

**PLANNING BOARD  
TOWN OF BERNE  
PO Box 57  
Berne NY 12023**

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**Date:** February 6, 2020

**Present:** Tom Spargo (Chair) Todd Schwendeman, Mark Sengenberger, Mike Vincent, Larry Zimmerman, Cathy Shultes (Planning Board Secretary), Mat Harris (Town Councilmember, Liaison) and other interested citizens

**Regular Meeting:**

- Tom Spargo, Planning Board Chair called the meeting to order at 7:00 pm.
- Review of Minutes from the January 2, 2020.
  1. ***Motion:***  
*Mark Sengenberger made a motion, seconded by Mike Vincent to accept the minutes from January 2, 2020. Motion carried with the following members voting aye: Tom Spargo, Todd Schwendeman, Mark Sengenberger, and Mike Vincent.*

**Old Business**

- Lot Line Adjustment – Gregory Domermuth, SBL: 114.-1-16.1 and 114-1-16.2, 93 Switzkill Road, Berne, NY 12023
  1. Mr. Domermuth provided current survey maps with the proposed lot line adjustment that will include the barn with the parcel including the house.
  2. ***Motion:***  
*Mark Sengenberger made a motion; seconded by Todd Schwendeman to schedule a Public Hearing for this application at the March 5, 2020. Motion carried with the following members voting aye: Tom Spargo, Todd Schwendeman, Mark Sengenberger, Mike Vincent and Larry Zimmerman.*

**Other**

- Small-Scale Battery Energy Storage System Law and Permit
  1. Todd Schwendeman provided a one-line addition for Signage to be inserted at 158-9.B. - *"Signage to be consistent with most current guidance from NFPA and/or Uniform Code."*
  2. ***Motion:***  
*Todd Schwendeman made a motion, seconded by Mark Sengenberger to forward the Battery Energy System Law, Permit and Checklist to the Town Board for further action. Motion carried with the following members voting aye: Tom Spargo Todd Schwendeman, Mark Sengenberger, Mike Vincent and Larry Zimmerman.*
- Industrial Battery Energy Storage System Law and Permit – nothing new to report
- Senior Housing – nothing new to report – awaiting information regarding a Municipal Water resource
- Streetlight LED Upgrade – nothing new to report

- Letter from the Planning Board to the Town Board regarding Emily Vincent
  1. On behalf of the Planning Board, Larry Zimmerman presented a correspondence requesting the reinstatement of Emily Vincent as a voting member, and not as an alternate.
  2. Tom Spargo, Chair acknowledged the letter as having been received and that it will become part of the record (minutes).

**Adjourn**

- Todd Schwendeman made a motion, seconded by Mike Vincent to adjourn the meeting at 7:37 pm. Motion carried with the following members voting aye: Tom Spargo, Todd Schwendeman, Mark Sengenberger, Mike Vincent and Larry Zimmerman.

Respectfully submitted,  
Cathy Shultes, Administrative Assistant

# Town of Berne

Planning Board

P.O. Box 57  
Berne, NY 12023  
(518) 872-1448  
Fax (518) 872-9303



2/6/2020

Mr. Sean Lyons  
Town Supervisor  
Town of Berne, NY

Dear Supervisor Lyons:

In January 2020, the Town Board, without a public hearing or opportunity to be heard, terminated Emily Vincent's voting position on the Town's planning board. Ms. Vincent was appointed to fill out the term of office of a planning board member who had resigned before the expiration of his term. Her term of office has not expired.

Respectfully, we call your attention to Town Law 271 (9) which states: "9. Removal of members. The town board shall have the power to remove, AFTER PUBLIC HEARING, any member of the planning board FOR CAUSE. (emphasis added).

Ms. Vincent, as you are well aware, represents an important segment of our community—namely the farming community. Witness the Town's recent celebration of Farm Days, an event in which Ms. Vincent played a significant role. Also, she has represented our community at large admirably and has been very active in the advancement of our Town.

Her removal, before the expiration of her term, was not for cause. Indeed, there was no mention of cause at the January 2020 Organizational Meeting, there was no public hearing to discuss any cause for her removal and, significantly, no opportunity for Ms. Vincent to be publicly heard on this matter.

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At the very least, this removal of a voting member of the planning board violates the most basic of due process rights of Ms. Vincent. Ms. Vincent does not deserve to be treated in this a manner.

Some Town generated documents may suggest that planning board members serve at the "discretion" of the Town Board. However, such uninformed and likely benign documents cannot be used to circumvent the plain requirements of Town Law 271 (9).

Therefore, the conclusion is inescapable that her removal was illegal, arbitrary and capricious. We are concerned with what precedent this sets for other board members whose appointed terms have not expired.

Consider this probable scenario: The planning board is presented with a controversial development proposal. The proposal passes or fails by one vote. Anyone who is in disagreement with the planning board's action will, perforce, challenge the legality of that one vote. The Town Board will then be forced to undo the illegality of Ms. Vincent's removal from voting office. An embarrassment to the community and, in particular, the Town Board.

We, therefore, call upon you to take immediate action to restore Ms. Vincent to her rightful place as a voting member of the planning board.

We appreciate your immediate attention to this matter.

Sincerely

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2/6/2020

## Current Planning Board Members

Todd Schwendeman

Mark Sengenberger

Mike Vincent

Lawrence Zimmerman

cc: Town Board  
Planning Board  
Altamont Enterprise  
Albany Times Union