

Town of Danby Conservation Advisory Council (CAC)

Minutes of Video Conference (Zoom) Meeting on
Tuesday, July 13, 2021
Danby, New York

Council Members present: Clare Fewtrell (chair), Joel Gagnon, George Adams, Don Schaufler, Margaret Corbit, Jonathan Zisk, Mary Woodsen, Brittany Legaly

Council Members absent:

Others present: Elizabeth Keokosky (secretary), Ronda Roaring (Danby resident), Katharine Hunter (Danby resident and former CAC member)

Zoom Meeting was officially called to order at 7:08.

Deletions or Additions to Agenda: Fewtrell is moving item 3 (Logging Ordinance) on Agenda to second place

Privilege of the Floor (PoF): Adams let the group know that he is leaving CAC for another organization (where he is on the board) that meets at the same time CAC does. He also let the group know that a disease is being passed on to birds from birdfeeders and that birdfeeders should be taken down. (Afternote: Salmonellosis - clean feeders and baths with a 10% bleach solution.)

Approval Minutes MOTION for June 8, 2021

Gagnon moved to approve

Zisk seconded

All voted yes except Legaly, who abstained, and Schaufler, who was having technical difficulties.

REPORTS AND UPDATES

1. Easement Signs - Adams

Adams reported that there was a computer graphics technical problem with art work that is holding up sign production, and that he will finish this task of the Easement signs before he leaves. Janice

(the town clerk) will be unavailable to help since she will be out of town 3 weeks on family business.

2. Logging Ordinance (from now on referred to as Timber Harvesting Ordinance) – Adams, Zisk, and Schaufler

(Secretary's note: this is especially detailed so that Adams can use suggestions in updating current draft version)

Adams reported on Version 5.7 of Logging Ordinance (which members found very readable and improved). Code Enforcement Officer, Steve Cortright, had been invited to attend this discussion but he had a conflicting meeting elsewhere.

Adams said that his goal was to decide which questions were left for CAC to answer and which questions had to be answered by the town lawyer.

He mentioned that Cortright, who had been given this version to read, had been concerned about protection of local roads when State crews were logging in the State Forest - without a permit being required. He would have liked to impose some sort of liability on the State. But Adams thought that activity might be exempt from the ruling we are discussing.

Adams posed the question "When do we decide this is complete enough to pass on to town board?"

Gagnon reminded group that we are only recommending this ordinance to the Town Board and they then have to approve it, and they are the ones to send it to and communicate with the town lawyer.

Performance Bond: Adams said that Zisk had pointed out that we don't have enough specifics on performance bonds. But Adams thought a lawyer could put that in properly. Gagnon said that the town has been using a method of imposing a performance bond for highway use for a long time, dating back to fracking rules, and was hoping Adams could have gotten that information from the Highway Department. At a minimum that could be referenced.

Highway Department: Schaufler had yet to get hold of the Highway Department for this information; he said he would. Adams said we needed buy-in from Highway Department, as we had from Cortright, who had said he considered the law enforceable as written. But Cortright might be an exception, since he comes from a logging family, so we have to make sure that any Code Enforcement Officer could feel comfortable enforcing it.

Definitions: Cortright said that the document needed definitions. He dealt with people who didn't know what words like BMP (Best Management Practices) mean. It turns out that the document cited as a reference has a glossary. But Cortright said that you needed to define words like standard and full cord, so there is a need to provide additional definitions not in the referenced document.

Fewtrell questioned Zisk and Schaufler, the others on the committee, about how they felt about the current version. Both seemed satisfied but Schaufler brought up a few problems.

Multiple harvest contractors: Schaufler mentioned that the logger and the trucker may be two different entities. That needs to be fine-tuned. He thought it was asking too much information for the trucker to tell the Town ahead of time which roads will be used, but if the Town can shut down roads, he's OK with it. Fewtrell said that we need to know who the truckers are. Adams said that we need to know which subcontractors are being used, so the same mechanism can be applied – we just need to replace the word “logger” with “harvest contractors.” Corbit and Fewtrell emphasized getting full contractor contact information so s/he can be reached immediately if need be.

Corbit wanted to change reference to 1) low density zone - to modify or take it out altogether and just say the Town. This was agreed on. 2) in the permitting process add the time frame – explicitly say that logging cannot start until a permit has been issued and the permit will have an expiration date. A decision to issue or deny a permit should occur within a specified period of time after the application is submitted. Recognizing that time matters, information packages will be sent to local contractors so they will be aware that Danby is now requiring permits for timber harvesting. The statement about logging

not starting until a permit has been issued may need repeating. Also it was noted that a statement saying that the permit will have an expiration date needs to be added as it was inadvertently left out of the current version.

Does group support sending Logging Ordinance to town board when Adams adds in these corrections? (see Appendix I)

Corbit moved to recommend

Zisk seconded

Unanimous in favor

Gagnon added that it doesn't have to be in final form but just in the ball park. He said when it is in its final form there will be a public forum and an opportunity for public comment.

Gagnon asked when document would be ready? Since typos and changes still had to be incorporated, it was decided that it would tentatively be put on town board agenda for July 21st. It was agreed that the name would be Timber Harvesting (law/ordinance?), since this is more inclusive than "Logging".

3. Easement Website & Rack Cards – Margaret Corbit & Mary Woodsen

Progress is not being made on the new website but there is a new page for CAC on the old website. Corbit reminded CAC members that someone with access to the full version of Adobe Acrobat can make revisions to a pdf file. Fewtrell said that she would contact the Town Planner, who might have this version.

4. Easement Updates – Clare Fewtrell

Wimsatt easement: Gagnon told the group that he and the lawyer had signed the Wimsatt easement. Jeffrey Wimsatt hadn't signed as yet. The easement had been approved at one of the June Town Board meetings.

Fewtrell asked that Schaufler take charge of arranging the annual easement inspections and distributing the new easement . Zisk and Corbit volunteered to help Schaufler. Gagnon suggested that Adams coordinate with Cindy in main office about delivery of easement

signs. David West should be asked if they could be stored in his office until they have been distributed.

Fewtrell reminded group that now was a good time to get back to other easements that had been started and also potential new ones including CAC members that had said they were interested.

Gagnon noted that Dan Hoffman and Mark and Micaela Karlsen might not need the Planned Development Zone because of zoning rule changes that will replace it. They need to accommodate putting in 3 dwellings.

5. Changes to Easement Template – Clare Fewtrell & Joel Gagnon

The changes being discussed were the result of rethinking the Easement Template during the recent Wimsatt Easement negotiations and also other language and updates that improve and make more explicit the usability of the template. During the lengthy discussion of this agenda item, Fewtrell screen-shared the marked-up template document and comments in “Review” mode displaying all the tracked changes. Each change was discussed separately.

Some high lights of this discussion were:

It was decided that Gagnon’s references to useful individual solutions from past easements would not be included in the template and would be discussed as a separate document at the next CAC meeting

Article I: added “Restricted Forest Use Zone” which had been approved by the Town lawyer but not yet by the Town Board.

Article II: Clarification was made on the fact that use zones follow a hierarchy and the Residential and Active Use Zone includes everything allowed in the other Zones. It reflects the hierarchal order of zones by increasing restriction, so farm activities are included in the Residential and Active Use Zone.

Article II: discussion of 2.03 Forest and Agriculture Management Zone -C4 Applying fertilizers, fungicides, pesticides, herbicides, their regulation, and what is sustainable and what is enforceable by CAC.

Took out “only in accordance with State and Federal Regulations” as being too limiting. And discussion of C6 Best Management Practices (BMP).

Gagnon moved to send the Easement Template document to Town Board with changes as discussed in Review mode.

Cobit seconded

Unanimous, except for absence of Schaufler, who left the meeting due to an imminent storm.

Gagnon said he would put it on the Town Board agenda for July 21st.

Regenerative Agriculture and Role Conservation Organizations can Play in Promoting Climate-resilient Agriculture – Elizabeth Keokosky

Due to the overtime on the meeting this agenda item was put off until the August meeting but there was a preliminary agreement on the importance of Agricultural Conservation easements, and Keokosky was given the go-ahead to start initial organization of a series of Agricultural Education presentations.

Fewtrell requested that a write-up on this be sent to all members

6. Planning Group Working Group Reports – Joel Gagnon, Jonathan Zisk & Elizabeth Keokosky

This item wasn't covered – please go to the minutes of these groups on their webpages at the Danby town website. Or go to next Monday's Town board meeting at 7pm (it will also will be recorded).

Thanks and Appreciation to George Adams who is leaving.

There was no Executive session

Next Meeting via Zoom is on August 10th at 7p.m.

Adjournment at 9:25

Submitted by Elizabeth Keokosky (Secretary)

Appendix I – Timber Harvesting Law Draft 6.1 (submitted to Town Board)

Local Law to Amend the Zoning Ordinance

Related to Timber Harvesting in the Town of Danby, New York

Be it enacted by the Town Board of the Town of Danby in the County of Tompkins, as follows:

Section 1. Authority

This local law is enacted pursuant to the provisions of the Municipal Home Rule Law (MHRL) of the State of New York and any other pertinent provisions of the Laws of the State of New York.

Section 2. Statement of Purpose

The purpose of this law is to promote the health and safety of the residents of the Town of Danby by protecting the natural environment as affected by timber harvesting. The Town recognizes that timber resources are of significant value and will be harvested. The Town also recognizes that if harvesting practices are carried out poorly, they can result in significant and direct environmental damage to the property and to the adjacent lands and waters. This law requires landowners and their agents to be responsible for following Best Management Practices when harvesting timber. Proper management practices will limit subsequent environmental damage, particularly from soil erosion and sediment-laden run-off. Therefore, the following requirements are intended to regulate those harvesting activities that are most likely to cause environmental damage, such as crossing streams, working on steep hillsides, clearings to stack, load or move logs and to provide for reclamation.

Section 3. Amendments to the Zoning Ordinance

A. The Town of Danby Zoning Ordinance, Article III: entitled ‘Definitions,’ Section 301 – DEFINED TERMS is amended by adding the following definitions:

1. **Cord** All use of cords of wood as a measure will mean standard full cords, not face cords.
2. **Board Foot** is a measure of finished lumber, with thickness of 1 inch and area of one square foot. As it is customary to measure the volume of a harvest in board feet while the timber is still in the form of logs, there are standardized methods to approximate the board feet contained in a log. This law will use {Doyle, International,???) rule for determining board feet.
3. **Hazard of Damage** will be used to mean any potential to cause pollution of streams or wetlands, loss of top soil and erosion where activity has removed all vegetation, contamination of soil or aquifers with petroleum products, sedimentation, altered runoff patterns, decreased biodiversity, loss of rare or endangered plants and animals, destruction of critical habitat and damage to public roads in the Town.
4. **Timber Harvest Operator** is used to mean the person or company contracted to fell and move timber within the harvested area and prepare it for loading, be that saw logs or firewood. This may be the same or a separate operator from the trucking company that moves the harvested timber over Town roads.

5. Other terminology with specified usage or meaning in the context of a Timber Harvest will be interpreted according to the Glossary that is part of the Best Management Practices publication incorporated by reference in part III.

B. The Town of Danby Zoning Ordinance, Article VI: entitled 'Zone Regulations,' Section 600 – LOW DENSITY RESIDENTIAL ZONE is amended by adding the following to Sub-section 1. PERMITTED PRINCIPAL USES:

d. Forest management and other forest resource uses. Timber harvesting is subject to the requirements in § 715.

[CAC anticipates significant modification to the Town's zoning maps and rules. This ¶ B and C stipulation of where the Timber Harvest regulation fits within the structure of the Town's laws is thus subject to change and its best placement is left to the Town Board and legal guidance]

C. Suggested placement of this law within the zoning laws. The Town of Danby Zoning Ordinance, Article VII: Special Regulations is amended by adding a new Section 715, entitled 'TIMBER HARVESTING as follows:

D. The Text of the Timber Harvesting Law:

I - Conflict with Other Provisions

Whenever the requirements of this law are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances or laws, the most restrictive shall govern.

II – When Is a Permit Required?

A. Exempt Activities

The following activities may be carried out without a permit:

1. The felling of trees that pose a hazard to roads, utilities or buildings or any other harm and any cutting of trees ordinarily incidental to property maintenance or landscaping work.
2. The cutting of less than 4000 board feet or 10 cords of firewood per year.
3. The clearing of a building site as approved in an issued building permit. The extent of the cleared area shall be delineated in the soil disturbance forms that supported the building permit application.
4. **Harvesting timber from land owned by the state of New York performed under the supervision of the NY DEC.**

[CAC recognizes that timber harvesting activity carried out under NYS DEC supervision carries significant risk of, and has been the cause of, some damage to the Town's roads. We have some concern as to whether existing Town laws regulating heavy loads and road use can be applied in these cases because of the exceptions for "agricultural use" provided in the road use law.

Regulatory means to hold the harvest operators or truckers responsible for damage should be devised but may not be part of this law]

B. Non-Exempt Activities

Because each of these activities poses some hazard of damage, work that will involve any of them shall be carried out only if a permit is issued. It will be a violation of this law to perform these activities without a permit.

1. Any activity associated with the harvest that involves the movement of heavily loaded trucks or other heavy equipment using Town roads.
2. Any construction or alteration of temporary culverts or shoulders of Town roads to create access to the area harvested or to facilitate loading of trucks and equipment.
3. Any activity that will involve temporary piling of logs within 50 feet of the road centerline.
4. Harvesting of more than 4000 board feet or 10 cords of firewood.
5. Moving equipment and logs across any permanent stream.

C. It is hereby required that a timber harvesting permit application be filed with the Town Code Enforcement Officer by anyone desiring to harvest timber by any means or to any extent that is not exempt from this law. The property owner and the Timber Harvest Operator(s) shall apply for such permit jointly.

D. No person, firm, partnership, corporation or other entity shall engage in any timber harvesting activity, including felling, skidding, modification of roadside ditches for access or clearing trails and landings, unless the aforesaid entity has obtained a timber harvesting permit issued by the Town Code Enforcement Officer.

E. It will be a violation of this law if the application is found to understate the extent, location, insurance coverages required, worker safety considerations, hazard of damage or volume of the harvest to such a degree that the permit issued cannot fully provide for the protection of the water bodies, the workers, the roads and the neighboring properties.

F. Permits must be prominently posted at the point of road access to/from logged area.

III – Best Management Practices Required

It shall be a violation of this law if any timber harvesting pursuant to this Section fails, in the judgment of the Code Enforcement Officer, to adhere to the Best Management Practices [BMP] described in the Chemung County Soil and Water Conservation District's publication "*Best Management Practices During Timber Harvesting Operations*".

IV – The Permit

The Timber Harvest Permit will identify the persons responsible for the harvest and state the period during which the permit is in force. It will be issued when a complete and accurate Timber Harvest Application has been submitted to the Code Enforcement Office and found to

satisfy all requirements of this law. If the application is found deficient in any way, a Request for Supplemental Information will be issued. In either case, the Code Enforcement Office will provide its finding within 10 business days after receipt of the application.

V – The Timber Harvest Application

The Timber Harvest Application will state the information required for a permit:

1. Applicants' certificate of insurance or bond for \$250,000/\$500,000 property damage and personal liability, specifically covering damage to roadways and culverts is required, as is Proof of Workers' Compensation Insurance coverage..
2. Names, addresses, phone numbers and email addresses of landowner and for each trucking firm, timber harvest operator and forester who will perform the harvest. This must be contact information that can be used for emergencies and violation notices that need a response in less than 24 hours.
3. A plan of the property to be harvested, in printed or electronic form. The basis of this plan shall be a topographic map which has been supplemented with the following:
 - a) Tax parcel number[s] for the parcel[s] containing the area to be harvested.
 - b) Property boundaries, streams, stream crossings, landings, road access.
 - c) Area to be logged, clearly marked, showing setbacks from roads and water bodies.
 - d) Explicitly planned egress and routing of any trucks expected to have GVW greater than 8 tons per axle,
4. Planned dates for start and completion of harvest.
5. Estimate of cords, tons, or board feet of timber to be harvested.
6. An application fee of \$100 or other amount that the Town Board may set.
7. A description of the specific Best Management Practices that will be used to protect the stream crossings, skid and haul roads, landings and access points to public roads and any maps, descriptions, or drawings of particular engineered measures which address hazards of damage that the Code Enforcement Officer identifies to the applicant, including a revegetation plan to prevent erosion of steep harvest locations.
8. If the timber harvesting is done under contract, the names and contact information of the parties and the effective dates of the contract.
9. If the timber harvest is the execution of a timber sale that has been recorded with the county clerk, the document control number of the registration.
10. Contact information for the insurer who provided the certificate of insurance, if such information is not present on the certificate.

VI . The Permitting Process

1. Property owner obtains an application packet from Town Clerk which will contain:
 - a. application forms,
 - b. a copy of this law,
 - c. a copy of Best Management Practices During Timber Harvesting Operations
 - d. a map of the Department of Environmental Conservation [DEC] listed streams in the Town
 - e. a list of resources to aid land owners in achieving a safe and economical harvest, which may include NYS DEC cooperating consultant foresters, Cornell Cooperative Extension contact, Tompkins County Soil and Water Conservation District [SWCD] contact, DEC district 7 contact,

description of the advantages of having a forester oversee the harvesting and sale of timber, description of the benefits of having a harvest conducted under a contract, and advice on how to choose a Timber Harvest Operator.

2. property owner and timber harvest operator(s), if any, complete the Timber Harvest Application and submit it, with fee, to the Code Enforcement Officer

3. The Code Enforcement Officer may circulate the permit application

a. to Town Planner for questions of adequate stormwater control,

b. to Conservation Advisory Council for questions about protected or sensitive wetlands or vegetation and to certify that a harvest does not violate the terms of any conservation easement.

c. to Highway Department for questions about risk of impact to Town roads, culverts and roadside drains and for a determination of a performance bond amount proportional to such risks, if any, which bond should be posted as a condition of the permit.

4. If the Code Enforcement Officer finds hazards of damage of the proposed harvest against which the application's documentation of the harvest and of BMPs do not assure adequate safeguards, the Code Enforcement Officer may issue a Request for Supplemental Information such as but not limited to a Stormwater Pollution Protection Plan (SWPPP), engineering drawings specifying how stream crossings will protect water quality, *etc.* Then the Timber Harvest Operator, Forester and Owner will file this supplemental documentation as amendments to their Timber Harvest Application.

5. If the application meets the criteria for a Timber Harvest Permit, including any supplemental documents requested by the Code enforcement Officer and if any required bond has been posted, the Code Enforcement Officer will issue a permit and send a copy of the approved permit to NYS DEC Region #7 Office, Tompkins County Soil and Water Conservation District, the Town Highway Superintendent, the Town Planning Department and the contiguous landowners.

VII - Regulation and Penalties for Offenses

A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this ordinance.

B. The Code Enforcement Officer, may with due cause and without hindrance, reasonably enter, examine and survey all grounds affected by the timber harvest in order to ascertain whether BMP are being followed and whether uncontrolled stormwater runoff is contaminating water bodies on or outside of the planned harvest area.

C. It will be a violation of this law if the Highway Superintendent finds that harvest activity is damaging roads beyond normal wear and tear. The Highway Superintendent may specify measures to remediate damage or suspend the harvesting operation until suitable weather conditions restore load-bearing capacity of the road.

D. Release of bond: If a performance bond was posted, it shall be returned at conclusion of the harvest providing :

1. The Code Enforcement Officer determines that any required clean-up or restoration work has been performed in compliance with the BMP.
2. The highway department determines that roads, ditches and access points are undamaged or if damaged, satisfactorily repaired.

[Does the Town already have a mechanism for taking and securely holding a bond that is to be returned later upon satisfaction of conditions?]

E. Upon notification by the Code Enforcement Officer to the applicant of any violation hereunder, the timber-harvesting permit granted to such applicant shall be suspended and/or revoked. Upon suspension or revocation, as the case may be, all operations shall immediately cease, and the applicant shall take immediate steps to address the violation. Such suspension or revocation notice may contain conditions to be met to obtain reinstatement of the permit.

F. Any person violating any provision of this law shall be guilty of an offense punishable by a fine set by the Code Enforcement Officer which may not to exceed \$10,000.00 or other amount that had been established by vote of the Town Board at the time the permit was issued.

G. Pursuant to 150.20 of the Criminal Procedure law and in accordance with section 10(4)(a) of the Municipal Home Rule Law, the Code Enforcement Officer of the Town is hereby authorized to issue and serve appearance tickets in respect to any violation of this law.

H. In addition to or as an alternative to the above provided penalties, the Town Board may also maintain an action in the name of the Town in a court of competent jurisdiction to compel compliance with or restrain by injunction any violation of this law.