

Town of Lyndon  
Special Meeting  
January 21, 2014

A Special Meeting of the Town Board of the Town of Lyndon, County of Cattaraugus and the State of New York was held at the Town Hall, 852 Lyndon Center Road, Cuba, New York on the 21<sup>st</sup> day of January 2014.

Present: Leonard Kaluzny ----- Deputy Supervisor  
Sidney Emmons ----- Councilman  
Don Gietl ----- Councilman  
Scott Hillman ----- Councilman  
Frank Puglisi ----- Clerk  
George Schneider ----- Supt. of Highways

Attended by: Numerous Residents, the Mercury Gazette, Attorney Andrew Fleming

Notice of said meeting was sent to the Mercury Gazette on January 16, 2014 with the same being posted on the same date at the Town Hall.

Deputy Supervisor Kaluzny called the meeting to order at 7:00pm with the Pledge to the Flag.

**Appointment of Town Board Member-**

Deputy Supervisor Kaluzny stated that this Special Meeting is being held to fill the vacated Board seat of Terry Bush.

Deputy Supervisor Kaluzny nominated Clifford (Skip) Evans and seconded by Councilman Hillman. Deputy Supervisor Kaluzny stated we will do a voice vote of each Board member.

Deputy Supervisor Kaluzny ----- Ayes  
Councilman Gietl ----- Ayes  
Councilman Hillman ----- Ayes  
Councilman Emmons ----- Nays

The motion failed 2 ayes to 1 no as Deputy Supervisor does not vote.

Deputy Supervisor Kaluzny asked the Board for any other nominations. Councilman Emmons nominated John Linderman which was seconded by Councilman Gietl. A voice vote was taken:

Deputy Supervisor Kaluzny ----- Nays  
Councilman Gietl ----- Nays  
Councilman Hillman ----- Nays  
Councilman Emmons ----- Ayes

The motion failed 1 ayes to 2 no.

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Deputy Supervisor Kaluzny asked if there are any other nominations on the table for Councilman, again asked are there any other nominations, and again asked are there any other nominations?

There were no other nominations and Clifford (Skip) Evans was declared the winner by Deputy Supervisor Kaluzny.

A resident then asked to be heard on a point of order. The resident stated that an appointed Town Supervisor does not have a vote according to Town Law. Councilman Emmons agreed with the statement but corrected it to Deputy Supervisor has no vote.

An extensive conversation between the Town Board and the public took place over whether or not Kaluzny was appointed supervisor. Many residents felt Kaluzny was Supervisor by way of his being sworn in. The Board maintained Kaluzny was never appointed as Supervisor.

Attorney Andrew Fleming then stated that he was here on behalf of the Supervisor Leonard Kaluzny and there is an audio tape of him being appointed as Supervisor. Attorney Andrew Fleming then stated there are signatures of the Town Board members giving Leonard Kaluzny full check signing privileges as Town Supervisor and not Deputy. He also stated that there is an audio tape of the Town Clerk swearing Mr. Kaluzny in as Supervisor, and stated the Board confirmed this by their presence at the meeting. A resident stated "If he swore him (Kaluzny) in as supervisor it was an illegal action by the Town Clerk, absolutely, by town law." Mr. Fleming then stated that as Mr. Kaluzny sits here tonight he is the Town Supervisor.

A resident asked the Town Clerk if he had a copy of the Oath that was read because as he remembered, it sounded like the same oath given to every person.

Town Clerk Puglisi stated that the Oath is the same for everybody and you insert whatever is appropriate. Blanks are left in it to fill in the name and title of a person.

Another resident asked the Town Clerk what he inserted as the title.

Town Clerk Puglisi stated Town Supervisor.

That resident then asked by whose authority did he swear Mr. Kaluzny in as Supervisor.

Town Clerk Puglisi stated the Board directed him to swear him in.

Councilman Gietl stated "No we did not direct you ... as acting supervisor is what we attempted to do".

Councilman Hillman stated he was under the understanding he was only sworn in as a deputy supervisor to sign checks and that sort of thing, until the Board appoints a supervisor. Attorney Fleming stated Mr. Kaluzny was sworn in.

Deputy Supervisor Kaluzny then stated if you remember the Board told me to come on down and close the meeting and then I stated I was not sworn in and the Board told me to come down and be sworn in as Supervisor. A resident stated it was not necessary for there to be a Supervisor to close the meeting.

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Attorney Fleming asked if Mr. Evans had been voted in? Town Clerk Puglisi stated that until we get a supervisor, it's 2 to 1. With the Supervisor's vote it is 3 to 1. Councilman Emmons stated that it was mox nix's whether Mr. Kaluzny was Supervisor or Deputy but there is no argument that Mr. Evans was on the Board. Councilman Gietl welcomed Mr. Evans to the Board. Town Clerk Puglisi asked Mr. Evans if he wanted to get sworn in now and Clerk Puglisi left the room to get the Oath book. Councilman Hillman asked if Supervisor Kaluzny's vote legally counted. Fleming stated " if he (Kaluzny) was deputy Supv., you would still be voting 2 to 1". Emmons mentioned that with three members voting, it would have to be unanimous.

Hillman: "With 3 bd members, 2 to 1 doesn't cut it"

Fleming: "I've already rendered a decision (unintelligible)....."

Councilman Emmons stated that the question is if Mr. Kaluzny is the Deputy or is he a full blown Supervisor. Councilman Gietl stated that is the question.

Attorney Fleming stated that this is not the question regarding appointing Mr. Evans.

Councilman Emmons stated that he understood that. He also stated that was mox nix over and done with. A town resident suggested the Board consult an attorney and that the Board should adjourn the meeting and consult with the Association of Towns.

Attorney Fleming stated that what was posted on the doors and in the paper for the special meeting was to fill board vacancies. He also stated that the rest of the issues were not put in the notice so the rest of the Town's people are not notified. He stated that they did what they have come to do and have elected Mr. Evans to the Board.

Councilman Gietl stated "then we better table ".

Councilman Hillman stated that there is gray area and he wants to make sure the majority vote would put Mr. Evans on the Board without the Supervisors vote counting. Emmons stated three board members would have to be unanimous. Hillman: "With only three board members, 2 to 1 doesn't cut it".

Councilman Emmons asked Clerk Puglisi what was put in the public notice? Also, if he talked to anybody before he put the notice in the paper.

Clerk Puglisi stated no, he did not talk to anybody before putting the notice in the paper. The Board told him to put a notice in the paper and also include that immediately following the meeting there would be an internal Justice Audit. Emmons: "I thought it was very clearly understood that we were going to appoint a board member and a supervisor". Puglisi: "I just put Town board".

Councilman Emmons stated that under the circumstances he would move to close this meeting.

The Residents asked what about swearing Mr. Evans in as Councilman?

Councilman Emmons stated oh I am sorry please do that right now.

Councilman Hillman stated he wanted to make sure everything was done right and Mr. Evans does have his support.

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Attorney Fleming stated that Mr. Kaluzny is the Supervisor and if there is a court challenge they could then challenge Mr. Evans appointment as well.

Councilman Emmons stated that the crux of the problem is whether Mr. Kaluzny is Supervisor.

Additional discussion was held between the Board, Fleming and residents over status of Kaluzny's position.

Deputy Supervisor Kaluzny asked to bring something up to the Town Board. He then stated that when this happened it was not mentioned that Clerk Puglisi was able to sign the checks. Mr. Kaluzny stated "Frankie had the power to sign checks. He was on the bank accounts. He was on everything. You did not have to swear me in as Supervisor to do the checks. You swore me in as Supervisor. Frankie had the power. He was already on it." "Frankie had the power". He stated that the Board told him to come down and get sworn in, and I was sworn in as Supervisor, how could I not be Supervisor. He asked if the Board was having a do over.

Councilman Hillman stated he thought the whole time it was understood that you were being sworn in to carry on the business until the Board appoints a new one.

A resident asked what was he being sworn in as?

Councilman Gietl stated as Acting Supervisor.

A heated discussion took place between Councilman Gietl and a resident.

Deputy Supervisor Kaluzny called the meeting back to order.

Clerk Puglisi swore in Clifford Evans as Town Board Member.

Councilman Emmons made a motion to adjourn the meeting. Seconded by Councilman Gietl All Ayes and the meeting was adjourned at 7:32pm.

Respectfully Submitted,

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Frank Puglisi – Town Clerk