

**Town of New Scotland
Special Town Board Meeting
February 28, 2019**

The following Town Officials were in attendance:

Supervisor:	Douglas LaGrange
Councilperson:	Adam Greenberg William Hennessy Patricia Snyder
Deputy Town Clerk:	Patricia Barber
Attorney:	Crystal Peck
Absent: Councilperson:	Daniel Leinung

1. Call to Order

Supervisor LaGrange called the meeting to order at 10:05 AM.

2. Pledge of Allegiance

3. Discussion/Action re: Proposed Local Law B of 2019, amending Local Law 6 of 2004, to establish regulations regarding small cell technology

Attorney Peck said that the biggest revisions she made beyond revisions she received from Councilperson Hennessy, Mrs. Stolzenburg, or Building Inspector Cramer were putting it into the modification section and then making sure that we incorporated into this section the provisions of the telecommunication law that speaks to indemnification. Councilperson Snyder asked where that is in the law. Attorney Peck said that it was page 16, item F. This makes it go for site plan approval. Attorney Peck said that she also made sure that the telecommunication law that was in place in 2004, the removal of the facilities, identification, adherence to state and federal rules, all of that stuff is going to be applicable to the small cell facilities that will have to be amended. Other than that, it was substantive additions that Councilperson Hennessy had and some of the comments that Mrs. Stolzenburg had that were incorporated in as well as Building Inspector Cramer. One of the main ones on that was accepting this from the height and setback requirements that are in our zoning law, at least for the stuff that's in the right-of-way, because it would make it impractical if it was. What she did was make it so that if it's going to be on a building the small cell wireless facilities could not increase the height of the buildings by more than 5 feet because technically we talk about small cell facilities going up to 50 feet. We don't want to have an extension on top of a building by 50 feet. Councilperson Snyder said that her question was is that within our discretion? Could we have made it 2 feet? Attorney Peck said that it's within our discretion. With the solar panels, they are not allowed to extend it more than 3 feet. When Building Inspector Cramer and she were looking at some of the different regulations, 45 feet was for buildings and certain structures, so we figured small cell facilities are defined at 50 feet. To get to 50 feet, that's only 5 feet more. Councilperson Snyder said that that's what she wanted to understand. Attorney Peck said that that's pretty much it on that side unless Councilperson Hennessy wants to add anything.

Councilperson Hennessy said he added item 17 on page 5. He added to it requiring that the cell tower have structural design in accordance with the NYS Building Code. It may be a moot point but it's better to spell it out. The Building Code has some requirements but there may be some other unknown areas. It appeared to him that it was not as strictly defined previously. He added that if there were neighborhoods in the repagination it went in another section and he did find it. Attorney Peck said that it went into the priority listing. Councilperson Hennessy said that if the utilities are currently in the backyard of a neighborhood instead of in the front yard then this pole needs to follow those utilities. That might be a moot point also because they need power and they need telephone to connect their cell tower to it so they probably would want to put it there. Supervisor LaGrange said that this prevents them from putting it in a fresh right-of-way. Councilperson Hennessy added that there aren't as many in the Town as he thought. He thought there were more. Supervisor LaGrange asked if there a place that it happens in Heldervue. Councilperson Hennessy said that that's one and he thought there was one in Feura Bush but he's not sure. It doesn't appear that we can require that for underground because Attorney Peck thinks we can't. Attorney Peck said that unless this gets challenged and overturned we're not going to be able to require it to be underground. Councilperson Hennessy said that he understands that. He's talking about the location of it. It doesn't follow as well with that clause he

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just discussed. He thinks he had several other minor additions that weren't as substantive as that.

Councilperson Greenberg said that he had a whole bunch of minor edits that he thought Attorney Peck would go over. Councilperson Hennessy asked if this is for now or for later? Councilperson Greenberg said that Attorney Peck had suggested doing it after if that's okay with everyone. It's not changing any content. It's spelling and spacing items. Councilperson Snyder agreed.

Councilperson Snyder asked Attorney Peck if this law will be organized the way we see it right now or is there any easier way to follow it. She couldn't understand why it was section I, II, and then §23. Attorney Peck said that that's because it's amending the local law. This isn't a stand-alone law. She had to incorporate it into the Town's communication law. Section I and II are amending the definitions of the Telecommunications Law but §23A is because §23 in the 2004 Telecommunications Law speaks to straight up essentially cell towers so she had to put a §23A in there to be able to get it to deal with the small cell wireless facilities so that's why it's kind of jumpy. Ideally what would happen after this for our own use would be to combine the two into one so at least it's easier to go through it. That's where we talk about codification of our laws anyway because a lot of our amendments to our zoning are exactly like that. Councilperson Snyder said that she's wasn't being critical but she's just having a hard time connecting everything. It goes from 23A to §28 and §29. Attorney Peck said that was because 28 and 29 are in the Telecommunications Law. She had to amend it so it would address small cell wireless as well as cell towers. Councilperson Snyder asked if there could be a context; maybe that would clear it up. She's just having a hard time organizing how this flows. Attorney Peck said that she could absolutely do a table of contents. Eventually we will just merge it in. Supervisor LaGrange added that you almost have to print out the telecommunications law as it stands and see where each section fits in. Councilperson Snyder agreed adding that if she's confused trying to understand it others will be too. She just thinks it would flow better. Attorney Peck agreed. Councilperson Greenberg said that this isn't how it will stand. It's getting absorbed into other laws. Once it gets absorbed in, that table of contents doesn't refer to anything that's in these other laws. In other words you have to open up the telecommunications law and you're going to go to §28 or whatever. Definitions are in a whole other place in this other law. This is not a problem with this law. This is a problem with our zoning at this point, and we are working with Mrs. Stolzenburg who recommended zoning changes. The idea was that once those zoning changes are done we would do the codification through her. She has some ideas about that. We can't codify just this one law. It doesn't make any sense. Councilperson Snyder said that she understands that. She's not being critical; she's just trying to make it easier to follow. If you don't want to do a table of contents, which she thinks would be helpful, maybe we could say §23A from the Telecommunications Law of the Town just so there is a flow so that people will know where it's coming from. Attorney Peck said that the only thing with that is that when we go to make this a local law it's like we're referencing the local law within the local law. So, when we do §23A of the Telecommunications Law we're re-referencing the law that it's already in. That's why it says in the beginning that this is an amendment of the 2004 Telecommunications Law. What Attorney Peck could do if it would be helpful for the public at the public hearing is put together a completely new, essentially merged telecommunications law with a table of contents that would show in a different color what these sections are that had been changed that are adding to it. Councilperson Snyder said that that sounds like a lot of work. She was just trying to find a simpler way to understand the flow of it. Could you do a table of contents to only to be used for this purpose at this time? Maybe that would help. Attorney Peck said that she absolutely could. Councilperson Snyder said that she's not trying to make more work. She's trying to make it flow a little more cleanly. Councilperson Hennessy added maybe we could sort of do a summary/table of contents. Supervisor LaGrange said that that's something we're going to have to discuss, too. There was a limited amount of time in Attorney Peck's proposal. He wants this Board to be prepared that we might have to extend that a little because we've gone through a lot of extra stuff. Attorney Peck said that she doesn't know where we are on that yet. She wouldn't want that to be a concern. Supervisor LaGrange said that it's not a concern. He just wants to be prepared because he also doesn't want you to eat it when you're putting in more work that he thinks was anticipated. Let's see where we are when we get it together. Attorney Peck said that we can cross that bridge when we get to it. She gave an estimate expecting that there were going to be additions and revisions. Supervisor LaGrange said that he doesn't want her to feel she has to absorb all of those additional things. The comments from Mrs. Stolzenburg were an extra. Attorney Peck said that she anticipated some. Supervisor LaGrange said we should wait and see.

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Resolution 2019-059

Supervisor LaGrange offered the following resolution and moved its adoption:

RESOLVED, that the Town Board of the Town of New Scotland does hereby set a public hearing for March 13, 2019, at 6:45 PM.

Seconded by Councilperson Greenberg. All present and voting, the motion carried (4 Ayes).

Packer Truck

Supervisor LaGrange said that he did get some more informative instruction from Tom Cetrino who has been guiding the County through this whole shared services thing. Mike McLaughlin and Lucas Rogers gave him over 100 pages of IRS law. The other day he asked Mr. Cetrino to give him this email. He asked him to break it down into two scenarios: \$140,000 new truck with two municipalities with the depreciation and then two municipalities, \$80,000 used, and what are our options here. What are the chances of getting something back? He took the scenarios, broke them down, and wrote it out. He doesn't expect the Board members to read it all now but it gives you a better idea of where we are. It turns out that it will be a little less than 90% because they have to go to the IRS depreciation schedule. Even though this isn't a truck that will be used to the level of what they normally consider for a heavy-duty general purpose truck, they says it's a six-year lifespan so it's a little less than we thought, but it's still \$30,000. It still seems, and Mr. Cetrino recommended, that we should go new. Take your time and read his email. It's nothing to decide today.

Councilperson Hennessy left at 10:20 AM.

Attorney Peck asked if the Board needed to do a formal referral.

Resolution 2019-060

Supervisor LaGrange offered the following resolution and moved its adoption:

RESOLVED, that the Town Board of the Town of New Scotland does hereby refer Proposed Local Law B of 2019 amending Local Law 6 of 2004 to the Albany County Planning Board and the Town Planning Board.

Seconded by Councilperson Greenberg. All present and voting, the motion carried (3 Ayes).

Resolution 2019-061

Supervisor LaGrange offered the following resolution and moved its adoption:

RESOLVED, that the Town Board of the Town of New Scotland does hereby appoint the Town Board of the Town of New Scotland as Lead Agency as far as SEQR for Proposed Local Law B of 2019.

Seconded by Councilperson Greenberg. All present and voting, the motion carried (3 Ayes).

Councilperson Snyder asked if Attorney Peck expected many questions from the Planning Board on this. She wouldn't want to see substantive changes because of the timing on this. Supervisor LaGrange said that that's also why he was worried about it. Councilperson Snyder asked if he could informally let them know that. Supervisor LaGrange said that that's why we wanted to do this for March 13th because we could still squeak it by at our April meeting if we had to. Attorney Peck agreed that we could, but she will also let them know that our hands are very much tied when it comes to certain things. We are not going to be able to allow a lot of landscaping in a right-of-way. That's going to be an issue in itself. We're not going to be able to do a lot of things prohibiting these in certain areas. Councilperson Greenberg said that once we pass it then it could be amended. He thinks that's the thing to say to the Planning Board. If there are major issues, we're going to pass this hopefully and deal with any problems later and we need this passed in our timeframe. Supervisor LaGrange said that on that same note it might be good to mention to them that there are lawsuits out there and we might have to amend it to accommodate those too. It's not like this is forever. Attorney Peck added that the other thing we might want to consider too is that Mrs. Stolzenburg is going through the zoning law. You're going to want to amend or add regulations regarding other utilities in there. Two or three years from now if there is

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an application here, one of big things is going to be what we require under utilities. We do it at the Planning Board level. We say it needs to be underground. We put that in at the Planning Board level, but it really needs to be a regulation. Supervisor LaGrange said that permitting fees were also mentioned. There's no rush. Attorney Peck said that for this situation we could do it technically at the March 13th meeting. You don't need a public hearing to amend the fee schedule. Supervisor LaGrange agreed that it's just a resolution. Councilperson Greenberg asked if we have those fees somewhere from other towns? Attorney Peck said that we have the fees that the FCC is saying. Supervisor LaGrange said that they put a cap on it. Councilperson Greenberg asked if we should just write that up and pass those? Attorney Peck said that that would be the idea but she thinks Councilperson Hennessy might have other thoughts on that so the Board probably needs to discuss that. Supervisor LaGrange said, again, it's not like we're going to get applications tomorrow. We do have a little wiggle room. The main timeliness thing is getting this passed before we aren't allowed to pass anything. Councilperson Snyder asked what the drop-dead date is? Attorney Peck said that she thinks it was April 15th but she'd have to double check. It was in the middle of April. Councilperson Snyder said that we have a little window of time if there is some glitch. Attorney Peck added that the lawyer in her says we have a little more time to wiggle with that too. Supervisor LaGrange said that he wanted to get this done as of March 13th. We still have wiggle room if we have to. He doesn't anticipate any reason. There are so many restraints on us here. We can pass what we can pass.

DPW Commissioner Position

Supervisor LaGrange said that he would send out an email to the whole Board, but he finally got some confirmation that Mr. Dempf is not going to be available in the sense that we were hoping. Mr. LaChappelle has told me that he wants to resign at the latest April 1st but he'd prefer March 16th. Supervisor LaGrange's hope was that with Mr. Dempf's career move he might entertain that, and he said he would but he had an offer in New York City. He basically got a dream project and he's been able to tailor it to his time at home and to the compensation he wanted. He talked to Mr. Dempf this morning and that's the direction he's going unless something falls through in the next day or so. So, we need to decide how we want to address the position of DPW Commissioner. He doesn't think there is any need to rush, but he does think that we need to get an overall view of where we are. He still firmly believes that it was right to create it at the time. He thinks Mr. LaChappelle has given us a lot of good stuff at one level but maybe not another. He thinks we have to explore which way we are going but he doesn't think we have to advertise it right away. He thinks we need to methodically decide where we want to be and what we want to do at least for the next couple of years. He just wanted to bring that to everyone's attention. Those are two definites that have come down basically just this morning. Councilperson Snyder asked how many hours that was. Supervisor LaGrange said that he thinks it's five hours a day but he'd have to look to be sure. Councilperson Snyder said that it's 25 hours a week so it's still part-time technically speaking. Supervisor LaGrange said that this is something for the full Board to discuss, but he thinks we need clerical more than we need a Commissioner, but again that's something to discuss. It always falls to Mrs. Boehlke and Mrs. Miller. Ideally, if Mrs. Miller was full-time, but at this point she can't be, that would help out a lot. We need to think about it. He's not suggesting one way or another at this point but he's not uncomfortable having the position open for a little bit of time. Quite frankly, he helps out and he's in the position more or less in the afternoons. It's something to start giving some consideration to.

Packer Truck

More importantly is getting our focus on this packer truck and making a decision soon because the Village would like to go with a new one. We're kind of hedging on which way we would prefer to go. That's why he asked for this calculation from Mr. Cetrino to give us an idea. He's still saying, despite what he said, what we might get from the state. He still doesn't believe it's in granite. Councilperson Snyder asked who Mr. Cetrino is. Supervisor LaGrange said that he's the gentleman he mentioned earlier. He's the contact that they brought in for the County to coordinate all the shared services stuff and be the guide to know what's going on. Councilperson Snyder asked if he was a County person? Supervisor LaGrange said that he's hired by the County. He honestly doesn't know where he came from, but he's been the guy forging the whole shared services. Councilperson Snyder asked if he's out of Albany County. Supervisor LaGrange said again that he didn't know if it's just for this or if there is anything else. He's always the guy that's attending all the meetings and always on top of the direction that things are supposed to go including the health consortium.

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4. Adjourn

Supervisor LaGrange made a motion to adjourn, seconded by Councilperson Snyder. The meeting adjourned at 10:31 AM.

Diane R. Deschenes, Town Clerk