

October 16, 2023 Meeting Minutes

The second regular meeting of the Kingsbury Town Board was conducted on October 16, 2023, at 6 Michigan Street, Hudson Falls, NY.

MEMBERS PRESENT:

Dana Hogan, Supervisor
Richard Doyle, Councilman
William Haessly, Councilman
James Lindsay, Councilman
Dan Washburn, Councilman

ABSENT:

OTHERS PRESENT:

Todd Humiston, Dog Control & Code Enforcement
Jeffrey Meyer, Town Attorney
Town Residents: Sean Akins, Dave Russell, Dave Brindle
Dennis Kelly

The meeting was called to order at 6:30 pm by Supervisor Hogan and opened for the order of business with the Pledge of Allegiance led by Councilman Doyle.

A **motion** by Councilman Doyle seconded by Councilman Lindsay and carried by a vote of 4 ayes to accept the minutes of the September 18th & October 2, 2023, Town Board Meeting Minutes as submitted by the Town Clerk.

The Town offers an optional health insurance policy for retired employees, the Town pays the premium and the retiree reimburses the Town for the cost minus the Town's retiree benefit per the handbook of a \$100.00 a month for retirees before 2016 and \$200.00 for retirees after 2015. Currently there is one employee prior to 2016 that uses the plan. There is no increase, and the Comptroller recommends renewal and that the Supervisor sign the renewal agreement.

A **motion** by Councilman Lindsay seconded by Councilman Doyle and carried by a vote of 4 ayes to renew the Medicare Advantage Benefit Package with CDPHP.

The Town has received a Settlement Agreement resulting from the Troy & Banks franchise audit for Spectrum, an indirect subsidiary of Charter Communications, Inc. A **motion** by Councilman Haessly seconded by Councilman Lindsay and carried by a vote of 4 ayes for Supervisor Hogan to sign the agreement. (Agreement attached)

Attorney Meyer provided copies of a proposed Local Law amending certain sections of the Kingsbury Zoning Law contained in Chapter 280 of the Code of the Town of Kingsbury. At the last meeting there were requests for uses in the Industrial Park. One was recreational use within the Industrial Park, which would allow turf fields to inside existing buildings, soccer fields inside complexes, construction of new buildings, etc. The IDA is on board with this use and the definition of recreation is already in the Code.

The request for Water Recreation storage is based on a prospective property owner looking to store boats within the Industrial Park. This is not a term that is defined in the Code. The attorney has put together a definition for water recreation storage. There are policy considerations for the Board to consider. When the old foundry was sold to Mr. Collette on Vaughn Road, there were issues with clearing and buffers. He is bringing this up because that was determined to be water recreation and storage. Attorney Meyer does not know where the terms came from or how it got into the Code, it seems like something that is odd; it's not strictly a self-storage facility it is just a worthless term. There is

one actual use in there for boat storage specifically, the language requires the boats to be on a trailer; they cannot be on wooden blocks; it is a policy decision for the Board. Also, when the Board adopted the junkyard regulations, it was expressed to the Town there may be a vulnerability in the law for boats. Boats are not defined as junk within the Local Law, and it was brought to their attention with the boat junkyard in Whitehall. He is bringing this to the Board's attention to prevent something like that happening in the Industrial Park. Is the boat temporary; temporary needs to be defined, the language needs to be expanded upon to protect the Town.

Code Enforcement Officer Humiston added the IDA was looking for more of a broader storage requirement to cover other types of large vehicles, aircraft, or RV's as well and he would like language added that the stored vehicles be registered. Supervisor Hogan added the requests for outside storage have been for storage of valuable equipment, vehicles, and boats. Attorney Meyer will amend the proposed Local Law amending certain sections of the Kingsbury Law contained in Chapter 280 of the Code of the Town of Kingsbury. A **motion** by Councilman Lindsay seconded by Councilman Haessly and carried by a vote of 4 ayes to hold a Public Hearing on November 6, 2023, at 6:40 pm for consideration of a Local Law Amending Certain Sections of the Kingsbury Law contained in Chapter 280 of the Code of the Town of Kingsbury. Code Enforcement Humiston will send public notices to neighbors within 500 feet specific to the Public Hearing. Attorney Meyer added the Public Hearing needs to be noticed to the Town of Queensbury and the Washington County Planning Board for Planning Board referral.

Supervisor Hogan provided an update on the Moss Street Cemetery. Moss Street Cemetery Board members, Terry Gould and Scott Hartung announced the Moss Street Cemetery Board is to be dissolved. The Town would take over the maintenance of the cemetery, but this is a bit unique situation because the Moss Street Cemetery is still an operational cemetery, they have funding, there are lots for sale and there are lots that have been sold awaiting burial. There have been talks of the Town contracting with Union Cemetery to manage the administration of the cemetery on the behalf of the Town of Kingsbury. If Moss Street dissolved the only obligation the Town would have is to mow and maintain the cemetery. Carleton Funeral Home has managed many of the plot sales, the administration, and the burials and the Town does not want to get involved in that. He has reached out to the Union Cemetery who have been very receptive and good to work with. The NYS Association of Cemeteries has created some obstacles but does not have to be involved. Now we are asking the Union Cemetery for some kind of number they would need for an administration fee. It costs Moss Street Cemetery Association approximately \$10,000.00 to maintain the cemetery; \$5,000 to \$6,000 for the mowing and plowing. The Union Cemetery Board is having an internal discussion on what kind of incentive they would need to manage the cemetery on the behalf of the Town. Supervisor Hogan may be invited to the Union Cemetery Board meeting on November 8th.

Councilman Haessly asked if there were any unsold lots in the Moss Street Cemetery that would be for sale. Supervisor Hogan responded there are and the Union Cemetery Board would manage the sale of the lots with the proceeds going to the Town of Kingsbury, any burials that would occur the payment would go to the Town of Kingsbury and the Union Cemetery Board would be paid later on.

TOWN CLERK REPORT:

A call was received on October 6, 2023, from Town Resident Irene Rupp who had received her first water bill from the Town since the Burgoyne Avenue Waterline. She was irate and insisted she was not paying the bill. Supervisor Hogan will reach out to her.

A call was received from Town Resident Theresa Pasco requesting to have her road paved due to a crack at the end of the driveway and deterioration on the edge of the road. Town Clerk will contact Highway Superintendent Graham who will follow up with the request.

COMPTROLLER REPORT:

A **motion** by Councilman Doyle seconded by Councilman Haessly and carried by a vote of 4 ayes to accept the following Budget Transfer:

TOWN OF KINGSBURY - BUDGET TRANSFER: OCTOBER16, 2023

FUND	DESCRIPTION	GL	AMOUNT
GF-WT	FROM: CENTRAL PRINT	1.1670.4	\$ 130.00
	TO: COMPTROLLER-CONTRACTUAL	1.1315.4	130.00
	PURPOSE: TONER		

COUNCILMAN REPORT:

Councilman Doyle asked Attorney Meyer if the entire committee needed to be present at the Public Hearing scheduled for November 6, 2023, for the Comprehensive Master Plan. Attorney Meyer responded no you need a majority; you need a quorum, and they all need to be in agreement. Councilman Doyle stated the committee as it stands now is four people but there are no official resignations. The discussion continued. Councilman Doyle would like to request an executive session to discuss a personnel matter.

WRITTEN REPORTS:

A **motion** by Councilman Doyle seconded by Councilman Lindsay and carried by a vote of 4 ayes to accept the following reports for the month of September as follows:

Code Enforcement Officer: No. Permits 9; Fire Inspections 3; Total Fees \$970.00

Dog Control Officer: Seizures 3; Mileage 58,347

Town Clerk: Paid to EnCon \$6,729.60; Paid to Supervisor \$12,198.96; Paid to the Village of Hudson Falls \$180.00; Paid to Ag & Markets for Population Control \$918.00; Paid to the NYS Dept. of Health \$180.00

PUBLIC COMMENT:

Dave Russell who resides at 136 Notre Dame Street noticed it is a 25mph zone in front of the school. Mr. Russell stated no one goes 25mph on that road. About 20 years ago his brother-in-law lost his child when hit by a car near the school and killed. He does not want to see that happen again. He is asking the Board to request our law enforcement to patrol it and enforce it. If that is not possible put up a sign that records the speed the cars are travelling. Supervisor Hogan will ask Sheriff Murphy to increase the monitoring and put up a flashing light that records the speed.

A **motion** by Councilman Doye seconded by Councilman Haessly and carried by a vote of 4 ayes to enter into an executive session to discuss a personnel matter. Code Enforcement Officer Todd Humiston was invited to the session.

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A **motion** by Councilman Doyle seconded by Haessly and carried by a vote of 4 ayes to exit the executive session at 7:27 pm. The meeting was adjourned.

Respectfully submitted,

Cynthia Bardin, Town Clerk

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the “Settlement Agreement”) is made this ____ day of September, 2023 by and among the Town of Kingsbury New York (the “Town”) and Spectrum Northeast, LLC, an indirect subsidiary of Charter Communications, Inc. (“Charter”).

RECITALS

WHEREAS, Charter operates a cable system in the Town and pays franchise fees pursuant to a franchise agreement between the parties (hereafter, the “Franchise” or the “Franchise Agreement”, as applicable or as the context of this Settlement Agreement so requires or admits);

WHEREAS, the Town conducted an audit of the franchise fee payments made by Charter for the period from January 1, 2016 through December 31, 2022 (the “Audit Period”) and concluded that Charter underpaid franchise fees for the Audit Period. Charter disputed the claim and arrived at a different conclusion than the Town;

WHEREAS, Charter agrees to submit payment to the Town in the amount of thirteen thousand one hundred and nineteen dollars (\$13,139) to forever settle past claims on franchise fees due the Town for the Audit Period;

WHEREAS, the Town and Charter now desire to conclude, settle, release and discharge once and forever, all rights, claims, causes of actions, liabilities, disputes and demands relating to franchise fees paid, calculable, or due during the Audit Period;

NOW THEREFORE, in consideration of the foregoing, and in consideration of the mutual promises and obligations hereinafter set forth, and for good and valuable mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Settlement Agreement hereto agree as follows:

AGREEMENT

1. **SETTLEMENT AMOUNT**

The Town and Charter have agreed that Charter shall submit payment to the Town in the amount of thirteen thousand one hundred and nineteen dollars (\$13,139) in full settlement of past claims on franchise fees for the Audit Period. Charter agrees to pay this amount to the Town within sixty (60) days after receipt of the executed Settlement Agreement from the Town. It is

expressly understood and agreed that the Settlement Amount represents full and complete satisfaction and compromise of any and all claims, actions, causes of action, controversies, demands, damages, debts, agreements, obligations, liabilities, interest, liens, expenses, costs, attorneys' fees and demands of any kind or nature, known or unknown, arising out of or in any way related to: (i) the Town's past claims on franchise fees due the Town during the Audit Period; and (ii) any claim, known or unknown, by Charter relating to the Franchise or franchise fees due or payable during the Audit Period, including any defenses or offsets thereto. Notwithstanding any provision of this Settlement Agreement, the parties hereby acknowledge and agree that any franchise fee payment made pursuant to the Franchise may be recovered by Charter from subscribers in accordance with the Franchise Agreement, if so permitted, or pursuant to the NYS Public Service Commission's Rules and requirements pertaining to the same.

2. RELEASE OF CLAIMS

For the consideration set forth in this Settlement Agreement, each party hereto does hereby release and forever discharge the other party, and its parents, subsidiaries, related affiliates and their respective officers, directors, shareholders, owners, partners, employees, agents, contractors, representatives, predecessors, successors, assigns, insurers and attorneys, and each of them, from any and all claims, demands, actions, causes of action, liabilities, obligations, losses, accounts, debts, damages, judgments, costs, interest, expenses, attorney's fees and demands of any kind or nature, known or unknown, arising out of or in any way related to franchise fees due, arising, or claimed as due or not due during the Audit Period.

3. VOLUNTARY AGREEMENT

This Settlement Agreement is freely and voluntarily given by each party, without any duress or coercion, and after each party has consulted with its counsel. Each party has carefully and completely read all of the terms and provisions of this Settlement Agreement. It is understood and agreed by the Town and Charter that nothing herein shall be deemed to be an admission of liability by Charter with respect to the matter of this Settlement Agreement.

4. **AUTHORITY AND BINDING EFFECT**

The Town and Charter represent and warrant to the other that each has the legal right, power and authority to enter into this Settlement Agreement and to perform its obligations hereunder. This Settlement Agreement will inure to the benefit of and be binding upon the parties and their respective successors and assigns. The parties for themselves and their respective successors and assigns agree to join in or execute any instruments and to do any other act or thing necessary or proper to carry into effect this or any part of this Settlement Agreement.

5. **ENTIRE AGREEMENT**

This Settlement Agreement sets forth the entire agreement between the Town and Charter relating to the subject matter of this Settlement Agreement.

6. **GOVERNING LAW**

This Settlement Agreement, and any controversies arising hereunder, shall be interpreted in accordance with the laws of the State of New York, and adjudicated in a state or federal court of competent jurisdiction located in the State of New York.

7. **CONFIDENTIALITY**

The existence, nature, terms and conditions of this Settlement Agreement are confidential and shall not be disclosed by either party in any manner or form, directly or indirectly, to any person or entity under any circumstances, unless required by court order or applicable law.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as their free and voluntary acts and deeds, effective as of the date first above written.

Town of Kingsbury, New York

Spectrum Northeast, LLC

By: Charter Communications, Inc., Its Manager

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Sworn before me in the Town of Goshen, New York of _____, this ___ day of _____, 2023.

My Commission Expires: _____

Notary Public

Approved as to Form:

Vice President and Associate General Counsel

PROP_ADDR	PROP_CITY	PROP_STATE	PROP_ZIP5
13 KATHERINE AVE	QUEENSBURY	NY	12804
46 SANDERS RD	QUEENSBURY	NY	12804
1526 MATTISON RD	FORT ANN	NY	12827
1528 MATTISON RD	FORT ANN	NY	12827
1536 MATTISON RD	FORT ANN	NY	12827
1503 MATTISON RD	FORT ANN	NY	12827
1491 MATTISON RD	FORT ANN	NY	12827
33 BROADWAY	FORT EDWARD	NY	12828
19 QUARRY CROSSING ST	HUDSON FALLS	NY	12839
25 QUARRY CROSSING ST	HUDSON FALLS	NY	12839
27 QUARRY CROSSING ST	HUDSON FALLS	NY	12839
17 QUARRY CROSSING ST	HUDSON FALLS	NY	12839
507 DIX AVE	HUDSON FALLS	NY	12839
1252 BURGOYNE AVE	HUDSON FALLS	NY	12839
1399 MATTISON RD	HUDSON FALLS	NY	12839
1410 MATTISON RD	HUDSON FALLS	NY	12839
1418 MATTISON RD	HUDSON FALLS	NY	12839
1430 MATTISON RD	HUDSON FALLS	NY	12839
1588 MATTISON RD	HUDSON FALLS	NY	12839
1491 MATTISON RD	HUDSON FALLS	NY	12839
1417 MATTISON RD	HUDSON FALLS	NY	12839
1477 MATTISON RD	HUDSON FALLS	NY	12839
1143 FARLEY RD	HUDSON FALLS	NY	12839
1224 FARLEY RD	HUDSON FALLS	NY	12839
1482 FARLEY RD	HUDSON FALLS	NY	12839
1463 FARLEY RD	HUDSON FALLS	NY	12839