

**TOWN OF ULYSSES  
PLANNING BOARD  
MINUTES  
June 16, 2015**

*Approved: July 7, 2015*

**Present: Chairman** John Wertis, **Board Members:** Sarah Adams, David Diaz, Craig Salino, and David Blake; Environmental Planner Darby Kiley, and Town Board Liaison Rich Goldman.

**Members of the Public Present:** Ken Kearl, Rod Kearl, Carl Lupo, Jason Fulton and Melissa Kemp.

**Call to Order at:** 6:59 p.m.

**Agenda Review; Minutes Review (6/2/15)**

At Mr. Wertis's suggestion, the Planning Board reached a consensus to include Ken Kearl in on discussions of the Open Development Area later in the meeting. Mr. Wertis also stated that Trumansburg Fire Chief Jason Fulton would be attending the meeting around 7:15 p.m.

Mr. Blake MADE the MOTION to approve the June 2, 2015 meeting minutes with changes, and Mr. Diaz SECONDED the MOTION. The minutes were unanimously approved.

**Continued Sketch Plat: Cold Springs Rd. Development Project** for a five-lot subdivision of Tax Parcel Number 25.-1-1.1, H1-Hamlet District. Carl Lupo and Leon Newhart Jr, Owners/Applicants.

Mr. Wertis said he did not have additional questions related to the sketch plat, and Ms. Kiley has not raised any questions herself. Board Members had no questions for Mr. Lupo.

Mr. Wertis MADE the MOTION to close the Sketch Plat conference, and Mr. Blake SECONDED the MOTION. The action was unanimously approved.

Ms. Adams said it was her understanding that the Planning Board would approve preliminary measures for the sketch plat this evening and not go forward with any major subdivision discussions until the board's next meeting. Mr. Blake said that was his understanding as well.

Mr. Fulton arrived at 7:11 p.m.

Mr. Lupo left the meeting following the closure of the sketch plat conference.

**Proposed Open Development Area** – Town Law 280-a referral from Town Board. Discussion continued from 4/21, 5/5, 5/19, 6/2.

Mr. Wertis recounted to the Planning Board a recent phone conversation he had with Mr. Fulton in regard to road access to the ODA. They discussed a number of questions the Planning Board had. He asked Mr. Fulton to describe what happens if and when the Fire Department responds to an emergency call in the ODA vicinity.

Mr. Fulton said it depends on the type of emergency call, which can vary from water in a basement and a downed electric line to a chimney fire or house fire. The calls dictate which vehicles respond, he said. In the early 1980s, lakeshore residents in the Maplewood Point Association and the Village split the cost for a mini-pumper truck with four-wheel drive. Residents had been concerned that a bridge to their homes was not wide enough to accommodate a large fire truck. The Fire Department still includes that truck within its fleet, and the vehicle has been updated over the years. In the winter, that 4x4 truck is the first to respond to emergency situations at the lakeshore because of the vehicle's all-wheel drive and the likelihood of snowy conditions. However, that changes in the spring, summer and fall seasons because the Department's larger apparatuses can access some of those lakeshore roads. As he explained to Mr. Wertis, Mr. Fulton said it is very likely the Fire Department can get trucks down to a lakeshore property, but there can be an issue getting out. Sometimes, trucks can get blocked in. A point he reiterated several times, Mr. Fulton said every lakeshore property is unique because not every driveway is the same. He responded to a lakeshore property call that very day and estimated that the truck hit 25 low-hanging branches while trying to access the property.

In regard to the ODA, Mr. Fulton said the Fire Department could traverse the access road, but it would be difficult to get water to a potential house fire there. Crews would have to pump water anywhere from 25 to 2,500 feet depending on where the house is located. Making matters all the more difficult, Mr. Fulton said many lakeshore access roads do not have adequate signage to identify where a particular home is located. Turning around a 50,000-pound truck is difficult, even more so when adrenaline is pumping. He said he does not want to make it difficult for the Kears to build in the ODA; he wants to make the fire crews' job easier and avoid liability for the village and himself if something went wrong.

Mr. Fulton said the Fire Department's truck fleet includes two trucks capable of carrying 1,500 gallons of water; a large ladder truck, a rescue engine, and a mini pumper used for brush fires. In the past year, the Department has purchased a utility vehicle with both tracks and tires because of worries from lakeshore property owners that ambulances would be unable to access their properties in the winter.

Mr. Blake asked Mr. Fulton if he would be comfortable sending the Department's heaviest truck to the ODA site via the access road. Mr. Fulton said yes. The Department also has the ability to run water across considerable distances: two trucks each have 1,000 feet of hose, and two others can each run between 800 and 900 feet of hose. Each lakeshore property is unique and different. If a fire broke out in the ODA site, the Fire Department would have to haul water. If two or three trucks respond to a house fire there, maneuverability would be limited. Trucks would be unable to back out, he said.

Asked by Mr. Wertis about the presence of a turnaround at the ODA, Mr. Fulton said the Fire Department would probably back a fire truck into a driveway located off to the right, in the

vicinity of the ODA. However, in the winter, that could be an issue if the driveway were not plowed. Also, the driveway could get blocked depending on where a fire is located. One has to consider ambulances on the scene as well. With no turnaround, emergency response vehicles are unable to get out.

Ms. Adams said she visited the area and could visualize one fire truck capable of turning around, but she could not see how multiple responding trucks and ambulances could navigate the access road, especially during the winter.

Mr. Fulton noted that the access road appears maintained, though Ms. Adams said the road was in bad shape from recent rains. She spotted a rivulet running down the middle of the road just last month.

Ms. Kiley said a 20-foot wide driveway entrance at the proposed Kearn development could act as an additional turnaround, though the expanded driveway has not been finalized. The original proposed driveway was 14 feet wide.

Mr. Fulton added that the other end of the access road – where it splits in a southern direction – could be used as a turnaround if it were leveled out.

Mr. Kearn asked for clarification: would a 20-foot wide driveway at his property, together with the turnaround access on the road's southeastern end, satisfy the Town's requirement for access? Mr. Fulton said ambulances are the most often requested emergency vehicle, and an ambulance would have no problem turning around in a 20-foot wide driveway. Fire crews would not pull a truck into the Kearn's driveway if his house were on fire; it is too close. He said he feels comfortable that a driveway at 20-feet wide is enough to allow fire trucks to turn around. He is comfortable with widening the driveway, just so long as his neighbor to the south is happy with it.

Ms. Adams asked Mr. Kearn if neighboring property owners have been notified of his proposal, to which Mr. Kearn said he has been in contact with Dawn Kimberly and his sister. He said he forwarded along information to them, and they were to then pass the information along to other neighbors. He does not have confirmation whether or not Ms. Kimberly passed along the information.

Mr. Wertis asked Mr. Fulton if the access road would be blocked in the event of a fire at the Kearn's new house. Mr. Fulton said the road would be blocked. If a fire alarm goes off, one Fire Department truck then responds. If an actual house fire, more than one truck will respond. Mr. Fulton said he thinks the driveway width of 20 feet is great, adding that a contoured entrance is easier to navigate as opposed to a driveway with sharp angles. Mr. Kearn said he would contour the driveway to provide maximum accommodation of access. Rod Kearn added the driveway would be mostly flat as well.

Mr. Fulton advised Planning Board members that something needed to be done to get lakeshore homeowners to properly identify where their homes are located off access roads. At his cottage in Covert, Mr. Fulton said he has a big sign on an access road that points to where the cottage is

located. The issue was brought up with the Westshore Homeowners Association during discussions involving Trumansburg Emergency Medical Services (EMS). The Town previously received a grant to number homes on the lakeshore, but finding a particular home can be tricky considering the number of winding access roads. Signs displaying addresses and directional arrows would be helpful, he said.

Mr. Wertis suggested that the Planning Board work through the draft recommendation to the Town Board, and Planning Board members agreed to do so.

Mr. Fulton left the meeting at 7:48 p.m.

Ms. Adams said it was her understanding of Town Law 280-a that these driveways were to meet certain fire code standards – what the Town Engineer called minimum standards – but the current draft document does not reference that. Mr. Wertis said that is a question for the Town Board to ask of the engineer. Ms. Adams said, for her, the lack of standards was an important element to include in the Planning Board’s recommendation. Mr. Wertis referenced advice from Town Counsel, who said the Town is not required to hold lakeshore access roads to New York State Fire Code. Citing 280-a, Ms. Kiley said the law does not require standards be met for access roads in an Open Development Area.

After a brief discussion, the Planning Board reached a consensus to work through the draft document and take straw votes on a number of questions and considerations, all of which would be included within a narrative to be sent to the Town Board. A thorough discussion of the document, including the taking of straw votes and approval of amendments, ensued.

**RESOLUTION:** Mr. Wertis MADE the MOTION to pass along the following narrative and straw votes to the Town Board as the Planning Board’s recommendation relative to the establishment of the ODA No. 2. Mr. Blake SECONDED the MOTION as follows:

**Planning Board Advice to the Town Board Regarding the Formation of ODA#2**

To: Town Board, Town of Ulysses

Re: Requested Advice on the Formation of ODA # 2 to include tax parcel numbers 18-1-19.21, 18-1-19.22, 18-1-19.4, 18.1-19.5, 18-1-19.62, 18-1-19.7, and 18-1-19.8

(I) Background Information

Early in March of 2014, in order to proceed with the consideration of granting a building permit for a property located on the western slopes of Cayuga Lake and accessed by a “private road” the Town began explorations of Town Law 280-A and its application to this situation. The purpose of Town Law 280-A is open to several interpretations and has been the subject of opinion in at least one law journal. Simply it states that a town can not issue a building permit for construction on a property that does not have direct “access” to a “mapped road (a road on the Town's Official Map) or an existing State, county, or town highway, or is shown on a sub division plat approved by the Planning

Board. Should this mapping not exist, relief is offered to the property owner/builder by seeking (a) a variance or (b) the Town's adoption of an Open Development Area that includes the property in question. In 2014 the Town chose to pursue the second route and created ODA #1. See relevant Town Counsel's opinion of 3/6/2014.

(II)The Current Situation

There is now another parcel of lake shore property that can only be reached by an existing "private road." New York state Town Law 280-A dictates that no building permit can be issued for construction on property not directly contiguous to a "mapped road". The road to the parcel is there by legal easement over a separate parcel of land and is not "mapped".

The Town is once more following the path outlined in 280-A of forming an Open Development Area. If this route is pursued, 280-A also dictates that the Town Board must, once again, "seek advice from the Town Planning Board" on the ODA formation question.

The Planning Board has been informed by the Town Planning and Zoning Officer that the parcel in question does not meet the current area standards for the Zone; but is a legal, nonconforming lot.

280-A references consideration of "health and safety" issues involved in forming the ODA. More specifically... the ability of fire and ambulance service to access the property. The Planning Board has sought guidance as to what "standards" to apply in making a judgment. The Town Planning and Zoning Officer provided the Planning Board with copies of the New York State Fire Code Standards and The Planning Board has reviewed relevant portions of this document." See relevant Town Counsel memo of June 16, 2015.

The Town Planning and Zoning Officer also sought advice from local safety officials. The Trumansburg Fire Chief provided a letter dated April 20, 2015 stating that fire trucks can get into and out from the property. The EMS head has provided a similar statement. Planning Board members who have visited the site by way of the access road have expressed reservation about the ability of long and heavy vehicles to access the site – "The Bumpy Road to Happiness" – and have raised the question as to specifically which fire vehicles will have ingress and egress.

The EMS head and Fire Chief have suggested certain minor improvements be made to the road: additional direction signs, overhead limb clearance, tree removal to widen the passage way, and making a provision for a "turn around" at the ODA parcel. The Fire Chief attended the June 16, 2015 meeting of the Planning Board and reiterated his suggestion for improvements, some of which have been addressed, such as the widening of the Kearl driveway to 20 feet. The Fire Chief specifically said the access road could handle fire trucks and emergency response vehicles, though he did have concerns about turnarounds.

**P.B. Vote #1:** We are satisfied with the level of information we have obtained on road conditions and emergency vehicle access at this time. Yes (the vote was 4-1, with Ms. Adams voting no)

**P.B. Vote #2:** We believe that the level of emergency vehicle access is satisfactory for this ODA

if the minor improvements identified are made. Yes (the vote was 3-2, with Ms. Adams and Mr. Blake voting no)

Members of the Planning Board have raised concern about ecological damage that might occur in the “Unique Natural Area” through which the easement road passes were it to be improved, either by Town requirement to meet State Standards or at the local residents' initiative. Legal opinion varies on this question; some counsel indicating it is appropriate to consider possible environmental damage and others not.

**P.B. Vote #3:** In making their recommendation, the Planning Board would want to consider the effects on the sensitive environmental area should extensive improvement of the road be required or otherwise carried out. Yes (the vote was unanimous)

**P.B. Vote #4:** If only the minor road improvements recommended are made and the road maintained at that level, there will be no appreciable damage to the ecology of the proposed ODA area. Agreed (the vote was 4-1, with Ms. Adams voting no)

(III) “Considerations” Recommended to the Town Board Should They Decide to Create ODA #2

- a. There shall be no future subdivision of the parcels unless the Planning Board makes a determination that the access is sufficient for any future parcels.
- b. The right of way granting access to the parcels shall remain in place.
- c. The driveway will consist of asphalt, another hard surface, or gravel and will be sufficient to support the passage of emergency vehicles with at least a 20' wide entrance for new residences.
- d. Trees and branches overhanging the access road shall be trimmed to accommodate vehicles approximately 13-14 feet tall.
- e. House number signs shall be installed at the start of the driveway of each house.
- f. Any land disturbance within the Open Development Area and within the Slope Overlay Area and/or Unique Natural Area is subject to Site Plan Approval by the Planning Board.
- g. All future deeds and easements for all the parcels in the Open Development Area shall contain the following provision: “This conveyance is made and accepted subject to the Open Development Area conditions approved by the Town Board of the Town of Ulysses on \_\_\_\_\_ (insert date).”

**P.B. Vote #5:** The Planning Board's advice to the Town Board is to consider carefully all of the factors we have identified in the above, our opinions as indicated by vote count, the Planning Board meeting minutes from April 21, 2015 through June 16, 2015, the advice from counsel, and the list of specific “considerations” applicable to approval of the proposed ODA that have been developed jointly by the Planning Board and the Town's Planning and Zoning Officer as you

make your decision on the formation of ODA #2. Agreed, with the board voting unanimously.

(IV) Additional Advice Relating to Data Gathering and Process Regarding the Establishment of Future ODA's

Consideration of the ODA formation process has raised certain questions relative to information gathering and communication between the Town and the residents in the proposed ODA. Specifically, the Planning Board feels that in this case and in future cases the following information should be supplied to the Planning Board and the following process followed:

- a. The applicant should be informed that it will be their responsibility to secure certification that the access road servicing their property will provide adequate access for emergency vehicles.
- b. All property owners in the proposed ODA should be informed of the Town's consideration of ODA formation at the same time that the Planning Board is asked to offer advice to the Town Board on the question.
- c. Documentation should be provided that all the properties in the ODA have legal access to the easement road.
- d. Documentation should be provided that there is a written understanding among the residents served by the road easement as to the current and future maintenance of the road.
- e. That the existence of Unique Natural Areas be recognized in discussions concerning the formation of ODAs.

**P.B. Vote #6:** The above should be adopted as policy for all ODA formations. Yes (the vote was 4-1, with Mr. Wertis voting no)

BE IT RESOLVED that the Planning Board pass this narrative with all straw votes to the Town Board as the Planning Board's recommendation relative to the establishment of the ODA No. 2.

The vote was as follows:

Mr. Wertis AYE  
Ms. Adams NAY  
Mr. Diaz AYE  
Mr. Salino AYE  
Mr. Blake AYE

**Result:** Recommendation approved

Ms. Kiley said the Town Board would be reviewing the Planning Board's recommendation on

Tuesday, June 23.

Mr. Wertis said he was surprised no other residents from the ODA attended the night's meeting. He had hoped they would feel some level of comfort regarding fire protection after hearing from Mr. Fulton.

Responding to a question from Mr. Kearl regarding process, Ms. Kiley said Site Plan Review and variances are next steps. The Planning Board could take up the Site Plan Review at its July 7 meeting, since it is a scheduled application meeting. The Board of Zoning Appeals would then address variances at its July 15 meeting. Mr. Kearl said he is planning on attending the Planning Board's July 7 meeting but will be unable to attend other July meetings due to business travel. Rod Kearl will be attending in his absence.

The Kearls left the meeting at 8:27 p.m.

### **Solar Regulations**

Ms. Kemp was the project manager for Solar Tompkins and also works for Renovus. Ms. Kiley gave a brief overview of the Town's current Zoning regulations regarding solar, saying panels are permitted as accessory uses. However, there is nothing in current Zoning that addresses larger commercial solar projects as a principal use.

Ms. Kemp told the Planning Board that New York State has been supportive of residential solar and, as of a couple of years ago, solar projects for larger commercial entities. The projects range in scale from a fraction of an acre up to 10 acres. New York State has allocated a billion dollars of support to encourage solar development statewide and across the region. Asked by Mr. Wertis to define "commercial development," Ms. Kemp said commercial development includes businesses – small and large – non-profits and churches.

Mr. Wertis said the Planning Board's current focus is largely to craft language relating to large installations and cooperative solar within Town Zoning.

Ms. Kemp said, as of now, no one is selling energy back to the grid. All energy generated from solar panels goes directly to end-users. Locally, that energy stays within the NYSEG territory and often Tompkins County itself.

Ms. Adams asked Ms. Kemp if she was familiar with the Town of Geneva's or other neighboring town's Zoning regulations concerning solar projects. Ms. Kemp said Massachusetts's Zoning regulations were her first recommendation to Ms. Kiley as an example of excellent model regulations. CUNY and the U.S. Department of Energy are currently crafting standards, but it remains unclear when they will become available. There is a sense of urgency to introduce standards since a federal tax credit for solar installations expires at the end of 2016, she said.

Referencing the Massachusetts law, Ms. Kiley said there are questions concerning its compatibility within New York State.

Ms. Adams told Ms. Kemp that the Planning Board has been trying to better understand the question of solar project size and whether or not percentage of lot coverage was a sufficient standard for determining size. Ms. Kemp said solar technology development is very slow, if at all. Generally, solar companies measure size by footage or kilowatt output. Typically, one solar panel produces 250 watts.

Though Ms. Kemp said a 50-kilowatt system is considered small, Ms. Adams noted that some residents may be concerned with a particular project's size in denser residential areas. In response, Ms. Kiley said future Zoning will likely limit solar projects to accessory uses in the Hamlet District. In the R2 District, Zoning could limit size to as small as an acre.

Asked by Mr. Wertis about state-level regulations concerning commercial or shared-community solar installations, Ms. Kemp said there are currently no regulations because solar installations are low impact – no concrete, noise or glare. However, with solar farms producing more than 50 kilowatts, fences are typically put up around the perimeter. Asked to explain how community solar works, Ms. Kemp said the process called net metering allows for the installation of panels on distant parcels. For instance, Cornell utilizes net-metering with the recent 2 megawatt system on Snyder Road, located by the Ithaca-Tompkins airport. SUNY Cortland has a one-megawatt system on its campus, and Ithaca College is planning a 2 megawatt system. Renovus is pursuing land in Hector for a pilot facility utilizing net metering.

Referencing the Town of Geneva's Zoning Law, Mr. Diaz asked about decommissioning and a particular stipulation requiring the restoration of panels equal to 80 percent of approved capacity. Ms. Kemp said solar panels come with a 25-year warranty, and, within that warranty, companies guarantee production of at least 80 percent beyond 25 years.

Ms. Kemp said zoning regulations for solar are particularly interesting with businesses. Since the Town of Ulysses only allows for accessory and not principal use, Gimme! Coffee is looking to add solar panels on Carman Road in Schuyler County. Gimme! has five buildings and wants to serve all of them, she said. New York State's net-metering laws set the rules on where solar electricity goes. States like North Carolina have surpassed New York State in large-scale solar projects, partly due to New York's slow roll-out of regulations. Smart development is important, but New York needs to catch up. The State aims to convert to 100 percent renewables by 2050. That includes heating and transportation, and New York has a long way to go.

Asked by Mr. Wertis about tracking-style solar farms that turn with the sun, Ms. Kemp said Renovus has yet to pursue them.

Mr. Goldman offered no liaison report.

Mr. Wertis MADE the MOTION to adjourn the meeting, and Mr. Blake SECONDED the MOTION. The vote was unanimously approved.

Meeting adjourned at 8:55 p.m.

Respectfully submitted by Louis A. DiPietro on June 18, 2015.