

**NOVEMBER 15, 2017  
REGULAR TOWN BOARD MEETING**

**Town Hall**

**7:00 P.M.**

Supervisor Greg Post led the pledge to the flag.

**Roll Call**

**Present:** Supervisor Post  
Deputy Supervisor Underhill  
Councilwoman White  
Councilwoman Michalak  
Councilman Zambito

**Others**

**Present:** Deputy Town Clerk Baubie

The Supervisor called the meeting to order at 7:00P.M.

The Town Board reviewed the SEQR for Local Law No. 6, of 2017 “New Subdivision Regulations”

**Public Hearing “Local Law No. 6 of 2017-** The Supervisor called the Public Hearing to Order for Local Law 6 of 2017 to Amend New Subdivision Regulations at 7:06P.M.- Minutes from public hearing entered separately.

**October 18, 2017 Public Hearing-Local Law 5-Tax Cap Override;,October 18, 2017 Regular Town Board Meeting,November 8, 2017, Public Hearing Sewer Rates, November 8, 2017 Public Hearing Water Rates,November 8, 2017 Public Hearing 2018 Town Budget** Motion Councilman Underhill, second Councilwoman White to approve the minutes as written.

**Ayes:** Underhill, White, Post, Michalak, Zambito

**MOTION CARRIED by unanimous vote (5-0)**

**RESOLUTION NO.182:**

Councilwoman White offered the following:

**RESOLUTION TO ADOPT A NEGATIVE DECLARATION**

**WHEREAS**, in accordance with the State Environmental Quality Review Act (SEQR), the proposed Local Law No. 6 of 2017 to provide for new subdivision regulations, is an Unlisted Action; and

**WHEREAS**, the Batavia Town Board acting as Lead Agency has reviewed the SEQR Short Environmental Assessment Form; and

**WHEREAS**, it has been determined that the proposed new regulations will not have an adverse impact on the environment.

**NOW, THEREFORE, BE IT RESOLVED** that the Town Board of the Town of Batavia, New York hereby directs the Supervisor to prepare the Negative Declaration Notice of Determination of Non-

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Significance with regard to Local Law No. 6 of 2017 that provides for the new subdivision regulations of the Town of Batavia.

**Second by:** Councilman Zambito

**Ayes:** White, Zambito, Underhill, Post, Michalak

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO.183:**

Deputy Councilman Underhill offered the following:

**RESOLUTION ADOPTING LOCAL LAW No. 6 of 2017**

**WHEREAS**, proposed Local Law No. 6 of 2017 of the Town of Batavia entitled “A Local Law to Adopt New Subdivision Regulations”, Town of Batavia, New York”, which proposed Local Law in its final form was presented to the Town Board at the meeting held on October 18, 2017, and a copy thereof was kept with the Town Clerk and copies were both laid upon the desks of the members of said Town Board and mailed to each member of the Town Board not in attendance at said meeting, at least ten (10) days, exclusive of Sundays, prior to its final passage; and

**WHEREAS**, a public hearing on the advisability of enacting said proposed Local Law was held on November 15, 2017, before this Town Board, pursuant to public notice duly published in The Daily News according to law, at which time all interested persons were heard; and

**WHEREAS**, all required referrals to the Genesee County Planning Board and the Batavia Town Planning Board, as well as all required publications and postings, have been properly completed; and

**WHEREAS**, the Town Board of the Town of Batavia, New York, is of the opinion that adoption of said proposed Local Law No. 6 of 2017 is in the best interests of the Town of Batavia, New York,

**NOW, THEREFORE, BE IT RESOLVED**, by the Town Board of the Town of Batavia, New York that said proposed Local Law No. 6 of 2017, be and the same hereby is adopted, and such Local Law shall be entered in the minutes of the Batavia Town Board; and

**BE IT FURTHER RESOLVED**, that certified copies of said Local Law No. 6 of 2017 be filed with the New York State Secretary of State in accordance with Law; and

**BE IT FURTHER RESOLVED**, that this Local Law shall become effective as provided by law upon its filing in the Office of the Secretary of State.

**Second by:** Councilwoman Michalak

**Ayes:** Underhill, Michalak, Post, Zambito, White

**APPROVED by unanimous vote (5-0)**

Local Law Filing

New York State Department of State

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41 State Street, Albany, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County  
City of Batavia, Genesee County, New York  
Town  
Village

Local Law No. 6 of the year 2017.

A local law known as Law to Adopt New Subdivision Regulations for the Town of Batavia  
(Insert Title)

Be it enacted by the \_\_\_\_\_ Town Board \_\_\_\_\_ of the  
(Name of Legislative Body)

County  
City of **Batavia, Genesee County, New York** as follows:  
Town  
Village

**ARTICLE I: ENACTMENT, AUTHORIZATION, TITLE, PURPOSE**

Section 1: Enactment and Authorization

The Town Board and the Town of Batavia does hereby ordain and enact this Law to Adopt New Subdivision Regulations for the Town of Batavia, pursuant to authority and provisions of Section 10 of the Municipal Home Rule Law.

Section 2: Title

This local law shall be known as the Law to Adopt New Subdivision Regulations for the Town of Batavia.

Section 3: Purpose

The purpose of this Local Law is the enact modifications to the various laws presently existing in the Town of Batavia relative to division of land, and repeal inconsistent regulations, which together will serve to streamline administration of subdivision procedures, eliminate redundancies and inconsistent laws, and make Town laws more user-friendly to landowners, builders and developers.

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**ARTICLE II:           TOWN OF BATAVIA SUBDIVISION REGULATIONS**

**I. General Provisions**

§ 204-1. Planning Board authorized to approve plats; declaration of policy; title.

A.

By the authority of the resolution of the Town Board of the Town of Batavia adopted on \_\_\_\_\_ pursuant to the provisions of Article 16 of the Town Law of the State of New York, the Planning Board of the Town of Batavia is authorized and empowered to approve plats showing lots, blocks, or sites, with or without streets or highways, to approve the development of entirely or partially undeveloped plats already filed in the office of the Clerk of the county and to conditionally approve preliminary plats within that part of the Town of Batavia outside the limits of any incorporated village.

B.

It is declared to be the policy of the Town Board to consider land subdivision plats as part of a plan for the orderly, efficient, and economical development of the town. This means, among other things, that land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, or other menace; that proper provision shall be made for drainage, water supply, sewerage, and other needed improvements; that all proposed lots shall be so laid out and of such size as to be in harmony with the development pattern of the neighboring properties; that the proposed streets shall compose a convenient system conforming to the Official Map, if such exists, and shall be properly related to the proposals shown on the Master Plan, if such exists, and shall be of such width, grade, and location as to accommodate the prospective traffic, to facilitate fire protection, and to provide access of fire-fighting equipment to buildings; and that proper provision shall be made for open spaces for parks and playgrounds.

C.

In order that land subdivision may be made in accordance with this policy, these regulations, which shall be known as and which may be cited as the "Town of Batavia Land Subdivision Regulations," have been approved by the Town Board on \_\_\_\_\_.

§ 204-2. Definitions.

For the purpose of these regulations, certain words and terms used herein are defined as follows:

**CUL-DE-SAC**

A short street having but one end open to traffic and the other end being permanently terminated by a vehicular turnaround.

**DRAINAGE RIGHT-OF-WAY**

The lands required for the installation of stormwater sewers or drainage ditches or required along a natural stream or watercourse for preserving the channel and providing for the flow of water therein to safeguard the public against flood damage.

**EASEMENT**

The lands created through authorization by a property owner for the use by another and for a

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specified purpose of any designated part of his property.

**LOT**

A piece, parcel, or plot of land intended as a unit for transfer of ownership or for development.

**OFFICIAL MAP**

The map established by the Town Board under § 270 of the Town Law showing the streets, highways, and parks heretofore laid out, adopted, and established by law and any amendments thereto adopted by the Town Board or additions thereto resulting from the approval of subdivision plats by the Planning Board and the subsequent filing of such approved plats.

**OFFICIAL SUBMISSION DATE**

The date when a subdivision plat shall be considered submitted to the Planning Board as provided in § 276 of the Town Law and is hereby defined to be the date of a meeting of the Planning Board at which all required surveys, plans, and data described in **VII** are submitted.

**PERFORMANCE BOND OR GUARANTY**

Any security which may be accepted in lieu of a requirement that certain improvements be made before the Planning Board approves a plat, including performance bonds, escrow agreements, and other similar collateral or surety agreements.

**PLANNING BOARD**

The Town of Batavia Planning Board as established pursuant to the provisions of Article 16 of the Town Law.

**PRELIMINARY PLAT**

The preliminary drawing or drawings indicating the proposed manner or layout of the subdivision to be submitted to the Planning Board for its consideration and meeting the requirements of VII.

**STREET**

Any street, avenue, boulevard, road, lane, parkway, alley, or other way which is an existing state, county, or town roadway or way shown upon a plat theretofore approved pursuant to law or approved by official action or a street or way on a plat duly filed and recorded in the office of the County Clerk of Genesee County prior to the appointment of a Planning Board and the grant to such Board of the power to review plats, and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, sidewalks, parking area, and other areas within the street lines. For the purpose of this chapter, streets shall be classified as follows:

**A.**

**ARTERIAL STREETS**

Those which are used primarily by a heavy volume of traffic.

**B.**

**COLLECTOR STREETS**

Those which carry traffic from minor streets to the major system of arterial streets, including the principal entrance streets of a residential development and streets for circulation within such a development.

**C.**

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**MINOR STREETS or LOCAL RESIDENTIAL STREETS**

Those which are used primarily for access to the abutting properties.

D.

**MARGINAL SERVICE STREETS**

Streets which are parallel to and adjacent to arterial streets and highways and which provide access to abutting properties and protection from through traffic.

E.

**ALLEYS**

Minor ways which are used primarily for vehicular service to the back or the side of properties otherwise abutting on a street.

**STREET PAVEMENT**

The wearing or exposed surface of the roadway used by vehicular traffic.

**STREET WIDTH**

The distance between property lines or right-of-way lines.

**SUBDIVIDER**

Any person, firm, corporation, partnership, or association who or which shall lay out, for the purpose of sale or development, any subdivision or part thereof as defined herein, either for himself, itself or others.

**SUBDIVISION**

The division of any lot into two or more lots for the purpose, whether immediate or future, of transfer of ownership or building development. The public acquisition of strips of land for extension of municipal infrastructure, including but not limited to the widening or opening of streets and installation of public utility infrastructure, and the transfer of agricultural parcels of at least 10 acres for the purpose of continued agriculture, shall not be included within this definition nor subject to these regulations.

A.

**MAJOR SUBDIVISION**

Any subdivision of a lot into five or more lots within a three-year period, or any size subdivision requiring any new street or extension of municipal facilities.

B.

**MINOR SUBDIVISION**

Any subdivision of a lot into two, three or four lots, not classified as a major subdivision, fronting on an existing street.

**SUBDIVISION PLAT OR FINAL PLAT**

A drawing, in final form, showing a proposed subdivision containing all information or detail required by law and by these regulations to be presented to the Planning Board for approval and

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which, if approved, may be duly filed or recorded by the applicant in the office of the Genesee County Clerk.

**TOWN DEVELOPMENT PLAN, COMPREHENSIVE PLAN, TOWN PLAN OR MASTER PLAN**

A composite of the mapped and written proposals recommending the physical development of the town prepared by the Planning Board pursuant to § 272-a of the Town Law which indicates the general locations recommended for various public works and reservations and for the general physical development of the town and includes any part of such plan separately adopted and any amendment to such plan or parts thereof.

**TOWN ENGINEER**

The duly designated engineer of the Town of Batavia.

**ZONING ORDINANCE**

The officially adopted Zoning Ordinance of the Town of Batavia, together with any and all amendments thereto.<sup>11</sup>

**II. Applicability**

§ 204-3. Minor subdivision.

Whenever a minor subdivision of land as defined herein is proposed, before any conveyance of any part thereof and before any permit for the erection of a structure in such proposed subdivision shall be granted and before commencement of site preparation, the subdivider or his authorized agent shall apply to the Zoning Officer for a certificate of approval of said minor subdivision in accordance with III of this chapter.

§ 204-4 Major subdivision.

Whenever a major subdivision of land is proposed, before any conveyance of any part thereof and before any permit for the erection of a structure in such proposed subdivision shall be granted and before commencement of site preparation, the subdivider or his authorized agent shall apply for and secure preliminary and final plat approval of such proposed subdivision in accordance with **IV** of this chapter.

**III. Procedure for Filing Minor Subdivision Applications**

204-5. Approval required.

Whenever any Minor Subdivision is proposed, and before any transfer of title, the property owner shall submit a sketch plan and obtain written approval of such sketch plan in accordance with the procedures set forth in Subsections A, B and C of this section. Before any land is transferred or any permit for the erection of a structure is issued for such land, final authorization of said land separation shall be obtained as set forth in Subsection D of this Article.

204-6. Sketch Plan

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A. A property owner shall submit to the Zoning Enforcement Officer a completed application and four copies of a sketch plan of the proposed Minor Subdivision. The sketch plan shall be prepared by a licensed surveyor, or by the owner, and shall show the entire parcel being divided and proposed lot lines, and any existing easements, deed restrictions or covenants affecting the property. At that time, the property owner shall also pay the fee established by separate resolution of the Town Board.

B. Discussion of requirements and classification.

(1)

Classification of the sketch plan will be made at this time by the Zoning Enforcement Officer as to whether the proposal qualifies as a Minor Subdivision, or must be processed as a Major Subdivision.

C.

Preliminary review. The Zoning Enforcement Officer shall review the sketch plan to determine whether it meets the requirements of these regulations. The Zoning Officer may, where he or she deems necessary, make specific recommendations to be incorporated by the applicant into the proposal prior to submitting it for final authorization.

D.

Final authorization. Within 180 days after close of preliminary review, the property owner shall provide the Zoning Enforcement Officer a final sketch plan. This sketch plan shall meet all the recommendations made by the Zoning Enforcement Officer in the preliminary review. Upon determination that the sketch plan complies with this law and his or her recommendations, the Zoning Enforcement Officer may approve the sketch plan and issue a Certificate of Approval of Minor Subdivision to owner. The approval shall be filed at the Genesee County Clerk's Office. No further review by the Planning Board is required.

**IV. Procedure for Filing Major Subdivision Applications**

§ 204-7. Approval required.

Whenever any subdivision of land is proposed, before any contract for the sale of any part thereof, and before any permit for the erection of a structure in such proposed subdivision shall be granted, the subdividing owner, or his authorized agent, shall apply for and secure approval of such proposed subdivision in accordance with the procedures set forth in this article.

§ 204-8. Preliminary plat.

A.

Discussion of requirements and classification.

(1)

Before preparing the preliminary plat, the applicant shall discuss with the Planning Board, or its representative, the requirements of land, street improvements, drainage, sewerage, water, fire protection, and similar aspects as well as the availability of existing services.

(2)

Classification of the proposed preliminary plat is to be made at this time by the Planning Board as to



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whether it is a minor or major subdivision as defined in these regulations. The Board may require, however, when it deems it necessary for protection of the public health, safety, and welfare, that a minor subdivision comply with all or some of the requirements specified for major subdivisions in these regulations.

B.

Application procedure. Prior to filing an application for the approval of a subdivision plat, the applicant shall file an application for the approval of a preliminary plat.

(1)

The application shall:

(a)

Be made on forms available at the office of the Town Clerk.

(b)

Include all land which the applicant proposes to subdivide as well as all lands owned by the applicant adjacent to the area proposed for subdivision.

(c)

Be accompanied by three copies of the preliminary plat, as described in VII, § 204-19 of these regulations.

(d)

Comply in all respects with V of these regulations and with the provisions of §§ 276 and 277 of the Town Law, except where a modification may be specifically authorized by the Planning Board.

(2)

Fees may be charged for processing applications for plat approval for minor subdivisions, preliminary plat approval for major subdivisions and final plat approval for major subdivisions, as well as for site plan reviews, public hearings, consulting fees, engineering expenses, inspection expenses, bad check charges, state environmental quality reviews, appeals, variances, special use permits and other administrative actions. The fees shall be set by the Town Board by resolution and may be changed from time to time in the same manner.

C.

Study of preliminary plat. The Planning Board will carefully study the practicability of the preliminary plat, taking into consideration the requirements of the community and the best use of the land being subdivided. Particular attention will be given to the arrangement, location, and width of streets, their relation to the topography of the land, sewage disposal, drainage, lot sizes and arrangement, the future development of adjoining lands as yet unsubdivided, and the requirements of the Comprehensive Plan and the Official Map as they may be adopted.

D.

Applicant to attend Planning Board meeting. The applicant or his representative should be prepared to attend the next regular meeting of the Planning Board and any subsequent meetings deemed necessary by the Chairman of the Planning Board to discuss the preliminary plat.

E.

Required changes for conditional approval. Within 45 days after the time of submission of a preliminary plat, the Planning Board shall take action to conditionally approve, with or without modifications, or

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disapprove such preliminary plat, and the grounds of any modification required or the grounds for disapproval shall be stated upon the records of such Planning Board. Failure of the Planning Board to act within such forty-five-day period shall constitute a conditional approval of the preliminary plat.

§ 204-9. Subdivision plat.

A.

Application procedure. Within six months of the conditional approval of the preliminary plat, the applicant shall file with the Planning Board an application for approval of a subdivision plat. The application shall:

(1)

Be made on forms provided by the Planning Board at the time of conditional approval of the preliminary plat.

(2)

Include the entire subdivision.

(3)

Be accompanied, for a major subdivision, by three copies of the subdivision plat and construction detail sheets as described in VII, § **204-20** of these regulations.

(4)

Comply in all respects with the preliminary plat as conditionally approved.

(5)

Be presented to the Chairman of the Planning Board at least two weeks prior to a regular meeting of the Board in order that a public hearing may be scheduled and the required notice given.

B.

Official submittal date. The subdivision plat shall be considered officially submitted only at the regular meeting of the Planning Board following completion of the application procedure outlined above.

C.

Endorsement of State Health Department. The proposed subdivision plat shall be properly endorsed by the State Health Department as meeting the standards of the State Sanitary Code, Public Health Law, or other applicable health code before any public hearing is scheduled. The plat should be in final form before State Health Department approval.

D.

County notification. The Planning Board will also, if the county has established a County Official Map, notify the Genesee County Planning Board and the County Superintendent of Highways or Commissioner of Public Works if the subdivision plat proposes structures or new streets having frontage on, access to, or otherwise directly related to any county road, existing or proposed, as shown on the County Official Map. The County Planning Board reports to the Planning Board within 30 days on its approval or disapproval or on its approval subject to stated conditions of the proposed subdivision plat. The plat may be approved by the town subject to stated conditions, notwithstanding such report, when the application of such report will act to deprive the owner of the reasonable use of his land.

E.

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Public hearing. Before the Planning Board acts on any subdivision plat, it shall hold a public hearing thereon within 30 days after the time of official submittal date in accordance with § 276 of the Town Law. If any zoning changes are to be requested at the time of approval of the subdivision plat, a public hearing thereon must be held in accordance with Town Law. The two public hearings may be held at the same time.

F.

Action on proposed subdivision plat. After careful study, the Planning Board shall, within 45 days from the public hearing on the subdivision plat, approve, modify, or disapprove such plat. The grounds for disapproval of any plat shall be stated on the records of the Planning Board. A subdivision plat shall not be signed by the authorized officers of the Planning Board until the applicant has met all the conditions of the action granting approval of such plat.

G.

Plat void if revised after approval. No changes, erasures, modifications, or revisions shall be made in any subdivision plat after approval has been given by the Board and endorsed, in writing, on the plat. In the event that any subdivision plat, when recorded, contains any such changes, the plat shall be considered null and void, and the Board shall institute proceedings to have said plat stricken from the records of the County Clerk.

H.

Signing of plat.

(1)

Every subdivision plat submitted to the Board for its approval shall carry the following endorsement:

Approved by resolution of the Planning Board of the Town of Batavia, New York, on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, subject to all requirements and conditions of said resolution. Any change, erasure, modification or revision of this plat, as approved, shall void this approval. Signed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, by

Chairman

Secretary

(2)

In the absence of the Chairman or Secretary, the Acting Chairman or Acting Secretary, respectively, may sign in his place. If there is a County Official Map, such endorsement shall stipulate that the plat does not conflict with the County Official Map or, in cases where the plat does front on, or have access to, or is otherwise related to roads or drainage systems shown on the County Official Map, that such plat has been approved by the County Planning Board in the manner specified by General Municipal Law.

§ 204-10. Required improvements and agreements.

A.

Improvements and performance bond. Prior to an action by the Planning Board approving a subdivision plat, the applicant shall be required to complete, in accordance with the Planning Board's decision and to

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the satisfaction of the appropriate town departments, all the street, sanitary, and other improvements specified in the action approving said plat or, as an alternative, to file with the Town Board a performance bond in an amount estimated by the Planning Board to secure to the town the satisfactory construction and installation of the incomplete portion of the required improvements. A period of one year, or such other period as the Planning Board may determine appropriate, within which required improvements must be completed shall be specified by the Planning Board and expressed in the bond. Such performance bond shall comply with the requirements of § 277 of the Town Law and shall be satisfactory to the Town Board as to form, sufficiency, and manner of execution. The bond shall provide that an amount determined adequate by the Planning Board shall be retained for a period of one year after the date of completion of the required improvements to assure their satisfactory condition. All required improvements shall be made by the applicant at his expense without reimbursement by the town or any district therein. Said improvements shall include the following:

(1)

Streets and streetlighting facilities.

(2)

Street signs.

(3)

Curbs and gutters.

(4)

Grass curb strips.

(5)

Sidewalks.

(6)

Street shade trees.

(7)

Monuments.

(8)

Stormwater runoff system.

(9)

Sanitary sewage collection system.

(10)

Water supply system.

(11)

Park and recreation facilities.

(12)

Electrical, telephone, and utility lines.

(13)

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Plantings and ground cover.

B.

Inspection of improvements. The town shall employ an inspector to act as agent of the Planning Board for the purpose of assuring the satisfactory completion of improvements required by the Planning Board and shall determine an amount sufficient to defray costs of inspection. The applicant shall pay the town costs of inspection before the subdivision plat is signed for filing. If the Planning Board or its agent finds, upon inspection, that any of the required improvements have not been constructed in accordance with Planning Board recommendations or the approved construction detail sheets, the applicant and the bonding company will be severally and jointly liable for the costs of completing said improvements according to specifications.

C.

Offers of cession and release.

(1)

The plat shall be endorsed with the necessary agreements in connection with required easements or releases. Offers of cession to the town shall be presented prior to plat approval.

(2)

Formal offers of cession to the town of all streets and parks not marked on the plat with notation to the effect that such cession will not be offered shall be filed with the Planning Board prior to plat approval. If the owner of the land or his agent who files the plat does not add as part of the plat a notation to the effect that no offer of dedication of such streets, highways, or parks or any of them is made to the public, the filing of the plat in the office of the County Clerk or Register shall constitute a continuing offer of dedication of the streets, highways, or parks or any of them to the public, and said offer of dedication may be accepted by the Town Board at any time prior to revocation of said offer by the owner of the land or his agent.

(3)

Before final approval of the subdivision plat, the Planning Board will require a certificate of approval from the Town Attorney as to the legal sufficiency of the offers of cession by the subdivider of the areas for public use, such as parks, streets, playgrounds, and other areas.

§ 204-11. Filing of approved subdivision plat.

Upon completion of all requirements set forth in the action approving the subdivision plat and notation to that effect upon the subdivision plat, it shall be deemed to have final approval and shall be properly signed by the appropriate officer of the Planning Board and may be filed by the applicant in the office of the Genesee County Clerk. Any subdivision plat not so filed and recorded within 90 days of the date upon which said plat is approved or considered approved by reason of the failure of the Planning Board to act shall become null and void unless the particular circumstances of said applicant warrant the Planning Board to grant an extension, which shall not exceed two additional periods of 90 days. The applicant shall provide the Town Clerk with a copy of the plat certified by the Genesee County Clerk as to being the true and certified copy of said plat on file in the county office.

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§ 204-12. Public streets, parks and playground areas.

The approval by the Planning Board of a subdivision plat shall not be deemed to constitute or imply the acceptance by the town of any street, park, playground, or other open space shown on said plat. The Planning Board may require said plat to be endorsed with appropriate notes to this effect. If the Planning Board determines that a suitable park or parks of adequate size cannot be properly located in any such plat or are otherwise not practical, the Board may require, as a condition to approval of any such plat, a payment to the town of a sum to be determined by the Town Board, which sum shall constitute a trust fund to be used by the Town Board exclusively for neighborhood park, playground, or recreation purposes, including the acquisition of property. The Planning Board may require the filing of a written agreement between the applicant and the Town Board covering future title, dedication, and provision for the cost of grading, development, equipment, and maintenance of any park or playground area, as well as a written agreement covering the maintenance and plowing of all streets within the subdivision until such time as they are accepted for public maintenance by the Town Board.

§ 204-13. Initiation of land sales or construction.

Upon posting of the performance bond in accordance with IV § **204-10** and after approval and filing of the subdivision plat, the subdivider may initiate land sales or construction of the subdivision itself.

**V. Development Standards for Major Subdivisions**

§ 204-14. Consideration by Planning Board.

The Planning Board, in considering an application for the subdivision of land, shall be guided by the following considerations and standards.

§ 204-15. Character of land; conformity to Official Map and Comprehensive Plan.

A.

Character of land. Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, or other menace.

B.

Conformity to Official Map and Comprehensive Plan. Subdivisions shall conform to the streets and parks shown on the Official Map of the town as may be adopted and shall be properly related to the Town Comprehensive Plan as it is developed and adopted by the Town Planning Board.

§ 204-16. Design standards.

A.

Streets. The following regulations shall govern the layout of streets:

(1)

The design of the street pattern shall be based upon a local residential or minor street pattern connected to a residential collector street system.

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(2)

The arrangement of streets in new subdivisions shall make provision for the continuation of existing streets in adjoining areas, or their proper protection where adjoining land is not subdivided, at the same or greater width insofar as such may be deemed necessary for public requirements.

(3)

Local residential streets shall be designed so as to discourage through traffic.

(4)

All right-of-way street widths and street pavements shall be measured at right angles or radial to the center line of the street and shall not be less than the following:

<b>Type of Street</b>	<b>Right-of-way (Feet)</b>
Collector Street	66
Marginal Service Street	60

(5)

Whenever possible, streets should intersect at right angles and not intersect at angles of less than 60° unless approved by the Planning Board.

(6)

The grades of streets shall be in accordance with specifications established by the Town Engineer, and such grades as submitted on subdivision plats shall be approved by him prior to final approval by the Planning Board.

(7)

All proposed subdivisions shall be designed to provide access to adjacent properties. When a proposed subdivision abuts an existing subdivision, the subdivider shall make every attempt to design the street system of the proposed subdivision to connect with dead-end or stub streets of the existing subdivision.

(8)

The following standards shall apply to cul-de-sac streets:

(a)

A cul-de-sac should be located, if possible, so that it drains toward its entrance.

(b)

Unless there is the expectation of extending the street through to the adjoining property, a cul-de-sac street should not be brought to the property boundary line but should be placed so that the lots can back on the property line of the subdivision.

(c)

No cul-de-sac shall exceed 500 feet in length.

(d)

All culs-de-sac shall have a turnaround at the end of the street which shall have a right-of-way radius of

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60 feet and pavement radius of 50 feet unless the Planning Board approves an alternate arrangement.

(9)

If a dead-end street is of a temporary nature, a similar turnaround shall be provided and provisions made for future extension of the street through to adjacent property and reversion of the excess right-of-way to the adjoining properties.

(10)

New half or partial streets shall not be permitted, except that wherever a proposed subdivision borders a half or partial street, the Planning Board shall require that the other part of the street be platted in the proposed tract if it is found that such a requirement would increase the effectiveness of the circulation system in the area.

(11)

Multiple intersections involving a junction of more than two streets shall be prohibited.

(12)

Local residential streets and residential collector streets shall not intersect with arterial streets less than 800 feet apart, measured from center line to center line.

(13)

The minimum distance between center-line offsets at street jogs shall be 150 feet.

(14)

No street shall have a name which will duplicate or so nearly duplicate as to be confused with the names of existing streets. The continuation of an existing street shall have the same name.

(15)

The minimum radius of horizontal curves, minimum length of vertical curves, and minimum length of tangents between reverse curves shall be in accordance with specifications established by the Town Engineer, and said items shall be approved by him prior to final approval of the subdivision plat by the Planning Board.

(16)

All street right-of-way lines at intersections shall be rounded by curves of at least twenty-foot radius and curbs shall be adjusted accordingly.

(17)

In general, street lines within a block deflecting from each other at any one point by more than 10° shall be connected with a curve, the radius of which for the center line of the street shall not be less than 400 feet on major streets, 200 feet on collector streets and 100 feet on minor streets.

B.

Lots. The following regulations shall govern the layout of lots:

(1)

The lot size, width, depth, shape, and orientation and the minimum building setback lines shall be appropriate for the location of the subdivision and for the type of development and use contemplated.

(2)



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All lots shown on the subdivision plat must conform to the minimum requirements of the Zoning Ordinance as to area and dimensions for the zone in which the subdivision is located. However, in the event of utilizing Town Law, the Planning Board may use its discretion in determining lot sizes.

(3)

Each lot shall abut on a street built to the town's specifications.

(4)

Corner lots shall have extra width sufficient for maintenance of required building lines on both streets as required by the Zoning Ordinance.

(5)

Where extra width has been dedicated for widening of existing streets, lots shall begin at such extra width line, and all setbacks shall be measured from such line.

(6)

Side lines of lots shall be at right angles to straight streets and radial to curved streets.

(7)

Where there is a question as to the suitability of a lot or lots for their intended use due to factors such as rock formations, flood conditions, or similar circumstances, the Planning Board may, after adequate investigation, require modification of such lots.

(8)

Block length and width or acreage within bounding roads shall be such as to accommodate the size of lot required in the area by the Zoning Ordinance and to provide for convenient access, circulation control and safety of street traffic.

(9)

Blocks intended for commercial or industrial use shall be designed specifically for such purposes, with adequate space set aside for off-street parking and delivery facilities.

(10)

Double frontage lots will not, in general, be approved.

C.

Easements. An easement shall be provided for all natural drainageways and all utility lines when such utility line or lines do not fall within a dedicated right-of-way. All easements shall be plotted on the preliminary plat and subdivision plat. A clause shall be inserted in the deed of each lot affected by an easement indicating that the easement exists and its purpose. Except as further required in this section, easements shall have a minimum width of 10 feet. Where a subdivision is traversed by a drainageway, channel, or stream, a drainageway easement conforming substantially to the lines of such watercourse shall be provided. The easement shall be 20 feet wide or such width as will be adequate to preserve natural drainage and provide sufficient width for maintenance. Where it is found that additional easement width is needed, such width shall be determined by the Planning Board in consultation with the Town Engineer. To the fullest extent possible, easements shall be centered on or adjacent to rear or side lot lines. All utility lines which are primarily intended to provide service to the lots within the subdivision shall be installed underground at a depth and at such locations as will minimize risk of interruption of services. A five-foot

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easement running parallel with and contiguous to all street and highway rights-of-way shall be provided to the town granting the town the right to protect, plant, prune, spray, remove, control, regulate and improve shrubbery and shade trees thereon.

D.

Landscaping and ground cover.

(1)

All lot areas which are not covered by structures or paving shall be properly seeded by the developer.

(2)

The developer shall provide a liberal and functional landscaping scheme for the entire subdivision. Each lot shall be provided with a minimum of two trees which shall be in addition to the street shade trees. This requirement may be waived by the Planning Board in wooded areas where the subdivider intends to maintain existing trees.

(3)

Individual homeowners may, by written agreement with the subdivider and builder, seed and landscape their yards independently.

(4)

When a proposed subdivision borders upon an existing commercial or industrial establishment or any other use which, in the opinion of the Planning Board, may be detrimental to the tranquility of the future residents of the subdivision, the Planning Board may require a landscape screen to buffer the subdivision from the noncompatible use.

E.

Preservation of natural features.

(1)

Topsoil moved during the course of construction shall be redistributed so as to provide at least four inches to six inches of cover to all areas of the subdivision and shall be stabilized by seeding or planting. At no time shall topsoil be removed from the site without written permission from the Planning Board.

(2)

To the fullest extent possible, all existing trees and shrubbery shall be conserved by the subdivider. Special consideration shall be given to the arrangement and ultimate improvement or development of the lots to this end. Precautions shall also be taken to protect existing trees and shrubbery during the process of grading the lots and roads. Where there is a question as to the desirability of removing a group of trees which serve to add interest and variety to the proposed subdivision in order to allow for use of the land for a lot or lots, the Planning Board may, after proper investigation, require modification of such lots. Where any land other than that included in public rights-of-way is to be dedicated to the public use, the developer shall not remove any trees from the site without written permission from the Planning Board.

(3)

Where a subdivision is traversed by a natural lake, pond, or stream, the boundaries or alignment of said watercourse shall be preserved unless, in the opinion of the Planning Board, a change or realignment will enhance the development and beauty of the subdivision or the utilization of such features by the future residents of the subdivision. All proposed changes in watercourse alignment shall be in accordance with

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the revised New York State Stream Conservation Law.

(4)

Unique physical features, such as historic landmarks and sites, rock outcroppings, hilltop lookouts, desirable natural contours, and similar features, shall be preserved if possible.

(5)

The subdivider shall not be permitted to leave any surface depressions which will collect pools of water.

(6)

The subdivider shall not be permitted to leave any hills or mounds of dirt around the tract. All surfaces shall be restored within six months of the time of the completion of the section of the subdivision.

F.

Floodplain.

(1)

Mapping. If any portion of the land within the subdivision is subject to inundation or flood hazard by stormwater, such fact and portion shall be clearly indicated on the preliminary plat and the prominent note on each sheet of such map whereon any such portion shall be shown.

(2)

Use. Land subject to flooding, and land deemed by the Planning Board to be otherwise uninhabitable, shall not be platted for residential occupancy nor for such other uses as may increase danger to health, life, or property or aggravate the flood hazard.

G.

Self-imposed restrictions. The owner may place restrictions on the development greater than those required by the Zoning Ordinance. Such restrictions, if any, shall be indicated on the final subdivision plat.

H.

Modification of standards. The Planning Board may modify the specified requirements in any individual case where, in the Board's judgment, such modification is in the public interest or will avoid the imposition of unnecessary individual hardship.

I.

Parks, playgrounds or open space.

(1)

Land shall be reserved for park, playground, open space, or other recreational purposes in locations designated on the Comprehensive Plan or elsewhere where the Planning Board deems that such reservations would be appropriate. For a major subdivision, each reservation shall be of an area equal to 5% of the total land within the subdivision, but in no case shall a reservation be less than two acres. The area to be preserved shall possess the suitable topography, general character, and adequate road access necessary for its recreational purposes.

(2)

Where a major subdivision is too small to establish an adequate recreation area site; where the land in a subdivision is unsuitable in character; or where the Town Comprehensive Plan or good planning judgment

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would not locate a recreation area; or in the case of a minor subdivision, the applicant will be required to provide a cash equivalent of \$50 per lot, deposited with the Town Clerk for the account of the Town of Batavia Park, Playground and Open Space Trust Fund, to be used for acquisition of such areas in suitable locations.

(3)

Where the Planning Board requires land to be set aside for parks, playgrounds, or other recreational purposes, the Board shall require that the site be graded, loamed, and seeded and may require it to be fenced.

(4)

When area for park, playground, recreational purposes or open space shall have been required on the subdivision plat, the approval of said subdivision plat shall not constitute an acceptance by the town of such an area.

**VI. Improvements Within Major Subdivisions.**

§ 204-17. General regulations.

The developer, before the approval of the subdivision plat, shall complete all improvements to the satisfaction of the Town Engineer or post a performance bond sufficient to insure the satisfactory completion of the following required improvements, except where waivers may be requested, and the Planning Board may waive, subject to appropriate conditions, such improvements as it considers are not requisite in the interest of public health, safety, and general welfare. Whenever this chapter references that improvements be made in accordance with standards and/or specifications on file in the Town Clerk's office, said standards and/or specifications shall include, but not be limited to, Chapter **183**, Road Specifications, of this Code, which chapter details general design standards for town roads, streets and related construction matters, as well as material and construction specification details for roadway construction, concrete gutters and curbs, concrete sidewalks, drainage structures and general grading, trimming and related work.

A.

Streets. All streets shall be constructed, graded, and paved in accordance with the standards and specifications on file in the Town Clerk's office.

B.

Storm drains, culverts, catch basins and other drainage structures shall be installed in accordance with the standards and specifications on file in the Town Clerk's office and in accord with the final map approved by the Planning Board. All pipe shall comply with the requirements of the current New York State Highway Department specifications governing construction of these facilities. The location, length, depth, size, grade, and type of pipe shall be designated in the plans. If unusual conditions are discovered at the time of construction which are not provided for on the plans, the Town Engineer shall determine the type and extent of construction required to overcome such conditions.

C.

Curbing or gutters shall be constructed on both sides of all streets shown on all proposed subdivision plats and in accord with the construction standards on file in the Town Clerk's office.

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D.

Sidewalks shall be required on both sides of the street and constructed in accord with the standards on file in the Town Clerk's office.

E.

Driveway aprons shall be required between the curbing and the sidewalk and shall be of six-inch concrete meeting the same specifications established for curbing.

F.

Street signs shall be of metal and shall be installed at the intersection of all streets in conformity with town specifications at the locations approved by the Planning Board.

G.

Grass strips shall be provided within the portion of the street right-of-way beyond the curb or gutter line and shall be properly graded and seeded.

H.

Street trees shall be planted in every subdivision at intervals from 40 feet to 60 feet along both sides of the street. Existing trees may be taken into consideration when determining the above. Trees shall be at least three feet from any sidewalk and located on the building side of the walk rather than the street side. Where dwelling structures are oriented with their rear on the street, street trees shall be at least six feet from the curblineline. Trees should also be at least 10 feet from any line which is directly under utility wires. The average trunk diameter shall be at least two inches, and an average height of six feet above finished grade level is required. Such trees shall be of a species and at locations approved by the Planning Board. No tree shall be planted within 25 feet from an existing or proposed streetlight or street intersection.

I.

Shade trees, other than within the right-of-way, may be required when, taking into consideration the existing trees on the lots, the Planning Board shall deem it necessary. Such trees shall be in conformance with the standards of size, kind, and locational limitations prescribed for trees along the street line.

J.

Streetlighting facilities shall be provided along all streets in the subdivision and along all streets upon which the subdivision abuts. Such lighting facilities shall be in accordance with the town standards and shall be installed as approved and directed by the Town Engineer.

K.

Sanitary sewers and treatment disposal facilities shall be required. Where a public sanitary sewer is reasonably accessible, the subdivider shall connect or provide for connection with such sanitary sewer and shall provide within the subdivision the sanitary sewer system required to make the sewer accessible to each lot in the subdivision. Sewer systems shall be approved by the town and health official(s) and be in accordance with other requirements of law. The construction is subject to the supervision of the Town Engineer.

L.

Where a public water main is reasonably accessible, the subdivider shall connect with such water main and provide a water connection for each lot in accordance with town standards, procedures, and supervision. Fire hydrants shall be required and shall be installed in the locations approved by the Town

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Engineer and in accord with the New York State Board of Fire Underwriters.

M.

Permanent monuments shall be set at block corners and at intervals of approximately 500 feet, or such other distance as the Planning Board may determine appropriate, and their location shall be shown on the subdivision plat. Iron pipes shall not be considered permanent monuments for the purpose of these regulations. Standards for monuments are on file in the Town Clerk's office.

§ 204-18. Permitted modifications.

A.

Concrete curbing may be omitted and, in lieu thereof, concrete gutters, rolled gutters or other means for controlling stormwater may be constructed as may be approved by the Town Engineer and Planning Board.

B.

Sidewalks may be omitted on one or both sides of the street to the extent deemed appropriate by the Planning Board.

C.

Where curbing and/or sidewalks are not provided, adequate provision for the protection of the edge of the road pavement, and graded shoulders, at all driveway openings and other accessways shall be provided in a manner approved by the Town Engineer.

D.

Where sidewalks and curbing are not provided, grass curb strips shall not be required. However, grading and seeding of the area between the pavement edge, shoulder, or approved drainage structure and the front property line of the lot shall be provided.

E.

Individual sewage disposal systems (septic tanks) may be provided in lieu of facilities connected to a public sanitary sewage disposal system. Where such system is not reasonably available, such on-site disposal systems shall not be subject to the provisions of these regulations regarding subdivision control but shall be subject to all other applicable laws and regulations of the town, county, and state. Sewage lagoons shall be prohibited.

F.

Individual on-site water supply systems may be provided in lieu of providing a water supply connected to a public utility system. Where such a system is not reasonably available, such on-site water supply systems shall not be subject to the provisions of these regulations regarding subdivision approval but shall be subject to all other applicable laws and regulations of the town, county and state.

G.

Fire hydrants may be omitted where adequate water mains which are a part of a public utility water system are not either existing or proposed to be available to the subdivision.

**VII. Specifications for Plats**

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§ 204-19. Preliminary plat.

Preliminary plats submitted to the Planning Board shall be drawn to a scale of not more than one inch equals 100 feet and shall show the following information:

A.

The location of the property with respect to surrounding property and streets. There shall also be included a key map at a scale of one inch equals 500 feet showing all streets, streams, and property within 1,500 feet of the applicant's property. All property held by the applicant in the area should be identified.

B.

The location and approximate dimensions of all existing property lines (include the entire area proposed to be subdivided and the remainder of the tract owned by the subdividing owner).

C.

All pertinent features, such as existing structures, streets, railroads, water bodies, streams, swamps, and large trees, that may influence the design of the subdivision and topography at a contour interval of one foot or two feet, depending on the steepness of the land, unless waived by the Planning Board.

D.

The location, width, and approximate grade of all proposed streets. Approximate elevations shall be shown at the beginning and end of each street, at street intersections, and at all points where there is a decided change in the slope or direction.

E.

The approximate location, dimensions, and area of all proposed or existing lots.

F.

The approximate location and dimensions of all property proposed to be set aside for playground or park use.

G.

The names of all property owners of record, or the names of developments within 500 feet.

H.

The name and address of the owner or owners of land to be subdivided, the name and address of the subdivider, if other than the owner, and the name of the land surveyor.

I.

The date, source of the North point, and scale.

J.

Acreage of tract to be subdivided to the nearest tenth of an acre.

K.

Proposed provision of water supply, fire protection, disposal of sanitary waste, stormwater drainage, street trees, streetlighting fixtures, street signs, and sidewalks, data on which must be available for consideration at this stage.

L.

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Each block shall be numbered and the lots within each block shall be numbered consecutively in accordance with the procedure established by the town. The total number of residential lots shall be noted on the plat.

§ 204-20. Major subdivision plat.

Major subdivision plats shall be accompanied by separate construction detail sheets, and both shall be submitted to the Planning Board for approval, as follows:

A.

Drawing, scale, and size of plat and construction detail sheets. The subdivision plat and construction detail sheets shall be clearly and legibly drawn on a stable, transparent, reproducible base. In areas zoned for lots of minimum size of 20,000 square feet or more, maps and profiles shall be at a scale of one inch equals 100 feet. In areas zoned for lots less than 20,000 square feet, maps and profiles shall be at a scale of one inch equals 50 feet. Maps shall be on uniform size sheets in accordance with the New York State statutes. Whenever any project is of such size that more than one sheet is required, then an index map on the same size sheet shall accompany these sheets. The construction detail sheets shall show all items included in Subsection **D** and as actually constructed.

B.

Information to be shown on plat. Plats shall show the following information:

(1)

Proposed subdivision name or identifying title which shall not duplicate or too closely approximate that of any other development in the town.

(2)

Date, source of the North point, and scale.

(3)

Name, address, and signature of the owner, subdivider, and licensed engineer or land surveyor.

(4)

Names of owners of record of abutting properties or developments.

(5)

Locations, names, and widths of existing streets, highways and easements, building lines, parks, and other public properties.

(6)

Locations and widths of all streets and sidewalks, together with names of streets, and location, dimensions, and status of all easements proposed by the subdivider.

(7)

Lot areas in square feet.

(8)

Lot lanes with accurate dimensions and bearings of angles.

(9)



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Sufficient data to determine readily the location, bearing, and length of all lines and to reproduce such lines upon the ground.

(10)

Radii of all curves and lengths of arcs.

(11)

Location, material, and approximate size of all monuments.

(12)

The accurate outline of all property which is offered, or to be offered, for dedication for public use, with the purpose indicated thereon, and of all property that is proposed to be reserved by deed covenant for the common use of the property owners of the subdivision.

(13)

Acreage of tract to be subdivided to nearest tenth of an acre.

(14)

Each block shall be numbered and the lots within such block shall be numbered consecutively in accordance with the procedure established by the town. The total number of residential lots shall be noted on the plat.

C.

In addition to the subdivision plat as described above, the following shall also be presented to the Planning Board:

(1)

A certificate that there are no tax liens on the property being subdivided.

(2)

A performance bond in such amount as is necessary to complete street and utility improvements.

D.

Construction detail sheets. Construction detail sheets shall show the following information, except that where requirements have been waived, applicable specifications may be omitted:

(1)

Profiles showing existing and proposed elevations along the center lines of all streets. Where a proposed street intersects an existing street or streets, the elevation along the center line of the existing street or streets within 100 feet of the intersection, in both directions, shall be shown. All elevations must be referred to established United States government or approved local benchmarks where they exist within 1/2 mile of the boundary of the subdivision.

(2)

The Planning Board may require, where steep slopes exist, that present elevations of all proposed streets shall be shown every 100 feet at five points on a line at right angles to the center line of the street, and said elevation points shall be at the center line of the street, each property line, and points 30 feet inside each property line.

(3)

Plans and profiles showing the location and a typical section of street pavements, including curbs and

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gutters, sidewalks, manholes, and catch basins; the locations of street trees, streetlighting standards and street signs; the location, size, and invert elevations of existing and proposed sanitary sewers, stormwater drains, and fire hydrants; and the exact location and size of all water, gas, electric, or other underground utilities or structures.

E.

All plans shall conform to the town minimum road specifications and shall be subject to the approval of the Town Engineer.

**VIII. Variances, Waivers and Violations**

§ 204-21. Variances.

Where the Planning Board finds that extraordinary and unnecessary hardships may result from strict compliance with these regulations, it may vary the regulations so that substantial justice may be done and the public interest secured, provided that such variations will not have the effect of nullifying the intent and purpose of the Official Map, the Comprehensive Plan, or the Zoning Ordinance, if such exists.

§ 204-22. Waivers.

Where the Planning Board finds that, due to the special circumstances of a particular plat, the provision of certain required improvements is not requisite in the interest of the public health, safety and general welfare or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may waive such requirements subject to appropriate conditions.

§ 204-23. Conditions.

In granting variances and modifications, the Planning Board shall require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so varied or modified.

§ 204-24. Violations; enforcement; penalties for offenses.

A.

It shall be unlawful for any person, firm or corporation to divide or otherwise alter existing property lines of lots or parcels of property without first complying with this law.

B.

Where the Zoning Enforcement Officer finds a violation of these provisions, he/she shall serve a written order-notice upon the owner by registered mail to remedy such condition. Such written notice shall include the provisions of law violated, the corrective action to be taken, the penalties and remedies which may be involved by the Town for noncompliance and time for compliance.

C.

Any violation of this chapter shall be deemed an offense punishable by a fine and/or imprisonment as set forth in § 268 of NYS Town Law. Each and every week such violation continues shall be deemed a

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separate and distinct violation.

**D.**

The Zoning Enforcement Officer may, with permission of the Town Board, institute court action to enforce any violation of the provisions of this chapter.

**E.**

In addition to the remedies described in this section, the Town of Batavia may seek an injunction to restrain, correct or abate any violation of this chapter and/or maintain an action at law for damages sustained as a result of any violation of this chapter. Damages may include but not be limited to legal fees and court costs expended or incurred by the Town as a result of legal proceedings brought hereunder.

**F.**

The Town Zoning Enforcement Officer is authorized herein to issue and serve appearance tickets with respect to violation(s) of this chapter which he/she is required to enforce.

§ 204-25. Supersession of state law.

All applicable statutes, laws and local ordinances in conflict with the provisions of this chapter, including §§ 276 and 277 of New York State Town Law, are hereby superseded to the extent necessary to give this chapter full force and effect.

**ARTICLE III:**                             **REPEAL OF INCONSISTENT REGULATIONS**

Section 1:                         Subdivision Regulations

Existing Chapter 204 of the Code of the Town of Batavia, entitled Subdivision of Land, is hereby repealed in its entirety.

Section 2:                         Land Separation Regulations

Existing Chapter 144 of the Code of the Town of Batavia, entitled Land Separation, is hereby repealed in its entirety.

**ARTICLE IV:**                             **EFFECTIVE DATE**

Section 1:                         Effective Date

This local law shall take effect immediately upon filing with the Department of State.

**ARTICLE V:**                             **SEVERABILITY**

Section 1:                         Severability

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The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

**(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)**

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 6 of 2017, of the ~~(County)~~ (City) (Town) (Village) of Batavia, New York was duly passed by the Town Board on \_\_\_\_\_, in accordance with the applicable provisions of law.

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_ of the ~~(County)~~ (City) (Town) (Village) \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved) (not disapproved) (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 2006, in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_ of the ~~(County)~~ (City) (Town) (Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_, and was (approved) (not disapproved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_. Such local law was submitted to the people by reason of a (mandatory) (permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special) (annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_ of the ~~(County)~~ (City) (Town) (Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved) (~~not disapproved~~) (~~repassed after disapproval~~) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_. Such local law was subject to permissive referendum and

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no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_, in accordance with the applicable provisions of law.

**\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.**

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36) (37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special) (general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_, State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

(SEAL)

\_\_\_\_\_  
Teresa Morasco  
Town Clerk, Town of Batavia

Date: \_\_\_\_\_, 2017

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)**

STATE OF NEW YORK

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COUNTY OF GENESEE

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

\_\_\_\_\_  
Andrew W. Meier  
Town Attorney  
~~County~~  
City of Batavia  
Town  
~~Village~~

Date: \_\_\_\_\_

**RESOLUTION NO. 184:**

Supervisor Post offered the following:

**TOWN OF BATAVIA SEWER RATES – 2018**

**WHEREAS**, pursuant to General Municipal Law Section 452 as amended, impositions of sewer rates in Sewer Districts No. 1 and No. 2 in the Town of Batavia are subject to approval by the Batavia Town Board;

**WHEREAS**, these sewer rates are imposed to pay for the cost of wastewater treatment and operation and maintenance of the sewer lines;

**WHEREAS**, in Sewer District No. 1 the sewer rates for 2018 has been set at six dollars and sixty-eight cents (\$6.68) per 1000 gallons;

**WHEREAS**, in Sewer District No. 2 the sewer rates for 2018 has been set at six dollars and sixty-eight cents (\$6.68) per 1000 gallons;

**WHEREAS**, as required by law and in conjunction with the public hearing held November 8, 2017 for the 2018 Town Budget, these rates were entered in and made a part of the record.

**RESOLVED**, the Batavia Town Board hereby authorizes the imposition of the aforementioned sewer rates in Sewer Districts No. 1 and No. 2 for one (1) year beginning January 1, 2018.

**RESOLVED**, the sewer rates are to be paid quarterly in the months of May, August and November, 2018 and February, 2019.

**Second by:** Councilwoman White

**Ayes:** Post, White, Underhill, Michalak, Zambito

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**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO.185:**

Councilwoman Michalak offered the following:

**TOWN OF BATAVIA WATER RATES – 2018**

**WHEREAS**, pursuant to the Code of the Town, Section 229-15, the Town Board shall by resolution establish and from time to time modify the water rate for all water sold by the Town of Batavia; and

**WHEREAS**, as a courtesy to the consumers, the Town Board held a public hearing on November 8, 2017 for the establishment of the 2018 water rates; and

**WHEREAS**, the base water rate for May 2018 to February 2019 is set at \$5.36/1,000.

**WHEREAS**, the agricultural water rate for May 2018 to February 2019 is \$3.87/1,000 gallons; and

**WHEREAS**, the base rate applies to all meters that are not dedicated to use within farming operations; and

**WHEREAS**, the agricultural rate applies to all meters serving parcels in a Certified Agricultural District and dedicated to use in farming operations, including providing drinking water for livestock, irrigation of crops, and operations related directly to agriculture. This rate does not apply to meters that also serve domestic, commercial, or industrial uses, and

**WHEREAS**, the formula for the Base Rate is  
100% of the water purchase cost  
100% of the Genesee County water surcharge cost  
100% of the Town's debt reserve cost  
100% of the Town's Operation and Maintenance cost

**WHEREAS**, the formula for the new Agricultural Rate is  
100% of the water purchase cost  
100% of the Genesee County water surcharge cost  
100% of the Town's debt reserve cost  
10% of the Town's Operation and Maintenance cost

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby authorizes the imposition of the aforementioned base water rate and agricultural water rate for one (1) year beginning January 1, 2018, and be it further

**RESOLVED**, the water usage is to be billed quarterly and are to be paid quarterly in the months

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of May, August and November, 2018 and February, 2019.

**Second by:** Deputy Supervisor Underhill  
**Ayes:** Michalak, Underhill, Zambito, White  
**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO.186:**

Councilman Zambito offered the following:

**ADOPTION OF 2018 TOWN ANNUAL BUDGET**

**WHEREAS**, the Town of Batavia Chief Fiscal Officer prepared a Tentative Budget for review by the Batavia Town Board, and

**WHEREAS**, the Town Board met in Budget sessions among themselves and with Town Employees in the formulation of the Preliminary Budget; and

**WHEREAS**, the 2018 Preliminary Budget was adopted on October 18, 2017 and after which a Public Hearing was held on November 8, 2017 for all interested parties to be heard; and

**WHEREAS**, on November 9, 2017 the 2018 Preliminary Budget was revised to

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby adopts the November 9, 2017 Revised Preliminary Town Budget as the 2018 Annual Budget of the Town of Batavia.

**Second by:** Councilwoman Michalak  
**Ayes:** Zambito, Michalak, White, Underhill, Post  
**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 187:**

Councilwoman White offered the following:

**TRAINING WORKSHOP**

**RESOLVED**, the Batavia Town Board hereby authorizes the following personnel to attend training workshops:

Jeremy Liles- Watershed Management Plans October 30, 2017 at no cost.

Joseph Neth, Greg Lang, Gregory Post- Low Pressure Sewer Workshop December 7, 2017 at a cost of \$38.00.

Teressa Morasco and Sandy Baubie-Adult Mental Health First Aid Course December 15, 2017 at no cost.



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Jon Long- Genesee Fingerlakes Regional Planning Local Department Workshop Fall 2017  
November 17, 2017 at the cost of \$75.00.

Mary Cordes- NYS Achieves Webinar (was) October 31, 2017 at no cost.

**Second by:** Deputy Supervisor Underhill  
**Ayes:** White, Underhill, Post, Michalak, Zambito  
**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO.188:**

Deputy Supervisor Underhill offered the following:

**ORDER CALLING A PUBLIC HEARING  
ON THE FIRE DEPARTMENT CONTRACT**

**RESOLVED**, that this Town Board hereby schedules a public hearing on the advisability of contracting with the Town of Batavia Fire Department, Inc. for fire protection to be provided to the Town of Batavia Fire Protection District by the Town of Batavia Fire Department, Inc., and that not less than ten (10) days notice of said hearing be published in the Daily News and posted on the signboard of the Town; and be it

**FURTHER RESOLVED**, that said hearing be scheduled for December 20, 2017 at the Batavia Town Hall at 7:00 o'clock p.m.

**Second by:** Councilwoman White  
**Ayes:** Underhill, White, Post, Michalak, Zambito  
**APPROVED by unanimous vote (5-0)**

**TOWN OF BATAVIA FIRE DEPARTMENT AGREEMENT**

**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **TOWN OF BATAVIA, NEW YORK**, (hereinafter designated as "Town") and the **TOWN OF BATAVIA FIRE DEPARTMENT, INC.** of Batavia, New York, (hereinafter designated as "Fire Department").

**WITNESSETH:**

**WHEREAS**, there has been duly established in the said Town of Batavia a fire protection district known as the "Town of Batavia Fire Protection District" as such' territory is more fully described in the Resolution establishing such District and duly adopted by the Town Board of the said Town of Batavia, Genesee County, New York on 24th day of March, 1948; and

**WHEREAS**, following a public hearing duly called, the said Town has duly authorized a Contract with the Fire Department for fire protection in said District upon the terms and conditions herein set forth;

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and

**WHEREAS**, this Agreement has also been duly authorized by the Directors and membership of the Fire Department, and the Fire Department has provided to the Town certified copies of Resolutions of approval of this Agreement by the Town of Batavia Fire Department Board of Directors and by its membership.

**NOW, THEREFORE**, the Town does engage the Fire Department to furnish fire protection to said District and the Fire Department agrees to furnish such protection in the manner following, to wit:

1. The equipment and personnel of the Fire Department shall at all times during the term of this Agreement be subject to call for attendance upon any fire occurring in such District, and when notified by any means of a fire within the District, said Fire Department shall respond and attend upon the fire without delay with one or more companies and with suitable fire-fighting equipment and apparatus of the Fire Department. Upon arriving at the scene of the fire, the firefighters of the Fire Department attending shall proceed diligently and in every way reasonably suggested under the circumstances to the extinguishments of the fire and the saving of life and property in connection therewith.

2. The Fire Department covenants and agrees at all times to maintain in force on and in respect to vehicles and equipment owned by it or subject to its control or use, while responding to, attending at or leaving from fires, alarms or calls both inside and outside said District, including, but not limited to, responses in connection with Mutual Aid Plan referred to in Paragraph 5 of this Agreement, an underlying public liability insurance policy for injury to persons and property, including wrongful death, with limits of \$500,000.00 for each person, \$1,000,000.00 for each accident and \$250,000.00 property damage for each accident and an excess public liability policy in the amount of \$3,000,000.00 insuring the Fire Department and the Town against any loss by reasons of personal injury including wrongful death, or property damage caused or contributed to by the negligent operation of said vehicles and/or equipment in connection with a fire, alarm or call in or from said District or in connection with a mutual aid response. In addition, the Fire Department agrees at all times to maintain in force public liability insurance to protect itself and the Town from all other losses occurring in its operations other than those arising out of the use and operation of said vehicles and/or equipment to persons for injury, including wrongful death, and to property in amounts for underlying and excess liability similar to that maintained for vehicles and/or equipment. All liability insurance policies must be obtained through insurance companies licensed to do business within the State of New York, must name the Town of Batavia as insured and must be maintained for the life of this Agreement.

The Fire Department shall deliver a copy of the policy of said insurance to the Town prior to the execution of this Agreement, covenants to pay the premiums thereon in timely fashion and to have said insurance policies provide for thirty (30) days written notice to the Town prior to cancellation. If the Fire Department shall fail to pay said premiums due hereunder in a timely fashion, the Town shall have the right to pay the same and to deduct the cost thereof from the amounts due the Fire Department under paragraph 7 of this Agreement.

In addition, the Fire Department hereby covenants and agrees to indemnify and hold the Town harmless from any and all losses and damages which the Town may sustain, suffer or be required to pay by reason of any claims made against said Town for injury to persons or property, including wrongful

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death, arising out of the performance of this agreement by the Fire Department to the extent that said losses and damages are not fully covered and paid by the insurance referred to herein.

3. Should any loss or damage whatsoever be sustained to the fire apparatus or other equipment, said loss or damage, including the cost of materials and any other special or incidental expenses incurred in the operation of the fire apparatus or equipment of the Fire Department in answering, attending upon or returning from a call for assistance in said Town of Batavia Fire Protection District, irrespective of the cause thereof, shall be a charge upon the Fire Department and not against the Town or against the Town of Batavia Fire Protection District. This fact is taken into consideration by both parties in arriving at the consideration to be paid to the Fire Department pursuant to this Agreement.

4. To the extent that the same is not otherwise provided for by the Genesee County Mutual Aid Plan, by the county of Genesee or by some other source, the Town of Batavia shall pay at its own expense or provide necessary insurance coverage at its expense for any and all claims authorized by law for medical expenses, loss of wages, compensation or other claims arising by reason of the injury or death of a fireman, or member of the Fire Department Emergency Relief Squad, a Fire Police Squad or a Fire Patrol sustained while answering or attending upon or returning from any such call in said District.

5. The Fire Department is hereby authorized by the Town to participate in the Genesee County Mutual Aid Plan and to answer calls for aid and assistance according to said Mutual Aid Plan and System. Nothing contained in this Agreement shall be deemed to prevent the Fire Department from securing reimbursement from any entities other than the Town and the Town of Batavia Fire Protection District for either any loss or damage to its fire apparatus, equipment or materials used for the locality that issues a call for aid or for payments to injured or deceased firemen as provided by any law of the State of New York.

6. In the event that the fire-fighting equipment owned by the Fire Department is in such condition that said Fire Department is unable to fulfill its obligations under this contract to answer or attend any fire occurring in said Town of Batavia Fire Protection District for a period of twenty-one (21) days or longer, the Fire Department covenants to reimburse the Town on a pro rata basis the sums provided to be paid to the Fire Department pursuant to this Agreement retroactive to the first day of said twenty-one (21) day period for the entire period of time during which it is unable to fulfill its obligations under this Agreement.

7. A. The Town covenants and agrees to pay to the Fire Department in consideration for services to be performed pursuant to this Agreement the sum of nine hundred forty-two thousand, four hundred seventy-eight dollars (\$942,478.00).

B. The sums as stated in section A of this paragraph to be due and payable on the 1<sup>st</sup> day of February, 2018, upon presentation to the Town of a duly verified voucher therefore.

8. The Town covenants to provide snowplowing services for the parking and driveway area to the Fire Hall owned by the Fire Department, as well as routine maintenance of said parking lot and driveway area, both only to the extent that the Superintendent of Highways of the Town determines that said services can be provided. The Fire Department agrees to provide all materials and supplies for said maintenance services; acknowledges that said routine maintenance services shall be provided only during normal

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business hours of the Town of Batavia Highway Department and as other Town Highway Department functions permit. The Fire Department further acknowledges that said snowplowing services shall be provided only after the Town's Superintendent of Highways is satisfied that the highways of the Town of Batavia are reasonably free and clear of ice and snow and that men and machinery under his supervision and control are free to provide said services. The Fire Department hereby covenants to indemnify and to hold the Town harmless for any injury, loss or damage which the Fire Department or any other person, firm or corporation may suffer, sustain or be required to pay by reason of the Town not providing or failing to provide adequate snowplowing and/or maintenance services under the provisions of this Paragraph.

9. **On or before April 1, 2018**, the Fire Department will provide an independent, certified audit of the financial affairs of the Fire Department.

10. A. The Fire Department shall provide written notice to the Town of capital purchases as early as possible, but in no event not less than 30 days prior thereto; provided, however, that this provision shall not be construed as requiring or constituting any municipal approval or involvement in the corporate affairs of the Fire Department by the Town.

B. The Fire Department shall continue to exercise sound financial practices and planning, including maintenance of capital reserve accounts where feasible.

11. All moneys to be paid under any provision of this Agreement, as well as other payments which may be made from time to time according to applicable provisions of law which regulate the terms and provisions of this Agreement, shall be a charge upon the said Fire Protection District to be assessed and levied upon the taxable real property in said District and collected with the Town Taxes.

12. This Agreement shall become operative and effective from 12:01 a.m. January 1, 2018, and shall continue for a term of one (1) year which will expire at midnight on December 31, 2018.

13. It is understood and agreed that this contract is subject to the provisions of Section 184 of the Town Law of the State of New York.

**IN WITNESS WHEREOF**, the parties have duly executed and delivered this Agreement in duplicate the day and year first above written.

TOWN BOARD OF THE TOWN OF BATAVIA

BY \_\_\_\_\_  
GREGORY H. POST

(SEAL)

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ATTEST:

\_\_\_\_\_  
TERESSA M. MORASCO, TOWN CLERK

TOWN OF BATAVIA FIRE DEPARTMENT, INC.

BY \_\_\_\_\_  
MICHAEL JONES, PRESIDENT

(SEAL)

**STATE OF NEW YORK)**  
**COUNTY OF GENESEE) ss:**

On the \_\_\_\_ day of \_\_\_\_\_, 2017, before me came GREGORY H. POST, to me known, who, being by me duly sworn, did depose and say that he resides at 8472 Seven Springs Road in the Town of Batavia, New York; and he is the Supervisor of the **TOWN OF BATAVIA, NEW YORK** the municipal corporation described in and who executed the foregoing Agreement; that he knows the seal of said Town; that it was affixed by order of the Town Board of said Town; and that he signed his name thereto by like order.

\_\_\_\_\_  
**NOTARY PUBLIC**

**STATE OF NEW YORK)**  
**COUNTY OF GENESEE) ss:**

On the \_\_\_\_ day of \_\_\_\_\_, 2017, before me came Michael Jones, to me known, who, being by me duly sworn, did depose and say that, he resides at 17 Lincoln Avenue, Batavia, New York; and he is the President of the **TOWN OF BATAVIA FIRE DEPARTMENT, INC.** the corporation described in and which executed the foregoing Agreement; that he knows the seal of said Corporation;

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that it was affixed by order of the Board of Directors of said Corporation; and that he signed his name thereto by like order.

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**NOTARY PUBLIC**

**RESOLUTION NO. 189:**

Supervisor Post offered the following:

**TOWN INSURANCE AWARD**

**WHEREAS**, as of November 27, 2001 the Batavia Town Board retained New York Municipal Insurance Reciprocal to provide the Town with insurance coverage; and

**WHEREAS**, the Insurance Premium for 2018 (November 27, 2017 through November 27, 2018) has been quoted at sixty-five thousand, five hundred, sixteen dollars and four cents, which includes the Cyber Coverage (\$65,516.04) (attached).

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby retains New York Municipal Insurance Reciprocal to provide insurance coverage for the Town in the amount of sixty-five thousand, five hundred, sixteen dollars and four cents (\$65,516.04), copies of which are annexed hereto and made a part of the minutes; and be it further

**RESOLVED**, the Batavia Town Board hereby authorizes the Supervisor to execute any documents necessary for the award.

**Second by:** Councilman Zambito

**Ayes:** Post, Zambito, White, Underhill, Michalak

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO.190:**

Councilwoman Michalak offered the following:

**EXCESS EMPLOYER'S LIABILITY INSURANCE**

**RESOLVED**, the Batavia Town Board hereby retains Franz-Manno Service Corporation to provide the Town's Excess Employer's Liability Insurance at a cost of One Thousand One Hundred Eleven Dollars, (\$1,111.00).

**Second by:** Councilman Zambito

**Ayes:** Michalak, Zambito, White, Underhill, Post

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**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 191:**

Councilman Zambito offered the following:

**RESOLUTION INCREASING BUDGETARY LINE ITEMS  
INSURANCE RECOVERY FUNDS**

**RESOLVED**, the Batavia Town Board hereby authorizes the following budget line item increases to account for insurance recovery funds – Incident August 27, 2017:

Revenue Line Item:	Expenditure Line Item:	
DA2680	DA5110.100	\$ 525.04
A2680	A3310.400	\$ 40.00

**Second by:** Deputy Supervisor Underhill

**Ayes:** Zambito, Underhill, White, Post, Michalak

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 192:**

Councilwoman White offered the following:

**RESOLUTION TO APPROVE WATER EASEMENT ON CALL PARKWAY**

**WHEREAS**, the contractor for the Mercy Flight building on Call Parkway needs to install approximately 450 feet of water main and appurtenances along the south side of Call Parkway to provide water to the proposed building; and

**WHEREAS**, the Contractor needs an easement in order to install this water line; and

**WHEREAS**, the Town of Batavia needs this easement in order to hereinafter operate and maintain this water main and appurtenances; and

**WHEREAS**, Batavia Farms Inc. owner of the property has signed the water easement granted to the Town of Batavia, for compensation of \$1.00.

**NOW, THEREFORE, BE IT**

**RESOLVED** by the Town Board of the Town of Batavia, New York, that the water easement granted by Batavia Farms Incorporated to the Town of Batavia is hereby approved and accepted at a cost of one dollar (\$1.00), and a copy of said easement is annexed hereto and made a part of the minutes; and be it further

**RESOLVED**, the Supervisor is hereby authorized to execute on behalf of the Town of Batavia any documents necessary to record the Permanent Easement from Batavia Farms, Incorporated

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regarding Tax Map No. 4.-1-26.111, situated in the Town of Batavia, dated October 31, 2017.

**Second by:** Councilman Zambito

**Ayes:** White, Zambito, Underhill, Post, Michalak

**APPROVED** by unanimous vote (5-0)

**RESOLUTION NO. 193:**

Deputy Supervisor Underhill offered the following:

**PURCHASE NEW SNOW PUSHER BLADE FOR  
HIGHWAY DEPARTMENT**

**WHEREAS**, the 2017 Town Budget reflects appropriations to purchase a new snow pusher blade for the Highway Department.

**WHEREAS**, the Highway Superintendent solicited quotes for a 10 ft. snow pusher blade and trading in the 96” HLA bucket. The lowest quote was from George and Swede at a price of \$2,245.00. The Highway Superintendent recommends purchasing the snow pusher blade from George and Swede.

**RESOLVED**, the Batavia Town Board hereby authorizes the purchase of a new 10 ft. wide snow pusher from George and Swede at a price of \$2,245.00 including the trade in of the 96” HLA bucket, and be it

**FURTHER RESOLVED**, the expenditure will be appropriated from line item DA 5130.200.

**Second by:** Councilwoman White

**Ayes:** Underhill, White, Post, Michalak, Zambito

**APPROVED** by unanimous vote (5-0)

**RESOLUTION NO. 194:**

Supervisor Post offered the following:

**AUTHORIZING PARTICIPATION IN  
YEAR 2018 JOINT YOUTH PROGRAM**

**WHEREAS**, the Town of Batavia has previously participated in a Joint Youth Project along with the following communities: the City of Batavia (Program R006); the Town and Village of Oakfield and Town of Alabama (Program R005); the Town and Village of Bergen and the Town of Byron (Program R002); and the Town and Village of Elba (Program R001), and

**WHEREAS**, the Town of Batavia’s contribution to this joint youth project is \$6,251.00.

**NOW, THEREFORE, BE IT**

**RESOLVED**, that the Batavia Town Board hereby approves and authorizes the Town’s



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participation in the aforementioned Joint Youth Project in the year 2018; and be it further

**RESOLVED**, that the year 2018 Joint Youth Project as herein described is approved, as are Town's contributions as specified for this program in the year 2018:

<u>Programs</u>	<u>Town of Batavia Share</u>
City of Batavia (R006)	\$ 3,442.00
Oakfield/Alabama (R005)	\$ 997.00
Elba (R001)	\$ 906.00
Byron/Bergen (R002)	\$ 906.00
Total	\$6,251.00

**Second by:** Councilman Zambito

**Ayes:** Post, Zambito, White, Underhill, Michalak

**APPROVED** by unanimous vote (5-0)

**RESOLUTION NO. 195:**

Councilwoman Michalak offered the following:

**PROPERTY DONATION**  
**ELLCOTT TRAIL PROJECT**  
**OAKWOOD HILLS LLC**

**WHEREAS**, Oakwood Hills LLC wishes to donate the abandoned railroad land identified as tax parcel 13.-1-107.22 to the Town of Batavia for the construction of the Ellicott Trail project; and

**WHEREAS**, an agreement to convey said property has been prepared and executed by Oakwood Hills, LLC; and

**WHEREAS**, the Attorney for the Town and the Assistant Town Engineer have reviewed and recommends the Town accept the property donation.

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby approves the Agreement to Convey Real Property between Oakwood Hills, LLC and the Town of Batavia for the donation of parcel 13.-1-107.22, a copy of which is annexed hereto and made a part of the minutes, and be it further

**RESOLVED**, that the Town Supervisor is hereby authorized and directed to sign all documents necessary to secure the property for the Ellicott Trail Project and to record the deed in the Genesee County Clerk's Office.

**Second by:** Councilman Zambito

**Ayes:** Michalak, Zambito, White, Underhill, Post

**APPROVED** by unanimous vote (5-0)

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**RESOLUTION NO. 196:**

Councilman Zambito offered the following:

**PROPERTY DONATION  
ELLICOTT TRAIL PROJECT  
ELLICOTT STATION LLC**

**WHEREAS**, Ellicott Station LLC wishes to donate an easement on portions of land owned by Ellicott Station LLC identified as tax parcels 84.015-1-37.311 and 84.015-1-37.312 to the Town of Batavia for the construction of the Ellicott Trail project; and

**WHEREAS**, an agreement to convey said property has been prepared and executed by Ellicott Station LLC; and

**WHEREAS**, the Attorney for the Town and the Assistant Town Engineer have reviewed and recommends the Town accept the property donation.

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby approves the Agreement to Convey Real Property between Ellicott Station LLC and the Town of Batavia for the donation of an easement on tax parcels 84.015-1-37.311 and 84.015-1-37.312, a copy of which is annexed hereto and made a part of the minutes, and be it further

**RESOLVED**, that the Town Supervisor is hereby authorized and directed to sign all documents necessary to secure the property for the Ellicott Trail Project and to record the deed in the Genesee County Clerk's Office.

**Second by:** Councilwoman Michalak  
**Ayes:** Zambito, Michalak, White, Underhill, Post  
**APPROVED** by unanimous vote (5-0)

**RESOLUTION NO. 197:**

Councilwoman White offered the following:

**RESOLUTION TO APPROVE AN AGREEMENT FOR  
CONTINUED DEVELOPMENT, OPERATION AND  
MAINTENANCE OF RECREATIONAL FACILITIES AT THE  
BATAVIA SPORTS PARK**

**WHEREAS**, the Town desires to continue to increase the number and enhance the quality of recreational opportunities available to Town residents, and

**WHEREAS**, the Town Board has determined that extending the prior Agreement for continued development, operation and maintenance of recreational facilities

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would be in the best interest of the Town in order to relieve the Town, except upon the limited basis as set forth in the agreement, of the financial responsibilities and the use of Town employees for the purposes of land acquisition, constructing and maintaining the recreational facilities as contemplated by this Agreement, operating these facilities and promoting athletic events, and

**WHEREAS**, the Town has determined that the continued operation of these recreational facilities, along with the events and tournaments to be scheduled using these facilities, will continue the efforts of the Town to promote the public purposes of enhancing the quality of life and promoting economic development and benefits for the Town and the surrounding communities in Genesee County, and

**WHEREAS**, the Town and the Developers previously entered into an Agreement that ended on December 31, 2016, and

**WHEREAS**, the parties desire to continue the prior working relationship and shared services for three (3) more years.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Board of the Town of Batavia, New York that a proposed "Amended Agreement for Development, Operation and Maintenance of Recreational Facilities", a copy of which is to be made a part of the Town Board Minutes, is hereby approved, and the Town Supervisor is authorized and directed to execute this Agreement on behalf of the Town, and

**BE IT FURTHER RESOLVED** that the Town Supervisor and employees of the Town are hereby authorized and directed to take all steps necessary to implement the terms and conditions of this Agreement, including, but not limited to, the payment of \$10,000.00 to the Developers this year on or before December 31, 2017; as well as subsequent payments of \$10,000.00 in 2018 and \$10,000.00 in 2019.

Second by: Councilwoman Michalak  
Ayes: White, Michalak, Underhill, Post, Zambito  
APPROVED by unanimous vote (5-0)

**RESOLUTION NO. 198:**

Deputy Supervisor Underhill offered the following:

**A BOND RESOLUTION, DATED NOVEMBER 15, 2017, OF THE TOWN BOARD OF THE TOWN OF BATAVIA, GENESEE COUNTY, NEW YORK (THE "TOWN"), AUTHORIZING THE ACQUISITION OF A MAINTENANCE VEHICLE FOR USE BY THE TOWN, AT AN ESTIMATED MAXIMUM COST OF \$110,000 AND AUTHORIZING THE ISSUANCE OF SERIAL BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$110,000 OF THE TOWN, PURSUANT TO THE LOCAL FINANCE LAW TO FINANCE SUCH PURPOSE, SUCH AMOUNT TO BE OFFSET BY ANY FEDERAL, STATE,**

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**COUNTY AND/OR LOCAL FUNDS RECEIVED, AND DELEGATING THE  
POWER TO ISSUE BOND ANTICIPATION NOTES IN ANTICIPATION OF  
THE SALE OF SUCH BONDS TO THE TOWN SUPERVISOR.**

BE IT RESOLVED, by the Town Board of the Town of Batavia, in Genesee County, New York (the "Town") (by the favorable vote of not less than two-thirds of all the members of the Board) as follows:

SECTION 1. The Town is hereby authorized to acquire a maintenance vehicle (excavator) for use by the Town including all preliminary costs and necessary equipment, apparatus, warranties and other such costs incidental thereto and in connection with the financing thereof (collectively, the "Purpose"). The estimated maximum cost of the Purpose is \$110,000.

SECTION 2. The Town Board plans to finance the estimated maximum cost of the Purpose by the issuance of serial bonds in an aggregate principal amount not to exceed \$110,000 of the Town, hereby authorized to be issued therefor pursuant to the Local Finance Law, such amount to be offset by any federal, state, county and/or local funds received. Unless paid from other sources or charges, the cost of such Purpose is to be paid by the levy and collection of taxes on all real property in the Town to pay the principal of such bonds and the interest thereon as the same will become due and payable.

SECTION 3. It is hereby determined that the Purpose is a class of objects or purposes described in subdivision 28 of paragraph (a) of Section 11.00 of the Local Finance Law, and that the period of probable usefulness of the Purpose is 15 years; however, the bonds issued pursuant to this resolution, and any bond anticipation notes issued in anticipation of the sale of said bonds, will mature no later than five years from the date of original issuance of such bonds or notes.

SECTION 4. Current funds are not required to be provided prior to the issuance of the bonds authorized by this resolution or any notes issued in anticipation of the sale of such bonds.

SECTION 5. It is hereby determined the proposed maturity of the obligations authorized by this resolution will not be in excess of five years.

SECTION 6. The faith and credit of the Town are hereby irrevocably pledged for the payment of the principal of and interest on such bonds (and any bond anticipation notes issued in anticipation of the sale of such bonds) as the same respectively become due and payable. An annual appropriation will be made in each year sufficient to pay the principal of and interest on such bonds or notes becoming due and payable in such year. Unless paid from other sources or charges, there will annually be levied on all the taxable real property of the Town a tax sufficient to pay the principal of and interest on such bonds or notes as the same become due and payable.

SECTION 7. Subject to the provisions of this resolution and of the Local Finance Law, and pursuant to the provisions of Section 21.00 relative to the authorization of the issuance of bonds with substantially level or declining annual debt service, Section 30.00 relative to the authorization of the issuance of bond anticipation notes and of Section 50.00, Sections 56.00 to 60.00, Section 62.00, Section 62.10, Section 63.00, and Section 164.00 of the Local Finance Law, the powers and duties of the Town

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Board pertaining or incidental to the sale and issuance of the obligations herein authorized, including but not limited to authorizing bond anticipation notes and prescribing the terms, form and contents and details as to the sale and issuance of the bonds herein authorized and of any bond anticipation notes issued in anticipation of said bonds, and the renewals of said notes, are hereby delegated to the Town Supervisor, the chief fiscal officer of the Town. Without in any way limiting the scope of the foregoing delegation of powers, the Town Supervisor, to the extent permitted by Section 58.00(f) of the Local Finance Law, is specifically authorized to accept bids submitted in electronic format for any bonds or notes of the Town.

SECTION 8. The temporary use of available funds of the Town, not immediately required for the purpose or purposes for which the same were borrowed, raised or otherwise created, is hereby authorized pursuant to Section 165.10 of the Local Finance Law, for the purpose or purposes described in Section 1 of this resolution. The Town then reasonably expects to reimburse any such expenditures (to the extent made after the date hereof or within 60 days prior to the earlier of (a) the date hereof or (b) the date of any earlier expression by the Town of its intent to reimburse such expenditures) with the proceeds of the bonds authorized by Section 2 of this resolution (or with the proceeds of any bond anticipation notes issued in anticipation of the sale of such bonds). This resolution shall constitute the declaration (or reaffirmation) of the Town's "official intent" to reimburse the expenditures authorized by Section 2 hereof with such bond or note proceeds, as required by United States Treasury Regulations Section 1.150-2.

SECTION 9. The Town Supervisor is further authorized to take such actions and execute such documents as may be necessary to ensure the continued status of the interest on the bonds authorized by this resolution, and any notes issued in anticipation thereof, as excludable from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code") and may designate the bonds authorized by this resolution, and any notes issued in anticipation thereof, as "qualified tax-exempt bonds" in accordance with Section 265(b)(3) of the Code.

SECTION 10. The Town Supervisor is further authorized to enter into a continuing disclosure agreement with the initial purchaser of the bonds or notes authorized by this resolution, containing provisions which are satisfactory to such purchaser in compliance with the provisions of Rule 15c2-12, promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934.

SECTION 11. The Town hereby determines that the Purpose is a Type II action that will not have a significant effect on the environment and, therefore, no other determination or procedures under the State Environmental Quality Review Act ("SEQRA") are required.

SECTION 12. In the absence or unavailability of the Town Supervisor, the Deputy Town Supervisor is hereby specifically authorized to exercise the powers delegated to the Town Supervisor in this resolution.

SECTION 13. The validity of such serial bonds or of any bond anticipation notes issued in anticipation of the sale of such serial bonds may be contested only if:

1. (a) such obligations were authorized for an object or purpose for which the Town is

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not authorized to expend money, or

(b) the provisions of the law which should be complied with as of the date of publication of this notice were not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within 20 days after the date of such publication of this notice; or

2. such obligations were authorized in violation of the provisions of the Constitution of New York.

SECTION 14. The Town Clerk is hereby authorized and directed to publish this resolution, or a summary thereof, together with a notice in substantially the form provided by Section 81.00 of the Local Finance Law, in the official newspaper(s) of the Town, or if no newspaper(s) have been so designated, then in a newspaper having general circulation in the Town, which newspaper shall be designated by the Town Board in a separate resolution.

SECTION 15. This Resolution is effective immediately.

**Second by:** Councilwoman White

**Ayes:** Underhill, White, Post, Michalak, Zambito

**APPROVED** by unanimous vote (5-0)

**SUSPEND THE RULES**-Motion Councilman Zambito, second Councilwoman Michalak to suspend the rules to introduce additional resolutions.

**Ayes:** Zambito, Michalak, White, Underhill, Post

**MOTION CARRIED** by unanimous vote (5-0)

**RESOLUTION NO. 199:**

Supervisor Post offered the following:

**PURCHASE EXCAVATOR FOR HIGHWAY AND WATER/SEWER DEPARTMENTS**

**WHEREAS**, the Highway Superintendent and Town Engineer have determined that it is necessary to purchase a 9 ton excavator to assist with the long term operation and maintenance of the Town's roads and water and sewer infrastructure; and

**WHEREAS**, the Town solicited bids from several vendors which could provide a 9 ton excavator to fit the Town needs. Bids were accepted from four excavator vendors. All the excavators could be purchased off NYS State bid or purchased from other Municipal bids. The lowest responsible bid was from Admar Construction Equipment and Supplies at a cost of \$102,687 (see bid summary memo attached); and

**WHEREAS**, The Town intends to purchase the excavator from Highway equipment line item

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DA5130.200 and secure a 5 year bond to reimburse that account. The bond payments would be split 50% highway and 50% water and sewer line items.

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby authorizes the purchase a new 2017 9 ton excavator from Admar Construction Equipment and Supplies at a cost of \$102,687; and

**RESOLVED**, an expenditure of \$102,687 will be appropriated from DA5130.200-highway equipment, and the Town will work toward securing a 5 year bond to reimburse that account. The bond payments will be split 50% Highway and 50% Water and Sewer Departments.

**Second by:** Deputy Supervisor Underhill  
**Ayes:** Post, Underhill, White, Michalak, Zambito  
**APPROVED** by unanimous vote (5-0)

**RESOLUTION NO. 200:**

Councilwoman Michalak offered the following:

**RESOLUTION TO APPROVE AN OPERATION AND MAINTENANCE AGREEMENT-  
TOWN OF ALABAMA TO TOWN OF BATAVIA**

**WHEREAS**, the Town of Batavia has entered into agreements with Genesee County to be supplied with water and has developed a water distribution system of its own, and has authority to distribute water from its distribution system to customers, on behalf of other municipalities outside of the Town of Batavia, and

**WHEREAS**, the Town of Alabama is constructing a water distribution system project consisting of approximately 255,000 linear feet of new 6-, 8- and 12-inch diameter water main, together with all related hydrants, valves, apparatus, conduits, pipes, casings, meters and manholes; to also include all interests in real property of any kind or nature to the extent assignable; and

**WHEREAS**, Alabama, in furtherance of this Project, has established Water District 2; and

**WHEREAS**, the Town of Alabama on behalf of this District desires to authorize the Town of Batavia to operate and maintain the water system for this District; and

**WHEREAS**, a proposed Operation and Maintenance Agreement has been drafted, reviewed and approved by the respective Attorneys for both Towns.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Board of the Town of Batavia, New York, that the Supervisor is hereby authorized and directed on behalf of the Town of Batavia to execute a proposed "Intermunicipal Agreement For Operation and Maintenance For Water Facilities For Town of Alabama Water District 2", a copy of which is annexed and made part of the minutes of the Town Board, and be it

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**FURTHER RESOLVED** that the distribution of water to the residents of the Town of Alabama Water District 2 will not at this time reduce the supply of the Town of Batavia water so as to render the same insufficient to service all water districts within the Town of Batavia for the residents located therein, and be it

**FURTHER RESOLVED** that upon the completion of the execution of the aforesaid “Intermunicipal Agreement For Operation and Maintenance For Water Facilities For Town of Alabama Water District 2”, employees of the Town are hereby authorized and directed to take all steps necessary to effectuate all terms and conditions set forth in said Agreement.

**Second by:** Councilman Zambito

**Ayes:** Michalak, Zambito, White, Underhill, Post

**APPROVED** by unanimous vote (5-0)

**INTERMUNICIPAL AGREEMENT FOR OPERATION AND MAINTENANCE**

**OF WATER FACILITIES FOR**

**TOWN OF ALABAMA WATER DISTRICT No. 2**

**THIS AGREEMENT**, made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and among the **TOWN OF BATAVIA**, a Municipal Corporation of the State of New York, with offices located at 3833 West Main Street Road, Batavia New York 14020, (hereinafter “Batavia”); and the **TOWN OF ALABAMA**, a Municipal Corporation of the State of New York, with offices located at 2218 Judge Rd, Oakfield, NY 14125, (hereinafter “Alabama”); (hereinafter referred to collectively as the “Towns”).

**W I T N E S S E T H:**

**WHEREAS**, Batavia has previously entered into a Water Supply Agreement with the County of Genesee, whereby the County supplies an adequate quantity of water for use by Batavia’s residents who are obtaining water services, and

**WHEREAS**, Alabama has previously entered into a Water Supply Agreement with the County of Genesee, whereby the County supplies an adequate quantity of water for use by Alabama’s residents who are obtaining water services, and

**WHEREAS**, a townwide water distribution system will be constructed consisting of approximately 255,200 linear feet of new 6-, 8- and 12-inch diameter water main, together with all related hydrants, valves, apparatus, conduits, pipes, casings, meters and manholes, to also include all interests in real property of any kind or nature to the extent assignable, to be installed within Water District No. 2 as



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more fully described on the Boundary Map for said Water District No. 2 attached hereto as Exhibit A (hereinafter referred to collectively as the “Facilities” or the “Project”), and

**WHEREAS**, Alabama, in furtherance of this Project, has established Water District No. 2 (hereafter “Water District”), and

**WHEREAS**, Alabama desires to contract for the operation and maintenance of the Facilities, as well as for the billing and collection of the costs to provide and pay for the water service, and

**WHEREAS**, Batavia will lease the Facilities from Alabama in order to perform the services and responsibilities as set forth herein, pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

1. Alabama does hereby lease the Facilities to the Town of Batavia for the term as hereinafter set forth in this Agreement.
2. The leased Facilities include replacements, additions, betterments and improvements, which may hereinafter during the term of this Agreement be furnished and installed within or on behalf of the Water District by the Water District.
3. Batavia agrees to operate, maintain and repair the entire Facilities and to distribute water on behalf of Alabama to the Water District.
4. The cost for these services shall be determined in accordance with Batavia’s current Rate Schedule in effect, and as amended from time to time by Batavia. Batavia’s Rate Schedule currently requires payment by each customer for water service to be charged at the rate of \$5.10 per 1,000 gallons of water used for regular customer, and \$3.73 per 1,000 gallons of water used for Agricultural customer, with this cost determined as follows:

	<u>User Rate</u>	<u>Agriculture Rate</u>
A. Billed Purchased Water	\$2.21	\$2.21
B. Unbilled Purchased Water	\$0.34	\$0.34
C. Genesee County Surcharge	\$0.60	\$0.60
D. Outside Batavia <sup>(1)</sup>	\$0.43	\$0.43
E. Operation and Maintenance	<u>\$1.52</u>	<u>\$0.15</u>
	\$5.10	\$3.73

(1) Outside Batavia rate shall not exceed Batavia customers capital reserve rate.

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5. On at least forty-five (45) days advance notice, Batavia will provide to Alabama any proposed amendments to the Rate Schedule, which shall break out the various costs for water supply, operation, maintenance and capital improvement reserve. During this forty-five (45) day period, the Supervisors of Batavia and Alabama shall meet at least once to discuss any proposed rate change. During the term of this Agreement, users in the Town of Batavia Service Area will pay the same water rate as users within Alabama Water District No. 2.

6. Alabama hereby retains the right to add any additional charges for the delivery of water service within the Water District, and shall be entitled to collect and remit any such charges from the Water District users to Alabama.

7. Maintenance and repair by the Town of Batavia as referred to in this Agreement shall be defined as a project which costs the sum of \$20,000.00 or less. Any project or improvements costing more than \$20,000.00 shall be considered as a capital expense, and Alabama shall be responsible to pay for or to reimburse Batavia for the full capital expenses. Notwithstanding the foregoing, any costs for maintenance and/or repair resulting from the use by Alabama or the Water District of materials or equipment that do not meet the minimum specifications of the Town of Batavia shall be borne solely by the Water District.

8. All performance of services that will be provided by Batavia shall be pursuant to Subpart 5-1, Public Water Supplies of the New York State Sanitary Code and Batavia's Water Ordinance, (hereinafter the "Ordinance"). The Ordinance may be amended from time to time by Batavia. However, Batavia agrees to provide Alabama at least forty-five (45) days advance written notice before implementing any such amendments. During this forty-five (45) day period, the Supervisors from Batavia and Alabama shall meet at least once to discuss the proposed Ordinance changes.

9. Upon request, Batavia shall supply to Alabama copies of any test reports required by the New York State Department of Health.

10. Batavia shall read all meters and invoice the customers of the Water District.

11. All Batavia invoices to the Water District customers included in this Agreement, shall be due and paid according to the terms of the Ordinance, including penalties for late payments, in effect as of the date of the invoice for such water. In the event that any such customer is delinquent for more than ninety (90) days, Alabama shall have in effect and shall maintain throughout this agreement rules and

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regulations to enforce collection of such charges and to make payment to Batavia, including but not limited to relieving of delinquent charges on tax bills and procedures regarding shut off of delinquent accounts.

12. Alabama, within 60 days after request by Batavia, shall make payments to Batavia for any water bills of customers within the Water District that are more than ninety (90) days in arrears.

13. Batavia shall make any and all payments related to water supply to Genesee County on behalf of Alabama, according to the terms set forth in the Water Supply Agreement in effect between Genesee County and Alabama.

14. Customers within the Water District shall purchase water to serve present and future needs of this Water District pursuant to the Water Supply Agreements by and between the County of Genesee and Alabama.

15. This Water District and any and all extensions or additions thereto, and any new Water Districts or appurtenances, shall be constructed in accordance with all of Batavia's standards and specifications for design and construction of water improvements in place at the time of design, unless a deviation from such standards is authorized in writing by the Batavia Town Engineer or Supervisor. Approval may occur prior to or after the effective date of this agreement.

16. A map of the proposed Water District service areas to be served by Alabama is annexed hereto and made a part of this Agreement as **EXHIBIT A**. This map shall be amended as necessary from time to time to reflect any customers added by the Water District. Any such amendment that expands or extends the Water District, shall be approved by Batavia and shall not negatively affect supply or service to existing Town of Batavia service area customers.

17. Batavia agrees that service to other areas outside of the initial boundaries of the Water District shall comply with the requirements of any and all existing Water Supply Agreements with Genesee County and the Towns of Batavia and Alabama, and any amendments thereto.

18. All extensions to the Water District after the execution of this Agreement shall be made under the exclusive control and jurisdiction of Alabama and shall be subject to the provisions of the Town Law and any amendments thereto. In the event that Alabama shall form one or more extensions, said extension shall be subject to the following terms and conditions:

A. At the request of the extending Water District, Batavia may provide the services of its Engineering Department to assist the extending District in the preparation and formation of necessary plans, drawings and specifications of the proposed distribution system construction. Said services may

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be provided to the extending District so long as Batavia is given reasonable notice of the need for, and the scope of such services, and Batavia and the extending District establishes mutually agreeable terms for the completion of services.

B. Said distribution system shall service the entire area of said extension and shall be installed without cost to Batavia.

C. Alabama shall have the exclusive right to determine the amount of any fee to be charged to any such extension and to be paid to it by the customers in the extension for the right to connect to the existing Facilities of the Water District. The fee shall belong exclusively to Alabama, and Batavia shall have no right or interest to this fee or any other charges related thereto.

D. The extension to the Water District shall comply with all applicable Laws, Rules and Regulations, including Batavia's Ordinance, and shall obtain all necessary governmental approvals with respect to the formation of any extensions and the construction of the distribution system therein.

19. Alabama, on behalf of the Water District, as well as any other water district now existing or developed in the future within Alabama, shall bear the full costs related to the formation of any such Water District and installation of facilities, including meters, except as specifically agreed herein.

20. It is understood and agreed that Batavia makes no guarantee as to the pressure, quantity, quality or continuity of service, and shall not, under any circumstances, be held liable for loss or damage from a deficiency or failure in the supply of water whether caused by shutting off water in case of accident, or for alterations, extensions, connections or repairs or for any other cause of any kind or nature.

21. In the event of an emergency or other necessity, Batavia shall have the right to shut off or reduce the flow of water for such periods that it deems necessary.

22. In the event that Batavia deems it necessary to shut off or reduce the flow of water supply, Batavia shall provide Alabama with reasonable advance notice when possible. Batavia shall restore water supply as soon as practicable. In such cases, Alabama shall have the right to request that Batavia temporarily turn off its transmission main and Alabama shall be able to temporarily obtain water from another source, but only until such time as the restorative measures taken by Batavia have been inspected and approved by Batavia's Water Department.

23. If Batavia deems that there is a condition in the Water District that could contaminate the water supply, Batavia will notify Alabama, and Alabama will correct the condition as soon as practicable.

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Batavia may temporarily discontinue water service to the Water District until the necessary corrections have been made.

24. In the event that a water emergency is declared by Batavia, Batavia shall notify the Alabama Supervisor, and the Alabama Town Board shall declare a similar emergency with respect to all water supplied to customers within the Water District. Alabama shall duplicate any emergency measures taken by Batavia during such water emergency.

25. Alabama shall immediately notify Batavia of any information or complaints that it receives from customers within the Water District; as well as any problems or difficulties relating to the Facilities and the water distribution system.

26. There are no other Agreements or understandings, either oral or written, by and among the parties effecting this Agreement. No changes, addition or deletions of any portions of this Agreement shall be valid or binding upon the parties hereto, unless the same is approved in writing by the parties.

27. This Agreement may not be assigned by any party, in whole or in part, without the prior written consent of both parties.

28. This Agreement shall be binding upon and shall inure to the benefit of both of the parties hereto and their respective successors and permitted assigns.

29. This Agreement and any transactions by and between the parties hereunder shall be governed by, construed and interpreted in accordance with the Laws of the State of New York.

30. The parties shall execute such further instruments, documents or certificates as may be necessary or desirable to effectuate the purpose and intent of this Agreement.

31. No waiver of compliance with any provision or condition of this Agreement, and no consent provided for herein, shall be effective, unless evidenced by instrument in writing, duly executed by the parties sought to be charged therewith.

32. No failure on the part of either party to exercise and/or any delay in exercising any of its rights hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise by either party of any right preclude any other or future exercise thereof or the exercise of any other right.

33. All the rights and duties of the parties created by this Agreement shall survive with respect to the services performed prior to such terminations.

34. This Agreement may be executed in several counterparts, each of which shall be an original and all which shall constitute the same instrument herein.

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35. The term of this Agreement shall be for a period of forty (40) years, with the following provisions:

A. This Agreement may be terminated or extended upon a written instrument executed by both Towns.

B. This Agreement shall terminate on the effective date of any contract with any entity assuming operation of the Town of Batavia Water Supply System.

C. Alabama may terminate this Agreement upon at least 120 days prior written notice to Batavia. In the event that Batavia provides operation and maintenance services to Alabama water districts beyond the Water District, then Alabama must also terminate the services of Batavia for these additional areas in order to eliminate the possibility that there are any “gaps” in areas of water facilities for which Batavia is providing operation and maintenance.

D. Batavia may terminate this Agreement upon at least 120 days prior written notice to Alabama.

E. Upon termination of this agreement, master meters must be installed (if not already installed) by the Water District at no cost to the Town Batavia.

**[REST OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF** the parties have last signed this Agreement the day and year first written above.

TOWN OF BATAVIA

(SEAL)

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\_\_\_\_\_  
Gregory H. Post, Supervisor

TOWN OF ALABAMA

(SEAL)

\_\_\_\_\_  
Janet Sage, Supervisor

State of New York }  
County of Genesee }ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, personally appeared Gregory H. Post, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

State of New York }  
County of Genesee }ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, personally appeared Janet Sage, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**Abstract No. 4-2016:** Motion Deputy Supervisor Underhill, second Councilwoman White to authorize the Supervisor to pay the following vouchers:

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General	261,757.11
Highway	62,582.42
Sewer No. 1	49,477.93
Sewer No. 2	70,767.67
Water	53,785.40
Townline Joint Water Dist	2,344.40
Southwest Water Dist	110.00
Hwy Equipment	331.98
Saile Sewer	1,163.42
Sewer Capacity	75.06
Ellicott Trail	2,892.24
<b>Total</b>	<b>505,287.63</b>

Check numbers 20719 thru 20796

**Ayes:** Underhill, White, Michalak, Post, Zambito

**MOTION CARRIED** by unanimous vote (5-0)

**DEPARTMENT REPORTS:**

**The Supervisor reported on the following departments:**

**Building Inspector** –The Supervisor read the attached Building Inspector’s report.

**Highway**- The Supervisor read the attached Highway Superintendent’s report.

**Water/Wastewater**- Busy with maintenance, leak detection, inspections and flushing hydrants.

**Supervisor’s Report:**

**Status Report** on expenditures and revenues is available for the Board’s review.

**GAM**- meeting is tomorrow evening at 7:00 p.m. hosted by the Town of Oakfield at the Town of Oakfield Community Center

**NYS Environmental Facilities Corporation Grant**- Received notices from NYSEFC that the Town has been awarded a NYS Water Infrastructure Improvement Act (WIIA) Grant for the Kings Plaza Pump Station Improvements

**Work Session**- November 22, 2017 work session has been cancelled

**Status Report** on expenditures and revenues is available for the Board’s review.

**COMMUNICATIONS:**

**The Deputy Town Clerk reported on the following:**

**October Town Clerk** monthly report collected a total of \$12,520.94, remitted \$11,157.59 to the Supervisor for the Local Share.

**Card of Thanks**- Received a card from NYMIR thanking the Town for hosting the Distracted Driving Seminar on October 12.

**Electronic Collection**- Received notice from GLOW Region Solid Waste Management that there is an electronic waste collection on November 18 at the Rush Henrietta High School from 9:00 a.m. to 12:00 p.m.

**Town Clerk’s Office** will be closing at 4:30 p.m. on November 22, 2017 rather than 7:00 p.m.



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**ADJOURNMENT:**

Motion Councilwoman Michalak, second Deputy Supervisor Underhill to adjourn the Regular Town Board Meeting at 7:40 P.M.

**Ayes:** Michalak, Underhill, White, Post, Zambito

**MOTION CARRIED by unanimous vote (5-0)**

Respectfully submitted,

Sandra M Baubie  
Deputy Town Clerk