

December 20, 2021 Town Board Meeting Minutes

The second regular meeting of the Kingsbury Town Board was conducted via Zoom on December 20, 2021.

MEMBERS PRESENT

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

OTHERS PRESENT

Jeffrey Meyer, Town Attorney
Todd Humiston, Enforcement & Dog Control Officer
Mike Graham, Highway Superintendent
Rebecca Pomainville, Comptroller
Anthony White, Town Justice
Terrence Nolan, Borrego Solar
Travis Rosencranse, Creighton Manning
Town Residents: Chip Doty, Lorraine Forcier, Jeff Zappieri

The meeting was called to order at 6:37 p.m. by Supervisor Hogan and opened for the order of business with the Flag Salute led by Councilman Washburn.

A **motion** by Councilman Doyle seconded by Councilman Washburn and carried by a vote of 4 ayes to accept the minutes of the October 12 Budget Workshop and November 15, 2021, Town Board Meeting, as submitted by the Town Clerk.

A **motion** by Supervisor Hogan seconded by Councilman Washburn and carried by a vote of 4 ayes to appoint James Lindsay to the Town Board to serve as a Councilman for the next year. Mr. Lindsay was sworn in by Town Justice Anthony White. Mr. Lindsay stated he is looking forward to working with the Board moving forward.

Supervisor Hogan opened a Public Hearing regarding the variance application of Borrego Solar Systems, Inc. seeking relief from the moratorium on large scale energy generating facilities located on 67 Hillview Drive. Terrence Nolan of Borrego Solar appreciates the opportunity to make a presentation as they are approaching certain deadlines in their project that require a substantial financial contribution on their part. They are asking for a waiver on the moratorium so they can proceed under the current zoning. The project has not changed since it was presented to the Planning Board, it is a 5-megawatt system at the end of Hillview Drive. The project will be 20 acres of a 70-acre parcel and from a visibility perspective obscured. It is located on wetlands or Army Corps wetlands and will be located within a reclaimed area. The project has reserved 5 megawatts on the sub-station and is the last 5 -megawatts on the sub-station. They are requesting the Town Board to consider their request for a waiver from the moratorium. On January 12, 2022, a 25% deposit on the study with National Grid is due in the amount of \$203, 902.00 to secure their position in the que and for an upgrade to connect to Burgoyne. In addition, Borrego has incurred substantial financial out of pocket costs associated with the project. In the terms of the deployment of that amount of capital in the face of the moratorium it becomes a real risk in an economic crunch in putting that out; they do not know if they can otherwise be proceeding before the Planning Board. NYSERDA released a new proposed road map for distributed generation with the new and proposed incentives, it will have a declining mega-watt framework whereas capacity gets used up, the incentives get used up, it declines to the next mega-watt and the incentives go down. They would

need to be permitting the project as soon as possible to take advantage of the incentives. They have locked in a 5 mega-watt block with National Grid and there are no other locations suitable in proximity to the sub-station. At one time there was a lot of traffic on Hillview Drive due to the mining operation, once the solar is completed there will be minimal traffic on this road. Visibility studies have been conducted which show it will not be visible. The residents will also have the opportunity to obtain a 10% discount on their energy bill. There will also be upgrades to the circuits on Hillview Drive in the amount of \$800,000.00, a portion will also be used to upgrade the circuits on Burgoyne Avenue.

Mr. Nolan stated the hardship was not self-created, they realized there was a solar moratorium when they entered into the lease with the owner on May 21, 2021 but looked into the expiration date of the moratorium in August 2021. They planned on attending the Solar Workshop conducted by the Town Board in the hopes that they had arrived at the conclusion of the moratorium. Once they had made the application with National Grid, they must follow the timeline and make the 25% deposit, the moratorium put them past the deadline. If you do not follow the timeline National Grid will kick you off the que. They think this is a good project from the perspective of the impact on the neighbors, visibility and the use of lands that are not economically viable as they are. Borrego will be taking a substantial risk continuing to invest in the project.

Councilman Haessly shared his thoughts about the current moratorium.

Councilman Doyle also shared his thoughts about the current moratorium. He also reported based on the survey conducted for the Master Comprehensive Plan there was a favorable response to solar in the Town with concern as to where it would be located.

Lorraine Forcier of 318 Geer Road asked if letters were sent to the residents of Hillview Drive about the Public Hearing. Supervisor Hogan answered he was not aware of letters being sent. Councilman Doyle stated when Borrego gave a presentation of the project in July there were members of the neighborhood who attended. The discussion continued, Enforcement Officer Humiston stated the owner of the property next to the proposed solar project is aware and has expressed no concern. Notices are posted for Planning and Zoning this is a meeting to determine if the Board would grant a waiver from the moratorium.

Supervisor Hogan read a letter from town resident Jerry Caruso, who is opposed to the granting of a waiver from the moratorium and granting any PILOT.

Supervisor Hogan will be offering some amendments to the current solar law. He asked Attorney Meyer if the Board were to grant a variance to Borrego and they moved forward and the Board made changes at a later date, would their application be subject to the prior law or the amended law. Attorney Meyer stated the applicant is to have a project design at the time of the adoption not the time of application and would be bound by the new law.

Supervisor Hogan asked Terence Nolan if Borrego was prepared to provide a cash surety. Mr. Nolan answered they would be prepared to provide a cash surety if the amount could be justified.

Mr. Nolan stated their actual out of pocket at this time is \$8,300.00 but must make the 25% deposit of \$203,000.00 on January 12, 2021.

Supervisor Hogan is concerned if a variance is granted to Borrego and new amendments to the solar law are enacted that Borrego may not like, what the repercussions would be to the Town. Terence Nolan stated they are entitled to a refund from National Grid if the project falls through.

Councilman Lindsay stated he is familiar with the location of the proposed solar project and thinks it is a good project and asked where the Board stood on changes to the current solar law. Supervisor Hogan would like to offer some amendments to the current solar law, possibly in the form of a workshop, there are things he would like to see in the law reflecting input received from the community.

Supervisor Lindsay stated he did not think you could find a better site in the Town of Kingsbury than the proposed site on Hillview Drive.

Councilman Washburn was happy to hear Borrego could receive a partial refund from National Grid on the \$203,000.00 payment if the project fell through and agrees it is a perfect site for a solar array. The Board agrees that is a decent location, Borrego could move forward with their investment if they so choose.

Supervisor asked for public comment. Lorraine Forcier stated the moratorium was put into place for a reason and the Master Plan is being worked on and to make exception should not be made.

Chip Doty stated he likes the location of the property, a great piece of property, but agrees an exception should not be made in the process of updating the Master Plan.

Jeff Zappieri stated this is the kind of site the Town would envision; would it be prudent to grant a variance while updating the Comprehensive Plan.

Attorney Meyer stated there is specific criteria to granting a variance, the harder factors for the applicant to meet is showing they have been deprived of economic use of the benefit of the property. It is up to the Board to decide. The Planning Board thought they were responsible for filling in too many of the gaps and wanted more direction from the Town Board.

The discussion continued in regard to the moratorium and the adoption of a new law for solar in the Town.

There being no further public comment Supervisor Hogan closed the Public Hearing at 7:38pm.

There was no motion to grant a variance to Borrego Solar from the moratorium on large scale energy generating facilities.

Supervisor Hogan opened a Public Hearing at 7:39 pm for the regulation of cannabis.

Councilman Doyle stated cannabis was a question on the survey for the Comprehensive Plan. The majority was in favor of allowing cannabis retail, but not so much on-site consumption. The Board should opt out because the State has not issued any regulations at this time. If the Town opted in, they would not know what they are opting into.

Councilman Haessly is in favor of opting in for the sale of cannabis but opts out for places that serve it.

Councilman Washburn would like to opt out not knowing what the State is going to do.

Councilman Lindsay agrees with Councilman Doyle, the Board needs to wait.

Resident Chip Doty agrees if the rules are not clear the Town should opt out.

Enforcement Officer Humiston there is no zoning in place for this and would ask the Board to opt out until local regulations can be put into place and what the impact on the quality of life would be.

Supervisor Hogan is opposed to opting in until there is more information from the State.

Supervisor Hogan closed the Public Hearing at 7:47 and the following resolution was adopted.

TOWN BOARD OF THE TOWN OF KINGSBURY

COUNTY OF WASHINGTON, STATE OF NEW YORK

Resolution No. 5 of 2021

Adopted December 20, 2021

Introduced by Councilman Washburn

who moved its adoption

Seconded by Councilman Doyle

RESOLUTION ADOPTING PROPOSED LOCAL LAW A OF 2021 REQUESTING THAT THE CANNABIS CONTROL BOARD OF THE STATE OF NEW YORK PROHIBIT THE ESTABLISHMENT OF RETAIL DISPENSARY LICENSES AND ON-SITE CONSUMPTION LICENSES IN THE TOWN OF KINGSBURY, COUNTY OF WASHINGTON, STATE OF NEW YORK

WHEREAS, New York's recently adopted Cannabis Law of the State of New York provides, at Section 131 of the Cannabis Law, that a municipality may request that the New York State Cannabis Control Board prohibit retail dispensary licenses and/or on-site consumption licenses in the municipality, which request must be in the form of a local law adopted by the municipal board subject to permissive referendum; and

WHEREAS, the Town Board of the Town of Kingsbury previously introduced a local law requesting that the New York State Cannabis Control Board prohibit retail dispensary licenses and or on-site consumption licenses in the Town of Kingsbury pursuant to Cannabis Law Section 131; and

WHEREAS, the Town scheduled a public hearing to be held before the Town Board on December 20, 2021 at 6:30 p.m. via teleconference and videoconference to hear all interested parties on the proposed Local Law; and

WHEREAS, notice of said public hearing was duly posted and then published in the *Post Star* the official newspaper of the Town, pursuant to and in conformance with Section 20 of the Municipal Home Rule Law; and

WHEREAS, said public hearing was duly held and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to the proposed Local Law.

NOW, THEREFORE, BE IT

RESOLVED, the Town Board, upon due deliberation of the proposed Local Law and the comments presented at the public hearing, finds that the adoption of the same shall be in the best interests of the Town; and be it further

RESOLVED, the Proposed Local Law A of 2021 law requesting that the Cannabis Control Board of the State of New York prohibit any retail dispensary licenses and any on-site consumption licenses in the Town of Kingsbury pursuant to Cannabis Law Section 131, a copy of which is attached to and made a part of this resolution, is hereby adopted subject to permissive referendum as provided for in Section 131 of the Cannabis Law of the State of New York, and shall take effect as provided for in said Local Law; and be it further

RESOLVED, this resolution shall take effect immediately.

The vote was as follows:

Supervisor Hogan Aye
 Councilman Doyle Aye
 Councilman Washburn Aye
 Councilman Lindsay Aye
 Councilman Haessly Present

Enforcement Officer Humiston is requesting a resolution to sign an agreement with iWorQ Systems; a **motion** by Councilman Doyle seconded by Councilman Washburn and carried by a vote of 5 ayes for the contract to be signed by the Supervisor.

A **motion** by Councilman Washburn seconded by Councilman Doyle and carried by a vote of 5 ayes to accept the following Budget Transfers:

**TOWN OF KINGSBURY
 BUDGET TRANSFERS
 DECEMBER 2021**

		DESCRIPTION	GL	AMOUNT
GF-WT	FROM:	PERSONNEL CONTRACTUAL	1.1430.4	\$ 100.00
	TO:	CLERK CONTRACTUAL	1.1410.4	100.00
	PURPOSE:	LEGAL ADS AND MISC YEAR END EXPENSES		
GF-PT	FROM:	CONTINGENCY	2.1990.4	3,000.00
	TO:	ATTORNEY CONTRACTUAL	2.1420.4	3,000.00
	PURPOSE:	UNANTICIPATED LEGAL FEES		
	FROM:	SAFETY INSPECTION EQUIPMENT	2.3620.2	61.20
	TO:	ZONING CONTRACTUAL	2.8010.4	41.20
	TO:	PLANNING CONTRACTUAL	2.8020.4	20.00
	PURPOSE:	LEGAL ADS		
	FROM:	ZONING PERSONAL SERVICES	2.8010.1	125.00
	FROM:	STATE RETIREMENT	2.9010.8	865.15
	TO:	SOCIAL SECURITY BENEFITS	2.9030.8	990.15
	PURPOSE:	FICA/MEDICARE FOR CODE ENF. OFFICER		
HWY-PT	FROM:	BRUSH & WEEDS CONTRACTUAL	4.5140.4	1,168.01
	TO:	BRUSH & WEEDS PERSONAL SERVICES	4.5140.1	1,168.01
	PURPOSE:	COVER PAYROLL EXPENSES		
WATER	FROM:	TRANSMISSION & DISTRIBUTION	7.8340.4	2806.36
	TO:	SOURCE OF SUPPLY	7.8320.4	2806.36

PURPOSE: COVER ADD'L WATER SUPPLY COST

A **motion** by Councilman Washburn seconded by Councilman Doyle and carried by a vote of 5 ayes to accept the following budget amendments:

BUDGET AMENDMENT #002 - 2021: Unanticipated legal expenses; and

WHEREAS: The Town of Kingsbury (TOWN) was Defendant of an Article 78 Petition; and

WHEREAS: Unanticipated legal fees were incurred above the 2021 budgeted amount; and

WHEREAS: Federal Covid Relief (ARP Act) Funds were received in July 2021 and can be partially allocated to right the General Fund-Part Town; and

WHEREAS: Budget Amendments require Legislative approval; therefore, be it

RESOLVED: That the Town Board authorizes the Town Comptroller to the following Budget Amendment:

Increase Appropriation: 2.1420.4 (Legal Fees — Part Town) \$30,000.00 Increase Revenue:

2.4089 (Federal Aid, Other) \$30,000.00

A **motion** by Councilman Haessly seconded by Councilman Lindsay and carried by a vote of 5 ayes to accept the following budget amendment:

BUDGET AMENDMENT #003 - 2021: Payroll for code Enforcement Officer; and

WHEREAS: The Town of Kingsbury (TOWN) added a position to the payroll for a part-time Code Enforcement officer; and

WHEREAS: The payroll expense was not included with the original 2021 Budget; and

WHEREAS: Additional revenue was generated as a result of the work performed by the Code Enforcement Officer; and

WHEREAS: Budget Amendments require Legislative approval; therefore, be it

RESOLVED: That the Town Board authorizes the Town Comptroller to the following Budget Amendment:
Increase Appropriation: 2.3620.1 (Safety Inspection, Personal Services) \$12,000.00

Supervisor Hogan asked the Board if they should suspend Public Hearings due to the spread of the Covid variant. After discussion the Board will continue Public Hearings virtually, this will allow projects to keep going.

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TOWN CLERK REPORT:

There are two vacancies on the Board of Ethics.

Resident Sharlene Lemery has contacted the office in regard to her effort to receive broadband in her home.

ENFORCEMENT REPORT:

Todd Humiston would prefer to continue Planning and Zoning Meetings in person.

The Building Permits received from the County are being put into the computer in preparation of receiving the new software program.

Rich Schermerhorn is in contract to purchase The Quarry Apartment Project from Mr. Nikas.

HIGHWAY SUPERINTENDENT REPORT:

Michael Graham went out to bid for 2 new 2022 trucks and reported the dealerships are not accepting bids for new trucks to be built. The dealership suggested waiting a few more months, hopefully the plants will re-open. The only change would be the trucks would be 2023 and not 2022 with delivery at the end of the year.

BOCES has requested if the Town could hold some of their salt at the Highway Garage and use the Town's loader to load their truck when salt is needed. The proper insurances would be in place. The Board has no concerns.

The NYS DOT has rejected a request to reduce the speed limit on Tow Path Road, the state does not mandate the speed on dirt roads. It is considered a 55-mph speed limit.

Superintendent Graham requested an executive session to discuss the performance of an employee.

COUNCILMAN REPORT:

Councilman Haessly expressed his concern with the future of traffic on Martindale Avenue and Burgoyne Avenue.

Councilman Lindsay stated he is looking forward to working with the Board.

Councilman Washburn thanked Jim Lindsay for stepping up to the plate and looks forward to working with him.

Councilman Doyle reported the Town received a grant for the completion of the Comprehensive Master Plan in the amount of \$40,000.00. A conference call is scheduled with Nicole Allen of Laberge on Wednesday.

WRITTEN REPORTS:

A **motion** by Councilman Washburn seconded by Councilwoman Doyle and carried by a vote of 5 ayes to accept the reports of certain officers for the month of October as follows:

Dog Control Officer: Seizures 1; Unlicensed Dogs 3 ;Written Warnings 1; Mileage 315 (51,330)

Town Clerk: Paid to EnCon \$2,333.08; Paid to Supervisor \$3,152.54; Paid to the Village of Hudson Falls \$330.00; Paid to Ag & Markets for Population Control \$99.00

Town Comptroller: Receipts \$39,724.10; Disbursements \$10,024.06

Assessor Reports

Enforcement Officer – August: Fire Inspections 10; Permits 8; Total Fees: \$2,973.00

For September: Permits: 4; Fire Inspections 10; Research Fee 1; Total Fees: \$3,655.00

For October: Permits 11; Fire Inspections 8; Research Fees 2; Total Fees \$1,245.00

PUBLIC COMMENT:

Lorraine Forcier asked Councilman Doyle if there were meetings scheduled for the Comprehensive Master Plan Committee. Councilman Doyle stated Councilwoman Havens is missed who was the heart and soul of this project. He has a scheduled meeting with Nicole Laberge on Wednesday and has sent an email to the committee members. With little response from the email more committee members may be

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necessary to complete the project. The summary of the survey is complete and will be sent to Lorraine Forcier.

A **motion** by Councilman Washburn seconded by Councilman Doyle and carried by a vote of 5ayes to enter into an executive session at 8:34 pm to discuss an employee matter. Highway Superintendent Michael Graham and Comptroller Rebecca Pomainville were invited to the session.

A **motion** by Councilman Washburn seconded by Councilman Doyle and carried by a vote of 5 eyes to exit the executive session at 8:58 pm; no action was taken.

There being no further business before the Board **motion** by Councilman Washburn seconded by Councilman Doyle and carried by a vote of 5ayes to adjourn the meeting at 8:58 pm.

Respectfully submitted,

Cynthia A. Bardin, Town Clerk