

Town of Danby Planning Board
Minutes of Regular Meeting
June 16, 2020

PRESENT:

Ed Bergman
Scott Davis
Kathy Jett
Elana Maragni
Bruce Richards
Jody Scriber
Jim Rundle (Chair)

OTHER ATTENDEES:

Town Planner	Jason Haremza
Town Board Liaison	Leslie Connors
Recording Secretary	Alyssa de Villiers
Public	Dana Berger, Marc Berger, Ted Crane, Rich DePaolo, Kevin Feeney, Joel Gagnon (Town Supervisor), Jim Henion, Katharine Hunter, Brian Miller, Kim Nitchman, Russ Nitchman

This meeting was conducted virtually on the Zoom platform.

The meeting was opened at 7:06pm.

(1) MEETING WITH STAFF

Planner Haremza reminded the Board that the Layen Rd. case had been held open so it could be re-notified in the Ithaca Journal with the correct terminology. He said there had been no decision in the Miller Rd. case, and that public hearing had been closed at the previous meeting. Regarding the Planning Group update, he thought the tax policy proposal would be the item of primary discussion.

(2) CALL TO ORDER / AGENDA REVIEW

There were no additions or deletions to the agenda.

(3) PRIVILEGE OF THE FLOOR

East Miller Rd. Case (Case #2)

Chair Rundle said that, because the public hearing had been closed for Case #2, SUB-2020-07 Standard Subdivision, East Miller Road, comments could be made during this time. He noted that Marc Berger had sent out a statement to the Board (via email).

Marc Berger (165 E. Miller Rd.) said he had learned about the public hearing in May through a sign posted on the land immediately adjacent to his property, so there had not been much time to prepare for the meeting. Since the previous meeting, he wrote and circulated an email. He said that, regarding the findings of the Board of Zoning Appeals (BZA), the BZA had found no clear detriment to the nearby properties, but this was clearly not the case. He said they also found there was no other alternative, which he believed to be incorrect as there is ample frontage to carve out a subdivision for a house on the applicant's land to the east. He said the applicant needs the subdivision approval because he wants to put a house there, not because he needs to based on limitations forcing him to do it. Mr. Berger was interested in knowing the notification requirements for the BZA as he only learned of that hearing at the May Planning Board meeting, and he asked to see the notice in the newspaper to evaluate its existence and timeliness. He said he would be happy to answer any questions about what he included in his email.

Chair Rundle said Mr. Berger should have received a notice in the mail about the BZA hearing; Mr. Berger said he did not see it or recall getting it. Planner Haremza said he thought Mr. Berger was on the list of addresses notified for the BZA hearing but would check that; the Town cannot guarantee delivery of the mail through the USPS. He also said he would locate the notice in the Ithaca Journal. Mr. Berger asked if there are no additional efforts made to notify owners of adjacent properties, to which Haremza said the notification is for all properties within 500', so it includes the immediate abutters.

Ted Crane commented that, with regard to Mr. Berger's comments about notification, he has long been hoping the Town would do more than the legal minimum requirement of properties within 500'. He pointed out that 500' might be only one property in some areas of the Town but many more in the hamlets. He also said that when agenda item #10, "Zoning Ordinance Revisions," was addressed, he supports both changes as described and has been pushing for them for a long time. Katharine Hunter said she agreed with Crane that 500' is too short. Planner Haremza said they could return to the larger issue of notification policy under agenda item #11, "Planner's Report," if there was time.

(4) APPROVAL OF MINUTES

MOTION: Approve the May 19th minutes

Moved by Richards, seconded by Scriber

The motion passed.

In favor: Bergman, Davis, Jett, Maragni, Richards, Scriber, Rundle

(5) TOWN BOARD LIAISON REPORT

Leslie Connors (Town Councilperson) shared the following information:

- A small committee is working on refurbishing the Town's website. She encouraged people to visit the website and give feedback, saying that ideas are welcome.
- She said the Town Board had a reopening plan meeting, and there is now protocol in place for staff to start using Town Hall, including the installation of Plexiglass shields (thanks to Tod Sukontarak from West Danby).

(6) PUBLIC HEARING

Case #1, SUB-2020-08 Standard Subdivision, 84 Layen Road

Location: 84 Layen Road, Tax parcel 8.-1-1.32

Zoning: Low Density (LD) Residential Zone

Applicant: Jim Henion

Anticipated Board action(s) this month: Public hearing, Subdivision approval

Proposal: Subdivide a 31.73 acre parcel into Parcel 2 (28.69 acres) to remain as open space with a pole barn structure. No construction is proposed at this time. Parcel 4 (3.04 acres) will retain the existing single family dwelling. (Parcels 1 and 3 were previously subdivided). The proposed parcels meet the minimum requirements of the LD District.. *Note: the public hearing was opened on May 19, 2020 and held open so as to re-notify as a standard subdivision.*

SEQR: Unlisted action, Planning Board is Lead Agency

Ag District: Tompkins County Agricultural District #2

County 239 referral: NA

The public hearing had been left opened from the May 19th meeting.

No additional comments were made by the public.

As lead agency for the State Environmental Quality Review Act (SEQR), the Board went through the Short Environmental Assessment Form (SEAF) parts two and three. For part two, all questions were answered, "No or small impact may occur." Chair Rundle noted there were no structures being proposed.

The public hearing was closed at 7:25 p.m.

MOTION: The proposed action will not result in any significant adverse environmental impacts.

Moved by Davis, seconded by Bergman

The motion passed.

In favor: Bergman, Davis, Jett, Maragni, Richards, Scriber, Rundle

MOTION: Approve the standard subdivision. (Resolution No. 14 of 2020)

Moved by Scriber, seconded by Maragni

The motion passed.

In favor: Bergman, Davis, Jett, Maragni, Richards, Scriber, Rundle

(7) PRIOR CASES

Case #2, SUB-2020-07 Standard Subdivision, East Miller Road

Location: East Miller Road between Troy Road and Nelson Road, Tax parcel 7.-1-43.222

Zoning: Low Density (LD) Residential Zone

Applicant: Brian Miller

Anticipated Board action(s) this month: Public hearing, Subdivision approval

Proposal: Subdivide a 105.9 +/- acre parcel into Parcel B (10.17 +/- acres) for a proposed single family dwelling. Parcel A (95.73 +/- acres) will remain as agricultural land. The proposed new parcel does not meet the minimum requirements of the LD District. This proposal was granted an area variance by the Board of Zoning Appeals on 4/14/2020 to waive the 200 foot frontage requirement per Zoning Ordinance Section 600-5. *Note: the public hearing was held and closed on May 19, 2020. No additional testimony will be taken on June 16. The Planning Board tabled the item on May 19 and did not make a decision at that time.*

SEQR: Unlisted action, Planning Board is Lead Agency

Ag District: Tompkins County Agricultural District #1

County 239 referral: NA

Chair Rundle summarized that this is a proposal they had heard last meeting and had some discussion on. The BZA had granted an area variance for the 200' frontage requirement. He said Mr. Berger had commented on the proposal as a resident of the adjacent property, both through an email and speaking earlier in the meeting. He added that Davis had sent out an email message to the Board, and Planner Haremza had also sent an email.

Applicant's statement

The applicant, Brian Miller, said that the lot more than meets the adequate measurements to put one house on and is above and beyond what they are asking for. He said there are many houses that sit back 700' or 800', so he does not see how this is any different, but he noted a house would not actually be back that far because of the driveway. He said they have already made a concession for Mr. Berger, and he thought Mr. Berger would be happy that he was able to enjoy that land at no cost while Mr. Miller was paying the taxes on it for the last 20 years. Mr. Miller added that this is what a whole transaction is held up on and pointed out that the property could be used for a thousand other things. He said he is only asking to release 10 acres of property that he has paid taxes on for the last 50 years of his life.

Mr. Berger responded saying he acknowledged Mr. Miller's feelings on the matter. He thought there was an ag exemption for taxes. He said his understanding was that the law requires that for the variance to be issued there be no other choice or option available to the applicant and that it not be detrimental to nearby property owners. He said this action would clearly reduce his property's value as well as the enjoyment of it. He was not sure what is commonly requested where a variance is concerned, but this would be a 50% reduction in what is deemed to be suitable for the landscape per the law (200' road frontage to 100'). He clarified with the Planning Board that the BZA can issue the variance, but the Planning

Board has to approve the subdivision. He said the variance takes no account of the structures that could be placed on the land or their impact on nearby property owners. He noted that the BZA findings said that the situation was of the applicant's own creation. Looking at the data and with these factors, he said he has a hard time understanding what went on.

Mr. Miller responded that the problem was created because Mr. Berger bought one acre of land from him there. He did not think anything that would go up would decrease the value of Mr. Berger's property, and if anything it would increase the value. Via the "Chat" function on Zoom, Russ Nitchman said that if Mr. Berger wanted to keep his view, he could purchase the lot, which would be fair to all.

Board Discussion

Scott Davis said that he felt the variance granted by the BZA went against both the spirit of giving variances and the Town's ordinances. He said it seems it would quite likely impose a financial burden on the adjacent property owner (Mr. Berger), and there were other options available to the landowner. He thought it might be, judiciously and at rare times, proper for the Planning Board to override a ruling by the BZA, and at times incumbent upon them. He described the three things he disagreed with in the process and ruling: (1) there were many other options for the applicant to parcel off a lot; while it may be more convenient to put it where suggested, it is not a huge burden to put it somewhere else, which needs to be balanced against the burden to the neighbor, (2) there was no guidance issued on where the future house can be sited past where the lot widens to the "flag" part and so the house could be put on the neighbor's property line; he felt the placement of the house is crucial as the visual impact on the site could be pretty severe, and (3) if a variance was going to be given, the BZA should have considered a variance to the side lot setbacks as that could have allowed the two residences to be further apart. Davis said he was open to different perspectives and having his mind changed. Rundle asked Davis to clarify his comment regarding side yard setbacks, and Davis said he meant that if the future house could have been closer to the eastern property line, it would have been a reasonable distance from the neighboring house. He thought the BZA ruling was lacking in not addressing this.

Planner Haremza clarified that the Planning Board cannot overrule a BZA decision. He said the two boards are looking at two different things. The BZA was only looking at the deficient frontage on E. Miller Rd., and they granted the variance with a condition. The Planning Board can impose conditions of their own to address concerns they have with the creation of the parcel. He said the Planning Board is looking at the bigger picture and the larger impacts whereas the BZA's purview is fairly narrow. He said the Board should feel comfortable adding conditions if they felt the need. Davis asked if the Planning Board would ever be able to override a BZA decision, and Haremza said it would be up to the aggrieved party to file a lawsuit.

Rundle said that if he was a landowner who got a variance from the BZA, he might think he was done. He said it is confusing for the BZA to grant a variance and then the Planning Board to still have a decision to make. He said the BZA's decision has a real impact on planning issues, as the Planning Board might have suggested certain conditions if they had been a part of it. Although he realized that Haremza was saying they can do that now, he said it seems like a bizarre way of doing it. Haremza agreed that it can be awkward. He thought it might have been helpful if there had been more guidance from him early on so the Planning Board could have provided input to the BZA in an official capacity for them to consider in rendering their decision. He said that might be a way the process could be improved. Elana Maragni said

the Planning Board could also have done a better job in letting the BZA know their concerns with the road frontage and the plot. She thought, moving forward, if the Board has a concern with a lot that will become a BZA decision, they should provide them with as much information as possible. Rundle said there would need to be a mechanism for the case to come before the Planning Board prior to the BZA, and Maragni pointed out that this and the Ridgecrest Rd. case did come before the Planning Board (under "Preliminary Reviews," Feb. 18, 2020).

Ed Bergman said he thought they were not supposed to be considering what might be built there when they are splitting properties. He said the applicant is asking to split his property, and so he thought that is what they could rule on. He asked what it was they were actually voting on to allow. He said that while the Board could have been more informed about the case before it went to the BZA, they approved something similar at the previous meeting. There might be good reasons why one flag lot is okay and one is not, but he thought as a group they needed to think about their priorities so they could get ahead of the issue.

Jody Scriber asked Planner Haremza if the Board had any options. Haremza said one option is to include a condition clarifying what would be treated as a side setback (such that the property line where the lot widens into the "flag," which is the back of Mr. Berger's lot, would need a setback). Although it is not clear that would be regarded as a side lot line, the code could be read to make that determination. A condition to this effect could be added, with the feet of setback decided by the Board. He said the "pole" part of the lot is already a no-build area as imposed by the BZA. He mentioned another option, or an additional option, would be to require site plan review for a future house. That would mean it would come back to the Planning Board at that point. Scriber said this meant they do have some options to put some parameters on the case to make it more palatable to the neighbors.

Rundle said he felt there were two issues. One was the neighbor, and the other was that the lot was very deep. He did not think it likely that a house would be put very far out, but said it was not inconceivable that someone might put it further out than is desirable. He felt site plan review would allow the Planning Board to have a say in that as well as the proximity to the neighbor. Haremza pointed out that if a house was further back, it would have less of a view impact. He said the Town is struggling with conflicting goals. On the one hand, they do not want the roads lined with houses, and flag lots are one way to achieve that goal, but then that solution creates other problems. Haremza added that public input is important, but land use decisions are not made by popular referendum, so one objection should not necessarily be a determining factor. He reminded the Board that site plan review is not just about the location of the house but can include other aspects also, like landscaping.

Bruce Richards said he thought they should both prescribe a setback and require site plan review in the future. He recognized Mr. Berger's concern, but said Mr. Miller owns the property, has had an expectation he would have the ability to do something with it the whole time he has owned it, and wants to do that now. He did not like the idea of completely changing the game on Mr. Miller at this point. He thought restrictions would annoy everyone so would probably be a good deal.

Kathy Jett said fences make good neighbors, and sometimes you just need to put something up. She said Haremza would look into the notification, and it was unfortunate Mr. Berger did not recall receiving the mailing. She said Mr. Miller has been paying on the lot for a long time, and the Board has done due diligence on their part.

Maragni said she felt for both parties. She gave a personal example of a lot being sold and a duplex being built next to her previous house and said that now that she has moved back to Danby, a big concern is if farmers around her decide to sell their land. She thought it would be beneficial if the Board treated flag lots differently and with more scrutiny moving forward. In this case, she said she liked the idea of a setback and asked about the possibility of increasing it in lieu of site plan review, although she noted she did not want to add to driveway cost.

Bergman agreed that he felt for everybody involved. He said he wanted to wait to see what they were voting on but thought it would be nice to find a compromise, possibly through setbacks.

Scriber said she, too, felt for both parties. She said the Board could work on preventing getting to this point in the future. For now, she thought requiring site plan review would be the most reasonable because adding any more to the setback would get into the issue of the driveway. With site plan review, the applicant could sell the land, and then the Board could mitigate what makes sense for all involved at the point something is proposed.

Richards said the 50' setback all around makes sense, and he was advocating for doing both the setback and the site plan review. Scriber confirmed with Haremza that they could do both.

Davis had technology difficulties but was able to express that he thought the Board should do a postmortem on the case. He suggested it as a future agenda item so they would not find themselves in the situation again. He asked if it was possible to go back to the BZA to allow the house to sit further east, and Haremza answered it was not. Davis said he thought it had been a healthy, helpful discussion.

As lead agency for the State Environmental Quality Review Act (SEQR), the Board went through the Short Environmental Assessment Form (SEAF) parts two and three. For part two, all questions were answered, "No or small impact may occur." Regarding question #2, Richards asked about the change from agriculture use to residential. Haremza said that the impact would not be considered moderate to large as it would likely be a single-family home on 10 acres.

MOTION: The proposed action will not result in any significant adverse environmental impacts.

Moved by Richards, seconded by Scriber

The motion passed.

In favor: Bergman, Jett, Maragni, Richards, Scriber, Rundle

Absent: Davis (technology difficulties)

A motion was made by Richards that would impose two conditions: (1) a 50' setback from all property lines and (2) requiring site plan review for any future house. The resolution, updated by Haremza, was reviewed by Board members via screen share, and minor edits were made. Crane asked a question about clarity, and Haremza said he appreciated his point, but the conditions would be shown on the final plat, so he felt comfortable with it.

MOTION: Approve the standard subdivision with the conditions that a 50' setback is maintained from all property lines and before a house is built it would be subject to site plan review. (Resolution No. 12 of 2020)

Moved by Richards, seconded by Scriber

The motion passed.

In favor: Bergman, Jett, Maragni, Richards, Scriber, Rundle

Abstain: Davis

(8) PRELIMINARY REVIEWS

There were no preliminary reviews on the agenda.

(9) PLANNING GROUP UPDATE

Tax policy working group

Discussion focused on the draft State legislation prepared by the tax policy working group. As described at the April Planning Board meeting, the proposed legislation would allow for “temporary conservation easements where a tax break is tied to the length of the easement. Danby would need legislation at the State level to do this. The way the current legislation is written, it includes only a handful of towns. Danby would be asking the legislature to amend the existing State law to include criteria that Danby could fit into.”

Rundle said he had sent a list of questions to Haremza; no one else had submitted any in advance. Ted Crane, Chair of the tax policy working group, said he had prepared additional information and answered those specific questions, which he shared with the Board (see attached). He also screen shared a document with assessed value by tax parcel.

Rundle said one of his concerns was that no criteria are listed for easements; somebody might file a lawsuit and then the cost of defending the Town would come out of taxpayers’ money (question #6). Crane said towns are allowed to decide the criteria and the other Towns that have done this have not had challenges. Rundle said the Planning Board has to make sure they are not approving something that then has issues come up later. He said the Planning Board has had the experience of having language where it seems like it has discretion, for example with special permits, but then really does not because there are not defined criteria. He said the attorney’s concern with this has been that if someone takes the Town to court, the Town would not have a sound basis for arguing against them.

Russ Nitchman said that it would be a tax reduction approved by the State legislature so he did not think someone would win in court. The trade landowners would be making is no development for X number of years. He said he is a major landowner, the taxes are horrendous, and the assessed value is going up. If it keeps going up, he and others would need to sell lots, and nobody wants that. He said the working group was a very diverse group, and they had a unanimous vote and came to a consensus that this is a win-win deal. Rundle said that it is the Board’s responsibility to make sure that the proposal will not cause problems down the road, and R. Nitchman responded that it is already State-approved legislation. Rundle said the Conservation Advisory Council (CAC) and the Town Board would make a decision on whether to grant an easement. If somebody was not granted tax relief, would that create a liability? Crane said that a body,

probably the CAC in Danby, would set out guidelines for decisions on accepting easements, which are then defensible.

Scriber said she still felt she did not have enough information. She asked if it would be possible to talk directly to the other places that have done this to find out what their experience has been. She felt due diligence for her would involve doing this. Gagnon said several people have been asking how the legislation has played out in towns that have approved it, including Ted Crane, Bruce Richards, and Betsy Keokosky. He said what Crane had done is to compile these people's findings and added that while there is room for more investigation, it would be good to review what has been found already. Scriber said she needed some time to get comfortable with the idea and understand it, and she remembered that Gagnon had said the State legislature would not be able to work on this right away. It was noted that the document prepared by Crane had just been received by Board members.

Rundle said the Board did not have the data before them on how much people are paying in taxes, how much taxes are going up, and how much people's land values are going up. He said the proposal needs data that people can look at so they can evaluate it. Crane directed him to some later answers in the document. He gave a personal example of his own property, and he discussed how the assessment process works. Rundle said that, because the proposal is not for permanent conservation easements, he was trying to balance how much more people are paying in taxes with how much more value their land has if they sell it.

Crane pointed out that pulling out of an easement agreement would hit someone in the pocket badly (question #7). Rundle said there are places the proposed law says the Town has discretion, but there are not criteria that define how the Town would make a decision. Crane said the first thing the CAC would do is decide what criteria it will apply. Rundle said how well the proposal will work then depends on the CAC. Gagnon added that the CAC is advisory to the Town Board, and ultimately the Town Board has to make the decision. Rundle gave a scenario where someone does a 15-year easement and then decides to sell (question #10), and Crane said nothing would prevent that. R. Nitchman said the Town would get that open space for that many more years.

Scriber asked about working on conservation easements or different levels of zoning to have a similar effect. R. Nitchman said there is no tax advantage to a permanent conservation easement at present. He said he would be unwilling to put his land in a long-term easement while getting nothing in return and paying the same amount in taxes. Rundle said he understood that, but why not propose the State provide tax relief for property put in conservation easement? R. Nitchman responded that they could take action locally and only cost residents \$40 or less in a scenario where the top 100 landowners participated. Crane directed the Board to questions #14 and #15. He said zoning forces you to do things, and it is preferable to provide incentive for landowners to take action without being forced.

Rundle said the problem is the proposal is not "planning" as you get a patchwork of whoever applies. He remembered that former Planner Randall said there are not enough zones in the Town, and farther out there could be zones with a requirement for a much larger acreage. He said that would be planning—deciding where the Town wants to protect large tracts of land and making it contiguous. Crane said that is a good idea in the long run, but if you have already identified the large properties and the owners are willing to restrict development in exchange for an incentive not to develop, you have basically won the battle, and it might smooth the path to rezoning. Rundle pointed out that this would only be for a

set time frame and then the land could be sold and the Town loses. Crane said that, for that time period, development would not have happened, and it would not have cost the Town anything. He added that the Town has to try to slow down the selling off of parcels for money as much as possible to keep the Town's rural character and slow the pace of development.

Via the "Chat" function, Haremza gave the example of zoning as the "stick" and tax abatement as the "carrot." Also via "Chat," Katharine Hunter said that zoning tells a landowner what they can or cannot do. She emphasized this proposal would be only one part of encouraging conservation in Danby and later added that the tax advantage is not the only reason for conservation. Gagnon said that the combination of voluntary and involuntary (zoning) ways of conserving land is most effective. He said this is why the Town embarked on doing conservation easements in the first place, and this proposal would be another voluntary way to encourage the preservation of open space. He noted that Ithaca got a lot of pushback for an eight-acre minimum lot size in their conservation zone.

Rundle said there must be something in between that is not so haphazard, like allowing tax relief in certain areas but not others. He felt some areas someone might propose an easement would be good places to have building lots. He also asked the point of the shorter-term easements, like 5 or 15 years. Gagnon said that, when approaching landowners with the idea of a conservation easement, there is often a reluctance to tie the hands of future generations in perpetuity. A short-term option might enable people who do not want the land developed but are not willing to commit forever to do it for an intermediate period of time. Via "Chat," Kevin Feeney said that five years gives an owner the chance to dip a toe into the water and see if an easement works for them; they may then choose to go for longer easements. He said if you are a more mature owner, a longer period starts to run into the next generation and added that the Town could bring these owners into the fold and see what develops. If nothing else, it would keep development at bay for a few more years. Rundle said it seemed like a good deal for a landowner, particularly if they are not planning to sell the land anyways. To this point, R. Nitchman said via "Chat" that it is not just a good deal for landowners as their neighbors get an awesome deal too.

Davis commented that the school taxes are not part of the proposal to start, although they could be later, so he wondered what the acreage would be where this (the monetary savings in exchange for not developing) becomes a matter of consideration. He asked how much someone would save if they had 20 acres they put in a 15-year conservation easement; Crane thought not much. Crane approximated that a four-acre property with land valued at \$20,000 would have \$120 a year in Town taxes and save \$60 a year with an easement, which would probably not be worth the hassle of entering into the contract. Davis asked at what point the amount of acreage theoretically acts as an incentive as compared to subdividing. He said it seems the proposal really applies to large landowners. He thought if a large landowner wanted to subdivide they would, and if they did not they would not, although he said he knows the taxes are a burden. He said he could see arguments on both sides but was not convinced the proposal was anything but a tax break for large landowners that might not affect the amount of land set aside in the short term or the long term.

Regarding the school tax, Crane said that in the other towns doing something similar, other taxing jurisdictions did buy in. He said it works much better if the school districts agree to participate and added that for the other towns school districts did largely opt in. For one town, he said it was in the record that an influencing factor was that it was not going to cost anything. He described it as a rebalancing of who pays,

not a change in how much money the jurisdiction gets. Via "Chat," Richards said there are four properties with conservation easements in Bethlehem, NY and two do not have school exemptions. Also via "Chat," R. Nitchman said he felt school districts agreeing was essential, and he said he did not think he would personally participate without it.

Via the "Chat" function, there was a discussion on development pressure. It opened with R. Nitchman saying that Danby says it is a town that values open space, but if it refuses to help its large landowners, they may be financially forced to divide and sell. Richards thought this was an oversimplification and asked if Nitchman was saying the only reason that land is not developed is that the taxes were low. He added that land is an investment, and we all pay taxes on our profits. Nitchman said that he bought his land not for investment but for his love of conservation. He said what he meant was that higher taxes push for development as they twist a person's arm and make them sell when they would not otherwise wish to. K. Feeney added that the rising taxes change the calculus of owning larger properties, which impact the viewshed for others. As taxes rise, people run up against their ability to afford to keep land undeveloped, and that pressure may force some landowners to develop when they do not want to. He said he knew of several considering it currently. Richards said the destruction of our forests has been hastened by the increase in holding costs, and he noted that big companies can use 480-A but the rest of us do not ultimately cover our tax bill. He agreed that the property tax-based system of financing the Town, County, and schools does not reward home ownership and owner conservation of fallow land. He expressed agreement with the tax reduction but not the short-term easements or rewarding public access. Richards also said he had thought there was not huge pressure for development in the Town, rather that (land for) fill-in development was hard to come by.

Scriber did not think the Board would resolve this at this meeting. She thanked Crane for the information and said they would need time to take a look at it. She suggested taking the issue over into another meeting. Rundle agreed. Gagnon said he would like not to be in the same position at the next meeting and suggested raising questions ahead of time so they could be addressed in the interim. Crane asked about the possibility of scheduling a special meeting to focus on the issue. Maragni said she thought that was a good idea, and she said it would be better to spend some dedicated time on it and come prepared with questions rather than discussing it over the course of months and forgetting what they talked about at the last meeting. Via "Chat," Kim Nitchman suggested a meeting of the Planning Board and the Planning Group specifically on the topic. Crane stressed that if he gets questions ahead of time, he can have answers prepared. Rundle wanted to see how much people are paying in taxes and how much the land is appreciating.

It was agreed that questions should be sent to Planner Haremza. Haremza asked the Board to be very careful about discussions about Planning Board business occurring outside Planning Board meetings due to the Open Meetings Law.

Other working groups (Conservation, Hamlets, Public Outreach)

It was agreed to skip these updates for this meeting. Haremza said the "Planning Group Update" is a standing agenda item so as to keep communication open in both directions between the Planning Board and the Planning Group.

(10) REQUEST BY TOWN BOARD FOR ZONING ORDINANCE REVISIONS

The first item to consider was, "Remove statement 'Other uses...deemed by the Planning Board to be similar in nature and compatible with the purposes of the zone' (Sections 600-3n, 601-3b, 602-3d, 603-2d(x), 603-3d(x), 603-4d(xiii))."

Rundle said the Board has said over and over again that the statement should not be there, and the Town lawyer has also told them this.

MOTION: Remove the statement that is in the agenda, item #10. (Resolution No. 15 of 2020)

Moved by Scriber, seconded by Richards

The motion passed.

In favor: Bergman, Davis, Jett, Maragni, Richards, Scriber, Rundle

The second item to consider was, "Require site plan review for all agro-business development if there will be activity that will attract customers/public and employees such as tasting rooms and processing facilities to ensure access/traffic/other non-agricultural impacts are adequately addressed."

Rundle said he thought they would need to see a resolution to consider. Haremza suggested that a committee could be formed to address this, but nobody was ready to step forward at that time.

(11) PLANNER'S REPORT

Planner Haremza gave a brief report:

- The RFQ for the hamlet grant would be posted the next day. He said this is the \$10,000 County grant to look at options for infill development in the hamlet and how to address the water and septic issues on smaller lots. It will wrap up at the end of the year or in early 2021
- The owner of the Howland Rd. hemp operation has been non-communicative. He, Town Supervisor Gagnon, Code Officer Cortright, and the Town Attorney are continuing to work on the situation.
- Regarding public notification, as discussed earlier in the meeting, he said the Board could consider forming a committee to discuss the issue further. The Town has been considering switching from letters to postcards, which would save the Town money. It would still be for everyone within 500'. He said the Town might want to explore requiring signs for site plan reviews and zoning variances; right now they are only required for subdivisions. These might be more effective as people notice them when they drive or walk by.

(12) ADJOURNMENT

The meeting was adjourned at 9:22pm.

Alyssa de Villiers – Recording Secretary

**Town of Danby
Planning Board Resolution Number 14 of 2020
June 16, 2020**

**Preliminary and Final Approval, Standard Subdivision SUB-2020-08
84 Layen Road, Tax Parcel 8.-1-32**

1. **Whereas** an application has been submitted for review and approval by the Town of Danby Planning Board for a Standard Subdivision of 84 Layen Road tax parcel 8.-1-32 by James Henion; and
2. **Whereas** the Applicant proposes to subdivide the existing 31.73 (+/-) acre property into two parcels:
 - a. Parcel 2, measuring 28.69 acres, to remain as open land with a pole barn
 - b. Parcel 4, measuring 3.04 acres, containing the existing single family dwelling

Note: Parcels 1 and 3 were previously subdivided
3. **Whereas** the parcel is in the Low Density (LD) Residential Zone and the proposed parcel meets the requirement of the LD District, per Zoning Ordinance Section 600-5, requiring a lot area minimum of 2 acres, frontage of 200 feet, and lot depth of 300 feet; and
4. **Whereas** this is considered a Standard Subdivision in accordance with the Town of Danby Subdivision and Land Division Regulations, Article II, Section 201C, due to the property having been previously subdivided within the past three years; and
5. **Whereas** this is an Unlisted Action under the Town of Danby Environmental Review of Actions and the State Environmental Quality Review (SEQR) Act and is subject to environmental review; and
6. **Whereas** legal notice was published and adjacent property owners within 500 feet notified in accordance with the Town of Danby Subdivision and Land Division Regulations, Article VI, Section 601 II.H. Hearing and Notices; and
7. **Whereas** the Planning Board opened the required Public Hearing on May 19, 2020 and due to a notification error, held the hearing open until June 16, 2020; and
8. **Whereas** this Board, acting as Lead Agency per the State Environmental Quality Review (SEQR) Act, did on June 16, 2020 review and accept:
 - a. A Short Environmental Assessment Form (EAF), Part 1, submitted by the Applicant
9. **Whereas** the Planning Board did carefully consider Part 2 of the EAF and on June 16, 2020 make a Negative Declaration of Environmental Significance for the project; and

10. Now Therefore, be it Resolved that the Town of Danby Planning Board does hereby grant Preliminary and Final Subdivision Approval to the proposed Standard Subdivision of 84 Layen Road, tax parcel 8.-1-32, by James Henion, applicant and owner, subject to the submission of the final approved plat, having a raised seal and signature of a registered licensed surveyor, filed with the Tompkins County Clerk within six (6) months.

Approved June 16, 2020


James R. Rundle, Chairperson

**Town of Danby
Planning Board Resolution Number 12 of 2020
June 16, 2020**

**Preliminary and Final Approval, Standard Subdivision SUB-2020-07
East Miller Road, Tax Parcel 7.-1-43.222**

1. **Whereas** an application has been submitted for review and approval by the Town of Danby Planning Board for a Standard Subdivision of East Miller Road tax parcel 7.-1-43.222 by Brian Miller; and
2. **Whereas** the Applicant proposes to subdivide the existing 105.9 (+/-) acre property into two parcels:
 - a. Parcel A, measuring 95.73 acres, to remain as agricultural land
 - b. Parcel B, measuring 10.17 acres, for a proposed single family dwelling
3. **Whereas** the parcel is in the Low Density (LD) Residential Zone and the proposed parcel does not meet the requirement of the LD District for a frontage of 200 feet, per Zoning Ordinance Section 600-5; and
4. **Whereas** the applicant was granted an area variance (VAR-2020-03) by the Board of Zoning Appeals on April 14, 2020 with a condition that no buildings, including accessory buildings, but excluding school bus shelters, shall be constructed in the narrow northern portion of the proposed parcel, an area approximately 100' wide and 196' deep.; and
5. **Whereas** the proposed parcel meets all other lot area requirements per Zoning Ordinance Section 600-5; and
6. **Whereas** this is considered a Standard Subdivision in accordance with the Town of Danby Subdivision and Land Division Regulations, Article II, Section 201C. Standard Subdivision; and
7. **Whereas** this is an Unlisted Action under the Town of Danby Environmental Review of Actions and the State Environmental Quality Review (SEQR) Act and is subject to environmental review; and
8. **Whereas** legal notice was published and adjacent property owners within 500 feet notified in accordance with the Town of Danby Subdivision and Land Division Regulations, Article VI, Section 601 II.H. Hearing and Notices; and
9. **Whereas** the Planning Board held the required Public Hearing on May 19, 2020; and
10. **Whereas** this Board, acting as Lead Agency per the State Environmental Quality Review (SEQR) Act, did on June 16, 2020 review and accept:
 - a. A Short Environmental Assessment Form (EAF), Part 1, submitted by the Applicant

11. **Whereas** the Planning Board did carefully consider Part 2 of the EAF and on June 16, 2020 make a Negative Declaration of Environmental Significance for the project; and
12. **Whereas** the Planning Board finds that a 50 foot setback along the east-west property line parallel to East Miller Road is necessary to protect adjacent properties from any potential negative impacts from the future development of this parcel. This 50 foot setback area matches the 50 foot side setback requirements found in the Town of Danby Zoning Ordinance. This setback is further augmented by the 100 foot by 196 foot 'no build' area imposed as a condition by the Board of Zoning Appeals; and
13. **Whereas** the Planning Board finds that in order to reduce the impacts associated with the creation of this parcel and future development that may occur on it, Site Plan Review shall be required for any future development on this property, including but not limited to a single family home, garage, barn, and any other accessory structures requiring a building permit; and
14. **Whereas** the conditions noted in #12 and #13 shall be included on the final approved plat submitted to the Town of Danby Planning Office;
15. **Now Therefore, be it Resolved** that the Town of Danby Planning Board does hereby grant Preliminary and Final Subdivision Approval to the proposed Standard Subdivision of the East Miller Road property, tax parcel 7.-1-43.222, by Brian Miller, applicant and owner, subject to the submission of the final approved plat, including the conditions noted in #12 and #13, having a raised seal and signature of a registered licensed surveyor, filed with the Tompkins County Clerk within six (6) months.

Approved June 16, 2020


James R. Rundle, Chairperson

Town of Danby
Planning Board Resolution Number 15 of 2020
June 16, 2020

Recommend Changes to the Zoning Ordinance with regard to Special Permits

1. Whereas the Town of Danby Zoning Ordinance should provide as much clarity and certainty to the land use review process for all people using the code including the land use review boards, applicants, residents, elected officials, and town staff; and

2. Whereas Zoning Ordinances in New York State typically have clearly defined lists of permitted and specially permitted uses; and

3. Whereas the statement "Other uses not specifically listed above but deemed by the Planning Board to be similar in nature and compatible with the purposes of the zone", which appears in multiple sections of the Zoning Ordinance (Sections 600-3n, 601-3b, 602-3d, 603-2d(x), 603-3d(x), 603-4d(xiii)) relating to specially permitted uses, is not typical language for Zoning Code; and

4. Whereas this language creates ambiguity and confusion for the Planning Board, applicants, and members of the public participating in land use review processes. Specifically, when determining if a proposed use *is* "similar in nature" and therefore, per the sections noted above noted, specially permitted or if a proposed use *is not* similar in nature, not permitted, and therefore subject to a use variance; and

5. Whereas the Town Attorney has recommended the removal of these sections of the Zoning Ordinance; and

6. Now Therefore, be it Resolved that the Town of Danby Planning Board does hereby recommend that the Town Board remove Sections 600-3n, 601-3b, 602-3d, 603-2d(x), 603-3d(x), 603-4d(xiii) from the Town of Danby Zoning Ordinance.

Approved June 16, 2020



James R. Rundle, Chairperson

This presentation has two parts:

- Background information gathered from Town and County Officials
- Answers to questions posed by the Danby Planning Board

Given the limited time to prepare the answers to questions in the second part, there's more to be said...just not the time to put it into writing.

ted crane

Background Information

Four Towns in NY State have been granted the right to offer tax exemptions to land owners who contract with their Town to grant a Conservation Easement. These are:

- Bethlehem, in Albany County
- Orchard Park, Eden, and Elma, in Erie County

I approached officials, both elected and appointed, in all four Towns. I had lengthy, informative conversations with representatives from three Towns. Elma did not return my phone calls, but indications are that it is much like Eden.

These "491 Programs" Towns can be categorized in several ways

- Town Size: large: Orchard Park, Bethlehem; small: Eden, Elma
- Program size: large: Orchard Park; small: Bethlehem; non-existent: Eden, Elma
- Age of program: 15+ years: Orchard Park, Eden, Elma; recent: Bethlehem

Eden, Elma

Eden has about 3,000 properties, somewhat more than Danby. It has a Town tax assessor, one of the old school. It currently has an equalization rate of 51 percent (a property valued at \$100,000 is assessed at \$51,000). Reassessment occurs, as a rule, when a property is sold. This could not be more different from the situation in Tompkins County, which has a County-wide assessment department, a 100 percent equalization rate, and reassessment of all properties in each Town on a rotating, 3-year cycle.

There are no 491 properties in Eden. The assessor doesn't even have a Section 491 in his assessor's manual. Eden offers NO insight into the effects of 491 easements and exemptions.

Bethlehem

Bethlehem has about 13,800 properties.

There are four (4) properties with 491 easements/exemptions in Bethlehem, totalling 31.3 acres. Bethlehem's guidelines for establishing 491 contracts includes a minimum of 5 acres; one of the properties is smaller than that, but was accepted because it accompanied a larger parcel.

Two of the properties are owned by non-profits, so the 491 contract has no tax consequences, there would be no tax liability in any case. From the sound of it, the 491 contracts on the other properties were also adopted for conservation reasons, not for tax advantage.

There are apparently several additional 491 contracts in negotiation.

The 491 program in Bethlehem was adopted by Albany County and by the Bethlehem Central School District (the largest, by far of the three School Districts covering Bethlehem). The minutes of the BCSD meetings indicate that adoption was facilitated by the fact that the 491 program is *revenue neutral*, it would have *no* effect on the District's tax levy (the same is true for all taxing jurisdictions).

Orchard Park

Orchard Park is probably the most indicative Town with respect to the impact of a 491 program in Danby.

Orchard Park has approximately 12,500 properties and 70 of them are in the 491 program. The scaled-down equivalent in Danby would be about 11 properties out of 2,000.

The dollar value of exemptions granted to 491 properties in Orchard Park is about \$2,300,000, compared to a total land assessment of \$325,000,000; this is about 0.7 percent of the total. The properties include about 1,200 out of 24,600 acres in the Town, about 4.8 percent of the total (ignoring the fact that about ¼ of Danby's acreage is State-owned forest land, the scaled up equivalent in Danby would be about 1,700 acres). The average property in the 491 program is only about 17 acres; the financial incentive is not huge.

Of the 70 contracts in Orchard Park, 44 are perpetual, 21 are 15-year (the minimum), 2 are 30-year, and 3 are 50-year.

Substantially all of the properties in the 491 program entered the program at its inception. Few, if any, have been added since then. Most of the 15-year contracts are being renewed but at least one landowner dropped out when her 15-year contract expired; she cited the newly-imposed requirement for a survey (and its cost) as the reason for not renewing. Judging from the preponderance of perpetual and long-term easements, conservation was a significant motivator in Orchard Park.

Both Erie County and the School District adopted 491 exemptions for properties in Orchard Park.

The assessor had one strong piece of advice: keep good records of which properties are in the program, and for how long.

Planning Board Questions

1. Explain what Section 491 is.

NYS Real Property Tax Law provides the right, on a town-by-town basis, to grant tax exemptions to properties that establish Conservation Easements with the Town. The tax exemptions increase with the length of the term of the easement. The exemptions are on the land value only, not any buildings or other improvements.

2. Is there a distinction between the value of the property and the value of the land? Doesn't assessed value include structures as well as land?

Yes. The assessment department provides TWO values for each property: the land value and the total value (value of structures, etc. is the difference between the two).

3. Is commercial property included in this proposal?

Simple answer: This is not specified by Section 491, nor, necessarily by the Town laws that must be enacted or order to implement Section 491.

More exact answer: What kind of commercial property? The Town, through its Conservation Board, can establish criteria for the acceptance of proposals of Section 491 Conservation Easements. The criteria, however, must determine that the property must have "conservation value" to the Town. Most commercial properties, presumably, don't. A notable exception might be the commercial activity associated with farming.

4. Certain commercial operations are allowed in non-commercial zones; would these be included?

See Question 3. It's not what kind of zone the property is in, it's whether the property (including ongoing activities) has conservation value to the Town.

5. If the value of the 100 largest parcels is only 5% of the total assessed value, then what percentage of Danby's assessed acreage would be affected? (Note that the Danby State Forest is not counted).

Ouch, detail of answer limited by the time allowed to prepare an answer.

Some round numbers. Danby is about 34,300 acres. Let's estimate the State Forest at ¼ of the total, leaving 25,700 acres. The 100 largest properties total to about 12,200 acres, or

about 47 percent of the land in the Town! Some of these properties may not be appropriate for the 491 program (commercial, etc.) and some are *already* tax exempt.

6. What criteria would the conservation board and the Town Board use to decide if a proposed tax exemption would benefit the Town, or how an agreement might be negotiated? By what criteria may the Town accept a proposal, or modifications, or reject a proposal?

The requirement in Section 491 is,

Such conservation board shall investigate the area to determine if the proposal would be of benefit to the people of the town and may negotiate the terms and conditions of the offer. If the conservation board determines that it is in the public interest to accept such proposal, it shall recommend..

In other words, the Town, via its Conservation Board gets to set the criteria. The CB would most likely establish criteria for evaluation at the outset of the program, and then apply them to determine whether specific proposals should be accepted. There is no reason to believe that contracts would be granted to properties without conservation benefit to the Town.

7. There is also discretion permitted in the granting of petitions to withdraw from an agreement, for "good cause". What would constitute good cause? What would not?

This is properly a question for a lawyer. The important issue, though, is that if an easement is broken, the property owner becomes subject to financial penalties: five years of financial benefit accrued via the Tax Exemption plus six (6) percent interest, compounded annually. These days, that's a significant downside; requests to withdraw aren't going to happen frivolously.

At the same time, if the Conservation Board negotiates a careful contract with the landowner, and then the property owner violates its terms, the contract can be terminated *for cause* by the Town. Again, there are significant financial penalties to the property owner. This helps prevent frivolous easement proposals by land owners.

8. If the School Board doesn't agree, what would be the impact on an owner's taxes?

The County, the School District, and other taxing jurisdictions are allowed to opt in to the Section 491 exemption. Experience in other Towns indicates that they will do so because it costs them nothing.

If other taxing jurisdictions do not opt in, the owner does not get the benefit of the exemption with respect to those taxes. They still get the benefit of the Town's exemption. In 2020, the Town tax rate is about 6 per mil, or 0.6 percent of assessed value (that is, \$6 per \$1000). In round numbers, the County 3.8 per mil, the Fire District 1.6 per mil, and the School District gets 16.8 per mil.

9. If the Town opted out of the exemption, would existing agreements have to be honored? Under subsection 3(f), "Such agreement may not be cancelled by either party."

The first question is really for a lawyer. My guess is that *if* the Town *could* revoke the law it passed, existing perpetual contracts would stand, and I see no reason why existing temporary contracts would be ended; there is no financial benefit to the Town to do so.

See also section 5 of the proposed law and the answer to question 7 above.

10. Suppose someone 50 years old decides to apply for 15 years of tax relief. At the end of that period, the value of the land will have increased, perhaps doubled. Then he or she divides the land into parcels, sells the land at the appreciated value, and retires to Florida. Would any provisions in the proposed law would prevent that?

No.

Many variants of this question have been heard. The issue to bear in mind, though, is that the easement protects Danby's quality of life while it is in effect. It also gives the Town an opportunity to create zoning that might forcibly (as opposed to Section 491's voluntary method) protect Danby's open space and rural character.

The methodology employed by Tompkins County's Assessment Department is intended to have assessed values track the *real* value of every property. Therefore, there should be no sudden increase in the value, assessed or resale, when the contract ends.

Viewed from a conservation point of view, it is not clear that the contracts are for years of tax relief; they are for years of protecting the environment, open space, rural character, and the quality of life of Danby residents in general.

11. How much are property owners in Danby paying in local tax, state tax? How much has property appreciated in value over the past 5 years? Pick something as an example.

The second question is easier! It doesn't matter. Assuming (as I do) that the assessment department applies its rules fairly and equally, then the increase in assessed value is "across the board" and does NOT affect the actual tax paid by any one property owner.

Question 1(b) is also simple: I don't know. State tax is income tax, not property tax.

Question 1(a), finally, is also simple: property owners pay "local" tax equivalent to the Town of Danby Levy, a fancy term for its budget. In round numbers, the Town's budget for 2020 is about \$2,000,000 plus \$560,000 for the Fire District.

12. Suppose the assessed value of a property is \$500,000. How much would the owner pay in taxes in 15 years? At the current rate of appreciation, how much assessed value might that property gain in 15 years?

Let's assume you're talking about local (Town) tax? And that the tax levy doesn't change? Well, according to the answer for question 8, the Town's current rate is 6 per mil. In 15 years, that would be 90 per mil, and a \$500,000 property would pay \$45,000 to the Town.

To be fair, though, there is NO property in the Town with land assessed at \$500,000. The three most "expensive" properties in town, averaging more than 250 acres, have their land assessed at \$368,000, \$316,600, and \$303,100. All three appear to be in Agricultural Districts, so their tax is based on lower figures. The most valuable property is already tax-exempt (Land Trust).

13. The proposal states that four other towns in NYS have enacted similar legislation. Does this proposal differ in any way from theirs? If so, in what way(s)? How long has the legislation been in effect for those towns? Have those towns tracked the sale of land in their towns to see if the legislation seems to be having the intended effect?

See the first half of this document.

This proposal includes a number of small changes and two significant ones: the addition of a trial, short-period exemption (to give owners a chance to kick the tires, so to speak) and the addition of an incentive to go beyond simply preserving open space—to allow public access opportunities to the conserved property (parks, playing fields, trails, ponds, etc.).

Three of the four Towns have minimal actual involvement with Section 491. The fourth is well satisfied with the program. No sudden sales at the end of contract periods were reported.

14. Why should the Town choose this method of preserving open spaces rather than by zoning?

Zoning is, to put it bluntly, punitive and forcible. It's only one of many tools in a planner's armory, but it's the one that has the potential to cause the most dissention from property owners who feel their prerogatives have been usurped. Encouraging land owners to voluntarily preserve open space and rural character is far preferable.

Bear in mind, *whatever* the zoning is, some things will be permitted that, down the road, may have unexpected and possibly undesirable outcomes. Zoning cannot achieve the same positive effects as voluntary easements.

15. Why not ask the State to provide tax relief for property that is put into conservation easements? If property owners do not wish to do that, then doesn't it suggest that they want to be able to sub divide at some point in the future? How does that benefit the Town?

NYS already provides some tax relief of this sort, but it is limited in scope and dollar value. An owner paying \$25,000 in property tax can only claim \$5,000 in credit, and is still paying \$20,000. A 50 percent exemption (for a 15-year easement) might be worth \$12,500 to this owner, in addition to the \$3,125 from NYS.