

MINUTES – TOWN OF ALLEGANY  
REGULAR BOARD MEETING  
TUESDAY, OCTOBER 8, 2019 7:00 PM TOWN HALL

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**PRESENT:**

Supervisor Martin	Councilman Hitchcock
Town Clerk D. Pinney	Councilman Parker
Comptroller D. Piccioli	Councilman Koebelin
Councilman Maguire	Hwy. Superintendent Moshier

**ABSENT:**

Attorney Tuttle

**ALSO PRESENT:**

Nancy Phearsdorf, DB Busan, Pete Hellier (Planning Board), Richard & Rosrita Fisher, Cynthia Nupp (Dog Control Officer), Robert Nupp, Wendy Johnston, Derrick & Mary Jo Pula, Brian Fortuna, Ben Giardini & Shilpa Thandla

**Public Hearing - Town of Allegany Farm Animal Control Law**

1. Supervisor Martin opened the Public hearing and asked for comments from the floor and copies of the proposed law are available for review.
2. Wendy Johnston, a past resident of Cherry Valley Rd., was instrumental in initiating the need for an animal control law in the Town of Allegany. She stated that she approves of the wording in the proposed law and brought photos of nuisance animal situations that she had experienced for over a year and a half.
3. Richard Fisher stated that he agreed with Ms. Johnston and approved with the wording of the Law. He also shared his concerns about the animals defecating in his yard and the safety hazard of the school bus swerving to miss geese in the road. He would like to be able to coexist with his neighbors.
4. Pete Hellier, a former farm owner, stated that there isn't a fence built that will keep an animal that wants to get out in, and the Law is like taking a sledge hammer to a tack hammer project.
5. Derrick Pula from the N. Nine Mile asked what if you hit one of these animals. He stated that other property owners can't be happy with people driving on their grass to get around the geese. Nancy Phearsdorf responded that the owner of the animal is responsible for the damage to the car or personal injury.
6. Supervisor Martin read 2 emails from concerned citizens who could not be present for the public hearing: first Randy Opferbeck (N. Nine Mile) who was concerned about hitting or avoiding free range geese and ducks that are continuously in the road when passing the Bierfeldt property, and the second from S. Cornett (N. Nine Mile) stating that the abundance of domestic geese and

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ducks that occupy the road almost daily at the Bierfelt residence has been a substantial nuisance for the last couple of years. He is concerned about the cars and school busses that travel the road.

7. Mary Jo Pula is worried about sanitary conditions and the animal waste and smell as well as how it is supposed to be disposed of. She stated that the animals are penned at night for their protection and free to roam during the day. Supervisor Martin said the law addresses that it needs to be disposed of in an appropriate and sanitary manner.
8. Brian Fortuna stated that there are 40-50 birds in a very small pond at a time. His concerns are environmental. He asked how bad does it have to get before the Health Department gets involved and tests the pond for water quality. The water has to be running off somewhere. Supervisor Martin suggested contacting the Health Department or the DEC. Mr. Fortuna also has pictures of the geese in the road that cause travel delays for his family.
9. Pete Hellier cautioned the group that the proposed Law will influence all the farmers in the Town if it is passed as it is written. Mr. Hellier also stated that animals that get out currently are covered by state law.

**#178-MOTION TO CLOSE THE PUBLIC HEARING (7:18)**

Motion by Councilman Koebelin to close the public hearing. 2<sup>nd</sup> by Councilman Parker. Martin-aye, Koebelin-aye, Hitchcock-aye, Maguire-aye, Parker-aye. CARRIED

**Salute to the Flag at 7:19PM opened the meeting**

**#179-MOTION TO ACCEPT MINUTES FROM THE SEPTEMBER 24, 2019 PUBLIC HEARING AND REGULAR BOARD MEETING**

Motion by Councilman Parker to accept the minutes from the September 24, 2019 Public Hearing and Regular Board meeting as written. 2<sup>nd</sup> by Councilman Maguire. Martin- aye, Koebelin-aye, Hitchcock-aye, Maguire-aye, Parker-aye. CARRIED

**AUDITED CLAIMS**

Gen A	\$ 40,105.29
Gen B	\$ 4,617.85
Hwy DA	\$ 186,877.68
Hwy DB	\$ 86,926.49
Spec Dist.	\$ 7,379.05

**MONTHLY REPORTS**

Town Clerk  
Building & Zoning Depts.  
Highway Dept.  
Rec. Dept.  
Cemetery  
Assessor

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Town Justice D. Porter – report for September 2019 – amount collected: \$ 7,320.00.  
Town Justice A. Spears – report for September 2019 – amount collected: \$ 5,499.00.

- The Board reviewed and discussed the financial reports from September, 2019.

**CORRESPONDENCE**

1. Allegany Town Planning Board – request for Lead agency
2. S. Cornett – Animal Control email
3. R. Opferbeck – Animal Control email

**NEW BUSINESS**

1. Appoint Allegany Town Planning Board as Lead agency for 3 Solar projects.
  - a. Countryside Properties, LLC 3113 N. 7<sup>th</sup> Ave., Allegany NY 14706
  - b. Birch Run Solar Project, 4474 Birch Run Road, Allegany, NY 14706
  - c. River Valley Solar Project, 3215 W. River Rd., Allegany, NY 14706

**#180-MOTION TO APPOINT THE TOWN OF ALLEGANY PLANNING BOARD AS LEAD AGENCY FOR (3) SOLAR PROJECTS**

Motion by Councilman Koebelin to appoint the Town of Allegany Planning Board as Lead Agency for (3) solar projects: Countryside Properties, LLC; Birch Run Solar Project; and River Valley Solar Project. 2<sup>nd</sup> by Councilman Hitchcock. Martin- aye, Koebelin-aye, Hitchcock-aye, Maguire-aye, Parker-aye. CARRIED

**OLD BUSINESS**

1. Adopt Local Law #3 of 2019 (Town of Allegany Farm Animal Control Law)

**Local Law 3 – 2019**

**Title:** A LOCAL LAW CREATING THE POSITION OF ANIMAL CONTROL OFFICER AND REGULATING FARM ANIMAL CONTROL IN THE TOWN OF ALLEGANY, NEW YORK.

**Purpose:** The Town Board of the Town of Allegany, N.Y. (herein after referred to as the “Town”) finds that the running at large and other uncontrolled behavior of farm animals has caused the potential for physical harm to persons, damage to property and created nuisances within the Town. The purpose of this local law is to protect the health, safety and well-being of persons and property within the Town and to preserve

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the overall public peace, health and good order of the residents of the Town by enforcing and enacting certain restrictions on the owners of farm animals within the Town.

**Farm Animal:** Livestock, including sheep, horses, cattle, goats and swine; poultry; fowls, ducks, geese, turkeys and chickens; farmed deer; fur-bearing animals; and reptiles, and excluding dogs and cats, whether domesticated or not, or which is classified by the New York State Department of Environmental Conservation as “wildlife”.

**Owner:** If a party is required to purchase a license for a farm animal, that party is the owner of the farm animal. If there is no licensing requirement for a farm animal, the term “owner” shall designate and cover any person or persons, firm, association or corporation, who or which at any time owns or has custody or control of, harbors, or is otherwise responsible for any farm animal which is kept, brought or comes within the Town. Any person owning or harboring any farm animal for a period of one (1) week prior to the filing of any complaint charging a violation of this Local Law shall be held and deemed to be the owner of such farm animal for the purposes of this Local Law. In the event any farm animal found to be in violation of this Local Law shall be owned by a minor, the head of household in which said minor resides shall be deemed to have custody and control of said farm animal and shall be responsible for any acts of said farm animal in violation of this Local Law.

**Restrictions:** It shall be unlawful for any owner of any farm animal in the Town to permit or allow such farm animal to:

- (a) Engage in habitual loud howling, crying, honking, whining or making of such noise or conduct in such a manner so as to unreasonably and habitually disturb the peace and quiet of any person other than the owner of the farm animal.
- (b) Uproot, dig, or otherwise damage any lawns, garden beds, vegetables, flowers, or other property not belonging to the owner of such farm animal.

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- (c) Chase, jump upon or at, or otherwise harass any person in such manner as to reasonably cause intimidation or fear or to put such person in reasonable apprehension of bodily harm or injury.
- (d) Habitually chase, run alongside of, or vocalize at motor vehicles while on a public street or highway or upon public or private property other than the property of the owner.
- (e) Create a nuisance by defecating or urinating on public property or private property other than that of the owner.

**Confined:** Such farm animals shall be securely confined or restrained and kept on the owner's premises whether within a building, kennel, electric fence, or other suitable enclosure or securely fastened on a chain, wire or other effective tether of such length and so arranged that the farm animal cannot reach or endanger any person, or any adjacent or abutting premises, or any public street, way or drive, or, if the animal is being transported by the owner, that it is securely confined in a crate, or other container, or so restrained in a vehicle that it cannot be expected to escape therefrom.

**Farm Animals prohibited from running at large:** No owner of, or other person having custody of, or who harbors, houses, keeps, maintains or cares for any such farm animal as defined herein shall suffer or permit any such farm animal to run at large on any property open to the public, or on any property not used or leased by the owner of the farm animal, unless the property owner gives permission to the owner of the farm animal to allow such farm animal upon his/her/their property.

**Maintenance of premises in Sanitary Condition:** The premises and property where a farm animal as defined herein is housed shall be kept clean at all times and properly ventilated, wholesome, sanitary and free from offensive odors. All accumulation or collection of manure and other refuse derived from the keeping of farm animals must be disposed of in an appropriate and sanitary manner.

**Animal Control Officer:** The position of "Farm Animal Control Officer" is hereby created and shall be filled by appointment of the Town Board of the Town of Allegany as set forth herein.

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**Enforcement:** It shall be the duty of the Farm Animal Control Officer or Peace Officer, when acting pursuant to his/her/their special duties, to enforce this local law. The Farm Animal Control Officer or Peace Officer shall investigate any alleged violation of this local law and cause a written report to be filed with the Town Clerk.

Establishment of the fact or facts that a farm animal has committed any of the acts prohibited by this Local Law shall be presumptive evidence against the owner of such farm animal that he/she/they failed to properly confine, leash or control his/her/their animal.

**Seizure, Impoundment, Redemption and Adoption:**

- (a) Any farm animal found in violation of this Local Law may be seized pursuant to the provisions of Article 26 of the Agriculture and Markets Law.
- (b) Every farm animal seized shall be properly cared for; sheltered, fed and watered for the redemption periods set forth in Article 26 of the Agriculture and Markets Law.
- (c) Seized farm animals may be redeemed by producing proof of correction of any violation under this Local Law and by paying impoundment fees.
- (d) If the owner of any unredeemed farm animal is known, such owner shall be required to pay impoundment fees whether or not such owner chooses to redeem the farm animal.
- (e) Any farm animal unredeemed at the expiration of the appropriate redemption period shall be made available for adoption or euthanized pursuant to the provisions of Article 26 of the Agriculture and Markets Law.
- (f) No action shall be maintained against the Town of Allegany, any Farm Control Officer or Peace Officer when acting pursuant to his/her/their special duties, or any other agent or officer or representative of the Town of Allegany, to recover the value of a farm animal, or for damages for injury or compensation for the destruction of any farm animal seized or destroyed under the provisions of this Local Law.

**Violations & Penalties:** Any Animal Control Officer or Peace Officer when acting pursuant to his/her/their special duties, or other designated agent of the Town shall

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have the authority to issue and serve an appearance ticket for any alleged violation. Unless otherwise stated, a violation of any provision of this local law shall be deemed an offense punishable, upon conviction, by a fine not to exceed One Hundred (\$100.00) Dollars for a first offense, and Two Hundred Fifty (\$250.00) Dollars for each offense thereafter.

**When Effective:** This local law shall become effective immediately upon filing with the New York Secretary of State.

**#181-MOTION TO ADOPT LOCAL LAW #3 OF 2019**

Motion by Councilman Parker to adopt Local Law #3 of 2019 (Town of Allegany Farm Animal Control Law). 2<sup>nd</sup> by Councilman Koebelin. Martin-aye, Koebelin-aye, Hitchcock-aye, Maguire-aye, Parker-aye. CARRIED

- a) Councilman Parker stated he is excited to see a full house at the meeting & thanked the members of the community who attended the meeting.
- b) Councilman Hitchcock asked for an explanation of warning and ticketing for animal control offenses.
- c) Dog Control officer Cindy Nupp outlined examples of the numbered offenses and associated fines depending on the severity. Warnings and opportunity to remedy will be given without fine for first offenses.
- d) Pete Hellier questioned who will keep an eye on the Animal Control officer. Supervisor Martin stated that the officer is under oversight of the Town Board.

2. LED Conversion – Highway Building on Birch Run

**#182-MOTION TO APPROVE HIGHWAY LED CONVERSION**

Motion by Councilman Koebelin to approve the LED conversion at the Town Highway building to include the Highway, offices, and court to be paid in a lump sum to take advantage of the 10% discount. 2<sup>nd</sup> by Councilman Maguire. Martin-aye, Koebelin-aye, Hitchcock-aye, Maguire-aye, Parker-aye. CARRIED

3. Town Hall Security Cameras

- Discussion

**#183-MOTION TO APPROVE PURCHASE OF TOWN HALL SECURITY CAMERAS**

Motion by Councilman Maguire to approve the purchase of Town Hall security cameras from Austin Security at \$3124.03. 2<sup>nd</sup> by Councilman Parker. Martin-aye, Koebelin-aye, Hitchcock-aye, Maguire-aye, Parker-aye. CARRIED

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**OTHER BUSINESS**

**#184-MOTION TO SCHEDULE 2020 PRELIMINARY BUDGET HEARING**

Motion by Councilman Hitchcock to schedule a Public Hearing on the 2020 Preliminary Budget on 10/22/2019 at 7:00pm. 2<sup>nd</sup> by Councilman Koebelin. Martin-aye, Koebelin-aye, Hitchcock-aye, Maguire-aye, Parker-aye. CARRIED

**COMMITTEE REPORT**

1. Councilmen Maguire and Parker will meet with Little League officials before the end of the year to discuss budget decisions.
2. Councilman Hitchcock is waiting on a response for Tom Gabrielle regarding the 4<sup>th</sup> & Maple lease.
3. Councilman Parker raised citizen concerns over speeding on the Buffalo Road. He asked John Moshier how this could be looked into. John Moshier responded that you would have to ask the State for a traffic study and since it is a County Road it is enforced by the Catt. County Sheriff's office.

**FROM THE FLOOR - none**

**Executive session personnel**

**#185-MOTION TO ADJOURN TO EXECUTIVE SESSION FOR PERSONNEL/LEGAL REASONS.**

Motion by Councilman Koebelin to adjourn to executive session at 7:57 pm for personnel reasons. 2<sup>nd</sup> by Councilman Hitchcock. Martin-aye, Koebelin-aye, Hitchcock-aye, Maguire-aye, Parker-aye. CARRIED

**#186- MOTION TO RETURN TO REGULAR SESSION.**

Motion by Councilman Maguire to return to regular session at 8:26 pm. 2<sup>nd</sup> by Councilman Parker. Martin-aye, Koebelin-aye, Hitchcock-aye, Maguire-aye, Parker-aye. CARRIED

**#187- MOTION TO ADJOURN THE MEETING.**

Motion by Councilman Hitchcock to adjourn the entire meeting at 8:27 pm. 2<sup>nd</sup> by Councilman Maguire. Martin-aye, Koebelin-aye, Hitchcock-aye, Maguire-aye, Parker-aye. CARRIED

Respectfully submitted,

Deryle Pinney, Town Clerk  
10/8/2019