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**Town of Lansing**

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**Zoning Board of Appeals Meeting**  
**Tuesday, December 13, 2022 6:30 PM**  
**Library Community Board Room- 27 Auburn Rd**

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**Present**

Judy Drake, Chair  
Mary Stoe  
Susan Tabrizi  
Jack Young

**Excused**

Richard Hayes

**Other Staff Present**

John Zepko, Planner                      Heather Dries, Planning Clerk

**Public Present**

No Public Present

**General Business**

Chair Judy Drake opened the meeting at 6:33pm.

**Action Item:**

**Town of Lansing Highway Department Building Replacement and Campus Renovation Project Request for Immunity from local land use review:**

A capital construction project of a New Highway Department Facility on a Town-Owned Parcel of Land in Lansing, New York, in and for the Town of Lansing, Tompkins County, New York, at 10 Town Barn Road (Tax Parcel Numbers 30.-1-16.12 and 30.-1-16.11) including original furnishings, equipment, machinery, apparatus, appurtenances, site improvements, and other incidental improvements in connection therewith requests immunity for a planned governmental project that falls squarely within the embrace of immunity, being a project already reviewed that provides statutorily mandated highway and emergency services.

**Summary of Discussion:**

- The Town Planner explained the reason for the meeting.
- The Zoning Board of Appeals discussed the project.
  - This property has maintained the same use for years and they do not see an issue with continuing the use.

**FINDINGS AND DECISION**  
**TOWN OF LANSING ZONING BOARD OF APPEALS**

40 **BACKGROUND INFORMATION**

41  
42  
43 Applicant and Owner: Variance No: 22-08  
44 Town of Lansing Zoning District: IR  
45 29 Auburn Rd Public Hearing Published on: N/A  
46 Lansing, NY 14882 600' Notices Mailed: N/A  
47  
48 Property Location: 10 Town Barn Rd  
49 Tax Parcel # 30.-1-16.12 and 30.-1-16.11  
50

51 **RESOLUTION AND FINDINGS**

52  
53 WHEREAS, the Town of Lansing is a municipal corporation duly organized and existing pursuant  
54 to the laws of the State of New York and having such powers and responsibilities pursuant to the  
55 provisions of the New York State Town Law and the Highway Law in conjunction with the Town's  
56 Highway Superintendent to provide for the care and maintenance of the Town's highways and  
57 bridges and to provide suitable places for the housing and storing of vehicles, machinery, tools and  
58 equipment owned by the Town for the effectuation of such purposes; and  
59

60 WHEREAS, the Town of Lansing is the owner of a parcel of real property (Tax Parcel Nos. 30.-1-  
61 16.12 and 30.-1-16.11), located on Town Barn Road, constituting approximately 17 acres of land  
62 that has been previously acquired and utilized by the Town and designated for municipal purposes  
63 ("subject premises"); and  
64

65 WHEREAS, the existing Town of Lansing Highway Department Building was constructed in 1968  
66 and is in need of an adequate repair, storage, and administrative, Salt/Sand Storage, and Fuel Storage  
67 facility in order to meet the needs of maintaining the public roadways of the Town of Lansing; and  
68

69 WHEREAS, the Town of Lansing, after an extensive multi-year process of selecting a qualified  
70 consultant and examining site selection options for constructing a new Town Highway facility, recently  
71 affirmed the existing location at 10 Town Barn Road as the subject parcel for the purposes of  
72 constructing a new Highway Department Building Replacement and Campus Renovation Project for  
73 the storage and operations needed by the Town of Lansing Highway Department, and;  
74

75 WHEREAS, the Town has, in accordance with the 2020 request for proposals process, selected  
76 Bergmann Architects, Engineers, and Planners, P.C. ("Bergmann") to prepare the required plans for  
77 a Highway Department Building Replacement and Campus Renovation Project to be constructed on  
78 the subject property; and  
79

80 WHEREAS, Bergmann has prepared preliminary plans for said facility which will be constructed in  
81 three phases, with Phase 1 consisting of construction of a 46,515 sf Facility including, but not  
82 necessarily limited to, administrative offices, break room, vehicle storage, maintenance and parts  
83 storage; and Phase 2 consisting of Staff / Equipment Relocation; and Phase 3 consisting of the  
84 existing building partial demolition and conversion to unheated Storage for trailers and other  
85 equipment; and  
86

87 WHEREAS, the subject property is located in the Town’s Industrial/Research (IR) zoning district in  
88 which  
89 such a highway facility is not a permitted, or specially permitted, use and it further, appears that  
90 some of the required construction for the facility on the site will not be in accordance with certain  
91 setback requirements for structures and improvements within the IR zoning district (“Bulk  
92 Regulations”), as set forth in the Town of Lansing Zoning Code; and  
93

94 WHEREAS, pursuant to the decision of the New York State Court of Appeals in the *Matter of*  
95 *County of Monroe*, 72 N.Y.2d 338 (1988), a “balancing of public interests analysis” (“Monroe  
96 Balancing Test”) is required to determine whether and to what extent, this project shall be exempt  
97 from the Town’s Zoning Code and use and bulk regulations and administrative approval from the  
98 Town of Lansing Zoning Board of Appeals; and  
99

100 **NOW, THEREFORE, BE IT**

101  
102 RESOLVED, that the Town of Lansing Zoning Board of Appeals has analyzed, considered and  
103 discussed the following criteria as required by *Matter of County of Monroe* in relation to the construction  
104 associated with the new Highway Department Building Replacement and Campus Renovation Project  
105 on the subject premises, and the Town of Lansing’s land use regulations, and hereby finds as follows  
106 with regard to each of the nine Monroe  
107 Balancing Test criteria:

108  
109 Factor #1: Whether there is an expression of legislative intent for the proposed action to be  
110 immune from local zoning oversight.  
111

112 The Town of Lansing Town Board is the municipal body solely responsible for the legislative  
113 and executive functions of the Town of Lansing. The Town of Lansing Planning Board and  
114 Zoning Board of Appeals are administrative boards of the Town of Lansing, whose members  
115 are appointed by the Lansing Town Board. This project is to enable a fully governmental  
116 task—the operation of the highway department—including to fulfill its duties to repair and  
117 maintain public highways and municipal building campuses, and further including the  
118 emergency services of snow and ice removal and treatment. The legislative scheme of the  
119 Town Law and the NYS Highway Law make this a core public service that is very much an  
120 emergency service in many aspects. Under NYS statutes, therefore, it is generally understood  
121 that these are the very functions that are considered exempt from local zoning and land use  
122 review under the County of Monroe standard (as was the case with the NYSDOT highway  
123 facility as well).  
124

125 Further, the town board, by including planners, consulting planners, the town engineer,  
126 consulting engineers, and many others upon these review committees, has evinced an intent  
127 to fully review and proceed with this project as designed, and not to have a critical  
128 governmental facility project subjected to discretionary review or delays, particularly given that  
129 the site plans are detailed and complete at this time and fully address any known issues that  
130 would normally be considered under any land use review process.  
131

132 Finally, it is suspected (but not definitively known) that the reason this particular governmental  
133 use is not an allowed use in the zone in which it is situate is because the town has always  
134 understood that this governmental use was not subject to local zoning and land use review. In

135 fact, there is no known record of zoning reviews or approvals for this site, including for recent  
136 projects, such as the re-design and expansion of the storage yard, or the older solar facility  
137 installations. It thus seems that the town has also considered this use and facility a  
138 governmental use that is not subject to land use review.

139  
140 Factor #2: The kind of function of land use involved and the extent of the public interest to  
141 be served.

142  
143 The construction associated with the Highway Department Building Replacement and  
144 Campus Renovation Project as a repair, storage, and administrative facility for the Town of  
145 Lansing Highway Department is a non-proprietary, governmental function which will serve  
146 the public interest by ensuring the continued and improved maintenance of public roadways  
147 under the jurisdiction of the Town Lansing’s Highway Department for the benefit of members  
148 of the public using said public roadways and the citizens of the Town of Lansing. Included  
149 services address emergency services, road maintenance, and maintenance and repair of public  
150 utilities like water and sewer. The maintenance of public roadways under the jurisdiction of  
151 the Town Highway Department is a statutory governmental function and obligation of the  
152 Town of Lansing Highway Department, and many of the services are emergency and utility  
153 services.

154  
155 Factor #3: The effect local land use regulation would have upon the enterprise concerned and  
156 the impact upon legitimate local interests.

157  
158 If the Town of Lansing Zoning Code Schedule I for the Industrial/Research (IR) Zoning  
159 District was to be applied “as written” to this project, the Town would be prohibited from  
160 siting the Highway Department Building on the subject property where it already exists unless  
161 either a variance to expand a lawful pre-existing use or a use variance could be obtained from  
162 the Town’s Zoning Board of Appeals. While this is perhaps non-sensical for a governmental  
163 use that has been in place for over 50 years and which is clearly consistent with uses in the  
164 zone in which the same is situate, being essentially a commercial-industrial use (e.g., a truck  
165 depot), subjecting a project that is necessary for the performance and delivery of core  
166 municipal purposes makes little sense, including in light of the above analyses already  
167 undertaken.

168  
169 Atop this, the process could be expensive and time consuming, with the outcome uncertain,  
170 at best (particularly under variance standards). The cure—to amend the zoning to fix a multi-  
171 decadal error—is equally problematic in terms of being speculative and untimely, particularly  
172 for this type of County of Monroe use. In addition, the facility, as preliminarily designed, could  
173 not be sited on the subject property in a manner fully compliant with the setback requirements  
174 of the Town of Lansing Zoning Code Schedule II for the Industrial/Research (IR) Zoning  
175 District and would also require area variance applications and approvals from the Zoning  
176 Board of Appeals, a process which would also be expensive and time consuming, with the  
177 outcome uncertain. Moreover, this variance could also require certain project modifications  
178 that are not feasible given the needs of the highway department and the town for a larger  
179 facility, all resulting in the potential for a highway facility which does not adequately meet the  
180 needs of the Town of Lansing Highway Department, with resulting adverse impacts upon the  
181 Town’s ability to maintain and improve their municipal highway systems in accordance with

182 the requirements of New York State law, resulting in possible dangers and other adverse  
183 impacts to the citizens of the Town and those travelling on the Town highways.

184  
185 Factor #4: The applicant's legislative grant of authority.

186  
187 New York State Town Law and Highway Law authorize and require the Town of Lansing to  
188 provide adequate facilities for the Town of Lansing Highway Department in aid of its  
189 responsibility to maintain those public roadways utilized by members of the general public  
190 which fall under the jurisdiction of the Town Highway Departments. Article 7 of the  
191 Highway Law specifically vests the Town Highway Superintendent with jurisdiction over the  
192 care of the town highways. The authority of the town to provide for these facilities and  
193 services is statutorily plenary, including under Town Law Article 4.

194  
195 Moreover, as noted above, the town also is imbued with substantial experience in project  
196 review and siting and causing redundant reviews by alternate agencies of the town does  
197 nothing relative to the governmental purposes here fulfilled that falls within the exceptions  
198 to the County of Monroe test. The town is not the type of agency that is incapable of  
199 undertaking a review, or which has no substantial experience in a land use planning, as may  
200 require additional internal reviews. See, e.g., Matter of County of Monroe, 82 NY2d 338, 343  
201 [1988]; Volunteer Fire Ass'n of Tappan, Inc. v. Town of Orangetown, N.Y.L.J. May 2, 2007,  
202 p. 22, col. 3 (Sup. Ct. Rockland Co. 2007), aff'd, 54 A.D.3d 850, 863 N.Y.S.2d 502 (2d Dept.  
203 2008) (fire departments have no intrinsic experience or authority with land use planning and  
204 thus may not fall under the County of Monroe standard when all factors are duly balanced).

205  
206 Factor #5: Alternate locations for the Highway Department storage facility in less restrictive  
207 zoning areas.

208  
209 The subject premises is the only Town-owned parcel located within the Town of Lansing  
210 suitable for the construction and maintenance of the facility and represents the most  
211 reasonable and efficient use of Town owned property in furtherance of the objectives of  
212 providing the Town of Lansing Highway Department with a consolidated highway facility  
213 location within the Town. Despite this, and as part of the project investigation, the Town  
214 evaluated several potential alternative sites for a new Highway Department facility. At least 3  
215 other sites were evaluated, and several site configurations considered as to this site.  
216 Consultants Bergmann Associates and the Town RFP Committee determined that there are  
217 no feasible alternate locations which meet the necessary objectives of the Town of Lansing  
218 Highway Department, and that this layout was the best overall layout given cost, traffic flow,  
219 needs, and available land.

220  
221 Moreover, it is believed that there are no zoning districts within the Town of Lansing in  
222 which a highway facility could be constructed in full compliance with the requirements of  
223 the Town Zoning Code (perhaps suggesting this is a “non-permitted” use precisely because  
224 it was not ever subjected to zoning, thereby explaining the exclusion of this use as an  
225 allowed use from its zone). Finally, the proposed Highway Department facility at the Town  
226 Barn Site is consistent with the existing current public service/highway department use and  
227 infrastructure at the site.

229 Finally, the least amount of impacts, changes, and costs are incurred by using the existing  
230 site, including because of its location, being in a high-impact IR zone, and not needing to  
231 disturb other lands or sites and build more roads, lots, and impervious new surfaces.  
232 Additionally, the town board approved a consolidated water district improvement  
233 specifically to get an additional main to Town Barn Road to be able to service the new  
234 facility with sprinklers for fire and risk management purposes. In sum, there are years of  
235 planning in play here, even beyond the 5 years these facilities have been evaluated and laid  
236 out.

237  
238 Factor #6: Alternative methods of providing the needed improvement.

239  
240 The construction of the new Highway Department facility as proposed represents the  
241 minimal infrastructure improvements necessary to promote increased use of the subject  
242 premises as a centralized Highway Department facility. There are no viable alternative  
243 methods of providing these improvements, and there is no way to catch-up with the past 50  
244 years, including in building design, maintenance, energy efficiency, or fire suppression than  
245 to upgrade and re-use some parts of the existing facility and construct a new operations barn  
246 and office space.

247  
248 This decision was made based upon thorough examinations of town needs, town equipment,  
249 personnel, operations, and the design and function of the proposed facilities by Bergmann  
250 Associates and the RFP committee, with approval from the town board, and thereafter from  
251 the Capital Investment Committee, with further general approval from the town board. To  
252 re-visit over 5 years of planning and site design, all at the cost of more time and money,  
253 would serve no valid land use purpose. Indeed, this is the precise point of the County of  
254 Monroe test, and why so many core governmental projects like this are in fact immune from  
255 such reviews. A review by a town agency of a town project already reviewed would be likely  
256 to be more of a redundancy than anything else (see Factor #5 analyses, above).

257  
258 Factor #7: Intergovernmental participation in the project development process.

259  
260 The past study, locational analyses, and site layout and design were subjected to rigorous  
261 review at multiple levels of the town government, with key personnel serving on both  
262 committees. This includes the town board, town engineer, town planners, town clerk,  
263 highway department, parks and recreation department, town bookkeeper, planning board,  
264 and town attorney, with additional input from others, such as Bergmann Associates and  
265 Municipal Solutions (finance). Atop this, the construction of the new highway facility will be  
266 overseen by members of the Town Board of the Town of Lansing, its engineers, and other  
267 retained professional consultants. The project will also require the review and approval of  
268 several outside jurisdictional agencies including the New York State Department of  
269 Transportation, New York State Department of Environmental Conservation, Army Corps  
270 of Engineers, and Tompkins County Department of Health. The Tompkins County  
271 Business Energy Advisors (BEA) Lansing, a program of the Tompkins County Department  
272 of Planning & Sustainability, has been engaged with project development since April 2021.  
273 The Town intends to utilize the energy analysis services offered by BEA Lansing for the  
274 development of the building.  
275

276 In addition, the development of plans for this facility will be fully vetted, discussed, and  
277 considered by the members of the Town Board and its legal, planning, and engineering staff  
278 and consultants, and Town of Lansing citizens have been and will be permitted to offer  
279 comments and suggestions upon the review and development of this project.  
280

281 RESOLVED, that the Zoning Board of Appeals hereby declares that the proposed Town Highway  
282 Department Building Replacement and Campus Renovation Project shall be exempt from the use  
283 and bulk requirements and restrictions of the Town of Lansing Zoning Code; and be it further  
284

285 RESOLVED, that the proposed Town Highway Department facility shall be deemed to be a use  
286 permitted, constructed and maintained on the subject property, subject to the approval of the  
287 Lansing Town Board; and be it further  
288

289 RESOLVED, that the Town of Lansing Schedule I and Schedule II Regulations for the IR Zoning  
290 District to the extent that they may restrict or prohibit the proposed facility shall not apply to this  
291 project.  
292

293 **THE VOTE ON THE FOREGOING DECISION, DETERMINATIONS, AND**  
294 **RESOLUTION OF THE TOWN OF LANSING ZONING BOARD OF APPEALS WAS AS**  
295 **FOLLOWS:**  
296

297 **Motion by: Mary Stoe**  
298 **Seconded by: Susan Tabrizi**  
299

300 Richard Hayes – Absent  
301 Mary Stoe – Aye  
302 Susan Tabrizi – Aye  
303 John Young – Aye  
304 Judy Drake – Aye  
305

306 Dated: 13 December 2022  
307

308 **Other Business:**

- 309 • The Zoning Board of Appeals discussed upcoming projects.  
310

311 **Motion to Recommend Susan Tabrizi to Serve a 5-year term on the Zoning Board of Appeals.**

312 **Motion:** Judy Drake                      **Seconded:** Mary Stoe                      (Motion Carried)  
313

314 Chair Judy Drake adjourned meeting at 6:58 PM  
315

316 Minutes taken and executed by Heather Dries