

## REGULAR MEETING

April 16, 2020

The Regular meeting of the Board of Trustees of the Village of Upper Nyack was held via teleconference on Thursday, April 16, 2020 at 7:00 PM.

**Those present:** Mayor Tarapata, Trustees Diamond, Dodge, Esmay & Rothchild  
Village Clerk Carol G. Brotherhood, Village Attorney Robert P. Lewis Treasurer –  
Richard D. Fortunato

Those who spoke: PO Kennedy-CPD, Jeffrey Epstein, Dave McWilliams, Jillana Sinnott, Robert Helmke, Jacob Jacobson, Judy Ryan, Peggy Kurtz

MINUTES – Will be held over to the next regular meeting (May 21, 2020)

(Regular Meeting 03/19/2020 and Special Meeting 04/02/2020 Meetings were recorded and posted to the website. Board did not have written copy).

POLICE REPORT – PO Kennedy gave the report for the CPD.

Discussion: There were 233 calls for service since the last March 1; 2 motor vehicle accidents without injury; 27 burglar alarms; 24 parking tickets issued. Most were in the area of Nyack Beach State park. SCAMS: related to COVID-19 (masks, medical equipment) IRS (taxes and stimulus payments)

Town of Clarkstown 22 overdoses, 5 deaths

Rockland County 58 overdoses, 45 deaths

Discussion: Mayor Tarapata told the Board about a telephone conference that she had with Supervisor Hohemann and Captain Wanamaker of the CPD earlier in the day to discuss parking issues at Nyack Beach State park. Rockland Lake was closed but not the southern entrance in Upper Nyack. Over Easter weekend there were many people in and around the park not practicing social distancing as required. The decision was made that the Nyack Beach State park would be closed to foot traffic and a Palisades Interstate Park Police Officer would be stationed at the entrance to turn people away. A barricade will also be placed there. Mayor Tarapata asked if the CPD could provide the electronic sign alerting people to the closure. Captain Wanamaker said they could. Supervisor Hohemann also offered to have the Clarkstown Highway Dept. provide another sign to be placed closer to the park.

PO Kennedy noted that she will drive by the park on a regular basis as well as the other area cars.

The Mayor and the Board thanked Officer Kennedy.

TREASURER'S REPORT – Treasurer Fortunato submitted his report for review.

Discussion: Balance sheet from last month and surplus available. He noted that the Village had received the delinquent tax payments from the County. Tax bills are ready to go to the printer.

Treasurer Fortunato requested a resolution from the Board for approval to make a bond payment on the June 15, 2020 for the preserve.

Trustee Diamond made a motion to authorize the Treasurer to pay the River Hook Preserve Bond for \$85,000.00 to principal and \$39,421.88 in interest, seconded by Trustee Rothchild and so moved.

On a call for a vote:

AYES: Mayor Tarapata, Trustees Diamond, Dodge, & Rothchild

NOES: None ABSENT: Trustee Esmay (had not signed into the meeting yet)

Treasurer Fortunato also noted the NYS filings were done for Property Tax Cap and Constitutional Tax Limit.

VOUCHERS – Read and approved for payment.

The minutes will be held over for approval to the May 21, 2020 meeting (March 19, 2020, April 2, 2020) The minutes were recorded and posted to the website but the Board did not have a written copy.

### COMMUNITY CHOICE AGGREGATION

Mayor Tarapata noted the RFP would be the next step after the adoption of this resolution. The Mayor read the resolution (attached).

Trustee Dodge made a motion to adopt the agreement for CCA with Joule Assets, seconded by Trustee Diamond and so moved.

AYES: Mayor Tarapata, Trustees Diamond, Dodge & Rothchild

NOES: None ABSENT: Trustee Esmay (had not signed in to the meeting yet)

### RESOLUTION-ROCKLAND COUNTY INTERMUNICIPAL SHARED SERVICES AGREEMENT- Procurement

Mayor Tarapata wanted to send this to Village Attorney Lewis for Review and to place on the agenda for the next regular meeting. (May 21, 2020) Village Clerk will send via email.

Trustee Esmay signed into the meeting.

### 7:30 PM - Public Hearing- Tentative Budget -2020-2021

The Village Clerk read the public hearing notice.

Trustee Rothchild motioned to open the public hearing, seconded by Trustee Esmay and so moved.

AYES: Mayor Tarapata, Trustees Diamond, Dodge, Esmay & Rothchild

NOES: None

Mayor Tarapata spoke about some of the highlights of the budget.

The increase will be 1.05%

The North Broadway Sidewalk Project will be covered by a grant from the New NY Bridge and from Assemblyman Ken Zebrowski.

Drainage work on Palmer and Kuyper (paving will be in 2021).

North Broadway will get micropaving from the village line to Nyack Beach State Park.

Increase in legal fees with the Comprehensive Plan and update to the Zoning Code

Treasurer Fortunato noted that the budget was not available at Village Hall with the closure but was on the village website for 3 weeks. The tax cap was discussed.

No one from the public spoke.

## Resolution for Community Choice Aggregation Electricity Supply Agreement

WHEREAS, effective April 21, 2016, the New York State Public Service Commission (“**Commission**”) issued an “Order Authorizing Framework for Community Choice Aggregation Opt-Out Program” in Case #14-M-0224 “authorizing the establishment of Community Choice Aggregation programs by municipalities statewide;” and

WHEREAS, effective March 16, 2018, the Commission issued an “Order Approving Joule Assets’ Community Choice Aggregation Program with Modifications” in Case #14-M-0224 that authorized Joule Assets, Inc. (“**Joule**” or “**Program Administrator**”) to serve as a Community Choice Aggregation Program Administrator on behalf of cities, towns, and villages in New York State; and

WHEREAS, on May 16, 2019, the Village of Upper Nyack, adopted local law One (1) of 2020 Chapter 15, Ordinance 15., establishing a Community Choice Aggregation (Energy) Program, enabling a Community Choice Aggregation Program in the Municipality (the “**Program**”); and

WHEREAS, on April 16, 2020, the Municipality, by Resolution (attached), resolved to engage the services of Joule to, among other things, act as Program Administrator on behalf of the Municipality for the Program, and thereafter entered into a municipal energy services agreement with Joule for performance of such services; and

WHEREAS, Municipality seeks to obtain competitive bids from electricity suppliers (each a “**Supplier**”) pursuant to a request for proposal that shall include provision of a 100% renewable supply option (the “**Supply RFP**”) that is intended to result in a three-party Electricity Supply Agreement between the selected Supplier, the Municipality and the Program Administrator that, among other things, will govern the terms of provision of the electricity supply by Supplier for the Program; and

WHEREAS, Program Administrator has prequalified prospective bidders based on creditworthiness and competence; has executed the public outreach campaign in the Municipality as required by the New York State Department of Public Service, and has obtained [or will be obtaining] utility data from the local distribution utility, all of which is necessary to solicit bids through the Supply RFP;

WHEREAS, the “Electricity Supply Agreement” (in the form attached hereto), has been reviewed and approved by counsel for the Municipality, and has been deemed to provide benefits, adequate protections, and minimize risk to Municipality, as well as to residential and small commercial utility customers therein; therefore, be it

RESOLVED, Municipality hereby authorizes Program Manager to issue a Supply RFP consistent with the provisions of this Resolution, with bids to be evaluated based upon compliance with the specifications of the Supply RFP including, without limitation, price and tenor parameters, and Supplier’s acceptance of all material terms of the Electricity Supply Agreement; and be it further

RESOLVED, Municipality approves the Electricity Supply Agreement in the form attached to this Resolution, such form to be included in the Supply RFP; and be it further

RESOLVED, Joule in its role as Program Administrator for the Program shall, among other things, manage the energy procurement process, prepare and issue the Supply RFP, and make recommendations for award to the Municipality; provided however, the Municipality reserves the right to make the final award decision; and be it further

RESOLVED, subject to the conditions that the awarded Supplier has been prequalified as required by Program Administrator and that the awarded bid meets the specifications established in the Supply RFP, [Supervisor/Mayor] shall execute an Electricity Supply Agreement on behalf of Municipality with changes deemed necessary in [Supervisor's/Mayor's] reasonable discretion with the awarded Supplier and Program Administrator in a timely fashion; provided, however, Municipality is under no obligation to award the Supply RFP should these conditions not be met.

Trustee Rothchild noted that the Board had time to ask questions at the workshop (recorded).

Trustee Dodge made a motion to close the public hearing, seconded by Trustee Rothchild and so moved.

AYES: Mayor Tarapata, Trustees Diamond, Dodge, Esmay & Rothchild

NOES: None

Trustee Dodge motioned to adopt the Budget for 2020-2021 as proposed, seconded by Trustee Diamond and with no further discussion, it was so adopted. On a call for a vote:

AYES: Mayor Tarapata, Trustees Diamond, Dodge, Esmay & Rothchild

NOES: None

#### Adopt salary & overtime rates

Trustee Rothchild made a motion that the Board adopt the salary (2% increase) and overtime rates as presented to the Board, seconded by Trustee Dodge and so moved.

AYES: Mayor Tarapata, Trustees Diamond, Dodge, Esmay & Rothchild

NOES: None

#### River Hook Preserve Discussion – West entrance mud mitigation in right of way

Mayor Tarapata will ask the DPW to use leftover stone dust that will be easy to put in place and remove later. They are able to do this work and maintain social distancing.

#### Discussion of Green Committee request for COVID related leaf blower ban

Mayor Tarapata took a webinar on Executive Orders from NYCOM. The Mayor read the following into the record:

Hello, everyone.

I apologize for taking so long to get back to you about your request for a leaf blower ban by Executive Order. This is a long response, so I decided to write it out rather than wait to say it all at the meeting tomorrow night.

This morning I attended a webinar held by the New York Council of Mayors (NYCOM) about Enforcing the Governor's COVID Executive Orders & the Procedure for Issuing Local COVID-Related Emergency Orders.

What I learned was important, in the face of your request for an Executive Order banning gas powered leaf blowers for the duration of the COVID pandemic as some other towns, such as Ardsley and Croton, have done.

In mid-March, Croton and Ardsley each declared a Local State of Emergency. They have municipal facilities, schools, parks and other programs that made them decide a declaration to be necessary.

There has been no reason for a declaration of a Local State of Emergency in Upper Nyack, because the declarations and Executive Orders of the Governor, County Supervisor and Town Supervisor have been sufficient.

A Local State of Emergency must be declared before an Executive Order can be made by the Mayor or Administrator of a municipality. There is a lengthy process of Public Noticing and notification of the state government that accompanies each of these actions.

A Local State of Emergency is for a period of 30 days, but can be renewed. Once the Local State of Emergency is declared, an Executive Order can be made for a period of 5 days only and then renewed for 5 days at a time. The Executive Order must be justified under section 24 of the Executive Law.

Then there is the Governor's Executive Order 202.5, which states, "Notwithstanding section 24 of the Executive Law, no locality or political subdivision shall issue any local emergency order or executive order with respect to response of COVID-19 without the approval of the State Department of Health." The process for doing that is found here: [https://coronavirus.health.ny.gov/system/files/documents/2020/03/doh\\_covid19\\_externalproceduresforlocalemergencyorders\\_032020.pdf](https://coronavirus.health.ny.gov/system/files/documents/2020/03/doh_covid19_externalproceduresforlocalemergencyorders_032020.pdf).

The upshot is, to go the route of Local Executive Order is extreme, with a very short term benefit. If, as I believe, there is a desire in the community to have a law regulating the times/seasons that gas powered leaf blowers can be used in the Village, it will be achieved through the normal local law process of community education and public hearings before anything is passed.

We can discuss how this process can be pursued at the regular meeting of the Village Board tomorrow night, which will be held as a video/teleconference on Zoom.

The public is welcome to attend the meeting and public hearing by computer or phone. The meeting and public hearing will be recorded.

Those who spoke regarding the ban:

Judy Ryan, Trustee Rothchild, Mayor Tarapata, Dave McWilliams, Jill Sinnott, Peggy Kurtz, Robert Helmke,

Mayor Tarapata noted that the Board will discuss the ban at the workshop meeting to be held on April 23, 2020 at 7 PM. The instructions to join the meeting will be posted on the website.

Mayor Tarapata noted that she and the Village Clerk will participate in a webinar on the Village elections on 4/17/2020 and hopefully will learn of the rescheduled date

#### Discussion – Upper Nyack Logo:

Trustee Dodge worked with a graphic artist to create a logo unique to the Village that could be used for the 150th anniversary of the Village, on water bottles and other items. No design was picked and the logo will be discussed further.

**RESOLUTION:** The Board discussed postponing the public hearing on the proposed Comprehensive Plan Update

Trustee Rothchild motioned to postpone the public hearing to June 25, 2020 at 7:00 PM, subject to the Governor's Executive Orders for gatherings, seconded by Trustee Esmay and so approved. On a call for a vote:

AYES: Mayor Tarapata, Trustees Diamond, Dodge, Esmay & Rothchild

NOES: None

#### Discussion – Painting bids for exterior of Village Hall

The Board discussed the recent bid opening for exterior painting of Village Hall.

Trustee Esmay contacted the low bidder for further information and to confirm the bid was based on prevailing wage. The company does most of their work for municipalities.

Trustee Esmay will request references and the item will be placed on the May agenda for discussion and hopefully approval. The Village Clerk will post the bid opening results to

the website.

Discussion – Request to waive temporary Certificate of Occupancy fee

Jason Jacobson, 113 Larchdale Ave., requested the Board waive the fee for temporary CO. The Board discussed when a temporary CO would be necessary and at whose discretion. The concern was if a temporary CO was issued would it be difficult to force the completion of the project? During the pandemic, work on the project has been slowed down with limits to how the project can be completed.

Trustee Rothchild motioned to waive the fee for a temporary CO subject to any escrow fee for a punch list and agreement by the Building Inspector, seconded by Trustee Dodge and so approved. On a call for a vote:

AYES: Mayor Tarapata, Trustees Diamond, Dodge, Esmay & Rothchild

NOES: None

Trustee Dodge made a motion to adjourn at 8:52 PM, seconded by Trustee Rothchild and so moved.

AYES: Mayor Tarapata, Trustees Diamond, Dodge, Esmay & Rothchild

NOES: None

Respectfully submitted,

Carol G. Brotherhood  
Village Clerk