

TOWN OF PENDLETON
PUBLIC HEARINGS and WORK SESSION
May 22, 2023

A Work Session of the Town Board of the Town of Pendleton was held at the Town Hall, 6570 Campbell Blvd., Pendleton, NY, on the 22nd day of May 2023 at 7:00 p.m. The meeting was open to the public.

PUBLIC HEARINGS

PUBLIC HEARING #1 – PROPOSED LOCAL LAW NO. XX OF 2023 – TOWN OF PENDLETON BEST VALUE CONTRACT AWARD LAW

Supervisor Maerten opened the Public Hearing at 6:55 p.m.

The notice for the Public Hearing was published in the Lockport Union Sun & Journal on May 16, 2023 and on the Town’s website.

The purpose of this public hearing is to allow public input on the proposed adoption of a Local Law to authorize the award of purchase contracts on the basis of Best Value Criteria pursuant to General Municipal and State Finance Law. Copies of the proposed Local Law were made available for public viewing at the Town Hall and on the Town’s website.

Town Attorney Joerg provided a brief explanation of the purpose of this proposed local law. He explained that municipalities have different options for purchasing other than always taking the lowest bid. For example, municipalities can purchase using the “piggyback” process off of a bid obtained by other municipalities or by using the State procurement list. Mr. Joerg stated that “best value” is another way that is allowed by the statute. He proceeded to explain the requirements of “best value” and provided examples of why this is sometimes the preferred method.

Mrs. Annmarie Reeb presented the Town Board with a list of questions and read them aloud. She did not state whether she was for or against this proposed local law.

Motion made by Councilman Hickman, seconded by Councilman Lombardo, to close the Public Hearing at 6:59 p.m. Motion carried.

PUBLIC HEARING #2 – REZONING REQUEST – NE CORNER OF CAMPBELL BOULEVARD AND TONAWANDA CREEK ROAD

Supervisor Maerten opened the Public Hearing at 6:59 p.m.

The notice for the Public Hearing was published in the Lockport Union Sun & Journal on May 16, 2023 and on the Town’s website.

The purpose of the hearing is to allow public input on a rezoning request (R-2 to CO-1) for the property located at the NE corner of Campbell Boulevard & Tonawanda Creek Road (SBL 136.00-1-

46.12). The property is currently zoned both CO-1 & R-2. Copies of the proposed Local Law were made available for public viewing at the Town Hall and on the Town's website.

There were no public comments during this hearing.

Motion made by Councilman Lombardo, seconded by Councilman Hickman, to close the Public Hearing at 7:00 p.m. Motion carried.

WORK SESSION

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

Supervisor Maerten, Councilman Buechler, Councilman Hickman, and Councilman Lombardo were present. Councilman Leible was absent.

Also present:

Deborah Maurer – Town Clerk
Dave Fischer – Highway/Water & Sewer Superintendent
Claude Joerg – Town Attorney
Dave Britton – Town Engineer
Tom Maturski – Budget Officer

There were six residents in attendance.

Supervisor began the work session by asking for public comments on the agenda items. There were none.

RESOLUTION 146-23

MEETING MINUTES – MAY 8, 2023

Motion by Councilman Buechler, seconded by Councilman Lombardo, the following resolution was

ADOPTED: Ayes 4 Maerten, Buechler, Hickman, Lombardo
Nays 0
Absent 1 Leible

BE IT RESOLVED, by the Town Board of the Town of Pendleton on this 22nd day of May 2023, that the meeting minutes for the Regular Meeting held on May 8, 2023, are approved as presented by Deputy Town Clerk Lemma.

RESOLUTION 147-23

ABSTRACT #10

Motion by Councilman Buechler, seconded by Councilman Lombardo, the following resolution was

ADOPTED: Ayes 4 Maerten, Buechler, Hickman, Lombardo
Nays 0
Absent 1 Leible

BE IT RESOLVED, by the Town Board of the Town of Pendleton on this 22nd day of May 2023, to authorize payment of Voucher Abstract #10, Vouchers #23-00418 to #23-00473, to be paid on May 24, 2023 as follows:

PENDING APPROVAL

| | | |
|----------------|----|------------|
| General Fund | \$ | 39,909.61 |
| Highway | \$ | 38,999.79 |
| Refuse | \$ | 46,755.71 |
| Sewer | \$ | 1,360.03 |
| Water | \$ | 2,204.54 |
| Trust & Agency | \$ | 408.50 |
| Total | \$ | 129,638.18 |

RESOLUTION 148-23

SEQR DETERMINATION FOR REZONING REQUEST

Motion by Councilman Hickman, seconded by Councilman Buechler, the following resolution was

ADOPTED: Ayes 4 Maerten, Buechler, Hickman, Lombardo
Nays 0
Absent 1 Leible

BE IT RESOLVED, by the Town Board of the Town of Pendleton on this 22nd day of May 2023, to accept the State Environmental Quality Review Act (SEQR) regarding the rezoning request for parcel 136.00-1-46.12, located at the NE corner of Campbell Boulevard and Tonawanda Creek Road and make a negative declaration based on the documents provided by the Planning Board.

RESOLUTION 149-23

REZONING OF NE CORNER OF CAMPBELL BOULEVARD AND TONAWANDA CREEK ROAD

Motion by Councilman Buechler, seconded by Councilman Lombardo, the following resolution was

ADOPTED: Ayes 4 Maerten, Buechler, Hickman, Lombardo
Nays 0
Absent 1 Leible

WHEREAS, parcel 136.00-1-46.12, located at the NE corner of Campbell Boulevard and Tonawanda Creek Road is currently zoned Light Commercial (CO-1) and Medium-Density Residential (R-2); and

WHEREAS, the current property owner has requested this property be rezoned from Light Commercial (CO-1) and Medium-Density Residential (R-2) to Light Commercial (CO-1); and

WHEREAS, an Application for Rezoning of Property has been submitted to the Planning Board by the property owner for review and all necessary fees have been paid by the applicant; and

WHEREAS, the Planning Board reviewed the rezoning application at the Board's April 18, 2023 meeting and recommends approval of this application.

NOW, THEREFORE BE IT RESOLVED, by the Town Board of the Town of Pendleton on this 22nd day of May 2023, that the requested rezoning parcel 136.00-1-46.12, located at the NE corner of Campbell Boulevard and Tonawanda Creek Road, from Light Commercial (CO-1) and Medium-Density Residential (R-2) to Light Commercial (CO-1) is approved. This resolution shall take effect immediately.

Next, Supervisor Maerten asked for a motion to accept the proposed local law that was discussed during the public hearing. Councilman Buechler wanted to know if our current code included language on the requirement to use "low cost". Engineer Britton and Town Attorney Joerg provided additional explanations about the requirements that actually fall under General Municipal Law.

Municipalities can award projects based on the lowest responsible responsive bid or by best value. Best value is vetted through a different process but is often more beneficial to a municipality. A lengthy discussion continued regarding the procurement policy and bidding process.

RESOLUTION 150-23

LOCAL LAW NO. 03 OF 2023

Motion by Councilman Hickman, seconded by Councilman Lombardo, the following resolution was

ADOPTED: Ayes 4 Maerten, Buechler, Hickman, Lombardo
 Nays 0
 Absent 1 Leible

TOWN OF PENDLETON LOCAL LAW NO. 03 OF THE YEAR 2023

**A LOCAL LAW OF THE TOWN OF PENDLETON, COUNTY OF NIAGARA, NEW YORK
AUTHORIZING THE AWARD OF PURCHASE CONTRACTS ON THE BASIS OF BEST VALUE
CRITERIA PURSUANT TO GENERAL MUNICIPAL AND STATE FINANCE LAW**

A Local Law of the Town of Pendleton, County of Niagara, New York, Authorizing the Award of Purchase Contracts on The Basis of Best Value Criteria Pursuant to General Municipal and State Finance Law:

WHEREAS, a public hearing was held on May 22, 2023 at 6:50 p.m. in the Pendleton Town Hall, Town of Pendleton, Lockport, New York, on said Local Law, and

WHEREAS, one person appeared to speak on said Local Law, and

WHEREAS, no amendments were made to said Local Law.

NOW, THEREFORE, BE IT RESOLVED, that a Local Law of the Town of Pendleton, County of Niagara, New York, for the year 2023 entitled "Town of Pendleton Best Value Contract Award Law" be enacted by the Town of Pendleton, County of Niagara, New York as follows:

SECTION 1. PURPOSE

The "best value" standard for selecting goods and services vendors is critical to efforts to use strategic sourcing principles to modernize the supply chain and ensure that taxpayers obtain the highest quality goods and services at the lowest potential cost, while also ensuring fairness to all competitors.

After passage of Section 16 in NYS GML §103 a large number of local municipalities throughout the state have passed Local Laws authorized under said section. With the increased complexity of the goods and services that municipalities must obtain in order to serve taxpayers, it is critical to consider selection and evaluation criteria that measure factors other than cost in the strictest sense.

Taxpayers are not well served in situations where public procurement results in low unit costs at the outset, but ultimately engenders cost escalations due to factors such as inferior quality, poor reliability and difficulty of maintenance. Best value links the procurement

process directly to the municipality's performance requirements, incorporating selection factors such as useful lifespan, quality and options and incentives for more timely performance and/or additional services.

Award contracts on the basis of best value standards is further intended to promote competition, foster fairness among vendors and competitors, expedite contract awards, optimize quality control costs and enhance efficiency among responsible bidders. The local law would authorize the Purchasing Agent to award purchase contracts that have been procured pursuant to competitive bidding under General Municipal Law Sec. §103 by either lowest responsible bidder or best value.

SECTION 2. DEFINITIONS

Purchase Contracts. Contracts for goods, commodities and equipment, including technology.

Best Value. The basis for awarding contracts for services to a responsible bidder who optimizes quality, cost and efficiency for the Town of Pendleton based upon objective and quantifiable analysis. Goods procured and awarded on the basis of best value are those that are determined will be of the highest quality while being the most cost efficient.

SECTION 3. REQUIREMENTS

- A. Whenever any contract is awarded on the basis of best value instead of lowest responsible bidder the basis for determining best value shall be thoroughly and accurately documented.
- B. The determination of quality and cost efficiency shall be based on objectively quantified and clearly described and documented criteria, which may include, but shall not be limited to, any or all of the following: cost of maintenance; proximity to the end user if distance or response time is a significant term; durability; availability of replacement parts or maintenance contractors; longer product life; product performance criteria; and quality of craftsmanship.
- C. General evaluation criteria shall be identified and shall be maintained in the Office of the Town Clerk and be made available to the public.
- D. The Pendleton Town Board shall specify evaluation criterion that was relied upon for procuring goods based upon best value, which shall be maintained in the Office of Town Clerk and made available to the public.
- E. Solicitation documents shall state the minimum requirements and specifications that must be met in order for the bidder to be deemed responsible and shall identify the general procedure and manner in which the evaluation and selection shall be conducted.
- F. The Pendleton Town Board must approve the use of best value for each purchase contract that wishes to utilize the method.

SECTION 4. SEVERABILITY

If any clause, sentence paragraph, subdivision, section or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, effect or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

SECTION 5. EFFECTIVE DATE

This local law shall take effect immediately upon filing with the New York State Secretary of State.

Supervisor Maerten introduced the Bond Resolution for the Community Center Project by explaining that a revision was made to the resolution that was posted online. He stated that revisions were made to SECTION 2 by removing the dollar values from this section because of errors in the original version.

He went on to explain that the bids were received and came in at approximately \$2.5M which was more than initially expected, probably due to inflation and state of the economy. The Town needs to make a decision to either push forward or no longer consider the project. The general consensus of the Board is to move forward. Supervisor Maerten stated that he has been working with Evans Bank, the bond counsel that the Board approved at the last meeting, and Budget Officer Tom Maturski. It was decided that it would be appropriate to approve financing up to \$1.7M for this project.

RESOLUTION 151-23

BOND RESOLUTION – COMMUNITY CENTER PROJECT

The following resolution was offered by Councilman Lombardo, seconded by Councilman Hickman, to wit;

BOND RESOLUTION DATED MAY 22, 2023

A RESOLUTION AUTHORIZING THE UNDERTAKING OF THE CONSTRUCTION OF A NEW COMMUNITY CENTER, AUTHORIZING THE ISSUANCE OF SERIAL BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$1,700,000 OF THE TOWN OF PENDLETON, NIAGARA COUNTY, NEW YORK, PURSUANT TO THE LOCAL FINANCE LAW TO FINANCE SAID PURPOSE AND DELEGATING THE POWER TO ISSUE BOND ANTICIPATION NOTES IN ANTICIPATION OF THE SALE OF SUCH BONDS TO THE TOWN SUPERVISOR.

BE IT RESOLVED, by the Town Board of the Town of Pendleton, Niagara County, New York (the “Town”) (by the favorable vote of not less than two-thirds of all the members of the Board) as follows:

SECTION 1. The specific purpose (hereinafter referred to as “purpose”) to be financed pursuant to this resolution is the construction of a new approximately 9,969 sq. ft. one-story

building to serve as the Pendleton Community Center, together with the acquisition and installation of equipment, machinery and apparatus and the undertaking of necessary site work for the foregoing purpose. The maximum cost of said purpose will not exceed \$2,950,000.

SECTION 2. The Town Board plans to finance the maximum estimated cost of said purpose as follows: (a) by the issuance of serial bonds in an amount not to exceed \$1,700,000 of said Town, hereby authorized to be issued therefor pursuant to the Local Finance Law, and (b) by the application of amounts from the following sources: (i) the Town's General Fund, (ii) the Town's Green Fees Reserve Fund, (iii) the Town's Building and Land Improvement Reserve, and (iv) the Town's Greenway Commission Grant.

SECTION 3. It is hereby determined that said purpose is an object or purpose described in subdivision 11(c) of paragraph (a)(1) of Section 11.00 of the Local Finance Law, and that the period of probable usefulness of said purpose is fifteen (15) years.

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

SECTION 5. It is hereby determined the proposed maturity of the obligations authorized by this resolution will be in excess of five years.

SECTION 6. The faith and credit of said Town are hereby irrevocably pledged for the payment of the principal of and interest on such bonds as the same respectively become due and payable. An annual appropriation shall be made in each year sufficient to pay the principal of and interest on such bonds becoming due and payable in such year. There shall annually be levied on all the taxable real property of said Town a tax sufficient to pay the principal of and interest on such bonds as the same become due and payable.

SECTION 7. Subject to the provisions of this resolution and of the Local Finance Law, pursuant to the provisions of Section 30.00 relative to the authorization of the issuance of bond anticipation notes or the renewals of said notes and of Section 21.00, Section 23.00, Section 50.00, Sections 56.00 to 60.00, Section 62.00, Section 63.00 and Section 164.00 of the Local Finance Law, the powers and duties of the Town Board pertaining or incidental to the sale and issuance of the obligations herein authorized, including but not limited to authorizing bond anticipation notes and prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized and of any bond anticipation notes issued in anticipation of said bonds, and the renewals of said notes, are hereby delegated to the Town Supervisor, the chief fiscal officer of the Town.

SECTION 8. The temporary use of available funds of the Town, not immediately required for the purpose or purposes for which the same were borrowed, raised or otherwise created, is hereby authorized pursuant to Section 165.10 of the Local Finance Law, for the capital purposes described in Section 1 of this resolution. The Town then reasonably expects to reimburse such expenditure with the proceeds of the bonds or bond anticipation notes authorized by Section 2 of this resolution. This resolution shall constitute the declaration of the Town's "official intent" to reimburse the expenditures authorized by Section 1 hereof with the proceeds of the bonds and notes authorized herein, as required by United States Treasury Regulation Section 1.150-2.

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

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

SECTION 11. The Town has previously determined that the undertaking of the construction of the new Pendleton Community Center and related improvements is an unlisted action, and that it will not have a significant effect on the environment and, therefore, no other determination or procedures under the State Environmental Quality Review Act ("SEQR") is required. The Town has issued a "negative declaration" under SEQR in connection with such determination.

SECTION 12. The validity of said serial bonds or of any bond anticipation notes issued in anticipation of the sale of said serial bonds may be contested only if:

- 1) (a) Such obligations are authorized for an object or purpose for which said Town is not authorized to expend money, or

(b) The provisions of law which should be complied with at the date of publication of this resolution are not substantially complied with,

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

- 2) Said obligations are authorized in violation of the provisions of the Constitution of New York.

SECTION 13. The Town Clerk is hereby authorized and directed to publish this resolution, or a summary thereof, together with a notice in substantially the form provided by Section 81.00 of said Local Finance Law, in the official newspaper or newspapers of the Town.

SECTION 14. This resolution is adopted subject to permissive referendum pursuant to Section 35.00 of the Local Finance Law.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

| | | |
|-------------------|--------|--------|
| Joel Maerten | VOTING | YES |
| Wolfgang Buechler | VOTING | YES |
| Joseph Hickman | VOTING | YES |
| David Leible | VOTING | ABSENT |
| Scott Lombardo | VOTING | YES |

The foregoing resolution was thereupon declared duly adopted.

Town Board Discussion

Councilman Buechler provided updates from the Recreation Committee. He informed the Board that the summer recreation program employees will be required to attend mandatory training one week prior to when the session begins. He stated that the employees will be formally approved at the June 12, 2023 meeting. Mr. Buechler also mentioned that the committee is looking for internal storage for 15 totes of their equipment. Another item mentioned was that the Recreation Committee is interested in planning a holiday celebration involving the tree lighting ceremony and a possible holiday lighting contest in the town. Lastly, Councilman Buechler announced that he is still seeking volunteers for the Ethics Committee.

Councilman Lombardo reported that both he and Highway/Water & Sewer Superintendent Fischer recently toured Nine Mile Island to try to figure out how to improve the situation there. He spoke about the poor condition of the property, the recent correspondence between the Town Attorney and the Nine Mile Island group, and the day camp that has previously operated on the grounds. The day camp has informed him that they already have people signed up for this summer. He stated a list of conditions that must be met before they can be permitted to use it. The day camp has agreed to the conditions on the list and is willing to work with Evans Agency, the town's insurance agency, to meet the insurance requirements. Councilman Buechler inquired about the funds raised by the day camp and whether or not any of those comes back to the Town. It was stated that no money comes back to the Town but the cleanup services which they provide will be considered in-kind services. Councilman Lombardo reiterated how deplorable the condition of the property is and stated that if the day camp isn't willing to clean it up, then it will become the responsibility of the Town. Superintendent Fischer also stated that he will contact the Boy Scouts to assist with the cleanup. He is certain that they will help.

Councilman Hickman asked about the dedication of a park pavilion at Depeau Park. Town Clerk Maurer explained that the Recreation Committee has been working with the Lions Club on this item. The dedication is scheduled for June 13, 2023. This item will be put on next month's agenda for a resolution. He also stated that the Pendleton Station Market coordinator had inquired about storage at Town Hall for a few items. This led to a discussion about potential storage space at the new Community Center. Lastly, he asked the Town Board to review the email he recently sent regarding a town credit card.

Town Clerk Maurer asked if there are any updates on completing the Park Policy that was initially created back in 2011 but never adopted. Councilman Buechler stated that the Recreation Committee is currently working on this. She also reminded the Board members of the monthly department head meetings and encouraged them to attend.

Highway/Water & Sewer Superintendent Fischer reported that the State will be milling Campbell Boulevard from Tonawanda Creek Road to Route 31. He anticipates this starting in late July or early August and will keep us informed as he learns more about it.

Motion by Councilman Lombardo, seconded by Councilman Hickman, to adjourn from the Work Session at 7:57 p.m. Motion carried.

Deborah K. Maurer, Town Clerk

PENDING APPROVAL