

REGULAR MEETING

DELAWARE COUNTY BOARD OF SUPERVISORS NOVEMBER 10, 2015

The regular meeting of the Delaware County Board of Supervisors was held Tuesday, November 10, 2015 at 1:00 p.m. in the Supervisors' Room of the Senator Charles D. Cook County Office Building, 111 Main Street, Delhi, New York, Chairman James E. Eisel, Sr. presiding.

The Clerk called the roll and all Supervisors were present except Mr. Ellis.

Mr. Marshfield offered the invocation.

Mr. Haynes led the Board in the Pledge of Allegiance to the Flag.

The minutes of the previous meeting were accepted as presented.

Chairman Eisel granted privilege of the floor to Mr. Hynes who introduced County Historian Gabrielle Pierce and Sheriff Mills to recognize the work of the South Kortright Youth Leadership Academy (YLA) at the County Poor House Cemetery.

Ms. Pierce introduced YLA Facility Director Todd Schraffenberger, Maintenance Supervisor Ed Dower, Cook Brian Oakley, Cadet Leader Charles Goetz and YLA youths Juan and Javyn, as well as visiting ministers from Rochester Reverend Karyn Carter and Minster Ossie Heath-Curmp. She extended her gratitude for their diligence and hard work in maintaining the grounds of the County's Potters Field Cemetery this summer.

Mr. Schraffenberger thanked Sheriff Mills for providing the YLA the opportunity to work among the community. It was an honor for the YLA staff and youth to work to reclaim the grounds of the cemetery from years of neglect. He said the YLA looks forward to coming back next season and would welcome other community service opportunities.

Sheriff Mills provided certificates of appreciation to Juan and Javyn, expressing thankfulness on behalf of the County for their work performed at the cemetery. Another certificate will be forwarded to a third youth, Nick, who has gone home since working at the cemetery. The cemetery has been neglected for many years and to have the attention and dedication of these people is gratifying.

Chairman Eisel, on behalf of himself and the Board of Supervisors, extended his appreciation for an outstanding job. The cemetery has been neglected for decades, bringing it back from disarray and abandonment is long overdue.

For standing committee reports Chairman of the Finance Committee Bruce Dolph stated that per the recommendations of the audit performed by the State Comptroller's Office the County amended its vehicle disposal policy. The recommendation was to sell through an auction process with the expectation of receiving between \$5,000 and \$8,000 per vehicle. There were several cars sold through the auction, one sold for \$360 and another for \$810 which is quite a difference from what the auditors stated we would get.

Chairman Eisel noted that the state uses book value, which in his opinion is unrealistic.

Mr. Marshfield offered the following resolution and moved its adoption:

RESOLUTION NO. 188

**TITLE: 2015 BUDGET AMENDMENT
TRANSPORTATION INITIATIVE PROGRAM
DEPARTMENT OF SOCIAL SERVICES**

WHEREAS, the Delaware County Department of Social Services is the designated local agency to administer the Transportation Initiative Program for SFY 2015-2016, and

WHEREAS, the expenditures will be used to meet the transportation needs of individuals eligible under the Temporary Assistance for Needy Families (TANF) program who are employed or participating in other allowable work activities; and

WHEREAS, the expenditures will be 100% reimbursed.

NOW, THEREFORE, BE IT RESOLVED that the 2015 Budget be amended as follows:

INCREASE REVENUE:

10-16010-44461000	Federal Social Services Administration	\$20,625.00
-------------------	--	-------------

INCREASE APPROPRIATION:

10-16010-54427013	Transportation Initiative	\$20,625.00
-------------------	---------------------------	-------------

The resolution was seconded by Mr. Hynes and adopted by the following vote: Ayes 4646, Noes 0, Absent 153 (Ellis).

Mr. Rowe offered the following resolution and moved its adoption:

RESOLUTION NO. 189

**TITLE: AUTHORIZATION TO ENTER INTO AN AGREEMENT
WITH THE TOWN OF MASONVILLE FOR USE OF HIGHWAY GARAGE
DEPARTMENT OF PUBLIC WORKS**

WHEREAS, the Department of Public Works Sidney Center Patrol Garage was razed in 2014 to make way for the County Route 35 tributary to Willow Brook relocation project; and

WHEREAS, the Department is attempting to utilize shared services with the towns to prevent the need to construct a replacement shop for the Sidney Center Patrol; and

WHEREAS, the Town of Masonville has agreed to work with the County in the form of renting a bay in the Town Garage to reduce the response time for a County Snowplow plowing some of the roads covered by the Sidney Center Patrol for the winter months; and

WHEREAS, in consideration of the mutual covenants and agreements between the parties hereto, it is hereby agreed as follows:

1. The term of this agreement shall be for a one-year term commencing November 1, 2015 and ending February 29, 2016. If necessary, the agreement can be extended through the end of April; the County will inform the Town by February 19, 2016 if they wish to extend through March and by March 25, 2016 if they wish to extend through April.

2. The Town shall provide a bay, use of the bathroom facilities, an electrical outlet to plug in a time clock, two parking spaces for the employees reporting to the shop, one parking space for a County pickup and use of the telephone for County business only.

3. The Town will invoice the County for \$3,600 on the 1st of each month.

4. The County will ensure that all invoices are paid promptly and that the employees assigned to report to Masonville understand the terms of the contract.

5. The Town will allow the County to store a limited amount of salt and abrasives in the Town's sand and salt storage building.

6. The Town will also allow the County to use the Town-owned loader to load the County truck.

NOW, THEREFORE, BE IT RESOLVED that the Chairman of the Board is authorized to enter into an agreement with the Town of Masonville for the use of the Highway Garage.

The resolution was seconded by Mr. Haynes.

Chairman Eisel granted Mr. Spaccaferno's request to abstain from voting on this resolution.

In answer to Mr. Marshfield, Commissioner of Public Works Wayne Reynolds stated that the shared service agreement with the Town of Masonville for the months of November through February will reduce the time it takes a county snowplow to respond. Additionally, it prevents the need to build a replacement shop for the Sidney Center Patrol.

In reply to Mr. Taggart, Commissioner Reynolds said the County would have one truck garaged and one truck parked outside.

The resolution was adopted by the following vote: Ayes 4514, Noes 0, Absent 153 (Ellis), Abstain 132 (Spaccaferno).

Mr. Dolph offered the following resolution and moved its adoption:

RESOLUTION NO. 190

TITLE: APPORTIONMENT OF COUNTY SELF INSURANCE BUDGET

RESOLVED that the budget for the County Self Insurance Fund for Workers' Compensation and Volunteer Firemen's Benefits in the total amount of \$1,900,000, as set forth below be accepted as part of the records of this Board.

<u>Participant</u>	<u>Full Value Assessment</u>	<u>Apportioned Amount to Raise</u>
County of Delaware	5,738,563,689	\$883,805.63
<u>Towns</u>		
Andes	429,227,255	\$66,106.00
Bovina	150,879,459	\$23,237.19
Colchester	808,494,951	\$124,517.64
Davenport	206,433,260	\$31,793.13
Delhi	334,348,945	\$51,493.63
Deposit	325,219,062	\$50,087.52
Franklin	201,407,041	\$31,019.03
Hamden	160,932,641	\$24,785.50
Hancock	427,491,188	\$65,838.62
Harperfield	141,942,537	\$21,860.80
Kortright	155,309,099	\$23,919.41
Masonville	101,938,311	\$15,699.69
Meredith	140,951,436	\$21,708.16
Middletown	702,183,784	\$108,144.48
Roxbury	421,529,335	\$64,920.43
Sidney	279,485,577	\$43,044.03
Stamford	170,563,937	\$26,268.83
Tompkins	190,022,338	\$29,265.65
Walton	390,203,533	\$60,095.89
<u>Villages</u>		
Delhi	101,849,251	\$15,685.97
Deposit	43,693,901	\$6,729.37
Franklin	17,533,981	\$2,700.44
Hancock	76,703,023	\$11,813.16
Stamford	30,117,438	\$4,638.44

(Harpersfield)		
Stamford (Stamford)	30,853,478	\$4,751.79
Fleischmanns	38,804,370	\$5,976.32
Sidney	159,938,607	\$24,632.41
Hobart	47,071,415	\$7,249.55
Walton	141,320,822	\$21,765.05

Fire Districts

Stamford, Jefferson	22,080,587	\$3,400.66
Stamford, Gilboa	47,063,878	\$7,248.38
Arena, Hardenburgh	16,453,484	\$2,534.03
Midd.-Hard., Hardenburgh	46,582,108	\$7,174.19
Deposit	39,535,853	\$6,088.98
TOTAL	12,336,729,574	\$1,900,000.00

The resolution was seconded by Mr. Marshfield and adopted by the following vote: Ayes 4646, Noes 0, Absent 153 (Ellis).

Mr. Triolo called up Local Law Intro. No. 30 entitled: A Local Law Imposing a hotel/motel occupancy tax in the County of Delaware, and seconded by Ms. Miller.

LOCAL LAW INTRO. NO. 30

**A LOCAL LAW IMPOSING A HOTEL/MOTEL OCCUPANCY TAX IN
THE COUNTY OF DELAWARE**

BE IT ENACTED by the Board of Supervisors of the County of Delaware, State of New York, as follows:

Section 1. Title & Statement of Intent; Priority

This local law shall be known as the Delaware County Hotel Occupancy Tax Law. The intent of this local law shall be to promote tourism in Delaware County.

Section 2. Definitions.

When used in this local law, the following terms shall mean:

- (a) County - Delaware County, New York.

- (b) Effective Date - the date set forth in Section 28 of this local law.
- (c) Hotel - Any facility or portion thereof which is regularly used and kept open for the lodging of guests. A building comes within the definition of a hotel or motel if, among other factors:
 - i. sleeping accommodations are provided for the lodging of paying occupants on a regular basis;
 - ii. the typical occupant is a transient or public traveler;
 - iii. the relationship between the operator of the establishment and the occupant of the accommodations is that of an innkeeper and guest and not of a landlord and tenant; and
 - iv. the occupant does not have an exclusive right or privilege with respect to any particular room or rooms, but instead merely has an agreement for the use or possession of a particular room or rooms.

The term hotel includes the following: hotels; motels; hostels; tourist cabins; bungalows; cottage colonies; inns; boarding houses or clubs; lodging houses; rooming houses; bed and breakfasts; guest houses; dude ranches; ski lodges; and similar establishments that are regularly used for the lodging of occupants. Campsites are not included within this definition.

- (d) Occupancy - The use of possession, or the right to the use or possession, of any room in a hotel or motel.
- (e) Occupant - A person who, for a charge or any consideration, uses, possesses, or has the right to use or possess, any room in a hotel or motel under any lease, concession, permit, right, license, agreement, or otherwise.
- (f) Operator - Any person operating a hotel or motel in Delaware County including but not limited to the owner, proprietor, lessee, sub-lessee, mortgagee in possession, licensee, or any other person otherwise operating such hotel or motel.
- (g) Permanent Resident - Any person occupying any room or rooms in a hotel or motel for at least thirty-two (32) consecutive days.
- (h) Person - An individual, partnership, society, association, joint stock company, corporation, limited liability company, general or limited or limited liability partnership, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and/or any combination of the foregoing.
- (i) Rent - The charge and/or consideration received for occupancy valued in money, whether received in money or otherwise.
- (j) Return - Any return filed or required to be filed as herein provided.
- (k) Room - Any room or rooms of any kind in any part or portion of a hotel or motel, which is available for, rented or otherwise, let out for the lodging of guests.

- (l) Tax Imposition Date - the date set forth in Section 3 of this local law.
- (m) Tourism Advisory Board – a committee, comprised of elected and/or public officials and appointed members, who are charged with the decision making process and reporting requirements regarding the manner in which Bed Tax revenues are utilized in the promotion and development of the tourism industry in Delaware County.
- (n) Treasurer - The Delaware County Treasurer or the Treasurer’s designee.

Section 3. Imposition of Tax.

On and after the first day of March in the year two thousand and sixteen, there is hereby imposed and there shall be paid a tax of two percent (2%) of the per diem rental rate for each room or rooms in a hotel or motel located within the County, except that such tax shall not be applicable to a permanent resident of a hotel or motel.

Section 4. Transitional Provisions.

The tax imposed by this local law shall be paid upon any occupancy on and after the date set forth in Section 3 hereof although such occupancy is pursuant to a prior contract, lease, or other arrangement. Where rent is paid on a weekly or other term basis, the rent shall be subject to the tax imposed by this local law to the extent that it covers any period on and after the date set forth in Section 3 hereof.

Section 5. Exempt organizations.

Except as otherwise provided in this section, any use or occupancy by any of the following shall not be subject to the tax imposed by this local law:

- (a) The State of New York, or any public corporation (including a created pursuant to agreement or compact with another state or the Dominion of Canada) improvement district or other political subdivision of the state;
- (b) The United States of America, insofar as it is immune from taxation; and
- (c) Any corporation or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

Section 6. Territorial limitations.

The tax imposed by this local law shall apply only within the territorial limits of Delaware County.

Section 7. Registration.

(a) Within twenty (20) days after the effective date of this local law, or in the case of an operator commencing business after such effective date within three (3) days after such commencement or opening, every operator shall file with the Treasurer a registration application in a form prescribed by the Treasurer.

(b) The Treasurer shall within ten (10) days after receipt of a registration application issue without charge to the operator a certificate of authority empowering such operator to collect the tax from the occupant and duplicate thereof, for each additional hotel or motel of such operators.

(c) Each certificate shall state the hotel or motel to which it is applicable.

(d) Each certificate of authority shall be prominently displayed by the operator in such manner that it may be seen and come to the notice of all occupants and person seeking occupancy.

(e) Certificates shall not be assignable or transferable, and shall be surrendered immediately to the Treasurer upon the cessation of business at, or upon the sale or conveyance of, the hotel or motel named in such certificate(s).

Section 8. Administration and collection.

(a) The tax imposed by this local law shall be administered and collected by the Treasurer, or such other employees of the County as the Treasurer may designate, by such means and in such manner as are other taxes which are now collected and administered or as is otherwise provided by this local law.

(b) The tax to be collected shall be stated and charged separately from the rent and shown separately on any record thereof, at the time when the occupancy is arranged or contracted for and charged for, and upon every evidence of occupancy or any bill or statement or charge made for said occupancy issued or delivered by the operator, and the tax shall be paid by the occupant to the operator as trustee for and on account of the County, and the operator shall be liable for the collection thereof and for the tax.

(c) The operator and any officer of any corporate operator shall be personally liable for the tax collected or required to be collected under this local law, and the operator shall have the same right in respect to collecting the tax from the occupant, or in respect to nonpayment of the tax by the occupant as if the tax were part of the rent for the occupancy payable at the time such tax shall become due and owing, including all rights of eviction, dispossession, repossession and enforcement of any innkeeper's lien that he may have in the event of non-payment of rent by the occupant; provided, however, that the Treasurer shall be joined as a party in any action or proceeding brought by the operator to collect or enforce collection of the tax.

(d) The Treasurer may, whenever he or she deems it necessary for the proper enforcement of this local law, provide by order that the occupant shall file returns and pay directly to the Treasurer the tax herein imposed, at such times as returns are required to be filed and payment made by the operator.

(e) The tax imposed by this local law shall be paid upon any occupancy on and after the tax imposition date, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to such date; and where rent is paid, charged, billed or falls due on either a weekly, monthly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period on and after the tax imposition date.

(f) Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the Treasurer may by order provide for credit and/or refund of the amount of such tax upon application therefore as provided in section fourteen of this local law.

(g) For the purpose of the proper administration of this local law and to prevent evasion of the tax hereby imposed, it shall be presumed that all rents are subject to tax until the contrary is established, and the burden of proving that a rent for occupancy is not taxable hereunder shall be upon the operator or occupant.

(h) Where an occupant claims exemption(s) from the tax under the provisions of section five of this local law, the rent shall be deemed taxable hereunder unless the operator shall receive from the occupant claiming such exemption a properly completed, executed and certified Exemption Certificate from taxes imposed pursuant to Articles 28 and 29 of the New York Tax Law, such certificate to be in the form and to contain the content approved and required by the New York State Department of Taxation.

Section 9. Records to be kept.

(a) Every operator shall keep records of every occupancy and of all rent paid, charged or due thereon and of the tax payable thereon, in such form as the Treasurer may by regulation or order require.

(b) All records shall be available for inspection and examination at any time upon demand by the Treasurer, or the Treasurer's duly authorized agent or employee, and shall be preserved for a period of not less than three (3) years, except that the Treasurer may consent in writing to their destruction within that period or may in writing require that such records be kept and maintained for a specified period in excess of three (3) years.

Section 10. Returns.

(a) After the date set forth in Section 3 of this local law, and except as provided in subdivision (b) of this section, every operator shall file with the Treasurer a return of occupancy and of rents, and of the taxes payable thereon, for the same quarterly periods and on the same dates as returns for New York State sales and use taxes are filed or to be filed.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Treasurer may permit or require returns to be made by other periods and upon such other dates as the Treasurer may specify by rule or order so as to carry out the purposes of this local law.

(c) All returns shall be filed with the Treasurer within twenty (20) days from the expiration of the period covered thereby.

(d) The forms of returns shall be prescribed by the Treasurer and shall contain such information as the Treasurer may deem necessary for the proper administration of this local law.

(e) The Treasurer may require amended returns to be filed within twenty (20) days after notice and to contain the information specified in the notice.

(f) If a return required by this local law is not filed, or if a return when filed is incorrect or insufficient on its face or otherwise, the Treasurer shall take the necessary steps to enforce the filing of a properly completed and sufficient return or of a corrected return.

(g) Any operator required to file a return under this Law shall be allowed a credit against the taxes required to be reported on, and paid with, such return when such person files the return on or before the filing due date and pays or pays over with such return the full amount shown on such return. The amount of the credit authorized by this paragraph shall be five percent of the amount of taxes (but not including any penalty or interest thereon) required to be reported on, and paid or paid over with such return, but not more than fifty dollars.

Section 11. Payment of Tax.

(a) Any tax imposed by this local law shall be paid by the occupant to the operator of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the County, and such operator or person entitled to be paid the rent or charge shall be liable for the collection and payment of tax to the County.

(b) The owner of the hotel or motel room or the person entitled to be paid the rent or charge for the hotel or motel room shall have the same right in respect to collecting the tax from the occupant, or in respect to non-payment of the tax by the occupant, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge. In any action or proceeding brought by an owner or a person entitled to be paid the rent or charge for the purpose of collecting the rent or charge, or the tax imposed by this local law, the Treasurer shall be joined as a party.

(c) At the time of filing a return of occupancy and of rents, each operator shall pay to the Treasurer the taxes imposed by this local law upon the rents required to be included in such return, as well as all other moneys collected by the operator acting or purporting to act under the provisions of this local law.

(d) All taxes and other moneys required to be paid under and pursuant to this local law shall be due from the operator and paid to the Treasurer on the date limited for the filing of the return for such period, without regard to whether a return is filed, or whether the return which is filed correctly shows the amount of rents and taxes due thereon.

Section 12. Bonds & Security for Payment of Tax.

Where the Treasurer, in the exercise of the Treasurer's discretion, deems it necessary to protect revenues to be obtained under this local law, the Treasurer may by rule or order require any operator required to collect the tax imposed by this local law to file with the Treasurer a bond to secure the payment of any tax and/or penalties and interest due or which may become due from such operator.

Section 13. Determination of tax.

(a) Upon the filing of a return, the Treasurer shall determine and verify the amount of tax due under and pursuant to this local law.

(b) If a return required by this local law is not filed, or if a return when filed is incorrect or insufficient as to the amount of tax due, the amount of tax due under and pursuant to this local law shall be determined by the Treasurer from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as number of rooms, location, scale of rents, comparable rents, type of accommodations and service, number of employees and/or other factors.

(c) Notice of a determination under subdivision (b) of this section shall be furnished in writing to the person liable for the collection and/or payment of the tax.

(d) Any determination by the Treasurer under subdivision (b) of this section shall finally and irrevocably fix the tax, unless

- (1) within thirty (30) days after the issuance of the notice of such determination the person against whom it is assessed shall apply in writing to the Treasurer for a hearing, or
- (2) the Treasurer shall, in the Treasurer's sole discretion, reconsider and re-determine the amount of tax due.

(e) Within fifteen (15) days after the conclusion of a hearing conducted pursuant to subdivision (d) (1) of this section, the Treasurer shall give written notice of the Treasurer's determination to the person against whom the tax is assessed.

(f) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return; provided, however, that

- (1) where no return has been filed as provided by this local law the tax may be assessed at any time; and/or
- (2) where, before expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period or any extension(s) thereof.

Section 14. Refunds.

(a) In the manner provided in this section the Treasurer shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid provided that written application for such refund shall be made to the Treasurer within one year from the payment thereof.

(b) An application for refund or credit may be made only by the occupant, operator, or other person who has actually paid the tax.

(c) An application for a refund or credit made as herein provided shall not be complete unless the same includes copies of all documentation and evidence upon which the applicant relies in support thereof, but nothing shall prohibit or prevent the Treasurer from receiving any other evidence with respect thereto.

(d) No application for a refund or credit shall be accepted or considered unless such application has been actually received by the Treasurer within one year of the payment by the tax.

(e) The determination to deny or allow a refund or credit shall be made by the Treasurer in writing, stating the reason(s) therefore, and the Treasurer shall give notice of such determination to the applicant.

(f) No refund shall be made to an operator who has collected and paid over such tax to the Treasurer unless and until such operator shall first establish, to the satisfaction of the Treasurer under such regulations as the Treasurer may prescribe, that such operator has repaid to the occupant(s) the amount of tax for which refund is sought.

(g) The Treasurer may, in the Treasurer's discretion and in lieu of the payment of any refund determined to be due, allow credit therefore on and against payments due from the applicant.

Section 15. Disposition of Revenues.

(a) All revenues resulting from the imposition of the tax under this local law shall be paid into the treasury of the County and shall be credited and deposited into a special tourism development and promotion fund under the trust and care of the Treasurer, and thereafter to be allocated for the promotion and development of the tourism industry in Delaware County by a committee hereafter established (section 15, part b) as the Tourism Advisory Board; provided, however, that the County shall have the right to retain up to ten per cent (10%) of the gross revenues to cover the Treasurer's costs for administration and collection; and

(b) The Board of Supervisors shall establish a committee known as the Tourism Advisory Board which shall review and approve proposals for the use of the funds raised from this tax for the promotion and development of the tourism industry in Delaware County. The Tourism Advisory Board shall be comprised of seven (7) persons, to be appointed by the Delaware County Board of Supervisors, for staggered terms of three years. Appointments shall

be made upon the recommendation of the Director of Economic with effort to ensure geographical representation of the County, per the following:

1. The Director of Economic Development of Delaware County.
2. Two members of the County Board of Supervisors.
3. Four representatives of businesses actively engaged in the tourism industry, at least two of which should be representative of lodging operators.

The Tourism Advisory Board shall report quarterly to the Delaware County Board of Supervisors' Committee on Economic Development with regards to all expenditures, as well as all plans and marketing. Revenues paid from the Treasurer's Office and all expenditures shall be accepted, paid and recorded with the Treasurer's Office of Delaware County.

Section 16. Reserves.

Whenever the occupant or operator has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to such occupant or operator on such application for refund, the Treasurer shall set up appropriate reserves to meet any decision adverse to the County.

Section 17. Remedies exclusive.

The remedies provided by sections thirteen and fourteen of this local law shall be exclusive remedies available to any person for the review of tax liability imposed by this local law; and no determination or proposed determination of tax or determination on any application for refund or credit shall be enjoined, contested or reviewed by any action or proceeding, except by a proceeding under article seventy-eight of the civil practice law and rules pursuant to section twenty-three of this local law.

Section 18. Proceedings to recover tax.

Whenever any operator or other person shall fail to collect and pay over any tax and/or to pay any tax, penalty or interest imposed by this local law as herein provided, or whenever any occupant shall fail to pay any such tax, penalty or interest, the County Treasurer may utilize any and all remedies as provided by law to collect such sum, including but not limited to the imposition of a tax lien upon the real property and personal property of the owners or operator. The lien of this tax shall have priority over all other real and personal property liens in the same manner as a real property tax levied pursuant to the New York State Real Property Tax Law.

Section 19. General Powers of the Treasurer.

In addition to the powers granted to the Treasurer by County Law and this local law, the Treasurer is hereby authorized and empowered:

- (a) To make, adopt and amend rules and regulations, and to issue orders, appropriate to the carrying out of this local law and the purposes thereof;

(b) To extend for cause shown the time of filing any return for a period not exceeding thirty days; and for cause shown, to remit or waive penalties but not interest; and to compromise disputed claims in connection with the taxes hereby imposed;

(c) To request information from the tax commission of the state of New York or the treasury department of the United States relative to any person; and to afford information to such tax commission or such treasury department relative to any person, any other provision of this local law to the contrary notwithstanding;

(d) To delegate his or her functions hereunder to any employee or employees of the County Treasurer;

(e) To prescribe methods for determining the rents for occupancy and to determine the taxable and non-taxable rents;

(f) To require any operator within the county to keep detailed records of the nature and type of hotel or motel maintained, nature and type of service rendered, the rooms available and rooms occupied daily, lease's or occupancy contracts or arrangements, rents received, charged and accrued, the names and addresses of the occupants, whether or not any occupancy is claimed to be subject to the tax imposed by this local law, and to furnish such information upon request to the County Treasurer;

(g) To assess, determine, revise and readjust the taxes imposed under this local law.

Section 20. Administration of Oaths and Compelling Testimony.

(a) The Treasurer, or the Treasurer's duly designated and authorized employee(s) or agent(s), shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of the Treasurer's powers and duties under this local law.

(b) The Treasurer shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of his duties hereunder and of the enforcement of this local law, and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the Treasurer or excused from attendance.

(c) A justice of the Supreme Court, either in court or at chambers, shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the Treasurer under this local law.

(d) Any person who shall refuse to testify or to produce books or records or who shall testify falsely in any material matter pending before the Treasurer under this local law shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars or imprisonment for not more than one year, or both such fine and imprisonment.

(e) The officers who serve the summons or subpoena of the Treasurer and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided.

(f) The County Sheriff, the Sheriff's duly appointed deputies, and any officer or employee of the Treasurer designated to serve process under this local law, are hereby authorized and empowered to serve any summons, subpoena, order, notice, document, instrument, or other process to enforce or carry out this local law.

Section 21. Reference to tax.

Wherever reference is made in placards or advertisements or in any other publications to this tax such reference shall be substantially in the following form: "Tax on occupancy of hotel or motel rooms"; except that in any bill, receipt, statement or other evidence or memorandum of occupancy or rent charge issued or employed by the operator, the word "tax" will suffice.

Section 22. Penalties, Interest & Violations.

(a) Any person failing to file a return or to pay or pay over any tax to the Treasurer within the time required by this local law shall be subject to

- (1) a penalty of five per centum (5%) of the amount of tax due; plus
- (2) interest at the rate of one per centum (1%) of the amount of tax due for each month of delay, except that no interest shall be charged for the first thirty (30) days immediately after the date such return was required to be filed or such tax became due.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Treasurer may, if satisfied that the delay was excusable, cancel and remit all or part of such penalty, but may not cancel or remit any portion of the interest.

(c) All penalties and interest shall be paid and disposed of in the same manner as other revenues from this local law.

(d) Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this local law.

(e) Officers and/or members of an owner or operator which is a corporation, limited liability company, limited liability partnership, or partnership shall be personally liable for the tax collected or required to be collected and paid by such corporation under this local law, and shall also be personally liable for the penalties and interest herein imposed.

(f) In addition to the penalties herein or elsewhere prescribed, any person found to have committed any of the following acts shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars or imprisonment for not more than one year, or both such fine and imprisonment:

- (1) failing to file a return required by this local law,
- (2) filing or causing to be filed, or making or causing to be made, or giving or causing to be given, any return, certificate, affidavit, representation,

information, testimony or statement required or authorized by this local law which is willfully false,

- (3) willfully failing to file a bond required to be filed pursuant to this local law,
- (4) failing to file a registration certificate and such data in connection therewith as the Treasurer may by order, regulation or otherwise require,
- (5) failing to display, or to surrender upon demand of the Treasurer, the certificate of authority as required by this local law,
- (6) assigning or transferring such a certificate of authority,
- (7) willfully failing to charge separately from the rent the tax herein imposed, or willfully failing to state such tax separately on any evidence of occupancy and on any bill or statement or receipt of rent issue or employed by the operator,
- (8) willfully failing or refusing to collect any tax imposed by this local law from the occupant, or
- (9) failing to keep or maintain the records required by this local law.

(g) The certificate of the County Treasurer to the effect that a tax has not been paid, that a return, bond or registration certificate has not been filed, or that information has not been supplied pursuant to the provisions of this local law, shall be presumptive evidence thereof.

Section 23. Judicial Review.

Any final determination of the amount of any tax payable pursuant to this local law, as well as any final determination on an application for refund or credit under section 14 of this local law, shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefore is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law-and rules shall not be instituted unless:

(a) The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

(b) At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner

shall not be required to pay such taxes, interest or penalties as a condition precedent to any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

Section 24. Returns to be secret.

- (a) Except in accordance with proper judicial order, or as otherwise provided by law,
 - (1) it shall be unlawful for the Treasurer or any agent, employee or designee of the Treasurer to divulge or make known in any manner the rents or other information relating to the business of an operator contained in any return required under this local law; and
 - (2) the officers charged with the custody of such returns shall not be required to produce any of such returns or evidence of anything contained therein in any action or proceeding in any court, except on behalf of the Treasurer in an action or proceeding under the provisions of this local law, or on behalf of any party to any action or proceeding under the provisions of this local law when the returns or facts shown thereby are directly involved in such action or proceeding, provided that in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.
- (b) Notwithstanding the provisions of paragraph (a) of this section, nothing herein shall be construed to prohibit
 - (1) the delivery to a taxpayer or such taxpayer's duly authorized representative of a copy of any return filed in connection with this local law, or
 - (2) the publication of statistics so classified as to prevent the identification of particular returns and items thereof, or
 - (3) the inspection by the county attorney or other legal representatives of the county, or by the district attorney of any county, of the return(s) of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted for the collection of a tax or penalty.

(c) Returns shall be preserved by the Treasurer for not less than three (3) years or for such longer period of time as the Treasurer determines.

(d) Any violation of paragraph (a) of this section shall be punishable by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, in the discretion of the court, and if the offender be an officer or employee of the county such officer or employee shall be dismissed from office or service with the county.

Section 25. Notices and Limitations of Time.

(a) Any notice authorized or required under the provisions of this local law may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed pursuant to the provisions of this local law, or in any application made by such person, or if no return has been filed or application made then to such address as may be obtainable.

(b) The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed.

(c) Any period of time which is determined according to the provisions of this local law by the giving of notice shall commence to run from the date of mailing of such notice.

(d) The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the county to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this local law.

Section 26. Limitation of Effect of Local Law.

This local law shall remain in full force and effect for a period of three (3) years from the date of enactment by the Board of Supervisors; except that nothing shall prohibit or prevent the adoption and enactment of subsequent local laws continuing or imposing the tax authorized hereby after the expiration of this local law.

Section 27. Separability.

If any provision of this local law or the application thereof to any person or circumstance shall be held invalid, the remainder of this local law and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 28. Effective Date.

This local law shall take effect upon filing in the office of the Secretary of State of New York State.

Mr. Triolo offered the following resolution and moved its adoption:

RESOLUTION NO. 191

**TITLE: PUBLIC HEARING ON LOCAL LAW INTRO. NO. 30 OF 2015
IMPOSING A HOTEL/MOTEL OCCUPANCY TAX
IN THE COUNTY OF DELAWARE
DEPARTMENT OF ECONOMIC DEVELOPMENT**

WHEREAS, a proposed Local Law imposing a hotel/motel occupancy tax in Delaware County has been offered for adoption by the Board of Supervisors.

NOW, THEREFORE, BE IT RESOLVED that a public hearing be held on the 24th day of November 2015 at 12:30 p.m. in the Supervisors’ Room of the County Office Building, 111 Main Street, Delhi, New York.

The resolution was seconded by Ms. Miller and adopted by the following vote: Ayes 4123, Noes 676 (Merrill, Valente, Axtell), Absent 153 (Ellis).

Chairman Eisel waived Board Rule 10 to permit the introduction without objection of the following not pre-filed resolutions.

Mr. Dolph offered the following resolution and moved its adoption:

RESOLUTION NO. 192

TITLE: PAYMENT OF AUDIT

WHEREAS, bills and claims submitted and duly audited by the Clerk of the Board’s office in the amount of \$795,450.93 are hereby presented to the Board of Supervisors for approval of payment;

NOW, THEREFORE, BE IT RESOLVED that the County Treasurer be directed to pay said expenditures as listed below:

General Fund	\$613,409.66
OET	\$7,863.12
Public Safety Comm System	\$4,198.15
Highway Audits, as Follows:	
Weights and Measures	\$746.37
Landfill	\$25,405.29
Road	\$93,979.99
Machinery	\$36,331.08
Capital Road & Bridge	\$9,237.77
Capital Solid Waste	\$4,279.50

The resolution was seconded by Mr. Marshfield and adopted by the following vote: 4646, Noes 0, Absent 153 (Ellis).

Mr. Dolph recalled Local Law Intro. No. 14 to set the 2016 salary of Cynthia Heaney,

Director of Community Mental Health Services at \$91,787. The Local Law was seconded by Mr. Marshfield and adopted by the following vote: Ayes 4273, Noes 373 (Taggart, Marshfield), Absent 153 (Ellis).

Mr. Dolph recalled Local Law Intro. No. 15 to set the 2016 salary of Judith Garrison, Election Commissioner at \$22,100. The Local Law was seconded by Mr. Rowe and unanimously adopted.

Mr. Dolph recalled Local Law Intro. No. 16 to set the 2016 salary of Stephen Hood, Director of Emergency of Services at \$56,112. The Local Law was seconded by Mr. Merrill and unanimously adopted.

Mr. Dolph recalled Local Law Intro. No. 17 to set the 2016 salary of Nicole Franzese, County Planning Director at \$78,488. The Local Law was seconded by Mr. Hynes and adopted by the following vote: Ayes 4405, Noes 241 (Taggart), Absent 153 (Ellis).

Mr. Dolph recalled Local Law Intro. No. 18 to set the 2016 salary of Michael Sabansky, Director of Real Property Tax Services II at \$61,201. The Local Law was seconded by Ms. Molé and adopted by the following vote: Ayes 4155, Noes 491 (Taggart, Hynes), Absent 153 (Ellis).

Mr. Dolph recalled Local Law Intro. No. 19 to set the 2016 salary of Leonarda Storey, Personnel Officer at \$67,830. The Local Law was seconded by Mr. Spaccaferno and unanimously adopted.

Mr. Dolph recalled Local Law Intro. No. 20 to set the 2016 salary of Wayne Shepard, Director Office of the Aging at \$69,080. The Local Law was seconded by Ms. Molé and unanimously adopted.

Mr. Dolph recalled Local Law Intro. No. 21 to set the 2016 salary of Amanda Walsh, Public Health Director at \$80,299. The Local Law was seconded by Ms. Molé and Mr. Merrill and adopted by the following vote: Ayes 4405, Noes 241 (Taggart), Absent 153 (Ellis).

Mr. Dolph recalled Local Law Intro. No. 22 to set the 2016 salary of Joseph deMauro, Director of Information Technology at \$78,442. The Local Law was seconded by Mr. Tuthill and unanimously adopted.

Mr. Dolph recalled Local Law Intro. No. 23 to set the 2016 salary of Wayne Reynolds, Commissioner of Public Works at \$93,129. The Local Law was seconded by Mr. Donnelly, Mr. Valente and Mr. Rowe and adopted by the following vote: Ayes 4405, Noes 241 (Taggart), Absent 153 (Ellis).

Mr. Dolph recalled Local Law Intro. No. 24 to set the 2016 salary of Dana Scuderi-Hunter, Commissioner of Social Services \$87,019. The Local Law was seconded by Mr. Hynes and adopted by the following vote: Ayes 4178, Noes 468 (Taggart, Triolo), Absent 153 (Ellis).

Mr. Dolph recalled Local Law Intro. No. 25 to set the 2016 salary of Charles Piper, Director of Veterans' Service Agency at \$42,636. The Local Law was seconded by Mr.

Marshfield and unanimously adopted.

Mr. Dolph recalled Local Law Intro. No. 26 to set the 2016 salary of Beverly Shields, County Treasurer at \$64,292. The Local Law was seconded by Mr. Rowe and unanimously adopted.

Mr. Dolph recalled Local Law Intro. No. 27 to set the 2016 salary of Sharon O'Dell, County Clerk at \$64,292. The Local Law was seconded by Ms. Molé and unanimously adopted.

Mr. Dolph recalled Local Law Intro. No. 28 to set the 2016 salary of Thomas Mills, Sheriff at \$72,109. The Local Law was seconded by Mr. Donnelly and Mr. Axtell and unanimously adopted.

Mr. Dolph recalled Local Law Intro. No. 29 to set the 2016 salary of the District Attorney at \$152,500. The Local Law was seconded by Mr. Marshfield and Mr. Rowe and adopted by the following vote: Ayes 4419, Noes 227 (Triolo), Absent 153 (Ellis).

Budget Officer Bruce Dolph distributed a handout providing changes that were made to the 2016 Tentative Budget. He noted that as a result of these changes the 2016 tax levy is now 3.3686 percent more than last year.

Mr. Dolph, stated in reference to Mr. Valente's question from the October 28 Board of Supervisors meeting that the County's tax base growth factor for 2016 is 1.0024.

In answer to Mr. Pigford, Mr. Dolph stated at this time he does not have all the information needed to compute the County's tax cap figure, however, the 2016 percentage of increase exceeds the state's tax cap limit.

Mr. Dolph offered the following resolution and moved its adoption:

RESOLUTION NO. 193

**TITLE: PUBLIC HEARING
2016 TENTATIVE BUDGET**

BE IT RESOLVED that the budget, with the changes discussed, be adopted as the Tentative 2016 Delaware County Budget and a public hearing be held on the 24th day of November, 2015 at 12:45 p.m. in the Supervisors' Room of the County Office Building, 111 Main Street, Delhi, New York.

The resolution was seconded by Mr. Marshfield and unanimously adopted.

Upon a motion, the meeting was adjourned at 1:38 p.m.