

**Town of Charlton
Saratoga County
Meeting of the Town Board**

PUBLIC HEARING

AMENDING THE TOWN OF CHARLTON
ZONING ORDINANCE ADOPTED NOVEMBER 13, 2000

**December 1, 2014
7:00 PM**

The Public Hearing for the proposed Local Law amending the Town of Charlton Zoning Ordinance adopted November 13, 2000 was held at 7:00 pm at the Charlton Town Hall, and called to order by Supervisor Grattidge.

Present: Councilman Grasso, Councilman Lippiello, Councilman Hodgkins, Councilman Verola, Supervisor Grattidge, Town Clerk Brenda Mills, Attorney Van Vranken.

Supervisor Grattidge introduced the Board and gave a brief outline of the purpose and procedures for the hearing. He asked those wishing to speak to sign in.

Town Clerk Mills read the following Legal Notice and confirmed that it was published in the official newspaper, The Daily Gazette on Monday, November 3, 2014:

TOWN OF CHARLTON
COUNTY OF SARATOGA
STATE OF NEW YORK

RESOLUTION NO. 168

October 27, 2014

**A RESOLUTION SCHEDULING A PUBLIC HEARING ON
PROPOSED LOCAL LAW NO. 1, OF 2014 OF THE
TOWN OF CHARLTON AMENDING THE TOWN OF CHARLTON
ZONING ORDINANCE ADOPTED NOVEMBER 13, 2000**

WHEREAS, a Local Law being proposed as Local Law No. 1 of 2014, a copy of which is attached to this resolution, was introduced at this Town Board meeting, October 27, 2014, by a member of the Town Board of the Town of Charlton, and

WHEREAS, the Town Board desires to hold a public hearing with respect to the adoption of said Local Law.

NOW THEREFORE, BE IT RESOLVED, that the following Notice of Public Hearing amending the current Charlton Zoning Ordinance shall be published in the Daily Gazette as soon as possible:

“PLEASE TAKE NOTICE that a public hearing will be held by the Town Board of the Town of Charlton on Monday, December 1, 2014, at 7:00 p.m. at the Charlton Town Hall located at 758 Charlton Road, Charlton, New York, regarding the adoption of a Local Law of the Town of Charlton for the year 2014 which would amend the Town of Charlton Zoning Ordinance as set forth below.

PLEASE TAKE FURTHER NOTICE that the environmental

significance of the proposed Local Law will be reviewed at said public hearing.

Any resident of the Town of Charlton shall be entitled to be heard at such public hearing. Copies of said proposed Local Law shall be available in written form at the Town of Charlton Town Clerk’s Office located in the Charlton Town Hall and also on the Town of Charlton website.”

BE IT FURTHER RESOLVED, that the Town Clerk is directed to cause public notice of said hearing as provided by law.

Moved by	Councilman Verola	Voting:	Councilman Grasso	Aye
			Councilman Hodgkins	Aye
Seconded by	Councilman Grasso		Councilman Lippiello	Aye
			Councilman Verola	Aye
			Supervisor Grattidge	Aye

I certify that this is a true and exact copy of this original as passed by the Town Board of the Town of Charlton on

Dated: October 27, 2014

Brenda Mills, Town Clerk

Town Clerk Mills verified that legal notices for the Public Hearing were sent to the following Town Clerks of the: Town of Ballston, Town of Galway, Town of Glenville, Town of Amsterdam, Town of Milton, as well as the Village Clerk of Ballston Spa, Schenectady County Clerk, Montgomery County Clerk, Saratoga County Clerk, Saratoga County Board of Supervisors and the Saratoga County Planning Board.

Attorney Van Vranken gave a summary of the process of passing a Local Law. He said that there has been a Zoning Review Committee which began working on recommendations for changes to the zoning law for the past six to eight years. He stated that the purpose of the hearing was to give the community a chance to speak for or against the items presented. Attorney Van Vranken said that if the Board decides to make significant changes to any of the items presented, a 2nd Public Hearing would need to be held. If the Board decides not to make any significant changes to the information presented, the Board can choose to vote to approve them and the Local Law will be passed.

Councilman Grasso thanked the public for coming out tonight, and he thanked those individuals including those on the ZORC Committee, Planning Board, ZBA, ECC, Town Engineer, Town Counsel for the Planning and Town Boards, and former Board members for their time and effort in helping with the recommended changes.

Councilman Grasso said that the purpose for making changes in the Zoning Ordinance is to make sure that it is consistent with the Comprehensive Plan and the Farmland Protection Plan. The Board also saw an opportunity to make the Town’s septic regulations more consistent with the State’s regulations. There is currently nothing in our Zoning regarding cell towers and solar arrays, and is something that the Board wants to make sure are addressed. They also wanted to make it user-friendly for residents and the Boards interpreting them. There are also inconsistencies within the current Ordinance and the Board wishes to fix the inconsistencies.

Councilman Grasso said that written comments have been received regarding the proposed changes, from the following: Zoning Board, Town Engineer, Zoning Officer, William Fyvie, Planning Board, Montemoranos, Jim Sevinsky and Chip Ellms. All of the comments will be part of the record and will be considered as well as any comments made tonight or received in writing in the next week. In terms of the future zoning changes, the Board looks at whether these are taking us in the right direction, are they

helping the Town move forward. Anytime that you are making comprehensive changes of this significance, you never get it perfect. It may not be the last time that the Board needs to delve into the Zoning and modify things to make sure that it is serving the residents as it should. The Board is not looking to drastically expand the scope of these changes by any comments that are made tonight. The Board will consider other changes in the future and he encouraged residents to continue to bring their thoughts and ideas of how the zoning can be further approved beyond what is being presented tonight, that the Board can consider in the future.

Councilman Grasso read the following summary of changes which handouts were provided to those present:

Summary of Proposed Zoning Text Changes (8/21/14):

Page 6: "Purpose" modified to reflect more of the goals in the Comprehensive Plan.

Page 7: Intent modified based on last substantial zoning changes in 2000. Simplified wording to facilitate future amendments.

Pages 8-15: Minor changes to some of the Definitions.

Page 18: Changes to Permitted Use Table. Added Banquet Facility (Exceptional Use Permit); Solar Arrays (Permitted) and Telecommunication Facilities (Exceptional Use Permit).

Page 19: Changes to the Bulk zoning requirements in R/A and A Zones:

Changed minimum width in Residential zone from 150' to 200'.

Reduced pond setback from 4050' to 10'.

Only non-wetland (upland) areas count toward meeting minimum lot size requirement. The location of NYSDEC and Federal wetlands will therefore need to be determined during Planning Board review, which is customary.

Changed minimum dairy farm size from 50 acres to 25 acres, livestock farm from 25 acres to 10 acres

Clarified 5 acres required for keeping of horses

****Pages 21-28:** Modified septic regulations to eliminate Charlton specific requirements, except for the Town's maximum 45 minute percolation rate. Clarified use of imported fill to meet percolation rate not permitted. Septic designs will now just have to comply with standard NYSDEC and NYSDOH requirements. This is consistent with what's used in most municipalities.

Page 31: Prohibits LED or Neon signs.

Page 34: Clarified in both Residential/Agricultural District and Agricultural District, 5 acres is required for keeping of horses.

Page 40: Clarified enforcement action of Code Enforcement Officer.

Page 42: Allows emergency use of trailer or motor home.

Page 62: Adds requirements for Stables used for the boarding of horses to be subject to an Exceptional Use Permit, and for Bed and Breakfasts to be subject to an Exceptional Use Permit.

Page 64 : Increases the maximum penalty for offenses from \$50 to \$500.

Page 147: Adds whole new Appendix B-13, relating to regulation of Telecommunication Towers throughout Town.

Page 148: Deletes the exemption that co-locations wouldn't require Exceptional use Permit. Co-locations will still require Exceptional Use Permit giving TB, ZBA or PB ability to review the application.

Page 157: Adds whole new Appendix B – 14, relating to regulation of Solar Arrays throughout Town.

Page 161: Requires Site Plan Review by the Planning Board for all ground mounted solar collectors. Also stipulates setbacks from solar arrays in each zoning district, as follows:

i. Residential Districts

Side Yard Setback: 50 feet

Rear Yard Setback: 50 feet

No ground mounted or free standing solar collectors shall be permitted in the Front Yard

ii. Residential/Agricultural Districts

Side Yard Setback: 50 feet

Rear Yard Setback: 50 feet

Front Yard Setback: 200 feet

iii. Agricultural Districts

Side Yard Setback: 50 feet

Rear Yard Setback: 50 feet

Front Yard Setback: 200 feet

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****Councilman Grasso expounded on this issue as follows -** Substantial modifications to the Town's septic regulations have been made. The purpose is to provide improved consistency between what the Town and State requires. The State has continually updated their design manual, commonly referred to the DOH Appendix 75A which is documented in their design manual. For years the Town of Charlton has had their own set of septic regulations which have not dovetailed well with the State's regulations and it has caused a lot of confusion for applicants and the Town Engineer to try to enforce what is legal and what is appropriate. We are actually peeling back most of the Town specific regulations. We eliminated the Charlton's special septic design regulations that require at least 3 feet from the bottom of the tile field to ground water and 5 feet to bedrock. Now we rely exclusively on State regulations that require 2 feet to ground water or 2 feet to bedrock. We will still allow use of fill for septic systems. We will now permit each of the 3 fill system types allowed by the State in their design manual, to be used in the Town of Charlton. These include a shallow absorption trench system, raised system and a mound system. Currently the only kind the Town allows is for the typical raised system which had additional requirements in terms of ground water or bedrock separation, as well as the tapers required. It was often difficult to site such a system within an otherwise approvable building lot. Because of the less stringent siting requirements and reduced setback, the changes in septic may allow development in the Town whether it would have otherwise maybe not been permitted. Another expected result would be reduced septic system costs. The Board has more confidence in today's technologies for septic designs and the State regulations that have kept up with those designs. We feel like we are at a point to rely more heavily on the State's design guidance. If the State chooses to update their regulations, those would become automatically applicable within the Town. The minimum percolation rate of 45 minutes of native soils is a Town of Charlton specific regulation that has been in place for at least the past 20 years. This is not subject to be changed. The State regulations require percolation quicker than 1 inch in 60 minutes, so the Town is more stringent than that. There has been a lot of misinformation circulating in the past few weeks about restricting the use of fill materials for septic systems which is definitely not the case. In actuality we are trying to encourage the use of fill placement for septic systems with the 3 septic types mentioned. All 3 types require fill to be placed. It has to be mechanically compacted or go through a freeze thaw cycle. We will rely on the State regulations regarding the placement of fill.

Councilman Grasso asked the floor to approach the microphone to address the Board with their comments.

Supervisor Grattidge called those that signed in to speak.

Mary Elizabeth Slevin, Attorney for Joe and Elizabeth Montemorano - She spoke on behalf of the Montemoranos. She had recently sent a letter concerning changes with the Zoning. Their primary concern is with Article 4 Section 3. She said that the problem is with the language as written. She said that Councilman Grasso's verbal clarification was helpful, but that is not what the proposed language says. It says that fill will not be permitted, which will have an effect on over 80% of the properties in Charlton, including her client's property. They have had a project that they are trying to proceed with in the Town, and they have tried to work with the Town with respect with the existing Zoning requirements regarding sanitary waste facilities. They have invested a large amount of money to bring in fill in accordance with what they felt were their directions from the ZBA. Now we find out that based on the wording in the proposed ordinance that fill may no longer be able to be used. Based on the interpretation that the Town offers this evening that fill will be permitted and percolation tests can be done on the area where fill has been provided, notwithstanding the language that is in the ordinance. Then our concern would go away. She felt that it would behoove the Town to clarify the language because it is inconsistent with what was

said this evening. It doesn't accord with the language that is proposed to be adopted. Zoning Ordinance are in derogation with common law rights. It is important the Town Board to ensure that only the minimum restrictions are imposed on properties to satisfy the TBs obligation to look out for the public health, safety and welfare. The language in the ordinance provides no opportunity for a variance from the Towns restrictions. It is important to make sure that if fill is to be permitted, that the wording in the ordinance is clear.

Supervisor Grattidge said that the current ordinance requires that the percolation rate of 45 minutes or less is required when you are designing a system. You have to do a test on the native soil to know whether you need a raised system or not. So before you consider bringing in fill, and initial test must be done. The Town has had for the last 30 years, the ordinance states on page 17 that a percolation test of greater than 45 minutes cannot be subdivided and cannot be used in a septic system for waste disposal. The State regulation under alternative systems says under site requirements for raised systems, there is at least 1 foot of original soil with a faster than 60 minutes percolation rate above any impervious soil layers or bedrock but not more than 2 foot. That is the language that clarifies the initial perk test. That is where we are talking about the 45 minute regulation. The Town chose to stay with the 45 minutes because of problems that the Town has had with soils that perked longer than 45 minutes. If we can clean up the language with that requirement, we will do it. But, you have to have a soil that perks in 45 minutes or less before you consider designing a raised septic system.

Joe Montemorano – The Town of Charlton's soil summary maps show a low percentage of properties that would pass a perk test. We have contractors that can attest to the fact that when they put in septic systems, they had failed to perk in the first 12 or 24 inches. So I don't understand why we have been putting in all of these raised systems because the soil failed to perk. Now, what we think the Board is saying that if you fail the perk, you can't build a raised system. Your soil summaries do show that a large percentage of soils have failed. That means that my 2 lots that I want to subdivide, my grandchildren can never live next to me now, because we can't do a raised system because those 12 inches fail to perk.

Elizabeth Montemorano – Our land failed everywhere. It did not pass a perk when our own home was built and our home septic was put in. Because it failed to perk, fill had to be brought in for the raised system that was allowed before. I don't understand why now if you are saying I can bring in fill, it has to perk when it never passed before. The raised system was permitted before. So we are either going to be allowed a raised system, whether the soil perks or not. It is pretty important if I am going to pay taxes on a dead piece of land that I cannot do anything with. I can't give it to my kids to build on, I can't do a project on it or essentially do anything on it.

Todd Stewart - He stated that he is a homebuilder living in the Town of Ballston. He applauded the Board for going with the State standards for septic system because he feels that the State knows what they are doing. He said there are many systems in the area that are substandard native soils that have been modified and are still working fine to this day. His concern is with the language. The 45 minute perk that the Town is proposing is not consistent with the State. If the Town is adopting the rest of the State code, why are we sticking with the 45 minutes? The Department of Health also says that someone can bring in non-native soil and lay it over the native soil and let it sit through a season and they consider that to be native soil. He asked that the Town Board consider that as well. He feels people should be able to build on that soil or it will leave a lot of people with useless land. He also said that he hopes that the Board is considering grandfathering in land that has already been subdivided when it comes to the non-wetland area counting towards the 2 acre building requirements.

Jim Sevinsky - He said that he has pole mounted solar arrays and they have been working well, providing the electricity that he needs for his home and farm. He feels that we should be encouraging renewable energy sources. He said he wanted to encourage the Town to welcome additional residential solar arrays. He feels that the proposed law is still too restrictive. The new restrictions would limit a lot of properties in this Town from being able to use residential solar. He disagrees with the pole mounted setbacks and restrictions on where they can be and the size they would be. He would like the Board to rethink accessory uses of property. He does not feel that every application needs to go before the Planning Board and feels that this is an excessive bureaucratic step. He said that he has given the Board additional information in writing. Copy is attached.

Suzanne Carreker-Voigt – She said that she understands that we want to keep Charlton rural and quaint, but feels that the Town is getting over bureaucratic and over regulated. She agrees with Mr. Sevinsky's opinion regarding solar arrays. She is an advocate of horse ownership. She is very concerned with the 5 acre minimum, and does not feel that there is any rational behind it. The current law has 3 acres in one area and 5 acres in another. She has responsible horse owners with less than 5 acres and irresponsible horse owners with more than 5 acres. The issue is not the acreage, but the responsible waste management, fencing and that the animals are fed. She would like to see that removed.

Andrew La Patra – He said he is confused with the septic issue. He feels that the Town should go along with the State regulations and be consistent with most municipalities. He feels that the Town should have a 60 minute perk test.

Mary Kadlecak - She thanked the Board for all of the work done to bring these changes to this point. She said updating our Zoning Laws give the residents the chance to maintain citizen shaping of our community and the chance to keep up with our economic and environmental world. Regarding solar arrays, she feels that allowing for rooftop solar is a good first step. She feels that the proposed setbacks for ground & Pole mounts are too restrictive. She feels that Planning Board review and screening add expense and complexity. She said that allowing a ground mount array, it benefits more than the owner. It helps to stabilize the power grid and the efficiency of the grid. She suggested that once you get used to the solar installations, they are like any other accessory use. She would like to see the Zoning Law treat solar arrays as any other accessory use.

David Adams - Mr. Adams said that he was part of the group that got the Town to form the ZORC Committee and he was on the Committee that drafted the first Zoning Ordinance and was the Chairman of the Board of Appeals. He was also on the Town Board and worked on several revisions. His concern is with the special uses. A provision has been added that gives the Board of Appeals the authority to add special uses. He does not think that that should be done. There was a lot of thought given to what special uses were appropriate to maintaining the character of Charlton. He feels that the authority should lie with the elected Town Board and not the appointed Board. Also, regarding the flood control regulations, he feels that we should reference the federal regulations, rather than to incorporate them into the Ordinance. If a federal change occurs, you have to change the Ordinance, but by making reference to the latest version of whatever the federal regulations are, you would not have to change the Ordinance.

Carl Pickett - The proposed law states that any part of wetlands would not be included in the acreage of a building lot. Supervisor Grattidge said that the proposal is for there to be a minimum of 2 acres of dry land required for a building lot. Mr. Pickett said that when the State measures for wetlands, there is a peripheral area of 100 feet that is considered part of it. He said that that could be a large area on a person's land. He feels that the wetland should be considered part of the lot size, otherwise you are negating a person's right to build on their land which otherwise would be buildable. Councilman Grasso said the buffer area around wetlands can still be counted towards your minimum lot size. Mr. Pickett says that you have to get a permit from the State to use it.

Doug Flynn - He said he applauded the Board for adopting the State septic regulations. He feels that the Board should adopt the entire regulation with the 60 minute perk rate as well.

Dawn Szurek – She said it was difficult for her to find the full draft of the proposed Zoning Ordinance on website.

Dean Durst – He said he is very happy to see many of the revisions. He would like to see the full State regulations for septic. He agrees with Dave Adams regarding the Federal changes. He likes the pond setbacks, and feels that a regular building permit should be enough for solar arrays.

Suzanne Carreker-Voigt asked if the Board could have an informal time to answer questions. Supervisor Grattidge encouraged the public to attend the regular Town Board's meeting twice a month or if needed, by appointment.

Marilyn Phillips said that she will send her comments in writing. She thought putting the changes on the front page of the website would be helpful.

12/1/14 Public Hearing minutes approved 12/29/14

Supervisor Grattidge said that no vote was scheduled for tonight. The Board will further consider what was said tonight, and discuss them in a future workshop.

The Board decided to allow written comments for the next 14 days.

No further discussion ensued.

RESOLUTION #182

Adjournment of Public Hearing

Motion by Councilman Verola

Seconded by Councilman Hodgkins

BE IT RESOLVED that the Public Hearing be adjourned at 8:05 p.m. with the provision that written comments be accepted for the next 14 days.

VOTE: All Ayes, No Nays, *CARRIED*.

Respectfully Submitted,

Brenda Mills
Town Clerk