

**Present:** Supervisor Donald Emhardt, Councilmen Kenneth Burnett, Dave Ward, Thomas Carlson and Scott Cummings, Highway Superintendent Dan Thorsell, Code/Zoning Clerk, Elizabeth Steinbach, Deputy Clerk, Jess Emhardt.

**Absent:** Town Clerk, Rebecca Luba

**Others Present:** Mike Manning(Ramboll Engineer), Peter McAuliffe(attorney for Omni Navitas), Greg Bacon(Post-Journal Reporter) and residents, Karen Engstrom, Roy Harvey, Sandy & Jeff Wagner, Mike Barnes, Dave Crandall, Richard Syper, Eagle Harrington, Jennifer Obert, Mark Smith, Marty Proctor

Supervisor Donald Emhardt opened the regular meeting at 7:00 P.M. with the Pledge of Allegiance.

**Motion** made by Councilman, Scott Cummings to approve the minutes as presented for 8/9/21 and 8/23/21

**Second:** Councilman Kenneth Burnett

**Vote:** Supervisor Donald Emhardt – Aye  
Councilman Scott Cummings – Aye  
Councilman Thomas Carlson – Aye  
Councilman Dave Ward – Aye  
Councilman Kenneth Burnett – Aye

**Carried**

**Departmental Reports:**

Town clerk monthly fees remitted for August totaled \$11,249.65 with the following disbursements. A Fund: \$1,544.62, B Fund: \$2,995.40, SS1 Fund: \$1,769.87, SW3 Fund: \$92.60. AG & Mrkts Animal Population Control: \$79.00, NYS DEC license sales: \$4,678.16, Dept. of Health: \$90.00. 3<sup>rd</sup> quarter bill for Sewer District 1 and Water District 3 will be mailed at the end of the month. School Tax Collection began September 1<sup>st</sup> and will continue through September 30<sup>th</sup> penalty free. The office is currently obtaining bids for the office remodel. State bid came in much higher than the original quote so we are reviewing all options.

Code enforcement office reported 12 building permits were closed in August with project cost totaling \$564,180.00. 14 permits were issued with the total project cost of \$423,431.00

Highway department report submitted and filed. Black topped Village roads including Patterson, Sea Lion, Whallon and Marvin. Drainage work on Davis Rd. Graveled 700 feet on Hannum road and getting ready for binder. Oiled and stoned intersections and pug milled Lawson Rd. 1.27 miles.

Assessor’s Report was submitted and filed in the Clerk’s office. The Assessor’s office has been fielding phone calls and walk-ins in regard to the 2021 school taxes and providing apportionments to the tax collector for property owner that have split their parcels through property sales.

**Committee Reports:**

Engineer for Ramboll, Mike Manning, reported on the order of consent for Water District 2 water plant. Next quarterly report is due on October 31, 2021. Disinfection by-products are within regulated limits after August sampling results. No update for Sewer District 1 Extension 1 North. Still waiting on the State to open grants which will possibly be in November.

**Public Comment on Non-Agenda Items:**

Karen Engstrom expressed concern regarding the mountain of millings being stored on Rte 394 next to the Metal Works business and creek.

Supervisor Emhardt stated that the gravel pile is permitted by the State and NYS DEC has been at the site and addressed any concerns with runoff to the creek.

**Agenda:**

**Water District 2- Water Source Project**

Ramboll Engineer, Mike Manning, gave a progress report for the water source project for Water District 2. EFC Grant funding for this project has not yet been released. RFPs for a well driller will be sent out next week and presented to the Board at October's meeting for approval. A Bond Resolution is currently being worked on and will also be presented to the Board at the October meeting. Currently working with the landowner, Jane Currie, on land acquisition for the well site.

A full progress report was submitted and on file in the Clerk's office.

**Agreement Amendment- Engineering Amendment No. 5**

The new well location is located outside of the current boundaries for Water District No. 2 and would require the preparation of a Map, Plan and Report to extend the district to encompass the site of the water source. Ramboll proposes to provide this service with an amendment to the original engineering agreement.

Attorney, Joel Seachrist, stated this extension would be subject to permissive referendum and offered the following resolution.

**Resolution- Water Dist. 2 Extension Map Plan and Report**

A RESOLUTION AUTHORIZING THE COST OF PREPARATION OF A MAP, PLAN AND REPORT REGARDING THE EXTENSION OF THE TOWN OF CHAUTAUQUA WATER DISTRICT NO. 2, SUBJECT TO PERMISSIVE REFERENDUM

**WHEREAS**, the Town of Chautauqua, New York (the "Town") has established the Town of Chautauqua Water District No. 2 to draw and treat water from Chautauqua Lake and distribute it to the residents of the Chautauqua Lake Estates and Villas at Point Chautauqua; and

**WHEREAS**, the Town must develop a new water source for Water District No. 2, has identified a feasible location to drill wells outside the boundaries of the current district, and wishes to explore its options for both extending the water district and distributing water to other residential areas within the extended district; and

**WHEREAS**, the Town Board finds that further engineering studies are needed to determine whether the extension of the existing water district and establishment of new water services should be made; now, therefore, be it

**RESOLVED** that, pursuant to Town Law §209-b, the sum not to exceed \$9,000 is appropriated to pay the cost of preparing a general map, plan, and report for extending a water district for the drilling of wells and provision of water within a proposed extension to the Town of Chautauqua Water District No. 2; and it is further

**RESOLVED** that this resolution is determined to be subject to permissive referendum as provided by General Municipal Law §6-c and Town Law §§90 to 94, and shall not take effect until thirty (30) days from the date hereof pursuant to Town Law §91, and that no expenditure shall be made prior to expiration of said 30 day period, and that no expenditure shall take place after said period if a Petition has been duly filed pursuant to Town Law §91 with further action of this Board.

**Motion** made by Councilman, Scott Cummings to accept the resolution and orders the Town Clerk to run the appropriate legal in accord with the permissive referendum requirements further authorizing the Town Supervisor to sign the engineering amendment at the end of the 30-day referendum.

**Second:** Councilman Kenneth Burnett

**Vote:** Supervisor Donald Emhardt – Aye  
Councilman Scott Cummings – Aye  
Councilman Thomas Carlson – Abstained  
Councilman Dave Ward – Aye  
Councilman Kenneth Burnett – Aye

**Carried**

**Public Hearing -Special Use Permit, Meadows Rd. Saw Mill**

**Motion** made by Councilman Scott Cummings to open the public hearing at 7:15p.m.

**Second:** Councilman Dave Ward

**Vote:** Supervisor Donald Emhardt – Abstained  
Councilman Scott Cummings – Aye  
Councilman Dave Ward – Aye  
Councilman Kenneth Burnett – Aye  
Councilman Thomas Carlson – Aye

**Carried**

**Action of the Board:**

To consider the application of Donald D. Emhardt for a Special Use Permit allowing the operation of a small sawmill at 6233 Meadows Road, parcel designated as tax map parcel Section 247.00, Block 1, Lot 6.

Supervisor Emhardt recused himself from any discussion or vote on the matter due to this application being submitted by him and his son, Fred Emhardt.

Deputy Supervisor, Thomas Carlson stated that there was a hearing conducted by the Zoning Board in which they submitted a positive recommendation and opened the floor for public comment. No verbal or written comments were received.

**Motion** made by Councilman Scott Cummings to close the public hearing at 7:17p.m.

**Second:** Councilman Kenneth Burnett

**Vote:** Supervisor Donald Emhardt – Abstained  
Councilman Scott Cummings – Aye  
Councilman Dave Ward – Aye  
Councilman Kenneth Burnett – Aye  
Councilman Thomas Carlson – Aye

**Carried**

**Resolution- Negative Declaration**

**WHEREAS**, Donald D. Emhardt, hereinafter called the “Applicant”, has submitted a special use application requesting permission to operate a sawmill pursuant to Section 143-28(H)(13) of the Town of Chautauqua Zoning Code, on property located at 6233 Meadows Road, in the Residential-Agricultural (R-A) District, and

**WHEREAS**, the proposed use has been subject to environmental review pursuant to Article 8 of the New York State Environmental Conservation Law (State Environmental Quality Review Act), including the preparation and review of a short Environmental Assessment Form, and

**WHEREAS**, Part 617 of the implementing regulations pertaining to the State Environmental Quality Review Act requires this Board to determine and give notice of the environmental impact of the proposed use, and

**WHEREAS**, the Board has determined that the proposed use will not have a significant environmental impact,

**NOW, THEREFORE, BE IT RESOLVED**, that the Town Board hereby approves Parts I and II of the Environmental Assessment Form, issues the attached Notice of Determination of Non-Significance, also known as a Negative Declaration, for the proposed use, and authorizes the Deputy Supervisor to complete and sign the Environmental Assessment Form accordingly.

**Motion** made by Councilman Scott Cummings accept the negative declaration as presented.

**Second:** Councilman Thomas Carlson

**Vote:** Supervisor Donald Emhardt – Recused  
Councilman Scott Cummings – Aye  
Councilman Dave Ward – Aye  
Councilman Kenneth Burnett – Aye  
Councilman Thomas Carlson – Aye

**Carried**

### **Resolution- Special Use Permit**

**WHEREAS**, Donald D. Emhardt, hereinafter called the “applicant”, has submitted a special use application requesting permission to operate a small saw mill pursuant to Section 143-28(H)(13) of the Town of Chautauqua Zoning Code, on property located at 6233 Meadows Road, in the Residential-Agricultural (R-A) District, and

**WHEREAS**, the proposed use was the subject of a public hearing held by the Zoning Board of Appeals in regards to its zoning impact, on July 20, 2021, after publication of legal notice, at which time all persons having an interest in the application were heard, and recommendations in writing were made by that board, and

**WHEREAS**, the Chautauqua County Planning Department by letter dated September 10, 2021, in response to a zoning referral submitted pursuant to Section 239-m of the General Municipal Law, advised that the proposed action was of local option, and

**WHEREAS**, the issue of compliance with the State Environmental Quality Review Act has been thoroughly addressed, and a negative declaration was issued after examination of the record and public hearing, and

**WHEREAS**, the Town Board has considered all the facts and papers before it, including the recommendations of the Town of Chautauqua Zoning Board of Appeals made after its July 20, 2021 hearing, and having heard those wishing to be heard at a public hearing held September 13, 2021, after publication of legal notice, and finds that the applicant will comply with all requirements of Section 143-28(H)(13) of the Zoning Code, and further finds ample justification to approve the application subject to the qualifications hereinafter set forth, now

**THEREFORE, BE IT RESOLVED**, that the application for a Special Use Permit to operate a sawmill at 6233 Meadows Road, be and hereby is authorized and approved subject to the conditions and requirements hereinafter set out:

- 1.The applicant shall undertake the permitted use in accordance with the map and plans prepared, upon information and belief, by the applicant and submitted to the Town with the application, and to be bound by the terms of the application and the conditions of this permit.
2. This permit shall not be assigned or transferred, in whole or in part, without the prior written consent of the Town.
3. This permit does not authorize the erection of structures or buildings without building permits that are otherwise required by state or local law.

4. The applicant shall commence operation of the use within one year of the issuance of this Permit; if the use has not begun within the prescribed time, this Special Use Permit shall be void and the applicant shall be required to apply for a new Permit should it intend to continue the project.

5. Any failure or omission on the part of the applicant to carry out the conditions or requirement herein or accordance with the terms or requirements of any statute, local law, ordinance, or regulation, may be deemed a violation of the Town of Chautauqua Zoning Code and unless corrected in not more than ten (10) days following the service of written notice of such violation upon the applicant, may subject the applicant to the penalties therein. Continued violations after written notice may result in revocation of this Special Use Permit.

6. This Special Use Permit shall become effective after the applicant approves each and every provision hereof and agrees to be bound by all of the terms of herein contained in consideration of the granting of this Special Use Permit.

**Motion** made by Councilman Kenneth Burnett accept the negative declaration as presented.

**Second:** Councilman Dave Ward

**Vote:** Supervisor Donald Emhardt – Recused

Councilman Scott Cummings – Aye

Councilman Dave Ward – Aye

Councilman Kenneth Burnett – Aye

Councilman Thomas Carlson – Aye

**Carried**

### **Public Hearing -Local Law 1 of 2021 Cannabis Legislation**

**Motion** made by Councilman Thomas Carlson to open the public hearing at 7:20p.m.

**Second:** Councilman Scott Cummings

**Vote:** Supervisor Donald Emhardt – Aye

Councilman Scott Cummings – Aye

Councilman Dave Ward – Aye

Councilman Kenneth Burnett – Aye

Councilman Thomas Carlson – Aye

**Carried**

Supervisor Emhardt read the following Local Law No. 1 for 2021

### **A LOCAL LAW TO OPT OUT OF ALLOWING CANNABIS RETAIL DISPENSARIES AND ON-SITE CONSUMPTION SITES AS AUTHORIZED UNDER CANNABIS LAW ARTICLE 4**

#### **Section 1. Legislative Intent**

It is the intent of this Local Law to opt out of allowing cannabis retail dispensaries and on-site cannabis consumption sites in the Town of Chautauqua that would otherwise be allowed under Cannabis Law Article 4.

#### **Section 2. Authority**

This Local Law is adopted pursuant to Cannabis Law §131 which expressly authorizes the Town Board to adopt a local law requesting the Cannabis Control Board to prohibit the establishment of cannabis retail dispensary licenses and/or on-site consumption licenses within the jurisdiction of the Town and is subject to a permissive referendum, the procedure of which is governed by Municipal Home Rule Law § 24.

#### **Section 3. Local Opt-Out**

The Town Board of the Town of Chautauqua hereby opts out of allowing cannabis retail dispensaries and on-site cannabis consumption sites from being established and operated within the town's jurisdiction.

Section 4. Severability.

If any clause, sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person, firm or corporation, or circumstance, shall be adjusted by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this Local Law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Section 5. Permissive Referendum/Referendum on Petition

This local law is subject to a referendum on petition in accordance with Cannabis Law § 131 and the procedure outlined in Municipal Home Rule Law §24.

Section 5. Effective date.

This local law shall take effect immediately upon filing with the Secretary of State.

**Public Comment.** Roy Harvey voiced his concern of increased crime in the area if this was permitted and the dangers of THC. Karen Engstrom also spoke on her opposition to recreational marijuana but stated there are benefits and differences in the medical use.

**Motion** made by Councilman Thomas Carlson to Close the public hearing at 7:23p.m.

**Second:** Councilman Kenneth Burnett

**Vote:** Supervisor Donald Emhardt – Aye  
Councilman Scott Cummings – Aye  
Councilman Dave Ward – Aye  
Councilman Kenneth Burnett – Aye  
Councilman Thomas Carlson – Aye

**Carried**

**Motion** made by Councilman Scott Cummings to adopt the Local Law 1 of 2021 as presented.

**Second:** Councilman Thomas Carlson

**Vote:** Supervisor Donald Emhardt – Aye  
Councilman Scott Cummings – Aye  
Councilman Dave Ward – Aye  
Councilman Kenneth Burnett – Aye  
Councilman Thomas Carlson – Aye

**Carried**

**Continuation of Public Hearing- Solar Project on Hartfield-Stockton Rd.**

The Board is still waiting on the signed engineering agreement and escrow payment from Omni Navitas. Peter McAuliffe, attorney for Omnis Navitas, stated he had brought the signed agreement to tonight's meeting, but the company was waiting on funds to clear from NYSERDA and the check will be mailed out within the week. He apologized for the delay but still feels this is a positive project for the Town. Councilman Thomas Carlson asked again what would happen with all the solar panels on the property after the agreement with the property owner expires in 25 years. Mr. McAuliffe stated that if the property owner opts not to renew the agreement, the \$150,00.00 decommissioning bond would kick in to remove all the panels and fencing installed. Councilman Carlson asked if he felt this amount would be enough in 2046. Mr. McAuliffe feels this would be more than enough but there is inflation on the bond. Councilman Carlson expressed concern that the cost of recycling the material will increase. Mr. McAuliffe stated that the bonds are renewed every 5 years and would be increased accordingly. Councilman Ward asked about the maintenance plan for the panels. Mr. McAuliffe stated there is an operations and maintenance plan in place

and production is monitored remotely. If there is any sign that any panel is not producing, maintenance would be ordered. Councilman Cummings stated he is not opposed to solar, but he has lost confidence in the company as to their lack in response to the delays for the past 3 months. Mr. McAuliffe apologized for that and again assured the Board that the check would be arriving within the week, and they are ready to get back on track.

Karen Engstrom read an article in opposition to solar farms and reminded the Board of the 15 Amish families that petitioned the Board on their opposition to the project.

Councilman Carlson made a motion to close the hearing. Mr. McAuliffe requested the Board to reconsider closing the hearing due to the time it would take to start over. Councilman Ward stated that he would prefer to keep the hearing opened for another month as to not go through this again. Supervisor Emhardt asked for the Town attorney's opinion who stated the hearing should be left open for another month. This will give the Board time to reevaluate and add stipulations to the permit.

Councilman Carlson Rescinded his motion to close.

**No further action was taken by the Board and hearing was continued until next meeting.**

### **Code Enforcement Agreement-Shared service with Village of Mayville**

An agreement prepared by the Village and Town attorneys was presented and reviewed by the Board. The agreement proposes that the Town of Chautauqua Code Enforcement Officer will issue all building permits and perform all inspections for the Village of Mayville in accord with the current NYS Building Code. All planning and zoning decisions will be made by the prospective Village Boards but will be enforced by the Town of Chautauqua Code Enforcement Officer. Councilman Cummings inquired about funding for the extra workload and why the Town would solely be responsible for the extra expense. Councilman Carlson asked about the liabilities to the Town. It was suggested to clarify in the agreement how the Village would appoint their CEO and that they should be involved in any code and zoning disputes. The Board agreed to move forward with suggested changes to the agreement and review with the Town attorney prior to next month's meeting.

**Motion** by Councilman Scott Cummings to meet with the Town's attorney on September 16, 2021 at 4pm to further discuss the agreement.

**Second:** Councilman Thomas Carlson

**Vote:** Supervisor Donald Emhardt – Aye  
Councilman Scott Cummings – Aye  
Councilman Dave Ward – Aye  
Councilman Thomas Carlson – Aye  
Councilman Kenneth Burnett – Aye

**Carried**

Attorney Seachrist stated this meeting need not be advertised based on Attorney/Client confidentiality.

### **Special Meeting- Tentative Budget Hearing**

The tentative budget will be ready for review and presentation next week and will require a special meeting.

**Motion** made by Councilman Scott Cummings to set the tentative budget hearing for Monday, October 4, 2021 at 7p.m.

**Second:** Councilman Kenneth Burnett

**Vote:** Supervisor Donald Emhardt – Aye  
Councilman Scott Cummings – Aye  
Councilman Dave Ward – Aye  
Councilman Kenneth Burnett – Aye  
Councilman Thomas Carlson – Aye

**Carried**

### **Mobitrac – Grant Acceptance**

**Motion** made by Councilman Thomas Carlson to accept the grant of \$5,000.00 awarded by CLWMA for a dredge pump that will go on the Mobitracs for the Lake Clean-up program

**Second:** Councilman Kenneth Burnett

**Vote:** Supervisor Donald Emhardt – Aye  
 Councilman Scott Cummings – Aye  
 Councilman Dave Ward – Aye  
 Councilman Kenneth Burnett – Aye  
 Councilman Thomas Carlson – Aye

**Carried**

**Mobitrac- 2022 Grant Application**

**Motion** made by Councilman Kenneth Burnett authorizing the Town Supervisor to submit the CLWMA 2022 grant application in the amount of \$58,812.00 for Mobitrac operations for the Lake Clean-up program.

**Second:** Councilman Thomas Carlson

**Vote:** Supervisor Donald Emhardt – Aye  
 Councilman Scott Cummings – Aye  
 Councilman Dave Ward – Aye  
 Councilman Kenneth Burnett – Aye  
 Councilman Thomas Carlson – Aye

**Carried**

**Motion** made by Councilman Scott Cummings to approve the Supervisor’s report for August

**Second:** Councilman Thomas Carlson

**Vote:** Supervisor Donald Emhardt – Aye  
 Councilman Scott Cummings – Aye  
 Councilman Dave Ward – Aye  
 Councilman Kenneth Burnett – Aye  
 Councilman Thomas Carlson – Aye

**Carried**

**Motion** made by Councilman Scott Cummings to approve the vouchers as presented to the board for payment. Abstract #009, Voucher # 489-553

**ABSTRACT # 009  
 DEPOSIT OF 08/01/2021 - 09/30/2021**

Code	Fund	Amount
<b>Book:</b>	<b>A B DA DB H1 H2 H3 H4 H5 K SF2 SF4 SL1</b>	
A	GENERAL FUND - TOWNWIDE	234,347.45
B	GENERAL FUND - OUTSIDE VILLAGE	2,381.59
DA	HIGHWAY FUND - TOWNWIDE	13,277.06
DB	HIGHWAY FUND - OUTSIDE VILLAGE	94,547.77
H4-	WATER DISTRICT 2	20,564.50
SL1-	PT CHAUTAUQUA LIGHT DISTRICT	301.62
SL2-	DEWITTVILLE LIGHTING DISTRICT	300.11
SL4-	BAYBERRY LANDING LIGHTING DIST	18.78
SS1-	CHAUT HEIGHTS SEWER DISTRICT	569.79
SW1-	CHAUT HEIGHTS WATER DISTRICT	6,163.21
SW3-	CHAUTAUQUA SHORES WATER DISTRICT	21.02
<b>Total:</b>		<b>372,492.90</b>

**Second:** Councilman Kenneth Burnett

**Vote:** Supervisor Donald Emhardt – Aye  
Councilman Scott Cummings – Aye  
Councilman Dave Ward – Aye  
Councilman Thomas Carlson – Aye  
Councilman Kenneth Burnett – Aye

**Carried**

**Motion** made by Councilman Thomas Carlson to adjourn the regular meeting at 8:15 P.M.

**Second:** Councilman Scott Cummings

**Vote:** Supervisor Donald Emhardt – Aye  
Councilman Scott Cummings – Aye  
Councilman Dave Ward – Aye  
Councilman Thomas Carlson – Aye  
Councilman Kenneth Burnett – Aye

**Carried**

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Rebecca Luba, RMC

Town Clerk

As recorded by Jessica Emhardt, Deputy Town Clerk

Town of Chautauqua