

**MINUTES OF WORKSHOP ON PETITION & PROPOSED LOCAL LAWS RE:  
NOISE CONTROL AND REGULATION OF MOTOR VEHICLE RACING OF  
THE TOWN BOARD OF THE TOWN OF NEW LEBANON  
HELD ON JULY 28, 2015**

**Present:** Michael Benson, Supervisor  
Dan Evans, Councilmember  
Chuck Gerald, Councilmember  
Matthew Larabee, Councilmember  
Irene Hanna, Councilmember

**Recording Secretary:** Cissy Hernandez

**Others Present:** Howard Commander, Lebanon Valley Speedway  
Heather O'Dell, Lebanon Valley Speedway  
John Dax, Petitioner  
Dan Lynch, Petitioner  
Gary Millett, Petitioner  
Gail Heinsohn, Reporter for *The Chatham Courier*  
Approximately 35 members of the public

**CALL TO ORDER:**

The meeting was called to order at 7:00 p.m. by Supervisor Benson.

Supervisor Benson thanked everyone for attending and noted that this is a workshop, not a formal town board meeting; it is not a public hearing. His intent is to hear from both sides of this issue; he noted that the town has been kicking this around for a couple years of his tenure and as far back as 1982. He thinks the town board's role is to try to hear from everybody; particularly the residents and the business of the town and to that end he wants to try to keep this brief, to the point, and civilized.

Supervisor Benson noted John Dax, Petitioner, would start by reviewing the petition and two proposed local laws that he presented to the Town Board (see Appendix.)

*John Dax* addressed the town board explaining that they are a group of New Lebanon residents and residents that live in adjoining towns that live in proximity to the Lebanon Valley Racing facility and are impacted one way or another by racing activities – noise and/or traffic. Mr. Dax noted that he is not here as an attorney; he does not represent any group or any individual. He is here as a member of a group of concerned citizens that are asking the Town Board to address some of the issues in what they think is a balanced way. They are here because they are concerned about the adverse impact of unrestrained racing activities on the quality of life in New Lebanon and the negative impacts on New Lebanon's future as a welcoming town in which to live, recreate, and visit. He noted that personally he has been very active in community matters over the years; he is a past member and chair of the Zoning Board of Appeals (ZBA), a member of the Zoning Re-Write Committee, and a member of the Comprehensive Planning Committee. In those contexts and in those capacities, he has witnessed how the Lebanon Valley Auto Racing facility affects this town both positively and negatively. Tonight their intention through presentations by several members of this group is to provide the board with information and hopefully to answer any

questions concerning the two proposed local laws that they put before the board. They will start with the perspectives of long term New Lebanon residents and residents of adjoining towns. Next, they will provide information that compares Lebanon Valley's seasonal racing schedule with the schedules of other racing facilities in New York State. Then, they will go through the two laws that they have proposed in some detail and hopefully invite some dialogue and some questions from the board. Mr. Dax introduced Dan Lynch, a long-term resident of New Lebanon.

*Dan Lynch* addressed the Town Board stating that he lives with his wife Clellie on Gale Hill Road about a mile from the track; they have been there since 1984, thirty-one years. He said it is a wonderful town with wonderful people. He wanted to draw the boards' attention to how the activities at the track have changed. When they first moved here, racing was largely limited to the speedway running on Saturday night and the dragstrip running on Sunday; in 1984, there were 55(\*) total racing days, 32 drags and 27 stock cars. In the 1990s, the drag strip expanded and "test and tune" was introduced which expanded the noise level over more days. "Test and tune" means the drag racers test and tune their engines. Those engines are un-muffled; they are very large. Testing and tuning now starts very early; it starts at 9:00 a.m. and sometimes earlier on Sundays. Over the years, he thinks that some accommodation has been made. He thinks Mr. Commander arranged for mufflers to be put on all the speedway cars. But since noise seems to be an important part of the experience, we listen to the loud speakers being turned up and we can hear the announcers calling the race. The speedway sometimes runs until 12:00 or 1:00 in the morning. There may be good reasons from the proprietor's point of view, maybe some previous races have been cancelled and he wants to get them in but none-the-less, being so close to the track, and some people live a lot closer, it is very very annoying to be lying awake listening to the cars run until 1:00 in the morning. As he mentioned before, the drag strip has these "test and tunes." Most of the races are on Sundays, but the "testing and tuning" can happen at any time of the day and it fills the valley with noise. There is one final point, drifting has been introduced. Drifting is when cars are racing around the parking lot and as in the movies, you have the cars going around corners with the tires squealing. Now the squealing of tires is a danger alert: "what is going on?" There are five days of drifting at the track and he thinks there should be none. To sum up, we now have racing on Wednesdays, Saturdays and Sundays from April until the end of October; there are some Tuesdays and some Fridays. They certainly believe that their friends and neighbors enjoy the track; there really is not too much to do in terms of excitement here. The track was in operation when he arrived 31 years ago; people enjoy it but it should be regulated.

*Bill Davis*, resident of the Village of East Nassau, addressed the Town Board on behalf of those residents in the neighboring communities that border New Lebanon who are adversely affected by the noise from the speedway. The speedway is at the Western edge of New Lebanon; it is at the confluence of the two Counties (Columbia and Rensselaer) and the towns of Nassau, Stephentown, and Chatham. For those in these towns and villages that closely border the track, the noise from racing events is constant and intense. One close by resident has spoken of her house physically shaking from the noise of a recent event. As a resident in the Village of East Nassau, his home is a little over a mile and a half

away as the crow flies and the noise is neither ambient nor forgettable. Adverse noise from the track is routinely heard north in Hoags Corners, almost four miles away in Malden Bridge, along Route 13 in Rayville towards Old Chatham, the eastern edges of Nassau, north along Garfield Road, east toward the center of Stephentown, and in areas of Chatham and Canaan. With the variables of wind, topography, humidity, and distance; there are probably areas they are not aware of where it is heard. Acceptance over many many years that the frequency and duration of events at the track were at a peak was mistaken as the schedule and types of events have increased, it has moved beyond co-existence. Without some restrictions to mitigate the current noise and curtail further expansion, it will continue. They ask the Town Board in the interest of good government to consider the impact on neighboring communities and respect the interests of other towns and villages.

*Gary Millett*, New Lebanon resident, addressed the Town Board regarding some research they did on other race tracks in New York; they searched the internet and called and spoke with other race tracks about how the different towns deal with noise and how they regulate it. Mr. Millett read the following information:

*We have gathered the following information about other New York State dirt oval racetracks from racetrack websites and from speaking to racetrack staff. According to the information compiled here, on **all** other dirt oval racetracks in New York State, regular racing is **one day a week**, with some additional special events on other days. In every case where the information was available, with one exception, we found that the events end at **11 pm or before**, either by official agreement with the host town (“a curfew”) or by the decision of the track itself. As one spokesman said in an email: “We do have an 11:00 pm curfew that we are required to abide by with the Town. So in summary – Typically our show ends around 10:00 pm but we never go beyond 11:00 pm due to our required curfew.” (Greg Emerson, Canandaigua Motorsports Park, 7/28/15)*

*There are five other drag strips in New York State. So far as we can discover, **no other racing facility combines a dirt oval track with a drag strip.***

*By contrast, both the Lebanon Valley Speedway and the Lebanon Valley Dragway schedules are very full: during the season, the Speedway has events scheduled **4 days per week**, with the occasional fifth day; at the same time, during the major part of the season (May – September), the Lebanon Valley Dragway also schedules events **4 days per week** with the occasional fifth. Drifting takes place generally one day per month. During some weeks in the season there are events 5/7 days or 6/7 days.*

*Events at the oval seem to have no set or required ending time, and sometimes extend as late as midnight or 1 am.*

Mr. Millett stated that the two tracks often operate at the same time but with the dragstrip starting at 10:00 in the morning running through the day and then the oval track starting around 5:00 and running until midnight or later. Mr. Millett referenced the tracks listed on a handout he provided that is attached as *Appendix A*. He noted that almost every track that they came across had an agreement with the town of some kind. The Lebanon Valley Speedway runs generally Wednesdays, Fridays, Saturdays, and Sundays from April through September plus four weekends in October and a swap meet in November. If you

count the swap meet, they are running for eight months a year. The dragway runs Fridays and Saturdays plus one Thursday in April. From May through September, the speedway runs Wednesdays, Fridays, Saturdays, and Sundays plus some Thursdays. May through September, dragway events are four days a week. In April and October, events are three days a week. And in some weeks, there are events five out of seven days and six out of seven days. This in addition to the speedway events and drifting once per month except September. The dragway includes races, test and tune, and track rentals. Friday, the events are generally track rentals. Saturday is test and tune. Mr. Millett noted that his hand-out (Appendix A) notes weeks where events were five days or six days out of seven. He noted that the drifting may not sound like much but to local residents that live nearby, it is really annoying – the squealing of the tires and it goes on for hours when they are doing it on an otherwise pretty quiet day at the race facility. Mr. Millett stated, to review, most tracks in New York State that they were able to talk to and find information on have one night a week of scheduled racing with one or two or three special events through the season. They have no dragstrips, no racing after 10:30 or 11:00, and they all have shorter seasons than the Lebanon Valley Speedway. Three to six months are the normal seasons and Lebanon Valley Speedway is seven months – eight if you count November. Each of the tracks they talked to and researched has agreements with the towns for specific regulations on when they can operate, how long they can operate and most towns have a way for residents to contact through a telephone number, website or a form to fill out about excessive noise when they are bothered by it. We are the only town in New York State to endure this kind of frequency, duration and quantity of noise from the speedway. We in fact have two tracks. Mr. Millett noted that most of the time when they run late, it is his understanding is because it was a rained out event earlier and he personally does not see a reason why they should have to re-run a race that was rained out; it is not like a cancelled baseball game. The track runs for the year, they acquire points that at the end of the year and each night there are winners declared. So he sees no reason that they should have to extend racing time because of rain-outs.

John Dax addressed the board noting that they had heard from three people that somewhat spelled out what the issues are; what the problems are that lead them to try to come up with a way to address the track in a way that they think is balanced and brings some sense of balance to the town. So they drafted two proposed laws (see Appendix B & C). He noted he wanted to take the board through the proposed law regulating motor vehicle racing and related activities first (Appendix B). He stated that just to further make the point that others have made, he read from the opening paragraph of article in the Chatham Courier from July 16<sup>th</sup> reporting on racing on Saturday, July 11<sup>th</sup>:

*Saturday night was a long night at Lebanon Valley. The schedule had double features for the Modifieds and fireworks on tap due to the July 4 rainout. Despite the card taking nearly six hours, there were some happy drivers at the end of the night.*

Mr. Dax was aware that night of the racing going until at least 12:00 and maybe quite a bit beyond 12:00, so what they tried to do with the proposed local law regulating motor vehicle racing and related activities is to put some times of day and days of the week restrictions on the activities much like those other towns have only much more generous to the track operations than in the other towns that they researched. Mr. Dax noted that Section 1 is a

statement of legislative findings which are the typical findings in any sort of public health and safety legislation that a town board or any other legislative body would adopt. Section 2 talks about what the law applies to; it applies to motor vehicle racing as defined in this law and it defines it whether or not it is conducted at a motor vehicle racing facility. Then there are a series of definitions that were drafted very carefully (Section 3). Mr. Dax reviewed the definitions. Section 4 are the restrictions; Section 5 is the enforcement and penalty provision. Mr. Dax noted that they specifically did not want violations to simply be a cost of doing business which it could be if the fines are not steep enough and if there is no ability to get injunctive relief.

Mr. Dax asked if the board had any questions on that proposed law or if the board just wanted him to go on to the second one (proposed law for noise control – Appendix C). Supervisor Benson asked Mr. Dax to review the second law and then he will ask each board member if they have questions of each person that has spoken.

Mr. Dax reviewed the proposed law for noise control (Appendix C). He noted that this proposed law is a generally applicable noise ordinance and it was drafted based upon a lot of different resources. They looked at the State of New York DEC's noise guidance guidelines that are used in the SEQR process; there is no statewide noise code in New York. New Jersey has a statewide noise code and they looked at that. They looked at other noise codes that other towns in New York State have; they also looked at professional studies that talk about noise and how to measure noise. This proposed law is not limited to noise coming from the race track; it does not talk about the race track and it specifically exempts what they call "typical rural activities" including activities such as, but not limited to, agricultural activities, hunting, logging, cutting firewood, mowing lawns, construction or similar activities. Those activities would not violate this law provided that they are done during normal daytime hours. He reviewed the definitions noting that these tend to become quite technical because one of the problems with noise codes is that they say what the limits are but they do not say how to measure them. The measuring of noise is a technical matter; it is not easily done. They tried to address that by coming up with some definitions of what they are targeting and how it is going to be measured. It is going to be measured either at a [noise source] property line or at a receiving property line; so it can be measured at the border of the property that is generating the noise or it can be measured far away on somebody's property that is hearing that noise. One of the problems in this town is the topography, a noise might be limited at its point of source through a sound wall, for example, and yet that may just drive the noise up to a higher topographical level and other people might hear noise that they otherwise would not have heard but for the building of that sound wall. So they thought it was important that the noise ordinance could be enforced by measuring the noise at the receiving property. Of course that raises the problem of how do you know that you are measuring just the noise that you think you are having a problem with? That requires measuring the background noise without the offending noise. Taking the race track for an example, on a Monday night with nothing going on, if you can grab the same kind of weather conditions – humidity and winds, for example – you measure the ambient noise whether it is at the noise generating property boundary or at the receiving property. You find out what ambient noise – the background noise – is in the absence of, for example, racing activity. Now, on another night if the conditions are reasonably the same, and that is going to be somewhat judgmental by an

acoustical engineer, when you add that noise to the background noise, what is the result and that is how you would actually enforce this code. The way it is drafted, this code can only be enforced by a professional acoustical engineer. This is not going to be anecdotal; “it woke me up in the middle of the night and I am complaining about it.” It has to be enforced by an acoustical engineer which means it is going to be time consuming and somewhat expensive. So they came up with two ways to do it: if a complainer wants the town to enforce it, the complaining party is going to have to put the money down that is going to cover the cost of the acoustical engineer; otherwise, the complaining party can hire the acoustical engineer themselves and incur that cost and the acoustical engineer will have to file an affidavit with his or her report. It will be a sworn statement by a professional person who is putting their reputation on the line. That report is going to say here is what we measured in the absence of the noise activity, here is what we measured in the presence of the noise activity, and does it violate the standards. The standards are set out in Section 3 - Noise Limits. Mr. Dax stated that the standards or limits proposed are quite typical of similar codes elsewhere. The proposed limits during daytime hours (7:00 a.m. to 7:00 p.m.) are 65 dB(A) measured over a twenty minute continuous period or an increase of 6 decibels over the background noise that is measured in the absence of the sound. A spike of noise that is not repeated or a one second or two second blast of noise that is not repeated is going to totally disappear into the background. At night, from 7:00 p.m. to 7:00 a.m., it is 55 dB(A) or a change of 3 decibels or more over the background noise. Those are the standards they are proposing. Mr. Dax noted that the word construction probably needs to be added to the list of exemptions, it somehow did not get repeated in this section [Section 4]. Section 5 discusses how the acoustical engineer is going to actually take the measurements; the machines that they use to collect sound are computers that record the sound and keep a continuous log. Later they go back into the computer program and analyze it in many different ways. Mr. Dax noted that they will collect sound over intervals of one second, twenty minutes, sixty minutes and twenty-four hours. One of his acoustical engineering colleagues expressed that one second was totally crazy, we would be awash in data and we would not know what to do with it so that is a mistake on his part [remove the one second interval from the measurement methods in Section 5]. The enforcement [Section 6] is going to depend on the report by the qualified expert. He or she is going to make that an affidavit saying here is my report; it is accurate; this is how I conducted it; and I determined that there was a violation of “x” nature. Then it gets turned back to the Code Enforcement Officer and the Town to determine how to go ahead and enforce it by seeking penalties. Mr. Dax offered to answer any questions to the best of his ability.

Councilmember Hanna asked Mr. Dax if he was only measuring continuous noise with the noise ordinance. For example, if she has a neighbor that is playing a radio really loud for hours at a time and it was really annoying, how would that work under this ordinance? Mr. Dax responded that would be continuous noise. Councilmember Hanna responded true, but by the time the expert comes, it would not necessarily be going on any more. Mr. Dax noted that she is right and some towns solved that by simply having a very general ordinance that says annoying noise is prohibited. However, his question in that instance is what does that mean? There are town codes that have those kinds of generalized standards. For our purposes, he thinks that would be trouble to have something so subjective that it cannot be measured by an expert. On the other hand, if your neighbor has a practice of doing it, then

this would work. You could get the noise expert to take a measurement while the radio is being operated too loudly. However, it is continuous noise in the sense that if it is going on for hours; if you mean continuous in repetitive throughout the season or year after year, you are right in that this might not capture things that are very short lived and the town could consider some more generic standard but when it came to addressing the noise coming from the racing facility anything that looked like a subjective standard struck them as being a non-starter.

Councilmember Evans stated that the noise control law seems to be very well put together; there was something submitted a year and a half ago or so and he had a few questions about that but they seem to be answered in this one. He is just curious to hear from the Speedway as far the motor vehicle racing law but he does not have any direct questions for the presenters.

Councilmember Larabee asked Gary Millett about his "speedway facts" handout. He noted that it shows the speedway as running on Wednesdays, Fridays, Saturdays and Sundays; he asked what events are on Wednesdays and Fridays normally. Mr. Dax stated that "test and tune" is on Wednesday. Councilmember Larabee noted that is at the Dragway and it is listed on Mr. Millett's handout under the speedway. Councilmember Larabee addressed Mr. Millett noting that on his "fact-sheet," he lists the Speedway as operating Wednesdays, Fridays, Saturdays, and Sundays and also lists the dragway as operating Wednesdays, Fridays, Saturdays, and Sundays; he was asking what events are at the Speedway on Wednesdays and Fridays. Mr. Millett stated he was not sure, he would have to check the schedule, special events maybe? Councilmember Larabee asked, nothing consistently then? [Unclear conversation in the audience.] Unknown person commented that Monster Trucks would be one of them that occurs on Wednesdays. Councilmember Larabee noted that is once a year. Unknown person continued noting that she believed that sometimes they have track rentals too or somebody comes and uses the track. Unknown person commented not on Thursdays and not on Wednesdays. Mr. Dax noted they would get back to Councilmember Larabee with more specific answers. Mr. Millett noted he does not have the raw data in front of him and possibly it is a mistake; they reviewed all the schedules on the internet and the printed schedules plus their notes of... Councilmember Larabee noted that they may have interchanged it with the dragway schedule. Unknown person commented that a radio advertisement last week said that they have a Wednesday event where you can pay twenty dollars to race as fast as you want with your car on the speedway. Unknown person commented that is on the dragway.

Councilmember Geraldi noted he did not have any questions at this time.

Mr. Dax asked Supervisor Benson if he had any questions. Supervisor Benson responded that he wanted to give Mr. Commander an opportunity to speak. He noted that the last agreement between the Town and the Speedway is dated March 3, 1982 and he does not think that there is anybody in this room that would not acknowledge the fact that things have changed. However, optimistically, his hope was that they could take a look at the 1982 agreement and take a look at the proposed laws and he had hoped that they could come to some type of an agreement. From a personal standpoint, he is a businessman and he values business; he gets kind of unnerved at the idea of certain regulations. He can recall when he first met with Mr. Dax's group; he got a mission statement put in front of him and there

were some things in the mission statement, quite frankly, that scared him and he thinks he said that to them right on the spot. But ultimately what would be best here would be to come to some type of a mutual agreement. He said it almost feels to him like to get to that, we are going to need some type of an outside force, some type of a mediator or facilitator or something. He does not know if that has ever been tried but he does know that from a practical standpoint, we have an agreement that is thirty-three years old and he thinks that that agreement, for a period of time, was good for both parties. He thinks any agreement that is good is good for both parties. [Unclear – overtalking] Someone commented that the word perpetuity which is in the agreement is the word that no one is bringing up. Supervisor Benson stated that at a bare minimum, from his standpoint, and he is going to ask this same question of Mr. Commander, what is their vision for trying to get to some type of an agreement? At some point, this board should take some kind of responsible action because this matter is before us; that is the right thing to do. Whether or not everyone here agrees with him on that remains to be seen. What is their [directed to Mr. Dax] vision for how we get to some type of an agreement that respects everybody.

Mr. Dax responded saying that first off, mediation has been tried. He participated along with Tony Murad and he thinks Jack Yurish. They were trying to mediate between Mr. Commander and a different group and that actually ended up bringing a law suit and that didn't work; that mediation didn't work. His perspective today is that this is a town problem; it is not going away. And this is a town problem that has come to the town board because you are the legislative body; you are responsible for looking out for all the interests in this town. That does not mean just protecting his interests or just protecting Lebanon Valley Auto Racing's interest; so the board may have to be the ones to drive the balance and the board may get sued when they do it. Somebody from either side may say that they don't think that law is appropriate or they say it is not sufficient or it is draconian and there may be a lawsuit. That may be what the board has to face to get through this but what they see is they need to bring the racing facility into some kind of balance where it looks a lot more like the racing facilities in other parts of the state that seem to succeed on very minimal schedules and they are not expecting that. They think they have taken a balanced approach; they understand that the owner of the race track is entitled under the constitution to earn a return on his property and they respect that. What they are suggesting, however, is that it does not come at the expense of being able to do whatever he wants to do, whenever he wants to do it, no matter what. There are other people in this town that have other interests, even people that are racing fans do not always like to hear racing when they are not at the racetrack. It cuts across the board. He thinks the town board needs to take this by the horns and resolve it and if they can reach an agreement, that is great but if struggling for an agreement is just going to be a way of running the clock, they are not going to be happy with that. And there are a lot of people that feel that way so if an amicable resolution is possible, good; but it is going to have to be meaningful and not nibble around the edges. That 1982 agreement only concerns jet cars and that is kind of like a red herring or the low hanging fruit; there are many cars that make a lot of noise besides jet cars and also it is the schedule that is the problem as well as the noise itself. Another point that he would make is that if there is going to be a resolution one way or the other, it ought to be codified in the law. Quite frankly, that agreement is not enforceable. That is an agreement between the Town Board then and it is not an agreement

by this board and even though he thinks the race track owner has respected that agreement, as a matter of law, it is not the equivalent of law. Town boards cannot make laws by contract; it is just not allowed. There is a way to adopt laws and there is only one way to adopt laws and you have to do it that way if you want something to be enforceable by the next town board and the next town board.

Supervisor Benson noted that it is an agreement and certainly the argument that it is not something that can bind future boards can be made. He is aware of that and it also does pertain to ... but it is the only piece of paper that exists.

John Dax noted that is what worries him that it is the only thing. The racetrack is unrestrained right now other than that.

Supervisor Benson noted that he would like to just avoid the town spending money on lawyers. Personally, he does not see that as the way to get to a resolution.

Mr. Dax said it is great if you can avoid it but sometimes you can't. Sometimes town boards have to make tough choices and they get sued.

*Howard Commander*, owner of Lebanon Valley Auto Racing, addressed the board noting that he is just seeing these documents for the first time. However, he does have a few comments that he can make. First of all, somebody said there are no other tracks in the state that have a dragstrip and speedway and that is totally false. He used to own Lancaster Speedway in Buffalo and they had a dragway and a speedway there; he sold it and it is still operating. Shangri-La Racetrack has both a dragstrip and a speedway. There are new proposed tracks that are coming in with racinos which is a casino with a racetrack and either dragstrip or a road course on it. There is one proposed right now in the Town of Brewerton, New York so there are racetracks with speedways and dragstrips in the State of New York.

Mr. Millett stated that he might have misspoken but he could not find any other in the research.

Mr. Commander noted that he just gave him three, if he would like more, he can stop down and see him and he will give him a whole list.

Supervisor Benson noted that he wanted to give Mr. Commander the opportunity to speak uninterrupted the same as everyone else.

Mr. Commander noted that they do run more than a lot of facilities in the State of New York and they run more than a lot of facilities in the U.S. but if you look at the tracks that run seven days a week, you cannot get a time to test and tune at either the dragstrip or the speedway because they are running seven days a week. Lebanon Valley tries to model themselves to be one of the biggest small tracks in the country. They don't compare themselves to a lot of the racetracks. They have expanded – not that much but they have expanded – they are doing drifting now because it is a young man's sport. It is kind of cheap and the kids are having fun doing it. They do run test and tune on Wednesday nights but they have been doing that for thirty years. Mr. Commander noted they have drifting on Friday nights and they have had some track rentals but they have had track rentals for thirty years. Not as many as they have now, but they have had track rentals for many

years. *Heather O'Dell*, Lebanon Valley Speedway, noted these are mostly muffled street cars, they are not dragsters.

Ms. O'Dell noted that while she appreciates everything that was said, the portrayal of things is a bit inaccurate for her. Mr. Commander noted that he is not prepared to get into the details of the proposed laws tonight because he has not read them over but, he said, a lot of what was said by the people proposing this new law, for example that they run until 12:00 or 1:00 in the morning is not accurate. Heather O'Dell noted that they do not. Mr. Commander stated that Mr. Dax said that he would let them race from 5:00 to 10:00 on a Saturday night and that is basically what they do. [overtalking – unclear]

Heather O'Dell stated that she is a racer; she works for Mr. Commander but she also has racing in her household. And here is the situation as she sees it, a gentleman asked, why is it necessary to make up a race. You have \$300,000 worth of racing equipment sitting at your house; the only way to recoup that is to race or you have a contract with a sponsor that states that you are obligated to race at a facility a certain number of times. For instance, they have one with Sprint PCS which gives them three medical leaves for the season; that is it. It does not account for rain outs. At the end of the season, they have to go to other tracks because Mr. Commander did not have enough races with the rainouts. They had to pack up and go all over the Northeast at the end of the season to all of the tracks that are listed on here that are being said are only running through September, what they just don't post on their websites is they race through November. That is what she has to do; that is what a racer has to do. Additionally, those same racers come into your town and buy the fuel from your stores, buy food from your restaurants... [disruption] It is true. Our racers are loyal people and they know that there is a problem with the town and they will forego buying in their hometown to stop at these stores and buy from them. That is what our racing people do for your town. [disruption] Ms. O'Dell stated that bought a house next to a railroad track three years ago; it goes right through her front yard, 385 days a year, 7 days a week. She knew it when she bought the house and she is not calling CSX every day telling them to stop.

Supervisor Benson noted we needed to stay on track. Ms. O'Dell noted that this is on track; she has been dealing with this since the moment she started working for Mr. Commander. [*Unknown person asked if they could get names please and another person asked and where people live*]. Ms. O'Dell stated her name is Heather and she lives in Pittsfield; she also noted that at one point she was in one of the studies (fifteen mile radius); she is 14.3 miles from the track.

**\*\*Mr. Commander** stated that this year they did get rained out two Saturdays in a row. They ran their fireworks on July 11<sup>th</sup> he thinks it was. If he had to swear to it in court, they were certainly done before midnight but people here are saying 12:30 or 1:00; they do not race that late. Maybe there was traffic leaving or something but the cars are not racing. He personally runs the races. Last Saturday night, they were done at seven after nine (9:07) and everything went well. If they have an injured driver, they have to call ambulances and get people removed; they can burn up an hour in a heartbeat. When you get five to seven hundred kids at the race track on Saturday night, you don't want to keep them there late. We make every effort to get everything over as soon as we can. They cancelled their Lebanon 200; he stated to Supervisor Benson, you can remember that when you first came

into office, they ran until 1:30 in the morning once. The 4<sup>th</sup> of July at Daytona it rained and they did not finish until 3:00 in the morning. They had 30,000 fans sitting in the stands after the rain; they finished the event. A few weeks ago at Eldora in Ohio (Tony Stewart's racetrack), they did not get started until 12:00 and they finished at 3:30. They don't try to run those kind of events; they could and they could bring in five to ten thousand people but they don't. They run weekly, they are a weekly racetrack. They bring nearly 10,000 racers in to town each year and as Heather stated, they have probably \$300,000 tied up in a racing operation. The economic impact here is somewhere between sixty and ninety million a year with racing engines, trucks, trailers, and everything is done. Mr. Commander noted that he has not done an impact study in several years but it is about 60 million dollars influx into New York State. Sunday night they had the World of Outlaws show and they had people from several countries attend. These sprint cars go 170 miles an hour and turn left, the scariest thing in the world to see them and only certain men can do it. [disruption]

Ms. O'Dell stated that she wanted to point this out that this is why there will be no mediation; they are here as a lynch mob against the track. Mr. Commander stated absolutely; they did not say one word while the other side was talking. [disruption – unclear, overtalking]

Supervisor Benson interjected that we do not have to do this; we definitely don't and he has to say to be fair, both times when both parties were speaking, he was hearing things and that is not what he would be doing if he were sitting here. [disruption] Supervisor Benson stated that he wanted to ask a question but first he wanted to make sure no one else wanted to speak. He also noted that we have to give the board the opportunity to ask questions. Because ultimately, as Mr. Dax pointed out, the board is charged with dealing with this.

Mr. Commander stated we have to be honest; he does not hate John Dax but he came after them for the go-kart track when he was on the ZBA; something that was a permitted use. Mr. Dax stated that Mr. Commander got his permit. Mr. Commander noted yes, after he spent \$70,000 and they have a NYS camping permit thanks to John Dax, the only good thing that came out of the camping permit is they got a crosswalk and some flashing lights and he thanked him for that; it does help. Mr. Commander said John Dax used the track years ago for being a nuisance; it doesn't sound like much, but at the end of it... he said he doesn't even know the end of it but he guesses they won because the judge said in order for Lebanon Valley Speedway to be a nuisance, it must lower the land values of the entire town and not just the abutting neighbors. Mr. Commander stated that really does not have too much trouble with his abutting neighbors; they come down to the track, they get free passes, some of them work there but the bottom line of this, John Dax represented the group. John Dax said actually he didn't it was a private lawyer, Greg Mills. Mr. Commander stated whoever represented them, the bottom line of that lawsuit was \$644,000 to prove that they were not a nuisance. He stated that they are talking about a million dollars over the last twenty years; it is a lot of money so they are a little bitter. He also noted that when you have to spend this money, you have to make it. So with that being said, Mr. Commander said, he does not have any animosity toward anybody. They run a lot; they are like one of the top five tracks in the world if not the number one dirt track in the world for a weekly operation. They have people coming from other countries. He asked

Heather O'Dell where they had people from last week. Ms. O'Dell responded they had people from Montana, Arizona, and Colorado; for the Monster Trucks she believes it was the Ukraine. She noted she had two Germans that came in that follow the series. These people that follow these series, they fly around the world. She stated she has a gentleman who now lives in Chatham who she thinks played the violin for the Boston Symphony; he is at the track every other week now and he thinks this is unbelievable. She noted she is not saying that it is not annoying; she is not going to say that she does not feel for them. But her point is exactly what she said; she bought a house near a railroad track; she knew it was there. She cannot have a wedding in her yard ever, ever, ever; and she does not get five months off a year from the railroad track is her point.

Mr. Commander noted that he had a few people here that might like to say a few words; he introduced his son Scott Commander. He noted that Scott has been growing up in this sport. He is getting the promotional side of it down pretty well. Scott Commander stated that he thought Mr. Commander said it very well.

Mr. Commander stated they have a race track; in defense there aren't probably more than fifty speedway/dragstrip combinations side-by-side but they do exist all over the country. They are going to try to keep in that top five or six tracks in the country. He noted that some of the California tracks, Charlotte, Daytona, Myrtle Beach; these are all tracks that run six or seven days a week and you cannot get a slot to do anything.

Mr. Commander said he can understand the problem but the problem he sees with what Mr. Dax said tonight, to let them run from 5:00 to 10:00 on a Saturday, a lot of times you have to run until 10:30 because something happens like an accident or something. He feels they have been getting the races over as quickly as we can. He noted that what they are saying is right, they start Saturdays with the lawn mower engines because the town lets you start a lawn mower engine at 7:30 am. At the dragway, the kids from five to eighteen years old can drive the Junior Dragstrip and they start with them at 9:30 or twenty minutes of ten and then we try to run to get them over before the stock car races.

Mr. Commander stated that he can understand how people feel that live up on Gale Hill or someplace close to the track but they have to make money to pay for everything. They have eighty people that work at the track. Most of them are \$8.75 an hour people but some of them make really good money. And this is what they, they run races. He stated he could live with a 5:00 start; they have never started at the stock car track before 5:00. They just don't do it, because they cannot prepare a dirt track with the sun out and start much earlier than 5:00. However, he noted, he wants to read this stuff over; they are just getting off the busiest part of their season. They have two more mid-week shows, specials and then they are basically down, dependent on what old man weather does, whether we can continue on or not. And that is where they are.

Supervisor Benson asked for questions from the town board members. Councilmembers Geraldini and Larabee stated they had no questions at this time.

Councilmember Evans noted that he was not going to pepper Mr. Commander with too many questions because Mr. Commander said he has not had a chance to look over the proposed laws. He asked Mr. Commander if he would say his seasonal schedule is March 31<sup>st</sup> through November 1<sup>st</sup>. Mr. Commander noted that they do start in April. Depending on

where Easter Sunday falls, they like to open up the drags the week after Easter Sunday. They leave it quiet for Easter Sunday and that has been their policy for a long time. If Easter falls late, they might try to get a Saturday in before Easter but they usually don't run in March. The weather is a killer that time of the year. They started in April, they tried to run the stock car track the first or second Saturday in April and it was just too early. They could not get the crowds to come out. They opened up this year, the last Saturday night of April. Heather O'Dell noted April 25<sup>th</sup> was their opening night this year.

Mr. Commander noted then just look at their plight, the month of June, if you were a farmer, you couldn't get in the fields; thirteen and a half inches of rain at the track in a month. Huge. Very, very hard to make everything happen. This year was a hard year because they were fighting the weather at least half of the nights where it had just rained or it was going to rain. When they bring two or three or four thousand people out, they try to get it over as fast as they can. Mr. Commander noted he watches every minute of every race trying to save minutes. That is what he does, try to get the races over as fast they possibly can. But they are racing a fair amount of the time.

Councilmember Evans said he was going to ask him about the possibility of starting earlier if there was a rainout and he was trying to get two in on one night but he already commented that he can't get the track prepped.

Mr. Commander responded that if you start earlier and the track dries out too much... Most people don't understand this, to prepare a dirt racetrack and prepare it right, it costs about \$3,000 to prepare the race surface so that it is not too dusty so the drivers can see. Most of their Modifieds, the big class that races, they have 40, 50 and 60 thousand dollar engines and the whole operation can be 2, 3, 4, hundred thousand dollars. They have teams at the track that spend a million dollars a year so there are only certain things you can do at certain times. He would have no trouble with a 5:00 start time; that is fine but they cannot end at 10:00 every night because once in a while something happens such as an injured driver, a bad accident, getting people out of the cars, etcetera. Ms. O'Dell asked Mr. Dax if in their restrictions, would there be something that would account for that.

Supervisor Benson said let's just finish hearing if we could, we will get to that. You are getting ahead of us if we are starting to negotiate already... [overtalking] Supervisor Benson said he would like to just keep this to statements and let the town board hear what they have to say on both sides and then ask questions.

Mr. Commander asked if there were any more questions; he noted it is a hard game that they play and very few people can do it; very few tracks can do what Lebanon Valley is doing.

Councilmember Evans stated that coming into tonight, the complaints that he has heard are about when they end up having to run late; it seems like it... Howard Commander stated well we did, we ran... [overtalking - unclear] Councilmember Evans stated that he follows racing and he understands that there are times, like when you have the Outlaws in town, you can't postpone until Monday because they are not coming back, and they are going somewhere else. Mr. Commander noted that yes, tonight they are up at Ohsweken, Ontario. Councilmember Evans asked so your special events, those are exceptions, right? Mr. Commander noted that you have to get them in, you have no choice. If it was a \$10,000

fine, like Mr. Dax would like to give them, they would have to pay the fine because you are not going to get them back and what do you do with the 4 or 5 thousand people that bought tickets. They had a rain delay of two hours on Sunday night; it was sunshine and rain and they had to get it in and they did finish it up. They finished it up a little after 10:00, 10:30 maybe, Sunday night. But if it rained a little longer, it might have been another hour and there are not enough motels in Pittsfield and Albany to house all these people if they had the money to buy a motel room. They want to see the race and they want to go home.

Councilmember Hanna asked where Mr. Commander saw the racetrack in about five years from now; what level of operations does he think he will be doing then. Mr. Commander stated that they cannot race much more than they are racing right now at the Speedway and Dragway. Mr. Commander stated that as far as expanding, he and Glenn Donnelly started Super Dirt Week about thirty-eight years ago. This is a big race in Syracuse; they has a mile track at the New York State fairgrounds and they are tearing down the grandstands there. Mr. Commander has been talking to the state; it is a week, one week, where they would bring 20 to 30 thousand people into the area – fill up every motel, every restaurant, everything – they are talking about shutting the Drag strip down for a week and using the whole facility to race like they are doing now, be done at ten or eleven o'clock but they would race for one week. They would run Wednesday, Thursday, Friday, Saturday, and Sunday. That might happen; it might not happen. If the racino in Brewerton gets a  $\frac{3}{4}$  mile track, it might go there. And now the Fairgrounds at Syracuse has had such an outcry in the last month from the motel and restaurant owners of Syracuse, they are now thinking of tearing out the mile track and putting in a  $\frac{3}{4}$  mile track. So whichever way the state goes, but they are the only track in New York State that could handle this type of a race. They would fill every motel up in Albany and Pittsfield if they decide to come here and they would have to have camping spots for 1,000 campers, which they do if they don't run the dragway. So that is a possibility of what could happen. Mr. Commander said he forgets how many millions the economic impact of that race is but it is huge. And New York State does not want to lose that race to Charlotte and have everybody go to Charlotte. New York State wants to keep the race here; so that is a possibility for the future. Mr. Commander said they do not run big shows; they could cut everything out and run big shows but they don't do it; they run weekly. They we are probably the biggest weekly track in the U.S. So they can't expand much more because they are running it; they are already doing it.

Supervisor Benson stated that he was going to ask Mr. Commander the same question that he asked of Mr. Dax which is, supposing that everyone agrees that we need to come to some type of a resolution that is beneficial to everyone, does Mr. Commander share that vision for trying to resolve this in some fashion and coming to some type of an agreement with the town, possibly through putting the laws or some variation of the laws that have been proposed into place or another type of an agreement, he is not asking him to agree to anything right now but what is his vision for trying to get past this?

Mr. Commander noted that he has not read any of this over but he knows that can start at 5:00, he can agree to that; they cannot end at 10:00, if it was 11:00, they might have a shot at it. He noted that at Albany/Saratoga, they just bought that speedway, they tell everybody they have an eleven o'clock curfew but they really have a twelve o'clock curfew. And as luck would have it, one of the top officials in the Town of Malta used to sell hotdogs

at their track and he is very open-minded. However, they do try at any cost to get it over at 12:00 at night.

Supervisor Benson asked, without getting into too many specifics, do you support the idea of trying to come to some type of a resolution? Mr. Commander stated, if it works; if it works. Supervisor Benson said he understands that it would have to work for Mr. Commander and it would have to work for everyone... which is probably impossible. Mr. Commander stated that they have to take in so much money to pay their tax bills and to pay all of their bills every year. Mr. Commander noted it has to work. He noted that Mr. Dax said in the proposal to shut the dragstrip down for one weekend a month; he shuts down one weekend a month because it rains; every time it rains, they can't operate.

Mr. Commander stated that Graham Light [Senior Vice President of Racing Operations] for the NHRA [National Hot Rod Association] visited them about four weeks ago. Mr. Graham told Mr. Commander that he had gone over all of his records, how many cars they race, and except for national events, there are twelve national event tracks in the United States, Lebanon Valley is the biggest little track that belongs to NHRA. Mr. Commander stated that they have the infrastructure to run a national event but then they couldn't run stock cars if they were running drag cars. They are running the biggest little track because of the car count; they are running six to eight hundred cars per week when you count Wednesdays and track rentals on Saturdays and Sundays. They get cars from five or six states a week that come out here and stay in their campers. One guy loves Mario's Restaurant, he says he doesn't just come here for the racing, he comes here to eat at Mario's too; it is all good.

Mr. Commander said, so are we open? We are open to talk but it has got to work. He does not see how giving a week off a month when you only have a good five months; and then our points stop, they have a big point fund and why do the points stop early? Because as dew comes into the valley, it is dangerous to run the cars so they have to stop in early October running the fast cars. On a normal Sunday, they have a hundred cars that go near or over two hundred miles an hour. So we are open-minded if we can make it work.

Supervisor Benson asked Mr. Dax, noting that Mr. Dax may not be able to answer right now, if he could designate two or three representatives of their group? Mr. Dax said he could not do that right now but he will do that. However, Mr. Dax stated, he thinks they have an irreconcilable conflict.

The very thing that makes Mr. Commander understandably proud as punch about his race track is the very thing that drives them nuts. Because it is the biggest little track, it runs the most cars, it gets them in good standing with the NHRA and with the Dirt Organization and with all his colleagues. That very thing that drives his desire is what drives them crazy because it is just relentless. And it is random some nights. Some nights that they say that they don't run, they do run. He stated that they have tried very hard in drafting these laws to preserve the Saturday night racing with the exception of proposing a 10:00 shut down time. And, Mr. Dax said, in answer to Ms. O'Dell's question, yes, from his standpoint, speaking personally, is that something that we could negotiate if there were exigencies because of weather or accidents that caused them to run later, is that something that could be negotiated? Perhaps, he does not see why not. But the dragstrip is the real problem. And that is why they drafted these laws to preserve the Saturday night racing and the dragstrip

is the problem for many of them, the relentlessness of it. It starts Saturday morning, it is all day Saturday; then the stock cars, the dirt track picks up, then it is all day Sunday. And then it is during the week. So that sounds like Mr. Commander is as proud of his dragstrip as he is of his dirt track and he is not going to let go of anything. So if he cannot let go of anything, if he cannot compromise, then there is no deal.

Supervisor Benson stated that he thinks we have an obligation give it a shot; we can certainly kill it tonight and then whatever happens, happens. However, he doesn't want to do that. The board is the governing body in this town and they have an obligation to deal with issues and he would like to try it. He stated that at this point he would ask both sides to consider putting forth no more than three people to bargain on their behalf. Those would be the people that talk; we cannot do this behind closed doors, it has to be open to the public but it does not have to be a zoo or a circus where there are all kinds of comments flying around the room; he is not going to let that happen. But if each side would consider designating three people, he thinks that could be beneficial. His question right now is are you agreeable to doing that and giving it a shot?

Howard Commander responded that he was okay if Mr. Dax and his group want to talk; we can talk about it. He stated that there are certain things that we cannot do; it is not like a switch that you can turn on and off. They have seven, eight, or nine drag strips competing for their cars; if they slip up and those cars go away, they are in trouble. They cannot let that happen during the regular racing season. They we cannot give a night off and then what happens if it gets rained out for two weeks and then the next week is beautiful but they have to take a night off. If you have a stock sportsman car which is like a corvette body that goes 250 miles per hour and you have a million dollars in it, which many of our people do, and your home track is Lebanon Valley and you get rained out two weeks in a row and then you have a sunny one and they have to take it off; that is suicide, it is suicide.

John Dax said that one problem he has in this dialogue is Mr. Commander's drift between the racetrack and the dragstrip. He uses concerns about one to cover the other. They have never suggested shutting down a weekend of the dirt track; that is not in this proposal – only the dragstrip. He stated that he thinks it is important if they are going to have any kind of mediation, there needs to be ground rules. People need to come prepared having read the stuff. They also might want to start out with a mediator who is not subject to the open meetings law so that they can have a candid conversation so that they can say to each of us, hey what is your bottom line here? So that mediator can come back to you and say look, this is not going to happen. They have a role to play because they are not subject to open meetings law and they can give the board a candid assessment of whether they are just so far apart.

[overtalking]

Howard Commander stated that he had not seen any of this, he just heard what John Dax was saying. He is going to look this over as soon as he has some time and he will have some good answers for the next time. Supervisor Benson asked if he could designate two or three people. Howard said yes, but he cannot do it in the next three or four weeks; it is just too busy until August is over. Both sides agreed to designate two or three people.

Supervisor Benson said the next thing he wanted to get to is the Town Board. He just recently got appointed to the CEDC Board which is the County's Economic Development entity. It is funded by the County but it is a private organization. If you read the paper, you will realize that many of the members of that board have been criticized and recently, frankly, investigated by the Authorities Budget Office for conflicts of interest. Supervisor Benson stated that he wanted to know if there is anybody on this board that is dealing with this issue that has a conflict of interest that feels that they have a conflict of interest. Councilmember Larabee stated that he does; he has a conflict of interest because he provides Lebanon Valley Auto Racing with propane. Supervisor Benson said okay, is there anybody else, on either side? [No one responded] Mr. Benson stated that he does not believe he has any, as he has said, he just finished a vast education on conflicts of interest and it is a pretty serious thing. Supervisor Benson stated that maybe where we should leave this is consider designating your groups and he would like to circle back and talk to both parties and try to figure out what our next step is.

An unidentified audience member stated that he has lived in the town for 48 years and he asked would any of the rest of us would have any say in this or be able to let the board know how they feel. Supervisor Benson said he could assure him that before anything happens relative to any action by this town board there will be or there has to be a public hearing. In the meantime, his suggestion would be for him to talk to whichever side he is on. Supervisor Benson stated there are 2,200 and some odd people in this town and we have got to try to figure out a way to get somewhere without turning it into a circus. Tonight was really for the purpose of informing the board on the proposed local laws and hearing from the Speedway. But the next step, he cannot say he is certain what that should be right now, he thinks it should be another meeting with a lesser quantity of people although the public are not going to be excluded from it if it does involve this town board or a quorum. So maybe a mediator is something to consider, he would like to talk freely with both sides separate of this and see if we can come to some type of an agreement on a next step and at least get... Mr. Commander stated he wants to read everything over because he is not sure if he heard everything that Mr. Dax said.

Supervisor Benson said understood and he understands fully that on both sides the devil is in the details. Mr. Dax's group made their presentation; we have moved off of home plate. Mr. Commander has some reading to do. Supervisor Benson stated that he personally feels that the board has an obligation to try and do something. They might hit an impasse, they can certainly announce that they are at an impasse and then the next move is going to be up to one side or the other. Mr. Commander stated he is not going to sue, he has been through enough lawsuits. Supervisor Benson said he dreads seeing the town or either side of this issue spending money on lawyers, no offense to lawyers, but often times, they are the ones that win. Mr. Commander stated that he has spent a million dollars on this kind of action over the last ... [unclear] and what he thinks is if we took that million dollars and did some good things in town it would be a much better place.

Supervisor Benson said unless there is anything else from the Town Board, he was shooting to get this over with by 8:30. He stated that we will get to public comment, he promised. If the public is asking if they will have a say, yes, of course you do. Thank you.

**ADJOURNMENT:**

The workshop was adjourned at 8:40 p.m.

Respectfully submitted,

Colleen Teal  
New Lebanon Town Clerk

# Appendix A:

8/28/2015  
Provided by  
Gary Killeff

## Facts about other dirt oval racetracks in New York State for comparison with the Lebanon Valley Speedway

*We have gathered the following information about other New York State dirt oval racetracks from racetrack websites and from speaking to racetrack staff. According to the information compiled here, on all other dirt oval racetracks in New York State, regular racing is one day a week, with some additional special events on other days. In every case where the information was available, with one exception, we found that the events end at 11 pm or before, either by official agreement with the host town ("a curfew") or by the decision of the track itself. As one track spokesman said in an email: "We do have an 11:00 pm curfew that we are required to abide by with the Town. So in summary - Typically our show ends around 10:00 pm but we never go beyond 11:00 pm due to our required curfew." (Greg Emerson, Canandaigua Motorsports Park, 7/28/15)*

*There are five other drag strips in New York State. So far as we can discover, no other racing facility combines a dirt oval track with a drag strip.*

*By contrast, both the Lebanon Valley Speedway and the Lebanon Valley Dragway schedules are very full: during the season, the Speedway has events scheduled 4 days per week, with the occasional fifth day; at the same time, during the major part of the season (May-September), the Lebanon Valley Dragway also schedules events 4 days per week with the occasional fifth. Drifting takes place generally one day per month. During some weeks in the season there are events 5/7 days or 6/7 days.*

*Events at the oval seem to have no set or required ending time, and sometimes extend as late as midnight or 1 am.*

### **Stateline Speedway, Busti, NY**

1/3 mile clay oval track.

Racing on Saturdays @ 7 PM, May thru August.

Very rural area.

### **Thunder Alley Speed Park aka Evans Mills Speedway, Le Ray, NY**

3/8 mile dirt track.

Racing on Saturdays @ 6 PM. Last week April thru first week Sept.

### **Fulton Speedway, Volney, NY, near Syracuse**

3/8 mile dirt oval track.

Races Saturdays Apr-Sept,

One finding was that events stop by 10 PM. But more recently a representative says "we have no formal curfew, but we try to hold to a midnight shutdown."

Track has installed a noise fence that has helped reduce noise complaints.

Town representatives meet with track in spring to review operation.

(Sister track to Brewerton)

### **Raceway 5, Batavia, NY**

3/8 mile dirt oval at fairground.

Saturdays @ 6pm, with two special events on a Thursday and a Friday  
Late March thru early Sept.  
Curfew is 11pm by agreement with town, but races are usually done by 10-10:30.

**Afton I-88 Speedway.** Near Binghamton, NY.  
Dirt oval.  
Fridays Apr-Sept plus five weekdays per season.  
11PM curfew by town ordinance.

*Fulton, Batavia, and Afton all have far fewer events than New Lebanon, and yet the issue of noise is still addressed by each town.*

**Cayuga County Fair Speedway** (three hours west of Syracuse). Weedsport/Brutus, NY  
Built in the 50-60's. Dirt Oval.  
Opened for one race only in 2012. Has fence as noise barrier.

**Rolling Wheels Raceway.** Same town, built in the 90's.  
Operates from time to time.

*Both Cayuga and Rolling Wheels need a fireworks permit, and operate no later than 11 pm.*

**Mohawk International Speedway** (formerly known as Frogtown I.S.). Hogansburg, NY, 1/2 hr north of Plattsburgh near Canada. 1980 (rebuilt 2009). Hogansburg is a hamlet in the town of Bombay. Run by the St. Regis Reservation (Mohawk tribe).  
Fridays at 7:30pm, May-Sept with a number of special events.  
Events required to end by 10:30PM.  
Meet yearly with town to discuss schedule.  
Send out letters to closest neighbors in advance of special events, especially the two big weekends per season.  
Have a fence, hill and bushes for noise abatement.

**Fonda Speedway** est. 1953, Fonda, NY, in town of Mohawk.  
Saturdays with total of 2 open practice Weds. and three scheduled specials - one on a Thursday, one on a Friday and one on a Sunday.  
Operates only one Sunday per season.  
No turbo or supercharged cars.  
Town has a general complaint form.

**Little Valley Speedway** Little Valley, NY.  
1/2 mile dirt. Fairgrounds track, opened 1932, speedway reconfigured 1997  
Track operates a total of six days *per season*, in "peace and good order," with 11pm cutoff time.

**Orange County Fair Speedway,** Wallkill, NY  
5/8 mile hard clay. Track is 95 years old  
Begins season April 6.  
Fridays @ 7pm, from early April to mid-September, with one weekend event in October, one practice day, 2 other special event weekends  
Howard Commander is one of the "Orange County Operators"

**Ransomville Speedway, Porter, NY**

Friday nights, from late April to late September, with 1 practice day on a Wednesday and 5 special events, 3 on Saturdays, 1 on a Wednesday, and 1 on a Tuesday

**5-Mile Point Speedway, Kirkwood, NY**

1/4 mile dirt

Saturday nights only through September, plus 2 weekends in October..

**Accord Speedway, Accord, NY**

1/4 mile dirt

Fridays only, plus one Saturday per month, April - Sept., and one event each in Oct. and Nov.

**Albany-Saratoga Speedway, Malta, NY**

4/10 mile dirt, est. 1965

(Managed by and affiliated with Lebanon Valley Speedway)

Fridays @ 7pm, mid-April to mid-Sept. plus 1 pre-season warmup day and 3 special events, one Tues, one Wed, and one Sunday

**Brewerton Speedway**

1/3 mile dirt

Fridays @ 7:30pm late April through Labor Day with a few specials in Sept. & Oct.

Events end around 10:30pm. No formal curfew

(Sister track to Fulton Speedway)

**Can Am Motorsports Park, LaFargeville, Orleans, NY**

4/10 mile dirt

Fridays @ 7:30pm, May to mid-Sept., plus 2 Wednesday events and 1 Saturday

Races are over by 10:30-11 pm at latest, according to spokesperson.

**Canandaigua Speedway**

1/2 mile dirt

Saturdays @ 7pm, late April to mid-Sept., plus one Wednesday, two Thursdays

Curfew of 11 pm for all events, by agreement with the town

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**Lebanon Valley Speedway**

Wednesdays, Fridays, Saturday, Sundays, April-Sept, plus all four weekends in October

**Lebanon Valley Dragway**

April: events on all Fridays & Saturdays plus one Thursday

May thru Sept: events on all Wednesdays, Fridays, Saturdays, and Sundays plus some Thursdays

The major part of the season (May - Sept) the Dragway has events 4 days a week. In April and October, events are on 3 days a week. Some weeks in the season there are events 5/7 days or 6/7 days. This is in addition to the Speedway events and drifting, which is once per month except September. This dragway activity includes races, test and tune, and track rentals. Fridays are generally track rentals; Saturdays are generally test & tune

*Note: week of June 21 there were 5 out of 7 days of dragway events, test and tune, or track rental, in addition to Speedway events*

*Note: week of July 12: 6 out of 7 days of events at Speedway and Dragway*

*Note: week of August 2, 5/7 days activity on dragway*

*Note: dragway is still in use 3 days/week till mid-October*

**Lebanon Valley drifting (2015)**

One Friday every month except September, one Saturday in October

**Other Dragways (sample)**

ESTA Safety Fridays only, from late April - mid Oct, plus 3 extra days

Skyview Drags: Saturdays only, from early May to early October, plus 4 extra days

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CHAPTER \_\_ – REGULATION OF MOTOR VEHICLE RACING AND RELATED ACTIVITIES

1. **FINDINGS:** The Town Board finds that the health, safety and welfare of its residents, the promotion of sustainable economic activity, the promotion of tourism and the general economic well-being of the Town require that motor vehicle racing and related activities be subject to scheduling restrictions. The Town Board also finds that the commercial interests of for-profit motor vehicle racing establishments will be advanced by creating certainty and predictability in the form of clearly established and uniformly enforced schedules providing for hours and days of operation.

2. **APPLICATION:** This chapter applies to Motor Vehicle Racing (as defined herein) and Related Activities (as defined herein) conducted in the Town whether or not conducted at a Motor Vehicle Racing Facility (as defined herein).

3. **DEFINITIONS:**

**“Motor Vehicle”** any device that is designed, manufactured, built or modified to be a self-propelled means of conveying persons or objects by any power other than human or animal power, including but not limited to, automobiles, cars, trucks, motorcycles, dirt bikes, snowmobiles, all-terrain vehicles, go-karts and jet cars.

**“Motor Vehicle Racing”** whether or not for exhibition or competition; whether for commercial, private, recreational or charitable purposes; whether by or with professional or amateur participants; whether or not upon payment of an entrance fee; and whether or not occurring at a Motor Vehicle Racing Facility or on other private property or on public property, the use of Motor Vehicles for, or in demonstration of, speed, acceleration, power, noise, or for other entertainment or competition purposes.

**“Motor Vehicle Racing Facility”** A facility, establishment or place of business designed or used for recreational purposes involving Motor Vehicle Racing, as defined herein. Motor Vehicle Racing Facility includes, but is not limited to, “automobile racing facility” as defined in Chapter 205.

**“Related Activities”** for purposes of this Chapter and when conducted in connection with, in proximity to, or in any manner related to Motor Vehicle Racing: (a) the operation of motor vehicles for testing, tuning, maintenance, or display; (b) the operation of Motor Vehicles at swap meets; (c) the operation of Motor Vehicles for other recreation, competition or exhibition purposes such as, but not limited to, the practice known as “drifting;” and (d) the operation of public address systems.

**“Willful Violation:** for purposes of this Chapter a violation that is knowing or intentional as evidenced by, for example but not limited to, the duration of a violation beyond a prescribed ending hour, a violation occurring on a day of the week proscribed by this Chapter or a violation that occurs as part of a pattern of recurring violations.

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**4. RESTRICTIONS:**

**Seasonal:** No Motor Vehicle Racing or Related Activities shall take place between November 1 and March 31 of the following year.

**Weekdays and Weeknights:** No Motor Vehicle Racing or Related Activities shall take place on Mondays, Tuesdays, Thursdays or Fridays. On Wednesdays, Motor Vehicle Racing and Related Activities shall not begin before 5:00 p.m. and shall end at or before 10:00 p.m.

**Weekends:** Motor Vehicle Racing and Related Activities shall not begin before 10:00 a.m. on Saturdays and 11:00 a.m. on Sundays and shall end at or before 10:00 p.m. on Saturdays and 5:00 p.m. on Sundays.

**Exceptions:** On four weekdays between April 1 and October 31 in any calendar year Motor Vehicle Racing and Related Activities shall be permitted for special events held at a Motor Vehicle Racing Facility pursuant to a schedule published not later than March 1 of the relevant year.

**Additional Restrictions Applicable to Motor Vehicle Racing Facilities:** In each calendar month in which Motor Vehicle Racing and Related Activities are permitted, there shall be at least one weekend, reported in a schedule published not later than March 1, in which no Motor Vehicle Racing and Related Activities shall take place other than on Saturday evenings beginning no earlier than 5:00 p.m. and ending at or before 10:00 p.m.

**Exemptions:** activities otherwise prohibited by this Chapter shall not be subject to the Restrictions of this Subdivision 4, other than the ending hour requirements, provided that the activities involve the use of no more than four unmodified motor vehicles by the owner or lessee of private property and the guests of such owner or lessee, and are conducted on such private property, for non-commercial, recreational purposes only.

**5. Enforcement and Penalties for Offences**

(a) Any person, whether a resident, property owner, or property lessee of New Lebanon or an adjoining town, may submit a written complaint to the Town Clerk (Clerk) and/or the Town Code Enforcement Officer (CEO) specifying, by dates and times, and including as much additional detail as available, the manner in which this Chapter is alleged to have been violated. Such complaint shall include the complainant's contact information. If submitted to the Clerk, upon its receipt the Clerk shall provide a copy of the complaint to the CEO. The CEO shall maintain a log of such complaints.

(b) Upon receipt of a complaint, the CEO shall conduct such investigations as are required in order for the CEO to reach a conclusion as to whether or not the alleged violation occurred. The CEO shall memorialize the investigation and conclusions in a written report and provide copies of the report to the complainant, the person or persons alleged to have been violating this Chapter and the Town Clerk. The written report shall

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have sufficient detail to enable the reader to understand the basis for the CEO's conclusion.

(c) If the CEO has determined that a violation has occurred, the CEO shall provide the person or persons who violated this Chapter with notice of violation and an appearance ticket.

(d) Violations of this Chapter may be prosecuted in Town Court or in State Supreme Court by the CEO or the Town Board. Upon the failure or refusal of the Code Enforcement Officer or the Town Board to institute an enforcement action for a period of ten days following a written request by a resident of the Town, any three taxpayers residing in the Town may institute such action in like manner as the CEO or Town Board is authorized to do.

(e) Any person violating any provision of this Chapter shall be deemed guilty of a violation and, upon conviction thereof, shall be subject to a fine of not more than \$1,000.00 or imprisonment for not more than 15 days, or both. Each violation of a restriction in this Chapter shall constitute a separate offense.

(f) Any person found guilty of a Willful Violation of this Chapter shall be subject to a fine of not more than \$10,000.00.

(g) The Town Board or CEO may institute an action or proceeding to enjoin continuing violations of the provisions hereof or take such other legal or administrative action deemed necessary or desirable to correct or abate such violations. The Town Board shall institute an action or proceeding to enjoin continuing violations where a person has been found guilty of two or more Willful Violations of this Chapter.

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**CHAPTER -NOISE CONTROL**

This local law, known as the TOWN OF NEW LEBANON NOISE CONTROL CODE, shall apply to sound originating from sources within the Town of New Lebanon.

**1. DECLARATION OF FINDINGS AND POLICY:**

New Lebanon is a rural community whose citizens are predominantly engaged in residential, agricultural and small business activities. The production of sound, including noise, is a normal, expected aspect of such activities. However, excessive sound is a serious hazard to the public health, welfare, safety, and the quality of life and can diminish property values. A substantial body of science and technology exists by which excessive sound may be substantially abated.

The citizens of New Lebanon have a right to, and should be ensured of, an environment free from excessive sound. It is the policy of the Town of New Lebanon to prevent excessive sound that may jeopardize the health, welfare, or safety of the citizens or degrade the quality of life, without interfering with the normal activities of rural and small town life, including activities such as, but not limited to, agricultural activities, hunting, logging, cutting firewood, mowing lawns, construction and similar activities.

**2. DEFINITIONS:**

**“Subject Noise”** shall mean sound generated on a Noise Source Property that is measured for compliance with this Noise Control Code at either a Noise Source Property Boundary or at a Receiving Property.

**“Noise Source”** shall mean an activity or process, or combination of activities or processes, conducted on a property within the Town that produces noise.

**“Noise Source Property”** shall mean the location on or from which Subject Noise is generated.

**“Noise”** shall mean sound generated by an activity, a process or a combination of activities or processes undertaken by, or under the control of, or allowed to take place by a person who owns or otherwise controls a Noise Source Property.

**“Property Boundary”** shall mean a line dividing property owned or under the control of the owner of a Noise Source Property and an abutting property owned or under the control of another person.

**“Qualified Expert”** shall mean a board-certified member of the Institute of Noise Control Engineering or a member in good standing of the National Council of Acoustical Consultants or of an equivalent organization recognized in the acoustical profession.

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**“Background Sound”** shall mean the ambient sound level, represented by  $L_{90}$  measured over one or more twenty-four (24) hour periods in the absence of the Subject Noise.

**“Receiving Property”** shall mean a property or parcel, other than the Noise Source Property, on which measurements are made to determine if the Subject Noise exceeds the limits of this Noise Control Code.

**“ $L_{90}$ ”** shall mean the sound level exceeded ninety percent (90%) of the time. When measured over a consecutive twenty-four (24) hour period, it is the sound level exceeded during ninety percent (90%) of that twenty-four (24) hour period, thereby capturing the sound experienced in the most quiet ten percent (10%) of the twenty-four (24) hour period.

**“Leq”** shall mean the average level of noise from all sound sources measured over a discrete period of time.

### 3. **NOISE LIMITS:**

Subject Noise as measured at either a Property Boundary or a Receiving Property shall not:

(a) result in an Leq measured over any continuous 20 minute period that exceeds the lesser of: 65 dB(A) during the hours of 7:00 a.m. to 7:00 p.m. or 6 dB(A) over Background Sound measured during those hours.

(b) result in an Leq measured over any continuous 20 minute period that exceeds the lesser of either 55 dB(A) during the hours of 7:00 p.m. to 7:00 a.m. or 3dB(A) over Background Sound measured during those hours.

### 4. **EXEMPTIONS:**

Sound created by any of the following activities, provided they are otherwise lawful, conducted between the hours of 7:00 a.m. and 7:00 p.m. shall not be subject to the Noise Limits of this Chapter: agricultural activities, lawn mowing, brush clearing, logging, snow removal, cutting fire wood, hunting, and the use of firearms for target practice.

### 5. **MEASUREMENT METHODS:**

Measurements shall be made by a Qualified Expert using properly calibrated meters equipped to measure, calculate, record and preserve sound levels occurring in intervals of one second, 20 minutes, 60 minutes and 24 hours, to enable determinations to be made regarding compliance with the Limits set forth in this Chapter. When measurements are being made by a Qualified Expert in an effort to verify the accuracy of a complaint made pursuant to 6(a) below, care shall be taken to ensure that the environmental conditions (*e.g.*, extent of foliage and weather conditions) are accurately replicated.

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**6. ENFORCEMENT:**

(a) Upon receiving a written complaint, together with a deposit of funds in an amount not less than the amount identified by the Code Enforcement Officer needed to cover the costs of hiring a Qualified Expert to make the required measurements, from a person residing or conducting business in the Town or on property abutting a Town boundary in an adjacent Town, or upon direction of the Town Board, the Code Enforcement Officer (CEO) shall make arrangements to retain a Qualified Expert to conduct noise measurements. The CEO shall assist the Qualified Expert in arranging to make measurements both within the Receiving Property and within the Source Property or at the property line of the Source Property nearest the Receiving Property.

(b) Measurements will be conducted to measure:

(ii) Background Sound over a continuous 24-hour period during which the Subject Noise is not generated;

(ii) Background Sound plus Subject Noise over a continuous period or periods when the Subject Noise is generated;

(ii) Measurements in dB(A) shall be collected for  $L_{90}$  and  $Leq$ .

(c) If the Qualified Expert has been hired in response to a complaint, and a violation of this Chapter has been determined to have occurred, the Town shall refund the deposit described in VI. A. to the Complainant.

(d) As an alternative to 6(a), a Complainant may submit a sworn statement prepared by a Qualified Expert in conformance with the final sentence of 6(a) and with 6(b). If such a statement shows that a violation has occurred, it shall be *prima facie* evidence of a violation.

**7. PENALTIES FOR OFFENCES:**

Violations of this Chapter may be prosecuted by the Code Enforcement Officer or the Town Board in Town Court or in State Supreme Court. Upon the failure or refusal of the Code Enforcement Officer or the Town Board to institute an enforcement action for a period of ten days following a written request by a resident of the Town, any three taxpayers residing in the Town may institute such action in like manner as the CEO or Town Board is authorized to do.

(a) A person found to be in violation of this Chapter who has not previously found to be in violation of this Chapter shall pay a penalty an amount sufficient to reimburse the Town for the out-of-pocket costs and expenses incurred to engage the qualified expert hired to conduct the measurements.

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- (b) A person found to be in violation of a second offence involving the same Noise Source shall pay a fine of \$1000.00 in addition to the amount sufficient to reimburse the Town.
- (c) A person found to be in violation thereafter involving the same noise source shall pay fines of \$5000 for a third offence, and \$10,000 per offence for each additional violation in addition to amounts sufficient to reimburse the Town.
- (d) Each violation of a limit in this Chapter shall constitute a separate offense.
- (e) The Town may institute an action or proceeding to enjoin continuing violations of the provisions hereof or take such other legal or administrative action deemed necessary or desirable to correct or abate such violations.