

**Town of Dryden Planning Board  
August 20, 2014**

**Members Present:** Joe Laquatra (Chair), Marty Hatch, Tom Hatfield, Heather Maniscalco, David Weinstein, Craig Anderson, John Kiefer - excused

**Guests:** Mahlon Perkins (Town Attorney), Nelson Hogg (ZBA), Jeff Fern (ZBA), David Bravo-Cullen, Kim LaMotte (Ag. Committee), Evan Carpenter (at 7:40)

**Conservation Board liaison:** Craig Schutt

**Planning Department representative:** David Sprout

**Presentation by Mahlon Perkins, Town Attorney**

*Town Planning Boards: Creation, Jurisdiction, Responsibilities and Limitations*  
(attached)

I. B. #5 Alternative Members:

The Town Board can appoint alternate members. A conflict of interest between member of Planning Board and the applicant or the Planning Board member has an interest in the project. In those cases, the Chair can appoint an alternative to serve.

J. Laquatra asked about a situation in which a Planning Board member abstained because of a bridge that affected his family's farm. Atty. Perkins said an alternate should have been appointed due to a conflict of interest.

Local law versus Ordinance:

Ordinances are enacted in a different way. Until 1976, municipalities did not have the power to pass local laws. In 1976, the Municipal Home Rule Law was passed allowing local governments to pass laws that relate to their affairs. The ability to enact a local law gives the municipality the power to overrule other laws in certain cases. A local law has to be filed with the State.

An ordinance is local, and limited to things enumerated in the Town Law that allow the Planning Board to act on. It simply has to be enacted and publicized.

II. C. Subdivision law

What is the difference between major, minor and conservation subdivisions?

A minor subdivision will create 2-5 lots (this is usually handled by the Planning Department)

A major subdivision will create more than 5 lots

A conservation subdivision has requirements based on protecting and preserving an area in a conservation zone

GML 239 (m) and (n) - certain actions by the Town have to be referred to the Tompkins County Planning Department. A full statement of the action including the SEQR, the application, and any studies are supposed to go to the County thirty days before the Town is going to act on it. This allows the County to provide their advice regarding the action. If the County says there is a potential negative impact on inter-municipal relations, then the Planning Board will need a majority + one to override the County.

There are things that trigger the County being involved – a subdivision, zoning ordinance amendments, actions within 500 feet or on a county road, town line, etc.

If the Planning Board doesn't do that (follow the laws, subdivision, gml, etc.), there are cases that say it is jurisdictional and an annulity (meaning there was no action). By law, the County is entitled to 30 days advance notice.

### III. Responsibilities:

The policy of the Zoning Ordinance and the subdivision law, states that when required to file a SEQR form, you are supposed to file the full form. This is not currently appropriate per revisions by the DEC. Atty. Perkins has asked the Town Board to change their requirements to be in agreement with the State.

Type I actions require a full EAF.

Unlisted actions should require the short form although Dryden law requires the full EAF.

When the Planning Board relies on a document to make a decision, make reference to it in the resolution. If a situation requires discussion to substantiate the decision it has to be documented. Demonstrate that the decision is reasonable or rational.

A question was asked using the example of Dryden Zoning and its conformity with Ag and Markets Laws. Is working toward conformity (in this case), something the Planning Board can/should initiate? Atty. Perkins stated that is not part of the Planning Board's responsibility.

Another question was asked regarding a Site Plan Review and whether questions regarding demolition and disposal of structures currently on the site were acceptable. Atty. Perkins said that it is improper unless part of the Environmental Review. SPR is authorized by Town Law but the Town Law doesn't set any standards. That is left to each local municipality.

Chairman Laquatra pointed to the Planning Board charge on the Town of Dryden's website which states part of the Board's responsibility is to protect the public. He has concerns about the fact that asbestos and lead abatement laws are often ignored. Atty. Perkins said that the Planning Board (and the Town) doesn't have that enforcement responsibility. It is up to the DEC, Department of Labor and the EPA. If a person suspects there may be an issue, they should refer it to the appropriate agency.

It is not part of the Code Enforcement Officers but they are able to make a referral. No resolution or determinations by the Planning Board are necessary. Any citizen can report potential problems.

Atty. Perkins advised the Planning Board better have a sound basis for the inquiry (a report from somewhere) even if it is within the SEQR review.

### IV. E. Conflict of Interest

Disclosure is very important. Generally the conflict is a financial interest but it can also include any interest in the outcome.

M. Hatch made the point that the Planning Board is limited to the knowledge given by the applicant when they are conducting a SEQR. The Planning Board is responsible for the honesty and truth of the SEQR.

Atty. Perkins said the information and decisions made by the Planning Board have to be reasonable under the circumstances.

David Sprout said that most of the concerns are addressed by the Planning Department through the permitting process – demolition, building, zoning, etc.

M. Hatch expressed his concern about the Board's inability to actually do anything about their concerns with demolition contamination. D. Sprout pointed out that the concerns can be part of the record even if they are don't have any power to regulate that action.

C. Anderson asked about a situation in which the Planning Board was scolded for approving a site plan with the condition the applicant had to have a landscaping plan approved by the Planning Department. The Planning Board had to redo the site plan the next month with the inclusion of landscaping. They were not permitted to let the Planning Department approve the landscaping. Last month, the Town Board did a special use permit (approval) in which they left the approval of landscaping to the Planning Director. What is the difference?

Atty. Perkins said he did not like either situation. If landscaping is required, then the applicant has to come up with a landscaping plan for approval by the Planning Board. He believes that if it is an important project, it is important enough to do it right. Make the applicant do it right. If it is something required, make the applicant get the information to you.

T. Hatfield asked Atty. Perkins to share his knowledge on the Right to Farm Law.

The Town had a Right to Farm Law before the state did; Local Law #1 in the year 1992.

The Ag and Markets law section 308 is labeled "Right to Farm". Atty. Perkins said he disagrees with that title and instead feels 305A is the heart of the matter. It restricts the policies of local governments when exercising their powers to enact and administer local laws, orders, rules and regulations shall exercise those powers in a manner that will realize the policy of the state and shall not *unreasonably* restrict or regulate farm operations within Ag Districts. It is how you apply the law.

H. Maniscalco asked for clarification regarding non-agricultural uses in an ag district. A farm which is part ag and part a dirt track for racing, is it possible to regulate the dirt track or is it considered part of the farm since it is in an ag district.

Atty. Perkins said the Right to Farm laws apply to farming operations in an ag district. Dirt track racing is not ag related and thus can be regulated to the same level as other non-ag businesses.

T. Hatfield asked about farm employee housing. Can 4 or more unrelated people living in the same house still fall under farm worker housing or does it get bumped to a boarding house application. Atty. Perkins recommended reviewing is Hafner v. Town of Lysander. He stated that as long as they are farm employees, it is not a boarding house. (<http://caselaw.findlaw.com/ny-court-of-appeals/1314549.html>)

**Review and approval of Minutes:**

T. Hatfield moved to accept the July minutes with the recommended changes. D. Weinstein seconded the motion and the minutes were approved unanimously.

**Dryden Zoning and Ag and Markets Law**

D. Weinstein expressed concern that the Town's zoning isn't consistent with Ag and Markets Law. The Board agreed that it will be best if Atty. Perkins reviewed the information (including the zoning, the original response from Dr. Somers, the response from D. Kwasnowski (former Planning Director) and the recommended changes presented by the Ag Committee)

Resolution # 9 - T. Hatfield offered the following resolution:

**Whereas**, there are several areas of the Town of Dryden Zoning Ordinance which appear to be inconsistent with NYS Agriculture and Markets Laws; and

**Whereas**, the Dryden Agriculture Advisory Committee has presented the Dryden Planning Board with recommended changes; and

**Whereas**, the Planning Board does not have the jurisdiction to review zoning recommendations in regard to NYS Ag and Markets Laws;

**Therefore**, the Planning Board requests the Dryden Town Board charge Town Attorney Mahlon Perkins with reviewing the current and recommended zoning changes in relation to NYS Ag and Markets Law.

D. Weinstein seconded the motion which was unanimously passed.

T. Hatfield pointed out how well attended the August 13<sup>th</sup> meeting/presentation with Dr. Somers was – easily close to 100 attendees.

The Board members said they saw people from Caroline, Ulysses and Groton. The farm community was well represented and Dr. Somers did very well.

C. Anderson questioned the presentation by J. Laquatra to the Town Board at the past Town Board Meeting. He is concerned that Mr. Laquatra was speaking for the Planning Board. He asked the Town Board to fill the position that has been vacant in the Planning Department and a quick search of grants that are available to Towns showed that Dryden might be missing out on several opportunities. He therefore asked the Town Board to consider hiring someone who can work on grant writing.

D. Weinstein pointed out that the Planning Board is on record as recommending a person with an economic development background for the position of Planning Director. At this point, the Planning Board is interested in a candidate who is capable of Grant Writing and IT.

Resolution #10 - M. Hatch offered the following resolution:

**Whereas**, the Town of Dryden currently has a vacancy in the Planning Department; and

**Whereas**, the Town of Dryden is potentially missing opportunities to improve the community through available grants; and

**Whereas**, the Town of Dryden does not have an information technology employee; and

**Whereas**, the Town is reliant on contemporary technology;

**Therefore**, the Planning Board recommends the Town Board fill the Planning Department position with an employee who can commit half time to Information Technology and half time to writing grants.

D. Weinstein seconded the motion which was passed unanimously.

As the Planning Board members need more training credits for this year, J. Laquatra agreed to give his presentation on green building in October.

There being no further business, the meeting adjourned at 8:40 PM.

Respectfully Submitted,

# TOWN PLANNING BOARDS

## Creation, Jurisdiction, Responsibilities and Limitations

### I. CREATION

- A. Planning Board (PB) creation is permissive, not mandatory
- B. PB created by Town Board by ordinance or local law – Town Law (TL) § 271
  - 1. Dryden – 2012 Zoning Ordinance (ZO) amendments continued the previously constituted PB (ZO Article XV)
  - 2. Town Board designates chairperson
  - 3. PB designates chairperson in absence of Town Board designated chairperson
  - 4. Five or seven members. Dryden – seven members, appointed by resolution of Town Board
  - 5. Alternate members:
    - (i) Serve only if there is a conflict of interest
    - (ii) Chairperson designates
    - (iii) All other requirements of PB members apply i.e. training, attendance, conflict of interest
    - (iv) Town Board determines term
  - 6. PB members – public officers – oath required [see IV (C)]
- C. PB may be abolished by Town Board action

### II. JURISDICTION

- A. PB derives its jurisdiction through delegation by Town Board and is limited to only that which is delegated
- B. Under ZO § 1504
  - 1. Site plan review when a proposed use is subject only to site plan review – ZO § 1101(C)(2)
  - 2. Special permits are reserved to Town Board which also reviews site plans – ZO § 1101(C)(1)
- C. Subdivision Law (SL) § 500(B)
  - 1. Major subdivisions
  - 2. Minor subdivisions only if public or private road proposed
  - 3. Conservation subdivisions
  - 4. Common driveways serving more than four lots – SL § 1201(A)(2)
  - 5. Common driveways serving no more than four lots – Planning Department SL § 1201(A)(1)
- D. Referrals
  - 1. Town Board by resolution – TL § 271(14)(a)
  - 2. Comprehensive plan when directed by Town Board – TL § 272-a(6)(b)
- E. Action
  - 1. Usually four votes required to take action

2. GML §§ 239-m and 239-n may require “super-majority” – i.e. five votes to approve (majority plus one)

### III. RESPONSIBILITIES

- A. Remember – your jurisdiction is limited!
- B. In your review and in your actions follow the criteria and procedures found in:
  1. SEQR
  2. New York Town Law
  3. Zoning Ordinance
  4. Subdivision Law
- C. Decisions on applications must be based upon applying the facts and proposal against the criteria
- D. Rational basis for decisions required
- E. Record should reflect deliberation
  1. Minutes
  2. Reference to reports, written documents, etc. – i.e. that upon which you rely
- F. PB is deliberative body, not a legislative body – no room for personal agendas
- G. Training – 4 hours/year – TL § 271(7-a); ZO §1507
- H. Attendance – ZO § 1506

### IV. LIMITATIONS

- A. Jurisdiction – remember what you can and cannot do
- B. Training requirements
  1. Reappointment – Town Law § 271(7-a)(b); ZO § 1507(B)
  2. Waiver – possible (but don’t count on it)
- C. Oath of office
  1. “I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of member of the Town of Dryden Planning Board according to the best of my ability.”
- D. Town Code of Ethics; GML § 809
- E. Conflicts of Interest – disclosure is the key – GML § 809 (failure to disclose misdemeanor)
- F. Removal/Reprimand by Town Board only
  1. For Cause – TL § 271(9); ZO § 1510
  2. Attendance – TL § 271(9) if local law or ordinance requires; ZO § 1509
  3. Training – TL § 271(9); ZO § 1509
  4. Procedure
    - Notice
    - Public hearing