

**Dryden Planning Board  
February 25, 2016**

**Members Present:** Joe Laquatra (Chair), Joe Wilson, John Kiefer, Dave Weinstein, Craig Anderson, Marty Hatch, Marty Moseley and Tom Hatfield

**Town Hall Staff:** Ray Burger, Planning Director

**Liaisons:** Deborah Cipolla-Dennis and Greg Sloan, Town Board and Craig Schutt, Conservation Board

**Guests:** David Bravo-Cullen, Nickolas and Nick Belisario, 51 Hall Road, Michael Moore and Erik Newland, Stone Wall Wine and Liquor

The meeting was called to order at 7PM.

**Review and approval of minutes from January 28, 2016:**

D. Weinstein moved to approve the minutes as presented, C. Anderson seconded the motion and the minutes were unanimously approved.

**Nickolas Belisario – 51 Hall Road**

Site Plan review:

D. Weinstein indicated that, despite the strong recommendation of the commercial design guidelines, a sidewalk is not necessary at this time considering the area and current usage. However, since the Town is attempting to accommodate pedestrians, he asked if Mr. Bellisario would be willing to assist in that attempt by permitting the use of the former rail bed (via an easement) as a walk-able trail.

Mr. Bellisario was agreeable to the easement as long it will not greatly affect his project. The width of the easement was not determined and Mr. Bellisario agreed to work with the Planning Department to reach an agreeable width. As part of the easement, Mr. Bellisario would be exempt from liability within the easement.

This is not a quid pro quo but rather a common sense acknowledgement as benefiting the town residents.

J. Wilson questioned the use of metal siding as per the D. Sprout, Planning Department, report. It was explained that the rest of the neighborhood buildings were metal sided and thus this project fits the established industrial area motif.

In reference to the signs, the guidelines encourage monument signs but in this case they are permitting the signs on the buildings. A second sign will be permissible if Mr. Bellisario decided to add a monument sign in the future.

M. Moseley asked about the type of lighting. It will be on the exterior of the building facing down. The Board was agreeable to the light fixtures Mr. Bellisario demonstrated.

M. Hatch read the short EAF into the record. Please see attached.

**RESOLUTION # 2 (2016 ) – NEG SEQR DEC – Hall Road, Nickolas Bellisario**

*M. Moseley offered the following resolution and asked for its adoption:*

*WHEREAS,*

*A. The proposed action involves consideration of the application of Nickolas Bellisario to build a warehouse on vacant land next to 51 Hall Road, Ithaca, NY.*

B. *The proposed action is an Unlisted Action for which the Planning Board of the Town of Dryden is the lead agency for the purposes of uncoordinated environmental review in connection with approval by the Town.*

C. *The Planning Board of the Town of Dryden, in performing the lead agency function for its independent and uncoordinated environmental review in accordance with Article 8 of the New York State Environmental Conservation Law – the State Environmental Quality Review Act “(SEQR), (i) thoroughly reviewed the Short Environmental Assessment Form (the “short EAF”), Part I, and any and all other documents prepared and submitted with respect to this proposed action and its environmental review, (ii) thoroughly analyzed the potential relevant areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment, including the criteria identified in 6 NYCRR §617.7(c), and (iii) completed the short EAF, Part II;*

*NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:*

1. *The Planning Board of the Town of Dryden, based upon (i) its thorough review of the short EAF, Part I, and any and all other documents prepared and submitted with respect to this proposed action and its environmental review, (ii) its thorough review of the potential relevant areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment, including the criteria identified in 6 NYCRR §617.7(c), and (iii) its completion of the short EAF, Part II, including the findings noted thereon (which findings are incorporated herein as if set forth at length), hereby makes a negative determination of environmental significance (“Negative Declaration”) in accordance with SEQR for the above referenced proposed action, and determines that neither a full Environmental Assessment Form, nor an Environmental Impact Statement will be required, and*

2. *The Responsible Officer of the Planning Board of the Town of Dryden is hereby authorized and directed to complete and sign as required the determination of significance, confirming the foregoing Negative Declaration, which fully completed and signed short EAF and determination of significance shall be incorporated by reference in this Resolution.*

*2<sup>nd</sup> T. Hatfield and unanimously approved.*

**Site Plan Review with conditions**

Resolution # 3

Hall Road, Nickolas Bellisario

*M. Hatch offered the following resolution:*

**Whereas**, *the Dryden Planning Board has reviewed the Sketch Plan per Article XI of the Town of Dryden Zoning Ordinance, and*

**Whereas**, *the Planning Board finds the project to be consistent with the zoning, design guidelines and comprehensive plan; and*

**Whereas**, *the Board waived the sidewalk requirement per the Commercial Design guidelines; and*

**Whereas**, the Tompkins County Planning Department review pursuant to General Municipal Law § 239-l and § 239-m is not required; and

**Whereas**, the Town of Dryden Planning Board and Planning Department have made recommendations;

**Therefore, be it resolved** that the Planning Board approves the Sketch Plan and waives further Site Plan review with the following conditions:

1. the developer will work with the Dryden Planning Department to determine the width and terms of an easement for the purpose of converting the former rail road bed into a trail,
2. the developer will verify safety access with the Fire Department and
3. the standard conditions. (attached)

M. Moseley seconded the motion which was unanimously approved.

**1284 Dryden Road, Michael Moore and Eric Newland, Stone Wall Wine and Spirits**

Site Plan review:

- The County Planning Department recommended putting the parking in the back or to the side of the building. That is not acceptable to the applicant; two of the new parking areas are handicap spaces and parking in the rear will not be as convenient. The additional parking will be pitched toward a grassy area (away from the road and the building).
- They are adding a stone fence and a sidewalk between the parking lot and Dryden Road. There is a history of vehicle accidents at this site (vehicles that have lost control as they come down Baker Hill road).
- the lights will be changed to LED and will be angled to shine onto the pillars on the front of the building.

M. Hatch read the short EAF into the minutes. Please see attached.

**RESOLUTION # 4 (2016) – NEG SEQR DEC –Stone Wall Wine and Liquor**

D. Weinstein offered the following resolution and asked for its adoption:

WHEREAS,

A. The proposed action involves consideration of the application of Michael Moore and Eric Newland to renovate the building at 1284 Dryden Road for purposes of a wine and liquor store.

B. The proposed action is an Unlisted Action for which the Planning Board of the Town of Dryden is the lead agency for the purposes of uncoordinated environmental review in connection with approval by the Town.

C. The Planning Board of the Town of Dryden, in performing the lead agency function for its independent and uncoordinated environmental review in accordance with Article 8 of the New York State Environmental Conservation Law – the State Environmental Quality Review Act “(SEQR), (i) thoroughly reviewed the Short Environmental Assessment Form (the “short EAF”), Part I, and any and all other documents prepared and

submitted with respect to this proposed action and its environmental review, (ii) thoroughly analyzed the potential relevant areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment, including the criteria identified in 6 NYCRR §617.7(c), and (iii) completed the short EAF, Part II;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Planning Board of the Town of Dryden, based upon (i) its thorough review of the short EAF, Part I, and any and all other documents prepared and submitted with respect to this proposed action and its environmental review, (ii) its thorough review of the potential relevant areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment, including the criteria identified in 6 NYCRR §617.7(c), and (iii) its completion of the short EAF, Part II, including the findings noted thereon (which findings are incorporated herein as if set forth at length), hereby makes a negative determination of environmental significance (“Negative Declaration”) in accordance with SEQR for the above referenced proposed action, and determines that neither a full Environmental Assessment Form, nor an Environmental Impact Statement will be required, and

2. The Responsible Officer of the Planning Board of the Town of Dryden is hereby authorized and directed to complete and sign as required the determination of significance, confirming the foregoing Negative Declaration, which fully completed and signed short EAF and determination of significance shall be incorporated by reference in this Resolution.

2<sup>nd</sup> M. Moseley and unanimously approved

**Superseding of the County recommendations per 239 review:**

Resolution #5

M. Moseley offered the following resolution:

**Whereas**, the Tompkins County Planning Department has provided a review pursuant to General Municipal Law § 239-l and § 239-m; and

**Whereas**, the applicant has provided a plan including fencing and buffering between the parking area and Dryden Road

**Therefore**, be it resolved the Dryden Planning Board, with a super majority, hereby waives the recommendations regarding the parking area as provided by the County Planning Department.

The motion was seconded by C. Anderson and unanimously approved.

**Site Plan Review with conditions**

Resolution # 6

1284 Dryden Road, Stone Wall Wine and Liquor

M. Moseley offered the following resolution:

**Whereas**, the Dryden Planning Board has reviewed the Sketch Plan per Article XI of the Town of Dryden Zoning Ordinance, and

**Whereas**, the Planning Board finds the project to be consistent with the zoning, design guidelines and comprehensive plan; and

**Whereas**, the Town of Dryden Planning Board and Planning Department have made recommendations; and

**Whereas**, the Town of Dryden Planning Board has moved to supersede the County recommendations per resolution # 5 of 2016;

**Therefore**, be it resolved that the Planning Board approves the Sketch Plan with attached standard conditions and waives further Site Plan review.

*The motion was seconded by C. Anderson and unanimously approved.*

**Miscellaneous Business:**

T. Hatfield noted that all committee projects/assignments need to go through the Planning Board. He also made the point that he was not copied in on emails regarding those assignments.

J. Wilson has changed his email address and shared the new one with the Board.

M. Moseley reminded the Board that although email is great it is not a good idea to have discussions via email because of open meetings law. Communication while working on a project is acceptable as long as no more than **two** members are communicating on the same issue.

The Board agreed that they would continue to “cc” those communications to the Deputy Town Clerk thereby establishing a record.

**Varna Survey:** D. Weinstein and C. Anderson

D. Weinstein wrote up a summary of the previous survey: a strong sense of community, a great place to raise a family, a safe community to work in, and favored because of proximity to Cornell. The concerns were the aesthetics of the built community, the adequacy of facilities in regard to increased level of traffic, too much development too fast and the potential change in character from a rural area to a transient strip development. His feeling is that Varna residents are not really in favor of doing another survey; they are in favor of the plan and the recent adjustments to 902 Dryden Road are seen favorably.

If the board does want to move ahead with a survey, D. Weinstein and C. Anderson have come up with list of questions. Is there another way to assess the meat of the problem; is there another way to determine if there is too much, too little or the right amount of density permitted in the Varna Plan?

The Planning Board is planning to meet at the Varna Community Association in April. Members of the VCA and other community members can be encouraged to attend to ask questions and/or the Planning Board can address concerns.

T. Hatfield is still concerned with the process. He feels the Varna Plan laid out the process for developers but the reaction to the 902 Dryden Road project demonstrated that the Plan has some problems.

Nickolas Bellisario is bringing a potential project to the Planning Board next month. It will be a sketch plan and subdivision. He is considering building “tiny homes” on at the corner of Freese Road and Route 366.

J. Wilson suggested that the 902 project could be a unique situation and not a good guide. He agrees it is a piece of information to review but there were really only a couple of people in opposition.

The March meeting will be held at the Dryden Town Hall and the April meeting will be held at the Varna Community Association.

**Ag Committee:** John Kiefer

D. Teeter will be joining the Planning Board next month to discuss/present the Dryden Ag Plan.

The committee has input so far from Farmers and Ag Land owners. The draft document that J. Kiefer has distributed came from that input in addition to information that has been incorporated into other Ag Plans. They plan to meet with the Farmers and Ag Land owners again in March to get feedback on what has been developed so far.

J. Kiefer said that having attended the Ag Meetings he has found that the issues important to the Ag community are significantly different than how the rest of the community views those same issues. They have unique views on some issues.

The proposed revisions to the zoning law will be reviewed by George Frantz.

Another point of contention for the farmers are the CEAs. The farmers are concerned about the potential limits that a CEA might enforce.

**Green Building Code:** J. Laquatra and M. Moseley

C. Anderson suggested that people don't have information. He has seen a letter written to the Town Board indicating that Dryden's energy codes lack behind other municipalities. This is not true and Dryden is actually exceeding a neighboring code – Tompkins County is a climate 6 zone and Cortland is in a climate 5 zone.

**The Renewable Energy Law amendment:** D. Weinstein and M. Hatch

- Are we going to require fencing around electrical equipment which is not typical around solar panels?
- There are not any size restrictions but a Special Use Permit will be needed.
- Would the commercial design guidelines apply to screening? There isn't anything in the current renewables law. The commercial guidelines require screening between commercial and residential uses. Is there any reason they would not be applied to a solar panel farm? Does the size of the property influence the requirement? The density of the buffering should be taken into consideration; certainly a tall buffer will undermine the potential power generation.
- J. Wilson questioned whether the Planning Board is clear on why/what the Town Board is asking from them. How do they know what the Town Board is looking for? How did the discussion of the Renewable Energy Law jump to screening?
- D. Weinstein explained that the law currently limits the size of a solar farm so if that area is expanded, all of the issues related to that expansion need to be addressed.
- there isn't a size limit currently and is there a reason for wanting a limit?
- D. Weinstein and M. Hatch discussed size limits and agreed that they wanted to leave it open. M. Hatch asked if the Board was trying to create zoning or are we just trying to open the door and refine later.
- D. Weinstein indicated that the charge was to simply adjust the law. There is no zoning associated with this; fix the law to permit solar expansion anywhere that meets the requirements.

Wind - D. Weinstein and M. Hatch determined that there are only 4 locations in Dryden that could utilize wind. Therefore instead of creating a law for those locations, it

would be more practical to tell a prospective builder to do a PUD (Planned Unit Development).

G. Sloan stated that he was on board with splitting the charge and focusing on solar right now. D. Weinstein said they will come back to the wind recommendations later.

M. Moseley pointed out that they might want to look at the difference between roof mounted and ground mounted - roof mounted will be less obtrusive than ground mounted and the requirements may be different. It is a commercial endeavor versus a personal, private attempt.

C. Anderson suggested that D. Weinstein and M. Hatch look at solar rights/solar access. Who owns the rights to the sun, the person with tall trees along his property or the guy who builds solar panels to the edge of his property but that are blocked by the tall trees?

**Public Utility law:**

- nothing has been done since some of the requested information needed to review the law was not available. The information will be sent ASAP.

**SUP/Site Plan reviews:** Town Board or Planning Board

Please see attached documents

T. Hatfield complimented J. Kiefer and J. Wilson on the astuteness of their consideration regarding the accountability difference between the Town Board and the Planning Board, elected versus appointed. He would like to determine what scenarios can be delegated to the Planning Board; what are the non-controversial issues that can be sent to the Planning Board where there is more experience with SUP/Site Plan reviews and in the field.

C. Anderson pointed out that the zoning law makes the Site Plan Review process is cut and dry and could come to the Planning Board where there is more expertise and experience.

J. Wilson pointed out that the Town Board would have to review the Zoning law to ensure those criteria are satisfactory. He also pointed out that in the footnotes of his recommendations, he provided information on situation that might be considered controversial.

**Fill Ordinance:**

Not much work has been done yet but it is still being discussed. C. Anderson has suggested a simple ordinance for the whole town layered by zoning district. It wouldn't penalize the farmers but would restrict other areas.

There being no further business, the meeting was adjourned at 9:08PM

Respectfully Submitted,

Erin A. Bieber  
Deputy Town Clerk

DRAFT-DRAFT-DRAFT

To: Town of Dryden Planning Board February 22, 2016  
From: John Kiefer  
Subject: Draft Response to the Town Board Charge to Make Recommendations on Handling of Special Use Permits

This memo responds to the charge from the Town Board that the Planning Board make recommendations (1) on whether Site Plan Review of SUP applications should be delegated to the Planning Board, and (2) whether the authority to grant a SUP should be delegated to the Planning Board. The actual language of the Charge appears in the Attachment.

In preparing this draft response I looked at the following:

1. Does NYS Law allow delegation of Special Use Permit proceedings to the Planning Board? I think it does. An excerpt from NYS Town Law appears in the Attachment.
2. Do the zoning ordinances in nearby towns provide useful examples? Yes. The Town of Ithaca delegates the SUP process to their Planning Board. The Town of Lansing requires their Planning Board to conduct SPR for SUP applications and make a recommendation to the Town Board, which then makes the final decision on whether to grant the request for the SUP.
3. Are there significant differences between the submittal and review requirements for Site Plan Review vs. SUP review? No. The Attachment contains excerpts from the Zoning Ordinance on criteria for review. The SUP process includes Site Plan Review and while the Considerations for Site Plan Review do not address compatibility with adjacent uses or provide for input from the public, the SEQR process that accompanies Site Plan Review provides for both.
4. What are the pros/cons of transferring SPR for SUP application and/or granting of a SUP to the Planning Board?
  - The Planning Board handles SPRs on a routine basis and consequently is better equipped to handle the process in a thorough and timely manner. SPR is one of the core tasks of the Planning Board.
  - Delegation of SPR for SUP applications to the Planning Board would allow the Town Board to focus on other issues.
  - Due the controversial nature of some SUP applications the citizens of Dryden may want SUP approval/denial to be handled by their elected officials. Similarly, Town Board members may feel it is their responsibility to make decisions regarding SUP applications.

- This would be a good time to visit the issue of liability of board members for decisions made by the board. Does the Town hold us harmless, pay any legal fees, etc?

Given the above considerations, it seems reasonable to me that the Planning Board handle Site Plan Review for Special Use Permit applications. Similarly, I'm comfortable having the Planning board handle the entire SUP process, but am also comfortable with a process in which the Planning Board conducts Site Plan Review and then makes a recommendation to the Town Board on whether the SUP should be granted.

## **ATTACHMENTS**

### **Planning Board Charge**

The Town Board hereby charges the planning board to make recommendations to the Town Board on the following items

- 3) Make recommendations about whether site plan review for special use permits should be delegated to the Planning Board.
- 4) Make recommendations about whether Special Use Permit review should be delegated to the Planning Board.

### **N.Y. Town Law 274-B – Approval of Special Use Permits**

2. Approval of special use permits. The town board may, as part of a zoning ordinance or local law adopted pursuant to this article or other enabling law, authorize the planning board or such other administrative body that it shall designate to grant special use permits as set forth in such zoning ordinance or local law.

### **From Dryden's Zoning Ordinance**

#### **Standards for Review for Special Use Permit**

- A. Compatibility of the proposed use with the other permitted uses in the district and the purposes of the district set forth in this Ordinance;
- B. Compatibility of the proposed use with adjoining properties and with the natural and manmade environment;
- C Adequacy of parking, vehicular circulation, and infrastructure for the proposed use, and accessibility for fire, police, and emergency vehicles;
- D. The overall impact on the site and its surroundings considering the environmental, social and economic impacts of traffic, noise, dust, odors, release of harmful substances, solid waste disposal, glare, or any other nuisances;
- E. Restrictions and/or conditions on design of Structures or operation of the use (including hours of operation) necessary either to ensure compatibility with the surrounding uses or to protect the natural or scenic resources of the Town;
- F. Compliance with the requirements for site plan review, including conformity to the Town's Residential and Commercial Design Guidelines.

Considerations for Sire Plan Review

1. Location, arrangement, size, design, and general site compatibility of buildings, lighting, and signs;
2. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers, and traffic controls;
3. Location, arrangement, appearance, and sufficiency of off-street parking and loading;
4. Adequacy and arrangement of pedestrian traffic access and circulation, walkway Structures, control of intersections with vehicular traffic, and overall pedestrian convenience;
5. Adequacy of stormwater and drainage facilities;
6. Adequacy of water supply and sewage disposal facilities;
7. Adequacy, type, and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation;
8. Adequacy of fire lanes and other emergency zones and the provision of fire hydrants;
9. Adequacy of the site's ability to support the proposed use given the physical and environmental constraints on the site, or portions of the site;
10. Special attention to the adequacy and impact of Structures, roadways and landscaping in areas susceptible to ponding, flooding and/or erosion;
11. Conformance with the Town's Residential and Commercial Design Guidelines to the maximum extent practicable;
12. Completeness of the application and detailed site plan in light of the Board's requirements following the sketch plan conference.

jak: The Zoning Ordinance does not mention review of applicant's SEQR EAF/DEIS or the development of findings. The environmental assessment is an evaluation of the known or potential environmental consequences of a proposed action. During an environmental assessment, involved and interested agencies have the opportunity to identify their concerns about an action, provide guidance to the lead agency in making its determination of significance, and help determine whether additional relevant information about potential impacts is needed.

**To: The Dryden Planning Board**  
**From: Joe Wilson, Alternate Member**  
**Date: February 23, 2016**

**Before finalizing recommendations on nos. 3 and 4, it would be helpful to know:**

1. What were the original reasons for reserving Site Plan reviews for SUP's and SUP reviews to the Town Board?

2. Since the 2012 Zoning Law was adopted, how many Site Plan reviews for SUP's and SUP's has the Town Board processed? What were the Uses and Districts involved?
3. What has changed or what are the reasons the Town Board is considering delegating its authority, now?

**Second, I hope we would consider these thoughts:**

Charge no. 3: Whether Site Plan Review for Special Use Permits should be delegated to the Planning Board:

In considering both the adequacy of a Site Plan and what, if any, conditions to impose on an approval, the Planning Board would be limited to addressing elements specified in the Town's zoning law. This would seem to mean that the Site Plan check list at Sec. 1103 "Application Content" and Sec. 1104, "Board Action on Site Plan Review Application" sets those limits.

There seem to be some areas of ambiguity in the Town's Zoning Law which it would be helpful to discuss and resolve before a final recommendation on delegation of review authority. Item no. 30 in Sec. 1103 reads "Other elements integral to the proposed development as considered necessary by the Board," and Subsection C of Sec. 1104 begins with "The Board's review of the site plan shall include *but not be limited to*, the following considerations" followed by a list of 14 items. [italics are mine]

Possibly adding to this ambiguity is that the leading court case in these matters, *St. Onge v. Donovan*, can be understood to expand an administrative agency's authority beyond what was specified in a local zoning law. There the court allowed a zoning board of appeal to add conditions not specified in the town's law to those "aimed at minimizing the adverse impact to an area that might result from the grant of an a variance or special permit." According to the court, such conditions could be added because they addressed "factors incidental to comfort, peace, enjoyment, health or safety of the surrounding area."

Given that matters frequently brought before the Town Board by residents now include the impacts of uses on one plot affecting public health, public safety, environmental impacts, energy consumption, renewable-sourced energy technologies, well and water protection, green house gas emissions, and air pollution, as well as the general welfare of the community, if the Town Board is in fact going to delegate its authority over Site Plan reviews, it seems that it would be helpful for the Town Board to make more clear what "elements" under Item 28 and what additional "considerations" under Sec. 1104 it wants the Planning Board to address. This should be done *before* the Town Board gives up its current authority.

For these reasons, I hope we will consider the following:

- a. Asking the the Town Board to give us additional information about the number and type of SPR and SUP reviews it has had to complete since this Zoning Law went into effect;
- b. Asking the Town Board to give us additional guidance by indicating why it is considering delegating its authority over Site Plan reviews and Special Use Permits;

c. Asking the Town Board to clarify what it would want the Planning Board to address under the seemingly ambiguous parts of Sections 1103, 1104, and any added ambiguity created by the rules in the *St. Onge* case;

d. Recommending that the Town Board retain the authority to review Site Plans for Special Use Permits until the Town Board can address “a,” “b,” and “c.”

Charge no. 4: Whether Special Use Permit review should be delegated to the Planning Board:

As with its review of Site Plans, the Planning Board's review of Special Use Permits (SUP) apparently will be limited to consideration of the standards for Special Use permits stated in the zoning law. According to New York Bar Association's *Zoning, Land Use and Environmental Law, 2014-2015*, courts have held that a planning board must approve an SUP if the stated considerations are all met, and it may impose conditions only to the extent they are consistent with a town's local law or comprehensive/community plan. A planning board's ability to apply SEQRA in the context of SUP reviews is also limited.

Although the SUP standards in Sec. 1202 “Town Board Action” seem more general, inclusive, and flexible than those for a Site Plan review, it is not clear that our Planning Board could consider matters recently brought to the Town Board such as public health, public safety, environmental impacts, energy consumption, well and water protection, green house gas emissions, and the general welfare of the community because they are not described in Sec. 1202.

By contrast, courts do allow Town Boards to consider factors not specifically described in its laws without first having to go through an amendment process:

“When the legislative body reserves to itself the granting of [SUP's], it need set forth no standards for the exercise of its discretion, and even if the ordinance sets forth standards, it has not divested itself of the power of further regulation unless the standards expressed purport to be so complete or exclusive as to preclude [the Town Board] from considering other factors without amendment of the zoning ordinance.”

Town boards are allowed the same flexibility in applying SEQRA with courts deferring “in large measure to the discretion and expertise of the lead agency.” In short there is a substantial difference between the powers of our Planning Board and our Town Board when it comes to Special Use Permit reviews--the Town Board simply possesses flexibility and latitude that our Planning Board does not.

It seems to follow from this that before our Town Board makes a whole sale delegation of its power to review Special Use Permits, it should decide on a Use-by-Use basis which Special Use Permit reviews it wants to retain so it can take advantage of the flexibility it has compared to the Planning Board.

For the same reasons, before the the Town Board delegates any of its authority over Special Use Permit reviews, it should decide whether any or all of those specific matters of recent concern should be added to any Special Use Permit review it delegates to our Planning Board under Sec. 1202. As noted, the list which comes to my mind include: public health, public safety, environmental impacts, energy consumption, renewable-sourced energy technologies, well and water protection, green house gas emissions, and air pollution.

Another caution was mentioned in last month's discussion at the Planning Board meeting and is noted again in John Keifer's February 9, 2016 draft memo on this subject. The caution can be summarized as follows: Many of the Uses listed as requiring an SUP under Sec. 501, "Allowable Use Groups Chart," of our zoning law could become controversial. By my quick count, there might be as many as 27 such Uses in the Neighborhood Residential, Rural Residential, Rural Agricultural, and Conservation Districts. My list is in Footnote 7, below.

When a proposed Use raises substantial and/or wide-spread concern, residents are highly likely to prefer that deliberations and decisions be handled "transparently" at public meetings of the Town Board—meetings more likely to be attended than those of the Planning Board. Moreover, residents typically want such matters in the hands of those whom they elected because Town Board members can be held "accountable" in an election whereas appointed Planning Board members whose terms of office typically run far beyond the next election.

For these reasons, I suggest considering recommending these steps before the Town Board delegates any of its authority over Special Use Permits:

- a. Getting feedback from the Town Board on why it is considering delegating SUP approval (including data on the number and type of SUP's the Town Board has addressed since the passage of the 2012 Zoning Law).
- b. Reducing the number of SUP's by stipulating some of the current list be either allowed as a matter of right or not permitted as a Use in a specific District and amending Sec. 500 as needed;
- c. Amending Sec. 1203: "Town Board Action" to include such considerations for SUP's as public health, public safety, environmental impacts, energy consumption, well protection, green house gas emissions, and the general welfare of the community;
- d. Identifying Uses requiring SUP's which are NOT likely to cause controversy and considering only the potentially "non-controversial" ones for delegation;
- e. considering a final recommendation *after* these steps are taken.