

# Regular Town Board Meeting

Tuesday July 20 2021

6:00 p.m.

Present were Supervisor Stephanie DeZalia, Councilman Marshall Gero, Councilman Robert Dobie, Councilwoman Maureen Marsden, Councilman Brian Caza, Town Clerk Martha (Candy) King, and Town of North Hudson Attorney John Silvestri.

Guests in attendance were Highway Superintendent Kenneth Foster, Bruce Caza, William Plumstead, Ryan Bessey, Brian DeZalia, Tracee Parent and Jake Parent.

Supervisor DeZalia called the meeting to order at 6:00 pm and led in the pledge to the Flag.

Approval of the June 23, 2021 minutes as amended.

Moved by Robert Dobie and seconded by Maureen Marsden.

All in Favor

Ayes-5

Noes -0

## **Supervisors Financial Report**

As of June 30, 2021

Checking Accounts

Town of North Hudson Checking	0.10%	\$ 695,081.38
General Fund	\$ 662,111.38	
Fire District	\$ 32,970.00	
Highway Fund Checking	0.10%	\$ 719,370.06
<u>Total All Funds</u>		<u>\$ 1,414,451.44</u>

Motion to approve by Councilman Caza seconded by Councilman Gero

All in favor

Ayes -5

Noes-0

## **Old Business-**

a. Bessey Easement-

Supervisor DeZalia read the follow statement” *In last month’s meeting the Board met with Ryan Bessey regarding an encroachment on his property. He presented details of how some trees had been cut beyond the Towns northern border, how some underground cables to the cell tower are on his side of the line and how the northern most side of the road leading to the cell tower is encroaching on his lot. All of which took place when the cell tower was installed and not in recent years. He did not present a survey and stated he wasn’t going to get an attorney. He provided an aerial view image Real Property tax map image to the Board where according to these images, it appears there were trees taken down beyond the line to the north and a portion of his lot. There is no clear indication of the number of trees that might have been cut though. Mr. Bessey asked the Board for a percentage of the monthly revenue the Town gets from the cell tower company. The Board agreed that if there is an actual encroachment then we need to have an easement and a contract done between the Town and Mr. Bessey.*

The Board passed **Resolution # 64 of 2021:**

**Resolution # 64 of 2021**

To resolve to enter into a contract for an easement with Ryan R. and April M. Bessey along the Towns northern property border and the southern border of the property of Ryan Bessey to contract at 6% of the contract per month as long as the contract with New Castle exists. This is effective July 1, 2021.

Moved by Supervisor DeZalia second by Councilwoman Marsden

Roll Call Vote:

Councilman Caza - Aye

Councilman Gero - Aye

Supervisor DeZalia - Aye

Councilman Dobie- Aye

Councilwoman Marsden - Aye

As agreed, this information was forwarded to the Town Attorney, Mr. John Silvestri. This is Mr. Silvestri's recommendations to the information provided to him in regard to the easement.

*"I believe that sometime in 2014 Mr. Bessey acquired ownership of certain property in the Town of North Hudson from family members. Sometime in 2005 the Town entered into a lease of its property to allow placement of cables and a cell phone tower. To facilitate this, the Town constructed an access road and cut certain trees. The date of the road construction and tree cutting is unknown but greater than 90 days prior to the presentation of Mr. Bessey's claim to the Town Board and very likely such acts occurred several years ago up to and including the date that the Town entered into the subject lease. Mr. Bessey is claiming that the cables encroach on his property as does the road and some trees on his property were cut. He did not specify the dates of these occurrences, did not present a survey to substantiate the alleged encroachment of the road or the location and size of the trees cut. In short he had absolutely no proof of his claims and presented nothing to substantiate or qualify the damages he claims to have suffered.*

*I am advised that the Town Board voted or passed a resolution to provide Mr. Bessey with a percentage of the Town's revenue from the cell phone tower to compensate him for unproven damages.*

*Q - Was the granting of Mr. Bessey a portion of the Town's revenue from the cell tower lease a lawful act of the Town Board?*

*A - No, it was not. If a resolution was passed, the resolution is likely void or voidable and should be rescinded. If no formal resolution was passed that whatever agreement was entered in the minutes is likewise void or voidable and Mr. Bessey should be advised that the Board acted outside of their scope of authority and cannot proceed with the agreed upon settlement.*

*The Town Board acts in a fiduciary capacity with regards to income and tax revenue and how those moneys are spent. Without proof of the date of the alleged occurrences, proof in the form of a survey showing that section of road and cables, some objective measure of the damages from a timber survey or brokers opinion, assuming proof of the road's encroachment, as the value of an easement for an encroaching portion of the road, the grant of any compensation was totally arbitrary and capricious and in derogation of the Boards Fiduciary Obligations. Since the Town did not lay the cables,*

*the Town has no liability for the placement of those cables, if they encroach on Mr. Bessey's land.*

*New York State's General Municipal Law § 50-e requires that any claim against a Municipality must be presented by a formal Notice of Claim which is properly served within 90 days of the date of the occurrence. It would appear from the facts that are known that all of Mr. Bessey's claims are barred by the application statutes of limitation. The fact that he may or may not have had discussions with a prior Supervisor is irrelevant. Discussions do not toll the statute of limitations. Mr. Bessey certainly has no claims for acts which occurred prior to his ownership and any claims which are over 90 days old are time barred. The Town Board cannot waive this 90-day Notice of Claim filing requirement.*

*Q- May or must the Town compensate Mr. Bessey for the portion for the access road that encroaches on his property?*

*A- First and essential step is a survey that shows the size and location of the encroaching road. Once the size and extent of the encroachment is determined the next step is establishing a value for the continued use of the road. There is also the question of whether the road has become a town road by use under Town Highway Law §189. I would suggest that if the encroachment is established by a survey, then the Town Board should consider relocating the road completely on its own property and if that cannot be done the establish the value of the easement needed from Mr. Bessey to continue the use of the road at its present location. A metes and bounds description by a surveyor would be needed to properly draft the terms of an agreement. Once a survey is procured showing the location of the access road, then an intelligent discussion can be had regarding whether it would be more cost effective to relocate the road or pay Mr. Bessey the fair market value of an easement for the portion of the road which encroaches on his lands."*

*Supervisor DeZalia read the following statement "I believe the Board is in agreement that if there is an encroachment then Ryan should be compensated. I also believe based on the above, none of us are appraisers or surveyors and we do not process the knowledge of the value of this encroachment. We the Town Board, must do due diligence and abide by our fiduciary obligation to the town. An important function of the Town Board in meeting this responsibility is in connection with the raising of monies to run the town and with the proper and legal expenditures of such monies. We acted out of our authority and therefore the above resolution must hereby be rescinded and voided so we may handle this matter in a proper manner. "*

*Supervisor DeZalia made a motion to rescind **Resolution #64 of 2021.***

*No second was forthcoming and went into discussion.*

*Councilman Dobie spoke first saying "it's not like someone from the city is threatening to sue the Town, it's not an adversarial thing. I met with Ryan and we looked at it. We obviously did something wrong we used his property, cut some trees and we need to compensate him for it. We had a deal." He then addressed Attorney Silvestri by saying "figure it out and do something to fix it". Mr. Silvestri spoke to this matter "What is the value of the property. You may be over compensating or undercompensating Mr. Bessey. How long do you want this for? What is the length of the tower contract? What is 6% of the contract? For how long, perpetuity? Is it enough or too much? Its' taxpayer money." He asked for a ballpark figure on what the total amount was that they had spoken about. Supervisor DeZalia stated the amount was to be 6% of the cell*

contract which would equal about \$ 90.00 a month for 99 years. Mr. Silvestri asked what the total amount the Town was talking about. Supervisor DeZalia replied \$106,920.00. Councilman Gero added *“That’s what we all agreed on”* Mr. Silvestri answered him saying *“Is this too much or not enough to compensate Mr. Bessey? It’s not your money, it’s the taxpayer money.”* Councilman Dobie added that *“Well we are getting something for our taxpayer money”*.

Mr. Silvestri added *“It has to be determined by facts. I have very little facts in front of me. We have no idea how big this section of road is and what the value is. I would want to see a metes and bounds description of the easement being entered into. Is this entire section of road necessary? Do we have something that clearly establishes that we are clearly encroaching? He added that the decision isn’t necessarily the wrong thing to do but that it was outside of your authority to do so. There is just not enough information to be done correctly. It was not appropriate for the Town Board to do without all the information.”* He asked Councilman Dobie if he is satisfied of the boundary lines and of area of encroachment. Councilman Dobie replied *“No, but I do know we encroached. I don’t know the percentage of the encroachment.”*

Town Attorney John Silvestri said the Board did not have enough information to make this decision the Town should have a metes and bounds description before making any decision.

He advised Supervisor DeZalia that after review of the information provided to him that the Board acted outside its capacity and therefore should not have entered into this agreement. He advised that in order to properly compensate Mr. Bessey the Town needs a survey stating it doesn’t matter who pays for it but he needs a two dimensional document providing him with the facts in order to draw up a perpetual easement with Mr. Bessey. He stated that a survey would provide this information to him. There was much discussion on this matter from both the Board and the floor. Supervisor DeZalia then denied privilege of the floor at this time, granting it only to Mr. Bessey.

Mr. Bessey spoke and stated 18 years have gone by already. The Town did have the property surveyed before they cut the trees and stated they were all posted by the Town. Ryan clarified that he wants no money for the trees. *“The Town had nowhere to go when they capped the dump so they just drove around it onto my land.”*

Mr. Silvestri addressed Ryan explaining that proper documentation is needed in order to have something he can file at the County. That is required to protect all parties involved. He again stated he needs a survey description to make an easement.

Mr. Silvestri clarified the fact there are two separate issues involved, the Town encroaching on the Bessey land and the cell company cables encroaching on his land.

Mr. Bessey stated his issue with the Town is the road not the cables.

Mr. Silvestri stated that he is representing the Town and the cell company would need to do their own easement with Mr. Bessey. Mr. Silvestri stated that he is not saying the Town made the wrong decision but more that information is need. *“A survey is needed, a deed description is needed, and a metes and bounds description is needed. It doesn’t matter who pays for it but it needs to be done.”*

Mr. Silvestri again asked Supervisor DeZalia for clarification that there were two separate issues, the town needs an easement and the cell company needs an easement. It was agreed by all that there were two issues. Both Councilman Dobie and Councilman Gero stated they agreed to the original contract and it should be done. Mr. Silvestri addressed this, *“You are giving away taxpayer money, and the facts are needed to*

*establish this.” We have no idea how big this section of road is and what the value is. I would want to see a metes and bounds description of the easement being entered into.”* Supervisor DeZalia added *“that by rescinding Resolution # 64 we are not saying we won’t be entering into an easement agreement with Mr. Bessey, it needs to be done right for all parties, we need to have the survey done and get the value in order to proceed with an easement agreement, we need to get a cost for a survey and get valuations for this area in question. Mr. John Deming did the survey at the time the dump was capped. We will call Mr. John Deming and get a cost. Then we can proceed with a perpetual easement agreement.”* Mr. Silvestri said Mr. Deming can easily provide this information.

Mr. Bessey again stated he was not looking for stumpage for the trees that were cut. Councilman Caza brought up the Towns 1994 purchase of the Colburn property and the easement done it at that time. Supervisor DeZalia reminded the Board they cannot proceed with a survey without a resolution. Councilman Caza put forth a resolution for the Town to pay for the easement as the Town was wrong cutting the trees and encroaching on Mr. Bessey’s land since 2005 when the landfill was capped and the cell tower went in adding that things were done incorrectly. Mr. Bessey asked the board members what the easement was worth? He stated he wanted to finish this deal tonight as he did not want to have to attend another meeting. Councilman Caza suggested that the Town pay Mr. Bessey a lump sum for the use of that property. He asked how much it would come to if they paid him 6% of the 99-year cell tower contract. Mr. Bruce Caza, from the floor, said the total would be \$106,920.00. Mr. Silvestri again stated that facts were needed to proceed. Mr. Bessey explained he didn’t care about the cell wires being on his property only the town use of his road. Mr. Silvestri again stated that the Town and the cell tower company would each need to do their own easement with Mr. Bessey that they were two separate issues.

Supervisor DeZalia reminded Councilman Caza to stay on track and get back to the resolution he was proposing. She added they still would need to rescind resolution #64 and then pass a resolution to proceed with a survey to make things right. Councilman Caza put forth the following resolution. Councilman Caza moved that the Town Board keep their agreement with Mr. Bessey. *Stating “if the town can’t stick to 6% what is the lump sum the Town would have to pay Mr. Bessey for this?”*, putting forth a motion for a one lump sum for the use of that lot.

Councilman Brian Caza continued *” instead of rescinding that resolution I propose we make an amendment to it.”* Supervisor DeZalia asked Councilman Caza *“so, you want to amend the original resolution? That can’t be done without setting a price. We can’t set a price until we get a survey. We need a resolution for a survey”*.

Mr. Bessey asked *“Is the deal still in play? If not is it considered trespassing?”*

Supervisor DeZalia again reminded the Board of the need to rescind Resolution #64-2021, to do a resolution for a survey to get a legal description to do right to use easement. Mr. Bessey asked the Board *“What are you guys offering? How much? I thought this was all taken care of. I want this done tonight, I do not want to come back to another meeting. Is the deal still in play?”*

Supervisor DeZalia reminded all that it still needs be determined who is going to pay for this. Bruce Caza, speaking from the floor, stated the Board should pay as the Town payed for the original survey back in 2005 and the Town was wrong for cutting the trees. Councilman Caza suggested that the Town pay for survey, that the Town sticks to the 6%

and asked to have Mr. Silvestri draw up the papers. Then the difference between a fee title and an easement were clarified. It was agreed after much discussion by the Board that a lump sum payment be made. The size of the piece of land in question was discussed being 25'x600'. Supervisor DeZalia wasn't sure the Board was ready to proceed with the easement as it still needs a value to be determined by a metes and bounds survey. She proposed again the Board rescind **Resolution #64 of 2021**. Supervisor DeZalia again reminded the Board they have an obligation to the taxpayers of North Hudson and need to find out the value of the property in order to come up with a total amount. Mr. Silvestri added that the cell company wires should not be tied to the value of the land. They will need to do their own easement for their wires. Timber trespass was wrong but the statute of limitations was over. Councilman Caza stood to leave the meeting and then put forth the following resolution to pay for the survey with a second by Councilman Dobie.

**Resolution # 65 of 2021**

Resolved that the Town of North Hudson to contract and pay for a survey for a metes and bounds for an easement and right of use across the lands of Ryan R. and April M. Bessey.

Moved by Councilman Caza      Seconded Councilman Dobie

Roll Call Vote:

Councilman Caza - Aye

Councilman Gero - Aye

Supervisor DeZalia - Aye

Councilman Dobie- Aye

Councilwoman Marsden – Aye

The Board then proceeded to discuss making an agreement how to pay Mr. Bessey.

Councilman Dobie wanted to go back to the original agreement.

Ryan said it would be fine with him if the town wanted to pay him \$ 1,500.00 a year for the next 99 years. This was calculated to be \$ 148,500.00. Mr. Silvestri asked Ryan for clarification on if he was looking for a lease, transfer of that property or an easement to done. All parties were in agreement that it would not be a lease. Mr. Bessey said it would not be a transfer," *absolutely not, there will be no property transfer.*" He made it very clear he will never sell that property as it belonged to his grandfather and will stay in the Bessey family.

It was decided by all parties that a perpetual easement was required.

Again it was stressed that a survey is needed to establish the value of this property for the easement. Councilman Caza still standing, stated he wants the Board to stay with paying Ryan the 6% based on the cell tower contract for 99 years and pay it in one lump sum totaling \$106,920.00.

Supervisor DeZalia stated the Town easement should not be based on the cell tower contract but the land value. She added the cell company will come back every few years for negotiations, however it is usually for a lower price, and to take into consideration there was no guarantee that there would even be a cell tower in place in 99 years. Mr. Silvestri added that with the cell tower cables have nothing to do with the Town right of use easement, that the cell tower company has to compensate Ryan for that and that timber trespass cannot be made a part of this easement as the statute of limitations is up. The cell tower project plans indicate they were on their side of the boundary and the Board was reminded that Mr. Silvestri does not have the project plans to review. The cell

company did have it surveyed however that survey is with the cell company and not on file at the County Clerk's office. Supervisor DeZalia and Ryan have met with the cell tower representative (AT&T) and were told that if the wires were on his land and not on the Town land they probably would make a settlement with Ryan of about \$25,000. No survey maps of this project were readily accessible. Again, Mr. Silvestri stated to the Board to have Mr. Deming look at his original survey and resurvey the portion of the road in question being a piece of land 25' x 600' then the Town could proceed with the necessary facts for an easement. Supervisor DeZalia reminded the Board they need to look at the current budget and see where this money will come from as it was not budgeted for and it will also need to be taken into consideration when preparing future budgets. Councilman Caza then suggested a \$1,500.00 a year lease for 99 years to be renegotiated every 5 years. Ryan asked "if this would be \$1,500.00 a year for 99 years. Total equaling \$148,500.00, and will I be getting an increase on this over time?" Mr. Silvestri explained that then would become a lease not a perpetual easement. If it is a perpetual easement it is not negotiable every 5 or 10 years. Mr. Silvestri stated he represents the Town and would not draw up a lease for Mr. Bessey.

Councilman Caza said "so we will be paying this a year for a 99 year for a lease so for 99 years' x \$1,500.00 is \$148,500.00 payable over 5 or 10 years." Supervisor DeZalia corrected him as it is not a lease but a perpetual easement.

Councilman Caza again said he would like to keep it as previously agreed upon at \$106,920.00, but instead of monthly payments make it a lump sum payment payable over the next 5 or 10 years. The Board said the agreement would have to be forever, it transfers with property, perpetuity.

Supervisor DeZalia reminded Councilman Caza of the amount of the original agreement of 6% equals \$106,920.00 and it would be made in annual payments divided up over whatever is agreed upon, being the next 5 years or 10 years. Supervisor DeZalia asked Mr. Bessey the size of the entire lot that that road encroached on. He said about 25 acres. She asked him the current value of this lot and he said apoximety \$40,000.00. Supervisor DeZalia asked Mr. Silvestri if the board could legally enter into such an agreement, He answered "is it legal, sure- but I have no idea of what the value of this easement is."

Supervisor DeZalia addressed the Board saying she does not believe they are following the advice of their attorney and fulfilling their obligation to determining the valuation of this easement as none of the Town Board or Mr. Bessey are qualified to do a property assessment. The Board really needs to know the value of the land in order proceed.

She asked Mr. Silvestri if it was legal for the Board to come up with this value of \$106,920.00? Attorney Silvestri 's reply was "It's up to you folks whether you believe this is a fair price to pay. You're the governing Board, my opinion is irrelevant. You're the Board, you govern this Town, you're the elected officials. If you think that is a fair price for that easement. Remember that the cable wires and tree cutting are in the past. If you think it's a fair price just make sure you are not mixing apples and oranges. I have no idea of the value of this easement is. Is the Town Board sure this is what they want to pay for this easement?"

Mr. Bessey then asked to have something into the easement when it is drafted that states nothing can be changed on the property. Mr. Silvestri asked him if the Town can maintain the road and Ryan said yes.

Again Mr. Silvestri asked if the Town Board was sure this is what they want to pay for this easement. Councilman Dobie asked Mr. Bessey if he was happy with this agreement. Mr. Bessey asked the Board members what they thought. Councilwoman Marsden replied "Are you happy? We are working for you."

Brian DeZalia, from the floor, inquired if the Board enters into this agreement does a survey still need to be done. "Yes, it goes in the deed. And there needs to be a legal description of what is in the easement" per Supervisor DeZalia.

Supervisor DeZalia explained to the Board that the revenue from the cell tower contract is \$16,800.00 per year and now the annual payment to Mr. Bessey will be \$10,692.00 annually to better understand the future revenue curve.

### **Resolution #66 of 2021**

Resolved to pay the sum of \$ 106,920.00 over the next 10 years starting upon the signing of the permanent easement over the property of April M. Bessey and Ryan R. Bessey and the next payment being due upon the anniversary of the first payment and like payment each and every year until the total sum of \$106,920.00 is paid in full.

Moved Supervisor DeZalia Second Councilwoman Marsden

Roll Call Vote:

Councilman Caza - Aye

Councilman Gero - Aye

Supervisor DeZalia - Aye

Councilman Dobie- Aye

Councilwoman Marsden – Aye

Mr. Bessey asked "Is this a done deal?"

The answer was "yes- as soon as papers are drawn up and signed"

Mr. Silvestri asked the Board for clarification on who maintains the cell cables. The easement will contain language that the town has the right to maintain the cables within the easement

Mr. Bessey thanked the Board and left the meeting at 7:20 p.m.

### **B. Health Insurance-**

Supervisor DeZalia read the following statement.

*"Last month Bruce Caza, during privilege of the floor, presented his case as to why he was entitled to health insurance based on past practices. He also presented copies of his application for health insurance & checks from back in 1994 and 1995 for his share of the insurance as proof he had insurance back then. Which I will admit, I accepted and looked at as past practice and went against my previous findings from March, and based my vote solely on them and I should not have. He also mentioned others he felt were entitled to health insurance and /or Medicare reimbursement. Marshall Gero and Michael Marsden being two of them. Councilman Brian Caza put forth a resolution to give Bruce, Marshall and Mike health insurance or Medicare reimbursement effective immediately. There was a question among the Board as to whether or not he could put forth the resolution before the Board as there may be a question of impropriety or conflict of interest. There was question whether Marshall and Maureen could vote on a benefit that they would directly benefit from. All felt they could vote on Mr. Caza's proposed resolution. Resolution #63 of 2021 was passed with a majority vote, with all members of the Board voting, giving these three (3) specific part time elected member's health insurance or Medicare reimbursement starting immediately. As I stated to the Board, I would have it looked at by our attorney. I*



know we have an obligation to all our employees and elected officials and the taxpayers so I chose to have it looked at and got the advice of others as well. Besides our Town attorney, John Silvestri, I also spoke at length to Lori Mithen-Demasi, council for the Association of Towns, I also met with Trish Biesmeyer with Burnham Benefit Advisors, and I spoke to Ronni Travers, president of Public Sector HR Consults, LLC. All of which had similar professional opinion of the granting of the benefits to these particular elected officials. Based on their years of service, their continuous or lapse in office, the policies in place at the time, they all advised we cannot give these benefits to individuals in particular, that it has to be an entire class of individuals. We cannot just pick and choose who we want to give it to at any particular time. The best way to do this would be to look at our policies in place and amend them if needed.”

“It is John’s (Silvestri) opinion that the Board cannot vary from the employee handbook for particular individuals. Mr. Silvestri’s response when asked if the Town Board can vary from the Employee Handbook for particular individual “No, the Handbook would need to be modified to define the class of persons who are entitled to benefits. This modification would have to be by formal resolution. The establishment of a Town Policy is an action that requires, at minimum, a resolution by the Town Board pursuant to the doctrine of legislative equivalency.” Mr. Silvestri’s response to the question “Must the Town Board modify the employee Handbook so all the class to be given benefits are treated the same?” His answer “Yes, otherwise the Town Board could be sued for violating Equal Protection under the laws. All employees/ Officers that are similarly situated in the same class must receive the same benefits. He was asked if the resolution was void. His response “Yes, for the reasons stated above.”

The next question - “Did the son, wife and Board member who voted in favor of giving himself benefits have a conflict of interest and should have abstained from voting? Mr. Silvestri’s response- “It is my opinion that the participation of these Board members for this particular vote, IE. The Resolution granting of benefits to particular individuals as distinguished from a resolution amending the Handbook, could be called into question under **NYS Public Officers Law §74(e)** which reads “**No officer or employee of a state agency , member of the legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he or she has a direct or indirect financial interest that might reasonably tend to conflict with proper discharge of his or her official duties.**” “In my opinion it would not be a conflict for these same individuals to vote on a Resolution to amend the handbook to include a new class of officers or employees to receive benefits. The reason is that although the amendment would impact all of the Board Members, there is no other way to accomplish a legitimate goal. I would recommend that the Board rescind this Resolution and adopt another one the explicitly modifies the policy, as authorized by General Municipal Law§ 92-a and renders it applicable to all similarly situated officers.”

Supervisor DeZalia continued by adding Lori Mithen-Demasi, council for the Association of Towns, stated that an amendment to the handbook should not be done on an individual request, but an amendment addressing all members of a class. A Handbook can be considered the governing body’s terms and conditions of employment and would be interpreted as the conditions at the time of employment or at the time of taking office as benefits are offered to keep employed, encourage them to stay and keep healthy. She stated that we cannot give to individuals but must give to all in the same

class. She believed the 3 votes may have violated Common Law conflicts of interest and there be an appearance of impropriety and a question of ethics. She also believes the resolution to be invalid because of the conflicts of interest present by members who voted. No one invoked the rule of necessity (which allows for a vote or decision to be made where there is a bias or conflict may be present) prior to voting. Based on the information given to her, she believes Marshall and Bruce would not be eligible for the benefits based on the current Employee Handbook in place at the time they took office in 2013. However, Mike with his continued service, with no lapses, may be entitled if entitled prior adoption of the handbook. Lori Mithen-Demasi recommend the Board rescind the resolution and pursue looking at the Employee Handbook, make the needed corrections if the Board so chooses to offer benefits to all past, present and future in this given class. Tish Biesmeyer advised the Board that they cannot just add these elected officials as they must wait for open enrollment in December. She added that there are specific situations when enrollment can occur such as new hire, loss of insurance, death, divorce from primary insurance coverage holder, or the birth of a child. Tish looked at the handbook and explained that due to the introduction of the Market Place in 2010 (Obama Care) is the reason why the handbook amendments happened, also stating that no one gives Medicare reimbursement, it's a thing of the past, it is no longer done. Trish is of the belief that once the handbook (policy) was in place then benefits would be based on those guidelines, insurance would be offered to all in the same class. She suggested Supervisor DeZalia speak with Ronni Travers of Public Sector HR Consults. Supervisor DeZalia spoke with Ronni Travers regarding the handbook and she is of the opinion that the Boards resolution was a "gift" of public funds. The resolution as written is a benefit to a few, not all in a particular class. She advised that the Board look at the handbook, make amendments that promote consistency and fairness to everyone in all classes. Also that based on the NYS Comptroller's office at the time someone retires (or separates) from the Town of North Hudson (employee or elected) they must be enrolled in the NYS retirement system and have applied for and been granted retirement benefits in order to qualify for health benefits. She advised that the one-year grace period being offered to our employees/officers to activate the NYS retirement system goes against the Comptrollers opinion and we might want to look at removing that from the handbook. She said anyone who has already activated their NYS retirement and are already getting health care benefits would not be eligible from the town as they were already getting the benefits from NYS retirement. Supervisor told the Board that Ronni's office drafts employee handbooks and make sure they follow all NYS requirements, done in a fair and consistent manner. *Supervisor DeZalia continued "The Towns current Handbook was drafted and approved by a few boards before and to date its use has been approved. We must all respect the decisions and the work that went into this policy as we hope future boards will respect the work that we put into it. If our Handbook and policies need to be amended, then it is up to us to do it in a fair, consistent and fiscally responsible manner."*

Supervisor DeZalia added that previously, **Resolution#38 of 2015** was passed by a majority vote and denied health insurance to Mr. Bruce Caza for reasons stipulated in the employee handbook. She said she believes that the Board needed to rescind that resolution prior to making **Resolution #63 of 2021**.

Supervisor DeZalia put forth the following resolution.

## **Resolution #67 of 2021**

Based on the above professional advice, I motion to rescind **Resolution #63 of 2021** that granted Marshall Gero, Bruce Caza and Michael Marsden health care and /or Medicare reimbursement. That said **Resolution #63 of 2021** is hereby rescinded.

Second Councilman Dobie

Discussion by the Board:

Councilman Gero stated he had his time in before the handbook went into place.

Councilman Caza stated that is correct.

He said employees are supposed to be notified of changes that affect them.

Supervisor DeZalia clarified that it has to be done as a class not be named individually.

The Board cannot just amend policies without taking into consideration entire classes and cost to the Town.

Councilman Caza clarified that when he proposed the resolution that it would apply to all Town employees affected.

Attorney Silvestri said the Board did not follow proper procedure, the Board needed to pass a resolution to amend the handbook, define class of people and rescind the original resolution, include a class of employees The names are irrelevant.

Mr. Bruce Caza addressed the Board, stating there is no class of employee in the handbook for part time vested retired employees and elected officials. He stated he has had several attorneys look at it. Bruce stated the Town Board passed a resolution in 2003 ending Medicare reimbursement. He discusses the fact is Doris Colburn as a person who benefits from both Town health insurance and Medicare reimbursement as the widow of a past employee. Mr. Caza asked for a class of vested, elected and retired employees. He stated he is being singled out. He asked the Town Board to define the classes in the right way. He stated he was vested in 1999, but he came back in 2013. He indicated it is getting very frustrated because this has been going on for over 7 years.

Supervisor DeZalia questioned the use of the word "vested."

Mr. Silvestri added the problem seems to be that there isn't a good description of what this class is. Who is this class of people and why? It needs to be determined what is a vested employee. The Board would need to pass a resolution to include a class of people. Supervisor DeZalia said if Councilman Caza wants to he can put forth a resolution have a workshop to review the handbook, health insurance, define the class of employees getting retirement. Bruce Caza, from the floor, said "*why not pass a resolution to absolve the entire handbook.*" Supervisor DeZalia stated that the handbook is needed, that healthcare is only a small portion of the Handbook. Again Mr. Silvestri asked who is this class of people and how is this class of individuals defined? What defines a part time elected official? It was discussed that per past practices that full credit was given for part time elected officials.

Discussion ended.

Roll Call Vote:

Councilman Caza- No

Councilman Gero- No

Supervisor DeZalia- Aye

Councilman Dobie- Aye

Councilwoman Marsden- No

This resolution remains standing.

Mr. Silvestri said he would like a clear definition of what makes up this class of people.

Councilman Caza made a motion to pass a resolution for the Board to look at and make appropriate amendments to the Employee handbook and make appropriate adjustments to the Health Care and Retirement Health Care sections based on recommendations of the attorney and to define the class of people who would get Health Care and /or retirement.

No second was forthcoming.

Motion to go into executive session at 7:55 pm for possible litigation by Supervisor DeZalia second Councilman Dobie

All in favor

Ayes-5

Noes-0

At this time in the meeting Councilman Caza, 7:55 pm, was excused for employment purposes.

The Board returned from executive session at 8:24pm.

Councilman Dobie motioned to return from executive session and Councilman Gero seconded

All in favor

Ayes -4

Noes-0

Excused -1

Supervisor DeZalia put forth the following resolution

**Resolution #68 of 2021**

Resolution for the Town of North Hudson to contract with Public Sector HR Consulting LLC of Glenville, NY to look at and recommend changes to our Employee Handbook that will include all aspects of the policy recommend changes to the Town of North Hudson's Employee Handbook to include all aspects of the policy, including Health Care benefits and Retirement Benefits and to define clearly all classes of employees and officers of the Town. Subject to Board approval of a written estimate.

Moved by Councilman Dobie Seconded by Councilman Gero

Roll Call Vote:

Councilman Gero- Aye

Supervisor DeZalia – Aye

Councilman Dobie – Aye

Councilwoman Marsden- Aye

Councilman Caza- excused

Supervisor DeZalia reminded the Board that resolution to rescind **Resolution # 64 of 2021** was made and the process needed to be completed.

Before moving on to the regular business Supervisor DeZalia made the following statement-*“I would like to add something of record. We, as public officials, voted on by our peers are bound by our oath to faithfully discharge the duties of our office to the best of our ability. I feel that we do exactly that. I will be completely honest, when I left last month's Board meeting, I questioned, Did I faithfully discharge the duties of my office?... and the fact that I even questioned it.... Gave me no choice but to seek the advice of the above professionals. We all have the obligation to question this... for each and every matter that comes before this Board... we are deemed to understand what we are doing and know how to act/ and react to it. We all can be thrust into a decision based on emotion or gut feeling at times...but we as a governing Board must recognize*

*when there is a need to step back, slow down and get all the facts and information before taking action. It is a lot easier doing things right the first time, then back tracking to correct an improper action. For this reason, I will be presenting to the Board before the August meeting a set of rules of procedure for our meetings, that will be a set of guidelines so we can all move forward from this and take appropriate action in the future.”*

Supervisor DeZalia reminded the Board that resolution to rescind Resolution # 64 of 2021 was made and the process needed to be completed.

Supervisor DeZalia asked Mr. Silvestri if it was proper for the Board to take a vote on it at this time. He stated being Councilman Caza offered up **Resolution # 66 of 2021** therefor it was not a conflict with him not being present to vote at this time.

She asked the Board if there was a second.

### **Resolution #69 of 2021**

Resolution to rescind **Resolution # 64 of 2021** by Supervisor DeZalia and seconded by Councilman Dobie.

Roll Call:

Councilman Gero-Aye

Councilman Dobie- Aye

Councilwoman Marsden- Aye

Supervisor DeZalia-Aye

Councilman Caza- excused

**Resolution # 64 of 2021** is rescinded.

Mr. Silvestri left the Board Meeting at 8:10p.m.

### **New Business**

**A. Department Reports-** Department reports were placed in the Board packets.

Supervisor- Supervisor DeZalia has completed and submitted the initial paperwork to NYS for the ARPA request for federal funds.

She reminded the Board of the upcoming webinar by the NYS Comptroller’s office.

Councilwoman Marsden, Mike Marsden and Candy King have registered for it.

She met with SLEMS and Supervisor Subra. The contract wording is being worked up to include the SLEMS to do billing per transport. She asked the Board for a resolution of support. The current contract will be amended to add the fact they are now billing. It is expected that after about one year of billing the Town of North Hudson may see a savings in the amount of contribution.

E-5 ALS coverage for the county was discussed.

### **Resolution #70 of 2021**

Resolved that the Town of North Hudson supports and allows the Supervisor to enter on to the contract with Schroon Lake EMS with the added verbiage that the Schroon Lake Ambulance Squad will be billing per transport effective the signing of the contract.

Moved Councilwoman Marsden      Second Councilman Gero

Roll Call:

Councilman Gero-Aye

Councilman Dobie- Aye

Councilwoman Marsden- Aye

Supervisor DeZalia-Aye

Councilman Caza- excused

### **Highway Dept-**

Supervisor DeZalia announced that there were 6 applicants for the HEO position. She explained that Ken has the right to hire who he wants; however, he is requesting an interview committee for the position. After discussion the committee will consist of Highway Superintendent Ken Foster, Councilman Gero and Supervisor DeZalia. They will review the applications and proceed with interviews within the next week. There were multiple applicants for the part time cleaner position. The interview committee was also selected for this and they will look at the applications within the next week. This committee will consist of Councilman Gero, Councilwoman Marsden and Supervisor DeZalia.

A written offer from John Howe for the scrap surplus items was received in the amount of \$4,000. It is not required to go out to bid on this as the Board can choose to sell to a local vendor. John will pick up the items eliminating the Town making a delivery.

**Resolution # 71 of 2021**

Resolved that to accept the offer of \$4,000.00 for the scrap surplus items set forth in Resolution# 47 of 2021.

Moved by Councilman Gero Second by Councilman Dobie

Roll call:

Councilman Gero – Aye

Councilman Dobie – Aye

Supervisor DeZalia – Aye

Councilwoman Marsden – Aye

Councilman Caza- excused.

The final Komatsu payment was made last Month; however, the check was returned due to an address change on their end. Therefor creating a late fee. They also have assessed the Town \$ 1,024.04 in late fees for 2019, 2020 and 2021 due to their billing system. They are offering to settle with the Town for \$ 400.00. The Board directed Supervisor DeZalia to continue to negotiate with Komatsu for the late fee charge to be removed. Supervisor DeZalia spoke to the theft of an item from the old highway garage. The NTSP have conducted interviews, with no information found. The investigation is still open. She asked members of the community to contact Trooper Johnson if they have any information.

A complaint has been received on the road condition at the end of Liberty road. Highway Superintendent Foster and the crew filled in a few pot holes. The problem however needs more than this. The pit coming down out onto Liberty Road has constant sand washout, the black top is breaking up and need for a possible culvert. Past history of this road were discussed and the issue will be further assessed.

**B. County Reports- none**

**C. ROA-**The Town received notification from the NYSLRS regarding the ROA of Judge Duntley. The results were rounded up to 1.5 and needs to be adjusted to the actual 1.45 ROA.

**Resolution# 72 of 2021**

Be it resolved that the Town Board of North Hudson hereby establish the following standard work day for Town Justice Deborah Duntley for the term of 01/01/2018-12/31/2021 as follows: Standard work day of 6 hours with a ROA of 1.45.

Moved by Councilman Dobie second Supervisor DeZalia

Discussion:

Supervisor DeZalia indicated that probably the length of time for the initial ROA to be reported by Justice Duntley prompted this. Payroll records will need to be amended by Cassandra.

Roll Call:

Councilman Gero-Aye

Councilman Dobie- Aye

Councilwoman Marsden- Aye

Supervisor DeZalia-Aye

Councilman Caza- excused

**D. BackBlaze-** Last year the Town Assessors computer was set up with BlackBlaze for backing up the computer which was covered under a grant from the County. The grant has ended and the cost will now be \$60.00 annually. Nine other towns were covered under this grant and will be paying the annual fee if they wish to continue.

**Resolution #73 of 2021**

Resolved to pay to Essex County \$60 for the BackBlaze backup for the Assessor's office.

Moved by Councilman Gero seconded by Councilwoman Marsden

Roll Call:

Councilman Gero-Aye

Councilman Dobie- Aye

Councilwoman Marsden- Aye

Supervisor DeZalia-Aye

Councilman Caza- excused

**E. Payment of Attorney-**

**Resolution # 74 of 2021**

Resolution to pay Attorney John Silvestri for services rendered.

Roll Call:

Councilman Gero-Aye

Councilman Dobie- Aye

Councilwoman Marsden- Aye

Supervisor DeZalia-Aye

Councilman Caza- excused

**F. Payment of Title Search-**

**Resolution # 75 of 2021**

Resolved to pay \$ 7,500 John Mahon for the genealogical search preformed for the Town's pending Article 15 action.

Moved by Councilman Gero seconded Councilman Dobie

Discussion about the Article 15 Action took place.

Roll Call:

Councilman Gero-Aye

Councilman Dobie- Aye

Councilwoman Marsden- Aye

Supervisor DeZalia-Aye

Councilman Caza- excused

Supervisor DeZalia asked Highway Superintendent to maintain a log of all time spent working in that area. Some of this can also possibly be considered work for the conservation easement and may be able to be billed to the State.

Roll Call:

Councilman Gero-Aye

Councilman Dobie- Aye

Councilwoman Marsden- Aye

Supervisor DeZalia-Aye

Councilman Caza- excused

**G. Speed signs-** Speed signs on Northern end of town were discussed.

Supervisor shared an email she received with the Board in their packets. She asked the board to read the email, as it makes some valid points.

Supervisor DeZalia reminded the Board of the increased traffic in that area and to especially consider the upcoming Winter Games. Also that we have moneys that can be used specifically for this. This had been discussed and previously agreed to, however, at the last meeting it was voted on to get only 2 signs not the 4 as previously discussed.

Supervisor DeZalia will revisit this with the Board at the August Town

**General and Highway Abstract approval**

Motion to approve the General Abstract

Moved by Councilman Dobie and seconded by Councilwoman Marsden.

All in favor

Ayes-4

Noes-0

Excused -1

**Audit of the Judges Financial report**

Motion to approve the Audit of the Judges Financial report

Moved by Councilman Gero and second by Councilman Dobie

All in favor

Ayes-4

Noes-0

Excused -1

**Privilege of the Floor**

Supervisor DeZalia opened the meeting to the floor asking everyone to please keep it under 5 minutes in length each.

Tracee Parent asked more specifics on the ambulance billing process with her questions being answered.

Highway Superintendent Foster spoke to the Board about the loader status. It was going into the shop the next day. The Board will wait for the estimate on repairs.

Service contract on the loader was discussed, Ken will inquire the cost of a routine service call. He recommends purchase of a Tandem vs a 2.5-ton truck for the Highway Dept. He stated the Town has not purchased a new truck in 10 years. It is estimated a new truck would cost about \$200,000. The issue of non CDL drivers being able to drive the truck was discussed. Supervisor DeZalia asked him to submit a plan at budget time. Discussion by Will Plumstead on the Town plowing out driveways. Supervisor DeZalia stated public safety is the primary concern



Tracee Parent asked about the Town doing the ditching on Dump Rd as she is getting flooded out. It will be reditched by the Town when they rent the backhoe. It will be brought to the attention of DOT as it was determined to be NYSDOT road concern.

Motion to adjourn at by Supervisor DeZalia second Councilman Dobie

All in favor

Ayes-4

Noes -0

Excused-1

Respectfully submitted

Martha M. King

Town Clerk