

**TOWN BOARD OF THE TOWN OF LIBERTY
PUBLIC HEARING
February 18, 2014 6:50 P.M.**

At a Public Hearing of the Liberty Town Board held on February 18, 2014 at 6:50 pm at Town Hall, 120 North Main Street, Liberty, NY, to hear oral and written comments from concerned citizens with regard to Introductory Local Law No. 6 of 2013 entitled "Amending certain definitions and certain schedules of district regulations in the Zoning Law". The following board members were present:

Present: Supervisor Charlie Barbuti
Councilperson Dean Farrand
Councilperson Thomas Hasbrouck
Councilperson Russell Reeves

Absent: Councilperson Brian McPhillips

Recording Secretary: Town Clerk Laurie Dutcher

Also present:

Finance Director Earl Bertsch	Carol Montana	Jen Flad
Budget & Accounting Coordinator Cheryl Gerow	Jeffrey Baker Joan Kittredge	Barbara & Eric Taylor Cora Edwards
Deputy Town Clerk Sara Sprague	Alan Scott	Matt DeWitt

Supervisor Barbuti called the meeting to order at 6:50 p.m.

Jeffrey Baker attorney for Joan Kittredge read the following statement:

Re: Introductory Local Law 6 of 2013

Dear Supervisor Barbuti and Members of the Town Board,

These comments are submitted on behalf of Joan Kittredge and Robert Shapiro on Introductory Local Law 6 of 2013, the proposed amendments to the Town of Liberty Zoning Law. The proposed amendments represent a dramatic shift in the scope and nature of the Town's zoning law which will expose the town to virtually unfettered and unregulated development. The amendments are contrary to the Town's Comprehensive Plan and the statements in the EAF are contrary to both the Town zoning law and SEQRA. As a result the

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Negative Declaration which we understand was adopted at the last Town Board meeting must be rescinded as it has fundamental legal flaws. We strongly urge the Town Board not to adopt these amendments, however, if it does decide to proceed, it can only do so by rescinding the Negative Declaration and preparing an Environmental Impact Statement.

1. Changes to the AC District

The primary change in the AC District is the reduction of the minimum lot size from 10 to 5 acres. This is a dramatic reversal from the previous amendments to the zoning code in 2011 where the minimum lot size at that time was increased from 2 acres to 10 acres. The 2008

Comprehensive Plan, the 2009 Agricultural and Farmland Protection Plan and the 2011 zoning amendments were the product of extensive community input and discussion which recognized the need to protect the rural character of the town and its agricultural and natural

While there have been a variety of meetings in the Town over the past year to consider possible zoning amendments, these amendments have focused on the hamlet centers, and we are not aware of any significant discussions regarding reducing the minimum lot size in the AC district by fifty percent. Ms. Kittredge wrote to the Town Board in May and June 2013 when this issue was first raised and pointed out how the change was inconsistent with the Comprehensive Plan and prior zoning efforts, but there was never any response to that letter, either in writing, or in any discussion at the Town Board level

It is our understanding that one of the purported reasons for this reduction in lot size is to conform with existing lot sizes in areas adjoining hamlet centers, specifically where Route 52 intersects with the core of the White Sulphur Spring hamlet. We are not aware of the Town undertaking any comprehensive assessment of the prevalence of undeveloped lots that are under 10 acres in size, the degree of road frontage of those lots or the appropriateness of subdivision of those lots. In other words, there has been no record made of why this change is necessary and what effect it will have. Clearly, for the majority of the AC district, the reduction in the minimum lot size will have a major impact by literally doubling the number of lots that could be created and permanently altering the character of the area.

If the Town Board truly believes that large lot zoning is inappropriate throughout the currently mapped AC district, it should consider a compromise amendment that redistricts areas near the hamlets and Route 52 to the RD district with its 3 acre minimum lot size. This would presumably meet the need the Town Board feels should be addressed and would comply with the goal of the Comprehensive Plan to provide transition zones from the more densely populated hamlet and SC zones to the more rural AC District without resulting in a wholesale change in the character of the AC District.

If the proposed reduction in minimum lot sizes is driven by a concern that some property owners find it difficult to create building lots for their children out of their larger holdings, there are other ways to address that issue. A simple remedy is to include a Homestead Allowance in the zoning code which allows property owners to subdivide a single lot for this purpose without destroying the character of the larger holding. For example, using a Homestead Allowance, a 30 acre lot could create a single 3 acre lot for the Homestead

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Allowance and the balance of the "parent parcel" could only be subdivided into the minimum 10 acre parcels. Many towns in New York State have included a provision similar to this in their zoning. Homestead zoning protects the legitimate interests of farmers to provide land for future generations of farm families without opening the door to inappropriate levels of small-lot development.

2. Changes to the SC District

The Town Board is proposing dramatic changes to the treatment of permitted uses in the SC District that will remove many significant uses from any review by the Planning Board. Either this is an inadvertent change by the Board which should be rejected, or if intended, it is a cynical attempt to allow for sprawl development within the present and any expanded SC zone.

The proposed amendments increase "other retail and service establishments" from 5,000 sq. ft. to 7,500 sq. ft. of floor area and "Convenience retail establishments" from 5,000 sq. ft. to 7,500 sq. ft. - and both have been moved from Special Uses to Principal Permitted Uses -allowing them to be built with only a building permit and without benefit of site plan review by the Town Planning Board. Additionally, "Eating and drinking places" have been added to Principal Permitted Uses with no size limitation other than the minimum lot size of 10,000 sq. ft- they too would require no site plan review. Under Special Uses, "Other retail and service establishments involving 7,500 sq. ft. but not more than 20,000 sq. ft" has been added.

It is one thing to increase the range of permitted commercial uses and their size in the SC District, but it is another to allow their construction without anything more than a building permit and not requiring any Planning Board approval or the opportunity for public comment. The proposed changes move those uses from requiring special use permits to simply designating them to the category of permitted uses. Sec. 147-26 of the zoning law states that site plan approval is required by the Planning Board "for all special uses and such other uses as specified in the Supplementary Regulations". However, none of the uses being removed from the Special Use category are included in the Supplementary Regulations (See, Article VI). Therefore none of those uses will be subject to site plan review by the Planning Board.

It takes little imagination to consider the wide range of retail stores, service establishments, restaurants and bars that would be allowed to be built without any review whatsoever provided the buildings meet the setback standards and building code requirements. The Planning Board would not be able to consider the location on the lots, design of the buildings, compatibility with surrounding uses, potential noise and odor issues, stormwater pollution, impacts to wetlands and traffic impacts. To put it simply and bluntly, the proposed changes would create an enormous loophole in the zoning law.

3. SEQRA Violations

The EAF accompanying the proposed law avoids any consideration of the potential environmental impacts of the modified Schedule of District Regulations by stating that "each use will require a complete review and approval of the location, size and specific elements of the development program when proposed." That statement is simply false. Because the uses

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are being removed from the category of special uses, they avoid all Planning Board approval. Since site plan and special use permit approval will not be required, the approval for each project will become ministerial and not discretionary and will no longer be subject to SEQRA. Thus, no application, either individually or cumulatively will be subject to any environmental impact review.

It is well established that even when a town board is making legislative changes to its zoning code, it must consider the range of potential impacts from those changes and may not defer the consideration of those impacts to some future review by a planning board. Matter of Lori Bergami v. Town Board of the Town of Rotterdam 97 A.D.3d 1018 (3d Dept. 2012). That fundamental rule is even more applicable in this case where there will not be any future review by the Planning Board. If the Town Board is determined to pursue this path, it must consider the environmental impacts of the full development of the SC district with a complete range of stores up to 7,500 sq. ft. and restaurants and bars of unlimited size. With the prospect of casino resorts in the town and the area, the Town Board must consider the likelihood that there will be an expansion of such development in the SC District and the likelihood of significant impacts.

The Town is also proceeding in a manner which constitutes classic illegal segmentation of its SEQRA obligations. The Town has already undertaken various changes to its zoning and is considering other changes, particularly a potential expansion of the SC District. The Town Board must consider all of these changes together and not proceed in a piece meal fashion which has the effect of arguing that individually the actions do not result in a significant adverse impact, but collectively would easily surpass the threshold required for an Environmental Impact Statement. All of these changes must also be considered in the context of the potential for casino resorts in or near the town and the impacts which will result.

While the previously scheduled hearing on this proposed law was postponed because of a snow storm, the Town Board nevertheless proceeded to adopt a Negative Declaration without the benefit of receiving public comment. Pursuant to the SEQRA regulations, anytime prior to a final decision on the action, the Town Board must rescind a Negative Declaration when new information is discovered that was not previously considered and the Town Board determines that a significant adverse environmental impact will result. 6 NYCRR §617.7(f). The foregoing fact that most of these projects will not be subject to a site plan review and the legal flaw in the reasoning that environmental considerations can be deferred constitute new information that the Town must take into account and rescind the Negative Declaration.

Taken together, these proposed challenges are significant and will have long-lasting impacts on the Town. The Town Board should not adopt amendments which are contrary to the adopted goals of maintaining the rural character of the Town and its hamlets, should not exempt an enormous category of uses from any planning control, and cannot proceed as if all of the zoning changes are unrelated and will not have the potential for an environmental impact. We trust that the Town Board will take a step back and proceed in a more thoughtful manner and comply with SEQRA.

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No one else wished to be heard and no written notices were received.

Adjourn

On a motion by Councilperson Dean Farrand, seconded by **Councilperson Thomas Hasbrouck** and carried, the Town Board adjourned the Public Hearing at 7:05 p.m.

Respectfully submitted,

Laurie Dutcher, Town Clerk