

Bennington Town Board

March 9, 2022

Workshop Session 6:30 p.m. Regular Board Meeting 7:30 p.m.

**Call Meeting to Order; pledge of allegiance.**

Approval of renewal contract with Williamson law software contracts for Town Clerk and Utility Billing.

Motion by Frounick, seconded by Domes to approve the 2022 Town Clerk and Utility Billing Software Support Contracts with Williamson Law Book.

Ayes: 5                      Noes:                      Abstain:                      Absent:

**Financial Matters:**

General Fund vouchers #45 to #61 \$19,798.15

Highway Fund vouchers #24 to # 36 \$53,024.74

Cowlesville Water vouchers #7 to #11 \$ 4,050.98

Cowlesville Light vouchers # -

Fire District vouchers totaling \$ 198,150.56

Motion by Mohun, seconded by Bryman to approve the vouchers for payment.

Ayes: 5                      Noes:                      Abstain:                      Absent:

Financial Reports - Prior to CD's

Motion by Mohun seconded Frounick to approve the Financial Reports ending February 28, 2022.

Ayes: 5                      Noes:                      Abstain:                      Absent:

Authorize repayment of Hwy Fund Due to General Fund

Motion by Mohun, seconded by Domes to authorize the payment of \$100,000 from Highway Fund to General Fund to close out a Due To/Due From established in 2021.

Ayes: 5                      Noes:                      Abstain:                      Absent:

Zoning/Planning –

Special use Permit David Smith on Schoellkopf Rd. Needs a license with the state to provide services for Draeger. Wyoming County has a need for an installer to work with Draeger to provide services in the County. Neighbors were contacted & receipt was provided by Mr. Smith as proof. This would not be a full-time business at this time. Read statement from Draeger – application will not be approved without zoning from Town of Bennington. Confusion on work being provided.

Supervisor Grant explained the zoning for auto shops. Need a Special use permit as he provided. Explained we need to hear from neighbors and assess the concerns and the board place restrictions on the business as needed. One year permit will be issued for trial to be sure it works out. If all works out a 3 year will be issued.

Board concerns:

Narrow road for vehicles backing out of the driveway. Possible resolution: restriction of the number of vehicles. Smith explained possible repair shop in the future. For now, he just needs

the license to be able to work with Draeger. Installation will be mobile not in house. Most often he will be installing off site no signage showing he is open to the public.

Neighbor Allen & Lavina Schuessler – worried it will morph into something more. Not opposed. Was told to bring concerns as soon as they have them and do not wait.

Domes – parking space limit? Usage? Hours of operation?

Smith – Welcomes a detailed restrictive permit.

Mohun – concerns of unregistered vehicles sitting in the parking area. Limit vehicles that do not belong at residence.

Supervisor Grant – Hours: 3 days a week 9-5? Agreed. Offsite? Unlimited.

Mohun – If the application with Dragger is denied you will be required to come tell the Board and the Special Use Permit will be pulled. Smith Agreed. No build-up of scrap.

Neighbor; Linda Pilc - Great reviews on Smith as a neighbor. In full support.

Support of the Board with underlined restrictions. Review of Environmental assessment form, no issues only concern is it might change level of traffic. No significant environmental impact is the Boards decision.

Motion to approve Application Special Use Permit with restrictions by Bryman and seconded by Frounick. All ayes; approved.

Supervisor Grant will have letter ready by noon Saturday.

### **Communications:**

Town Clerk:

Cert of insurance from CIR Electric.

Notice from Department of State re: Local Law #1 of 2022 banning the sale of cannabis on file.

Notification from Tompkins showing compliance of regulation 87. Bond issuance for the

purchase of the grader. Justice Court Reports for the month of February 2022. Folsomdale

Snowmobile letter thanking for the use of the trail through park. No problems this year. Classes

available WYCO EMS – Tier 3 EMT 4/13/22 9-12 in Warsaw. DEC Posting a brush burn ban

3/16/22 – 5/14/22

### **Minutes of Previous Meetings:**

#### **No additions / Corrections**

Motion by Mohun, seconded by Domes to approve minutes for February 2022 Regular Session

Ayes: 5 Noes: Abstain: Absent:

### **Petitions and public concerns:**

Dustin George: Burrough Rd. between Tooley Rd and Bear Rd. 8-inch pot holes no fire trucks will make it down. It's a safety concern. The road is dirt with no stone left. In the past no response from Highway Superintendent. Needs to be fixed. The ditch on the west side needs to be done. Can salt be applied from other end because the road can't handle it.

Mohun agreed the Highway Superintendent needed to be notified. The fabric is that was placed years ago is no longer there. UPS truck driver saying the road is hardly passable. Supervisor Grant explained we purchased a new grader and the plan is to grade the stone back on the road.

Mr. George explained the town didn't even plow the road because the snow plow didn't make it.

Domes would like a timeline for work from Andy. Supervisor Grant will speak with Highway Superintendent about issue tomorrow. The fire department is worried about damaging their equipment.

### **Departments:**

Town Clerk/Tax Collector – Nothing

Highway – Work on dirt road, plowing and cleaning ditches. First time installation fee \$300 town labor equipment and build materials with signoff from the town. Owner provides pipe but town provides everything else.

**Resolution #2022-3-1 Adoption of Driveway Pipe Policy**

Be it Resolved, that the Bennington Town Board hereby adopts a policy for the installation of driveway pipes within the Town, and

Be it Further Resolved, that said policy shall be effective January 1, 2022 and shall be made available on the Town’s website and at the Town Hall and Highway Department.

Motion by Mohun, second by Frounick

Ayes: 5 Noes: Abstain: Absent:

Cold storage facility will need advertising, bidding (approx. \$28 / sq ft) ARPA funds. \$60-\$75K for just the building. No utilities. All equipment will be in shelter and no lease of offsite storage will be needed. Approved Clerk to advertise. 3/26/22 opening of bids – Monday 3/28/22 evening special session and award bid.

**Resolution #2022-3-2 Cold Storage Facility**

Be it Resolved, that the Town Board hereby authorizes the Highway Superintendent to develop bid specifications for a cold storage facility to be constructed adjacent to the existing highway garage; and

Be it Further Resolved, that the Town Clerk is hereby authorized to advertise for bids for the construction of a cold storage facility for the Highway Department, said bids to be opened on March 26, 2022 at 9:30 a.m. at the Bennington Town Hall; and

Be it Further Resolved, that the Town Board shall meet in a special session on March 28, 2022 at 6:30 p.m. at the Town Hall for the purpose of awarding bid for construction to the lowest responsible bidder; and

Be it Further Resolved, that the Town Board reserves the right to decline any and all bids.

Motion by Mohun, second by Frounick

Ayes: 5 Noes: Abstain: Absent:

Assessor – Going better than expected (response). 100 people so far with communication.

Explanation of value. Most are accepting – its fair and reasonable. A number of Ag Exemptions. Grievance applications for May: He will know which are going before the meeting. Last 3-4 months were difficult.

Communication: Supervisor Grant liked the year-to-year comparison. It’s a state report. Rate is driven by the municipal budget.

Zoning and Planning – First application renewal is Gary Arcese Renewal of Special Use application for 1046 Getman for a firearms dealer. In operation since 1987. Second application Arrow Portable signs at 76 Kern Rd sale and rental of portable signs. It was requested the yard be cleaned up. Improve storage area. 3-year approval with amendment to Arrow Portable sign to improve area.

Motion to approve Application Special Use Permit with amendment by Frounick and seconded by Domes. 4 ayes; 1 noes; approved.

Water District – Steve Perkins will attend April board meeting to talk about updating meters.

Will ask Judy and meter reader to attend. Past due water bills: One payment came in remaining outstanding bills can now shut off water. Over \$400 in arrears bills will be asked to pay current and 20% - 25% of past due to get caught up. Next billing cycle.

Court – Nothing to report.

Park/Recreation – Easter Egg Hunt.

**Old Business:**            Audit of 2021 Town Financial Records  
**Resolution #2022-3-3**            **Audit of 2021 Financial Records**

Whereas, the Bennington Town Board, by law is required to audit the fiscal records of all the towns financial record yearly, and

Whereas, the Bennington Town Board retained an independent audit to be performed by a retired municipal accountant on the financial records of the Town Supervisor, Town Clerk, Tax Collector, Town Court and Water Collector's records for 2021;

Now, Therefore, Be It Resolved, that the Bennington Town Board, at a duly held meeting on March 9, 2022, accepted Donald E. Pryzbyl's audit report, which concludes all of the Town's records to be in compliance; and

Be it Further Resolved that said audit shall be filed with the NYS Unified Court System upon approval.

Motion by Frounick, second by Domes

Ayes:        5                    Noes:                    Abstain:                    Absent:

**New Business:**            Post-Issuance Tax Compliance Procedures  
**Resolution #2022-3-4**            **Adopting Post-Issuance Tax Compliance Procedures**

WHEREAS, the Internal Revenue Service has issued regulations requiring issuers of tax-exempt obligations to certify on various forms that they actively monitor compliance with federal tax rules following the issuance of such obligations; and

WHEREAS, the Town is a periodic issuer of tax-exempt obligations and thus is subject to the aforementioned compliance requirements which are critical for the preservation of the preferential tax status of those obligations; and

WHEREAS, it is therefore in the best interest of the Town to adopt formal written procedures to ensure such compliance and to designate an official responsible for ensuring that such procedures are followed; and

WHEREAS, Hodgson Russ LLP, as bond counsel to the Town, has prepared (and has recommended that the Town adopt) post-issuance tax compliance procedures;

NOW THEREFORE, BE IT RESOLVED, that the Town hereby adopts the post-issuance tax compliance procedures that are attached hereto as "Schedule A" and resolves to be governed thereby; and be it further

RESOLVED, that the below Schedule A will be placed in its entirety in the official records, files and minutes of the Town and adhered to going forward; and be it further

RESOLVED, that this resolution shall take effect immediately upon its adoption.

**Schedule A**

**TOWN OF BENNINGTON,  
WYOMING COUNTY, NEW YORK  
Post-Issuance Tax Compliance Procedures  
for Tax-Exempt Bonds and Notes**

**Statement of Purpose**

These Post-Issuance Tax Compliance Procedures (the "Procedures") set forth specific procedures of the **Town of Bennington, Wyoming County, New York** (the "Issuer") designed to monitor, and ensure compliance with, certain requirements of the Internal Revenue Code of 1986, as amended (the "Code") and the related Treasury regulations promulgated thereunder (the "Treasury Regulations") in connection with the Issuer's issuance of tax-exempt bonds and notes ("Obligations").

These Procedures describe various systems designed to identify, on a timely basis, facts relevant to demonstrating compliance with the requirements that must be satisfied subsequent to the issuance of Obligations to ensure that the interest on such Obligations is eligible for exclusion from gross income for federal income tax purposes. The federal tax law requirements applicable to the Obligations will be described in the tax questionnaire and/or tax certificate prepared by bond counsel and signed by officials of the Issuer. These Procedures establish a permanent, ongoing structure of practices that will facilitate compliance with the requirements for individual borrowings.

To ensure compliance with applicable federal tax requirements, the Issuer must monitor the various direct and indirect uses of proceeds of the obligation and the investment of such proceeds, including but not limited to:

- (1) Monitoring the use of financed property over the life of the obligation.
- (2) Determining the sources of debt service payments and security for the obligation.
- (3) Calculating the percentage of any nonqualified use of the financed property.
- (4) Calculating the yield on investments of proceeds.
- (5) Determining appropriate restrictions on investments.
- (6) Determining the amount of any arbitrage on the investments.
- (7) Calculating any arbitrage rebate payments that must be paid to the U.S. Treasury.

The Issuer recognizes that compliance with the pertinent law is an on-going process, necessary during the entire term of the Obligations. Accordingly, the implementation of the Procedures will require on-going monitoring and consultation with bond counsel and the Issuer's accountants and municipal advisor.

### **General Procedures**

The following procedures relate to monitoring post-issuance tax compliance generally.

- A. **The Town Supervisor, currently Ellen Grant (the "Compliance Officer")**, shall be responsible for monitoring post-issuance tax compliance issues.
- B. The Compliance Officer will coordinate procedures for record retention and review of such records.
- C. All documents and other records relating to Obligations must be maintained by or at the direction of the Compliance Officer. In maintaining such documents and records, the Compliance Officer will comply with applicable Internal Revenue Service ("IRS") requirements, such as those contained in Revenue Procedure 97-22 (see the reference materials presented herewith, referred to herein as "Reference Materials").
- D. The Compliance Officer shall be aware of remedial actions under Section 1.141-12 of the Treasury Regulations (see Reference Materials) and the Treasury's Tax-Exempt Bonds Voluntary Closing Agreement Program (VCAP) and take such corrective action when necessary and appropriate.
- E. The Compliance Officer will review post-issuance tax compliance procedures and systems on a periodic basis, but not less than annually.
- F. The Compliance Officer will be responsible for training any designated officer or employee who is delegated any responsibility for monitoring compliance pursuant to this procedure. To the extent the Compliance Officer needs training or has any questions with respect to any item in this procedure, he or she should contact bond counsel and/or Issuer's accountants and advisors. The IRS recognizes that the Compliance Officer and any delegated individual are not expected to act as lawyers who know the proper response to all compliance situations that may arise, but they should be familiar enough with federal tax issues that they know when to ask for legal or other compliance advice.

### **Issuance of Obligations: Documents and Records**

With respect to each issue of Obligations, the Compliance Officer will:

- A. Obtain and store a closing binder and/or CD or other electronic copy of the relevant and customary transaction documents (the "Transcript").
- B. Confirm that the applicable information reports (e.g., Form 8038 series) for such issue are filed timely with the IRS. Issuer should consult with their accountants and/or bond counsel with questions regarding the filing of such forms.

- C. Coordinate receipt and retention of relevant books and records with respect to the investment and expenditure of the proceeds of such Obligations.

### **Arbitrage**

The following procedures relate to the monitoring and calculating of arbitrage and compliance with specific arbitrage rules and regulations.

The Compliance Officer will:

- A. Confirm that a certification of the initial offering prices of the Obligations with such supporting data, if any, required by bond counsel, is included in the Transcript.
- B. Confirm that a computation of the yield on such issue from the Issuer's municipal advisor or bond counsel (or an outside arbitrage rebate specialist) is contained in the Transcript.
- C. Maintain a system for tracking investment earnings on the proceeds of the Obligations.
- D. Coordinate the tracking of expenditures, including the expenditure of any investment earnings. If the project(s) to be financed with the proceeds of the Obligations will be funded with multiple sources of funds, confirm that the Issuer has adopted an accounting methodology that maintains each source of financing separately and monitors the actual expenditure of proceeds of the Obligations.
- E. Maintain a procedure for the allocation of proceeds of the issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures. This procedure shall include an examination of the expenditures made with proceeds of the Obligations within 18 months after each project financed by the Obligations is placed in service and, if necessary, a reallocation of expenditures in accordance with Section 1.148-6(d) of the Treasury Regulations (see Reference Materials).
- F. Monitor compliance with the applicable "temporary period" (as defined in the Code and Treasury Regulations) exceptions for the expenditure of proceeds of the issue, and provide for yield restriction on the investment of such proceeds if such exceptions are not satisfied.
- G. Ensure that investments acquired with proceeds of such issue are purchased at fair market value. In determining whether an investment is purchased at fair market value, any applicable Treasury Regulation safe harbor may be used.
- H. Avoid formal or informal creation of funds reasonably expected to be used to pay debt service on such issue without determining in advance whether such funds must be invested at a restricted yield.
- I. Consult with bond counsel prior to engaging in any post-issuance credit enhancement transactions or investments in guaranteed investment contracts.

- J. Identify situations in which compliance with applicable yield restrictions depends upon later investments and monitor implementation of any such restrictions.
- K. Monitor compliance with six-month, 18-month or 2-year spending exceptions to the rebate requirement, as applicable.
- L. Procure a timely computation of any rebate liability and, if rebate is due, to file a Form 8038-T and to arrange for payment of such rebate liability.
- M. Arrange for timely computation and payment of "yield reduction payments" (as such term is defined in the Code and Treasury Regulations), if applicable.

**Private Activity: Use of Proceeds**

The following procedures relate to the monitoring and tracking of private uses and private payments with respect to facilities financed with the Obligations.

The Compliance Officer will:

- A. Maintain records for determining and tracking facilities financed with specific Obligations and the amount of proceeds spent on each facility.
- B. Maintain records, which should be consistent with those used for arbitrage purposes, to allocate the proceeds of an issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures.
- C. Maintain records allocating to a project financed with Obligations any funds from other sources that will be used for otherwise non-qualifying costs.
- D. Monitor the expenditure of proceeds of an issue and investment earnings for qualifying costs.
- E. Monitor private use of financed facilities to ensure compliance with applicable limitations on such use. Examples of potential private use include:
  - 1. Sale of the facilities, including sale of capacity rights;
  - 2. Lease or sub-lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers) or leasehold improvement contracts;
  - 3. Management contracts (in which the Issuer authorizes a third party to operate a facility, e.g., cafeteria) and research contracts;
  - 4. Preference arrangements (in which the Issuer permits a third party preference, such as parking in a public parking lot);
  - 5. Joint-ventures, limited liability companies or partnership arrangements;



6. Output contracts or other contracts for use of utility facilities (including contracts with large utility users);
7. Development agreements which provide for guaranteed payments or property values from a developer;
8. Grants or loans made to private entities, including special assessment agreements; and
9. Naming rights arrangements.

Monitoring of private use should include the following:

1. Procedures to review the amount of existing private use on a periodic basis but not less than annually; and
2. Procedures for identifying in advance any new sale, lease or license, management contract, sponsored research arrangement, output or utility contract, development agreement or other arrangement involving private use of financed facilities and for obtaining copies of any sale agreement, lease, license, management contract, research arrangement or other arrangement for review by bond counsel.

If the Compliance Officer identifies private use of facilities financed with tax-exempt debt, the Compliance Officer will consult with bond counsel to determine whether private use will adversely affect the tax status of the issue and if so, what remedial action is appropriate. The Compliance Officer should retain all documents related to any of the above potential private uses.

### **Reissuance**

The following procedures relate to compliance with rules and regulations regarding the reissuance of Obligations for federal law purposes.

The Compliance Officer will identify and consult with bond counsel regarding any post-issuance change to any terms of an issue of Obligations which could potentially be treated as a reissuance for federal tax purposes.

### **Record Retention**

The following procedures relate to retention of records relating to the Obligations issued.

The Compliance Officer will:

- A. Coordinate with staff regarding the records to be maintained by the Issuer to establish and ensure that an issue remains in compliance with applicable federal tax requirements for the life of such issue.
- B. Coordinate with staff to comply with provisions imposing specific recordkeeping requirements and cause compliance with such provisions, where applicable.

- C. Coordinate with staff to generally maintain the following:
1. The Transcript relating to the transaction (including any arbitrage or other tax questionnaire, tax regulatory agreement, and the bond counsel opinion);
  2. Documentation evidencing expenditure of proceeds of the issue;
  3. Documentation regarding the types of facilities financed with the proceeds of an issue, including, but not limited to, whether such facilities are land, buildings or equipment, economic life calculations and information regarding depreciation;
  4. Documentation evidencing use of financed property by public and private entities (e.g., copies of leases, management contracts, utility user agreements, developer agreements and research agreements);
  5. Documentation evidencing all sources of payment or security for the issue; and
  6. Documentation pertaining to any investment of proceeds of the issue (including the purchase and sale of securities, yield calculations for each class of investments, actual investment income received by the investment of proceeds, guaranteed investment contracts, and rebate calculations).
- D. Coordinate the retention of all records in a manner that ensures their complete access to the IRS.
- E. Keep all material records for so long as the issue is outstanding (including any refunding), plus seven years.

Motion by Mohun, seconded by Frounick

Ayes: 5      Noes:                      Abstain:                      Absent:

**Any other Business to Come before the Board/County Matters:**

Garbage – Domes: If we have a 5 bag contract does it change with new containers? Volume doesn't match contract must review. 3 large items each month and Recycle items every other week. New schedule is Friday pickup.

Motion was made by Councilman Mohun, second by Councilman Domes to adjourn at 9:23pm.  
Voting all ayes; carried

Respectfully submitted,

Deanna Nikiel  
Deputy Town Clerk