REGULAR MEETING
TOWN OF EVANS PLANNING BOARD
WEDNESDAY, JULY 26, 2023

MEMBERS PRESENT: Chairwoman A. Sellers, J. Pinter, L. Szewczyk, D. Schiedel, J. Wilson, M. Keller, J. Mesi

ALSO PRESENT: William (Bill) Smith, Director of Planning & Community Development
Brittany Penberthy, Town Counsel

APPLICANTS/REPRESENTATIVES: Jeff Magavern, Attorney – in person and Mr. Uhl – remotely

Chairwoman Sellers: I would like to welcome everyone to the July 26, 2023 Planning Board meeting. Before we begin tonight's meeting there is a change to our Agenda from what was published. The first and second items on the Agenda regarding the Hogg subdivision and rezone recommendation and the second item regarding the site plan and special use permit recommendation for the Solar Liberty project on Southwestern Boulevard will not be heard this evening, as further documentation from the applicant is required. Please watch the Angola PennySaver and the Town's website for further updates. All public meetings and public hearings currently scheduled before the Planning Board of the Town of Evans, will be held both in person and by remote access via Zoom while giving the public the ability to listen in and comment when given the opportunity. If any person wishes to comment on these actions, it is their right to do so when the floor is opened to the public. At that time, we ask that anyone who wishes to speak please clearly state your name and address, spelling your last name for the record. Those attending online may "raise their hand" using the function on your Zoom interface. Each person is limited to one opportunity to speak and comments shall be limited to 3 minutes.

For the record, a Planning Board Public Meeting is conducted solely for the pre-determined action items listed on the official Planning Board Agenda and/or any other business that may be presently before the Planning Board as advertised.

1. The only item on the agenda this evening is a:

Rezone – Recommend for approval to the Evans Town Board the proposed Rezone of a 20.485± acre vacant parcel from Rural Residential (RR) to Rural Agriculture (RA) on Sturgeon Point Road, part of SBL# 206.00-5-37.1. Petitioner: Thomas & Patricia Snyder Uhl, 4101 S 4000 West, West Haven, UT 84401.

PROJECT BACKGROUND:

- The applicant filed a formal application for Rezone on June 20, 2023 for the vacant property on Sturgeon Point Road located near the corner of Sturgeon Point and Delamater Roads. The project was reviewed at Planning Board Work Session on June 14, 2023.
- The applicant is proposing to purchase a 20.485± acre parcel from David DiPetro for the purpose of operating a small farm and spreading manure. The applicants are seeking a Rezone recommendation to the Town Board Rural Residential to Rural Agriculture to allow for the operation. The applicant's attorney, Mr. Jeffery Magavern is here this evening representing the Uhls.

INTERDEPARTMENTAL REVIEWS:

- **Planning Director, Bill Smith:**
  - When discussed at Work Session we recommended that only the 20.485± acre parcel and coincidentally the Uhls had recommended that almost at the same time; that they remove the 5-acre parcel and just rezone the 20.485± acre parcel as it was more in line with the rural agriculture design criteria.
  - I do not have any problem with the rezone from a spot zoning perspective as I feel it is in character with the surrounding community and it is rural as you can see on the maps and it is Rural Agricultural land across the street from the proposed rezone.
  - We have not heard anything, although I see there are a couple of attendees online currently, from any of the neighbors regarding concerns with nuisances. Once we do the Town Board recommendation, the Board will set a public hearing and we will be sending out abutter notices as required, so we might be hearing more at that time at the public hearing, so really this becomes a Town Board decision, but from a recommendation from the Planning Board, I believe it is appropriate.
- **Code Enforcement Officer, John Flading:** Has no objections to the project.
- **Town Engineer, Dave Johnson:** *Per Bill, there was no need for the Engineer to weigh in on this.*
- **Deputy Attorney, Brittany Penberthy**: Has no objections to the Rezone.

Chair: OUTSIDE AGENCY REVIEWS:

- **Erie County Department of Environment and Planning:** A 239M Review was sent to the County and returned on July 20, 2023. They offered no recommendation having determined that the proposed action is of local concern.

SEQR: The Planning Board has reviewed the site plan application and have found no significant environmental concerns in regards to the proposed plan amendment.

Chair: At this time, I will ask the applicant, or his attorney if they wish to address the Planning Board with any further information than previously submitted.

Jeff Magavern, Attorney representing Tom & Patricia Uhl: *Mr. Magavern noted the Uhl's had the property under contract for the better part of a year and that there was a subdivision process that had to be completed prior to their purchase which was completed in late March or early April. Subsequently they were made aware that there was an issue regarding the use of the property. They have two parcels; a 5-acre parcel which their daughter is going to build a house on and a 20+ acre parcel, which they also plan on building a house on but wish to also have a farm with a few horses and would like to spread manure after composting. The current Rural Residential would not allow spreading of manure, thus the basis for the rezoning request to Rural Agricultural. It's possible if they don't receive the rezoning they may not go through with the purchase. The applicant submitted a formal application and preliminary site plans concerning the 20+ acre farm; the Uhl's daughter will be constructing a home on the 5-acre parcel. The applicants are currently from Utah, but have roots in the WNY area, both being graduates of UB and they would like to move back to the area.*

Planning Director: Mr. Uhl is online with his hand raised, he would like to speak. Mr. Uhl, you may speak if you'd like.

Chair: Mr. Uhl is having trouble speaking, so how about we move on and we can come back to him. Are there any questions or comments from the Board for the petitioner? *(No questions from the Board).* There being no questions or comments from the Board I will open the floor to the public. Mr. Uhl can you hear us and speak?
Planning Director: Mr. Uhl we are having technical issues hearing you.
Chair: Is there anyone else online who cares to speak on this project?
Brittany Penberthy: Would he like to call in on my cell?
Chair: Before I close the floor, if Mr. Uhl would like to speak we have a phone number for him we could ask him to phone in or we could phone him.

Mr. Magavern provided the Uhl's phone number to Town Counsel, Brittany Penberthy who called Mr. Uhl directly.

Mr. Uhl: For clarification purposes:

1. They would not be spreading manure so there wouldn't be any problem with smell; they would be spreading compost. Spreading manure directly would damage any hay you had growing.
2. The 5-acre lot would be where Mr. & Mrs. Uhl would be living; his daughter is the one who would have the horse farm.
3. Both lots would be owned by the Uhl Family Trust; he and his wife are primary holders of the trust and their daughters would be secondary.

Planning Director: When you talk about a farm could you clarify what you mean. I recall in an email you mentioning chickens or goats as well.
Mr. Uhl: She would have a maximum of 6 or 8 horses and then perhaps a half dozen chickens and sort of pie in the sky, she might at some point get a couple head of cattle. Nothing large, we're talking a hobby farm.
Planning Director: Have you reviewed the Code for RR and RA in regard to how many and what certain animals or livestock that you can have?
Mr. Uhl: I believe in RR we could have up to 20 horses on that 20-acre lot, which we are not going to have anywhere near. I wasn't clear on the chickens, I think it was like 6 chickens, but then it made it sound like that was per acre.
Chair: I don't think we limit chickens on 20-acres. We have neighborhoods who have chickens, that's why we have numbers on chickens. When you get into farming areas with this much acreage, we don't really limit chickens.
Planning Director: So, I would just say you will be held to whatever limits there are on the RA and our Code Enforcement Officer would enforce that if it becomes an issue.
Mr. Uhl: That's fine, not a problem. Our key concern when looking at the RR was strictly being able to spread compost we did not want to try and haul off manure.
Planning Director: For horses, mules or donkeys, you would need a minimum of 2 acres for the first 2 animals and a half-acre for each additional animal. Fifty (50) chickens, 5 ostriches, 5 llamas, 10 swines, 5 cattle and 50 mink.
Chair: You have the perfect road for this, I can think of 4 different horse farms in the area right off the cuff. We had a farm that raised Morgans, there is a farm with Thoroughbreds right down the street from you on Sturgeon Point called Derbyshire Stables, there's Mr. Fox right almost directly across the

street from you. It is a beautiful area for horses and we are glad that you are returning to Western New York and chose Derby.
Mr. Uhl: Thank you and we are looking forward to being there close to the lake. I grew up in Buffalo, lived in the city. My wife grew up in Batavia, so we are both from WNY. Our daughter Elizabeth graduated from UB as well, so we are very familiar with the area. We lived for about 10-years in Vestal, NY; we are looking forward to being back where there's water.

Chair: If there are no further questions I will close the floor to the public. Are there any questions from the Board? *(No questions from the Board).* There being no further questions from the Planning Board may I please have a motion regarding recommendation to the Town Board?

D. Schiedel: WHEREAS, it is the responsibility of the Planning Board of the Town of Evans to make recommendation to the Town Board pertaining to the rezone of property; and
WHEREAS, the applicant Thomas and Patricia Uhl as potential buyers and property owner David DiPietro wish to rezone the vacant property located near the corner of Sturgeon Point & Delamater Roads (SBL# SBL#206.00-5-37.1) from Rural Residential (RR) to Rural Agriculture (RA) for the purpose of operating a small farm and spreading compost; and
WHEREAS, the Planning Department has received the required application, forms and fee from the applicant and reviewed the proposed rezone with Planning Board at Work Session; and
WHEREAS, the Planning Board has expressed no concerns regarding any potential adverse environmental impacts of the proposed rezone.
NOW, THEREFORE, BE IT RESOLVED, that the Planning Board hereby approves recommendation to the Town Board of the proposed rezone of the 20.485-acre parcel located at Sturgeon Point & Delamater Roads (SBL# SBL#206.00-5-37.1) from Rural Residential (RR) to Rural Agriculture (RA) for the following reasons:

- The action is consistent with the Town of Evans Comprehensive Plan.
- The action is in character with the surrounding community.
- The project will constitute the use of an underutilized property.
- The action is not expected to result in any significant adverse impacts.

J. Wilson: Second.

Roll Call Vote: All in Favor…Carried

Chair - NEXT STEPS: We will send a letter to the Town Board notifying them of our recommendation this evening and request a public hearing be set. The Town Board will set a public hearing and a legal notice will appear in the Observer notifying the public of the date and time of the public hearing. Once published, abutter notices will be sent out to all property owners within 500-feet of the property with the legal notice attached. The public will be given the opportunity to speak in favor of, or objection to, your Rezone request at the public hearing. Once the public hearing is closed, the Town Board will make their determination in regards to approval. Should the Rezone be approved by the Town Board, you will then work with the Building Department to secure all necessary permits, etc. before proceeding further, as the building permit process is under their jurisdiction. Good luck to you as you continue through the process. Thank you everyone for joining in on our meeting this evening, whether in-person or remotely.
May I please have a motion to adjourn.

L. Szewczyk: Motion to adjourn.
D. Schiedel: Second.

Roll Call Vote: All in Favor…Carried

Chair: Good night everyone.

Respectfully submitted by:
Debra L. Wilson