

Special Meeting held by the Milan Town Board on 02/17/09 at 7:30 PM at the Milan Town Hall to address the FOIL appeal of William May and appoint an appraiser for the 1133 Taconic Realty, LLC court proceedings.

Present: Councilpersons David Byrne, Roberta Egan, Diane May & Ross Williams  
Absent: Supervisor Richard Barrett

In the absence of the Supervisor Council. Egan chaired the meeting.

Council. Egan opened the meeting and the clerk read the notice.

Council. May interrupted and said that before the board gets started she wanted to add to the agenda for the Special meeting on the 23<sup>rd</sup> the payroll issue so we can bring it to an end.

Council. Egan replied "of course".

#### **APPOINTMENT OF APPRAISER – 1133 TACONIC REALTY**

Scott Hobson, the Assessor Chairman stated that he had met with Scott Volkman and reviewed nine appraisers of the proposed project. He reviewed with the board a spreadsheet, which contained the each phase. It was narrowed down to three candidates – 1. Hirsh Valuation Group – Golf Property Analysis, 2. Empire State Appraisal Consultants (ESAC), 3. Beckmann Appraisals, Inc. The Board continued to review the bids. Council. Williams stated that he was disappointed with Scott Volkman because he did not come up with a recommendation. Scott responded that was why they had the meeting today, Scott Volkman did have a recommendation, and that he was leaning towards Hirsh Valuation Group since they had experience with golf courses. Council. Williams wanted to know if any of them had specialty in tax certiorari. Mr. Hobson said that they did not have enough time to do a reference check because the court date is set for February 24, 2008. The board also discussed Pine Plains paying for some of the cost. After some further discussion and various comments, the board felt that Empire State Appraisal Consultants was the best appraiser for the job. Spread Sheet enclosed:

Town of Milan  
Appraisal Bids for 1133 Taconic, LLC  
Carvel Country Club Golf Course

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Appraiser's Name	Location of Company	Phase I Cost	Time-Table	Phase II Cost	Total Cost Phase I & II	Time-Table (Phase I+)	Phase III Cost	Total Cost Phase I, II & III	Time-Table Phase I, II & III	Hourly Rate/ Total
⑤ Beckmann Appraisals, Inc.	67 Main St. Tappan, NY	\$5,000 + expenses		\$10,000 + expenses	\$15,000 + expenses	90 days	\$25,000 (if alone) \$15,000 (w/total appraiser) + expenses	\$40,000 + exp \$30,000 + exp	180 days (270 days)	\$2,500 per day \$200 per hour
Congdon & Company, Inc.	10 Madison Ave. Endicott, NY	\$1,450 50% retainer	2 wks	\$5,950 50% retainer	\$7,400 Retainer \$3,700	4 to 6 wks (8 wks)	\$2,250 50% retainer	\$9,600	3 to 4 wks (12 wks)	\$250 per hour
DeVan & Schott, Appraisal Associates, LLC	P.O. Box 128 Red Hook, NY	\$5,000 to \$7,500 +/-expenses \$2,500 retainer	2 to 3 wks	\$15,000 to \$17,500 +/-expenses \$5,000 retainer	\$20,000 to \$25,000 + expenses \$7,500 retainer	4 to 6 wks (9 wks)	\$30,000 to \$40,000 +/-expenses \$10,000 retainer	\$60,000 to \$65,000 + expenses	6 to 8 wks or more (18 wks)	\$175 per hour
② Empire State Appraisal Consultants (ESAC)	16 Hudson St. Kinderhook, NY	\$3,000 est hourly rate		\$11,000	\$14,000		\$4,000	\$18,000 est hourly rate		\$125 associate \$175 principals
George Silver & Associates	301 College St. Burlington, VT	\$4,500 to 6,750		\$10,000	\$16,750	120 days	\$25,000 if Phase II is undertaken \$10,000 would be applied	\$41,750 \$31,750	150 days (270 days)	\$225.00 per hour

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Appraiser's Name	Location of Company	Phase I Cost	Time-Table	Phase II Cost	Total Cost Phase I & II	Time-Table	Phase III Cost	Total Cost Phase I, II & III	Time-Table Phase III & III	Hourly Rate/Trial
① Hirsh Valuation Group Golf Property Analysis	2213 Forest Hills Dr., Suite 3 Harrisburg, PA	\$3,000 w/ \$1,500 retainer	15 days	\$18,000 w/ \$10,000 retainer	\$21,000 w/ \$11,500 retainer	45 days	\$4,000 w/ \$2,500 retainer	\$25,000 w/ \$14,000 retainer	21 days (81 days)	\$350 hour \$2,000 retainer
Hubbell Realty Services, Inc.	320 Main Street Poughkeepsie, NY	not to exceed \$2,000	3 to 4 wks	not to exceed \$4,500	\$6,500	4 to 5 wks (9wks)	No fee quote			
Hudson Valley Appraisal Corporation	P.O. Box 1004 Port Ewen, NY	Hourly basis	60 days	\$15,000		60 to 90 days	No Bid			\$200 per hour principal Trial \$2,050 a day
PKF Consulting	8 Penn Cir. Plaza 19 <sup>th</sup> Floor Philadelphia, PA		begin in 2 wks				\$17,500 + expenses for all three Phases- \$10,000 retainer	\$17,500	4 to 6 wks	\$250 per hour + local appraiser fees

Note: All proposals, to some degree, were "plus expenses".

**RESOLUTION # 12-09 Appraiser for 1133 Taconic Realty**

Resolution offered by Council. Egan seconded by Council. Byrne to appoint Empire State Appraisal Consultants to provide appraisal services in accordance with the proposal dated 02/05/09 to assist with the tax certiorari proceeding for the real property, Town of Milan Tax parcel #6672-00-359795, owned by 1133 Taconic. Roll was taken and adopted.

YES - 4 Egan, Byrne, May, Williams

NO - 0

ABSENT – 1 Barrett

## **WILLIAM MAY – FOIL APPEAL**

Council. Egan stated that next item on the agenda was the FOIL appeal of William May and she asked Council. May if she was going to recuse herself. She responded saying “Why don’t you go ahead and we’ll see how things unfold”.

**MOTION** by Council. Egan seconded by Council. Byrne to affirm the appeal of the FOIL request dated 12/29/08, made by Mr. William May.

Council. May stated that she is going to recuse herself but before she does she had something to say. She referred to an opinion that was set out by the attorney and she wanted to know who requested this opinion. Council. Egan said it was the Supervisor. After several more comments Council. May left her seat and sat in the audience.

The Board then addressed the appeal of Mr. May of the denial of his FOIL request dated 12/29/08. According to Mr. May the Town of Milan was in violation of Section 6 E, (4), (5), (6) of Local Law 9 of 2006. This law is based on providing the records within the specified time required by law. Council. Williams stated that he was denied the files within the specific time frame because he was not furnished with all the passwords. Council. Egan and Council. Byrne both felt that he received the files by specified time required by law. The discussion continued as to when he actually received the password to open the documents and if Mr. May was able to open the documents. The Town Clerk stated that she did not deny Mr. May the information, but for whatever reason he could not open the information that was sent to him in the email. The Clerk also stated that she spoke with Committee on Open Government and explained to them what procedures were taken concerning this FOIL and they agreed with her that she did everything she was suppose to do. After further discussion and various comments the board voted. Roll was taken and defeated.

YES – 1 Williams

NO – 1 Egan

ABSTAIN – 1 Byrne

ABSENT – Barrett

At this time Council. May returned to the table and stated that “I as a Town Board Member would like a CD tomorrow of the 2008 Financial reports on Quick Books, and I don’t believe that I need a FOIL to have that fulfilled by 2:00 PM to pick it up and please make sure that the CD is not password protected.” She said just let the bookkeeper know that I will be in at 2:00 PM.

Council. Byrne felt that it was an unreasonable request giving that amount notice.

Council. Egan said that she did not think the files could be given without a password protection.

Council. May said that it does not matter, she said that she was a town official and this is what I am requesting.

Discussion continued.

The Board then brought up the issue of the fee charge regarding the FOIL. **MOTION** by Council. Byrne seconded by Council. Egan to table the issue of fee charges for the FOIL until 02/23/09. Roll was taken and carried.

YES - 2 Egan, Byrne

NO – 0

ABSTAIN – 1 Williams

Council. Williams wanted to go into executive session regarding the next item on the agenda, which are attorneys. There was a discussion whether or not it was appropriate to go into executive session for this purpose. Council. Byrne wanted to know if it was critical to go into executive session for the motions that were on the agenda. Further

discussion continued. After discussing it further, Council. Williams decided that the board did not need to go into executive session.

Council. Egan brought up the Resolution #66-08 from the July 17<sup>th</sup>, 2008 meeting which states in part - regarding the check from Milan Concerns to offset the legal expense incurred from the appeal (Red Wing); with the conditions that the Town will continue to move forward with this appeal given continued public financial support for it and that the Town agrees to account for and return any monies not utilized in this appeal. Council. Egan wanted this to be part of the motion. Discussion followed and numerous comments were made on how the attorney would get paid. **MOTION** by Council. Williams seconded by Council. May to appoint Van DeWater & Van DeWater special counsel for the continuing legal matters related to the McCulloch law suits, in which Terry Rice represents the Town of Milan under our town insurance policy and to appoint Van DeWater & Van DeWater to continue legal matters with the Red Wing DEC mining permit application currently awaiting Commissioner rulings and to appoint them as special counsel for continuing legal matters for appeal being handled by the Attorney General's Office in the matter of Red Wing v. Milan. Council. Egan wanted to amend the **MOTION** seconded by Council. Byrne to appoint Van DeWater & Van DeWater as special counsel for continuing legal matters for the appeal being handled by the Attorney General's Office in the matter of Red Wing v. Milan conditioned on Resolution #66-08 which states that the town will continue to move forward with this appeal given continued public financial support for it, and that the town agrees to account for and return any monies not utilized in this appeal effort. Discussion. Council. Williams withdrew his original motion and the second made by Council. May and the Board decided to do the motions separately.

**MOTION** by Council. Williams seconded by Council. Egan to appoint Van DeWater & Van DeWater as special counsel for continuing legal matters related to the McCulloch lawsuits, in which Terry Rice represents the town under our town insurance policy and to appoint Van DeWater & Van DeWater as special counsel for continuing legal matters for the Red Wing DEC mining permit application currently awaiting Commissioner ruling. **MOTION** by Council. May seconded by Council. Williams to amend that the Attorney would be paid out of the Attorney line. Roll was taken and carried.

YES - 4 Egan, Byrne, May, Williams

NO - 0

ABSENT - 1 Barrett

**MOTION** by Council. Williams seconded by Council. May to appoint Van DeWater & Van DeWater as special counsel for continuing legal matters for the appeal being handled by the Attorney General's Office in the matter of Red Wing v. Milan. **MOTION** by Council. Egan seconded by Council. Byrne to amend conditioned on Resolution #66-08 which states that the town will continue to move forward with this appeal give continued financial support for it, and that the town agrees to account for and return any monies not utilized in this appeal effort. Roll was taken on the amendment:

YES - 2 Egan, Byrne

NO - 2 May Williams

ABSENT - 1 Barrett

Roll was taken on the original motion.

YES - 2 May, Williams

NO - 2 Egan, Byrne

ABSENT - 1 Barrett

All is defeated!

Council. Williams said we now have you (Council. Egan) on record as denying further support for the mining people. Council. Egan responded saying that we are denying support for Van DeWater because they were not allowed to be paid.

MOTION by Council. Egan seconded by Council. Byrne to authorize and direct the Supervisor to establish a dedicated Justice Court Assistance Program (JCAP) Grant Fund and approve the transfer to \$9,053.75 from the General Fund to this newly established JCAP Fund by 02/28/09. Discussion. Council. May did not want to consider the motion without certification of the amount with Justice Christensen. MOTION by Council. Williams seconded by Council. May to table this until the meeting on the 23<sup>rd</sup> of February. Roll was taken and carried.

YES - 4 Egan, Byrne, May, Williams

NO- 0

ABSENT – 1 Barrett

MOTION by Council. Byrne seconded by Council. Egan to adjourn this meeting. (9:10 PM)

Roll was taken and carried.

YES - 5 Egan, Byrne, May, Williams

NO – 0

ABSENT – 1 Barrett

Respectfully submitted,

Catherine Gill, Town Clerk