

Minutes of the Town Board Meeting held at Town Hall on September 20, 2012 at 7:30PM

Present: John Burke, Supervisor  
Timothy Arone, Marilyn Prestia and James Skoufis, Councilpersons  
Absent: Frank Palermo, Councilman  
Also Present: Joseph McKay, Attorney for the Town; Robert Weyant, Highway Superintendent

**I. Administrative Business:**

a. Acceptance of Minutes:

Motion was offered by Councilman Arone, seconded by Councilman Skoufis, to accept the minutes of the regular meeting held September 6, 2012.

**ADOPTED** AYES 4 Burke, Arone, Prestia, Skoufis  
NOES 0

b. Approval of Abstract:

Motion was offered by Councilman Skoufis, seconded by Councilwoman Prestia, to approve Abstract 19 containing vouchers 20121954 – 20122028 and totaling \$197,881.40.

**ADOPTED** AYES 4 Burke, Arone, Prestia, Skoufis  
NOES 0

c. Approval of Budget Modifications:

Motion was offered by Supervisor Burke, seconded by Councilman Skoufis, to approve a modification to the budget of the Library by decreasing L7410.408 (Insurance) by \$1959 and L7410.407 (Legal) by \$1000 and increasing L7410.436 (Periodicals) by \$1000 and L7410.437 (AV Equipment/Videos) by \$1959.

**ADOPTED** AYES 4 Burke, Arone, Prestia, Skoufis  
NOES 0

Motion was then offered by Councilwoman Prestia, seconded by Councilman Arone, to approve a modification to the budget of the Animal Control by decreasing A3510.100 (Control of Animals Personal Services) by \$500 and increasing A3510.411 (Office Supplies) by \$100 and A3510.416 (Uniforms) by \$400.

**ADOPTED** AYES 4 Burke, Arone, Prestia, Skoufis  
NOES 0

Motion was then offered by Supervisor Burke, seconded by Councilman Arone, to approve a modification to the budget of the Highway Department by decreasing DB5142.466 (Salt) by \$1500 and increasing DB5130.455 (Tires) by \$1500.

**ADOPTED** AYES 4 Burke, Arone, Prestia, Skoufis  
NOES 0

Motion was then offered by Councilwoman Prestia, seconded by Supervisor Burke, to approve a modification to the budget of the Animal Control by decreasing A3510.100 (Control of Animals Personal Services) by \$500 and increasing A3510.200 (Equipment) by \$500.

**ADOPTED** AYES 4 Burke, Arone, Prestia, Skoufis  
NOES 0

Motion was then offered by Supervisor Burke, seconded by Councilman Skoufis, to approve a modification to the budget of the Parks Department by increasing A599 (Appropriated Fund Balance) by \$800 and increasing A7110.424 (Lifeguarding Classes) by \$800.

**ADOPTED** AYES 4 Burke, Arone, Prestia, Skoufis  
NOES 0

Motion was then offered by Supervisor Burke, seconded by Councilman Arone, to approve a modification to the budget of the General Fund by decreasing A1440.400 (Engineer Consultant Expense) by \$2500 and increasing A1620.414 (Architect/Engineer Earl EAP & IMP) by \$2500.

**ADOPTED** AYES 4 Burke, Arone, Prestia, Skoufis  
NOES 0

Motion was then offered by Councilman Arone, seconded by Supervisor Burke, to approve a modification the budget of the Highway Department by decreasing DB5142.466 (Salt & Liquid Calcium) by \$37,745 and increasing DB5130.200 (Machinery Equipment) by \$5145 and DB5130.447 (Truck Parts/Repairs) by \$32,600.

**ADOPTED** AYES 4 Burke, Arone, Prestia, Skoufis  
NOES 0

d. Appointment of Part-Time Dispatcher:

Motion was offered by Supervisor Burke, seconded by Councilman Skoufis, to appoint John Seymour to the position of part-time Dispatcher beginning September 7, 2012 at a rate \$19.32 per hour, pending the signing of all required Town documents.

**ADOPTED** AYES 4 Burke, Arone, Prestia, Skoufis  
NOES 0

e. Return of Road Permit – 16 Castleton Drive:

Motion was offered by Supervisor Burke, seconded by Councilwoman Prestia, to authorize the return of the \$500 road opening permit posted by Gary Park, 16 Castleton Drive, as recommended by Superintendent Weyant.

**ADOPTED** AYES 4 Burke, Arone, Prestia, Skoufis  
NOES 0

**II. Old Business:**

a. Decision – Petition for Annexation Brach/Kiryas Joel:

Attorney McKay stated he has prepared a resolution for the Board to entertain that contains findings and an order relating to the petition for annexation that was received on May 22, 2012 from Zigmond Brach and the Village of Kiryas Joel. On July 5, 2012 a joint public hearing was held by the Village of Woodbury Board of Trustees, the Monroe Town Board and the Woodbury Town Board. At this hearing, evidence was submitted by consultants representing Woodbury, as well as members of the public. The Board has reviewed the evidence submitted and finds that this petition for annexation does not benefit the overall public interest. All Board members present stated that they have reviewed the findings and order submitted and all agree with the contents of each. Additionally, all felt that the petitioners failed to submit any evidence proving that this annexation would be a benefit to the overall public. All also noted that shall this order be challenge in court, the Board will continue to fight for the overall public interest.

Motion was then offered by Supervisor Burke, seconded by Councilman Skoufis, to adopt the following resolution, findings and order on a petition by Zigmond Brach and the Village of Kiryas Joel for annexation of three parcels into the Town of Monroe:

**WHEREAS**, on or about May 22, 2012, Zigmond Brach and the Village of Kiryas Joel, filed a petition with the Town Board of the Town of Woodbury, the Board of Trustees of the Village of Woodbury and the Town Board of the Town of Monroe, to annex three parcels of property located in the Town and Village of Woodbury into the Town of Monroe, to wit: Tax Map Section 213, Block 1, Lot

64.1, Tax Map Section 213, Block 1, Lot 64.2, and Tax Map Section 213, Block 1, Lot 69.2 (A copy of the petition is annexed hereto as *Exhibit*<sup>1</sup> "1"); and

**WHEREAS**, the Town Board of the Town of Woodbury, the Board of Trustees of the Village of Woodbury, and the Town Board of the Town of Monroe were required pursuant to General Municipal Law Article 17 to hold a public hearing to determine the sufficiency of the petition and whether or not the annexation is in the over-all public interest; and

**WHEREAS**, the Town Board of the Town of Woodbury passed a resolution on June 3, 2012 scheduling a joint public hearing with the Village Board of the Village of Woodbury and the Town Board of the Town of Monroe for July 5, 2012 at 7:30 p.m. (A copy of the Notice of Joint Hearing is annexed hereto as *Exhibit* "2"); and

**WHEREAS**, pursuant to General Municipal Law § 704, the Town Board of the Town of Woodbury, the Board of Trustees of the Village of Woodbury and the Town Board of the Town of Monroe caused a public hearing notice of the July 5<sup>th</sup> public hearing to be published in the Times Herald-Record on June 11, 2012; and

**WHEREAS**, the Village Clerk of the Village of Woodbury, on behalf of the three hearing boards, caused a notice to be mailed to property owners within the proposed territory and to school authorities and local fire districts in compliance with the provisions of General Municipal Law § 704(1) and (2) (A copy of the list of individuals who received said notice is annexed hereto as *Exhibit* "3"); and

**WHEREAS**, the Board of Trustees of the Village of Woodbury passed a resolution on May 25, 2012 noticing its intent to be Lead Agency for the purposes of conducting environmental review pursuant to SEQRA (A copy of the Resolution Noticing Intent to be Lead Agency is annexed hereto as *Exhibit* "4"); and

**WHEREAS**, on July 5, 2012, the Town Board of the Town of Woodbury, the Village Board of Trustees of the Village of Woodbury, and the Town Board of the Town of Monroe conducted a joint public hearing pursuant to General Municipal Law § 705 to hear testimony and receive evidence and information concerning the question of whether the annexation is in the over-all public interest, as well as to hear testimony and receive evidence and information as to the specific statutory factors set forth in General Municipal Law § 705 (A copy of the minutes of the July 5, 2012 public hearing are annexed hereto as *Exhibit* "5"); and

**WHEREAS**, on July 5, 2012, all members of the Town Board of the Town of Woodbury, the Village Board of Trustees of the Village of Woodbury, and the Town Board of the Town of Monroe were present at and participated in the joint public hearing pursuant to General Municipal Law § 705; and

**WHEREAS**, at the joint public hearing on July 5, 2012, counsel for Petitioner, Village of Kiryas Joel, Donald Nichol, Esq. of the firm of Jacobowitz and Gubitz, and James Sweeney, Esq., counsel for Petitioner Zigmond Brach, made oral presentations in support of the petition for annexation; and

**WHEREAS**, at the joint public hearing on July 5, 2012, neither Petitioner, Village of Kiryas Joel, nor Petitioner Zigmond Brach, submitted any further documentation in support of their filed petition as requested an adjournment of the hearing pursuant to MAL Section 705 (2); and

**WHEREAS**, at the joint public hearing on July 5, 2012, counsel for respondent, Town of Woodbury, Joseph G. McKay, of the firm of Tarshis, Catania, Liberth, Mahon & Milligram, PLLC, and counsel for the Board of Trustees of the Village of Woodbury, Dennis E. A. Lynch, Esq., of the firm of Feerick, Lynch & MacCartney, submitted joint objections into the record, that the petition failed to substantially comply in form and/or content with the provisions of Article 17 of the municipal annexation law, because:

- the petition is dated May 22, 2012, but it was verified by both Brach and Kiryas Joel twelve (12) days earlier on May 10, 2012; and

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<sup>1</sup> All Exhibits (1-11) are on file in the Office of the Town Clerk, not printed in this minute book.

- the Petitioners failed to attach the statutorily-required Certificate of the Assessor to the petition in violation of MAL § 703(3); and
- a supplemental filing containing an Assessors' Certificate was made on June 8<sup>th</sup>, 2012, eighteen (18) days after the filing of the Petition, in violation of MAL § 703(3); and
- the town petition contained no notary stamp; and
- the town and village petitions did not contain the statutorily-prescribed authentication as required by MAL § 703(2);and
- because the proposed petition would result in the properties and residents therein having a change in their Representative in the New York State Assembly in violation of section 716(1) that prohibits an annexation from "affecting the boundaries" of any congressional district, senate district or assembly district; and

**WHEREAS**, at the joint public hearing on July 5, 2012, respondent, Town of Woodbury submitted written comments into the record of the proceedings concerning the question of whether the annexation was in the overall public interest pursuant to MAL § 705(1); and

**WHEREAS**, the Town of Woodbury's written submission contained comments from the Village of Woodbury Building Department on the issue of whether the annexation of lot 213-1-69.2 would be in the overall public interest, as follows (A copy of the Village of Woodbury Building Department letter dated June 19, 2012 is annexed hereto as *Exhibit "6"*):

- the parcel contains one single family dwelling on 31,000 square feet; and
- annexation would result in this parcel being rendered an "island" (or "peninsula") for emergency services response; and
- because the Town of Monroe has no police department, annexation would require that the New York State Police provide services to this residence, resulting in confusion for 911 dispatchers and would likely result in longer response times; and
- the parcel is within Amdur Park Water System and the property pays fees and charges for the water system's operation and maintenance and contributes to pay off the water system's debt service (held by the Town of Woodbury), which is currently \$21,968.00 per year, and annexation would require other residences to increase their proportionate share of debt service payments and operation and maintenance charges; and
- annexation would result in that parcel being taken out of the water service area, and would require either disconnection of services, or would require the owner to contract with Village of Woodbury as an out-of-village user of water, and to contract with the Town of Woodbury with respect to paying the property's proportionate share of debt service; and
- the Village of Woodbury would lose ability to levy and collect unpaid water charges against the property; and
- the Village of Woodbury would lose the ability to be made whole by the County on unpaid water charges; and
- the parcel would be removed from the Town of Woodbury lighting district, while the remainder of the development in which it is located would remain within the district; and
- the parcel would be removed from the Town of Woodbury refuse district, while remainder of development in which it is located would remain within the refuse area; and
- annexation of this parcel (and others) would result in the development of a baroque boundary; and

- if annexed, the parcel would be adjacent to the Town of Monroe URM zoning district which allows for multi-family dwellings, and such zoning, if applied to the territory to be annexed, would allow for greater density of construction than under current Village of Woodbury zoning; and
- dense development or multifamily development would be inconsistent with the current Village of Woodbury zoning and current Master Plan; and
- the annexation is possibly an impermissible means by property owners to circumvent Village of Woodbury zoning by annexing to Monroe; and

**WHEREAS**, the Town of Woodbury's written submission contained comments from the Village of Woodbury Building Department on the issue of whether the annexation of lot 213-1-64.1 would be in the overall public interest, as follows:

- the parcel is owned by Kiryas Joel and contains two water tanks; and
- real property taxes paid by Kiryas Joel would be lost in perpetuity; and
- the petition's claimed benefit to all jurisdictions by annexation of this parcel (and others) is not explained; and

**WHEREAS**, the Town of Woodbury's written submission contained comments from the Village of Woodbury Building Department on the issue of whether the annexation of lot 213-1-64.2 would be in the overall public interest, as follows:

- the parcel contains 12.83 acres and is undeveloped; and
- owner Brach previously proposed a six (6) lot subdivision for the parcel, but the application was withdrawn; and
- if annexed, the parcel would be adjacent to the Town of Monroe URM zoning district which allows for multi-family dwellings, and such zoning, if applied to the territory to be annexed, would allow for greater density of construction than allowed under current zoning; and
- dense development or multifamily development would be inconsistent with current Village of Woodbury zoning and Comprehensive Plan; and
- annexation is possibly an impermissible means by the property owner to circumvent Village of Woodbury zoning by annexing to Town of Monroe; and

**WHEREAS**, the Town of Woodbury's written submission contained comments from the Town of Woodbury Tax Assessor on the issue of whether the annexation of all lots would be in the overall public interest, as follows (A copy of the Town of Woodbury Tax Assessor's comments are annexed hereto as *Exhibit "7"*):

- Loss of revenue currently (all parcels): \$6,072.36; and
- Loss of revenue would be in perpetuity; and

**WHEREAS**, the Town of Woodbury's written submission contained comments from the Town of Woodbury Police Department on the issue of whether the annexation of lot 213-1-64.2 would be in the overall public interest, as follows (A copy of the Town of Woodbury Police Department's letter dated June 18, 2012 is annexed hereto as *Exhibit "8"*):

- there is no benefit to the Town of Monroe or the property owner for annexation because the Town of Monroe has no Municipal Police Department; and
- the one parcel of property that has a residence on it [213-1-69.2] may add to confusing police services. Emergency police calls to the residence may add possible delay in response; and
- the first (closest) fire response agency appears to be the Village of Kiryas Joel, but their department is not certified to respond to interior fires; and.

**WHEREAS**, the Town of Woodbury's written submission contained comments from the Village of Woodbury Water and Sewer Department on the issue of whether the annexation of lot 213-1-64.2 would be in the overall public interest, as follows (A copy of the Village of Woodbury Water and Sewer Department's letter dated June 20, 2012 is annexed hereto as *Exhibit "9"*):

- the petition provides no apparent [water and sewer] benefits to the Town Woodbury; and
- one parcel will be lost from the Amdur Park Water System; and
- the Village of Woodbury may be required to cease services or be required to provide water service outside its municipal boundaries; and
- the Town of Woodbury may be required to contract with an owner for the payment of ongoing debt service; and

**WHEREAS**, the Town of Woodbury's written submission contained comments from Town Board members on the issue of whether the annexation of all of concerned lots would be in the overall public interest, as follows:

- all annexed parcels would lose benefit of Town of Woodbury park system, which is a substantial benefit in comparison to the services offered by Town of Monroe; and
- annexation would likely result in properties being within Town of Monroe URM zone, that would allow multiple dwellings, which would be inconsistent with the Village of Woodbury's zoning and Master Plan; and
- applicants present no information concerning future development plans for the properties; and
- annexation would result in one parcel with a single family dwelling being the only residence within an established development not within the surrounding fire district; and
- the Village of Woodbury's Master Plan and zoning regulations in the area call for use of septic systems and wells, to allow for recharge of an important aquifer; and
- public comments made by Owner Brach prior to the hearing on his petition [stated that the petition would be denied for anti-Semetic reasons]; and

**WHEREAS**, on July 5, 2012, the Board of Trustees of the Village of Woodbury called experts to provide testimony concerning whether the annexation was in the overall public interest; and

**WHEREAS**, on July 5, 2012, Dennis G. Lindsey, PE, of Riddick Associates, P.C., the Village of Woodbury's consulting engineers, testified and provided a written submission into the record of the proceedings, concerning the impacts that the proposed approval of the petition for annexation would have on the Village of Woodbury (A copy of Riddick Associates' report is annexed hereto as *Exhibit "10"*); and

**WHEREAS**, Engineer Lindsey's testimony and report found that:

- the large parcel sought for annexation was uniquely suited for the location of a municipal water tower that would provide residents of the Village of Woodbury's Amdur Park water service area with sufficient water pressure for service and fire-fighting needs; and
- that siting of a water tower was discussed with Petitioner Brach while an application to develop the property was before the Town Planning Board in 2003; and
- that the annexation of the property into the Town of Monroe would substantially and adversely impact the plans for upgrading and extending water service within the Village of Woodbury; and
- that the Village has pursued a plan to develop a fire sub-station on Ridge Road; and

- that property for the sub-station had been deeded to the Village of Woodbury Fire Department; and
- that present response times would be unaffected by the annexation, but that should the build-out of the fire sub-station be completed as planned, a net detriment in response times would result from the annexation; and
- that multi-family development of the parcels, as would be allowed under the Town of Monroe zoning code, would require installation of pump stations or sewage treatment facilities which would result in greater environmental impacts than the onsite septic systems; and
- that multi-family development of the parcels, as would be allowed under the Town of Monroe zoning code, would result in greater environmental impacts on storm water protection plans and storm water management; and

**WHEREAS**, on July 5, 2012, Stuart Turner, FAICP, of the Turner Miller Group, the Village of Woodbury's consulting planners, testified and provided a written submission into the record of the proceedings, concerning the impacts that the proposed approval of the petition for annexation would have on the Village of Woodbury (A copy of the Turner Miller Group's report is annexed hereto as *Exhibit "11"*); and

**WHEREAS**, Planner Turner's testimony and report found that:

- there was no public benefit to the proposed annexation; and
- there was no benefit to the proposed annexation in terms of fire protection and police services; and
- the properties, which are currently covered by the Village's Ridge Preservation Overlay, which is intended to address the visual impacts on important scenic areas, may not be protected under the Town of Monroe's code provisions; and

**WHEREAS**, the Town Board of the Town of Woodbury has performed a review and analysis of all information provided to them by the Petitioners, by the Town's employees, by the Village's employees, the public and professional advisors, including, but not limited to, to the following:

- 1) Petition for annexation, including the EAF form;
- 2) resolutions and legal notices in connection with the scheduling of the joint public hearing and assumption of Lead Agency Status;
- 3) written presentation materials submitted by the Town Board of the Town of Woodbury and the Board of Trustees of the Village of Woodbury at the joint public hearing, including the summary of comments made the Village of Woodbury Building Department, Village of Woodbury Water & Sewer Department, the Town Assessor and the Town of Woodbury Police Department, including the exhibits attached thereto;
- 4) oral presentation by Petitioners' counsel at the joint public hearing;
- 5) oral comment and written letters from the public at the joint public hearing;
- 6) transcript of the joint public hearing;
- 7) written submission provided by Riddick Associates, P.C.; and
- 8) written submission provided by Turner Miller Group; and
- 9) such other and further documentation and information attached hereto, and such other information and records concerning the proposed annexation on file in the Town Clerk which are incorporated herein by reference all of which is made a part hereof, and is hereby made the Record of the Proceedings for annexation (see also further exhibits attached hereto collectively as *Exhibit "12"*); and

**WHEREAS**, on or about September 11, 2012, the Village Board of Trustees of the Village of Woodbury, as the SEQRA Lead Agency on the annexation petition, issued a Negative Declaration with respect to the project:

**NOW THEREFORE, THE TOWN BOARD OF THE TOWN OF WOODBURY, PURSUANT TO GENERAL MUNICIPAL LAW § 711, MAKES THE FOLLOWING FINDINGS AND DETERMINATIONS:**

**THAT THE PETITION FOR ANNEXATION FAILS TO SUBSTANTIALLY COMPLY IN FORM AND/OR CONTENT WITH THE PROVISIONS OF ARTICLE 17 OF THE MUNICIPAL ANNEXATION LAW, FOR THE FOLLOWING REASONS:**

1. The petition for annexation does not comply in form and/or content with Article 17 of the General Municipal Law since the annexation petition was dated May 22, 2012, but was verified both by Zigmond Brach and the Village of Kiryas Joel twelve (12) days earlier on May 10, 2012;
2. The petition for annexation does not comply with MAL Section 703 (2) in that the affidavit/acknowledgment is incomplete, in that the petition served upon the Town of Woodbury contains no notary stamp;
3. The petitions served on both the Town of Woodbury and the Village of Woodbury do not contain the statutorily-prescribed authentication as required by MAL § 703(2);
4. Petitioners' failed to attach the statutorily-required Certificate of the Assessor to the Petition in violation of MAL § 703(3);
5. A supplemental filing containing an Assessor's Certificate was made on June 8, 2012, eighteen (18) days after the filing of the Petition, also in violation of MAL § 703(3) (A copy of the supplemental filing is annexed hereto as *Exhibit "13"*.);
6. The petition for annexation does not comply with GML § 705(1)(d) since the annexation, if approved, would violate § 716(1) of the MAL which prohibits annexation from affecting the boundaries of any congressional district, senate district or assembly district. The current senate and assembly districts for the Village of Woodbury do not extend to the territory described in the petition. If the territory is annexed, the senate and assembly district boundaries would change in violation of § 716(1); and

**IT IS FURTHER FOUND AND DETERMINED THAT THE ANNEXATION IS NOT IN THE OVERALL PUBLIC INTEREST BECAUSE LOT 213-1-69.2:**

- contains one single family dwelling on 31,000 square feet; and
- annexation would result in this parcel being rendered an "island" (or "peninsula") for emergency services response; and
- annexation would require that the New York State Police provide services to this residence, resulting in confusion for 911 dispatchers and would likely result in longer response times; and
- the parcel is within Amdur Park Water System and loss of the parcel through annexation would result in the remaining water system users having to pay a higher proportionate share of the system's debt service of \$21,968.00 per year, and
- annexation would require either discontinuance of water service to the parcel, or would require the owner to contract with Village of Woodbury as an out-of-village user of water (and, if so, to contract with the Town for payment of the property's proportionate share of debt service); and
- the Village of Woodbury would lose ability to levy and collect unpaid water charges against the property; and

- the Village of Woodbury would lose the ability to be made whole by the County on unpaid water charges; and
- the parcel would be removed from the Town of Woodbury lighting district, while the remainder of the development in which it is located would remain within the district; and
- the parcel would be removed from the Town refuse district while remainder of development in which it is located would remain within the refuse district; and
- annexation of this parcel (and others) would result in the development of a baroque boundary; and
- if annexed, the parcel would be adjacent to the Town of Monroe URM zoning district which allows for multi-family dwellings, and such zoning, if applied to the territory to be annexed, would allow for greater density of construction than under current Village zoning; and
- dense development or multifamily development would be inconsistent with the current zoning and current Master Plan; and
- the annexation is believed to be an impermissible attempt by a developer to circumvent Village of Woodbury zoning density provisions by annexing to the Town of Monroe; and

**IT IS FURTHER FOUND AND DETERMINED THAT THE ANNEXATION IS NOT IN THE OVERALL PUBLIC INTEREST BECAUSE LOT 213-1-64.1:**

- is an extremely small parcel containing only two municipal water tanks; and
- the real property taxes on the parcel by Kiryas Joel would be lost in perpetuity; and
- the petition's claimed benefit to all jurisdictions by annexation of this parcel (and others) is neither explained nor supported by the record; and

**IT IS FURTHER FOUND AND DETERMINED THAT THE ANNEXATION IS NOT IN THE OVERALL PUBLIC INTEREST BECAUSE LOT 213-1-64.2:**

- contains 12.83 undeveloped acres; and
- in or about 2003, Brach applied to the Town of Woodbury Planning Board on a proposed a six (6) lot subdivision for the parcel, which would have allowed the construction of up to six (6) single-family residences, but the application was withdrawn; and
- the Town of Woodbury zoning density regulations that existed in 2003 are the same as currently exist under the Village of Woodbury zoning code; and
- the zoning for the parcel has not changed subsequent to Brach's purchase; and
- if annexed, the parcel would be adjacent to the Town of Monroe URM zoning district which allows for multi-family dwellings, and;
- such URM zoning, if applied to the territory to be annexed, would allow for greater density of construction than would have been authorized under the current Village of Woodbury zoning code and the previous Town of Woodbury zoning code; and
- dense development or multifamily development would be inconsistent with the Town of Woodbury's last-applicable zoning code and Town Master Plan, and is inconsistent with the Village of Woodbury's current zoning and Comprehensive Plan; and
- annexation is a ruse by the property owner to circumvent /Village of Woodbury zoning by annexing to the Town of Monroe; and

**IT IS FURTHER FOUND AND DETERMINED THAT THE ANNEXATION IS NOT IN THE OVERALL PUBLIC INTEREST BECAUSE:**

- Loss of the properties through annexation will result in an annual revenue loss to the Village of Woodbury (estimated at 2012 values without consideration for future increases in the value of the properties) of \$6,072.36 annually, in perpetuity; and

**IT IS FURTHER FOUND AND DETERMINED THAT THE ANNEXATION IS NOT IN THE OVERALL PUBLIC INTEREST BECAUSE:**

- the Town of Monroe has no municipal Police Department to provide protection services to the parcels; and
- excising parcel 213-1-69.2 from other properties in an established development will result in confusion when police, fire or other emergency services to the residence and will delay emergency response times; and
- excising the proposed parcels will result in the nearest fire response agency being the Village of Kiryas Joel; and
- the Village of Kiryas Joel fire department is not certified to respond to interior fires; and

**IT IS FURTHER FOUND AND DETERMINED THAT THE ANNEXATION IS NOT IN THE OVERALL PUBLIC INTEREST BECAUSE:**

- neither the petition nor the record of the proceedings, provides any water and/or sewer service benefits to the Town Woodbury; and
- the Village of Woodbury may be required to cease services or be required to provide water service outside its municipal boundaries; and

**IT IS FURTHER FOUND AND DETERMINED THAT THE ANNEXATION IS NOT IN THE OVERALL PUBLIC INTEREST BECAUSE:**

- all annexed parcels would lose benefit of Town of Woodbury park system, which is a substantial benefit in comparison to the services offered by Town of Monroe; and
- annexation would likely result in properties being within Town of Monroe URM zone, that would allow multiple dwellings, the development of which would be inconsistent with the Village of Woodbury's current zoning and Master Plan; and
- applicants present no information concerning future development plans for the properties, resulting in impermissible segmentation of the review of the project pursuant to SEQRA; and
- annexation would be inconsistent with the Village of Woodbury's Master Plan and zoning regulations in the area call for use of septic systems and wells, to allow for recharge of an important aquifer to serve both Town and Village residents; and
- Petitioner Brach made public statements alleging, prior to the hearing on his petition, that the petition would be denied for anti-Semetic reasons; and

**IT IS FURTHER FOUND AND DETERMINED THAT THE ANNEXATION IS NOT IN THE OVERALL PUBLIC INTEREST BECAUSE:**

- Village of Woodbury Consulting Engineer Lindsey testified, without objection or refutation by Petitioners, that the large parcel sought for annexation was uniquely suited for the location of a municipal water tower that would provide residents of the Village of Woodbury's Amdur Park service area with sufficient water pressure for service and fire-fighting needs; and
- that the siting of a water tower was discussed with Petitioner Brach while an application to develop the property was before the Town Planning Board in 2003; and
- that the annexation of the property into the Town of Monroe would substantially and adversely impact the plans for upgrading and extending water service within the Village of Woodbury; and
- that the Village has pursued a plan to develop a fire sub-station on Ridge Road; and
- that property for the sub-station had been deeded to the Village of Woodbury Fire Department; and

- that present response times would be unaffected by the annexation, but that should the build-out of the fire sub-station be completed as planned, a net detriment in response times would result from the annexation; and
- that multi-family development of the parcels, as would be allowed under the Town of Monroe zoning code, would require installation of pump stations or sewage treatment facilities which would result in greater environmental impacts than the onsite septic systems; and
- that multi-family development of the parcels, as would be allowed under the Town of Monroe zoning code, would result in greater environmental impacts on storm water protection plans and storm water management; and

**IT IS FURTHER FOUND AND DETERMINED THAT THE ANNEXATION IS NOT IN THE OVERALL PUBLIC**

**INTEREST BECAUSE:** Village of Woodbury Consulting Planner, Stuart Turner testified, without objection or refutation by Petitioners, that:

- there was no public benefit to the proposed annexation; and
- there was no benefit to the proposed annexation in terms of fire protection and police services; and
- the properties are currently protected by the Village of Woodbury's Ridge Preservation Overlay, which is intended to minimize visual impacts on important scenic areas, may not be protected under the Town of Monroe's code provisions; and

**IT IS FURTHER FOUND AND DETERMINED THAT THE ANNEXATION IS NOT IN THE OVERALL PUBLIC**

**INTEREST BECAUSE:**

- the Petitioners did not submit any additional documents, reports, exhibits or lay testimony or expert testimony (other than introductory statements of Petitioners' counsel) that the annexation of their lot is in the over-all public interest; and
- the Environmental Assessment Form (EAF) provided for review is not sufficient to provide the Village of Woodbury with information designed to aid the Lead Agency in determining the environmental significance of the annexation (A copy of the EAF is annexed hereto as part of *Exhibit "13"*.); the EAF does not provide any information concerning the overall project plan; resulting in impermissible segmentation of the project for SEQRA review purposes; and
- the zoning provisions applicable to Petitioners' properties have not changed since the time they acquired the same; and
- Petitioners are attempting to use annexation as a ruse to avoid compliance with and to circumvent the Town of Woodbury and the Village of Woodbury's municipal ordinances and zoning regulations; and
- the Petitioners' have provided no documentary or testimonial evidence that the proposed annexation, if approved, would achieve the common law requirement that there be a unity of purpose and facilities between the territory and the municipality into which it would be annexed; and
- the proposed annexation, by excising one developed parcel from within an established development, would result in impermissible baroque boundaries; and

**IT IS FURTHER FOUND AND DETERMINED THAT THE ANNEXATION IS NOT IN THE OVERALL PUBLIC**

**INTEREST BECAUSE:**

- Petitioners' have failed to demonstrate that the proposed annexation is consistent with existing case law holding that annexation cannot be used by a property owner to avoid the existing municipal zoning on their property by transferring the property to another municipality with zoning regulations more advantageous to the property owner. (See

Matter of Village of Skaneateles v. Town of Skanateateles, 115 A.D.2d 282 (4<sup>th</sup> Dep't 1985)); and

- Petitioners' have failed to demonstrate that the proposed annexation is consistent with existing case law holding that annexation is proper only where the existing local government and the territory to be annexed have a requisite unity of purpose and facilities to constitute a community (City of Kingston Common Council v. Town of Ulster, 25 A.D.2d 203(3<sup>rd</sup> Dep't 2006)); and
- Petitioners' have failed to demonstrate that the proposed annexation is consistent with existing case law holding that mere presentation that the annexation would provide some personal advantages to the Petitioner, is insufficient to meet the Petitioner's burden to demonstrate that annexation is in the overall public interest (See City of Ogdensburg v. Town of Oswegatchie, 76 A.D.2d 1012 (3<sup>rd</sup> Dep't 1980));

**NOW, THEREFORE, BASED UPON THE ALL OF THE DOCUMENTS AND TESTIMONY CONSTITUTING THE RECORD HEREIN, INCLUDING THE ABOVE FINDINGS AND DETERMINATIONS, AND PURSUANT TO MUNICIPAL ANNEXATION LAW SECTION 711 (1) AND (2), IT IS HEREBY RESOLVED, BY THE TOWN BOARD OF THE TOWN OF WOODBURY, AS FOLLOWS:**

**THAT**, the petition for annexation does not comply with provisions of Article 17 of the Municipal Annexation Law; and

**THAT**, on the basis of the foregoing considerations including but not limited to those relating to the effects upon (a) the territory proposed to be annexed, (b) the local government or governments to which the territory is proposed to be annexed, (c) the remaining area of the local government or governments in which the territory is situated and (d) any school district, fire district or other district corporation, public benefit corporation, fire protection district, fire alarm district or town or county improvement district, situated wholly or partly in such territory, it is not in the over-all public interest to approve the proposed annexation; and

**IT IS HEREBY ORDERED THAT**, the Petition for annexation is **DENIED**.

**ADOPTED BY ROLL CALL AS FOLLOWS:**

Supervisor Burke	AYES
Councilman Arone	AYES
Councilman Palermo	ABSENT
Councilwoman Prestia	AYES
Councilman Skoufis	AYES

Supervisor Burke noted that Councilman Palermo was unable to attend the meeting this evening due to a previous engagement. He sent an email stating that, due to the fact the petitioner provided no documentation and made no demonstration at the public hearing held on July 5, 2012, he feels the annexation is not in the overall public interest and would vote to deny the petitioners request.

**III. New Business:**

a. Update - Earl Reservoir Dam:

Supervisor Burke stated a very extensive article was printed in the Times Herald Record on September 16 reporting on the conditions of several dams under the jurisdiction of the NYSDEC in the Hudson Valley. Included in the list was the Earls Reservoir Dam and he took this opportunity to inform the public of the history of this dam and what has been done to it by the Town over the last several years to it. The dam at Earls Reservoir is classified as a Hazard Class C Dam with the NYSDEC. This classification is defined by the DEC as meaning that a failure in the dam may result in widespread or serious damage to home(s), main highways, industrial or commercial buildings, railroads, and/or important utilities. Earls Reservoir has a normal water surface area of 16 acres and normal volume of 122 acre feet (40 million gallons). The dam is a combination of earth and concrete and was

reconstructed between June 1978 and 1979 (original construction date was 1912). The reservoir drains to an unnamed tributary of Woodbury Creek and after its confluence with the Moodna Creek eventually discharges to the Hudson River in Cornwall. In 2009 the New York Dam Safety Regulations were revised to implement procedures intended to protect lives, property and protect natural resources. The revised regulations require safety inspections, written reports on maintenance, emergency action plans and annual certifications to the NYSDEC. The Town has taken the following actions to comply with these regulations: 1) prepared a written Emergency Action Plan and Inspection and Maintenance including mapping of potential flood inundation areas, emergency notification flow charts and contact information, dam inspection guidance documents, identification of evacuation routes and general dam infrastructure; 2) dam safety certifications were submitted to NYSDEC in January 2010, 2011 and 2012.

At this time there is some cosmetic repair work that is needed to the dam that Riddick Associates has prepared a timeline schedule for. Motion was offered by Supervisor Burke, seconded by Councilman Arone, to authorize Riddick Associates to advertise for bids for the necessary repairs to the Earls Reservoir Dam, pending the DEC approving the extension of the permit requirements for Timber Rattlesnakes. Supervisor Burke noted these repairs are cosmetic in nature only and have nothing to do with the structure.

**ADOPTED**      AYES    4            Burke, Arone, Prestia, Skoufis  
                     NOES    0

EXTRA ITEM – Kohl’s Tax Certiorari:

Motion was offered by Supervisor Burke, seconded by Councilman Skoufis, to authorize the Attorney to settle the Kohl’s tax certiorari, as recommended by Attorney Liberth and Assessor Breslin.

**ADOPTED**      AYES    4            Burke, Arone, Prestia, Skoufis  
                     NOES    0

#### **IV. Department Reports:**

a. Supervisor’s Report – August 2012

Motion was offered by Councilman Skoufis, seconded by Councilman Arone, to approve the Supervisor’s Report for August 2012 with receipts totaling \$335,670.36 and disbursements totaling \$1,232,900.14.

**ADOPTED**      AYES    4            Burke, Arone, Prestia, Skoufis  
                     NOES    0

b. Town Clerk’s Report – August 2012

c. False Alarm Report – July 2012

d. Parks/Recreation Minutes – September 10, 2012

e. Animal/Goose Control Report – August 2012, which contains a list of donations

f. Police/Communications Report – August 2012

g. Beautification Commission Minutes – No Meeting Held

h. Library Minutes – September 4, 2012

i. Budget vs. Actual – August 2012

#### **V. Public Comment:**

Superintendent Weyant stated that the Roselawn Bridge closed as of September 17 and it is planned to be closed for no more than 45 days. All pre-cast pieces should be delivered by Monday morning and the work pace is moving rapidly.

Peter Stabile, representing the American Legion Post 779, thanked the Town Board, businesses, clubs and residents that have supported the Post for the past 75 years. On October 2 at 7PM there will be a meeting at the Fallkirk Pub. There is no cost to veterans to attend and the State Veterans Council

will be speaking about benefits and recent changes to law. All veterans of Woodbury are invited, whether they are current members of the Post or not. On October 10 the Post will be holding their 75<sup>th</sup> Anniversary Dinner at which they will be honoring some members of the community.

John Smith stated that Planning Board meeting held last night was for a public hearing regarding the planned renovations to Woodbury Common. The State Police gave a short presentation about how they plan to handle the traffic but he felt that they and Simon missed the point on how the traffic affects Route 32. The Planning Board will be accepting comments until October 5 and he encouraged residents to send in their comments. Councilman Arone added that all of the documents relating to the application before the Planning Board are online on the Village's website for review by the public.

**8:10PM – Executive Session:**

Motion was offered by Councilwoman Prestia, seconded by Councilman Skoufis, to enter into an executive session pursuant to Article 7 of the Public Officers Law, to discuss two items of litigation (Brach, et al v. Town of Woodbury, et al and Nassau County, et al v. MTA).

**ADOPTED**      AYES    4            Burke, Arone, Prestia, Skoufis  
                      NOES    0

*There were no minutes of the executive session recorded.*

**VII. Adjournment:**

With no further business to discuss, a motion was offered by Councilman Arone, seconded by Councilwoman Prestia, to adjourn the meeting at 8:40PM.

**ADOPTED**      AYES    4            Burke, Arone, Prestia, Skoufis  
                      NOES    0

Desiree Potvin, Town Clerk