

Town of Danby Planning Board  
Minutes of Regular Meeting  
Thursday November 19, 2015

**DRAFT**

**PRESENT:**

Joel Gagnon  
Anne Klingensmith  
Frank Kruppa  
Jim Rundle  
Naomi Strichartz

**ABSENT:**

Steve Selin  
Ted Melchen (excused)

**OTHER ATTENDEES:**

Town Planner C.J. Randall  
Town Board Leslie Connors, Jack Miller  
Rec. Secretary Kelly Cecala  
Guest Debbie Teeter - Tompkins County Cooperative Extension  
Public Ted Crane, Linda Fetherbay, Charles Tilton, Pat Woodworth, Frank Darrow, and David Hall

*The meeting was opened at 7:06 pm.*

**(1) CALL TO ORDER/AGENDA REVIEW:**

Frank Kruppa handed out the agenda to the Board for comment and review, nothing was added or deleted.

**(2) PRIVILEGE OF THE FLOOR:**

Linda Fetherbay corrected a typo found in the October 15th Public Hearing minutes; the blind spot she referenced is at 303 Gunderman Road not 85 Gunderman Road. This correction will be made to the final version of the minutes.

Frank Darrow referred to the October 22nd minutes, which failed to mention that Darrow had previously submitted his comments in a signed written statement at the October 15th Public Hearing, which he was unable to attend. The final version of the minutes will be edited to include Darrow's statement and a printed copy of Darrow's written statement will be filed at the Town Clerk's Office.

Darrow then asked what the mechanism was for the Town Board to review the minutes, discussion, and guidance from the Planning Board, because he said that the elements of the discussion enlightened what happens in a way that a simple vote on a recommendation doesn't. Darrow added that there may be a false impression on what the Planning Board might actually think.

In particular at the October meetings, Darrow said he was surprised by the recommendation, as it came out, which seemed much more positive in respect to David's proposal, then the discussion leading up to it. Darrow commented that he thought the Town Board would be more interested in knowing the "final thoughts" of how the Planning Board was actually feeling. Darrow read the final thoughts portion of the October 22nd meeting, and said that this opinion is not reflected in a vote that recommends approval with changes to PDZ 10.

Kruppa clarified that the Planning Board can not speak for the Town Board, but that the minutes are public record, and the Town Board has two liaisons that attend the Planning Board meetings regularly. Rundle added that he went to the Town Board to make his own personal statement, not on behalf of the Planning Board.

Darrow also asked for follow up to the potential impact to hunting in the area if this law passed. Kruppa himself did not recall taking ownership of this, or he would have asked the Town Staff to look into it. Kruppa said that the PB didn't have an answer to it yet. Darrow questioned if there was a transcript to the Public Hearing, and the Board confirmed that there is not. Darrow asked where written signed statements go, Klingensmith confirmed that written statements are recorded in the Town Clerk's office. Darrow then wanted to know if a copy of the edited proposal had been prepared yet, the Planning Board confirmed that they have a working copy with all of the recommended changes.

Pat Woodworth raised concerns about several inconsistencies and inaccuracies she found in her statement(s) from both the October 15th and October 22nd minutes; she said that she did not have a complete list prepared but that she would resubmit a complete list for the record. Woodworth said that it would be a much better policy to have a transcript available for a Public Hearing, where comments from the public are an exact recorded, versus someone trying to summarize keep points from numerous people, which could be misinterpreted. Pat Woodworth's statements will be edited/corrected in the final version of both the October 15th and October 22nd minutes. A hard copy of Woodworth's written statement will be filed at the Town Clerk's Office.

Woodworth added that one concern, which has not come up, has been about traffic and said that all of the discussion has been about limiting the number of employees in the proposal, but there has been no discussion at all on the fact that there is no limit on clients or patients, which could have a big impact on traffic. Woodworth added that Section 3 of the law, claims that this law will prevent sprawl in the town of Danby, that this law will increase business along the main corridors in the town of Danby, and that this law will preserve open space in the town of Danby. She said that by approving this law, the Planning Board is then also approving these stated "facts," which Woodworth has argued are false and inaccurate.

Lastly, Woodworth mentioned the claims that were made about the broadness of the law, and those that are concerned about the broadness of the law. She said how those that are concerned about

having "medical clinics" (in general) versus an "autism clinic" have been characterized as discriminating against alcoholics and people with other illness and diseases. Woodworth said that discrimination against, as opposed to discriminating between things, is an unjust prejudice distinction in the treatment of different categories of people. Woodworth spoke to an attorney as well as the Director of FLIC who did not see any issue of discrimination in this particular category.

Charles Tilton then spoke and also found problems with his statements in the minutes as well. He said that if the minutes are not presented as they are stated, they can have profound secondary effects, in addition to being incorrect. Tilton referred to an example found in the October 22nd minutes where he discussed a Gun Free Zone within 1,000 feet of a school; his point was misrepresented as it relates to the proposed autism center. Tilton's main concern was for others to think that Tilton was against an autism center, which he is not. In fact, Tilton said that he has always been in favor of having an autism center. Lastly, Tilton wanted to express his disappointment and wanted to know why print outs of relevant meeting documents were not prepared in advance, or available online for the public to view. The board had no comment.

Tilton also supported the idea of having a transcript and expressed the importance of having public statements being submitted correctly, or there could be profound ramifications if they are written incorrectly. Charles Tilton's statements will be edited/corrected in the final version of both the October 15th and October 22nd minutes.

David Hall said that explicit language was used in the law to deliberately not call the autism center a "school" or have it be within a school zone, Hall offered to change the wording if the current language was not adequate. Hall questioned if the Gun Free Zone was struck down as unconstitutional, Tilton said that it was modified but it was never struck down. Tilton said that you can not possess a weapon, hunt, or fire a weapon within 1,000 feet of a school. Hall suggested adding to the law "no school as defined by the Gun Free Zone." Tilton remarked the word "school" alone, may trigger the law into effect. Kruppa commented that the Town Board will need to ensure and verify this if the law is passed.

Ted Crane remarked on Frank Darrow's comments about the Planning Board's overall impression towards this law, as well as the current PDZ, and the importance of forwarding these impressions to the Town Board. Crane stated that passing the law, even with reservations, is a stamp of approval. Crane commended Rundle for standing up and expressing his negative opinion about the law to the Town Board. Crane also wanted to amplify what Pat Woodworth said regarding the proposed law not be compatible with the neighborhood, it was not then and it is not now.

Crane said that he has Ag & Markets Law, which Trumps local law, and lives in an Ag District. He said that the problem with Ag Districts, is that it gives people who are in neighborhoods, which are within the district but where no active farming exists, the potential for a farm to just parachute down without local review. Crane said a similar thing happened with Eagle Automotive in a commercial district. Crane stated that having most of the town covered with Ag Districts is bad news, and it would trump the expectations of the neighborhood and it would take away local control. Crane connected his comments to Gunderman Road, and said that ideally the Planning Board should just turn the law down, and say no.

Additional conversation about the minutes and the suggestion to provide a transcript during Public Hearings was held between the Planning Board and the public. Klingensmith said that additional funding would need to be made available and Kruppa added that ultimately it is up to the Town Board to change the process and protocol.

### **(3) REPORT ON AGRICULTURAL DISTRICT #2 UPDATE: DEBBIE TEETER, CCE**

Debbie Teeter from the Tompkins County Cooperative Extension, attended the meeting to speak about the New York state program which created a body of law to protect farmland and farming. Teeter stated that every eight (8) years, the two (2) agriculture districts which are located in Danby and within Tompkins County, have to be reviewed to determine if they are still helping to protect farmland; the review process is done by surveying farmers and agricultural land owners. Teeter also confirmed, that New York State Agricultural Law *can* supersede Local Law, but it's a complex process.

In addition, Teeter stated that a land owner can request to remove their parcel of land from an Ag District every (8) eight years. She said that the land owner must submit a written letter to the CCE requesting to remove a parcel of land from the Ag District. However, a parcel of land may be added to an Ag District, if approved, once every year in February. The process to add a parcel must also be done in writing from the land owner to the CCE. The CCE first looks for viable agricultural land, after the land is deemed viable, it is sent to the Ag & Farming Protection Board, and if passed a recommendation is made to the county legislature to have the parcel added.

Teeter said that more than half (~64,000 acres) of the land in all of District #2 is active farmland. Klingensmith asked how many total acres from the two districts are located in Danby, and how many of those acres are actively farmed. Klingensmith added that it's important information for the Planning Board to know and said that questions about Ag Districts have come up during PB meetings and discussions before. Teeter said she would contact the Planning Department and the Assessment Office to get those figures. Teeter explained that Agricultural District Law provides yearly agriculture assessments of different 1, 2, and 3 soil types to determine their agricultural value.

### **(4) APPROVAL OF MINUTES**

Several edit-changes were requested during privilege of the floor, therefore the October meeting minutes were not considered for approval. Both the Public Hearing (10/15/15) and Special Meeting (10/22/15) minutes will be edited and considered for approval and the December Planning Board meeting.

### **(5) RATIFICATION OF OCTOBER 2015 RESOLUTION TO RECOMMEND WITH MODIFICATIONS:**

**Planned Development Zone 10: Summit Enterprise Center Rezoning & Development Proposal.**

**Board Action(s) in November: Official recommendation to Town Board in accordance with Town of Danby Zoning Ordinance Section 800(3).**

**Applicant has proposed rezoning of Planned Development Zone 10 (Formerly known as Angelheart Design) located at 297-303 Gunderman Road, from the currently permitted**

**commercial use (clothing manufacturer) under Local Law 1-1997 to a mixed use business incubator with a 8,000 +/- sq. ft. future addition. Tax Parcel 9-1-9.12. JLF Holdings, LLC, Owner, David Hall, Applicant.**

Kruppa asked the board members what they wanted to discuss first. Rundle said that he didn't feel satisfied on how the board deliberated the key issues in the proposal by grouping them in categories to (1) strike (2) keep or (3) unclear/disagree. Rundle is particularly bothered by the items that were deemed unclear/disagreeable, or passed along to the Town Board to "figure out". Rundle listed his concerns as the light industrial use (said that he was uncomfortable with some of them and they should be discussed thoroughly) having two medical clinics mentioned in the proposal (he only remembered reviewing one at the prior meeting) the term "medical clinics" still needs further discussion and the traffic implications of having 50 employees "at any one given time." Rundle suggested to have additional discussion and put more restrictions on these lingering items to see if it can be narrowed down, or just take it to another vote. Rundle added that he made a formal statement to the Town Board expressing his concern and opinion of the entire proposal.

Strichartz said that she was very uncomfortable with many parts of the plan, particularly the food processing, water usage, and light industrial uses. She said that on behalf of the neighborhood, nobody wants an industrial zone or any industrial uses permitted in the area. However Strichartz said that she personally thought an Autism Center would be a great idea. Strichartz noted that retail sales were listed, but originally not included. She concluded by saying that she's worked hard to protect other peoples neighborhoods for the past 18 years, and now she wanted to protect her own.

Klingensmith remarked that she felt the Planning Board had been trying to make an improvement to the PDZ that already existed, because it was previously implied that the original PDZ was not good for the neighborhood. Klingensmith feels that the entire PDZ issue in Danby is not good and clearly needs to be looked at; but it's the law that exists and this PDZ already exists. She said she thought the Planning Board was making an honest effort to try and do something better for the PDZ than the clothing manufacture that was set up originally.

Strichartz commented that there were members on the Planning Board that are extremely upset that this PDZ is in their neighborhood, and asked who would want to live right next door to an industrial development?

Gagnon agreed with Rundle's suggestion to continue discussing the open ended/unaddressed items and added that they weren't deliberated in great length at the previous meeting, because of time constraints.

David Hall said that he provided a shortened, abbreviated version of the light industrial section of the proposal (which included square footage) and asked CJ Randall if it was included. Randall provided hard copies to the members for their review.

Rundle mentioned that the preamble was not discussed at the previous meeting and suggested removing paragraph D from Section 3, which discusses the preservation of open space. Rundle said that the wording makes a "claim" that the PDZ will do certain things and it's completely speculative. Gagnon said that the PDZ doesn't effect open space at all, by increasing or decreasing it, and added

that Section 3, D, may be implying that it will help reduce sprawl. Rundle thought this assumption was a stretch, and the board members did not come to an agreement on whether or not Section 3, D, should be removed as Rundle suggested.

Rundle asked Hall why there are two locations for a medical clinic? Hall said that the two go hand in hand, with the idea being that the smaller in-house residential "clinic" would compliment the larger facility for smaller therapy sessions, etc. Gagnon said that they could technically be viewed as two separate medical clinics. Strichartz questioned why the term "Autism Center" was changed to "Medical Clinics." Hall clarified that the law needs to be "durable" and the definition of autism has changed dramatically, and by limiting and naming it such, it can be very problematic. Hall suggested to add language which states that the home clinic is ancillary to the clinic in the main building.

Ted Crane asked if the board had considered the traffic impact of the 12,000 sq. ft. medical clinic, and how many clients and non-employed care givers would be involved on a daily basis. Rundle stated that a traffic impact analysis needs/should be done. CJ Randall said that the applicant did submit a trip generation study for traffic impact, which is an environmental review issue that the Town Board will consider.

Gagnon questioned where the 12,000 sq. ft. figure came from. Hall said that the clinic is space demanding, with large therapy equipment, a gym, office space, etc., and it would occupy one full floor of the existing building.

Rundle brought up the issue of Food & Beverage Processing and Manufacturing and said that he wanted to add "only if independent testing, paid for by the applicant, proves that the water resources are adequate for the proposed use." Gagnon said that water, with testing and monitoring, had already been addressed in another section. Rundle clarified that his point was to establish the water situation (first) ahead of time, versus testing and monitoring after the law has been written.

Kruppa suggested to add the old water language from the original version, back into the current document. Randall recommended that the water map also be included and referenced. Strichartz spoke as a resident of the area in question, and said that enforcement has been an issue in the past and said that these are not binding restrictions and questioned if they will actually be enforced. Ted Crane asked if water holding tank could be included. Randall said if the well yield were less than 2 gallons per minute, a holding tank would be required. She also said that the County Health Department has strict guidelines and will check all systems (septic, well, etc) before granting a permit.

Gagnon clarified that the county will help determine if the natural resources are adequate for the use proposed, but it does not take into consideration the impacts to the neighborhood, whereas the Planning Board's recommendation does. Klingensmith added that under the Water & Sewerage Services section, there is a clause that does not grandfather anything in from the Aquifer Protection Local Law. Gagnon said that this does not need to be changed, because if there were ever a conflict, the more restricted would govern.

David Hall emailed CJ Randall a narrower list of "Light Industrial and Assembly Uses" (which included sq. footage) for the Planning Board to consider. Strichartz stated that the list of uses was too much and that the neighborhood may be better off with a single use-clothing company, she added that

recommending approval for all these uses would be irresponsible. Kruppa remarked that the proposal has a square footage limitation, where one single tenant can not exceed 5,000 sq. ft. Gagnon said that the uses were a list of possibilities.

Rundle said that he is mostly concerned about the uses that would create noise (because it's difficult to control) as well as traffic. On a related point, Rundle expressed that the number of allowed Industrial Uses, could have a direct impact on the total number of employees; suggesting that the higher the number of uses, the higher number of different people employed. Klingensmith said that by limiting the number of employees it can also limit how many of the Light Industrial uses can occur at one time. Rundle said that if we get the number of employees down, then he wouldn't be as bothered by the different number of uses, because the traffic impact would be reduced.

Rundle commented that 50 employees at "any one time" is too many. Hall said that he was fine with going back to the previous language and would omit the "any one time." Rundle then suggested 25 employees, but Hall said that 25 employees is an "empty" building and that's what the former business had. Rundle added that the neighborhood would probably prefer to take their chances with the clothing company then, versus a new law that would allow numerous business to operate. Gagnon added that not only would the employees create traffic, but clients and visitors as well. Randall said that if the applicant agrees to volunteer a specific condition (i.e. limiting the number of employees) that would be acceptable, but that the Board cannot require or impose it. She added that Angelheart Designs had 70 people employed at its peak. Hall said that the Light Industrial uses don't attract additional traffic and agreed to a maximum of 50 employees.

Frank Darrow then asked, but what if a future owner comes to the Town and says I can't conduct business with only 50 employees, or says that you can't limit me to only 50 employees because I need 150 employees. Crane commented that once this applicant has accepted the restriction, and the law is passed, can a successor exceed the restrictions? Randall said that as long as the applicant agrees to the restriction, then it's in the zoning, and an amendment to the zoning would need to be requested to change it. Rundle added that the Planning Board would not have to grant it. Gagnon said that when one buys a property, the owner knows what the restrictions are.

Crane asked if parking spaces could be limited to help reduce transient traffic? Kruppa said that the Planning Board is not equipped to do that, but Randall said that a suggestion could be made to the Town Board. Gagnon pointed out, there could be enforcement issues since the employee total is for the entire PDZ, which is broken into 3 different lots which could have 3 different owners. Crane added the term "or equivalent" should be taken out because 50 FT employees could equal 100 PT employees. Rundle said that for the purposes of deciding on what this resolution is going to say, and if we are putting restrictions on employment, then it needs to be agreed on by the applicant. There was a lengthy discussion on how to limit the number of employees, per lot, in the event the lots are sold. Crane suggested to leave the employee count for the PDZ and let that be a term in the sale agreement. Klingensmith said that if the property is sold, the total number of employees for the PDZ does not change.

Strichartz remarked that Hall has another property located on the main road where some of the more Industrial Uses could be located, if he wanted to. Hall replied that the location is a restaurant, and what I do what that property is independent of this application. Strichartz added that this application

has a whole neighborhood upset. Hall disagreed. Frank Darrow said that 80-90% of the people (neighborhood) are upset.

Rundle brought up the Waldorf School on Nelson Rd., and said that it's no problem because it's located so close to 96B. Rundle said the majority of the traffic turns right out onto 96B; but if the traffic were going past his house all day, then it would be a big unwanted change. Strichartz feels that this proposal would have a much larger traffic impact on the area than Angelheart Designs did, and added that the goal (by elected officials) was to make things better for the neighborhood.

Hall commented that he never expected to get so much resistance to his proposal. Hall stands behind his proposal, and calls it a superior vision to what is there now, and said that it's the highest use that he has seen for the property. Hall said that he met with TC3 about their farm to table initiative and there was a lot of opportunity for the students to use his organic orchard to grow things. Gagnon said that it has the potential to support a larger agricultural community in the area, which would be good for Danby.

Strichartz said that if the proposal was limited to only two uses, one for the Autism Center and one for the Book Auction, it would be more palatable and suggested that the applicant apply for additional uses when he needs them. Strichartz said that the proposal now, is too overwhelming.

Crane had a final comment about solar wind, citing that there are missing commas in the document between the two words "solar" and "wind." Crane also said that solar is pretty well contained, wind though has impacts on its neighbors. He said that wind is treated differently in different areas of the document, both on site and off site use, and in one place a limit on the total number of kilowatts. Crane thinks the language should be consistent throughout the document, noting that solar has very little impact on the neighborhood, whereas wind could have an impact. Kruppa said that the Town Board will need to be the ones to deal with wind and wind towers.

### **The Planning Board members made the following amended changes:**

#### **(b) The Commercial Development Area (Lot 2)**

##### **(1) Uses Allowed as of Right:**

(h) Change to: Barber and beauty shops not to exceed a combined total of 300 sq. ft.

##### **(2) Uses allowed as of right but subject to Site Plan review and approval by the Planning Board**

(d) The Planning Board says the list of "Light Industrial and Assembly Uses" is too expansive and it should be pared down. Substitute with amended language submitted by applicant and amendments made by the Planning Board for the "Light Industrial and Assembly Uses." Amendments included:

Strike - metal product fabrication and assembly, but not smelting or milling  
Strike - small motor and engine assemblies



**(2) Uses allowed as of right but subject to Site Plan review and approval by the Planning Board:**

(d) Change to: Planning Board disagrees with how the loose term "medical clinics" is used and requested that the wording be more specific to an Autism Center. To include, a center for providing therapy and support for individuals with developmental disabilities, their families, and professionals working in the field of developmental disabilities.

**Section 5 B 9 Water and Sewerage Services: Stormwater: SPDES Permitting**

(b) Change to: The Planning Board recommends adding the words "and quantity" behind water quality.

The Planning Board recommends adding a new subsection under Section 5 B 9 Water and Sewerage Services; Storm-water; SPDES Permitting, to be inserted as 9 (f) and 9 (g) and reads as follows (this water language was found in the resolution from the Jan 2015 Planning Board meeting)

9 (f) Notwithstanding the foregoing, the maximum total proposed or actual water usage from on-site groundwater sources within the primary building at 303 Gunderman Road (including within said total the usage in any subsequent new commercial building or related addition) shall not exceed 750 gallons per day average day demand until and unless an assessment of the potential adverse impacts of the proposed or actual usage on surface water and groundwater resources is conducted for review and approval by the Planning Board. Said review will follow the same procedures and criteria as provided for Special Permits. Said assessment shall occur if and when the proposed or actual water usage meets 750 gallons average based on at least one month's usage or if a neighbor within 1500 feet develops a problem with their well, consults independently with a qualified well driller or hydrogeologist about such problem and reports such problem to the Town.

Such assessment shall include an analysis of the magnitude and extent of water level draw-down that will result from groundwater withdrawals associated with a projected 1,000 gallons per day average day demand as well as an evaluation of potential impacts of drawdown on groundwater and surface water within a minimum of 1,500 feet of well(s) proposed to supply said water usage in excess of 1,000 gallons per day. The method of analysis shall be approved by the Planning Board, and shall be developed using standard methods; and will include an analysis of potential conditions during normal and drought periods.

In addition to any other considerations or conditions provided in the Zoning Ordinance or in this local law, review and any approval by the Planning Board of the proposed water usage and its assessment must include the following determinations:

- I. The proposed usage will not adversely affect the quality or quantity of off-site water re-sources including private wells.
- II. There are sufficient water supply resources to meet the short-term and long-term needs of the use.

9 (g) A meter shall be installed and maintained at the water system within the primary building at 303 Gunderman Road so that water usage in that building can be monitored. The building owner shall

submit annually to the Town Code Enforcement Office a log of water usage measurements made at least monthly for such purpose. Additionally, the building owner shall notify the Town Code Enforcement Office immediately upon recorded usage indicating average day use meeting or exceeding 750 gallons a day in the prior month.

**Section 5 B 10 General Restrictions and Prohibitions:**

(d) 1. Change to: There shall not be more than 50 full-time employees, and no more than 65 total employees, employed within the PDZ, exclusive of seasonal farmworkers and independent grounds maintenance persons. Also, for this purpose, any employee who primarily resides within a residence located within the PDZ shall not be counted towards such totals (as, for example, they would not be driving, parking, etc., and thus they would not be contributing to material impacts this restriction is designed to address.) \*\*note - applicant agreed to this restriction.

**Section 5 B 2 Allowed Principal And Accessory Uses; Lot Locations:**

**(c) PDZ Management and Office Space (Lot 1) (page 10-11):**

**(2) Uses allowed as of right but subject to Site Plan review and approved by the Planning Board:**

- d. New recommendation: Medical clinics for outpatient treatment and testing, but only within Existing House on Lot 1, and to only be ancillary to uses and tendencies in Lot 2.
- x. New recommendation: add commas differentiating between solar and wind throughout the document.

**MOTION - Vote to recommend approval of draft PDZ 10 with amended modifications made by the Planning Board.**

Moved by Gagnon, second Kruppa  
In Favor: Gagnon, Klingensmith, Kruppa  
Against: Rundle, Strichartz  
The motion failed

There was a mixed vote of 3:2 in a 5 person quorum. The proposed resolution to recommend draft PDZ 10 with modifications, did not pass.

**ADJOURNMENT**

*The meeting was adjourned at 10:08 pm.*

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Kelly Cecala, Planning Board & Board of Zoning Appeals Recording Secretary