

The Otsego Town Board held a Regular Monthly meeting on the 8th day of February 2017 at the Town Building, Fly Creek, NY at 7:00 PM.

Town Board Members Present:

Meg Kiernan	Supervisor
Thomas Hohensee	Councilperson
Carina Franck	Councilperson
Bennett Sandler	Councilperson
Joseph Potrikus	Councilperson

Also Present:

John Schallert	Highway Superintendent
Michelle Kennedy	Town Attorney
Pamela Deane	Town Clerk

Supervisor Kiernan called the meeting to order and asked everyone to please rise for the Pledge of Allegiance.

MOTION by Councilperson Potrikus, seconded by Councilperson Hohensee, to amend the January 11th minutes to reflect that Councilperson Joseph Potrikus read from the NYS Town Law Manual, Chapter 3, subchapter 10, "Role of Town Clerk". Town Clerk must attend every meeting and keep a written record of all proceedings of the Town Board. He felt this was relevant due to the fact the budget workshop meetings had no proceedings on record.

MOTION CARRIED: All were in favor.

MOTION by Councilperson Potrikus, seconded by Councilperson Franck, to amend the January 11th minutes to state that Councilperson Joseph Potrikus read from Local Law #1 of 2009, stating the terms of an alternate member of the Planning Board is 5 years and ZBA alternate member is 3 years.

and

MOTION by Councilperson Potrikus, seconded by Councilperson Franck, to amend the January 11th minutes to state that Joseph Potrikus read NYS Local Law Chapter 7, subchapter 4, which states: "Significantly if the Town Board does not agree with a ZBA or Planning Board decision it has no authority to review or change that decision. The appropriate means of challenging a Planning or ZBA decision is for an individual of standing, such as the applicant or a grieved neighbor of the applicant, to commence an Article 78 proceeding".

MOTION CARRIED: All were in favor.

Supervisor Kiernan reviewed correspondence received since last meeting. Among the correspondence was:

- A Liquor License Application for the Upstate Bar and Grill, formally know as the Pepper Mill. The Board had no objections.
- A letter from Virginia Hasting regarding the Blackbird Hollow application. She has been informed that Blackbird Hollow lacks required area and use variances. Hastings encouraged the Town Board to exercise their legal obligation and see that the law is enforced and the necessary variances are obtained before construction begins. In closing she stated that the community expects the Town Board to direct that all of the Town Laws and appropriate procedures are followed.
- A letter from Leslie Orzetti, Executive Director of OCCA, echoed Hastings sentiments. She pointed out that the numerous oversights and errors related to the review of Blackbird Hollow application has created a certain amount of legal risk that could endanger further review. Additional progress related to the construction of the proposed project will only serve to compound the legal risk facing the Town. Orzetti urged the Town Board to direct Town ZEO Ed Hobbie to issue a stop work order until Town Officials have appropriately consulted their legal counsel and determined a subsequent course of action moving forward.

Supervisor Kiernan opened the floor for Public Comment.

Councilperson Potrikus read from NYS Local Law Chapter 3, Subchapter 12, part B: which states that rules pertaining to public participation must be reasonable and uniformly enforced. They should be widely made available to the public beforehand and read at the beginning of the public comment period. With that Councilperson Potrikus asked that the Towns Guidelines for Public Comment be read aloud. Councilperson Franck volunteered to do so.

Otsego 2000 Board President Nicole Dillingham stated that after submitting a FOIL request to the Towns ZEO she is convinced that the necessary variances required for the Blackbird Hollow project do not exist. With that, a complaint was filed with the Town ZEO Barbara Monroe back in November and was served again when Ed Hobbie was appointed to the position. The project was permitted harmoniously without compliance for the law. If there has been no progress after two years of approval the permit is expired. It has been three years since the original approval of the project. The ZEO is supposed to acknowledge the complaint and issue a decision within 48 hours. Hobbie has told the Planning Board that he does not intend to issue a decision because this complaint has been turned over to the Town Board. Dillingham pointed out that Town Law requires that the Town Board

cannot interfere and it is the duty of the ZEO make a determination on any complaint. She urged the Town Board to let the ZEO to do his job.

Charlotte Hall (Shotzie) asked what constitutes a dump? ZEO Ed Hobbie agreed to give her a copy of the Town's Junkyard Law.

Tripp Hill road resident Brain Kegelmann believed that District Attorney John Muehl has spoken to Town Attorney Michelle Kennedy and has advised her that Kegelmann is within his rights to protect his property and return water that the town has directed onto his property by changing its natural flow. This water will now become the town's responsibility and liability. Kegelmann plans to build a berm raising the water level in the pond 1ft. higher than the road. Any means the town has directing water into his pond will be cut off. He suspects the next large rainfall will wash out the road. This will inconvenience his ten neighbors residing above him. All emergency vehicles will have to go the long way around. Kegelmann stated that he "finally has figured out how to box the Town Board in". He felt that he has every right to do this because Highway Superintendent John Schallert violated Highway Law 147 and 148. In closing he told the Town Board they had 24 hours to try to negotiate a valid easement.

Supervisor Kiernan closed the floor for public comments.

Supervisor Kiernan introduced Louise Gava and Ronald Feldstein from MEGA, Municipal Electric and Gas Alliance CCA. Gava and Feldstein gave a presentation on how MEGA uses competitive bidding for electricity and natural gas supplies to save taxpayers money on the cost of energy. Routinely, residents will notice a couple of percent reduction in their bill. Residents will not be locked in and can opt out at any time. Any solar projects the Town may be pursuing will not be precluded. MEGA is a non-for profit organization. They will send Town Attorney Michelle Kennedy an Administrative Agreement to review.

Supervisor Kiernan gave a financial report. The Board discussed the following balances in the various accounts:

General Savings: \$ 4,692.22	General Checking: \$ 443,070.63
Highway Savings: \$ 7,823.89	Hwy Checking: \$ 504,702.93
Building Reserve Fund: \$179,699.99	Hwy Equipment Fund: \$ 263,978.43

MOTION by Councilperson Sandler, seconded by Councilperson Potrikus, to accept the financial report.

MOTION CARRIED: All were in favor.

MOTION by Councilperson Potrikus, seconded by Councilperson Sandler, to pay the following invoices, as corrected, and make the necessary transfers.

GENERAL: # 18-# 40	\$ 7,359.59
HWY: # 9-# 31	\$ 18,200.54

MOTION CARRIED: All were in favor.

Dog Control Officer Thomas Steele reported answering three barking dog complaints and 1 running-at-large. The one running-at-large is still running. The three barking dogs are not licensed and were given a three-day warning.

Planning Board Chairman Tom Huntsman, discussed applications the Planning Board is currently reviewing. During their February they voted Ryan Miosek to be the Planning Board Attorney. Huntsman stated that "first lot split" needs to be defined. He ended by complimenting ZEO Ed Hobbie for doing an outstanding job.

ZEO Ed Hobbie reported that he has been actively going through and cleaning up permits issued prior to him being hired and also violations. To name a few he has been researching the Reiss subdivision that was approved in 1989, Boyd and Addison Bissell's property and Rosemary Summers.

Councilperson Potrikus asked ZEO Ed Hobbie if he would submit a copy of his log showing permits and applications he issued each month.

Councilperson Sandler brought up the fact that enrollment into MEGA (which is supported by a CCA Administrator) is one of the 10 action items required for the NYSERTA grant. He would like to establish an Energy Sustainable Committee consisting of no more than a total of 5 people. Once the committee is established their first order of business would be to qualify for the clean energy communication to be eligible for the \$50,000 or \$100,000 jack pot. The 10 action items to comply with the grant were discussed. No decision what 4 action items to complete for eligibility.

Highway Superintendent John Schallert stated that Suit-Kote Paving estimated the cost to move Willow Avenue would be between \$15,000 and \$20,000. Willow Avenue resident George Chandler has agreed to release his right-of-way through the Town Highway 5 acre parcel on Cemetery Road. Councilperson Potrikus agreed to talk to adjoining property owners, Walter and Irene Duesenbury, for feed back on concerns they may have if the road

were to be moved.

Councilperson Sandler suggested that the Town hire an engineer for review and advice on the proposal.

Town Attorney Michelle Kennedy agreed to review Chandler's deed and examine the wording concerning his right-of-way.

Councilperson Hohensee reported that the Safety Committee has held their fifth quarterly meeting on February 6 and attended by Councilperson Franck and highway Superintendent John Schallert. Documentation and recording of all training were reviewed and updated, based on previous recommendation by David Bloodgood at NYMIR. Bob Satriano, Otsego County Safety Officer has also previously complimented the town for being ahead of other towns in meeting their training requirements.

Upstate Technology's yearly contract renewal was discussed. Councilperson Sandler would like automatic back-up added to the contract and the Board was in agreement.

MOTION by Councilperson Hohensee, seconded by Councilperson Franck, to approve the contract submitted by Upstate Technology.

MOTION CARRIED: All were in favor.

MOTION by Councilperson Potrikus, seconded by Councilperson Franck, to approve the Fire and Ambulance Contract offered by the Village of Cooperstown.

MOTION CARRIED: All were in favor.

MOTION by Councilperson Sandler, seconded by Councilperson Hohensee, to adopt Local Law #1 The Demolition of Historic Structures.

MOTION CARRIED: Supervisor Kiernan yes
 Councilpersons Hohensee yes
 Councilperson Sandler yes
 Councilperson Franck yes
 Councilperson Potrikus no

MOTION by Councilperson Sandler, seconded by Councilperson Franck, to adopt Local Law #2 Flood Damage Prevention .

MOTION CARRIED: Supervisor Kiernan yes
 Councilpersons Hohensee yes
 Councilperson Sandler yes
 Councilperson Franck yes
 Councilperson Potrikus yes (frustrated that the Board has no choice. If you don't vote yes then the Town is not eligible for funding.)

MOTION by Councilperson Franck, seconded by Councilperson Sandler to adopt Local Law #3 Heirloom Barns and Building Law Moratorium.

MOTION CARRIED: Supervisor Kiernan yes
 Councilpersons Hohensee yes
 Councilperson Sandler yes
 Councilperson Franck yes
 Councilperson Potrikus yes

As a first step it was agreed to send Section 3.15 of the Town Land Use Law, Heirloom Barns and Buildings, to Cindy Falk, a professor at the Cooperstown Graduate Program, who offered to have her graduate students review the law and give the Town Board feedback. The hope is they will recommend language to eliminate any vague language and tighten up uses, ensuring minimum impact on neighbors. Councilperson Potrikus stated that currently it is not a "blank check" to be allowed to do whatever you want with your historic building. They still have to go through Site Plan Review.

Each Town Board member took the liberty to address Councilperson Potrikus and his January comments made at the January 11th meeting.

Councilperson Sandler referenced Councilpersons Potrikus' statement made at last month's meeting whereby he disagreed with the other four Town Board members who voted to use significant fund balance reserves in significant proportions to balance the budget and predicted that at this rate the reserves will be depleted in two years and taxpayers will see a 20% increase in their taxes. Councilperson Sandler did a 10 year look-back and at no time did the fund balance ever go under a million dollars. In the last five years money pulled from reserves to balance the budget has been between \$207,000.00 and \$399,000.00. Nowhere during that time have the reserves even come close to depletion. He found it alarming and not realistic to make those kind of statements. He is not

concerned that the town will be out of money in the next two years. He takes the Boards fiduciary responsibility very serious. Councilperson Sandler then asked Councilperson Potrikus if he has any direct investments with Joseph Galatti's Blackbird Hollow project? Councilperson Potrikus replied "none whatsoever". Councilperson Sandler then asked Councilperson Potrikus if he has ever had any investments or business associations with Mr. Galatti in the past? Councilperson Potrikus replied that he did not have to answer that question but the answer is "no". Councilperson Sandler just wanted to know that if the Blackbird Hollow project goes to court Councilperson Potrikus, who was the Planning Board Chairman at the time, had no reason to recluse himself.

Councilperson Potrikus went back to Councilperson Sander's argument that the fund balance, in his opinion, is sustainable. Councilperson Potrikus's analogy was if it turns out he is right it will be to late to fix it. Councilperson Franck focused on Councilperson Potrikus's comment that the Town's Public Comment Guidelines are "selectively being enforced". Town Law states that although Open Meetings Law gives the public the right to attend Town Board meetings and to listen to Town Board deliberations, the public does not have the right to speak at Town Board meetings except as provided by rules created and adopted by the Town Board. In comparison, the public does have a right to participate in Public Hearings. The Town Board did adopt a Public Guideline Resolution allowing people a 5 minute maximum to speak during public comment period along with some rules governing behavior. Councilperson Franck confronted Councilperson Potrikus stating that the law was not followed in the Blackbird Hollow application. With the few new appointments made to the Planning Board, she was encouraged that procedure and the implement of the law is being followed.

Councilperson Potrikus fired back that the law is not being followed. Tom Huntsman has not followed the law and done the mandatory training required to remain on the Planning Board.

Supervisor Kiernan stated that the records show that Tom Huntsman has satisfied the training requirements.

Councilperson Hohensee had much to say to Councilperson Potrikus. He started by offering him his condolences for the loss of his mother. He also felt that some of his comments were constructive. He laid out specific points he took issue with. Some of those issues were as follow:

- Felt his 20 minute monologue came across in an attacking tone. Quite frankly, he felt ambushed. He would prefer that if Town Board members intend to share prepared comments of any length that they be included on the meeting agenda.
- Regarding Town Manual Training requirements for Town Planning Board members cited in Chapter 7 of the Town Law Manual, recited: "must annually complete 4 hours of Town Board approved training". NOT MENTIONED: "training hours may be carried over in any 1 year, and the Town Board may waive the training requirements if it is deemed to be in the best interest of the town". He strongly disagreed with Councilperson Potrikus's assessment that it was "LUDICROUS", and a MISTAKE to appoint Tom Huntsman as Planning Board Chairman. He felt Tom Huntsman was qualified based on his work ethics, intelligence, humility, commitment to doing the right thing, and integrity. After attending last nights Planning Board meeting, and observing Tom Huntsman running the meeting he thought he did a wonderful job under difficult conditions. He felt politicking ramped up with Councilperson Potrikus's statements, "Really hate to do this- really not where I wanted to be tonight" "I know this is going to cause some trouble".
- He had questioned Councilperson Potrikus's statement that he had been approached by some of his constituents who have said that they are afraid to come to Town Board meetings, afraid to voice their opinion for "fear of retribution". So, because of that, they have asked him to keep them in the loop. Councilperson Hohensee hoped Councilperson Potrikus told his constituents that they do not need to fear retribution when stating their opinion to this Town Board.
- Councilperson Potrikus sent out an e-mail "Dear Friends, I need your help. We have a Town Board that continues to promote their agenda and is poised to take actions that will be detrimental to our town's long-term existence". Later-stated that using \$250,000.00 in reserves for 2017 budget, with \$776,390.00 in reserves as of 12/31, we'll be "bankrupt in 3 years. Councilperson Hohensee thought that statement was over the top and untrue. Councilperson Potrikus accused the Town Board of not being responsible fiduciary stewards. Councilperson Hohensee made it clear that he felt the Town Board members take their fiduciary responsibility seriously.
- At the January meeting Councilperson Potrikus admitted it was he who was responsible for the content and reason for Catherine Elsworth's article in the Town Crier. Councilperson Hohensee went on record that there was a lot of misinformation in that column.
- Planning Board and ZBA appointments: Last year was a difficult time and there were a lot of contention among Planning Board members with John Phillips' appointment to the Chairman position. Councilperson Potrikus, in his e-mail, states to his constituents that the Town Board is playing politics with Planning Board and ZBA appointments, putting in the people they think are the right people and they are the wrong people because they honestly don't know what they are doing and that is why he is voting against Tom Huntsman to close the loop. Councilperson Potrikus reached out to his constituents asking them if they know anyone who would be a good candidate for those positions to please talk to them. Councilperson Hohensee did not feel the people chosen to fill Planning Board and ZBA vacancy and chairmanship were the wrong people.
- Councilperson Potrikus felt that the Town's Public Comment Guidelines are being "selectively enforced". Councilperson Hohensee felt the all boards need to keep things reasonable and let people speak. And sometimes that might mean more than 5 minutes, which is allowed now. He did not agree that it has been selectively enforced.

In closing Councilperson Hohensee stated that it appeared that Councilperson Potrikus is calling the Town Board out for what he thinks are wrongful actions. We don't need politics; we need a genuine willingness to work together in an open deliberative, respectful, and collaborative way always considering town laws and the needs and values of town residents.

Supervisor Kiernan confronted Councilperson Potrikus. She felt attacked. She put something on the table and said "let's discuss it next month" and he in turn sent it out to the public, got everybody worked up like it was a done deal when in truth she put it out there for everyone do their homework and be prepared to discuss it at the next meeting. She did not appreciate Councilperson Potrikus going behind the Town Board's back, sending out e-mails when she tries to be inclusive and include everyone on everything. She thought that it only fair that she be added to his e-mails so she knows what is being said about her.

Councilperson Potrikus thought the website needed to be updated. Councilperson Sandler brought the Town's website up on his computer and it was deemed that the current issues section does need to be updated

Councilperson Potrikus noted that the Town Law Manual states that the Town Board minutes need to be made available to the public with in 1 week after an executive session. The Association of Towns informed him that the Town Board minutes have to be made available no later than 2 weeks after a Town Board meeting.

Town Attorney Michelle Kennedy stated that it is already the practice of the Town Clerk to have the minutes available within a 2 week timeline. If anyone requests minutes she gives them a "DRAFT" copy. They do not need to be posted on line. She explained that the Town Law Manual and the Association of Town's information is not to be treated as gospel. The Association of Towns has a range of attorneys with a range of experience. They are not Court of Appeal Justices. It was brought up by Councilperson Potrikus that the Town Clerk is not keeping a complete and accurate record of the proceedings of the meeting. Kennedy wanted to use this as an example that the Town Law Manual is not the law and the law is subject to interpretation. There is no definition for proceedings in the Town Law Manual. Blacks Legal Dictionary defines proceedings as an act, which is done by the authority, or direction of the court, agency or tribunal expressed or implied and acts necessary to be done in order to obtain a given end. This means MOTIONS need to be recorded, not discussions. If Board members indicate during discussion that they would like the minutes to reflect their comment, Attorney Kennedy thought that was fair. What she did not think fair was for Board members to expect the Town Clerk to automatically know what parts of the three to four hour discussion they would like noted in the minutes.

MOTION by Councilperson Hohensee, seconded by Supervisor Kiernan, to go into Executive Session at the request of the Town's ZEO for Attorney Client privilege.

MOTION CARRIED: All were in favor. (10:00PM)

MOTION by Councilperson Hohensee, seconded by Councilperson Sandler, to come out of Executive Session.

MOTION CARRIED: All were in favor. (10:50PM)

MOTION by Councilman Sandler to adjourn.

MOTION CARRIED: All were in favor.

Meeting ended at 10:50PM.

Respectfully Submitted,
Pamela Deane/Town Clerk