



PLANNING BOARD
TOWN OF PORTER

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The regular meeting of the Town of Porter Planning Board was called to order at 7:00 p.m. Thursday, March 3, 2016.

Present: Chairperson Jeffery, Member Anthony Collard, Member John Bis, Assessor Susan Driscoll, Attorney Michael Dowd, Special Council Kyle Andrews.

Absent: Member Mark Fox, Member Robert Tower, Code Enforcer Roy Rogers.

Approve minutes of February 4, 2016 planning Board meeting

Chairperson Jeffery read highlights of the minutes of the February 4, 2016 Planning Board meeting. The highlights included approving the prior months minutes, appointing a Vice Chairperson, a summary of Chris Guard's development on River Road, a lengthy discussion regarding CWM, Code Enforcer Rogers' report and Attorney Dowd's report. Also attached was a checklist for the CWM Site Plan application that was previously handwritten.

With no additions or corrections Member Collard made a motion to approve the minutes as submitted. Member Bis seconded the motion. All in favor. motion carried.

Update on Site Plan for Michael McCabe's application for Servicing of Garden/Farm Equipment, 34,00-1-5-22, 2384 Lake Road, Ransomville

Chairperson Jeffery updated the Board on the timeline of events from the month regarding the McCabe property.

On February 8, 2016, Attorney Andrews sent a letter to the Town Board and Supervisor Weipert recommending that the Board table any further action on the law change regarding the Sales and Service of Farm/Garden Equipment until a meeting was scheduled with Mr. McCabe and his attorney.

On February 10, 2016, a meeting was held with Mr. McCabe, Matt McCabe, McCabe's Attorney, Supervisor Weipert, Town Board member Fleckenstein, Chairperson Jeffery and Attorney Andrews to discuss legal aspects.

On February 11, 2016, Chairperson Jeffery picked up the Site Plan documents that were presented to Code Enforcer Rogers.

On February 24, 2016, Chairperson Jeffery attended a work session to update the Town Board on Mr. McCabe's application as well as the CWM Site Plan review.

Chairperson Jeffery stated that Mr. McCabe was out of town and therefore requested that the Planning Board not take any action regarding his property during the meeting this evening.

Special Council Andrews was asked to give the Planning Board an overview in the process between the Town Board and Planning Board for this application. Attorney Andrews stated that the initial application was submitted to the Zoning Board in the early part of 2015. Subsequent to that a very preliminary Site Plan was submitted to the Planning Board. It was then requested that the New York State Department of Agriculture determine if the property use was a Farm operation. The opinion returned in late 2015 was that NYS Department of Agriculture did not see it as a Farm operation however if the Town Board felt differently the determination could be pardoned.

Mr. McCabe has since retained council who has asked that the Planning Board to move forward with the Site Plan review process. Attorney Andrews stated that the Planning Board should review the package as presented and to come up with a list of questions or items that need clarification so that they can be provided to Mr. McCabe's lawyer.

Currently the only returned correspondence from Mr. McCabe is a list of proposed vehicles to be serviced at the property. Chairperson Jeffery stated that he would like a list of products and services that will be performed under the Service of Farm and Garden Equipment. He stated that a list is needed in order to approve/deny and enforce any activities that will occur for the business on the property.

Attorney Andrews stated that this is not under a Special Use Permit, but the Planning Board has the ability to commit the landowner to the approved activities. Legally, the Planning Board needs to review the Site Plan application because of the current law within the Town. Attorney Andrews again stressed that the Town Board not make any further changes at this time relative to the zoning of the property.

Member Bis raised the question regarding compliance and current violations and asked how the Planning Board can move forward if there are property violations on record. Chairperson Jeffery stated that the last part of the code reads that the application can cure the violation. Code Enforcer Rogers and Town Council can verify, but Chairperson Jeffery felt that this application was being introduced to cure the violations. Member Bis also asked about the excavation on the property and Chairperson Jeffery stated that the potential variances would allow a cure to that violation. Attorney Andrews verified that the pond would need to be addressed with variances.

Chairperson Jeffery still has concerns about how the logistics will apply to the Site Plan with regard the Farm use status. He asked Attorney Andrews if all the buildings would need a variance because the buildings are larger than the main residence. It was also questioned as to who is responsible for requesting the variances. Chairperson Jeffery stated that it needs to be determined if the buildings are Farm Use or Service of Farm/Garden Equipment. Without knowing how they will be used, it could be a roadblock to moving forward.

Attorney Andrews stated that the application before the Board is only Service of Garden/Farm Equipment and therefore addresses specific parcels, not the structures on the parcel. Therefore it is prudent for the Planning Board to ask as many questions as possible so that the correct determination can be made. The overall application before the Board for Service of Garden/Farm Equipment is for the property, not the buildings. Chairperson Jeffery asked if the approval of the Site Plan could be contingent upon approval of the variances needed for the property and Attorney Andrews stated that he was comfortable with that. Both the Planning and Zoning Board will need to be involved in the application.

Member Bis stated that he is still concerned because of the violations currently on the property. Attorney Andrews agreed with Member Bis' concerns.

Audience member Irene Myers from the Zoning Board stated that the violations have been compounded over time and the law was adopted without the correct due process. Chairperson Jeffery stated he would not speak formally on the legal foundation on how the law was adopted. Irene stated that it shouldn't matter if the law is rescinded or not because there are violations that have compounded on the property. A permit should not be entertained while the violations are on the table and continue to manifest over time. These violations occurred prior to the application being served. She stated that the Town taxpayers are paying a considerable amount of money for dual council because of the violations that have occurred. She stated that permits cannot continue to be issued when there are outstanding violations – some as basic as cleaning up the property.

Chairperson Jeffery stated that he understand her concerns, but action has to be taken based on legal council's direction. The zoning Board can either approve or deny the variances. He stated that the Town is trying to take the appropriate action at this time.

Vicky Waterson, a Lake Road resident and neighbor to Mr. McCabe stated that the entire process has been a farce from the beginning. Permits should not have been issued and buildings should not have been built. She stated the entire mess needs to be cleaned up.

Chairperson Jeffery stated that everything the Planning Board has done has been by the book. He stated he appreciated her concern, but the Site Plan review by law needs to happen. The Planning Board is not ready to entertain a motion for approval/denial, but the Board does have to move forward according to the law.

Member Collard stated that the Site Plan is before the Planning Board for review. Chairperson Jeffery stated that after review the Planning Board can approve, approve with conditions or deny the Site Plan. No actions will be taken during this evenings meeting. Mr. Collard asked what the time limit is for decision. Chairperson Jeffery stated the deadline has been extended because Mr. McCabe was not present at the meeting. Chairperson Jeffery stated that a list of concerns should be compiled so that it can be provided to Attorney Andrews so that he can present it to Mr. McCabe's attorney prior to the next meeting. Attorney Andrews recommended that the matter be put on the docket for April's meeting unless an extension is a mutual agreement of both parties. Chairperson Jeffery asked the Board members to provide any questions they may have to him by March 17 so that Mr. McCabe has time to review them prior to the April meeting.

Member Collard stated that it bothers him that the Planning Board has been put in this situation because the Board is being forced by a timeline to move forward when actions from other parties have hindered the process.

Another resident asked if the decision of the Planning Board is the final decision. Chairperson Jeffery stated that the Site Plan review for the Service of Garden/Farm Equipment is final. Legally the Town Board cannot appeal the decision. He stated that residents could appeal the decision; however there is a timeframe in which the appeal must be filed.

Attorney Andrews stated that the Town Board has designated certain parcels of land within the town whereby Sales and Services of Garden/Farm Equipment is allowable by Site Plan review. Hence the reason the Planning Board has been presented the Site Plan. A law was passed from the Town Board to zone this property to allow the Sales and Service of Garden/Farm Equipment and the timeframe in which to appeal that law has passed.

A resident asked how the business could be promoting industrial sand blasting on the property as that does not fit into Service of Garden/Farm Equipment. Chairperson Jeffery stated that blasting is not a part of the Site Plan and is not being considered acceptable use by the Planning Board. The resident asked how the business has not been shut down. Member Collard stated that he felt her concerns should be addressed to the Town Board. The

Site Plan proposed to the Planning Board does not address the building and business concerns that are being presented by the residents. The resident asked why the Boards do not get together more often so that each knows what the other is doing. Chairperson Jeffery stated that recently there have been meetings, but each Board, by law, has to act independently on decisions as checks and balances to the system.

The resident asked again why the buildings and business are not shut down. Chairperson Jeffery stated that he respected her concerns, however, that concern is not what was being presented to address in the Site Plan. Another resident stated that when he went to court for another matter the judge stated that once a building is up, it is near impossible to force somebody to take it down. At this point Chairperson Jeffery stated it was time to move forward and that the Board members should send any questions or concerns on the McCabe property within the next two weeks.

CWM Chemical Services, LLC Site Plan review regarding the Residuals Management Unit No. 2 (RMU-2), 61.00-2-1 & 60.00-3-9.2, 1550 Balmer Road, Youngstown

Chairperson Jeffery stated that a Site Plan visit was going to be set up so that both the Planning and Zoning Board members can see the facility to better understand the Site Plan proposal. This will be a fact gathering site visit — not a meeting with discussion.

Lori Caso and Michael Mahar from Waste Management had a power point presentation to help visualize the Site Plan proposal. The presentation addressed specific questions from the excel document included with the minutes from the February meeting. The presentation is attached.

The proposed area for expansion is in the middle of the facility and will include a new facultative pond. A Site Plan map was displayed showing the CWM property boundary. A proposed new drum building was displayed as well as the RMU-1 building that will be taken out of service. This is a 15-25 year project once started. RMU-1 lasted 23 years.

Buffer requirement was defined as “a strip of land which is planted and maintained in the shrubs, bushes, trees, grass or other ground cover material and within which no buildings or structure shall be authorized except a wall or fence.” The property boundary was illustrated along with the new FAC Bond 3 at the south end of the site. The RMU-2 boundary is currently proposed at 75 feet from the Town of Porter property line. Mr. Mahar stated that the buffer area is a deed-restricted area and therefore there is nothing that will ever be built on the southern border that only has the 75-foot buffer. However, because the code states it needs to be 150 feet or greater, Mr. Mahar stated that before the cell was built in another 5-6 years after the project has started, CWM would need variances or to modify their application with a redesign to the DEC. It is understood that the Site Plan application can be accepted with that condition. Chairperson Jeffery stated that the 150-foot buffer was part of the code as well as the host agreement.

The next concern was the Waste Management Plan (NYSDEC requirement) and permit requirements from the DEC showing the queuing for possible 220 trucks per day. Mr. Mahar stated that between the guardhouse and scale house 50 trucks can be staged. As trucks go into the facility to the sampling racks single file will accommodate 50. The trucks can be doubled in that area to hold 100 trucks (total of 150 on facility).

Chairperson Jeffery requested that Mr. Mahar provide a plan that shows how the stacking will appear. Mr. Mahar stated that CWM can only take in 35 trucks an hour and although staging is probably only needed for 35 trucks, he will provide a more detailed drawing to show the queuing plan.

Onsite waste is collected in a recycling container and in a refuse compactor and then taken offsite for disposal. A janitorial service takes care of all waste. Chairperson Jeffery asked for a procedure of how waste is handled so that it can be added to the application to address that concern.

Mr. Mahar asked if the addressed concerns can be submitted as an addendum. Attorney Dowd said that would be sufficient.

The Request for Board Action Site Plan review application was submitted to Code Enforcer Rogers, but was not passed along to the Planning Board members. Assessor Driscoll provided copies to all Planning Board members as attached.

A statement of financial capability was requested to address the post closure bonds. Attorney Dowd suggested that a copy of the Waste Management financial statement be provided to the Planning Board. Because the project is not started, there is not a post closure bond in place. The Planning Board can make it a condition of the Site Plan approval that a closure bond for the new facility is provided.

Attorney Dowd stated that if an applicant submits a Draft Environmental Impact Statement (DEIS) to the New York State Department of Environmental Conservation (DEC), it completely obviates the Environmental Assessment Form (EAF). Because a DEIS was submitted, CWM has "jumped over that step" of submitting an EAF. If only the EAF was submitted, a DEIS could be required (as further information). Therefore, the DEIS submitted to the New York State DEC supersedes the EAF.

Construction traffic is a concern in addition to the waste truck traffic and the routes that will be followed. Routes are typically by the weight of the vehicle. A traffic study has been done and is a part of the project and analysis and will be indicated on the traffic diagram to be provided.

Site Plan approval per code, is good for two years. CWM is requesting a variance for the approval of the Site Plan for the life of RMU-2 with the following conditions:

- CWM obtains a new building permit anytime that construction activities have ceased for more than six (6) months
- CWM submits a request for Site Plan modification for any material changes in the project scope for over the life of RMU-2.

According to Mr. Mahar only one (1) Town Process was needed over the life of RMU-1.

Attorney Dowd stated that a variance could state that the Site Plan review occur every ten (10) years. CWM is requesting that the Special Use Permit be renewed every 10 years as well. The Planning Board could make a recommendation to the Zoning Board for this variance.

Mr. Mahar stated that currently waste is being accepted, but nothing is coming in for the landfill. Gross receipt taxes only apply if there is product coming into the landfill. Therefore the Town of Porter is currently not getting any monies from CWM as a gross receipt tax. Last years receipts (before the landfill was capped) will be presented to the Town for around \$115,000.

Attorney Dowd stated that no formal action can be taken until New York State determines the environmental impact statement. Therefore the determination must be postponed until that time. For practical purposes, the Planning Board can wait until the State has made a determination before hosting the public hearing or the Board can move forward with the public hearing and require conditions for the final of the site approval. Mr. Mahar feels it will take the better part of this year for a decision to come from New York. Once the decision comes in

from New York State, the furthest out of the Planning Board decision would need to be made be within 60-90 days (estimated timeframe). Chairperson Jeffery asked that when CWM has an idea of when the process will be complete to inform the Board so that the public hearing can occur in close timeframe.

The Planning Board will move forward with the site visit in case further questions are raised.

It was suggested that a joint public hearing be held between the Planning and Zoning Board – one for the Site Plan and one for the variance. However, the decisions must be made independently of the two Boards.

A short recesses was taken.

Subdivision request of Cyrus Ardalan to separate a home from farmland and then join the farmland to adjacent parcel. 62.00-1-3, 2381 Youngstown Lockport Road, Ransomville

Assessor Driscoll displayed the property separation so that Mr. Ardalan could illustrate his subdivision. The property is located at 2381 Youngstown Lockport Road. Mr. Ardalan stated that he wanted to separate the house from the farmland using the creek as a dividing line. Once the land that contains the house, farm stand and barn (approximately 3 acres) becomes subdivided, Mr. Ardalan would like to combine the remaining farmland with adjacent farmland. In total there are currently 60 acres in one parcel and 99 acres on the second parcel. Chairperson Jeffery asked Assessor Driscoll if the combination of farmland could be done as an assessor merge. Assessor Discol concurred.

The Planning Board agreed that it was a simple subdivision and therefore Mr. Ardalan needs to provide 5 stamped copies of the survey, an electronic legal description of the subdivision and the State Environmental Quality Review (SEQR) form to the Planning Board. This needs to be done three (3) weeks prior to the Planning Board meeting.

Member Bis made a motion and Member Collard seconded the motion to move forward with the minor subdivision process. All were in favor, motion carried.

Zoning Board recommendation for Keith Shaw – Special Use Permit Renewal, agriculture equipment and lawn mower repair, 1434 Lake Road, Youngstown

Mr. Shaw was not present as the application is for the Zoning Board. The Planning Board can recommend action to the Zoning Board. Member Collard stated that his business is a “model” business for a special use permit. Previously Mr. Shaw had a five (5) year permit, and Member Collard recommended a ten (10) year renewal. The current permit states that the hours of operation are 7:00 a.m – 7:00 p.m. six days a week, Monday through Saturday. Any storage must be hidden from public view. Mr. Shaw repairs lawnmowers.

A motion was made by Member Collard that the application be recommended for approval by the Zoning Board for a ten (10) year renewal of his Special Use permit. Member Bis did ask why this would not be covered by the Town law regarding Sales and Service of Farm Equipment. It was discussed that the original special use permit was granted before the law was passed. Therefore Member Bis seconded the motion. All were in favor, motioned carried.

Application of Joshua Smith — Home occupation in the sale and transfer of firearms, 3880 Dickersonville Road, Ransomville

The applicant or a representative was not present at the meeting. However, it was determined that for a home occupation, a Site Plan must be reviewed and approved by the Planning Board. The only paperwork submitted was a Request for Board Action. State and possible Federal permits may be needed in order for Mr. Smith to run this type of business. Questions were raised as to if there would be ammunition storage. Attorney Dowd was going to look into the permit requirements regarding firearms/ammunition. No action was taken, as there were too many outstanding questions without a representative available for answers. Assessor Driscoll stated that she would contact Mr. Smith to inform him of the requirements for the Preliminary Application regarding the Site Plan review for a home occupation.

Update from Chairperson Jeffery on the NY State Association of Towns meeting

Member Bis recommended that because there were two Board members missing, that this agenda item be postponed until the next meeting. Chairperson Jeffery concurred.

Attorney Dowd report

Attorney Dowd stated that it has been suggested that there be a joint training session for all the Planning and Zoning Boards for the Town of Porter, the Village of Youngstown, the Town of Lewiston and the Village of Lewiston. Attorney Dowd is working to make this happen.

Chairperson Jeffery asked for an update on Chris Guard's property. Attorney Dowd reported that a meeting was held and Mr. Guard stated he would like to build twenty (20) medium to high-end homes with twelve (12) slips on the waterfront. He is talking about proposing that the Homeowners Association would own the river frontage lot (which has 300 feet of frontage) and propose to build twelve (12) slips, which would be owned by the Homeowners Association. The members of this neighborhood would have access to the slips as part of the Association. Attorney Dowd stated that a stipulation can be made upon approval that slips cannot be put in the water until houses are being built.

Chairperson Jeffery stated that Mr. Guard has been speaking with neighbors and seems interested in pursuing this application.

Code Enforcer Rogers report.

Enforcer Rogers was not present, but Assessor Driscoll presented his report.

Member Collard made a motion to adjourn the meeting. Member Bis seconded the motion. All in favor, motion carried at 9:08 p.m.

Respectfully submitted

Amy Freiermuth, Secretary
Town of Porter Planning Board