

The first regular meeting of the Kingsbury Town Board was conducted February 11, 2019 at the Kingsbury Town Hall at 6 Michigan Street, Hudson Falls.

MEMBERS PRESENT: Dana Hogan, Supervisor
Richard Doyle, Councilman
Henry Freebern, Councilman
William Haessly, Councilman
Dan Washburn, Councilman

OTHERS PRESENT: Michael Graham, Highway Superintendent
Todd Humiston, Dog Control Officer
Jeffrey Meyer, Town Attorney
Thomas Schmeizenbach, Earth, Waste & Metal
Chris Krahling, Agricultural Stewardship Association
Lucy Burch, Town Resident
Town Residents: Jane Havens, Paul Bromley, Ken Spaulding, Jerry Caruso
Patty Nicolls & Jeff Zappieri

The meeting was called to order at 7 p.m. by Supervisor Hogan and opened for the order of business with the Flag Salute led by Councilman Doyle.

The minutes of the Organizational Meeting conducted on January 7, 2019 and the Special Meeting conducted on January 21, 2019 were accepted as submitted by the Town Clerk on a **motion** by Councilman Freebern seconded by Councilman Doyle and carried by a vote of 5 ayes.

Supervisor Hogan opened the public hearing at 7:01 PM and requested the Town Clerk read the notice of public hearing for the junkyard application from Earth, Waste & Metal. Supervisor Hogan stated we have received all the application information which Code Enforcement Officer Ross Cortese found was in order. Mr. Schmeizenbach stated Earth, Waste & Metal is not changing the operation and some of what they do does fall under the definition of a junkyard. They do not accept vehicles which eliminates a lot of concerns that may arise from hazardous materials such as gasoline or oil; this facility does not get involved in those types of materials nor does it accept it. Mr. Schmeizenbach would be happy to answer any questions and if he does not have the answer he will get back to the Board.

Town resident Patty Nicolls stated there seems to be no law that you have to cover your load of scrap metal. When the former East Side junkyard was in operation there would be scraps of metal that had fallen from the load and motorists would get tire damage. Ms. Nicolls asked if the Town could have some sort of stipulation that the scrap metal loads must be covered. Supervisor Hogan stated it is probably a New York State Traffic Law and may be a better question for Sheriff Murphy and not Mr. Schmeizenbach. Supervisor Hogan asked if Earth, Waste & Metal accepted scrap metal. Mr. Schmeizenbach replied receptacles are provided to dispose of scrap metal and their trucks have covers on them. Ms. Nicolls and Mr. Schmeizenbach stated there are signs at Earth, Waste & Metal indicating that loads must be covered.

There was an error in the Notice of Public Hearing as to the property address of Earth, Waste & Metal; Attorney Meyer stated there must be a re-notice with the correct property address but the discussion could continue. A **motion** by Councilman Haessly seconded by Councilman Freebern and carried by a

vote of 5 ayes for the Town Clerk to publish a notice of a public hearing for the junkyard license application by Earth, Waste & Metal.

Supervisor Hogan stated there has been a request from residents for improvement to be made to the driveway at the transfer station. Mr. Schmeizenbach replied improvements have been planned for the facility, the driveway being one of them.

Attorney Meyer stated the Local Law that the junkyard licensing has fallen under has two separate requirements. A bond or financial surety be placed to cover the cost of removal of all junk and rubbish on the site in the event it closes and does not re-open. The applicant must provide a copy of the existing bond that he has in place for DEC and the request that he not provide a similar bond to the Town. The way the bond and the regulations are set up were there ever an issue it is up to the DEC to pull on that bond to clean the site. The Town has no authority or mechanism to force the DEC to act. He is asking for a variance for that requirement and a variance for the pollution liability insurance. The Town's Local Law requires 5 million; Mr. Schmeizenbach provided evidence of 2 million with an umbrella on the top which will get you another million but it doesn't get you to the 5 million. The Local Law has revisions for variances if they demonstrate a need and Mr. Schmeizenbach has requested variances for those two items; it is up to the Town Board to grant those variances. Mr. Schmeizenbach stated the facility is covered with the bond with the DEC and it was an exhaustive effort to determine what the cost of clean-up would be if necessary and was reviewed in detail with the DEC. The Town should be rest assured that the site would be cleaned up because the DEC has mandated that through their permitting. Mr. Schmeizenbach feels it would be redundant and would come with a cost for the same action and no further action would be taken if they secured another bond. Mr. Schmeizenbach has written a request to the Board to consider the situation.

Mr. Schmeizenbach stated all the insurances are all covered, the particular insurance for hazardous waste which the Town regulations calls for a 5-million-dollar limit; they carry a 2-million-dollar limit for the hazardous waste item. They do not accept hazardous waste such as gas and oil; this is a transfer station, no automobiles. He would like the Board to consider allowing them to carry the 2-million-dollar limit for hazardous waste.

Councilman Washburn asked if there was anything from stopping them from changing their policy that would allow the transfer station to accept automobiles, gas or oil without approval from the Board. Mr. Schmeizenbach stated they would have to renew their permitting with the DEC and they also would have to come to the Town for a change of operation. That is not what they do at the facility and he does not foresee that changing. They would certainly be open to being granted a variance with a provision they would not change what they accept and should it change they would come back to the Board.

Councilman Doyle asked if the bond provided to the DEC was \$40,500.00. Mr. Schmeizenbach stated that was correct. He also asked if the insurances for the pollution liability of 2 million dollars was acceptable to the DEC. Mr. Schmeizenbach stated yes.

Supervisor Hogan stated as part of the variance request the language would indicate that any substantial changes the Town would be required to be notified.

Attorney Meyer will draft a variance but would prefer to be fairly specific due to problems with past junkyards; not necessarily the present company. Attorney Meyer will work with Thomas Schmeizenbach to develop language that is acceptable in the requested variances and prepare it by the next meeting on March 4, 2019.

Mr. Schmeizenbach wrote a request to the Board for a change in zoning from Residential-Agricultural RA-1A to Industrial IND-75. The transfer station can operate until August 31, 2020 due to pre-existing uses. Chad Nims and Clarence Monahan have also requested the zoning change.

Councilman Doyle stated we would have to extend the industrial zone from its current place through properties to get over to the transfer station and does the industrial zone have to be connected.

Attorney Meyer stated the preference is to connect it to avoid any claims of illegal spot zoning.

Councilman Doyle asked how do we extend the industrial zone out to the transfer station. Attorney Meyer stated it is an action that can be taken by the Board and is essentially lines on a map. Councilman Doyle and Councilman Washburn will form a committee to research the expansion of the industrial zone.

Paul Bromley asked if the junkyard license is contingent on the requested zone change. Supervisor Hogan replied not necessarily. Mr. Bromley asked how can you have something licensed in a zone that it is not zoned for. Attorney Meyer explained the zoning law has a sunset provision for junkyards. Existing junkyards outside of the industrial zone have two years to continue to operate at that location.

Supervisor Hogan introduced Chris Krahlung of the Agricultural Stewardship Association, a non-profit organization for farmland protection in Washington and Rensselaer Counties located in Greenwich, NY. The Agricultural Stewardship Association was founded in 1990 by local farmers who banded together to conserve farmland. There are currently 128 conservationist easements on approximately 21,000 acres in the 2 counties. Mr. Krahlung is requesting a letter of endorsement and support from the Town for an application to the state for the Dairy Transitions Farmland Protection Grants Program for the Burch Family Farm. Lucy Burch stated the former dairy farm is to go to quality hay and better hay storage and on the home farm they plan to replace a barn lost in a fire. They are looking forward to the expansion of the bike path which borders the farm and will give a nice area for the bikers to view. A **motion** by Councilman Doyle seconded by Councilman Freebern and carried by a vote of 5 ayes for Supervisor Hogan to sign a letter of support to NYS Ag & Markets for the application of the Burch Family Farm for a Dairy Transitions Grant.

Supervisor Hogan re-opened the public hearing to discuss the amendment to the local law for Animal Control at 7:32 PM. Dog Control Officer Todd Humiston reviewed the proposed changes explaining increases in fines for penalty offenses when issued an appearance ticket, increases in dog licensing fees and increases in replacement dog tags. Supervisor Hogan asked with respect to the annual dog license fees, when was the last time they were increased. Todd Humiston replied he believed it was 2008 and currently we are the highest licensing fee in the county. He received feedback from the Town Clerk's Office with concerns in the proposed increase in the fees. Another concern came from the SPCA in regard to the holding time of three days after a dog is seized, though it is legal they had concerns it is too short of a time. Humiston's data indicates 3 days is long enough. Supervisor Hogan asked the Town Clerk if she had an opinion in regard to the increase in the licensing fees. The Town Clerk explained she felt the increase in the cost of the replacement tags from \$3.00 to \$5.00 was too extreme; the cost to the Town is \$.27 for each tag. She can foresee a problem in the cost of licensing fee for unspayed and unneutered dogs, currently the fee is \$20.50 with an increase to \$25.00. At this time there are already complaints with comments that surrounding towns have a much lower fee. Supervisor Hogan would be inclined to leave the current fees in place after conversations with the Town Clerk and her Deputy Clerk. Councilman Doyle stated the fees are supposed to pay for the program; are the fees currently paying for the program. At this time the fees are paying for approximately half of the program, \$16,994.50 was collected for dog licensing in 2018 and the program costs approximately \$32,000.00 per year. Councilman Freebern stated he has no problem with the proposed increases for dog licensing. Dog Control Officer Humiston makes a recommendation there should be no increase in the cost of the replacement dog tags.

Supervisor Hogan opened the public hearing to public comment.

Patty Nicolls stated there must be a lot of dogs that are unlicensed and the increase would not be burdensome. Humiston commented there are approximately 1600 dogs licensed at this time and does not feel the Town's rates are high but surrounding towns are too low.

Jane Havens asked if the verbiage stated that the program was supposed to pay for itself. Humiston stated no, licensing is to off set the cost of the program, all money from licensing has to go back to the dog control program. Jane Havens stated as a taxpayer, the new fee structure should be accepted because at this time the licensing fees only cover approximately 50% of the program.

Humiston also requested some wording changes to the proposed local law.

Supervisor Hogan closed the public hearing at 7:47 pm after discussing the proposed changes to the Animal Control Law.

A **motion** by Councilman Haessly seconded by Councilman Freebern and carried by a vote of 5 ayes to accept the requested changes from Dog Control Officer Todd Humiston for the proposed Local Law for Animal Control. Attorney Meyer will make the requested changes to the Local Law; the local law will be adopted at the next Board Meeting on March 4, 2019.

In December the Town sought proposals from qualified Engineering Firms to provide engineering services and to prepare funding applications. Superintendent Michael Graham stated there is a \$100,000,000.00 Bridge NY program in which he would like to apply for funding. The Town received proposals from Greenman-Pederson, Inc. and The Chazen Companies. Superintendent Graham reviewed the proposals and recommended Greenman-Pederson, Inc. There will be no cost to the Town, an engineering company is needed to file the application and oversee the project. If the project is denied they do not get paid, if the project gets approved, they get paid through the Bridge NY Program. Graham would like to submit for a project by the end of January 2020. A **motion** by Councilman Freebern seconded by Councilman Doyle and carried by a vote of 5 ayes for the Town to select Greenman-Pederson, Inc. for engineering services and prepare funding applications.

Dog Control Officer Todd Humiston stated there was a violation of a Dangerous Dog Order which was placed in 2014. The individual was issued a ticket for violation of the Dangerous Dog Order that went to Court and they were found guilty. We now have evidence (proof) that this person violated the Dangerous Dog Order and they still have the dog. This has now become a criminal matter. Humiston explained we could file a complaint with the District Attorney's Office with the evidence that this person is in violation of a Court Order and if they choose, they can take criminal action against this person. Humiston feels action should be taken because the dog has been deemed dangerous and they are not doing what is necessary to keep the community safe and the Town may be liable if no action is taken. Humiston is seeking approval for this case and any future case for the Town Attorney to file a Dangerous Dog Order. Councilman Doyle asked what the owner was supposed to do with the dog. Humiston answered the dog was to be leashed at all times and in this case the dog attacked another dog off their property; this was in addition to multiple violations. Humiston would like to discuss this in an executive session because there are there is a legal matter on other issues with the same individual. A **motion** by Councilman Washburn seconded by Councilman Freebern and carried by a vote of 5 ayes for the Town Attorney to file a Dangerous Dog Order with the District Attorney for this case and any case in the future.

A **motion** by Councilman Freebern seconded by Councilman Doyle and carried by a vote of 5 ayes to re-appoint Michael Hayes for the Alternate Dog Control position.

Supervisor Hogan received a letter from the OCA in regard to a Court Justice Docket Audit. Attorney Meyer explained the Board needs to review the Court Records to make sure the monies collected are going to the proper authorities. This will be tabled until the next meeting on March 4, 2019.

Supervisor Hogan received a message from Bill Nikas of the Sandy Hill Arts Center that he would not be able to attend tonight's meeting due to an emergency and he would follow up to re-schedule. Supervisor Hogan asked anyone who would like to comment on the Sandy Hill Arts Center to hold any specific discussion regarding Mr. Nikas's request because he is not certain what his request was. Supervisor Hogan ask that they discuss the PILOT in broad terms and they could have a discussion about that topic.

Ken Spaulding asked if the PILOT program was something the Towns or Counties are obliged to have. Town Attorney Meyer explained the Town is not obligated to provide a PILOT. In 1999 the Town Board adopted a resolution opting out the IDA's PILOT program, which essentially means it can negotiate for itself.

Ken Spaulding stated in a sense you are handing money to PILOT applicants when there are people who have lived in the Town for 40 years struggling to pay their property taxes and are unable to get a tax break. He feels there is a financial gain for the PILOT recipients because they are not paying the full shot of taxes. The Town is losing out on revenue and anyone who wants to start a new business can come to the town requesting a PILOT.

Jane Havens would like to say there are a lot of successful businesses in our communities and they are not receiving a tax break or benefit. Her feeling is that if you have something really good, you believe in it and you pay your own way. It's not fair that if a few people think an idea is good and then portray that burden unto everyone else.

Paul Bromley referred to an article in the Post-Star about a proposed PILOT application being a not for profit and feels it was a mistake. Anytime you ask for a tax break, whether it be sales tax or property tax the government does not reduce its spending by the amount of the tax break given; therefore, the rest of the tax paying population has to take on that burden. As an independent businessman himself, it gives an unfair advantage to the person or group receiving a PILOT over anyone else who is competing with him in any way shape or form. He also stated the government should not be lending money that is not theirs to lend. When you give a tax break you are essentially lending the taxpayer who receives the tax break the constituent's money.

A **motion** by Councilman Doyle seconded by Councilman Freebern and carried by a vote of 5 ayes to accept the reports of certain officer for the month of January as follows:

Code Enforcement Officer: Site Plan 1; Variances 1; Total Fees \$600.00

Dog Control Officer: Complaints/Call s33; Unlicensed Dogs 3; Seizures 1; Summons Issued 0; Bites Investigated 1; Mileage 303 with 41 charged to Fort Edward & 118 charged to Fort Ann

Town Clerk: Paid to EnCon \$37.78; Paid to Supervisor \$1,910.19; Paid to NYS Dept. of Health \$112.50; Paid to the Village of Hudson Falls \$30.00; Paid to Ag & Markets for Population Control \$75.00

For December: Town Justice; Fees Collected: \$15,534.00

TOWN CLERK REPORT:

Town Clerk provided a copy of the Supervisor's Report for the tax collection as follows:

TO: Supervisor Hogan
Councilman: Doyle, Freebern, Haessly & Washburn

FROM: Tax Collector: Cynthia A. Bardin

SUBJECT: 2019 County/Town Collection

DATE: February 11, 2019

Payments to Town:

January 9, 2019 - \$595,003.62
January 17, 2019 - \$655,666.43
January 23, 2019 - \$305,909.95
January 31, 2019 - \$10,238.62 – unpaid water

Total Paid to Supervisor: \$1,566,818.62

DOG CONTROL OFFICER REPORT:

Todd Humiston stated one of the main reasons for the proposed changes to the Animal Control Law was to add the non-Article 7 holds that we were doing; law enforcement type holds. These holds occur when a driver is arrested with a dog in the vehicle. He would like to send a letter to the Washington County Sheriff and the Hudson Falls Chief of Police to let them know on arrest services, he will still provide assistance but we will no longer hold those dogs.

HIGHWAY SUPERINTENDENT REPORT:

Michael Graham reported the Town had purchased a 2008 bucket truck in Pennsylvania for \$32,000.00. He explained the reason for the purchase was to reduce costs associated with the need to hire out services.

SUPERVISOR REPORT:

Supervisor Hogan reported Court Clerk Laura Barody has successfully secured a Justice Court Assistance Program (JCAP) grant in the amount of \$10,000.00 which will be used for the over flow parking lot for the Court.

A **motion** by Councilman Haessly seconded by Councilman Freebern and carried by a vote of 5 ayes to enter into an executive session at 8:15 PM to discuss a Dog Law Order and a potential legal matter with a Code Enforcement matter.

A **motion** by Councilman Freebern seconded by Councilman Washburn and carried by a vote of 5 ayes to exit the executive session at 8:49 PM.

The Board had a general conversation about maps related to a study for sewer expansion conducted in 2006. Supervisor Hogan will contact Jarrett to see if any information is available.

There being no further business before the Board a **motion** by Councilman Washburn seconded by Councilman Freebern and carried by a vote of 5 ayes to adjourn the meeting at 9:10 P.M.

Respectfully submitted,

Cynthia A. Bardin, Town Clerk