

**MINUTES
SENECA COUNTY PLANNING BOARD
MAY 14, 2015**

**HEROES 9-11-01 CONFERENCE ROOM
COUNTY OFFICE BUILDING
WATERLOO, NEW YORK**

MEMBERS PRESENT: Keith Beck, Gordon Burgess, William Dalrymple, Donald Denman, Edward Franzoni, Jack Freer, Mary Kelleher (Alternate), Colby O'Brien (Alternate), Michael Scaglione, Michael Smith and John Swanson

MEMBERS CALLED: Betty Berger, Sally Kenyon, Pam Kirk, Mark Lott and Tom Scoles

MEMBERS ABSENT: See Above

STAFF: Harriet Haynes, Planner and Mary DeStefano, Staff Resources Asst., Department of Planning and Community Development

GUESTS: Desiree Dawley, Concerned Citizens of Seneca County (CCSC), Leland Henry (CCSC), Karen Rothfuss (CCSC), Glen Silver (CCSC) and Allison Stokes (CCSC)

The meeting was called to order at 7:04 p.m. by Chairman William Dalrymple.

Chairman Dalrymple appointed Colby O'Brien, Alternate, to sit in for absent member, Tom Scoles and Mary Kelleher, Alternate, was appointed to sit in for absent member, Betty Berger.

The Minutes of the April 9, 2015 meeting were approved by a motion of John Swanson and seconded by Donald Denman. Carried 11 – 0.

PUBLIC COMMENTS:

Mr. Glen Silver, Concerned Citizens of Seneca County, expressed his concern that the agenda for tonight's County Planning Board meeting was not posted on the County website. Therefore, he did not have significant knowledge to address the item that was being reviewed, and requested that action be tabled until after the conclusion of the court determination.

GML Reviews:

Ms. Haynes stated that the first item under "GML Reviews", Park Outdoor Advertising, forwarded by the Town of Seneca Falls has been withdrawn by the request of the applicant.

1) Town of Waterloo, Interpretation of Code Officer's Determination

John Swanson moved and Gordon Burgess seconded adoption of Resolution 17-15. The Town of Waterloo has forwarded for review by the County Planning Board the appeal to the Waterloo Zoning Board of Appeals by Dixie D. Lemmon and Concerned Citizens of Seneca County in connection with the Administrative Determination of the Waterloo Town Code Officer in issuing Permit Number ZP 14-126 to Seneca Meadows, Inc. ("SMI"). Ms. Haynes expressed that all zoning boards of appeals are directly given appellate jurisdiction by State law. Appellate jurisdiction is the power to hear and decide appeals from decisions of those officials charged with the administration and enforcement of the zoning ordinance or local law. This is the primary function and purpose of a zoning board of appeals in zoning administration, and encompasses the power (if an appeal is properly taken to the board) to interpret the zoning ordinance or local law and to grant variances. Ms. Haynes further explained that as a result of the New York State Supreme Court Case Dixie D. Lemmon and Concerned Citizens of Seneca County vs. Seneca Meadows, Inc., Town of Waterloo Town Board and Town of Waterloo Planning Board, the courts determined:

The court does agree with respondents' assertion that neither the Town Board nor the Planning Board may interpret a local zoning law, but only the CEO may do so, and that such interpretation must be appealed to the ZBA before a court may review it. Inasmuch as here, the interpretation of Chapter 135 in regard to the access road has not been formally determined by the CEO, as evidenced by a written and filed interpretation of the local zoning code, the court may not entertain this cause of action. The petitioners must exhaust their administrative remedies, after the CEO files his determination regarding interpretation of Chapter 135 in regard to the access road through the R-1 zone. Therefore, the second cause of action is **dismissed, without prejudice.**

The Town Code Enforcement Officer issued a permit on February 20, 2015, to SMI for construction and operation of the proposed clay mine. In appealing the Code Enforcement Officer's determination, Ms. Lemmon and CCSD contest that "Because the proposed haulageway for the Meadow View Mine is a required and integral element of SMI's mining plan, and because mining uses are prohibited in the Town of Waterloo's R-1 Zoning District pursuant to Chapter 135 of the Town of Waterloo Code, construction and operation of the proposed haulageway for the Meadow View Mine would be in violation of Chapter 135 of the Code."

Ms. Haynes reported that when this Board reviewed the proposed Site Plan and Special Use Permit for the Meadow View Mining Operation in June of 2014, the access road was a part of that application and at that time, the Seneca County Planning Board stated no opposition to the location or development of the proposed access road.

Ms. Haynes cited court cases that support both sides of the argument as to whether accesses to a non-residential use can traverse a residential zone.

The Department of Planning and Community Development's recommendation is that the Seneca County Planning Board finds no new significant issues of County concern in regards to the appeal of the issuance of Town of Waterloo Zoning Permit 14-126, and to further recommend that the Town of Waterloo Zoning Board of Appeals make its recommendation based on its due consideration of the issues and on the recommendations of its legal counsel. Carried 11 – 0.

2) Town of Seneca Falls, Use Variance, Shaklee, Scott & Mary Beth

Jack Freer moved and Colby O'Brien seconded adoption of Resolution 18-15. The applicants are seeking the Use Variance to allow the structure at 2389 Lower Lake Road to be used as a two-unit residential dwelling. Ms. Haynes stated that the applicants maintain that the property was established as a two-unit structure prior to their purchase of the property in 2005; however, no documentation was provided in the application to support their statement. Ms. Haynes stated that the 2015 tax rolls indicate the property as a one-family residence. Ms. Haynes stated that if the applicants can provide evidence that the property was legally converted prior to their purchase and/or before the 1991 adoption of the Seneca Falls Zoning Code, then reasonable argument can be made regarding the statutory requirements for the granting of the Use Variance. Ms. Haynes stated that lacking any such evidence, the applicants would have to prove the hardship clause. A discussion followed regarding whether the property was used for one or two units in previous years. Ms. Haynes reiterated that no documentation was provided showing proof of it being used as two units. Conditional approval is recommended upon the applicants demonstrating either: 1) that the property was legally converted to a two-unit residence prior to the 2005 purchase, or 2) the applicants fully demonstrating lack of reasonable return, unique circumstances, essential character of the neighborhood, and self-created hardship. Carried 11 – 0.

3) Town of Tyre, Proposed Site Plan Review Regulations

Gordon Burgess moved and Colby O'Brien seconded adoption of Resolution 19-15, recommending that the Town of Tyre adopt proposed Local Law #2 of 2015. The proposed regulations will involve all development of land in the Commercial District, the Industrial District and in the Agricultural District other than single-family residential and agriculture. Ms. Haynes stated that the regulations establishes the approval process that will be a two-step process starting with a pre-application when the applicant provides a sketch plan and narrative statement outlining the project. The Local Law details the information to be included with a complete application and establishes procedures wherein the applicant can request that particular items be waived in relation to their application. Proposed Local Law #2 also authorizes the Planning Board to require the applicant to post a performance bond to cover reasonable costs to the Town for SEQ, engineering and legal review. Carried 11 – 0.

4) **Town of Tyre, Proposed Subdivision Regulations**

John Swanson moved and Mary Kelleher seconded adoption of amended Resolution 20-15, recommending that the Town of Tyre adopt proposed Local Law #3 of 2015: Subdivision Regulations, conditional upon 1) clarification of Sections 5C&D and 2) removal of the phrase "and the transfer of agricultural parcels of 10 acres or less for the purpose of continued agriculture" from the definition of subdivision. The Town of Tyre has been in the process of developing Subdivision Regulations and the Town's Comprehensive Plan recommends the adoption of such regulations.

Ms. Haynes stated that subdivision is defined into minor or major subdivisions. The regulations further list the areas in which the Planning Board may require improvements to the subdivision, e.g., street standards, signage storm water system, etc. Also, under the definition of subdivision, a subdivision for the purpose of transferring 10 acres or less for continued agricultural use would be exempt from subdivision review. There was then conversation regarding if this clause had a particular use in supporting land staying in agricultural production. Concerns were raised as to why it would only pertain to parcels under 10 acres. There was also discussion regarding ramifications in relation to lots within that subdivision that were not for continued agricultural use. John Swanson indicated that as a farmer, he has no problem with having land he plans on selling to another farmer going through subdivision review. It was questioned if the land was to stay in agricultural production, if there were time limits regarding how long the property must be used for agriculture.

Regulations in Section 5C call for all subdivision plats to have the "endorsement of the Seneca County Health Department." The Seneca County Health Department does not review all land subdivisions. They review subdivisions covered under Health Law – Article 11 – Title II Realty Subdivision: Water and Sewerage Service §1115. These Regulations only require subdivisions to be reviewed when they include more than five parcels being subdivided which are less than five acres each. Legal Counsel working with the Town of Tyre has proposed that a clause stating where required by the Seneca County Health Department and/or State or local law be included. This will satisfy the confusion.

Section 5D of the regulations imply that subdivisions would only be referred to the County Planning Board if the County had an "Official Map." The concept of an "Official Map" comes under General Municipal Law Section 239N. Under the definition for proposed features of GML 239N3a, referral requirements are listed. Legal Counsel for the Town of Tyre has drafted an amendment *wherein if the County has established a County "Official Map"* would be deleted.

Ms. Haynes stated that the proposed Local Law authorizes the Planning Board to require the applicant to post a performance bond to cover reasonable costs to the town for SEQR, engineering and legal review. Carried 11 – 0.

5) **Town of Tyre, Proposed Dog Kennel Regulations**

Colby O'Brien moved and Michael Smith seconded adoption of Resolution 21-15, which recommends that the Town of Tyre adopt proposed Local Law #4 of 2015. The regulations define a commercial kennel as any use on a lot, whether such use is primary or otherwise, wherein nine or more dogs, each of which is six months of age or older, are kept or maintained for sale, boarding, breeding, grooming, letting for hire, training or any other purpose involving compensation, whether monetary or otherwise, of any kind. All commercial kennels will be required to maintain State and Federal Permits, and individual dogs staying at the kennel will be required to have current licenses and in compliance with all vaccinations and canine health maintenance. Such kennels are also to be in full compliance with zoning and NYS Fire Prevention and Building Code regulations. All commercial kennels in the Town of Tyre will be required to have a town license and to have it annually renewed. It was questioned if a commercial kennel will be an allowed use in the Residential Zone. Ms. Haynes stated that the Town of Tyre does not have a Residential Zone – the three zones in Tyre are Commercial, Industrial and Agricultural. Carried 11 – 0.

6) **Town of Fayette, Special Use Permit & Site Plan Review, Vanno Estates LLC**

Gordon Burgess moved and John Swanson seconded adoption of Resolution 22-15. The applicant is seeking approval for an expansion of use – construction of additional storage units on property located at 2688 Route 96, driving south on Route 96, leaving the Village of Waterloo. In 1988, one storage unit was constructed on the site. In May of 2007, the County Planning Board recommended conditional approval on an application to construct a 30' X 100' self-storage building. Ms. Haynes stated that the Site Plan submitted shows a large non-permeable surface around the existing and proposed units. It also shows a fence entirely around the site but does not include any indication as to the type or height of the proposed fence, nor does the application give any indication of the lighting that might be installed. Conditional approval is recommended upon the same conditions given in 2007: 1) the applicant having prepared a **Storm Water Management Plan**, and that the Seneca County Soil and Water District be asked to review the plan for sufficiency, 2) that the town works with the applicant to determine a

fencing style and type which will meet the applicant's perceived security needs and fit in with the residential and service character of the neighborhood, 3) that the applicant and town come to agreement as to the amount of external lighting that will be allowed, its location, and that all lighting must be designed so as to cast light at the ground but not illuminate beyond the property line, and 4) that the applicant and community work together to establish signage requirements, including total area not to exceed 65 Sq. Ft. including wall or fence mounted signs. Carried 11 – 0.

7) Town of Fayette, Site Plan Review & Special Use Permit, Locke, David

John Swanson moved and Donald Denman seconded adoption of Resolution 23-15, recommending that this request be left solely to local determination. The owner of the property wishes to convert his single-family home at 4180 Teall Beach to a Bed and Breakfast. The area is a mix of agriculture and residential. There will be no exterior changes to the structure. The property is not currently farmed and the change of use should have no negative impact on agriculture in the area. Ms. Haynes stated that because the property is near the end of a long private road, the town needs to take into consideration the impact on the neighborhood. Carried 10 – 0, with an abstention from Michael Smith.

8) Town of Fayette, Use Variance, Area Variance & Special Use Permit, Gardner, John & Qwiksolar LLC

Colby O'Brien moved and Michael Scaglione seconded adoption of Resolution 24-15. Mr. Gardner is seeking the necessary approvals to install a Solar Array on his property at 676 Lerch Road. The series of solar panels will be 9' wide, 8' tall and 94' long. Ms. Haynes stated that this application was originally submitted as a Special Use Permit and Area Variance; however, clarification from the Chairman of the Town of Fayette Planning Board indicated that the applicant will also need to either receive an interpretation from the Zoning Board of Appeals that Solar Arrays are a "Customary Residential Accessory Building" or a Use Variance. Ms. Haynes stated that if an interpretation is not made regarding this being an accessory use, the granting of the Use Variance should be considered first as it has the highest standards for it to be granted. The Area Variance is such that the array may be located within 6' of the property line and the applicant contests that this is necessary so that the array is not located over the pond on the property. Ms. Haynes stated that the Solar Array will be used to power his pole barn / garage. It is recommended that this request be left to local determination, as this particular Solar Array should have minimal impact on the adjacent agricultural properties, and that the County Planning Board encourages the Town of Fayette to consider adding Solar Energy Systems to Zoning Section 500D (Uses Permitted with a Special Use Permit) and to develop a section which lists the criteria. Carried 11 – 0.

OLD BUSINESS: None.

NEW BUSINESS: None.

The meeting adjourned at 8:36 p.m. by motion of John Swanson.

Respectfully submitted,

Mary DeStefano, Secretary
Staff Resources Asst.