

TOWN OF DAY PLANNING BOARD REGULAR MEETING – JULY 7, 2008

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

Members Absent: None

Motion by Jack Vaillancourt, seconded by Board Member Traeger to approve the minutes of June 2, 2008 meeting with the following correction: Page 7, line three “has an easement on this parcel.” to “has a lease on this parcel.” Ayes: David Cox, Ted Mirczak, Dick Traeger, Eileen Brennan, Jack Vaillancourt. Carried: 5-0.

Old Business: Overlook – Nature Conservancy

Chairman Cox stated he and ZBA Chairman Dave Davidson made a field visit to the Nature Conservancy parcel and to the overlook on the lake which is on private land on the lakeside. They will not be of any service to the Town unless circumstances change.

Comprehensive Plan Committee Update

Chairman Cox stated the first meeting of the Comprehensive Plan Committee took place on Monday, June 23rd and Ted Mirczak was appointed Chairman for the Town with Professor Richard Lamb as consultant. Another meeting will be scheduled without Professor Lamb at the end of the month with much to be accomplished prior to the next meeting with Professor Lamb.

Board Member Mirczak stated he did attend the Sustainable Communities Summit which he felt was a worthwhile conference with information to be applicable to the Comprehensive Plan Committee.

**New Business: HOFFMAN/PETRO Conceptual Review of Proposed
Subdivision – PB08-07SUB - Tax Map #33.14-17.2**

Chairman Cox stated he would recuse himself from this Review because the applicants are longtime neighbors. Board Member Mirczak will serve as Chair.

Philip Logan, representing the applicants (Richard Hoffman was present), is a registered architect based in New York City who has worked extensively in land preservation and estate planning with

July 7, 2008

difficult properties working closely with Boards to make a project a good fit in the community. He stated he has been working with Mr. Hoffman on the future development of his parcels. Mr. Hoffman owns parcels along Kathan Road which is located at number 1282 which consists of two properties with houses on the lake. He also owns with Richard Petro a parcel consisting of 29+ acres up hill and across from the lake which is accessible by a 16 foot wide skid road and undeveloped. Mr. Logan stated this parcel was logged approximately six years by a previous owner. He further reviewed a submitted survey map explaining which parcels were owned by Mr. Hoffman and Mr. Petro. Mr. Petro also owns a small parcel located on Kathan Road.

Board Member Mirczak inquired if all of the parcels were separate lots with separate tax map numbers. Mr. Logan stated they were. Mr. Gil VonGilder, surveyor of the properties, stated the right-of-way was fee title ownership to the land. Mr. Logan submitted a Drawing No. L1.0, entitled "Existing Site Plan With Proposed Dwelling Sites and Driveway." He stated the Hoffman family in order to accommodate an expanding family while keeping them within the family owned parcel, wished to build two homes with two guest houses on the combined three parcels. Mr. Logan stated due to a difficult bank a shared private road would be constructed with a garage located near the intersection of Kathan Road for storage of a snow plow then splitting into private roads accessing three dwellings. Board Member Mirczak inquired how many dwellings would be on each parcel. Mr. Logan stated some of the buildings could be considered accessory uses and requested the definition of an accessory use. Board Member Mirczak stated each separate dwelling is considered a structure and not an accessory use. Town Attorney Avigdor stated APA law defines each dwelling a principal building. Mr. Logan stated the dwellings could be attached. Town Attorney Avigdor stated a building permit would determine by number of kitchens, etc. if a principal building was a duplex and therefore would count as two buildings on a single parcel. He stated the applicants should consider a single large dwelling.

Mr. Logan stated that he realized he was "pushing the envelope" in trying to realize as many as four subdivided lots on these proposed three combined parcels. Board Member Mirczak stated the parcels are located in two zoning districts, lakefront residential and rural low density which require 1.3 acres and 8.5 acres respectively. He further stated on a parcel of 29 acres, three dwellings would be allowed. However, Town of Day has a road frontage requirement

of 300 feet in RLD which must be on a public road for each dwelling.

Town Attorney Avigdor stated under the Subdivision Regulations of the Town of Day, Section II a principal residence is a single family dwelling or mobile home, a tourist cabin for rent of 300 square feet or more, and each dwelling unit of a multiple family dwelling constitutes one principal building. He stated this is an oddity in APA law which this Town adopted intentionally not wanting to impose an extra level of restriction. He further stated a person may be able to have a very large house but not two houses attached. Mr. Logan stated it was unfortunate that the applicants must follow such strict guidelines which spurn "McMansions" because families feel constrained. Town Attorney Avigdor stated in areas where the Town zoning law differs from the APA law, we must insist on compliance with both and where we could match that law whether or not we felt it was good town policy, we did not add additional restrictions.

Board Member Mirczak stated regarding the pre-existing, non-conforming 82 foot wide parcels, they would be regarded as building lots and the large 29-acre parcel with a 16 foot right-of-way would be another buildable lot provided they meet all building code requirements for a building permit. He further stated they would have access to a public road (Kathan Road). Board Member Mirczak stated the applicant would have to build a road if they wished to subdivide the 29-acre parcel and the Town would have to accept it as a public road. Town Attorney Avigdor stated the policy the Town had in mind when requiring road frontages is that very commonly in this rural area there were poorly maintained easements and right-of-ways. There was concern for emergency vehicles having clear access to those homes and the only way to insure public access was a public road. Mr. Logan stated they were researching the requirements for a public road and finding them to be very stringent. Town Attorney Avigdor stated the requirements for road dedication in the Town of Day was similar to those requirements of downstate.

Mr. Logan stated there is the possibility considering density for three lots on the three parcels. Board Member Mirczak stated by splitting the 16 foot right-of-way, it would be creating two non-conforming parcels and it would not be allowed. Mr. Logan stated it would need to become a town road. Town Attorney Avigdor stated at least 450 feet of length would need to be added to the

July 7, 2008

road. He stated the Planning Board could allow the road to be wrapped around including each side to make up the road frontage requirement. He further stated while he is only the town attorney and cannot predict how a Board would act; another alternative might be to be denied at this Board and appear before the Zoning Board of Appeals with the position that you have the right to build three lots and would like relief from the road frontage requirements. Town Attorney Avigdor stated if the applicant submitted an application for four buildings, it would be less likely to be granted because each additional variance diminishes an approval. He further stated Mr. Hoffman could approach the ZBA stating he could build the structures without approval but is looking for a more sensitive and appropriate land use by locating the structures on the rear lot. Town Attorney Avigdor stated Mr. Hoffman still needs subdivision approval to build the structures, but he again could not predict how the ZBA would find on such an application but it is an approach they might consider.

Mr. Logan stated this approach would not require a town road. Town Attorney Avigdor stated it would not. He further stated if all parcels were combined, a four lot subdivision would still require variances for both road frontage and acreage. It would require an APA variance. This would be a subdivision into sites which is not drawing a line and establishing separate parcels but creating building sites on a single piece requiring the acreage per site. At four sites, the applicant would be creating an acreage shortage requiring an APA variance and in his 22 years practicing law in this area, an APA variance has never been granted.

Mr. Logan clarifying the build out on the three parcels, stated the 29-acre parcel could be subdivided into three parcels and each smaller grandfathered parcel could have one building which would be a possible five lot subdivision. He inquired if he should appear before the ZBA for the public road dedication. Town Attorney Avigdor stated he would appear before the Planning Board for a road dedication. Mr. Logan stated the expense may be prohibitive and the requirements too great to practically consider a public road dedication. Town Attorney Avigdor stated that the added value may be a consideration to applying for the additional building lot which becomes a judgment call on the part of the applicant. Board Member Mirczak stated a public road must be a certain width, which is more than 16 feet and this is regulated by New York State Highway law and carving out a road from the smaller parcels further reducing the available acreage to be applied to a

subdivision. Board Member Traeger inquired if the road had to be sufficient for access by emergency vehicles. Town Attorney Avigdor stated he was not indicating it should be more narrow but shorter. He stated if the object is to get quality access to three buildings, would it matter if the road frontage requirement was met or quality access was attained. Board Member Traeger stated a property owner at the end of Pine Ridge Road wished to accomplish a similar subdivision and to build a road. Town Attorney Avigdor stated they did not want to build a road, they wished to build a right-of-way.

Board Member Vaillancourt inquired if the property would be subdivided on the 29 acre parcel. Mr. Logan stated the family would like to subdivide creating separate lots. Board Member Vaillancourt stated there was another lot designed as "Cromie" which is landlocked, has no structure on it and is surrounded by lands of Hoffman. Mr. Hoffman stated they were considering offering to purchase it which may give them the necessary acreage to build a town road. Board Member Mirczak stated it is not a buildable lot and does not have access through the existing logging road. Mr. Logan stated if a public road were constructed, it may give Cromie access to the lot. He further stated if it were possible to construct a road to highway specifications, the only way would be to construct it through one of the 82 foot wide parcels and the Cromie parcel which would destroy those parcels from any other kind of development. Board Member Vaillancourt stated he was not aware how steep the area was where the planned driveway was to be constructed but there is concern about water running down driveways and freezing causing hazardous conditions on the public road. Board Member Mirczak stated it was a driveway, there are driveway specifications.

Mr. Logan stated the first project they wish to pursue would be the garage/workshop building. Board Member Vaillancourt stated a catch basin could be located in the same area. Mr. Logan stated their goal is to create a nice environment. Board Member Mirczak stated as a Planning Board if this were a formal application, the Board would have to deny it due to insufficient frontage and also APA regulations for number of buildings per acreage. He further stated the applicants have the right to build on the grandfathered smaller parcels. Board Member Mirczak consulting with Town Attorney Avigdor stated in order to refer the applicants to the ZBA, they would have to change their conceptual review of the application to a formal application. Town Attorney Avigdor stated if Mr. Logan wished to consult further with his clients, the matter

could be placed on the August agenda and not require the applicants or their representatives to attend. He further stated they could come to a decision whether or not they wished to pursue the public road construction. Mr. Von Guilder inquired about road width requirements and setbacks. Town Attorney Avigdor inquired if there was a steady rise on the upper 29 acre parcel. Mr. Von Guilder stated there was. Mr. Logan stated the planned development of these parcels does not include a clear cutting of a 50 foot wide swatch for a public road.

Town Attorney Avigdor stated there is a “planned development” district which is more flexible on ownership of the road and allows smaller lots preserving the remaining acreage allowing it to be applied to the total required acreage but does not change overall density. He further stated the proposed road would have frontage on a dead end road rather than a through road and would the frontage requirement be wrapped around both sides of the road. Board Member Traeger stated the Fedorowicz application involved frontage on both sides of a through road. Town Attorney Avigdor stated this was a different application because this is an application with frontage on a dead end road. He further stated while he feels this is different, the Board would have to take into consideration if it is sensible land use or not. He stated the road frontage requirement exists to ensure a certain density is maintained. Board Member Mirczak stated there is a procedure for roads to be accepted by the Town. Town Attorney Avigdor stated that decision would be with the Town Board and not the Planning Board. Board Member Traeger stated he did not believe the Town would accept a road. Board Member Mirczak stated he is not aware of a road being dedicated to the town in his experience. Mr. Logan stated there was a requirement of a three percent slope and without purchasing the adjoining property that could not be accomplished. Mr. Logan stated after consultation with his clients, a public road would not be a consideration and he would like the application to be a formal submission. He further stated the subdivision lines would appear on the submission to the Zoning Board.

Motion by Dick Traeger, seconded by Board Member Mirczak to deny Application No. PB08-07SUB, Richard Hoffman/Richard Petro, Tax Map #33.14-17-2, four- lot subdivision. Ayes: Ted Mirczak, Dick Traeger, Jack Vaillancourt, Eileen Brennan. Abstention: David Cox. Carried 4-0 (one abstention).

Town Attorney Avigdor stated under APA law, the Town of Day has an approved land use ordinance which means if an applicant needs a Class B Regional Permit for certain subdivisions, we can grant that at this Planning Board. However, if it is a Class A Regional Project, it would need APA approval. He further stated APA variances can be granted here but the procedures are different. During a Planning Board proceeding, the APA can appear as an interested neighbor and make comment. The Town of Day can then take action and not abide by their APA wishes. A variance procedure is different because APA can reverse our action. Town Attorney Avigdor stated he is making the applicants and their associates of the Hoffman/Petro subdivision aware of the facts so they can plan their submission so they do not require an APA variance. Mr. Logan inquired about the APA requirement for road frontage. Town Attorney Avigdor stated there is no APA requirement for road frontage. He also stated any wetlands on the property would be a trigger for APA oversight. The legal definition for APA wetlands is one contiguous acre and Army Corps of Engineers is 40 contiguous acres not necessarily all on one parcel if the wetlands extend on a neighbor's property requiring APA review. Town Attorney Avigdor stated this does not mean that the applicants cannot obtain an APA variance but it increases the complexities of the application. He further stated APA does not have a wetlands map but on their website, there is an application for determination of wetlands which requires a tax map parcel number and they will notify you if there are wetlands present on the site. Town Attorney Avigdor recommended the applicant make this application to APA to avoid any unforeseen problems at the start of their application process. The applicant will be notified of the fee for both applications. Mr. Logan also requested a copy of the minutes of the meeting.

**KENYON, Clarence/LINCOURT, Duane & Mary Ellen
Tax Map #30-2-12 PB08-08-SUB**

Chairman Cox stated Application PB08-08SUB is a two-lot subdivision of a parcel of 86 acres owned by Clarence Kenyon. Mr. and Mrs. Lincourt wish to purchase 30+ acres on the north side of Yates Hill Road with Mr. Kenyon retaining the remaining acreage. Town Attorney Avigdor inquired if Mrs. Lincourt was purchasing the entire portion of the parcel on the north side of Yates Hill Road. Mrs. Lincourt stated she was. Town Attorney Avigdor reviewed a section of the ordinance which stated the sale of a landowner's entire ownership on one side of a dedicated public road will not be a subdivision requiring approval. Any lot

July 7, 2008

created pursuant to the proceeding sentence will be deemed created as of the date of the conveyance which divides the land along the road. Any lot so created so therefore will not be pre-existing lots under the Town Zoning Law and will not be buildable lots unless they meet the requirements of the Zoning Law.

Chairman Cox stated if Mrs. Lincourt purchased the entire parcel, she would not need subdivision approval but she would have to meet all the requirements of the building code. It was determined that Mrs. Lincourt was purchasing 30.5 acres located in Rural Low Density District and determined the Board has no jurisdiction in this matter. There is a similar provision in APA law. The Board reviewed the survey map of the 30.5 acres which Mrs. Lincourt submitted. It was determined that Residential/Resource Concentration District is on the south side of Yates Hill Road. Mrs. Lincourt stated they contacted APA prior to coming before this Board and APA referred them to the Town of Day Planning.

Motion by Ted Mirczak, seconded by Board Member Vaillancourt to declare Application No. PB08-08, Clarence Kenyon/Duane and Mary Ellen Lincourt, Tax Map No. 30-2-12 non-jurisdictional. Ayes: David Cox, Ted Mirczak, Jack Vaillancourt, Dick Traeger, Eileen Brennan. Carried: 5-0.

Secretary's Report None.

Public Participation None.

Motion by Ted Mirczak, seconded by Board Member Vaillancourt to adjourn the meeting at 8:15 p.m. Ayes: David Cox, Ted Mirczak, Jack Vaillancourt, Dick Traeger, Eileen Brennan. Carried: 5-0.

Respectfully submitted,

Diane Byrne
Secretary