

The Otsego Town Board held a public hearing and regular monthly meeting on the 11<sup>th</sup> day of March 2015 at the Town Building in Fly Creek, NY at 7:00 PM.

Town Board Members Present:

Anne Geddes-Atwell	Supervisor
Thomas Hohensee	Councilperson
Bennett Sandler	Councilperson
Carina Franck	Councilperson

Also Present:

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

Supervisor Geddes-Atwell called the public hearing to order and read the Public Notice that was published in the Oneonta Daily Star on February 26<sup>th</sup> announcing and explaining the purpose of tonight's public hearing. The floor was then open for comments.

Howard William Michaels, Vice President and co-owner of the Fly Creek Cider Mill and Orchard, read a prepared statement. In the statement Michaels explains that he would like to add a second story to the single structure addition to the mill built in 1960's and 1970's. The second story addition attached to the historic mill, would be energy efficient, compliment the designs and materials of the existing mill, and provide additional emergency egress and modern heating and cooling systems. The plan also allows for an elevator allowing persons with disabilities to access the second level to witness the mills cider making process. He has applied for an interpretation of a Use Variance, which will be heard by the Zoning Board of Appeals March 17<sup>th</sup>. He was upset to see the Town Boards proposal allowing only "conforming" structures, which the Cider Mill is not, be allowed to make modifications, alterations, or necessary repairs to an existing structure without site plan review from the Planning Board. A building permit from the County may still be required. In closing Michaels believes the Town Board's action targets his pending application with the ZBA and is destructive, malicious and personal. It was never his intention for his proposed project to be tried in the court of public opinion. He was disappointed that the Town Board sought to try him here before he was allowed to present his application before the ZBA.

Jim Howarth, a Cooperstown resident, supports the Cider Mill and considers it a historic, economic asset to the community. Howard asked that the Town Board gather input from Zoning Board and Planning Board members before acting on the proposed Land Use Law amendments.

Attorney Robert Birch from Hartwick, supported the Cider Mill's application for the same reasons that had already been mentioned and expressed his concern with the proposed language under the Section 1.04 amendment. It was his opinion that the proposed language could lead to ambiguity and enforcement difficulties. He asked the Board if it were their intent that any of these proposed changes, if adopted, would be applicable to a currently pending zoning applications?

Town Attorney Michelle Kennedy answered no. She regards a pending application before the ZBA as already vested. It did come to her attention with the Cider Mill application that there is a split amongst the Appellate Divisions. The Third Appellate Division, which our jurisdiction falls under, has ruled that when you have increased the height of a building that encompasses the expansion of a use and so therefore the expansion of a non – conforming use would require a Use Variance; the Fourth Appellate Division, which does not include our jurisdiction, has ruled the opposite.

Kennedy explained there was an immediate concern by the Board with the other proposed changes that were discussed extensively at the last meeting when Planning Board members were present and participated in the discussion. Because there seemed to be this clarification issue concerning Section 1.04 the Board decided to add it to the list of proposed amendments.

Town Board member Carina Franck stated that she, along with Town Board member Julie Huntsman, has been meeting with Planning Board and Zoning Board members going through the Land Use Law making sure that the law still mirrors the Town's Comprehensive Plan. The review of the Land Use Law is at the early stages.

John Phillips, Planning Board alternate and Fly Creek resident, wanted to clarify that he and Planning Board member Edward Hobbie were at the last Town Board meeting and looked at the proposed changes, which was just a draft. He then met with Councilperson's Huntsman and Franck the following Monday and expressed legal concerns with the proposed changes. He stated that he was told not to worry about that and that the Board plans to tweak these changes some more. Later he finds out that there is a public hearing scheduled for these proposed changes. Phillips felt blindsided and insulted that the Planning Board was not notified or asked for input. Phillips went on to say that he felt more advertising should have been done. He thought that the Town Board should have done a mailing. He feels these proposed changes are a knee jerk reaction to something being built that somebody doesn't like.

Joseph Potrikus, also a Planning Board member and Fly Creek resident, accused the Town Board of steam rolling over the Planning Board and could not understand why these proposals were being proposed now without input from the Planning Board or the ZBA. He felt the Planning Board and ZBA should have been notified as interested parties under SEQRA. He complimented Councilpersons Franck and Huntsman for their diligence in meeting with Planning Board and ZBA members gathering suggestions on how to improve upon the Land Use Law and he admitted that although asked, he never met with either one of them. At no time did either of them

bring up the fact that the Town Board had scheduled this public hearing. He felt this was all done in secret. He accused the Town Board members of steamrolling over the entire Town's Land Use Law when they approved the parking lot at the end of Linden Avenue in Cooperstown. He felt the Town Board members were all hypocrites to go after private business and change the Land Use Laws at the eleventh hour when they did not do anything to follow the recommendations of the Planning Board or the Land Use Law with that parking lot proposal.

Rob Bohm, a Fly Creek resident, stated that he doesn't read the local paper. Never does. Doesn't have time for it. Learned about the meeting four hours ago. Was in favor of a mailing next time. Felt that if someone had an old barn they should be able to use it as a storage unit facility.

Attorney Lester Sittler, a Fly Creek resident, stated that he has been in contact with Town Attorney Michelle Kennedy, totally does not agree with her interpretation of the Land Use Law but has agreed to put her position and his before the ZBA for a decision. His complaint was that at no time did Kennedy inform him about the public hearing for the amendment of Section 1.04 which if adopted would affect the Cider Mill's application. He was delighted to hear that his client's application will be considered vested and not fall under the amendment if adopted. He did not think the amendments to the Land Use Law, should be done piece meal but all at once after numerous meetings with the public and members of the Planning Board and ZBA. His advice was to slow down.

Attorney Douglas Zamelis from Springfield was there on behalf of Maureen and Roger Heroux Excavating and Cider Mill owners Brenda and Howard Michaels. He agrees with all comments already made and was there to register a formal objection to the proposed amendments, in particular Section 1.04 and the definition to Service Trade Establishment. He thinks the amendments are bad for business and therefore bad for the Town as a whole. The Board should want small and medium size business. It is good to have local employment and an increase in the tax base. These amendments would restrain both the Michaels and Heroux's business to grow. He doesn't feel the current Land Use Law is broken. He respectfully asked, on behalf of his clients, that the Board not adopt the proposed amendments at this time.

Marjorie Landers, resident of Cooperstown, informed the Board that word is traveling fast that the Town Board is considering amendments to the Land Use Law under the radar. Lander's is concerned about fairness and asked that the Board refrain from voting until a later date.

Ron Streek, resident of Cooperstown, stated that he looked over the proposals and feels they are anti-business. The Cider Mill is a long time successful business that employs a number of people. He asked that the Board look at the proposal again and see how they can better benefit businesses.

James Ainslie, resident of Fly Creek, read thoughts of this country's founding fathers. A major purpose of the framers of our constitutions was to establish a government strong enough to protect each person's right to use and enjoy his property at the same time they wanted a government so limited that it could not endanger that right. He felt the Board is endangering resident's liberty and rights as landowners with these proposed amendments.

MOTION by Councilperson Sandler, seconded by Councilperson Hohensee, to close the Public Hearing.

Supervisor Geddes-Atwell called the regular meeting to order and asked all those present to please rise for the Pledge of Allegiance.

Supervisor Geddes-Atwell publicly read the February 11<sup>th</sup> minutes.

MOTION by Councilperson Franck seconded by Councilperson Hohensee, to accept the minutes of February 11<sup>th</sup> as presented.

MOTION CARRIED: All were in favor.

Planning Board liaison Joseph Potrikus reported that Planning Board Chairman Donna Borgstrom will be moving and the Town Board will need to appoint a replacement by the July meeting. He respectfully requested that the Board refrain from conducting any interviews or making any appointments before the Planning Board has had a chance to make a recommendation at the April meeting.

Town Attorney Michelle Kennedy asked John Phillips, if he as the Planning Board liaison forwarded the information discussed pertaining to the proposed amendments to the Planning Board members?

Phillips replied that the Planning Board did not meet in March. The hand out for the proposed amendments was referenced as a "Draft" and he thought would be discussed again at a future date.

Kennedy pointed out that the Board discussed the SEQRA process and setting a date and time for the public hearing. She was mystified how the Planning Board members that were present missed that whole process.

Phillips said it was his birthday and he and Planning Board member Edward Hobbie left early.

Kennedy felt Phillips and County Representative Rick Hulse certainly were present during the extensive discussion on the importance on nailing down the language and sending the proposed amendments to the County Planning Board Department for review in hopes that their recommendation would be given within thirty days.

Neither Phillips nor Hulse remembered any of the Boards conversation pertaining to this matter.

Kennedy made it known that the public hearing notice along with a list of the proposed amendments was in the Oneonta Daily Star, on the Town's website and posted at the Town Building. She feels the Town Board is transparent. Phone calls and e-mails are frowned upon and discouraged. All discussions and decisions of the Town Board are made at an open meeting.

Supervisor Geddes -Atwell read correspondence received since last meeting.

Supervisor Geddes-Atwell opened the floor for comments.

Joseph Potrikus questioned where the MOTION for a public hearing in the February minutes was.

Town Attorney Michelle Kennedy answered that the MOTION was located on the bottom of the third page of the February minutes.

Joseph Potrikus had issue with the language in the MOTION to schedule a public hearing.

Supervisor Geddes-Atwell answered, "So noted".

John Phillips informed the Board that he has found the lost e-mails dated 3/1/2005 concerning a definition change for "storage units".

Rosemary Craig, a Planning Board member, thought the Town Board felt they were doing the right thing but felt they went about it in the wrong way.

Howard Michaels always felt the Board had a fiduciary role of the Town watching over the Town's money and property. For four years the old highway garage has been just sitting. The Town Board should be coming up with ways this building could be an asset to the community. The town has an aggregate storage facility and open salt shed leaching into the environment. The town highway superintendent is now dealing with four feet of frozen crust on the dome of the grit that is unusable, pushed off to the side. Why not consider a covered, compliant, safe, environmentally friendly, sustainable use of the Town's property. He felt these are the roles of Town Council.

Councilperson Sandler responded that the old highway garage is being used for cold storage.

Rob Bohm asked if the town is short of cash why is the Board researching the use of solar for the Town Buildings. He has looked into solar and it is very expensive and the payback takes years, if ever. He agreed with Michaels that a better use of money would be to get a dome over the sand pile.

Supervisor Geddes-Atwell responded that the solar project will result in a cost savings, not additional cost.

MOTION by Councilperson Sandler, seconded by Councilperson Hohensee to close the floor for Comments.

MOTION CARRIED: All were in favor.

Supervisor Geddes-Atwell gave a financial report. Balances are as follows in the various accounts:

General Savings: \$ 4,678.19	General Checking: \$ 495,604.00
Highway Savings: \$ 7,800.00	Hwy Checking: \$ 779,347.80
Building Reserve Fund: \$150,710.49	Hwy Equipment Fund: \$102,794.36

MOTION by Councilperson Sandler, seconded by Councilperson Hohensee, to accept the financial report as given.

MOTION CARRIED: All were in favor.

MOTION by Councilperson Hohensee, seconded by Councilperson Franck to pay the following invoices as well as make the necessary transfers.

GENERAL: #41-#56	\$ 1,5523.77
HWY: #30-#47	\$ 23,166.25

MOTION CARRIED: All were in favor.

Zoning Enforcement Officer Tavis Austin reported the following permits issued since last month:

Zoning Permit: 2

Dog Control Officer Tom Steele reported that all is quiet in the Town of Otsego.

The Highway Superintendent report was given by Highway Superintendent John Schallert. Topics discussed:

- Schallert suggested that Lamont Engineering be asked to make recommendations on whether or not the culvert at the end of Honey Joe Rd. needs to be increased and inspect the dam at Mcgoey's pond at the top of Honey Joe Rd. for stability. Councilperson Sandler suggested that the Army Corp. of Engineers be called to inspect the dam at Mcgoey's pond to determine if it is sound. If not, Mcgoey will have to take it from there. Otsego County Soil and Water was another suggestion for input. He did not believe there would be any charge for either of those agencies services.

- He has been instructed by property owner Timothy Curtin on Murdock Rd. not to turn the plow truck around in his driveway. Schallert informed the Board that he would now be building a large turn around.
- Schallert stated that he found a good used 2000 Mack truck on e-bay that he would like to inspect and possibly buy. He was informed by Town Attorney Michelle Kennedy that would not be possible. Municipalities must use competitive bidding for purchases in that cost range.
- Schallert informed the Board that he would like to purchase and post “No Parking” signs between Nov. 1<sup>st</sup> and April 1<sup>st</sup>. In order to do that the Town Board needs to pass a resolution. Board members seemed to be in favor of his request.
- Schallert informed the Board that loggers are ruining town roads, Bed Bug Hill, Rose’s Hill, and Panther Mt. in particular. Kennedy will look into options for recourse in recuperating road repair costs.
- Schallert warned the Board that soon there will be a State Law mandating that all sand piles be covered to stop leaching into the soil.

Attorney Michelle Kennedy informed Schallert that Brian Kegelman has met with some of his neighbors and have presented what changes they would like to see to alleviate future flooding.

Supervisor Geddes-Atwell asked for comments from the Board in regard to the proposed amendments to the Land Use Law.

Councilperson Sandler appreciated all the feedback from the public. He pointed out that the Board had a responsibility not only to business owners but to residents as well. He was concerned with the further erosion of the relationship between the Planning Board and the Town Board. He did not understand what the immediate impact these few changes would make since there are no applications on the table at this time. Down the road if it is the wishes of the town residents to put back any or all of the proposed changes, the law can be tweaked again.

Rosemary Craig’s fear was that there is slow growing erosion over time, discouraging businesses from coming into the town and, this will cause things to get out of balance.

Attorney Doug Zamelis felt the Board’s “little tweak” actually puts those with Service Trade Establishments in a straight jacket labeling them now non-conforming and unable to expand.

Councilperson Sandler felt that once a business grows to a certain size it no longer belongs in a residential area and needs to continue in a commercial district. He felt the proposed changes benefit others in the community.

Hulse said that the public hearing was the first time he heard of the proposed changes to the Town Land Use Law.

Attorney Kennedy pointed out that Hulse was copied on an e-mail dated February 23<sup>rd</sup> from County Planner Karen Sullivan reporting on the amendments that were reviewed by the County Planning Board Department. Kennedy, on the receipt of the e-mail, assumed because Hulse was copied on the e-mail he requested the County Planning Department expedite the referral.

Hulse said that he did receive Karen Sullivan’s e-mail with the County Planning Department’s report regarding the amendments attached. It was not his doing to expedite the proposed changes.

Supervisor Geddes-Atwell stated that the town now has a large commercial building in a residential area and the Board felt that it was not the intent of the law to allow for a series of commercial buildings of that size being built in the middle of a residential area. The Towns Comprehensive Plan, which involved many people when drafted and underwent a public hearing, has been consistent.

Eileen and Edward Kukenberger stated that while they owned Kukenberger Gravel Bank they were approached by board members and asked not to build any large buildings on the gravel bank. When the gravel and sand is gone the topsoil will be put back and the land will revert back to agricultural. They would have loved to have large buildings to store all their large expensive equipment in. But they honored the board’s wishes. Eileen went on to say that she was not against businesses or people making money but believed residents need to be considered also.

Councilperson Hohensee was asked by the Supervisor for his thoughts. He felt the discord between the Planning Board and the Town Board was unfortunate. Two years ago he was excited about joining the Town Board and anxious to work on repairing the Town Board’s relationship with the Planning Board. The Planning Board had currently no pending projects. He agreed with Howard Michaels that the Board also has a fiduciary responsibility. The reason for the controversy is because there are two sides to the story. The Board has tried to listen to both sides. He just hoped that this issue could be resolved in a reasonable way in a reasonable amount of time.

Councilperson Franck was asked by the Supervisor her thoughts. She felt the changes were discussed with Planning Board members. The Town Board is currently looking at the entire Land Use Law and its districts. They are making sure the current law reflects the Comprehensive Plan. She reminded those in attendance that the Town Board has a responsibility not only to business owners but to town residents as

well. Clarity was also a concern. She also felt the Land Use Law is too vague.

Supervisor Geddes-Atwell stated that the Planning Board has indicated that they want more clarity.

Potrikus remembered the Town paid a substantial amount of money to experts to write the Town's Comprehensive Plan after receiving back from residents a survey they had sent out. At the end of the day the law was intentionally written with gray area so the Planning Board could look at the merits of the individual application, followed by a public hearing process and incorporating public comments into the planning process. For the record, he recused himself from the Heroux application because of the proximity of his own Service Trade Establishment. The Planning Board's response when Heroux submitted his original plan for four 80ft x 120 ft storage units was, "ain't gonna happen". The next application Heroux submitted was scaled back to one 80ft x 120 ft. Service Trade Establishment. The Planning Board has always taken comments from the public, incorporated them in, made suggestions to the applicant in this case, creating berms and where trees should be planned for screening. No one just shows up one night and the application is approved. There have been times when applications were not approved.

Councilperson Sandler asked Eileen Kukenberger if she felt she was heard by the Planning Board at the Heroux public hearing.

Kukenberger's response was "no". Her letter was read and placed in a folder and they went on. No one asked her any questions. Planning Board member Thomas Huntsman did address a few of the issues she raised in the letter and voted against Heroux's application. She again said that she is not against business but felt one commercial building of that size in a residential area is enough.

Attorney Kennedy asked Potrikus if when the application was first presented showing four 80ft x 120ft storage units, did the Planning Board recommend that the applicant revise the application.

Potrikus felt that the Planning Board's reaction was that this application will set precedent being it is the first storage unit facility ever being proposed and they needed to move slowly. From there discussion were held. The engineer pushed to expedite the application with winter coming. It was the recommendation of the Planning Board that the number of buildings being proposed be reduced. When he previously stated that the project "ain't gonna happen" he meant it wasn't going to happen in a short amount of time, not that it wasn't going to happen at all.

Attorney Kennedy stated that the concern that was expressed to Town Board Members had to do with the phrase in the Land Use Law which states "those aspects of the operation which exceed a home occupation intensity of use are conducted off the premises". It was felt that that phrase should have reduced the size of the use of the operation that could be situated there.

Potrikus felt Attorney Kennedy was taking the sentence out of context.

Attorney Kennedy stated that she has advised the Board that there could be a proliferation of these buildings, which Potrikus had already pointed out that, could set a precedent. There is a window of time in which an application could be filed and an interest could be vested if there is not a decision tonight. Attorney Kennedy also advised that the Board may consider omitting from the proposed amendments, the proposed amendment to Section 1.04. The decision is entirely up to the Town Board.

Supervisor Geddes-Atwell called for a vote. This issue can be revisited later. The Planning Board has indicated that the law is vague. She felt the time to act was now before a precedent is set that wasn't intended.

MOTION by Councilperson Franck, seconded Supervisor Geddes-Atwell, to adopt the proposed amendments to the Land Use Law to be known as Local Law # 1 of 2015 with the exception of the proposed amendment to Section 1.04.

Roll call vote was taken.

MOTION CARRIED: Supervisor Geddes-Atwell aye

Councilperson Franck      aye  
Councilperson Hohensee      aye  
Councilperson Sandler      aye

Supervisor Geddes-Atwell stated that Board of Assessment member Debra LeCates term ended October 1<sup>st</sup>, 2014 and she is willing to serve another term.

MOTION by Councilperson Sandler, seconded by Councilperson Hohensee, to reappoint Debra LeCates to the Board of Assessment Review (term ending 10/01/17).

MOTION CARRIED: All were in favor.

MOTION by Councilperson Sandler, seconded by Councilperson Hohensee to go into Executive Session for attorney-client privileged communications. (9:36)

MOTION CARRIED: All were in favor.

MOTION by Councilperson Sandler, seconded by Councilperson Hohensee to come out of Executive Session. (9:53)

MOTION CARRIED: All were in favor.

Attorney Kennedy discussed briefly her legal concerns with the form of MOTION to newly adopted Local Law #1 for 2015.

MOTION by Supervisor Geddes-Atwell, seconded by Councilperson Franck, to be in compliance with the Municipal Home Rule Law Section 20, Subsection 4 the Board repeals Local Law #1 for 2015.

Roll call vote was taken.

MOTION CARRIED: Supervisor Geddes-Atwell –aye  
Councilperson Sandler -      aye  
Councilperson Frank-      aye  
Councilperson Hohensee-      aye

MOTION by Supervisor Geddes-Atwell to pass the following proposed amendments to the Town of Otsego Land Use Law dated February 11<sup>th</sup>, 2015. The first amendment is to the definition of Service Trade Establishment (Service Trade Establishment: Construction building trades and/or maintenance businesses, provided that only storage, light fabrication, and/or office functions are conducted on the premises, the operation takes place wholly within one principal or accessory building that does not exceed 3000 square feet and those aspects of the occupation which exceed a home occupation in intensity of use are conducted off the premises. The maximum building square footage of 3000 square feet shall not apply to any Service Trade Establishment that meets the requirements of Section 3.15, “Heirloom Barn and Buildings.” If the Service Trade Establishment is situated within a residential dwelling, the Service Trade Establishment may only occupy up to 3000 square feet of total floor area, but the total square footage of the residence may exceed 3000 square feet.). The second is to strike self-storage units (in the RA-2 District). The third is to add under Article VII Administration and Enforcement, the authorization of the ZEO to issue STOP Work Orders and appearance tickets.

In support of this new motion to amend the Town of Otsego Land Use Law and adopt Local Law #1 of 2015 Supervisor Geddes-Atwell stated that in her capacity as the Supervisor for the Town of Otsego, she hereby certifies pursuant to Municipal Home Rule Law Section 20, Subsection 4 as to the necessity for the immediate passage of the proposed amendments to the Town of Otsego Land Use Law including the amendments to the definition of Service Trade Establishment, the striking of self-storage units in the RA-2 District and the additions under Article VII entitled “Administration and Enforcement” as it has been stated on the record this evening that the Heroux project has an immediate business plan to expand the intensity of its warehouse operation to include 3 additional warehouse buildings in the RA-2 district which could forever alter the character of the district and is contrary to the Comprehensive Plan. Seconded by Councilperson Sandler.

MOTION Seconded by Councilperson Sandler.

Roll call vote was taken.

MOTION CARRIED: Supervisor Geddes-Atwell aye  
Councilperson Sandler - aye  
Councilperson Frank- aye  
Councilperson Hohensee- aye

Local Law #1 of 2015 ADOPTED:

Councilperson Sandler reported on a meeting held with Brian Kegelman to discuss recommendation made by Lamont Engineering and what the town was willing to do. Kegelman met with neighbors and came up with their own solutions.

It was the consensus of the Board to contact Lamont Engineering to review Kegelman's recommendations, which include changes on Murdock Road as well as Tripp Hill Road and capping the engineering cost at \$1,100.00.

MOTION by Councilperson Sandler to adjourn.

MOTION CARRIED: All were in favor.

Meeting ended at 10:30PM.

The next regular meeting will be at the Town Building in Fly Creek on the 8<sup>th</sup> day of April 2015.

Respectfully Submitted,  
Pamela Deane/Town Clerk