

**Minutes  
Cayuga County GML 239-l, m & n Review Committee  
March 19, 2015**

The Cayuga County GML 239-l, m & n Review Committee was established in 2005 by Cayuga County Legislature Resolution 413-05 as the agency to conduct mandatory reviews in Cayuga County under sections 239-l, 239-m, and 239-n of the General Municipal Law of New York State. The Committee meets monthly to review local actions for potential intermunicipal or countywide impacts.

The meeting was called to order at 9:04 AM in the Conference Room on the 5th floor of the County Office Building at 160 Genesee Street in Auburn, New York.

The following committee members were present:

Director of Planning and Development:	<b>Steve Lynch</b>
Director of Environmental Health:	<b>Eileen O'Connor</b>
Superintendent of Highways:	<b>Rich Wheeling</b> (designee)
Environmental Engineer:	<b>Bruce Natale</b>
Director of Soil and Water Conservation:	<b>John Fraser</b> (designee)

A quorum was thereby established.

Others present: Kari Terwilliger (Planning Staff), John Zepko (Planning Staff), Paul Nelson (Village of Moravia Planning Board Member- arrived at 9:28am)

**1. Minutes**

Minutes from February 19, 2015 and March 3, 2015:

**MOTION BY STEVE LYNCH:** Approve all minutes with no changes.

**SECOND BY EILEEN O'CONNOR:** All vote AYE.

**Motion Approved and Carried.**

**The following municipal matters were submitted to the Committee for consideration pursuant to New York State General Municipal Law §239-l, m, & n:**

**2. Town of Ira – Special Use Permit, 2470 Ira Station Road**

The Committee carefully considered the materials provided by the Town related to the proposed Special Use Permit application for 2470 Ira Station Road. The Committee discussed, based on the information provided in the referral letter, that “this property is already zoned as a Commercial Planned Development District. It was originally the site of a convenience store, then sat vacant for a

few years, then a learning center for children and is now setting vacant again. Mr. Mignogna would like to change the use to a motorcycle repair facility and retail sales of motorcycle parts.”; and that despite being surrounded by existing residential land uses, the granting of the special use permit to change the permitted commercial use in this previously approved PDD does not present intermunicipal concerns.

**MOTION BY STEVE LYNCH:**

The Committee has determined that the action appears to have no intermunicipal concerns and to be of local concern only.

**SECOND BY EILEEN O’CONNOR:**

All voted AYE.

**Motion Approved and Carried.**

**3. Town of Ira – Special Use Permit, 13001 NYS Route 34**

The Committee carefully considered the materials provided by the Town related to the proposed Special Use Permit application for 13001 NYS Route 34. The Committee discussed, based on the information provided in the referral letter, that the applicant intends to “convert an existing 3 bay garage into a grocery/dry goods store.”, that this appears to be an adaptive re-use of an existing building with no proposed change to the footprint of the building, and that the proposed use does not present intermunicipal concerns. The Committee did comment on the regulation of the proposed store, whether or not that would be through NYS Agriculture & Markets or by the County Health Department, especially with regards to water service and treatment (chlorination/sanitization) and the septic system.

**MOTION BY STEVE LYNCH:**

The Committee has determined that the action appears to have no intermunicipal concerns and to be of local concern only.

**Comments.**

1. The applicant, if they have not already done so, should contact NYS Agriculture & Markets to see if they will need a permit for the grocery store and if the store will be regulated by NYSDAM or by the County Health Department; and they should contact the County Health Department to request an inspection of the existing septic system in order for the department to determine if it’s adequate to serve this use.

**SECOND BY JOHN FRASER:**

All voted AYE.

**Motion Approved and Carried.**

**4. Town of Owasco- Special Use Permit, 6750 East Lake Road**

The Committee carefully considered the materials provided by the Town related to the proposed Special Use Permit application for 6750 East Lake Road from the Owasco Country Club. The Committee discussed, based on the information provided in the referral letter, that “The Club wants to increase bar and restaurant revenue by expanding Club membership. No exterior changes to the structure(s) or site are proposed or planned.”; and that this proposal could be considered an expansion of a pre-existing nonconforming use, in terms of the number of memberships that the club wants to sell in order to expand the number of permitted dining and bar patron members. The Committee stated that the proposed use does not present intermunicipal concerns.

**MOTION BY STEVE LYNCH:**

The Committee has determined that the action appears to have no intermunicipal concerns and to be of local concern only.

**SECOND BY JOHN FRASER:**

All voted AYE.

**Motion Approved and Carried.**

**5. Village of Moravia- Use Variance, South Main Street (NYS Route 38)**

The Committee carefully considered the materials provided by the Village related to the proposed Use Variance application for South Main Street. The Committee discussed, based on the information provided in the referral letter, that the applicant has applied for a Use Variance to “Construct a car wash in the Village of Moravia in an Agricultural Zone.”, and that the Village’s current zoning law lists a Car Wash as “NOT PERMITTED” in its Agricultural Zoning District. The Committee also discussed that they will review this referral with regards only to the potential issuance of a Use Variance; and are therefore only looking at the proposed change of use of the land, not the specifics of the proposed site plan and layout (i.e. impact of increased impervious surface, location of driveways, runoff, etc.) because if the Village ZBA granted a Use Variance for the proposed car wash, the applicant would then have to apply to the Village Planning Board for a Site Plan review and at that time it would be referred back to the Committee. The Committee acknowledged that, as far as they are aware, the proposed gas station portion of the proposed project in the Town of Moravia could be approved by the Town without a Use Variance or site plan review because the Town does not have zoning or site plan review requirements. The Committee also mentioned the NYS Statutory criteria that the Village ZBA will have to follow when reviewing and deciding upon the Use Variance request. §7-712-b, 2(b)1-4 of NYS Village Law states:

*“No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:*

1. *The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;*
2. *That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;*
3. *That the requested use variance, if granted, will not later the essential character of the neighborhood; and*
4. *That the alleged hardship has not been self-created”*

The Committee determined that the action of either granting or of not granting a use variance for this proposed use does not present intermunicipal concerns; however, the Committee did comment that the potential aesthetics of a commercial development across from the State Park on lands that are currently agricultural and generally open may have intermunicipal impacts, if a use variance is granted, and that the Village ZBA may want to consider requiring buffers or other design elements as conditions of a use variance if they decide to grant said variance.

**MOTION BY STEVE LYNCH:**

The Committee has determined that the action appears to have no intermunicipal concerns and to be of local concern only.

**Comments.**

1. The potential aesthetics of a commercial development across from the State Park on lands that are currently agricultural and generally open may have intermunicipal impacts, if a use variance is granted, and the Village ZBA may want to consider requiring buffers or other design elements as conditions of a use variance if they decide to grant said variance.

**SECOND BY JOHN FRASER:**

All voted AYE.

**Motion Approved and Carried.**

**6. Town of Genoa- Local Law Prohibiting Natural Gas Exploration, Extraction, Storage & Disposal**

The Committee carefully considered the materials provided by the Town related to the proposed Local Law to Prohibit Natural Gas and Petroleum Exploration and Extraction Activities, the Underground Storage of Natural Gas, and the Disposal of Natural Gas or Petroleum Extraction, Exploration, and Production Wastes. The Committee discussed that they had seen a previous version of this law in September 2014 when the Town referred a draft local law to ban heavy industrial uses. The Committee stated that while on the surface this local law appears to contain similar language that they have seen

before for other communities, it does provide for the “grandfathering” of existing gas wells and related uses and the law also does not prohibit certain customary activities with gas such as gas stations, the transmission of natural gas to homes and businesses, or the transmission and private storage of fuel oil to homes and businesses. The Committee determined that the proposed local law does not present intermunicipal concerns; however, the Committee did comment on the SEQR form submitted as part of the referral and their dissatisfaction with the use of “N/A” repeatedly across the form and the adoption of a Local Law is actually a Type I action under SEQR and therefore a full EAF (long form-parts 1, 2 & 3) are required. The Committee stated that they felt that the Town had taken a very careful approach to the development of this local law over the past year and that the Committee feels it would be in the best interest of the Town to work with their attorney to completely fill out the proper SEQR forms (just in case they are challenged on the validity of this law in the future by a property/business owner, in which case the procedure of not filling out and filing of proper SEQR forms could be questioned and used as cause to invalidate the law).

**MOTION BY STEVE LYNCH:**

The Committee has determined that the action appears to have no intermunicipal concerns and to be of local concern only.

**Comments.**

1. The Committee strongly encourages the Town to consult with their attorney to properly fill out and file a Full EAF, Parts 1, 2 & 3 (long form) for the Type I SEQR action for adopting this proposed local law.

**SECOND BY EILEEN O’CONNOR:**

Steve Lynch, Eileen O’Connor, Rich Wheeling and John Fraser voted AYE; Bruce Natale ABSTAINED.

**Motion Approved and Carried.**

**7. Village of Cato- Local Law to Consolidating the Planning Board and ZBA**

The Committee carefully considered the materials provided by the Village related to the proposed Local Law to consolidate the Planning Board and ZBA into one Board. The Committee discussed that the Planning Department (CCPED) had been contacted by the Village of Cato in January seeking advice on potentially combining their Planning Board and Zoning Board of Appeals into one Local Land Use Board. At that time the Village expressed their desire to pursue this consolidation approach due to their continued struggle with membership on both boards, particularly with finding enough residents interested in serving on either board to fill vacant seats. CCPED contacted NYS DOS to see if they had heard of other municipalities exercising Home Rule in order to supersede the State’s statutes to combine the two boards, and if it was legal or advisable to do so in situations similar to what the Village is in with Board memberships. NYS DOS informed CCPED that they had no knowledge of any other municipality in the state attempting to combine their Planning Board and Zoning Board of Appeals. They confirmed what CCPED staff already knew with regards to local municipalities having

the legal right to give review and approval authority of Site Plan and Special Use Permit applications to a ZBA, but questioned whether the review of Subdivisions could be given to a ZBA or a body performing ZBA appellate functions. NYS DOS did tell CCPED staff that they would speak with their attorneys and provide an official opinion on the broad legality of the proposed consolidation of a Planning Board and a Zoning Board of Appeals with regards to subdivision review and approval. At the time of the Committee's meeting, CCPED staff had not heard back from NYS DOS, but staff stated that they would continue to follow up with the State to get that official opinion for the Village.

The Committee stated that while potentially perfectly legal, this type of proposed action is unprecedented in the state and they are unsure what the ramifications of such a consolidation may be, if any. They did state that all members of the new board will need to be trained as Planning Board and ZBA members and that it may be challenging for the Board at first to ensure that they are following specific review criteria and state statute criteria for each case before them, particularly if they have an agenda that has a site plan review, then an area variance, and then a special use permit on it (by way of example). The Committee determined that the proposed local law does not present intermunicipal concerns; however, the Committee did comment on the affects that this consolidation might have on the three branches of local government and the check and balances that are associated with them, especially since the Village is proposing to combine the executive branch (Planning Board) with the judicial branch (ZBA) which has some local police power with regards to appeals; and the Committee wanted to bring to the Village's attention, if they have not already done so, the need to review their zoning law for consistency in terminology with regards to referencing this new board instead of the Planning Board or the ZBA in order to eliminate confusion.

**MOTION BY STEVE LYNCH:**

The Committee has determined that the action appears to have no intermunicipal concerns and to be of local concern only.

**Comments.**

1. The Committee strongly encourages the Village to review their zoning law for consistency in terminology with regards to referencing this new board instead of the Planning Board or the ZBA in order to eliminate confusion.
2. The consolidation of the Planning Board and the Zoning Board of Appeals into one Local Land Use Board will mean less government and the loss of one set of checks and balances by combining the executive branch with the judicial branch of local government and may have some unforeseen consequences.

3. The Planning Department, on behalf of the Committee, will continue to follow up with the NYS DOS to obtain a copy of their official opinion on the broad legality of the proposed consolidation of a Planning Board and a Zoning Board of Appeals with regards to subdivision review and approval and will provide the Village with copies of whatever information they receive from the State.

**SECOND BY EILEEN O'CONNOR:**

All voted AYE.

**Motion Approved and Carried.**

**Motion to adjourn by Steve Lynch. Seconded by Eileen O'Connor. All approving.  
Adjourned at 10:12 AM.**

Minutes submitted by Kari Terwilliger (staff).