

York Town Board Meeting  
August 23, 2012

Present: Supervisor Gerald L. Deming, Council Members: Lynn Parnell,  
Norman Gates, David Deuel and Frank Rose Jr.

Absent: None

Others: Andrew Emborsky (Legal Counsel) and attached list of guests

Supervisor Deming opened the Town Board Meeting at 7:33 p.m. with the Pledge to the Flag.

MINUTES

RESOLUTION offered by Mr. Gates and seconded by Mr. Deuel to approve the minutes of the August 9<sup>th</sup> Town Board Meeting and August 14<sup>th</sup> Meeting which was a continuation of the July 24<sup>th</sup> Public Hearing. Voted on and approved, Yes-5, No-0.

Supervisor Deming informed the public that the Board received written comments regarding the proposed Moratorium until 4:00 p.m. August 14<sup>th</sup>. Due to the multitude of correspondence that will be reviewed, the Board will not be discussing the issue this evening until all comments have been read. Mr. Deming stated Lenape Resources did submit additional information this evening, which will be posted on our website after tonight's minutes have been approved.

Supervisor Deming added, because of the September 13<sup>th</sup> Primary from 12:00-9:00 p.m., the main area of the Town Hall will not be available to the Board for their regular meeting, as it is a legal polling site, ultimately scheduling us in the office that evening. The Board will not be discussing Fracking issues on the 13<sup>th</sup> but will continue discussions at the **September 27<sup>th</sup> meeting**, in order to have the proper room necessary for any visitors wishing to express their thoughts on the matter.

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OLD BUSINESS

1) Town Hall roof:

Supervisor Deming reported after two heavy rain storms, the Town Hall roof appeared to have some leaks and needed attention. After review from the Contractor and Engineering firm, we verified that the roof was not the issue, the

Town Board Meeting  
August 23 2012  
7:00 PM

GUESTS (PLEASE PRINT)

- 1) Tom Taylor
- 2) Jerry Sturm
- 3) Jerry Hupp
- 4) Tom Seifert
- 5) Bob Wild
- 6) Jack Crooks
- 7) Stan Fudge
- 8) Nancy Hoyer
- 9) Stanley Rodger
- 10) Bill Lynch
- 11) Lee Gietarick
- 12) Pat Coardner
- 13) Graya Melashlin
- 14) Roger McCadden (Water & Sewer Op.)
- 15) George Worden Jr. (Highway Supt.)
- 16) Allen Rodger
- 17)
- 18)
- 19)
- 20)

**LENAPE RESOURCES, INC.**

9489 ALEXANDER ROAD, ALEXANDER, NY 14005

www.lenaperesources.com

585.344.1200

Fax: 585.344.3283

**RECEIVED**  
BY *Cmt* | 8/22/12 DATE

August 22, 2012

Town of York  
2668 Main Street  
York, NY 14592

Dear Members of the Town Board:

Please find attached a copy of a letter that I drafted last week for submission to the Town Board for consideration. I mistakenly believed there to have been another meeting last week and have since become aware that last week was the deadline for submission of written comments to the Town Board. While it may be too late for the Board to formally accept written comments, and whereas I will not be able to attend the meeting this Thursday because of prior commitments, I would still nonetheless like to provide the Board with this information dealing with just two of the provisions within the SGEIS that address the potential future permitting of wells under any new regulations to be adapted by the DEC.

Any comments made by those in support of this local law which attempt to scare the Town into believing that there will be a sudden convergence by Oil and Gas drilling operators onto the Town of York are simply NOT TRUE. There are numerous provisions within the current document that will delay any possibility of drilling within the Town for a significant period of time. Two of these provisions are the subject of and more particularly identified in the attached letter. Since Lenape has a significant leasehold position within the Town there is even a lesser likelihood that anyone other than Lenape will seek to operate within the Town for the foreseeable future. Lenape has a thirty year history, operating within the Town of York and while we may not have been able to please every landowner that we have dealt with over this time, we have a meticulous record in the Town and will continue to strive to be good neighbors.

I thank you for your consideration in opposing this local law.

Regards,

Lenape Resources, Inc.

John C Holko, President 

W/attachments

**LENAPE RESOURCES, INC.**

9489 ALEXANDER ROAD, ALEXANDER, NY 14005

www.lenaperesources.com

585.344.1200

Fax: 585.344.3283

August 14, 2012

Town of York  
2668 Main Street  
York, NY 14592

Dear Members of the Town Board:

Thank you for this opportunity to comment at this meeting as well as the time last Thursday at which I was able to comment on Lenape's opposition to this moratorium "Local Law No. 1 for 2012" titled the "Moratorium and Prohibition within the Town of York, Livingston County, New York (hereinafter "Town") of Natural Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration and Production Wastes". It was clear from our meeting last Thursday that the Town Board has no intention of trying to harm Lenape or the landowners that have entrusted their mineral development to Lenape. It was also made clear at the meeting that the Town was only interested in some time (proposed as a year) necessary for them to learn about HVHF and its relationship to the Town of York. I explained that this time was already provided within the existing document and review process of the draft SGEIS currently under review by the NYSDEC. I also explained at that meeting, that this proposed moratorium prohibits Lenape from performing operations allowed by the NYSDEC which have been performed in the Town for more than 30 years and would place a financial burden on Lenape prohibiting it from operating as it has during the last 30 years. In addition, it would impede Lenape's existing contracts with its Lessors. As expressed in the meeting and as follows, I offer an explanation of the time provided by the existing NYSDEC draft SGEIS.

Since the NYSDEC as well as other agencies within the State with regulatory authority over oil and gas operations have been reviewing HVHF, and the current draft SGEIS of approximately 4,000 pages covers all of the possible topics of discussion that the town could propose, I would suggest using this document as a guideline for review. In addition, I would offer sections of this existing document which will provide the town comfort that they have the year they are proposing in the moratorium to complete their own review if necessary without the necessity of any moratorium action by the Town.

Section 7.11.1.2 of the draft SGEIS provides for Municipal Control over Local Road Systems and requires a submission of this plan prior to any site disturbance. In addition, Section 7.13 provides for the development of an Emergency Response Plan to be submitted 48 hours prior to well spud. Both of these documents will require communication and cooperation between well operators and local municipal leaders. Both of these can be used if necessary to provide the

Town additional time to review impact as well as discuss operations and impact with companies interested in pursuing development in the Town.

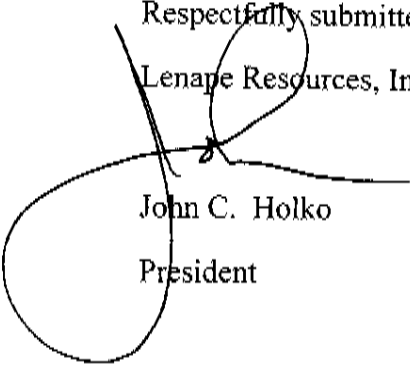
In addition, the most lengthy review in the existing document which will provide more than the proposed year in the moratorium is the Habitat Fragmentation in Section 3.2.3.10 of the draft SGEIS. In this section, disturbance in Grassland requires a minimum of one year field surveys at the proposed site. If you review the Grassland Focus Area Map provided, you will see that the Town of York is within this Focus area and will require a one year study for disturbance in a grassland patch of 30 acres or more.

The combination of these restrictions and requirements should provide comfort that there will be no HVHF development in the Town of York in less than a year. As stated at our meeting and supplied here for the record, if the Town's true intent is to take a year and review natural gas development, it is not necessary, because the items stated above which are currently in the NYSDEC draft SGEIS guidelines for natural gas development would not allow any site disturbance in less than a year and probably longer.

By using these existing time restraints, it is not necessary for the Town of York to adopt this moratorium which would conflict directly with supercedure language in the State Environmental Conservation Law, interfere with existing oil and gas leases operated by Lenape and prohibit Lenape from continuing its existing operations in the Town.

Respectfully submitted,

Lenape Resources, Inc.



John C. Holko

President

### 3.2.3.9 Local Planning Documents

The EAF Addendum will require the applicant to identify whether the location of the well pad, or any other activity under the jurisdiction of the Department, conflicts with local land use laws, regulations, plans or policies. The applicant will also be required to identify whether the well pad is located in an area where the affected community has adopted a comprehensive plan or other local land use plan and whether the proposed action is inconsistent with such plan(s).

### 3.2.3.10 Habitat Fragmentation

Applicants proposing well pads in Forest or Grassland Focus Areas that involve a disturbance in a contiguous forest patch of 150 acres or more in size or a contiguous grassland patch of 30 acres or more in size should not submit the EAF or a well permit application prior to conducting a site-specific ecological assessment in accordance with a detailed study plan that has been approved by the Department. The need and plan for an ecological assessment should be determined in consultation with the Department and will consider information such as existing site conditions, existing vegetative cover and ongoing and historical land management activities. The completed ecological assessment must be attached to the EAF and must include, at a minimum:

- A compilation of historical information about use of the area by forest interior birds or grassland birds;
- Results of pre-disturbance biological studies, including a minimum of one year of field surveys at the site to determine the current extent, if any, of use of the site by forest interior birds or grassland birds;
- An evaluation of potential impacts on forest interior or grassland birds from the project;
- Additional mitigation measures proposed by applicant; and
- Protocols for monitoring of forest interior or grassland birds during the construction phase of the project and for a minimum of two years following well completion.

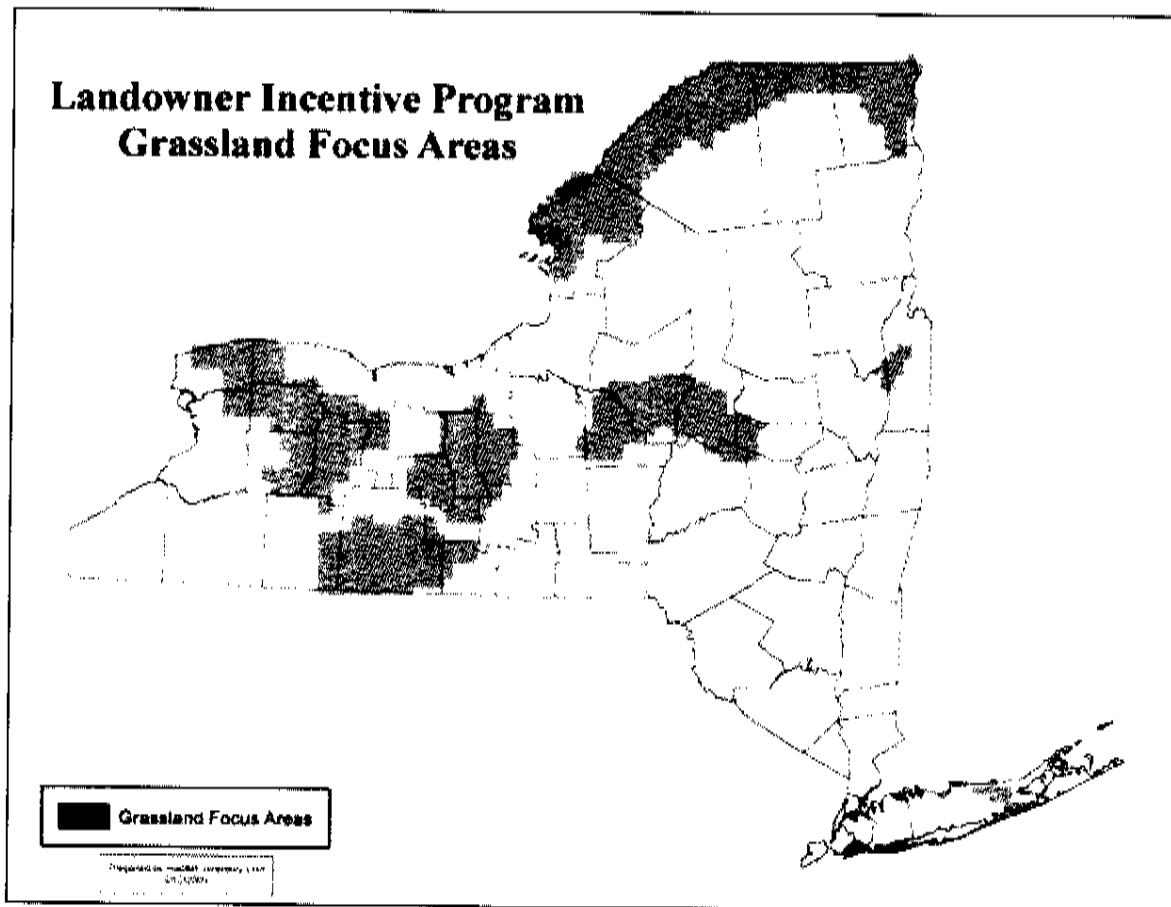
### 3.2.4 Prohibited Locations

The Department will not issue well permits for high-volume hydraulic fracturing at the following locations:

- 1) Any proposed well pad within the NYC and Syracuse watersheds;



## Grassland LIP: Focus Areas Map



required to have an agreement in place to pay for the work required to repair or prevent the road deterioration.

#### 7.11.1.2 Municipal Control over Local Road Systems

Under NYS highway vehicle traffic laws, local municipalities retain control over their roads, and as such, can implement measures to prevent or minimize transportation impacts. For example, NYS Vehicle and Traffic Law § 1640(a)(5) provides that, "The legislative body of any city or village, with respect to highways ... in such city or village ... may by local law, ordinance, order, rule or regulation ... exclude trucks, commercial vehicles, tractors, tractor-trailer combinations, [and] tractor-semitrailer combinations from highways specified by such legislative body." Part 10 of this same section allows legislative bodies of a city or village to "establish a system of truck routes upon which all trucks, tractors and tractor-trailer combinations, having a gross weight in excess of ten thousand pounds are permitted to travel and operate and excluding such vehicles and combinations from all highways except those which constitute such truck route system." Part 20 of this same section allows for the establishment of weight, height, length, and width criteria, for which vehicles in excess of such standards may be excluded from highways or the setting of limits on hours of operation of such vehicles on particular city or village highways or segments of such highways. Essentially, NYS Vehicle and Traffic Law §1640(a)(5), (10), and (20) allow local governments to establish regulations pertaining to the use of city or town highways by trucks, tractor trailers, etc., and to exclude such vehicles from use of city or town highways as may be delineated by the local legislative body.

In addition to city and village ordinances or rules that may govern the use of highways within a city or village, NYS Vehicle and Traffic Law § 1650(4)(a) provides that "the county superintendent of highways of a county with respect to county roads in such county, may by order, rule or regulation: ... exclude trucks, commercial vehicles, tractors, etc. in excess of designated weight, length, height and width from county highways, or set limits of hours of operation for such vehicles." This is essentially the same legislative authority given to cities and villages in Vehicle and Traffic Law §1640, except this pertains to counties. The same is true of Vehicle and Traffic Law § 1660(a)(10), (11), (17), and (28), which allow for the same exclusion of trucks, tractors, tractor-trailers, etc., as provided in the previous Articles, except that this section pertains to the authority of a town's legislative body. In addition, Town Law § 130 (7)



- Avoidance of peak traffic hours, school bus hours, community events, and overnight quiet periods, as established by Vehicle and Traffic Law §1640(a)(20);
- Coordination with local emergency management agencies and highway departments;
- Upgrades and improvements to roads that will be traveled frequently for water transport to and from many different well sites, as may be reimbursable pursuant to ECL §23-0303(3);
- Advance public notice of any necessary detours or road/lane closures;
- Adequate off-road parking and delivery areas at the site to avoid lane/road blockage; and
- Use of rail or temporary pipelines where feasible to move water to and from well sites.

Supplementary permit conditions for high-volume hydraulic fracturing would re-emphasize that issuance of a well permit does not provide relief from any local requirements authorized by or enacted pursuant to the Vehicle and Traffic Law. Such permit conditions would also require the following:

1. Prior to site disturbance, the operator shall submit to the Department and provide a copy to the NYSDOT of any road use agreement between the operator and local municipality.
2. The operator shall file a transportation plan, which shall be incorporated by reference into the permit; the plan will be developed by a NYS-licensed Professional Engineer in consultation with the Department and will verify the existing condition and adequacy of roads, culverts, and bridges to be used locally.

★  
When there is no agreement, the applicant should nevertheless be guided by Environmental Conservation Law (ECL) § 23-0303(2), which provides that "this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries; but shall not supersede local government jurisdiction over local roads or the rights of local governments under the real property tax law." This gives local municipalities the authority to designate and enforce vehicle and traffic laws pertaining to the use of local roads by motor vehicles, including trucks engaged in activities connected to gas drilling.

#### 7.11.1.4 Reimbursement for Costs Associated with Local Road Work

Under Highway Law § 136 (2), "a county superintendent shall establish regulations governing the issuance of highway work permits, including the fees to be charged therefor, a system of

- fencing of the site when drilling is located in active pasture areas to prevent livestock access.

Implementation of these measures would lead to successful reestablishment of agricultural lands when well pads are no longer productive.

The socioeconomic, visual, noise, and transportation impacts discussed in Sections 6.8, 6.9, 6.10, and 6.11, respectively, also impact community character. To the extent that these impacts are mitigated as discussed in Sections 7.8 (Socioeconomic), 7.9 (Visual), 7.10 (Noise), and 7.11 (Transportation), impacts on community character would also be mitigated.

### **7.13 Emergency Response Plan**

There is always a risk that despite all precautions, non-routine incidents may occur during oil and gas exploration and development activities. An Emergency Response Plan (ERP) describes how the operator of the site will respond in emergency situations which may occur at the site. The procedures outlined in the ERP are intended to provide for the protection of lives, property, and natural resources through appropriate advance planning and the use of company and community assets. The Department proposes to require supplementary permit conditions for high-volume hydraulic fracturing that would include a requirement that the operator provide the Department with an ERP consistent with the SGEIS at least 3 days prior to well spud. The ERP would also indicate that the operator or operator's designated representative will be on site during drilling and/or completion operations including hydraulic fracturing, and such person or personnel would have a current well control certification from an accredited training program that is acceptable to the Department.

The ERP, at a minimum, would also include the following elements:

- Identity of a knowledgeable and qualified individual with the authority to respond to emergency situations and implement the ERP;
- Site name, type, location (include copy of 7 ½ minute USGS map), and operator information;
- Emergency notification and reporting (including a list of emergency contact numbers for the area in which the well site is located; and appropriate Regional Minerals' Office), equipment, key personnel, first responders, hospitals, and evacuation plan;

PROPOSED EAF ADDENDUM REQUIREMENTS  
FOR HIGH-VOLUME HYDRAULIC FRACTURING

- Operator will prepare and adhere to an emergency response plan (ERP) consistent with the SGEIS that will be available on-site during any operation from well spud (i.e., first instance of driving pipe or drilling) through well completion. -A list of emergency contact numbers for the area in which the well site is located must be included in the ERP and the list must be prominently displayed at the well site during operations conducted under this permit
- Operator will adhere to all well permit conditions and approved plans, including requirement for Department approval prior to making any change
- Operator will adhere to best management practices for reducing direct impacts to terrestrial habitats and wildlife consistent with the SGEIS (see Section 7.4.1.1)

**ADDITIONAL SUBMISSION REQUIRED PRIOR TO SITE DISTURBANCE**

\*

- Copy of any road use agreement between the operator and local municipality

**ADDITIONAL SUBMISSION REQUIRED AT LEAST 48 HOURS PRIOR TO WELL  
SPUD**

\*

- Copy of the ERP in electronic form

#### 8.1.1.3 Local Government Notification

ECL §23-0305(13) requires that the permittee notify any affected local government and surface owner prior to commencing operations. Many local governments have requested notification earlier in the process, although it is not required by law or regulation. The Department would notify local governments of all applications for high-volume hydraulic fracturing in the locality, using a continuously updated database of local government officials and an electronic notification system that would both be developed for this purpose.

**Donna A. Rea**  
3368 Fowlerville Road  
Caledonia, NY 14423  
donnarea@rochester.rr.com  
(585) 226-8334 home

**RECEIVED**

BY *CMH* | 9/10/12 DATE

September 9, 2012

Town of York Board Members  
2668 Main Street  
PO Box 187  
York, NY 14592

Dear Board Members:

I am a resident and property owner in Fowlerville and I am writing to urge you to please pass a moratorium on hydrofracking. I am deeply concerned about the safety and environmental impact of hydrofracking. There is no question that there is tremendous potential for serious environmental damage. There could be accidents at the drilling sites, groundwater could become contaminated, or there could be traffic accidents with the trucks carrying the highly polluted waste water. The risk is too high. It is impossible to guarantee nothing will ever go wrong. I didn't live here when the salt mine collapsed, but I understand even that ruined area wells. And salt mining seems much more benign than hydrofracking.

I even saw a newspaper article that said that it was probable that hydrofracking had caused earthquakes in Ohio. I found that hard to believe, but did a little research and found there was an issue with hydrofracking and earthquakes in Arkansas as well. Aren't we on a fault line here? If hydrofracking can cause earthquakes, it's all the more reason to not allow it!

Things go wrong. The salt mine collapsed. Horrific oil spills happen. Chernobyl happened. The nuclear power plant disaster happened in Japan due to the tsunami.


We need to put our efforts toward developing cleaner, safer energy sources; not more dangerous ones. Many "green" technologies exist, such as electric cars, hybrid cars, bio-fuels, geo-thermal heating, wind power, solar power, etc. These are the avenues that should be pursued. Hydrofracking is not the only way to provide energy, or create new jobs.

If hydrofracking is allowed, and there is ever an accident, it would destroy property value, and damage human and animal health.

Our environment is already seriously polluted and we are suffering from the effects. In the past there has been ignorance and/or callousness toward environmental and health risks. Please do not put us at further risk by allowing hydrofracking. Please pass the moratorium. Personally, I'd like to see it banned altogether.

Thank you.

Sincerely,

  
Donna A. Rea

**RECEIVED**Pittard, N. Y.  
Sept. 10, 2012

BY PAB 9/11/12 DATE

Yorktown Board  
Henry Deming, Supervisor  
Ladies and Gentlemen,

My husband and I have discussed  
the issue of hydrofracking in the  
Town of York and we say no!!

The reasons why 13;

The wear and tear on our roads —  
Endangering our water table which  
is already compromised by nitrates &  
salt —

While a few people may make money  
— even the town — most will have  
to pay in poorer roads and expense for  
water etc. Shell oil like British Pet. in  
the North is out for itself no matter how  
good their intentions

Sincerely,  
Ed & Nora Coleman

chimney area was where the water was entering the building. We will be reviewing the status of the chimney and possible steps for repair.

### NEW BUSINESS

#### 1) County Snow and Ice:

RESOLUTION offered by Mr. Gates and seconded by Mr. Rose to approve the County Snow and Ice Contract for the period beginning October 15, 2012 to October 14, 2013, at a rate of \$4,000.00 per mile, to perform snow and ice control on County Roads located in the Town of York. Voted on and approved, Yes-5, No-0.

#### 2) Assessor Request:

Supervisor Deming stated the Board discussed a request by Assessor Anne Sapienza at the July 26<sup>th</sup> Town Board Meeting for a new PC and monitors. The Board tabled the discussion for further clarification on the need. Mr. Deming stated Mrs. Sapienza submitted documentation for each member to review in order to explain the reason for the purchase.

After some discussion the Board agreed that the funds needed for the Assessor's equipment will be put in 2013's budget.

### HIGHWAY

Mr. Worden reported members of our Highway crew continued to assist the County Highway Department with the Simpson Road Bridge Project over the past few weeks. The project is finally completed, now with unlimited weight restrictions. Mr. Worden commented that the bridge looks great.

Mr. Worden stated we also helped the County on York Road West as well, by filling in driveways after the resurfacing.

The routine mowing of roadsides were also taken care of.

#### 1) Roadside Mower:

Mr. Worden reported that he contacted Lakeland Equipment recently to obtain a quote for budget purposes, for one cab tractor, side flail and a rear offset flail. Mr. Worden stated the John Deere model is quite expensive due to the fact that it is the newest generation, but would be significantly less (\$20,000) in 2013 if we were to order this year, but pay for it in next years budget.

Randy Rodger asked Mr. Worden if any equipment was available on State surplus. Mr. Worden replied models are available but unfortunately in worse condition than we currently have.

### WATER/SEWER

#### 1) Water Main Replacement:

Mr. McCracken reported that CCS Pipeline hopes to begin the Water Main Replacement project on Route 63, the first week of September.

2) Hydrants:

Mr. McCracken stated the water department has been flushing hydrants throughout the district for the past two weeks and should be coming to a close tomorrow afternoon.

In addition to the flushing, the crew has stayed busy fixing three water breaks in that period as well.

\* Mr. McCracken informed the Board that yesterday was his 35<sup>th</sup> Anniversary with the Town of York Water/Sewer Department.

The Board congratulated and thanked Mr. McCracken for his dedicated years of service.

NEW BUSINESS

1) 2013 Pickup Truck:

Mr. McCracken stated we received a total of six (6) bids for a new 2013 Pickup Truck. The bids were as follows:

#1-	Wentworth Motors (Dansville)	\$25,508.50
#2-	West Herr Ford (Hamburg)	\$24,377.00
#3-	Ken Barrett Chev. – Cadillac (Batavia)	\$27,105.00
#4-	Emerling Chevrolet, Inc. (Boston)	\$24,577.00
#5-	VanBortel Ford, Inc. (E. Rochester)	\$24,542.00
#6-	Doan Chevr. Oldsmobile LLC (Rochester)	\$26,292.00

After review and verification of the bids, Mr. Worden and Mr. McCracken recommend that the Board accept the bid submitted by West Herr Ford.

RESOLUTION offered by Mrs. Parnell and seconded by Mr. Deuel to accept the bid submitted by West Herr Ford in the amount of \$ 24,377.00, for a New 2013 Pickup Truck. Voted on and approved, Yes-5, No-0.

\*\* Clerk Harris will notify all bidders of the award result.

BILLS

RESOLUTION offered by Mr. Gates and seconded by Mrs. Parnell to approve all claims brought before the Board. Voted on and approved, Yes-5, No-0.

General Fund Claim	# 234-245	\$ 11,337.52
Joint Water & Sewer	# 230-240	\$ 97,932.03
Youth Fund Claim	# 16-17	\$ 240.85
Highway Fund Claim	# 163-170	\$ 17,863.85

7:50 P.M

RESOLUTION offered by Mrs. Parnell and seconded by Mr. Gates to enter into Executive Session to discuss a Legal Matter, to include Town Board, Town



Attorney, Water Superintendent, Highway Superintendent and Town Clerk.  
Voted on and approved, Yes-5, No-0.

8:19 P.M.

RESOLUTION offered by Mr. Gates and seconded by Mrs. Parnell to end Executive Session. Voted on and approved, Yes-5, No-0.

Supervisor Deming reported no action was taken in Executive Session.

After a brief discussion the Board authorized the Town Attorney to speak with the Livingston County District Attorney regarding a non-moratorium related matter.

ADJOURNMENT

RESOLUTION offered by Mr. Deuel and seconded by Mr. Gates to adjourn the Town Board Meeting until September 13<sup>th</sup>. Voted on and approved, Yes-5, No-0.

Town Board Meeting closed at 8:25 p.m.

Respectfully Submitted,

Christine M. Harris, Clerk