

February 26, 2015  
Public Hearings  
6:00 P.M.

Present: Supervisor Gerald L. Deming, Council Members: Lynn Parnell, Norman Gates and David Deuel

Absent: Frank Rose Jr.

Others: James Campbell (Town Attorney), Barbara and Jerry Ayers, Henry Fuller, Patricia Gardner, Kirk Richenberg, Carl Peter (Zoning and Code Officer) and George Worden Jr. (Highway Superintendent).

Supervisor Deming opened the Public Hearing for proposed Local Laws #1 and #2 at 6:02 p.m.

Attorney Campbell read aloud the legal notice for such public hearings, and outlined individually what each law will reflect.

**Proposed Local Law #1 of 2015** shall be known as “A Local Law to amend and supersede as applicable various substantive provisions of the Zoning Ordinance of the Town of York, Livingston County, New York, relating to permitted uses within the Commercial District (C) zoning classification.”

**Proposed Local Law #2 of 2015** shall be known as “A Local Law to amend and supersede as applicable the zoning map of the Town of York as officially adopted to create a Wind Overlay Zone pursuant to Article VI of the Zoning Ordinance of the Town of York.”

Attorney Campbell stated proposed Local Law #2 regarding a Wind Overlay Zone, was prepared after the Town received an application for a windmill at the location owned by York Animal Hospital to allow the possible development of a wind energy conversion system. Our code states that a Public Hearing is required for such action, and is a prerequisite before either the Zoning Board of Appeals or Planning Board can proceed.

The Board agreed to discuss the laws separately, beginning first with proposed Local Law #1 of 2015:

#### QUESTIONS/COMMENTS

Kirk Richenberg: In the Comprehensive Plan, adopted in 2006, wasn't there a reason for not allowing the change to happen?

Supervisor Deming stated he does not believe at the time of the Comprehensive Plan adoption there was not a specific reason to update, he feels it may have been an oversight at the time.

Attorney Campbell added, it may or may not have been a conscience decision with the wording or may have just been omitted. What is being proposed is not uncommon in areas of

this community size. The potential action may not work in larger communities, but does seem to fit in smaller ones.

Mr. Peter: I don't believe anyone from the committee caught the wording at that time.

Jerry Ayers: This situation first came about when Supervisor Deming asked for an update regarding the Zoning Board of Appeals reaction to Mr. Russo's request for an Area Variance, due to the existing undersized apartment. It was then discovered that the apartment he was inquiring about is actually zoned Commercial, which did not meet our zoning. At that time the Zoning Board of Appeals tabled their discussion because they could not act on an unpermitted use. Attorney Campbell recommended options to Mr. Russo, one being to approach the Town Board to possibly change the definition of commercial zoning to allow residential apartments, and after consideration by the Board, the proposed Local Law was then created.

Attorney Campbell: Keep in mind the proposed law is not limited to a particular property, it encompasses all commercial properties in the township.

Mr. Richenberg: Isn't one person bringing this request to the Town Board?

Supervisor Deming: Yes, Mr. Russo did request of the Board consideration regarding commercial properties.

Mr. Richenberg: Which property is he specifically asking about?

Supervisor Deming: The property Mr. Russo asked about is located at the corner of Routes 36 & 63.

Mr. Campbell: The Town of York currently has roughly 50-55 total acres zoned Commercial in the township.

Mr. Ayers: Outside of Route 36, 63 and 20 is there any other Commercial Property?

Mr. Deming: Other than the routes discussed, there is no other commercially zoned areas.

Mr. Ayers: Approximately two years ago Beamers requested a project that would take a parcel from Agricultural zoning to Commercial and was refused. If the Board approves this law, we are taking what little commercial property we have in the town and reducing it further. This is a big decision.

Mr. Campbell: The proposed Local Law does not include single family dwellings, but multi family structures.

Mr. Richenberg: Are there residents on this property?

Supervisor Deming: Yes, residents are on the property.

Mr. Richenberg: Have there been residents added?

Mr. Peter: Yes, one resident was added since the zoning was adopted (apartment in the previous truck shop area).

Supervisor Deming: Mr. Russo had a building permit for the work, but it was then brought to our attention by Zoning Board Chairman, Mr. Ayers that the corner was not zoned to allow residential purposes in a commercial area.

Mr. Richenberg: The last one should not have happened and should be cited.

Supervisor Deming/Mr. Peter: You can't cite someone when a permit was already issued. Mr. Peter added, Mr. Russo complied in good faith with what was asked of him pertaining to the renovation process.

Mr. Richenberg: So, aren't we going backwards?

Mr. Campbell: Legally we are not in a position to undo the permit, we can't take the permission away. The proposed Local Law is considered to be an update or "fix" to the existing code. If Local Law #1 is not approved, Mr. Russo can't proceed with his original request and would need to apply for a Use Variance to legitimize the use. Ultimately the Board needs to decide whether or not the code should be amended.

Mr. Fuller: If the first one wasn't done right, why proceed?

Mr. Peter: The first permit was done correctly, including the Certificate of Occupancy.

Mr. Campbell: The first apartment is done. The Board needs to act on this Local Law to decide if they wish to alter the existing code to allow multi-family residences in a commercial zone.

Mr. Fuller: Did the first apartment go through SEQR?

Mr. Peter: All interior work does not require a SEQR, outside work would require if one acre or more of land was disturbed.

Mr. Fuller: Does it meet the commercial distances?

Mr. Peter: Mr. Russo did not move or expand the building. He did not alter the footprint of the building, it is still pre-existing. If Mr. Russo was to alter the front wall of the building closer to the road, it would then create an issue.

Mr. Fuller: You are asking the public to approve this, what about potential future commercial requests?

Mr. Peter: This law will not be solely for this particular property but for all commercial properties, such as the old Circle F, and Corbins corners, under our present zoning.

Mr. Fuller: There seems to be a multitude of problems we are covering with this Local Law if approved.

Mr. Richenberg: If this should go forward, with a Permitted Use, does the new use have to comply with current codes, State and Local?

Supervisor Deming/Mr. Campbell: Yes, anything that takes place after the approval will be required to comply.

Mr. Peter: The current code does address alterations to the existing building, so that portion would have to be brought up to code.

Mr. Ayers: If approved, what does this do to the commercial businesses left?

Mr. Campbell: This law would apply to all commercial lots.

Mr. Ayers: Is the opposite corner commercial as well?

Supervisor Deming/Mr. Campbell: Yes, the opposite corner is commercial too.

Mr. Richenberg: I was part of the committee with Mr. Russo to adopt the zoning, why wasn't the change made then...Mr. Russo will benefit if approved, this looks very suspicious.

Mr. Campbell: The Local Law is up for proposal. Mr. Russo raised the concern to the Board for consideration, but the Town Board is presenting this law. If approved, will it resolve Mr. Russo's problem, yes, but if they decide not to approve, Mr. Russo will have to take another course of action.

Mr. Fuller: We are only addressing the Northwest corner right now, but will open ourselves up to issues in other areas, (the rest of the corner property) as well.

Mr. Campbell: If and when the Town Board approves the law and zoning maps are changed, the commercial properties become a Permitted Use, and alters the previous use. This will apply to all commercial property, not just Mr. Russo's parcels.

Mr. Richenberg: If the Board adopts this law in order to reverse a mistake already made by allowing the previous building permit, it will bring us to litigation. What does this open us up to in the future...we are setting a precedence.

Mr. Campbell: With Boards having to change/alter zoning regulations periodically, he does not feel it would be setting a precedence. Regulations change and evolve, and the Board would not be in favor of making decisions for one property only. The Board is modifying commercial property in the Town of York otherwise he would never recommend approval for just one applicant, which would become spot zoning. What is being proposed has been relatively typical for this area and county, with a hamlet like scenario.

Mr. Richenberg: This appears to be spot zoning.

Mr. Campbell: It is not spot zoning, it is expanding the benefit for all commercial properties. Most property owners are grateful for the change and its additional uses.

Mr. Peter: Mr. Russo asked the Board to consider rezoning the area to mix use to allow residential, that would then be spot zoning.

Mr. Fuller: I personally believe Mr. Russo went around the process and then came to the Board for assistance.

Mr. Peter: No, Mr. Russo came to the Town for a permit to the second apartment, and during this process, the issue of the undersized apartment came to light that the residence was not allowed, based on the square footage issue. (apartment was too small based upon our existing code).

Mr. Campbell: Mr. Russo obtained a permit for the 1<sup>st</sup> apartment, and when he attempted a permit for the 2<sup>nd</sup> apartment, is when the issue arose.

Mr. Richenberg: As the Town's Planning Board Chairman doesn't he know the regulations...it looks suspicious. Is there only one apartment in the chrome shop?

Mr. Peter: Yes, only one apartment is in the chrome shop building.

Mr. Richenberg: I suggest the Board not adopt this Local Law.

Councilman Deuel: The corner of Route 36 and 20 is not hamlet-like due to the population setting, whereas the corner in Greigsville is. Could you see it as a Hamlet-Commercial zoning?

Mr. Richenberg: What are the permitted differences between Hamlet Commercial and Commercial?

\*Mr. Peter and the Board stated they would have to review the zoning ordinance for specific differences between the two.

Councilman Deuel: We have talked previously about available commercial space throughout the town, but do not have much to work with.

Mr. Richenberg: The property that surrounds Route 20 and 36 is all agricultural, with no area to build on, no room to expand upon.

Mr. Ayers: Route 20 and 36 was once a main part of this Town and had ten times the traffic. Once 390 and the Thruway were constructed, trucks use the main routes now. The best and busiest corner in this town right now is the area we are speaking of at Route 36/63, and should stay commercial. Although Route 20 no longer has the heavy traffic it once had, it should be left commercial as well.

Mr. Peter: After reviewing the zoning regulations in regards to the differences between Hamlet Commercial and Commercial, both allow much of the same, except the residential portion is allowed more so in Commercial without having to obtain a Special Use Permit.

Mr. Richenberg: If the Town Board should adopt this Local Law there would not be specific blocks left in the town to allow just commercial.

Councilman Deuel: What we have experienced over the years for anything other than residential, the public is wary of, specifically referencing close proximity to the school.

After no further questions or comments pertaining to Local Law #1, Supervisor Deming now addressed Local Law #2:

Mr. Campbell stated if Local Law #2 is adopted the applicant must still obtain approvals from the Planning Board and Zoning Board of Appeals, but at this time the Board has to create a Wind Overlay Zone first.

Supervisor Deming asked Zoning Board of Appeals Chairman, Mr. Ayers if his Board had any initial objections pertaining to this application or Local Law. Mr. Ayers replied they did not see any objections at first glance, but are waiting for the Town Board to complete the process before discussing further.

Mr. Richenberg: How tall is the windmill?

Mr. Peter: The height is 151 feet to the top of the blade.

Mr. Richenberg: Is there a definition in the codes on a Wind Overlay Zone?

Mr. Campbell: The term is explained on page 64 of the code and gives all regulations pertaining to it, including where allowed, which is only in an agricultural area.

Mr. Richenberg: Is the overlay zone necessary in case of the tower falling, specifically for public safety?

Mr. Campbell: Safety is always a concern, but it is an opportunity for the Town Board, Planning Board and Zoning Board of Appeals to review each application request. This is site specific.

Mr. Richenberg: Any idea as to the size of the overlay?

Mr. Campbell: The Wind Overlay Zone will be encompass the size of the parcel.

Mr. Campbell added that each of the proposed Local Laws require SEQR. Local Law #2, would need the Short Environmental Assessment Form, and Local Law #1 would require the Long Form due to the fact that it encompasses and affects more than 25 acres, which is a Type I Action.

Mr. Richenberg: The Wind Overlay Zone Local Law should go forward.

Mr. Campbell asked the Board if they would like to answer the necessary questions in Part II of the Short Environmental Assessment Form (Impact Assessment) this evening, which the Board replied they would. Mr. Campbell then read aloud eleven (11) questions, with the Board's response to all as "no or small impact" may occur with this proposed action.

#### RESOLUTIONS:

(1) RESOLUTION offered by Mrs. Parnell and seconded by Mr. Gates to adopt the findings that were made in the review of Part II of the Short EAF as set forth therein. Voted on and approved, Yes-4, No-0.

(2) RESOLUTION offered by Mr. Deuel and seconded by Mr. Gates to adopt a Negative Declaration based on the findings made in the review of the Short EAF and specifically in Part II, and to have the Supervisor sign the EAF signifying the Negative Declaration being made. Voted on and approved, Yes-4, No-0.

Mr. Campbell stated now the Board must deliberate at a regular meeting possible adoption.

Mr. Richenberg commented the Local Law notice should have been on the outside signboard. Supervisor Deming replied, duly noted.

Mr. Fuller: Will there be a public comment period for Local Law #1?

The Town Board agreed additional public comment/questions will be received by the Board for both proposed Local Laws until Monday, March 9<sup>th</sup>, in order to review for potential action at the March 12<sup>th</sup> regular Town Board Meeting.

ADJOURNMENT

RESOLUTION offered by Mrs. Parnell and seconded by Mr. Gates to adjourn to Public Hearing at 7:00 p.m. Voted on and approved, Yes-4, No-0.

Respectfully Submitted,

Christine M. Harris, Clerk

Regular Town Board Meeting  
7:30 p.m.

Present: Supervisor Gerald L. Deming, Council Members: Lynn Parnell, David Deuel and Norman Gates.

Absent: Frank Rose Jr.

Others: George Worden Jr. (Highway Superintendent), Carl Peter (Zoning and Code Officer), Patricia Gardner, Henry Fuller and Kirk Richenberg

Supervisor Deming opened the regular Town Board Meeting at 7:32 p.m. and invited Councilman Deuel to lead in the Pledge of Allegiance.

MINUTES

RESOLUTION offered by Mr. Gates and seconded by Mrs. Parnell to approve the minutes of the February 12<sup>th</sup>, 2015 Town Board Meeting. Voted on and approved, Yes-4, No-0.

HIGHWAY REPORT

Mr. Worden reported the following for the Highway Department:

- The Department continues to be busy plowing/salting roadside
- We still have 400 ton of salt remaining from American Rock, roughly using 80% of our contract thus far

- Working on/repairing trucks and plow equipment, due to the wear and tear this season
- Hydraulic hoses had to be replaced on two trucks which is not uncommon with the ongoing use
- The banks have been graded back
- Continue to push back snow near intersections for better visibility
- A few driveway pipes froze, needing attention, which have been taken care of
- Two tires were replaced on the grader
- Received quotes for 14 x 14 overhead door

Mr. Worden stated he received two quotes for a 14 x 14 insulated door at the Highway Department, the quotes are as follows:

Tri County	\$3,890.00
Alliance Door	\$3,565.00 + \$97.00(additional for upgrading of springs) = \$ 3,662

RESOLUTION offered by Mrs. Parnell and seconded by Mr. Deuel to approve the quote submitted by Alliance Door in the amount \$3,662.00 for a 14 x 14 insulated overhead door. Voted on and approved, Yes-4, No-0.

Mr. Worden commented he hopes to be able to patch potholes next week if the weather cooperates. Ideally the temperature should be at least in the 30's, but due to the condition of some areas we may not have a choice regardless of the weather. Councilman Deuel re-verified that 400 ton of salt is still on hand, which Mr. Worden replied it is because we have been able to mix sand with salt occasionally for a little extra traction in the severe cold spells.

#### WATER/SEWER REPORT

Mr. Worden reported that the department has dealt with a few frozen meters through the frigid weather. Once we arrived we noticed that some of the residents had issues with open doors/windows, but for the most part homeowners have tried to do what they can to protect the meter from freezing.

Supervisor Deming asked if the farms have been experiencing any major curb box issues during the winter season, which Mr. Worden replied they have not. Mr. Worden added that Water/Sewer Operator, Mr. Grant has continued to assist by cleaning around fire hydrants. It is very difficult to locate some due to the height of the snow banks, and we need to see exactly where they are in order to make sure the plow does not come in contact.

Mr. Worden reported the Retsof treatment facility has been running smoothly, no issues to contend with, and commented the thermostats purchased last year for the pump stations have worked well, cycling as they should.

#### NEW BUSINESS

(1) Bills:

RESOLUTION offered by Mr. Gates and seconded by Mrs. Parnell to approve all claims brought before the Board. Voted on and approved, Yes-4, No-0.



• General Fund Claim	#58-69	\$ 6,632.76
• Joint Water and Sewer	#47-56	\$ 9,570.39
• Highway Fund Claim	#43-46	\$19,751.89

(2) Impact Research Group:

Supervisor Deming stated Mr. Nagel was unable to attend tonight's meeting but wanted to update the Board on the Impact Research Group. Mr. Deming read aloud Mr. Nagel's written comments:

- #1 – Organizational meeting dates – February 28 and March 7, additional meeting date April 11, 10:30 a.m.-12:00.
- #2 – Internet service will be available at the town hall for those group members researching topics.
- #3 – Board membes are encouraged to attend any Impact Research Group meeting to get a sense of what is going on (as long as there are less than three members present).
- #4 – Suggestions regarding research topics are always welcome. If you feel something in the town is important to you, this could be included in the “snapshot” of York.

ADJOURNMENT

RESOLUTION offered by Mrs. Parnell and seconded by Mr. Gates to adjourn the Town Board Meeting until March 12<sup>th</sup>. Voted on and approved, Yes-4, No-0.

Town Board Meeting closed at 7:40 p.m.

Respectfully Submitted,

Christine M. Harris, Clerk