

**MINUTES OF THE REGULAR MEETING OF
THE TOWN BOARD OF THE TOWN OF NEW LEBANON
HELD ON MARCH 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
Cynthia Creech, Court/Assessor's Clerk
Kevin Smith, Ethics Board Member
Robert Smith, Planning Board/Ethics Board Member
Trina Porte, Planning Board Member
Ted Salem, ZBA Member & Zoning Re-Write Committee
Chair
Steve Oberon, LVHS President
Scott Larabee, Recreation Committee Chair/Building
Maintenance
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 7:00 p.m. by Supervisor Benson. A moment of silence was followed by the flag salute.

FINANCIAL:

Specific Questions on Vouchers:

Councilmember Evans questioned General Fund Voucher No. 72 to Crawford & Associates for \$426.12 asking what they had completed. Supervisor Benson stated that he assumed it was the results of their review of other reports but he has had no dialogue in the past 60 days.

Supervisor's Report:

Supervisor Benson read the Supervisor's Report and reviewed the other reports provided to the board members. Supervisor Benson noted that the unappropriated General Fund Balance is \$393,891.28; and the unappropriated Highway Fund Balance is \$96,801.21. The Highway Capital Reserve Fund has a balance of \$20,000; the Capital Reserve Fund for Shatford Park has a balance of \$11,534.00. A motion was made by Councilmember Evans, seconded by Councilmember Gerald and approved unanimously to accept the Supervisor's report.

OLD BUSINESS:

Town Position (Appointments):

Zoning Board of Appeals applicants included *Phyllis Stoller, Michael Blatt, and Gary Millett.*

A motion was made by Councilmember Larabee, seconded by Councilmember Baldwin, and approved unanimously to reappoint Phyllis Stoller to the Zoning Board of Appeals for a five-year term to expire 12/31/2018.

Planning Board applicants included *Cynthia Creech, Steve Muse, Erich Wagner, Monte Wasch, David Weiser, Michael Blatt, Gary Millett, Josh Schuster.*

A motion was made by Councilmember Larabee, seconded by Councilmember Gerald, and approved unanimously to appoint Josh Schuster to the Planning Board for a seven-year term to expire 12/31/2020.

Recreation Commission applicants included *Amy Fiebke.*

A motion was made by Councilmember Larabee, seconded by Councilmember Baldwin, and approved unanimously to appoint Amy Fiebke to the Recreation Commission to fulfill the balance of a five-year term that expires 12/31/2017.

HR Manual - Update:

Supervisor Benson noted that the board met on February 25th; reviewed the entire manual and there were some changes proposed. All of the proposed changes are in motion and he noted that he expected to have a final draft within the next couple weeks which he will email to the board members.

Covenant Circle Road:

Attorney Howard reported that the Covenant Circle Homeowner's Association reached out to him to indicate that they were strongly considering circulating a petition to create a special district. Supervisor Benson noted that they had asked to be put on the agenda but he received a call late this afternoon requesting to be pulled from the agenda.

Councilmember Gerald noted that they had not had a meeting yet as he has been going through all the paperwork and he knew Councilmember Evans was also working on it but he feels they are at the point now where they can set up a meeting. He asked the attorney what the exact procedure is that we go through to do this if they submit a petition to the town; once they get in a meeting, he does not want to be guessing about this. Attorney Howard responded that if the board receives a petition, first they recognize the receipt of and the filing of the petition; the next step would be to set up a public hearing to hear comment from members of the public with regard to the petition and the elements and the issues contained within it. Following that, should the board be of a mind that this would be a reasonable improvement that should occur, the board could consider passing a resolution directing the engineer for the town to develop the specs and would work along with the town attorney to develop a proposed contract and in connection with that engineer would come back and give the board an estimated cost. At that point, you would measure the estimated cost that you received from your town

engineer with hypothetically a petition you received saying this is what we would agree to pay up to. If the number from the engineer was lower than the amount in the petition, then the board would have the ability to consider a resolution to proceed and to have the project put out for bid. If the amount was more, it would require another hearing to be held to discuss the fact that now that final numbers have come in, they are higher than the numbers that were petitioned by residents abutting the road. Following that second hearing, if it was necessary, the board could then again at that point consider a resolution directing the project to proceed. That resolution, because it would be a higher number would be subject to a permissive referendum. Councilmember Geraldini asked Attorney Howard what say does the Highway Superintendent have in this. The input that the Highway Department would have would be in the development of those specifications for any roadway improvement, that would be part of the process that he would envision, the Highway Department and the Highway Superintendent being involved.

The Highway Superintendent noted that he has other people that have been looking to have their roads taken over; can they get on board with this now, would this be the time for them to do this, other subdivisions? Attorney Howard noted that any citizen has the right to circulate a petition. If it is a particular stretch of road, what the law says is fifty percent residents abutting that road have a right to submit a petition to the town. Just because they submit a petition does not mean the town board has to proceed, but it triggers statutorily the next phase and that would be a public hearing to hear about it and then ultimately a decision by the board.

NEW BUSINESS:

2013 Year End AUD Report (Annual Financial Updated Report):

Supervisor Benson noted that he circulated the AUD Report. Town Clerk Teal asked if it had been filed with the state and Supervisor Benson noted that it had. Ms. Teal noted that it is supposed to be filed with her when it is filed with the state and she needs to publish that it is available for public review. Councilmember Baldwin noted that he had reviewed the document and he believed the General Fund surplus is \$393,891 and the Highway Fund surplus is \$96,801. Supervisor Benson confirmed this.

Town Banking:

Supervisor Benson noted that he circulated a sheet a couple weeks ago regarding the Bank of Greene County. They had completed a one month interest comparison on all of the town's accounts with the exception of the court accounts because we cannot earn interest on those. There is a substantial difference in the interest rates being paid; in the month of December, the Bank of Greene County would have been .25% compared to First Niagara which was .10%. In the month of December, the General Fund earned \$59.09 in interest at First Niagara but it would have earned \$140.42 at the Bank of Greene County. The Supervisor noted that it is his understanding that the bank that is in town cannot accept municipal funds and there are a number of bank accounts outside his accounts that are in limbo right now. The Town Clerk confirmed that her account (currently at Berkshire Bank), needed to be closed by March 31st. The other accounts outside the Supervisor's accounts would be the Tax Collector's account and three Town

Court accounts. Supervisor Benson noted the Bank of Greene County would come out here to open all of the accounts and it could be done before March 31st. The Bank of Greene County was included in the blanket resolution approving financial institutions at the 2014 Organizational Meeting so additional board approval is not required. The Supervisor and the Town Clerk will move their accounts to Bank of Greene County and the Town Clerk will let the Court and the Tax Collector know of the change.

LIAISON REPORTS:

Economic Development: ~ no report.

Highway Department: ~ no report.

Town Property & Assets:

Councilmember Baldwin thanked the board for approved of the use of the town park staff to move some things around in the basement and on the second floor. He noted he will present a proposal for the April or May meeting for an estimate for putting better wiring to a couple rooms upstairs and another estimate for drop ceilings on the first floor and the floor on the first floor. Councilmember Baldwin also noted that he opened reversed the insulation because the insulation was on the warm side, not on the cold side of the pipes but apparently they froze again last week. We may need to install a whisper fan to keep the warm air going into that area.

Zoning, Planning, Code Enforcement:

Councilmember Geraldini noted we have a presentation from the Zoning Re-write Committee. Ted Salem, Chairman of the Zoning Re-write Committee, reported that the Zoning Re-write Committee is recommending to the Town Board that we proceed to public hearing on six of the eight items on their original recommendation back in November:

1. Fencing,
2. Cell towers – clarifying that a Town Board license is required,
3. Accessory Structures – conforming this section to NYS Building Code,
4. Road frontage – correcting a technical error,
5. Combining 1 & 2 family residences as one category, and
6. Clarifying the use table – specifically that a “P” or permitted use still requires a zoning permit.

Mr. Salem explained that most of these are technical items. The Manufacturing/Home Occupation item still needs more work and will take some time and the Columbia County Planning Board Referrals amendment is not necessary.

Attorney Howard noted that, if the board is inclined, based on these recommendations, he can prepare a proposed local law looking to make those amendments for you to look at next month at which point you would set the public hearing. You would also direct the referral to County Planning for their review. The Town Clerk asked if this was something that she would need to send to all the abutting communities (towns and counties) and the Attorney noted yes.

Town Assessment Office:

Councilmember Evans reported he has been corresponding with the Assessor and noted that she has been working with the state and has declared an early level of assessment and this should hold the town at 100% until she finishes the 2015 reval.

Education & Recreation

Councilmember Larabee reported that there is a Recreation Commission meeting next Tuesday, March 18th at 7:00 p.m. at the Town Hall and there will be a TRACS (Together Resisting Alcohol and Drugs Coalition) meeting at the Town Hall on Tuesday, March 25th at 6:30 p.m.

Security, Fire, Law Enforcement ~ no report

Justice Court/Constable

Councilmember Baldwin reported that he has been talking to one of the Judges and the Clerk regarding late night arraignments and safety; they are looking into a lighting system for the parking lot that would be covered by the court grant.

AUDIT OF BILLS:

**General Nos. 64 through 96, in the adjusted amount of \$57,799.46;
Highway Nos. 17 through 34, in the amount of \$22,297.41; and
As listed on Abstract # 3 of 2014, dated March 11, 2014.**

A motion was made by Councilmember Evans, seconded by Councilmember Baldwin, and approved unanimously to pay the above noted claims from their respective accounts.

ANNOUNCEMENTS (of activities or events):

April:

Tuesday, April 8th ~ Town Board Meeting at 7:00 p.m. at Town Hall

PRIVILEGE OF THE FLOOR:

Kevin Smith addressed the Town Board about the banking accounts and not being able to bank with the local bank; is the "swiping" thing something we can do, where we do the daily swipe for deposits. It was explained that Berkshire Bank is dissolving their NY Charter for their subsidiary that handles municipal funds effective March 31st; per the FDIC, once that occurs, no New York municipal funds can be on deposit with them period. Mr. Smith also asked about the proposed change to the fencing regulations. Ted Salem, Zoning Re-write Committee Chair, explained that it was simply clarify setback and height issues associated with fencing but no substantial change to the regulations. There will be a public hearing on all the proposed amendments before it is adopted.

Trina Porte addressed the Town Board and asked for a **copy of the Zoning Re-write Committee memo** that was being referred to noting that once something makes it to the board agenda, it is supposed to be available to the public. A copy will be emailed to her tomorrow. She asked if there was a reason why the architect and the builder that we paid half a million bucks to, to do the building are not fixing the **freezing pipe issue** because it was not an issue before the addition was put on. Supervisor Benson

noted that we are outside of a one-year warranty. Ms. Porte noted that the problem started last year. Councilmember Baldwin noted that last year we thought the problem was in the old part of the building; it was just this year that we became aware where the problem was. He discussed some of the work that has been and some that will be done to solve the problem also noting that his work is free, it is not costing the town. Ms. Porte noted that she was concerned because of the cost of heat this year and having the heat turned up in the addition to 70 degrees so the pipes do not freeze is probably costing the taxpayers a lot of money. Supervisor Benson noted that in spite of the addition, our energy costs are actually lower. Ms. Porte asked if Supervisor Benson would consider asking the County to renegotiate the thirty year dump closure given that the dump has been closed for twenty-eight years, to reduce the thirty year time frame. Supervisor Benson explained that the thirty year maintenance of the landfill is a state mandated time-frame, specifically the NYS Department of Environmental Conservation, and if we are lucky it will be thirty years as there is currently talk of making it fifty years. Supervisor Benson also clarified that per the state regulations, the monitoring starts once the closure is completed.

Mary Hotaling addressed the Town Board regarding an accident with one of the plow trucks. She noted that she is frustrated by the misinformation that is said about her and about the accident. She also noted her frustration about how she was treated by a town employee and by the town officials and the lack of response of town officials.

Millie Dillinger addressed the Town Board noting that she did not know that this law even existed. It is state-wide; municipal drivers all across the state are exempt from a lot of traffic rules when they are plowing except if reckless intent could be proven; but what is reckless. Ms. Dillinger asked if the town had a safety program for our plow drivers to address what is reckless for them. Also, she asked if the town had a protocol in place for the drivers for when there is an accident so they know what they are supposed to do. Attorney Howard responded noting that in looking at **Section 1103-b of Vehicle and Traffic Law**, the history of that law is that prior to last amendments to that statute there was actually blanket immunity for all highway personnel when they were engaged in clearing the roads. He noted that he thinks the initial public policy reason for that is the general public at large benefit when the roads are clear; they understand that highway personnel are out there, in many instances under very trying circumstances trying to clear the roads. In 1974, that law was changed it brought about this reckless standard whereby, if it is shown that a highway personnel's actions are reckless, there would not be that blanket protection. The highest court of the state has actually defined recklessness and that definition is the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow and has done so with conscious indifference to the outcome. The law has provided that definition; recklessness is not something that any one town or any other municipality defines; it is defined for the municipalities by the court system.

Cynthia Creech addressed the Town Board and asked for clarification of the hiring of **Behan Planning & Design** and the cap on the amount of money that was to be paid

and the billing they have submitted and the vouchers that have been paid to date are not squaring up in her mind. She noted that the motion that was passed said that we were hiring Behan Planning and to limit the work not to exceed \$10,000 which the town has with a plan to raise another \$10,000 through donations and/or other grants but not to move forward with the second phase until the funding is in place. However, the vouchers that Behan submits always say Behan has a not to exceed budget in the amount of \$20,000. She noted that we have paid them \$15,000 for work through the workshop in November. Supervisor Benson noted that there was a second action taken, he believes it may have been at the time of the budget – October or November – but he would have to go back and look. She noted that they worked beyond the \$10,000 into November when we did not have the private donations. Supervisor Benson noted that the Behan Planning project is being handled presently by Max Gitter; prior to that it was Doug Clark.

Kevin Smith addressed the Town Board regarding a skate park for the kids in town; it would give them something to do and it has been successful in other communities. What do we need to do to start this in the park? We need to do something for the kids. What do we need to do to make this a reality? Supervisor Benson suggested that he take the idea to the Recreation Commission.

Mark Baumli addressed the Town Board regarding the minutes of the meetings; he noted that a member of the public was looking for information and the Supervisor responded that there was some action possibly taken in October; unfortunately, we do not have minutes available to confirm this. He requested that the board put the minutes on the agenda next month, for the board to get together and find some resolution so this town can have the minutes of the meeting available – they are entitled to those minutes.

ADJOURNMENT:

A motion was made by Councilmember Larabee and seconded by Councilmember Geraldi to adjourn the meeting at 8:14 p.m.

Respectfully submitted,

Colleen Teal, RMC
New Lebanon Town Clerk