

**REGULAR MEETING
FEBRUARY 14, 2018
TOWN OF PAVILION
7:00 P.M.**

The Town Board of the Town of Pavilion held the regular monthly meeting on February 14, 2018 at the Town Hall, One Woodrow Drive, Pavilion, New York at 7:00PM present were:

Present were: Deputy Supervisor Dean Davis
Councilperson John Rudgers
Councilperson Donald Oberlin
Councilperson Mark Heineman

Others: Others: Town Clerk Cindy Starr, Highway Superintendent Joel Offhaus, James Cleveland, Bill Kegler, Rob LaPoint, Keith Clarke, Bryan Smart & Erica Welch

Deputy Supervisor Davis opened the meeting at 7:23 PM.

Due to Town Law §42 provides that “while the office of supervisor is vacant, the deputy supervisor shall preside...except that he shall have no vote in his capacity as deputy supervisor on matters coming before the town board. (See attached letter from Reid Whiting Town Attorney)

Deputy supervisor Dean Davis has abstained from all voting

Councilperson Rudgers offered a motion, seconded by Councilperson Heineman to approve the January 10, 2018 Organizational & Regular minutes as submitted.

Approved by unanimous vote (3-1 abstained). Voting was as follows:

Deputy Supervisor Dean Davis abstained
Councilperson John Rudgers
Councilperson Donald Oberlin
Councilperson Mark Heineman

Councilperson Oberlin offered a motion, seconded by Councilperson Rudgers, to authorize the clerk to draw a warrant on the supervisor to pay bills. General \$21550.29 T&A \$33444.17, Library \$2477.33; Sewer \$9,297.93; Highway \$50165.83; Water \$ 437.50

TOTAL \$ 117,373.05

Approved by unanimous vote (3-1 abstained). Voting was as follows:

Deputy Supervisor Dean Davis abstained
Councilperson John Rudgers

Councilperson Donald Oberlin
Councilperson Mark Heineman

A motion was offered by Councilperson Oberlin seconded by Councilperson Rudgers
To approve January 2018 operating statement, monthly bank reconciliation & clerk report.

Approved by unanimous vote (3-1 abstained). Voting was as follows:

Deputy Supervisor Dean Davis Abstained
Councilperson John Rudgers
Councilperson Donald Oberlin
Councilperson Mark Heineman

Highway-Joel Offhaus

- Transit Road resident has concerns as their driveway is a hidden driveway and would like a hidden driveway sign for safety reasons.
- Need to sign contract with Genesee County Soil & Water for oil-water separator grant
- Hudson Rd farm, feed bunk is on Town right-away and has created problems, Town needs to look into solutions for this problem.
- Quotes for new 1-ton pick-up, tabled for next meeting looking for more quotes.

Councilperson Rudgers offered a motion, seconded by Councilperson Oberlin

Resolution No. 26, 2018: Hidden driveway sign

RESOLVED: Post hidden driveway sign on Transit Road for safety reasons.

Approved by unanimous vote (3-1 abstained). Voting was as follows:

Deputy Supervisor Dean Davis Abstained
Councilperson John Rudgers
Councilperson Donald Oberlin
Councilperson Mark Heineman

Councilperson Heineman offered a motion, seconded by Councilperson Oberlin

Resolution No. 27, 2018: Contract signing with Genesee County Soil & Water
Grant.

RESOLVED: Signing contract with Genesee County Soil & Water for grant money to
install Town shop oil & water separator.

Approved by unanimous vote (3-1 abstained). Voting was as follows:

Deputy Supervisor Dean Davis Abstained
Councilperson John Rudgers
Councilperson Donald Oberlin
Councilperson Mark Heineman

Library-Donald Oberlin

Do to bad weather the February meeting was canceled.

Karen Kingsley at this time has not signed the oath book, she will need to be reappointed.

Councilperson Oberlin offered a motion, seconded by Councilperson Rudgers

Resolution No. 28, 2018: Library Trustee

RESOLVED: Appoint Karen Kingsley as Hollwedel Memorial Library Trustee.

Approved by unanimous vote (3-1 abstained). Voting was as follows:

Deputy Supervisor Dean Davis Abstained
Councilperson John Rudgers
Councilperson Donald Oberlin
Councilperson Mark Heineman

Planning Board-John Rudgers

- *Approved two land separations.
- *Working on revisions to the zoning codes.
- *Completing inspections and processing permits
- *Working on State report and fire inspections

Councilperson Rudgers offered a motion, seconded by Councilperson Heineman

Resolution No. 29, 2018: Dennis Kingsley Health Insurance

RESOLVED: Town will pay retiree Dennis Kingsley health insurance in the amount of \$576.66 to be paid directly to Fedelis Care New York insurance company.

Approved by unanimous vote (3-1 abstained). Voting was as follows:

Deputy Supervisor Dean Davis Abstained
Councilperson John Rudgers
Councilperson Donald Oberlin
Councilperson Mark Heineman

Councilperson Oberlin offered a motion, seconded by Councilperson Rudgers

Resolution No. 30, 2018: Town Special Meeting.

RESOLVED: Special meeting for February 21, 2018 @ 7:00pm, to appoint Town Supervisor and Town Councilperson.

Approved by unanimous vote (3-1 abstained). Voting was as follows:

Deputy Supervisor Dean Davis Abstained
Councilperson John Rudgers
Councilperson Donald Oberlin
Councilperson Mark Heineman

Mary Ann Brooks has resigned as Newsletter Editor, and Kelly Kinney is resigning as Planning Board Secretary, the Town will be looking for persons for these positions.

Councilperson Rudgers offered a motion, seconded by Councilperson Heineman

Resolution No. 31, 2018: Town Auditor.

RESOLVED: Hiring of Donald Przybyl to complete 2016 & 2017 Town audit.

Approved by unanimous vote (3-1 abstained). Voting was as follows:

Deputy Supervisor Dean Davis Abstained
Councilperson John Rudgers
Councilperson Donald Oberlin
Councilperson Mark Heineman

Councilperson Rudgers offered a motion, seconded by Councilperson Heineman

Resolution No. 32, 2018: Sound System.

RESOLVED: Purchase of a Town sound system in the amount of \$868.79

Approved by unanimous vote (3-1 abstained). Voting was as follows:

Deputy Supervisor Dean Davis Abstained
Councilperson John Rudgers
Councilperson Donald Oberlin
Councilperson Mark Heineman

Councilperson Rudgers offered a motion, seconded by Councilperson Oberlin

Resolution No. 33, 2018: Tobacco Free Facility

RESOLVED: The Town of Pavilion building is a smoke and tobacco free facility.

Approved by unanimous vote (3-1 abstained). Voting was as follows:

Deputy Supervisor Dean Davis Abstained
Councilperson John Rudgers
Councilperson Donald Oberlin
Councilperson Mark Heineman

Councilperson Heineman offered a motion, seconded by Councilperson Rudgers

Resolution No. 34, 2018: Town Court Clerk Credit Card

RESOLVED: Pavilion Town Court Clerk will be issued a Town credit card with a \$2000.00 limit.

Approved by unanimous vote (3-1 abstained). Voting was as follows:

Deputy Supervisor Dean Davis Abstained
Councilperson John Rudgers
Councilperson Donald Oberlin
Councilperson Mark Heineman

Councilman Oberlin made a motion at 9:21pm to adjourn meeting seconded by Councilperson Heineman. Voting all ayes.

Respectfully submitted,

Lucinda Starr, Town Clerk

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Of Counsel

January 12, 2018

To: Pavilion Town Board
From: Reid A. Whiting, Esq.
Re: Filling supervisor/deputy supervisor/town council vacancies mid-term

Section 64(5) of the Town Law provides that whenever a vacancy occurs in any town office, a majority of the members of the town board may appoint a qualified person to fill the vacancy.

For an elective office, such as Town Supervisor or member of the Town Council, the appointee "shall hold office until the commencement of the calendar year next succeeding the first annual election at which the vacancy may be filled." Town Law § 64(5). This seems to suggest that the appointee who fills the vacancy will hold the office until January 1 of the year following an election.

Section 64(5) also provides that a member of the town board may be appointed to fill a supervisor vacancy so long as he/she resigns prior to such appointment. Town Law § 42 provides that "in case the office of supervisor becomes vacant any deputy supervisor in office at the time such vacancy occurs shall continue to serve until the successor of such deputy supervisor is appointed." Town Law § 42 also provides that "while the office of supervisor is vacant, the deputy supervisor shall preside . . . except that he shall have no vote in his capacity as deputy supervisor on matters coming before the town board."

Therefore, if a Supervisor vacancy occurs, the Deputy Supervisor acts as de facto supervisor until an interim Supervisor is appointed by the Town Board. During this time frame, the Deputy Supervisor cannot vote on any matters before the Town Board. As soon as practicable, the Town Board, or at least a majority thereof, may appoint a qualified person to fill the Supervisor vacancy, including by formally appointing the Deputy Supervisor. A current member of the Town Board, including the Deputy Supervisor, may be appointed as Supervisor as long as he/she resigns their position on the Town Board first. There appears to be no differentiation between "resignation" and "retirement" of a supervisor. In terms of timing, the appointments should occur as follows:

- (1) Deputy Supervisor resigns his position on the Town Board
- (2) (at the same meeting) a new Town Councilman is appointed to fill the vacancy left by the (now former) Deputy Supervisor

- (3) (at the same meeting) a new Deputy Supervisor is appointed pursuant to §42;
- (4) (at the same meeting) now that the Deputy Supervisor role has been filled, the Town Board appoints the (now former) Deputy Supervisor to act as Supervisor.

Pursuant to Town Law § 42, any person, including a town officer, may be appointed deputy supervisor, provided they are qualified as an elective town officer. Also, before performing any functions, the new deputy supervisor must take and file the constitutional oath of office and execute and file an official undertaking.