

**TOWN OF NEW LEBANON
RESOLUTION #26, 2020
EQUIPMENT PURCHASING BY HIGHWAY DEPARTMENT
DECEMBER 8, 2020**

At the regular monthly meeting of the New Lebanon Town Board, held via video and teleconference, duly called and held on the 8th day of December 2020, the following Resolution was proposed and seconded:

Resolution by Supervisor Houghtling
Seconded by Councilmember Rasmussen

EQUIPMENT PURCHASING BY HIGHWAY DEPARTMENT

WHEREAS, the Town Board of the Town of New Lebanon was recently presented with a voucher seeking payment for a 2020 backhoe; and

WHEREAS, the purported transaction underlying said voucher provided for a total purchase price of \$99,820.00, with such purchase price to be paid in part by trading in the Town's 2015 backhoe at a trade-in allowance of \$50,000 and payment by the Town drawn on Town funds from the Highway Budget in the amount of \$49,820.00; and

WHEREAS, Highway Law § 142 (1) requires Town Board approval for the Town Highway Superintendent to purchase equipment, tools and other implements to be used for highway maintenance, construction or reconstruction, snow ploughs, or other devices for the removal of snow from highways from moneys appropriated for that purpose; and

WHEREAS, Highway Law § 142 (5) requires Town Board approval of the sale, exchange, surrender or trade-in of machinery, tools, implements and equipment prior to the Town Highway Superintendent disposing of such machinery, tools, implements and equipment;

WHEREAS, following a diligent and thorough review and investigation of the purported transaction and underlying circumstances as part of its voucher auditing procedure, the Town Board determined that neither the purchase of the 2020 backhoe nor the disposition of the Town's 2015 backhoe was authorized or approved by the Town Board; and

WHEREAS, in response to the Town Board's inquiry concerning the validity of the underlying transaction for which payment was being sought, the Town Highway Superintendent asserted that he believed he was authorized to purchase the 2020 backhoe because, in part, his purchases of salt, sand and other materials has never previously been questioned, and, in part, because the Town Board in office in 2019, during the budget adoption process for 2020, appropriated up to \$50,000 to be expended on a backhoe; and

WHEREAS, the Town Board has reviewed and considered the Town Highway Superintendent's assertions; and

WHEREAS, contrary to such assertions, the Town Highway Superintendent has sought and obtained approval for equipment purchases in the past as shown in the minutes excerpts and resolutions collectively annexed hereto as ***Exhibit A***; and

WHEREAS, the Town Board finds that the Town Highway Superintendent's assertions are also contrary to the history of this particular transaction as shown in the minutes excerpts annexed hereto as *Exhibit B*, as summarized below; and

WHEREAS, in this particular case, the Town Highway Superintendent attempted to obtain approval of the purchase of the 2020 backhoe at issue from this Town Board over the course of several months this year; and

WHEREAS, in response to various requests to authorize the purchase of the 2020 backhoe, the Town Board never voted in favor of approving either the purchase of the 2020 backhoe or the trade-in of the 2015 backhoe; and

WHEREAS, at various points during such discussions, particular Town Board members made clear that the purchase of the 2020 backhoe required Town Board approval; and

WHEREAS, in an effort to accommodate the Town Highway Superintendent's request for the Town Board's approval of the purchase of the 2020 backhoe, certain Town Board members expressed consideration of voting in favor of approving the purchase if the Town Highway Superintendent was able to sell surplus highway equipment (other than the 2015 backhoe, which had not been declared surplus); and

WHEREAS, in an effort to accommodate the Town Highway Superintendent's request for the Town Board's approval of the purchase of the 2020 backhoe, the Town Board declared four pieces of highway equipment (none of which included the 2015 backhoe) as surplus at the Town Highway Superintendent's request and authorized their sale through bidding with Auctions International; and

WHEREAS, thereafter, the Town Highway Superintendent suddenly rescinded his authorization of the sale of such four pieces of surplus equipment, and requested that only two of such four pieces of equipment be sold and that such sales be made through advertisement in the local newspaper rather than through Auctions International; and

WHEREAS, at no point did the Town Board declare the 2015 backhoe as surplus equipment, nor did the Town Board at any point authorize its disposition by sale, trade-in, or otherwise; and

WHEREAS, in light of the above facts and circumstances, both with respect to prior purchases made by the Town Highway Superintendent and with respect to attempts by the Town Highway Superintendent to obtain Town Board approval of the referenced transaction in particular, all as evidenced in Exhibit A and Exhibit B hereto, the Town Board finds the Town Highway Superintendent's assertions that he allegedly believed he either was authorized to engage in the referenced transaction or that Town Board approval was unnecessary for the referenced transaction to be lacking in credibility; and

WHEREAS, in the event the Town Highway Superintendent legitimately believed that he was either authorized to engage in the referenced transaction or that Town Board approval for the referenced transaction was unnecessary, the Town Board deems it to be in the best interest of the Town to make a clear, direct, and unequivocal statement concerning transactions involving highway equipment;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. Pursuant to Highway Law § 142 (1), no purchase of highway equipment, tools or other implements to be used for highway maintenance, construction or reconstruction, snow ploughs, or other devices for the removal of snow from the highways may be made without the express approval thereof by an affirmative vote of the Town Board of the Town of New Lebanon in favor of such purchase at a duly authorized, called and held meeting. Moneys appropriated for the purchase of equipment (even if itemized) in the Town budget and the Town Board's vote in adopting or amending the Town budget shall not constitute Town Board approval of a purchase governed by this paragraph or by Highway Law § 142 (1).
2. Pursuant to Highway Law § 142 (5), no sale, exchange, trade-in, surrender, or other disposition of machinery, tools, implements or equipment of the Town Highway Department shall be made without first obtaining the express approval thereof by an affirmative vote of the Town Board of the Town of New Lebanon in favor of such sale, exchange, trade-in, surrender, or other disposition at a duly authorized, called and held meeting.
3. Transactions involving both (a) a purchase governed by paragraph 1 of this Resolution and Highway Law § 142 (1) and (b) a trade-in or other disposition governed by paragraph 2 of this Resolution and Highway Law § 142(5) shall require express Town Board approval of both such aspects and shall comply in all respects with both paragraphs 1 and 2 of this Resolution and Highway Law § 142(1) and (5).
4. All transactions governed by this Resolution and Highway Law § 142 shall strictly comply with the provisions thereof in all applicable respects. Any transactions governed by this Resolution and Highway Law § 142 but purportedly entered into without such strict compliance shall be null, void, and of no legal effect as against the Town of New Lebanon. If any person, including the Town Highway Superintendent, engages or purports to engage in any transaction in violation of any applicable provisions of this Resolution or Highway Law § 142, such violation(s) may be deemed by the Town Board of the Town of New Lebanon to be intentional, in violation of the public trust, a gross dereliction of duty and an abuse of authority, and the Town Board of the Town of New Lebanon reserves the right to pursue any and all remedies available under law, including without limitation, seeking civil recovery of damages incurred as a result and seeking removal of office.

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

Roll Call Vote:

Councilmember Norman Rasmussen	Aye
Councilmember Deborah Gordon	Aye
Supervisor Tistrya Houghtling	Aye
Councilmember Jesse Newton	Absent
Councilmember John Trainor	Aye

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: December 8, 2020

Marcie Robertson
Town Clerk
Town of New Lebanon