

## WARREN COUNTY BOARD OF SUPERVISORS

**COMMITTEE: LEGISLATIVE & RULES**

**DATE: April 29, 2014**

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**COMMITTEE MEMBERS PRESENT:**

SUPERVISORS MONROE  
GIRARD  
WESTCOTT  
STROUGH

**OTHERS PRESENT:**

KEVIN B. GERAGHTY, CHAIRMAN OF THE BOARD  
PAUL DUSEK, COUNTY ADMINISTRATOR  
MARTIN AUFFREDOU, COUNTY ATTORNEY  
JOAN SADY, CLERK OF THE BOARD  
FRANK E. THOMAS, BUDGET OFFICER

**COMMITTEE MEMBERS ABSENT:**

SUPERVISORS SOKOL  
WOOD  
FRASIER

SUPERVISORS BEATY  
BROCK  
SEEBER  
SIMPSON  
TAYLOR  
TRAVIS WHITEHEAD, RESIDENT OF THE TOWN OF QUEENSBURY  
DON LEHMAN, *THE POST STAR*  
SARAH MCLENITHAN, SECRETARY TO THE CLERK OF THE BOARD

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Mr. Monroe called the meeting of the Legislative & Rules Committee meeting of the to order at 12:03 p.m.

Motion was made by Mr. Strough, seconded by Mr. Girard and carried unanimously to approve the minutes of the previous Committee meeting, subject to correction by the Clerk of the Board.

Copies of the agenda packet were distributed to the Committee members; *a copy of the agenda packet is on file with the minutes.*

Mr. Monroe advised the first item on the agenda pertained to a request from Albany County for a resolution in support of the E23 Casino Project in the City of Albany. He stated Albany County had indicated Warren County would benefit from a casino being located in Albany because it would generate revenue for Capital District OTB (Off-Track Betting Corporation). He continued since Warren County was a participating County member of the Capital District OTB they would receive a portion of the revenue generated from the casino. He said he contacted the Saratoga County Board of Supervisors to inquire whether they were interested in locating a casino there and they indicated they were; however, he said, the City of Saratoga Springs passed a resolution opposing casino expansion in Saratoga Springs.

Mr. Strough questioned why they were considering a resolution of support, as it was not clear whether Warren County would be guaranteed a certain percentage of the revenue generated from the proposed casino. Mr. Monroe explained the matter was brought before the Committee because of a request received from Albany County; however, he said, no initiative had been taken. He reiterated Albany County indicated because Warren County was a participating County member of the Capital District OTB they would receive a portion of the additional revenue generated from the casino. He said Albany County was claiming if the casino was located elsewhere in the region and the Capital District OTB was not involved the participating County members would receive no financial benefit from the casino.

Mr. Westcott asked whether the revenue generated from the Capital District OTB was earmarked for a specific area such as education and Mr. Monroe replied in the negative. Joan Sady, Clerk of the Board, advised Warren County received a certain percentage of the funds. Mr. Strough queried

whether Albany County was implying Warren County would only benefit from the casino being located in their County, as there would be no advantage if the casino was located in Saratoga County and Mr. Monroe replied affirmatively. Mr. Girard apprised he was in favor of taking no action on the matter, as there was no justification for Warren County to be involved with the issue. Mr. Monroe concurred with Mr. Girard. He pointed out the argument existed that Warren County would benefit financially in other ways if the casino was located in Saratoga County.

It was the consensus of the Committee to take no further action on the matter.

Mr. Monroe stated the next item on the agenda was a request from the LRANY (Lawsuit Reform Alliance of New York) for a resolution in support of reform to the Scaffold Law. Mr. Strough said he recognized that currently the Scaffold Law imposed strict liability on employers and owners of buildings regardless of whether the employee was at fault in the event of a fall. He said he thought LRANY was asking for the strict liability to be removed from the law. Mr. Monroe added LRANY thought it should be comparative negligence, which reviewed the negligence of the contractor or owner as compared to any negligence of the employee rather than strict liability. He noted New York State was the only State that had this law.

Mr. Strough said he was in favor of a resolution in support of reform to the Scaffold Law because it did not take away liability but rather removed the strict liability aspect of the law. Mr. Simpson urged the Committee to support the reform of the law. He explained that leaving the law in place as it was meant that if one of his drywall contracting business employees showed up to work intoxicated and he was not present he would be liable if they were injured while on a scaffold or a ladder.

Mr. Girard questioned whether the law permitted someone to sue their employer should they become injured on the job, as this was not the case with workers compensation cases, and Mr. Monroe replied affirmatively. Mr. Strough stated, as an example, the strict liability determined the employer was at fault if an employee was injured while on a ladder or scaffolding regardless of whether they were intoxicated or not. He said if the proposed changes were implemented the employer would have the opportunity to prove negligence on behalf of the employee. Mr. Girard apprised he thought if you were injured at work it was covered under workers compensation and New York State did not allow employees to sue their employer in these cases; however, he said, this permitted a lawsuit if an employee fell from scaffolding or a ladder. Mr. Simpson interjected that workers compensation may not pay if there were extenuating circumstances such as the employee being under the influence of alcohol or drugs when they were injured; however, he stated, the Scaffold Law held the employer liable regardless of the circumstances.

Mr. Westcott advised he felt verification was needed that the only change to the Scaffold Law was removing the strict liability portion of it before a resolution was adopted. Mr. Monroe suggested a resolution be adopted in support of reform to the Scaffold Law conditioned upon verification by the County Attorney that lawsuits under the Scaffold Law were not restricted under the Workers Compensation Law.

Motion was made by Mr. Westcott, seconded by Mr. Girard and carried unanimously to support reform of the Scaffold Law to eliminate the absolute liability standard and implement a comparative liability standard, in which a worker's own negligence, intoxication, or refusal to use safety equipment may be admitted as evidence in court conditioned on confirmation by the County Attorney that lawsuits under the Scaffold Law are not restricted under the Workers Compensation Law and the necessary resolution was authorized for the May 16, 2014 Board meeting. *A copy of supporting documentation is on file with the minutes.*

Mr. Monroe apprised the following item on the agenda referred to his request for a resolution in support of a proposal to amend the Local Finance Law to permit bonding for new biomass heating systems for twenty years instead of ten. He stated he made the request on behalf of a project he was working on in the Town of Chester that was projected to provide substantial savings estimated at \$250,000 over the useful life of the system. He explained the issue derived from the State Comptroller's interpretation that the Local Finance Law permitted a new heating system in connection with new construction to be bonded for up to thirty years; however, he said, if it pertained to the replacement of a boiler it could only be bonded for up to ten years. He advised he felt this ignored the difference between installing a new heating system based on biomass such as wood pellets or wood chips because this involved many more steps and substantial costs as compared to replacing a boiler. He stated the project in the Town of Chester was bonded for twelve years; however, he said, if they were permitted to bond the project for fifteen to twenty years he felt they could achieve some of the fuel savings. He apprised if they were required to finance it for ten years they would have to subsidize the project in the amount of \$3,000 on an annual basis for about ten years before they could accumulate additional savings.

Mr. Monroe pointed out the proposed amendment to the Local Finance Law was supported by the Northern Forest Center, the Tug Hill Commission, a number of consultants and some environmental groups. He said prior to Senator Little and Assemblyman Stec putting forth the reform in the form of a bill they had requested that he inquire with other municipalities and/or organizations to determine which were in support of such reform. He stated he felt the reform had the potential to lower fuel costs for municipalities, as well as provide for local jobs and avoid appropriating funds to the Middle East for oil. He noted a bill number would be provided if the initiative was introduced to the State Legislature.

Motion was made by Mr. Girard, seconded by Mr. Westcott and carried unanimously to support a proposal to amend the Local Finance Law to permit bonding for new biomass heating systems for twenty years instead of ten. *The necessary resolution was authorized for the May 16, 2014 Board meeting.*

Pertaining to pending item one, Mr. Monroe advised he felt beaver dams continued to be a serious problem that created hazardous situations. He stated he thought the discussions with the OES (Office of Emergency Services) and the Warren County Soil & Water Conservation District had not produced a viable solution to the issue. He wondered if it should be removed from the pending item list if no action was going to be taken on the issue.

Mr. Strough stated the item referred to performing an evaluation to develop an inventory of the beaver dam situation in Warren County, which he believed would be required prior to developing a sustainable solution to the problem. Mr. Girard said the question was whether a plan had been developed as to how the evaluation and inventory would be completed. Mrs. Sady apprised she believed the OES was awaiting approval from the Board of Directors for the Warren County Soil & Water Conservation District to work with the OES on developing the aforementioned plan.

Mr. Monroe recalled that it was mentioned if an inventory was performed today it may be different the following month because beavers were constantly building dams in new areas. Mr. Girard stated that he concurred with Mr. Monroe; however, he said, it would be beneficial to know what was in existence now so that updates could be made periodically. He said he felt this was the appropriate first step to developing a solution to a problematic area that had cost the County a significant amount of funding.

Mr. Westcott proposed that the report include suggestions of possible solutions and whether it was economically feasible to act upon the issue. Mr. Monroe stated this was an issue Municipalities such as the Town of Chester and Horicon had dealt with for years. Mr. Girard apprised it was important to be aware if there were life hazards. Mr. Monroe interjected life hazards did exist, as two separate incidents had occurred in the Town of Chester in which the same beaver dam washed out and caused significant road damage. He pointed out the issue created significant expenses for the Towns and the County and caused safety hazards. He said he did not believe there were any existing laws that permitted mitigation of the hazard. He advised performing an evaluation and developing an inventory could lead to a possible solution such as adopting a local law. Mr. Westcott suggested the evaluation begin with compiling information from the Town Supervisors as to where the known problem areas were located to prevent the duplication of efforts. Mr. Thomas noted Jim Lieberum, District Manager of the Warren County Soil & Water Conservation District, had previously expressed some reservations about performing an evaluation to develop an inventory of the beaver dam situation in Warren County; however, he said, he could not recall what they were.

It was the consensus of the Committee that Mrs. Sady would follow up with Mr. Lieberum and the OES to inquire whether they could provide additional information regarding the aforementioned evaluation and study and report back at the following Committee meeting.

Pending Item 2, Mr. Monroe stated, pertained to a referral from the Support Services Committee opposing the New York State Election Law that required election machines and staff in Municipalities for primary elections on the Conservative Line where only a small number of voters were eligible to participate, and instead suggested that they send each voter an absentee ballot with a return envelope. Mr. Strough advised it was unclear whether this only referred to Conservative Line primaries or whether it pertained to the other party lines, as well. Mr. Monroe apprised he thought it only pertained to primaries for the Conservative Line. Mr. Westcott questioned whether the purpose for the opposition was expressed and Mr. Monroe replied it was because of the significant expense of administering an election for a very small group of voters. Mr. Strough advised he felt clarification was needed as to whether it was referring to all party lines or just the Conservative line before any action was taken.

It was the consensus of the Committee to refer the issue back to the Support Services Committee for further discussion and consideration. ***Subsequent to the meeting the Board of Elections Commissioners advised that the NYS Constitution and Election Law provides that any Constituted Party has a right to have a primary election. Therefore, there is no further action to be taken on this referral.***

Pending Item 3, Mr. Monroe advised, related to a referral from the Invasive Species Sub-Committee expressing their concern with the bid specification requirements that contracted divers working in relatively shallow water be paid the prevailing wage rate of \$55 an hour for industrial divers when the actual rate was approximately \$15 an hour. He stated the firm AIM (Aquatic Invasive Management) had developed an efficient way of dealing with hand harvesting and benthic matting; however, he said, the issue was if they contracted with a municipality they were required to pay the prevailing wage rate for divers of \$55 per hour, rather than the \$15 per hour they paid if their contract was through an association. He said he did not feel the \$55 per hour was relevant to the work being conducted, as this was the rate that was paid to industrial divers working in deep water under hazardous conditions. He explained the hand harvesting and matting consisted of diving in warm, shallow water under favorable conditions; therefore, he said, he felt the \$15 per hour wage rate was more applicable to the work being performed. He noted he had requested that Assemblyman Stec research the matter.

Mr. Westcott questioned whether the State implemented the requirement that municipalities pay divers the prevailing wage rate when they are performing work for them and Mr. Monroe replied affirmatively. He explained he felt the State needed to revise the Rule to distinguish between the wage rates for an industrial diver and a diver performing work in shallow water. Mr. Westcott questioned whether a letter of support would be sufficient and Mr. Monroe replied he felt a resolution should be adopted and forwarded to the State requesting that this requirement be amended. Mr. Strough suggested a resolution be drafted by the County Attorney's Office and forwarded to Mr. Monroe for review prior to being presented before the Board and the Committee concurred.

Motion was made by Mr. Westcott, seconded by Mr. Girard and carried unanimously to authorize a resolution in support of rescinding the requirement that divers be paid the prevailing wage rate of \$55 per hour for industrial divers when they are performing hand harvesting work in shallow waters. *The necessary resolution was authorized for the May 16, 2014 Board meeting.*

Mr. Monroe advised Pending Item 4 could be deleted, as no action was required.

Prior to adjourning the meeting, Mr. Monroe apprised that Travis Whitehead, resident of the Town of Queensbury, requested to address the Committee with his concerns regarding compliance with Rule No. 5 of the Rules of the Board of Supervisors. Mr. Whitehead stated he felt the intent of Rule No. 5 was to ensure that the Supervisors had adequate time to review resolutions prior to voting on them. He said he felt the way it was being interpreted was different than what was actually stated in the Rule. He read Rule No. 5 of the Board as follows, *"All resolutions shall be in writing and filed with the Clerk before noon on the Tuesday preceding the regular meeting on Friday of each month and at least three days prior to any adjourned or special meeting. The Clerk shall photocopy all resolutions and mail copies thereof to each Supervisor on each Tuesday prior to a regular meeting and on the third day prior to any adjourned or special meeting. All resolutions shall be considered by the Supervisors on each regular meeting date."* He said he felt the following was important to note: *"No resolution shall be presented after noon on the Tuesday before the regular Friday meeting except with the approval of a majority of the total weighted voting power of the members of the Board"*. As an example Mr. Whitehead cited Resolution No. 217 of 2014 which was presented to the Board of Supervisors at the April 18<sup>th</sup> meeting. He noted when questioned why the resolution had not been included in the mailed packet of resolutions Mrs Sady had explained Resolution No. 217 of 2014 was drafted on the Thursday prior to the Friday Board meeting. He continued the resolution was typed up and handed out to the Board as they entered the meeting on Friday and voted on with the mailed resolutions. He apprised he was concerned because it was not included with the mailed resolutions; therefore; he said, neither himself or the Board had not been given the chance to review it. He noted it had not been posted on the website, as it should have been, so he had no knowledge of what the resolution was in regards to prior to the meeting.

Mr. Whitehead advised Rule No. 5 indicated that said the Board could have waived the Rules by a majority vote, as had been done in the past, and accepted a resolution that was not written; however, he stated, this was not how it was managed. He stated he felt the intent of Rule No. 5 should be similar to how the Glens Falls Common Council handled similar situations. He explained that their process dictated if any member expressed concern that enough time was not allotted to review the resolution, they could require that the resolution be tabled; however, he advised, this was not what the Rule specified. He said he was asking the Legislative & Rules Committee to consider the wording Rule No. 5. As its current state allowed that as long as the resolution was written prior to the meeting, like the aforementioned resolution, then it was valid and voted on the same way a normal resolution was. He stated that to him this was clearly not the intent of the Rule and he asked for clarification.

Mr. Monroe pointed out that in the past, circumstances a resolution was tabled for further review at the request of a Supervisor. Mr. Whitehead advised the Glens Falls Common Council only required one person to object to a resolution for it to be tabled. Mr. Brock clarified that any resolution presented to the Common Council which was drafted within the twenty-four hour period prior to the meeting could be tabled by one vote; however, he said, a majority vote was required for the resolution to fail. Mr. Whitehead stated Roberts Rules required 2/3 majority vote which would be applicable if there was no specific Rule; however, he said, since there was a definite Rule he did not feel Roberts Rules was applicable. He apprised he felt the intent was to have a higher standard set to accept a resolution that was not included within the resolutions mailed to the Supervisors than that of a resolution included within the mailed resolutions.

Mr. Monroe advised the resolution was included within the resolutions presented to the Supervisors the morning of the Board meeting; however, he said, it was not included with the mailed resolutions on Tuesday, as the resolution was drafted after that. Mrs. Sady apprised the resolutions not included in the packet mailed on Tuesday were posted on the website and available for review. She explained the resolution Mr. Whitehead was referring to was placed on her desk for review at 3:00 p.m. the day before the Board meeting; therefore, she said, it was not posted on the website that day. She noted the resolution was received later than usual because of the timing of the Health Services Committee meeting, which was held on April 15<sup>th</sup>.

Mr. Monroe stated there were three categories of resolutions:

- 1) Resolutions in writing that were included in the packet were mailed on the Tuesday prior to the Board meeting.
- 2) Resolutions in writing that were not included with the mailed resolutions because they were completed after the resolutions had been mailed.
- 3) Resolutions that were not in writing which required a 2/3 majority vote to Waive the Rules of the Board requiring that a resolution be presented in writing in order to bring it to the floor.

Mr. Westcott added his perception that although Resolution No. 217 of 2014 was drafted after the resolutions were mailed on Tuesday it could be included with the resolutions presented to the Supervisors on the day of the Board meeting because it was approved by a Committee. He pointed out Resolution No. 218 of 2014, had not been approved by a Committee; therefore, he said, a 2/3 majority vote was required to Waive the Rules of the Board. Mrs. Sady clarified that Resolution No. 217 of 2014 had been approved by the Health Services Committee prior to the Board meeting; however, she stated, Resolution Nos. 218 and 219 required the Rules to be Waived because a 2/3 majority vote of the Personnel Committee had not been taken. She explained that portion of the Rule was waived because the Personnel Committee had not taken action prior to the Board meeting. She noted waiving the Rules was required when a resolution was not presented in writing or in cases where a 2/3 majority vote of the standing and the Personnel Committee was not achieved prior to the Board meeting as required.

Mr. Whitehead stated he must have misunderstood what occurred at that meeting where Resolution No. 217 of 2014 was voted on, as it was presented similar to the resolutions that were mailed. Mr. Monroe interjected that prior to voting on Resolution No. 217 of 2014 Mrs. Sady had stated that a vote was required to bring all other resolutions to the floor. Mr. Whitehead questioned whether this vote pertained to the resolutions not included in the mailed packet and Mr. Monroe replied in the negative. He explained this vote referred to resolutions that were in writing and included within the packet presented the day of the Board meeting. Mrs. Sady clarified the mailed resolutions were considered to be on the floor because they had already been reviewed by the Supervisors. She said every month there were a few last minute resolutions not included with the mailed resolutions that

were presented to the Supervisors in their packet the day of the Board meeting; therefore, she said, they required a 2/3 majority vote to bring them to the floor. She said if a 2/3 majority vote was not achieved the resolutions would not be to the floor.

Mr. Whitehead advised Resolution No. 217 of 2014 was of no significance to him or the Supervisors since it had already been voted on; however, he said, for future reference he felt the Supervisors should be permitted the time to review resolutions prior to being asked to vote on them. He noted the Supervisors were only able to review Resolution No. 217 of 2014 just prior to the Board meeting. He said he felt the process should provide a more definite way to identify which resolutions were not included within the mailed packet. He reiterated the Glens Falls Common Council permitted one vote to table a resolution for further review. He apprised in these cases the resolution should require a 2/3 majority vote to bring it to the floor similar to a resolution that was not written.

Mr. Girard exited the meeting at 12:39 p.m.

Mr. Monroe stated any Supervisor could request a resolution be tabled during the meeting; however, he said, a 2/3 majority vote was required to carry a tabling motion. He advised his concern with one vote being able to table a resolution because sometimes they dealt with time critical issues wherein the Governor or State Legislature was awaiting action by the County. Mr. Whitehead interjected that he was not requesting that one vote be able to table a resolution; however, he said, he felt more time should be permitted for the Supervisors to review the resolution. Mrs. Sady noted in the past recesses had been granted to permit further review of specific resolutions presented.

Mr. Westcott requested that for future meetings, the process be slowed down. He said although he voted in favor of Resolution No. 219, he had been unable to review it fully since the process was so hurried. He suggested more time be allotted for the aforementioned resolutions to be reviewed.

Mr. Whitehead stated he felt everyone was agreeable the intent was for the resolution to be included within the mailed packet whenever possible and it ought to be quite an exception if this was not the case. He apprised he believed the exception should be noted during the meeting to take special care of the specific resolutions that were not mailed. He advised he felt the process moved so swiftly that resolutions were approved without proper review.

Mr. Thomas advised that Mr. Taylor, as Chairman of the Personnel Committee, had discussed the resolution prior to the vote. Mr. Westcott stated because the process had moved so quickly he had difficulty connecting the resolution with what Mr. Taylor had discussed. He pointed out he could have abstained from the vote; however, he said, he elected to vote in favor of the resolution, as suggested by Mr. Taylor. Mr. Monroe suggested amending Rule No. 5 to state that any Board member could request a recess if they felt further review of a resolution was necessary and Mr. Westcott concurred. Mr. Monroe noted due to the lack of a quorum the matter would be discussed further at the May 16, 2014 Board meeting.

As there was no further business to come before the Legislative & Rules Committee, on motion made by Mr. Westcott and seconded by Mr. Strough, Mr. Monroe adjourned the meeting at 12:44 p.m.

Respectfully submitted,  
Sarah McLenithan, Secretary to the Clerk of the Board