

**Danby Town Board
Minutes of Regular Meeting
March 21, 2016
DRAFT**

Present:

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

Others Present:

Town Clerk Pamela Goddard
Bookkeeper Laura Shawley
Planner CJ Randall
Public Ted Crane, Ronda Roaring, Frank Darrow, David Hall, Pat Woodworth, Charles Tilton, and others.

Public Hearing Opened at 7:10pm

A hearing will be held before the Town Board in relation to the dangerous and unsafe building on March 21 at 7:00pm, at the Town Hall, 1830 Danby Road, Ithaca, New York: Town Board of the Town of Danby determines that the Building at 1840 Danby Road is unsafe and dangerous, as defined in Town of Danby Local Law No. 4 of 2000 (as amended by Local Law No.1 of 2002), in the manner and for the reasons set forth in the Findings and Recommendations as to the Repair or Demolition and Removal report; and that the Town Board of the Town of Danby hereby Orders the Owner of the property at 1840 Danby Road, 10.-1-25, Christopher Muka, to comply with the recommendations of the Findings and Recommendations as to the Repair or Demolition and Removal report, being that the contents of the Building must be removed, the Building must be demolished, and all debris and abandoned materials must be removed from the site unless portions of the debris can be lawfully disposed of on the premises.

Muka did not appear before the Board. There were no comments regarding this matter. No correspondence was received related to this matter.

Public Hearing Closed at 7:12pm

Regular Meeting Opened at 7:12pm

Privilege of the Floor

Frank Darrow made comments regarding what he saw as inconsistencies in the SEQRA review of the proposed PDZ #10 legislation. He asked whether the 2010 traffic report, submitted by the applicant, is still relevant at this time? Darrow asked for some clarification regarding the review and Planning Board recommendation process. He asked when the public will be able to see a “clean” (un-annotated) and final copy of the proposed law on which to respond at a Public Hearing? Members of the Board and Planner Randall attempted to clarify the process of review. The SEQRA process can be used to point to areas which may be mitigated by various means. There was agreement that some areas need further review and consideration. The document will need to go to County Planning for review, as it is in an agricultural district. Planner Randall stated that this usually provides substantial recommendations for amendments to the proposal.

Pat Woodworth noted that the version of the draft zoning change at PDZ #10 was not the version which had been recommended by the Planning Board. Woodworth expressed concerns regarding allowed number of employees, and related traffic, in the Planning Board recommendation regarding PDZ #10. Randall spoke to these concerns. Randall noted that the Planning Board recommendations are now posted on the web site. There was a related discussion between Randall, Brenner, Connors, and members of the

public as to the process of SEQRA review and whether the environmental review should be done on a final document or a document which may have further changes. Woodworth made the case that this proposal is not in accord with the Danby Comprehensive Plan. She questioned whether there would be true benefit to the Town, should this proposal be approved.

Clerk Goddard read a letter from Kelly Makosch, 93 Gunderman Road, expressing strong objections to the proposed development at PDZ #10, particularly with respect to traffic safety.

Charles Tilton read a written set of comments in objection to the number of allowed uses proposed for PDZ #10 on Gunderman Road. He made the point that it was David Hall's, "desire and need for flexibility" (a lots of uses allowed by right) which brought these into the proposed law, and that this "flexibility" goal was Hall's, not the Town Attorney's. Tilton's comments were submitted to the Clerk for the record.

Ted Crane spoke against the PDZ #10 proposal and the inclusion of a long list of allowed uses. He agreed with others who see the extensive use of allowed uses coming from the applicant rather than the Town Attorney, noting that Hall was given ample opportunity to pare down uses. He supported others who assert that, if uses are permitted by the legislation, it must be assumed that the applicant or a subsequent owner will take advantage of them (it has happened under the existing PDZ #10 legislation), and that this is a huge expansion of the current allowed usage. He expressed concern that lower Gunderman Road will become the, "high speed access to Route 96B," as the NYS DOT has recently completed a safety survey—based on existing traffic—and has lowered the speed limit on Comfort Road to 35mph.

David Hall responded to comments above, continuing his assertion that the current document was drafted by the Town Attorney. He stated that he agreed to the removal of several uses by the Planning Board.

Board Position Appointments - Planning Board Vacancy

To open a discussion, Connors moved to reappoint Ted Melchen to fill the vacancy on the Planning Board. She reported that the Planning Board discussed appointments during its February 18 meeting. Connors reported that the PB unanimously voted to recommend Melchen to another term. Those minutes were not available at the time of this meeting. Melchen has not submitted the application required by the Town's Appointment Policy. Melchen had previously stated that he was not interested in being considered for an additional term. He had also stated that he would serve until someone else could be appointed. Connors reported that Melchen had changed his mind, that he did want to stay but was uncertain whether he could serve for an additional seven years. Connors recommended that Melchen either be reappointed to a term or that he be appointed as an alternate.

Brenner expressed concerns, as another candidate did follow procedure and had come to the Board for an interview. She expressed the view that term limits for appointments provide a good opportunity to assess the appointment with fresh eyes. She would prefer for the minutes of the February PB meeting to be available prior to appointing to the vacancy. Holahan agreed that it would be better to speak with Melchen prior to making an appointment.

After discussion, Connors decided to withdraw the motion to appoint, until the question can be further discussed with Melchen.

Board Position Appointments - Board of Zoning Appeals Vacancy

Connors moved to reappoint David Hall to fill the vacancy on the Planning Board. She stated that she was aware of letters of support for Al Wagner from the BZA chair and other members of the BZA. She reported that she has attended almost all of the BZA hearings in the past few years and found David Hall a respectful and objective member of that board. She hoped that the Wagner would remain interested in a future vacancy, as he was a valuable member in the past.

Dietrich and Brenner expressed concerns. Dietrich wondered why the Town Board would listen to what one Board, the Planning Board, recommends while going against the recommendation of another, the Board of Zoning Appeals? Brenner expressed similar concerns. She stated that the Town was lucky to

have two good candidates, and that it was important to take the recommendations of the BZA into consideration as this is a group which needs to work well together. Connors stated that she thought the interactions of the two boards are quite different.

Connors expressed concerns about some of the other members of BZA. She was displeased with the way some treated residents and treated each other. Connors suggested that the TB may want to go into executive session for discussion. Clerk Goddard suggested that there was not a clear legal reason for doing so. There was not support for going into executive session.

Holahan and Miller expressed their support for Hall. They were willing to support Connors' recommendation.

Dietrich expressed concern that there might be a need for Hall to recuse himself in the event that issues related to rezoning PDZ #10 are sent to the BZA for variance requests. He reported that a discussion has begun with the Code/Planning office to address some problems with the BZA through training. He restated his intention to listen to the recommendation of members of the BZA for a good working group.

RESOLUTION NO. 36 OF 2016 - APPOINT BOARD OF ZONING APPEALS REPRESENTATIVE FOR 2016-2020

Resolved, that the Town Board of the Town of Danby reappoints David Hall to fill a five year term on the Board of Zoning Appeals, for 2016-2020.

Moved by Connors, Second by Miller. The motion passed.

In Favor: Connors, Holahan, Miller.

Opposed: Brenner, Dietrich.

Board Position Appointments - Recreation Partnership Vacancy

There was a motion appoint Brenner to a vacancy on the Recreation Partnership Board. Brenner stated that she was happy to take on this involvement.

RESOLUTION NO. 37 OF 2016 - APPOINT RECREATION PARTNERSHIP REPRESENTATIVE

Resolved, that the Town Board of the Town of Danby appoints Rebecca Brenner as its representative to the Tompkins County Recreation Partnership.

Moved by Connors, Second by Holahan. The motion passed.

In Favor: Connors, Holahan, Miller, Dietrich.

Abstain: Brenner.

1840 Danby Road Property Contingent Purchase Offer

CJ Randall provided information regarding a draft, contingent purchase offer for the property at 1840 Danby Road. Randall noted that this is similar to the recent action taken on the land acquisition on Hornbrook Road with the exception that there is no divestment in this case, and so no need for a permissive referendum. Bookkeeper Shawley confirmed that there are sufficient funds in the General Fund Balance for this property purchase. Randall noted that the SEQRA review should be an unlisted action with a short form.

RESOLUTION NO. 38 OF 2016 - SEQRA DECLARATION OF LEAD AGENCY – AUTHORIZING A CONTRACT FOR PURCHASE AND SALE OF REAL ESTATE LOCATED AT 1840 DANBY ROAD, TOWN OF DANBY TAX PARCEL 10.-1-25

Whereas, 6 NYCRR Part 617 of the State Environmental Quality Review Act (SEQRA) and Section IX of Local Law 2 of 1991 Environmental Review of Actions in the Town of Danby, require that a Lead Agency be established for conducting environmental review of projects in accordance with local and state environmental law; and

Whereas, State Law specifies that for actions governed by local environmental review, the Lead Agency shall be that local agency which has primary responsibility for approving and carrying out the action; and

Whereas, pursuant to New York State Town Law §64(2), The Town of Danby Code Enforcement Officer, acting with a fiduciary duty to secure the most beneficial terms in the public interest, has obtained a formal purchase offer from the Owner of the property at 1840 Danby Road, Christopher Muka, to purchase the parcel of land known as 1840 Danby Road, Ithaca, New York and designated on the Tax Map as 10.-1-25 (0.65 acres) and more particularly described in the forthcoming survey schedules; and

Whereas, this is an Unlisted Action under the Town of Danby Environmental Review of Actions and an Unlisted Action under the State Environmental Quality Review Act, both of which require environmental review; and

Whereas, pursuant to §617.6(b)(3) of the State Environmental Quality Review Act (SEQRA), the aforementioned information must be mailed to all involved agencies notifying them that a Lead Agency must be agreed upon within thirty (30) calendar days of the date that the aforementioned information is mailed to involved agencies; and

Whereas, the Town Board is the local agency with primary responsibility for approving the action;

Now Therefore, be it

Resolved, that the Town Board of the Town of Danby hereby authorizes the mailing to all Involved Agencies of the aforementioned information, together with Notice that the Town Board intends to declare itself Lead Agency for purposes of SEQRA for this Type I and Unlisted Action, unless objection to such designation is received within thirty (30) days.

Moved by Connors, Second by Brenner. The motion passed.

In Favor: Brenner, Connors, Holahan, Miller, Dietrich

There was a short discussion regarding the contract negotiation and property clean up process. Brenner asked questions regarding how much money should be held in escrow for this action. These details can be worked out by the Supervisor, Town Attorney, and Code Officer during the contract negotiation process. The final purchase offer contract will be contingent on approval by the Town Board.

RESOLUTION NO. 39 OF 2016 - AUTHORIZING A CONTRACT FOR PURCHASE AND SALE OF REAL ESTATE LOCATED AT 1840 DANBY ROAD, TOWN OF DANBY TAX PARCEL 10.-1-25

Whereas, the Town of Danby Comprehensive Plan Update that was adopted by the Town Board of the Town of Danby on September 11, 2011 included a stated strategy to implement the Central Danby Hamlet Revitalization Plan; and

Whereas, pursuant to New York State Town Law §64(2), The Town of Danby Code Enforcement Officer, acting with a fiduciary duty to secure the most beneficial terms in the public interest, has obtained a formal purchase offer from the Owner of the property at 1840 Danby Road, Christopher Muka, to purchase the parcel of land known as 1840 Danby Road, Ithaca, New York and designated on the Tax Map as 10.-1-25 (0.65 acres) and more particularly described in the forthcoming survey schedules; and

Whereas, 6 NYCRR Part 617 of the State Environmental Quality Review Act (SEQRA) and Section IX of Local Law 2 of 1991 Environmental Review of Actions in the Town of Danby, require that a Lead Agency be established for conducting environmental review of projects in accordance with local and state environmental law;

Whereas, the Town Board finds, that acquisition of the subject property by purchase is the best alternative, of all reasonable alternatives available to the Town, and that such acquisition would be in the best interests of the Town;

Now Therefore, be it

Resolved, that the Town Board hereby authorizes and directs the Town Supervisor, the Code Enforcement Officer, and the Town Attorney to enter into contract negotiations related to sale with the record owners of the subject property, now or formerly Christopher Muka, for the purpose of acquiring said property, at a cost to the Town of Danby not to exceed \$10,000, subject to adjustment on a pro rata basis upon proof of the actual surveyed acreage of the property; and be it

Further Resolved, that pursuant to contract the Supervisor is authorized and directed to execute any documents and to pay any and all reasonable survey, title, environmental audit, prorated tax, and recording charges; and be it

Further Resolved, the monies to be expended for purchase of the foregoing property, together with related expenses, shall be drawn from the Town of Danby General Fund Balance Account, and

Further Resolved, that the Contract is contingent upon approval by the Town Board.

Moved by Brenner, Second by Connors. The motion passed.

In Favor: Brenner, Connors, Holahan, Miller, Dietrich

PDZ #10 SEQRA Review - Discussion

David Hall read a statement expressing a desire for a change in direction for this proposal.

He reviewed his intentions as well as the fears of the neighbors, as seen through the eyes of his wife. Hall stated that he had been naive in making his proposal. He stated that his motives, rather than being purely financial, are to help enable local farmers and entrepreneurs. Hall noted that he had purchased the now defunct Oasis Club restaurant for this purpose, and has just gotten started on that initiative to support the regional agricultural community. His primary interest for the Gunderman Road property is to establish an autism center to support his son.

Toward that end, Hall stated his intention to table the application for revised zoning of PDZ10. He asked that the Town Board draft a resolution to the Board of Zoning Appeals to support an intended request for a Use Variance to cover the single use of an Autism Center. He made this request with an understanding that a Use Variance could be more limited in scope than a zoning change. He recognized that there may be a concern as to whether he could have a fair hearing before the Board of Zoning Appeals, and hoped that this could be accomplished. He additionally hoped that the community would support this change in approach.

Dietrich responded to Hall's statement. He stated that this seemed to be an entirely new proposal, that he and the Board would need time to digest this information and to see what's really on the table.

Planner Randall stated that the Board could go forward with the environmental quality review, extending the timetable for this review with the applicant's consent, and then sending this to County Planning for review. Hall clarified that his statement is for discussion and that he is proposing "tabling" the request for zoning change, but not withdrawing the proposal.

For the benefit of Hall and the Board, Randall described the difficulty in approval of any use variance. She stated that there is a very high threshold for approval of Use Variance and that this is the most difficult sort of variance to be approved. This is intentional, so that a judiciary board does not frequently overrule the intent of a legislative board. That said, a Board of Zoning Appeals may be the one place where a variance could be granted for a single use.

Dietrich asked Randall for clarification of process for moving forward, given Hall's new suggestion that the original proposal be tabled on possible appeal through the variance process. Randall explained the process for a Use Variance request in contrast with a request for a zoning change. A Use Variance would still be subject to environmental quality review and would still have to go to County Planning for review. Randall advised that this would be as complicated as a zoning change request.

Randall made a case for the TB to continue the process of environmental review already underway. There was a related discussion of the process to extend SEQRA deadline, as the first deadline for making a determination was this date. Dietrich polled the Board regarding what direction to take at this time. Brenner stated that she needed more information about Hall's current proposal before making a recommendation or declaration at this time.

Holahan asked Randall for clarification regarding what the process might be if Hall were to pursue a zoning change request and variance request concurrently. Randall stated that she would advise the applicant to write a letter of variance request and that both that letter and the current zoning change proposal would be sent to County Planning. They would, most likely, send back review of each alternate proposal. Holahan asked whether there was any reason not to proceed in that way. Randall stated that there was no reason, positive or negative. Dietrich asked Randall for direct advice or direction. Randall supported the idea of extending the SEQRA deadline and having a special meeting to review and discuss this topic. Deadline extension, for 30 days or more, can be done by verbal agreement of the Board and applicant.

PDZ #10 Proposal Review - Set Special Meeting

Miller suggested setting a special meeting with the Board, applicant, and Town Attorney to focus on this topic. He stated that this may not have gotten the full attention necessary, as the rezoning topic has been included at meetings with full agendas. There was a discussion of when this might be possible.

The Town Board and applicant agreed to extend the SEQRA deadline, and to set a special meeting for the express purpose of reviewing Hall's proposal for PDZ #10. Randall advised the applicant to have his attorney present as well, with a reminder that Guy Krogh works on behalf of the Town. This date to take place in mid-April, based on the availability of the Town Attorney. A meeting was tentatively set for April 12 at 7:30pm.

Permaculture Course Request

Eric Banford did not attend the meeting to address the Board. There was no further communication from him. Dietrich stated that Banford needs to go to the Danby Community Council for cosponsorship and use of the Town Hall. Crane reported, on behalf of the DCC, that this conversation is underway. Bookkeeper Shawley reported that the Town may be listed as "additional insurance."

There was a general discussion of whether permission for Town Hall use should be granted for outside organizations that charge for events. Brenner expressed concern that any decision related to such use should be part of a consistent policy. No formal decision was made at this time.

Appointments - Webmaster

Holahan reported that Jordie VanHam has expressed an interest and willingness to continue as Town Web Master.

RESOLUTION NO. 40 OF 2016 - APPOINT WEB MASTER - 2016

Resolved, that the Town Board of the Town of Danby re-appoints Jordie VanHam as its Web Master for 2016.

Moved by Holahan, Second by Connors. The motion passed.

In Favor: Brenner, Connors, Holahan, Miller, Dietrich.

Subdivision Amendments

Dietrich advised the Board that revisions to the Subdivision Ordinance will be forthcoming from the Code/Planning office. Randall reported that the Planning Board has made a recommendation regarding the current process. The recommendation is to amend the current process to be a minor subdivision process which goes before the Planning Board. Randall has written the draft of the amendment and this has been transmitted to the TB. Randall commented that this is the more common and appropriate procedure. She added that this can lead to better planning.

Randall has been working with the Town Attorney to approve the language of these amendments. Randall reported that the Attorney has recommended updating and amending Major Subdivision Ordinance provisions at the same time. Randall is more inclined to deal with the simple revisions for minor subdivision at this time. She also advised that the proposed Groundwater Protection Ordinance will impact Subdivision regulations as well. It may be appropriate to address other Subdivision amendments during the process of reviewing and adopting the Groundwater Protection Ordinance.

Hornbrook Road SWAT Incident Review

Dietrich provided information that Federal review of the 2015 SWAT incident on Hornbrook Road is moving forward. There will be a meeting to be held in the Town Hall to gather comments from a few key officials and residents. This meeting is to be scheduled on an afternoon in early April.

Adjourn

The meeting was adjourned at 9:20 pm.

Pamela Goddard, Town Clerk