

MINUTES
CAYUGA COUNTY PLANNING BOARD
April 6, 2005

The meeting was called to order at 7:05 pm in the Chambers of the County Legislature on the sixth floor of the County Office Building.

The minutes from October 2004 were approved as submitted.

Presentation on Article 78

Presented by: Fred Westphal, Cayuga County Attorney

Mr. Westphal discussed the Article 78 process, when it applies and the procedure involved.

Article 78 is designed to test the validity of an action or inaction of a governmental body. There are four types of actions that can trigger an Article 78 proceeding.

Mandamus: a body or officer failed to perform a duty enjoined upon it by law.

Prohibition: the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction.

Certiorari: a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed.

Mandamus-Certiorari Borderline: a determination made was as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence.

The Article 78 process acts as a checks and balances to make sure that local government is acting in a responsible manner. When a decision is made, and someone is offended or impacted by the decision, there needs to be due process to allow the concerns to be heard and evaluated. The Article 78 process provides this.

An offended or impacted party files papers with State Supreme Court within 4 months after the decision. This is usually done through the submission of documents that record the action. If the record is lacking, depositions of key individuals may be taken.

In Cayuga County the appeal is made to either Judge Corning or Judge Fandrich. After the judge reviews the papers, they decide if there is sufficient information or if they need to have a hearing. The hearing involves the attorney from each side presenting their case to the Judge. Based on their arguments the Judge will render a decision.

Once the decision is made at the State Supreme Court level it can be further appealed to the Appellate Division of the 4th Department in Rochester. Similar procedure applies where the Judge will review the record and the decision rendered by the lower court. Based on this, the judge will render their decision. By permission only, the case can be further appealed to the Court of Appeals, but is rarely done and is

typically done when there is a possibility that the Court overstepped its bounds and their interpretation needs to be reviewed.

There are a number of things you can do in order to have a strong case when you do you have to go to court. The first is to involve your municipal attorney as soon as possible in the process. If you receive an application that you know or suspect will create public controversy, then you should invite your attorney to be present at the meetings. Your attorney will be able to give you advice throughout the process in order to help ensure that you are following the correct procedures. If you don't involve your attorney early, then the attorney can't do anything to keep you out of trouble, all they can do is argue your case once the Article 78 has been filed.

The second thing you should do is make sure your records are complete as possible. The more detailed and accurate your minutes are, the easier it is for the Judge to understand the basis for your decision. If you know it is going to be a controversial topic then try to hire a stenographer to take the minutes. You can use a tape recorder, but it isn't as good because it can be heard to discern what is being said on the tape when more than one person is talking. Ninety percent of the activity the board sees will not need a stenographer or really detailed notes. Most activities are routine and typical note taking is sufficient.

Third, make sure that any decisions made have the findings or reasons included that that decision was based on, especially rejections. If you reject an application there must be a reason why. Make sure those reasons are clearly noted.

Recent Land Use Case Law Updates

Presented by: Amy D'Angelo, Cayuga County Planning and Economic Development

Nine cases were presented to the Board along with handouts that described the cases in more detail. Short summaries of the cases are described below. If you were unable to attend this meeting and would like a copy of the handouts, please contact Amy D'Angelo at 253-1276.

Pecoraro v. Board of Appeals of Town of Hempstead (2004) – This case involves the denial of an area variance. The applicant claims that the decision was based on generalized community opposition instead of the details of the application. The Town won and was able to prove that their decision was based on the facts and not on the expressed community opposition.

Real Holding Corp v. Lehigh (2004) – This is another area variance case where the ZBA determined that they could not grant an area variance from the dimensional components of special use permits. The Court of Appeals held that the ZBA had authority to grant an area variance from any requirement in the Zoning Code, including requirements for issuance of special use permits.

Smith v. Town of Plattekill (2004) – This is a situation where an applicant went to the ZBA for permission to operate an off-road motorcycle racetrack. The ZBA was advised by its attorney that the zoning amendment which prevented the racetrack was improperly enacted. Deciding the law was improperly enacted, the ZBA chose to disregard the law and found the racetrack to be a permissible use. The Ulster County Supreme Court upheld the ZBA's decision, however, the Appellate Division of the Third Department pointed out that the ZBA has no power to determine the validity of the ordinance.

Buckley v. Town of Wappinger (2004) – The Town Board of the Town of Wappinger, in order to settle a zoning enforcement action, authorized a stipulation allowing MVK Landscaping to use its property in ways that are prohibited by the local zoning ordinance. The Dutchess County Supreme Court upheld the Town Board's action. However, the Appellate Division of the Second Department said the stipulation was

unenforceable. In order for the uses to be allowed, the ordinance would have to be amended or MVK would have to obtain a variance. The Appellate Division found that the Town usurped the authority of the Zoning Administrator, Zoning Board of Appeals, and the Planning Board of the Town of Wappinger.

Headriver v. Town Board of the Town of Riverhead (2004) – As a result of the Town’s submission to the County Planning Board for compliance with GML 239, the County Planning Board made a recommendation that the Town deny the request for a special permit. After the public hearing, the Town Board voted 3-2 to grant the special permit. Since GML 239 requires a supermajority vote to override the recommendations of the County Planning Board and because a supermajority vote was not obtained, the permit was denied. The Court held that because the Town Board could not override the County’s recommendation, it was compelled to disapprove the project.

Batavia First v. Town of Batavia (2004) – Wal-mart had sought and received approval from various town boards of a proposed expansion of its store in the Town of Batavia. In approving the site plan, the Town Planning Board overrode, in part, the recommendation of the Genesee County Planning Board disapproving the site plan. The claim of the petitioners (mostly neighbors) was that the actions the various boards that gave approval were unlawful and/or arbitrary and capricious. The court annulled the actions of the boards because the County Planning Board should have received a completed Part I AND Part II of the EAF in a timely fashion.

Matter of City Council of the City of Watervliet v. Town Board of the Town of Colonie (2004) – This case involves annexation of land and the SEQRA process. The Court concluded that SEQRA requirements apply to annexations, but the extent of the environmental assessment is dependant on the specific development plans, if any, proposed in connection with the site. If there are no specific development plans then the SEQRA should address environmental impacts of the annexation itself. The other key point in this case is that the Court determined that a SEQRA review must be completed before either municipal acts to reject or accept the resolution.

Chamber v. old Stone Hill Road Associates, et al. (2004) – A group of homeowners sought to prevent the construction of a telecommunications tower. Neighbors brought a suit against a wireless communications carrier to enforce a deed restriction which limited the use of the tower site to single-family homes. The cellular company had received a special permit from the town to construct the tower. While the lawsuit was pending, the tower was erected. The Court of Appeals, in upholding the lower courts, directed the cellular company to remove the tower from the site. The Court noted that the Town’s issuance of a special permit to construct the tower did not preclude the enforcement of the deed restrictions.

Twin Lakes Development Corp. v. Town of Monroe (2003) – This case deals with subdivisions that incorporate fees in lieu of parkland dedication. The Courts found that imposing an in lieu of fee for development of parkland was not considered takings. The Court also found it acceptable for the Town to charge the developer the costs of hiring a consultant to evaluate the parkland needs of the community and the increase needs of the proposed subdivision.

Upcoming Household Hazardous Waste and Tire Recycling Events

Presented by: Renee Lippold, Cayuga County Planning and Cornell Cooperative Extension

This spring Cayuga County and the City of Auburn are holding a Household Hazardous Waste Collection day on May 7th at Casey Park. Since we are working with the Auburn Landfill we are holding it at Casey Park this year, which has enough space to allow us to hold a Household Hazardous Waste drop off center as well as a propane and electronics station.

Household hazardous waste day is a great opportunity for residents to properly discard any hazardous waste in or around their homes. Hazardous waste can be identified by the words CAUTION, DANGER, TOXIC, CORROSIVE found on their labels. These hazardous wastes may include such things as mothballs, silver/gold cleaner, carpet cleaner, gasoline, paint thinner, oil based paint, and antifreeze. We urge you please do not throw these into the trash because they may leach into the ground and affect not only our soil but our drinking water as well. In addition to Hazardous Waste we are collecting household electronics, which includes Computers, TV's, DVD players, radios, microwaves and so on. There is a \$5 fee per computer monitor and TV but all other electronics are free.

What we would like to discourage is bringing latex paint, car/marina batteries or oil. All of these can be recycled year round for free. Bringing these to the collection event costs us more money than necessary. Also, if you are looking to dispose of Agricultural Pesticides the NYSDEC is holding a NYS Clean Sweep this spring as well.

In the past Household Hazardous Waste Drop-Off Day and Electronics/ Propane Collection has been successful. We have had four events in the past. Each event has had over 300 households in Cayuga County participate and has collected thousands of pounds of hazardous waste. Altogether we have collected 168,500 pounds of hazardous waste. There have been three Electronics and Propane events in the past, which have collected well over 50,000 lbs of electronics and over 1200 propane tanks. This year we hope to have a much greater response.

To participate in the Household Hazardous Waste collection all you need to do is to register with Cornell Cooperative Extension. You may do this by calling 255-1183 or by e-mail.

May 14th we will be holding a Tire Round up at the Natural Resource Center from 8-noon. We are accepting up to 40 tires per truckload and it is 50 cents per tire. Each tire must be no larger than 36 inches in outside diameter and can be on or off the rims. The tires collected at the events are trucked over to Nucor Steel-Auburn where they recycle the rims and radials for steel and use the rubber as a source of carbon, which replaces the traditional fuel source of coal. We have brought a total of 21,000 tires to Nucor in the past two events. And once again hope for a greater response this year.

Local Status Reports:

T/Ira – Ms. Southard mentioned that the Town of Ira distributed a Town-wide survey in order to collect information for the Comprehensive Plan they are working on. They have sent out 850 surveys and have received 245 so far. Some of the answers have been enlightening.

V/Cato – Ms. Sweetman affirmed that CIVIC Heritage has indeed had their state grant promised by Nancy Lorraine Hoffman reinstated. They have received the contracts and hope to receive the funds shortly.

T/Scipio – Mr. Hatfield stated that the Town is in the process of enacting a wind turbine law. The Planning Board is going to be presenting it at the next Town Board meeting with a hearing to follow. NYSERDA will not work with an applicant for funding assistance unless there is a local law. Since there is someone in their Town who is interested, the Town has been working on a law.

T/Sterling – Mr. Field commented that the Town of Sterling is also working on a wind generator law because of the amount of local interest within the Town. Interest increased after the ice storm when so many people were with out power for an extended period of time.

There was a discussion of wind generators and their impacts. Ms. Southard mentioned that there are 10 turbines in Wyoming County and that they are looking to expand it. In that area they seem to be beneficial and are quiet. Mr. Zabriskie stated that he thought Southern Cayuga School District was looking at the possibility of installing wind generators. Mr. Towne mentioned that you need areas of high winds and topography in order to be suited to the use and that when they are there, they are very quiet and you can hardly hear them.

T/Niles – Mr. Edmonds shared with the group that Americorps is helping the Town finish the basement of their new Town Hall. The Town hope is will be able to move into the new building by the end of summer.

Other Matters:

Duties and Responsibilities of a Cayuga County Planning Board Member – Many people have asked what are the duties of a CCPB board member. According to the state the only responsibility the board has is to review applications forwarded to the board in accordance with General Municipal Law 239. In Cayuga County we have established a subcommittee of the CCPB to handle these applications. As a result, the CCPB acts primarily as a liaison between the County and the municipalities. The board gets the opportunity to learn about projects going on within the County and an opportunity to listen to guest speakers on various topics. In turn it is an opportunity for the County to get a better understanding of the types of projects that are taking place in our local communities.

Choose Site for June Meeting – The board has received an invitation from Jim D’Angelo, Director of Sterling Nature Center for their June meeting. The Nature Center is currently conducting a Visioning Process to aid in the development of a functional management plan for the site. He would like the opportunity to discuss the process and to give a tour of the heron rookery. The herons will be on the nest this time of year. The board accepted the invitation. Packets will be sent out with the June meeting notice that has tourism information about the area and directions to Sterling Nature Center.

Upcoming Classes (ZBA, Genesee/Finger lakes Regional Planning Council’s Spring Government Workshop) – There are two training opportunities coming up: Board of Appeals Introductory Training will be held in the Legislative Chamber of the County Office Building on April 11th and the Genesee/Finger lakes Regional Planning Council’s Spring Local Government Workshop will be on May 13th in Pittsford, NY.

Stormwater Phase II information packets and Weeds Watch Out brochures were distributed.

The next meeting will be on June 2, 2005 at 6:00 pm at the Sterling Nature Center.

Meeting was adjourned at 8:45pm.