

**STATE OF NEW YORK  
COUNTY OF ALBANY**

**JULY 22, 2020**

**PUBLIC HEARING**

**6:00 PM Public Hearing Proposed Local Law #5 of 2020**

Supervisor Lyons declared the public hearing on Local Law #5 of 2020 known as the “**Town of Berne Planning Board**” open with the following members present: Councilmembers Palow, Harris, & Willsey. Town Clerk Clayton and Attorney Afzali were also present. Councilmember Conklin was not in attendance.

Supervisor Lyons opened the floor to guests:

Kevin Crosier – stated this local law was not well thought out, the Planning Board has been in existence for 30 years; jumped the gun; not true it wasn’t established; we will take you to court every time you’re wrong; didn’t do due diligence and got to state archives; if you haven’t done that you haven’t done your job.

Gerry Chartier – read a statement which is attached to these minutes.

Barbara Crosier – read a statement (but did not submit paper) stating that she did not feel there was a need for this local law, there was no proof that it didn’t already exist; no search could be conducted with Department of State during the pandemic; adoption of Zoning Ordinance was how it was established; no meeting of planning board in 5 months; questioned that there were no projects before the planning board; business acting without special use permit; Town Board cannot function as planning board without legal process; questioned §2 of the local law.

Dawn Jordan – submitted an email to be read into the record which is attached to these minutes.

James Bushnell, Town of Berne Building Inspector, stated that for the first 3 months of the pandemic all construction was on hold and the Planning Board couldn’t have acted on applications because work was limited; a fair number of building permits and inspections have been issued; most projects consist of new property; demolitions; remodeling following same footprint. The building department has been keeping up with all permits, even on a part time basis. Mr. Bushnell stated this is a beautiful town to live in and appreciates working and living here.

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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, Harris & Willsey voting aye. Public Hearing adjourned at 6:24 PM.

## **REGULAR MEETING**

Supervisor Lyons led the Pledge of Allegiance and called the regular meeting to order at 7:00PM with the following members present: Councilmembers Palow, Harris & Willsey. Town Clerk Clayton and Attorney Afzali were also present. Councilmember Conklin as not in attendance. The minutes of 06/29/20 were presented and on motion of Supervisor Lyons and seconded by Councilmember Palow, the minutes were accepted with the following members voting aye; Supervisor Lyons; Councilmembers Palow, Conklin, & Harris. Councilmember Willsey abstained. The minutes of 07/08/20 were presented and on motion of Supervisor Lyons and seconded by Councilmember Palow, discussion was added to state that “no shared services agreement with New Scotland existed” and the minutes were accepted with the following members voting aye; Supervisor Lyons; Councilmembers Palow, Conklin, & Harris & Willsey.

## **ANNOUNCEMENTS**

- The August Town Board Meeting will be August 26, 2020 due to absences
- As of 6/28/2020 Berne was only at 50.8% for the 2020 Census response rate, well below the AC average of 61.1%. Please encourage your friends and neighbors to respond as there are lots of funding to be lost or gained, let's get that rate up to 100%

## **PUBLIC COMMENT:**

Kathy Moore read testimonials from people who have used Switzkill Farm for retreats and stated it is a great resource.

Sue Hawkes Teeter – asking for status regarding Switzkill Farm Board and Conservation Board; stated that raises should not go beyond 1% for fiscal year.

Mary Ann Ronconi – felt the town is being mismanaged; taxpayers' money being unnecessarily spent on investigations; tennis courts in disrepair; doesn't agree with raises in the Collective Bargaining Agreement.

Barbara Crosier – asked about going back to Zoom meetings; concerned about the town's fiscal situation and spending by the board; 10% unemployment rate in Albany County; asked the board to be fiscally responsible with the highway contract.

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John Zelnak – submitted a new strategic plan for Switzkill Farm; read a letter from Karen Schimmer regarding moving forward with Switzkill Farm; stated Roger Chrysler was an essential board member and irreplaceable; spoke to the purchasing of Switzkill Farm.

Lois Wilson read and submitted a letter which is attached.

Lois Dysard– read a statement (not submitted) in support of Supervisor Lyons and his support of veterans.

## **OLD BUSINESS**

### **EXECUTIVE SESSION – 7:47PM**

Councilmember Harris made the motion seconded by Supervisor Lyons to enter into executive session for the purpose of discussing negotiations under the Taylor Law. Motion carried with the following roll call vote; Supervisor Lyons, Councilmembers Palow, & Harris voting aye. Councilmember Willsey – nay.

### **7:54 PM**

Supervisor Lyons reconvened the meeting and stated that he will return to the table regarding 2020 Collective Bargaining agreement negotiations.

### **APPROVING FIREWORKS FOR AUGUST 1, 2020**

After discussion, Supervisor Lyons made a motion seconded by Councilmember Palow, approving the fireworks at the Town Park on 8/1/20. Motion carried with the following roll call vote: Supervisor Lyons, and Councilmembers Palow & Harris voting aye. Councilmember Willsey, abstained.

### **SHARED HIGHWAY SERVICE CONTRACT**

After discussion, this matter was tabled.

## **NEW BUSINESS**

### **ADOPTING LOCAL LAW #2 OF 2020**

#### **“Town of Berne Planning Board”**

The following resolution was offered and moved by Councilmember Harris and seconded by Supervisor Lyons:

**WHEREAS** Local Law #2 of 2020 known as the **“Town of Berne Planning Board”** has been introduced by the Town Board of the Town of Berne and a public hearing has been duly called and held, **NOW, THEREFORE, BE IT RESOLVED**, that the Town Board of the Town of Berne hereby adopts **LOCAL LAW #2 of 2020** of the Town of Berne known as **“Town of Berne Planning Board”**. The resolution was adopted by the following roll call vote: Supervisor Lyons & Councilmembers Palow, & Harris – Aye; Councilmember Willsey – Nay.

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**APPROVING TOWN OF BERNE TRAINING AND ATTENDANCE POLICY**

After discussion, Councilmember Harris made a motion seconded by Supervisor Lyons, approving the Town of Berne Training and Attendance Policy. Motion carried with the following roll call vote: Supervisor Lyons, and Councilmembers Palow & Harris voting aye. Councilmember Willsey voting nay.

**TRAINING RESOLUTION**

The following Resolution was offered and moved by Councilmember Harris and seconded by Supervisor Lyons:

**WHEREAS** New York State Law §271 authorizes the Town Board to establish training for appointed members of the Planning Board; and

**WHEREAS** This Town Board, in order to allow for the proper review and administration of matters that may come before the Planning Board, designates that The New York State Interactive Local Government Training “Planning Board Overview” shall serve as the minimum training requirement for the remainder of this calendar year; and

**WHEREAS** The Planning Board Chair shall, on or before the first day of the month of October, provide to the Town Board for its consideration, recommendations for other training that in the opinion of said Planning Board would complete the State of New York's 4 hour minimum training guidelines and enhance the capabilities, effectiveness and efficiency as they pertain to the administrative and regulatory roles of the Planning Board.

I move that the Town Board adopt the training requirement specified above as the minimum training requirements for Town of Berne’s Planning Board for the remainder of this calendar year.

The resolution was adopted by the following roll call vote: Supervisor Lyons & Councilmembers Palow, & Harris – Aye; Councilmember Willsey – Nay.

**APPOINTING PLANNING BOARD CHAIR**

After discussion, Councilmember Harris made a motion seconded by Councilmember Palow to appoint Michael Vincent as Planning Board Chair through 12/31/20. Motion carried with the following roll call vote: Supervisor Lyons, and Councilmembers Palow, Harris & Willsey voting aye.

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**APPROVING SEWER EXPENSE FOR NEW EQUIPMENT**

After discussion, Supervisor Lyons made a motion seconded by Councilmember Palow, approving sewer expenses in an amount not to exceed \$2,000 for equipment needed for 2021 DEC compliance. Motion carried with the following roll call vote: Supervisor Lyons, and Councilmembers Palow, Harris & Willsey voting aye.

**SWITZKILL FARM**

Councilmember Palow asked Attorney Afzali to discuss the purchase and acquisition of Switzkill Farm. Attorney Afzali outlined various aspects of the legality of the purchase and options for the property. Councilmember Palow outlined the expenditures and revenue for Switzkill Farm as follows:

2015 – purchased property \$142,700; spent \$5,375.51 on property; revenue - \$0  
2016 – spent \$9,472.06; revenue -\$5,750  
2017 – spent \$21,905; revenue - \$10,746  
2018 – spent \$62,000; revenue - \$5,027  
2019 – spent \$17,252; revenue - \$6,000  
2019 - \$150,000 put in a reserve fund  
Total Expenditures - \$408,934.39  
Revenue - \$28,609

**SWITZKILL FARM CONTRACTS**

Councilmember Palow made a motion, seconded by Supervisor Lyons to table discussion regarding the contracts for the purchase, caretaker and haying of Switzkill Farm. Motion carried with the following roll call vote: Supervisor Lyons, and Councilmembers Palow & Harris voting aye. Councilmember Willsey, nay.

**MOTION TO ADJOURN**

There being no further business or discussion, Supervisor Lyons made the motion seconded by Councilmember Palow to adjourn the meeting. Motion carried with the following roll call vote: Supervisor Lyons, and Councilmembers Palow, Harris Willsey voting aye. Meeting adjourned at 8:36PM.

Respectfully submitted,

\_\_\_\_\_  
Anita C. Clayton, Town Clerk

From: Gerard Chartier [REDACTED]  
Subject: LTE Berne Planning Board  
Date: Jul 22, 2020 at 13:34:15  
To: mhale-spencer@altamontenterprise.com

Dear Editor:

The Republican backed Berne Town Board thinks that the existing Planning Board and Zoning Board of Appeals were not legally created. Why you ask has this come up after 46 years? Beats me. Councilman Harris maintains that he searched town records and did not find any record of a local enactment. I don't think that he contacted the NYS Department of State, the repository for local laws, for any assistance. Now, the Pandemic prevents a thorough review by that agency of historic paper records. Harris is disabused in thinking that absence of proof settles the question. He just is pushing a new Planning Board Law for some misguided reason.

I believe that the Town's Zoning Ordinance was adopted in 1974. That Ordinance sets out the powers and duties of both the PB and ZBA. It created both as five member committees, and the terms for each member.

For 46 years, not one person has questioned the validity of the Ordinance. In fact, this issue was not raised in deliberations of the NYS Supreme Court in the recent debacle of the illegal removal of Ms. Vincent from the Planning Board! It never came up in my 28 years of service on the Planning

Board.

This Wednesday, the Berne Town Board will probably act on this folly. It will be another example of maladministration by this Board. Citizens need to pay attention to their self serving agenda.

Thank You for the opportunity to comment.

Gerard Chartier  
Past PB member and chair

Sent from my iPhone

Please read this statement into the record at the Public Hearing for Local Law #5(#2) of 2020 Town of Berne Planning Board:

Town Board members,

The public notice for this hearing as posted on the website and dated June 24, 2020 states, "Written comments sent by email or regular mail and received by July 22, 2020 3:00 PM will be read into the record prior to the Board taking action on the proposed local law." As this notice does not give a time limit on said reading, I request this statement be read in its entirety, regardless of how long it takes versus the time limit for in-person speakers stated at this public hearing.

I question the need for this local law.

It is my understanding that the search for records of the establishment of the Berne Planning Board in the early 1970's included Town of Berne records. The Town Clerk has stated to Town Board members many times that older records such as these are difficult or impossible to find. The Department of State search was conducted during the time of COVID-19 lockdown – it is doubtful therefore a physical search was conducted for records that were indeed submitted physically, given their timeframe. How can anyone be certain that all of those records were properly digitized in the first place and therefore available in a digital search? It seems such uncertainty makes it unwise to declare a board that has been in existence and doing Town of Berne business for almost 50 years to be illegitimate for all that time.

In the meantime, since your declaration of illegitimacy, the Planning Board and Zoning Board of Appeals have been forced to stall. I have followed the work of these two boards as a

resident, a Planning Board member, a Town Councilman, and again as a resident consistently for the past 11 years. I do not recall a stretch of time greater than a few months – and at that, usually only in the winter months – when the Planning Board has not had a building project in the town which required their review. Yet the Planning Board has not been allowed to meet for the past five months. At the June Town Board meeting Mr. Townsend reported that there were many building projects happening in the Town. None of them required Planning Board action? None?

I will not name names, but I am quite certain that there is a special use permit that has expired in the Town leading to a business which is operating without it – thus, illegally according to our town code. Why? Because the Zoning Board of Appeals cannot do its job of review and granting the special use permit without a functioning Planning Board.

I was not at the last Town Board meeting, but I understand that the Town Board stated that it is functioning as the Planning Board when discussing this very case. This can happen within the parameters of New York State Law, but not without a legal process that clearly has not been taken. Nor can the Town Board usurp the power of the Zoning Board of Appeals – the sole agency in our town that can issue the special use permit in this case. Are we now in the Wild West where one board is judge, jury and executioner in all matters of planning? Or are projects being approved without the code-required Planning Board or ZBA input and approvals? It's one or the other, and neither is legal.

I leave you with a few comments on the local law itself. The last sentence in Section 2 reads “All previous findings, determinations and decisions rendered by the existing Planning Board of the Town of Berne shall be deemed ratified and stand.”

I repeat, it says, “... the existing Planning Board ...” You are acknowledging the existence of the very Planning Board you are claiming doesn't exist, which is your reason for the necessity of this law in the first place. Apparently, we've moved from the Wild West into the dystopian world of the Twilight Zone!

As to the statement that all findings, determinations and decisions of this existing-yet-not-existing Planning Board will stand ... well, you can wish for that and make your case, but that won't stop or even discourage people from taking you to court and wasting more taxpayer money on defense of Planning Board and ZBA decisions rendered that displeased an applicant or a neighbor. Fifty years of case decisions means there are an awful lot of chances for that to happen.

In the recent New York State Supreme Court case which ruled that you illegally demoted Emily Vincent from the Planning Board, and illegally replaced her with convicted felon Tom Spargo, there was no mention of that court questioning the validity of our Planning Board. Is this the

reason you are doing this? To somehow invalidate the Supreme Court's decision given that it was based on a Planning Board which you claim to have proven did not really exist at that time?

One has to wonder what your motives really are, because they do not seem to be in service to the good people of our town.

Dawn Jordan  
54 Gulf Hill Rd.  
Voorheesville, NY

BERNE TOWN MEETING 7/22/2020

Who is it that takes pleasure in the destruction of the reputation of another human being? "To speak kindly does not hurt the tongue." Is there a reason on this earth to hate and divide each other? Is it that we are jealous of the accomplishments of another person? Why do we continue to do our best to prevent the grip of peace from wrapping its arms around us all?

I am not a resident of the Town of Berne but I AM a part of the Human Society and have watched for some time now, with a heavy heart, the attempted destruction of a few good men on this board, the likes of which, I have not seen before. I am not, nor will I ever be one who will not stand up and defend a friend who I know to be true to a cause! I am a friend to these men, and I will stand for good. I will not run in the other direction, nor should they. Both men stand for our rule of law, The Constitution. They took an oath to protect and defend it against all enemies both foreign and domestic, as did everyone on this board.

Sean has been called a "NAZI LOVING CREEP" by a person I can name, but won't.

A NAZI pulls fathers away from their families and puts them into slave labor until they can no longer do the labor they were forced to do, then they kill them. A NAZI uses children and women for medical experiments causing unimaginable pain until they die. A NAZI separates parents from children and puts them on the death trains to the showers and then to the ovens.

The KKK set the homes of blacks on fire and hanged blacks just because of the color of their skin. The KKK accused black men of rape, even though THEY were the ones who committed that crime, just to be able to hang yet another black man and rid the world of this race!

To the best of my knowledge, Sean does not fit this M.O. I ask you, what is being accomplished by the constant accusations of this good man? Is it the only way you know to build yourself up or is it something else? Are you conforming with the masses and filling your life with hate against the freedoms you so enjoy in your little hilltown of Berne?

Veterans go through hell, they SEE hell and many cannot talk about it, not because they don't want to, rather because, if you haven't seen hell for yourself, you could never understand, so they clam up. Have you, Mr. Zimmerman seen hell for yourself? I suspect not and if I'm wrong, I stand corrected. For you to tell Dennis to "Hang your TREASURED uniform in the closet and ('like most folks who have also served'), try to use the lessons learned while in service and understand that it is a privilege to once again give back to your community." There are many of those "folks" here tonight so you can tell them to their faces if you would like.

I am witness to many Veterans who have found the freedom to open up through our Veteran's and Friends Weekly Breakfast because they have met OTHERS who have seen hell too! I honor them every day! I do not criticize them because I have no idea what it means to be free! I have always been free because of them. Dennis has spent a lifetime protecting yours and mine and his Patriotism is about as far from a "false flag" as it can be, since he signed a contract to give his life for that flag, if necessary! As far as I am concerned, he can brag all he wants!

Sean Lyons, your Town Supervisor and my friend is doing the best he can to direct the limited funds in your town where they will do the most good for the times we are living in. I see nothing NAZI like or RACIST about either of these good men!