

TOWN OF SOUTHEAST
1360 Route 22,
Brewster, New York 10509
Thursday, June 9, 2016
EXECUTIVE SESSION 6:00 P.M.
WORK SESSION/REGULAR MEETING 7:00 P.M.

Pledge of Allegiance

Notation of Exits

Turn Off/Put on Vibrate – All Electronic Devices

Executive Session:

1. Litigation/Personnel Matters

Work Session:

1. Discussion – Fortune Ridge Sewer Rates
2. Discussion – Barrett Hill

Regular Meeting:

1. Resolution – Setting Rates for Independent Sewage Works Inc. – Highlands Shopping Development
2. Resolution – Ward – 2-12 Castle Hill Farm – Private Cemetery Special Permit
3. Resolution – MACO Land – ARB Report and Recommendation
4. Resolution – Appoint Special Prosecutor – Brewster Auto, Inc. & Estate of Marin – Continuing Violations
5. Resolution – Settlement of Certorari Proceedings – Kohl's
6. Resolution – Settlement of Certorari Proceeding – CRR Top Spin Tennis
7. Resolution – Authorizing Supervisor to sign MOU with County/EOHWC/Feehan Agency- Storm Retrofit
8. Resolution – Authorizing Supervisor to sign IMA on Electrical Inspections
9. Waive the Rules – Resolution – Re-Appointment Historic Sites Commission

Recognition of Public/Public Comment

Recognition of Town Board/Town Board Comment

KEANE & BEANE P.C.
ATTORNEYS AT LAW

ws#1
Main Office
445 Hamilton Avenue
White Plains, NY 10601
Phone 914.946.4777
Fax 914.946.6868
Mid-Hudson Office
200 Westage Business Center
Fishkill, NY 12524
Phone 845.896.0120

April 27, 2016

VIA OVERNIGHT DELIVERY

Honorable Tony Hay, Town Supervisor
and the Town Board of the Town of Southeast
Town Hall
1360 Route 22
Brewster, New York 10509

Re: Fortune Ridge/Meadows at Deans Corner -
Deans Corners Sewer Company, Inc. - Sewer Rates

RICHARD L. O'ROURKE
Principal Member
rorourke@kblaw.com

Dear Supervisor Hay and Members of the Town Board:

Keane & Beane, P.C. represents Meadows at Deans Corners Sewage Works, Inc. (the "Company") with respect to the sewer rate application being filed on behalf of that entity. Attached please find copies of the following documents for filing prepared by the Company's rate consultant, Guastella Associates, LLC:

1. Initial Rate Analysis
2. Schedule for Sewer Service
3. Initial Rate - Cost of Service Study
4. Work Papers in Support of Cost of Service Study

We would greatly appreciate it if the Town Board could schedule the matter so that the Company's sewer rates could be approved as soon as possible. As I am sure Willis will advise you, there is no public hearing required. Should the Town Board not act with regard to the rates, by operation of law the rates will go into effect (Transportation Corporations Law Section 121). Please do not hesitate to contact either myself or Guastella Associates, LLC in the event you have any questions regarding this matter.

Respectfully submitted,



Richard L. O'Rourke
RLO/sj

cc: John F. Guastella
Willis H. Stephens, Jr., Esq., Town Attorney (wstep68534@aol.com)
Michelle Stancati, Town Clerk
Christopher Munch

1185/33/565559v1 4/27/16

MEADOWS AT DEANS CORNERS SEWAGE WORKS, INC.

Initial Rate Analysis

GUASTELLA ASSOCIATES, LLC

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LIST OF SCHEDULES

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SCHEDULE B	Rate Base
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	* * *
<i>APPENDIX A</i>	Certificate of Incorporation and Resolution = Town of Southeast
<i>APPENDIX B</i>	Tariff Schedule

SUMMARY OF FACTS

COMPANY	Meadows at Deans Corners Sewage Works, Inc.
ADDRESS	c/o Fortune Builders LLC 8 Kendall Avenue Sleepy Hollow, NY 10591
TERRITORY	Residential Development Known as "Fortune Ridge" Town of Southeast Putnam County, New York
FILING	Initial Tariff Schedule No. 1 - Sewer
EFFECTIVE DATE	August 1, 2016
NATURE OF REVISIONS	Establishes rates and conditions of service
NUMBER OF CUSTOMERS	110 Customers
ANNUAL REVENUES	\$236,505
RATE BASE	\$993,067
RATE OF RETURN	8.25%
RATE STRUCTURE	Quarterly Base Rate: Varies by Water Meter Size Volumetric Rate: Based on Metered Water Use

DESCRIPTION OF SEWER SYSTEM

Meadows at Deans Corners Sewage Works, Inc. (“Company”) was formed to provide wastewater collection, treatment and disposal service to a residential development known as “Fortune Ridge” located in the Town of Southeast, Putnam County. It is anticipated that this development will consist of 103 single-family residential homes, a clubhouse facility, a castle and carriage house residence unit, and two farm facilities.

A wastewater treatment facility is designed to treat a flow of 94,000 gallons per day (gpd). The average day flows at system build-out are expected to be approximately 30,000 gpd. The membrane bioreactor (MBR) wastewater treatment plant was completed in the fall of 2014. The facility is located within the NYC Watershed and complies with all requirements for microfiltration. The wastewater system includes an influent pump station, flow equalization, fine screening, biological treatment, membrane filtration, nutrient removal, and UV disinfection facilities. The system is designed for discharge to an infiltration gallery resulting in no surface discharge.

The treatment plant will have backup units, a standby power generator, alarm system and flow measuring devices. The collection system will be primarily a gravity system, but will include one lift pumping system and a small section of force main in a low lying area.

RATE-SETTING METHODOLOGY

The initial rates for sewer service have been predicated on the basis that the Company will be a sewer utility capable of providing safe and adequate service on the strength of its own financial condition. The revenue requirement has been calculated to include an estimate of all operation and maintenance expenses, depreciation, taxes and a reasonable return on a net investment that includes an imputation of contributions. Consistent with establishing compensatory rates, the revenue requirement or total cost of service has been based on a fully developed system. It has been recognized that because the Company will not be fully developed in the first several years of operation, the revenues will not be adequate to cover all operating costs. Accordingly, advances from affiliated companies will cover unrecovered operating expenses in the interim.

This method of developing initial rates and structuring a new sewer utility has the following advantages:

1. The risk of the investment in utility plant, which is dependent on the success of the development, is borne by the developer, not the utility or its customers, since the customers actually added will, in effect, pay through the rates only a pro rata share of the costs.
2. Since the developer will provide advances to cover any operating costs in excess of revenues during the period of growth, the utility will have the necessary cash flow. Disposition of advances in the future (by forgiveness of a respective portion of debt) will enable the utility to avoid dilution of its equity.
3. As a unique sewer utility serving a relatively small number of wastewater customers, yet requiring substantial investment, the rates are at a level that reflects prior notices requiring an imputation of contributions, and as adjusted will be compensatory, as negotiated with the Town of Southeast.

4. The sewer utility will be better able to attract capital for future plant replacements or additions and, therefore, to provide safe and adequate service on a long-range basis.

REVENUE REQUIREMENT

Because projections are made for the complete system, the cost of operations must be estimated in order to determine the revenue requirement and resultant rates. Schedule A sets forth the computation of revenue requirement, which is estimated at \$236,505. The revenue requirement components are identified as: Operation and Maintenance Expenses, Depreciation, Amortization, Taxes Other Than Income Tax, Federal and State Income Taxes and Return on Investment, each of which is developed later in this report.

Each revenue requirement component has been calculated in current, uninflated dollars so that today's customers do not pay rates for service based on future price levels. It is therefore anticipated that any increases in operating expenses and construction costs in the future (due to inflation, operational and construction changes, delays, variances in system characteristics or other unanticipated changes) will require compensatory rate revisions. The possible occurrence of such future events, however, does not alter the compensatory nature of the revenue requirement and resultant rates established in this analysis.

RATE BASE

Schedule B, sets forth the computation of the Company's rate base in the amount of \$993,067. The original cost of plant in service in the amount of \$4,054,619, less \$120,000 of contributed land and \$2,825,056 of imputed contributions, is based on the estimated cost of facilities for a fully developed system. The original cost of plant, by primary plant account, is set forth on Schedule B.1. The accumulated depreciation in the amount of \$153,683 at system build-out is detailed on Schedule B-2. The accumulated depreciation includes ten years of depreciation to allow for the approximate period it will take to serve all potential customers.

The rate base also includes the average unrecovered balance of deferred rate case expense and the cash working capital allowance of 20% of operation and maintenance expenses based on lead/lag of billing quarterly in arrears.

OPERATION AND MAINTENANCE EXPENSES

The Operation and Maintenance Expenses were estimated for this specific system on the basis of information furnished by the Company. A detailed estimate of Operation and Maintenance Expenses is set forth on Schedule C. The Operation and Maintenance Expenses are estimated at \$98,435 based on current dollars, unadjusted for inflation.

ANNUAL DEPRECIATION EXPENSE

The depreciation expense is based on the use of average service lives that are appropriate for the various utility plant accounts. A detail of the depreciation rates, by primary plant account, and resultant annual depreciation expense in the amount of \$28,532 is shown on Schedule B-2 and set forth on Schedule C-1.

ANNUAL EXPENSE AMORTIZATION

The amortization of deferred rate case expense is based on spreading the rate case costs over a five-year recovery period. The calculation of the annual amortization recovered through rates in the amount of \$7,000 is set forth on Schedule C-1.

TAXES

The Taxes-Other reflect anticipated real estate taxes of \$5,000, as shown on Schedule C-1.

Federal and State income taxes are calculated using current tax rates as shown on Schedule C-1.

RATE OF RETURN

The return on rate base is predicated on an overall rate of return of 8.25%, as set forth on Schedule D. For the purpose of this analysis, the capital structure is estimated at 50% debt and 50% equity, with cost rates of 6.5% for debt and 10.0% for equity. Because of the size of this Company, a detailed "cost of money" analysis is impractical and unnecessary. The current impact of a variance in the overall rate of return necessary for the Company to attract capital in the future is insignificant (even if measurable) with respect to the compensatory nature of the initial rates

RATE STRUCTURE

The rate structure, as set forth on Schedule E, consists of a quarterly base charge, to be billed in arrears, based on the relative size of the water meter, and a volumetric rate based on metered water usage. The base service charges are designed to recover the fixed costs and the volumetric charges to recover the variable costs of providing service.

CONCLUSION

The proposed initial rates are based on a careful estimation of the Company's revenue requirement, and include an imputation of contributions in order to mitigate the level of rates and designed to be fully compensatory as adjusted. The planning of the Company's operation as to rates and charges is intended to create a financially sound sewer utility that will provide safe and adequate service, that will have revenue sufficient to cover its reasonable cost of operations, and that will be capable of continuing as a viable utility after the development project is complete.

R # 1

**TOWN BOARD
TOWN OF SOUTHEAST, NEW YORK**

**INDEPENDENT SEWER WORKS, INC.
DETERMINATION OF RATE PETITION**

RESOLUTION NO. _____ / 2016

DATE: June 9, 2016

INTRODUCED BY: _____

SECONDED BY: _____

WHEREAS, Independent Sewer Works, Inc. ("ISW") is a Transportation Corporation duly organized, existing and operating pursuant to the laws of the State of New York and providing sewer collection and treatment services to commercial entities located in the Highlands Shopping Center within the Town of Southeast (the "Rate Payers"); and

WHEREAS, the Town Board of the Town of Southeast is empowered to review and revise rates paid by such Rate Payers to ISW pursuant to the Transportation Corporation Law of the State of New York; and

WHEREAS, a petition seeking rate view having come before the Town Board and after thorough review of submissions on behalf of ISW and individual rate payers, including, but not limited to Home Depot, U. S. A., Inc., and upon review of all submissions made to the Board in its review of ISW's rate base, revenue requirements and rate design, and after due deliberation thereon, it is the Town Board intention to memorialize its decision.

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board of the Town of Southeast hereby establishes the annual revenue permitted to Independent Sewer Works, Inc. to be \$ 580,627 and the rates charged to individual Rate Payers shall be calculated and designed so as to be apportioned 82% based upon square foot occupancy of each Rate Payer within the area served by ISW and 18% upon water consumed by each such Rate Payer in accordance with the table annexed hereto and made a part hereof as Schedule A; and be it further

RESOLVED, that the Town Board hereby adopts and incorporates herein by reference, the annexed Decision Determining the Revenue Requirement and Rates of Independent Sewer Works, Inc., effective June 9, 2016.

Upon Roll Call Vote:

Councilman Alvarez _____
Councilman Cullen _____
Councilwoman Eckardt _____
Councilwoman Hudak _____
Supervisor Hay _____

VOTE: carried / defeated by a vote of _____ in favor, _____ against; _____ abstained.

TOWN CLERK'S CERTIFICATION

STATE OF NEW YORK)
 : ss.:
COUNTY OF PUTNAM)

I, MICHELE STANCATI, Town Clerk of the Town of Southeast, do hereby certify that the above is a true and exact copy of a Resolution adopted by the Town Board of the Town of Southeast at a meeting of said board held the 9th day of June, 2016.

MICHELE STANCATI
Town Clerk

INDEPENDENT SEWER WORKS, INC.

Annual Revenues at Proposed Rates and Full Occupancy

Bldg	Description	Sq Ft		2012		Present Rates		Proposed		total	Difference		
		Forecasted	Actual	tg	rate/tg	annual base	total	rate/tg	monthly base			annual base	total
Bldg 1	Home Depot HD Unmetered Wastewater	136,753.0	136,000.0	410.0	\$4,993.80	\$186,961.92	\$191,955.72	\$8,991.07	\$14,194.87	\$170,338.44	\$179,329.52	-7%	
Bldg 2A	Kohl's	86,854.0	86,500.0	97.4	\$1,186.33	\$118,913.28	\$120,099.61	\$2,135.93	\$9,028.35	\$108,340.26	\$110,476.19	-8%	
Bldg 2B	DeCocco Market	37,500.0	37,500.0	1,075.6	\$13,100.81	\$51,552.00	\$64,652.81	\$23,587.31	\$3,914.03	\$46,968.32	\$70,555.63	0%	
Bldg 3	Animal Kingdom Depot Wines Gaetano's Mahopac Bank Marshall's Michaels Massage Envy Sleepy's Community Pharmacy	11,214.3 11,214.3 11,214.3 11,214.3 11,214.3 11,214.3 0.0 0.0	11,300.0 3,150.0 3,150.0 3,481.0 30,000.0 21,600.0 4,073.0 4,308.0	208.7 1.2 189.8 3.2 26.3 9.7 0.0 1.2 1.9	\$2,541.97 \$14.62 \$2,311.76 \$38.98 \$320.33 \$118.15 \$0.00 \$14.62 \$23.14	\$15,594.36 \$4,330.32 \$4,330.32 \$4,785.36 \$41,241.60 \$29,694.00 \$5,599.20 \$5,922.24 \$6,378.72	\$18,076.33 \$4,344.94 \$6,642.08 \$4,824.34 \$41,561.93 \$29,812.15 \$5,599.20 \$5,936.86 \$6,401.86	\$4,576.68 \$26.32 \$4,162.21 \$70.17 \$576.74 \$212.72 \$0.00 \$26.32 \$41.67	\$1,179.43 \$328.78 \$328.78 \$363.39 \$3,131.22 \$2,254.48 \$425.12 \$449.64 \$484.30	\$14,153.12 \$3,945.34 \$3,945.34 \$4,359.91 \$37,574.66 \$27,053.75 \$5,101.39 \$5,395.72 \$5,811.55	\$18,729.80 \$3,971.65 \$8,107.55 \$4,430.09 \$38,151.40 \$27,266.47 \$5,101.39 \$5,422.04 \$5,853.21	0% -9% 22% -8% -8% -9% -9% -9% -9%	
Bldg 4	Applebee's Wireless Zone Co-Co Nails Dunkin Donuts EB Games Image Cleaning Pearlie Vision Landlord	4,750.0 4,750.0 4,750.0 0.0 0.0 19,000.0	4,738.0 2,046.0 3,221.0 2,113.0 2,030.0 2,032.0 17,680.0 1,697.0 19,377.0	883.9 1.2 168.8 256.6 3.5 1.2 2.5	\$10,765.90 \$14.62 \$2,055.98 \$3,125.39 \$42.63 \$14.62 \$30.45	\$6,513.48 \$2,812.68 \$4,428.00 \$2,904.84 \$2,790.72 \$2,062.08 \$2,793.48 \$2,332.92	\$17,279.38 \$2,827.30 \$6,483.98 \$6,030.23 \$2,833.35 \$2,076.70 \$2,823.93 \$2,332.92	\$19,383.44 \$26.32 \$3,701.69 \$5,627.10 \$76.75 \$26.32 \$54.82	\$494.52 \$213.55 \$336.19 \$220.54 \$211.88 \$156.56 \$212.09 \$177.12	\$5,934.29 \$2,562.59 \$4,034.27 \$2,646.51 \$2,542.55 \$1,878.73 \$2,545.06 \$2,125.47	\$25,317.73 \$2,588.91 \$7,735.96 \$8,273.60 \$2,619.30 \$1,905.05 \$2,599.88 \$2,125.47	0% -8% 19% 17% -8% -8% -8%	
Bldg 5	Eveready Diner	6,300.0	5,245.0	1,142.7	\$13,918.09	\$7,210.44	\$21,128.33	\$25,058.78	\$547.44	\$6,569.30	\$31,628.08	50%	
		364,907.0	380,137.0	4,765.9	\$58,048.66	\$522,582.12	\$580,630.78	\$104,513.54	\$476,117.24	\$476,117.24	\$580,630.78	0%	
					10.00%	90.00%		18.00%					

Percentage :
 18.0% \$104,513.54
 82.0% \$476,117.24
 \$580,630.78

Handwritten notes and signatures at the bottom right of the page.

TOWN BOARD
TOWN OF SOUTHEAST
STATE OF NEW YORK

-----X

IN THE MATTER OF THE PETITION OF
OF INDEPENDENT SEWAGE WORKS, INC.
FOR RATE DETERMINATION
DATED MARCH 1, 2016

DECISION

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INTRODUCTION

Independent Sewage Works, Inc. (“ISW”) was formed on or about April 26, 2001 as a Transportation Corporation pursuant to Section 3 of the Transportation Corporation Law of the State of New York for, *inter alia*, the purpose of supplying a sewer system for the disposal of sewage to a commercial development located within the Town of Southeast known as the Highlands. As a highly regulated utility pursuant to the laws of the State of New York, the ISW’s services are provided through facilities for which the requisite approvals were obtained from the New York City Department of Environmental Protection, Putnam County Department of Health, New York State Department of Environmental Conservation, the Planning Board of the Town of Southeast and the Town Board of the Town of Southeast. Pursuant to the Transportation Corporation Law of the

State of New York, ISW is regulated by the municipality in which the utility provides services. ISW's rates are set in accordance with the Transportation Corporations Law ("TCL") by the Town Board of the Town of Southeast ("Town Board"). The Town Board is charged with determining fair, reasonable and adequate rates for the provision of the sewage disposal service to the area served by ISW.

BACKGROUND AND PROCEDURAL HISTORY

On or about July 18, 2002 the Town Board adopted Resolution #33/2002 which established the initial rate structure for ISW and the sewage users within the Highlands. On or about June 26, 2005, two of the ISW Rate Payers, Home Depot, U.S.A., Inc. ("Home Depot") and LNT, Inc.¹, filed a complaint with the Town Board demanding a reduction in the rates charged by ISW. The Town Board chose not to review the rates at that time as the rates had been established less than three years prior to Home Depot's demand.

Home Depot subsequently commenced litigation in New York State Supreme Court to compel the Town to review the rates charged by ISW to its customers. On or about February 9, 2010 the Appellate Division of the Supreme Court of the State of New York entered its decision in *Matter of Home Depot*,

¹ LNT, Inc. operated a retail store known by the trade name Linens 'n Things. LNT, Inc. no longer occupies space in the Highlands Shopping Center. The space previously occupied by LNT, Inc. is now a grocery store known as DiCicco's.

U.S.A., Inc. v. The Town Bd. Of the Town of Southeast, 70 A.D.3d 824 (2nd Dept., 2010), which held, *inter alia*, that it is appropriate under the Transportation Corporation Law for a Town to review rates of sewage works corporations under its jurisdiction every five (5) years and directing the Town Board to review the rates of ISW.

On or about April 2, 2010, ISW submitted a petition to establish a revised rate schedule. While the Town Board never formally acted upon this filing, ISW began charging a decreased rate to its Rate Payers based upon the April 2, 2010 revised rate filing². In the background of the instant proceedings, litigation between related parties was progressing in other jurisdictions, particularly the New York Public Service Commission (“PSC”), the Supreme Court of the State of New York, Albany County, and the Appellate Division: Third Department. It was felt by all parties that determinations made in those related cases would be instructive on how certain expenditures and involvements should be handled in determining the Rate Base, Revenue Requirements and Rate Structure for the related sewage works entity, ISW.

It was agreed among the parties that formal action by the Town Board would be held in abeyance until such issues were finally determined by such other jurisdictions. At this point, informal settlement discussions ensued among the

²Transportation Corporations Law § 121 provides that a rate will go into effect if not acted upon within 90 days of filing.

parties and the Town with hopes of coming to an agreement as to a fair, reasonable and adequate rate structure without the need for continued formal rate proceedings. On or about November 13, 2012, the decision of the PSC in *Matter of Home Depot U.S.A., Inc., et al. v. State of New York Public Service Commission, et al.*, concerning a related utility, Independent Water Works, Inc., became final. This was the last of the decisions pending in other jurisdictions which the parties felt may have some bearing on the proceedings before the Town Board. Unfortunately, the informal discussions and negotiations did not bear fruit.

On or about June 21, 2013, ISW filed yet another Rate Petition with the Town setting into motion renewed effort to compel a formal review and revision of rates charged by ISW pursuant to the Transportation Corporations Law. In this process the Town would engaged an Independent Rate Consultant (the "Rate Consultant"). This Rate Consultant was asked to review the submissions of the various parties and make recommendations to the Town Board.

By Memorandum dated January 2, 2014, the Rate Consultant issued a "revised" recommendation significantly restructuring some of the recommendations made in the Consultant's initial November 6, 2013 memorandum. Although not required, the Town Board held a public hearing on the rate petition.

After reviewing all the submissions, reports, memoranda, testimony and correspondence the Town Board issued its determination regarding the establishment of the Rate Base, Revenue Requirements and Rate Structure in this regard. On March 20, 2014, the Town Board rendered a Decision and adopted a Resolution determining the annual Revenue Requirements for ISW (\$580,627.00) and establishing a rate structure for determining how the rates would be apportioned among the various users of the ISW collection and treatment facilities (90% of the rate would be based upon the square foot occupancy of a particular user).

Shortly thereafter Home Depot commenced suit seeking to annul the determination of the Town Board pursuant to Article 78 of the Civil Practice Law and Rules (“CPLR”) on allegations that the Town Board had acted in an arbitrary and capricious fashion and that the determination was not supported by substantial evidence in the record. Several of the Respondents in this proceeding, including the Town, moved the Supreme Court seeking to dismiss the Petition prior to the filing of an Answer and/or a record.

On July 15, 2015, the Supreme Court of the State of New York, in and for Putnam County (*per* Hon. Victor Grossman, J.) rendered its decision determining, *inter alia*, that the Town Board had been “arbitrary and capricious” in the manner in which the Town Board adopted its rate structure. The Supreme Court remanded

the matter back to the Town Board for further proceedings. Several Respondents sought leave to appeal the decision of the Supreme Court to the Appellate Division, Second Department. Leave to appeal was denied by decision dated November 9, 2015.

By letter dated February 4, 2016, the Town Board directed ISW to submit a revised rate petition by March 1, 2016 and Home Depot and any other interested parties were directed to respond to such within two weeks, whereupon a work session would be held on March 24, 2016 to give all interested parties an opportunity to verbally amplify their written submissions. The Town Board reserved decision on the petition and indicated it would render its ruling by its Regular Meeting to be held on May 5, 2016. The date for rendering the Town Board's decision was adjourned to June 9, 2016 to afford interested parties, including Home Depot, to review additional materials and submit additional arguments if they chose.

DECISION

A. REVENUE REQUIREMENT

The Supreme Court did not address the Town Board's methodology or conclusions with regard to that portion of the Petition which sought the establishment of Revenue Requirements. Although ISW has pointed out a number of factors where it feels the revenue analysis falls short, it is the Town Board's

determination that there is substantial evidence in the record to support the Revenue Requirement Determination which was spelled out in the March 20, 2014 Decision. The Town Board adopts the findings contained in the March 20, 2014 determination and specifically incorporates them herein by reference. The Revenue Requirements are continued as follows:

1. Operation and Maintenance (O&M) Expenses

The Revenue Requirement determination for O&M expense is based upon using ISW's 2012 actual results of \$262,454.00. We conclude that the expenses reported in ISW's statements are a more reliable source than the 2013 Rate Study submitted by ISW's Rate Consultant. For most expense activities the 2013 Rate Study started with expense levels for the three (3) years, 2010-2012, averaged them and added 2.5 percent (2.5%) for inflation (see 2013 Rate Study Work Paper 7). The source of the year-end values used in the 2013 Rate Study is unexplained but clearly is not to be from the company's financial statements since the value for 2012 (\$251,614.00) is not the same as (is actually below the amount) reported by ISW's CPA (\$262,454.00). In addition to not being tied to a CPA-supported financial statement, we conclude that the 2013 Rate Study O&M expense of \$289,738 is less reliable than the 2012 CPA-reported amount because the three year average is exaggerated by its inclusion of the 2011 reported amount of \$304,559. The reported O&M

expenses for 2011 exceeds the reported O&M expenses for 2010 by 25 percent (25%), exceeds the reported O&M expenses for 2012 by 21 percent (21%), and exceeds the CPA-reported actuals for 2012 by 16 percent (16%). Therefore, we will use \$262,454 for O&M expenses for rate-setting purposes. Because inflation has been and continues to be very low and ISW has failed to demonstrate what inflationary pressures the unique expenses incurred by a sewage company are subject to, we are not recommending any inflation adjustment.

2. **Depreciation.**

ISW correctly points out that straight-line amount of \$133,507.00 should be used rather than tax depreciation. Therefore, for purposes of determining the 2014 Revenue Requirements we will use a Depreciation figure of \$133,507.00.

3. **Amortizations.**

ISW proposes adding an annual amortization of \$59,483.00 representing one-fifth (1/5) of extraordinary legal fees and one third (1/3) of rate case expenses (2013 Rate Study Schedule C-3). We conclude that both expenditures are unusually high for a company of this size. It is our determination that these expenditures be shared equally between customers and owners and, therefore, reduce the amortization expense added to the Revenue Requirement to \$30,000.00.

4. Real Estate Taxes

We accept ISW's allocation of \$14,543.00 of common real estate taxes.

5. Income Taxes

We adopt Home Depot's proposal for setting rate of return on a pretax basis. Therefore, there is no need to add an income tax allowance (*see* letter from Natoli to Dax dated December 18, 2013 at 3-4).

6. Rate Base and Return

In its June 2013 Rate Analysis, ISW's Utility Plant in Service ("UPIS") is reported at \$3,161,911.00, which is claimed to include certain additions to plant and equipment made in 2006 and 2013. The UPIS as reported in ISW's 2012 financial statements is \$3,062,350.00. We conclude that the CPA's figure includes the 2006 plant addition but not the 2013 addition. Accordingly, we increase the UPIS value by \$92,061.00 to \$3,154,411.00.

To account for Home Depot's contribution to capital, we will use \$288,918.00, the value ISW presented in its 2010 Rate Study. ISW has failed to explain why the value was revised downward in the 2013 Rate Study to \$271,218.00.

For accumulated depreciation we accept Home Depot's calculation of \$1,550,813.00. We also accept Home Depot's calculation of deferred tax credits at \$275,536.00. For the same reason that we reduced the rate year-

expensed portion of litigation and rate cases expenses by half, we will reduce the unamortized balances by half as well. We will use a pretax rate of return of 11 percent (11%).

The resulting 2014 Revenue Requirement of \$580,627.00 is presented as follows:

OPERATION & MAINTENANCE EXPENSE	262,454
DEPRECIATION	133,507
AMORTIZATIONS	30,000
TAXES OTHER THAN INCOME TAX	14,543
PRETAX RATE OF RETURN 11%	140,123
ON RATE BASE OF	1,273,847
REVENUE REQUIREMENT	<u>580,627</u>

B. Revenue Requirement Allocation and Rate Design

In the prior proceeding the Town Board rejected a majority of the recommendations of the Rate Consultant with regard to rate design. The Town Board continues to believe strongly that a rote adherence a solely “use-based” model for developing a Rate Structure for ISW customers is illogical and irrational. Having a completely “use-based” model for developing a Rate Structure fails to recognize the design, approval and construction of the ISW

plant and processes was accomplished in the context of a highly regulated environment. For the most part, the design of the WWTP was based upon square footage of the anticipated build-out of the Highlands complex. Some would argue that the WWTP was “over designed” to accommodate (or, perhaps, discourage) the development of the “big box” complex we now know as the Highlands shopping center. The ISW plant and services are unique and was driven by the stringent requirements for treatment and phosphorous offset dictated by the 1996 Watershed Agreement between the City of New York and the municipalities located within the New York City Watershed. It is our considered opinion that the Rate Consultant, being unfamiliar with the unique environment known as the New York City Watershed failed to appreciate the circumstance under which the Highlands project and ISW were borne. The Highlands project could never have been constructed if the developers were not able to meet the strict standards for inclusion in the Phosphorus Offset Program dictated by the regulations promulgated by the New York City Department of Environmental Protection (“DEP”). In fact, the first certificate of occupancy would never have been issued unless a “state of the art” waste water treatment plant (“WWTP”) was first placed in service. Due largely to the extensive impervious surface which makes up a major portion of the Highlands Development, much of which was dictated by the needs of Home Depot and other “big box” retailers located within the Highlands

complex, the plant, equipment and processes for ISW had to be designed in a manner that such sewage works facilities and the processes of phosphorus reduction would remove or reduce multiple times more phosphorus from the environment than it introduced. Because of these factors, it continues to be the Town Board's determination that a large share of the Revenue Requirement should be collected on an occupancy basis (ratio of square footage occupied by a particular Rate Payer to the overall build-out of the Highlands complex) rather than solely on a volumetric usage basis as advocated by some of the "big box" retailers such as Home Depot and Kohl's.

After the 1996 Watershed Agreement was inked, no more than three (3) WWTP's with a combined total discharge of 150,000 gallons per day capacity were permitted under the NYC Watershed Pilot Program within phosphorous restricted basins which include the Town. Only one (1) such plant for commercial use has been constructed to date and that plant services the Highlands development and is owned and operated by ISW. The ISW plant is the only accepted, approved and operating WWTP in the NYC Watershed that has satisfied, and continues to meet, all the requirements of the Phosphorous Offset Pilot Program authorized under 15 RCNY § 18-82(g) and 10 NYCRR § 128-8.2(g) of the NYC Watershed Regulations.

The WWTP approvals necessary for the development of the Highlands complex were largely driven by the size of the development. In fact, one approval granted by NYC DEP on September 27, 1999, required that the facility be designed to treat 36,000 gallons per day (“gpd”) of effluent, despite the fact that tenants located at the Highlands complex would not be producing that amount of effluent (*see*, DEP approval dated September 27, 1999). It was also mandated that the sewer plant be designed to treat an unusual phosphorus limit of .1 mg/l (*see*, DEC State Pollution Discharge Elimination System (SPDES) Discharge Permit, dated September 27, 1999, p. 5).

It is important to note that the 36,000 gpd requirement for the ISW facility was predominantly based upon the square footage of the proposed buildings within the Highlands complex and not on the estimated domestic water usage. This fact is substantiated by a number of documents including, but not limited to, the Town of Southeast Planning Board’s Lead Agency Finding Statement; the letter from M. Penny Kelly, DEP Staff Engineer, dated June 29, 1998 (the “Kelly Letter”); and the Waste Water Treatment Systems Design Engineer’s Report prepared by Milnes Engineering, Inc. dated November 12, 1998 (the “Milnes Report”).

Of particular importance in concluding that the ISW facility was designed based upon square footage and not usage is expressly set forth in the Kelly Letter

which required that the ISW plant be designed based upon a 0.1 gpd/sf (which was later reduced by twenty (20%) percent). In addition, the Milnes Report specifically showed that the 36,000 gpd design capacity was calculated based upon square footage and not estimated water usage.

It is, therefore, rational to conclude that the ISW plant was required to be designed to accommodate and treat significantly more wastewater than would be actually metered because the design was based upon the total square footage of the buildings at the Highlands complex and the cost for the operation of the ISW facility increased exponentially because of this requirement. What is more, the SPDES discharge permit, required as part and parcel of the overall approvals, consisted of a joint wastewater and storm water permit wherein the amount of impervious surface proposed in the Highlands complex directly impacted the costs of construction and operation of the ISW facility. As stated earlier, the amount of impervious surfaces were dictated by the square footage and parking requirements of the ISW customers, including “big box” tenant Home Depot.

It is for the foregoing reasons that the Town Board finds and determines that it is fair and reasonable to establish revenue allocations predominantly based upon square footage of occupancy of a particular Rate Payer under these circumstances. The Town Board recognizes, however, that a fair rate structure must include a usage component even though the amount of usage within the

Highlands complex has never come close to reaching the design capacity.³ In this Board's prior determination it adopted the same methodology used by the Public Service Commission in structuring rates for Independent Water Works, Inc., ("IWW") the water works that supply water to the Highlands Complex. In the related proceeding, the PSC determined that the structuring of rates based primarily on square footage (as opposed to usage) was appropriate for the water utility that serves the Highlands complex. Because the Town Board found ISW's arguments concerning the analogous relationship of IWW and ISW to be particularly compelling, the Town Board concluded that adopting the 90% square footage / 10% usage model adopted by the PSC in the IWW rate case was rational and supported by the evidence. Arguably, this is where the Town Board acted in an "arbitrary" fashion by failing to develop the appropriate nexus between square footage and usage to support the 90/10 ratio for sewer. Though the Supreme Court ruled that Town's adoption of the 90/10 rate structure was arbitrary and capricious, it went on to state:

The Court notes that this determination is not conclusive on the issue of how sewer rates should be calculated and charged – square

³ It is interesting to note that the Engineering Study submitted by Home Depot's rate consultant argues that, given the current mix of retail and food service or restaurant establishments, the ISW WWTP should be designed for a total 58,146 gpd given the current mix of retail and restaurant facilities and that restaurants alone are responsible for 31,920 gpd of effluent (see, Report of Delaware Engineering, D.P.C. dated March 15, 2016), yet historic usage of the WWTP over the most recent six (6) months shows that the WWTP has not processed more than an average of 18,710 gpd in any given month.

footage vs. usage vs. a combination of the two, or some method that produces “fair, reasonable and adequate” rates for all users. That is something that must be addressed by the Town Board.

Having concluded that it is fair and reasonable to design a rate structure based upon a ratio of occupancy and usage, we now have the opportunity to revisit the rationale utilized to develop the appropriate ratio.

The “usage model” is, in the Town Board’s opinion, flawed and not an adequate gauge of how the WWTP benefits a particular user. A case in point would be the Dunkin Donuts® franchise located within the Highlands complex. This tenant has a relatively large amount of water use in a relatively small location. Most of the water is used to make coffee products for off-premise consumption. As a “fast food” establishment, Dunkin Donuts® uses paper products for service, no dishes are washed, and this particular franchise has only two restrooms. Relatively few patrons use the rest room facilities (which would contribute to sewer use) yet the amount of water use of this restaurant is high because of the product they sell. Clearly, having a “usage only” model for determining the sewer rate structure would be crushing to a tenant such as Dunkin Donuts® and definitely unfair and inequitable.

This brings us back to an examination of the premises upon which the Highlands complex was originally developed and the fact that, without a state of

the art sewage treatment facility in place designed to accommodate the “big box” stores anticipated for the Highlands, neither Home Depot nor any of the other structures would have been granted a permit for construction, much less a certificate of occupancy. This fact requires us to highlight the methodology employed by the developer and various regulatory agencies to establish the requisite size and capacity of the WWTP. For the most part, the costs associated with operating the WWTP remain relatively constant on a year to year basis, regardless of the amount of effluent which passes through the system.⁴

The development of the Highlands Complex dates back to the late 1990’s, when on March 9, 1998, the Southeast Planning Board accepted the Draft Environmental Impact Statement (“DEIS”) on the project. Continuing through the environmental and planning review of this project, the Highlands Retail Center was approved by the Town of Southeast Planning Board on September 27, 1999. During its approximately two years navigating the developmental approval process, Highlands encountered numerous complex regulations that were being imposed by the New York City Department of Environmental Protection, the New York State Department of Environmental Conservation (NYSDEC) as well as other regulatory agencies. This resulted in the construction of a sophisticated WWTP sized based predominantly on the square footage of the various proposed

⁴ The Town Board recognizes and takes into consideration the fact that the closer a WWTP runs to its design capacity, the more efficiently and cost effectively it operates.

occupants. Despite the fact that Home Depot and the Rate Consultant employed in connection with the previous rate petition chose to ignore these facts in recommending a rate structure, the Town Board chose to acknowledge the development history of this particular project in making its determination on a fair, reasonable and adequate rate structure. At that time of the development of the Highlands project, the regulations being imposed by the NYCDEP were unprecedented. The Highlands project was the first and only commercial project of its kind being governed by such stringent regulations.

Going back to the original design of the WWTP as incorporated into the Final Environmental Impact Statement for the Highlands project, the design capacity of the WWTP was established at approximately 35,732 gpd. Of this design capacity, 29,372 gpd, or approximately 82% of the design capacity, was allocated to "retail" uses, and 6,360 gpd, or 18% of the design capacity, was allocated to Restaurant/office uses. The Town Board recognizes that the current complexion of the Highlands development has a different mix of retail and restaurant or food service users. The Town Board also recognizes that the mix of retail and restaurant users may fluctuate at any given time. As previously noted, however, the cost of operating the WWTP is driven substantially by its design capacity and costs of operation fluctuate little depending on the amount of effluent being treated. The Town Board is also cognizant of the fact that, in large part,

basing a sewer rate solely upon water usage is unreliable and unreasonable as one of the heaviest water consumers in the Highlands complex (Dunkin Donuts®) contributes relatively little to the waste water stream.

On the foregoing, the Town Board finds and determines that a rate structure which allocates costs to a particular user based 82% on square footage of the occupancy and 18% upon the actual water usage of the particular user to be fair, reasonable and adequate.

This constitutes the Decision and Order of the Town Board.

Dated: Brewster, New York
June 9, 2016

FOR THE TOWN BOARD

By: _____
Tony Hay, Supervisor

RC #2

**TOWN BOARD
TOWN OF SOUTHEAST, NEW YORK**

**SPECIAL PERMIT REQUEST
WARD – CASTLE HILL FARM – PRIVATE CEMETARY**

RESOLUTION NO. _____ / 2016

DATE: June 9, 2016

INTRODUCED BY: _____

SECONDED BY: _____

WHEREAS, McClain Ward, owner of premises located at 2-12 Castle Hill Lane Tax Map No. 78.-1-53, (the "Subject Premises") has made application to this Town Board for a Special Permit to allow establishment of a private burial plot on the Subject Premises; and

WHEREAS, the Subject Premises are located in an R-160 Zone; and

WHEREAS, a cemetery is only permitted in an R-160 zone upon the grant of a Special Permit by the Town Board; and

WHEREAS, the Town Board is in receipt of a report and recommendation from the Southeast Planning Board finding that the proposal of McClain Ward is in compliance with the applicable general and special standards of Article X of Chapter 138 of the Town Code; and

WHEREAS, the Planning Board, as Lead Agency for purposes of State Environmental Quality Review Act ("SEQRA") has issued a Negative Declaration, thereby concluding review under SEQRA; and

WHEREAS, a duly noticed public hearing was held by the Town Board on May 19, 2016 in connection with this application and all interested parties have been given an adequate opportunity to be heard in this regard.

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board of the Town of Southeast hereby makes the following findings of fact in connection with the instant application:

1. The proposed use is in such location and is a size and character that it will be in harmony with the appropriate and orderly development of the surrounding district and will not be detrimental to the immediate site or adjacent properties;

2. The location and size of the proposed use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout, and its relation to access streets will be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous, provided the conditions set forth herein are incorporated in any final approval;

3. There are no proposed structures which might hinder or discourage the development and use of adjacent land and buildings; and

4. The proposed use will not require such additional public facilities or services or create fiscal burdens upon the Town greater than those which characterize uses permitted as of right.

AND BE IT FURTHER

RESOLVED, that based upon the foregoing findings, the Town Board of the Town of Southeast hereby grants a Special Use Permit to McClain Ward, Castle Hill Farm, to maintain a private, family burial plot on the Subject Premises in accordance with Statement of Use prepared and submitted to the Planning Board in connection with this Project Development Plan / Request for Special Permit application and incorporated herein by reference, on the following conditions:

1. The burial chamber, crypt or mausoleum shall be constructed so as to be wholly beneath ground and shall be designed and constructed to accommodate the burial of one (1) member of the Ward family. Any proposal to expand the burial plot to accommodate land burial of additional Ward family members shall require the owner of the Subject Premises to make further application to the Planning Board; and

2. The applicant shall maintain the cemetery in compliance with all conditions set forth in Article X of the Zoning Code; and

3. The applicant shall comply with any and all requirements, guidelines, rules and regulations of the Department of State, Division of Cemeteries; New York State Department of Health; Putnam County Department of Health and any other federal, state or local municipal or governmental agency having authority over the land burial of human remains; and shall files any and all such approvals with the Planning Board of the Town of Southeast.

And be it further

RESOLVED, that the Town Clerk is hereby authorized and directed to forward a certified copy of this resolution to the owner or representative of the Subject Premises and to the Secretary of the Town of Southeast Planning Board, forthwith.

UPON A ROLL CALL VOTE:

Councilman Alvarez	_____
Councilman Cullen	_____
Councilwoman Eckardt	_____
Councilwoman Hudak	_____
Supervisor Hay	_____

VOTE: carried / defeated by a vote of _____ in favor, _____ against; _____ abstained.

TOWN CLERK'S CERTIFICATION

STATE OF NEW YORK)
 : ss.:
COUNTY OF PUTNAM)

I, MICHELE STANCATI, Town Clerk of the Town of Southeast, do hereby certify that the above is a true and exact copy of a Resolution adopted by the Town Board of the Town of Southeast at a meeting of said board held the 9th day of June, 2016.

MICHELE STANCATI
Town Clerk

R#3

**TOWN BOARD
TOWN OF SOUTHEAST**

**MACO LAND PROPERTIES
ARCHITECTURAL REVIEW BOARD**

RESOLUTION NO.: _____/2016

DATE: June 9, 2016

INTRODUCED BY: _____

SECONDED BY: _____

WHEREAS, the Town Board is in receipt of a Report of the Architectural Review Board ("ARB") of the Town Southeast dated May 26, 2016 in connection with the application of Maco Land Properties to construct an office building on property located at 1651 Route 22, Tax ID 46.-3-14, in the Town of Southeast, Putnam County, New York; and

WHEREAS, the Report concludes that the ARB positively recommends the project to the Town Board on the condition that the applicant make modifications to certain construction materials and landscape plantings ; and

WHEREAS, the Town Board finds that there is no reason to upset the findings and recommendation of the Architectural Review Board in connection with said application.

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board hereby accepts and approves the Report of the Architectural Review Board dated May 26, 2016, a copy of which is annexed hereto and made part hereof, in connection with Maco Land Properties, 1651 Route 22, Tax ID 46.-3-14 and that such Report, with conditions, shall be incorporated into any final Site Plan subsequently reviewed and approved by the Planning Board.

UPON ROLL CALL VOTE:

Councilman Alvarez _____
Councilman Cullen _____
Councilwoman Eckardt _____
Councilwoman Hudak _____
Supervisor Hay _____

VOTE: carried / defeated by a vote of _____ in favor, _____ against; _____ abstained.

R#4

**TOWN BOARD
TOWN OF SOUTHEAST, NEW YORK**

**PEOPLE v. BREWSTER AUTO, INC. &
ESTATE OF MARIN (CARLA MARIN CO-EXECUTOR)
APPOINTMENT OF SPECIAL PROSECUTOR**

RESOLUTION NO. /2016

DATE: June 9, 2016

INTRODUCED BY: _____

SECONDED BY: _____

WHEREAS, theTown of Southeast has previously instituted proceedings against Brewster Auto, Inc. and Carla Marin as Co-Executor of the Estate of Beatriz Marin in connection the illegal operation of an auto wrecking and junk yard facility within the Town of Southeast; and

WHEREAS, the aforementioned proceedings were transferred to the Justice Court in and for the Town of Philipstown (Hon. Alan Steiner presiding) wherein a bench trial was conductedon September 11, 2014 (the "Trial") culminating in a entry of a decision and order dated November 16, 2015 which, *inter alia*, found the Defendants guilty of having violated various provisions of the Town's codes and later sentenced the Defendants to pay fines calculated from the time of the filing of the accusatory instruments for on-going violations through the date of the Trial; and

WHEREAS, the auto wrecking and junk yard facility has continued to operate in violation of the codes, rules and regulations of the Town of Southeast; and

WHEREAS, the Town Board had previously appointed Stephen Lewis, Esq., as Special Prosecutor to represent the People in these matters.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Southeast hereby appoints Stephen Lewis, to serve as Special Prosecutor for Town of Southeast in connection with all new, additional, supplemental or supplementary proceedings seeking redress and sanctions for on-going violations of the Town's Codes by the owners and operators of the Brewster Auto / Marin automobile wrecking / junk yard from the date of the previous Trial to such time as such violations are abated or otherwise discontinued.

UPON A ROLL CALL VOTE:

Councilman Alvarez _____

Councilman Cullen _____

Councilwoman Eckardt _____

Councilwoman Hudak _____

Supervisor Hay _____

VOTE: carried / defeated by a vote of in favor, against; abstained.

TOWN CLERK'S CERTIFICATION

STATE OF NEW YORK)
 : ss.:
COUNTY OF PUTNAM)

I, MICHELE STANCATI, Town Clerk of the Town of Southeast, do hereby certify that the above is a true and exact copy of a Resolution adopted by the Town Board of the Town of Southeast at a meeting of said board held the 9th day of June, 2016.

RUTH A. MAZZEI
Town Clerk

R#5

**TOWN BOARD
TOWN OF SOUTHEAST, NEW YORK**

**KOHL'S DEPARTMENT STORE
SETTLEMENT OF CERTIORARI PROCEEDINGS**

RESOLUTION NO. _____ / 2016

DATE: June 9, 2016

INTRODUCED BY: _____

SECONDED BY: _____

WHEREAS, proceedings have been commenced in Supreme Court challenging the assessed valuation of commercial premises known generally as Kohl's Department Store, Tax Map No. 56.-1-23.-2 for 2013, 2014 and 2015; and

WHEREAS, the Town Board is in receipt of settlement recommendations from the Town's Assessor, Appraiser and Town Attorney with regard to such proceedings.

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board of the Town of Southeast does hereby accept the recommendations of its professional advisors and authorizes the Town Attorney to execute a Stipulation of Settlement, Consent Judgment and/or Order on Consent in accordance with said recommendations for the following:

<u>Petitioner</u>	<u>Tax ID</u>	<u>Year</u>	<u>Assessment</u>	<u>Settled Assessment</u>
Kohl's	56.-1-23.-2	2013	\$8,966,000	\$7,994,000
		2014	\$8,966,000	\$7,994,000
		2015	\$8,966,000	\$7,994,000

And be it further **RESOLVED**, that the Town Attorney is hereby authorized and directed to execute any and all stipulations, consent orders or other documents necessary to reflect the foregoing settlements.

UPON A ROLL CALL VOTE:

- Councilman Alvarez _____
- Councilman Cullen _____
- Councilwoman Eckardt _____
- Councilwoman Hudak _____
- Supervisor Hay _____

VOTE: carried / defeated by a vote of _____ in favor, _____ against; _____ abstained.

C#6

**TOWN BOARD
TOWN OF SOUTHEAST, NEW YORK**

**CRR TOP SPIN
SETTLEMENT OF CERTIORARI PROCEEDINGS**

RESOLUTION NO. _____ / 2016

DATE: June 9, 2016

INTRODUCED BY: _____

SECONDED BY: _____

WHEREAS, proceedings have been commenced in Supreme Court challenging the assessed valuation of commercial premises known generally as CRR Top Spin LLC, doing business as Hardscrabble Tennis Club, Tax Map No. 78.-2-16.3 for the Tax Year 2015; and

WHEREAS, the Town Board is in receipt of settlement recommendations from the Town's Assessor, Appraiser and Town Attorney with regard to such proceedings.

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board of the Town of Southeast does hereby accept the recommendations of its professional advisors and authorizes the Town Attorney to execute a Stipulation of Settlement, Consent Judgment and/or Order on Consent in accordance with said recommendations for the following:

<u>Petitioner</u>	<u>Tax ID</u>	<u>Year</u>	<u>Assessment</u>	<u>Settled Assessment</u>
CRR Top Spin	78.-2-16.3	2015	\$5,000,000	\$3,750,000

And be it further **RESOLVED**, that the Town Attorney is hereby authorized and directed to execute any and all stipulations, consent orders or other documents necessary to reflect the foregoing settlements.

UPON A ROLL CALL VOTE:

Councilman Alvarez _____
Councilman Cullen _____
Councilwoman Eckardt _____
Councilwoman Hudak _____
Supervisor Hay _____

VOTE: carried / defeated by a vote of _____ in favor, _____ against; _____ abstained.

R#7

**TOWN BOARD
TOWN OF SOUTHEAST**

**AUTHORIZING SUPERVISOR TO
EXECUTE MEMORANDUM OF UNDERSTANDING
WITH PUTNAM COUNTY, FEEHAN AGENCY AND
EAST OF HUDSON WATERSHED CORPORATION**

RESOLUTION NO. _____ / 2016

DATE: June 9, 2016

INTRODUCED BY: _____

SECONDED BY: _____

WHEREAS, the Town of Southeast (the "Town") and Putnam County (the "County") are members of the East of Hudson Watershed Corporation ("EOHWC"); and

WHEREAS, EOHWC assists its member municipalities, including the Town and the County, in complying with the New York State Department of Environmental Conservation ("NYSDEC") Municipal Separate Storm Sewer Systems Permit effective May 1, 2010 ("MS4 Permit") by the design and installation of stormwater retrofit projects approved by NYSDEC;

WHEREAS, one such project is designed for the collection and treatment of stormwater run-off emanating from Town owned roads, crossing County owned lands and rights of way and then through lands owned by Feehan Agency ("Feehan") located at 2350 Route 6 (the "Premises"); and

WHEREAS, EOHWC proposes to undertake a Stormwater Retrofit Project which will entail the staging, storage and mobilization of equipment and materials from the Premises; and

WHEREAS, upon the conclusion of the construction phase of the Project, EOHWC will restore the disturbed area of the Premises and re-pave the balance of Feehan's parking lot; and

WHEREAS, the Town and County will each reimburse EOHWC for one-third (1/3) the cost repaving the parking lot on the Premises.

NOW, THEREFORE, BE IT

RESOLVED, that the Town Supervisor is authorized to execute and deliver any and all memoranda of understanding, agreements or other documentation necessary to memorialize the agreements and understandings necessary to reflect the intentions and commitments of the parties to share the expense of re-paving the Feehan Agency parking lot located on the Premises; and be it further

RESOLVED, that all actions heretofore taken by the Supervisor in connection with this initiative are hereby ratified, confirmed and approved *nunc pro tunc*; and be it further

RESOLVED, that this Resolution shall take effect immediately.

UPON A ROLL CALL VOTE:

Councilman Alvarez	_____
Councilman Cullen	_____
Councilwoman Eckardt	_____
Councilwoman Hudak	_____
Supervisor Hay	_____

VOTE: carried / defeated by a vote of _____ in favor, _____ against; _____ abstained.

TOWN CLERK'S CERTIFICATION

STATE OF NEW YORK)
) SS.:
COUNTY OF PUTNAM)

I, MICHELE STANCATI, Town Clerk of the Town of Southeast, do hereby certify that the above is a true and exact copy of the Resolution adopted by the Town Board of the Town of Southeast at a meeting of said board held on the 9th day of June, 2016.

Michele Stancati, Town Clerk

R # 8

**TOWN BOARD
TOWN OF SOUTHEAST**

**AUTHORIZING SUPERVISOR TO
EXECUTE INTERMUNICIPAL AGREEMENT
WITH PUTNAM COUNTY FOR ELECTRICAL INSPECTIONS**

RESOLUTION NO. _____ / 2016

DATE: June 9, 2016

INTRODUCED BY: _____

SECONDED BY: _____

WHEREAS, pursuant to New York General Municipal Law, Article 5-G, local governments are authorized to enter into municipal cooperation agreements for the performance among themselves or one for the other of their respective functions; and

WHEREAS, the Town of Southeast (the "Town") acknowledges that there is a critical need to utilize every means available to provide the maximum services in the most cost-effective manner and at the least possible cost to the local taxpayers, and that flexibility in operation local governments through shared services and resources is necessary to insure efficiency and maximum benefits to the local taxpayers which will result in efficient and cost-effective work performance; and

WHEREAS, pursuant to New York Executive Law §381(2), any local government may enter into an agreement with the county in which such local government is situated to administer and enforce the uniform code, the state energy conservation construction code, or both, within such local government; and

WHEREAS, the County of Putnam (the "County") intends to enter into a contract with an electrical inspector consultant (the "inspector") to perform electrical inspections, re-inspections or altered electrical wiring (collectively referred to as "electrical inspections") in accordance with the standards of the National Electrical Code, New York State Uniform Fire Prevention Code, New York State Building Code, and all other applicable national, state and local regulations, ordinances and codes for residential and commercial properties located within the County, including those properties located with the Town; and

WHEREAS, the Town wishes to authorize the County, through its inspector and at no cost to the Town, to administer electrical inspections within the Town's jurisdiction; and

WHEREAS, taxpayer monies will be saved and that such an agreement is in the best interests of the Town to enter into such an agreement.

NOW, THEREFORE, BE IT

Additional

**TOWN BOARD
TOWN OF SOUTHEAST, NEW YORK**

**HISTORIC SITES COMMISSION
BOARD RE-APPOINTMENT**

RESOLUTION NO. _____ / 201_

DATE:

INTRODUCED BY: _____

SECONDED BY: _____

WHEREAS, the Town of Southeast Historic Sites Commission ("HSC") fully support the re-appointment of a current Board Member; and

WHEREAS, the Town Board is in receipt of an HSC report regarding the re-appointment of that Board Member.

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board of the Town of Southeast hereby appoints

Lisa McCarthy

who resides at 147 John Simpson Road, Carmel, New York 10512 in the Town of Southeast, to a fill an open 7 year term from 01/01/16 – 12/31/23 as a member of the Town of Southeast Historic Sites Commission; and be it further

RESOLVED, that these appointments shall take effect upon the taking and filing of the appropriate oath of office with the Clerk of the Town of Southeast.

Upon Roll Call Vote:

Councilman Alvarez	_____
Councilman Cullen	_____
Councilwoman Eckardt	_____
Councilwoman Hudak	_____
Supervisor Hay	_____

VOTE: carried / defeated by a vote of _____ in favor, _____ against; _____ abstained.