

TOWN OF DAY PLANNING BOARD REGULAR MEETING – MAY 7, 2007 – 7 P.M.

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

Members Absent: None

Motion by Jack Vaillancourt, seconded by Board Member Traeger to approve the minutes of the April 17, 2007 meeting. Ayes: David Cox, Ted Mirczak, Dick Traeger, Jack Vaillancourt, Charles Dreyer. Carried 5-0.

Old Business

**CARBONE, Rick PB07-03SPR
Tax Map #30.2-1.112 and #30-2-34**

Board Member Mirczak stated the reason this Board has had to hold a Public Hearing on the Carbone Stump Dump is a failure to timely file a permit. He further stated in 1995 the septic lagoon permit had expired and the Planning Board at that time had warned Mr. Carbone the dangers of letting permits expire. In 1999 and 2003 the permit for the stump dump expired and this Board held meetings and reissued the permit and now another permit has not been filed. The current application was submitted on February 18, 2007. The original DEC registration of land clearing regulations was attached. Board Member Mirczak inquired if Mr. Carbone was familiar with all the regulations. Mr. Carbone stated he was. Board Member Mirczak stated in 1994 and 2003 there were twelve additional conditions and he inquired if Mr. Carbone was familiar with those. Attorney Coseo stated the 1995 application has the twelve conditions but the 1993 application does not. Board Member Mirczak stated the permit issued in 1994 contains the twelve conditions and the 2003 permit is identical to the 1994 permit. He inquired if Mr. Carbone agreed with that statement. Attorney Coseo stated they are the same. Board Member Mirczak, referring to the conditions and requirements, stated that at the March 5, 2007 Planning Board, Mr. Carbone stated he does not keep copies of the past four or five years of reports which DEC states he is required to keep copies of. Board Member Mirczak was able to obtain copies of reports from DEC dating back to 1999 and provided Board Members with copies of each. Board Member Mirczak inquired if Mr. Carbone had copies of the

same reports. Mr. Carbone stated he is not required to keep copies. Board Member Mirczak stated Mr. Carbone is required to keep copies of reports for seven years and produce them, he was unable to produce them as requested but Kevin Woods of DEC was able to produce them. However, no reports were found for 2003, 2004 or 2005. Board Member Mirczak inquired if Mr. Carbone had submitted them as required? Mr. Carbone was unsure, stated he submit forms whenever DEC sent them to him but because he was only dumping brush and stumps, the reporting is different and DEC did not always require him to send in reports. Board Member Mirczak stated regulated facilities must submit an annual report no later than 60 days after the end of the year and must include specific information which was not on the reports such as truck count, volume, and percentage of remaining approved design volume under Section 360-7.1. Mr. Carbone stated the reporting requirement is different for stump dumps. Board Member Mirczak stated it was not according to Mr. Woods at DEC, that reports should have been filed for 2003, 2004 and 2005, and Section 2 and 4 of these reports are not complete. Board Member Mirczak stated according to Mr. Carbone, the Town has brought in fill and that should also be reported and the identified waste was “stumps, trees and brush” only and the fill was not reported.

Board Member Mirczak stated the origin of the waste is listed on the reports as coming from Warren, Fulton and Saratoga Counties with the total for 2006 being 1,500 yards. He further stated 86 loads would translate to 17.4 yards per load. Mr. Carbone stated his trucks can hold 18 yards. Board Member Mirczak stated that Mr. Carbone has reported this deposited material is from Edinburg and Day. Mr. Carbone stated it is mostly from Edinburg and Day. Board Member Mirczak inquired if deposited materials originate from other places? Mr. Carbone stated it does occasionally. Board Member Mirczak stated Mr. Carbone did not report it as required. Mr. Carbone stated it did not matter where the materials come from. Board Member Mirczak stated this Board issued a permit for deposited materials from Edinburg and Day and under Section 9 of the DEC report calls for identification of any deviations to be reported. Mr. Carbone stated when he spoke with Mr. Woods of DEC, he told him what to fill out. Board Member Mirczak inquired if Kevin Woods told Mr. Carbone how to fill out the reports? He further stated

the current permit allows 100 loads per year but inspection of previous reports reveal in 1998, 40 truckloads of 500 yards; 1999, 50 truckloads; 2000, 60 truckloads; 2001 no increase; 2003, 2004, 2005 no reports; and 2006, 1500 yards. He inquired if a smaller truck were used. Mr. Carbone stated they were and he has new trucks now. Board Member Mirczak stated that none of the reports from 1996 to 2006 indicate the source per city and how does Mr. Carbone keep track of the loads? Mr. Carbone stated he has a log in the shop and when it is time to file, they are added up and submitted on the reports. Board Member Mirczak stated if these reports are based on logs, does Mr. Carbone keep the logs as required for seven years? Mr. Carbone stated once the reports are filed, the logs are disposed of.

Board Member Mirczak stated regarding the source of the materials, is Mr. Carbone changing the way he operates the dump to conserve it and make it last longer in spite of an increase of 150% of loads dumped? Mr. Carbone stated he does not know if he will be dumping 250 loads or if he will utilize the dump from 7 a.m. to 7 p.m. but occasionally he may come into the dump late and need a clean truck for the following morning. He stated he usually ends his work day at 4 p.m. and does not work on Saturdays but he wishes to cover himself so he increased the numbers on the application so Mr. Jordan cannot complain to the CEO about his operations. He stated the Town of Day needs a dump such as this one as there is no other place to dispose of trees and brush. He stated there is nothing hazardous in the stump dump.

Board Member Mirczak stated he visited the site and took photographs of carpet, concrete wire, a damaged cooler garden hose and rusty pipe and how did those materials get in the dump? Mr. Carbone stated Mr. Jordan's contractor dumped these materials and at the time, Mr. Carbone immediately contacted Mr. Jordan and Mr. Jordan admitted he put them there. Attorney Coseo stated it is a 100 acre parcel which Mr. Carbone does not control and Mr. Jordan cannot prevent others from coming into the stump dump because there is no operating gate or fence. Board Member Mirczak stated perhaps it should be fenced. Attorney Coseo stated it is 800 feet from the road. Mr. Jordan stated he did not allow any one into the stump dump. Board Member Mirczak inquired if Mr. Carbone inspects what his trucks dump in the stump dump. Mr. Carbone stated he definitely does. Board Member Mirczak

stated a gate is supposed to keep people out and when the Planning Board visited the site, the lock on the gate was not operable and it is Mr. Carbone's responsibility to keep the gate locked. Mr. Carbone stated he always opened the gate with a key but he does not know what happened since he was stopped from using the stump dump in December 2006. However, he stated in the future he would replace the lock and make sure it is operable.

Board Member Mirczak stated when the Town excavated, it found ground water within one foot of the dumped materials and that would be a violation of the permit. Mr. Carbone stated DEC informed him he could not dump in standing water. Board Member Mirczak stated Mr. Carbone is aware of the conditions of his permit and he violated them. Mr. Carbone stated that requirement was a mistake but never corrected on the list of conditions and he was only restricted from dumping in standing water.

Board Member Mirczak stated the permit contains 12 conditions and did Mr. Carbone wish to change six of them and only have six conditions to now apply? Mr. Carbone stated he wished to change six of the 12, but not eliminate them. He stated the Board may leave on or eliminate any conditions they wish. Attorney Coseo stated because this was a new application, Mr. Carbone revisited the conditions and made changes. Board Member Mirczak stated there was an increase of 100 loads to 250 loads per year and does Mr. Carbone see an increase in dumping. Mr. Carbone stated he has no plans to increase his loads to that extent but wished to cover himself if he brought in over 100 loads. Attorney Coseo stated this would also cover the fill loads since these loads must also be counted. Mr. Carbone stated there is a possibility in the future he would stock pile fill for future closure of the stump dump. He further stated he may have 75 to 80 loads of clean fill this summer.

Board Member Mirczak reviewed the increase of days and hours of operation and days of running heavy equipment at the site from six to 15 days. Mr. Carbone stated he may not need up to 15 but he is just trying to cover his bases and have no problems at a later time. Board Member Mirczak stated if this Board would issue this permit; they would require logs of truckloads with a copy of DEC annual report submitted to this Board. He further stated he did not feel the operating hours of sunrise to sunset were unreasonable in a rural area. He further stated the language

on the permit which deals with violations should be added, such as a stop work order if the conditions are violated. There should also be a log of truckloads going in that is required to be maintained. Board Member Vaillancourt stated there does not appear to be any paperwork retained at this time. Attorney Coseo stated Mr. Carbone has no objection to submitting any reports. Board Member Traeger stated there should not be an assumption that any one within the Town Hall obtains any permits for Mr. Carbone. Attorney Coseo stated this was a mistake on Mr. Carbone's part.

Chairman Cox stated that this Board does not know if the stump dump can stay within the boundaries and be able to be covered as required maintaining all slopes, etc. without a drawing. He further stated does this Board wish to issue a permit without knowing that? He stated if this Board issues a permit for one or five years, he would require a drawing to show him if there is enough room in the three acres. Board Member Vaillancourt stated he wishes to change the boundaries. Chairman Cox stated Mr. Jordan wanted to come to an agreement where the boundaries are but the discussion never progressed. Board Member Mirczak stated they are three contiguous acres. Board Member Dreyer inquired if it appears in the deed. Board Member Mirczak stated the lease had to be recorded in the deed. Board Member Traeger inquired what happens to the timber cut from the site. Mr. Carbone stated he leaves it and Mr. Jordan can come into the site and take out the trees. Attorney Coseo stated on the issue of the deed and lease, it was the responsibility of the landowners to file the lease with the deed and Mr. Carbone had no control over that. Mr. Jordan stated in DEC regulations Section 360-7.6, Section F, the responsibility to file the lease falls on the lessee. Attorney Coseo stated the lessor should have filed the lease at that time. Mr. Jordan stated it is the lessee's responsibility to do that and DEC must file a map depicting the three acre limitations and should have had a survey done at that time. Attorney Coseo stated Mr. Carbone met with DEC and there was no violation or reason to cite Mr. Carbone. Board Member Dreyer stated there is a requirement for a map on the regulations from DEC. Chairman Cox stated on Page 2, Section 360-7.6(f) there is a requirement the deed shall also reference a map which shall be filed with the county clerk, showing the limits of the landfilled area within the property. Attorney Coseo stated he believed the burden was on the landowner and whether the landowner did this, he does not know.

Attorney Coseo stated the Board had a meeting with DEC at the Town Hall and they did not cite any violations by Mr. Carbone.

Chairman Cox stated how does this Board know if this stump dump as it exists today can be properly closed within three acres. Mr. King stated there was confusion on the boundary lines of the stump dump which are not the property lines. This would allow you to fill the whole three acres of the stump dump. Chairman Cox inquired if the footprint will reveal if the current existing site on three acres would be large enough to accommodate what is deposited in the stump dump in the future? Mr. King stated in his estimation there is enough area to continue utilizing the stump dump. Chairman Cox stated he would need a drawing to establish this fact and how big the footprint is. Mr. King and Mr. Carbone were on the site and measured from the pin 105 feet but felt uncomfortable putting those lines on paper because he is not a surveyor and did not find two pins on the property and did not put any pins there.

Mr. King was comfortable stating that it could be properly utilized and closed properly in the future. He further stated he did not establish the line as there were no cross sections. Board Member Mirczak inquired if this was crucial in the decision-making process? Chairman Cox stated he felt it was and he would need to know more of what the limits of the stump dump are and where he can dump the stumps prior to making a decision. Board Member Mirczak stated he was concerned that the Board would be requiring Mr. Carbone to spend additional money when they may not issue this permit. Chairman Cox stated this could be held in abeyance for 62 days or issue a denial at this time.

Town Attorney Avigdor stated the resolution would need to be completed within 62 days. He further stated without holding a special meeting, the Board must make a decision tonight or at the June meeting. Town Attorney Avigdor stated at this time if the Board needs additional information based on what they have learned from the Public Hearing, they should wait the additional month or approve the application, approve the application with conditions or deny the application. Chairman Cox stated that in fairness to Mr. Carbone, if this Board is going to deny the application they should let him know.

Town Attorney Avigdor stated if two adverse parties come before the Board to challenge the Board's decision, the

Board must make a resolution to articulate the reasons based on evidence or facts received from the Public Hearing. Chairman Cox stated he would be willing to approve this personally with the original conditions but change the two-foot ground water to standing water and he would need different drawings to be certain the stump dump can be properly closed. Board Member Mirczak stated he would be inclined to deny the permit based on information that Mr. Carbone has kept no records, has let the permit lapse in the past and he is not convinced that Mr. Carbone will operate it properly.

Motion by Ted Mirczak, seconded by Charles Dreyer to deny Application 07-03SPR, Richard Carbone, the permit is denied with no further action needed. Ayes: Ted Mirczak, Charles Dreyer, Dick Traeger. Nays: David Cox, Jack Vaillancourt. Carried 3-2.

New Business

Goodspeed/Mattison Site Plan Review – Kennel

The Secretary stated she has sent Ms. Goodspeed an application for a site plan review and letters stating if she is keeping these dogs as pets, they would need to be individually licensed. Ms. Goodspeed has not responded to any of the letters. Code Enforcement Officer Metzler stated Ms. Goodspeed contacted his office on a different matter and stated rules for purebred dogs versus kennels are different and that she has this license in Warren County. She was advised that the license would need to be issued by the Town of Day. Mr. Metzler stated Ags and Markets would need to be contacted to ascertain what is required for purebred dogs and the difference between the purebred and kennel license. No further action will be taken until this information is received.

Town Attorney Avigdor inquired if she is selling the dogs. Mr. Metzler stated she told him she does sell an occasional dog. Board Member Dreyer stated there was a sign in a local store which indicated she was selling dogs. Town Attorney Avigdor stated this Board was not the enforcement authority and either Ms. Goodspeed would need to appear before the Board for a site plan review or the enforcement authority would decide what to do.

Majestic Mountain Marina

Board Member Dreyer stated he feels the owners of Majestic Mountain Marina should appear before this Board

for a site plan review in light of the fact that they have changed their original operation since their last site plan review by obtaining a liquor license and calling the site a restaurant rather than a snack bar. Chairman Cox stated he did not think it needed a site plan review. Town Attorney Avigdor stated the Board would need to see exactly what was originally approved being that a restaurant or snack bar is just a label. He further stated this was not a change in land use. There is a threshold for requiring a new site plan review and a violation of the original site plan would need to be reviewed by the Code Enforcement Officer. Code Enforcement Officer Metzler stated they did expand with a permit which increased their occupancy from 19 to 50 by adding bathroom facilities. Chairman Cox stated also only one driveway had been approved. Mr. Metzler stated two driveways always existed. Chairman Cox stated only one could be used for commercial use. Mr. Metzler stated it was a pre-existing driveway; and, in regard to the beer and wine permit versus alcohol permit, he was confused on that issue. Town Attorney Avigdor stated the previous resolution would reveal what was allowed; but under site plan review law, an expansion of floor area would require a site plan review. Mr. Metzler stated the addition was only bathrooms. He further said he did speak with the applicant and the applicant stated he would like to change his snack bar to a restaurant. Mr. Metzler stated he would then need to come before the Board for a site plan review and he agreed to do that. Board Member Traeger stated he reviewed the application of Majestic Mountain Marina and there was no mention of liquor or wine. Any action was tabled until the previous application and file are reviewed. Town Attorney Avigdor stated any expansion of the site plan review over 50% would require a new site plan.

Correspondence

Chairman Cox stated information had been received for Zoning and Planning Breakfast Briefing regarding Enforcement of Local Land Use Laws to be held June 22 in Saratoga. There was no interest in attending.

Chairman Cox stated he will be on vacation at the time of the June meeting and Board Member Mirczak will chair the meeting.

Chairman Cox stated he has served on the Great Sacandaga Lake Advisory Committee on the permit rule changes and these proposals have been forwarded to Hudson River Black River Regulating District. At the present time, he

has not received the approved copy of the minutes of this meeting and there is no requirement that HRBR approve these proposed rules. Copies will be distributed at their May meeting with action being taken in June but they have committed not to take action on the proposed rules until Public Hearing.

Secretary's Report

None.

Public Participation

Barry Lyons stated he was a potential purchaser of Tax Map #32.19-14 & 15 which currently has two building permits. Mr. Lyons stated he would like to subdivide this parcel so the property line would divide the two parcels with each having road frontage on North Shore Road rather than one parcel having 200 feet road frontage and the second parcel is currently located directly in back of it with no road frontage. Chairman Cox stated this would result in two illegal lots. Code Enforcement Officer Metzler stated they are two pre-existing buildable lots. Town Attorney Avigdor stated if these lots existed prior to 1990, they remain buildable lots. Board Member Dreyer stated they would no longer remain buildable if there is a change. Mr. Lyons stated they were not trying to profit from this change but simply wished to create two lots with road frontage. Board Member Traeger inquired if there was a right of way to the back lot. Mr. Metzler stated a deeded right-of-way would achieve access to the back lot.

Town Attorney Avigdor stated currently there are two lots with 200 feet and zero feet road frontage. If the boundary was changed there would still be two lots with 100 feet of road frontage where 150 feet are required and this would not meet the requirements of the Zoning Ordinance. It was established the lots are 350 x 200 feet. Chairman Cox stated Mr. Lyons would have to apply to the Zoning Board of Appeals for two area variances. Town Attorney Avigdor stated this Board cannot formally give approval because the property is currently owned by another party. He further stated this Board could give a non-binding decision which Mr. Lyons could provide to his attorney and have a contract for purchase include the contingency of obtaining area variances for this property. Mr. Lyons stated he did not wish to go through the whole process if he would not be able to obtain the area variances. There would be another purchaser besides himself for these properties. It is his intention to renovate the existing yellow house. He has contacted the neighbors for locations of existing septic

systems in order to comply with those regulations. Town Attorney Avigdor stated while this Board cannot give approval for a subdivision for someone else's property, this Board may determine it to be a non-jurisdictional boundary line adjustment and the seller would know there may be a contract for sale.

Chairman Cox stated he would agree it would be a boundary line adjustment. Board Member Mirczak stated it may have a shared driveway. Board Member Vaillancourt stated he would agree it would be a boundary line adjustment if the parties shared a driveway. Town Attorney Avigdor stated a driveway permit must be obtained from the County Highway Department. Mr. Metzler stated a building permit cannot be issued without a driveway permit. Chairman Cox stated based on a preliminary review of this matter, he feels this Board would treat it as a boundary line adjustment. Mr. Metzler stated he would be unable to utilize the zoning law reduction on setbacks and Mr. Lyons would have to have setbacks of 20 feet on each side of the structure.

Mr. Jordan thanked the Board for their decision in the Carbone application and he inquired if Mr. Carbone had the right to re-apply. Chairman Cox stated an individual can re-apply unless they are denied. Board Member Vaillancourt stated if Mr. Carbone does not submit a new application with a new plan, there is no point in re-applying.

Motion by Charles Dreyer, seconded by Board Member Vaillancourt to adjourn the meeting at 10:05 p.m. Ayes: David Cox, Ted Mirczak, Jack Vaillancourt, Dick Traeger, Charles Dreyer. Carried 5-0.

Respectfully submitted,

Diane R. Byrne
Secretary