

DRAFT
YATES COUNTY PLANNING BOARD
MEETING MINUTES FOR
MAY 27, 2010

PRESENT: Jim Ritter; Kevin North; Alan Snyder; Chuck Mitchell; Sandra King; Dave Christiansen; Ron Rubin; Jerry Stape; Douglas Skeet; Judy Wiltberger, and Marilyn Scharf.

Also in Attendance: Donald House, Yates County Legislator; Pat Galvin; Jacob Provoost; Lennie Rugg; Leon Button; Dan Doyle; Rocco Venezia; Shawna Bonshak, Yates County Planner, and Karen Phillips, Recording Secretary.

Excused: John Sawers.

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

APPROVAL OF MINUTES:

The minutes from the April 22, 2010 meeting had the following corrections: 1. Under the 2010-21 application, Linwood and Cindy Hough – Sandra King is her aunt by marriage, not cousin. 2. Also, under the 2010-19 application, 3rd page, 3rd paragraph, half way down – the only documentation submitted was the initial comprehensive plan from 2005 – the plan did not allow for wind turbines – it should say changed instead of unchanged in 2009. There should also be a question mark at the end of the next sentence.

Chuck Mitchell stated he was not present at last month's meeting and while reading over the minutes he did not understand some of the things that he read and suggested that Mrs. Bonshak go over them again to make sure everything is okay as written, as this could become a very important document.

Mr. Mitchell made a motion to hold on approving the minutes until the next meeting. Dave Christiansen seconded the motion. All were in favor.

GML 239 REFERRALS:

2010-26 – Leon Button, 5768 North Vine Valley Road, Town of Middlesex. Applicant requests an area variance from the minimum setback requirement for an agricultural building in the AG District; 100' required with 60' setback requested.

Mr. Button stated the reason he has to be at 60 ft. from the road is because there will not be room for access to the barn on the north end if they go further north. For the space that is there and the size building he is putting up, either it has to go more towards the road or he won't have access on the north end. There would be a traffic safety issue if the access were from the road. The shop will eventually be on the north end which will be centrally located to the other buildings. This will help increase the productivity of the farm, to store equipment and increase operations and be more efficient in the business. They will be able to have more of the equipment under roof as well. The building that was torn down was considerably smaller, but the setback is only about a 10 ft. difference from the former

building. Mr. Button owns property on both sides of the road. The nearest neighbors are his mother and brother and they have no complaints. This has been approved by the Town of Middlesex pending County Planning Board review.

Mrs. King made a motion to approve this application; he is expanding his farm and looking to increase productivity. This has no countywide impact. Doug Skeet seconded the motion. All were in favor.

2010-27 – Lennie Rugg, 195 East Swamp Road, Town of Potter. Applicant proposes to subdivide an existing 6.3 acre parcel into two conforming lots.

Mrs. King stated she understands that this application has already been acted on at the Town of Potter Planning Board and was approved. This is just a parcel that is being divided into two conforming lots. It has no countywide impact. Mrs. Bonshak stated that regardless of the Town's review, this application is still subject to County Planning Board therefore it is not officially approved until this Board makes a recommendation either way.

Mrs. King made a motion to approve this application. It has no countywide impact. Mr. North seconded the motion. All were in favor. Mrs. Bonshak noted that this should not have been approved before our Board acted on it.

2010-28 – The Highland Group of Canandaigua Lake, LLC, 556 East Lake Road, Town of Middlesex. Applicant requests subdivision and site plan approval for a three (3) lot minor subdivision in steep slope (shoreline cliff area).

The applicant stated that the lot to the south, lot #1 currently has a driveway on it, but lot #'s 2 and 3 will have driveways constructed. Mr. Mitchell stated that Soil and Water is only recommending one driveway and asked how that would work. The applicant noted that when this project started they worked with the Town of Middlesex for almost a year on one driveway. The Town has a law in place that says you can't share a driveway. The Town Board would have to change the Law as there is no variance process. By code, they can do four lots there. It was his recommendation to do three lots to secure one driveway. Following their code and working within the steep slope and staying within the guidelines they have, the current design is the best they could come up with. Mr. Mitchell said he doesn't understand the beach access. The applicant stated that for lot #1 there is a path and it's very gradual, but lots 2 and 3 will have to have staircases. It is quite typical through there. They do not need any variances for this; it is all done by code. They have not had to approach the Zoning Board at all. The applicant noted that the two new driveways will be a lot better than the existing driveway, which is fairly steep. They are very desirable driveways for that neighborhood and very easy to travel with a 12% slope range. Mr. Christiansen asked if there's anything in their design for stairways to the lake. The applicant said they only have a customer for lot #1. Approvals for the staircases and possibly a tram will come later.

Mr. Stape asked where the topsoil will be stored when they box out the driveway. He said the topsoil would need to be taken away and asked where that would be stored. The applicant stated that most of the driveway is fill. There is not much topsoil there. He said they would not leave the topsoil on the

hillside. He understands that if you leave dirt on top of shale and it rains it will all go downhill. He said he would probably build the topsoil back into the slopes and pack it back down. If it is too much topsoil they would have to store it up the road somewhere off-site. The contractor or the buyer would have to find a place for it, because it would be too dangerous to put it on the slope. Most of the material is fill and has to be trucked in. The cutting operation is more intrusive than the filling operation. That is a very heavily treed lot.

Mr. Stape asked if the walls that they are proposing to put in for a septic system are gabion baskets. The applicant said the Town has requested that for each wall. They stepped up the walls so they are not high. The reason they have to have the walls is because there due to a NYS Health Dept. law that says you can't build on slopes for a septic system over 10 percent, but they are getting a variance for over 15 percent.

Mrs. King made a motion to approve this application. It will obviously be closely overseen by the Town of Middlesex along with the Town Engineer and it appears there will be a lot of expertise involved in this. The letter from Rick Ayers with his recommendations will be attached to this approval. Mr. Rubin seconded the motion. All were in favor.

2010-29 – Jacob Provoost, 12 North Main Street, Village of Rushville. Applicant requests two use variances: to operate a new/used car sales lot in the Class 3-Commercial zone; to erect a temporary office in connection with the new/used car sales.

Mr. Sawers could not be at the meeting, but sent in comments to the Board. This application is for a use that is not permitted in the Village of Rushville.

Mr. Provoost stated that he bought these two lots about three years ago and has been selling cars there since. He noted he understands that there used to be a jeep dealership there. He addressed the Board stating that he and his wife do have a hardship in that they had just lost all of their savings. They had been doing real well up until that. He would like to build a new building if this goes through. He noted he has filled out every application he was supposed to do. The second phase would be to have a convenience store. The plans and blue prints have been given to the Finger Lakes Economic Development Center. He noted that the first phase, Little Buck's Auto, will build the base of his business. He said the SEQR has been done and if this Board grants permission to sell cars there he will be able to build their building. Mr. Ritter stated that no matter what we do or say, the Village of Rushville has the final approval.

Mr. Rubin talked about his experience with the zoning laws and the requests for use variances – the hardship that has to be demonstrated is an economic hardship and it's the property that we are concerned with and the proof has to be that the property cannot be used for anything other than what they are proposing. From a zoning standpoint, until they do an actual financial analysis, the Zoning Board would not even be able to consider this type of a process, which is one of the strict requirements. Mr. Provoost said they have gone through that process. He noted that is the only company he and his wife have and if they can't sell cars, they have nowhere else to go. Mr. Rubin noted that the law is

pretty specific as to what needs to be presented before a use variance can be approved. Mr. Provoost said he would be creating new jobs, and can't understand why they won't let him sell his cars.

Mr. Ritter stated that someone should have been here from the Village of Rushville. It is hard for us to make a recommendation if we don't know what is going on in the Village. Mrs. Bonshak noted that everything she put in the memo to the Planning Board was approved by the Village of Rushville Code Enforcement Officer. She said she does not know what is going on politically but stated again that what she presented to the Board, was approved by the CEO.

Mr. Christiansen asked Mr. Provoost if they had ever received a permit to sell cars on that property when they first purchased the business. Mr. Provoost said he has been selling his cars there for three years and suddenly someone told him that he needed to get a use variance.

Mrs. Wiltberger asked if a convenience store is a permitted use in that area. The answer was yes, but that is not on the application. Mrs. Wiltberger said that could be another use for that property that might generate income for them. Mr. Provoost said they have no income to do that. Little Buck's Auto is the only company that will build his income back up. He noted they just lost \$400,000 and they have a hardship. He noted that they bought out Martin Tire, which is where he lost all of his money. He noted that Little Buck's will build the convenience store.

Mrs. King stated that this business doesn't pose a traffic issue; there are no hazardous materials produced and no negative impact upon the community. They are operating a business and have future plans that may possibly benefit the village. She noted her recommendation is that if they have an active business, maybe the Village should consider giving them a use variance and the Village would have to have a public hearing for public comment. She noted that based on what she can see, these people do have a hardship and asking them to close their business and move elsewhere is government infringement upon their rights to do business. They are here and asking for the opportunity to be able to continue on and do a business. They do have a pretty convincing case and it's not like he's a noisy neighbor. There are no dumpy vehicles there or debris around the area. It appears to be kept well.

Mrs. King made a motion that we approve that the Village of Rushville issue two use variances to Mr. and Mrs. Provoost to continue in carrying out their business. Mrs. Wiltberger stated that she is disappointed in the Village of Rushville for letting Mr. Provoost operate his business for three years without addressing the problem; this has put the gentleman in a very tough spot.

Mr. Rubin noted that he believes this does have a countywide impact if we do approve this, we are approving a use variance without the required documentation and proof needed to do so. He believes we are setting a loose example for an exception to use variances in the Village. Mr. Ritter said he believes it is up to the Village to get the back-up information needed to justify the use variance; A lot of these things are personal and should be up to the Village to decide. Mr. Skeet noted that Mr. Rubin's comments related to hardship was relating to hardship to the property itself and not to the individual; we don't have the documentation we need related to hardship. Mrs. Bonshak said planning law requires strict, detailed financial documentation from the applicant that demonstrates no other

permitted use is feasible in that location and that they have exhausted all possibilities related to the other uses.

Mr. Christiansen seconded the motion. 8 members were in favor of the motion. Mr. Rubin, Mrs. Wiltberger, and Mr. Skeet were against the motion. The motion also included a comment from the Board expressing their disappointment with the Village of Rushville for taking three years to deal with this use issue.

2010-30 – Town of Milo. Local Law establishing a moratorium for a period of twelve (12) months for the acceptance, review, processing and approval, conditional approval, conditional approval with modifications or denial of Major Subdivision Applications (including sketch plans, preliminary and/or final subdivision plans) as defined in Chapter 120 of the Town Code, by any board, agency, department, or official of the Town of Milo.

Mr. Ritter asked if there has already been a public hearing on this. Mrs. King asked if it is normal to get a moratorium for 12 months. Mrs. Bonshak noted that a year is reasonable, because often they ask for six months and then come back for six more months. Mr. Ritter said that if a moratorium is in effect it will stop any major subdivisions that doesn't have approval. Mr. Christiansen said it could halt the ones that under review. Mr. Ritter said he understood that you can't halt anything that has already been. That wouldn't be fair to anyone. Mrs. Bonshak said this moratorium is a response to the Town's Comprehensive Plan. The Town has some good recommendations related to enhancing their subdivision regulations and in order to do that, they need time to amend their code. They just hired Tom Harvey as a consultant to assist them with the code revisions.

Mr. Mitchell made a motion to approve this application. Mr. Snyder seconded the motion. 10 members were in favor of the motion. Mrs. King voted against.

2010-31 – Village of Penn Yan. Village of Penn Yan 2010 Parks and Recreation Master Plan (portion of Plan revision taken from original 2001 Master Plan).

Dan Doyle reported that he revised the Parks Master Plan of 2001. A lot of the grant applications state that you need an up-to-date master plan in order to apply. To save money he updated the Plan in-house. They changed the priorities to seek outside funding projects that need to be done. Their attorney suggested that this be approved by the Village and County Planning Boards.

Mr. Doyle said he is excited to be able to do this in-house and has had a lot of help from the Soil and Water Department.

Mr. North made a motion to approve this as presented. Mr. Mitchell seconded the motion. All were in favor.

COMMUNICATIONS

Keuka Housing has invited everyone to an open house on June 10th.

Mrs. Bonshak stated that the Town of Torrey has re-written their zoning ordinance and is asking our Planning Board if they would like to review it before they finalize it. It is still in draft form. Mr. Ritter noted that as long as we know what they are changing by highlighting those areas, we could look at it. It may be more help to them if we look at it now rather than later.

Mrs. Bonshak noted that we will be talking about the exemption agreements next month. She is now starting to get comments back from the Townships, one being from the Town of Italy who is in disagreement of the changes.

There is a Marcellus Shale symposium on June 10th at Hobart's Finger Lakes Institute and representatives from the industry, government, private sector, public sector, etc. will be there. It will be held all day. It is the most diverse group she has seen. She will e-mail the registration to all the PB members.

OLD BUSINESS:

None.

MEMBER REPORTS:

None.

NEW BUSINESS:

None.

ADJOURN:

Mr. Mitchell made a motion to adjourn the meeting at 8:07 p.m. Mrs. King seconded the motion. All were in favor.