



TOWN OF ROTTERDAM

DIANE M. MARCO
Town Clerk

John F. Kirvin Government Center * 1100 Sunrise Boulevard * Rotterdam, NY 12306
Telephone: (518) 355-7575 Ext: 352 * Fax: (518)355-7837* Website: www.rotterdamny.org
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August 4, 2022

Certified Resolution: #237.22 for the year 2022 was duly adopted at the Town Board Special Meeting held at J.F. Kirvin Government Center, 1100 Sunrise Boulevard, Rotterdam, NY 12306 that was held Wednesday, August 3, 2022. **Resolutions #236.22, 238.22 and #239.22 Failed.** The Town Board Agenda review started at approximately 6:35 p.m. The agenda review was adjourned at approximately 6:38 p.m. All agreed to adjourn the agenda review meeting. The Town Board meeting began at approximately 7:00 p.m. The Town Board meeting was adjourned at approximately 7:51 p.m. by Councilmember Dodson and seconded by Councilmember Mastroianni. All agreed to adjourn the Town Board Meeting.

Councilmember Christou was absent

Diane M. Marco

Diane M. Marco, Town Clerk

**TOWN OF ROTTERDAM
NOTICE OF SPECIAL MEETING**

PLEASE TAKE NOTICE: That the Town Board of the Town of Rotterdam will hold a special meeting at the John F. Kirvin Government Center, Town Hall, 1100 Sunrise Boulevard, Rotterdam, New York 12306 at 7:00 p.m. on the 3rd day of August, 2022 for purposes of discussing and possibly taking action with respect to the Lease Agreement for Office Space at 93 West Campbell Road by and between Via Port New York, LLC and the Town of Rotterdam, dated November 2, 2021, and for any other purpose as may come before the Town Board.

**BY ORDER OF THE ROTTERDAM TOWN SUPERVISOR
MOLLIE A. COLLINS, SUPERVISOR**

DATED: July 29, 2022

Daily Gazette: Please publish once on or before August 1, 2022

Town Clerk: Post; Transmit to News Media; Provide Written Notice to Councilmembers

The Town of Rotterdam Town Board Meeting will be held in person; however, the public may access the meeting electronically via conference call. Members of the public may listen to the board meeting by dialing 1 (929) 205-6099, then enter the conference ID NO. 867 0373 0307, followed by the pound symbol. Video of the town board meeting will be posted on the Town of Rotterdam website (www.rotterdamny.org) the following Friday after the meeting.

MEETING OF THE
ROTTERDAM TOWN BOARD
August 3, 2022
7:00 pm
AGENDA REVIEW 6:30 PM

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

SUPERVISOR'S REMARKS: Supervisor Mollie A. Collins

EXECUTIVE SESSION

PROCLAMATIONS/PRESENTATIONS

PUBLIC HEARING

PUBLIC COMMENT – PRIVILEGE OF THE FLOOR:

Those members of the public wishing to address the Town Board will be asked to sign in before the meeting is called to order on the sign-in sheets being provided. Speakers will be called to the podium in the order of their signing in. Persons recognized by the Chair to speak during privilege of the floor shall direct his/her comments to the Town Supervisor as Chair of the meeting. Persons granted the privilege of the floor shall first clearly state his/her name and address for the record. Persons so addressing the Chair through the use of a prepared written statement shall submit a copy of the same to the Town Clerk for the purpose of maintaining clear and accurate official minutes of the Town Board meeting.

GENERAL RULES OF PROCEDURE FOR PUBLIC HEARINGS & PRIVILEGE OF THE FLOOR:

Any person recognized by the town supervisor to speak during privilege of the floor shall direct his/her comments to the town supervisor as chair of the meeting. Any person granted the privilege of the floor shall first clearly state his/her name and address for the record. The purpose of privilege of the floor shall be for speakers to express their views, thoughts and speak freely. Each speaker, who wishes to address the town board, shall have an equal and reasonable opportunity to be heard by the town board. Each speaker shall be afforded a maximum of four (4) minutes to address the town board.

INTRODUCTION OF MOTIONS, ORDERS AND RESOLUTIONS

MOTIONS

RESOLUTIONS

236.22 FAILED To authorize the preparation and filing of a petition to the county legislature seeking to legalize and validate the adoption of resolution 214.21 pursuant to county law § 227.

237.22 To recognize that the lease agreement for office space at 93 West Campbell Road by and between Via Port New York, LLC and the Town of Rotterdam is void.

238.22 FAILED To re-authorize the lease agreement for office space at 93 West Campbell Road by and between Via Port New York, LLC and the Town of Rotterdam, subject to permissive referendum.

239.22 FAILED To authorize the Supervisor to enter into negotiations with Via Port New York, LLC for the purchase of premises.

LIAISON REPORTS

MISCELLANEOUS

EXECUTIVE SESSION

ADJOURNMENT

Mollie A. Collins, Supervisor

RESOLUTION NO. 236.22 FAILED

At the Special public meeting of the Town Board of the Town of Rotterdam, held at the John F. Kirvin Government Center 1100 Sunrise Blvd. Rotterdam, New York on Wednesday, August 3, 2022, at 7:00 p.m., the following resolution **Failed**:

TO AUTHORIZE THE PREPARATION AND FILING OF A PETITION TO THE COUNTY LEGISLATURE SEEKING TO LEGALIZE AND VALIDATE THE ADOPTION OF RESOLUTION 214.21 PURSUANT TO COUNTY LAW § 227

WHEREAS, pursuant to Town Law § 81 (1) (b) and Town Law § 220 (2), a town board is authorized to lease a town hall, town lockup or other necessary building for town purposes, provided that a resolution authorizing such lease is adopted subject to permissive referendum; and

WHEREAS, Town Law § 90 requires that within 10 days of adoption of a resolution subject to permissive referendum, the town clerk shall, in the same manner as provided for notice of a special election, post and publish a notice which shall set forth the date of the adoption of the resolution and contain an abstract of such resolution concisely stating the purpose and effect thereof and specify that the resolution was adopted subject to a permissive referendum; and

WHEREAS, the failure to post and publish a notice of adoption of a resolution subject to permissive referendum as required in Town Law § 90 has been determined to be a jurisdictional defect that prevents such a resolution from becoming effective and rendering void *ab initio* any action taken in furtherance thereof; and

WHEREAS, Town Law §§ 81(1)(b), 220(2), and 90 are applicable to actions taken by the Town Board to the extent such actions fall within the scope of their provisions; and

WHEREAS, by Resolution 214.21 adopted on August 11, 2021, the Town Board voted in favor of authorizing the then-Town Supervisor to enter into a lease agreement with ViaPort Rotterdam, located at 93 West Campbell Road, 12306, for the lease of office space; and

WHEREAS, the Town's lease of such office space was subject to the requirements of Town Law § 81 (1) (b) and Town Law § 220 (2); and

WHEREAS, Resolution 214.21 did not identify that it was adopted subject to permissive referendum, nor did it direct or instruct the Town Clerk to post and publish a notice of adoption of the resolution in accordance with Town Law § 90; and

WHEREAS, the Town Clerk did not post and publish a notice of adoption of Resolution 214.21 in accordance with Town Law § 90; and

WHEREAS, the Town otherwise did not comply with the requirements of Town Law § 90 with respect to Resolution 214.21; and

WHEREAS, on or about November 2, 2021, the then-Town Supervisor executed a certain Lease Agreement for Office Space at 93 West Campbell Road by and between Via Port New York, LLC and the Town of Rotterdam (hereinafter, the “Lease Agreement”);

WHEREAS, County Law § 227 authorizes the Schenectady County Legislature to legalize and validate any act had and taken in connection with a lawful municipal purpose by the Town Board if the Schenectady County Legislature shall find that that defect sought to be cured was, among others, the failure to perform an act within the time prescribed by law or that the service, posting or publication of any notice was not performed within the time and in the manner required by law; and

WHEREAS, County Law § 227 requires any municipality seeking such relief to present to the County Legislature a petition duly verified setting forth the facts and praying for the relief authorized by County Law § 227; and

WHEREAS, the Town Board seeks to request that the Schenectady County Legislature legalize and validate Resolution 214.21;

THEREFORE, UPON MOTION OF Councilmember **DODSON**, seconded by Councilmember **MASTROIANNI, NOW**

BE IT RESOLVED BY THE TOWN BOARD AS FOLLOWS:

SECTION 1. The Town Board hereby authorizes and directs the Town Supervisor, in consultation with the Attorney for the Town, to prepare and file with the Schenectady County Legislature a petition duly verified setting forth the facts relating to the adoption of Resolution 214.21 and the failure to post and publish notice of adoption of Resolution 214.21, attaching thereto certified copies of all acts done and proceedings had in relation to the subject matter of such Resolution 214.21, and requesting that the County Legislature, after compliance with the procedures set forth therein, legalize and validate Resolution 214.21 and deeming the time prescribed by law for the publication and posting of the notice of adoption of Resolution 214.21 extended to allow compliance therewith.

SECTION 2. This resolution shall become effective August 3, 2022.

DATED: August 3, 2022

NAME	AYES	NOES	ABSTAIN
Christou (Absent)			
Miller-Herrera			X
Dodson		X	
Mastroianni		X	
Collins		X	

I, Diane M. Marco, Town Clerk of the Town of Rotterdam, Schenectady County, New York, **DO HEREBY CERTIFY** that the foregoing resolution **failed** by the Town Board of the Town of Rotterdam **Special** Meeting on August 3, 2022, and that the foregoing resolution is a true and correct transcript of the original resolution and of the whole thereof and that said resolution is on file in the Town Clerk’s office.

I DO FURTHER CERTIFY that each of the members of the Town Board received the **Special** meeting notice of the said Town Board meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Town of Rotterdam this August 4, 2022.

Diane M. Marco
Diane M. Marco, Town Clerk



RESOLUTION NO. 237.22

At the Special public meeting of the Town Board of the Town of Rotterdam, held at the John F. Kirvin Government Center 1100 Sunrise Blvd. Rotterdam, New York on Wednesday, August 3, 2022, at 7:00 p.m., the following resolution was duly adopted:

TO RECOGNIZE THAT THE LEASE AGREEMENT FOR OFFICE SPACE AT 93 WEST CAMPBELL ROAD BY AND BETWEEN VIA PORT NEW YORK, LLC AND THE TOWN OF ROTTERDAM IS VOID

WHEREAS, pursuant to Town Law § 81 (1) (b) and Town Law § 220 (2), a town board is authorized to lease a town hall, town lockup or other necessary building for town purposes, provided that a resolution authorizing such lease is adopted subject to permissive referendum; and

WHEREAS, Town Law § 90 requires that within 10 days of adoption of a resolution subject to permissive referendum, the town clerk shall, in the same manner as provided for notice of a special election, post and publish a notice which shall set forth the date of the adoption of the resolution and contain an abstract of such resolution concisely stating the purpose and effect thereof and specify that the resolution was adopted subject to a permissive referendum; and

WHEREAS, the failure to post and publish a notice of adoption of a resolution subject to permissive referendum as required in Town Law § 90 has been determined to be a jurisdictional defect that prevents such a resolution from becoming effective and rendering void *ab initio* any action taken in furtherance thereof; and

WHEREAS, Town Law §§ 81(1)(b), 220(2), and 90 are applicable to actions taken by the Town Board to the extent such actions fall within the scope of their provisions; and

WHEREAS, by Resolution 214.21 adopted on August 11, 2021, the Town Board voted in favor of authorizing the then-Town Supervisor to enter into a lease agreement with ViaPort Rotterdam, located at 93 West Campbell Road, 12306, for the lease of office space; and

WHEREAS, the Town’s lease of such office space was subject to the requirements of Town Law § 81 (1) (b) and Town Law § 220 (2); and

WHEREAS, Resolution 214.21 did not identify that it was adopted subject to permissive referendum, nor did it direct or instruct the Town Clerk to post and publish a notice of adoption of the resolution in accordance with Town Law § 90; and

WHEREAS, the Town Clerk did not post and publish a notice of adoption of Resolution 214.21 in accordance with Town Law § 90; and

WHEREAS, the Town otherwise did not comply with the requirements of Town Law § 90 with respect to Resolution 214.21; and

WHEREAS, on or about November 2, 2021, the then-Town Supervisor executed a certain Lease Agreement for Office Space at 93 West Campbell Road by and between Via Port New York, LLC and the Town of Rotterdam (hereinafter, the “Lease Agreement”); and

WHEREAS, the Lease Agreement provided that “Tenant [the Town of Rotterdam] has deposited with Landlord, as security for Tenant’s compliance with this lease, the Security in an amount of \$1,000,000, which shall be used to secure Tenant’s obligations under the lease, but may also be applied by Landlord toward the payment of any amounts for any work detailed in Exhibit B, ‘Landlord’s Work’ [relating to renovating the premises for use as town office and related space]”; and

WHEREAS, on or about December 1, 2021, the Town Board purported to authorize designation of \$1,000,000 of funds received pursuant to the American Rescue Plan Act (ARPA) to begin the rehabilitation of the premises that are the subject of the Lease Agreement; and

WHEREAS, the Town of Rotterdam deposited \$1,000,000 with the Landlord purportedly as security on or about December 6, 2021, paid from A1620 4900 (Building Repairs); and

WHEREAS, by virtue of the Town Board’s failure to adopt a resolution to authorize the Lease Agreement subject to permissive referendum and the failure to post and publish notice of adoption of Resolution 214.21 in accordance with Town Law § 90, the execution of the Lease Agreement, and actions taken in furtherance thereof, were not properly authorized, are jurisdictionally defective, and are void *ab initio*;

THEREFORE, UPON MOTION OF Councilmember **DODSON**, seconded by Councilmember **MASTROIANNI, NOW**

BE IT RESOLVED BY THE TOWN BOARD AS FOLLOWS:

SECTION 1. The Town Board hereby finds and determines that the Lease Agreement was not authorized in accordance with New York State law and is jurisdictionally defective, and therefore is void *ab initio* and unenforceable.

SECTION 2. The designation of \$1,000,000 of funds received pursuant to the American Rescue Plan Act (ARPA) to begin the rehabilitation of the premises that are the subject of the Lease Agreement was and is not authorized and is void *ab initio*.

SECTION 3. The deposit of \$1,000,000 with Via Port New York, LLC, as security under the Lease Agreement was and is not authorized, and the Town Supervisor, the Town Comptroller, the Attorney for the Town, and their respective designees are hereby authorized to pursue such action as may be necessary to secure the return of such deposit from Via Port New York, LLC, provided, however, that further Town Board resolution shall be required prior to commencement of any litigation.

SECTION 4. The Town Supervisor, Town Comptroller, and Attorney for the Town, and their respective designees, are hereby authorized to take any such action as may be necessary or appropriate to effectuate this Resolution, provided, however, that further Town Board resolution shall be required prior to commencement of any litigation.

SECTION 5. This resolution shall become effective August 3, 2022.

DATED: August 3, 2022

NAME	AYES	NOES	ABSTAIN
Christou (Absent)			
Miller-Herrera			X
Dodson	X		
Mastroianni	X		
Collins	X		

I, Diane M. Marco, Town Clerk of the Town of Rotterdam, Schenectady County, New York, **DO HEREBY CERTIFY** that the foregoing resolution was approved by the Town Board of the Town of Rotterdam **Special Meeting** on August 3, 2022, and that the foregoing resolution is a true and correct transcript of the original resolution and of the whole thereof and that said resolution is on file in the Town Clerk’s office.

I DO FURTHER CERTIFY that each of the members of the Town Board received the **Special** meeting notice of the said Town Board meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Town of Rotterdam this August 4, 2022.

Diane M. Marco
 Diane M. Marco, Town Clerk



RESOLUTION NO. 238.22 FAILED

At the Special public meeting of the Town Board of the Town of Rotterdam, held at the John F. Kirvin Government Center 1100 Sunrise Blvd. Rotterdam, New York on Wednesday, August 3, 2022, at 7:00 p.m., the following resolution **Failed**:

**TO RE-AUTHORIZE THE LEASE AGREEMENT FOR
OFFICE SPACE AT 93 WEST CAMPBELL ROAD BY AND BETWEEN
VIA PORT NEW YORK, LLC AND THE TOWN OF ROTTERDAM, SUBJECT TO
PERMISSIVE REFERENDUM**

WHEREAS, by Resolution 237.22, the Town Board determined that Resolution 214.21 was required to be adopted subject to permissive referendum, was not adopted subject to permissive referendum, was not posted and published as having been adopted subject to permissive referendum, and failed to properly authorize the Lease Agreement for Office Space at 93 West Campbell Road by and between Via Port New York, LLC and the Town of Rotterdam, dated November 2, 2021 (the “Original Lease Agreement”); and

WHEREAS, as a result of the foregoing, and pursuant to Resolution 237.22, the Town Board recognized that the Original Lease Agreement was not properly authorized in accordance with New York State law, was jurisdictionally defective, and therefore was and is void *ab initio* and unenforceable; and

WHEREAS, the Town Board seeks to properly authorize a lease of such space on the same terms and conditions as were set forth in the Original Lease Agreement;

THEREFORE, UPON MOTION OF Councilmember **DODSON**, seconded by Councilmember **MASTTOIANNI, NOW**

BE IT RESOLVED BY THE TOWN BOARD AS FOLLOWS:

SECTION 1. Subject to Section 4, below, the Town Board authorizes the Town Supervisor to execute a lease agreement with Via Port New York, LLC for premises located at 93 West Campbell Road, 12306, for the lease of office and related space, on the same terms and conditions as set forth in the Original Lease Agreement.

SECTION 2. Within 10 days after the adoption of this Resolution, the Town Clerk is authorized and directed to, in the same manner as provided for notice of a special election, post and publish a notice setting forth the date of adoption of this Resolution and containing an abstract of this Resolution concisely stating the purpose and effect thereof, and specifying that the resolution was adopted subject to permissive referendum.

SECTION 3. This Resolution is adopted subject to permissive referendum pursuant to Town Law §§ 81 (1) (b) and 220 (2).

SECTION 4. This resolution shall become effective August 3, 2022, provided however, that the authorization to execute a lease agreement as set forth in Section 1 hereof shall not take effect until thirty (30) days after the adoption of this Resolution, nor until approved by the affirmative vote of a majority of the qualified electors of the Town, voting on such proposition, if within thirty (30) days after adoption of this Resolution there be filed with the town clerk a petition signed, and acknowledged and proved, or authenticated by electors of the Town qualified to vote upon a proposition to raise and expend money, in number equal to at least 5% of the total vote cast for governor in the Town at the last general election held for the election of state officers, but which shall not be less than one hundred, protesting against this Resolution and requesting that it be submitted to the qualified electors of the Town for their approval or disapproval.

DATED: August 3, 2022

NAME	AYES	NOES	ABSTAIN
Christou (Absent)			
Miller-Herrera			X
Dodson		X	
Mastroianni		X	
Collins		X	

I, Diane M. Marco, Town Clerk of the Town of Rotterdam, Schenectady County, New York, **DO HEREBY CERTIFY** that the foregoing resolution **Failed** by the Town Board of the Town of Rotterdam **Special** Meeting on August 3, 2022, and that the foregoing resolution is a true and correct transcript of the original resolution and of the whole thereof and that said resolution is on file in the Town Clerk’s office.

I DO FURTHER CERTIFY that each of the members of the Town Board received the **Special** meeting notice of the said Town Board meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Town of Rotterdam this August 4, 2022.

Diane M. Marco

 Diane M. Marco, Town Clerk



RESOLUTION NO. 239.22 FAILED

At the Special public meeting of the Town Board of the Town of Rotterdam, held at the John F. Kirvin Government Center 1100 Sunrise Blvd. Rotterdam, New York on Wednesday, August 3, 2022, at 7:00 p.m., the following resolution **Failed**:

**TO AUTHORIZE THE SUPERVISOR TO ENTER INTO NEGOTIATIONS
WITH VIA PORT NEW YORK, LLC FOR THE PURCHASE OF PREMISES**

WHEREAS, by Resolution 237.22, the Town Board determined that Resolution 214.21 was required to be adopted subject to permissive referendum, was not adopted subject to permissive referendum, was not posted and published as having been adopted subject to permissive referendum, and failed to properly authorize the Lease Agreement for Office Space at 93 West Campbell Road by and between Via Port New York, LLC and the Town of Rotterdam, dated November 2, 2021 (the “Original Lease Agreement”); and

WHEREAS, as a result of the foregoing, and pursuant to Resolution 237.22, the Town Board recognized that the Original Lease Agreement was not properly authorized in accordance with New York State law, was jurisdictionally defective, and therefore was and is void *ab initio* and unenforceable; and

WHEREAS, the Town Board seeks to explore the possible purchase of a portion or all of the building, real property, and improvements that were the subject of the provision in the Original Lease Agreement providing the Town with a right of first refusal (known as and referred to therein as the “Kmart box”), along with all necessary and appropriate appurtenances for utilities, access, and parking;

THEREFORE, UPON MOTION OF Councilmember **DODSON**, seconded by Councilmember **MASTROIANNI, NOW**

BE IT RESOLVED BY THE TOWN BOARD AS FOLLOWS:

SECTION 1. The Town Board hereby authorizes and directs the Town Supervisor, or her designee, to enter into negotiations with Via Port New York, LLC in furtherance of a purchase by the Town of all or a portion of the Kmart box, located at 93 West Campbell Road, along with all necessary and appropriate appurtenances thereto, including for utilities, access, and parking.

SECTION 2. The Town Supervisor is not authorized by this resolution to execute any purchase agreement or other memorandum reflecting proposed terms of any such purchase, unless and until the Town Board authorizes such execution by resolution in accordance with all applicable legal procedures and requirements.

SECTION 3. This resolution shall become effective August 3, 2022.

DATED: August 3, 2022

NAME	AYES	NOES	ABSTAIN
Christou (Absent)			
Miller-Herrera			X
Dodson		X	
Mastroianni		X	
Collins		X	

I, Diane M. Marco, Town Clerk of the Town of Rotterdam, Schenectady County, New York, **DO HEREBY CERTIFY** that the foregoing resolution **Failed** by the Town Board of the Town of Rotterdam **Special** Meeting on August 3, 2022, and that the foregoing resolution is a true and correct transcript of the original resolution and of the whole thereof and that said resolution is on file in the Town Clerk's office.

I DO FURTHER CERTIFY that each of the members of the Town Board received the **Special** meeting notice of the said Town Board meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Town of Rotterdam this August 4, 2022.

Diane M. Marco
Diane M. Marco, Town Clerk

