

2577 US Route 11
P.O. Box 193
LaFayette, NY 13084



Date: August 22, 2017

Time: 7:00 pm

Location: LaFayette Town Offices

Zoning Board Meeting

Meeting called by: LaFayette Zoning Board

Facilitator: Christine Keenan

Note taker: Sue Marzo

Attendees: Zoning board members: Karl Field, Christine Keenan, Jerry Marzo, Anita Miner, *absent James Nash*

John Langey, Town Counsel, Sue Marzo, Secretary, Steve Pitoniak, Rosemary Brodt, Herbie Brodt, Martin Ossenberg, Mark Peterson, Dave Grevelding, Mike Grief, Melanie Palmer, Burt Coleman, Ralph Lamson

Minutes

Agenda item: Courtesy Public Hearing for the interpretation of a paragraph of the zoning law and a definition of the word "accessory" with regard to a Determination of Code Enforcement Officer, Ralph Lamson's letter dated May 30, 2017 regarding a building permit for the proposed manure pit storage facility located at the end of Markland Rd. LaFayette, NY

Agenda item:

Discussion:

Meeting was called to order at 7:00 pm by Christine Keenan

Christine Keenan asked the board if they reviewed the minutes. Motion was made to approve minutes of July 25, 2017. All board members were in favor. Minutes are approved as written.

Christine Keenan opened the meeting with introductions. In attendance was Rosemary and Herb Brodt, Martin Ossenberg, Melanie Palmer, Burt Coleman, Mark Peterson, Mike Grief, Dave Griswold, and Ralph Lamson. The Zoning Board was asked to interpret Article 7 Section B paragraph 6 of the LaFayette Zoning Ordinance of 1970 and asked for the interpretation of the term accessory as used in the zoning ordinance. After our last meeting, we sent to Ag and Markets for guidance and NYS Dept. of State.

John Langey, town attorney provided an overview recalling that the appeal of the written determination of building permit for this manure storage structure as to whether a building permit would be necessary. It seems like some residents thought that Subsection 6 may be triggering it. Mr. Lamson made his own determination as the umpire of the code. The Zoning Board can overrule and they can question how Ralph has come up with his reasoning. The Zoning Board can call upon its own understanding of the code, do their own research, seek counsel for assistance but they wanted to hear from Ag and Markets as to what is a reasonable provision in the code and what is unreasonable. The Dept. of State are focused on the building code. This is a complicated matter. Been up and down with building departments and with Ag and Markets and we are getting back all this information which must get back to this board to decide.

The question posed to Building Codes was "Are we not allowed to request a building permit?" Their opinion was if we so decide, Ralph Lamson can require that they get a building permit for that structure. There is an exception because it is an ag structure but it is possible to require them to get one.

Is Ag and Markets going to trump that decision as an unreasonable restriction on a farm operation certified ag district? Our zoning code cannot unreasonably restrict a farm operation. I was on a Conference call for an hour and they recently wrote us an email that they don't think the way our code is currently written with this \$500 requirement is unreasonable unless we got into how it was constructed. Caveat is you can't raise the bar too high to for them to get that building permit. If the building permit fee is not excessive for a farmer and issued in relatively quick period and they are ok with that language.

The building code people stated you can require it but you are not going to hold up the issue. We are listening to advice of Ag and Markets and our code is not overly restrictive and you can't deny it. State folks say if you are requiring a building permit, you better give it to them. Ralph becomes Ministerial act for Codes to supply the building permit if we don't charge too much for the permit. I believe that is enough information for the ZB to interpret what does Codes really say.

John Langey is ready to answer questions from the board. Anita Minerd asked if the pit is physically located in LaFayette and is part of a farm. The building permit would have to be issued in LaFayette as the land in question is in LaFayette even though the main farm is in Preble. The farmers, in attendance, state that they own 440 acres on Markland Rd. and the land contains a shed or two. John Langey stated that farm operations can cross over many town lines. He stated this does not matter.

Christine Keenan jumping off the subject stated that it might matter according to Article 8 Section B, paragraph 1 and located on the same lot.

“ACCESSORY BUILDING OR USE: A building or use customarily incidental and subordinate to the principal use or building and located in the same lot with such principal use or building.”

Accessory to the use if the use is the farm then the accessory structure is accessory to the use of the farm. This manure storage facility may be an accessory to the use of farming. Ralph Lamson disagreed. Manure happens on farms. It is the main part of the farm. Accessory structure is the manure pit.

Christine Keenan opened the public hearing and will hear everybody. We will be civil and please address the board as opposed to each other.

Christine addressed Ralph to start. Ralph how did you arrive at your determination? Ralph stated he would not agree that this is an accessory structure to a farm. Basically, he determined it is not accessory use and we have never called for a building permit for any farm. Why would we change now? Fundamental use and falling on past precedent. It is not accessory use in his opinion. The town can't even demand that drawings are furnished. Ralph attended training from NYS Building Code classes and he was trained that it should not be required to issue a building permit.

Steve Pitoniak Meadowlark Circle addressed the board with an opening statement.

I'd like to say that we obviously disagree. I hope my interpretation is accepted. I have no plans to enforce this ordinance. It may or may not be legal. I will accept the fact that it is legal after hearing the lawyer's interpretation. I hope the reason that I am doing this is to understand the terms in our ordinance. There is disagreement in terms and the way things are done. I'd like to try to get a better understanding of our procedures of our town ordinance. I did not come to fight the legal battle. Personally, I want to understand the terms and procedure in this ordinance so I can be better prepared to understand things that affect me. I didn't come prepared to make a case. I'll let the lawyers do that. I just came here because I don't understand the interpretation of the code. What is going to be accepted in our ordinance today and in the future? It has a great impact on the town. That is my opening statement.

Regarding the accessory farm structures, I have a short paragraph I'd like to read. In a letter to the LaFayette Code Enforcement Officer, Mr. Ralph Lamson on 5/18/17 on the meaning of the word structure regarding the manure pit, I stated my interpretation of the zoning law. The pit falls outside the exception because it costs more than \$5,000 to construct. Therefore, according to the town zoning law a building permit is required for a pit costing more than \$5,000. Mr. Lamson rejected my interpretation in a letter dated 5/30/17 by stating that your discussion regarding structures are all well taken. He gave some examples of an accessory farm structure, dog kennels, greenhouses, etc. I rejected these examples as customary accessory farm structures since dog kennels and greenhouses are not necessary to a farm operation such as a dairy farm. I also rejected his statement that they are not an accessory structure because they are not related to farming. For example, a primary residence may have a garage because it is related to the principal use. It is a place for a homeowner to store his automobile likewise a primary agricultural structure may have farm building use for the storage process of agricultural process since they are reasonably related to the principal use. These farming structures are related in a subordinate manner to the principal use of the milking barn. I would be happy to give you a copy of lists of certain structures listed as farm accessory structures. It lists accessory residential structures which agree with Mr. Lamson's examples. My contention is that Mr. Lamson's examples were not farm accessory structures. When you get to specific farm accessory structures in these ordinances you will see that they are more specific and they don't list the residential structures. Farm structures are buildings used for storage processing and manufacturing and are related to the farming process.

In my interpretation, he was citing residential instead of farming accessory structures. I am just making clear where our differences are. Also, some other language that was used in some supreme and appellate court decisions including one of the supreme court justices. Mr. Pitoniak provided a copy of the examples discussed.

Next to speak Mr. Martin Ossenberg residing at 6173 Old Coye Rd. asked to address the attorney. Mr. Ossenberg was encouraged by John Langey, town counsel's opening statements. In the last 5 months, I have read and studied every town law particularly the zoning ordinance. The most confusing part of the town is Mr. Lamson, prefers to be addressed as the Zoning Enforcement Officer and he totally ignores the other title he holds of Zoning Official. Zoning ordinance specifically states zoning official. The town board appoints him and he works as an official of the town board. I am not a lawyer and not trained. I am asking you for a ruling to clarify at what point is he the zoning official and what time is he code enforcement. The code enforcement is critical because of the State of NY exempts all agricultural activity. It is controlled by the USDA through the NY DEC and the DEC adopts the standards and regulations from the USDA. Mr. Lamson states he is trained to enforce the code as it relates to the uniform standard of the law and he ignores totally the zoning part. The zoning part would force him to become knowledgeable about the standards that are required under the USDA rules. Am I correct?

Mr. Langey spoke and wanted to make clear that he was not disagreeing with Mr. Lamson. We have interacted that language and has been reviewed by lawyers and officials from NYS and Ag and Markets separately. They both looked at it. What they determined which gets us to the same place. Ag and Markets does not find this offensive if you don't make it difficult or impossible to the farmer. The codes people said a similar thing that requirement can be valid and can be requested by the town. If the farmer requests that building permit it would have to be issued so in the end they would get the building permit and they could continue their way with what they wanted to do. I don't take offense with what Ralph stated. I just see some fundamental analysis issues that we are sorting out. In the end, the manure storage pit it will exist, can exist and if the farmer asked for a building permit, it would have been issued. We can talk esoterically about the terms what hat does Ralph wear. Does he wear the code hat or the zoning hat? He wears both. He does his research and comes up with the best answer that he has. You have the option to challenge that. Your Zoning Board are the officials on the field and they have a right to challenge that. What does the state say, what

does Ags and Markets say, what is Ralph's analysis? We went to the state and we see what Ralph is saying but in the end, you would have to issue them a building permit anyways. The idea of getting a building permit to them is not offensive. Under the code we could require a building permit. You can't put unreasonable barriers in their way.

Ag and Markets says manure ponds are a legitimate part of the farm operation but you can't make it impossible for them to get a building permit for one. There is another level of review which the DEC and the Federal Government must sign off on it too. They are making sure they are built the correct way. Everyone knows they are offensive and can smell.

Mr. Ossenberg spoke and did not agree. The town has the authority and the power to ask for a building permit. They also have an obligation to control the quality of the construction. To make sure that the quality of the construction standard meets the standard USDA and DEC requires NRCS NY-313 October 2014. You can go back to the Agricultural Waste Management Field Handbook you can get at the office next door.

Mr. Langey stated, we don't have any regulations that talk about how to design these facilities that will hold manure. Just like with mining operations. The DEC regulates all mines. The Town and Zoning Ordinance say here's where you can have a mine. But once you get into the operations of the mine, that's where you stop. You can say where they are going to be or if they will be anywhere at all but you are not allowed to get into any of the mining practices, buildings or structures. It is a good analogy to this CAFO business.

Mr. Ossenberg stated that per the zoning ordinance when you issue a permit the applicant is required to provide signed, sealed drawings to the code enforcement officer or the zoning official. They must come up with P.E. signed drawings. They must provide the standard by which they construct the waste storage facility. There is no law or standard for a manure pit.

We don't know that. We don't have proof. Steve could obtain the design for the first waste storage facility to go in at the end of Markland Rd. He got the designed drawings. There were very few specifications and I must state I have considerable background when it comes to earthen containment as I have been in the oil industry for 35 years. We had to come up with double bottom tanks and had to build containment but we had to meet the standard of the DEC which was dictated by the EPA. Those standards were very strict when it came to

permeability of the soil. When you read the NRCS regulations, you will see how important the permeability is to them. What happens is the farmer is digging a hole. You need to have proof that he is meeting the specifications. The USDA allows you infiltration of 1,000 gallons per day/per acre. To meet that requirement, and try to improve it down to 500 I won't complain. But to meet that specification, you should have a very dense soil. No drawings that we received met the regulations spelled out by the NRCS. Show me the drawings, show me the specs and the town should be happy. And leave the code enforcement officer to read the blueprints and I'm sure he can go next door and they can read them for him.

Mr. Langey stated that this facility has received approvals from the state and federal government.

Mr. Grief stated that Onondaga County Soil and Water looked at the drawings. If another jurisdiction must approve it just like the mining operations. It is like a mining operation in that we don't approve the operation. I don't know if it is reasonable to say that Ralph must sit down and study these plans when it is being authorized by a higher jurisdiction. This board was asked to interpret a sentence of the law. We have gotten way off track. Designing this facility is not what this board was asked to do tonight.

Mr. Ossenberg stated that we have been trying to educate the town and they have basically refused and they are totally convinced that they have no authority. That annoys me because here are the rules, here is the law, read it and try to understand it.

Mr. Langey stated my office had a case in the neighboring town of Skaneateles where a farmer constructed a huge CAFO and all the millionaires around the lake hired a team of lawyers to look at what could be done to stop that CAFO.

The decision was you can't try to stop it because it is controlled by a different agency. We are not against the farmer but I submitted a commentary that the law should incorporate every sentence and rules that are dictated by the USDA. Mr. Ossenberg stated that he has gotten the answers I have asked, but at the minimum the town people have the right to see the design drawings and the specifications of the construction.

Next to speak was Herbert Brodt of 2721 Webb Rd. Mr. Langey was telling us about the millionaires in Skaneateles. There are people in this room that have spent more time than all the lawyers and all the millionaires. We have educated

ourselves. We have tried to educate the town. It is like spitting in the wind. We have done a very good job of representing the town.

Mr. Langey stated that he has been in your shoes where I have been an advocate for a group like yours and understand the issues you are dealing with. I do appreciate what you are saying. I am reporting back the information we got from the state and that is all we can do.

Ralph Lamson recalled an issue with greenhouses in the town and how that was also considered an ag district. We even drove out to Albany to meet with Ag & Markets. They threatened to sue the Town. Ag & Markets said they can build as many greenhouses as they want. Watson Greenhouse built more greenhouses than they were supposed and added on to some. We should have a copy of that 10 or 12-page decision.

Mr. Pitoniak of 2084 Meadowlark Circle would like to see that file. You can't tell them how to construct it but that is understandable. But then you use the word unreasonably restricted. There are reasonable things. Unreasonable would be telling an engineer how to build a pit.

Mr. Langey stated that your laws cannot unreasonably restrict a farming operation. A farmer has the right to take it to Ags & Markets. We understand while it is not a reasonable restriction to require a building permit it is not a reasonable restriction but you better give it to them. You'd be surprised what is reasonable and unreasonable.

Mr. PITONIAK stated we are asking for a rough copy of some of those things. Ags & Markets why would be asking for sketch be unreasonable? Sometimes you'd be amazed what is reasonable or unreasonable.

Mr. Herbert Brodt 2721 Webb Rd. LaFayette. I don't see Onondaga County Soil and Water, Mark Berger. I talked to him in detail about the pit. He told him me it would be a steel reinforced concrete structure. In my freedom of information act it said it would be an earthen structure. Mark Berger is the best politician. He lied to me. I don't like liars. What bothers me is in 1993, the other side of Tully Valley, the mountain collapsed. The soil on the west side of the valley is as just as vulnerable. There is a good chance that the whole tank could down into Cardiff. With a steel reinforced pit, it is unlikely that would happen. There are people who get their water from the springs especially the east side of the Tully Valley and the potential of a disaster is present. That is what bothers me. Would the farmer be willing to put up a guarantee of money value if something like that happens all the

people in Cardiff will be able to take showers with bottled water. Once you contaminate the water source of Cardiff, you only get once chance. You can't reverse the process.

Christen Keenan state that this is not something this board can decide.

Mr. Brodt, stated he was trying to bring up the potential for disaster.

The farmers in attendance stated that the handling of the manure is part of our farming operation and abides by DEC regulations. We cannot winter spread on frozen ground so we must be able to store this manure.

Christine Keenan asked the farmers who creates soil and water reviews. Their reply was private engineer and AGs & Markets, Soil and Water, NLCS. They must follow the NLCS standard to construct these lagoons. These agencies have all signed off on this. The engineer is our go between with these agencies. Christine asked if we could get that from her or if they could get it for us. The engineer keeps that on file. The farmer stated that he supposed we could.

Burt Coleman 2376 Markland Rd in LaFayette. In 1971 there were only 3 houses on the road. I have concerns about the wells and concerns about the spills. You drive down the road and the manure gets on your cars and smells. What are we going to do about the spills? Christine Keenan responded that this board will not do anything. We Interpret the laws, and issue variances. We concern ourselves with zoning law. There are appropriate agencies. This board is not one of them.

Steve Pitoniak of Meadowbrook Circle stated there are two parts to that communication problem to the interpretation problem compulsory accessory structure. The other thing that had to do with the \$5,000 permit. You can issue the permit but we cannot tell them how to build it. We did not have ask to control the operation or construction. John Langey stated it was confirmed by state agencies. Whether you get a permit or not, you will get to the same place. They can get a building permit. Mr. Pitoniak stated that this has wider implications because there are other issues that we have not brought to the town board that are related to this.

Ralph Lamson asked John Langey if we have a requirement that is more restrictive than the building code don't we have to send them to get approved? They said they are ok with but I don't know what they would say. We can't use that in this situation. Make sure that was clear. Just because it is good language doesn't mean we can use it.

Mr. Pitoniak of Meadowlark Circle is it true that if the town doesn't have a list of things that they want to control in their town ordinance that by default the state would make the decision? Mr. Langey stated that was too broad a question. Mr. Pitoniak stated if the town defaults on their obligations then the county and then the state can. That is true for the building code. If it is not in here then you can't do it. Brand new use that no one thought of; examples would be cell towers, windmills, we didn't have a law yes and we are going to create one. We did one for solar too.

Mr. Langey stated that this board doesn't deal with zoning code. You asked for an interpretation of a sentence in our zoning law. Ralph said no. We are spiraling out into a whole another area. Let's keep the board focused. Christine Keenan stated we are very narrow on what we do. We are here to interpret this one zoning law. Largely it doesn't matter and we are going to interpret this one paragraph. If we require a building permit for these gentlemen and we have no reason to deny nor are we permitted to deny it.

Steve Pitoniak asked if the board can rule on parts of it. Christine Keenan stated the definition is the interpretation. What it means is what it says. Mr. Pitoniak states that is unclear. John Langey agreed that it means what it says. We agree that this is an accessory structure for a farm. The board has agreed that it is a primary structure of the farm and is an accessory structure to the farm.

Mark Peterson 3052 Sentinel Heights Rd. asked as mentioned earlier by the applicants that by law you cannot spread manure during winter months because of runoff. The property owner stated that you cannot spread manure on four inches of more of snow or if there is concrete frost. If the snow melts you can spread. That is DEC law.

Herbert Brodt has pictures of manure being spread on Markland Rd. from this past winter. Everything is white, all snow. Someone did spread manure. The photos are dated so we know when and where. I can bring it to you and someone did spread manure and you can see when it was spread. Another comment is we are not against farming. Wouldn't it have been a wise decision if I want to put something in that is controversial why not cooperate with the people. Is this a hazard waiting to happen or can you show us why it is safe; the compaction tests so on and so forth. Again Mr. Berger told me that the reason this was not built years ago was the builder could not pass the compaction test. This past year due to excessive snow fall that should not be a problem. Are we going to have tests until eternity until one passes and why not share that information with the public?

That would be satisfactory to me. The way you holler into the woods is how it echoes back.

Christine Keenan don't bring pictures to us. This board does not enforce the laws. We have nothing to do with enforcing the law.

Mike Grief, Preble NY would like to clarify that. The law went into effect July 1st of this year on winter spreading. Last year it was ok to spread in the winter. This is a new change in guidelines for this year. The facility was not planned to be built years ago. Last year we went through the process and met with town officials and town supervisor and highway superintendent on July 6, 2016. We worked with all these people and had a public hearing in March.

Dave Griswold Preble NY, it was such a dry year last year that we could not get the compaction last year. We could have hauled in water last year to get the compaction test but we did not want to get into that project.

Herb Brodt stated that he had documentation from soil and water that goes back to 2013 not 2016. Christine Keenan replied, once again this does not apply to this board.

Christine Keenan stated that because there was an oversight due to the noticing of this meeting we are going to extend the Public Hearing to September 26 at 7:00 pm for another public hearing. We are being very careful that the legal commitments are met. If you have had your say, you don't need to come.

Mr. Pitoniak stated we made one determination tonight. Consensus on the board but no formal resolution. Christine Keenan stated everybody must have a chance to be heard. I doubt there will be monumental change on how they look at this. Just trying to follow the rule of the law. This has been a productive meeting. I must say everyone has been diligent in their research even though much of it will not apply.

Mr. Pitoniak asked about the courtesy meeting hearing. Christine Keenan explained that it means that the applicant does not have a standing to make the request.

Herbert Brodt asked will you make your decision at the next meeting? Christine Keenan responded we will talk and once everyone has been heard and the public hearing is closed, and we will make our decision.

Motion to continue the public hearing to the next meeting, September 26, 2017 was made. All were in favor.

Motion to adjourn was made at 8:10. All were in favor.

Respectfully submitted,

Sue Marzo
Zoning Board Secretary

/attachments – documentation provided by Steve Pitoniak

