

The first regular Board Meeting of the Kingsbury Town Board was conducted on May 3, 2021 at the Kingsbury Town Hall at 6 Michigan Street, Hudson Falls.

MEMBERS PRESENT: Dana Hogan, Supervisor
Richard Doyle, Councilman
William Haessly, Councilman
Jane Havens, Councilwoman
Dan Washburn, Councilman

OTHERS PRESENT: Jeff Meyer, Town Attorney
Todd Humiston, Enforcement & Dog Control Officer
Rebecca Pomainville, Town Comptroller
Lorraine Forcier, Jeff Zappieri, James Ross, Town Residents

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 Washburn.

A **motion** by Councilman Washburn seconded by Councilman Haessly and carried by a vote of 5 ayes to accept the minutes of the April 19, 2021 Board Meeting as submitted by the Town Clerk.

Supervisor Hogan opened the Public Hearing for the Agreement with Spectrum Northeast, LLC and the Town of Kingsbury at 7:01 PM. Comptroller Rebecca Pomainville reported if the contract with Spectrum Northeast, LLC has a statement that indicates that the Town is prohibited from hiring a success-based firm for auditing for underpayments, the Town loses out on the opportunity of having an audit conducted to make sure the Town is paid the fees they are entitled to. The Comptroller suggests the phrase be removed from the agreement. Attorney Meyer stated it had been removed and was not in the new contract.

Resident Lorraine Forcier asked if the new contract had any information in regard to expansion of services in Washington County. Councilman Haessly stated there was not, but in the new contract service could be provided if there were 20 houses per mile; the old contract stated 35 houses. Also, the standard installation distance was 100 feet, in the new contract the standard installation distance will be 150 feet. Lorraine Forcier asked if the contract indicated a schedule of areas for expansion of service. Councilman Haessly replied you could ask for a study. Ms. Forcier has asked for studies, sent a letter to Carrie Woerner, and thought there were 20 houses in her area. Attorney Meyer stated you are not at 20 houses and should have received a report and suggested Ms. Forcier have Spectrum explain how they calculated the density. Councilman Haessly explained Spectrum is a tv cable service and not an internet provider, internet is one of their products. The discussion continued. Councilwoman Havens stated broadband will be addressed in the Master Plan and possibly there may be help from the state and federal officials.

A **motion** by Councilman Haessly seconded by Councilman Doyle and carried by a vote of 5 ayes to approve the contract between the Town of Kingsbury and Spectrum Northeast, LLC.

Supervisor Hogan reported he received information from Kingsbury Volunteer, Inc. Chief Scott Purdy in regard to notifying the Town when they plan on conducting fundraisers. Attorney Meyer stated the Town should be notified when the fire house is conducting a fundraiser with the date and time. Supervisor Hogan will contact Fire Chief Scott Purdy to request notification of fundraisers.

Attorney Meyer opened a discussion about solar in the Town stating currently there is a moratorium for new solar in the Town. He also stated it is appropriate for the Board to engage in a discussion for general planning and regulating of solar in the community because there is a time limit on the moratorium and the Board needs to act within those time limits. The Board needs to account for what they have done in this time and did not enact a moratorium just to stop a project. Attorney Meyer stated what is not appropriate for the Board's discussion and the Board should steer away from anything as it relates to a specific project and especially a project that may be subject to current pending litigation, for instance, Geer Road Solar and Peckham, he will stop the discussion if it is started. Supervisor Hogan has started to look at other communities that are facing the same issue with solar projects and have put moratoriums into place. The long-term impact of solar, intermingled with the authority of the state to cite these solar projects and supersede home rule and determine the appropriate citing and setting of permitting of these projects in a local community. He is also concerned with the cost of de-commissioning the solar projects 25 years from now. He would like to take away the risk to the landowner who agrees to a solar project on their property and 25 years later the company that started the project is long gone and they are stuck with the decommissioning of the solar panels. What will the Town's role be; how can the Town address financial surety long term with the cost-of-living increases. It is such a new technology he does not think local engineers have the experience to determine a decommissioning cost. Another concern is the zoning allowing solar in an agricultural community when they are not agricultural, it is a commercial solar array. He is concerned about the impact on the environment and wildlife.

Councilman Haessly stated with an updated land use plan the solar should remain in commercial zones; the zoning laws are meant to protect all the people.

Councilwoman Havens did some research and stated she is opposed to solar on agricultural land. Her research indicated currently, producing electricity from solar panels is 2 to 3 times more expensive than electricity produced by hydro, coal, or nuclear energy sources. Due to the variability of the wind and sun, those facilities produce less energy than base load nuclear, coal or natural gas plant which can run continuously. Nameplate capacity indicates the maximum capacity a generator can produce. Nuclear would produce 92% of the nameplate capacity, coal 80%, wind 32%, and solar only 15%. A 500 megawatt nuclear and a 500-megawatt solar array are different because the nuclear can produce 92% and the solar 15%. The loss of a scarce resource like farmland will have a significant impact on the community, land rents are increasing, and solar farms will compete for agricultural land. Landowners may look at solar farms due to the high rent from a solar company. There are tax breaks to procure vacant flat land and a lot of incentives on the back end of solar. Solar companies pay 20 times more than a farmer would pay to rent a piece of land. There is no way to build a solar panel the green way and when completed it is toxic waste.

Councilman Haessly is concerned about disposal of the solar arrays when they no longer function.

Attorney Meyer explained the financial surety for de-commissioning is based on current material cost, a level of inflation is added in, a small factor for unknown is added and everything is based on current disposal techniques and currently the panels are not considered hazardous waste. The inverters, the connectors and some of the other electronics are hazardous waste and are removed and disposed of independently of the solar panels. Currently the financial surety is renewed every 5 years to stay in line with the curve. The discussion continued.

Attorney Meyer stated Kingsbury has very permissive zoning, with very few districts and must decide where to allow solar and what do you do at the end of the life of the solar The state has complete control; it does not matter what the Town says and if the Town is against it should continue to fight for home rule rights and push back; the projects are coming, and rural areas and farmland are the only places with the acreage to support this kind of power production.

Councilman Doyle was on the Town Board when the Solar Law was put in place and there was no differentiation between commercial and residential and solar was allowed in any zoning district. Farmers could put in a solar array for his own home or if he wants to lease his land for a 5 mega-watt facility he can. He believes a property owner should be able to do what they want to do with their property. In terms of the current moratorium, it was put in effect because the Board thought the IDA was going to try to circumvent the PILOT for solar which was set up by the Town. At this point he believes this has gone by the wayside and feels the Board should not continue or extend the moratorium. It is a zoning question, and the Town does not do spot zoning.

Enforcement Officer Todd Humiston would like the Board to take into consideration in regard to solar, the lack of buildable space in the commercial zone, the Town has a small commercial zone; they are not many buildable lots. This has led to a lot of the enforcement issues the Town has been having with complaints of commercial businesses in the residential/agricultural districts. Another thing the Board should consider is the way the Town Zoning Law is written any part of a district that is on a piece of property you could use that zone as a whole district. National Grid requires that a single project maxes out at 5 mega-watts which would take up about 50 acres; anything larger than that needs to be a separate parcel, a separate project.

Resident Lorraine Forcier stated she reviewed a lot of solar plans from different Towns in NYS and they found ways how to determine what farmlands could be used for solar. The farmers have rights to rent their property out to a solar project; the neighbors also have the right to protect their property and investments. It is an issue that needs compromise. Right now, solar is being driven by dollar signs; things must be kept under control by having parameters to protect both parties. She feels the moratorium should continue because it needs to be seriously reviewed and is a huge issue for the Town being primarily agricultural.

Town Resident Jeffrey Zappieri stated the solar is a complicated issue and is going to take time to resolve, but there may not be much time with the state getting into this which puts the Town in a bind. He is concerned with the state siting solar on farmland. The Town must decide what it wants which is why we have comprehensive planning.

Supervisor Hogan stated the Town's Comprehensive Plan may not be completed in time for the moratorium on solar. The moratorium expires in August but can be extended an additional 6 months. The big issue with solar is the zoning and the location. The Board needs to determine the zoning and where they are going to allow solar to be sited in the community.

Attorney Meyer stated if the focus is prime agricultural soils, when farmers get their Ag exemptions the USDA has the soil maps; that information has been digitized and is available through the USDA. If the Town wants to preserve prime farmland it would be a good resource to figure out where these areas may be and figure out which areas to protect.

After discussion, the Board decided to schedule a special meeting, a public workshop, approximately the third week of June, to discuss solar development in the Town.

LEGAL UPDATE:

Attorney Meyer has an update which will be discussed in an executive session.

TOWN CLERK REPORT:

Town Clerk reported she is still experiencing computer problems in the office; two computers shut down today and had to be re-started and encountered a problem with the monitor in the tax office. Computer problems have occurred in the Town Clerk office since September 2020. The Town Clerk would like to have an analysis conducted to determine what the problem is. A **motion** by Councilman Washburn seconded by Councilman Haessly and carried by a vote of 5 ayes giving permission to the Town Clerk to contact Adirondack Technical Services to conduct an analysis of the computers in the Town Clerk Office.

ENFORCEMENT OFFICER REPORT:

Todd Humiston reported the Town Engineer, Tom Jarrett, reviewed documents from Kingsbury Transfer Station, LLC. After review Tom Jarrett sent questions to Kingsbury Transfer, LLC; Mr. Humiston has not received a response from Kingsbury Transfer, LLC.

The DEC will be conducting work at the Kingsbury Landfill on the cap and drainage trenches; this is routine work.

At the last Board Meeting there was a discussion on possibly wavering fire inspection fees for not-for-profit organizations. Attorney Meyer stated the Board must be careful where they draw the line to start exempting non-for-profits. There are many layers of not-for-profits.

Supervisor Hogan stated the bill for a fire inspection should go to the owner of a building and not to a not-for-profit organization. The discussion continued. A **motion** by Councilman Washburn seconded by Councilwoman Havens and carried by a vote of 5 ayes for the following: If a property in the Town of Kingsbury is tax-exempt, they would be exempt from fire inspection fees for inspections conducted by Code Enforcement officials.

COMPTROLLER REPORT:

An email was sent to the Board to review the RFP for surveying services which is required to keep moving forward on the Burgoyne Avenue Water Expansion. A **motion** by Councilman Haessly seconded by Councilman Washburn and carried by a vote of 5 ayes to move forward on the RFP for surveying services for the Burgoyne Avenue Water Extension.

A **motion** by Councilman Doyle seconded by Councilwoman Havens and carried by a vote of 5 ayes giving permission to the Comptroller to attend a training for COVID Relief Funds, Process, Procedures, and Accounting and Reporting at a cost of \$60.00.

A **motion** by Councilman Washburn seconded by Councilman Doyle and carried by a vote of 5 ayes giving permission to the Comptroller to attend a training for Foundations of Internal Control at a cost of \$100.00.

A **motion** by Councilman Washburn seconded by Councilman Haessly and carried by a vote of 5 ayes giving permission for the Comptroller to find and provide training to all staff on cyber security.

COUNCIL REPORT:

Councilman Haessly recently requested government email addresses be issued to Planning and Zoning Board members. The Comptroller stated not all members have emails, some members do not have computers, and the cost is \$12.00 per month per user. The Board discussed Councilman Haessly's request. The Planning Board Chairman would prefer to use his own email account due to the various positions he holds. Attorney Meyer stated the strongest case for having an email address is because of the FOIL requirements in the Open Meeting Law to make sure the information is there if there were to be litigation. If it is a personal e-mail, it becomes subject to discovery if they do not have a Town dedicated email account. If there is a transition, all of his emails are still Town records but would be gone. After discussion Supervisor Hogan will take Councilwoman Haven's suggestion and reach out other municipalities to see if their Planning/Zoning Board members have email addresses dedicated to their municipality or if personal emails are used.

Councilwoman Havens requested training materials for a Planning Board member. Enforcement Officer Todd Humiston suggested contacting Pam Landi at Washington County.

Councilwoman Havens stated at the last Town Board Meeting during the insurance discussion, the Board heard there is a new opportunity to insure trucks for replacement. If there were a fire and the Town trucks were totaled the insurance seems like a responsible thing to consider. She would like to go to the Highway Garage to look at the trucks and learn the function of each truck to determine if it is worth insuring them for replacement. She also suggested taking pictures of everything at the Town

Garage and Town Hall for insurance pictures. The Comptroller stated a physical inventory of the Town Hall was conducted approximately 5 years ago and thought taking pictures was a great idea. Supervisor Hogan will contact Dave Meager to request the language in the policy for replacing vehicles.

Councilman Doyle and Councilwoman Havens conducted interviews for vacancies on the Planning Board and the Zoning Board of Appeals. Les Macura has been recommended to fill a vacancy on the Planning Board and James Ross who served on the Village Zoning Board of Appeals for 15 years has been recommended to fill a vacancy on the Zoning Board of Appeals.

A **motion** by Councilman Doyle seconded by Councilwoman Havens and carried by a vote of 5 ayes to appoint Les Macura to the Planning Board effective immediately.

A **motion** by Councilman Doyle seconded by Councilwoman Havens and carried by a vote of 5 ayes to appoint James Ross to the Zoning Board of Appeals, effective immediately.

Councilman Doyle sent out the RFP for Solar and received one response from an engineering firm who partners with 2 developers. Concerns were expressed from the developer but there was no indication as to what the concern was. Councilman Doyle stated there is some work to be done by the DEC on the cap of the landfill which has collapsed a little bit.

Councilman Doyle will meet with DEC at the landfill on Friday and possibly other developers may stop.

A **motion** by Councilman Doyle seconded by Councilman Haessly and carried by a vote of 5 ayes to enter into an executive session at 8:42 pm to discuss pending legal litigation.

A **motion** by Councilman Haessly seconded by Councilman Washburn and carried by a vote of 5 ayes to exit the executive session at 9:13 pm; no action was taken.

There being no further business before the Board a **motion** by Councilman Washburn seconded by Councilman Haessly and carried by a vote of 5 ayes to adjourn the meeting at 9:13 P.M.

Respectfully submitted,

Cynthia A. Bardin, Town Clerk