

Tompkins County Council of Governments
 Regular Meeting Minutes
Thursday, August 22, 2013 3:00 PM
 Scott Heyman Conference Room

Attendance

Attendee Name	Title	Status	Arrived
Ric Dietrich	Member, Town of Danby	Present	
Mary Ann Sumner	Member, Town of Dryden representative	Present	
Herb Engman	Member - Town of Ithaca	Present	
Bill Goodman	Member - Alternate, Town of Ithaca representative	Present	
Ruth Hopkins	Alternate, Town of Lansing representative	Present	3:15 PM
Richard Driscoll	Co-Chair, Town of Newfield representative	Present	
Kate Supron	Co-Chair, Village of Cayuga Heights representative	Present	
Betty Conger	Member, Village of Groton representative	Present	
Svante Myrick	Member, City of Ithaca representative	Present	
J.R. Clairborne	Member - Alternate, City of Ithaca representative	Present	
Joe Mareane	Tompkins County Administrator	Present	
Donald Hartill	Member, Village of Lansing	Present	3:08 PM
Ed Marx	Planning and Community Sustainability Commissioner	Present	
Joan Jurkowich	Deputy Commissioner, Planning Department	Present	
Susan Brock	Town of Ithaca Attorney	Present	
Michelle Pottorff	Minute Taker, Legislature Office	Present	

Call to Order

Mr. Driscoll called the meeting to order at 3:06 p.m.

Greeting/Sign In/Review Agenda

The report on the Hydrilla eradication project in Cayuga Lake was withdrawn from the agenda. An update on the County's Comprehensive Plan by the County Planning Department was added to the agenda.

Minutes Approval - July 25, 2013

This item was deferred due to lack of quorum.

Report on New Land Use Law

Ms. Brock said this issue concerns a Supreme Court case that was decided in June. The Koontz case has generated a lot of excitement among land use lawyers as well as some controversy over the impact on municipality. The case deals with a form of taking called and "exaction". She said the United States Constitution says there shall be no taking of private property for public use without just compensation. There are different takings with the most obvious one being where the government wants to get title for property for public use such as bridge or road. There is another category of takings called "exactions. This is where the government conditions end use approval (such as a site plan approval or special permit or subdivision) and approval is conditioned on the developer developing to the public use part of their property. It doesn't mean that they have to sign title over to the entity but they may require things such as an access easement which is a very typical type of condition. This is considered an exaction because it says the public has a right to use the property although they do not have title to the property. And The Ms. Brock clarified she is using the term "developer" in a broad sense and it could also be the person who owns the land; it would be whoever is applying for the approval.

Ms. Brock said where the municipality is requiring public access as a condition of approval there is a heightened scrutiny (a more stringent set of criteria) applied to make it legal. She referred to the Nolan and Dolan cases and said she views that as common sense and said municipalities should always be meeting Nolan and Dolan which said when there is an exaction whatever it is that is being required to have access to the property has to have a nexus or connection to the impact of the development and there has to be a "rough proportionality" between the impact and the scope of what is being required.

Mr. Hartill arrived at this time.

Ms Brock said there is an enormous requirement and it may mean the "rough proportionality" is not met; this sets the stage for the Koontz case. Previously the courts had limited analysis to cases where the provision is given by a municipality and the owner/developer/applicant contests the conditions and says its is unconstitutional and is a "taking". The question in Koontz is in that case there was no permit given and none was denied; and said there were discussions and things fell apart between the applicant and the water management district. This raised a question of whether the heightened scrutiny applies when a permit is denied or does it only apply where a permit is granted and conditions are applied. Also up to this point the Nolan and Dolan analysis only applied where public access was required to some type of property interest was required and not the question is does it apply in cases where a municipality asks for money instead of property.

Ms. Hopkins arrived at this time.

She explained the Koontz case involved approximately 15 acres of land that an individual wanted to develop that were wetland. He offered them to the water management district that issues the permits for development in Florida. He said a conservation easement on the remaining 3/4 of his property would mitigate the development of the four acres of wetlands. The water management district provided other options for the developer to consider because they did not think what was being proposed was enough to mitigate the impacts. They said he could develop one acre and put the conservation easement on the other 14 acres, or he could develop the 4 acres and put the conservation easement on the remaining 11 acres, and give the district some money that would be used to improve some offsite wetlands that the water management district owned elsewhere. The developr characterized the demands as being excessive and sued. The Florida trial court made a finding that the wetlands he wanted to develop were already to seriously degraded that his offer of putting a conservation easement on the remaining 3/4 was enough and nothing more should be required, and what the water management district was requiring was excessive and applied the Nolan and Dolan analysis and rough proportionality standard.

This then went to the Florida Supreme Court and that court reversed the decision and said Nolan and Dolan do not apply for two reasons: 1) If there was a permit denial there was a denial; there was not a permit granted with conditions and Nolan and Dolan only apply when there are conditions; and 2) Nolan and Dolan only apply to property rights and not demands for money. It then went up the United States Supreme Court and they reverse both grounds set by the Florida Supreme Court. They said Nolan and Dolan do apply where a permit denied, although there are questions as to whether a permit was actually denied. What is does say is where there are concrete and specific demands as a condition before a permit is granted will apply.

With regard to how this could impact municipalities Ms. Brock said when developers come in and there are discussions with them about the impact of their projects with the intention to make suggestions on how impacts can be mitigated a question is raised as to when demands become concrete and specific enough and the court said they don't decide that and sent it back to the Florida Supreme Court. With regard to the second issue, by a split vote the court said Nolan and Dolan does apply when it comes demands for money or a specific parcel.; however, taxes and user fees are not included in this. Ms. Brock said municipalities have to be sure that whatever conditions are being applied or imposed by

boards have some connection to the impacts and that there is some proportionality.

Approximately nine years ago the Court of Appeals had another case and ruled the Nolan and Dolan scrutiny is not applied where a municipal planning board as a condition of site plan approval required a conservation easement on the property. Ms. Brock said municipal boards may have conservation easements, deed restrictions, or other conditions included in municipal approvals that may end up now being subject to a heightened scrutiny. One of the impacts from this could be municipalities not talking to developers and if they think there are impacts that could be mitigated but they could be harmed if they discuss them they will just deny the permits which will cause much more litigation. She advised municipalities to discuss this with their attorneys and to enter reasonable discussions without placing a condition permit approval. She also stressed information is still vague with a lot yet to learn.

Update on CDRC/TCCOG Pilot Workshop

Mr. Driscoll said several comments were received following the initial announcement for training sessions at no cost for elected officials in conjunction with the Community Dispute Resolution Center. The program has been revised and will now be a "tool kit" presentation and is now three sessions. It is being developed in a manner that will be effective and rolled out on a regular basis for appointed and elected boards over time. He provided information and asked members to register.

Update on Tompkins County Comprehensive Plan

Ms. Jurkowich said the County's Comprehensive Plan was adopted in 2004 and it is now time to review and redo it. The Plan is organized around a series of principals, policies, and action items. The Plan identified agricultural resource focus areas based on the County and in cooperation with Cooperative Extension and local municipalities. A housing fund which is jointly funded by Cornell University, City of Ithaca, and Tompkins County, was also established which has approved funding slightly under \$2 million to develop 350 units of affordable housing. The Plan also laid the groundwork for doing the Route 13 corridor study which laid the basis for the Town of Dryden on the Varna community plan. Also, a development focus strategy was created along with a development focus area fund. The first project to be funded was in the Town of Ithaca and looked at form-based zoning for an area that was within both the City and Town of Ithaca. It also formed the basis for an application for Cleaner Greener funding. Ms. Jurkowich said they are almost at the completion of an energy road map to determine how to meet energy goals in the community. This addresses the power potential from solar, wind, biomass, as well as a more detailed report on energy supply and demand.

They would not only like to update the existing sections of the Plan incorporating two additions as: Climate Change Adaptation and Community Sustainability. They also have the opportunity to add additional topic areas and asked for feedback on these from TCCOG as well as suggestions for additional areas they may have missed: Affordable Living, Communication Technology, Community Character, Creative Economy, Education Economy, Food Security, Green Infrastructure, Healthy Communities, Recreation, and Traditional Infrastructure.

Mr. Engman said he believes the time has come to begin talking about fire and police protection on a broader scale. It was suggested that this is a broad issue and should be labeled as "public safety". Ms. Sumner said the Town of Dryden is working on open space planning and has a nice effort going between the Conservation Board and the Recreation Commission and the Agricultural Advisory Committee to integrate agricultural open space, recreational open space, and conservation open space.

Ms. Jurkowich said the timeframe of the Plan is 20-50 years but will be updated every ten years and looked at every five years. Mr. Hartill asked how the Department identifies what communities want. Ms. Jurkowich said this is the first step. They are beginning to organize meetings with local planning staff

and will also be conducting a public survey that will inform the decision. Mr. Marx said they will be working with the school district to engage students in filling out surveys and will be making specific effort to reach those populations that seldom participate, such as the lower income and those who are marginalized and who don't have the ability to typically participate in public processes.

Additional suggestions may be submitted to the Planning Department.

Presentation on Smart Work Program

Mr. Mareane provided members with a PowerPoint presentation on the Smart Work Program. This is a program that was previously referred to as the "Lean Office Program". It is an all-staff exercise that looks at ways to improve efficiency and productivity. It looks at where processes are tied up and are not doing what they are intended to do. It involves every member of the staff who is in the process through very careful and expert facilitation of discussion to figure out where things are tied up, where things aren't connecting, and how to make the process better. They have found that participants are left with a much more efficient process and much more productive workforce. The byproduct is also improved morale of the workforce and better customer service. It is a two half-day exercise through TC3.biz with a cost of \$5,000 to \$6,000 per project.

Report from Cable Committee

Mr. Engman said the work group has completed the review of the draft franchise agreement and a consultant has reviewed the document and made minor changes. Arrangements are being made for a technical review. Everyone should have received the most recent version. They have put together a negotiating team who will strategize how it needs to get ready for meeting with Time Warner. They do not think they will need a paid negotiator but want to have the ability to have consultations.

Mr. Driscoll said there was also discussion by the Committee about setting up a mechanism to engage viewers and users in rural communities.

Mr. Clairborne asked if the Committee has been working on the issue of Time Warner Cable moving the public access channels to the higher channels. Mr. Engman said on behalf of the Committee he sent a letter to Time Warner Cable saying the group objected to this and feels it is a taking of public good. Other members also expressed concern over the how public access service has deteriorated over the years. Mr. Engman said this will need further discussion.

Next Meeting Agenda Items

Agenda items suggested for the next agenda were:

Deer Summit announcement; and
Tompkins County Area Development long range plan

Adjournment

On motion the meeting adjourned at 4:29 p.m.