

DRAFT
YATES COUNTY PLANNING BOARD MEETING MINUTES
JANUARY 24, 2008

PRESENT: Kevin North, Loretta Henrie, Pidge Bower, Jerry Lane, Cubby Graves, Lane Clute, Dave Christiansen, Marilyn Scharf, and John Sawers.

Others in attendance: Don House, Yates County Legislator; Peg Thompson, Dundee Observer; Steve Catlin, Town of Benton; Joe Bovenzi, Interim County Planner, and Karen Phillips, Recording Secretary.

Excused:

Absent: Jim Ritter and Chuck Mitchell

CALL TO ORDER:

The meeting was called to order at 7:00 p.m.

APPROVAL OF MINUTES:

Mr. Graves made a motion to approve the November 15, 2007 meeting minutes. Ms. Bower seconded the motion. All in favor.

CONSIDER GML 239 REFERRALS:

2008-01 – Village of Penn Yan. General Municipal Law 239-m Referral: “Subdivision Chapter of the Code of the Village of Penn Yan.” The Penn Yan Village Code’s subdivision chapter will be amended to require sidewalks in new subdivisions and provide an exemption from subdivision regulations for minor lot line adjustments.

Mr. North noted that if any problems arise over the sidewalk requirement, the developer/builder will have to go to the building inspector for clarification. It is a good idea for the Village to require sidewalks in new subdivisions. In addition, the Village is trying to streamline the subdivision process as laid out by its subdivision laws so that minor lot line adjustments do not require a lengthy regulatory process.

Mr. North made a motion to approve this amendment. Mr. Graves seconded the motion. All in favor.

2008-02 – Town of Potter. General Municipal Law 239-m Referral: “Town of Potter Amendment to Fire Prevention and Building Code Law No. 1 of 2008.” The Town

Board is amending the Local Law on the enforcement of the NYS Fire Prevention & Building Code.

Mr. North indicated that this referral is very similar to what the Board has received in the past from other towns. These revisions are basically intended to update local building code and streamline the enforcement process. The good thing about this is that all municipalities in the County are operating under the same regulations, which is a very important thing to do. It makes the enforcement process more uniform across the county.

Mr. North made a motion to approve this action as it has been sent to us. Mr. Clute seconded the motion. 8 members were in favor of the vote. Ms. Bower abstained from the deliberation and the vote.

2008-03 – Town of Milo. Resolution No. 01-08 of the Town of Milo Board dated January 3, 2008, in regard to proposed legislation regarding overlap of membership between the Planning Board and Zoning Board of Appeals in the Town of Milo.

Mr. Bovenzi noted that the only concern he had with this referral was that it proposes to increase the number of members on the Town's Zoning Board of Appeals from 5 to 7. According to New York State law (Article 16, Section 267), a town's Zoning Board of Appeals can have either 3 or 5 members. Mr. Bovenzi said that according to Mr. Graves, the Town Attorney said that having 7 people sit on the Zoning Board is okay to do, and suggested that the Board consider approving this referral with the stipulation that the Town confirm with its legal advisors that this is permitted.

Ms. Bower made a motion to approve this action, with the stipulation that the Town confirm that this is legal. Mr. Stape seconded the motion. 8 members were in favor of the vote. Mr. Graves abstained from the deliberation and the vote.

2008-04 – Irvin Burkholder, 4170 Ferguson Corners Road, Town of Potter. Area Variance, old barn foundation is only 51' from center of the road. An area variance for 24' would be required.

Mr. Sawers stated that a new barn has already been built up to the old foundation. The end of the barn that faces the road was left open so Mr. Burkholder can extend it over the old foundation, but he has not built over the old foundation. He wants to complete the barn out over the old foundation and so that its end is a little closer to the road. Mr. Sawers does not think there is any problem with this proposal. Mr. Stape agreed and noted he does not see where a problem would arise from this proposal either.

Mr. Sawers made a motion to approve this action. Mr. Christiansen seconded the motion. 8 members were in favor of the vote. Ms. Bower abstained from the deliberation and the vote.

2008-05 – Special Use Permit from Stephen Catlin, 2901 Route 364, Town of Benton. Extension of a special use permit to be used to include sales of ice cream, pizza, subs, sandwiches and a bakery that will be located in the existing residence.

Mr. Catlin attended the meeting to provide additional information to the Board about this referral. He is the new owner of an existing local business and wants to continue operating the business. He noted that he is not proposing to build any new buildings and he is keeping the same access from Route 364. Mr. Christiansen asked what his parking lot would hold for cars at this time, and Mr. Catlin said that he would estimate it can hold roughly 14-15 cars right now. Ms. Bower asked if they would continue selling brown chicken eggs. Mr. Catlin noted that he has Mennonites and other people who want him to carry those eggs and he has been talking with Ag and Markets about it; it sounds like that would not be a problem.

Mr. Christiansen asked if there would be a problem if they had a lot more cars there; is there more room that could be made into parking. Mr. Catlin said he does not foresee parking as a problem; however, there is more room on the property for parking if extra space is needed. Mr. Catlin said that there is a horse tie-shed on the east side of the parking area, but that he is not happy as to where it is located. He is currently looking for a better place to locate the shed. When buggies pull in and the horses leave their droppings and then the buggies back out again, this action can spread the droppings out into the parking area where someone might walk on them. He does not want horse droppings tracked into their store, particularly for health reasons. Mr. Christiansen asked if there would be room to move the shed back into the parking area and then have the horses exit by going out the other side and out instead of backing up. Mr. Catlin said the location of the shed is definitely something he would like to see changed; however, there is nothing in his plans to address this right now.

Mr. Christiansen made a motion that the Yates County Planning Board has determined that this proposed action only has considerations which are of significance to the Town of Benton. This action appears to have no significant countywide or inter-community impact. Mr. North seconded the motion. 8 members were in favor of the motion. Mr. Stape abstained from the deliberation and the vote.

2008-06 – Town of Jerusalem. Zoning text amendment relating to notice of hearing before the Zoning Board of Appeals.

The Town of Jerusalem is extending the timeframe required for the Zoning Board of Appeals to distribute notices of hearings. Currently, the law requires the Zoning Board to distribute such notices at least five days prior to the hearing. The proposed law will require notices to be distributed ten business days prior to the hearing. The new law also clarifies what the contents of the notice should include.

Mr. Graves made a motion to approve this amendment. Mr. Sawers seconded the motion. All in favor.

2008-07 – Village of Penn Yan. Zoning map amendment and zoning classification of Annexed Territory. The territories known as 2421 Old Bath Road and 1841 North Main Street are being annexed to the Village and will require zoning district classification. It is proposed that each be classified as Residential R-1.

Mr. Christiansen stated that in order for land to be annexed into the Village, the property owners have to apply to be annexed. Mr. Bovenzi noted that he checked with the Village Clerk on the annexation process, because when he first received the referral there was nothing confirming that the Village had gone through the proper annexation procedures as laid out in State law. The Village Clerk confirmed that there was a petition and vote and it was done according to the State's procedures. Now the Village is at the point where it will be annexing the land by local law and referring it to the County Planning Board for review, which is one of the final stages for annexation. The Village has done the background research and work.

Mr. North asked if this property will change hands again. Mr. Bovenzi said they didn't say that was the case, but that doesn't really have anything directly to do with the annexation process or rezoning.

Mr. Christiansen made a motion to approve this amendment. Mr. North seconded the motion. 7 members were in favor. Mr. Stape and Mr. Graves abstained from the deliberation and the vote.

COMMUNICATIONS:

- Mr. Bovenzi distributed the draft 2007 Annual Report, which everyone should have received with their agenda packet. This report is basically just updated from what Chris Wilson prepared in 2006. Mr. Bovenzi stated that he just modified the report's formatting and used the updated statistics from 2007 instead of statistics from 2006. What the Planning Board did in 2007 was pretty much in line with what it did the year before. The report includes the numbers of referrals that were received. Nothing really stuck out. The final approval of this report will be made at the YCPB's February meeting. Mr. Bovenzi noted that if anyone has any comments, please direct them to him and he will report back in February; if everyone is happy with the draft at that time, the Board can approve it at that meeting.

Ms. Bower stated that at some point, and the Board may want to have this addressed by the new County Planner, it may be interesting for the Board to find out what the municipalities do with the Board's recommendations – do they override the Board or not. Also, when the Board includes suggestions or recommendations in their responses to the applicants, it would be interesting for the Board members to find out

whether those suggestions and recommendations make any difference or not. The Board members sit here every month and listen to issues carefully and are very professional about what and how it reviews, but does it matter? Mr. Stape stated that in the Town of Benton it does make a difference. There have been things that were brought up at the Yates County Planning Board and the Town of Benton definitely took heed to it.

Mr. Bovenzi said that all of the response letters from the municipalities regarding their final actions are on file in the County Planning Department. He noted he does have the master database available to anyone who wants to see it. That database records what the final response was for each referred action. That level of detail is not on the draft report that was just distributed, but it is available. Ms. Bower noted that she was just suggesting in the future that there be something that we can look at as a board to see if the townships listened to what we said and did they follow the recommendations. Mr. House asked if it would be appropriate for the County Planner to report any objections by the local governments back to the Board members. The Board members thought this was a good idea. Ms. Bower said that this would make all of us feel either better or worst; at least we would know. Mr. North said that most of the times when we ask the municipalities to respond, they do respond. Mr. Stape said it is good to know there is another board looking at these issues; perhaps the County Planning Board will catch something about a proposed project that possibly the local board may have missed. Four heads are better than one.

- Mr. Bovenzi stated that in late December 2007 a letter was received in the County Planning office from concerned citizens in Penn Yan about the Lake Street Plaza redevelopment project. Basically, the letter came in too late for the Board to have reviewed it for its December meeting. Mr. Bovenzi noted that he contacted the Village of Penn Yan and spoke with the Planning Board clerk about this letter. The clerk, Lynn Duryea, indicated to him that the concerns raised by the letter had been addressed by the Village in the most recent re-design of the project. Specific issues that the Village addressed included drainage, lighting, and other design issues. The Village Planning Board has already met with some delegates from the group of concerned citizens to discuss their concerns. Mr. Bovenzi said that he does not anticipate any other issues coming up as a result of this letter, and that his understanding is that the Village has effectively addressed the concerns that were raised in the letter.

Mr. North indicated that the letter gave the citizens a chance to voice their concerns. Mr. Christiansen asked if at some point this referral would come back to this Board. Mr. Bovenzi noted that it will not; this issue has gone beyond the County Planning Board's purview because the Board only had 30 days to respond to the referral from the date it received the referral. As the Board did not meet in December, essentially all of the referrals on the December agenda were kicked back to the municipalities for their final action. If they wanted to, they could send their referrals back to the County Planning Board again, but none of the municipalities did. The Town of Middlesex sent their proposed moratorium back to the County Planning Board but since the

Town Board has already enacted it, there is no point in the County Planning Board making a recommendation on that referral. Mr. Bovenzi noted that, because of this situation, he was not sure why the Town sent the referral back to the County Planning Board. Ms. Henrie said that the Town still wanted the Board to review it and wanted their determination. Mr. Bovenzi said that it is fine for the Board to review the referral in an *advisory* capacity, but it cannot issue a formal recommendation and the Town will not be bound by what advice the County Board sends back to it. There is a limit on the County Planning Board's authority in this regard.

OLD BUSINESS:

Recent GML 239 Referral:

2007-72 - Town of Middlesex. Review request for temporary moratorium for the installation of tram systems in the Town of Middlesex.

Ms. Bower asked Ms. Henrie what the idea was behind the moratorium. Ms. Henrie noted that because the word "tram" is used in the moratorium, there is some confusion as to whether or not a tram is a structure, but the lawyers say that it is not. In order to have any regulations on trams, a definition of what a tram is has to be included in the law. The Town wants engineering plans and studies done for tram installations in order to make sure they are safe.

Mr. Bovenzi stated that the Town of Gorham, in Ontario County, has also had some issues with trams in recent years. The Town chose not to require permits for them. According to the Town's code enforcement officer, if the Town issues a permit, the Town could be liable if something goes wrong as a result of an incomplete or improper inspection. He said that trams are very relevant to zoning issues in terms of appearance and how they are engineered and is it a cable that runs on a slope. A local law regarding trams is probably something that you need a professional engineering firm to work on. Ms. Henrie noted that is what the Town wants; that is, a property owner to submit engineering plans for trams and make sure that the design is properly down on paper. Mr. Stape asked why the Town is liable. Mr. Bovenzi said that, according to the Town of Gorham, if the Town issues a building permit or certificate of occupancy and there is an accident and something happens, then the Town could be potentially sued if there is a negligence on their part – maybe they did not do a thorough inspection of the facility – so the Town of Gorham did not want to take on that responsibility. Mr. Bovenzi suggested talking to the Town of Gorham to get all of the information on this process, but they felt they did not have the resources at this moment to take on the ability to inspect and permit those. Mr. Stape said that if, in Gorham's case, they had an engineer come in and the thing was built by the engineer's prints, then wouldn't that let the Town off the hook? Mr. Stape said that the engineer should come back and look at that project, like they would do for a septic system. Mr. Bovenzi said that could be what the local law should state. The local law could say that it took three months to install the system, and the engineer who designed the system must come back and inspect it to make sure it is

working properly. The Town then has to make sure that it has the staff expertise to be able to check the engineer's work. That was what kept Gorham away from enacting such a law. Mr. Stape said possibly the engineer who designed it, or someone who is qualified to inspect it, could come back periodically every year. Ms. Henrie said that there are already trams on the lake. Who is in charge of them? Mr. Bovenzi confirmed that there are already quite a few in the Town and that there is no local oversight of them.

Mr. Christiansen gave an example of someone who owned a lake lot with fairly steep stairs and they became handicapped – the only way to get up and down was to have some sort of tram. He said he doesn't understand why trams should be outlawed; it does not seem realistic. Mr. Bovenzi said the point of a local law on trams is not to outlaw them, the point is to make sure that they are properly engineered and safe to use. Ms. Henrie said they all have to be hooked up to a rope. Mr. Christiansen said it would be the owner's responsibility to have them properly installed. Mr. House stated that an owners responsibility does not guarantee that everyone will install them properly. Where the liability comes in is when the Town says it is okay and has approved its construction, and then an accident occurs. That is what the Town wants to protect itself against. Mr. Christiansen said that a person can say the same thing when steps are installed up to their house or porch – and you let it fall into neglect and let it fall through – the town is not liable.

Mrs. Scharf asked if these trams were going to be for 8 or 12 families. Ms. Henrie said that the developer wants to build a tram so that he can subdivide this piece of property. It was agreed that would be a different story. The moratorium is to be put in place so the Town can check the project out and put forth the rules and regulations they want to establish; or if they want to allow it or not, or take it under their wing. Mr. Stape asked that if an engineer had to come back every year and it was worded in the moratorium that the Town is not liable, does that eliminate the Town as long as it was worded as such? Mr. Graves noted that when he heard that this tram was going to be put in in order to subdivide the property, to him that would be more in line of the public community. The Town is not liable for ski lifts and that is a private entity.

Ms. Bower asked if the Town of Middlesex wants something from the County Planning Board in response to this referral. Ms. Henrie said that the Town Board wanted the County Planning Board to know that this moratorium was adopted at its January meeting and wanted it in their (the Town's) files that the County did review it. The Town wanted to know what the County Planning Board's determination was, including any recommendations for the Town to consider and that such recommendations would be appreciated. Mr. Stape noted he would recommend that the Town have an engineer design trams and that every year they would have someone, such as an engineer or someone who is qualified to look at it and approve it. Mr. Christiansen stated that he believes such a recommendation would be putting a lot of stipulations on people's property. If someone builds a stairway down a steep embankment, no one comes to inspect it to see that those steps are kept properly every year. Mr. Stape agreed with Mr. Christiansen. In that case the steps are inspected once and it is left up to the property owners to maintain them. Mr. Stape said that in the case of trams, the Town is dealing

with a mechanical device involving cables and pullies; and if someone doesn't maintain it, next thing you know, someone could get killed. Mr. Stape said that on Keuka Lake there have been broken cables where people have gotten hurt. Mr. Christiansen noted that pretty soon a person won't be able to turn around without being stopped. He stated that if Mr. Stape put one in and a guest came to visit him and he got hurt on it, the owner would get sued. The guest is not going to come back on the county or the Town. That is up to the owner; that is his responsibility. Mr. Stape agreed that was exactly right. Mr. Bovenzi said that this is the view that the Town of Gorham is taking. It would become an individual's problem and not the Town's. People can still put them in, but in the case of a lawsuit, the Town is not responsible. Mr. Bovenzi agreed that Middlesex should have a moratorium in place until the Town figures out its way forward. Ms. Bower stated that one of the questions that should be noted is that if the Town takes a stance that these trams are to be applied for and reviewed in some sort of manner, are they then accepting liability for those trams? Or like Gorham, they said to put them in if you want to, but it is the owner's problem if anything goes wrong. Maybe that is the better way for the Town to go. Mr. Stape agreed. That would then take the burden off and you're back to the home owner having to maintain it. That would put the liability back to the homeowner, which is where it belongs. Mr. Bovenzi said he will draft the letter and have it sent out. The letter will basically state that the County Planning Board is in favor of supporting the moratorium, but also ensuring that the Town considers that they not take on responsibility for the inspections and liability on trams.

Mr. Stape asked Ms. Bower if she has done anything with the dog kennel issue. Ms. Bower said she has not done a thing and is waiting until the new Planner comes. She noted that she has been thinking about it a lot, but right when Mr. Wilson left he was doing some good things regarding kennels and they did synthesize what they felt their role was for coming up with standards and recommendations and basic plans. Then Mr. Wilson left and the work on dog kennel guidelines were one of the ongoing projects that was left hanging. At that point, the Board members were all personally shocked that he left and she decided to not reinvent the wheel, but will have to review, when the County hires a Planner, what the status is on that particular item. She noted there are some other items as well, such as the Route 14A Corridor, that the Board has essentially tabled until the County has a new Planner. Mr. Bovenzi stated that he has had a few conversations with Sarah Purdy in regards to the dog kennels guidelines. Her thoughts are that such guidelines are worthwhile things to be looking into and studying, but that it might be better to retain a consultant to specifically develop a model ordinance for municipalities to adopt on that issue. He then noted that he can only do the basic support of the Planning Board and a few other odds and ends on priority projects. Mr. North and others stated that they appreciated the work Mr. Bovenzi has done for the Board. Mr. Bovenzi thanked them and said that if the Board lists those specific concerns or issues tonight or at the February meeting, then when the new Planner comes on board and gets situated, that person can pick up where it was left off and get things going again. Mr. Stape said the worst part of this situation is that if the Board had held its December meeting, it would have been a long meeting because of that. It would have been long and drawn out. There is no basic plan or guidelines regarding handling dog kennel issues available for the Board to use. The Board needs to have some document for guidance because if another

dog kennel issue comes up, it will take the Board forever to discuss it and such a discussion needs to be streamlined.

Mrs. Scharf asked what happened with the December referrals, since the County Planning Board did not meet. Mr. Bovenzi said that they were kicked back to the municipalities for final action. The County Planning Board has 30 days to review referrals and if it does not, for whatever reason, the referrals are kicked back to the municipalities for final action. Mrs. Scharf stated that Raymond Hoover's kennel is one that she visited and he obviously had more than 60 dogs in it. She said that a 200 dogs kennel does not surprise him. All the dogs are in the same room and it is quite a racket in terms of noise. The kennel seemed to be clean and orderly, but it looks like the Town of Starkey has approved allowing him to have a permit for 200 dogs. Mrs. Scharf noted that in the Town of Barrington they have gotten to know some of their Mennonite neighbors because they are working on a comprehensive plan and some of them have been coming to their meetings and it has been terrific. She said they are a delight and one of their members talked a long time to one of the Mennonites who has a kennel and he is concerned that some of the laws that the state imposes really aren't strong enough and he would like to see an improvement. Mrs. Scharf said that this is a very important business for them and they want things to be done right so that large scale kennels are not called puppy mills. Mr. Christiansen indicated that it is to their benefit to do a good job with operating these kennels. Mr. Stape stated that the Town of Benton had one proposal where a farmer had brought 50 dogs up from Pennsylvania without permission and then it was turned down. He was allowed to keep four dogs and when the building inspector went back, it was not as clean as it was when they had looked at it prior to that. He then noted that kennel operators have to go by the Ag and Markets guidelines and have some sort of limitations. Ms. Bower said that she had read all of the cruelty literature and if cruelty prevention rules were enforced, there would not be a possibility of having these dog kennels. Mr. Stape indicated that some farmers are doing a good job of operating them. It does not make any difference if it is horses or alpacas or dogs, if someone is doing a good job, you can not rule them out. Ms. Bower said that it is like so many laws that the County has; if the particular old laws were in force, you could not do what you are doing now. The laws need to be cleaned up.

NEW BUSINESS:

Mr. Bovenzi reported that he met with Yates County Administrator Sarah Purdy earlier in the day and she mentioned that she had interviewed a good candidate for the County Planner's position. According to Ms. Purdy, the candidate is originally from the area, but has been living in Maryland for the past few years and now wants to move back to the area. Nothing is confirmed yet, but Ms. Purdy thought that the best case scenario might be that that this candidate is hired soon, comes on full time in mid-February, and will be present at the February YCPB meeting. Mr. Bovenzi noted he will also come to the February meeting to help the Board transition over to the new Planner. He said that nothing has been confirmed yet, but it is a major step forward and he thought the Board members should know about it.

Mr. House stated that the Legislature meets in five different committees the 1st Monday and Tuesday of every month and the hiring of a new Planner would be approved at that time. They have also interviewed a candidate for the Real Property Office.

ADJOURNMENT:

Mr. Graves made a motion to adjourn the meeting at 8:20 p.m. Mr. Stape seconded the motion. All in favor.