

**WESTERLO TOWN BOARD  
WORKSHOP MEETING  
OF  
TUESDAY, FEBRUARY 19, 2019**

The Town of Westerlo Town Board held a workshop meeting on February 19, 2019 at the Town Hall located at 933 County Route 401, Westerlo, NY. Supervisor Rapp opened the workshop at 7 PM with the Pledge of Allegiance to the Flag.

Attending were: Supervisor Richard H. Rapp  
Councilman Anthony W. Sherman  
Councilman Richard Filkins  
Councilman Joseph J. Boone  
Absent were: Councilwoman Amie L. Burnside

Also attending were: Highway Superintendent Jody Ostrander, Highway Employee/Dog Warden Justin Case, Planning Board Chairperson Dorothy Verch, Zoning Board Chairperson John Sefcik, Clerk to the Assessor Claire Marshall, Clerk to the Supervisor Patricia Boice, Deputy Supervisor William Bichteman, Town Clerk Kathleen Spinnato, Interim Attorney Javid Afzali, Deputy Town Clerk II Karla Weaver and approximately five residents.

Councilman Boone announced that Councilwoman Burnside was on vacation and introduced Mr. Javid Afzali the Interim Attorney.

**IMPENDING SUPERVISOR VACANCY**

Attorney Afzali explained how the transition will work once Supervisor Rapp resigns. In the Town Law, any vacancies are filled by a Town Board vote but only triggered when the seat becomes vacant. Once a Supervisor is appointed, that person will hold the position of Town Board member/Supervisor through December 31<sup>st</sup> 2019. Whoever wins the general election in November 2019 will be seated January 1<sup>st</sup> 2020. He indicated the vote could be made at a Regular or Special Town Board meeting but if the Town Board decides to do a Special Town Board meeting there are special notice requirements according to open meetings law. He mentioned that the Town Board would not illicit applications for the Supervisor vacancy as it is the role of an elected official not a job opening. He indicated the discretion is fully within the Town Board to pick the person or individual that is most qualified, able and eligible to run for the office of Supervisor here in Westerlo. He informed the Town Board that Supervisor Rapp will not have a vote for the next Supervisor because his resignation would be in effective. He acknowledged there would only be four votes and explained what would happen if there was a 2/2 split. He suggested the best solution would be that the Town Board recommends someone that most or all Town Board members can agree on. If that doesn't happen and there is a 2/2 vote and the Town Board can't come to a consensus, any resident of the town could go to the Governor to indicate the need for a Supervisor in the Town of Westerlo. The Governor has the power to call a Special Election however he has never before seen a Governor intervene in local matters. Another option would be going to the Courts if the Town Board refuses to appoint a Supervisor or if they attempt to do so and the Town Board is split. He mentioned that a resident could also go to the Courts and file an Article 78 to have the Court force a Special Election and further explained what the process would be if the Town Board couldn't make a decision on a Supervisor. Residents would have the opportunity to file paperwork with the Court which would then be presented back to the town for public hearings. By the time it makes its way back to the court it may be time for the election anyway so he emphasized that going to the Courts made no practical sense due to the time frames. He indicated that if none of the above was practical, the Town Board would be governed by four members and decisions would still need to be made by at least three members until the Town Board was able to find that tie breaker.

**MOHAWK AND HUDSON RIVER HUMANE SOCIETY CONTRACT (M&HRHS)**

Deputy Supervisor William Bichteman announced that the M&HRHS contract remains open as Supervisor Rapp is awaiting on direction from the Town Board. The significant change from last year is the contract cost went from \$351.75 per dog to \$70 per dog day. The redemption period before M&HRHS can put the dog up for adoption or to

ethanize is five (5) days for dogs without ID and seven (7) for dogs with ID. After speaking with the Town Clerk's office it was suggested that the town charge an additional fee of \$15/day for three (3) days on top of the \$70 to cover the cost to the town and then charge \$70/day thereafter as to not burden the owner. This additional fee would help recoup the loss to the town for travel time and expenses. He also explained that if a dog received vet care for being injured or sick that cost would be passed on to the owner if redeemed. Deputy Supervisor Bichteman confirmed that when a dog is brought to the shelter they are given a distemper and bordatella vaccine.

Deputy Town Clerk Karla Weaver explained how the process works when a dog is brought to the shelter and how the owner goes about redeeming the dog. It was confirmed that a dog must be up to date with a rabies vaccination before an owner may redeem their dog. If a dog is not up to date on rabies, one will have to be given prior to being licensed and redeemed which can potentially add additional days/costs.

### **TRANSFER STATION PERMITS**

Councilman Filkins provided the Town Board and public with information regarding Transfer Station permits. The information listed pros, cons and associated costs. He was hopeful the Town Board would be able to vote on it next month. Councilman Sherman asked for clarification on what the resolution was and noticed Mr. Filkins had suggested changing the hours of operation as well. Mr. Bichteman believed there were two different issues here; one for fencing as there is an issue with people dumping during off hours and the other for permits. Attorney Afzali agreed that it was a good idea to separate the two issues but also had a question regarding paragraph six (6) of the proposed resolution; which sets forth dumping without a valid permit. He wondered if there was a current Local Law consistent with those findings, if not the Town Board may want to first consider making a Local Law in order to enforce fines. Highway Superintendent Jody Ostrander commented that there is a Solid Waste Law although it is very old. Councilman Boone asked if there was a need to look at the fencing issue. Mr. Ostrander responded that there is a section of fencing at the Transfer Station that people walk around when they are closed. Mr. Bichteman suggested breaking this into three parts; permits, site improvements and illegal dumping.

### **PROPOSED RESOLUTION-TIME CLOCKS**

Councilman Filkins provided the Town Board and public with information regarding time clocks which included quotes from three companies with the hope it would be voted on at the March Town Board meeting. He indicated that employees could punch in/out on their cell phones eliminating the need for the Highway Superintendent to deliver time cards to the Supervisor's Clerk. Mr. Ostrander questioned what he should do if his guys didn't have a cell phone with that capability. Mrs Betty Filkins responded that they could punch in on their cell phones, call it in or have a time clock. Mr. Bichteman wondered if the employees could apply comp, vacation or sick time to their weekly hours from their cell phone, Councilman Filkins responded yes. Councilman Filkins believed time clocks would help with human errors and would be easier for employees who work from home. Town Clerk Spinnato asked about fees and if the companies would charge a one time or annual fee; Councilman Sherman indicated the fees were addressed in the paperwork and depends on the company.

Mrs. Betty Filkins asked about an issue with some of the W-2's. Deputy Supervisor Bichteman explained that if it wasn't for the Clerk to the Supervisor who noticed the error with the pre taxed retirement, it would have gone on unnoticed. This error was due to the automated system used by the payroll company and thankfully Mrs. Boice fixed the problem. He mentioned that the current payroll company has not been easy to work with and that there is an IRS law that will not allow for a revised W-2 to be issued until after the waiting period set by the IRS but believed it was being addressed as quickly as possible.

### **PROPOSED RESOLUTION-DEPARTMENT REPORTING**

Councilman Filkins suggested that departments submit their reports the Friday before the Town Board meeting so the Town Board members could review them in advance, eliminating the need to have them read aloud. Mr. Bichteman indicated that some reports are not necessary especially when there is nothing new to discuss. Different options for monthly reporting and holding public comments until the end of the meetings were discussed.

### **PROPOSED RESOLUTION-BUDGET VS ACTUAL**

Councilman Filkins did not believe the Town of Westerlo has a fund balance policy. Mr. Bichteman indicated in order to have a policy there needs to be a fund and mentioned that as the budget is constructed next year, there will be changes to define it and he has already been in contact with the accounting firm in that regard. He also explained at the top of the budget there is an appropriation line which is the fund balance carried forward. That money is used to apply to the budget to cover the cost of the town and indicated if money is taken out of there it needs to come from somewhere else. In the beginning, the town borrowed money on a short term basis to fund the town because the tax money wasn't here. Having that fund balance carry forward, allows the town to enter the first quarter of the year with money to pay bills without any short term borrowing. The fund balance is still part of the budget and is important to have and should never get down to zero. He also mentioned the importance of not being misled by sales tax revenue. Sales tax fluctuates every year and has a big influence in what that carry forward amount is going to be. Setting money aside is a good idea but he believed you have to be reserved in how much you set aside as to not burden the tax payers. He also mentioned the town tries to stay under the 2% tax cap limit although if necessary it can be overridden.

Councilman Filkins mentioned solar in the Town of Westerlo and Mr. Bichteman responded that the solar companies have now added battery systems to each one of the solar projects which changes the game. Mr. Bichteman indicated that the PILOT's will now need to be renegotiated. Mr. Bichteman commented that some of the things you can do to help create those funds are things like the PILOT programs; the Town negotiates the amount of money and it is shared with the school district and the county with a small portion going to the town.

Councilman Boone questioned Mr. Filkins on the Budget vs Actual reporting resolution and noted that much of the conversation this evening was regarding the fund balance policy. He wondered if the resolution was more so to deal with the way the finances of the town are expended and how it is reported or formulating a more definitive fund balance policy. Councilman Sherman believed it should be broken out and mentioned that the Budget vs Actual monthly reporting is actually part of the Supervisor's monthly report which is based on when the accountant ran the reporting and wasn't sure what more Councilman Filkins was looking for. Councilman Filkins mentioned he would like to have it broken down.

#### **COMPREHENSIVE PLAN/COMMITTEE CHAIRPERSON**

Mr. Bichteman explained that the Town Board has the ability to undertake the Comprehensive Plan on their own, have the Planning Board do it or can have a combination of the two. He believed the town needs to have survey information to establish the direction the town should go and indicated surveys may prove ideas are quite varied. Councilman Sherman believed the Town Board should establish guidelines and goals. Mr. Bichteman mentioned a budget for a committee should be discussed as well. He believed the Comprehensive Plan is important to the town as it's the basis for Planning and Zoning. Attorney Afzali agreed and believed it provides the community with stability. Mr. Bichteman mentioned that the Zoning Law is a bit outdated and unclear with provisions having been added over the years however, a good Comprehensive Plan will help clarify the Zoning Law. He believed it is something that should be started but could take years to complete. He indicated that when the current Comprehensive Plan was finished it was almost outdated. Councilman Boone commented that surveys could be very costly but grant money may be available. Attorney Afzali suggested that reaching out to a professional may help explain what the steps are and cost associated. He mentioned that the town does not necessarily have to hire a professional to do the plan but instead have them as a consultant to the Board or Committee.

#### **MUNICIPAL BUILDING DEDICATION**

Deputy Supervisor Bichteman made a recommendation to the Town Board to dedicate the Town Hall building to Supervisor Richard Rapp and thought that the Richard Rapp Municipal Building would be a good name. He hoped a ceremony could be held in May or June.

#### **OPEN TO PUBLIC**

A resident commended Councilman Filkins for collecting all the information for the resolutions. She questioned if money was being moved from one fund to pay for another which Mr. Bichteman said it was not. She also asked about the appropriation of about \$90,000 for Worker's Compensation and wondered what is happening with that. Mr. Bichteman responded that the money was still there but it could be assigned to another department via Town Board Resolution.

Another resident asked about how Transfer Station permits will work for people with more than one vehicle, change in vehicles or with rentals, etc. On the Time Clock reporting, she also wondered how hours get validated if they are done by cell phone. Councilman Filkins indicated that the Clerk to the Supervisor Mrs. Boice would still review them at the end of the week. Mrs. Boice wondered how she would know if they were the right hours if the department heads weren't approving them and also where the records are if audited. Mrs. Betty Filkins responded that reports would be provided to her by the company and the department supervisor would be reviewing their employee's time before being sent to Mrs. Boice. Mrs. Betty Filkins continued that the supervisor would also receive a notice if one of their employees didn't sign in.

ZBA Chairperson John Sefcik asked about the Supervisor resignation and wondered who would do the job of the Supervisor on a day to day basis if the Town Board is split leaving the possibility that the Town would operate with a four member Town Board. Attorney Afzali responded that in this scenario all of the duties of the Supervisor would fall to the Deputy Supervisor. If there was no decision or if the Town Board is split, the Deputy Supervisor would be vested with all the powers of the current Supervisor except that he can't vote and can't serve on the County Board of Supervisors.

A resident asked about a salary for the Deputy Supervisor if he becomes the Acting Supervisor. Attorney Afzali confirmed that under Section 42 of the Town Law, the Town Board has the power to appropriate money for the Deputy Supervisor however he indicated we are actually talking about a salary as acting Supervisor so the vesting of the powers of the Supervisor includes the salary for his time acting as Supervisor therefore the Town Board does not have to do anything other than allocate what the current Supervisor is getting paid and give it to the Acting Supervisor.

Another resident asked about cameras for the Transfer Station. She believed cameras may deter people from entering during off hours. She also mentioned that in addition to herself, her husband and son rotate taking garbage to the Transfer Station in three different vehicles and wondered how sticker wise they should deal with permits for a business and their two residences. Councilman Filkins responded that permits are based on residences with a house. Fees for businesses and color permits were discussed. Clerk to the Assessor Claire Marshall believed in this case she would be charged for three permits, two resident permits and one business. The resident also had a suggestion for the Town Board to help save time at meetings. She believed only working on one or two topics at a time before moving on to the next topic would help.

Town Clerk Spinnato also indicated that the information provided by Councilman Filkins regarding the Transfer Station may need to be revised. The information Mr. Filkins provided indicated that residents would need to provide a vehicle registration as proof of residency to apply for a permit. She believed that was problematic as many people have out of state registrations.

A resident asked for clarification, she understood that there was dissatisfaction with the payroll company but wondered if there was also dissatisfaction with the accounting firm which Mr. Bichteman responded no.

A resident suggested moving reporting to after new business before opening the meeting to the public to help streamline meetings. She also asked about Article 78 and that many towns Comprehensive Plan Committees did not follow the survey making the Town Board liable for an Article 78 lawsuit. Attorney Afzali responded that any decision made on the Comprehensive Plan is owned by the Town Board and is their decision to adopt or not. There will be procedural requirements such as public hearings and notices that must be followed. There may be issues where the survey says x and the Board wants to do something else but the Board does get a lot of discretion as long as it's based on reason. Mr. Bichteman and Attorney Afzali believed during the development of the Comprehensive Plan the Board would seek legal counsel and a professional consultant. The resident also inquired about Article 78 with respect to Department Reporting and Time Clock resolutions and wondered if there was a difference between elected and appointed officials and having a resolution that not requests but forces them to follow a time clock or to produce certain reports. She continued that elected officials report to the public not to the Town Board. Attorney Afzali commented that if the Town Board needed information from a specific individual whether that person is appointed or elected they can ask for that information by a resolution, policy or employee

handbook change. As far as forcing an individual to report time that would depend on how that person is paid. He further clarified that for any employees under the elected/appointed officials, it's the Town Boards job to make sure that those hours are accurately recorded.

Mr. Sefcik mentioned he went to the conference in Saratoga recently where he was given an estimate of \$20,000-\$30,000 for the cost of a survey as it relates to Comprehensive Plans.

Town Clerk Spinnato questioned Town Clerk Department Monthly Reporting and Councilman Filkins request to provide them to the Town Board the Friday before meetings. Since certain information is not available such as DEC reports for example, she may not be able to accommodate that time line. Some reports can't be printed early.

Planning Board Chairperson Dotty Verch wondered when the Town Board plans to change the Interim Town Attorney to permanent. Mr. Bichteman believed they were a ways away from that.

Councilman Boone thanked Mr. Afzali for attending this evening's meeting. He also mentioned that the podium was not utilized tonight but he would like to see it being used more in the future.

There being no further business to discuss, Supervisor Rapp made a motion to adjourn the meeting, seconded by Councilman Filkins, motion carried by those present. Meeting adjourned at 8:52 pm.

Respectfully submitted,

Karla Weaver