

DRAFT
MEETING MINUTES FOR
YATES COUNTY PLANNING BOARD MEETING
JULY 22, 2010

PRESENT: Jim Ritter, Kevin North, Sandra King, Alan Snyder, Chuck Mitchell, Lane Clute, Douglas Skeet, Dave Christiansen, John Sawers, and Marilyn Scharf.

Also Present: Donald House, Yates County Legislator; Mark Moon; Reggie O’Hearn, Village of Rushville; John Griffin, Town of Barrington; Glenn Steed, Windtamer Towers; Karen Bradley; Shawna Bonshak, Yates County Planner, and Karen Phillips, Recording Secretary.

Absent: Ron Rubin.

Excused: Judy Wiltberger.

CALL TO ORDER:

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

APPROVAL OF MINUTES:

Chuck Mitchell made a motion to approve the minutes from the June 24, 2010 meeting. John Sawers seconded the motion. All were in favor.

GML-239 REFERRALS:

2010-38 – Town of Barrington. Local law for the regulation of construction, maintenance, and placement of signage. This review is postponed until the August County Planning Board meeting per Town’s request.

2010-39 – Mark and Wendy Warren, 118 Elm Street, Village of Penn Yan. Area variance for an additional sign for their business, “Dahlia’s Curios”.

Chuck Mitchell stated that this may become a mute point if the alley disappears, as the building next door is coming down.

Chuck Mitchell made a motion to approve this application. Sandra King seconded the motion stating that they are only trying to promote their business. All were in favor.

2010-40 – Town of Milo. Local Law enacting regulations for construction on steep slopes.

Kevin North stated that the Town of Milo is looking to amend and make additions to their zoning laws. This is an all new law. Soil and Water sent in a letter which brings up valid points. The Town of Milo should have consulted with Soil and Water before submitting this to the Planning Board.

Sandra King inquired about Section 8C, where it says any disturbance within 50 ft. of a 15% or greater slope will require a permit. If you have a two acre parcel and it's only a very small section of it that will be disturbed, will that require a permit if there's only a small section that is 15%? Shawna said that Jerusalem went back and changed that. Sandra said that seems far too restrictive. Dave Christiansen said that Town of Torrey has about the same thing. Jim said they then left it up to the code enforcement officer to make a judgment on them because a lot of times you can do it without disturbing things. Shawna said Jerusalem has an actual area of 300 sq. ft. Sandra said it seems extremely restrictive. You could have an area where the vast 90% of the lot is fine, but there's one small section that could stop the whole process, because this could cost the homeowner a great deal of money to get the engineer plans and everything else.

Dave Christiansen made a motion to disapprove this as written and return it to the Town of Milo to work with the Soil and Water Department on points that were included in the memo. Douglas Skeet seconded the motion. All were in favor.

2010-41 – Town of Barrington. Town of Barrington requests an area variance review for a two lot configuration at 724/725 East Lake Road, Penn Yan. (*County Planning Board reviewed a proposed three-lot configuration for this property at the 6/24/10 meeting - #2010-35)

Mark Moon reported that several members were at last month's meeting where they initially proposed the dividing the property into three lots. After the initial County PB meeting and the Barrington Zoning Board of Appeals meeting, they have revised the proposal to divide the property into two lots. The Zoning Board of Appeals in Barrington recommended that it was such a drastic change that he come back and present it to the Yates County Planning Board. The neighbors to the north did a division that created two new multi-residence in a single-family zoned area in 2008 and sold off the first parcel in September of 2009. The applicant feels this provides justification for them to request a variance. Karen is asking for that precedent to be considered with her request; she has four residences on one property and if she does any division, she would like the same consideration that her neighbors to the north were given. The townships normal footage is 60 ft. The property next door to the Kapps has two residential homes on one lot, and including Karen's property, there is a total of four in a row that all have multiple residences on one property. Any division that Karen requests, they feel would reduce the seasonal temporary traffic. Possibly in the future they would build a house on this lot they are creating. In regard to the lot size they are proposing, the main reason for the variance is the creation of a lot that has about 45 ft. of frontage which is less than the 60 ft. required. If starting at Karen's property and going 250 ft. to the south, there are several parcels that exist today that have less than 60 ft. of frontage and they have single family homes on them. If Karen is allowed to do this division, it would create the same situation – one new single family structure on a lot that is less than 60 ft. Mark noted they listed a few properties in there and attached a tax map with the neighboring parcels tax maps showing that they

have less than 60 ft. No survey work has been done here, no final engineered septic plans are provided in the plan yet, but this new lot they are creating will meet all the setback requirements in terms of the structure and septic systems. Other properties that have sold in the Town of Barrington that have less than 60 ft. of frontage are pre-existing conditions, but this entire area is full of those types of situations. To the south of a lot of these properties is the mobile home park where everyone with little lots share 75 or 100 ft. of frontage and there are a few dozen mobile homes down in there. Today there are 4 residential homes on one lot and they are proposing that she take off one cottage by itself and leave the other three and all the other land on the existing parcel.

Jim noted that what our Board had the problem with last month was the fact that they would not have a place for a septic. There was no place they could ever expand and have one, but they do now with this plan. It would be taken across the road away from the lake.

Chuck Mitchell stated that his concerns from last month have been addressed and made a motion to approve this application. Sandra King seconded the motion. 9 members were in favor of the motion. Marilyn Scharf abstained from the deliberation and the vote.

2010-42 – Lauren Welch (Windmill Markets), 3900 State Route 14A, Town of Barrington, requests a use variance for the installation of a wind tower not to exceed thirty nine (39') in the AR district.

Glenn Steed, Installation Coordinator for Windtamer Turbines reported that they are proposing a Windtamer Turbine, which is a bit different style than most people have seen for a windmill. This unit would be no taller than 39 ft., and they are extremely quiet. They do not find any noise over the ambient noise. They are low to the ground. This unit would go out in front of the Windmill, 114 ft. off from Rte. 14A, 249 ft. north of Hobson Road, which puts it 91 ft. from the building. The Windmill's interest is to have this windmill located in the center of the eating area so that people eating are able to see the windmill. They will have all of the electronic equipment in the eating area in a nice case. They can see the blades turning, see the windmill and see what kind of energy is coming in at real time. At this building at the Windmill, there are 5-6 electric meters. They will be tying into this system – one meter on the building. For the business advantage, they will be able to see a discount in their electricity. They do have approval from NYSEG on this system. He has to submit electrical diagrams and all of the hardware they are using. That has all been approved at this point based on installing to their parameters. NYSEG will regulate all of the electrical concerns as far as putting everything back into the grid and making sure everything is wired properly.

Sandra King stated that this is an opportunity for The Windmill, which has a number of businesses, to reduce their utility costs, which is one of the biggest concerns you have in running a business. She noted that this is green technology and something that will certainly promote the Windtamer business as well, so it's an opportunity not only to help increase the Windmill's business and stay in business and gives Windtamer a growing business and opportunity for a tremendous amount of exposure.

Sandra King said she cannot see any downsides to this and believes this is a win-win for the Town and the County, as well as for both businesses and made a motion to approve this application. Dave Christiansen seconded the motion. 8 members were in favor of the motion. Lane Clute and Marilyn Scharf abstained from the deliberation and the vote.

2010-43 – Joan Pierri, 2395 West Lake Road, Town of Jerusalem. Applicant requests an area variance to reduce her lot size by .020 acres in order to convey that area to her neighbor; the lot line shift will make applicant's pre-existing, non-conforming lot more non-comforming but will bring her neighbor's side-yard setback into compliance.

Mrs. Bonshak stated she called Jerusalem and apparently the owner is selling the property and before she sells it, the neighbor asked for a small portion, which will make Pierri's lot more non-conforming, because it already is non-comforming. It will make the neighbor's side setback meet code and will make his nonconforming lot less non-conforming. Sandra stated the way the property line looks now, he could hardly maintain the corner of his house. Mr. Ritter said it really will not change the original lot that much; they still have the same width on the road side and on the lake side and will just lose a little in the middle. Sandra said it will make it easier for the other property owner to maintain the house. Dave Christiansen noted that it could be done with an easement so it carried with the lot when it was sold.

Sandra King 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 Jerusalem. This action appears to have no significant countywide or inter-community impact. Chuck Mitchell seconded the motion. All were in favor.

COMMUNICATIONS:

Shawna distributed the self-study course materials to members of the Board. She noted that if you complete the course, it is worth 8 hours of credit and members will want to complete it before the end of the year.

OLD BUSINESS:

2010-36 – Town of Torrey, Review of the draft changes to the Torrey Zoning Ordinance. This was tabled from the June 24th meeting.

Dave Christiansen stated he questions the fact of not building within 15 ft. of the high water mark. They have 10, and he feels it should be more. Jim said a lot of places left it that way, because otherwise you wouldn't have enough room to build. They want to make everything residential from the lake to Route 14, which he does not agree with. Jim asked if they have resort residential, or just residential. Dave said it is Ag Residential, which still requires big lots. Shawna reported that this is a draft, so we will be seeing

this again. Sandra noted that there's no sense in discussing the 4th draft when we haven't seen the 5th draft yet.

Sandra made a motion to table this item until we have a current finalized draft with the changes highlighted. We would also like a representative from the Planning Board from Town of Torrey to come and answer our questions. Alan Snyder seconded the motion. All were in favor.

Reggie O'Hearn from the Village of Rushville spoke to the Board about a recent referral for a use variance that came through the County Planning Board. He noted that he has been a Planning and Zoning Consultant for the past 34 years and is also the Code Officer for Rushville. He noted there was some confusion on a recent use variance that was passed by the County Planning Board and referenced key areas from Guidelines for Zoning Laws and Use Variance Practices that he had distributed. Some of the key areas he read from this document related to demonstrating and proving hardships. Reggie stated that use variances are almost very impossible to get. He noted he had worked for the Town of Naples for 12 years and there had never been a use variance granted because they could not prove a hardship based on criteria and tests.

Jim stated that it is not up to us to prove financial hardships and we were batting blind because no one was here from Rushville to explain the situation. Reggie noted that with this referral, he included the zoning regulation which stated that new and used car dealerships are not permitted uses in the C-1 district, Article 4.30. He said that he even cited the definition on service stations. Sandra King reported that there seems to be a point where some common sense and some discretion should come into play, because we have all seen where it benefits the government to do something and the government moves ahead and does what they seem to want to do, but in this case we were trying to work with the individual who seemed to have hardships. Under common decency and in trying to help this person promote his business was where we were coming from. She noted she understands this does not cite the letter of the law, but there's also a time where you should use a little discretion and work with this individual until such time that you are able to change the law. If the problem is with the law, then the law needs to change. Reggie said that you have to separate your emotions from the law. Sandy said you have to use some discretion in that as well.

John Griffin asked what good a use variance is if you can't give them. Reggie said a use variance is designed specifically because that is what they don't want used in that district; you have the permitted principal uses. Reggie said that from a Code Officer's point of view, there is no discretion. A code officer has no room for discretion, which is why there is Zoning Board of Appeals. If it doesn't fit the zoning regulation, it has to go to the ZBA. Sandy asked if they are then afforded the opportunity to apply for a special use permit to be allowed to do that business and have a public hearing where the community can come in and decide whether or not they can have that as an exception to the current law. Reggie said you can't jump from a use variance to a special use, because a special use is a permitted use in the zoning regulations. A use variance is not an allowed use in a district, but a special use is an allowed use in a district and you apply conditions. A use variance can be done, but you have to show hardship for a property. It has to be unique to the neighborhood. Reggie said that zoning is there

for a purpose; to regulate. When you have high density you have tighter restrictions. When you are in a rural area they are a little more relaxed. They should be because you're dealing with 50 acre parcels or 5 acre parcels. If you get into the village or city you're dealing with inches and everyone is on edge and wants their community to look a certain way. He said zoning is more restrictive in high density areas.

Reggie stated that he read through the minutes and Mr. Rubin made all valid points and said he was curious as to why no one followed his points. Mr. Sawers said there was no unanimous vote. Reggie then noted that the County Planning Board should have enough documentation from the packet if no one can be at the meeting to represent. Alan Snyder stated that we could have easily tabled this if we had known that no one could be at the meeting to represent Rushville.

Reggie then suggested that when any motions are made, they should be backed up with a basis for the motion and why you are making that motion either for or against. There should be a reason, such as it's not compatible to the neighborhood or it's a detriment. Sandra said we tried to put a little common sense and tried looking at the whole picture to try to figure out what was going to assist this individual in being able to make a living and survive. She understands that this Board issues a recommendation and it's to go back to the Village for their ultimate authority. She noted that we understand what Reggie is saying, but she is asking if he understands where we are coming from as well, that we are trying to also look at the human being and the human situation and that person, instead of just the black and white. She said we get so caught up in rules and regulations sometimes that we forget the individuals. Reggie said that when a person can't prove their case, then they don't get it. Marilyn Scharf said this is an inherent problem. How many people are going to continue on doing as they have always done and not even know that they are breaking the rules?

Sandra said she hopes that Reggie isn't taking where we came from personally, but this individual came in under the assumption that he could run a business and because he does something wrong, all of a sudden his life gets yanked out from underneath him; maybe we didn't abide by the letter of the law, but we will use common discretion from now on. Alan Snyder suggested that the Village of Rushville Zoning Board should have looked a little closer over the years how things were zoned. This was allowed for years. Sandra noted that we make recommendations and send them back to the Village so that it falls on the municipalities. Reggie said that what the County Planning Board was looking at was whether or not it had a countywide impact and it didn't have, which is the reason why cases are referred to the County Planning Board to see if it does have a countywide impact, not to get too deep into the Village's zoning regulations. He said the comment could have been that it does not have a countywide impact and if the Board wanted to make a recommendation, they could have gone off into the law; otherwise it could have been sent back to the Village to decide. Reggie stated that this Board is making comments without any representation, which is not good. The comment should have fallen back that there was no countywide impact and leave the final decision up to the Village of Rushville. He noted that this Board should be making recommendations off from the zoning regulations. Either you deny it based on the fact that your zoning law says this, or you approve it. Chuck Mitchell stated that no one on this Board is conversant with becoming familiar with a dozen different zoning laws. Reggie suggested that Villages submit copies of the sections of zoning laws that the application is dealing with. Whoever is submitting

the application just has to make copies of what they are referring to on the application and then the Board can see actually what is stated in the sections. Use variances are not made to be simple, so they really need to be looked at.

Reggie stated that what he was hoping for tonight is that in the future on use variances that the Yates County Planning Board follows the criteria closer. He noted that the simplest thing that would have been done is to say that either it had no countywide impact or they could have tabled to have more questions answered.

NEW BUSINESS:

None.

ADJOURNMENT:

Sandra made a motion to adjourn the meeting at 8:30 p.m. Dave Christiansen seconded the motion. All were in favor.