Town Board Work Session Agenda
May 11, 2016
7:00 PM

I. Call to Order

II. Approval of Minutes – April 27, 2016

III. Monthly Reports - April

IV. Public Hearing – None

V. Guests –
   • Mia Scofield – Discussion of Relocation of Mia’s Nails and Day Spa to 2094 Five Mile Line Road - Costello
   • Jennifer Aquino – Discussion of Improvements to 2084 Five Mile Line Road

VI. ACTION ITEMS

Law and Finance
1. Oak and Apple Cidery Review – Horwitz/Weishaar

Public Works
1. Discussion of Sidewalks for 2016 – Valentine
2. Proposed Modification to the Town Sidewalk Policy – Valentine
3. Discussion of a Pilot Pond Treatment Program – Valentine

Public Safety - None

Community Services - None

VII. INFORMATIONAL ITEMS

Law and Finance - None
Public Works - None
Public Safety - None
Community Services - None
VIII. HELD ITEMS
1. Jomanda Way, Expanding No Shooting Petition – LaFountain
2. Sidewalk Waiver, 1445 Jackson Road – Valentine
3. Preservation of Curb Cut and Parking Requirement Relief, 2136 Penfield Road – Costello
4. Sable Oaks Roadway Dedication – Valentine
5. Jeff Luce, 1357 Marchner Road – Out of District Sewer – Valentine
6. Sign Ordinance Update – Costello/LaFountain
7. Review of Informal Discussion for Pet Hotel, 125 Panorama Creek Drive – Costello
8. Request for Sidewalk Waiver at Barclay Park Subdivision – Costello

IX. Old Business - None

X. New Business - None

XI. Executive Session – Real Estate, Litigation and Human Resource Matters

XII. Adjournment
I. Call to Order

Present:
Supervisor LaFountain
Councilwoman Kohl
Councilwoman Metzler
Councilman Moore
Councilman Quinn

Also Present:
Jim Costello
Dick Horwitz
Lisa Grosser
Mark Valentine
Pete Weishaar

II. Approval of Minutes – 4/27/16
CM Quinn moved for the approval of the Minutes of April 27, 2016, CW Metzler seconded the motion.

III. Monthly Reports – Reports for April are in except for Justice Court, Local History Room, Personnel and Public Works all of which are expected tomorrow.

IV. Public Hearing – None

V. Guests
- Mia Scofield – Discussion of Relocation of Mia’s Nails and Day Spa to 2094 Five Mile Line Road – Costello

Jim Costello introduced Mia Scofield who has relocated her business from 1790 Penfield Road where she had operated for 22 years. She has been at the new location at 2094 Five Mile Line Road for four (4) weeks.

Mia Scofield explained that her business provides services for hair, nails and waxing. She has three (3) full time employees and three (3) part time employees. Hours of operation are Tuesday and Thursday from 9:00 AM to 8:00 PM, Friday 9:00 AM to 5:00 PM, Saturday 8:00 AM to 5:00 PM and closed Sunday and Monday. She has been utilizing a temporary A Frame sign in the front and will need signage in the back.

Jim Costello explained that Scofield is entitled to a sign attached to the building and a sign on the back of the building.

Councilwoman Kohl asked if Scofield would utilize the old signs from the previous location.

Scofield said no, she is working on having new signs made.
Costello said he will work with Scofield on sizing of signs and permits that need to be issued.

The Board discussed agreed to approval through the streamline process.

Supervisor LaFountain directed Costello to prepare a letter summarizing this evening’s discussion to Scofield.

Costello agreed and stated that he will work with Scofield regarding both the permitting and signage.

- Jennifer Aquino – Discussion of Improvements to 2084 Five Mile Line Road
  Jennifer Aquino was not in attendance and this item will be held.

VI. ACTION ITEMS

Law and Finance
1. Oak and Apple Cidery Review – Horwitz/Weishaar
Supervisor LaFountain stated that this application came before the Planning Board and in March the Town Board requested that the Town Attorneys review the use of the parcel to determine if it is allowed under the current Conservation Easement.

LaFountain then read his March 31, 2016 letter which is posted on the Town website:

Earlier this year, the Planning Board received an application from Oak & Apple LLC for site plan approval to construct and operate a farm cider mill with associated site improvements on agricultural land located in the RA-2 (Rural Agricultural) zoning district at 1381 Sweets Corners Road.

In 2002, the Town of Penfield acquired the development rights to this property through a conservation easement. The easement limits the permitted uses on the property, and questions have arisen regarding whether or not the proposed cider mill would violate the terms of this easement. The Town Board is studying the full scope of all uses proposed by the applicant here, and working with the Town’s counsel and members of its staff to determine whether these uses are prohibited or authorized under the terms of the existing easement and the Town’s open space plan.

Oak & Apple’s site plan application for its farm cider mill was originally scheduled for a public hearing before the Planning Board on April 14, 2016. However, in light of the foregoing concerns, the application before the Planning Board was indefinitely postponed so that the Town Board could more fully study the applicant’s proposal and make the determinations required under the easement and open space plan. If the Town Board determines that the use proposed complies with the terms of the easement, the Planning Board will resume its consideration of whether or not to grant site plan approval for this project.
LaFountain stated that Doug Fox, Comprehensive Planning and Advisory Consultant, is in the audience. Fox was instrumental in putting together the Open Space Plan.

Town Attorneys Dick Horwitz and Pete Weishaar then reviewed the history of the parcel and how the Willmes Conservation Easement was created. They examined the easement to determine if the proposed cider mill is a permitted use.

Horwitz stated in 2001 the Open Space program was developed to maintain parcels in the Town for agricultural use and to prevent development. The Willmes property was determined to be an important parcel to protect through the Open Space program.

April 2002, the Town had referendum approval for financing to purchase the development rights for several parcels including the Willmes parcel. In November 2002 the Willmes Conservation Easement was purchased by the Town, which covers several parcels including the property for the proposed cider mill. The prime purposes of the conservation easement are to protect and preserve agricultural land, scenic open space, preserve wildlife and plant habitat, and to purchase development rights.

The terms of the easement state that the parcel must be used as stated in New York State Agriculture Law §301 -11 as amended, which is as follows:

“Farm operation” means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a “commercial horse boarding operation” as defined in subdivision thirteen of this section, a “timber operation” as defined in subdivision fourteen of this section, “compost, mulch or other biomass crops” as defined in subdivision sixteen of this section and “commercial equine operation” as defined in subdivision seventeen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

Horwitz continued to say the operation of a cider mill is allowed and protected as a farm operation. The Conservation Easement originally allowed a winery as a permitted use. The parcel is uniquely situated in an orchard where grapes were grown. Horwitz stated that the Town would not have been able to acquire the property without allowing Willmes to continue growing grapes with the possibility of developing a winery.

Horwitz went on to say the terms of the easement include size restrictions and nuisances such as noise, odor, glaring lights which could adversely affect the neighborhood. Easement terms do not permit any banquet, outside storage or party facilities. The location of the farmstead must be in agreement with the property owner and the Town Board.
Howitz stated a letter from the applicant’s attorney James Bonsignore, Woods Oviatt Gillman, detailed and outlined the proposed use including a cider farm operation, growing apples to produce hard cider and a 2,675 square foot cidery facility including a 520 square foot tasting room. The hours of operation are limited and there are no proposed banquet facilities. Only cider products will be served and snack type food is proposed. There will be no full service kitchen. The size of the proposed facility is less square footage than was permitted for the winery operation. The applicant also submitted exhibits, case law, statutory provisions and guidelines of the Agriculture and Markets department regarding farm operations.

Horwitz stated that both he and Attorney Weishaar reviewed the intent and purpose of the Conservation Easement and concur that stated under New York State Agriculture and Markets Law, the use as a proposed cider mill is permitted under the terms of the Conservation Easement.

Councilman Quinn asked if the law states any specific information for farm use as opposed to commercial use, and the retail sale of alcohol.

Horwitz stated incidental products can be sold, not commercial retail such as Wegmans.

Councilwoman Metzler asked if products that can be sold are specified.

Horwitz stated not specifically, only general guidelines are listed.

Pete Weishaar stated the sales are allowed to support the agriculture operation. The sale of incidentals cannot be a predominate use, and must be less than 50% of the revenue. There is a broad interpretation of the statute. Weishaar continued to say the easement takes back some of those permitted items, such as banquet facilities, which would be allowed under the Agricultural and Markets Law.

Metzler stated that the cidery is a permitted use under the Agriculture and Markets Law. The Conservation Easement puts some constraints on the operation. Metzler then asked, what ability does the Town Board have to restrict operations further?

Horwitz stated that the Planning Board, through Site Plan approval, has the authority to restrict operations as it pertains to things that can affect the neighborhood such as odors, glare and traffic. The Alcoholic Beverage Control Board will control the sale of alcohol.
Horwitz continued to say products could be offered for sale similar to what is sold by Schutt’s Apple Mill and Gentles Farm Market. The Town Board has the authority, along with agreement of the property owner, to specify the location of the farmstead and the facility.

Weishaar added the easement already has conditions built into it. The Planning Board can impose conditions that are set to minimize impacts on the site as it relates to site plan approval. There needs to be substantial evidence on the record for the conditions.

Metzler stated she is more sensitive to the neighbors than to the applicant. She represents the neighbors who have had valid concerns during this process. This process has caused unnecessary stress for residents in that area, which is of concern. If this goes forward, she would like the conditions to minimize impact to the neighbors. There must be agreement with the Town Board on the location of the farmstead. Metzler does not feel the proposed hours are limited. We need to protect the neighbors from unreasonable nuisances. Metzler stated she has concerns in general and will continue to work to represent the residents as we move forward.

Supervisor LaFountain stated the Board will continue to review the materials submitted by the Town Attorneys. The next possibility for this to be discussed would be at the May 25, 2016 Work Session.

Public Works
1. Discussion of Sidewalks for 2016 – Valentine
Mark Valentine displayed a map and submitted a summary of the proposed 2016 sidewalk projects to the Board for its review. These projects had previously been discussed in 2015 and have been carried over.

Councilman Moore inquired about the CDBG funding.

Valentine stated that CDBG grants were obtained for partial funding. A portion of the Empire Boulevard sidewalk was from 2014 CDBG grants, we may be able to apply for a secondary grant to complete this project.

Moore asked if our 2016 budget would be depleted doing just the first two (2) projects; are there funds to be carried over from 2015?

Valentine reviewed the complete summary and stated with carry over funds from 2015 and the 2016 budget we should be able to complete all of the primary projects. The secondary project can be carried over to 2017 if necessary.

Moore asked how much is budgeted for sidewalk repairs annually?
Valentine stated that we work with the Department of Public Works for sidewalk repair; we do not have a dedicated fund.

Supervisor LaFountain added that most of the sidewalk repairs are done by the DPW. Historically the Town spends more on new sidewalks than repairs, approximately 90% on new sidewalks and 10% on maintenance.

Valentine added that as a new subdivision is approved a sidewalk district is created, and the sidewalk repairs are funded by the residents who reside within the district.

Councilman Quinn inquired if there is a list of all future sidewalk needs.

Valentine said these are the projects that were reviewed last year. There is a running list of approximately 15 - 20 more proposed projects.

Moore asked if we would be able to complete the four (4) projects listed under primary?

Valentine said yes, and possibly secure additional funding for the secondary project, or carry it over to 2017.

The Board discussed and agreed to move forward with the sidewalk projects as proposed.

Valentine will prepare documents and go out to bid for the sidewalks.

2. Proposed Modification to the Town Sidewalk Policy – Valentine

Mark Valentine stated that PRC has been reviewing sidewalk waiver fees and trying to determine a fair and equitable way to calculate the waiver. They are looking to tie the waiver fee to the County bid price. Also listed are maximum waiver fees of $5,000 for a residential property and $10,000 for a commercial property. Valentine included two (2) parcels on Jackson Road that have recently requested waivers for comparison.

Councilman Quinn stated that these two (2) parcels are near the Town Hall and he would consider Jackson Road a mainline that should have sidewalks. Reviewing the proposal, Quinn summarized that based on the example the resident would pay the $5,000 waiver fee. If the Town decides to go forward and install sidewalks, it would be at a cost of approximate $20,000.

Supervisor LaFountain stated the Board would like to review this proposal further, this item will be discussed at the next Work Session on May 25, 2016.
3. Discussion of a Pilot Pond Treatment Program – Valentine

Mark Valentine stated that the Watershed Management Committee has been reviewing both the conditions and functionality of Town owned ponds. A summary was submitted to the Board for its review. Valentine added that in the recent past we had dredged some of the ponds and they will need to be dredged again in the future.

Valentine continued to say the Watershed Management Committee met with representatives from A-Tip regarding their muck away product. The muck away breaks down the organic material at the bottom of the pond, and increases the time between dredging. Valentine said three (3) groups quoted and A-tip was the lowest cost. The muck away is a non-tonic product and each year less material is required to maintain the pond. The summary includes a breakdown of costs over three (3) years, which decreases each year. Valentine added that we would need to develop a criteria to evaluate the ponds after using the muck away product.

Councilman Quinn asked when the ponds are scheduled to be re-dredged?

Valentine said the Tolewood Pond was dredged a year ago and Glenbrook Pond three (3) years ago. We do not have another dredging scheduled, but are looking for a way to avoid/delay the dredging costs.

Quinn asked how the Watershed Management Committee prioritized the needs.

Valentine said they selected all four (4) ponds for the reasons specified on the summary. They suggest we try the muck away product and review results next year.

Councilwoman Metzler stated the Watershed Management Committee has been discussing this for quite some time. They were very impressed with the A-tip representative’s presentation and track record.

Councilman Moore asked what the ultimate goal is.

Valentine said to extend the life of the ponds and reduce costs of dredging.

Supervisor LaFountain stated this would be preventative maintenance for the ponds.

Valentine said we have created Special Improvement Districts for subdivisions with ponds and future funding will be by the residents within the district.

The Board discussed and agreed to move forward.
Valentine said he will take benchmark photos and show the progress to the Board.

**Public Safety** - None

**Community Services** - None

**VII. INFORMATIONAL ITEMS**

**Law and Finance** - None

**Public Works** - None

**Public Safety** - None

**Community Services** - None

**VIII. HELD ITEMS**

1. Jomanda Way, Expanding No Shooting Petition - LaFountain
2. Sidewalk Waiver, 1445 Jackson Road - Valentine
3. Preservation of Curb Cut and Parking Requirement Relief, 2136 Penfield Road - Costello
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**IX. Old Business** - None

**X. New Business** - None

**XI. Executive Session** - Real Estate, Litigation and Human Resource Matters - None

**XII. Adjournment** - Supervisor LaFountain adjourned the regular Work Session at 8:06 PM.

Lisa Grosser, RMC
Deputy Town Clerk