

# TOWN OF DAY PLANNING BOARD MINUTES

## REGULAR MEETING – FEBRUARY 5, 2007

**Members Present:** David Cox, Chairman                      **Members Absent:** None  
Ted Mirczak  
Dick Traeger  
Jack Vaillancourt  
Charles Dreyer  
David Avigdor, Attorney

### Pledge

**Motion** by Charles Dreyer, seconded by Ted Mirczak to approve the minutes of January 4, 2007. Ayes: David Cox, Ted Mirczak, Dick Traeger, Jack Vaillancourt, Charles Dreyer. Carried 5-0.

**Old Business**                      **KYARSGAARD, Matthew**  
**RATCLIFFE, Michael**  
**PB06-07BLA – Tax Map #33.18-1-36**

Chairman Cox and the Board reviewed the revised map Mr. Kyarsgaard submitted to the Zoning Board and noted several changes. Mr. Kyarsgaard stated he had notified all adjoining property owners of the area variances and no one had any objections. Board Member Mirczak inquired if Attorney Avigdor was satisfied with the letter Mr. Kyarsgaard's attorney, John Ray, had sent to Mr. Ratcliffe which stated "They (the Ratcliffes) are advised and aware of the fact that no further applications for sideline variances along the adjusted boundary line will be entertained by the Board (ZBA)." Attorney Avigdor stated he was comfortable with the letter.

Chairman Cox stated that it appears that Mr. Ratcliffe gained additional road frontage. Mr. Kyarsgaard stated Mr. Ratcliffe gained two or three additional feet. Attorney Avigdor stated all the adjustments were between Mr. Kyarsgaard and Mr. Ratcliffe and they were approved by the ZBA.

**Motion** by Jack Vaillancourt, seconded by Dick Traeger finding this would be a boundary line adjustment on the Ratcliffe/Kyarsgaard parcels. Ayes: David Cox, Ted Mirczak, Dick

Traeger, Jack Vaillancourt, Charles Dreyer. Carried 5-0.

**Page 2**

**February 5, 2007**

**KLOSS, Charles – Tax Map #33.6-1-29.12  
Town Turnaround on Pine Ridge Road**

Chairman Cox stated Mr. Kloss was instructed to contact property owners Cebula and Pareene because their property was also affected. Attorney Avigdor stated he has not heard from Mr. Kloss but that this procedure would not happen promptly.

**Mandatory Training Resolution**

Chairman Cox reviewed the rough draft of the Resolution and in the fifth paragraph, first line added “Members” and stated that anything other than the specified organizations offering conferences would have to be approved by the Town Board.

**Motion** by Ted Mirczak, seconded by Charles Dreyer for blanket approval for training at any conferences or training seminars conducted by Saratoga County Planning; New York State Planning Federation; Adirondack Park Agency; New York State Associations of Towns; and, Bond, Schoeneck & King, PLLC by the Town Board to meet the four hours of training required. This motion is to be presented to the Town Board at their next Regular Meeting. Ayes: David Cox, Ted Mirczak, Dick Traeger, Jack Vaillancourt, Charlie Dreyer. Carried 5-0.

**New Business**

**CARBONE, Richard  
PB07-03SPR – Stump Dump**

Attorney Peter Coseo of Corinth, representing Mr. Carbone stated the person retained by Mr. Carbone to file the permit in the Clerk’s office did not file it properly and he was requesting that the permit be reissued. Attorney Coseo also provided the Board with a copy of the lease between Arthur and Bertha Kenyon and Mr. Carbone from January 1, 1995 to December 31, 2025 which was filed in the Saratoga County Clerk’s office (stamped January 27, 1995) and the short form SEQR. Attorney Coseo stated he would take the position that the application is complete and that this Board issue the Class B Regional Permit. Chairman Cox stated Mr. Carbone did not fill out the Site Plan Review Application. Mr. Carbone stated he had contact Chairman Cox and was told he only needed to file the short

form SEQR. Chairman Cox stated he informed Mr. Carbone that he did not need to the long form, 22 page SEQR at this time but he was required to file a Site Plan Review Application. Chairman Cox stated that a Public Hearing could not be scheduled without deeming a filed application complete and Mr. Carbone has not filed an application.

**Page 3**

**February 5, 2007**

Attorney Coseo stated he was requesting that this Board allow Mr. Carbone to file the Site Plan Review at a later date and because this is a ministerial act, and nothing has changed, file the application which was previously approved at this time and reinstate the permit.

Attorney Avigdor wished to state for the record and for Mr. Coseo's information that he has represented Mr. Carbone in the past in rather incidental matters, did deed preparations, etc. but at this time would be representing the Town of Day. Attorney Avigdor stated Mr. Coseo is correct this Board has the authority to proceed based on the earlier application but is not required to do so. He further stated that neither he nor the Board knows if anything has changed. He stated he would like to review the previous application prior to it being reinstated but it is the decision of the Board if they wished to proceed in this way.

Attorney Coseo stated based on the previous Public Hearing and since the only item missing was the failure to file the permit in the Clerk's Office, it was his position that the Board could grant the permit at this time. He further stated this would allow Mr. Carbone's application to continue until its expiration date in 2008 and at that time he would file a new application. Attorney Coseo also proposed that rather than return on a yearly basis, the Board renew the permit for an extended period of time. He further stated that the stump dump is an appropriate use, that DEC has not filed any complaints with the Town and it has continued to operate without incident since 2003. Mr. Carbone stated it has operated since 1994 and this was an additional renewal. Attorney Avigdor stated he is in agreement with what Mr. Coseo has stated but that this Board is not obligated to proceed at this time. He further stated a Public Hearing was held at the time and the Board could reissue that permit with an amended requirement for the filing date.

Board Member Mirczak stated he has received a set of regulations from DEC which states this is a non-regulated facility requiring a registration. He would request a copy of the approved registration from DEC and a copy of the last report filed with DEC by Mr. Carbone as part of the application. Mr. Carbone stated he would provide that information. Mr. Carbone stated that he dumps only

**Page 4**

**February 5, 2007**

trees, stumps and brush and it is covered with fill provided by the Town three or four times a year.

Board Member Mirczak inquired if there are any barriers to keep people from entering the stump dump. Mr. Carbone stated he has a gate. Board Member Mirczak inquired if Mr. Carbone charges any one to dump at the stump dump. Mr. Carbone stated he or his crew are the only persons allowed in the dump and he does pick up materials from building sites of others to be dumped there. Board Member Mirczak stated if Mr. Carbone is charging a fee that is not allowed. Mr. Carbone stated he was not. Chairman Cox stated he felt the CEO may have questions regarding this permit but he was aware that he had issued a stop work order. Chairman Cox stated any members of the public who wished to comment on this site could do so at this time.

Mr. John Jordan, owner of the property stated he has talked to CEO Metzler and brought several issues to his attention: 1) Mr. Carbone is dumping in ground water, 2) Mr. Carbone is allowed 100 loads in the five-year term of the lease and 300 loads have been dumped there since he moved in in November 2005, 3) the gate is not closed in spite of Mr. Jordan providing a lock, 4) the letter sent by CEO Metzler only addresses the fact that Mr. Carbone did not file the permit as required and he was advised that it would be a moot point to address any of the other issued.

Mr. Carbone stated he is not dumping in ground water and the Town excavated down one foot and found ground water there. He further stated DEC would not allow him to dump in ground water. He stated no hazardous materials are dumped there and other than the ground water issued, there are no other restrictions. Mr. Carbone stated the regulations regarding the septic lagoon were more stringent. In the matter of number of loads, this was a figure that he estimated at the time of the first permit.

Board Member Mirczak stated under “Conditions” of the Permit, Paragraph 9 “The depth of the materials to be placed at the site shall be the lesser of (A) five feet, or (B) two feet above the existing level of ground water”, and Paragraph 11 A. “ Delivery of materials to the site shall be by truck, and no more than 100 truck deliveries to the site shall be permitted.” Board Member Mirczak inquired how Mr. Carbone interprets 100 loads, annually or forever? Mr. Carbone stated that was a mistake – in particular, one

**Page 5**

**February 5, 2007**

of the Board Members did not want to make tall mounds so he dumps over the bank and would eventually make it level. Attorney Avigdor stated the 1995 permit issued by the Board would have identical language with the exception of the number of loads. The earlier permit states “per calendar year”. He further stated without reviewing the previous application or the minutes, he cannot state what the intent of the Board was in 2003.

Board Member Mirczak stated it is critical whether the loads are per year or the length of the permit. His review of the minutes revealed they are sketchy. He also stated it is critical that this requirement is adhered to and he inquired if Mr. Carbone was delivering more than 100 per year? Mr. Carbone stated he only delivered 86 loads last calendar year. Mr. Jordan stated he had kept a schedule of times, dates and content of the trucks particularly because he lives on the site and from March 2006 to December 2006, there were 129 loads delivered. He further stated 158 loads were delivered in 2005. Attorney Avigdor stated if that factual discrepancy is critical to this Board’s decision, they should consider holding another Public Hearing where both Mr. Jordan and Mr. Carbone can submit their written records. This meeting is not the time for such questions or allegations which should be reviewed in a Public Hearing. This Board could reinstate the existing permit and let CEO Metzler bring enforcement proceedings against Mr. Carbone for exceeding the limit.

Mr. Carbone stated that this dump is not something that is bad for the Town, these loads could be dumped at the Town Garage and they would have to burn it which would contaminate the atmosphere while he is able to simply bury it. He stated it is not detrimental, not against the law, he is disposing the materials property, and DEC has

not found any problems with it. He stated the officials at DEC stated Mr. Jordan calls frequently and has become a nuisance.

Attorney Avigdor stated Mr. Carbone is correct in some points of what DEC requires. He stated APA determined that a permit was required under their law and a project notice was issued in 1995. APA determined that the Town of Day has its own zoning ordinance and in a letter of February 15, 2001 stated a permit could be obtained from the Town of Day. However, an approved registration must be obtained from DEC. Board Member Mirczak stated that the regulations state that the owner may not undertake the project until DEC issues that permit. Attorney Coseo stated

**Page 6**

**February 5, 2007**

the Town of Day has a Code Enforcement Officer and if there is a violation of this permit, it should be brought before the Town Court with evidence that is credible and make a burden of proof. Mr. Jordan stated that he has uncovered 5 gallon cans of hydraulic oil, concrete products, plumbing, wiring and sewage pipe among the stumps and brush. He further stated CEO Metzler took pictures of 40-50 feet tall piles. Mr. Jordan stated Mr. Carbone has only three acres to work with and if he were to finish the area with a one quarter pitch as required, it would be impossible to do being that it is downhill. He stated Mr. Carbone's violation in the septic lagoon prompted DEC to close that site. Mr. Jordan stated Mr. Carbone was digging trenches and diverting liquids off the top of the septic lagoons toward portions of his property line and he has requested through the Freedom of Information Law to obtain these recorded violations from DEC. He was told that Mr. Carbone was ordered to move some of these liquids off site. Mr. Carbone stated he was out of state when these allegations were made to DEC and he was not issued tickets per se but notifications which resembled tickets. He was not in violation of any regulations but the Federal Government passed laws which no longer allow septic lagoons. He had previously dug a new trench because as one filled up, he would have another one ready. He never made an agreement to transfer from one lagoon to another but to keep it underground and filled to the next lagoon 15 feet away. Mr. Carbone stated he has a lease on 198 acres of land which is not owned by Mr. Jordan.

Chairman Cox stated the concern if this Board would reauthorize the existing permit of 2003 is that it stipulates that the materials be two feet above the existing ground water and the maximum depth of

materials be five feet. He further stated that it has been revealed tonight that the materials are one foot above ground water and the piles are higher than five feet. He stated the applicant can't meet two of the conditions of the existing permit. Chairman Cox stated Mr. Carbone is not aware how the load limit was arrived at and that the permit was provided to him and he intended to record it. He stated it would appear that Mr. Carbone accepted the conditions and intended to record this renewal of a previous permit. In spite of a violation of some of the conditions of the permit, there has been no discussion of a need to change the conditions. Chairman Cox stated a review of the minutes of the Public Hearing may reveal the intent of the Board. Board Member Mirczak stated the minutes are very sketchy. Mr. Carbone stated the height of the piles was never discussed. Attorney Coseo stated if this Board

**Page 7**

**February 5, 2007**

were to reissue the current permit unless the permit was amended, Mr. Carbone would be in violation. Board Member Mirczak stated he would not be comfortable reissuing the current permit without a Public Hearing. Discussion ensued regarding the previous length of the time limit of the permits was three years and it was increased to five years. Attorney Avigdor stated it would be counterproductive to consider reauthorizing this permit knowing it will be in violation. Attorney Coseo stated based on those facts, it would be in his client's best interests to file a new application for a larger load limit and the height restrictions his client feels are necessary. Attorney Avigdor agreed that this would be the best way to pursue the permit. Chairman Cox stated that a Public Hearing cannot be scheduled without deeming the application complete. Attorney Coseo stated he would FOIL for any records from the old file. Attorney Avigdor stated he would be entitled to any public records from either the stump dump or septic lagoon.

Board Member Mirczak stated this Board has the authority to request additional information and he would request a formal copy of the DEC registration and the last report filed with them by Mr. Carbone. Attorney Avigdor stated the information submitted by Mr. Carbone should address all the issues brought up tonight by everyone commenting, the more information provided to the Board, the more likely they will deem the application complete and proceed to the Public Hearing. Mr. Jordan inquired since he was the owner of the property, did the application require his signature?

Also, the lease requires that Mr. Carbone follow the rules and regulations of DEC. Attorney Coseo stated these would be issues that this Board would not address. Attorney Avigdor stated this Board has the authority to deem the application complete without Mr. Jordan's signature but agreed that Mr. Coseo is right that this Board does not have jurisdiction in violation matters. He further stated if there were land use violations, noise of trucks or adverse environmental effects, it would be addressed. Mr. Jordan also stated Mr. Carbone has been clearing the trees on his property and he wishes it to remain wooded. Attorney Avigdor stated he has not reviewed the lease completely tonight but the area to be disturbed is less than three acres. Attorney Avigdor stated that while he does not know what Mr. Carbone is applying for (regarding the changes in conditions), it is agreed that there is currently no permit in effect.

**Page 8**

**February 5, 2007**

Board Member Mirczak inquired if the acreage contiguous and that DEC would not validate it if it were more than three acres. Chairman Cox stated this Board would meet with DEC and determine if this would be environmentally sound. Mr. Carbone stated DEC does not permit dumping in standing water. Chairman Cox stated if this Board does issue a new permit and Mr. Carbone does not abide by the conditions, Mr. Carbone will be served with another stop work order. Chairman Cox inquired of Attorney Avigdor if this Board would meet with DEC at the site, would it require an advertisement to the public. Attorney Avigdor stated the Post Star should be notified and a notice posted in the Town Hall. He stated this Board would need Mr. Carbone's permission but he would not advise doing anything until his application is received. At this time Mr. Jordan and Otto Kenyon (owner of the other portion of the site in question) gave their permission for the Board Members to visit the site. Mr. Kenyon stated he has received a visit from Mr. Carbone to make payment for the use of his property which he currently crosses and to sign the permit application. Mr. Kenyon has not done so at this time.

**JOHNSEN, Daniel K. – PB07-02BLA**  
**TAX MAP #42.6-1-14.2 – 42.6-1-14.12**  
**TAX MAP#42.6-1-14.2 – 42.-1-7.3**

Board Member Mirczak recused himself from this application because he has been friends with the application for many years. Mr. Johnsen stated he had received a previous boundary line adjustment but the sale was not completed and they wish to make two additional boundary line adjustments. Mrs. Johnsen stated they wished to increase the depth of Lot 42.6-1-14 by 75 feet from Lot 42-.1-7.3 which is 36.75 acres of forest land and increase the road frontage of lot 42.6-1-14.12 and decrease the road frontage of Lot 42.6-1-14.2 (increase this to 280') which would leave 160 feet where 150 feet are required. Attorney Avigdor inquired if the Johnsens would be getting a survey. They stated they would not. Attorney Avigdor stated his concern was because Lot 42.6-1-14.12 is so close to compliance and no survey would be done, the Board may require additional square footage be added. Board Member Dreyer inquired how deep that lot was. Mrs. Johnsen stated it was 300 feet. Mr. Dreyer stated he would be more comfortable with 85 feet and the other Board Members agreed.

Chairman Cox stated he felt this was a boundary line adjustment in that the applicant started with three lots and will end with three

**Page 9**

**February 5, 2007**

lots and all other Board Members were in agreement. Mrs. Johnsen corrected the map.

**Motion** by Jack Vaillancourt, seconded by Dick Traeger finding this would be a boundary line adjustment on the Johnsen parcels. Ayes: David Cox, Dick Traeger, Jack Vaillancourt, Charles Dreyer. Abstention: Ted Mirczak. Carried 4-1.

**Correspondence** Chairman Cox stated he has received a memo from Saratoga County Planning and a phone call from Louise Reed, Corinth Planning Board Chairperson regarding a workshop to be held in Corinth on February 26<sup>th</sup>. He stated that while many of the Board Members would already be familiar with some of the items on the agenda, she was trying to have good participation in order to have Saratoga County Planning do more outreach training in the future. Board Members Cox, Dreyer and Traeger would attend.

Chairman Cox provided the Board Members with materials pertaining to Farmer's Markets.

**Secretary's Report** The Secretary stated the Perryman application was still open and in

light of the ZBA denial, what would be the wishes of this Board? Attorney Avigdor stated that the application should not have been referred to the ZBA because there was no road frontage and a variance cannot be given with some road frontage footage.

**Motion** by Ted Mirczak, seconded by Charles Dreyer to deny the Perryman Application PB06-08SUB, Tax Map #25.1-22.2 for a minor subdivision of land. Ayes: David Cox, Ted Mirczak, Jack Vaillancourt, Charles Dreyer, Dick Traeger. Carried 5-0.

Board Mirczak stated at the January Planning Conference there was a presentation on Stormwater and if anyone would like a copy of what could not be presented at the time, please contact him.

Board Mirczak also inquired if there was an electronic copy of the zoning ordinance. The Secretary stated she knew the new revisions had been added electronically and she would find out who has that copy.

**Page 10**

**February 5, 2007**

**Motion to Adjourn** at 8:30 p.m. by Jack Vaillancourt, seconded by Charles Dreyer. Ayes: David Cox, Ted Mirczak, Jack Vaillancourt, Charles Dreyer, Dick Traeger. Carried 5-0.

Respectfully submitted,

Diane R. Byrne  
Secretary