

**TOWN OF DAY
LOCAL LAW REVIEW COMMITTEE
MEETING MINUTES
MARCH 15, 2011, 9:30 A.M.**

Present: Ted Mirczak, Chairman
Dave Davidson
Kenneth Metzler
June Dixon
Richard Lamb, Consultant

Absent: Dave Cox

Others: David Avigdor, Town Attorney

Review of Minutes:

Motion by Dave Davidson, seconded by June Dixon to approve the minutes of March 1, 2011 and March 15, 2011. Ayes: Mirczak, Davidson, Metzler, Dixon. Carried: 4-0.

Discussion with Town Attorney David Avigdor:

- **Format of review materials (Word ‘Mark-up):**

Town Attorney Avigdor will receive copies of all minutes and accompanying documents for review in Word (mark up format) of any rough copies of changes to zoning law or subdivision law as those changes are made. This will allow Town Attorney Avigdor to avert any legal issues as soon as the topics are discussed and changes are made. However, he may not be able to give a full review of the piece meal referrals. The tentative finished draft will be given the most complete review.

Final format of the Zoning Law would be in typical legal fashion, i.e. the draft in text format with the formatting of deletions/additions in brackets, italics or strike throughs. It was firmly discouraged to use bold or underlining.

Regarding the issue of whether to rescind existing law and then adopt the new version, recommendation would be if a new law is adopted that close attention be paid to anything that is grandfathered under the old law also be under the new version. These items referring to grandfathering will be reviewed after the first draft of the law is complete.

Suggestion that care is given in how the proposals to changes in the law are framed for public discussion, i.e. in planning we don't envision any changes and at least no substantive changes and there is no change in philosophy. Eliminating the old law will raise issues with the public and how would the Committee deal with that issue alone

prior to the first informational meetings. Suggestion would be to explain what is being replaced in the old law against the new law.

Professor Lamb will prepare a summary of changes without renumbering.

- **Workshop vs. Public Hearing:**

Discussion included how to mitigate any issues the Committee may envision prior to any public meetings in particular with laymen and comments from the public which can be heated.

- **Worksheet for permitted uses – incorporate in law?**

At this time, Committee is leaning toward rescinding the old law and will also consult with APA and County Planning on how to proceed as they would be more familiar with the revision process.

The tabular format would be used for reference purposes but not adopted due to possible inconsistencies. While a summary of the zoning law would be an excellent reference for the Planning and Zoning Boards, the law could lose meaning and need to be full of disclaimers. Working off a worksheet could result in legal action against the Town. This is the law and should read and sound like law and read like provision of law and not focus on being user friendly.

Both Planning and Zoning Boards would benefit from using the worksheet strictly as an internal document. Town Attorney Avigdor stated an internal worksheet is still discoverable in legal action and there would be a need for the addition of a disclaimer. The worksheet would be designated as a legal document with no attempt to hide it from the public. Present both the text and tabular form to the Town Board making clear the tabular form is just an internal document which is available. *Town Attorney Avigdor will provide this disclaimer after the document is prepared in the final form.*

The law in its original text form would be easier to search through word searches and is the version which is currently working well within the Building Department.

Committee will take all suggestions under consideration with a final decision to be made at a future meeting.

- **Other:**

1. Law speaks to lot width not to required road frontage and is a convoluted definition. It speaks to the width at the building line and not at the road which would put the building line further back on the property where a lot width may be wider and not have any road frontage. The Board has not been challenged on that. This would be a weak point of the law. The law should include both standards and the remedy would be to apply for an area variance.
2. Setbacks which are different for front, rear and side and the issue of which is the front yard; i.e. the door that faces the road or the door that faces the lake or the sideyard. The definition of lot, front line is “The lot line which abuts upon a

street or highway right-of-way boundary, or shoreline if the principal structure faces such shoreline.” Currently this adopted definition which has worked. However, if a property owner wishes to site his dwelling close to the road to allow for a greater lawn area on the lakeside, it has been allowed and has made sense to both the Planning Board and adopted by the Town Board. In the case of a row of houses which are in a line closer to the lakeside, this would put one hose out of line and disrupt that street line.

3. The Committee should be certain everyone is working off the same law.
4. Committee discussion included
 - how this would affect half acre lots; aesthetics of the neighborhood;
 - would this situation occur in the Town of Day as opposed to Hadley where subdivisions of lines of houses currently exist which all obvious front doors face the road or street;
 - should it be made part of a subdivision plan (some subdivisioners would be in favor of having all homes face the same direction because it is a good selling point);
 - would be a visual impact not a density impact;
 - could have an affect on grandfathered lots;
 - there are not many lots in the Town of Day which would be affected by recent APA law change;
 - there are other lakes located within the Town other than the Great Sacandaga and how would those lots be affected there;
 - recent variances for garages would have had the backyard argument available to them and if they presented architectural evidence that the main entrance is on the side or on the lakeside, they may not have needed a variance;
 - the measurement for the lot lines would be taken from the lot line of the property not the center of the road because that is not truly the center and subject to re-engineering;
 - the point from where measurements are taken are not in layman’s point of view “the center of the road” but from the lot line;
 - how roads are cut to avoid angles, snow plowing, drainage and how roads are typically cut wider and re-engineering of road could change it;
 - emphasis should be placed on term “lot line setback” rather than road setback to avoid confusion;
 - survey which are now required by the ZBA clear up any confusion regarding setbacks;
 - Committee agreed to continue to use current regulation distances with possible elimination of words “front” and “back” yard from regulations regarding setbacks and use only one measurement for both regardless of which is the front or back of the house.

Completion Schedule:

Planning Board Review is required and would need to be included in the Completion Schedule. The Planning Board will review the same version as the Town Board and it will be a complete draft.

Under the Comprehensive Plan Committee schedule, public informational meetings were held prior to Town Board review. The informational meetings would provide the opportunity for the public to comment; is one of this Committee's working tools which gives them an opportunity to hear public concerns with possible incorporation into the law; and, should be held early in the process.

Determine if the informational meetings are held when the majority of the property owners are in residence (preferably late June or early July). Town Attorney Avigdor can appreciate the concern for holding meetings during the summer months but it would not be a miscarriage if these meetings were not held at that time. The Town of Day has never had a subdivision greater than three lots, does not envision a hotel or conference center being built in town or any major controversial planning or zoning issue within the next year. While these developments are always a possibility, it would not create an undesirable situation within the Town if the public hearings are not held until 2012. The Town has only been involved in legal proceedings twice in the twenty years since land use law has been in effect locally and it would not have been any different with a different law. This would be considered a very good record. He is not implying there should be a delay but if additional information is needed and it taxes the Committee, they should take the time to do their job right.

Professor Lamb requested that Town Attorney Avigdor forward any specific land use law issues via email for incorporation.

- **Existing Zoning Maps:**

The large black and white zoning map is the official version but obscures some parcels. Code Enforcement Officer Metzler utilizes the smaller colored APA version which does not include the additional of the Viewshed Protection Area (The APA version can be viewed on their website and sections or parcels can be zoomed in on). Committee will review the large size map produced by Professor Lamb which is as accurate as the APA version (the APA version's zoning lines are not digitized and this may be slightly inaccurate and off by 50 feet).

The official map and law should agree as the map will be adopted as part of the law. Discussion included if a small zoning map could be precise and Professor Lamb stated it was as precise a rendering as he has seen. Committee will determine what the official position will be on the official map. APA does not classify our Viewshed Protection Area as a map amendment and Town Attorney Avigdor stated the issue would be raised again with APA during the approval process of the new law. If APA is not going to make the map change, they should give an explanation of what the change is.

- **Can "noise" be used as criteria for subdivision review?**

Town Attorney Avigdor does not know how or who would determine level of noise as no one within the town has the expertise to do same. Planning Board could require the applicant to bear the cost and have a study done. A land use point of view would include the height of building, how much area it covers, and if it is too reflective, however, noise levels may require determination of an engineer.

Should it be included in land use vs. Town law (example: noisy party vs. windmill). Town Attorney Avigdor stated it is a policy question and injecting it into land use law and a project design would require noise levels to be determined before the project is built.

On the other hand a “party” is not land use nor is a bar or tavern which has existed for years. The Town Board could pass a law regulating levels of noise. If the Town wished to be “business friendly”, would the elimination of all objectionable noise promote business (i.e. a marina working on boats would require the engine to be started and result in noise)? Is this the appropriate type of legislation this Committee wants?

In the case of site plan review, if the adjoining neighbors did not wish to have the type of noise generated by a project, they would voice that objection at a public hearing. This may be create an issue in the future because if the noise issue of a project is not broached at a public hearing, wouldn't having a standard deal address a future issue (i.e. if a marina is permitted, no motors can be run past 5 p.m.)?

Require any new business to complete a site plan review. Professor Lamb reviewed noise standards from sample ordinances which limit the noise to 55 decibels and give discretionary powers to the Planning Board. The standard would be flexible with a check list with specific guidelines in order for the applicant to know what to expect in the planning review. The limit of 55 decibels would severely limit loggers and marinas and may be a standard that would be exceeded by many everyday noises (lawnmowers) and would depend how close an individual is to the offending noise.

In the past several years, on two or three occasions, individuals have appeared before the Town Board with complaints regarding noise and the Town Board has not directed Town Attorney Avigdor to draft any ordinance or take any legal action against the offending parties. The issue is enforcement. The inclusion in zoning law would be different as levels would be set by an engineer but the enforcement and measurement may once again be the issue.

The noise issue was high on the list of issues on the Comprehensive Plan Survey (noise from boats). Town Attorney Avigdor stated to regulate noise requires a local law but that would not be able to regulate boat noise. Town Attorney Avigdor stated is this Committee talking about land use standards for approval of projects or simply a noise ordinance which all people would have to abide by? For example, a car repair shop doing minor repairs and engine maintenance which may generate very little noise. However, when an individual retires and sells the business, it becomes an auto body shop

which does generate considerably more noise. This sale of an existing business may not require site plan approval if the nature of the business is not changing. The same would be true of a restaurant under new management which now adds live music. Noise ordinance would make more sense than a land use standard. This would not be inferring that this train of thought is not a wise but what scenarios could be possible.

If not made part of the zoning law, site plan review could be approved with conditions and/or approved with applicable law compliance. Lawnmowers, chain saws, etc. could be addressed by separate noise ordinance (which may differentiate between sustained noise vs. occasional).

Revised Permitted Use Chart Worksheet – Review:

(Resume review of worksheet)

- Commercial Greenhouse – not permitted in LF or RRC
- Daycare Facility:
Currently not allowed in Lakefront Residential reason may have been parking issues as it relates to children disembarking from vehicles. Committee agreed to allow in LF.
- Dockominium:
Facility which would utilize forklifts on docks and have multiple boat slips which are individually owned or it may be a private dock at private facility. Definition will be eliminated and reference will be to use “marina” definition. Specifics would be a land use issue and should be included in a business agreement/site plan review.
- Veterinary Clinic:
 1. Not currently allowed in LR or NC. Issues with noise levels as most include a dog kennel which may be troublesome to live near (noise). Would exclusion from NC be “business friendly”? Because it is “neighborhood” commercial (indicating residences), would it be more appropriate to be located in more rural areas with larger acreage (5 fives minimum) requirement. Vet Clinic definition includes “boarding facilities” which will be removed.
 2. Require a site plan review but dog kennels do not. This should be consistent.
 3. Standards are included in zoning law for kennels for animal hospitals. If they are met, do you still want to keep kennels and clinics separate?
 4. Change from “Dog Kennel” to “Kennel” to include cats.
 5. Continue to utilize two different categories for Veterinary clinic and Dog Kennel.
 6. Every use requires a definition and if it requires a meaningful clarification, the clarification should be included. (Example: Sign painted on the side of a truck parked near the road). Town Attorney Avigdor will review for loopholes.
- Fueling Station:
 1. Marinas which are located in LF have fueling station which creates an inconsistency. Continue to utilize fueling station definition and modify marina definition. Survey indicated businesses of the type as Stewart’s were desired.

- Consider fueling station in all zones with exception of RRC with site plan review.
- Funeral Home:
 1. While not allowed in LR, it is allowed in NC which is the area closest to LR which was considered for directing businesses to. While it will have a certain amount of traffic surrounding this type of business, there are only a handful of parcels which would be affected. It is doubtful that a funeral home will ever open in the Town of Day.
 2. Discussion ensued regarding why certain types were not allowed in LR, Town Attorney Avigdor stated zoning law was tailored to the goal of APA approval and NC was promoted to create business centers and create balance. Businesses which would be promoted for LR would be those which are used everyday. In a business environment in this area, it makes sense to open LR to certain types of businesses. This Committee should use its best judgment and allow the Town Board to make the ultimate decision with the caveat that it cannot go beyond what APA will allow. The original purpose was to create NC district in order to attain hamlet designation which was later disallowed by APA. Now twenty years later with business in the area on the decline, it is less compelling to make the distinction. A small business that serves the populace and is not intrusive is the criteria.
 3. The types of small business that we would wish to encourage would include barber and beauty shop, possibly a laundromat, but not a nursing home, real estate office, junkyard, boat storage or shopping center.
 4. In regard to what may happen in the future, there should be a stipulation of what would be allowed and what would not. Town Attorney Avigdor stated we are not bound by what APA envisions for these zones. Moderate intensity use areas (LR and NC) are classified by APA as “those areas where the capability of natural resources and the anticipated need for future development indicate that relatively intense development particularly residential in character is possible, desirable and suitable. They are typically along highways and accessible shoreline where existing development has already established the character of the area.” APA envisions for this area “single family dwellings, individual mobile homes, open space recreation, agricultural, forestry, hunting and fishing cabins, game preserves, private parks, cemeteries, private roads, sand and gravel extraction, with utility use. Secondary uses include commercial, tourist accommodations and attractions, marinas, campgrounds, mineral extraction, sawmill, etc.” This is only a third of the APA list.
 5. The Character description from the Comprehensive Plan is “scenic lakeshore area characterized by relatively high density year round and seasonal housing interspersed by occasional and/or tourism related businesses. Steep slope and a winding roadway pose limitations for development within many portions of these districts.”
 6. The Vision is “The purpose of these districts are to provide for residential use of the Great Sacandaga Lake shorefront while protecting water quality and use of the Lake. They are intended to be primarily residential in character, but to allow for the establishment of businesses seeking a lakeshore location, such as restaurants and marinas, provided that they are designed to be compatible with the

scenic environment and neighboring residential properties and do not create significant traffic hazards. Development should be consistent with the Town Vision Statement.

7. While these two statements do not speak to any lakeshore types of businesses, statement of Allowable Uses “Single family residential dwellings, some tourist or lake related businesses as well as small businesses serving the local population” would be considered consistent with proposed changes to zoning law. The remedy for what is not allowable is to go to the ZBA.

8. Site plan reviews give the Planning Board the opportunity to insure that a project is done properly.

9. Barber and beauty shop would be permitted in LR change although signage may be issue. If determined not to be a home occupation (i.e. additional work station and need for additional parking) site plan review for both on same line with definitions remaining virtually the same.

- Tourism related businesses of Bed and Breakfast; Campground/RV Park – no change. Privately owned museum may be permitted
- Change Highway Garage to Highway Garage by Use of Government Entity as per recommendation of Town Attorney Avigdor with distinction of whether it is related to road work or would it house school buses or under use by HRBRRD.
- If CEO Metzler can refer applicants to ZBA for interpretations of law.

Travel trailers – Discussion:

Seasonal travel trailers requirements of 180 days was the limit of occupancy or the limit of how long these can be at site. Town Attorney Avigdor stated the issue with APA was so contentious regarding this part of zoning law that unless there is a compelling reason to change this section of law, this section of law should remain as written. The potable water requirement will not be added to zoning law.

The meeting was adjourned at 12:10 p.m.

Respectfully submitted,

Diane Byrne
Secretary