

The Otsego Town Board held a regular monthly meeting on the 13th day of March, 2013 at the Town Building, Fly Creek, NY at 7:00PM.

Town Board Members Present:

Anne Geddes-Atwell	Supervisor
Bennett Sandler	Councilman
Carl Wenner	Councilman
Thomas Hohensee	Councilman

Also Present:

Michelle Kennedy	Town Attorney
Pamela Deane	Town Clerk

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

MOTION by Councilman Sandler, seconded by Councilman Wenner, to accept the minutes of February 13<sup>th</sup> as presented.

MOTION CARRIED: All were in favor.

Supervisor Geddes-Atwell opened the floor for comments.

Planning Board Chairman Donna Borgstrom did not feel the minutes of the joint Planning Board and the Town Board meeting held on February 27<sup>th</sup> accurately reflected the meeting. She felt the summary of the meeting was too general. A summary of what each individual said would have been more accurate.

Planning Board member Joseph Potrikus felt the narrative for the February 27<sup>th</sup> joint meeting was vague. Among other things, Potrikus felt the minutes reflect a summary of the clerk's opinion or conjecture- not facts. He agreed with Borgstrom that each Board member's comments should have been at least noted and summarized.

Town Attorney Kennedy stated that it is not legally required for the Town Clerk to report a meeting verbatim.

Councilman Sandler informed everyone that a copy of the recording of the February 27<sup>th</sup> meeting has been downloaded on the clerk's computer and transferred onto a thumb drive for Planning Board member Joseph Galati and is also available for anyone else interested in obtaining it.

County Representative John Kosmer reported that he is notifying the public through a series of e-mails and flyers, that there will be a series of three meetings to explain why Otsego Manor is going to be sold. He then read and later submitted an informational flyer stating when, where and the time the meetings will be held, along with the ground rules in which questions can be asked.

Supervisor Geddes-Atwell closed the floor for Public Comment.

The adoption of the February 27<sup>th</sup> minutes was discussed further by Board members. Town Attorney Michelle Kennedy informed the Board that they are not obligated to adopt the minutes. Attorney Kennedy requested that recording of the February 27<sup>th</sup> minutes be saved for an indefinite length time.

Supervisor Geddes-Atwell read an e-mail sent to her by Planning Board member Joseph Galati. The letter stated that he did not feel the minutes accurately reflected the February 27<sup>th</sup> joint meeting and asked that members of the Planning Board be given a reasonable amount of time to review the audio tape and comment on the minutes prior to any action to adopt them.

Councilman Hohensee felt that because the purpose of the joint meeting was to improve communication between the two boards, the minutes need to be accurate and clear.

It was decided to table the adoption of said minutes, giving the Planning Board time to review them and make further comment.

Supervisor Geddes-Atwell read correspondence received since last meeting.

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

General Savings: \$ 4,671.30	General Checking: \$ 700,618.75
Highway Savings: \$ 7,789.00	Hwy Checking: \$ 681,889.46
Building Reserve Fund: \$150,468.44	Hwy Equipment Fund: \$ 107,033.86

MOTION by Councilman Sandler, seconded by Councilman Hohensee, to accept the financial report subject to the input/output statement being included in future reporting, and accounts A-1110.3 and B-1120 be identified and corrected.

MOTION CARRIED: Supervisor Geddes-Atwell, Councilmen Sandler and Hohensee voted yes. Councilman Wenner voted no.

Supervisor Geddes-Atwell asked for comments and /or questions concerning the proposed bills.

Councilman Wenner questioned whether it is required that the Town Supervisor attend the Annual Conference in NYC sponsored by the Association of Towns.

Supervisor Geddes-Atwell replied that it is not required but information learned will be helpful at budget time.

Councilman Wenner questioned the cell phone re-imbursement charge from Town Justices Gary Kuch. He wondered why the Judges are using cell phones rather than the phones at the Town building.

Councilman Sandler felt that in this day and age the use of cell phones is part of the cost of doing business.

MOTION by Councilman Wenner, seconded by Councilman Sandler, to pay the following invoices and make the necessary transfers.

GENERAL:	#42-#57	\$ 19,037.34
HWY:	#21-#32	\$ 42,269.93

Town Attorney Michelle Kennedy recounted a phone call she received from Fly Creek Attorney Lester Sittler. Attorney Sittler indicated that he has a high number of clients interested in filing on grievance day and asked what the timing of the next re-valuation will be. She told Attorney Sittler that the Town Board anticipates a re-valuation within the next one to two years.

Town Attorney Michelle Kennedy informed the Board that there will be oral argument on March 21<sup>st</sup> in respect to Home Rule and Gas Drilling. The first two pending cases to be heard before the Third Appellate Court in Albany are the Towns of Middlefield and Dryden.

Dog Control Officer Tom Steele reported relinquishing two dogs to the SPCA.

Zoning Enforcement Office Tavis Austin stated that he talked with Planning Board Clerk Bill Deane about organizing the files pertaining to site plan review and permits. He suggested that the Board talk to Icon USA or a similar company, who has a tag team that will scan and archive Town records. He has found Icon USA to be cost effective.

Town Attorney Michelle Kennedy reported on Planning Board activity. The Blackbird Hollow, LLC application was approved by the Planning Board as provided in the permit lodged with the Town Clerk. The Planning Board has requested that the Town Board revisit the recent amendments to the Ethics Policy. Town Attorney Kennedy expressed surprise that the Planning Board minutes of March 4, 2013, taken after she had recused herself from the meeting, read that the ZEO had been advised by the Town Board and Attorney to take no action against the B&B Ranch despite violations of a Special Use Permit. Town Attorney Kennedy clarified that she and the Town Board regarded the Special Use Permit that was issued to the B&B Ranch for a "Recreational Use Facility" and / or Horse Boarding Facility to be ambiguous. Reference was made to the definition of "Recreational Use Facility" under the Town of Otsego Land Use Law, which the Town Board had previously interpreted to include facilities, such as a Country Club that may offer dining for patrons of the club. In addition, the doctrines of Laches and Mootness could preclude a court action once substantial investment has been made and there has been a delay in enforcement.

Town Attorney Michelle Kennedy, at the request of the Town Supervisor, described her role and responsibilities as the Town Attorney. The Town Attorney provides legal advice at the request of the Town Board, Zoning Board of Appeals, Zoning Enforcement Officer, Highway Superintendent, and Planning Board Attorney. The body or public officer is not required to act in accordance with the legal advice. The Town Attorney has a duty not to file frivolous claims and to evaluate potential legal actions. In addition to the aforementioned bodies and public officers, the Town Attorney is answerable to both the taxpayers and the Town's insurance carrier.

Town Attorney Michelle Kennedy wanted to address questions and concerns that have been raised with respect to the amendments to the Ethics Policy adopted by the Town Board in 2012. Complaints have been made that the amendments violate the right to equal protection and are of a discriminatory nature. The amendments to the Town of Otsego's Ethics Policy require recusal and absence from a proceeding

by a board member when he/she has an application before a Town Board and/or a direct or indirect financial or private interest in any matter before a Town Board. A Legal Opinion, attached hereto, issued by the NYS Attorney General's Office in 1995 reads, "a member of a local Planning Board who has stated that he or she has a conflict of interest concerning a particular matter before the board must absent himself from the board during the time that the matter is before it." Attorney Kennedy explained that the purpose of this requirement is to avoid impropriety as well as the appearance of impropriety. Public confidence in government has been recognized as a rational basis upon which to institute more stringent ethical obligations of public officials. The Town Board acted to amend the Town of Otsego Ethics Policy and impose more stringent requirements for recusal once presented with the allegations made by Town of Otsego residents in a Verified Petition filed with the Otsego County Supreme Court, attached hereto, dated April 3<sup>rd</sup>, 2012 at Page 6, Paragraphs 27-30, page 10, Paragraph 62, and Page 10, Paragraphs 68075.

Councilman Wenner reported for the Highway Committee. Highway Superintendent Shawn Mulligan plans on inspecting miles of surplus equipment at Fort Drum that is being brought back from overseas and being sold at a reasonable price.

Councilman Sandler reported that the water line coming into the new highway garage froze and needs to be addressed. Also CSEA is not satisfied with the highly sensitive carbon monoxide indicators. Councilman Sandler will contact PESH who are willing to test for elements free of charge.

Councilman Hohensee reported that there is a plan for creating a Lake Management Plan for Canadarago Lake this spring. Ultimately the Plan will deal with flood control issues.

Councilman Sandler reported that the minutes and agendas are being put on the website in a timely way. The Board talked briefly about upgrading the Town's website and ways to cut down on paper. No decision was made.

Supervisor Geddes-Atwell stated that neither Justice is interested in resigning to solve the same term problem. Councilman Wenner was in favor of eliminating one of the justice positions and reinstating it in two years to establish off set terms. Councilman Sandler was concerned with downsizing to one justice given the Village may be eliminating their court and consolidating with the Town.

Councilman Wenner asked if the Board was interested in adopting an Emergency Budget. He feels that having something in place showing what programs or positions are potentially cut in the event of an Emergency. After much discussion Councilman Sandler will meet with Councilman Wenner to review the Town Budget and be prepared to submit a proposal for the Boards consideration.

MOTION by Councilman Wenner, to adjourn.

MOTION CARRIED: All were in favor.

Meeting ended at 9:30PM.

Respectfully Submitted,

Pamela Deane  
Town Clerk