

**TOWN OF LIBERTY
PLANNING BOARD MINUTES
July 10, 2012**

MEMBERS PRESENT

Lynn Dowe, Chairman
Ray Kelly
John Van Etten
Denise Birmingham
Peter Stettner, Alternate

ABSENT

Vincent McPhillips
Lydia Rolle, Alternate

ALSO PRESENT

Walter F. Garigliano, Town Attorney
Mark Van Etten, Building CEO
See attached sign in sheet

CHAIRMAN LYNN DOWE CALLED THE MEETING TO ORDER AT 7:05 PM.

ON MOTION MADE BY JOHN VAN ETTEN AND SECONDED BY RAY KELLY, THE BOARD UNANIMOUSLY APPROVED THE MINUTES FOR JUNE 19, 2012 WITH TWO CORRECTIONS. ALL IN FAVOR, APPROVED.

PUBLIC HEARING:

Ben Weitsman & Son of Liberty, LLC
Special Use Permit
Sheehan Road
SBL: 13-1-7.1, 13-1-7.2, 18-1-31 & 18-1-36.2
Zone: IC #2011-0021

PLANNING BOARD MEMBER JOHN VAN ETTEN RECUSED HIMSELF FROM THIS DISCUSSION AS HE OWNS A PROPERTY WITHIN 500 FEET OF THE APPLICANT PROJECT. MEMBER DENISE BIRMINGHAM RECUSED HERSELF BECAUSE SHE DID SURVEY WORK FOR THE PROPERTY OWNER ON THE SUBJECT PREMISES IN THE PAST.

Fifteen hearing notices were sent, 13 green cards received, 2 outstanding.

Chairman Dowe asked if there was anyone from the public who had any questions or comments.

Jeffrey Cohen read to the Board his comments, giving a copy of same to the Secretary. They are attached at the end of the minutes.

Dan Ratner spoke saying he has lived there over 35 years and has been present at the Town Board meetings on this project and many questions were answered as things have been presented and prepared. He said that Sullivan County has had many changes, he remembers

skiing and Liberty having five (5) shoe stores, and even the Chamber of Commerce has changed. He also said he remembers seeing tractor/trailers going back and forth on Sheehan Road in the past. He said we need large businesses to come and help the tax base, not carpetbaggers that come, say they're going to do a lot, then leave. He believes Weitsman is a valuable business and the Town should welcome them, give them a chance.

Brad Burnet of Ironic spoke saying that it took him many months to go through the process and he needed to have a site plan. He said he also has a place in Cuddebackville and that he knows there is not that much scrap available, it is at an all time low. The Town doesn't need more scrap yards. Mr. Burnet said he believed the Town slid Zalkin through, and that Zalkin stayed in business, easing out and now his license is being moved to a new site. He said as for his own business when he wants to take in copper or brass, he is asked if he has ever taken in copper or brass before and proves it with affidavits. Same thing with tin, he has to prove his previous experience with tin with affidavits.

John Nichols spoke. He said that this project will provide jobs and tax revenue not seen in many years. Plus spin off jobs. He said that this owner runs a clean business and that he knows some Board members went to the owner's other sites to see his operations. He said the Town citizens can't keep every project out, that we can't afford to do that anymore. The Town citizens should consider this as positive.

Charlie Barbuti spoke saying that he was confident the Planning Board would act in the interest of the Town and abide by the rules. The rules don't change just because someone doesn't like the rule. He said he looked through the project and it was hard to find something not positive. He said he can't get into bad debt debates at this meeting, but that strip of land is only good for IC, no houses would be built there. It would be easy for the truck to get to without going through the village as the ramp from 17/86 is right there. He said as for noise level, just stepping outside his business door on South Main Street – the noise is deafening and that's in the Village. As far as the Comprehensive Plan, he likened it to the Bible where you can always find what you need to make your point. He said on page 12 #10 one of the objectives was to increase tax rateables. On page 16 one of the tasks was to reduce garbage and increase recycling opportunities. He said he had confidence in the Planning Board to keep the Town's interest in mind as it reviewed the comments and abided by the rules.

Tim Edwards spoke saying that he was unaware of the project until he saw a surveyor in his yard. That he has three little kids there and he would also have trouble going in and out of his own driveway.

Howard Perez spoke first stating that he was an architect for the last 15 years in Puerto Rico, New Jersey and New York. That he bought his house 12 years ago for \$45,000 and put in about \$400,000 in renovations and repairs as it had been empty with no water and sewer for 18 years before he purchased it. He asked that the Board review the comments of Jeffrey Cohen and that he agrees with them.

Helene Rothstein said she only received her notification of this on the 9th. She said she had some questions who should she ask. She was told she could ask questions and make comments but none would be answered until after the public hearing, that it wasn't a question/answer period. She was shown the map and she then said that her concerns were fluid recovery and waste treatment, how long would it be stored, what contingency did the Town have for fires and toxic fumes, how many vehicles per day in traffic, noise levels, was there to be a shear machine. She said the traffic report was not very clear. She also wanted to know if the hours of operation were to be seven days a week from 8:00 a.m. to midnight.

Chairman Dowe asked if there was anyone else that had a comment from the public.

There was no response from the public.

ON A MOTION MADE BY RAY KELLY, SECONDED BY PETER STETTNER, THE PUBLIC HEARING WAS CLOSED. ALL IN FAVOR. APPROVED.

Due to the fact that there was no quorum, there was no presentation or answer to public comments by the applicant or his engineers. There will be a 10 day period after the meeting for written comment on this project up to and including July 20th.

PLANNING BOARD MEMBERS JOHN VAN ETEN AND DENISE BIRMINGHAM RETURN TO ACTIVE PARTICIPANTS.

Ester Newhouse
8 lot Subdivision
Twin Bridge Road
SBL: 30.-1-88
Zone: R-1 #2011-0015

Randy Wasson appeared for this project. He supplied a letter from the Department of Health, by Glenn Illing, P.E. that says that the plan sheets are acceptable for their preliminary approval. Final approval from the DOH will be given once they receive Randy's full drawing package with his P.E. seal and signature on all sheets and a certified Plat Plan sealed and signed by the NYS Licensed Land Surveyor. After a short discussion it was determined that the project could be considered complete.

ON A MOTION BY JOHN VAN ETEN, SECONDED BY DENISE BIRMINGHAM THE APPLICATION FOR THE 8-LOT SUBDIVISION WAS APPROVED WITH THE CONDITION OF FINAL APPROVAL BY THE DEPARTMENT OF HEALTH AFTER WHICH OUR MAPS CAN BE SIGNED. ALL IN FAVOR. APPROVED.

Yeshiva Letzirim Inc.
Special Use Permit
85 Ferndale Loomis Road
SBL: 35.-2-18.1 & 18.2
Zone: RD #2011-0014

Bill Sattler appeared for this project. Several issues were brought to the attention of the Board, one of which was the fact that on the approved plans there was to be a 6 inch line coming in and what the Code Enforcement Officer, Mark Van Etten saw when he went out there was a 2 inch plastic line. The DOH closed down their well as unstable which means they will “have” to go back to Town water. Mark said he has not received any water flow information for what the sprinklers are going to be or a letter from the fire department saying okay.

A discussion proceeded where it was determined that the buildings, road, waterline and other issues were not being done according to the approved plan. Six out of the eight buildings had changed location, the road moved 10 to 15 feet from the approved plan, the matter of the 6 inch water line, elimination of a fire hydrant with no paperwork involved, the issue of sprinklers as to whether they are required by law or not required. There is also the issue of the main building where they made the shul larger increasing the square footage there. After much discussion it was determined that the issue of the sprinklers would be submitted to Glenn Smith by Mark Van Etten, the Code Enforcement Officer. Mark Van Etten said that he would do so and the work would be stopped at the site until the issues were cleared up and the sheet rock torn out along with other items that were done incorrectly. Bill was asked to submit an amended application and to do an overlay showing the proposed changes. Mark has had a stop work order in place since Friday July 7th. Nancy will call Chris at Adler’s office to give the amount required in Escrow for the Town Engineer review on the sprinklers, which amount would need to be paid before the project was sent to the Town Engineer.

Hudson Valley Foie Gras
Special Use Permit
Brooks Road
SBL: 46.-1-32.1
Zone: IC #2012-0017

Marcus Henley and Stephen Darcangelo, P.E. appeared for this project. There were no changes in the plans. Stephen reiterated the project saying that the expansion of the building would have a gravel drive on three sides and a walk in cooler. It would be for new processing and have a small addition for waste water. The building would not be heated or cooled it would have ventilation only. John Van Etten asked if there would be any external lighting as none was shown. It was determined that it could be horizontal cut off lighting with the light extending to the edge of the gravel. It could be shown on sheet 5. Stephen agreed to do so. It was determined that the building would be fire and energy compliant the sloped floor would be a

30 % grade to the ground. It was determined that this project does not require 239 review. Attorney Garigliano did the SEQR form.

ON A MOTION MADE BY JOHN VAN ETTEN, SECONDED BY RAY KELLY, A NEGATIVE DECLARATION WAS DECLARED ON HUDSON VALLEY FOIE GRAS. ALL IN FAVOR. APPROVED.

A public hearing will be held on July 24, 2012. Mr. Henley was asked if there would be additional ducks or just new processing. He said due to the fact that foie gras has been banned in the State of California and it has hurt business, the expansion would be used for processing and he would be diversifying and adding new products.

Allen Scott from the Sullivan County Partnership for Economic Development stood and said that he was impressed with the progress of the process and that this expansion would be creating 12 new jobs, two of them administrative.

BSD, LLC a/k/a Liberty Business Park

Special Use Permit

Harris Road

SBL: 41.-1-27

Zone: IC #2011-0020

Gerard Fitamant, PE and Rajeev Raina, Project Engineer appeared for this project. They distributed large binders with updated information to all Board members and copies for the Planning Board files. They answered the review comments of Town Engineer, Glenn Smith. The first being the site distance issue. They now have a site distance of 930' and 850' which will accommodate a large @67 size truck. They have moved the septic and shown wells and setbacks. They are still conceptual on lots #2 & 3. They have been working on the soil erosion and sediment control issues. The logging trail has been started and is progressing according to plan. They did perk rates which were originally hoped for to be 60 minutes for in 1 inch which is in actuality only 30 minutes for 1 inch which is much better. The septic location may adjust due to the perk. It was determined that no further public hearing would be needed as there was only one public comment, no changes significant enough to require a public hearing. Attorney Garigliano would work on a resolution for this project for preliminary subdivision approval.

White Sulphur Homes

Subdivision

White Sulphur Road

SBL 38-1-43 & 34.12

Zone: AC / RS #2006-0038

Ron Cobb and Paul Savad appeared for this project. They wanted to appear to let the Planning Board know this is still an active project. They are waiting for the Town Board to pass the local law concerning package plants. It was determined that the SEQR still needs to be done at the Town Board level. The Planning Board will need a letter from Terry Kelly who was the review engineer for the Town on this project originally, with regard to the new locations of houses 28, 29 and 30 to the wetlands. This project will only go for public hearing after the SEQR is done and the local law passed by the Town Board.

Lake Marie Homes

Subdivision

Lake Marie Road / NYS Route 52

SBL 35-2-7

Zone: RD / SC #2006-0039

Ron Cobb and Paul Savad appeared for this project. They wanted to appear to let the Planning Board know this is still an active project. They wanted it to be clear that they have complied with requirements to this point. They are now waiting on the Loomis Plant hookup, which they are told would be sometime in April of 2015. They will come before the Town Board for that in October of 2014. They would be put on the Planning Board agenda at that time as well.

ON A MOTION BY JOHN VAN ETEN AND SECONDED BY RAY KELLY, THE MEETING WAS ADJOURNED AT 9:45 PM.

Respectfully submitted,

Nancy Saucier, Planning Board Secretary

The foregoing represents unapproved minutes of the Town of Liberty's Planning Board from a meeting held on July 10, 2012 are not to be construed as the final official minutes until so approved.

X Approved as read

THE FOLLOWING PAGES ARE THE PUBLIC COMMENT FROM THE PUBLIC HEARING:

7/10/12

Dear Planning Board Members,

Good evening.

I would like to thank you for taking the time to listen to my comments tonight as they relate to issues associated with the proposed Ben Weitsman and Sons, Liberty Transfer Station located at Sheehan Road off exit 99. Introduction of a junkyard at the proposed location will be accompanied by many changes which need to be fully enumerated, explained, examined, and assessed, including looking at the total project as a whole. The primary concerns that I want to address tonight are: 1) several legal issues associated with the permit application, rezoning of the site and conformity to the objectives of development for the proposed location; 2) performing a more complete analysis of traffic impacts due to the proposed operation and potential safety and liability concern associated with the interstate exit; 3) asking for a more complete study to truly assess the larger impact on jobs in the area; 4) more comprehensive estimation of the noise impacts associated with the project, including how these are expected to vary in space and time of day; 5) the fact that the current process being followed for the proposed junkyard are non-compliant with the statute in the Town expressly governing junkyards; and 6) a clear explanation of the custody of ownership of any past, present, and future liability for potential contamination at the former Zalkin site as the business ownership and location is transferred as this presents a serious long-term, high-resource liability to the Town and should be considered in detail.

In 2008 the Joint Comprehensive Plan, on page 11, discusses Economic Development Objectives. The first three listed are as follow: 1) work towards a diversified tourism industry with a balance mix of year round activities; 2) preserve and protect historic sites and landscapes to foster stewardship among Liberty residents; and 3) promote an attractive image of Liberty to tourists. This junkyard – in this location – goes against all these objectives in the Joint Comprehensive Plan. As a matter of fact, I have yet to hear from any Town Representative why this location will be beneficial to the town and its residents. I don't even think it is a good location for Ben Weitsman and Sons as I will now point out some of the many flaws with this location.

First, the special use permit application depends on the property being zoned IC. Currently, there is an Article 78 proceeding challenging the Town's alleged "correction" of the zoning so that it would be IC instead of residential. If the court agrees with the arguments of petitioners the "correction" would be rolled back and the property in question would be zoned residential. In this case the proposed use would be impermissible. The Planning Board should wait until the court acts before considering the application for a special use permit. In addition, I would like to mention that the application, along with the petition to the town, are incorrect. In that applicant Ben Weitsman and Sons of Liberty, L.L.C. did not exist in October

2011 when they applied. In fact, it wasn't until the lawsuit was filed – and not until April 2012 – that this business was registered as a legal entity.

In reviewing the incomplete SEQR appendix A on file in the Town Hall, I would like to point out some discrepancies.

- On page 9 (C7): *What are the predominant land uses and zoning classifications within a ¼ mile radius of proposed action?* They only listed Highway, Industrial and Commercial. As a matter of fact, most of the surrounding land is R-2 and R-1 – high and low density residential, respectively. Why was that left out? That needs to be included and understood.
- On page 9 (C8): *Is the proposed action compatible with adjoin/surrounding land use within a ¼ mile?* YES has been checked, however it clearly should be checked NO. As stated above there is a large residential area surrounding this property and the Town of Liberty district intent chart (bulk and use) states. "IC-Industrial commercial: This district is intended to provide areas within the town for the development of job producing business and industrial use where such enterprise can be assured that their activities will not be in conflict with residential use. Development of this zone should reflect the rural quality of the town and should follow designs guidelines to ensure buildings are compatible." This location will be in direct conflict with residential use.

Switching gears, I would like to bring up the traffic study discussed in page 5 (B1g) and page 10 (C12a). There is a major traffic problem which still needs to be addressed.

- There seems to be a sight distance issue for people coming off the highway and going into town; they will never have enough sight distant or time to stop, with cars and tractor trailers coming in and out of Sheehan Rd. It is stated that there will be 133 vehicles per hour coming out or going into Sheehan Rd. That's more than one every 30 seconds! This now becomes a major liability. The sight distance as it stands now does not meet legal minimum distance requirements for sight on an exit ramp to an Interstate.
- What about traffic coming down Parksville Rd. towards Liberty and wanting to make a left to get onto the exit road? It is a blind spot from Sheehan Rd. making that same left they would not see the oncoming traffic. Now you have a 2nd liability.
- For tractor trailers to make the right turn onto Sheehan road from the exit road they are going to have to make a wide-swinging left into oncoming traffic to make that right turn into Sheehan Rd. Now that's a 3rd liability.
- The last thing about traffic I would like to point out is the 33 ft wide right of way that Ben Weitsman and Sons will be using to access the property. First, I am not sure it is legally wide enough for two way traffic – especially with large tractor trailers. Secondly, that right of way also runs through the property towards the back, so I don't think you can put up a locked gate to block access and I certainly don't think you can build a building in the middle of a right of way. All these questions will need to be answered.

Moving now to jobs. Page 6 (B9 and 10) states 10-12 jobs are going to be created and none will be eliminated. This is a gross over-simplification requiring a more

thorough analysis. From a macroeconomics point of view putting this junkyard in this location may actually have a net-negative job impact on the town. Let me explain by way of example. Mrs. Jafri in the Catskill Motel has told the Town Board that the project will severely affect her business especially because she has a lovely outdoor sitting area her customers enjoy. Due to the proximity to the junkyard her business suffers, as revenue goes down because less people want to stay at her motel. She now needs to lay off three employees because she can no longer afford to pay them. The laid off employees have no money to spend in town or the village. Fewer tourists are coming to her place to stay overnight, so now less people are coming into town to eat, get gas or buy sneakers. In addition, because the junkyard would be right on the Interstate exit, people will tend to avoid the area – keep driving – and will go elsewhere to spend their time and money. So now the businesses in town are doing less business, so they have less revenue to pay their employees. If ten to twelve businesses in town each end up having to lay off one employee due to a slowing economy associated with this junkyard, that's more unemployed people in town, so where is the net growth promised? However, if you put the junkyard in the large industrial district south of Ferndale, you can have your 10-12 jobs and now Mrs. Jafi doesn't have to lay anyone off because people will continue to come to her motel and the travelling public will be more inclined to stop into town for something to eat or fill up with gas. A more complete economic impact study should be commissioned.

Now I would like to move onto noise. First, the Town Board will have to review the local law to update the present noise ordinance because it's from 1998 and out of date. It only mentions maximum noise levels of 60. I would like to talk more about noise but neither I nor Nancy were able to find the noise study that we were told was done. There was only a brief mention of noise in the 5/1/12 minutes where Mr. Toffe said he did a quick check and the noise at the center of the property was low 70's and on Parksville Rd. was 85. It is not clear if these figures represent a momentary check when a motorcycle drove by or a base level reading. When I first heard about the project I asked someone who is an acoustical engineer what the effect would be for me. He told me I was lucky to be at the top of the hill and upwind because sound mostly travels horizontal and in the direction of the wind. From that point of view those spot checks seem extremely inaccurate and misleading. It also means that all the noise, dust and dirt produced at the sit of the junkyard will travel directly into the village especially with the constant winds coming out of the valley from Parksville.

In 2001 the Town of Liberty updated their Junkyard Law it reads as follow:

~ 93-1. Purpose.

This chapter is enacted for the purpose of establishing minimum health and safety standards for Junkyards in the Town of Liberty as well as controlling their location so as to limit problems of Incompatibility with other activities. The regulations are enacted pursuant to the authority granted towns by ~ 136 of the General Municipal Law and ~ 136.1 of the Town Law as well as the Municipal Home Rule Law.

93-2. Jurisdiction and scope.

A. This chapter shall apply to all junkyards in the Town of Liberty. All junkyards shall be required to conform to said standards or be removed at the owner's expense.

~ 93-4. License required.

E. The Code Enforcement Officer shall not issue a license in any instance where the Planning Board has not approved the site plan.

~ 93-5. Prohibition of new junkyards.

The Town of Liberty, for the purposes of preventing damage to the rights of adjacent landowners and promoting the interests of the community as a whole in retaining a clean and attractive environment conducive to a high quality of life and the promotion of tourism, hereby prohibits the establishment of new junkyards within the town.

~ 93-6. Standards applicable to existing junkyards.

All existing junkyards shall conform to the following standards:

A. Existing junkyards, within a period of two years following the effective date of this chapter, shall be removed unless a license shall have been obtained for continued operation and the facility has been made to conform to the regulations provided below. The Town of Liberty Code Enforcement Officer shall be responsible for notifying the owners of existing junkyards of any nonconformities and shall, additionally, inform all owners of existing junkyards of the action which must be taken to comply with this chapter, the time available to take those actions and the consequences of violations.

C. Applications for licenses to continue operation of existing junkyards shall include a site plan prepared by a professional engineer depicting the existing operation and any planned improvements as may be required by this chapter.

F. The initial license application for the existing nonconforming junkyard shall be processed in a manner identical to that for special use applications under the Town of Liberty Zoning Law and shall include other information as may be required to determine compliance with this chapter, including a site plan defining the boundaries of the existing junkyard for future application renewal and enforcement purposes. The Planning Board, in acting upon the application, shall consider the following:

(1) The impacts of the use on the enjoyment and use of adjoining properties as well as the community as a whole.

(2) The degree to which the use can economically be made to comply with requirements for new junkyards.

(3) The effectiveness of screening available or to be provided, visibility from the highway and the extent to which the operator's plans address various health, safety and aesthetic concerns.

(4) The extent to which dismantling operations can or do take place inside an enclosed structure and whether or not all parts of vehicles or equipment are similarly stored inside an enclosed structure. Likewise, the Board shall consider whether or not vehicles awaiting dismantling or retained for sale or use intact are or will be stored in improved parking areas specifically designated for this purpose.

G. Existing junkyards shall not be expanded by more than 25% beyond the boundaries of the existing junkyard as defined by the above-referenced site plan, and in no case shall any change in an existing junkyard that would lessen its conformity with these regulations be permitted.

From this, my question is: why is Zalkin's or Liberty Scrap yard still operating with a license if they haven't complied with this law? In 2005, and again at the end of 2006, limited amnesty was granted each time for two years to Zalkin's so by October 2008 the amnesty period had ended. So again, why is Zalkin's still operating without being in compliance with the law and has no site plan? As stated in the law a site plan is needed for transfer of a licenses and in this case a relocation. For the past ten years Zalkin's has never been brought into compliance with the law, examples are as follow, having no site plan, having no pavement or

impervious surface and many other issues which still need to be addressed. So now the problem exists to what is legally being transferred. When you go to Google maps and you zoom in on Zalkin's you see an area of all dirt and no pavement approximately 400 x 300 ft which is 120,000sq ft. When you divide by 40,000 which is the area of an acre you get 3 acres, yet Ben Weitsman claims there are 6.5 acres. What independent information were you provided that shows the areas are as Weitsman states, I could find none in the file? On March 21, 2011 Town Board meeting minutes read as follow:

Assistant Town Attorney Walter Garigliano

Attorney Garigliano advised the Town Board that he had been directed to amend the Junkyard Law in order to accommodate the relocation of the Zalkin Junkyard. He wanted to know how much property was to be included in the new location. The Board agreed just the paved area was to be included.

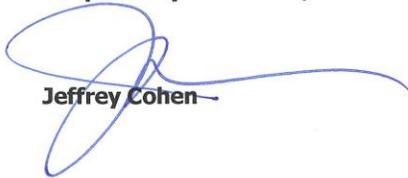
Zalkin's has no paved area, so therefore logic dictates no paved area, nothing can then be transferred, and with no site plan nothing exists.

Now for the most important part of this whole equation, there has been very little discussion or mention of the mitigation and cleanup of Zalkin's Junkyard. Has anyone from the Town or Planning boards told Mr. Weitsman or Mr. Rittenberg what is buried in the Zalkin's yard? I have been told by multiple sources that lead acid batteries for one thing and that is a very serious problem for the town to mitigate. This is not just a level the land and grass seed project. This is potentially a very serious, long-term undertaking requiring a full environmental assessment and remedial action. Considering the future use of the Zalkin property the town should request a preliminary assessment and site investigation to identify potential hazards and the need for remedial action. This would require getting the DEC and the EPA involved; cleanup could take years, and tie up many of Liberty's resources.

In conclusion, this public hearing or comment period should be left open. The public should be entitled to comment on the noise study that is missing. As a matter of fact an independent traffic and noise study should be done by the town to rule out bias. The public should have the right to comment on the 239 reviews from the county which has not been received and the 239 reviews from NYSDOT which has not been received. And finally DEC comments on the condition of Zalkin's Junkyard and it mitigation and cleanup should also be included.

Thank you for your time.

Respectfully submitted,



Jeffrey Cohen