

Peter Jeffrey called the regular meeting of the town of Porter Planning Board to order at 7:00 p.m. on **Thursday, March 5, 2015**. Jipp Ortiz and Roy Rogers were absent. Mr. Jeffrey introduced Mark Fox and welcomed him as a new member of the Planning Board. Mr. Jeffrey read over the agenda for tonight's meeting.

APPROVE FEBRUARY 5, 2015 MINUTES

Mr. Jeffrey read over the minutes of the February 5, 2015 Planning Board meeting. Mr. Bis noted that page 1, under Solar Farms in the Town of Porter, line 5 "and what tax credits are available for solar energy" should be deleted. Anthony Collard made a motion to approve the revised minutes. John Bis seconded the motion. With all in favor the motion was unanimously carried.

AREA VARIANCE: JAMES EISMUELLER, 3735 RIVER RD., YOUNGSTOWN FOR MANURE STORAGE ON SITE

This is a request to the Zoning Board of Appeals to store horse manure. There is no site plan provided and no one is here tonight to speak on this matter. Potential owners want to put horses on the site. This does not meet the code on page 6, paragraph A item 4 "There shall be no storage of manure or other odor or dust producing substance within 150 feet of any lot line.... This property is 252 feet wide at back. This request does not meet the criteria. The area variance is for set back. There is enough area but the set backs are not sufficient. Geri Surchia, who lives on one side of the property as well as her sister, Nan who lives on the other side of the property. Mr. Surchia passed out a list of her concerns that included a photo of the site. They are very concerned because of the smell of the manure, particularly during the summer month, how it will be contained, and where a structure will be built to house the animals. There is a structure on the site that has never been completed. Ms. Surchia feels that the structure is not 100 feet from the lot line. There is 108 feet of road frontage.

The Planning Board is charged with giving a referral to the Zoning Board. The ZBA will make the final determination on this matter. It would be nice to have the applicant here to answer questions regarding where he is planning to house the horses, where he is planning to store the manure. Mr. Jeffrey is not sure exactly what the variance is asking for other than set back. Mr. Jeffrey read from the Zoning Law §38 regarding this matter. There is a utility right-of-way in the back of the property. ATV's, four-wheelers, etc. are always running down the ROW and you add horses to the mix that there is potential for a real problem. As question was raised if fences can be put up over the R-O-W. That is a question that the utility company will have to answer.

The Planning Board does not have enough information to act on this request tonight. The property owner/applicant knew that this request was on the agenda for tonight's meeting. The applicant is expecting this matter to be before the zoning board next month according to Ms. Driscoll. There is a letter from the owner giving Nina Nanula permission to act on this matter, however, she is not at the meeting tonight.

Mr. Jeffrey said that the Zoning Board can choose to take action on this matter at their next meeting whether they have a referral or not. Ms. Surchia asked if the neighbors would be notified of the Zoning Board Public Hearing. Mr. Jeffrey said that all neighbors within a 500 feet of the property will be notified by mail. There is a possibility that the Zoning Board may take action on this before the Planning Board's next meeting. If the manure is taken off site the owner could still have horses. Arrangements for manure disposal would have to be made. The code allows two horses on the site with five acres.

Mr. Jeffrey feels that the manure storage variance should be denied based on the neighborhood. Set back requirements would require 300 feet and they only have 250 feet. They are requesting for a variance in excess of 50 feet to store manure on the property.

Councilman Fleckenstein asked if the Planning Board has any idea what the applicant intends to do with the horses. He recommended caution when acting on this matter tonight because if they are bringing in a business with horses this matter would fall under the Ag & Markets laws and this would change the whole identification of that land. Ms. Driscoll stated that the horses are for personal use. Without the applicant here, the Planning Board should use caution.

Anthony Collard recommends that the Zoning Board take no action on this matter due to lack of information. The Planning Board asks for a referral back on this matter and have the potential buyer or a representative at the meeting to address this matter. John Bis seconded the motion. A roll call vote resulted in the following: Mr. Fox, yes; Mr. Bis, yes; Mr. Collard, yes, Mr. Jeffrey, yes. Motion unanimously carried.

Preliminary Site Plan for Michael McCabe to sell and service garden and farm equipment at 2384 Lake Road.

Mr. Jeffrey stated that he does not have any information on this request. Michael Dowd introduced Kyle Andrews, attorney for the Town of Wilson. Mr. Dowd has represented Mr. McCabe in several matters in the past and will recuse himself from the Planning Board or Mr. McCabe on this matter. Kyle Andrews has been asked to represent the town on this matter. Mr. Dowd believes that the purpose of tonight's meeting is a pre-application meeting. Mr. Andrews will guide the Planning Board in this matter.

Mr. Andrews addressed the board regarding preliminary site plan review. This is at the very preliminary stage. The Planning Board will address the applicant and his engineer regarding what is expected from him regarding this project. At this point the meeting is introductory in nature and the Planning Board will communicate with the applicant and outline expectations reserve future meetings for comments.

The next step will be to present the site plan, then schedule a public hearing. The meeting tonight is not a preliminary site plan rather a pre-application meeting. Mr. Jeffrey referenced page 123 Article VIII in the Zoning Law regarding procedures. Mr. Bis read from the Zoning Law regarding (2) Compliance Required that states “No application for Site Plan Review, Planned Unit Development, Special Permit and Variances shall be considered where there are existing violations or delinquent real estate Town taxes assessed against the subject property except where such application is intended to cure the violations. The Zoning/Code Enforcement Officer shall be responsible for accessing all records in order to make this determination.” There is no code enforcer at the meeting tonight. Mr. Andrews said that without a code enforcement officer present and the recent submission of the paperwork registered from Mr. Jones office, he recommends that no formal action be taken by this board tonight. The board should outline expectations Mr. McCabe must comply with. This is an optional pre-submission consultation tonight per Mr. Jeffrey.

Mr. Jeffrey feels that the application for sales and service of farm equipment in the code book initially was re-adopted to re-align with the previous code when it was allowed. Mr. Jeffrey feels that if the town is going to allow sales and service of farm equipment in a Rural Agricultural area the same or similar design standards should be applied for both Rural Commercial and Rural Agricultural so there is equity in the law.

The standards referred to are in the Zoning Law §13, page 18. These design standards are reasonable to apply to this application. Mr. Jeffrey read aloud the Design Standards from the Zoning Law. This is a general outline of what the Planning Board might expect from Mr. McCabe on this site.

Mr. Morgan Jones, attorney representing William Dean, 2359 Lake Road, Ransomville in this matter, asked to speak to this matter to give input from the neighbor. There are now three and one half buildings of substantial size on the site, none of which had a building permit prior to being put up. Mr. Jones is very concerned about the process where the Planning Board is looking for a site plan for a building/buildings that have already been put up. The buildings are presently being used for industrial purposes, sandblasting and painting heavy equipment. Mr. Jones is concerned about SEQRA issues that includes storm water run off from 8,000 square feet of roof, all the water runs off and used to go across the street to a drainage ditch into the lake. The drainage ditch has been blocked through actions of the present owner and now all the water pools there. Noise pollution

and air pollution are a concern. Industrial noise reduction/elimination needs to be addressed. Air quality/water run off from sandblasting is a concern. Should this heavy equipment work be permitted rather than garden/tractor sales and service.

An appeal packet has been submitted to the Zoning Board of Appeals. The code enforcement officer is not here to help us at this time. Mr. Jeffrey understands that there has been notice of the stop work order on industrial applications which are not permitted on the site. Perhaps the buildings themselves are permitted, depending what the occupancy and use is. It is the use that is yet to be determined. The application is for service and sales of farm and garden equipment. The focus of the Planning Board is to conduct a preliminary site plan consultation and what is expected on it. A Public Hearing will be held that will include a mailed notice to home owners within 500 feet of the site. There is no clear time line on this matter.

A resident is concerned that there are four buildings that do not have a site plan for. How does a person construct four buildings without one site plan. Why hasn't the applicant been allowed to get away with this. The Planning Board is charged with the site plan review, not code enforcement. The code enforcement officer is very aware of what is going on. The resident feels that he is not following through with his responsibilities. The Planning Board brings information/situations to him.

If a building is being erected on a site, the building inspector will issue a building permit. Joe Fleckenstein took the floor to explain to the resident that she needs to address her issues to the Zoning Board of Appeals. The Planning Board is the lead agency for the Zoning Board. The Planning Board does not make any rules. Final decisions on this matter, will be made by the Zoning Board. Until Mr. Rogers returns from his vacation, many of the concerns/problems being raised tonight cannot be answered. There is a cease and desist order right now for anything other than work on farm or garden equipment. Buildings are a separate issue. Mr. McCabe is here for a site plan. The Planning Board is not taking any action tonight, but are making recommendations to Mr. McCabe as to what should be included in a site plan that will be submitted to this board in a Public Hearing.

Mr. Andrews recommends that the Planning Board let Mr. McCabe know of any other items that they would like to see in the site plan. Mr. Jeffrey would like to proceed on that avenue. It is the understanding of the Planning Board that there is to be no work of the industrial nature on the site. Other recommendations regarding the site plan might include set backs from property lines, skilled drawing of all structures on the lot, occupancy or use of each building on the lot, sizes of lot and buildings, parking based on occupancy, no outside storage, signage. A scale drawing is being requested. Design standards as outlined in the Zoning Law deed to be adhered to.

Mr. Dean would like the Planning Board to consider that this is a complicated experience because typically before building permits are issued the site plan needs to be completed.

The Planning Board would prefer that Mr. McCabe came to the Planning Board before he built any buildings.

Fredericka Dean asked if site plan review requires specific uses of the buildings. The building code of New York State have a set of rules that need to be followed. The NYS building code is outside of the Planning Board's realm. The Planning Board is asking for the use of each building to be outlined in the site plan.

Joe Fleckenstein commented that Mrs. Dean's request about a site plan and if they are still building, the building that is being built now is for storage. That building does not need a site plan because it is for personal use. It is a temporary building for storage. Mr. Dean said that Roy Rogers issued a temporary building permit for a building number 6 that would be coming down in the spring. Upon the Code Enforcement's return there will be updates and discussions on this matter so the Planning Board is informed.

Mr. McCabe and his representative said they have sufficient information regarding the section of the zoning law regulations that need to be addressed. The newly adopted law is not in the manual. Site Plan and drainage plans will be submitted at the next meeting. Storm water and noise issued will be address in the site plan. Paint and sandblasting issues will be addressed in the site plan. What ever the building code allows is what the Planning Board is looking for.

There are four buildings on the site. The Planning Board will be looking for a site plan for the business and usage for each building should be identified in the site plan. Mr. McCabe said that there were permits issued for every building prior to the building getting started.

Kyle Andrews suggests that Mr. McCabe should submit everything together including the formal drawings and application.

ATTORNEY MICHAEL DOWD REPORT

Michael Dowd has met with Wendel Engineering. Mr. Riley said that he doesn't know if FLS is going to send a request to the Town Board to ask that the area be re-zoned to permit solar farms in the town with certain limitations. Grants that are being applied for need to have documentation that states that the town is considering re-zoning for this purpose. Once the application comes to the town board it will be referred back to the Planning Board for recommendation.

There will be no site plan until the law allows for solar farms in the town. This area included twelve acres. There is a huge grove of walnut trees and a farm. The Fitch family plans to lease the farm rather than sell it. FLS is looking at five locations in the

state of New York. The currently operate several solar farms out of the state. Mr. Dowd feels that the next time the Planning Board will see this request will be after the board sends it to the Planning Board for a zoning amendment to permit this type of activity in a rural agricultural area. Mr. Jeffrey feels there are some items that should be considered for these larger solar farms. Mr. Dowd said that perhaps overlays could be used for this purpose in the town. The town board will have the ability to do overlays in the town.

Mr. Jeffrey recommends that the Planning Board members do some homework on this matter of solar farms. Look at model codes that are being used on solar farms. Twelve acres of solar farms can take care of 250 homes. Trackers that follow the sun are quite noisy. Solar farms would take potential farm land out of use in the town. The solar farm needs to be tied in to the grid. Mr. Jeffrey asked about battery storage. Snow tends to accumulate on the solar panels. Substantial NYSERTA grants are the driving factor for FLS or anyone looking into solar energy in New York State.

MARJORIE WARRANT SPECIAL USE PERMIT RENEWAL

Marjorie Warrant had submitted a request to renew her permit to operate a seasonal roadside farm stand at 3744 Creek Road, Youngstown. This is located on the west side of Creek Road. According to the Zoning Law this use is permitted subject to Building Permit only when part of a legitimate farm operation in a certified Agriculture District of 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 the Ag & Markets Guidance Document for Zoning. This information is found on page 8 of the Zoning Law regarding permitted primary uses.

CODE ENFORCER REPORT

Mr. Jeffrey handed out copies of the Code Enforcer reports for February. Mr. Rogers was not at the meeting tonight to speak to these reports.

With no further business to come before the Planning Board the meeting a motion was made to adjourn by John Bis. Mark Fox seconded the motion. With all in favor the motion was unanimously carried and the meeting adjourned at 8:35 p.m.

Respectfully submitted,

Pamela F. Parker, Secretary
Town of Porter Planning Board