

**PLANNING BOARD MEETING**  
**October 27, 2015**

**Susan Hawvermale, Chair**  
**Karen Ellsweig, Steven Budofsky, David Groskin, Robert Sipos**  
**Sandi Burke, Planning Board Secretary**

**Location of meeting:** Town Hall.

Planning Board meeting commenced at 7:00 pm.

Pledge of allegiance.

**REVIEW OF THE MINUTES FROM THE SEPTEMBER 24, 2015 MEETING:**

Susan Hawvermale: "Do I have a motion to accept the minutes from September 24, 2015?"

Steve Budofsky: "I will motion."

**MOTION** made by Steve Budofsky to accept the minutes and seconded by Robert Sipos. All in favor "Aye." None opposed." Carried.

**COMMUNICATIONS:**

Susan Hawvermale: "Communications?"

Sandi Burke: "Yes. Would you like I should read them since there are only 3 or?"

Susan Hawvermale: "Sure."

Sandi Burke: "Okay. We have 3 letters that came in, all through email.

- 1. Dear Chairwoman Hawvermale and Members Ellsweig, Groskin, Budofsky and Sipos: I write this letter to voice an objection to your adoption of the rules originally drafted for Delaware New York's Town Board. As partially revealed in its "whereas" clauses and more clearly revealed in an analysis of that town's history, these rules were fashioned in response to a perceived problem that no reasonable person could possibly think applies to Forestburgh. Their rules do not belong here. The Town of Delaware in the years that preceded its adoption of these speech-limiting rules had degenerated into a severely confrontational and angry place. The political battle that had been raging there for years pitted those recession-strained landowners with hopes and dreams of cashing in on the fracking boom (like their Pennsylvania neighbors just across the river) against those citizens - man of whom were economically more secure, who (like us here in Forestburgh) were very much worried about the environmental and long term consequences of fracking for their town. Passions were inflamed. When the politics in the Town of Delaware brought the fracking supporters into office, they moved to consolidate their hold on power in a number of different ways. One of the things they did (as an example of how free speech was seen as a threat to their continued hold on power) was to refuse to permit a town park to be used as a place to screen the controversial anti-*

*fracking documentary film "Gasland." In response to the neighboring town's passage of local ordinances banning fracking, which were upheld in court, they proposed and then passed an ordinance affirming their commitment to permit fracking in their town. This was a highly contentious process and many in the town felt that their voices, although raised, were not being heard. The response to the frustration they expressed was to put a muzzle on these voices of opposition and to threaten them with criminal prosecution and to embody this effort and that thread in a rule governing public comment in their meetings. This is the statute which Delaware's town attorney is now being asked in his role as a Forestburgh Planning Board attorney to create for you. It does not belong here. We are not the Town of Delaware. While there certainly have been strong expressed opinions espoused in the few Planning Board meetings where public comment has been permitted, there has not been any of the rancor that led to the original statute that you have asked be grafted onto your board's rules of procedure. Voices have not been raised, protest signs have not been held up. The only thing that has brought the Sheriff to the Planning Board meeting was his effort to help his wife's boss get this permit for from you. While there was a single instance of a comment being made in an irregular way being addressed quite directly to the applicant himself, it certainly was the opposite of bullying or threatening. Did anybody think that this was the kind of behavior that warranted a disorderly conduct prosecution of the woman who spoke passionately, but in a friendly manner directly to Mr. Sherman? Excluding the speakers who were related to or employed by ASTI (who were admittedly improperly permitted to speak as members of the public) the only public comment offered in favor of ASTI was a Town Board member from the Town of Delaware. How ironic was that? It is also noteworthy that he as not interrupted, threatened or treated with any disrespect whatsoever. He didn't leave the room saying to you that "you need our rules." Forestburgh is united against ASTI. Opposing an applicant is no reason to change the rules of public comment any more than the banning of the showing of a film on public property is an appropriate response for a government body to take to those who oppose their views on a topic. Is the real reason this rule is being considered that everybody is opposed to this application and that makes you, as a board, uncomfortable or the applicant feel unwelcome? If that's true, ask yourselves the question "Is that a legitimate reason to reign in free speech?" why should you give a second thought to the applicant feeling unwelcome by Forestburgh if, as is obviously the case here, he is unwelcome? What prompted you to say that you have no obligation to be user-friendly to that public? To Forestburgh? But the inappropriateness of this rule being considered by you doesn't end with the observation that Forestburgh is a different place than the Town of Delaware. No other town body in Forestburgh has this kind of speech-limiting approach to the public. Frankly, I find it disrespectful to the public, your public, to try to muzzle us. Perhaps there's a lesson to be learned from how our Town Board (and the public who attends their meetings) reacts to inappropriate public comment. Just recently in the agenda comment period of the meeting, a member of the public used that forum to unleash a personal attack on multiple members of that board, as well as a member of the public who was in attendance on topics that didn't even come close to being agenda items. Look at the August Town Board meeting minutes. The board's and the public's response was to not even dignify the comments with a response. The board didn't respond by saying "let's adopt the Town of Delaware's rules" or "let's put a muzzle on her" or "arrest that woman". They treat*

*their public with dignity and with the rare exception, such as that, they receive the same treatment. They serve their public and the people who have business before them. Why are you taking that same approach that the Town Board does? You don't need these rules anymore than the Forestburgh Town Board does. I implore you, don't adopt these rules. They are a reaction to a problem that truly does not exist in our town of Forestburgh. Respectfully yours, Richard Robbins*

2. *Good Afternoon, I understand the Planning Board may be moving toward a policy that would restrict public comment at their meetings. I want to express my very strong feelings against this unneeded and very draconian policy. The people of our township have the right to express their opinions in a respectable manner to both the Town Board and Planning Board as all of you represent us. There is absolutely no reason for this policy to be put into place as the meetings have been orderly and without disruption. Unfortunately, I am getting the distinct impression that the Planning Board and most especially its Chairperson does not want public input that goes against her own opinions. This entire matter goes against the tenor of our township and is definitely not representative of the views of the persons who reside here. I would caution the Planning Board not to try and fix a problem that does not exist and so generate negative feeling in the township against the board which can only do all of us harm. Sincerely, Steven Sharoff.*
3. *Ladies/Gentleman: I write this email to express my alarm that the Planning Board is considering the adoption of rules put in place by the Town of Delaware, rules that, in my view are not only unnecessary, but harmful to free and informative public discourse. Every reasonable person would agree, I think, that Planning Board meetings should be orderly and respectful. They have been and the consideration of rules that limit public comment and participate in the democratic process strikes me as a "solution" vainly in search of a problem. Therefore, I wish to register my strong opposition to the adoption of such rules. A change I would highly recommend that both the Planning Board and the Town Board consider is a means of amplifying the commentary of members of those respective boards. Much of what is said borders on the inaudible for those in the back of the room at the Town Hall. It is even worse in the Firehouse. Certainly an inexpensive solution to this very real problem could be investigated for the betterment of all future meetings. Respectfully, Mark Schilling.*

Susan Hawvermale: "The only other thing I meant to bring up after review of the minutes was that on the previous September minutes we had made one motion. I am going to review motions every time we have a meeting, so that we can just remember what we have voted on at the previous meeting. You will have to excuse me, I am losing my voice. We voted on a draft resolution for public comment rules that Ken is going to put together for us and that was the only motion in that September meeting.

#### **REVISION OF PLANNING BOARD APPLICATION:**

Susan Hawvermale: "Did you guys have a chance to go over this? There was only one thing I found where I requested that the owner's email be listed."

Sandi Burke: "Page 1? You want me to include a space for the owner's email? It's right here?"

Susan Hawvermale: "See where it says owner's telephone? If we could have the owner's email put in there."

Sandi Burke: "Oh, okay."

Susan Hawvermale: "Other than that, how do they look?"

Karen Ellsweig: "They look very good."

Susan Hawvermale: "They look good to me too. Steve?"

Steve Budofsky: "Yeah, we went over this a few times and each time there were numerous changes made. I think it looks good other than the change you just mentioned."

Susan Hawvermale: "Bob?"

Bob Sipos: "They are fine."

David Groskin: "Yeah, I have nothing to add, it's fine."

Susan Hawvermale: "Can I have a motion to accept this new application so we can put forth for any further applicants?"

**MOTION** made by Karen Ellsweig to accept this new application, seconded by Steve Budofsky. All in favor, "Aye". None opposed. Carried.

Sandi Burke: "Okay, so I will just add the owner's email and we are done. After that, do you want me to upload it to the website? Remove the old and upload the new?"

Susan Hawvermale: "Tim, I'm sorry, do you have a comment?"

Tim Gottlieb: "Yeah, on page 2, item C, it says about the escrow, it says "At the meeting, the applicant will be advised of the escrow" and before that, it says "you won't be placed on the agenda until the escrow is in place".

Sandi Burke: "Where does it say that?"

Karen Ellsweig: "On page 5 where it states "All application escrow fees must be paid before being placed on the agenda."

Susan Hawvermale: "We will recall the motion to accept and I think we need then to..."

Ken Klein: "I think you should just delete C and reletter everything after it to eliminate the contradiction."

Sandi Burke: "Well then should we put in here the escrow fees are to be paid at the time of the application? Because they are going to pick the application up from Joanne, but then they are going to come before you? How does that?"

Susan Hawvermale: "They have to pay all fees and escrow before they come before us, but maybe C should say what you have at the bottom of page 5."

Sandi Burke: "So take this off of the bottom of page 5, leave it there and then also place the same thing in C?"

Ken Klein/Susan Hawvermale: "Yes."

Susan Hawvermale: "Can I have a motion then to amend line C to reflect the last line of page 5 of the application escrow fees for them to be paid before? Great catch Tim."

Sandi Burke: "Yeah really, that was a great catch Tim."

**MOTION:** Motion made by Karen Ellsweig to amend. Seconded by David Groskin. All in favor "Aye." None opposed. Carried.

Susan Hawvermale: "Okay, next is the rules for public comment period. To all of my years in Planning, which has been 23, my go to person for any kind of protocol or any advice whatsoever has always been Robert Freeman who is the Executive Director State Committee on Open Government and I have talked to Bob on numerous occasions. He has always given me sound

advice. He is the oracle, the guru for Planning Boards, Town Boards open meetings. He is the only person to go to in New York State to talk to when you need some advice about things like rules for public comment. I did talk to him recently and his statement to me was basically in New York State open meeting law article 7, public offices law gives members of the public the right to attend meetings the public values. It does not give the public the right to speak or otherwise participate at those meetings, except at public hearing and under other limited circumstances, which does not mean that we cannot have public comment. Personally, I think public comment is good. I think we need it in most cases, not in every single case. From everything that Bob has told me and in all the training I have had over 23 years, every single professor and every single lawyer I have spoken to has said to me to make sure you have rules and regulations for public comment. I looked at other rules and regulations that other counties have and some of them are much stricter than the ones that Ken Klein has put together for us. I also went through a great deal of my paperwork because I have paperwork from 2006 from the Town Board and the Planning Board and in 2006, the Town Board of Forestburgh enacted rules for public comment that are very, very similar to the rules that we are looking at today. They are on file. Some of the Town Board members apparently do not know that they have these rules, but they are there and they are very similar to what we have in front of us and what Bob Freeman says is the right and fair thing to do. In my estimation, this is not a gag order. This does not prevent anyone from saying anything in these meetings whatsoever and whatever the letter said about how we should proceed, that is not Planning Board law, that is opinion, so I am looking for comments from you about these rules, which basically have already been enacted by the Forestburgh Town Board to get your feedback."

Steve Budofsky: "I am in agreement that we definitely need rules in place and we should have rules in place, but in light of the fact that this just came out in email today, I have not had a chance to look at it. They were sent last night."

Karen Ellsweig: "They are basically just the same thing that were just made for the Planning Board. Ken revised them so that they are specifically for our board, but the numbers 1-16 are the same."

Steve Budofsky: "Okay, I haven't had a chance today to look at it. I saw the attachment that came through in the email, but I didn't get it until today. So, um."

Karen Ellsweig: "Okay, we let's read them."

David Groskin: "Well, all I have to say is that so Steve, I saw the ones you wrote. There were 6 of them and I see the 3 letters addressing how they state about the Town of Delaware and I don't know, but I don't see any harm in adopting the rules. I don't see any reason to reinvent the wheel when its already there and it works and the only thing we can do is to change the name from Delaware to Forestburgh. I feel like why should we spend more time thinking about it though either. They all seem pretty reasonable."

Susan Hawvermale: "In my research, the Town Board has already enacted the same rules, not word for word but very similar. Bob?"

Bob Sipos: "Well, I'm happy with what Kenny does and he guides us through to make our board go forward in his professionalism and I'm happy with what he has done and I'm happy with what I see and if something comes to be an issue, I think we can change or go over it again, but I like what Kenny does. I think he does a thorough job. Thank you Ken."

Susan Hawvermale: "He does. You know, these rules will help us in assess in what we can accept. Most public comment in my experience have been very well spoken. However, this has

not been the case in meetings since May, so I don't think that enacting these rules and regulations is going to stop anyone from being allowed to speak, its just going to moderate how to speak."

Karen Ellsweig: "Well said."

Sandi Burke: "And in all reality, they have been given 3 minutes to speak this whole time, I mean now its just being put into writing."

Susan Hawvermale: "Well, its funny you should mention that because Bob Freeman said in one of his statements about public comment that for most rules, the amount of time by which a member of the public may speak is no more than 3 minutes. That was his recommendation. So, what would you like to do?"

Karen Ellsweig: "I agree with Bob and with what you so eloquently said. I think that this is to just give us some parameters and boundaries to work on. I don't think we are in any way touching on freedom of speech or on what our people can say. Basically, it is just how its said and how to keep decorum rules and I think that we should adopt them as written. That would be my opinion."

Susan Hawvermale: "Any other comments? Okay, do I have a motion to accept this resolution?"

**MOTION** made by David Groskin and seconded by Bob Sipos.

**MOTION CALLED AS FOLLOWS:**

**Bob Sipos:** "Yes."

**Steve Budofsky:** "No."

**Susan Hawvermale:** "Yes."

**Karen Ellsweig:** "Yes."

**David Groskin:** "Yes."

David Groskin: "So Ken can I ask Steve Budofsky a question?"

Ken Klein: "Of course."

David Groskin: "What don't you like about this? What am I missing that you see that I don't? I'm not trying to put you on the spot, I mean I read yours and I read these and to me what I saw is that you basically took 14, 16 and combined it down to 6 with maybe some possible gaps."

Steve Budofsky: "Well, what I tried to do was to take pretty much what was in here already and condense it down to a little bit more user-friendly, more condense format so there were 6 points instead of 16 and just changed a couple of the wording of how it was. I don't see what I submitted here in the folder, but if I remember right, it did allow for the board to have an issue if there was an interruption, if anyone was to disrupt the meeting and it pretty much said the same thing. It might have been worded differently in terms of being escorted out by police or subject to penal code, you know, the wording was a little bit different, but the format was basically, it was just 6 instead of 16 and I tried to put it in a little bit more user-friendly format. That was the basic idea. I really didn't look at it and say this is no good."

David Groskin: "So you really don't have any problems with the actual points its making, you just didn't really like the formation."

Steve Budofsky: "Yeah, I don't really have a problem with the points that are made in here at all, its fine, I just didn't like the format more than the content and a couple of the minor points of content, but no its...if you remember what I wrote, its pretty much what's in here, its just revised a little bit."

David Groskin: "Okay, so your not really fuming that this passed then."

Steve Budofsky: "Well, I voted no, you all voted yes and its in, so I'm not going to bring it up again and make an issue of it. If that's what passed, then that's what we will go by."

David Groskin: "I'm sorry, I just wanted to ask and I know I can't ask you after the meeting."

Karen Ellsweig: "I appreciate what your saying. The only reason I'm much more comfortable with the 16 rather than the 6 is because I read them side by side and I think that the 16 have been drafted to get rid of any little holes or misinterpretations that is much more specific and I think in a document like this, I think that is necessary because if there is anything that is a little more user-friendly to me could be open to misinterpretation."

Steve Budofsky: "That's why I asked like when David said what gaps did you see, what in your terms would be misinterpreted to where you wouldn't be able to apply what was already there. I didn't see much difference there."

Karen Ellsweig: "I definitely saw some differences and I definitely felt more comfortable with the additional wording. It gave me a sense of comfort because its for all of us, its for the board and for the public, so I think its a good way to help us conduct our meetings on both sides."

Steve Budofsky: "Right, well I think that the biggest bone of contention is the fact that there is a concern regarding personal attacks or negative language used or you know disrupting the meeting because people were upset and I remember we talked at the last meeting and I referenced to Ken that if someone was to get to the level where they were being disruptive physically or verbally to a point that something needed to be done that law enforcement would be called to have the removed if it got to that level and I agree with that, but as Ken pointed out at the last meeting that if you didn't have it in a rule and somebody did it, you would still follow that same procedure anyway."

Susan Hawvermale: "Yes, but this document is how we are going to conduct these meetings and the Town Board has pretty much done the same thing. Well, this is what Bob Freeman says to do and he takes phone calls, you can call him."

Steve Budofsky: "I've actually read some of the material that he has online."

Susan Hawvermale: "Yes, he has a lot of stuff online and I have talked to him on numerous occasions. He is to the point and he really knows his stuff. He has helped me a lot in Planning Board procedures, as well as other procedures throughout my career. Okay, any other comments about the rules and regs? Sandi, I think what we need to do in the future is to double side these and bring these to the meeting."

Ken Klein: "I would keep them on the table right next to the sign-in sheets."

Sandi Burke: "Yes and I will put them up on the website."

Susan Hawvermale: "Ken can we get the official version of this?"

Ken Klein: "Yes, I will send it to Sandi in word and then she can cut and paste it into her minutes and fill in the blanks in terms as who voted and who the resolution was made by and seconded by."

Susan Hawvermale: "In all my Planning Board experience up until this Planning Board, we ever had to speak to anybody about these kinds of things, but now its in place for the future and we know what the rules are, the public will know what the rules are and we still have public comment. Bob also made the point that public comment is not anything that is granted by law that there are Planning Boards that exist that do not have public comment. I don't think that is a good policy."

Karen Ellsweig: "I think its a really important part of the process."

David Groskin: "I guess its good. I don't see any reason why it wouldn't be good. My thoughts are that we were pretty full the last time we were here on public comments and I know that

people say that well this is what represents the town and this is what the town wants and they don't want this project and they do want this project, which is fine, but not the whole town. Its barely a small percentage of the town as well."

Steve Budofsky: "It would certainly be anybody else's right to voice their opinion if they were for or against anything. I think its essential to have public comment and its an important part of the process."

Susan Hawvermale: "Its important for the applicant and for us to hear it."

Karen Ellsweig: "And regardless to what happens to this project or any other one, it is obvious that things that were said by the public, not us, but by the public were taken into consideration by the applicant and I think that that is the entire purpose for having public comment so that we can hear, so the applicant can hear and the public has a chance to say what they think about the project and it worked and they made changes because of things that they heard."

Susan Hawvermale: "I've seen that happen in many other projects as well previous to this Planning Board."

Steve Budofsky: "Its also more inclusive for the community this way the people can feel that they are a part of the entire process whether what they say was taken into consideration with the decision or not, but they are participating in the process."

Susan Hawvermale: "I think also, the public wants us to show our hand, which we cannot do. We have to remain neutral until the vote and I think there was a lot of frustration by the public because we didn't go one way or the other, which we cannot do. We must just follow the process. Bob did you have anything?"

Bob Sipos: "Yeah I do have a statement. I think that one group doesn't speak for this whole entire town that tries to push their ways and thoughts through on what the Planning Board should and shouldn't do. I do agree with that, but I think its great to have public comment so we know what the public is thinking to help us go forward in what we're doing. I mean prior to this Planning Board, no offense, but the old Planning Board was very hard to approach when you tried to do something in this town. I think we are very open minded and taking everything into consideration on what was in front of us. My dealings in the past and being in front of that board was nothing shy of horrible for nothing and it was nothing compared to this. I mean we were run through the mill for what we were trying to do. So I think we are very open and take into consideration what people are saying to us and I like what we are doing and I like the way its going. Thank you for all your comments everybody."

Susan Hawvermale: "Any other comments about public comments."

Ken Klein: "Just as a side note and just so you know, I go to probably 10 or 12 different municipalities for Planning Boards and not one of them have public comment. They don't even allow it, not one other than a public hearing."

Susan Hawvermale: "A lot of them do not. We do not have to always have public comment. We can choose not to have public comment at times and there may come a time in hearing a brand new application where we may decide not to have public comment. I can always be added to the agenda if we so choose, but it does not have to be listed on the agenda per se. So, in the meantime, we have public comment and I open up the floor to public comment. Do we have anyone on the list?"

### **PUBLIC COMMENT:**

Sandi Burke: "Mr. Richard Robbins."

Richard Robbins: "I have nothing to add."



Susan Hawvermale: "Okay, anyone back there at the table have any public comment?"

Giovanni Vinogradov: "I have nothing to say right now, so I'm just going to hold back and wait until I have something to report."

Susan Hawvermale: "Okay, this is how this works for Planning Boards that helps projects get through the town in whatever fashion they end up. Some get through. Some do not, but it is important that you guys know this kind of stuff. You're probably not going to remember any of it when you go back to school, but its important you know."

**OTHER BUSINESS:** None.

**ADJOURNMENT:** Meeting adjourned at 7:44 p.m.

**UPCOMING MEETINGS:**

- November 24, 2015

Respectfully submitted by

Sandi Burke  
Planning Board Secretary