

**TOWN OF COXSACKIE PLANNING BOARD  
MINUTES OF SPECIAL MEETING  
September 27, 2023**

**CALL TO ORDER**

Chairman Bruce Haeussler called the meeting to order at the Coxsackie Town Office Building at 12:00 PM followed by the Pledge of Allegiance.

**ROLL CALL**

The following members were in attendance: Chairman Bruce Haeussler, Vice Chairman, Frank Gerrain, JoAnne Conway, Nathan Tailleur, Linda Deubert, William Whitbeck, Joseph Garland, Secretary Patty McIntyre, and Attorney Tal Rappleyea. A quorum was declared. Also, in attendance were John Halsted, Attorney Andy Brick, Bitta Albright, William Albright, and Suzanne Lewis.

**PUBLIC HEARING**

Chairman Haeussler reviewed the purpose of the meeting (to vote as to whether the Planning Board should continue with its appeal to the ZBA regarding CEO Ed Pebler’s decision that the mine is in compliance). He read a statement from the Association of Towns as follows: “the Attorney General’s office has opined that a planning board member must remain objective regarding cases in front of the planning board and if the planning board member has a personal interest in the application the member should recuse themselves regarding the application”. He then canvassed the board as to whether they felt that they would recuse themselves in this matter. Results as follows:

Linda Deubert – No	JoAnne Conway – No
Nathan Tailleur – No	Frank Gerrain – No
Bill Whitbeck – No	Joe Garland – No
Bruce Haeussler – No	

At 12:04pm Attorney Rappleyea asked for an attorney/client session with the board. The board returned at 12:15pm.

Chairman Haeussler introduced Attorney Andrew Brick who asked to speak to the board on behalf of Gallivan. Attorney Brick introduced himself and gave his background and experience with working with Planning and Zoning Boards across New York State. He had never come across a situation where a planning board appealed to the zoning board in his 28 years, and he feels that this is not possible. It is his opinion that a planning board does not have the power to interpret the local zoning laws and therefore does not have the authority to appeal. Individuals, however, can appeal. In addition, it is his opinion that some members of the board have a duty to recuse themselves from the vote. He also stated that the appeal is “time-barred”. State law says that an appeal must be made within 60 days of the CEO’s decision, and he produced a letter written by CEO Pebler written on June 9, 2022, stating that there are no violations making the appeal past the statute of limitations. Bill Whitbeck asked about NYS law 267A, paragraph 4 which states:

4. Hearing appeals. Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or

determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. Such appeal may be taken by any person aggrieved, or by an officer, department, board, or bureau of the town.

Attorney Rappleyea concurred with this. Regarding the letter from CEO Pebler, even though the Town could not find record of it or had not shared it with the planning board, the clock does not re-start, and the June 9, 2022, date stands. The lack of communication within the Town was again discussed, and the validity of the letter, since it was not supplied to the board from the Town, but rather from Gallivan.

There was no public input.

Bill Whitbeck asked Attorney Brick about whether Gallivan would have a right to mine the land that has been purchased along Rte. 81 surrounding the existing property. Attorney Brick stated that they could not expand beyond the existing footprint without a site plan.

A motion to withdraw the appeal challenging the CEO's inaction on the request from the Planning Board to shut down operations at Gallivan and appeal the non-conforming use status of Gallivan Mine was made by Joe Garland and seconded by Bruce Haeussler. Voting as follows:

Linda Deubert – Nay	JoAnne Conway – Nay
Nathan Tailleir – Abstained	Frank Gerrain – Nay
Bill Whitbeck – Abstained	Joe Garland – Abstained
Bruce Haeussler – Aye	

The motion failed. The Appeal will continue.

Chairman Haeussler stated as chairman he feels that as a matter of law the planning board should not continue, and he does not want to violate the law.

### **CLOSING**

A motion to close the meeting was made by Frank Gerrain and seconded by Bruce Haeussler at 12:44pm. All were in favor.

Respectfully submitted,

*Patricia McIntyre, Secretary*