

Regular meeting of the Trustees, Village of Lyndonville was held on Monday, November 1, 2021 at the Village Hall. Meeting by teleconference via Zoom, the meeting opened at 6:00 PM

PRESENT: Mayor: John Belson
Deputy Mayor: Danny Woodward Jr.
Trustees: Anne Marie Holland
Kimberly Kenyon
Darren Wilson
Clerk-Treasurer Teri Woodworth
Supt. of Public Works Terry M. Woodworth
Code Enforcement Officer Dan Wolfe - Absent
Attorney Katherine Bogan
Fire Chief Ben Bane - Absent
Public – Present: Carla Woodworth

APPROVAL OF THE MINUTES

ON MOTION of Trustee Wilson seconded by Trustee Woodward Jr., to accept the minutes of the October 4, 2021 regular meeting, October 22, 2021 special meeting and the October 25, 2021 special meeting.

Vote: 5 Ayes (Belson, Holland, Kenyon, Wilson, Woodward Jr.); 0 Nays; 0 Abstain

PRIVILEGE OF THE FLOOR

- Nothing

USE OF FACILITIES

- Fire Hall – Isabella Annecharico is requesting use of the Fire Hall on November 14, 2021 from noon to 6:00pm for a birthday party.
- Fire Hall – Kristin Guild is requesting use of the Fire Hall on December 11, 2021 from 11:30am to 3:00pm for a birthday party.
- Fire Hall – Jeffrey Hinckley is requesting use of the Fire Hall on December 18, 2021 from 9:00am to 9:00pm for a Christmas party.

RESOLUTION NO 2021-87

USE OF FACILITIES – ISABELLA ANNECHARICO, KRISTIN GUILD AND JEFFREY HINCKLEY

ON MOTION of Trustee Kenyon, seconded by Trustee Holland, to approve the use of facilities request from Isabella Annecharico, Kristin Guild and Jeffrey Hinckley as requested.

Vote: 5 Ayes (Belson, Holland, Kenyon, Wilson, Woodward Jr.); 0 Nays; 0 Abstain

Report – Code Enforcement Wolfe

- Mayor Belson confirmed everyone received Code Enforcement Wolfe’s report.
- Mayor Belson noted 43 Garland has been inspected and recommended to drop the charges.
- Trustee Wilson inquired what the letter for 114 S Main was for. Clerk-Treasurer Woodworth noted it was in regards to building permit and certificate of occupancy for a real property sale.
- Trustee Kenyon inquired if there are any further complaints from neighbors regarding 43 Garland. Mayor Belson noted he’s not aware of any.

Report – Officer Larkin

- Mayor Belson confirmed everyone received Officer Larkin’s report.

Report – Fire Chief Bane

- Absent - Report given by Clerk-Treasurer Woodworth– 207 Calls for 2021; 12 Calls for October (5 – EMS Town, 2 – EMS Village, 1 – CO2 Town, 1 – CO2 Village, 1 – Lift Assist Village, 1 – MVA Village and 1 – Traffic Control Town)

Report – Attorney Bogan

- Attorney Bogan noted she attended medical scholarship meeting; the committee is trying to get a scholarship going to get good quality doctors in Orleans County. Attorney Bogan noted Rochester Regional Health is going to contribute. Trustee Wilson noted the Lyndonville Area Foundation may be able to help support the scholarship program as well.
- Attorney Bogan noted the class action suit Kimberly Clark Organization with regards to flushable wipes causing issues for Waste Water Treatment Plants. Attorney Bogan noted Kimberly Clark Organization is going to change their business practices.

Report – Clerk-Treasurer Woodworth

- Clerk-Treasurer Woodworth presented the Board with the budget to actual report as of October 31, 2021.
- Clerk-Treasurer Woodworth asked the Board for approval to declare the minutes cabinet as surplus and to donate the cabinet to the Town of Somerset.

RESOLUTION NO 2021-88

SURPLUS – MINUTES CABINET

ON MOTION of Trustee Kenyon, seconded by Mayor Belson, to declare the minutes cabinet as surplus and to donate the cabinet to the Town of Somerset.

Vote: 5 Ayes (Belson, Holland, Kenyon, Wilson, Woodward Jr.); 0 Nays; 0 Abstain

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- Clerk-Treasurer Woodworth presented the Board with a letter from the property owners at 23 Railroad Avenue, stating the residents will now be a single-family home therefore requesting their availability charge be reduced to a single unit. Superintendent Woodworth noted the water meter for the apartment has been removed by the DPW.

RESOLUTION NO 2021-89

23 RAILROAD AVENUE – SINGLE UNIT – REDUCE AVAILABILITY CHARGE

ON MOTION of Trustee Kenyon, seconded by Trustee Holland, to authorize Clerk-Treasurer Woodworth to change 23 Railroad Avenue to a single unit for the availability charge and to terminated the east apartment’s account.

Vote: 5 Ayes (Belson, Holland, Kenyon, Wilson, Woodward Jr.); 0 Nays; 0 Abstain

- Clerk-Treasurer Woodworth asked the Board for approval to apply a credit of \$19.20 for the penalty to the water/sewer account for 10 Willowbrook Drive as the customers payment was inadvertently destroyed by the Clerk’s office.

RESOLUTION NO 2021-90

10 WILLOWBROOK DRIVE - CREDIT

ON MOTION of Trustee Kenyon, seconded by Trustee Wilson, to authorize Clerk-Treasurer Woodworth to issues a credit of \$19.20 to the water/sewer account for 10 Willowbrook Drive.

Vote: 5 Ayes (Belson, Holland, Kenyon, Wilson, Woodward Jr.); 0 Nays; 0 Abstain

- Vouchers – Abstract A5-1 – A6 #15624 - #15678 to be paid for 2021-2022

General	\$ 17,120.38
Water	\$ 9,228.53
Sewer	\$ 5,701.66
Grand Total	\$ 32,050.57

RESOLUTION NO 2021-91

VOUCHERS TO BE PAID FOR ABSTRACTS A5-1 – A6

ON MOTION of Trustee Wilson, seconded by Trustee Kenyon, to have Clerk-Treasurer Woodworth pay Abstracts A5-1 – A6 # 15624 – #15678.

Vote: 5 Ayes (Belson, Holland, Kenyon, Wilson, Woodward Jr.); 0 Nays; 0 Abstain

Report – Superintendent Woodworth

- Superintendent Woodworth noted the Village of Lyndonville is no longer overseeing the Village of Medina’s water system.
- Superintendent Woodworth noted leaf pickup will begin tomorrow.
- Superintendent Woodworth noted the two new employees started last Wednesday.

Report – Trustee Kenyon

- Trustee Kenyon noted she’s hearing lots of compliments on Dollar General.

Report – Trustee Woodward Jr.

- Trustee Woodward Jr. noted a special meeting will need to held on November 29, 2021 at 2:30pm to approved the candidates for the 2022 Lyndonville Fire Department elections.
- Trustee Woodward Jr. noted he sent out an email to schedule a public safety committee meeting and has heard no response from the Town of Yates representatives.

Report – Trustee Holland

- Trustee Holland expressed concern regarding motorcycles racing around the Village and asked if Officer Larkin could contact the individuals regarding their speed.
- Trustee Holland inquired if Superintendent Woodworth has heard anything on the LED Street light conversion. Superintendent Woodworth noted he has and is working on completing the survey of the Village Street lights.
- Trustee Holland inquired if they need to survey the Village sidewalks again this year or wait till spring of 2022. Superintendent Woodworth noted the next sidewalk project would have to done in the 2022/2023 fiscal year.

Report – Trustee Wilson

- Trustee Wilson noted he like to see the Village Board get a tree for Christmas in Lyndonville.

Report – Mayor Belson

- Mayor Belson noted New York Rural Water was checking for water leaks on Housel Avenue as Lyndonville School expressed concerns that the sink hole in their parking lot was from a water leak.

OLD BUSINESS:

- Water Rate Agreement – Clerk-Treasurer noted she will be sending updates to Attorney Bogan for review.
- Mobile Food Truck Application Fee – The Board tabled until the spring of 2022.

NEW BUSINESS:

- Settlement and Release Agreement – Clerk-Treasurer Woodworth presented the Board with a settlement and release agreement for NYSEG regarding past gross receipts tax owed.

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RESOLUTION NO 2021-92

NYSEG – SETTLEMENT AND RELEASE AGREEMENT

This SETTLEMENT AND RELEASE AGREEMENT (hereafter, the “Settlement Agreement”) is entered into and made effective as of the 1st day of November, 2021, between New York State Electric & Gas Corporation (“NYSEG”) and the Village of Lyndonville, New York (“Lyndonville”). NYSEG and Lyndonville are hereinafter sometimes referred to individually as a “Party” or together as the “Parties”.

WHEREAS, pursuant to New York’s General City Law Section 20-b or New York’s Village Law Section 5-530 as applicable, Lyndonville is authorized to impose a local gross receipts tax (“Municipal Tax”) of up to 1% on NYSEG’s gross revenue from transactions originated or consummated within Lyndonville’s territorial limits;

WHEREAS, the Parties disagree as to whether Section 20-b of the General City Law and Section 5-530 of the Village Law, as applicable, authorize the imposition of Municipal Tax on revenue received from customers within Lyndonville’s territorial limits where such customers take delivery service from NYSEG but receive commodity service from a third-party provider, and whether NYSEG should have, in prior periods, been collecting the Municipal Tax from said customers and remitting the proceeds to Lyndonville (the “Dispute”);

WHEREAS, NYSEG’s prior tariffs expressly prohibited the collection of local gross receipts tax from customers that take delivery (or transportation) service from NYSEG but receive commodity service from a third-party provider;

WHEREAS, on May 17, 2019 NYSEG filed a petition proposing revisions to its tariffs to allow for the charging/collection of the Municipal Tax on transmission and delivery service related to customers who receive commodity service from third-party providers; and

WHEREAS, on September 19, 2019 the Commission issued an Order Approving Tariff Filings with Modifications (the “Order”), whereby the Commission approved the proposed tariff revisions, but required deletion of the “on a prospective basis only” language contained in NYSEG’s Petition and NYSEG modified its tariff language as required by the Order;

WHEREAS, Lyndonville had initiated an audit of NYSEG related to the Municipal Tax and/or the Dispute and as of the date hereof, that audit remains open and it is the intention of Lyndonville to close the audit upon the Parties’ execution of this Settlement Agreement;

WHEREAS, Lyndonville, along with certain other cities and villages (together with Lyndonville, the “Represented Municipalities”), has engaged Computel Consultants (“Computel”) as its agent for all matters related to the Municipal Tax and the Dispute;

WHEREAS, contemporaneously with this Settlement Agreement, NYSEG and NYSEG’s affiliate, Rochester Gas and Electric Corporation (“RG&E”, and together with NYSEG, the “Companies”) and Computel have entered into a separate settlement agreement (the “Computel Agreement”) whereby RG&E and/or NYSEG or another affiliate of NYSEG and RG&E shall pay a combined total of Seven Hundred Fifty Thousand Dollars (\$750,000) (the “Settlement Amount”) to Computel to fully and finally resolve and settle the Represented Municipalities’ claims for Municipal Tax on gross revenues from transactions completed prior to the date NYSEG begins collection of Municipal Tax pursuant to paragraph 7 of this Settlement Agreement;

WHEREAS, RG&E and NYSEG shall each pay a share of the Settlement Amount as determined by RG&E and NYSEG in their sole discretion (the “RG&E Share” and “NYSEG Share” as applicable) and the sum of the RG&E Share and the NYSEG Share shall equal the Settlement Amount;

WHEREAS, pursuant to the Computel Agreement, the Companies provided Computel with percentage allocations for the Represented Municipalities, and Computel shall allocate a portion of the Settlement Amount to Lyndonville in accordance with those percentage allocations;

WHEREAS, the amount to be apportioned to Lyndonville is one thousand five hundred dollars (\$1,500) (the “Lyndonville Payment”); and

WHEREAS, the Parties desire to settle and resolve the Dispute without resort to litigation or legal proceedings, and without admission of fault or liability;

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby stipulate and agree as follows:

1. Lyndonville will deliver an executed copy of this Settlement Agreement to NYSEG for execution. Promptly upon receipt of this executed Settlement Agreement, the executed Settlement Agreements of the other Represented Municipalities and the executed Computel Agreement, NYSEG will execute this Settlement Agreement. Within ten (10) business days after execution of this Settlement Agreement, NYSEG shall pay the NYSEG Share of the Settlement Amount to Computel by electronic funds transfer.
2. Pursuant to the Computel Agreement, within ten (10) business days of receipt of the NYSEG Share of the Settlement Amount, Computel shall pay Lyndonville the Lyndonville Payment.
3. Lyndonville hereby releases and forever discharges NYSEG and its present, former and future directors, officers, trustees, lenders, representatives, employees, attorneys, advisors, agents, stockholders, partners, members, affiliates, predecessors, legal representatives, successors and assigns, from any and all claims, damages, liabilities, actions, complaints, causes of action, judgments, etc., whether at common law, equitable, or statutory in nature, whether in court, arbitration or other forum that Lyndonville ever had, now has, or hereafter can, shall or may have, arising by reason or in respect of or related to the Dispute (the “Release”). For the avoidance of doubt, the Release covers only Lyndonville’s claims for Municipal Tax on gross revenue from transactions

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completed prior to the date NYSEG begins collection of Municipal Tax pursuant to paragraph 7 of this Settlement Agreement, and any claims relating to or arising from the agreement to collect and remit Municipal Tax set forth in paragraph 7 of this Settlement Agreement are not covered by or subject to the Release.

4. Lyndonville hereby closes and will take all action necessary to formally close the audit described in the above recital.
5. The Release stated herein shall be effective upon payment by NYSEG of the NYSEG Share of the Settlement Amount, notwithstanding whether Computel has paid or ever will pay the Lyndonville Payment to Lyndonville and Lyndonville agrees that it shall have no recourse from NYSEG if Computel is late or does not ever pay the Lyndonville Payment.
6. The Parties hereto agree not to commence or file, or cause, contribute or assist others to commence or file any complaint, or make any claim by any action, suit or proceeding, or voluntarily participate in any action, suit or proceeding, or pursue any remedy, arising out of, related to, or in connection with the Municipal Tax or the Dispute.
7. As soon as is practicable after execution of this Settlement Agreement, NYSEG shall, on behalf of Lyndonville, begin the process pursuant to its Tariff of collection of Municipal Tax from residents of Lyndonville that receive energy transportation or delivery service from NYSEG and receive their energy commodity from a third-party energy services company. NYSEG will file with the Public Service Commission the statement required by its Tariff within 45 days of the date of payment of the Settlement Amount pursuant to paragraph 1 of this Settlement Agreement and will make good faith commercially reasonable efforts to begin collection of the Municipal Tax as soon as is practicable. NYSEG will remit said proceeds to Lyndonville in accordance with its applicable tariff provisions.
8. Lyndonville represents and warrants to NYSEG that it has: (i) read and fully understands this Settlement Agreement, and (ii) consulted with counsel to the extent deemed necessary prior to the execution and delivery of this Settlement Agreement.
9. The terms and conditions of this Settlement Agreement and the existence of this Settlement Agreement, shall remain confidential. Lyndonville, its employees, agents, counsel and/or other representatives, including the New York Conference of Mayors, that have a need to know of this Agreement and its terms shall not discuss or disclose to any third party any matters concerning (including its existence) this Settlement Agreement.
10. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to its principles of conflicts of law. Any litigation arising out of this Settlement Agreement, other than those brought before the New York Public Service Commission, are to be venued in the courts of Monroe County, New York.
11. This Settlement Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Signatures to this Agreement transmitted by facsimile or electronic mail shall be valid and effective to bind the Party so signing.
12. This Settlement Agreement may not be amended, supplemented or otherwise modified except by a written instrument signed by each of the Parties hereto.
13. This Settlement Agreement constitutes the entire agreement of the Parties in connection with the Dispute. Any prior communications by the Parties, whether written or oral, pertaining to or made in connection with this Settlement Agreement shall have no binding force and effect.
14. No provision of this Settlement Agreement shall be deemed waived by either Party, unless in writing signed by the Party granting the waiver.
15. This Settlement Agreement is a negotiated settlement agreement, and the resolution of the issues or the manner in which such issues were resolved shall have no precedential effect with respect to any future issues relating to the Municipal Tax. Neither this Settlement Agreement nor anything contained herein, nor any action taken by the Parties in performance of their obligations hereunder, shall be construed as evidence of the validity of any claim asserted by any Party, nor an admission of the same by any Party.

IN WITNESS WHEREOF, each of the undersigned has caused this Settlement Agreement to be duly executed by its duly authorized representatives on and as of the date first above written.

ON MOTION of Trustee Woodward Jr., seconded by Trustee Kenyon, to authorize Mayor Belson to execute the settlement and release agreement with NYSEG for gross receipts tax.

Vote: 5 Ayes (Belson, Holland, Kenyon, Wilson, Woodward Jr.); 0 Nays; 0 Abstain

- Hazard Mitigation Plan – Mayor Belson presented the Board with a letter and resolution from Orleans County Department of Planning and Development Director James Bensley for the Orleans County Hazard Mitigation Plan.

RESOLUTION NO 2021-93

ORLEANS COUNTY HAZARD MITIGATION PLAN

WHEREAS, the Village of Lyndonville, with the assistance from Tetra Tech, Inc., has gathered information and prepared the Orleans County Hazard Mitigation Plan; and

WHEREAS, the Orleans County Hazard Mitigation Plan has been prepared in accordance with the Disaster Mitigation Act of 2000; and

WHEREAS, the Village of Lyndonville is a local unit of government that has afforded the citizens and opportunity to comment and provide input in the Plan and the actions in the Plan; and

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WHEREAS, the Village of Lyndonville has reviewed the Plan and affirms that the Plan will be updated no less than every five years;

NOW THEREFORE, BE IT RESOLVED by Village of Lyndonville Board of Trustees that Lyndonville adopts the Orleans County Hazard Mitigation Plan as this jurisdiction's Natural Hazard Mitigation Plan, and resolves to execute the actions in the Plan.

ON MOTION of Trustee Woodward Jr., seconded by Trustee Wilson, to accept the Orleans County Hazard Mitigation Plan as stated.

Vote: 5 Ayes (Belson, Holland, Kenyon, Wilson, Woodward Jr.); 0 Nays; 0 Abstain

- Renewal of State-owned Submerged Land Underwater Easement for Water Intake Pipe – Clerk-Treasurer Woodworth presented the Board with a letter and resolution from New York State to renew the easement for the intake line in Lake Ontario at the Water Treatment Plant along with an easement fee of \$5,110.00.

RESOLUTION NO 2021-94

RENEWAL OF STATE-OWNED SUBMERGED LAND UNDERWATER EASEMENT FOR WATER INTAKE PIPE

ON MOTION of Trustee Kenyon, seconded by Trustee Holland, to renew the State-owned submerged land underwater easement for the water intake line pipe with New York State for 25 years.

Vote: 5 Ayes (Belson, Holland, Kenyon, Wilson, Woodward Jr.); 0 Nays; 0 Abstain

- Mayor Belson noted the solar project is getting started.
- Clerk-Treasurer Woodworth noted there has been no public comment on the cannabis local law. The Board discussed and expressed concern over the other municipalities that opted in. Clerk-Treasurer Woodworth will file the local law with the State on November 4, 2021.

ON MOTION of Trustee Woodward Jr., seconded by Trustee Wilson, to adjourn the meeting at 6:26PM.

Vote: 5 Ayes (Belson, Holland, Kenyon, Wilson, Woodward Jr.); 0 Nays; 0 Abstain

Teri M. Woodworth
Clerk-Treasurer