

September 14, 2022

The Town Board of the Town of Harpersfield held a regular meeting on September 14, 2022.

Present were: James Eisel Sr., Supervisor
Matthew J. Taylor, Councilmember
Patrick F. Funk, Councilmember
Erik R. Reeve, Councilmember

Absent: Lisa M. Driscoll, Councilmember

Also present: Russell Hatch, Supt. of Highways
Linda E. Goss, Town Clerk
Kevin Young, Town Attorney
Lindsay Dodd, Associate of Kevin Young
Dean Darling, Chairman of the Planning Board

Others present: Elizabeth Page, Editor for The Mountain Eagle
Henry L. Browning
Mary Hughes
Kaislyn Ferrara
Trish Hilts
Joe Profera
David Ogborn
Bill Abbatine
Sarah Abbatine
Calin Miller
Steve Weiner
Gloria Anderson

The meeting was called to order at 7:04 PM by Supervisor James Eisel Sr..

Supervisor Eisel led the Board and those present in the Pledge of Allegiance to the Flag.

Supervisor Eisel asked if the Board had received the minutes from the regular meeting held on August 10, 2022? The Board had received the minutes. Supervisor Eisel asked the Board if they had any questions, comments or corrections to be made to the minutes? The Board had no questions, comments or corrections to be made to the minutes. A motion to accept the minutes from the regular meeting held on August 10, 2022 as presented was made by Matthew J. Taylor seconded by Patrick F. Funk. All voting Aye.

Linda E. Goss read a letter of thanks from the Delaware County Historical Association for the annual contribution.

Linda E. Goss read a letter of thanks from Delaware Opportunities, Inc. for the annual contribution to the Senior Dining Program.

Linda E. Goss read a letter from the Harpersfield Historical Society thanking the Town Board, Russell Hatch and the Highway Crew for the fabulous job they did installing the Historical signs.

Linda E. Goss reported to the Board that the 26th Annual Clean Sweep Chemical Disposal Day 2022 will be held on Friday October 7, 2022 for businesses and farms and Saturday October 8, 2022 for households. Registration is required online or by telephone message from September 17, 2022 to October 1, 2022. They ask to have your list of items and quantity when you register. This information has also been posted to the Town's website.

Supervisor Eisel recognized David Ogborn with privilege of the floor. Mr. Ogborn informed the Board that he and his neighbors would like the County to put up some speed limit signs on County Highway 33. They have been informed by the County that they needed to speak to the Town Board to get the process started. Mr. Ogborn runs a barber shop and is concerned for his customer's safety coming out of his driveway. There have been two very bad accidents on the road. One was a fatality and the other the fellow was in the hospital for a month. There have been numerous close calls. Councilmember Taylor asked Mr. Ogborn what the speed limit is on the road? Mr. Ogborn answered that entering Co Hwy 33 off of State Hwy 23 by the bridge there is a suggested speed limit sign of 40 MPH. There is no speed limit. Mr. Ogborn continued that currently there are ten different companies hauling stone out of the quarry that has just opened up the road. There is a school bus stop at Mr. Ogborn's house for a student who transferred from Charlotte Valley Central School to Stamford Central School. Next year a neighbor will also have two children who will be riding the bus. Mr. Ogborn asked that the County put up 45 MPH speed limit signs and also a blind drive way sign. The discussion continued. Councilmember Funk asked Mr. Ogborn if he was asking to have the entire length of Co Hwy 33 changed to 45 MPH or just up to Betty Brook Road. Russell Hatch informed the Board that there is only .4 miles of Co Hwy 33 located in the Town of Harpersfield. Councilmember Taylor added that is the worst part of Co Hwy 33. There is a lot of traffic using Gun House Hill Road. The discussion continued.

Councilmember Matthew J. Taylor offered the following resolution and moved its adoption:

TITLE: SPEED ZONE BE ESTABLISHED ON COUNTY HIGHWAY 33.

BE IT RESOLVED, that the Town Board of the Town of Harpersfield requests that an appropriate speed zone be established on the following road: County Hwy 33.

Seconded by Councilmember Patrick F. Funk with the vote as follows:

Adopted:	Supervisor	James Eisel Sr.	Aye.
	Councilmember	Matthew J. Taylor	Aye.
	Councilmember	Patrick F. Funk	Aye.
	Councilmember	Lisa M. Driscoll	Absent.
	Councilmember	Erik R. Reeve	Aye.

Supervisor Eisel reported to the Board that he has received a letter from the County District Attorney confirming that he has given his consent to the Town Attorney to prosecute violations of the Uniform Building Property Maintenance Code in the Town of Harpersfield local Court in capacity as a Town Attorney. A brief discussion continued.

Supervisor Eisel informed the Board that he has a resolution and agreement for Mountaintop Airfield, LLC. Kevin Young, Town Attorney explained to the Board that Mountaintop Airfield, LLC has submitted a Site Plan application to the Planning Board for a go-cart track. Dean Darling, Planning Board Chairman informed the Board that they would like to place a go-cart track where the parking lot currently is located. They want to add this to the complex that is already there. They do not want to address any other issues. They have submitted this Site Plan application and say that their facilities will handle the parking, the noise, etc.. Kevin Young continued that in 2017 there was litigation between the Town of Harpersfield and Mountaintop Airfield, LLC on the approvals of the original Site Plan and whether their operation was consistent with those approvals. The Town Planning Board determined that they were not authorized to use automobiles on the track. Mountaintop Airfield, LLC was required to submit a Site Plan application for a change of use to allow automobiles on the track. As part of that application the Planning Board hired LaBella Engineering to evaluate noise which was paid for by an escrow agreement with Mountaintop Airfield, LLC. Mountaintop Airfield, LLC never gave LaBella Engineering access to the site to actually evaluate the noise at the site. Since 2017 Mountaintop Airfield, LLC has been allowing automobiles use of the track without Town approval. The Town Planning Board and Town Attorney have made it clear to Mountaintop Airfield LLC that they are going to look at the Site Plan application for a go-cart track going back to what was authorized originally not including automobiles. They are going to require an escrow agreement from them to cover the expenses to get an acoustical engineer and for legal counsel. The resolution is for the Town Board to give the Town Supervisor authorization to execute an agreement with Mountaintop Airfield, LLC for an escrow for municipal expenses,

land use council and technical consultant. Kevin Young has been trying to get LaBella Engineers to work with the Town as they had done so before. They are currently very busy and have not called Mr. Young back. Councilmember Funk asked Kevin Young, Mountaintop Airfield LLC funded the experts last time and did not allow them to come in? Kevin Young answered this time they want to construct something. This time we are not going to allow them to construct something without going through our Planning Board. Councilmember Funk asked Kevin Young, with hiring an acoustical engineer what does that outcome determine? Kevin Young answered we are going to interpret this Site Plan application as both an application to address automobiles and to construct this go-cart track. In such an application there is a requirement under SEQRA that you evaluate all environmental impacts. If there is an essential or significant adverse environmental impact than we can require a draft environmental impact statement. The acoustical engineer will be looking at what the background noise is now without automobiles and the go-cart track and what the proposed operation will be with automobiles and the go-cart track. Then whether that has the potential for a significant adverse environmental impact in particular with noise. If there is a significant adverse environmental impact they will have to come up with mitigation measures to prevent it or they will have to do an environmental impact statement. Councilmember Funk asked Kevin Young if Mountaintop Airfield LLC knows that the acoustical engineer is coming out on a certain day what is to stop them from having electric vehicles on the track that day? Councilmember Taylor asked can we request multiple days that the acoustical engineer goes up to the site? Kevin Young answered yes, it is our obligation with our consultant to get a representative sampling and figure it out. This is not a new thing. This happens all of the time. They will document what is there that day, they will document the attendance, they will document the vehicles etc.. The discussion continued.

RESOLUTION NO. 012 OF THE YEAR 2022

Councilmember Matthew J. Taylor offered the following resolution and move its adoption:

TITLE: MOUNTAINTOP AIRFIELD, LLC – APPLICATION FOR SITE PLAN AMENDMENT RESOLUTION AUTHORIZING THE TOWN SUPERVISOR TO EXECUTE FOR PROFESSIONAL CONSULTANT SERVICES.

DATE: September 14, 2022.

WHEREAS, Mountaintop Airfield, LLC (“Applicant”), through its authorized representative, submitted an application to the Town of Harpersfield Planning Board (“Planning Board”), for a site plan amendment to add a new track on the site of its existing motorcycle training facility located on an existing 134 acre parcel of land located at 396 Zimmerman Road in the Town of Harpersfield (“Application”); and

WHEREAS, the Application documents submitted to the Planning Board includes a proposed site plan, completed application form and a Short Environmental Assessment Form; and

WHEREAS, the Applicant had previously submitted an application for a site plan amendment in 2017 to allow the use of automobiles at the Applicant's existing motorcycle training facility located on a 134 acre parcel of land on Zimmerman Road; and

WHEREAS, the documents submitted to the Planning Board in support of its 2017 application for site plan amendment provided an analysis of noise from the existing facility and expected noise levels associated with the use of automobiles; and

WHEREAS, pursuant to Section 7.070 of the Town of Harpersfield Site Plan Review Law, the Planning Board retained a professional consultant and/or engineer to assist it in the review of an application at the Applicant's expense; and

WHEREAS, the Planning Board retained a noise expert, Labella Associates, D.P.C. ("Labella") to evaluate the noise study and data submitted in support of the Application; and

WHEREAS, Labella reviewed the information that was submitted as part of the Application, observed operations from the offsite locations identified by the Applicant and provided a report to the Planning Board recommending next steps, including a visit to the facility to observe on-site operations and a request for supporting information from the Applicant's consultant so that the Planning Board could properly evaluate the noise data submitted by the Applicant; and

WHEREAS, the Applicant did not permit Labella to visit the facility to observe on-site operations or provided any of the supporting information in Labella's report. Therefore, the Planning Board tabled the Applicant's application in November 2017; and

WHEREAS, the Applicant has continued to allow the use of automobiles on the track without site plan approval; and

WHEREAS, the Planning Board must review the current application and the environmental impacts of the proposed use in accordance with SEQRA and intends to declare itself Lead Agency; and

WHEREAS, the Planning Board must also consider the potential impacts of the use of automobiles at the facility which has not been approved by the Town and is not part of the baseline condition for purposes of assessing potential environmental impacts under SEQRA; and

WHEREAS, pursuant to Section 7.070 of the Town of Harpersfield Site Plan Review Law, the Planning Board has the authority to hire professional consultants to assist it in the review of an application at the Applicant's expense; and

WHEREAS, the Planning Board has determined it needs the assistance of a land use attorney and engineer as it reviews this application; and

WHEREAS, pursuant to the attached agreement, the Planning Board will designate its consultant engineer and provide the Applicant with notification and a copy of any retainer

agreement upon request. For its land use counsel, the Planning Board desires to engage Young Sommer, LLC to assist with its review of the application which will bill the Applicant at the non-municipal rate of \$250.00 per hour pursuant to the agreement.

NOW, THEREFORE IT IS HERBY RESOLVED, the Town of Harpersfield Town Board hereby authorizes the Town Supervisor to execute the proposed Escrow Agreement to retain professional consultants to provide legal counsel and technical assistance to the Planning Board in connection with its review of the Application under the Town of Harpersfield Site Plan Review Law and SEQRA.

WHEREUPON, this Resolution was declared adopted by the Town Board of the Town of Harpesfield.

Seconded by Councilmember Patrick F. Funk with the vote as follows:

Supervisor	James Eisel Sr.	Aye.
Councilmember	Matthew J. Taylor	Aye.
Councilmember	Patrick F. Funk	Aye.
Councilmember	Lisa M. Driscoll	Absent.
Councilmember	Erik R. Reeve	Aye.

AGREEMENT NO. 005 IN THE YEAR 2022

AGREEMENT FOR THE PAYMENT OF MUNICIPAL EXPENSES, LAND USE COUNCIL AND TECHNICAL CONSULTANT.

This Agreement dated September 14, 2022 by and between the Town of Harpersfield, a municipal corporation with its principal office located at 25399 State Hwy 23, Harpersfield, NY 13786 (the "Town"), and New York Safety Track LLC and Mountain Top Airfield LLC, with its principal place of business located at 396 Zimmerman Road, Harpersfield, NY (collectively "Applicant").

WHEREAS, the Application documents submitted to the Town of Harpersfield Planning Board (the "Planning Board") includes a proposed site plan, completed application form and a Short Environmental Assessment Form; and

WHEREAS, the Applicant had previously applied for a site plan amendment in 2017 to allow the use of automobiles at the Applicant's existing motorcycle training facility located on a 134 acre parcel of land on 396 Zimmerman Road, Harpersfield, NY; and

WHEREAS, the documents submitted to the Planning Board in support of its 2017 application for site plan amendment provided an analysis of noise from the existing facility and expected noise levels associated with the use of automobiles; and

WHEREAS, pursuant to Section 7.070 of the Town of Harpersfield Site Plan Review Law, the Planning Board retained a professional consultant and/or engineer to assist it in the review of an application at the Applicant's expense; and

WHEREAS, the Planning Board retained a noise expert, Labella Associates, D.P.C. ("Labella") to evaluate the noise study and data submitted in support of the Application; and

WHEREAS, Labella reviewed the information that was submitted as part of the 2017 application, observed operations from the offsite locations identified by the Applicant and provided a report to the Planning Board recommending the next steps, including a visit to the facility to observe on-site operations and a request for supporting information from the Applicant's consultant so that the Planning Board could properly evaluate the noise data submitted by the Applicant; and

WHEREAS, the Applicant did not permit Labella to visit the facility to observe on-site operations or provided any of the supporting information identified in Labella's report; and

WHEREAS, the Planning Board tabled the 2017 application for site plan amendment in November 2017 and a balance of \$2,228.67 remains in the escrow account established in connection with the application; and

WHEREAS, the Applicant has continued to allow the use of automobiles on the track without site plan approval the Town of Harpersfield Code Enforcement Officer has notified the Applicant that the use of cars on the track may result in enforcement action being taken against New York Safety Track LLC; and

WHEREAS, prior to granting any site plan amendment, the Planning Board must review the application materials and the environmental impacts of the proposed use in accordance with SEQRA; and

WHEREAS, the Planning Board must also consider the potential impacts of the use of automobiles at the facility which has not been approved by the Town and is not part of the baseline condition for purposes of assessing potential environmental impacts under SEQRA; and

WHEREAS, pursuant to Section 7.070 of the Town of Harpersfield Site Plan Review Law, the Planning Board has the authority to hire professional consultants and/or engineers to assist it in the review of an application at the Applicant's expense; and

WHEREAS, the Planning Board has determined it needs the assistance of a land use attorney and engineer to review the Application and make recommendations to the Planning Board; and

Whereas, the Planning Board desires to engage a consultant engineer and land use attorney, to assist with its review of the application pursuant to the Escrow Agreement appended hereto which was reviewed and approved by the Planning Board; and

NOW, THEREFORE, in consideration of the mutual promises herein, the Town and the Applicant agree that the terms and conditions of this Agreement are the following:

1. Applicant shall reimburse the Town, in full, for all of its out-of-pocket consultant fees and expenses incurred in connection with the review of this project, including but not limited to all services required to process the application, review the project under the Town's Site Plan Review Law, and compliance with SEQRA. Under this Agreement, the Applicant shall not be required to reimburse the Town for any legal fees associated with any litigation related to the project.
2. The Planning Board will designate its consultants and provide the Applicant with notification and a copy of any retainer agreement upon request. The Town has retained Young/Sommer, LLC as legal counsel. Young/Sommer, LLC will bill the Applicant at the non-municipal rate of \$250.00 per hour.
3. Upon execution of this Agreement, the Applicant shall deposit an additional \$5,000.00 with the Harpersfield Town Clerk whom shall hold the funds in escrow to be used to pay the consulting engineer and legal fees incurred in the review of the project. The Town and Applicant agree that the \$2,228.67 balance remaining in the escrow account established in connection with the 2017 application shall be transferred to the newly established escrow account bring the total account balance to \$7,228.67. The Town and Applicant agree that all funds in the newly established escrow account shall be administered in accordance with the Agreement and that any prior escrow agreement between the parties shall be considered null and void.
4. Whenever the balance of the escrow fund falls below \$1,000.00, the Applicant shall be notified, through its contact, of the amount remaining in the account and within five business days of such notification the Applicant shall deposit an additional \$5,000.00 or such other amount as the Town and Applicant shall agree to in writing signed by both parties, into the account with the Town Clerk. In the event the Applicant fails to replenish the account within five (5) business days of being notified, the Planning Board Chairman may direct the lawyers to cease all work on the project until such payment is received from the Applicant.
5. The invoices for consultant legal and engineering services will be submitted to the Town of Harpersfield Supervisor (the "Supervisor") for review. Upon approval by the Supervisor, the approved invoices shall be delivered to the Town Clerk who will thereafter be directed to disburse funds from the escrow account to pay the invoices. Copies of all invoices shall be provided to the Applicant upon request. The Applicant is entitled to review all invoices, subject to the Town's rights to delete attorney-client or privileged communications/materials.
6. The professionals retained by the Town to assist it and its boards reviewing the application work for the Town and do not have any obligation or fiduciary relationship to the Applicant.

7. The services provided by the professionals subject to reimbursement hereunder shall be limited to those services reasonably necessary to assist the Planning Board in its review of the proposed application under SEQRA and the Town's Site Plan Review Law, and make recommendations as to additional steps, if any that can or should be implemented to mitigate noise impacts from the facility. The rates charged by professionals shall not exceed those rates customary within the community for similar services. Upon completion of all the Town's responsibilities with respect to the review of the proposed development, any monies remaining in the escrow account, after paying all outstanding costs, fees and expenses, shall be returned to the Applicant.
8. Upon request by the Applicant, no more frequently than once every two months, the Town shall render an accounting of all monies received and expended in connection with the escrow funds and an estimate of all costs, fees and expenses to be expended in the next two months, subject to the Town's rights herein stated.

TOWN OF HARPERSFIELD

MOUNTAINTOP AIRFIELD, LLC

BY: _____

BY: _____

PRINT NAME: _____

PRINT NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

NEW YORK SAFETY TRACK, LLC

BY: _____

PRINT NAME: _____

TITLE: _____

DATE: _____

Councilmember Reeve asked Kevin Young is there anything the Town can do if Mountaintop Airfield LLC just goes ahead and puts in this go-cart track. They have been noncompliant with the cars on the track. What can we do to actually stop it? Kevin Young answered the Town would need to bring an enforcement action. This will cost the Town a lot of money. In the past with the Town Attorney's advice the Town chose not to bring an enforcement action with the cars on the track as it would not be in the best interest of the Town to spend tax payer funds for this action. The discussion continued. Supervisor Eisel added that the Town will have more standing when going to court if Mountaintop Airfield, LLC builds this go-cart track at this time without the consent of the Planning Board. The discussion continued.

Supervisor Eisel informed the Board that he has a resolution giving the Village of Stamford immunity from the Town of Harpersfield Subdivision Regulations for conveyance of a 6.65 acre portion of tax parcel #41.-1-4 to the Catskill Mountain Little League. Kevin Young informed the Board that in the Village of Stamford the new swimming pool has been built on the Little League field. The Village of Stamford owns a 24.3 acre parcel of land in which they have conveyed 6.65 acres over to the Catskill Mountain Little League for them to build a recreational complex with a regulation little league diamond with lights, a second "Multi-Use" diamond that would serve little league baseball while enabling the eventual creation of league-sanctioned softball, a bull pen, batting cage, concession stand, announcer's booth and accessory parking. This should have been started with a Subdivision application submitted to the Town Planning Board and received Subdivision approval. The Village of Stamford and Catskill Mountain Little League did not do that. Catskill Mountain Little League now has to go before the Town Planning Board to get Site Plan approval to move forward with this project. While reviewing the Site Plan application the Planning Board determined that they can't process the application without also getting Subdivision approval. Getting Subdivision approval will require the Village of Stamford getting a survey and will delay the start of construction this year. There is a law that when a government takes a local action that it could be immune from Subdivision regulations. The law is called the Monroe Test. It is a balancing of interests. When we look at Subdivision regulations they are primarily there to make sure that the properties that are subdivided are habitable lots. This includes that they have road access and have adequate space for a well and septic. In this instance this was not the case. The Subdivision was for a facility and the Village of Stamford is retaining the remaining acres. In this case the Town Attorney is charged with doing the analysis or the evaluation on the balancing test. In this resolution you will see that we go through all of the factors of the balancing test. The Town Attorney's opinion is in favor of the Village of Stamford conveying 6.65 acres to the Catskill Mountain Little League. Therefore the Town Board can adopt a resolution which says that under the balancing test the Village of Stamford is immune from Subdivision regulations. Catskill Mountain Little League still has to go through Site Plan approval before construction on

the facility can begin. Councilmember Taylor asked Kevin Young did the Village Attorney not understand before hand that they needed to do a Subdivision with the Town? Kevin Young answered he did not know. Mr. Calin Miller, Treasurer of the Catskill Mountain Little League informed the Board that when they went to the Village of Stamford and asked for land from parcel #41.-1-4 they said go get a survey. So Catskill Mountain Little League went and had a survey done on the 6.65 acre parcel that they would need. Once the survey was completed Catskill Mountain Little League brought the map to the Town of Harpersfield Planning Board. The Planning Board gave Catskill Mountain Little League a Site Plan application, told them to complete it, come back and see them, they would discuss it and go from there. At the next meeting the Planning Board informed Catskill Mountain Little League that they would need more road frontage than what they currently have. Catskill Mountain Little League then called the surveyor back and informed them that they needed an easement to get another seventeen feet of road frontage to follow the Subdivision regulations. They also needed a memo from Clark Companies to state that they had done a perc test. So Catskill Mountain Little League started going through all of the requirements for subdivision. During this process the Town of Harpersfield's Attorney informed Catskill Mountain Little League of the resolution by the Town Board giving immunity to the Village of Stamford from Subdivision regulations. So that is where we are at. Dean Darling added that a survey of the remaining lot would involve a lot of time, extra expense and a perc test. So as Kevin Young has explained the lot that is going to be improved on is going to be built for the Little League and is the only one that needs to meet the subdivision requirements. The remaining lot is separate and does not need to be surveyed or have a perc test for this process to continue. Kevin Young continued that in this resolution we have added that on the subdivision map that is eventually filed it will say Lot 1 is not being improved as a building lot in the Town of Harpersfield. The Village can not build on that lot that it is retaining until they come back in front of the Planning Board. Linda E. Goss asked Kevin Young what kind of precedence does this set? Kevin Young answered this Monroe Balancing Analysis is done all of the time. Supervisor Eisel added that it is done at the County all of the time. Kevin Young continued that you are a municipality, you are doing a public function and it is beneficial and serves the community. Supervisor Eisel asked Kevin Young if the Town Board supersedes the Planning Board? Kevin Young answered only the Town Board has this authority.

RESOLUTION NO. 013 OF THE YEAR 2022

Councilmember Patrick F. Funk offered the following resolution and moved its adoption:

TITLE: APPLICATION OF MONROE BALANCING ANALYSIS TO DETERMINE VILLAGE OF STAMFORD IMMUNITY FROM TOWN OF HARPERSFIELD SUBDIVISION REGULATION FOR CONVEYANCE OF 6.65 ACRE PORTION OF TAX PARCEL #41.-1-4.

DATE: September 14, 2022.

WHEREAS, by deed dated May 13, 2022 and filed in the Delaware County Clerk's Office as Instrument #4963, the Village of Stamford ("Village") conveyed a six point six five (6.65) acre portion of a larger 24.3 acre parcel of land identified on the Delaware County Tax Map as Parcel #41.-1-4 Catskill Mountain Little League. A copy of said deed is attached hereto. The 6.65 acre portion of Tax Parcel #41.-1-4 that was conveyed by the Village is referred to herein as the "Ballfield Parcel"; and

WHEREAS, the deed conveying the Ballfield Parcel included a condition that the Ballfield Parcel be used as a park which will "benefit and serve the public"; and

WHEREAS, the Ballfield Parcel is located in the Town of Harpersfield ("Town") and will have access via a right of way over land owned by Prospect Enterprises, Inc. for ingress and egress from New York State Route 10; and

WHEREAS, the Town of Harpersfield Subdivision Regulations (Local Law No. 1 of 1995) provides as follows: "[w]herever any subdivision of land is proposed to be made, and before any contract for the sale of, or any offer to sell any lots in such subdivision or any part thereof is made, and before any permit for the erection of a structure is such proposed subdivision shall be granted, the subdivider or his duly authorized agent shall apply for a secure approval of such proposed subdivision in accordance [with the Town Subdivision Regulations]"; and

WHEREAS, the Village did not apply for or secure approval for a subdivision before conveying the Ballfield Parcel for use as a park to benefit and serve the public; and

WHEREAS, the Harpersfield Planning Board ("Planning Board") has now received an application for site plan approval to build a recreational complex with regulation little league diamond with lights, a second "Multi-Use" diamond that would serve little league baseball while enabling the eventual creation of league-sanctioned softball, a bullpen, batting cage, concession stand, announcer's booth and accessory parking; and

WHEREAS, the application for site plan approval is an action subject to SEQRA and the Planning Board has declared its intent to act as Lead Agency under SEQRA 6 NYCRR 617.6 and commenced a coordinated review with other involved and interested agencies; and

WHEREAS, during the Planning Board's review of the site plan application, it was determined that the Village had not applied for or obtained subdivision review before conveying the Ballfield Parcel; and

WHEREAS, under the "balancing of public interests" test adopted by the New York Court of Appeals in the *Matter of County of Monroe v. City of Rochester*, the Village's subdivision and conveyance of the Ballfield Parcel may be deemed immune from the Town's Subdivision Regulations if after consideration of the relevant factors, the Harpersfield Town Board determines the balance of said considerations weighs in favor of granting immunity.

NOW, THEREFORE, the Harpersfield Town Board hereby adopts the following findings:

1. The nature and scope of the instrumentality seeking immunity. The nature and scope of the instrumentality seeking immunity is the Village of Stamford. The Village owned a 24.3 acre piece of property located in the Town and conveyed the Ballfield Parcel without obtaining subdivision approval from the Planning Board prior to the conveyance, thereby indicating its belief that the conveyance was immune from the Town's subdivision regulations.
2. The kind of function or land use involved. The kind of function or land use involved relates to the Village's intent to convey the property so that it can be used for the benefit of the public and its proposed improvement by the Catskill Mountain Little League as a recreational complex.
3. The extent of the public interest to be served thereby. The Catskill Mountain Little League has not had a field to use in Harpersfield or Stamford since 2020 when the Timothy Terry Field was selected as the proposed site of a new community swimming pool. The Village's conveyance of the Ballfield Parcel for a nominal consideration and the Catskill Mountain Little League's subsequent development of a recreation complex with grant funding from the Robinson-Broadhurst Foundation will promote the public interest by providing a location for Catskill Mountain Little League to continue to operate and hold games and other events that benefit the larger community.
4. What the effect of local land use regulation would have upon the enterprise concerned. The Village's conveyance of the Ballfield Parcel without obtaining subdivision approval will not create the potential for adverse impact to the Town because the proposed recreation complex will require a review of potential environmental impacts under SEQRA and site plan review under the Town's local law which is currently ongoing. The main purpose of the Subdivision Law is to ensure that new parcels that are created by a subdivision are sustainable lots with road access and are suitable for sewer and sewer utilities without an adverse impact on the surrounding properties. This purpose can be achieved through the Planning Board's review of proposed development on the Ballfield Parcel.
5. The impact upon legitimate local interests. With respect to the impact on legitimate local interests, the deed conveying the Ballfield Parcel states the Village's intent to allow the property to be used in a manner that provided a benefit to the community and serve the public interest. As the subdivision was necessary to allow any future development of the Ballfield Parcel for the benefit and service of the public, a determination that the subdivision is immune from the Town's subdivision regulations furthers a legitimate local interest in this specific case.
6. The encroaching government's legislative grant of authority. Subdivision Regulations do not exempt the Village owned land in the Town from its requirements and there is no known legislative grant of authority that grants the Village authority to subdivide its property within the Town without obtaining necessary approvals or a Town Board determination. However, it is recognized that the Village intended to convey the Ballfield Parcel to facilitate its use by the public and conveyed it for a nominal

consideration to Catskill Mountain Little League which is in turn relying on grant funding to develop the proposed recreation complex to the extent practical to obtain an actual benefit for its community.

7. Alternative locations for the facility in less restrictive zoning areas. There are no alternative locations. The Ballfield Parcel is a portion of a Village owned parcel that was not needed by the Village and therefore could be devoted to a use that would benefit and serve the public. The Village was willing and able to convey the Ballfield to Catskill Mountain Little League for a nominal value to facilitate this use.
8. Alternative methods of providing the needed improvements. There are no affordable alternatives for the needed improvements. See response to Factor No. 7.
9. Intergovernmental participation in the project development process and an opportunity to be heard. The Town Planning Board is conducting a coordinated SEQRA review in connection with Catskill Mountain Little League's application for site plan application for the proposed recreation complex and has included the Village of Stamford, in addition to NYS DEC, NYS DEP, Delaware County, NYS Office of Parks and Recreation and others, in its coordinated review. The Village also received direct notice of the public hearing that was held on the site plan application on August 31, 2022.

NOW, THEREFORE, BE IT FURTHER RESOLVED, based on a consideration of the factors set forth above and the findings adopted herein, the Town Board hereby determines that the Village's conveyance of the Ballfield Parcel to Catskill Mountain Little League is immune from review and approval under the Town's Subdivision Regulations and that the plat depicting the two parcels, revised August 8, 2022, may be filed in the Delaware County Clerk's Office without Planning Board approval provided the plat is amended to include any changes required by the Planning Board during the course of its site plan review and the following note is added to the plat before it is filed:

1. "Lot 1 is not being approved as a building lot by the Town of Harpersfield Planning Board".

NOW, THEREFORE, BE IT FURTHER RESOLVED, the Town Board hereby authorizes the Town Attorney and Chairman of the Planning Board to prepare and execute any documents necessary to effectuate this resolution.

WHEREUPON, this Resolution was declared adopted by the Town Board of the Town of Harpersfield.

Seconded by Councilmember Matthew J. Taylor with the vote as follows:

Supervisor	James Eisel Sr.	Aye.
Councilmember	Matthew J. Taylor	Aye.
Councilmember	Patrick F. Funk	Aye.

Councilmember Lisa M. Driscoll Absent.

Councilmember Erik R. Reeve Aye.

Russell Hatch reported to the Board that he has purchased a 2011 Mack dump truck with a plow. This truck has approximately 180,000 miles on it. The cost was \$41,925.00.

Russell Hatch informed the Board that the truck with the bent frame is in the shop. New frame rails are being put on it.

Russell Hatch reported to the Board that the sealing of the roads paved this year is complete. The roads sealed were Shaver, Dibble, Truax, Streeter Hill, Champlin, Truesdell and Weaver Roads. He has left Odell Lake Road unsealed due to the raising costs.

Russell Hatch informed the Board that they have begun the Austin Road culvert project. The crane is scheduled for Wednesday to set the footers and scheduled for Thursday to set the box. They are going to be close to being complete by the end of the NYS DEC Stream Permit. Russell is hoping that they will be able to get an extension to finish the project. Supervisor Eisel asked is the area all prepared? Russell answered that the area is 75% dug out. That will need to be completed. They will also need to put stone in the base for the footers. Once the structure has been set there will still be quite a lot of work to do. Supervisor Eisel asked if the company that is delivering the culvert will be putting it in place? Russell answered no he has hired a crane company to do that. The precast company has made the structure and has trucked it to the site. They will not set the culvert.

Russell Hatch reported to the Board that he has tried to get in touch with the company that the Town has bought the new loader from. The last time that Russell had talked to them they said that the new loader should be delivered at the end of this month. Once he has taken possession of the new loader his plan is to get rid of the old loader and a truck. He is going to play it by ear. Linda E. Goss asked Russell if he would be putting them on an auction website to be sold? Russell answered yes. Supervisor Eisel added that the funding for the new loader will be grant funds from the Robinson-Broadhurst Foundation.

Russell Hatch informed the Board that he has not heard anything on the new truck. He is on a waiting list. At the beginning of the year the company finds out how many trucks they will be getting to sell. Supervisor Eisel added that he has written a grant to the Robinson-Broadhurst Foundation, which is ready to go, to help with purchase of the new truck.

Councilmember Funk asked Russell what happened with the fuel bid? Russell answered that he had gone on the Office of Government Services (OGS) website. The way that the bid from Mirabito was written they had given the Town the price for fuel for that week. That is the way that the OGS site works also. He checked OGS's site that same week as the Mirabito bid and Mirabito's price was lower by about \$.10. He did accept the bid from Mirabito.

Supervisor Eisel asked Russell if the Austin Road culvert project would be covered by CHIPs funds? Russell answered yes. He had held back \$125,000.00 of CHIPs funds from last year. He thinks he is in good shape to be able to cover the cost of the culvert project. The biggest expense is the actual structure. The cost for that is approximately \$58,000.00.

Councilmember Funk asked Russell if he had heard anything on the grant application for the Reed Road and Gun House Hill Road project? Russell answered that he has not heard anything on that. He will contact Delaware County Soil and Water to see how things are going.

Supervisor Eisel reported to the Board that there was a question at last month's meeting about a grant from Western Catskills Revitalization to the Town of Stamford. The Town of Stamford did receive grant funding from Western Catskills Revitalization in the amount of \$500,000.00. The Town of Stamford did pay Western Catskills Revitalization a fee of \$4,500.00 to write and administer the grant. They are going to rehab houses up to \$25,000.00 and anything over that has to have Town Board approval. The project has not started yet. A discussion continued.

Councilmember Funk had brought to the Board's attention an article titled "Can Whitetails and Windmills Coexist?" The article talks about how solar facilities and windmills affect wildlife as well as people. The article brings up several points that the Board may not have thought about. The Town Clerk will make sure to add a copy of the article with the minutes for the Town Board.

A motion to accept the Town Clerk's August report in the amount of \$592.39 was made by Matthew J. Taylor seconded by Patrick F. Funk. All voting Aye.

The abstract and vouchers for the month of August were presented to the Board. Presented were General Claims #196 to # 216 in the amount of \$7,303.78, Highway Claims #130B to #150 in the amount of \$171,207.19 and Transfer Station Claims #037 to #043 in the amount of \$4,140.70. A discussion was had on the how the cost of everything is going up. A motion to pay the vouchers as presented was made by Matthew J. Taylor seconded by Patrick F. Funk. All voting Aye.

The Supervisor's report for the month of July was issued to the Board.

Supervisor Eisel informed the Board that he will have the tentative budget for 2023 for the Board at next month's meeting.

Councilmember Taylor asked the Board and Russell Hatch if they could remember when the last time was that they resurfaced State Hwy 23? He thinks that it was a while ago. Russell Hatch agreed. Councilmember Taylor asked if as a Town is it possible to address NYS DOT about the condition of the road? The stretch between Mile Hill and Davenport is horrendous. When it rains heavily the ruts in the road fill with water and make a vehicle hydroplane.

Councilmember Taylor purposely ran his pickup truck in the rain filled ruts and it threw his pickup truck a half a lane over. He is concerned about someone having a fatal accident because of the road's condition. Can the Town address NYS DOT and say we have an unsafe situation going on in our Town with one of your roads. Then at least the Town has recognized the

situation and sent a letter to NYS DOT. Kevin Young said yes the Town can send NYS DOT a letter about the condition of NYS Hwy 23. Councilmember Funk agreed that the Town should send a letter. The discussion continued. Kevin Young said that he will put together a letter that will need to be signed by the Highway Superintendent. Russell agreed that he would sign the letter. Councilmember Funk continued that if the Town does not bring the issue to the States attention and something does happen then they can't be held liable. Kevin Young added that once the Town brings it to their attention they are on notice. Then if they do not do anything and they are on notice they are liable. The discussion continued. Kevin Young will draft a letter with help from Russell Hatch.

At 7:56 PM Patrick F. Funk made a motion to go into executive session for contract negotiations regarding emergency medical service. Linda E. Goss was asked to participate in executive session. Linda E. Goss agreed to honor the attorney-client privilege. Seconded by Matthew J. Taylor. All voting Aye.

At 8:20 PM a motion was made to come out of executive session by Matthew J. Taylor seconded by Patrick F. Funk. All voting Aye. No action was taken in executive session.

The meeting was adjourned.

The next regular meeting of the Board will be held on Wednesday, October 12, 2022 at 7:00 PM.

Linda E. Goss

Town Clerk

