

**MEETING OF THE
TOWN OF ALLEGANY PLANNING BOARD**

**Monday, July 8, 2013
at 7:00 p.m.
Allegany Senior Center,
3790 Birch Run Road, Allegany, NY**

AGENDA

Salute to the Flag

Minutes

June 10, 2013

Old Business

None

New Business

Allegany Wind proposal to settle lawsuit

Other Business

Zoning ordinance update:

- Revised schedule, June 14, 2013
- Section 5.17 Junkyards and Storage of Junk
- Section 5.18 Subsurface Rights
- Section 5.19 Oil and Gas Production Facilities
- Section 5.20 Control of Excavation
- Section 5.23 State Environmental Quality Review (SEQR)
- Article II: Definitions (time permitting)

Correspondence

None received

**Next Planning Board meeting:
Monday, August 12, 2013**

**Town of Allegany Planning Board
Meeting Minutes**

Monday, July 8, 2013 at 7:00 P.M.
Allegany Town Hall, 52 W. Main Street, Allegany, NY

APPROVED August 12, 2013

Present:

Frank DeFiore, Chairman
Pete Hellier
Rick Kavanagh
Helen Larson

Also Present:

John Hare, Town Supervisor; Ed Allen, David Koebelin, David O'Dell, Jim Hitchcock, Town Council; Daniel Spitzer, Esq. Charles Malcomb, Esq.; Everpower Representatives: Kevin Sheen, James Muscato, Young/Sommer LLC; Nick Pircio, Kate Day Sager, Times Herald; Carol Horowitz, Town Planner; Lynette Semsel, Secretary; Town Residents

Due to the number of latecomers, Chairman DeFiore opened the meeting at 7:10 PM with the Pledge to the Flag. He then welcomed everyone and stated this is not a public hearing.

Mr. Hellier made a motion to approve the minutes of the June 10, 2013 meeting. 2nd by Mr. Kavanagh. Mr. Kavanagh – aye; Mr. Hellier – aye; Mr. DeFiore – aye; Mrs. Larson – abstained.

Mr. DeFiore asked Everpower representatives to present their proposal to settle the lawsuit. Mr. Muscato introduced himself and addressed the board. He stated they have had discussions with the Town Board regarding resolution of the litigation. The Town Board has asked them to talk with the Planning Board regarding options for proceeding with a resolution and ultimately settlement of the lawsuit. He further added they have come to the Planning Board to answer any questions on the proposal they provided the Board and to discuss a process for resolving the litigation.

Mr. Spitzer informed Mr. Muscato that the proposal has not been treated as a public document; therefore, no one other than the Board knows what it contains. Mr. DeFiore and Mr. Spitzer offered the opportunity for Mr. Muscato to make a public presentation to the Board of what was in the proposal. Mr. Muscato said he felt it appropriate that the document should remain confidential while the litigation is still pending; however, the Company is prepared to move forward with an application for the reissuance of the permits involving this Planning Board.

Mr. Spitzer asked Mr. Muscato to correct him if he is wrong in the following statement of the proposal documents. "They basically are saying that you would go forward with the project as originally approved with Nordex 100 type turbines and that you would specifically address the issue of Mr. Gordon's home by proposing that turbine 18E be operated in a low sound mode not

unlike what was done with the other properties where there were compliance issues. And that you would present, in effect, a reapplication to the Board for purposes of the Board's consideration with, if you will, the original project modified to address the issue of Ted Gordon with turbine 18E."

Mr. Muscato answered, "I would clarify that. That is mainly correct. This does not involve alternate turbine models. This takes it back to the project as it was originally permitted by the Planning Board. With one exception to what you said, with this submission, we will ensure compliance for all residents; whether it is turbine 18E or all turbines, compliance with the Allegany's Zoning Codes and all its setback requirements. The only difference in the application will be with respect to the showing that is necessary for 18E."

Mr. DeFiore stated, based on the information received, at this point the Planning Board is not willing to consider the June 19, 2013 proposal until the litigation that the Town Planning Board is under right now has been terminated.

Since the next item on the agenda was continuation on updating the Zoning Ordinance, Mr. DeFiore called a short recess at 7:25 PM to allow the Everpower representatives and townspeople to leave.

The meeting was called back to order at 7:35 PM and the following items in the Zoning Ordinance were discussed:

Section 5.17 Junkyards and Storage of Junk

Mrs. Horowitz stated she is going to add a category for recycling facilities.

Section 5.18 Subsurface Rights

Section 5.19 Oil and Gas Production Facilities

Section 5.20 Control of Excavation

The Board decided to change the title of this section to Control of Mining as this would match the definition. Mining will only be allowed in Ag-Forest and not be permitted in the Industrial Districts unless a variance is granted.

(C) 2. The present ordinance is unclear on the distances (from inhabited dwellings and adjoining property.) Mrs. Horowitz will call the DEC to clarify this section.

(C) 4. Mrs. Horowitz recommended eliminating the excavation measurements and change the wording to "slope of such grading shall meet current NYS DEC standards..."

Section 5.23 State Environmental Quality Review (SEQR)

Article II: Definitions

The Board completed review of this section through page 7.

Other Business:

Casadent/Valley View Dental

Mrs. Horowitz stated that Mr. Dzurhoff informed her that Mr. Porcello has finished the basement in his dental clinic. He may now not be in compliance with the special use permit that was issued. If necessary, Mrs. Horowitz will compose a letter for Mr. DeFiore's signature citing the items that are not in compliance.

Mr. Kavanagh made a motion to adjourn. 2nd by Mrs. Larson. Mr. Kavanagh – aye. Mrs. Larson – aye. Mr. DeFiore – aye.

The meeting was adjourned at 8:35 p.m.

Respectfully submitted,

A handwritten signature in blue ink that reads "Lynette K. Semsel". The signature is written in a cursive style with a large initial 'L'.

Lynette K. Semsel
Secretary