

# TOWN OF DAY PLANNING BOARD – MINUTES

## REGULAR MEETING – SEPT. 5, 2006 – 7 P.M.

**Members Present:** David Cox, Chairman  
Ted Mirczak  
Jack Vaillancourt  
Dick Traeger  
David Avigdor, Attorney

**Members Absent:** None.

### Pledge

**Motion** by Ted Mirczak, seconded by Jack Vaillancourt to approve the Minutes of August 7, 2006. Ayes: David Cox, Ted Mirczak, Jack Vaillancourt, Dick Traeger. Carried 4-0.

### Old Business

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

Chairman Cox stated Mr. Kyarsgaard has also submitted an application in this boundary line adjustment application. Mr. Ratcliffe had appeared before this Board in regard to this boundary line adjustment at the July meeting. Mr. Kyarsgaard submitted a survey map and his deeds. Mr. Kyarsgaard stated the shaded area of the previously submitted map shows the 25 feet of the proposed boundary line adjustment where his paved driveway and part of his carport are located on the Ratcliffe parcel.

Chairman Cox stated the Ratcliffe parcel currently has 160 feet of road frontage where 150 feet are required. Mr. Kyarsgaard stated his parcel is 50' x 188' and at the time he paved his driveway, he assumed the survey pin he found was correct. Because Mr. Ratcliffe is going to construct a home on his property, he ordered a survey and it revealed the encroachment. Mr. Kyarsgaard stated in exchange for an engineered septic system, which he would install for Mr. Ratcliffe, he would receive the 25 feet of property, which will also satisfy the setback requirement.

Mr. Kyarsgaard currently owns four lots, which appear on the same deed together but apart from his original 50' x 188' parcel. Board Member Mirczak stated that that lot would be pre-existing allowing a 50-foot road frontage rather the required 150 feet. Board Member Mirczak further stated originally the Ratcliffe

parcel was represented as .84 acres and to transfer 25 feet would reduce it to .64 acres. At the same time, the road frontage would be reduced from 160 feet to 135 feet creating a substandard frontage requirement together with a substandard acreage requirement. Chairman Cox inquired if Mr. Kyarsgaard's septic or well currently encroached on the Ratcliffe parcel. Mr. Kyarsgaard stated it did not but a pond located on another portion of the property would and had been accounted for in this boundary line adjustment.

Chairman Cox stated this action would result in a legal lot and make it substandard and a grandfathered but substandard lot more standard. Board Member Mirczak stated the problem would be that Mr. Ratcliffe would be prohibited from building on his parcel because his parcel would now become a new substandard lot subject to the requirements of the Ordinance. It would no longer be a pre-existing, non-conforming lot. Mr. Kyarsgaard asked for those requirements. Board Member Mirczak stated the lot would have to be 60,000 square feet with 150 feet of road frontage. Discussion ensued regarding a smaller boundary line adjustment of ten feet rather than 25 feet but the problem would still remain on the acreage requirement. Board Member Mirczak inquired of Town Attorney Avigdor if he was interpreting the Ordinance correctly. Town Attorney Avigdor stated he was correct. Board Member Mirczak asked if Mr. Ratcliffe were aware of this. Mr. Kyarsgaard stated he probably was not. Board Member Mirczak stated it was germane to the discussion and the decision, and that Mr. Ratcliffe be informed of the implications of this boundary line adjustment. Chairman Cox stated the only reason that Mr. Ratcliffe's parcel is buildable currently is due to it being grandfathered.

Mr. Kyarsgaard inquired if there was any other option he and Mr. Ratcliffe could pursue. Chairman Cox stated they could make an application to the Zoning Board of Appeals and once they obtain a variance, return to this Board. Chairman Cox stated this Board must live by the rules of the ordinance and the Zoning Board has the ability to adjust the requirements with a variance. He further stated that while this is a boundary line adjustment and not under the jurisdiction of this Board but creating a substandard lot would be under the auspices of this Board. Town Attorney Avigdor stated if the ZBA grants the variance then this Board would not have any trouble proceeding. Board Member Mirczak stated the

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variance would be for Mr. Ratcliffe because it is his lot that will be more substandard. Mr. Kyarsgaard stated he has an attorney. Town Attorney Avigdor stated he should contact his attorney to find out the standards for which an area variance may be granted. Town Attorney Avigdor asked if Mr. Kyarsgaard wished to waive the time limits to see what the result of the application would be with the ZBA and hold this application open with the Planning Board. Mr. Kyarsgaard agreed to waive the time limits.

**PERRYMAN, Arthur & Kristine**  
**PBO6-08 SUB – Tax Map #25.1-22.2**

The Secretary stated she has not received any new information from the Perrymans. This application will remain on the agenda until the end of the six month time period.

**FEDOROWICZ, John & Laura**  
**PB06-09SUB – Tax Map #43.6-2-1**

Chairman Cox stated the Fedorowicz have submitted a new application and survey map. He further stated they wish to subdivide two parcels. One parcel has 150 feet of road frontage and the other has 118 feet and the Fedorowicz wish to use frontage on the lakeside of the road. The new map reveals that this lakeside frontage is now split between the two lots with 30 feet transferred to Lot 1 and 51 feet transferred to Lot 2. Mr. Fedorowicz stated there would also be a boundary line adjustment from their larger parcel to meet the acreage requirement of 60,000 square feet for these two parcels. He further stated the lakeside road frontage had to be split between the two parcels after consulting with Hudson River Black River Regulating District. They informed Mr. Fedorowicz if each lot did not retain a part of that lakeside frontage, the lot without the lakeside frontage would lose access to the lake.

Board Member Mirczak stated that according to the Ordinance there should be 150 feet of contiguous frontage from boundary to boundary. This splitting of frontage from the opposite of the road has never been allowed previously therefore no precedent has been set. Board Member Vaillancourt stated this has not occurred since he has been on the Board. Board Member Mirczak stated the issue was density. Mr. Fedorowicz stated the Town would not be gaining density. Board Member Mirczak stated the lakeside

portion of the parcel is not usable now and that it appears to be part of the existing deed to gain road frontage for lake access. Board Member Vaillancourt stated the applicants have one buildable lot. Chairman Cox asked if the Fedorowicz has any further questions. The Fedorowicz stated they did not. Discussion ensued on what type of action should be taken on this application at this time. Chairman Cox stated the Fedorowicz could apply to the ZBA with this Planning application held in abeyance and pursue a variance. He asked if the Fedorowicz wished to waive the time limits regarding this application. Town Attorney Avigdor stated their application to the ZBA was still being held on their agenda pending Planning action. The Fedorowicz agreed to waive the time limits on the Planning application.

Chairman Cox inquired if the Board wished to make any recommendations to the ZBA and would a motion be required. Board Member Traeger stated he did not see how this subdivision could possibly happen. Chairman Cox stated if the Fedorowicz applied for a variance for the 118 feet of road frontage, this Board would not have to consider any frontage on the lakeside of the parcel.

Town Attorney Avigdor stated this Board should reconsider making recommendations to the ZBA. They should be concerned with what happens in planning terms and not with what the ZBA does or what it should consider. The ZBA should be allowed to do what they do. Town Attorney Avigdor further stated that if the variance is granted, that lack of frontage could not be the basis on which this Board could deny the subdivision. Board Member Mirczak stated he would like to make his concern regarding the density issue known to the ZBA. Town Attorney Avigdor stated he thought Board Member Mirczak was technically correct in considering lot width in terms of density, however, lakeside frontage should take the buildings per foot of total frontage in consideration. Chairman Cox stated the concern is septic systems and buildings on one side of the road and the nearness to other septic systems. Board Member Mirczak stated this Board was designed to deal with density and wished to make it known to the ZBA and was not sure how to go about that. Town Attorney Avigdor stated he could make a recommendation, say nothing or appear at the Public Hearing, which would make the most sense to remain part of the equation before making a recommendation to the ZBA as a formal statement from the Planning Board. He further stated Board Member Mirczak would be appearing as a

private citizen voicing his concern and he would let the ZBA be aware that he was also a member of the Planning Board.

**New Business** None.

**Correspondence** APA letter regarding Camp Cherith and telephone contact reveals all improvements are physically taking place in the Town of Corinth with installation of routine septic systems.

APA letter regarding telecommunications towers being located in Day, Edinburg, Hadley and Luzerne. Board Member Mirczak asked how the other members of the Board felt about these towers. Board Member Traeger stated he did not like the obtrusiveness of them and was concerned in the future how much space other companies renting space would occupy on the towers. Discussion ensued on the Duffy property, the location of the tower on or near that site and the private road intersecting the town road. Chairman Cox stated if the tax map numbers matched the Duffy parcel which was included in the APA letter, that the tower would be located there. Board Member Vaillancourt stated the location on Horsehill Road would be located so low on the mountain it would only increase service in the valley and not over the hill. Chairman Cox stated these are not cell towers but only emergency towers and there was planning for future use by cell phone companies. Chairman stated there are strict limits by the APA on height requirements for these towers and their construction was still in the future.

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

Town Attorney Avigdor stated this turnaround was originally designed approximately seven years ago with then Highway Supervisor Danny Allen and the original location was found not to be appropriate. The site was exchanged for another location on the Kloss property but the deeds had been filed with the original site. Mr. Kloss approached Town Supervisor Johnson stating he wished to rectify the situation and Supervisor Johnson sent to the Planning Board for an ad hoc recommendation. He further stated he could not give any more information and if the Board felt it needed further information, a letter should be sent to the Town Board stating the same. An appearance by Mr. Kloss and Highway

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Supervisor York at the next meeting may be needed with a clearly stated description of the proposal. Chairman Cox stated this turnaround appears to be on lands owned by Cebula and Pareene and they should also be involved in these discussions. Board Member Vaillancourt stated he had visited the site and it would appear to him that Mr. Kloss only owns half of the turnaround. All members agreed to send a letter to the Town Board.

Letter from Saratoga Real Property regarding the Mowle/Wilhelmsen illegal subdivision. Town Attorney Avigdor stated he was the attorney for this subdivision and it is a legal subdivision because the parcel of Mowle spans the public road. According to our Ordinance, property that is located on either side of the road can be legally subdivided without a formal application. He further stated no action would need to be taken, as this was simply a notification by Real Property that an illegal subdivision may have occurred.

Memo from Real Property regarding boundary line adjustments and deeds. Chairman Cox stated it appears that Real Property is making any follow-ups on these boundary line adjustments.

**Secretary's Report** Chairman Cox stated he would be attending the Planning Federation Conference in October.

There is a planning conference on September 28 regarding record keeping which is not pertinent for any Planning Board Members.

Town Attorney Avigdor stated he would not be attending the October meeting due to the religious holidays.

**Motion to Adjourn** at 8:15 p.m. by Jack Vaillancourt, seconded by Dick Traeger. Ayes: David Cox, Dick Traeger, Jack Vaillancourt, Ted Mirczak. Carried 4-0.

Respectfully submitted,

Diane R. Byrne  
Secretary