

TOWN OF DRYDEN
PLANNING BOARD MEETING
November 18, 2020
Via Zoom

Present: John Kiefer, Chair, Tom Hatfield, Craig Anderson, Tony Salerno, Daniel Bussmann, Joe Wilson, David Weinstein, Alice Green (alternate)

Absent: Simon St Laurent (alternate)

Staff: Ray Burger, Planning Director

Liaisons: Dan Lamb & Loren Sparling (Town Board), Craig Schutt (Conservation Board)

Chair, John Kiefer opened the meeting at 6:00 p.m.

Approval of Minutes

After a few minor corrections, approval of the October 22, 2020 minutes was moved by J Wilson, seconded by C Anderson – all in favor.

Updates

Town Board – Dan Lamb reported that the town is going to take up the Short Term Rental Law and likely vote on it Thursday. There was an article that came out in the Ithaca Times about it, so there's some public awareness about this issue.

The Rail Trail subcommittee has decided on a design approach for the pedestrian bridge that goes across Route 13 for the Rail Trail. It will be on the Town Board agenda for Thursday to select a basic plan for the approach of the Route 13 crossing.

John Kiefer reminded members that at the end of the year Joy will subtract 4 training hours from each member's logged hours and the remainder applies toward next year, meaning, you can carry training hours forward.

NY Stretch Energy Code - NYSERDA has money this year that they've shared with Cornell Cooperative Extension and CCE, in turn, has engaged Tatum Engineering to do presentations to municipalities on the New York Stretch Energy Code. Lou Vogel, president of Tatum, did a presentation to the Climate Smart Communities group last month on the stretch code. The intent is to encourage municipalities to put that into play immediately. According to Lou, it'll be state law within three years. It was suggested that the Town Board hear that presentation because if it's going to get implemented, they would do it.

Comp Plan- A Green and J Wilson are reaching out to area high schools to do a public speaker presentation with the students. It's looking like that will happen on December 3rd. This will give the board a chance to hear from young folks and collect information from them and they will also invite

them to the community work shops that will happen a little later in December. The Dryden School Superintendent, Josh Bacigalupi, has been very helpful. They will present the same slide show that was presented in the public speaker series but gear it more towards issues that young people might be interested in. J Wilson has contacts with Ithaca City Schools. He reached out to Ithaca High School, New Roots and Lehman Alternate Community School and heard back from New Roots with some enthusiasm from the sustainability and science teacher there along with the Key Club from Ithaca High. J Kiefer thanked Alice and Joe for putting this together.

J Kiefer reported that he and R Burger had their biweekly meeting with Sam and Jane, mostly to talk about the upcoming workshops. The purpose of the workshops is to talk about goals and strategies regarding the Comp Plan. One of the first things talked about was how we can broaden the venue for outreach and one idea was to build a site on Dryden 2045. There would be 7 venues, one for each of the 7 thematic areas that we are seeking information on. It would contain the slides from the presentation that will be used on the 8th and 9th. It would give people an opportunity to log onto the site and participate in goals and strategies on transportation. From there you can send to Sam comments on it. Every couple of days he will post those comments so we can build a bulletin board much as we would do if it were in person. Another idea would be to provide hard copies at the town hall of the presentation materials that we plan to use on the 8th and 9th. This gives everyone the opportunity to participate in this very important discussion. This topic will continue to be discussed in upcoming meetings.

Maifly Development 5-9 Freese Road

J Kiefer shared two proposed resolutions for the Maifly project. The first is for site plan modification approval for 5 Freese Road. The town attorney sent an email with respect to the HOA replacement agreement/plan indicating that he is confident that it protects the town. A Green will vote on this matter in place of D Weinstein who has recused himself.

The 5 Freese Road matter is a modification of a site plan that was previously approved. It has been modified with a club house replacing the original gazebo and a few other adjustments. In reviewing SEQR the projects were combined and looked at holistically.

RESOLUTION #13 (2020) – APPROVE SITE PLAN MODIFICATION – 5 FREESE ROAD

C Anderson offered the following resolution and asked for its adoption:

RESOLVED, that the site plan modification at 5 Freese Road by Maifly Development is hereby approved subject to the following:

- 1) HOA Replacement Agreement/Plan
 - To insure property owners maintain and allow access to public facilities (e.g. roads, parking, utilities, community building)
 - Subject to review and approval of Town Attorney and Director of Planning;
- 2) SWPPP Approval
 - Subject to review and approval of Town Engineer
- 3) Utility Connection Agreement
 - Subject to review and approval of Town Engineer and Attorney

2nd T Hatfield

Aye – Green, Anderson, Bussmann, Wilson, Hatfield, Salerno, Kiefer

There was discussion about LEED certification, points, how the points are achieved, documents and signing off on how the project delivers those points. J Wilson read parts of a communication from the town attorney (attached) and expressed his concerns with granting a LEED bonus. J Kiefer said he didn't feel that LEED should be wielded like a club, but rather it should be used to encourage green development and if we don't get any green development the community loses.

Comments during discussion:

- Would be more concerned with the 40-point minimum if there weren't other achievable points.
- 7 additional units are attributable to the LEED bonus.
- It seems like tricky public policy and is confusing.
- It should be made clearer in the future.
- Making the 40 points for LEED is a condition of approval.
- The certificate of occupancy could be withheld for the bonus units until compliance if necessary.
- It's a relative low risk then to award the LEED bonus.
- LEED is a moving target.
- The town could hire an expert to review the points awarded.
- The developer is making a good-faith attempt to meet the requirements in an effective way.
- Developer will provide the Planning Department an updated checklist as the design progresses and construction starts and at completed construction.

RESOLUTION #14 (2020) – 9 FREESE ROAD FINAL SITE PLAN APPROVAL

C Anderson offered the following resolution and asked for its adoption:

RESOLVED, that the site plan 9 Freese Road by Maifly Development is hereby approved subject to the following:

- 1) Parking Space Size Per Zoning
 - 9 x 18' spaces are allowed for smaller cars
- 2) SWPPP Approval
 - Subject to review and approval of Town Engineer
- 3) Utility Connection Agreement
 - Subject to review and approval of Town Engineer and Attorney
- 4) Green Development Bonus (2 du/ac townhouses, 4 du/ac apts) is awarded as follows:
 - The following LEED prerequisites are waived because they are not achievable at the project site: Walkable streets, Connected and Open Communities
 - Certification via LEED accredited consultant Compliance Letter defining compliance with 40-point minimum requirement. USGBC certification is waived.
 - Compliance Letter is subject to review and approval of Director of Planning to issuance of Certificate of Occupancy.
- 5) Standard Conditions of Approval as amended August 14, 2008.

2nd T Hatfield

Aye – Green, Anderson, Bussmann, Hatfield, Salerno, Kiefer

No - Wilson

97 Southworth Road

This is a decision by the Planning Board as to whether or not this business proposal would qualify as an ag related business in this rural ag district. Hans Hass, owner of Alpine Roofing, submitted a four-page proposal including two maps. Hans has a business that sells metal roofing and siding which is mostly sold to the ag sector, mostly large dairy farms, but also includes small farms as well. They take 10,000 lbs steel coils that are painted already and form it into the panels and form the trim pieces as well. He would like to do the same thing at 97 Southworth Road. There will be a formal public hearing in December if the board decides to go through with this. The question is whether this roofing manufacturing facility is in fact an agricultural related enterprise. From what he said, much of his business comes from farmers. If the board approves this, the next step would be to get the applicant to come back to begin site plan review. The building that is already there would be where they run their business out of. Hans would eventually put a pole barn on that land for extra storage and he would widen and pave the existing driveway that is shared with the neighboring property. Hours of operation would be 7 AM to 4 PM Monday-Friday.

Comments:

- This business would be great to have in Dryden.
- The neighbors are supportive.
- It seems like it wouldn't make a lot of noise.
- The problem is that this business could be mainly selling for ag now but in a few years, it could be homeowners that are buying it, so where do we draw the line?
- No one can predict the future, so we must judge the application for what it is.
- It looks like an excellent business to come to the town.
- The building is already empty so it would be great to see a business there.
- It looks like a win, win in every direction.
- The company could provide proof of percentage of ag sales each year.
- There are weight restrictions over bridges.
- Large truck traffic through the Village could be a concern.
- Would like to see/hear a video so the board can see how loud it is.
- If it is an ag-related business, the Planning Board should make a list of sketch plan submittal requirements, such as DOT permits if necessary, Village determination of traffic impact, and such.
- Applicant will talk with the Highway Superintendent and Village.

RESOLUTION #15 (2020) – DETERMINATION OF AG RELATED BUSINESS – 97 SOUTHWORTH ROAD

J Kiefer offered the following resolution and asked for its adoption:

RESOLVED, that this board determines that the metal roofing business proposed by Hans Hess at 97 Southworth Road is an ag-related business provided that the applicant demonstrates now and annually that more than half of his business is to farms.

2nd T Hatfield

Aye – Green, Anderson, Busmann, Hatfield, Salerno, Kiefer, Weinstein

No – Wilson

Sketch plan review on this matter will be held next month. Applicant will provide approval from the Highway Superintendent and the Village of Dryden with respect to the roads and a letter of agreement from the neighboring property. Depending on the result of the sketch plan, there may be a formal site plan review in January.

1400 Dryden Road

Michael Moore, owner of Four Seasons storage units at 1400 Dryden Road would like to expand his business and put a third building behind the two that already stand. This matter will go before the Town Board tomorrow. This board has reviewed the associated documents and Planning Department memo should pass along any observations or concerns they would like the Town Board to be aware of.

Some questions were raised about compliance with any SWPPP requirements. The SWPPP (triggered by this third building) is under review by TG Miller. Is all the runoff that comes off this roof going to go into the holding pond? Applicant reassured him that it will because that is how it was engineered. The roof has no gutters so when runoff from the roof hits the ground it follows what is shown on the grading plan.

Varna Fire Department's comment were discussed. There is not municipal water available at the site. The sidewalk requirement will be waived because development in the area doesn't seem to warrant it at this point.

R Burger will provide feedback to the Town Board.

Open Meetings Law

J Kiefer reviewed his drafted guidelines on complying with open meetings law and discussed them with board members.

There being no further business, the meeting was adjourned at 8:30 p.m.

Respectfully submitted,

Bambi L. Avery

TRUE & WALSH, LLP

Attorneys-at-Law

South Hill Business Campus
950 Danby Road, Suite 310
Ithaca, New York 14850

Peter J. Walsh
Sally T. True

Maître Denis Bensaude**
Correspondent in Paris, France

**Service of papers by facsimile not accepted*

Telephone: (607) 273-2301
Fax: (607) 272-1901

*** Admitted to the bars of Paris and New York*

E-mail: pjw@truewalshlaw.com
Web: www.truewalshlaw.com

MEMORANDUM

To: Planning Board, Town of Dryden
From: Peter J. Walsh, counsel *PJW*
Re: Tiny Timbers (Maifly) Subdivision
Date: November 11, 2020

INTRODUCTION

The developer of Tiny Timbers subdivision in the Hamlet of Varna, in conjunction with final site plan review, has requested the award of density 'bonus' units pursuant to the town zoning code section 706, for compliance with the so-called LEED (Leadership in Energy and Environmental Design) Neighborhood Development Protocol promulgated by the U.S. Green Building Council, although the developer does not intend to seek formal certification that the development meets the LEED protocol. Members of the Planning Board have requested clarification of the application of Section 706 in this circumstance.

QUESTIONS POSED

- (1) May the Planning Board award a density bonus pursuant to Section 706?
- (2) If yes, what showing is required to support the award of a density bonus?

DISCUSSION

Section 706 reads as follows:

Green Neighborhood Development; Additional Density. In addition to the density permitted in the Varna Density Table in Section 703, a density bonus may be awarded if a Neighborhood Development proposal achieves at least basic LEED certification according to the most current LEED Neighborhood Development Protocol. The Town shall have the discretion to excuse non-compliance with LEED prerequisites which can't be reasonably attained within the Town of Dryden.

Section 706 as it now stands was amended by Local Law No. 3 of 2019, filed February 27, 2019 with the New York State Secretary of State, and made effective that date. Until 2019, Section 706 had read as follows:

Green Neighborhood Development; Additional Density. In addition to the density permitted in the Varna Density Table in Section 703, a density bonus may be

awarded if a Neighborhood Development proposal achieves at least basic LEED certification (40 points) according to the 2009 LEED Neighborhood Development protocol.

Comparing the two, the changes induced in the law by the 2019 amendment were two: the LEED standard reference changed to the 'most current' protocol, from the 2009 protocol; and the Town acquired "discretion to excuse non-compliance with LEED prerequisites which can't be reasonably attained within the Town of Dryden."

Interpreting Section 706 as it existed until the 2019 amendment, one might conclude that by the use of the word "achieves", the legislator, i.e., the town board, intended that a development proposal would be eligible for a density bonus *if but only if* the project had actually received a certification of at least 40 points from the U.S. Green Building Council. To receive such certification, a development obviously would have to be considered eligible for consideration in the first instance by the certifying body, the U.S. Green Building Council.

Even if the former Section 706 were to be given such a mandatory interpretation, i.e., the development must actually receive an official certification from the U.S. Green Building Council, the language inserted by the 2019 amendment added three, new elements: "discretion", "non-compliance", and "prerequisites which can't be reasonably attained".

It is a basic tenet of statutory construction that meaning should be given, if possible, to every portion of the statute. Applying that rule to give meaning to "LEED prerequisites which can't be reasonably attained within the Town of Dryden", it is clear that the legislator intended that a proposal would still be eligible for a bonus despite it being not feasible to qualify the project for formal LEED certification, given the geography or other limits that precluded qualifying it under the U.S. Green Building Council eligibility rules. The first step in the board's analysis of the application should thus be to determine *whether* there are prerequisites in the U.S. Green Building Council formula that would make it impossible for any project in the town to qualify.

If the conclusion to that question is, yes, the second level inquiry would be, *should* the board exercise its discretion to waive formal certification of the project? It may, but it need not. If the conclusion is, yes, the third level inquiry is, applying "the most current" LEED Neighborhood Development Protocol, do the claimed features of the project yield 40 points under that protocol?

If the conclusion is, no, the inquiry ends and the application should be denied.

Finally, if the answer is, yes, the project features yield 40 or more points on the LEEDS scale, the board must then exercise its discretion to determine whether it is in the public interest to award bonus units under Section 706.

It should be noted that all discretion must be exercised 'reasonably'. Here, 'reasonable' does not mean 'moderate or acceptable' (as in, 'it's a reasonable price'), but whether there is an articulable reason supporting the conclusion.

CONCLUSION.

We conclude from this that the board "may", i.e., that it is within its discretion, grant bonus density units pursuant to Section 706 although the project would not qualify for formal certification under the U.S. Green Building Council formula *so long as* it would otherwise achieve the requisite number of points to qualify for a basic status under the LEEDS protocol.