objection to motorcycles during the daytime but they go on until 2:00 A.M. She said she is awakened sporadically and to her that is a big problem. She said she hates to say anything about it because she knows they are having a good time. She said she can identify exactly where they are and it is very upsetting to her. She has to work the next day at 6:00 A.M.

Appearance: Ms. Marie Bouchard  
Congers, New York

Ms. Bouchard asked if a time limit had been set on lawn mowers and weed eaters, etc? Mr. Costa said in a residential zone that type of equipment can be operated as early as 8:00 A.M. and up to 8:00 P.M. In a commercial zone that type of equipment can begin operations as early as 7:00 A.M. and must cease by 9:00 P.M. Ms. Bouchard asked does that include weekends? Mr. Costa said that can be any day of the week with no restrictions. Ms. Bouchard said she thinks you are getting too much into the homeowner. You're going to have to send all these police for special training to have an ear for noise. If I say there is a noise that annoys me and it is unnecessary the police officer is going to come and unless he is trained for that he will say well that doesn't bother me. You will have to send all these police officers to enforce these laws?

Mr. Costa said the police are being called out now on noise complaints and have been frustrated by their inability to do anything about it so we are hoping that this would allow the police activity to produce some results and then prevent or

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PH - Re: Local Law No. 1-1993 - Repeal of Chapter 205 (Peace and Good Order) and Local Law No. 2-1993 - Noise Abatement  
2/23/93 Page 5.

abate the type of problems that are requiring the police to respond so often. Ms. Bouchard said if you have a rotten neighbor and they are complaining about everything the police have to come and settle arguments. In the meantime someone else is robbing a bank down on Main Street. She said she did not think it was necessary to have these laws. People in Clarkstown are intelligent enough that they are not going to interfere with people's recreation. Supervisor said most of them are but some of them are not. The problem is that people are affected by people who are not considerate and have their lives made miserable simply because some neighbor next to them is not concerned about their peace or well being. This at least gives our Police Department the opportunity to enforce something against people who are preventing an individual from enjoying the peace and tranquility of their private property which they are entitled to under the law. Ms. Bouchard asked if there are any other towns that have instituted this? Supervisor said more and more towns have revised their ordinances in recent years due to the fact of excessive leaf blowers, music, parties way on into the night, etc. when someone is trying to get a night's sleep.

Supervisor said we are not here to harrass businessmen but it is designed to prevent people from being abused by individuals who are unreasonable and who are actually disturbing their lives and preventing them from getting sleep and preventing them from enjoying their property in a reasonable fashion. We are not going to, every time somebody turns on a leaf blower, have a cop out there to say shut it off but the fact is that there are people out there who are unreasonable and have no consideration for their neighbors. We have been frustrated and other municipalities have been frustrated in trying to enforce our noise law because it was virtually unenforceable. This at least gives us an opportunity that if in fact the noise is unreasonable and excessive that we can issue a ticket and something can be done about it. Otherwise these people are sort of condemned to suffer abuse forever and anon without anything being done about it. Actually we are empowered here in government to allow people to enjoy their property in peace and tranquility. That is the old archaic way of saying it but the fact of the matter is that is really what it is supposed to be and if you can't do that on your own property then your property becomes worthless or valueless.

Appearance: Mr. Jerry Schulman  
Nanuet, New York

Mr. Schulman said for all the proponents of noise you left out one element - recreational noise. In terms of go carts which obviously a child would enjoy, most have no mufflers or sound deadening devices. It is a recreational vehicle. I'm not looking to deny anybody their pleasure but listening to a go cart without any sound deadening device or muffler you could listen to a coal mine operation. Certainly, in a residential area turning your backyard into an amusement park is exactly what you define. A child's enjoyment is somebody else's detriment. Would that be encompassed in the law? Mr. Costa said specifically the use of a go cart would be a vehicle that would fall into the category of 205-4(3) which is a per se violation if it is not properly equipped with a muffler or if it otherwise produces a sound not commonly associated with the operation of such vehicle. If it doesn't fall under that category it would have to fall under the general category of creating an unnecessary noise. If it runs

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excessively loud without a muffler it would be a per se violation of the noise ordinance to operate that equipment. Mr. Schulman asked is it unchallengeable? Mr. Costa said nothing on this piece of paper is unchallengeable. Mr. Schulman asked if a policeman came would he hear it the same way as I? Mr. Costa said hopefully. He has to apply his individual discretion as a police officer to each situation encountered. Mr. Costa said you also raised the question about recreational noise. There is an exception in this local law which allows any sound associated with any sporting event, carnival, fair, exhibition or parade occurring on any public or private property when such event has been duly authorized by any governmental body or agency. The noise that would emanate from such an activity would not be a violation because that is a permitted, licensed event. Mr. Schulman said what I would define is right behind a residential area. Mr. Costa said that would not be a permitted (meaning somebody issued a permit to do that) activity and therefore that would come under either the per se violation or the general violation if it was unreasonable.

Appearance: Mr. Tormello(?)  
West Nyack, New York

He said when he spoke about this sometime ago he did not have in mind family spats which he felt were relatively minor nor did he have in mind recreational vehicles. What he had in mind was the lawn mowers, the professionals who come in and are there from early morning until late at night. He said as he understands the law that is a violation if you do that sort of thing before 8:00 A.M. and after 8:00 P.M. in residential communities. He thinks that is a step in the right direction but it doesn't go far enough. That is an issue that can be taken up at some subsequent meeting and he hopes that the Environmental Protection Agency when it issues its regulations regarding pollution of this type of equipment - lawn mowers and blowers, etc. - will take care of it for me. He commended the board for putting forth the legislation and he thinks it is a good step and a step in the right direction.

Appearance: Mr. Joe Rabatin  
West Nyack, New York

Mr. Rabatin said he has a problem that is not only a couple of hours duration. He has a severe noise pollution from Route 59 between the Palisades Interstate Parkway and Strawtown/Sickletown Road. Orange & Rockland has been coming in every three or four years and cutting down half of the trees between Route 59 and the local roads. Recently the State DOT came in and did a noise study and they said they are going to put a noise barrier at the top of the hill but you don't need it at the bottom. After a lot of prodding and with the assistance of Mr. Holbrook and Mr. Gromack he said he finally got a copy of the report and the noise study needs a little more work but the data presented shows the problem is the same along the whole length of this area. In addition, after much prodding, he finally got the law. The law is a permit from DOT to Orange & Rockland for the annual maintenance of their equipment along Route 59. It specifically says they cannot cut, they cannot even trim without the permission of the homeowners. No one has ever given permission in the twenty years since Orange & Rockland has been cutting trees in there. They've been breaking the law if that is the only law. Would a situation like this be in the comprehensive noise abatement law you are proposing? Mr. Costa said no. Mr. Rabatin asked what

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is the remedy? Mr. Costa said he did not study that problem and this would not address it. You are talking about a noise that is produced as a result of highway traffic and this would not affect that in any way.

Supervisor said he thinks one of the solutions to Mr. Rabatin's problem is our continuing to try to get the DOT to extend that noise barrier down further on Route 59 from where they are terminating it. He said he knows they had the study and gave figures as to noise levels. Mr. Rabatin said the highest decibel was 65. It was 64 just below his house but all the readings that are in the range of 64 were taken 60 to 80 feet from Route 59. The one reading at the bottom of the hill at 64 decibels was taken at 150 feet from the road. Now we all know the closer to the road the noisier it is and now on top of this cutting the trees aggravates this problem. Orange & Rockland apparently has no legal right to do it. Who would enforce noise pollution along there? Not the state police. It would be the Clarkstown Police. If it came from highway noise he did not know if it would be enforceable. Councilman Mandia said only if the vehicle were not properly equipped.

Mr. Rabatin said you talked about gasoline and diesel engines. You talked about motorcycles. You talked about all sorts of cutting - chain saws, etc., all of which are used in the cutting. Mr. Costa said that is correct but there is no restriction on the operation of a motor vehicle properly equipped which does not produce a sound that is unusual or uncommon to the operation of that vehicle. There is no attempt to regulate that. Supervisor said the State has to extend that barrier since they created that problem. He said we are still working at trying to convince them once they start the project to put that barrier up this year which they promised and while they are out there constructing it, to extend it down two or three or four more houses so that would address your problem.

Mr. Rabatin said one of the points he heard is that because the lower part isn't in the construction zone they can't extend it. One of the drawings that they show in there shows the guard rail in the median strip being disturbed to allow left and right turns at Cherry Hill Lane. Now, that is extending the construction. Also, what hasn't been addressed yet is a drainage problem on Cherry Hill Lane. The road from the local street comes down and floods. It forms ice and you have a sliding problem there which they have to do something about. Supervisor said hopefully this summer when they begin to construct that barrier we will get them to extend it and also correct that too.

Councilwoman Smith asked if Orange & Rockland, through trimming and cutting actually eliminated a buffer, have they ever replanted? Mr. Rabatin said never. Supervisor said the State has replanted. Supervisor said years ago in Bardonia they did replant there but it is never the same after you cut it.

Appearance: Ms. Harriet Dusanenko  
New City, New York

Ms. Dusanenko said many homes in Rockland County have a water problem and they have sump pumps. Now suppose we have a blackout at 10:00 or 11:00 P.M. and we have to put a generator on which she can't stand? Supervisor said that is an emergency situation. Ms. Dusanenko said okay then I won't be penalized. Ms. Dusanenko said what about people who work

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nights and have to sleep in the daytime and neighbors don't give a damn about them? Supervisor said hopefully this law is a first step in trying to protect them from excessive noise. Ms. Dusanenko asked how are you going to protect them in the daytime when it says from 8:00 A.M. to 8:00 P.M. they can make noise? Mr. Costa said the per se violations which are limited to the daytime hours do not preclude enforcement when you have particularly obnoxious sound generated during the daytime from a machine that would otherwise be permitted to operate. This is not going to prevent people from cutting their lawns or blowing their leaves. It would have to be the type of machinery that would be so intrusive in terms of its noise during the day as to come under the general section. Unfortunately, for people who sleep during the day time they will have to endure a higher level of noise without having a really effective remedy.

Ms. Dusanenko said she happens to have very good neighbors and when we have heavy snows they come out maybe 1:00 A.M. or 2:00 A.M. and plow us out for which she is grateful. She said she would take that noise anytime.

Appearance: Ms. Mary Maher  
Nanuet, New York

Ms. Maher said the first thing that bothers her is that you would even think of having the police interpret the law. She said it is the duty of the Town to define the law. A police officer's job is to enforce the law not to interpret it. She said when she calls a police officer for any reason she does not want him to have to come and make a judgment as to whether the law is being broken or not. Most civilized people know when the law is being broken. Two people arguing in their kitchen is not a good reason to call the police but if I can hear them five houses away then I should call the police because they might hurt each other rather than the fact that they are upsetting me. She said she thinks any police officer won't have to do any interpretation there. He will use common sense and say this couple should be divided. When a police officer goes on a job he should know, the Town is behind me and this is the law and that's how it must be.

Ms. Maher said she hopes you will never permit a garbage truck to operate at 5:00 A.M. for many reasons more than the noise. Daylight is absolutely necessary when garbage trucks are in motion as you all know. Serious accidents can occur at 5:00 A.M. in the wintertime when it is very dark, foggy and these people do not have adequate lighting on their trucks or the people operating the trucks are running back and forth and are not visible at 5:00 A.M. She noted that close to her house a tragic accident occurred where some man going to work at 5:00 A.M. drove into the back of a garbage truck and was killed instantly. She hoped the Town would never permit this kind of activity at 5:00 A.M.

Ms. Maher said businesses are the biggest culprits when it comes to lawn mowers, not the homeowners. Occasionally, someone takes out a lawn mower. She said she has lived beside the Nanuet Mall for twenty years. At 3:00 A.M. every night their sweeper operates in violation of the Town ordinance and they do it and get away with it. In the fall when they come to blow the leaves away, they blow them into the sewers and operate at 2:00 A.M. If you call the police, they know that is a violation of the law and they don't have to interpret anything. We must stick to what is noise and what

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is not noise. Don't cause us to have increased taxes and waste police officers' time running out to someone having a party in their backyard. If I'm having a large party in my backyard I discuss it with my neighbors and let them know and they are aware that once in six months I'm having a party. Most of the neighbors do that. That is not something that we need a code for. We need a code where young people may be gathering in large numbers and creating problems like in certain areas of the Town where they go into a mall area and they stay there until 2:00 A.M. and do damage to property and create a general nuisance. The police know when they find this there is no need for any further law. They know that is a violation and all they have to do is enforce the law not interpret it. She asked the Board to deeply consider these things.

Appearance: Mr. George Smith  
New City, New York

Mr. Smith said he was speaking for all the farmers in the Town of Clarkstown. He said he was expressing concern about the proposed anti-noise law. He said since their farm has its own lake and irrigation is an integral part of their vegetable farming they need to operate pumps into the late evening hours because evaporation takes place in the heat of the day and you lose 50% of the water that you pump out. Whereas, when you pump it late at night after 8:00 P.M. up to midnight and so on you lose nothing. You get 100% good of the water that you pump. Now, we only have a couple of million gallons in this reservoir lake on Old Phillips Hill that we pump from so we don't want to waste it. The other farmers, Mr. Cropsey, Mr. Davies, Mr. Shrimp we all want to be exempt from this anti-noise rule.

Mr. Costa said your comment needs a little clarification. There is no outright prohibition from the use of a pump during the hours of 9:00 P.M. to 8:00 A.M. What the law says is that if you were operating a pump during those hours from 9:00 P.M. to 8:00 A.M. during the night the equipment either has to be housed in a closed structure or equipped with sound suppressing equipment so as to prevent the sound of operation from reaching the adjoining property line. You could pump water all night long provided the sound did not reach the adjoining property line or you otherwise had it equipped with sound suppressing devices. It doesn't stop you from pumping. It merely restricts the type of noise that the equipment will produce.

Mr. Smith said there are only four farmers in Clarkstown. Why can't we be exempt? Mr. Costa said that is not up to him and must be addressed to the Town Board. Mr. Smith said then why can't the Town Board exempt the four farmers from this new anti-noise rule? Mr. Costa asked do you believe that your pumping operations would produce the type of sound that would travel beyond your property line to adjacent properties? Supervisor said suppose you said something with regard to agricultural uses would that be a significant change in the law at this point if the Town Board were to consider that? Mr. Costa said that is a matter of legislative discretion. Councilman Maloney asked has anyone complained in the past about the pumps going? Mr. Smith said no but if we get this new law then they will come over at 8:10 P.M. and complain or we could have a neighbor call up and say it is bothering him.

Supervisor said let's ask the Town Attorney's office to take the comments made here and evaluate them in

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relationship to the law and if the Town Board goes ahead with the ordinance as it is now then maybe they will consider at a subsequent point an amendment with regard to the agricultural uses in the Town of Clarkstown.

Mr. Costa said he did consider that when this was drafted and he didn't put anything in this local law that would restrict the operation of a tractor or a plowing machine. That type of equipment is not restricted per se. It would be left to an individual situation to determine if it produced noise which was offensive.

Mr. Smith said Mr. Costa there are no farmers left. Why try to destroy the couple we have? Mr. Costa said he did not believe this local law would do that. Supervisor said we will take these comments and ask the Town Attorney to review them and then we can go from there and see what we have to deal with.

Appearance: Mr. Ed Duffy  
Nanuet, New York

Mr. Duffy asked could anyone tell him the average age of a police officer in Clarkstown? Supervisor said probably in the early thirties. Mr. Duffy said then it becomes a question of enforcement. The average age of the police officer that he has had to deal with at 1:00 A.M. or 2:00 A.M. were no 30 year old people but maybe 25 or 26 years old. As to the restriction of noise between the hours of 10:30 P.M. and 4:00 A.M., for two years the people on Grandview have repeatedly called the police to do something with the noise pollution from Lauderdale's Bar. It still continues from 10:30 P.M. to 4:00 A.M. He had one policeman say well I was down there and the noise wasn't too bad. Noise pollution for a 26 year old who has grown up with noise, music that knocks your head off, is used to it and it is something natural for him. It's not natural for senior citizens who are trying to go to sleep at night. He said he has been a hard worker all his life and he wants people to enjoy themselves but he doesn't want them to put pressure on people who have been paying their taxes or who can afford to pay taxes here in Rockland County.

Mr. Duffy said motorbikes go up and down Grandview Avenue for the whole spring, summer and fall blasting away. I suppose you'd call that a police matter. Supervisor said it is covered in the law to the extent that those motorbikes are licensed and have the appropriate sound suppressants, mufflers, etc. If they don't they would come under the jurisdiction of this law. Mr. Costa said there is nothing in this local law that prevents a citizen complaint from being filed in the justice court. Mr. Duffy said how can he file a complaint about a motorbike that goes past the house at 50 or 60 miles an hour and you don't get time to read the license plate. How can I catch them? How are the police going to catch them?

Supervisor said if it is a single incident that is one thing. But a lot of times these people who create the noise on these things are repeaters so that if people are out there and they see them, eventually somebody, whether it is the police or an individual, will get that information. Then they will be able to apprehend them.

Mr. Duffy said there was a question about the hours between 8:00 A.M. and 8:00 P.M. Was that seven days a week? He was told yes. Sundays it was always no machines of any sort

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before 1:00 P.M. Mr. Costa said he was aware that in some situations Sundays have been restricted but in getting to the issue of the observance of the Sabbath. Then you have to make exceptions for those who observe another day for their Sabbath. This local law does not provide for any inviolate time during the day on Sunday or Saturday or any other day. Mr. Duffy said then in other words this is another way of Christian bashing. Mr. Costa said he would not say not. Mr. Duffy said he would and he has said it. He said he believes it should be written back into the law again, for a majority of Christian people are celebrating Sunday morning and should not be subject to all this noise. He said the majority of people in the County would agree with this and not just Clarkstown.

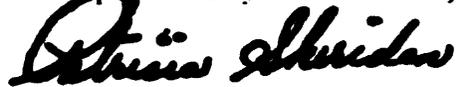
Mr. Duffy said the owners of the Lauderdale Bar do not live in Nanuet. He said there is one store which on every holiday for the past three years, has had a burglar alarm or whatever it is blasting for 2 or 3 hours at night. He said he has called the police about it and so have his neighbors and what is the answer we get? We're trying to contact them. They don't live here. They live someplace in Connecticut. That is another thing that must be taken care of. Mr. Duffy asked are they allowed to have burglar alarms to protect their property and destroy our environment without any recourse? Mr. Costa said he would say no. He would think that type of a false alarm situation that continues to the duration that you have described that would be prosecutable under this local law if adopted. Mr. Duffy said in the meantime do we have to wait two or three hours until they get this guy out of bed. Supervisor said he thought they could identify where the noise was coming from and after a reasonable period of time if that hasn't been corrected they could issue an appearance ticket. Mr. Duffy said is 3 years reasonable? Supervisor said 3 years is more than reasonable. Actually, even better would be after a half hour or something like that. When it is apparent that they guy is not going to show up to do anything then the police officer could use his judgement and issue an appearance ticket. Supervisor said in the past we haven't been able to do that and that is the frustrating thing that has affected many residents that they haven't been able to. The police officer says yes you are listening to this noise but under our code we haven't been able to issue appearance tickets. In this way maybe we can put an end to that type of thing. Mr. Duffy asked can I call the police tomorrow at 2:30 A.M. about the Lauderdale Bar? Supervisor said after we adopt the law you can.

Appearance: Ms. Frances Caponigro  
Congers, New York

Ms. Caponigro thanked the Supervisor and the Town Board. She thought it was a great job. It covers a lot of things that could possibly happen. You can't possibly cover every single noise that could happen in this Town but she felt they had done a great job and she thanked the Town Board.

There being no one further wishing to be heard on motion of Councilman Maloney, seconded by Councilwoman Smith and unanimously adopted, the public hearing was declared closed, time: 9:20 P.M.

Respectfully submitted,



PATRICIA SHERIDAN,  
Town Clerk

(RESOLUTIONS NOS. 135-1993 AND 136-1993 ADOPTED)