

TOWN OF DAY PLANNING BOARD – MINUTES

REGULAR MEETING – DECEMBER 4, 2006

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

Pledge

Motion by Jack Vaillancourt, seconded by Dick Traeger to approve the minutes of November 6, 2006. Ayes: Ted Mirczak, Jack Vaillancourt, Dick Traeger. Carried 3-0.

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

Ratcliffe/Kyarsgaard has been referred to the Zoning Board of Appeals. The Public Hearing will be December 18, 2006. No additional information has been received and no action will be taken. It will remain on the agenda.

PERRYMAN, Arthur & Kristine
PB06-08SUB – Tax Map #25.1-22.2

The Perryman application has also been referred to the Zoning Board of Appeals. It has not been accepted as complete and no Public Hearing has been scheduled. It will remain on the agenda.

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

No further information has been received on the Fedorowicz application by either this Board or the Zoning Board of Appeals. It will remain on the agenda until January.

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

Further information and notification of adjoining neighbors who may also be affected by the location of both the existing highway and turnaround is still pending.

New Business: ALDRICH, Leland & Carol
PB-12SUB - Tax Map #32.1-5

Code Enforcement Ken Metzler appeared before the Board with Mr. Aldrich stating Mr. Aldrich and his sister, Carol, wished to gift a 3.118+ acre lot from a 39-acre parcel located in Lakefront Residential District to Mr. Aldrich. Mr. Aldrich has submitted a survey map. Acting Chairman Mirczak stated the survey map revealed that while there is adequate acreage, there is inadequate road frontage (total frontage is 300 feet with 200 feet to be retained on the larger parcel), which may result in a lot that is not buildable. Acting Chairman Mirczak stated this would be an issue the applicant would take up with the Zoning Board of Appeals. Mr. Aldrich stated he was aware of this.

Attorney Avigdor stated this would be a modified gift lot and if Mr. Aldrich intends to file the map with the county, it would need to be stamped. Previously, an applicant wanted to file a gift lot and this Board did not have a procedure in place, which would allow the stamping of gift lot maps due to the determination of gift lots not being jurisdictional. The Secretary contacted the Planning Board in the Town of Corinth to obtain materials they used for gift lots. The Town of Corinth does not have a zoning ordinance which has been approved by the Adirondack Park Agency and one of their stipulations is that the applicant receive a jurisdictional determination from the APA and copies of the survey map along with the mylar. It will be the decision of this Board whether they wish to add these two stipulations to their gift lot procedure. Currently the procedure only involves a notarized affidavit from the applicant and a resolution of non-jurisdiction.

Attorney Avigdor further stated that since the Town of Day has a zoning ordinance which has been accepted by the APA and the Town of Day Planning Board would be the lead agency in these matters, it is not necessary for the Town of Day to receive a jurisdictional determination from the APA. The resolution would contain wording which would state "This Board is not determining whether any other government agency has jurisdiction. The Applicant is responsible to determine if there are any other involved agencies (i.e. Adirondack Park Agency). APA would determine the existence of wetlands and this Board is not in a position to give a binding opinion on that.

Attorney Avigdor stated the next item this Board would have to consider is if it wishes to require the submission of a survey map and mylar. If the applicant proposes to file it with the County, they should have a more involved survey map with mylar to be stamped and signed by the Chairman. However, in the past this Board has accepted less formal maps from applicants in order to have a good understanding of what the applicant was proposing. Attorney Avigdor further stated this would be a conveyance without a map, which would be sufficient if the conveyance was a square or rectangle. However, if the lot to be conveyed is irregularly shaped, an informal map would not be sufficient and this Board may want to require a new survey map, which has been prepared by a licensed surveyor.

Acting Chairman Mirczak, Board Members Vaillancourt and Traeger agreed to include the wording in the Resolution that the Applicant would be responsible to determine if any other agencies were involved and not require a jurisdictional determination from APA prior to issuing this Board's Resolution of Non-Jurisdiction. Board Member Traeger stated they might have set a precedent in the way the Allen gift lot application was handled with a surveyed map. Acting Chairman Mirczak stated he did not believe they did because the Allens wished to file the map. They further agreed that they would not require a formal survey prior to issuing the Resolution of Non-Jurisdiction if they were satisfied they were fully informed by the information submitted by the Applicant. Attorney Avigdor stated over the years of issuing Determinations of Non-Jurisdiction, there have been 20 to 30 gift lots, which did not result in the filing of a map. Acting Chairman Mirczak stated it was not the wish of this Board to burden the applicants. It was determined that if it is not a formal survey, the map would not be stamped.

Mr. Aldrich stated he had no objection to providing the Board with a copy of his map. Acting Chairman Mirczak inquired if Mr. Aldrich intended to file his map with the County. Mr. Aldrich stated he was. Acting Chairman Mirczak stated then this Board would require a mylar to be stamped and signed by the Chairman. Attorney Avigdor provided Mr. Aldrich with a copy of the affidavit and inquired if he were comfortable to sign the same. Mr. Aldrich did and signing it before Attorney Avigdor, it was notarized and submitted to the Board. Acting Chairman Mirczak wished to reiterate that this declaration of non-jurisdiction does not

guarantee the buildability of this lot. Mr. Aldrich stated he understood the same.

Motion by Board Member Vaillancourt, seconded by Dick Traeger to take no action being this is a gift of land through a family member. Ayes: Ted Mirczak, Jack Vaillancourt, Dick Traeger. Carried 3-0.

Mr. Aldrich inquired if he could obtain the Resolution and signed map within the next few days in order to file it. Acting Chairman Mirczak stated he would sign the map in Chairman Cox's absence this week.

McLAIN, Paul Tax Map #41.1-11 Gift Lot

Paul McLain appeared before the Board to clarify the difference between regular subdivision and gift lot applications. He wishes to gift a lot to his son from his 17.3 acre parcel on Snow Road. He is unsure of his son's future plans and he was concerned if he gifted a lot to his son and his son decides not to return to this area would the lot be able to be sold. Acting Chairman Mirczak stated when the application is a gift lot; this Board would not take jurisdiction over the subdivision and therefore would not guarantee the buildability of the lot.

Mr. McLain stated there are currently two residences on the parcel, his own and that of his father who is deceased. Attorney Avigdor stated whatever is currently on the parcel would be grandfathered. The question involves what is newly constructed. This parcel would be located in Residential Low Density, which would require 8.5 acres, and since the total acreage is so close to what is required, a formal survey would be required to confirm the total acreage. The road frontage requirement would be 300 feet per parcel and Mr. McLain's parcel has 450 feet in total so it would be deficient in that requirement. However, if this were handled as a gift lot, the road frontage requirement would be waived but as stated previously would not guarantee buildability.

The differences in the submission requirements were reviewed with Mr. McLain (i.e. formal subdivision would also require a fee, notification of adjoining neighbors, etc.). Acting Chairman Mirczak also stated if Mr. McLain's son wished to replace the mobile home currently existing on his lot, it would require a submission to the Zoning Board of Appeals for the road frontage

December 4, 2006

requirement. Attorney Avigdor stated if Mr. McLain's son decided not to return to the area, he could sell this lot.

The different methods of subdivision were discussed which included gifting a lot with 300 feet of road frontage and the remaining 100 feet would remain with the original parcel. Attorney Avigdor stated the ZBA might look more favorably on a variance where there are structures already in place. The McLain parcel would not be increasing the density since two homes already exist and the only change would be on paper. However, Attorney Avigdor stated he cannot predict how the ZBA will decide. Mr. McLain was provided with a blank affidavit and would make a decision in the future if he is going to proceed with the application.

HANSTEIN/MATTHEWS
PB06-04SUB – Tax Map No. 42-2-25.1

Code Enforcement Officer Metzler stated he had received a letter from Saratoga County Real Property and a phone call from Mr. Matthews regarding the same letter. Real Property was informing Mr. Matthews that "The deed needed to finalize this line adjustment as approved by the town has not yet been filed. If the deed is not filed in a timely manner the tax parcels will be split creating a tax parcel that may not meet town regulations." Mr. Matthews stated there was a delay in his attorney's office but this matter would be rectified in the near future. Acting Chairman Mirczak stated his concern was that Real Property was circumventing the action of this Planning Board. Attorney Avigdor stated he was not able to explain the County's action.

CARBONE, Richard
Stump Dump Permit

Code Enforcement Officer Metzler stated Mr. Jordan had appeared in his office regarding the Carbone Stump Dump Permit. Mr. Jordan contacted the County to find out when the Permit was filed and the County had no record of it being filed. Under Condition No. 2 of the Permit Class B Regional Permit issued by the Town, it states "This Permit shall be void unless recorded in the County Clerk's Office, in the name of the Applicant, within 60 days after the issuance hereof." The Permit was issued on August 4, 2003.

December 4, 2006

Mr. Jordan has concerns regarding Condition No. 9 “The depth of the material to be placed at the site shall be the lesser of (A) five feet, or (B) two feet above the existing level of ground water.” Mr. Jordan states this condition has not been adhered to. Ken Metzler stated he has contacted Mr. Carbone to dig a test hole in the near future.

Mr. Jordan stated under Condition 11A “Delivery of materials to the site shall be by truck, and no more than 100 truck deliveries to the site shall be permitted.” Mr. Jordan stated he understands this to be for the duration of the permit and he has documented over 100 visits to the site by Mr. Carbone.

Ken Metzler inquired what his jurisdiction would be on this matter. Attorney Avigdor stated as the code enforcement officer, it would be his department to deal with these infractions. Ken Metzler stated he would call the County and try to determine if the Permit had been filed. Attorney Avigdor stated if the Permit had not been issued, the issue of the number of truckloads would be easily dealt with. He stated it would be difficult to prove the number of loads exceeding 100. Ken Metzler was directed to write a letter to Mr. Carbone to produce the filed permit within 14 to 21 days via certified mail.

Board Member Traeger stated that Condition No. 3 reads, “This Permit is binding on the Applicant and all future owners of the project site, their heirs, successors and assigns.” He inquired how a future owner would be aware of this. Attorney Avigdor stated it would be revealed in the title search but if it was not filed, it would not be found in a search. Mr. Jordan stated he had a title search and it was not revealed.

Mr. Jordan stated Mr. Carbone informed Ken Metzler that Mr. Jordan was harassing him and was he within his rights to bring this matter to the attention of the Board and Code Enforcement Officer. Attorney Avigdor stated he was not guilty of harassment and had a right to petition the government for redress of a grievance.

Correspondence

Additional information was received from the APA on the telecommunications tower with no action taken by this Board.

The meeting date schedule was reviewed and no members could see any conflict with the dates. These dates could be changed if a conflict should in the future.

Secretary's Report None.

Public Participation None.

Motion to Adjourn at 7:55 p.m. by Dick Traeger, seconded by Jack Vaillancourt. Ayes: Ted Mirczak, Dick Traeger, Jack Vaillancourt. Carried 3-0.

Respectfully submitted,

Diane R. Byrne
Secretary