

The Otsego Town Board held a regular monthly meeting on the 12<sup>th</sup> day of October 2016 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 regular meeting to order and asked everyone to please rise for the Pledge of Allegiance.

Supervisor asked for comments concerning the September 14<sup>th</sup> minutes.

Councilperson Potrikus felt the September minutes should have stated why he voted not to accept the August minutes as presented. Despite the fact that it was explained that the minutes are only a summary of the meeting and by law only need to note the MOTIONS, Councilperson Potrikus voted not to accept the August minutes because he felt there were several items discussed at great lengths at the August Workshop and should have been mentioned.

MOTION by Councilperson Potrikus that his comments as to why he voted against accepting the August minutes be included in the September minutes.

MOTION died for lack of a second Motion.

MOTION by Councilperson Sandler, seconded by Councilperson Hohensee, to accept the minutes of September 14<sup>th</sup> as presented.

MOTION CARRIED: Supervisor Kiernan, Councilpersons Sandler, Franck and Hohensee voted yes. Councilperson Potrikus voted no.

MOTION by Hohensee, seconded by Councilperson Sandler, to accept the minutes of October 5<sup>th</sup> as presented.

MOTION CARRIED: All were in favor

Supervisor Kiernan announced that the Town Board did hold a Budget Workshop on September 21<sup>st</sup>. The Town Clerk was on vacation and no minutes were taken.

Supervisor Kiernan reviewed correspondence received since last meeting.

Supervisor Kiernan open the floor for Public Comment.

Fly Creek resident Carl Wenner expressed his dismay with the Town Board having the authority to choose a Highway Superintendent, which is what is being proposed as a referendum on the November Ballot. Wenner felt that whomever they appoint to the position will then feel indentured to them and will do whatever they want. The last time the Superintendent position was up for election four people ran for position. Government no matter where or what level, is corrupt. The Town Board already holds the purse strings. He would rather see term limits.

Supervisor Kiernan informed the audience there would be an article in the paper explaining the advantages and disadvantages to making the Highway Superintendent position appointed.

Tripp Hill resident Joan Kegelman summarized the events leading up to the change in volume of runoff going into their pond.

- October 2014 notified the Town Board of additional ground water diverted to their pond by the town highway crew under the direction of former Highway Superintendent Shawn Mulligan.
- In June 2014 Ms. Kegleman alleged that their pond flooded due to the additional runoff from the Town Rd. causing \$18,000.00 worth of damage to their property
- 2014 the highway crew, now under the supervision of Highway Superintendent John Schallert, replaced all the culverts on Tripp Hill Rd. She further alleged that the Town Highway employees trespassed onto their property to direct the increased volume of runoff into their pond.
- The Town Board commissioned Lamont Engineering to conduct a study of the work done.
- The Kegelman's then hired engineer Jonathan McManus to conduct a hydrologic and a hydraulic analysis. McManus determined that there has been an increase in flow that has adversely affected their pond.

Ms. Kegelman informed the Town Board that according to case law it is unlawful for the Town to move water onto a resident's property without their permission. She went on to state that case law allows property owners the right to protect their property. She and her husband have not heard back from the Town Board or Town Attorney in over a year are still waiting to hear how the Town is going to correct the illegal actions taken by the Town's Highway Department.

Brian Kegelman took offense to the Motion in last month's minutes authorizing the Town Highway Superintendent to remove the obstructions Kegelman placed in the culverts with law enforcement present. Kegelman felt that people reading the minutes might assume that he had done something illegal when, in fact, he was just protecting his property. He plans to close the pond within 26ft. of the right-of-way, which he feels is fully within his right, and warns that the water will then be backing up into the town road. The Town will be liable if anyone gets hurt.

Kegelman felt one solution to the problem would be to hire Attorney Martin Tillapaugh, whom he felt is experienced in

municipal law and land use law. Kegelma n makes his case in 40 minutes. Town Attorney Kennedy makes the Town's case in 40 minutes. Tillapaugh then informs the two parties how the water can be redirected legally. If Tillapaugh feels he has a stronger case then he would like the town to buy an easement to let the water run through his property, the highway crew dig out his pond back to the way it used to be, restore his brook to where it was, and engineer McManus be retained to manage the flow of water through his property. He would like an answer from the Town Board within the next two weeks.

Town Attorney Michelle Kennedy offered to respond to the Kegelma n's complaints following the public comment period but they opted not to stay.

Attorney Doug Zamelis introduced himself as acting legal counsel for the Margaritis and Roy Family in the Bissell litigation. He summarized the Bissell litigation from the start and where things stand today.

- The Margaritis and Roy family petitioned the Town Board 1 ½ years ago to enforce legal action against Boyd and Addison Bissell for their un-permitted construction of a new deck within 3 inches of his client's property line. This is in direct violation of the Towns Zoning Law.
- Addison Bissell constructed a new residential building on his property in 2014 to expand his limited nonconforming use within the minimum setbacks without any approval from the town and without any permit from the County.
- The Town Board then commenced an action against the Bissells in NYS Supreme Court to abate and remove the violations but instead of aggressively prosecuting those violations the Town Board soft- peddled by letting Bissell reapply for a use variance through the ZBA, when he already previously applied in 2015 and then withdrew his appeal. He is not entitled to a use variance on the grounds that his hardship is totally self-created.
- Zamelis now has to return to the ZBA and remind them that the Bissells withdrew their application because the Town Attorney did not inform the Supreme Court Judge that Town Law Section 267A provides only 60 days to appeal to the ZBA, which expired back in 2015. Any appeal now is untimely.

Zamelis complained that while this has been dragging on Bissell has rented the Walker Cottage with the enlarged deck as part of Cobblecote and Addison Bissell continues his non-conforming use with team parties and events. Just look at the online reviews for Cobblecote. The marina just adds to the intensity of this non-conforming commercial use in a residential district.

Zamelis took exception to Attorney Kennedy requesting his clients submit information on how their surveyor obtained the measurements of the size and location of Addison Bissell's deck. He stated the all surveyors have sophisticated equipment that can obtain this information without going on neighboring properties.

Zamelis also took exception to Kennedy not explaining to Judge Coccoma that Bissell withdrew his application for an area variance. By doing this he felt the Judge would have ruled instead of passing it off to the ZBA. Now if Bissell disregards the ZBA's ruling he would have to answer to the Town Court rather than the Supreme Court which he felt would have had better success in getting Bissell's willingness to abide by the law.

Town Attorney Michelle Kennedy clarified the record concerning the lengthy history with the Bissells later in the meeting

- The Town, on its own initiative, took the Bissells to Town Court when they disturbed the natural vegetation that could not be replaced and took down trees on their property within 500 feet of Otsego Lake without Planning Board approval. Addison Bissell pled guilty to a criminal misdemeanor and was fined the maximum amount allowed under the NYS Penal Code.
- Roy and Margaritis then asked the Town Board to take action in NYS Supreme Court against Addison and Boyd Bissell for the building of an illegal structure and deck, which the Town did.
- The Bissell's went before the ZBA for area variances and Zamelis argued that the ZBA did not have jurisdiction to hear the applications for area variances for two reasons: (1) the 60-day time period had elapsed in which the Bissell' could bring their applications before the Board according to Zamelis and (2) there was no written determination by the Zoning Enforcement Officer from which an appeal could be taken. Kennedy, on the other hand, had advised the Zoning Board to hear the appeals. The Zoning Board decided Zamelis's argument was more compelling and decided not to hear the appeal. The Bissells had 30 days to challenge that Zoning Board's determination, but did not. Zamelis's argument before the ZBA was erroneous because in order to go before the Planning Board to get a Special Permit or site plan approval the Bissells first needed to apply to the Zoning Board to receive an area variance. The 60 day window for filing an appeal does not apply when a special use permit or site plan approval is sought. Further, the Second Appellate Division has ruled in case law cited by the NYS Department of State that a verbal determination by the ZEO is sufficient for the purpose of an appeal to the ZBA.

Kennedy then asked that Attorney Zamelis not obstruct the ZBA process and allow Addison Bissell's pending application for a use variance be heard so that regardless the outcome, it is a final decision and either party may bring an Article 78 challenge, if dissatisfied.

Kennedy addressed Zamelis's final point as to why the settlement with Boyd Bissell was in the form of a settlement agreement rather than a stipulation and order signed by Judge Coccoma. If she were to bring an action asking the court to find the Bissell's in contempt of a stipulation and order, the evidentiary burden is significantly greater than the burden of proof in a breach of contract action.

Canadarago resident Tina Graves sympathized with the Margaritis and Roy family. The residents on Marble Road are having the same situation with Mr. and Mrs. Harrison Hummel III and Town enforcement.

Tripp Hill resident Richard Carr encouraged the Town Board to work things out with the Kegelma n's. He also suggested to the Highway Superintendent John Schallert that a lot of the problem may be corrected if the low spot in the road near Kegelma ns was raised up.

Kegelma n disagreed. He felt a better solution would be for the town to buy an easement through his property, which he was opened to do, for a price of \$22,000.00.

Supervisor Kiernan closed the floor for further comments.

Supervisor Kiernan gave a financial report. Balances are as follows in the various accounts:

General Savings: \$ 4,690.45	General Checking: \$ 407,953.85
Highway Savings: \$ 7,820.95	Hwy Checking: \$ 475,259.26
Building Reserve Fund: \$179,541.90	Hwy Equipment Fund: \$ 263,846.11

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

MOTION CARRIED: All were in favor.

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

GENERAL: # 131-# 140	\$ 1,051.47
HWY: # 282-# 291	\$ 50,446.31
#380- #382	

MOTION CARRIED: All were in favor

Dog Control Officer Thomas Steele reported answering 2 barking dog complaints since last months meeting.

Planning Board Liaison Rosemary Craig reported that the Planning Board did discuss the Heirloom Barn Law and are requesting more time to finalize revision suggestions. She cautioned the Board that acting in haste would only add to the Towns detriment. Even though residents have asked for a moratorium on the Heirloom Barn Law she did not feel that would be necessary.

Councilperson Sandler wanted to clarify for the record, inaccurate statements made by the Kegelms. The culverts on Murdock were not replaced. Only a few culverts were replaced on Tripp Hill and they remained similar in size. Lamont Engineering had determined that excess sediment was from logging activity on a neighboring property and not from any road improvements the Town Highway Employees did.

Highway Superintendent John Schallert submitted a surplus list for the Town Board to review. He suggested that instead of putting surplus items out for bid the Town auction them off.

MOTION by Councilperson Sandler, seconded by Councilperson Potrikus, authorizing the Highway Superintendent to make arrangements with an auctioneer to auction off all items listed on the proposed surplus list.

MOTION CARRIED: All were in favor.

Schallert requested authorization to buy a new pick-up truck to replace an older one that has an oil pan leak. Estimated cost to fix the problem was \$4000.00. He will get quotes off the State Bid and bring data to the November meeting.

Schallert quoted the labor cost to refurbish the old Town Highway Garage roof next to the Town Building on County Highway 26, to be \$5,000.00. It was agreed to remove the small bump out storage area. Schallert will get quotes to paint the exterior sidewalls.

Building and Grounds Committee representative Councilperson Potrikus, suggested a retaining wall be installed to hide the concrete foundation of the Town Building after the pavement is cut back away from the building. Other options were also discussed and considered. Further discussion was tabled for the November meeting.

Town Attorney Kennedy reported that the action against Linden and Sylvia Summers has been filed.

MOTION by Councilperson Hohensee, seconded by Councilperson Sandler, to approve the cost of the Process Server.

MOTION CARRIED: All were in favor.

Watershed Committee member Councilperson Sandler reported that 74 out of 90 septic system inspections in the watershed have been done. There were no violations in the Town of Otsego.

Supervisor Kiernan submitted a Historic Structure Demolition Committee report, which was reviewed and discussed by the Town Board. The draft stated a Purpose, Commission and Score Sheet to evaluate buildings brought before the committee. All demolition applications for structures 100 years old or older will be subject to a public hearing. Further discussion was tabled until the November meeting.

Councilperson Franck went through the specifications of the Heirloom Barn Law and explained that even though in theory it seemed like a good idea to create a reason and a way for people to restore their historic buildings by allowing them to apply for any special permit in any district, it is not working. Instead it has created a huge loop hole and is not achieving what it was set out to achieve. In closing Councilperson Franck suggested that the Board think about rescinding the Heirloom Barn Law and rely on the variance process through the Zoning Board of Appeals for anyone wishing to restore their old historic building and re-purpose the use in a district where it is not allowed.

Councilperson Hohensee felt that if the Planning Board would just consider the intent of the law while evaluating an application that should eliminate the loophole.

Councilperson Potrikus felt the law should be tweaked not eliminated, and that site plan review works.

Councilperson Sandler thought the Heirloom Barn Law needs clarity.

Supervisor Kiernan appreciated all the work the Planning Board and Zoning Board does but they have not had any additional

time to work on problem areas in the Land Use Law. She suggested that the Town Board take the lead and start meeting on a regular basis going through the Land Use Law a few pages at a time, making revisions as they go.

Further discussion was tabled for the November meeting.

Supervisor Kiernan handed out a Weapons Policy submitted by NYMIR, which the Board reviewed and discussed.

MOTION by Councilperson Franck, seconded by Councilperson Hohensee, to adopt the Ban on Weapons in the Workplace Policy.

MOTION CARRIED: Supervisor Kiernan, Councilpersons Hohensee, Sandler, and Franck voted yes. Councilperson Potrikus voted no because he was concerned about the second amendment conflict.

After a short discussion the Board decided to schedule a Budget Workshop for October 26<sup>th</sup> at 5:00PM and hold an informational meeting on the proposed referendum at 6:30PM.

MOTION by Supervisor Kiernan, seconded by Councilperson Sandler, to go into Executive Session to discuss the Attorney Client Privilege and Collective Bargaining.

MOTION CARRIED: All were in favor. (10:15PM)

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

MOTION CARRIED: All were in favor. (10:55PM)

MOTION by Councilperson Sandler to adjourn.

MOTION CARRIED: All were in favor.

Meeting ended at 10:55PM.

Respectfully Submitted,  
Pamela Deane/Town Clerk