

**TOWN BOARD
TOWN OF OSSINING
OSSINING, NEW YORK**

**REGULAR MEETING
MAY 25, 2004
7:30 p.m.**

**POLICE/COURT
FACILITY
86-88 Spring Street**

I. CALL TO ORDER

The Regular Meeting of the Town Board of the Town of Ossining, Westchester County, New York, was held on May 25, 2004 in the Police/Court Facility, 86-88 Spring Street in Ossining. The meeting was called to order at 7:30 p.m. by Supervisor John Chervokas. Other members of the Board present were: Michael G. O'Connor, Francesca Connolly and Northern Wilcher. Councilmember Geoffrey Harter was absent. Also present were: Tom Beirne, Town Attorney and Mary Ann Roberts, Town Clerk.

II. COMMUNITY ANNOUNCEMENTS

Councilmember O'Connor announced the Memorial Day Weekend Schedule:

Sunday, May 30th, the Fire Department will hold its annual Memorial Fire Department Mass at St. Ann's as well as a service at the Trinity Church. Following the services, a breakfast will be held at the Joseph G. Caputo Community Center prior to going to the various cemeteries to honor the deceased fire fighters.

Monday, May 31st, the Central Committee will hold its annual Memorial Day Parade beginning at 9:30 a.m. at the corner of Calam Avenue and Croton Avenue and proceeding down to Nelson Park, where a short ceremony will begin at 10:45 a.m. with General Robert Yerks, a retired 3-Star General as the guest speaker. General Yerks' Uncle was killed in World War I.

Supervisor Chervokas announced that the Briarcliff Memorial Day Parade would be held on Monday, May 31, 2004 beginning at 12 noon.

III. TOWN BOARD RESOLUTIONS

A. Approval of Minutes – May 11, 2004

Councilmember Connolly moved and it was seconded by Councilmember O'Connor that the following be approved:

Resolved, that the Town Board of the Town of Ossining hereby approves the Minutes of the May 11, 2004 Regular Meeting as presented.

Motion Carried: Unanimously

B. Approval of Voucher Detail Report – May 25, 2004

Councilmember Connolly moved and it was seconded by Councilmember Wilcher that the following be approved:

Resolved, that the Town Board of the Town of Ossining hereby approves the Voucher Detail Report dated May 25, 2004 in the amount of \$196,595. 32

Motion Carried: Unanimously

C. Town Licenses – Fireworks Approval – St. Augustine’s Church

Councilmember O’Connor moved and it was seconded by Councilmember Connolly that the following be approved:

Whereas, the Church of St. Augustine, by letter dated May 7, 2004, has requested a permit from the Town of Ossining for a fireworks display to be held on the evenings of July 21st (rain date July 22nd) and July 25th, 2004; and

Whereas, the Church has submitted the information required by Section 101-5 of the Code of the Town of Ossining and Section 405(2) of the Penal Law of the State of New York; and

Whereas, the bond/insurance coverage submitted by the Church has been found by the Town Attorney to comply with the requirements of Section 101-6 of the Ossining Code and Section 405 of the State Penal Law; and

Whereas, the Fire Chief has made an inspection of the premises where the fireworks display will be held and reported that such display will not be hazardous to persons or property;

Now, Therefore, Be It Resolved, that the application of the Church of St. Augustine for a fireworks display on Wednesday, July 21st 2004 at 9:15 P.M. (rain date Thursday, July 22nd) and Sunday, July 25th at 9:15 P.M., is approved subject to the following conditions pursuant to Section 405(3) of the Penal Law:

- 1. The actual point at which the fireworks are to be fired shall be at least 200 feet from the nearest permanent building, public highway or railroad or other means of travel and at least 50 feet from the nearest above-ground telephone or telegraph line, tree or other overhead obstruction;**
- 2. The audience at such display shall be restrained behind lines at least 150 feet from the point at which the fireworks are discharged and only persons in active charge of the display shall be allowed inside these lines;**
- 3. All fireworks that fire a projectile shall be so set up that the projectile will go into the air as nearly as possible in a vertical direction, unless such fireworks are to be fired from the shore or a lake or other large body of water, in which case they may be directed in such manner that the falling residue from the deflagration will fall into such lake or body of water;**
- 4. Any fireworks that remain unfired after the display is concluded shall be immediately disposed of in a way safe for the particular type of fireworks remaining;**
- 5. No fireworks display shall be held during any wind storm in which the wind reaches a velocity of more than 30 miles per hour;**
- 6. All the persons in actual charge of firing the fireworks shall be over the age of 18 years, competent and physically fit for the task;**
- 7. There shall be at least 2 such operators consistently on duty during the discharge; and**
- 8. At least 2 soda acid or other approved type fire extinguishers of at least 2 and one-half gallons capacity each shall be kept at as widely separated points as possible within the actual area of the display; and it is further**

Resolved, that a copy of this Resolution duly certified by the Town Clerk of the Town of Ossining shall constitute a Permit meeting the requirements of the Code of the Town of Ossining and the Penal Law of the State of New York.

Motion Carried: Unanimously

**D. PROPOSED LITIGATION WITH CABLEVISION
ENGAGEMENT OF SPECIAL COUNSEL**

Councilmember O'Connor moved and it was seconded by Councilmember Wilcher that the following be approved:

WHEREAS, in or about October 2002, the Town Ossining entered into an Agreement authorizing the assignment of the Town of Ossining's Cable television franchise from Media One of New York, Inc. ("AT&T/MediaOne") to Cablevision of Boston, Inc. ("Cablevision") as part an Exchange of assets between the two companies (the "Exchange"); and

WHEREAS, AT&T/MediaOne remained liable to the Town of Ossining for any violations of its cable television franchise agreement with the Town of Ossining or uncured deficiencies in MediaOne's performance under the Franchise Agreement ("Claims") that existed or arose prior to the Exchange, including any those that may be disclosed in a franchise fee audit (the "Audit") to be performed by or on behalf of the Town after such assignment; and

WHEREAS, Cablevision agreed to indemnify the Town of Ossining in connection with any such Claims, including monetary or other compensation, in the event the Town of Ossining is unable to obtain satisfactory resolution of any Claims from AT&T/MediaOne; and

WHEREAS, a Consortium of Westchester municipalities was organized to, among other things, share the costs of the Audit, which Consortium is comprised of the Towns of New Castle, Mount Pleasant and Ossining and the Villages of Pleasantville and Ossining; and

WHEREAS, the Audit dated August 6, 2002, was prepared on behalf of the Consortium by Ashpaugh & Sculco, CPAs, PLC, which Audit disclosed franchise fees due the Consortium in the aggregate in excess of \$440,000.00; and

WHEREAS, despite its due diligence and good faith efforts, the Consortium has been unable to obtain a satisfactory resolution of the Claims with either AT&T/MediaOne or Cablevision; and

WHEREAS, Cablevision is presently seeking renewal of its cable television franchise with each of the Consortium members and nevertheless has failed to satisfy the outstanding Claims; and

WHEREAS, the Consortium has determined that it is necessary to take legal action to enforce Cablevision's obligation to indemnify the Consortium members relative to the Claims; including recovery of legal fees incurred by the Consortium in connection with enforcement of its indemnification claim; and

WHEREAS, the Consortium wishes to engage the law firm of Wormser, Kiely, Galef and Jacobs, LLP, which has heretofore been advising the Consortium on matters pertaining to the Claims as well as the franchise renewal process, to pursue such legal action; and

WHEREAS, in order for Wormser, Kiely, Galef & Jacobs, LLP to represent the Consortium in such legal action, each Consortium member must

take action (i) to authorize such firm to represent its interests as a member of the Consortium, recognizing that such firm will be representing each member's interest in the Consortium, and (ii) to pay its respective share of the legal fees, expenses and court costs of such litigation, while recognizing that Wormser, Kiely, Galef & Jacobs, LLP is the Town Attorney for the Town of New Castle and Village Counsel to the Village of Pleasantville.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Town Board hereby engages the firm of Wormser, Kiely, Galef & Jacobs, LLP (the "Firm") as special counsel to represent its interests as a member of the Consortium in all legal proceedings against Cablevision and, if necessary, AT&T/MediaOne, relative to the Claims, and pay the Town of Ossining's share of the legal fees, expenses and court costs (collectively, the "Litigation Costs") incurred in connection with such proceedings based upon the percentages stated below.
2. It is agreed and understood among the Consortium members and the Firm that the Firm will notify the Consortium members when such Litigation Costs reach an aggregate amount of \$20,000.00, at which time the Consortium members may decide to either discontinue the litigation, or continue the litigation remaining responsible for their share of the continuing Litigation Costs, and advise the firm in writing of their collective determinations in this regard.
3. The Consortium Members' respective shares of the Litigation Costs shall be as follows:

Town of New Castle	36.8%
Town of Mount Pleasant	25.7%
Town of Ossining	10.6%
Village of Pleasantville	9.1%
Village of Ossining	17.8%

Motion Carried: Unanimously

E. Finance – 2004 Budget Adjustment

Councilmember O'Connor moved and it was seconded by Councilmember Connolly that the following be approved:

Resolved, that the Town Board of the Town of Ossining hereby authorizes the following transfer of funds to the 2004 police department budget for the purchase of a phone messaging system.

From	Amount	To
20-3510-475 Animal Control	\$1,975	20-3120-201 Equipment

Motion Carried: Unanimously

F. Police Facility – General Construction

Councilmember O'Connor moved and it was seconded by Councilmember Connolly that the following be approved:

Resolved, that the Town Board of the Town of Ossining hereby authorizes the Supervisor to sign the following change orders with St. Francis Construction:

Door and hardware changes	\$3,570
Remove large boulder within building footprint	\$2,750

Motion Carried: Unanimously

IV. VISITOR RECOGNITION

Mr. Celloi, 36 Stormytown Road, questioned why the Town was paying for an error on the part of the Architect of the new Police Facility. The Supervisor stated that this would be brought to the attention of the Architect.

Bobby Williams, Spring Street, discussed the situation at the VA Hospital in Cortlandt. He also questioned whether there was a formal plan for affordable housing or senior assisted living. He also questioned what the Town's position is about being part of the pool which is proposed by the Village.

Supervisor Chervokas stated that he has not been approached by the Mayor regarding the pool at the Joseph G. Caputo Community Center. He also discussed the referendum regarding the pool at Cedar Lane Park which was resoundingly not approved. The Town Planning Board has been told to request developers with 5 – 8 units for at least 1 or 2 affordable units to be included.

Mary Prenon, Brooke Club Drive, and Director of GOTV, invited everyone to the Open House of GOTV which will be held at the Ossining High School Library on May 27th from 7 to 9 p.m. with Estelle Dashman as the Host. Mrs. Dashman is the widow of the founder of GOTV, Frank Dashman.

V. ADJOURNMENT

At 8:03 p.m., Councilmember O'Connor moved and it was seconded by Councilmember Wilcher that the meeting be adjourned.

Motion Carried: Unanimously

Approved:

**_____
Mary Ann Roberts, Town Clerk**