

Town of Danby Planning Board  
Minutes of Special Meeting  
September 5, 2019  
(Extra Meeting)

**PRESENT:**

Ed Bergman  
Joel Gagnon  
Bruce Richards  
Jody Scriber  
Jim Rundle (Chair)

**ABSENT:**

Scott Davis  
Naomi Strichartz

**OTHER ATTENDEES:**

Town Planner	John Czamanske
Town Supervisor	Ric Dietrich
Town Board Members	Leslie Connors, Jim Holahan, Jack Miller, Matt Ulinksi
Recording Secretary	Alyssa de Villiers
Public	Katharine Hunter

*The meeting was opened at 7:04pm.*

**(1) CALL TO ORDER / AGENDA REVIEW**

No changes were made to the agenda.

**(2) PRIVILEGE OF THE FLOOR**

No comments were made during privilege of the floor.

**(3) DISCUSSION MORATORIUM RECOMMENDATION**

Rundle opened by summarizing the purpose of the meeting: Because the Planning Board felt the Town does not currently have language to exert some control over the appearance of buildings in the Commercial zone, and given that a zoning rewrite takes a long time, it was felt that a moratorium would allow the Town

to make the Town's zoning consistent with what the Town has been talking about for years. They made a recommendation of a moratorium to the Town Board (later narrowed to proposals needing site plan or special permit approval in the Commercial Zone). This recommendation received some pushback and concerns were voiced, so it was concluded that a consultation with the Town Attorney Guy Krogh would be the next step.

Rundle asked if having a moratorium when commercial interests have been expressed would be inappropriate. Attorney Krogh said that moratoria should apply uniformly and arise out of dire emergency or necessity. They are more often misused than used, and should not be used as a reaction to stop a project. It can be a slippery slope, and one must be precise about intent. If a moratorium would update authority that the Town already possesses, it could be viewed as invidious. Scriber and Gagnon emphasized that the Board's goal is not to target a use and not referencing anyone specifically, just to create explicit standards for guiding aesthetics. Attorney Krogh said that form-based zoning needs lots of public engagement sessions, taking one to two years minimum, and that no one in the area has this type of zoning, but there are some hybrids. Gagnon explained that his hope was that the moratorium would give the Board and Town time to agree on what they want the Town to look like before being in the position of talking with an applicant.

Regarding site planning in the courts, Attorney Krogh said that site plan review standards are inherently subjective and difficult to quantify; aesthetics are even more difficult to enforce because they are subjective, thus towns generally are required to have some specificity in underlying regulations or ordinances. He said that the site plan review standard of compatibility with the surrounding neighborhood or the built or natural environment is also an aesthetic standard but is broad and enforceable. Is the Planning Board saying it wants to regulate architecture, shape, size, form, and building materials of buildings? Gagnon brought up that the current dominant aesthetic in the Commercial zone may not match what the Town wants. Attorney Krogh suggested that there is currently a rural farmland aesthetic and a general architectural style that is identifiable. Rundle brought up a training multiple Board members had attended about holding buildings to a certain aesthetic. Scriber pointed out that examples exist of what the Board wants to see, including the Town Hall, the Church, and the Gathery. Later in the meeting, Mr. Krogh used the tapestry on the wall to suggest that the Board was talking about a New England/Americana architecture. He said if the Board is looking to regulate style, look, and feel, that is within the scope of their site plan review authority, but how well it would withstand a challenge would depend on the detail to which they wish to regulate aesthetics.

Attorney Krogh said that moratoria are often challenged, often do not survive, and the timeframe is difficult to accomplish the goal within. He stressed these questions: What makes the Board feel they do not have the site plan review authority to sculpt a proposal in a manner that they find consistent with the Comprehensive Plan or community goals or built environment? What authority is lacking? The Town does not have specific aesthetic standards, but what is the Town trying to regulate? The Board has traditional site plan authorities (size and scale, parking, lighting, signage, landscaping, sight and sound buffering) and can connect the condition to mitigate impact to a harm to be alleviated.

The discussion then moved to regulating form versus matching the built environment. Attorney Krogh said that, in terms of regulating aesthetics, saying a building should match the built environment, should be of a size that matches the other buildings of that nature in the community, and be of muted colors are accepted standards that courts will enforce. Rundle asked if Mr. Krogh thought that the Town has existing language for that in their Ordinance. Krogh said that a number of the site plan review standards in Section 274A of Town Law authorize those decisions to be made. Danby's Ordinance has language from 274A and has general site plan review authority. Gagnon asked if the one word "appearance" in the Ordinance is enough of a lever to say what the Board would like a building to look like. Planner Czamanske said the Planning Board can ask for the architecture to look like what the Town values, but the ability to require something and make it stick does not seem like it is there. Attorney Krogh reiterated that the Town's site plan review standards match up pretty well with what is in 274A and provide broad authority for regulating those types of factors. The current zoning is use-based, not form-based; changing to form-based zoning is a total restructuring of the comprehensive plan to value form over the use. Planner Czamanske pointed out that a hybrid is possible, where a Town regulates uses and form, and there is a spectrum of how much control is exerted over form. Krogh said the hybrid model is coming into play more often in New York. Regarding comprehensive planning, it was generally agreed there are some inconsistencies/disconnects between the Town's Zoning Ordinance and Comprehensive Plan. Voluntary concessions were briefly discussed.

Attorney Krogh said that when thinking about a moratorium, the Town should look at what is the specific upgrade or improvement that is needed, how long does it need to get there, and is there a direct connection between the moratorium, the public good, and achieving that goal within the set timeframe. Gagnon asked what a reasonable time frame for a moratorium would be, to which Krogh said one year. He added that the time frame should be proportional to the complexity and the public interest standard of the harm that the Town is trying to remedy. He also noted that it takes away value from land when it is locked up in a moratorium.

Supervisor Dietrich mentioned financial considerations and thinking in advance about where challenges will arise. Bergman questioned whether the Planning Board would want to suggest a moratorium a second time after what he viewed as the Town Board saying "no" the first time. Gagnon said he thought they more said to talk to Mr. Krogh and reconsider. Richards said that in his view the reason for the moratorium was the law is vague, the process to update zoning and the comprehensive plan long, and the Town Board had not yet committed to a full-time planner, thus the Planning Board felt there would be no future way forward and called for a time out. He said the Town Board's decision to bring on a full-time planner gives a way forward so a moratorium is not as necessary or the right tool. Gagnon agreed the Town Board had made a major commitment in making the planner position full-time. He pointed out that the full process of updating zoning will take years, and that things can happen in the meantime which people may be unhappy about. Does the Town have the authority to require buildings to look a certain way? Does the Planning Board agree on what this look should be? He felt it would be better to take a time out to have the conversation.

Attorney Krogh read aloud Article VIII, Section 805 from the Zoning Ordinance, "Site Plan Review and Approval Procedures: General Considerations." He said it is broader than 274A of Town Law. It does not

have specific standards. The amount of aesthetic control would depend on contextualizing it in terms of buffering compatibility with the community and the built environment and other policies, regulations, and laws in the Town. Conditions must be related to the legitimate purpose of zoning. If the goal is to make sure a building has a general appearance that is consistent with the environment and the goals and Comprehensive Plan of the Town, the Planning Board has that authority. The Town's law probably does not allow regulating specific details of the design (versus design generally). General authority must connect the specific project to the Town policy or Comprehensive Plan.

Rundle suggested that a document or statements referencing Town aesthetics could be added to the Comprehensive Plan. Councilperson Jim Holahan pointed out that it sounds like there are a lot of tools in place already and there could be a challenge to something added on. Rundle said he wants applicants to feel that the Planning Board has a legal basis to suggest something reasonable. Could a document be created and adopted by the Town board to say that the aesthetic of new commercial buildings ought to match the architecture of Town's structures and local houses and barns? Attorney Krogh said that this would help, but could hurt if it seemed to be targeted at any one project. Public input would be required. Gagnon and Councilperson Connors brought up the Hamlet Revitalization Plan, which asked for public input about Town aesthetics. Planner Czamanske said that the preparation of a document as suggested would not be quick---maybe six to nine months to adoption. He also said that the more specificity the governing body has provided through the land use ordinance, the more the review board has to work with; specificity added to the zoning would assist the Planning Board in requiring versus asking.

Planning Board members discussed the pros and cons of a moratorium, as well as what exactly a potential moratorium would be for. The Board would want to minimize impact, but Mr. Krogh pointed out that if targeting only commercial retail with the goal of ensuring compatibility and regulating aesthetics, the goal might not be fairly served (moratorium would then not regulate, say, a factory). Czamanske said that it could be only for commercial over a certain size. Town Board members were asked to weigh in, with no one saying they supported a moratorium. Rundle summarized the options as the Board could take no action or do a moratorium to decide an aesthetic standard. A motion was made by Scriber.

**MOTION:** The Planning Board does not ask for moving forward on a moratorium at this time.

Moved by Scriber, seconded by Bergman

**The motion passed.**

In favor: Bergman, Gagnon, Richards, Scriber, Rundle

### **Sketch plan review process**

Czamanske said that if the Planning Board gets together to have a discussion, it is a public meeting. In a preliminary discussion, the Board can indicate what they would like an applicant to provide. It was agreed that it would be good to locate and review the hamlet charette done during the creation of the Hamlet Revitalization Plan. For sketch plan conferences, Bergman suggested being clear on the Town's regulations, emphasizing fit with the neighborhood, and pointing out the buildings that the Board would like

to match in style and color; Scribe added talking about the vision for development in the area. She also mentioned working towards something that looks like the community and benefits the community.

Thanks were given to Attorney Krogh.

#### **(4) ADJOURNMENT**

*The meeting was adjourned at 9:09pm.*

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Alyssa de Villiers – Recording Secretary