

**Town of Rhinebeck
Special Board Meeting**

Agenda

October 12, 2017 1:00 pm

A. Call to Order

B. Pledge of Allegiance

C. Resolutions

1. Resolution 2017206 Settlement of Lawsuit Against State of New York
2. Resolution 2017207 Appointment to Zoning Board of Appeals (Clark)

D. Discussion

1. Peddler Permits
2. Tow Truck Local Law

E. Workshop On 2018 Budget

F. Adjournment

TOWN OF RHINEBECK

RESOLUTION NO. 2017206

SETTLEMENT OF LAWSUIT AGAINST STATE OF NEW YORK

WHEREAS, the Town of Rhinebeck filed a lawsuit against the State of New York in Court of Claims to recover \$248,272.31 plus interest that the Town expended in legal fees and disbursements to defend two lawsuits challenging the Town's Zoning Law adopted at the end of 2009; and

WHEREAS, this lawsuit was initially dismissed on October 16, 2013 by the Court of Claims; and

WHEREAS, the Town appealed that dismissal to the Appellate Court in the Second Department which rendered a written decision reversing the dismissal of that lawsuit; and

WHEREAS, the State has agreed to settle that lawsuit by paying \$310,000, representing the \$248,272.31 which the Town paid to defend successfully those two lawsuits brought in 2010 challenging the Town's Zoning law, plus interest; and

WHEREAS, the Town adopted a resolution in October 2013 authorizing the entry of a revised fee agreement (attached) with the law firm Hinman Straub, P.C. to pay that firm its disbursements in connection with that lawsuit plus one-third of any recovery; now, therefore, be it

RESOLVED, that the attached Stipulation of Settlement and Discontinuance of Claim number 122102 is approved; and James Potter of the law firm Hinman Straub, P.C. is authorized to execute that Stipulation on behalf of the Town of Rhinebeck as well as execute any other document and do anything else as may be necessary to effectuate the settlement and payment from the State; and, be it further

RESOLVED, that the attached Town of Rhinebeck v. State Settlement Statement is approved for the payment to Hinman Straub, P.C. of \$104,652.77, which sum is to be deducted from the funds from the \$310,000 settlement check, which the State will send to Hinman Straub, P.C. for deposit in its escrow account, and from which Hinman Straub, P.C. will remit from its escrow account \$205,347.23 to the Town and retain \$104,652.77 as payment for its legal fees and disbursements.

STATE OF NEW YORK : COURT OF CLAIMS

=====X

TOWN OF RHINEBECK,

Claimant,

-against-

STIPULATION OF
SETTLEMENT AND
DISCONTINUANCE
CLAIM NO. 122102

THE STATE OF NEW YORK,

Defendant.

=====X

WHEREAS, the parties hereto have agreed to settle this claim pursuant to the provisions of section 20-a of the Court of Claims Act, and

WHEREAS, the Hudson River Valley Greenway Communities Council, as the entity having responsibility herein has approved settlement under the terms and conditions set forth below, and

WHEREAS the Claimant Town of Rhinebeck has brought this claim seeking reimbursement by the State of its reasonable covered costs and expenses arising from litigation defending its adoption and implementation of land use controls including, but not limited to, a zoning law or ordinance as contemplated in Environmental Conservation law § 44-0107 (23);

NOW, THEREFORE, it is hereby Stipulated and Agreed by and between the attorneys of record in the action that, subject to the approval of the Court, all of the parties being municipal and governmental entities and no person or entity not a party having any interest in the subject matter, the action be, and hereby is settled and upon payment of the sum of Three Hundred and Ten Thousand Dollars (\$310,000.00), the claim shall be fully and finally discontinued with prejudice and the State of New York, its departments, boards, offices, and all

of its officers, servants and employees are released from any and all further liabilities to Claimant as a result of the events and circumstances giving rise to the claim.

Payment shall be made by check payable to the order of the Town of Rhinebeck and Hinman Straub, PC, and sent to Hinman Straub, PC, at 121 State Street, Albany, NY 12207.

We, Hinman Straub, PC, the attorneys for the claimant, do hereby release and waive any lien for services upon the above named claimant's cause of action, claim, verdict, report, judgment, determination or settlement in favor of said claimant, which we have thereon by virtue of section 475 of the Judiciary Law.

We, the Attorneys for the claimant, do further represent that there are no other attorneys having a lien for services rendered to the claimants pursuant to the provisions of section 475 of the Judiciary Law.

In confirmation of the agreement herein, the undersigned attorneys for the parties to this action set their signatures below.

It is stipulated and agreed that duplicate and facsimile signatures hereon shall be deemed and considered to have the same binding effect as original signatures, and that on execution by counsel for the parties, this Stipulation of Settlement and Discontinuance may be submitted without further notice for consideration by the Judge assigned and filing with the Clerk of the Court.

DATED: Albany, New York
October , 2017

James Potter, Esq., for

Hinman Straub, PC
121 State Street
Albany, New York 12207

DATED: Poughkeepsie, New York
October , 2017

J. Gardner Ryan
Assistant Attorney General, for
Eric T. Schneiderman
Attorney General of the
State of New York
One Civic Center Plaza - 4th Floor
Poughkeepsie, New York 12601

SO ORDERED:

Honorable Stephen J. Mignano
Judge of the Court of Claims

TOWN OF RHINEBECK v. STATE
SETTLEMENT STATEMENT

310,000.00	Total Settlement
<u>1,979.16</u>	Disbursements
308,020.84	Settlement After Disbursements
<u>102,673.61</u>	1/3 Hinman Straub fee
205,347.23	Net Proceeds to Town

To Hinman Straub:

1,979.16	Disbursements (see breakdown below)
<u>102,673.61</u>	Fee
104,652.77	Total

Disbursements:

Photocopies (in-house)	486.90
Photocopies (Camelot Copy)	457.68
Photocopies (NYS Archives)	80.75
Filing Fees	670.00
Service of Process	30.00
Postage	19.66
Federal Express	83.95
Travel Expenses	<u>150.22</u>
	1,979.16

To Town of Rhinebeck:

205,347.23

James T. Potter
E-mail: JPotter@hinmanstraub.com

November 1, 2013

Hon. Thomas Traudt
Town Supervisor
Town of Rhinebeck
80 E. Market Street
Rhinebeck, N.Y. 12572

Re: *Proposal for Fee Recovery Lawsuit*

Dear Supervisor Traudt:

As you know, on October 17 we received an adverse decision from the Court of Claims in our action to recover from the State of New York the fees paid by the Town of Rhinebeck in defending the actions commenced in the Supreme Court, Dutchess County by Creed Monarch, Inc. (Index # 2010-3116) and by Astor Rhinebeck Associates, LLC (Index # 2010-3147). We have reviewed the decision and believe that there is a reasonable chance that it could be overturned on appeal.

Our retainer agreement with the Town dated October 19, 2012, provided for a contingent fee of between twenty-five percent (25%) and one-third (33.33%) of any amount recovered, plus disbursements of all sums collected, depending on the activity required before the Court of Claims. Appeals from adverse decisions were to be handled for a legal fee of \$200 per hour, plus disbursements.

We are mindful of the constraints on municipal budgets, so we are willing to alter our retainer agreement of October 19, 2012 to take an appeal to the Appellate Division from the current decision within the contingent fee arrangement. Under this arrangement, our total legal fee will be one-third (33.33%) of any amount recovered, plus will be entitled to reimbursement of disbursements.

In the event we are successful on this first-level appeal, and the case is remanded to the Court of Claims for further proceedings, we will continue to represent the Town within the contingent fee of one-third of the recovery, plus disbursements. If the Appellate Division affirms the order of the Court of Claims unanimously, we will not be obligated to seek leave to appeal to the Court of Appeals. However, we will make a motion for leave to appeal if at least one judge dissents. If an appeal is heard in the Court of Appeals from the order of the Appellate Division, we will handle that appeal within the one-third contingent fee structure, plus disbursements.

We estimate the total disbursements for bringing the appeal to the Appellate Division to be close to \$1,000. Disbursements will be greater in the Court of Appeals because that court requires the filing of a greater number of copies of the briefs and record on appeal.

If the Town Board agrees with this fee arrangement, I would ask that you countersign this letter and return a copy to me at your earliest convenience.

Very truly yours,

James T. Potter

Town of Rhinebeck

By: _____
Thomas Traudt, Town Supervisor

Dated: October ____, 2013

TOWN OF RHINEBECK

RESOLUTION NO. 2017207

APPOINTMENT TO ZONING BOARD OF APPEALS

WHEREAS, there is an open seat on the Zoning Board of Appeals with an unexpired 5-year term expiring on December 31, 2019; and

WHEREAS, Kathryn Clark has indicated her wish to serve on the Zoning Board of Appeals; now, therefore, be it

RESOLVED, that Kathryn Clark is appointed to the unexpired term on the Zoning Board of Appeals expiring on December 31, 2019.