

**WALWORTH TOWN BOARD – REGULAR MEETING
15 JANUARY 2009**

Presiding Supervisor Plant called the regularly scheduled Town Board meeting, held at the Walworth Town Hall, 3600 Lorraine Drive, to order at 7:30 PM.

Present:	Thomas Yale	Councilman
	Frank Maciuska	Councilman
	Patricia Marini	Councilwoman
	Suzi Hawkins-Mance	Councilwoman
	Susie Jacobs	Town Clerk
	Mike Frederes	Highway Superintendent
	Rob Burns	Sewer Superintendent
	Jacqueline Van Lare	Recreation Director
	Karen Ambroz	Assessor

RECESS:

Supervisor Plant requested a short recess of 5 minutes to finish the audit of vouchers.

MINUTES:

Motion by Councilman Maciuska to approve the Minutes of December 8, 2008, Special Meeting as presented.

Seconded by Councilwoman Marini.

Roll call vote:	Councilman Maciuska	Aye
	Councilwoman Marini	Aye
	Councilwoman Hawkins-Mance	Aye
	Councilman Yale	Aye
	Supervisor Plant	Aye

Motion carried.

CORRESPONDENCE:

Susie Jacobs, Town Clerk, had nothing to enter into record.

SUPERVISOR'S REPORT:

Motion by Councilwoman Marini to approve and file the Supervisor's Monthly Report for January, 2009, as presented.

Seconded by Councilwoman Hawkins-Mance.

Adopted: Vote Ayes 5 Nays 0

FLBOA CONFERENCE AUTHORIZATION:

Motion by Councilman Yale authorizing Phil Williamson, Code Enforcement Officer, to attend 2009 Finger Lakes Building Officials Association conference in Hilton, NY, March 16 – 19, for an amount not to exceed \$390.00, from budgeted line item A3620.41.

Seconded by Councilwoman Marini.

Adopted: Vote Ayes 5 Nays 0

PUBLIC PARTICIPATION:

No one present offered any comments.

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AUDIT OF CLAIMS RESOLUTION 10-09:

Councilwoman Marini offered the following Resolution 10-09 and moved its adoption.

Seconded by Councilwoman Hawkins-Mance to wit:

WHEREAS, the following claims submitted at the scheduled Town Board Meeting of January 15, 2009, have been audited and approved by the appropriate Council Members.

BE IT RESOLVED that the claims be paid on **Abstract #1**, numbered 1 through 67, in the following amounts:

GENERAL FUND	\$	85,085.52
HIGHWAY FUND	\$	18,486.33
WALWORTH SEWER DISTRICT #1	\$	63,314.68
BROOKSIDE LIGHT DISTRICT	\$	12.97
PARK PAVILION CAPITAL FUND	\$	23,116.57
HARVEST HILL LIGHT DISTRICT	\$	711.55
ORCHARD VIEW LIGHT DISTRICT	\$	124.67
WALWORTH LIGHT DISTRICT	\$	625.13
WALWORTH CONSOLIDATED DRAINAGE	\$	5,858.03
GANANDA SIDEWALK DISTRICT	\$	572.70
PARKVIEW GREEN DISTRICT	\$	343.56

BE IT FURTHER RESOLVED that the claims be paid on **Abstract #1**, numbered 1 through 11, in the following amounts:

TRUST & AGENCY	\$	23,301.92
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NOW THEREFORE BE IT RESOLVED that the Town Council of the Town of Walworth adopts resolution 10-09.

Adopted this 15th day of January, 2009, at the meeting of the Town Council.

Roll call vote:	Councilman Maciuska	Aye
	Councilwoman Marini	Aye
	Councilwoman Hawkins-Mance	Aye
	Councilman Yale	Aye
	Supervisor Plant	Aye

Resolution carried.

DEPARTMENT HEAD REPORTS:

HIGHWAY DEPARTMENT

Ready for Spring!

Supervisor Plant asked how many days had the Highway Department not worked in the last month. Mike Frederes responded that today was the 70th trip for the season.

Councilman Yale asked Mike Frederes if there had been any issues with salt this year like last year. Mikes Frederes responded that he thought it might well be an issue by the end of the season, but so far we were okay.

SEWER DEPARTMENT

Nothing to report at this time.

RECREATION

Nothing to report at this time.

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ASSESSOR

Nothing to report at this time.

TOWN CLERK – COMMITTEE ON OPEN GOVERNMENT LAWS

Susie Jacobs commented that she had given Council members a copy of the New York State Department of State's Committee on Open Government "Your Right to Know" New York State Open Government Laws, Revised, February, 2008. Copies are available for the public.

TOWN CLERK – DEPUTY CLERK APPOINTMENT TERMINATED

Susie Jacobs, Town Clerk, stated for the record that she terminated the Appointment of Linda Kleeman as Deputy Town Clerk on December 5, 2008.

TOWN CLERK – DEPUTY CLERK APPOINTMENTS

Susie Jacobs stated that according to Town Law 30 subdivision 10 effective July, 2007, the Town Clerk is authorized to appoint up to three deputies; they are as follows:

- First Deputy - Michael Jacobs, serving without compensation
- Second Deputy - Joyce Gumina
- Third Deputy - Diane Board, serving without compensation

COMMITTEE REPORTS:

WIND ENERGY

Councilman Maciuska reported that he sent the revision on Wind Energy as well as his response to the Attorney for the Town's letter. Councilman Maciuska stated that if he were to summarize what the Attorney's concerns were, it would be that she had a misconception about what the law was trying to address. The law was attempting to allow individual users to have wind turbines/roof turbines but made it very difficult for wind farms. Councilman Maciuska noted that he did incorporate most of her recommended changes. He said that Denise Munson, Attorney for the Town, recommended more regulations than the Town needed; i.e., the use of professional engineers a lot more than was required. Councilman Maciuska asked Council members to review what he had sent them and give him some feedback.

LIBRARY COMMITTEE

Councilman Maciuska reported that the Library was still interested in space. He also reported that the Library Board of Trustees met with the new Trustees; everything went well - there is a lot of enthusiasm this year.

WALWORTH AMBULANCE AGREEMENT – RESOLUTION 11-09:

Councilman Maciuska offered the following resolution 11-09 and moved its adoption. Seconded by Councilwoman Hawkins-Mance to wit:

AGREEMENT

THIS AGREEMENT, made the 15th day of January, 2009, by and between the Town of Walworth, a municipal corporation situated in the County of Wayne, State of New York (hereinafter "Town"), and Walworth Ambulance, Inc., a Not-For-Profit corporation, organized and existing under the laws of the State of New York and having its principal place of business in Walworth, New York (hereinafter "Ambulance").

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WITNESSETH

WHEREAS, Ambulance is a Not-For-Profit Corporation organized exclusively for charitable and educational purposes and for the purpose of operating, conducting, and maintaining an emergency ambulance service to serve the persons in the Town of Walworth; and

WHEREAS, in order to defray the cost of purchasing and maintaining an ambulance and other equipment and to defray the overhead expense of operating said ambulance services, it is necessary for Ambulance to receive payments from municipalities as well as user fees for services; and

WHEREAS, such emergency services are vital and necessary to the health and welfare of the inhabitants of the Town.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties hereto mutually agree as follows:

1. PROVISION OF EMERGENCY MEDICAL SERVICES

- (a) Ambulance will provide Town an ambulance staffed with volunteers, which complies with the regulations of the New York State Department of Health, Bureau of Emergency Medical Services, to serve the 24 hour per day emergency medical needs of those persons within the boundaries of the Town of Walworth.
- (b) Such provision of equipment, services and transportation are limited to the extent reasonable and possible based upon Ambulance's available resources and personnel.

2. TERM

The term of this Agreement shall commence on the 1st day of January, 2009, and shall continue for a period of one (1) year unless sooner terminated as herein provided.

3. COMPENSATION

Town shall pay that amount as provided for in **Schedule A**, no later than March 15 of the contract year.

2/7/2009

Town and Ambulance have attempted to calculate the portion of user fees that are attributable to any Town resident-user's share of insurance payments. Town agrees to pay as part of an up-front contract fee, an estimated amount of the resident-user's portions of insurance to Ambulance so that users who are residents of the entire corporate limits of Town do not have to pay them directly. Town also agrees to pay Ambulance an annual sum on top of such insurance related fees to permit Ambulance to have sufficient funds to operate, and both amounts are included in the annual fees payable under this Agreement.

4. REPORTING REQUIREMENTS

Ambulance shall submit annual reports to Town containing the following information, no later than January 31 (of the following contract year) for the prior twelve-month period:

- (a) Number of requests for ambulance assistance received
- (b) Number of responses by Ambulance to each of those requests for assistance

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5. RECOGNITION OF LIMITATIONS

Town recognizes that in some or all cases, only a limited number of volunteers may be available. Town also recognizes that on some occasions no ambulance may be available due to Ambulance's lack of vehicles and/or personnel to respond to all emergencies for which it contracts to provide services, both within and without the Town's boundaries.

6. INSURANCE

Ambulance agrees to maintain liability insurance sufficient to insure itself against claims for unintentional torts resulting in personal injuries in the amount of Three Million Dollars (\$3,000,000.00). Ambulance agrees to maintain automobile insurance for injuries arising out of the operation of emergency vehicles for at least One Million Dollars (\$1,000,000.00). Ambulance shall have the Town named as an additional insured in the insurance policy and present the Town with a certificate of insurance within 5 business days of the signing of this Agreement. (or see attached)

Town shall be responsible for providing the Volunteer Ambulance Workers Benefit Law benefits or appropriate insurance to provide for such benefits, as required by such law.

7. EXPENSES

Ambulance agrees that it will cover the costs of maintenance, repair, and supplies for the vehicles and equipment used in connection with the service it provides.

8. BILLING

Town recognizes that Ambulance bills patients directly for services and transportation it renders and approves of this practice. Ambulance may collect these fees directly. Ambulance shall not bill any user, who is also a resident of Town for any co-payment, but shall bill or pursue a user or third party insurer for any insurance portion owed by the user, or for 80% of any deductible due from the user. Nothing herein shall require Ambulance to waive any co-payments or deductibles for non-residents. Ambulance is also permitted to obtain the insurance amount directly from the insurance company of a resident or non-resident. Ambulance reserves the right to initiate legal action against any person who is delinquent and does not tender payment for Ambulance's services in a timely manner. Delinquency shall be defined as having a payment overdue more than ninety (90) days from the date of billing. Attached as **Schedule B** is the list of user fees Ambulance may bill. Incorporated by reference into **Schedule B** and this Agreement are any rates paid by any government, private employer-based or third-party insurance.

9. CERTIFICATIONS

Ambulance agrees to keep in force its Ambulance Service Certificate and to maintain compliance with the requirements of Article 30 of the Public Health Law and State Emergency Medical Services Code.

10. NO EMPLOYMENT

Ambulance's employees shall not be deemed employees of the Town. Nothing herein creates an employment relationship which subjects Ambulance or its employees to the supervision and control of the Town nor creates municipal liability on behalf of the Town. The relation of the Ambulance to the work to be performed by it under this Agreement shall be that of Independent Contractor.

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11. CONFIDENTIALITY

Nothing herein shall entitle the Town to the name, address or social security number of any patient served. The Town will not require Ambulance to release any patient's medical information without a proper judicial subpoena as required by New York State law.

12. CONTINUATION OF SERVICES

If Ambulance's services continue to be provided by the request of the Town beyond the expiration of the term hereof, the terms of this Agreement shall continue on a year-to-year basis as set forth in this Agreement unless and until the parties enter into a subsequent written Agreement. Should Town desire to cancel the Agreement, Town must provide Ambulance written notice of at least sixty (60) days.

13. EXPIRATION OR TERMINATION OF RESPONSIBILITIES

Upon expiration or termination of the Agreement as provided hereunder, Ambulance shall have no liability or responsibility for providing services under this Agreement to any person within the Town's boundaries. Town agrees to defend, indemnify and hold Ambulance harmless for any claim arising from Ambulance's failure to provide any services to any person within the Town's boundaries after this Agreement expires or terminates. In the event of early termination, Town's Contract amount shall be pro-rated to the date of the termination and Town shall be reimbursed for the unused portion thereof.

14. GROUND FOR TERMINATION

This Agreement shall terminate prior to the expiration of the term hereof upon the happening of any of the following events:

- (a) upon the Town's failure to deliver the monies due Ambulance under this Agreement by the date due, so long as Ambulance provides seven (7) days written notice to the Town of the date it will stop providing services;
- (b) upon the loss or suspension of Ambulance's ability to deliver emergency medical services due to the loss of a certificate of need, the loss of operating permits or licenses, or the cessation of its corporate existence;
- (c) upon the Ambulance's failure to comply with all applicable laws or ordinances, or in the event it violates this Agreement or fails to deliver emergency medical services to the Town of Walworth.

15. NOTICES

All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing, and shall be deemed duly given if delivered by hand or mailed by registered or certified mail, return receipt requested, to the parties at their respective addresses hereinabove stated or to such other addresses as may be designated by written notice complying as to delivery with the terms of this Section.

16. INDEMNIFICATION

Ambulance agrees to indemnify and save Town harmless from any liability imposed upon the Town, its officers, agents or employees, arising from the negligence, active or passive, of Ambulance.

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17. SAVINGS CLAUSE

If any provision of this Agreement is determined to be legally invalid, inoperative or unenforceable, only that particular provision shall be affected, such determination shall have no effect whatsoever on any other provision of this Agreement, and all other provisions shall remain in full force and effect.

18. WAIVER

No delay or failure to exercise any remedy or right occurring upon any default shall be construed as a waiver of such remedy or right, or acquiescence in such default, nor shall it affect any subsequent default of the same or a different nature. All rights and remedies herein conferred shall be in addition to and not exclusive of any and all other rights or remedies now or hereafter existing at law or in equity.

19. HEADINGS

All headings and captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and shall in no way define, limit, extend or describe the scope or intent of any provisions hereof.

20. FURTHER ASSURANCES

The parties shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes set forth in this Agreement.

21. BINDING EFFECT

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executor, administrators, successors and assigns.

22. COUNTERPARTS

This Agreement may be executed in counterparts and each such counterpart, when taken together, shall constitute a single and binding Agreement.

23. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The County of Wayne in the State of New York is hereby designated as the place of trial for any action or proceeding arising from or in any way connected to this Agreement.

24. NO ASSIGNMENT

This Agreement shall not be assigned by any party without the prior written consent of the other party.

25. GENDER NEUTRAL

Wherever used herein and required by the context, the singular number shall include the plural, the plural shall include the singular number, and the use of either gender shall include both genders and the words “hereof” and “herein” and “hereafter” shall refer to the entire Agreement and not to any provision or section.

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RG&E BILL PREPAYMENT – RESOLUTION 13-09:

**RESOLUTION 13-09 ROCHESTER GAS & ELECTRIC PREPAYMENT
AUTHORIZATION GAS LINE – GINEGAW PARK PAVILION:**

Councilwoman Hawkins-Mance offered the following Resolution **13-09** and moved its adoption. Seconded by Councilman Yale to wit:

WHEREAS, the Town Council of the Town of Walworth would like to Contract with Rochester Gas & Electric for; and

WHEREAS, the Town of Walworth would like the installment of a Gas Line, for the Ginegaw Park Pavilion; and

WHEREAS the Claimant RG&E, voucher 69, requests prepay in the amount of \$816.13;

THEREFORE, BE IT RESOLVED that the Town Council of the Town of Walworth directs the Supervisor to prepay RG&E for Installment of a Gas Line for Ginegaw Park Pavilion in the amount of \$816.13 from Budgeted Line HP8310.43; and

BE IT FURTHER RESOLVED, that the Town Council of the Town of Walworth adopts Resolution **13-09**.

Adopted this 15th day of January, 2009, at the meeting of the Town Council.

Roll call vote:	Councilman Maciuska	Aye
	Councilwoman Marini	Aye
	Councilwoman Hawkins-Mance	Aye
	Councilman Yale	Aye
	Supervisor Plant	Aye

Resolution carried.

PROCLAMATION OF APPRECIATION – ROBERT TURCOTTE:

Supervisor Plant read the following Proclamation.

Councilwoman Marini moved the following Proclamation and moved its adoption. Seconded by Councilman Maciuska to wit:

WHEREAS, Robert Turcotte has been a lifelong resident of the hamlet of West Walworth; and

WHEREAS, Robert has provided valuable support to the Town of Walworth through his services to the West Walworth Fire Department; and

WHEREAS, Robert has been a member of the West Walworth Fire Department since August, 1958, giving 50 years of dedicated service; and

WHEREAS, Robert served as the Property Clerk of the West Walworth Fire Department from 1960-1966, Secretary in 1967, Vice President for the years 1968 and 1969 and has served from 1977 until the present as the Financial Secretary; and

WHEREAS, it is the sense of the Walworth Town Board that we should give special recognition to those who work so diligently for the betterment of the communities;

NOW THEREFORE BE IT RESOLVED that the Town Board of the Town of Walworth extends its deepest appreciation to Robert Turcotte for the outstanding work he has performed over the past fifty years for the West Walworth Fire Department and the Town of Walworth.

Adopted: Vote Ayes 5 Nays 0

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Supervisor Plant stated that this proclamation would be presented to Mr. Turcotte at a banquet next Saturday night.

EXECUTIVE SESSION:

Motion by Councilwoman Hawkins-Mance to enter into executive session to discuss pending or possible litigation.

Seconded by Councilwoman Marini.

Adopted: Vote Ayes 5 Nays 0

Time: 7:50 PM.

RECONVENE:

Supervisor Plant reconvened the regularly scheduled meeting.

Time: 8:27 PM.

ATTORNEY AUTHORIZATION - BROADVIEW:

Motion by Councilman Maciuska authorizing the Attorney to proceed against Broadview.

Seconded by Councilwoman Marini.

Roll call vote:	Councilman Maciuska	Aye
	Councilwoman Marini	Aye
	Councilwoman Hawkins-Mance	Aye
	Councilman Yale	Aye
	Supervisor Plant	Aye

Motion carried.

EMPLOYEE APPLICATION:

Councilman Maciuska reported that back in December, 2008, when the Board talked about hiring a new employee, that he wanted to make sure the Board vetted the application and was successful. He went on to say that there was no problem with the application.

APPROVAL OF VOUCHER 1996:

Motion by Councilman Maciuska authorizing the approval of voucher 1996.

Seconded by Councilwoman Marini.

Roll call vote:	Councilman Maciuska	Aye
	Councilwoman Marini	Aye
	Councilwoman Hawkins-Mance	Aye
	Councilman Yale	Aye
	Supervisor Plant	Aye

Motion carried.

ADJOURNMENT:

Motion by Councilwoman Hawkins-Mance to adjourn. Seconded by Councilman Marini and unanimously carried.

Time: 8:30 PM.

Respectfully Submitted,

Susie C. Jacobs, Town Clerk