

Supervisor James Schmitt opened the Regular meeting of the Town Board of the Town of Pawling at 6:00 PM April 8, 2020 via Facebook due to the Covid-19 pandemic. The meeting was broadcast live. The public was able to submit comments in writing regarding agenda items only, which were read into the record and answered during the meeting. Present were Councilmen Johnson, McCarthy, DeRosa and Councilwoman Snow.

MINUTES

Supervisor Schmitt made a motion to accept the minutes of March 4, 2020, seconded by Councilman Johnson motion passed unanimously.

Supervisor Schmitt made a motion to accept the minutes of March 11, 2020, seconded by Councilman Johnson motion passed unanimously.

QUESTIONS FROM THE PUBLIC ON AGENDA ITEMS

Supervisor Schmitt said the first question was from Kevin Gardiner, resident from Tracy Road. His question was about Water District #2 referred to in Resolution 2020085 and 2020090. There is a serious problem with water in Pawling and this effects the Town's Water District #2, as well as current and future Village water users. One proposed step to address the current water shortage is for the Village to purchase a large piece of land which is adjacent to Lakeside Park. This partial solution is being estimated at a cost of over 3 million dollars according to the presentation made by the Chazen Companies. This 3 million dollar expense may or may not solve the problem and further expensive steps may be required. Has the Village government approached any of the town board members about drilling new wells on Town property (Lakeside Park, Murrow Park, Dutcher Golf Course, etc.) instead of purchasing new land? Is there any objection the Town Board would have to allowing existing town property to be used for new wells? Does any Town Board member have an explanation of why we would need to purchase new property to drill wells while the Town of Pawling already owns hundreds of acres?

Supervisor Schmitt said this question should be directed toward the Village. The Town did communicate with the Village in the past regarding the water issue. He said the Village in the past has drilled wells on many different town properties and other spots around the Village. He believed the Village had a map prepared by The Chazen Companies where test wells were drilled. Regarding the three million dollars, the Town is not privy to those conversations as this issue has nothing to do with the town. Test wells were drilled at Lakeside Park, and there was communication with the Village. As for what the Village will do with the information they received, he did not know.

Councilman Johnson said the agenda item tonight refers to Pawling Water District #1, which is the district that receives its water from the Village. Part of the reason the Board needs to pass that resolution is to help the Village apply for funding for future water sources. A test well was drilled at Lakeside Park, which was a good well yielding 12 gallons per minute, but not enough for a water district. Other test wells were drilled. He felt the Board would have no issue with allowing the Village building a water facility on any town property. He said the town also owns a parcel of land on Dutcher Avenue, which may work better. He would be speaking with Trustee Daniels tomorrow regarding this.

Councilman DeRosa said he is not sure how much of the three million dollars was for property, he thought it was for mechanical setup and a treatment facility. He felt the town would be willing to work with the Village but this is a Village issue and the question should be directed to the Village.

Supervisor Schmitt said the next question is from Drew Montgomery, resident from Quaker Hill Road. His question was about the town levying a fee to somebody who wants to rent a room in their home as a B&B. Renting spare rooms in one's home has been done probably for centuries as a way for the homeowner to help pay bills and the traveler to find places to stay at a reasonable rate and especially, where there are few or no hotels. It is the advent of the website Airbnb that now makes it easy to do and prevalent nationwide and has prompted localities to try and get a piece of the pie. In charging for a permit, what service does the town provide to the homeowner? Are you listing available B&B's? Are you inspecting to make sure they are properly set up? Is it costing the town in any way to have these Airbnb's exist? My question is, how do you justify charging a fee for somebody to have a B&B in their home?

Supervisor Schmitt said he believed Mr. Montgomery's question related to a fee waiver for Celeste Bevilacqua, which is on the agenda tonight. Supervisor Schmitt said the town is providing a service because inspections must be done for safety such as fire safety, proper ingress and egress, septic systems must be checked to make sure they are adequate for the use. The short term rental local law is something the Board discussed for a long time and formed a committee to look at it. A public hearing was held on October 9th and the Board passed the resolution putting the local law into effect. The town has to cover the building department expenses, which is why a fee is charged. The local law was adopted for the protection of neighborhoods, where large house parties were being held disrupting neighbors.

Councilman DeRosa said a lot of the complaints received were about parking so that was also an issue. The rentals have to be inspected once per year to keep people who are renting safe and homeowners also.

Councilwoman Snow said she understood that this has been discussed before she was on the Board and she remembered the complaints the Board received. She agreed with everything Supervisor Schmitt said.

Supervisor Schmitt said the next question is from Kate Krusko, resident from Tracy Road. Her question was regarding concerns relating to resolution 2020088 and the decision before the Board to fill a vacant, full-time position at the Buildings and Grounds department. Given the scaled back operation of our local governments and the uncertainty of several Coronavirus impacted revenue streams (recreation fees, summer camp fees, golf course membership, greens fees, sales tax from the state/county, etc.) I believe the necessary, prudent question is: will the Board please hold off on filling this vacancy until we know when our Parks and Golf Course are able to be open and be fully functioning? After sharing this thought with several town residents, we agree that the wise decision is to postpone filling this open position while our town, county and state governments can assess the financial imbalance we face this year. At this time, we must be as fiscally conservative as possible. The property tax payers of Pawling cannot absorb the potential consequence of making this hire now, that is, a tax increase needed to cover the shortfalls in revenue cited above due to the impacts of Coronavirus.

Supervisor Schmitt said these are trying times and globally uncharted waters. He has had contact with the Bookkeeper and the Board and has begun to look at revenue streams. Lakeside Park is open and getting more use now that people are home. The golf course cannot be open right now but it will be open on April 15th. Strict social distancing rules will be in place. This is not a new hire, it is a position that has always existed but has been vacant for the past year because the employee went to another department, but has now come back. The groundskeeper position has always been funded and is a staff neutral position because another person in the department recently left. The workload is still very high and there is no shortage of work.

Councilman Johnson said the grass hasn't stopped growing so this is a department you really can't cut back on. Taking into consideration areas we can cut, we are doing that with recreation, actually postponing a resolution to make a part time employee full time and he is in favor of this.

Councilman McCarthy said Trevor is spending most of his time at Lakeside and at the parks, not the golf course. This position was budgeted and we waited until April to accept him, so money will be saved for the first quarter of the year. He felt it was a good idea to have him come back.

Councilman DeRosa agreed, saying opening the golf course on April 15th will be limited and there will be some changes in order to be safe.

Councilwoman Snow said she felt this made sense and it has been budgeted already, so it is not a new position. She asked if the position was posted so any employee could apply if they wanted to.

Supervisor Schmitt said yes, the position was posted. He said he is hoping for the best and to hit projected revenues.

NON CONSENT AGENDA

Resolution 2020084 Payment of Bills for the Town of Pawling

Whereas, the Town of Pawling Bookkeeper has reviewed and prepared the vouchers and has offered them for review, and

Whereas, the vouchers have been approved in accordance with the Town of Pawling policy, and
Whereas, the vouchers have been numbered 20202036 through 20202193, now therefore, be it

Resolved, that the Pawling Town Board hereby accepts the vouchers as prepared and on the
recommendation of the Bookkeeper and hereby authorizes payment of said vouchers for the
Town of Pawling on this date in the amount of \$260,074.56.

MOTION: Supervisor Schmitt

SECOND: Councilman Johnson

ROLL CALL VOTE:

Councilman Johnson – “AYE”

Councilman DeRosa – “AYE”

Councilman McCarthy – “AYE”

“Councilwoman Snow – “AYE”

Supervisor Schmitt – “AYE”

Resolution 2020085
Billing for Pawling Water District #2

Whereas, Pawling Water District #2 bills need to be approved by the Pawling Town Board, and

Whereas, the bills have been prepared and submitted in the amount of \$13,712.40 for the period
of January 1, 2020 through March 31, 2020 by the Water District Clerk, now therefore, be it

Resolved, that the Pawling Town Board hereby accepts the billing as recommended for Pawling
Water District #2.

MOTION: Supervisor Schmitt

SECOND: Councilman Johnson

ROLL CALL VOTE:

Councilman Johnson – “AYE”

Councilman DeRosa – “AYE”

Councilman McCarthy – “AYE”

“Councilwoman Snow – “AYE”

Supervisor Schmitt – “AYE”

Resolution 2020086
Delay of Temporary Appointment of Lori Covell

Whereas, at the March 14th Town Board meeting, Lori Covell was granted a temporary 6 month
full time appointment in the Recreation Department to start April 1, 2020, and

Whereas, due to Executive Order 202.6 from the New York State Governor in response to
COVID-19 the Town of Pawling must operate on very limited staff, and

Whereas, due to the above restrictions recreation activities have been cancelled or postponed
until further notice and therefore do not require extra staffing, therefore, be it

Resolved, that the Town Board hereby delays the 6 month full time appointment of Lori Covell
until Town of Pawling recreation operations are permitted by the State to resume.

MOTION: Supervisor Schmitt
SECOND: Councilman Johnson

ROLL CALL VOTE:

Councilman Johnson – “AYE” Councilman DeRosa – “AYE”
Councilman McCarthy – “AYE” “Councilwoman Snow – “AYE”
Supervisor Schmitt – “AYE”

Resolution 2020087
Fee Waiver Request – Celeste Bevilacqua

Whereas, the Town of Pawling Town Board has recently adopted Local Law #1 of 2020, Short Term Rentals which amended Section 215-3 of the Zoning Code, and

Whereas, Celeste Bevilacqua has applied to operate a Short Term Rental in the Town of Pawling under the provisions in Local Law #1 of 2020, and

Whereas, all Short Term Rental owners must pay a fee to operate in the Town of Pawling, and

Whereas, under the previous Zoning Code 215-3, Mrs. Bevilacqua paid the appropriate fee to operate in the Town of Pawling for the year, therefore, be it

Resolved, that the Town Board hereby waives the Short Term Rental fee for the year 2020 for Celeste Bevilacqua.

MOTION: Supervisor Schmitt
SECOND: Councilman Johnson

Councilman Johnson said Mrs. Bevilacqua has a model Airbnb, has complied with all requirements and was involved in the forming of this law. The motion is to waive the application fee.

Councilman DeRosa while he agreed with Councilman Johnson, he felt Mrs. Bevilacqua should be subject to the annual renewal fee because the Building Inspector will have to go out and do the annual inspections.

ROLL CALL VOTE:

Councilman Johnson – “AYE” Councilman DeRosa – “AYE”
Councilman McCarthy – “AYE” “Councilwoman Snow – “AYE”
Supervisor Schmitt – “AYE”

Resolution 2020088
Groundskeeper Appointment - Buildings & Grounds

Whereas, a vacancy exists in the Buildings & Grounds Department for the Groundskeeper position, and

Whereas, the Town of Pawling publicly advertised for the position, and

Whereas, the Supervisor of Buildings & Grounds would like to fill the position with Trevor Wendover, therefore, be it

Resolved, the Town Board hereby approves the appointment of Trevor Wendover to Groundskeeper.

MOTION: Supervisor Schmitt

SECOND: Councilman Johnson

ROLL CALL VOTE:

Councilman Johnson – “AYE”

Councilman DeRosa – “AYE”

Councilman McCarthy – “AYE”

“Councilwoman Snow – “AYE”

Supervisor Schmitt – “AYE”

Resolution 2020089

Authorizing Town Clerk to Advertise for Property and General Liability Insurance Brokerage Service

Whereas, the Town of Pawling is seeking to hire a brokerage service for property and general liability insurance; and

Whereas, the Town of Pawling wishes to advertise for Request for Proposals for the brokerage service; and

Whereas, the Town Board of the Town of Pawling wishes to authorize its Town Clerk, Catherine Giordano, to advertise for Requests for Proposals for property and liability insurance Brokerage Services;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Pawling hereby authorizes its Town Clerk, Catherine Giordano, to advertise for Requests for Proposals for a Brokerage Services.

MOTION: Supervisor Schmitt

SECOND: Councilwoman Snow

ROLL CALL VOTE:

Councilman Johnson – “AYE”

Councilman DeRosa – “AYE”

Councilman McCarthy – “AYE”

“Councilwoman Snow – “AYE”

Supervisor Schmitt – “AYE”

Resolution 2020090

Intermunicipal Cooperation Agreement for Water System

WHEREAS, the Village owns and operates a water supply system pursuant to which water is supplied to Village residents and sold to the Town Water District (“Water System”);

WHEREAS, the Town has established a water district within the boundaries of the Town, excluding the Village, known as the Pawling Water District No. 1 (“Town Water District”);

WHEREAS, the Village and the Town entered into, and are parties to, a Contract for the Supply of Village Water to the Town for the Town Water District dated May 4, 1981 (“1981 Contract”) and an Intermunicipal Water Service Agreement dated November 16, 1998 (“1998 Agreement”);

WHEREAS, the Village has been providing the Town with water as needed for the Town Water District at the prevailing bulk rate of the Village pursuant to the 1981 Contract;

WHEREAS, the fees for water usage by the users in the Town Water District have been paid by the Town Water District at the bulk rate charged by the Village;

WHEREAS, the 1981 Contract also requires the Town Water District to pay the Village, an assessment in the amount of \$7.00 per meter per quarter for each water meter in use within the Town Water District in addition to the fee for water usage;

WHEREAS, pursuant to the 1981 Contract, the Town Water District retained both the ownership of all water lines, mains, meters, hydrants and other equipment located within the Town Water District and the responsibility to repair and maintain the same;

WHEREAS, General Municipal Law Article 5-G authorizes municipalities to agree to perform any of their existing functions or duties jointly or one for another. See, General Municipal Law §§ 119-n(c), 119-o(l); and

WHEREAS, the Parties desire to terminate the 1981 Contract and the 1998 Agreement and enter into a new agreement pursuant to which the Village shall continue to provide water from the Water System to the users in the Town Water District according to the terms set forth herein, which include but are not limited to, a change in the manner in which the Village bills for usage in the Town Water District and a change in the Party responsible for maintenance and/or repair of the water lines, mains, meters, hydrants, and other equipment located in the Town Water District.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the respective representations, warranties, covenants, agreements and conditions hereinafter set forth, the Parties hereby mutually agree as follows:

1. Definitions. The following terms shall have the meanings ascribed to each in this section.
 - 1.1. "Agreement" means this Agreement.
 - 1.2. "Breach Notice" shall have the meaning ascribed to such term in § 9.2.1 of this Agreement.
 - 1.3. "Change in Law" shall have the meaning ascribed to such term in §12 of this Agreement.
 - 1.4. "Effective Date" means the effective date of this Agreement as set forth in the first paragraph of this Agreement.
 - 1.5. "Final Breach Notice" shall have the meaning ascribed to such term in § 9.3 of this Agreement.
 - 1.6. "Force Majeure" shall have the meaning ascribed to such term in § 11 of this Agreement.
 - 1.7. "1981 Contract" shall have the meaning ascribed to such term in the third "WHEREAS" clause of this Agreement.
 - 1.8. "1998 Agreement" shall have the meaning ascribed to such term in the third "WHEREAS" clause of this Agreement.
 - 1.9. "Notices" shall have the meaning ascribed to such term in § 13 of this Agreement.
 - 1.10. "Parties" means the Village and the Town.
 - 1.11. "§" means a section or subsection of this Agreement, as the case may be. When a section is referenced, such reference shall include references to all subsections, sub-subsections, etc. within that section. For example, a reference to § 1 shall include references to §§ 1.1, 1.2, 1.3, etc.
 - 1.12. "Supply Agreement Period" shall have the meaning set forth in § 8.
 - 1.13. "Supply Agreement Termination Date" shall have the meaning set forth in § 8.
 - 1.14. "Town Code" means the town code of the Town of Pawling.
 - 1.15. "Town Owned Water Improvements" means the water lines, mains, hydrants, and other equipment of the Water System which are exclusively used to provide water from the Water System to the users in the Town Water District; provided, however, that water meters shall not be deemed to be Town Owned Water Improvements.
 - 1.16. "Town Water District" shall have the meaning ascribed to such term in the second "WHEREAS" clause of this Agreement.

- 1.17. “Water System” shall have the meaning ascribed to such term in the first “WHEREAS” clause of this Agreement.
- 1.18. “Water System Activities” shall have the meaning ascribed to such term in §3 of this Agreement.
- 1.19. “Village Law” means the New York Village Law as set forth in Chapter 64 of the Consolidated Laws of New York State.

2. Termination of Prior Agreements. The 1981 Contract and the 1998 Agreement are hereby terminated.

3. Powers and Duties Delegated to the Village. The Village insofar as permitted by law, shall have the powers and duties to engage in the following activities with respect to the Water System (collectively the “Water System Activities”):
 - 3.1. Establishing and amending water rates;
 - 3.1.1. During the first year of the Supply Agreement Period, the quarterly water rates charged to the water users located within the Town Water District (“Town Users”) shall be equal to the quarterly rates currently being charged by the Town to Town Users (“Current Town Rates”).
 - 3.1.2. During the second year of the Supply Agreement Period, the quarterly water rates charged to the Town Users shall be increased by an amount equal to fifty (50%) percent of the difference between the Current Town Rates and the amount charged to Village residents.
 - 3.1.3. During the third year of the Supply Agreement Period, the water rates charged to the water users located within the Town Water District shall be as determined by the Village; provided, however that such rates shall be the same as those charged to residents of the Village at such time.
 - 3.2. The construction, repair, replacement, expansion, operation, maintenance and improvement of the Water System and the supply of water to users of the Water System, including without limitation the costs to retire indebtedness and the costs of administrative and professional personnel (whether for employees or independent contractors);
 - 3.3. Arranging for engineering, attorneys and other professional services;
 - 3.4. Engaging and terminating contractors and other employed or independent contractor personnel;
 - 3.5. Acquiring necessary lands and rights of way, supplies and materials;
 - 3.6. Preparation of bid specifications and the letting of bids;
 - 3.7. Preparing budgets;
 - 3.8. Acquiring, repairing, replacing, installing, and reading of meters to measure the usage of water by users of the Water System, including meters on the property of users located within the Town Water District;
 - 3.8.1. In the event that meters are inoperable or not available, such determination of usage of water shall be based on estimates of water usage obtained pursuant to standards established by the Village from time to time. Each Party hereto agrees to deliver such of its own records pertaining to its own water systems (including readings) as the Village may request to enable the Village to make the foregoing determinations. At the Village’s option, master meters may be installed at points of connection of the water mains of the Town to the water mains owned by the Village for the purpose of determining water usage within the Town. If the Village elects, the readings of such meters may be substituted for the readings on consumer’s meters.
 - 3.9. Directly billing users of the Water System within the Village and the Town Water District and collecting payments of such bills from such users;
 - 3.10. Accessing and entering upon properties located in the Town Water District at any and all reasonable times in order to read meters;
 - 3.11. Applying to the appropriate governmental authorities as it deems advisable, including the United States Government and the government of the State of New York, for such financial and other aid (including loans or grants) that may be available for the Water System Activities.
 - 3.12. Establishing, amending and enforcing rules and regulations as it deems advisable, including, without limitation, rules and regulations relating to water meter acquisition, repair, replacement, installation, and readings, required plumbing inspections; rules and processes for handling emergency breaks in lines, safeguards to protect the Water

- System from leaks, infiltration/inflow and the establishment of standards and regulations with respect thereto;
- 3.13. Establishing and implementing financial controls and audit.
 - 3.14. In lieu of hiring its own personnel, contracting with the Town or, any other municipality or governmental agency or political subdivision, or any other private corporation or firm for provision of personnel services, use of equipment, use of supplies, etc., and the costs of such contract or contracts, as the case may be, shall be included in the cost of the operation of the Water System;
 - 3.15. Making capital improvements to the Water System, subject to the approval of any federal or state agencies as may be required.
 - 3.16. Calling, arranging, and conducting hearings in regard to the furnishing of water and to determine the issues thereat; and
 - 3.17. Providing for the making of necessary inspections and the keeping of all records concerning the maintenance of the Water System and making all necessary and required reports as required by law.
4. Supply of Water. During the Supply Agreement Period, the Village shall provide water to the users within the Town Water District upon and subject to the terms and conditions of this Agreement.
 5. Delegation of Authority. The governing bodies of the respective Parties may at any time delegate such other duties and responsibilities to the Village as permitted by law and as mutually agreed.
 6. Financing operation and maintenance costs.
 - 6.1. Annually, during the Supply Agreement Period, the Village shall prepare a budget for the operation and maintenance costs and revenues for the Water System. The Village may then advertise notice of a budget hearing for the Water System and adopt the budget.
 - 6.2. During the Supply Agreement Period, the Village shall maintain appropriate accounts to hold Water System funds from all sources and may disburse such funds in accordance with this Agreement for lawful purposes as permitted in the Water System budget.
 - 6.3. During the Supply Agreement Period, the Village shall be responsible for the ordinary maintenance and/or repair of any Town Owned Water Improvements.
 - 6.4. The Town shall be responsible for the cost and financing of any acquisition or construction of, and any capital improvements to, any Town Owned Water Improvements and the Village shall have no responsibility for such costs or financing.
 - 6.5. With respect to the current fund balance of the Town Water District as of the date hereof, if any, such fund balance shall only be used for capital improvements to Town Owned Water Improvements;
 7. Title to Real Estate.
 - 7.1. The Town shall not have any right, title or interest in any of the real estate and/or easements owned by the Village and used in connection with the Water System; provided, however, that the Town shall continue to hold title to the Town Owned Water Improvements.
 - 7.2. The Town hereby establishes and grants to the Village an easement providing the Village with access to any property owned by the Town, including but not limited to any streets, highways, roads or rights of way within the Town for the purpose of performing the Village's duties and obligations hereunder, including without limitation, maintaining and/or repairing any Town Owned Water Improvements and for the purpose of maintaining, repairing and replacing any other water lines, mains, meters, hydrants, and other equipment located in the Town which service or are used in connection with the Water System.
 8. Term; Termination.
 - 8.1. This Agreement shall be in effect during the Supply Agreement Period.
 - 8.2. "Supply Agreement Period" means the time period commencing on the Effective Date and terminating on the Supply Agreement Termination Date.
 - 8.3. "Supply Agreement Termination Date" means the first to occur of the following:
 - 8.3.1. Thirty (30) years from the Effective Date; and
 - 8.3.2. Termination of this Agreement as provided herein.

- 8.4. Effect of Termination. Upon termination of the Supply Agreement Period as provided herein, or upon any other termination of this Agreement as provided herein, except for obligations or liabilities accrued prior to such termination, all obligations of the Parties hereunder shall be null and void and of no further force and effect.
9. Limited Covenant and Warranty.
- 9.1. The Village covenants and warrants that, during the Supply Agreement Period, the Village, acting reasonably, will endeavor in good faith to comply with the terms of this Agreement and all applicable laws, rules and regulations regarding the supply of water to the users within the Town Water District and to the maintenance and management of the Water System and that the Village will conduct its duties and activities pursuant to this Agreement applying substantially the same standards of care and diligence as the Village applies to its similar activities and duties pertaining to the water supply system within the Village. The limited covenant and warranty of the Village set forth in this § 9.1 shall not apply to and the Village shall not be deemed in breach of this Agreement as a result of any one or more of the following events:
- 9.1.1. loss of water capacity in the Water System due to storms, floods, acts of God, fire, casualty or other natural disaster;
- 9.1.2. reduction in the overall capacity of the Water System as a result of any governmental determination, order, directive or mandate, or as a result of any changes in applicable laws or regulations;
- 9.1.3. actions of third parties, including other users of the Water System, which violate any laws, rules and/or regulations applicable to the Water System, it being understood and agreed that, although the Village intends to exercise due diligence to enforce its respective laws, rules and regulations, the Village shall not be deemed in breach of its respective obligations hereunder based on any failure by the Village to commence or prosecute any suit, action or proceeding in order to enforce any such laws, rules and regulations.
- 9.2. In the event that the Village commits a material breach of § 9.1 and such breach is materially interfering with the supply of water to one or more residents within the Town Water District, the Village shall remedy such breach as soon as practical after receiving notice of such breach applying the same standards of diligence as the Village applies to similar water supply interference issues within the Village. For all other material breaches of §9.1, the Village shall use diligent efforts to remedy such material breach within thirty (30) days after notice of the material breach from the Town to the Village ("Breach Notice"); subject however, to the following:
- 9.2.1. if and to the extent such material breach cannot be reasonably cured within such time period, and if the Village has diligently attempted to cure the material breach and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to the time period which is reasonably required, with the exercise of due diligence, to effect such cure. For the avoidance of doubt and without limiting the generality of the immediately preceding sentence, the Village's time to cure any material breach shall be extended to the extent that the Village is delayed in curing any material breach as a result of a Force Majeure as described in § 11 below. In addition, the Village shall be deemed to be diligently attempting to cure a material breach in compliance with this § 9.2.1 in the event that the Village has agreed in a consent order or other binding agreement with any Federal, New York State or local agency to a definite time schedule of improvements satisfactory to such agency and the Village is in material compliance with such time schedule. The immediately preceding sentence shall not be deemed to limit the manner or means by which the Village can cure a material breach.
- 9.2.2. In no event shall the Village be required to commence or prosecute any litigation in order to cure any material breach;
- 9.2.3. In no event shall the Village be required:
- 9.2.3.1. to make any capital improvements to the Water System in order to cure a material breach;
- 9.2.3.2. to make any new capital improvements which expand the capacity of the Water System, even if such expansion is required in order to cure a material breach;
- 9.3. Limitation of Remedies. In the event that the Village materially fails to comply with its obligations under § 9.2, then the Town shall have the right to give the Village an

- additional notice of such failure ("Final Breach Notice") and, in the event that such failure has not been cured by the Village within thirty (30) days after the Village's receipt of the Final Breach Notice, the Town shall have the right:
- 9.3.1. to commence an action against the Village in Dutchess County Supreme Court seeking (i) specific performance by the Village of its express obligation under § 9.1, as the case may be and/or injunctive relief to enjoin a violation of §9.1, subject however, to the limitations specified herein; or
 - 9.3.2. To terminate this Agreement.
- 9.4. The rights and remedies described in §9.3 are the Town's sole and exclusive remedies in the event of any one or more of the following:
 - 9.4.1. a breach of this Agreement by the Village;
 - 9.4.2. the capacity to supply water to the Town Water District is not available, including without limitation any such lack of capacity which arises directly or indirectly from a moratorium or other order or directive which is issued by any governmental agency or department with jurisdiction;
 - 9.4.3. Any negligence, errors or omissions or strict liability of any Covered Pawling Person;
 - 9.4.4. Termination of this Agreement;
 - 9.5. IN NO EVENT WILL THE VILLAGE BE LIABLE TO THE TOWN, THE TOWN WATER DISTRICT, OR ANY OF THE USERS WITHIN THE TOWN WATER DISTRICT FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, REVENUE, PROFIT, BUSINESS, REPUTATION OR FINANCING ARISING OUT OF OR OTHERWISE RELATING TO ANY OF THE EVENTS SPECIFIED IN § 9.4 ABOVE.
 - 9.6. THE LIMITATIONS ON LIABILITY IN § 9.5 SHALL APPLY EVEN IF THE COVERED PAWLING PERSON(S) HAS BEEN ADVISED OF OR KNEW OF THE POSSIBILITY OF SUCH DAMAGES.
 - 9.7. "Covered Pawling Person" means any of the following: the Village, the respective trustees, consultants, engineers, attorneys, officers and employees, of the Village.
 - 9.8. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE LIMITED COVENANT AND WARRANTY OF THE VILLAGE SET FORTH IN THIS § 9 IS THE SOLE AND EXCLUSIVE COVENANT AND/OR WARRANTY OF THE VILLAGE WITH RESPECT TO PERFORMANCE OF THE VILLAGE'S OBLIGATIONS HEREUNDER AND IS EXPRESSLY IN LIEU OF ANY AND ALL OTHER COVENANTS, WARRANTIES, EXPRESS OR IMPLIED BY THE VILLAGE, BOTH INDIVIDUALLY AND COLLECTIVELY. FOR THE AVOIDANCE OF DOUBT, WITH THE EXCEPTION OF THE LIMITED COVENANT AND WARRANTY PROVIDED IN THIS § 9, THE VILLAGE MAKES NO WARRANTIES, GUARANTEES OR REPRESENTATIONS, EXPRESS OR IMPLIED, IN FACT OR IN LAW, WITH REGARD TO THE WATER SYSTEM, ANY COMPONENT OF THE WATER SYSTEM, AND/OR THE RESERVED CAPACITY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING DISCLAIMER, THE VILLAGE DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.
 10. Termination by the Village. The Village shall have the right to immediately terminate this Agreement in any of the following events:
 - 10.1. The Town and/or the Town Water District are in breach of any of the terms of this Agreement and such breach is not cured within thirty (30) days after notice from the Village to the Town of such breach;
 - 10.2. The Water System is insufficient to fully serve the Village or its inhabitants and the users of Village water outside the Village.
 11. Force Majeure. A given Party will not be held in breach of this Agreement for a delay or failure to perform its obligations under this Agreement if and to the extent such delay or failure to perform under this Agreement, is due to an act of God or public enemy, civil

commotion, closing of public highways, government interference, government regulations, delays on the part of suppliers, shipping delays, work delays caused by contractors, work stoppages, labor disputes, strikes, fires, accidents, weather conditions, civil disobedience, riots, rebellions, wars, court ordered cessation of operation, or any event or occurrence beyond the reasonable control of such Party (collectively, a "Force Majeure").

12. Change in Law. In the event that any term or provision of this Agreement is held to be illegal, invalid or unenforceable under the laws, regulations, or ordinances of a federal, state or local government to which this agreement is subject, such term or provision shall be deemed severed from this agreement and all remaining terms and provisions shall remain in force, provided such change does not materially impair the rights and benefits of one or both of the Parties hereunder. Each Party acknowledges that both the Federal and State governments from time to time review and revise existing and proposed legislation, rules and regulations that may affect this Agreement. The Parties intend that this Agreement be in compliance with all applicable laws, rules and regulations at all times, so in the event that (i) either a State or the Federal government enacts legislation or adopts rules and regulations (or any interpretation of, or guidelines for, same) which will frustrate the purposes of this Agreement or render all or some aspect of this Agreement to be non-compliant with any law, rule or regulation, or (ii) a court or arbitrator of competent jurisdiction or an agency of a State or the Federal government having authority to enforce the law shall interpret, or issue guidelines with respect to, such laws, rules or regulations in a manner which will frustrate the purposes of this Agreement or render all or some aspect of this Agreement to be non-compliant with any law, rule or regulation (each of the foregoing being a "Change in Law"), the parties shall negotiate in good faith to amend this Agreement to the minimum extent required so that such Change in Law does not frustrate the purposes of this Agreement, and so that no aspect of this Agreement will be non-compliant with any applicable law, rule or regulation. For the purposes of this paragraph, the phrase "frustrate the purposes of this Agreement" means to: (i) materially impair performance of this Agreement by either party or both parties; or (ii) have a material adverse impact on the rights or benefits of one or both of the parties hereunder.
13. Notices. All notices, or other communications (referred to collectively as "Notices") required to be given in or relating to this Agreement shall be in writing and shall be deemed to have been duly given on the date of delivery if sent to a given Party by overnight courier service (such as DHL) or delivered by hand at the respective address of such Party set forth above. Any Party hereto may, at any time, designate a different address to which Notices shall be directed by providing written notice in the manner set forth in this § 13.
14. Successors and Assigns.
 - 14.1. Assignment by any Party to this Agreement of its rights and/or obligations hereunder to any individual or entity not a Party to this Agreement shall be prohibited.
 - 14.2. Subject to the provisions herein governing assignments, this agreement shall be binding upon and inure to the benefit of the Parties hereto and each such Party's respective successors and assigns.
15. Intention re: Future Water Districts & Water Improvements. It is the intention of the Parties without being contractually bound, that in the event any additional water districts are established within the Town in the future, water may be supplied to such districts by the Village,. This § 15 is merely a statement of intention and shall not be deemed to constitute an offer and shall not create any contractual rights in favor of either Party.
16. Amendment of Town regulations. The Town represents and warrants to the Village that this Agreement is in conformance with and does not violate the Town Code or any other laws or regulations adopted by or otherwise applicable to the Town and/ or the Town Water District.
17. Adequacy of water supply. Notwithstanding anything contained herein to the contrary, the sale of water by the Village to the Town Water District and/or Town remains subject

to the New York Village Law §11-1120 restriction that the Village may not sell water outside the Village if the water supply is insufficient to fully serve the Village or its inhabitants and the proposed users outside the Village. It is acknowledged by the Parties that the Village's water supply is able to serve both the Village and its inhabitants and the users in the Town Water District at the time this Agreement becomes effective, but that continuation of the sale of water to the users in the Town Water District is contingent on sufficient capacity in the future.

18. Authorization. The Parties represent and warrant (a) that this Agreement has been presented to the governing body of each of the Parties hereto; (b) each such governing body has approved this Agreement by a majority vote of the entire voting strength of its governing body and duly authorized the undersigned signatories for the Village and the Town to enter into this Agreement on behalf of their respective governing body.
19. Resolution of Disputes and Waiver of Jury Trial. Any controversy or claim concerning or arising out of this Agreement, or the breach thereof, shall be decided by the Supreme Court of the State of New York, County of Dutchess, and all such claims shall be adjudicated by a judge sitting without a jury.

MOTION: Supervisor Schmitt
SECOND: Councilman Johnson

Councilman Johnson said in an effort to streamline the Village water operation, the Village needed to be in control of the billing and operation of the Town's water district. The required backflow valves have been installed. The residents in the water district were paying 40% to 50% less than people in the Village for the same amount of water. They weren't paying anything towards operation and maintenance. In an effort to not harm people, the increase will take place over three years. This is also being done for the Village to obtain grants for additional water sources.

ROLL CALL VOTE:

Councilman Johnson – “AYE”	Councilman DeRosa – “AYE”
Councilman McCarthy – “AYE”	“Councilwoman Snow – “AYE”
Supervisor Schmitt – “AYE”	

BOARD MEMBER DISCUSSION

MCCARTHY

Councilman McCarthy said Jay Dickinson, Highway Superintendent received the test radios from NYCOMCO and he hasn't been able to find any dead zones in town. Regarding transfer station permits, Cathy Giordano, Town Clerk is issuing permit by mail.

JOHNSON

Councilman Johnson said regarding safety at the parks, people are refusing to social distance. Parents and kids are going to ballfields with other people. He suggested hiring “parkland attendants”. They require less training than constables and this would require less time for constables to be at the park. This is something that has been discussed for many years and he was in favor of trying to create this position. He also suggested the Sherriff do more monitoring of the parks.

SNOW

Councilwoman Snow said the Pawling Resource Center has been the center of the town during this time and she thanked Terry Ariano for all of her work. The community support has been heartwarming and she thanked the community for their support. She wished everyone who is sick a full recovery and said we are here to support them. This is impacting a lot of people and there are phone numbers on the town website to call for help. If people need help, they should reach out to the Board.

DEROSA

Councilman DeRosa thanked the Board for all of the communication while he was away. He felt the Board did an excellent job keeping the public and Board informed and keeping employees safe. He thanked the employees for their work and he thanked all of the healthcare workers for their work. Regarding the parkland attendant, he felt it was a great idea and would give a presence when the park is being used. There could be three or four part time people so no benefits would be paid. He was at the dam today and everything looks good.

SCHMITT

Supervisor Schmitt said social distancing is so important. He said other communities have closed their parks and he didn't want to do that, so he asked people to practice social distancing. There aren't enough constables to be at the parks all of the time. He said littering seems to have gotten out of control. He said it is great that people are using masks and gloves, but they shouldn't throw them on the ground. He asked people to be mindful of this and not to litter. He asked people to be mindful of the businesses and help them in any way they can. He said he has put a lot of information out to the community and Town Board as quickly as he gets it. He said the parks are open so people should utilize them. The golf course will open on April 15th and he hoped people would utilize it.

The motion to adjourn was made by Councilman Johnson at 6:50 PM, seconded by Supervisor Schmitt, motion passed unanimously.

Town Clerk