

The Planning Board of the Town of Cicero held a meeting on **Monday, February 11, 2013 at 7:00 p.m.** in the Town Hall at 8236 Brewerton Road, Cicero, New York 13039.

Agenda:

- Pledge of Allegiance
- Notes from the Chairman
- Site Plan, AutoZone, Brewerton Road, Proposed AutoZone Store, Dunn & Sgromo **(approved)**
- Zone Change Recommendation, Jack Lyon, Cicero Center Road, Agricultural to R-12, Tom Woznica, Ianuzi & Romans **(recommended to the Town Board)**
- Zone Change Recommendation, Jack Lyon, 7697 Route 31, Agricultural to R-10 & General Commercial **(recommended to the Town Board)**
- Site Plan, Cicero Dumpster Service, 6188 South Bay Road, Proposed Dumpster Service **(No Discussion)**
- Approval of Minutes from the January 28, 2013 Meeting **(approved)**

Board Members Present: Bob Smith (Chairman), Joe Ruscitto, Chuck Abbey, Pat Honors and Mark Marzullo

Others Present: Neil Germain (Esquire, Germain & Germain), Mark Parrish (P.E., O'Brien & Gere), Steve Procopio (Code Enforcement Officer), Doug Wickman (P.E., C&S), Jessica Zambrano (Town Board Member) and Tonia Mosley (Clerk)

Chairman Smith opened the meeting by welcoming those present. He noted the room's emergency exits and asked that cell phones be silenced. Mr. Marzullo led the Pledge of Allegiance.

**NOTES FROM THE CHAIRMAN**

- The annual Planning Symposium is a good opportunity to meet your continuing education requirements. Please let the Clerk know which sessions you would like to attend for registration and payment purposes.
- We should expect to see the return of the Tocco Villaggio project. The Town Board is considering a change in zoning there.
- The Town Board has indicated at the end of February they are looking to make a number of code changes that affect the Planning Board. If Board members have some input to add contact our liaison, the supervisor or the Zoning Office.

**SITE PLAN, AUTOZONE  
BREWERTON ROAD (TAX MAP# 045.-01-04.0), PROPOSED AUTOZONE STORE  
DUNN & SGROMO**

Representative: Ric Maar, Dunn & Sgromo Engineers, PLLC

Mr. Smith noted this was on the last agenda. Our attorney and engineer noted several things that needed to be changed.

Mr. Germain explained one of the things we were looking for was an easement. They have provided that easement in a form which I have reviewed. It is acceptable and correct on a legal basis. I believe that they were also going to make some minor changes to their site plan involving the title block, etc.

Mr. Parrish agreed.

The Chairman asked about the resolution of the easement issue. There was debate as to whether we were just taking easements at property lines or whether the easement was going to cross the property.

Mr. Germain responded they were going to give us an easement as far as they could along their own property.

Mr. Maar showed the Board the easement's location, noting it comes down and ends at the property line.

Mr. Smith added when the property to the south is developed we can have access.

Mr. Germain: When the property to the south comes in for site plan approval, the Board would be able to ask that they hook up to that easement---to join the two easements. It would not work to ask an applicant to affect property that is not a part of their own application. We now have the ability to connect later on.

Mr. Maar noted the only other item that the Board had asked us to do was adding the words and warehouse to the title block, because it is a store and a warehouse. We did that on all of the drawings and re-submitted them. We show the easement and we show the additional wording in the title block.

**Mr. Ruscitto made a motion** regarding SEQR. He read: Be it further resolved that the Planning Board of the Town of Cicero hereby determines that the proposed action will not have a significant effect on the environment and that this resolution shall constitute a negative declaration for the purposes of Article 8 of the Environmental Conservation Law of the State of New York. **Mr. Smith seconded the resolution** and asked for a vote.

*Ayes:* 5      *Nays:* 0      *Abstained:* 0      **Approved**

**Mr. Smith moved** for the adoption of a resolution approving the application of AutoZone, Brewerton Road, tax map# 045.-01-04.0, for site plan approval with said site plan being last revised February 11, 2013. This approval is subject to the following conditions:

1. This approval is contingent on the applicant obtaining a building permit on or before August 11, 2013.
2. This approval is contingent on the applicant filing the access easement as presented to this Board's attorney for approval.

**Mr. Ruscitto seconded the motion.** The Chairman asked for a vote.

*Ayes:* 5      *Nays:* 0      *Abstained:* 0      **Approved**

**ZONE CHANGE RECOMMENDATION, JACK LYON  
CICERO CENTER ROAD, TAX MAP# 080.1-14-01.0, AGRICULTURAL TO R-12  
IANUZI & ROMANS**

Representatives: Hal Romans, Surveyor, Ianuzi & Romans Land Surveying P.C.  
Tom Woznica, T&L Companies

Mr. Smith noted the zone change was from Agricultural (AG) to R-12. The site is adjacent to the Lyons Runne project that is already underway.

Mr. Romans introduced himself. We are here tonight seeking a zone change recommendation for the shaded portion that you see on the screen. It is approximately 48.7 acres. The existing Lyons Runne property is to the north with a stub. That area is R-12. Mariner's Landing is to the east with existing R-10. We are asking that this parcel be re-zoned to R-12, similar to Lyons Runne. That would allow the continuation of that residential subdivision. It would have the ability to connect into Mariner's Landing.

Mr. Smith: This is strictly a recommendation to the Town Board.

Mr. Germain agreed. They are just asking for this Board's recommendation, not site plan approval or anything like that. The Town Board will take whatever action they deem fit.

Mr. Smith: If this does develop into a new housing tract, it would come back to this Board for subdivision approval.

Mr. Romans agreed. Currently, Tom Woznica, T&L Companies has been building the homes within Lyons Runne. I believe that they are on their third section, having done Sections 1, 2 and 2A. Section 2A was

this interconnect here.

Mr. Smith: We already have the stub opening here for this section?

Mr. Romans: Yes. You can also see the existing stub to Mariner's Landing.

Mr. Abbey asked if there were any wetland issues.

Mr. Romans: Lyons Runne does have some wetland areas that travel into the property. Mr. Woznica and Mr. Lyons looked at the wetland making sure that the area where the stub comes in would be adequate. We know that there is probably wetland in this area. We will have to develop around it similar to what we did in Lyons Runne.

We try to make it so that our impact is not an impact to the wetlands.

Mr. Smith asked if stormwater was figured in.

Mr. Romans responded that would come in during site plan approval. We would have to meet the criteria of the DEC and the Town.

**Mr. Smith moved** for the adoption of a resolution recommending the application of Jack Lyon for the proposed zone change on Cicero Center Road, tax map# 080.1-14-01.0, Agricultural to R-12 to the Town Board. **Mr. Marzullo seconded the motion.** Mr. Smith asked for a vote.

*Ayes: 5      Nays: 0      Abstained: 0      **Approved***

**ZONE CHANGE RECOMMENDATION, JACK LYON  
7697 ROUTE 31, TAX MAP# 072.-01-05.1 & 072.-01-05.2  
AGRICULTURAL (AG) TO R-10 AND GENERAL COMMERCIAL (GC)  
TOM WOZNICA & IANUZI & ROMANS**

Representatives: Hal Romans, Surveyor, Ianuzi & Romans Land Surveying P.C.  
Tom Woznica, T&L Companies

Mr. Smith explained that the Planning Board had recommended denial of the application. Our concerns included knowing that there were no guarantees on the open space and the up-hill battle of establishing a marina. There was nothing to protect the Town.

Since that time the applicant has spoken with the Town and returned offering a conservation easement.

Mr. Germain explained. The applicant has come back with a plan that is substantially the same, except now they have a certain area set aside in what they are calling a conservation easement. This conservation easement would not allow the building of any permanent structure or improvements except for the proposed utilities.

According to the easement that I reviewed, some of that area is wetland.

Mr. Romans clarified. We describe the area in two parts. We excluded the area in the easement that transports through the property---this overhead utility easement and sanitary sewer easement. Conservation Easement One is about 18.94 acres. The second easement is everything from the north side of that easement line to the creek. That is approximately 51.11 acres. So, the total area is 70.05 acres. Within those 70.05 acres is approximately 40.16 acres of wetlands. That means that there is about 29.89 acres of what the DEC or Army CORPS would consider as uplands---property that is not wet.

There is a portion of the property that is subject to floodway and floodplain. That does not change. All of this area is a part of the area that is currently zoned R-10. We show the existing zoning line. Everything to the north of this line is R-10. Everything to the south is still AG.

I tried to show what the overall area is, the wetland area in the conservation easement and the upland area. Again, upland is any property that is not regulated as wetland.

You can see out of approximately 168.288 acres approximately 70 acres, almost half, is within the conservation easement.

At the end of the description I have included the actual meets and bounds description in legal format that we provided to Mr. Germain. I ended it with the following verbiage: The here before described conservation easement parcels are to remain in a natural state with no permanent structures or improvements except for existing and proposed utilities that benefit the Lyon property, its adjoining owners or the community. We added that in case, for example, a water line needs to go through there or something underground. You would have the ability to do that.

Mr. Smith: Those changes, for example if a water line needed to go through, requires the agreement of the Town Board, correct?

Mr. Germain: Subject to the Town Board, the Town of Cicero.

Mr. Smith: Whoever is on the Town Board at that time would have to agree. If I understand correctly, if the applicant is able to get the approvals needed to put in a marina, the marina would have to be

approved by the Town Board.

Mr. Germain: It would be subject to the same approval process.

Mr. Smith: And then it would come in for site plan approval. My other concern is it says that it gets left in its natural state. That protects us against any logging, any topographical changes, etc.

Mr. Germain: They would have to re-state that in the actual easement. That would need to be changed.

Mr. Romans agreed to add that language.

Mr. Germain: If the Board decides to give a recommendation, as part of that recommendation you can recommend to the Town that the easement be looked at and revised to provide that the land stays in its natural state.

This just says in the conservation easement they are not going to put in any structures or build on it. It does not say that they are not going to log it or cut it. I don't know how much of that they could actually do because some of the area is a wetland. But, to protect the Town, if that is one of the things that you want to weave into your recommendation, you could.

I think that the biggest thing you are looking for when you look at the conservation easement or something of this nature is to say who does the easement run to, who are the beneficiaries, and who could enforce this easement. The way this is offered if you look at the beneficiaries--the people who could rely on this and therefore use some kind of enforcement proceeding--would be the owners, adjoining owners or the community at large. It does give you the added level of enforcement protection being available to people who live in the development, the community and adjoining landowners---if the Town Board wants this easement the way that it is written.

This would be a difficult easement for them to shy away from. It does not look to me by anything that I have seen written, that they are attempting to do anything other than provide a permanent easement to conserve the property.

The language that you are talking about, saying there is no logging or disturbance---basically some type of forever wild language---is something that you would want to recommend to be added.

More discussion occurred.

Mr. Romans: My client says yes we could add that. We could add that for the Town Board's review

and supply copies to the Planning Board.

Mr. Germain: I don't think that we need to see it again because the final will be approved by the Town Board. Their attorney will look at it and make sure that it is inline with what you are promising here. As long as you add that to it, something in the nature of undisturbed, forever wild, natural however you want to put it.

Ms. Zambrano: My comment is to add the promised language within the agreement that we pass. I think that we are going to take up this issue Wednesday. Does this language prevent the development of walking paths or something of that nature within the easement?

Mr. German: That becomes a difficult issue. The way the easement is written, it benefits the Town, the residents and the adjoining community. There are other beneficiaries. If you wanted to change that or do something outside of that, those beneficiaries would have rights too.

Mr. Romans noted you would get into trouble with the no logging, clearing or grading verbiage with a walking path. If you tried to make a walking path that was ADA compliant you would need to grade.

Mr. Smith: What would they have to do to get approval to put a marina, which is not a bad feature for the Town, within this easement?

Mr. Germain: Basically, they would have to amend the easement. I would caution you. To amend the easement you would have to go back to the beneficiaries of the easement which include adjoining landowners.

Mr. Smith: Why wouldn't the Town Board be the sole beneficiary along with Lyons Runne? I'm trying to make sure that the Town has the approval and the authority to make a change, if necessary.

Mr. Germain: Once you include adjoining property owners you make it very difficult to make future changes.

Mr. Romans: We can take that out. We intended that to be specific to utility easements and that's it.

Mr. Marzullo: That's how I read it.

More discussion occurred.

Mr. Marzullo asked who owns the easement area.

Mr. Romans responded if we get the zone change it will probably go into a simple HOA.

Mr. Marzullo: Getting back to what Ms. Zambrano asked, there would not be any improvements by the water for them to have a picnic, to fish, etc?

Mr. Romans: Not at this time. You can't improve anything.

Mr. Smith: The owners of the property would have to come to the Town Board to modify the easement and the Town Board would have to agree to it. If they did not agree, nothing would happen.

Mr. Romans: So, to make this clear, we will take out adjoining property owners or community and add the verbiage about logging and grading.

Mr. Germain: I think that with a little more clarity it will avoid later interpretations.

Mr. Ruscitto: The intent is to have the Town be in control?

Mr. Germain: The way I read it, and I think what the applicant is trying to do, is to allow the Town the future option. If the developer needs to pull something out of the easement they would be able to go to the Town. The Town be the sole entity that the developer has to get approval from.

Mr. Smith: The elected Board would make the decision. Anyone could come before that Board and raise their objections.

Mr. Germain: Depending upon the procedure in place for that, there could be some type of public input with the Town Board.

The whole point is to caution the Developer against investing a lot of rights to a lot of people. That could lead to a difficult situation when trying to do something in the future. You really just want to go to one entity to make a change. That would be the Town. The Town Board is empowered and represents the people. They consider the interests of the Town of Cicero and its residents in their decision making.

We are talking about writing something within the easement agreement that says it can only be modified with the Town's approval.

More discussion occurred.

Ms. Zambrano: If the Town Board is going to approve something on Wednesday we need the very

specific language for Wednesday.

Mr. Romans: We would have it ready tomorrow morning. Basically it would say: The here and before described conservation easement parcels are to remain in a natural state, no logging, no grading etc, with no permanent structures or improvements except for existing or proposed utilities that benefit the Lyon property, subject to approval by the Cicero Town Board.

Mr. Marzullo asked if the applicant looked at clustering.

Mr. Romans responded they did not. We looked at a zone change to R-10 because there is R-10 in the area. Clustering requires you to come up with a density plan with the current zoning. The density plan for AG is one acre lots. Our intent has always been to try and get the marina. But, if we can't, we will need R-10 for development.

Mr. Marzullo: This is a unique parcel. You have a small commercial parcel, the potential for a marina and detached patio homes. Did you look at doing a PUD?

Mr. Romans: The PUD process forces you into a contract document phase. We would have to know exactly what would go into the commercial area, the marina, etc. We would need to go into a full document phase for the entire project. I picture this being a multi-year process. My client has investigated enough in researching the marina to know that it will take him a while to see if it is possible and economically feasible.

Mr. Germain: The PUD process here would require looking at the whole site. The Developer is not in a position to do that. It becomes very difficult for a Developer who has not hashed out their whole vision. There are probably too many variables in this project to do that.

Mr. Smith stated moving forward I would move for the adoption of a resolution recommending the application of Jack Lyon but I want some changes to the language. Instead of General Commercial, do we want to recommend Neighborhood Commercial (NC)? Would NC be more appropriate next to a community?

Mr. Germain: You can attach any comments to that recommendation you so desire. **You would move** for the adoption of a resolution recommending the application of Jack Lyon, 7697 Route 31, tax map numbers 072.-01-05.1 & 072.-01-05.2, for a proposed zone change as more fully set forth in an application dated 1/3/2013. As part of this recommendation this Board recommends that the Town Board consider the following in regard to the application:

1. The Planning Board notes that it has considered the Conceptual Site Plan revised 2/6/2013 which shows a proposed conservation easement. This Board's recommendation is based on securing this easement.
2. The Planning Board notes the importance that this easement run in favor of the Town of Cicero and that any amendment or changes to the easement only occur with the approval of the Town of Cicero.
3. The Planning Board recommends that the easement be modified to prohibit any logging or topographical changes or things of that nature.
4. The Planning Board recommends that the Town Board reviews the easement to make sure that it is consistent with those requirements.
5. The Planning Board recommends that the proposed application for a General Commercial (GC) area be changed to Neighborhood Commercial (NC). The Planning Board has reviewed the allowable uses in the GC zone as opposed to the NC zone and feels that it is more appropriate to have a NC use consistent with this application.

**Mr. Smith made a motion** as presented by Mr. Germain above. **Mr. Marzullo seconded the motion.** The Chairman asked for a vote.

*Ayes: 5      Nays: 0      Abstained: 0      Approved*

**SITE PLAN, CICERO DUMPSTER SERVICE  
6188 SOUTH BAY ROAD, PROPOSED DUMPSTER SERVICE  
AMRIK SHERGILL**

No representative.

No discussion.

**APPROVAL OF THE MINUTES FROM THE JANUARY 28, 2013 MEETING**

**Mr. Abbey made a motion** to approve the minutes from the January 28, 2013 meeting. **Mr. Honors seconded the motion** and the Chairman asked for a vote.

*Ayes: 5      Nays: 0      Abstained: 0      Approved*

**Mr. Abbey made a motion** to adjourn. **Mr. Ruscitto seconded the motion.** The motion was **approved** unanimously.

IN AS MUCH AS THERE WAS NO FURTHER BUSINESS BEFORE THE BOARD, THE MEETING WAS ADJOURNED AT 8:05 P.M.

Submitted by Tonia Mosley, Clerk