

**MINUTES OF THE REGULAR MEETING OF
THE TOWN BOARD OF THE TOWN OF NEW LEBANON
HELD ON APRIL 8, 2014**

Present: Michael Benson, Supervisor
Dan Evans, Councilmember
Chuck Gerald, Councilmember

Absent: Bruce Baldwin, 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.

MINUTES:

The minutes of the **February 11, 2014, Special Meeting; February 11, 2014, Regular Monthly Meeting;** and the **February 25, 2014, Special Meeting** were reviewed; a motion was made by Councilmember Evans, seconded by Councilmember Gerald, and passed (Councilmembers Baldwin & Larabee absent) to approve the minutes as typed.

FINANCIAL:

Specific Questions on Vouchers:

Supervisor Benson noted that there are a lot more mileage reimbursement requests related to banking which he understands but he hopes that between all of the offices, we are coordinating deposits and runs to the bank so we minimize those charges. The Town Clerk noted that it is only the court staff making the trips (for everyone) and they are going twice a week as required by their office. He noted that he understands that this is being done because the number of hours that we have to deposit court funds is regulated. Supervisor Benson asked Attorney Howard to confirm that at some point, if we could do a one run a week, it would be his preference but if it is not feasible, it is not

feasible. The Town Clerk asked Attorney Howard to confirm the regulations for deposits for her office as they are also regulated.

Supervisor's Report:

Supervisor Benson read the Supervisor's Report and reviewed the other reports provided to the board members. Supervisor Benson noted that there was a question last month regarding the Economic Development Plan; Supervisor Benson asked Cynthia Creech to restate her question noting that he did not have figures in front of him at the time. Ms. Creech responded that she asked for clarification; there was a motion passed stating that the town would pay \$10,000 to pay for services from Behan Planning. It was a \$20,000 contract and that the remaining \$10,000 would be raised through private donations but the second phase of work would not be done until the money was raised. We had paid vouchers for \$15,000 and she had asked for clarification. Supervisor Benson noted that the \$15,000 is correct; on June 12, we paid \$3,000; on September 10, we paid another \$2,000; and on January 11, we paid four invoices totally \$10,000. He noted that the resolution that was passed called for a \$10,000 expenditure on behalf of the town and \$10,000 to be raised by private funds and the town budgeted another \$5,000 this year. So far, the town has received \$7,800 of the \$10,000 in private funding. Ms. Creech asked if that was what was shown here on this month's report and Supervisor Benson confirmed that it was.

A motion was made by Councilmember Evans, seconded by Councilmember Gerald and approved (Councilmembers Baldwin and Larabee absent) to accept the Supervisor's Report.

NEW LEBANON CENTRAL HIGH SCHOOL:

Leonard Brown, NL High School teacher and community resident, explained that the reason he and a large number of students were present at tonight's Town Board meeting is because a member of the Town Board has made derogatory statements about their school district which were also printed in the newspapers and he is here to deliver facts – to set the record straight in regards to the town's heroin drug problem. Mr. Brown addressed a number of inaccurate statements that were made in the press. He noted that these statements insinuate that the heroin problem is in the school and provided the board with data and factual information regarding the students of New Lebanon Central High School.

2014 Drug & Alcohol Survey Statistics:

- 84% of students have never smoked a cigarette,
- 84% have not drank alcohol in the past 30 days,
- 77% have never smoked marijuana,
- 99% have never abused prescription drugs, and
- 100% have never used or tried heroin.

More Facts about New Lebanon Central High School students:

- 70% of the students play one to three sports each year,
- 49 of those students are scholar-athletes (maintain high-honors through the entire sports season),
- New Lebanon has the 2nd highest graduation rate in Columbia County.

Other School Facts:

- Drug dogs come in once a month and random locker searches are conducted by our Sheriff's Department,
- State Police do unannounced random walk-throughs at least twice a month,
- Will be taking advantage of a new County incentive where they will have a full-time sheriff with his office in our school district,
- Has a very active SADD (Students Against Destructive Decisions) group where students take on the responsibility of training, teaching, and standing up against destructive decisions; New Lebanon's SADD activities include:
 - A Cancer walk that raised almost \$800 in one night thanks to the SADD President,
 - Red Ribbon Week, a national observance honoring a DEA Agent who was killed in the line of duty, during which they do a large number and wide variety of programs and activities to educate 7th and 8th graders on the dangers of drugs,
 - Suicide Awareness Week which includes students attending a two-day safe talk conference on suicide prevention,
 - Prescription Drug Awareness Week,
 - Distracted Driving Presentations,
 - Impaired Driving Power Point Presentations,
 - Cultural Diversity & Prejudice three-day training,
 - Bullying Presentations at the High School, and
 - SADD members do Bullying Presentations at Elementary School to up-coming 7th graders.

OLD BUSINESS:

Covenant Circle Road:

Bill Better, Attorney for Covenant Circle property owners, presented the Town Clerk and the Town Board with a petition from the owners of real property fronting and/or abutting Covenant Circle petitioning the Town of New Lebanon to make the necessary improvements to Covenant Circle Road in accordance with NY Town Law §200 in order to have said road adopted as a Town Road, the maximum amount petitioned to be expended for improvement being \$100,000; and to accept dedication of the road upon completion of the improvements.

Councilmember Geraldini asked for clarification the process. Attorney Howard noted that in this case we have the petition. The statute says that the Town Board shall adopt an Order setting the public hearing so the Town Board can take comment. The board would direct the attorney to formalize an order for filing with the Town Clerk and the Town Clerk would publish and post notice of the public hearing.

Councilmember Geraldini asked for clarification of timing – how long do we have before we have to hold the public hearing; how long after the hearing before the board must

act; and etcetera. Attorney Howard responded that the order would be submitted to the Town Clerk for certification then we would give not less than ten days and not more than 20 days public notice of the hearing. Attorney Howard further explained the process noting that the Town Board will take comment from the citizens of the Town at the public hearing. If after the public hearing, the board was inclined to proceed, they would direct the town engineer with the assistance of the Attorney's office and the Highway Superintendent to prepare definite plans and specifications and make a careful estimate of the expense of the project. If the result of the final estimate is within the \$100,000 petitioned to date, the board would adopt a resolution setting it out for bid and establishing the obligation of the Covenant Circle improvement district. If the estimate is more than \$100,000; the board would hold another public hearing. If after this hearing, the board felt this was an appropriate number and the majority voted to do so, the project would proceed subject to the people of Covenant Circle having the ability to petition for a permissive referendum. If the people of Covenant Circle decided it was more than they wanted to pay, they could file a petition saying they want to have a vote on it because it is a little much. Obviously, if that petition is not filed then what they are telling you is that they are comfortable with that number and it would proceed. So it is a several month process.

Councilmember Geraldini asked where in this process can we decide that we do not want to do this at all. Attorney Howard responded that the board could do that after the public hearing.

Councilmember Geraldini noted that he would prefer to have a public hearing held as a special meeting, not as part of the regular meeting; it draws the meetings on too long. Attorney Howard noted you could do that as well. There was a general discussion about holding a special meeting on April 22nd for the public hearing as well as the public hearing for the zoning amendments recommended by the Zoning Re-write Committee.

Proposed Amendments to the Zoning Regulations:

Ted Salem, Chairman of the Zoning Re-write Committee, addressed the Town Board noting that at last month's meeting, the town board authorized the attorney to draw up a proposed local law to in effect codify the recommendations of the Zoning Re-write Committee; that has been done and the Zoning Re-write Committee is asking for the proposed local law proceed to the next step of a public hearing.

Public Hearing: Petition on Covenant Circle & Proposed Local Law Amending the Zoning Regulations:

There was a general discussion about the public hearings and timing requirements for each. The board decided to hold the public hearings at 6:00 p.m. on May 13th and to hold the regular meeting at 7:00 p.m.

Covenant Circle Road:

Highway Superintendent Jeff Winestock addressed the Town Board noted that there is more involved than just plowing road after it is taken over. He understand the process is moving forward and he has been getting contractors to take a look at that

road in order to satisfy him as the Highway Superintendent; he is still kind of blind here on where we are going to go – on whose call – on what is actually going to be done to the road. He noted to the board; number one the slope of that road does not meet specs. He stated that he is not happy with any of it but he did get a quick quote and just for the fabric and gravel that he would like to see on that road, it is almost \$400,000 and another \$300,000 to \$350,000 to put a little paving on it. That does not include any of the culvert pipe replacement or removal of the six to eight inch trees that are growing in the ditches. That is just one quote; he will have multiple quotes. He also noted that he hopes that the residents of the town watch this carefully because it is not a matter of just going up through there and plowing if this all goes through. There is a lot of maintenance involved in any road and he just wanted the public to be aware of that.

Capital Reserve Fund:

Supervisor Benson provided an update on the landfill noting that in either January or February, we resolved as a board to establish a capital reserve fund for the landfill; it is his understanding that the first payment will be made from the County to the Town in the amount of \$75,000 this month.

The Town Clerk questioned the resolution noting that she has no record of the enactment of the resolution nor was it published which she thought was required as it would be subject to a permissive referendum. Attorney Howard noted that he would have to look at that. Supervisor Benson noted there has to be some record because it was on the agenda. The Town Clerk noted that the attorney was going to draft the resolution but that was on February agenda; it was not on the March agenda and it is not in the March minutes. She noted that she just completed them and they are recorded, there was not an action in March. Supervisor Benson stated there was a resolution; they took a vote to establish a capital reserve fund. Attorney Howard noted we should have a resolution; he thought it was just a resolution brought from the board. Supervisor Benson noted that was what he thought; he thought it was a resolution and a board vote. The Town Clerk questioned the Attorney, if it is a capital reserve it needs a resolution that is subject to permissive referendum otherwise you will need to vote on every expenditure subject to a permissive referendum? Attorney Howard noted that what we can do is we can talk about it; we certainly can do a resolution. If it was resolved then that would be something that would normally be published, the abstract of it and it would go out. We just need to make sure we have written confirmation of that. Certainly the board this evening could reaffirm their decision to make sure that that gets done. Whether you put it in this month or the next month it is not going to impact the creation of it. So we would want to make sure that we... Supervisor Benson noted that those funds are coming in the month of April and if we are not going to meet again until May, then he just wanted Attorney Howard to tell him what they need to do so they could do it right now. Attorney Howard stated we would make a motion to formalize the creation of the capital reserve account for the landfill remediation and authorizing the Supervisor to open that account. The Town Clerk asked if the Attorney would be doing the terminology of this action for her and he responded yes. The Supervisor noted that is what he thought they did in February. Attorney Howard noted we will reaffirm that tonight, then we will make sure that resolution and the abstract of

it is given to the Town Clerk so that we can do the publication. The Town Clerk asked if it is subject to permissive referendum; Attorney Howard noted it is money that we have contractually taken in for a specific purpose by the County so we have had that but he will take a look at that. The Town Clerk stated that she is not clear what she needs to do. The Attorney noted he would tell her. Attorney Howard further noted that this board should reaffirm that money is ... (unintelligible – multiple speakers).

Councilmember Evans made a motion to reaffirm the ability to open a capital reserve account, Councilmember Gerald seconded the motion. Supervisor Benson asked all in favor, all responded “Aye”; opposed – none.

Town Clerk Teal asked again for confirmation, it is a capital reserve fund for? Attorney Howard responded the landfill.

Resolution # 10, 2014: Landfill Remediation and Restoration Reserve Fund:

The following resolution was proposed by Councilmember Dan Evans and seconded by Councilmember Chuck Gerald:

Landfill Remediation and Restoration Reserve Fund

RESOLVED, that pursuant to Section 6-c of the General Municipal Law, as amended, there is hereby established a capital reserve fund to be known as the “Landfill Remediation and Restoration Reserve Fund” (hereinafter “Reserve Fund”). The purpose of this Reserve Fund is to accumulate moneys to finance the cost of the remediation and restoration of the former Town Landfill upon said property. The specific remediation, restoration and building to be financed from the Reserve Fund are the remediation and restoration of the subject site in accordance with the closure plan to be developed and approved by the New York State Department of Environmental Conservation, it is hereby further

RESOLVED, that the Town Supervisor is hereby directed to deposit and secure the moneys of this Reserve Fund in the manner provided by Section 10 of the General Municipal Law. The Town Board may invest the moneys in the Reserve Fund in the manner provided by Section 11 of the General Municipal Law, and consistent with the investment policy of the Town of New Lebanon. Any interest earned or capital gains realized on the moneys so deposited or invested shall accrue to and become part of the Reserve Fund. The Town Supervisor shall account for the Reserve Fund in a manner which maintains the separate identity of the Reserve Fund and shows the date and amount of each sum paid into the fund, interest earned by the fund, capital gains or losses resulting from the sale of investments of the fund, the amount and date of each withdrawal from the fund and the total assets of the fund, showing cash balance and a schedule of investments, and shall, at the end of each fiscal year, render to the Board a detailed report of the operation and condition of the Reserve Fund, and it is further

RESOLVED, except as otherwise provided by law, expenditures from this Reserve Fund shall be made only for the purpose for which the Reserve Fund is established. No

expenditure shall be made from this Reserve Fund without the approval of this governing board and such additional actions or proceedings as may be required by Section 6-c of the General Municipal Law and any other law.

This resolution is subject to permissive referendum pursuant to subdivision 4 of Section 6-c of the General Municipal Law.

Upon the question of the foregoing Resolution, the following Town Board Members voted "Aye" or "Nay" for said Resolution:

Roll Call Vote:

Roll Call Vote:	
Councilmember Bruce Baldwin	Absent
Councilmember Dan Evans	Aye
Councilmember Chuck Gerald	Aye
Councilmember Matthew Larabee	Absent
Supervisor Michael Benson	Aye

The Resolution, having been approved by a majority vote of the Town Board, was declared duly adopted by the Supervisor of the Town of New Lebanon.

HR Manual/Employee Manual:

Supervisor Benson noted that Town Board held a special meeting and reviewed the entire manual. The step that remains is just completing modifications as a result of that meeting and other input which are going to be reviewed in the next couple of weeks by the attorney for the town and him and he expects to bring that HR manual to the board for final approval at the May meeting.

LIAISON REPORTS:

Economic Development:

Councilmember Evans noted that Supervisor Benson already made a comment on the Behan Planning report. The Lebanon Valley Heritage Center received a donation from the bank.

Highway Department: ~ no report.

Town Property & Assets: ~ no report.

Zoning, Planning, Code Enforcement: ~ no report.

Town Assessment Office: ~ no report.

Education & Recreation: ~ no report.

Security, Fire, Law Enforcement ~ no report

Justice Court/Constable: ~ no report.

OTHER:

Councilmember Gerald noted that there will be a presentation by Robert Freeman from the Committee on Open Government regarding Open Meeting Laws and other things.

The meeting will be held on Tuesday, April 29th at 7:00 p.m. at the Town Hall, everyone is welcome. There will be a fifteen to twenty minute presentation followed by a question and answer sessions and Mr. Freeman has noted that he will stay until all questions have been answered.

AUDIT OF BILLS:

General Nos. 97 through 132, in the adjusted amount of \$308,207.98;
Highway Nos. 35 through 43, in the amount of \$9,776.70; and
Escrow No. 14-3, in the amount of \$500.00;
As listed on Abstract # 4 of 2014, dated April 8, 2014.

A motion was made by Councilmember Evans, seconded by Councilmember Gerald, and approved (Councilmembers Baldwin and Larabee absent) to pay the above noted claims from their respective accounts.

ANNOUNCEMENTS (of activities or events):

April:

Tuesday, April 29th ~ Committee on Open Government Public Meeting at 7:00 p.m. at Town Hall

May:

Tuesday, May 13th ~ Public Hearing on Petition on Covenant Circle at 6:00 p.m. at Town Hall

Tuesday, May 13th ~ Public Hearing on Proposed Local Law to Amend Zoning Regulations at 6:00 p.m. at Town Hall

Tuesday, May 13th ~ Town Board Regular Monthly Meeting at 7:00 p.m. at Town Hall

PRIVILEGE OF THE FLOOR:

Brittany Warner, NL Jr/Sr High School student & NL SADD President, addressed the Town Board about “the outrageous rumors and comments directed towards the students at New Lebanon High School.” Ms. Warner addressed specific inaccurate statements and the negative impression portrayed in the press. With regard to any **heroin** or drug problem, Ms. Warner noted that we should be bringing awareness to this situation and help find solutions instead of pointing fingers, trying to find someone to blame and noted that this is a town issue, not a New Lebanon Central School District problem.

Bernadette Wagner spoke applauding **Lenny Brown** for coming to the defense of the **NLCSD students** and providing the all the statistics that seems to show that they are doing a great job keeping the kids away from drugs.

Erich Wagner addressed the Town Board noting that he would find the **financial reports (Supervisor’s report)** more meaningful if they were comparative; secondly, he had hoped that the board would be talking about the **noise ordinance**. He stated that he was very interested in this and concerned about an over-weight towards grandfathering certain things. Supervisor Benson responded that the noise ordinance will be on the agenda for the May meeting.

Alannah O'Dell addressed the Town Board regarding **the students of NLCSD** and the inaccurate statements made about them noting that she graduated from New Lebanon last year and she was the former President of the SADD Chapter at NLCSD. She noted that the statements not only made the school look bad but they made the kids look bad – unfairly.

J.J. Johnson addressed the Town Board expressing she was very proud of **the kids** here at the Town Board meeting tonight; getting civically involved and standing up for their school.

Jagat Pandy addressed the Town Board expressing how proud he was of **the young students** getting involved and coming and telling the Town Board what they feel.

Trina Porte addressed the Town Board noting she was thrilled to see the **students and Mr. Brown** here sharing information. Ms. Porte noted that sharing information is really the best way to really know what is really going on and what we have to work with. She also asked **the press** in the room to remember that their words do have an impact and it is very important to be fact checking. Before they put something in the newspaper that could really hurt someone's feelings, hurt their job possibilities, hurt their college options. These things are serious and what they say is serious and she hopes that this is a good reminder for them to do their jobs as journalists; they have a responsibility to actually report the news not just what they think, or what they feel strongly about, or what someone told them. Ms. Porte also noted that regarding the **April 29th meeting with Bob Freeman from the Committee on Open Government**, Mr. Freeman said that as long as people have questions to ask, he will stay and try to answer them.

Mark Baumli addressed the Town Board asking for clarification on the **Capital Reserve Fund** being set up to take care of the landfill – can that money *only* be used to maintain the landfill and improvement at the landfill site or can it be used for any capital project within the town? Attorney Howard responded that it would have to be for the specific purposes for which it is set up which is remediation, restoration and development in connection with that landfill site specifically. Mr. Baumli further noted that he did mention at the end of last month's meeting the possibility of the board discussing the **minutes of the board meetings** and the fact that they are not up-to-date and available to the public. He asked if the board had discussed that or if they were going to discuss that. Supervisor Benson asked the Attorney to address this one. Attorney Howard responded that the Town Clerk is statutorily charged with the minutes and the nature of those minutes, what they say and how they say it, subject to review by the board, are her minutes. Attorney Howard further noted that once those minutes are prepared, they are available for review by any member of the public even if they have not been formally adopted. Mr. Baumli noted that by law they have to be available within a certain number of days. Attorney Howard responded yes, even if they have not been adopted, once they are prepared, they are available so to the extent there are minutes you certainly are entitled to them. And to the extent that there may be

circumstances which resulted in certain minutes not being prepared, there is nothing yet to provide you. Mr. Baumli reiterated that the Open Meetings Law states that they have to be available within so many days. Attorney Howard noted, right, once they are prepared; the Town Clerk does not have a gun to her head. Mr. Baumli noted that unfortunately he did not have his papers with him but that is not what he was told by the people at the Committee on Open Government. Town Clerk Teal noted that the law says fourteen days from the meeting. Mr. Baumli noted it is fourteen days after the meeting, not fourteen days after they are prepared. So the town is in violation of the Open Meetings Law and he wanted to know if that was the town's responsibility to clear that up. Attorney Howard noted that it was the Town Clerk's responsibility. Supervisor Benson noted that there was only one person on the dais that could answer that question so direct the question to the Town Clerk. Mr. Baumli responded no, you cannot fire her because she is an elected official but the board can take action to have her removed from office. Attorney Howard responded that certainly the board has certain rights and jurisdictional authority to take certain action. Mr. Baumli noted that at this time the board chooses not to take any action. Attorney Howard responded that would be correct. Supervisor Benson responded that that was open for discussion; he noted that he has a problem with it but he is one person. Mr. Baumli stated apparently not because they have not discussed it in a board forum yet. The Town Clerk addressed Mr. Baumli and asked him if he would be attending the meeting on the 29th on Open Meetings Law as she will be looking for guidance at that meeting for how she can proceed if she is being prohibited from completing the duties of her office.

Justine Metzler addressed the Town Board noting that she has children in the community that are coming up through the school. She noted that we are aware that there is a problem in town – obviously not just in our town but across the nation – with drugs and alcohol. She was at the last TRACS meeting as a parent and she noted that there was a much more negative portrayal of the last TRACS meeting in the press and on social media than what actually occurred there. Ms. Metzler also noted that, with everything going on and all the students here in this room, she has decided to take the initiative to help bring the TRACS (*Together Reducing Drugs and Alcohol in our Community*) program into our community. She did note it is not a school based program; it is a community based program. She further noted that it is not the kids' responsibility to try to keep drugs and alcohol off the streets. She will be working to bring TRACS into New Lebanon and she hopes to have the support of everyone in the community. She hopes that we can pull together and try to make this a safe place for all of us.

ADJOURNMENT:

A motion was made by Councilmember Evans and seconded by Councilmember Geraldini to adjourn the meeting at 8:15 p.m.

Respectfully submitted,

Colleen Teal, RMC
New Lebanon Town Clerk