

TOWN OF DAY PLANNING BOARD

PUBLIC HEARING – APRIL 17, 2007

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

Members Absent: None

Public Present: Richard Carbone
Peter Coseo, Attorney for Mr. Carbone
John King, Engineer for Mr. Carbone
John Jordan
Otto Kenyon
John and Marjorie Rauth
Bertha Kenyon
Ken Metzler, Code Enforcement Officer

The Public Hearing regarding Richard Carbone, Stump Dump Permit Renewal, Tax Map #30-2-2 was declared open by David Cox, Chairman for the Planning Board at 7:15 p.m.

Attorney Avigdor stated John Jordan and Otto Kenyon have not received certified notice of the Public Hearing from Mr. Carbone and both are present at this Public Hearing. Mr. Jordan is the owner of the parcel where the stump dump is located and Mr. Kenyon was the previous owner at the time the lease was created. Attorney Avigdor stated he has not researched whether the actual owner of the parcel is entitled to notice. He further stated when APA is faced with a similar situation, if the owner has signed the application, they would not receive notification.

Attorney Avigdor stated the tax parcel number which appeared on the legal notice published in the Post Star and on the certified letters was also incorrect. The tax map number indicated appeared on the permit issued in 2003 and several transactions have occurred since the last permit was issued and new numbers have been assigned. The Jordan parcel is Tax Map #30-2-1.112 and the Kenyon parcel is Tax Map #30-2-34. Attorney Avigdor's concern is that those persons who received certified mailings may not have been concerned with what occurs on Tax Map #30-2-2 but would on Tax Map #30-2-1.112 or #20.2-34 and would wish to speak at this Public Hearing. Attorney Coseo stated the officers of the town had disseminated incorrect information. Attorney Avigdor stated the burden is on the application to verify that all information is correct. He further stated all adjoining property owners are entitled to correct information in order for the Public Hearing to proceed. Attorney Avigdor stated his concern is whether the Public

Hearing should proceed this evening. He further stated he had an opportunity to discuss this matter with Attorney Coseo in the presence of Mr. Carbone that this Board does not have the jurisdiction to proceed this evening.

Attorney Coseo stated while the Secretary provided the tax map number and the Code Enforcement Officer provided the list of adjoining property owners, he would not want to subject his client to a future Article 78 proceeding if there was anything improper in the notification process. Attorney Avigdor stated he would agree to not proceed this evening and he asked for any objections from those in attendance. John Jordan stated he would object because Tax Map #30-2-2 is the number of John and Marjorie Rauth. Attorney Avigdor stated the concern was larger than Mr. Jordan's. He further stated all tax map numbers are available online, one of the adjoining property owners would have the ability to receive information on the location of Tax Map #30-2-2 and may not have an objection to activity on that tax map number.

Attorney Avigdor stated his advice to the Board would be to not hold the Public Hearing this evening, advise Mr. Carbone and Attorney Coseo the correct tax map number and to verify the adjoining property owners list is correct. He further stated if Mr. Carbone wished, legal research could be done to ascertain if Mr. Jordan and Mr. Kenyon legally would need to be notified. This would involve a possible further delay of the Public Hearing. Board Member Mirczak inquired of how the adjoining neighbor list is arrived at in relationship to the 500 feet requirement. Attorney Avigdor stated it would be 500 feet from all outside boundaries of the parcel in question. Discussion ensued on how many days would be needed to meet the ten day requirement and legal notification requirement. Attorney Avigdor stated the certified mailings would have to be made by Friday, April 20th. Mr. Carbone stated he would meet that requirement. The Secretary stated the legal notification would also be made within the time requirement. Attorney Avigdor stated he would assume Mr. Carbone would not require the legal research of whether Mr. Jordan and Mr. Kenyon would be entitled to certified notification. Mr. Carbone stated he would not and would provide both with certified notification.

Chairman Cox stated the Public Hearing could be scheduled for the next regular meeting on May 7, 2007 at 7 p.m.

Motion by Board Member Dreyer, seconded by Jack Vaillancourt to reschedule the Public Hearing for Monday, May 7, 2007 at 7 p.m. Ayes: David Cox, Jack Vaillancourt, Charles Dreyer, Ted Mirczak, Dick Traeger. Carried 5-0.