

TOWN OF NEW BALTIMORE ZONING BOARD OF APPEALS
Regular Monthly Meeting
June 1, 2016 – Page 1

The meeting was called to order at 7:30 p.m. by Chair Pat Linger followed by the Pledge of Allegiance. Other Board Members in attendance were James Eckl, Kingsley Greene and Craig Albano. Michael Meredith was absent. Also in attendance Councilwoman Shelly Van Etten and CEO Steve Mantor.

Minutes:

It was moved by Linger and seconded by Greene to approve the minutes of the January 6, 2016, Package Pavement Variance Application Public Hearing as presented.

AYES: Linger, Eckl, Greene, Albano
NAYS: None
ABSTAINED: None
ABSENT: Meredith

It was moved by Greene and seconded by Linger to approve the minutes of the January 6, 2016, Regular Monthly Meeting as presented.

AYES: Linger, Eckl, Greene, Albano
NAYS: None
ABSTAINED: None
ABSENT: Meredith

Correspondence

1. Copy of 4/28/2016 letter from CEO Steve Mantor to Mr. & Mrs. John Suchy, re: Building Permit denial.

Old Business None

New Business

John & Jennifer Suchy – Area Variance Application

Present were John Suchy and Christopher Primi from Solar Liberty. Application is to allow for the placement of a ground mount solar system less than 15 feet from side boundary on property owned by the Suchy's at 977 County Route 51, bearing Tax Map #27.00-4-11.

Variance requested is to *install a solar array structure five feet from property line. The land surrounding the Suchy property is wooded, placing the structure five feet from the property line is the ideal location. It is away from pond and driveway and yields the most sunlight.*

What practical difficulties, if any, would arise if the area variance is not granted? *Shading from trees and house will reduce system production. Removal of neighboring trees will be difficult and reduce environmental benefit. Will be closer to pond and driveway which create additional safety hazards. Variance issuance would not have an effect on the character of the district.*

Mr. Suchy added that his parcel is only one acre. Most of the surrounding parcels have more acreage. His parcel is surrounded by trees, making it difficult to find a good location. The selected location provides almost 90% efficiency for the sun. He has a notarized statement, part of the file, from neighbor indicating he does not have a problem with the placement. Putting it closer to the driveway could present an issue with snow removal. Taking down more trees and/or filling in the pond creates the hardship of the project costing more money. One corner is five feet, another corner is ten feet from neighbor's property line to get the necessary southern twist. Placement further away from the pond avoids issues with the trench digging for the cable.

Mr. Linger noted system is 27 panels and questioned is there availability of a higher efficiency panel to make a smaller footprint where you would gain a little bit? Mr. Suchy explained it would not be economically feasible. It would be another 20% higher in cost which I am not willing to put forth. System layout now is seven. If I did anything, I would take the current lay out of 27 and try to gain more. My house uses 10 kilowatts; but I can't fit ten kilowatts in that space. So I am reducing it down to seven, maybe eight if a larger panel. If I reduce it down to six, make it fit that size and if it is only generating

TOWN OF NEW BALTIMORE ZONING BOARD OF APPEALS
Regular Monthly Meeting
June 1, 2016 – Page 2

half the power of the house, is it really even worth it at that point?

Mr. Primi explained the system being recommended is a Kyocera 260 watt. Our higher efficiency panels that they go to is 310, which is gaining 50 watts per panel, which would be only another 1200 kilowatts. The efficiency between the LG and the Kyocera is the LG is a higher efficiency, 20% efficient while the Kyoceras are at 17% efficiency. It is called the premium panel but the efficiency is not yet there.

Mr. Albano questioned if there was the possibility of acquiring adjoining property, picking up 15 to 20 additional feet which appears to be wooded/wetland so you would have added buffer from neighboring property, would meet setback requirements and not have an issue with a future neighbor if current neighbor decided to sell? Mr. Suchy responded the neighbor is interested in more, not selling any, wants to keep it in the family. If he would, there is the matter of survey, cost for the land and how it would be configured.

Mr. Eckl commented that he was not entirely sure that Mr. Suchy needed an Area Variance at all. The 15-foot setback rule is a requirement of setback for an accessory structure. It is not a requirement of setback for absolutely everything that might be a legitimate accessory use. A driveway has to be built. It has a fixed location on the ground, a legitimate assessor use of a residential property. No one would think that was an accessory structure nor that the mailbox at the end of the drive mounted on a post in concrete was a structure or a fence that has to be built that runs along the property line would be an accessory structure that has to be set back 15 feet from the side line. Mr. Eckl referred to the definition of structure in the definitions section of the Code.

Anything constructed or erected with a fixed location on the ground, or attached to something else, specifically including a building and mobile home.

That suggests that the intent of the term "structure" is a building or something that serves the purpose of a building (tool shed, barn, silo). He was not convinced it was an accessory structure at all.

Mr. Linger responded that generally these sub-structures for the mounts of the solar panels do have a footing that is in the ground. They are not easily removed. It is a permanent "structure" without walls. He further pointed out that we did receive a denial letter from the Code Enforcement Officer.

Mr. Mantor commented that Mr. Eckl made an interesting point. It depends on which Code you are looking at. The Town Code has certain definitions. If you look at the Building Code, you are talking about footings, about permanent electrical wiring coming and going and it has volume. It has a three-dimensional shape. It doesn't have wall but it occupies a three-dimensional shape and casts a shadow. All of these things affect it being near the property line. Mr. Mantor offered to check with the gentlemen in the Codes Division and also would look more thoroughly at the New York State definition of a "structure". He however was leaning toward it is an accessory structure but not adverse to looking into it further. It is new technology. Mr. Linger pointed out we will need to know one way or another since I am sure it is not the last one to come before the Board.

Mr. Eckl further advised that State Public Policy on solar energy as set forth in Energy Law Section 3-101 is:

to foster, encourage and promote the development and use of resources including solar.

So this is not something that the Public Policy requires us to go through a bunch of gyrations to oppose; but rather to the contrary, the Public Policy favors it if we assume that it is an accessory structure and therefore an Area Variance is required.

He further noted that Part I of the Short Environmental Assessment Form had been completed and submitted with the Variance Application. He further noted that one of many Type 2 actions that are not subject to SEQR review is the granting of an Area Variance for a single-family residence. Therefore, while the effort put forth by the applicant is appreciated, Mr. Eckl did not feel the SEQR process was necessary if it was found to be a Type 2 action. It would then be the end of the inquiry.

Mr. Linger pointed out we don't have to worry about this until the Public Hearing and he felt it best to follow our normal course of action and schedule the Public Hearing. If Mr. Mantor finds out differently, he was asked to let everyone know and assumed the denial letter would then be null and void.

Mr. Mantor responded that he felt it necessary to check solidly with a couple of people in the Codes Division for an interpretation. He further warned against setting a precedent because there are other types

TOWN OF NEW BALTIMORE ZONING BOARD OF APPEALS
Regular Monthly Meeting
June 1, 2016 – Page 3

of solar arrays and bigger ones that will probably be coming our way. If you set the precedent with this, then you are sort of stuck; but with all the new technology, it certainly should be looked into. He further noted:

- ...It has volume
- ...It is a permanent fixture.
- ...It has electrical connections coming and going to it.
- ...It is an engineered structure.

It is not like a mailbox.

Mr. Eckl continued that it was his guess that the purpose of the setback requirement for which an "accessory structure" definition is provided is to prevent construction that would be a nuisance to the neighbor; whereas conceivably, there are other definitions of "structure" out there that are intended not to protect the quiet repose of the neighbor but to perhaps prevent an electrocution hazard, prevent a collapse hazard if constructed poorly injuring someone. It is not impossible that someone would worry about a structure not because it was a nuisance to anyone but simply because it presented some other sort of a hazard. Therefore, it is necessary to understand the definition in the context.

Mr. Primi explained it is somewhat temporary. A panel only lasts 25 or 30 years and then you have to replace it or take it down because at that point it will be non-functional. You have to take a look at how permanent, semi-permanent. Mr. Eckl pointed out that he thought the Board could regard the concrete and steel as fairly permanent as opposed to the temporary parking of a camping trailer. It was further noted it is subject to wind load. It has to have the structure to withstand the wind load. It has foundations. It will be 12 feet high. It has a reasonable volume to cast a shadow. Mr. Mantor advised that he would look into it further and provide the Board with any information he found but it was his recommendation that the Board look more at the Variance rather than setting a precedent changing the rules.

It was further noted by Mr. Suchy if you look at the diagrams, the aerial photos, it is 135 feet from the road. It really has no visibility unless someone pulls in the driveway. It is really far away and not something to create a glare. Mr. Linger pointed out it is amazing technology and has a big benefit to it. The issue in this instance is the setback off the property line.

Public Hearing on the application was scheduled for 7:30 p.m., July 6. Blue sheet providing the neighbor notification process was provided to Mr. Suchy and Mr. Primi. They were advised that they should confirm the names and addresses of surrounding property with the Assessor's Clerk. Mr. Suchy questioned if it would be the same four Board Members that would act on the application in July and if the missing Board Member could also vote? It was explained that Mr. Meredith had received a copy of the application packet, will have the minutes of this meeting and would be able to vote. Mr. Linger further explained that tonight was the Board's gathering of information; the next meeting would be the gathering of information from any members of the public in attendance who wish to comment and any additional information the applicant might wish to submit which the Board would take into consideration.

Mr. Primi further advised that he believed it would be found in the Code that it is considered a "structure" by the fact that there is electric involved and there are footings. He felt the Board was correct in not setting a precedent, keep the process the way it is. The day of solar plantations is coming.

Proposed Zoning Changes

All Board Members had electronically received the Zoning section of the Town Code reflecting proposed changes and had received a printed copy this evening. The Town Board is seeking comments, positive or negative, from the ZBA and the Planning Board regarding the proposed changes. Mr. Linger advised that he had already sent some comments with regard to things that he had noticed that did not jive, had been changed in one part of the Code and not in another. Mrs. Van Etten pointed out that any legal questions should be directed to the Town Attorney and other changes should be provided to her in writing since the proposed Zoning changes have to go before a couple of Boards, including the County Planning Board.

Some of the changes noted were taking the mandatory requirement out and putting an option in in several instances. Mrs. Van Etten advised that there really weren't a lot of changes made. Basically, changing from "shall", have to do it to "may" do it. The 50% set aside is still there, recommended, just not required. A couple of the Commercial Zones were cut out since it was felt they were not working. The set aside is still required in the Planned Development District.

TOWN OF NEW BALTIMORE ZONING BOARD OF APPEALS
Regular Monthly Meeting
June 1, 2016 – Page 4

In the new chart reflecting the fewer districts, second line, dwelling, single and family/modular, noted that the word "one" had been omitted (one-family) Modular mentioned but not manufactured homes (trailers).. Questioned if manufactured homes (trailers) were no longer going to be allowed? It was noted while both are manufactured, a modular goes on a slab or foundation; a manufactured home (trailer) retains the frame underneath whereby it can be moved. State Code has section on manufactured homes. It was emphasized that manufactured homes/trailers will still be allowed in the Town. It appeared the chart the ZBA received was the first, rather than second chart generated already reflecting some of the items so noted here.

"Building Inspectors" are now to be referred to as Code Enforcement Officers. Words "building inspector" is still shown in several instances in the code.

With regard to animated and digital signs, there are some new definitions shown.

Mr. Linger pointed out one thing he did not see was a written procedure for lot line adjustments. He would like to see that defined. It is currently a four-month process to do a lot line adjustment which is ridiculous when the neighboring property owners are in agreement on the change. Mrs. Van Etten advised that the Town Attorney was working on it, she felt the Town was going to have to do something but she did not yet know what. Presently people are having to jump through too many hoops without anything in writing. Mrs. Van Etten explained the process in Cocymans did not entail having to go through the detailed process when two property owners did not know where their property line was. It was walked, they agreed on the line, a very small amount of land involved and that was it. It was explained when a definitive property line is not known, it is not a lot line adjustment. The neighbors establish the property line and file deeds accordingly. It is when there are known property lines to be adjusted, that the process is needed.

The Town Board is also looking into solar legislation. It was noted the solar farms have to be at least 15 acres for the company to re-coup what they are putting into the project. Mr. Mantor noted the Building Department has been contacted by at least three solar companies inquiring about the Town's rules and regulations for the siting of solar farms.

Mrs. Van Etten advised that she had been informed by a local bank representative and also by business representatives that the Town of New Baltimore was not business friendly. As a result, a couple of the Commercial District zones have been taken out of the proposed zoning changes. It was also noted that the number of calls regarding locating on 9W dropped way off when we hit the economic slump and have not picked back up since. Further, there was always the Variance process if wishing to locate in one of the Commercial Zones where not permitted. Mrs. Van Etten pointed out businesses do not want to go through the hassle. Returning to the solar companies that have requested zoning information, the Variance process was not at all onerous to them if they had a desired location. They were going through the Variance process in many Towns where solar legislation was not in place.. Mrs. Van Etten continued that she found the permitting process in many other Towns much easier.

Mr. Mantor pointed out with the deletion of some of the Zones, the Zoning map would have to be redrawn. Mrs. Van Etten responded that it would be. Mr. Mantor further questioned what effect would the changes have on the people currently there. Mrs. Van Etten explained many of them were grandfathered but non-conforming. With the proposed changes, they will no longer be non-conforming. Being a non-conforming use, they could not change the foot print of the business, make it larger. The proposed changes were discussed with many of the business owners in the 9W corridor and they were very happy about it.

Mr. Mantor further commented that he found some language inconsistencies, definitions that needed to be cleared up in some of the charts.

It was noted that the proposed zoning changes have been worked on by a Committee over a long period of time; and during that time Committee members changed so a lot of people have worked on it. Some recommended changes had been made to the previous Town Board but it was not known what was done with them.

Mr. Eckl's comments on proposed revisions to 2007 Comprehensive Plan and to the 2008 Zoning Code were presented to Mr. Linger in writing for inclusion in the public record. It was emphasized that any revisions the ZBA are recommending to the Town Board are just recommendations. It is the Town Board that has the final say with regard to what changes actually do take place. Mr. Eckl's comments are as follows:

TOWN OF NEW BALTIMORE ZONING BOARD OF APPEALS
Regular Monthly Meeting
June 1, 2016 – Page 5

Dear Mr. Chair,

re: proposed revisions to the 2007 Comprehensive Plan and to the 2008 Zoning Code
 (as amended)

Pursuant to your message of May 10, following for inclusion in the public record are my comments regarding the captioned subject.

.....

I. **THE TIMING OF CONSIDERATION OF THE PROPOSED AMENDMENTS IS SUCH AS TO CAST DOUBT ON THE INTEGRITY OF THE PROCESS**

As I have been given to understand, the current schedule for this process is that the proposed amendments to the 2007 Comprehensive Plan and the proposed amendments to the 2008 Zoning Code (as amended) are to be considered simultaneously, in a single "joint public hearing".

The 2007 Comprehensive Plan is meant to be general guidance, a collection of "goals, objectives, principles, policies, and standards"; but the 2008 Zoning Code (as amended) is a local law setting out specific requirements and prohibitions. That being so, it would follow naturally that amendments to the 2007 Comprehensive Plan should be adopted first, and only thereafter should the amendments to the 2008 Zoning Code (as amended) be enacted to implement the agreed-upon amended Comprehensive Plan. And this is exactly what was done less than a decade ago: the present 2007 Comprehensive Plan was adopted on March 12, 2007, and the present 2008 Zoning Code (as amended) was enacted more than a year-and-a-half later on November 10, 2008.

Considering these two very different documents simultaneously may engender a belief that the single true objective of the process is to revise the 2008 Zoning Code (as amended) and that the revision of the 2007 Comprehensive Plan, rather than being a true exercise in planning, is essentially a sham to justify the revision of the local law in the manner already decided. And, especially since there is no explanation given as to why ideas adopted less than a decade ago have somehow harmed the public interest, this inappropriate haste can only invite suspicion: suspicion that the revisions are sought without regard to the impact on the public interest simply to adhere to some anti-regulatory ideology; or, worse, suspicion that the revisions are sought without regard to the impact on the public interest deliberately to confer a benefit upon some favored insiders.

.....

II. **ANY PROPOSED AMENDMENTS TO THE 2007 COMPREHENSIVE PLAN AS MAY BE RECOMMENDED BY THE SO-CALLED "COMPREHENSIVE PLAN COMMITTEE" WOULD BE INVALID**

A comprehensive plan is intended to serve the public interest, that is, the collective interests of all the residents of the community. "[T]he authority and responsibility to undertake town comprehensive planning and to regulate land use for the purpose of protecting the public health, safety and general welfare of its citizens" is one of the most important powers and duties which a town possesses, a readily identifiable and available town comprehensive plan is in the best interest of the people of the town, and "The town comprehensive plan is a means to promote the health, safety and general welfare of the people of the town". Town Law § 272-a(1), (b), (c), (f). It is beyond question that uncontrolled economic development can be a detriment to a community, just as it is equally beyond question that properly controlled economic development can be an asset to a community; and indeed a comprehensive plan is explicitly allowed, but not mandated, to address the topic of "Specific policies and strategies for improving the local economy in coordination with other plan topics". Town Law § 272-a(3)(l). But a comprehensive plan is far more than an economic development plan limited to promoting the interest of only the business sector.

The statute gives a town three options as to which body may properly perform the task of preparing a comprehensive plan or an amendment to an existing comprehensive plan: the Town

TOWN OF NEW BALTIMORE ZONING BOARD OF APPEALS
Regular Monthly Meeting
June 1, 2016 – Page 6

Board itself may prepare it; or, the Planning Board may be assigned to prepare it; or, a Special Board may be assigned to prepare it. Town Law § 272-a(4). The Town Board and the Planning Board are both permanent multi-purpose bodies each having a continuing existence. However, a Special Board is another matter. A Special Board is "a board consisting of one or more members of the planning board and such other members as are appointed by the town board to prepare a proposed comprehensive plan and/or an amendment thereto". Town Law § 272-a(2)(c).

As I have been given to understand, it is the town's position that the proposed amendments, soon to be considered, to the 2007 Comprehensive Plan were prepared by a Special Board, the so-called "Comprehensive Plan Committee", which is claimed to be the continuation of the 2005 Comprehensive Plan Committee established and staffed by the Town Board's resolution of September 12, 2005 and given the task of preparing amendments to the then-existing comprehensive plan.

- The Legislature clearly did not have to make a Special Board a permanent body in order to give a town the ability to assign to some permanent body the task of preparing a comprehensive plan or an amendment to an existing comprehensive plan, inasmuch as both the Town Board and the Planning Board were both made available to perform that task. Given that, and given that a Special Board is created solely for that task, I submit that the only reasonable interpretation of the statute is that a Special Board is a temporary ad hoc single-purpose body which ceases to exist by operation of law once it has completed its assigned task.

Moreover, the incontrovertible record of the previous comprehensive plan amendment demonstrates that the particular Special Board in question, namely, the 2005 Comprehensive Plan Committee established and staffed by the Town Board's resolution of September 12, 2005, was understood and intended to be a temporary ad hoc single-purpose body which would cease to exist once it had completed its assigned task. That resolution did not simply create a Special Board and assign it the task of preparing amendments to the then-existing comprehensive plan; at 5, it specifically charged the Special Board "To recommend to the Town Board, upon the completion of its work, the amended Town Comprehensive Plan, to be considered for adoption by the Town Board". And the Town Board ultimately did adopt an amended Town Comprehensive Plan by its resolution of March 12, 2007. That resolution includes at the first Whereas paragraph the recitation that "the Town of New Baltimore Comprehensive Plan Committee has referred a Draft Comprehensive Plan for the Town of New Baltimore with a recommendation for its adoption by the Town Board", and at the sixth Whereas paragraph the recitation that a public hearing thereupon had been held by the Town Board on December 4, 2006 pursuant to Town Law § 272-a(6), a hearing that, per (b), could only be held after receipt of the Special Board's recommendation. In other words, as of some date in late 2006, the 2005 Comprehensive Plan Committee had completed its work of preparing amendments and making its recommendation to the Town Board, and had thus done everything it had been created to do, and, since that Town Board and every succeeding Town Board was perfectly able to create another Special Board at any later date as circumstances might indicate, there is no plausible basis for the contention that the 2005 Comprehensive Plan Committee was intended to continue in existence, after it had completed its assigned task, for absolutely no purpose.

Moreover, even assuming for the sake of argument that it is legally possible for the 2005 Comprehensive Plan Committee to have continued in existence, albeit dormant, there is nothing in the record of which I have been made aware to show that it was ever reactivated and staffed; I have not been referred to any resolution by which the Town Board purported to appoint specific individuals to be new members of a continued 2005 Comprehensive Plan Committee.

Accordingly, the 2005 Comprehensive Plan Committee no longer exists.

- The Town Board might have established a new Special Board, to also be called the "Comprehensive Plan Committee", at any time, and indeed it ought to have somehow engaged in the periodic review of the 2007 Comprehensive Plan, as contemplated by the statute, Town Law § 272-a(10). But I have not been referred to any resolution by which such a Special Board was established, and likewise I have not been referred to any

TOWN OF NEW BALTIMORE ZONING BOARD OF APPEALS
Regular Monthly Meeting
June 1, 2016 – Page 7

resolution by which such a Special Board was staffed: I have not been referred to any resolution by which the Town Board appointed specific individuals to be members of any such newly-established so-called "Comprehensive Plan Committee". This is especially troubling in view of a certain newspaper story published during the Supervisor's recent successful reelection campaign [Daily Mail story entitled **Dellisanti, Fullerton square off for supervisor in New Baltimore** (October 28, 2015)] in which the Supervisor was quoted as saying, "We need to revise the town's Comprehensive Plan to help increase our tax base. Since the beginning of 2014, the Comprehensive Plan Committee, which I co-chair with Councilwoman Shelly VanEtten, has proposed changing the zoning on Route 9W from six zones to four zones to help bring new businesses to our area".

There is nothing in the record of which I have been made aware to show that a new so-called "Comprehensive Plan Committee" was ever established and staffed.

Accordingly, no other so-called "Comprehensive Plan Committee" ever came into existence.

• In the event that the task of preparing a comprehensive plan or an amendment to an existing comprehensive plan is assigned to a Special Board, "the board preparing the plan shall hold one or more public hearings and such other meetings as it deems necessary to assure full opportunity for citizen participation in the preparation of such proposed plan or amendment. ... Notice of a public hearing shall be published in a newspaper of general circulation in the town at least ten calendar days in advance of the hearing. The proposed comprehensive plan or amendment thereto shall be made available for public review during said period at the office of the town clerk and may be made available at any other place, including a public library". Town Law § 272-a(6), (b), (c). However, I have not been made aware that a public hearing has already been held by such a Special Board, and likewise I have not been made aware that any public hearing is expected to be held by such a Special Board.

Accordingly, any recommendation which might be made to the Town Board by either the reactivated 2005 Comprehensive Plan Committee or a new so-called "Comprehensive Plan Committee", assuming that such body exists, would be made without compliance with the statutory mandate of a hearing prior to recommendation. Therefore, since no Special Board now exists to perform the task of preparing amendments to the 2007 Comprehensive Plan, anything supposed to have been done by either the continued 2005 Comprehensive Plan Committee or any new so-called "Comprehensive Plan Committee" is a nullity. And even assuming for the sake of argument that some such Special Board does exist, I have not been made aware that the mandatory procedure has been followed or is intended to be followed, and thus any recommendation it might make is a nullity. In either case, the Town Board is without jurisdiction to consider any proposed amendments to the 2007 Comprehensive Plan.

.....

III. EVEN ASSUMING THAT SUCH PROPOSED AMENDMENTS TO THE 2007 COMPREHENSIVE PLAN WOULD BE VALID, ANY PROPOSED AMENDMENTS TO THE 2008 ZONING CODE (AS AMENDED) AS MAY BE ENACTED BY THE TOWN BOARD WOULD BE LARGELY INVALID

The Vision Statement, along with a couple of the Goals and Subgoals, of the 2007 Comprehensive Plan are worthy of recollection in detail.

From the Vision Statement: "Our town's peaceful, rural, historic character and its natural beauty continue to make New Baltimore a special place to live. Economic prosperity makes New Baltimore affordable. Together these make our community a great place to live for all our citizens – a place where young people grow up then stay to raise a family, and where older residents can enjoy their senior years. From the hills to the river natural beauty is protected. Active and adaptive agriculture is promoted and preserved. Working landscapes of prosperous farms and productive forests, as well as carefully selected protected areas, provide open lands that offer views, recreation opportunities, and wildlife habitat. ... The Route 9W and thruway corridor is a thriving and attractive commercial area. Businesses are compatible with

TOWN OF NEW BALTIMORE ZONING BOARD OF APPEALS
Regular Monthly Meeting
June 1, 2016 – Page 8

our small town character. Commercial buildings fit well into their rural surroundings. Careful improvements to the highway maintain traffic flow. Commerce contributes significantly to the town tax base and helps provide economic opportunity and security for all our citizens. ...”

From the Goals and Subgoals: “[Goal] A. Preserve and protect the rural character and environmental quality of the town. Subgoals: 1. Develop clear but flexible tools to regulate major subdivisions in keeping with the rural and historic character of the town. 2. Encourage housing developments that preserve open space over those that do not by adopting concepts of smart growth and conservation design. 3. Limit multi-unit developments (condominiums, apartments, and mobile home parks) to certain parts of town. 4. Give special attention to appropriately regulating development on lots where environmental limitations exist. 5. Seek opportunities to preserve and protect historic buildings and sites, scenic landscapes, sensitive environmental sites, and public access to the Hudson River. 6. Seek ways to protect rural character and environmental quality other than simply increasing the minimum lot size. 7. Conduct an inventory of the places and things that make New Baltimore special, including historic buildings and sites, scenic vistas, active farms, open spaces that are already protected, and natural areas that deserve special attention.” “[Goal] B. Promote and encourage business development that is consistent with the rural and historic character of the town and that contributes to the town tax base. Subgoals: 1. Concentrate development in the Route 9W Corridor. 2. Provide potential developers with clear expectation for what the community requires for quality development, including requirements for the appearance of businesses. 3. Promote and encourage appropriate home based businesses. 4. Review administrative processes and improve them as needed to assure that they are thorough, prompt, and efficient.”

And it should be noted that nothing in the foregoing excerpts would be revised by the proposed amendments.

The content of a comprehensive plan places limits on the town's discretion to enact any “land use regulation”, that is, any local law enacted “for the regulation of any aspect of land use and community resource protection”, specifically including “any zoning, subdivision, special use permit or site plan regulation” and also including “any other regulation which prescribes the appropriate use of property or the scale, location and intensity of development”, Town Law § 272-a(2)(b). The basis of this limitation is the requirement of consistency with the comprehensive plan: “All town land use regulations must be in accordance with a comprehensive plan adopted pursuant to this section”, Town Law § 272-a(11)(a); which is a specific application of the more general, “Such [land use] regulations shall be made in accordance with a comprehensive plan...”, Town Law § 263.

There are numerous instances in which the proposed amendments to our land use regulations, the 2008 Zoning Code (as amended), would be inconsistent with the 2007 Comprehensive Plan, even if it were validly amended as proposed. A few examples will suffice:

- In the 2007 Comprehensive Plan, under Goal A, there are included the Subgoals, “1. Develop clear but flexible tools to regulate major subdivisions in keeping with the rural and historic character of the town. 2. Encourage housing developments that preserve open space over those that do not by adopting concepts of smart growth and conservation design”. These would not be revised.

And following there are included the Strategies, “a. Revise the zoning ordinance and subdivision regulations to make conservation subdivisions mandatory for major subdivisions ... c. Create a Rural Siting Manual to encourage minimal environmental impact in the design of major subdivisions”. Both of these would be revised, respectively, by deleting “mandatory” and substituting “available and recommended” and by providing in the discussion that the town “should institute a conservation subdivision approach that is available and recommend [sic] for consideration for major subdivisions where appropriate”, and, by providing in the discussion that a Manual is merely a “guidance” tool that is not “mandatory”.

In the 2008 Zoning Code (as amended), § 112-52, at B., provides that for a major subdivision (that is, one involving the creation of five or more lots out of a single parcel or requiring a new street or other municipal facilities) in the rural residential / agricultural district, which is the vast majority of the territory of the town, “the Planning Board shall require” a conservation subdivision; and § 112-54, at D.(3), requires that “At least 50% of the total acreage shall be preserved”; and likewise § 112-61, at A.,

TOWN OF NEW BALTIMORE ZONING BOARD OF APPEALS

Regular Monthly Meeting

June 1, 2016 – Page 9

provides that "a minimum of 50% of the gross acreage of the parcel shall be permanently protected from development". The proposed revisions would eliminate the conservation subdivision requirement of § 112-52, at B., changing it so as to read, "the Planning Board may require" a conservation subdivision; would eliminate the requirement of § 112-54, at D.(3), of permanent preservation of at least 50% of the parcel, changing it so as to read, "25 – 50% of the total acreage is recommended to be preserved"; and likewise would eliminate the requirement of § 112-61, at A., of permanent preservation of at least 50% of the parcel, changing it so as to read, "a minimum of 25% of the gross acreage of the parcel is recommended to be permanently protected from development", along with a conforming revision at B. But the present conservation subdivision mandate for a major subdivision is not inflexible. In the 2008 Zoning Code (as amended), § 112-56, A. and B., sets out the circumstances in which a major subdivision may be made as a conventional subdivision: pursuant to A., an exception may be gotten by the developer's voluntary increase in minimum lot size, in which case the minimum lot size is that prescribed in § 112-11, at B.(2), namely, per (b) for a subdivision involving the creation of five or six or seven lots the minimum size shall be five acres, and, per (c) for a subdivision involving the creation of eight or more lots the minimum size shall be ten acres; and pursuant to B., (1) and (2), a waiver may be obtained upon a Planning Board determination that "there is no reasonable basis for requiring a conservation subdivision" in which case the minimum size is that prescribed in § 112-11, at B.(2)(d), namely, for such subdivision the minimum lot size shall be two acres, the same as for a minor subdivision. The proposed revisions would leave the exception and waiver provisions of § 112-56 unchanged. But the proposed revisions would eliminate the larger minimum lot size provisions of § 112-11, at B., for major subdivisions as conventional subdivisions, changing it so as to read simply, "Minimum lot sizes for conventional subdivisions in the RA district shall be 2 acres". Thus it would appear that, considering for instance a subdivision of a one hundred acre parcel, whereas now to be made as a conventional subdivision it would have to consist of ten lots of ten acres, pursuant to the revisions it might be made as a conventional subdivision consisting of fifty lots of two acres, and without any permanently preserved open space; in other words, it might quintuple the number of households inhabiting that one hundred acre parcel, thereby quintupling the environmental impacts and quintupling demands for municipal services.

• In the 2007 Comprehensive Plan, under Goal B. there is included the Subgoal, "2. Provide potential developers with clear expectation for what the community requires for quality development, including requirements for the appearance of businesses". This would not be revised.

And following there is included the Strategy, "e. Institute design guidelines or standards for commercial development"; and additionally, following Goal D. there is included the Strategy, "g. Explore methods to improve the effectiveness of the town's zoning ordinance", one component of which is "Design guidelines: Draft and adopt the Architectural and Site Design Guidelines proposed in this plan. Depending on the final form of these guidelines, they may be included as mandatory components of zoning, or references within the ordinance". And it should be noted that, at pages 15 to 16, it is recited in the discussion accompanying the first Strategy that "over 80% of the survey respondents stated that the appearance of businesses is important and that the town should regulate the appearance of businesses". But both of these would be revised, respectively, by providing in the discussion that design guidelines are tools that are merely "guiding principles, but should not be mandatory", and, by providing in the discussion that design guidelines should be merely "suggested components of zoning" rather than "mandatory".

In the 2008 Zoning Code (as amended), § 112-25, at D. and E., provides extensively detailed site guidelines and standards, and architectural guidelines, respectively, some of which are mandates and some of which are now simply guidance, for projects in the commercial and developmental districts, which together form a narrow north-south strip running along the Route 9W / Thruway corridor. The proposed revisions would eliminate the prohibition against parking in front of new buildings at D., (1)(a)(ii), (2)(a)(iii), (5)(a)(ii); eliminate the requirement of integration of landscaping

TOWN OF NEW BALTIMORE ZONING BOARD OF APPEALS
Regular Monthly Meeting
June 1, 2016 – Page 10

within parking areas and delete the recommendation that 10% of the area be devoted to landscaping at D., (1)(c)(vi), (2)(c)(iii), (4)(c)(vi), (5)(c)(vi); eliminate the requirement of a buffer to screen trash storage at D.(2)(d)(v); delete the recommendation that the height of the first floor be a minimum of fifteen feet at E.(2)(b)(ii); delete the recommendation that roofline features should be integrated into the overall design at E., (2)(c)(ii), (5)(c)(ii); and eliminate the requirement that colors reflect the intended architectural style "rather than predetermined corporate or business colors" at E., (2)(e)(iii), (5)(e)(ii).

● In the 2007 Comprehensive Plan, under Goal A. there is included the Subgoal, "4. Give special attention to appropriately regulating development on lots where environmental limitations exist". This would not be revised.

And in the following Strategies there is no specific mention of the environmental limitations issue.

In the 2008 Zoning Code (as amended), § 112-26, at A., recites that "Steep slopes in the Town of New Baltimore are environmentally sensitive land forms and valuable natural resources which are of benefit to the entire Town and the surrounding region", and that "The intent is not to restrict general development in the Town, but to guide land use proposals into areas where they best preserve and enhance these natural resources and preserve and protect the visual and environmental character of the land"; and at G. and H., it provides regulations for the disturbance of "moderately steep slopes (between 15% and 20%)" and the disturbance of "very steep slopes (greater than 20%)", respectively, likewise for projects in the commercial and developmental districts. [Note, slopes are commonly described by reference to the vertical rise as a percentage of the horizontal run; thus, a 15% slope is one having a rise of fifteen units over a run of one hundred units and represents an angle of inclination of approximately 9°, and a 20% slope is one having a rise of twenty units over a run of one hundred units and represents an angle of inclination of approximately 11°.] The proposed revisions would repeal H., thereby completely eliminating the more stringent controls on commercial development of "very steep slopes" and allowing all uses and activities permitted in the district as are now allowed only on "moderately steep slopes".

In conclusion: The proposed revisions to the 2008 Zoning Code (as amended) would eliminate many significant controls that were enacted less than a decade ago to serve the public interest, all without explanation as to why the elimination of these controls is thought to be desirable. This amounts to a surrender of the town's proper authority over development; it is nothing less than a transfer of the power to shape development, from the town to the developer who, being a private-sector entrepreneur pursuing a private interest, cannot be relied upon to make decisions in the public interest, and can never be made to answer to the residents in any election. The inevitable result of the proposed revisions must be that a developer will have far greater latitude to pursue its own notion of development without regard to the adverse impact of those private business decisions on the town's residents who these land use regulations are intended to protect, and who will be left to live with that development after the developer has gone. The proposed revisions are clearly not calculated to achieve the fundamental purposes of the 2007 Comprehensive Plan, even as it too would be revised: this proposal is not the way to keep our peaceful, rural, historic, beautiful small town, our quiet country home town; this proposal is not the way to preserve open space, to foster attractive commercial development, to guide commercial development so as to protect sensitive natural resources. To that extent, the proposed revisions are not in accord with either the 2007 Comprehensive Plan or any foreseeable amended Comprehensive Plan, and so would be invalid.

Cordially, James H. Eckl

Adjournment

At 8:25 p.m., it was moved by Albano and seconded by Greene to adjourn the meeting,

Ayes: 4 Nays: 0 Abstained: 0 Absent: 1

Respectfully Submitted by:
Marjorie Loux, Clerk