

TOWN OF FORESTPORT
REGULAR TOWN BOARD MEETING MINUTES
WOODGATE FIRE HALL
12445 State Rte. 28, Forestport, N.Y. 13338
September 20, 2023 @6:30

PRESENT: Supervisor Entwistle
Councilwoman Kardash
Councilwoman Abrial
Councilwoman Verschneider

ABSENT: Councilman Scouten

RECORDING SECRETARY: Tracy Terry, Town Clerk
CALL TO ORDER

ABSTRACTS:

WATER DISTRICT #1:

A motion was made by Councilwoman Verschneider and seconded by Councilwoman Abrial to pay Abstract #9, Vouchers #115- #128 in the amount of \$2,250.52

4 ayes/ 0 nays/ 1 absent MOTION CARRIED

BUCKHORN WATER:

A motion was made by Councilwoman Abrial and seconded by Councilwoman Kardash to pay Abstract #9, Vouchers #34- #38 in the amount of \$510.09

4 ayes/ 0 nays/ 1 absent MOTION CARRIED

SEWER DISTRICT #1:

A motion was made by Councilwoman Abrial and seconded by Councilwoman Kardash to pay Abstract #9, Vouchers #64- #70 in the amount of \$24,541.12

4 ayes/ 0 nays/ 1 absent MOTION CARRIED

➤ \$15,000 is for the Engineer for the WWIP.

GENERAL:

A motion was made by Councilwoman Verschneider and seconded by Councilwoman Abrial to pay Abstract #9, Vouchers #468- #511 in the amount of \$48,562.18

4 ayes/ 0 nays/ 1 absent MOTION CARRIED

➤ \$21,000 is fuel oil for the Town Hall.

HIGHWAY:

A motion was made by Councilwoman Kardash and seconded by Councilwoman Verschneider to pay Abstract #9, Vouchers #263- #309 in the amount of 35,344.08

4 ayes/ 0 nays/1 absent MOTION CARRIED

TOWN CLERK MINUTES:

A motion was made by Councilwoman Abrial and seconded by Councilwoman Verschneider to accept the minutes from the:

Town Board Regular Meeting- August 16, 2023
4 ayes/ 0 nays/ 1 absent MOTION CARRIED

REPORTS

WATER DISTRICT #1

WATER DISTRICT #2

SEWER

TOWN CLERK REPORT

JUSTICE REPORT

PLANNING REPORT

SUPERVISOR REPORT

A motion was made by Councilwoman Kardash and seconded by Councilwoman Verschneider to approve the reports as a whole.

4 ayes/ 0 nays/ 1 absent MOTION CARRIED

NOCCOG:

Lisa Bellinger of NOCCOG went over the monthly announcements.

WATER:

- **Lucas Update:** Lucas is finishing up his training class and his training hours. He is enjoying the job.

SEWER:

- **WWIP:** Supervisor Entwistle received a notice from the DEC that they are not pleased with the progress. The project was supposed to be finished by May 1st. The town is continuing to receive engineer bills but cannot use the grant money yet.

OLD BUSINESS BOARD:

- **Bower Road:** Supervisor Entwistle let the residents on Bower Road know they should try filing a Citizen's Complaint next time they call 911. A Public Nuisance Abatement allows the town to have the Codes Officer issue a ticket. Dave Ultsch, from the gallery stated this would allow people to turn their neighbors in. Councilwoman Verschneider asked about putting it up to referendum. Supervisor Entwistle stated people will be able to voice their concerns by the town providing copies of the proposed law, publishing the Public Notice in the newspaper and on the website. Discussion took place. The following is a letter that was given to the Town Board:

September 20, 2023

Dear Members of the Forestport Town Board;

While we are not able to attend the Town Board meeting tonight, we would like to express our feelings and thoughts in regards to your motion of creating a nuisance law. We are the current owners of 3089 Bower Rd in

Forestport, NY. We are in favor of a nuisance law that would curb a person or persons that create loud or obnoxious noise or any activities that create a dangerous and/or illegal activity on their property or property of others within the Town of Forestport.

The current events that are happening on Bower Rd could harm neighbors or neighbor's property and hinder surrounding area property owners from enjoying the peaceful solitude of their homes. We feel that this ongoing problem can and will affect our property values. We do not object to law abiding citizens that are respectful of their neighbors. It is an ongoing problem that is not being addressed. Those people who abuse these laws are not able to be prosecuted unless caught while in the act, which seems unfair. If the only way to stop this, is to give the codes enforcement the tools to be able to stop these acts with fines and possible criminal charges that can be enforced, then we ask the Town Board to please consider creating a nuisance law that would do this and will help the Town of Forestport stay the welcoming, warm town that it is.

Respectfully,

Don and Dorie Kasper

A motion was made by Councilwoman Abrial and seconded by Councilwoman Kardash to schedule a Public Hearing on October 18, 2023, at 6:15PM at the Woodgate Fire Hall regarding the Public Nuisance Abatement Law.

4 ayes/ 0 nays/1 absent MOTION CARRIED

Local Law 2023-_____ Public Nuisance Abatement

§ 1. Title.

This Chapter shall be called entitled "Town of Forestport Public Nuisance Abatement Law."

§ 2. Intent.

- A. The Town Board of the Town of Forestport finds that a small percentage of persons who own or control real property in the Town of Forestport have allowed their property to be used for illegal purposes, or have otherwise failed to properly maintain their property in accordance with the Town Code of the Town of Forestport and/or the New York State Uniform Building and Fire Code. Where the violations are habitual, these properties interfere with the comfort, health, solitude and quality of life of the individuals residing in the neighborhood; they have created a significant impact upon the living conditions in the Town's neighborhoods; and, they have raised justifiable concerns about public safety. Chronic public nuisance activities have been found to contribute to the general decay of affected neighborhoods, which result in a lowering the value of surrounding properties.
- B. As a result of the activities occurring at these properties, and/or the conditions in which they are maintained, these properties tend to receive and require more than the general, acceptable level of Police and Code Enforcement services. As a result they place an undue and inappropriate burden on the Town of Forestport taxpayers. The Town Board of the Town of Forestport has determined that existing laws do not sufficiently encourage such property owners to take reasonable steps to abate the nuisances that their property is creating, and has determined that enhanced penalties will give such property owners additional incentives to ameliorate the said problems, and help to compensate the Town for the increase in Code Enforcement services.
- C. This local law is enacted to encourage property owners to recognize their responsibility to ensure that activities occurring on their property conform to the law and do not adversely affect their neighborhoods, unduly burden the Town's Code Enforcement resources and to provide a mechanism for the Town to take action against property owners who fail to ensure property they own does not require a disproportionate level of Code Enforcement resources to be devoted to such property. This Chapter is not intended to discourage crime victims or a person in legitimate need of police services from requesting them. This section does not affect a property owner's duty to comply with all other laws governing residential tenancies which are contained in the New York State Statutes.

§ 3. Definitions.

For the purpose of this Chapter, the following words, terms and phrases, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

The existence of two (2) or more criminal convictions for any of the activities set forth in the definition of a public nuisance in §3 at any building, structure or real property within a two (2) year period prior to the commencement of a civil action shall be *prima facie* evidence of the existence of a public nuisance. A criminal conviction shall be defined as the entry of a plea of guilty to or a verdict of guilty for one (1) or more counts set forth in an accusatory instrument.

§ 7. Other evidence of prohibited conduct as presumption of the existence of a public nuisance.

The existence of two (2) or more incidents of the following activities at any building, structure or real property within a two (2) year period prior to the commencement of a civil action shall be *prima facie* evidence of the existence of a public nuisance.

- (1) Arrest for any of the activities set forth in the definition of a "public nuisance" in §3 occurring on or near the property.
- (2) Service of an accusatory instrument charging any of the activities set forth in the definition of a "public nuisance" in §3 occurring on or near the property.
- (3) Service of a search warrant on the building, structure or real property where controlled substances and/or weapons are seized.
- (4) Finding of illegal controlled substances or illegal firearms or weapons on the building, structure or real property.
- (5) Investigative purchases of illegal controlled substances on the building, structure or real property by law enforcement agencies or their agents.

§ 8. Summons and complaint for civil action.

- (a) The Town Attorney may bring and maintain a civil action in the name of the Town to abate a public nuisance and shall commence the civil action by the filing of a summons and complaint in the manner required by New York State Civil Practice Laws and Rules.
- (b) The summons and complaint or petition shall name as defendants the building, structure or real property by describing it by Tax Map Number and/or street address and shall name as defendants at least one (1) of the owners of some portion of, or having some interest in the property.
- (c) Any owner, operator, manager, tenant, lessee or other occupier of the building, structure or real property may also be named as a defendant.
- (d) The complaint shall allege the facts constituting the public nuisance.
- (e) The complaint shall be accompanied by affidavits for purposes of showing that the owner or his/her agent had notice of the nuisance and had an opportunity to abate the nuisance.
- (f) The venue of the action shall be Supreme Court, Oneida County.
- (g) In the case of a summons and complaint, in rem jurisdiction over the building, structure or real property shall be completed by affixing the summons to the building, structure or real property and by mailing the summons and complaint by certified or registered mail, return receipt requested, to the person in whose name the real property is recorded at the office of the Town Assessor.
- (h) Defendants other than the building, structure or real property shall be served with the summons and complaint in the manner required by the New York State Civil Practice Laws and Rules.
- (i) With respect to any action commenced or to be commenced, the Town Attorney may file a notice of pendency pursuant to the New York State Civil Practice Laws and Rules.

PERSON

Any natural person, association, partnership, company, corporation, or entity capable of owning or using property in the Town of Forestport.

PUBLIC NUISANCE

Includes, but shall not be limited to:

- (1) Any building, structure or real property used for the purpose of illegal use, possession or distribution of a controlled substance as defined by the New York State Penal Law.
- (2) Any building, structure or real property used for the purposes of prostitution as defined by the New York State Penal Law.
- (3) Any building, structure or real property used for purposes of indecency, obscene performances and/or promotion of obscene material as defined by the New York State Penal Law and this Code.
- (4) Any building, structure or real property used for purposes of illegal gambling activity as defined in the New York State Penal Law.
- (5) Any building, structure or real property used for the purpose of illegal sale, manufacture or consumption of alcohol beverages as defined by the New York State Alcohol Beverage Control Law.
- (6) Any building, structure or real property wherein there exists or has occurred a criminal nuisance as defined by the New York State Penal Law.
- (7) Any building, structure or real property used for purposes of loitering as defined by the New York State Penal Law.
- (8) Any building, structure or real property wherein an occupant, guest or business invitee commits criminal activities, including but not limited to, assault, harassment or disorderly conduct, as said criminal activities are defined by the New York State Penal Law.
- (9) Any building, structure or real property used for purposes of a business, activity or enterprise which is not licensed as required by federal, state or local law and/or ordinance.

§ 4. Nuisance forbidden.

No owner, operator, manager, agent in control, tenant, lessee or other occupier of a building, structure or real property shall knowingly conduct, maintain, permit or allow the existence of a public nuisance at the building, structure or real property.

§ 5. Presumption of knowledge.

Notice by first class mail, or personal service, of activities entailing a public nuisance to the property owner, operator, manager, agent in control, tenant, lessee or other occupier of a building, structure or real property shall be *prima facie* evidence of knowledge of the public nuisance.

§ 6. Criminal convictions as presumption of the existence of a public nuisance.

§ 9. Civil penalty.

If, upon the trial of an action for a public nuisance or upon a motion for summary judgment, a finding is made that defendants have conducted, maintained, permitted or allowed a public nuisance, a penalty may be awarded in an amount not to exceed One Thousand Dollars and Zero Cents (\$1,000.00) for each day it is found that defendants conducted, maintained, permitted or allowed the public nuisance after notice to abate had been given by the Town. Upon recovery, such penalty shall be paid into the General Town Fund.

§ 10. Permanent injunction.

- (a) If, upon the trial of an action for a public nuisance or upon a motion for summary judgment, a finding is made that defendants have conducted, maintained, permitted or allowed a public nuisance, a permanent injunction may be granted.
- (b) A permanent injunction may prohibit defendants from conducting, maintaining, permitting or allowing the public nuisance.
- (c) A permanent injunction may authorize agents of the Town to remove and correct any conditions in violation of this Code. The judgment may order that the costs of removing and correcting the violations, plus a charge of fifty percent (50%) as compensation to the Town for administering, supervising and handling such work, shall be charged against defendants and awarded to the Town. The judgment may further order that the costs of removing and correcting the violations, plus a charge of fifty percent (50%) as compensation to the Town for administering, supervising and handling such work, shall constitute a lien against the real property and shall be collected in the same manner provided by law for the collection of real property taxes within the Town.
- (d) A judgment ordering a permanent injunction may direct the closing of the building, structure or real property by the Oneida County Sheriff's Department, to the extent necessary to abate the nuisance.
- (e) A judgment awarding a permanent injunction shall provide for all costs and disbursements allowed by the Civil Practice Laws and Rules and for the actual costs, expenses and disbursements of the Town in investigating, bringing and maintaining the action.

§ 11. Closing of the building, structure or real property.

- (a) If the judgment directs the closing of the building, structure or real property, the Oneida County Sheriff's Department shall serve the judgment upon defendants in the manner required by the Civil Practice Laws and Rules and shall post a copy of the judgment upon one (1) or more of the doors at entrances of the building, structure or real property, or in another conspicuous place on the building, structure or real property.
- (b) In addition, the Oneida County Sheriff's Department shall affix upon one (1) or more of the doors at entrances of the building, structure or real property or in another conspicuous place on the building, structure or real property, a printed notice stating "CLOSED BY COURT ORDER" in block lettering of sufficient size to be observed by anyone intending to enter the premises. Mutilation or removal of such posted judgment or notice while it remains in force will be considered a separate violation and shall be punishable as contempt of court.
- (c) After posting, the Oneida County Sheriff's Department may then command all persons present in the building, structure or real property to vacate the property forthwith. After the building, structure or real property has been vacated, the Oneida County Sheriff's Department may secure the premises.
- (d) The closing directed by the judgment shall be for such period as the court may direct, but in no event shall the closing be for a period of more than a year from the posting of the judgment.

- (e) A closing by the Oneida County Sheriff's Department shall not constitute an act of possession, ownership or control by the Town.

§ 12. Preliminary injunction.

Upon a motion or order to show cause from the Town Attorney and pending an action for a permanent injunction, a preliminary injunction enjoining the public nuisance may be granted for any of the relief obtainable by a permanent injunction.

§ 13. Temporary restraining order.

Pending a motion or order to show cause for a preliminary injunction, a temporary restraining order or a temporary closing order may be granted, without notice to defendants, for any of the relief obtainable by a permanent injunction.

§ 14. Administrative hearing.

Whenever there is *prima facie* evidence of a public nuisance at any building, structure or real property within the Town, the Town Attorney may initiate an administrative process before a hearing panel as stated herein.

- (1) Service of notice. A notice of the hearing shall be served on all owners of the building, structure or real property and may also be served on any known tenants or lessees or other occupiers of the building. The notice shall be served in the manner required by New York State Civil Practice Laws and Rules.
- (2) Content of notice. The notice shall allege the facts constituting the public nuisance. The notice shall further contain a time and place for a hearing to be held before a panel.
- (3) Hearing panel. The panel shall consist of a member to be appointed by the Town's Code's Officer, and two members to be appointed by the Town Supervisor who shall preside at such hearing. Each appointing authority shall be authorized to appoint himself/herself or any member of his/her staff to the hearing panel.
- (4) Hearing. At the time and place designated in the notice, the Town Attorney or his/her designee shall present all relevant evidence as to the existence of a public nuisance at the building, structure or real property, and as to appropriate remedies. The owners of the building, structure or real property, or their representatives, shall have the right to cross-examine any witnesses presented by the Town Attorney or his/her designee. The owners of the building, structure or real property, or their representatives, may present any relevant evidence in their defense. The Town Attorney, or his/her designee, shall have the right to cross-examine any witnesses presented by the owners of the building, structure or real property, or their representatives.
- (5) The panel's finding and recommendation: within five (5) days of the hearing, the panel shall provide a finding of fact to the Town Supervisor or the Town Supervisor's designee. The finding of fact shall state whether there is *prima facie* evidence of the existence of a public nuisance at the building, structure or real property. The panel shall further provide a written recommendation of remedies to abate the public nuisance.

§ 15. Administrative remedies.

The Town Supervisor, or the Town Supervisor's designee, upon receipt of a finding of fact and recommendation from the panel, shall have the following powers in regards to the abatement of public nuisances:

- (1) To suspend or revoke, for a period not to exceed one (1) year, the certificate of occupancy for the building, structure or real property.
- (2) To order the closing of the building, structure or real property by the Oneida County Sheriff's Department, to the extent necessary to abate the nuisance, pursuant to the procedures set forth above in § 11.

- **Comprehensive Master Plan- kickoff meeting scheduled for October 19th:** Supervisor Entwistle suggested everyone to keep a lookout for fliers and QR codes. The goal is to get as much public input as possible. Don Frank had some questions regarding the Comprehensive Plan. Discussion took place.
- **Budget workshops – 10/2 and 10/3:** Supervisor Entwistle stated the Town Board will go over the entire budget on the 2nd and go into Executive Session to discuss wages and Personnel on the 3rd.
- **Afterschool Program:** There are 6 kids currently signed up for this program and Adirondack School will bus the children to the Town Hall. Applications are still being accepted. Discussion took place regarding setting a tuition fee for out-of-town children to attend.
- **STAR negotiations:** Joe Smith emailed his vision for the five towns to keep them financially stable to Supervisor Entwistle. There is not a date yet for the negotiations.
- **Fall EXPO:** The EXPO is set for September 27th, next Wednesday. There will be many vendors to assist anyone.

NEW BUSINESS BOARD:

- **Kincaid Road repairs:** There have been repeated washouts on the Kincaid Road Bridge. Bill had a plan to repair the washouts and the DEC had questions about the plan. Bill is asking for an engineer. Steve Case, with the DEC stated what they are looking for. Supervisor Entwistle has reached out to several other engineers. Steve said if they had an actual plan and knew it would take place when it opens again in the spring, that would be fine. The DEC has granted extensions.
- **Budget updates – tax levy and rates for 2024:** The tax levy is figured, and the tax rate is 2.30 /1,000 up four cents since last year.
- **Curb cut estimate:** The quote is for \$12,000. Supervisor Entwistle stated that was too much money and Councilwoman Verschneider agreed.
- **Retirements for 2023/2024:**
Councilwoman Nancy Kardash is retiring after 12 years.
Dorothy Hajdasz, the Highway Clerk is retiring after 27 years.
Dawn Campbell, Bookkeeper to the Supervisor, retiring after 22 years.
- **Mystery trip for Seniors:** The trip leaves at 10am and returns around 2-2:30.
- **Joel Schneider:** The Attorney and the Codes Officer are looking to turn this over to the Court for a violation of the Site Review Law. Supervisor Entwistle read the following from Tony Donatelli, Code Enforcement Supervisor:

CODE ENFORCEMENT OFFICE

Tony Donatelli, Codes Supervisor
10275 Route 28
P.O. BOX 137
FORESTPORT, NY 13338
315-392-2801 EXT. 8
C# (315)795-0358

Website: Townofforestport.org

Date: 9/12/23

Subject: Joel Schneider

Address: Woods Road

Tax ID 27.000-1-6.9 and 10

I am writing this letter to inform you that you are in violation of Forestport site review law article section 10.1 by having an unpermitted cabin (14x30) on your property. Although I have gone to great lengths to explain the requirements you need to obtain a permit, you have neglected to do so. It is also important to note that you

vehemently argued each requirement for obtaining your building permit. Throughout my dealings with you have been consistently rude and unreasonable, even going as far as attacking me on a personal level. At this point moving forward all our correspondence will be done strictly via email. I have compiled a bulleted list of your outlandish comments and arguments you have made when trying to get you to comply with the requirements the town of Forestport has set forth:

- Mr.Schneider argued why I needed to know where he was going to build on his property “It’s his land and he can put his cabin wherever he wants” (I repeatedly explained to him that there are several setback regulations needed to obtain a building permit).

- Mr.Schneider argued that the overall fee structure was way too high (I repeatedly explained to him that I did not make up the amounts on the fee schedule).

- Mr.Schneider argued first that his 14x30 shed was movable and shouldn’t need a permit (I repeatedly explained that the term movable is for structures on wheels).

Mr.Schneider argued that although his structure had a front porch and was going to have a bed in it for sleeping it should be considered a shed (I explained repeatedly that if you are sleeping in the structure it would be considered a cabin, not a shed).

Mr.Schneider argued that even though he was going to stay in his cabin overnight it did not need to meet code requirements (such as 85lbs). (I explained to him repeatedly that he would need to have an engineer design his structure to meet NYS codes regulations).

Mr.Schneider argued that he did not need a septic system as a way to get rid of human waste because he was going to put his human waste in a bucket and take it home with him. (I explained repeatedly that taking human feces home in a bucket was not a suitable way of dealing with human waste).

Mr.Schneider argued that he was going to use his human feces for fertilizer on his property because it is the same thing farmers do. (I explained repeatedly that taking human feces and using it as fertilizer was not a suitable way of dealing with human waste).

Mr.Schneider argued that he had a septic design engineered for an additional cabin that he “may” put in down the road (I (along with his engineer) explained repeatedly that the septic system needs to be for the cabin he is applying for a permit for, not a cabin that he may or may not build down the road).

10/22 Mr. Schneider told me that he was putting it in his cabin this

year with or without the permit because he was using it for hunting this year. I informed Mr. Schnider I would be contacting the town attorney and he would be dealing with the matter legally. I spoke to Jessica Young and informed her of the ongoing unfortunate situation.

A motion was made by Councilwoman Verschneider and seconded by Councilwoman Abrial to refer this to the Town Attorney for Court action.

4 ayes/ 0 nays/1 absent MOTION CARRIED

NEW BUSINESS PUBLIC:

- Ron Davies, from the Gallery asked if the fuel oil was put out to bid. Supervisor Entwistle stated it is not put out to bid. Halpin's charges 10 cents under the state bid. Ron asked why the Highway is using so much salt this year. Councilwoman Kardash stated Bill is locked in to buying the salt the year prior and the salt prices are going up every year.
- Roy, from the Gallery asked what the update is with the Solar Project. Supervisor Entwistle stated the state has changed their permitting process. They changed their delineation process and wildlife studies. The project was supposed to be started in 2024, but now it will most likely happen in 2026.

ADJOURNMENT:

A motion was made by Councilwoman Kardash and seconded by Councilwoman Verschneider to adjourn the meeting.

4 ayes/ 0 nays/1 absent MOTION CARRIED

There being no further business, the meeting was adjourned at 7:44 pm by Supervisor Entwistle.

Respectfully submitted,

Tracy M. Terry

Forestport Town Clerk