

The Otsego Town Board held a Public Hearing and a Regular Monthly meeting on the 11th day of October 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.

Supervisor Kiernan called the Public Hearing to order. She explained the purpose of the Public Hearing was to hear public comment on the proposed Local Law #2 which would allow a real property tax levy in excess of the 2% "tax levy limit" as defined by General Municipal Law 3-c.

Shirlee Rathbone asked why the Town Board would opt to go over the 2% cap instead of applying some of the Town's surplus to the budget?

Supervisor Kiernan explained that it all depends on how much insurance, highway equipment and payroll goes up. Another concern was she was told that the Fly Creek Fire Districts Budget was going to be increased substantially.

Sheila Ross asked if residents would lose their STAR exemption if the Town Budget exceeded the 2% cap.

Supervisor Kiernan explained that that would only happen if a Local Law allowing the exceeding of the 2% cap was not adopted.

Supervisor Kiernan closed the Public Hearing.

MOTION by Councilperson Hohensee, seconded by Councilperson Potrikus, to accept the September 13th minutes as presented.

MOTION CARRIED: All were in favor.

MOTION by Councilperson Hohensee, seconded by Councilperson Sandler, to accept the September 25th minutes as corrected. The date of the meeting was actually on September 26th.

MOTION CARRIED: Supervisor Kiernan, Councilpersons Sandler, Hohensee and Potrikus voted yes. Councilperson Franck abstained given she did not attend the meeting.

MOTION by Councilperson Sandler, seconded by Councilperson Franck, to accept the October 3rd minutes as presented.

MOTION CARRIED: All were in favor.

Supervisor Kiernan read correspondence received since last meeting. Councilperson Potrikus stated that he received an e-mail from Joseph Galati who requested it be read aloud and entered into the minutes.

Town Attorney Michelle Kennedy stated that given the entire Town Board had been inundated with e-mails and sarcasm from Joseph Galati all day, the e-mail should not be read. In the future, if Mr. Galati has actions he would like the Board to take then he is welcome to come to the meeting and make his comments public or send a letter. Mr. Galati, through his e-mails, suggested that Planning Board Attorney Ryan Miosek was in ethical violation when he gave an interpretation of the law after recusing himself from the conversation that was advantageous to his client. Upon receiving that information the Town Supervisor has since spoken to Attorney Miosek and asked him that in the future when he recuses himself that he does not have any further discussion pertaining to the application he is recusing himself from. He is a new Planning Board Attorney and the Town Board felt he should be given some latitude.

In regards to Mr. Galati's complaint that the Upstate Bar and Grill's patio was not properly permitted by the Planning Board and was subject to Site Plan Review, the Town Board had an extensive discussion at their September meeting whereby Town Attorney Michelle Kennedy clarified that should the patio result in an increase in capacity of the restaurant it is not to be considered as landscaping and requires Site Plan Review. Upon that advice the Town ZEO contacted Upstate Bar and Grill and told them that if they intend to exceed 160-person occupancy they would need to come before the Planning Board for Site Plan Review.

Attorney Kennedy ended by asking where are we going with this. It is now getting ridiculous. It is the Planning Board's discretion if any other steps need to be taken. They hire their own attorney. If the Planning Board wants to take action against their attorney that is their prerogative. It is not the prerogative of the Town Board.

Supervisor Kiernan opened the floor for comments.

Pat Rhyde asked Highway Superintendent John Schallert why the last three tenths of a mile of Roses Hill was not paved.

Highway Superintendent John Schallert stated that there was only so much money to work with. He felt the last three tenths of the road was in good shape. He did not think it was a priority.

County Representative Andrew Marietta handed out a chart showing his and other County Representatives attendance record along with all the committees he sits on. The chart showed that he has attended 89 out of 94 meetings, which he felt shows the commitment he has put in this position.

Sheila Ross stated that she has been to the Northern Transfer Station since it has re-opened and it looks beautiful but the flow for the recyclables is a disaster. The bins for the recyclables are in the weeds. Signage is non-existent. Someone's going to get hurt.

Marietta responded by saying that it is a work in progress. There will be directional signs put in place to help with the traffic flow.

Town Historian Shirlee Rathbone was concerned with all barns that are being torn down in the Town. She had thought the Board was going to enact a law encouraging people to re-purpose their barns. When you drive through Delaware County there is a barn every quarter of a mile. Ours are disappearing.

Supervisor Kiernan replied that Councilperson Franck and Councilperson Potrikus are working on improving the Heirloom Barn section of the Town's Land Use Law. As the law stands it allows a lot of uses for historic barns and houses.

Supervisor Kiernan closed the floor for comments.

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

General Savings:	\$ 4,697.33	General Checking:	\$ 322,995.03
Highway Savings:	\$ 7,832.66	Hwy Checking:	\$ 387,401.32
Building Reserve Fund:	\$179,833.65	Hwy Equipment Fund:	\$ 298,255.44

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

MOTION CARRIED: All were in favor.

MOTION by Councilperson Sandler, seconded by Councilperson Franck, to pay the bills and make the necessary transfers.

Supervisor Kiernan asked for discussion.

The Board discussed a \$300 charge from Roseboom Dog Control Officer, Bobby Jorgensen who picked up a stray dog for the Town of Otsego. Town of Otsego Dog Control Officer Tom Steele, received a call about the stray but was unable to pick the dog up because he was at still work. He suggested the caller call Bobby Jorgensen. After receiving the call about the stray dog Bobby Jorgensen called Town Supervisor Kiernan and asked for confirmation that the Town wanted him to retrieve the stray dog and drop it off at the SPCA. Her answer was "yes". It was determined that the \$300 was to be paid to Bobby Jorgensen but in the future Dog Control Officers from other towns retrieving dogs in the Town of Otsego need to collect their fee from the dog owners through the SPCA.

GENERAL:	#157-# 165	\$ 929.40
HWY:	#162-#177	\$ 54,378.89

MOTION CARRIED: All were in favor.

MOTION by Councilperson Hohensee, seconded by Councilperson Sandler, to adopt the proposed Local Law #2 as presented allowing the Board to exceed the 2% cap.

MOTION CARRIED:

Supervisor Kiernan	aye
Councilperson Franck	aye
Councilperson Hohensee	aye
Councilperson Potrikus	aye
Councilperson Sandler	aye

Dog Control Officer Tom Steele reported answering 1 dog bite, 1 dog poop call, and 1 dog running at large.

ZEO report was given by Ed Hobbie. The following permits were issued since last meeting:

Zoning Permits: 5

Site Plan: 1

Supervisor Kiernan wanted to review when fees are to be collected. The Board looked at Land Use Law Section 7.02 which states “No building or structure shall be constructed, erected, altered or otherwise extended *unless a zoning permit is issued*... “and Section 7.02 A – 3 which states” Whenever a proposed building, structure or land use requires approval of a site plan no zoning permits shall be issued *until* such site plan is approved...” and Section 7.04 Fees “The application for any permit, certificate, license or any review by the Town Planning Board or Town Zoning Board of Appeals *shall be accompanied by a fee*.”

Zoning Enforcement Officer Ed Hobbie felt that mandating an applicant to fill out and pay for a Zoning Permit after they have already filled out and paid for a Site Plan Review Application and/or a Use or Area Variance Application was redundant since both the permit and application require basically the same information.

Attorney Kennedy felt it was within the law to waive the Zoning Permit Fee if an applicant is also applying for a Site Plan Application and/or a Use or Area Variance.

It was the consensus of the Board that going forward the ZEO will waive the Zoning Permit Fee if an applicant is also applying for a Site Plan application and/or a Use or Area Variance.

Councilperson Franck spoke to Cindy Falk professor of the Cooperstown Graduate Program, who felt her students draft revision to the Heirloom Barn Law was well done but too ambitious. She thought the students would be willing to try simplifying the law. Paul Lord and Cindy Falk conveyed to Councilperson Franck that they felt historic barns and historic houses should be defined separately and not lumped together under one law. Another thought was maybe the students would be interested in documenting where and what district the historic barns are in the Town of Otsego. Once that is established make a list of what historic barns are viable and a list of suggestions on making them viable again. The Board was very open to this idea.

Councilperson Potrikus took offense to a comment he read in the Planning Board minutes made by Chairman Huntsman who stated that some people are offended because in the past the Planning Board followed precedent but now follow the law. The problem he has is the inconsistency in the enforcement of the law. He started to reference Joseph Galati’s Black Bird Hollow Application when cut off by the Town Attorney.

Town Attorney Michelle Kennedy stated that Ryan Miosek is the Planning Board Attorney now. If he is failing in their estimation, the Planning Board can select another attorney at any point in time.

Councilperson Potrikus’s opinion was that the Ethic Committee should review Attorney Miosek but that was another issue and not where he was going. His concern was with Site Plan Review Applicant Bill Miller who was told that in order for him to subdivide his property he needed to build a roadway and put in retention basins. This would cost him tens of thousands of dollars to do. So Miller was left with the option of leaving it as it is and having it approved every 90 days or clear-cut the property. To date Miller has had 24 extensions. The Town Law only allows two. Councilperson Potrikus asked if the town is putting the property at risk of being logged or clear-cut vs. extending the 90-day extension.

Attorney Kennedy informed Potrikus that this is the jurisdiction of the Planning Board. It is not a Town Board decision. They rely on the advice of their attorney.

Councilperson Potrikus stated that Joseph Galati has spent thousands of dollars in lawsuits defending what he is trying to do and then he sees other people getting away with not following the law.

Town Attorney Kennedy stated that she went to incredible lengths to defend Mr. Galati’s property interest at the expense of the town so she could not understand why he should feel he has been treated unfairly. In fact she has told him that he can put the same kind of patio out at his property without Site Plan Review so long it does not increase the number of occupancy permitted.

Councilperson Potrikus’ biggest concern with the modifications done at the Northern Transfer Station was that the SEQRA documents that Sullivan sent him were not dated or signed and no title of anyone

that did the review. Councilperson Potrikus conveyed to County Representative Andrew Marietta that he hoped in the future the County would make sure that the local town be involved in the discussion.

County Representative Andrew Marietta did not disagree with him. He did explain that there were three layers of overseers, including the County Attorney, overseeing the project and that County involvement is different than Town. Marietta asked Councilperson Potrikus if he had spoken to County Planner Karen Sullivan or County Attorney Ellen Cocoma about his concerns. Councilperson Potrikus had not.

The Highway Superintendent report was given by Highway Superintendent John Schallert. Schallert brought up again that there is a problem with the Fly Creek Fire Department buying their fuel from the Town. In doing so the Town has a Service Station Classification which triggers additional inspections from DEC and Classes A,B, and C operators are mandatory. The Board will talk to the Fly Creek Fire Commissioners to explore other options.

Driveway Permits were discussed. Applicants seem to be confused thinking they have purchased a Driveway Permit when in actuality it is a Driveway Application they have purchased and that needs to be approved by the Highway Superintendent. Supervisor Kiernan volunteered to modify the Driveway Permits to say "Application" which should clear up some of the confusion.

Schallert informed the Board that the old landfill has been mowed.

Schallert informed the Board that he met with Mr. Kegelman and Otsego County Highway Superintendent Bill Mason, on Tripp Hill. Kegelman was adamant that the new culvert be the same size and relocated to the same spot as the old one the Town is replacing. The culvert currently is directly between two trees.

Town Attorney Kennedy stated that Brian Kegelman sent to the Town a fully drafted easement, which states for one dollar and other good and valuable consideration Kegelman grants, an easement to the Town of Otsego. The question is "What is the consideration" or in other words dollar amount he is considering for this easement. Before going forward Kegelman needs to present the dollar amount he would accept for the easement. The question is, would a court place any value of significance on these easements if an easement needs to be granted. The Town's position has always been that when you are improving conditions on your own property or there is no quantification as to the increased volume of water that is coming onto your property the dollar value is nominal. Kegelman's position has been that it is worth tens of hundreds of dollars.

Supervisor Kiernan presented an agreement from NY's D.O.T. concerning the pedestrian crossing near the Farmers Museum which was reviewed by the Town Board and Town Attorney.

MOTION by Councilperson Potrikus, seconded by Councilperson Franck, authorizing Supervisor Kiernan to sign the document sent by the State indemnifying and holding harmless the State of New York for the use of an in street pedestrian crossing sign north and south of the Farmers Museum, distributed by the Department of Transportation.

MOTION CARRIED: All were in favor.

Supervisor Kiernan announced there were no engineering bids submitted for the Highway Garage projects on Willow Avenue nor were there any bid on refurbishing the old Town Garage. Supervisor Kiernan will continue to try to seek bids.

Supervisor Kiernan presented two landscaping plans from Epic Landscaping. The Board reviewed and discussed the proposed plans.

MOTION by Councilperson Hohensee, seconded by Councilperson Sandler, to accept Epics proposal to build a retaining wall, paver a walkway and install drainage pipe totaling \$7,350.00 around the Town Building.

MOTION CARRIED: All were in favor.

After a short discussion it was the decision of the Town Board to hold another Budget Workshop for Wednesday October 18th at 6:30PM.

The Board discussed the need to appoint three members to the Ethics Committee.

Supervisor Kiernan read a letter from NYS D.O.T. stating that they have been notified that given that the

Upstate Bar and Grill and Bocca, two restaurants located on State Highway 28 south of Cooperstown, having limited parking, it has resulted in customers utilizing the narrow shoulders of NYS highway 28 as overflow parking which has potentially caused a safety concern. They are considering restricting parking on both sides of NYS Route 28 between the Cooperstown Village line and a point 1000 feet plus or minus south. Before any restriction is ordered, they are requesting input from the Town and other area officials and also ask that the Town speak to any local businesses that may be affected and discuss this issue at their next Town Board Meeting.

MOTION by Councilperson Sandler, seconded by Councilperson Franck, to hear Public Comments on November 8th at 7:00PM to hear public comment on this very subject.

MOTION CARRIED: All were in favor.

MOTION by Supervisor Kiernan to adjourn.

MOTION CARRIED: All were in favor.

Meeting ended at 10:00PM.

Respectfully Submitted,
Pamela Deane/Town Clerk