

REGULAR MEETING, TOWN OF LIVONIA
September 5, 2019

A regular meeting of the Town Board of the Town of Livonia, County of Livingston and the State of New York was held at the Livonia Town Hall, 35 Commercial Street, Livonia on September 5, 2019.

PRESENT: Eric Gott, Supervisor
Andy English, Councilmember
Matt Gascon, Councilmember
Frank Seelos, Councilmember
Peter Dougherty, Councilmember
Colleen West Hay, Clerk
Jim Campbell, Attorney, Town of Livonia

OTHERS PRESENT: IT Committee Members Ken Liesegang, Nik Varrone and Earl Hay; several residents.

The Town Board meeting was called to order by Supervisor Gott at 7:00 PM. Adam Backus led the pledge.

PUBLIC HEARING – LOCAL LAW #5 – 2019 - MORATORIUM ON SOLAR BATTERY STORAGE

Following distribution of the proposed Local Law to the Town Board members on July 11, 2019, notice of said Public Hearing was duly published in the Livingston County News on August 22, 2019, with same being posted on the same date at the Town Hall, Livonia post office and Livonia’s web site. Referral was also sent to the Livingston County Planning Board and adjacent municipalities.

Clerk Hay read the Notices of Hearing for the record.

Attorney Campbell reviewed the purpose of a moratorium. He explained that it presses the pause button by suspending property owner rights for a temporary period of time to allow the town to educate itself about a topic and formulate appropriate regulations. This particular moratorium is proposed for one year and will prevent applications for large scale battery storage devices during that time.

Attorney Campbell stated that we are seeing interest in these projects in parts of Livingston County, including Livonia. These projects may or may not be related to any generation site. We currently do not have adequate provisions in the town code to address this rapidly developing technology. There are safety, environmental, and land use concerns that need to be addressed. Interest is also being fueled by state funding packages.

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Attorney Campbell remarked that if we do not need the full year, we can always terminate the moratorium in a shorter period of time. He cautioned that suspending landowner rights is a serious remedy. We must accomplish something during the moratorium. He suggested that the Town Board put together a committee to look at it. He added that there is a lot of information, and some of it is contradictory. The committee will need time to sift through it all.

Supervisor Gott declared the Public Hearing open at 7:05 PM.

Comments:

Supervisor Gott asked if anyone from the public or the board wished to comment. No one commented. Supervisor Gott stated that the public hearing would remain open and there would be another opportunity to comment before the hearing was closed.

RESOLUTION 107-2019

SET UP CD WITH MONEY FROM COUNTRYSIDE GARDEN CLUB

Councilmember Dougherty reported that years ago, Joe Vitale left money with the Countryside Garden Club to purchase flowers and shrubs for Vitale Park. The club is no longer in existence. He proposed that the money remaining in the account be used to purchase a CD to be transferred to the Town of Livonia with the understanding the money only be used for flowers and shrubs.

On motion of Councilmember Dougherty seconded by Councilmember Seelos the following resolution was

ADOPTED Ayes - 5 (Gott, English, Gascon, Seelos, Dougherty)
 Nays – 0

Resolved to accept money from the now defunct Countryside Garden Club to set up a Certificate of Deposit, the proceeds of which will be used to purchase flowers and shrubs for Vitale Park.

VITALE PARK UPDATES

Councilmember English gave the following updates after meeting with Park Manager Mo Watson and his assistant John Meyers regarding Vitale Park:

- The shed will be here at the end of September, and he would like to ask if Bookkeeper Mike Lawton could cut a check for the balance due of \$500.
- He asked if Highway Superintendent Dave Coty could move the existing sheds out of the way to make room for the new one.
- He reported that Boy Scouts stained the pavilions as a part of an Eagle Scout project and installed an “invasive species disposal station.” He explained that this is a standard NYS DEC disposal station that provides a place for anglers to

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dispose of unused bait, instead of dumping the bait in the lake. The station was provided by a partnership of the Conesus Lake Association, Town of Livonia, and the Conesus Lake Watershed Council.

- He reported that Boy Scouts stained the pavilions as a part of an Eagle Scout project and installed an “invasive species disposal station.” He explained that this is a pole that goes in the ground and has a box on it. Instead of dumping bait in the water, fishermen can dump it in the box. The station was purchased by Gene Bolster.
- Councilmember English added that we need to start advertising for help at the park.
- He shared that he will start contacting security places to provide help on the third of July. He will get prices for next year’s budget.

A resident remarked that she had relatives visiting from out of town and took them to Vitale Park. They really enjoyed it and were impressed. She wants to make sure that Mo knows they were overjoyed to enjoy such a park. Supervisor Gott agreed that the park staff and volunteers do a great job.

TOWN CLERK’S REPORT – JULY 2019

Paid to Supervisor for the General Fund	\$2,703.14
Paid to County Treasurer for Dog Licenses	\$392.00
NYS Comptroller’s Office (Bingo and Games of Chance Licenses)	\$11.25
Paid to NYS Ag & Markets for the Spay/Neuter Program	\$128.00
Paid to NYS Environmental Conservation for Hunting/Fishing Licenses	\$782.91
State Health Department (marriage licenses)	\$90.00
TOTAL DISBURSEMENTS	\$4,107.30

TOWN CLERK’S REPORT – AUGUST 2019

Paid to Supervisor for the General Fund	\$3,836.54
Paid to County Treasurer for Dog Licenses	\$490.00
NYS Comptroller’s Office (Bingo and Games of Chance Licenses)	0
Paid to NYS Ag & Markets for the Spay/Neuter Program	\$204.00
Paid to NYS Environmental Conservation for Hunting/Fishing Licenses	\$5,365.39
State Health Department (marriage licenses)	\$157.50
TOTAL DISBURSEMENTS	\$10,053.43

Town Clerk Updates

- Fall Newsletters are available.
- AED/CPR Trained responders – Colleen Hay, Wendy Liesegang, Kolleen Redman, Betty

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Miles, Dawn Woodburn and Alison Houk have renewed their AED/CPR training. Our Medical Direction Agreement will have to be renewed in 2020. Clerk Hay will include the cost in her budget request.

- Rabies Vaccination Clinic – Clerk Hay and Deputy Clerk Liesegang attended the Rabies Vaccination Clinic on August 6 and renewed 5 dog licenses at the clinic. They also handed out newsletters and tried to get the word out that dogs need to be licensed.

Updates

- Shredding – Reminder that the shredding event will be here at the Town Hall on Saturday, from 9-11 AM. The company will also shred the records that are in the Town’s bins at no additional charge.

RESOLUTION 108-2019

APPROVE RECORDS DESTRUCTION

On motion of Councilmember Gascon seconded by Councilmember English the following resolution was

ADOPTED Ayes - 5 (Gott, English, Gascon, Seelos, Dougherty)
 Nays – 0

Resolved to approve the Records Destruction Authorization Form dated 9/5/2019.

RESOLUTION 109-2019

APPROVE AGREEMENT WITH FORTE

On motion of Councilmember Dougherty seconded by Councilmember Seelos the following resolution was

ADOPTED Ayes - 5 (Gott, English, Gascon, Seelos, Dougherty)
 Nays – 0

Resolved to approve the agreement with Forte for credit card processing services and authorize Clerk Hay to sign the agreement. Further resolved to amend the agreement so that the initial term will be for one (1) year instead of three (3) years.

Sexual Harassment Prevention Training Reminder

The deadline is approaching in October where all employees must take the Sexual Harassment Prevention Training. The following still need training: Bob Lemen, Margaret Linsner, Irene Turner, Robbyn Haak, Joanne Palmer, Jack Sparling, Peter Nilsson, Rosemary Bergin, Karen Coon, all recreation employees and volunteers (except Craig Emmerling). Clerk Hay found a link for training on the NYS Department of Labor web site. It says the training is for New York City employees. Attorney Campbell will watch it and will reach out to the Department of Labor to see if we can use it. He reported that NYMIR has an online university, and we can get training through that as well. That might also be a good resource. He will follow up.

RESOLUTION 110-2019

APPROVE TOWN CLERK’S REPORT

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On motion of Councilmember English seconded by Councilmember Gascon the following resolution was

ADOPTED Ayes - 5 (Gott, English, Gascon, Seelos, Dougherty)
 Nays – 0

Resolved to approve the July 2019 and Town Clerk Report.

RESOLUTION 111-2019

APPROVE TOWN CLERK’S REPORT

On motion of Councilmember Seelos seconded by Councilmember Gascon the following resolution was

ADOPTED Ayes - 5 (Gott, English, Gascon, Seelos, Dougherty)
 Nays – 0

Resolved to approve the August 2019 and Town Clerk Report.

DISCUSS PROPOSED TOWN IT POLICY

Supervisor Gott shared that the Town Board has had the proposed IT Policy for a couple of months, but the subject is beyond his understanding. He asked the committee to talk about what they were proposing. He introduced committee members Ken Liesegang, Nik Varrone, and Earl Hay.

Mr. Liesegang thanked the Town Board for the opportunity to meet. He shared that security is an important issue. The media has broadcast horror stories of what has happened in other municipalities. He feels that the Town of Livonia faces the same issues as larger municipalities. It is the recommendation of this committee to start us on the path to address risks. The recommendation before the board was built on Bonadio’s report and utilized a framework provided by CIS, which is an organization dedicated to internet security standards. The committee worked to “right size” the policy for the Town of Livonia, realizing that we do not have the resources to implement some of the recommended best practices. He shared that he feels the Town of Livonia is an accident waiting to happen. He thinks the proposed policy will put us in a position to prevent inadvertent disclosure and outright attacks.

Mr. Liesegang reported that the committee attempted to come up with an action plan, realizing that we cannot do this all at once. He directed the board to page 3 of the document, where the committee took a first stab at putting together a recommended timeline. The timeline begins with some simple things like identifying who is responsible for what. It includes Internet security awareness training.

The committee discussed the fact that there is a mix and match of personal and town

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owned equipment. The committee recommends that all town business be conducted on equipment that is managed by the town.

Mr. Hay shared that technology is so advanced now that you can be infected just by visiting a site, and some of the phishing emails have gotten very sophisticated. These are the kinds of things the committee is trying to address. Some of the proposed policies might not be popular. For example, people might be used to checking personal email on their town computer, but that presents a potential liability. There are towns that have gotten shut down completely by an infected email. Scammers are targeting big and small organizations. There is a current scam now where the municipality's information is held hostage, and you have to pay to get your information back. Councilmember English remarked that 60 Minutes just had a report on this. The special talked about a small town even smaller than Livonia. They ended up negotiating the ransom down to \$6,000 to get their information back. The police caught those guys, but there are others wanting to take their place. Mr. Hay added that some of these policies are going to cost money to implement, but the Town should weigh those costs against being out of business if something were to happen. Mr. Varrone shared that he works at SUNY Geneseo, and his job is to control all end points. He feels that where the Town is now almost like the 90s. He mentioned that the Town allows employees to use their own devices. He feels that this makes us vulnerable to a hack or a leak.

Supervisor Gott remarked that the Town has several employees who use their phones for town email. He wanted to know if the committee is saying that the Town should provide them with a phone and if they will then have to carry two devices. Mr. Varrone answered that it depends on the device they have. If they have devices with up-to-date security and encryption, they can use their own device, but they should be using town accounts. Supervisor Gott answered that he does not know if everyone uses town email. Clerk Hay added that no, not everyone uses town email. Some employees still use a personal email account. Supervisor Gott stated that the Town no longer provides cell phones. Instead, we give stipends. He would rather people use a Town of Livonia email on their personal device.

Mr. Liesegang stated that the Town does not currently have staff who are qualified to do this. Supervisor Gott agreed that the Town needs outside help, and we need to figure that out. We need a budget number, and we cannot do it all at once.

Mr. Liesegang remarked that the Town will need to purchase some hardware. The policy addresses that future hardware and software purchases must go through the Town, and there will be a human resources part of it for training. Mr. Hay added that it will not be in-depth tech training, but more awareness training. They are trying to find something free or low cost. Someone needs to inform staff that the training is required, make sure

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they take the training and track who has taken what and when.

Code Enforcement Officer Adam Backus remarked that he is willing to educate himself on this topic, and if the committee could point him to the appropriate materials, he would be willing to review it now. Mr. Liesegang stated that he appreciates Mr. Backus' positive attitude. He added that security awareness training should happen now rather than later. Mr. Backus stated that he does not want to carry two phones but he will if required. Mr. Hay stated that nothing is cast in stone here. We are not saying you cannot use a personal phone. The committee is just advising the Town Board as to their options and risks, and it is up to the Town Board to decide how to go forward.

Supervisor Gott asked if it would be appropriate to adopt the policy as it was presented tonight. Mr. Liesegang answered that it is a living document and should periodically be reviewed and revised.

Councilmember English asked if the committee is looking to start implementation this month. Mr. Liesegang stated no, we will have to move it out. Councilmember English asked where the costs start for implementing policies 1-5. Mr. Varrone answered that depending on whether the Town can use existing resources, we would be looking at starting at #2 or 3. As for the password policy, the Town's existing company will have to implement it. He recommends that employees be required to change their passwords every 180 days. Mr. Liesegang suggested that for item #4 AUTHORIZED SUPPORT AGENT the Town ask Hurricane Technologies to become an active part of the policy. The Board asked Clerk Hay to get budgeting figures from Hurricane Technologies.

Clerk Hay asked who will track the human resource piece for training and make sure people do it. Supervisor Gott said he can be that person. Attorney Campbell stated that it would be wise to have the employees sign the policy once it is adopted so that they are buying in to it as well. Mr. Liesegang pointed out that this policy is for electronic documents only, not paper documents.

Attorney Campbell asked about the asterisked items. Mr. Liesegang shared that the committee referenced all 21 items that were recommended by CIS, but we just do not have the resources to do some of those things. The asterisked items are beyond what we will be doing for now.

Supervisor Gott stated that everyone who works here needs to be using a livonian email address for town emails. He remarked that Town Board probably does not want to have a town email address. He asked if there was really a need for that. Some discussion followed. The recommendation of the IT Committee is that everyone who works for the Town in any capacity have a livonian email address, however the Town Board should

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weigh the risk of exposure and decide. The IT Committee also discussed the issue of discoverability for FOIL and lawsuits. Employees using their own email addresses should be aware that their device could be seized for evidence in a legal proceeding and that their personal emails would be subject to FOIL as well. Mr. Varrone stated that by requiring Town email addresses for everyone – including all board members, the Town Board would be protecting the Town, themselves and their employees. Supervisor Gott stated that he thinks it is asking too much to create a separate email account for members of the various boards.

Mr. Varrone explained that there are security protocols that protect accounts on people's personal devices, but depending on the device, security can vary. He said that the Town should probably state minimum protocol requirements for people who are using their own personal devices. Mr. Liesegang suggested that current devices be grandfathered in, and require people to comply when they next upgrade their device. Mr. Hay remarked that the committee is not mandating what the Town should do, they are just going over the options. The Town Board needs to decide what level of risk they are comfortable with. Mr. Varrone pointed out that at the college, there is a distinction based on a person's office. One option for the Town might be that if an employee's role involves personally identifiable information, then you must comply. Mr. Liesegang stated that the Town Board can decide to defer that question for now and revisit it later. It is up to the Town Board to decide how to proceed.

Councilmember Gascon stated that he feels the topic is beyond his understanding. Councilmember English remarked that he wants to get going on it now. Supervisor Gott stated that we can get pricing now for some of the things included in the policy.

Clerk Hay asked what specific items to get pricing on. The Town Board asked her to follow up on getting pricing to implement the password policy and to install a ticketing system.

Supervisor Gott asked about the awareness training. Mr. Liesegang said that should be done no matter what. He added that there are online trainings for employees to take on their own at their desktop and take a test at the end.

A resident asked if the Town could hire an outside source to manage and track the training. Attorney Campbell said that there would be no problem engaging someone to do it, but finding someone to do it might be difficult.

Mr. Liesegang stated that he does not want the issue regarding mobile devices to become a stopping point. He encouraged the Town Board to decide what they want to do and move on.

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RESOLUTION 112-2019

APPROVE MEETING MINUTES

On motion of Councilmember English seconded by Councilmember Dougherty the following resolution was

ADOPTED Ayes - 5 (Gott, English, Gascon, Seelos, Dougherty)
Nays – 0

Resolved to approve the meeting minutes from 8/1/2019.

RESOLUTION 113-2019

OPT OUT OF PAID FAMILY LEAVE ACT EFFECTIVE 1/1/2018

Supervisor Gott shared that the Family Leave Act went into effect about a year and a half ago. Municipalities have been given the ability to opt out. Attorney Campbell recommended that the Town exercise this option.

On motion of Councilmember English seconded by Councilmember Dougherty the following resolution was

ADOPTED Ayes - 5 (Gott, English, Gascon, Seelos, Dougherty)
Nays – 0

Resolved to opt out of the Paid Family Leave Act effective 1/1/2018.

RESOLUTION 114-2019

APPROVE ADAM BACKUS AS CODE ENFORCEMENT OFFICER

Supervisor Gott reported that New York State finally held the test for Code Enforcement Officer. Adam Backus is on the list of eligibles. Supervisor Gott would like to make Mr. Backus' appointment permanent.

On motion of Councilmember Seelos seconded by Councilmember Gascon the following resolution was

ADOPTED Ayes - 5 (Gott, English, Gascon, Seelos, Dougherty)
Nays – 0

Resolved to approve Adam Backus as Code Enforcement Office at current rate of pay effective 9-5-2019.

RESOLUTION 115-2019

APPROVE HIRING JULIE HOLTJE AS ZONING COMPLIANCE ASSISTANT

Supervisor Gott introduced Julie Holtje. She is the unanimous recommendation by the interview committee for the position of Zoning Compliance Assistant. Supervisor Gott

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stated that her proposed salary is \$45,000. She would like to ask for 2-3 vacation days in the first six months in case something comes up and she needs it. Mrs. Joltje shared that she served on the Planning Board here before moving out of town and coming back. Her career started in engineering and she has experience with site planning and development. She is very familiar with Planning/Zoning process and is a certified Code Enforcement Officer. She is a Town of Livonia resident and lives here with her husband Dan. On motion of Councilmember Gascon seconded by Councilmember Seelos the following resolution was

ADOPTED Ayes - 5 (Gott, English, Gascon, Seelos, Dougherty)
 Nays – 0

Resolved to approve the hiring of Julie Holtje as Zoning Compliance Assistant effective Tuesday, September 10, 2019 at a rate of pay of \$45,000/year and 3 vacation days to start.

Supervisor Gott mentioned that we gave civil service at the county a job description and they were able to match it with a position. This position has never been filled in the county, but it has now been certified for the Town of Livonia. Mrs. Holtje realizes that if a test comes out for the position, she will need to take it.

RESOLUTION 116-2019
GAZEBO AT HEMLOCK LAKE PARK

Supervisor Gott indicated that the Town Board discussed the purchase of a gazebo for Hemlock Lake Park at the meeting. He sent an email with the proposed color combination (clay and forest green) to the Board. The cost to purchase if from Springwater Amish Shoppe is \$18,157.10.

On motion of Councilmember Gascon seconded by Councilmember Dougherty the following resolution was

ADOPTED Ayes - 5 (Gott, English, Gascon, Seelos, Dougherty)
 Nays – 0

Resolved to purchase a gazebo for Hemlock Lake Park from Springwater Amish Shoppe at a cost of \$18,157.10 in the color combination of clay and forest green.

RESOLUTION 117-2019
APPOINT SOLAR COMMITTEE

The Board discussed volunteers for the Solar Committee. The following members were proposed: Tim Ehmann, who currently works for O’Connell Electric; Matt Cole, who has experience with agricultural and commercial development and has an understanding of economic development and the importance of protecting prime ag soils; Gabe Recchio, a

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Livonia resident who is interested in solar energy and responsible development and is eager to serve; Andy English, Town Councilmember; one member from the Zoning Board of Appeals; and one member from the Planning Board. Attorney Campbell and Code Enforcement Officer Adam Backus will serve on the committee in an advisory (non-voting) capacity. This committee will be charged with looking at both issues of large-scale solar development and battery storage. Attorney Campbell advised that someone should keep minutes at the meetings. Supervisor Gott stated that if we are keeping official minutes, we should pay a recording secretary.

On motion of Councilmember Gascon seconded by Councilmember English the following resolution was

ADOPTED Ayes - 5 (Gott, English, Gascon, Seelos, Dougherty)
 Nays – 0

Resolved to appoint Tim Ehmman, Matt Cole, Gabe Recchio, a member from the Planning Board, and a member of the Zoning Board of Appeals as voting members to the Solar Committee and Attorney Campbell along with Code Enforcement Officer Backus as non-voting, advisory members, and further resolved to pay a recording secretary to take minutes.

RESOLUTION 118-2019
HEMLOCK SEWER TAP - MAIN STREET

Supervisor Gott reminded everyone of the issue Sharon Woodcock has had with her property on Main Street in Hemlock. When the sewer lines were put in, her house was omitted. Supervisor Gott talked with Steve Morsch. Normally, we would have to go through the procurement process from Livingston County Water & Sewer Authority (LCWSA), but Steve would only charge \$5,500-\$6,000 to do the job. Attorney Campbell is going to talk with the LCWSA to see if Mr. Morsch can do this for us. When the sewer was originally put in, this project was led by the Town of Livonia, therefore it is the responsibility of the Town of Livonia.

On motion of Councilmember English seconded by Councilmember Seelos the following resolution was

ADOPTED Ayes - 5 (Gott, English, Gascon, Seelos, Dougherty)
 Nays – 0

Resolved to hire Steve Morsch to conduct the sewer tap for Sharon Woodcock's property on Main Street in Hemlock, provided that the project does not have to go through the procurement process with Livingston County Water & Sewer Authority.

RESOLUTION 119-19

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REJECT BID FOR HEMLOCK SIDEWALKS AND DISCUSS NEXT STEPS

Supervisor Gott reported that we received one bid (from Ramsey) for the Hemlock sidewalk project and it was exactly double what we were told it would cost. We need to reject this bid and re-bid it with a projected start date in the Spring.

On motion of Councilmember Gascon seconded by Councilmember Seelos the following resolution was

ADOPTED Ayes - 5 (Gott, English, Gascon, Seelos, Dougherty)
 Nays – 0

Resolved to reject the sidewalk bid from Ramsey and authorize Clark Patterson to re-bid the project for Spring 2020 with a completion date of May 31.

RESOLUTION 120-2019

RE-APPOINT LAURIE FOE TO THE BOARD OF ASSESSMENT REVIEW

On motion of Councilmember English seconded by Councilmember Dougherty the following resolution was

ADOPTED Ayes - 5 (Gott, English, Gascon, Seelos, Dougherty)
 Nays – 0

Resolved to re-appoint Laurie Foe to the Board of Assessment Review for the term of October 1, 2019 through September 30, 2024.

DISCUSSION REGARDING LOADER

Supervisor Gott reported that Highway Superintendent Dave Coty gave him a second quote on a loader after Supervisor Gott asked him to talk to Five Star and other vendors. Five Star indicated that they have no room to negotiate on the price. George and Swede has a loader with a base price \$26,000 less than Five Star. They will also give us \$70,000 trade-in value for a net cost of \$44,215. Supervisor Gott asked Mr. Coty about the loader from George and Swede, and his response was, "It is not a John Deere." Supervisor Gott said he would rather not buy a loader than buy something Mr. Coty is not happy with.

Councilmember English asked why the need keeps coming up. Since the loader only has 1,000 hours on it, why not keep using it? Councilmember Dougherty asked what else Mr. Coty plans to purchase this year. Supervisor Gott replied that Mr. Coty wants to replace his pickup truck. It has 50,000 miles on it. He has the dollars in his budget to replace the loader. Supervisor Gott stated that Mr. Coty runs the equipment, and he knows the equipment. Councilmember English stated that it is the point that every year they were getting a new loader with the buy-back program, so he thinks they are used to it now. Supervisor Gott asked the board if it would be okay for Mr. Coty to get pricing on a pickup truck. His current truck is three years old, has 50,000 miles, and we should get

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good money back for it, and get a warranty on a new truck. The Board agreed that Mr. Coty could get pricing on a pickup truck. Supervisor Gott stated that Mr. Coty's budget request will probably include an excavator next year. He will let Mr. Coty know to proceed on the pickup truck, and that the Board will not approve the loader.

PUBLIC HEARING ON BATTERY STORAGE MORATORIUM, CONTINUED

A resident shared that he thinks it is great to have a battery storage moratorium. He is in favor of the Town taking time to look at that issue.

With everyone who wished to be heard having been heard, the Public Hearing was closed at 8:43 PM.

MORATORIUM ON BATTERY STORAGE IS A TYPE II ACTION

Attorney Campbell advised that the battery storage moratorium is exempt from the bulk of the SEQR review process. He asked to let the record reflect that this action is a Type II Action under SEQR.

RESOLUTION 121-2019

ADOPT LOCAL LAW #3-2019 – MORATORIUM ON BATTERY STORAGE

(Note: Local Laws are numbered sequentially when they are proposed, but once adopted, they are assigned the next number of adopted law. The local laws that were proposed as #3 and #4 were not adopted, therefore proposed local law #5 becomes local law #3 when it is adopted.)

On motion of Councilmember Gascon seconded by Councilmember Dougherty the following resolution was

ADOPTED by ROLL CALL VOTE
Supervisor Gott - Aye
Councilmember English - Aye
Councilmember Gascon - Aye
Councilmember Seelos - Aye
Councilmember Dougherty - Aye

Resolved to adopt Local Law #3-Moratorium on Battery Storage as follows:

**TOWN OF LIVONIA LOCAL LAW NO. 3 of 2019 A LOCAL LAW
ESTABLISHING A TEMPORARY LAND USE MORATORIUM PROHIBITING
LARGE SCALE BATTERY ENERGY STORAGE SYSTEM INSTALLATIONS
WITHIN THE TOWN OF LIVONIA**

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Be it enacted by the Town Board of the Town of Livonia as follows:

SECTION 1. TITLE

This Local Law shall be known as the “Moratorium on and Prohibition of Large Scale Battery Energy Storage System Installations within the Town of Livonia.”

SECTION 2. STATUTORY AUTHORITY; PURPOSE AND INTENT.

This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of Livonia under the New York State Constitution, and the Laws of the State of New York, including but not limited to the following authorities: New York State Constitution Article IX, Section 2 (c)(ii)(6), (10); Municipal Home Rule Law § 10(1)(i); Municipal Home Rule Law § 10(1)(ii)(a)(6), (11), (12), and (14); Municipal Home Rule Law § 10(1)(ii)(d)(3); Municipal Home Rule Law § 10(2); Municipal Home Rule Law § 10(3); Municipal Home Rule Law § 10(4)(a), and (b); Statute of Local Governments §10(1), (6), and (7); Town Law § 64 (17-a); Town Law § 130(3) and (15); Town Law §135; Town Law Article 16 (Zoning & Planning) inclusive; Environmental Conservation Law §3-0301(1)(b), 3-0301(2)(m) and 8-0113 and 6 NYCRR Part 617, also known as the State Environmental Quality Review Act, as it pertains to applications that are neither excluded nor exempt from this local law.

This Local Law is a land use regulation. This Local Law is intended and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town to address matters of statewide concern. This Local Law is intended to act as and is hereby declared to exercise the permissive “incidental control” of a zoning law and land use law that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the physical externalities associated with certain land uses, such as potential negative impacts of such uses on a community.

This Local Law shall supersede and suspend those provisions of the Code of the Town of Livonia and New York state law which require the Planning Board and/or the Town Code Enforcement officer to accept, process, and approve land use applications within certain statutory time periods.

This Local Law is intended to temporarily prohibit the creation or siting of large scale battery energy storage system installations (as herein later defined) within the Town of Livonia for a period of up to twelve (12) months, pending the development and adoption of local laws and/or ordinances designed to regulate and govern such installations.

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The Town Board recognizes and acknowledges that the Town needs to study and analyze many considerations that affect the preparation of local legislation to regulate the future creation and siting of large scale battery energy storage system installations. The Town Board has formally requested the Building and Zoning Department and the Planning Board of the Town of Livonia to identify and review local laws from other jurisdictions, and related information and source materials, in order to assist in developing the parameters of a local law to regulate large scale battery energy storage system installations. The Town Board has directed the Town Attorney to assist in this endeavor.

The Town Board also recognizes the need to review and examine its existing ordinances, local laws and Zoning Code provisions insofar as they may be affected by adoption of such local law(s) regulating the creation and/or siting of large scale battery energy storage system installations. It is deemed necessary to enact this moratorium in order to permit the Town adequate time in which to draft suitable legislation for this purpose. During the term of the moratorium the Town of Livonia shall work to prepare and eventually adopt new land use regulations to incorporate into the Town's existing Zoning Code.

At this time, there are no pending applications for the location, development or site plan approval of a large scale battery energy storage system installation.

During the pendency of the moratorium, the Town Board will consider how best to permit such installations so as to harmoniously integrate such installations with the existing agricultural community and landscape and to mitigate potential undesirable environmental impacts that may be associated with such use. At present, the Zoning Code of the Town of Livonia may not adequately regulate such land use. If the community allows such development during that time, the goals of the Town could be undermined or damaged. Moratoria are useful in controlling or temporarily inhibiting development until satisfactory final regulations are adopted.

For these reasons, the Town Board finds that temporary moratorium legislation is both advisable and necessary for a reasonable and defined period of time in order to develop and adopt necessary zoning and land use changes to the Zoning Code of the Town of Livonia, thus protecting and furthering the public interest, health and safety.

SECTION 3. DEFINITIONS.

For purposes of this Local Law, the following terms shall have the meanings respectively set forth below:

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Large Scale Battery Energy Storage System Installation(s) -Any installation of a rechargeable energy storage system having an aggregate energy capacity of 600kWh or more, consisting of electrochemical storage batteries or similar technology, battery chargers, controls, power conditioning systems, inverters, transformers, switchgears and associated electrical equipment designed to store electrical power received from a generating or transmission source and periodically discharging power from the battery energy storage system into the power grid. Systems typically used to provide standby or emergency power and/or an uninterruptable power supply, load shedding, load sharing, or similar capabilities relating to the energy consumed by a residence, farm operation or business on site and having an aggregate energy capacity of less than 600kWh shall not be considered a “Large Scale Battery Energy Storage System Installation” for purposes of this Moratorium.

SECTION 4. TEMPORARY MORATORIUM and PROHIBITION.

- A. Unless permitted pursuant to Section 5 hereafter, from and after the date of this Local Law, no application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, or other Town-level approval of any nature shall be accepted, processed, entertained, approved, approved conditionally, or issued by any board, employee, official or agent of the Town of Livonia, for the construction, establishment, or use or operation of any land, body of water, building, or other structure located within the Town of Livonia, for any Large Scale Battery Energy Storage System Installation, as defined above.
- B. Unless permitted pursuant to Section 5 hereafter, from and after the date of this Local Law, no person, entity or business shall use, cause, or permit to be used, any land, body of water, building, or other structure located within the Town of Livonia for any Large Scale Battery Energy Storage System Installation, as defined above.
- C. The prohibitions set forth above in Clauses A. and B. of this Section 4. are not intended, and shall not be construed, to prevent or prohibit the use and development of battery energy storage systems that are typically used to provide standby or emergency power and/or an uninterruptable power supply, load shedding, load sharing, or similar capabilities and that are for personal or individual use on or about any residence or place of business, or any farm operation, so long as such use does not have an aggregate energy capacity of 600kWh.

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- D. This moratorium and prohibition shall be in effect beginning on the effective date of this Local Law and shall expire on the earlier of (i) that date which is twelve (12) months after said effective date; or (ii) the effective date of a Town Board resolution affirmatively stating the Town Board has determined that the need for this moratorium and prohibition no longer exists.
- E. This moratorium and prohibition shall apply to all real property within the Town of Livonia, and all land use applications for the siting or creation of Large Scale Battery Energy Storage System Installation within the Town of Livonia.
- F. Under no circumstances shall the failure of the Town Board of the Town of Livonia, the Zoning Board of Appeals of the Town of Livonia, the Planning Board of the Town of Livonia, or the Code Enforcement Officer for the Town of Livonia to take any action upon any application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, or any other Town-level approval related to a Large Scale Battery Energy Storage System Installation constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

SECTION 5. HARDSHIP VARIANCE RELIEF FROM APPLICABILITY OF MORATORIUM.

Applications for land use otherwise subject to this moratorium may be exempted from the provisions of this Local Law following a noticed public hearing before the Town Board. It is specifically intended that this moratorium shall supersede New York State law which would otherwise confer exclusive variance the zoning board of appeals.

Following a written request for hardship variance relief, within sixty (60) days of receipt of such request, a noticed public hearing shall be held, at which hearing the Town Board may, but is not limited to consider:

- A. The proximity of applicant's premises or the subject of applicant's request for relief to natural resources, including but not limited to prime agricultural soils, wetland areas, conservation districts and other areas of environmental concern.
- B. The impact of the proposed application on the applicant's premises and upon the surrounding area.
- C. Compatibility of the proposed application with the existing land use and character

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of the area in general proximity to the subject of the application, and its effect upon aesthetic resources of the community.

- D. Compatibility of the proposed application with the recommendations of any administrative body charged with such review by the Town of Livonia.
- E. The written opinion of the Town of Livonia Planning Board and the Town of Livonia Code Enforcement Officer that such application may be jeopardized or made impractical by waiting until the moratorium is expired.
- F. Evidence specifying in detail the nature and level of any alleged hardship imposed on the property owner(s) as a result of this moratorium.
- G. Such other considerations and issues as may be raised by the Town Board.

In making a determination concerning a proposed exemption or grant of relief from application of the moratorium, the Town Board may obtain and consider reports and information from any source it deems to be helpful with review of said application. A grant of relief from application of the moratorium shall include a determination of unreasonable hardship upon the property owner (or if there are multiple property owners, a determination that each such owner shall suffer an unreasonable hardship) which is unique to the property owner(s), a finding that there are sufficient existing regulations to adequately govern the application for which a hardship waiver is being requested, and a finding that the grant of an exemption will be in harmony with, and will be consistent with the existing Town of Livonia Zoning Ordinance and the recommendations of the Comprehensive Plan as such may exist.

An application for relief from the prohibitions of the moratorium shall be accompanied by a fee of \$500, together with the applicant's written undertaking, in a form to be approved by the Attorney for the Town, to pay all of the expenses of the Town Board and any agent or consultant retained by the Town Board to evaluate and consider the merits of such application, including but not limited to any fees incurred by the Town for services provided by the Attorney for the Town.

SECTION 6. PENALTIES.

- A. Failure to comply with any of the provisions of this Local Law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Five Hundred Dollars (\$1,500) or

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imprisonment for not more than 10 days, or both for the first offense. Any subsequent offense within a three-month period shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500) or imprisonment for a period of not more than 30 days, or both. For purposes of this Clause A., each day that a violation of this Local Law exists shall constitute a separate and distinct offense.

- B. Compliance with this Local Law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction, in an action brought on behalf of the Town by the Town Board.
- C. In the event the Town is required to take legal action to enforce this Local Law, the violator will be responsible for any and all costs incurred by the Town relative thereto, including attorney's fees, and such amount shall be determined and assessed by the court. If such expense is not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be charged to the propert(ies) within the Town on which the violation occurred, by including such expense in the next annual Town tax levy against such property, and such expense shall be a lien upon such property until paid.

SECTION 7. CONFLICTS.

For and during the stated term of this legislation, unless the stated term thereof shall be modified or abridged by the Town Board, this moratorium shall take precedence over and shall control over any contradictory local law, ordinance, regulation or Zoning Ordinance provision.

SECTION 8. SEVERABILITY.

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed here from, and the Town Board of the Town hereby declares that it would have enacted this Local Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a

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portion hereof is or declared invalid or unenforceable.

SECTION 9. EFFECTIVE DATE.

The effective date of this Local Law shall be immediately upon its filing with the Secretary of State.

RESOLUTION 122-2019

SET DATE FOR BUDGET WORKSHOP

On motion of Councilmember Seelos seconded by Councilmember English the following resolution was

ADOPTED Ayes - 5 (Gott, English, Gascon, Seelos, Dougherty)
 Nays – 0

Resolved to set the budget workshop for October 10, 2019 at 7 PM at the Town Hall, and further resolved to set the Public Hearing for the 2020 Proposed Budget on October 17, 2019 at 7 PM at the Livonia Town Hall.

OPEN SESSION, CONTINUED

A resident asked for an update regarding the light on the flag at Hemlock Park. Councilmember Gascon responded that Lenny Hayes has ordered a solar operated light and will mount it when it is received.

RESOLUTION 123-2019

AUDIT OF CLAIMS

On motion of Councilmember English seconded by Councilmember Seelos the following resolution was

ADOPTED Ayes - 5 (Gott, English, Gascon, Seelos, Dougherty)
 Nays – 0

Resolved to pay claims 634-689 in the amount of \$132,564.00 from the Abstract dated 8/13/2019.

RESOLUTION 124-2019

AUDIT OF CLAIMS

On motion of Councilmember Dougherty seconded by Councilmember Seelos the following resolution was

ADOPTED Ayes - 5 (Gott, English, Gascon, Seelos, Dougherty)
 Nays – 0

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Resolved to pay claims 670-715 in the amount of \$22,421.74 from the Abstract dated 8/26/2019.

RESOLUTION 125-2019

AUDIT OF CLAIMS

On motion of Councilmember Seelos seconded by Councilmember English the following resolution was

ADOPTED Ayes - 5 (Gott, English, Gascon, Seelos, Dougherty)
Nays – 0

Resolved to pay claims 716-746 in the amount of \$137,980.49 from the Abstract dated 9/5/2019.

With no further business, on a motion of Councilmember Gascon seconded by Councilmember Dougherty the meeting was adjourned at 8:46 PM. Carried unanimously.

Respectfully Submitted,

Colleen West Hay, RMC, CMC
Town Clerk