

TOWN OF DAY PLANNING BOARD REGULAR MEETING AUGUST 2, 2010

Members Present: David Cox, Chairman
Ted Mirczak
Jack Vaillancourt
Eileen Brennan
David Avigdor, Town Attorney

Members Absent: Dick Traeger

Motion by Ted Mirczak, seconded by Board Member Vaillancourt to approve the minutes of July 8, 2010 with the following changes: Page 2, last paragraph, fourth line "...and the ZBA grants the variance. The Planning..." change to "... and the ZBA grants the variance; then the Planning Board..." (deletion of commas and addition of semi-colons within the same sentence). Page 4, last paragraph, tenth line change "encumbered" to "unencumbered". Ayes: Cox, Mirczak, Vaillancourt. Abstention: Brennan. Carried: 3-0.

Old Business: **McCormack, John & Annette**
 Tax Map #31.11-1-74, 41 & 40.2

Mrs. McCormack has met with Assessor Nealon and decided to merge all three properties rather than subdivide a portion of the right-of-way. This would have created two lots with one being substandard. The final merger accomplished a single parcel which was a beneficial solution for Town of Day and the McCormacks.

HERTZEL, Ron
Tax Map #44-1-8 & 65
Boundary Line Adjustment, November 6, 2000

Saratoga County Real Property Office contacted the Secretary to ascertain if the Hertzal parcels had been subdivided recently due to a request they received to file a new deeds. The Secretary provided a history of the parcels in question to the Real Property Office. The original application was a boundary line adjustment and deemed non-jurisdictional. Since 2003, resolutions have routinely been issued by the Planning Board to be presented to the Real Property Office at the time of either map or deed filings. At the time of the Hertzal boundary line adjustment motion, no resolution was prepared. However, the minutes do indicate it was approved as a boundary line adjustment.

The Real Property Office would not file the deeds because according to "Rules for Real Property Tax Administration" the area of the boundary line adjustment fell in two different school

districts. When a situation such as this occurs, the solution would be to create a substandard lot(s) in each school district. This would be unacceptable to this Board and the Town of Day.

The Secretary was next provided with a letter from Real Property indicating a possible illegal subdivision. Chairman Cox inquired of Town Attorney Avigdor what the County would expect of this Board. Town Attorney Avigdor stated this Board would not have to take any action. He further stated if this Board had been aware of the school district boundaries in this area, the boundary line adjustment would have been denied. The proposal as presented did not violate the Town of Day Subdivision or Zoning Law. Technically, this Board was correct in stating they did not have jurisdiction. If this Board had known there was a school district boundary and knew the merger could not take place, the applicant would have been informed of that and this situation would not have occurred.

Town Attorney Avigdor stated nonetheless this Board informed the applicant they did not have jurisdiction over this merger and the County is currently not allowing the applicant to complete this merger. He further stated he realizes that property owners resent this type of interaction between agencies which result in delays or disapprovals but it is the reality of the situation.

Town Attorney Avigdor stated this landowner did violate the Town of Day Subdivision Laws because they did not file the boundary line adjustment which was approved. He further stated he did not believe this was done in bad faith. It is a technical violation and Code Enforcement Officer Metzler should be notified that it appears to be a violation and no building permits should be issued until the violation is cured.

Town Attorney Avigdor stated the applicant can reappear before the Planning Board to rectify the situation. If they do not choose to, this Board has eliminated any negative land use impact on the Town of Day by notifying Code Enforcement Officer Metzler. Board Member Mirczak, in order to understand the technicality, stated Mr. Hertzler created the substandard lot at the time the County could not merge a portion of Tax Map #44-1-65 to Tax Map # 44-1-8. Subsequently Tax Map #44-1-8 was split into two parcels, Tax Map #44-1-8.1 and 44-1-8.2.

Board Member Mirczak inquired if zoning in that district would not allow an 8.6 acre stand alone parcel. Town Attorney Avigdor stated it would not matter for this Board's analysis this evening

what the zoning district allowed. What would matter is the fact it is a subdivision and was not approved by this Board. Town Attorney Avigdor stated if a lot can be legally created, the landowner's cure would be to submit an application for a subdivision. If it is not a lot which can be created due to non-compliance with Zoning Law, the landowner will have to seek another cure.

Town Attorney Avigdor stated Code Enforcement Officer Metzler and the landowner should be advised that the failure to merge as was the plan presented to this Board on November 6, 2000 renders this an illegal subdivision and no building permits should be issued until this situation is cured.

Board Member Vaillancourt stated the issue of school districts has never occurred since he has been a member of the Planning Board. He inquired how this Board would know where school boundaries are. Town Attorney Avigdor stated he has not had a situation such as this one previously either. However, it has occurred and perhaps applicants should be queried at the time an application is submitted. Each landowner whose property is in two different school districts would receive a school tax bill for each.

Town Attorney Avigdor stated when this Board approves boundary line adjustments, the resolution could state that this Board is approving it on the condition that the merger does not cross a school district boundary.

Board Member Brennan inquired to the number of areas affected by school district boundaries. Town Attorney Avigdor stated there are three school district boundaries within the Town of Day which are Corinth, Hadley-Luzerne and Edinburg. The Secretary will obtain a map of the school districts. Board Member Mirczak will ascertain if the County mapping website has an overlay for school district boundaries.

Motion by Eileen Brennan, seconded by Board Member Mirczak to direct the Secretary to notify Code Enforcement Officer Metzler and property owner Ronald Hertzl that failure to merge 8.6 acres from Tax Map #44-1-65 to Tax Map #44-1-8 as was the plan presented to this Board on November 6, 2000 renders this an illegal subdivision and no building permits should be issued until this situation is cured. Ayes: Cox, Brennan, Mirczak, Vaillancourt. Carried: 4-0.

New Business: None.

Correspondence: Major Project Notice No. 2010-0102 was received from the Adirondack Park Agency and no Board Members have any comment on the same.

Secretary's Report: The Secretary stated she was contacted by Mike Valentine of Saratoga County Planning regarding projects on County highways. Ted Serbalik of Saratoga DPW believed some projects on County highways were not being referred to his office (none of which were located in the Town of Day). Mr. Serbalik is requesting Towns provide his office with copies of subdivision maps and site plans only (no applications) to alert his office that a driveway may be included in the building plans. They wish to be aware of construction plans prior to their implementation. The Secretary informed Mr. Valentine that she would forward those maps and site plans to Mr. Serbalik. Chairman Cox stated these applications on County highways are routinely referred to County Planning. The Secretary agreed. Town Attorney Avigdor believed that County Planning is attempting to place the burden of notifying DPW on the Town of Day. He further stated for clarity, the need to send a copy of applications on County highways is a legal obligation, the request to forward maps and site plans to County DPW is an accommodation which we will do.

In regard to the Planning Federation, Chairman Cox stated he would attend on Tuesday rather than on Monday as he had stated at last month's meeting. The Secretary will forward the registration.

Motion by Jack Vaillancourt, seconded by Board Member Mirczak to adjourn the meeting at 7:15 p.m. Ayes: Cox, Mirczak, Brennan, Vaillancourt. Carried: 4-0.

Respectfully submitted,

Diane Byrne
Secretary