

**MINUTES OF THE BUDGET WORKSHOP / SPECIAL MEETING OF
THE TOWN BOARD OF THE TOWN OF NEW LEBANON
HELD ON OCTOBER 30, 2023**

Present: Tistrya Houghtling, Supervisor
Deborah Gordon, Councilmember
John Trainor, Councilmember
Norman Rasmussen, Councilmember
Susan, Tipograph, Councilmember

Recording Secretary: Marsha “Marcie” Robertson, Town Clerk

Others Present: Steve Powers, CAC & ZRC Member & CSC Chair
Attorney Jon Tingley, Town Attorney (5:21pm)
Member of the Public

CALL TO ORDER:

The meeting was called to order at 5:06p.m. by Supervisor Houghtling.

SALARY (.1) BUDGET:

EVALUATION BASED RAISES:

Supervisor Houghtling summarized; the board already decided the evaluation-based scales at the last budget workshop. Supervisor Houghtling clarified that her motion at the last meeting was a score of 3 to 3.5 was a 1% raise, a 3.5 to 4.5 was a 2% raise, and a 4.5 to 5 was a 3% raise. That motion would make it that a 3.5 was designated as both 1% and 2% raise and 4.5 designated as both 2% and 3% raise. This motion needs to be re-done.

Councilmember Rasmussen suggested that is should be 3.49, 4.49, etc.

A motion was made by Councilmember Rasmussen, seconded by Councilmember Gordon, and approved unanimously, to change the previous motion made at the last budget workshop to apply evaluation-based raises as follows:

anyone who scores between a 3 and a 3.49 gets a 1% evaluation-based raise;
anyone who scores between a 3.5 and a 4.49 gets a 2% evaluation-based raise; and
anyone who scores between a 4.5 and a 5 gets a 3% evaluation-based raise.

Supervisor Houghtling reported, no employees got the 1%, everyone got at least a 3.5 and up. There are six employees that got the 2% raise, and five employees that got the 3%

raise. The total amount of all the raises is \$5,585.95 that will come out of the \$50,000 that was put aside for contingency raises.

COLA'S:

Supervisor Houghtling stated, the Federal COLA is 3.2% going into 2024. The board discussed going with a 3% COLA, with all Elected Officials getting a 3% COLA, and all other employees would get between 5% and 6% total raise when the evaluation raise is built in.

The board discussed the order of which to apply the COLA's and the evaluation-based raises. It was decided to apply the evaluation-based raises first.

A motion was made by Councilmember Tipograph, seconded by Supervisor Houghtling, and approved unanimously to apply the evaluation-based raises first and then the COLA raises.

A motion was made by Councilmember Rasmussen, seconded by Councilmember Trainor, and approved unanimously to set the COLA raises at 3%.

**DECEMBER 12TH REGULAR TOWN BOARD MEETING –
START TIME CHANGE:**

Supervisor Houghtling brought up that the New Lebanon Jr/Sr High School winter concert is on the same date of the regular Town Board meeting. Both the Supervisor and Town Clerk's children are in the concert. The board discussed the different options of having the Deputy's fill in, changing the date, or changing the start time of the meeting to accommodate the concert.

A motion was made by Councilmember Tipograph, seconded by Supervisor Houghtling, and approved unanimously to change the start time from 6:00pm to 7:30pm for the Regular Town Board meeting on Tuesday, December 12th, 2023 in honor of the Christmas concert of the New Lebanon Jr Sr High School.

YEAR END MEETING:

The board discussed possible dates and times to schedule the year end meeting.

A motion was made by Supervisor Houghtling, seconded by Councilmember Tipograph, and approved unanimously to schedule the Year End meeting on Thursday, December 28th, 2023 at 2:00pm and ask the Town Clerk to advertise accordingly.

FOIL APPEAL RESOLUTION – WILLIAM BANKER:

Supervisor Houghtling stated, Attorney Jon Tingley has joined the meeting. The town received a FOIL appeal, the FOIL appeal body is the Town Board. The Town Board has the town attorney here to read a proposed resolution for the Town Board's consideration.

Attorney Tingley stated, the Town Board is up to speed on the FOIL request and the response that was provided to the requestor and on the appeal that was filed. Attorney Tingley read the following resolution for the Town Board's consideration.

TOWN OF NEW LEBANON

RESOLUTION #26, 2023

**DECISION ON FREEDOM OF INFORMATION LAW APPEAL (W. BANKER, OCTOBER 16, 2023)
OCTOBER 30, 2023**

At a special meeting of the New Lebanon Town Board, held on the 30th day of October 2023, the following Resolution was proposed and seconded:

Resolution by Councilmember Tipograph
Seconded by Councilmember Gordon

DECISION ON FREEDOM OF INFORMATION LAW APPEAL (W. BANKER, OCTOBER 30, 2023)

WHEREAS, on September 6, 2023, William A. Banker, Jr., submitted a Freedom of Information Law Request (the "FOIL Request") to the Town of New Lebanon Records Access Officer that is the subject of this Resolution, seeking:

- Any and all dog licenses renewal forms from July 1, 2023 through August 31, 2023; and
- Any and all notices of delinquent renewal forms from August 1, 2023 through September 6, 2023; and

WHEREAS, in response to the FOIL Request, on September 8, 2023, the Town Clerk, as Records Access Officer, sent a written acknowledgment of the FOIL request and notified Mr. Banker that he could expect to receive a response on or before October 3, 2023; and

WHEREAS, on October 1, 2023, the Town Clerk, as Records Access Officer, sent the following email to Mr. Banker, along with 19 pages of records:

"Please see the attached documents to complete your FOIL request for dog license renewal forms and delinquent dog renewal forms for the time period of 7/1/2023 through 8/31/2023. Please take note that I have included both renewal and delinquent reports, and delinquent notices. In the program that the town uses for our dog renewals, once the license has been renewed in the system it will no longer generate a renewal form. Therefore, you will see none are attached because they have been renewed or past renewal which would then be a delinquent renewal notice.

These are an auto populated and generated form based on the information in the BAS (Business Automation System) data.

FOIL law states that if a record does not exist, I do not have to create one to satisfy a FOIL request. However, I went one step forward for

your request and I reached out to the BAS support to see if there was any way to manually provide a document or a report for you, and there is not.

This information provided and email satisfies and completes your FOIL request received on 9/6/2023 within the twenty business days allowed.

Thank you”; and

WHEREAS, the 19 pages of records provided to Mr. Banker consisted of the following:

1. One page entitled “Renewal Dog Report”, from 07/01/2023 to 8/31/2023 Including Purebred, with a date header of 09/29/2023 10:55:48 AM, listing 8 dogs, 4 of which had a license expiration date of July 31, 2023 and 4 of which had a license expiration date of August 31, 2023;
2. One page entitled “Delinquent Dog Report”, from 07/01/2023 to 08/31/2023 Including Purebred, with a date header of 09/29/2023 10:55:31 AM, listing 8 dogs, 4 of which had a license expiration date of July 31, 2023 and 4 of which had a license expiration date of August 31, 2023;
3. Eight pages of forms entitled “Friendly Notice of Renewal” that correlate to the dogs listed on the “Renewal Dog Report” also provided;
4. Eight pages of forms entitled “Notice of Delinquent Renewal” that correlate to the dogs listed on the “Delinquent Dog Report” also provided; and
5. One page entitled “Dog Licensing Report by Municipality”, with a date header of 09/29/2023 11:32:26 AM; and

WHEREAS, the Town Clerk, as Records Access Officer, redacted the name, address, phone number, dog’s name and dog license number; and

WHEREAS, the Town Clerk did not retain unredacted copies of the records provided; and

WHEREAS, the Town Clerk has indicated that the Town Clerk’s office uses software provided by Business Automation Services (Edmunds GovTech, Inc.) (hereinafter, “BAS”) for dog licensing; and

WHEREAS, the Town Clerk has indicated that using BAS, the dog license renewal forms and the notice of delinquent renewal forms are printed each month for those dog licenses that are then due for renewal or are delinquent, as applicable, mailed out en masse, and copies of the actual forms mailed are not maintained in the ordinary course; and

WHEREAS, the Town Clerk has indicated that once a dog license is renewed, it is removed automatically by the BAS software from the database of licenses due for renewal and/or from the database of delinquent renewals; and

WHEREAS, the Town Clerk has indicated that the records produced on October 1, 2023, were the only records available to her knowledge on that date that were responsive to the FOIL Request; and

WHEREAS, on October 16, 2023, Mr. Banker filed an appeal in response to the records provided, which appeal stated as follows:

“I William Banker Jr. write this letter today to appeal the constructive denial of the foil request made by myself on September 6th, 2023, at the town hall of New Lebanon NY.

I Requested.

‘Any and all license renewal forms from July 1st, 2023, through August 31, 2023’

‘Any and all notice of delinquent renewal forms from August 1st through September 6th, 2023’

The Records provide [sic] by the town of New Lebanon where [sic] so redacted that it constitutes a constructive denial.

I have attached the original foil records labeled exhibit A, and three advisory opinions labeled exhibit B, exhibit C, and exhibit D, that relate to dog licenses and foil requests, to assist you in your decision.

I have no intent on using the records that I request for any commercial or fund-raising activities.

I ask currently that you provide the complete un redacted records that I have requested in my foil request dated September 6th, 2023. They must provide the dates in which the renewal forms where [sic] generated, and the dates in which the delinquent renewal forms were generated, as well as all other information generally found on dog license renewal forms and delinquent dog license renewal forms”; and

WHEREAS, following the filing of the appeal, the Town Clerk attempted to regenerate the records, for submission to the Town Board as FOIL Appeals Officer, but was unable to do so given how the data is handled by the BAS software; and

WHEREAS, in particular, the Town Clerk attempted to reproduce the subject renewal forms and delinquent renewal notices as they would have existed on the date on which they were generated, but the BAS software does not allow for that to occur and the Town Clerk does not in the ordinary course maintain a hard copy of the renewal forms and delinquent renewal notices she sends; and

WHEREAS, given the Town Clerk’s inability to regenerate the forms and notices as they existed on the day such forms and notices were mailed, and given that the Town Clerk did not retain unredacted copies of the records she provided in response to the FOIL Request, the Town Clerk contacted Edmunds GovTech (the provider of the BAS software) and Columbia County

Managed Information Systems (“CC MIS”) (the Town’s IT service provider) seeking technical assistance to regenerate the subject records; and

WHEREAS, following consultation between Edmunds GovTech and CC MIS, it was determined by such service providers that the records that were sought in Mr. Banker’s FOIL Appeal do not exist in the precise format in which he is seeking them and are not retrievable, including through any backup storage; and

WHEREAS, in an effort to gather the records responsive to the FOIL Request that are currently available without the redactions so that the Town Board as FOIL Appeals Officer can review them in connection with this appeal, the Town Clerk was able to produce reports and renewal forms/delinquent renewal notices for six of the eight dog licenses (because such six licenses remain unexpired), with the other two dog licenses not appearing on such reports or having a renewal form/delinquent renewal notice because (a) one such dog license was renewed since the FOIL records were previously provided, and (b) the license associated with the other dog was no longer required as the owner and the dog reportedly moved out of town; and

WHEREAS, in an effort to provide the same information to the Town Board that had been redacted from such two licenses in the original FOIL Request, the Town Clerk was able to provide the owner name, owner address, dog name, dog license number, and telephone number to the Town Board concerning those licenses; and

WHEREAS, such information provided, albeit in a different form than provided with the FOIL records originally produced to Mr. Banker, contains the same information that was previously redacted in such records; and

WHEREAS, the Town Board, as FOIL Appeals Officer, having reviewed the subject records and information provided by the Town Clerk, the appeal and documents submitted by Mr. Banker, and with an understanding of the totality of the circumstances, is hereby prepared to render a decision on Mr. Banker’s FOIL Appeal;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The recital clauses set forth above are expressly incorporated herein.
2. Mr. Banker’s appeal is hereby decided as follows:

Mr. Banker’s appeal is granted in part, and denied in part.

First, the Town is not able to provide records that do not exist. Accordingly, Mr. Banker’s appeal seeking the renewal forms and delinquent renewal notices that “provide the dates in which the renewal forms were [sic] generated, and the dates in which the delinquent renewal forms were generated” is not possible. Despite diligent efforts on the part of the Town Clerk, including seeking and obtaining the assistance of the provider of the BAS software (Edmunds GovTech) and the Town’s information technology service provider (CC MIS), records in precisely the format requested by Mr. Banker simply do not exist and are not retrievable, including through recovery from backup storage devices.

Second, although the Town Board would have preferred to review exact copies of the records produced, but without redactions, the Town Clerk did not retain unredacted copies.

Going forward, the Town Clerk is hereby directed to retain original, unredacted copies of any FOIL responses that are sent for purposes of allowing for complete and meaningful review by the FOIL Appeals Officer and, if necessary, by a reviewing court.

Notwithstanding the above, the Town Clerk was able to regenerate the same information that was redacted, albeit in a different form. For six of the eight licenses at issue, the Town Clerk has provided to the Town Board an unredacted Renewal Dog Report (Including Purebred) for the subject period, an unredacted Delinquent Dog Report (Including Purebred) for the subject period, six unredacted Friendly Notices of Renewal, and six unredacted Notices of Delinquent Renewal, along with a Dog Licensing Report by Municipality for such six dog licenses. These records contain identical information as did the records previously provided for these six dog licenses, except that the print date is not the same due to how the BAS software works. In addition, although the two remaining dog licenses do not appear on the Renewal Dog Report, Delinquent Dog Report, any Friendly Notice of Renewal, any Notice of Delinquent Renewal, or the Dog Licensing Report for the reasons set forth above, the Town Clerk has provided the same information to the Town Board that was previously redacted in her response to the FOIL Request. Accordingly, the Town Board will review and decide this FOIL Appeal based on the records and information that does exist and that can be provided, if required under FOIL.

N.Y. Public Officers Law § 87 (2) (b) provides that “. . . such agency may deny access to records or portions thereof that: . . . if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of [N.Y Public Officers Law § 89 (2)]”. N.Y. Public Officers Law § 89 (2) provides a non-exclusive list of examples of what would constitute an unwarranted invasion of personal privacy, including, as may be relevant here, the following:

- “sale or release of lists of names and addresses if such lists would be used for solicitation or fund-raising purposes”;
- “disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it;” and
- “disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency”.

As noted by Mr. Banker in his FOIL Appeal, the New York State Committee on Open Government (the “COOG”) has rendered advisory opinions with respect to disclosure of licensee names and addresses, including in the context of dog licensing. Consistent with existing case law, the COOG has opined that names and addresses of licensees are subject to disclosure under FOIL because various activities are licensed due to some public interest in ensuring that individuals or entities are qualified to engage in certain activities, such as owning a dog, and information that is relevant to that licensing scheme is the type of information which, if disclosed, would constitute a permissible, rather than an unwarranted, invasion of personal privacy (see, e.g., COOG Adv. Op. F10244 [Aug. 5, 1997]).

The Town Board hereby finds that the disclosure of the owner name, owner address, dog license number, and dog name does not constitute an unwarranted invasion of personal privacy. This information is directly relevant to the licensing regulatory scheme, as it provides information relating to where the dog is normally harbored, the identity of the dog and its owner, and the dog license number. In addition, in his appeal, Mr. Banker has indicated that he has no intent on using the records for commercial or fundraising activities. The Town Board views the disclosure of this information relating to the licensing of the dogs as permissible under the guidance of the COOG.

However, the personal telephone number of the owner is different. The actual telephone number, or even the fact that the owner has or does not have a telephone number, is not relevant to the regulation of dogs because it does not bear on the qualifications of the owner or the behavioral or vaccination history of the dog. Rather, the telephone number is collected as part of the regulatory licensing scheme as a convenience to the regulators (i.e, the Town Clerk, the Dog Control Officer, the Town’s contracted shelter) to contact the owner when necessary. Over the recent past, telephone numbers have increasingly become private, with many no longer being listed in a telephone directory. In addition, over the recent past, the incidences of unwelcome telephone calls to personal telephone numbers, as well as the number of press reports involving identity theft efforts by telephone, have increased substantially. Given that the personal telephone number of an individual in the dog licensing records of the Town is not relevant to the qualifications of that individual to possess a dog license or of the behavioral or vaccination history of the dog, the Town Board finds that the disclosure of personal telephone numbers associated with the owner of the dogs would constitute an unwarranted invasion of personal privacy, particularly in light of the recent increases in unwelcome telephone calls and identity theft efforts by telephone.

Based on the foregoing, Mr. Banker’s appeal is granted in part, and denied in part. The records produced for review by the Town Board as FOIL Appeals Officer shall be produced in unredacted form, except that telephone numbers of the owners shall be redacted. In addition, to address the issue that two dog licensees’ information had been previously redacted but now are no longer in the subject records for the reasons stated, the owner name, dog name, license number, and owner address shall be provided for such dog licenses.

3. The Town Supervisor is hereby authorized and directed to transmit a letter to Mr. Banker, with a copy to the New York State Committee on Open Government, setting forth this decision, along with a copy of this Resolution, along with the records and the identifying information that are available, redacted only in accordance with this decision, all within the time set for decision on appeals under the Freedom of Information Law.

Upon the question of the foregoing Resolution, the following Town Board Members voted “Aye” or “Nay” for said Resolution:

Roll Call Vote:

Councilmember John Trainor	Yes
Councilmember Deborah Gordon	Yes

Supervisor Tistrya Houghtling	Yes
Councilmember Susan Tipograph	Yes
Councilmember Norman Rasmussen	Yes

The Resolution, having been ***approved*** by a majority vote of the Town Board, was declared ***duly adopted*** by the Supervisor of the Town of New Lebanon.

Dated: October 30, 2023
Marcie Robertson, Town Clerk
Town of New Lebanon

ADJOURNMENT:

A motion was made by Supervisor Houghtling to adjourn the budget workshop at 5:39pm. The motion was seconded by Councilmember Rasmussen.

Roll Call Vote:

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

Respectfully submitted,

Marcie Robertson
New Lebanon Town Clerk