

**Danby Town Board
Minutes of Regular Meeting
March 14, 2016
DRAFT**

Present:

Councilpersons: Rebecca Brenner, Leslie Connors, Jim Holahan, Jack Miller
Supervisor: Ric Dietrich

Others Present:

Town Clerk Pamela Goddard
Bookkeeper Laura Shawley
Public Ted Crane, Ronda Roaring, Eric Banford, Frank Darrow, Alan Wagner, Al Becker, Sarah Elbert, Garry Huddle, Jody Scriber, David Hall, Pat Woodworth, Charles Tilton, Dan Klein, and others.

Regular Meeting Opened at 7:02pm

Privilege of the Floor

Eric Banford made a presentation regarding a proposal to hold a series of PermaCulture courses in the Danby Town Hall. He asked the Board to consider allowing use of the Town Hall building for a lecture portion of a Permaculture Course; one Wednesday evening a month with an estimated 5-6 meetings. A fee will be charged for this course and all income will go to an outside agency. Banford further asked about whether the course could be covered by insurance from the Danby Community Council. Clarification was given that the Community Council insurance is separate and distinct from the Town of Danby municipal insurance. Supervisor Dietrich asked for additional information and noted that this request may warrant review by the Town Attorney. Banford asked to be allowed some time on the next Town Board meeting agenda in order to provide additional information.

Frank Darrow made comments in opposition to proposed changes to PDZ #10 on Gunderman Road. He noted that the Board is considering approval of specific changes, and not general “ideas” as has been stated by the applicant. Darrow also noted that, as this is a request from the property owner, there are several options for the Board including taking no action. He asked the Board to keep those things in mind during its review and deliberation.

Garry Huddle made a short Justice’s Report during Privilege of the Floor. The current court clerk has resigned, effective March 25, to take a new, full time job. A new court clerk will start March 28.

Pat Woodworth made several comments in opposition to proposed changes to PDZ #10 on Gunderman Road. She expressed continuing concerns regarding water usage and traffic. Woodworth was particularly concerned that the water resource evaluation did not take into account an unlimited number of part-time employees, visiting clients to a proposed medical facility, nor the fact that one of the proposed uses is food preparation. Woodworth was additionally concerned that the traffic evaluation, contributed by the applicant, is based on five year old data and may not reflect current conditions, let alone conditions that may develop related to new proposed allowed uses. She urged the Board to undertake further, more accurate studies related to water use and traffic related to the specific consequences in this proposal.

Ted Crane made comments in opposition to proposed changes to PDZ #10 on Gunderman Road. He reminded the Board that this is a discretionary action and that the Board is not obligated to do anything. Crane expressed his view that actions related to zoning changes should only be undertaken when there is demonstrated value for the good of the Town and that, based on the objective data he is aware of, it is hard to justify action in this case.

Charles Tilton asked several questions regarding the engineer’s report, fire code, sanitation report, and the septic system at the location of PDZ #10 on Gunderman Road. Planner Randall responded to

those questions. He expressed concern that there were known factual errors in the engineer's report and that, therefore, it is not legally useful for review.

David Hall responded to the comments regarding the potential number of employees at operations in PDZ #10. Planner Randall noted that any regulation of the number of employees and hours of operation are beyond the scope of a zoning change. This would be negotiated by special permit process. Additional comments, questions, and responses were made during the discussion of the PDZ #10 SEQRA review later in the meeting.

Board Position Interviews

The Board interviewed two applicants to a vacancy on the Board of Zoning Appeals: David Hall and Alan Wagner. Each applicant was asked what their interest is in serving on the Board and what their qualifications are for the Board of Zoning Appeals. There was a brief discussion regarding training for new members of the Board of Zoning Appeals and other boards.

The Board interviewed one applicant to a vacancy on the Planning Board: Jody Scriber. Applicant Joseph Bargher withdrew his application just prior to the meeting. Scriber was asked what her interest is in serving on the Board and what her qualifications are for the Planning Board.

Approve Town Board Minutes

MOTION - APPROVE MINUTES

Resolved, That the Town Board of the Town of Danby approves the minutes of January 11, 18, and February 8, 2016.

Moved by Connors, Second by Holahan. The motion passed.
In Favor: Brenner, Connors, Holahan, Miller, Dietrich

Warrants

ABSTRACT #3 OF 2016:

GENERAL FUND

#72-131 for a total of \$32,155.93

Moved by Connors, Second by Brenner. The motion passed.
In Favor: Brenner, Connors, Holahan, Miller, Dietrich

HIGHWAY FUND

#43-79 for a total \$60,702.75

Moved by Brenner, Second by Holahan. The motion passed.
In Favor: Brenner, Connors, Holahan, Miller, Dietrich

WEST DANBY WATER DISTRICT

#10-14 for a total of \$640.55

Moved by Holahan, Second by Miller. The motion passed.
In Favor: Brenner, Connors, Holahan, Miller, Dietrich

1840 Danby Road Property Determination Order and Set Public Hearing

Paul Hansen provided information regarding the status and process of an *Order of Determination of an Unsafe Building* at 1840 Danby Road. A letter has been drafted to the property owner. The letter outlines the problems with the building and the steps required to come into compliance. A public hearing is required, in less than five days from service of the Order of Determination, in order to provide time for the property owner, neighbors, and/or interested citizens to comment.

Hansen outlined the options available to the property owner, including applying for a building permit to renovate and restore the unsafe building. The requirements which must be met for any building permit to be issued are listed in the Order of Determination, including an asbestos inspection and set of plans with an engineer's stamp. The location of the septic system must be determined. Absent a firm plan to renovate and restore, demolition of the building, or portions of the building, must be started within 30 days of being served the Order of Determination.

The Board asked questions about what happens with the demolition debris, whether there is a concern about lead paint, whether there are fuel tanks on the property, and what happens with the storage units at the back of the property. Hansen responded that the issue of storage is being addressed through the court process outlined in the Zoning Code. Other, potentially hazardous materials will be noted and addressed through an outside engineer's inspection.

RESOLUTION NO. 29 OF 2016 - RESOLUTION AND ORDER DETERMINING THAT A BUILDING AT 1840 DANBY ROAD IS UNSAFE, DIRECTING REMEDIATION, AND SETTING A DATE FOR A HEARING REGARDING THE UNSAFE BUILDING

Whereas, the Town of Danby Code Enforcement Officer inspected the structure ("the Building") on December 28, 2015, at 1840 Danby Road, Town of Danby Tax Parcel 10.-1-25, Christopher Muka, Owner ("the Owner"); and

Whereas, as a result of such inspection the Code Enforcement Officer prepared a report dated March 9, 2016 (the "Findings and Recommendations as to the Repair or Demolition and Removal"), determining that the Building at 1840 Danby Road is unsafe and dangerous, as defined in Town of Danby Local Law No.4 of 2000, "A Local Law Providing for the Repair or Removal of Unsafe Buildings and Collapsed Structures" (as amended by Local Law No. 1 of 2002); and

Whereas, the Code Enforcement Officer recommends certain actions be taken to secure the Building and to minimize the danger to life and property from the present damaged and hazardous condition, all as more particularly set forth in the Findings and Recommendations as to the Repair or Demolition and Removal report; and

Whereas, the Town Board has reviewed the Findings and Recommendations as to the Repair or Demolition and Removal report; and

Whereas, pursuant to NYCRR Part 617 of the Implementing Regulations pertaining to Article 8 (State Environmental Quality Review Act), the adoption of this resolution and order is a Type II Action, being a routine or continuing agency administration and management not including new programs or major reordering of priorities that may affect the environment, and therefore no further environmental review is necessary;

Now Therefore, be it

Resolved, that the Town Board of the Town of Danby determines that the adoption of this resolution and order is a Type II Action, and therefore no further environmental review is necessary; and it is further

Resolved, that the Town Board of the Town of Danby determines that the Building at 1840 Danby Road is unsafe and dangerous, as defined in Town of Danby Local Law No. 4 of 2000 (as amended by Local Law No.1 of 2002), in the manner and for the reasons set forth in the Findings and Recommendations as to the Repair or Demolition and Removal report; and it is further

Resolved, that the Town Board of the Town of Danby hereby Orders the Owner of the property at 1840 Danby Road, 10.-1-25, Christopher Muka, to comply with the recommendations of the Findings and Recommendations as to the Repair or Demolition and Removal report, being that the contents of the Building must be removed, the Building must be demolished, and all debris and abandoned materials must be removed from the site unless portions of the debris can be lawfully disposed of on the premises; and it is further

Resolved, that a hearing be held before the Town Board in relation to the dangerous and unsafe building on March 21 at 7:00pm, at the Town Hall, 1830 Danby Road, Ithaca, New York; and it is further

Resolved and Ordered, that the Town Code Enforcement Officer cause a copy of this Resolution and Order, together with the Notice required by Section 6 of said Local Law No. 4 of 2000 (as amended by Local Law No. 1 of 2002) and the Findings and Recommendations as to the Repair or Demolition and Removal report, to be served upon the Owner in any manner authorized by said Local Law.

**Moved by Connors, Second by Miller. The motion passed.
In Favor: Brenner, Connors, Holahan, Miller, Dietrich**

Hornbrook Road Land Swap Resolution

There was a discussion regarding a proposed land swap between the Town of Danby and the owners Petricola and Bartolf on Hornbrook Road. Two resolutions related to this matter were presented by Code/ Planning officers Hansen and Randall. Hansen explained that the portion of Town property to be exchanged is a wetland and would not be suitable for a driveway or any other purpose, as outlined in the resolutions below. A Deed survey is already in process.

Clerk Goddard asked a procedural question regarding the clause for a “permissive referendum” related to this action. Publication in the newspaper of record (Ithaca Journal) must be made and the public has 30 days to petition for a referendum. If no petition is presented, the action proceeds with divestment and acquisition of adjacent properties on Hornbrook Road.

Roaring asked whether the Town was considering asking for a Conservation Easement on the property related to these action? The Board suggested that this is not part of this process. Information about benefits to any potential easement can be provided to the property owner and should be discussed through the Conservation Advisory Council. Dietrich noted that this land swap is already of significant benefit to the Town.

RESOLUTION NO. 30 OF 2016 - DECLARATION OF LEAD AGENCY - SEQRA, LAND SWAP OF 0.5 ACRES OF 129 HORNBOOK ROAD FROM PETRICOLA-BARTHOLF PARTNERSHIP

Whereas: 6 NYCRR Part 617 of the State Environmental Quality Review Act (SEQRA) and Section IX of Local Law 2 of 1991 Environmental Review of Actions in the Town of Danby, require that a Lead Agency be established for conducting environmental review of projects in accordance with local and state environmental law, and

Whereas: State Law specifies that for actions governed by local environmental review, the Lead Agency shall be that local agency which has primary responsibility for approving and carrying out the action, and

Whereas: The Town of Danby Code Enforcement Officer, acting with a fiduciary duty to secure the most beneficial terms in the public interest, has obtained formal land swap options from a landowner partnership to exchange approximately .5 acres of additional land in size located at the westerly portion of a parcel of land commonly known as 129 Hornbrook Rd, Ithaca, New York and designated on the Tax Map as 10.-1-82.2 and more particularly described in the forthcoming survey schedules; and

Whereas: The Town of Danby pursuant to New York Town Law § 64(2) duly declares the portion of land to be divested at Town Highway Department, 93 Hornbrook Rd., Ithaca, New York and designated on the Tax Map as 10.-1-82.1 excess and not needed for any current or reasonably foreseeable public use, which resolution is also required to be made subject to permissive referendum, and

Whereas: this is a Type I Action under the Town of Danby Environmental Review of Actions and an Unlisted Action under the State Environmental Quality Review Act, both of which require environmental review, and

Whereas: pursuant to §617.6(b)(3) of the State Environmental Quality Review Act (SEQRA), the aforementioned information must be mailed to all involved agencies notifying them that a Lead Agency must be agreed upon within thirty (30) calendar days of the date that the aforementioned information is mailed to involved agencies, and

Whereas: the Town Board is the local agency with primary responsibility for approving the action;

Now Therefore, be it

Resolved, that the Town Board of the Town of Danby hereby authorizes the mailing to all Involved Agencies of the aforementioned information, together with Notice that the Town Board intends to declare itself Lead Agency for purposes of SEQRA for this Type I and Unlisted Action, unless objection to such designation is received within thirty (30) days.

Moved by Brenner, Second by Connors. The motion passed.
In Favor: Brenner, Connors, Holahan, Miller, Dietrich

RESOLUTION NO. 31 OF 2016 - LAND SWAP OF .5 ACRES OF 129 HORNBOOK ROAD FROM PETRICOLA-BARTHOLF PARTNERSHIP

Whereas, the Town of Danby Comprehensive Plan Update that was adopted by the Danby Town Board on September 11, 2011 included a stated objective to "Rationalize capital improvement and maintenance spending on roads to ensure cost-effectiveness" and a goal that "Road related construction minimizes negative impacts on neighborhoods and natural resources," and

Whereas, subsequent to the completion of the Comprehensive Plan Update, the Town identified land adjacent to the existing Town Highway Department site as suitable for access to said Highway Department, and

Whereas, The Town of Danby Code Enforcement Officer, acting with a fiduciary duty to secure the most beneficial terms in the public interest, has obtained formal land swap options from a landowner partnership to exchange approximately .5 acres of additional land in size located at the westerly portion of a parcel of land commonly known as 129 Hornbrook Rd, Ithaca, New York and designated on the Tax Map as 10.-1-82.2 and more particularly described in the forthcoming survey schedules; and

Whereas, The Town of Danby pursuant to New York Town Law § 64(2) duly declares the portion of land to be divested at Town Highway Department, 93 Hornbrook Rd., Ithaca, New York and designated on the Tax Map as 10.-1-82.1 excess and not needed for any current or reasonably foreseeable public use, which resolution is also required to be made subject to permissive referendum, and

Whereas, This action requires publication of a Notice of Permissive Referendum within 10 days of this resolution, and the resolution cannot take effect until the passage of 30 days with no request for a referendum, or if a qualifying petition is delivered, then upon approval by the voters, and

Whereas, 6 NYCRR Part 617 of the State Environmental Quality Review Act (SEQRA) and Section IX of Local Law 2 of 1991 Environmental Review of Actions in the Town of Danby, require that a Lead Agency be established for conducting environmental review of projects in accordance with local and state environmental law;

Now Therefore, be it

Resolved, that the Town Board hereby authorizes and directs the Town Supervisor, Code Enforcement Officer, and the Town Attorney to take such steps as may be necessary to carry out the intent of this resolution.

Moved by Miller, Second by Connors. The motion passed.
In Favor: Brenner, Connors, Holahan, Miller, Dietrich

Power Purchase Agreement - Reissue Request for Proposals

Hansen explained the intent behind a resolution to revoke previous Power Purchase Agreement proposals and reissue/republish the Request for Proposals. Hansen clarified that this action will re-start the process as “clean slate.” The deadline for proposals will be the end of April, 2016. A decision on a PPA should be made by the end of June. This will still allow the project to be installed by the end of the summer.

RESOLUTION NO. 32 OF 2016 - REVOCATION OF POWER PURCHASE AGREEMENT REQUEST FOR PROPOSAL (RFP)

Whereas, the Town of Danby issued a Request for Proposal (RFP) for services associated with the establishment of a Power Purchase Agreement (PPA) on December 2, 2015 in regard to the construction of a solar at the Town of Danby Highway Department, and implementation of a PPA connected for such solar array, and

Whereas, the Town of Danby found irregularities in the extension of the deadline for proposals for Power Purchase Agreements (PPAs) in regard to the construction of a solar at the Town of Danby Highway Department, and implementation of a PPA connected for such solar array, and

Whereas, reasonable notice and an opportunity to reply are mandated by GML §§ 101, 103;

Now Therefore, be it

Resolved, that the Town Board hereby exercises its right to reject all bids and re-notice (republish) the notice and RFP.

Moved by Connors, Second by Miller. The motion passed.

In Favor: Brenner, Connors, Holahan, Miller, Dietrich

Appoint Planning Board and Board of Zoning Appeals Chairs

The Board held a brief discussion regarding the appointment of Chairs for the Danby Planning Board and Board of Zoning Appeals.

RESOLUTION NO. 33 OF 2016 - APPOINT PLANNING BOARD CHAIR FOR 2016

Resolved, that the Town Board of the Town of Danby appoints Frank Kruppa as Planning Board Chair for 2016.

Moved by Connors, Second by Holahan. The motion passed.

In Favor: Brenner, Connors, Holahan, Miller, Dietrich.

RESOLUTION NO. 34 OF 2016 - APPOINT PLANNING BOARD CHAIR FOR 2016

Resolved, that the Town Board of the Town of Danby appoints Joseph Schwartz as Board of Zoning Appeals Chair for 2016.

Moved by Connors, Second by Dietrich. The motion passed.

In Favor: Brenner, Connors, Holahan, Miller, Dietrich.

Appoint Local Board of Assessment Review

The Board held a brief discussion regarding the appointment of two persons to the Local Board of Assessment Review for 2016. The Danby date for the Local Assessment Review is set by the LBAR members, the County Legislator, and the Board of Assessment.

RESOLUTION NO. 35 OF 2016 - APPOINT LOCAL BOARD OF ASSESSMENT REVIEW FOR 2016

Resolved, that the Town Board of the Town of Danby appoints Gould Colman and Thomas Seaney to the Local Board of Assessment Review for 2016.

Moved by Connors, Second by Miller. The motion passed.

In Favor: Brenner, Connors, Holahan, Miller, Dietrich.

PDZ #10 SEQRA Review - Discussion

The Board held an extensive discussion with Planner CJ Randall regarding the Environmental Quality Review of the proposed changes to PDZ #10 on Gunderman Road. The questions in the “Part 2” of the SEQRA review attempt to answer the question of what the potential environmental impact is of the proposed amendments to Planned Development Zone 10.

Randall addressed questions regarding the process by which information for the Environmental Review is gathered. She clarified that Part 1 of the review is prepared by the applicant. Part 2 is prepared by the municipality, in this case Planner Randall on behalf of the Town Board. The review at this meeting was focused on Part 2.

There were questions and a difference of opinion between the applicant and members of the Board, regarding limiting language regarding a “Therapy Center for People with Disabilities” as opposed to a “Medical Clinic” and the impacts of this proposed allowed use related to the Environmental Review. Randall reported that, during the Planning Board discussion, she had expressed her personal discomfort with attempts to limit “medical clinic” uses to a “therapy center” through zoning changes. She reported that there are legal concerns, related to the Americans with Disabilities Act, for narrow zoning of medical facilities. This legal advice has previously been provided by the Town Attorney, to both the applicant and the Planning Board.

There was a discussion about whether to review the SEQRA document, or to go directly to the proposed law—including the revisions recommended by the Planning Board—for proposed changes to PDZ #10. Brenner asked whether it might be more effective for the Town Board, at this time, to consider removing some uses that may trigger positive declaration of impacts in the SEQRA review? Connors suggested going through the currently provided SEQRA review, step by step, as a guide to where changes might be made. Brenner noted that there is a Positive Declaration based on this review. The Board agreed to review the Part 2 SEQRA review, as prepared by Randall.

With respect to the question of triggers for a Positive Declaration of Impacts, it was noted that finding a Positive Declaration of Impacts triggers a full environmental review, including review of the project by Tompkins County Planning. During that review, there will be an opportunity to ask for more information from the applicant.

There was another discussion regarding where the long list of allowed uses came from. Once again, there was a reminder of the extensive drafting process during the summer of 2015 that included the Town Planner, Applicant, and attorneys for both the Town and the Applicant. Hall tried to argue that he did not understand that this was the agreed upon list of allowed uses. Dietrich objected to an assertion, from the applicant, that this extensive list of allowed uses was inserted by the Town’s attorney. Dietrich reminded the applicant that he was present at those meetings and had ample time to object to and remove any allowed uses that he did not want to be part of this project.

A full list of allowed uses is found in the draft document, available on the Town web site.

Randall reviewed each of the seventeen (17) SEQRA review questions with the Board. Randall noted places where there is a determination of probable or potential negative impacts. “Yes” responses were noted in sections 1 (Impact on Land), 4 (Groundwater Impact), 13 (Impact on Transportation), 15 (Impact related to noise, light, odors), and 17 (Consistency with Community Plans). A single finding of potential impact triggers a Positive Declaration. Any one and/or all of these five “yes” determinations of potential impacts will send the proposal to full environmental review.

Brenner suggested that proposed construction, an expanded parking area, and other activities might change flood water flows and that section 5 (Impact on Flooding), and a “yes” designation should be considered. Randall had marked this with a “no” related to potential impact. There was discussion regarding potential future flooding impacts related to future construction and expanded parking areas. Randall noted that the applicant would be required to complete a stormwater protection plan as part of any site plan review or building permit stage. Miller expressed the opinion, based on the specific questions in the SEQRA review, that the proposed uses would rate a “no” designation. There was not final agreement on this question.

There was additional discussion regarding Impacts on Traffic. Brenner expressed concerns with the trip generation report used by the applicant. She questioned whether this adequately took into consideration additional traffic from several allowed uses and additional employees related to the proposed uses. Randall asked whether the Board wanted to have a traffic expert consultant address these concerns at its next meeting. Hall stated that it may not be possible for that person to appear at the next TB meeting. Dietrich noted that this area in the SEQRA review is already marked “yes,” and may not need additional review or information from a traffic consultant. Brenner also expressed concerns regarding impacts on pedestrian and cycling traffic on public access roads leading to this property.

Dietrich asked where concerns about neighborhood response would be noted in this review? How would this be addressed? Randall responded that this is not a standard part of the SEQRA review. However, an additional section addressing “community controversy” could be added to the SEQRA Finding Statement. Neighborhood response would additionally be addressed during the Board vote.

Further discussion regarding the environmental review of this proposal was scheduled for the next Town Board meeting.

Adjourn

The meeting was adjourned at 9:43 pm.

Pamela Goddard, Town Clerk