

**TIOGA COUNTY PLANNING BOARD
MEETING MINUTES
March 19, 2014
Tioga County Office Building
LEGISLATIVE Conference Room – Main Floor
56 Main Street, Owego, NY
7:00 PM**

I. CALL TO ORDER AND INTRODUCTIONS

- Chairman Doug C. called the meeting to order at 7:01 PM.

II. ATTENDANCE

A. Planning Board Members:

Present: William Dimmick III, Tim Pollard, John Current, Doug Chrzanowski, Hans Peeters, Patty Porter

Excused: Georgeanne Eckley

Absent: Nathan Clark, Jason Bellis, Pam Moore, Dave Mumbulo

B. Ex Officio Members:

C. Local Officials: Kevin Millar, Village of Owego Mayor, , Robert McKertich, Village of Owego Attorney, LeeAnn Tinney, Director of Economic Development and Planning

D. 239m Review Applicants: Janice and Eric Johnson for Johnson Pools & Spas, Kevin Millar and Robert McKertich for Village of Owego, Kraig Moss for KRM Management Group

E. Guests: none

F. Staff: Elaine Jardine

III. APPROVAL OF AGENDA

- Approval of agenda as amended switching items VII A. 1 and 3.

J. Current/P. Porter/Carried

None Opposed

No Abstentions

IV. APPROVAL OF MINUTES

- Approval of February 19, 2014 minutes

P. Porter/J. Current/Carried

None Opposed

No Abstentions

V. PRIVILEGE OF THE FLOOR

None heard

VI. CORRESPONDENCE

Folder passed around. E. Jardine pointed out there is flyer from NYD DEC announcing upcoming webinars on the new SEQR EAF forms. She will e-mail this flyer to TCPB members after she finds out how DEC will handle issuance of training certificates for the webinars.

VII. NEW BUSINESS

A. 239 Reviews

3. County Case 2014-007: Town of Owego, Rezoning, KRM Management Group, LLC / Albanese

The applicants are requesting to rezone their 4.9-acre and 1.19-acre properties from Residential B to Highway Interchange with the intention to create a commercial development on the 4.9-acre property, if this rezoning request is successful. Both properties sit right in between NYS Route 434 and East Main Street in Apalachin. The larger parcel, although recently filled and graded, has been and remains vacant land. While most of the property is in the FEMA 1% annual flood chance Special Flood Hazard Area, the recent fill and grading has brought it up above flood elevation.

The Town of Owego Zoning Ordinance regulation of 5-acre minimum for a General Business zoning district requires KRM to get more than his 4.9-parcel in the proposed zoning district. Peggy Ayres decided that she did not want her property (adjacent to the east) rezoned General Business, so KRM approached the adjoining property owners to the west, the Albanese, if they would be willing to have their property rezoned HIC, which already exists to the west of their parcel. The Albanese's, who currently have a single-family rental home on the property, have stated that they are willing to have their property rezoned to HIC as they have contemplated in the past ideas of commercial development on the property, but have no solid or specific plans to date.

The proposed Highway Interchange (HIC) zoning is appropriate given the location of the property along NYS Route 434 and that there is commercial development as well as HIC/ General Business zoning on either side of this site along Route 434. While this is a residential neighborhood, access to a future commercial development will be from NYS Route 434 only and the entire development will be oriented away from the houses, facing the state highway. That access already exists. There will be no access from East Main Street. This should minimize impacts on the current residential neighborhood.

Staff recommends approval of the rezoning requests.

Q: T. Pollard – What is the difference between the GB and HIC zoning districts? **A: E. Jardine** – They are basically the same, except the HIC zoning districts are located geographically close to NYS Route 17 interchanges. **T. Pollard** – And they are different on each side of these properties? **E. Jardine** – Yes, HIC to the west and GB to the east.

Motion to recommend approval of the rezoning:

H. Peeters/ P. Porter/ Carried	
Yes	6
No	0
Abstention	0

1. County Case 2014-005: Village of Owego, Comprehensive Plan Update

The Village of Owego Comprehensive Plan Update was done over the last year and a half by ELAN Planning, Landscape Design & Architecture, in conjunction with the Village of Owego Planning Board.

The Village of Owego of Owego’s proposed Comprehensive Plan Update has done a good job of incorporating important documentation and vision from the past comprehensive plans, yet adding newer, more relevant topics. One large standout, however, is the singling out of the hydraulic fracturing process associated with natural gas drilling and extraction. While the comprehensive plan is a tool for providing vision, the singling out of any particular industry is not a suitable means for the prohibition of a specific land use. At the comprehensive plan stage, it would be better to state in a more general manner the vision for no future heavy industrial practices located with the village. Then subsequently get more specific in regulations updates – such as zoning and site plan review – to the type of industries/land uses prohibited, based on the general recommendations in the comprehensive plans.

Staff recommends Disapproval of the Comprehensive Plan update.

Q: T. Pollard – Can the Village Attorney provide insight as to why the plan was constructed this way? **A: R. McKertich** – I have spoken about this with the Village Board of Trustees under attorney-client privilege, but cannot speak about it.

Q: P. Porter – Was the Village Planning Board involved in this? **A: E. Jardine** – Yes, they were the main entity or Steering Committee.

Q: T. Pollard – Was other more general wording considered? **A: R. McKertich and K. Millar**– No, but we have gotten a lot of public input throughout this long process, including 2 public hearings, at which no one expressed concerns.

TCPB members then deliberated about voting. E. Jardine reminded them they have three voting options– approval, approval with modification in this case removing Chapter XII, or taking staff recommendation of disapproval.

Motion to recommend approval with modification of the comprehensive plan update removing Chapter XII Natural Resource Extraction:

Doug C./H. Peeters/ Not Carried	
Yes	5
No	1 (T. Pollard)
Abstention	0

2. County Case 2014-006: Village of Owego, Use Variance, Special Use Permit and Site Plan Review, Johnson’s Pools & Spas, LLC

The applicant is requesting a special use permit and site plan review approval for the construction of a 10’x10’ concrete block building to house a water connection to utilize as a filling station for water trucks for the applicants business- Johnson Pools and Spas. First an area variance needs to be granted as this proposed commercial/industrial-type use is not allowed in the Village of Owego’s R3 zoning district.

Applicant states that currently water is accessed through the Town of Owego during normal operating hours of their utility department. This limited access restricts applicant's ability to operate his business as water is only accessible Monday through Friday 7:30AM-3PM. The proposal states that water would be purchased from United Water in the Village of Owego. The site has access to a 6" main. Water withdrawals would fall under United Water's SRBC permit (confirmed by staff).

Hours of operation will be primarily Monday – Saturday 7AM-7PM with maximum projected capacity of 6 loads per day (currently hours of operation limit Johnson Pools and Spas to a maximum of 3 loads per day).

In order to make the intended use work logistically, the applicant must obtain a lease from the Village of Owego to access their FEMA flood buy-out property, so the trucks can back into his lot from Water Street. The applicant is pursuing such lease agreement with the Village of Owego.

The neighborhood contains a mix of uses, but mainly vacant land, and neighboring lots are zoned Industrial.

ANALYSIS:

Use Variance Considerations:

According to NYS Law, a use variance must pass all 4 tests in order for a ZBA to grant it. An applicant must prove unnecessary hardship by addressing the following 4 statements:

- 1) **The applicant is substantially unable to make a reasonable return from the property, as shown by competent and real financial evidence (must have numbers);**
 - Staff Answer – Since these vacant parcels are in the floodplain and really should not have residential construction on them in the future, the applicant cannot realistically make any kind of profit from them with residential uses. His intended use is much more suitable to the properties' condition and will allow him to make a profit through sale of water.
- 2) **The hardship is somewhat unique, or at least not shared by majority of parcels in the same (R3) district zoning district;**
 - Applicant answer - See attached sheet.
 - Staff answer – This reason the applicant purchased these properties for this intended use was because the properties are serviced by a 6" public water main, which is perfect for the intended use. There is no other industrially-zoned district in the Village that has this required infrastructure.
- 3) **The hardship has NOT been self-created; and**
 - Applicant answer – See attached sheet.
 - Staff answer – Yes, this hardship was self-created as these properties have been zoned Residential 3 since the Village of Owego's zoning code was originally adopted and the applicant purchased these properties without conducting proper research.
- 4) **The relief asked for (variance) will not alter the essential character of the neighborhood.**
 - Applicant answer – See attached sheet.
 - Staff answer – The use variance will result in minimal changes to the character of the neighborhood, only due to the introduction of regular truck traffic onto the neighborhood streets, which consists of a mix of vacant land and industry. The truck route will pass only one occupied residence.

While this proposed use is suitable for these properties and neighborhood, the fact is that the applicant cannot pass the use variance test of self-created hardship.

Staff recommends disapproval of the use variance, and not to consider the Special Use Permit and the Site Plan Review at this time.

E. Jardine then stated that the Village Attorney had updated her today about the FEMA approval for this intended use, so that has been added as a condition. She will e-mail the TCPB members the revised review document.

E. Johnson then stated that the proposed truck route has been revised so it won't pass by that occupied house anymore and won't require backing up into the property. The trucks will now follow a route where they will enter through the Village of Owego property and proceed eastward, half on Village Property and half on the applicant's property, then exit via Mill Street. He then distributed a few new engineered site plans.

Q: Doug C. – Is the Village putting the road in? **A. R. McKertich** – No, the applicant will be putting a gravel road in on the Village property for his use.

Q: J. Current. – If we recommend disapproval of the use variance, should we not vote on the special use permit or site plan review in case the Village Board overrides with a supermajority? **A. E. Jardine** – I asked the Village Attorney to put forth just the use variance first, just because of concern over this situation, but he insisted it proceed all together at once. I need to consult with the County Attorney to be sure that if this Board recommends disapproval, then the Village Zoning Board of Appeals overrides it, the TCPB can go ahead and vote on the special use permit and site plan review. **R. McKertich** commented that if the Village ZBA does override by a supermajority, it should clear the way for the further referrals and review on this case, but to check with the County Attorney to make sure.

Q: R. McKertich – Why is the Tioga County Planning Board reviewing this case again? **A: E. Jardine** – Due to improper procedure from the first referral since this intended use is not allowed in the Village of Owego's R3 zoning district, which was discovered by my planner substitute, Erik Miller, after the February 19th Tioga County Planning Board meeting. He immediately notified Village Officials this deficiency and that the proposal would need a use variance and site plan review. **R. McKertich** – Who submitted it incorrectly? **E. Jardine** – Village of Owego officials.

Motion to recommend disapproval of the use variance:

Doug C./J. Current/ Carried	
Yes	6
No	0
Abstention	0

4. County Case 2014-008: Town of Owego, Special Use Permit, Johnson's Pools & Spas, LLC

The applicant is proposing to relocate the business's outdoor pool display (see attached example picture) from behind the new structural addition to the front

of the parking lot for better visibility. The surrounding area is currently made up of commercial uses.

There will be little to no impact to this site resulting from the proposed change in physical arrangement of the business, and the pool display will be in character with the surrounding commercial area. There is plenty of parking and vehicular traffic space on site, so the small consumption of this space by the pool display will be of little to no concern.

Staff recommends approval of the special use permit.

Motion to recommend approval of the special use permit:

H. Peeters/P. Porter/ Carried	
Yes	6
No	0
Abstention	0

VIII. REPORTS

A. Local Bits and Pieces

1. Town of Candor – G. Henry
 - Not in attendance.

2. Town of Nichols – P. Porter
 - The Town Planning Board is incorporating by reference the Town of Nichols Long Term Recovery Strategy in their Comprehensive Plan development, especially establishing site plan review regulations.
 - Town Supervisor wants the Planning Board to research & develop local laws to govern brine spreading and drones. Other TCPB members advised against both of those.

3. Town of Berkshire – T. Pollard
 - Resident surveys completed for the Comprehensive Plan update have been forwarded to the Town Board for their review.
 - Planning Board has decided to collaborate with the Town of Richford on developing a road use local law. He inquired about good examples. E. Jardine suggested obtaining a copy of the Town of Nichols and Town Tioga local laws, as they are simplistic yet effective and developed by the same attorney. Only thing missing to them is a permitting systems that is referenced in the law.

4. Town of Tioga – D. Chrzanowski
 - Site Plan Review regulations are now in the Town Board’s hands for review.

5. Village of Waverly – W. Dimmick III
 - Two new trustees were voted in Tuesday’s election.

6. Village of Owego – G. Eckley
 - Not in attendance.

7. Town of Newark Valley – H. Peeters

- No report.

8. Town of Richford - vacant

9. Town of Owego – J. Current

- No report.

10. Town of Barton – D. Mumbulo

- Not in attendance

11. Spencer – N. Clark

- Not in attendance.

B. Staff Report – E. Jardine stated there was no February report in the packets because she was out of work last month, however resolutions were still provided. She also had two additional items to report:

- 239 Referral cases – Voting Recusal. Due to research by the County Attorney, from now on when a TCPB member is also a member of their municipal planning and a 239 referral case is being considered at a meeting from the municipality in which they serve, that member will have to leave the meeting room during deliberation and vote. Abstention is not sufficient to satisfy the vote recusal required by GML §239-c, 2(c). It was commented that this would have impact on reaching majority votes. T. Pollard then asked if there was some clause in the TCPB by-laws that addresses absenteeism. E. Jardine stated yes, the by-laws say 3 sequential unexcused absences calls for dismissal. E. Jardine stated that she would try to reach Nathan Clark again to address this.
- Financial Affidavit Disclosures – The County Attorney has informed Department Heads that these documents will now be reviewed by the County’s Board of Ethics. All items must be completed, even if the answer is Not Applicable – leave no blanks. If this is not done properly, the member will be either removed from service or fined a penalty.

IX. OLD BUSINESS

A. None

X. ADJOURNMENT

A. Next Meeting April 16, 2014 @ 7:00 PM in the Legislature Conference Room.

B. Motion made to adjourn at 8:20 PM. P. Porter/J. Current/Carried.

Respectfully submitted,

Elaine Jardine, County Planning Director

Economic Development and Planning