

**PLANNING BOARD  
TOWN AND VILLAGE OF ARCADE  
17 Church Street, Arcade, New York 14009  
Village Office      585 492-1111  
Town Office        585 492-4685**

At a meeting of the Planning Board of the Town and Village of Arcade held on Wednesday, August 14, 2013 at 7:00 P.M. in the Village Boardroom, 17 Church Street, Arcade, New York:

**MEMBERS PRESENT:** Rich Kosmerl, Don Suttell, Andy Schnitzler and Aaron Felber

**MEMBERS ABSENT:** Paul Bijhouwer

**OTHERS PRESENT:** ZEO Chris Lexer, Jim McGarvey

The meeting was called to order at 7:01 P.M. by Acting Chairman Rich Kosmerl.

**APPROVAL OF MINUTES:**

The minutes of the meeting of March 13, 2013 were tabled as a quorum from that meeting was not present.

**MOTION** by Aaron Felber, seconded by Don Suttell and unanimously carried, to accept the Minutes of the meeting of July 10, 2013.

**JIM MCGARVEY AND CHRIS LEXER REQUEST DISCUSSION REGARDING NON-RESIDENTIAL SITE PLAN REVIEWS FOR THE VILLAGE OF ARCADE:**

Mr. McGarvey and the ZEO asked if it was possible not to bring non-residential Site Plans to the Planning Board if they were small in scope. Mr. McGarvey feels the policy needs to be changed to give the ZEO the ability to grant a Certificate of Zoning Compliance if there is “no impact” to the Village. An example would be C and G Electric adding the awning roof over the entrance to the building. He stated the process we now have costs the business owners extra money and unneeded time delays.

In discussion:

1. The main issue is in defining “no impact.” The determination of what does or does not have impact, and if so what mitigation might be needed, is the purpose of the Planning Board review. Can a clear definition of the size and scope of the work to be excluded from coming before the Planning Board be developed so that the interpretation is clear?
2. Does a Site Plan coming before the Planning Board trigger the need to be forwarded to the

County for projects within 500 feet of a State Highway, County Road, Municipal Boundary or Historic District? If a small project falls within these boundaries and does not go before the Planning Board, does it still need to be forwarded to the County for recommendation and approval? The ZEO stated if it does then there is no sense in changing the law. It is the Planning Board that should complete the Site Plan Checklist and forward the application. He also stated he has no desire to approve any large projects.

3. The Board stated that the Attorney for the Village will need to do research to determine the legalities of changing the law. NYS law states that if you have zoning in place a municipality must abide by the State laws.
4. If it is legal to change the law, the Village Board would have the authority to do so and also change the fee structure for applications. A lower fee, or possibly no fee, for a project small in scope could apply.
5. Article 1200 of Village Local Zoning Law was reviewed which defines the duties of the Planning Board. If a revision is done it is the responsibility of the Village Board.
6. According to NYS a Site Plan Review must be done by a Board. It can be a Planning Board or the municipal Board can take responsibility or designate the Zoning Board of Appeals to do so.
7. It is to be remembered that zoning is to protect all property owners and not just those doing a building project.
8. We now have a design standard in the downtown area. If the ZEO were allowed to approve small projects would we be putting this at risk?
9. If the Attorney for the Village finds it is legal to do this, the Village Board should notify the Town Board and ask for comments and recommendation as this Planning Board is combined for the Town and the Village.

**MOTION** by Aaron Felber, seconded by Andy Schnitzler and unanimously carried to send a letter to the Village Board (see Attachment A) giving the Mayor and Trustees a summary of this discussion with recommendations and comments.

Mr. McGarvey and the ZEO asked to be placed on the agenda for the September meeting at which time they hope to have the advice of the Attorney for the Village.

**WORKSESSION FOR AMENDMENT TO THE COMPREHENSIVE PLAN REGARDING ENGERGY DEVELOPMENT:**

The Secretary reported that the time has expired for comment to the Arcade Town Board regarding Lead Agency. Letters have been received from the following giving consent for the Town to act as Lead Agency: Town of Sardinia, Village of Arcade, U.S. Army Corps of Engineers, and the NYS DEC. The DEC did state that they may become involved with decision-making for future projects if approvals under the Environmental Conservation Law are necessary. Consent is assumed for anyone not responding.

The Board composed the First Draft of the Amendment:

**“FIRST DRAFT ENERGY DEVELOPMENT OPPORTUNITIES AND CONSTRAINTS:**

The potential for energy development in Arcade, both commercial and private, is significant. The United States is trying to move away from its’ energy dependence from other countries and so new and innovative means of producing energy are in the forefront.

The Town of Arcade is situated on both the Marcellus and Utica Shale formations opening it to natural gas and oil drilling. Horizontal hydraulic fracturing for natural gas production has become a controversial issue.

Wind Farms generating electrical power are now located in adjacent townships and the Town of Arcade with its’ hilltops and open fields could be a prime location for additional wind mills. Farming is a major industry within Arcade with bio digestion and biomass now being privately developed on local farms. The Town has a very strong commitment to a healthy and thriving agricultural community. The Town is now seeing the use of geothermal energy for heating being installed in private residences. The potential also exists for hydro power.

In rural areas of the Town, open spaces, farmland and scenic views are prevalent. Residents of these areas do not have access to Village water or sewer services and must depend on their own on-site septic systems and water supplies through wells. It is vital that protection is in place regarding the location of energy development for the water sources these residents depend upon.

With the controversy regarding horizontal hydraulic fracturing, citizens of Arcade came before the Town Board with concerns. Workshops were held to gain further information on the pros and cons of this procedure. A Public Hearing was conducted to determine if the Town should impose a moratorium on horizontal hydraulic fracturing. After further investigation into the legalities of moratoriums, the Town Board passed a motion to amend this Comprehensive Plan enabling the Town to develop Local Zoning Laws to protect residents and the Town’s infrastructure and to consider the mineral rights of individual landowners regarding the location of all types of energy development.

We cannot regulate development but we can establish regulations and zoning laws to protect neighbors, the community in general, the character of the community, Town and community infrastructure and costs incurred by the Town in evaluating and approving appropriate site plans for such activity. Such laws should encompass a wide range of activities recognizing the individual landowner, farm developments and both commercial and individual energy development.

This Comprehensive Plan Amendment is structured recognizing the limited role of Town government in dealing with issues allowed by state law for setbacks, protection of the community environment and character of the community. Control and regulation of the repair of local roads and infrastructure, performance bonds as allowed by state law, noise, lighting, hours of operation, impact on neighbors, property restoration, esthetic appearance, protection for chemical storage on site and all other areas that come within our authority within NYS Town Law and NYS Village Law must be considered.”

The Board directed the Secretary to forward this first draft to Art Buckley, Wyoming County Planner, for his recommendation and comments. Further, the Board directed the Secretary to send the following proposed time line to the Town Board to keep them up-to-date:

- August – First draft completed and sent to Art Buckley for recommendation and comment;
- September – Second draft to be completed and forward to Village Board for comment;
- October – Public Hearing and copy to Village Board for comment;
- November – Final draft completed and presented to Town Board and Village Board.

In further discussion:

1. Other items to be considered in zoning laws – main gas transmission lines not to be in residential areas, near schools or public gathering places.
2. Regarding the Planning Board’s Public Hearing:
  - a. The Acting Chairman reviewed the State Laws;
  - b. It is possible a big turnout can be expected so arrangements with the school should be made to move the hearing to the auditorium across the street if the Village Boardroom cannot accommodate everyone;
  - c. Legally, anyone wishing to speak can be asked to sign a separate sheet and they will be called in the order in which they have signed in;
  - d. For the first round of comments a time limit could be established and then a second round can be conducted for further comments;
  - e. The Planning Board can establish an ending time to the Public Hearing and if there are others who still wish to speak, the meeting can be adjourned and the Public Hearing continued at the next meeting;
  - f. Village police should be notified of the hearing in the event they are needed;
  - g. The public will be informed that they are to speak only on the proposed amendment. This is not the time to speak for or against hydrofracking or zoning laws which will be determined later;
  - h. In the hearing notice in the newspaper it should indicate that copies of the proposed amendment will be available in both the Town and Village offices;
  - i. The Village should also be asked to post it on their website and this should be indicated in the newspaper notice. The Town does not have a website.

**ADJOURNMENT:**

There being no further business brought before the Board, the meeting adjourned at 8:21 P.M. Upon **motion** by Don Suttell, seconded by Rich Kosmerl and unanimously carried. The next regular meeting of the Planning Board of the Town and Village of Arcade is scheduled for Wednesday, September 11, 2013 at 7:00 P.M. in the Village Boardroom, 17 Church Street, Arcade, New York.

Respectfully submitted,  
Holly L. Almeter  
Secretary