

**Town of Elba
Regular Town Board Meeting
November 8, 2018**

Supervisor Hynes called the meeting to order at 7:00 p.m.

Those in attendance included:

Supervisor Hynes
Councilman Chamberlain
Councilman Coughlin
Councilwoman Marshall
Councilwoman Zambito

Others Present:

Town Clerk Werth
Superintendent of Highways Yungfleisch
Jacob Monacelli, Airosmith Development

Public Hearing Local Law #2 of 2018 – Override Tax Levy Limit – The Supervisor called the Public Hearing to Order for Local Law #2 of 2018 – Override Tax Levy Limit at 7:00 P.M. - Minutes for public hearing entered separately.

Public Hearing 2019 Annual Town Budget – The Supervisor called the Public Hearing to Order for 2019 Annual Town Budget at 7:05 P.M. - Minutes for public hearing entered separately.

Public Hearing Lease Agreement Between the Town of Elba and Blue Sky Towers II, LLC – The Supervisor called the Public Hearing to Order for Lease Agreement Between the Town of Elba and Blue Sky Towers II, LLC at 7:10 P.M. - Minutes for public hearing entered separately.

Minutes of October 11, 2018 Town Board Meeting:

MOTION Councilman Chamberlain, second by Councilman Coughlin to approve the minutes as written.

Ayes: Chamberlain, Coughlin, Hynes, Marshall, Zambito

MOTION Carried

RESOLUTION NO. 36-2018:

Supervisor Hynes offered the following:

**RESOLUTION ADOPTING LOCAL LAW No. 2 of 2018 TO OVERRIDE
THE TAX LEVY LIMIT ESTABLISHED IN GENERAL MUNICIPAL LAW §3-c**

WHEREAS, proposed Local Law No. 2 of 2018 of the Town of Elba entitled “Local Law to Override the Tax Levy Limit Established in General Municipal Law §3-c”, which proposed Local Law in its final form was presented to the Town Board at the meeting held October 11, 2018, and a copy thereof was kept with the Town Clerk and copies provided to Town Board Members at said meeting; and

WHEREAS, a public hearing on the advisability of enacting said proposed Local Law was held on November 8, 2018, 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, the Town Board of the Town of Elba, New York is of the opinion that adoption of said proposed Local Law No. 2 of 2018 is in the best interest of the Town of Elba, New York.

NOW, THEREFORE, BE IT RESOLVED, by the Town Board of the Town of Elba, New York that said proposed Local Law No. 2 of 2018 entitled “Override the Tax Levy Limit Established in General Municipal Law §3-c” be and the same hereby is adopted; and

BE IT FURTHER RESOLVED, that a certified copy of said Local Law No 2 of 2018 be filed with the New York State Secretary of State in accordance with the Law

Second by: Councilwoman Zambito

Ayes: Chamberlain, Coughlin, Hynes, Marshall, Zambito

APPROVED by unanimous vote (5-0)

RESOLUTION #37-2018:

Councilman Chamberlain offered the following:

ADOPTION OF 2019 TOWN ANNUAL BUDGET

WHEREAS, the Elba Town Board hereby adopts the Town Budget for 2019; and be it further

NOW, THEREFORE, BE IT RESOLVED, that the Town Board approves the budget as prepared with a copy attached hereto.

Second by: Councilman Coughlin

Ayes: Chamberlain, Coughlin, Hynes, Marshall, Zambito

APPROVED by unanimous vote (5-0)

RESOLUTION #38-2018:

Councilman Coughlin offered the following:

**AUTHORIZE LEASE FOR COMMUNICATIONS FACILITY
ON TOWN PROPERTY WITH BLUE SKY TOWERS II, LLC**

WHEREAS, Blue Sky Towers II, LLC (“Blue Sky”) proposed to construct a communications facility and install antennas on a tower located on property to be leased from the Town of Elba (the “Town”), pursuant to that certain Lease Agreement (the “Lease”), on property located on Hundredmark Road, Town of Elba, County of Genesee, State of New York, as shown on the Tax Map of the Town of Elba as Tax Map Number 14.-2-18.1 (the “Project”); and

WHEREAS, the representatives of Blue Sky have met with the Town and thoroughly reviewed the Project and the Lease and;

WHEREAS, the Town Board (the “Board”) is fully familiar with the proposed location and the surrounding area, the terms and conditions of the proposed Lease and the benefits to the public which will result from the improved wireless service; and

WHEREAS, proceeding with the Lease is in the best interests of the Town and will serve important Town purposes, including enabling emergency services, businesses and individuals to have access to adequate, reliable, modern wireless communications services to relevant portions of the Town, and

WHEREAS, because the Lease and the Project will serve important Town and public purposes, they do not require local municipal zoning approval; and

WHEREAS, the lease premises are not needed for any other public purpose; and

WHEREAS, the initial rent under the Lease is \$14,400.00 with 2% annual increases, which the Town has determined is fair market value; and

WHEREAS, pursuant to the Lease, the initial term shall be for a period of ten years, with four successive ten-year renewal terms for an overall term not to exceed 50 years; and

WHEREAS, in connection with the Lease, the Board has conducted a full and comprehensive single agency review of potentially adverse environmental impacts from the Project pursuant to the State Environmental Quality Review Act (“SEQRA”) and duly issued a Negative Declaration pursuant thereto; and

WHEREAS, based upon the Board’s thorough and careful review of the Project, and all other materials submitted in connection therewith, and the important Town and public interest to be served by the Project, the Board has determined to enter the Lease on the terms and conditions set forth therein and noted below.

NOW, THEREFORE, BE IT RESOLVED that:

1. The Board hereby authorizes the Supervisor of the Town of Elba, to enter into the Lease with Blue Sky Towers II, LLC to allow Blue Sky Towers II, LLC to construct and operate a communications facility and related infrastructure on the Property.
2. The Lease shall be for an initial term of ten (10) years with up to four (4) ten (10) year renewal terms, which term is in keeping with relevant statutory provisions.
3. The Lease shall have an initial annual rent of \$14,400.00, with rent escalating 2% every lease year, which the Board has determined is fair market value.
4. The Lease shall additionally serve an important public purpose by providing emergency services to businesses and individuals in the relevant coverage area with access to adequate, modern, reliable wireless communications.

BE IT FURTHER RESOLVED, that the Supervisor of the Town of Elba be hereby authorized to execute the Lease with Blue Sky Towers II, LLC for the term and conditions set forth above,

BE IT FURTHER RESOLVED, that this Resolution is subject to a permissive referendum pursuant to Town Law section 64.

Second by: Councilwoman Zambito

Ayes: Chamberlain, Coughlin, Hynes, Marshall, Zambito

APPROVED by unanimous vote (5-0)

RESOLUTION #39-2018:

Councilwoman Zambito offered the following:

**AUTHORIZE STATE ENVIRONMENTAL QUALITY REVIEW ACT (“SEQRA”)
DETERMINATION OF ENVIRONMENTAL SIGNIFICANCE, NEGATIVE DECLARATION,
TOWER LEASE AGREEMENT, ON PROPERTY LOCATED AT HUNDREDMARK ROAD, TOWN
OF ELBA, GENESEE COUNTY**

WHEREAS, Blue Sky Towers II, LLC proposed to construct and operate a communications facility, including installing a communication tower on property to be leased from the Town of Elba (the “Town”), pursuant to a certain Lease Agreement (“the Lease”), on property located on Hundredmark Road, Town of Elba, County of Genesee, State of New York, as shown on the Tax Map of the Town of Elba as Tax Map Number 14.-2-18.1 (the “Project”); and

WHEREAS, representatives of Blue Sky Towers II, LLC previously met with Town officials and thoroughly reviewed the Project and the Lease and have submitted materials and information in connection therewith; and

WHEREAS, the Town Board (the “Board”) is fully familiar with the proposed location and the surrounding area; and

WHEREAS, the Project is an unlisted action under SEQRA and the Board is the only involved agency and, therefore, the Lead Agency; and

WHEREAS, the Board has fully reviewed the Project, the Lease and all other materials submitted in connection therewith and taken a “hard look” at any potential adverse environmental impacts.

NOW, THEREFORE, BE IT RESOLVED THAT:

Based upon the Board’s thorough and careful review of the Project, the Lease, and all other materials submitted in connection therewith, the Board hereby determines that the Project and the Lease will not result in any significant adverse environmental impacts and hereby issues a negative declaration pursuant to SEQRA.

REASONS SUPPORTING THE NEGATIVE DECLARATION:

1. Air, Water, Noise, Waste, Erosion, Drainage, Site Disturbance Effects: The Project will not create any adverse change in the existing air quality, water quality or noise levels, nor in solid waste production, nor potential for erosion, nor promote flooding or drainage problems. The Project will produce minimal, if any, disturbance of soil and vegetation, with minimal storm run-off.
2. Aesthetics, Agriculture, Archaeology, History, Natural or Cultural Resource, Community or Neighborhood Character: The Project will not adversely affect agricultural, archaeological, historical, natural, or cultural resources. The Project is a public utility which must be located as and where necessary to provide essential wireless telecommunications service. Although a facility of this nature will be visible, its overall visibility will be minimized to the maximum extent possible.
3. Vegetation, Fish, Wildlife, Significant Habitats, Threatened or Endangered Species. No plant or animal life will be adversely affected by the Project.

4. Community Plans, Use of Land or Natural Resources. The Project is in keeping with the official community plans and goals and will have no adverse effects on land-use or the use of natural resources by or in the community.

5. Growth, Subsequent Development, etc. The Project will not induce any significant or adverse growth or subsequent development.

6. Long Term, Short Term, Cumulative or Other Effects. The Project will not have any significant adverse, long term, short term, cumulative, or other environmental effects.

7. Critical Environmental Area. The Project will not have an impact on any Critical Environmental Area as designated in 6 NYCRR, subdivision 617.14(g).

8. Public Health and Safety. The Project will have no adverse impacts on the public health. The Board recognizes that the Project will enable Blue Sky Towers II, LLC to provide reliable wireless telecommunications service to the Town and the area generally, enabling individuals, businesses and emergency service providers access to this essential service. For all these reasons, the Project will promote the general health, safety and welfare of the citizens of the area by providing access to a modern, reliable system of wireless telecommunications service.

BE IT FURTHER RESOLVED that the Board finds that none of the criteria for determining significance set forth in §617.7(c)(1)(i)-(xii) would be implicated as a result of this Project.

BE IT FURTHER RESOLVED that Notice of this determination of non-significance shall be filed to the extent required by the applicable regulations under SEQRA or as may be deemed advisable by the Board.

Second by: Councilman Chamberlain

Ayes: Chamberlain, Coughlin, Hynes, Marshall, Zambito

APPROVED by unanimous vote (5-0)

RESOLUTION #40-2018:

Councilman Chamberlain offered the following:

AUTHORIZE DELINQUENT WATER BILL TO BE RE-LEVIED ON THE 2019 WARRANT

WHEREAS, the Town Clerk has received a list of all property owners who owe for water rents in Water District #1 to the Town of Batavia; and

WHEREAS, Section 229-15 (c) of Town Law stipulates that such amounts owing shall be levied against the property to which the service is rendered.

NOW, THEREFORE, BE IT RESOLVED, the amount of \$314.21, or as may be amended before final submission to the Genesee County Treasurer, be and is hereby approved for levying against the following individuals, Ronald Shultz - \$149.29, Theresa Cwiklinski - \$123.82 and Erik Roth - \$41.10.

Second by: Councilman Coughlin

Ayes: Chamberlain, Coughlin, Hynes, Marshall, Zambito

APPROVED by unanimous vote (5-0)

RESOLUTION #41-2018:

Councilwoman Zambito offered the following:

APPROVAL OF OFFICIAL UNDERTAKING FOR TAX COLLECTION

[The Official Undertaking/Bond must be filed with the County Clerk and have attached thereto the approval of the Town Board as set forth below.]

APPROVAL OF THE ELBA TOWN BOARD

We, the undersigned members of the Town Board of the Town of Elba, County of Genesee, State of New York, do hereby approve the attached undertaking or bond as to its form, manner of execution, amount and sufficiency thereof, and to the sureties names thereon. Said undertaking or bond shall be conditioned that the collector of the taxes shall well and truly keep, pay over and account for all moneys and property coming into her/his hands as such collector.

Witnessed this 8th day of November, 2018.

Supervisor _____

Council Member _____

Council Member _____

Council Member _____

Council Member _____

[Approval may also be in the form of a copy of the Resolution with the corresponding certification of the Town Clerk.]

Pursuant to Sections 25, 35, 36 and 37 of the Town Law of the State of New York

Second by: Supervisor Hynes
Ayes: Chamberlain, Coughlin, Hynes, Marshall, Zambito
APPROVED by unanimous vote (5-0)

RESOLUTION NO. 42-2018

Councilman Coughlin offered the following:

BID AWARD – WATER DISTRICT NO. 2, PHASE 3

WHEREAS, the Town of Elba received bids November 1, 2018 at 10:00 A.M. for the construction of approximately 76,000 linear feet of 8-inch and 12-inch water main, valves, hydrants and water services along North Byron Road (CR 12), Bridge Road, Barrville Road (CR 7), Miller Road, Luddington Road, Log City Road, and portions of Transit Road (CR 42), Oak Orchard Road and Norton Road in the Town of Elba Water District No. 2, Phase 3. In addition to the Base Bid, the overall bid included the following two (2) separate alternate bids for upgrades and additional work as part of a separate Genesee County Phase 2 Water project.

1. Alternate Bid 1: Upsize of approximately 6,800 linear feet of 8” water main to 12” water main along Norton Road and Log City Road.
2. Alternate Bid 2: Installation of approximately 2,700 linear feet of 12” water main and appurtenances along a portion of Log City Road.

WHEREAS, the County will reimburse the Town for the water main upsizing and additional water main work through an inter-municipal agreement (IMA).

WHEREAS, Sergi Construction, Inc. from East Aurora, New York was the lowest responsible bidder with a total bid amount of Three Million Three Hundred Seventy Nine Thousand Seven Hundred Seventy Dollars and Zero cents (\$3,379,770.00), (Base Bid amount was Three Million One Hundred Seventy Six Thousand Two Hundred Dollars and Zero cents (\$3,176,200.00), Alternate Bid 1 in the amount of Ninety Seven Thousand Dollars and Zero cents (\$97,000.00) and Alternate Bid 2 in the amount of One Hundred Six Thousand Five Hundred Seventy Dollars and Zero Cents (\$106,570.00)).

NOW THEREFORE BE IT RESOLVED, the Elba Town Board hereby awards the Bid to Sergi Construction at a cost Three Million Three Hundred Seventy Nine Thousand Seven Hundred Seventy Dollars and Zero cents (\$3,379,770.00), (Base Bid amount was Three Million One Hundred Seventy Six Thousand Two Hundred Dollars and Zero cents (\$3,176,200.00), Alternate Bid 1 in the amount of Ninety Seven Thousand Dollars and Zero cents (\$97,000.00) and Alternate Bid 2 in the amount of One Hundred Six Thousand Five Hundred Seventy Dollars and Zero Cents (\$106,570.00)) for the installation of approximately 78,000 linear feet of 8 inch and 12 inch water main and appurtenances for Phase 3 of the Town of Elba Water District No. 2, Phase 3, contingent on all USDA Rural Development approvals and upon all required insurance and bonding being in place as approved by the Town Attorney; and

BE IT FURTHER RESOLVED, the Elba Town Board hereby authorizes the Supervisor to execute Agreements and issue the Notice to Proceed once the aforementioned conditions are met.

Second by: Councilman Chamberlain

Ayes: Chamberlain, Coughlin, Hynes, Marshall, Zambito

APPROVED by unanimous vote (5-0)

RESOLUTION #43-2018:

Councilwoman Marshall offered the following:

ADOPTING TOWN OF ELBA SEXUAL HARASSMENT POLICY

WHEREAS, On April 12, 2018 Gov. Andrew Cuomo signed the New York State 2018-2019 Budget Bill, which includes provisions addressing workplace sexual harassment and

WHEREAS, this same bill requires that effective October 9, 2018, employers must adopt a Sexual Harassment Prevention policy that meets certain minimum requirements, therefore, be it

RESOLVED, that the Town of Elba hereby repeals Resolution 43-2018, Sexual Harassment Policy effective October 9, 2018, and be it

FURTHER RESOLVED, that the Town of Elba does hereby adopt the following Sexual Harassment Policy effective October 9, 2018:

TOWN OF ELBA SEXUAL HARASSMENT POLICY

Introduction

Town of Elba is committed to maintaining a workplace free from sexual harassment. Sexual harassment is a form of workplace discrimination. All employees are required to work in a manner that prevents sexual harassment in the workplace. This Policy is one component of Town of Elba's commitment to a discrimination-free work environment. Sexual harassment is against the law¹ and all employees have a legal right to a workplace free from sexual harassment and employees are urged to report sexual harassment by filing a complaint internally with Town of Elba. Employees can also file a complaint with a government agency or in court under federal, state or local antidiscrimination laws.

Policy:

1. Town of Elba's policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business, regardless of immigration status, with Town of Elba. In the remainder of this document, the term "employees" refers to this collective group.
2. Sexual harassment will not be tolerated. Any employee or individual covered by this policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action (e.g., counseling, suspension, termination).
3. Retaliation Prohibition: No person covered by this Policy shall be subject to adverse action because the employee reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. Town of Elba will not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected sexual harassment. Any employee of Town of Elba who retaliates against anyone involved in a sexual harassment investigation will be subjected to disciplinary action, up to and including termination. All employees, paid or unpaid interns, or non-employees² working in the workplace who believe they have been subject to such retaliation should inform a supervisor, manager, or Town Supervisor. All employees, paid or unpaid interns or non-employees who believe they have been a target of such retaliation may also seek relief in other available forums, as explained below in the section on Legal Protections.
4. Sexual harassment is offensive, is a violation of our policies, is unlawful, and may subject Town of Elba to liability for harm to targets of sexual harassment. Harassers may also be individually subject to liability. Employees of every level who engage in sexual harassment, including managers and supervisors who engage in sexual harassment or who allow such behavior to continue, will be penalized for such misconduct.
5. Town of Elba will conduct a prompt and thorough investigation that ensures due process for all parties, whenever management receives a complaint about sexual harassment, or otherwise knows of possible sexual harassment occurring. Town of Elba will keep the investigation confidential to the extent possible. Effective corrective action will be taken whenever sexual harassment is found to

¹ While this policy specifically addresses sexual harassment, harassment because of and discrimination against persons of all protected classes is prohibited. In New York State, such classes include age, race, creed, color, national origin, sexual orientation, military status, sex, disability, marital status, domestic violence victim status, gender identity and criminal history.

² A non-employee is someone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services in the workplace. Protected non-employees include persons commonly referred to as independent contractors, "gig" workers and temporary workers. Also included are persons providing equipment repair, cleaning services or any other services provided pursuant to a contract with the employer.

have occurred. All employees, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment.

6. All employees are encouraged to report any harassment or behaviors that violate this policy. Town of Elba will provide all employees a complaint form for employees to report harassment and file complaints.
7. Managers and supervisors are **required** to report any complaint that they receive, or any harassment that they observe or become aware of, to Town Supervisor.
8. This policy applies to all employees, paid or unpaid interns, and non-employees and all must follow and uphold this policy. This policy must be provided to all employees and should be posted prominently in all work locations to the extent practicable (for example, in a main office, not an offsite work location) and be provided to employees upon hiring.

What Is “Sexual Harassment”?

Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual’s sex when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual’s employment.

A sexually harassing hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual’s sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient’s job performance.

Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called “quid pro quo” harassment.

Any employee who feels harassed should report so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this policy.

Examples of sexual harassment

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- Physical acts of a sexual nature, such as:
 - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's body;
 - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
 - Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments;
 - Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
 - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:
 - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
 - Sabotaging an individual's work;
 - Bullying, yelling, name-calling.

Who can be a target of sexual harassment?

Sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor.

Where can sexual harassment occur?

Unlawful sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices or during non-work hours.

Retaliation

Unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours).

Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in “protected activity.” Protected activity occurs when a person has:

- made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
- opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- reported that another employee has been sexually harassed; or
- encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

Reporting Sexual Harassment

Preventing sexual harassment is everyone’s responsibility. Town of Elba cannot prevent or remedy sexual harassment unless it knows about it. Any employee, paid or unpaid intern or non-employee who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to a supervisor, manager or Town Supervisor. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager or Town Supervisor.

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy, and all employees are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee’s behalf.

Employees, paid or unpaid interns or non-employees who believe they have been a target of sexual harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.

Supervisory Responsibilities

All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, **are required** to report such suspected sexual harassment to Town Supervisor.

In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.

Supervisors and managers will also be subject to discipline for engaging in any retaliation.

Complaint and Investigation of Sexual Harassment

All complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a timely manner, and will be confidential to the extent possible.

An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough, commenced immediately and completed as soon as possible. The investigation will be kept confidential to the extent possible. All persons involved, including complainants, witnesses and alleged harassers will be accorded due process, as outlined below, to protect their rights to a fair and impartial investigation.

Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. Town of Elba will not tolerate retaliation against employees who file complaints, support another's complaint or participate in an investigation regarding a violation of this policy.

While the process may vary from case to case, investigations should be done in accordance with the following steps:

- Upon receipt of complaint, Town Supervisor will conduct an immediate review of the allegations, and take any interim actions (e.g., instructing the respondent to refrain from communications with the complainant), as appropriate. If complaint is verbal, encourage the individual to complete the "Complaint Form" in writing. If he or she refuses, prepare a Complaint Form based on the verbal reporting.
- If documents, emails or phone records are relevant to the investigation, take steps to obtain and preserve them.
- Request and review all relevant documents, including all electronic communications.
- Interview all parties involved, including any relevant witnesses;
- Create a written documentation of the investigation (such as a letter, memo or email), which contains the following:
 - A list of all documents reviewed, along with a detailed summary of relevant documents;
 - A list of names of those interviewed, along with a detailed summary of their statements;
 - A timeline of events;
 - A summary of prior relevant incidents, reported or unreported; and
 - The basis for the decision and final resolution of the complaint, together with any corrective action(s).
- Keep the written documentation and associated documents in a secure and confidential location.

- Promptly notify the individual who reported and the individual(s) about whom the complaint was made of the final determination and implement any corrective actions identified in the written document.
- Inform the individual who reported of the right to file a complaint or charge externally as outlined in the next section.

Legal Protections And External Remedies

Sexual harassment is not only prohibited by Town of Elba but is also prohibited by state, federal, and, where applicable, local law.

Aside from the internal process at Town of Elba, employees may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

In addition to those outlined below, employees in certain industries may have additional legal protections.

State Human Rights Law (HRL)

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints with DHR may be filed any time **within one year** of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three years** of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to Town of Elba does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: www.dhr.ny.gov.

Contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

Civil Rights Act of 1964

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a “Charge of Discrimination.” The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov.

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit www.nyc.gov/html/cchr/html/home/home.shtml.

Contact the Local Police Department

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

Second by: Councilwoman Zambito

Ayes: Chamberlain, Coughlin, Hynes, Marshall, Zambito

APPROVED by unanimous vote (5-0)

ABSTRACT 11-2018

MOTION Councilman Coughlin, second Councilman Chamberlain to approve the following:

General Fund	232-253	\$ 6,725.25
Highway	118-124	\$ 10,983.24
Water District #2	28-30	\$356,165.03
	TOTAL	\$373,873.52

Ayes: Chamberlain, Coughlin, Hynes, Marshall, Zambito

MOTION CARRIED by unanimous vote (5-0)

COMMITTEE REPORTS

Building and Grounds

Getting ready for winter.

Zoning Board

Councilman Chamberlain reported that they had a Public Hearing for the Pritchett property on Lockport Road and approved it.

ZEO/CEO Mikolajczyk attended the ZBA meeting, he referenced the buildings at 100 South Main Street. That area is zoned industrial and needs to switch to commercial if they want to have an apartment attached. The Village will need to address this.

Members of the ZBA will be attending an 8 hour training session. The hours will be used for this year and next year's training requirements.

Planning Board

Councilman Coughlin reported he and a few of the Planning Board members attended the Smart/Green Genesee meeting in LeRoy recently. They offer a grant to assist with the comprehensive plan. Chuck Hoover will look into this.

GAM

Supervisor Hynes reported that there was a presentation from Megaenergy regarding Power of Partnership. She also shared the Sales Tax Question sheet that was passed around at the GAM meeting.

Cemetery

There were quite a number of burials this year, revenue is up.

Publicity

None.

DEPARTMENT REPORTS

Highway

Superintendent of Highways Yungfleisch reported he and the MEO's are preparing for winter. He is still looking into a new truck, it would be the same cost as the one purchased in 2016. However, if he ordered it today it would not be ready until next fall.

Assessor

No report.

ZEO/CEO

Mr. Mikolajczyk's report was emailed and is also available in the Town Clerk's office.

Town Clerk

Town Clerk Werth reported that she took in \$1,851.48 and remitted \$1,816.45 to the Supervisor for local share, \$35.00 to NYS Ag. & Markets for spay/neuter program. A total of two new dogs were licensed and 25 licenses were renewed. We also had a total of 20 conservation customers.

We continue to collect the Water Service Applications for the Town of Batavia. A total of 16 residents applied in October.

Supervisor

The buy back of cemetery plots was discussed. Our town attorney, Dave Schubel is concerned about setting a precedent in these matters. A resolution will be found to deny any future requests.

The closeout of the 1st BAN will take place for WD2 on November 14th. All funds available in the loan will be used.

The next Construction Meeting for WD2, Phase 1 will be at 9:00 a.m. November 14th.

Supervisor Hynes set the year end meeting for December 27th at 4:00 p.m.

Councilpersons/Miscellaneous

Councilwoman Marshall stated that she has started reviewing the policy book. She would like to review the policies monthly at the meetings and have a resolution prepared to vote on.

ADJOURNMENT

MOTION was offered from Councilman Chamberlain second by Councilman Coughlin to adjourn the meeting at 7:44 p.m.

Ayes: Chamberlain, Coughlin, Hynes, Marshall, Zambito

MOTION CARRIED by unanimous vote (5-0)

Respectfully Submitted,

Trisha Werth
Town Clerk