

Town of Orangeville
Board Meeting
May 12, 2022

The Town Board of Orangeville met on May 12, 2022 to audit the town accounts and transact other such business as is necessary at this time.

Present were Town Board Members:

- Susan May Supervisor
- Hans Boxler, Jr. Councilman
- Andrew Flint Councilman
- James Herman Councilman
- Joseph Ahl Councilman

Others Present:

- Rosann A. Lowder, RMC Stella Glosser, Deputy TC Cherie Glosser, Deputy TC
- Lisa Perez, Bookkeeper
- Wade Roggow, Highway Superintendent
- Thomas Suto, Zoning Officer
- David DiMatteo, Town Attorney – 8pm

Guests:

| Name | Town of Residence | Name | Town of Residence |
|-----------------|-------------------|------------|-------------------|
| Tyler Dominesey | Orangeville | Mark Green | Orangeville |
| Dan Walczak | | | |
| | | | |

Supervisor May called the board meeting to order at 7:00 p.m. at the town hall located at 3529 Rt. 20A, Warsaw, New York.

Supervisor May opened with the Pledge of Allegiance; all were thanked for attending the meeting.

Public Comments:

Supervisor May requested a motion to approve the meeting minutes from April 14, 2022. On a motion from Mr. Herman, seconded by Mr. Flint, to approve the minutes. Ayes [4] May Boxler Flint Herman Ahl. Noes [0] Carried

Supervisor May requested a motion to approve the Supervisors Report. report. A motion was made by Mr. Flint, seconded by Mr. Herman to approve the

Supervisor Report. Ayes [4] May Boxler Flint Herman Ahl. Noes [0] Carried

Zoning Officer Report: Report in packet.

Highway Superintendent Report: Mr. Roggow stated that they have been cutting trees on Nesbitt and Krotz. The River Keeper Project is underway – putting in an 18-foot arch. We have plowed and sanded a bit this month, we have been cleaning equipment, and have been paving for Sheldon. We have worked on the old cemetery across from Duane Christ and the one on Gassman rd. Requested permission to purchase a mower, as ours has seen better days. We ordered the Town pickup truck – OGS, the state is also up in arms regarding the increase in pricing and not honoring the bids. We have to reorder, would not be in until September or October. On a motion by Mr. Flint, seconded by Mr. Herman to purchase the pickup truck. Ayes [3] May Boxler Flint Herman / Noes Ahl. Noes [1] Carried

207 – western star will not be built until next year – we approved the truck in November 2021, the original bid has increased \$10,300 - \$5,000 the month after the bid was accepted and \$5,300 again after. We may see the truck in 2023 or 2024, Mr. Roggow asked the Board with this bid, until at least July, as 206 is rotting away. It will be \$294,000 for the truck and box. Mr. Roggow asked the Board to Increase the budget line for CHIPS to \$204,630.64. On a motion by Mr. Flint, seconded by Mr. Herman to increase the Budget line. Ayes [4] May Boxler Flint Herman Ahl. Noes [0] Carried

Town Clerk Report: Our Town website visits for April 2022 were 278, it appears on the site has changed how they monitor our site. The Towns total revenue for the month of April was \$190.00, \$105.00 for Zoning, \$45.00 for dog licenses, \$30.00 for registrar fees and \$10.00 for DEC. We had 5 renewal licenses. To the general fund, \$150.55, Dogs were \$15.00, \$0.55 for DEC fees, \$30.00 for Registrar Fees and \$105.00 for zoning. We disbursed \$25.00 to Wyoming County, \$5.00 to Ag and Markets for dogs. WE have completed making copies of all vouchers and abstracts from 2007 to current. We could not copy 2006 information, as it was destroyed in the water issues in the vault. The Board continued to discussed that we may have to rebid for fuel, propane and gasoline.

Comments:

Mr. Green discussed with the Town Board the resolution declaration that the Town of Warsaw just completed to uphold the Constitution of the United

States of America. There was discussion regarding this resolution. Mr. Green stated that Warsaw and Castile have approved this resolution.

Mr. DiMatteo stated that the law is clear regarding the power of the Town Board; [text from letter to the Town Board]

1. Power to acquire real and personal property (Subsection 2)
2. Power to acquire, establish, construct, reconstruct, equip, maintain, repair and operate recreational facilities on park or other lands (Subsection 3)
3. Power to dispose of real or personal property (Subsection 4)
4. Power to manage fees, interest rates, penalties, and liens on local property (Subsection 5)
5. Power to adopt, amend, and repeal zoning ordinances (Subsection 6)
6. Power to perform comprehensive or other planning work within jurisdiction (Subsection 7)

While the above-mentioned subsections may be inapplicable, Subsection I of this Section appears to be more relevant, and states that local governments have "[t]he power to adopt, amend and repeal ordinances, resolutions and rules and regulations in the exercise of its functions, powers and duties" (emphasis added). This raises the question of what are the "functions, powers, and duties" of a Town Board?

The answer to that question is found in Town Law Section 64, entitled "General powers of Town Boards." This statute plainly describes the functions, powers, and duties of the local government. There are 25 enumerated powers under the section, and I do not see any that would permit a Town Board to declare itself a Constitutional Sanctuary or otherwise disregard state laws, mandates, and regulations. The powers conferred to Town Boards are as follows (please forgive the disorganized appearance of the list, but it is how the statute is organized):

1. Control of Town finances
 - a. Petty cash funds
2. Acquiring and conveying real property
 - a. Acquiring and conveying personal property
3. Management, custody and control of Town property
4. Indemnity insurance

5. Filing vacancies
 - a. Removal of fire and health hazards and weeds
6. Award and execution of Town Contracts
7. Franchises
8. Gifts to Town
9. Naming and numbering streets and proving street signs
10. Street profiles
 - a. Permits for filling or diversion of streams
 - b. Temporary blocking of Town streets, highways, and roads
11. Declaring official newspaper
 - a. Drainage facilities
 - b. Publication of minutes of Town Board meetings
 - c. Central fire alarm systems
12. Appropriations for National Holidays
 - a. Establishment of recreational facilities
13. Appropriations for rooms for patriotic organizations
14. Publicity funds
 - a. Posting of public notices
15. Appropriations for the construction of conning towers
 - a. Purchase of equipment for the prevention of forest fires
16. Traffic control, signals, and standards
17. Formation of citizen advisory committees on capital improvements
 - a. Preservation of historic places
 - b. Cultural development (applies to arts, literacy, and performances)
18. Control of White Pine Blister Rust
 - a. Appropriation of deer food
 - b. Management of Golden Nematode
19. Contracts for lighting of certain improved highways and bridges
 - a. Appropriation for public health
 - b. Town medical and dental care
 - c. Psychiatric rehabilitation facilities
 - d. Contracts for physician services
 - e. Psychiatric clinics
20. Band concerts
 - a. Dumping facilities

- b. Combustible liquids
- 21. Town Physician
 - a. Establishing Department of Public Works
- 22. Certain expenditures Town charges
- 23. GENERAL POWERS — "shall have and exercise all the powers conferred upon the Town and such additional powers as shall be necessarily implied therefrom."
- 24. Admissions tax at pari-mutuel tracks
- 25. Use of Agricultural Assessment for improvement district charges

While there is a clause for "General Powers" which says that Town Boards "shall have and exercise all the powers conferred upon the Town and such additional powers as shall be necessarily implied therefrom," I do not believe that this clause would allow you to take such action due to the provisions of Statute of Local Government Section 11, as well as fundamental principles of Constitutional law.

While the intent of the residents of the Town is slightly unclear to me, I believe that part of the reason this resolution is before the Town is in response to the State's mandates regarding vaccines, masks, and other State-level responses to the Covid-19 pandemic. If this is indeed the case, I would caution you not to take any actions inconsistent with the State's position during the pendency of the State of Emergency Declaration that is in place until at least May 15, 2022. Statute of Local Government Section 11, entitled "Reservation of power by legislature" describes the power that the legislature reserves for itself, and does not grant to the states. Subsection I prohibits a local government from passing "any law relating to the continuity of state or local governmental operations during periods of emergency caused by enemy attack, actual or imminent, or by disaster." As such, the Town is outright prohibited from acting against State actions taken in response to the pandemic.

Further, Subsections 5 and 6 expressly prohibit laws authorizing the voluntary transfer of power or the voluntary exercise of power by a local government in cooperation with another local government or government agency. As such, even if you have the power to pass such a resolution, which I do not believe is the case, I would caution you in how you proceed with assistance from other counties or towns that have passed similar resolutions.

A Town Board is not able to disregard the State Constitution and laws in favor of federal guidance. As a basic matter of Constitutional law, the US Constitution is "the law of the land" and may not be overruled by any state or local governments. Any powers not expressly reserved to the federal government in the US Constitution are granted to the States. When both Federal and State law are silent on an issue, a local government may exercise its discretion, however, a local government may not pass any mandate, law, or resolution that attempts to overrule either State or Federal law. This is commonly known as preemption.

While I understand the "idea" behind this resolution, I do not see what its function or purpose is intended to be. I understand the thought behind it, however, based on the law, I do not see what effect this resolution would have. In other words, I can see this being passed as a statement of intent to uphold the Constitution, however, based on the above, I do not believe that there would be any practical effect, as the Town does not have the power to contradict either Federal or State actions.

Mr. Green: You have taken an oath to uphold the constitution.

Mr. DiMatteo: You as a citizen can fight this, we as a municipality cannot.

Mr. Walczak: Liberty is not delegated to the town?

Mr. Green: Greg Rudolph states that it is symbolic, the safe act is symbolic.

There was continued discussion regarding the proposed resolution that Mr. Green presented to the Board. Mr. Ahl made a motion to table the information on this resolution, seconded by Mr. Herman. Ayes [4] May Boxler Flint Herman Ahl. Noes [0] Carried

Mr. DiMatteo questioned if the Board or the Supervisor has any discussions or correspondence with Invenergy, regarding scheduled turbine repair or the events that occurred March 20th. The Board discussed that they have not had any correspondence or discussions with Invenergy. Mr. DiMatteo will make written inquiries

The Bookkeeper has presented corrected copies of Abstract4

- a. Highway: Voucher 50 – ¼ NYS taxes was - \$180.59 – corrected \$180.58
- b. General: Voucher 57 National Grid was correct to: \$207.62 / \$207.61

On a motion by Mr. Flint, seconded by Mr. Herman to accept and approve the corrected Abstracts. Ayes [4] May Boxler Flint Herman Ahl. Noes [0] Carried

Supervisor May requested a motion to approve the 2022 Highway Fund Bills: Abstract #5 Vouchers #74 through 93 totaling \$43,438.56. A motion was made by Mr. Ahl, seconded by Mr. Flint to approve the payment of the Highway bills. Ayes [4] May Boxler Flint Herman Ahl. Noes [0] Carried

Supervisor May requested a motion to approve the 2022 General Fund Bills: - Abstract #5 Vouchers #79 through 99 totaling \$16,107.49. A motion was made by Mr. Ahl, seconded by Mr. Herman to approve the payment of the General Fund bills. Ayes [4] May Boxler Flint Herman Ahl. Noes [0] Carried

The meeting was adjourned at 9:10pm on a motion by Mr. Flint, seconded by Mr. Herman to adjourn. Ayes [4] May Boxler Flint Herman Ahl. Noes [0] Carried

Respectfully submitted

Rosann A. Lowder, RMC

Town of Orangeville