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## TOWN OF NEW RICHMOND

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### Minutes of the Meeting

November 4, 2021 at 6:30 p.m.

**Roll Call:** Board Members Present, President Luke Martin, Council Member Minnie Howard (Was in quarantine for Covid was present by Face Time on the phone) and Carmine Azzato, Clerk/Treasurer Alaathea Foust, Attorney Rob Reimondo and Water/Sewer Superintendent Earl Heide.

Luke M. said during the meeting no comments, at the end each person will get 1 minute to comment. Luke said that there have been 3 break ins at the park, it is still under investigation so there will be no discussion on it tonight.

Alaathea Foust Clerk/Treasurer presented approval for Minutes of 2022 Budget Adoption on September 7, 2021 at 6:30 p.m., she stated that she forgot to present this at the last meeting. Carmine A. made the motion to approve the minutes, Luke M. seconded the motion, Luke M. called for a vote, motion carried.

Alaathea Foust Clerk/Treasurer presented approval for Minutes of Public Hearings on October 5, 2021 at 6:30 p.m., Carmine A. made the motion to approve the minutes, Luke M. seconded the motion, Luke M. called for a vote, motion carried.

Alaathea Foust Clerk/Treasurer presented approval for Minutes of Meeting on October 5, 2021 at 6:43 p.m., Carmine A. made the motion to approve the minutes, Luke M. seconded the motion, Luke M. called for a vote, motion carried.

### **Amendments/Additions to Agenda: None**

**Streets/Maintenance:** Luke M. said he is finishing up the mowing for the year.

**Water/Sewer:** Luke M. asked Earl Heide if he had anything Earl said no.

**Town Marshal:** Jeremy Minor not present.

**Fire Department:** Fire Chief Darren Foreman gave a report on their runs for the month.

**Special Committee:** Chairman Sam Buckles said the committee did not have a report.

**Clerk/Treasurer:** Alaathea F. presented Accounts Payable Voucher Register for November 4, 2021 to the Board, Minnie H. made the motion to approve the APV Register, Carmine A. seconded the motion, Luke M. called for a vote, motion carried.

Alaathea F. presented the bank reconcilements for September 2021.

Alaathea F. presented the Board with up-to-date Fund Report, Appropriation Report and Revenue Report.

Alaathea F. asked permission to pay Indiana Metal in the amount of \$474.72 for materials to finish the Fire Station roof. Carmine A. asked if the roof was inspected and everything was signed off on, Luke M. said yes, Carmine A. made the motion to pay Indiana Metal, Minnie H. seconded the motion, Luke M. called for a vote, motion carried.

Alaathea F. presented Meeting Dates for 2022 for the Town Council to look over for the next meeting.

Alaathea F. said we applied for the IPEP Safety Grant and was awarded \$1,425.35 to go towards safety equipment and gear.

Alaathea F. told the Town Council that she will be out of Town for the SBOA & ILMCT conference November 7 – 10 and that the office would be closed on November 11 for Veterans Day.

Alaathea F. asked permission to use Promotional Funds for the Town Christmas Event on December 4<sup>th</sup>. Carmine A. made the motion to approve using promotional funds for the Christmas Event, Minnie H. seconded the motion, Luke M. called for a vote, motion carried.

Alaathea F. said the Police Car is needed new tires. Carmine A. asked if there was an estimate for the tires. Alaathea F. said no. Luke M. said yes, the tires need to be replaced. Carmine A. made the motion to approve getting new tires on the police car, Minnie H. seconded the motion, Luke M. called for a vote, motion carried.

### **Old Business:**

**Street Project for 2021:** Alaathea F. said the street work is done and asked permission to pay Fox Paving the \$41,875.00 for the work. Minnie H. made to motion to pay Fox Paving, Carmine A. seconded the motion, Luke M. called for a vote; motion carried.

**Roger Hurt Memorial Park:** Carmine A. said the Plaque for Roger Hurt Memorial has been ordered and paid for by donations.

### **New Business:**

**Engineer for Water Infrastructure:** Luke M. said we met with a new Engineer today for our water infrastructure we need to move on this so that we can get our paperwork done for the OCRA grant. Carmine A. said he was very impressed with HWC Engineer and the guy we talked to today was part owner in the company and works close to the area. Carmine A. made the motion to approve using HWC Engineer for the water construction, Minnie H. seconded the motion, Luke M. called for a vote, motion carried.

**Dismissal of the Town Superintendent:** Carmine A. said he has pictures from around Town of issues that the Town has, this is not an attack on the person, but is the person qualified to do the job. Carmine A. said the answer that he came up with is no. The other concern was dual office, after checking with the Attorney General's lawyer (who is in charge of the elections) the answer he received was that Luke M. could not be Town Superintendent and Town Council person. There has been a lot of conversation with Rob Reimondo and Dan Guard on this matter. Carmine A. said that he did not ask the Journal Review to come tonight, it was the Republican Chairman of Montgomery County, Jim Johnson. Carmine said Luke M. should be fired and removed as Town Council President.

Rob Reimondo, Town Attorney, said Carmine contact me to talk about Luke's two positions, on one hand Indiana Codes provides you cannot be in a position that would create a conflict, because IC 35-44.1-1 says in that part of the code you cannot be on a board, for example being on a board and vote on your own salary, that would be a conflict. Luke has not voted on his own salary or position in the few years that I have been here, and in that regards he has been in compliance. However, I do think there is an issue with IC 3-5-9-5, which is what Carmine A. cited, which provides you cannot have two lucrative offices in the same municipality basically. The problem is that there are some gray areas the code does not give definitions of what employees are. The IN Attorney General Office offers a list of positions that are considered lucrative and non-lucrative positions. Carmine is wrong on one hand in that just by having employment in a municipality, this is my

opinion, does not mean the fact that you cannot have it. There is a nice handbook from the Attorney General Office that I would encourage everyone to look at, Dual Office Holding Guide, on page four which is very early in the handbook says "The dual office prohibition does not prohibit a person from maintaining an office while also serving as an employee of a governmental entity". It suggests that you can be an employee of the municipality and be on a board. Having looked at this and IN Codes, I made a call to Becca McCuaig Chief Legal Counsel for AIM (Accelerated Indiana Municipalities), she has reviewed this issue at Alatheia's request and I have talked to her as well. After my conversation with her, I felt it was unlikely that Luke could have both positions, but it is unlikely I am not 100% sure, because again there is a gray area here. Town Superintendent is not on the list of lucrative positions, there is a whole list you can look in the guide yourselves and see that and again the same handbook says you can be an employee and if it's not listed it becomes a gray area. My preference would be to get an official opinion from the Attorney General's Office and /or the State Board of Accounts. This having been the first time it has been raised as a conflict of interest.

Luke M. said I have been through this before with the State Board of Accounts and they have been in my favor.

Rob R. said in Luke's defense they have indicated from a conflict point of view he would be in line with the code 35-44.1-4 if he does not vote on issue involving the Superintendent position. The question becomes the other portion of the code which Carmine A. cited.

Luke M. said I was told by the State Board of Accounts I was okay with what I was doing.

Rob R. said I have seen emails, just so that everyone knows, from some of the lower levels of SBOA people that have said there is not a problem there is no conflict. The question is he also in line with this other provision, that's the gray area that is troubling to the scenario. My recommendation to the board is to vote to have it examined by the Attorney General's office and /or State Board of Accounts to determine if Luke Martin is in line or not in line with the IN codes, so he can know for sure.

Carmine A said he is going to show some pictures to show why Luke M. is not fit for the Town Superintendent position. He talked about concerns for the diesel/gas tank leaking fuel on the ground and no plug in the dike.

Luke M. asked Earl H. to tell him what the Montgomery County Health Department said about it. Earl H. said he put a plug in it and the Health Department said there was not enough to worry about concerning the leak.

Carmine A said he looked at the Maintenance Shop there is some structural repairs that need done and doors the need fixed.

Luke M. said he is part time and has limited hours for the year to get things done as well as a limited budget to do things. After much discussion on various issues, Rob R. said First, do we want to pursue an opinion from the Attorney General's Office and the State Board of Accounts as to a potential dual position for Luke. Second, a motion in regards to the Town Superintendent.

Carmine A. made the motion to contact the Attorney General's Office and the State Board of Accounts to get an opinion about a potential incompatibility of Luke's two positions. Minnie H. said we have tried several times to find out if Luke's two positions were okay and we were told several times yes. Minnie H. said as far as the safety of the Town that is the responsibility of the Town Council as well. Minnie seconded the motion, Luke M. called for a vote, motion carried.

Carmine A. made the motion to dismiss the Town Superintendent and look for somebody more qualified to maintain the buildings properly. The motion was not seconded, therefore the motion died.

**Luke Martin's Status as Council President:** Rob R. said this fall under the discussion of the dual office. No decisions were made.

**Special Election for a 5-Member Board:** After much discussion Rob R. said He looked into this as well IC 36-5-2-4.2 provides that a legislative body may adopt a resolution to submit a public question on the number of legislative body members to the voters of the Town. Then it talks about the resolution and the form of the resolution. The key is that the body may adopt the resolution so there would have to be a vote with the Town Board in order to adopt a resolution to have the public question put on the ballot.

Carmine made the motion to have a special election for a resolution to adopt a 5-member board for the Town of New Richmond. The motion was not seconded therefore, the motion died.

**Removal of the Special Committee:** Carmine A. said there is concern on how this Special Committee was picked by only one board member Luke M. Luke M. said a Special Committee can be appointed by the President of the Board, if that committee becomes permanent than that permanent committee needs to come before the whole Town Board for a vote.

After some discussion Carmine A. made the motion to remove this Special committee from here on forward. Alaathea F. asked the Attorney Rob R. if he had an opinion on that. Rob R. said he was not sure, that was not one of the things he looked into.

After some more discussion Carmine A. changed his motion to, that at the next meeting proof would be put to the table that Luke M. picked them legally and that you did not need Minnie or his input on who would be on the Special committee, Minnie H. seconded the motion, Luke M. called for a vote, Aye- CA, MH, Nay- LM, Motion carried.

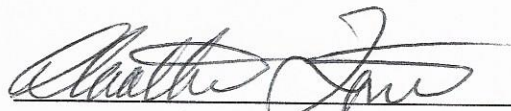
**Public Comments:**

Matt Martin had concerned about the speeders on his end of Town, West Washington street.

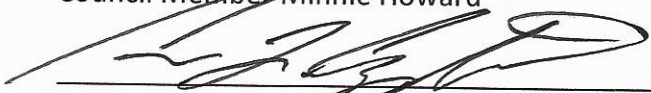
Russ Wethington asked about how many hours does the Town Marshal works. Also asked about what we could do about the abandon houses.

Carmine A. made the motion to adjourn the meeting, Minnie H. seconded the motion, Luke M. called for a vote, motion carried.

  
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President Luke Martin

  
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Attest: Clerk/Treasurer Alaathea Foust

  
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Council Member Minnie Howard

  
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Council Member Carmine Azzato