

**Town of Caroline
Land Use and Economic Development Task Force**

Meeting 2

**September 21, 2020
7:00 PM**

Agenda

1. Privilege of the floor
2. New Introductions (Barbara Lynch and Ellen Harrison)
3. Open Discussion, Current Town Laws and options
4. Discussion of Reading Pertaining to Formula Business Restrictions
5. Discussion of Reading Pertaining to Economic Impact Review
6. Discussion of Reading Pertaining to Design and Site Plan Review
7. Summary Reflections, Greg Colucci
8. Discussion of Path Forward

Attendance

Yusmin Allim; Jonathan Bates; Michele Brown; Barbara Knuth; Kathryn Seely; Ken Miller; Barbara Lynch; Ellen Harrison (Site Plan Review Board representative); Bill Podulka (Planning Board representative); Tim Murray (Town Board representative); Mark Whitmer (Town Supervisor); and Greg Colucci (Planner); a few members of the public

Absent from the Task Force was Rebecca Schillenback

Notes

1. Tim Murray opened the meeting by allowing privilege of the floor; no member of the public spoke.
2. Ellen Harrison and Barbara Lynch introduced themselves to the Task Force. All other Task Force members introduced themselves.
3. Tim asked about everyone's availability to meet the following Monday, September 28, and there were no objections.

A member of the public, Milt, introduced himself to the Task Force.

Ellen asked for clarification of the charge of the Task Force; Tim answered that the charge is to consider short and long term goals for land use guidance and make appropriate recommendations to the Town Board.

Ken Miller brought up that there is a disclosure form in the Right to Farm Law of the Town that if a permit is being issued within a certain distance of a farm, the owner needs to sign a form to acknowledge it; Tim clarified that it's an addendum to a building permit.

4. Tim asked for feedback on the readings pertaining to Formula Business Restrictions (FBRs).

Bill Podulka asked about the interaction between FBRs and zoning; Greg Colucci said that it appears that most places with FBRs have tied them to zoning, i.e., using zone districts to restrict those types of businesses in specific areas.

Ellen asked for clarification because she understood that FBRs do not have to do with zoning and that they could be tied into design guidelines. Greg suggested that the Task Force should look into the possibility of incorporating FBRs into design guidelines.

Michele Brown brought up that the readings were conflicting; one of the readings suggested that FBRs should be enacted through Municipal Home Rule Law and not through the Zoning Enabling Statutes and another reading suggested enacting them through zoning.

Kathryn Seely took away from the readings that a town needs to have a set of regulations related to the Comprehensive Plan; she said that it seems that there does need to be some form of zoning as a precedent to other regulations.

Ellen asked whether design guidelines can be done without zoning. She understood from the readings that FBRs or design guidelines can be added to the Town's Site Plan Review Law. She wants the Task Force to read the Town's Site Plan Review Law.

Barbara Lynch said that she understands that FBRs are about design guidelines and have nothing to do with social purpose.

Greg said that it would be useful to know more about the applicability of FBRs without zoning; because Caroline has Design Guidelines as part of their Site Plan Review Law, then it seems that FBRs incorporated in design guidelines without zoning may be valid. Whether design guidelines without zoning can delineate areas in a town is another subject. This may not be useful for Caroline, but it might be worth researching.

Bill also wants to know whether design guidelines can be attainable without zoning; he wants to know if this will be a good recommendation to the Town as a short term option and if zoning could be a recommendation for a longer term solution. Bill also brought up that he understands FBRs to not only restrict design, but that they could also regulate the density of those types of businesses.

Ken said that he understands that design aspects, such as lighting, are not zoning; he said he understands that zoning is about where certain uses are allowed. Greg commented that design guidelines can be incorporated into a Zoning Ordinance or they can be completely separate. He also commented that New York enables local municipalities broad power in discretionary approval; this is generally a good thing however local municipalities in New York often do not have much criteria to review a development against. Instead there are often “considerations” about the development (e.g. Caroline’s Site Plan Review Law), which are retroactive in nature; they require case-by-case analysis instead of having set criteria to review against a development.

Tim asked what kind of teeth design guidelines have outside of zoning and how binding they can be for the Site Plan Review Board. Greg suggested that this question deserves more research and legal advice, but it appears that as long as the law (e.g. design guidelines) ties to the Comprehensive Plan [and does not violate property rights, equal protection and similar protections] it should be enforceable. It’s important that the Comprehensive Plan has specific language to back up specific laws. Taking this further, Greg wants to know whether a design guideline law can “break up” a town into certain areas or if, without zoning, they need to be town-wide. It would be good for the Task Force to understand what the Town can legally do under New York State law.

Tim followed up by asking why Caroline would need to be so area-specific with design guidelines, and not just have them apply town-wide. Greg referenced Dryden’s Design Guidelines that delineate a corridor along Route 13 to which the guidelines apply.

Bill agreed with Tim that design guidelines would be more appropriate town-wide, as long as there are certain thresholds established that would exempt less intensive uses (e.g. a roadside farm stand).

Bill asked Ellen about her discussions with Guy Krogh, the Town Attorney, regarding what could be required through the Site Plan Review. Ellen explained that the Site Plan Review requires certain criteria to be met, including consistency with the Comprehensive Plan. Guy said that the Comprehensive Plan is a visionary document and not a law, but Ellen felt she could not approve something that is inconsistent with the Comprehensive Plan. She believes that the Comprehensive Plan is more binding than what was originally believed, but would like clarification on that.

Jonathan Bates said that it makes sense to hold off on detailed conversations about area-specific design guidelines, but if the Task Force does suggest town-wide guidelines the Town runs into the challenge of not defining areas where it does want development and where it does not. It seems to him that town-wide design guidelines would be a short term answer because there could potentially be stores spread out all over Town and not concentrated in more desired areas.

Following up on Greg's comment earlier, Ken said that he understands that design guidelines can be in zoning or separate, but because the Town doesn't have zoning, FBR should be incorporated in the Site Plan Review process.

Barbara Knuth, referencing an earlier discussion topic, noted that she read that FBRs could be enacted through Zoning Enabling Laws or Municipal Home Rule Law. She brought up that the Town's Site Plan Review Law is legislated under the Home Rule Law and she wants to know what else could be enacted under that law, other than Zoning and Site Plan Review, that the Task Force should be considering.

Ellen added that she would like to know the difference between the two laws - Municipal Home Rule Law and Zoning; Greg said that one difference is that zoning can be adopted through an ordinance or through a local law and the difference seems to be in the public hearing and notification requirements.

Barbara Knuth asked if the Caroline Site Plan Review Law makes use of all the powers afforded to a town under the law or if there is something different, or in addition, that Caroline can consider. Two questions she would like answered: What else does the Municipal Home Rule Law allow the Town to do other than the Site Plan Review?; and is there anything under the current Site Plan Review Law that could be changed or added to give the Town more power to implement the vision of the Comprehensive Plan?

Tim commented that the Site Plan Review Law should get anchorage from the Comprehensive Plan. He would also like those questions answered.

Bill said that the Municipal Home Rule Law simply enables land use regulation by the Town within its boundaries.

Ken brought up SEQRA (New York's [State Environmental Quality Review Act](#)); even if communities do not have zoning, SEQRA can still help communities regulate land use.

Bill said that we still do not have the answer on if design guidelines can be enforced absent zoning; Greg cited Caroline's currently adopted Design Guidelines as an example where a Town has that type of law without zoning. He noted that Caroline's Design Guidelines are "considerations" in the form of questions and are not criteria. This leaves a lot of gray area for development; the review board does not have specific criteria to weigh a development against.

Tim asked Greg if he was suggesting that the Design Guidelines should be more comprehensive as opposed to question format. Greg said that he believes so.

Ellen brought up an example of a Site Plan Review consideration that is "mushy" and suggested that it's worth talking about making the criteria clearer.

5. Tim asked for feedback on the readings of Economic Impact Review (EIR), starting off by commenting that they appear to be used by larger communities with more robust economic business districts. Tim asked the Task Force how scalable they believe EIRs can be.

Ellen suggested that EIRS should be something to be considered in Caroline, given the small business areas of the Town, such as Brooktondale and Speedsville.

Yusmin Allim discussed the example of increased traffic as a trigger for an EIR in relation to changes along Route 79.

Bill suggested that there could be a threshold of development impact (e.g. size) when EIR would be required; he suggested that EIRs could be incorporated in Site Plan Review.

Barbara Lynch asked if there are tools to encourage economic development as the Comprehensive Plan envisions. Kathryn followed up on this saying that the Town wants to encourage small businesses, and she wants to know how the Town can do this.

Greg noted that there are many types of municipal laws that are not just “sticks” but “carrots” to incentive certain types of development in the Town; he used the example of Transfer of Development Rights (TDRs), which allows an owner of property to sell their development rights to a “receiving” property.

Bill noted that TDRs work only in a zoning context so they could not work at this time; the Town can grant conservation easements. He also wants to know how the Town can encourage small business development.

Kathryn asked if farming can still take place under a conservation easement and Tim confirmed that it could. Ellen followed up by saying that there are negotiations that happen between the owner and the Town setting the types of restrictions and allowances that would apply per the easement agreement.

6. Agenda item 6 was incorporated in the previous discussion
7. Agenda item 7 was incorporated in the previous discussion.
8. Tim asked the Task Force where it wants to go from here; he hoped that after next week the Task Force could break into smaller groups researching definitive actions that could be delivered to the Town Board by mid-November. Tim suggested that the Task Force should do more research on Municipal Home Rule to understand what the Town can fully do. Tim suggests that the Task Force reads Danby’s and Dryden’s Design Guidelines, as well as researching other types of FBRs in relation with design guidelines.

Ellen asked if Danby's and Dryden's Design Guidelines address formula businesses; Greg said that Dryden's address "national brands."

Tim brought up the threshold of 10,000 square feet in Caroline's Site Plan Review Law that requires review for commercial developments over that size; he questioned why it's at that threshold and if it can be looked at being amended. Kathryn and Yusmin agreed that the Task Force should look into this and possibly redefine the threshold.

Ken mentioned that the Task Force should be mindful of populations of lower income as these restrictions may adversely affect them.

Bill said that he does not know how the 10,000 square foot threshold came to be, but it should be looked at to possibly be revised.

Greg brought up examples of formula businesses that are smaller than 10,000 square feet, such as [Starbucks](#) and [dollar stores](#).

Tim said that readings will be distributed to be read by next week's meeting. He also asked the committee to consider meeting every week instead of every other week.

Ken asked whether the Task Force is working on the draft Comprehensive Plan or just the items in the Task Force Resolution; Tim reiterated that the committee is charged with researching practical options for land use guidance that the Town Board could utilize per recommendations in the revised Comprehensive Plan anticipated to be adopted this fall.

Meeting adjourned at 9:00 PM

Meeting notes prepared by Greg Colucci