

August 16, 2010

TOWN OF PORTER ZONING AND SUBDIVISION UPDATE PUBLIC HEARING

The public hearing was called to order at 7:00 p.m. with the Pledge of Allegiance by Town of Porter Supervisor Mert Weipert. Attendees included Town of Porter Council Members Joe Fleckenstein, Jeff Baker and Tom Baia; Technical Committee Members Nancy Orsi, Peter Jeffery and Tony Collard; Town of Porter Legal Representative Mike Down; Town of Porter Building Inspector Roy Rogers; Peter J. Smith Company representative Jim Wagner and several Town of Porter residents. Mert Weipert introduced Jim Wagner of the Peter J. Smith Company as the speaker of the evening.

The hearing was held for the purpose of presenting the public with an update of the final draft document "Town of Porter Zoning Law and Subdivision Regulations" with changes that have been installed as suggested through public comment on April 6, 2009.

Mr. Wagner began his presentation by reviewing the evening's agenda as such:

- Overview of the Project
- Goals of Update
- Effect of Changes
- Differences
- April 6, 2009 Public Meeting and Substantial Changes
- Subdivision Regulations
- Public Comments

Overview of the Project:

The Zoning Law and Subdivision Regulations project began in 2004. Since 2007 there has been substantial public and committee input and revisions. In spring of 2010 the final draft document was approved by the Niagara County Planning Board.

Goals of Update:

To take public and committee input and revise the document to include new uses that did not exist in the past and create a final document that is consistent, bringing codes up to date, improving organization, offering protection for the rural character of the community and the environment and simplifying the text and processes.

Overall Effect of New Zoning Changes:

No loss of development potential; Offers Ag protection while offering more opportunities to farmers through a "no restrictions" clause; Non-conforming uses (lots) are protected through transferability; Shorter permitting time periods; Design Standards that are less restrictive and with more uses permitted.

Differences:

Organizational - Include simplified text and processes with shorter time frames; General information at the front of the document for easier reference; concise wording with easy to follow graphics and inclusion of current and possible future issues.

Districts – re-naming and re-distribution of districts for a more uniform flow; Inclusion of clear and easy reference tables such as: Permitted Use Table, Dimensions Table and Design Standards graphic samples; Consolidation of information into their own sections for less document scanning and easier reference; Procedures charts; offers “grandfathering” for non-conformities.

Substantial Changes utilizing input/comments from the April 6, 2009 public meeting:

- Industrial District were returned back to “3” Industrial Districts
- Agricultural PUD has been eliminated
- Cluster development has been expanded
- Wind Energy Conservation Systems to include regulations that are fair and safe for both sides (residential and farm lands)
- Design Standards were made less restrictive and more like design guidelines giving greater discretion to/of the Planning Board.
- Density of MDR was reduced to 6 units and a Senior Housing District was added.
- Outdoor Wood Burning Stoves will follow State Regulations.
- Firewood Storage and POD Storage will allow clarified exceptions.
- Landscaping Regulations will be at the Planning Boards discretion.
- Noise limitations will be at the Boards discretion for certain activities.
- Commercial Stables will align with other agricultural communities.
- Solar Collectors will be permitted with some control on the appearance.
- “Structures” shall not include signs which are separately regulated.

Subdivision Regulations:

- Differences - to include overall organization of the document and more emphasis on the environment.
- Types of Subdivisions (Major vs. Minor) process chart for easier reference
- Procedures charts and outlines
- Design Standards list

PUBLIC COMMENTS:

Tom Fleckenstein / 1953 Balmer Rd.: Mr. Fleckenstein reviewed the current revisions to the document in preparation for this evening’s meeting and had several comments and concerns relating to various sections of the document. Mr. Fleckenstein shared his comments with the public and then submitted his lengthy notes to Mr. Wagner for review and response. Mr. Fleckenstein’s comments along with Mr. Wagner’s responses will be attached to these minutes – So Noted.

Margaret Catersano / Braley Rd: Ms. Catersano expressed her concern regarding the current adoption of the FEMA maps and how they may affect flood insurance.

- Building Inspector Roy Rogers responded by stating that the FEMA maps had very little change in the Town of Porter and at this time he was unable to check her specific location but did offer Ms. Catersano their review at any time convenient to her. (The FEMA maps were not available for review at this meeting but are available for review in the Clerks office at any time.)

Edward Hogan / Ransomville: Mr. Hogan expressed his concern for the medium density status in the residential district of Ransomville stating that flooding/water problems were already in existence when there are heavy rains and snow. He stated that the lots are too small to absorb heavy water and lot size should be reconsidered since smaller lots will enhance an increase of flooding. He also questioned why the commercial district was increased to the North and not to the West. Would it be feasible to consider expanding the commercial district toward Braley Road?

-Council Member Joe Fleckenstein agreed that Ransomville is like a bowl with the lowest point being at the center of town. There is not a lot of potential for growth in the hub of Ransomville and current homeowners within the hub need to be protected.

-Committee Member Nancy Orsi stated that the idea behind the MD District was to allow for expansion of the commercial district and that the land to the North was mostly open farm land that could possibly be subdivided and sold for commercial use. If a land owner were to anticipate something like this, the land would already be zoned commercial. Also, this area appeared to be the best place to go since there are very few existing houses along this strip compared to the number of homes to the West.

-Committee Member Pete Jeffery stated that this decision was a compromised solution on what was available and what might work to allow for this type of expansion.

-Town Supervisor Mert Weipert stated that the Board could take another look at the map to see what other possibilities exist.

Fred Bruening / 1472 Youngstown-Lockport Rd: Mr. Bruening stated that the current M1 and M2 zones stopped short of Lutts Road at the ditch area and his property has been zoned in the agriculture district. He stated that he can't plant on his land because nothing will grow there and asked for the commercial zone to be expanded to include his property. Mr. Bruening also stated that he had addressed this issue some time ago when the project was gathering initial input from residents.

-Council Members reviewed the map and the exact location of the property in question and determined the three parcels located just North & West of the current zoning map could be considered for inclusion into the commercial zone. They agreed to take a look at it on behalf of Mr. Bruening.

Bill McLaughlin / Ransomville: Mr. McLaughlin stated that at a past Council meeting the former Harding's/Perrone's restaurant had been approved for change to commercial zoning so a variance wouldn't be required every time the business changed hands but the change was never included or updated on any map to show the zoning update. He was concerned that this could cause problems if the property were to sell and would like the new maps to include this as a commercial mixed use zone.

-Council Members stated that they will go back into the Town Board minutes to see where this property currently stands. The Council also agreed that this property may be best zoned as Commercial Mixed Use to accommodate the possibility of either the opening of another business or the rebuild of a residential structure.

With no other comments, the meeting was adjourned at 8:30 p.m.

Respectfully submitted,

Donna Jeffs
Recording Secretary

attachment

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TOM FLECKENSTEIN – COMMENTS / JIM WAGNER – RESPONSE (Public Hearing 8/16/10)

Comment: Relationship to Other Standards

In their interpretation and application, the provisions of this Chapter shall be held to be minimum requirements adopted for the promotion of the public health, morals, safety and general welfare. Whenever the requirements of this Chapter are at variance with the requirements of any other lawfully adopted rules, regulations, statutes or ordinances, the most restrictive thereof, or those imposing the highest standards, shall govern.

This suggests that when there is a conflict with AML, the more restrictive shall govern.

Response:

This line was intended for local laws. Local needs to be inserted to clarify. This section can be used to add a provision about AML compliance.

Comment: Junkyards- Regulations restrictive to farm operations

Response: Definition of Junkyard clearly exempts farm junk.

Comment: Keeping of animals (§38) – many of the provisions violate AML. Commercial stables has a faulty definition as it would pertain to a farm operation. Subsection 3 – need to add AML law.

Response: Subsection 3 reads as follows – “Notwithstanding the foregoing, nothing herein contained shall prohibit the raising or harboring of domestic animals or poultry on an existing farm protected by Niagara County Right-to-Farm Law or any plot of land that qualifies as a farm in a County adopted, State certified Agricultural District.” The underline is the AML exemption. The provision pertains to the foregoing, thus this whole section which is targeted towards non-farms, does not apply to Ag districts and NC approved farms.

Comment: Outdoor Material Storage (§45) regs are unreasonably restrictive to farmers.

Response: Definition of Outdoor Material Storage reads “The large scale commercial storage of any materials, merchandise, stock, supplies, machines and the like that are not kept in a structure having at least four (4) walls and a roof, regardless of how long such materials are kept on the premises. Outdoor storage shall not include materials associated with a farming operation including the sale of firewood or the storage of materials associated with an active construction site.”

Comment: Outdoor Wood-burning Furnaces (§46) Subsection D is highlighted.

Response: I don’t remember a comment on this section, nor do I see anything wrong with the reg. The furnace police are not going to watch everybody starting their furnace. It would have to be used in excessive amounts to be noticed by a neighbor and become a nuisance.

Comment: Solar Collectors – 3 feet above roof is not practical in the winter when panels are slanted more for efficiency.

Response: 5 feet is common in other codes. Consider amending.

Comment: Seasonal Sales as a temporary use which includes the sale of Christmas trees (a permitted farm use)

Response: I don't think farms fall under temporary use. Also, there is nothing in this regulation that is unreasonably restrictive to farmers. An exemption may be added to the provision or the over-riding disclaimer under Applicability may suffice.

Comment: §59A(6) FAA only requires notification for structures 200ft +.

Response: That is correct. This can be deleted.

Comment: §59A(8) House & Barn can't be metered separately.

Response: Intent of this reg is to make sure it's not commercial. This could be changed to "prove that the WECS does not generate more than 110% of a farm's anticipated needs including living facilities."

Comment: §59A(9) Site plan too restrictive.

Response: Regulation reads "In addition to the above requirements, applicants for non-commercial WECS for private residential use, or non-farm operations, shall comply with the submission requirements for Site Plan Review contained in §106 of this Law." This reg has no effect on farm use.

Comment: §59D – 150 feet too low.

Response: I don't think so, and there is an exemption for farms within the regulation.

Comment: §59N – Farms are exempt from noise regulations because it is farm equipment.

Response: They are considered to be farm equipment, however, noise restrictions are designed to protect the health and safety of the community and would not be found to be unreasonably restrictive. These regulations were reviewed by Mathew Brower from Ag & Markets and he had no objection to the noise regulation.

Comment: §59K(5) Surety Bond is unreasonable

Response: It probably is. Cost could probably be recovered through other means and it should not be a problem with non-commercial devices. Could be deleted.

Comment: §72 Junk Vehicles – screening regulations are unreasonably restrictive.

Response: Subsection F reads “These regulations shall not apply to active farming operations and vehicle repair stations.

Comment: §79 Property Maintenance – needs farm exemption.

Response: There is no exemption contained in section. This section is an existing law verbatim that was incorporated into the document. Probably could use an exemption or a statement in the beginning of the document under applicability may suffice.

Comment: §106 Site Plan Review – AML has found that requiring site plan review is overly restrictive. Ag and Markets has developed an abbreviated version for site plan review in some cases.

*Response: All Farm related uses contain in the use chart have an *following the permit type. The * in the legend denotes the following “Subject to Building Permit only when part of a legitimate farm operation in a certified Agriculture District or an existing farm protected by Niagara County Right to Farm Law. The Planning Board may for new and significant projects, request a streamlined site plan review according to and as outlined in Ag & Markets Guidance Document for Zoning”*

Comment: Definition of Commercial Stable is faulty.

Response: Definition is good. A commercial Stable is not referring to a use covered under AML. Those uses are covered under the definition of Farm Operation/Agricultural Activity which reads “the use of land and on-farm buildings and all activities and practices which are inherent and necessary to the operation of a farm and which contribute to the production, preparation, and marketing of crops, livestock and livestock products as a commercial enterprise, including a commercial horse boarding operation, as defined and governed in the Agriculture and Markets Law Article 25-AA, § 301.” A commercial Stable refers to those enterprises that are not farm related and are not in an Ag District.

Comment: Manure Lagoon definition should say “aerobic” digestion and not “Anaerobic” since these facilities are not covered.

Response: While these facilities are open, the digestion takes place under water free from oxygen. Covered facilities are used to capture the resulting gas for use as energy. Definition is correct.

Comment: The rated capacity for a non-commercial WECS should be 600kw or less.

Response: 250kw is the threshold set for commercial and non-commercial systems. This is not set by any state statute. If a farm operation requires more energy, they can build two such towers. Change as you see fit. Definition under Commercial WECS will have to be changed accordingly.