

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

Meeting 5

**October 12, 2020
7:00 PM**

Agenda

1. Privilege of the floor
2. Formula Business Restrictions sub-group report
3. Economic Impact Review sub-group report
4. Design Guidelines sub-group report

Attendance

Yusmin Allim; Michele Brown; Barbara Knuth; Kathryn Seely; Ellen Harrison; Barbara Lynch; Ken Miller; Tim Murray (Town Board representative); Greg Colucci (Planner); and Mark Whitmer (Town Supervisor)

Absent from the Task Force were Jonathan Bates and Rebecca Schillenback

Notes

1. Privilege of the floor; no member of the public joined the meeting
2. Kathryn Sealy summarized the Formula Business Restrictions (FBRs) sub-group report (available in the October 5 Task Force Meeting Notes) noting that these types of businesses are not consistent with the vision in the revised Comprehensive Plan and likely not economically viable in the Town; the sub-group also recommended that the Town investigate basic zoning tools.

Tim Murray added that communities that have FBRs are typically larger than Caroline and all have zoning; there are complex legal challenges with FBRs all based around zoning issues. He referenced a town in Maine that did not approve the development of a formula business based on design, not on FBRs; in other words, well thought out design standards might be able to restrict formula businesses. Tim noted that the sub-group recognized that development of minimal zoning guidelines would provide a template for enforcement of formula businesses in future; thus the sub-group's conclusion is to focus on design guidelines and zoning.

Barbara Knuth asked if the sub-group came across a minimum size of buildings in which FBRs would apply.

Tim answered that most FBRs are aimed at businesses like Walmart, which have a very large footprint.

Greg Colucci said that he is not aware of an FBR being applied for businesses less than 10,000 square feet.

Ellen Harrison asked for clarification from the FBR sub-group that they are not recommending a specific law to regulate these businesses.

Tim confirmed that, yes, given the legal precedent of challenges to FBRs around the country, Caroline is likely not in a position to adopt such a law; he also noted that there are residents of the Town that prefer to shop at such businesses.

Ellen said that if the sub-group is recommending that formula businesses should be dealt with through design standards, the current Site Plan Review law would need to be amended because their size is typically lower than the current review threshold of 10,000 square feet.

Michele Brown asked how difficult it would be to change building size threshold in the Site Plan Review law.

Tim replied that it wouldn't be difficult.

Michele noted that rather than calling them Design Guidelines, they should be called Design Standards.

Ellen asked if a definition for formula businesses could be put in the Site Plan Review law to act as a trigger for review, similar to the size of buildings and area of disturbance.

Greg said that he believes that is an option. As long as the law defines the issue and defines how it plans to mitigate it (and as long as it's not discriminatory), it should be legal. Greg urges legal advice on this possibility.

Yusmin Allim said that the Task Force should consider multiple triggers, not just building size. He referenced a number of triggers in the Economic Impact Review (EIR) sub-group report that would require EIR.

Tim said that the Town likely can't attract large businesses due to the availability of water, but that smaller businesses could be held to similar thresholds.

Michele asked if not allowing formula businesses would fall under discrimination and asked for clarification on interstate commerce protections.

Greg asked if Michele's question was about separating out formula businesses from the rest of retail or restaurant uses; Michele answered yes.

Barbara Knuth said that she believes this is question needs legal advice.

Ellen added that defining formula businesses as types of businesses that would need to adhere to design standards might not be discriminatory.

Tim suggested that it's not discriminatory to regulate formula businesses, but what is discriminatory is if certain types of formula businesses are regulated and not others.

Barbara Knuth cited an example of discrimination in the readings where an FBR was invalidated based on the presence of similar types of businesses already established in the community.

Tim asked if the group agrees that FBRs are not the best approach for Caroline.

Barbara Knuth agreed with not having FBR as a separate law, but wants to explore a definition of formula businesses within Site Plan Review law and how that definition, if met, triggers certain design standards.

Greg and Tim agreed with this approach.

Greg asked if the group wants to still consider triggers for Site Plan and/or design standards, other than for just those that met a definition of formula business.

Barbara Knuth thought this would be appropriate.

Ken Miller agreed this would be a good approach if the Town doesn't need to do zoning; he wants to understand the difference between regulation and restrictions; he suggested that the group consider regulations (for all types of businesses) over restrictions.

Tim acknowledged this point, but also added that the FBR sub-group recommended the Town explore zoning.

Tim asked for consensus to shift attention away from FBRs.

Barbara Knuth agreed, but asked that the group work on a definition for formula businesses to incorporate into other tools.

Kathryn referenced an FBR case study that included a quota and asked if this should be explored.

Tim said that those cases were also in places with zoning, but that a definition for formula business shouldn't be a major challenge as there are a number of precedents that delineate this option for the Town.

3. Economic Impact Review (EIR) sub-group report

Barbara Lynch stated that EIR is not the same as Site Plan Review; EIR considers the economic impact of a proposed business, whether positive or negative. The sub-group ended up with a lot more questions than they started. The questions revolve around thresholds or triggers for EIR, but also questions such as: do we care whether employees (in these new businesses) are paid a living wage or not? Can competition be a reason for restriction, or rather a trigger for review? Does the town need a bank or a pharmacy?

Ken said there were more questions than answers; he doesn't believe that the focus should be whether the business will be profitable, but what benefit it is to the community and what cost it is to the community (e.g. more need for trash services).

Tim asked if the sub-group came across requiring EIR for some, such as formula businesses, but not for others, such as for those that require a living wage.

Barbara Lynch said this did come up in the research; in terms of the vision in the revised Comprehensive Plan and in terms of the benefit and cost to the Town, it's worth considering.

Yusmin said that EIR could be "the first door" for a business to be established in the Town. Once they pass through this door and it's determined that the business will be a benefit to the Town, then other reviews can happen.

Michele asked what would trigger an EIR.

Yusmin answered that it can be many things – dimensions of the business, business operations, employees, and other impacts.

Tim asked if EIR can be applied outside of zoning.

Yusmin answered that he does not believe so, based on the research, but cited what Joan Jurkovich (Tompkins County Planner) said at the last meeting that there could be something simpler, other than zoning.

Barbara Lynch suggested that just as there is a Site Plan Review law, there could be a an EIR law, separate from zoning and that instrument would have to include a set of triggers and thresholds for review. One measure she keeps thinking about is the relationship between the size of the business footprint and economic benefit to the community.

Ellen said that the Design Standards group included language in their suggested edits of the current Design Guidelines that would require a closer look at the economic impact of a proposed development. In other words, the EIR may not need to be a separate law, but could be included in the Site Plan/Design Standards law.

Tim asked whether the sub-group came across cost of the review, noting that an EIR could be cost-prohibitive for smaller businesses. He said Caroline would want to be cautious of that.

Michele said that the sub-group created a list of issues in EIR that they hope could be addressed; for example, requiring a business to address potential abandonment through creating an escrow account.

Barbara Knuth asked if Greg has seen any abandonment clauses for developments; Greg answered that he has seen abandonment clauses in solar facility regulations.

Barbara Knuth followed up asking how a town would administer an abandonment clause – which mechanism would it be under; Greg answered that it has been done through zoning regulations or local laws.

Ellen suggested that the scale of businesses might take care of itself; in other words, a small business would be required a small (EIR) report and a larger business would be required a larger report. It may not be overly burdensome due to the scale of the business and impact.

Barbara Knuth said that with an EIR there are some standardized questions to be answered regardless of size, so answering those questions adequately may be costly for a smaller business.

Ellen said that this would be true of reviewing businesses against design standards. It's important to understand the triggers for EIR and Site Plan review.

Barbara Knuth asked to find out the size of Brookton Market to get an understanding of size of businesses and what the appropriate thresholds may be for reviews.

Ellen followed up asking for the size of the Dandy Mart and the convenience store in Speedsville; she also brought up other design elements that may trigger a review, such as a pump station at a convenience store.

Barbara Lynch added that size of paved area could also be a trigger for review.

Tim noted that a pump station may be reviewed under environmental review.

Greg said that environmental review (per the State Environmental Quality Review Act) is a part of all development proposals and depending on impact, there are different types of review; this is a separate review from Town laws. He also added that the County tax assessor would have sizes of building footprints.

Michele asked if the footprint includes the paved area; Greg answered, no, that the tax assessor is just looking at the building footprint.

Michele followed up saying that maybe the Town should look more closely at the paved area in their reviews.

Barbara Knuth added the Site Plan Review law looks at area of disturbance, which would include the paved area.

Barbara Lynch added that she also wants the Town to look at the paved area of businesses a little more closely and how they contribute to the overall benefit of the business.

Tim asked if the EIR sub-group would like to continue to refine this topic and follow-up on recommendations as it sounds like more information is needed.

Barbara Lynch said yes, and that the Task Force should look at if the Town should incorporate the EIR in Site Plan Review. She asked Greg to find more examples of EIR.

Greg commented that Site Plan Review, Design Standards, and EIR can all be triggered by different issues and don't need to all be applied unilaterally.

Greg also brought up that it would be difficult for the Town to impose an EIR without a baseline understanding of its market conditions. In other words, there needs to be proof of current market conditions in the Town in order to impose an EIR with specific criteria to review businesses against.

Tim asked for confirmation that, before the Town Board could consider an EIR law, the Town would need to understand baseline market conditions; Greg confirmed.

Barbara Lynch asked if the Town knows its baseline market conditions; Tim said no. She followed up saying that perhaps a student at Cornell would conduct a study. Tim thinks this could be a good approach, but it would be a long-term goal.

4. Design Guidelines/Standards sub-group report

Barbara Knuth discussed the sub-group's report beginning with asking the Task Force to continue looking at the minimum square footage for buildings as a threshold for Site Plan Review. The current Design Guidelines are a set of questions; the first major recommendation is to call them "standards" instead. The sub-group modified the guidelines primarily by using the word "must" to require certain criteria; for example "the development *must* meet ____" rather than "the development *should* meet ____"

The sub-group also took a close look at guidelines pertaining to impacts on Unique Natural Areas and prime agricultural soils; they will continue to develop standards pertaining to protecting those critical environmental resources.

Ellen reiterated that changing standards to using the word "must" was important so that criteria are required and not just discussion points. Other areas not included in the current design guidelines were also looked at. The sub-group looked at Dryden's design guidelines as a point of reference. Ellen said that the Town does not have Critical Environmental Areas, but she did talk to someone who is familiar with bird habitats and this area may be considered for important environmental resources to protect. She said that the sub-group will continue to look at triggers for design standards.

Michele wants to look more at wildlife areas and wetland areas.

Tim said that wetlands fall under the DEC purview and that if there are impacts on them they would be captured in a SEQR review.

Barbara Knuth added that wetlands are regulated by State and Federal agencies.

Tim asked if the sub-group had a chance to look at the Danby design guidelines; Barbara Knuth said they would look at them next.

Barbara Knuth asked for the Task Force to have a discussion at the next meeting on the proposed revised Design Guidelines (Standards); Tim agreed.

Tim asked if the EIR group would continue to refine their questions and topics and if the FBR group would look into basic zoning tools.

Ellen added that the FBR group should come up with a definition of formula businesses; Tim agreed.

Ellen suggested the Town consider other topics, such as an ordinance on billboards and on junkyards; she asked if these topics could be put on the radar. Kathryn agreed with looking into junkyards.

Tim recommended that the Task Force continue to look into the current land use topics they have been researching, but that those topics (junkyards and billboards) are of concern to be looked into in the near future.

Ellen said that the revised Comprehensive Plan recommends the Town looking into junk and other nuisance laws; Tim said that the Town is hiring a new Code Enforcement Officer soon and this will help because these types of laws need enforcement.

Barbara Knuth asked if the Task Force should be considering the changes to the revised Comprehensive Plan in regards to the charge to the committee.

Tim said that there haven't been any significant changes to the Comprehensive Plan that would alter the charge to the Task Force; Tim said the other thing to consider is a possible extension of the moratorium due to the timing of the pending adoption of the revised Comprehensive Plan.

Tim said the Planning Board has two vacancies and asked the members of the Task Force to consider applying.

Ken asked what the EIR sub-group should do with the questions that they have (see sub-group report in October 5 meeting notes); Greg said he can send more examples of EIR, but wants to hear what the group suggests because EIR is a much more involved long-term project.

Tim suggested that the Task Force table the EIR for now and look into the Site Plan Review and draft Design Standards for the next meeting.

Ken said that the EIR questions could possibly be included as the thresholds to look at as part of the Site Plan Review.

Ellen suggested that the EIR group could include some of the questions in their review of the design standards.

Ken clarified his comment at the last meeting regarding assessment of property for fire districts and asked that the notes reflect his comment accurately; Greg acknowledged that this change would be made (see October 5 notes).

Meeting adjourned at 9:00 PM
Meeting Notes prepared by Greg Colucci