

TOWN OF CONCORD PLANNING BOARD
Town Hall

April 8, 2025
6:00 p.m.

ITEM # 1:

The meeting was called to order by Planning Board Chairman Edbauer, at 6:00 p.m.

ITEM #2: Roll Call

Present:

Jospeh Edbauer, Chairman
James Jozwiak
Julie Zybert
Guy Marlette
James Miller

Also Present:

Darlene Schweikert
Clyde M. Drake, Town Council Liaison
Kevin Manchester, Bldg. Safety Inspector
Stephen Myers

Not Present:

Michael Cochran

ITEM #3: Citizen Participation

There was no one for Citizen Participation.

ITEM #4: Comments from Council Liaison Drake

Town Board Liaison Drake advised that there has been a change in the Supervisor's Office and Rachel Watz has resigned after a mutual discussion. Right now, a person from the payroll company, which also does books for Towns, is coming in and doing the Town's books. Supervisor Drozd also hired Vanessa McCormick and also his former Erie County Highway Secretary, Rose Heyden, to come in part-time; both will be working a couple days of the week. The Town is trying to finish up the Town's Audit and trying to finish up Year 2024 as soon as possible since the Town is moving the Town books to the payroll company; to give the company a good starting point. This has been taking up a lot of his time.

Chairman Edbauer saw the Draft Scoping Document submitted by RIC on the solar project. Planning Board Secretary noted that she had spoken with Supervisor Drozd about setting a public participation meeting. Supervisor Drozd noted that the first meeting with Board members, MDA and Town Attorney Attea will be scheduled for sometime next week and then the Town Board can discuss a public participation meeting. This Draft Scoping Document has a deadline date of May 26, 2025. J. Miller asked if this matter was the Planning Board's concern; Chairman Edbauer answered that the Planning Board has already passed the project on to the Town Board but he likes the Planning Board Members to have a chance to be involved and be aware of the status of

the project. G. Marlette asked if this was just a draft of what RIC Energy would be putting in their report. Town Board Liaison Drake advised that the Town Board declared a positive declaration on the SEQR so now the project has to go through further SEQR process and MDA went back to RIC Energy with a bunch of questions which RIC Energy is now preparing to answer. G. Marlette stated that he thinks this Draft to see if there is anything that the Town would like to see included since a report has not yet been completed. Part I and Part II of the SEQR have been completed. This Draft Scoping Document was submitted to the Town as well as all the involved Agencies and now all parties have a response period. The NYS DEC has already responded noting that there are wetlands in the area and what the project sponsor then would have to do to obtain a permit from the DEC to further investigate. The Planning Board and Erie County Planning & Development have been advised that this project does not fit in the Town's Comprehensive Plan. G. Marlette noted that he thinks the purpose of this Draft Scoping Document is to tell all the interested agencies what they are going to report on; is it enough to mitigate the positive declaration. G. Marlette said that RIC Energy has it pretty much covered in their Draft Scoping Document; then he thinks RIC Energy would send back an Environmental Statement for the parties to review. G. Marlette thought that the Planning Board should make a motion acknowledging receipt of the Draft Scoping Document and make a recommendation of no comment/no changes on the Draft Scoping Document. G. Marlette made the motion, seconded by J. Jozwiak. All in favor. Carried.

Town Board Liaison Drake had spoken with Supervisor Drozd about the moratoriums on solar and BESS which expire the end of July 2025; and that the Town has to be pro-active on these two moratoriums or the need to extend the moratoriums. He had heard that there is discussion about a BESS project on the Rumfola property on Route 240. J. Miller noted that that parcel might be classified as prime farmland as well. Planning Board Secretary Schweikert advised that a meeting has been scheduled for next week Monday to meet with Drew Reilly, Wendel Companies, regarding these local laws; Supervisor Drozd and Council Member Krzemien are attending. Members of the Planning Board noted that they would like to be involved in the process of preparing these two new local laws. Planning Board Secretary Schweikert advised that she had an email from a company who is interested in putting in a solar project on the Duwe property on Genesee Road; the representative had requested a pre-application meeting with the Town. Planning Board Secretary Schweikert emailed the representative advising that the Town currently has a moratorium on solar projects; that this matter could be placed on a future Planning Board meeting agenda; awaiting their response. Once the Town passes new local laws, there could be companies submitting project applications quickly. G. Marlette stated that the Town of Boston Supervisor Keding may be a good contact as well. At the Southtowns Planning & Development Meeting, Supervisor Keding about on these topics. There were big concerns with BESS about safety and explosions. J. Miller said that Town of Marilla Supervisor Gingerich is on the news discussing these topics as well and may have input about Right to Farm. Planning Board Secretary Schweikert advised that Supervisor Drozd attends Town Supervisor Meetings and she is certain that these topics have been discussed at those meetings. J. Jozwiak advised that these property owners, like Zittel/Ferguson, if their solar project gets turned down, they could proceed with housing on that same prime farmland and the Town

would not be able to do anything about that. Chairman Edbauer said he'd rather see houses. J. Miller asked how many acres were needed or how big of an area would be involved in the BESS project? Since the project application has not yet been submitted, the Town does not know this information at this time. G. Marlette thought that he had read a minimum of 30 acres would be needed for BESS to allow for the project and security around the area. Bldg. Safety Inspector Manchester noted that these just don't sound safe; G. Marlette advised that overheating is the issue. J. Miller noted that the solar panels could catch on fire too. J. Jozwiak advised that the batteries are lithium-ion. He questioned if there were fire hydrants on that section of Route 240 and it appears there are. J. Jozwiak noted that a lithium-ion car is 5,000 gallons of water to control, not put out. These are thermal active reaction. A school bus is 15,000 gallons of water. He questioned how many batteries would be in a BESS project. J. Miller questioned by definition, what is a BESS project? G. Marlette advised that they are facilities that has a bunch of these batteries and at night they charge the batteries at the lowest electric rate possible and then during the day, they sell it back to the grid at the current day-time rate. S. Myers said that solar panels make all their power during the day making more power than the grid can handle so then they will also store it while they have that gluttony of the power. He noted that the lithium also oxidizes and that's what causes the fire; like titanium when it oxidizes, it catches on fire. Lithium is the same; when you punch a hole in a lithium battery, once air gets to it, it becomes volatile; you essentially have to drown out the air.

Town Board Liaison Drake also noted to the Members that the person on Trevett Road shooting the guns (Zelie), all the neighbors went to the Town Board meeting with complaints. Council Member Kassel will be following up on this matter. Chairman Edbauer volunteered to work on this issue if the Town Board would so desire. The Town does not have a noise ordinance so under our current Code, Zelie is not doing anything in violation of the Code. There was general discussion about living near the Springville Field & Stream and the sound associated with the activity.

ITEM #5: Approval of Minutes

a) March 4, 2025– G. Marlette made the motion, seconded by J. Jozwiak, to approve the Minutes as presented. All in favor. Carried.

ITEM #6: Code Update

Chairman Edbauer advised that the Code Update will start at Article XXXII, Administration, Enforcement and Violations:

Section 150-166	No revision
Section 150-167	No revision
Section 150-168	No revision
Section 150-169	No revision

Section 150-170 (A)

These amounts are "not to exceed" amounts so the Judge could make whatever determination for a fine as deemed appropriate. S. Myers noted, for reference purposes, that \$350 is about \$585 in 2005 dollar amounts if you adjust for inflation and \$700 is \$1,100. Town Board Liaison Drake said this section is going into the future, so he would recommend taking \$350 to \$1,000. Change amounts: \$350 to \$1,000; \$700 to \$2,000 and \$1,000 to \$3,000. J. Jozwiak noted that these are fines for egregious; someone may think twice if they see the fee amounts. It's taking up CEO time.

Section 150-171 No revision

Article XXXIII Site Plan Review:

Section 150-172 through 150-178 After the March meeting, G. Marlette prepared a revision of this section using the Town of Amherst as a template; a copy was provided to the Members for their review for the May meeting. G. Marlette noted that during the March meeting, part of the conversation was that it would be easier to see what the difference was between what required a major and minor site plan. He took the Amherst table which uses square footage and thinks that is something the Town should look at; how much of a building does the Town want to allow to go through to determine if a project is a major or minor project and if a site plan review would be required. He noted that there is a lot of information here but using a table giving specific details doesn't allow for wiggle room. J. Jozwiak noted that a recent class he took noted that uses tables, charts and graphs are the better way to proceed because using verbiage can allow for interpretation. G. Marlette noted that the Village of Springville Code has a lot of verbiage. On the template provided, the yellow highlights are what he was searching for when he searched the Amherst Code and the pink highlights are information that either can be changed, edited or subject for conversation. He referenced the first page where in pink highlights it notes an "NCD District." This district does not exist in Concord; but the Town could add any such district if it would so desire in the future. "NCD" is Neighborhood Commercial District in Amherst; in Amherst planning, Amherst took a very large plot of land and gave it this NCD designation as a district to encourage low-impact commercial uses (offices, doctors) and low-level housing, condos and apartments. It is like a planned community. G. Marlette noted that Concord also does not have TNB Overlay and T1 districts at this time either and they would just come out of the template language or the Town could consider districting for the future since everything that comes up now is farmland and some areas are not farmed anymore and the Town could designate those areas to push development toward; that is how districting within the Town could work. If someone wants to put in a small restaurant or ice cream shop, if the Town had this type of districting in a certain area of the Town, it is more likely that this development would go; promote people to stop there but not really impact the area. Chairman Edbauer said that Concord does not have water and sewer districts in most areas of the Town. G. Marlette said that applicants would be able to do on-site water/sewer treatment and not have the Town create water/sewer districts. J. Jozwiak noted that since G. Marlette put that much time into making this template, he would like

to spend more time in reviewing this; take it home and bring it back at next month's meeting for discussion. This is the Members' homework assignment.

Article XXXIV Special Use Permits:

Section 150-179	No revision
Section 150-180	No revision (except check (J) is 6 NYCRR 617 still correct reference?)

Section 150-181 J. Jozwiak questioned if junkyard permits should go into this section. See Junkyards Chapter 85 Junkyards. The junkyards in the Town were existing and are now a prohibited use in the Town. These junkyards are not under SUP. The Planning Board just reviews and recommends them to Town Board annually but no more junkyards will be allowed in the Town.

G. Marlette questioned why the Town would not make Special Use Permits renewable with a fee. Why have no expiration? Maximum should be five years. This would force the applicant to keep the maintenance up; it's a way to protect the neighborhood. Chairman Edbauer noted that the Town has an out under the current Code as well because if the applicant doesn't follow the rules, the SUP can be revoked. CEO would investigate any problems and also track if the intended use is not being done for one continuous year, their SUP is revoked. G. Marlette feels that if the Town is giving a Special Use Permit that never expires, then the parcel should be rezoned; he totally disagrees with the non-expiring SUP. It could be may be moving forward that these SUP could be renewable every three or five years with a fee but the already issued SUP would then be non-conforming SUPs. Bldg. Safety Inspector Manchester noted that if the system works, then why change it? Planning Board Secretary Schweikert advised that the Town does not issue that many of these SUPs. G. Marlette noted that since the Town doesn't have that many, now would be a good time to change this. G. Marlette said he still thinks the Town should do a three- or five-year expiration; he thinks that is pretty standard in towns with a reoccurring revenue. G. Marlette noted that when the Town issues a SUP with no expiration, the Town is just avoiding the whole rezoning of the property; a side-stepping. Discussed the Still on the Hill SUP; this is a NYS farm winery which NYS allowed. The Town had the Burkes apply for a SUP for the farm winery and issued the permit. G. Marlette feels that this probably should've been a rezoning application. The current fee is \$100 so a SUP doesn't generate that much revenue to the Town. Discussion about the fee; Bldg. Safety Inspector Manchester noted that for the privilege of getting a SUP the fee should be increased. The Town Fee Schedules are generally reviewed at the end of each year and then approved at the Organizational meeting in January. G. Marlette would think a fee of \$250 with a renewable every three years. J. Jozwiak noted that he may be starting to lean towards what G. Marlette is saying; the Town is giving a resident the ability to do something they are not supposed to do so the resident should come back to the Town to prove that they are still doing what they are supposed to be doing. Under current Code, the SUP does not transfer to a new owner and ends at the end of one year of non-use or the specific use. G. Marlette had concerns about a new purchaser and the termination of the SUP without knowledge. Planning Board Secretary Schweikert stated that she could

make a note of this consideration for the next Code Update; once this update is complete the Town will need to keep the Code review and update as an on-going project. Our local laws are footnotes on eCode but our books have not been receiving supplements. G. Marlette noted that when issues come up, it is better to change the Code to fit the issue then to have to go through zoning variances numerous times for the same types of issues; that is why do the updates regularly are so important. Planning Board Secretary Schweikert said that the Town fall off that cycle years ago and now, at some point, the Code Update needs to be submitted at the best point that can be at this time and then start preparing for the next update/review. Once these updates are completed by Planning Board, the changes will be submitted to General Code and the Town will get a print out of the changes for review and to proceed with finalizing the local law with the updated Code. If there are changes or corrections, any major changes in this update will be billable to the Town. If minor changes or corrections are required, there would be no further fees charged by General Code. J. Miller questioned who would keep track of the changes/updates going forward since Planning Board Secretary Schweikert will be retiring at the end of this year; it would have to be on the Chairman, new Planning Board Secretary, Town Board Liaison to the Planning Board or Town Supervisor, to keep track of these changes and to make sure the Code remains up to date. There was discussion about costs of updating and supplements to our Code books.

Section 150-182 No revision

Section 150-183 No revision There was discussion about the McCarthy Pit on Spaulding Road and that the NYS DEC has notified the Town that the pit has been reclaimed. If the owner wants the zoning changed back to R-Ag, he will need to apply for a rezoning permit; otherwise, it will be M-R District and the owner will need to follow the Code requirements of M-R District. Members questioned if the Assessor uses a different assessment value for R-Ag or M-R districts. Chairman Edbauer will check with the Assessor.

Article XXXV Planned Unit Development

Section 150-184 Change: Within the context of a Comprehensive Plan for the Town of Concord "as adopted in December 1990 by the Concord Town Planning Board and subject to amended from time to time" to "as adopted and on file with the Concord Town Clerk."

Section 150-185 No revision

Section 150-186 No revision

Section 150-187 No revision

Section 150-188 No revision

Section 150-189 No revision

Section 150-190 No revision

Section 150-191 No revision

Section 150-192 No revision

Section 150-193 No revision

Section 150-194 No revision

Section 150-195 No revision

Section 150-196 No revision

Article XXXVI Zoning Board of Appeals

Section 150-197	No revision
Section 150-198	No revision
Section 150-199	No revision

Article XXXVII Amendments

Section 150-200	No revision
Section 150-201	No revision
Section 150-202	No revision

Article XXXVIII Right to Farm

Section 150-203	No revision
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Section 150-204 Review with Town Attorney Attea: Resolution Committee which states "Made up of the Chairman of the Conservation Board or designee, and a member of one other standing committee of the Town designed by the Town Supervisor." Concord does not have a Conservation Board. Is it required by the Right to Farm Law? J. Jozwiak googled this and AI generated said, "No, the Right to Farm Law in NYS does not inherently require a Town Conservation Board. While a Town may have a Conservation Board, it's not a mandatory component of the Right to Farm Law itself." G. Marlette said that the change could be "Chairman of the Conservation Board" to the "Chairman of the Planning Board" and get Town Attorney Attea to approve.

Section 150-205	No revision
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Section 150-206 No revision; but have MDA review with regard to the RIC Energy project and the issuance of a SUP which the property which is the subject of such application is "located within one mile of an existing farm." Planning Board Secretary Schweikert will email this section to Caleb Henning, MDA, for review. J. Zybert reads this section that if the farming operation would be disrupted, you can't disrupt anyone within the farming activity.

Section 150-207	No revision
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Article XXXIX Solar Energy Systems

Sections 150-208 through 150-220 This is being handled by the Town Board and Wendel Companies to prepare new local law on Solar and BESS. Some of the Members volunteered that they would like to be involved in these meetings with Wendel Companies. During the RIC Energy application, the Members made some comments about what they would like to see be incorporated into the new solar and BESS laws: that these projects not be allowed on lands that are designated as prime farmland; that the project and location meet the criteria in the Town's Comprehensive Plan; that the application be submitted to the Town Engineer for beginning SEQR review, prior to any referral to the Town Board, so that that information can come back to the Planning Board for further review; that the inverter/collection point be in the center of the project to reduce the hum sound from the equipment; and that the number of copies of the plans be increased to 20 so there are enough copies for Town Board, Town Attorney, Town Engineer, Town Clerk, Planning Board Members and Board Secretary, and Town CEO.

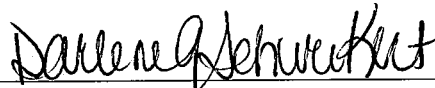
Section 150 Attachment 1 Illustration of R-12 Standard Lot and 150 Attachment 2 Illustration of R-12 Cluster Lot – These illustrations may not be necessary since the minimum lot size and setbacks are detailed in the R-12 Zoning Section. Planning Board Secretary Schweikert will check R-12 Zoning Section and confirm the details are noted in the section and then these two Illustrations could be removed from the updated Code. It appears that these two Attachment Illustrations 150 Attachment 1 and 150 Attachment 2 can be deleted.

ITEM #7: Business from the Members

1. Planning Board Secretary Schweikert provided the Members with a copy of the Adult Uses District from Grand Island which requires application for a Special Use Permit. Planning Board Secretary Schweikert will change our Code Article XVIII M General Industrial District Regulations to use the Grand Island language and send it to the Members for review at the May meeting.

ITEM #8: Motion of Adjourn

G. Marlette made the motion, seconded by J. Miller, to adjourn the meeting at approximately 8:30 p.m. All in favor. Carried. The next meeting will be Tuesday, May 6, 2025.



Darlene G. Schweikert
Planning Board Secretary