

TOWN OF DAY LOCAL LAW REVIEW COMMITTEE MEETING MINUTES, JULY 11, 2011

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

Absent: Dave Cox

Others: Suzanne Denn, Town Board Member

Review of Minutes:

Motion by Committee Member Davidson, seconded by Committee Member Metzler to approve the minutes of June 21, 2011 with the following correction: Page 6, “Front yards in areas directly on the lake,” fifth sub-bullet “Should front yard set backs always need to face the road?” Add “The Committee determined that the front yard should always face the road.” Ayes: Mirczak, Davidson, Dixon, Metzler. Carried: 4-0.

Finalize Hamlet discussion:

Chairman Mirczak stated he discussed via email with David Smail that hamlet designation would include lands under water. It was agreed by the Committee to discontinue any further discussion of this designation. While the Committee can appreciate what Mr. Smail is attempting to accomplish, Professor Lamb stated the Adirondack Park Agency is seeking specific recommendations; this is a quasi public area which is neither State land nor private land; and, if the property owners wished to make an impact on final determination of the designation and/or classification of the lands that surround the lake, it should direct their comments to the Agency. Committee Member Davidson stated results of the survey indicated the community wished the Town of Day Town Board to take a leadership role representing the interests of the Town in front of agencies.

Committee Member Metzler stated he will be meeting with APA Representative Brian Grisi later in the day. Chairman Mirczak stated the issue of the map change should be an item of discussion at that meeting.

Prep for Town Board Workshop – August 2, 2011:

The following items were discussed in preparation for the August 2nd workshop with the Town Board:

- Corrections to Summary of Proposed Zoning Law Changes:
 - Page 5, mobile home should be stricken and replaced with manufactured home.

- Page 7, Deletions, first bullet, should read *Delete entire Article 4.7.*

The Committee agreed to use the corrected version of the Summary of Proposed Zoning Law Changes which will also include the following:

- Lot Size and Dimension Chart which was not a part of the June 23rd version for their discussions with the Town Board Members.
- Committee Member Davidson asked for clarification on the high water mark as it relates to commercial which is not included on the Lot Size and Dimension Chart. Professor Lamb stated it should be added in the event a new category is created. *Under Shoreline Setback from the mean high water mark of navigable lakes, ponds and streams, add "75 ft."*
- Minimum highway width was struck and minimum lot width remains part of the chart.

Chairman Mirczak stated the Town Board could inquire how this Committee made their decisions to make changes, in particular, why certain things were or were not allowed in Lakefront Residential (i.e. activities which would support tourism). The following were included in Committee discussions:

- The density issue did not address what this Committee's underlying principle was. Committee Member Davidson stated the changes made in either use or setbacks were not substantive. However, there were uses precluded in zones in existing zoning law without reasoning to back up that omission. These uses were not in contradiction with the latest version of the comprehensive plan.
- Committee Member Metzler stated that any changes that were made continued to protect the residential atmosphere along the water while allowing the growth of marinas and lake related uses. Commercial uses were not curtailed because they were never allowed near the water.
- Chairman Mirczak stated this Committee did brainstorm on allowing 50 foot minimum lot widths which would create keyhole lots but ultimately did not allow them. The frontages were put in place when zoning law was first instituted in the Town of Day to reduce density.
- Is density what is seen or what exists? Committee Member Davidson stated in his opinion density is what is seen not what is there. In regard to the road frontage issue, what is there rather than what is seen is at issue. In other words, density can mean different things to the individual. In the end, no substantive changes were made.
- Committee Member Davidson stated one issue which is very pertinent with the Zoning Board of Appeals is setback issues.
 - In his personal opinion, it is a visual issue in that setbacks are in place to provide separation between houses, people and the road.
 - He would not have taken issue with 50 foot minimum lot width because it would have the effect of moving the house back further from the road.
 - Committee Member Metzler stated the zoning issues which that Board has had to handle since its inception would relate to pre-existing substandard lots. In his opinion, the minimal lot sizes work because they have enough land area to accomplish what is needed without encroaching on their neighbors.

- Committee Member Davidson stated it is that which makes ZBA decisions difficult.
- Committee Member Davidson stated he does not disagree with Committee Member Metzler but would have liked to develop a principle of what is meant by density which may state “here is what this Board is trying to protect and here is what is meant by density.” That principle would greatly aid the Zoning Board in its decisions.
- In the case of a decision which the Zoning Board made at its last meeting, he regarded that as a density and visual issue. In regard to density, he believed it was a small house on a small lot located too close to the road. However, the majority of the Zoning Board did not have the same opinion that he did and the variance was granted. If a principle was in place which stated “this is what is meant by density” and clarified if it is visual or people per square mile, it would have given the ZBA a base to work from. In this particular variance approval, it was an issue of people per square mile as a larger building can accommodate more occupants.
- Chairman Mirczak stated in his opinion, density was the number of people per square mile.
- The Committee agreed this would be a subject for debate.
- While Committee Member Davidson stated it should be a matter of discussion with the Town Board, Committee Member Metzler stated each Town Board Member could have a differing opinion.
- Committee Member Davidson stated this was the issue with the Zoning Board and may be a topic for Public Hearing.
- Chairman Mirczak stated in the Comprehensive Plan, density was not an issue.
- Committee Member Davidson stated that while the variance which was granted, it was argued it would not change the character of the neighborhood because some of the existing residences in the same area do not meet setback requirements.
- ZBA was considering how the variance would impact regulations in effect at this time. Committee Member Metzler stated that it is the charge of five individuals on the Zoning Board.
- Committee Member Davidson stated he fully understood that but he believes this is a subject in need of discussion. Committee Member Metzler stated this is a discussion which has occurred previously in cases of individuals desiring variances and obtaining them only to lament that a similar variance given to another property owners is now offensive to them.
- Committee Member Davidson stated density still comes down to a visual impact with him. Committee Member Metzler stated keeping that in mind, if a development were allowed on a side of a mountain which is heavily trees and no one can see it but then in years to come, the trees are cut, it now becomes an issue. Chairman Mirczak stated if density increases, services provided by the Town may also increase. Increased density brings additional septic systems which can impact ground water.

Chairman Mirczak stated while this Committee has not addressed all the issues in the Comprehensive Plan, all issues relating to land use have been addressed.

Issues Not Addressed From The Comprehensive Plan:

There were 45 recommendations and only 17 dealt with land use and five of those were not addressed or were not able to be addressed and they are as follows:

- In subdivision standards, insuring all roads and structures were adequately signed and numbered. The house numbering was a major concern of the emergency services personnel. In the near future, if a reval is undertaken, the data collectors would be able to collect that data. Subdivision regulations would require all house be assigned a 911 number and the numbering be done in 3" reflective letters visible from the road which are required in building code. *Add section of 911 house numbers stating it is in accordance with State Building Code.*
- In recommendations for subdivisions, encouraging wide shoulders for biking/pedestrian lanes. While this would be a welcomed addition, it is not recommended to be added to subdivision standards at this time.
- Policies adopted by this Committee should promote new growth away from the lake. How to achieve this is subject to significant debate particularly in light of the fact that this Committee has rejected two ways to accomplish the same (50 foot lot widths and creation of private roads). The Committee should acknowledge that the statement should be removed because there is no way to accomplish this. It was pointed out that one incentive to move farther away from the lake is lower property taxes and if an individual wishes to live on the lake, taxes are not an issue. It was agreed this is not a plausible issue to deal with and there is no plausible way to accomplish this.

At this time all 17 issues have not been dealt with by this Committee.

Materials to be given in advance:

The Summary of Proposed Zoning Law Changes and Proposed Revised Town of Day Subdivision Control Law will be provided to Town Board Members at least one week in advance of the joint workshop to adequate review. This informational meeting with the Town Board will occur prior to forwarding any drafts to Town Attorney Avigdor.

Chairman Mirczak reviewed several items to clarification:

Summary of Proposed Zoning Law Changes:

- Summary of Proposed Zoning Law Changes Document of June 23rd, under Accessory building and uses, the current definition: "A building or use which is clearly incidental and subordinate to and serves the principal use or building and is located on the same lot with such principal use or

building.” Since this Committee has indicated that it is permissible, should it be subject to SPR? There is some debate of what is considered customary and if this would be a use issue. Due to Zoning Board oversight if a building cannot meet setback requirements, it would be scrutinized by that Board. It was agreed this issue would first come under Code Enforcement review for initial determination of whether or not it is truly an accessory use with referral to the ZBA if it cannot meet setback requirements or if there is use issues.

- Definition of agriculture in existing zoning law: “The use of land for agricultural purposes, including farming, dairying, pasturage, agriculture, aquaculture, horticulture, floriculture, viticulture, and animal and poultry husbandry, including the sale of products grown or raised directly on such land, and including the construction, alteration or maintenance of fences, agricultural roads, agricultural drainage systems and farm ponds and including the necessary accessory structures for packing, treating, storage or production including any barn, stable or other building or structure directly and customarily associated with agricultural use.”

Discussion included why agricultural is not allowed in NC District and it may be due to the definition being so broad; a small stand selling vegetables would qualify as a home occupation; and it was agreed to continue to disallow agricultural use in LR and NC Districts.

- Change definition of “S” to “Site Plan Approval” because what is meant is not review but approval. If an applicant is referred to Site Plan Approval, the inference is that the approval may be automatic when that is not the case. It would be “reviewed” for “approval”. *Verbiage will read “following review and approval.”*
- Page 2, Worksheet, Club or Lodge is new and should be printed in red.
- Page 3, Retail Gasoline Sales: Discussion limited gasoline sales in LR from marinas only to boats with all other Retail Gasoline Sales limited to NC. *Change Retail Gasoline Sales to S in NC only.*
- Public Utility Structures, category listed twice in Accessory Building or Use and as Minor and Major Public Utility Structures or use in Other Uses.
 - Discussion included the distinction between Minor and Major Public Utility Structure and the visual impact of such a use; existing zoning law makes the distinction between minor and major; minor being defined as anything not major.
 - Definition of major includes verbiage of “Any electric power transmission or distribution line with associated equipment of a rating of more than 15 kilovolts which is one mile or more in length...” Discussion included if this use’s impact would have more visual effect, would the distinction between minor or major be necessary. *Distinction between major and minor would be eliminated and merged into one category with SPR under Other Uses.*

- This change would not create additional submissions to the Planning Board and at this time changes of power poles are routinely referred to the Planning Board for SPR.
- Office Building under existing zoning law not permitted in NC. Differentiated from home occupation by number of employees (more than one). *Change to permitted in NC with SPR.*
- *Public Parking Garage should be changed to Garage for Public Vehicles and not permitted in LR.* Agreed to change with the caveat that the Town is not subject to its own zoning laws.
- Page 2, Adult Entertainment definitions could be interpreted as the same as retail. *Add to retail definition does not include adult entertainment.*
- Page 6, Seasonal Roadside Stand limited to no more than 62 days per year. Discussion included there is no difference between non-agricultural items and agricultural items but related to products made on site. *Change to eliminate 62 days; add 180 days to facilitate plowing; add produced on site; and, on second line eliminate word "agricultural". Add portable and removed from site off-season.*
- Wind Power Generating Facility, Small states "...not more than 100kW..." which was believed to be a high figure. Discussion included different types of appliances and their energy requirements. *Professor Lamb will research figures with those results to be discussed at subsequent meeting.*
- Are height restrictions for wind power generating facility exempt? It was believed that definition may appear in existing zoning law referring to the measurement of height to the fixed point of the tower. Rationale for the same is not included but would have been helpful. APA regulations restrict all structures to no more than 40 feet which would ultimately impact any wind power generating facility. *Will research to determine where it does appear in the existing regulations and delete.*
- Page 8, remove *dog* and list just kennel.
- Issue of singling out pigs and fowl. Discussion included odor and which would be more problematic to adjoining neighbors; original handout was more complex distinguishing between number of pigs or fowl; wish to allow agriculture (hobby farm not large commercial); should not distinguish between different animals; more specific and detailed definition which could be controversial; *add to definition any off premises sales or distribution in a commercial operation; change to farm animals.*
- Page 11, D. "The following activities are not regulated by this law" category, item 1. "Buildings or structures smaller than one hundred (100) square feet in ground area, except for seasonal roadside stands as defined herein." *Delete D1. It was noted that while not every structure requires a building permit, all structures must meet zoning law requirements.*
- *Delete D8 –"Timber harvesting not located within the Town of Day Viewshed Protection Area."*

Proposed Revised Town of Day Subdivision Control Law:

- Page 4, Subdivision(c) gift lots:
 - Discussion included gift lots should not constitute subdivision law unless it goes through the subdivision process.
 - Gift lots were part of APA regulations which allowed tracts of land to be gifted to children. APA law does not have road frontage requirements.
 - Gifted lots may not be buildable lots.
 - If a lot is gifted, a property owner cannot be prevented from filing a deed while the children could be prevented from building on the same lot.
 - An unbuildable lot will be taxed in spite of not being buildable.
 - Difference between subdivision and gift lots is that under subdivision regulations, all lots are buildable. (Example: Property owner (father) has a 20 acre parcel and gives 8 acres to son with 500 feet of road frontage where 600 feet are required creating a substandard lot. Should that be allowed to occur?)
 - By creating substandard lots, that an unbuildable lot could later be sold by the children to an unsuspecting purchaser who believes it is buildable.
 - To require that all gifted lots meet subdivision standards makes the gift lot exemption meaningless.
 - Gifting circumvents the subdivision process. (Example: Original lot has a giftable standardized lot created from it while the original lot now becomes substandard.
 - Should all lots whether gifted or created through boundary line adjustment, must be standardized lots?
 - Example: The boundary line adjustment recently approved at the Planning Board would not have been allowable because both lots were substandard. This application moved the boundary line 15 feet, each lot contained structures and no additional building would occur based on this transfer and there would be no change in the neighborhood. Under the recommendation of not allowing any gift lots or boundary line adjustments unless it creates standardized lot, this boundary line adjustment would not have been allowed.
 - Discussion included that neighbor notification should not be a requirement of gift lots.
 - Existing zoning law does not require that the giftee be a relative. Prior discussions of the Town Board included the reason why the giftee is not required to be a relative was the Board did not wish to be required to prove family relations.
 - Emotions should not play a part in determining land use;
 - Controversy which may be created in elimination of gift lots.
 - *Tentative decision to eliminate gift lots; review by Town Attorney Avigdor with additional research on subject; and discuss this item at the August 2nd workshop with the Town Board.*

- Page 4, (e) “Principal building in form of hotels and motels, consider each tourist accommodation unit 1/10th of a principal building”. This is a standard from APA and cannot be changed.
- “Reverse Frontage Lots”. *Professor Lamb stated this definition is in existing law and it must be found within the text and removed.* This could be accomplished with word search.
- Page 5, Subdivision, Minor, line two “...not involving any new road or road or the extension...” change to “...*not involving any new road or the extension...*”
- Page 16, General Requirements for the Subdivision of Land, first paragraph, line six “...and should avoid the need for costly land alterations or intricate engineering to overcome adverse site conditions.” If a property owner has the means to change site conditions while staying within the restrictions of zoning law (i.e. Viewshed Protection will prevent the topping of a mountain), should he be prevented from doing so? Committee believes it should fall under the purview of the Planning Board to retain the natural look of the Town. *Do not change.*
- Page 23, I “...designed in compliance with minimum shoreline lot width...” is this width part of existing zoning law? This is currently part of the reformatted zoning law, Page 74: “Minimum Yard Dimensions is the minimum lot width and setbacks required for each lot. Minimum yard dimensions apply to buildings, roofed porches and accessory structures.”

A corrected version will be emailed to all Board Members.

Other Recommendations:

Chairman Mirczak stated there were a total of 45 recommendations included in the survey responses and only 17 were land use issues. This Committee did indicate in their charge that they would consider and decide from a technical point of view if they could act on the remaining 28 recommendations. Examples: Hamlet, work with citizen’s activist groups, work with government groups, etc. Committee has the obligation to at least review them. It was decided the Committee would resume discussion in sixty days of those subjects. It was also discussed that these recommendations would not result in changes to law but rather recommendations to the Town Board on how to make possible changes.

The meeting adjourned at 11:10 a.m.

Respectfully submitted,

Diane Byrne
Clerk