

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



Date: July 25, 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, James Nash, *absent Anita Minerd*
Kevin Gilligan, Town Counsel, Sue Marzo, Secretary, Steve Pitoniak, Rosemary Brodt, Herbie Brodt, Martin Ossenberg

Minutes

Agenda item: Informational meeting regarding the Appeal of the Determination of Code Enforcement Officer, Ralph Lamson's letter dated May 30, 2017 regarding the building permit for the proposed manure pit storage facility

Agenda item: **Presenter:** Steve Pitoniak

Discussion:

Christine Keenan opened the meeting at 7:00 pm. Introductions were made by Board Members in attendance, Secretary, Legal Counsel and all attendees

Ms. Keenan called the meeting to order for a sketch plan conference. Ms. Keenan advised the purpose of the zoning board as an appeals organization. We grant variances, and interpret zoning ordinances.

Mr. Pitoniak will speak for the (4) person group in attendance as this is not a public hearing. Ms. Keenan asked what was wanted from the Zoning Board from the attendees. Mr. Pitoniak first Informed of a typographical error on the language in the appeal. He clarified that Article 7C1 should read Article 6B6. Christine Keenan mentioned the

confusion on the language earlier to the meeting and now is clearer as to what was being requested.

Mr. Pitoniak addressed the board as the representative of the group, wanting to know what that town law meant in regard to Mr. Lamson's interpretation and asked if the board agreed with that interpretation of accessory structures. Christine Keenan read the article in question. Mr. Pitoniak asked for an interpretation from the board as to what the article means. The group disagrees with the interpretation of the LaFayette Codes office and wants to hear what the zoning board defines and the general ruling. Ms. Keenan asked Mr. Pitoniak what words he wanted definition of. Mr. Pitoniak wanted the boards definition of what accessory structures are. They aren't related to farming operations and he wanted to know if the board interpreted it the same way or if it was different. That ordinance also claimed that anything below \$5,000 would not require a building permit. That implies that anything over \$5,000 would. Mr. Pitoniak asked if the board interpreted it that way also.

Mr. Pitoniak is not asking if anything here is legal, he is just asking for the board's interpretation of what that law states. Article 7 Section B6, paragraph 3 states:

"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, not used for dwelling purposes and having a value of less than \$5,000.00, provided that such accessory structures comply with the provisions of this Ordinance and other requirements of law applicable thereto. (As Amended)"

Ms. Keenan wanted to read that section of the article because other agencies, like Ags & Markets may be involved in the decision. Mr. Pitoniak is not here to argue the law, just wants to know the original intent of that law and what it meant according to the Zoning Board.

Ms. Keenan advised that a public hearing is required so we can get input from all parties concerned. Mr. Pitoniak and others in the group should be ready to counter. We will need to have other opinions. Mr. Pitoniak is not here to challenge the law but just to understand the original intent of that law.

Mr. Gilligan will send for advice to Ags & Markets. Mr. Gilligan advised that it is basically saying that our code provision is invalid because the state building code and state ag and markets have overruled that and pre-empted this area and our provision is basically illegal. Mr. Pitoniak is not here to challenge whether it is legal or not. He just didn't

understand what it said. Mr. Pitoniak said the public hearing will have some strong opinions and he will prepare for that.

Ms. Keenan asked for a motion resolution to refer this case to Ags & Markets. All board members voted in favor.

Ms. Keenan advised that the typo on the appeal with the incorrect article is to be cleaned up prior to sending to Ag and Markets. Mr. Gilligan will assure correction is made.

Mr. Martin Ossenberg presented documentation evidence to the board (attached). Mr. Ossenberg advised that he resided at 6173 Old Coye Rd.

Mr. Pitoniak asked for suggestions on preparation for the next meeting. Ms. Keenan advises that people are upset. There are lots of emotion but we need to have a case supported by facts and figures. That is what we will need.

Mr. Brodt asked if the board would make a decision that night or will it be made in closed quarters? Ms. Keenan advised that it depends on the outcome of the public hearing. The board will probably decide that night but it will depend on if all parties have been heard. The Public Hearing may have to be extended.

Mr. Pitoniak stated again that he did not come here for the board to decide if there should have been a building permit. He simply came to understand the interpretation of the law.

Public Hearing will be arranged for the 4th Tuesday of August, August 22 at 7:00pm. Motion for Resolution was approved by all board members. Resolution is carried for public hearing.

Motion to approve the minutes from March 28, 2017 were approved as written by all board members in attendance.

Motion to adjourn was made at 7:14 pm.

Action items

Person responsible

Arrange for public hearing

Sue Marzo

Neighbor notification, newspaper,
social media, website

Send advice to Ags & Markets

Kevin Gilligan

Respectfully submitted,

Sue Marzo
Zoning Board Secretary

/attachments



06/23/2017 FRI 10:24 FAX --- Sue Marzo

001/004

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 Szwarc	3203 Webb Road LaFayette NY
Rosamary Brodt	2721 Webb Rd. 13084 LaFayette, NY 13084
Martin Rosenberg HERBERT BRODT	6173 ENDICOTT ROAD 2721 WEBB RD 13084
Carol Scofield	Markland Rd landownert
Tom MacMachan	2293 Markland Road
Greg Serman	2308 Markland Rd Laf
Louie Tanner	2320 Markland Rd Laf.
Karen Dester	2370 Markland Road, Laf
Renata Rahn	2223 Markland Road, Lafayette
Karen L. Markoff	2430 Markland Road, Lafayette, N.Y.
Stephen Pitoniak	2084 Meadowlark Cir. Lafayette N.Y. 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 Marlband 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
mpadow l... k Circle*

*14.03-~~10~~
41.4*

Martin Ossenberg, 6173 Old Coye Road

Registered Mail

6/27/2017

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 SPDS 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**

Page 2

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.

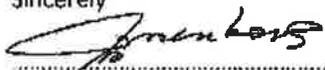
Delete in its entirety.

<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



New York Consolidated Laws, Agriculture and Markets Law - AGM § 305-a. Coordination of local planning and land use decision-making with the agricultural districts program

. Policy of local governments. a. Local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in this article, and shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened.

b. Upon the request of any municipality, farm owner or operator, the commissioner shall render an opinion to the appropriate local government officials, as to whether farm operations would be unreasonably restricted or regulated by proposed changes in local land use regulations, ordinances or local laws pertaining to agricultural practices and to the appropriate local land use enforcement officials administering local land use regulations, ordinances, or local laws or reviewing a permit pertaining to agricultural practices.

c. The commissioner, upon his or her own initiative or upon the receipt of a complaint from a person within an agricultural district, may bring an action to enforce the provisions of this subdivision.

2 to 4. *Repealed by* .



Department of Environmental Conservation

B. SEQR Handbook: Type II Actions

In This Section You Will Learn:

- what are Type II actions;
- what major changes were made to SEQR in 1996;
- what are emergency actions;
- what is "grandfathering".

All Links to regulations leave DEC website.

A. TYPE II ACTIONS-ACTIONS REQUIRING NO REVIEW

1. Are there actions that, once classified, require no further agency review under SEQR?

Yes, there are, and they are called "Type II." (See also the definition of "action" in the Decisions Subject to SEQR section of this Handbook). Actions that can be classified "Type II" actions under the SEQR regulations do not require any further SEQR review, not even an EAF. The list of actions identified as Type II is found in 6 NYCRR Part 617.5

2. What is a Type II Action?

Type II actions are those actions, or classes of actions, which have been found categorically to not have significant adverse impacts on the environment, or actions that have been statutorily exempted from SEQR review. They do not require preparation of an EAF, a negative or positive declaration, or an EIS. Any action or class of actions listed as Type II in 617.5 requires no further processing under SEQR. There is no documentation requirement for these actions, although it is recommended that a note be added to the project file indicating that the project was considered under SEQR and met the requirements for a Type II action.

The agency classifying the action must make sure that all aspects of the whole action are included when determining that an action is Type II. Additionally, the applicant or agency working with the action must keep in mind that, although an action is classified as Type II under SEQR, it must still comply with all relevant local laws and ordinances and meet all the criteria or standards for approvals.

3. What do the items on the Type II list mean?

Based on DEC's experience, and on court decisions, the following additional examples are offered to illustrate Type II actions as discussed under 617.5(c).

617.5(c)(1)

"maintenance or repair involving no substantial changes in an existing structure or facility;"

This allows for the normal cleaning, upkeep and minor repairs to a structure or facility. Painting, repair of damaged wood around a window, retiling a ceiling, repairing a hole in an existing fence, sealing an asphalt parking lot, installing vinyl siding on a house in a historic district, or reshingling a roof would be examples of actions that would fit in this category.

Ordinary home repair, business repair, in-place, in-kind remodeling, or upgrading to meet fire or plumbing codes are not substantial changes, unless the repairs are extensive enough to trigger any of the Type I thresholds. Even if a building is damaged or destroyed by fire, if it is rebuilt in the same footprint, and is comparable in size, scale and intended use to the old structure, it is still not subject to SEQR.

**NATURAL RESOURCES CONSERVATION SERVICE
CONSERVATION PRACTICE STANDARD**

WASTE STORAGE FACILITY

(No.)

CODE 313

DEFINITION

A waste storage impoundment made by constructing an embankment and/or excavating a pit or dugout, or by fabricating a structure.

PURPOSE

To temporarily store wastes such as manure, wastewater, and contaminated runoff as storage function component of an agricultural waste management system.

CONDITIONS WHERE PRACTICE APPLIES

- Where the storage facility is a component of a planned agricultural waste management system
- Where temporary storage is needed for organic wastes generated by agricultural production or processing
- Where the storage facility can be constructed, operated and maintained without polluting air or water resources
- Where site conditions are suitable for construction of the facility
- To facilities utilizing embankments with an effective height of 35 feet or less where damage resulting from failure would be limited to damage of farm buildings, agricultural land, or township and country roads.
- To fabricate structures including tanks, stacking facilities, and pond appurtenances.

CRITERIA

General Criteria Applicable to All Waste Storage Facilities.

Laws and Regulations. Waste storage facilities must be planned, designed, and constructed to meet all federal, state, and local laws and regulations.

Location. Siting of manure storage facilities must consider potential contamination of ground water and the production of undesirable odors. Locate manure storage at least 100 feet from the well. Waste storage facilities, if located within flood plains, must be protected from inundation or damage from a 25 – year flood event or larger if required by laws, rules or regulations.

Storage Period. The storage period is the maximum length of time anticipated between emptying events. The minimum storage period must be based on the timing required for environmentally safe waste utilization considering the climate, crops, soil, equipment, and local, state, and federal regulations.

Design Storage Volume. The design storage volume equal to the required storage volume must consist of the total of the following as appropriate:

Conservation practice standards are reviewed periodically and updated if needed. To obtain the current version of this standard, contact the Natural Resources Conservation Service

**NRCS, NY
October 2014**

Does Farm Construction need a State Pollutant Discharge Elimination System (SPDES) Permit?

Have you ever asked that question of yourself as you were planning a construction project on the farm or while the contractor was there moving soil around in preparation for an expansion? If you did but dismissed the idea assuming agricultural construction activities were exempt from SPDES Permits you need to read the information below!

When planning construction on your farmstead or farm area, one of the first considerations is obtaining a NYS Pollutant Discharge Elimination Permit (SPDES) General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002). Many farms incorrectly assume a SPDES Stormwater Permit is only needed for non-farm construction and incorrectly assume that farm construction is exempt! Do not fall into this perceived easy out from the permitting process, as you could potentially suffer fines and penalties.

We have been on farms undergoing construction projects that were not aware of the need to obtain a SPDES Stormwater Permit. In several instances, the farmer did not ask and was not told during the planning process by the project engineer. We see and hear of inadvertent violations like this frequently. So why bring this to your attention now? Many of our rural communities that have been traditionally agriculture are changing. Newcomers to these communities are concerned about their surroundings and are asking questions of their town planning committees and boards about agricultural practices including farm construction activities.

New York State Department of Environmental Conservation (DEC) views barns and other large farm construction projects which includes buildings, silos (including bunks), houses, stock yards and ponds, as construction projects that may require a SPDES Stormwater Permit.

How do you know when you need to obtain a SPDES Stormwater Permit? It will depend on the type of construction activity that is proposed. The types of activities and the associated permit requirements for those farms designated as a Concentrated Animal Feeding Operation (CAFO) can be found in Appendix B of the new CAFO Permit. You may also contact the NYS DEC Regional Office, your local Soil and Water Conservation District and Cornell Cooperative Extension Office for additional assistance.

If you are planning to complete any farm construction, this activity most likely will trigger soil disturbance. The outline below is intended to alert you to the requirements for permitting.

Soil disturbance of less than 1 acre: If you are disturbing less than 1 acre, it is not required to obtain permit coverage, however, water quality standards must be maintained to prevent soil from leaving your site and entering a watercourse. The DEC can still issue a fine if a water quality violation occurs on the site, even if no permit is required.

Soil disturbance is between 1-4.99 acres - "Exempt Activities": If you disturb between 1 and 4.99 acres, most (NOT ALL) practices are still exempt from permit coverage. However, exempt projects and activities are still required to implement erosion and sediment controls during construction, but there are no requirements to implement post-construction stormwater controls.

Soil disturbance is between 1-4.99 acres - "NON-Exempt" Activities: If you disturb between 1 and 4.99 acres, and the construction activities include the construction of barns, houses, silos (including bunks), stock yards, pens, farm ponds and other farm buildings, a SPDES Stormwater Permit is required. A stormwater pollution prevention plan (SWPPP) that includes erosion and sediment controls is also required to be developed and implemented.

Soil disturbance of over 5 acres: Construction activities involving 5 or more acres of disturbance must obtain a SPDES Stormwater Permit and develop and implement a SWPPP that includes erosion and sediment controls. For sites that include the construction or reconstruction of impervious area, the SWPPP must also address post construction stormwater management practices.

All sites that require a SPDES Stormwater Permit, also need a completed Notice of Intent (NOI) form which must be submitted to the DEC prior to the commencement of soil disturbance activity. Soil disturbing construction activities, as defined by the Stormwater Permit, means any clearing, grading, excavation, filling, demolition or stockpiling activities that result in soil disturbance. Clearing activities can include, but are not limited to, logging equipment operation, the cutting and skidding of trees, stump removal and/or brush root removal— if site clearing is completed for a non-exempt practice, a stormwater permit is needed. Clearing completed for a field that will be used agricultural crop production does NOT need a stormwater permit. However, it is strongly recommended that erosion and sediment controls are implemented during large clearing activities. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility.

It is always easier to ask a question about stormwater control prior to starting a construction project rather than waiting until a potential violation is noticed and then deal with permitting and possible costly fines, increasing the cost of the project. For more information you can consult DEC's website at <http://www.dec.ny.gov/chemical/43133.html> or http://www.dec.ny.gov/docs/water_pdf/introduction.pdf.

Submitted by

Doug Kierst, Executive Director, Cayuga County Soil and Water Conservation District
Judy Wright, Senior Ag Resource Educator, Cornell Cooperative Extension of Cayuga County

