

TOWN BOARD OF THE TOWN OF LIBERTY
PUBLIC HEARING
October 20, 2014 6:50 P.M.

At a Public Hearing of the Liberty Town Board held on October 20, 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. 3 of 2014 entitled "amendment of §31-5 to Chapter 31 of the Code of the Town of Liberty. 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
Budget & Accounting Coordinator Cheryl Gerow
Deputy Town Clerk Sara Sprague
Carol Montana
Jeffrey Baker
Joan Kittredge
Alan Scott
Jen Flad
Barbara & Eric Taylor
Cora Edwards
Matt DeWitt

Supervisor Barbuti opened the Public Hearing at 6:50 p.m.

The following letter was received from:

Jeffrey S. Baker of Young & Sommer LLC on behalf of Joseph Alderisio

Hand Delivered

Hon. Charles Barbuti III Supervisor, Town of Liberty
120 North Main Street
Liberty, NY 12754
October 20, 2014

Re: Introductory Local Law 3 of 2014

Dear Supervisor Barbuti:

We represent Joseph Alderisio who owns a house and property at 306 Cutler Road in White Sulphur Springs. Mr. Alderisio's property is adjacent to the White Sulphur Homes project which is one of the two properties which are the subject of above referenced Introductory Local Law. Mr. Alderisio strongly objects to the law as it is in violation of Article 16 of the New York State Town Law and the State Environmental Quality Review Act.

This law is providing a special benefit for two projects (White Sulphur Home Subdivision and the Lake Marie Subdivision) owned by the same person, Paul Savad. The law intends to exempt those two projects from the 2011 comprehensive zoning amendments which increased the minimum lot size in the AC district from two to ten acres. There is no justification for special treatment for these projects and the Town Board is proceeding to grant these special benefits in a completely illegal manner.

I. Violation of Town Law Article 16

Introductory LL 3 of 2014 is characterized as an amendment of Chapter 31 of the Liberty Town Code. Chapter 31 provides for the creation of the Town Planning Board. This law purports to add a new section to Chapter 31 to grant additional authorization to the Planning Board. While this law is masquerading as an amendment of Chapter 31, it is in fact an amendment of the Town's zoning law, Chapter 147. That distinction is not a matter of semantics but has important legal implications that the Town Board is attempting to avoid by mislabeling this law. By labeling this an amendment of Chapter 31, the Town Board is attempting to avoid the provisions of General Municipal Law §239-m and Town Law §265.

1. General Municipal Law §239-m.

Referral to the Sullivan County Planning Board is required for certain actions affecting real property within 500 feet of specific items, including municipal boundaries and state and county roads. GML §239-m(3)(b). Among the actions affecting real property requiring referral are "the adoption or amendment of a zoning ordinance or local law" [GML §239-m(3)(a)(ii)] and "other

authorizations which a referring body may issue under the provisions of any zoning ordinance or local law" [GML §239-m(3)(a)(vi)].

Putting aside the question of whether the Town Board can designate LL 3 an amendment to the Planning Board law (Chapter 31) or the zoning law (Chapter 147), the fact remains that LL 3 is a local law affecting real property within the meaning of GML §239-m. Since the Town's sole authority to adopt land use laws stems from the grant of authority given by the state in Town Law Article 16 and §261, there cannot be any reasonable argument that this legislative action to carve out special zoning rules for select properties is not one of the actions requiring referral to the county planning board.

2. Town Law §265

By labeling LL 3 an amendment of Chapter 31, the Town Board is attempting to deprive Mr. Alderisio and other Town of Liberty property owners of their right under Town Law §265 to file protest petitions and thus require a super-majority vote of the Town Board before adoption. Town Law §265 allows, *inter alia*, for owners of 20% of the property adjacent to a property being rezoned to file a protest petition. By not recognizing that this is an amendment to the zoning law, the Town Board is improperly trying to prevent the public from exercising their statutory rights.

3. Failure to Comply with the Comprehensive Plan

By avoiding the recognition that LL 3 is an amendment of the zoning law, the Town Board is also avoiding its responsibility to assure that the proposed changes are consistent with the Town's comprehensive plan. Town Law §272-a. The 2011 comprehensive amendment of the zoning law was intended, in part, to reduce development in areas with natural constraints and was specifically intended to be in compliance with the comprehensive plan. (See, EAF and Negative Declaration for LL 1 of 2011). At that time, the Town Board that adopted those amendments was presumably well aware that projects were pending. Nevertheless the 2011 law did not provide for the exemption of pending applications, thus the need for such a provision was either never raised or the Town Board did not believe it was warranted.

4. Spot Zoning

By benefiting, by name, two specific properties, the Town Board is engaging in classically illegal spot zoning, if not contract zoning. The Town Board cannot reasonably determine that the zoning for these projects, at two-acres, are consistent with the character of surrounding properties that are large lots, including Mr. Alderisio's 50 acre parcel and which are protected by the 10 acre minimum lot size. As noted above, the comprehensive plan recognizes the natural constraints of the land in this area and determined that small lot development was not appropriate. This law, if adopted, would create incongruous development in a primarily rural area of the town.

II. SEQRA

Since this law changes the zoning regulations for these two projects, it is an "action" under SEQRA and the Town Board must comply with SEQRA before adopting the law. To date, the

Town Board has operated in complete violation of SEQRA.

1. The Law is a Type I Action

Rather than recognize that this is an "action" subject to SEQRA, the Notice of this public hearing states that the law is a Type II SEQRA action, meaning that as a matter of law it is exempt from SEQRA review. 6 NYCRR § 617.5(a). However, the Notice does not identify under which action listed under 6 NYCRR §617.5(c) this law falls. The reason for that lack of specificity is because the law does not qualify under any of the actions comprising the Type II list.

In fact, the law is the opposite of a Type II action – it is a Type I action, a category of actions that are likely to require the preparation of an environmental impact statement. While the Town Board may try to cloak this law as something else, it is, without any doubt a zone change that amends the bulk requirements that are applicable to the subject parcels. And the zone change is being made at the request of an applicant (6 NYCRR §617.4(b)(3)) that meets or exceeds one or more of the thresholds elsewhere in the Type I list. *See* 6 NYCRR §617.4(b)(2)("the adoption of changes in the allowable uses within any zoning district affecting 25 or more acres").¹ Even if the Town Board were to wrongfully characterize the action as "Unlisted" it would still be a Type I action because it involves a non-agricultural use that is located wholly or partially within an agricultural district and exceeds 25 percent of the threshold for Type I residential projects. *See* 6 NYCRR § 617.4(b)(8) and (5).

¹The White Sulphur Homes subdivision alone is over 70 acres.

2. The Town Board Must Prepare an EAF

According to the Town Clerk, an EAF has not been prepared for this law, thus the Town Board has failed to identify the relevant areas of environmental concern and has failed to take a hard look at the potential environmental impacts. The White Sulphur Homes project alone presents significant issues regarding stormwater runoff, impacts to wildlife, threats to local water quality and the water supplies of neighboring properties, traffic and community character. Nevertheless, the Town Board is ignoring its SEQRA obligations.

3. The Town Board May Not Defer to a Future Planning Board Review

The Town Board cannot defer consideration of the environmental impacts of this action to the Planning Board when it undertakes its project specific reviews. This law is granting the power to the Planning Board to reduce the minimum lot size mandated in the Town Zoning Law and apply a different standard creating the potential for significant adverse environmental impacts that the Town Board has refused to identify or analyze. This is exactly the kind of situation that SEQRA is intended to prevent. 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).

4. The Town Board May Not Segment the SEQRA Review of Zoning Changes

The Town Board has been engaged for some time in the consideration of a wide range of amendments to the Zoning Law, including changing the list and terms of permitted uses and changing the minimum lot size in the AC district. It is our understanding that the Town Board is considering reducing the minimum lot size to 5 acres. While Mr. Alderisio does not support that reduction, if the Town Board is considering a broader change in the dimensional requirements in the AC district, along with other zoning changes, it cannot proceed with permitting these two projects to proceed without considering the broader environmental impacts of the other potential changes to the zoning law.

III. Effect of LL 4 of 2013

A year ago the Town Board adopted the first purported amendment to Chapter 31 of the Town Code to allow for the special treatment of these projects. That law, with all of its legal infirmities, is still subject to judicial review and does not protect the current proposed law from legal challenge.

Mr. Alderisio did not comment or challenge LL 4 of 2013 because he had absolutely no knowledge of its contents or its potential to impact his property. The text of LL 4 of 2013 did not identify the projects to which it applied. It only referred to a class of projects whose applications were pending when the 2011 zoning law was adopted. As the Town Board is well

aware, I represented Joan Kittredge at the time of consideration of LL 4 of 2013, and it was not until the November 2013 public hearing that the Town Board finally identified the projects to which the law applied, which were not near Mrs. Kittredge's property. Thereafter, at my request, the Town Board identified the projects in the resolution adopting LL 4 of 2013. Obviously, without any prior identification of what projects were covered, the public did not have any actual notice of the scope of the law and thereby were deprived of a meaningful opportunity to comment.

All of the legal issues associated with this law, were previously raised to the Town Board for the 2013 law, nevertheless the Town Board proceeded at its own risk. The unconstitutionality of LL 4 of 2013 can still be challenged, as well as the Town Board acting *ultra vires* in violation of Article 16 and failing to comply with General Municipal Law § 239-m. The current law has the same legal flaws and revives the SEQRA claim as this is a new action extending the scope of the 2013 law for another year.

IV Conclusion

The Town Board should not attempt this backdoor maneuver to amend the zoning law for one particular developer. If the Town Board desires to entertain Mr. Savad's request for a zone change, it should do so in accordance with the law by complying with Town Law §265, General Municipal Law §239-m and SEQRA and it should do so in the context of the other zoning amendments it is contemplating. It is our hope that the Town Board will avoid unnecessary litigation and reject this clearly illegal law.

Mary Heinle

Presentation by Mary Heinle Oct. 20, 2014 at 6:30p.m. public hearing

First I want to commend the wording of the hearing notice, not obscuring the fact that it pertains to only the 2 parcels: Lake Marie Homes and White Sulphur Homes and also for having the hearing 6:30p.m. before the 7pm. evening meeting when working people can attend. Too bad this wasn't done last fall instead of the wordy notice; not mentioning that only these 2 parcels were being considered and the hearing held 3:50 p.m. before the department head meeting. Since the original resolution could pertain to other properties, it was later clarified that it applied to just these 2 afore mentioned parcels. Obscuring facts makes one question the Board's integrity.

I am speaking with concerns for the White Sulphur Homes area.

The Local Law proposals are steps in the faces of all those who worked on the Comprehensive plan and zoning map in effect and all those who came to the White Sulphur Hamlet Committee's first public meeting 5-23-13 expressing gratification that this White Sulphur Homes area was back in an AG zone. And it's a slap in the face of those on the Hamlet committee. The chairperson had no idea 6 months after the Local Law change when the Hamlet Committee met May 28 for their first meeting this year that this property was allowing one acre residential sites. They are showing a map at their public meeting Aug. 21 with this area designated AG. No answer was given when people questioned this. Dean Farrand told me at the 4-7-14 Board meeting when I asked if any changes had been made to the 2011 zoning map, that none had been made.

The local Law change made last Fall allowed the developer to proceed with his original plan and have details finalized by 12-31-14. However, the map presented is not that of the original project. This map was presented after the zoning map change and should follow the terms of the current zoning map. As an analogy: If I go to the bank to purchase a CD, the rate is 3% and I decide to wait another month. When I go back the rate is 2%. I don't think that the bank will change their rules to let me have the 3% even though I showed them that I had the money at that time. And so the developer sat back and in the interim things changed. Proper hearings were held when the new map was adopted. This project, which I stated before, is a new project. The planning board has been approached about changes from the original map to the new map. Yes, this is a new project presented after the zoning change and should follow the current 10 acre lots or wait and see what changes the Board will make. This property with homes on larger parcels would add to the current rural charm of the area. Each parcel would have private septic thus alleviating concerns of a failed septic system serving 30 homes. Also sewer wells would need to be drilled. Currently this is an area of larger lots. When the Polys bought their house, they also bought the extra lot. I understand the Beseths have purchased an extra lot.

The developer agreed to the 12-31-14 deadlines when you made the local Law change. At last month's meeting, he made the Board the "Bad Guys" for causing delays for his projects and asked for this extension to 12-31-15. Will this result in asking for one concession after the other? My basic argument is that this is a new project and this extension is not merited and the Basic Law change should never have been made.

Lillian Stettner

Mrs. Stettner advised Mr. Savad said he would charge each house \$500 for the septic but what happens if he doesn't sell all the houses will the taxpayers have to pick up the bill?

Mrs. Stettner stated she felt that this goes against what the White Sulphur Springs Hamlet Committee felt was right for their area.

Ron Cobb

The developer has been working on this project since 2006 and the plans have not changed that much. An on-site sewer disposal system was approved by the DEC and they have met all the density requirements at the time. Lake Marie Homes also had an on-site sewer disposal system but a moratorium was placed on them for (2) years.

The Loomis plant had problems with the DEC. They then had an upgrade and came to them to allow them to connect to it.

There have been several public hearings on both developments.

Lake Marie project has received approvals from the DEC & DOH and in the spring of 2014 they went back and designed a master plan to connect to and annex into the Loomis Sewer District. This plan was finally approved this spring. All the Town Board and Planning Board requirements have been met and now they have to send it on to the upper levels for approval.

Paul Savad

Mr. Savad advised the board that when this project was first submitted he was told by Attorney Garigliano this was the first application in (25) years to build new residential homes. He stated that they have complied with every request of the Town Board and the Planning Board and he would just like an opportunity to build new homes in the Town of Liberty.

Mr. Savad stated this law is neutral to any and all projects and when the Town first introduced it they had to research what projects it even applied to.

Representative from Young & Sommers LLC

The representative from Young & Sommers LLC advised the Board that the zoning was changed as this project developed. The Town adopted Comprehensive Zoning in 2011 and under NYS Law the Zoning Law envisions 10 acre minimum lot sizes in that district. She explained that the Zoning can be changed but that it was a zoning change and requires a different procedure and a different application. It also requires SEQR review notice and procedural safeguards as in the NYS Town Law.

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

Adjourn

On a motion by Councilperson Dean Farrand, seconded by **Councilperson Russell Reeves** and carried, the Town Board adjourned the Public Hearing at 6:58 p.m.

Respectfully submitted,

Laurie Dutcher, Town Clerk