

## REGULAR MEETING

April 4, 2016

A regular meeting of the Town Board of the Town of Busti was held on Monday, April 4, 2016 at 6:45 p.m., at the Town of Busti Administration Building, 125 Chautauqua Avenue, Lakewood, New York with the following members present:

Supervisor Jesse M. Robbins  
Councilman Todd M. Hanson  
Councilman Jim Andrews  
Councilman Kenneth J. Lawton  
Councilman Rudy Mueller

Supervisor Robbins called the meeting to order with the salute to the flag and a moment of silence was observed.

Present at the meeting were: Lakewood Busti Police Chief John Bentley, Attorney Joel Seachrist, Highway Superintendent Melvin Peterson, Code Enforcement Officer Jeffrey Swanson, Mary Griffin, Susan Lane, Charles Gessing, Village of Lakewood Department of Public Works Supervisor Tom Pilling, Tim and Candy Young, Jim Toth, Tillie Solomonson, Chautauqua County Legislature PJ Wendel, Ross Foti, John Certo, Andy JA Byler, Bennie M. Miller, Henry A. Byler, Levi A. Byler, Nancy Padake, Diana Peterson, Dennis Brown, Ray Ayers, Lee Fischer, David Menzies, EJ McCague, William de la Cerde, Charles Roof, Joe Miller, Jay Roof, Mary Seger, Craig Saldano, Mahlon Hochstetler, Atlee Shetler, Peter Dawson, Nancy Bargar, Village of Lakewood Trustee David DiSalvo, Village of Lakewood Mayor Cara Birrittieri, and Post-Journal Reporter Doug Callen.

Chautauqua County Legislature PJ Wendel reported there is a proposed Stream Back Stabilization Project for Shadow Creek and Sunset Golf Course, the project was originally denied but is now on the county approve list. There is a major erosion issue in that area that needs to be addressed. Also, the county continues to discuss changing the minimum age to purchase tobacco products.

Several in attendance questioned the status of the proposed law to change the use of sawmills in the town, stating they would like to see the town move forward in approving such use. Supervisor Jesse Robbins noted that at this time the Town Code states that sawmills are not allowed in any Zoning District within the Town of Busti. The Comprehensive Plan Implementation Committee is working towards a solution that would be presented to the board for approval. Prior to any change in the code a public hearing would be scheduled and announced.

Town Clerk Darlene Nygren reported her office has collected \$6,015,601 toward the 2016 County Town Tax Warrant of \$6,673,522.84. The last day of collection was Friday, April 1, 2016, however payments that were postmarked for that date or prior will be processed this week. Town Clerk Nygren noted that the Hazeltine Public Library and the Busti Historical Society will be sponsoring a book talk introducing the newly published book Grit and Grain: The Busti Mill Restoration by Helen Ebersole. The event will be on Saturday, April 23<sup>rd</sup> from 11am – 1pm at the Hazeltine Public Library. Town Clerk Nygren also noted that the Chautauqua County Municipal Clerk's Association is sponsoring a \$300 scholarship for continuing education expenses for a student who intends to enter public service as a career. Applications can be picked-up at the Town Clerk office and the deadline is April 30<sup>th</sup>.

Chief John Bentley reported 2,770 incidents year to date. The Canine Unit has been recertified as an explosive detection search dog and tracking people. Chief Bentley is requesting that the Town Board Public Safety Committee meet with Village Trustees David DiSalvo and Randy Holcumb along with the Town and Village attorneys to discuss increasing parking fines which have not been changed since 1967. Accessible and Fire Lane fines are set by the state.

Highway Superintendent Melvin Peterson reported the department has been working on the drainage on Mall Boulevard with plans to repave the boulevard this summer. The weekend storm brought down a number of trees and the department was called in to plow.

Code Enforcement Officer Jeffrey Swanson reported New York State has adopted new codes for ICC. The new codes take effect April 6, 2016 with a grace period through October 6, 2016. These codes affect energy, documentation, and compliance. Mr. Swanson has completed two asbestos inspections. He has received confirmation of qualifications for two electrical inspectors and is waiting on a third inspector to complete his training.

Supervisor Robbins moved the following resolution regarding the Chautauqua County Multi-Jurisdictional Hazard Mitigation Plan, with the changes suggested by Highway Superintendent Peterson at the previous Town Board meeting, which was duly seconded by Councilman Mueller:

**RESOLUTION**

WHEREAS, Town of Busti, with the assistance from Ecology and Environment, Inc., has gathered information and prepared the Chautauqua County Multi-Jurisdictional Hazard Mitigation Plan; and

WHEREAS, the Chautauqua County Multi-Jurisdictional Hazard Mitigation Plan has been prepared in accordance with the Disaster Mitigation Act of 2000; and

WHEREAS, Town of Busti is a local unit of government that has afforded the citizens an opportunity to comment and provide input in the Plan and the actions in the Plan; and

WHEREAS, the Town of Busti has reviewed the Plan and affirms that the Plan will be updated no less than every five years;

NOW THEREFORE, BE IT RESOLVED by the Town Board of the Town of Busti adopts the Chautauqua County Multi-Jurisdictional Hazard Mitigation Plan as this jurisdiction's Natural Hazard Mitigation Plan, and resolves to execute the actions in the Plan.

Upon roll call vote, all aye.

Supervisor Robbins noted that a town employee's NOVA card remains turned off. Communication from NOVA states that the card was turned off due to two charges: one charge was marked ineligible due to the fact that it was submitted in 2015 and the DOS was under the prior year's plan and the second charge, NOVA had requested substantiation and did not receive the required documents (at this point the run-out date of 60 days would cause the substantiation to be denied). Discussion followed.

Councilman Lawton moved the following resolution which was duly seconded by Councilman Hanson:

**RESOLVED**, the Town of Busti town board authorize NOVA to activate the employee's card because the board believes the charges were justified and the board send a letter to all town employee's stating that any NOVA charges that require substantiation must be substantiated with the requested documents. Employees would be asked to sign the letter noting that they have read and understand the proper procedure of substantiation for their NOVA card and that the town will not make any exceptions in the future.

Upon roll call vote, all aye.

Highway Superintendent Peterson reported that he attended the Health Care Consortium meeting on March 14, 2016. Don Barber, Executive Director of Greater Tompkins County Municipal Health Insurance Consortium led the presentation which addressed if Chautauqua Municipalities can achieve savings and security with Article 47 Health Insurance model. This plan is a self insured plan that would not have more than an 8% annual increase in cost to the employees, there would be a \$250,000 cap and there is no broker. County Executive Vince Horrigan was interested in further investigating the possibilities of developing a Health Care Consortium for Chautauqua County. The school districts are currently insured through a Health Care Consortium.

Town Clerk Nygren noted that her office received one letter of interest for the Dog Enumerator position. The letter was from Stan Peterson, town resident.

Supervisor Robbins moved the following resolution which was duly seconded by Councilman Hanson:

**RESOLVED**, that Stan Peterson be assigned the duty of Dog Enumerator for the area north of Hunt Road (including Village of Lakewood) at a rate of \$1.00 per dog reported to the town, with payment made by voucher.

Upon roll call vote, all aye.

Supervisor Robbins noted that the Office of the New York State Comptroller, Division of Local School & Accountability has filed the Town of Busti Taxpayer Equity Report of Examination with the Town Clerk's office. The Town of Busti has ninety days from the date of filing, March 28, 2016 to submit a Corrective Action Plan.

Highway Superintendent Peterson read the following statement:

"After reading the Comptroller's report I do agree that Mr. Robbins should take full responsibility for the wrongful charging to the DA Bridge account for the truck. In meetings with Mr. Robbins I explained the DA account was for bridges and there was money in the DB Machinery account to buy the truck. In 1993 the town board passed the following resolution "that, pursuant to the applicable provisions of the highway law, all expenses for highway machinery and snowplowing shall no longer be treated as whole town expenses but said items shall be charged and levied to that real property located in the Town of Busti outside the Village of Lakewood". Mr. Robbins said it was done due to the Highway Department doing services for Lakewood at no cost. These services that Mr. Robbins was referring to are called Shared Services and we have done these services for many years with Lakewood and other surrounding towns and villages. If the town board wants to look at the Shared Service Agreement they would find that the Highway Superintendents, not the Supervisors are granted the authority to see that the services provided are of equal value. Town and villages in the county have been doing Shared Services for decades without political interference. Emergency Services needs towns and villages to help, if they can, when natural disasters hit without the affected areas having to worry about charge backs. In the response letter to the Comptroller, Mr. Robbins lists some of the services that we have done, and some we have never done. Mr. Pilling would be more than happy to explain to the board what Shared Services the village does for the town, and services the town has done for the village."

Village of Lakewood Department of Public Works Supervisor Tom Pilling noted the following list of Shared Services between the Town of Busti Highway Department and the Village of Lakewood Department of Public Works:

#### Town of Busti in the Village of Lakewood

1. Paving of village roads – the Town of Kiantone owns half of the roller and paver
2. Snow removal – Town of Busti truck was used to haul snow piles out of the square
3. 1 ten-wheeler and operator was used for four days
4. Since 2009 Town of Busti has helped one afternoon hauling some big leaf piles away, however there is no fall brush pickup
5. The Town of Busti excavator was at Crescent Creek from the railroad tracks to Summit Ave, on 3/7/2012 the operator reported the track was torn. That section had only been cleaned once in 20 years. The town has helped with the area from the lake to the foot bridge has been cleaned out a couple times since 2009.
6. The town's excavator has been used for placing rip-rap on some projects
7. The town and the village share the brush facility and tub grinder
8. The Town of Busti Highway Dept built a new wing and plow frame for a village truck, the village paid for the parts and had an employee there to assist. The town provided the welder and his pay.
9. In 2015 the town helped excavate the bank around the addition to the Village Highway Building.

#### Village of Lakewood in the Town of Busti

1. Lakewood provides trucks and manpower when the town paves, as well as other municipalities.
2. The village street sweeper is used to sweep Briarwood, Copper Ridge, Pewter Rock, Cottage Park, Lakeside Dr, Vukote and Goose Creek
3. The village has been snow plowing the Town Hall and former Recreation Center on an average of 30 times per year for the last 30 years.
4. The town uses the village loader or backhoe when installing sewer line in close proximity to the village.
5. Summer Recreation Program – restrooms and beach area.

Mr. Pilling stated these are just a few of the Shared Services between the village and the town. Shared Service is to offset costs to the tax payers so each municipality can do the best job for the least amount in costs. This eliminates the need for each municipality to buy the specialty equipment: such as pavers, rollers, excavators, sweepers, and air compressors.

Supervisor Robbins noted that the \$137,500 budgeted in 2014 in the town-wide highway fund was charged to the whole town, not just the Village of Lakewood, every parcel in the town was charged the same percentage for the expenditure. The expenditure resulted in a higher tax for village residents and although there was an increase in the tax for residents outside the village it was not as much as it would have been had the \$137,500 been charged to the part-town highway fund. Supervisor Robbins stated that there is a law that allows the expenditure to be budgeted in the town-wide highway fund, however he was unaware, at the time, that prior to the 1994 budget a resolution was passed stating that highway equipment expenditures were to be budgeted to the part-town highway fund only. The town board had discussed the expenditure in detail prior to approving the 2014 budget and felt that they were justified in budgeting the expenditure in the town-wide highway fund. Supervisor Robbins noted that he now understands that a resolution should have been passed by the town board prior to budgeting the expenditure in the town-wide highway fund.

Discussion followed. Many of the Lakewood residents present, including Village of Lakewood Mayor Cara Birrittieri, expressed their concern regarding the audit finding and their disapproval of the misclassified expenditures; asking how the situation will be corrected in the future. Supervisor Robbins noted that he now understands that a resolution must be made to approve a highway equipment expense in the town-wide highway fund in a budget.

Councilman Mueller noted that there is no penalty to the town for the finding, but the Comptroller's office is asking for a board response through a Corrective Action Plan within 90 days.

Attorney Joel Seachrist noted that according to Appendix B of the Report of Examination, Note 1: "The Board can choose to levy taxes for machinery purchases upon the entire Town, including the Village, and allocate these costs to the town-wide highway (DA) fund, but it must first pass a resolution stating its intention to do so".

Mayor Birrittieri noted that the Village Department of Public Works has requested to purchase a new truck for many years; however the purchase has not been approved. She stated that she would like to work with the town board and the attorney for the town to try to come up with a solution that would be satisfactory to the town and village tax payers.

Supervisor Robbins noted that a village within a town is responsible to contribute towards the cost of running the town. The village portion of the town tax is half of the town-wide funds budgeted, per assessment. The 2004 village tax rate for town taxes was the same as it was in 2015. Supervisor Robbins noted the Town Supervisor prior to him continued to drop the village portion of the town tax and taking money from the fund balance.

Councilman Mueller noted he believes that Supervisor Robbins should have noted, in his response to the Comptroller's office, that a mistake was made. Although, the response letter does note that in the future a resolution would be made for such expenditure to be budgeted in the A fund and agrees that statement should be part of the Corrective Action Plan. Supervisor Robbins noted that the reference to the "town board feeling that the action was justified" was referring to the town board at the time that the 2014 budget was approved. Councilman Mueller stated that his biggest concern is that County Shared Services is at risk by keeping track of what each municipality's highway department does for the others and feels that it is a dangerous precedence to set.

Attorney Joel Seachrist noted that it was not required that the board review and approve the Supervisor's initial response letter to the Comptroller's office. The Corrective Action Plan should be approved by the board.

Councilman Hanson stated that it should be noted that in spite of the audit finding that has been discussed that it was "overall" a good audit. The town had not been audited since 2009 and this was the only finding.

Councilman Lawton stated that if the part-town highway fund had been charged for the \$137,550 expenditure the residents outside of the village would've been taxed higher and the village residents less. However, he noted that had the board passed a resolution that the expenditure was to be budgeted in the "A" account the auditor's report would not have said that an undue burden was placed on the village, the finding was on the procedure. The board approved budgeting the expenditure in the "A" fund because they

felt that it was the appropriate division of those expenses. His interpretation was that the auditor's statement that it was an undue burden to village residents was due to the fact that a resolution was not passed and had the proper resolution been passed the finding would not have been written in the report.

Councilman Hanson stated keys to resolving the audit finding situation is the Corrective Action Plan; working with the Highway Superintendent for a ten year budget for equipment; and not keeping track of Shared Services. At the time, the budget expenditure made sense from the way it was explained and looking at how other town's and villages handle such expenses. The board needs to look at what the Corrective Action Plan should be and what will be done moving forward. He feels that it is important to quit spending time looking at the past and rather look at the future how the town and village can be working together.

Supervisor noted that the town has received a Draft Franchise Agreement from Time Warner Cable to renew the current franchise agreement.

Supervisor Robbins moved to set a public hearing regarding renewal of the cable television franchise agreement by and between the Town of Busti and Time Warner Cable. The public hearing will be held Monday, April 18, 2016 at 7:00 p.m., the motion was duly seconded by Councilman Lawton. All in favor.

Supervisor Robbins moved the following resolution which was duly seconded by Councilman Hanson:  
**RESOLVED**, that Highway Superintendent Melvin Peterson be authorized to attend the 71<sup>st</sup> Annual School for Highway Superintendents at Ithica College, Ithica, New York – June 5-8, 2016.  
Upon roll call vote, all aye.

Supervisor Robbins moved the following resolution which was duly seconded by Councilman Hanson:  
**RESOLVED**, that the Town of Busti Town Board approve appointing the following individuals to the Planning Board for a term of seven years – Janet Briggs, Michael White, Linda Anderson, and James Butler.  
Upon roll call vote, all aye.

Supervisor Robbins moved the following resolution which was duly seconded by Councilman Hanson:  
**RESOLVED**, the following individuals be authorized to attend Southern Tier West-Local Government Conference at Houghton College, Houghton, New York – May 11, 2016:  
Town Supervisor, Town Councilmen, Highway Superintendent, Town Clerk, Deputy Town Clerk, Town Justices, Court Clerk, Deputy Court Clerk, Code Enforcement Officer, and Planning Board & Zoning Board of Appeals Members.  
Upon roll call vote, all aye.

Supervisor Robbins moved the following resolution which was duly seconded by Councilman Mueller:  
**RESOLVED**, that Supervisor Robbins be authorized and directed to pay the presented General Fund, Highway Fund, and the Joint Recreation Fund for Abstract No. 6 from warrant #144 to and including warrant #192 in the amount of \$46,972.77.  
Upon roll call vote, all aye. Carried.

Supervisor Robbins moved to accept the February 16, 2016 and March 7, 2016 town board minutes which was duly seconded by Councilman Andrews.  
All aye. Carried.  
Councilman Hanson reported that he has been meeting with Highway Superintendent Peterson to develop a ten year plan for the Highway Equipment budget.

Councilman Hanson moved the following resolution which was duly seconded by Supervisor Robbins:  
**RESOLVED**, Highway Superintendent Peterson be authorized to look at the vault door at Gernatt Products to determine if it is in working condition. If so, he is authorized to purchase it for a price no greater than \$1,500, the door would be used in the new records vault and the price is considerably less than what a new one would be.  
Upon roll call vote, all aye.

Councilman Hanson stated that Highway Superintendent Peterson is working with Jim Henderson to locate

a truck for the town to purchase for the Parks Department. Currently the Parks Department does not have a truck and is using a Highway Department truck. He also noted that he emailed the town board a proposal from New Wave Energy to renew its contract as supplier for gas and electric and would like the board to respond with comments or questions.

Councilman Mueller reported he met with the bookkeeper and reviewed the Joint Recreation funds. He was glad to hear that Supervisor Robbins had asked the State Comptroller's office to audit the JR funds. Councilman Mueller recommends that the board send a letter to the State Comptroller's office requesting a formal audit be done on the recreational funds in the future. Councilman Mueller gave the board copies of pages from the town's 2016 Annual Financial Report AUD which shows the unassigned fund balance.

Supervisor Robbins moved to adjourn the meeting at 8:26 p.m. which was duly seconded by Councilman Lawton.  
All aye.

Respectfully Submitted,

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Darlene H. Nygren, Town Clerk