

**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, October 14, 2015, at 7:00 P.M. in the Village Boardroom, 17 Church Street, Arcade, New York:

MEMBERS PRESENT: Rich Kosmerl, Don Suttell, Paul Bijhouwer, Aaron Felber

MEMBERS ABSENT: Andy Schnitzler

OTHERS PRESENT: Doug Ronan, Thomas Bijhouwer, Town ZEO Don Roberts

The meeting was called to order at 7:00 P.M. by Chairman Bijhouwer.

APPROVAL OF MINUTES:

MOTION by Rich Kosmerl, seconded by Don Suttell and carried, three yes votes to one abstention, to accept the Minutes of September 9, 2015. Aaron Felber abstained as he was not present at that meeting.

**TOWN ZEO DON ROBERTS PROPOSES CHANGE TO TOWN ZONING LAW
REGARDING SPECIAL USE PERMIT APPROVALS:**

The Board reviewed the proposed changes to Sections 202-2.96 Special Permits, 602 Required Plan, 604 Conditions and 605 Expiration of the Town Local Zoning Law (see Attachment A). The purpose of the changes is to remove the Town Board from the review and approval process of Special Use Permits and allowing the Planning Board to do so.

In discussion:

1. The ZEO stated that the Town Board was in agreement with the proposed change.
2. The Planning Board agreed stating the following:
 - a. The Town Board would not have to defend itself if there was litigation;
 - b. This would shorten the process for the applicant;
 - c. The Town Board only sees the application once, whereas the Planning Board may review it up to three times. If applicable, the Wyoming County Planning Board also reviews it;
 - d. There will still be public input through the required Public Hearing;
 - e. The Planning Board is most familiar with Local Zoning Law whereas the Town Board is not.

3. The Planning Board commends the Town Board for this change allowing for more efficient government.

MOTION by Paul Bijhouwer, seconded by Don Suttell and unanimously carried, to recommend to the Town Board that the amendment to Town Local Zoning Law to remove the Town Board from the review and approval process of Special Use Permits and allowing the Planning Board to do so, be approved.

DISCUSSION OF THE TOWN LIGHTING LAW, SECTION 807, ADDING APPROPRIATE TABLE:

In reviewing Town Zoning Law, Section 807- Lighting, Rich Kosmerl discovered that the Lighting Table (see Attachment B) was inadvertently omitted when the Town adopted the Village regulations. The Board agreed that it was an over site and should be added.

MOTION by Rich Kosmerl, seconded by Paul Bijhouwer and unanimously carried to recommend to the Town Board that the Lighting Table be added to Section 807 of Town Local Zoning Law.

RESPONSE FROM TOWN BOARD REGARDING PROTECTION AGAINST POTENTIALLY HAZARDOUS STORAGE OR SPREADING OF BIO SOLIDS FOR DEVELOPMENT OF A LAW FOR THE TOWN OF ARCADE:

The Board reviewed the Town Board's clarification as to what they wish to accomplish with such a law.

In discussion:

1. The Secretary stated that after conferring with the Town Clerk, the Town of Arcade does not have a Solid Waste Disposal Law or a Right-To-Farm Law.
2. The ZEO stated that NYS Ag laws guarantee all the laws necessary for the right-to-farm and most towns did not adopt their own.
3. Using the Town of Sheldon's Law as a model, the Board composed a proposed law for use by the Town of Arcade (see Attachment C).
4. The Board emphasized that the Town Board should take special note under the section Definitions, to item 1.c. regarding storage and use of legally permitted fertilizers. Legal counsel should be sought before adoption of any law regulating against Biosolids.
5. Also, special note should be taken regarding the exception in No. 1 under Prohibitions. This is to allow treatment facilities within the Town.
6. The Board highly recommends that someone from the Town Board and/or the office of the Attorney for the Town attend the 3:00 session of the Genesee/Finger Lakes Regional Planning Council's Fall 2015 Regional Local Government Workshop to be held on November 13, 2015 at the Clarion Hotel in Batavia. The workshop is entitled LAND APPLICATION OF SEWAGE SLUDGE: THE SCIENCE, REGULATION AND LAW.

It will explore whether a local ban or restriction against land application is legally valid within the framework of applicable NYS laws.

MOTION by Paul Bijhouwer, seconded by Aaron Felber and unanimously carried, to forward to the Arcade Town Board the draft of a proposed law for the protection against potentially hazardous storage or spreading of bio solids for the Town of Arcade. Further, the Secretary was directed to inform the Town Supervisor of their recommendation for someone to attend the workshop listed above regarding the legality of such a law.

WORK SESSION – CONTINUATION OF DRAFT OF ENERGY DEVELOPMENT LAWS:

1. The Secretary provided the Board with an updated copy of the draft.
2. After review the Board decided that all references to residential energy systems be removed and placed under the present Section 817 and the name of that section be changed to Residential Energy Systems (RES). This will cause less confusion for an individual resident in locating the appropriate laws. The Secretary was directed to prepare an updated Section 817 for review at the next meeting.
3. The laws for Commercial/Industrial Energy Regulations will become a new Section 819 under Article 400.
4. It was noted that modifications to District Regulations in Article 400 will need to be made referencing Section 817 and the new Section 819. The R4 District for Mobile Home Parks needs further discussion.

IN OTHER BUSINESS:

1. The Secretary informed the Board that the Krog Corporation located in the Arcade Business Park was ready to proceed with the next phase of their project which was approved by the Planning Board in 2008.
2. The ZEO stated he had reviewed the preliminary plans of the buildout and they match what was approved by the Board in 2008.
3. The Board thanked the ZEO for his due diligence.

ADJOURNMENT:

There being no further business brought before the Board, the meeting adjourned at 8:55 P.M. upon **motion** by Don Suttell, seconded by Paul Bijhouwer and unanimously carried. The next regular meeting of the Planning Board of the Town and Village of Arcade is scheduled for Wednesday, November 11, 2015, at 7:00 P.M. in the Village Boardroom, 17 Church Street, Arcade, New York.

Respectfully submitted,
Holly L. Almeter, Secretary

Attachment A – Planning Board – Oct. 14, 2015

PROPOSED LANGUAGE CHANGES TO REMOVE ARCADE TOWN BOARD FROM THE REVIEW AND APPROVAL PROCESS FOR SPECIAL USE PERMITS AND ALLOWING THE ARCADE PLANNING BOARD TO DO SO

Section 202-2.96 - SPECIAL PERMIT – A Special Permit deals with special permission, granted only by the ~~Town~~ **Planning Board** ~~after being reviewed by the Planning Board~~, to occupy land for specific purposes as authorized in the District Regulation, under special and specific conditions, where permitted or not permitted by right. (May sometimes be referred to herein as Special Exception.)

Section 602 - REQUIRED PLAN - A Plan for the proposed development of a site for a Special Permit shall be submitted with an application for a Special Permit, and such a plan shall show the location of all buildings, lots, parking areas, traffic access and circulation drives, open spaces, landscaping, and any other pertinent information that the Planning Board deems necessary for review. ~~or Town Board deems necessary for approval.~~

Section 604 – CONDITIONS - In the granting of Special Permits, the ~~Town~~ **Planning Board** may attach such conditions and safeguards as it deems appropriate under this Local Law.

Section 605 – EXPIRATION - A Special Permit shall be deemed to authorize only one particular use, and the Town Board may require, as a condition of the issuance of any Special Permit, that it shall be periodically renewed. The Special Permit is revocable for violation of the terms under which it was granted. The Permit shall expire if the use shall cease for more than six (6) months for any reason. As an alternative to periodic renewal, ~~said~~ **the Planning Board** may issue a Temporary Special Use Permit subject to adequate guarantees that the use covered will be terminated at the end of the period specified, or such extension thereof as may be granted by ~~said~~ **the Planning Board**, provided that any such renewal or extensions shall be subject to the same procedure as specified herein for the original issuance of the Special Permit involved, and shall be in conformity with aforesaid general and special standards.

Attachment B – A hard copy will be distributed as it cannot be scanned.

TOWN OF ARCADE

PROPOSED LOCAL LAW NO. _____ OF 2015

**A LOCAL LAW TO PROTECT AGAINST POTENTIALLY
HAZARDOUS STORAGE OR SPREADING OF BIOSOLIDS**

- SECTION 1. TITLE
- SECTION 2. LEGISLATIVE FINDINGS
- SECTION 3. LEGISLATIVE PURPOSES
- SECTION 4. PROHIBITION ON STORAGE OR SPREADING OF
POTENTIALLY HAZARDOUS BIOSOLIDS
- SECTION 5. PENALTIES FOR VIOLATION
- SECTION 6. OTHER TOWN LAWS
- SECTION 7. SEVERABILITY
- SECTION 8. EFFECTIVE DATE

SECTION 1. TITLE

This local law shall be known and cited as “A Local Law of the Town of Arcade Prohibiting Storage or Spreading of Potentially Hazardous Biosolids.”

SECTION 2. LEGISLATIVE FINDINGS

The Town of Arcade finds that:

- A. Biosolids are human sewage sludge, food waste, fats, oils, greases, and sludges generated by waste water treatment plants, industrial sources, sewage sludge sources and other sources, often resulting from the treatment of municipal and industrial waste water by anaerobic or aerobic means.
- B. Biosolids are potentially dangerous and hazardous to the welfare of persons and land to which they are exposed because of deleterious and toxic substances (such as lead and mercury) and dangerous pathogens (bacteria, viruses, protozoa, and parasite eggs) that they may contain.
- C. Storage or spreading of biosolids can result in pollution and contamination of soil, surface and ground water, and air. This pollution and contamination can pose a threat to

the health, safety and welfare of person, crops, livestock and wildlife. Storage or spreading of biosolids can result in:

1. Exposure to pathogens that cause serious, incapacitating, or irreversible illness and an increase in mortality;
 2. Harmful liquids which drain off, over and into soil and water;
 3. Emission of noxious fumes, aerosols and odors and spreading of dust and particles containing contaminants into the air; and
 4. Attraction of rodents, scavengers, birds, vermin, insects and other animals which transport contaminants and pathogens.
- D. Proper and effective regulation and safe management of biosolids requires a substantial and expensive capacity to test and monitor every instance of storage or spreading within the Town. The Town would need to test and monitor for pesticides, pathogens, toxic contaminants including arsenic, cadmium, copper, lead, mercury, molybdenum, nickel, selenium and zinc (which are specified in State and Federal regulations) as well as carcinogenic materials, irritants, organics, biologicals, pharmaceuticals, barium, fluoride, cobalt, iron, tin, vanadium, sulfur and other regulated and unregulated deleterious and toxic substances that might be determined to adversely affect the Town.
- E. The Town's manpower and resources are such that it cannot realistically, in any effective way, regulate, test and monitor the storage or spreading of biosolids within the Town. Biosolids coming from outside the Town could be of a quantity and poor quality that would swamp any resources that the Town might muster to deal with the associated health, safety and environmental problems that might accompany storage or spreading of these materials.
- F. Based on current scientific opinion, as found in respected publications and other sources, existing Federal and State regulation of the municipal, commercial and industrial facilities that produce biosolids is insufficient to relieve the Town's concerns and to protect the Town's residents and environment from harm.
- G. A prohibition on storage or spreading of biosolids that does not include storage or spreading of agricultural waste is consistent with Right-To-Farm legislation and a prohibition on storage of biosolids that does not include storage in residential septic systems is consistent with Town and County regulation of septic systems.
- H. The Town Board has a duty to protect the residents and environment of the Town of Arcade through an exercise of its constitutional and statutory powers.

SECTION 3. LEGISLATIVE PURPOSES

It is the purpose of this local law to:

- A. Exercise the Town's powers under the constitution of the State of New York, the Municipal Home Rule Law and the Town Law to protect the well-being, health and safety of the Town's residents and the Town's environment by enacting more strict controls on contamination and pollution through storage and spreading of biosolids than State law requires;
- B. To deal with all potential problems presented by the possibility that potentially hazardous or dangerous biosolids would be stored or spread within the Town;
- C. Protect the Town's residents and environment from the potential hazards and dangers that could occur if biosolids were stored or spread within the Town;
- D. Avoid the costs to the Town's taxpayers from any need to regulate, test or monitor biosolids being stored or spread within the Town;
- E. Ensure that farm owners and operators within the Town may dispose of agricultural waste from farming operations without being affected by this local law governing the storage and spreading of potentially hazardous and dangerous biosolids;
- F. Ensure that residential septic systems and other septic systems as defined and regulated by Wyoming County and the Town of Arcade may be used within the Town in accordance with applicable regulations without being affected by this local law governing the storage of potentially hazardous and dangerous biosolids.

SECTION 4. PROHIBITION ON STORAGE OR SPREADING OF POTENTIALLY HAZARDOUS NON-AGRICULTURAL BIOSOLIDS

A. Definitions

1. Agricultural Waste

Waste which includes both natural (organic) and non-natural wastes produced on a farm through various farming activities, but does not include biosolids as defined herein. Farming activities include all activities conducted by a farmer on a farm to produce agricultural products and which are inherent and necessary to the operation of a farm and on-farm production, processing and marketing of agricultural products. Farming activities include but are not limited to:

- a. The collection, transportation, distribution, storage and land application (spreading) of animal wastes;

- b. Storage, transportation and use of equipment for tillage, planting, harvesting irrigation, fertilization and pesticide application;
 - c. Storage and use of legally permitted fertilizers, limes, and pesticides;
 - d. Storage, use and application of animal feed and foodstuffs;
 - e. Construction and use of farm structures and facilities for the storage of animal wastes, farm equipment, pesticides, fertilizers, agricultural products and livestock.
2. Biosolids
Human sewage sludge and septage (contents of a portable toilet, holding tank, septic tank, cesspool or other individual sewage treatment facility) and other waste in liquid, semi-solid or solid form from municipal, public or private, industrial or commercial waste water treatment or sewage treatment facilities; food waste; and oils, greases and sludges from municipal, industrial or commercial processing facilities; but not including agricultural waste on farms located in whole or in part within the Town, and not including waste while it is stored in residential and other septic systems located within the Town.
3. Person
Any individual, partnership, firm, association, business, industry, enterprise, public or private corporation, political subdivision of the State, government agency, estate, trust, or any other legal entity whatsoever.
4. Residential and Other Septic System
A septic tank, cesspool or other individual sewage treatment facility as defined and regulated by Wyoming County and the Town of Arcade and located within the Town.
5. Storage of Biosolids
The containment, storing, stowage, holding or enclosing of biosolids in any way for any period of time within the Town except for transportation through the Town as permitted by State and Federal regulations.
6. Spreading of Biosolids
The application, deposit, discharge, disposal, distribution, dumping, injection, leaking, placing, spilling or spreading of biosolids by any means or methods on, over or under any soil or water within the Town.
7. Town
The Town of Arcade.

B. Prohibitions

1. Storage of biosolids within the Town of Arcade is prohibited except for temporary storage required by processes involved in a waste or water treatment facility.

2. Spreading of biosolids within the Town of Arcade is prohibited.

C. Publication

A notice of this local law shall be published and maintained by the Town Clerk. The requirement of publication shall not be relevant to the penalties for violation as all local laws are filed with the New York Department of State.

SECTION 5. PENALTIES FOR VIOLATION

- A. Any person who violates this local law shall be punishable by a fine of up to one hundred thousand dollars (\$100,000) for each violation. Each day of continued violation shall be deemed a separate violation of this local law.
- B. This local law may be enforced by the Zoning Enforcement Officer (ZEO) of the Town of Arcade or any person authorized by the ZEO. The Zoning Enforcement Officer or any person authorized by the ZEO may issue an enforcement ticket or summons in the manner provided by local laws to any person who violates the provisions of this local law. The ZEO or any person authorized by the ZEO, members of the office of the Wyoming County Sheriff and members of the NYS Police shall have access to any premises or land within the Town upon reasonable cause to believe a violation of this local law may have occurred therein or thereon.
- C. Nothing in this local law shall be deemed to impair or diminish any cause of action or remedy that the Town or any other person may have under any other local law, or under any Federal or State law or regulation, or under common law. In addition, the Town may enforce this local law by court injunction.
- D. A person adjudged in any proceeding to have violated this local law shall be liable to the Town for all expenses incurred by the Town in connection with any proceeding related to the violation, including attorneys' fees and expenses incurred by the Town.

SECTION 6. OTHER TOWN LAWS

This local law shall be construed as being in addition to the Zoning Law of the Town of Arcade. This local law shall not be interpreted as in conflict with any requirements or restrictions of existing local laws of the Town of Arcade whenever it is possible to conform both the provisions of this local law and the provisions of any other local law; and in event of a conflict this local law shall have preemptive effect. This local law shall be construed as being in addition to the Environmental Conservation Law of the State of New York and the regulations thereunder and relevant Federal environmental laws and regulations.

SECTION 7. SEVERABILITY

If any section, part, sentence or clause of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgement shall not affect, impair or invalidate the remainder thereof.

SECTION 8. EFFECTIVE DATE

This local law shall become effective immediately upon its filing with the New York Department of State.

Attachment B – Planning Board Oct. 14, 2015

IES PARKING LOT LEVELS OF ACTIVITY (EXAMPLES)	IES MAINTAINED HORIZONTAL ILLUMINANCE RECOMMENDATIONS (FOOTCANDLES)					
	General Parking & Pedestrian			Vehicle Use Area Only		
	Ave	Min	U. Ratio	Ave	Min	U. Ratio
HIGH Major League Athletic Events Major Cultural or Civic Events Regional Shopping Centers Fast Food Facilities	3.6	0.9	4:1	2.0	0.67	3:1
MEDIUM Community Shopping Centers Cultural, Civic or recreational Events Office Parks Hospital Parking Transportation Parking (Airports, Commuter Lots, Etc.) Residential Complex Parking	2.4	0.6	4:1	1.0	0.33	3:1
LOW Neighborhood Shopping Industrial Employee Parking Educational Facility Parking Church Parking	0.8	0.2	4:1	0.5	0.13	4:1
IES states: "This recommendation is based on the requirement to maintain security at any time in area where there is a low Level of nighttime activity." Local interpretation and application of IES Parking Lot Levels of Activity Examples not specifically identified or quantified:						

Level Of Activity	
Regional shopping centers containing retail space of 300,000 square feet or greater.	HIGH
Community shopping centers containing retail space of 5,000 to 299,999 square feet.	MEDIUM
Neighborhood shopping containing retail space of less than 5,000 square feet.	LOW
Fast Food Facilities (means only with customer seating capacity of 40 or greater).	HIGH
Automotive Dealerships	HIGH
Entertainment theaters, sports arenas	HIGH