

Memo

To: Town Board Members
From: Brad Packard, Assistant Director of Community Development
CC: Town Attorney, Town Clerk, Town Engineer, Senior Code Enforcement Officer, Planning Board Members, Chamber of Commerce
Date: 7/20/2012
Re: July 25, 2012 Town Board Meeting Agenda

Following is a review/analysis of the items listed on the July 25, 2012 Town Board agenda.

PUBLIC HEARINGS:

1. MAIN/BARTON MASTER PLAN 2015 AMENDMENT, 9105 and 9125 MAIN STREET.

Location: South side of Main Street at the intersection with Barton Road.

Description/History: Existing residential property located in the Residential Single-Family Zone.

Proposal: Applicant is seeking a Master Plan Amendment to allow for a commercial zoning classification on the two corner lots.

Master Plan: Area currently identified as residential per the original Map Cover for the White Acres Subdivision Approval.

Reason for Town Board Action: As stewards of Master Plan 2015, the Town Board has ultimate authority to amend the Future Land Use Map within MP 2015.

Issues: The Planning Board has forwarded a recommendation to amend the Future Land Use Map at 9105 and 9125 Main Street to identify commercial zoning. As a part of the recommendation it is identified that a specific zoning classification would be considered at a future date under a separate application for a change in use on the property. Limiting factors associated with the future land use of the property include lot size and required setbacks to adjoining residential properties as well as the lack of public sewers. A public hearing will be required to consider the amendment.

2. MULTI-FAMILY HOUSING MORATORIUM.

Location: The proposed Moratorium has been structured as a temporary town-wide suspension on the review and approval of multi-family housing projects.

Description/History: Multi-family housing is currently a permissible land use in commercial zoning districts only with the issuance of a Special Exception Use Permit as per the Town Board.

Proposal: The town wide Moratorium has been advertised for a six month time period with a potential additional six month extension.

Master Plan: Multi-family uses are currently only permissible in commercial zoning districts.

Reason for Town Board Action: As land use moratoria are treated as local law adoptions, the Town Board has final authority over adoption and amendment of local law.

Issues: While there is no mention of moratorium or moratoria within the New York State zoning and land use enabling laws, previous New York Court of Appeals rulings, decisions, and orders have established a procedural basis for the issuance of moratoria on the behalf of local jurisdictions on the basis of Municipal Home Rule. Previous case history has established that the drafting of a moratorium must include at a minimum the activity affected, must specify any components of Town or Village Law to be superseded, establish a valid public purpose for the moratorium with a preamble that recites the nature of the particular land use issue, clearly identify the need for additional time to allow community officials to comprehensively address the issue at hand, should include a date certain termination, and should provide a relief mechanism allowing affected landowners the opportunity to apply to a local board for relief from its restrictions (the Zoning Board of Appeals as a possible relief body for example). Said officially drafted moratorium must be made available to the public 10 days prior to a mandatory and duly scheduled public hearing. Official notice of said moratorium must be provided to the Clerks of all Counties and Municipalities within 500' of any land area possibly affected by said proposed moratorium. Finally, prior to issuance of said moratorium, the proposal would be subject to referral to the Erie County Department of Environment and Planning in association with the requirement of New York State General Municipal Law Section 239 m. Bearing in mind these regulatory requirements, if in fact these procedures have not been adhered to, the public hearing would be held more so for public comment relative to the drafting of an official moratorium than consideration for issuance of said moratorium.

FORMAL AGENDA ITEMS:

1. JONATHAN PRISET, 6425 SALT ROAD.

Location: East side of Salt Road, north of Keller Road.

Description/History: Existing single-family residence located in the Agricultural Rural Residential zoning district.

Proposal: Applicant is proposing to construct an in-law apartment addition to an existing residence.

Master Plan: Area identified in an Erie County Agricultural District.

Reason for Town Board Action: Secondary Living Units in the residential zone will require a Special Exception Use Permit. Per the Zoning Law, the Town Board has approval authority over Special Exception Use Permits.

Issues: A public hearing will be required to consider the use. Adherence to required conditions stipulated in the Zoning Law is required.

2. KELLY MARQUART, 6105 SALT ROAD.

Location: East side of Salt Road north of Clarence Center Road.

Description/History: Existing vacant parcel located in the Agriculture Rural Residential zoning district.

Proposal: Applicant is proposing to develop a single-family home and is requesting a secondary living unit be developed as a part of the permit

Master Plan: Area identified in an agricultural-residential classification.

Reason for Town Board Action: Per the Zoning Law, the Town Board may consider a secondary living unit with a Special Exception Use Permit.

Issues: The public hearing regarding this item was previously held and closed by the Town Board at the July 11th meeting of the Board. At this point the Board may consider approval provided adherence to stipulated conditions within the Zoning Law being required as a condition of approval.

WORK SESSION ITEMS:

1. CIMATO ENTERPRISES, WOODLAND HILLS SUBDIVISION.

Location: South side of Greiner Road, east of Harris Hill Road.

Description/History: Project site has been the subject of the consideration of a Major Subdivision request within the Residential Single Family zoning district.

Proposal: Applicant is requesting a Clearing, Filling and Grading Permit as well as an Excavation Permit to allow for the excavation of a proposed stormwater detention area that is planned in connection with the development of a proposed 77 lot Major Subdivision. The excavated fill is intended to be utilized for grading a proposed right of way in connection with the proposed Major Subdivision.

Master Plan: Area identified within a residential classification.

Reason for Town Board Action: In association with the Local Clearing, Filling, and Grading and Excavations Laws, the Town Board has final authority for the consideration of issuing permits in relationship with applications under both Laws.

Issues: The project site in question has previously been and is currently the subject of a Major Subdivision review. While the project has previously received a Negative Declaration under SEQR and Concept Plan approval, the project has not received nor been the subject of an official Development Plan review and approval. Additionally, the property, while currently planned for a 77-lot major subdivision, is not currently within a sanitary sewer district. It is important to note that as per the Local Clearing, Filling and Grading Law (Section 79-6(G)), the following provision is stated: "Any site that is proposed for development *may not* be cleared until development plan approval has been granted by the Town Board and a building permit has been obtained from the Building Department." Additionally, as per the Local Subdivision of Land Law (Section 193-15(E)(3)) the following provision is stated: "No construction activity shall commence without first obtaining development plan approval from the Planning Board and the appropriate regulatory agency and departmental permits." The proposed action would require the Town Board permit construction activity in association with a Major Subdivision proposal not serviced by a sanitary sewer district and without Development Plan approval having first been obtained.

2. CLARENCE CENTER VOLUNTEER FIRE COMPANY, 9415 CLARENCE CENTER ROAD.

Location: Southside of Clarence Center Road, west of Goodrich Road.

Description/History: The Fireworks Display is an association with an annual Labor Day Fair event held on the grounds of the Clarence Center Volunteer Fire Company campus.

Proposal: Applicant is seeking approval for fireworks display permits on September 2, 2012.

Master Plan: Area identified within the Clarence Center Traditional Neighborhood hamlet.

Reason for Town Board Action: The Town Board has local authority to approve fireworks display permits.

Issues: Required applications, fees, site plans, insurance certificates and fire chief approvals are in the file.