

Testimony of a Public Hearing of the Town of Union Planning Board held relative to Special Use Permit for an Agri-Business at 1838 Nanticoke Drive, on October 17, 2023, at 7:04 p.m.

PRESENT: Members present: L. Miller, Chairman  
M. Jaros  
S. McLain  
T. Crowley  
C. Bullock  
T. Crowley  
G. Ksenak

Others present: Marina Lane  
Mike Maione  
Liz Fisher  
Francis Fisher  
Jim Wilson  
Kelly Mellander  
Adam Pelto  
Chris Pelto  
Connor Gehl  
Joseph Gehl  
Charles Wage  
Samuel Kim  
Kurt Eschbach  
Kevin Baker  
April Buechner  
Benson Zhing  
Domenico Fata

MS. MILLER: We will open the Public Hearing, and I will read the public notice.

The Town of Union Planning Board will conduct a public hearing relative to an application by Michael Maione for a special use permit for an Agri-Business at 1838 Nanticoke Drive (tax map number 125.05-1-29). The property is zoned Rural Residential, and an agri-business requires a special use permit. Because the project is for agricultural purposes, the action is a Type II Action under the State Environmental Quality Review Act (SEQRA), and no further environmental review is required.

An agri-business is any business which is designed to directly support or is engaged in the production operations of an agricultural operation, the manufacture or distribution of farm equipment and supplies, or the processing, storage, and distribution of farm commodities.

The public hearing will take place on Tuesday, October 17, 2023, at 7:00 PM in the Town Board Meeting Room on the second floor of the Town of Union Office Building located at 3111 East Main Street, Endwell, New York. The application is available for review in the Town of Union Planning Department during normal business hours (8 AM to 4 PM).

Individuals with special needs requiring accommodations may contact the Planning Department at (607) 786-2926 at least 24 hours prior to the scheduled public hearing.  
Lisa B. Miller, Planning Board Chair

MS. LANE: Mr. Maione, would you like to give two or three sentences beyond what I said. I think everyone knows it is a corn farm.

MR. MAIONE: I have multiple plants up there.

MS. MILLER: Any questions?

MR. GEHL: My name is Connor Gehl and I am a crop farmer on the property. There are other businesses there. I am the one who is growing the corn and all of that. What I am wondering is, there are two different crops and two separate farms on the property. So they are two separate farms. Does each farmer have to apply for this or just the property owner?

MS. LANE: Just the property owner, primary. He is the one who submitted the application and it is for any crop.

MR. GEHL: Okay. So I don't need to do anything else?

MS. LANE: No. But Connor, will you please spell your last name for me?

MR. GEHL: I am Joseph Gehl, Connor's father, and I am also a real estate broker. This caught my attention because nowhere else in Broome County does farmland need a special use permit. This is already coded as property classification, 120 Field Crops, rural residential. The residence is no longer in use at the property. It is a gutted two-story home. It would need permits to bring that back to a two-story home. So what we are really talking about is 151 acres of raw agricultural land, but it is zoned for field crops, which is permitted by the USDA for Connor's farm.

MS. LANE: Can I respond?

MR. GEHL: Sure.

MS. LANE: Well actually all that land that is currently zoned Rural Residential is as a consequence of the former director of planning, deciding that there were not really any farms in the Town of Union, so he wanted to change the name from Agricultural to Rural Residential. It is a misnomer because of course there are farms here. And what

happens to us is that people buy a house somewhere and they say this isn't supposed to be farming; it is Rural Residential. But actually if you look in our code book, and remember this is the Town of Union, not Broome County. In the town of Union, an Agri-Business, even animal husbandry as a business, requires a special permit.

MR. GEHL: Can I have a copy of this?

MS. LANE: Sure, and you can even look it up online, the Town website under chapter 300. So just to counter what you said, you do not need to have a residence. Hi Charlie, I recognize you; I am not recognizing you to speak I just recognize you. So technically speaking, any farm that becomes a farm since this Zoning Code adopted in 2011, then they should technically really have to get an Agri-Business. Mr. Kashou, who owns the former Sports Dome, and now the Sports Center, wanted to have ten chickens and he had to get a Special Use Permit for ten chickens. Until we can change the code that is the way it is. I would like to change the Code and I would like to change it back to Agricultural, now that the person who changed it to Rural Residential is retired, but we are just under the gun and have so much to do.

MS. MILLER: Anyone else?

MR. BAKER: I am Kevin Baker and actually I was out driving around with my daughter the other day and we go past the corn field and she says, Dad I wouldn't eat that. So then I asked her why not and she said because they spray.

MS. LANE: They what?

MR. BAKER: They spray. So they spray chemicals like Roundup. So when I saw this I spoke to my daughter about that and she says, why don't more people know that? I answered, I don't know honey, that's a really good question. Roundup goes into our air, it goes into our water. So really I just happened to drive past there and I saw that there was a town board meeting, and I had no idea what this was about. But I figured I would show up because my daughter asked me why more people don't know. And I am not going to talk to her about things that I am not going to stand for myself. I believe that our actions speak louder than our words, and I think people in the government could make a big change. Connor, I don't know how you farm. I just saw a documentary today, and I recommend if you haven't seen it, Connor, you go and see it. And also I recommend if this is something you can do is to ask the land commission to work with you.

MS. LANE: Thank-you for expressing your concerns about the pesticides.

MR. GEHL: My name is Connor Gehl and I am twenty-two years old and I am a Certified Pesticide Applicator from the New York State DEC, and I also have a bachelor's degree in agronomy and agricultural science from SUNY Cobleskill. I would like to state that there is no concern with the pesticides that I use. There really should not be any concerns with pesticides because they are all EPA registered and reviewed by the New York DEC. So there is nothing to worry about. They are not getting into the water. I have to follow my SPDES permits. They cannot get into the water by the way I spray. The only way there is contamination in the water is if you deliberately dump the chemical in water. If you use the proper dilution rates, which I have to by law, and the DEC comes and checks all my records. They cannot harm any water, well, or anything. I have setbacks of 100 feet from any well which I do. I have maps and GPS to prove it. And the question of where do the chemicals go? The sunlight actually destroys the chemical after it does its job on the plants. It does not get absorbed into the plants, it does not go into the air or anything. There are so many misconceptions about Roundup. Roundup cannot get into the groundwater whatsoever. That's not how it works. Basically, there is nothing to worry about, the DEC is the one who passes these and they are very strict on top of the EPA, so there really is no need for anyone to be concerned about pesticides in our water in the Town of Union.

MS. LANE: Please be respectful of each other. Thank you.

MR. WAGE: Charlie Wage, I live at 281 Twist Run Road, Endicott. I am a neighbor to the farm and I will be sixty-nine next month. I have watched that farm my whole life and I would think that farm would be subject to a prior existing non-conforming use to your new code. There have been crops every year for the last sixty-nine years that I have been around. I have known the Dubois family and I have met the people who are on it now. Other than that, the only concern I have that the crop they are suggesting with the pot plants, is still a Class 1 felony under federal law. So New York has passed it but it can still be a problem anytime the government decides to change policy.

MS. LANE: Well number one, not anymore. I am not familiar with the license, but if they have a license to grow it, then they have a license to grow it. We do not have a police force in the Town of Union to go out and check on that. If we can't see if from the road, we don't know, but not only that, but when the whole cannabis business came about a couple of years ago we were very clearly told that we cannot regulate where cannabis is grown as long as it is being grown under the permit they

get from New York State. So that is not necessarily what triggered this. This is something that we need to get a grip on in general with everybody. So I didn't quite understand; it sounds like you are supportive of the farm, but I believe that nobody was farming it for several years.

MR. WAGE: Mihonichecks farmed it every year. After Mihonichecks, Joey Keychuck did it. After Joey Keychuck, the Tollisons, I'm not sure, but the hay never went wild.

MS. LANE: We felt it had gone latent for a couple of years. After 3 months...

MR. WAGE: They may not have been real active for a year while the estate was being settled, and that's a short period of time. Under New York estate planning law you have to wait six months before you can settle an estate.

MR. JAROS: If I can interject for a minute, I think you made a couple of points here. One, you were correct with the federal law with cannabis not being recognized by the federal government and you are absolutely correct. So with that concern you are absolutely correct, but with that other one, we are just making sure that everything is in compliance in code because of the way the code is set up. Now Mr. Maione, you rent out the two pieces of property?

MR. MAIONE: It's my son.

MR. JAROS: So he rents one and he grows corn?

MR. GEHL: I rent from Carol Clark, the property owner. I rent out all the tillable land on both sides of the road. It's all one parcel I believe.

MR. JAROS: And on that one parcel are you growing just corn?

MR. GEHL: Just field crops.

MR. JAROS: And the other parcel is where the marijuana is being grown?

MR. GEHL: There is a 3-acre piece I don't touch up top and I don't use any of the buildings either. I only use the tillable acres.

MR. JAROS: So I guess that is just a clarification.

MR. WAGE: Just a note on the record. It's still a pass under federal law. I am an attorney and I lecture on the law and government policy at Binghamton University and at Cornell University School of Law, and I have a law office out of Montrose, PA.

MR. JAROS: So you know and we are in agreement when it comes to the federal law. I just wanted to make sure since you mentioned that, since you

mentioned the federal law, and I said you are absolutely correct. I think that is the part that Marina glossed over. Thank you.

MR. WAGE: Okay, thank you.

MS. MILLER: Anyone else?

MR. FISHER: My name is Francis Fisher and I live at 1810 Nanticoke Drive. My only concern is the marijuana which has nothing to with this here today. But, the stuff that is put on that corn and whatever they put on that corn, liquid manure, it all runs downhill into the streams. Anybody will tell you that it goes in the ground and what goes in the ground goes downhill. That's my only concern. By Nanticoke Creek and the Bradley Creek. There are two creeks there.

MS. MILLER: Thank you.

MR. GEHL: I just want to personally state that I don't use liquid manure and I think you are referring to prior farmers. I don't do that because as you mentioned there is runoff. I use dry fertilizer and it is a whole complicated process. But anyway, I don't use manure and I just wanted to state that in case there is any concern with any other matters.

MR. FISHER: Well I had it happen. I am just telling you it happens. You might not do it but the guy behind you might put corn in and he might do it. And Whittaker's Farm up on Route 26, he is the one who brought it down and put it on the last time.

MS. MILLER: Well that will be up to the enforcement people.

MS. LANE: That would be a DEC issue and we do not have that type of authority. But we appreciate that you voiced your opinion.

MR. FISHER: Well you don't live here, that's what I am saying.

MS. LANE: We can't do property to property etcetera; that is not under our jurisdiction. The DEC would be the one that you would have to call if you have a concern.

MR. FISHER: Another story is that the state police regulate marijuana that is growing on that hill. What they do is go over in a helicopter and I actually have seen them land once up there. Somebody told me that they are supposed to put a fence around that and I don't think they ever did.

MR. GEHL: There is supposed to be a perimeter around it that is supposed to be impermeable. There is only a gate with a chain on it and you can drive right around it. I am not against it, I'm neutral on the subject; I am just stating since I go up there for my crops, you could walk right up to the marijuana field; there is nothing protecting it regarding New

York State. I have access to the field crops, so I often go in their territory I just wanted to state that you can easily access the marijuana.

MR. JAROS: Mr. Maione, does your son have a New York State license to grow the marijuana?

MR. MAIONE: Yes.

MR. JAROS: Okay, thank you.

MS. LANE: So I just heard that a particular little tobacco shop in this area was just raided by the police. We cannot go in and raid the tobacco shop; we don't have that authority, it's the police. In this case, if have a concern about the runoff material associated with the farm, you need to call the DEC. It's just like a few months ago, almost a year ago now, somebody cut down a whole lot of trees in their wetland and it broke everybody's heart, and we were told by the Army Corp of Engineers that they were allowed to do that. Much as we disagreed, but we didn't have that authority.

MR. JAROS: Mr. Fisher, if I could say thank you, because if you don't say something, we don't know. And if you don't say something to the DEC, they don't know.

MR. FISHER: Well I am going to tell you that the DEC has a bigger problem than ours, because that sewage treatment plant. If anyone went over to that river, they would shut that place down. There is nothing but toilet paper coming down through that river. And everybody knows that you can't take a fish out of that river; it's polluted. That's our DEC.

MS. MILLER: Any other questions or comments?

Mr. WILSON: Jim Wilson, 3834 Country Club Road. Just a question, can you walk me through the process? I am trying to just wrap my head around the changes that are potentially occurring here for agri-business. Could you just explain that and comment on an example of this occurring.

MS. LANE: Of an agri-business license? No. This is the first one.

MR. WILSON: This will be the first one. When I read the description of an agri-business, I don't want to read it, but it seems quite nebulous and I'm trying to understand the terms within that and the limitations. The old code had farm stands and was very specific. Can you express an opinion of what an agri-business would be limited to?

MS. LANE: When we know that someone is going to be undertaking this as a primary business, and again it would have to be new, we were under the belief that particular farm had been quiet for several years. We

were not aware that people were actively farming it. We thought this was a new farming practice. We know that young Mr. Maione had been growing corn there, and that he actually also tried hemp. We have been asking Mr. Maione to come in to get the appropriate Special Use Permit, which is really not supposed to be a big deal. It is sort like a ministerial action to say, yes, you can have that. We are going to go through another Special Permit shortly, the same thing, it is not really an issue, it is just that our code book says that you need to have a Special Use Permit to have a photography studio in an Industrial zoning district.

MR. WILSON: So is it a zoning change of 151 acres?

MS. LANE: It is not a zoning change, otherwise this would have been a rezoning petition. This is a Special Use Permit to have a farm that is producing product that is going to be possibly, I don't know the full details, processed. I don't know that there is any processing going on, but we do know that he has been sowing corn because he wanted to have a farm stand. We have been asking him to get this particular Special Use Permit for a couple of years, and finally I managed to convince him to come in and get the Special Use Permit, thinking that it was not going to be a big deal. It is existing, it is going to stay just the way it is and nothing is changing. We are just bringing him into conformance.

MR. WILSON: But that wasn't my question. My question is what describes an agri-business?

MS. LANE: Why do you want to take time up now to find out about that? Are you against the project?

MR. WILSON: I am a resident and its 151 acres ...

MS. LANE: Right now we have other projects on the agenda and I would be happy to speak with you another time. When we got a new code enforcement officer, John Freer as you know, we had talked about what all the different codes meant, and we said that Agri-business, just as Lisa read the announcement, is when you have a commodity and you are growing it, and then you are going to sell it.

MR. WILSON: If there was manure grown, or there was livestock on the field, or manure as an energy product, and this is a prime market for farms, would that be a permissible activity there? Would it be permissible to store 300 cattle and manure and sell excess electricity?

MS. LANE: With a Special Use Permit.

MR. WILSON: Would it be permissible to place photovoltaic on top of farm equipment if it's ancillary to generating energy for the farm?



MS. LANE: With a Special Use Permit.

MR. WILSON: Would it be permissible to have outdoor events, if it was ancillary to growing hops for brewing beer on the property?

MS. LANE: That would probably require a Special Use Permit. Did you have a reason for asking that?

MR. WILSON: I am asking because the statute is pretty unclear, it doesn't have limitations for what an agri-business would be.

MS. LANE: We have an outdoor entertainment section which is separate. Recreational and entertainment venues outdoors requires a Special Use Permit.

MR. WILSON: I am just reading the ancillary products of what is permissible, so if it is an ancillary product to the agri-business, I think it is relevant to ask the question. Because there could be many future uses that you should envision here and I am thinking about this if we are going to understand the process.

MS. LANE: I wish that everybody would comply with the code.

MR. JAROS: I think that it is just the idea that with every question you have, it sounds like you need a specific permit for it.

MR. WILSON: So I'm asking you, does the Town require a permit for those activities? So I am asking you if there was amplified outdoor music, we have been in this situation before, is that a permissible activity for a farm stand or a pumpkin festival?

MR. JAROS: With a permit. Just like if you had a bar in Endwell, and they decided to have an outdoor festival, they would need a special permit for it.

MR. WILSON: But is that not what they're applying for? If I read the definition it seems pretty ambiguous.

MR. JAROS: You are talking about for the farm?

MR. WILSON: For the agri-business.

MR. JAROS: Yes, we are bringing them into compliance.

MS. LANE: For an agri-business. Outdoor entertainment is a special use permit. I don't why you are belaboring that. Right now we have someone who has a farm and we want to bring him into conformance as we have been asking him to do. We know he is selling product, at one point it was corn, and I know he has tried to sell hemp. We know he was going to process it and try to sell it. It was a measly little Special Use Permit, to just be in compliance with the code. If I had time to run around as a code enforcement officer, and ask every single farm

that started up since 2011, to come in and get their Special Use Permit, it would be an awful lot of my time. But we know Mike, he has worked with us on other projects, we asked him to do it, and he finally agreed.

MR. WILSON: I am asking if the Special Use Permit places limitations and does it describe how the limitations are placed in this process in advance of approval? If that doesn't exist, I think that could answer my question.

MS. LANE: Does anyone want to say anything?

MR. KSENAK: Are you questioning the activity that is going on here? Or are you questioning, speculating in the future that some event may happen, and would it be relevant to what is going on here?

MR. WILSON: I will give you a past example. There was, I believe, a Special Use Permit for an Outdoor seating area and that didn't envision or show some forethought and that caused questions after the fact in the regulatory process. And that was down here with the golf, with Fairways. So I am just asking in this process. . .

MR. KSENAK: Are we opening up the door for anything they want to do down the road, and that is not the case. Anything that goes outside of the format or boundaries of the permit they are receiving, they would have to reapply and the Board would review it. If it tripped zoning requirements then that would be reviewed. If it tripped a new constituent that was being used in the way of a chemical, that would have to be reviewed. The system is set up so that if something new comes in that it would be addressed with the applicable agencies and review itself.

MR. WILSON: So let me see if I understand it. So when drafting the Special Use Permit you will insert language to limit it to the activity that is discussed.

MR. KSENAK: No, I think that what you are requesting is that we put in some type of phrase or requirement, that in the event of any changes, you must come forward and reapply for a new permit. Is that what you are asking, so that I understand it? I am trying to verbalize it the best that I can.

MR. WILSON: I guess I'm not really understanding the process. It seems like a Special Use Permit should have predefined conditions of what it is actually authorizing and explicitly what it is not authorizing. But it seems like we're confused.

MS. LANE: Jim, let me address the Fairways Indoor Golf Center. They were told when they got their permit for the outdoor seating that outdoor music wasn't permitted. They were told at that meeting. And then the way

that they got around it is that they put in the garage door and then they had the band stand right at the edge of the garage door, such that we got numerous complaints. Outdoor music is not permitted. We have talked with them about a one time a year event that would be a different type of a Special Use Permit, but in general, those wonderful young men tried to do something that they knew that they were not really supposed to do, and we had to stop them. We let them go through the month of September because they had advertised it, then they had to stop. It was a completely different situation.

MR. WILSON: Did the permit spell that out?

MS. MILLER: I think we are getting off task. We are here as a public hearing to approve or deny or question the farming end of it. I think the rest of it should be done at a different time.

MR. WAGE: I just have one quick question about the agriculture. What I recall growing up working on these farms, is that the farmers generally rotate crops, year to year, like hay one year, corn the next, then oats the next to heal the field. And this has been predominately hemp and corn. Will the approval that you give them tonight allow them to rotate crops if they want to bring in another one?

MS. LANE: It's for farming. Charlie, you might recall, you spoke to me a few years ago about cattle farming.

MR. WAGE: Yes, I know.

MS. LANE: And I told you that it was going to require a Special Use Permit. I am just saying this for people who are asking why we are requiring it. That would have been a new farm and I told you then that it would have required a Special Use Permit. Just like we are trying to do this, what was supposed to be a very simple process. We don't regulate what he plants and we don't regulate the chemicals he uses.

MR. GEHL: I just have a quick question. I have some other fields in the Town of Union. Am I the one responsible for applying for a permit, or should I contact the land owner and have them apply for the permit?

MS. LANE: You can do it.

MR. BAKER: I am just going to say one last thing since I heard that this is a vote. I'm just curious to know if Connor has to wear any special equipment when he's farming or what the protocol is when Connor sprays his fields with his pesticides? The DEC doesn't live in this community.

MS. MILLER: That is not really what we are here for. We have no authority over anything he uses. That is up to the EPA and they will inspect it. The Planning Board has no say whatever.

MS. LANE:                So you make sure that you buy organic vegetables.  
MR. BAKER:             Actually I grow my own without spraying them.  
MS. LANE:                Good for you.  
MS. MILLER:             If there is no one else then we will close the public hearing.

Public Hearing concluded: 7:37 p.m.

I, CAROL M. KRAWCZYK, do hereby certify that the foregoing transcript of a Public Hearing of the Town of Union Planning Board is a true, accurate, and complete transcript of my stenographic notes/tape taken at the above time and place.

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CAROL M. KRAWCZYK