

**BOARD OF TRUSTEES
VILLAGE OF WARWICK
MAY 8, 2023
WORK SESSION**

9629

A Work Session of the Board of Trustees of the Village of Warwick was held on Monday, May 8, 2023, at 7:00 p.m. in Village Hall, 77 Main Street, Warwick, NY. Present was: Mayor, Michael J. Newhard, Trustees: Barry Cheney, Carly Foster, Mary Collura, and Tom McKnight. Also, present was Village Clerk Raina Abramson and Village Attorney Stephen Gaba. Others present: Stephanie Keegan, Linda Moser, Cheryl Rogowski, and Jeremy Havens.

The Mayor called the meeting to order and led in the Pledge of Allegiance.
The Village Clerk held the roll call.

Mayor Newhard stated that before the Board begins the discussion on tap-in fees the Board will first go through the motions.

**FY-2024 ORANGE URBAN COUNTY CONSORTIUM COMMUNITY
DEVELOPMENT PROGRAM GOVERNING BODY AUTHORIZING
RESOLUTION - SIDEWALKS ON SOUTH STREET BETWEEN
THIRD STREET AND LAWRENCE AVENUE**

The Village of Warwick is hereby submitting its Application for consideration under the FY-2024 Orange Urban County Consortium Community Development Program and the chief elected official or executive officer is hereby authorized to submit this Application for Sidewalks on South Street between Third Street and Lawrence Avenue as described in the proposal. Input from citizens and groups has been received and considered and an application has been prepared which addresses their community concerns. They further certify that they have read and understood the Orange Urban County Consortium Community Development Guidelines for the FY-2024 program year and have met all of its applicable requirements and that the information contained in the Application is accurate and true to the best of their knowledge. If awarded CDBG funds, the Municipality shall implement the activities in a manner to ensure compliance with all applicable federal, state, and local laws and regulations.

Trustee Cheney presented the foregoing resolution which was seconded by

Trustee McKnight,

The vote on the foregoing resolution was as follows: **APPROVED**

Barry Cheney, Trustee, voting Aye

Carly Foster, Trustee, voting Aye

Mary Collura, Trustee, voting Aye

Thomas McKnight, Trustee, voting Aye

Michael Newhard, Mayor, voting Aye

Discussion

Mayor Newhard clarified that the Village applied for this project last year from Third Street to Galloway and did not receive funding for it; however, in the interim the Village did receive \$75,000. With that funding, the Village can do the south side of Galloway and the first leg of South Street from Galloway to Lawrence hopefully in late fall. This project would be the next leg, which is why the Village is reapplying.

Trustee McKnight and Trustee Cheney confirmed that the State will be doing the work at the Galloway intersection. Trustee Cheney explained that this is the section from where the State would leave off to Lawrence Avenue where there is no sidewalk.

Discussion ensued about the NYS DOT 17A paving project, existing sidewalks, and crosswalks.

**RESOLUTION APPROVING LICENSE & INDEMNITY
AGREEMENT WITH
ST. ANTHONY COMMUNITY HOSPITAL**

WHEREAS, the Village of Warwick is undertaking an evaluation of the feasibility of relocating the Maple Avenue Water Booster Station; and

WHEREAS, in the course of such evaluation it will be necessary for the Village's engineering services contractor, Barton & Loguidice, to conduct certain survey and subsurface activities on property owned by St. Anthony Community Hospital (the "Hospital") located at 15 Maple Avenue, Warwick, New York; and

WHEREAS, the Village Board has before it a proposed License and Indemnity Agreement with the Hospital which allows and is required for performance of the survey

and subsurface activities which the Village wishes to conduct on the Hospital's property in regard to the proposed relocation of the Maple Avenue Water Booster Station;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. That the Village Board approves the License and Indemnity Agreement; and
2. That the Mayor is authorized to sign the License and Indemnity Agreement and all documents necessary to carry out the terms and provisions thereof.

Trustee Collura presented the foregoing resolution which was seconded by Trustee McKnight,

The vote on the foregoing resolution was as follows: **APPROVED**

Barry Cheney, Trustee, voting Aye

Carly Foster, Trustee, voting Aye

Mary Collura, Trustee, voting Aye

Thomas McKnight, Trustee, voting Aye

Michael Newhard, Mayor, voting Aye

Appointment of Special Counsel from J&G Law, LLP

A **MOTION** was made by Trustee Collura, seconded by Trustee Foster and carried to appoint special counsel from J&G Law, LLP for Article 7 tax certiorari proceedings.

The vote on the foregoing **motion** was as follows: **APPROVED**

Trustee Cheney Aye Trustee Foster Aye Trustee Collura Aye

Trustee McKnight Aye Mayor Newhard Aye

Discussion

1. Connection Fees.

Steve Gaba explained that some developers have brought to the Village's attention the tap-in fees/connection fees are set at \$3,000 per unit which means that when there are multiple units connecting to water and sewer the amounts that are charged by the Village can end up being quite substantial. Mr. Gaba stated that in 2022 he pointed out that there is a defining case in New York called the Torso Brothers case vs. the Village of Monroe where the Village was charging a fee of \$15,000 for connection to sewer and the money was not being used to pay for the work that the village put into processing sewer connection applications but for a capital fund to pay off bonds. Torso Brothers didn't think that was an appropriate charge for their connection to sewer, so they brought a lawsuit that was brought up to the Appellate Division where it was said that the rule as far as fees, is that you must have fees set roughly proportional to the cost you incur in providing whatever service it is you are charging the fee for. Mr. Gaba said for example if you are charging a Building Inspector inspection fee, your cost for that should be roughly proportional as to what it is that the Village is incurring as a cost to provide that service. If the village uses fees as a revenue raising device as opposed to just something to make the village whole it's not the point of the fee to raise money, the point is to just recover the cost. Mr. Gaba stated that it is considered an illegal tax so fees can't be used to raise money and when the village sets a fee it must have a rough idea as to what you are charging the fee for is actually costing the village.

Mr. Gaba said that at \$3,000 per unit it's unclear from his research as to how that fee came to be set. The Village of Florida has similar types of fees. The fees in this area generally range, and there are some outliers, between \$1,500 and \$5,000. The \$5,000 being very high but that's overall, not necessarily per unit, with some outliers.

Mr. Gaba stated that what the Village tried to do overtime was to come up with a rough estimate on the number of hours and then base the fee on the hourly times the average amount. Mr. Gaba said people may end up paying more than the actual time put in and some may end up paying less, but on the whole, overall, everybody who comes to the Village is going to pay roughly a fair amount for having their sewer and water connections taken care of.

Trustee McKnight said that he believed the reason this came up was because the Village was talking about 90 units, \$3,000 per unit was \$270,000. Trustee McKnight stated that this illustrates how this is not inline with the actual work that goes into it and inquired if that is what brought this up or is it the \$3,000 in general being questioned.

Mr. Gaba said that it brings up the broader issue if \$3,000 is the right amount and if it is the right amount should it just be just per property or per unit.

Trustee Cheney explained that the \$3,000 application fee, the basis for it was that everybody that has been in this for years has been contributing through the rates that they pay, the upkeep of the system. The system is where it is now because of it being born of the backs of those users and the land tax. Everybody pays the land tax including undeveloped property so those property owners have been contributing to some degree and the land tax has been used for some major capital improvements but there have been other capital improvements that have been done to keep everything working properly that have been contributed to through the water and sewer rates that are paid. Trustee Cheney stated that this was attempt given that others were doing it, to recoup some of those monies probably absent good advice at counsel at the time relative to these cases that have been fought, so it called into question the appropriateness of it.

Further discussion ensued about connection/tap-in fees.

Mayor Newhard explained that Trustee Cheney brought in the water department and sewer department and did a very thorough analysis and on the fees for water it was \$6,000 as opposed to \$3,000.

Trustee Cheney explained that it is \$3,000 for an application fee and \$3,000 for doing the tap-in. Trustee Cheney stated that as a point of reference, the property with the 90-units on Brady Road, they were going to actually do the tap-ins, so the Village wasn't going to incur any costs so the \$3,000 for the tap-in fee was waived. The only \$3,000 they were paying was for the application fee per unit. Mayor Newhard stated that then the application fee is based on the concept of the return. Trustee Cheney said if you apply the premise that your fee has to represent in the ballpark of what your actual costs are you can't justify the \$3,000 for a single application as opposed to a 90-unit application.

Trustee McKnight stated that he didn't think that anyone should be tapping into the Village's watermain infrastructure unless it's the DPW Water Department. Trustee Cheney explained that he doesn't know that the Village has total control over that, and they can only do it through the Village's inspection. The Village is there and knows that everything they're doing is being done the way it needs to be done. Trustee Cheney said it makes sense, especially if you have a new development where you have the developer putting in the mainline on the main street and then they're going to finish that off and the Village is going to come back and dig trenches to the other side of the curb to put in the valve. You do it all at once and that's the appropriate way to handle it.

Trustee Cheney said that it would probably be a per tap fee because the Village has to look at each tap, the design of it, involve the Village Engineer, the Water Distribution Supervisor, the DPW Supervisor, and the Building Inspector.

Trustee Cheney explained that if the 90-units consisted of 9 buildings that had a tap for each one that would be 9 times whatever the fee is that we would establish.

Trustee Cheney explained the details of his analysis. Discussion ensued.

Executive Session

A **MOTION** was made by Trustee Cheney, seconded by Trustee McKnight and carried to enter into Executive Session for a discussion regarding proposed, pending or current litigation.

The vote on the foregoing **motion** was as follows: **APPROVED**

Trustee Cheney Aye Trustee Foster Aye Trustee Collura Aye

Trustee McKnight Aye Mayor Newhard Aye

In Executive Session

In Executive Session: Michael Newhard, Mayor, and Trustees Barry Cheney, Carly Foster, Mary Collura and Tom McKnight. Also present, Village Attorney Stephen Gaba and Village Clerk Raina Abramson. Others present, Stephanie Keegan, Cheryl Rogowski, Linda Moser, and Jeremy Havens.

Exit Executive Session

A **MOTION** was made by Trustee Foster, seconded by Trustee Cheney and carried to exit Executive Session and resume the work session.

The vote on the foregoing **motion** was as follows: **APPROVED**

Trustee Cheney Aye Trustee Foster Aye Trustee Collura Aye

Trustee McKnight Aye Mayor Newhard Aye

Continuation of Connection Fee Discussion

Trustee Cheney explained the application for a water tap-in includes the review of the application, site visit and the necessary issuance of the permit which was estimated to be around \$1,500. If the application requests that the Village does the actual tap-in, it includes ordering the mark out, doing the mark out, saw cutting the pavement, excavating with a backhoe, hydro excavating with the sweeper, hauling the excavated material, hauling the replacement material, and hand excavating. Then the Village needs to tap the main and install the connection. The Village installs the pipe and the curb valve, places bedding material under the pipe and the curb valve and then backfills with other material, followed by paving, striping, and replacing the curb

to the extent necessary. These costs include the equipment that would be used, and the cost associated with the materials.

Mr. Gaba asked Trustee Cheney if someone attached a water main themselves, does the village have someone inspect the line. Trustee Cheney confirmed that there would be a water tap inspection fee for an install performed by the applicant's contractor. Trustee Cheney added that then there would be a water meter install.

Trustee McKnight asked if the breakdown of the hours and the hourly rate in the analysis justifies what is already written in the fee schedule.

Trustee Cheney said yes but that there are variations that can occur or not occur. For example, if a flagger was needed.

Trustee Foster thanked Trustee Cheney for the analysis. Trustee Cheney stated that he was surprised that it came out as costly as it did and it that it may not cost this every time, but it's certainly within the ballpark.

Mr. Gaba asked if this would be per unit or per tap. Trustee Cheney stated it would be per tap. Trustee Cheney added that the Village has been charging for water meter installation the cost of the meter alone without any labor. Trustee Cheney said that the Village could spend up to \$350 on connections that are required that wouldn't necessarily be there by the homeowner so that fee will jump considerably. Trustee Cheney said that since there was approximately \$100 between the 5/8" meter and the 1" meter that it didn't make sense to have a separate price for each and if it's over 1" diameter, it is the actual cost to the Village to do it.

Discussion continued regarding the analysis, connection fees, and fee schedule.

Trustee McKnight said that based on the numbers put together the Village is far undercharging for the water meter installation fee. Water tap inspection fee the Village is incurring roughly \$1,200 but not charging anything. Water service application fee, potentially the Village is overcharging, and water tap in fee looks like the Village is significantly under charging. Trustee Foster clarified that currently the Village is charging per unit instead of per tap, so it depends on the situation.

Mr. Gaba said that if the Village is reasonable about how you set your fees and aren't overreaching, you'd be fine.

Trustee Cheney explained his analysis of the sewer. Trustee Cheney said that the costs are less because there is less in the way of materials and less in the time it takes to actually do it. The application fee is less because it's a simpler process. The tap-inspection fee because it's a lesser

activity event so it doesn't need as much attention, so fewer hours are necessary, and it doesn't involve the water department.

Trustee Foster confirmed that it includes all administrative activities involved.

Discussion ensued regarding contractors performing the tap-ins and the connection fees.

Mr. Gaba said that if as a matter of policy, the Village doesn't want to charge the full amount you can charge but understand that if you do that, the Village will have to use other funds to pay for the overall cost.

Trustee Cheney stated that he will go through the fees and put them out there for everyone to comment on prior to the next meeting.

Trustee McKnight expressed concern between the balance between keeping it affordable to live and build in the Village and off setting those costs.

Trustee Foster stated that she is very much in favor of charging what the Village thinks is basically costing the Village because looking at the capital improvements plan and the impact to the budget and each area of opportunity costs.

Mr. Gaba said that these are all important issues, but the bottom line is that you are resolving the per unit issue which was raised. Mr. Gaba recommended to come up with a brief memo saying this is the charge for the service and then decide on the final fee and put it into resolution form, one for water and one for sewer, and then can enact it on how the Board thinks is best.

Executive Session

A **MOTION** was made by Trustee Foster, seconded by Trustee Collura and carried to enter into Executive Session for the proposed acquisition, sale or lease of real property.

The vote on the foregoing **motion** was as follows: **APPROVED**

Trustee Cheney Aye Trustee Foster Aye Trustee Collura Aye

Trustee McKnight Aye Mayor Newhard Aye

In Executive Session

In Executive Session: Michael Newhard, Mayor, and Trustees Barry Cheney, Carly Foster, Mary Collura and Tom McKnight. Also present, Village Attorney Stephen Gaba and Village Clerk Raina Abramson.

**RESOLUTION AUTHORIZING THE PURCHASE OF
CERTAIN REAL PROPERTY LOCATED AT 75 MAIN STREET**

WHEREAS, the Village Board is considering purchasing certain real property located at 75 Main Street in the Village of Warwick; and

WHEREAS, the Village Board and the record owners of the said property have reached an agreement upon a purchase price known to the Village Board within 10% of the appraised value of the said property subject to execution of a contract and compliance of the conditions and contingencies therein; and

WHEREAS, the purchase of the said property constitutes a Type II Action under the New York State Environmental Quality Review Act ("SEQRA").

NOW, THEREFORE, BE IT RESOLVED as follows:

1. That the Village Board hereby approves the proposed purchase of the real property located at 75 Main Street in the Village of Warwick subject to execution of a written contract and compliance of the conditions and contingencies therein; and

2. That the Village Attorney is hereby directed to prepare a contract for purchase of the said property containing suitable conditions and contingencies to ensure that the Village receives clear title and does not incur liabilities in the said purchase beyond payment of the purchase price and expenses; and

3. That upon receipt of a contract for purchase of the said property in acceptable form, the Mayor is authorized to execute the contract for the purchase of the said property and all documents necessary to carry out the purchase.

Trustee Collura presented the foregoing resolution which was seconded by
Trustee Foster,

The vote on the foregoing resolution was as follows: **APPROVED**

Barry Cheney, Trustee, voting Aye

Carly Foster, Trustee, voting Aye

Mary Collura, Trustee, voting Aye

Thomas McKnight, Trustee, voting Aye

Michael Newhard, Mayor, voting Aye

Exit Executive Session and Adjourn Regular Meeting

A **MOTION** was made by Trustee Cheney, seconded by Trustee McKnight and carried to exit Executive Session, resume the work session and adjourn at approximately 9:50 p.m.

The vote on the foregoing **motion** was as follows: **APPROVED**

Trustee Cheney Aye Trustee Foster Aye Trustee Collura Aye

Trustee McKnight Aye Mayor Newhard Aye