

**Danby Town Board
Minutes of Special Meeting
March 2, 2015
Draft**

Present:

Supervisor: Ric Dietrich
Councilpersons: Rebecca Brenner, Leslie Connors, Jim Holahan, Jack Miller

Others Present:

Town Clerk Pamela Goddard
Town Attorney Guy Krogh
Public Ted Crane, Walter and Elizabeth Reimers, Joel Gagnon, Sarah Elbert, Jan Pfleiderer, Frank Darrow, Pat Woodworth, Charles Tilton, Garry Huddle.

The Danby Town Board Special Meeting was opened at 7:20pm

Supervisor Dietrich stated the purpose of the special meeting, to provide legal and procedural information to the Town Board. He stated that there may not be time for questions or comments from the public.

David Hall asked whether the intent or goal of the meeting was to schedule a public hearing for March 16. Supervisor Dietrich made no commitment to a time schedule. Dietrich stated that the goal of the meeting is to gather sufficient information about this land use change proposal to direct the next steps.

Advise from Town Attorney

Town attorney Guy Krogh provided his review and response of the current draft Local Law amending allowed uses in the Gunderman Road PDZ#10. He outlined two primary legal reactions. "If so many conditions are needed, is this the best use for this location?" As an example, Krogh considered water restrictions in the Local Law. He noted that access to water is a critical resource. Who owns the right to a diminishing resource? Who "owns" that water? Where is the balance between regulatory power and a documented harm? What is the trigger for restriction? From an enforcement perspective, how would you know?

Krogh stated that his second legal concern is that allowed uses are written in, "broad, broad brushstrokes." The example given was, what is meant by "warehouse"? He stated that most of the allowed uses (eg: food service/CSA) could trigger the same questions. Once an allowed use is in the local law, even if regulated by special permitting and other regulatory methods, it becomes an allowed use by right. What are the implications of these allowed uses, from a zoning perspective?

Attorney reported that, through dialogue about these questions, it seemed that this could be a good use for the land. Questions still remain as how to define uses and restrictions. Will mitigating conditions be general or specific? What exactly is the plan? While it may be difficult for a developer to know some specifics during the planning stages, some details are necessary in order to address impacts. Krogh advised that it would be beneficial to have something in place which will not only work in the short term, but also over time as tenants change.

Krogh presented some difficulties in drafting such a legal document. What is the mechanism to regulate and prevent impacts? In such a case, this is not just a site plan, but a zoning change. Krogh's presentation included a substantial description of SEQR review - generic vs specific - with some examples. Krogh stated that a zoning change for a t]Town zone triggers full SEQR review.

Krogh expressed concern as to whether there was a solid legal grasp of the concept of the proposed amended change. He stated problems with a generic site plan vs. what the actual use may be. Problems relate to traffic flow, building use, etc. Specifics are not currently apparent in this case.

Krogh advised that the local law needs “more meat on the bone.” He suggested that site plans from other Tompkins County business incubator facilities be reviewed as relevant to this proposed plan.

In review: A) What is the mechanism for regulatory controls? A tight definition of allowed uses, general conditions, site planning with specific conditions, and/or impact limitations (eg: no more than 20 trucks a day). B) This is not just a site plan, but rather a zoning change. Allowed uses in that zone are going to be very different from what was there (a clothing manufacturer).

Town Board Discussion - Gunderman Road Planned Development Zone

Perspective of the Board, based on what they heard from attorney. Brenner voiced a need to have a lot more information and specific information.

Krogh agreed that more information would be helpful and that the developer needs to make some decisions. He also advised that there are some complex code issues hiding in the proposal.

Connors agreed that there needed to be more in this local law, yet thought that the current draft local law could be fixed. She thought that this is a change for the Town, and therefore the Town Board needs to make decisions regarding allowed uses in that area. She thought that the Town Board should write the law, as a use for that area of the Town.

Dietrich noted that substantial changes are needed to the draft law. He asked whether this should be sent back to the Planning Board for further review? What is the best vehicle for making the needed changes?

Holahan agreed that the Town Board should define the legislative end result. He credited the PB for the work already done. He suggested that the TB create a list of what it wants done.

Joel Gagnon spoke from the Planning Board perspective, describing their process and considerations. The PB focused on mitigating constraints which would apply to any business. They considered the primary concerns of the neighborhood, eg: water resources, hours of operations, number of employees, traffic, and noise. The intent was to limit the scope and impact of the PDZ to less than what is there currently.

Holahan recognized the amount of work and negotiation between developer and PB. In his perspective the local law still needs more specifics, definitions. He did not think that the task is insurmountable.

Brenner also commended the PB for its work. She expressed concern about problems inherent with special permit by right. It's not possible to fix problems in the future if uses are granted by right. She also expressed concern about enforcement and the limited resource of the Code Office. What recourse is there for the Town if the restrictions are onerous to enforce? Brenner was concerned that uses be compatible with a low density residential zone. She saw that the nature of changes brought by this zoning modification are significant and was concerned about transient nature of some allowed uses which may change the character of what is essentially a dead-end road. Brenner would like to see holistic rather than piecemeal development.

Planning Next Steps

Krogh added information in response to Gagnon's description of the PB process and intent. The Planning Board opted for impact controls more heavily than other methods of regulation. Krogh described problems with the subjective nature of impact controls - such as noise regulation and hours of operations. The subjective nature of these impacts creates a complication for enforcement. In addition, municipalities may not regulate business operations. Regulations must be land use related.

Krogh advised that the Town needs to decide what method of regulation to use in this case: a series of general regulation, a method of strictly defined allowed uses, maximum impact regulations, or a combination of these. A more developed site plan would be useful but may not be possible at this time. In discussion with Gagnon regarding special permits, Krogh noted that all uses that are subject to special permit are, by right, allowed uses. They have more regulation, but are allowed.

Miller asked a question regarding whether it would be detrimental to take out the section about uses allowed by Special Permit. Krogh provided information about current direction of planning. He stated that modern zoning is moving away from special permits in favor of more detailed Site Planning, and gave some examples. He described site planning as a broader and more effective tool.

Miller asked Krogh his opinion regarding Beeners' recommendation that the developer hire site plan assistance for this project. Krogh supported that recommendation. He stated that it is rare not to have a site plan engineer involved in the process. There is no legal requirement for an applicant to hire site plan assistance, but it would be to the developer's benefit to do so.

Krogh presented questions for TB consideration regarding complications/imperfections of impact based regulation. What triggers an impact? The last tenant? Would the uses of one incubator trigger regulations for all? If those uses are unknown (or poorly defined) how will SERQ be handled?

There was a discussion of this issue between the Attorney, the developer, and Board. David Hall asked, "Isn't this my problem?" Krogh pointed out that the concerns of zoning go beyond the intent of this developer. The PDZ local law is regulating land uses. Krogh also noted regulatory burdens which would fall on the landlord in a "trigger based" impact mitigation system.

Krogh said that these problems are not insurmountable, but the method of regulation needs clarification. He suggested reviewing similar sample plans for Planned Development Zones for impacts, allowed uses, etc. Krogh suggested that, while he had not found a perfect sample for this case, the Board may want to review Town of Ithaca zoning for examples such as the PDZ for Ithaca Brewery.

Miller asked question regarding "hidden complications in code" - what might they be? Krogh gave the example of a facility sprinkler system. Currently, such a system is not needed at the Gunderman Road facility. Mixed use with various tenants, as is common in a business incubator, might trigger that code requirement and developer cost. There may be other code issues related to multiple uses which are not under common ownership. Krogh suggested that SEQR should flag some of these concerns.

There was a discussion of what process to use to refine the draft local law. By agreement of the Board, Hall was included in this discussion. Hall described the information session as the "first moment of clarity in seven months" of working toward a business incubator plan for the Gunderman Road facility. He asked to be kept involved in the process of addressing concerns in the local law. There was a discussion of specific steps needed to move the process forward.

Klingensmith added her perspective of the Planning Board process. The PB took into consideration that the Angelheart factory was too much of an impact on the neighborhood. The current draft local law was designed to be less disruptive and a best attempt to address neighbor concerns. Dietrich agreed that the Angelheart operation had a negative impact on the neighborhood. He said that this underscored the importance of considering land uses, neighborhood impacts, and regulations up front.

Krogh suggested the model of a "Short Action Committee" to review and redraft the local law. Such a committee would include a member of the Town Board, Planning Board, Board of Zoning Appeals, local resident, and local business person (not the applicant/developer). This provides a cross-section of opinions. Krogh suggested that the committee be given a short deadline to come back to the

Town Board with a coordinated document built on what the Planning Board has already created. Krogh gave the example of the Town of Caroline, which has used this model for several zoning laws.

There was agreement among TB to use this model. Discussion of this and possible creation of a “Short Action Committee” will be on the agenda for the March 9 TB meeting.

Jan Pflederer asked for clarification regarding water resource rights, asking whether it was true that water resources/aquifers to not end at a property boundary. This was confirmed.

Sarah Elbert made comments in opposition to the proposed PDZ change and to the process being undertaken. She implied that there was some conflict of interest regarding the applicant and the Town Board, as Hall is also a member of the Board of Zoning Appeals. The TB clarified that this request was made in October 2014 and that the Planned Development Zone was already in place. Connors and Dietrich expressed that they are unbiased as to the outcome of this request. Miller clarified that the purpose of this meeting was simply to gather information.

Ted Crane commented on the process, supporting the TB in a course of deciding what it would like to see in the area as opposed to reacting to negative impacts. He urged the Board to examine cumulative effects of uses in the PDZ.

Adjourn

The meeting was adjourned at 8:55 pm

Pamela Goddard, Town Clerk