

**REGULAR MEETING
OF THE TOWN OF WESTERLO
TOWN BOARD
TUESDAY, JULY 2, 2013**

The regular meeting of the Westerlo Town Board was held on Tuesday July 2, 2013 at Westerlo Town Hall located at 933 County Route 401, Westerlo. Supervisor Rapp opened the meeting at 7:30 PM with the Pledge of Allegiance.

PRESENT WERE: Supervisor Richard H. Rapp
Councilman Anthony W. Sherman
Councilman Alfred L. Field
Councilman William F. Bichteman Jr.
Councilman Theodore S. Lounsbury III

Also attending were: Deputy Supervisor Edwin H. Lawson, Planning Chairwoman Dorothy Verch, Planning Board Member Edwin Stevens, Zoning Board Member John Sefcik, Highway Superintendent Keith Wright Sr., Town Clerk Kathleen Spinnato and approximately twenty-six interested residents.

Supervisor Rapp asked the Town Board members for a motion to approve the Town Board minutes of June 4, 2013. Councilman Field made the motion to approve, seconded by Councilman Lounsbury, motion carried all in favor.

Supervisor Rapp asked for a motion to approve the Town Board Workshop minutes of June 11th and June 18th, 2013. Councilman Lounsbury made the motion to approve, seconded by Councilman Bichteman, motion carried, all in favor.

Supervisor Rapp informed that the Supervisor's Trial Balances of April and May 2013 had been submitted to the Town Board. Councilman Sherman then made a motion to adopt the following resolution:

WHEREAS: the Town Board has received the Supervisor's Trail Balances for April and May 2013, be it hereby

RESOLVED: the Town Board accept the Supervisor's Trial Balances as submitted.

Councilman Lounsbury seconded the motion and a roll call vote resulted as follows:

AYES: Supervisor Rapp, Councilman Sherman, Councilman Lounsbury,
Councilman Field, Councilman Bichteman

NAYS: None.

RESOLUTION #37-2013 was thereby duly adopted.

Supervisor Rapp asked Planning Board Chairwoman Dorothy Verch to give the Planning Board report. Dorothy Verch informed that the Planning Board met on June 25th. The Public Hearing for 12-004 for a Special Use Permit for an existing nonconforming building was closed. The necessary documentation had not been received. Mr. Rufa was asked to submit a new application when he has taken possession of the property and has all the required paperwork in hand. A new recording device has been purchased for the Planning and Zoning Board Clerk Rita Perciballi, Dorothy will submit the receipt and voucher. The Planning and Zoning training was attended by Dorothy, Edwin Stevens, and John Sefcik on June 14, 2013 held by the Capital District Regional Planning Commission at Hudson Valley Community College. She also asked the Town Board for approval of all previous training provided by the Town Attorney, for the Zoning and Planning Boards. Councilman Bichteman made a motion to adopt the following resolution:

WHEREAS: the Town Attorney Aline Galgay has provided previous required training to various Planning and Zoning Board members, be it hereby

RESOLVED: the previous training provided by the Town Attorney is approved by the Town Board as required training for Planning and Zoning Board members.

Councilman Field seconded the motion and a roll call vote resulted as follows:

AYES: Supervisor Rapp, Councilman Bichteman, Councilman Field, Councilman Lounsbury, and Councilman Sherman.

NAYS: None.

RESOLUTION #38-2013 was thereby duly adopted.

Supervisor Rapp informed the Town Board the Town Clerk Kathleen Spinnato has submitted the Town Clerk's monthly report for June. Councilman Field made a motion to adopt the following resolution:

WHEREAS: the Town Board has received the Town Clerk's June monthly Report, be it hereby

RESOLVED: to accept the Town Clerk's monthly report as submitted.

Councilman Lounsbury seconded the motion and a roll call vote resulted as follows:

AYES: Supervisor Rapp, Councilman Field, Councilman Lounsbury, Councilman Bichteman, Councilman Sherman

NAYS: None.

RESOLUTION #39-2013 was thereby duly adopted.

Supervisor Rapp informed there is a vacancy on the Zoning Board of Appeals. Supervisor Rapp made a motion for the Town Clerk to advertise the position. Councilman Field seconded the motion and carried all in favor.

Supervisor Rapp informed all present the appointed Sole Assessor Peter Hotaling's six year term will expire on 9/30/13. He asked the Town Board if they want to reappoint Mr. Hotaling. Councilman Bichteman asked to wait on the reappointment of the Sole Assessor, he hasn't had the opportunity to meet Mr. Hotaling and would like to do so. The reappointment of the Assessor was tabled by the Town Board.

Supervisor Rapp advised that a member of the Board of Assessment Review will be needed for a term that expires on 9/30/2013. Tracey Lawson has expressed no interest in reappointment. Councilman Sherman and the Town Board agreed to have the Town Clerk advertise for the Board of Assessment Review member position.

Councilman Bichteman reported on the Westerlo Water District # 1 operator. The current operator, LVDV, has agreed to terminate their contract effective whenever the Town of Westerlo would like. The applicant for the operator position is Doug Story of Rensselaerville. In his scope of work he will: take daily samples, send test samples monthly, read all meters, reconcile the billing with the usage, provide a monthly report to Health Dept. and the Town Board, He will be a part-time employee with a salary of \$26,000. Mr. Story will meet with LVDV at the site to go over record keeping. We will pay the shared cost of maintaining the Certification Educational Credits, part paid by the Town of Rensselaerville and part paid by the Town of Westerlo. He will also develop a schedule of maintenance. He will test the meters and repair them as necessary, this is not covered in Mr. Story's scope of work and he will bill at an hourly rate. He currently holds all licenses. Councilman Bichteman made a motion to adopt the following resolution:

WHEREAS: the current Westerlo Water District No. 1 operator LVDV has agreed to terminate their contract be it hereby

RESOLVED: the Town Board has chosen to hire Doug Story as the operator of the Westerlo Water District No. 1 with the transition between operators to happen sometime during the month of July.

Councilman Lounsbury seconded the motion and a roll call vote resulted as follows:

AYES: Supervisor Rapp, Councilman Bichteman, Councilman Lounsbury, Councilman Sherman and Councilman Field.

NAYS: None.

RESOLUTION #40-2013 was thereby duly adopted.

Supervisor Rapp stated the monthly bills need to be paid and asked for a motion. Councilman Sherman made the motion to adopt the following resolution:

WHEREAS: the Town Board has audited the monthly bills, be it hereby

RESOLVED: the following monthly bills be paid:

Voucher # 784 through Voucher # 834 in the amount of \$34,463.14

Councilman Bichteman seconded the motion and a roll call vote resulted as follows:

AYES: Supervisor Rapp, Councilman Sherman, Councilman Bichteman,
Councilman Field and Councilman Lounsbury

NAYS: None.

RESOLUTION #41-2013 was thereby duly adopted.

Supervisor Rapp reported Robert E. Fisher Consultant to the Town of Westerlo had submitted his resignation effective July 31, 2013. The Town Clerk read Mr. Fisher's June 28th, 2013 letter of resignation.

Councilman Bichteman commented on the Hydrofracking Report giving his input. He stated the report is informative and it took time to assemble all the facts, figures and put in order, however, he has reservations about the report and the language used in it and made several suggestions for areas of the document that need to be addressed. He then detailed the areas that need addressing. The report is for information purposes and it is very hard and he sympathizes with the committee for trying to present both sides of the argument on the hydrofracking issue. Councilman Bichteman made the motion to adopt the following resolution:

WHEREAS: the Westerlo Town Board has reviewed the Hydrofracking Report submitted by the Gas Drilling Investigation Committee be it hereby

RESOLVED: the Town Board does not accept the Hydrofracking Report as presented

Councilman Sherman seconded the motion with a roll call vote as follows:

AYES: Supervisor Rapp, Councilman Bichteman, and Councilman Sherman

NAYS: Councilman Field and Councilman Lounsbury

RESOLUTION #42-2013 was thereby duly adopted.

Supervisor Rapp asked the Town Board for their opinions on a potential Extension of the Hydrofracking Moratorium. A draft of Local Law # 1 of 2013 was available at the Town Board meeting for the public. Councilman Bichteman expressed it should be extended due to the Hydrofracking Report not being accepted by the Town Board and the upcoming expiration of the Moratorium on Hydrofracking. A Public Hearing should be held as soon as possible. Discussion followed about the extension of the moratorium and potential dates to schedule a Public Hearing and Special Town Board meeting. Councilman Sherman made a motion to adopt the following resolution:

WHEREAS: the Town Board needs to hold a Public Hearing regarding the proposed Extension of the Moratorium on Hydrofracking be it hereby

RESOLVED: a Public Hearing be held regarding proposed Local Law #1 of 2013 the Extension of the Moratorium on Hydrofracking to be followed immediately by a Special Town Board meeting on Thursday, July 25, 2013 at the Westerlo Town Hall at 7:00 P.M.

Also, the Town Board Workshop scheduled for July 16 is canceled.

Councilman Bichteman seconded the motion, with a roll call vote as follows:

AYES: Supervisor Rapp, Councilman Sherman, Councilman Bichteman,
Councilman Field, Councilman Lounsbury

NAYS: None.

RESOLUTION #43-2013 was thereby duly adopted.

Supervisor Rapp announced the Albany County Executive Dan McCoy's office has called to schedule a meet and greet with residents for the Town of Westerlo on Fri. July 12th at approximately 11

AM for the purpose of asking questions about the County government, if there are any changes he will advise.

Councilman Bichteman spoke regarding the clarification of the role of the Town Attorney and her participation at Town Board meetings. Councilman Bichteman informed the public the Town Attorney is not an elected official. She serves at the convenience of the Town Board and attends meetings when she is asked to do so by the Boards. The Town Attorney's responsibility is to the Town Board and the Town of Westerlo. When individuals question the Town Attorney and call her office she is not obligated to respond. Those individuals that do have questions about the Town's procedures should contact the Town Supervisor. If it is a legal matter, it will be referred to the Town Attorney to render a legal opinion to the Board if she is asked to do so. Discussion followed with comments and questions regarding the Town Board and the Town Attorney made by several residents their questions or comments were answered by Councilman Bichteman and Councilman Sherman.

The meeting was then opened to the public.

Diane Sefcik had concerns regarding the Hydrofracking Report. She wanted to know what is the status of the document, what role does it have, and she has a document of her own that she wants to be filed with the report. She was informed the Hydrofracking Report was not accepted by the Town Board. Councilman Bichteman indicated earlier in tonight's meeting he had reported a list the things that need to be addressed in the report. It is his opinion that the Hydrofracking Report should be revised. There are some things in the report that need to be edited or are already slightly outdated. It is difficult for a committee to start compiling a report on Hydrofracking and to try to keep information current with the time constraints put upon them, and the evolving industry.

Councilman Bichteman advised a Freedom of Information Law (FOIL) request granted by the Town was granted in error. The Town should not have released the Hydrofracking Report, that report was not a completed document. The same thing is now happening with FOIL requests for the Comprehensive Plan, which also has not been accepted by the Town Board and is being FOILED currently. The documents should not be released until they have become an official document and that does not happen until the Town Board accepts the document. A brief discussion followed between Diane Sefcik and Councilman Bichteman regarding FOIL requests and the hydrofracking committee.

Helena Kosorek spoke regarding the consensus of responsibility of Town Board on the subject of Hydrofracking. She made reference to a report about Storm water runoff and should the Town have a Public Hearing on a ban. Zoning Administrator Edwin Lawson responded. He advised initially the Hydrofracking Report was to gather information not necessarily pro or con, so a strategy could be developed for a potential law for the Town of Westerlo. Being a class C town we cannot even regulate speed limits. Storm water runoff is regulated by NYSDEC. You are left with trying to pull in the County and State by sharing your thoughts with them. Some towns have chosen to ban, but whether or not a ban would hold up when the town cannot even regulate speed limits. The Town is dictated to by the County and State, permits are issued by NYSDEC and New York State. The Town can regulate Zoning changes regarding road weight limits, how many acres, and bonding; similar to what had been done with cell phone towers. In his opinion, Zoning is a strategy that can be put in place to address some of the issues. Need to determine what applies to a class C town, the county and state can assist. Discussion followed on the subject between Mrs. Kosorek and Zoning Administrator Lawson. Several more persons commented on the issue of Hydrofracking.

Highway Superintendent Keith Wright Sr. spoke to the Town Board regarding the potential purchase from the Town of Durham of a 1996 Champion 710 grader with 3900 hours for the purchase price of \$30,000. Jody test drove the grader and it runs well. A new grader would cost \$189,000. The Town of Durham is willing to wait on a payment if the Town of Westerlo gives them confirmation of intent to purchase. Supervisor Rapp asked the Town Board for their opinion. Councilman Field made a motion to adopt the following resolution:

WHEREAS: the Town of Westerlo Highway Superintendent Keith Wright Sr. is seeking the Town Board's authorization to purchase a used 1996 Champion grader from the Town of Durham for \$30,000 be it hereby

RESOLVED: the Town Board authorizes the purchase of the used grader from the Town of Durham in the amount of \$30,000.00

Councilman Bichteman seconded the motion and a roll call vote resulted as follows:

AYES: Supervisor Rapp, Councilman Field, Councilman Bichteman, Councilman Sherman and Councilman Lounsbury

NAYS: None.

RESOLUTION # 44-2013 was thereby duly adopted.

Eugene McGrath commented on the State Comptroller's Report of Fiscal Stress Monitoring System from an article in a local newspaper. He compared the ratings of the Town of Greenville, with the Town of Westerlo. Supervisor Rapp thought the rating may be FEMA related. Councilman Bichteman had questions regarding what the criteria was based on for the ratings. Councilman Bichteman indicated that he had not seen the article.

Pat Kosorek spoke regarding the Second Amendment Preservation Ordinance and nullification of the NYS Safe Act. A discussion followed between Councilman Bichteman and Mr. Kosorek on the subject.

Diane Sefcik indicated that she appreciates the way Supervisor Rapp conducts the meetings giving the public the opportunity to speak for a truly democratic process. She also wanted to know if amendments would be made to the Zoning Law, and would this happen at the Public Hearing scheduled for a potential Extension of the Moratorium on Hydrofracking. It was indicated to Mrs. Sefcik that any Zoning Law changes would not happen at the Public Hearing. She asked if the Town Board would accept her notes for the Hydrofracking report. Councilman Bichteman indicated they would take a look at her notes, and he made no indication to her that her notes would be included in a revision of the Hydrofracking Report.

There was a brief discussion on Town Board workshops.

Helena Kosorek asked if compulsory integration has been addressed or looked into.

Clinton Milner spoke regarding the Town Attorney. He indicated that she did everything she could to stop the placement of the town seal on trucks, and the reduction of speed limits in South Westerlo. It was indicated to Mr. Milner by Zoning Administrator Edwin Lawson that this is not factual. The Town Attorney had no action in either. Albany County and New York State regulate the speed limit in the Town of Westerlo. The speed limits are set based on their determinations. He believed if they looked back in minutes the matter of seals on the trucks was brought up by the Marrone's and the Town Supervisor indicated that he would talk to the Highway Superintendent about the seals. It took time but they are on the trucks, the attorney was not involved. More discussion followed on the subject of speed limits between Mr. Milner, Councilman Sherman, Supervisor Rapp and Zoning Administrator Edwin Lawson.

Town Clerk Kathleen Spinnato reported she is designated as the FOIL Access Officer for the Town of Westerlo. Upon receipt of a FOIL Appeal letter, she had contacted the Town Attorney regarding who should be answering FOIL Appeals, as to the Town Clerk's knowledge no one had ever been officially designated as the FOIL Appeals Officer. She forwarded the Town Attorney's response regarding a FOIL Appeals Officer to the Town Board members. As the FOIL Access Officer she should not be the FOIL Appeals Officer as well. She asked the Town Board to review the matter. Supervisor Rapp and the Town Board agreed to review the matter of the designation of a FOIL Appeals Officer. No determination was made at this time.

Councilman Sherman made the motion to adopt the following resolution:

WHEREAS: Any new hires to the Town of Westerlo will no longer fall under the 1997 revision of the Employee Handbook be it hereby

RESOLVED: New hires will fall under whatever the Employee Handbook is revised to, as the Town Board is currently working on revisions to the Employee Handbook at Town Board Workshops.

Councilman Bichteman seconded the motion and a roll call vote resulted as follows:

AYES: Supervisor Rapp, Councilman Sherman, Councilman Bichteman, Councilman Field, Councilman Lounsbury.

NAYS: None.

RESOLUTION # 45-2013 was thereby duly adopted.

Councilman Sherman made a motion to adjourn the meeting, seconded by Councilman Lounsbury and carried all in favor. The meeting adjourned at 9:10 PM.

Respectfully Submitted,

Kathleen Spinnato