

TOWN OF DAY PLANNING BOARD REGULAR MEETING DECEMBER 6, 2010

Members Present: David Cox, Chairman
Ted Mirczak
Jack Vaillancourt
Eileen Brennan
David Avigdor, Town Attorney

Members Absent: Dick Traeger

Motion by Jack Vaillancourt, seconded by Board Member Mirczak to approve the minutes of the November 4, 2010 meeting. Ayes: Cox, Mirczak, Vaillancourt. Abstention: Brennan. Carried: 3-0.

Old Business: **HERTZEL, Ron Tax Map #44-1-8 & 65
Boundary Line Adjustment November 2000**

The Secretary stated one of the property owners of the parcel involved in this boundary line adjustment had contacted the office to state Mr. Hertzell and his attorney would be pursuing a remedy to this property transfer/boundary line adjustment. To date, there has been no contact.

New Business: **National Grid/APA Project Permit No. 2010-102
PB10-02SPR**

Chairman Cox stated since there is an approved land use plan in the Town of Day, APA was required to consult this Board on projects of this type; i.e. a request for consultation. Since two of the proposed poles are over 40 feet, would this pole replacement violate Town of Day zoning requirement, which would be a 30 feet height limit. Poles P155 and P158 would be 43 feet in height.

Town Attorney Avigdor stated the height requirements in Town zoning law pertains to structures. The definition of structure taken from Town Zoning Law is: "Structure - Anything constructed or erected, the use of which requires location on or in the ground, or attachment to something having location on or in the ground other than public utility poles, wires and related equipment."

Chairman Cox also stated from Zoning Law under Lakefront Residential requirements of Permitted Accessory Uses include public utility structure and is referred to as a structure. Board Member Mirczak stated it could refer to a substation or a small hut. Town Attorney Avigdor agreed with Board Member Mirczak. Chairman Cox stated in Zoning Law under the same category, it

requires site plan approval for two different categories of utility structures.

Town Attorney Avigdor stated while it would be subject to Board interpretation, he is not certain if either category would include "poles". He would consider a public utility structure, under Board Member Mirczak's interpretation, a substation or switching station and/or a major power utility structure as a power generating plant or the dam. He further stated a structure would exclude poles and wires if this Board was to modify the word "structure" to include poles and wires. While this should not be considered a legal opinion, it should be a fact the Board Members should take into consideration prior to modification of any part of zoning law due to the added height of the poles.

Board Members were in agreement with Town Attorney Avigdor that a pole would not be a structure. Board Member Mirczak stated his concern would be poles which would be telecommunications poles which are 150 feet in height with transmitters. Can this decision be made without precedent? Town Attorney Avigdor stated any decision creates a precedent for that which is in the same set of facts. A telecommunication tower is defined in zoning law as: "A structure on which transmitting and/or receiving antenna(e) are located." Chairman Cox stated this would be a private enterprise rather than public. Town Attorney Avigdor stated National Grid is a private company also. He further stated it would be reasonable to make a distinction between utility poles. However, if in the future, it became a standard to construct poles 100 feet tall, it would be advisable to amend the definition of structure to include poles. However, because the definition does not include poles, it is non-jurisdictional.

Town Attorney Avigdor stated over the years, power poles have gained height due to interference between electrical currents and internet service which required additional spacing between lines on the poles. In the future, three phase power transmission may need to be further from the telecommunication equipment due to weight of the wires. Also, to allow higher poles simply due to technological requirements is not always a sound reason to allow the same and it may be necessary to engage in the process of site plan approval. The utility located on the poles are paying a fee per foot and it would be practical to assume they would not wish to increase their costs by installing higher poles. In the past, there were separate poles for power and phone. At the present time, both are located on the same pole with agreements between users

on distances, costs, etc.

Chairman Cox stated in the October 25th letter from APA, on page 5 of 8, second paragraph under 2, it states “ Replacing the poles with taller poles would not have introduced additional visual elements to the project and the increased height of approximately 4 to 5 feet with minimum tree cutting and trimming would have likely been determined to be a less significant visual impact than proposed to install intermediate poles.” Chairman Cox stated due to heavier wires which sag, National Grid stated they needed additional poles with less height or fewer higher poles. Chairman Cox stated the Board would support the fewer higher poles for a lesser impact.

Chairman Cox stated APA approval has not been given until this Board reviews the proposal and once that occurs and there are no issues, APA approval will be given. Chairman Cox proposed directing the Secretary send a letter stating the definition of a structure from Zoning Law; that this Board determined that power poles do not qualify as structures and would not violate our local law. He stated the letter should further state “The Board does agree with APA comments on Page 5 of 8 of the APA Project Permit 2010-102, Item 2 which suggests an increase in pole height to eliminate intermediate poles.”

Motion by David Cox, seconded by Board Member Vaillancourt to direct the Secretary to send a letter to APA indicating the Town of Day Planning Board does not have jurisdiction over the power pole construction and stating our agreement to the statement of APA on page 5 of 8 of APA Project Permit 2010-102, Item 2 which suggests an increase in pole height to eliminate intermediate poles. Ayes: Cox, Mirczak, Brennan, Vaillancourt. Carried: 4-0.

Correspondence: All registrations have been submitted by all Planning Board to attend the Saratoga County Planning Conference on January 26, 2011.

Members were encouraged to submit suggestions for topics for APA Local Government Day conference to be held in Lake Placid on March 22 and 23, 2011.

In the Fall 2010 issue of the NY Planning Federation publication, the Planning Federation announced the 2011 conference will be held in Albany rather than Lake Placid over Columbus Day weekend, Sunday, October 9 through Tuesday, October 11. Further information to follow.

Board Members received several other notices of conferences.

Saratoga County Planning Memo of October 18th regarding legislation to extend conditional approval of subdivisions was distributed to all Board Members.

2011 Meeting Schedule was distributed to all Board Members.

Motion by Ted Mirczak, seconded by Board Member Brennan to adjourn the meeting at 7:20 p.m. Ayes: Cox, Mirczak, Brennan, Vaillancourt. Carried: 4-0.

Respectfully submitted,

Diane Byrne
Secretary