

**MINUTES OF THE PUBLIC HEARING OF
THE NEW LEBANON TOWN BOARD
ON COVENANT CIRCLE
HELD ON MAY 13, 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
Jeff Winestock, Highway Superintendent
Tammie Darcy, Tax Collector
Eileen Evans, Bookkeeper/Confidential Secretary
Cynthia Creech, Deputy Court/Assessor's Clerk
Trina Porte, Planning Board Member
Kent Pratt, CEO/ZEO
Joe Ogilvie, Recreation Commission
Thaddeus Flint, Reporter for *The Eastwick Press*
Several members of the public

CALL TO ORDER:

Supervisor Benson called the public hearing to order at 6:10 p.m.

PROOF OF PUBLICATION AND POSTING:

Town Clerk Teal provided the Town Board with proof of publication and posting of the public notice as follows:

PUBLIC NOTICE
TOWN OF NEW LEBANON
COUNTY OF COLUMBIA
PUBLIC HEARING RE: COVENANT CIRCLE

IN THE MATTER OF
COVENANT CIRCLE,
In the Town of New Lebanon, County of
Columbia and State of New York

ORDER

WHEREAS, William J. Better, Esq., attorney for owners of real property fronting and/or abutting a private roadway known as Covenant Circle located within the Town of New Lebanon, County of Columbia and State of New York, on April 8, 2014, presented the New Lebanon Town Board with a petition signed by owners of real property fronting and/or abutting Covenant Circle, thereby petitioning the Town of New Lebanon in accordance with New York Town Law §200 to make necessary improvements to the aforesaid Covenant Circle Road and to have Covenant Circle Road dedicated as a Town Road, the maximum amount petitioned to be expended for said improvement being \$100,000, said sum to be charged against each of the parcels of real property fronting and/or abutting Covenant Circle Road on a pro-rata basis in accordance with applicable law, and

WHEREAS, having received such petition, the New Lebanon Town Board hereby sets and confirms the public hearing for May 13, 2014 at 6:00 pm at the New Lebanon Town Hall, 14755 State Route 22, New

Lebanon, New York 12125, to consider the Petition and to hear all such persons who may have an interest in said Petition

NOW THEREFORE, the New Lebanon Town Board hereby adopts this Order and directs that it be entered into the minutes of the meeting wherein it is being adopted, and further directs that the Town Clerk to publish a copy of this Order in accordance with Town Law §200.

Dated: April 22, 2014

TOWN OF NEW LEBANON

PUBLIC COMMENT:

The following people spoke in favor of taking over Covenant Circle:

William J. Better, Attorney for Covenant Circle,
Joseph Wolf,
Brian Cloutier,
John Sheehy,
Kathy Murnane,
Matt Murnane,
Amy Fiebke,
Craig Trombley, and
Bill Chodkowski.

William Better submitted letters in favor of taking over Covenant Circle from:

Kevin Brady,
Richard & Patricia Riedel,
Herbert Roes,
Scott & Jill Tully,
Gabriel & Frances Baum,
Charlotte Berz, and
John DiStasio.

The following people spoke opposing said proposed local law:

Judy Zimmer, and
Jeff Winestock, Highway Superintendent.

The following persons addressed the Town Board and made the following comments:

Jagat Pandy expressed concern about the lack of respect shown toward the elected officials of the Town of New Lebanon shown by the Attorney for Covenant Circle.

Mark Baumli noted that if the residents of Covenant Circle are willing to pay the cost, whatever that may be, to bring the road up to the Town specifications as required then he is in favor of having the road taken over but he stressed that the board needs to do their homework and make sure that the cost is the true cost of bringing the road up to where it really needs to be; if not, then it should not be taken over.

Andy Howard, Attorney for the Town, addressed the public and the Town Board stating the following:

I just want to say one thing. I do not want to frustrate the public hearing portion of this but I don't want there to be any misconceptions. To the extent there has been prior review or analysis, what I am going to tell the Town Board is that, until such time as we have this public hearing, and should this board decide in accordance with the law that they are going to direct the town engineer to look at this, as they are required to, until such time as that happens and a report comes back of the total cost of this project including the design, including the legal work that is necessary, including the surveying, all of those things; the Town has not bound itself to anything. They have done some preliminary due diligence but statutorily, statutorily after this public hearing – this is for the public - should they feel that it is worth a further look, what would be coming out of this public hearing would be a direction to the town engineer to develop that spec and to develop the estimate. And any numbers that exist right now are not binding until such time as that.

Highway Superintendent Jeff Winestock:

Mr. Better continues saying “we don't want to talk money; we don't want to talk money.” We are going to have the engineers look into this after if you decide to move forward. Well, we already have their engineer and our engineer stating that it is \$100,000 to fix this road, but we don't want to about that now; this is what Mr. Better said.

Attorney Howard responded:

Well, they brought it up but what I am saying is that there has been a lot of discussion about this but there have not been formal proceedings. And so before this Town is going to be bound by anything, they need to hold this public hearing. Should they feel that it is worthwhile to take the next step, they can consider a resolution to direct the town engineer along with my assistance to develop not only the specs but the cost of the whole thing. When that thing comes back, it is at that point, whatever that number is; that number is either greater than \$100,000 or it is less than \$100,000. If it is less than the \$100,000 in the petition, it gets done. If it is more than \$100,000, there is going to be another public hearing. But this town is not bound, if they decide to direct the engineer, that's what I want to be clear about, the Town's not bound by any number until such time as that complete review is done.

Highway Superintendent Jeff Winestock addressed the board and the public:

My name is Jeff Winestock; I am the Highway Superintendent. First of all, I walked in here tonight and this gentleman was passing out this paper and asked me if I would like him to read it for me. It should be thrown out. There are insinuations on there that I should be removed from the process. I don't know if you had time to read that but you might want to read that and maybe ask this gentleman [Attorney Better] to leave. I am going to try to answer some questions that I heard. Somebody had concerns about getting an ambulance and fire truck up there. I have been the Highway Superintendent... have been working here for twenty-nine years, never once, never once have I refused to go on

private property – roads, driveways, whatever it took – to get an ambulance or a fire truck through. Any time they have ever asked me; I would go up on Covenant Circle tonight if need be.

I am a tax payer. Everybody in here is a big taxpayer. I am sick and tired of driving up and down Route 22; I am sick and tired of driving up and down the 'Miracle Mile.' There is not a whole lot of money. I have lots of road here; I am in charge of 47.6 miles of road. I had people up on – I don't know if you got any calls Mr. Supervisor - Ann Lee Lane, Dymond Road, Beacon Hill, Wadsworth Road, people couldn't get through. Those are my roads and I am trying like hell to improve the roads; I have done a lot of improvement.

As far as saying something that I would never take that road over even if it was gold plated; I don't remember saying that. Maybe I did; let's say I did. And that is what one of the insinuations was that I have this personal agenda about this road. I have had this conversation with Craig Trombley; this road does not meet town specs. It is as simple as that. First of all, Covenant Circle had an engineer go up there and look at the road; there were thirty test holes dug supposedly and he described what was in there. I haven't gotten a map on where those test holes were dug but I have no doubt that he probably did dig those test holes. He mentioned something about pipes; there might be sediment in them or something like that. I am getting ahead of myself. I am not arguing the point that there was fabric put down on the road because you can drive up there right now and see road fabric. You do not need to put the road fabric down if you are not going to put quality gravel on top of it. Some of the results are saying two feet of gravel on the fabric; you could put four feet of junk on there and you are going to have a bad road. That road is a bad road; it has nothing to do with an agenda or whether I hunted up there or anything like that. Then we have the town engineer go up there – and yes, I am not an engineer, I never claimed to be an engineer – but I will tell you what, I have had a lot of experience with road gravel. I have had a lot of experience with gravel and road fabric. I have learned the hard way. I have done a lot with that and I have improved these roads immensely; what I have done with the town roads from what they were thirty years ago. So we have Covenant Circle's engineer saying this, then all of a sudden we have the town engineer go up there. And...I don't think they went up there originally but they wrote letters talking about what Covenant Circle's engineer said. And then all of a sudden there was a big meeting up there in December. December 16th I believe and the road was beautiful; it was after a snow storm. Now it's a gravel road. Somebody commented that I don't ever drive up there. Oh, I do. And I have been stuck in front of Mr. Trombley's house buried with my truck - the town truck in front of your house before; and I know other residents that have gone up in there also and have been stuck on the road. But anyway, so we go up there, December 16th I believe it was, there was a meeting of the minds – engineers, the Town Supervisor, Mr. Trombley – and the road was beautiful. The road was beautiful; it was plowed, it was sanded, ditches were fine, culverts were good. Well, I guess, pretty much any of my roads are good then; you can have washouts, you can have potholes, you can have ruts. It snows and you plow them off. After you plow them a few times, they are smooth, they are beautiful. I took fifteen minutes – now there were test holes dug – thirty test holes dug – and there could be some culverts that might need work. I took fifteen minutes this morning and drove up Covenant Circle. I saw five cross-culverts on the road; I have them written down. Four of them, there is no bottom to

them. They are gone, they are shot. I estimate probably ... oh, I can't talk money ... can I talk money, sir? (directed to Attorney Better) You are running this outfit here. Do I ask you or do I ask you, who do I ask? (directed to Attorney Better and Supervisor Benson). Do I ask you or do I ask you? Does anybody know?

Bill Better responded:

You can talk about whatever you want.

Jeff Winestock, Highway Superintendent continued:

Anyway, there are five cross-culverts that range from three feet to eighteen inches; they are shot, they are junk. Okay. It is going to cost a lot of money. The cut is anywhere from three feet to fifteen feet. (Mr. Sheehy stated that they can be relined.) They can be relined but I, again, am not an engineer but I have put culverts in before we got these good culverts (ADS M12 culverts). It came out about fifteen years ago, it was accordion stuff; it was junk. Now we have smooth bore – beautiful stuff. But I have replaced pipes since I worked here and had to replace them since. They rotted out. Now I replace them with plastic ADS M12 and every time I replace them, FEMA, SEMO, everybody says you should make them bigger. I have taken out pipes that one foot when I got here, I have gone to eighteen inches, I have gone to two feet and they are four feet pipes now. I don't know if anybody has seen... and I am not insinuating cause I am not an engineer but I didn't see any pipes ... (interruption) ... but anyway, they should be replaced and they should be larger because every storm we have, I don't know if anybody has paid attention but I do because I am out there shoveling on them... there is a lot of water. But I am just figuring out....bah....I don't want to get you made at me sir. But I am guessing, I am guessing... That is nothing to laugh about. I would like that letter read, it has nothing to do with this; it has nothing to do with this. This is not a personal agenda; I am here for the taxpayers. The past town boards and the past tax payers have listened to me; I have experience. I know that road; I know what it is all about and it is not going to be \$100,000. I am guessing you are going to use up half your money replacing the pipe. That is if whoever is in charge... and that is what I worry about, who is going to be in charge of making that decision if you guys go ahead with the \$100,000. You are not going to fix that road up to town specs. There is one other issue – the grade on that road; everybody seems to stay away from that; that's a bad thing to talk about but I am going to tell you right now, I am not threatening anybody, I would ask that the Town Board to have something written up because I don't believe that you are going to get the grade to town specs on that road and if it does get accepted and I am forced into maintaining that road, I would like something written up stating that I am not liable what-so-ever in any way for this guy to be standing in a court of law, god forbid somebody got hurt, went off the road, got killed and you guys knew that that road does not meet grade. And I don't want that on me, I have enough responsibility. If I am forced into taking the road over, I am forced into taking the road over but I want that signed and I want you all to know that. That is how I feel. Thank you.

Councilmember Baldwin requested that the letter written by the Attorney for Covenant Circle addressed to the Town be read into the record. The Town Clerk read the letter:

May 13, 2014

*Michael Benson, Supervisor
Town of New Lebanon
Town of New Lebanon Town Hall
Route 22
New Lebanon, NY 12125*

Re: Covenant Circle Subdivision Road

Dear Supervisor Benson:

As you know, I represent the owners of lots in Covenant Circle who have signed a petition requesting that the Town, on their behalf, expend the sum of \$100,000.00 to upgrade the road servicing the subdivision in anticipation of the same being taken over by the Town.

It has come to my attention that the Highway Superintendent has chosen to not follow the design specifications outline by the Town Engineer and which were the basis of the petition and public hearing. Instead, in an effort to sidetrack this effort, the Highway Superintendent has solicited bids to interfere with the orderly government process under which this matter is currently moving forward.

In particular, the Highway Superintendent, who is not part of the statutory scheme of Section 200 of the Town Law, has set forth design specifications not described by the Town Engineer or Town Board. I believe that this is being done in his continued effort to derail this project. This has or will directly result in a bid and a budget for work which is multiple times what is contemplated.

The Highway Superintendent's personal agenda appears to be prohibiting him from acting in an unbiased fashion. The Highway Superintendent has a long history of animosity towards this area where he used to hunt and, as such, has been vehemently opposed to accepting this road. Given his personal agenda, he should not be allowed to participate in this matter.

While historically the Highway Superintendent has shown animosity toward this endeavor, it is interesting to note, that he previously agreed to the assumption of responsibility for this road as indicated in the attached communications. The Town of New Lebanon previously indicated to the initial developer of this property (Russ Freeman) and the homeowners therein, that they will take the road over. For unknown reasons, the Highway Superintendent has changed his position (as evidenced by his most recent behavior) and clearly doesn't wish this project to move forward. His animosity and his personal agenda should not get in the way of what government is supposed to do.

The Highway Superintendent has no statutory role in this matter. He should be removed from the equation. Otherwise, I have advised my clients to commence an action or file a Notice of Claim against the Town and the Highway Superintendent. The Highway Superintendent has overstepped his bounds in this matter. His conduct should be examined under the Public Officers Law to determine if it's violative thereof.

Sincerely yours,

William J. Better, Esq.

(see Appendices A – D for documents attached to this letter).

New Lebanon Town Board
PH on Covenant Circle
May 13, 2014
Page 7 of 7

All persons desiring to be heard, having been heard, a motion was made by Councilmember Larabee, seconded by Councilmember Evans, and approved to close the public hearing at 7:06 p.m.

Respectfully submitted,

Colleen Teal, RMC
New Lebanon Town Clerk

APPENDIX A

TOWN OF NEW LEBANON

PLANNING BOARD
ZONING BOARD OF APPEALS
CODE ENFORCEMENT OFFICER/BUILDING INSPECTOR
P.O. BOX 328
NEW LEBANON, NEW YORK 12125
TEL. (518) 794-8884
FAX (518) 794-9694

DEAN HERRICK
CODE ENFORCEMENT OFFICER
BUILDING INSPECTOR
FLOOD PLAIN OFFICER

CHARLES GERALDI
ZONING BOARD OF APPEALS CHAIRMAN
RAYMOND HERRMANN
PLANNING BOARD CHAIRMAN
LOUISE I. WATERS
PLANNING/ZONING CLERK

August 08, 2000

Dear Planning Board Members

The Next Planning Board Meeting will be held on August 16, 2000 at 7:30 P.M. at the Town Hall the agenda is as follows:

- 1.) PLEASANT HILL EXTENSION - MAJOR SUBDIVISION - PUBLIC HEARING
Applicant(s) would like to subdivide the property located on Covenant Circle (Private Road) off of Hand Hill Road and County 5A in the Town of New Lebanon into 6 parcels.
- 2.) LAND OF TINGER - MINOR SUBDIVISION
Applicant(s) would like to subdivide their property into 2 parcels. The property is located on 115 French Hill Road in the Town of New Lebanon.
- 3.) PHIL GELLERT
Applicant would like talk to the board about a shared driveway.
- 4.) MOBILE HOME ORDINANCE
The Town Board has asked us to write a new ordinance and submit it.
- 5.) MINUTES
Approve the minutes for July 19, 2000.

UPCOMING MEETINGS:

- Sept. 05, 2000 - Zoning Board of Appeals
- Sept. 11, 2000 - Town Board
- Sept. 20, 2000 - Planning Board

Very truly yours,

Louise I. Waters
Planning/Zoning Clerk

COPY

TOWN OF NEW LEBANON
PLANNING BOARD
ZONING BOARD OF APPEALS
CODE ENFORCEMENT OFFICER/BUILDING INSPECTOR
P.O. BOX 328
NEW LEBANON, NEW YORK 12125
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DEAN HERRICK
CODE ENFORCEMENT OFFICER
BUILDING INSPECTOR
FLOOD PLAIN OFFICER

CHARLES GERALDI
ZONING BOARD OF APPEALS CHAIRMAN
RAYMOND HERRMANN
PLANNING BOARD CHAIRMAN
LOUISE I. WATERS
PLANNING/ZONING CLERK

August 08, 2000

BRUCE HAND
P.O. Box 51
West Lebanon, New York 12195

UNDER CONTRACT WITH:
NORTHTREE - FISHING BROOK ASSOCIATES, INC.
191 Water Street
Willaimstown, MA 01267

Re: Public Hearing - Bruce Hand - Northtree - Fishing Brook Associates, Inc.
Major Subdivision

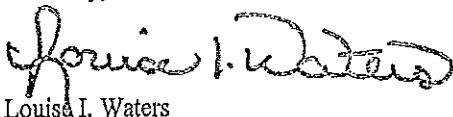
Dear Applicant(s):

The New Lebanon Planning Board will be holding a Public Hearing on your behalf for the purpose subdividing your property into 6 parcels located on Covenant Circle (Private Road) off Hand Hill Road and County Route 9A in the Town of New Lebanon.

The Public Hearing will take place on August 16, 2000 at 7:30 P.M. in the Town Hall. Anyone wishing to speak will be given an opportunity to be heard.

If you have any questions, please do not hesitate to call.

Sincerely,



Louise I. Waters
Town of New Lebanon
Planning/Zoning Clerk

LIW/lw
cc



TOWN OF NEW LEBANON

BOX 328
NEW LEBANON, NEW YORK 12125

Supervisor

Albert I. Wheeler
(518) 794-8024 (home)
(518) 794-8889 (office)

Town Clerk

Barbara Felter
(518) 794-8888 (office)
(518) 794-9724 (home)

Highway Superintendent

Jeffrey Winestock
(518) 794-8580 (office)
(518) 794-8919 (home)

Councilmen

Lawrence Benson
John King
Margaret Robertson
John Trainor

TO; The Planning Board

FROM: Jeffrey Winestock
 Highway Superintendent

REC'D
AUG 16 2000

This letter is to inform you that I have looked at the road into the Pleasant Hills Subdivision, and have no problem with the way it is constructed.

Jeffrey Winestock
(RB)

TOWN OF NEW LEBANON

PLANNING BOARD
ZONING BOARD OF APPEALS
CODE ENFORCEMENT OFFICER/BUILDING INSPECTOR
P.O. BOX 328
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COPY

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BUILDING INSPECTOR
FLOOD PLAIN OFFICER

CHARLES GERALDI
ZONING BOARD OF APPEALS CHAIRMAN
RAYMOND HERRMANN
PLANNING BOARD CHAIRMAN
LOUISE I. WATERS
PLANNING/ZONING CLERK

August 29, 2000

To Whom it may concern:

Pleasant Hills Phase I was approved on March 12, 1993.
Pleasant Hills Phase II was approved on October 18, 1995.
Pleasant Hills Phase III was approved on August 16, 2000.
Pleasant Hills Extension was approved on August 16, 2000.

All Phases of the Pleasant Hills Subdivision has been approved by the Planning Board as of this date.

Louise I. Waters
Louise I. Waters
Planning/Zoning Clerk

LIW/lw
cc

Pleasant Hill
Extension
8/16/2000
Phase III
8/16/2000
Phase II
10/18/95
Phase I 3/12/93