

A Work Session of the Town Board of the Town of Clarence was held on Wednesday, May 2, 2012, at Clarence Town Hall, One Town Place, Clarence, New York.

Supervisor David Hartzell called the meeting to order at 9:00 A.M. Members of the Town Board present were Councilmember's Bernard Kolber, Peter DiCostanzo and Robert Geiger. Other Town officials present were Deputy Supervisor Kathleen Hallock, Town Attorney Lawrence Meckler, Confidential Secretary to the Supervisor Karen Jurek, Director of Administration and Finance Pam Smith and Deputy Town Attorney Steven Bengart.

**Floss Agency – Joseph Floss/NYMIR – Karen Buckley**

NYMIR representative Karen Buckley presented a check in the amount of \$14,600 representing the final installment of repayment of a capitalization charge that the Town had paid in full in 2006. It is a five year capital contribution which the town decided to pay all at once to receive a discount.

NYMIR recently had a claim where an unsafe building was taken down and it was not covered because it was considered an intentional act. NYMIR has now added an endorsement for the removal of unsafe buildings. They recently added replacement cost for police/security vehicles. Every other insurance company gives you actual cash value.

Ms. Buckley stated that NYMIR has put a lot of their resources into new training. Currently the town is not utilizing the training that NYMIR offers. Their on-line university includes training for Planning and Zoning - it fulfills the four hours that the state mandates Zoning Board members have. The State recognizes NYMIR's training and a certificate is provided once the training is complete. There is Parks and Recreation training. There are interviews with attorneys that talk about some of the exposures that you have with the recreation programs. Playground inspection - there is a loss control person looking at a playground and talking about the different things you should be looking for, the importance of keeping maintenance records in case you have a claim. There is a defensive driving course (\$19 per person) which can give you point reduction off of your license and also 10% discount on your personal insurance. This is a six hour course that can be taken in increments to complete. The latest topic is about Crime and Fidelity. The training gives you internal procedures; NYMIR recommends municipalities put in place in order to deter internal embezzlement. NYMIR did not insure the town for crime loss in the past, they can do it now and would like to train and make sure the town is avoiding liability on that side of the coverage.

NYMIR covers 660 municipalities. They only insure cities, towns, villages and counties; they do not insure any special districts. NYMIR has taken a price decrease for the last five years; they have not taken an increase in over a decade.

Joe Floss previously met with Councilman Geiger to go over all the town policies and claims. Not everything is with NYMIR. The Town has a crime policy with The Hartford and In-land Marine with Liberty and Peerless because at the time that what was best for the town. NYMIR is a fully regulated insurance company owned by its subscribers.

Supervisor Hartzell introduced Amherst Council members Barbara Nuchereno and Mark Manna.

**LOSAP – Floss Insurance Agency Joseph Floss/VFIS Dave Wyrwas & Kathy Sibol,**

Joe Floss stated that he likes to meet with the Board on an annual basis to review how LOSAP is working. They will also meet with the volunteer fire men tonight, this will give them an opportunity to ask any questions and address any of their concerns.

The Town of Clarence is the LOSAP sponsor for Harris Hill, Swormville, East Amherst and Clarence Center VFC Length of Service Award Program. The Town has been with VFIS since plan inception. Joe Floss is the Town's insurance agent and liaison with the VFIS office.

VFIS representative Dave Wyrwas stated that the Town pays an administrative fee to VFIS to do all the paperwork for the four plans. If the town shopped the service fee, the cost for the four plans is roughly one-half the cost of one plan with competing vendors. The Town Board made a decision to go with a group annuity contract-it is a fixed type investment. You will never get a 30% - 40% rate of return but you will never lose a penny. When the rate of interest goes down, the funding status goes down.

The Towns plan has post entitlement – if people stay after the retirement age and earn benefits, the town is paying them for the extra time – there are two ways to do this. You can pay as you go or you can put money away today in anticipation of a 40 year old male working past age 65. By prepaying that based on assumptions, you are trying to keep your costs level. If you pay as you go, you pay a single chunk of money for all the people who have earned it. By paying in advance, it will lower the funding status because it is making assumptions. The person who would have a \$200 benefit at age 65 would have a \$300 benefit at age 70. This could show a lower funding standard.

As the investment climate has decreased over the years, the assumed rate of interest has lowered. As the rate of interest goes down, the funding status goes down. VFIS will continue to lower the interest rate to more closely mirror the experience of our plan over a five or ten year period. Mr. Wyrwas stated that they are not worried about the funding status because these plans are “active and dynamic.” They are very comfortable with their actuary because they are extremely conservative.

VFIS charges a flat annual fee for administrative services, there is a per participant fee as well. The flat fee is an inclusive fee – basically everything they do for the town is included in that fee.

A hand-out was distributed showing Actuarial Funding Ratio and Interest Assumption and Amortization Balance. Kathy Sibol stated that all plan’s absorbed the cost of Retrospective Post Entitlement Benefits to be amortized over three years effective 2011. Swormville VFD interest assumption reduced from 6.0% to 4.75%. Harris Hill and Clarence Center VFD interest assumption reduced from 5.0% to 4.75% and East Amherst VFD interest assumption reduced from 5.25% to 4.75%. The ratios are determined by each Plan’s set of actuarial assumptions, benefit specifications and roster of liabilities as of the 2011 actuarial valuation.

If the towns’ finances allow, you can accelerate the funding of these plans for whatever amount you want and it would be considered an excess contribution to the plan. The only downside is that once the assets are in LOSAP, they cannot be taken out for other purposes unless every liability of LOSAP is taken care of.

When the plan started, the Town made a promise to pick up five years of past service. Three plans (Clarence Center, Harris Hill and Swormville) paid off their frozen initial liability. East Amherst was reset in 2003 when the entitlement age was dropped to age 55.

VFIS has been gradually trying to reduce the interest assumptions through the years as they saw fit without a dramatic drop which would affect the town’s budget and taxpayers. The plans are certified annually by an enrolled actuarial service that is independent from VFIS. VFIS takes their advice year to year on what they should do as far as adjustments.

Through the years there have been some amendments to the plans, there was some inconsistency with benefits provided by the various plans but they are now very much in line with each other except for East Amherst which has an entitlement age of 55, benefits are due for a much longer duration. They commence at age 55 so they are more costly. All other plans have entitlement age of 62, \$20 per year of service and a 30 year maximum benefit. There is a \$25,000 life insurance death benefit for all insured participants except Clarence Center which has a \$10,000 life insurance death benefit. Originally, Clarence Center did not have VFIS as their plan administrator, they came aboard in 1995.

Investment results should be measured against established benchmarks of similar investments. Group Annuity Contract offers guarantee of principal and interest (you cannot lose one penny from what was put in and you are guaranteed an interest rate of no less than 3%), the current rate of return is 3.75%,

there is no investment windows (you can put contributions in any time you want and they can be taken out any time for benefit distributions without trying to match them to an investment), book value benefit distribution and no additional fees or charges for deposit, withdrawal or distribution activity.

Dave Wyrwas stated that the VFIS Plan is actuarially sound and the funding stream is going to meet the obligation the town has with its members.

Joseph Floss stated that there are two unique situations with both Swormville and East Amherst VFC; they both have fire protection districts in the Town of Clarence and the Town of Amherst. In 1991 there were discussions on how to handle this. At that time the East Amherst Fire Chief submitted a letter stated that they wanted to be included in the Town of Clarence plan. There was a joint service agreement signed for VFIS by former Amherst Supervisor Ward and former Clarence Supervisor Grenzebach. That is how that came about, while East Amherst is physically located in the Town of Amherst but has a fire protection district in the Town of Clarence they opted to join Clarence plan rather than the Town of Amherst plan. Joseph Floss stated that he appreciates Amherst Council members being present at today's meeting and encourages any questions of the plan and the administration because they have a vested interest in how East Amherst and Swormville are vested, how they are run and if they are serviced properly.

Amherst Councilman Mark Manna stated that as he has previously requested from the former Supervisor and most recently with Supervisor Hartzell, he would like to form a joint committee to look at how we can manage differently the assets in Swormville and East Amherst especially when Amherst pays 2/3 of the costs and Amherst has no say in how the program is managed. The Amherst Town Board passed a resolution several months ago to form a committee and they are ready when the Town of Clarence forms a committee to look at how this can be managed differently.

Councilman DiCostanzo stated that in the past Joseph Floss reviewed the town's insurance policies/claims annually with the liaison and thought it would be a good idea for Mr. Floss to sit down with the entire Town Board. Mr. Floss put together a binder for Councilman Geiger (insurance liaison) and would be happy to duplicate it for the entire Town Board to review each year. It is important that the entire Town Board be engaged in what is happening with the towns insurance. If the Town Board would like a quarterly review of our loss runs, coverage's or situations that Mr. Floss may be working with the Town Attorney on he would be happy to do so. The Town Board was in agreement with this. Supervisor Hartzell suggested the June 6<sup>th</sup> morning Work Session. Mr. Floss will check his schedule and get back to Supervisor Hartzell.

Councilman Casilio arrived at 10:05 AM.

Part of the investment vehicle for the VFIS plan includes a life insurance policy. In 1991 when the plan was presented, there was no option but permanent life insurance. When a member reaches entitlement age, that cost ends at age 62 even if they continue to be active. They are offered the opportunity to take that permanent life insurance policy with them stripped of its cash value. There are options available today to reduce LOSAP costs.

Motion by Councilman Casilio, seconded by Councilman Kolber to enter into Executive Session pursuant to § 105(1)E of the Open Meetings Law to discuss employment history or a particular person/corporation. On the question, Councilman Casilio had an Attorney-Client item to discuss as well. Upon roll call – Ayes: All; Noes: None. Motion carried.

The Work Session reconvened at 11:00 AM

**Lumsden & McCormick LLP/Certified Public Accountants – Sara Dayton CPA/Mary Young**

Sara Dayton met with the Audit Committee last week for approximately one hour. She provided the Town Board with the presentation she gave the Audit Committee. Included in the presentation were the CPA opinions on the Financial Statements. Government Financial Statements are very long so the information was condensed to make it more readable. There are two other reports included as well.

The Town received federal funding in excess of \$500,000. this year, because of that, Lumsden & McCormick was required to do a report in accordance with government auditing standards also known as Yellow Book Standards as well as one in accordance with Office of Management and Budget. There is one matter in the Yellow Book Report that Lumsden & McCormick is required to tell the Town Board that they prepare the financial statements. They take the information from Director of Administration and Finance Pam Smith and put it into the financial statements.

The Town received \$612,000 in Federal Funds from the US Department of Energy that flowed through NYSERDA for solar panels for Highway, Senior Center and Clarence Public Library. The auditor is required to test 50% of those expenditures received under the grants. One of the grants (for the highway and library solar panels) was 64% of the expenditures so they tested that one. The expenditures were in accordance with all the requirements of federal funding and federal expenditures; there were no issues with any of that.

Lumsden & McCormick issued an agreed upon procedures report on the Town Justice activity. The only issue was a couple of late reports, nothing major. There were no issues as far as cash coming in and being remitted.

The Annual Update Document was prepared and submitted to the state electronically, it was due May 1<sup>st</sup>. Pam Smith will receive an electronic copy via e-mail. These are basically financial statements and some additional information relative to them.

Total assets in 2011 \$125,202,000. up from \$118,833,000 in 2010. Current and other assets remained consistent \$14,191,000 up from \$14,286,000 in 2010, this is primarily cash. Capital assets \$11,011,000 up from \$104,547,000 in 2010. Capital assets increased as a result of continue construction projects, such as Mile Road Bridge as well as land purchases on Rapids Road and Harris Hill Road. The Town also received contributed land, roads and sewer lines, primarily as a result of new residential development amounting to almost \$4.5million.

Total liabilities were consistent with 2010 with an increase of \$55,000 or 0.3%. The increase is due to the issuance of \$1,820,000 in bond anticipation notes and an increase in the other postemployment benefits liability of \$255,000 offset by \$397,000 of redeemed bond anticipation notes, \$1,200,000 in bond principal payments and a decrease in the compensated absences liability of \$367,000.

Total net assets increased \$103,394,000 vs. \$97,080,000 in 2010.

The main sources of revenue to support the Town's programs are real property taxes and non-property taxes. Real property taxes increased by \$311,000 or 3.0% compared to 2010. Sales tax revenue increased by \$692,000 of 14.5% over the 2010 amount due to an increase in the Town's population as recorded in the 2010 census allocating more money to the town. The increase in operating and capital grants and contributions of \$5,019,000 is a result of donated land, roads and sewer lines.

Total fund balances for the governmental funds decreased from \$5,206,000 to \$3,976,000.

General Fund expenditures increased by \$283,000 or 3.0% in 2011 with the largest increase in employee benefit expenses of \$159,000 or 9.0%. This increase is attributable to increases in the required contribution rates for the NYS Employees Retirement System.

GASB Statement No. 54 Fund Balance Reporting and Governmental Fund Type Definitions were effective for the Town's financial statements for the year ended December 31, 2011. GASB 54 requires that special revenue funds have a specific and substantial ongoing revenue source that is restricted for that fund's purpose. If a fund does not meet that definition, its activity should be included in the general fund. Upon review of the Town's funds, it is recommended that the wastewater fund be closed and balances moved to the general fund.

Several recommendations were suggested for segregation of duties and internal controls however may not be doable based on staffing and the number of people in a department.

Lumsden & McCormik looked at different areas within the audit as required. They did a lot of testing, making sure the building fee amount charged corresponded with the rates the Town Board set. Credit Card transactions were reviewed as well as retiree payments to be sure retirees were paying the portion of health insurance that they are supposed to be paying and paying timely as well. They also looked at the sale of surplus equipment – making sure it was published and the people coming in to pay paid the proper amount and it was credited to the proper account. There were no issues with any of the testing's. They checked random disbursements throughout the year and focus on vendor names that might be unusual and again there were no issues with any of that. The Auditors stated that they worked very closely with Director of Administration and Finance Pam Smith however they report to the Town Board and if they need anything further, they can be contacted directly.

Motion by Councilman DiCostanzo, seconded by Councilman Kolber to accept the Financial Statements and Auditors Report as presented. Upon roll call - Ayes: All; Noes: None. Motion carried.

Parks Crew Chief James Burkard stated that the sprinkler system in the Clubhouse is charged and running however, there is a water leak.

Motion by Councilman Casilio, seconded by Councilman DiCostanzo to enter into Executive Session pursuant to § 105(1)C of the Open Meetings Law to discuss information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed. Upon roll call – Ayes: All; Noes: None. Motion carried.

There being no further business, the Work Session adjourned at 11:34 A.M.

Darcy A. Snyder  
Deputy Town Clerk

Motion by Councilman Kolber, seconded by Councilman Casilio to adjourn the Executive Session at 11:45 AM. Upon roll call – Ayes: All; Noes: None. Motion carried.