

Minutes of the Public Hearing held August 11, 2006 at 6:30 p.m. in the town hall for the purpose of reviewing the Pease Road Gravel Bed issue to determine whether there is a basis of removing one or more members of the Planning Board due to a conflict of interest and impropriety.

Present: John Brinzow – deputy supervisor
Richard Colesante, John Metzger, Andrew Kelsey,
Daniel Buck - council members
Warren Bader - town attorney
Janet Warford - town clerk
Others present: Charles Gilkey, Paul Heins, Paul Metot,
Mike Marr, Patricia Schlueter - planning
board members
Absent: Ronald Sakonyi - supervisor

Mr. Kelsey feels after review the board should be holding an administrative hearing with regard to this matter and he would look into the proper procedure for the board to take. He recommended it best the board reconvene to a later date to be determined. The fact that the supervisor was not present at this hearing was also a contributing factor.

Mr. Colesante said the town attorney, not Mr. Kelsey should be advising the board as to what procedures to take. He questioned why the principal people involved in the Pease Road Gravel Bed issues were not present. Why adjourn to a later date when the applicant or anyone directly involved, other than planning board members were not even at this hearing?

Mr. Gilkey requested the town clerk read the following;

Memorandum to the Town Board from Warren W. Bader, Esq., dated 8/8/06

This memo will briefly outline the Site Plan review requirements and procedures as it would apply to recent actions taken by the Constantia Town Planning Board relative to the Terry Reed Gravel Pit. This outline can be used in your consideration of whether the proper procedures were taken in that matter.

Section 274-a of Town Law sets forth the procedural requirements for site plan review. Pursuant to that section, the Town Board is permitted to authorize the Planning Board to consider site plan review applications. In addition, that section also provides that a decision on the site plan review application must be made within sixty-two days after the close of the public hearing or within sixty-two days after the application is received if no public hearing is held. See N.Y. Town Law 274-a (8). Similarly, the Constantia Town Code provides that “ Within 62 days of the acceptance of a completed application for site plan approval by the planning board, or if a public hearing is held, within sixty-two days of the public hearing, the planning board shall render a decision.” C.L.D.L. 560. As for when a public hearing is necessary, the C.L.D.L. provides that the planning board may conduct a public hearing on the site plan if considered desirable by the majority of the members and, if a public hearing is to be held, it must be held within sixty-two days after the acceptance of a completed application. Looking at the facts of this case, despite the fact that the Planning Board approved a motion on March 28, 2006 that the application was complete, the application, in fact, was not complete. Furthermore, in its present state, the application continues to be incomplete. More particularly, Section 274-a also provides that “The authorized board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and it’s implementing regulations.” N.Y. Town Law 274-a (10). The SEQR regulations specifically provide that “No agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQR.” 6 NYCRR 617.3 (a). In addition, the SEQR provisions also provide that “ An application for agency funding or approval of a Type I or Unlisted action will not be complete until ... a negative declaration has been issued ... or ... until a draft EIS has been accepted by the lead agency as satisfactory with respect to scope, content and adequacy.” 6NYCRR 617.3 (3). Therefore, an application is not complete until SEQR is complete. See also Tinker ST. Cinema V. Town of Woodstock Planning Board and Sun Beach Real Estate Dev. Corp v. Anderson. In this instance, there is no dispute that SEQR has not yet been completed. Therefore, there is no completed application and a decision on the gravel pit cannot yet be made.

Therefore, in the instant matter, despite the fact that a motion was made that the application was complete, the application was, in fact, not complete because SEQR had not yet been performed. Therefore, even though a public hearing was held, it was not held after the completed application was received. It is after the completed application is received that the public hearing should be held and, thereafter a decision made.

Memorandum to WWB from WSR, dated 8/8/06

RE: Procedures for removal of Planning Board member

Per your request, I have done some additional research regarding the procedures for removal of a Planning Board member. As explained in my previous memo, Town Law 271 governs the appointment and removal of Planning Board members and provides the following:

Removal of members. The Town Board shall have the power to remove, after public hearing, any member of the planning board for cause. Any planning board member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the town board by local law or ordinance.

Town Law 271 (9) (emphasis added). As such, the planning board members may only be removed by the Town Board for cause and after public hearing. I have researched attorney general and comptroller opinions and case law and have not been able to gather any additional requirements as to procedure other than that the removal is by the town board after conducting a public hearing. The only other requirement and this relates to due process, is that the officers subject to removal have notice of the pending actions against them prior to the public hearing. Looking at the notice in the paper, it appears as if the Town Board is holding a public hearing to determine whether there are grounds to remove various members, but I do not see where they have put specific members on notice. Therefore, in my opinion, in order to avoid having any decision upheld, if it is determined after Friday's public hearing that any particular board member may be subject to removal, it would be advisable for the Town Board to hold another public hearing for the specific purpose of determining whether specific planning board members should be removed for specifically enumerated actions. Then, notice should be published and served directly upon subject planning board members and that notice should state exactly who is subject to removal and the exact grounds for that potential removal. In my opinion, that procedure would be recommended in order to avoid due process challenges.

Mr. Kelsey said that other issues have now been raised. The planning board accepted an application as complete and the application was not complete. That should be grounds for removal of planning board members who voted. Mr. Bader stated the planning board had made a decision in error and the notice issue as to who was charged and with what was a bigger issue. Discussion followed.

Mr. Colesante again questioned adjourning to a later date. He feels this is not the proper procedure to take, Mr. Bader has provided the board with enough information regarding this matter, there is no cause, the people directly involved with this issue do not feel the need to be present and this appears to be a wild goose chase. He recommended the matter be dropped and the planning board members be allowed to continue on with their volunteer work.

Mr. Brinzow stated the board needs to step back and do this correctly and end the back and forth comments and figure out the right way to handle this.

It was questioned what the conflicts were. Mr. Kelsey stated one conflict occurred when a buffer zone around the gravel bed was created which would have benefited members of the planning board owning property adjacent to the gravel bed.

A town resident stated the planning board was looking at what was good for the town in creating the buffer zone and it should have been created no matter where a gravel bed was proposed. It was noted the buffer zone was negotiated for adjacent property owned by the Sterling's.

Mr. Brinzow read a portion of a memo dated 5/5/06 from Attorney Bader relating to planning board members and conflicts of interest. It would be Bader's recommendation that a planning board member take a non-active role in the process and ultimately abstain from voting on any issue involving the Planning Board member's contiguous property owner's application. Mr. Heins stated there had never been any votes taken for or against the gravel bed and since the application is incomplete this should be a non-issue.

Mr. Kelsey made the motion to reconvene at a later date. Seconded by Mr. Buck.

Brinzow- yes	Colesante - no	Metzger - yes
Kelsey - yes	Buck - yes	