



The Town of Franklin

P.O. Box 209, Route 3, Vermontville, NY 12989 • 518-891-2189 • Fax: 518-891-6389 • www.townoffranklin.com



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Town of Franklin Board Meetings

Town Board Public Hearing Proposed Local Law #2 Of 2009 Creation Of A Planning Board. September 23, 2009 - 7:00 PM

Board members present:

Supervisor Mary Ellen Keith
Councilman Al Berg
Councilman Clifford Smalley
Councilwoman Janet Ordway

Board members absent:

Councilman Walt Kretser

Others Present:

Timothy Smith, Esq., special counsel, Town Clerk Sandra Oliver, Les Parker, Frances Oliver, Karen Smalley, Jean Baltzly, Dick Jarvis, Ed Martin, Art Willman, Brad Merrill, Jacques DeMars, Barbara Rottier, John Alexander - WNBZ, Nathan Brown - Adirondack Daily Enterprise

1. CALL TO ORDER

Supervisor Keith called the public hearing to order at 7:00 pm. The Pledge of Allegiance was recited. The Town Clerk called the roll, introduced guests and stated a quorum was present. The clerk noted that a copy of the proof of publication and Rules of Conduct at Public Hearing were attached to the Agenda. In addition, anyone recording the hearing was requested not to record those members of the public in attendance that preferred their comments not to be recorded.

2. RULES OF PUBLIC HEARING

Supv. Keith read into the record the rules of procedure for public hearings:

RULES OF CONDUCT AT PUBLIC HEARINGS

1. COMMENTS AND QUESTIONS:

- Oral Comments. The Town Clerk will maintain a sign-in sheet at the public information desk for each person who wishes to make oral comments. Anyone who wants to do so must enter his/her full name and address on the sign-in sheet, in the spaces provided. ANYONE NOT SIGNING THE SIGN-IN SHEET WILL NOT BE PERMITTED TO ADDRESS COMMENTS TO THE TOWN BOARD.
- Questions. The Chairperson will entertain questions from the floor. Questions shall be for the sole purpose of obtaining information about the subject matter of the public hearing or clarifying its provisions. Questions shall not have the intent of provoking a debate between the questioner and the Town Board or any individual in the audience
- Written Comments. The Town Board will accept written comments on the subject matter of the public hearing PROVIDED ALL WRITTEN COMMENTS ARE GIVEN TO THE CHAIRPERSON BY THE END OF THE PUBLIC HEARING.

PRESENTATION OF COMMENTS AND QUESTIONS:

Presiding Officer. The Town Supervisor or designee will preside over the public hearing, and act as Chairperson. In his/her absence, the Deputy Town Supervisor or designee will act as the Chairperson.

2. GROUND RULES FOR THE PRESENTATION OF COMMENTS

The purpose of a public hearing is to gather public comment on proposed Local Law #2 of 2009 - Creation of a Planning Board. The Board encourages all in attendance to offer comments and ask questions. However, a successful public hearing requires that some simple ground rules be followed. These ground rules will ensure that all in attendance are treated in a respectful and courteous manner, and that all who desire to speak will have the opportunity to be heard:

- No one may speak unless recognized by the Chairperson for that purpose. Upon recognition, the person must identify him/herself by clearly stating his/her full name and address.
- Anyone choosing to speak must address his/her remarks to the Town Board, and not to other members of the audience. Any debate between those "for" and those "against" the proposal must be strictly avoided.
- Oral comments can generally be delivered in five minutes. If there are a large number of persons wishing to speak, the Chairperson reserves the right, in its sole discretion, to strictly enforce the 5-minute rule, so that all who wish to speak may have an opportunity to do so.
- The Town Board is here to listen to the public's comments, and to answer questions about the subject of the hearing. The Board is NOT here to express its own views or opinions thereon. The Board will NOT participate in a debate of the issues. We want your advice and assistance in coming to the proper conclusion on the issues involved. If you are in favor, simply tell us and give us your reasons why; and likewise, if you are opposed.
- No person has the right to demand an answer to a specific question from a member of the Board. As noted earlier, questions should seek clarification and information and should not lead to a debate of the issues. All questions are to be directed to the chairperson, who may either answer them or refer them to a Board member or the Attorney for the Town. The answer may be deferred and subject to further review or study and answered at a later date.
- No person may speak a second time until everyone who wants to speak has spoken.
- No member of the public or Town Board shall engage in any demonstration, booing, handclapping, or otherwise disrupt the formality of the public hearing.

The Town Clerk will be responsible for ensuring that these rules are followed.

ANYONE VIOLATING ANY OF THESE GUIDELINES WILL BE ASKED TO REFRAIN FROM DOING SO, AND MAY, IN THE SOLE DISCRETION OF THE CHAIRPERSON, BE ASKED TO LEAVE THE PUBLIC HEARING."

3. TIMOTHY SMITH, ESQ

Supervisor Keith introduced special legal counsel Timothy Smith, Esq. Mr. Smith stated he had served as legal counsel to municipal planning boards for 20 years. He assisted in the drafting of proposed Local Law #2 of 2009, Creation of a Planning Board. The proposed law is in NYS Dept. of State regulation form, as used by towns across the state, and includes reference in paragraph 5 to the Town of Franklin Code of Ethics. The proposed law will accomplish its purpose of creating a planning board.

4. PUBLIC COMMENTS

FRANCES OLIVER, a resident of Fletcher Farm Road and former Town Board member, opined adoption of the proposed law is long overdue and is an excellent effort by the Town Board. It has been needed for a long time.

KAREN SMALLEY, a resident of Fletcher Farm Road, commented she favors adoption of the law.

EDWARD MARTIN, a resident of Swinyer Road, noted his opposition to both proposed Local Law #1, Major Subdivision Control Law and to proposed Local Law #2, Creation of a Planning Board. Both are a waste of time and money. No answers have been forthcoming as to the actual cost of implementing or administering either proposed law. Who will pay if the Town is sued?

ART WILLMAN, a resident of French Road, agreed with Mr. Martin, in his opposition to both proposed local laws. The subdivision law adds another layer of bureaucracy and the financial repercussions have not been discussed. The proposal for a planning board does not reflect the results of the March 2009 taxpayer survey returns, 60% of which favored the Town Board administering the subdivision law, or appointing an advisory board. These laws are not

acceptable to the electorate. In addition there are no provisions in the planning board law to remove a planning board member. A 5 year appointment is a longer term than a councilman.

BRADLEY MERRILL, a resident of State Route 3, expressed his opposition to both proposed laws. The estimated cost to taxpayers for administering the subdivision law has not been addressed. No need for either law because the Adirondack Park Agency exists to administer and approve large subdivision development. It will be an unnecessary expense in tough financial times.

JACQUES DeMARS, resident of State Route 3 and Superintendent of Highways, indicated he had spoken with locals but has not read either proposed law. He would prefer that citizens be permitted to vote on the proposed laws. Wants to see a vote approach to be considered.

JEAN BALTZLY, resident of Fletcher Farm Road, expressed indecision about the proposed laws. She acknowledged a need for central oversight of development but is concerned about potential liability and possible cost to the Town. She recommended including some mechanism for the removal of planning board members.

LES PARKER, a resident of County Route 55, showed a PowerPoint presentation and handed Supervisor Keith a printed copy of the following:

"TEN THINGS YOU NEED TO KNOW ABOUT THE TOWN OF FRANKLIN SUBDIVISION LAW WHICH WILL BE ADMINISTERED BY THE NEW PLANNING BOARD, AS ITS LEGAL PURPOSE

TEN THINGS

- PURPOSE
- ROADS/SAFETY
- COST
- OTHER PROBLEMS
- ONLY BIG PROJECTS
- GUARANTEE
- WHAT'S BIG?
- NOTIFY NEIGHBORS
- NO ZONING
- WAIVER POSSIBLE

1. PURPOSE

- Promote good development in the Town of Franklin
- Make sure land in each lot is suitable for building
- Protect from dangers to health, peril from fire, flood, traffic or other hazards
- Provide for sewage, water, emergency access, drainage, utilities
- Roads constructed to town standards
- Protect neighborhoods and community
- Promote affordable housing

2. COST

- ZERO new cost to the town budget for subdivision planning
- Protect taxpayers from having to assume the costs of failed subdivisions
- Improve the tax base
- Protect lot buyers from the cost of water, sewage, access, and safety problems
- Protect neighbors the cost of dealing with runoff, sewage, injurious conditions
- Avoid unnecessary costs of special design and construction for developers
 - The first stage is free
 - The third and final stage can be waived
 - Town approval will fast-track the project with the APA

3 ONLY BIG PROJECTS

- The law only regulates MAJOR subdivisions
- Only major subdivisions

4. WHAT IS BIG?

- Major subdivisions are only; FIVE or more lots in a single development, or, A parcel that has a road intended for the Town to take over as a town road.

5. NO ZONING

- The Town of Franklin has no zoning law
- The Subdivision Law does not create a zoning law
- The law does not increase the authority of the APA over projects

(IN OTHER WORDS)

review process

NO ZONING

NO ADDED APA AUTHORITY

no jurisdiction for 1-4 lots

no public road

law applies 1-4 lots

public road added

law applies to 5 or more lots subdivision

6. ROADS/SAFETY The Subdivision Law assures lot buyers that;

- There is a buildable area on each lot
- There are provisions for wastewater treatment

- There are provisions for a well/water source
- There are provisions for vehicle access
- Roads are passable by emergency vehicles, all seasons
- Roads are constructed to meet engineering standards
- There are safe conditions at intersections
- There are provisions for utilities

7. OTHER PROBLEMS

- Prevent water runoff from creating problems to down slope properties
- Maintain existing drainage patterns
- Prevent noise and other problems from effecting neighbors
- Ensure compatibility with adjoining land uses
- Prevent designs that create dangerous or injurious conditions
- Prevent designs that adversely impact the reasonable use of nearby properties

8. GUARANTEE

- Provides for future road ownership and maintenance
- Assures sufficient legal arrangements
- Rights of way
- Requires
 - Deeded rights/recorded Declaration of Covenants
 - Workable private road maintenance cost-sharing
 - Road maintenance agreements

9. NOTIFY NEIGHBORS

- Require neighbors to be personally notified;
 - About the development, or
 - Any public hearings about the subdivision
- Require that neighbors be able to tour the property with the Planning Board

10. WAIVERS POSSIBLE

- If compliance causes
 - Unusual hardship
 - Unreasonable difficulties
- If lots will not be used for building
- As long as public safety and interest is served
- Second public hearing waiver, if,
 - Received preliminary plat approval, and,
 - No significant modifications, and
 - In agreement with the approved preliminary plat
- The purpose of the law and the Planning Board, as specified in the law, just makes sense. Not only does it not cost the taxpayers anything to put the law in place, but, it prevents future town costs and the lost tax revenue from failed developments. It has absolutely no impact on you if you are not doing a big project. It does not change anything in regard to zoning or the APA. It assures public safety and protects the interests of buyers and neighbors. And, it provides for a sensible and flexible process.

CONCLUSION So, in closing... I leave you with a complicated question:

- Why is it that the opponents of this law do not want us to make sure, at no new cost to the town, that each lot is suitable for building; that there are no dangers to health and safety; that hazards are prevented; that there are provisions for sewage, water, emergency access, drainage, and utilities; that roads are constructed to minimum town standards; that buyers and neighbors are protected; that there are no future liabilities for the taxpayers?"

JACQUES DeMARS: How does this not cost money? People have to travel to these training sessions. The Town Board approves of and appoints the planning board; there is one mindset. What do we have to lose if we put this to a vote?

- Mr. Smith responded that a vote is not an option. James Maher, Esq., attorney for the Town of Franklin has written two opinions, both of which appeared in the Town meeting minutes, that public funds may not be spent on the matter.

Mr. DeMars continued, commenting that he understood a vote was allowed to occur but there was no obligation to hold an election on the matter.

The Association of Towns indicated the matter could be put on the ballot.

- Mr. Smith stated he relied on the two opinions written by Mr. Maher.

BARBARA ROTTIER: A planning board is appropriate here because the Major Subdivision Control Law provides for it. She stated she supports both laws. In addition, she owns a large parcel of land designated "Low Intensity" by APA. She could sell 9 lots on the parcel in open fields without the necessity of obtaining an APA permit. APA does not cover everything in this town. The Town should have a say in what is developed, and this is fair to everyone.

5. ADDITIONAL PUBLIC COMMENTS

Q/C Did not see anything in the presentation or in either local law not covered by APA regulations. These proposed laws imply the Town will be protecting future land purchasers. He does not think Town should be in that position - caveat emptor - "let the buyer beware" is a principle he believes in. He had a conversation with Brian Grisi of APA, and although some sort of control might be necessary, he does not believe the Town should assume lead agency status under SEQR. Mr. Grisi indicated it would be all about what Town of Franklin taxpayers want to pay for.

Recently the Town of Santa Clara spent \$100,000 to prosecute a lawsuit and the Town of Harrietstown won a lawsuit, but had to incur legal fees. The Town will need to contract with special legal counsel at more than \$85 per hour. Seventy percent of the land in Town is owned by New York State or a conservation easement; the 30% remainder of land is privately-owned but is not all developable.

- Mr. Smith responded that the role of the Town Board is to enact, amend or repeal local laws and to appoint committee members. There is a customary separation of responsibilities.

Q/C Agrees with previous comment. Provisions in both proposed local laws are already covered by Adirondack Park Agency, Dept. of Environmental Conservation and Dept. of Health. There are already laws in place that are overprotective. Town does not need this.

Q/C The presentation showed the proposed laws are redundant. State covers everything. People need an APA permit for one lot. APA provides legal status of highway access and shared driveways. The proposed subdivision law is more restrictive, but APA will have final say.

Q/C Agrees with many points made. Expressed concern about the Town protecting the land purchasers; it is not the job of government to do so. APA protections are in place. People do not need the Town of Franklin to determine whether a site is buildable. She also expressed concern about neighbors being allowed a tour of possible subdivisions. Why do neighbors have a say?

Q/C People keep talking about how the subdivision law will be costly to the Town. She requested an explanation of possible costs.

- Coun. Smalley responded he does not believe either law would be costly to implement or administer.
- Tim Smith replied that costs, if any, would be incurred in defense of Article 78 proceedings brought by persons aggrieved by planning board decisions. These are fairly rare. It is contemplated that the planning board will do a good job and are afforded the "presumption of validity", or a "presumption of right" by the courts. There is no financial liability by virtue of land use regulations decisions. In his 20 years as attorney to a municipal planning board, he has had a few suits filed. He stated in his opinion there is no significant threat.

Q/C Not clear on what the Town of Harrietstown case involved, but the Santa Clara case has no bearing on the proposed local laws.

- Mr. Smith commented that someone cannot sue just because he doesn't like the law. Attorneys are ethically prohibited from filing frivolous lawsuits. The law will not create a conflict in litigation. The proposed law requires a cooperative process between the applicant and planning board. The roles are different but teamwork happens.
- Regarding neighbors on site visits, Mr. Smith continued, this is required under NYS Open Meetings Law. Members of the public are allowed to attend all meetings of government boards and committees. If planning board members visit a site, it is considered a meeting of a government committee or board, and the public may attend.

Q/C Where does the expertise of planning board members come from? What will the cost of hiring experts amount to? Will the planning board have adequate knowledge?

- Supv. Keith responded the County of Franklin is considering whether to create a County planning board. At a recent meeting of representatives of many communities in the County, the majority felt it was time for this. There are many advantages to a County planning board, but Franklin County might not have a planning board, per se, rather, it would have an expert who would consult with municipalities with planning boards already in place. Therefore, if APA does not approve a plan, Towns could consult the County expert, who would assist in completing the project. The expert would assist in locating grants to fund projects. The County proposal is not in place now but perhaps will be in the future.
- Supv. Keith also noted there are certified programs for training; an upcoming one is October 13th in Potsdam, at a cost of \$35 per participant. APA holds training sessions and there are State-sponsored "webinars". There are regularly-scheduled low-cost training sessions available.
- Tim Smith indicated the proposed law provides that costs for professional consultants incurred by the planning board will be borne by the applicant. In addition, implied in the proposed law is that people appointed to the planning board will act in a diligent manner.
- Coun. Smalley, in response comments concerning costs and appointees' expertise, read into the record the proposed classified ad requesting applicants:

"APPLICANTS FOR PLANNING BOARD

The Town of Franklin has developed and adopted a Major Subdivision Law that will soon be in effect. This law is designed to provide a set of guidelines to any developer or landowner who wishes to subdivide a parcel of land into five (5) or more lots - a major subdivision. As part of this effort, the Town Board has also created a 5-member, 2-alternate Planning Board to review and oversee all major subdivision proposals to ensure that relevant procedures, guidelines and timelines set forth in the law are adhered to. Planning Board members will be appointed by the Town Board to fill staggered one- to five-year terms. The Town Board is therefore requesting applications from individuals who might be interested in serving on this Planning Board. Applicants should send a letter of interest with information regarding background and experience that may be useful for this type of assignment. In addition, the Town Board would like a short statement as to why you have an interest in serving on the Planning Board and why you believe you should be considered. Individuals selected will be required to receive special training. Application letters should be addressed to the Town Clerk, Town of Franklin, 7 Cold Brook Rd., P.O. Box 209, Vermontville, NY 12989."

Coun. Smalley continued, noting that the Town Board will screen applicants for knowledge, expertise and interest.

- Mr. Smith indicated that proposed local law #2 dovetails with the Town's Code of Ethics. The law is straightforward and is related to proposed local law #1. The proposed laws are linked. However, he noted, the Board could adopt the proposed law creating a planning board and not adopt the proposed law regulating major subdivisions.

Q/C Concerns regarding costs of experts being borne by applicants for subdivision approval. What would happen if the planning board wanted to consult with an engineer and the applicant refuses?

- Mr. Smith responded that the proposed local law #2 requires consultation. Generally, applicants will have already engaged engineers and professionals, and they do a good job. Concurrent jurisdiction with APA would be a rare event for the provision to be invoked but it is protective of the Town to have this provision.
- Coun. Berg added the Board was allowed a "straw vote".
- Coun. Smalley opined a poll of attendees was not required.

Supervisor Keith thanked Mr. Smith for his expertise and presence at the public hearing, and Mr. Smith then left the meeting.

ADJOURNMENT.

. (J.Orday-A.Berg m/s/p) ALL AYE 7:50 PM.

Respectfully submitted, Sandra J. Oliver, Town Clerk

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