

SPECIAL TOWN BOARD MEETING  
TOWN OF CHATHAM

for the purpose of discussing Adam Slone/LSYF request for a Hardship Waiver from LL #1-15  
held at the North Chatham Fire House  
Route 32, North Chatham, NY  
July 7, 2015..... 6:00 P.M.

**PRESENT:** Supervisor Jesse DeGroot, Councilman Henry Swartz, Councilman Maria Lull, Councilman Bob Balcom, Councilman Jean Rohde, Town Clerk Beth Anne Rippel, Town Attorney Tal Rappleyea

**OTHERS:** Attorney Andy Howard, TRCA members and others

Supervisor DeGroot called the meeting to order at 6:00 P.M. and led the pledge to the flag.

DeGroot stated that we've been through the public hearing phase of the hardship waiver for LSYF and we're now at the point where the Town Board needs to render a decision under the law. There is no public comment during this meeting.

**Rappleyea** gave an overview of the moratorium which was passed in February. At that the time there was concern over possible development on Town's unpaved roads and also because the zoning code is undergoing revisions.

- There were several versions of the moratorium for the Town Board to consider. The one the Board adopted included the provision for a hardship waiver. Those versions were shared with the attorney for the applicant and also with Jeff Baker, the attorney for the TRCA. In that moratorium the hardship waiver language had in it the standard where there was an unnecessary hardship which not a mere delay in being permitted to make an application or waiver decision on the application would be sufficient. So we do have a standard that's in the law itself, that language came to us from Jeff Baker, attorney for TRCA and that language is what the Town Board adopted.

- LSYF application was pending before the ZB and ready to go to public hearing. Because the property is located on an unpaved road it fell under the requirements of the moratorium. Slone could not proceed so he filed an application for the hardship waiver.

**Rappleyea** said that he did not get to meet with each Board member as he had hoped to do last week. So what he will propose is that each of the Board members has a chance to speak in an open meeting. He suggested that there be a motion, a second and vote on the motion, then open it for discussion. Again the standard is the moratorium itself and it has been looked at by both attorneys (Howard and Baker). The Montgomery case would give guidance. In that case the court found that there was a hardship and they found that the town looked at whether there might be any impact to their revisions of their zoning laws. The fact pattern fits.

This application was referred to County Planning Board according to §239 of the General Municipal Law. The County PB reviewed the application and determined that it's a local issue with no county wide impact so therefore the Town is free to act in the usual manner.

With respect to the SEQRA, 6 NYCRR §617, Rappleyea recommendation is that this is a type II action which is exempt from SEQRA review. Under subsection 5 and subparagraph 30 says that the "adoption of a moratorium on land development or construction is specifically exempt from SEQRA". Subsection 27 says the "adoption of regulations, policies, procedures, local legislative decisions in connection with any action on this list". So the 2 point together tells that this action is exempt from SEQRA.

Region 4 chief council at DEC and the resource for public officials both agree that this is exempt.

Motion was made by Supervisor DeGroot, seconded by Councilman Swartz to approve the hardship waiver application.

## Discussion

**Supervisor DeGroot** said that we've spent a great deal of time looking at all sides on whether to grant the hardship waiver to LSYF. Historically this Town has worked together to solve its problems. While there may be divisions, we have not had the divisiveness we've seen on this issue. Traditionally the residents of this Town have opened their arms to help underprivileged of all ages. DeGroot stated that he has no desire to turn his back on those who need the help the most. When he asked Mr. Slone to include local children in his Foundation's camp Slone agreed. When it comes to the hardship waiver "we" the Town Board created the hardship by imposing the moratorium. At the time the moratorium was passed there was another issue looming which made the moratorium "palatable" but that issue never materialized Slone was lawfully proceeding through the ZBA process prior to the implementation of the moratorium. The moratorium law does contain the standard by which this hardship application should be decided. Slone has provided proof that fundraising has been impaired by the moratorium and LSYF will most likely lose financial backers because of this. Therefore DeGroot will vote yes on granting the hardship waiver. DeGroot has faith in the ZBA and this project should go back to them.

**Councilman Lull** asked fellow Board members if they read the 501C3, its about 20, 25 pages which Lull said she had only received yesterday after asking for it multiple times. It is lengthy and it sets out the master plan for the charity.

There are red flags which popped out;

1. The NYC address on the application.
2. Revenue and expense projections for the next few years amount to 2.8 million. In 2015 the charity is going to raise 1.7 million.
3. Page 9, item 4 suggests that Slone will be leasing the property out during the off weeks when the facility will not be operating as a tennis camp.

Nowhere in the application did it say that he would be leasing out the property. This was never brought up and it leads Lull to believe that the Board does not have all the facts.

This is an important issue for the Town. Lull is a strong proponent for zoning as she had served on the Planning Board for 14 years. Progress must be done in an orderly, methodical way without being distracted by those who want "immediate change".

The Town has been working on the Comprehensive Plan since 2002. The Board will soon receive the ZIC recommendations to enact into law a new zoning code. This is the reason the Board passed the moratorium on new development on unpaved Town roads and this is what must be kept in mind as we consider the request for a hardship waiver.

Citizens care about the Comprehensive Plan as it will protect every property owner and their real estate investment. The moratorium preserves the "status quo" while the Comp. Plan is being updated.

The moratorium is temporary. This gives the Board time to consider the ZIC recommendations. The Board should not rush to judgement. As a guide to municipal boards the NYS Local Leaders Guide to Moratorium on Development states "the moratorium prevents developers and property owners from rushing to develop land under current land use rules while the community is in the process of changing". It prevents development that is inconsistent to the proposed new rules. If the Board allows an exemption while the zoning code is being updated the work on the Comp. Plan will be undermined. The applicant is requesting a hardship waiver and after careful consideration, due diligence and many letters from the public Lull considers the hardship request to be unfounded based on the evidence provided. He has full use of the property and any expenditure he made is part of property ownership. As a real estate broker Lull knows that the purchase of property that requires a change of use permit must have a contingency to purchase, if it doesn't "you run the risk of mere speculation". Construction will greatly impact the area and the dirt roads. The Board is obligated to investigate the facts and listen to the arguments from the "majority of the public". Lull will vote to "protect citizens of the Town from liability and the integrity of the implementation of this new zoning code". Lull asks the Board to not grant the hardship waiver.

**Councilman Balcom** stated that his work goes back years, working on the steering committee on the comprehensive plan. When the Plan was completed was when the problems started. Balcom read from a statement he had prepared. It's about the comprehensive plan and it always has been.

After reviewing the narrative found in IRS form 1023 *Application for Recognition of Exemption Under Section 501 (c) (3) of the IRS Code* the applicant has a well thought out worthy endeavor, it's a great idea but the location and timing has made it difficult and controversial. It's important that the Board listen to the all citizens and weigh their concerns and take a position. The Board has a responsibility to defend the Town from potential threats that could have a long term impact. This is why he put his time into the development of the comprehensive plan. The elected officials of this town have let the residents down by their failure to implement the comprehensive plan. He doesn't want to diminish the work done by the ZIC. But the first few years were not productive, the committee chair was working with an "outdated draft for which the modified contents were used against him for political gain". This took months to resolve. The Committee met for a few more months trying to decide whether part 2 of the document was part of the Plan. He sat in the audience and tried to guide the committee on these issues but was told by the Chairman that they had it. Balcom said he was observing for the citizens and was told by one of the committee members that they would close the meetings to the public if what they were discussing were to end up in the paper. At that point Balcom decided to get reelected. The Town Board has not yet seen any of what the ZIC has been doing with the zoning changes. They may be doing great work but Balcom stated "but I don't know". Because of this situation Balcom said that he has been put in the position of possibly having to issue a special use permit without knowing the "intent" of the Comp. Plan. The Board has been assured that the rewrite is reaching the finish. For Balcom all the nastiness and manipulation of Board members "is background noise" trying to distract him from his focus. The Comp. Plan reflects the desires of the community. The moratorium the Board passed is to give them breathing room while the ZIC finishes up. It makes sense to see what's in the new code. The moratorium was also an attempt to take some of the heat off but that didn't happen.

Yesterday the Board received a copy of the 501 (c)(3) application for LSYF which reveals facts pertinent to the hardship. In the application it shows little financial hardship. There are \$825,000.00 claimed in commitments. The application does not specifically name Chatham as the location for the camp which makes Balcom think there are other locations under consideration. Outside of the camp dates of operation the property will be leased out for retreats. The applicant said that donors are withholding donations; this is contrary to what the application reads. The Foundation has assets enough to sustain itself throughout a moratorium. The Foundation has not demonstrated it has suffered financial hardship. As per the application it is apparent that the Foundation is looking at other locations rather than in Chatham. Slone has rejected a more suitable location directly across from Crellin Park. This location would fit in with the Town's recreation area. Balcom is not convinced there is a hardship. If the implementation process had occurred in a more timely fashion the Town would not be where they are today. Approving the hardship waiver would undermine the implementation process. Balcom supports the concept of LSYF but does not support granting the hardship waiver.

**Councilman Swartz** stated that the ZB looked at this. It went to them because that's their field and that's what they do and have done for the Town for many years. The Zoning Board found nothing wrong with the project and Swartz is not going to go against their decision. The Zoning Board been through litigation several times throughout the years and have always won. This is because they use the same fair process/procedure with every applicant. The ZBA goes by the facts they have in front of them. For that very reason Swartz supports granting the hardship waiver.

There has been a lot of talk about the Comp. Plan and Swartz is upset that his fellow Board members have not read it. Had they read the Plan they would know that under the Comp. Plan this project would have been allowed. From the ZIC they had considered defining every type of camp and in that conversation they talked about the size of the camps. There was talk about making the acreage requirement larger than 25 acres possibly up to 50 acres. After much discussion the ZIC decided that it would stick with the 25 acre minimum for summer camps in the new zoning code. This project as things stand would have passed. Swartz has no personal stake in this. He stated that he has lost business because some people here are opposed to his decision on this project and he is sorry for that but it

hasn't swayed who he is or what he believes. There is a hardship here for Mr. Slone and he is in support of granting the hardship waiver.

**Lull** pointed out that this Board has not seen anything from the ZIC nor has the public. This Board will go over all the recommendations and make the final decision with input from the public. Lull said that Swartz's statement is irrelevant; the Board has the final say and Swartz's argument doesn't hold up.

**DeGroodt** said as he recalled that the Board didn't see much of the Comprehensive Plan other than from the people who were on the steering committee. The Board didn't see much until it was finished.

**Balcom** interjected and said that the Board had minutes which he had taken and parts of the Plan were submitted to the Board and all along it was an open process. Balcom said that the bottom line is that once they had the Plan it was up to the Board to review it.

**DeGroodt** said that that was not the point he was trying to make and didn't want to start a war. He recalls that the Board didn't see the total Comp. Plan until it was finished. They saw minutes and what was going on but they did not get it in pieces. They received the whole document. You can't just look at a part of it and know what you're looking at.

**Swartz** said that it's the same way with ZIC. They cannot give the Board parts of the Plan it has to be done in its entirety. At that point it will be given to the Board and the public for review and at that time they will be discussion and public hearings. Then they'll go back to make changes. In his opinion as a member of the ZIC for the past 5 years and working through the Comp Plan has not changed his mind on granting the hardship waiver.

**Balcom** said that it was a process.... ZIC is still in the process. When the Comp Plan made it to the Board he thinks that about 90% of went unchanged. There were problems with readability and DeGroodt pushed to get that changed so there wasn't the note section on the side of each page making it easier to understand. The same thing will happen with the zoning code. There may not be any changes but there could be a few problem areas. Balcom doesn't know it, he has to see the words, that's the legal code he has to go by and he can't wait to see it.

**Councilman Rohde** stated that she agrees with Swartz. She has been working on the ZIC for years as well and we can't put it out in bits and pieces; we have to look at one big document.

Whether the camp is a good idea or not we still have to make a decision. Rohde is dismayed by the arguments, misinformation and untrue information which she has heard around Town. We are all adults and we should be able to debate more calmly and without getting mad at each other. If we don't have disagreements we wouldn't get anywhere and sometimes we learn something.

The Moratorium was a study on dirt roads, development along dirt roads and whether this was appropriate. The one thing that stuck out all through the Comp. Plan process was the love of dirt roads. We love our dirt roads and love our country and at this time she is not in favor of granting the hardship waiver.

**Rohde** has been rereading the Comp. Plan would like to get a group together to do a study on the dirt roads and is looking for volunteers.

Swartz reminded everyone that he was not in favor of the moratorium but he does believe that we need to protect the dirt roads. We already have something place to do that and it's our Zoning and Planning Boards. We didn't need to do a moratorium to make that point.

**RES. #90-15** to grant LSYF a hardship waiver from LL #1-15. Supervisor DeGroodt offered RES. #90-15 and moved its adoption to grant LSYF a hardship waiver from LL #1-15. Councilman Swartz seconded the motion.

VOTE

AYES: DeGroodt, Swartz    NAYES: Lull, Balcom, Rohde    Resolution defeated

Motion was made by Councilman Balcom, seconded by Councilman Lull to direct Town Attorney Rappleyea to prepare a detailed resolution denying the application of Adam Slone/Life Serve Youth Foundation hardship waiver from moratorium LL #1-15 .

VOTE

AYES: Lull, Balcom, Rohde    NAYES: DeGroot, Swartz    Motion carried.

Motion to adjourn at 6:40 was made by Councilman Swartz and seconded by Councilman Balcom.  
Motion carried.

Respectfully submitted by,

Beth Anne Rippel  
Town Clerk