

Otsego County Planning Commission

Minutes from 02-22-2010

1) 6:00 Call to Order

2) Pledge of Allegiance

3) Roll Call

Present: Mr. Stults, Ms. Backenstose, Mrs. Jarecki, Mr. Colosimo, Ms. Nowak, Mr. Klee, Mr. Borton, Mr. Mang

Excused: Mr. Ernst, Mr. Arndt, Mr. Hilgendorf

Land Use Services staff present: Joe Ferrigan, Sharon Bolinger, Allen West

Public present that signed the attendance sheet: Elliot Blumberg, Mike Moegenberg, Dorinda Chamberlain, Olen Harris, Colleen Jozwiak, Patricia Osburn

4) Consent Agenda: None

5) Approval of Minutes from the 12-21-2009 regular meeting with corrections.

Motion by Mr. Klee. Seconded by Mr. Borton.

Approved unanimously. Motion carries.

6) Other: Mr. Stults announced that item #1 under New Business will be removed from tonight's agenda.

7) Public participation for items not on the agenda: None

8) Unfinished Applicant Business: None

9) Public Hearings: Mr. Stults read the rules for Public Hearings.

- 1) Proposed changes to the Otsego County Zoning Ordinance regarding Wind Turbine Generators.

Public Hearing opened at 6:08pm.

Mr. Stults stated that we have received comments from Otsego Lake Township, Chester Township and Livingston Township and they are supporting the proposed changes.

No public comments.

Public Hearing closed at 6:09pm.

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- 2) Proposed changes to the Otsego County Zoning Ordinance regarding Article 23 Zoning Board of Appeals.

Public Hearing opened at 6:09pm.

Mr. Stults stated that we have received comments from Chester Township, Corwith Township, Livingston Township and Otsego Lake Township in favor of the proposed changes.

No public comments.

Public Hearing closed at 6:10pm

10) Unfinished Commission Business

- 1) Northern Processing: Status of Special Use Permit.

Mr. Stults “We have a request from Colleen Jozwiak to give us a presentation by Mr. Blumberg regarding a Special Use permit for mining. Mr. Blumberg..”

Mr. Blumberg “Ladies and gentlemen my name is Elliot Blumberg I represent Colleen Jozwiak. We’ve been before this Commission on a number of occasions regarding the Special Use permit that had been issued initially in 2001 that was recently renewed in 2004. Most recently this Commission renewed the Special Use permit which on its terms ? expired we believe in January 2009. We’ve been before this Commission most recently in regards to the obligation of Mr. Matelski and Northern Processing LLC to submit what has been required of him which is a reclamation plan. For instance, question as to his obligation to submit that plan I think the Commissions attorney has given his legal opinion, the Commission has taken the position that in fact Northern Processing must file a reclamation plan. We are now one year past the time which we believe the Special Use permit expired. We’re asking this Commission today to make the finding that in fact that permit is expired and consequently then Mr. Matelski and his company have no legal right to continue the operations at the gravel pits. That’s what we are asking you to do this evening.”

Mr. Stults “Thank You... Mr. Ferrigan...”

Mr. Ferrigan “Yes.”

Mr. Stults “you have communicated with our legal council on this issue?”

Mr. Ferrigan “There are a few things I’d like to say. I did if you remember our last meeting, Northern Processing had made some comments about not being notified about a meeting on February 12th I sent a notice to Mr. Delaney that Ms. Jozwiak represented by Mr. Blumberg asked to be placed on the Planning Commission agenda and that the meeting is going to begin at 6:00pm on this date. I included a copy of this

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in your packet. And he replied back that he has a five day jury trial beginning today so it's not uncommon for a trial to continue after 5:00pm." He says that "This issue is very important to my client Northern Processing. I would like to have the matter heard at the March meeting..." He goes on to say "Since my client is not operating the gravel pit and the lawsuit has been pending since September 2008 the landowner will not be prejudiced by a 30 day delay." I did talk to Mr. Delaney, and in fact also Mr. Matelski, I told them that if we were going to remove it from the agenda, that it would be up to the Chairman as to whether he wanted to proceed because of the request by Mr. Delaney.

So with that being said, to answer your question, I did speak with the County's legal council and his statement to me and to the Planning Commission, is in your packet also, is that the minutes from the January 19, 2004 Planning Commission meeting are self supporting. The Planning Commission held a meeting, made a finding of fact, a motion was made and supported, a vote was taken, and the motion was approved to grant a Special Use permit in Case PC-2003-09-CHSUP for a period of five years. There is no need for the Planning Commission to take any action on the current request. So what he's saying is that we held a meeting, we granted a permit for a period of five years beginning January 19th, 2004 so the minutes speak for themselves."

Mr. Stults "Any additional comment? Anyone not in agreement with following the advice from our legal council?"

Mr. Blumberg "I have a question."

Mr. Stults "Mr. Blumberg."

Mr. Blumberg "I'm not sure what your council is advising you to do nothing the permit you granted on it's face expires five years after it's renewal January 2009. I think my client has a right to come before you and ask for you to make a determination, either that permit is in place or it's expired."

Mr. Stults "The way I understand the advise from our legal council is that the minutes from the meeting were the permit was granted, granted it for five years and that five year period has ended so it's no longer a valid permit."

Mr. Blumberg "Ok. That's all I, I guess that's what I was asking."

Mr. Stults "Ok, and I think you know based on our December meeting in comments you made before us according to our minutes you agreed with that conclusion."

Mr. Blumberg "I don't think anybody could argue to the contrary."

Mr. Stults "Ok, ok."

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Mr. Blumberg “Obviously we, Mr. Matelski had one year now since the expiration 2009 January is when that Special Use permit expired. He’s had one year to do the reclamation which we believe he has not even started yet. Let alone perhaps you could edify me in terms of whether or not his reclamation plan has ever been submitted and approved by the Planning Commission? Or is it mute now that the permit’s expired?”

Mr. Stults “The, your aware that the courts have ruled in action which your involved in, that he’s not required to.”

Mr. Blumberg “No that’s incorrect, Judge Allen after this last meeting entered a new order requiring him to act in conformity with the Planning Commission and he does have an obligation to present and have approved a reclamation plan.”

Mr. Stults “And you’ve been kind enough to provide us with that information and that revised order then?”

Mr. Blumberg “I haven’t because your council already advised you to do that, and I thought that that was not even an issue. You guys voted on it and said he had to do it.”

Mr. Stults “Yes we did but I think you know in good faith if there’s a revised order it’s something that we would like to have in hand if you would share it with us.”

Mr. Blumberg “And I apologize for not doing that. I don’t think even Mr. Delaney wouldn’t dispute the fact that that order has been revised to reflect the ruling of this Commission.”

Mr. Stults “Well I think in fairness to have current information particularly on a pending and ongoing court case that if your asking us to take action we need to have all the facts.”

Mr. Blumberg “With all do respect, one is independent of the other and this body is the one that issued the Special Use permit.”

Mr. Stults “Well I disagree that their independent with each other because the court said in the first order he wasn’t required to do something that we had asked him to be done. And that prevents us from pursuing that.”

Mr. Blumberg “And I’m not here to argue with you about what the court said or didn’t say, there isn’t any question with the order of the court now says Northern Processing LLC must file a reclamation plan.”

Mr. Stults “Well, please provide us with that the so that we can...”

Mr. Blumberg “Yes I certainly would be glad to do that.”

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Mr. Stults “Thank you. Any other Commission comments? Ok, moving on to the next matter.”

2) WTG Commission discussion / next step.

Mr. Ferrigan recommended forwarding the revision on to the County Board of Commissioners.

Mr. Mang agreed.

There were multiple discussions among Commission members.

Herb Russell addressed the Commission. He was under the impression that we were still in the process of making the ordinance and requested to get a copy of the proposed changes. Sharon told him to call or stop into the Zoning office and we will get him a copy.

There were more discussions concerning wind turbine generators.

Motion made by Mr. Mang to recommend the proposed changes be sent on for adoption by the Board of Commissioners. Supported by Mr. Borton.

Motion approved unanimously. Motion carries.

3) Article 23 Commission discussion / next step.

There were no Commission comments.

Motion made by Mrs. Jarecki to forward on with a recommendation for adoption to the Board of Commissioners. Supported by Mr. Klee.

Motion approved unanimously. Motion carries.

11) New Business

1) County Administrator John Burt presentation on new Animal Control Building. Removed from agenda at beginning of meeting.

2) Approval of restroom remodel at County Park.

Mike Tarbutton, Parks and Recreation Director addressed the Commission.

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He gave a presentation to the Commission on the restroom addition and remodel.

Mr. Stults stated that this is before the Planning Commission based on the Planning Enabling Act Section 125.3861 item 2.

There were multiple discussions among Commission members and Mr. Tarbutton.

Motion made by Mr. Borton to authorize the Chairperson to report to the County Board of Commissioners and the Parks and Receptions Board that the Planning Commission recommends the remodeling and expansion of the restroom facility at the County Park. Supported by Ms. Nowak.

Motion approved unanimously. Motion carries.

3) Enforcement of Otsego County Zoning Ordinance / Discussion.

Mr. Ferrigan gave a presentation concerning the enforcement practices of the Otsego County Ordinance and equality in enforcement. The dumpster enclosure ordinance was the main topic for discussion.

There were multiple discussions among Planning Commission members and Planning and Zoning staff members.

Mr. Stults and Mr. Ferrigan asked the Commission members to take a good look over the Zoning Ordinance and to come back with any recommendations as how best to enforce the Ordinance for equality within the County.

12) Reports and Commission member comments.

Mr. Stults acknowledged that we have received a letter from Chester Township indicating that they have adopted an ordinance to establish a planning commission. He also saw Charlton Township Ordinance adopting a planning commission published in the Herald Times. Two Townships that did not have planning commissions have adopted an ordinance to establish them.

John Burt asked Randy Stults to update the Planning Commission on funding for Planning and Zoning for 2011. He has met with the township supervisors and they have made an offer of funding that they would have available for Planning and Zoning and he is working on a plan that would be able to support Planning and Zoning within the funding that they put forward and he is close to finalizing that. Then he will be going back to the townships with a plan within the funding that they have offered.

The funding from the Townships for the current year 2010 has been reduced by approximately \$8000 due to a time study that was put together by Mr. Ferrigan.

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Mr. Stults offered his assistance to the townships that are forming planning commissions.

Meeting adjourned at 8:02pm.