

**MINUTES OF THE SPECIAL MEETING OF
THE TOWN BOARD OF THE TOWN OF NEW LEBANON
HELD ON FEBRUARY 15, 2019**

Present: Colleen Teal, Supervisor
Kevin Smith Sr., Councilmember
Mark Baumli, Councilmember
Norman Rasmussen, Councilmember

Absent: Jesse Newton, Councilmember

Recording Secretary: Tistrya Houghtling, Town Clerk

Others Present: Cissy Hernandez, CEO/ZEO/Building Dept Admin
Jeff Winestock, Highway Superintendent
Brian Fitzgerald, Town Accountant

CALL TO ORDER:

The meeting was called to order at 10:30 a.m. by Supervisor Teal.

NYS RETIREMENT:

Supervisor Teal read the following statement:

What happened:

Retirement underwent an intensive audit and there were numerous errors in reporting found – In New Lebanon it effected 16 employees (out of approx. 40 to 45) from 1986 to 2015. The major part of the problem was salaried employees – retirement is reported on a monthly basis – not bi-weekly like payroll – there are usually 2 months per year that have three pay periods and the reporting must be adjusted for those two months.

We have been working with retirement consistently since we received the first letter compiling the data for the adjustments – however, there are adjustments for 16 employees over a thirty-year time frame – so the compilation of this data took time – additionally, there was confusion on both sides of exactly what needed to be done – what time frames for which employees, etc. This morning, the entire adjustment file was uploaded – it will take 2 to 3 days for this information to be validated by retirement – and 3 to 5 days (from today) for reinstatement– if there are any additional errors found in this report I will know immediately, because I will be in daily contact with retirement.

Also, once you are reinstated, your time over the suspension period will be added back into your service time – you will not lose the past week of service.

Your current reporting is accurate – I confirmed this with retirement – so once this is corrected, it will never recur. I am not saying there will never be a need for minor adjustments – those do occur from time to time but nothing of this magnitude has ever occurred before and now that we are fixing back 30 years, will not occur again.

Supervisor Teal stated that she has the confirmation of the submission this morning. We were going to submit last night but we ran into a little bit of a break down. Retirement thought we could submit each one individually, they were incorrect. We had to wait until this morning to do a massive file otherwise it would have been 11 additional days as we did each employee individually. She asked Highway Superintendent Winestock if he has any questions.

Highway Superintendent Winestock stated that he has a ton of questions and would like Town Accountant Brian Fitzgerald out here (Mr. Fitzgerald was in the kitchen at the time). Supervisor Teal stated that she would like him to direct his questions to her.

Superintendent Winestock asked when the first letter was sent out from retirement alerting the Town that there was an issue. Supervisor Teal stated it was sent in 2016. Superintendent Winestock stated that he got a letter a year ago from retirement stating that the suspension was going to happen and he went to Supervisor Teal and was told that it was being taken care of and not to worry about it. He then got another letter recently stating that his retirement has been suspended. He cannot retire today. He talked to the Tiffany from retirement who sent that letter to us and she has asked and asked and asked the Town for the information they need to fix the problems. It has been going on for at least a year. Superintendent Winestock stated that he doesn't know who refused to submit the information, whether it was Supervisor Teal or Town Accountant Brian Fitzgerald, but somebody neglected to give retirement the information that they needed. He is so angry that he worked hard for the Town for all of these years and then it was taken away because somebody didn't want to do their job.

Supervisor Teal stated that the time frame that is being addressed is 1986 to 2015. She stated that she wasn't here in this position in 2015. What retirement is asking them to do and what Tiffany has already admitted is that they are asking us to correct 30 years of someone else's error and it cannot be done overnight. Superintendent Winestock stated that Supervisor Teal is exactly right, but within a year it can absolutely be done. Supervisor Teal stated that she has documentation that shows our meetings with retirement and our submission of data that wasn't accurate because they asked us for the wrong stuff.

Councilmember Smith stated that he remembers last year something from retirement. He remembers 6 months ago something was supposed to be submitted from Brian to retirement. He asked if we have documentation that Brian actually submitted that because we do not have a copy of that in the Town Clerk's office which it should be for recordkeeping. Supervisor Teal stated that what we have are the records of the interaction back and forth between retirement and us. The problem was in April, when Brian went to meet with retirement the wrong dates were given to him and the wrong data was compiled

so then it had to be started all over again. We have to work with Tiffany because if we try to work with the supervisor she doesn't know so we had to learn how to get through the system also to figure out what they needed. She stated that she was on the phone with Rachel this morning telling her to go back in and do these, you can do these individually. You cannot. She had to get an email address, she could not even call a phone number so she could get through the system. So, yes, we are struggling with retirement but anyone who has ever dealt with State knows what it's like. Councilmember Smith asked if there was documentation submitted to retirement 6 months or so ago. Supervisor Teal stated that Accountant Fitzgerald went out and met with Rachel, that is what we have the documentation on. Accountant Fitzgerald has all that documentation, but she does not have it in our file. She will have it in our file but she doesn't have it at the moment. The priority this morning was getting the 671 entries entered and we were told we could do one at a time, the system rejected us. Supervisor Teal stated that this has not been us sitting saying we don't care, her retirement is there too.

Councilmember Rasmussen stated that we have spent time worrying about the past which we cannot do anything about. Let's just focus for a moment on going forward. He asked what from herein are the steps that we need to take to correct this situation. Supervisor Teal stated that everything is being uploaded. It needs to go through a two to three day validation process. Councilmember Rasmussen asked if we do have all the data we need from 1986 to whenever the errors stopped. Supervisor Teal stated yes. Councilmember Rasmussen asked if we uploaded it all today. Supervisor Teal stated yes and there are no errors in the upload. Councilmember Rasmussen asked if, as of now, we have done everything that we can do and we are waiting to see if there are errors. Supervisor Teal stated yes, retirement will now go through each one of the adjustments. Councilmember Rasmussen stated that with that many adjustments we can assume that there are some errors that will need to be adjusted. Supervisor Teal stated that what's going to happen is this is going to be uploaded and let's say the first 3 employees it goes through there are no errors, those 3 employees are going to be cleared and the reinstatement process is going to start. Councilmember Rasmussen asked what the reinstatement process require. Supervisor Teal stated another 2 days. She stated it is a 3-5 day from today but that includes that 2-3 day validation period. Councilmember Rasmussen asked who does the actual reinstatement. Supervisor Teal stated that is a whole other division but she is working with Rachel through this whole validation process. Councilmember Rasmussen stated that theoretically if the data is deemed incorrect the suspensions could go on for weeks and months while retirement says there are errors. He asked if each day as Supervisor Teal gets the error messages back she will go in and correct it that day. Supervisor Teal stated that she is pretty confident that the majority of this is correct and is going to go through. Councilmember Rasmussen stated that it sounds like the earliest anyone can be reinstated is the end of next week or the beginning of the following week. Supervisor Teal stated that it will probably be on Thursday or Friday of next week.

Councilmember Smith stated that in the meantime if somebody dies they are screwed and it is on the taxpayers. Supervisor Teal stated it is on the Town. Councilmember Smith asked if we can get an insurance policy to cover any of this until we are reinstated.

Councilmember Rasmussen stated that he wants to make sure that all of the employees that came to listen understand what their situation is. They are currently without death benefits, they can't retire today, but they won't lose credit for these days once they are reinstated. Starting from a week from Monday we should begin to see reinstatements and hopefully very quickly thereafter everyone will be reinstated. In terms of fixing the current problem, it is possible that within, not this coming week but the following week everybody will be reinstated and we will be back to normal. He stated that, if he understood Supervisor Teal correctly, everyone is currently being submitted correctly and this is a historical thing going from 30 years ago to 3 years ago so there is no reason to believe that this issue is going to recur in any way.

Councilmember Rasmussen asked Supervisor Teal to update all Town Board members and all employees suspended next Friday and every day thereafter. Supervisor Teal stated that her plan was to do that daily starting today. Councilmember Rasmussen asked if that is an accurate description of what is happening. Supervisor Teal stated yes. Councilmember Rasmussen stated that he doesn't want to use the word acceptable because the only thing acceptable is if it never happened but it's a little late for that, but considering where we are now, is that an acceptable way for the Town to keep the employees informed. Superintendent Winestock stated absolutely not. Councilmember Rasmussen asked how Superintendent Winestock would like the Town to keep him informed. Superintendent Winestock stated that he would like to know how we got to today. Councilmember Rasmussen stated that will come later but today we are focusing on going forward. Superintendent Winestock stated that we could have avoided this whole problem and when it comes to his retirement, he has worked here for 33 years and to have it taken from him. He is blaming whoever is responsible for getting the information to retirement. Supervisor Teal stated that they have been working on it, she doesn't care if he believes it or not, 30 years of corrections for 16 employees is a long time. She stated that they have not been just ignoring it. Superintendent Winestock stated that he talked to the lady that issued the suspension letter.

CEO/ZEO Hernandez stated that this go around, for some reason, her retirement was not affected. Supervisor Teal stated that she was hourly. She has only been salaried under Supervisor Teal and anything since 2016 has been reported properly. CEO/ZEO Hernandez stated that her concern is that working with Supervisor Teal for 16 years, she knows how she works and if anybody is going to fix this problem, it's going to be Supervisor Teal. She stated that she is terrified when Supervisor Teal leaves. She asked how the employees get notified if there is something wrong. Town Clerk Houghtling stated that retirement sends you a certified letter. Supervisor Teal stated no. Town Clerk Houghtling stated that she is one of the employees that was affected and she received a certified letter from retirement. Supervisor Teal stated when they found it, we are talking 30 years. Town Clerk Houghtling stated that she understands, so when they find it she thinks that is the only time you are going to get notified is when they find it. Supervisor Teal stated yes but if you go to retire and the numbers don't make sense... Councilmember Rasmussen asked if the employee can go to retirement and see exactly what their contributions are. Supervisor Teal stated yes. She stated that employees get a quarterly report. CEO/ZEO Hernandez asked the employees who had issues if their reports came back as goose eggs. Town Clerk

Houghtling stated no. Supervisor Teal stated that they would have been off but the employee wouldn't have known that. Councilmember Rasmussen asked how the employee would know if they are off. Supervisor Teal stated that she doesn't know. Town Accountant Fitzgerald stated that there are two parts of retirement reporting. There is the money withheld and the days accrued. The money withheld shows up on the W2s but not the days accrued. Supervisor Teal asked the annual report that the employees get from retirement shows both the money withheld and the days accrued. Town Accountant Fitzgerald stated yes it should show both. Councilmember Rasmussen stated that the employee should then be able to compare the report they receive from retirement with their salary and with the number of days they reported on their retirement calendar and they should match. Supervisor Teal stated yes. She stated the number that full time employees want is 260 days per year.

Councilmember Smith asked if there is a way once this is fixed for each employee to get a copy. Town Accountant Fitzgerald stated that the retirement system is putting a whole new system online which is one of the things that made this difficult because we started reporting it with the new system and then halfway through they said it doesn't work, go back and use the old system. He stated that in the new system you should be able to go in and pull a report for everybody which would be great. Once we get that, he would like to sit down with some of the board members and come up with a standard report every month. Councilmember Rasmussen stated that it would be even better if he could have a short meeting with the employees and show them where it is and where they can get it so employees have their own self-controlling mechanism. Supervisor Teal stated that one thing you will see is once this is corrected, you will be able to see that going forward there will be a shift. Town Accountant Fitzgerald stated that in the past what we did before Supervisor Teal is he had these employee data sheets. He would give them to the Supervisor and they would fill it out and on the bottom they would let him know how many days per month the people worked and human error was a problem because we were getting the wrong days per month for the salaried employees. Now that Supervisor Teal is here, he has skipped the human interaction and gone straight to the report and he puts it in right from the report. That's why we haven't had any problems since then.

Councilmember Baumli stated that he is concerned as a tax payer because if an employee wants to retire or if something happens to an employee we as tax payers have to cover that. He stated, back to Councilmember Smith's point, can we get a policy that is going to cover us because we could potentially lose hundreds of thousands of dollars as town residents. Councilmember Baumli asked if, in the letters received in 2016, the State gave us a time period to get this resolved. Supervisor Teal stated no. Town Accountant Fitzgerald stated that he spoke with Rachel from retirement, back at the end of December she called him. He told her he was still working on it and he told her that January is really busy for him so he would get it to her, guaranteed to her by the end of month or by the second week in February. He stated that February 14th was the second week and then they suspended them before that date. Supervisor Teal stated that Tiffany suspended it, not Rachel, they clarified that with her. She stated that there has been a consistent breakdown between Rachel and Tiffany.

Councilmember Baumli asked if this has all been via phone conversations or if there are emails discussing this. Supervisor Teal stated there are emails, phone conversations and face to face conversations. Councilmember Baumli stated that it is fine to get quick things resolved over the phone but we need emails. He stated we need to get things in writing to cover the Town. If someone tells you something on the phone, ask them to follow up with an email for your file. One person is telling us one thing another person is telling us something else and it's all on phone conversations. You can sit and say that this person told you this or that but it does you no good if it is not in writing. Supervisor Teal stated that they won't send you it in email. Councilmember Baumli stated that you then follow up with an email sent to them saying this is what was just discussed in our telephone conversation, please respond to this email to confirm. He stated that we have to cover our rear ends because that the way that business works. He suggests that going forward because it would be great if we had an email saying I am going to give you until mid-February to get this resolved. Councilmember Baumli stated that if we have been working with them this whole time, for them to just pull the plug, something is wrong. He stated that we may need to get the Town Attorney involved to ask why these are suspended when the Supervisor and the Accountant have been working with State Retirement to get this resolved and ask if we can get these reinstated because we are faithfully working on this to get this resolved. If we need to reach out to the Town Attorney, let's do that. He asked that we call the Town Attorney today and get him involved. And moving forward he asks that everybody sends emails back and forth because these phone conversations do nothing. Councilmember Smith asked that we also look into temporary insurance coverage in the meantime. Supervisor Teal asked Town Clerk Houghtling to reach out to the Town's insurance about a death benefit coverage temporarily.

Councilmember Smith stated that he has a hard time believing, based on the timeline, that it was not able to have been figured out with it dragging on for so long. Supervisor Teal stated that she can show him the file. She wants to wait until she has the Accountant's data. They met with Rachel in April because they were talking to them on the phone about what it is they were looking for and that wasn't clear so they decided that we needed a face to face. Town Accountant Fitzgerald went out to meet with them and Rachel said she needs certain data and it wasn't right so we were working on compiling that data during April and May of 2018, turns out it's not the right data. We are also trying to upload it on the new system because they told us that was okay and then they told us it wasn't working and we had to go back to the old system. It wasn't just that retirement was saying they wanted us to sign something, we were trying to get them what they needed and they didn't even know what they needed. They couldn't even answer that for us. We get a generic letter that lists all of these employees with all of these dates.

Councilmember Smith asked Town Accountant Fitzgerald what date he actually got from retirement correctly what they needed. Accountant Fitzgerald stated that in April he received sheets that show all the months that they have questions about. He stated that these are thousands of payrolls that he had to pull up and go over to make sure they were right. Councilmember Smith asked what date we knew exactly and correctly what we needed. Accountant Fitzgerald stated that it was at the April meeting and he feels that it was pretty quick that he got it all done. He couldn't stop everything else to do it and he has

about 80-100 hours into this.

Supervisor Teal read the following statement:

I want to thank Brian Fitzgerald (our accountant) personally and publicly – the work involved with this was significant and we were fixing errors from prior administrations – I told him on several occasions this was not part of his current duties and we should be paying him additional for this work and he declined. I could not have made these corrections without him. Thank you Brian.

Councilmember Smith asked if retirement ever gave us a definitive deadline of when employees were going to be suspended. Supervisor Teal stated no. Councilmember Baumli stated that those letters went out. Town Clerk Houghtling stated that the letters that came to the employees affected and the Town were in November of 2016, March of 2018 and then the suspension letter February of 2019. In the November of 2016 letter it said there are some issues and they must be addressed by your employer or else you will be suspended but there was no date. A year and a half later another letter went out saying your employer has not complied and then in big bold letters, you will be suspended but still no date. The last letter in February of 2019 said you are suspended.

Councilmember Baumli stated that during this time Supervisor Teal and Accountant Fitzgerald are behind the scene working on it unbeknownst to the people getting letters. They first gave them the wrong dates it sounds like, and gave them the wrong information. For the State to just suspend it, I would get it if we were doing nothing but they have correspondence back and forth so why would they suspend them. Supervisor Teal stated that is what retirement told Superintendent Winestock was that the Town was doing nothing. Superintendent Winestock stated that retirement didn't get what they wanted and he just heard that Accountant Fitzgerald had a busy December and January and he was too busy to fix the retirement and maybe it should have been brought to the board and we should have said if he can't do it because he is too busy we are going to get someone else to do it. Supervisor Teal stated that retirement was telling them that they were fine with the timeline and we were communicating with them the whole time.

ADJOURNMENT:

A motion was made by Councilmember Rasmussen and seconded by Councilmember Smith to adjourn the meeting at 11:30 a.m.

Respectfully submitted,

Tistrya Houghtling
New Lebanon Town Clerk