

Marcellus Town Board
Board Meeting
Wednesday, January 7, 2026
6:30 PM

A Regular Meeting of the Town of Marcellus, County of Onondaga, State of New York was held on Wednesday, January 7, 2026, in the Town Hall, 22 East Main Street, Marcellus, New York.

Present:	Jane Attley	Supervisor
	Jeff Berwald	Councilor
	Percy Clarke	Councilor
	Terry Hoey	Councilor
	Karen Pollard	Councilor

Also Present: James Gascon, Town Counsel; Mike Ossit, Highway Superintendent; Don MacLachlan, Park and Recreation Director; Joanna Clarke, Clerk to PB/ZBA/Codes; Bill Southern, Linda Wilcox, Scott Stearns, Chris Christensen, Dave Card, Fire Department; Bill Southern, Art Hudson, Nancy Hudson, Patricia Bishop, Stephen Knapp, Denis Donovan, Jerry Wickett, Tara and Mike Lanning, Chris Hunt, Pat Eisenberg, Priscilla Carmody, Brandy Witthoft, Stacey Ossit, Percy Clarke, Robyn and Steven Bolewski, Suzanne Tobin, Deputy Town Clerk.

Public Hearing: Fire Service and Ambulance Service 2026 Contracts: Supervisor Jane Attley opened the Public Hearing at 6:32 regarding the Fire Service and Ambulance Service 2026 Contracts. She asked if anyone had anything to say either for or against it. There were no comments or questions from the Board or the residents. Councilor Jeff Berwald made a motion seconded by Councilor Karen Pollard to close the Public Hearing at 6:33 pm.

Ayes – Attley, Berwald, Hoey, Pollard

Carried

Waive the Reading and Accept the Minutes: Councilor Terry Hoey made a motion to waive the reading and accept the minutes as submitted by the Town Clerk for December 3, 2025, and the motion was seconded by Councilor Jeff Berwald.

Ayes – Attley, Berwald, Hoey, Pollard

Carried

Councilor Terry Hoey made a motion to waive the reading and accept the minutes as submitted by the Town Clerk for December 17, 2025, and the motion was seconded by Councilor Jeff Berwald.

Ayes – Attley, Berwald, Hoey, Pollard

Carried

Councilor Terry Hoey made a motion to waive the reading and accept the minutes as presented from the December 29, 2025, end of year meeting; and Councilor Jeff Berwald seconded the motion.

Ayes – Attley, Berwald, Hoey, Pollard

Carried

Abstract of Audited Vouchers: The Abstract of Audited Vouchers was given to the Board Members as submitted by the Town Clerk. Abstract #12 for January 7, 2026, Claim #'s 159059-159070

	<u>Expenses</u>
General Fund	5,241.81
Total	<u>\$5,241.81</u>

The Abstract of Audited Vouchers was given to the Board Members as submitted by the Town Clerk. Abstract #1 for January 8, 2026, Claim #'s 159071-159086, 159086-159096.

	<u>Expenses</u>
General Fund	31,177.82
Part Town General	7,531.38
Townwide Highway	6,582.77
Part Town Highway	5,670.25
Fire District	18,629.75
Ambulance Fund	1,216.25
Trust and Agency	1,888.27
Total	<u>\$72,696.49</u>

Councilor Jeff Berwald made a motion seconded by Councilor Terry Hoey to approve the Abstract of Audited Vouchers and pay the bills for January 2, 2026, and January 5, 2026.
Ayes – Attley, Berwald, Hoey, Pollard Carried

Old Business:

MAVES 2026 Contract:

Councilor Jeff Berwald made a motion seconded by Councilor Terry Hoey to approve the Maves 2026 Contract.
Ayes – Attley, Berwald, Hoey, Pollard Carried

Fire Department 2026 Contract:

Councilor Karen Pollard made a motion seconded by Councilor Jeff Berwald to approve the Fire Department 2026 Contract.
Ayes – Attley, Berwald, Hoey, Pollard Carried

Appointment of Town Board Councilor:

Supervisor Jane Attley: Mr. Gascon reached out to the Commissioner of Elections Republican Chair and had not heard back.

Attorney James Gascon: I did speak to him, and I'm continuing to investigate the matter and will be offering an opinion to the board within a few days.

Councilor Terry Hoey: I would like to take a moment to explain for the audience that we have two issues going on. One issue is the legal question of should Percy Clarke be on the board currently as a holdover appointment. Which was legal advice the Board received from our Town Attorneys. There is disagreement about the interpretation of that part of New York State law regarding holding over after the expiration of a term. The previous Board and two members of the current Board held and hold the position that Percy should be a member of the Board currently as a holdover appointment and should be seated on the bench. That is mine and Jeff's position. The other issue is filling the vacancy left by Councilor Gabe Hood's death. If we vote and fill the vacancy, then the first issue disappears. I want to note to the public that those are two separate issues and people should be aware of that.

Councilor Jeff Berwald: I'd like to reference an email from Mr. Gascon's firm to then Supervisor Laurie Stevens on December 9th asking that same question and his advice was (quoted from email) *"Our best answer is as follows: It is our opinion Percy's appointment by this Board, to fill Gabe's vacancy, will end on December 31st 2025. That vacancy may then be filled by the new Board starting on January 1st, 2026. If the new Board is unable to fill the vacancy, for example a 2 to 2 tie vote, then it is our opinion that Gabe's appointment holds over until a majority vote of the new Board either appoints him or replaces him. The foregoing notwithstanding, we can see either a court of law or an opinion of the Attorney General coming to a different conclusion. That alternative conclusion would be in the form of a ruling/opinion that Percy's appointment by the current Board expires upon the expiration of Gabe's current term Dec. 31st and the appointment to the new Board must, and can only, be made by the new Board. Thus, our practical advice is to have Percy resign from the current Board and be appointed to replace Gabe's position. Thereafter a motion should be made by the new Board in January to affirm Percy's appointment."* Then following that on December 22nd, another email from Mr. Andino, a partner in your firm stated that *"Percy remains as a "holdover in office" even though the vacancy for purposes of appointment by the new Board exists. If there is a 2-2 split on filling the vacancy, Percy remains as a sitting Board member as the "holdover" until such time as there is a majority vote or the election occurs in November to fill the balance of the term."* That is the advice the Town Board received and followed, and you agreed. Until last Friday when we had our Organizational Meeting and we found out that you met with these two (Supervisor Attley and Councilor Pollard) on January 2nd at the Milk House and then changed your opinion regarding the holdover until you get an answer from the Republican party. I don't agree with that. He should be sitting up here right now.

Attorney James Gascon: I want to clarify the advice to the Town Board regarding the two emails. I feel it is important that I give the full measure of my advice.

Councilor Jeff Berwald: Is it different from the emails that I referred to that you wrote to the Town Board giving us guidance?

Attorney James Gascon: "It's different than what you painted it out to be. Yes."

Councilor Jeff Berwald: I'm reading it from the emails your office sent.

Attorney James Gascon: I started it is clear as mud in that email that I gave to you. That is not clear, and it is a case of first impression. I did learn on the 2nd of January, the very date of the meeting, that the Democratic Commissioner of the Board of Elections came to a different conclusion than me. I was also informed that the Town was threatened with being sued if we put Percy Clarke in place. Considering that, I gave the advice to the board that it would be wise to table the issue of the appointment until

additional investigation could be conducted and a request could be made to the Attorney General for an opinion on the subject. That was my advice. My advice was also, if we were wrong, then we would have a board member on the board who is not legally supposed to be there and that the decisions of the board would then be in legal jeopardy. That was the advice I gave. Now, as for the meeting that I had with the duly elected Supervisor, I was instructed not to meet with her by the outgoing supervisor.

Councilor Terry Hoey: You were told that in December.

Attorney James Gascon: I was told by the outgoing Supervisor in December not to meet with the incoming supervisor and I abided by her instruction, and I did not meet with her during her term. On January 1, 2026, I had a new Supervisor who asked me to meet with her. I am willing to meet with any Board member at any time they request me. I adhered to the instructions of my previous Supervisor, and I adhered to the request of my new Supervisor, and I think asking or telling me under no circumstances should I meet with the incoming Supervisor is wrong.

Councilor Terry Hoey: That is not your job, Mr. Gascon. Your job is to represent the town in legal matters and offer us legal advice. You only met with two out of the four current Town Board members.

Attorney James Gascon: That is what I did.

Denis Donovan, Marcellus Resident: This is one of the things that I was going to bring up today, which is talking about the appointment and the contract with the law firm. Since 2022, I have sat in 15 to 20 Planning and Zoning meetings. This is the second Town Board meeting I have been to. In the Planning and Zoning Board meetings I have sat in, the demeanor of Mr. Gascon is just what we witnessed here today. The Board saw it, normally it is directed at the residents asking to put up a garage or make modifications to their property. Mr. Gascon will not look at them, talks down to them in the same manner that he just did to the Board. Which is why I kept coming here. I could not believe that somebody that is representing the Town would talk to our citizens in the manner that he does. Today we get to see him talking the same way to the Board. I think that is unacceptable.

Brandy Witthoft, Marcellus Resident: As far as the holdover appointment is concerned, I don't understand what the basis of that would be. To my understanding, Percy did not win his election. He lost his election, he served out his term, and I do not think he should be on the board considering that he served out his term and he lost the election.

Percy Clarke, Marcellus Resident: I had no plans to come back. I was going to run for village trustee. Gabe Hood was a very good friend of mine. The last conversation I had with him, He said to me that if something happens to me, please step in, and I agreed. That is where this holdover comes in, Councilor Hoey didn't come up with it, Councilor Berwald didn't come up with it, I knew nothing of it. Legal counsel presented it. If anybody knows me, they know that I live and breathe for Marcellus. Whether it is coaching sports, substitute teaching and being a police officer here. I want what is best for the Town, and Gabe felt that too. It was Gabe's wish that I fulfill his vacancy.

Brandy Witthoft, Marcellus Resident: No disrespect to Gabe, but it is up to the voters who sits on the Board. It is not up to Gabe's wishes.

Councilor Jeff Berwald: To answer your question first Percy stepped down from his elected position, the one that he lost the election for. We appointed him to Gabe's position as a holdover from that position, not the one he lost. I just want to clarify that.

Percy Clarke, Marcellus Resident: It would be the election coming up in November.

Nancy Hudson, Camillus Resident: Can the board complete business without a councilor being nominated or put into place?

Supervisor Jane Attley: Yes

Nancy Hudson, Camillus Resident: Can it be the person that lost the election?

Councilor Terry Hoey: Yes, it is Irrelevant. It can be any person who is qualified for the job with a majority vote. It is filling a vacancy temporarily.

Scott Stearns, Zoning Chairperson: I serve on the Planning and Zoning Board. I think Percy would be a great person to have for the interim this year, that is my position.

Chris Hunt: I am a previous Town Board member, and I would like to speak on what Percy brought up. I know Gabe and him requesting Percy to fill his vacancy is a very honorable thing that everybody should take into consideration. Not what party lines they are on. Gabe chose the person that would represent his values. I have known Percy for a long time, he has done a great job since he has been on the Board. The commonsense move and I do not care what party you're in; you honor that. Marcellus is a small community and we honor each other. We are here for one common goal. I spoke to Percy long before Gabe's passing, if something happened would he step in? And he was saying absolutely not, he was done, he lost and he knew it. He is moving in another direction. Please take that into consideration and do what is right.

Robyn Bolewski, Marcellus Resident: I want to point out that Percy was appointed to fill Jamie Curtin's seat, when he resigned to serve on the Village Board. Also, at the same time he applied for that position, Tammy Sayer, who had served for four years on the Board and was instrumental in getting this new building built, she was passed over for that spot. Even though she had four years of town board experience under her belt, she was passed over. Percy was put in that position because of party loyalty.

Councilor Terry Hoey: I reject that. I know Tammy and I worked very well with her. Is this some version of payback? At that time, we accepted letters of interest from two people, we interviewed both and voted. I understand you do not like the result of the vote, but we voted on it as a Board representing the Town of Marcellus. You may not agree with the result of our vote and think we should have voted a different way, but that is what we voted.

Robyn Bolewski, Marcellus Resident: How would you justify that vote?

Councilor Terry Hoey: By the information they gave us, by the interviews they had, and I know both of them. They both would have done a very good job.

Robyn Bolewski, Marcellus Resident: When we saw the agenda for the meeting where Percy was resigning and taking over for Councilor Hood, The Marcellus Democratic Committee contacted the Onondaga County Democratic Commissioner. We then immediately contacted the State.

Councilor Terry Hoey: I think we can see who is making it a partisan issue.

Robyn Bolewski, Marcellus Resident: We are paying attention to what is going on.

Councilor Terry Hoey: Getting on the Board is a partisan issue. All of us are here because we have been endorsed by a party, that's how we get the job, then the people vote. It is incredibly unlikely to get this job without being endorsed by a party. Yes, it is a partisan issue for getting elected or getting the job, but once you're on the Board there have been few decisions that are split based on political party. It is almost always unanimous. We have tried extremely hard under the last two supervisors to make decisions by consensus. Once you are sitting as a Board member, political party is pretty much irrelevant. Political parties are not relevant.

Supervisor Jane Attley: I do expect a lot of unanimous votes in favor of anything that is going on this year. Any other comments on this issue? Are we ready to move on?

Councilor Jeff Berwald made a motion seconded by Councilor Terry Hoey to appoint Percy Clarke to the open position. Roll call was taken:

Jane Attley	Supervisor	Voted	No
Jeff Berwald	Councilor	Voted	Yes
Terry Hoey	Councilor	Voted	Yes
Karen Pollard	Councilor	Voted	No

Councilor Jeff Berwald: In the event of a two-to-two split we were unable to fill the vacancy. Percy remains as a sitting Board member, as a holdover until the time the Board can reach a majority vote or until the election in November.

Councilor Terry Hoey: We tried to fill the vacancy and the motion failed. Now we go back to our original question of Percy being appointed to Councilor Hood's term and the legality of remaining as a holdover.

Denis Donovan, Marcellus Resident: Mr. Gascon stated he spoke to the Republican party or some other organization, and he would be rendering his decision within the next few days. I think the Board should inquire which direction he was leaning with that decision. This might help the Board render a decision on the Board vacancy.

Councilor Terry Hoey: We would like to know the position of the Onondaga County Board of Election Democratic and Republican Chairs, but I do not believe their position is legally binding advice. What we would like is an interpretation from the Attorney General's office. I do not know if that is legally binding either, but it is a definitive answer of legal advice.

Chris Hunt, Marcellus Resident: Before the election they could give information, but when the election is over it is closed and sealed, the Board of Election Commissioners have no right to be involved. The question to Supervisor Attley and Counselor Pollard is if the advice from the Attorney General regarding the legality of a holdover is going to change your two opinions? What does it matter regarding appointing Percy.

Attorney James Gascon: The law has not given us a clear answer to the question. It is a question of first impression. The State statute says if there is a vacancy before September 20th, the vacancy is filled by that existing Board by a majority vote. That vacancy is up for the next November election. If the vacancy occurred in February, the 2025 Board would have appointed the replacement and that position would have gone up for election in November. The law says if the vacancy occurs after September, the Board makes the appointment until the next available election or the end of the term. Unfortunately, Councilor Hood's term expired December 31, 2025, and he passed away after he was re-elected. The question is when does that vacancy occur, upon his death or does it occur upon January 1, 2026, when the new term begins. Statutes do not answer that, case law does not answer that, opinions of the Attorney General will not answer that. There is this provision of the law that talks about holdovers, but that provision is not clear. It talks about the holdover of officials; it does not talk about the holdover of elected officials. The chair of the Democratic Commission believes that that statute does not apply to elected officials and believes that the vacancy doesn't occur until January 1, 2026. That is his position, which I did not know about until January 2nd. When I arrived for the meeting, I was also given false information that said the Election Commissioner had threatened to sue the Town and had called our Republican Commissioner or Republican chair and threatened him which did not occur. The meeting that I had with Supervisor Attley and Councilor Pollard on January 1, 2026, was to prepare Supervisor Attley for her first organizational meeting. The advice that I gave to Councilor Pollard and Supervisor Attley was the exact same advice that I gave to this board. I handed them the same email and gave them the exact same advice. There was nothing nefarious about the meeting. My advice at that time to the Board I think was good advice. And that advice was we are under threat of being sued, which is not in the best interest of the Town. It could cost the Town thousands of dollars in my legal fees. There is absolutely no harm in tabling the issue of the appointment. That was the advice I gave. Three out of the four Board members decided to table the issue to give me the opportunity to do additional investigation. I have conducted some additional investigation and spoke to the Republican Chair of the Election Commission; I got a very different opinion. It remains my advice to this board based on all the legal precedent that I

have reviewed, that Percy would be a holdover under that holdover statute. Unless, and until this board can reach a majority vote on the issue. That remains my advice, I only changed my advice to protect the litigation interests of the town that were thrown at me on January 2nd.

Bill Southern, Marcellus Resident: If there is no threat of suit, then Percy is on the Board. The reason we are talking about holding off on doing this was because there was a threat of a lawsuit from the Democratic Commissioner and now, I hear that, no, he didn't make one.

Attorney James Gascon: I corrected the false statement that there was a threat of a lawsuit from the Democratic Election Commissioner. I did not state there was not a threat of lawsuit. Towns get sued but not by election commissioners as I learned today that they do not have standing.

Bill Southern, Marcellus Resident: They do not have standing so they cannot sue the Town. I think that the opinion of the Town Attorneys would stand, which is Percy is on the Board from the two-to-two split, that position would remain. The Board could appoint somebody in the future and the position would still be considered open. Percy is filling the vacancy until the Board can come to a majority decision on whether they wanted somebody different than Percy. The other option is the Governor could call special election for the seat. As Mr. Gascon said he belongs on the Board, "so, I think you got to make a space up there."

Councilor Karen Pollard: What I am hearing from Councilor Berwald is that because it was a two-to-two tie Mr. Clarke should be on the Board. That would not prevent Mr. Gascon from investigating and looking into a holdover appointment further, is that correct?

Councilor Terry Hoey: Our expectation was that Mr. Gascon seek guidance from the Attorney General's office. We already directed him to do it.

Councilor Karen Pollard: I do not have a problem with Mr. Clarke being on the Board as long as Mr. Gascon can continue with his investigation. So, until we have a definitive answer from the Attorney General Mr. Clarke will be on the Board.

Brandy Witthoft, Marcellus Resident: I think the two Republican members of the Board are very enthusiastic about maintaining Percy because you want to maintain a three, two majority.

Councilor Karen Pollard: I do not agree with that statement.

Councilor Terry Hoey: I think you're absolutely wrong. I have known Percy my whole life and that is irrelevant. I do not agree with that statement.

Brandy Witthoft, Marcellus Resident: That is a perception that one could have.

Bill Southern, Marcellus Resident: I have been going to meetings for years and disagree that they vote party lines.

Chris Hunt, Marcellus Resident: I am the chair of the Republican party and I was on the Board for five years and the Republican part of me did not come into play when I made a decision. There were two Democrats on there with me, Councilor Pollard was on there, Laurie Stevens was coming on after. I had two Democrats, an Independent, Councilor Pollard and I. All of us were on opposite ends of our political parties, but we all voted as one across the Board. We may have had disagreements, but we worked it out and we voted almost every time unanimously.

Steven Bowleski, Marcellus Resident: I was at meeting when Percy was appointed to fill Councilor Hood's position on December 17, 2025, for Councilor Hood's term that ended on December 31, 2025. My point is that Councilor Hood's term that Percy was appointed to ended on December 31, 2025.

Councilor Jeff Berwald: Not if we apply the holdover provision.

Councilor Terry Hoey: That is the legal interpretation that the Board is seeking.

Chris Hunt, Marcellus Resident: As Councilor Pollard said, Mr. Gascon can keep on researching to make sure the holdover provision is legal and until then Percy sits on the Board.

Councilor Percy Clarke then signed the Oath book, took the Oath of Office and took his seat on the bench.

Costello, Cooney & Fearon, PLLC 2026 Contract:

Mr. Gascon addressed specific questions raised by several board members regarding the structure of the contract and offered various methods of how the Town Board might be able to save on attorney's fees going forward. Councilor Percy Clarke made the motion that the Town Board approve the 2026 contract with Costello, Cooney & Fearon, PLLC. and Councilor Terry Hoey seconded the motion.

Ayes – Attley, Berwald, Clarke, Hoey, Pollard

Carried

New Business:

2025 Court Audit: Councilor Jeff Berwald volunteered to witness the annual Court Audit.

Official Undertaking of Municipal Officers:

Councilor Terry Hoey made a motion to accept the official Undertaking of Municipal Officers as written and Councilor Jeff Berwald seconded that motion.

Ayes – Attley, Berwald, Clarke, Hoey, Pollard

Carried

Comprehensive Plan Zoning Changes:

Gerald Wickett had asked to be put on the agenda this evening in order to bring the Town Board and the attending audience members up to speed on the progress that the Planning Board has been making. In light of the fact that the comprehensive plan was updated and adopted a few months ago, Mr. Wickett wanted to review the next steps to be taken with the Town Board. He shared that due mainly to the efforts of Joanna Clarke, who is our planning and zoning secretary, they were able to get a grant from the county for \$75,000 to pay for the updates to the zoning regulations. The grant contract calls for it to be done by the end of 2027. Mr. Wickett would like to get that process moving by getting a committee appointed. After some discussion, seven members were chosen; Terry Hoey, Karen Pollard, Scott Stearns, Chris Christensen, Gerald Wickett, Joanna Clarke, James Gascon and an engineer as needed. The last two members listed would not have voting privileges.

Councilor Jeff Berwald made the motion that the Town Board approve forming the comprehensive planning and zoning committee as suggested and Councilor Terry Hoey seconded that motion.

Ayes – Attley, Berwald, Clarke, Hoey, Pollard

Carried

Reports From Department Heads:

Codes: John Houser, Codes Officer did not attend the meeting and had no new business.

Highway Department: Mike Ossit, Highway Superintendent shared that with the recent weather, it has been a long two weeks, and Chris Hunt made a point of thanking Mike and his crew for their diligent work.

Parks and Recreation: Donald MacLachlan, Parks and Recreation Director; reported that Michele started her new hours and we had a Moonlight Walk that happened on January 3rd. It was a big success, having at least 200 people in attendance. He also mentioned that the skating rink was up and running for a short time before someone drove on it. It will be back up and running when the weather permits. Also,

he spoke about doing a small amphitheater for concerts with the help of a student program for future engineers and architects.

Town Clerk: Rosemary Tozzi, Town Clerk; presented the monthly report for December 2025.

Dog Licensing \$320.00

Certified Copies-Marriage \$20.00

Photocopies \$33.40

Passport \$70.00

Conservation \$.55

Marriage Licensing Fee \$17.50

Building \$900.00

Discussion Agenda:

Fire Department: Dave Card reported that the 2024 audit was complete and would be submitted to the board and that the Fire Department's budget was nearing completion.

Fire Department Roof: Dave Card informed the Board that the roof will be an ongoing issue and that he and Mike Ossit will be working together on it as the weather permits. It would be a repair not a replacement. He would like to request that the Board members come to the firehouse in order to get more involvement without breaking any open meeting laws, ideas were presented as alternate ways to accomplish that end.

Nancy Hudson stated that she has attended several banquets and events from other fire departments, and they are extremely well attended by their town boards. I know that you all get invitations. We would love to have you join us and get to know us as people better.

Adjournment: Supervisor Jane Attley made a motion seconded by Councilor Terry Hoey to adjourn the Meeting at 7:56 PM.

Ayes – Attley, Berwald, Clarke, Hoey, Pollard

Carried

Respectfully submitted,

Suzanne Tobin

Deputy Town Clerk