



PLANNING BOARD TOWN OF PORTER

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Approved at the Planning Board Meeting July 7, 2016

Monday, June 20, 2016

A Special Meeting of the Town of Porter Planning Board was called to order at 7:00 p.m. with the Pledge to the Flag.

Present: Chairperson Jeffery, Vice Chairperson Anthony Collard, Member John Bis, Member Mark Fox, Member Robert Tower, Special Council Kyle Andrews

Chairperson Jeffery read from his notes: "Tonight we have the unenviable task of deliberating a controversial application for Site Plan Review. First we must complete the SEQR (State Environmental Quality Review) process, then build a rationale, on the record, for the deciding action of the McCabe Site Plan Review."

Approval of minutes from the June 2, 2016 Planning Board meeting

A draft copy was emailed to all Planning Board members. Also emailed was a copy of the transcripts of both public hearings (Fleckenstein and McCabe).

Motion to approve the minutes and transcripts as presented was made by Member Collard and seconded by Member Fox.

With no further discussion, roll was called:

Chairperson Jeffery: Yes

Member Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Motion Carried.

Site Plan Review for Michael McCabe — Service of Garden/Farm Equipment, 2384 Lake Road.

Chairperson Jeffery read: "At our last meeting a resident of this Town accused this Board of 'sin and silence' on this topic, by stating the quote 'to sin through silence makes cowards out of men'. This man is simply uninformed. He has not attended the many meetings this Board has entertained discussion in regard to Mr. McCabe's request for action; I presume it is because he gets his information from the media as opposed to the public record."

“I want the members of this Board to know that those who are informed in the public, and myself in particular, know we have certainly not sinned and definitely have not been silent on the application before us tonight. Each of you has invested your time and integrity to serve for the Town’s betterment — in my opinion. I am confident that tonight will be no different.”

“Board Members know and consider this quote from an unknown source: *‘With integrity, you have nothing to fear, since you have nothing to hide. With integrity, you will do the right thing, so you will have no guilt.’*”

Chairperson Jeffery asked those in attendance if they could hear what he was saying. A few residents in the back of the room stated they could not. Member Collard invited those in the back of the room to move forward to open chairs in the front of the room so that they would better be able to hear.

Chairperson Jeffery asked Kyle Andrews, Special Council, to take some time to address the Board and the Public in regards to the status of this Application. He stated he understood that Kyle would be responding to questions of a legal nature for the officials of the Town of Porter and for the public.

Special Council Andrews stated that he was asked to be Special Council for the Town approximately 15 months ago. During that time he claimed he has attended Town Board meetings, Zoning Board meetings and multiple Planning Board meetings. A wide range of issues has been discussed as well as the entire history of the development on the property. He was informed of the violations on the property as well as the adoption of the local law 2014-71 – all of which have lead to the Site Plan application, which is before the Planning Board this evening. He noted that prior to his involvement and prior to the Planning Board’s involvement, numerous buildings were constructed on the site, a pond was dug and a local law was adopted. He stated that this is the context the Planning Board now faces as they entertain a Site Plan for review.

Special Council Andrews stated that currently in an RA (Rural Agricultural) district, Sales and Service of Farm and Garden Equipment is an allowable use subject to a Site Plan review which according to the Town code (section 106) “is to provide a mechanism for a detailed review of development proposals to ensure that they are consistent with this chapter and the comprehensive plan, will not adversely affect the neighborhood, and promote the safety and general welfare of the community.” He stated that this is the task before the Planning Board in reviewing the Site Plan.

According to Special Council Andrews, initially the Site Plan was little more than a survey. The applicant hired council who helped to facilitate the process. Many of the issues that were raised by both the Planning Board and the members of the public have been discussed with Mr. McCabe’s attorney, Mr. Malcomb. He stated that both parties have agreed to the timeline for the process, as it has taken longer than the Town code requires.

Special Council Andrews stated that several questions have arisen in the process – including if the existing violations at the property would limit the Planning Board from moving forward with the review. Special Council Andrews stated he reviewed the violations and it was his determination that the Site Plan be approved, approved with modifications or denied this evening because the Town code allows for Site Plan review even though there is a violation or alleged violation that could be curative in nature. He stated in this instance, the Site Plan approval could be curative in nature.

Special Council Andrews stated that he is not the Town Attorney and was not involved with the adoption of Town Law that allows for the Sales and Service of Farm and Garden Equipment in an RA district. The Planning Board is the administrative body of law for the Site Plan review and therefore needs to take the law as it exists. Currently the law is not challenged in a court of law and therefore the Planning Board needs to move forward with the process.

Special Council Andrews again stated that the Planning Board should act this evening on the Site Plan by approving the Site Plan, approving with modifications or denying the Site Plan. Numerous documents have been received and shared from both Mr. McCabe and the public. Special Council Andrews stated that he feels that the Planning Board has not acted out of threat of litigation on this Site Plan review and has the best interest for the Town of Porter in making the decision this evening.

Chairperson Jeffery stated that the next step is to complete Part II of the SEQR form. One of the handouts provided to the Planning Board was Part I of the SEQR that was filled out and provided by Mr. McCabe in January 2016. He stated that section should be used as a reference while the Planning Board determines the answers to Part II. Another handout provided to each Planning Board member were excerpts from the NYS DEC (Department of Environmental Conservation) website that include guide documentation for completing Part II. Also included in the handouts is documentation from Code Enforcer Rogers of complaints, action taken and a timeline of the process for this property that will be **included in the file for the record**.

Chairperson Jeffery read the instructions for the SEQR Part II. For the record, Chairperson Jeffery read each question and discussion followed as below.

Question 1: Will the proposed action create a material conflict with an adopted land use plan or zoning regulation?

Chairperson Jeffery stated that the guide from NYS DEC states that question 1, 4 and 5 from Part I of the SEQR can be used as a guide to determine the answer to question 1 on Part II. Chairperson Jeffery read the questions and answers as provided by Mr. McCabe for 1, 4 and 5 from Part I. Chairperson Jeffery stated that question 5b asked if the permitted use is consistent with the adopted comprehensive plan. Mr. McCabe's answer was yes, but Chairperson Jeffery disagreed. He stated that section 2; subsection A of the Zoning law contains 8 goals. He read each goal and stated that these goals are representative of the comprehensive plan.

Chairperson Jeffery stated that each question on Part II would need to be answered as either:

No, or small impact may occur

or

Moderate to large impact may occur

After allowing both Mr. Malcomb and Mr. Jones (The lawyer Mr. and Mrs. Dean — neighbors of Mr. McCabe) to speak, the planning Board decided because the Town Law currently allows the land use of Sales

and Service of Farm and Garden Equipment that the answer to question 1 was no, or small impact may occur. As indicated with a yes, all Members were in favor and none opposed.

Question 2: Will the proposed action result in a change in the use or intensity of use of land?

Member Fox stated that he felt the Site Plan would have a large impact on the intensity of the use of land. Member Bis agreed. Chairperson Jeffery stated that it was moderate at best and the land is already impacted since the first building was built in 2012. Member Fox stated the scope of the project is large and Member Tower stated that buildings and a pond cover the two (2) acres that Mr. McCabe owns. He asked what the definition of intensity includes. Chairperson Jeffery stated the intensity of the land is based upon what the land was used for prior to the project. He stated that property was originally farmland and therefore the current and proposed use is a huge change in intensity. Current and proposed business activity changes the use and intensity of the land and is currently a violation of the law. Chairperson Jeffery asked the Planning Board members if their answer was no or small or moderate to large. All members stated that it was a moderate to large impact.

Attorney Malcomb stated that for every question that is answered as moderate to large impact may occur, Part III of the SEQR must be completed. It was suggested that it may help the Planning Board in answering Part III by reviewing the modifications made to the Site Plan regarding screening, storage of materials, lighting, noise, etc. Chairperson Jeffery stated that these modifications might help to mitigate the intensity of the land. He also stated that further modifications could be required to further reduce the impact. Attorney Jones did state that the question itself is asking if the impact is small or large. Part III will address the areas that could mitigate the answers.

Member Tower asked whom the guidance for these questions should be coming from. He feels that the attorneys have been trying to guide the Board this evening and requested that the Planning Board continue with the questions without the lawyers input (unless asked). Chairperson Jeffery stated that all input is good. Member Tower agreed, but stated that each attorney is going to argue his client's position but the Planning Board needs to make the final decision.

Chairperson Jeffery asked the Planning Board members if they all agreed that the answer to question 2 was moderate or large impact and they agreed.

Question 3: Will the proposed action impair the character or quality of the existing community?

Chairperson Jeffery stated that this was the sticking point for him because the character of the neighborhood has been significantly impacted. The bulk size of the buildings adds a significant focus on the character of the neighborhood.

Member Tower stated that someone told him the litmus test would be to ask him if he would want it (Mr. McCabe's property) across the street from his house. He stated that the houses on the Lake were there before the development and he feels it is a huge impact on the neighborhood. Member Bis stated it was certainly a large impact. He stated that this whole thing is very troubling to him and he feels the application

has been slipping and sliding from the beginning and at this point he feels it is hard to determine what the application is even requesting at this point. He asked if the application has changed since it was submitted. Chairperson Jeffery stated that the application itself has not changed from when it was submitted in May of 2015. The application is for the Service of Farm and Garden Equipment. He stated that measures to mitigate Site Plan concerns from the Planning Board have been submitted since the application was received.

Member Bis stated he found it difficult to continue the SEQR without the actual details of the final plan being presented. Special Council Andrews suggested that the Planning Board allow Mr. John Battaglia (Mr. McCabe's engineer) to present the current plan to the Board so that they can continue with their responses on the SEQR.

Mr. Battaglia stated that during the public hearing a few issues were brought to his attention and he has worked on addressing those issues. Copies were provided to the Planning Board. The issues were:

1. Screening to allow for full screening from public view from the front of the property. Modifications have been made to include fencing and vegetation screening that covers the western and eastern side of the property as well as the dumpsters on the property.
2. Exterior parking and storage. Customers and Mr. McCabe will park in the front of the property but employees will park behind the fencing and screening. The storage area will also be behind the screening.
3. A variance that is needed for the project and Mr. Battaglia stated that the variance documents have been on file as part of the application process.
4. Pavement or hard surface is needed to minimize the potential for dust. Mr. Battaglia stated that areas in the front would be covered with concrete to eliminate the dust from traffic.
5. Lighting is an issue and although a light study was not formally done, Mr. Battaglia stated that Mr. McCabe measured the light and found it to be less than 5 candle foot. Mr. Battaglia stated that Mr. McCabe agreed to install deflectors and if need be change the lighting if it is still an issue for the neighbors.
6. Noise limitations would include no activity during the timeframes within the Town code as indicated on the updated drawing presented. Hours of operation would be limited to the Town code.

Chairperson Jeffery stated that this should clear up some of the concerns that were outstanding. Member Bis stated it did help. Chairperson Jeffery reread the question:

Question #3: Will the proposed action impair the character or quality of the existing community?

Chairperson Jeffery asked if the proposal as being presented will impact the community in a small way or moderate to large impact. Member Collard stated it is a large impact in his opinion. The screening may hide the building, but it is still large. Member Fox stated that if this was on Balmer Road, it may not be an issue, but because this is on Lake Road within a community it is a large impact.

Chairperson Jeffery read the instructions for Part III of the SEQR so that the Planning Board would further understand how to handle moderate to large answers. All board members agreed that the answer to question 3 is moderate to large.

Question 4: Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?

The Planning Board members agreed this was not a CEA so the answer is No, or small impact may occur.

Question 5: Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?

The Planning Board members agreed that traffic or infrastructure for mass transit would not increase drastically and therefore the answer is No, or small impact may occur.

Question 6: Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonable available energy conservation or renewable energy opportunities?

The Planning Board members agreed that use of energy would not be a large impact and therefore the answer was No, or small impact may occur.

Question 7: Will the proposed action impact existing:

a. public/private water supplies?

The Planning Board agreed the answer is No, or small impact may occur.

b. Public/private wastewater treatment utilities?

The Planning Board agreed the answer is No, or small impact may occur.

Member Bis asked about the storage tank on site and was told by Mr. Battaglia that the tank is self contained and not connected to sanitary sewer.

Question 8: Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?

The Planning Board agreed the answer is No, or small impact may occur.

Question 9: Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?

Member Bis stated that there would be an air quality issue considering Mr. McCabe has already been sited by the DEC (Department of Environmental Conservation) for sandblasting outdoors. Chairperson Jeffery stated that sandblasting is not a proposed use at this time. Member Collard asked if Mr. McCabe would be painting the garden equipment. Mrs. McCabe answered that he would not be sandblasting. She also stated that the sandblasting equipment has not been on the property in a year. Mr. McCabe's son stated that the building where painting occurs has an air filtration system that has been approved and inspected by the

DEC. He stated there are multiple layers to the filtration system. Chairperson Jeffery stated that a stipulation could be included that all DEC air quality requirements must be met and maintained.

The Planning Board agreed the answer is No, or small impact may occur.

Question 10: Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?

Mr. Battaglia stated that there was a large culvert installed recently and there are no drainage or flooding issues on the property. The paved areas will not be in the drainage area so they should not have any issues from the driveway.

Chairperson Jeffery asked Special Council Andrews if the drainage plan had been submitted to the Town Engineer. Special Council Andrews was not sure, but would find out from Code Enforcer Rogers. Chairperson Jeffery stated that if the Site Plan was approved, a stipulation could be made that the Town Engineer must approve the drainage plan.

The Planning Board agreed the answer is No, or small impact may occur.

Question 11: Will the proposed action create a hazard to environmental resources or human health?

Chairperson Jeffery stated that the DEC guide refers to questions 18, 19 and 20 from part I. Chairperson Jeffery read question 18 from Part I: Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (eg. Retention pond, waste lagoon, dams)? Chairperson Jeffery stated the answer indicated (as filled out by Mr. McCabe) was No. He asked Mr. Battaglia if any of the ground or surface water drained into the pond on the property. Mr. Battaglia stated that the pond is “catching the fields in the back” because the water drains north due to the slope in the property.

Chairperson Jeffery read question 19 from Part I: Has the site of the proposed action or adjoining property been the location of an active or closed solid waste management facility? He stated the answer is No.

Chairperson Jeffery read question 20 from Part I: Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? He stated that answer to that is No.

Chairperson Jeffery stated that it appears that the proposed action will not create a hazard to environmental resources or human health. Attorney Jones asked if the State Pollutant Discharge Elimination System (SPDES) permit should be taken into consideration. Chairperson Jeffery stated that because the permits were all issued for individual projects at different times, a SPDES permit was not needed or issued because it was less than one acre of construction at a time, as he understands the law. Special Council Andrews concurred that Chairperson Jeffery was correct for SPDES. Chairperson Jeffery read question 11 again.

The Planning Board agreed the answer is No, or small impact may occur.

Chairperson Jeffery stated that because the Planning Board has questions that were answered, “Moderate to large impact may occur” Part III needed to be completed for those questions.

He reread question 2 — Will the proposed action result in a change in the use or intensity of the land?

Chairperson Jeffery stated the proposed business activity for the Site Plan is the proposed action. Member Fox suggested that because there is already activity on the property, it should be considered as though the project is not already complete. He stated that the potential impact could be seen already because the buildings are built. Member Bis stated that if you took aerial photographs of the property now versus when it was farmland there is a significant negative visual impact for the neighborhood.

Special Council Andrews stated that the Planning Board needs to consider what additional impact will occur if the Site Plan is approved. Chairperson Jeffery stated it is hard to ignore the fact that there are non-conforming structures on the property. He said that the intensity and bulk of the buildings has changed the intensity of the property. He stated that if the Site Plan is approved, the business activity will be allowed. If the Site Plan is denied, the buildings will still be on the property. The Site Plan, if approved, would mean that building number 1 could be used for business activity, which would increase the intensity of the use. Therefore the Planning Board needs to decide if the screening and concrete would mitigate the intensity of impact. Member Collard stated that stipulations could be put on the Site Plan if approved. Chairperson Jeffery agreed.

Chairperson Jeffery stated that the identified impact for question 2 would include:

- Traffic
- Business activity
- Noise
- Lighting

The members agreed. Member Bis also felt that visual and aesthetic impact also needed to be included.

Chairperson Jeffery asked the members if any of the proposed actions mitigate the identified impact. The members discussed areas to reduce the impact include:

- Screening
- Driveway (concrete) will reduce dust
- Shielded lighting (adjust as needed)

Chairperson Jeffery stated that noise is still a concern and although the screening will reduce the noise, it will not be eliminated. He suggested that the mitigation there is that the work must be performed inside the building. Member Collard asked Mrs. McCabe about the proposed hours of 7:00 a.m. – 9:00 p.m. and questioned why they were so long. Mrs. McCabe stated that this is what is in the Town Zoning book and they took that timeframe from the Code. Member Collard asked if the timeframe could be adjusted. Mrs. McCabe said yes. She also stated that if the lights need to be adjusted or turned off, they would be willing to work with the Planning Board.

Chairperson Jeffery asked Special Council Andrews how detailed the Planning Board needed to get with Part III. He stated that questions 2 and 3 from Part II need to be “transferred” to Part III and further explained why the answer was “moderate to large impact may occur” and then to explain if the answer could be mitigated. Chairperson Jeffery stated he felt that question 2 had been addressed.

Chairperson Jeffery reread question 3: Will the proposed action impair the character or quality of the existing neighborhood?

He asked the Planning Board members what their opinion was for how to address this in Part III. Member Fox stated that he agreed with Member Tower asking if someone would want this across the street from their house. Chairperson Jeffery stated that this was a quiet lakefront residential area with no business activity in that area prior to Mr. McCabe.

Member Tower asked Member Collard if he was involved in the Master Plan for the Town. Member Collard concurred and stated that there was never commercial activity intended for this area. Member Collard stated that when the updated Zoning Code was adopted more commercial districts were added in Ransomville proper and identified more rural commercial districts. He stated that there are rural commercial districts within a half-mile on either side of this property on Lake Road. There is one to the east at the end of Ransomville and Lake Road and one to the west is a rural commercial district that incorporates the hotel and Truesdale trucking. There is also one by Ray’s and the furniture store. Chairperson Jeffery stated that some of the property that was zoned rural commercial at the west corner of Ransomville Road and Lake Road was rezoned back to residential by way of owner petition.

Chairperson Jeffery stated that the impact needs to be identified. He stated that the residential area now has business activity and that many of those issues are identified from question 2. The mitigating measures that are being proposed include screening, pavement, shielded lighting and hours of operation.

Chairperson Jeffery read from the SEQR:

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Chairperson Jeffery stated that if the second box is checked then it means that the Planning board agrees that the answers to the SEQR are not significant either by the answer in Part II or the mitigation outline in Part III.

Attorney Malcomb stated that the SEQR can be issued as negative impact, but the Planning Board can still deny the application. The SEQR is specific to the environmental impact. He stated that a multimillion-

project casino was built on a negative declaration. If the SEQR is determined to be a significant impact, a detailed engineer survey will be required. Attorney Jones stated he had nothing further to add.

Chairperson Jeffery stated that if the SEQR is issued as a small or no impact declaration, the Planning Board is not approving the Site Plan. He stated he felt that it was appropriate to check the no or small impact to declare a negative declaration on the SEQR. Member Collard stated he agreed, but reluctantly.

A motion was made to declare the SEQR will not result in any significant adverse environmental impact by Member Collard and seconded by Member Fox.

With no further discussion, roll was called:

Chairperson Jeffery: Yes

Member Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Motion Carried.

A copy of the completed SEQR is attached.

A brief recess was taken.

Chairperson Jeffery read (from his notes) his perspective: "I want to start the deliberation hereafter by presenting my perspective — the Board can then discuss the merits of my reasoning.

First I have tried to separate fact, fiction, and emotional data. We have an extraordinary amount of testimony and reports/ information for this application. However facts and the law are the primary elements for us to use in deciding our action. I believe that this Site Plan should be denied, based on the following;

1. Pursuant to section 106 (A) of Town Zoning Law: Mr. McCabe's current and proposed business activity is not consistent with the Comprehensive Plan. Furthermore the proposed business has (and will continue) to adversely affect the neighborhood. The health/safety and general welfare of the community is not served well by sitting a business in this well established Lakefront residential neighborhood, as is evidenced by public comments during the public hearing. 64 pages of transcripts were compiled from the public hearing.
2. In accordance with the Comprehensive Plan adopted 12/13/2004 and Farmland Protection Plan adopted 12/11/2006 as referenced in section 2 (A) of Town Zoning Law: Mr. McCabe's Business activities at this site (both current and proposed) violate the once cohesive neighborhood in an adverse way, and do not protect the agricultural resources of the Town, and are not the promotion of responsible development of residential and commercial development.
3. Mr. McCabe is a habitual offender in violation of the Town of Porter laws, as is exemplified by:

- a) Building #1 in 2012 is constructed without obtaining a building permit. A building permit is issued after construction because of a complaint of unlawful construction. This is a violation of Town laws. Note that this is fact even though not documented by the Code Enforcement officer.
- b) Building #1 is constructed without variances for side yard setback and square footage greater than the primary structure.
- c) Subsequent buildings (#3, 5 and 6) were all constructed without variances for square footage greater than the primary structure. A violation of the Town laws.
- d) Business activities, both industrial and commercial in nature have transpired (nearly continuously) from at least January of 2013 to present. A Violation of Town laws.
- e) Construction of a recreational pond is completed without a variance for side yard setbacks. A Violation of Town laws.
- f) Spoils (excavated earth) from recreational pond construction is removed from the property. A Violation of Town laws.”

Chairperson Jeffery continued by saying “Although not all of the above are specific to the Site Plan, they are violations of Town laws, and are significant. Though not a complete record of violations it should serve to demonstrate that Mr. McCabe intends and has demonstrated he does what he wants with no regard for Town law and no regard for his immediate neighbors. I believe that a ‘known/Habitual offender of the law’ is a valid and reasonable component for a denial action on this Site Plan because I have no faith that Mr. McCabe will conform to the Town Zoning Law.

- 4. Further evidence of the above is that Mr. McCabe has acquired ‘Farm Status’ on this site by deliberately using New York State Ag and Market Laws to remediate existing violations of the Town Zoning Law (many of the previous mentioned violations). There is no measure in the Town law to ensure that Mr. McCabe will continue to perform the farm operations after he acquires approval to operate a business on this site.”

Chairperson Jeffery continued in saying, “Mr. McCabe has proven to me, and I think this Board, that he will use his financial assets and personal influence to manipulate any obstacle in the way of his goal to operate a business at this site. And I think this is an adverse impact to the neighborhood. If you listen to Mr. McCabe’s lawyer we should have no reason to deny the Site Plan. If you listen to the Dean’s lawyer, we have no reason to approve the Site Plan. I feel that within the law we have the rights and means to deny this based upon those sections of the code. I don’t know where the rest of the board stands and have not lobbied you to my side outside of the public hearing.”

Member Tower stated that within RA (Rural Agricultural) in the code book there is a lot width requirement and there are three categories. He stated that agricultural or farm operation is 200 feet, residential is 125 feet and other uses are 300 feet. He stated that he couldn’t find within the Ag and Market law that Farm and Garden Repair is an agricultural operation, and asked if would fall under “other uses” and therefore require a lot width of 300 feet. He stated that the property is only 249 feet wide.

Chairperson Jeffery stated that because of the multiple uses on the property the “waters are muddied” and hard to enforce under the farm status. Member Tower stated he has a problem with this being a Right to Farm issue. He stated this law is intended for farmers and is not supposed to be used negatively to correct violations by becoming a farm. Chairperson Jeffery stated that the law is not to be used to escape Town Code. Member Tower concurred.

Chairperson Jeffery stated that the character of the neighborhood is the aspect of the law that can be used to deny this Site Plan. Member Fox stated again that this business is in the wrong spot. Chairperson Jeffery agreed and stated that entire process was done improperly from the beginning.

Member Collard stated that the complaint action summary provided by Code Enforcer Rogers is 4 pages, which is pretty extensive. He stated that if the Site Plan is approved would the complaints continue. Chairperson Jeffery stated that it is hard to imagine that Mr. McCabe would adhere to the guidelines that are stipulated. He stated there is business activity going on right now that is not supposed to be happening including a sign out front with topsoil for sale.

Member Collard said that to deal with the farm status he went through all of his files and reviewed a letter from Ag and Markets dated December 8, 2015 that is confusing, but in conclusion states that based upon the current information, the property does not meet AML (Ag and Markets Law) 301-11 definition of a farm operation. He further stated that this determination however does not mean that Mr. McCabe is not a farm as defined in the Town Zoning Code. If he plants crops in 2016, he may be considered by this department (Ag and Markets) to be a farm operation. As such only buildings and activities conducted within the buildings that are connected to a farm operation may be protected under the Ag and Markets Law. He continued that the Town Zoning Code may have broader protection than the Ag and Markets Law. Chairperson Jeffery stated that the farm operation under the Code specifically refers to the Ag and Markets Law and therefore he interprets the letter (and the Code) that as of 2015 Mr. McCabe was not a farm. He stated that this is contrary to what the Code Enforcement Officer Rogers determined when issuing buildings permits prior to 2015. Since that time livestock was purchased and Mr. McCabe is in the process of farming the land himself. Since the letter was issued Code Enforcer Rogers has determined, that as of now, Mr. McCabe qualifies as a farm operation. However, the business of Servicing Farm and Garden Equipment is not a farm operation. Member Collard asked if the servicing would be covered under the Ag and Markets Law and Chairperson Jeffery stated it would not fall under Ag and Markets and therefore should conform to all the Town Zoning laws.

Member Bis stated that the Town spent a great deal of time on the Master Plan with many people involved. He stated that the Plan really focused on promoting the agriculture intent of the Town. He stated this application does not do that. He continued that the Planning Board is working backwards on this project because all of the buildings have been approved. He stated that if the application is to be approved as a curative measure, it makes a folly of the whole process.

Therefore Member Bis made a motion to deny the application using the stipulations that Chairperson Jeffery cited. He stated that Secretary Freiermuth could gather the information from the meeting for the specifics. Chairperson Jeffery stated that the stipulations included section 106A of the Town Zoning law that the proposed business is not consistent with the Comprehensive Plan and further that the purposed business adversely affected the neighborhood. He also stated that section 2A of the Town Zoning law was cited that

is more specific to the Comprehensive Plan and the cohesiveness of the neighborhood. He stated that the character of the neighborhood is a significant factor to the Site Plan review section of the Code.

With the motion made by Member Bis, Member Collard seconded the motion.

With no further discussion, roll was called:

Chairperson Jeffery: Yes

Member Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Motion Carried.

Attorney Malcomb asked that the Planning Board still make a referral to the Zoning Board so that they can continue the process with the variances requested. He stated that the Zoning Board could approve the variances because the Planning Board issued a negative declaration of the SEQR. Member Tower also stated that he would like the Zoning Board to look into the 300 feet frontage variance. Chairperson Jeffery stated that it appears that currently there is a side yard set back variance needed and a square footage variance for the accessory building in excess of the primary residence.

A motion was made by Chairperson Jeffery to make a recommendation to the Zoning Board of Appeals that they deny the applied for area variances for both side yard setback and variance in footage for the accessory building in excess of the primary structure. If minimum lot width requirement of 300 feet is needed, Chairperson Jeffery motioned that this variance should be denied as well. He stated that the variance recommendations are based upon the Site Plan being denied for the Service of Farm and Garden Equipment.

With the motion made by Chairperson Jeffery, the motion was seconded Member Bis.

With no further discussion, roll was called:

Chairperson Jeffery: Yes

Member Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Motion Carried.

A motion was made to adjourn the Special Meeting of the Planning Board at 9:25 p.m. by Member Collard and seconded by Member Bis. All in favor.

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information							
Name of Action or Project: McCabe Site Plan Approval							
Project Location (describe, and attach a location map): 2384 Lake Road, Ransomville, NY							
Brief Description of Proposed Action: Site Plan approval by Town of Porter Planning Board for current property use of Sales/Service of Garden/Farm Equipment. Variances approval by Town of Porter Zoning Board of Appeals for front and side yard setbacks for existing structures.							
Name of Applicant or Sponsor: Michael L. McCabe		Telephone: 716-791-3253 E-Mail: mmc2371@aol.com					
Address: 2371 Lake Road							
City/PO: Ransomville		State: NY	Zip Code: 14131				
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">NO</td> <td style="width: 50%; padding: 2px;">YES</td> </tr> <tr> <td style="text-align: center; padding: 2px;"><input checked="" type="checkbox"/></td> <td style="text-align: center; padding: 2px;"><input type="checkbox"/></td> </tr> </table>	NO	YES	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NO	YES						
<input checked="" type="checkbox"/>	<input type="checkbox"/>						
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: Action requires Site Plan Approval by the Town of Porter Planning Board and Variance approval by the Zoning Board of Appeals			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">NO</td> <td style="width: 50%; padding: 2px;">YES</td> </tr> <tr> <td style="text-align: center; padding: 2px;"><input type="checkbox"/></td> <td style="text-align: center; padding: 2px;"><input checked="" type="checkbox"/></td> </tr> </table>	NO	YES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
NO	YES						
<input type="checkbox"/>	<input checked="" type="checkbox"/>						
3.a. Total acreage of the site of the proposed action?		~14.5 acres					
b. Total acreage to be physically disturbed?		0 acres					
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		~14.5 acres					
4. Check all land uses that occur on, adjoining and near the proposed action.							
<input type="checkbox"/> Urban <input checked="" type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input checked="" type="checkbox"/> Agriculture <input checked="" type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____ <input type="checkbox"/> Parkland							

5. Is the proposed action, a. A permitted use under the zoning regulations? Subject to Site Plan Approval by Planning Board and variance approval b. Consistent with the adopted comprehensive plan? by Zoning Board of Appeals	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation service(s) available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	NO <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	YES <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places? b. Is the proposed action located in an archeological sensitive area?	NO <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	YES <input type="checkbox"/> <input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	NO <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	YES <input type="checkbox"/> <input type="checkbox"/>	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input checked="" type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
16. Is the project site located in the 100 year flood plain?	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? <input type="checkbox"/> NO <input type="checkbox"/> YES If Yes, briefly describe: _____	NO <input checked="" type="checkbox"/> 	YES <input type="checkbox"/> 	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____ _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____ _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____ _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
<p>I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</p> <p>Applicant/sponsor name: <u>MR M... ..</u> Date: <u>1-10-16</u></p> <p>Signature: _____</p>		

Short Environmental Assessment Form

Part 2 - Impact Assessment

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept “Have my responses been reasonable considering the scale and context of the proposed action?”

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing: a. public / private water supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Short Environmental Assessment Form

Part 3 Determination of Significance

For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

Question 2:

Identified Impact:

- Traffic
- Business activity
- Noise
- Lighting
- Visual and aesthetic

Proposed Mitigation:

- Screening
- Driveway (concrete) to reduce dust
- Shielded lighting (adjust as needed)
- Hour of operation

Question 3:

Same identified impact and proposed mitigation as question 2.

☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

☒ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Town of Porter Planning Board

June 20, 2016

Name of Lead Agency

Date

Peter Jeffery

Chairperson

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Amy L. Freiermuth
Secretary

Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from Responsible Officer)

Complaint Action Summary

Complaint Number: 012-14

Complaint #: 012-14**Type:** Non-permitted Business**Status:** Open**Location:** 2371 Lake Rd**Identifier:** 21.17-1-22**Open Date:** 04/29/14**Owner:** Michael McCabe**Complainant:** Anonymous**Nature Of Complaint:** commercial work in a RA district

Action Type	Action Date	Action Information
Inspection	04/25/14	Inspector: Roy Rogers Result: Pass Notes: r McCabe showed me around the site and his collection of tractors, He indicated that he was restoring his own collection of old tractors and equipment. I informed him that the property was not zoned for commercial operations.
Individual letter	04/29/14	McCabe Roy Rogers Letter sent on April 28 regarding use of property
Inspection	08/12/15	Inspector: Roy Rogers Result: Pass Notes: report of bak hoe being painted. I saw only the NY Dot equipment
Inspection	09/15/15	Inspector: Roy Rogers Result: Pass Notes: I saw no commercial activity some partions from the previous Grand rix races in Niagara Falls weere purchased by Mr. McCabe
Information to Courts	11/20/15	McCabe n permitted use, commercial operations. Conducting commercial work in a Rural Agricultural Zone on 11/16/2015 as evidenced by an invoice to Village of Youngstown for commercial work of sandblasting and painting a trailer.
Violation	11/20/15	The permitted uses table presents a list of permitted uses, the district that the use is permitted in, and the permit process necessary for each use, which may vary by zoning district. A. A blank in the table means that use is not permitted in that district. An individual may request an application for a use variance for non permitted uses. B. Any use, which is not specifically listed on the permitted use table, is not permitted in any district unless it is determined by the Code Enforcement Officer, in consultation with the Planning Board, that the use is similar to one (1) of the uses in the permitted use table. open
Inspection	11/24/15	Inspector: Roy Rogers Result: <none> Notes: call from bi;; dean regarding a bucket truck being placed in one of the buildings, I observed a bucket truck in the building. No work was being done. Spoke to mr. McCabe and he told me it was just parked as a foveor to friend that was hunting.
Phone Call Received	01/04/16	McCabe recieved comoplainat that McCabe was fabricating and painting steel girders
Inspection	01/06/16	Inspector: Roy Rogers Result: Pass Notes: Mr. MCcabe told nme that the fabrication was for his business in Lockort.
Inspection	01/06/16	Inspector: Roy Rogers Result: <none> Notes: could not verify violation
Phone Call Received	01/14/16	McCabe complaint that more work is being done today
Inspection	01/14/16	Inspector: Roy Rogers Result: <none> Notes: could not verify

Town of Porter

Complaint Action Summary

Complaint Number: 043-14

Complaint #: 043-14

Type: Unpermitted construction

Status: Completed

Location: 2371 Lake Rd

Identifier: 21.17-1-22

Open Date: 11/05/14

Owner: Michael McCabe

Complainant: Anonymous

Nature Of Complaint: removal of soil from excavation for pond in violation of code section 50 para H.

Action Type	Action Date	Action Information
Inspection	11/05/14	Inspector: Roy Rogers Result: <none>
1st letter	11/05/14	McCabe Ransomville, NY 14131
Notice of Violation	10/13/15	McCabe removed dirt without Town Permission
Violation	10/19/15	H. All soil excavated as a result of pond construction shall be retained on the premises for grading, finished seeding, or other landscaping purposes. Any mound created as a result of excavation shall be stabilized and maintained. The Town Board must approve any exceptions. open
Final Notice of Violation	10/21/15	McCabe stop removing dirt
Accusatory Instrument	10/21/15	McCabe Roy Rogers the [21] day of October 2015 removing dirt in violation of local zoning code section
Accusatory Instrument	11/09/15	McCabe Roy Rogers the [19] day of [October] , 2015 Removal of truck loads of soil on 19 October 2015.
Inspection	05/05/16	Inspector: Roy Rogers Result: Pass

Notes: Farm pond building permit issued on May 5 2016. Farm ponds have no prohibition on removing dirt. case closed

Town of Porter

Complaint Action Summary

Complaint Number: 004-15

Complaint #: 004-15

Type: Unpermitted construction

Status: Completed

Location: 2371 Lake Rd

Identifier: 21.17-1-22

Open Date: 02/04/15

Owner: Michael McCabe

Complainant: Anonymous

Nature Of Complaint: building a bilding withoput a permit

Action Type	Action Date	Action Information
1st letter	02/04/15	McCabe Ransomville, ny 14131
Inspection	02/06/15	Inspector: Roy Rogers Result: Fail
Notes: informed Mr. McCabe that a building permit is required. Will Pick up permit on Feb9, 2015		
Inspection	02/09/15	Inspector: Roy Rogers Result: Pass
Notes: permit issued for a temporay building using precast blocks and trusss roof		

Town of Porter

Complaint Action Summary

Complaint Number: 007-16

Complaint #: 007-16

Location: 2384 Lake Rd

Owner: Michael McCabe

Type: Non-permitted Business

Status: Open

Identifier: 34.00-1-5.22

Open Date: 05/19/16

Complainant: Anonymous

Nature Of Complaint: Painting a car

Action Type	Action Date	Action Information
Inspection	05/19/16	Inspector: Roy Rogers Result: <none>
Notes: observed car being primed. Mr McCabe indicated he owns the vehicle. He will provide proof of ownwrhsip		
Individual letter	05/20/16	McCabe Roy Rogers letter sent requiring registration of vehicles
Individual letter	05/20/16	McCabe Roy Rogers sent letter that bil opf sale is not sufficient to establish ownership of the vehicle in question.
Letter received	05/20/16	McCabe Roy Rogers recieved a bill of sale for two junk vehicles.

Timeline for events involving McCabe

3/--/2012	Application for pole barn building permit denied- no primary structure on the parcel existing garage/farm produce stand
4/12/2012	Properties merged project #005-12
5/--/2012	determined to meet criteria to be a farm—USDA crop schedule 2008-20012
6/18/2012	Permit#41-12 40x 80 pole barn for personal storage of farm tractors. Set back established by existing building
7/31/2012	Permit #78-12 40 x 40 extension of #41-12. Personal storage of farm tractors and equipment
11/04/2013	Permit # 89-13 30 x 64 Pole barn for storage of personally owned tractors and equipment
5/--/2013	observed tractors for sale. Notified Mr. McCabe that sales of farm equipment is not a permitted use

Timeline for events involving McCabe

6/09/2014	Zoning law revised to allow Sales and Service of garden and farm equipment as a permitted use after site plan approval.
5/7/2014	Permit # 021-14 30 x 56 pole barn for personal storage of tractors
9/24/14	permit # 83-14 Recreational pond approx. .7 acres
11/5/2015	Complaint removal of soils Mr. McCabe informed that no soils may be removed without Town Board Approval
1/0920/15	Complaint # 12-14 Non-permitted business "industrial" use, informed MR. McCabe he may not operate a sandblasting business or take any commercial business. Complaint open and being monitored
2/04/2015	Complaint #004-14 building without a permit. Informed Mr. McCabe he may not build without a permit. Applied for a permit for a Temporary Building. Permit issued and complaint cleared.
2/06/2015	Request for site plan approval for application to sell and Service Garden/Farm Equipment
2/06/2015	Permit # 05-15 30 x 65 pole barn construction for temporary dry storage.

Roy Rogers

From: "Roy Rogers" <porterbuildinginspector@roadrunner.com>
Date: Wednesday, June 15, 2016 11:14 AM
To: "Ptjeff89" <ptjeff89@aol.com>
Subject: Re: McCabe Site plan

I have put into your box a copy of the time line of events summary that was prepared some time ago to give Kyle some background. Also, I have copied the complaint action summary for each of the filed complaints. Two are closed the one for building a temporary building, and the one for removing soil. Both were cured by subsequent actions. There are two open, one for commercial work that is in Lewiston court(now set for pretrial on June 21) and one recently opened for painting a car. Have a bill of sale to McCabe, but requested a registration or title and have not yet received that evidence.

I will be out of town beginning tomorrow, but may be reached by email or phone. My personal cell phone 716 863 9155

From: Ptjeff89
Sent: Tuesday, June 14, 2016 8:52 PM
To: porterbuildinginspector@roadrunner.com
Cc: porterplanningboard@gmail.com
Subject: McCabe Site plan

Roy,

Would you please assemble a compilation Log of Violation/Complaints/Actions Taken against Mike McCabe at 2384 Lake Road site for the Planning Boards review and enlightenment as we deliberate the Site plan application. It is my belief that the Planning Board needs to search for the facts as we approach a rational decision regarding this controversial application. We have heard comments from the public and from Lawyers and from the Applicant. Each of those parties would have the Board believe that their position is the correct one. I think that the Planning Board needs this information to discern facts from fiction and or emotional commentary. If you could Forward that to me prior to our Monday 6/20/16 meeting I would appreciate it. Thank You.

Sincerely
Peter T Jeffery
Planning Board Chairperson - Town of Porter