

§ 118-87. Report of Planning Board.

A. All proposed amendments, supplements or changes originating by petition or by motion of the Town Board shall be referred to the Planning Board for a report and recommendation thereon. In undertaking such review, the Planning Board shall make inquiry and provide recommendation concerning the items specified below:

(1) Whether such change is consistent with the purposes embodied in this chapter as applied to the particular districts concerned.

Member Donovan: Proposed changes are inconsistent with the current district in the type, variety and scope of development proposed by the petitioners. Current PDP (Planned Development Park) has 4 approved uses; requested changes would expand permitted uses by nearly 5 fold, remove currently approved uses of Research & Development and Manufacturing and thereby render Par Technology's manufacturing operations a non-conforming, albeit a grandfathered use. Further, it would foreclose any expansion of manufacturing by the company at this location. Permitted uses in the PDMU (Planned Development Mixed Use) would be similar to "The Orchards" retail development on Clinton Street and Middle Settlement Road. Coupled with last year's rezoning of the Jay-K and Sloan properties, this proposed amendment would significantly lessen the availability of land for manufacturing in contravention of the town's Comprehensive Plan and 2007 Update. See - Schedule of Use, Area and Bulk Regulations, Town of New Hartford Code.

Petitioners request 216 acres rezone from (PDP) Planned Development Park to (PDMU) Planned Development Mixed Use and 30 acres from PDP to 30 (PHB) Planned Highway Business. Total acres: 246.

(2) Whether adequate public services and other support facilities exist or can be created to serve the needs of any additional development that may occur as a result of such change.

Member Donovan: We have no way of knowing based on the record presented thus far. More than \$3m in Taxpayer financed infrastructure in the PDP was designed for Business Park. Retail development would be a permitted use under the requested zone changes. Retail would increase traffic beyond the volumes that could be anticipated under existing zoning and add to public safety costs. During the Aldi's grocery store site plan review, the state Department of Transportation stated there are no funds to reconstruct the Jay-K Intersection. Section 118-87 directs the Planning Board (PB) to make inquiries pertaining to such requests and provides the Board 45 days to make its recommendations. This petition is being presented on the very last day allowing no time to responsibly assess these criteria. Based on the information we currently have, anecdotal and otherwise, it is impossible to make a reasoned judgment.

(3) The indirect implications of such change in its effect on other regulations. *Member Donovan: Unknown given the record at this time. No report on this criteria has been provided by staff. A zone change of 250 acres with nearly 20 more permitted uses would likely have implications on state or local regulatory requirements. Can anyone say with certainty that other regulations will not be affected? What are the implications on the Planning Board's previous approved 29 acres, phase 1, of the business park in addition to removal of existing uses and*

design standards? (Planning Board minutes March 27, 2006 and September 11, 2006)

The last time the PB made a zone map amendment recommendation it involved 24 acres and one site plan. (Aldi's, Planning Board minutes January 10, 2011) The changes before us involve 10 times the number of acres and potentially 20 or more permitted uses including: retail, campgrounds, grocery, theater, nursing home, greenhouse, bowling alley, restaurant, congregate residence, convenience store and gas stations, to name a few.

Two previous zone map amendments seeking to permit a convenience store and gas station in the PHB district were denied by the Planning Board and the Town Board. (Planning Board minutes, August 20, 2007, page 7, Planning Board minutes January 14, 2008, page 8). Is a gas station a desirable use in the subject PDMU given its proximity to the proposed expansion of the PHB zone?

(4) Whether such proposed amendment is consistent with the underlying objectives of the Town Comprehensive Plan. Member Donovan: The petitions state that the request would bring the town into compliance with the recommendations of the Comprehensive Plan Update and "achieve the economic development goals of the Town, the County and the State." One of the economic development goals of the town is a business park. That has not changed and if it were it to change, one would think the impetus would come from a comprehensive plan review initiated by town government not a zone map amendment advanced by private interests.

Moreover, the petitioners have cherry picked one of a myriad of recommendations contained in the Update and taken it out of context. (Pages 40 & 81) This is not a single site plan or expanded use of an existing building. These amendments involve nearly 250 acres with the potential for more than a score of site plans, including big box retail which is now restricted to the RB 1 District. PHB is intended for smaller scale development as envisioned in the 1995 Comprehensive Plan and evidenced by existing businesses on along Seneca Turnpike.

The language in the Comprehensive Plan Update states, "The town could benefit from reducing the number of zones AND establishing design controls to foster a continuity of development." The petition makes no mention of design controls. In fact the PDMU petition would eliminate design standards now governing PDP development contrary to the Plan's recommendation. Further the Plan Update states, "Zoning changes should be consistent with the Town's Plan and minimize potential land use conflicts." Eliminating the PDP is not consistent with the town's land use plan. At no time during the 2007 Update process was elimination or reduction of the business park zoning raised as an issue. In fact, Page 66 explicitly references the Business Park and efforts to finalize plans for over 500,000 sq. ft. of building space.

Moreover, the Update recommended, "At a Minimum the revision of the town's zoning should address specific issues that arose during the Comprehensive Plan Update process." As noted, at no time during the Update process was re-zoning of the PDP an issue or topic of discussion. In fact, at the time, the business park was under active development between the town, the developer and the state Department of Transportation.

These 2007 Update recommendations were adopted by the town board in April 2007, yet it has

been nearly 5 years and no action has been taken to implement the recommendations to comprehensively update the town zoning code despite the availability of resources to do so. This would entail a GEIS, not piecemeal rezoning when a developer or property owner has difficulty marketing property based on its permitted use. This approach constitutes sound land use planning and is supported by case law and the 2007 Comprehensive Plan Update, a legally binding document.

In **Thomas vs. Town of Bedford**, the New York Court of Appeals upheld a rezoning from residential to research-office use, finding that it had been enacted after careful study and consultation with experts and after extensive public hearings. In another decision, **Udell vs. Haas**, the Court of Appeals stated that “one of the key factors” to be used by the courts in determining whether zoning is “in accordance with a comprehensive plan is: whether forethought has been given to the community’s land use issues.” Source: *Zoning and the Comprehensive Plan - James A. Coons Local Government Technical Series, NYS Dept. of State*

Simply sending the application out to the county DPW, County Planning and DOT hardly constitutes a “careful study and consultation with experts and extensive public hearings.”

The town budget contains \$75,000 to carry out the consolidation of development districts recommended in the 2007 Update. The changes sought by the petitioners should be considered through a comprehensive analysis not a truncated SEQRA review led by the town board.

These petitions, if approved, would eliminate the PDP zone which was affirmed in the 2007 Update and again when the Town Board returned site plan review for Business Park development to the Planning Board in 2009. In both instances, the intent was to carry out the vision established more than a decade ago -- to develop a business park with restricted uses and design standards to attract high paying jobs and lessen the town’s reliance on the retail tax base. Expansion of retail will not generate significant new sales tax revenues for the town. Over the past decade the population of Oneida County has declined and the population of New Hartford today is lower than 1990. Neither population is projected to grow over the next two decades. (Comprehensive Plan Update, Page 49; Southern Area GEIS, page 224, Oneida County Department of Finance sales tax trend 2000-2011)

The town’s land use policy has not changed, nor should that policy be changed by way of a zone map amendment on either the hope for additional sale tax revenues or the economic self-interests of current property owners.

Since adoption of the current Zoning Code in 1999, 10 Zone map amendments and 13 Zone text amendments have been enacted and more petitions are on the way. At what point is the Zoning Map not worth the paper it is printed on? As noted, the most recent was a year ago, within a ¼ of a mile of the business park at the Jay-K intersection where DOT acknowledges Service Level of intersection will be diminished. It is reasonable to believe the petitioner’s request will only further degrade LOS given the expanded types of permitted uses that would be allowed.

Will we fulfill the requirements of the Comprehensive Plan Update by a constant stream of piecemeal zone map amendments or use the tools intended to comprehensively and systematically address the number and type of zone in the best interest of the public? How many zone map amendments will it take to render the Comprehensive Plan and zoning map irrelevant?

(5) Whether such proposed amendment is consistent with the character of the community.

Member Donovan: The vision for the character of this section of the town has been to permit development consistent with comprehensive zoning changes made more than a decade ago which included zoning for a business park. This was done after public input and exhaustive studies costing taxpayers nearly \$1M. (Rezoning and Seneca Turnpike GEIS) The petitions before us would effectively alter the character of this section of the town with little more than a SEQRA review by the town board, rather than the study such a change demands.

While an extension of the PHB along Seneca Turnpike might be viewed as compatible with existing uses, the petitioner's map shows a carve out that could accommodate a substantial retail operation which has been rumored to be a BJ's Warehouse store or further subdivide that land for higher density use. As previously noted a box store of this magnitude is inconsistent with the permitted uses intended in the 1995 Comprehensive Plan and reaffirmed in the 2007 Update for the PHB district. No such operations exist today because they are not permitted as they would not conform to the character of the smaller business operations located along Seneca Turnpike.

The 2007 Comprehensive Plan Update Survey asked town residents if they agreed or disagreed with the following: "More large scale retail centers are needed in the town." 70% of those responding disagreed or strongly disagreed. Page 163 (35% response rate)

B. The Planning Board shall submit its report within 45 days after receiving such referral. Failure of the Planning Board to report within the required time shall be deemed to be a recommendation of approval of the proposed amendment.

Member Donovan: Had these petitions not been presented to the Board on the date of the deadline prescribed in local law, I would have requested of the town board authority to contract for a planning consultant to advise us further before we make a recommendation based on the criteria in the town code. We are mandated to make a "report" and "recommendations", not simply a yea or nay vote yet, due to the timing that all that's left.

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Jerome Donovan, Member Planning Board, March 12, 2012