

Town of Cazenovia Planning Board

Special Meeting Minutes

December 19, 2013

Members Present: Michael Palmer, Chairman; Anne Ferguson; Tom Pratt; Hugh Roszel; Anastasia Urtz; Dale Bowers; Jennifer Basic (delayed in arriving)

Members Absent:

Others Present: John Langey, Esq.; John Dunkle; Kyle Williams; Roger Cook; Don Ferlow; Peter Muserlian; Nancy Muserlian; JoAnne Gagliano; Antonio Caruso; Robert Andres; Chris Montante; Rick Ruggber; Jason Emerson; Anne Redfern; Graham Egerton; Debi Cramer; Bryan Wendel; Barry Schreibman; Mark Costa; JoAnne Race; Bruce Race; Laurel Eveleigh; Gail Azeredo-Woods; Charles Woods; Jan Salzman; Roberta Keeler; Brian Keeler; Deb Shephard-Moynihan; Linda Siracuse; Chris Fischer; Jorn Clement

HEARINGS

*Owera Vineyards - Site Plan Review - 5276 East Lake Road
File # 13-905 (Dale Bowers)*

M. Palmer called the meeting to order at 7:35 p.m.

M. Palmer explained that because this is a work session they would do the formal meeting first and then proceed with the other items of business. He asked J. Langey to give a review of the application for Owera Vineyards as it has developed over the last two weeks.

J. Langey explained that at the last meeting the public hearing was continued; the Planning Board received comment from the public and an update from the applicant, as to the status of their application. Near the end of the meeting, the Planning Board made a motion that was approved to receive an interpretation from the Code Officer of how the proposed building relates to the zoning code. December 17, 2013 the Code Officer submitted his letter regarding that interpretation, stating that because this would be a farm-related building, the applicant can come before the board for site plan approval, but also that the board has broad discretion to address any potential impact of the building through reasonable conditions. In the meantime a letter

from Ag & Markets was received commenting on "start-up" farm operations and their rules, and a number of letters from citizens including one from an individual addressed to the Zoning Board of Appeals requesting an appeal of R. Cook's interpretation. He went on to explain the process this individual must follow to formally submit an appeal. He further explained that this appeal by a third party does not create an automatic stay, so the Planning Board can undertake their normal work regarding this application. He stated that an environmental review would have to take place as part of this normal procedure before there could be any voting, which probably would not happen until all the other issues are discussed, the public hearing is closed, and the board can review the environmental assessment form.

J. Basic arrived.

M. Palmer asked if there were any other questions for J. Langey. Since there were not, he suggested to open the public hearing.

Motion by H. Roszel, seconded by T. Pratt, to open the public hearing, was carried unanimously.

M. Palmer asked for comments, asking speakers to step forward and state their names for the record.

Debi Cramer of 4714 Syracuse Road read two letters written by Duane Cramer, her husband, dated November 7, 2013 and December 19, 2013 which they had submitted for the file citing their concerns about the potential changes to the character of the surrounding area, the manner Owerha has misrepresented the character of their business, the precedents that may be set for future developments, and specifically the issues of noise. In addition, they submitted a report by the DEC entitled Assessing and Mitigating Noise Impacts, dated February 2, 2001. She also expressed concern about the qualifications of the sound engineer and his firm Barton & Loguidice that were hired by the Town. She spoke further about the need for an updated environmental impact study now that the scope of Owerha's business has increased.

Bryan Wendel of 5271 East Lake Road read his letter in which he formally appealed to the Zoning Board of Appeals regarding R. Cook's interpretation of the Code of the Town of Cazenovia as it relates to the application by Owerha Vineyards for its proposed construction stating that there is no evidence to support the contention that obtaining site plan review or special use permits would "unreasonably" interfere with Owerha's farm operation, or that the proposed building is related to the marketing of Owerha's farm product. He said he would take the necessary steps to complete the procedure of appeal December 20, 2013.

Barry Schreibman stated that the assumption that Ower's catering business has a right to exist is erroneous. He stated that Ower should apply for a special use permit for this aspect of their business under Town zoning law because that business is incompatible with the surrounding residential use. He spoke about obtaining the Commissioner of Ag & Markets ruling regarding Ower's catering business being a protected agricultural practice. He further spoke about contesting that ruling if it were unfavorable to the residents by appealing to state court.

Mark Costa of 1710 North Lake Road read his letter dated December 19, 2013 in which he talked about the negative impact of noise from Ower's events for the neighbors and the neighboring property values, and how these events and uses conflict with the Town's comprehensive plan, citing references to NYS Ag and Markets publications and a New York State Zoning Law and Practice report.

JoAnne Race of 5320 East Lake Road read her letter dated December 19, 2013 which argued that Ower's use for the proposed building would be for "a specifically described service for a fee," rather than for the marketing of their wine. She cited the New York State Department of Agriculture and Markets Law and Ower's contract for wedding events. She stated specific restrictions that would need to be imposed to protect the community, and reported that "overriding local concern" was the reason the NYS liquor licensing agency denied Ower's Liquor application, mentioning Ower's development is contrary to Cazenovia's comprehensive plan's goals of preserving, enhancing, protecting and maintaining the town's character.

Laurel Eveleigh introduced herself as an attorney representing a group of concerned citizens residing near Ower Vineyards. She submitted a letter but did not read it because many of the points had already been stated, however she did want to emphasize her issue with the December 10, 2013 letter written by the applicant's attorney stating that the local zoning law of Cazenovia is superseded by the Department of Agriculture and Markets (AML) because of Ower's "start-up farm operation" designation. She submits that any number of traditional zoning methods (i.e. site plan approvals, special use permits, variances, etc...) are applicable to properties in agricultural zones as long as they do not "unreasonably" prohibit or regulate farm operation.

Jan Salzman resides within 500 feet of Ower's property in question on Cazenovia Terrace and is president of the Ower Homeowner's Association. He spoke about the disturbance of this area because of the noise and the impact it has on the neighborhood.

Gail Azeredo-Woods read a letter from Elaine Rubenstein dated December 19, 2013 and another written by Charles Woods and herself dated December 18, 2013. E. Rubenstein expressed her support of the vineyard but made clear her opposition to a "for-profit event center."

G. Azeredo-Woods' letter advised the board to "take time and not rush this process" in determining what is reasonable for this residential area based on our local laws and what is in the spirit of the Ag. and Markets protection of an Agri- business.

Robert Keeler read Joe Ziemba's letter dated December 19, 2013. He expressed his opinion that "marketing efforts tend to be a cost of doing business, not a revenue source." He emphasized the issue of safety impacted by increased automobile traffic and sobriety levels. He also repeated the fear of setting a precedent for further commercial development.

Brian Keeler spoke about the increased number of special events scheduled by Owera as opposed to the winery's business plan and expressed his concern that this business will not succeed as a vineyard asking what decisions the Town will face in the future if it does not, asking the board to "protect the neighborhood ... and the life we've enjoyed in Cazenovia."

Deb Shephard-Moynihan residing on Owera Point Drive addressed M. Palmer and referred to his previous statement that he wanted to know the intent of the owners of Owera Vineyards saying she was also interested in their intent. She submitted a full video of an interview conducted by Paul Taylor in which P. Muserlian references having a winery, and events center, a spa and a hotel.

M. Palmer asked if there were any other comments, to which no one else came forward.

A. Urtz expressed her desire to hear the Zoning Board of Appeals' determination of this issue.

J. Langey informed the board that once the Planning Board closes the public hearing the Planning Board has 62 days to take action under New York State law.

M. Palmer asked the other members of the board what action they wanted to take.

There was a comment from the audience wondering why there was any question of an appeal.

M. Palmer explained that even though there is an appeal from a third-party source, the Planning Board does not have an automatic stay, they still need to proceed.

H. Roszel expressed his desire to continue the file and not to proceed.

A. Ferguson concurred.

D. Bowers asked what the Zoning Board of Appeals would do for the situation, and how it would affect the Planning Board.

M. Palmer said if they agree with R. Cook and the proposal would return to the Planning Board in February or March. He also said this would not really postpone the decision greatly because he did not feel the board was ready to vote on this proposal tonight anyway. In terms of construction season, a determination in late January as opposed to February or March makes little difference.

D. Bowers asked what counsel recommends.

J. Langey listed some possible options of action. The Board could close the public hearing and the clock would start ticking down the 62 day deadline; they could vote tonight; they could put the proposal on next month's agenda and vote then; they could wait until the following meeting after that which would put them at about the 62 day mark. They may have a decision from the Zoning Board of appeals at that time. The Zoning Board of Appeals could overturn R. Cook's decision and make its own decision as to how the building fits on the site and how it interacts with the Town zoning law and possibly Ag & Markets law. They might decide the building shouldn't be there or the site plan review is not the appropriate method. If they uphold R. Cook's decision, the proposal would return before the Planning Board. He mentioned the option available to the applicant is to attempt to go the Ag & Markets saying the Town of Cazenovia is giving them a hard time and they want Ag & Markets to get involved. This involvement would actually be welcomed on all fronts, but does not seem to be easily achieved. He warned the board to not exceed 62 days regardless of the option they choose. It was clarified that the earliest this matter can appear before the Zoning Board of Appeals would be January 27, 2014. If the public hearing is kept open, the 62 day requirement does not yet begin.

J. Basic commented that a lot of new information has been brought to light recently and she would like to have the opportunity to review it before voting.

J. Langey pointed out that the applicant had a number of paid consultants with him at this meeting and suggested they would like to address the board before the board makes any final decision as well.

Motion by J. Basic, seconded by A. Urtz, to continue the public hearing was carried unanimously.

M. Palmer invited A. Caruso to bring the Owera team forward.

A. Caruso asked J. Gagliano to display the plan. He stated the footprint is the same but he wanted to show how they have made improvements to further reduce sound in the areas that seemed problematic previously. He displayed a drawing they had compiled showing the various distances which had been submitted as well. He clarified that the closest boundary is 290 feet, not 350 feet as they had first thought. He asked his noise expert to explain what the building does.

M. Palmer asked what the sound level they were proposing at the property line would be.

A. Caruso said 60/50 decibels (dB). He mentioned the consideration of low-frequency sound in considering noise level. Then he asked R. Andres to present.

R. Andres introduced himself saying he's with Environmental and Safety Associates out of Baldwinsville, NY and Naples, FL. He spoke about the design of the building regarding low frequency sound which is associated with modern music. He said this building is above any design he's previously done as far as a high Sound Transmission Class (STC) building, speaking about the composite of several layers of barriers and insulation in its design to block and absorb low frequency sound. The wall structure exceeds 60 STC. The roof of the building is similarly constructed to block and absorb noise. He stated this is the best structure he's ever seen for controlling sound in his 40 years of sound control experience.

A. Urtz asked about the comparison of this building and rooms used for musical training/practice.

R. Andres explained about stud construction, weave, and insulation, and about the transmission of sound in general.

M. Palmer pointed out that much of the discussion is about the base line being relative to the current ambient noise level. He asked if they have any current readings.

A. Caruso stated that it depends what standard is used, citing DeWitt has 70 at the boundary line during the day and 50 at night.

M. Palmer clarified that they would like to know what the noise level is currently so that level can be maintained or only increased by a reasonable level.

A. Caruso stated the DEC has some guidelines about ambient levels and would probably expect it to be about 45.

The audience disagreed stating it is 30.

M. Palmer reminded the audience that they had their opportunity to speak and that they were not to interrupt the speaker.

A. Caruso stated that they are not trying to misrepresent, and he understands their being upset, but assured the audience that they are trying to remedy the problem. He feels using the ambient level will be a mistake because it is very hard to determine since it varies depending on the time of day/night. One has to determine where the measurements are going to be taken - at the residence or at the boundary line. There is the issue of "plus factors" which the DEC states can range from 3-6; anything above 6 requires further study. Therefore, they would like to have a standard that is measured at their boundary line which is fixed so they can know if they are in compliance. The standard must be reasonable for sound and reasonably monitored, not ever shifting such as an ambient level, reiterating that they are endeavoring to keep people happy. He also pointed out that it would be easier for R. Cook to monitor as well.

M. Palmer stated that he understands the process.

A. Caruso mentioned other steps that can be taken within the building to help reduce sound such as using curtains, and the sound board settings that would be used during music making. He said this time and effort has been put forth to replace the tent which was not working for the vineyard or making the neighbors happy.

A. Ferguson stated they need to have an agreed upon measurement of the ambient noise level now in order to reassure the public that those levels will be the vineyard's goal and that is why having time to take measurements will be helpful.

M. Palmer asked Kyle Williams to talk about this noise issue.

K. Williams introduced himself stating he's been with Barton & Loguidice Engineers for about eight years doing numerous studies on both sides of noise evaluations, and they have had experience with DEC hearings as well. They have reviewed the applicant's noise studies. The initial study explained their construction methods, the STC ratings of the building, and their proposed improvements over the tent. They have also reviewed the noise reading R. Andres took this past summer, and they agree with the ambient level method of applying a sound level limit at the property line. They propose that additional monitoring be conducted at the property line at various times - during the weekday, during the weekend - extended continuous monitoring events to determine the overall sound levels at those locations, and they are proposing using a decibel "C

weighted level" be used to measure the low frequency levels in addition to "A weighted levels." He stated it is appropriate to use and determine ambient sound levels in this location because of the rural setting to make sure the surrounding residents are not adversely impacted by the events being proposed.

M. Palmer asked about the mechanics of taking those samplings.

K. Williams explained they would be using a sound level meter set for 24 hour continuous measurements mounted on a tripod about 5 1/2 feet above the ground then data is uploaded to a PC to be analyzed to determine average ambient levels for that time period.

It was clarified that this has not yet been done.

J. Basic asked if all types of sound are equal at the same ambient levels. For instance, does rock and roll music sound the same as the wind at the same ambient level, is its impact the same.

K. Williams explained that one experiences the same sound pressure levels but there are different frequencies, but essentially they would have the same impact.

R. Andres asked if one were to take the ambient readings at a given residence in the front of the residence and then at the back of the residence over the same length of time, would those readings be the same.

K. Williams said those readings would be different.

R. Andres asked if the residence is influenced by both readings, the front as much as the back.

K. Williams said the residence is impacted more by the reading in the front.

R. Andres clarified that the property lines that K. Williams spoke of were the residential property lines. Then he discussed the problem of distortion, stating that the reading at the property line could be distorted low compared to the actual level at the residence.

K. Williams stated the DEC guide document uses the property line as a conservative point.

A. Urtz asked if multiple data points could be used.

K. Williams affirmed they could.

D. Bowers pointed out that the board can dictate where to take the readings that the board would consider reasonable.

K. Williams pointed out that the nearest property line is 290 feet away, but the nearest receptor is about 600 feet away.

R. Andres submitted that when determining a residence's level, the data from the front yard be averaged with the data from the backyard. He and K. Williams discussed other sound measurements and range of readings.

A. Urtz asked A. Caruso if he had a comment about the document prepared by R. Cook stating this board has jurisdiction over the building in question; that this building is to be used for agricultural purposes not for rental or fees to support the activities within the building.

A. Caruso said they are able to have events to promote their product. They are able to have buildings to promote their product for marketing. The guidelines are clear that all the buildings on the property are taken together to be part of the farm operation, so even though a building might be separate from the other buildings, or is not being used for what some might not consider a farm purpose, if someone challenges the use of the building or the events in it, under the Ag department rules, if they meet the requirements of the formula previously referred to, they can have the building and the events in it. If they do not meet the requirements of the formula, then they will be prohibited from doing that event until they can meet those requirements. They are willing to take the risk because they believe they can meet that formula. He mentioned the 51% rule of production which they feel they can attain in the specified time frame they presented in their business plan to Ag & Markets. He said it is not the board's function to second-guess them about achieving the 51% production level. He further stated that to build a structure should be relatively simple. The use of the building can be in question and challenged, seeking compliance with Ag and Markets.

M. Palmer asked about benchmarks to achieve this 51%.

A. Caruso said Ag and Markets establishes those benchmarks after the business plan is presented to them. He said every year they will report to the board how they are meeting their goals or the reasons they are unable to meet those goals in that particular year, whether it be an act of God or what have you.

A. Urtz remarked that her question was not answered. She was wondering if R. Cook's presentation elicited any further comment on what is in his document. She believes the answer to that is "No." The second question she had was whether he has presented, on the record, the entire case that he wants to present as it relates to what the farming uses will be for what they are proposing. She asked if everything is in the file that they wish to have in the file to show their plan.

A. Caruso said because they are not done with their presentation, he cannot say that they have given everything they want submitted. He does believe he has given more than enough so that the board can consider the Ag and Markets rules, regulations, guidelines, and statutes and the board can come to the conclusion that they have the right to build the building, and its use can be controlled under the Ag Departments rules and regulations. He said they are before the board to determine an appropriate use.

A. Urtz reiterated that the building must be used for purposes on that land, that it cannot be an event center, and it cannot be a structure for which fees or rental is charged.

A. Caruso said that is not correct.

A. Urtz said that A Caruso does not agree with R. Cook's characterization in his document.

A. Caruso said that is not what R. Cook stated in the document.

A. Urtz disagreed. She said the document stated that they can have this building, but they cannot do these particular things.

A. Caruso disagreed and stated that his presentation asserts that they can have the building and use it for farm purposes, including marketing their product.

A. Urtz asked if it was no longer an events center.

A. Caruso said under Ag and Market guidelines there are four uses for the building. That all the buildings are considered part of the farm. He said Ms. Urtz and he apparently are not going to agree on this point.

A. Urtz restated that she just wanted to understand if he has made the complete presentation he wants to make and she imagines he wants to think about that more.

M. Palmer asked if there were any other questions about noise. He said they are going to be looking for some kind of reading, if this goes forward, whether it be at the property line or the front yard or the back yard.

D. Bowers stated that it appears the board needs to make some kind of determination before that. Because A. Urtz recommended that this go before the Zoning Board of Appeals, they would not even discuss any of this. He felt given the counsel he has received and the information in the letter from R. Cook, he is more than comfortable to see that this rests with this board as a site plan that they need to put reasonable restrictions on.

A. Ferguson pointed out that if the application was denied, they would save time and expense.

J. Langey explained that the board can do a dual trek, that the board can go about its business working toward a decision which may be upset by what the Zoning Board of Appeals does, or may not, in which case the work would be done.

D. Bowers clarified that there is a difference between the Planning Board recommending that the proposal go before the Zoning Board of Appeals and a third party appealing to the Zoning Board of Appeals.

J. Langey reiterated the board's options which he explained at the start of the discussion, stating that some neighbors definitely will be appealing the interpretation of R. Cook's determination to the Zoning Board of Appeals. He reminded the board that their role is the role of the Planning Board. All parties concerned, including Ag and Markets and the applicant, agree that the Planning Board has the power to fashion the remedy that protects the health, safety and welfare of the neighbors. He further stated that there is a practical issue, which is not a Planning Board issue, but probably the Code Officer's issue, and that is that the building will not be erected by spring which means the tent will be going back up which presents the problems of last summer. He encouraged the applicant, the Code Enforcement Officer and the neighborhood to reach an agreement about dealing with the events that will be taking place. He stated that the Board does not have any power over that issue because that has already occurred, but R. Cook still has interpretation of the original site plan review. The neighbors have made their complaints known, so this will become an enforcement issue.

A. Caruso stated that the reason they endeavored to cure the noise problem, and had this not been appealed to the Zoning Board of Appeals, they might have been able to come to some reasonable conclusion. He stated they are still willing to work to that end on a parallel tracks. He feels the Planning Board can make reasonable demands and still protect the interests of the

citizens, believing the proposed building that doesn't generate noise will make most of the problems go away.

M. Palmer asked what the board wanted to do.

H. Roszel stated his preference in taking a parallel path.

J. Langey wanted to make one thing clear. He wanted the applicant to be aware that going forward they are agreeing to reimburse the Town for reasonable and necessary expenses associated with the consultants hired by the Town to process this application whether it is approved or denied. Because there are additional engineers working on this application, he wanted to make the applicants aware of this expense.

A. Caruso stated that they are aware of that and asked for an estimate of K. Williams' next steps. He asked how they would go about getting on private property to do the testing.

J. Langey said they would have to ask permission of the property owners and said they could use the boundary of their own property lines as well.

Some further discussion ensued about where to do the noise readings.

K. Williams repeated that the readings should be taken at the property lines for the sake of conservative conclusions, and spoke to the issue of road noise.

M. Palmer informed K. Williams that they would need him to submit a proposal detailing how he would collect data and the approximate cost. If P. Muserlian agrees to the proposal then the board would proceed.

Because of weather conditions Mr. Williams suggested waiting until spring or early summer to take those readings.

A. Ferguson emphasized we need the ambient level for now.

M. Palmer explained that we do not have the luxury of comparing the seasonal levels.

J. Basic advised the readings be taken when the events would most often be occurring.

J. Dunkle expressed the view that they would not need to establish the ambient number but could set the limits now. He said that the board will be agreeing on the average ambient level and then deciding on the level that is acceptable in relation to that which will be the enforceable limit. What he is stating is the average may not necessarily need to be determined now but the acceptable level is what is to be determined.

More discussion about this issue followed.

K. Williams affirmed the particulars would be included in his proposal.

It was clarified that the meter will collect data in "A" and "C" measures.

Motion by H. Roszel, seconded by T. Pratt, to continue the file was carried unanimously.

Motion by H. Roszel, seconded by J. Basic, to close this part of the meeting was carried unanimously at 10:00pm.

Sue Wightman - Office Secretary
December 21, 2013