

**WESTERLO TOWN BOARD  
MEETING OF**

**TUESDAY, AUGUST 1, 2017**

The Town of Westerlo Town Board held the regular monthly meeting on Tuesday, August 1, 2017 at Town Hall, 922 County Route 401, Westerlo, NY. Supervisor Rapp opened the meeting at 7 PM with the Pledge of Allegiance to the Flag.

Attending were: Supervisor Richard H. Rapp  
Councilman William F. Bichteman Jr.  
Councilman Anthony W. Sherman  
Councilman Joseph J. Boone

Absent: Councilwoman Amie L. Burnside

Also attending were: Albany County Legislator Christopher Smith, Planning Board Chairwoman Dorothy Verch, Zoning Board member John Sefcik, Highway Superintendent Jody Ostrander, Clerk to the Assessor Claire Marshall, Clerk to the Supervisor Patricia Boice, Deputy Dog Warden Salvatore Spinnato IV, Museum Director Mary Jane Araldi, Broadband Research Committee members Dorothy Verch, Eric Markson, Bob Wilcox, Michael Sikule & Leonard Laub, Town Clerk Kathleen Spinnato and approximately seventeen residents.

**TOWN BOARD MINUTES**

Councilman Sherman made a motion to accept the Town Board minutes of 7/6/2017 as submitted. Councilman Bichteman seconded, motion carried by members present.

**PAYMENT OF MONTHLY BILLS**

Supervisor Rapp made a motion to adopt the following resolution:

WHEREAS: the Town Board has audited the monthly bills, be it hereby

RESOLVED: the following bills be paid

Voucher # 373 through Voucher # 420 in the amount of \$42,832.40

Councilman Boone seconded the motion, a vote resulted as follows:

AYES: Supervisor Rapp, Councilman Boone, Councilman Sherman and  
Councilman Bichteman

NAYS: None

**RESOLUTION # 28-2017 was thereby duly adopted.**

**SUPERVISOR'S REPORT**

Councilman Bichteman made a motion to accept the Supervisor's report for the month of June as submitted. Councilman Boone seconded, motion carried by members present.

**TOWN CLERK'S REPORT**

Councilman Boone made a motion to accept the Town Clerk's monthly report for July as submitted. Councilman Sherman seconded, motion carried by members present.

**ZONING BOARD OF APPEALS REPORT**

Chairwoman Virginia Mangold submitted the following report, read by the Town Clerk.

The Town of Westerlo Zoning Board held their regular monthly meeting on July 24<sup>th</sup>, 2017 at 7 p.m.

The Board went over a public hearing with applicants and approved the variance. Following old business, the Board reviewed a new application and approved the acceptance for a variance. A Public Hearing was scheduled for their next regularly scheduled meeting on August 28<sup>th</sup> at 7 p.m.

The Board all voted in favor to conduct the site review for this new variance application following the conclusion of this meeting.

ZBA member John Sefcik added to Chairwoman Mangold's report that a Special ZBA meeting was held on July 10<sup>th</sup>. It was for two public hearings, delayed because it was erroneously not published by the newspaper for the June meeting. Two variances were approved and the third applicant was asked to come back with additional work and left that Public Hearing open.

Councilman Bichteman made a motion to accept the ZBA report, seconded by Councilman Boone to include the additional comment, motion carried by members present.

### **PLANNING BOARD REPORT**

Chairwoman Dorothy Verch submitted and read the following report:

The Planning Board met on July 25, 2017 at 7PM. There were no new applications. The status of Mid-Hudson Cable Franchise Agreement was reviewed, to date.

Received an update from the Department of State regarding Type I, Type II and Unlisted actions. (10 pages)

"The purpose of the list of Type I actions in this section is to identify, for the agencies, project sponsors and the public, those actions and projects that are more likely to REQUIRE THE PREPARATION of an EIS (environmental impact statement) than Unlisted actions. ALL AGENCIES ARE SUBJECT TO THIS TYPE I LIST."

Section 2-Designation of a TYPE I action by one involved agency REQUIRES coordinated review by ALL involved agencies.

(b) The following actions are TYPE I if they are to be DIRECTLY UNDERTAKEN, funded or approved by an agency.

**(1)The ADOPTION OF A MUNICIPALITY'S LAND USE PLAN, the adoption by any agency of a comprehensive resource management plan or the initial adoption of a municipality's comprehensive zoning regulations.**

**(2) The adoption of CHANGES in the allowable uses within ANY ZONING DISTRICT, affecting 25 or more acres of the district.**

It also addressed TYPE II actions that do not need a SEQRA review.

Because the Planning Board is so cautious, we apply the SHORT SEQRA review to ALL TYPE II actions. Every application is put through the DEC mapper to identify each piece of property. The mapper uses the DEC information and applies it to each TAX ID #. Because the PB does this, we identify areas such as endangered species, wet lands etc.

By taking this precaution, we protect the Town from disputes.

A discussion regarding the updating of the Comprehensive Plan took place.

Ned Stevens and Doyle Shaver feel that it is too soon to address changes/updates since it was just accepted in January of 2015. Gerry Boone and Rich Kurylo were not in attendance.

No new business. Meeting was adjourned.

### **BROADBAND RESEARCH COMMITTEE (BRC)**

Dorothy Verch submitted and read the following report:

The BRC met on July 25, 2017. Attendees; Mike Sikule, Bob Wilcox and Dorothy Verch.

A draft of the new franchise agreement was updated. Some wording was adjusted and the colored maps of the new phases for Exhibit II were completed.

Additional roads were added and would be "driven" on 7/28. Update was sent to Mike for addition to the current colored map.

Tonight we would like to review the agreement and how we arrived at our current position.

During this process, we reached out to the Public Service Commission (PSC), Carol McTague whose office assists towns and helps to draft franchise agreements. We sent her our June draft and she responded with 2 pages of suggestions into directives. We reworked our initial draft taking all of her suggestions into consideration. The draft dated July 14, 2017 was sent to the Town Board for discussion on the 16<sup>th</sup> Meeting-which was canceled and rescheduled to the 26<sup>th</sup>-which was also canceled.

We were informed that it would be discussed at the regular monthly meeting, tonight Aug. 1.

A review of the agreement and the map of Westerlo to follow.

Councilman Sherman made a motion to accept the Planning Board report and the Broadband Research Committee Report as submitted. Councilman Bichteman seconded, all those present in favor, motion carried.

### **MUSEUM REPORT**

Museum Director MaryJane Araldi read the following report:

We have been meeting once a month on the second Thursday of the month. Some of the museum possessions have been moved from the library to the old town hall and we continue to sort through them.

The museum has been open for the first Sat. of every month from 9am to 11am.

Plans are being made for the Grand Opening on Friday, October 6<sup>th</sup>. Save the date postcards have been sent. Formal invitations will be going out in a couple of weeks. This will coincide with the Fall NY Path Through History.

We are also planning on having the museum open the weekend of Sept. 16<sup>th</sup> and 17<sup>th</sup> for the Farm and Artisans tour that will be going on that weekend.

Councilman Boone made a motion to accept the museum report. Councilman Bichteman seconded, motion carried those present in favor.

#### **WATER BOARD REPORT**

Councilman Bichteman reported the fire hydrants have been painted. A young man served through a community service program implemented by the Albany County District Attorney's office and the Town Justice Court. He also thanked resident Gene Germani who helped direct traffic and finished up the work started.

Councilman Sherman made a motion to accept the Water Board report. Councilman Boone seconded, all those present in favor, motion carried.

#### **OLD BUSINESS:**

##### **Summer Youth Recreation Program**

Supervisor Rapp thanked Albany County Legislature Chris Smith for obtaining a grant for the Town of Westerlo for a summer youth program.

Councilman Boone also thanked Chris Smith for attending tonight's meeting and doing all the leg work to obtain the grant from the County. Applause followed. Councilman Boone had been involved since Councilman Bichteman had asked for a volunteer to organize, solicit and work out the details involved in starting the program. He also thanked all the members of the community and outside of the immediate community and volunteers who came together, in a relatively short amount of time, for their effort, support and time making the youth program a success. He thanked Hannay Reels for their donation to sponsor rental of bounce house. Approximately 24 youths attended.

##### **Town Hall Renovation**

Councilman Bichteman announced the Town has received an estimated quote in the amount of \$10,200 from Sullivan Contracting (work change order) to remove approximately 997 sq. ft. of asbestos floor tile in the hallway and bathrooms of Town Hall. In an effort to move forward with asbestos removal and town hall renovations, he then made a motion to adopt the following resolution:

WHEREAS: the Town has received a quote to remove asbestos floor tile in the Town Hall, be it hereby

RESOLVED: that the Supervisor is hereby authorized to sign a work change order with Sullivan Contracting for removal of asbestos floor tile in the Town Hall estimated by their engineer to cost approximately \$10,200. The Supervisor shall also have the authority to negotiate a lesser amount, if possible, the final cost of the proposed project shall not exceed \$10,200.

Councilman Sherman seconded the motion, a vote resulted as follows:

AYES: Supervisor Rapp, Councilman Bichteman, Councilman Sherman, Councilman Boone

NAYS: None.

**RESOLUTION # 29-2017 was thereby duly adopted.**

Councilman Bichteman advised that the Contractor may have to set up on a weekend in order to prepare the building. The actual removal of the tile should take approximately one or two workdays. He also advised of the effect on the Town Offices during the proposed project and that air quality tests would also need to be performed.

### **Mid-Hudson Cable Franchise Fees**

Dorothy Verch questioned if the Town had received franchise fees from Mid-Hudson Cable for an error where Westerlo residents with a Greenville mailing address (12083) were improperly identified by Mid-Hudson Cable as residents of the Town of Greenville. Back in April, Dave Fingar of Mid-Hudson Cable, had advised her they would be cutting a check to the Town of Westerlo for those misidentified franchise fees. To the memory of the Supervisor and the Clerk to the Supervisor, a check for any additionally owed franchise fees had not been received, they recalled only receiving the normal franchise fee payment.

### **Laberge Group**

Dorothy Verch advised that she had received a statement from the Laberge Group for finance charges. The Laberge Group is an engineering consultant hired to assist the Planning Board on a recent cell tower application. She spoke with the company, the finance charge will be removed, there is no balance owed. A new statement will follow showing a zero balance.

### **Draft Cable Franchise Agreement**

Councilman Bichteman indicated he had read the proposed Mid-Hudson Cable (MHC) Franchise Agreement drafted by the members of the Broadband Research Committee (BRC). He felt there are certain sections of the agreement that need to be reviewed by the entire Town Board. A review of the draft by the Town Board unfortunately hasn't happened. Due to circumstances both the recently scheduled workshop of 7/18/2017 and an attempt to reschedule the workshop meeting on 7/26/2017 had to be canceled. In his opinion there were portions of the document that should precede a discussion about the contract; who is served needs to be addressed, any negotiation points may have to be discussed in Executive Session, but certainly the entire document doesn't need to be discussed during Executive Session as has been suggested by the Broadband Research Committee (BRC). He believed the BRC was looking for guidance from the Town Board for the parameters on the proposed document and because the document is extensive with many parts, he thought this was not the proper meeting for the Town Board to conduct the review and discussion.

Councilman Bichteman and Dorothy Verch discussed the targeted areas within the Town that BRC is proposing expansion of Mid-Hudson Cable lines. Councilman Bichteman believed the routes that currently exist should also be rechecked in order to see if there is any possibility for further expansion on those already existing service routes. Dorothy Verch indicated that the BRC had based proposed expansion upon the input of residents who had expressed a need for internet/cable services.

BRC member Eric Markson stressed the fact to the Town Board that the 15<sup>th</sup> of August is the deadline for MHC to apply for Phase III grant applications. If the deadline is missed the grant monies will disappear, this is the last chance for MHC to be able to get the monies. We are crunched on time to see any of that funding. If the BRC can present an agreement to Mid-Hudson Cable it will show them we are prepared to negotiate. It will tell them exactly which roads we want to be included. At that point MHC can do the research and apply for the grants.

BRC member Michael Sikule inquired if the Town Board could schedule an Executive Session to meet with the BRC for next week to discuss the proposed draft franchise agreement. Councilman Bichteman advised that Executive Session cannot be held on its own, it is part of a meeting. A meeting has to be scheduled and advertised in advance like any other meeting. Mr. Sikule and Mrs. Verch inquired about having an executive session tonight to which there was no immediate response from the Town Board members.

Councilman Bichteman advised he understood the deadline. What is the impotence on MHC to apply for the money, why can't they apply for the grant money? The members of the BRC advised MHC has told them they won't apply unless they know the terms of the agreement. That is why the BRC had included the Exhibit of proposed roads for cable expansion. MHC is not only agreeing to the proposed franchise agreement they would also be agreeing to service of the proposed roads.

Councilman Bichteman inquired why he found no mention of broadband service in the agreement. BRC member Bob Wilcox advised the Public Service Commission (PSC) does not regulate internet they only regulate cable television service. Discussion followed on the subject of revenue earned by MHC for cable television vs. internet services.

BRC member Leonard Laub indicated MHC is holding hostage any notion of expanding their cable plan until we negotiate any franchise agreement. If they were to expand the cable plan they will need the grant monies from the state for Phase III. If we miss the deadline, we miss the opportunity for them to expand. MHC would now have to proceed with expansion on their nickel or they will have to charge their subscribers more. This is the Town's opportunity to persuade Mid-Hudson to expand this cable plan, and once they do, they are absolutely going to provide internet service to everyone on the extended cable plan because the internet service makes them the money. The grant needs to be applied for in a timely manner. How can we move forward in a timely fashion?

Dorothy Verch reported that County Routes 402 and 410 were included in Phase II grant applications by MHC. MHC had promised that they would expand those routes if the Town signs the agreement. Councilman Bichteman advised it is an agreement that MHC hasn't even seen yet. Dorothy Verch and Eric Markson reported these particular routes are being expanded now, they are taking a number of poles, they are signing for licenses to put lines on poles, this is already happening, it is a sign of good will on MHC's part.

The BRC discussed the expansion of cable lines being proposed now compared to the future which may include the possibility of wireless connections. Because of the topography of the Town, not all areas which need to be served or are under served, can be served at this time. They are looking into the possibility of other carriers.

Mr. Laub felt the Town's negotiating position would be substantially weakened if we can't reach a settlement on the draft franchise agreement by the middle of this month. Mr. Markson advised MHC needs the agreement so they can apply formally for the grant by the middle of this month. BRC member Bob Wilcox commented that the text in the agreement doesn't differ greatly from the past agreement other than the BRC has pushed to receive better data and the proposed expansions.

Councilman Sherman indicated once a workshop meeting can be held to discuss and review the proposed franchise agreement and it is then potentially submitted to Dave Fingar of MHC, will it pass? The members of the BRC agreed that was correct. So what the BRC members are hoping is to show Mr. Fingar a good faith effort that the Town is working towards settling an agreement. If that is what it takes, why doesn't the Town Board authorize the Supervisor to draft a letter to Mr. Fingar letting him know that the Town has a draft copy of a Franchise Agreement that is currently being reviewed and revised. Mr. Laub responded the PSC will prevent MHC from proceeding if we do not give Mr. Fingar what the PSC requires him to have. The BRC members continued discussion on the matter.

Councilman Bichteman inquired if the BRC were to hand this draft to Mr. Fingar as it stands now, would he apply for the grant? Mrs. Verch, Mr. Markson and members of the BRC replied yes, this is correct. Councilman Bichteman felt there are provisions in the draft agreement that many businessmen would not sign. Mr. Laub advised, that they negotiate them, but we must do it soon and with an agreement before we can do so.

BRC member Michael Sikule reported in detail how the contract was developed by the BRC comparing a past contract and the franchise agreements of other area towns. Most of the changes made are already included in other towns cable contracts. The PSC had recommended the other changes to the contract. He thought the build out may be the only issue MHC may have, as to how or who will pay for it. Discussions continued about the proposed draft contract.

Councilman Bichteman suggested that the BRC construct language that when certain situations arise that MHC would have to continue to build out. Dorothy Verch responded they can add that in. Mr. Laub requested the BRC & Town Board go into executive session so that we can figure it out now.

Councilman Bichteman was not in objection of discussing certain points of the contract in Executive Session. His concern is that the Town Board is represented tonight by counsel to provide a legal opinion in a fifteen year contract, which he was not comfortable with.

Discussions continued over the proposed draft franchise agreement and the looming deadline of August 15<sup>th</sup> for MHC to apply for the grant.

Councilman Sherman indicated he is excited at the opportunity for a grant and for expansion of broadband to areas. I think that what the BRC has done is commendable, agreement or not, if MHC does the line expansion they will continue to profit. Mr. Fingar has advised he does not need a Franchise Agreement to continue to run his business. I understand it is a revenue stream, its money for funding projects. Just because he chooses to use the grant money, as a smart business man he should, it doesn't mean if we get this document to Mr. Fingar by August 15<sup>th</sup> he wouldn't continue to make money or he wouldn't expand his business.

Dorothy Verch advised it will revert back to the original franchise agreement. Then the PSC ruling would take place at a rate of 35 homes per mile. The BRC was able to get that figure reduced to 20 homes per mile, with 15 committed. That is a big change Mr. Fingar has agreed to. Discussion followed on the cost of running cable.

Councilman Boone inquired what is required by MHC to present to New York State for the Aug. 15<sup>th</sup> grant deadline, is he required to have a document on hand for display to the State? Mrs. Verch

responded yes and she gave an example of a private resident within the town who was interested in doing his own personal contract, he was given the deadline of Aug. 3<sup>rd</sup> by MHC. She advised Mr. Fingar wants the Town to commit to an agreement. Mr. Wilcox advised a rural contract is less appealing for MHC they still have to pay the mileage charge per pole to Central Hudson, they still have to pay the same kind of maintenance for anything that goes wrong with the wires, and they have far fewer people signing up. The revenue stream is much smaller for this type of investment. The revenue will depend on the number of persons who sign up and the type of services they require.

Councilman Boone advised that because Mr. Fingar has not been presented with a draft of the proposed franchise agreement, is it presumed he is aware of this phase/layout, there is no guarantee. Mr. Markson advised Greenville does have a phased layout, so this concept is familiar to MHC. Plus we have done research and they have done actual driving to meet the criteria. Mr. Sikule commented, Mr. Fingar may not agree with the contract, but he's aware that the BRC wants more service other than that proposed for County Routes 402 and 410.

Several residents expressed their opinions regarding; a possible letter of intent, questions about the map presented by the BRC and commented on the housing market and the need for cable/internet service. Questions were answered by members of the BRC and Councilman Bichteman. Discussions followed regarding new technologies and the competition of wireless service providers, the necessity of internet access for households with students, etc.

Councilman Boone asked the BRC where does the potential for any new technology during the 15 yr. franchise agreement come into play? Mr Markson advised the FCC & the PSC have a set definition of standards that companies have to meet. The state can impose hefty fines for not following these standards. Councilman Bichteman, Councilman Boone, Mr. Markson and Mrs. Verch briefly discussed the proposed 2 year expansion of cable service the BRC had incorporated into the draft franchise agreement.

Discussions continued regarding the franchise agreement and some suggested modifications. Councilman Boone agreed what the BRC has done and the amount of time they have spent is commendable, and thanked the public for their comments, he agreed with Councilman Bichteman that the town board should seek the advice of counsel regarding the draft franchise agreement.

In an effort to move forward on a proposed Franchise Agreement with Mid-Hudson Cable, Councilman Bichteman made a motion to adopt the following resolution:

**WHEREAS:** The BRC has made recommendations to the Town Board on a proposed DRAFT Mid-Hudson Cable Franchise Agreement the BRC had developed. The BRC hopes that MHC will be able to apply for phase III of state grants with an approaching deadline of Aug. 15, 2017, to potentially extend cable/internet service in the Town of Westerlo in the future to unserved areas, be it hereby

**RESOLVED:** Upon the submittal and approval of the Town Attorney, the Town Board allow the BRC to tender a DRAFT of the Mid-Hudson Cable(MHC) Franchise Agreement to present to MHC. The revised DRAFT agreement to include the latest modifications to be made by BRC member Michael Sikule.

Councilman Boone seconded, vote follows:

AYES: Supervisor Rapp, Councilman Bichteman, Councilman Boone, Councilman



Sherman.

NAYS: None.

**RESOLUTION # 30-2017 was thereby duly adopted.**

## **NEW BUSINESS**

### **DOG WARDEN/DEPUTY DOG WARDEN**

Supervisor Rapp announced Jody Ostrander has taken a leave of absence from his duties of Dog Warden due to his recent appointment to the position of Highway Superintendent. He then made a motion to adopt the following resolution:

WHEREAS: the Town Board needs to fill the position of Dog Warden, be it hereby resolved

RESOLVED: the Town Board appoints Salvatore Spinnato IV - Deputy Dog Warden to the position of Dog Warden

WHEREAS: the Town Board will now need to fill the position of Deputy Dog Warden, be it hereby

RESOLVED: the Town Board appoints Justin Case to the position of Deputy Dog Warden

Councilman Bichteman seconded the motion, a vote resulted as follows:

AYES: Supervisor Rapp, Councilman Bichteman, Councilman Sherman and Councilman Boone

NAYS: None

**RESOLUTION # 31-2017 was thereby duly adopted.**

### **ZONING BOARD OF APPEALS MEMBER**

Supervisor Rapp announced that ZBA member Wilfred Van Iderstynne had submitted his letter of resignation. Councilman Sherman made a motion to advertise for the ZBA position in the Altamont Enterprise, indicating applicants must be a resident of the Town of Westerlo. The deadline to receive applications was set for Monday, August 28<sup>th</sup>. Supervisor Rapp seconded, motion carried by those present.

### **NEW POSITIONS:**

With the Supervisor's permission, Councilman Bichteman announced that the Town desperately needs to hire, in an interim basis, a couple of people to perform maintenance/grounds duties for the Town Hall building.

He made the following motion:

WHEREAS: there is a need to perform maintenance on the Town Hall, be it hereby

RESOLVED: the Town Board allow the Highway Superintendent to appoint two persons from approximately 15 to 20 applications he currently has on file, to fill a six month probationary position(s), to be either renewed, newly hired or eliminate at the end of the probationary period the positions to be paid at the regular Highway rate.

Councilman Sherman seconded the motion, vote follows:

AYES: Supervisor Rapp, Councilman Bichteman, Councilman Sherman and  
Councilman Boone

NAYS: None

**RESOLUTION #32-2017 was thereby duly adopted.**

The public commented on shared services & grants in general. Supervisor Rapp advised he was not in favor of the shared service the County is proposing. Highway Superintendent Jody Ostrander advised the public that the Town Highway Dept. has participated for 24 years, since he has been here, sharing services with other towns in the surrounding area.

**FEMA-WINTER STORM STELLA**

Highway Superintendent Jody Ostrander reported that winter storm Stella has been declared by FEMA. The town has submitted the paperwork in anticipation of funding. Supervisor Rapp reported our share is approximately \$26,000.

There being no further public comment, Councilman Sherman made a motion to adjourn the meeting, second made by Councilman Bichteman, motion carried by those present. Meeting adjourned at 8:50 PM.

Respectively submitted,

Kathleen Spinnato Town Clerk

