



PLANNING BOARD TOWN OF PORTER

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Approved February 2, 2017

Thursday, January 5, 2017.

The regular meeting of the Town of Porter Planning Board was called to order at 7:03 p.m. with the Pledge to the Flag.

Present: Chairperson Peter Jeffery, Vice Chairperson Anthony Collard, Member Mark Fox, Member John Bis, Member Robert Tower, Assessor Susan Driscoll, Attorney Michael Dowd, Code Enforcer Roy Rogers

Approval of the minutes from the Planning Board meeting on December 1, 2016

A motion was made to approve the minutes as presented by Member Collard and seconded by Member Fox. All in favor, motion carried.

Discussion on recommendation to the Town Board regarding Transient Housing/Airbnb Regulations

Chairperson Jeffery stated that sample codes had been provided to the Planning Board (via email from Attorney Dowd) from other municipalities. Because of a situation on Lake Road, the Town Board has asked for a recommendation from the Planning Board regarding local laws for transient housing.

Code Enforcer Rogers stated that the current law allows for interpretation and feels that the rental cottages on Lake Road are not a violation of the local law. He feels the homes are single family residences with short term rentals and do not fit the definition of a motel. However, numerous complaints have been received from the neighbors who do feel that the use is a code violation.

Chairperson Jeffery stated that the Planning Board is tasked with looking at the local law and recommending to the Town Board if additional laws or changes should be made. He stated that Airbnb's are becoming more popular and any changes would be Town wide.

Lake Road resident Michael Mosher stated that he has filed noise complaints and wants to know if there is a noise ordinance and if it is enforced. Code Enforcer Rogers stated that his noise complaint is not specific to short term rentals / transient housing. He did state that there is a noise ordinance however, enforcement is not easy. Attorney Dowd stated that Mr. Mosher had an issue with noise coming from the home his sons are renting. He stated that the issue is not what is being discussed (regarding transient housing) as a short term rental is less than a month. Code Enforcer Rogers stated that a letter had been mailed to the owner and tenant of the home and no further complaints have been received. The owner is responsible to control the noise of the tenants and if the levels seem to be "out of hand" Mr. Mosher should contact the police.

Member Tower asked if the parties involved in the complaints on Lake Road were present at the meeting. Chairperson Jeffery explained that Mr. Nowacki is out of town until April and therefore not in attendance. He stated that the Planning Board would like for him to have an opportunity to present his situation even if it could not be done in person. A written letter would suffice. Chairperson Jeffery felt that the recommendation could not wait until April as it will take time for the Town Board to make a decision and

follow procedure. Chairperson Jeffery asked Secretary Freiermuth to send Mr. Nowacki a letter asking him to submit any concerns he may have in writing so that it can be submitted to the Planning Board for consideration.

Attorney Dowd stated that this is a Town wide issue being addressed that has been spurred by a specific issue on Lake Road.

Mr. Lynch and Mrs. Lynch were in attendance. Chairperson Jeffery asked if they would like to speak. Patricia Lynch, 2091 Lake Road, read a prepared statement that was submitted for the record that evening. Mark Lynch, 2089 Lake Road, also read a prepared statement that was submitted for the record that evening.

Member Bis asked if the current use of the buildings is in violation of the Town Code. Code Enforcer Rogers said that in his opinion they are not in violation. He stated that the complaint is regarding two single family cottages. Member Bis verified that the recommendation would be Town wide. Code Enforcer Rogers concurred.

Chairperson Jeffery stated that the Planning Board does not have the authority to reverse a decision or interpretation made by Code Enforcer Rogers. Attorney Dowd stated that if a complainant does not agree with Code Enforcer Rogers, they can ask to have the decision appealed and can address the concern with the Zoning Board of Appeals. If the ZBA agrees with Code Enforcer Rogers and the complainant does not agree, the complainant can file an article 78 to have the argument heard in a court of law.

Attorney Dowd stated that he had explained this to the Lynch's in the past. He also stated that the reason the issue is before the Planning Board is that the Town Board is looking for a recommendation to see if the Town should adopt an ordinance with more specific laws regarding Transient Housing. Attorney Dowd stated that a single-family home is permitted in the zoning district on Lake Road. He said that nothing in the code book states that short rentals are not a prohibited use. Chairperson Jeffery again stated that the Lake Road property was not an issue the Planning Board could address this evening but rather the discussion should focus on the "big picture" regarding short term rentals.

Member Fox asked if more regulations are really needed. He stated that he did not want to over regulate home owners who rent out their cottages. He stated that there are avenues in which to keep noise under control, including calling the police if necessary. Mr. Lynch stated he has called the police on numerous occasions.

Member Bis asked if there was defined rental season. He asked what the definition of short term rental included. He asked if the tenant has a consideration for the environment based on the timeframe of stay. Member Bis continued in saying that the examples provided of other codes were very detailed and must be enforced. He questioned how the Town would be able to enforce the codes with such detail.

Attorney Dowd stated that short term rentals are typically defined as less than one month – including weekends, long weekends, weeks, etc. He stated that the person using the short-term rental is not considered a tenant and therefore does not fall under the tenant/landlord law.

Chairperson Jeffery stated that a definition of short term rental along with permitted zones within the code would help. He stated that in his opinion a bed tax may not be the best direction for short term rentals within the Town. Attorney Dowd stated that if the short-term rentals would be beyond a permitted use, a Special Use Permit could be required. Member Bis stated that very formal regulations require enforcement and how would the Town know who is providing short term rentals. He gave the example of letting somebody stay at his cottage for a week to go fishing.

Member Tower stated he has an issue with the term transient as the cottages are often well kept and not inexpensive to rent. He stated he feels the rules should be for everybody to protect not only the neighbors but the tenants as well. Member Fox stated he felt that the law is already in place and that the Town is not the enforcing agency. Supervisor Weipert stated that he assumes the rules in place are between a tenant and owner and that the owner should regulate and enforce the rules.

Mr. Lynch stated that last year there were between 200 and 300 people that stayed in 3 buildings. He states he has photos and videos to provide evidence. He stated that transients are unpredictable and feels it is obscene to have to pay an attorney to make sure the law is enforced. He asks that the Planning Board not be frivolous in making the law and that land use regulations should be adopted. Member Fox stated that even with land use regulations short term rentals would be a permitted use. Attorney Dowd stated that the laws could include limitations on the number of people staying in the home, parking, etc. Enforcement may still be an issue, but if there were complaints, a permit could be revoke (if the law required a permit). Attorney Dowd stated that in Grand Island the Town lost a lawsuit because of vague laws that the Town was trying to enforce. He suggested that regulations be adopted to control short term housing that are clear but concise.

Mr. Lynch asked that the Planning Board take into account the safety and health of the community. He stated that Niagara County and the DEC (Department of Environmental Conservation) will not inspect a single-family home as it would a hotel. Attorney Dowd stated that the law could include inspection of the home by Code Enforcer Rogers.

Chairperson Jeffery stated he felt that the Planning Board should not make the recommendation this evening in order to allow Mr. Nowacki the opportunity to address the Planning board. He also stated that the Planning Board should put further thought into the statements and documents submitted so that a cohesive recommendation could be made.

Attorney Dowd stated that if the Planning Board did not want overly restrictive regulations for occasional rentals, the law could include the requirement of a permit if a home owner rents the home out more than X number of times. Member Fox said that it could take only one bad tenant to revoke a permit. Member Collard stated that the Town does owe the residents a certain quality of life as well as enforcement of the code book. He stated he was not sure that more regulations were needed, but that the members should look at the parameters. Attorney Dowd said that the decision should be a “happy medium” for both the neighbors and the home owner to allow protection for both parties.

Mr. Lynch asked that if a law or additional regulations were adopted if Mr. Nowacki’s business would be “grandfathered” under the current law. Attorney Dowd and Chairperson Jeffery both stated that he would not be “grandfathered” and would therefore would need to abide by any new law or regulations created.

A motion was made to table the recommendation by Member Tower and seconded by Member Bis. All in favor. Motion passed.

Member Collard reminded the Planning Board to consider quality of life issues. Chairperson Jeffery stated he would attend the Zoning Board meeting for their opinion. Secretary Freiermuth was asked to send Mr. Nowacki a letter asking for input. Attorney Dowd stated that once the Planning Board made a recommendation to the Town Board, the Town Board would still need to make a decision and if the law were to change there is a process that must be followed — including a public hearing. He stated that this could be a process that takes a few months but feels that it could be accomplished before the summer rental season.

New / Old / Miscellaneous Business

Chairperson Jeffery stated that Christopher Guard is planning a Major Subdivision at 3881 River Road, Youngstown. The preliminary plat process as defined in the Code book is very extensive, but Mr. Guard was present to discuss his progress since meeting with the Planning Board last year.

Mr. Guard presented drawings and introduced the Planning Board to his architect Dave Sutton. Mr. Sutton stated that phase 1 of the project would include 23 lots with the potential for a phase 2 upon completion. The HOA (Home Owners Association) would allow accessibility to the river deck and docks for the homeowners within the subdivision. Twelve slips have been approved by the Zoning Board with the condition that they cannot start construction of the docks until homes have been built. Mr. Sutton stated that in principal the same design is being shown as was presented previously. Currently the engineer is working on the technical aspects of the plat. Mr. Guard stated that he is upfront and is open to any changes that may be required.

Chairperson Jeffery asked about fire code requirements. Mr. Sutton stated that there would be a turn around. Attorney Dowd asked if secondary access would be required due to the depth of the subdivision. Mr. Sutton stated that between he and the Town Engineer, those types of issues would be discussed and addressed. He stated that the storm water retention pond was shifted to the back of the northern properties rather than being located in one lot. Phase 1 water will be gravity fed while phase 2 may require a lift station. The topography study was being conducted this week.

Chairperson Jeffery stated that Town Engineer Dave Britton will be guiding the Planning Board on the SEQR process. Mr. Guard stated that the DEC and Army Corps of Engineers is involved in the process for the deck and slips.

Chairperson Jeffery asked what the expected schedule looks like. Mr. Sutton stated that the goal was to have the plat ready to present in February, but that this would be weather dependent. He also stated that they would not present the plat unless it was fully prepared. Attorney Dowd stated that the Planning Board is the lead agency on the project and that the plat would not need to be presented to the Town Board.

Mr. Guard stated that this project is an “open book” so that the neighbors are aware of the plans. He stated he is willing to meet with local residents one on one to ease any concerns or to answer any questions.

Code Enforcer Rogers report

Code Enforcer Rogers distributed his report. He stated that 120 permits were issued in 2016.

Attorney Dowd report

Nothing to report.

A motion was made to close the meeting 8:47 p.m by Member Bis and seconded by Member Tower. Motion carried.