

A regular meeting of the Lysander Town Board was held at 7:00 p.m. on December 12, 2011 at 8220 Loop Road, Baldwinsville, New York.

MEMBERS PRESENT        Brian F. May, Deputy Supervisor  
                                 Arthur C. Levy, Councilor  
                                 Edward T. Reed, Councilor

MEMBERS ABSENT:        Barry W. Bullis, Supervisor  
                                 Jack F. Krisanda, Councilor

STAFF ATTENDING:       P. David Twichell, Town Attorney; Hugh Kimball, member of the Planning Board; Frank Costanzo; member of the Zoning Board of Appeals and Lisa Dell, Town Clerk.

OTHERS ATTENDING:     Joe Loffredo, PAC-B; John Salisbury, 97 W. Genesee Street; Jeff Dack, 8389 Twin Flowers Road; Billy Palmer, 104 Melvin Lane; Chris and Lynn Patrick, 8243 Ashington Drive; Fred Burtch, 8865 Plainville Road; Brian Licourt, 2166 Connell Terrace; Dennis Stimson, 3650 Cold Springs Road; Jim Stirushnik, 8961 Dinglehole Road; Kevin Rode, 6278 Mourning Dove; Bob Ellis, 8813 Wheaton Road; Melinda Shimer, 8 Elizabeth Street; Andy Reeves, Reeves Road; Tom Perkins, 3 MacArthur Road; Norm Ashbarry, 3128 Hidden Lake Drive; K.C. Pickard, 8 Appleridge Street; Dave Oney, 30 Church Street; Bob Dalton, Enterprise Fire Company, Phoenix, NY; Collin W. Gallagher, 8675 E. Mud Lake Road; Amy Franco, Clough Harbour & Associates; Michael Bryant, 3401 Van Wie East.

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**PUBLIC HEARING**  
**2012 WEST PHOENIX FIRE PROTECTION DISTRICT CONTRACT**  
**WITH ENTERPRISE FIRE COMPANY NO. 1 OF PHOENIX, N.Y. INC.**

**Proof of notice having been furnished, the Public Hearing on the Town of Lysander 2012 preliminary budget was called to order at 7:03 p.m.**

**Attorney Twichell** reported that he reviewed the contract and made revisions. **President Robert Dalton** was present at the hearing and Deputy Supervisor May asked Mr. Dalton if he had anything to add. **Deputy Supervisor May** said that there is an expense for a down payment for a new truck. **Mr. Dalton** stated he has not received the revised contract. **Attorney Twichell** informed Mr. Dalton he would be given a copy tonight.

**Deputy Supervisor May opened the floor for comments.**

**John Salisbury, 97 W. Genesee Street,** asked what the tax rate is in this district. **Deputy Supervisor May** reported it is \$0.9465 for 2012 and \$0.9037% for last year. There is an approximately \$4500.00 increase in the total budget.

**The Public Hearing closed at 7:05 p.m.**

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**PUBLIC HEARING**  
**2012 SMOKEY HOLLOW FIRE PROTECTION DISTRICT**  
**WITH BALDWINSVILLE VOLUNTEER FIRE COMPANY, INC.**

**Proof of notice having been furnished, the Public Hearing on the Town of Lysander 2012 preliminary budget was called to order at 7:05 p.m.**

**Attorney Twichell** reported he made revisions to the contract and has received it back from Baldwinsville Volunteer Fire Company, Inc. **Deputy Supervisor May** said the overall increase is about 2 percent and approximately \$6000.00 in total cost to the district.

**Deputy Supervisor May opened the floor for comments.**

**John Salisbury, 97 West Genesee Street,** asked what the rate increase was. **Tom Perkins,** representing the Fire Department, stated he did not have that information at this time and said the rate last year was approximately \$1.20. Mr. Perkins said that they kept it under the 2 percent cap even though their costs went up considerably, more than 2 percent.

**Billy Palmer, 104 Melvin Lane**, asked if there is anything going on for getting a fire house in the Smokey Hollow Fire Protection District.

**Tom Perkins** stated that they have a couple of sites and have land purchased. They have backed off the last two years on any building plans until they knew the outcome of a recent fire service study.

**Deputy Supervisor May** added that it is more than a study; it is an extraordinary effort by all the fire districts and fire departments to figure out the best way to move forward from dollar and sense standpoint. Everyone in public safety in that regard has been doing a good job responsibly taking a look at the future before making any giant decisions.

**The Public Hearing closed at 7:08 p.m.**

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**APPROVAL OF MINUTES**

**November 21, 2011**

**RES. #165/2011** Motion by Levy, Second by Reed

**RESOLVED** that the minutes from the regular Town Board meeting of November 21, 2011 be approved.

VOTE:

Deputy Supervisor May	Yes
Councilor Levy	Yes
Councilor Reed	Yes

**All Ayes, Motion carried and adopted.**

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**SCHEDULED CITIZENS' CONCERNS**

**None**

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**REPORTS**

**Town Clerk:**

**Town Clerk Lisa Dell** reported and reminded those present of the Fire District Elections for Commissioners to be held on December 13, 2011 from 6:00 pm to 9:00 pm for Cody, Belgium Cold Spring, Seneca River, Plainville and Lysander Fire Districts.

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**CITIZENS' COMMENTS ON AGENDA ITEMS**

**BUDGET TRANSFERS**

**Billy Palmer, Melvin Lane**, asked about the budget transfers listed in item G on the agenda. **Deputy Supervisor May** reported that the transfers do not involve any money being spent out of the fund balance or contingency account.

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**NY BUILDING, LLC V. TOWN OF LYSANDER, ET AL**  
**TAX CERTIORARI**  
**SETTLEMENT**

**Dennis Stimson, 3650 Cold Springs Road**, asked for the Board to explain item C, listed on the agenda.

**Attorney Twichell** explained that the taxpayer brings a lawsuit against the Town after the grievance procedure to challenge the assessment of what is fair market value of the property. The property was assessed at 2.4 million and the Grievance Board reduced it to 2 million. The owner claimed the property should be assessed at 1.675 million and a settlement was reached at 1.875 million. The Town Assessor and outside Attorney for the Town recommended the settlement. The Assessor agrees that confirming statistics/comparables are scarce, the

cost of defense, both legal and expert, substantially outweighs the continuation of this case to trial and no refund by the Town is required unless the 2012 tax is paid before settlement.

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**OLD BUSINESS**

**APPROVAL OF PLOWING AGREEMENT**  
**WITH**  
**ONONDAGA COUNTY**

**RES. #166/2011** Motion by Reed, Second by Levy

**RESOLVED** to authorize the Supervisor to sign the 2011/2012 Plowing Contract with Onondaga County subject to the approval of the Town Attorney.

VOTE:

Deputy Supervisor May	Yes
Councilor Levy	Yes
Councilor Reed	Yes

**All Ayes, Motion carried and adopted**

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**NEW BUSINESS**

**WEST PHOENIX FIRE PROTECTION DISTRICT**  
**APPROVAL OF CONTRACT**  
**WITH**  
**ENTERPRISE FIRE COMPANY**

**RES. #167/2011** Motion by Levy, Second by Reed

**RESOLVED** that the Supervisor be authorized to sign a one- year agreement with the Enterprise Fire Company No. 1 of Phoenix, N.Y. Inc. for fire protection services in the West Phoenix Fire Protection District in the amount of \$94,416.11, subject to the approval of the Town Attorney.

VOTE:

Deputy Supervisor May	Yes
Councilor Levy	Yes
Councilor Reed	Yes

**All Ayes, Motion carried and adopted**

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**SMOKEY HOLLOW FIRE PROTECTION DISTRICT**  
**APPROVAL OF AGREEMENT**  
**WITH**  
**BALDWINSVILLE VOLUNTEER FIRE COMPANY, INC.**

**RES. #168/2011** Motion by Levy, Second by Reed

**RESOLVED** that the Supervisor be authorized to sign a one-year agreement with the Baldwinsville Volunteer Fire Company, Inc. for fire protection services in the Smokey Hollow Fire Protection District in the amount of \$303,231.69, subject to the approval of the Town Attorney.

VOTE:

Deputy Supervisor May	Yes
Councilor Levy	Yes
Councilor Reed	Yes

**All Ayes, Motion carried and adopted**

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**NY BUILDING, LLC VS. TOWN OF LYSANDER**  
**APPROVAL OF TAX CERTIORARI SETTLEMENT**

**RES. #169/2011 Motion by Levy, Second by Reed**

**RESOLVED** that the Tax Certiorari settlement between NY Building, LLC and the Town of Lysander be approved.

**VOTE:**

Deputy Supervisor May	Yes
Councilor Levy	Yes
Councilor Reed	Yes

**All Ayes, Motion Carried and Adopted**

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**APPROVAL OF OCWA PERMIT  
INSTALLATION OF WATER MAIN  
THE TIMBERS, 1B, PHASE 4**

**RES. #170/2011 Motion by May, Second by Levy**

**RESOLVED** to approve the OCWA permit to install 245'± of 8" DICL water main at The Timbers, 1B, Phase 4, with no pavement to be cut, conditional upon approval of the Belgium Cold Spring Fire District.

**VOTE:**

Deputy Supervisor May	Yes
Councilor Levy	Yes
Councilor Reed	Yes

**All Ayes, Motion Carried and Adopted**

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**RESOLUTION TO AMEND AND RESTATE THE MODEL PLAN**

**RES. #171/2011 Motion by Levy, Second by Reed**

**WHEREAS**, the New York State Deferred Compensation Board (the "*Board*"), pursuant to Section 5 of the New York State Finance Law ("*Section 5*") and the Regulations of the New York State Deferred Compensation Board (the "*Regulations*"), has promulgated the Plan Document of the Deferred Compensation Plan for Employees of the Town of Lysander (the "*Model Plan*") and offers the Model Plan for adoption by local employers;

**WHEREAS**, Town of Lysander], pursuant to Section 5 and the Regulations, has adopted and currently administers the Model Plan known as the Deferred Compensation Plan for Employees of Town of Lysander;

**WHEREAS**, effective August 26, 2011 the Board amended the Model Plan to adopt provisions

- Reorganizing and updating sections to improve the overall readability and eliminate unnecessary numerical references (annual limits) from the Model Plan document.
- Including employer elections within the plan document including: suspension of deferrals following an unforeseeable emergency withdrawal, automatic distributions from small and inactive accounts, loan design parameters and Roth deferrals and in-plan conversions are permissive. The Model Plan document includes a Schedule A where the employer may indicate the election of one or more of these provisions.
- Clarifying the first date a participant may make deferrals in compliance with Code Section 457(b) and timing requirements for any subsequent changes to deferral rates or allocations between pre-tax and after-tax deferrals.
- Clarifying compensation available for deferral for purposes of calculating contributions and recognizes that employers use various methods in determining the order of deductions taken before a deferral percentage is applied.
- Including provisions related to HEART Act of 2008 regarding treatment of differential pay and qualifying distributions for active military service in compliance with the HEART Act, including suspension of deferrals for six months following distribution.

- Making technical recognition of the waiver of RMDs for 2009.
- Clarifying that a beneficiary form must be received in good order to be considered valid.
- Clarifying that the Model Plan will only accept rollovers from Eligible Retirement Plans comprised of pre-tax amounts and amounts may be rolled in by participants, beneficiaries (other than inherited accounts) and alternate payees. Model Plans may roll account balances out to Eligible Retirement Plans that include post-tax amounts if the receiving plan separately accounts for them.
- Clarifying that a beneficiary of a deceased participant may roll a distribution directly to a Roth IRA, in addition to plan participants.
- Including language allowing for future delivery of participant communications through electronic means, where appropriate.
- Codifying that periodic and lump sum payments must be a minimum of \$100 per payment, unless the Committee selects a different minimum, and sets a maximum annual number of partial distributions.
- Clarifying that the \$50,000 loan limit includes the highest loan value in the last twelve months from the Model Plan and other employer plans. Regarding participants who have defaulted on a Plan loan, subsequent loans would not be allowed until defaulted loan is repaid. Removes requirement that a participant must wait until the term of the original loan expires before applying for a new loan, assuming the defaulted loan is repaid.
- Providing guidance on the handling of the receipt of special proceeds such as SEC settlements payable to former participants.
- Allowing a surviving spouse beneficiary to name a beneficiary on their account.
- Including the 5 year option for non-spousal beneficiaries to receive distributions and makes distribution rules consistent for pre- and post-age 70½ deaths.
- Allowing earlier distributions due to severance of employment as long as a balance of \$500 remains in the account for 45 days after a severance from employment.
- Providing that outstanding loans from another New York state 457(b) plan may be allowed to be transferred or rolled in with a full account transfer.
- Removing the Power of Attorney Language since the acceptance of a power of attorney is governed by State law and not required in the Model Plan document.
- Clarifying the requirement that Committee actions must be taken at a public meeting in accordance with Article 7 of the Public Officers Law.
- Limiting indemnification to Committee Members only.

**WHEREAS**, the Board has offered for adoption the amended and restated Model Plan to each Model Plan sponsored by a local employer in accordance with the Regulations; and

**WHEREAS**, upon due deliberation, Town of Lysander has concluded that it is prudent and appropriate to amend the Deferred Compensation Plan for Employees of Town of Lysander by adopting the amended Model Plan.

**NOW, THEREFORE, BE IT RESOLVED**, that The Town of Lysander hereby amends the Deferred Compensation Plan for Employees of the Town of Lysander by adopting the amended Model Plan effective August 26, 2011, including the optional provisions in Schedule A, in the form attached hereto as Exhibit A.

**VOTE:**

Deputy Supervisor May	Yes
Councilor Levy	Yes
Councilor Reed	Yes

**All Ayes, Motion Carried and Adopted**

**LYSANDER PARK RESTROOM RENOVATION PROJECT**  
**APPROVAL OF PAYMENT NO. 1 – CONTRACT NO. 1**

**RES. #172/2011 Motion by Reed, Second by Levy**

**RESOLVED** that Payment No. 1 for Contract No. 1- General construction for the Lysander Park Restroom Renovations be made to McGinnis Nelson Construction in the amount of \$28,737.50 for work performed through November 11, 2011, pursuant to the Town Engineers recommendation.

**VOTE:**

Deputy Supervisor May	Yes
Councilor Levy	Yes
Councilor Reed	Yes

**All Ayes, Motion Carried and Adopted**

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**APPROVAL OF 2011 BUDGET TRANSFERS**

**RES. #173/2011 Motion by May, Second by Levy**

**RESOLVED** that the attached budget transfers be made to the 2011 budget in accordance with the Town Comptroller's recommendations.

**VOTE:**

Deputy Supervisor May	Yes
Councilor Levy	Yes
Councilor Reed	Yes

**All Ayes, Motion Carried and Adopted**

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**APPROVAL OF TEMPORARY WORK EASEMENT**  
**2187 WEST GENESEE ROAD**

**RES. #174/2011 Motion by Levy, Second by Reed**

**RESOLVED** that the Supervisor be authorized to sign a temporary working easement agreement with Sue Ellen Kerschenheiter, 2187 West Genesee Rd. for Force Main Construction for the Whispering Oaks Sewer District contract No. 2.

**VOTE:**

Deputy Supervisor May	Yes
Councilor Levy	Yes
Councilor Reed	Yes

**All Ayes, Motion Carried and Adopted**

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**APPROVAL TO REFER ZONE CHANGE APPLICATION TO PLANNING BOARD**  
**FROM JOSEPH E. ALBERICI, SR.**

**RES. #175/2011 Motion by May, Second by Reed**

**RESOLVED** to refer the application for a Zone Change from Joseph E. Alberici, Sr. for tax parcel No. 58.-06-09.2 to the Lysander Planning Board for its recommendation.

**VOTE:**

Deputy Supervisor May	Yes
Councilor Levy	Yes
Councilor Reed	Yes

**All Ayes, Motion Carried and Adopted**

**Amy Franco, Clough Harbour & Associates, representing Joseph E. Alberici, Sr.**, made a presentation to the Board with a map and photograph of the architecture of the building on a 5 acre parcel at the front of Route 31 and Aspen Springs Road. It is currently zoned PUD, industrial and the developer would like to do a PUD apartments. They are proposing to build 3 apartment buildings with 18 apartments in each with all the associated site amenities such as parking, sidewalks, landscaping and modifying the existing storm water pond in the front to be able to accommodate the associated storm water. They will modify it by adding an additional four bay.

**Attorney Twichell** advised the Board that the petition for change of zone by Clough Harbour & Associates was submitted on behalf of Mr. Alberici and was received by the Supervisor's Office on November 21, 2011. He has spoken with James Thrasher at Clough Harbour about this and this piece of property was added to Radisson PUD some years ago. It is on the Radisson land use map as industrial property. Apartments are not permitted in industrial property. In order to do what the developer wants to do, he believes that there may be two steps involved. The first step is to complete a zone change application which they have made under the Town's zoning law. The other aspect of this that he has discussed with Clough Harbour is the fact that this is in the industrial park in the Radisson community. The Empire State Development Corporation (ESDC) also has a separate set of hoops that they have to jump through in order to change the General Project Plan adding there are quite a few procedures that have to be taken. He does not recommend that the Board set a public hearing to consider a zone change and at this point all the Town Board can do is to refer it to the Town's Planning Board. Attorney Twichell said he told Mr. Thrasher that he needs to get something in writing from the ESDC as to what they plan to do because that process should probably be taken first along with whatever process the Town is going to proceed with.

**Ms. Franco** advised that Mr. Thrasher had met with a representative of ESDC and just for the Town's behalf will submit something in writing. **Attorney Twichell** provided documents to Ms. Franco that explains the ESDC's process for zone changes.

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**TOWN JUSTICE ELECT**  
**CHARLES J. MANTIONE JR.**  
**APPROVAL TO AUTHORIZE OPENING OF BANK ACCOUNTS**

**RES. #176/2011 Motion by May, Second by Levy**

**RESOLVED** that Town Justice Elect Charles J. Mantione Jr. be authorized to open a Bail Account and a Fine Account with M & T Bank with the condition that deposits or withdrawals not be made until such time as he officially assumes office on January 1, 2012.

**VOTE:**

Deputy Supervisor May	Yes
Councilor Levy	Yes
Councilor Reed	Yes

**All Ayes, Motion Carried and Adopted**

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**WHISPER RIDGE SUBDIVISION**  
**LETTER OF CREDIT**

**RES. #177/2011 Motion by Levy, Second by Reed**

**RESOLVED** to authorize the Supervisor and Town Attorney to take the necessary steps to draw on Letter of Credit No. 428732 for the Whisper Ridge Subdivision, if it is not renewed.

**VOTE:**

Deputy Supervisor May	Yes
Councilor Levy	Yes
Councilor Reed	Yes

**All Ayes, Motion Carried and Adopted**

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**OTHER BUSINESS**

**None**

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**RECOGNITION OF CITIZENS**

**TOWN OF LYSANDER**  
**2012 ORGANIZATIONAL MEETING**

**John Salisbury, W. Genesee Street, (Newly Elected Town of Lysander Supervisor)** announced to the audience that the Organization Meeting for 2012 will be on Tuesday, January 3, 2012 at 7:00 pm at the Lysander Town Hall. The first regular meeting of the Board will follow the organizational meeting that night and the second regular meeting of 2012 will be on Monday, January 23, 2011. Mr. Salisbury said that he plans to adopt the meeting schedule for 2012 at the organizational meeting.

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**RESIGNATION**

**Andy Reeves, 997 Reeves Road,** asked Deputy Supervisor May the effective date of his resignation. (**Deputy Supervisor May was recently elected as Onondaga County Legislature 1<sup>st</sup> District, effective January 1, 2012.**) **Deputy Supervisor May** stated it is December 31, 2011. **Mr. Reeves** thanked Deputy Supervisor May for all his service to the Town and wished him the best of luck when he goes to the County.

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**TRANSFER OF DEVELOPMENT RIGHTS PROGRAM**

**Melinda Shimer, 8 Elizabeth Street,** asked why the Town Engineering Firm has approached the Chairman of the Onondaga County Farm Land Preservation Committee and asked for an emergency meeting before December 22, 2011 to approve the TDR so it can be on the meeting for public hearing and Board approval. The current incoming administration has some issues with this and they are meeting with Barton and Loguidice and NYS Agriculture and Markets about those issues. **Deputy Supervisor May** said he did not know and asked the rest of the Board, including Attorney Twichell, and they acknowledged that they were not aware.

**Tina Winkler, Warriors Path,** asked the Board if any of the Board were aware of this emergency meeting.

**Deputy Supervisor May** explained that this was already asked and answered; reiterating that he was not aware of any meeting and the rest of the Board said they were not aware.

**Andy Reeves, Reeves Road,** asked the Board if they have any plans, or would they consider it, if that was on the agenda, having a public hearing and voting on it before the end of this year. **Deputy Supervisor May** explained that there are a lot of moving parts regarding the program. One example is that in order to recover funds from grants, a public hearing has to be held to pass a resolution that the Town would like to recover the money that has been spent. That may come on the next agenda, it may not, he does not know.

**Mr. Reeves** said that the incoming administration is looking at it and isn't set one way or the other. They are getting a lot of information on it and a meeting is set for tomorrow with Agriculture and Markets. The Town Engineer contacted the Chairman of the Land Preservation Committee last Thursday, who happens to be his brother, and asked if he could have an emergency meeting of their committee before the 22<sup>nd</sup> of December and approve this TDR so that the Town Board would have time to have a public hearing here on the 29<sup>th</sup> of December and approve it. Mr. Reeves said he wants to know if anyone on this Board knows of this happening.

**Deputy Supervisor May** replied that that question has been answered a couple of times tonight already. **Deputy Supervisor May,** stated, speaking for himself, knowing Mr. Reeves sentiments towards the program, he would not be inclined to take action on the TDR program but cannot speak for the other Board members.

**Attorney Twichell** added that if there was going to be a public hearing before the end of this year the Board would have had to adopt a resolution tonight to advertise for it. There would have to be publication in the newspaper and if it does not get adopted tonight, and it was not on the agenda, chances are there is not going to be a public hearing.

**Deputy Supervisor May** said that generally speaking, this Board is trying to do right through the transition process and **Mr. Reeves** said he agrees.

**John Salisbury** added that he does not know how you can have a public hearing without setting one. They appreciate what has been done through this transition and it has made it much easier for them to come in and take office on January 1, 2012 and he expressed his thanks for that.

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**ALBERICI ZONE CHANGE APPLICATION**  
**ASPEN SPRINGS DRIVE**

**Fred Burch, Plainville Road**, reminded the Board of previous flooding issues with the pond at Aspen Springs and the bypass.

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**ADJOURNMENT**

**Deputy Supervisor May wished everyone a Merry Christmas and happy holiday season.**

As there was no further business, at 7:42 p.m., the Deputy Supervisor adjourned the meeting to 7:00 p.m. on December 29, 2011. There was no dissent.

This is a true and complete recording  
of the action taken at this meeting.

Lisa Dell, Town Clerk