Town Board Work Session Agenda
July 27, 2016
7:00 PM

I. Call to Order

II. Approval of Minutes – July 13, 2016

III. Monthly Reports - None

IV. Public Hearing – None

V. Guests – None

VI. ACTION ITEMS

Law and Finance
1. Oak and Apple Cidery – LaFountain
2. Abbington Place Subdivision – Section V, 1229 Fairport Nine Mile Point Road - Costello

Public Works - None

Public Safety - None

Community Services - None

VII. INFORMATIONAL ITEMS

Law and Finance
1. Sign Ordinance Update – Costello/LaFountain

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. Jeff Luce, 1357 Marchner Road – Out of District Sewer – Valentine
5. Review from Informal Discussion for Pet Hotel, 125 Panorama Creek Drive – Costello
6. 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
Lisa Grosser
Richard Horwitz
Peter Weishaar

II. Approval of Minutes – 7/13/16
CW Kohl moved for the approval of the Minutes of July 13, 2016, CM Quinn seconded the motion.

III. Monthly Reports – Supervisor LaFountain stated that all reports are in except for Public Works and Personnel which are expected by the end of the week.

IV. Public Hearing – None

V. Guests – None

VI. ACTION ITEMS

Law and Finance
1. Oak and Apple Cidery – LaFountain
   Supervisor LaFountain stated that the Town’s legal team has followed up and reviewed comments and materials submitted.

   Richard Horwitz, Town Attorney stated that he had been asked to review materials and provide additional clarification to the Board. A letter had been received from Kevin Gallagher detailing specific concerns pertaining to the Conservation Easement and the New York State Agriculture and Markets Law. Horwitz reviewed each comment and provided a response.

   Point 1. The 2002 Conservation Easement defined the area as farm area and did not include a farmstead.

   Response: This is a correct statement.

   Point 2. The Conservation Easement defines distinct activities allowed for a farmstead and a farm area.
Response: This is a correct statement.

Point 3. Oak and Apple has acknowledged, in a June 5, 2016 letter to the Town Board, that their proposed development can only be constructed on a farmstead.

Response: This is a correct statement.

Point 4. The only right to create a farmstead is for a winery, reference Section 3 - farm operations, B - farmstead.

Response: This is not correct. All types of farm uses are allowed to have agricultural support buildings in a farmstead area.

A) The easement provides the property should be used solely and exclusively for the purposes described in §301-2 of New York State Agriculture and Markets Law.

B) §301-2 allows a cider mill to be considered and protected as a farm operation.

C) The New York State Agriculture and Markets guidelines state a cider mill is a protected farm operation.

D) Easement Article III-B, entitled farmstead, provides in Section 1, page 10 that the owner has a right to construct new buildings which include, but are not limited to barns, farm market buildings, including a winery and suitable tenant housing. The easement language does not limit the farmstead, farm operation and buildings to only a winery. Any farm operation done on the Willmes easement is entitled to request a farmstead area to build support buildings for the farm operation.

Point 5. The right to farm does not include a right to create a farmstead. They are allowed farm activities only.

Response: The owner’s right to request a farmstead area, is set forth in the Conservation Easement. The Agriculture and Markets Law Section 308 discusses the right to farm, but does not discuss farmstead.

Point 6. All remaining development rights are transferred to the grantee, the Town, and are terminated. Reference Section 4, rights of the grantee and Section 5, development rights.

Response: As previously stated the easement provides that the property can be used for farm operations and agricultural support buildings and improvements. The cidery use is a permitted use.
Horwitz stated, in conclusion after reviewing all comments and materials received by the Town, both in favor and not in favor, including the language of the easement, the Town Board has no legal right to not have the Planning Board hear the Site Plan application for this project; this is a legal obligation.

Horwitz concluded by stating that he strongly suggests the Town Board authorize the Supervisor to send a memo to the Planning Board to move forward in the process regarding the proposed project.

Councilwoman Metzler asked if the Conservation Easement was put in place to protect open space as part of the open space plan, or was it put in place to prevent development?

Horwitz stated the language of the Conservation Easement states that the primary purpose of the easement is for the protection and preservation of agricultural resource. The easement also states that view sheds enjoyed by the public, are to be preserved as long as they are consistent with an active farm use of the property. The Planning Board will have to make a determination where the structures are going to be on the property, and the impact to the view shed. Agricultural use is the primary goal, and the view shed is subordinate if there is any conflict.

Metzler stated, the Planning Board would have to compare the view shed from 2002 and this proposal. Can the view shed be increased by public access to the site?

Horwitz stated as a private property there is no access for people to come and view the site. With this new business, there now maybe be an enhanced opportunity for the public to view the area from the site. The Planning Board will take this into consideration when reviewing the site plan.

Metzler stated in the 2002 agreement there was a desire to continue agricultural production in east Penfield versus a residential or commercial development versus open space.

Horwitz stated the desire was to preserve agriculture. Willmes was concerned with the grapes and had a dream to establish a winery. The provisions to establish a winery at some point in the future were negotiated. The Town negotiated the protections in the Conservation Easement so as not to have a commercial establishment, but other types of farms were not excluded.

Peter Weishaar, Planning Board Attorney, reviewed that the Conservation Easement stated Open Space and agriculture were the primary purpose of the agreement. They wanted to protect important elements and preserve agriculture as a resource/industry within the community. They also wanted to preserve the scenic beauty of the area.
Metzler asked if the easement states that the property can only be a winery, and if not the contract is void?

Horwitz stated the intent was that the Town of Penfield wanted to preserve the right to farm in any form whatsoever on that property. The farmstead was not established at the start because Willmes was not sure he could do it.

Metzler stated a winery was allowed because that is the only thing Willmes demanded when negotiating the Conservation Easement. The Town would not have agreed to a winery at the time if they didn’t think it was appropriate.

Weishaar stated the easement states permitted structures include barns, green houses, dryers, silos, fuel tanks, general support buildings, farmstands, including a winery. It is stated these items are included, but not limited to. The restrictions are also listed in the easement, such as banquet facilities or outside storage which are not permitted. Weishaar added when the parties wanted to restrict something, it was put in the easement.

Metzler said if the Supreme Court had to analyze this agreement, they would review the contract language and the intent of those that signed it.

Horwitz said the contract speaks for itself. The intent of the contract was to allow all farm operations. The winery and additional buildings were added as a bargain for consideration. The provision for a winery is not in any other Conservation Easement within the Town.

Councilman Moore verified the request for the winery was first raised by the landowner at that time, and that language is specific to this parcel?

Horwitz stated yes, no other Conservation Easements in Town include a winery.

Councilman Quinn asked what are the next steps?

Horwitz said he recommends the Town Board authorize the Supervisor to send a memo to the Planning Board to resume deliberations on this application.

Metzler stated that the Town Board cannot recommend a decision, the approval falls to the Planning Board to evaluate.
Weishaar stated the project has gone through sketch plan concept review. The formal application for site plan review will be submitted and the application will go to a Public Hearing. Weishaar added that this application came to the Town Board because they had approved the original Conservation Easement and it needed to be verified that the proposal fit within that agreement. Our recommendation is that the application is consistent.

Metzler stated that residents have expressed concerns at the outset of this application, based on representations made by the applicant regarding the nature of this operation. Does the Conservation Easement permit a bar, saloon, party house, gathering place or large retail operation?

Weishaar stated that those are all restrictions.

Horwitz added that the commercial development rights were extinguished.

Metzler asked, if the applicant desires to expand upon the use, those are not permitted uses?

Weishaar stated that the ancillary uses are consistent with Agriculture and Markets Law. Any expansion would have to be reviewed at that time.

Metzler asked if the applicant requests additional uses, will that come back before the Town Board?

Horwitz stated those questions are premature, we don’t know the details the applicant will present during the application process. Those will be addressed at the time they become obvious.

Moore stated, there is language in the agreement prohibiting banquet facilities?

Horwitz stated yes. The Agriculture and Markets Law can be broadly interpreted, and the Conservation Easement adds additional limitations.

Weishaar stated what has been proposed by the applicant is allowed within the Conservation Easement.

Quinn asked if there are guidelines on alcohol consumption, as he shares the concerns of the residents regarding the placement of a “bar” at the end of their street.

Weishaar said that is not regulated locally, it is governed by the New York State Liquor Authority.
Quinn stated he strongly encourages the Planning Board to do their due diligence when reviewing the application pertaining to legal limits for consumption and sale of alcohol, to ensure residents that this is not a bar. This review should be evaluated under the restrictions of the Conservation Easement, the Agriculture and Markets Law and the New York State Liquor Authority.

Horwitz said yes, the Planning Board will examine the liquor license as well.

Weishaar said the Planning Board will review the structure to verify it looks like a farm. If in the future, there is a change in the operation, the structure will remain.

Moore asked for confirmation, the Town Board has no legal right to prevent this from going before the Planning Board, is that correct?

Horwitz stated yes. The Town is required by law, to have this go before the Planning Board.

Metzler stated that she has wrestled with this application, and added it is unusual for the Town Board to be reviewing this type of application. When businesses come into Town, they want to be a part of the community. She asked that the applicant listen to his neighbors and be a part of the community. Metzler continued to say, it saddens her that this east Penfield property was purchased because it is a beautiful piece of property. The people from that area are not being heard by the applicant. Metzler added, she feels for the residents and hopes the Planning Board has a better experience. The 2002 easement sought to preserve the agricultural fabric of our community, and she would like to see this venture embrace that as well.

Supervisor LaFountain stated that after review and analysis of all of the materials that have been submitted, the proposal is consistent within the easement. The Town Board must refer this to the Planning Board based on the recommendations from the Town Attorney. LaFountain stated he will draft a memo for review of this application and it will move forward to the Planning Board.

Moore stated he concurs with Councilwoman Metzler. Moore hopes the Planning Board and the applicant will hear this Board’s concerns.

Metzler stated that she has great constraint moving forward. Farmers embrace other farming operations; she asked that the applicant consider the neighborhood. This will ultimately make for a successful venture. As we have experienced in Town, when businesses alienate their neighbors, they do not succeed.
LaFountain said he will draft a memo for review by Town Attorney Horwitz and the Town Board. When completed, the memo will also be posted on the Town’s website. This application will go before the Planning Board.

2. Abbington Place Subdivision, Section V, 1229 Fairport Nine Mile Point Road – Costello
Jim Costello reviewed that the Public Hearing was held July 20, 2016. All of the PRC comments have been addressed. The comments pertaining to the extension of the stub road will be listed as a Condition of Approval. The last phase of the project will be coming shortly.

The Board discussed and agreed to approve.

Supervisor LaFountain directed Costello to prepare a Resolution for the next Legislative Session on August 3, 2016.

Public Works - None
Public Safety - None
Community Services - None

VII. INFORMATIONAL ITEMS

Law and Finance
1. Sign Ordinance Update – Costello/LaFountain
Supervisor LaFountain stated that he met with Jim Costello and Town Attorney Horwitz regarding the Sign Ordinance. Both the Town Board and the Zoning Board have reviewed requests for multiple signs and some applications have been approved and others have not. The Town needs to support the business community. The Ordinance will be reviewed for revisions and refinements and submitted to the Town Board for approval. Town businesses need to be properly represented. The Town Board and the Zoning Board have been allowing additional signage that falls within the total square footage allowance. Multiple signs within square footage requirements may be more appropriate for specific areas rather than one (1) large sign.

LaFountain added that event signage is allowed a specific number of times per year. We will also review this again within the business districts in Town. This signage helps businesses grow and flourish. We will meet with Andy Suveges, Code Compliance Officer over the next couple of months. LaFountain concluded with this review we will look to revamp the Sign Ordinance in the coming months. This will be a held item for future agendas.

Public Works - None
Public Safety - None
Community Services - None
VIII. HELD ITEMS
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3. Preservation of Curb Cut and Parking Requirement Relief, 2136 Penfield Road – Costello
4. Jeff Luce, 1357 Marchner Road – Out of District Sewer – Valentine
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6. 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 – None

XII. Adjournment – Supervisor LaFountain adjourned the regular Work Session at 7:43 PM.

Lisa Grosser, RMC
Deputy Town Clerk