

**MINUTES OF THE SPECIAL MEETING OF  
THE TOWN BOARD OF THE TOWN OF NEW LEBANON  
HELD ON NOVEMBER 20, 2020**

**Present:** Tistrya Houghtling, Supervisor  
Jesse Newton, Councilmember  
Norman Rasmussen, Councilmember (online)  
Deborah Gordon, Councilmember (online)  
John Trainor, Councilmember

**Recording Secretary:** Marsha “Marcie” Robertson, Town Clerk

**Others Present:** Jeffrey Winestock, Highway Superintendent  
Jon Tingley, Town Attorney (online)

**CALL TO ORDER:**

The special meeting was called to order at 1:05 pm by Supervisor Houghtling.

**CONSIDERATION OF HIGHWAY DEPARTMENT EQUIPMENT PURCHASE  
REQUEST:**

Supervisor Houghtling stated to Highway Superintendent Winestock, that the Town Board would like to give him the opportunity to be heard and opened the meeting with anything that he wanted to address to the Town Board.

Highway Superintendent Winestock asked what it was that they would like him to address?

Supervisor Houghtling stated that it was brought to her attention that he had requested to be heard by the Town Board. Supervisor Houghtling stated that Councilmember Newton said that Highway Superintendent Winestock wanted to be heard.

Highway Superintendent asked the Town Board if anyone has any questions for him.

No one from the Town Board had any questions.

Highway Superintendent Winestock stated that he guesses he is being accused of purchasing a backhoe that he wasn't supposed to purchase. He stated that he went to the Town Board last year and was approved for a truck and a backhoe, it is in his budget on a line item. He stated that it went through a Public Hearing and the people of the Town of New Lebanon did not have any problem with that. Highway Superintendent Winestock

stated that he needs his backhoe, which is a very important piece of equipment. He stated that he has done this, he is guessing, through the last four pieces of equipment. He stated that the only thing that he didn't do that was different then was that he went to the Town Board and asked permission to do that, which he did to with the past Town Board to find out where the funding was going to be. Highway Superintendent Winestock stated that he went ahead and purchased this backhoe on state contract and the reason he did that was because the old backhoe is in tough shape and it needs a lot of work. Highway Superintendent Winestock stated that he doesn't have the money in his budget to put that work into the backhoe.

Supervisor Houghtling thanked Highway Superintendent Winestock.

Supervisor Houghtling stated that she just wanted to state the facts as she sees them. She stated that \$50,000 was allocated in the 2020 budget specifically for the purchase of a backhoe. When COVID hit, the board asked all of the departments to cut back wherever they could, and she stated that she did have a phone conversation with Highway Superintendent Winestock asking him if he could make the backhoe last another year, and his response to Supervisor Houghtling was I can, but I don't want to.

Supervisor Houghtling stated that Highway Law 142 does require that all equipment purchases require Town Board approval, and Highway Superintendent Winestock has always come to the Town Board for approval to purchase equipment. He did come to this Town Board multiple times this year, requesting the necessary Town Board approval to purchase a new backhoe and the Town Board denied his request multiple times in part due to the loss of estimated revenues in the 2020 budget due to COVID.

Supervisor Houghtling stated that Highway Superintendent Winestock without authorization of the Town Board purchased a new backhoe for \$99,820.00 and sold the old backhoe, a piece of town owned equipment for \$50,000.00 as a trade in for this purchase.

Supervisor Houghtling stated that selling or trading of town owned equipment does require Town Board approval and the Town Board did not authorize the sale or trade in of the old backhoe, therefore the transaction was not a legally authorized transaction and the Town Board is not legally allowed to approve payment on a transaction that is not legally authorized.

A motion was made by Supervisor Houghtling to deny payment of the voucher submitted by Monroe Tractor & Implement seeking payment of \$49,820, on the basis that the underlying transaction involving the purchase of the 2020 backhoe with a trade-in of the town's 2015 backhoe was not duly authorized or approved by the Town Board as required by the New York Highway Law, and to authorize the Town Supervisor and Attorney for the Town to notify Monroe Tractor & Implement that the payment of the voucher is denied, that the underlying transaction was not authorized, and that town equipment must be immediately returned to the Town. The motion was seconded by Councilmember Rasmussen.

Highway Superintendent Winestock asked if he could speak?

Supervisor Houghtling stated that she would give Highway Superintendent Winestock an opportunity to speak afterwards.

Supervisor Houghtling stated that she would like to open it to any comments by the Town Board before they take a vote on the motion.

Councilmember Newton stated that obviously they have discussed this in private meetings and stuff but he thinks, even the possibility of getting the old backhoe back, we have no idea what Monroe is going to do. He thinks they will be putting bad money in front of good money. Councilmember Newton stated that he understands that people are upset that Highway Superintendent Winestock made this decision to purchase this, but he thinks honestly looking at it from a town resident stand point, if we say it cost us this much to go through this whole process with the Town Attorney here and whatever happens, he thinks it will be really seriously putting bad money in front of good. No matter what, if we bubblegum the old backhoe together, whatever we have to do for repairs, it's only a short time from then that we are going to have to get a replacement one anyway.

Councilmember Rasmussen stated that he completely understands the point that Councilmember Newton is making and the rationale for it. In the end, these choices, he doesn't think there is a right or a wrong, there is better and worse on different scales. Councilmember Rasmussen stated that he thinks approving after the fact the sale of equipment is a really poor precedent for the Town Board to be setting. The law is very clear about it, so Councilmember Rasmussen stated that he thinks the Town Board owes it to the residents to undue the transaction, get them to a starting point and then consider if and how to proceed making sure that they are following all of the rules that the board and the state sets up for them.

Councilmember Trainor stated that he thinks Councilmember Rasmussen makes a good point and that it requires Town Board approval.

Highway Superintendent Winestock stated that he did have Town Board approval.

Councilmember Trainor stated that he was concerned about the money and it appears that Monroe Tractor made a mistake too, they accepted it without Town Board approval. Councilmember Trainor stated that he was on the fence but he thinks now, he agrees with Councilmember Rasmussen and the motion that was made.

Councilmember Gordon stated that she agrees with Councilmember Rasmussen and Supervisor Houghtling's motion also. She thinks to do anything else would be a precedent that the board would regret making.

Highway Superintendent Winestock stated that he doesn't exactly remember that conversation with him, saying he can wait another year, he's not saying whether they did or not. Highway Superintendent Winestock stated that he and Supervisor Houghtling did have a conversation a couple of times and Supervisor Houghtling didn't have a problem with this, Supervisor Houghtling said if he got rid of the surplus, we could use that money.

Highway Superintendent Winestock stated he said he wasn't going to wait until the surplus, that he was buying the machine to come in because he needs it, that they could take the money from the surplus.

Highway Superintendent Winestock stated that the COVID doesn't matter to what he does, it doesn't stop snow storms or hurricanes.

Highway Superintendent Winestock stated that they keep saying that he didn't get board permission, he did have the boards permission, it was put in his budget. He stated that he just ordered \$10,000 worth of crusher run and two loads of salt and nobody had any problem with him doing that, it's in his budget. Was there a budget amendment made for him not to be able to do this?

Highway Superintendent Winestock stated that he came to the Town Board and asked their permission. He remembers one time telling Councilmember Newton, he was going to the meeting stating that Highway Superintendent Winestock was going to purchase this and Councilmember Newton came back to Highway Superintendent Winestock and told him that nobody was really happy with that. Highway Superintendent Winestock stated that Supervisor Houghtling told him that they voted on its four times, and he would like to see that.

Highway Superintendent Winestock stated that they are costing the taxpayers a ton of unnecessary money and he doesn't believe he did anything wrong.

Supervisor Houghtling stated that she could definitely give Highway Superintendent Winestock a copy of the minutes from this year when this Town Board said no. She stated that she could give him the minutes where either Highway Superintendent Winestock or Councilmember Newton as his liaison said that Highway Superintendent Winestock is requesting Town Board authorization to purchase this backhoe.

Highway Superintendent Winestock stated he didn't ask for the board's authorization, he wanted the boards blessing.

Supervisor Houghtling stated that in the Highway Law Manual, Chapter 3, Article 1, the purchase of highway equipment requires Town Board approval, Highway Law 142. Supervisor Houghtling stated that Highway Superintendent Winestock buying salt and sand is very different from buying equipment. Just because the money was budgeted in a budget line does not mean the Town Board approved it. Supervisor Houghtling stated that if Highway Superintendent Winestock looked back on any of his past purchases there are Purchase Resolutions authorizing the purchase of equipment, further there was never authorization for Highway Superintendent Winestock to sell the existing backhoe, which usually comes within a Purchase Resolution. The Town Board giving authorization not only for a new purchase but also for the sale of the other piece as a trade in, that did not happen, the law is very clear on this.

Supervisor Houghtling stated that when she and Highway Superintendent Winestock spoke outside, he was asking why she wasn't supporting it. Supervisor Houghtling stated that

she explained it to Highway Superintendent Winestock and she told him if he could get \$50,000 for the surplus equipment she would change her vote but that she was only one of five, that she knew Councilmember Newton supports it, that would give him two, that he would need to find a third Town Board member who also supports it.

Highway Superintendent Winestock asked Supervisor Houghtling if she has proof that the Town Board voted on this four times with a roll call stating the he is not supposed to purchase that backhoe? Highway Superintendent Winestock stated he didn't want to get into it, he has explained himself and he has gotten legal advice that is different.

Supervisor Houghtling stated that there is a motion and a second and asked Town Clerk Robertson to take the Roll Call Vote on the motion that she made.

Roll Call Vote:

Councilmember Rasmussen -	Aye
Councilmember Gordon -	Aye
Supervisor Houghtling -	Aye
Councilmember Newton -	Nay
Councilmember Trainor -	Aye

**PURCHASING POLICY AMENDMENT:**

Supervisor Houghtling stated that we adopted a Purchasing Policy earlier this year. Town Attorney Tingley wrote in an addition to paragraph 1, that says:

*Nothing in this paragraph applies to the highway department or highway superintendent. All purchases by the highway department and/or highway superintendent must comply with all applicable state laws, including without limitation, Highway Law § 142, which requires Town Board approval for purchases of equipment, tools, implements, snow plows, and other devices for highway maintenance, construction, reconstruction, and snow removal.*

Supervisor Houghtling made a motion to amend the Policy for Purchasing and Vouchering items with what she read added to the end of paragraph 1.

Town Attorney Tingley interrupted the motion that was being made to clarify that there was also language of the beginning of that paragraph that begins with *Except as otherwise provided*.

Supervisor Houghtling asked was that an addition as well?

Town Attorney Tingley answered, yes it was. He then suggested how the motion should be phrased.

Supervisor made a motion to adopt the Purchasing Policy before the board as amended. The motion was seconded by Councilmember Trainor.

Supervisor Houghtling stated that we have a motion and a second, are there any questions or comments from the Town Board before they vote on it.

Councilmember Newton stated that he actually remembers Attorney Tingley telling the Town Board not to act on this quickly, to really think about this and amend the Purchasing Policy, so this is the first he is seeing this. It appears to him that the Highway Superintendent doesn't even have the purchasing power of a department head, is that correct?

Supervisor Houghtling stated that what it is doing is adding in what Highway Law 142 requires, saying that our Purchasing Policy does not override what is required by law under Highway Law 142. Attorney Tingley confirmed that is correct.

Supervisor Houghtling stated that in their prior meeting with Attorney Tingley, this is the change that he thought should be adopted today. The other Resolution will be done at the December meeting.

Councilmember Newton stated the Purchasing Policy of the Town would apply; the \$2,500 /\$500 would apply to all these things then.

Supervisor Houghtling stated that this policy is in place except when it would be in confliction with Highway Law 142 and then Highway Law 142 applies.

Councilmember Newton stated that for example, the highway department had to purchase a tool that was \$700.00 they would have to come to the town for approval on that.

Supervisor Houghtling stated that she believes that is what Highway Law 142 states, she doesn't know if we have been complying with it but that is what the law says.

Town Attorney Tingley stated that if the equipment or tool is within the scope of snow removal, construction, reconstruction of highways that those items in Highway Law 142 that under this policy if it is adopted as amended, then yes, the Highway Superintendent would need the Town Board's approval because Highway Law 142 does require it in that instance. There is no monetary amount set in 142, so it really relates to whether or not it's an equipment, machine, implement or other device that would be in the scope of that section. If it is in the scope of that section then this policy would confirm that Highway Law section 142's requirement for Town Board approval continues to apply.

Supervisor Houghtling stated let's say we never adopted this policy, that was already the case. We are not changing anything from the way the law already exists. All we are saying is that us adopting this policy is in no way overriding the requirements of the highway law, correct?

Town Attorney Tingley stated he would say correct. It is really the Town Boards intent but he would say the starting point is Highway Law 142, that requires Town Board approval for purchases of equipment that are within the scope of that section, to the extent there was any confusion or any misunderstanding about the approval process for purchases of those types of equipment, in the past in the Town of New Lebanon this policy would make it clear that Highway Law 142's requirement for Town Board approval applies.

Councilmember Gordon asked is Highway Law 142 a state law?

Town Attorney Tingley replied, yes, it is, it applies to every town in the state and there are different mechanisms for obtaining Town Board approval that are set forth in that law but it does apply to every town in New York State.

Councilmember Gordon asked is it optional?

Town Attorney Tingley replied, it is optional in the way that Town Board approval is obtained. In the Town of New Lebanon, the practice has been that the Highway Superintendent come to the Town Board when a purchase of equipment is requested and the Town Board actually votes on it and authorizes it, that would be the standard practice in his opinion throughout the state. There may be other forms of authorization but that would be what he would use as the standard practice.

Councilmember Newton stated that technically that would mean that they would have to convene a board meeting for a lot of purchases it appears, is that correct?

Town Attorney Tingley responded that it would mean that Town Board approval would be required so it would have to be done at a meeting, yes.

Councilmember Trainor stated that we are subject to the state law but we have some flexibility within that law on how they go about it, is that correct?

Town Attorney Tingley responded, that is correct. You will always need a vote to authorize the purchase but you can pre-authorize purchases up to a certain amount for highway equipment but the practice that the town has engaged in in the past is when a purchase is to be made, the request is made and the board acts on that specific request.

Supervisor Houghtling stated to Town Attorney Tingley that if the Town Board wanted to, they could at December's meeting, say that the Highway Department, if it is a tool, they could define that there are certain items that can be purchased up to a certain threshold at the Highway Superintendent's discretion as long as the money is in the budget.

Supervisor Houghtling stated that they could come up with some definition of authority that they could set the monetary amount on so it could never be a \$30,000, \$50,000 or \$100,000 piece of equipment. If he needed a new snow plow in the middle of winter then the board would be able to give him, if the board wanted to, some sort of parameter or highway department purchasing policy in line with 142. Is that what she is understanding?

Town Attorney Tingley stated that he believes that would be permissible. The only thing he suggests is that before the board does that to take a look at the actual language to see if a particular item has to be identified in advance or if it can be done by category or by monetary amount. Highway Law Section 142 does permit for the Town Board to authorize purchases in advance up to a certain amount. It may be item or category specific but

there is a different way to approve those purchases then just coming to the board every time there is a purchase requested.

Highway Superintendent Winestock asked isn't that what our Procurement Policy is?

Supervisor Houghtling responded that our Procurement Policy does address some purchase thresholds that does currently apply to the highway department.

Town Attorney Tingley responded that is different, that's a different requirement. Any purchase by the highway department has to comply with Highway Law Section 142 and the Town's Procurement Policy and if applicable, the competitive bidding laws and any piggybacking or exemptions that might apply. They are not exactly the same thing, just because you go out to bid on something doesn't mean that the purchase is authorized. Any town department head in theory could go out to bid on anything it wants but if the Town Board didn't authorize it, it's not an authorized purchase.

Highway Superintendent Winestock stated that in the middle of a snowstorm or a windstorm or hurricane and one of their chainsaws gets run over or something, he can't go buy a chainsaw without the Town Board giving him permission, is that what they are saying?

Town Attorney Tingley responded we can talk about hypotheticals all day long Mr. Winestock but the bottom line is if the equipment falls within the scope of Section 142 then that is correct.

Supervisor Houghtling stated that she imagines that they could get a list of what falls under that scope and get it to Highway Superintendent Winestock.

Town Attorney Tingley responded that he thinks that if the list relates to the construction, reconstruction, maintenance or removal of snow from highways then it's within the scope of that section. He stated what is not in the scope of that section are things that Highway Superintendent Winestock mentioned earlier, which are salt, sand, materials, things like that are not within the scope of that section because they are not equipment, they are not tools or implements or snowplows or other devices. Those are clearly not within the scope.

Highway Superintendent Winestock stated that is what he was getting at where Councilman Newton was headed. It is easy to sit here on a nice beautiful day and talk about this, I don't want to argue, none of you have any idea. It was a long time ago, a Councilman wanted to hang him because he went out and bought a snowplow because it got crushed. He stated that he is responsible for the roads and the safety of things and sometimes you don't have a lot of time to do things, so he asked can he go and buy a chainsaw if need be during a snowstorm and he loses it.

Supervisor Houghtling stated that she didn't think a chainsaw could be considered a tool that he would use for construction, reconstruction or snow removal.

Highway Superintendent Winestock responded that yes, it is, he has to sometimes cut the



trees down to get the snow off of the roads.

Town Attorney Tingley stated that at this point there is a motion that has been made and been seconded. He does not think that this is the appropriate time or place to be answering hypotheticals. The law is the law. If there is something wrong with the law, then the state legislature certainly can change that and can get the highway superintendent unfettered authority to make any purchases he wants, but that is not the law. The law in the state is that purchases of this type that relate to the construction, reconstruction, maintenance or snow removal from highways in the town require Town Board approval.

Highway Superintendent Winestock stated that he wasn't questioning the law, he was asking the Town Attorney and the Town Board a question, and he guesses the Supervisor answered that with that he will be receiving a list of what he can and can't do.

Town Attorney Tingley responded, the list is in the section of law, if it relates to that, Town Board approval is required.

Supervisor Houghtling stated to Highway Superintendent Winestock, if he has a request for something for the Town Board to consider that is allowed under Highway Law Section 142 where the board defines up to a certain threshold or a certain type, she would be happy to look into how they can do that. Supervisor Houghtling stated that if Highway Superintendent Winestock would like to come to her with a request as to what that threshold would be that he would be requesting, then the Town Board could consider that.

Supervisor Houghtling stated that there is a motion and a second, and asked Town Clerk Robertson to do a Roll Call vote.

Councilmember Rasmussen asked is this for the motion to approve the amended policy?

Supervisor Houghtling responded yes, the amended Purchasing Policy.

Roll Call Vote:

Councilmember Rasmussen -	Aye
Councilmember Gordon -	Aye
Supervisor Houghtling -	Aye
Councilmember Newton -	Nay
Councilmember Trainor -	Aye

**BOARD OF ASSESSMENT REVIEW:**

Supervisor Houghtling stated that Dale Ackley on the Board of Assessment Review, his term did expire.

Supervisor Houghtling made a motion to appoint Dale Ackley to the Board of Assessment Review for a term ending September 30<sup>th</sup>, 2025. The motion was seconded by Councilmember Trainor.

Roll Call Vote:

Councilmember Rasmussen -	Aye
Councilmember Gordon -	Aye
Supervisor Houghtling -	Aye
Councilmember Newton -	Aye
Councilmember Trainor -	Aye

**ADJOURNMENT:**

A motion was made by Supervisor Houghtling and seconded by Councilmember Rasmussen and agreed unanimously to adjourn the special meeting at 1:31 pm.

Respectfully submitted,

Marcie Robertson  
New Lebanon Town Clerk