

MINUTES OF THE REGULAR MEETING OF THE TOWN BOARD OF THE TOWN OF THURMAN, NY HELD JULY 11, 2018 AT THE TOWN HALL, 311 ATHOL ROAD, ATHOL, NEW YORK, COMMENCING AT 6:30 PM....

PRESENT: **Mrs. Brenda Ackley, Councilwoman**
 Mrs. Joan Harris, Councilwoman
 Mr. Douglas Needham, Councilman
 Mrs. Gail Seaman, Councilwoman
 Mrs. Cynthia Hyde, Supervisor

RECORDING SECRETARY: Susan E. Staples

The meeting started at 6:30 with the reading of the claims.

The meeting was called to order at **7pm**.

PLEDGE OF ALLEGIANCE TO THE FLAG

ROLL CALL

The **Supervisor** noted that no bids had come in from our request for new legal representation. **Councilwoman Seaman** noted that we will make a few phone calls because we have made an honest attempt and we'll find an attorney for the town.

NEW BUSINESS: Supervisor Hyde noted that she had a letter from a lawyer representing the SPCA of Warren County. She then read the attached letter. She then noted that within 30 days we would no longer have an Animal Control Officer. She noted that in the meeting packet she had included a resolution to look for letters of interest.

REPORTS: The **Supervisor** noted that she had made committee appointments back in February, and had appointed **Mr. Needham** as **Building and Grounds Liason**. She noted that she had asked him to look over the playground, and check it for safety. Also that she had asked him to find for us what sort of safety rules we need to follow and report back to the Board so we can keep an eye on that. She said that she had received a phone call that there was a problem up there. She noted that she had gone up there yesterday with the **Town Clerk**, and had found that someone had smashed in the windows of the playhouse, and that there was glass everywhere. She noted that there was a board missing on the deck leaving an exposed screw that could hurt a child. Also that the little shovel in the sand was missing a bolt, and broken. She noted that the post on the monkey bars of the swing set was loose and able to be shaken. She then asked **Councilman Needham** if he would mind taking a look at that. **Councilman Needham** noted he had been up there a month ago, and everything was fine. **Supervisor Hyde** said she had called the Police today because it looked like vandalism because of the way the windows were smashed in.

NEW BUSINESS: Councilwoman Harris noted she had something to say. She went on to note that she has a contract with the Town. She noted that she had 2 or 3 people over there to do Historical work. She stated that someone had put 2 files in front of her door. She

stated that she needs them removed. From what she can see on the outside that they belong to the **Judge**. She would like them removed so she can get into her office. She also noted the paint situation. Saying that she was told the paint had been left outside for several years and was no longer good. She stated that she had moved some of them inside. **Councilman Needham** noted that 3 years ago when he worked for Town he had cleaned that up. **Supervisor Hyde** noted that she had sent **Councilman Needham** a link for a free disposal of toxic waste, and said maybe he might want to look into that as Building and Grounds liaison. So he could possibly look into getting rid of the paint on the porch safely. She then noted that he had replied to her that he didn't do it. Why don't I not worry about paint cans. What are our finances? **Councilman Needham** noted that he had an email where he had said for the Maintenance man to take care of that. The **Supervisor** noted it was a special day on the weekend, and that the maintenance man does not work weekends. Also that she was hoping that you out of the goodness of your heart help. **Councilwoman Harris** then noted to **Councilman Needham** that they had talked about this previously, and he stated it was too cold to take care of do you remember. Yes, he responded. **Councilwoman Harris** wanted it noted that the two files needed to be moved, and also that there were artifacts and a collection that are in the **Harris House** and are not protected. She then noted that she had painted, cleaned and done other work in the building. **Councilman Needham** then stated that that building was not safe with **Councilwoman Seaman** agreeing with him. **Councilwoman Harris** noted that **Charlie Wallace** had come up here and said the only thing we need to do is fix the ramp. So if we had volunteers we could fix the ramp. **Councilwoman Seaman** noted that the Engineer said it was not safe. The **Supervisor** stated that **Charlie Wallace** came up and did an inspection, and that the building was safe. **Councilwoman Harris** noted that the building was fine to be used, and **Councilwoman Seaman** disagreed. **Councilwoman Harris** noted that she has a contract with the Town, and that municipal buildings are supposed to be maintained by the Town. She noted that the **Judge** had offered to use money from her grant to do the repairs, but she was afraid to use the grant money for the repairs as it might upset the Board. The **Supervisor** noted that the Board had rescinded a resolution that had authorized that work to be done. That the **Judge** was going to use leftover money from the grant to do those repairs. The **Supervisor** noted that those funds were sitting in the general fund, and was not ours to use it's the courts. It will have to go back **Councilwoman Seaman** noted. **Supervisor Hyde** noted that it will have to go back if she doesn't use it we are going to have to come up with the money that was spent on the furnace and the on demand hot water heater. She noted that the grant totaled about \$20,000.00. **Councilwoman Harris** noted that the bottom line was that was where she works, and the paint is in the way. I would like that moved she noted. **Councilwoman Seaman** asked who she thought should move those files and paint cans. The maintenance man the **Supervisor** noted, but we don't have one. What happened to the volunteers? **Councilwoman Harris** stated that if anyone wants to volunteer to let her know. That she would go in there, and show you which ones to move. After offers to volunteer **Councilwoman Seaman** asked if they had insurance because the town's liability does not pay for you.

OLD BUSINESS: Councilwoman Seaman wanted to bring something up when the **Supervisor** noted that that was not on the agenda. That the next item on the agenda was **Whitespace**. **Supervisor Hyde** asked the Board what they had planned for **Whitespace** because they were getting some very unhappy people. She noted that a lot of the **Whitespace** was going down, and people were switching to satellite. She noted that we now had only about 15 subscribers, and that we were not bringing in the revenue that we had been. She said that she wondered if the Board had any answers for the residents. **Councilwoman Seaman** responded that Cynthia refused to give me keys, she refused to carry out the duties of her office when we asked her too. **Supervisor Hyde** again asked what do you three plan on doing for the Whitespace?

Motion introduced by **Councilwoman Ackley** and seconded by **Councilman Needham**

To give Gail the key to the pole so she can maintain the pole

Discussion: Supervisor Hyde asked and then what? Are you three in charge of Whitespace she asked. No **Councilwoman Ackley** stated **Gail, Gail** wanted the key to be in charge. If you want the keys you can have the keys, but you are going to have to have a resolution that states that **Gail Seaman** is now in charge of the Whitespace poles. Oh no, no, no. That's not what I asked replied **Councilwoman Seaman**. She continued noting that we are going to separate your responsibilities from my responsibilities. The **Supervisor** continued to ask **Gail, Doug, and Brenda** what their plans for the Whitespace system were. **Councilwoman Harris** asked what the criteria was for when somebody has the keys? **Councilwoman Ackley** responded that she needs to maintain the **Whitespace** poles, and she needs to do the billing part she continued. **Councilwoman Seaman** responded No, they are supposed too, that 's their responsibility she noted. **Councilwoman Harris** noted that she had asked **Brenda**, and to let Brenda reply. **Councilwoman Seaman** continued to speak to **Councilwoman Ackley** about what she would like in the resolution with **Councilwoman Harris** continuing to ask her to let **Brenda** speak for herself. **Supervisor Hyde** asked what would happen if she went to maintain the pole and something was wrong. Who would pay for that? She then noted that there was no money coming in to pay maintenance. We need to know if this maintenance is going to be free or if it is going to cost money. **Councilwoman Ackley** then asked **Gail** are you going to do it for free or are you going to charge the Town? No, **Councilwoman Seaman** replied I will try to get the system up and running at no cost to the Town because I am a Board Member. At no time do I take over the responsibilities that are clearly outlined in the Grant papers of the Supervisor. She then noted that it was not required by any other Board Member last year to give any explanation of what they would be covering and wouldn't be covering. The keys were just given. **Councilwoman Harris** noted she was trying to determine the agenda and the criteria for who has the poles. She noted that she was asking **Councilwoman Ackley** about her resolution. She noted that you want to give her keys to maintain the poles. What does the word maintain mean she asked. **Councilwoman Ackley** responded that if system goes down she has the keys, and can try to maintain it. And if she can't asked **Councilwoman Harris?** Then what happens from there on. **Councilwoman Ackley** then asked if you have a solution, I'm not sure. **Councilwoman Harris** asked if she has the key does she try and find someone to help her or what. **The Supervisor** noted that

there was more to maintaining **Whitespace** then something breaks on the pole. So if she is going to have the keys she still will not be able to maintain it. Also that we don't have money for repairs and if something were going to cost money that the price would have to be spread out over the existing subscribers because the other people in town absolutely do not have to pay to fix that **Whitespace**. The only money that can be used is revenue from Whitespace and we don't have that coming in. So now we have a very serious problem. **Councilwoman Harris** wanted to know if **Councilwoman Seaman** would have anyone else working on the poles, and asked about liability. **Councilwoman Seaman** asked the Clerk what she had written for the resolution. She reread the resolution, and asked if there was a change to that. **Councilwoman Ackley** replied the system itself, not if a pole broke in half the system. The **Town Clerk** asked repeatedly for **Councilwoman Seaman** to for quiet as she tried to clarify the resolution with **Councilwoman Ackley**. **Councilwoman Ackley** then asked to table the resolution. **Councilwoman Seaman** then noted that she was going to bring a resolution.

Resolution # 84

On a motion introduced by **Councilwoman Seaman** and seconded by **Councilman Needham**

Resolution to give me the keys so that I can try to attempt to get the Whitespace up and running.

Discussion: **Councilwoman Harris** wanted to know what would happen if **Councilwoman Seaman** had the keys and couldn't fix it. **Councilwoman Seaman** noted that we could cross that bridge when we got to it. We don't need a backup plan she noted. **Councilwoman Harris** thought that we did. **Supervisor Hyde** wanted a promise that she would not spend any money doing this. If you are going to spend money we need to figure out where it will come from. **Councilwoman Seaman** noted that she has no capability nor as a Board Member can I spend any money regardless. **Supervisor Hyde** noted that you cannot hire anybody without bringing it to the Board. That's correct **Councilwoman Seaman** responded. **Supervisor Hyde** then asked how she was going to maintain the system with the keys if she couldn't hire anybody. Let me worry about that **Councilwoman Seaman** responded. **Councilwoman Harris** noted that we should have a backup plan. **Supervisor Hyde** asked **Councilwoman Seaman** if you could not fix that are you planning on having somebody else come in an touch that. We'll cross that bridge when we get to it **Councilwoman Seaman** noted. **Councilwoman Ackley** noted that she (Councilwoman Seaman) had said if she couldn't fix it she would bring it back to the Board. **Supervisor Hyde** noted that if she can't fix it she is going to bring it back to the Board. In other words she thinks she can fix it herself. **Councilwoman Seaman** responded that if I cannot facilitate it getting it fixed. So you are not going to bring in someone else asked **Supervisor Hyde**. **Councilwoman Seaman** noted I can't tell you, if I need help I'll get somebody. **Councilwoman Harris** wanted the resolution to state that if she can't fix it she can't bring anybody else, and that she has to come back to the Board. No that's my resolution **Councilwoman Seaman** noted. **Supervisor Hyde** then noted that she can't just bring in any Tom, Dick or Harry to fix it. **Councilwoman Harris** noted that you said you would bring it back to the Board. She wanted **Councilwoman Seaman** to agree that she would not bring in anybody because that is a

curtail, that you probably have in the back of your head. **Councilwoman Seaman** replied nope, I did not agree to anything. No. I am charged with getting the system up and running, and I will get it up and running at no cost to the Town. If I can do it. That is the bottom line she continued. **Councilwoman Harris** asked if she was going to bring it back to the Town Board before it is done. **Councilwoman Seaman** noted that if it is going to cost money it would not be done, and she would bring it to the Board. **Supervisor Hyde** noted that she had a concern because she (Councilwoman Seaman) wouldn't say if she is going to bring someone else in. That means if she does, and they get hurt then we can get sued. There is electric stuff in there she noted. **Councilwoman Seaman** wanted to vote on her resolution without the addition from **Councilwoman Harris**. The **Town Clerk** asked **Councilwoman Seaman** to repeat verbatim what she wanted in the resolution. Noting that there had been changes while they talked, and she would have to look at her notes. Asking for **Councilwoman Seaman** to repeat what she wanted in the resolution for clarification.

Resolution #84

On a motion introduced by **Councilwoman Seaman** and seconded by **Councilman Needham**

Resolution to give me the keys so that I can try to attempt to get the Whitespace up and running.

Cynthia Hyde and the Town of Thurman will give Town Board member Gail Seaman the keys to the Whitespace poles so that I may attempt to get the Whitespace up and running because no attempt has been made by the current Supervisor to get the system up and running. And if it is necessary to cut the locks off I am allowed to cut the locks off. And the locks will be replaced at the Town's expense. If it is going to cost the Town any amount of money to get the system up and running that I will bring it back to the Board for prior approval. Because it is not legal for a Board Member to expend funds without Board approval.

Discussion: **Councilwoman Harris** noted that that is a lie, it's an absolute lie. **Supervisor Hyde** also noted that that was a lie. **Councilwoman Seaman** responded that she didn't care it's in the resolution. We don't put lies in resolutions **Supervisor Hyde** stated. Actually it is illegal to put lies in resolutions the **Town Clerk** noted. Huh, **Councilwoman Seaman** stated. The **Town Clerk** repeated that it was illegal to put lies in resolutions. **Susan**, write the resolution write the resolution verbatim please **Councilwoman Seaman** stated. I will, I will write it verbatim. I will write it verbatim. I'm comfortable writing it verbatim especially because I just told her that it is illegal to put lies in there. So I'm comfortable doing this the **Clerk** noted. The **Supervisor** noted that they had spent a lot of money on the Combs Road pole last year. She wanted it noted that they had fixed the pole year when they weren't here. **Councilwoman Seaman** again noted that she wanted the resolution to be as she had stated with no amendments. **Supervisor Hyde** then noted for the record that she had no idea if any of those keys worked because she had not actually gone to every pole and tried a key. I do know that there is a pole on Valley Road that won't open, problems with the Coombs Road pole not working, and the fiber pole lock had to be changed. She may

experience problems with those keys, but I can't help that . She noted that a lot of them are not labeled, and that is the way it was left for us. **Councilwoman Seaman** again asked for her resolution to be reread to her noting that there had been a lot of talk and that she

From: Sarah Brancatella <sbrancatella@nytowns.org> **To:**
seamangg <seamangg@aol.com>

Date: Tue, Jul 10, 2018 10:27 am

Attachments: Options to deal with a supervisor who fails to perform job Comp Op 82 252.doc (48K)
wanted to be sure of what was in it. The **Clerk** reread the resolution. The **Supervisor** asked why the last part was included in the resolution because it's a lie. The **Town Clerk** replied I know. She wants it in there. I've explained to her that it is illegal to do that, but if she wants it in there illegally that's up to her the **Clerk** noted. **Supervisor Hyde** noted oh I see if she wants an illegal resolution let her bring an illegal resolution. The **Clerk** responded that's correct. All I can do is warn them then it's up to them. It's not illegal, it doesn't matter responded **Councilwoman Seaman**. The **Supervisor** then noted that for the record she wanted it to show that that was an absolute lie that she didn't do anything to maintain the system.

A Roll Call Vote Was Called

Motion Carried: Ayes~3 Ackley, Needham, Seaman, Nays~2 Harris, Hyde

On a motion introduced by **Councilwoman Harris** and seconded by

Resolution # 85

Resolution Because of Liability

Because of liability with the poles being electrical and computerized that we will not be held liable for any damage by the person who has the keys. Or by anybody else who she brings in to handle the keys. And that she is responsible because she is the only one who has the keys.

Discussion: Councilwoman Seaman noted that she was not going to be responsible for what you are saying. **Supervisor Hyde** noted that she wants the keys, but doesn't want to be responsible.

A Roll Call Vote Was Called

Motion Failed: Ayes~ Harris, Hyde, Nays~3 Ackley, Needham, Seaman

Councilwoman Seaman noted that she had needed some direction from the **Association of Towns** attorney, and had emailed them about a resolution that was passed on June 29th to pay back the BAN from our town funds. Because the BAN has totally frozen \$300,000.00 in our accounts. She noted that there was nothing insight that the Legislature was going to go back into session. So we decided to pay off the debt. She stated that she had called and asked the attorneys may the Town Board direct the Supervisor to pay off a contractual debt. She then read the first paragraph from the following letter.

Hi Gail

This email is in response to our conversation last week.

May the town board direct the supervisor to pay a contractual debt?

The short answer is generally yes so long as there is appropriation in the budget for that expenditure. Town Law § 117 requires an appropriation to be in the budget to support every expenditure. If an appropriation lacks the required funds, the town board may transfer supplemental funds, unappropriated cash surplus, the unexpended balance of an appropriation, contingency funds, or unanticipated revenues (see Town Law § 112). The supervisor does not have the individual authority to make budget transfers (see Town Law § 112; see generally *Town of Evans v. Catalino*, 88 AD2d 780 (4th Dept)). Absent a sufficient appropriation or a budget transfer, the town board may not spend town funds (see Town Law, §117) and the supervisor may not disburse town funds (see generally, *Opns St Comp*, 1972, No. 72-487; *Opns St Comp*, 1981 No. 81-128; 6 *Op. State Compt.* 290, 1950). Where however, a sufficient appropriation has been made, the supervisor is authorized to pay the principal of and interest on indebtedness without prior audit (Town Law, §125 (1); Town Law, §118). The supervisor is required to state in every check or draft drawn which fund it is drawn against and the appropriate account chargeable therewith; the supervisor may not draw upon one fund or appropriation account to pay a claim chargeable to another (Town Law § 125 [1]).

Does the town board have the authority to freeze salaries

The town board has the duty to set salaries and determine the payroll schedule (Town Law, §27(1)). An elected town official's salary may only be decreased midterm by local law subject to a mandatory referendum with the exception of town justices whose salaries may not be reduced midterm (*Op. St. Comp No. 2006-5*). A lag payroll system that involuntarily defers earned compensation for public employees until the employee separates from service has been invalidated (*Association of Surrogates & Supreme Ct. Reporters Within City of N.Y. v. State of New York*, 79 N.Y.2d 39 (1992)). Here, the town board is proposing to change the payroll disbursement schedule but intends to provide compensation in the same year in which it was earned. Although there is case law, which prohibits the implementation in some instances of a lag-payroll system I was not able to find any case law construing the board's authority to change the payroll schedule for elected or appointed officers. Therefore, in the absence of controlling precedent an argument could be made that there is authority under Town Law, §27 for the board to change the payroll schedule, as long as the board has a reasonable basis for changing the town's payroll disbursement schedule, compensation is paid in same year in which it was earned and the board is not acting arbitrarily or capriciously. Additionally, the town should be mindful of any collective bargaining agreements, but I believe on the phone you mentioned that was not an issue

How can the town board get a monthly financial report from the supervisor?

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The Comptroller's office has said that the town board may, by resolution, prescribe the form of the monthly report (see Op State Compt 80-309). I have attached an from the comptroller's office on options to deal with a supervisor who willfully fails to execute their responsibilities. 2 of the 3 involve court (a writ of mandamus or a Public Officers 36 proceeding) but another option includes creating the position of comptroller in which case that individual would submit the monthly financial report.

Best,

Sarah B. Brancatella
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Resolution # 86

On a motion introduced by **Councilwoman Seaman** and seconded by **Councilman Needham**

Resolution

Whereas the Town Board has previously directed the Town Supervisor to pay the principle and indebtedness on the BAN which was due May 31, 2018 to Glens Falls National Bank, and

Whereas the Town Supervisor has informed the Board that she will not pay *off* the now overdue BAN due to moral and ethical opposition, and

Whereas the Town Board is legally in charge of the fiscal operation of the Town, as per the New York State Comptroller's Office and the Laws of the State of New York, and

Whereas the Town Board has determined that it is in the best financial interests of the Town to stop the further accrual of interest, damage to the Town's credit rating, and to protect the town from a tax increase which would occur if the Town took out a BOND or other entered into another loan scenario, and

Whereas the Town Board recognizes that the Town Supervisor has repeatedly made clear that she will not abide by the laws of the State of New York which require her to carry out the resolutions of the Town Board, despite the negative impacts of her actions on the Town and its citizens, however the Town Board has a duty to the Town as the governing body that it intends to carry out despite the Supervisor's refusal to carry out the resolutions of the governing body, therefore

BE IT RESOLVED that the Town Board again directs the Town Supervisor to pay the principle and indebtedness on the now overdue BAN, and

BE IT FURTHER RESOLVED that pursuant to the Town Supervisor's complaint that direction to pay *off* the BAN was not specific enough; the Town Board directs the Supervisor to do the following:

Transfer \$109,400 from the Savings account ending *7817 to the General Fund

Use the \$109,400 and an additional \$191,372.17 from the General Fund to pay Glens Falls National Bank the \$300,772.17 due to pay *off* the BAN, this pay *off* amount must be paid no later than July 12, 2018 after such time additional charges will accrue. The Town Board directs the Town Supervisor to pay *off* the BAN prior to July 12, 2018.

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Make the following Budget adjustments defunding various budget lines to reflect the necessary budget adjustments that need to be made to cover the expense of paying off the BAN from the General Fund. The Board recognizes that the financial information provided by the Town Supervisor is inaccurate however these statements are the only information the Supervisor has provided the Board, and the Town Supervisor has repeatedly vowed that they are accurate so the Board will have to do its best to adjust the budget with inaccurate accounting records:

Decrease the General Fund Codes as follows:

1010.4 - \$2,480
1110.2 - \$ 1,500,
1220.4 - \$2,000
1221.1 -\$18,000
1310.1 -\$ 1,000
1355.4 - \$ 6,000
1411.1-\$2,500 .
1440.4 - \$17,000
1620.1 - \$ 6,500
1620.4 - \$15,000
4020.1 - \$ 750
4025.4 - \$ 500
6510.4 - \$ 250
6772.4 - \$ 5,000
7310.4-\$ 1,000
7510.1 -\$ 500
7510.4 - \$ 50
8160.1 - \$14,000
8160.4 - \$10,000
8810.1 - \$ 4,000
8810.4 - \$ 700
8989.1 - \$ 3,000
1990.4 - \$10,000
1910.4 - \$19,000
\$140,730

Reduce the Unallocated, Unappropriated Fund Balance by \$50,642.17

BE IT FURTHER RESOLVED that the Town Board directs that the following positions be deleted and removed from the Town's Table of Organization due to the budget cuts, the Board may recreate the positions by resolution in the future once the financial status of the Town has stabilized;

Secretary/ bookkeeper to the Supervisor
All Town Maintenance Workers
Landfill Superintendent
Cemetery Superintendent
Cleaner

BE IT FURTHER RESOLVED that the position of one Deputy Town Clerk shall remain but at no salary as the position was defunded in the budget

BE IT FURTHER RESOLVED that with the exception of the Highway Superintendent and the Court Clerk all elected and appointed individuals whose positions remain funded in the budget shall be paid the remainder of their salaries in the second week of December to allow the Town to meets its contractual and cash flow obligations, and

BE IT FURTHER RESOLVED that the Town Board recognizes the importance of public health and safety and directs the Town Supervisor to pay the overdue contract fee of \$50,000 to Warrensburg EMS as soon as possible and no later than September 15, 2018, and finally,

BE IT RESOLVED that Town Law 29 (7), Town Law 125 (1) and Town Law 29 (16), provide that the Town Supervisor is required to pay the principle and indebtedness and that the Town Supervisor is required to perform such duties as the Town Board directs by resolution on behalf of the Town Board. Further and continued refusal by the Town Supervisor to comply with the resolutions of the Town Board is not only a violation of the Town Supervisor's Oath of Office but also violates the laws of the State of New York.

Discussion: Supervisor Hyde asked if an attorney had looked this over. **Councilwoman Seaman** relied they don't need too. Not every resolution from the Board has to have an attorney. **Supervisor Hyde** noted that she didn't have faith in **Councilwoman Seaman's** ability to write resolutions. She noted that she would never act on something that an attorney has not looked at. She then noted that you can't ask an AOT attorney because they don't do that they are not your attorney. Being that we do not have an attorney there is no way of knowing if this is legal or not. **Councilwoman Seaman** noted that it is legal Cynthia, I gave you the law. **Supervisor Hyde** stated that with the track record of **Mrs. Seaman's** resolutions I do not trust this resolution at all. **Councilwoman Seaman** noted I don't care. She continued noting Town Law 29 Section 7, Town Law 125 Section 1, Town Law 29 Section 16 provides that the Town Supervisor is required to pay the principle indebtedness of the town. The Town Supervisor is required to perform such duties as the Town Board directs by resolution on behalf of the Town Board. Further and continued refusal of the Town Supervisor to comply with the resolutions of the Town Board not only a violation of the Supervisor's Oath of Office, but also violates the laws of the State of New York. Resolutions come from the Town Board not from attorneys she noted. **Supervisor Hyde** stated that resolutions of this caliber needs to be looked at by an attorney. **Councilwoman Seaman** stated it's paying our debt. We already passed it, this is clarifying for you. **Supervisor Hyde** continued that an attorney needs to look at this. **Mrs. Seaman** you are not qualified to write a resolution. **Councilwoman Seaman** interrupted her stating obviously I did. Obviously I did. What's wrong with it **Cynthia**, what's wrong she asked. I don't know I'm not an attorney responded **Supervisor Hyde**. **Councilwoman Seaman** noted that as the Town Supervisor you would be required to write resolutions. Do you have attorneys write resolutions she asked. **Supervisor Hyde** noted that she would never write a resolution like that without an attorney. Let's have discussion **Councilwoman Harris** said. **Supervisor Hyde** stated that unfortunately we do not have an attorney, so we can have an attorney. This very well might not be legit because we don't have an attorney hasn't had a chance to look at it. **Councilwoman Seaman** then noted that according to the AOT it is legit, and further failure of the **Supervisor** to begin let's see let's see she said. **Supervisor Hyde** noted that she had spoken to the AOT also. **Councilwoman Seaman** stated so did I, but I have the AOT response in my email and that

will be included in the minutes please. So do I **Supervisor Hyde** noted stating that she had spoke to **Laurie Mithen** and had the same response that you have. That's great **Councilwoman Seaman** noted that tells you that you have to follow a legal resolution. **Supervisor Hyde** stated it doesn't tell me anything. All I know at this point is an attorney needs to look at this. Do you not agree she asked? I don't agree. **Councilwoman Harris** noted that you have here that the **Town Supervisor** is inaccurate. Show me proof she stated. I don't have to show you proof replied **Councilwoman Seaman**. **Councilwoman Harris** replied yes, you do. **Councilwoman Seaman** noted no I don't. That's your opinion she noted. Both the **Supervisor and Councilwoman Harris** again asked her to show proof. **Councilwoman Seaman** replied Not going to go there. **Councilwoman Harris** stated no, you don't have proof. I have a list of things that you lie about. I can't trust you. Second of all she continued anyone who does any accounting, and you provide that the Town Supervisor is inaccurate, why would you use inaccurate records, and accounting and amounts? **Councilwoman Seaman** responded because they are inaccurate, because those are the only figures the Supervisor has given us. **Councilwoman Harris** then stated we then get the rights ones. **Supervisor Hyde** stated prove they are inaccurate **Gail**. **Councilwoman Seaman** replied sorry don't have too. We did our due diligence. **Councilwoman Harris** asked **Councilwoman Seaman** what a budget code stood for. There was discussion on what the codes in the resolution pertained to. Some of the codes were Town Board, Justice equipment, director of finance (which is part of the Supervisors pay), assessor contractual, deputy town clerk, engineer, buildings and personal, buildings and contractual, registrar of vital statistics, laboratory, program for the aging, youth commission, Historian, payroll for transportation, and payroll for the transfer station. **Supervisor Hyde** noted that **Councilwoman Seaman** seemed to be taking away all of the services that the town provides to the residents. She noted that she didn't trust this resolution at all. **Councilwoman Harris** noted to **Councilwoman Seaman** that she had voted a week ago to send this to the Senate and Assembly, and now a week later you change your mind. **Councilwoman Seaman** stated that it didn't even make it to the floor. **Councilwoman Harris** responded that it made it in the Senate. And that it was on its way to the Assembly. **Councilwoman Harris and Councilwoman Seaman** went on to discuss whether or not the Assembly would reconvene. **Councilwoman Seaman** went on to note that the funds are frozen they can't be used for anything. It doesn't matter what you send out on the thing there is no money there to pay. Yes there is **Supervisor Hyde** noted. No said **Councilwoman Seaman**. **Supervisor Hyde** noted that yes, there is. We have plenty of money to keep the Town going. She continued noting that you don't know what you are talking about ,and are ruining the Town for you own personal reasons. **Councilwoman Seaman** asked if we could call a vote. **Supervisor Hyde** responded no, that we are not finished discussing. **Councilwoman Harris** wanted to know why

Councilwoman Seaman had changed her mind after you said yes. Asking something made you change your mind what was it. She noted to **Councilwoman Seaman** that you and I are both Board Members, and we should be able to talk back and forth and answer questions. She noted that she would answer anything you wanted. She continued to ask **Councilwoman Seaman** about why she had changed her mind. **Councilwoman Seaman** wanted to call a vote, and did not want to respond to **Councilwoman Harris**.

Councilwoman Harris noted that you lied on this, and asked her to prove that the figures were not right. Don't have to **Councilwoman Seaman** noted. **Supervisor Hyde** asked the Board what the Board planned on doing when this money is gone and we have garbage or maintenance issues. What is the Board going to do then? Are you going to wave a magic wand and find a money tree? **Councilwoman Seaman** responded maybe we will who knows. **Councilwoman Harris** noted don't get frustrated these are all common answers. This is finances this is big finances. This is huge finances **Supervisor Hyde** agreed.

Councilwoman Seaman noted that defaulting on a \$300,000 debt is really bad.

Councilwoman Harris started to speak when **Councilwoman Seaman** made a noise.

Councilwoman Harris than asked her why she was laughing when she hadn't even heard it. Be respectful I'm respecting you. **Councilwoman Seaman** interrupted stating really.

Councilwoman Harris continued I always meet you halfway unless you get going.

Councilwoman Seaman again wanted to bring it to a vote. **Councilwoman Harris**

continued speaking noting that you don't lead in fear. Nobody goes into a battle, nobody goes into a situation, and makes everybody afraid using fear tactics. **Councilwoman**

Seaman asked like when somebody that didn't tell the Board until 4 day after the BAN wasn't paid, and that we were in default. That's another lie **Supervisor Hyde** responded.

Councilwoman Harris noted something like someone who signed for the BAN, who knew the figures were wrong. **Councilwoman Seaman** interrupted pointing to **Supervisor Hyde** saying that's the one who signed it. No, the first one replied **Councilwoman Harris**.

Councilwoman Seaman responded that there wasn't any. **Supervisor Hyde** noted that **Gail** put the motion on the floor. The 2016 Board are the ones who put that we had less than 30%. Their resolution is what we moved forward on, but that was incorrect. It was easy enough to correct this resolution with legislation, but they for some reason won't correct the town's mistake. **Supervisor Hyde** noted that she had something to read. She said that **Gail** had contacted **Sarah Brancatella**, and that she had contacted **Laurie**

Mithen and we both got the same thing. And the thing that I would like to point out, I don't think she read this they were discussing the Town Board and salary. She then read the following. The town board has the duty to set salaries and determine the payroll schedule. An elected town official's salary may only be decreased midterm by local law subject to a mandatory referendum with the exception of town justices whose salaries may not be reduced midterm. A lag payroll system that involuntarily defers earned

compensation for public employees until the employee separates from service has been invalidated. Here, the town board is proposing to change the payroll disbursement schedule but intends to provide compensation in the same year in which it was earned. Although there is case law, which prohibits the implementation in some instances of a lag-payroll system I was not able to find any case law construing the board's authority to change the payroll schedule for elected or appointed officers. Therefore, in the absence of controlling precedent an argument could be made that there is authority under Town Law section 27, for the board to change the payroll schedule, as long as the board has a reasonable basis for changing the town's payroll disbursement schedule, compensation is paid in the same year in which it was earned and the board is not acting arbitrarily.

Supervisor Hyde then noted what does arbitrarily means. Arbitrarily means based solely on personal wishes, feelings, or perceptions rather than on objective facts, reasons or principles. And for the record that is why **Mrs. Seaman** is doing what she was doing. She is doing everything she is doing arbitrarily. I do not support anything that she has brought up to this board. **Councilwoman Seaman** stated arbitrarily that we defaulted on a \$300,000.00 loan the Board didn't know about until four days afterwards. Arbitrarily that the bank has frozen \$300,000.00 of our funds that we can't touch. **Supervisor Hyde** noted that she was ready for a vote. That you made the mistake. Unfortunately you didn't know what the percentage of state land was, and that is what started this.

Councilwoman Seaman responded you signed it dear, let's call the vote. **Supervisor Hyde** noted that you made the motion, and you voted yes on the fact that we were under 30% state land so you failed to get the permission that we needed. No, no you did

Councilwoman Seaman said. **Supervisor Hyde** noted yes that's exactly what happened. Anybody I have put the resolution from 2016 December 27th 2016 on the website. You can see who moved it. She moved it (pointing to Councilwoman Seaman) she seconded it (pointing to Susan Shepler), and there was four yeses and one nay she noted. You can read right in the resolution that they passed the resolution and said in their resolution that there was less than 30% state owned land, and therefore they did not need permission from the Comptroller's office. That's where it started, and I have it on the website for everybody to see. See I can prove what I say. We are trying to fix it **Cynthia Councilwoman Seaman** noted. This is not fixing it **Supervisor Hyde** said. This is very dangerous this was not looked at by an attorney.

A Roll Call Vote Was Called

Motion Carried: Ayes~3 Ackley, Needham, Seaman, Nays~2 Harris, Hyde

Supervisor Hyde again noted that a lawyer should look at this. **Councilwoman Seaman** noted it doesn't have to, you have to do this. It is to be paid tomorrow or we accrue interest, more interest, and you will be in violation of your oath of office.

PRIVILEGE OF THE FLOOR: The following people spoke Jerry Shipiro, Wini Martin, Sally Wallace, Kevin Maxam, Matt Seaman, Keith Parent, Mary Eddy, Joyce Eddy, Shirley Wendling, Kathy Templeton, Wini Martin, Mary Eddy, Paula Hubert, Jerry Shipiro and Susan Horowitz. Privilege closed at 8:58 pm.

Resolutions:

Supervisor Hyde stated that there was a resolution to accept the Street Lighting Audit which was tabled last time.

On a motion introduced by **Councilwoman Harris** and seconded by **Supervisor Hyde**

RESOLUTION TO ACCEPT STREET LIGHTING AUDIT

DISCUSSION: **Councilwoman Seaman** noted that **Brenda** said you were supposed to bring the documents. They are right here **Supervisor Hyde** noted. After looking into the envelope that **Supervisor Hyde** had handed her, **Councilwoman Seaman** noted that it was empty. **Supervisor Hyde** noted that she realized it was in her other folder. She also noted that we will have to bring it up next time. She then noted that she would appreciate it if they knew they wanted to see it that they would bring it up prior to the meeting. It was then noted that they had all of the information last time, and had voted to table the resolution then. **Councilwoman Seaman** noted no we didn't, and we want to table the resolution.

A motion to table the resolution was introduced by **Councilwoman Seaman** and seconded by **Councilman Needham**

Motion Carried: Ayes~ Ackley, Needham, Seaman, Nays~2 Harris, Hyde

Supervisor Hyde noted that they had this information last time, and that she was sorry that they didn't remember. She also noted that the next resolution was to approve and assign an agreement with the Highway Superintendent which she had also brought to the last meeting. And that it had been tabled at that time by them, and that she was hoping that they were ready to sign it now, and that it was in their meeting packets.

Councilwoman Seaman stated No, because there is no Pat here. **Councilwoman Seaman and Councilwoman Ackley** both noted to **Supervisor Hyde** that they had asked to speak

to Pat. You had a month to talk to Pat. If you wanted him here you should have asked him the **Supervisor** noted to them.

Resolution # 87

On a motion introduced by **Councilwoman Harris** and seconded by **Councilwoman Ackley**

RESOLUTION TO APPROVE AND SIGN AGREEMENT

DISCUSSION: **Councilwoman Harris** noted that Pat can't spend that money if we don't sign this. **Councilwoman Seaman** disagreed. **Supervisor Hyde** noted that they had a month to talk to the Highway Superintendent, and apparently couldn't be bothered to do so.

A Roll Call Vote Was Called.

Motion Carried: Ayes~3 Ackley, Harris, Hyde, Nays~2 Needham, Seaman

Supervisor Hyde, Councilwoman Ackley, and Councilwoman Harris then signed the agreement.

Supervisor Hyde then noted we have a resolution to pay the claims. **Councilwoman Seaman** noted that there was one voucher that needed to be changed. Then note that for the minutes then the **Supervisor** said, tell her what you would like the **Supervisor** noted. Can we get it on the floor first asked **Councilwoman Ackley?** Yes, I'll make a motion because a voucher needs to be changed. To bring this to the floor asked **Supervisor Hyde?** Yup, replied **Councilwoman Seaman**. Seconded asked the **Supervisor** then the **Town Clerk. Cynthia** seconded it replied **Councilwoman Seaman**. No she was asking who was seconding the resolution the **Town Clerk** noted. **Councilwoman Ackley** then seconded the resolution.

On a motion introduced by **Councilwoman Seaman** and seconded by **Councilwoman Ackley**

Resolution # 88

Resolution to pay claims

Discussion: **Councilwoman Seaman** stated the voucher for Stone, you have two of them on one voucher here, and the concert you said that we were not paying that for the concert. It was not signed by, it was signed by somebody other than a town official, and \$286.00 has to be taken off. That is not a Town bill she noted. **Supervisor Hyde** asked what \$286.00, what is the voucher number that you are talking about. **Councilwoman Seaman** then noted voucher number 2018-506. The **Town Clerk** noted that was for Stone Industries for the Porta Potties. That there were two codes one applies to the Landfill, and one is for the concerts. The **Supervisor** then asked **Councilwoman Seaman** if she was not paying for the potties for the concert series. No we told them they had too **Councilwoman Seaman** replied. Who had to **Supervisor Hyde** asked. Well the TSA had to **Councilwoman Seaman** noted. We told them we were not going to pay for them she noted. Discussion as to who had signed the contract for the potties ensued. **Councilwoman Seaman** noted that this was still on the General Fund abstract. **Councilwoman Seaman** asked if we could vote on this. The **Supervisor** then noted the amounts of the abstract General Fund in the amount of \$7,069.98, Highway Fund \$9,829.70 and Enterprise fund \$50.00. **Supervisor Hyde** noted that she wanted to vote on the resolution as it stood. **Councilwoman Seaman** then noted that there was another motion on the floor. For what **Supervisor Hyde** asked. It was put on first, and it was seconded to take off the \$286.00 off of the voucher. I didn't hear that motion **Councilwoman Harris** noted. Neither did I noted the **Town Clerk**. **Supervisor Hyde** then noted that first we will vote on the Abstract with the potties in.

A Roll Call Vote Was Called

Motion Failed: Ayes~ Harris, Hyde, Nays~3 Ackley, Needham, Seaman

The **Supervisor** then asked about calling a vote to pay the abstract without the vouchers for the porta potties in it. The **Town Clerk** noted that they would have to make an amendment to the resolution or a new resolution. **Supervisor Hyde** then asked why **Mr. Needham** had vote yes to sign the contract then turn around and not want to pay for that. That makes no sense she noted. Why did you vote yes to sign the contracts. Are you going to answer me she asked **Councilman Needham**. No, **Councilman Needham** replied. **Supervisor Hyde** then noted for the record that **Councilman Needham** had voted yes to allowing me to sign those contracts, then he turned around and says no we are not going to pay those people that we have contracts for. **Cynthia** we need the prepays **Councilwoman Seaman** noted. The **Supervisor** noted that she doesn't have a bookkeeper, and didn't have that report. She then asked to call a vote on the Abstract with that voucher removed. The **Town Clerk** then asked who had made a motion to remove the potties from the resolution. We are not voting on anything **Councilwoman Seaman** stated it's already been not passed she continued. So we'll go on to the next

resolution **Supervisor Hyde** stated. You didn't pay the bills again, ok the **Town Clerk** noted. **Supervisor Hyde** then noted that we needed to get an Animal Control Officer. She noted that she would like to bring a resolution to the floor to seek letters of interest in the Animal Control Position.

Resolution # 89

On a motion introduced by **Councilwoman Harris** and seconded by **Councilwoman Ackley**

RESOLUTION TO SEEK LETTERS OF INTEREST

The town board of the Town of Thurman seeks letters of interest for the position of animal control officer.

Motion Carried: Ayes~5 Ackley, Harris, Needham, Seaman, Hyde, Nays~0

Councilwoman Seaman then asked the **Supervisor** to go get the prepays so we can actually pay the bills and know what we are paying. Where are we on paying the bills **Supervisor Hyde** asked. We did not pay the bills the **Clerk** responded they voted no to pay the bills. **Councilwoman Seaman** then stated that she was making a motion to give you (Supervisor Hyde) ten minutes to make a pause so that you can go up and get the prepays so we know how much is coming out of the accounts. Because our accounts are between \$20,000.00 and \$30,000.00 and we need to know how much we are paying from them. The prepays are in the report that I gave you **Gail, Supervisor Hyde** responded. It shows all the bills paid from June 26th until today. They are right there. Open your eyes and look at the report. Please get the prepays for us **Councilwoman Seaman** stated. **Gail** it's right there for you to look at it **Supervisor Hyde** noted. You don't have the amount **Councilwoman Seaman** note. **Gail**, they are all there, the check number, the amount, who it's from look at the report that I have provided for you. You have a report the **Supervisor** noted of everything that has been paid in this town since January 1st. Alright motion to adjourn the **Supervisor** then asked.

ADJOURNMENT: On a motion to adjourn introduced by **Councilwoman Harris** and seconded by **Supervisor Hyde** the meeting was adjourned at 9:17pm.

Motion Carried: Ayes~5 Ackley, Harris, Needham, Seaman, Hyde, Nays~0

Respectfully Submitted,

Susan E Staples, Town Clerk

July 11, 2018 Regular Board Meeting

From: Sarah Brancatella <sbrancatella@nytowns.org> To: seamangg
<seamangg@aol.com>

Date: Tue, Jul 10, 2018 10:27 am

Attachments: Options to deal with a supervisor who fails to perform job Comp Op 82 252.doc (48K)

Hi Gail

This email is in response to our conversation last week.

May the town board direct the supervisor to pay a contractual debt?

August 13, 2018

Attachments

The short answer is generally yes so long as there is appropriation in the budget for that expenditure. Town Law § 117 requires an appropriation to be in the budget to support every expenditure. If an appropriation lacks the required funds, the town board may transfer supplemental funds, unappropriated cash surplus, the unexpended balance of an appropriation, contingency funds, or unanticipated revenues (*see* Town Law § 112). The supervisor does not have the individual authority to make budget transfers (*see* Town Law § 112; *see generally* *Town of Evans v. Catalino*, 88 AD2d 780 [4th Dept]). Absent a sufficient appropriation or a budget transfer, the town board may not spend town funds (*see* Town Law, § 117) and the supervisor may not disburse town funds (*see generally*, *Opns St Comp*, 1972, No. 72-487; *Opns St Comp*, 1981 No. 81-128; 6 *Op. State Compt.* 290, 1950). Where however, a sufficient appropriation has been made, the supervisor is authorized to pay the principal of and interest on indebtedness without prior audit (Town Law, § 125 (1); Town Law, § 118). The supervisor is required to state in every check or draft drawn which fund it is drawn against and the appropriate account chargeable therewith; the supervisor may not draw upon one fund or appropriation account to pay a claim chargeable to another (Town Law § 125 [1]).

Does the town board have the authority to freeze salaries

The town board has the duty to set salaries and determine the payroll schedule (Town Law, § 27(1)). An elected town official's salary may only be decreased midterm by local law subject to a mandatory referendum with the exception of town justices whose salaries may not be reduced midterm (*Op. St. Comp No.* 2006-5). A lag payroll system that involuntarily defers earned compensation for public employees until the employee separates from service has been invalidated (*Association of Surrogates & Supreme Ct. Reporters Within City of N.Y. v. State of New York*, 79 N.Y.2d 39 [1992]). Here, the town board is proposing to change the payroll disbursement schedule but intends to provide compensation in the same year in which it was earned. Although there is case law, which prohibits the implementation in some instances of a lag-payroll system I was not able to find any case law construing the board's authority to change the payroll schedule for elected or appointed officers. Therefore, In the absence of controlling precedent an argument could be made that there is authority under Town Law, § 27 for the board to change the payroll schedule, as long as the board has a reasonable basis for changing the town's payroll disbursement schedule, compensation is paid in same year in which it was earned and the board is not acting arbitrarily or capriciously. Additionally, the town should be mindful of any collective bargaining agreements, but I believe on the phone you mentioned that was not an issue

How can the town board get a monthly financial report from the supervisor?

July 11, 2018 Regular Board Meeting

The Comptroller's office has said that the town board may, by resolution, prescribe the form of the monthly report (see Op State Compt 80-309). I have attached an from the comptroller's office on options to deal with a supervisor who willfully fails to execute their responsibilities. 2 of the 3 involve court (a writ of mandamus or a Public Officers 36 proceeding) but another option includes creating the position of comptroller in which case that individual would submit the monthly financial report.

Best,

Sarah B. Brancatella
Associate Counsel
Association of Towns
150 State St.
Albany, NY 12207
518-465-7933

Be sure to follow us on Facebook and Twitter @nytowns for all the latest information from the Association of Towns.

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Opns St Comp, 1982 No. 82-252 New
York State Comptroller September
24, 1982

TO: MR. WILLIAM WEAKLEY,
COUNCILMAN TOWN OF RUSSIA

Cplr. §7801

Education Law, § 1442(2) General

Municipal Law, § 30 Public

Officers Law, §36

Town Law, §§(10), (10-a), 29(4), 124, 125(1)(2)

1. PUBLIC OFFICERS AND EMPLOYEES-- REMOVAL --OF TOWN SUPERVISOR FOR FAILURE TO PERFORM

DUTIES

2. TOWN SUPERVISOR--POWERS AND DUTIES--FILING MONTHLY AND ANNUAL FINANCIAL REPORTS
~~When a town supervisor is removed for failure to submit his monthly and annual financial reports or~~
fails to keep his books of account in proper order, (1) any citizen resident of the town may present to the Appellate Division of the Supreme Court an application for removal of such officer from office, or (2) the town board may bring an Article 78 proceeding in the nature of mandamus seeking a court order requiring the supervisor to properly perform his official duties, or (3) the town board may create the position of town comptroller and designate him as the accounting officer of the town with responsibility for keeping detailed accounting records, filing the annual financial reports with the town clerk, and filing the monthly financial reports with the town board.

We have received an inquiry requesting our opinion with respect to the legal remedies available to the members of a town board with respect to the following problems:

1. Failure of the town supervisor to present the monthly financial statement to the board.
2. Refusal of the supervisor to bring town books to monthly meetings.
3. Failure of supervisor to file the annual financial report.
4. Insistence of supervisor on keeping books with pencil only.
5. Failure of the supervisor to begin the accounting of the 1982 fiscal year.

Under section 125(2) of the Town Law a supervisor is required to render to the town board at the end of each month a detailed statement of all moneys received and disbursed by him for such month, and to file a copy in the office of the town clerk.

The supervisor is also required to keep an accurate and complete account of the receipt and disbursement of all moneys which shall come into his hands by virtue of his office, in books of account in the form prescribed by the Department of Audit and Control (Town Law, § 29(4)). Although there is no statutory requirement that the supervisor bring these books to the monthly board meetings, the town board could by resolution require him to do so. These books are public records and must be open and available for inspection by the public during all reasonable hours of the day.

Further, the supervisor is required by section 29 (10) of the Town Law to prepare and file with the town clerk within 30 days after the expiration of each fiscal year an annual financial report accounting for all moneys received and disbursed by him, together with the certificates of the bank or trust company where town moneys are deposited. In lieu of this report, the town board may authorize the supervisor to use a copy of the report which he sends to the State Comptroller pursuant to section 30 of the General Municipal Law. In such instance the supervisor has 60 days to file the report with the town clerk after the close of the fiscal year.

With respect to the recording of the books of account, section 144(2) of the Education Law provides that all public records inscribed by public officials for permanent preservation shall be made, entered, or

July 11, 2018 Regular Board Meeting
regularly made and well finished. Since the books of account are public records (supra), the supervisor must record them in ink.

Where a supervisor intentionally fails to keep proper records or to file the proper reports with the town board or the town clerk, several legal remedies are available.

Section 36 of the Public Officers Law, which provides for the removal of municipal officers, states in part:

"Any town , village, improvement district or fire district officer, except a justice of the peace, may be removed from office by the supreme court for any misconduct, maladministration, malfeasance or malversation in office. An application for such removal may be made by any citizen resident of such town , village, improvement district or fire district or by the district attorney of the county in which such town , village or district is located, and shall be made to the appellate division of the supreme court held within the judicial department embracing such town, village improvement district or fire district."

Under this section a supervisor may be removed from office for willfully refusing to perform the duties of his office as required by law (13 Opns St Comp, 1957, p 250). Although administrative oversights in the performance of one's duties would not warrant removal , intentional disregard of official responsibilities would. (/n re *Pisciotta*, 41 AD2d 949, 343 NYS2d 992 [1973]). However, the application for such removal must be made by a citizen resident and not by the town board. In other words, any resident of the town including a member of the town board may bring the action but the cost of the proceeding may not be paid by the town itself since the action is personal to the individual filing the application for removal (Opns St Comp, 1978, No. 78-239, unreported; 22 Opns St Comp, 1966, p 198).

The town board may in its official capacity bring an Article 78 proceeding in the nature of mandamus (CPLR, §7801 et seq.) to compel the supervisor to present the monthly statement to the board and to file his annual report with the town clerk. Mandamus will issue to compel the performance of an official duty which is clearly imposed by law (*Albert Elia Bldg. Co. Inc. v New York State Urban Development Corp.*) 54 AD2d 337, 388 NYS2d 462 [197 6]). Where the court finds a positive duty it will order the supervisor to perform his duties and the disobedience of such an order will subject him to contempt proceedings. The drawback to this remedy is that a new action will be necessitated in each instance where the supervisor fails to perform a specific duty.

Finally, the town board may wish to avoid such legal proceedings by creating the position of town comptroller and designating him as the accounting officer pursuant to section 124 of the Town Law . In addition to keeping detailed accounting records, the comptroller would prepare and submit to the town clerk the annual financial report as required by section 29 (1 0) of the Town Law and if the town board shall so determine the report required by subdivision (10-a) of such section. He would also submit to the town board the detailed monthly statement required by section 125 of the Town Law and the annual financial report to the Department of Audit and Control as required by section 30 of the General Municipal Law.

Therefore, it is the opinion of this Office that where a supervisor intentionally or willfully fails to submit his monthly and annual financial reports to the town board or fails to keep his books of account in proper order,

- (1) Any citizen resident of the town may present to the Appellate Division of the Supreme Court an application for removal of such officer from office, or
- (2) The town board may bring an Article 78 proceeding in the nature of mandamus seeking a court order requiring the supervisor to properly perform his official duties, or
- (3) The town board may create the position of town comptroller and designate him as the accounting officer of the town with responsibility for keeping detailed accounting records, filing the annual financial reports with the town clerk, and filing the monthly financial reports with the town board.

Opns St Comp, 1982 No. 82-252

END OF DOCUMENT



6-36P-lan-kR-oad

Suite 209
Clifton Park, NY 12065

Jul) In, 2018

Cvnrhia R. Hyde. Supervisor
To\\n <ifThunnan
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Pt) HO:(29
\\thul, \, Y 1281 ti

Re: Warren County SPCA

Dear Supervisor 1- lvd:

I represent rhe \\ -arren County SPCA ("SPC...") .. \s you know the Town of Thurman has entered into an Agn::cment with the SPC:\ for certain humane law enforcement and animal control stf\JCe~ .

. -\~ I am sure vo u a1T aware the SPC:\s contract with \\'arren Co untv was nor r enevved and due to certain non-pavmcnr issues with the Countv the SPC.-\ has withdrawn irs bid for future County animal related services,

The pricing structure with the Town wa: intertwined with the pricing structure for the County. In addition. due to non-renewal of its County contract, the SPC:\ is no longer performing humane law enforcement services for the Count; and as such cannot fulfill a major portion of the contract with your Town.

r\, such, my client is in the unfortunate position of ha,-ing m submir this letter to you Lriggcring the Termination clause in the Agreement between the To wn and the SPC:-\). Please accept this letter as the SPCA\ thirrv dav notice of termination.

Thank you for your tune. As always I am

Respectfully Yours,

SCHOPF LAW, PLLC
&~~' A~~
=

Jonathan C. Schopf

cc: Client

Thurman Town Board

I am addressing this letter to Town Board Members as follows

The Town of Thurman through the years has gone through several perceptible factors that has brought this town to shame. I think the worst has come recently when three board members projected to take away the pay of our working citizens, thinking what little pay they get will make up for the resolution to pay off a error which was done on one board members watch and voted yes on with the wrong information causing the chaos now for the sum of 300,000 dollars. That person is a alarmist instead of waiting for this error to be corrected by the state that hoard member decided to stop paying our workers due to a error made on that persons watch, also two other board members agreed to stop paying working people in our town. A trumped up thought of let volunteers do this! Who is doing it I have not seen one person yet clean up the inside or outside of the town hall. These board members have no pride nor conscience connected to our town or the tax payers.

Hidden agendas secret factors has lead this town once again not working for the town but against the town, revenge being a factor in everything. Not one thing since the start January 2018 has been for the town, only what can be done to make someone look bad or take away their insurance but ask for your own, take away their hours when these hours are stretched already, now taking away jobs and money. There is also a bias standard on who gets paid and who does not get paid.

This bullying, verbal vulgar assault against women and laughing about it, Defamation of character, Slandering of all people and screaming needs to all stop. You have no pride in our town. If only you could see what and who you are in others eyes, the eyes on social media, the eyes of people that live in this town and the eyes of others who dwell outside of this town. Shame on all of you.

Maria Lig~: *f!Wh-LlJ~j!i*) J

Please read aloud and make this part of the minutes of the meeting.

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MINUTES OF THE SPECIAL MEETING OF THE TOWN BOARD OF THE TOWN OF THURMAN HELD DECEMBER 27, 2016 AT THE TOWN HALL, 311 ATHOL ROAD, ATHOL, NEW YORK, COMMENCING AT 4:00 P.M ...

PRESENT: Mrs. Evelyn Wood, Supervisor

Mrs. Gail Seaman, Councilwoman

Mr. John Youngblood, Councilman

Mrs. Susan Shepler, Councilwoman

Mr. Michael Eddy, Councilman

RECORDING SECRETARY: Jeanie Sprague, Town Clerk The

Meeting was called to order by **Evelyn Wood, Supervisor**

ROLL CALL

OTHERS PRESENT: Jamiee Ross, Tax Collector

Supervisor Wood stated the main reason for this meeting is the Bond Resolution for the affected homes so we can get started with that process.

Councilman Eddy asked if **Supervisor Wood** just received this December 27th. **Supervisor Wood** answered yes. Discussion ensued about the amount to be bonded, why we are bonding and if it will affect the 2% tax cap.

RESOLUTION #137:

RESOLUTION AUTHORIZING THE ISSUANCE OF UP TO \$313,000 IN SERIAL BONDS OF THE TOWN OF THURMAN TO PAY THE COST OF ALTERNATIVE WATER SUPPLY; AND AUTHORIZING THE ISSUANCE OF UP TO \$313,000 IN BOND ANTICIPATION NOTES OF THE TOWN FOR THE SAME PURPOSE

WHEREAS, elevated levels of salt have been found in the well water located on and servicing certain properties in the vicinity of the Town's salt shed; and

WHEREAS, there were allegations that the elevated levels of salt in the well water were caused by a Town owned salt pile which allowed salt to enter the groundwater; and

WHEREAS, the Town denies all liability related to the elevated salt levels in the well water but has offered to install alternate water systems for affected properties in an effort to settle claims that may be related to the elevated salt levels; and

Section 5. The faith and credit of the Town of Thurman, Warren County, New York, are hereby irrevocably pledged for the payment of the principal of and interest on such obligations as they become due and payable. An annual appropriation shall be made in each year sufficient to pay the principal of and interest on such obligations becoming due and payable in such years. There shall annually be levied on all the taxable real property in the Town a tax sufficient to pay the principal of and interest on such obligations as they become due and payable. This Bond Resolution is not subject to a referendum pursuant to Local Finance Law Section 35.00.

Section 6. For the purpose of paying the cost of the Project, there are hereby authorized to be issued serial bonds of the Town up to a maximum amount of \$313,000 the maximum maturity of which shall not exceed the forty (40) year period of probable usefulness set forth above (which is further limited by the five (5) year limitation detailed in Section 4 above) and which shall mature on or before such date as measured from the date of the bonds or from the date of the first bond anticipation note issued in anticipation of the sale of such bonds, whichever date is earlier. The bonds may be issued in the form of a statutory installment bond.

Section 7. There are hereby authorized to be issued bond anticipation notes for the specific object or purpose in an amount up to but not exceeding the \$313,000 maximum amount of serial bonds authorized to be issued, in anticipation of the issuance and sale of the serial bonds authorized, including renewals of such bond anticipation notes.

Section 8. Any bond anticipation notes shall be payable from the proceeds derived from the sale of the bonds or otherwise redeemed in the manner provided by Section 23.00 of the Local Finance Law. The faith and credit of the Town are hereby irrevocably pledged for the payment of the bond anticipation notes and the interest on them.

Section 9. There are no bond anticipation notes outstanding which have been previously issued in anticipation of the sale of these bonds. Neither are the bond anticipation notes hereby authorized renewal notes. These bond anticipation notes *will* not be issued in anticipation of bonds for an assessable improvement. These notes shall mature at such time as the Town may determine and may be renewed from time to time, provided that in no event shall such notes or renewals extend more than one (1) year beyond the original date of issue except as permitted in the Local Finance Law.

Section 10. Subject to the terms and conditions of this Resolution and of the Local Finance Law, and pursuant to the provisions of Sections 30.00, 50.00 and 56.00 to 60.00, inclusive, of the Local Finance Law, the power to authorize bond anticipation notes in anticipation of the issuance of the serial bonds authorized by this Resolution and the renewal of these notes, and the power to prescribe the terms, form and contents of the serial bonds and bond anticipation notes and the power to sell and deliver the *serial* bonds and bond anticipation notes issued in anticipation of the issuance of the bonds is hereby delegated to the Town Supervisor, the Chief Fiscal Officer of the Town. The Town Supervisor is hereby authorized to sign any serial bonds and bond anticipation notes issued in anticipation of the issuance of the serial bonds and bond anticipation notes issued pursuant to this Resolution by manual or

the State Comptroller to issue the bonds and/or notes is not required under Local Finance Law Section 104.10(3).

Section 17. This Bond Resolution is contingent upon the Town and DEC entering into a mutually acceptable Order on Consent or other binding and enforceable determination regarding the installation of water systems for the five (5) homes. Financing for such improvements shall be issued only after such Order on Consent or other binding and enforceable determination is fully executed.

Section 18. Miller, Mannix, Schachner & Hafner, LLC, Glens Falls, New York, is hereby designated bond counsel.

if: **Section 19.** The validity of these serial bonds and bond anticipation notes may be contested only

(A) These obligations are authorized for an object or purpose for which the Town is not authorized to expend money, or

(B) The provisions of law which should be complied with at the date of publication of this Resolution are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty (20) days after the date of such publication, or

(C) Such obligations are authorized in violation of the provisions of the State Constitution.

Section 20. This Resolution or a summary thereof shall be published in the *Post Star*, which has been designated as the official newspaper of the Town, together with a notice of the Town Clerk in substantially the form provided in Section 81 . 00 of the local Finance law.

Section 21. This Resolution shall take effect immediately.

Section 22. The question of the adoption of this Resolution was duly put to a vote on roll call which resulted as follows:

On a motion by **Councilwoman Seaman**, seconded by **Councilwoman Shepler**, Resolution # 13 7 was approved.

ROLL CALL VOTE:

Councilwoman Seaman - Yes

Councilman Youngblood - Yes

Supervisor Wood - Yes

Councilwoman Shepler - Yes

Councilman Eddy - Abstain

The board came to a consensus to turn the Jack Wax matter over to the proper authorities.
Councilman Eddy disagreed.

RESOLUTION #140:

Appoint Susan Shepler as the Organizer for the Jack Wax

The Town Board of the town of Thunnaan resolved to appoint Susan Shepler as the organizer for the Jack Wax.

On a motion by **Councilwoman Seaman**, seconded by **Councilman Youngblood**, Resolution # 140 was approved.

Motion Carried: 3 Ayes -Youngblood, Wood, Seaman 1

Nay-Eddy

1 Abstention - Shepler

ADJOURNMENT, On a motion by **Councilwoman Seaman**, seconded by **Councilwoman Shepler** the meeting was adjourned at 4:28 p.m.

MOTION CARRIED: 5 Ayes-Youngblood, Wood, Seaman, Shepler, Eddy

Respectfully Submitted:

Jeanie M. Sprague, Town Clerk

January 10,2017