

TB Mtg October 14, 2021
REGULAR TOWN BOARD MEETING
VIA – Go To Meeting at Colden Town Hall & Virtual

MEETING CALLED TO ORDER AT 7:08pm

SUPERVISOR DePASQUALE OPENED THE MEETING WITH A MOMENT OF SILENCE
FOLLOWED BY THE PLEDGE OF ALLEGIANCE.

PRESENT: Councilman David Arcara
Councilman Jesse Hrycik
Councilwoman Patricia Zurbrick
Councilman Gerald Pietraszek
Supervisor James DePasquale

ALSO

PRESENT: Bldg. Insp/Code Enf. Officer John Kotlarsz - excused
Asst. Bldg. Insp/Fire Insp. Thomas Dzuilko
Highway Superintendent Paul Clarkson - excused
Planning Board Chairman Walt Kammer
Town Clerk Christina Kerlin
Approximately 7 Residents

MINUTES:

MOTION made by Councilman Pietraszek and seconded by Councilman Arcara and
unanimously approved the minutes of the September 9, 2021, Town Board Regular meeting,
September 23, 2021 Special Town Board meeting and the October 7, 2021 Town Board Budget
Workshop meeting as presented.

Supervisor DePasquale stated that the meeting held on September 23, 2021, 2:00pm, in the
afternoon was strictly to read a resolution into record to advertise a Public Hearing on a Local
Law relating to the town opting out of adult use Cannabis Dispensaries and On-site Consumption
sites. The public hearing notice needed to be placed within a certain time frame. There was no
other action that took place at that meeting.

PUBLIC HEARING:

PUBLIC HEARING COMMUNITY DEVELOPMENT BLOCK GRANT

Supervisor DePasquale opened the Public Hearing at 7:13pm

Supervisor DePasquale stated that Town Clerk Kerlin advertised the Public Hearing Notice in
the Springville Journal.

Supervisor DePasquale stated that last year BOLO received an upgrade to their building and that the towns are on a rotation system so if there was a project the town would probably not qualify. There were no other projects for the town that were submitted for this year except for the Rural Transit Service which is requested every year for transportation for the seniors, disabled and low-income families.

No Public Comments

Supervisor DePasquale closed the Public Hearing at 7:14

2022 COMMUNITY DEVELOPMENT GRANT FUNDS

WHEREAS, at a meeting of the Colden Town Board held on October 14, 2021, at 7:00 pm, the Town Board of the Town of Colden authorizes Supervisor James P. DePasquale to sign, submit and execute a contract with Erie County Community Development Grant Program for an amount not to exceed \$100,000 the following project upon approval of ECCDBG Funds.

- 1) Rural Transit Service

Duly adopted this 14th day of October, 2021 by the following vote.

MOTION made by Councilwoman Zurbrick and seconded by Councilman Arcara

On the Vote: Councilman David Arcara – yes
Councilman Jesse Hrycik – yes
Councilwoman Patricia Zurbrick – yes
Councilman Gerald Pietraszek – yes
Supervisor James P. DePasquale – yes

PUBLIC HEARING LOCAL LAW TO OPT-OUT OF CANNABIS RETAIL DISPENSARY LICENSES AND/OR ON-SITE CONSUMPTION LICENSES

Supervisor DePasquale opened the Public Hearing at 7:15pm

Supervisor DePasquale read the Local Law to Opt-Out of Cannabis Retail Dispensary Licenses and/or On-Site Consumption Licenses into the record.

Public Comments:

Lara Hrycik asked for clarification on the Local Law to Opt-Out of Cannabis Retail Dispensary Licenses and/or On-Site Consumption Licenses and how the Town Board came to the decision to act on this law.

Supervisor DePasquale stated that the towns were given a Guidance Book Titled “ A Town Official’s Official Guide to Cannabis” (The Marihuana Regulation and Taxation Act (MRTA) A Summary for Town Governments) which explains the Opting In or Out and regulations for Municipalities in NYS. The book is on file in the Town Clerks office. There is a deadline for towns to Opt-Out of the permitting of cannabis retail dispensaries or on-site consumption. If a town does not opt out the town automatically is opted in after the deadline and cannot opt-out after the deadline. The Town Board would rather Opt-Out now and look at setting some regulations within the town if that is needed and the town can always opt in later if it chooses.

Supervisor read from the Municipal Guidebook page 5 - Local Law Opting Out

“ In addition to the notification requirements for retail and on-site consumption licenses, towns, cities, and villages also have the ability to adopt local laws opting out of allowing retail dispensaries and onsite consumption sites (Cannabis Law § 131). The opt-out local law is subject to a 2021 Cannabis Guide | 6 permissive referendum (or referendum on petition) following the procedure outlined in Municipal Home Rule Law § 24 (id.). This means that if a town adopts a local law opting out, and there is a petition with a sufficient number of qualifying signatures, then the town would have to put the local law to a vote. If a municipality wants to opt-out, it must adopt the local law by December 31, 2021 (id.). Please note that the law states that the local law must be ADOPTED by December 31, 2021, not that the referendum has to be done by that date. For towns with villages, any local law opting out would apply only to the town outside of the village (id.), and remember, municipalities can ONLY opt out of retail dispensaries and on-site consumption, nothing else. If a town is not sure how its residents feel about allowing retail sales or on-site consumption, the Association of Towns recommends holding public hearings or community roundtables to get a sense of what the community wants. Another consideration is revenue. As discussed later, revenue sharing with municipalities is done in proportion to the sales that take place within its boundaries, so if zero sales take place in the town because it opted out, then the town gets zero percent of the revenue. Furthermore, while the deadline to opt out is December 31, 2021, the town board may, in the future, rescind that local law. To illustrate – let’s say the town adopts a local law opting out in October 2021 and in two years, the town board rescinds that local law in October 2023. In October 2024, if the town board wants to opt-out again, it would not be allowed to because a local law opting out cannot be adopted later than December 31, 2021.

• Time/place/manner restrictions on retail dispensaries and on-site consumption establishments If a town decides to allow retail dispensaries and on-site consumption sites, it may adopt local laws regulating the time/place/ manner of those establishments so long as it does not make the operation of them unreasonably impractical (Cannabis Law § 131 [2]). Towns are otherwise pre-empted from adopting any rule or local law on the operation or licensure of registered organizations, adult-use cannabis licenses, or cannabinoid hemp licenses (id.). “

Again the opting out would give the town some time to look at regulations in zoning areas for future action on opting in, if that is a direction the town would like to go in.

Robert Walker at 9927 Heath Road stated that he was in support of the Town Board Opting-Out of the Cannabis Dispensaries and Consumption sites. Marijuana is not like alcohol use and consumption, with alcohol there is a formula with a person’s age, weight, height and the amount of drinks they consume how impaired they are after drinking. With marijuana there is no formula that determines how high a person is after consumption to gauge how or when the consumption becomes impaired. Regulation is not needed for the Town of Colden if the Opting-Out is in place of dispensaries and public use. Money should not be an issue when it comes to opting in the town can do fine without the extra tax money that would be generated if the town were to opt-in.

Linda Kotlarsz at 8880 Hayes Hollow Road agreed with Robert Walker with supporting his thoughts on consumption sites with people leaving to go on the roads dispensaries is another issue as well and the money is not needed.

Peter Baker 8670 State Road agreed that regulations in the different zoning sections of town should be looked into with supports and debates on the subject, he does not have a strong support either way, but planning should be taken into consideration on this subject with the Master Plan update.

Public comment closed at 7:37pm

Supervisor read the following Local Law and Resolutions into the record:

TOWN OF COLDEN

LOCAL LAW INTRO. 1-2021

LOCAL LAW NO. 1-2021

**A LOCAL LAW TO OPT-OUT OF THE RETAIL DISPENSERY LICENSE AND/OR
ON-SITE CONSUMPTION LICENSE PROVISIONS OF CHAPTER 7-A OF THE
CONSOLIDATED LAWS OF THE STATE OF NEW YORK**

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF COLDEN AS FOLLOWS:

SECTION 1. TITLE.

This Local Law shall be known, cited and referred to as the “Town of Colden Adult Use Cannabis Retail Dispensaries and/or On-Site Consumption License Opt-Out.”

SECTION 2. PURPOSE AND INTENT.

The purpose of this Local Law is to enable the Town of Colden to opt-out of the provisions relating to the Cannabis Control Board’s authority to issue Retail Dispensary Licenses and/or on-site Consumption Licenses for cannabis pursuant to Chapter 7-A of the Consolidated Laws of the State of New York within the jurisdiction of the Town of Colden.

SECTION 3.

The Town of Colden hereby requests that the Cannabis Control Board prohibit the establishment of any Retail Dispensary Licenses and/or On-Site Consumption Licenses as provided for in Article 4 of Chapter 7-A of the Consolidated Laws of the State of New York within the jurisdiction of the Town of Colden.

SECTION 4. PERMISSIVE REFERENDUM.

This Local Law is subject to permissive referendum as provided under the Municipal Home Rule Law of the State of New York.

SECTION 5. EFFECTIVE DATE.

This Local Law shall take effect upon expiration of the time period for filing a Petition for Permissive Referendum pursuant to Municipal Home Rule Law and filing with the Secretary of State.

DULY ADOPTED, this 14th day of October, 2021.

MOTION made by Councilman Arcara and seconded by Councilman Pietraszek,

On the Vote: Councilman David Arcara - yes
Councilman Jesse Hryck – yes
Councilwoman Patricia Zurbrick – yes
Councilman Gerald Pietraszek – yes
Supervisor James P. DePasquale – yes

TOWN OF COLDEN
COLDEN N.Y. 14033
RESOLUTION #2021-8
RESOLUTION TO ADOPT LOCAL LAW NO. 1-2021

WHEREAS, Local Law No. 1-2021 has been submitted to the Town Board of the Town of Colden to provide for opting-out of the Retail Dispensary License and/or On-Site Consumption License of provisions of Chapter 7-A of the Consolidated Laws of the State of New York, and

WHEREAS, the proposed Local Law has been carefully considered by the Town, and

WHEREAS, a Public Hearing was held on October 14, 2021, permitting public comments in regard to the Local Law opting out of the Cannabis Retail Dispensary License and/or On-Site Consumption License provisions of Chapter 7-A of the Consolidated Laws of the State of New York,

NOW, THEREFORE, be it

RESOLVED, Local Law No. 1-2021 is hereby adopted and shall become effective upon expiration of the time period 45 days for filing a Petition for Permissive Referendum and filing of the Local Law with the New York Secretary of State, and be it further.

RESOLVED, the Town Clerk is directed to file a copy of the Local Law with the New York State Department of State.

Duly adopted this 14th, day of October, 2021.

On the Vote: Councilman David Arcara - yes
Councilman Jesse Hryck – yes
Councilwoman Patricia Zurbrick – yes
Councilman Gerald Pietraszek – yes
Supervisor James P. DePasquale – yes

**TOWN OF COLDEN
COLDEN N.Y. 14033
RESOLUTION #2021-9
A RESOLUTION RELATING TO THE STATE ENVIRONMENTAL
QUALITY REVIEW PROCESS**

WHEREAS, the Town Board of the Town of Colden is considering adopting a Local Law to provide for opting-out of the Retail Dispensary License and/or On-Site Consumption License of provisions of Chapter 7-A of the Consolidated Laws of the State of New York; and

WHEREAS, the Town Board of the Town of Colden is duly qualified to act as lead agency for environmental review of certain actions undertaken by local government;

NOW, THEREFORE, BE IT,

RESOLVED, that the Town Board of the Town of Colden hereby declares itself as Lead Agency for SEQRA review purposes and hereby determines that the proposed action is a Type II action and that no further environmental review is required.

DULY ADOPTED, this 14th day of October, 2021.

**THE FOLLOWING RESOLUTION WAS OFFERED BY
COUNCILMAN PIETRASZEK WHO MOVED
IT'S ADOPTION, SECONDED BY COUNCILMAN ARCARA, TO WIT**

On the Vote: Councilman David Arcara - yes
Councilman Jesse Hryck – yes
Councilwoman Patricia Zurbrick – yes
Councilman Gerald Pietraszek – yes
Supervisor James P. DePasquale – yes

**Advertise Public Hearing Notice of Adoption of Local Law
Subject to Permissive Referendum**

MOTION made by Councilwoman Zurbrick and seconded by Councilman Arcara and unanimously approved to advertise Public Hearing Notice of Adoption of Local Law Subject to Permissive Referendum in the next edition of the Springville Journal.

COMMITTEE REPORTS

BUILDING REPORT

No report

CODE ENFORCEMENT OFFICER REPORT

Report for the month of September 2021 – Asst. Bldg. Insp/Code Enf. Officer, Thomas Dzuilko reported that there were:

- 16 Building permits Issued
- 1 New Dwelling Permit Issued
- 1 Certificate of Occupancy
- 11 Certificates of Compliance
- 4 Fire inspections
- 4 Phone Complaints & 1 Written Complaint
- 12 Hours of School (John)

Asst. CEO Thomas Dzuilko stated an email was received from Johnnie Yell (The Broadway Group) requesting to work on the weekends. The interior and exterior workers are requesting to work on the following weekends 10/16, 10/23 and 10/30.

After some discussion on the noise related to working on the building outside and the verbal agreement not to work on the weekends when the Change of Use was approved, the Town Board resolved that there be no exterior work on the weekends and interior work would be allowed only on Saturdays from 9am – 5pm.

Supervisor DePasquale asked Asst. CEO Thomas Dzuilko if he received the complaints from three homeowners on Phillips Road about a neighbor regarding his business with the noise level and leaving the roads in terrible condition with mud and debris. Tom stated that he has seen the complaints and has sent a stop work order to that owner at that premises.

COMMUNITY DEVELOPMENT REPORT

Councilwoman Zurbrick reported that the following:

Bread of Life Outreach and Gabe's on the Hill Hours:

Tuesday, 10am – 5pm

Wednesday, 1pm – 5pm

Thursday, 3pm – 6pm

Friday, 3pm – 6pm

Saturday, 9am – 12pm

Food Pantry Hours:

Thursday, 3pm – 6pm

Saturday, 9am – 12pm

Mobile Food Truck

Colden Fire Hall on Thursday, October 28th 1:30-3:30

All are Welcome. Last truck until January. No truck Nov and Dec.

Colden Halloween Event

Sunday October 31, 2021, at Town Hall and Bread of Life from 3-6pm. Trunk or Treat, Family Ghost Hunt, Halloween Movie, Flyers can be picked up at the Town Hall and Bread of Life Outreach Center with a list of the events taking place that day.

A group is interested in setting up a disc golf course at Kummer Park and will meet with the Town Board to discuss options for setting up a course along with the cost.

DOG CONTROL OFFICER REPORT

Councilman Arcara read the following DCO report for September 1, 2021 – September 30, 2021.

*Nickle City K9 rescue called asking if the DCO for Colden is also for Glenwood and what the dog limit is in town.

*A boxer went missing on Blanchard Road and a neighbor found the dog and returned to owner.

*Received a call about a missing dog and if there have been any sightings. None as of October 14th.

*Appearance tickets were mailed out for delinquent dogs. Calls were received that dogs have passed away, will forward info to the Town Clerk's office.

ENVIRONMENTAL BOARD REPORT

No report

HIGHWAY REPORT & PARKS

Supervisor DePasquale reported that the new 2022 - 1ton plow truck has been received and is in the process of being registered and decals placed on the truck, as well as fitted with GPS.

Highway Superintendent Clarkson will be submitting a quote for a new 2022 plow truck to be budgeted for next year. The order would be to be placed now for 2022 because trucks are hard to come by and this would secure the purchase for next year. An e-mail quote for the truck will be sent out to the Town Board to secure the ordering and purchase of the truck.

Supervisor DePasquale reminded the Town Board when responding to the e-mail to make sure you include the response to the Town Clerk for the record of the purchase. The truck would be financed for three years, and the old plow truck would be put out for sale.

Supervisor DePasquale stated that an email went out on October 5th to explain the importance of committing to ordering a new Hi-Lift now so it could be reserved. The current Hi-Lift will be traded in which was under the three-year contract with the option to trade and purchase a new one at \$30,000. The commitment was needed by October 5th so that the Hi-Lift could be reserved prior to any price increase on the machine with Town Board approval.

Approve Milton Cat 926M Hi-Lift Upgrade

MOTION made by Councilman Arcara and seconded by Councilwoman Zurbrick and unanimously approved the purchase of a new Cat 926M Wheel Loader/Hi-Lift at a cost of \$30,000.00 payment due January 1, 2022 along with the trade in of the current Hi-Lift.

INSURANCE REPORT

Councilman Arcara reported that the new 1-ton truck is being updated with decals, registration and added to the town insurance policy.

LIBRARY REPORT

West Falls/Colden Library has the following:

Fall Wreath

Make a harvest wreath from grapevines, pinecones, and colorful leaves
Tuesday October 19th, from 6-7:30pm

Upcycle Planter-

Make a 4 ½ “recycled planter from denim and a tin can
Tuesday, October 26th from 6pm-7:30pm

Boston Library has the following:

The Friends of the Boston Library are hosting a Basket Raffle benefiting the Boston Free Library. The Basket Raffle will feature donations from the public and many local businesses. Tickets are sold during all library open hours throughout the month of October.

Tickets are \$5.00 per sheet or 5 sheets for \$20.00 (cash or check only). Funds raised during the event go towards the maintenance of the historic library building as well as to allow the library to continue to provide free programming for all ages. Future plans include the expansion of outdoor programming with the construction of a pavilion.

PERSONNEL & TRAINING REPORT

Councilwoman Zurbrick reported that ZBA member Janet Dillsworth turned in a resignation letter dated September 24, 2021.

Accept Resignation Janet Dillsworth

MOTION made by Supervisor DePasquale and seconded by Councilman Pietraszek and unanimously approved to accept ZBA Member Janet Dillsworth resignation from the Zoning Board of Appeals effective October 14, 2021.

PLANNING BOARD REPORT

Planning Board Chairman Walt Kammer reported the following actions by the Planning Board:

9/21/21 Planning Board September meeting at 7PM

9/29/21 Chairman's meeting with CEOs to discuss pending permitting and approval for requirements for any proposed field work on the Colden segment of the ECRT project.

10/2/21 Review NY Farm Bureau materials regarding the negative impact of the NYS Environmental Rights Amendment (Green Amendment) as passed by NY Senate and Assembly in legislative session.

10/7/21 Support Virtual meeting; attend the Town Board's Budget Workshop; review projected Planning Board budget expectations for 2022's Town budget for AFPP

WATER REPORT

Councilman Pietraszek reported at the present time water consumption billed to ECWA for the prior month was 1,801,000. gallons at a cost of \$5,042.80 + \$278.37 = \$5,321.17 expenditure.

*Radio batteries keep dying, EOL span was 15-18 with us being at year 15. Pit radios are being replaced a few at a time due to winter elements. Suggest we replace 20 a year to get on some type of schedule.

*NYRWA was in, they tested the Park Street leg believe there is there is a leak retesting in that area again before digging up the entire line.

*Relevy letters were sent out and due date of November 1st.

*Five letters were sent out reminding for backflow preventer reports are due.

Town Board discussed Chapter 105 Water application & fees being changed. The water application change would have to be sent to the Town Attorney for review of the language and the process of obtaining a water hookup.

The fee increases are needed again due to the cost of the water increasing from ECWA.

Proposed increases are:

- *Minimum Quarterly charge 42.00 increase to 44.00
- *Each additional 1,000 gallons or fraction thereof is 4.45 increase to 4.70
- *ECWA infrastructure quarterly service charge 4.60 increased to 5.00
- *Service line inspection 150.00 increase to 200.00

MOTION made by Councilwoman Zurbrick and seconded by Supervisor DePasquale to apply the above fee increases to Water District #1 Chapter 105.32 and 105.19.

On the Vote: Councilman David Arcara – yes
Councilman Jesse Hrycik – yes
Councilwoman Patricia Zurbrick – yes
Councilman Gerald Pietraszek – yes
Supervisor James P. DePasquale – yes

YOUTH/ADULT RECREATION REPORT

Asst. Rec. Director Carrie DePasquale stated that there is a Two-Day Pottery Class scheduled for November 17th and December 12th. The class filled up fast, so they are looking at scheduling a second class. The community garden has been cleaned up for the season.

OLD BUSINESS

None

NEW BUSINESS

None

RESOLUTIONS

None

BUDGET TRANSFERS

None

TOWN CLERK REPORT

Town Clerk Kerlin reported that the 2022 Preliminary Budget Hearing will need to be set after some discussion on the date it was decided to be held on Thursday, November 4th at 7pm.

Advertise Public Hearing 2022 Preliminary Budget

MOTION made by Supervisor DePasquale and seconded by Councilwoman Zurbrick and unanimously approved to advertise the Public Hearing for the 2022 Preliminary Budget on Thursday, November 4, 2021 at 7:00pm at the Colden Town Hall.

Town Clerk Kerlin asked that if a newsletter is being sent out this year that she would like to add some information about upcoming tax collection, licensing your dog in town, open board positions, if reroofing a dwelling that you do need a building permit, and the additional property acquired adjunct to Kummer Park.

SUPERVISOR’S REPORT

Supervisor DePasquale reported that he received a letter from NYS Department of Public Service, the Comprehensive Broadband Connectivity Act. The act requires the Public Service Commission to study the availability, reliability, and cost of high-speed internet and broadband services in New York State. There is an online survey link that will be placed on the town website.

The Supervisor will be attending a meeting on Thursday, November 11th for an update on the Erie County Rails to Trails.

PAY BILLS

MOTION made by Councilwoman Zurbrick and seconded by Councilman Hrycik and unanimously approved to pay the following bills:

General Fund Warrant Voucher #2021-342 to #2021 -391	\$ 39,632.55
Highway Fund Abstract Voucher #2021-131 to #2021-148	\$ 87,277.18
Water District Voucher #2021-57 to #2021-62	\$ 5,857.43
Lighting District Voucher #2021-17 to #2021-18	\$ 1,506.02
Refuse Fund Voucher #2021-09	\$ 21,017.32

PRIVILEGE OF THE FLOOR

No comment

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ADJOURN

MOTION made by Councilman Pietraszek and seconded by Councilman Arcara and unanimously adjourned the meeting at 8:43pm.

Respectfully submitted,

Christina M. Kerlin
Town Clerk