

# TOWN OF DAY PLANNING BOARD MINUTES

## REGULAR MEETING – MARCH 5, 2007

**Members Present:** David Cox, Chairman  
Ted Mirczak  
Charles Dreyer  
David Avigdor, Attorney

**Members Absent:** Dick Traeger  
Jack Vaillancourt

### **Pledge**

**Motion** by Ted Mirczak, seconded by Charles Dreyer to approve the minutes of the February 5, 2007 meeting with the following corrections: Page 5, last paragraph, last line change “permit” to “registration”, Page 7, second paragraph, second line from “he would request a formal copy of the DEC registration” to “he is requesting from Mr. Carbone, a formal copy of the DEC registration”, Page 8, first line from “the acreage contiguous” to “the acreage is contiguous” and Page 9, Secretary’s Report, last line from “ cannot be given with some road frontage” to “cannot be given without some frontage”. Ayes: David Cox, Ted Mirczak, Charles Dreyer. Carried 3-0.

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

Chairman Cox inquired if there had been any activity on this agenda item. The Secretary stated there has not and it would remain on the agenda for one more month.

### **New Business**                    **CARBONE, Rick - PB07-03SPR Tax Map #30-2-2**

Chairman Cox stated an application for Site Plan Review had been received from Mr. Carbone. He inquired if Mr. Carbone or his attorney had anything to add. They stated they did not. Board Member Mirczak stated on the application under “Certification” there is representation certification for the attorney to be given permission to represent the applicant and should that be completed on this application. Attorney Avigdor stated that while APA routinely requires this certification be signed by the applicant’s attorney, it is not required. The Board has the discretion whether it requires the signature of the owners where the applicant submits a lease or a contract. He further stated the owner or owners, in the case of this application, have appeared and have notified the Board that they have issues with the validity of the lease. Attorney Avigdor stated this Board is not a Court to determine validity.

March 5, 2007

Chairman Cox stated the purpose of this meeting is to decide if the application is complete and not to decide if what is written is acceptable.

Board Member Mirczak stated on the sketch included with the application it indicates the parcel is under two ownerships and where is the dump located relevant to the two owners. Attorney Coseo stated Mr. Carbone does not agree with the 50 foot setback which requires the stump dump to be located 50 feet from property lines. The map filed in the County Clerk's Office indicates one parcel to Mr. Jordan and one parcel to Mr. Kenyon. By drawing this new property line, it indicates an encroachment by Mr. Carbone and puts a burden on him. Mr. Coseo presented a survey map to the Board (copy of which he will provide at the Public Hearing to be included in the file).

Chairman Cox stated this stump dump is less than three acres. Mr. Carbone stated only one third of the dump has been used and he has changed the way he operates the dump to conserve it and make it last longer. Board Member Mirczak stated he asked Mr. Carbone to submit to the Board a copy of the last report he submitted to DEC as required in his registration. Mr. Carbone stated he did not keep a copy of this report and he was under the impression that Board Member Mirczak was obtaining that report from DEC. Mr. Carbone stated the report would indicate he dumped 1500 yards of debris. Board Member Mirczak stated it was clearly indicated in the meeting minutes from the February 5<sup>th</sup> meeting; Mr. Carbone was to submit this quarterly report which is required in his registration with DEC. Mr. Carbone stated he only submits yearly reports. Board Member Mirczak stated this would be considered part of the completed application. He further stated he spoke with Code Enforcement Officer Metzler who had made an inquiry with DEC for the reports but is on vacation and Board Member Mirczak does not know if he was able to obtain the report.

Mr. Carbone stated he has not kept a copy of reports which he filed the past four or five years so he cannot provide a copy of the most recent report. He was under the impression that while the reports are filled out quarterly, he is required to file them with DEC on a yearly basis. Mr. Carbone stated under "360-1.8(h) many items

March 5, 2007

are covered that do not pertain to his operation. He further stated that truckloads which were counted as loads of debris were

actually loads of fill because the trucks could not drive over the piles and he is required to cover them. He stated this could cause some confusion in actual count of the loads. Board Member Mirczak stated according to Section 360-1.8(h) "Registered facilities must submit an annual report...to the department's center office and the office of the department administering the region in which the facility is located, no later than 60 days after the first day of January following each year of operation." Board Member Mirczak inquired if Mr. Carbone had filed the report. Mr. Carbone stated he had and if he had not, DEC would have pulled his registration. He stated he has not been cited by DEC for any violations. Chairman Cox stated Mr. Carbone cannot submit a report that he does not have. Board Member Mirczak stated he would try to obtain a copy.

Mr. John Jordan, owner of one parcel in the dump site, stated there were problems with Mr. Carbone capping the septic lagoon and that Mr. Carbone must retain a 50 foot perimeter around the stump dump. He further stated Mr. Carbone would not be able to maintain the 4 to 1 or 25% pitch going to the pond. Chairman Cox stated that these were issues for the Public Hearing and the purpose of this evening's meeting was to deem the application complete.

**Motion** by Charles Dreyer, seconded by Board Member Mirczak to declare the application complete and schedule the Public Hearing for Wednesday, April 4, 2007 at 4 p.m. Ayes: David Cox, Ted Mirczak, Charles Dreyer. Carried 3-0.

Attorney Coseo inquired if there was any further the Board would require at the time of the Public Hearing. Chairman Cox stated he should address the grade issue and submit a copy of the latest annual report. Mr. Jordan stated 4 p.m. would be an early hour for a public hearing. Chairman Cox stated public hearings have no set time. Chairman Cox stated he will contact DEC to schedule an on site meeting prior to the Public Hearing and will notify Mr. Jordan, Mr. Carbone and Mr. Kenyon. Mr. Kenyon stated the area is plowed and accessible.

**Correspondence** Chairman Cox stated a letter had been received from Mr. and Mrs. Arthur Perryman regarding grandfathered right-of-ways. Attorney Avigdor stated what was grandfathered must exist now and the Perryman subdivision would not fall under that as the new lot would not be grandfathered. Board Member Dreyer stated he had

subdivided that parcel when he was the owner a year prior. Attorney Avigdor stated the zoning ordinance went into effect in 1989 or 1990 but the grandfathering had nothing to do with what

the Perrymans wished to do. He stated the Secretary should send a letter to the Perrymans stating “The question of grandfathering should be taken up with Code Enforcement Officer Metzler.”

Board Member Mirczak stated the tone of the letter is that this Board made the Perrymans jump through hoops while what the Board did was to advise the Perrymans what avenue to take to bring this to resolution. Board Member Dreyer stated Mr. Metzler had advised the Perrymans to go before the ZBA, Mr. Metzler stated it was an option and Mr. Perryman was aware that he had no hope of obtaining a variance. Board Member Mirczak asked the Secretary to email a copy of the draft letter to himself and Chairman Cox prior to sending it out.

The Secretary inquired if Chairman Cox would be presenting the Training Resolution to the Town Board. Chairman Cox stated Town Clerk Vaillancourt would present it to the Town Board.

Board Member Mirczak stated he was in receipt of a recent emailed Subdivision Law but wished to obtain a complete electronic copy of the Ordinance. The Secretary stated she would obtain a copy.

Chairman Cox stated he was in receipt of a memo from Saratoga County Planning regarding lot line adjustments along with an information sheet provided by Real Property Department to be distributed to each Board Member.

Chairman Cox stated he would contact DEC to arrange a meeting at the Town Hall in the Carbone site plan review. Board Member Mirczak stated he would like to determine if the law had been complied with regarding reports. Board Member Dreyer stated DEC informed them it did not have the time or personnel to check on reports. Mr. Kenyon stated at the time of the closure of the septic lagoon, he contacted Tom Preston of the DEC. Board Member Mirczak inquired if this meeting would have to be advertised. Attorney Avigdor stated it would. Chairman Cox stated he would attempt to set up a meeting for the week of March 19<sup>th</sup>. Mr. Jordan stated he had evidence of previous violations.

Chairman Cox stated this information should be presented at the Public Hearing. Board Member Mirczak stated this Board should obtain some input from Code Enforcement Officer Metzler to produce any information at the Public Hearing.

**Motion to Adjourn** at 8 p.m. by Ted Mirczak, seconded by Charles Dreyer. Ayes: David Cox, Ted Mirczak, Charles Dreyer. Carried 3-0.

Respectfully submitted,

Diane R. Byrne  
Secretary