

**MINUTES OF THE SPECIAL MEETING OF
THE TOWN BOARD OF THE TOWN OF NEW LEBANON
HELD ON AUGUST 9, 2019**

Present: Doug Banker, Deputy Supervisor
Kevin Smith Sr., Councilmember
Mark Baumli, Councilmember
Jesse Newton, Councilmember
Norman Rasmussen, Councilmember

Recording Secretary: Tistrya Houghtling, Town Clerk

Others Present: Peg Munves, CAC Member
Ted Salem, ZBA Member & ZRC Chair
Cynthia Creech, CAC & ZRC Member
Judy Zimmer, NL Rep to CC OFA
Bud Godfroy, LVPA
Phyllis Hulbert, LVPA
Pat Burnell, LVPA
Sharon Moon, Board of Assessment Review
Samantha Long, Court Clerk
Tegan Cook, Planning Board & Recreation Comm Member
Jeff Winestock, Highway Superintendent
Joe Ogilvie, Recreation Commission Member
Hazel "Cissy" Hernandez, CEO/ZEO/Building Dept Admin
Jim Carroll, Planning Board Member
Katherine Levitan, Recreation Commission Member
Georgette Tefoe, Ethics Board Member
Bob Gilson, CAC Member
Thaddeus Flint, *The Eastwick Press*
Several members of the Public

CALL TO ORDER:

The meeting was called to order at 12:30 p.m. by Deputy Supervisor Banker.

SUPERVISOR RESIGNATION:

Deputy Supervisor Banker stated that we are holding a special meeting today to determine how to fill the Supervisor vacancy. He stated that the Town Clerk will read the pertinent town law that covers how this is done.

Town Clerk Houghtling read the following from the Association of Towns:

The town board has the authority to fill a vacancy in the office of supervisor (Town Law, §64(5)). A majority of the fully constituted board is required to make the appointment (i.e. 3 out of 5 votes needed). The person who is appointed to fill the vacancy in this case would serve until December 31, 2019 when the incumbent's term of office is scheduled to expire. During the vacancy, the deputy supervisor has the authority to perform all of the functions of the supervisor with two

exceptions – (1) the deputy does not vote on behalf of the supervisor and (2) the deputy cannot represent the town on a county board of supervisors (Town Law, §42). The responsibilities of the supervisor are primarily set forth in Town Law, §29 and Town Law, §125 but there are other provisions of law that might apply. I would recommend that the deputy supervisor review the town law manual and the information for town officials manual from the state comptroller's office to get a sense of the supervisors duties. In the event the town board does not fill the vacancy in the office of supervisor, the deputy would continue to perform the duties of the supervisor (with the exceptions noted) until the expiration of the incumbent's term on December 31st 2019. In this case, the winner of the election will take office on January 1, 2020. Should the town board decide to appoint the winner of the election for the remainder of the incumbent supervisor's unexpired term he or she would have to take and file two separate oaths of office one for the appointment to the remainder of the unexpired term and a new oath for the new term to begin January 1, 2020.

Councilmember Rasmussen made a motion to nominate Doug Banker to replace Colleen Teal until the election. The motion received no second.

Councilmember Smith made a motion to appoint Margaret Meg Robertson as interim Supervisor until December 31, 2019. Councilmember Baumli seconded that motion.

Deputy Supervisor Banker asked if the board members had any discussion. Councilmember Rasmussen stated that he thinks that Meg Robertson has the experience to do the job just fine. He thinks however Doug Banker has the more recent experience, has been briefed by the outgoing Supervisor, and given the fact that from his point of view we are talking about 2 months because the winner of the election should be nominated rather than continuing the interim another 2 months until January, that we would be serving the town better if we went for more continuity by nominating Doug Banker.

Deputy Supervisor Banker asked if there was any other board discussion. Nobody spoke. Deputy Supervisor Banker stated that the board has discussed all they can discuss and he is going to open this for public comment. Councilmember Newton stated that we have a motion and a second. Councilmember Baumli stated that he can't open that up for public comment. Deputy Supervisor Banker stated that you are allowed to have public comment before the vote. He feels that the Town Board should hear from people before they decide. Councilmember Baumli stated that is fine.

Councilmember Baumli stated that he would like to speak if we are going to open it up to the floor. He stated that there have been emails and facebook posts that went out to the general public that some board members intentions were to appoint Mr. Godfroy into this position. He can tell you himself as of last Monday's meeting when Colleen gave her resignation, that option was off the table for him. Now, did he discuss that possibility with people, yeah he did because he is a board member that has a right to talk to other board members and other people in the community but as of before that email was sent out and the facebook post was sent out, he had made his decision as to where he was going to go with that. He said to Mr. Godfroy, the evening of the meeting where Ms. Teal gave her resignation, he talked to him outside and he said to him that would be political suicide for him as a Democrat that sits on

this Town Board to put you in that seat, so therefore he will not do that. That was made by him before the emails started flying around in this town based off hearsay of other individuals. He feels bad for Mr. Godroy because he thinks by the emails going out it looks like they are all scheming against the other candidate. That was not his intention. He did have a conversation with other board members about the possibility of doing that. That lasted one conversation and he said he will not do that so if anybody has any other questions for him based off of that he would be happy to answer them, but that option was totally off the table last Monday for him.

Councilmember Smith stated that in the emails it was stated on the front page that all information the Supervisor dealt with was now to go to the Clerk's office where it should have said it should have gone to the Deputy Supervisor's office or a board member. So when we are talking fairness and we shouldn't, according to all of these emails, be supporting either candidate for this interim, because it would be improper, he agrees. Councilmember Baumli stated that was actually in the town newsletter. Colleen Teal put in the town newsletter, unbeknownst to any board member what her letter was going to state, she said for things that you would have called or emailed me about, please contact or email Town Clerk, Tistrya Houghtling, giving the phone number and Tistrya's town email address. It is not the job of the town clerk to do the supervisor's job. She was not elected to do that job or represent that job, it is, at this point, until this vote goes through, it is the Deputy Supervisor's job so he doesn't know if this was politically motivated that Colleen made that decision, because she is a Democrat and Tistrya is a Democrat or was it because Doug didn't want the responsibility to do that job. He doesn't know, but as soon as he saw this, people in this town should have a problem with that. That is unethical.

Councilmember Rasmussen suggested that we get the comments back to the motion that we are discussing. There is a motion to nominate Meg Robertson and he believes that is what we were asked to comment on, correct? Councilmember Baumli stated correct but we were going to open it to the floor and he wanted the floor to be aware based off emails that were going around town what his position was and where his position when it happened and maybe that will solve some questions of people.

Deputy Supervisor Banker stated that he will open it up for public comment and the normal rules for public comment apply so please raise your hand to be recognized, only address the board, do not debate among yourselves while we are here.

Audience member Steve Axelrod stated that he would like to ask the board members individually if they could explain why they would prefer Meg Robertson as the interim Supervisor as opposed to Doug Banker. Councilmember Smith stated board representation is one. With the emails, not supporting either candidate as well. Meg is a former Supervisor, he is sure she has to brush up on a couple of things, the responsibilities, there are quite a few but they are minimal, it's your retirement, your payroll, your transfers from accounts. The way it sets now, to him, it would be inappropriate because it would be giving Tistrya an advantage over her opponent. Town Clerk Houghtling asked Councilmember Smith if he was referring to appointing Doug Banker. Councilmember Smith stated because she would be doing a lot of that Supervisor's work and she could potentially run on that, that she is already

into the job, she is learning that job right now. He thinks it would be good to have someone independent and that is his opinion. Town Clerk Houghtling stated for the record she already does a lot of that. Colleen and her worked hand in hand for the last 4 years so the fact that she has experience in some of that work has nothing to do with this, so a lot of those things that Meg and her would work together on or Doug and her would work together on, she already has been working with Colleen for years on.

Audience member Phyllis Hulbert stated that she would like to know why there should be a debate when Doug Banker is the next person in line. Deputy Supervisor Banker stated that it doesn't work that way. It is whatever the board wants to do. He stated that they could choose him because he is obviously a citizen of the town and all that, but it is not an automatic succession. Phyllis Hulbert asked if being the Deputy is not automatic. Deputy Supervisor Banker stated that it doesn't mean that he automatically takes the job when the Supervisor resigns. Phyllis Hulbert stated that this whole thing is totally wrong in her estimation and she does agree with all of them that Bud or Tistrya, when they are opposing each other, should be in that seat. She likes them both but she agrees with the board. Deputy Supervisor Banker stated just to remind everyone, Tistrya is not being selected to be the Supervisor.

Councilmember Baumli stated if he could get back to the gentleman's original question as to why he thinks we should appoint Meg, he thinks it is experience, and he likes Doug, he thinks Doug is a very good guy, but Doug has not done the job of Supervisor. He has maybe shadowed Colleen, he sat in on one board meeting, he ran one board meeting. Colleen made sure that that board meeting had minimal on the agenda. Back to Phyllis's point, Doug was not appointed by the board. That is a position that the Supervisor does, similar to Town Historian, the board has no choice in that. That is an appointment made only by the Town Supervisor. Now, had she continued on her job, stayed here in town, maybe was sick for some reason, couldn't do her job, we wouldn't have this option. She left town. She is no longer a resident of the Town of New Lebanon so now the board has that option to make a decision as to who we think. And he is basing his off of experience, the job that's been done, it's a short period of time, Meg understands how County government works, she will represent us at the County level, she has done the supervisor's job as far as transfers, dealing with the accountant. Doug has minimal experience in that and he can speak for himself as far as what Colleen has trained him on or not trained him on. Himself personally, that is why he chose Meg. He chose Meg because of what her experience, it is a short term position, she is not running for the job, as far as he knows she is not going to run for Supervisor anytime in the near future. That was his position, what was good for the town.

Audience member Erminia Rasmussen stated that there was a previous special meeting held, if she is not mistaken, about a week ago and it was for the exact same reason.

Councilmember Baumli stated that was for Colleen's resignation. Erminia asked why the board wouldn't have, at that time, appointed Doug or someone else. Councilmember Smith stated that you cannot appoint until the day of the resignation of the Supervisor because the Supervisor could have had the opportunity to withdraw her resignation, which he found out would only have had to been approved by the Clerk to re-do it so even though she resigned, the board couldn't hold her to that until the date of the effective resignation, nothing could be

done. Erminia Rasmussen stated so that meeting was only to accept her resignation. Councilmember Baumli and Councilmember Smith stated correct. Councilmember Newton stated that she set the date which was today as her last day. Erminia Rasmussen asked if there was any talk or mention of who the next temporary supervisor would be. Councilmember Baumli stated that they could have spoke of it, but they couldn't have made any motions to make that change on that day.

Councilmember Newton stated that when he was first asked about this he immediately said neither candidate. He had a lot of people say Mark would be a good person for it and he thinks that would be unfair as well because he is up for re-election this year. His first comment was a former board member that had a lot of experience or a former supervisor. The advantage with a former supervisor is they have the county experience and we get very little representation, obviously you see what the state and the county does, so he thought a former supervisor and really there is only one choice essentially. There is another recent one too. He had the comment made to him that replacing a Democrat with a Democrat would be a lot more correct than putting a Republican in the seat. Personally he is Independent so that doesn't bother him one way or another but he knows it would affect a lot of people in town so that was his decision.

Audience member Herb Teitelbaum asked if the Town Board has gotten a public commitment from the people who they might be considering on this interim basis, if they will not run for Town Supervisor. Councilmember Smith stated that the ballots are already done for the year. Herb Teitelbaum asked if they can't run. Town Clerk Houghtling and Councilmember Baumli stated that they could do a write in. Herb Teitelbaum stated he understands that and he is asking, put aside the pressure of a write in, have they gotten a commitment that the person they appoint will not pursue a permanent position as the Town Supervisor. Councilmember Smith stated no. Herb Teitelbaum asked why not. Councilmember Smith stated that it didn't come to mind because the ballots are done. Deputy Supervisor Banker stated he is not sure if the board has the authority to do that. Councilmember Rasmussen stated the board can't tell them not to run but they can ask if they intend to run. Herb Teitelbaum stated that the board has the authority to ask the question. Councilmember Smith stated that it was not thought of because as far as he knows there is no interest and it is too late to file for any party so that is why it was not a concern. Councilmember Baumli stated that the Democratic and Republican parties have already chosen their candidates for this upcoming election so the party lines are already set as far as the general election that will take place this year so Meg would be unable to even get on that ticket so unless as a candidate she did a write in, but again as a write in it's very difficult, he doesn't know if any write in has ever won a general election. Audience member Meg Robertson stated that Lisa Murkowski won the Senate in Alaska on a write in. She stated that write ins work. Herb Teitelbaum asked isn't the same principle applicable here as with not appointing the present candidates. Isn't the same principle applicable that you don't want somebody serving in this slot on an interim basis if they, under any circumstances write in or otherwise, if they are going to try to assume the permanent position. Somebody who is in the temporary position has the platform to promote a write in. Councilmember Smith stated that even if that question was asked, anyone can sit there and say no I won't and be in the position and then run, so it's not something that would even be law abiding if they said there is no way I am

going to run, there is no way you could stop them from running. Herb Teitelbaum stated that is exactly true but there are some of us who really don't like public officials lying. Councilmember Rasmussen asked Doug Banker if he plans to run a write in campaign for supervisor. Doug Banker stated no. Councilmember Rasmussen asked Meg Robertson if she plans to run a write in campaign for supervisor. Meg Robertson stated that she couldn't tell you at this point. She stated that she could or could not but that is why it is called a Democracy. Councilmember Rasmussen stated of course, it is just a question and he thinks it is a valid question.

Audience member Andy Jacobs stated, just so he understands, is the person who just said they wouldn't answer the question, the other person the board is thinking of nominating. Town Clerk Houghtling stated yes. Andy Jacobs stated so the other person the board is thinking about nominating won't commit to not running. Is that true? This election, they won't commit to not running in this election. Meg Robertson stated that she gets to choose, it is a Democracy. Andy Jacobs stated that he is relatively new to the town and he wants to make sure he understands the rules. He stated that somebody said before that the board has to appoint somebody. Isn't it a fact that if the board did nothing, the Deputy Supervisor would automatically serve until... Deputy Supervisor Banker stated yes but with restrictions. He would not be able to vote and he would not be able to represent the Town at the County level. Andy Jacobs stated but we would have a Supervisor. Councilmember Rasmussen stated we would have a Supervisor for the two months that we need one. Deputy Supervisor Banker stated in other respects, yes.

Sarah Westwind stated that in the email that went around it stated that if Doug Banker were to become the interim Supervisor, he would not take a salary for those months. Doug Banker stated that it is true that if he were to either be Deputy acting Supervisor or interim appointed Supervisor, he would not accept a salary. He stated that there are personal reasons for that and he also felt that in the event that there was extra work that was required either by the Accountant or perhaps we would need extra staffing for the 5 months, that those funds could be transferred to defray the cost of doing that. That is the only reason he did that. It was not to make him more attractive as a candidate. Sarah Westwind asked if Meg Robertson planned on taking the salary. Deputy Supervisor Banker stated that is not appropriate to ask. Andy Jacobs asked why is it not appropriate for the board to know whether one person would take a salary and the other wouldn't in making their decision since it would save the town money. Deputy Supervisor Banker stated that it is the board's prerogative to compensate the person who takes the job. Andy Jacobs asked is it not relevant to the board's decision. As a board member, do you want to take this vote without knowing whether you are going to save money by nominating one over the other. Councilmember Smith stated that you would be saving some money then you would be giving it to the Accountant, then you would be putting it in the Clerk's office as well, so, you know nothing's for free in this world. Councilmember Baumli stated that in reference to that savings, let me say, it's budgeted. It's in our budget. Our Supervisor gets paid. If Doug were in the position, he could get paid, Meg could take the salary, it's in our budget. But there are other things in our budget that he finds ironic that nobody questions. There is an individual that works for this town that gets a buyback on their insurance. It's a large amount. Deputy Supervisor Banker stated that he doesn't think that is appropriate to talk about either. Councilmember

Baumli continued by stating that nobody's concerned about that, but their worrying if we are going to save \$9,000 on paying a Supervisor on an individual that the board now has a motion on the floor to put in as Supervisor who has done the job, who is going to drive to the County, represent us at the County level. He thinks it is money well spent.

Audience member Erminia Rasmussen stated that the public is not allowed to ask Meg Robertson if she will take the salary, but can the board ask her. Councilmember Rasmussen and Councilmember Smith stated no. Councilmember Smith stated that this whole line right here is inappropriate what we are discussing right here period. Councilmember Baumli stated good, bad or indifferent you want us to choose if someone is not going to take the salary or someone is going to take the salary I should determine my decision based only on that? That is what you are trying to imply to me. Erminia Rasmussen stated no, but it is part of the consideration.

Audience Member Sharon Moon stated that the board has talked about being represented at the County. She asked how many meetings is this Supervisor actually going to do at the County, two or three. Deputy Supervisor Banker stated that he is guessing it is just 5 with the 5 months. Councilmember Baumli stated that he doesn't know, maybe somebody would know. Colleen also sat on, he believes, subcommittees at the County level. He asked if this appointment would still be on those same committees. Councilmember Smith stated that he would assume so because they are taking over the responsibility of the Supervisor for the Town of New Lebanon. Councilmember Baumli stated that it would not only be for the monthly Board of Supervisors meetings but would also represent us at the County level on these subcommittee meetings, which also might take place on other evenings.

Audience member Katherine Levitan asked for a point of clarification. She stated if the Deputy Town Supervisor becomes the Supervisor, isn't that person then also appointed to go to the County. Deputy Supervisor Banker stated that if he was appointed by the Town Board as interim Supervisor then he would be able to vote on this board and represent us at the County level. That is true of anybody who is appointed by the board. Katherine Levitan stated that nobody has really asked Deputy Supervisor Banker what he has done to merit being Supervisor. Deputy Supervisor Banker stated that he is not going to answer that because he doesn't think it is pertinent to the matter the board is looking at right now, which is whether or not to select Meg Robertson as the interim Supervisor. Katherine Levitan stated but they have a choice. They have a choice to do nothing, to appoint Doug Banker or to appoint Meg Robertson. Deputy Supervisor Banker stated yes, but they have already made that choice by nominating Meg Robertson.

Audience member Andy Jacobs stated the fact that some members of the board do not think it is relevant whether they have to pay \$10,000 or not to this decision. He agrees that it is not the deciding matter, it is not the only matter, but as a tax payer, somebody who pays a fair amount of money to New Lebanon, he cares where the money goes and he would think that our board members would want to know whether they were going to save or spend \$10,000 depending on the decision. In a close situation, it might make the call. Either of the nominees could vote, one way we save \$10,000 and get a vote, the other way we spend \$10,000 and get a vote.

Audience member Cynthia Creech stated that we asked about whether people would commit to not running on the next election cycle. She doesn't see the difference in asking about this. Councilmember Rasmussen stated that he thinks the primary difference is number one, not everyone agrees that he should have asked, but we are allowed to have a difference of opinion so the board is clearly not completely aligned on that question and the second is in regard to the money, it is something that Doug volunteered and the board never asked him to do it and never asked will you or won't you take the money so since we didn't ask one candidate we shouldn't ask any other candidate as a question of fairness. If she wants to speak up and say I will or I won't, that's her prerogative. Deputy Supervisor Banker stated that he communicated that to the board members only so that they would understand his position and he regrets that it was made public. He is sorry that we have spent this much time on it.

Audience member Judy Zimmer stated that he thinks Meg would be the perfect person because she has had the experience, however, and she doesn't know yet and that is fair, but if she does become the interim Supervisor and then also runs, again that feels like she has been given an unfair advantage. If she is acting as Supervisor for 3 months and people get to know her in that capacity, you never know. She stated that she agrees that it was probably not appropriate to bring up about the insurance thing, but since it did come up, correct her if she is wrong, but she is pretty sure that the board had created an option that if you wanted to go with another insurance on your own, that would be what would happen so it's not like someone coming to the board and saying why don't you pay me to not take the insurance.

Audience member J.J. Smith stated that she is a person who really cares only about two things and that is that everything is done ethically and constitutionally and she sees that that is what the board is trying to do and she is thrilled with that. She doesn't care if a Democrat or a Republican gets into this position. All she cares about is that somebody with some experience, somebody who has done this job, who knows this job is in there. It is a temporary appointment, 5 months. Anything can change between now and then. Anybody else could be a write in. There could be 18 people come write in between now and then. You are doing the right thing, you are doing it clean, you are doing it ethically. She thinks they should just take your vote and let's be done with it.

Town Clerk Houghtling stated that we have a motion and a second.

Roll Call Vote:

Councilmember Rasmussen -	Nay
Councilmember Smith -	Aye
Supervisor position -	Vacant
Councilmember Newton -	Aye
Councilmember Baumli -	Aye

ADJOURNMENT:

A motion was made by Councilmember Rasmussen and seconded by Councilmember Newton to adjourn the meeting at 1:00 p.m.

Respectfully submitted,

Tistrya Houghtling
New Lebanon Town Clerk