

TOWN OF CLARKSON
TOWN BOARD MEETING
April 10, 2010

The Town Board of the Town of Clarkson held their regular meeting on Saturday, April 10, 2010 at the Clarkson Town Hall, 3710 Lake Road, Clarkson, NY at 9:00 A.M.

PRESENT:

Paul Kimball	Supervisor
Christa Filipowicz	Councilperson
** Allan Hoy	Councilperson
Patrick Didas	Councilperson
Sheldon Meyers	Councilperson
Sharon Mattison	Town Clerk
David Goodwin	Highway Supt.
Richard Olson	Attorney for the Town

ALSO:

** William Ey	Ass't to Supervisor
** Pam Dolliver	Assessor
** Chad Fabry	Building Insp/Code Enf.
Christopher Lyon	Acting Assessor

**excused

Supervisor Kimball opened the meeting, and Sharon Mattison, Town Clerk led all those present in the Pledge of Allegiance. A moment of silence was observed for those serving in the military.

OPEN FORUM

Mike Cunningham, Salmon Creek Snowmobile Club representative thanked the Board for allowing the club to use the canal path this past winter and said they are planning to expanding their trails and hope to ride to Hafner Park for a cookout/fun day next winter.

PUBLIC HEARING – LOCAL LAW # 3-2010 “TO ALLOW LAW FOR THE APPOINTMENT OF ELECTRICAL INSPECTORS IN THE TOWN OF CLARKSON”

Supervisor Kimball opened the public hearing at 9:05 A.M.

Ed Chapman of 199 Lawrence Road, Mike Cunningham of 27 Gilmore Road, and Kurt Kronenburg of 7932 Newco Drive, Hamlin addressed the Board with general questions and comments.

Supervisor Kimball explained to everyone present the purpose for the Local Law and stated that he would like to see anyone currently authorized to perform electrical inspections have their term expiration line up with any and all new inspectors. Attorney for the Town, Richard Olson said that he agrees with the modification and will have the changes ready for the next Town Board meeting.

Bob Farron, President of International Association of Electrical Inspectors-Genesee Chapter was present and applauded the efforts of the Board for their work on the proposed Local Law. Mr. Farron stated that he feels the Board should take the Local Law one step further by requiring all inspectors to take continuing education courses. A lengthy discussion continued. Attorney Richard Olson will work with Bob Farron in reviewing possible modifications to the proposed Local Law.

Supervisor Kimball closed the public hearing at 9:32 A.M.

SUPERVISORS ANNUAL REPORT

Robert Fox, Auditor for the Town of Clarkson gave a lengthy review of the Supervisors annual report and a copy of the balance sheet summary was handed out to all present. Mr. Fox stated that the Town Board shows good fiscal management and the Town is in excellent financial shape. Wayne Ward of 3267 Sweden Walker Road was present at the meeting and requested a copy of the Town's financial report. A copy will be produced for Mr. Ward to purchase. Councilperson Didas thanked Mr. Fox for his service to the Town and stated that the Town is very fortunate to have someone of his stature and expertise as Clarkson's CPA.

04.10.10**PROPOSED LAKE ROAD SEWER UPDATE**

Supervisor Kimball stated that out of the 17 responses returned, there does not appear to be enough interest to move forward at this time.

MOTION AUTHORIZING SUPERVISOR TO SIGN PURCHASE AND SALE CONTRACT FOR 8000 RIDGE ROAD (aka RIDGEWOOD BALL PARK)

Supervisor Kimball stated that the Town has received a grant of nearly \$600,000 to purchase the old Ridgewood baseball park.

- Negotiated price with the current owner is \$350,000.
- Midland Appraisals estimate came in at \$550,000, awaiting second appraisal.

Councilperson Meyers commented that he did not feel it is the right time to purchase the park due to the fact that employees have had their wages frozen and he is worried about future maintenance costs.

Supervisor Kimball stated that Councilperson Meyers originally voted in favor of the ball park grant with the understanding that it is a 50% matching grant. Councilperson Meyers stated that he misunderstood that it was a matching grant and does not think the Highway Dept. can perform in-kind services to make up the matching grant portion.

Tom Trapp of 36 Sugar Tree Circle asked if the Board would consider putting the purchase of the park to a referendum. Councilperson Meyers quoted State Law Article 7, Section 91 regarding referendum. Supervisor Kimball stated the benefits for obtaining the park now are: being able to purchase while land prices are reasonable compared to what they may be in the future, increased demand for softball and all youth sports in general, and overuse of current park fields. In a down economy, people look for parks and recreation from government as they cannot afford an extended vacation.

Attorney for the Town, Richard Olson quoted Section 81 of the New York State Town Law on permissive referendums stating since the funds are coming from money appropriated from surplus funds it shall not be subject to referendum.

Motion Authorizing the Supervisor to sign the Purchase and Sale Contract for property commonly known as 8000 Ridge Road

Motion by Councilperson Didas

Seconded by Councilperson Filipowicz

To authorize the Supervisor to sign the Purchase and Sale Contract to Stan Koziatek and Cindy Kosiatek (sellers) and the Town of Clarkson (buyers). The property commonly known as 8000 Ridge Road is 49.60 acres. The contract is in the amount of \$350,000 to be paid from surplus funds.

VOTE OF THE TOWN BOARD:

AYES: Supervisor Kimball, Councilpersons Filipowicz and Didas

NAYS: Councilperson Meyers

ABSENT: Councilperson Hoy

Purchase and Sale Contract attached at end of minutes

MOTION AUTHORIZING SUPERVISOR TO SIGN CONTRACT FOR PHASE 1 ENVIRONMENTAL SITE ASSESSMENT

Attorney for the Town, Richard Olson recommended for the benefit of the Town to do an environmental study of the property located at 8000 Ridge Road. The contract is with Earthworks Environmental and these expenses will be included as part of the grant expenses.

Motion by Councilperson Filipowicz

Seconded by Councilperson Didas

To authorize the Supervisor to sign the contract for Environmental Consulting Services with Earthworks Environmental for \$1,300 to complete a Phase I Environmental Site Assessment on the property located at 8000 Ridge Road.

VOTE OF THE TOWN BOARD:

AYES: Supervisor Kimball, Councilpersons Filipowicz and Didas

NAYS: Councilperson Meyers

ABSENT: Councilperson Hoy

Earthworks Environmental contract attached at end of minutes

04.10.10**MOTION AUTHORIZING THE PURCHASE OF CARPET FOR COURTHOUSE**

Motion by Councilperson Didas

Seconded by Councilperson Meyers

To accept low bid from PROCARPET for \$5,882.40 to replace Courthouse carpeting.

Unanimously carried

Discussion: The original carpet was put down in 1992 and is in serious disrepair. Court Clerk Rogers obtained 3 bids as follows; Procarpet \$5,882.40, Sail-On Carpet \$6,495.00, and Brockport Custom Carpet \$7,053.13, \$6,789.83, \$6,329.05.

SUPERVISOR REPORTS

Supervisor Kimball informed the Board that Councilperson Hoy was excused from today's meeting as he had to work.

ASSESSOR REPORTS

Acting Assessor, Chris Lyon stated the tentative roll is almost ready to go out.

HIGHWAY SUPT. REPORTS

Supt. Dave Goodwin reported that junk drop off is scheduled for May 1st thru the 8th and brush pickup begins on May 12th. His department is doing a general sweep through town to repair lawns damaged by snowplows. Sewer repairs in process. Wood chips are now available for residents. Will be doing road resurfacing starting in June.

MINUTES

Motion by Councilperson Filipowicz

Seconded by Councilperson Didas

To approve March 23, 2010 minutes as amended.

Unanimously carried

MINUTES

Motion by Councilperson Didas

Seconded by Councilperson Meyers

To approve March 24, 2010 workshop minutes.

Unanimously carried

AUDIT—04-01-2010

Vouchers 20100319-20100384; Total \$30,889.00; Gen. \$17,751.64; Hwy. \$12,848.94; SS \$288.42

Motion by Councilperson Didas

Seconded by Councilperson Filipowicz

Unanimously carried

EXECUTIVE SESSION

Motion by Councilperson Didas

Seconded by Councilperson Meyers

To enter into executive session at 10:45 A.M. due to a matter regarding attorney/client privilege.

Unanimously carried

REGULAR SESSION

Motion by Councilperson Didas

Seconded by Councilperson Filipowicz

To return to regular session at 10:55 A.M.

Unanimously carried

Motion to adjourn at 11:00 A.M. by Councilperson Filipowicz

Seconded by Councilperson Meyers

Unanimously carried

Respectfully submitted,

Sharon S. Mattison
Town Clerk

APPROVED APRIL 27, 2010

PURCHASE AND SALE CONTRACT

When signed, this document becomes a binding contract. Buyer and Sellers should consult their own attorney.

TO: STAN KOZIATEK and CINDY KOSIATEK (Sellers)
FROM: TOWN OF CLARKSON (Buyer)

OFFER TO PURCHASE

Buyer offers to purchase the property described below from Sellers on the following terms:

1. Property Description.

Property commonly known as 8000 Ridge Road, Town of Clarkson, Monroe County, New York

Approximate Lot Size: 49.60 acres.
Tax Account No: 054.04-1-8

2. Other Items included in purchase. The following items, if any, now or on the property are included in this purchase and sale: All buildings, structures, fences, towers, bleachers, baseball accessories and any and all mechanical, electrical and plumbing equipment on the premises. Buyer agrees to accept these items in their present condition.

3. Price: Amount and How it will be Paid. The purchase price is Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00).

The purchase price shall be paid as follows:

All in cash, or certified check at closing.

4. Contingencies. Buyer makes this offer subject to the following contingencies. If any of these contingencies is not satisfied by the dates specified, then either Buyer or Sellers may cancel this contract by written notice to the other.

A. Attorney Approval. This offer is subject to attorney approval by Seller's attorney within 5 banking days after acceptance.

B. Waiver of Attorney Approval. This offer is not subject to the Buyer's Attorney approval if accepted as written. If there is an accepted counteroffer, that will be subject to the Buyer's attorney's approval within 5 banking days after it is signed by all parties.

C. Environmental. Buyer, at its sole cost and expense, receiving a satisfactory Phase I environmental assessment. Buyer and/or its agent(s) shall be permitted to enter on to the property to conduct this inspection.

5. Closing Date and Place. The transfer of title shall take place at the Monroe County Clerk's Office within thirty (30) days of the buyer receiving a satisfactory environmental report. Should this not occur on or before the ____ day of _____, 2010, either party may cancel this contract by written notice to the other.

6. Buyer's Possession of Property. Buyer shall have possession of the property on the day of closing.

7. Title Documents.

A. Deed. Sellers will deliver to buyer at closing a properly signed and notarized warranty deed with lien covenant (or Executor's Deed, Administrator's deed or Trustee's deed, if Sellers holds title as such) together with such other forms as are necessary to properly record said deed.

B. Abstract, Bankruptcy and Tax Searches, and Instrument Survey Map. Buyer will furnish and pay for and deliver to Buyer's attorney at least 10 days prior to date of closing, fully guaranteed tax, title and United States Court Searches dated or redated after the date of this contract.

8. Marketability of Title. The deed and other documents delivered by Sellers shall be sufficient to convey good marketable title in fee simple, to the property free and clear of all liens and encumbrances. However, Buyer agrees to accept title to the property subject to restrictive covenants of record common to the tract or subdivision of which the property is a part, provided these restrictions have not been violated, or if they have been violated, that the time for anyone to complain of the violations has expired. Buyer also agrees to accept title to the property subject to public utility easements along lot lines as long as those easements do not interfere with any buildings now on the property or with any improvements Buyer may construct in compliance with all present restrictive covenants of record and zoning and building codes applicable to the property.

9. Objections to Title. If buyer raises a valid written objection to Sellers' title which means that the title to the property is unmarketable, or should some environmental issue arise for which the parties cannot agree on proper remediation, the Buyer may cancel this contract by giving prompt written notice of cancellation to Sellers.

10. Recording Costs, Transfer Tax and Closing Adjustments. Buyer will pay the real property transfer tax, if any. Buyer will pay for recording the deed. Current taxes computed on a fiscal year basis, excluding any delinquent items, interest and penalties, will be prorated and adjusted between Sellers and Buyer as of the date of closing.

11. Zoning. Sellers represents that the property is zoned Highway Commercial and there are no known environmental outstanding violations with respect to the property.

12. Hazardous Substances.

A. Sellers expressly represent to Buyer that to the best of Owners' knowledge and belief the Property has not been used in the past, is not presently being used, and prior to closing will not be used for the handling, storage, transportation, or disposal of hazardous or toxic substances as defined in applicable Federal, State and local laws and regulations, and that no accidental spillage of any such substance that has not been cleaned up has occurred.

B. Buyer may obtain certificates or letters from the applicable local, state and federal governmental agencies that such agencies are not currently investigating the Property, that there have been no notices of violations of environmental/hazardous substance laws given by such agencies and that they have no records in their files of the existence of hazardous/toxic substances on the Property and Buyer, at its sole option and expense, may obtain a report from a reputable environmental consultant as to whether the Property and any improvements thereon have been or are presently being used for the handling, storage, transportation or disposal of, or are or were subject to an accidental spillage of, hazardous or toxic materials

C. Owner agrees that the Property shall remain free of hazardous or toxic materials through the date of closing.

13. Risk of Loss. Risk of loss or damage to the property by fire or such other casualty occurs prior to transfer, Buyer may cancel this contract without any further liability to Sellers and Buyer's deposit, if any, is to be returned. If Buyer does not cancel but elects to close, then Sellers shall transfer to Buyer any insurance proceeds, or Sellers' claim to insurance proceeds payable for such damage.

14. Condition of Property. Buyer agrees to purchase the property "as is" subject to the provisions in paragraphs 4 C, 8 and 12.

15. Deposit. NONE

16. Real Estate Broker. It is understood by both Buyer and Sellers that no broker secured this contract.

17. Life of Offer. Buyer agrees not to withdraw this offer before April __, 2010, at 6:00 p.m..

18. Responsibility of Persons Under this Contract; Assignability. If more than one person signs this contract as Buyer, each person and any party who takes over that person's legal position will be responsible for keeping the promises made by Buyer in this contract. If more than one person signs this contract as Seller, each person or any party who takes over that person's legal position, will be fully responsible for keeping the promises made by Sellers. This contract is personal to the parties and may not be assigned by either without the other's consent.

19. Entire Contract. This contract when signed by both Buyer and Sellers will be the record of the complete agreement between the Buyer and Sellers concerning the purchase and sale of the property. No verbal agreements or promises will be binding.

Kristin P. Coon
KRISTIN P. COON
Notary Public, State of New York
Monroe County, #01C05201679
My Commission Expires Mar. 2, 2013

Dated: April, 2010

Buyer: TOWN OF CLARKSON
Paul M. Kimball
By: Paul M. Kimball, Supervisor

ACCEPTANCE OF OFFER BY SELLERS

Sellers certifies that they own the property and have the power to sell the property. Sellers accept the offer and agrees to sell on the terms and conditions set forth.

() Waiver of Sellers' Attorney Approval. This offer is not subject to Sellers' Attorney approval.

Dated: 4.19.2010 Seller: *Stan Koziatek*
Seller: *Cindy Koziatek*

Buyer: Town of Clarkson
Address: 3710 Lake Road
PO Box 858
Clarkson, NY 14430
Phone: (585) 637-1131

Sellers: Stan and Cindy Koziatek
Address: c/o No Tubes
202 Dan Zenker Drive
Big Flats, NY 14814
Phone: (607) 562-2870

Attorney: Richard J. Olson
Address: 24 West Avenue
P.O. Box 130
Spencerport, NY 14559
Phone: (585) 352-8900
Fax: (585) 352-8709

Attorney:
Address



Earthworks Environmental

Environmental Assessment, Investigation & Consulting Professionals

PROPOSAL/AGREEMENT ENVIRONMENTAL CONSULTING SERVICES

TO: Town of Clarkson
P.O. Box 858
Clarkson, New York 14430

RE: **Phase I Environmental Site Assessment**
Vacant Baseball Sports Park, 8000 W. Ridge Rd., T/Clarkson, C/Monroe, NY

29 March 2010

Introduction

Earthworks Environmental proposes to provide Phase I Environmental Site Assessment (ESA) of the referenced property (the "*Property*"). It is our understanding that the *Property* consists of a single parcel of land covering approximately 49.6 acres and located in the Town of Clarkson, County of Monroe, N.Y. The *Property* is reportedly occupied by a one-story concrete block, slab-on-grade building, some bleachers and floodlights, each constructed around 1975. The building is currently vacant and was reportedly used for concession sales/sports bar related to the operation of a baseball sports park.

Earthworks Environmental will perform the Phase I ESA in substantial conformance to the most current standards established by the American Society for Testing and Materials (ASTM) as outlined in their *Standard Practice for Environmental Site Assessment* (E1527-05), also recognized by the USEPA's All Appropriate Inquiry Rule that became effective 1 November 2006.

Information obtained during the course of the Phase I ESA of the *Property* and our professional recommendations and conclusions regarding evidence of environmental concerns will be described in our standard Phase I ESA Report © format. The Phase I Report will be prepared for exclusive use by the client and their designees and assignees, for use on their behalf. The findings, conclusions and recommendations contained in the Report shall be relied upon only by them. Use of the Report or reliance upon its contents, findings and conclusions by any other person or firm other than the client and/or their designees is prohibited without the prior written permission of *Earthworks Environmental*.

4 Lincoln Avenue
Batavia, New York 14020

(585) 355-0987
eweoffice@aol.com

Town of Clarkson
29 March 2010
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Scope of Work – Phase I Environmental Site Assessment (ESA)

An *Environmental Professional* (ASTM & USEPA-qualified) will perform each aspect of the Phase I ESA process according to standards established by ASTM and USEPA, including:

- Site reconnaissance of the *Property* and visual observation of adjoining properties;
- Interviews of knowledgeable persons familiar with the history of the *Property*;
- Historical records review;
- Historical aerial photograph interpretation;
- Public (municipal) records screening;
- Review of the abstract of title and survey map(s) for the *Property*;
- Formulation of conclusions and recommendations, Report writing.

Note: *Earthworks* will review readily available federal and state databases (e.g., NYSDEC, USEPA, NYSDOT) as part of the Phase I ESA scope of work. Review of investigation and remediation reports, construction permits and other physical files at NYSDEC, NYSDOT or USEPA regional or central offices is considered an additional service and is not included in the scope of work of this Phase I ESA except if specifically noted below. If review of additional files is deemed necessary to resolve a potential environmental concern identified during the normal course of the Phase I ESA, the client will be notified and provided an estimate of costs to perform the additional scope of work.

Report

Our standard Phase I Environmental Site Assessment Report © to be provided to the client will include an Executive Summary describing our professional conclusions and recommendations, an Inquiry Summary outlining our findings (in table format) for each scope of work item, and a Discussions Section that documents the collective evidence we obtained to support our conclusions and recommendations and to demonstrate the thoroughness of our environmental inquiry of the *Property*. Photocopies of maps and other essential documentation, as well as the qualifications of the environmental professional conducting the inquiry, will be attached as appendices to the Report.

Fee for Services –Phase I ESA

Our fee for conducting Phase I ESA of the *Property* is \$ 1,300 which includes an additional fee of \$100 for excessive acreage inspection. Necessary photocopy expenses for Freedom of Information (FOIL) documents exceeding \$10.00 will be billed to the client. No retainer is required of municipal clients in order for us to initiate a Phase I ESA project. The entire fee balance of \$1,300 will be due and payable upon completion of the work and presentation of the written Phase I ESA Report together with our final invoice for services.

Fees for Additional Services

Additional environmental services beyond those itemized above, *if requested*, will generally be charged at a rate of \$85 per hour (*Earthworks* environmental professional) plus any costs. Rates for engineers, chemists, industrial hygienists, technicians or other specialists will vary depending on the type and extent of work necessary and can be quoted as needed. Rates for subcontracted services (e.g., laboratory services) will be quoted as a lump sum based on any additional scope of work requirements.

Provisions

1. The Phase I ESA Report can be completed in approximately 4 weeks and will be finalized only upon receipt of the signed Proposal/Agreement. Delays in acquiring information from the Town of Clarkson, the County of Monroe or other agencies could negatively affect this 4-week timeframe.
2. We will perform this work with the understanding that the abstract of title for the *Property* will be furnished for review of previous ownership, occupants, environmental liens, deed restrictions, engineering controls/institutional controls (EC/IC) and other recorded documents.
3. The client is responsible for gaining access to all areas of the *Property*. Additional expenses incurred from time lost due to lack of access will be the responsibility of the client.
4. If for any reason the project is terminated, billing will be for actual time spent at the time of project termination at the Environmental Professional's billing rate of \$85 per hour not to exceed the quoted fee for services.
5. Invoices outstanding over 30 days will be assessed interest at a rate of 1.5% per month on the balance over 30 days from the date of origination.
6. This proposal is based on the information supplied and stated above. A *significant increase* in the amount of work required to perform the Phase I ESA or associated costs, resulting from *gross* information inaccuracies, may result in additional required fees to cover those costs.
7. Review of NYSDEC, NYSDOT, USEPA or other governmental files other than readily available databases (e.g., CDROM) is not included in the scope of work of this proposal except as identified above. This work may involve but is not limited to determining whether a neighboring contaminated property (past or present) has potentially impacted the *Property*.
8. *Earthworks Environmental* reserves the right to reallocate funds, as necessary, to address issues affecting scope of work as they arise.
9. This proposal is valid for a period of 30 days from the date of this proposal.

Limitations

1. Field testing, sampling and/or laboratory analysis of soil or soil vapors, sediment, water, air, lead-based paint, suspect asbestos-containing materials (SACM), mold, radon or waste materials are not included in the scope of work of this proposal but may be *added* at additional cost.
2. This Phase I ESA proposal includes no provisions or associated costs to remove or investigate any buried drums, underground or aboveground storage tank systems, hydraulic lifts, sumps, drains or other subterranean appurtenances or suspected areas of soil, sediment or groundwater contamination that may be encountered on the *Property*.
3. *Earthworks Environmental* shall be held harmless from and against any and all claims, losses, damages, liability and costs, including litigation fees, arising out of connection with the presence, discharge, release or escape of contaminants of any kind, excepting only such liability arising from our sole negligence in the performance of services under this agreement.
4. For any damage or cost resulting from our sole negligence, unless the damage or cost is due to gross negligence, the liability of *Earthwork Environmental* shall be limited to our fee for consulting services. *Earthworks* liability for negligence is limited to the extent of professional liability insurance coverage at the time of claim submission.

The return of a signed copy of this proposal will acknowledge your acceptance of the terms and conditions contained herein and authorize *Earthworks Environmental* to proceed with the scope of work described herein. If there are any questions, please do not hesitate to call me at (585) 395-9080 (office) or (585) 355-0987 (cell).

Sincerely,
Earthworks Environmental

Kenneth R. Pike, Environmental Geologist
ASTM &USEPA-Qualified Environmental Professional

.....
ACCEPTED:

By: Paul M Kimball
(Signature)

Mr. Paul M. Kimball, Supervisor
Town of Clarkson, NY 14430

Printed Name: _____

Date: _____