

# **TOWN OF DAY PLANNING BOARD REGULAR MEETING – AUGUST 4, 2008**

**Members Present:** David Cox, Chairman  
Jack Vaillancourt  
Dick Traeger  
David Avigdor, Town Attorney

**Members Absent:** Eileen Brennan  
Ted Mirczak

**Motion** by Jack Vaillancourt, seconded by Chairman Cox to approve the minutes of July 7, 2008 with a correction in the spelling of “VonGuilder” to “VanGuilder”. Ayes: Cox, Traeger, Vaillancourt. Carried: 3-0.

**Old Business:** None.

**New Business:** None.

**Correspondence:** Chairman Cox stated the Board had received a letter from Mike Valentine of Saratoga County Planning which he had received from New York State Department of Health regarding subdivisions being created because they are divided by a road. Town Attorney Avigdor stated it has no bearing on Town of Day Subdivision Law. He stated as APA and Town of Day each have subdivision laws and there is a third government agency which has jurisdiction over certain subdivisions and those types of subdivisions have never been addressed in the Town of Day. These realty subdivisions which require Department of Health approval are subdivisions of more than five lots with less than five acres each.

The letter states “A subdivision ‘tract’ as defined by Article 11 of New York State Public Health Law would not be considered multiple ‘tracts’ by this Department for the mere fact that it is divided by a road(s).” Town Attorney Avigdor stated that their law under Article 11 does not say that it is non-jurisdictional because it is divided by a road but ours does. If the Department of Health had jurisdiction, the applicant would have to abide by their regulations. APA also considers a subdivision non-jurisdictional when divided by a road. Town Attorney Avigdor has contacted Mike Valentine to ascertain if he is in agreement with Attorney Avigdor’s conclusions and he does concur.

Chairman Cox stated this would apply to the Hoffman/Petro application which is divided by Kathan Road. Town Attorney Avigdor stated if they wanted to divide their property along Kathan Road, they would be allowed to do that. He further stated this situation is completely analogous to the gift lot situation which is a

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property owner can divide a parcel without Planning Board scrutiny. However, it does not state it is a buildable lot without meeting the requirements of the building code. In regards to gift lot and subdivision by road, the Board may wish to make the wording more analogous. Presently, if a property owner divides his parcel along a public road, they have not violated our subdivision law. Town Attorney Avigdor stated he suggested that the Town Board refer both issues to the Comprehensive Plan Committee for their review. Chairman Cox stated it was tabled at the Town Board meeting.

Chairman Cox inquired if a property owner wants to divide their parcel that is divided by a road, it is legal and not a subdivision but it is not grandfathered from zoning requirements. Town Attorney Avigdor stated the lot would have had to exist prior to the inception of the zoning ordinance and it is legally created and newly created. Board Member Vaillancourt inquired if that would count the footage on both sides of the road. Town Attorney Avigdor stated each side has created its own lot so it would be separate and would count.

Chairman Cox stated APA has sent this Board a letter suggesting revisions to our gift lot amendment and has forwarded new wording for Town of Day's gift lot exemption. Chairman Cox inquired of Town Attorney Avigdor if the wording from APA was proper. Town Attorney Avigdor read the following from APA's wording proposal, "Any conveyance of land shall contain the following language (or similar) in the conveyance document which shall govern the buildable status of the premises in question." He stated he would eliminate "(or similar)" to avoid any argument on what is considered similar. He also stated the Board may consider adding similar wording to the subdivision by road. Chairman Cox reviewed the July 21<sup>st</sup> correspondence from the APA with the Board Members stating the cross outs were deletions and items underlined were additions. Chairman Cox stated the changes will be made to the Resolution and be submitted to the Town Board. Board Member Vaillancourt stated there has never been a problem with this previously. Chairman Cox stated he was in agreement with Board Member Vaillancourt but it was an item that the Town Attorney recommend this Board deal with prior to an unsuspecting purchaser having to deal with it. For example, if a property owner were to subdivide their property by the intersecting road such as Hoffman/Petro and Kenyon/Lincourt

(which was approved at our last meeting) that the Board include a statement that makes the buyer aware that he is still subject to zoning. He stated he would bring the issue to the Comprehensive Planning Committee for their suggestions.

**Motion** by Dick Traeger, seconded by Board Member Vaillancourt to Town Board that this Board is in agreement with the suggested changes by Town Attorney Avigdor that “(or similar)” be eliminated.

Board Member Vaillancourt inquired if there were any proposed applications anticipated in the near future. The Secretary stated she had not received anything in the past weeks. Chairman Cox stated there had been some inquiries but it had not progressed any further.

**Motion** by Jack Vaillancourt, seconded by Board Member Traeger to adjourn the meeting at 7:20 p.m. Ayes: David Cox, Jack Vaillancourt, Dick Traeger. Carried: 3-0.

Respectfully submitted,

Diane Byrne  
Secretary