

## Selection of Town Department Heads

### Introduction

The Governance Options Study Committee was charged with looking at town governance and considering alternatives that will positively impact either efficiency or effectiveness. The Committee identified the method of selection of town department heads as one of the areas for further study. Specifically, the Elected or Appointed Subcommittee looked at the elected offices of Town Clerk, Highway Superintendent and Receiver of Taxes.

The Bethlehem 2020 Implementation Committee brought this topic to the Town Board in 2011. Their report presented the option of moving to appointed department heads for all Town departments and eliminating elective offices for Highway Superintendent, Tax Receiver and Town Clerk. The 2020 Implementation Committee stated that this would “modernize and provide consistency in the Town’s management structure.”

The 2020 Implementation Committee presented statistics from the Association of Towns on the prevalence of elected versus appointed officials. Of 932 towns in New York:

- 889 towns have elected town clerks, whereas 43 appoint their clerks;
- 577 town clerks serve as tax collectors or receivers; and
- 873 town highway superintendents are elected; 59 are appointive.

The 2020 Implementation Committee also outlined the process to convert an elected department head to an appointed position. The Town Board must pass a local law at least 60 days before the date of a referendum of the voters, which could occur on a general election date. The conversion could be timed to take place at the end of an elected official’s term.<sup>1</sup>

The Elected or Appointed Subcommittee of the 2012 Governance Options Study Committee tried to supplement but not duplicate this previous work by the Bethlehem 2020 Implementation Committee. We focused on identifying the differences among elected, appointed and civil service positions and on comparing Bethlehem to other similar towns with respect to these three functions.

### Elected, Appointed, or Civil Service

The Town of Bethlehem employs 221 individuals to provide services to residents and carry out the other duties of town government. The Town’s 12 department heads are selected in three different ways.

**Election:** Town voters elect the Town Clerk and the Highway Superintendent to 2-year terms and the Receiver of Taxes to a 4-year term. Candidates are nominated by party committees or by petition, subject to primary.

State law establishes certain qualifications and duties for elected town officers. A person must be at least 18 years old, a United States citizen, and a resident of the town.<sup>2</sup> No other qualifications are established in statute for the positions of town clerk, receiver of taxes or highway superintendent.

The duties of the town clerk are to keep “all records, books and papers of the town... attend all meetings of the town board... keep a complete and accurate record of the proceedings of each meeting” of the town board. The town clerk must keep an “ordinance book” with a copy of every ordinance adopted by the town

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<sup>1</sup> Bethlehem 2020 Implementation Committee, 21<sup>st</sup> Century Town Government and Management Structure, [http://www.townofbethlehem.org/images/pagelimages/2020/ImplementationMeetings/20110415\\_21st\\_Century\\_Town\\_Governance.pdf](http://www.townofbethlehem.org/images/pagelimages/2020/ImplementationMeetings/20110415_21st_Century_Town_Governance.pdf)

<sup>2</sup> NYS Public Officers Law, section 3.

board and “record all deeds of conveyance... [and] file all certificates or oaths and other papers...” Other responsibilities include issuing licenses and permits and collecting and depositing fees.<sup>3</sup>

The receiver of taxes must “receive and collect all state, county, town and school taxes, and all assessments that may be levied or assessed in the town, and all fees....” He or she must collect all water rates, sewer rentals, permit fees and other fees and charges payable to the town, keep a record of collections, and deposit them within 24 hours. The town board determines which banks and accounts the receiver of taxes should use.<sup>4</sup>

The highway superintendent must oversee repair and maintenance of roads and sidewalks, keeping them open and free from obstructions. He or she must “[c]onstruct and keep in repair sluices and culverts and cause the waterways, bridges and culverts to be kept open.” The highway superintendent is also required to remove loose stones from the highways at least 3 times a year; remove brush and weeds; “attend public meetings called by the department of transportation...;” and provide adequate detour signs during any road closures.<sup>5</sup> The Bethlehem Highway Superintendent has prepared a written job description that includes supervising the maintenance of all Town-owned vehicles and equipment; supervising the operation of the landfill, transfer station, and composting facility; reviewing work and projects with engineers and consultants; and other responsibilities.

As independently elected officials, the Bethlehem Town Clerk, Receiver of Taxes and Highway Superintendent answer primarily to the voters, not the Town Supervisor or Town Board.

The Town Board approves the budget for their departments as well as appointments of personnel (except for most highway department positions, which are classified under Civil Service Law as non-competitive labor class). Currently there are 3 employees in the Town Clerk’s Office, 3 in the office of the Receiver of Taxes, and 56 in the Highway Department.

**Competitive Civil Service Examination (referred to as “Civil Service” in this report):** Candidates for competitive civil service positions must take an examination. The Albany County Department of Civil Service is responsible for administering civil service for the Town of Bethlehem, including administering examinations. The examination results in a list of eligible candidates ranked by score, with tie scores given the same rank. When a position becomes available, the list of candidates with the highest score is canvassed to determine their interest, and interested candidates are interviewed. Candidates with lower scores may be considered for appointment only when there are fewer than three candidates with higher scores. Appointments must be approved by the Town Board.

In Bethlehem, the department heads for Parks and Recreation, Senior Services, Police, Human Resources and Management Information Services are appointed through a competitive civil service process. The Town maintains written job descriptions for each of these positions.

**Non-competitive or Exempt Civil Service Appointment (referred to as “Appointed” in this report):** Civil Service Law does not require examinations for positions classified as non-competitive or exempt. Candidates for appointment must meet minimum qualifications. Those appointed in exempt class positions serve at the pleasure of the appointing authority.

Bethlehem’s Human Resources Department is responsible for recruiting candidates. Job openings are advertised in a way that is appropriate to the position, ranging from the publication of the American Public Works Association to monster.com. Typically openings are posted on the Town’s website. Interviews for department head positions are conducted by the Town Supervisor, the Director of Human Resources, and

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<sup>3</sup> NYS Town Law, section 30.

<sup>4</sup> NYS Town Law, section 37.

<sup>5</sup> NYS Highway Law, section 140.

sometimes a third participant, such as a town board member or a past department head. Appointments must be approved by the Town Board.

In Bethlehem, four department heads are appointed through this process, with varying terms. The Assessor is appointed for a 6-year term. The Comptroller, Commissioner of the Department of Public Works, and the Director of Economic Development and Planning are appointed for 2-year terms concurrent with those of the Town Supervisor. Bethlehem maintains written job descriptions for each of these positions.

### **How Does Bethlehem Compare with Other Towns in New York State?**

To learn about experiences with different ways of selecting key town officials, we mailed out a letter with survey questions to 10 towns. We looked for towns that are located north and west of the Hudson Valley; suburban in character; and similar in size to Bethlehem. Five of the towns were also identified as benchmarking communities by the Budget Advisory Committee. Subsequently a member of our committee called to interview the town supervisor or his or her designee, using the survey questions as a guide. We received responses from 9 of the 10 towns.

The towns responding to our survey represent a number of different configurations for the three offices:

- Two (Lewiston and Vestal) elect all three positions, like Bethlehem.
- One (Ithaca) appoints all three positions.
- Three utilize both methods.
  - Niskayuna elects the Tax Receiver and Town Clerk and appoints the Highway Superintendent.
  - Queensbury elects the Town Clerk and Highway Superintendent and appoints the Receiver of Taxes.
  - Salina elects the Tax Receiver and appoints the Town Clerk and Highway Superintendent.
- Three have eliminated the positions of Receiver of Taxes and consolidated those duties into the Town Clerk's responsibilities. Of these,
  - Two (New Hartford and West Seneca) elect the Town Clerk and Highway Superintendent, and
  - Irondequoit appoints both the Town Clerk and Highway Superintendent.

None of the responding towns uses a civil service examination to select town clerk, tax receiver or highway superintendent. Table 1 compares the organizational framework of these towns to Bethlehem.

One of the survey questions asked the town representatives for their views of the advantages and disadvantages of appointing versus electing these three officials. Table 2 summarizes the answers and comments that we received.

**Considering Changes:** Generally, town officials support the current selection processes that are used in their towns, whether they are elected or appointed. Typically the organizational framework was established long before the tenure of current officials. However, one town has been discussing possible changes over the last four years, and two towns in our survey, West Seneca and New Hartford, recently eliminated the position of tax receiver by shifting those duties to the town clerk.

In West Seneca, concern about the cost of town government led to a grassroots movement to pare down its size. Citizens collected signatures for a town-wide referendum. In the subsequent election, voters approved the elimination of the receiver of taxes. They also reduced the size of the town board, from 5 to 3 members.

New Hartford voters eliminated the receiver of taxes in the November 2011 election. The purpose was to reduce costs and make town government smaller. Two members of the tax receiver's office were then incorporated into the town clerk's office.

**Selection Process:** In the survey, as well as in public comments last year in response to the 2020 proposal, it is clear that a number of people place a high value on the opportunity to directly elect the receiver of taxes, town clerk and highway superintendent. Electing local officials is seen as a way for the people to express their choice and have input into town government. At the same time, it is not unusual for these elections to be uncontested. In one town, none of these positions were contested in the last 4 elections. In another town, the incumbents have held their positions for multiple election cycles with only one primary challenge. Another respondent to our survey acknowledged that voter participation in these elections tends to be low.

By appointing individuals to these positions, a town can establish minimum qualifications, recruit widely and consider many applications. The supervisor recommends appointments to the town board, which must approve them. One respondent described selecting candidates with extensive relevant private sector experience and experience working for other towns. Another described experiences both with promoting from within the department and with recruiting from outside the town. However, survey respondents also noted that appointments could be made for political reasons. One survey respondent noted that the board had never turned down a supervisor's recommended appointment. Another respondent did not remember seeing job descriptions.

**Accountability Framework:** Appointed department heads report to the town supervisor. One survey respondent noted that the town board approves all job descriptions for the appointed positions, and the supervisor conducts annual performance reviews and forwards them to the board for information. In another town, the supervisor annually reviews the performance of each department head, and each department head evaluates the supervisor. Every three years, department heads evaluate each other.

Elected officials tend to function with more independence than other department heads. Typically, they are not directly supervised as town employees, and formal performance reviews are not conducted. However, one town supervisor commented that if the public is not happy with the services provided by one of these offices, the supervisor will hear about it. The elected officials are accountable to the public for their performance, in either biennial or quadrennial elections.

In our survey, we did not learn of any regularly reported performance measures for the functions of town clerk, highway superintendent and receiver of taxes. It can be difficult to determine appropriate performance measures for government functions and expensive to set up measurement systems. Reported performance measures could make it easier for both town officials and voters to evaluate the performance of a department and the department head.

**Efficiency and Cost Savings:** Both elected and appointed department heads must operate their departments efficiently and control costs, while providing services to meet the town's needs. In Bethlehem, elected and appointed department heads have worked together to implement efficiency and cost savings initiatives. Greater efficiencies may be available through coordinating or even consolidating a single department with other similar government functions.

Towns that recently consolidated the receiver of taxes position into the town clerk's office did so for cost savings and better use of staff. One town supervisor reported considering such a consolidation but deciding not to pursue it because of the efficiency of the current operation. Some towns have consolidated highway responsibilities with those for parks and public works.

One town reported a rigorous review process before filling vacant positions. Other towns described sharing services or even employees with other jurisdictions in order to realize savings. Outsourcing certain services,

such as lockbox for deposits, was mentioned as a source of savings. When department heads are appointed and report to the town supervisor, a town may be able to more rapidly evaluate and implement various efficiency and savings opportunities.

### **Questions for consideration**

There are examples of towns like Bethlehem that operate successfully under a variety of organizational frameworks. Because of public resistance to change, pursuing the elimination of the position of Receiver of Taxes or changing positions from elected to appointed may divert the time of the Town Board and Supervisor from other pressing issues. In weighing the advantages and disadvantages of pursuing any change, we suggest considering following questions:

1. What are the most important goals and results for the Town of Bethlehem with respect to these three departments? A department's priority might be to modernize systems or expand or improve services; or an overall town goal, such as achieving cost savings, might take priority.
2. Which process, elected or appointed, is most likely to result in the selection of an individual who can lead the department in achieving those goals?
3. Which accountability framework is most likely to produce the desired results? In the current framework, independently elected officials are accountable to the voters at election time. In an alternative framework, appointed department heads are accountable to the Town Supervisor on a day-to-day basis, and the Town Supervisor is accountable to the voters at election time.
4. If a change is made, what other actions need to take place to produce the desired results? For example, a specific plan might be developed to achieve cost savings.

Survey Results Table 1 Town (County and Nearby City)	2010 Pop.	Receiver of Taxes	Town Clerk	Highway Supt	Town Supvsr	Other Appted Dept Heads	Other Civil Service Dept Heads	Comments
<b>Bethlehem</b>  Albany Albany	34,000	Elected, 4 year term	Elected, 2 year term	Elected, 2 year term	Elected, 2 year term	Comptroller, Assessor, Public Works, Economic Development and Planning	Parks & Recreation, Senior Services, Police, Human Resources, Management Info. Services	
<b>Irondequoit</b>  Monroe  Rochester	52,000	None/Town Clerk performs duties	Appted, 2 year term	Appted, 2 year term	Elected, 2 year term	Comptroller, Director of Community Development	Police Chief, Payroll Clerk	Director of Community Development oversees building, fire, community development.
<b>Ithaca</b>  Tompkins  Ithaca	20,000	None/Town Clerk performs duties	Appointed	Appointed	Elected, 4 year term	Not available	Not available	Director of Public Works responsible for highways and water and sewer services.
<b>Lewiston</b>  Niagara  Buffalo	16,000	Elected, 4 year term	Elected, 4 year term	Elected, 4 year term	Elected, 2 year term	Budget Officer, Accountant	Building Inspector, Assessor, Police Chief, Admin'r/ Operator Treatment Plant	
<b>New Hartford</b>  Oneida  Utica	22,000	None/Town Clerk performs duties	Elected, 4 year term	Elected, 4 year term	Elected, 4 year term	All others		Town referendum in 2011 eliminated Receiver of Taxes

Survey Results Table 1 Town (County and Nearby City)	2010 Pop.	Receiver of Taxes	Town Clerk	Highway Supt	Town Supvsr	Other Appted Dept Heads	Other Civil Service Dept Heads	Comments
<b>Niskayuna</b> Schenectady Schenectady	22,000	Elected, 4 year term	Elected, 2 year term	Appted, 2 year term	Elected, 2 year term	Comptroller, Attorney, Assessor, Chief of Police, Recr'n Coordinator, Info. technology director	Town Engineer, Town Planner, Water/Sewer Department, Chief of Police	Highway superintendent also responsible for Parks
<b>Queensbury</b> Warren Glens Falls	28,000	Appointed	Elected, 2 year term	Elected, 2 year term	Elected, 2 year term	Not available	Not available	
<b>Salina</b> Onondaga Syracuse	34,000	Elected, 4 year term	Appted, 2 year term	Appted, 2 year term	Elected, 2 year term	Director of Planning and Development, Assessor, Comptroller		Comptroller and Assessor are shared with another town
<b>Vestal</b> Broome Binghamton	28,000	Elected, 4 year term	Elected, 4 year term	Elected, 4 year term	Elected, 4 year term	Not available	Not available	
<b>West Seneca</b> Erie Buffalo	45,000	None/Town Clerk performs duties	Elected, 2 year term	Elected, 2 year term	Elected, 4 year term	Building, Public Works (water and sewer)	Parks and Recreation, Senior Services	Highway Superintendent also responsible for sanitation, building and grounds

Survey Respondents: Mary Joyce D'Aurizio, Irondequoit Town Supervisor; Herb Engman, Ithaca Town Supervisor; Carol J. Brandon, Lewiston Town Clerk; Joe Landry, Niskayuna Town Supervisor; Paul Sebesta, Niskayuna Comptroller; Gail Wolanin Young, New Hartford Town Clerk; Barbara Tierney, Queensbury Budget Director; Mark Nicotra, Salina Town Supervisor; W. John Schaffer, Vestal Town Supervisor; Town Supervisor's Assistant, West Seneca

Survey Results Table 2

<b>Elected Department Heads</b>		<b>Appointed Department Heads</b>	
<b>Pros</b>	<b>Cons</b>	<b>Pros</b>	<b>Cons</b>
The public directly participates in choosing the official.	Low voter turnout and lack of challengers to incumbents indicate that voters tend to ignore these races	Larger and more qualified pool of applicants for position	Opportunity for cronyism, to appoint individuals for political reasons rather than professional qualifications
The voters can replace an unsatisfactory official at the next election.	The town is unable to establish minimum professional qualifications for the position, such as education and experience.	Opportunity for transparency. If appointed positions are publicly advertised against specific job requirements, the public can see the basis of selection.	Election is even more transparent.
Running for office provides a strong incentive for delivering high quality public services to the town's residents.	Candidates are selected through a political process that may emphasize political needs over town needs. Town services such as issuing marriage licenses and dog licenses are not political, they are bipartisan.	More flexibility in assignment of duties, priorities	Potential for instability if terms are tied to those of the elected Town Board.
The official is accountable to the public.	No one is specifically responsible for reviewing the official's performance. If an ineffective person is elected to a position, there is almost no way to get rid of the person until the next election.	Position qualifications are determined locally; job descriptions including education and experience background can be approved by the town board	Appointments could be political and not reflect the residents' choice
	Elective office can result in more political pressure on the town official.	Town Board control of department budget and spending	

<b>Elected Department Heads</b>		<b>Appointed Department Heads</b>	
<b>Pros</b>	<b>Cons</b>	<b>Pros</b>	<b>Cons</b>
	Reduces local government flexibility in dealing with budget issues, aligning government tasks and dealing with emerging issues.	Better accountability through local evaluations; if the person is ineffective or inefficient, that person can be terminated.	Elected officials are responsible to the public, not to the town supervisor
	With an elected department head, there is the potential for conflicts over department budgets and project costs with the Town Supervisor and Town Board.		