

**Town of Smithville**  
**Planning Board Meeting Minutes**  
**February 6, 2019**

Planning Board Chair, Shane Butler, called the Planning Board Meeting to order at 7:00 p.m.

**Planning Board Members:** Chair, Shane Butler, Robert Brooks, Adam Whitbeck, Pamela Holcomb, and Julie Hatfield

**Planning Board Members Absent/Excused:**

**Others in Attendance:** Lori Eaton, Planning Board Clerk, Alison Owens, Town Board Clerk, and Highway Superintendent, Vince Witkowski.

**7:00** Call to order by Chair Butler.

**Review and Approval of Minutes:**

Incomplete minutes were accidentally emailed to Planning Board members. Chair Butler explained that the only corrections were to include the names of the residents who attended the January meeting. The corrected minutes were to be emailed to all Planning Board members. Bob Brooks moved to approve corrected minutes. 2<sup>nd</sup> by Adam Whitbeck. All Ayes.

**New Business:**

**Call for New Business by Chair Butler:**

Highway Superintendent Witkowski voiced concerns with the current Road Use Agreement. He has received complaints from companies who are refusing to pay a permit fee since they already pay a Highway Use Tax. Mr. Witkowski believes the \$100 permit fee should be replaced with a \$1,000 bond. He stated that the companies he's spoken with would prefer a \$1,000 bond because they believe they will be respectful of the roads and will receive that money back. Mr. Witkowski thinks that if someone is logging without a permit, the landowner should be liable for any damage.

Mr. Witkowski proposed revising the Road Use Agreement to read more like McDonough's Road Preservation Local Law. Mr. Brooks pointed out a previous version of the Smithville agreement is worded as Town of Smithville Road Preservation Local Law. Pam Holcomb informed Mr. Brooks that he was referring to an outdated version, and that is was updated in 2017 to read Road Use Agreement.

When selling timber to more than one company, Mr. Witkowski referred to the current Road Use Agreement which states: Any damage (to a Town road) should be the responsibility of the landowner. He also pointed out that according to the current Road Use Agreement, he can call up Code Enforcement Officer Steve Fox and tell him that someone is logging without a permit, but Mr. Fox will probably say that it's a town issue. Mr. Witkowski admitted to not knowing all of the legalities. He also believes that the landowner or contractor needs to be responsible for the bond. The truckers should not be liable since they already pay a highway-use tax.

Pam Holcomb asked Town Clerk Owens if the \$1,000 bond would need to be kept in an interest-bearing account and be kept separate from town funds. Clerk Owens replied that she thinks it would be deposited and held in the Town fund. Ms. Holcomb suggested looking into the interest issue.

Town Clerk Owens questioned Mr. Witkowski if there is a subcontractor involved, is the subcontractor responsible or the contractor? Mr. Witkowski said the contractor would be responsible.

Chair Butler stated that just as with homeowner grants at Chenango County, Chenango County is the actual contractor and whatever our subcontractor does, the County is responsible.

Mr. Witkowski mentioned logging taking place near the town bookkeeper, Virginia Smith, and he does not know if a permit was issued.

Mr. Witkowski also asked the Planning Board members if he has the authority to ask if a permit has been obtained when logging is taking place on a County road but a Town road is being traveled to haul. He said that according to the current Smithville Road Use Agreement, if a permit is obtained in Smithville, either the landowner or contractor is supposed to come to the Highway Superintendent and discuss where the landing is going to be, the site distance, and which roads will be used.

Chair Butler reiterated that the Road Use Agreement is not a logging permit; it is more of a road preservation agreement. According to Smithville's Attorney, a Road Preservation *agreement* was more enforceable than a *law*. Mr. Witkowski asked if loggers are refusing to pay the current fee, how will this be enforced? He also asked the Planning Board members where the rule stands regarding County roads being used in the town of Smithville. Mr. Brooks said that Smithville is simply concerned with town roads, not the county or state roads. Chair Butler stated, "State law allows each town to enforce laws that protect their roads which is well within their legality of the municipality."

According to the current Road Use Agreement, the Highway Superintendent has the right to shut the operation down if protocol has not been adhered to. If this does not work, Mr. Witkowski said he will call the police.

Mr. Witkowski points out that loggers are grossing out at roughly 80,000 pounds. He asked about tandem and tri-axle trucks hauling sap with 4,000 gallon tanks on them that are in the same weight class. He believes they are actually doing more damage to the roads because they are traveling the roads when the thaw is on.

Chair Butler said maple producers are exempt due to Ag and Markets Law. Highway Superintendent Witkowski stated that timber laws are considered agricultural, as well. Chair Butler informed Mr. Witkowski that he works for the Chenango County Planning Department, so he will call the Department of State and ask them where log and maple syrup haulers fall within this law.

Mr. Witkowski said that he read Smithville's agreement and it mentions loggers, anyone opening up a gravel pit, mining, and gas wells etc.... Based on his experience, the gas well companies will create roads a thousand times better than the roads we currently have. Mr. Witkowski just wants the agreement to include everyone and not exclude anyone. Mr. Brooks said the road use issue began several years ago because a particular logger destroyed a Town road and someone said that if you're going to take someone to court, you better have a law to fall back on.

Mr. Witkowski told of an instance when he was logging in nearby towns and asked prior to beginning if he needed any permit and was told no. Then the Highway Dept. pulled in and asks what he was doing. There was one logger who used a skidder and used the road as his personal driveway and ended up crushing a culvert pipe that he didn't see. Mr. Brooks stated that it's difficult to define what is to be covered, and that everyone wants to be exempt. Mr. Brooks states that Smithville is trying to make the agreement as user-friendly as possible. However, the main issues are who does it apply to, who doesn't it apply to, and why are they exempt? Chair Butler said that it comes down to which laws exempt certain activities. Chair Butler said that according to Ag and Markets Law, a dairy hauler and fuel truckers are completely exempt. Pam Holcomb pointed out that they are coming out of a driveway, not coming out of a field. Mr. Witkowski told of private driveways that are being used to bring logs out and that this issue should be brought to the Highway Superintendent

Mr. Witkowski stressed that his job is safety. If there are culvert pipes needed for their log landing, installation of these pipes needs to meet with his specifications. He asked when the job is done, is it the job of the contractor to remove them or does the Town have to pay for that and charge them a fee?

Mr. Witkowski hasn't talked with Nick Drew in Greene on this issue, but he knows that Mr. Drew usually puts the driveways in so that he knows they're done properly. Pam Holcomb suggested that Mr. Witkowski check with Pete Raymond, Supervisor for Greene.

Mr. Witkowski stated whether it's a County road or State road, they should still have to pay the \$100 permit fee. If for no other reason, than to cover the Town Clerk's time. Pam Holcomb asked if the Town of Smithville had a lawyer and Town Clerk Owens said yes, and that he approved Smithville's current Road Use Agreement. Bob Brooks suggested that perhaps since the lawyer is in Vestal, he's not familiar with logging and permits. When Town Clerk Owens asked Mr. Witkowski how McDonough enforces their agreement, he said the Highway Superintendent has the right to shut down a job. Mr. Witkowski read from the Smithville Agreement that said if someone is logging without a permit, there is a \$1,000 fine. Chair Butler

said that's why we have the law and that we would then rely on the Town Justice to do his job and do it properly.

Bob Brooks informed Mr. Witkowski that revising the Road Use Agreement is not going to happen quickly. Town Clerk Owens added that revising the wording to the Road Use Agreement will have to undergo a public hearing. Changing the fee, however, does not require a public hearing. Chair Butler informed Mr. Witkowski that he will incorporate the revisions in time for the next Planning Board meeting. He will then email the revised version to all who attended the meeting and present the draft at the next Planning Board meeting. If it is approved, he will present it to the Town Board at the next meeting and then a public hearing would be scheduled for the month of April. Town Clerk Owens suggested that even though other Road Use Agreements were reviewed prior to writing Smithville's current one, she recommends that Chair Butler again review Road Use Agreements in place within other towns in Chenango County. Pam Holcomb suggested asking if other towns are enforcing their County roads and State roads within their town? Chair Butler said the Town of Smyrna discusses the routes taken with the company as to avoid town roads. Mr. Witkowski said the gas companies are already doing this and believes that the chosen route should be the responsibility of the Highway Superintendent. If people don't approve of his chosen route, he has the right to stop them. If damage is done, at least we have the bond. Chair Butler pointed out that the amount of the bond will be set by the Town Board. He also mentioned that Oxford has a General Liability Insurance Policy of \$5,000,000.

Town Clerk Owens stated events held on Town of Smithville property require an insurance form as long as they have a DBA. Town Clerk Owens said that it would not be unreasonable to expect a DBA.

Chair Butler mentioned that the reason the Town of Plymouth adopted a Road Use Agreement was because drillers were coming into Smyrna via Town of Plymouth roads.

Pam Holcomb suggested that Mr. Witkowski ask other Highway Superintendents how they enforce their agreements. He said he would be meeting with someone later in the week.

A major concern for Highway Superintendent Witkowski is that he has a small budget to work with, and he believes \$1,000 could be better spent on a main road as opposed to "fixing a back road that has been damaged by loggers."

Chair Butler assured Mr. Witkowski that he will be reviewing the matter and it will be discussed at the next planning board meeting.

**7:43** Chair Butler called for any other concerns.

### **Old Business:**

**7:52** Chair Butler asked for any updates. Chair Butler also asked that Planning Board members volunteer to attend the Town Board Meetings. He will be creating a sign-up sheet.

**Adjournment: 7:53** Bob Brooks made a motion to adjourn. This was 2<sup>nd</sup> by Pam Holcomb.

Respectfully submitted,

Lori Eaton  
Planning Board Clerk

**Next Planning Board Meeting is March 6, 2019 at 7:00**