

The second regular meeting of the Kingsbury Town Board was conducted on February 20, 2018 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

ABSENT

Dan Washburn, Councilman

OTHERS PRESENT

Rick Chase, Transmission Develops, Inc.
Dave Perkins, Champlain Canalway Trail
Colleen Adamec, Sole Assessor
Michael Graham, Highway Superintendent
Todd Humiston, Dog Control Officer
Callie Ginter, The Post-Star

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 February 5, 2018 Board Meeting were accepted as submitted by Town Clerk with a **motion** by Councilman Freebern seconded by Councilman Haessly and carried by a vote of 4 ayes.

Supervisor Hogan introduced Rick Chase of Transmission Developers, Inc. Mr. Chase stated Transmissions Developers, Inc. is proposing to construct a 333 mile underwater and underground high voltage direct current transmission line, designed to import clean, renewable electricity from Canada and carry it down to the New York City area. One hundred and ninety six (196) miles will be underwater and 137 miles will be buried in existing rights-of-way. The project is 100% privately funded and is owned by Blackstone, the world's largest alternative firm. The high voltage direct current transmission line is rated at 1,000 megawatts which will be delivered into New York State. The project is fully permitted; they received a certificate of environmental compatibility and public need from the New York State Public Service Commission in April of 2013, which is the overall sighting permit needed from New York State. They also received two federal permits; one from the US Department of Energy which allows for the transmission of electricity across an international border (Canada) in October of 2014 and in April of 2015 a permit from the US Army Corps of Engineers. Construction is scheduled to begin in 2019 and be in service by 2022. The project does offer significant benefits to the State of New York. The project will decrease wholesale electricity costs for ratepayers across New York by \$12.8 billion during the first 30 years of operation. The greatest savings will be where the power is delivered and the further away from the sight of delivery the savings will be there but the cost will be less. The project will generate \$1.6 billion of tax revenue for local municipalities during the first 30 years of operations. The transmission line will replace fossil fuel and will deliver clean power to meet the demands of a growing population and economy. The transmission line will also strengthen the electric grid by relieving congestion upstate to downstate and diversify the state fuel supply mix. There will be minimal impact; there will be 2 five-inch cables about 18 inches apart. They anticipate using to the greatest extent possible local labor for construction of the project and local contractors. There is some specialty work involved, particularly where you splice the cables together; but their goal is to use as much local labor as possible. Mr. Chase provided maps of the proposed route. The route that has been approved through the Town of Kingsbury, which from north to south in the Town, will be installed completely within the Canadian Pacific Rail right of way. Mr. Chase stated during construction there will be some temporary impacts; they will work with the Town to minimize the impacts, but because the route is within the Canadian

Pacific Rail right of way there will be a minimal impact if any on the roads. There is approximately 8 miles of the route within the Town of Kingsbury and during the first year of operation they will pay approximately \$460,000.00 in taxes to the school district; \$230,000.00 to Washington County and about \$110,000.00 to the Town of Kingsbury which totals \$880,000.00. After that here is a somewhat complicated formula used to determine what happens to the rates moving forward, but we estimate based on that formula the property taxes paid will increase on an average 1.5% per year. The transmission line has a life span of approximately 40 years which will bring the taxes paid to \$43 million during that time. They anticipate negotiating a PILOT agreement through the Washington County IDA the purpose being to create some tax certainty.

Supervisor Hogan asked if the PILOT agreement would be negotiated at the state level. Mr. Chase responded they would be made county by county.

Councilman Freebern commented environmentally, the buried transmission line is better than having the lines over us. Mr. Chase commented it is very difficult to build transmission lines overhead; people don't want to look at them and people don't want to pay for them. In their case they address both of those concerns, the line will be underground and underwater and will be privately financed. The rate payers are not taking on any of the development or construction risks; it is all on Transmission Developers, Inc.

Mr. Chase stated the power originates in Quebec and is mainly hydro-power and there may be some wind power also. The transmission line will cross the border and go under Lake Champlain come upland in Dresden and stay upland until around Catskill and Greene County where it will go in the Hudson River and go south. The line will come out of the river in Rockland County for about 8 miles to avoid a sensitive environmental area.

Councilman Haessly asked how deep the line would be buried. Mr. Chase stated upland it will be 4 feet from the top of the cables to the surface and in the waterway it can lay on the bottom at depths of 150 feet or more; if it is less than 150 feet it must be buried. Mr. Chase stated when the line is buried upland; there will be a concrete cap placed above the line and above the cap some red plastic warning tape so if anyone happens to dig above they will see the red plastic warning tape. If the red warning tape is not seen and the line is struck, it will shut down instantaneously.

Councilman Haessly asked if they had to buy right-of-ways. Mr. Chase answered they had to buy right-of-ways from the railway company and there may be discreet parcels they will use temporarily where they may need to tunnel under an obstruction; they may need a temporary easement from a local property owner to stage the equipment and they will negotiate them as they go forward. They will also want to obtain storage areas that they might lease from property owners who are willing to lease their lands for a period of time. The actual construction will be for the most part within the rights of ways and the cables will be in the rights of ways. In the water there will be barges and support barges built specifically for this project, the cables will come off the barges on reels and lay on the bottom or be buried by machinery on the barge.

Councilman Doyle asked which dam the power would be coming from. Mr. Chase stated the power will come from the Hydro-Quebec system and not any particular dam. They have excess hydro-electricity that they are looking to market in the United States.

Michael Graham, Superintendent of Highways asked what the life span of the cable was. Mr. Chase stated the lifespan of the transmission line for their financial purposes estimate is forty years, but typically transmission lines like this operate much longer. He explained the cable will never be removed the permit requires they leave it in place.

Sole Assessor Colleen Adamec asked where would they go if they do not get railway approval. Mr. Chase explained they would have to come up with another route if they decide to go forward, they would have to go back to the permitting agencies to get a new permit.

Supervisor Hogan re-opened the public hearing to adopt a Local Law imposing a limited large scale solar energy generating facility land use moratorium at 7:22 pm. There being no comment or discussion Supervisor Hogan closed the public hearing at 7:23 pm.

Councilman Doyle commented he is not opposed the proposed moratorium; he feels the change in the time from six (6) months to three (3) months with two one (1) month extensions is sufficient time for he and Councilman Haessly to research PILOTS, etc. A motion by Councilman Freebern seconded by Councilman Doyle and carried by a vote of 4 ayes to adopt the following Local Law:

**TOWN OF KINGSBURY
COUNTY OF WASHINGTON, STATE OF NEW YORK**

Local Law No. 1 of 2018

**A LOCAL LAW IMPOSING A LIMITED LARGE SCALE SOLAR ENERGY GENERATING FACILITY LAND USE
MORATORIUM**

Be it enacted by the Town Board of the Town of Kingsbury ("Town"), County of Washington, State of New York ("State") as follows:

Section 1. Legislative Intent.

The purpose of this local law is to protect the public health, safety and welfare by restricting the development of large scale solar energy generating facilities within the Town of Kingsbury for a limited period of time in order to further develop and revise the applicable zoning law provisions specific to large scale solar arrays and to establish policies and procedures to implement a program for payment in lieu of taxes pursuant to section 487(9)(a) of the NYS Real Property Tax Law or opt out of the tax exemption under section 487 of the NYS Real Property Tax Law.

Section 2. Findings.

The State of New York has, as a matter of public policy, undertaken a policy to encourage the development of facilities for the generation of solar energy. As the result, there has been a sudden increase in developmental pressures within the Town of Kingsbury with respect to development of large scale solar energy generating facilities. The Town Board is therefore concerned that the existing Chapter 280 of the Code of the Town of Kingsbury ("the Zoning Law") may not be adequate for the review of the impacts and mitigation of the consequences of such uses and the approval thereof.

There is also little guidance within the provisions of §487 of the Real Property Tax Law with respect to establishing programs for payment in lieu of taxes agreements as an alternative to opting out of the exemption provided thereby. The Town Board wishes to explore the development of a payment in lieu of taxes program in an effort to avoid the necessity of opting out of the tax exemption under §487 of the Real Property Tax Law. Therefore, it is necessary and appropriate to implement a temporary and limited moratorium with respect to the development of large scale solar energy generating systems in the Town of Kingsbury. Doing so shall preserve the status quo while the Town Board completes an evaluation and formulates revisions in the Zoning Law to provide for an effective process to regulate, review and approve applications for large scale solar energy generating facilities, and develops policies and

procedures for a payment in lieu of taxes program, thereby reducing the possibility that any such zoning revisions may be rendered ineffective and their purpose defeated in the interim, and avoiding the necessity of once again, opting out of the tax exemption afforded under §487 of the Real Property Tax Law.

Section 3. Moratorium Imposed.

- A. Large Scale Solar Energy Generating Facilities Temporarily Prohibited.** For a period of three (3) months following the date of adoption of this local law, no new site plan applications shall be accepted, reviewed, or approved by the Planning Board, nor any building permit(s) shall for such applications be issued by the Town of Kingsbury or Washington County with respect to large scale solar energy generating facilities, hereby defined as non-farm large scale solar systems generating 1 MW or more of energy for sale to utility companies or for other commercial use. This shall not in any way limit or prevent the Planning Board from continuing their review of any existing site plan applications or hinder the provision of building permits for such existing projects upon approval by the Planning Board.
- B. Evaluation and Revision of Existing Regulations.** During the period of the moratorium established by this local law, the Town Board shall endeavor to evaluate and adopt revisions to the Town's Zoning Law to address the use and regulation of large scale solar energy generating facilities and to evaluate and adopt policies and procedures for a payment in lieu of taxes program pursuant to the provisions of Real Property Tax Law §287(9)(a).

Section 4. Extension of Moratorium.

This moratorium may be extended for up to two (2) additional periods not exceeding one (1) months each by resolution of the Town Board upon a finding of necessity for such extension.

Section 5. Relief From Requirements.

The Town Board reserves to itself the right and sole discretion to vary or adapt the strict application of this local law in the case of unusual hardship or circumstances that would deprive a property owner of the reasonable use of lands affected by this local law. Accordingly, by duly adopted resolution, the Town Board may authorize the Planning Board to review and consider for approval or disapproval a site plan application, the review of which is otherwise precluded by this local law, or the Code Enforcement Officer to issue a building permit that is otherwise precluded by this local law, subject to the regular review process for such special use and site plan, or building permit, under circumstances where:

- A.** An application for a variance is filed, in writing, with the Town Clerk, together with a filing fee in the sum of \$150.00. The application shall specifically identify the land involved, recite the nature and scope of the proposed development, provide a narrative description and a sketch plan of the proposed development, and describe the reasons for which the variance is requested and the grounds upon which it is sought to be approved, including all facts and circumstances upon which hardship is claimed.

- B. All costs incurred by the Town in connection with the consideration of the application for a variance are paid by the applicant, including but not limited to, all professional consulting fees such as attorneys, engineers, and planners.
- C. The applicant demonstrates that this local law has resulted in unnecessary hardship in that: the applicant has been deprived of substantially all economic use or benefit from the property in question, which must be established by competent financial evidence; the alleged hardship is unique to the applicant's property and does not apply to a substantial portion of other properties in the areas of the Town to which this local law applies; and the variance, if granted, will not pose a present or future risk to the health, safety and welfare of the residents in the vicinity of the proposed development and the Town at large.
- D. The Town Board may refer any applications for a variance hereunder to the Planning Board, the Zoning Board of Appeals, any other Town board, committee or department, and/or its professional consultants for their advice and recommendations. Nevertheless, all decisions as to the granting or denying of such variances shall be made by the Town Board in its sole and absolute discretion after determining whether the requested variance is compatible with protection of the environment and any contemplated revisions to the Town's Zoning Law. No variance shall be granted unless the Town Board determines the requested variance is compatible therewith.
- E. The Town Board shall conduct a public hearing on any request for a variance within forty-five (45) days after it determines that a complete application has been submitted to it. The Town Board shall render its determination upon any application for a variance within sixty-two (62) days after the conclusion of the public hearing.
- F. The granting of a variance by the Town Board does not preclude or otherwise restrict the Planning Board's review and jurisdiction of the site plan application pursuant to the Zoning Law.

Section 6. Conflict With Other Laws.

This local law is enacted pursuant to the provisions of the Town Law and the Municipal Home Rule Law and, during the time it is in effect, it specifically supersedes and shall take precedence over any contrary laws, ordinances and provisions, including but not limited to §267, §267-a, §267-b, §274-a and §274-b of the Town Law of the State of New York, or Town Code of the Town of Kingsbury.

Section 7. Penalties for Offenses and Enforcement.

Any person who shall develop or erect or install improvements upon land in violation of this local law, or break ground for the purpose thereof, shall be guilty of a violation and subject to a fine not to exceed \$1,000.00 or six (6) months in jail, or both. Each week a violation continues shall be considered a separate and distinct violation. This local law shall be enforced by the Code Enforcement Officer of the Town of Kingsbury who is hereby granted authority to issue appearance tickets for the purpose thereof. Upon authorization by the Town Board, this local law may also be enforced by civil action brought in the

name of the Town for the purpose of obtaining injunctive relief and recovering civil penalties of \$1,000.00 for each week a violation of the local law continues.

Section 8. Effect of Invalidity.

If any clause, sentence, phrase, paragraph or any part of this local law shall for any reason be adjusted finally by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this local law, but shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or any part thereof, directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of this local law would have been adopted had any such provisions not been included.

Section 9. Effective Date.

This local law shall take effect immediately upon adoption.

Dave Perkins a member of the Champlain Canalway Trail working group presented an update on the progress of the Champlain Canalway Trail. With a push from the governor's office for 200 hundred million dollars we now have a trail that is going to fall into place. Canal Corp had a person that retired and have hired Sasha Eisenstein. The positive news is from Fort Edward to New Swamp Road once you get to the area known as the T along the Feeder Canal you could go further north to Bond Creek you then had to turn around and go back. The plan now is to build a box culvert to get you to the other side of the body of water; then a bridge is going to be built across Bond Creek. The test borings have been done and right of ways has been resolved so they can build this bridge across the canal. This brings you to the side of State Route 196 where DOT is already in the process of building a tunnel under State Route 196. During the building of the tunnel the road will be closed for approximately one week; this will bring the trail over to Tow Path Road. The construction of the bridge and tunnel will be much safer for trail users; they will not have to cross State Route 196. The preliminary design work for these projects is underway, the surveying is complete and the final design report will be complete next month. They expect the construction on these projects to begin in 2019. The permitting and the coordination with local officials is underway on the bike path from Kingsbury to Fort Ann, with construction to begin in March or April 2019.

The trail then heads north to Smith's Basin which will probably have a stone dust surface. The bike trail from Smith's Basin to Baldwins Corner will be paved; from Baldwins Corner to Fort Ann will be stone dust.

Mr. Perkins stated Canal Corp announced the boating season will open early this year on May 18th and closing on October 10th.

Mr. Perkins and the Board discussed possibilities for the bike trail from Fort Ann to Whitehall. Supervisor Hogan thanked Dave Perkins for the update on the Champlain Canalway Trail.

Supervisor Hogan had requested the Board review information on the interest and intent of AIM Services to establish and operate a residence at 304-E Queens Drive. Supervisor Hogan spoke with the Schermerhorn Representative who said they already have some tenants that are great tenants, very responsive and he has no concerns. He also spoke to Joshua Phelps, the Director of Administration of AIM. A **motion** by Councilman Freebern seconded by Councilman Haessly and carried by a vote of 4 ayes for Supervisor Hogan to follow up and show support for the interest and intent of AIM Services, Inc. to establish and operate a residence known as Supervised Individual Residential Alternative home at 304-E Queens Drive.

Superintendent of Highways is seeking approval to purchase a stainless steel dump box to replace one that is twelve (12) years old. Superintendent Graham explained during the budget process for 2018 there was money set aside to purchase one. Superintendent Graham stated Viking had the best price; it is on Oneida County Contract # 1889 in the amount of \$35,540.80 and delivered to the Highway Garage. Graham commented the stainless steel dump box purchased last year was \$43,000.00. It will be cash and carry and the Highway crew will install it in approximately two (2) days. A **motion** by Councilman Freebern seconded by Councilman Doyle and carried by a vote of 4 ayes to purchase a stainless steel dump box from Viking Cives (USA) in the amount of \$35,540.80; Oneida County Contract # 1889. The dump box being removed will be sold to the Town of Salem for \$1,000.00. The Town Clerk will send a letter to Viking Cives with the approval for the Town to purchase the stainless steel box.

Councilman Freebern called the NYS DOT in regard to a speed limit reduction for 35 Vaughn Road (location of Primary School) which was not approved. The Town has sent 3 requests for a reduction in the speed at this location. Councilman Freebern was told the only time a speed limit reduction occurs in a school zone is when there are children walking or riding their bicycles to and from school. Councilman Freebern's concern is with our crossing guards; one crossing guard had been hit by a car a few years ago. Councilman Freebern told the NYS DOT they would hear from him if another crossing guard was hit. NYS DOT will review the matter again.

TOWN CLERK REPORT:

Town Clerk provided the following report to the Board:

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

FROM: Tax Collector: Cynthia A. Bardin

SUBJECT: 2018 Town & County Tax Collection

DATE: February 20, 2018

Penalties Collected Feb. 1 – Feb 7 -	\$254.49
Bank Interest for January	\$77.03
Return Check Fees	\$40.00
Paid to Supervisor- 2/8/17	\$371.52
Total Paid to Supervisor:	
Tax Levy -	\$1,519,346.19
Penalties Collected -	\$254.49
Bank Interest -	\$77.56
Return Check Fees -	\$60.00

Total: \$1,519,738.24

The Town Clerk requested permission to attend the New York State Association of Tax Receivers and Collectors from June 10 – 13 in Lake Placid; the money is in her budget.

The Town Clerk received a notification from Town Justice Michael Keenan to advise the Board that the court's records and docket are available to be presented for examination.

DOG CONTROL REPORT:

Todd Humiston reported the Dog Control Officer Inspection was complete with satisfactory results. The state is interested in the program Mr. Humiston conducts at the school and the enumeration program he has used in the Town. He has been asked to speak at the conference to be held in May; as a speaker he

will not be charged to attend the conference. Mr. Humistom will be out of town this weekend; Michael Hayes, the Dog Control Officer Alternate will cover for him.

HIGHWAY SUPERINTENDENT REPORT:

Michael Graham reported they had been very busy with the recent snow storms.

Mr. Graham is an executive committee member for the New York Association of Towns Superintendents; there are 18 Superintendents from New York State on the committee. March is advocacy month; on March 7th they will go to the State Capitol in Albany talk to the Assembly and ask for more money for CHIPS. The Town receives about \$107,000.00 each year; the state receives \$478 million and they will ask for an additional \$150 million. There is also Pave New York which gives the Town an additional \$19,000.00. There is also extreme winter recovery for harsh winters which typically gives the Town \$24,000.00. This year the extreme winter recovery is not there, the committee will try to get that back. There is Bridge New York program, Graham would like to receive a grant to replace culverts on Wait Road and Dean Road.

SUPERVISOR REPORT:

Supervisor Hogan received a call from a Cherry Tree Lane resident expressing her gratitude for the continued great service that the Town Highway Department provides year after year. She indicated these snowstorms she felt the Town of Kingsbury roads were the best in the area and her cul-de-sac is always perfectly clear. Mr. Graham commented he has a great group of guys to work with.

Supervisor Hogan said we may have the opportunity to pursue another grant to do a water extension. Supervisor Hogan and Water Superintendent Jim Chase did a drive around and Jim gave him a rough outline of what the extension would look like. He is going to ask Jim Chase to attend the next meeting to give the Board a clarifying explanation.

ASSESSOR:

Colleen Adamec stated she is busy with exemption applications; she will be busy for the next two weeks. Colleen asked if anyone knew about legislation for the Towns to get more money for state land. Supervisor Hogan suggested she contact Laura Chadwick of the Washington County Real Property Tax Service.

A **motion** by Councilman Doyle seconded by Freebern and carried by a vote of 3 ayes to enter into an executive session at 8:07 pm to discuss possible litigation. Supervisor Hogan recused himself from the executive session.

A **motion** by Councilman Haessly seconded by Councilman Freebern and carried by a vote of 3 ayes to exit the executive session at 8:54 pm.

There being no further business before the Board a **motion** by Councilman Freebern seconded by Councilman Doyle and carried by a vote of 3 ayes to adjourn the meeting at 8:54pm.

Respectfully submitted,

Cynthia A. Bardin, Town Clerk