

MINUTES of a Special Meeting of the Village Board of Trustees held Friday, September 4, 2020 at 9:00AM, Village Hall, 111 Elm Street, Room 202, Penn Yan, NY 14527

PRESENT: Mayor L MacKerchar; Trustees C. Benedict; D. Condella; T Hoban; R. Spencer; R. Stewart; **Attorney** Ed Brockman; Clerk/Treasurer G. Meeks; Deputy Clerk/Treasurer H. Easling; Director of Public Works T. Schwartz;

ABSENT: Trustee Benedict, McLoud; Deputy Director of Public Works TBD; Police Chief T. Dunham; CEO B. Lyon, J. Kincaid; Fire Chief F. Ellis

News Media present: None

PUBLIC: None

Mayor MacKerchar called the Special Village Board meeting to order at 2:00 PM

Mayor - special meeting of the Village Board. Our reason for being here is an appeal to a FOIL response by Bob Hawley. Welcome Dr. Hoban. The original FOIL request was requested made by Mr. Hawley, which reads “ I Robert request under the foil laws of New York state any documents that prove that a public hearing was held and that the Penn Yan Village Board approved the purchase of the McDonalds property and a response was sent to him on August 20, that by Mary Ann Martin reads “ We received your request for records pursuant to the Freedom of Information Law on August 19 requesting” Any documents that prove that a Public Hearing was held and that the Penn Yan Village Board approved the purchase of the McDonald’s property”. There was no “purchased” of any land from McDonalds by the Village, Accordingly, there are no records of any “purchase”. If you do not agree with my decision Section 148-10 of the Village Code gives you the right to an appeal and outlines the process for doing so. Mr. Hawley did send us an appeal thus that’s the reason for our get together this afternoon. In your packet you’ll see the minutes of our Village Board meeting in 2018, November, November 20, 2018 there was a Resolution 100-2018, which addressed the gift of the approximately .08 acres to the Village. Quite specific the SEQRA that went along with it. The reference here thanking Mr. Brockman for work he did work on it the McDonalds deed that was recorded. That was in our July 21 meeting of 2020. To park plan and opportune to look at another access to from the Lake Street to the Waterfront trail. It’s well documented - public documents are available. All the documents that are related to it, minutes are on line. Mr. Hawley references a Quickclaim where it referenced to a Quitclaim where it’s referenced to premises sold to and I believe is the standard transfer if property Quitclaim reference but as far any other documents. Mary Ann. **Mayor**- Hello – Mr. Brockman

Atty. – good afternoon ladies and gentlemen

Mayor- I was just reviewing the appeal here and

Atty. – I heard most of it. We couldn’t get the screen up right away but I was listening.

Mayor – Okay

Atty. – Briefly if you would like me to explain something.

Mayor – Yes

Atty. – All a short lesson in real property law. All deeds in most jurisdiction in our county going back to English common law require resitlatation of consideration therefore when everybody sitting that bought there house their deed has a resuscitation regarding transfer of funds. It doesn’t necessarily recite the excite amount you paid for your house and most deeds, most warranty deeds which are used when a house is purchased realistic recites \$1.00 and other good and valuable consideration. The deed format in New York State are prescribed describe by law section 258 of the real property law and there are specific format for Quitclaim deeds along with ever other type deed in New York State and statutory form D and statutory form double DD are both Quitclaim Deed and if you look at the format that is required in the State of New York they all recite some type of consideration those deed were drafted by the McDonalds Corporate Office in Chicago and it took sometime to get that part of it completed properly they had trouble filling out the documents that have to be filled along with the deeds in the County Clerk’s Office. 1. Being a transfer report that issued by the censored to how to assess the property and that’s a one-page form all being 8 ½ X 14. They kept sending it they scanned it and sending it to us and down in the bottom there’s a section of the form has one of these bar codes doodad on it. It kept getting deleted every time it was sent and the county refused to take it because they couldn’t read the bar code. The other form is a required by the State of New York also. That is a capital gain affidavit that’s a four-page form and that had to come from McDonalds also the buyer and seller in most transaction have to sign it and this particular category. We were the grantee and they were the grantor – because no one was transferring money. Both of those support documents indicated there was nothing paid for this property and the response to the FOIL was specifically to the request with regards to purchase and there was no purchase, therefore it was indicated to Mr. Hawley that there were no documents with respect to a purchase. It was gifted to the Village and nothing paid by the Village to McDonalds and there were two parcels so there were two Quitclaim deeds. Both of them read the some except for the description in them and that’s how were at the point now. If anybody has any questions. I don’t know if Mr. Hawley is on here or not. I know Mary Ann said he indicated he was not going to be on because he didn’t want us hiding behind our computers. Apparently, he’s not familiar with the Governor’s execute orders that mandates that all hearings are required to be remote and cannot be any person present at any hearing that are Public Hearing and this public per say. So, all being said any questions I would be happy to answer.

Mayor – Cool

Trustee Stewart – Who did we pay the \$10.00 to?

Atty Brockman – We didn't pay any \$10.00, the only funds the Village expended was to record the deed and file the supporting documents. I have forgotten how much the deed was probably under \$100.00 so that goes to the County Clerk there was a \$5.00 charge for the capital gain affidavit and then there was I believe \$225.00 which is filing fee for the transfer report. Those funds all go to the County Clerk and it funneled to the State and the County and then in order to file the maps that were to get done and those maps were provided by McDonald's engineering company. We pay – did pay \$10.00 to have the map filed to County Clerk but none of that money went to McDonald's. McDonalds received nothing and as I said before all deeds in most jurisdiction and the only one, I know is an exception is Louisiana because that's based on French Conerficatin law. They don't have any common law down there at least they didn't when the State was formed. This all goes back to English common law and has to go back to restitution consideration. There was no \$10.00 paid to anybody that is just required by statute to be in there.

Trustee Spencer- Thanks for the great explanation.

Atty. Brockman – I hope it was clear sometime I go out on tangents

Trustee Spencer- It's perfect

Mayor – So we have heard Ed's appeal and we have it in writing hear. I feel Mary Ann gave him a through response to his request for sale of information and hearing.

Atty. – Wording he used was purchased I believe

Mayor- Purchase I say – ya purchase but the minutes and attached documents are have are quite procedural are Resolution from 2018 and as you should with a gift of this nature. So, I think

Atty. – I believe Mary Ann directed Mr. Hawley to go the what ever you call it for this meeting. Those documents are there look at them

Mayor – Yup

Atty. – But when your response to a to a FOIL your supposed to response exactly what was said and not offer up information so

Mayor – That's correct

Atty. – That's why any response to him was in a format that it was in. Mary Ann did a very good job handling it. I know she has talked with him several times and she has been very diplomatic in the way she is handling Mr. Hawley. I don't know I could have done the same that what I don't talk to him anymore.

Mayor- So procedural this has been a hearing regarding the FOIL appeal. Should we have a Motion to deny the appeal.

Trustee Condella – I'll make that Motion

Trustee Stewart- I'll second it

Mayor – Ok Motion Mr. Condella, second by Mr. Stewart any other discussion

Atty. – I would suggest I'll draft a response to Mr. Hawley for Mary Ann to send to him and in that I will address the fact that this was a gift. I'm not going to go into 20 pages explaining real properties law to him, but I'll tell him nothing paid if he wants to pursue it, it's up to him. He talked about filing a 78 on the issue. They will have to deal with it.

Mayor- Ok any other discussion

Mayor asked for a Roll Call Vote

Mr. Spencer	Yes	Mrs. Benedict	Absent	Mr. Condella	Yes
Mr. McLoud	Absent	Mr. Stewart	Yes	Dr. Hoban	Yes - nodded
					Motion Carried

Trustee Hoban – Sorry – yes - I was muted

Mayor – That's quite alright Motion carried Thank you all – any other business

Atty. – I just wan to thank you all for coming out on a Friday afternoon- beautiful sunny day. I'm sure there are other things you would rather be doing to support. So, Thank you

Trustee Condella – Than you Ed

Mayor- We have 15 minutes before out next

Trustee Stewart - I do have a question are we going to have to vote on Halloween about having it

Mayor – Thought about that this morning. I'm hoping we get some guidance on that Yea we better – probably will

Atty. – It's on a Saturday, so that is appropriate

Trustee Condella – right

Atty – It's also a full moon that night

Mayor – Alice pointed that out.

Atty. – She did

Mayor- ya

Atty.- Glad to see Alice is on the ball, with the moon stages

Mayor – yes

Atty. – I commend her highly for that

Mayor – Yes Rich we will have to take action on that and I'm sure there be more information before the 1st of October. We have a couple of months.

Trustee Stewart – The kids will probably be wearing a masks

Mayor – That's true

Atty. – that will be appropriate for Halloween

Mayor – yes

Atty. – Parents won't have to go out and by fancy customs. Just wear one of those fancy facemasks.

Atty. – Has anyone heard anything from the Governor today – or tomorrow

Mayor – Not yet

Atty. – it supposed to expire

Gary- Not yet Ed

Mayor – Goes to the 5th- yup tell the 5th he'll probably send something this afternoon we do have Village election coming up if there is no other business, I'll entertain a motion to adjourn.

Trustee Hoban - I'll make that motion

Trustee Stewart – I'll second it

Mayor – second Mr. Stewart

Mayor asked for a Roll Call Vote

Mr. Spencer	Yes	Mrs. Benedict	Absent	Mr. Condella	Yes
Mr. McLoud	Absent	Mr. Stewart	Yes	Dr. Hoban	Yes

Motion Carried

At 2:17 PM adjourn Special Village Board meeting for a Foil appeal

Mary Ann Martin, Deputy Clerk