

**STATE OF NEW YORK
COUNTY OF ALBANY**

APRIL 29, 2020

PUBLIC HEARING

6:00 PM Public Hearing Proposed Local Law # 4 of 2020

Supervisor Lyons declared the public hearing on Local Law #4 of 2020 known as the “**Town of Berne Planning Board Membership**” open with the following members present: Councilmembers Palow, Conklin, Harris, & Willsey. Town Clerk Clayton and Attorney Afzali were also present.

Supervisor Lyons opened the floor to guests: Councilmember Willsey stated that people needed more time to read through the Local Law #4 and asked that the public hearing be left open.

Supervisor Lyons called for a roll call vote to adhere to the 3-minute time limit. Councilmember Willsey – nay; Councilmember Conklin – aye; Councilmember Harris – aye; Councilmember Palow – aye; Supervisor Lyons – aye.

Supervisor Lyons made a motion seconded by Councilmember Willsey to allow written public comments to be attached to the minutes. Motion carried with the following roll call vote: Supervisor Lyons, Councilmembers Palow, Conklin, Harris & Willsey voting aye.

All other comments not written are available via video on the website.

Public Comment:

Lawrence Zimmerman, Todd Schwendeman, and Mark Sengenberger spoke and submitted written comments which are attached. Thomas Spargo submitted written comment attached.

Sue Hawkes-Teeter commented that it was a disgrace not to allow public comment at the April meeting; she felt the planning board functioned very well.

Karen Schimmer commented she was opposed to the 3-minute time limit on public comment that the Comprehensive Plan was just adopted in 2017 and was funded by a grant from Ag & Markets and a contribution from the Town to replace the 1995 plan that was never adopted; discussed the process of the survey; stated that the residents do not know why LL #4 is being presented and it can only raise suspicion.

Gerry Chartier – was a member of the Planning Board and Chair and stated it functioned very well with a five-member board.

George Christian – stated how serious the pandemic is with toll on lives and budgets and is against increasing the planning board.

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Barbara Crosier – resident for over 30 years; stated she is increasingly alarmed at the behavior of the Town Board; the firing of Cheryl Baitsholts and Emily Vincent; the appointment of Tom Spargo and the lack of understanding or knowledge for the laws of the Town of Berne or its residents; concerned about tax increases; feels there is no concern or plan for Berne residents during the pandemic; discussed the issue of amount of money being lost by the State during this time; she further stated that the Berne Town Board needs to prioritize and manage costs for the Town; discussed the drop in local sales tax; opposed to the increase in the Planning Board.

Dawn Jordan – stated this public hearing was held 7 days after publication not giving any time for review; campaigned on keeping open government but felt this is not true. Why is there a rush on this law? Is an additional member needed? She stated that in her years of involvement with the Planning Board it was busy, but never overwhelmed. She is opposed to putting Mr. Spargo in as Chair. She discussed Councilmember Harris’ statement in The Enterprise regarding the Comprehensive Plan. She urged the Board to keep the Public Hearing open until a time when the public can attend.

Kevin Crosier - opposed to LL #4. He stated that history will judge you in what you do in a crisis. Stated Supervisor Lyons has not shown any leadership or sympathy for the people in Berne; opposed to the appointment of Mr. Spargo on the Planning Board; discussed the 2020 budget increases and the drop in local sales tax.

Mr. LaCour – asked how much was spent between the law suit and an additional board member and is opposed to LL#4.

Supervisor Lyons stated that the public hearing will be left open so written comments may be received.

Supervisor Lyons made a motion, seconded by Councilmember Palow to adjourn the Public Hearing. Motion carried with the following roll call vote: Supervisor Lyons, Councilmembers Palow, Conklin, Harris voting aye. Councilmember Willsey abstained.

SPECIAL MEETING

Supervisor Lyons called the meeting to order at 7:24PM.

Councilmember Harris discussed moving into executive session. Councilmember Willsey stated that this executive session is being called under the guise of personnel issues, which is not true. Elected Officials are independent representatives of the town and discussion of actions against elected officials is not a personnel issue.

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EXECUTIVE SESSION – 7:33PM

Councilmember Palow made the motion seconded by Supervisor Lyons to enter into executive session for the purpose of discussing personnel matters. Motion carried with the following roll call vote: Councilmember Willsey – nay, Councilmember Conklin - aye, Councilmember Harris – aye, Councilmember Palow – aye, Supervisor Lyons – aye.

8:38 PM

Supervisor Lyons reconvened the meeting and stated no action had been taken.

PUBLIC HEARING PROPOSED LL#4

Supervisor Lyons made a motion, seconded by Councilmember Palow to continue the Public Hearing on Proposed LL#4 on 5/13/20 at 6:30 PM. Motion carried with the following roll call vote: Supervisor Lyons, and Councilmembers Palow, Conklin, Harris & Willsey voting aye.

MOTION TO ADJOURN

There being no further business, Supervisor Lyons made the motion seconded by Councilmember Harris to adjourn the meeting. Motion carried with the following roll call vote: Supervisor Lyons, and Councilmembers Palow, Conklin, Harris & Willsey voting aye. Meeting adjourned at 8:54PM.

Respectfully submitted,

Anita C. Clayton, Town Clerk

April 28, 2020

Dear Supervisor Lyons, This correspondence is in response to proposed Local Law No. 4 (Year 2020) to increase the number of Planning Board Members from five to seven members. It is also in response to the Letter to the Editor, Altamont Enterprise (April 23, 2020) by Town Board Member Mathew Harris regarding the apparent decision by the Town Board to direct the Planning Board to be responsible for updating the Town's Comprehensive Plan. This correspondence to you is to be made part of the public hearing record. Increasing the Town's Planning Board membership from five to seven members is simply a waste of our community's time and resources. During my 5 year tenure the Planning Board workload averages less than one new business activity each month, a work volume the Board has been able to readily address. In addition, the majority of new business items generally fall into two very routine categories typical of most rural communities; lot line adjustments and minor subdivisions. No other community of similar size and demographics within Albany County has a Planning Board of seven members. Expanding the Planning Board membership (e.g. increasing town government) at a time when our community is under a state of emergency, when municipalities are just starting to confront major budget deficits, when substantial numbers of our residents are out of work due to the Covid-19 pandemic seems irresponsible and negligent. Furthermore, the purpose and intent of Local Law 4, "to provide for the orderly and proper planning in the Town of Berne and efficient operation of the Town Planning Board" is simply not true. Anytime that membership increase in a Board or committee occurs, the level and volume of coordination increases requiring additional administration, time and money. Furthermore, the urgency and minimalistic notice with which the Town Board has scheduled the public hearing is troubling. It is hard for me to believe during the current health crisis that our Town Board doesn't have many, many, many more important activities to engage in to support and bolster our residents. This hastily scripted action comes on the heels of Mr. Harris's Altamont Enterprise Letter to the Editor (April 23, 2020) calling for the delegation of responsibility from the Town Board to the Planning Board to revise Berne's Comprehensive Plan. The Comprehensive Plan is a critical best practice community governance document laying out a short and long-term resource and fiscal investment pathway. The current Comprehensive Plan was recently adopted in 2017 (not "the early 2000's" as inaccurately written by Mr. Harris) following nearly \$40,000 of grant and Town financing and incorporated Town-wide input from multi-levels of Town government and citizens at-large. The term used by Mr. Harris to describe our current Comprehensive Plan, "antiquated" appears to be nothing more than a gross misrepresentation. Surprisingly enough at no time has the Town Board made any effort to discuss the "new urgency" to revise the Comprehensive Plan with current Planning Board members. In conclusion, the Town Board's proposal to expand the Planning Board membership and revise the recently revised Comprehensive Plan is woefully misguided, unnecessary, a waste of community resources and precious budget dollars.

Respectfully submitted,
Todd Schwendeman Planning Board Member Town of Berne

April 29, 2020

Dear Supervisor Lyons,

This is in response to the proposed Local Law No. 4 of the Year 2020 to increase the number of Planning Board Members from five to seven members. It is also in response to the Letter to the Editor dated April 23, 2020 by Town Board Member Mathew Harris that was printed in the Altamont Enterprise regarding the apparent decision by the Town Board to direct the Planning Board to be responsible for updating the Town's Comprehensive Plan. I ask that this letter be made part of the record of said public hearing.

I raise these concerns:

1) In the public notice for the public hearing scheduled for April 29, 2020, the Town Board did not provide any rationale for raising the number of Planning Board Members from five to seven. To the best of my knowledge, few towns of comparable size to Berne in the Capital District have a planning board of more than five members. It is unclear why this change is needed and whether it is a justified expense to the Town's taxpayers.

2) Mr. Harris' letter in the newspaper provides possible insight to the Town Board's intentions. He talks about a need to address "many legacy, unfulfilled issues, such as municipal water, hydro-fracking, municipal parks and recreation, industrial land use, and commercial business". He goes on to suggest that "other external initiatives" including the governor's energy plan and wireless technology issues need to be addressed.

Mr. Harris states that "The Berne Town Board has placed the responsibility for the overhauling of our antiquated comprehensive plan with the Planning Board." He also states that "I would anticipate an updated document ready for public review and comment to be presented not later than one year from today."

It is unclear how and when the Town Board made the above decisions and whether there is any documentation of the meetings in which these decisions were allegedly made.

3) Inexplicably, the Town Board has not talked with or sought any input from the five current duly appointed Planning Board members regarding the proposed changes to the size of the board membership or to its apparent decision to assign the responsibility for updating the Berne Comprehensive Plan to the Planning Board. This lack of transparency calls into question why these proposed decisions are being made. Some have suggested that the primary purpose is to be able to reappoint Mr. Thomas Spargo as Board Chairman. If this is the case, it remains unclear why this is important to the Town Board.

Why the Need for a Seven Person Board?

The current number and complexity of applications brought to the Planning Board does not justify expanding the board to seven members. For example, from January 2018 through March 2020, the Planning Board held 27 scheduled public meetings and only reviewed and took action on about 17 separate applications; some were considered at more than one meeting. During this period, the Planning Board:

Conducted a pre-application discussion with applicants for a two-lot subdivision

Conducted pre-application discussions with applicants for a residential wind turbine

- ☑ Approved 2 porch replacements and other building modifications requiring building permits in the Berne Historic District
- ☑ Approved 4 Minor Subdivisions involving simple lot-line adjustments
- ☑ Denied one proposed minor subdivision involving variances
- ☑ Conducted site reviews and advised the ZBA on 6 applications for variances
- ☑ Reviewed the plans and determined that the co-location of an additional antenna on the existing Long Road Tower met the requirements of the zoning code and did not need further board review
- ☑ Reviewed the preliminary plans and advised the Fire Department that the proposed East Berne Fire House plans conformed with Town of Berne zoning requirements
- ☑ Provided expedited approval of the site development for the Mid-Tel Communications Building at the Berne Fire House property with a special use variance granted by the ZBA; this fiber optic switching station will enhance broadband wireless communication to more Town residents
- ☑ Approved the new Dollar General Store to provide local shopping opportunities for residents and to bring business to our Town

Only the commercial application for the Dollar General store involved substantive issues. The current Planning Board members were active at the many planning board meetings in asking questions of the applicant and making specific recommendations for improvements to the design of the project. The applicant was very receptive and responsive to the recommendations. The result was a smooth review and approval process and a well-designed project that is aesthetically pleasing and fulfills a need for nearby shopping for community residents.

The current Planning Board also worked cooperatively and expeditiously with Mid-Tel to facilitate timely approval of their project that will improve telecommunications within Berne and surrounding communities. It is notable that Hudson Valley Wireless is preparing to provide commercial microwave broadband internet service to Berne using the previously approved Jansen Hill tower to transmit from as part of the NYS Broadband program.

During this same period, the current Planning Board proactively updated the Town's permit application and guidance documents, advised on changes to the zoning ordinance, worked on an energy conservation lighting plan for the Town, and prepared a draft Battery Energy Storage System local law. Planning Board members also attended required training and participated in a workshop with the ZBA to clarify roles and responsibilities and to assure timely decisions by both boards.

Why the apparent urgent need to update the Berne Comprehensive Plan?

In his letter, Mr. Harris inaccurately describes the current Berne Comprehensive Plan as "antiquated" and "crafted in the early 2000s".

In fact, the current Berne Comprehensive Plan (the Plan) was adopted April 12, 2017. It was developed by a "Comprehensive Plan Review Committee" appointed by the Town Board. It was comprised of a Town Board Member, a Planning Board Member, a Conservation Board Member, and volunteer members representing a cross section of our Berne Community. I believe this "special committee" was authorized by Town Board under Town Law Section 272-A.

The Committee drew on a town-wide survey, public workshops and public input received during the Committee's many meetings. Planning consultants were hired to guide the two year effort, to facilitate meetings, and to help prepare the final written document. The Plan was funded by a \$30,000 grant from the NYS Agriculture and Markets and \$8,000 of matching funds from the Town of Berne. The Plan was reviewed by the Albany County Planning Department and NYS Commissioner of Agriculture and Markets.

This 2017 Comprehensive Plan has been used to support many revisions to the Town of Berne Zoning Code.

Why Exclude the Current Planning Board Members?

According to Mr. Harris' letter, the Town Board has apparently already decided to place the responsibility for overhauling the comprehensive plan with the Planning Board and is trusting in the wisdom of the Planning Board to undertake this activity.

Inexplicably, the Town Board has not had a single discussion with the current Planning Board members about the need for updating the comprehensive plan or the apparent decision to assign it to the Planning Board.

It is unclear whether the Town Board has any practical understanding about the amount of time, effort and cost to responsibly update the plan and the importance of trust and transparency needed to effectively involve the general public in the process.

In the 2017 Comprehensive Plan update, the "special committee" was formed and involved many hundreds of person hours that were spent over a two year period revising the plan. It is not an effort a Planning Board can easily take on while performing its required work through its monthly planning board meetings.

Each Planning Board Member is provided a written Job Description which must be reviewed and signed when appointed by the Town Board. The Planning Board has regulatory and advisory powers. The Planning Board upholds and implements Berne's zoning through review and approval of subdivision plats, site plans and certain special use permits. It conducts site visits and solicits reports from the Conservation Advisory Board and Albany County Planning Board and holds public hearings.

The Planning Board advises the Zoning Board of Appeals on major subdivision plats, variance requests, and other special use permits. It advises the Town Board on matters of planning and zoning, and may put forth suggested changes to the existing zoning.

The Planning Board Members are expected to commit to 3-6 hours per month, prepare for and participate in one, and occasionally two, board meetings per month, and to attend relevant training for 8 hours per year.

Notably, the job description does not include having responsibility to participate in a time intensive effort to produce a revised Comprehensive Plan.

Conclusions:

1. The need for a seven person Planning Board is not justified by the typical small scale, limited number, and relatively non-complex nature of the applications typically brought to the Berne Planning Board.
2. The Town Board has had no discussions whatsoever with the current Planning Board members regarding the proposed expansion of the Planning Board membership and the apparent decision to charge the Planning

Board to update the comprehensive plan within the next year. This defies explanation and shows a lack of respect for the current Planning Board and demonstrates a remarkable lack of transparency and trust.

3. Mr. Harris' letter raises some arguably legitimate concerns for "legacy issues" and emerging green energy and telecommunications issues. However, the immediate jump to update the comprehensive plan to address those alleged concerns is premature given the lack of any meaningful discussion about those issues with the various town boards and its citizens.

Further, there may be other more appropriate forums such as workshops between the Town Board, the Planning Board, the Zoning Board of Appeals and the Conservation Advisory Board to mutually identify, assess, and narrow the most important issues and determine whether an update to the Comprehensive Plan is necessary. Public information meetings where the Town Board and the Planning Board could be used to solicit input from the general public about issues of concern would be useful, informative, and inclusive.

4. The updating of a Comprehensive Plan is an incredibly important responsibility to guide the growth of a town into the future. It should not be undertaken lightly as it involves a serious commitment of time, energy, and volunteer citizen resources and may have significant municipal financial costs.

The Town Board should, with input from other relevant town boards and with input from the public, seek to identify and narrow the issues that need to be addressed in a Comprehensive Plan update and identify those issues best addressed by other means or processes. If an update to the Comprehensive Plan is warranted, this update process may best be served, as in the past, by the Town Board authorizing a "select committee" rather than assigning the effort to the Planning Board which has prescribed ongoing duties and responsibilities.

5. The active participation of citizens in an open, responsible and flexible planning process is essential to the development of an optimal town comprehensive plan. Proposing to undertake an update to the comprehensive plan seems ill-advised at this time of the coronavirus pandemic given the limited opportunities for face to face communication among and between Town officials and the public. Further, the lack of dialogue and consensus building between the various Town boards has not set a proper foundation for establishing the priorities, processes, and funding to undertaken such an initiative. Let's take the time to work together towards a more thoughtful approach.

Respectfully submitted,

Mark Sengenberger, Berne Planning Board Member

cc. Berne Planning Board Members

Berne Town Board Members

Anita Clayton, Berne Town Clerk

THOMAS J. SPARGO
363 Joslyn School Road
East Berne, New York 12059
Tel: (518) 390-6377
E-mail: tjspargo@nycap.rr.com

April 28, 2020

Hon. Sean Lyons, Supervisor
Town of Berne
Post Box 57
Berne, New York 12023

Re: Public Hearing – Proposed Local Law #4, 2020

Dear Supervisor Lyons:

I am writing in connection with the April 29, 2020 public hearing scheduled for consideration of Proposed Local Law #4 of 2020 – Planning Board Membership.

Section 3 of the Local Law contains the heart of the proposed change by increasing the Planning Board membership from five to seven members.

The Planning Board is an important adjunct to the Town Board as it considers the ongoing opportunities and improvements that lie ahead for the residents of the Town of Berne. The best document that describes these opportunities is the Town of Berne Comprehensive Plan that was adopted on April 12, 2017.

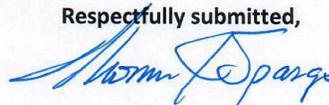
During my first three meetings as Chairman of the Planning Board we handled routine matters well. But I sensed that a Planning Board could be much more effective and proactive, if it could take up the issues and proposals set forth in the Comprehensive Plan.

A seven member board would allow the appointment of two separate subcommittees of three members each to study the recommendations of the Comprehensive Plan.

This work is important for the future of the Town of Berne. The current members of the Planning Board have great talents and unique skills and two more members will make it more diverse and representative of the community and more efficient and productive.

I think the adoption of Local Law #4 has great potential for the future of Berne.

Respectfully submitted,



Good Evening It is my understanding that the members of the Town Board desire to increase the number of businesses and capital investment in Town. A worthy aspiration and if the Board listened to all its citizens few would disagree. It is a matter of setting priorities and taking a hard look at the Town's assets. This Board's priority, however, is the installation of a convicted felon to chair the Planning Board and increasing membership on the board to seven. This is the Board's second attempt to maneuver Mr. Spargo into a role on the Planning Board. The first ham fisted attempt was declared illegal by the Court. This remains to be an embarrassment to the Town. With all due respect, the Town Board is approaching its aspiration to increase investment in the Town from precisely the wrong direction. The Town Board has to realize that THE MARKET will decide what investment will be made in Berne, not the Planning Board or its chair. We can throw out the comprehensive plan (although it is only two years old and was developed with all segments of the community participating) and draft an entirely new plan. The cold eye of THE MARKET could care less. To developers, zoning laws are merely pesky common hurdles to step around in order to maximize their investment. You can appoint convicted felons to all seven seats on the Planning Board and the cold eye of THE MARKET will raise an eye brow (or perhaps a wry smile) but ultimately THE MARKET will make investment decisions with little regard to the membership of the Planning board—to investors that's irrelevant. This Board needs to focus its attention on marketing the Town—not fiddling with the comprehensive plan or the Planning Board's putative chairman. Marketing the Town is the duty of the Supervisor and the Town Board. PRESENTLY, THERE IS NO SUCH MARKETING PLAN, NOR ANYONE CHARGED WITH ITS IMPLEMENTATION. Let's look at some hard facts and asses how THE MARKET reacts to those facts. 1) We are a community of approximately 2800 folks. 2) Our population is aging 3) We are not an affluent community 4) The nearest super market is about 15 miles away 5) Farming in these hills is a tough business 6) We have no municipal water supply and our ground water is very sensitive to contamination. How has THE MARKET reacted to these facts? In the last two years virtually the only significant development in town is the Dollar General which is not designed to cater to an affluent market. The comprehensive plan had no effect whatsoever on that developer's decision to build here. 2800 folks is hardly a customer base to attract any sort of large scale commercial development. Industry of any magnitude will not invest when our water supply is often stressed and at times inadequate. So how do we market our Town? What are our assets that we can market? 1) Our hills are beautiful and around many corners lie spectacular vistas. 2) We have an abundance of forest preserves and game management areas. 3) We have an abundance of hiking trails 4) We have an active agricultural community ready and willing to sell its wares. Switzkill Farm is the Town's foremost asset that brings together almost all the assets listed immediately above. Berne is the jewel of the Helderbergs and Switzkill Farm should be the principal tool by which to market the real treasures of this Town. Hiking trails which connect to the Cole Hill forest, water falls, breathtaking vistas. Switzkill Farm also has the potential to be a significant revenue source.. Weddings and receptions; small conferences, renting cross country skis and snow shoes, getting certification as a dark sky site, catering businesses to serve visitors to the farm, ETC.ETC. If developed wisely, ancillary businesses such as bed and breakfast establishments, restaurants., and other businesses catering to out of town visitors to Switzkill Farm, can move forward. How has this Board utilized this compelling asset? Our feckless code enforcement officer delights in pointing out all the alleged "code violations" he can dream up. Rumor has it that he has actually issued a "cease and desist" order against the Town. In and of itself that would be laughable, but it simply serves to show how his Board has neglected this precious asset. The citizens on the voluntary advisory board have been insulted and dismissed. The Town has not seen fit to appoint anyone to manage the development of this asset. You can't do that with sole reliance on volunteers. Switzkill Farm remains unused, un-repaired, unpainted and devoid of revenue. There is an undercurrent suggesting we should "dump the farm". The only use presently made of this beautiful asset is an ersatz and cobbled together dog pound which likely violates the restrictive

covenant and conservation easement attached to the property. Also, such a use may constitute an alienation of parkland which requires an act of the State legislature. This expense was utterly unnecessary. Such neglect is unforgivable. I have read Mr Harris's lengthy essay in the Altamont Enterprise regarding our present comprehensive plan. Mr. Harris's description of the plan as "antiquated" is intentionally misleading and profoundly wrong. Is this what we are to expect from the Town Board? Is that the reputation you want? Our comprehensive plan is forward looking, explicitly flexible and designed to be adjusted over the coming years. It is packed with data which supports the direction outlined in the plan. The comprehensive plan is not a fixed or static document but sets forth a planning process designed to evolve as the Town's needs and priorities change. A plan simply cannot be "antiquated" if the very planning process outlined in the plan has never been initiated! It is the function of the Town Board, not the Planning Board to initiate these steps. How has the Town approached these issues? Instead of developing a marketing plan that emphasizes the Town's real assets , it is hell bent on appointing a convicted felon as chair of the Planning Board. Rather than marketing the Town's assets, it has created an embarrassment for the town which will not generate a single dollar of new investment. Is this the "spirit" and "vision" that Mr. Harris longs for? Such a priority remains a mystery. Let's see how the comprehensive plan addresses the Town's assets: Page 4 of the plan explicitly states: "The Plan is not to be viewed as a fixed, static document, but rather it is meant to be one that evolves in response to changing conditions and concerns that may emerge. The Plan's implementation should be monitored and reported on each year to evaluate its progress. The overall Plan should be reviewed to consider both progress and any need for modification." The plan sets forth some 144 action steps to be undertaken by the Town Board to implement, evaluate and update the plan and the planning process each year. Page 50 of the Plan sets forth those action steps for the Board to undertake. The obvious first step is to appoint an "implementation committee" in addition to the Town's other committees. This plan has been in existence since 2017. The Town Board has utterly failed to undertake any of the implementation steps in the planning process . To say that this sophisticated and forward looking planning process is "antiquated" is a deliberate falsehood. To aver that yet another plan can be thrown together within the year is not only laughable but serves only to demonstrate that anyone championing such an approach simply doesn't know what they're talking about. We are embarrassed for the Town. You will likely appoint Mr. Spargo as chair of the Planning Board. You have alienated and insulted many segments of this community in the process. There is no action plan to market the town. One can only imagine what the agenda is—would you like to let the Town in on the secret?