

**At a Meeting of
the Town Board of Delhi
held on July 11, 2011
at 7:30 P.M. at the Town Offices**

Resolution #8 of 2011

**RESOLUTION OF THE TOWN BOARD FOR THE
TOWN OF DELHI**

In the Matter of the Village of Delhi's Continuing Responsibility Over the Structure Locally Known as the "Woolerton Street Bridge".

WHEREAS, the Village of Delhi is a long existing municipal government, that is a legally independent and separate entity from the Town of Delhi;

WHEREAS, the Village of Delhi is charged with the responsibilities and obligations imposed upon village governments under the New York State Village Law, and other applicable laws of the State relating to Village infrastructure, including sewage systems, water, roads and bridges;

WHEREAS, in or about December 2008, the Village of Delhi ("Village") commenced legal action against the Town of Delhi ("Town"), seeking to compel the Town to assume legal and financial responsibility for an approximately 120-year old structure located in the Village of Delhi that is commonly known as the "Woolerton Street Bridge" (the "WSB"). The Village initially asserted that the "Woolerton Street bridge [was] a Town Highway responsibility," by letter to the Town dated August 21, 2007. The Town responded to the Village by letter dated September 4, 2007, informing the Village that the Town "concluded that the Town of Delhi has no responsibility in replacing or repairing" the WSB. The Village again demanded that the Town accept responsibility for the WSB by communication dated December 18, 2007. The Town responded by letter dated January 14, 2008 that, "[b]ased upon its long established voluntary supervision and control of the structure, the Village is responsible for the repair and maintenance of the 'Woolerton Street Bridge,'" and that the "Town does not intend to assume responsibility for this clear Village obligation." The Village subsequently initiated its legal action against the Town;

WHEREAS, the Town denied the Village's demands that the Town assume responsibility for the WSB because, among other reasons, it was common knowledge that the Village had preexisting "supervision and control" of the WSB as intended by Village Law §6-604, mandating that the Village "shall continue to exercise such control under this chapter," i.e., Chapter 892 of the Laws of 1972—which first adopted Village Law §6-604. The Town consistently maintained that, because official Village records and other credible documentary evidence established that the Village constructed the WSB in 1890, reconstructed it in the 1930s, and had exclusive "supervision and control" of the WSB from 1890 to present, the Town was not liable for the Village created and maintained structure, under the laws of the State of New York;

WHEREAS, on a subsequent appeal in the Village’s legal action against the Town, the New York State Supreme Court, Appellate Division, Third Department, agreed with the Town, and determined that the Town’s documentary evidence showed “that petitioner Village of Delhi...constructed the WSB in 1890 and, after it washed away, reconstructed it in the 1930s. Thereafter, the Village performed certain maintenance on the WSB” *See Village of Delhi v. Town of Delhi*, 72 AD3d 1477, 1477 (2010)(emphasis added). The Appellate Court acknowledged that the Town’s legal argument was that the “Town denied responsibility for maintaining the WSB on the basis that . . . the WSB had been under the Village’s ‘control and supervision’ for the past 60 to 100 years.” *See Id.* After making this finding, the Appeals Court determined that “it was clear that the Town produced evidence supporting their claim that the Village should be held responsible for the WSB” *See Id.* at 1479. However, the Appellate Court did not decide the case on the full merits, because the court determined that certain procedural issues needed to be re-addressed and resolved by the lower court. Specifically, the Third Department held that the Town’s alleged affirmative defenses on appeal “raised factual and legal issues which they should be able to assert in an answer, including necessary parties and statute of limitations issues, and additional instances of supervision and control by the Village.” *See Village of Delhi*, 72 AD3d at 1479;

WHEREAS, apart from the evidence establishing that the Village initially constructed the WSB in the 1890s, and reconstructed it in the 1930s, the Town’s record and other evidence produced in the Village’s legal action against the Town, documents the extent of the Village’s actions in controlling, maintaining and supervising the WSB. The Town’s documentary and other evidence includes, but is not limited to, the following:

1. In 1973, the Village Board Trustee hired a local contractor to “lower Steele Brook from Woolerton Street Bridge to the river.” *See Village meeting minutes 1973 p. 26.* As explained by the Village Street Superintendent, work by the Village in Steele Brook is done for the purpose of protecting bridges, including the WSB.
2. In 1973, the Village Board of Trustees agreed to allow the local State University “to start work on Woolerton Street Bridge so as to protect it from future flood water.” *See Village meeting minutes November 5, 1973 p. 26.*
3. The Village Board discussed and agreed to try to have the local State University perform work in Steele Brook, at the Board’s August 14, 1978 meeting. *See Village meeting minutes August 14, 1978, p. 179.*
4. The Village requested that the County inspect and provide a load rating analysis for the WSB structure in June 1999.
5. The Village, after directing its Street Superintendent to contact them, retained the private engineering firm Delaware Engineering, P.C. (“DE PC”) to inspect the WSB structure and perform a load rating analysis for the WSB, and in August 1999 the Village’s engineering consultant DE PC recommended that the Village post the load rating capacity for the WSB to 12 tons.

6. The Village requested that the County perform an inspection and analysis of the WSB structure and its structural integrity in early 2002 to determine its deterioration/possible repairs, which the County subsequently performed and reported its findings and recommendations to the Village.
7. The Village requested that the County review the WSB and provide an estimate for the County to replace the stone parapet walls on the WSB, which the County then provided to the Village in November 2002. The County estimate stated it assumed that the Village would provide the necessary traffic control on the WSB during the proposed work.
8. The Village retained the County to replace the stone parapet wall on one side of the WSB with steel posts and box beam guide rails in late 2002-early 2003. The Village had the parapet removed and the County then installed steel posts and box beam guide rails along Bell Hill Road, over the WSB, and along Woolerton Street, between January and October 2003. The Village paid the County's invoice of \$9,042.63 for the County's work, materials and services, in February 2004. The Village said it removed the stone wall on the WSB in part to "lower the dead loading on the bridge."
9. The Village had debris removed that had become clogged under the WSB from a January 1996 flood of Steele Brook, and also repaired damage to the downstream left wingwall under the WSB that anchors the WSB. The Village requested that the County review and provide possible repair work to the WSB structure from damage suffered by a separate flood in 2005. The County provided the Village with a written review assessment of damages and possible repair work to the WSB structure in July 2005.
10. The Village had a gabion wire retaining wall at the base of the WSB structure replaced with a stone wall in or about 2005-2007. The Village applied to FEMA to have FEMA reimburse the Village for the approximately \$8,500.00 the Village paid for the Village's work on the WSB. The FEMA application by the Village expressly said the work was located at "Steele Brook at Woolerton Street," and included installing a concrete toe at the base of the WSB gabion wall. The Village Superintendent of Public Works testified at his deposition that the Village asked FEMA to reimburse the Village for WSB work.
11. The Village and its Public Works Superintendent closed the WSB to public travel after a 2006 flood. The Village contacted its engineers DE PC to inspect the WSB and advise the Village about re-opening the WSB.
12. The Village Superintendent of Public Works testified that he prepared a "list of potential projects that the Village would face in the next 10 years," in or about 2006. Repairing or replacing the WSB was listed as one of those projects.

13. The Village began pursuing having the County assume responsibility for the WSB between 2005-2007. As part of these efforts, the Village proposed a plan that the Village would physically alter the WSB and try to expand the opening of the WSB to 20 feet or greater so the County would accept responsibility for the WSB. The Village's plan called for the permanent use of a temporary WSB structure stabilization measure. The Village Public Works Superintendent testified at his deposition that he developed two proposed plans in 2006, at the request of Village Mayor Truscott, to try to increase the 4 ton limitation on the WSB. One of the two plans developed by the Village Public Works Commissioner was to use a temporary stabilization measure sought to construct "wooden beams over the existing structure on separate concrete pads or abatements. The Village contacted a firm about doing the work to utilize the temporary wooden deck plan, in 2006.
14. From 1999 to present, the Village has reduced the permitted public use of the WSB, by reducing the legal load capacity of the WSB to 12 tons in 1999, then to today's limit of 4 tons, in 2006. The Village Board of Trustees discussed and approved these actions at several meetings in 1999, and adopting a local law to reduce the load capacity of the WSB in 1999, and then again in 2006, respectively. This is significant because—as a matter of law—these actions establish that the Village was asserting legal control and supervision over the WSB as a "bridge[] . . . under its jurisdiction," under New York State Vehicle and Traffic Law §1640(c).

WHEREAS, the WSB is also locally known and referred to as the "Bell Hill Bridge", based upon the structure's location at the intersection of Bell Hill Road and Woolerton Street. Relative to Village of Delhi actions concerning the "Bell Hill" Bridge, the Town obtained copies of the Village of Delhi Board of Trustees' meeting minutes, which further note as follows:

1. "Bell Hill, which was temporarily closed, is now open . . . Mayor Manning reported for Ronald Pagerie that Bell Hill sustained the most damage," and that a local contractor was hired by the Village to bring it back in use for an estimated cost of \$10,000. *See* Village meeting minutes for January 22, 1996.
2. "There is no issue with emergency service vehicles crossing the 12-ton weight limit Bell Hill Bridge. Trustee Morganstern was asked to contact Mr. Mason regarding this letter requesting the Village to look into this matter." *See* Village meeting minutes for August 19, 2002.
3. "The Board again discussed options of what to do with the revenue received from the timber sale. (Sheldon Park). Options were the Woolerton Street wall, the closing of the pool, a new street garage, something toward the purchase of a ladder truck, money toward the new pool and or repairs to Bell Hill Bridge." *See* Village meeting minutes for April 19, 2004.

WHEREAS, in May 2008, the former Village mayor summarized a number of the above Village's actions over the years, in supervising, controlling, repairing and maintaining the WSB.

Specifically, the former Village mayor stated:

“I did attempt to find an engineering firm qualified to evaluate bridges more than a year ago. Delaware Engineering does not have expertise in bridges and is not qualified, nor apparently is Wayne Reynolds at the County for situations of this type. The only firms that I could locate were in Syracuse, Binghamton, Albany, etc. . . Dave Curley took off some of the stone railings in order to lower the dead loading on the bridge. That the steel guard rails that were installed had made the bridge unsightly and spoiled its rustic appeal. The stones were taken off because the mortar deteriorated and [had been vandalized at times] . . . The steel rail was installed because at that time we assumed that the bridge was a village responsibility and we were liable if the railing was not strong enough.”

WHEREAS, during the course of the Village’s legal action against the Town, the Village could not produce any documents, meeting minutes or witness testimony indicating that the Town had ever taken any action concerning the WSB, in response to the Town’s substantial evidentiary showing;

WHEREAS, in accordance with the prior Appellate Court ruling, recently, the Hon. John F. Lambert, A.J.S.C., the Judge assigned to the Village’s legal actions in about January 2011, dismissed the Village’s action entirely, by Decision and Order dated May 26, 2011;

WHEREAS, as previously conveyed in September 2007, and reiterated in January 2008, the Town’s position has been that, based upon the Village’s long established supervision and control of the structure, including when the Village “constructed the WSB in 1890 and, after it washed away, reconstructed it in the 1930s,” and then performed certain maintenance on the WSB, as specifically determined by the Appellate Division, Third Department, the WSB is an obligation created by the Village, and is the continuing responsibility of the Village under Village Law §6-604. The recent Decision and Order of the Hon. John F. Lambert, in concert with the Appellate Division Decision from April 2010, each support the Town, and establish that there is no merit to the Village’s claims against the Town concerning the WSB, as both of those Courts heard—but were not persuaded by, the Village’s claims against the Town;

WHEREAS, a village’s authority to construct any structure that functions as a bridge is derived exclusively from Village Law §6-606 (stating “When [a] village may construct or repair bridges”). That provision provides the exclusive procedures for a village to construct and maintain a bridge, including requiring a village to obtain formal approval from any surrounding town;

WHEREAS, the evidence before the Courts in the Village’s legal action established that the Village unilaterally constructed and maintained the WSB; but that the Village never requested nor received any approval from the Town to construct or maintain the WSB. The law is clear that the Village cannot unilaterally act, and somehow simultaneously create a Town tax payer obligation for a bridge under Village Law §6-604. As relating to Village Law §6-604, the

Village's unilateral construction of the WSB is simply evidence of pre-existing "supervision and control" of the WSB when §6-604 was adopted in Chapter 892 of the Laws of 1972. The Village's "supervision and control" of the WSB, and its legal responsibility, can only be terminated in accordance with Village Law §6-606, including requiring that the Village obtain formal Town approval, to ensure that the Town taxpayers agree to accept a tax burden created by a separate and independent municipal entity. *See* Village Law §6-608 (providing how a "village which has the supervision, control, care and maintenance of any bridge" can "terminate the right of such village to supervise, control, care for and maintain such bridge[.]");

WHEREAS, the Town of Delhi Town Board believes it has legal and fiscal obligations to the citizens of the entire Town of Delhi to be prudent stewards of the public's monies, and is obligated to act in the interests of the taxpayers of the entire Town of Delhi;

WHEREAS, the Town is not able to legally or practically assume tax burdens unilaterally created by a separate municipal government;

WHEREAS, while the Town acknowledges that the WSB would benefit by being repaired or replaced entirely, the Town has no ability, legally or financially, to interfere with or to otherwise act concerning the obligations or responsibilities of a separate and independent municipal entity;

WHEREAS, the Town will continue to support the community's goals and efforts to repair or replace the WSB, including supporting the local citizens group that is actively seeking to raise monies specifically for the WSB;

WHEREAS, the matters at issue herein are not subject to the State Environmental Quality Review Act (ECL Article 8 and 6 NYCRR Part 617),

**NOW THEREFORE, BE IT RESOLVED AS FOLLOWS BY THE
TOWN BOARD OF DELHI, DELAWARE COUNTY, NEW YORK:**

THAT THE Town Board of the Town of Delhi hereby determines that the Town will continue to support the community's goals and efforts to repair or replace the WSB, including supporting the local citizens group that is actively seeking to raise monies specifically for the WSB, but cannot legally or practically assume tax burdens unilaterally created by a separate municipal government, to the fiscal detriment of the residents of the entire Town of Delhi, who had no say in the decision making process of that separate municipal entity.

IT IS FURTHER RESOLVED, that no further actions are necessary to implement this resolution.

Town Board Member James Bracci so moved; Town Board Member

Allan Reed Seconded, and the Town Board voted as follows:

Peter Bracci	Yea/Nay
James Bracci	Yea/Nay
Michele DeFreece	Yea/Nay
Allan Reed	Yea/Nay
Kevin Lee	Yea/Nay

STATE OF NEW YORK }
COUNTY OF DELAWARE }
TOWN OF DELHI }

I have compared the preceding copy with the original Resolution on file in this office adopted by the Town Board of Delhi at a special meeting held July 11, 2011, and I DO HEREBY CERTIFY the same to be a correct transcript therefrom and of the whole of the original. I further certify the vote thereon was as follows:

MEMBERS PRESENT	MEMBERS ABSENT	VOTE
Peter Bracci		Yea/Nay
James Bracci		Yea/Nay
Michele DeFreece		Yea/Nay
Allan Reed		Yea/Nay
Kevin Lee		Yea/Nay

Witness my hand and the seal of the Town of Delhi, this 11th day of July, 2011.

NANCY LEE, TOWN CLERK
TOWN OF DELHI