

Regular Meeting - City of Port Jervis Common Council:

A regular meeting of the City of Port Jervis Common Council was held at the Youth Center at 134 Pike Street, Port Jervis, New York on Monday March 25th, at 6:30 p.m.

Attendance-

Jason Vicchiariello	1st Ward	Present
Colin O'Connell	1st Ward	Present
Misty Fuller	2nd Ward	Present
Maria Mann	2nd Ward	Present
Jeffrey Rhoades	3rd Ward	Present
Gerald Oney, Jr.	3rd Ward	Present
Jacqueline Dennison	4th Ward	Present
Stanley Siegel	4th Ward	Present
Michael Hockenberry	Councilman-At-Large	Present
Dominic Cicalese	Mayor	Present

Also present:

Deputy Clerk-Treasurer, Bobbie Jo Muller, William Frank, Esq., and Director of CDA, Valarie Maginsky
The meeting opened at 6:30 pm by Mayor Cicalese.

Pledge of Allegiance- Mayor Cicalese led all present in the Pledge of Allegiance.

Executive Session - None

Approval of Minutes -

- Motion to approve February 12, 2024, Common Council minutes by J. Rhoades, second C. O'Connell.
AYE: 7 ABSENT: 0 NAYS: 0 ABSTAIN: 2 (Fuller & Oney) CARRIED
- Motion to approve February 26, 2024, Common Council minutes by J. Rhoades, second M. Hockenberry.
AYE: 9 ABSENT: 0 NAYS: 0 ABSTAIN: 0 CARRIED
- Motion to approve March 11, 2024, Common Council minutes by J. Rhoades, second C. O'Connell.
AYE: 8 ABSENT: 0 NAYS: 0 ABSTAIN: 1 (Siegel) CARRIED

Executive Session Material - None

Regular Business-**J. Vicchiariello - CODE**

- Code has not met since the last meeting.
- The next Code Committee meeting will be held on April 3rd at 6:30pm at the council chambers. The meeting will focus on the Cannabis moratorium and new zoning for that.

J. Vicchiariello - POLICE

- Police have been involved in training for emergency medical certification in partnership with the OC Sheriff's Dept. The dept has recently been established as a certified HIS training site, with two certified instructors: Officer Mehedin and Officer Mortenson.
- Officer Nick Osowick is currently teaching the 5th grade DARE program at ASK. Sergeant McGowan is teaching the Too Good for Drugs and Violence curriculum to 8th grade students at PJMS.
- On April 27th, from 10am to 2pm, the PJPD in partnership with BSCH will be hosting a Drug Enforcement Administration National Take Back Prescription Drug Disposal event. BSCH will also be hosting a Wellness component to this event outside of City Hall, with stations for Behavioral Health and Narcan training, with free

Narcan kits available, pharmacy reconciliation, free blood pressure screenings and fall prevention services. Motion to approve this City sponsored event, second by M. Hockenberry.

AYE: 9 ABSENT: 0 NAYS: 0 ABSTAIN: 0 CARRIED

- Police committee did not have the last regular meeting, as there was the awards event for Catholic Charities, where Chief Worden was the recipient of the 2024 Caritas Award.
 - Next meeting will be held on April 18th at 6pm.
 - Resolution: 2024-0325-017 RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF PORT JERVIS AUTHORIZING INTERMUNICIPAL AGREEMENT FOR THE 2024/2025 ORANGE COUNTY STOP-DWI PROGRAM Motion by J. Vicchiariello, second by C. O'Connell
- AYE: 9 ABSENT: 0 NAYS: 0 ABSTAIN: 0 CARRIED

C. O'Connell - Planning -

- At the last meeting there was a public hearing for the new KFC going into the old Dunkin Donuts building; the franchise owner stated that there will be improvements made to the structure as well as the parking lot. The franchise owner will be available for questions and will be speaking at the next meeting on April 17th.

C. O'Connell - Zoning -

- The next Zoning meeting will be held on April 2nd in the Council Executive session room.

C. O'Connell - Recreation-

- Youth center will be closed this week March 25th to April 1st for spring break.
- Easter Candy Dash at the upper level of Church St. Park on March 30th at 11am. Please bring a basket or bag.
- Solar Eclipse viewing on April 8th at 2:10pm at Riverside Park. Limited safety glasses/viewing devices available.
- Spring Park cleanup at Veteran's Park will be held on April 13th at 10am- Volunteers are needed.
- The Jim Faggione, Jr. Port Jervis Midnight Madness Relay will be held on April 20th at 6pm and ends on the 21st at 6am at Elks Brox Park.
- The 30th annual Delaware River Run/Walk 5k will be held on May 5th at Riverside Park.
- The next Recreation meeting will be held on April 10th at 6:15pm.

M. Fuller - Finance -

- Motion to approve Accounts Payable Warrant for \$719,113.97, second by C. O'Connell.
- AYE: 9 ABSENT: 0 NAYS: 0 ABSTAIN: 0 CARRIED
- The next Finance meeting will be held on April 17th at 6:30pm.

M. Mann - Tourism -

- Tourism last met on March 13th.
- Next year's St. Patrick's Day parade will be held on March 2nd.
- The Citywide Yard Sale will be held on May 4th. There will not be any maps this year.
- Fabulous 50's will be held on June 2nd from 12pm to 6pm at Riverside Park.
- The Italian Festival will be held on August 17th at Veteran's Square Park.

M. Mann - IDA-

- IDA last met on March 18th but due to a lack of a quorum, they postponed the meeting.
- The next meeting will be held on April 15th at 6pm.

J. Rhoades - FEM -

- The PJFD responded to 32 calls in February, which is about average.
- The next FEM meeting will be held on April 15th at 6:30pm.

S. Siegel -HOUSING and VETERANS-

- The next Port Jervis Housing Authority meeting will be held on April 23rd at 7pm at Hillside Terrace.

- WWII vets are eligible for free healthcare benefits through the VA.
- Thank you to Congressman Pat Ryan for the presentation on the grant for Rumshock, as well as the support from the local people for our homeless veterans. Also, a thank you to Rumshock for their decision to come to Port Jervis.
- Access 8 is very close to being on air again.
- Next Senior Club meetings will be on March 27th, April 10th, and April 24th at 1pm at Fellowship Hall in West End.
- Quote: "A dream is only a dream until you decide to make it real" by Harry Styles.

J. Dennison - CDA-

- Defer to V. Maginsky re: OSI (Open Space Institute); Ms. Maginsky said that currently OSI has a RFP out with submission due by April 22nd. It is the opportunity for the City to acquire funds for conservation easements on the existing watershed. The City is currently going through a NYS DEC water quality improvement program to buy additional property to add to the watershed. The upcoming proposed WQIP acquisitions, shown in yellow on the map provided have nothing to do with this project. This project does not include the mountain conservation district shown in orange on the second map. This OSI project is for the two large parcels with stars on the map in green. One parcel is 1821.4 acres and the other 169.6 acres. Obtaining a conservation easement on these properties would ensure that these properties remain in their natural state. An appraisal of the properties is required. Upon council approval, the OC Land Trust will be working on securing said appraisal. The cost of the appraisal would be paid for by OC Land Trust with the understanding that there could be reimbursement by OSI, who is extremely interested in this project. Both properties are located in the Town of Deerpark and owned by the City of Port Jervis.
- Motion by J. Vicchiariello to authorize the Mayor or his designee to inform OC Land Trust that the City has approved the appraisal with the intent of applying for funds through OSI, second by S. Siegel.
AYE: 9 ABSENT: 0 NAYS: 0 ABSTAIN: 0 CARRIED
- Next meeting will be held on Wednesday, March 27th at 7pm.

M. Hockenberry - DPW-

- Garbage, recycling, and paper pick up will be on the normal schedule for the weeks of March 25th and April 1st.
- The 2024 Garbage schedule is available on the city website at www.portjervisny.gov or by emailing the DPW office at dpwclerk@portjervisny.gov
- Compost pile and City Dump is now open every Saturday from 7:30am to Noon.
- Street sweeping is ongoing and citywide bagged leaf pickup is every Monday until completion.
- Citywide pothole repairs are in process.
- Motion for employee #619 for municipal bus scheduler from provisional to permanent employment, second by C. O'Connell.
AYE: 9 ABSENT: 0 NAYS: 0 ABSTAIN: 0 CARRIED

Mayor Cicalese -

- Resignation of Tom Sexton as Zoning Board Chairperson and formally appoint Tim Simmons to that position.
- Appoint David Thompson to the vacant seat on the Zoning Board; that term will expire 2/6/2029.
- Appoint Caleb Russell to the IDA; that term will expire 1/16/2029.
- Consideration: Hardship for Green Port Smoke Shop, defer to Corporation Counsel. Will Frank stated that on February 26th there was a public hearing regarding this Hardship Waiver from the moratorium and what was discussed at the public hearing. He also explained the criteria required for the Hardship.
- **RESOLUTION: 2024-0325-018 RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF PORT JERVIS DENYING THE APPLICATION OF GREEN PORT SMOKESHOP, INC. FOR A VARIANCE FROM LOCAL LAW NO. 5 OF 2023** Motion by J. Vicchiariello, second by M. Hockenberry.
AYES: 9 ABSENT: 0 NAYS: 0 ABSTAIN: 0 CARRIED

- 2nd Annual Bark in the Park sponsored by the Outdoor Club on October 6th, 2024. Motion to approve by J. Rhoades, second by M. Hockenberry
AYES: 9 ABSENT: 0 NAYS: 0 ABSTAIN: 0 CARRIED
- Little Bellas Half Day Camp July 8th, 2024, to July 12th, 2024. Motion to approve by J. Rhoades, second by O'Connell.
AYES: 9 ABSENT: 0 NAYS: 0 ABSTAIN: 0 CARRIED
- Port Jervis Soapbox Derby – Practice May 19th, 2024 (rain date June 2nd, 2024) & June 8th, 2024; Impound: June 8th, 2024; Race Day: June 9th, 2024 (rain date June 16th, 2024). Motion to approve by M. Hockenberry, second by J. Vicchiariello.
AYES: 9 ABSENT: 0 NAYS: 0 ABSTAIN: 0 CARRIED
- Port Jervis Farmer's Market June 1st, 2024, to October 26th, 2024. Motion to approve by J. Rhoades, second by J. Vicchiariello.
AYES: 9 ABSENT: 0 NAYS: 0 ABSTAIN: 0 CARRIED
- Property Sisters of the Hudson Valley Grand Opening April 14th, 2024. Motion to table until next council meeting by M. Hockenberry, second by J. Vicchiariello. S. Siegel is against closing the street for the event, M. Mann stated the application does not meet the required amount of time for an event that size.
AYES: 8 ABSENT: 0 NAYS: 1 ABSTAIN: 0 CARRIED

7:20pm - Motion to adjourn by M. Hockenberry, second M. Fuller – all in favor.

Respectfully,
Bobbie Jo Muller
Deputy City Clerk Treasurer

CITY OF PORT JERVIS

P.O. BOX 1002
20 HAMMOND STREET
PORT JERVIS, NEW YORK 12771
Regular Common Council Meeting Agenda
IN-PERSON MEETING ONLY



Monday March 25, 2024 - 6:30 pm Regular Session (location change to 135 Pike Street, Port Jervis, NY 12771):

Pledge of Allegiance / Roll Call

Public Hearing: NONE
Presentation: NONE
Mayor Appointment: NONE

Public Comment: 5-minute limit per person

BASED ON PUBLIC OFFICERS LAW ARTICLE 7

Executive Session: NONE

Approval of Minutes: February 12, 2024 – Common Council Meeting Minutes
February 26, 2024 – Common Council Meeting Minutes
March 11, 2024 – Common Council Meeting Minutes
March 20, 2024 – Special Common Council Meeting Minutes

Address Executive Session Material:

Regular Business:

CODE <i>Vicchiariello</i>	Report			
POLICE <i>Vicchiariello</i>	Report			
PLANNING & ZONING/RECREATION <i>O'Connell</i>	Report			
FINANCE <i>Fuller</i>	Bills to be paid Report	Motion:	2nd:	Vote:
TOURISM/IDA <i>Mann</i>	Report			
FIRE <i>Rhoades</i>	Report			
HOUSING/VETERANS <i>Siegel</i>	Report			
CDA <i>Dennison</i>	Consideration: Open Space Institute - Permission to appraise the watershed properties Report	Motion:	2nd:	Vote:
DPW <i>Hockenberry</i>	Consideration: Approve employee # 619 from a provisional appointment as Municipal Bus Route Scheduler to a Permanent Appointment Report	Motion:	2nd:	Vote:

CITY OF PORT JERVIS

P.O. BOX 1002
20 HAMMOND STREET
PORT JERVIS, NEW YORK 12771
Regular Common Council Meeting Agenda
IN-PERSON MEETING ONLY



MAYOR'S COMMENTS

Mayor Cicalese

Announce: Resignation of Tom Sexton from Zoning Board
Appointment of David Thompson to Zoning Board
Appointment of Caleb Russell to IDA

Consideration: Hardship Request – Green Port Smoke Shop

	Motion:	2nd:	Vote:
2nd Annual Bark in the Park 10.6.24	Motion:	2nd:	Vote:
Little Bellas Half Day Camp 7.8.24 to 7.12.24			
	Motion:	2nd:	Vote:
Property Sisters of the Hudson Valley Grand Opening 4.14.24			
	Motion:	2nd:	Vote:
Port Jervis Soapbox Derby - Practice: 5.19.24 (rain date 6.2.24) & 6.8.24; Impound: 6.8.24; Race Day: 6.9.24 (rain date 6.16.24)			
	Motion:	2nd:	Vote:
Port Jervis Farmers Market 6.1.24 – 10.26.24			
	Motion:	2nd:	Vote:

ADJOURNMENT

**RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF PORT JERVIS
AUTHORIZING INTERMUNICIPAL AGREEMENT FOR THE 2024/2025 ORANGE
COUNTY STOP-DWI PROGRAM**

WHEREAS, the Stop-DWI Program is a statewide traffic safety effort in existence in New York since 1981 for innovative enforcement, rehabilitation, and prevention programming, designed to ensure that no one part of the Driving While Intoxicated (DWI) system becomes overburdened as a result of increased enforcement; and

WHEREAS, the City of Port Jervis is a participating municipality in the Orange County Stop-DWI Program, and it is in the public interest, health, safety and welfare for the City to continue its participation in the Orange County Stop-DWI Program; and

WHEREAS, the term of the IMA shall commence on or about March 10, 2024, and end on or about January 1, 2025: and

WHEREAS, the City of Port Jervis agrees to participate in STOP DWI Program enforcement periods which coincide with state and national enforcement campaigns; and

WHEREAS, as part of the City of Port Jervis’s participation in the Orange County Stop-DWI Program the City can receive grant funding based on officer overtime hours expended for STOP DWI Program enforcement activities during the enforcement periods as supported by data,

NOW, THEREFORE, IT IS HEREBY

RESOLVED, that the Common Council of the City of Port Jervis hereby authorizes the City Mayor, or his designee, which in the first instance shall be the City of Port Jervis Chief of Police, to sign an Intermunicipal Agreement on behalf of the City associated with the 2024/2025 Orange County Stop-DWI Program, along with other Orange County program documents and agreements covering said period, subject to final review by the Corporation Counsel.

Motion by: J. Vicchiariello

Second by: C. O’Connell

Jason Vicchiariello	1st Ward	AYE
Colin O’Connell	1st Ward	AYE
Maria Mann	2nd Ward	AYE
Misty Fuller	2nd Ward	AYE
Jeffery Rhoades	3rd Ward	AYE
Gerald Oney, Jr.	3rd Ward	AYE
Stanley B. Siegel	4th Ward	AYE
Jacqueline Dennison	4th Ward	AYE
Michael Hockenberry	Councilman-At-Large	AYE



Attest: Bobbie Jo Muller
Bobbie Jo Muller, Deputy City Clerk

Deputy Clerk Treasurer

From: John Faggione
Sent: Thursday, March 21, 2024 4:38 PM
To: Mayor; Colin O'Connell
Cc: Clerk Treasurer; Deputy Clerk Treasurer
Subject: Recreation update for CC meeting March 25, 2024

Recreation update
March 25, 2024
6:30 pm

1. The Youth Center Rec Room will be closed this week March 25-April 1 for Spring Break. The Youth Center Recreation Room normal weekday schedule is Monday-Friday between 3 pm- 6pm.

2. Upcoming special events:

- Easter Candy Dash on March 30, 2024, at 11:00 am at the upper level of Church St. Park. This is a free event for children ages 9 and younger. Bring an Easter basket or bag to help carry your candy home. Don't be late or you will miss it!

-Solar Eclipse Viewing Event on April 8, 2024, starting at 2:10 pm at Riverside Park. There will be a Solar Eclipse that will be visible right here in Port Jervis. The eclipse starts at 2:10 pm, with maximum eclipse at 3:25 pm and finished by 4:35 pm We are expected to have approximately a 90% eclipse. That means 90% of the sun will be covered by the moon! This special event won't occur again here in Port Jervis until August 23, 2044!

Join us at Riverside Park along with the Port Jervis Police Department and PJ Middle School science teacher Randall Wright for a Solar Eclipse Viewing Event. We will have limited safety viewing devices and glasses available. So, bring a chair or blanket, safety viewing glasses and join us on April 8!

- Spring Park Cleanup at Veteran's Park on April 13 at 10:00 am. Volunteers are needed. Email the Recreation office if you would like to volunteer.

3. Other Special Events later this spring include:

-The Jim Faggione Jr. PJ Midnight Madness Endurance Relay on April 20-21 at Elks Brox Park. The relay starts at 6 pm on April 20 and ends at 6 am on April 21. You can register as an individual or teams of 2, 3 or 4. Do as many laps as you can in the 12 hours on this 3.1mile loop course. Music, movies, food truck and more throughout the night. All money raised will go to The Outdoor Club of Port Jervis and the American Foundation for Suicide Prevention. For more information or to register go to pjmidnightmadness.com

- The 30th Delaware River Run 5K run and walk on May 5, 2024, at Riverside Park. Join us with the entire family as we celebrate 30 years of running! Some special events are planned that morning. For more information or to register go to- runsignup.com and search Delaware River Run.

CITY OF PORT JERVIS

Accounts Payable

3/25/2024

1 General Fund		\$452,957.96
2 Water Fund		\$58,051.49
3 Sewer Fund		\$13,660.75
4 Capital Fund		\$2,953.72
5 Trust and Agency		\$191,490.05
6 Recreation		\$0.00
	Total	<u>\$719,113.97</u>

GENERAL, WATER & SEWER FUNDS

NYS Employee Health Insurance	\$316,479.56
RC Lain	\$51,110.91
CSEA Employee Benefit Fund	\$7,597.50
Police Uniform Allowance	\$45,381.25

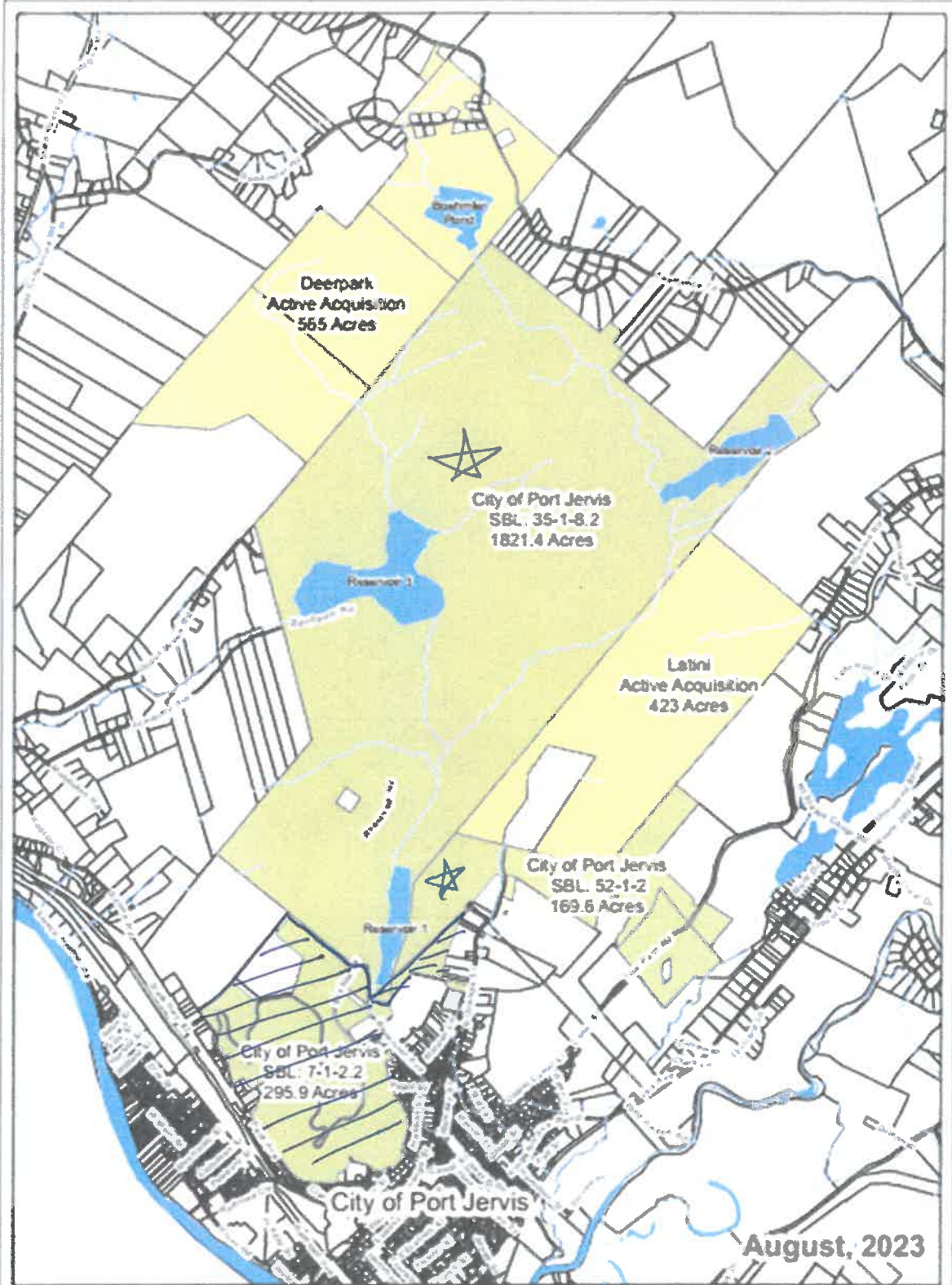
CAPITAL FUND

Applied Concepts - Stalker Radar	\$ 2,500.00
Newburgh Winwater Works	\$ 453.72

SBL: 35-1-8.2 - 1,821.4 Acres

52-1-2 - 169.6 Acres

Appraisal on
P J Parcels in Town of Deerpark



August, 2023

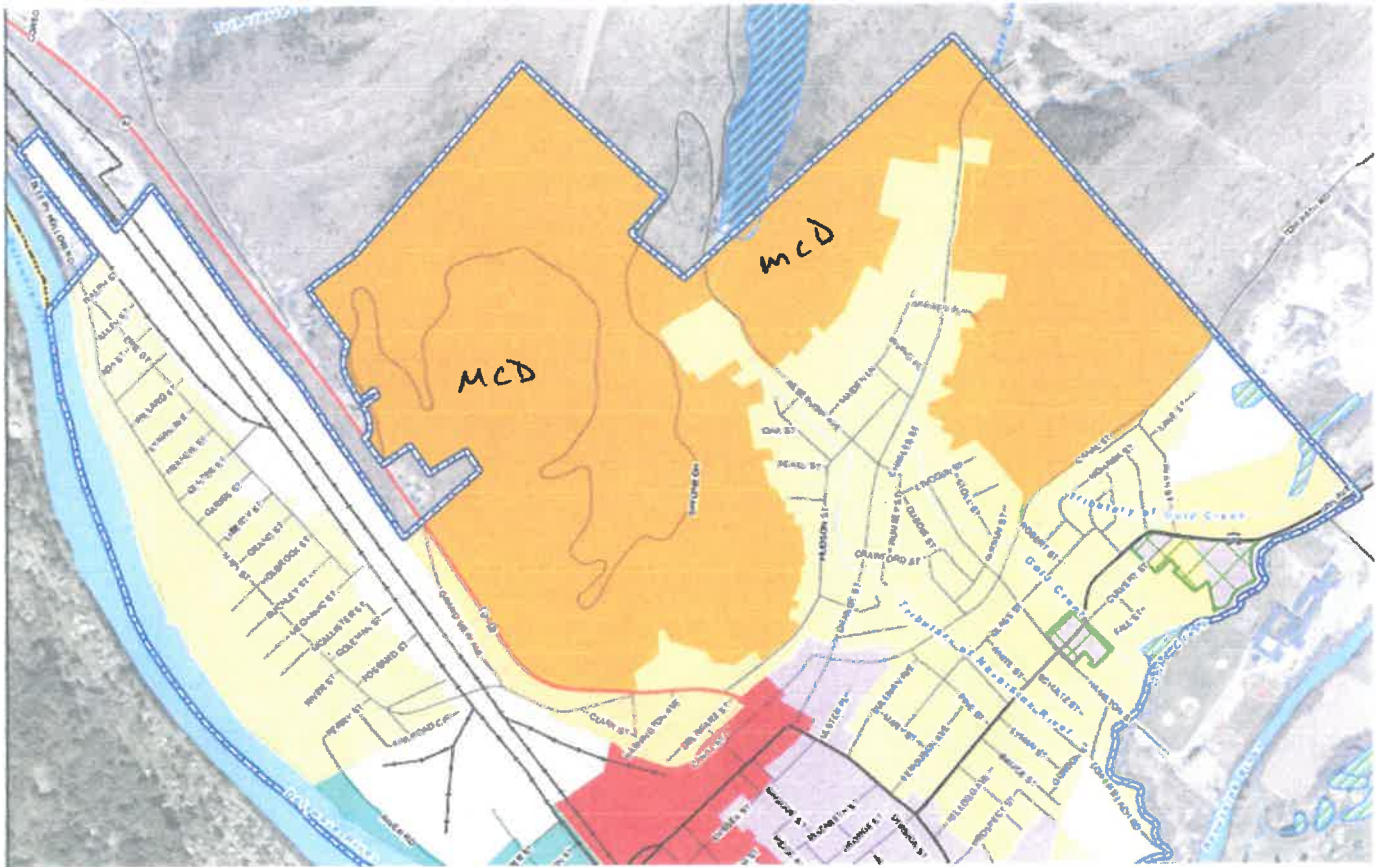
Port Jervis Reservoir Watersheds -- Active & Potential Projects

- City-owned Property
- Active Acquisitions
- Water
- Other Tax Parcels
- Streams



Zoning Map – Port Jervis – City

Orange = Mountain Conservation District



Zoning District

- Central Business District (CBD)
- Light Industrial (LI)
- Neighborhood Mixed-Use (NMU)
- Low Density Residential (R-1)
- Medium Density Residential (R-2)
- Mountain Conservation District (MCD)
- Senior Citizens Affordable Housing (SCAH)
- Waterfront Mixed Use (WMU)



CITY OF PORT JERVIS, NY

Department of Public Works
1 Franklin Street, Port Jervis, NY 12771

Steven R. Duryea
Director

(845) 858-4006
Facsimile

(845) 858-4000
Telephone

Common Council Update

March 25th, 2024

- 1. Garbage and recycling on the week of March 25th will be picked up on its normal schedule. On the week of April 1st garbage and recycling will be picked up on its normal schedule. The week of March 25th and the week of April 1st paper pickup will be on its normal scheduled day.**
2. The 2024 Garbage schedule is available on the city website at www.portjervisny.gov or by emailing the DPW office at dpwclerk@portjervisny.gov .
3. The Compost Pile and Dump Tickets are now open every Saturday from 7:30 am until Noon.
4. Street Sweeping is ongoing.
5. City Wide bag leaf pickup every Monday until completion.
6. City Wide Pothole and Tar repair.

**THE CITY OF PORT JERVIS
COMMON COUNCIL**

The following was presented

By: J. Vicchiariello

Sec'd by: M. Hockenberry

Date of Adoption: March 25, 2024

ROLL CALL VOTE				
Names	Ayes	Noes	Abstain	Absent
<i>Councilman at Large</i> Mr. Hockenberry	√			
<i>Councilman</i> Mr. Vicchiariello	√			
<i>Councilman</i> Mr. O'Connell	√			
<i>Councilwoman</i> Ms. Mann	√			
<i>Councilwoman</i> Ms. Fuller	√			
<i>Councilman</i> Mr. Rhoades	√			
<i>Councilman</i> Mr. Oney	√			
<i>Councilwoman</i> Ms. Dennison	√			
<i>Councilman</i> Mr. Siegel	√			
TOTAL	9			

**RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF PORT JERVIS
DENYING THE APPLICATION OF GREEN PORT SMOKESHOP, INC. FOR A
VARIANCE FROM LOCAL LAW NO. 5 OF 2023**

WHEREAS, the City of Port Jervis (the “City”) received an application dated January 4, 2024 from Green Port Smokeshop, Inc., seeking a variance from Local Law No. 5 of 2023, which local law established a moratorium on, *inter alia*, the land use review and approval process for applications to develop smoke shops within the City; and

WHEREAS, the application was submitted in accordance with Section 7 of Local Law No. 5 of 2023 and application fees were duly tendered to the City Clerk-Treasurer; and

WHEREAS, the Common Council of the City of Port Jervis held a public hearing with respect to the application on February 26, 2024 and considered all relevant factors in making its determination as is described in the decision annexed hereto; and

WHEREAS, the Common Council hereby finds that Green Port Smokeshop, Inc. would not suffer an unnecessary and extraordinary hardship should the City require strict compliance with Local Law No. 5 of 2023 with respect to the subject project,

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Common Council of the City of Port Jervis hereby denies Green Port Smokeshop, Inc. a variance from Local Law No. 5 of 2023 and further adopts and accepts the annexed decision, which is fully incorporated herein by reference, as the official decision of the Common Council.



CITY OF PORT Jervis
COMMON COUNCIL DECISION

Application of Green Port Smokeshop, Inc.
For Variance From Local Law No. 5 of 2023 as Extended by Local Law No. 1 of
2024 To Seek Approval to Operate a Smoke Shop within the City

Background

On or about June 26, 2023, the Common Council of the City of Port Jervis (“City”) adopted Local Law No. 5 of 2023 establishing a six-month moratorium (the “Moratorium”) prohibiting the approval of applications for the construction and operation of retail sales establishments for cannabis, CBD and tobacco products within the City, as such terms are defined in Chapter 535 of the Port Jervis City Code. The Local Law was filed in the office of the New York Secretary of State, thereby becoming effective, during business hours on July 10, 2023.

As relevant here, during the effective period of the Moratorium:

“No Land Use Approvals shall be issued for the development, construction and operation of retail sales establishments for cannabis, CBD and tobacco products within the City, as such terms are defined in Chapter 535 of the Port Jervis City Code, without the approval of the Common Council of the City of Port Jervis, which approval will not be considered except in the event of proven hardship.

The City Planning Board shall not accept any application, grant any approval to, or continue the review of a subdivision plat, site plan, special use permit or other permit that includes the permitting, construction, development and/or operation of retail sales establishments for cannabis, CBD and tobacco products, as such terms are defined in Chapter 535 of the Port Jervis City Code, within the City within the City or would have as a result of the enlargement, relocation, or modification of any existing use in such zones.” Local Law No. 5. of 2023 §4(A)(1) and (2).

2024-0325-018

Local Law No. 5 of 2023 was extended for an additional six months pursuant to Local Law No. 1 of 2024, which was adopted on or around January 8, 2024 and filed in the office of the New York Secretary of State on January 11, 2024.

Applicant, Green Port Smokeshop, Inc. (“Applicant”) is the lessee of the real property known as 180 Pike Street within the City and identified on the tax maps of the City as Section 8, Block 16 and Lot 8. According to the records of the Orange County Clerk’s Office, as of October 27, 2022, the fee owner of the property is Alharbi Holdings LLC. At the time the Moratorium was enacted, the Applicant had already submitted an application to the City of Port Jervis Planning Board on or about May 2, 2023 for a special use permit approval to construct a smoke shop and convenience store on the aforementioned parcel of property. Section 7(A) of the Moratorium Law permits a property owner that claims to suffer an unnecessary and extraordinary hardship due to the enactment and application of the Moratorium to apply to the Common Council in writing for a variance from strict compliance with the law upon submission of proof of such unnecessary hardship.

On or about January 4, 2024, Applicant submitted a variance petition (“Petition”) to the City Clerk seeking hardship relief from the Moratorium, the entirety of said Petition, with exhibits, is incorporated herein by reference. Applicant also submitted the requisite fee to process said application on January 5, 2024.

The Application

Applicant alleges, inter alia, the following in its Petition:

1. The Applicant filed its completed application with the Planning Board for site plan approval for the smoke shop and convenience store on May 2, 2023.
2. The Applicant has no intention of applying for a retail cannabis sales license from New York State.
3. In addition to operating a retail tobacco and convenience store, the Applicant intends to sell a large gift inventory specializing in merchandise with the “I Love America” logo contained thereon.
4. The Applicant holds a certificate of authority from the New York State Department of Taxation and Finance (certificate attached to petition).
5. The Applicant holds a retail dealer certificate of registration from the New York State Department of Taxation and Finance to sell cigarettes and tobacco products (certificate attached to petition).
6. The Applicant holds a certificate of licensure from the New York State Office of Cannabis Management to sell cannabinoid hemp products (certificate attached to petition).

7. The Applicant claims in the petition that applicant and a “business associate” purchased 180 Pike Street for the sole purpose of operating the proposed retail convenience store and smoke shop and paid \$170,000 for the property.

8. The Applicant submitted a Short Environmental Assessment Form under the New York State SEQRA regulations in connection with its site plan application to the Planning Board.

9. Applicant “has continued to pay monthly rental in the amount of \$3,000 to the owner. The applicant has also been required to pay for gas and electric, insurance and building maintenance” (Petition Section 5).

10. “That the building has produced no income for the applicant during the current six-month moratorium. The entire investment by the applicant and owner is in excess of \$230,000 has had no revenue since the moratorium was enacted in July, 2023” (Petition Section 6).

11. “That the applicant’s store has been fully stocked with inventory, shelving, equipment and all other necessary items ready to conduct business during the entire time of the moratorium” (Petition Section 7).

12. The store will not cause significant or any environmental harm, will not adversely impact surrounding natural resources, adversely affect public health, comfort or safety or have a negative effect of the City.

13. The Petition alleges that the Moratorium will cause further significant harm to the Applicant because:
 - “Applicant is under a contractual lease obligation to continue paying \$3,000 per month rent to the owner of the property, LMB Star LLC-A completely independent third party”.

 - “There is no financially feasible alternative commercial use for the property. Without the ability to sell tobacco products at the retail store, along with other items, there is very little expectation of operating a successful retail business at this property”.

The Public Hearing

In accordance with Section 7(C) of Local Law No. 5 of 2023, a duly noticed public hearing was convened on February 26, 2024 at 6:30 p.m.

At the public hearing, the Applicant Green Port Smokeshop, Inc. appeared by Akeel Naji. Shehab Alharbi, the principal of the owner of 180 Pike Street, Alharbi Holdings LLC was also present. Vern S. Lazaroff, Esq., attorney for Applicant, also appeared.

During the hearing, the Applicant was given the opportunity to present any evidence that supported its Petition. Mr. Lazaroff presented arguments with respect to the economic harm allegedly suffered by Applicant due to delays occasioned by the Moratorium, including Applicant's investment in the property and store inventory. Mr. Lazaroff noted that the Applicant had no intention of selling drugs or intoxicants. Common Council members raised questions about the sale of CBD because Applicant's retail CDB license was a part of the Petition. Mr. Alharbi, the property owner, indicated that there would be no sales of CBD products and offered to supply a letter confirming same to the Council.

Following comments from the Common Council, Corporation Counsel William A. Frank, Esq. asked certain questions relating to the Petition summarized as follows:

- i) The deed for the subject property from LMB Star LLC to Alharbi Holdings LLC is dated 10/27/22 and the Orange County Clerk's records show the current owner as Alharbi Holdings LLC. The Petition states that Green Port Smokeshop is paying \$3,000/mo. to the former owner LMB Star. Is that correct?
- ii) What is the relationship between Green Port Smokeshop, Inc. and Alharbi Holdings, if any?
- iii) What is the relationship between Green Port Smokeshop, Inc. and LMB Star, if any?
- iv) Is rent of \$3,000 per month being paid at this time?

It was then acknowledged by the Applicant that Mr. Naji, the principal of Green Port Smokeshop, Inc., is the nephew of Mr. Alharbi, the principal of Alharbi Holdings LLC the owner/landlord. Applicant conceded on the record that the Petition was incorrect and that no rent was due or being paid to LMB Star LLC, the former owner of the property.

Significantly, after questioning, Applicant acknowledged that the \$3,000 monthly rental alleged in the Petition was apportioned as follows: \$2,200 for the retail location and \$800 for the apartment located at the subject property. Furthermore, Applicant admitted that no rent had been

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paid to the owner/landlord, his uncle, because the store was not open. The owner/landlord thereafter stated that rent has been demanded, although no documentation to support this contention was submitted during or after the public hearing. The Applicant, Green Port Smokeshop, Inc., presented no evidence that it paid any portion of the \$170,000 purchase price for the property.

Mr. Naji then informed the Common Council that he is married with six children, and it was his intent to move from his current home to Port Jervis.

The Applicant was invited to present any additional evidence to support its hardship application and offered nothing further for the Common Council to consider. A motion was thereafter made by Councilman O'Connell to close the public hearing, which motion was seconded by Councilman Vicchiariello. On a unanimous vote, the Common Council closed the public hearing.

Findings and Conclusions

Application of Moratorium Law To The Project

Section 7(A) of Local Law No. 5 of 2023 states as follows:

- A. Should any owner of property affected by this Local Law suffer an **unnecessary and extraordinary hardship** due to the enactment and application of this Local Law, then the owner of said property may apply to the Common Council of the City of Port Jervis in writing for a variance from strict compliance with this Local Law upon submission of proof of such unnecessary hardship. **For the purposes of this Local Law, unnecessary or extraordinary hardship shall not be:**
 - a. the mere concern that regulations may be changed or adopted, or that the Plan may be amended; or
 - b. **the mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special permit, site plan, subdivision, or other permit during the period of the moratorium imposed by this Local Law** (emphasis added).

Section 7(D) sets forth the factors that the Common Council must examine when considering an application for a variance from the law:

- D. Standard of Review. In reviewing an application for an exception based upon a claim of unnecessary or extraordinary hardship, the Common Council shall consider the following criteria:

- a. The extent to which the proposed development activity would cause significant environmental harm, adversely impact surrounding natural resource areas, public health, comfort or safety concerns and/or have a negative impact upon the City.
- b. **Whether the moratorium will expose a property owner or applicant to substantial monetary liability to a third person or would leave the property owner or applicant completely unable, after a thorough review of alternative solutions, to have a reasonable alternative use of the property (emphasis added).**

Considering the Petition and all evidence presented at the public hearing, the Common Council finds that the Applicant has failed to satisfy the criteria for entitlement to a variance from enforcement of the requirements of the Moratorium Law for the project.

In the first instance, by Applicant's own admission, the Petition is flawed. The representations made by Applicant in the Petition fail to disclose that a significant portion of the purported \$3,000 monthly rent is allocated to an apartment at the property and has nothing to do with the retail store¹. In addition, regardless of the allocation of rent between the store and the apartment, no rent has been paid by Applicant before or during the Moratorium period. Of further note, the Petition failed to disclose that Applicant and the property owner have a familial relationship, despite the fact that the Petition inaccurately claimed that rent had already been paid to an independent third party.

Even if the allegations in the Petition with respect to the payment of rent were accurate (which they are not based on the evidence deduced at the public hearing), such expenditures do not satisfy the criteria of Section 7(D)(b) of Local Law No. 5 of 2023. Clearly, the Applicant has not been exposed to substantial monetary liability to a third person. Mr. Naji has not had to pay rent to Mr. Alharbi's company or to anyone else during the Moratorium period. Even if rent had been paid, that does not rise to the level of an unnecessary and extraordinary hardship which is any different to other similarly situated parties. Furthermore, Applicant failed to present any evidence in the Petition or at the public hearing that would render the Applicant completely unable, after a thorough review of alternative solutions, to have a reasonable alternative use of the property as required by Section 7(D)(b). The inability to utilize the property in a different way is a critical component of entitlement to a hardship variance, particularly when insufficient evidence is presented with respect to economic harm.

Based on the foregoing, it is not necessary to examine any other portions of the Petition with respect to environmental concerns or any other aspect of said Petition.

¹ It is noteworthy that the Planning Board application and the Short Environmental Assessment Form submitted with said application make no mention of an apartment at the subject property.

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Accordingly, the Common Council finds that the Applicant has not satisfied the requirements of Section 7 of Local Law No. 5 of 2023 and the Petition is hereby denied. The Applicant's project remains subject to Local Law No. 5 of 2023 and Local Law No. 1 of 2024.

This Decision shall be filed in the Office of the City Clerk-Treasurer with copies delivered to the Chairman of the City Planning Board, Secretary to the City Planning Board and the Applicant's Counsel.

Dated: March 25, 2025



Dominic M. Cicalese, Mayor

The Mayor was authorized to execute the foregoing decision at a duly convened Common Council meeting held on March 25, 2024