

**Town of Danby Planning Board  
Minutes of Public Hearing and Regular Meeting  
June 19, 2014  
Draft**

**Present:**

Joel Gagnon  
Anne Klingensmith  
Frank Kruppa  
Ted Melchen  
Jim Rundle  
Steve Selin  
Naomi Strichartz

**Others Present:**

Acting Secretary	Patty Jordan
Code Officer	Sue Beeners
Town Board	Leslie Connors
Public	Linda Hansen, Vincent Kotmel, Bill Kuhns, Selene Kuhns, Verna Little, Edward Shay, Nancy Kotmel, Rick Kline, Ted Crane, Erin Oates, Colleen Strong, George Kozak, MaryAnn Kozak, Jake Brenner

**The Public Hearing was opened at 7:05pm**

Public Hearing to consider granting a Special Permit to William E. Kuhns, III for a proposed Automotive Repair Shop, 1753 Danby Road, Commercial Zone "C," Tax Parcel 7.-1-93.

Kruppa read the public hearing notice.

The following communications in opposition were received related to the proposed auto repair shop:

06/05/14 – Gladys M. Varona-Lacey (1882 Danby Road)

06/19/14 – Email from Olivia Vent (1839 and 1849 Danby Road)

06/19/14 - Vincent and Nancy Kotmel (1763 Danby Road) provided each member of the Board with a packet of information. The packet contained a memo from the Kotmels in opposition to the proposed auto repair shop, excerpts of the Town of Danby Comprehensive Plan, a list of concerns, a second memo listing the conditions the Kotmels would like added if the Board decides to approve this proposal, a petition signed by 43 Town of Danby residents in opposition, a copy of the letter from Gladys M. Varona-Lacey, an Email from Karen Eldridge of Audrey Edelman Realty, a copy of the site plan map, and a third memo from the Kotmels in opposition, dated May 14, 2014.

Kruppa asked Kuhns to give a description of the project. Kuhns talked about the portfolio he had put together for the Board. He stated that there were sections in the portfolio with information about DEC, DMV, and NY State regulations, his planned safety measures such as eye wash stations and fire extinguishers, a copy of the contamination control certificate he received from Exxon, a copy of the site plan map, and layouts of the proposed building.

Vincent Kotmel (1763 Danby Road) stated that he would like the deliberation of this proposal to be tabled until there is a formal review of the zoning for Commercial Zone "C." He also read the list of concerns that was included in the Kotmel's packet of information. These concerns include: health hazards from accidental spills and airborne particles, noise pollution, increased traffic, decrease in property value, fire hazards, hazardous waste disposal, accidental leaks, water contamination, and change in the neighborhood dynamic. He was also concerned that the site plan has changed and the building has gotten larger. He indicated that they have talked with a realtor who states that "it seems

logical that having an automotive shop next door could likely reduce the number of buyers that you would have, should you sell, which could bring down the value.”

Verna Little (1758 Danby Road) read Section 200 - Purpose from the Town of Danby Zoning Ordinance and wondered if this project meets any of the provisions stated in that section. She also stated that a realtor told her she would not be able to sell.

Rick Kline (11 Benny Lane) stated he stands behind the residents concerned about this project. He thinks it seems reasonable to have a review of the zoning as this has become a highly residential area since the zoning went into effect.

Linda Hansen (1870 Danby Road) had several questions. She asked if the project met the zoning ordinance of 150 feet of road frontage, if mitigation for runoff had been addressed, and if the road cut had been approved for the new driveway. She also asked if the well would satisfy both the home and the business. Kuhns replied that there is a lot of water and the well would serve both.

George Kozak (Jennings Pond Road) said that his biggest concern is whether Danby can support two similar businesses so close together and wondered if that had been considered by the PB.

Verna Little voiced her concerns with the South and East setbacks of the proposed project and wondered how they would affect the Kotmel's view. She also stated the concerns she has with her own view and the possibility of fumes and noise pollution affecting her property which is located across the street.

Erin Oates (Bald Hill Road) wondered if this was the last public hearing on this matter. Kruppa responded to describe the steps taken so far and where the proposal stands now. Erin also asked if the situation could be described simply as, “legally a business has a leg to stand on because of the zoning but it's a bad neighbor thing to do?” Kruppa replied to say that everyone is welcome to their own interpretation.

Ted Crane (currently King Road, moving to Comfort Road) hates to see the yard ruined and wondered about the impact on the aquifer as the proposed location overlies the aquifer directly. Beeners indicated that it is a confined aquifer in that location and it should not be getting recharge directly because it is capped.

Beeners asked Kuhns how many employees he would have and to describe how he plans to handle drainage. Kuhns stated that there will be two employees, he and his partner, David Cady. He plans to add gutters on an incline run to the ditch along Rt.96B. He also stated that he is trying to make money and is not trying to be a bad neighbor.

Nancy Kotmel asked why there are so many parking spaces. Kruppa indicated that the site plan shows the maximum number but that it can be reviewed and reduced if it seems necessary. Nancy indicated that given the business is by appointment only and there are two bays, she feels there should only be two spaces. She also wanted to know how tall the building would be. Kuhns answered that it is to be a 12-foot wall with trusses on top to make it an estimated 18 feet total. Kuhns said he plans to install a 6-foot fence between his property and the Kotmel property.

Verna Little noted that the water supply runs under the Kuhns property and beyond her property. She's concerned that any oil spill would end up in the water supply. Kuhns indicated that the DEC will test the water once a year and that he's required to keep a log that the DEC will also inspect once a year.

Vincent Kotmel asked Kuhns who the true owner of the business would be. Kuhns stated he will own the building and lease it out to the automotive repair business.

Kruppa read aloud the two communications received from Verona-Lacey and Vent.

**The Public Hearing was closed at 7:42 pm**

## **The Regular meeting was opened at 7:42 pm**

### **Privilege of the Floor**

Sue Beeners said that a County Highway Department notice was received indicating that Bald Hill Road will be closed at the bridge starting June 30 through mid-July so that the culvert can be replaced. They will restore pedestrian access as soon as they can. Updates will be posted on the web and in the Danby Area News.

Ted Crane announced "Grill Night," being held at 4:30 pm on Sunday, June 22, at Jennings Pond.

### **Additions to the Agenda**

Consideration of the Public Hearing to consider granting a Special Permit to William E. Kuhns, III for a proposed Automotive Repair Shop.

Klingensmith would like to discuss the pre-drafted resolutions issue.

### **Approval of Minutes**

Jim Rundle asked that page 2, paragraph 8 of the draft May 15, 2014, minutes be changed to read as follows: "In relation to a question on impact on property values, the applicants stated to the Board that a member of Audrey Edelman Realtors was of the opinion that this would not reduce property values for adjacent owners. They presented a set of petition papers from several persons (no addresses were given) in support of their proposal."

#### **RESOLUTION NO. 29 OF 2014 - APPROVE MINUTES**

**Resolved**, that the Town of Danby Planning Board approves the minutes of May 15, 2014 as amended.

**Moved by Gagnon, Second by Klingensmith. The motion passed.**

**In Favor: Gagnon, Klingensmith, Melchen, Rundle, Selin, Strichartz, Kruppa**

### **Consider Granting Special Permit for Automotive Repair Shop**

Kruppa stated that, as he sees it, there are four options: the PB says "yes" to granting the special permit, the PB says "yes," with conditions, the PB says "no," or the PB tables the decision for later consideration. Kruppa also stated that the perception that the PB decision was a foregone conclusion was not intended and they will work on the wording of the pre-drafted resolutions.

There was extensive discussion among the PB members regarding whether or not this proposal meets the requirements of Section 901 – General Considerations Required for All Special Permits of the Town of Danby Zoning Ordinance. In particular, that it not be detrimental to or endanger the public health, safety or general welfare; and that it not be injurious to the use and enjoyment of other properties in the vicinity or neighborhood.

Strichartz said it is definitely going to be jeopardizing the enjoyment of the people who live there and she expressed her concern that the space is too small for a building of the intended size. Rundle agrees that it is too small of a space and too close to the neighbors. He indicated that he would not want it next to him and would not buy a house with an automotive repair shop next to it. The impact on the neighbors weighs heavily with him.

Klingensmith asked for an overview of the history of the zoning in this area. Gagnon responded to say that there was very little commercial zoning in Danby so the Commercial Zone was extended to Gunderman Road but it was not given much thought to whether it should be "A," "B," or "C." He stated that almost all are "C" because property owners wanted the flexibility for future commercial use. Klingensmith indicated that she might feel differently regarding the impact on the Kotmels if the neighbor on their other side wasn't the masonry. As it is, the Kotmels would be "sandwiched" between two commercial businesses and she can't see how that wouldn't impact their property values. Kruppa stated that if this creates a commercial corridor in that area, it could potentially create value. Strichartz indicated that it is more a quality of life issue that she is concerned about.

Klingensmith says that there is a justification for saying yes as Lane's is just down the street and the zoning ordinance says it can be permitted, but not necessarily that it is required that it be permitted. She wondered how this fit in the vision for the hamlet. Strichartz said it doesn't fit in with the Comprehensive Plan. Gagnon stated that the zoning ordinance doesn't fit in with the Comprehensive Plan. It was noted that it is zoned commercially but it has changed somewhat into a more residential, dense area. The question of whether the proposed business is compatible with the neighborhood was raised. Rundle said that the law regarding special permits gives the Board the ability to make judgment about particular applications. He said that this application is very close to a house and to him it fits directly under the guidelines the PB is supposed to be taking into consideration. He stated that he feels it's his duty as a Board member to read and apply the considerations under these circumstances.

There was discussion of tabling the decision pending review of the zoning laws. There was general agreement that the Board should not table this decision with the idea of changing the zoning laws before considering this proposal. It was agreed that Kuhns deserves a decision based on the current zoning. Gagnon suggested looking at the zoning laws after this decision has been made.

Klingensmith stated that there is not a lot of water in Danby and the aquifer is highly valued. While NYS regulates this kind of business, accidents do happen. An accident would have a big impact on the water supply. This is an aquifer that everybody uses and should always be considered in PB decisions.

Kruppa pointed out that a NYS highway runs right in front of the property. He felt a truck spill would be a bigger impact than a spill from the automotive repair shop. He stated that not all risk can be eliminated and the idea is to put controls in place to make them as unlikely as possible. Strichartz commented that to her right now Danby Road is highly residential as defined by the people who live there and the majority are opposed to the proposal. She feels it is the PB's job to make sure that their quality of life stays.

There was discussion of the steps the applicant has taken to mitigate the concerns that have been raised. Kuhns showed the Board the building layout from his portfolio and described his mitigation plans including limiting parking, taking out the back bay to mitigate noise, installing double insulation walls, putting up a fence between his property and the neighbor's property, placing the air compressor on the side of the building away from the Kotmel's house and enclosing it in a box, installing a fan for air circulation so the bay doors can be kept shut, and by scheduling repairs by appointment only during the hours of 8am-4pm. Kuhns also stated that there will be no external lighting facing the Kotmel property, there will not be a floor drain in the building, they will not be painting vehicles, and that the business will fall under the "Conditionally Exempt Small Quantity Generator" level of the DEC regulations. He indicated that Casella will handle the hazardous waste disposal and that burned out lamps will be taken to Tompkins County Solid Waste Center. He indicated that the dumpster will hold office waste and may contain his household waste. The dumpster will be hidden behind fencing and will be emptied once a week. Kuhns stated that his long-term goal is to provide a trade for his son.

Melchen suggested tabling the decision until next month. Gagnon, Selin, and Melchen all indicated that they would like more time to think about their decisions. Gagnon moved to table the decision until next month; Selin seconded. Before the vote, Kruppa wanted to know what needed to be done between now and the next meeting in order to move the decision along. Selin wants to see a map of the area with those opposed and those who support the business indicated on each property. Sue Beeners said she would put this on a map based on the petitions they have received. It was agreed that approximately a ½ mile radius would provide a good visual.

Strichartz wondered if the building could be smaller or placed back further on the property. It was generally agreed that the building could not be smaller. Kuhns indicated that the cost of placing the business further back on his property would be prohibitive. Leslie Connors suggested flipping the building clockwise 90 degrees so that the bays face the Kuhns' house. It was also suggested that Kuhns use the existing driveway for the business. Kuhns would prefer for the business to have its own driveway as his kids use the existing one as a place to play.

Melchen acknowledged that Kuhns has bent over backwards and hates to see him shot down but the opposition is significant. There are two neighbors (one next door and one across the street) that assert that it will be injurious to them using and enjoying their property. Kruppa said that it is commercially zoned and there are other commercial activities in the general vicinity. He also pointed out that it's on a state highway. He feels the proposed business is a more appropriate fit for a commercial zone than residential housing and that residential housing should not dictate how commercial activities can occur within a commercial zone. Rundle said that the commercial zoning does create a presumption in favor of the commercial operation and it's only if it doesn't meet the requirements that you don't approve it. Strichartz stated that the reason it's incompatible is because it is right on top of the neighbor's house.

Jake Brenner (Gunderman Road) asked about the appeals process. Beeners stated that if there is an appeal of the decision, it would go to the Town Board for consideration.

Beeners mentioned an Association of Towns article about how the neighborhood tone should not override the decisions that the PB needs to make and stated that she believes the lawyer would say the same thing.

#### **RESOLUTION NO. 30 OF 2014 - CONSIDER TABLING A DECISION**

**Resolved**, that the Town of Danby Planning Board considers tabling a decision on Granting a Special Permit to William E. Kuhns, III for a Proposed Automotive Repair Shop, 1753 Danby Road, Commercial Zone "C," Tax Parcel 7.-1-93.

**Moved by Gagnon, Second by Selin. The motion passed.**

**In Favor: Gagnon, Klingensmith, Melchen, Selin, Strichartz**

**Opposed: Rundle, Kruppa**

Kruppa will contact the lawyer for guidance and to be a resource for the PB as they make their decision.

#### **RESOLUTION NO. 31 OF 2014 - SET SPECIAL MEETING**

**Resolved**, that the Town of Danby Planning Board sets a Special Meeting, to be held on Wednesday, July 2, 2014, at 7:00 pm, to consider granting a Special Permit to William E. Kuhns, III for a proposed automotive repair shop.

**Moved by Gagnon, Second by Strichartz. The motion passed.**

**In Favor: Gagnon, Klingensmith, Melchen, Rundle, Selin, Strichartz, Kruppa**

### **Comprehensive Plan**

Kruppa distributed via Email prior to the meeting the proposed changes to the Natural Resources section of the Comprehensive Plan prepared by Anne Klingensmith. Klingensmith indicated that the sections that are "grayed out" are the parts that "didn't speak to her." She asked the PB members to let her know if they had anything to say about her revisions. Kruppa handed out the language for the introduction to the article on the Comprehensive Plan that will appear in the Danby Area News. Kruppa will Email the "track changes" version of the Housing Section of the Comprehensive Plan to the board.

Selin left the meeting at 9:20 p.m.

### **Pre-Drafted Resolutions**

There was discussion of the wording of the pre-drafted resolutions giving the impression that a decision had already been made. One suggestion was to have two versions of resolutions – one with reasons for and one with reasons against. Another suggestion was that the reasons for or against should be the responsibility of the Planning Board. It was also suggested that the wording be changed to “RESOLVED, that the Town of Danby Planning Board grants...” to “RESOLVED, that the Town of Danby Planning Board grants/denies...” Kruppa asked for a sample of a resolution of denial. No final decisions were made regarding the wording of pre-drafted resolutions.

### **Member Item**

Klingensmith complimented Kruppa on how he is doing as Chair of the Planning Board. She commended him for letting the Board discuss the issue of the automotive repair shop for 2 hours.

### **Adjournment**

The meeting was adjourned at 9:35pm.

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Patty Jordan, Planning Board Recording Secretary