

Town of Danby Planning Board
Minutes of Regular Meeting and Public Hearing
Thursday October 15, 2015

FINAL

PRESENT:

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

ABSENT

Jim Rundle

OTHER ATTENDEES:

| | |
|----------------|---------------------|
| C.J. Randall | Town Planner |
| Leslie Connors | Town Board |
| Ric Dietrich | Town Board |
| Kelly Cecala | Recording Secretary |

Public: David Hall, Susan McLellan, Mike McLellan, Frank Darrow, Cathy Darrow, Pamela Goddard, Ted Crane, Charles Tilton, Pat Woodworth, Kelly Morris, Bob Strichartz, Kenny Makosch, Sarah Elbert, Jan Pflaiderer, Jack Miller Jr., Anna Miller, Jack Miller Sr., Gerda Medgyaszay, Jacob Brenner, Claudia Miettunen, Robert Chase, David Burrows, Robyn Em, Garry Huddle, Anthony Wells, Thomas Clements, Linda Fetherbay, Jody Scriber, Robert Chase, Faith Chase, Brian LaMorte, Joseph Cheng, Cindy Ceracche.

The Public Hearing was opened at 7:05 pm.

Consider rezoning of Planned Development Zone 10 (Formerly known as Angelheart Design) located at 297-303 Gunderman Road, from the currently permitted commercial use (clothing manufacturer) under Local Law 1-1997 to a mixed use business incubator with an 8,000 +/- sq. ft. future addition. Tax Parcel 9-1-9.12. JLF Holdings, LLC, Owner, David Hall, Applicant. The Town Board has requested a non-binding recommendation from the Planning Board.

Voices Against

Charles Tilton, 305 Gunderman Rd., first gave a historical perspective of the PDZ and Angelheart Designs and said that in addition to light disturbance, the law allowed noise, water, and traffic impacts to the area. Tilton said that after a few years, the actual operation matched the law, but not the many verbal descriptions of which. Tilton said the operation grew much bigger than anticipated and the impacts on the neighborhood were much more severe than ever intended. Tilton mentioned the expansion of PDZ 10 and stated that the previous Design Studio, eventually became a residence for two families, because the written law allowed it. Tilton stressed that the only thing that matters, is the actual written law, and not what someone's intentions are. Tilton also addressed the proposed new Business Incubator and said that over 7,500 exist worldwide and that most of them fail due to a lack of meaningful program content. According to Tilton's research, studies show that a successful Business Incubator needs a specific plan in place to help incubate the new business, versus just renting them a space, and said that none of the materials provided describe any actual programming for the Business Incubator.

Tilton defined the term "mixed-use" development as integrated commercial, residential, and retail uses in one zone with the major goals being to (1) increase walkability and (2) decrease auto traffic; most apply to urban and suburban areas, urban fringe, rural villages, or rural town centers on major roads. Woodworth provided examples of rural mixed-use, which were found in two major categories (1) rural fringe and (2) rural town centers, hamlets, etc. and went on to illustrate that none of these common uses apply to 303 Gunderman Rd. or what is found in the Gunderman Rd. business proposal.

Pat Woodworth, 305 Gunderman Rd., said that the law applies to the property and that PDZ 10 has already been subdivided with three (3) potential new owners. Woodworth stated that the major goal for the proposed law is "flexibility" but she said that it was easier for her to understand this term by calling it an endless supply of "blank checks" that are pre-signed by the Town of Danby, and the owner can use those checks and do much more than what is currently described in the proposal. Woodworth added that since the zoning laws apply to the property, any new land owners would have also these same "blank checks", as well as the subdivided tenants, and so on. Woodworth said that both her and Tilton had always supported most of the specific uses described by the current owner, and they could have supported a law that matched those uses and such a law would likely have been approved, but they strongly objected to a broad law that provides an unlimited supply of "blank checks."

Woodworth said that the proposal is supposed to be in line with the Comprehensive Plan but the arguments for compatibility with the proposed law, are extremely far fetched. She commented that language found in Danby's own 2003 Comprehensive Plan contradicts the Gunderman Rd. proposal. Woodworth said that one claim found in the proposed law is that it prevents sprawl, when it actually does the opposite (i.e. allowing more development in an area that is away from the main road and one that

doesn't provide any bus service.) Woodworth fears that this might set a precedent, which could increase sprawl throughout Danby.

Woodworth talked about another claim found in the proposal; it states that the proposed Business Incubator complies with the Comprehensive Plan and a survey of residents which want business at Town Center and that PDZ 10 will incubate these new business. Woodworth said that this claim is far-fetched and false, because the proposal does not describe a true Business Incubator and there is nothing in the proposed law which will require the incubated new business to move to the Town Center.

Woodworth said that another claim found in the proposed law supports the town's desire to encourage more open space. Woodworth argues that there is a potential loss of open space. She added that the density that would be allowed in Lot 3, is about twice the allowed density in the rest of the town of 1.2 versus 2 acres and the only preservation that is required is the orchard. Any open space provided for, is lost, with the allowed additional building and additional parking, so this proposal does not encourage more open space.

Woodworth stated that in a discussion she had with her lawyer, regarding the arguments used to make the plan/proposal satisfy the goals of the Comprehensive Plan, it was described to her as "fractured logic" while trying to "fake compliance."

Tilton remarked that when looking at the zoning political aspect, re-zoning is a political decision, it is not a legal one. He added that there was no legal, moral, or ethical requirement to rezone PDZ 10. Tilton believes that the original law which created PDZ 10, did not protect the neighborhood and said that a new law, to rezone PDZ 10, should provide more protection to the neighborhood and fewer "blank checks."

Kelly Morris, 90 Lieb Rd. Spencer, raised concerns about Agricultural Business and the "expected" water consumption which is outlined in the proposal. Morris said that the water language found in the proposal was very unclear and too vague.

Ted Crane, 888 Comfort Rd., discussed the water and traffic study found in the proposal and questioned what was actually being studied. Crane said that in both studies, the author clearly stated that they only studied the subsets of the "big picture" that were provided by the applicant; as a result the studies cannot be viewed as impartial. Crane recounted some of the long history of the location. Crane said that the law, as written, has a larger effect then it needs to, and that the law will outlive the current owner and his business intentions. Crane said that the proposed 100dB limit, 25 yards inside a neighboring property, is completely inappropriate. Crane remarked about traffic impact and said that the likelihood is that traffic will only turn out to the right side (towards 96B) congesting that stretch of road. Crane concluded that the law is badly flawed and that it should be rejected.

Frank Darrow, 400 Gunderman Rd., strongly opposes the proposal and is a former Planning Board member and was involved when the 2003 version of the Danby Comprehensive Plan was being written. Darrow read from a written statement, which will be filed at the Town Clerk's office. Darrow said that the CP was developed in consideration of and response to the overwhelming wishes of the residents of The Town of Danby that the town maintain and preserve its rural and residential character. Darrow said the Plan imagined commercial developments in high density areas concentrated in the hamlets of Danby and West Danby.

Darrow added that the CP recognized that residential home-based enterprises would exist in the Town, and that farming and agriculture were prime examples of such an enterprise. Darrow added that the former land and business owners of PDZ 10, had a personal expertise in clothing and that their business grew into a non-residential commercial enterprise. Darrow said that the new law goes with the land, and that there will be a significant impact on the roads, its residents, and the surrounding area. Darrow said that what the new law allows by right, will go well beyond what it will replace. In Darrow's statement, he concluded by saying that he urges the Planning Board to recommend against approval of the proposed law.

Kenny Makosch, 98 Gunderman Rd., had three primary concerns for his family of four - water, traffic and road safety. In an email submitted by Kelly Makosch, it stated that when the Waldorf School wanted to go in at that location, it was "soundly defeated because of similar concerns with traffic and water usage." The Makoschs believe that this new business proposal is far worse. Kelly Makosch also raised concerns about the rezoning and its potential to reduce nearby home values.

Katharine Hunter, 601 West King Rd., major objection is that laws should not be written to answer a zoning issue.

Pamela Goddard, 888 Comfort Rd., referred to the recent water resource meeting and reminded all that Gunderman Rd., is in a low yield well area. Goddard said that a lot of pedestrian traffic occurs along Gunderman Rd. and agreed that the proposal did not go with the landscape of the neighborhood and added that she was not opposed to any of the specific uses, but of its location. Goddard questioned if the applicant had other areas to run these activities.

Bob Strichartz, 708 Comfort Rd. commented that he ran out of water over the summer and is very concerned about it in the future. Strichartz also said that when Angelheart Designs was operational, his household was disturbed by the lights in the early morning. Strichartz concluded by saying that he seconded all of the previous concerns by other residents, and stated that David Hall wanted to open up Pandora's Box.

Sarah Elbert, 405 Troy Rd., mentioned the large CSA next to the Waldorf School on Nelson Rd. Elbert said that the noise from the farming equipment was very noticeable from her home. Elbert said to consider the traffic safety on Gunderman Rd. during the

winter months too. Elbert added that most residents along Troy Rd. and Nelson Rd., avoid driving by the Waldorf School on Nelson Rd. because of traffic.

PRIVILEGE OF THE FLOOR:

Ted Crane noted that the county is going through its review of agricultural districts and requested that the Planning Board add agricultural districts as a discussion item on their agenda. Crane said that the relevant Gunderman Rd. location is a good illustration of why agricultural districts are not necessarily a good thing for residential neighborhoods.

APPROVAL OF MINUTES:

MOTION - Approve September 17, 2015 Minutes with suggested changes by Joel Gagnon

Moved by Gagnon, Second by Melchen

In Favor: Gagnon, Klingensmith, Melchen, Strichartz, Kruppa

Abstain: Selin

The motion passed

DISCUSSION ON PUBLIC HEARING:

Strichartz outlined why the proposed law was not compatible with the economic portion of the Danby Comprehensive Plan: the negative impact to aquifers, traffic, light and noise on the neighborhood and surrounding environment is too great. Strichartz said that it was not an incubator business and added that the Town has not been successful in moving a growing business to another area. She said that proper zoning is not in place to even enforce moving the business and that the Town has had problems with succession before.

Selin asked if the Planning Board should even be considering the law, knowing that the document was not the applicant's creation. Kruppa stated that the Town Board is looking to the Planning Board for a recommendation. He added that if the PB agrees to change the zone, then the PB needs to discuss it. Kruppa clarified that a special Planning Board meeting, which will be held on October 22nd, will allow the PB member's time to consider the public's comment.

Strichartz's suggestion to the Town Board is to forget the PDZ altogether and to have the applicant come up with a business proposal with specific uses. Gagnon responded that we don't have any provisions in our zoning for the Autism Center or the Book Auction in the Gunderman Rd. area, because in a low density area those are not permitted uses. He added that planned development zone creation was the mechanism used within our zoning to accommodate businesses that have outgrown their status as home occupations. Gagnon said that the Town is still lacking a good plan to move a growing business to a more appropriate area.

Klingensmith said that legally the applicant can run a clothing company now, with noise, traffic and unlimited water usage. Klingensmith said that the Town would be missing out on an opportunity to put some restrictions on this property were the law not approved, and that the applicant has proven himself a willing participant to the process. Selin asked Town Planner, CJ Randall, if the property owner can voluntarily give up certain rights. Randall said that the applicant can request a use variance for a zoning change to a single parcel. Gagnon restated Selin's question: can we put constraints in the law if the applicant volunteers them? Klingensmith added, and if so would they convey? Randall said, they are not used because they are legally indefensible. Gagnon said the alternative approach is to limit the uses, which will limit the impact.

David Hall stated that he is delighted to pare the document down and that he doesn't need all the uses listed in the law. Gagnon said that the Planning Board needs to make a good faith effort to review the law and pare it down to mitigate the impact and uses, making it better for the neighborhood. Kruppa said that the applicant has also requested that the Planning Board look at the local law and pare it down to what we feel is reasonable. Kruppa finished by remarking that the Planning Board will hold a special meeting in one week to review the law and work towards making a recommendation to the Town Board.

Due to time constraints, Kruppa waived the remaining items on the agenda.

**GROUNDWATER PROTECTION LAW
TOWN BOARD LIAISON REPORT
PLANNING & ZONING REPORT
COMPREHENSIVE PLAN REPORT
ADJOURNMENT**

The meeting was adjourned at 9:07 pm.

Kelly Cecala, Planning Board & Board of Zoning Appeals Recording Secretary