

# **Regular Meeting of the Putnam Town Board**

PUTNAM TOWN BOARD  
NOVEMBER 14, 2019  
7P.M. PUTNAM TOWN HALL

The meeting opened with the auditing of bills, the Supervisor's monthly report and the Town Clerk's monthly report.

## **7:00 Meeting called to order**

Councilwoman Shirley Randall led the Pledge of Allegiance.

## **Roll Call**

<b>Members present:</b>	Supervisor	John LaPointe
	Councilman	Darrell Wilson
	Councilman	Kevin Hart
	Councilwoman	Shirley Randall
	Councilman	Greg Harris

**Others present:** Mary Jane Dedrick (Deputy Clerk, P.O. Box 14) Gary Treadway (Highway Superintendent, Treadway Lane), Charlie Bain Sr. (Boat launch attendant, 17 Bain Lane), Cee McKenzie (BAR Chair, 526 Gull Bay Road), Bob Rudt (Planning Board, 526 Gull Bay Road), Galen Seerup (Planning Board Chair, 17360 State Route 22), May Drinkwine-Shiell (Resident, 439 County Route 3), Larry Shiell (Resident, 439 County Route 3), Christopher Mallon (Resident, 575 Liddle-Harris Road), Karl Ohly (Resident 428 County Route 3).

## **Public Hearing of the 2020 proposed town budget** (7:01)

Supervisor LaPointe opened the hearing by giving highlights of the proposed budget. The proposed budget is under the tax cap of 2% at 1.23%. The Town Clerk and Highway Superintendent both received pay raise of 3%, no other elected officials had an increase. The Highway crew will receive a .50 cent raise per their union contract. The Fire Department has an increase of 1.87%. Supervisor LaPointe open the floor to comments or questions, there were none.

## **Resolution # 73**

### **Close the public hearing of the proposed 2020 Town Budget** (7:02)

On motion of Supervisor LaPointe, seconded by Councilman Darrell Wilson; all in favor, Resolution unanimously adopted

## **Resolution # 74**

### **Accept the minutes of the October 10, 2019 meeting**

On motion of Councilwoman Shirley Randall, seconded by Councilman Kevin Hart; all in favor, Resolution unanimously adopted.

**Resolution #75**

**Accept the Supervisor's report for the month of October 2019**

On motion of Councilman Darrell Wilson, seconded by Councilman Greg Harris; all in favor, Resolution unanimously adopted.

**Resolution # 76**

**Accept the Town Clerk's report for the month of October 2019**

On motion of Councilman Kevin Hart, seconded by Councilman Darrell Wilson; all in favor, Resolution unanimously adopted.

**Resolution # 77**

**Pay bill as audited**

On motion of Councilman Greg Harris, seconded by Councilman Darrell Wilson; all in favor, Resolution unanimously adopted.

Resolved, the bills on the following are paid as audited.

General Fund	# 303-346	\$26,046.57
Highway Fund	# 124-148	\$88,539.85
Black Point Sewer District	# 4	\$10,915.63

**Correspondence** (7:03)

**October minutes correction:** Supervisor LaPointe acknowledged an email from Tom Badenoch. In October's minutes Mr. Badenoch was incorrectly identified as the writer of an email, and an employee of the Lake George Land Conservancy. The original email was actually written by Jamie Brown of the Lake George Land Conservancy, emailed to Mr. Badenoch and subsequently forwarded to the Town. Mr. Badenoch would like this corrected in the minutes. There was no other correspondence.

**Courtesy of the floor** (7:04)

Karl Ohly addressed the board regarding the Champlain Hudson Power Express project. (A proposed power line that will run from Canada to New York City, a portion of that line may cross through Putnam). Mr. Ohly read a statement aloud. (See attached). Mr. Ohly finished by saying, for the Town to collect monetary value from the road and the powerline was unlawful; and that the property owner would be the rightful recipient of any monetary compensation. Mr. Ohly also expressed concern about guests at his inn not having proper access to his business, and the disruption of atmosphere at the inn during the construction period. Mr. Ohly described various other concerns surrounding the actual construction regarding the geographic nature of the landscape on the proposed powerline route. Supervisor LaPointe replied that the Town Attorney would review Mr. Ohly's statement and thanked Mr. Ohly. Supervisor LaPointe also expressed that there is no negotiating in the works, and no contracts or agreements have been made at this time between CHPE and the Town.

**Highway report** (7:14)

Highway Superintendent (HS) Gary Treadway reported in the past month the crew has capped culverts that they had replaced, patched areas of Sagamore Road that needed attention, repaired washouts caused by the storm on Halloween. Prepared equipment for the season change, and worked through the first snow storm of the season. HS Treadway continued that everything went well. HS Treadway also reported that the live edge plow has been delivered to the Bolton Landing Highway Department and would need to be picked up in the coming week.

Galen Seerup asked HS Treadway about garbage pickup on inclement weather Mondays. HS Treadway replied that the crew tries to make a pass on the bad weather day, but make another pass on the following day. The policy is to pick up garbage the day after.

**Planning Board report** (7:17)

Planning Board Chairman (PBC) Galen Seerup reported that the Planning Board meeting the prior evening was quiet. Mark and Dawn Karlson were on the agenda but didn't attend because they hadn't received their Adirondack Park Agency (APA) permit yet. That application was postponed until December's meeting. PBC Seerup also stated the Planning Board had discussions covering the Site Plan Review draft and solar and the Governor's plan to have renewable energy in place in the next decade.

**Old business** (7:20)

Supervisor LaPointe reported he had contacted two landowners about complaints at October's meeting regarding the properties. Supervisor LaPointe reported that Mr. Finster the owner of one property that was the subject of a complaint responded to a letter sent to him. Mr. Finster supplied proof of service by Adirondack Waste for portable bathrooms and waste water pump out of the camper trailers on the property. Supervisor LaPointe also investigated the concern that the land owner possibly was not paying taxes on the trailers on the property. Supervisor LaPointe concluded that the property was being taxed properly, assessed at \$480,000 classified as vacant with improvements. The owner of the second property of concern, owned by Caron's, also responded to the letter sent and agreed to clean the brush piles from the property and have the track hoe removed in the spring.

In other business, a joint meeting of the Town Board and Planning Board has been scheduled for December 4<sup>th</sup>, at 6pm at the Town Hall for the purpose of discussing the final draft of the Site Plan Review Law. This meeting is open to the public.

**New business** (7:25)

**Resolution #78**

**Adopt the 2020 Budget**

On motion of Councilman Darrell Wilson, seconded by Councilman Greg Harris, Roll Call 5 Ayes, 0 Nays; Resolution unanimously adopted.

Gregory and Kathleen Hild have filed for an article 7 litigation to reduce their assessment. The settlement would reduce their assessment from \$750,000 to \$710,000.(See attached)

**Resolution #79**

**Hild article 7 litigation settlement**

On motion of Councilman Darrell Wilson, seconded by Councilman Greg Harris, Roll Call 5 Ayes, 0 Nays; Resolution unanimously adopted.

Councilman Wilson reported that the Putnam Volunteer Fire Department has received a grant from International Paper for \$8,000 to cover two installs on new digital radios that are required for emergency response services. Councilman Wilson reported any excess funds not spent on operating costs will be placed in a truck fund.

**Resolution #80**

**Adjourn the regular meeting of the Putnam Town Board**

On motion of Councilman Greg Harris, seconded by Councilman Kevin Hart; all in favor, Resolution unanimously adopted.

**Regular meeting of the Putnam Town Board adjourned at 7:33 P.M.**

The next regular meeting is December 12, 2019 at 7 P.M.

Respectfully submitted,

Darlene Kerr  
Putnam Town Clerk

John LaPointe \_\_\_\_\_ Supervisor

Darrell Wilson \_\_\_\_\_ Councilman

Kevin Hart \_\_\_\_\_ Councilman

Shirley Randall \_\_\_\_\_ Councilwoman

Greg Harris \_\_\_\_\_ Councilman

There is no desire to have an adversarial relationship with the Town of Putnam. I am here today to share the legal background and citations of previous tort for what I have come to regard as an ill advised project by the town of Putnam: the power line burial project:

Lakeside Farm Properties, LLC owns the underlying title to real property extending to the center of the proposed route along County Route 3 and continuing onto Lake Road. This highway was acquired by the Town by user under what is now section 189 of the Highway Law, which dates back at least to section 3 of chapter 43 of the Laws of 1817, which was founded upon the common-law doctrine of dedication to the public by a grant, presumed to have been made, which has become conclusive by acquiescence on the part of the owner in public use as a highway coupled with improvement and maintenance by the public authorities during a period of time analogous to that of the limitation applicable to private persons claiming title through adverse possession (*James v. Sammis*, 132 N.Y. 239; *Palmer v. Palmer*, 150 N.Y. 139, 147-148; *Goldrich v. Franklin Gardens Corp.*, 138 N. Y. S. 2d 731, affd. 2 A D 2d 752, affd. 2 N Y 2d 906; *Speir v. Town of New Utrecht*, 121 N.Y. 420). This statute provides that "All lands which shall have been used by the public as a highway" for the requisite number of years "shall be a highway, with the same force and effect as if it had been laid out and recorded as a highway, and the town superintendent shall open all such highways to the width of at least three rods." Public highways arising from presumption of dedication through user under section 189 of the Highway Law, or by written instrument "for highway purposes" delivered and accepted under section 171, do not involve the conveyance of a fee but the transference of an easement to the public for the purpose of a highway (*Osborne v. Auburn Tel. Co.*, 189 N.Y. 393). It is known fact that Lakeside Farm Properties LLC owns the fee to half of the street, and that the Town of Putnam has an easement for highway purposes. The point at issue concerns whether such an easement includes the right to lay a private corporation's electric transmission lines beneath the street, or, if the town does not do so itself, to grant the right to lay such transmission lines to a private utility corporation. In this instance, the Town of Putnam in coordination with Transmission Developers, Inc. is attempting to do the latter.

The NY Supreme Court held in *Holden v. City of New York* (7 N Y 2d 840, 841) that "The reservation of a mere 'right of way' under the decisions included only the right of passage over the surface of the land (*Thompson v. Orange & Rockland Elec. Co.*, 254 N.Y. 366; *Osborne v. Auburn Tel. Co.*, 189 N.Y. 393; *Eels v. American Tel. & Tel. Co.*, 143 N.Y. 133; *Ferguson v. Producers Gas Co.*, 286 App. Div. 521; *Matter of Bense*, 140 App. Div. 257)."

As a general proposition, "[a]n easement of way confers the lawful right to use the surface of property owned by another for unobstructed passage, with the right to enter upon said property and prepare it for that purpose, together with such other incidental rights as are necessary to the enjoyment of the right of passage" (*Minogue v Kaufman*, 124 AD2d 791, 791-792). The grant of a mere right-of-way for ingress and egress does not, however, include the right to install underground pipes or utility lines (see, *McCormick v Trageser*, 24 N.Y.2d 873, 874-875; *Holden v City of New York*, 7 N.Y.2d 840, 841; compare, *Missionary Socy. of Salesian Congregation v Evrotas*, 256 N.Y. 86, 88 [grant of a right-of-way included the right to "free and unobstructed use" of the road for the passage of vehicles and "all other lawful purposes"]

In *Thompson v. Orange & Rockland Elec. Co.* (254 N.Y. 366) utility mains for the service of domestic consumers, which is not a highway purpose, is to be distinguished from wires or storm sewers for lighting or draining the street itself. The latter are included within a public highway easement inasmuch as they are uses such "as appertain directly or indirectly to the right of passage and tend in some way to preserve or make more easy the exercise of such right" (254 N. Y., *supra*, p. 369). Nothing further was held in *Palmer v. Larchmont Elec. Co.* (158 N.Y. 231). In the *Thompson* case it was also stated that "No distinction can now be drawn between city streets and country highways in this regard" (p. 369).

Laying of the cable, including the unsightly visible above ground abutments for sake of access, will constitute unauthorized taking or use of property for purpose which is not lawful highway or street use under the public easement existing by virtue of the use of the roadway as a public street. This type of trespass resulted in inverse condemnation in *Heyert v. Orange & Rockland Utilities* (24 A D 2d 592, affd. 17 N Y 2d 352) Furthermore, "the use must be necessary to the beneficial enjoyment of the land retained" (*Abbott v Herring*, 97 AD2d 870, affd 62 N.Y.2d 1028; see, *Astwood v Bachinsky*, 186 AD2d 949, 949-950; *Minogue v Monette*, 158 AD2d 843, 844; *Ford v Village of Sidney*, 139 AD2d 848, 849) Laying of the proposed underground transmission cable fails to meet that standard even if there is money given to the community by the private corporation for public works in the Town of Putnam as discussed in the previous meeting.

The New York Supreme Court has repeatedly ruled that the private property owner has complete jurisdiction in this context. These above cases have never been overturned and are commonly cited as previous tort in similar cases. As such, this could ultimately cost the Town of Putnam untold amounts in land owners' legal actions against the Town in private and class action suits should this go forward in its current state.

Following a few brief conversations it's clear that many of the affected land owners on the route have not even been informed. There are countless of negative effects this will have on them, even beyond decreasing property values including, but not limited to, construction asset disturbances on farming and business, changing and disrupting the flow of ground water especially related to near surface wells, extreme disruptions of residents in areas of granite ledge, or lacking consideration in areas that have sensitive environmental concerns.

**TOWN BOARD  
TOWN OF PUTNAM  
RESOLUTION #79 of 2019**

**SUBJECT: GREGORY AND KATHLEEN HILD ARTICLE 7 LITIGATION**

**WHEREAS**, Gregory and Kathleen Hild commenced litigation pursuant to RPTL Article 7 challenging their assessment for tax years 2019 for property located at 1.14-1-11 (the “Subject Property”); and

**WHEREAS**, the Town has determined it to be in its best interest to enter into a Consent Judgment to resolve this case without the need for continued and costly litigation;

**NOW, THEREFORE, BE IT**

**RESOLVED**, that the Town Board of the Town of Putnam hereby approves the settlement of the Real Property Tax Law Article 7 proceedings *entitled Gregory and Kathleen Hild v. The Board of Assessors and/or the Assessor of the Town of Putnam and the Board of Assessment Review* by reducing the assessed value of the Subject Property from \$750,000 to \$710,000, and be it further

**RESOLVED**, that the Town agrees to hold this assessed value through the assessment roll for 2023; and be it further

**RESOLVED**, that the Town Board hereby authorizes Bartlett, Pontiff, Stewart and Rhodes, P.C., Karla Williams Buettner, Esq., Special Counsel to the Town, to sign the appropriate Stipulation of Settlement and Order resolving these matters.

Motion: Councilman Darrell Wilson

Second: Councilman Greg Harris

Roll Call: Greg Harris – Aye, Shirley Randall – Aye, Kevin Hart – Aye, Darrell Wilson- Aye  
John LaPointe - Aye

I hereby certify that this Resolution was duly adopted by the Town Board of the Town of Putnam at a regular meeting of the Town Board conducted on November 14, 2019.

By: \_\_\_\_\_  
Darlene Kerr, Town Clerk  
Town of Putnam