

Cattaraugus County Planning Board
County Center
Little Valley, NY
June 28, 2007
7:00 pm

PLANNING BOARD MEMBERS PRESENT: William E. Sprague, Chairman
Paul Mager, Vice Chairman
Ann Padlo, Secretary
Charles Couture, Assist. Sec.
Jack Berger
Florence Fuller
Richard Fuller
Michael Zaprowski

PLANNING BOARD MEMBERS ABSENT: Tina Abrams
Kameron Brooks
Robert Keis
David McCoy
David Rivet

PLANNING DIVISION STAFF: Christopher G. Crawford, Senior Planner
James H. Isaacson, Senior Planner
Margaret E. Puszcz, Stenographic Secretary

GUESTS: Joan A. Petzen, Chair Agricultural and Farmland Protection Board
Kathy Kellogg, Buffalo News

Chairman Sprague called the meeting to order at 7:01 p.m. and welcomed everyone to the meeting.

APPROVAL OF MINUTES

Charles Couture moved with a second from Richard Fuller to approve the May 31, 2007 minutes as submitted. Carried.

NEW BUSINESS

General Municipal Law Section 239 (l) & (m) Referrals

Town of Allegany Zoning Board of Appeals – Area Variance – 4788 Zink Road

Chris Crawford reported that the Town of Allegany Zoning Board of Appeals (ZBA) has referred a request for a side and front yard setback variance to place a mobile home on property located at 4788 Zink Road. The area variance was referred based on its proximity (within 500 feet) of a county highway (Rt. 60) and the Allegheny River.

Chris' review consisted of the examination of the Town of Allegany ZBA findings relating to the County Planning Board advisories issued for the same property at last month's meeting, the public hearing notice, the town zoning ordinance and GIS data layers of the area.

Chris' findings were that the Town of Allegany ZBA addressed both advisories from the County Planning Board's May meeting by consulting with the Town Code Enforcement Officer (CEO) with regard to the applicability of Local Law No. 1 – 1987 "A Local Law for Flood Damage Prevention." The CEO stated that the proposed action meets requirements of this law. This required the applicant to split the property to insure compliance with §5.18 (B)(3) of the Town's Zoning Ordinance, thus necessitating this referral. This is a Type II action under SEQR with no environmental review required. A Public Hearing was held on June 18, 2007.

Staff recommendation is based on the relatively small scale of the project and that access would be from Zink Rd. (not CO Rt. 60), granting of an area variance for the proposed action poses no significant countywide or intercommunity impact in accordance with §239-I of NYS General Municipal Law.

Paul Mager moved with a second from Florence Fuller that the referred Town of Allegany Zoning Board of Appeals area variance request for a side and front yard setback to place a mobile home at 4788 Zink Road has no significant countywide or intercommunity impact. Carried.

Town of Allegany Town Board – Zoning Text Amendment – Wind Energy Facilities

Chris Crawford reported that the Town of Allegany Town Board has referred a Zoning Text Amendment on regulations for siting commercial and non-commercial Wind Energy Conversion Systems by Special Use Permit in the A-F zone.

Chris' review consisted of examination of the draft text amendment, NYSEERDA guidance documents and various websites. His findings are: 1) The proposed text amendment is generally thorough and comprehensive. 2) A number of relatively minor questions arose during review, highlights of which include: a) Definition of 'hunting cabin'; b) Consistency in specifying height / radius requirements for application materials, setback requirements and approval conditions; c) Prohibition of distribution across property lines for non-commercial systems, i.e. does this disallow 'selling back to grid'? and d) Restrictions on proximity to water supply wells, residential / commercial fuel oil tanks and oil exploration and mining structures.

Discussion on soil testing.

Chris stated that a Zoning Text Amendment is a Type 1 Action under SEQR. An EAF was submitted. No public hearing date has been set.

Staff recommendation is the proposed project has no significant countywide or intercommunity impact. However given the questions and recommendations derived from review of the proposed text amendment, staff recommends the following advisory:

That questions and recommendations concerning the proposed text amendment be forwarded to the Town Planning Board for their due consideration and that technical assistance for improving the proposed amendment be given upon request.

Ann Padlo moved with a second from Mike Zaprowski and Florence Fuller that the Town of Allegany Zoning Text Amendment on regulations for siting commercial and non-commercial Wind Energy Conversion Systems by Special Use Permit in the A-F zone has no significant countywide or intercommunity impact with the following advisory: That questions and recommendations concerning the proposed text amendment be forwarded to the Town Planning Board for their due consideration and that technical assistance for improving the proposed amendment be given upon request. Carried.

Town of Ellicottville Town Board – Zoning Text Amendment – Signage

James Isaacson reported that the Town of Ellicottville has referred a Zoning Text Amendment to the Zoning Ordinance relating to signage. James stated that the Town has reorganized the format so that it is easier to read. Other changes include: 1) Many new definitions – 18; 2) Expanded the list of signs not requiring a permit; and, 3) Added a new section on non-conforming signs. This is a Type 1 action under SEQR. No determination has been made. A public hearing has not been scheduled yet. Staff recommendation is approval.

Charles Couture moved with a second from Richard Fuller that the referred Town of Ellicottville Zoning Text Amendment relating to signage be approved.

Paul Mager asked if there was anything in the regulations concerning billboards?

James stated that billboards will be allowed in the Ag Forestry District but can only be 96 sq. ft. Any signs along Route 219 are governed by NYSDOT.

Motion carried.

Town of Randolph Zoning Board of Appeals – Special Use Permit – Corner of Fox & Pine Hill Road – Music Festivals

Chris Crawford reported that the Town of Randolph Zoning Board of Appeals has referred a Special Use Permit request for the holding of occasional (once or twice a year) concerts at the Corner of Fox Road and Pine Hill Road (*Tax Map No. 79.003 -1-8.4*). The Town referred the Special Use Permit based on the fact that the property currently lies in an Agricultural District.

Chris' review consisted of the examination of the applicant submitted documents for requesting a Special Use Permit, notes taken at the Public Hearing on June 6, 2007, Town Zoning Ordinance, conversations with ZBA Chair Gerald Barton and GIS data layers of the area. His findings were: 1) The Town ZBA submitted the referral as if the property were completely in the AF zone. The property in question is currently zoned both R-1 and AF. 2) As a result of conversations with The Town Zoning Board Chair,

he understands this issue and realizes it needs to be addressed before the County can act on the referral.

Staff recommendation is that the item should be tabled and remanded to the Town of Randolph ZBA until such time that the ZBA determines the proper zoning for this parcel. However, given the findings above the following advisory is recommended: That staff work with and provide training to the Town of Randolph ZBA, Code Enforcement Officer and other interested municipal officials regarding the procedural and substantive issues associated with the County Referral Process and services provided by County Planning staff to aid municipalities.

Paul Mager moved with a second from Michael Zaprowski that the referred Town of Randolph Zoning Board of Appeals Special Use Permit request for a Music Festival Venue at the Corner of Fox Road and Pine Hill Road be tabled and remanded to the Town of Randolph ZBA until such time that the ZBA determines the proper zoning for this parcel with the following advisory: That staff work with and provide training to the Town of Randolph ZBA, Code Enforcement Officer and other interested municipal officials regarding the procedural and substantive issues associated with the County Referral Process and services provided by County Planning staff to aid municipalities. Carried.

Town of Yorkshire Planning Board – Special Use Permit – McKinstry Road – Gravel Mine

Richard Fuller and William Sprague abstained from the discussion of the following issue due to their capacities as Yorkshire Town Supervisor and member of the Yorkshire Town Planning Board respectively. Because of these abstentions, there was no quorum of the County Planning Board present for action on this item.

James Isaacson reported that the Town of Yorkshire Planning Board has referred a Special Use Permit request to conduct a gravel mining operation on Route 16 and McKinstry Road. This referral had been before this Board about a year ago for a variance. The Town denied the variance. It went to Court and the Town's denial was overturned. It is now back for a Special Use Permit.

James stated that the project involves 95 acres of excavation, 26 acres of material processing (crushing, screening, washing), and 4 acres of roads. The land is located in the Farmersville-Freedom Agricultural District and an Ag Data Statement has been submitted. The entrance road crosses a floodplain associated with a stream. There are minor unnamed wetlands scattered throughout the site. The reclaimed land will be used for meadows, wetlands, and a small 4-5 acre lake. NYSDEC conducted the SEQR review as lead agency (the project is a Type 1 Action under SEQR), made a positive declaration, prepared the final EIS, and made a finding that environmental impacts have been minimized or avoided to the maximum extent practicable. Impacts considered include: traffic, noise, wetland impacts, surface water, public water supply and agricultural land. Staff recommendation would have been approval had a quorum been present.

Charles Couture asked how close this project is to the Yorkshire Water District.

James Isaacson replied closer than two miles.

Richard Fuller asked if the project is on McKinstry Road.

James Isaacson replied no, the property abuts McKinstry Road, but access is from Route 16.

Ann Padlo asked about dust.

James Isaacson replied that it is set back from Route 16 and measures are taken to control the dust.

No action was taken on this item due to the lack of a quorum.

Village of Little Valley Zoning Board of Appeals – Area Variance – 212 Court St.

James Isaacson reported that the Village of Little Valley Zoning Board of Appeals has referred an Area Variance request to the setback from property line to build a stairway and deck for an entrance/exit to the second floor at 212 Court Street (Tax Map No. 54.064-1-29). The deck would be 2 feet from the property line (setback requirement is 7 feet). The neighboring house is about 20 feet from the property line. This is a Type 2 Action under SEQR. No determination has been made to date. Staff recommendation is local issue, no significant countywide or inter-community impacts.

Jack Berger moved with a second from Ann Padlo that the Village of Little Valley Zoning Board of Appeals referred Area Variance request to the setback from property line to build a stairway and deck for an entrance/exit to the second floor at 212 Court Street is a local issue, no significant countywide or inter-community impact. Carried.

Village of Ellicottville Village Board of Trustees – Zoning Text Amendment – SEQR Lead Agency – Multi Dwelling Units in Commercial Zone

Chris Crawford reported that the Village of Ellicottville Village Board of Trustees has referred a Zoning Text Amendment to the Village Zoning Local Law of 2005 land use tables to allow upper floor dwellings by Special Use Permit only in the Village Commercial 1 (VC-1) Zoning District. The Village Board of Trustees is also seeking to be the Lead Agency for the SEQR process.

Chris' review consisted of the examination of the proposed zoning text amendment, examination of documents submitted by August-Alexis LLP's legal counsel addressing concerns of Village Planning Board members, examination of correspondence between the Village Planning Board and the Village Board of Trustees, review of NYS Village Law and review of July 27th, 2006 Zoning Referral Form regarding Use Variance request for Ellicottville Inn, and Vol. 3 of County Guidebook Series. His findings were: 1) The proposed text amendment is the result of a petition by August-Alexis LLP, current owners of the Ellicottville Inn, to modify the current zoning regulations to allow for condominium development of upper floors in the VC-1 district. 2) After review by Village Planning Board, a number of revisions to the petition by August-Alexis were made to the proposed zoning text amendment. The proposed amendment will allow condominium

development on upper floors of buildings in the VC – 1 district under the following conditions: a) Such development be by Special Use Permit Only. b) A maximum of only 12 such units be allowed per building. c) The minimum size of any one unit shall not be less than 450 sq. ft. d) Amendment will only apply to existing floors. e) First floor shall remain commercial/retail and shall not be converted to residences. f) Adequate parking must be available in accordance with other sections of the Village Zoning Law. g) Green space on any property for which condominiums are proposed shall not be diminished by this land use. h) All Special Use Permit applicants for condominium development will be required to undergo Architectural Design Review as specified under existing zoning law and, i) Rental of under 30 days shall not be permitted. A public hearing is scheduled for August 13, 2007.

Chris stated that this Zoning Text Amendment is a Type I Action under SEQR. The Village Board of Trustees is seeking to be the Lead Agency for the environmental review required.

Staff recommendation is that the proposed project has no significant countywide or intercommunity impact and that the County Planning Board, as an interested agency, has no objection to the Village Board of Trustees serving as Lead Agency for the purpose of conducting an environmental review of the proposed amendments to the Zoning Local Law of 2005.

Ann Padlo moved with a second from Michael Zaprowski that the referred Village of Ellicottville Zoning Text Amendment to the Village Zoning Local Law of 2005 land use tables to allow upper floor dwellings by Special Use Permit only in the Village Commercial 1 (VC-1) Zoning District has no significant countywide or intercommunity impact. Carried.

Charles Couture moved with a second from Paul Mager that the County Planning Board, as an interested agency, has no objection to the Village of Ellicottville Board of Trustees serving as Lead Agency for the purpose of conducting an environmental review of the proposed amendments to the Zoning Local Law of 2005 pursuant to Part 617.6(B) of the NYS Environmental Quality Review (SEQR) Act. Carried.

NYS Intergovernmental Reviews

Chris Crawford reported that NYS Intergovernmental Reviews numbered STW#07.021 through STW#07.023 were received, reviewed, no comment. *The Board concurred.*

OLD BUSINESS

Town of Ellicottville ZBA – Area Variances – Rt. 242W – Townhouses – Songbird

James Isaacson reported that last month the Board had reviewed this referral, which was requesting two area variances. Upon review, the Board had returned the referral as incomplete for several reasons including the question concerning the segmentation of the SEQRA review because the ZBA was proceeding ahead of the SEQR review by the Planning Board. The Town of Ellicottville asked this question of the Albany DEC office and they stated that this would be segmentation of the SEQRA review, and therefore

would not be permitted pursuant to SEQRA. The Town is therefore withdrawing the referral until such time as the Town of Ellicottville Planning Board has completed the SEQRA review.

James also noted that the Town of Ellicottville Planning Board, as Lead Agency, has issued a Positive Declaration and determined that they will conduct scoping on this project. Since the County Planning Board had expressed concerns last month, there are no other comments to make at this time.

Planning Board Training

Chris Crawford distributed copies of General Municipal Law (GML) Section 239 (l) and (n) to the Planning Board for their review. These two sections of the GML describe how we do our review and what to look at.

REPORTS / OTHER BUSINESS

Chairman's Report

Annual Meeting – Chairman Sprague thanked Margaret Puszcz and the Planners for organizing such a successful meeting. He has received many good comments on the meeting.

Reappointment of Planning Board Members – Chairman Sprague indicated that four members terms will expire on July 31, 2007 – Florence Fuller, Richard Fuller, Robert Keis and Michael Zaprowski. He asked them if they were willing to serve another 3-year term. They all indicated yes. Chairman Sprague stated that he would forward their names to the Chairman of the County Legislature for reappointment.

Set date for Three Year Plan & Budget Committee Meeting – Chairman Sprague stated that it is that time of year when the County Budget process will begin. This Committee of the Planning Board, in the past, has met and made recommendations concerning the planning budget to the Department of Economic Development, Planning and Tourism Director, Thomas Livak.

Upon discussion, it was decided that the Three Year Plan & Budget Committee would meet for an hour prior to the regular July meeting of the Planning Board.

Summer Meetings – Margaret Puszcz reported that traditionally, the County Planning Board has met at various locations other than the County Center for its July meeting. The Planning staff has the following suggestions: Onoville – review proposed equestrian staging area on County property above the Marina; Allegany State Park – update on current status from Mike Miecznikowski, General Park Manager; Olean Airport – update on current status from Tom Windus, City of Olean Public Works; Sprague's Maple Farms – changes since our last visit in 2001 from owner Randy Sprague; or Gowanda – Village of Gowanda planning activity update from Chairman Jack Torrance.

Upon discussion, it was the consensus of the Board to meet at Allegany State Park for the July meeting, if arrangements can be made. It was also the consensus to wait and see concerning the August meeting as to whether to cancel or hold.

Director's Report – None

Staff Reports

Ag Tour of Cattaraugus County with John Brennan – Joan Petzen reported that she along with Brian Davis and Paul Bishop had taken John Brennan, NYS Ag & Markets, to Sprague's Maple Farms in Portville on Thursday, June 14, 2007, the day after the Annual Dinner meeting. They were given a tour inside and out hosted by Kathy Baughman of Sprague's followed by further discussion over breakfast.

They then met with Telaak's Dairy Farm, a well-established dairy operation in the Town of Mansfield, north of Ellicottville. They discussed the farm's operation, concerns and issues with neighbor relations and their concerns about development pressures, such as the proposed development of the former Poverty Hill Ski area into expensive homes.

They then met with David Musal Dairy Farm, a start-up dairy operation in the Town of East Otto. There they discussed similar issues as the Telaak farm as well as start-up issues for young farmers.

Joan Petzen stated that other issues discussed through out the day also included Right to Farm issues with more and more homes being built near farming operations, strip development and the lack of regulations in the community, large lot development, etc.

Joan believes that John Brennan was very pleased with the day and will take back to Albany the fact that it is not always the very huge developments that cause issues for farming, but residential uses, the need to allocate funds to smaller counties like ours, before things get out of hand.

Charles Couture stated that the farmers in Otto and East Otto have real concerns, because when Route 219 ends in Ashford, they are only five to 10 miles from there.

Joan Petzen stated that she is seeing lots of pressures of homes on 2 – 5 acre lots. Any time we have mixed uses, we end up with potential conflicts.

Chairman Sprague believes the State needs to look at getting the landowner more income, not necessarily from the farms, so the landowner is willing to keep his land instead of developing it.

Joan Petzen discussed the proposed Working Farmland Tax Credit legislation.

STW Report

Charles Couture reported that at the STW Board meeting, they reviewed the ARC Grant applications for this year. STW has \$500,000 to \$650,000 to give out in grants.

Member's Forum

Dick Fuller reported that there had been a meeting about the formation of a Business Association for the Yorkshire area. Thomas Livak gave a good presentation. They had about 14 people in attendance. Dick has had several calls since the meeting indicating that they are interested in this type of organization.

Chairman Sprague stated that he had attended this meeting and that one of the thrusts for organization of this Business Association would be to promote tourism and economic development so that they could cash in on some of the Bed Tax monies.

Charles Couture reported that the West Valley waste stream is moving. 40 to 50 carloads of low-level waste have been removed from West Valley.

Ann Padlo reported that the City of Olean is going to have the Farm City Days again.

Michael Zaprowski reported that Salamanca is having their "Come Home Festival" in July.

CORRESPONDENCE

The following correspondence was received and reviewed:

John Brennan, NYS Department Agriculture and Markets – Thank you for Wednesday's event and Thursday's farm tour – "I really got a very good snap shot of agriculture in the county."

Town of Allegany ZBA – Area Variance – 4788 Zink Road – Mobile Home – determined that the variance requested was not sufficient; therefore a new request and public hearing are needed.

ADJOURNMENT

Chairman Sprague wished everyone a very happy and safe 4th of July.

Paul Mager moved with a second from Jack Berger to adjourn the meeting at 8:30 pm. Carried.

APPROVED AS SUBMITTED JULY 26, 2007.