

**AGENDA
TOWN OF LAFAYETTE
ZONING BOARD OF APPEALS
TUESDAY, JULY 25, 2017
7:00 PM
2577 ROUTE 11
LAFAYETTE, NY**

Meeting Call to Order

Attendance

Introductions

Informational meeting regarding the Appeal of the Determination of Code Enforcement Officer, Ralph Lamson's letter dated May 30, 2017 regarding the a building permit for the proposed Manure Pit Storage facility.

ZBA Secretary

To: Sue Marzo, Secretary to Planning & Zoning Boards
From: Stephen Pitoniak
Date: 6/21/17
Re: Zoning officer's interpretation of Zoning Ordinance, Article VII, Section B, 6.

Ms. Marzo, Secretary of the Town of Lafayette, N.Y. Planning and Zoning Boards

I am appealing the interpretation and ruling from the Town of Lafayette Zoning Officer Ralph Lamson dated May 30, 2017 in response to my letter (Stephen Pitoniak), dated May 18, 2017.

In particular I appeal Mr. Lamson's May 30, 2017 interpretation that refuses to honor Zoning Ordinance, Article VII, Section C, 1. as a valid enforceable Town Ordinance as outlined in my letter of May 18, 2017.

I contend that the Town Board has the authority and power to issue permits to control all construction activities within the Town's boundary and has an obligation to protect the Town residents from any and all exposure to public health threats, safety hazards, and environmental contamination.

I respectfully request that the interpretation and ruling by the Town Zoning Officer be reversed.

**Sincerely,
Stephen Pitoniak**



**2084 Meadowlark Circle
Lafayette, N.Y.**

Attachments:

- 1. My letter to the Town of Lafayette Zoning officer**
- 2. Response to my letter from Ralph Lamson**
- 3. Signatures of Neighboring aggrieved parties supporting this appeal**

We the following residents support Stephen Pitoniak's ZBA appeal of Mr. Lampson's May 30, 2017 interpretation that refuses to honor Zoning Ordinance, Article VII, Section C, 1. as a valid enforceable Town Ordinance.

Name	Address
Rebekah Signorini	3203 Webb Road LaFayette NY
Rosemary Brodt	2721 Webb Rd. 13084 Lafayette, NY 13084
Martin Rosenberg	6173 Pond Cove Road
HERBERT BRODT	2721 WEBB RD 13084
Carole Scofield	Markland Rd landowner
Tom MacMackin	2293 Markland Road
Greg Schmeier	2308 Markland Rd Laf.
Louie Tanner	2320 Markland Rd Laf.
Karin Dexter	2370 Markland Road, Laf
Renata Rehdin	2293 Markland Road, Lafayette
Karen L. Malloff	2430 Markland Road, Lafayette, N.Y.
Stephen Pitoniak	2084 Meadowlark Cir. Lafayette NY 13084
Michael Morris	5413 Webster Rd., Lafayette

TOWN OF LA FAYETTE
2577 ROUTE 11
PHONE: 315-677-3674



P.O. BOX 193
LA FAYETTE, N.Y. 13084
FAX: 315-677-7806

Steve Pitoniak
2084 Meadowlark Circle
LaFayette, NY

May, 30, 2017

Steve,

I have read through your letter dated may 18, 2017. Your discussion regarding Structures and "constructed" are all well taken. You missed one key element in the section. That would be the understanding of the word accessory as used in our Zoning world. When looking at this we look at an accessory farm structure as something that coexists with the farm. Examples of that would be things (housing for a hired hand, dog kennels, greenhouses, etc.) that aren't directly related to farming but are customarily found on a farm. The other issue is the zoning ordinance is old. In 1983 the Town voted to adopt the New York State Building Code. When this was put in place if the Town wanted to be more restrictive than the building code it had to send any law to New York State for approval. My understanding is the Town has not done this. Therefore we follow the Building Code in that we do not issue Building permits for Agricultural structures. I can be reached at 315-677-5371 if you have any questions regarding this matter.

Respectfully

A handwritten signature in black ink, appearing to read 'R. Lamson', with a long horizontal line extending to the right.

Ralph Lamson CEO

Regarding Marpleland Rd. Manure Pit.
To: Town of Lafayette Zoning Office

5/18/17

Sir(s):

According to the Lafayette Zoning Ordinance, "Building Permits and Certificate of Occupancy shall not be required for construction or alteration of customary accessory farm structures, appurtenant or necessary to an existing farm operation, having a value of less than \$5,000.00". "Structure" is defined in the zoning law as: "Anything **constructed** or **erected** with fixed location on the ground, or attached to something having a fixed location on the ground, or attached to something having a fixed location on the ground". The building permit requirement proscribes that "No structure shall be erected" but then later references "construction". "Erect" and "construct" are not defined, ("construct" is broader than "erect"; mines are "constructed"), and should therefore be interpreted consistent with their common usage. Dictionary definitions of "erect" tend to reference upward activity whereas a manure pit can fairly be considered to be **constructed** downward. The Town Board's inclusion of the \$5,000 dollar limitation on the exemption from building permit and certificate of occupancy requirements is an indication that the Town Board intended that structures costing as much as this manure pit obtain a building permit.

It is my opinion that the pit is a structure because it is "**constructed with a fixed location on the ground**". The pit falls outside of the exemption because it costs **more** than \$5,000.00 to construct. Therefore according to the town's zoning law a building permit is required for a pit costing more than \$5,000.00.

I request that the Zoning Office make a written determination on these issues.

Sincerely,
Stephen Pitoniak
315-677-8025
Lafayette, N.Y.

2084
Meadow Lake Circle

14.03-~~10~~.4
41.4

**To
Town of Lafayette Board Members.**

Comments to proposed amendment of Town Zoning Ordinance "Section K"

1. Attempt to regulate a waste storage facility by size is a mistake.
2. The farmer could simply design the structure just a smidgen smaller or in time construct several waste storage facilities using adjoining fields.
3. **Liquid Manure Storage Facilities** terminology is no longer used. The new ECL General SPDES permit GP-0-16-001 and the Natural Resource Conservation Service (NRCS), and the AWMS 651 Agricultural Waste Management Field Handbook Appendix 10D refer to **"Waste"** consisting of manure, litter, food, digestate, and process waste water.
4. The new **ECL and CW General SPDES Permits effective July 24, 2017** add many stricter CAFO regulations especially directed to nutrient and manure management (CNMP).
5. The amendment to the Town Zoning Ordinance should be guided by the new CAFO ELC & CW General SPDES permit and NRCS-NY 313,(10/2014) and Part 651 Agricultural Waste Management Field Handbook (AWFH) guidelines (Appendix 10D).
6. The farmer must retain the services of an Agricultural Environmental Management (AEM) Certified Planner to develop these plans and calculate the amount of waste that may be applied to each "Field" based on soil characteristic and contemplated crop to be planted. The end result will tell the farmer how much of waste storage facility volume he must have available to temporary store the waste between spring and fall applications. The farmer has this right to fully harvest the nutrients from the waste the farm produces.
7. Typically one would expect the waste storage facility to be located in close proximity to the housing of the animals that are the source of the generation not several miles away.
8. For the town to control unlimited storage volume of farming produced waste by out of town CAFO operations the farmer needs to provide to the town at the time of permit application the CNMP, prepared by the AEM, for the contiguous fields within the town boundaries to monitor and control the volume of waste that may be injected based on the nutrient content approved by the SPDES permit. The waste storage facility can now be fairly and effectively restricted to the volume of waste that the farmer is authorized to inject in one application to the fields in the spring and fall cycle of crop production. (7 day per field, up to two (2) applications in a growing season).
9. The next consideration is the type of waste storage facility the farmer seeks to construct: a. earthen impoundment, or above ground structures.
10. If he proposes an earthen impoundment type structure the farmer will be able to store to the full extent of the structures capacity in between applications to preserve the earthen structure; he must keep the structure filled. This type of waste storage structure is prone to catastrophic failure with several incidents in recent time. **Consideration must be given to the impact on public health and safety and the rate of infiltration impact on the environment**, considering the fact that the facility

would **not** be under the daily observation of the farming operation and responses to emergency events could be very late or not at all.

11. Storage of waste is limited to the actual documented CNMP planning volume for the contiguous fields located within the town boundaries and one subsequent filling of the structure after each seasonal drawdown. Transfer to fields not contiguous with property owned or under the control of the farmer away from the waste storage structure is not permitted. Sharing the waste storage facility with a neighbor farmer is also not allowed.
12. All construction related to agricultural operations are controlled by USDA regulations and the Town code enforcement official needs to recognize this fact. The most important aspect of constructing an earthen impoundment is the permeability of the in situ soils. The seepage rate must be controlled and typically requires that the in situ soil meets a permeability coefficient of 1×10^{-7} otherwise the design must consider soil enhancement or a liner (AWMFH). Analyzing the soil and testing to establish the permeability by a certified laboratory and composite soil sampling under the supervision of a certified and registered geology professional should occur and to be submitted with the application for the permit. These are basic requirements regardless of the size of the earthen impoundment (AWMFH, APPENDIX 10D).
13. At the time of filing for a permit application the farmer should also state the type of SPDES permit the farm is operating under, the date of issue and the expiration date. A plan that clearly indicates the locations of soil sampling prior to obtaining a permit.
14. The farmer must provide a copy of the annual report of how much waste was injected and stored on the contiguous fields within the town boundaries in accordance with the CNMP.

Section B.6.

Delete this section in its entirety

Local Town Law No. 3 amendments:

Section 4.D. adds The Code Enforcement Official shall administer and enforce all the provisions of the "Building Code for the State of New York, and the NRCS rules and Guidelines for agricultural construction and the provisions of this Local Law.

Section 5. Building Permits

Section 5.2.d.

Delete in its entirety.

<https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/water/?&cid=stelprdb1045935>

<https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg/>

I respectfully request that this document be incorporated into the minutes of the next Town Board Meeting.

Sincerely



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