

**MINUTES OF THE REGULAR MEETING OF
THE TOWN BOARD OF THE TOWN OF NEW LEBANON
HELD ON FEBRUARY 11, 2014**

Present: Michael Benson, Supervisor
Bruce Baldwin, Councilmember
Dan Evans, Councilmember
Chuck Gerald, Councilmember
Matthew Larabee, Councilmember

Recording Secretary: Colleen Teal, Town Clerk

Others Present: Andy Howard, Attorney for the Town
Jeffrey Winestock, Highway Superintendent
Eileen Evans, Secretary/Bookkeeper
Robert Smith, Planning Board/Ethics Board Member
Scott Larabee, Recreation Committee Chair/Building
Maintenance
Trina Porte, Planning Board Member
Thaddeus Flint, Reporter for *The Eastwick Press*
Gail Heinsohn, Reporter for *The Chatham Courier*
Several members of the public

CALL TO ORDER:

The meeting was called to order at 7:10 p.m. by Supervisor Benson. A moment of silence was followed by the flag salute.

MINUTES APPROVAL:

The minutes of the **January 2, 2014 Organizational Meeting; January 14, 2014 Year End Audit; January 14, 2014 Monthly Meeting; and January 28, 2014 Special Meeting** were reviewed; a motion was made by Councilmember Baldwin, seconded by Councilmember Larabee, and passed unanimously to approve the minutes as typed.

FINANCIAL:

Specific Questions on Vouchers:

Councilmember Baldwin questioned General Fund Voucher No. 57 in the amount of \$487.50; this is a bill submitted by the Court for a public defender. There was a conflict of interest which required the appointment of another public defender. Attorney Howard noted that this is generally paid through the County Public Defender's Office; the bill was pulled from this month's packet and the attorney will look into it. The town clerk will adjust the abstract accordingly.

Supervisor's Report:

Supervisor Benson read the Supervisor's Report and reviewed the other reports provided to the board members. A motion was made by Councilmember Baldwin, seconded by Councilmember Larabee and approved unanimously to accept the Supervisor's report.

OLD BUSINESS:

Fuel Bids:

Public Notice:

The Town Clerk read the public notice as follows:

NOTICE TO BIDDERS
HIGHWAY DEPARTMENT
TOWN OF NEW LEBANON
COUNTY OF COLUMBIA

NOTICE IS HEREBY GIVEN that the TOWN OF NEW LEBANON is seeking bids for supplying the following items for use by the NEW LEBANON HIGHWAY GARAGE and the NEW LEBANON TOWN HALL for the year 2014:

LOW SULFUR HEATING FUEL (*Number 2 Heating Fuel*) – Delivered to the Town Hall and Town Highway Garage for heating.

LOW SULFUR DIESEL FUEL – Delivered to the Town Highway Garage, and

KEROSENE – Delivered to the Town Highway Garage.

Bidder must guarantee to deliver fuel products at such times and places, and in such quantities, as may be ordered by the Town Highway Superintendent or other Town personnel. Failure on the part of the contractor to make timely deliveries of fuel products upon requisition of the Town may be regarded, at the option of the Town of New Lebanon, as a forfeiture of this contract upon the part of the bidder.

Bids are to be presented as a FIXED ADD to the posted gross rack price at the port of Albany, or the port of Rensselaer at noon on Friday, February 7, 2014.

Proof of posted rack price for any invoice/bill must be made available upon request of the Town Board.

The **FIXED ADD** will remain constant and will be added to the same terminals gross rack price as originally bid on the date of each delivery. Use of an alternate rack price will be allowed if it results in a lower net price for the Town, in which case documentation will be required for the original terminals gross rack pricing, as well as the alternate terminals rack price. An Alternate Fixed Price per Gallon Bid (*good through 12/31/14*) may be submitted for each of the fuel items.

Sealed bids (*on the form provided by the Town of New Lebanon*) must be in plain envelopes, clearly labeled only with the item being bid, and must include a “Non-Collusive Bidding Certificate.” Bids must be received in the office of the Town Clerk at the New Lebanon Town Hall, 14755 Route 22, New Lebanon, New York, no later than 5:00 p.m. on Monday, February 10, 2014. Electronic and faxed bids will not be accepted.

Bids will be opened at the Office of the Town Clerk on Monday, February 10, 2014 at 5:00 p.m. and they will be considered by the Town Board at the regular monthly meeting at the New Lebanon Town Hall at 7:00 p.m. on Tuesday, February 11, 2014. The Town Board reserves the right to reject or accept all bids.

Colleen Teal
New Lebanon Town Clerk
1/20/2014

Bids Received:

The following bids were received:

John Ray & Sons:

Terminal Used for Bid: Port of Rensselaer (ITP)

Low Sulfur Heating Fuel:

Gross Rack Price \$3.5855 Fixed Add: \$0.23 Total: \$3.8155
Alt. Fixed Price: N/A

Low Sulfur Diesel Fuel:

Gross Rack Price \$3.6703 Fixed Add: \$0.15 Total: \$3.8203
Alt. Fixed Price: N/A

Kerosene:

Gross Rack Price \$3.8320 Fixed Add: \$0.25 Total: \$4.0820
Alt. Fixed Price: N/A

Valley Oil:

Terminal Used for Bid: Citgo/Mirabito

Low Sulfur Heating Fuel:

Gross Rack Price \$3.4018 Fixed Add: \$0.40 Total: \$3.8018
Alt. Fixed Price: \$3.9900

Low Sulfur Diesel Fuel:

Gross Rack Price \$3.4096 Fixed Add: \$0.30 Total: \$3.7096
Alt. Fixed Price: N/A

*Winterized Diesel price will be determined by the percent of kerosene added (example price: on 2-10-14 at 70/30 blend would be \$3.8175)

Kerosene:

Gross Rack Price \$3.6692 Fixed Add: \$0.40 Total: \$4.0692
Alt. Fixed Price: \$4.3900

HL Fuel Co.:

Terminal Used for Bid: Albany/Rensselaer SEC

Low Sulfur Heating Fuel:

Gross Rack Price \$3.6773 Fixed Add: \$0.25 Total: \$3.9290
Alt. Fixed Price: N/A

Low Sulfur Diesel Fuel:

Gross Rack Price \$3.7232 Fixed Add: \$0.25 Total: \$3.9790
Alt. Fixed Price: N/A

Kerosene:

Gross Rack Price \$4.0374 Fixed Add: \$0.25 Total: \$4.2890
Alt. Fixed Price: N/A

Main Care:

Terminal Used for Bid: Spragues

Low Sulfur Heating Fuel:

Gross Rack Price \$3.0821 Fixed Add: \$0.1490 Total: \$3.2311
Alt. Fixed Price: \$3.3740

Low Sulfur Diesel Fuel:

Gross Rack Price \$3.1050 Fixed Add: \$0.1750 Total: \$3.2800
Alt. Fixed Price: \$3.3980

Kerosene:

Gross Rack Price \$3.4755 Fixed Add: \$0.3250 Total: \$3.8005
Alt. Fixed Price: \$3.8480

There was a general discussion regarding the bids noting that the fixed add should be the basis for awarding the bid. Highway Superintendent Winestock noted his concern that the diesel fuel tank holds 500 gallons and that amount of diesel fuel can be consumed very quickly when they are plowing; how realistic is it to expect a supplier to get out here in a blizzard to fill the diesel tank?

A motion was made by Councilmember Larabee to accept the bid from HL Fuel; they are local, they have never treated us wrong, and we have had good experience with them; how long are we going to have to wait for a truck to come out of Averill Park, Chatham or Albany for diesel fuel? Councilmember Larabee also noted that we need to look at the type of service we have been getting from HL; HL has been servicing us forever. Supervisor Benson stated that he is not in favor of supporting that kind of decision; he is not going to support spending more money because we are not ambitious enough to figure this out the right way. Councilmember Larabee noted that we should throw out Main Care's bid because he did not properly submit the bid; he based it on a January rack price when the bid request stated it was to be based on the rack price at noon on February 7, 2014.

A motion was made by Councilmember Larabee to the reject Main Care's bid because it was not submitted properly. There was no second to the motion.

Councilmember Evans questioned whether or not we could accept Main Care's bid since they submitted the bid incorrectly using the rack price from January 10, 2014; not February 7, 2014. Attorney Howard stated no; the real question is the fixed add so you are looking at the fixed add. To the extent that they used a gross rack price based upon a date that was previously provided and you can see that; as long as you do not have to perform any math in order to determine what they are coming up with, you are allowed to deal with that sort of discrepancy. The bottom line is whatever we pay is going to be based on that fixed add price that they are giving us; the gross rack price fluctuates every day and sometimes during the day.

Attorney Howard noted that in the event they could not honor delivery, that would form a basis for breach and the town would have the ability from an emergency stand point to go ahead and hire somebody else – and not just hire somebody for one load but to hire them for as many as the town board felt necessary.

Councilmember Geraldi noted that he understood that the bidders were supposed to include proof of rack price at the time of bid and I don't see of them that really included that; Supervisor Benson noted that we asked for proof of rack price for any invoice or bill. Councilmember Geraldi noted that a couple of the bidders used the same places but the rack prices are different. He noted he would like to see this re-bid with the right dates and times *and* the documentation of the rack prices at the time and what they are going to charge us.

A motion was made by Councilmember Baldwin and seconded by Councilmember Evans to accept the bid from Main Care for all three (3) products based on the fix add pricing and effective 2/11/14. The motion was approved with the following vote:

Aye: Councilmembers Evans and Baldwin; Supervisor Benson

Nay: Councilmembers Gerald and Larabee.

There was additional discussion regarding the concerns of obtaining diesel fuel; Supervisor Benson noted that the insufficient capacity of the diesel fuel tank is a separate issue that needs to be dealt with; 500 gallons is not enough fuel for what we are doing, we should be doubling this to 1000 gallons. Councilmember Baldwin noted that to add capacity in the highway garage is not realistic because of the containment requirements that we have to meet.

Town Positions:

Appointments:

Supervisor Benson noted that we are tabling this until later in the month or until the March meeting. Supervisor Benson noted that the positions we are looking to fill are: one (1) Planning Board member, one (1) Zoning Board of Appeals member, and two (2) Conservation Advisory Council members; all interviews were concluded tonight and we will be making appointments either later this month or at the March meeting.

Employee Manual:

Schedule Special Meeting:

Supervisor Benson proposed scheduling a special meeting to deal specifically with the employee manual that was distributed at the last meeting. Also at the last meeting, he requested that any comments or feedback be submitted in writing and he noted that he has received a couple different submissions from within the town. He proposed a meeting on Tuesday, February 25th, he invited the HR firm that put our employee manual together to come to that meeting and he also requested that the town attorney be present for that meeting. Town Clerk Teal noted that she cannot attend that meeting and she asked the attorney if he had received a copy of the Public Officers Law. She noted that her biggest concerns are with NYS Public Officers Law as there are many statutory requirements for her office in that law and there is a lot in the employee manual that she has concerns about, that do not conform to those requirements. Attorney Howard noted that he will take a look at that.

The board set the special meeting for Tuesday, February 25th at 7:00 p.m.

Behan Planning and Design Update:

Supervisor Benson noted that in every one's packet tonight, there is an update report from Behan Planning and Design on the Hamlet Revitalization Project that he had requested. Supervisor Benson read the update:

Completed to date:

- Mapping and inventory of existing conditions – Summer 2013
- Review of existing planning documents – Summer 2013

- Site visit and meetings with local business owners – July 2013
- Draft of preliminary findings and recommendations – September 2013
- Public Workshop – November 2013

To be completed:

- Report outline – February 2014
- Draft report delivered digitally to town – Last week of March 2014
- Public Review Draft posted online and hard copies made available at Town Hall immediately thereafter
- Comments to be received by – approximately first week of May
- Final Report and Draft Grant Application (BOA) – Two weeks thereafter
- Final Grant Application – TBD based on State's request for applications

Supervisor Benson noted that essentially, by April or May we will have wrapped up this process and have something to show to everyone.

Shaker Museum Stone Barn Project Update:

Supervisor Benson reported that David Stocks, President of the Shaker Museum and Library, submitted a progress report on the Great Stone Barn Stabilization Project through the end of 2013; work will continue on this project through this summer. The town clerk noted that these quarterly reports need to be filed in her office; it is part of the requirements of the grant that they received and we administer.

Covenant Circle Update:

There was a discussion about Covenant Circle, a private road in a subdivision in West Lebanon, and the desire of the residents of this subdivision to have the road taken over by the town. Supervisor Benson summarized the activity on this topic noting that in May or June of last year, the town sent a letter to the residents of Covenant Circle outlining the issues that needed to be addressed if the town is to consider a road takeover. That has resulted in a couple of meetings and in some work completed by an engineer hired by the residents of Covenant Circle (Prendergast) and work by the town's engineer (Crawford & Associates). Crawford issues an initial letter of findings in November 2013 and another in January 2014. Supervisor Benson noted that he believes there are three options:

Option A: Establish a basis with facts for not taking the road over.

Option B: The road is built to specs and the town will take the road over. (Supervisor Benson noted that it is well established by both Covenant Circle's engineer and the town's engineer that there are things that need to be done to bring the road into compliance with the town's specifications.)

Option C: A special district is established as a mechanism to fund the work required to bring the road up to town specs.

Supervisor Benson asked the Attorney Howard to explain the special district option. Attorney Howard noted that if the town board wanted to consider taking over the road, there are really only two ways that can occur. One would be to have the residents of Covenant Circle perform the necessary improvements to the road and when they were

completed, present that to the town. The other mechanism that is available is the creation of a special improvement district to provide for the improvement of the road up to town road specs. This could be accomplished either by the submission of a petition of the residents – at least fifty percent or more of the abutting land owners of Covenant Circle – or by a resolution from the town board. The creation of the special improvement district would require the determination of the specifications to be met, the costs to accomplish this, and a public hearing would then be held on this specific plan. Essentially, what would occur is that those residents would pay an additional assessment to cover the improvement of the road such that it could be taken over by the town. Upon completion of the improvements, it would be maintained from then forward as a public highway by the Town of New Lebanon. All the costs associated with that would be included within this special district. So that would include the surveying, engineering, publishing expenses, legal expenses, to create the district. And that particular plan would be vetted by the residents of Covenant Circle to get their input if that is something they would be comfortable with. So that would be the third option.

Councilmember Evans noted that he was interested in seeing the reports from Crawford & Associates to see how much work needs to be done to bring the road up to specs and also he would like to see a cost analysis showing the impact of two more miles of road to maintain on the highway budget.

Craig Trombley, spokesperson for the Covenant Circle homeowner's association, noted that all of the lots (32) are individually owned and there are currently 22 homes in the subdivision (including one under construction). He noted that they are struggling collecting the homeowner's association dues to pay for the maintenance of the road. He feels the homeowner's are onboard with the special assessment district to pay for the road improvement.

Amy Fiebke, President of the Covenant Circle homeowner's association, addressed the board noting they are facing the difficulties of any homeowner's association as time goes by and especially with the history of wondering is the town going to take over the road or not, it does get harder and harder to get people to pay. So they end up having to incur more fees with attorneys trying to collect money from people, take them to court, and it would be more helpful for them if the special assessment were addressed because it is a tax. It is easier for the town to collect those funds.

John Sheehy, Vice President of the association, addressed the board pointing out some of the assets of Covenant Circle.

Mark Baumli addresses the town board noting that the town has Subdivision Regulations that set the specifications that any road has to be built to before it can be considered for takeover by the town and these regulations also state that the road does not at any point ever have to be taken over by the town of New Lebanon.

Pete Daniel, Covenant Circle homeowner, addressed the town board noting his frustration that he feels that they keep being asked to meet certain standards which they do and then they are asked to meet more.

Highway Superintendent, Jeffrey Winestock, requested an opportunity to speak. He noted his frustration that this has been going for a long time, he was not included in the engineer's field inspection, and he was not copied on any of the engineering reports. He noted that the engineer's field inspection was conducted after multiple snow storms when the road had been plowed and yet they reported no ruts, no potholes, that the drainage is fine, the culverts are fine – how can you see the drainage with the snow? Of more concern, Highway Superintendent Winestock noted, the grade of the road does not meet specs. He watched this road in progress, the developers went around and tried to get up away from that grade and finally beat themselves to death on that shale; they ran out of money. Finally they said that's enough, we can't go anymore. He made his recommendations to the board; he noted we do this every time there is a new supervisor, a new town board, and etcetera. He recommended that the board not take the road over.

Highway Superintendent Winestock noted he is also frustrated with the fuel decision tonight. He noted that Councilmember Baldwin knows the problems getting fuel that they experienced in the past when he was Town Supervisor. So we saved the taxpayers \$1,000 dollars tonight on fuel by going with the lowest bid but if we get nailed with five storms in a row, those are the three guys the people want to be calling when he can't plow the roads.

Bill Chadkowski, Covenant Circle homeowner, addressed the town board noting that the residents of Covenant Circle are taxpayers.

John Sheehy, Vice President of the Covenant Circle homeowner's association, addressed the town board noting there are building lots that could be sold for houses to be built on and improve the tax base of this town. People are afraid to buy up there because it is a private road, the town board can fix this issue.

Scott Larabee addressed the town board noting that a lot of residents do not live on town road, that does not mean that they do not benefit from the other roads in the town that our taxes are maintaining.

Councilmember Evans noted that he did think that one of Jeff's biggest concerns is that anyone can come in and put fabric down and put four inches of gravel on top of it but it can be lipstick on a pig. He noted he does not know what is in the engineers' reports, if they did sub-base soil tests. Is the proper material there with the proper compaction? If the sub-base is suitable it is one thing, if it is not, that is another thing. Supervisor Benson noted that he believed that was part of Prendergast's report.

Councilmember Larabee suggested setting up a meeting with the President of the homeowner's association or her designee, Craig Trombley, a town board member, and the highway superintendent to discuss some options. Councilmembers Evans and Geraldini agreed to participate in the meeting(s).

Noise Ordinance Update:

Supervisor Benson noted that we have had a noise ordinance that was proposed back in November, he asked Attorney Howard to review that document and he is in the process of doing that.

NEW BUSINESS:

Formation of Capital Reserve Account:

Supervisor Benson noted we will receive our first payment from the County on the landfill closure in April and prior to receipt of those funds, he would like to have the account set up. He noted that he had discussed this with Attorney Howard. Attorney Howard noted that establishing a reserve account for something like this is encouraged by the State Comptroller's Office, particularly when we are receiving funds from an outside source dedicated to a particular purpose. It would be a prudent step for the board to take; everyone on this board knows what the funds are for but we want to maintain that institutional history and have a reserve account so that when the time comes to have that money dedicated there is not any confusion; it is clear that this money can be used for x, y, and z. Attorney Howard noted that he can draft a resolution and he suggested the language "**Landfill Remediation, Restoration and Potential Development**" for the boards consideration. This will allow the board to work through the steps to necessary to determine what the level of remediation and restoration is going to be in a final approved plan and, looking long term, there may be some portion of this land on one side of the road or the other that the town may want to do something with. He also noted that any remediation money from the state may have to run through this sort of account.

Councilmember Baldwin questioned whether the terminology in the County agreement noted maintenance rather than remediation; Supervisor Benson stated that the document was written in such a way that it did not stipulate the use of the funds at all, it was written as a reimbursement to the town.

The attorney will circulate the draft resolution to the board for consideration at the March meeting and he will advise the town clerk of her obligations regarding publication and notification.

Vault Shelving:

Town Clerk Teal requested approval to proceed with the purchase of the last two shelving units for the vault based on the quote provide by Just the Right Stuff – a preferred provider for NYS Archives Records Management Program in the amount of \$1,535.00. The monies are available in the Records Management budget. A motion was made by Councilmember Baldwin, seconded by Councilmember Larabee and approved unanimously to authorize the Town Clerk to purchase the two shelving units from Just the Right Stuff for \$1,535.00 based on quote 020514R dated 2/5/14.

LIAISON REPORTS:

Economic Development:

Councilmember Evans reported that the Economic Development Committee has been working hard on numerous tasks. They are close to getting a report from **Behan** within the next one or two months. They are also close to getting **high-speed internet broadband** to businesses in the town. **The Heritage Center** has been extremely successful in the first two months of being open; all are encouraged to continue attending.

Highway Department:

Councilmember Baldwin asked Highway Superintendent Winestock if he had anything. Mr. Winestock noted that he wanted to address the **replacement of the backhoe**. He was asked by the board to prepare a five-year plan and this was part of the plan. He would like to replace the backhoe; we made our last payment last month. He would like to continue with this payment and he provided the board with a quote from Monroe Tractor. They would take our backhoe in trade and continue with the same payment we currently have. The first payment would be due January of next year. The reason he would like to replace it, it sits in the salt and they use it a lot. The salt does not treat equipment very well. Rather than starting to put a lot of money into it, he would like to replace it. Supervisor Benson noted they would distribute the quote to all the board members and they would address it at the February 25th meeting.

Councilmember Baldwin also noted that the Highway Department is doing a great job on the snow removal. Highway Superintendent Winestock noted his concern about the **fuel** stating that there was a reason why he insisted on keeping a local company because like I said, it has been a nightmare. And he is the one that is going to be freaking out because he is the one that is responsible for that. The lowest bid is not always a good way to go. I know you have already made your decision but I want to be put down on the record because there is nothing I can do if I don't have fuel, I can't run. Supervisor Benson noted that we have awarded the fuel contract and now we need to understand who we are dealing and how we get fuel and so on. Mr. Winestock stated, not to be rude, but he thinks that would have been a smart move to do before you went and awarded the bid to someone we have no clue about.

Town Property & Assets:

Councilmember Baldwin asked if he could meet with Supervisor Benson and Scott Larabee after the meeting regarding the **frozen pipes** and a possible solution. Councilmember Geraldi noted that these pipes come from the new addition, why, he asked, is it not the contractor or the architect who is responsible for this? If he built a guy's house and his pipes froze, he wouldn't be cutting holes in his own wall; he'd be calling him. Supervisor Benson noted that he honestly does not know what these pipes are for, is it water service on this end of the building? Councilmember Larabee responded yes, it comes from the basement to the bathrooms and the kitchen. Supervisor Benson noted that we had a warranty period and he believes we are out of that warranty period. That doesn't mean we can't ask the contractor to return in good faith. Councilmember Geraldi noted that this was going on last year too; so it is an ongoing problem; it is not something that just started this year. Supervisor Benson noted that he was not aware of it until this year. Councilmember Baldwin explained that last year, we thought it was actually in the old part of the building but it became

evident to him when he put those vents in the chase that the cold air was actually coming from the new part. He believes that with no cost to the taxpayers, the problem can be resolved; he will meet with Supervisor Benson and Scott Larabee after the meeting to discuss it.

Zoning, Planning, Code Enforcement ~ no report

Town Assessment Office:

Councilmember Evans reported that she spoke with the Assessor today to see if she had any updates. He reminded everyone that exemptions are due March 1st and that any changes should be submitted as well. The Assessor is continuing to work towards the 2015 reval and is extremely busy doing that. The data mailers that were sent out were all returned, the data was uploaded with only some minor changes.

Education & Recreation

Councilmember Larabee reported they had a TRACS (Together Resisting Alcohol and Drugs Coalition) meeting here; it is a program that we are trying to bring into our town and our school to teach kids about resisting drugs. The Columbia County Sheriff's Department is involved in this program. It is mainly a school function but he is trying to bring it into the town so he got involved in it and he is now on the board.

Councilmember Larabee also reported that we are still looking for a Recreation Commission member. The Recreation Commission meets once a month.

Security, Fire, Law Enforcement ~ no report

Justice Court/Constable ~ no report

AUDIT OF BILLS:

**General Nos. 24 through 63, in the adjusted amount of \$24,845.86;
Highway Nos. 5 through 16, in the amount of \$19,008.33; and
Escrow Nos. E:14-1 through E:14-2, in the amount of \$1,484.89;
As listed on Abstract # 2 of 2014, dated February 11, 2014.**

A motion was made by Councilmember Larabee, seconded by Councilmember Evans, and approved unanimously to pay the above noted claims from their respective accounts **excepting General Voucher No. 57** in the amount of \$487.50 for an adjusted General Fund amount of \$24,358.36.

ANNOUNCEMENTS (of activities or events):

February:

Tuesday, February 25th ~ Special Town Board Meeting at 7:00 p.m. at Town Hall

March:

Tuesday, March 11th ~ Town Board Meeting at 7:00 p.m. at Town Hall

PRIVILEGE OF THE FLOOR:

Gary Millett addressed the Town Board expressing his support for the **proposed Noise Ordinance**.

Allen Cote addressed the Town Board expressing his support for the **proposed Noise Ordinance**.

Lydia Davis addressed the Town Board expressing her support for the **proposed Noise Ordinance**.

Howard Commander, Lebanon Valley Speedway owner, addressed the town board regarding the **proposed Noise Ordinance** noting that there is nothing wrong with a noise ordinance if it is done properly and he was here to see where we were in the process. He also noted that he thinks most of the board knows where we sit as far as a proposed noise ordinance goes. He also expressed his willingness, as always, to sit down and talk to the board about anything that there may be to talk about.

Supervisor Benson asked Attorney Howard to address the **proposed Noise Ordinance**. Attorney Howard noted that this germinated a few months ago. There was a proposed Noise Ordinance that was provided; what we talked about last month – and I am in the middle of doing that – is doing a survey of noise ordinances that are out there because you do have competing needs. You want to have an objective standard but what you see is that standard runs a spectrum. If you create a standard that is so objective that it takes specialized equipment that no one here is equipped to operate, then the effectiveness of that law goes away. That is one side of the spectrum. The other side of the spectrum is to recognize the community that you have here and to speak to some of the common sense measures that would make sense to protect everyone's property interest so that they can enjoy their property but to do that in such a way that it is not left to the subjective interpretation of a Code Enforcement Officer. So those are some of the competing needs that we are looking at addressing. And quite frankly with that, one has to consider the development of the town, the history of the town, the types of uses that have existed in the town, along with the rights of those who live here to be able to enjoy their individual properties peacefully. There are a lot of factors and what I have said to the Supervisor and I would say to the town board is what I would like to try to do is provide them with as much information so that when they exercise their discretion, if they decide to take any action, that action they take, I can at least tell them is creating a legislative framework, a local law and regulations, that are actually effective and would be enforceable. So that is what we are working on right now.

Carole Roseman addressed the town board regarding the proposed Noise Ordinance noting that she would like to see a good noise ordinance. She suggested – and noted that she would provide - something that the US Environmental Protection Agency has issued called "The Noise Effects Handbook." It is a desk reference to health and welfare effects of noise and Ms. Roseman quoted some for the record:

"Since 1973, the Department of HUD (Housing Urban Development) has conducted an annual housing survey with the Census Bureau in which noise has been consistently ranked as a leading cause of neighborhood dissatisfaction. In the 1975 survey, street noise was mentioned more often than all other unwanted noise conditions. This survey has also shown that aircraft and traffic noise are the leading factors in making people want to move from their neighborhoods. Apparently, one-third of all respondents who wished to move because of

undesirable neighborhood conditions did so because of noise. Both a poll conducted by the Gallup Organization and the National League of Cities and a Harris survey for ABC Network on attitudes towards environmental issues indicated that public views noise as a growing problem warranting more governmental action. According to the levels documented, the day/night sound level of residential noise should not exceed 55 decibels to protect against activity interference and annoyance.”

Ms. Roseman further noted that her research has found that Noise Ordinances have been enacted in the City of Hudson, the Village of Chatham, and the towns of Canaan, Gallatin and Claverack. We have also looked at the fact that we are unlike a lot of other towns because we do have a speedway. And to that she suggested we look at a town like Lime Rock which is actually in the town of Salisbury. The last point is that this is such a technical issue that there are people with better technical knowledge than any of us in this room at this point and she did find somebody in New Jersey that only deals with noise and noise ordinances. She strongly suggested the board look at hiring a consultant that can work with our town attorney on these issues.

J.J. Johnson addressed the Town Board stating that Mr. Commander has spent hundreds of thousands of dollars on noise studies by professional people that do just that for a living and I would recommend that they use those results rather than going to the expense of bringing in someone else and doing it over again. We already have the studies done, let's use what we have.

Carole Roseman addressed the Town Board regarding enforcement of noise ordinances noting that there is now a school that is part of Rutgers that does training for law enforcement officers whose job it is to deal with noise ordinance violations. It is a three day class and apparently everybody in New Jersey who is connected with law enforcement and noise has to go through this training and he is doing it across the country as well depending on the size of the group. So the enforcement issue is a critical issue and the other piece of the issue is obviously the penalties involved because if the penalties are not dealt with then people just thumb their nose at the law. So these are all things that need to be built into any noise ordinance to make sure that it is effective because the law with the enforcement and the enforcement without the penalties is meaningless.

Judy Zimmer addressed the Town Board noting that when there is really charged issue, sometimes when there is an impasse, there are **mediation services** like Common Ground that are free.

Don Slovak addressed the Town Board noting that his kid has a field car and if he is driving around the fields and the exhaust gets ripped off, is this **noise ordinance** going to effect that? If I get up at five o'clock in the morning and the muffler blows out on my snow blower, I live 300 feet from my nearest neighbor, am I going to have a cop standing at the end of my driveway saying, hey your snow blower is too loud? My kid rides his four-wheeler and his snowmobile, is my kid going to be told his four-wheeler is too loud or your snow mobile is too loud? Mr. Slovak noted that he is a resident of Kinderhook and they tried to do this in the Town of Kinderhook to stop kids from riding ATVs.

Honda, Yamaha, and all the big companies actually stepped in because they were not going to be able to sell ATVs in the Town of Kinderhook because of the noise ordinance; they were actually going to send lawyers to fight it. He noted he is concerned that if New Lebanon does this, someone might try it in Kinderhook again. We are in the country, this has always been country, and there has always been some noise. Most people are pretty respectful and, hopefully, most people can get along with their neighbors.

Trina Porte, Planning Board member, addressed the Town Board regarding the **proposed noise ordinance**. She noted that NYS does have a lot of unenforceable laws; she read the noise ordinance and it does seem to have reasonable levels but she noted she is not a sound engineer but based on the 55 decibel standard, it seems to be within a reasonably close, enforceable, common sense ballpark of that so if people are really worried, she suggested that they read the proposed noise ordinance. It seems workable and fair; not damage people's hearing, not wake people up that are sleeping because they work second shift and so forth. It seemed to have reasonable time windows. Enforcing noise is difficult and it has been previously mentioned that Mr. Commander made agreements many, many years ago to stop racing at certain hours of the day because it is impossible for someone to run a race car at the same sound level every second that the engine is on because sometimes the noise does flare and that is addressed by the ordinance. It has rates of transmission and it has time frames of transmission. It seems pretty thorough so she encourages people to read the proposed ordinance. Ms. Porte also noted to the board that the law does require that the documents they are discussing at a meeting be made available to the public for the meeting; when the board is discussing documents that the audience does not have, it is easy for the audience to panic, to worry, and to get angry because we don't have the information that is supposed to be shared with us as members of the public. So perhaps if you would make more information available, people would know about it, we wouldn't have to beg you for information. Only a select few get emails on it. It is supposed to be publicly available to everyone prior to meetings on our website and at the town hall by law for that reason.

ADJOURNMENT:

A motion was made by Councilmember Larabee and seconded by Councilmember Geraldi to adjourn the meeting at 9:10 p.m.

Respectfully submitted,

Colleen Teal, RMC
New Lebanon Town Clerk