

**MINUTES OF THE PUBLIC HEARING OF
THE NEW LEBANON TOWN BOARD
ON THE PROPOSED ZONING RE-WRITE
HELD ON JUNE 29, 2009**

Present: Margaret Robertson, Supervisor
Allen Livermore, Councilmember
Bruce Baldwin, Councilmember
Monte Wasch, Councilmember
Karl (K.B.) Chittenden, Councilmember

Recording Secretary: Colleen Teal, Town Clerk

Others Present: John Dax, Zoning Re-write Committee, Zoning Board of Appeals Chairman
David Katzenstein, Zoning Re-write Committee
Tony Murad, Zoning Re-write Committee, ZBA Member
Matt Murnane, Zoning Re-write Committee, Planning Board Member
Trina Porte, Planning Board Member
Jack Yurish, Comprehensive Plan Implementation Committee
David Flint, Reporter for the *Eastwick Press*
Approximately 65 members of the public

CALL TO ORDER:

Supervisor Robertson called the public hearing to order at 7:15 p.m. A moment of silence was followed by the flag salute.

PROOF OF PUBLICATION AND POSTING:

Town Clerk Teal provided the Town Board with proof of publication and posting and read the published public notices as follows:

**NOTICE OF PUBLIC HEARING
TOWN OF NEW LEBANON
COUNTY OF COLUMBIA**

Town of New Lebanon Proposed Zoning Re-Write

NOTICE IS HEREBY GIVEN that a Local Law has been introduced by the Town Board of the Town of New Lebanon to modify the Zoning Regulations. The Proposed Zoning Re-write is a local law regulating and restricting the uses of land, and the locations, construction and use of buildings and structures; establishing boundaries of districts for said purposes; establishing a Zoning Board of Appeals with power to determine and vary the application of the regulations hereby established in harmony with their general purpose and intent; and providing for the enforcement of the provisions herein; all for the purpose of promoting the health, safety, economy, esthetics, morals and general welfare of the inhabitants of the Town of New Lebanon. The purpose of the Zoning Re-write is to meet the goals expressed in the Town of New Lebanon Comprehensive Plan and for the following purposes: to protect and enhance scenic vistas and the towns' natural beauty and rural and small town character; to preserve and protect the environment; to promote an environment that supports appropriate business growth and retention; to promote housing opportunities; to preserve farms and farmland; to lessen congestion in the streets; to secure safety from fire, flood, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to facilitate the adequate provision of transportation, schools, parks and other public requirements; to enhance the value of land and buildings; and to encourage the most appropriate use of land throughout the town. A copy of said Proposed Zoning Re-Write and a memorandum summarizing the differences between the existing and proposed

zoning laws are available for public review in the office of the New Lebanon Town Clerk during regular office hours as well as on the town website at www.townofnewlebanon.com. Additional copies are available for public review at the New Lebanon Library and the New Lebanon Planning, Zoning & Building Department.

PLEASE TAKE FUTURE NOTICE that a public hearing upon said proposed Local Law will be held at the New Lebanon Firehouse at 523 US Route 20 in New Lebanon on the 29th day of June 2009, at 7:00 p.m. and that an opportunity to be heard will be given to those favoring or opposing the passage of said proposed law.

By order of the New Lebanon Town Board
Colleen Teal, Town Clerk
6.15.09

PUBLIC COMMENT:

The following persons spoke in favor of the Proposed Zoning Re-write:

John Dax, Zoning Re-write Committee member;

David Katzenstein, Zoning Re-write Committee member;

Jack Yurish: complimented the committee for their work and thanked the members; noted that the new regulations clarify issues for both residents and the authorizing board;

Tony Murad, Zoning Re-write Committee member: sprawl is the worst possible growth and development; the new regulations provide for more harmony; additionally cluster housing is a density bonus and is a good thing; house after house after house is the worse way to develop a town; if someone has 100 acres with enough frontage for fifteen (15) houses, offering a density bonus may allow them to “cluster” thirty (30) houses on the same property while keeping open space as well as reducing the cost of infrastructure to the builder/developer.

Phineas Stall: there was no zoning when he bought his property fifty years ago, then his property was zoned commercial;

Gary Millett: thanked everyone for the tremendous amount of work that went into the process and noted that he supported it; he is concerned that there is a large area around the racetrack that will be zoned commercial and the speedway noise is already a nuisance and he dreads the day when or if it returns to the way it was ten years ago; inquired if there are any ways that the West Lebanon residents will be protected from expansion; he would not like to see the track operating seven (7) days a week or having jet cars seven (7) days a week. [John Dax noted that the Zoning Law does not restrict operations, the Town Board, however, does have police powers and does have the right to put lawful and reasonable limits on operations. The Comprehensive Plan recommends adopting noise limits and ensuring that site plan review includes references to minimizing noise pollution. The Zoning Ordinance is not the place for a noise ordinance but a noise ordinance is within the Town Board’s authority.]

Dave Mieschonz: likes new function of the Planning Board, Site Plan Review, and cluster housing.

The following persons spoke in opposition of the Proposed Zoning Re-write for the noted reasons:

Trina Porte: requested that the Town Board remove “adult businesses” from the Code of the Town of New Lebanon and provided the Town Board with the following petition:

Petition to Remove Adult Businesses from the Town Code of New Lebanon, NY

Whereas, both the Town Comprehensive Plan and the Town Zoning Code state in their definitions that they exist “...for the purpose of promoting the health, safety, economy, esthetics, morals and general welfare of the inhabitants of the Town of New Lebanon” and,

Whereas, the Town Code, Chapter 60, states that adult businesses “...because of their very nature are recognized as having serious objectionable operational characteristics” and may “...thereby have a deleterious effect on the health, safety, and general welfare of the town and its inhabitants” there,

We, the undersigned, hereby petition the Town Council and Town Supervisor to completely remove adult businesses as a permitted use in all codes and laws of the Town of New Lebanon.

Robert Mittnight: change of zoning classification of various properties under proposed new zoning map; some people have put a lifetime of investment into their property and to change it now is unfair;

Chuck Gerald: change of zoning classification of various properties under proposed new zoning map; while current uses will be allowed to continue as grandfathered non-conforming uses, expansions either cannot be done or would require a variance which can be very difficult to obtain; he owns one of the commercial properties being changed to residential and there are a lot of other businesses affected by this change: a used car lot, the motel, the church, etcetera; also concerned about the Site Plan Review Process, while some say it will be easier, he disagrees; when seven (7) people get together to decide how an applicant can lay-out their business, it is not right; encouraging a shared driveway is one thing, how I set up my business is my business; we are going from a set list of requirements to arbitrary decisions by people that are not always qualified to make such decisions; also concerned that the SEQRA (State Environmental Quality Review Act) will not be a negative declaration so an environmental impact study could cost thousands of dollars; since the overlays are not done, does this mean that there will have to be more public hearings, more SEQRA reviews, and that this process will be continued? (John Dax noted that the priority now is to get the zoning law changed, the overlays have not been mapped out – the rules for the overlay districts have been set – because the mapping out of the overlay areas will take a significant effort, the committee felt it needed to be completed as a separate effort.) Mr. Gerald noted that it is not right that the overlays are not part of the original package; we are seeing what is planned “later” as far as the rules to be applied but we have no idea where they will be applied; it should all be right up front, not two years down the road. (David Katzenstein noted that as the maps are done, they will be adopted as an amendment to the zoning regulations.) Mr. Gerald later noted that the change from industrial to commercial for Mr. Weber’s property was explained as better for him giving him more permitted uses but the change to his property and the others along Route 20 from commercial to

residential is taking away permitted uses and making it harder for the businesses there;

Laurie Gerald: change of zoning classification of various properties under proposed new zoning map;

Stuart Gerald: change of zoning classification of various properties under proposed new zoning map; if the intent is to bring more business to town, it does not make sense to reduce the amount of commercial zoning nor to make it tougher for the businesses already there to continue doing business; he lives in West Lebanon and it appears like all of the industrial and commercial zones are being pushed down to West Lebanon; right now they are through-out the town, keep it through-out the town; (John Dax noted that he too lives in West Lebanon. Industrial is being centered in the town, not pushed into West Lebanon. Commercial is still throughout the town.)

Robert Allgood: concerns that while some commercial property is being converted to residential, he heard that the property being converted to commercial is swampland which, if true, does not make sense; also concerned about commercially zoned area being reduced or moved to back roads;

Sarah Allgood: concerned that reducing commercial zones will reduce commercial assessments and/or taxes thereby increasing residential assessments and/or taxes; very concerned about residents on fixed incomes being affected by this change;

Bill Black: concerned with change in zoning of area surrounding speedway and Kinderhook Creek Mobile Home Park; contacted the Zoning Enforcement Officer (ZEO) regarding the impact the new zoning would have on his pre-existing uses and was advised that the ZEO had “no idea how it will affect pre-existing uses;” additionally, involved in the special permit process and it is quite long and difficult; concerned with change in zoning of piece of property across from the elementary school, purchased this property as industrial but now it is being changed to commercial; Site Plan Review is required for any industrial or commercial use and for expansion which means there will be more costs to the business owner – is that going to bring in more business if we make it harder and more costly for the business owner? We have not done a good job bringing in more business with the current zoning and now we are making it more difficult for businesses. (John Dax noted that a good zoning law, wisely implemented along with a good Comprehensive Plan will bring in more business.) Mr. Black noted then we are doing that at the cost of the businesses that have been operated in town for years.

Howard Commander: concerned about change in zoning on property he owns abutting the Sampson (Tri-State) property; he purchased this property as industrial and planned to use it for industrial purposes; why is this being changed to commercial, he would like to have it kept as industrial; also concerned that Junior Bingham’s land that he just acquired was zoned commercial-recreation – it used to have a go-cart track operating on it and he planned to put in a new go-cart track, it is being changed to general commercial; will this affect his ability to put in a go-cart track? Is a go-cart track allowed in a General Commercial zone or would it be grandfathered under pre-existing? (John Dax noted that it *would not* be grandfathered as the business has not

operated as such for more than a year; Mr. Dax further noted that he could not offer an opinion on whether that type of use is permitted in the new zoning under General Commercial; Mr. Dax also noted that the property adjacent to Sampson (Tri-State) was never properly re-zoned industrial; no map was filed with the Secretary of State regarding the change to Industrial therefore, the re-zoning never took effect.)

Howard Commander & Bill Black: concerned that this particular property was already decided once and it was not “rezoned”, it was scaled out and found that the property was clearly within the industrial zone; it was “corrected” based on the scaling; now it appears the town is trying to change things already approved (Tony Murad noted that the measurements are not in questions; he believes it has always been industrial but a vote of the Town Board and a filing of the map after approval with the Secretary of State would rectify this issue.) Mr. Commander noted that they have expressed their protest and they are asking the Town Board for direction; tell them what they need to do. (John Dax noted that now would be the proper time to widen the industrial zone there; this is the appropriate time to fix this type of thing.) (Chuck Gerald noted that he was on the Zoning Board of Appeals when the zoning of this piece was before the ZBA – they did not change the zoning – the ZBA made a determination about whether or not this particular parcel lay within the industrial zone.)

Howard Commander: concerned that the Special Permit process is very difficult; it needs to be streamlined and acted on a lot quicker.

Jackie VanDeusen: concerned about changes in “mixed use zones”; residents that bought homes in commercial areas knew this before they bought; however, businesses bought knowing they were in commercial; her property was zoned Commercial and RA-5, she worked through the process to get the necessary approvals and permits and made the investment to put up a commercial building; now if it is changed to a residential zone, the building cannot be used for its intended purpose and she will have lost her investment;

Cheryl Hattat: aesthetics are subjective and can be individual to each person; uncomfortable with the same five (5) people involved with Site Plan Review and Special Permit Process; same five (5) people holding all the cards; (John Dax noted that having applications that require both Site Plan Review and a Special Permit handled by one board streamlines the process for the applicant.) Ms. Hattat asked, if the applicant disagrees with the decision, is there an appeals process and, if so, is it to the same five (5) people; (the appeals process is to file an Article 78 to the courts); Chuck Gerald noted that means that under the new law, if there is a disagreement, it has to be taken to court whereas under the current law, the Planning Board is a referral Board; (John Dax noted that yes, under the current regulations, the Planning Board is a referral board and the new regulations give more authority to the Planning Board.) (Tony Murad noted that only one board gives a decision on an application even under the current regulations. Site Plan Review provides an opportunity for more negotiation between the board and the applicant; it is a mistake to say they will command certain things, some specifics are required in the zoning regulations but Site Plan Review

allows for more recommendations and negotiations. It is also not accurate to say a “step” has been removed at the local level.)

Julianna Faginas: change of zoning classification of various properties under proposed new zoning map;

Dominic Devaney: change of zoning classification of various properties under proposed new zoning map coupled with the difficulties of expansion under these circumstances; concerns about ability to sell as business later if “grandfathered;”

Robert Weber Jr.: change of zoning classification of his property from industrial to commercial along with H. L. Fuel and the NYSEG substation; he purchased his property as industrial, paid a premium for industrial and does not want it now to lose value and have the options of what he can do limited; he would like to understand the reasoning behind the change; he does not want to see his industrial classification taken away because it makes the map look neater; the expansion of industrial by CeramTech is on a hillside and nothing can be built there; also concerned about Site Plan Review – if Site Plan Review is required, what are the qualifications that will be required to sit on the boards – S.P.R. can become very arbitrary; concerned about the rezoning along Route 20 from commercial to residential, currently you can have residential in commercial so why make residential and make more cumbersome for businesses; a goal of the Comprehensive Plan is to bring in more businesses, this will not happen if it is made residential and more difficult for businesses to open or operate or expand; a better idea would be to leave it as it is and streamline it where you can. It is a good Comprehensive Plan and we do need to change the zoning regulations to comply with it, but we should not make it more difficult to bring in business. Mr. Weber also noted that, in his circumstances, the business that was operating at Country Squire Supply was closed while he worked out the purchase details. In his particular situation it took nine (9) months but if it took twelve (12) months and it was a “grandfathered” as a non-conforming use, he would have lost the right to operate there. Mr. Weber also noted that Route 20 is commercial from Boston to Washington. (David Katzenstein noted that when they catalogued the properties, the general surrounds of the hardware store seemed to have less of a chance of being used as industrial and appeared to be a good opportunity to expand the commercial zone.) Mr. Weber later noted that “clustering” does not create a sense of community; a sense of community comes from the community. We are a thoroughfare, a bedroom community, but we need businesses to help support the community.

Jagat Panday: change of zoning classification of various properties under proposed new zoning map; he has not run the Valley Rest as a motel in over a year because of personal illness and right now the economy is so bad they cannot do anything so he would lose his right to run a motel or to use the property for any commercial purpose and bring a business into town; he noted businesses are good for the community;

Bud Godfroy: change of zoning classification of various properties under proposed new zoning map; should leave commercial and industrial where it is and add

commercial all along Route 20 to encourage business in town to help pay the incredible taxes.

Eileen Ketcham: concerned with the pedestrian traffic at the speedway, last week took her twenty (20) minutes to go from County Route 9 to the end of the speedway; change of zoning classification of various properties under proposed new zoning map.

Larry Benson: noted that enough cannot be said of the people that worked on this and the amount of effort put into it; however, he raised concerns and objections to the change in zoning in his "front yard" (along Route 20 from the Theater Barn to the former Amsure Building); it has been commercial and he feels enough argument has been made to keep it commercial. The Comprehensive Plan encourages businesses and that section is not broken and does not need to be fixed.

Kevin Smith: noted that his property is being changed from commercial to residential; his plans, when and if he can afford it, is to put another restaurant on his property; he has everything up to date: septic, water, etcetera; why chase out a business that has generated money for years and years; across Route 20 on the hill where nothing can be built, it was kept commercial; it does not make sense;

The following letter was read in opposition of the Zoning Re-write:

To the New Lebanon Town Board and Zoning Rewrite Committee,

First, let me thank the Zoning Rewrite Committee for all the hard work that went into the creation of this document.

As a larger land owner, who purchased the 318 acre parcel that I own in order to prevent the 2 developers bidding against me from getting this property and potentially putting 150 homes on this land, I understand the desire to protect the open spaces in our beautiful town from haphazard development. However, I believe that in the interest of providing a sufficient supply of future building lots, while ensuring an abundance of open space, our Zoning Law needs a graduated scale system for a parcel's subdivision prior to triggering a Major Subdivision process.

It does not seem fair, that I can only (minor) subdivide my 318 acre property 4 times when someone with only 20 acres can do the same. In this example, the 20 acre parcel might be divided into four 5 acre lots, which, after being developed, could have a major negative effect on open space. If my parcel were to be divided into 5 or 6 equal lots, it would trigger a Major Subdivision (which becomes a time consuming and costly process for a landowner). These theoretical lots would each be a building lot of over 50 acres, which would certainly be more beneficial in regards to maintaining open space and preserving habitat for wildlife. These large lots would certainly meet the goals of our Comprehensive Plan better than the creation of many 5-acre lots.

As property taxes rise and we are facing the greatest recession since the Great Depression, I may have no choice but to sell of pieces of my land in order to be able to afford to hold on to and protect the remaining majority of my property. Forcing me to build roads to spec to accommodate a 5th or 6th parcel would not be economically feasible (along with the cost for professional assistance for the major subdivision process) and may force me to sell the remainder of my property in one fell swoop. Who, at this point, other than a developer, would be likely to purchase the remaining several hundred acres once I had used up the minor subdivision capability thus resulting in many more home on the property than would be there if a graduated scale system existed?

I know that I am not the only owner of a large parcel. Please do not put those of us with good intentions who have been willing to invest financially in the town of New Lebanon in a position where we have no choice but to give up that investment. Thank you again for your hard work.

Sincerely,

Vivian Steinberg

A graduated system might be:

"Parcel subdivision is permitted as "minor", so long as no resulted lot is less than 35 acres" (or pick some other number).

The following persons signed up to speak and were called upon to speak but did not for the reasons noted:

Walter McKeon: no comment at this time;
June Ross: no comment at this time;
Saul and Mary Haas: not in attendance at this time;
Dick Sime: not in attendance at this time;

The following questions were asked by members of the audience of the Zoning Re-write Committee members and the Town Board:

Q: What if a use is "grandfathered" and the person wishes to expand?

A: They cannot as of right; they would need a variance.

Q: How difficult is it to obtain a variance?

A: A use variance is not necessarily easy to obtain: you need to demonstrate a hardship, and show that the hardship is not self-imposed which in this case would not be as the zone was changed by law.

Q: How long does it take to get a use variance?

A: Not easy to answer as it depends on the situation but as means of an illustration, a use variance was recently issued and the process took the applicant three (3) months.

Q: Why were the changes in the zones made?

A: The goals of the committee were to adhere to the goals of the Comprehensive Plan and to provide tools to apply modern zoning principles to the zoning regulations. Committee members drove throughout town and catalogued each property with regard to its current use. They then applied this information to try and point future development into "clusters" of commercial and industrial instead of random "sprawl."

A: Also, rather than thin strips of zone classifications along the main thoroughfares, the zones were expanded to include entire parcels as they currently exist. The intent was to

eliminate the current need or requirement to build right on Route 20; building further back from the road would not be required but the option would be available.

A: Goal was clusters, no more “scatter shots” but adjusting the commercial zone along Route 20 between the Theater Barn and the old Amsure Building would be a minor adjustment.

(note: The following officials noted that they felt there could be adjustments to the Commercial/Residential zone from the Theater Barn to the old Amsure Building without jeopardizing the overall goals and plans for the town: Tony Murad, John Dax, Councilmember Wasch.)

Q: Was the goal to reduce the amount of commercially zoned property or to move it to the back roads?

A: No, the goal was to keep the commercial and industrial in clumps. There is more commercial opportunity along Route 20 by the racetrack.

Q: Could someone explain the Site Plan Review Process?

A: First, if a Special Permit and Site Plan Review are both required, under the new regulations, they will be done in tandem by the Planning Board instead of having the Planning Board review the application to make a recommendation to the Zoning Board of Appeals and then the Zoning Board of Appeals to review for the decision. Under the new, the process is streamlined for the applicant; they only have to appear before one board. Giving Site Plan Review to the Planning Board gives them the ability to work with the applicant on the application when it comes to determining lay-out, location of buildings, orientation of buildings plantings, parking lots, and etcetera. For example, there have been many concerns raised about the number of Used Car Dealerships in town; however, Site Plan Review would allow the Planning Board to make a Used Car Dealership more aesthetically pleasing or appealing and put more thought into the lay-out and set-up. It will be more attractive for the town as a whole and, in the long-run, more attractive and beneficial for the business owner. To have both a Planning Board and a Zoning Board of Appeals without Site Plan Review is very unusual today.

A: There do need to be regulations to provide some kind of standard so that people know what to expect when they buy and can have some level of peace and enjoyment when they buy. The new regulations provide more definitions than the prior regulations and there is no Site Plan Review requirement for single family residences. Site Plan Review is not a huge panacea. There are many benefits but could be a little bit of a dangerous road. While the Planning Board is generally very reasonable, historically, there have been some individuals on the boards that could be very difficult and unyielding.

Q: How long will it take to complete an environmental impact study and how long will it be before the new zoning regulations take effect?

A: Hopefully, the new regulations can be adopted by the end of this year.

Q: What are repercussions to the town if not done by the law?

A: We have a Town Attorney and consult with him frequently so that it is done by the law.

OTHER COMMENTS:

Kathy Murnane noted that in response to concerns about the qualifications of the board members, the state now requires annual training for all Planning and Zoning Board members.

David Mieschonz noted that the boards have the authority to hire professionals with expertise to advise them on applications.

Pete Rawson stated that on behalf of the Business Association, an informational meeting was held several months ago and it would have been wonderful to this type of attendance at that meeting. The Business Association needs the support of the business people in town.

Councilmember Wasch noted that there is still much to be done for implementation of the Comprehensive Plan; it is a process, not an event. All of it will be done in the sunlight. The range from no zoning to over regulation is very broad and finding the right balance is very delicate; it is impossible to please 110% to the entire public. It does require assigning values and rules to each and every property throughout New Lebanon. Councilmember Wasch further noted that improving infrastructure and other changes are just as important as zoning in bringing in business.

Supervisor Robertson noted that she served on the Zoning Re-write Committee and while she viewed herself basically as a novice, she gleaned a lot of information from the other members of the committee. She noted that her understanding of the "re-write" is to tighten up areas of the town so that it is not so loosely zoned throughout town. To more clearly define and separate residential areas and commercial/business areas. However, based on tonight's input, the commercial-residential strip needs to be looked at again. We are here to hear your concerns and take them into account. The regulations have not been adopted and this is the time to find the holes that might need to be patched.

Supervisor Robertson noted that the public hearing will be held open, it will not be closed tonight and it will not be decided tonight.

All persons desiring to be heard, having been heard, a motion was made by Councilmember Wasch, seconded by Councilmember Livermore, and approved to adjourn the Public Hearing at 9:55 p.m. and noted that another public hearing will be heard at a date to be determined.

Respectfully submitted,

Colleen Teal
Town Clerk