

Planning Board Meeting
July 16, 2014

Present: Mary Ann Bachman
Anne Caprini
Jim Ely, Chairman
Ralph Endres
Ann Jacobs
Ann Marie Rotter
Rodney Terminello
Bessie Tyrrell

Absent: Mike Staub

The regular July meeting of the Town of South Bristol Planning Board was called to order at 7:00 P.M. followed by the Pledge of Allegiance. All board members were present with the exception of Mike Staub.

Rodney Terminello then read out loud the Comprehensive Plan Vision Statement.

Chairman Ely then called for a motion to approve the June 18, 2014 as written. Ann Jacobs made said motion which was seconded by Ralph Endres. All in favor: Mary Ann Bachman-aye; Jim Ely-aye; Ralph Endres-aye; Ann Jacobs-aye; Ann Marie Rotter-aye; and Rodney Terminello-aye. Anne Caprini and Bessie Tyrrell did not vote as they were not present at the June 18, 2014 board meeting.

Old Business

Logging/Steep Slope Regulations Draft-Chairman Ely then began discussion regarding the timber harvesting draft law that the board had been working on for some time. He told the board members that after the board's June meeting he had a very in-depth and helpful meeting with Supervisor Barbara Welch and Kevin Olvany of the Watershed Council in response to some of the concerns that Supervisor Welch had raised and some of the issues discussed at the Planning Board's June meeting. Mr. Ely said that, as a result of that meeting, he had made

some additional revisions to the draft timber harvest law for the board's review. He said that had the board secretary underline the changes that had been made to the previous draft. Chairman Ely told the board that Kevin wanted to be sure that the law referenced the most current edition of the Field Guide which was 2011 and now appeared on the first page of the draft law. He then pointed out that on page 4 of the draft under Section VII in the first paragraph a reference to the 2011 edition of the Field Guide had also been added. In addition, Mr. Ely said that Kevin had suggested the board use the words "access to" the Best Management Practices Field Guide due to the fact that there was a copy of that Guide in the Code Enforcement Office and they could access it there. Mr. Ely then went out to point out that Kevin had suggested a change to the wording on page 5, Item B(2) to read: "Submission of joint applications to the NSY DEC and US Army Corp of Engineers for permits for any stream crossing and wetland disturbances". He then said that on page 6 he had made a change to the draft law that, in many respects, addressed Supervisor Welch's principle concern that the Planning Board make it extremely clear in the proposed law that the code enforcement officer can obtain expert assistance. He noted that the Planning Board had talked about including language in the draft law at their June meeting that would allow the CEO to do so and had agreed upon doing so. Mr. Ely said that the way he had phrased it in the draft was to include but not limit the expert assistance to only certain people by using the language: "The CEO may seek inspection assistance from any persons deemed necessary, including but not limited to, the Canandaigua Lake Watershed Manager, the Canandaigua Lake Watershed Inspector, and the Ontario County Soil and Water Conservation District". Chairman Ely then said that Kevin had indicated that he would be more than willing to assist and work with the CEO but that it must be with the CEO as he would not do so independent of the CEO.

Mr. Ely then turned to the permit application form. He said that he and Kevin had extensively discussed the matter of notification by the applicant to the highway superintendents with regard to the use of written notification or notification by telephone. He said the concern with notification by telephone was that the applicant could say that he called and sometime messages get dropped so you would not know if the applicant actually called or not. He then said that the trouble with written notification, as was pointed out by Kevin, was that a lot of

the loggers/applicants are not really paperwork-type people. Mr. Ely also said that Kevin had spoken to Highway Superintendent Jim Wight who had indicated to Kevin that he would be just as happy to receive a notification by phone. Chairman Ely told the board that he had, therefore, decided to give the applicants a choice by changing the last paragraph at the bottom of Page 1 of the application to read: "Seventy-two hours prior to the commencement of logging operations, the Town and County Highway Superintendents or their deputies must be notified in writing or by telephone by the applicant". He then proceeded to discuss the second and last page of the application form. Mr. Ely told the board that he had modified the last sentence in the third paragraph from the bottom to read: "The property owner further consents that the CEO may seek inspection assistance from any persons deemed necessary, including but not limited to, the Canandaigua Lake Watershed Manager, the Canandaigua Lake Watershed Inspector, and the Ontario County Soil and Water Conservation District".

Chairman Ely then said that he would be more than happy to entertain further discussion regarding the draft law or any further changes or questions the board members might have. He also indicated that the board had revised the draft law several times and that they had originally copied the law from the neighboring Town of Bristol who in turn had copied it from a handbook prepared by the Canandaigua Lake Watershed so Kevin Olvany was very familiar with it. Mr. Ely went on to say that he felt that Kevin had assured Supervisor Welch regarding a couple of points that were at issue. He said if the board felt that the draft law was ready for submission to the Town Board, for their review and consideration for adoption and for them to seek advice of counsel if they so choose to do so, then he would entertain a motion to that effect. Ralph Endres then made said motion. Rodney Terminello then asked whether the words "slash and debris" in Section VI(B) needed to be defined in the definition section (IV) of the draft law. Rodney said it was just a question and also stated that "debris" was a common word and that most people know what it is. Chairman Ely noted that in Section VI that the board did decide to take out the word "promptly" and replace it with the words "within two days". No changes to the definition section was made in connection with Rodney's question. Ralph Endres then made a motion to send the draft law to the Town Board for their review and consideration for adoption

and for them to seek advice of counsel if they so choose to do so. Bessie Tyrrell then seconded the motion. The motion was unanimously accepted.

Animal Control Regulations-Chairman Ely then directed the board's attention to two proposals in connection with animal control. He said the first proposal had to do with animals other than dogs. Mr. Ely noted that Ann Marie Rotter had prepared a first draft for last month's meeting for the board to use as a starting point in developing animal control regulations which the board modified and shortened up quite a bit at that meeting. Mr. Ely said that he had prepared a redraft of the regulations and had left in language regarding feral cats. He said that the board was not aware of any feral cat colonies in the town but that the board members had wanted the language left in case there might be some at some point in the future. He went on to say that the board had cast a pretty broad net defining animals but had also included the wording "including but not limited to" in case there were some animals that the board had not thought about. Chairman Ely said that he had received an email from former Planning Board member and expert proofreader, Jack Bartlett, who had pointed out that ewes and sheep were one in the same. He said, therefore, he had taken the word "ewes" out of the revised draft. Mr. Ely said that he appreciated Jack's input. Chairman Ely then said that unless the board members had further questions or comments regarding the revised draft he felt that the board was ready to go forward with it by sending it on to the Town Board and recommending that they consider making said revision to the town code. Ann Marie Rotter made said motion which was seconded by Rodney Terminello. The motion was unanimously accepted.

Chairman Ely said that the second proposal involved some language to address barking dogs. He said the board had previously discussed the language he had prepared for review which consisted of some modifications to language Mike Staub had presented to the board. Mr. Ely noted that when the board first looked at what he (Mr. Ely) had come up with it had been mentioned that the word "baying" should be included. Chairman Ely said he had added that to the most recent revision which resulted in the following proposed new Item E to be added to Section 61-15 of Town Code (Article II, Dog Control): "E. No dog shall be permitted to engage in habitual loud howling, barking, baying, or conduct itself in

such a manner as to habitually annoy any person other than the owner or person harboring such dog". Mr. Ely pointed out that the proposed language was modeled in part after an ordinance from the Town of Perinton. He added that he had done a little bit of checking and found that other towns in Ontario County (the Town of Canandaigua, the Town of Gorham, and the Town of Bristol) all have ordinances dealing with dogs that bark habitually and disturb the peace, etc. He went on to say that some say "regularly for a period in excess of one hour". Chairman Ely said he did not like that provision because 1-a dog could be a huge nuisance for a period of 55 minutes or less and 2-being too specific wouldn't necessarily help carry out what you're trying to accomplish. Mr. Ely also said that it seemed that those towns he mentioned were able to work with their barking dog regulations. Chairman Ely then said that he had spoken with CEO Phil Sommer and that Phil had expressed some concerns about how he would determine if a dog is habitually barking and disturbing the neighbors if he was not present to witness the problem. Mr. Ely then said that, in the first instance, working with language regarding barking dogs would just have to be by trial and error. He also said that he did not think that all of a sudden there would be a massive need for barking dog enforcement in the town. Mr. Ely said the thought was to have something in the town code that could deal with a bad situation should one arise in the future. He said that was the impetus behind the board's efforts to address habitual barking dogs in the town. Discussion followed. Board members agreed that to some people barking dogs are a nuisance and to others it does not bother them especially in light of living in a rural setting. It was also noted that with regard to barking dogs it would be a matter of a judgment call to some extent. Ralph Endres then said if the law were to say barking regularly for a period in excess of an hour and it was longer than an hour then they could be issued some type of citation to appear before the local town justice. Ralph added that not many law enforcement personnel nor the code enforcement officer would be running around in the middle of the night trying to find the dog/dogs owner. Chairman Ely said he felt that it was very unlikely that there was going to be a real problem with barking dogs in the town but that the town had received some complaints regarding barking dogs and wandering animals and that the Planning Board was just responding to those types of animal control issues. It was also brought up during discussion that people can file a complaint with the code enforcement officer but that they would need some evidence to back up any

complaint such as a digital recording. Following discussion, Chairman Ely called for a motion to recommend that the Planning Board send both animal control language proposals on to the Town Board for their consideration for adoption to the Town Code. Ann Marie Rotter made said motion which was seconded by Anne Caprini. The motion was unanimously accepted.

New Business

There was no new business.

Other Business To Come Before The Board

Update on PD Requests-Chairman Ely told the board that it was his understanding that neither one of the PD applicants (Everwilde nor BSV Resorts) came back before the Town Board on July 14, 2014. He said that, therefore, both PD applications were pending at the Town Board level. Mr. Ely explained that the Town Board had asked each applicant for some additional information including, among other things, proof of their financial capability. Chairman Ely then said that he thought what it meant was that the Town Board could not possibly address the issues raised regarding the two PD's until their August meeting. He then said that even if they vote to send one or both of the applications on to the Planning Board it would be on the Planning Board's September agenda.

Chairman Ely then went on to say that in connection with the two PD applications the Town Board had engaged professional consultants, a different one for each project, to assist the town with the PD process. He said that he had been invited to sit in and participate on some of the interviews to help select the consultants and that he felt that having professional consultants on board would help make the whole process much less burdensome on town officials due to the consultants' expertise with regard to SEQR, engineering capability, etc. Chairman Ely also noted that the cost incurred for the consultants' assistance would be charged to the applicants. Mr. Ely and the board members indicated that they were very pleased that the Town Board had hired the two consultants.

Fracking Decisions-Chairman Ely informed the board that the NYS Court of Appeals had upheld the power of towns to ban fracking and noted that the Town of South Bristol had such a ban in place. In addition to that announcement, the

board secretary told the board that in The Daily Messenger the night before the meeting there was an article that reported that a state judge had dismissed two lawsuits challenging the state's delay in finishing its health and environmental analysis of the potential impact of fracking in New York. She also said that according to the article State Attorney General Eric Schneiderman said that the judge's decision to dismiss both lawsuits was an important victory in the effort to ensure all New Yorkers have safe water to drink and a clean, healthy environment.

Update re the Bristol Homeowners Environmental Preservation Associates, LLC v. Town of South Bristol-Rodney Terminello asked what the status was of the Bristol Homeowners Environmental Preservation Associates v. Town of South Bristol. Chairman Ely told the board that he had been advised that arguments for that case were going to be heard at the Appellate Division of the Supreme Court in September.

BSV (Bristol Ski Valley) Resort-Request to Withdraw 2012 Restaurant Application and To Have The Planning Board Public Hearing Closed-Chairman Ely gave a little bit of history regarding BSV's restaurant application for the benefit of the new board members. He told the board that in October of 2012 BSV Resort submitted an application for site plan approval for a restaurant. Mr. Ely said that the Planning Board held a public hearing on December 19, 2012 and that Jeanne Loberg was the chair at that time. He went on to say that the board, however, adjourned that public hearing to await a more complete submission and to also seek the advice of the town attorney as to how to proceed since they also had applied to the ZBA to obtain a special use permit for the restaurant. He explained that there was some question as to which board would entertain their request for a restaurant first. Mr. Ely then said that the Planning Board never did receive any further information/submissions from the BSV people and that subsequently they decided to apply directly to the Town Board for a Planned Development which is the application that is presently pending before the Town Board. He said that as part of the PD application process, he had suggested to Supervisor Welch that they should officially withdraw their application for the restaurant.

Chairman Ely then advised the board that a letter had been received from BSV Resort's attorney withdrawing their pending application for site plan review by the Planning Board for the restaurant and requesting that the public hearing from December 19, 2012 be closed. Mr. Ely then called for a motion to close the December 19, 2012 public hearing. It was noted that only those board members who were present at the December 19, 2012 hearing would be participating in the action to close the public hearing which consisted of Jim Ely, Bessie Tyrrell, Ralph Endres and Ann Jacobs, representing a quorum of four board members of those in attendance on December 19, 2012. Bessie Tyrrell then made a motion that the December 19, 2012 public hearing be closed which was seconded by Ralph Endres. The motion was unanimously accepted by Jim Ely, Bessie Tyrrell, Ralph Endres and Ann Jacobs. Chairman Ely then directed the board secretary to take the "Continuation of Public Hearing-Bristol Ski Valley" off the Agenda Building List. It was also pointed out that both "Develop Steep Slope Logging Regulations" and "Animal Control Regulations" could now be removed from the list as well.

Miscellaneous

Chairman Ely then said that in connection with the proposed logging ordinance which the board had just voted to send on to the Town Board that Supervisor Welch had suggested that the Planning Board also take a look at the town's existing steep slope ordinance to be sure that it also provides that the CEO may obtain outside assistance from the same people listed in the proposed logging ordinance. He said he had told Supervisor Welch that the Planning Board would be happy to do so. Mr. Ely then told the board that he felt that it could be done in a very surgical way. Board members agreed that it was a very good idea to make sure that both ordinances parallel each other.

Chairman Ely then went on to say that several people had raised the question as to whether the Planning Board should take another look at site plan review criteria including Kevin Olvany. He said Kevin had told him that he had some suggestions for the board that might be useful from other towns. Mr. Ely said he had advised Kevin that the board would certainly be open to hearing those suggestions. He said that the question also had been raised as to whether there should be site plan review on lakefront property. It was noted that there had been a great deal of building going on at the lakefront and that some of it was

really pushing the limit. Chairman Ely then said that he, personally, had no position on either of the site plan topics. He said he was just bringing them to the board's attention so that they could discuss both items at their next meeting.

Bessie Tyrrell then asked Ann Jacobs to bring the list of things that the Town Board had suggested the Planning Board work on during the joint meeting of the boards in June 2013. Bessie said she wanted to be sure that those items were on the Planning Board's list of agenda items. Ann Jacobs said that she would do so. It was noted that some of the items currently listed as "Agenda Items" were: demolition ordinance, special use permit criteria, dark sky regulations, private driveway damage to town roads and noise ordinance.

There being no other business to come before the board, Chairman Ely called for a motion to adjourn. Ralph Endres made said motion which was seconded by Ann Jacobs. The motion was unanimously accepted and the meeting adjourned at 7:45 P.M.

Respectfully submitted,

Debra Minute
Recording Secretary