

**TOWN OF WESTERLO
PUBLIC HEARING ON PROPOSED LOCAL LAW 2 OF 2023
&
TOWN BOARD WORKSHOP MEETING
OF
TUESDAY, MAY 2, 2023**

The Town of Westerlo Town Board held a Public Hearing on Tuesday, May 2, 2023 regarding Local Law 2 of 2023 to establish residency requirements for certain appointed offices for the Town of Westerlo. The Public Hearing was followed by the regularly scheduled workshop meeting at the Town Hall 933 CR 401, Westerlo, NY. Supervisor Kryzak opened the meeting with the Pledge of Allegiance to the Flag at 6:00 PM.

ATTENDING WERE: Supervisor Matthew Kryzak
 Councilman Peter Mahan
 Councilman Joshua Beers
 Councilwoman Lorraine Pecylak
 Councilwoman Amie Burnside

Also attending were: Highway Superintendent Jody Ostrander and employees Salvatore Spinnato & Daniel Rohrmiller, Town Attorney George McHugh, Planning Board Chair Beau Loendorf and Members Gerry Boone, Bill Hall and Angela Carkner, Deputy Town Clerk's Marta Pongo, Kathy Spinnato & Jaimee Motschmann, Hometown Heroes Committee Member/Confidential Administrator Lisa DeGross, Westerlo Rural Cemetery President Betty Filkins, Clerk to the Planning and Zoning Boards Claire Marshall, Museum Board Member Becky Kryzak, Library Trustees Laura Tenney & Mary Ann Witt, Code Enforcement Officer Jeff Pine, Town Justices Robert Carl & Kenny Mackey, and approximately seven residents.

Councilwoman Burnside made a motion to open the workshop meeting. Councilman Mahan seconded; all in favor motion carried.

Supervisor Kryzak gave a PowerPoint presentation prior to the Public Hearing regarding public officer law and advised of rules the public should follow during the Public Hearing. He indicated there was a sign-up sheet in the back of the room for anyone wishing to speak during the Public Hearing.

PUBLIC HEARING

Councilwoman Burnside made a motion to open the Public Hearing at 6:24 pm. Councilwoman Pecylak seconded; all in favor motion carried. Supervisor Kryzak called on those who signed in to speak one by one.

Planning Board Member Gerry Boone wondered if the Town Board had the opportunity to interview other attorneys when Mr. McHugh was hired. Mr. Kryzak responded they did not interview other attorneys but they could if they wanted to. Supervisor Kryzak mentioned the Town Board could make an appointment without interviewing other attorneys. Mr. Kryzak had interviewed Mr. McHugh and believed previous Board Members Joe Boone and Rich Filkins did as well. Planning Board Member Boone indicated the Town Board never mentioned that Mr. McHugh would be getting retirement benefits when he was hired.

Clerk to the Assessor Claire Marshall indicated the rules in the Supervisor's presentation did not make sense because she didn't know what she wanted to say until she heard comments from others. She also mentioned that the Town of Westerlo hadn't had a resident Assessor since 1998. Councilman Beers believed the Assessor was a civil service position so they don't need to live in the town. Mr. Kryzak advised they are also subject to public officer laws.

Resident Bobby Sherman asked each of the Town Board members to explain why they think the Town needs this law. Councilwoman Burnside responded, unfortunately they were there to listen to the public at this point.

Resident Chuckie Benninger mentioned Mr. McHugh has been the Town Attorney for almost 2.5 years and the Town is just figuring out he's been paid incorrectly and that's why the law was being presented. Mr. Kryzak responded that the state opened up local governments to allow non-residents as officers. Mr. Benninger also explained that the public has an issue with the Town Attorney getting retirement benefits as an employee. He also indicated the Attorney asked for a retainer but should've known that he's not allowed to request one. The resident suggested changing Town Attorneys, not the law.

Planning Board Member Carkner referenced the PowerPoint presentation, specifically the January 4, 2022 meeting minutes and questioned if there was a reason why all public officials were listed on the next page but Mr. McHugh as Town Attorney was not if he is a public official. Mr. Kryzak responded he didn't have that page so he didn't see it and was only there to listen, not to speak.

Resident Brandon Carkner mentioned that the RS 2415 form that Mr. Kryzak had in his presentation was the wrong form. He also commented that the March 23rd email didn't indicate that Councilman Beers had approached the Town Attorney regarding him being hired incorrectly. He mentioned it's also not being discussed in the email that the Town Attorney drafted and proposed a law, which he expressed was unethical. He asked if Mr. McHugh as a public officer could request a retainer fee; Supervisor Kryzak responded, they are there to listen. Mr. Carkner read an email from Attorney McHugh to previous Planning Board Chair Verch requesting the Planning Board seek a \$2,500 initial retainer fee for the Town Attorney for legal review of the (Carkner's Special Use) application. He questioned if a public officer was also allowed to act as an independent contractor and ask for a retainer fee. Mr. Kryzak responded; they are there to listen. Mr. Carkner indicated that the Town Board advised they were saving money by bringing on Mr. McHugh; however, he mentioned that based on this year's budget, this year is the highest budgeted year for legal services. He asked for the Town Board to explain what the contractual fee is for this year; Mr. Kryzak responded, he's here to listen. He also indicated Mr. McHugh missed many meetings in 2022 and 2023. He believed the taxpayers should be concerned that the Town Attorney tried to obtain a retainer fee, is on the pension system in five places and that the Town Board is acting very unethically.

Planning Board Member Loendorf finds the Town Board's recent comment interesting that they will always consider local applicants first. He indicated that the Town Board has not been transparent with multiple jobs over the past few months and things have been done behind the scenes. He encouraged the Town Board to make hiring residents a top priority moving forward.

Library Trustee Laura Tenney wondered if the reason the proposed law was written originally about town officers needing to be residents had something to do with finding someone who would be loyal to their town and who serves their towns best interests. She feared that if the Town passes this law which no longer would require the officer to live in town, it opens us up to individuals who may not have the

towns best interest at heart. She indicated, Mr. McHugh is involved in many other surrounding towns both politically, financially and legally and wondered if there could be some conflict of interest that perhaps the Town is not getting an individual that has our best interests at heart.

Mr. Sherman reminded the Town Board that they all took an oath to look out for the residents' interests.

Mrs. Carkner mentioned that this law was proposed by Mr. McHugh to the Supervisor in an email which she sees some problems with. She expressed concern regarding the Town Attorney asking the Town Supervisor to pass a new law for himself especially since he has been employed here since 2021. She questioned why the Town needed to change the definition of Town Attorney after almost 1.5 years. The original draft of the proposed law was to change the definition of Attorney from a Town of Westerlo resident to anywhere in New York State (NYS). She advised, the Town has never had a problem obtaining legal counsel from someone in NYS and that previous legal counsel didn't live in town and was paid as an independent contractor. She did not believe there was a reason to change the definition of Attorney in order to obtain legal counsel from someone who was able to practice law in NY. She indicated the reason why the Town Attorney wanted the Town to pass the proposed law was so he could legally receive pension benefits through the NYS retirement plan as an employee of the Town of Westerlo. She advised, by keeping him on payroll, the Town Board is agreeing that the residents now pay employer contributions, half the FICA payments and additional insurance fees such as unemployment. This is something the Town has never done with any other non-resident Attorney. She advised that when Mr. McHugh retires, the Town will continue to pay his pension which could be tens of thousands of dollars, if not more. She mentioned these fees add up and are completely unnecessary considering the Town Attorney should be hired as an Attorney of the Town. She mentioned he was hired incorrectly, he provided a contract, he had his own law firm, he can come and go as he pleases and he doesn't have an office at the Town or a Town email. Based on State Comptroller form RS 2414 which is the updated form, he is not a Town Attorney, he is an independent contractor and suggested that the Town Board correct the mistake. She indicated; this law was created by Mr. McHugh and it causes harm to town residents because they will no longer be first in line for positions with the Town. This law will allow anyone who resides in Albany County and adjoining counties to apply for these positions, directly taking away jobs from those in our community. There is also a clerical error. The Town of Coeymans has a Dog Control Officer and a Town Court Clerk, Westerlo has a Dog Warden and a Clerk to the Justices.

Planning Board Chair Loendorf wondered if he could ask a question; Mr. Kryzak responded he's here to listen and to hear what the public has to say, not to debate.

Mr. Carkner asked what will happen if the law was proposed wrong with the titles of Dog Control Officer and Town Court Clerk. Mr. Kryzak indicated he was not there to debate and they have done their due diligence. The Town has the authority and if the Town Board decides to pass this law and people are unhappy, they can officially challenge the law. Mr. Kryzak mentioned, nothing is going to be done here arguing about it. If people feel obligated to challenge because something has been done wrong, it can go to the courts to decide.

With there being no further comments or questions, Councilwoman Burnside made a motion to close the Public Hearing at 6:42 pm. Councilwoman Pecylak seconded; all in favor motion carried.

OLD BUSINESS

ADOPTION OF LOCAL LAW 2 OF 2023

Supervisor Kryzak made a motion to adopt the following resolution:

- WHEREAS:** the Town Board of the Town of Westerlo has introduced proposed Local Law No. 2 of the year 2023 to establish residency requirements for certain appointed offices for the Town of Westerlo (see attached); and
- WHEREAS:** the Town Board duly noticed and held a Public Hearing on the proposed Local Law on May 2, 2023; be it hereby
- RESOLVED:** that the Town Board hereby approves and adopts Local Law No. 2 of 2023 of the Town of Westerlo to establish residency requirements for certain appointed offices for the Town of Westerlo.

Councilwoman Burnside seconded; a vote resulted as follows:

AYES: Supervisor Kryzak, Councilwoman Pecylak, Councilwoman Burnside

NAYS: Councilman Beers, Councilman Mahan

RESOLUTION # 53 of 2023 was thereby duly adopted.

NEW BUSINESS

BROADBAND GRANT & FIRE CO. SURVEY UPDATES

No update.

GREENWAY GRANT

Supervisor Kryzak mentioned that the application will be submitted tomorrow.

FRESE HOUSE UPDATE

Mr. Kryzak announced that the title search and search for an heir is underway. Highway Superintendent Ostrander advised there are still live wires to the house. Mr. Kryzak indicated CEO Pine will need to reach out to Central Hudson.

LIBRARY MEMORANDUM OF AGREEMENT

No comments were heard from the Town Board on the Library Memorandum of Agreement. Mr. Kryzak advised his comments which were previously discussed with the library, will be incorporated. They will negotiate on a few items regarding certain things being interdependent as opposed to independent.

HILLTOWN COMMUNITY RESOURCE CENTER RIBBON CUTTING

Supervisor Kryzak reminded the public that the ribbon cutting is at 10 am tomorrow at the new Hilltown Community Resource Center.

NEW BUSINESS

INTERFUND TRANSFER

Mr. Kryzak indicated there was a cost code error on GNH V # 148 that was authorized to be paid at the April meeting. \$12.49 was incorrectly coded to account TA 628 (Hometown Heroes), instead should've been coded to A1620.21 (Building). Supervisor Kryzak made a motion to adopt the following resolution:

- WHEREAS:** A correction needs to be made to GNH V # 148 in the amount of \$12.49 which was prepared to be paid at the April 2023 meeting but it was incorrectly coded to TA 628, be it hereby
- RESOLVED:** The Town Board authorizes a correction be made to V # 148 in the amount of \$12.49 from cost code TA 628 to A 1620.21.

Councilwoman Pecylak seconded; a vote resulted as follows:

AYES: Supervisor Kryzak, Councilwoman Pecylak, Councilman Mahan, Councilman Beers

ABSTAIN: Councilwoman Burnside

NAYS: None

RESOLUTION # 54 of 2023 was thereby duly adopted.

AUD UPDATE

Supervisor Kryzak indicated the AUD has been submitted to the State Comptroller. He reported that the Town's unexpended general fund balance for year ending 2022 was \$2,389,403.00. Highway fund balance at the end of 2022 was \$682,935.00. He explained that the fund balance is important and hopes to work on a new salt shed and fix the court building in the future. The AUD will be presented to the Town Clerk as soon as he hears back from the State Comptroller.

CONFIDENTIAL ADMINISTRATOR'S JOB DESCRIPTION

Councilman Beers asked for an update on the Confidential Administrator's job description. Supervisor Kryzak responded; it is still in draft form and it can be discussed at the next Town Board meeting. He advised that the AUD was his priority. Councilman Mahan asked how the title Confidential Administrator was created. It was created by the previous administration and Town Board.

PUBLIC COMMENT

Clerk to the Assessor Claire Marshall asked how the retirement for the Town Attorney was reported and wondered if he has to fill out a form and provide hours. Supervisor Kryzak indicated that everyone completes the same form.

Library Trustee Mary Ann Witt asked if any of the surplus in the fund balance is from the American Recovery Act. Mr. Kryzak responded that no, the ARPA money is earmarked for either broadband or capital outlay projects.

Planning Board Member Boone asked if the Town Hall is a non-partisan building; Supervisor Kryzak responded yes. Mr. Boone asked that the party that holds their meetings here be held elsewhere. Mr. Kryzak indicated any town organization is free to use the Town Hall.

Mr. Carkner expressed concern about an issue that transpired at a republican meeting regarding a comment Mr. McHugh made about Councilmen Beers and Mahan. The Supervisor had no response.

Museum Member Betty Filkins would like to hold a Museum meeting at the Museum but was told meetings have to be held at the Town Hall. You can meet at another location but the Town Clerk needs to be notified to be able to post changes to the website and sign board as meetings are subject to open meetings law.

A resident expressed concern that an individual in town keeps burning his outside wood furnace and believed there was a law that indicates you can't burn after a certain time. He also mentioned that this individual burns his garbage in the furnace. Jeff Pine advised DEC is in charge of regulating and enforcing.

Library Trustee Witt commented about republican meetings being held in the Town Hall. She indicated the library meeting space can be used if scheduled but if meeting at The Town Hall, they should be meeting in the public space as opposed to an office.

ADJOURN THE MEETING

With there being no further comments or questions, Councilwoman Burnside made a motion to close the workshop meeting. Supervisor Kryzak seconded; all in favor motion carried. Meeting adjourned at 7 pm.

Respectfully submitted,

Karla Weaver
Town Clerk

LOCAL LAW NO. 2 OF THE YEAR 2023

SECTION 1. TITLE:

This Law shall be known as Local Law No. 2 of the Year 2023 entitled “A LOCAL LAW TO ESTABLISH THE RESIDENCY REQUIREMENTS FOR CERTAIN APPOINTED OFFICES FOR THE TOWN OF WESTERLO”.

SECTION 2. LEGISLATIVE AUTHORIZATION:

This local law is authorized by the Municipal Home Rule Law sections 10(1)(ii)(a)(1), which grants to local governments the authority to enact local laws regarding the qualifications of local officers. Furthermore, this article recognizes that the state legislature has amended Public Officers Law § 3 numerous times, expanding the residency requirements for appointed public offices, thereby rendering the statute a special law, not a general law.

SECTION 3. SUPERCESSION:

This local law shall supersede Town Law, Section 23(1) in its application to the offices of Town Court Clerk, Building Inspector, Town Attorney, Assessor, Dog Control Officer, Deputy Highway Superintendent, and Deputy Town Clerk for the Town of Westerlo.

SECTION 4. RESIDENCY:

Residency requirements for appointed positions in the Town of Westerlo: The person holding the office of Town Court Clerk, Building Inspector, Town Attorney, Assessor, Dog Control Officer, Deputy Highway Superintendent, and Deputy Town Clerk for the Town of Westerlo need not be a resident nor an elector of the Town of Westerlo, provided, however, that such person shall reside in the county in which such town is located or an adjoining county within the State of New York.

SECTION 5. INCONSISTENCY:

If any clause, sentence, paragraph, section, article, chapter or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, article, chapter or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SECTION 6. SEVERABILITY:

If any clause, sentence, paragraph, word, section or part of this local law shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair or invalidate the remainder, thereof, but shall be confined in its operation of the clause, sentence, paragraph, worked section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SECTION 7. EFFECTIVE DATE:

This Local Law shall become effective immediately upon filing with the NYS Secretary of State in conformity with NYS Municipal Home Rule Law.