

**MINUTES OF THE REGULAR MEETING OF
THE TOWN BOARD OF THE TOWN OF NEW LEBANON
HELD ON AUGUST 11, 2015**

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

Recording Secretary: Colleen Teal, Town Clerk

Others Present: Andy Howard, Attorney for the Town
Jeff Winestock, Highway Superintendent
Cynthia Creech, Deputy Court/Assessor's Clerk;
Recreation Commission, CAC, & Zoning Re-Write
Committee Member
Ted Salem, Zoning Board of Appeals Member & Zoning
Re-Write Committee Chair
Robert Smith, Planning Board Member
Phyllis Hulbert, NL Rep. to CCOFA
David Farren, CAC Member
Joe Ogilvie, Recreation Commission
Gregg Gilliland, LVPA President
Mary Young, LVPA
Bobby Waters, LVPA
Sharon Wheeler, LVPA
Ed Godfroy, LVPA
Ben Wheeler, LVPA Fire Chief
Steve Oberon, LVHS
Thaddeus Flint, Reporter for *The Eastwick Press*
Ellen Gaydos, Reporter for *The Columbia Paper*
Several members of the public

CALL TO ORDER:

The meeting was called to order at 7:02 p.m. by Supervisor Benson. A moment of silence was followed by the flag salute.

FINANCIAL:

Specific Questions on Vouchers:

No questions.

Supervisor's Report:

Supervisor Benson read the Supervisor's Report and noted the other reports provided to the board members. Supervisor Benson reported that the second quarter sales tax is down approximately \$3,000 from 2014. The cash balance as of July 31, 2015 is \$1,183,237.58; the cash balance as of July 31, 2014 was \$1,114,517.57 so about \$70,000 less. Supervisor Benson noted he wanted to go over the town's reserves on the balance sheet:

Shatford Park Reserve \$11,534.00; this is the same amount as it was in 2014 at this time;
Landfill Closure Reserve \$150,000.00; at this time last year it was \$75,000 and in 2017, it will be a full \$625,000;
Assigned Appropriated General Fund Balance \$70,000.00; this is money that we took out of our fund balance to balance the budget, in 2015, we took \$70,000 out of the general fund balance, in 2014, we took \$85,000;
Unassigned General Fund Balance \$395,997.94; this is essentially the town's reserves, in 2014 we had \$393,891.28.

Assigned Appropriated Highway Fund Balance \$15,000.00; in 2014, we did the same;

Assigned Unappropriated Highway Fund Balance \$106,711.84 (reserves); at this time last year, it was \$96,801.21.

A motion was made by Councilmember Evans, seconded by Councilmember Hana and approved unanimously to accept the Supervisor's report.

OLD BUSINESS:

West Hill Road Property ~ Former Town Gravel Pit:

Supervisor Benson stated we are still working on finalizing our deal with the high bidder and only bidder.

New Lebanon Library ~ Tax Bill Identification:

Supervisor Benson noted that we discussed this at the last meeting and he is going to take it off the agenda at this point, we are one hundred percent complete with that.

Highway Material Testing:

Supervisor Benson noted this is just left on here as a continuation.

Human Resource Matters / HR Manual:

Supervisor Benson noted this is also just left on here as a continuation.

Tennis Courts:

Supervisor Benson asked Councilmember Evans to run the board through his scope. Councilmember Evans asked if anyone had any comments on the draft scope of work he prepared for the project. Councilmember Hanna noted it seemed fine. Councilmember Evans stated he is not familiar with how technical they want to get with terminology. Supervisor Benson asked if we could just recap what we would be considering doing and how we would do it; what is outlined is some work that would be done by the town and some work that would presumably be bid out. Councilmember Evans noted that the fence would be removed and replaced (R&R'd) and the excavation of the five inch lift that is in there now and the disposal of this would be with the assistance of the Highway Department. He believes that is where they can come in with a group of volunteers; he has heard from multiple people that they would be willing to come in and help clean it up with some rakes and get it to a somewhat suitable grade. That way when we put it out to bid, the first thing installed would be a stabilization fabric which he is not sure if they would spec out a highway fabric or something that they typically

use for tennis courts. Crusher run would be installed to an eight inch depth with a 1% grade being met, a type 3 NYS DOT binder or similar would be installed to a thickness of 2 inches, and then a type 7 NYS DOT surface course or similar would be installed to a thickness of 1 ½ inches, as well as new nets and posts being installed as per manufacturer's recommendations with the submittal of what they are going to be installing to be approved by the town board before installation, and finally the surface coating and striping would be their responsibility to sub out.

Supervisor Benson said at this point it is up to the town board to consider putting it out to bid with a scope and probably a pre-bid meeting to discuss the scope and address any questions.

A motion was made by Councilmember Hanna to put the project out to bid based on the scope prepared by Councilmember Evans; the motion was seconded by Councilmember Larabee and approved unanimously.

Town Clerk Teal asked for confirmation that this motion included a scope and pre-bid meeting. Supervisor Benson said yes, he asked Councilmember Evans if he could convert this to a scope, the lower part of it, and the board also needs to discuss when they want to accept bids. The pre-bid meeting will be after we go out to bid and before we receive bids. Supervisor Benson stated it really becomes a question of does the board want to try to do this this year. The board determined that bids would be due by 5:00 pm on Friday, September 18th; they would hold a pre-bid meeting at 9:00 am on Friday, September 11th; and tentatively, they would hold a special meeting on Tuesday, September 22nd at 7:00 pm.

Supervisor Benson asked when it would be advertised, the Town Clerk responded as soon as she receives the scope, the scope needs to be available when the advertisement is run. Town Clerk Teal also asked Councilmember Evans to let her know who they have been working with or anyone he knows that specializes in tennis courts so she can fax or email a copy of the bid notice to them. Supervisor Benson stated we will advertise it sometime the week of the 17th.

Tax Freeze/ Government Efficiency Plan:

Supervisor Benson noted he is just leaving this on the agenda until it is fully dealt with.

Designation of Wyomanock Creek as an Inland Waterway:

Cynthia Creech stated that she has spoken with several people about this and it has taken on a life of its own. Today, she spoke with the Legislative Director in Senator Marchione's Office, this woman is the person who, with the Senator, drafts the bill so she thinks they are where they need to be now. What they need is a letter from the Town Supervisor asking for this designation and a resolution from the Town Board with details pertaining to the creek and why the designation is important. She has asked the Shaker Swamp folks as well as the Corkscrew Rail Trail people to give them a little blurb describing how they think it would be important to them. Once the resolution and letter are received, the Legislative Director will review them with the Senator, assuming there are no stumbling blocks as to why this should not be done, they will draft legislation and it will be introduced when the session starts in January. They will also give the legislation to Assemblyman McLaughlin to sponsor in the Assembly so

they take of getting him involved in this and they give him the bill. Once the legislation is introduced and assigned a bill number and an assembly bill number, they will need another town board resolution stating the desire that this legislation, using the bill number, be put forward. They will also need a home rule request form to be filled out and sent with that resolution. The Legislative Director (Daphne Jordan) will guide us through this when it comes time.

David Farren noted that we just have to try to coordinate with Stephentown. Ms. Creech noted that this is not our responsibility; she did mention that to the Legislative Director and she said they need to do the same thing. Ms. Creech noted that perhaps, since the Rail Trail is in Stephentown, Mr. Farren may want to coordinate with those folks.

Ms. Creech noted that they will get all the language together for the September meeting: a letter for the Supervisor and a resolution for the board to review.

Noise Ordinance Workshop:

Supervisor Benson reported the board had a workshop on July 28th. To characterize where they left off, they discussed a subsequent meeting two by two by two – two town board members, two representatives of Lebanon Valley Speedway, and two representatives of the group that has put forth the two proposed local laws. That meeting has not been scheduled yet. He does know who all the representatives will be.

Proposed Local Law Amending Specified Section of Chapter 205 (Zoning) of the New Lebanon Town Code:

Attorney Howard noted the board needed to go through the SEQR process. Attorney Howard noted he prepared a Short Environmental Assessment Form, he reviewed part 2 with the board.

A motion was made by Supervisor Benson, seconded by Councilmember Evans and approved unanimously to issue a negative declaration based on the review of part 2 of the Short Environmental Assessment Form (*completed SEQR on file in Town Clerk's Office*).

Resolution # 20, 2015 ~ Enactment of Local Law No. 6 of 2015: Amending Specified Sections of Chapter 205 (Zoning) of the New Lebanon Town Code:

The following Resolution was proposed by Councilmember Geraldini and seconded by Councilmember Evans:

Enactment of Local Law No. 6 of 2015: Amending Specified Sections of Chapter 205 (Zoning) of the New Lebanon Town Code

PURPOSE AND INTENT

The Town Board of the Town of Lebanon hereby adopts this amendment to Chapter 205 of the Town of New Lebanon Town Code.

AUTHORIZATION

This local law is adopted pursuant to the Town Board of the Town of New Lebanon enacts this Local Law under the authority granted by:

1. Article IX of the New York State Constitution, Article 9 §2 (c)(6) and (10).

2. New York Municipal Home Rule Law §10.
3. New York Town Law, Article 16 (Zoning and Planning).

ENACTMENT

Be it enacted by the Town Board for the Town of New Lebanon that Chapter 205 of the New Lebanon Town Code be hereby amended as follows:

§205-17 Definitions is hereby amended to provide the following additional and/or amended definitions:

AGRICULTURAL OPERATION: See definition for **AGRICULTURAL PRACTICES** in Chapter 102 of the Town of New Lebanon Code (Right to Farm).

SMALL BUSINESS OPERATION (SBO): A retail business that manufactures what is sold on premises. This category encompasses minimum to moderately sized retailing/manufacturing enterprises in commercial zones. The combination of retailing and manufacturing is the essential characteristic of the SBO; although it is understood that portions of what is produced on site may be sold online, wholesale or at external markets. **SBO's are intended to include craft shops where artisans engage primarily in the handcrafted manufacture of small items, such as pottery, jewelry, weaving, custom woodwork, baskets, ceramics, clothing, flower arrangements, metalwork, musical instruments, paintings, sculpture, toys, soaps, candies and baked goods.** An SBO may sell accessories, supplies and incidental items not produced on the premises, provided that no more than 20% of retail floor space is used for such sales. **Other uses consistent with the uses enumerated above shall be** at the discretion of the Zoning Enforcement Officer with appeal to the Zoning Board of Appeals.

FARM: The land and on-farm buildings, equipment, manure processing and handling facilities, and practices, including the sale of products produced on premises, which contribute to the production, preparation, and marketing of crops, livestock, and livestock products as a commercial enterprise, including a commercial horse boarding operation as defined in this chapter. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other. It includes necessary farm structures within the prescribed limits and the storage of equipment used for farm operations. It excludes riding academies and dog kennels.

§205-13 is hereby amended to add subsection (15) providing as follows:

(15) Small Business Operation.

(a) General Conditions.

[1] The SBO must meet all zoning conditions for the commercial zone in which it is located;

[2] If located in a General Commercial, Commercial Recreational, or Commercial Residential zone, at least 25% of the square footage of the SBO must be devoted to retail. Such retail space must be located adjacent to the public entrance to the SBO, generally the storefront. **Nothing herein should be construed to apply this requirement to a small business operation located in a Commercial Industrial Zone.**

[3] **The manufacturing performed primarily within the confines of the**

buildings, but may make minor use of outside space.

[4] The manufacturing performed on premises will not produce substantial noise, vibration or otherwise objectionable disturbances such as smoke, dust, odors, heat, glare or electrical disturbances or heavy truck traffic, and will not involve the use of heavy machinery or mass production.

[5] The SBO will not cause a major increase in neighborhood traffic.

[6] The SBO will have sufficient off-street parking for employees and customers.

[7] Hazardous material shall be stored in accordance with New York State Fire Code.

[8] The number of employees permitted to work simultaneously at the SBO may not exceed ten (10) employees.

(b) Special Use Permit:

[1] A special use permit will be required for an SBO. If the Zoning Board of Appeals finds that unrestricted operation of the SBO could appreciably alter the character of the commercial zone in which it is located, the Board may place reasonable restrictions on the operation of the SBO and the permit will be subject to revocation should those restrictions be exceeded or violated.

[2] The ZEO will ascertain by inspection that all conditions of the permit are being met and maintained.

§205 Zoning Attachment 2 - Use Table is hereby amended to provide as follows:

A row is hereby added under the *General Uses* to the Town of New Lebanon Zoning Law Use Table for Small Business Operation (SBO) which shall provide for "SP" in the General Commercial (C), Commercial-Recreational (C-Rec), Commercial Industrial (C-I) and Commercial-Residential (C-R) Zoning District columns.

SEVERABILITY

In the event that any word, phrase or part of this local law shall be declared unconstitutional, the same shall be severed and separated from the remainder of this local law and shall not effect the remainder of said local law which shall remain in full force and effect.

EFFECTIVE DATE

This Local Law shall take effect immediately upon filing in the Office of the New York State Secretary of State.

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

Roll Call Vote:

Supervisor Michael Benson	Aye
Councilmember Dan Evans	Aye
Councilmember Charles Gerald	Aye
Councilmember Matthew Larabee	Nay
Councilmember Irene Hanna	Aye

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

NEW BUSINESS:

Fire Department ~ Appearance Request:

Supervisor Benson note Gregg Gilliland, LVPA President, had requested an opportunity to address the board. Mr. Gilliland stated he wanted to turn the floor over to Ed Godfroy. Mr. Godfroy addressed the town board noting that last year they had a tough time with the budget and a lot of discussion. This year, they started off on the wrong foot again. He noted that Supervisor Benson had handed out a paper showing some comparisons for four years of the budget but it is still declaring depreciation as cash-in-hand. In the meeting we had with all the accountants last year, we thought we got squared away that depreciation on our tax forms is not cash-in-hand so there have been some questions asked about how can we have so much money in our pocket. Actually, we spent \$237,000 to \$239,000 last year on a \$220,000 budget. So they asked Bernhardt Karp and Stephanie First, their accountants, to come tonight in case the board had any questions on their financial papers. He noted that Councilmember Hanna had a question at a previous meeting on depreciation and there has been a lot of talk and banter back and forth about their financial statements and depreciation and the board did not seem to understand that it is not cash-in-hand; it is a tax document item. They do not pay taxes, they do not get a refund. He noted that they are not like a private business where depreciation helps on the businesses taxes; theirs does not. It is a depreciation statement for tax purposes.

Supervisor Benson stated he had something else to pass out which includes the original document Mr. Godfroy is referring to. He noted he does not refer anywhere on that document to anything as cash-on-hand. What it does state is cash receipts less cash expenditures which would identify the depreciation amounts. For the record, all of the figures came from certified financial statements and, for Supervisor Benson, this was his way of performing a financial analysis of what is going on. If there is disagreement... and that is why he wanted to pass these out, on the second page of this hand-out, he did identify from the LVPA's 990 the cash on hand. He also identified the debt in years 2011, 2012, 2013, 2014 and also what it is currently, which to his understanding is zero. Mr. Godfroy confirmed that it currently is zero. Supervisor Benson noted that what he would like to do with the Fire Department is to agree on the figures in his hand-out as a starting point, meaning having the Fire Department acknowledge that yes these are their figures, they agree with them or no, they don't agree with them or they agree with these numbers but not those numbers, etcetera. He did not really know what the Fire Department wanted to address the board on tonight but he did pass out his hand-out and he asked that if there is anything on it that the Fire Department feels is not represented accurately or fairly, he wants to know that. Then he thinks that this can serve as a basis for the discussions this year which he thinks are going to be intense. So he noted, he would give them as many copies as he could of the handout, but his intent tonight was to understand if they agreed with these figures or not. The sheet that Mr. Godfroy was referring to, he has not changed that. What he did was added a second sheet because he felt that the cash-on-hand needed to be better identified and he felt

that the debt needed to also be identified at least for the sake of the town board. So if these two pages could be considered a starting point in terms of them all agreeing that these numbers are real, characterizing them can be done any number of ways. Mr. Godfroy noted they would take a look at them. He noted that he was giving the town board each a copy and the rest he would give to Mr. Godfroy. He wants the Fire Department to have the opportunity to go through this before any of this is disseminated otherwise. Mr. Godfroy asked if the board had any questions on their financials or any of the reports that are provided; the people who prepare these are here tonight to answer any questions. There were no questions from the board.

Fire Department Building Project Liaison:

Councilmember Gerald noted there has not been a meeting. Ed Godfroy, LVPA, reported that the only change from last month is that they have a letter sent out to the NYS Code Division for a clarification of the Building Codes pertaining to the conversations they have had with the other companies that have built or are building new buildings about what codes they followed and what codes they need to follow. That has been the biggest question, what codes need to be followed. Supervisor Benson requested a copy of the letter; Mr. Godfroy stated he would send him a copy. Supervisor Benson asked when that letter was issued. Mr. Godfroy noted that it was drafted two weeks ago, it was reviewed by their board, and it was mailed today.

Fire Department Financial Reporting Liaison:

Councilmember Larabee noted that all board members have a copy of the July Treasurer's reports as well as the June and July Fire Reports. Councilmember Larabee reviewed the Fire Reports.

Supervisor Benson asked if anyone in the Fire Department knew the status of the radio... the Fire Department is showing almost \$50,000 in this radio fund. His understanding is the county is ultimately going to be picking that tab up; he is not sure if that is true or not. Mr. Godfroy responded that when the county went out for this, they did a survey of the companies – their company did a survey of the equipment they had and they gave it to the county. The county based the equipment they purchased for the LVPA off of their survey; that's what they will buy for them. The only thing that would be spent, per their agreement with the board, is anything that is not covered under the county purchase, anything that they have gained since the survey was completed. The rest of the money in that line item would go to the building fund. They are in the process of installing new antennae and they are slowly going to start putting in new equipment, one company at a time. Mr. Godfroy noted that he did not know if it would all get done this year or not.

Ben Wheeler, Fire Chief, noted that all the portable radios are in and they are developing a program. They are working on getting the mobiles installed and setting up a plan for that. They are trying to make a decision on which battalions they are going to start doing the installs in.

Jeff Winestock, Highway Superintendent, asked why they are changing. Mr. Wheeler responded that basically, the radio system they have now is based on 46 to 50 low-band radio configuration which is basically becoming for them, in fire service, an obsolete

band. Everything is being switched off. Either the 150 ranges or the 400 ranges or even the 7 or 8 hundred [unclear – background noise]. The county itself made the decision that they are going up into the 150 range. They have not been released the new radio frequencies yet. Mr. Winestock asked if they were having problems with [unclear – overtalking and background noise]... Mr. Wheeler: ...the system, one of the last times the equipment up on County Route 5, the tower was struck by lightning a couple of years ago and they had to send the equipment to Israel to get it repaired because there was no place left around to repair the stuff. This system in the county has served them well but it is antiquated [unclear – overtalking]. Mr. Winestock asked if it was going from low band to high band. Unknown speaker noted correct, we cannot get parts for low band anymore. Mr. Winestock asked how they thought the high band would serve them as far as dependability. Mr. Wheeler said from what they are being told, it is supposed to be a better system. They have upgraded the links between the towers have been upgraded; there are not upgraded microwave links but there are also better hardware connections in case the microwave links go down. There was discussion about adding another tower in the county to get better coverage through the tower system as well. Mr. Winestock said they used low band so he is interested in what is going on but he is not sure that the high band is going to serve you any better. [overtalking]

Ed Godfroy noted that with regard to the low band versus high band, the majority of the county is already high band. The fire service is one of the last ones on low band, all the other services are on high band. So at this point, they are maintaining two radio frequency equipment towers – a low band and a high band.

Ben Wheeler noted that the other thing that goes along with that is when you all get into one frequency range, you get a lot better ability to interact between all of your agencies because now you don't have two different radios, you just have one radio... [unclear].

Cynthia Creech asked if the county was paying the \$40,000. Supervisor Benson said he believes it may be some portion of that. Ed Godfroy noted that when this project started, it was unclear whether the county was going to buy all of their equipment or if they had to buy all of the new equipment so the company started saving money to pay for radio equipment. So, the county actually did a survey of all the companies and they came up with a dollar amount that they needed to replace the equipment that we have. The county came up with a dollar amount for the fire service and that is what they are going to buy for the LVPA, what was on that survey. Cynthia Creech said so potentially, that amount of money is going to be paid for by the county. Mr. Godfroy responded maybe not all of it, because, as he said, whatever they purchased after the county did the survey – that was not included in the survey bill amount that we gave them – that they may have to buy that out of the \$40,000. Ms. Creech noted that what she is unclear about is the \$40,000 what it is going to actually cost or what the county is going to pay? Mr. Godfroy said the \$40,000 is what they saved to put towards the radios. [overtalking]

Unknown speaker said the plan is to transfer any excess money from that current reserve fund if you don't need it for radios into the building fund. Ed Godfroy said yes, to the building fund per an agreement with the town board.

Ben Wheeler noted that some of the other differences there may be as far as what they are looking to purchase for the different fire departments, for example they put in for a mobile radio for each apparatus so they will get the mobile, the microphone, whatever but if they have a different additional set-up on it such as additional remote microphones and that type of stuff on the truck, they may not cover that. So for the company to get back to where they were with the number of speakers, additional microphones, for the pump out there and everything else, that is probably what is going to come out of that fund. Supervisor Benson said there is some ancillary equipment that is not covered by the county. Mr. Wheeler noted that is correct.

Supervisor Benson said to follow with his hand-out, could he schedule a meeting with him and whomever from the fire department that they would like to go over the hand-out and either agree or not agree. He does not know if that includes their accountant, that is their business. He is willing to do it here or do it in Hudson like they did before or whatever they want to do but time is short at this point because he would like to put a budget out. Frankly, he wanted to have it out by August 1st. Ed Godfroy asked the Supervisor to give them a couple days to go over it with the accountant to see if the numbers are right and we can agree. Supervisor Benson said we need a starting point.

Ben Wheeler noted that part of their concern was the feeling that the interpretation that is out there at different times is that the depreciation, like you said it is cash-in-hand, whether that is how it is put out there now, that seems to be the feeling they are getting back from certain people at different times, well if you only spent half your budget, why are you asking for a whole budget. So the other reason we thought we would bring the accountant in tonight is that if other people, not just the board, but people in the audience, wanted that interpretation – exactly what the depreciation is – because we can go back to the cash receipts for years and we are spending more than what it is showing if you look at depreciation. Because some of those people interpret the fact that it looks like we only spent \$87,000 or \$90,000 out of the budget and when we go back to our cash receipts for the year and that is not correct. Supervisor Benson said he takes responsibility for the hand-out. He generated the hand-out in an effort to put things into perspective for him and also to provide people on the town board with hopefully some more information that doesn't necessarily require them to be a CPA but that does not mean that it is perfect and he is willing to acknowledge that. At the end of the day, what is at stake here, he thinks – and he does not mean to speak for the entire town or the town board – the fire department is designing a three million dollar fire house right now and that is a major commitment for every person that pays taxes in this town because we are your funding source. He thinks that is why budget discussions have intensified to put it candidly. So, if they can agree to go through the hand-out, he tied into all the numbers so he is confident that the numbers are right, but in terms of characterizing what they are, that he understands is somewhat more subjective. So if they could let him know when works for them, he is not available this week but next week he is very open.

Planning Board Vacancy:

Supervisor Benson noted we have had a Planning Board vacancy for quite a while and we have sort of let this one grow stale. He has had several people approach him that

have an interest in serving on the Planning Board and we have received at least two letters of interest.

A motion was made by Supervisor Benson and seconded by Councilmember Geraldini to re-advertise for the vacancy on the Planning Board and to make an appointment in the month of September, letters of interest will be due by Friday, September 4th.

Vote:

Aye: Supervisor Benson, Councilmember Geraldini, and Councilmember Hanna;

Nay: Councilmember Evans and Councilmember Larabee.

The motion passed.

LIAISON REPORTS:

Economic Development and Conservation Advisory Council (CAC) (Councilmember Evans):

Councilmember Evans noted he had no report.

Conservation Advisory Council (CAC):

Cynthia Creech reported that the CAC has a letter coming to the board regarding the budget. Supervisor Benson noted they have the letter; essentially it would be a new budget line for \$2,500.00.

Monte Wasch stated he had a question from the perspective of the Economic Development Committee, they had meetings with the people from BroadLights (Broadcom) who are now putting in wireless internet in Hoosick and Supervisor Benson was following up with them and he was wondering if there was any progress on that. Supervisor Benson said he has not, their first step as he understands it would be identifying tower sites. On the day that we met with them, we identified one potentially that the county is using on County Route 5 and that is really as far as he has gotten. He does not believe the ball is in his court but he could be wrong. Mr. Wasch said he did not know, he said he would contact them and see what their thoughts are at this point. He noted they are moving ahead on this new installation. They are erecting a 120 foot tower in Hoosick Falls and they have two other installations now working. Supervisor Benson said he is not of the understanding that the ball is in his court presently; he thinks tower locations is their issue. The only thing he could potentially do to help them would be to see if they could get a spot on the county's tower; it is the county's tower but it is currently on private land. Although he is expecting that maybe tomorrow night at the Board of Supervisor's meeting, that may be on the agenda to change. He is not sure where that issue stands. That is the only tower that he is aware of that could potentially accommodate them at this point. Mr. Wasch noted that tower would accommodate a large part of this town. He further noted that he will re-contact the company. Supervisor Benson noted that if he needs to go to the County, he will. He will be paying attention tomorrow night. He does not know if that tower site is changing hands tomorrow or not. It has been proposed to do so but it has been up, it has been down, it has been all over the place.

Highway Department (Councilmember Hanna):

Councilmember Hanna reported that the Highway Department has been busy grading,

mowing, cleaning ditches, and doing general maintenance. They have been screening gravel and starting to prepare the sand for the winter.

Town Property & Assets (Supervisor Benson):

No report.

Zoning, Planning, Code Enforcement (Councilmember Gerald):

No report.

Town Assessment Office (Councilmember Evans):

No report.

Education, Recreation, Historian:

Community Picnic:

Councilmember Larabee reported that we had our 4th Annual Community Picnic a couple weeks ago. It was very well attended, he thanked the members of the various boards that attended.

Ice Cream Social/Recreation Commission:

Councilmember Larabee reported that the Recreation Commission is sponsoring an Ice Cream Social on September 13th at Shatford Park Pavilion. Music is being provided by *Chasin' Grace*.

Lebanon Valley Historical Society:

Steve Oberon reported that the Unity Lodge 9 Free and Accepted Masons is sponsoring an event to benefit the Historical Society's work in Lebanon Springs to maintain the sycamore tree and to restore the spring. There will be more information forthcoming.

Lebanon Valley Seniors:

Councilmember Larabee reported that the LV Seniors had invited the town board members to attend their 40th Anniversary celebration; he and Councilmember Hanna attended.

CC Office for the Aging:

Phyllis Hulbert, NL Representative to the CCOFA, reported that through the Consortium in Hudson (which she found in the Eddy program, not through the OFA) we now have transportation up here for our seniors for hospital visits such as testing and that type of thing and for doctors' visits. Not for emergencies. The transportation will travel into Pittsfield for us and there is no charge. There needs to be one or two weeks advance notice for the transportation services because they are providing transportation all over the Columbia County. Supervisor Benson clarified with Ms. Hulbert that she figured this out, not through the OFA, but through the Eddy. Ms. Hulbert confirmed this. Supervisor Benson asked if this was because she did not get anywhere with the OFA. Ms. Hulbert noted that she really did not want to say this but what they said to her was we live so far from the County seat that they don't have any services hardly at all for us. If we lived in Hudson, we would get every service that is out there. So she decided to seek out other places and she is really doing well with the Eddy with their programs and with their visiting nurses – which again the county only has a few and not enough to go around. Supervisor Benson noted that the county actually sold that visiting nurses business last year to a private company so it is not even the county

anymore. Ms. Hulbert said that some of the programs she is just not making head-way with. She is also in the process of talking to two chain stores to be able to delivery groceries to our elderly residents that cannot get out to get them. The way it would work is they would call in their order, the store would call them back and tell them the cost, and then the groceries would be delivered to their home. She has been working on quite a few things and there are still a couple more things she is working on. Ms. Hulbert also noted that her co-representative, Katherine Heatley, fell and broke her wrist so she is out of commission for a while. She did note that Ms. Heatley has been trying to get a grocery store to come here but Ms. Hulbert had explained to her that the town has exhausted almost every avenue when it comes to that.

Supervisor Benson stated that on that subject, he had a meeting in Albany a month or so ago with the association that represents every grocery store in the State of New York and all of the Northeast who did an email blast multiple times to every grocer, distributor, everyone imaginable, more or less pleading with them to come to New Lebanon. He learned last week that he was the person that was to be contacted if there was interest and he has not heard from anyone.

Ms. Hulbert reported that as of a couple of months ago, we have hot meals being delivered every day to our seniors who are handicapped shut-ins. On Fridays, they deliver the meals for the complete weekend. She is ecstatic at this point that she is getting some programs up here and again, she is working on more.

Security, Fire, Law Enforcement (Councilmember Larabee):

No report.

Justice Court/Constable (Councilmember Gerald):

No report.

Assessor's Office:

Cynthia Creech, Assessor' Clerk, reported that the Assessor has sent out forms to quite a few residents who might qualify for the *Income Verification Program* for the *Enhanced Program*. If you are over 65 and receive one of those forms, if you in fact file your New York State Income tax, then you are potentially eligible to be a member of that program which would mean that when you file your New York State Income Tax, you would not have to complete the annual application with the Assessor's Office. The state would simply notify the Assessor's Office if you were eligible or ineligible. So if anyone received that form or knows of anyone that received that form, it a beneficial thing to do.

BUDGET AMENDMENT:

Amendment # 4 of 2015:

General Fund:

\$2,379.26	from A-1990.4 (Special Items: Contingency)
\$479.26	to A-1910.4 (Special Items: Unallocated Insurance)
\$1,900.00	to A-8160.4 (Refuse & Garbage: Contract. Expense – <i>Town Clean-up</i>)

A motion was made by Councilmember Hanna, seconded by Councilmember Larabee, and approved unanimously to approve the above noted amendments to the 2015 Budget.

AUDIT OF BILLS:

**General Nos. 226 through 266, in the amount of \$29,781.27;
Highway Nos. 118 through 128, in the amount of \$18,095.39; and
As listed on Abstract # 8 of 2015, dated August 11, 2015.**

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

PRIVILEGE OF THE FLOOR:

JJ. Johnson-Smith addressed the town board regarding the signs in town. She noted that there are no rules on billboards and murals; everybody can do whatever they want. Nobody can enforce our town sign regulations. She also noted the issue of what has been in the news the last couple of weeks with our candidates for Supervisor and the lawsuit. She stated she thinks it was an embarrassment; she thinks it was childish; she thinks it was unnecessary and she thinks it was huge double standard considering that Mr. Benson filed fraudulent petitions which she has copies of if anyone wants to see them plus a statement from both heads of the two main parties in Hudson saying that it was. Additionally, Mr. Benson was not living here when he first ran; he was sleeping in Loudonville back then. Supervisor Benson asked Ms. Johnson-Smith if she was looking in his windows. Ms. Johnson-Smith stated, no, Mr. Benson was looking in Ms. Teal's. However, that was just common knowledge, everyone knew that you lived in Loudonville so it was [unclear]. She stated that she thought it was a real double standard and she thinks it was totally ridiculous and she thinks it was an embarrassment.

Robert Smith addressed the town board asking what they are going to do about Behold and the signs down there on the OTB. The Planning Board said they could not have them and they went right ahead and did it. Attorney Howard responded that the Zoning Enforcement Officer brought this to his attention and the sign law in the Town of New Lebanon does not have a definition of sign. Mr. Smith said the Planning Board told them they could not have it. Attorney Howard stated we are going to talk about people being governed by the law and there is a problem with the law. As he understands it, the Zoning Enforcement Officer has advised the town that it is something that they need to look at. Just by way of example, another town where he lives and a town he represents, and this was not a sign ordinance that he personally prepared but it has been on the books, but just look at the difference. In this ordinance, there is a definition of a sign: *any material, structure, or device, or part of thereof composed of lettered or pictorial matter or upon which lettered or pictorial matter is placed when used or located out of doors or outside or on the exterior of any building including window display areas, areas for display of advertisement, announcement, so on and so forth and also anything of that nature which serves as part of an overall sign program to identify a business or increase the visibility of a site and that is placed in view of the general public.* That is an example of a sign ordinance that regulates the conduct for everybody so that we don't have a Zoning Enforcement Officer or a Planning Board or a Town Board or anyone we want to select, decide how we are going to enforce the law. New Lebanon currently does not have legislation that even defines the nature

of a sign and when this was brought to his attention in consultation with the Town's Code Enforcement Officer what was found, believe it or not this is not unique to New Lebanon, is there are towns and cities across this country – Arlington, Virginia; Seattle, Washington – various places where you don't see the pictorial nature but what you see is a mural gets painted. It does not identify any single person and there are cases that have gone to the second circuit court of appeals, tens of thousands of dollars have been spent. Municipalities have tried to enforce it and the next thing they know, they get a group that comes in and represents the afflicted property owner and a lot of money gets spent by municipalities because they have not addressed it and as a result of this litigation that has occurred over the last ten to fifteen years, you will find municipalities that will have a mural policy adopted; they will have photographic policy. The thing that struck him was in the one second circuit case that was dealing with this, the question that was brought up on this particular mural, if you were not from the jurisdiction when you drove into that town or that city and you saw something, was there any marker on the "mural" that identified any particular business. In this particular instance, with what is up there, there is nothing that identifies them. Now, the question becomes, the way to truly regulate this and to make sure that everyone is treated fairly would be to have that code reviewed by the re-write committee, have a discussion about it, go through the democratic process, hear from the public, and craft what the people of New Lebanon really want to see with regard to their sign ordinance because right now, it does not exist. And that happens, there are things that will occur that have not been contemplated. He has been in other jurisdictions where all of a sudden someone shows up with a vehicle that just happens to be painted from beginning to end and they go and park something on some other site on a main highway for the express purpose of that. But here is the thing, it is a registered motor vehicle; it is utilized as a truck. He knows a place in North Greenbush where if you drive, you will see it every day. It is a salon and they park a Hummer in front of their house and use it as a sign. No one thought about that when a lot of these codes were drafted but you go and research it, you start finding jurisdictions across the country that regulate, not only at the planning process but from an enforcement standpoint, mobile signs. But that is a jurisdiction by jurisdiction determination that the people of New Lebanon get to decide under their local Home Rule; they get to decide whether they want to have mobile advertising, how are they going to regulate murals, and what are the penalties because in the code we currently have, there is no penalty. So just to be clear, right now there is an opening with regard to that if you are talking about something that's photographic in nature, that does not in and of itself have text or identifies itself with any particular business or movement or organization or what-have-you. Is that a case-by-case analysis, it is but does the law need to be strengthened, he thinks it is something that the Zoning Re-write Committee needs to look at. Mr. Smith stated that the problem is that it came before the Planning Board and the Planning Board said no. [unclear – overtalking] Supervisor Benson asked if it would help or solve the problem if we put his picture on the mural. Mr. Smith responded that the Planning Board said no and they went ahead and did it anyway. [overtalking] Mr. Smith said the Town's Planning Board does not have any teeth? The Town Board does not have any teeth either? Attorney Howard said you have to rely on something in the Town Code. JJ. Johnson-Smith said so as it stands right now, the town actually does not have a formal description of a sign in New

Lebanon? Attorney Howard stated New Lebanon does not have a definition like what he just read; if you read the New Lebanon Code in total, there is discussion primarily about text and there is some discussion about symbols such as if you had a logo, how they are calculating the square footage. JJ. Johnson-Smith said so the bottom line is, like she said in the beginning, have a ball everybody. Cynthia Creech said, if she is right, over a year ago when she was first working with Behold, there was discussion about putting something on that very site where it is now and she went to the Zoning/Code Enforcement Officer and asked if this was a problem. She, Mr. Pratt, and Cissy Hernandez looked up the definition and the language was pretty open and the only reason it was not done last year is because someone in this town objected to it who had enough power to back them down and they did not do it last year. In response to what Mr. Smith said, she thinks the interpretation of what the Planning Board said is they could not put a sign on that building, which is what they were going to do, with text, symbol, and photographs. So they took out the text and the symbol and went with just the mural, there is no definition which includes a mural. Highway Superintendent Jeff Winestock stated there is a sign law but it does not go into detail of what a sign is. Ted Salem stated that the Zoning Board of Appeals actually decided that if they did it that way they would not be running up against a detailed sign law; that is a formal action that they took and then their board interpreted it that way so he does not think, at least as far as he can tell, that anyone is flaunting anything at this point because they conformed with what they were asked to do. Attorney Howard noted that is his point, if it is an issue of concern, the way you handle that when it is something new just like the mobile sign he talked about would be to have a Zoning Re-write Committee look at it, the town can have a discussion... [interruption] ...here's the thing, town's would deal with that in a variety of ways. They are going to treat this differently in different towns be it a mobile sign, be it a mural. But that is part of the democratic process, what we cannot do is have anyone just say, we said you can't do that, we cannot point to anything in the code, therefore, don't do it. Ted Salem noted that in line with all this, he has had a couple conversations with the Zoning/Code Enforcement Officer about enforcement generally and he thinks everyone knows there have been some deviation of what is out there in reality and what is currently in the code and he thinks the ZEO/CEO has been reluctant to do a lot of enforcement without some guidance from the Town Board, Planning Board and Zoning Board. He is wondering if what they are suggesting is an opportunity for them to take a look and make sure they are happy with what the entire ordinance says, make changes if they think they are appropriate, maybe look at some twenty-first century technical issues and then give the ZEO/CEO the go ahead to start enforcing once it is adopted. Attorney Howard said he was just smiling at the Town Clerk because the Town has done quite a few local laws this year; so you have been doing that but certainly that is something that you could consider. Cynthia Creech asked if this would fall in with definition of art. [overtalking] Attorney Howard stated that would be the reason for and the process that would be followed; it would be a comprehensive analysis of what the Constitutional parameters are and where... [overtalking] Monte Wasch asked, wouldn't a work of art that has no commercial message be protected under the Constitution? John Dax noted there are towns that regulate pieces of art even so it is all up for grabs; it up to the town to decide what it wants to do. Attorney Howard said and also, is the art in question part of a greater

marketing program that is linked to an identifiable business; those are things that can be discussed and that can be narrowly tailored into a law so that you are sure that you enforce the letter of it and give people an idea of what they can expect. Where that leads is up to town.

Kevin Smith addressed the Town Supervisor asking if he had read his letter of interest for the town Planning Board. Supervisor Benson said he was sure that he had. Mr. Smith asked what part of that does he think does not qualify him; with the new construction he has completed, the wetlands that he was told he had that weren't and that he had taken off, all these issues that he has dealt with, with building and planning, both commercial and residential. He is just wondering what the big objection is. Supervisor Benson said that he was not sure he had state any objection. Mr. Smith asked if any of the board members had received his letters of interest over the last two months. Supervisor Benson said he thought everyone had. Councilmember Hanna confirmed she had received it. Mr. Smith said he was just really curious what your objection is, what you think that would not qualify him for that position. Supervisor Benson said he does not know what Mr. Smith is referring to, he has not stated an objection to Mr. Smith. Mr. Smith said he believes he just did because he has his letter, you after advertising for two months and then another month, to advertise again; so yes, they are because they would not make that motion to re-advertise if you thought he qualified for it. Monte Wasch stated that there are other people in this room who have submitted letters of interest for serving on the Planning Board. Mr. Smith said exactly, whether they read them and what part of them seems to upset them. Supervisor Benson said he does not know what Mr. Smith is referring to.

ANNOUNCEMENTS (of activities or events):

August:

Wednesday, August 12th ~ Benefit for the Cemetery of the Evergreens at the Theater Barn at 7:30 p.m.

September:

Tuesday, September 8th ~ Town Board Regular Monthly Meeting at 7:00 p.m. at the Town Hall

ADJOURNMENT:

A motion was made by Councilmember Larabee and seconded by Councilmember Hanna to adjourn the meeting at 8:25 p.m.

Respectfully submitted,

Colleen Teal
New Lebanon Town Clerk