

Village of Buchanan  
Mayor & Board of Trustees  
Regular Meeting  
Monday, October 4, 2010

**PRESENT:**

Mayor Sean Murray  
Trustees Richard A. Funchion, Theresa Knickerbocker, Brian Smith and Nicholas Zachary  
Village Administrator Kevin Hay  
Village Attorney Stephanie V. Porteus  
Village Secretary Susan F. Matthews

**1. PLEDGE OF ALLEGIANCE:**

Mayor Murray opened the meeting at 7:30 PM, welcomed everyone, informed them of the fire regulations and led the Pledge of Allegiance.

**2. APPROVE MINUTES:** September 7, 2010 Board Meeting; July 21, 2010 Workshop Meeting

A MOTION to approve the minutes of September 7, 2010 as amended was made by Trustee Funchion, seconded by Trustee Knickerbocker with all in favor. Mayor Murray had corrections on page 3, item c, paragraph 3, line 5: date is September 18 for the wet down; page 11, paragraph 5: change court to "judge". Trustee Zachary had corrections on page 4, item e, paragraph 3, line 5: correct to "was" 10%; page 5, paragraph 1, line 9: change street to "streets"; paragraph 3, line 12: change to that the Town is not going with the highest bid and they are obliged to go with the lowest responsible bid. Trustee Knickerbocker had a correction on page 7, paragraph 2, lines 4 and 17: spelling is "KOVACS".

A MOTION to approve the minutes of July 21, 2010 was made by Trustee Zachary, seconded by Trustee Knickerbocker, with all in favor and Trustee Funchion abstaining as he was not present at that meeting.

**3. COMMENTS FROM THE FLOOR:** (agenda items only)

None

**4. NEW BUSINESS:**

a) **10-67 RESOLUTION AUTHORIZING INTER-FUND BORROWING FROM GENERAL FUND TO CAPITAL FUNDS.**

Mayor Murray read the Resolution (copy attached).

A MOTION to adopt this Resolution as presented was made by Trustee Funchion, seconded by Trustee Knickerbocker, with all in favor.

Trustee Zachary wanted to know if this was specifically targeted for sludge removal equipment. Mayor Murray advised that it was.

b) **10-68 RESOLUTION AUTHORIZING THE INSTALLATION OF STOP SIGNS.**

Mayor Murray read the Resolution (copy attached).

A MOTION to adopt this Resolution as presented was made by Trustee Funchion, seconded by Trustee Zachary with all in favor.

Trustee Knickerbocker wanted to know if the white road markers were going to be added. Village Administrator Hay advised that they would be.

c) **10-69 RESOLUTION APPONTING SEASONAL EMPLOYEES FOR THE HIGHWAY DEPARTMENT.**

Mayor Murray read the Resolution (copy attached).

A MOTION to adopt this Resolution as presented was made by Trustee Knickerbocker, seconded by Trustee Smith with all in favor.

Trustee Zachary noted that it is the intention that one person works five days and one three days. He wanted to know if they do leaf pick-up, how would one worker work more than the other. Village Administrator Hay advised that they are going to also use them for the catch basins and other work. One person worked for the Village this summer but can only do two to three days, as he will be in school. Highway Foreman Jeff Tiernan wanted seasonal workers with one employee working for three days and one for five days. Sometimes they will be working simultaneously. Mayor Murray commented that it is not the intension to have another temporary person working for a year or two. A temp should not be working more than six months in a calendar year. He directed the Village Administrator to advise the Highway Foreman of this as a consideration for possibly bringing any temporary employees back next summer.

d) **10-70 RESOLUTION AUTHORIZING RELEASE OF BOND FOR PCL CONSTRUCTION.**

Mayor Murray read the Resolution (copy attached).

A MOTION to adopt this Resolution as presented was made by Trustee Funchion, seconded by Trustee Zachary with all in favor.

Mayor Murray commented that this is the expansion project by Lafarge that was taken on several years ago. The Village requires a bond that their performance is met and that our Engineer's specifications are met.

e) **10-71 RESOLUTION SUPPORTING THE FIND AND ASSIST VETERANS OF RECORD (FAVOR) PROGRAM.**

Mayor Murray read the Resolution (copy attached).

A MOTION to adopt this Resolution as presented was made by Trustee Funchion, seconded by Trustee Knickerbocker with all in favor.

Trustee Funchion wanted to know how the merchants were going to be notified and would application forms be given out. Mayor Murray advised that he wrote a memo to merchants. Copies have been placed in the Board members' boxes on September 24. He does not wish to send out correspondence on behalf of the Board without their approval. He read a letter on this from County Executive Rob Astorino. The Mayor will get a list of vendors who will be sent his and the County Executive's letters along with an application form.

Trustee Zachary commented that as he has brought up in the past, he would like to see the Home Page of the Village web site set up to have links to other sites for items like this.

f) **10-72 RESOLUTION ACCEPTING PROPOSAL FOR AUDITING SERVICES FOR VILLAGE COURT.**

Mayor Murray read the Resolution (copy attached).

A MOTION to adopt this Resolution as presented was made by Trustee Knickerbocker, seconded by Trustee Funchion with all in favor.

Trustee Funchion wanted to know if this is put out for bid. Mayor Murray advised that last month he got a letter from the State requesting knowledge of when the last audit of the court was done. The Mayor met with the judges for an interpretation of the law regarding what are the Village Board's requirements. The law requires the Board to see that the court is audited. This requirement was not included in the proposal for the

auditor. This law firm gave an estimate for the inclusion of the last two years. The Mayor advised that we had sent out for bids for an audit. The two bids that were returned were almost identical. This firm was the closest location. This audit was included to be in compliance with State law.

Trustee Zachary noted that this is for 2009 and 2010. He wanted to know if we need to go back further. Village Administrator Hay advised that we did not have to, as Gary Weidelman, the previous auditor, had done it in the past. Mayor Murray advised that the State Comptroller also did an audit for the court. We wanted to include this since New York State wanted it and we are going to supply it.

## **6. EXECUTIVE SESSION.**

At 7:50 PM a MOTION to go into Executive Session was made by Trustee Knickerbocker, seconded by Trustee Zachary with all in favor to discuss personnel issues and CK Trucking litigation.

At 8:35 PM a MOTION to come out of Executive Session was made by Trustee Knickerbocker, seconded by Trustee Zachary with all in favor. Mayor Murray advised that no action was taken. The Board will continue the litigation and continue to research personnel issues. No funds were expended.

## **7. INFORMATION FROM OFFICERS AND DEPARTMENTS.**

### a) Justice Court Report - August 2010

Received.

### b) Attorney's Report

Village Attorney Porteus reported that the contracts for Bleakley Avenue are in, as are the exhibits. They are setting up a meeting within the next few days to sign contracts. The Village Administrator has been working on the funding and bonds for the roads. The Village Attorney has received a proposed IMA from the Town of Cortlandt regarding Henry Street. She was not able to review it because of illness. She wants to compare it to other documents. When reviewed, it will be presented to the Board and make changes with Town Attorney Tom Wood.

### g) Trustee's Reports:

Trustee Smith had nothing to report at this time.

Trustee Zachary reported that they talked about putting together a committee to organize a Buchanan Day event. He would like to see other events such as music in the gazebo in the summer. The first meeting of the committee will be on October 13 at 7:00 PM in the Village Hall. They are starting to organize a Buchanan Day festival for the Spring. Anyone who is interested can contact him or Trustee Knickerbocker.

Trustee Funchion reported that he attended the Westchester Municipal Officials Association at the Larchmont Yacht Club with Trustees Knickerbocker and Zachary. They were hoping that the speaker would enlighten them on reevaluation of property and related matters. Instead, he gave a talk about his work as a judge and how much litigation was involved, but no new insights as to how to handle that as a village or town. Trustee Funchion found that to be disappointing.

Trustee Funchion attended the committee meeting of the Saint Patrick's Day Parade Committee as liaison. Their first meeting was in September. He was amazed at the work they do with such a small committee. He wanted to extend his appreciation to them for their work in the past and future.

Trustee Knickerbocker thanked Village Administrator Hay for getting the bunting skirts for the Board's tables in the meeting room. It had been discussed at a Workshop. She thinks it looks great. They had also talked about getting a Village of Buchanan logo to be stitched on, which could be done at a minimal cost. Trustee Knickerbocker reported that she has spoken to the Village Engineer about getting a salesman at the next Workshop from the company with the new technology for the fine bubble diffusion system, so that the Board can make a comparison with the aeration system. Mayor Murray commented that before we have someone come in, he would like to wait until we get the information on the regulations from the State about getting the nitrates out and whether or not we have to remediate. That is a big factor in the type of system they will get.

Trustee Knickerbocker reported that the sweeper has not been out as it needed extensive repairs. It should be out again in the next week.

Trustee Knickerbocker reported that she read about a food drive in Westchester County at the V.A. Hospital. Mayor Murray advised that it was a food drive for the residents to help any veterans in need. A box will be set up in the Village Hall for donations of non-perishable food items. Trustee Knickerbocker would like the information to be in the next Village Newsletter. There are a lot of people who are struggling in these hard economic times and she would like to see the Village support this effort for the veterans.

#### h) Mayor's Report:

Mayor Murray reported that October 13 will be the third annual Veteran's Rally at the FDR VA Hospital. Every year the Town of Cortlandt organizes it to both show support for the veterans and to show the government, who wants to lease the land to developers, what type of opposition

to that there is in our communities, and that we want to keep it for the veterans. He commented that there is no reason to have high income housing there. The Federal government has to realize it is for the veterans. It is not for somebody who wants to live by the river. It will be on October 13 at the lawn of the VA Hospital.

Mayor Murray reported that on October 5 at 7:00 PM, the Planning Board of the Town of Cortlandt is having a Public Hearing about the proposed planning changes for the former Kaufman scrap yard. They are requesting a change of use from a junk yard to a recycling facility.

Mayor Murray reported that he has been in negotiations with Clear Channel about the billboards. Several years ago, the Village won a lawsuit against the previous owner of the billboards to have them removed. It was a quality of life issue and an eyesore. The Village spent a lot of money and won. The last phase was supposed to have been done in 2007 or 2008 but was not. Village Attorney Porteous has contacted Clear Channel. They were told to either remove them or enter in some type negotiation regarding revenue generation. There is a meeting on October 22 where they will give a proposal. Mayor Murray advised that the Village Code has a ban on billboards. That would have to be changed in order to accept any type of proposal. He wants the Board members to think about what they would like to see and what type of revenue generation they would like to have. He commented that economic times have changed since the litigation. Mayor Murray wants everyone's input to see if we should be able to keep the billboards. There are four billboards, four of which are currently active. One is abandoned. If the Board wishes to have them removed, the Village Attorney will have to go to court. It will cost \$2700 per billboard which would be billed back to the company. The Mayor would like to negotiate with them to get some revenue. Trustee Knickerbocker wanted to know if Mayor Murray knew if and how much other communities get compensated for having billboards. The Mayor did not know but felt that we have an advantage because of the court order.

Mayor Murray commented on the Bleakley Avenue road work. The Mayor does not believe the entire repairs will be completed this winter. Some repairs will be done. The Village Engineer is working with a contractor to keep the road in a safe condition. We are waiting for the bond and insurance. It is going to take a little longer. Since our bonds came in below what was previously estimated, he asked the Village Engineer to include Second Street in the project with Henry Street. They will be done at the same time. The contractor estimated three to four days to do Henry Street. Second Street will be done then since the manpower and all the equipment will be there. The roads are next to each other. It is the best use of the money. They are preparing the numbers.

Mayor Murray reported that there will be a stakeholders meeting at Entergy on October 19 at 9:00 AM. He requested the Board members to advise him know if they want to attend. It will be a one hour update about what is going on at the plant. Spectra Energy who manages the pipeline will have a stakeholders meeting on October 26 at 8:30 AM in Brewster. He wanted to Board to

let him know by October 8 if they want attend to see what type of emergency response they might need. There was an incident in California. They want to reach out to those adjacent to the pipeline and emergency responders to see what type of resources they are going to need.

Mayor Murray directed Village Attorney Porteous to look at the abandoned house on White Street. There have been several complaints. He believes the water has been shut off. One of the persons who had been squatting in there has been arrested on another charge. There are several tax liens between the County and the State. The Village will do a search on this to either get rid of or sell the house as a first step in mitigating this issue.

Mayor Murray reported that last month there was a \$500 fine at the sewage treatment plant which was just received today. The Village did not receive the order until September 28 for a judgment dated September 16. The Mayor thought it was interesting that people knew about it before the notification was received from the County. It was for October 5, 2009 for operating the waste water treatment facility without a proper operator. Since that time, we have hired a contractor with a license to be in compliance. We got the paperwork from the Board of Health which they ordered on September 16. It was brought up at the September 7 Village Board meeting.

#### **8. COMMENTS FROM THE FLOOR:**

Sam Cherchia, Westchester Avenue, commented on Henry Street. After the September Village Board meeting, he thought the Trustees had some information. He commented that it appears that none of the Trustees except Trustee Smith had any information about Henry Street. Trustee Smith accumulated considerable information. Village Administrator Hay gave him all the information he had. Trustee Smith went to the Town to get more information. He requested information from the Village Engineer who, Mr. Cherchia commented, ignored him. Trustee Smith made two requests. He was advised in an e-mail from the Village Administrator to contact the Mayor who would answer all his questions. Mr. Cherchia commented that Trustee Smith did this by himself with no assistance from anyone other than the Village Administrator in the Village. Mr. Cherchia believes that the Trustees at the time had no information about the Henry Street project. It was his impression that it is going to be from Second to Church Street. He commented that is not true. A total of 650 feet was contracted for. The distance from Second to Church Streets is 1030 feet. It was presented in July 2009 by the previous Village Engineer, Tim Cronin. It was measured with the wheel. Mr. Cherchia commented that at the September Village Board meeting, a Board member asked what would be the implementation cost. Mr. Cherchia commented that the Mayor advised at that time that the final cost is \$92,000, which is not true. The engineer has been billing right along. The Board paid one bill for an associate who spent 8 hours reviewing specs at \$85 an hour. This was done on August 13, 15 and 17, which Mr. Cherchia finds odd, considering the information provided by the Village Engineer on August 18. The Village bid was opened on the 18<sup>th</sup> for Bleakley Avenue. At the September 7 meeting, there was a request for information on why they had to vote on the letter

of commitment that day. The response was that it was necessary because the Town will award the bid on September 13. The Town awarded the bid on August 17. They notified Bilotta that they had accepted his bid for \$613,000 and change. Mr. Cherchia commented that it was not necessary to because the bid was already accepted some 11 days before the meeting. Mr. Cherchia remarked that to pass the letter of commitment at that meeting because of the Town's deadline was an outright lie. He remarked that this was typical. It seems to him that the Board was in the dark. From June 14 when it was first mentioned, he did not recall anything else being stated about Henry Street. Trustee Smith obtained the contract. It clearly states that the work will be completed by September 30 which was last week. Only the Town Board can extend the time. The Village has no say over it because the Town is the party who is in control. Mr. Cherchia read the IMA. He commented that he has been out of law practice for 9 years and maybe there are changes in the canons of ethics that he was not aware that the attorney could directly communicate with the client who had an attorney and ask that person to execute a document which they do not have the authority to execute. It went directly to Village Administrator Hay. He commented that the funny thing about the IMA is that there is no resolution that the Town entered into it. There is no resolution that the Village will. It cannot be executed.

Mr. Cherchia believes the problem is that after all the research that was done the Village is being charged \$60,000 more than it should. The rate applied to the Village is three times higher than that being applied to the Town. Mr. Cherchia displayed a blow up of the contract. (A copy was given to the Board members by Trustee Smith). There was a letter from Village Engineer Hahn specifying that the Town bid was \$613,955 and indicating that Bilotta claims that the Village of Buchanan's share is \$92,635.52. Mr. Cherchia commented that one of the reasons why Henry Street was not bid out with Bleakley Avenue is that it is more complex. The Town contract calls for a simple two inch overlay which is exactly what Henry Street requires. He cited the differences in key cuts and security. Allowance to rebuild manholes, basins and inlets is \$20,000. Most of this work is done in the Town of Cortlandt. The Village should not be paying for all of it. For the sake of argument, he said to say it is equal. He showed appendices with a list of streets to be paved with their length, width and tonnage. Second Street to Church Street is 650 feet by 30 feet. Square footage can be simply calculated which he noted that Trustee Smith has done. The total bid is \$613,955. Dividing the bid by the square footage, the average is \$1.69 per square foot. The square footage for Henry Street is 19,500. Applying \$1.69 per square foot, the cost for Henry Street should be \$32,998.51, and not \$92,000 which was previously indicated. He compared the Henry Street cost to a street in the Town of Cortlandt being done, with almost double the square footage but with a cost of \$62,923. It is over \$30,000 less than Henry Street. He feels there is something wrong with that. Mr. Cherchia showed a chart with cost per square foot for the Town of Cortlandt. It showed the total square footage for the project less that for the streets being done in Buchanan. He showed the total contract price less the amount being charged to Buchanan. He calculated the Town's cost per square foot to be \$1.51. He showed a



chart with the cost per square foot for Henry Street and the Village's share of the contract price. He calculated it to be \$4.75 per square foot compared to the Town's cost of \$1.5.1.

Mr. Cherchia remarked that \$50,000 is missing. He does not know where it goes. He knows that this is something that the Comptroller's Office, the Attorney General, the District Attorney and possibly the U.S. Attorney should look into. He commented on the possibility of an election law violation, referring to the election of last March.

Mr. Cherchia commented on the IMA. This is a request to have the Village agree to allow the Town of Cortlandt to continue to spend the Village's money. Mr. Cherchia commented that it is saying to the Town Board of Cortlandt that they want contracts from Buchanan and to charge what they want and the Village Board will approve it because the Village Board has no say over it once it is approved. They have no say over it once it is approved. Mr. Cherchia referred to the first page of the contract. He noted that at the bottom, the contractor agrees to do additional work for Buchanan as long as it is in excess of 800 tons of asphalt. He assumes for a cost \$4.75. He remarked that the Board will be abrogating their duty. He does not know if it is legitimate that this is being done without any bids even though a letter has been issued that the Village has implemented changes in our purchasing and contracts. He remarked that the Board has but not to the good. He does not know how the Village can afford to give away this amount of money to the Town of Cortlandt. He remarked that the Board was eager to rush into Second Street. When he and Trustee Smith talked about the \$1.69, they agreed that if the Village was being charged that, it is a good price for doing Henry Street. The Board is not going to get it. They will pay \$4.75 a foot; \$3.24 more than the Town of Cortlandt. He does not see this as a mathematical error. He believes this is intentional. He will request the Comptroller's office to come in if the Board does not. He will refer it to the District Attorney's office to see if there is criminal activity here. He does not know why the rush for the IMA since the Town Board has not seen fit to pass a resolution agreeing to enter into it. He wanted to know why the Village should. As it stands today, if there is a contract violation, Bilotta may sue the Town of Cortlandt but not Buchanan. The minute they sign the IMA, Bilotta can sue the Village. Mr. Cherchia remarked that the Board continues to give away the store without any explanation. He has no problem in making a complaint. He does not care if they like him or not. It makes no difference to him. It is so wrong. He does not understand why there is a rush to give away the checkbook to the Town of Cortlandt. He feels that everything is being done on the say so of Village Engineer Hahn. Mr. Cherchia remarked that Mr. Hahn will bill the Village for a two minute phone call as a 15 minute call. He will bill to have the specs delivered from Brewster to Buchanan \$85 each way, \$170. Mr. Cherchia remarked that he finds it amazing that on Mr. Hahn's say so, the Village Board is willing to do this. He wanted to know, if it is going to be bid, why is it so different for the Village to ask the Town to do it. It is not buying in bulk. He said you are not getting a better price at \$4.75 per foot. They are not buying just blacktop. They are buying it in place. He commented that if we had our own bid, we would be paying for our own cuts and security. We would not be sharing expenses with the Town. There is no explanation why the Village has to

pay \$4.75 and the Town is paying \$1.51. He remarked that he is sure that Mr. Hahn will come up an explanation, but Mr. Cherchia is not buying it. It will be a lie. He does not know if there is a rush for the IMA. The Village Attorney has not executed one. The Village will be assuming a liability it does not have. He commented that Trustee Smith has tremendous information. Village Administrator Hay was very cooperative and gave Trustee Smith what he had. Mr. Cherchia noted that Trustee Smith is his nephew and they do talk. Mr. Cherchia remarked that it was fortunate for the Board that Trustee Smith is available and has the time and that he did it on his own with no cooperation from the Village Engineer. He remarked that the Board should do what it wants and he will do what he wants which is to report this to the proper authorities.

Mr. Cherchia commented on the Resolution dated January 4, 2010 authorizing the proposition for the bond for the sewer plant. He read Section 3 stating that the period of probable usefulness for the pump is 40 years. When Mr. Cherchia sat at the meeting and listened to Village Engineer Hahn, he recalled hearing the greatest figure given by him as being 20 years. Mr. Cherchia does not know how you borrow 1.5 million dollars for 30 years on a project with a probable life span of 10-20 years. He wanted to know if there was not a requirement to make changes if you are not going to have a life expectancy beyond the length of the bond issue. He feels it should be disclosed. He commented that changes were proposed that would extend the life of the plant to 50 or 60 years. That is what the Village Engineer put before the County Board of Health. That would be money well spent if we were to get 50-60 years out of that plant. He commented that if the Board has questions, Trustee Smith has a lot of information.

Trustee Zachary had a question on Mr. Cherchia's list of streets with their dimensions, specifically the length of Henry Street. Mr. Cherchia commented that if the length from Second Street to Church Street is actually 1030 feet. He referred to a memo from Tim Cronin's office dated July 2009. Only 650 feet of it will be done. That is all Bilotta is obligated to do. Trustee Zachary noted that the contract states 650 feet from Second Street to First Street. Either they are listing the wrong street or they are listing the wrong footage on this chart. Mr. Cherchia commented that the chart is from the Town and is part of the contract. It is what Bilotta based the bid on as the square footage for Henry Street. That is what he bid on and that is what was sent and that is what you have. The contract specifies 650 feet so they can stop there.

Village Attorney Porteus advised that she had this discussion with George Palmer a week ago. There is 36,000 square feet of milling for this road. Mr. Cherchia commented that in the same memo from Tim Cronin's office, there is a comment that no milling is required on any of the streets. Henry Street is 650 linear feet. For the Town of Cortlandt, it is over 3 miles of linear feet. Village Attorney Porteus commented that what she was told by George Palmer is that 1125 linear feet of road was bid on. She would have had the Village Engineer present if it had been known that this matter would come up. She advised that she had questioned Mr. Palmer on the measurements and was advised that it was 1125 linear feet. Mr. Cherchia commented that if somebody made a mistake, it was Village Engineer Hahn. Mr. Cherchia remarked on the Village being charged if they did call him in. Village Attorney Porteus commented that Mr. Cherchia

has done research and that she has in writing the numbers she was given, the 1125 feet. She questioned if Mr. Cherchia's number and Mr. Palmer's were referring to the same thing. Mr. Cherchia commented that they were. He and Trustee Smith paced it off. They came out from Second to Church Street being just over 1,000 feet. They did not have a wheel. 650 feet takes you to just about First Street. Trustee Smith did most of the research. He commented that they have an advantage. The Board does not know this. Until Trustee Smith went to the Town, the Village did not even have a contract. He wanted to know why the Village did not have the specs. He feels that the Board is putting 100% trust in the Town that they would be taken care of. Village Attorney Porteus commented that they are putting faith in the Village Engineer.

Mayor Murray commented that the Village Engineer wrote the specs. The Village Engineer was in contact with the Town Engineer. The Mayor commented that he talked about joint bidding with the Town, going back to the May Village Board meeting. He spoke with mayors of other municipalities. That is how they saved money. The Mayor commented that just looking at the bid package they had last month, we saved 6% on the paving cost. We went from \$102 per ton to \$96 per ton. That is what our bidders had on Bleakley Avenue. The reason Henry Street was not included in Bleakley Avenue is because the original Bleakley Avenue estimate was \$800,000. He noted that as Mr. Cherchia knows, we only have \$950,000 to use. So we could not do many more roads. When it came back at \$515,000, we told the Engineer to use \$100,000 to offer to the Town to do a joint bidding project. Mr. Cherchia commented that was not so. The Village's bids came in and were opened on August 18. He commented that the Mayor did not know that there was an extra \$100,000. Mayor Murray commented that the Board knew that our estimate from Village Engineer Hahn was \$800,000; hopefully less because the original estimate from Tim Cronin was \$450,000-\$550,000. So they told the Village Engineer to go with \$100,000 or \$150,000 to the Town to do a joint bid. It turned out that the bid for Bleakley Avenue was \$515,000. Hopefully, they can now include Second Street because they saved 6% on our asphalt cost. Mr. Cherchia wanted to know why the Village did not do the bid. If it takes Bilotta three to four days to do 650 feet, he feels you need a new contractor. Mayor Murray commented on Mr. Cherchia's measurement being different than the Village Engineer's. Mr. Cherchia and Trustee Smith may have paced it out. The Village Engineer put it together. Mr. Cherchia commented that regardless of who paced it out, to look at the contract. The contract list is what was bid on and all that Bilotta is obligated to do; 19,500 square feet of Henry Street. He based his bid on the entire contract on the footage listed in Appendix (d). Mr. Cherchia remarked that regardless of what Mr. Hahn said, you cannot stretch 650 feet into over 1,000. Mr. Cherchia commented that he would go a step further since he knew this would be the Board's so-called excuse. Do the calculation at 1,000 feet by 30 and it comes out 60,000. So they are still giving away money. So it does not make any difference what figure they are using. The only figure that counts is what is in the contract, not what Mr. Hahn says. Mr. Cherchia commented that when you give an IMA to the Town, you do not have a say. You do not review the bidding yourself. You do not say what you want done. You do not have the contract in front of you and say that you are not going to pay \$4.75. You do not have that authority. It rests only in the

Town of Cortlandt and why should they reject a contract that reduces their cost at your expense. Once you give that IMA, just take the title of the object: Inter-municipal Agreement. "Agreement" implies that two or more parties get together to resolve or come to accord on a particular object. It is all one sided. The Town of Cortlandt does what it wants but the Village gets the bill. The Town wants the Village to pay the builder direct. He commented if the Board signs that IMA, executes that IMA, and passes a resolution to execute the IMA, Bilotta has the right to sue you directly. He does not have the right as the contract stands. Mr. Cherchia commented that if the Board wanted it done at that price, to do it. If they do not, the time has expired. He feels that in this case time is not of the essence when you are paying \$3.24 a foot more.

Mayor Murray wanted to know why Bilotta would want to sue the Village for anything. It seemed to him that whenever we try to do anything out of the ordinary, there are threats of law suits. The Mayor wanted to know why would a contractor whom the Village has issued a bid to, who has done the work according to the specifications as set forth by our Engineer want to sue the Village. Mr. Cherchia commented that no person or party enters into a contract with default in mind. Go to the court house and see the list of people who entered into the contract in good faith but now one is suing the other.

Mayor Murray wanted to know if Mr. Cherchia was saying that we should never enter into an IMA with anybody because of the threat of a law suit. Mr. Cherchia commented that he is not saying that. In this IMA, he feels that the Board is abrogating all their obligations and passing them over to the Town. An agreement means you sit down and negotiate what you want. You talk about it and both give a little. He feels that was not done here. Mayor Murray wanted to know if he felt that the three previous IMAs with the Town for office supplies and emergency services. Mr. Cherchia was not familiar with them. The Mayor advised that the Board does them every year. Mr. Cherchia would not recommend an IMA for anything other than the specific purpose. He thinks the Village should go its own way. There is nothing wrong with an IMA if done properly. He does not feel this one is. He wanted to know why the Board did not know about this in advance. Mayor Murray commented that he has been talking about it since May. He offered to read the minutes of the meeting.

Mr. Cherchia asked Trustee Smith to tell the Board about the tonnage. Trustee Smith gave the Board members a list with the tonnage. He noted that on Henry Street the total tons in this contract comes in at 4553 tons. Trustee Zachary wanted to know the source of the figures. Trustee Smith advised that they come right out of the contract. He came into possession of the contract on September 17. Before then, he did not know any of this. Trustee Zachary wanted to know if the \$1.69 per square foot rate was in the contract or one a projection that Trustee Smith and Mr. Cherchia did. Trustee Smith advised that it was one they worked out. Mr. Cherchia commented that it was a proportional rate. It gives an idea of where we should be falling into. Trustee Smith noted that if you look at the total tons and the price unit schedule for the proposal, the Town estimated a quantity of 5,350 tons machine laid, 300 tons hand laid. There is an

approximately 1100 tons difference between what the contract states and what their estimate was. If it was decided to do the remaining streets identified on the July 9 report done by the previous architect that would have been 917 tons. It would have worked in this contract. It struck Trustee Smith as unusual because he does not know how they do estimated tons on one side and then come up with a total on the other. He feels they could have had their exact tonnage because they knew what it was. It does not make sense to him why they would be so much over what the contract lists. It comes out about 20% over.

Several things struck Trustee Smith as unusual about this contract. The average of \$1.69 for the Town with the Village's being \$4.75. It came up out of nowhere. At the last Board meeting, he could not understand how it came up so quickly without anyone knowing about it. He knows that the Board discussed having agreements with the Town and sharing services. He is not against that. If we can get Bilotta to do these streets for the \$1.69 rate, we can actually do Henry Street completely. We can do Second Street, Henry Street to Tate Avenue and the lower part of Second Street for \$93,461. It is a ballpark figure. He asked Village Engineer Hahn and George Palmer in an e-mail how they arrived at these prices. Mayor Murray commented that it was his understanding that they did respond and Trustee Smith was not satisfied with the answers. The Mayor advised that all communications will go through the Village Administrator. The Mayor understands there was contact through the Town Engineer and other sources. He noted that the Board does not know what the questions were. That is why the Mayor asked the Village Administrator to be the point of contact and why Trustee Smith received all the information he asked for. Mr. Cherchia wanted to know why it is necessary for one person to go out and get the information and why is it not done right here. He wanted to know why it was not delivered to the Village, why did the Village not get a copy of the contract when it came out and why did the Village Engineer not get a copy until Trustee Smith provided one. He wanted to know why the Board did not have the specs of the contract to see how it affected Buchanan. Mr. Cherchia commented that they did not know what the specs were and they are now telling him it is 1,000 feet. Mayor Murray commented that he is not going to measure what the Village Engineer measured to verify it. You have to be able to trust somebody. That is what the Village Attorney and Village Administrator are here for. They go out and get that information and the Board reviews that information. Mr. Cherchia commented that the Board got the information after the fact. Trustee Smith got the information. Mayor Murray commented that the Engineer read and reviewed the contract and sent a recommendation that the Board approved it. Mr. Cherchia remarked that they are trusting an engineer who missed the difference in footage. Mayor Murray commented that Mr. Cherchia has one number and they have another. Some swales have to be cut out and he did not hear that mentioned. Mr. Cherchia commented that swales do not appear in the contract. Trustee Smith commented that the swales are included. He told the Town Engineer about that. He commented that the Town Engineer thought that Village Engineer Hahn's price was high. Trustee Smith caught him off-guard when he showed up. When Trustee Smith mentioned the price, the Town Engineer commented that it seemed high to him. Trustee Smith believes that he is relying on the Village Engineer to be accurate with his records. The

back page of the contract is 650 linear feet. The previous Village Engineer had 1,030 feet. Trustee Smith commented that unless he is doing patch work, the entire street will not get done even though that is the intent. So Mr. Bilotta could just pull up the stakes since that is all the contract requires. If the Village did not like it, we would be out of luck. If he had more time, Trustee Smith would have brought it to the Board sooner. He commented that one thing in our favor is that on September 30 the contract expired. He likes the \$1.69 price. The Board has to work on communications. He commented that they only have one chance at this.

Trustee Zachary commented that as mentioned, the Board members are not professional engineers. They rely on the information they get from the Village Engineer, Village Attorney and Village Administrator. They get the proper information. They appreciate community involvement. He commented to let us try to distill what is important and if there is a discrepancy in the footage, then let the Board go back and get clarification, find out where they got that number and what it means in terms of getting Henry Street paved. Let the Board verify that we are getting a prorated rate when the Town is bidding out these roads together. Is the Village getting a proportionate rate or are we paying more than others. We should get information. Mr. Cherchia commented that the Village portion of the contract is 6% and the Village portion of the payment is 16%. That does not count the engineer's fee. Trustee Zachary commented that there are so many possibilities. Somebody may be trying to cheat somebody. Somebody may have made a mistake. Mr. Cherchia commented that this is something that should have been done first. The same with the IMA. He wanted to know why all of a sudden, when Trustee Smith started nosing around, there is a need for an IMA that comes in on September 28. It did not come to the Village Attorney. It should be sent to the attorney, not the attorney's client.

Mayor Murray advised that the Town asked for a commitment. They asked for a commitment that we would accept the bid. They had not written the IMA at the time of the last Village Board meeting. The Board voted on a letter of commitment. Mr. Cherchia commented that it was an IMA. Mayor Murray advised that they never passed an IMA. Mr. Cherchia remarked that no one will be able to explain to the Mayor because he does not want to know. He does not want to hear anything that Mr. Cherchia said. Mr. Cherchia remarked that the Mayor has made up his mind. He should do what he wants and Mr. Cherchia will do what he thinks he should. That is to have somebody investigate it because it is not clean. Mr. Cherchia remarked that they do things in secret. People are entitled to assume the worst. He wanted to know why the Board does things behind closed doors. Mayor Murray wanted to know what Mr. Cherchia was referring to that he feels was done in secret. The Mayor commented that he has been talking about joint bidding since May. Mr. Cherchia commented that nothing about this contract came out until last month's meeting and the reason the Mayor gave was that the Town was going to award the bid the following Monday. He remarked that the Mayor lied when he said that. He remarked that the Mayor lied when he said there would be no additional charges. \$92,000 is our final cost. That is on the videotape. He remarked that the Mayor should look at the video; that

the Mayor thinks he is always right but he is not. Mayor Murray thanked Mr. Cherchia for his comments.

Trustee Knickerbocker commented that it says 650 linear feet. If you subtract that out, there is 380 difference. On Henry Street, we had the swales. She wanted to know if perhaps that was included separately because it is hand work. There are two separate lines. One is machine laid units and the other is hand placed. She knows that the swales have to be done by hand. Mr. Cherchia commented that there is a difference in the contract between the machine and hand laid. The hand laid is more expensive because it is more labor intensive. You still have to go to the contract which says this is the price and that is the distance. You cannot alter it now. He thinks they can but he was never afraid of litigation. He has to be a knowledgeable and informed IMA. He restated his previously stated definition of how an agreement is arrived at and its not being one sided. The Town does not dictate the terms. He remarked that he can say it 50 more times and it does not make any difference. The only thing that counts here is the contract.

Village Administrator Hay advised that they did talk about this and he contacted the Village Engineer after Trustee Smith had spoken. He said it was 650. They talked to the Village Engineer. The amount he said was 1125 with 36,000 square feet of milling and 36,000 of black top. At the meeting with Bilotta, which the Board members received an e-mail about, he questioned whether swales would be extra. George Palmer said it was included. He was going to discuss with the Town Engineer whether there would be extra charges and get back to the Village Administrator. Mr. Hay does not believe there is. He apologized for not getting the information out as quickly as possible, and if that made the Board's decision more difficult or added to the confusion. After talking to George Palmer, 1125 linear feet is what Bilotta is going to be paved and they are going to pave from Church Street to Second Street. Mayor Murray commented that the Village Administrator had a lot of things going on.

Angelo Iacomini, 6 Donahue Court, commented that he has been sitting and listening. He feels that Mr. Cherchia has brought up valid points and wants the right thing done for the Village. Ultimately, the Board has to decide between \$4.75 and \$1.69. If they are going to sign off and pay that overage, it is like buying a car where you are given one price and sign off on another. He feels that the Board needs to look at the valid points and as elected public officials, make sure to get the most for the dollars for the people they serve. He does not know what the Engineer's qualifications are. He cannot say if he made an incorrect calculation. Mr. Iacomini feels that while he is our Engineer, we need a back up in the community to verify the numbers. He does not know if anyone else picked up on it at all. He commented that in the past he has asked why is Bleakley Avenue being done first and was advised by the Mayor that it is because it is the first on the list. He also asked how long will it take to do the rest of the roads in the Village and was told by the Mayor that it would all be done by November. Mayor Murray commented that what he stated was that he did not anticipate it going past November, not that it would be all done by then. Mr. Iacomini felt that was because the Mayor did not have all the information.

Mayor Murray commented on coordination through so many different agencies. The Village Administrator did a lot of work. In the beginning, the agency told the Board that the money would be here in three weeks once the bidding was done and everything was taken care of. Then they told us it would be six weeks. Another week goes by and the Village Administrator has to spend more time negotiating it down to three weeks. The Board thought that once the bidding was accepted, we would have the insurance and bonding. We have not yet got it. Mayor Murray commented that we are not going to jump into it. A lot of things take time to coordinate. The Mayor commented that perhaps he was not as cautiously optimistic as he should have been. He thought if we opened the bid in August and awarded the bid in the first week of September, we could start working in September. He did not think that Henry Street or the majority of the work would take more than three months. We are not going to tell our contractor to do it when there is threat of a frost. We are going to stop him from working because we want the job done correctly, like we did with the bonding issue. We have to bond the roads correctly because if there is moisture or frost in there, you shorten the life of the road by over half. The Mayor has asked the Village Engineer to work with the contractor to do what can be done now, so we can apply to the State for some reimbursement, and so we can start paying back our bond as soon as we use it so we can spread the tax increase over a two year period instead of just one year.

Mr. Iacomini wanted to know if we do not do it until next year, will our rates be 2% or 4% percent in the Spring. He commented that when the Sewage Treatment Plant was talked about and the 30 to 60 year life span from doing it a certain way, and Village Engineer Hahn spoke about 10 to 20, Mr. Iacomini would rather do it right the first time. If we have to go back in 10 or 20 years, who knows what the interest rates will be when we have to cut another bond. You overlap into the other bond. He commented that the way the Board cannot tell when the roads are going to be done, we might as well do it right the first time. He is looking to get the most output for the dollars because we do not have a lot of bucks in this community. He commented that because the Town of Cortlandt says they are going to give us a deal, we should not just take their word. We have to know that it is a deal. Not that they would intentionally do it but we could end up get burned a little bit and getting less than we should. Mayor Murray concurred. The Board feels that way too and is taking the extra steps to try to save money. That is why the Village Engineer is looking closer at the aeration system and what specifications will be required by the State. The Mayor commented that unfortunately, the previous engineer did not include the sludge collection equipment in his previous bid, which approximately was an extra \$200,000. The Board is waiting for the letter from the County about the Comminutor where we might be able to save an extra \$70,000. The Board is looking to save money. But it all takes time and research.

The Mayor asked Mr. Iacomini if he would like the Village Administrator to answer his questions about the percentages. Village Administrator Hay advised that the finances will come in a bond anticipation note (BAN). It is a one year note. We borrow the money the money at that point. We can roll over the BAN up to five times. At that point, we would have to roll into



a serial bond. He did not have our numbers yet because they have not yet bid ours. He is hoping to get similar numbers to what other municipalities got. Hastings-on-Hudson just did one for one million dollars, which is close to what we are doing, and got 1.5%. Hopefully, we get a similar rate. Hopefully, we can spend the money within a year and roll it into a serial bond.

Mr. Iacomini was not questioning the qualifications. He wants to see as many roads done as possible with this one at a good rate, and get the sewage treatment done with this one at a good rate. If the economy picks up and things pick up, we would not have to borrow again at a higher rate.

9. **ADJOURNMENT:**

At 9:53 PM a MOTION to adjourn this meeting was made by Trustee Funchion, seconded by Trustee Knickerbocker with all in favor.

General Fund: \_\_\_\_\_ Water Fund: \_\_\_\_\_

Capital Fund: \_\_\_\_\_ T&A Fund: \_\_\_\_\_

See Abstract of Audited Claim Vouchers for details.

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Kevin Hay