

**Town of Nichols  
Regular Meeting  
March 9, 2021**

*Town Supervisor, Kevin Engelbert, brought meeting to order at 7:00pm in the Nichols Elementary School located at 139 Ro-Ki Blvd Nichols NY 13812*

*Pledge of Allegiance*

**Roll Call;**

*Councilperson Ray Thetga Sr. (present), Councilperson Bill Middleton (present), Councilperson Esther Woods (absent), Councilperson Barbara Crannell (present), Supervisor Kevin Engelbert (present).*

*Others present;*

*Ray Thetga Jr. (Buildings & Grounds), Will Heveland (Highway Superintendent), Rose Cole, Brandon Sickler and Pam Moore.*

**MINUTES**

*Motion to accept the minutes as submitted by the Town Clerk from the February 9, 2021 Town Board Meeting made by B. Middleton 2<sup>nd</sup> by B. Crannell.*

*Roll Vote;*

*Ray Thetga (aye), B. Middleton (aye), B. Crannell (aye), E. Woods (absent), K. Engelbert (aye).*

*Carried 4 aye- 1 absent- 0 No-0 abstain*

**QUESTIONS COMMENTS & CRITICISMS FROM THE PUBLIC**

**NEW BUSINESS**

- *Proposal for adopting an IRS Section 125 Premium Only Plan for employees to pay health insurance premiums on a pre-tax basis.*

*Tom Augustini, the Town's health insurance provider, took the floor to explain to the Town Board members that the Town can adopt a Section 125 Plan that covers the Town in case the IRS asks about why payroll taxes have changed. The benefits to employees is that it lowers their adjusted gross income, so they pay less in federal and state taxes. The benefit to employers is that they pay 7.65% less in FICA and Medicare payroll taxes. The Town can allow employees to opt out of the plan. Why someone might opt out of the plan is that they would prefer a higher income reported for Social Security purposes.*

*B. Middleton - Would that also affect your Social Security Disability amount if someone was to get hurt? That it would lower the amount of money you would get.*

*T. Augustini - That is correct. What it does not do is affect your New York State and Local Retirement (NYSLRS). what is reported to the NYSLRS is your gross wages. It is strictly a federal issue. Historically, municipalities paid, in full, employees health insurance and did not participate in Social Security so this was not applicable to them. if the municipality was paying 100% of the premiums back those days then it would have been pre-tax since the employees weren't paying it out of their paychecks. When municipalities chose to have employees make a contribution towards health insurance premiums some*

*may have not taken the extra step to make it on a pre-tax basis. That is a more common reason as to why some places didn't implement this plan.*

*K. Engelbert opened the floor up for anyone that was present to ask questions or comments.*

*W. Heveland - For the guys that pay \$4,600 dollars a year in health insurance, I would like that to be taken out pre-tax.*

*B. Crannell - And you've got what, maybe one or 2 employees that might be close to retirement that it might affect their retirement?*

*W. Heveland - Well I am not speaking for them; I am speaking for myself.*

*R. Cole - Once it is set up it would be easy. With my business, my QuickBooks software does that for me. Once it was set up, the software would do it all for me without a lot of difficulty. So, it might be something individuals can decide on their own.*

*T. Augustini - Right, it would be a policy that you can establish. It could be an opt out policy. Like "hey, we're going to do this on a pre-tax basis unless you tell us or communicate to us that you don't want it pre-tax".*

*B. Middleton - What is the difference between Social Security and Social Security Disability income with the pre-tax, is it marginal?*

*T. Augustini - It really depends on their income on how much is being taken out on a pre-tax basis. So less is going to be reported to the federal government when they do a calculation on, say you become disabled, if you get SSI Disability income, they will calculate it on your earnings over the course of your lifetime. That is how they are going to factor in what your Social Security benefit is, which you can start collecting at 62 or wait and let it grow to a different amount, based on your average income over 35 years. But it really is all dependent on what gets reported to the federal government.*

*K. Engelbert - Can you go over it again? I am the opposite of Will. I could collect SS at almost any time. I want my income to be as high as possible, so I wouldn't want to do the pre-tax. Can it be set up?*

*T. Augustini - Yes.*

*K. Engelbert - So you can do it so it could be an individual choice for each employee who partakes in the Town's health insurance plan.*

*T. Augustini - You can set it up that way, yes.*

*W. Heveland - That is how the Town of Owego does it.*

*B. Middleton - But, in reality, it affects everyone, the younger you are it affects what shows on your gross income, so at retirement time if your income is \$4,000 less it is that much less than you might get paid for social security or disability or whatever you happen to go on. There is always a give and take for everything.*

*T. Augustini - There's no straight answer to it, it's not a this way is correct or this way is not correct. Each individual person is going to have a...*

*B. Middleton - It is if they prefer to have money in their pocket now or if they want it in their pocket when they retire.*

*T. Augustini - I will give you a personal example. For a long period of time, I officiated several different sports, so a lot of fellow officials took those game fees and there wasn't a lot of paperwork. Some took that income and applied it as income toward their taxes and others played fast and loose with the rules and said if they were getting cash and not getting a 1099, they didn't report that income. I always reported my income for two reasons, to stay in compliance and to have as much income reported to the federal government so that my benefit would be higher on the back end.*

*B. Crannell - Will our payroll system accommodate that kind of selection?*

*Pam Moore - It can, but I just want to be clear, you were talking about how it would affect people's State Retirement. Section 125 is part of Federal law....*

*T. Augustini - Yes, Federal law.*

*P. Moore - Right, so are you saying it's only potentially exempt from the federal taxes but not state taxes?*

*T. Augustini - For state income taxes yes, but not for New York State Retirement.*

*P. Moore - That's why I want to be clear, because if it lowers your gross income and your contributions are 3% of your gross income, then it's going to affect what you are contributing to your NYSLRS. So is it or is it not lowering your gross wages as far as NY State is concerned?*

*T. Augustini - In the reporting guide it will tell you how to report that income. Because what the reporting income to the NYSLRS is, will be different than what you are reporting to the federal and state governments. Does that make sense?*

*P. Moore - I am thinking of it in terms of how the payroll system is set up. You can exempt things from federal and you can exempt things from state and I am wondering, I don't remember seeing in our current payroll system some category for this in between. So that's why I'm asking, is it going to lower your gross wages for everything or just for federal and not state?*



*T. Augustini- You'll see your gross wages and your adjusted gross wages but when you report to the NYSLRS you are reporting gross wages to...*

*P. Moore - I don't understand what you mean by adjusted gross wages. There is gross and there is net. What is an adjusted gross wage?*

*T. Augustini - Whatever comes out on a pre-tax basis is your adjusted gross.*

*P. Moore - So are you saying that there is adjusted gross wages for federal but not state?*

*T. Augustini - So there are two parts to the state. One is your income reported to the NYS Income Tax and Finance, the other is what you report to NYSLRS.*

*B. Crannell - And who reports that to the NYSLRS?*

*T. Augustini - The Town does. You are reporting gross wages to NYSLRS, so that when they are calculating your service time and your final average salary and what your benefits are going to be when you decide to collect that benefit. They are taking your 3 highest earning consecutive years (Tier 6 would be 5 consecutive years) of your gross wages, meaning base pay...overtime pay, really any pay associated with work that you do.*

*K. Hall - Prior to any deductions taken out.*

*T. Augustini - Right*

*R. Thetga Jr. - Right, so it's based if your salary is \$50,000, they are looking at \$50,000 for those years. They are not looking at if your adjusted gross is \$47,000 because you had \$3,000 taken out, whether its health care or retirement...*

*T. Augustini - Exactly*

*R. Thetga Jr. - The State is just looking at what your base salary is.*

*T. Augustini - Yes*

*P. Moore - I need to be clear because what the State knows about your income is what I tell them. So, I need to be clear on what I am supposed to be doing so that the State and the Federal governments are treating it right.*

*R. Thetga Jr. - The Federal looks at everything, that's where if you take this tax deduction that's where it's going to lower the SS and State Income Tax is lowered based on that reporting, But NYSLRS not is going penalize anyone for 30 years of service and they just want to see what they made gross for each year and they are going to take that and not penalize an employee for the State or whatever for any deductions taken out pre-tax.*

*T. Augustini - And you should see that on your member statement each year from NYSLRS. It will say what was reported for you for that period of time. Which for NYSLRS is April 1 to March 31. That's the State Fiscal Year, that is how the retirement system looks at your earnings. Then NYSLRS, when you get your retirement statement, it will say this is what was reported, when you look at that number, that is the gross amount that was reported to them. So, when they start to do projections, they are looking at those numbers to say, at 55 you could get this amount or at 62 you could get this amount.*

*K. Engelbert - So bear with me, I have never put into NYSLRS. So, is there no impact to someone one way or the other?*

*T. Augustini - No, correct and there would not be.*

*K. Hall - Yes, there would not be any impact to anyone that has paid into NYSLRS.*

*T. Augustini - Right, but you have employees that are mandatorily in NYSLRS they don't have an opportunity to decide they don't want to be a part of it, so those that are members you are reporting their total gross wages to NYSLRS.*

*K. Engelbert - So basically the biggest impact is how much you can collect on social security when you retire or possibly if you become disabled how much you can collect.*

*T. Augustini - Correct*

*K. Engelbert - So if you don't participate those numbers are going to be higher, if you do participate, they will be lower, plain and simple.*

*T. Augustini - Correct*

*R. Thetga Jr. - Just like what Will said earlier, if you are filing taxes and you want more money in your pocket now, then pre-tax is what you do. If you decide you want more money from Social Security later you can opt out.*

*K. Engelbert - So we have at least one employee that wants to participate in this program, how do we get this set up and how do we make this happen?*

*B. Middleton - Is it easier to implement it and then opt out or can we have an opt in?*

*T. Augustini - The easiest way, this is my opinion, the easiest way to do it is opt out. This is the way the Town will be doing it unless you an employee says they don't want it done on a pre-tax basis. That is normal administratively and for the bookkeeper easier, this way you are saying we are doing it this way unless your employee comes to you and says they don't want it.*

K. Engelbert - So this is the way it's always been, nobody has been opting into this program, what do we have to do to make it available. It seems so simple, but why is it so complicated? What do we have to do to make it happen for Will or anyone else that wants to do it?

T. Augustini - That's a good question. Why is it complicated and not so easy to do it? It's because the federal government is going to say, why are you not paying taxes on this. And so there's a document that says, it's a cafeteria 125 adopting that section of the IRS rules that says this is why people aren't paying taxes on income. That is your hat that you can hang everything on as to why you aren't paying taxes on that income. Because the federal government takes all income as taxable, unless we say these areas are not taxable. So, they want you to adopt a document, much like the one that is in your packet, the sample from the Town of Tioga, that you are adopting that section of the IRS rules that allow you to do it on a pre-tax basis. So, if somebody comes in, for instance, maybe your independent auditors or someone from the State Comptroller's Office and asks why are you doing it this way? You can show them the document that says this is why we are doing it this way. Kind of along the same lines if they say, "Why did you purchase it like this?" and you say "Here is our purchasing policy" It says this is how we purchase things. Or "why did you pay this rate for this employee?" you can show them where it states in your policy where it says this is their rate, it's a paper trail that allows you to do that.

K. Engelbert - So it takes eleven pages to make that happen?

T. Augustini - It's incredible isn't it?

W. Heveland - And I am sure the federal and state governments want every cent they can get out of you for taxes too, right? That probably has something to do with it?

T. Augustini - Yeah, we right now are focused on health insurance but they also recognize Flexible spending accounts, Health Savings Accounts, Dental or Vision qualified IRS expenses that can also be covered under this plan.

B. Crannell - Are those generally the plans that if you don't use it, you lose it?

T. Augustini - They have amended those plans. That was always a sticky point as to why people did not want to do it, is because if you didn't use it you would lose it. They amended it a few years back to say, if you don't use up to \$500 you can roll that over. In 2020, because of the pandemic there is no use it or lose it. The same goes for 2021, they said it doesn't matter what the balance you have, it can be rolled over.

K. Engelbert - Is this a one time? Let's say Will is planning on retiring 10 years from now and he knows his social security income is going to depend on the last 3 years, so seven years from now he opts back out of this...can he do that?

T. Augustini - It all depends on if you allow him/them

K. Engelbert - I don't know why we wouldn't. Is that part of the plan?



*B. Crannell - Is that something we could have to have Bob take a look at too.*

*K. Engelbert - That's what's going through my mind.*

*T. Augustini - It is a good idea to have Bob Mc Kurdick to review that document, he can set it up initially that unless you don't want to participate you have to fill out paperwork to say you don't want to participate. If you don't want to participate later down the road you can fill out paperwork down the road.*

*W. Heveland - There's no guarantees on Social Security anyway. It may not be there when I retire. There could be no Social Security someday. There are guys that are younger than me, that are twenty-five-six. They may have to work until they are 85, they may not even live that long. That's something to think about too.*

*T. Augustini - There's no question. You would like to think that if they're taking money out that you're going to enjoy some benefit. But you can probably go back to the 90's and 80's of people who have said that it's not going to be around when I'm around and it's still here.*

*K. Engelbert - So the next step would be to contact Bob McKertich, the Town's lawyer, and tell him we want to create a law or ordinance or...*

*T. Augustini - So it would be a resolution, saying you were going to adopt something similar to the Town of Tioga that allows the Town of Nichols to participate in the IRS cafeteria section 125 by exempting income from certain benefits or allowing people to pay on a pre-tax basis.*

*K. Engelbert - I'll give him a call, but I'll probably have him give you a call too.*

*T. Augustini - Absolutely, I know Bob too.*

*K. Engelbert - I want to make sure this is done right. Hopefully he'll have it ready by April 13th and we can vote on it. And then what happens once we vote on this program?*

*T. Augustini - You'll have an effective date on it.*

*B. Middleton - Everyone will be in it unless they opt out.*

*R. Thetga Jr. - They sign a letter opting out of it.*

*There was some discussion that happened regarding the Opt Out paper for employees to fill out that didn't want to participate.*

*B. Crannell - We should also have a meeting for employees to explain it to them.*

*B. Middleton - Or rely on Will to explain it to his guys.*

*K. Hall - I can easily type up an Opt Out Form. I would keep the original in the Town's personnel file and give a copy to Pam so she knows who is opting out.*

*P. Moore and T. Augustini had a discussion about Williamson Law software.*

*B. Middleton - For me, it would have been a major downfall. At 54 I was on full disability.*

*W. Heveland - This is the first time an employer that's done that. My previous employer, they took it out pretax.*

*K. Engelbert - Did you see this from Tioga County Tom?*

*T. Augustini - no*

*K. Engelbert - This one here is pretty simple.*

*T. Augustini - So this is the Opt Out form and they probably have a document like the one Town of Tioga has.*

*K. Engelbert - so we have to adopt one like that and then have the Opt Out Form available for people that dont want to do that.*

*T. Augustini- Correct*

*K. Engelbert - Ok I think I got it straight.*

*T. Augustini - Feel free to give Bob my number or whatever you need to give him.*

*K. Engelbert - I will.*

*K. Engelbert to call attorney in the morning to get everything ready to vote on adopting the resolution at the April 13 Board Meeting*

- *Sealed Bids for Empty Fuel Tanks*

<i>David Hazard</i>	<i>\$1,500 for both tank and pump</i>
<i>Scott Smith &amp; Son</i>	<i>\$300 for 1k with pump</i>
	<i>\$300 for 2k no pump</i>
<i>Cole Construction</i>	<i>\$400 for 1k</i>
	<i>\$600 for 2k</i>
<i>Advanced Fluid Systems</i>	<i>\$531 for 1k</i>
	<i>\$265 for 2k</i>



*Motion to accept Bid from David Hazard made by B. Middleton 2nd by K. Engelbert  
Roll Vote;*

*Ray Thetga (aye), B. Middleton (aye), B. Crannell (aye), E. Woods (absent) K. Engelbert (aye).  
Carried 4 aye- 1 absent-0 No-0 abstain*

- *Sealed Bids for Request for Audit Proposals for Highway garage  
Incero & Co \$6,500.00*

*Motion to accept bid from Incero & Co made by K. Engelbert 2<sup>nd</sup> by B. Middleton.  
Roll Vote;*

*Ray Thetga (aye), B. Middleton (aye), B. Crannell (aye) E. Woods (absent), K. Engelbert (aye).  
Carried 4 aye- 1 absent-0 No-0 abstain*

*K. Engelbert to contact the auditing firm.*

- *Approve Public Health Plan mandated by New York State. Plan needs to be recorded and filed in the  
Town Clerk's Office and posted on the Town's website.*

*B. Middleton - Is it the same as the County's plan?*

*B. Crannell - It is very similar*

*Motion made by B. Crannell 2nd by B. Middleton  
Roll Vote;*

*Ray Thetga (aye), B. Middleton (aye), B. Crannell (aye), E. Woods (absent), K. Engelbert (aye).  
Carried 4 aye- 1 absent-0 No-0 abstain*

**ADOPTED**

**RESOLUTION NO 02-2021**

**TOWN OF NICHOLS PUBLIC HEALTH EMERGENCY PLAN**

**WHEREAS**, on September 7, 2020, Governor Cuomo signed legislation requiring all public employers to create plans to protect employees in the event of another health emergency declaration in New York State; and

**WHEREAS**, the protection of public employees during a public health emergency is a critical aspect of operational continuity; and

**WHEREAS**, the Town Board of the Town of Nichols will meet its statutory obligations for dealing with this matter; and

**NOW THEREFORE** upon a motion by Councilwoman Barb Crannell, seconded by Councilman Bill Middleton, and carried; therefore, be it

**RESOLVED**, that on this day Tuesday, March 9<sup>th</sup> of 2021, the Town Board of the Town of Nichols adopted the Town of Nichols Public Health Emergency Plan.

A certified copy of Resolution #02-2021 will be filed in the Town Clerk's office.

- Accept Utilities Director Phil Baker's resignation  
Motion made by B. Crannell 2nd by B. Middleton  
Roll Vote;  
Ray Thetga (aye), B. Middleton (aye), B. Crannell (aye), E. Woods (absent), K. Engelbert (aye).  
Carried 4 aye- 1 absent-0 No-0 abstain
- Cancel the March 24, 2021 Board Meeting  
Motion to cancel March 24, 2021 Board meeting, made by K. Engelbert 2<sup>nd</sup> by B. Middleton  
Roll Vote;  
Ray Thetga (aye), B. Middleton (aye), B. Crannell (aye), E. Woods (absent), K. Engelbert (aye).  
Carried 4 aye- 1 absent-0 No-0 abstain

#### **ADDITIONAL NEW BUSINESS FROM BOARD MEMBERS**

K. Engelbert - The Town has gotten notification from the New York State Association of Towns that the Town of Nichols is to receive \$541,735.00 in new stimulus money, additionally, with Tioga Downs open for business the Town is on pace to get approximately 1.4 million for the year to help with the Town's infrastructure on top of the stimulus.

#### **UPDATE FROM TOWN DEPARTMENTS/PERSONNEL**

Highway Department – W. Heveland

We have some road damage to fix, as well as some sluice pipes to dig up and replace. The Hwy Dept. is trying to work around the bus route schedule so as to not have any delays to the school, the kids have off on Wednesdays we are trying to make our repairs during those days.

K. Engelbert - Prior to Covid shutdown the Town there were some items the Hwy Dept was looking into purchasing. With the extra funds coming we should look into purchasing the new truck and boom mowers we talked about.

W. Heveland - I would prefer to get another tractor with a cab to protect from weather and rent a boom mower, as the cost and upkeep of the mower is more expensive than renting one at this time.

K. Engelbert - So a truck for you, F350, and a tractor?

W. Heveland - I don't think I need a truck that big; a one ton would be fine.

K. Engelbert - Research the purchases and submit them at the April 13 Board Meeting, the board will make a motion to purchase then. There may be a wait time for delivery, see if you can order these for purchase after the meeting with a payment given on approximately May 1, 2021.

*Buildings and Grounds – R. Thetga Jr.*

*B. Crannell - there was a request from buildings and grounds prior to Covid*

*K. Engelbert - Ray if you need equipment...*

*R. Thetga jr - Prices may be different now, but I can get my list together for the board. The main items were a mini excavator that can handle attachments that others cannot and a skid steer. We've been lucky and grateful to be able to borrow local Town residents, Ray Thetga Sr and Paul Campbell's equipment to assist the Town and my department's duties.*

*K. Engelbert - Same goes to buildings and grounds, get prices and what you need together to be approved at the April 13, 2021 Board Meeting for approval. See if they can be ordered prior to, for a May payment after meeting approval.*

*R. Thetga Jr. - Buildings and Grounds are getting geared up for outside work. I am in the beginning stages of the Justices move up to NES. The Town needs to replace the rear entry doors of the building will need to make it handicap accessible as well. Art Mayer, IT for the Town of Nichols, needs ½ of the cost for running the computer and phone lines up front to be able to purchase needed equipment to start the job. New York State requirements also mandate that security cameras are set up in all Justice's Clerk's offices and courtrooms.*

*K. Engelbert - Contact James Branston to see if he remembers which company the Town Hall used or Tioga Downs as to which security surveillance they use since they have cameras in the hallway of NES.*

*Planning Board – Planning Board not meeting next week and nothing on Reap Replacement or Comp Board*

## **OLD BUSINESS**

### **ADDITIONAL OLD BUSINESS FROM BOARD MEMBERS**

#### **ACCEPT REPORTS AND PAY BILLS**

*Motion to accept the Reports and Pay Bills, made by B. Crannell 2<sup>nd</sup> by B. Middleton*

*Roll Vote;*

*Ray Thetga (aye), E. Woods (aye), B. Crannell (aye), E. Woods (absent), K. Engelbert (aye).*

*Carried 4 aye- 1 absent-0 No-0 abstain*

## **EXECUTIVE SESSION**

### **ADJOURN**

*Motion to Adjourn meeting at 8:05pm made by B. Middleton 2<sup>nd</sup> by K. Engelbert*

*Roll Vote;*

*Ray Thetga (aye), B. Middleton (aye), B. Crannell (aye), E. Woods (absent), K. Engelbert (aye).*

*Carried 4 aye- 1 absent-0 No-0 abstain*

*Respectfully Submitted,*

**Karen Hall**

*Nichols Town Clerk, 3/10/2021*