

WARREN COUNTY BOARD OF SUPERVISORS

COMMITTEE: LEGISLATIVE AND RULES

DATE: APRIL 1, 2015

---

COMMITTEE MEMBERS PRESENT:

SUPERVISORS: MONROE  
FRASIER

COMMITTEE MEMBERS ABSENT:

SUPERVISORS: GIRARD  
SOKOL  
WOOD  
WESTCOTT  
STROUGH

OTHERS PRESENT:

KEVIN B. GERAGHTY, CHAIRMAN OF THE BOARD  
MARTIN AUFFREDOU, COUNTY ATTORNEY  
JOAN SADY, CLERK OF THE BOARD  
FRANK E. THOMAS, BUDGET OFFICER

SUPERVISORS BROCK  
CONOVER  
MERLINO  
SIMPSON  
SEEBER

LEXIE DELUREY, DIRECTOR OF REAL PROPERTY TAX SERVICES  
MICHAEL SWAN, COUNTY TREASURER  
JOHN SALVADOR, WARREN COUNTY RESIDENT  
BOB SCHULTZ, WARREN COUNTY RESIDENT  
DAVID ROSEBROOK, ASSESSOR FOR THE TOWN OF BOLTON  
GEORGE WEINSCHENK, WARREN COUNTY RESIDENT  
FRANK CERRO, WARREN COUNTY RESIDENT  
DON LEHMAN, *THE POST STAR*  
SARAH MCLENITHAN, SECRETARY TO THE CLERK OF THE BOARD

---

Mr. Monroe called the meeting of the Legislative and Rules Committee to order at 10:59 a.m.

Mr. Monroe noted due to a lack of a quorum no action could be taken at today's meeting. He said they would review the agenda; however, he stated, no action would be taken on the matters.

Mr. Monroe advised the first item on the agenda concerned a request from E. Jay Stokes, resident of the Town of Lake Luzerne, for support of legislation to repeal the New York Secure Ammunition and Firearms Enforcement (SAFE) Act of 2013. He stated several counties; including St. Lawrence and Schuyler had passed resolutions to support Senate Bill S511-2015 and S1194-2015.

Chairman Geraghty questioned whether the County had provided prior support for this and Mr. Monroe replied affirmatively. Chairman Geraghty asked whether these bills were substantially different than the previous bills and Mr. Monroe said he was unsure. Mr. Monroe apprised these particular Senate bills were sponsored by State Senators Michael Nozzolio and Katherine Marchione. He outlined the issues with the SAFE Act as follows:

- The New York State SAFE Act of 2013 was rushed to passage by the New York State Senate, Assembly and Governor;
- The SAFE Act had a detrimental effect on hunters, sportsmen and legal gun owners, creating a hostile environment for both of them and for the sale and manufacture of legal firearms;
- The legislation prohibits the sale of firearm magazines with a capacity larger than 7 rounds and those firearm magazines with a capacity larger than 7 rounds, which were authorized to be retained by existing owners, may only be loaded with 7 rounds and eventually must be permanently altered to only accept 7 rounds or be disposed of;

- Few or no low capacity (7 rounds or less) magazines currently exist for many of the firearms commonly possessed by law-abiding residents of New York State;
- The legislation severely impacts the possession and use of firearms now employed by the residents of Warren County for the defense of life, liberty and property; and
- The legislation severely impacts the possession and use of firearms now employed for safe forms of recreation including, but not limited to hunting and target shooting.

Mr. Monroe commented he was unsure if the proposed bills mirrored the previous bill the County supported; however, he said, he believed they were similar. Chairman Geraghty queried whether the matter could be discussed at the April 17, 2015 Board meeting and Joan Sady, Clerk of the Board replied affirmatively. Mr. Monroe mentioned he thought a determination as to whether the County would support the bill needed to be made as soon as possible since the State Budget had been adopted and the legislation would commence discussing other matters shortly. Chairman Geraghty reiterated he felt the matter should be discussed further at the April 17, 2015 Board meeting.

Mr. Brock requested that it be determined prior to the Board meeting whether there were any differences between these particular bills and the previous one they supported. Martin Auffredou, County Attorney, advised that shortly after the SAFE Act was enacted, Resolution No. 110 of 2013 was adopted, which expressed dissatisfaction with the process employed by the New York State Legislature when adopting the SAFE Act. He questioned whether there were any other resolutions adopted following this and Mrs. Sady replied in the negative. She explained that Mr. Stokes was requesting that the County support these two proposed Senate Bills that would repeal all or part of the NY SAFE Act of 2013. Mr. Auffredou said he would compare Resolution No. 110 of 2013 to the two proposed Senate Bills to determine if there were any differences between them.

Chairman Geraghty mentioned the burden that was placed upon the County Clerk's Office by the adoption of the 2013 SAFE Act had a considerable bearing on why Resolution No. 110 of 2013 was adopted by the full Board at the February 15, 2013 Board meeting. He said he felt the new bills were somewhat dissimilar than the previous bill that was proposed. Mr. Monroe advised he felt that while the arguments of the proposed and previous Senate Bills were the same, the two proposed Senate Bills would repeal and/or Amend the 2013 SAFE Act rather than just oppose the method in which it was enacted.

It was the consensus of the Committee that the County Attorney would prepare a resolution in draft form to be distributed and discussed at the April 17, 2015 Board meeting.

Moving along, Mr. Monroe apprised the next item on the agenda pertained to a pending item that was brought forward from a discussion at the March 9, 2015 Committee meeting. He stated the County Attorney was charged with developing a policy regarding public commentary at Committee and Board meetings.

Mr. Auffredou apprised following the March 9, 2015 Committee meeting, he developed a rough draft to commence the discussion on the matter; *a copy of which is on file with the minutes*. He stated he was instructed to develop a policy that would preserve, understand and recognize the importance of public comments during the Committee and Board meetings. He mentioned his original plan was to develop a policy that applied to the Board meetings and a policy that was applicable to Committee meetings;

however, he said, he determined one policy could be developed that covered both types of meetings. He mentioned the draft policy was broken into the following eight different sections:

- Section 1: Purpose and Scope;
- Section 2: Regular and Special Meetings of the Board of Supervisors and Public Hearings;
- Section 3: Presentations at Regular and Special Meetings of the Board of Supervisors and Board of Supervisors Committee Meetings;
- Section 4: Committee Meetings of the Board of Supervisors;
- Section 5: Public Comment- Time Limitations Applicable to All Board of Supervisors Regular and Special Meetings, Committee Meetings And Public Hearings;
- Section 6: Addressing the Board of Supervisors or Committee of the Board Of Supervisors;
- Section 7: Decorum; and
- Section 8: Severability.

Mr. Auffredou stated Section 1 of the policy was rather self-explanatory. He said Section 2 governed when public comment was permissible at regular and special meetings of the Board of Supervisors and Public Hearings.

Mr. Auffredou advised that Section 3 dealt with presentations taking place at regular and special meetings of the Board of Supervisors and Committee meetings. He pointed out there had been a presentation regarding medical marijuana and the Town of Chester at the March 20, 2015 Board meeting. He mentioned he felt it was appropriate for the policy to address how such presentations would be governed. He apprised since Committee meetings were structured differently than Board meetings, Section 4 related to when public comment would be permitted during them.

Mr. Auffredou stated that Section 5 referred to the limitation regarding public comment for regular and Special Board meetings, as well as the Committee meetings. He explained he selected 3 minutes as the time speakers would be generally limited to because this appeared to be what was considered a reasonable time frame at previous meetings. He noted he had included in the policy discretion for both the Chairperson who presided over the Board meeting, as well as the Chairperson of the Committee meeting so that the time period could be adjusted dependent upon perceived or expressed levels of public interest

Section 6, Mr. Auffredou apprised, dealt with how individuals were recognized to make public comments. He stated he believed this policy mirrored what was actively being practiced now. He said individuals wishing to make public comment raised their hands and requested to be recognized by the Chairperson. He continued, when called upon by the Chairperson, the individual approached the podium and stated for the record, their name and address and immediately proceeded into their public comments.

Mr. Auffredou advised Section 7 stated the following regarding Decorum: "In order to maintain proper order and decorum during any meeting including a public hearing, a person who makes a rude or vulgar

---

comment or engages in boisterous or disruptive behavior, or who is unruly may, at the absolute discretion of the Chairperson be removed from the meeting or public hearing and may only return upon permission of the Chairperson. No member of the public shall interrupt a person who is making a public comment at the podium or who has otherwise been recognized by the Chairperson to make a public comment”.

Mr. Auffredou reiterated he put together the rough draft of a policy to commence the discussion regarding the matter. He suggested the policy be reviewed thoroughly over the course of the next few months. He mentioned he would provide the Committee members that were absent today with a copy of the policy. He commented he felt it was imperative that they take their time and review and discuss the policy over the next couple of months to ensure that whatever was adopted would not require further modifications and/or amendments.

Mr. Monroe commented he felt the policy was more generous in relation to permitting public comment than he had observed in other places, specifically in regards to public comment on proposed resolutions. Chairman Geraghty advised he felt the issue arose when individuals got off the point of what was being discussed. He pointed out at the last Board meeting individuals attempted to interrupt a County Official who was providing information regarding the matter that was being discussed. He said he would welcome a set of rules they could adhere to. He mentioned it was important to allow individuals to speak while ensuring they stayed on point with the subject matter being discussed. He pointed out during his first year of service with the County public commentary was not permissible during Committee meetings; however, he said, public comments were now welcomed at meetings. He mentioned he felt other Board members would like decorum to narrow the gap.

Mr. Auffredou advised during his research on the matter he had determined the Committee on Open Government website provided no guidance; however, he said, they did refer the reader to case law standard. He continued, the case law standard stated that any Municipal Board could adopt reasonable regulations governing public comments. He added the website noted that public comment was not required; however, he stated, Warren County had always permitted the public to comment. He commented he drafted the policy under the notion that the County would permit the current arrangements regarding public comment to continue. He apprised he attempted to put together a policy that was reasonable, fair and content point of view neutral.

Mr. Monroe suggested adding that the individual speaking needs to identify which resolution they were addressing in Section 2-1 to ensure they remained on point with the resolutions and Mr. Geraghty concurred. Mr. Conover recommended including how a presentation gets included on the agendas for regular and special meetings, as well as Committee meetings. Chairman Geraghty apprised he felt the current method in place should be continued wherein individuals contacted the Clerk of the Board to request that their presentation be included on the agenda for the applicable meeting. He continued, the Clerk of the Board then put forth the request to the respective Chairperson to determine whether this was permissible or not. He suggested the policy should state the following: “When an individual, group or association wished to make a presentation, they shall contact the Clerk of the Board, who will request approval of the Chairperson of the Board of Supervisors and/or Board of Supervisors Committee, the Chairperson who shall designate the amount of time allowed for the presentation”.

Mr. Brock apprised he felt an issue that occurred on occasion was when individuals who were allowed to comment for more than the 3 minute time frame at a previous meeting believed that because they were allowed to go over the 3 minute time frame at a previous meeting they were entitled to do so whenever they wanted. He suggested including that the 3 minute time frame was upon the discretion of the Chairperson. Mr. Auffredou interjected that he addressed that point in Section 5 (a) which permitted the Chairperson to increase the time period and/or allowed individuals who had already commented on that particular subject matter to comment again as long as it was not repetitive or redundant of the comment previously provided. Mr. Brock advised he felt Mr. Auffredou misunderstood his point, as he was suggesting that the Chairperson announce whether the 3 minute time frame would be enforced or additional time would be permissible during the meeting to ensure individuals did not accuse the County of unfair practices.

Mr. Auffredou apprised he had sought to make this subject matter specific to the public comments themselves and not how the Chairperson would manage the meeting, as he believed the public was aware of what they could and could not do. Chairman Geraghty stated he believed the number of times an individual commented on subject matters should be limited, as was the case in the Town of Queensbury where individuals could only comment one time. John Salvador, Warren County resident, advised, this was no longer the case, as it was now permissible for individuals to comment again after everyone else has had the chance to comment on the subject matter. Chairman Geraghty suggested implementing into the policy that individuals could comment twice on the same subject matter.

It was the consensus of the Committee that the matter would be discussed further at the next Committee meeting.

Continuing with the agenda review, Mr. Monroe advised that Mr. Auffredou would address the Committee regarding two resolutions approved at the March 9, 2015 Committee meeting, but not presented at the March 20, 2015 Board meeting relative to 1) Support for amendment to the New York State Social Studies Learning Standard No. 5 and 2) Supporting adoption of New York State law to amend the education law in relation to Common Core Standards. He pointed out he received additional information from Robert Schultz, Warren County resident, regarding the matter; copies of which are on file with the minutes. He apprised the correspondence from Mr. Schultz dated April 1, 2015 contained a chart that summarized the facts regarding the proposed Civic Education Resolution and articles that spoke to Common Core's violation of the Fourth Amendment. He continued, attached to the correspondence dated March 30, 2015 from Mr. Schultz was an article regarding the Judge in the State of Missouri's ruling that the Common Core testing was illegal, as well as a copy of the actual judgment.

Mr. Auffredou stated following the March 9, 2015 Committee meeting he had the opportunity to closely examine both resolutions, one which addressed Common Core State Standards initiative and the other relating to Social Studies Learning Standard No. 5. He mentioned the proposed resolutions made some concise findings about New York State being in violation of the United States Constitution and various other provisions. He commented he did not feel the County was a court of law and should be stating that New York State was in violation of the United States Constitution etc., as he was unaware of whether this statement was factual. He added he was unsure of whether anyone involved had the expertise to make that finding as far as the Board of Supervisors was concerned. He stated he felt it was necessary to get input regarding the matters from the New York State Board of Regents, the New York State Department of Education, as well as comments from the Superintendents of the school districts

throughout Warren County; therefore, he said, he sent them copies of both resolutions and asked them to provide comments on such within 45 days. He noted he had contacted Roger Wickes, County Attorney for Washington County, to inquire whether they took action on this matter, as the requests had been presented to them, as well. He advised Mr. Wickes informed him their Board decided not to move forward with either resolution. He noted he had read the statutes named by Mr. Schultz as well as the court case he cited from the State of Missouri in which the judge ruled that the State's membership in a federally funded testing consortium charged with creating an assessment aligned with the Common Core standards was illegal. He explained this court case was presided over by a County Circuit Court in the State of Missouri and a judgment was issued recently. He pointed out a publication dated March 10, 2015 provided by Mr. Schultz indicated that the Attorney General for the State of Missouri was planning to appeal that decision. He commented he understood Mr. Schultz's case that there were arguments by analogy; however, he stated, he was hesitant to recommend that the Committee utilize this court case as a basis to take action since it took place in another State. He suggested waiting to see if they received any input from the New York State Board of Regents, the New York State Department of Education, as well as comments from the Superintendents of the school districts throughout Warren County before determining whether to move forward with any action.

Mr. Schultz advised that this was not a political question but rather a legal question and the supporting documentation to his argument was irrefutable. He stated that New York State Education Law was adopted in 1941 and contained Section 801 and 802, both of which were presented on the chart he supplied with his correspondence dated April 1, 2015. He continued, Section 801 of the State Education Law required "every teacher of the State shall teach every child of this State in public and private schools from grade 8 on the history, the meaning, the significance and the effect of every provision in our State and Federal Constitution and in our Declaration of Independence". He stated as he had indicated at the previous meeting he was a graduate of public school in 1957 and he could assure the Committee he was not taught this nor was his grandchild who graduated from Lake George High School this past June. He stated children were not being prepared for their civic lives, as they were unaware of how the system was designed to work, what was included in the State and Federal Constitution and in the Declaration of Independence. He added since children were not being taught properly they were unable to properly make a connection between what the government was doing at every level and what the United States and New York State Constitutions prohibited them from doing that mandated them to do. He notes the bold lettering contained in the chart was the verbiage he was encouraging to be added to Social Studies Learning Standard No. 5.

In regards to Section 802 of New York State Education Law, he apprised this portion of the law stated that "children were to be instructed on the display and care of the flag of the United States of America with such instructions including as a minimum, the provisions of sections one hundred seventy through one hundred seventy-seven of title thirty-six of the United States Code." He pointed out the third box of the chart contained the current Social Studies Learning Standard #5, which he believed was woefully inadequate, as it made no reference to the New York State Constitution. He commented within his 36 years of experience he came to realize that most individuals were unaware in New York, as well as other States that there was a State Constitution, much less the information it contained. He noted it was the State Constitution that governed the behavior of every single elected and appointed official in the State, far more so than the Federal Constitution, which hardly ever came into play with the day to day administration of our States.

Mr. Schultz stated that the fourth box within the chart contained a copy of the proposed amendment to Social Studies Learning Standard No. 5. He stated the proposed amendment would carry over the key

language from Sections 801 and 802 of the New York State Education Law to ensure instruction was in compliance with the law. He pointed out all curriculum must teach to the Learning Standards adopted by the New York State Board of Regents. He mentioned his request was for the County to call upon the New York State Board of Regents to Amend Social Studies Learning Standard No. 5 to bring it into compliance with New York State Education Law. He commented the proposed amendment would assist schools with teaching the history, the meaning and the significance of every provision of the State and Federal Constitutions over a five year period.

In reference to his other request, Mr. Schultz advised this was directed at the State Legislature. He stated the resolution would have the County emphatically urging the State Legislature to bring New York into compliance with the United States Constitution by discontinuing the Common Core State Standards and ending New York State's involvement in the Race to the Top Program and the PARCC (Partnership for Assessment of Readiness for College and Careers Consortium). He mentioned as he stated at the previous meeting he provided the Committee with a copy of the decision made by the County Circuit Court in the State of Missouri. He noted attached to his correspondence dated April 1, 2015 was a copy of the complaint that was filed, which he felt was extremely well done in terms of its detail. He added there were also copies of the restraining order that was issued and the final judgment from the court. He commented there was no question that the assessment consortium New York State was participating in violated the Compact Clause included in Article One of the United States Constitution because it was not approved by Congress.

Mr. Schultz stated although the court determination occurred in a different State, the allegations in their complaint applied to New York State, as well. He apprised his March 30, 2015 correspondence from him identified the paragraphs in the complaint that were factual and applied without reference to any State. He reiterated the facts from the case in Missouri applied in every State. He pointed out New York State belonged to PARCC and the State of Missouri belonged to SBAC (Smarter Balance Assessment Consortium), which he noted was the only difference between the two States in terms of Common Core. He commented the complaint provided a considerable amount of detail in support of both assessment consortiums being in violation of the compact clause. He noted he provided additional information regarding the law in support of the proposed resolution. He argued that requesting comments from the New York State Board of Regents, the New York State Department of Education, as well as comments from the Superintendents of the school districts throughout Warren County was unnecessary since he had provided the facts to the Committee. He reiterated that it was not a political question that required comments from others, as the proper course of action was to review the law to assist with determining whether the Common Core and Social Studies Learning Standard No. 5 were illegal.

Mr. Auffredou advised for the record that he never stated this was a political issue, as he was fully aware that it was a legal matter. He said he was unsure why he could not seek comments from the New York State Board of Regents, the New York State Department of Education, as well as the Superintendents of the school districts throughout Warren County on the matter of their perspective of the law. He said he was concerned that the proposed resolution was stating Mr. Schultz's position that "the current New York State Learning Standard for Civic, Citizenship and Government failed to comply with Sections 801 and 802 of New York State Education Law". He continued, he believed the New York State Board of Regents may take a completely different position on this statement; therefore, he said, he felt it was necessary for the County to solicit comments from the aforementioned agencies if the Board was going to move forward with the resolutions that were presented by Mr. Schultz. He reiterated he thought it was necessary to gather comments from the aforementioned groups before any determination was made.

Mr. Schultz interjected that the aforementioned agencies were the ones who were responsible for the violation. He commented he believed a more productive course of action would be to adopt a resolution calling upon these agencies to Amend Learning Standard No. 5 to read as he proposed. He continued, once this resolution was adopted the agencies could comment and advise why they would not amend this learning standard. He noted if the current practice in place was legal, these agencies would reaffirm that.

Mr. Auffredou commented he felt Washington County was correct in their determination to decline taking action on both of these resolutions. He reiterated that it was his recommendation that no action be taken on the proposed resolutions until it was determined whether the individuals and entities he contacted would provide comments.

Mr. Monroe suggested providing the full Board with copies of the information supplied by Mr. Schultz so that the matter could be discussed further at the next Committee meeting or at the April 17, 2015 Board meeting. Chairman Geraghty advised he felt Mr. Auffredou's suggestion of gathering input from the individuals and entities that he had contacted prior to making a determination on the matter was the correct course of action. He added if no input was received the Board could make their own determination on the matter.

Mr. Schultz thanked the Committee members for their time. Mr. Brock questioned whether Mr. Schultz was stating that the Declaration of Independence and the United States Constitution were not taught in schools and Mr. Schultz replied that the documents were mentioned in school. He advised that Mr. Strough had attended the previous Committee meeting and noted for the record that he was a retired social studies teacher. Mr. Brock interjected that was a social studies teacher, as well. He said the Declaration of Independence and the United States Constitution were mentioned; however, he stated, he was unsure of whether the State Constitution was part of the curriculum. He commented what was important was the law required that what be taught over that five year period was "the history, meaning, significance and effect of every provision of these documents". He pointed out no word found its way in or out of the State Constitution except by a vote of the citizens, as the citizens were the ones who structured and regulated the government. He noted the State Constitution was an extraordinarily important document of which the provisions were not being taught.

Mr. Brock interjected that the provisions were being taught. Mr. Schultz advised there were War Power Provisions of the United States Constitution, Money Provisions of the United States Constitution etc. He continued, the State Constitution contained debt provisions that stated "no public money or credit can be given or loaned to for an aid of any private undertaking" and yet it was routinely violated. He said the State Constitution made it very clear that the State Legislature was not to pass any act which affects the property affairs or government of two or more counties but not all counties; however, this was being violated, as well. He stated he could speak to these issues because he had many years of experience dealing with them.

Mr. Brock advised that the Declaration of Independence, United States Constitution and case law were taught in school; however, he said, the State Constitution was only mentioned. He stated he felt the curriculum that dealt with local government was woefully inadequate and should be improved upon. He noted depending upon the school, Participation in Government, which was either a half year or whole year course, spent an abundant amount of time teaching students about these documents. He questioned why Mr. Schultz was stating that this was not being taught.

Mr. Monroe commented he believed Mr. Schultz's argument was not that it was not being taught but rather that Social Studies Learning Standard No. 5 was not adhering to the Provisions 801 and 802 of the State Education Law. Mr. Brock advised it was not possible to teach a United States history course without teaching the United States Constitution. He stated lots of information was just mentioned, as time did not permit them to teach every provision of the documents.

Mr. Schultz apprised although this was not a forum for debate he would like the record to reflect that it was his perception after doing this type of work for 36 years that we had a culture that children were being raised in and lead to believe that if you did not agree with how things were being managed you should just vote for someone else, as the electoral process provided citizens with remedies and only the electoral process. He noted this was not true in a nation that was governed by the rule of law. He said he did not want to put Mr. Brock on the spot but he mentioned he taught the Declaration of Independence. He continued, one of the most significant provisions of the Declaration of Independence which he was aware was not being taught stated why people institute government. He questioned Mr. Brock why this was and what it said. He said it was a key sentence early on in the document that advised why people institute our government. He explained it was to secure our rights. He advised this was the only purpose of our government.

Mr. Schultz pointed out the Declaration of Independence occupied five pages of a little book he kept. He noted three of the five pages were devoted to a listing of the grievances that the founders of the United States had with the government of their day. He continued, the third page contained what the Constitutional scholars referred to as the Capstone Grievance, which more than all of the others individually or put together led to the decision to separate and declare their independence. He asked Mr. Brock to site the Capstone Grievance. He noted it was crucial that children understood this grievance. He apprised the grievance stated "we have petitioned for redress of these grievances and our repeated petitions have been answered only with repeated injury. A prince or a government whose character is thus marked by every act that which would define a tyrant is unfit to be the ruler of a free people". He mentioned this meant they had petitioned for a remedy to these grievances and their repeated petitions had been met with repeated injury either ignored or worse. He pointed out there were citizens today that were petitioning their governing bodies that were being ignored. He stated this was why the founders placed into the First Amendment freedom of worship, speech, press assembly as where doing here and petition for redress of grievances. He reiterated these were important provisions that were not being taught.

Mr. Monroe thanked Mr. Schultz for his presentation. He stated all of the documents Mr. Schultz made available would be provided to the full Board to discuss further at the next Committee meeting and/or the Board meeting.

Moving along, Mr. Monroe advised the next item on the agenda pertained to continuing the discussion on boundary locations as fixed by the State's 1858/59 Statute. He noted the County Treasurer and the Director of Real Property Tax Services were in attendance to provide some input on the matter. Mr. Auffredou recommended that John Salvador, Warren County resident, provide the Committee with a brief summary about what he had presented at the last meeting and what sort of action he was seeking and then the County Treasurer and the Director of Real Property Tax Services could provide their comments on the matter.

Mr. Salvador apprised since the point of departure at the prior meeting was that the County would pursue this matter and discuss it with Michael Swan, County Treasurer, and Lexie Delurey, Director of

Real Property Tax Services, he had not prepared a statement for today's meeting. Mr. Monroe reminded the Committee Mr. Salvador had made a presentation at the March 9, 2015 Legislative & Rules Committee meeting. He continued, he reviewed the information provided by Mr. Salvador and discussed the matter further with Mr. Auffredou, Mr. Swan and Ms. Delurey. Mr. Salvador requested that Mr. Swan and Ms. Delurey provide their comments on the matter so that he may respond to them. Mr. Monroe noted that Mr. Swan was the former Director of Real Property Tax Services.

Mr. Swan stated he had met with Mr. Salvador in 2007 to discuss the relationship of the boundary lines in Lake George between the Towns of Queensbury and Bolton. He said his office at that time completed a substantial review on the matter which resulted in changing the boundary lines to reflect what was stated in the 1858/59 Statute by the State Legislature. He added the minor amendments to the Statute, as well as adjustments made to the boundary lines via court cases were all reflected on the tax maps. He explained that the tax maps were forwarded on to their respective Towns to utilize at their discretion.

Mr. Swan asked Mr. Salvador whether this issue was with who was responsible for assessing the docks or not assessing the docks, what they are attached to and where they are located in the lake in regards to what town and navigable waters. Mr. Salvador apprised his issue was the fact that the docks were being assessed outside the boundaries of the town that was taking care of the assessing. Mr. Swan advised he felt the correct course of action for Mr. Salvador to take on this matter was to file a grievance with his local town. He continued, if the Town declined his grievance then he had the option to commence legal action against the town.

Mr. Salvador interjected that he could not file a grievance with the Town because the entire lot was not outside the boundary line, which was part of the criteria for filing this type of grievance. Mr. Swan advised he believed this was an issue that had to be addressed with the town, as the County had no jurisdiction or authority to instruct the towns on how to interpret or manage their assessments. He said the one exemption to this was under the State Legislature if the County was an assessing unit, of which Warren County was not. He noted the local town was the assessing unit. He mentioned Ms. Delurey and the Tax Map Unit could work on this issue again if there was a discrepancy with the town lines or there was more information that they missed when they performed the review in 2007. He reiterated it was his belief that the County had no jurisdiction over this matter and it should be settled with the town, which was exactly what he stated in 2007.

Mr. Auffredou restated his opinion from the previous Committee meeting that he believed that the proper course of action for Mr. Salvador to resolve his issue was to file a grievance with the Town of Queensbury. He continued, should the Town of Queensbury deny Mr. Salvador's grievance Mr. Salvador could file a petition with the court to resolve the matter. He supported Mr. Swan's statement that the County did not have the authority to enforce the towns decision to honor the boundary lines as set forth on the tax maps. He pointed out for today's record that Mr. Strough from the Town of Queensbury was not in attendance. He mentioned he was aware that Mr. Strough had continued with his search for a metes and bounds description of the town boundaries and had contacted the State Legislatures and some others regarding the matter.

Mr. Monroe commented it was his understanding that Mr. Swan and the County GIS Department agreed with Mr. Salvador's position that the 1858/59 Statute set forth the correct boundary lines and Mr. Swan concurred. He said that he had requested that the County Attorney review whether this Statute had even been amended or repealed; however, he said, there was a separate question on the assessment. Mr. Auffredou advised his office had commenced the review of the 1858/59 Statute to see if there were

any modifications and thus far they have not located any. Mr. Monroe pointed out whatever determination was brought forth from the review would only have an effect on how the County managed the tax maps and what they did with respect to GIS; however, he said, the County had no jurisdiction over the assessment function. Mr. Swan noted assessing the docks was a local issue between the Towns of Bolton and Queensbury. He noted New York State Real Property Tax Law stated clearly that the local town and the local assessor had the authority to perform the assessments and the County had no jurisdiction over this process.

Mr. Merlino suggested assuming that Mr. Salvador was correct and it was determined that these towns did not have the right to assess the docks. He asked who would be charged with assessing the docks and queried whether they would be lumped into the County's portion of the lake or would they go elsewhere. Ms. Delurey advised that the Town of Bolton had the rights to the water up to the shoreline in the Town of Queensbury; therefore, she said, although the docks were located in the Town of Bolton they were attached to real property in the Town of Queensbury. Mr. Swan interjected there had always been a "Gentlemen's Agreement" that where the dock was attached was the Town that it was assessed in. He pointed out this practice took place not only in Warren County, but statewide. He said he searched for an opinion of council on this matter but was unable to locate one. He said this was what was practiced during the 1970's when he was the Assessor for the Town of Queensbury. He stated the towns needed to determine whether this was the correct course of action to be taking on the matter.

Mr. Auffredou mentioned if it was assumed the Town of Queensbury did not have the authority to assess those docks they would either be deemed un-assessable altogether or the Town of Bolton perhaps could seek the authority to create several little taxable parcels for each of those docks, which would be a sizeable, distressing task for them to take on. He added he thought he heard Mr. Salvador raise a separate argument that he was already being taxed on his docks by the Lake George Park Commission and that he pays an annual fee for his docks to them as did all dock owners on the lake. He advised he felt at some point in time there had to be some level of involvement by the State to develop a solution.

George Weinschenk, Warren County Resident, apprised he felt all of this became a moot point with the ruling by Supreme Court Judge David Krogmann's that stated the towns did not have the right to tax State property. He pointed out most of the boathouses, docks, etc. were located on State property. He said the decision was reaffirmed when the appeal was denied. Mr. Auffredou interjected that the decision Mr. Weinschenk was speaking of dealt with the provisions of the navigation law and that there was not the authority of a town under its zoning powers to regulate docks; however, he said, he did not believe it had anything to do with the assessed value of docks. He added he could be wrong about this but he did not remember reading that as part of the decision.

Mr. Weinschenk advised the County and towns did not have the right to go on to State land and make a determination they were going to tax it, as the authority was with the State. As an example, he stated, if it was determined that the Town of Queensbury did not have the right to assess these docks, then their assessed valuation is less than what they are claiming; therefore, he said, the Town of Queensbury was claiming more of their share of the sales tax that should be allocated to them. He pointed out this took away from towns that did not have property on the lake such as Lake Luzerne, etc., which he felt was wrong. He added this also had an effect on the school districts because the assessment was used by the school districts to determine their taxable rate. He continued, if the assessment was incorrect then the schools did not have the right to tax that parcel, as well.

Mr. Monroe requested that David Rosebrook, Assessor for the Town of Bolton, provide his opinion since he was experienced on the matter. Mr. Salvador interjected that he believed it was necessary to establish where the boundaries were prior to determining the propriety of assessment. He noted there was no foundation in the law to utilize the boundaries that were currently being utilized. He added he believed this was a declaration that needed to come from the Warren County Board of Supervisors. He stated according to State law the County Real Property Tax Services Department was the only organization within the State that he was aware of that had the authority to map municipal boundaries and district boundaries.

Mr. Monroe asked whether the Real Property Tax Services Department had created tax maps that supported his position and Mr. Salvador replied affirmatively. Mr. Salvador explained the Town of Queensbury did not honor these as the correct boundaries. He stated it was necessary to determine how to ensure that the towns were honoring the proper boundary lines as set forth by the law.

Mr. Rosebrook advised this subject matter was not new to him, as it had been brought forward a number of times over the 20 years that he been the Assessor for the Town of Bolton. He stated when he was originally asked about the jurisdiction it was determined that the property rights for the docks, boat houses, etc. derived from the dominant property on the shores of Lake George in the Town of Queensbury. He mentioned from this point forward the Town of Bolton permitted the Town of Queensbury to perform assessments of property that had the rights to the docks, boat houses, etc. He pointed out the boundary for the Town of Bolton not only extended along the shoreline of the Town of Queensbury, but also extended along the shoreline of the Towns of Fort Ann and Dresden. He added the Town of Hague had a boundary line along the westerly shore of Warren County in the Towns of Dresden and Putnam; therefore, he said, the same issue was relevant to them, as well. He said their decision in the past may have been a matter of convenience because he was unaware of who owned the shoreline in the Town of Queensbury, as he did not have access to these records. He explained when a deed was filed for a shoreline in the Towns of Queensbury, Dresden or Fort Ann he had no idea when it was filed, who owned the property, and the rights that proceeded on to New York State property in the navigable waters of Lake George. He stated a process was not in place at this time to gather the information necessary to assess such properties that were applicable. He said there was no way for him to determine whether the boundary line along the shore was at the high water mark, the mean low water mark or someplace in between depending upon how deep the water was right off the immediate shore could make some difference. He advised he was unaware of what the distance was between the high water mark and the low water mark in some of these cases, as it was dependent upon the topography.

Mr. Rosebrook commented the decision by Supreme Court Judge David Krogmann had nothing to do with taxation, as it was only applicable to rules and regulations applying to the navigable waters of the Lake George basin. He mentioned the Town Assessment Office was not a regulatory agency, as directed by New York State, only the local assessor could tax property with the exception of when a County becomes a taxing jurisdiction or the exception of when the State assesses special franchise property. In conclusion, he stated, the process in place right now was a matter of convenience, as the proper information was not available to their office in order to gather the information necessary to determine which boat houses, docks, etc. were located in the Town of Bolton or in the Town of Hague.

Mr. Monroe advised that he felt the proper course of action for individuals to take if they felt they were being improperly assessed was to file a grievance with the Assessor for the Town of Queensbury alleging that they were assessing their property without the proper authority. He continued, if their grievance was denied by the Town of Queensbury, individuals could pursue their claim through litigation. He noted

the County did not have any jurisdiction over that process and Mr. Rosebrook concurred. Mr. Rosebrook added a court determination may assist them with ensuring that the proper procedure was in place. He reiterated although the docks, boat houses, etc. were located in the Towns of Bolton and Hague up to this point they had no possible wherewithal to assess them. He said it clearly stated in the Real Property Tax Law that the local assessor was to identify and assess all of the real property within their jurisdiction.

Mr. Salvador interjected that the boathouses, docks, etc. were located in the Town of Bolton's jurisdiction. Mr. Rosebrook advised although the docks were located in the Town of Bolton's jurisdiction he had no way of identifying them. He added he would require a substantial amount of administrative assistance to identify which ones fell within their jurisdiction. He reiterated he felt the proper venue to resolve the matter was through the court system. Mr. Salvador stated following the meeting he would commence the grievance process with the Town of Queensbury.

In regards to Mr. Weinschenk comments earlier, Mr. Rosebrook advised the local assessor assessed State property, as the State did not assess their own property. He pointed out there was about \$300 million of State islands assessed in the waters of Lake George. Mr. Weinschenk questioned who granted the local assessor the authority to assess State property and Mr. Rosebrook replied that State law directed that the local assessor was the only individual who could assess property within their jurisdiction. Mr. Weinschenk apprised the Towns and County did not have the right to go on to State property. Mr. Swan mentioned there was a court case regarding this particular matter in which the State used to perform the assessments and supply them to the local assessor. He continued, the local assessor had to place the assessments on the tax rolls. He added he was unsure of what the name of the Town was where this occurred; however, he said, the court determined the town assessor had the right to assess state land within their jurisdiction. Mr. Weinschenk questioned who granted the local assessor to assess the State lands and Mr. Swan replied this directive was included in New York State Real Property Law.

Mr. Monroe requested that Ms. Delurey provide some insight on the matter. Ms. Delurey apprised that the tax maps supported Mr. Salvador's statement regarding the boundary lines. She stated she thought a determination by the courts was necessary to make changes to the current method of assessing the docks, boathouses, etc. She said they had no way of interpreting where the docks were located, what the description for each dock, boathouse, etc. would be to create the parcel. She noted this would create several small parcels throughout the lake; however, she mentioned, they had no way of gathering the information required to plot out each individual parcel on the tax maps. Mr. Monroe pointed out changes could occur with the season because individuals utilized floating docks that were placed on the lake in the spring and removed in the fall. Ms. Delurey added they were unaware of whether the docks were located in high water, low water, etc.

Mr. Salvador apprised when the boundary line issue was settled he had prepared a cross section of the boundary line along the shore. He stated there were two statutorily established elevations on Lake George that the County should accept and not try to change. He noted the first one was the one mean high water mark of 320.2 feet above mean sea level, which was established by the New York State Department of Environmental Conservation and the Adirondack Park Agency. He maintained the water level of Lake George during the month of April usually reaches the mean high level mark, which was supported by records from the Lake George Park Commission. He continued, as long as the water level rises to the mean high level and the water was navigable then this figure could become the basis for the shoreline of Lake George. He mentioned this meant the mean high water level could be considered the

boundary line between the Towns of Bolton and Queensbury. He explained the way to establish this was to have the Lake George Park Commission notify the property owners on the Lake when the water level reached the mean high level in the spring so they could place pegs on their lawns to identify where the mean high level was on their property.

In regards to the mean-low water mark of 317.74 feet above sea level was established in 1963 by revision to Section 15A of the Public Lands Law. He said the range between the mean high level and the mean low level was private property, as it was beyond the mean low that the State claimed ownership of the land. He mentioned the brochure from the Office of General Services stated that on navigable lakes the demarcation between private and public land was the mean low water mark; therefore, he commented, there was a taxed parcel between the mean high and mean low. He apprised the size of the taxed parcel was dependent upon the topography. He advised that New York State Real Property Tax Law stated that the literal owner takes title to the mean low water mark.

Chairman Geraghty asked whether taxes were paid to New York State for the property along the shoreline. Mr. Salvador explained property owners along the shoreline of Lake George paid taxes to New York State in the form of a fee to the Lake George Park Commission. Chairman Geraghty questioned whether the State would tax a dock that was on their portion of the land and Mr. Salvador replied in the negative. Mr. Salvador stated that in cases such as those property owners compensated the State through an annual fee for docks. Chairman Geraghty queried what would occur if a boat house or dock went beyond the mean low water mark and Mr. Salvador replied that this was why they paid the annual fee to the Lake George Park Commission. Mr. Salvador commented he felt property owners such as himself were being double taxed on their docks along the shoreline. Mr. Monroe interjected that was only the case if you felt the fee charged was a tax; however, he said, he did not feel that this was the case. Mr. Salvador commented it was imperative that a solution to the disagreement over the boundary lines was established.

Mr. Conover acknowledged Mr. Rosebrook for his work as the Assessor for the Town of Bolton and commended him on a job well done. He suggested Ms. Delurey research whether any other towns and/or counties had dealt with a similar issue and if so how did they handle it, as well as seeking guidance from the New York State Assessors Association on the matter. He commented he believed the County may have some jurisdiction over the matter since they established the County Tax Rate that was applied to the individual towns. He concurred with Mr. Rosebrook's statement that there was no way for the Town of Bolton to identify the docks, boathouses, etc. that were associated with property in the Town of Queensbury.

Mr. Swan advised the aerial photography for tax mapping was completed during the month of April. He said this was used as the basis for the water level when the tax maps were drawn; therefore, he said, if the high mean water level was in April then the tax maps would properly note this.

Mr. Conover asked whether Ms. Delurey could inquire whether New York State offered any solutions to the matter. Ms. Delurey advised she could contact Directors of Real Property Tax Services from other Counties to inquire whether similar situations had occurred in their Counties and if so how was the matter resolved. Mr. Conover stated the issue did not only encompass private docks, as it impacted marinas, commercial enterprises, boathouses, etc.

Mr. Monroe advised that it appeared the only way for a solution to be determined was through the State Legislature or a binding decision by a court. He noted Assemblyman Stec had indicated to him

there was no interest within the State Legislature to address this issue. Mr. Monroe pointed out the County had no jurisdiction to enforce the towns to honor the County's findings even if the County went through the process of creating tax map parcels for each dock, boathouse, etc. Mr. Salvador interjected that the County did not have to make any changes to the tax maps. Mr. Monroe apprised he did not understand what the County had jurisdiction over to solve the issue for Mr. Salvador.

Mr. Salvador commented the County could enforce upon the Town of Queensbury that there were not recognizing the correct town boundaries. Mr. Monroe stated he did not believe the County had the authority to carry through with this and Mr. Auffredou concurred. Mr. Auffredou added he thought this was a legal matter between Mr. Salvador and the Town of Queensbury. He said if a lawsuit was filed the County could be named as an indispensable or necessary party; however, he advised, he did not think the County by Statute had the authority to enforce the Town of Queensbury to take any action. Mr. Salvador interjected that the Town of Queensbury did not have the authority to map their Town boundaries. Mr. Auffredou apprised he understood Mr. Salvador's argument was the Assessor for the Town of Queensbury was making an entry on the tax roll for which their assessor did not have the authority to do and/or they were assessing properties outside of their boundary lines. He stated that Mr. Salvador could file a grievance with the Town of Queensbury. He continued, if Mr. Salvador was unsuccessful with his grievance with the Town of Queensbury he had the option to file an Article 7 and make his argument before the court. He added under Article 7 he was required to name the County as a necessary party.

Mr. Conover stated that Riparian rights may be applicable to this situation. Mr. Auffredou advised that this argument could be raised before the court, as he believed Mr. Salvador's assumption that the property owner owns to the mean low level was correct; however, he said, with any property came an abundance of rights. He mentioned he believed owning shorefront property entitled Mr. Salvador to Riparian Rights. He explained the State regulated that area of the shoreline for purposes of docks, wharfs, boathouses, etc. He said the State could determine whether it was permissible for individuals to have such objects based upon how much shoreline frontage and individual had or the particular conditions. He commented the argument could be made that this was part of Mr. Salvador's Riparian Rights that went along with his ownership of the dominant parcel. Mr. Conover added that it was not a big leap from there to make the connection with value.

Mr. Monroe advised the County was responsible for the tax maps. He asked Mr. Salvador whether he agreed that the County's tax maps were correct and Mr. Salvador replied affirmatively. Mr. Brock queried how much value a dock added to a property's assessed value and Mr. Rosebrook replied the average cost of a crib dock was about \$60,000. Mr. Auffredou questioned whether that figure related to the cost of the dock or the value added to the assessment and Mr. Rosebrook replied it related to the cost. Mr. Auffredou mentioned that when he was the Counsel for the Lake George Park Commission and someone applied for a variance, an analysis of what the property was worth with and without a dock was performed. He commented some of the figures that were calculated for the added value to the parcel with a dock were astounding.

Mr. Merlino pointed out that he was the Supervisor from a small Town that did not have lakefront values. He continued, because the Town of Queensbury and some of the other Towns were being assessed at such high values they were allocated a larger portion of the sales tax revenue generated in the County; therefore, he said, he felt the County was involved in the matter because they were allocating sales tax revenue that they were not eligible for if their town value decreased slightly. He

commented he would prefer that the towns that received larger allocations of the sales tax revenue set aside about 1% of that for the smaller towns.

Mr. Monroe advised that he felt the opinion of the County Attorney was that the County did not have jurisdiction to direct the Town of Queensbury to relinquish the assessments on the parcels that were impacted by this or to direct the Town of Bolton to assess them.

Mr. Weinschenk stated that the County was involved because they signed the tax warrants at the end of the year. He commented the tax warrant should not be signed if the County was aware that the Town of Queensbury was falsifying their records. He apprised whether or not it was a "gentlemen's agreement" that the Town of Bolton permitted the Town of Queensbury to assess these docks as part of their property was illegal because State law permitted towns to only forfeit up to \$10,000 without referendum by the voters. He commented he did not feel the residents of the Town of Bolton would permit to forfeiting these parcels to the Town of Queensbury. He mentioned it was necessary to come up with a solution that was legal to this issue. Mr. Monroe reiterated the only two valid solutions to this issue were if action was taken on the matter by the State Legislature by Amending the 1858/59 Statute or through litigation. He noted neither the Legislative & Rules Committee nor the full Board had jurisdiction over the matter.

Mr. Conover commented the County did have an interest in resolving the matter. He said this issue had been present for several years; therefore, he stated, assistance in resolving the issue could be provided by the State if they could provide similar cases that took place throughout the State and how they were resolved. Mr. Monroe apprised this would not provide any information on the boundary line set forth by the 1858/59 Statute. Mr. Conover stated he thought at this stage there was not enough information available to dispute the boundary line. He said unless it was challenged the current way docks were assessed by the Towns of Queensbury and Bolton would remain in place.

Frank Cerro, Warren County Resident, advised that one of the things he had not heard today in any of this discussion was when the boundary issues commenced. Mr. Weinschenk apprised that the issue commenced in 1858/59.

Mr. Monroe advised that the issue would not be resolved today, as they did not have a quorum. Mr. Salvador apprised that he was on his way to file an Article 7 with the Town of Queensbury because his boathouse was located in the Town of Bolton.

Mr. Weinschenk stated when he was on the Lake George Park Commission during the 1980's they researched this matter back to the 1858/59 Statute. He noted they found no evidence in the State Legislature that this was ever changed or that there was a "Gentlemen's Agreement" in place.

Mr. Monroe commented he concurred with the County Attorney that the matter needed to be settled through litigation; therefore, he stated, he felt Mr. Salvador was taking the correct course of action to resolve the matter. Mr. Salvador asked whether it was appropriate for him to name the County as a necessary party and Mr. Auffredou replied Article 7 proceedings required that the County be named as a necessary party. He added he believed if Mr. Salvador was seeking some sort of tax relief from the lawsuit he had to name the County as a necessary party. Mr. Salvador stated he could make a combined Article 7 and 78. Mr. Monroe commented taking care of this issue would also resolve the sales tax issue, as well because if there was a change in the assessments it could change the amount of sales tax allocated to the Towns of Bolton and Queensbury, which he noted seemed to be a concern, as well. Mr.

---

Auffredou explained it would provide Mr. Salvador with multiple options to pursue against the Town of Queensbury. Mr. Salvador apprised he would be sure to keep his complaint as narrow as possible.

There being no further business to come before the Legislative & Rules Committee, Mr. Monroe adjourned the meeting at 12:34 p.m.

Respectfully submitted,  
Sarah McLenithan, Secretary to the Clerk of the Board