

TOWN OF DAY PLANNING BOARD REGULAR MEETING – JUNE 2, 2008

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

Members Absent: Dick Traeger

Motion by Jack Vaillancourt, seconded by Board Member Brennan to approve the minutes of the May 5, 2008 meeting. Ayes: David Cox, Ted Mirczak, Jack Vaillancourt, Eileen Brennan. Carried: 4-0.

Old Business: **HILICUS, Christine PB08-02SUB
Tax Map # 31.15-2-16**

Chairman Cox stated this Board's Resolution #PB08-02SUB indicated it could not grant the subdivision of Christine Hilicus because it was substandard was made at the April meeting. He further stated APA also originally stated the permit was not filed and therefore it was not in compliance. This Board has received a letter from APA dated May 6, 2008 which states "you (Hilicus) confirmed that the proposed two-lot subdivision authorized by Agency Permit 86-78 was undertaken in 1986...you further confirmed that the property deed was not corrected to reflect the two individual lots, due to a lien attached to the property. We can now advise that since Agency Permit 86-78 was recorded on May 17, 1986 and the two-lot subdivision was undertaken as required pursuant to 809(7)(c) of the Adirondack Park Agency Act, Agency Permit 86-78 remains valid and no additional permit is required from the Agency...".

Mr. Hilicus stated presently there exists two driveways, two separate homes, wells and septic systems. Town Attorney Avigdor stated subdivision rules will not permit this subdivision due to substandard lot size but the applicants could gift the parcels to the family members. Mr. Hilicus stated they wished to subdivide and not gift the parcels. Chairman Cox stated this Board would refer it to the Zoning Board for an area variance. Town Attorney Avigdor explained the variance process to Mr. and Mrs. Hilicus and the necessity of a variance in their situation. He further explained the ZBA would take into account the impact on the neighborhood. He stated that he does not have a vote on that Board and it would be for those Board Members to make a decision.

Old Business: Gift Lot Exemption Draft Language Proposal

Chairman Cox stated there are substantial differences in our gift exemption and APA gift exemption and both have to be complied with. He inquired what would occur if the Code Enforcement Officer or any other officials in the Town did not remember to include enforcement of APA regulations and this Board issued a gift lot exemption without complying with APA regulations. Town Attorney Avigdor stated because the Board is an APA Land Use approved agency, it is compelled to comply with both sets of regulations. He stated an applicant would apply for a gift lot exemption under our regulations and a gift lot determination under APA regulations which may be too technical for applicants to comply with. This Board would be charged with completing the process which would be considering it under both laws. He further stated it may be a gift lot under Town of Day law but not APA which would require a permit and the applicant could come before this Board to apply for it. It may be a subdivision approval under APA law and a gift lot under our law.

Chairman Cox stated in Attorney Avigdor's proposed language, it includes a clause to cover an occurrence where a party may buy a lot which was gifted and discover it is not buildable. Chairman Cox inquired if we should add a clause referring to APA regulations. Town Attorney Avigdor stated he did not feel the purpose of the law was to advise about other laws but it may be included in the application. Board Member Brennan stated to clear up confusion, if an applicant meets our standards but not APA, and they would need to get a permit from APA. Town Attorney Avigdor stated that would be correct. Board Member Brennan inquired if the applicant would be made aware of the information at the time of applying? Town Attorney Avigdor stated that would be a decision of the Board and how they would want to communicate that with the applicants. He further stated APA gift law deals only with the person who owned the parcel in May 1973 and not anyone whom they transferred that parcel to. That was 38 years ago and there are very few people who will qualify for the APA gift exemption and fewer as time goes on. Town Attorney Avigdor stated in the future, there will be more people applying for our gift exemption because it does not speak to historical ownership. Chairman Cox stated we need to follow the requirements of both our law and APA regulations and Town

Attorney Avigdor agreed. Chairman Cox stated if there are few who can qualify in the future under APA law, there will be fewer and fewer who will be given gift lot exemptions under our law. Town Attorney Avigdor stated they would qualify for gift exemption under our law and under APA law they would be granted a permit for a subdivision. He further stated APA law does not have road frontage requirements, only area requirements which would result in a subdivision permit from APA and a gift lot exemption from us. Chairman Cox stated that the gift lot exemption is becoming less and less important as time goes on due to the APA requirements.

Board Member Mirczak stated if this Board accepts the proposed language to amend the Town law, it is simply to alert the prospective purchaser that it is a gift lot and may not be buildable. He further stated this Board is not rewriting the Town of Day's gift lot law but that may be revisited in the Master Plan Committee reviewing the Town's previous Comprehensive Plan. Chairman Cox stated this Board is not rewriting the law but making it a condition of the gift lot exemption. Board Member Mirczak agreed and stated it is requiring an applicant to include in their deed that this was a gift lot and may carry deed restrictions. He stated he favors the change in language but does not favor that a gift lot can only be gifted if it complies with zoning law because he does not feel that is relevant. He further stated if an individual wishes to gift a piece of property which will never be buildable, they should be able to. There are many regulations on lot size, road frontage, etc. but this is to alert prospective buyers who would be able to do a search of the records. If an individual purchases a parcel without searching and attempts to build on it, it would be stopped at that point and it was their mistake not to search the records. There were no other questions or discussions.

Motion by Eileen Brennan, seconded by Board Member Mirczak to recommend to the Town Board to amend the gift lot exemption to include the following language: "These premises are being conveyed pursuant to a gift lot exception of the Town of Day Subdivision Law, and are not a buildable parcel unless these premises otherwise comply with the Town of Day Zoning Law and with all other applicable laws." Ayes: David Cox, Ted Mirczak, Eileen Brennan, Jack Vaillancourt. Carried: 4-0.

New Business: Chairman Cox stated Town of Arietta Planning Board Chairman Brad Dake is visiting all towns in the Park and proposing an amendment to the State Constitution which would make it legal for

DEC and APA to sell to the towns small portions of State land. He was inquiring if there was any State land in the Town of Day which the Town may have a use for. Chairman Cox stated he was not aware of any. Board Member Vaillancourt inquired what his agenda was. Chairman Cox stated the State owns a large portion of the land in the Town of Arietta. Mr. Dake believes that DEC and APA may look favorably on this proposal. Chairman Cox stated the lands which towns may be interested in are generally along roads and the town would have to pay fair market value to purchase more valuable land for land conservation. Chairman Cox stated Mr. Dake seemed confident this proposal would pass. Chairman Cox stated this was informational and no action needed be taken on it.

**JOHNSEN, Gail - Gift Lot Exemption
Tax Map #42.10-1-1**

Mrs. Johnsen presented a map and explained she and her husband would like to gift a small parcel to an individual which would not meet the zoning requirements and they would stipulate there would be no principle building rights. She further stated she contacted APA and their representative did not feel there would not be a problem making this transfer but the Johnsens would need to file a jurisdictional inquiry form in order to receive a written response which she has done and also apply simultaneously to the Town for approval. Mrs. Johnsen presented a map to the Board. Board Member Mirczak stated he was a life long friend of the Johnsens and would recuse himself. Town Attorney Avigdor also stated he has represented the Johnsens in real estate closings and Mrs. Johnsen consulted him in this matter. He has explained to Mrs. Johnsen that he would be representing the Board in this matter. He stated he would recuse himself if anyone felt his involvement was inappropriate.

Mrs. Johnsen stated a close friend purchased a lot from them with an interest to build. The Johnsens agreed to sell a parcel which would include access to the lake. They contacted Hudson River Black River Regulating District in November and were assured they could make the transfer to Mr. Bradley when the paperwork was completed. In the spring when the transaction was completed, they recontacted HRBR and who now denied the transfer. Mrs. Johnsen stated at the time of the purchase based on HRBR's advice, they acted in good faith and feel they need to make Mr.

Bradley whole. In order to do this, they would like to gift the area covered by an easement. Chairman Cox inquired if it would be sold outright. Mrs. Johnsen stated it would not be sold but it would provide him with benefits he already has. Chairman Cox stated it would be a boundary line adjustment. Town Attorney Avigdor disagreed. Mrs. Johnsen stated it would be added to his current tax map parcel. Town Attorney Avigdor stated this Board may be able to approve it as a gift because it is not contiguous and it involves no transaction. He further stated HRBR has changed their practice in general and denied Mr. Bradley his permit. He further stated this is the third case concerning this that he has dealt with.

Town Attorney Avigdor stated the best avenue is a gift lot exception which the law states is a gift between natural persons and it would have no buildable rights. He further stated this a perfect example of the Board's previous discussion. Mrs. Johnsen is not receiving anything for the transfer, was not the owner in May 1973 and it would not be buildable. Chairman Cox stated the law does not give any reason not to allow it. Town Attorney Avigdor stated if the Board believes Mrs. Johnsen's explanation, it would remove it from their jurisdiction. Board Member Brennan stated it currently divides the Johnsen property located along the lake in half. Town Attorney Avigdor stated the Johnsens could gift the strip on the edge of the parcel to avoid dividing the property and quitclaim back to the Johnsens the easement. Chairman Cox stated he would prefer the latter proposal and not create two Johnsens lots. However, the conveyance of the easement may appear like a transaction for gain on the part of the Johnsens. He further stated it could be understood that Mr. Bradley will be conveying back the easement and asking the Board to realize that it is a correction of a mistake. It would be better land use because it is on the edge of the Johnsen parcel. Board Member Vaillancourt inquired on the width of the gifted parcel on the edge of the parcel. Mrs. Johnsen stated it would be 10 feet. Chairman Cox it would enable Mr. Bradley access to the lake. Town Attorney Avigdor stated the Board should request Mrs. Johnsen amend her inquiry to APA to change her original plan and transfer the parcel on the edge of their property. If APA does not agree, she can revert to her original plan and the only cost would be the delay. Town Attorney Avigdor stated this Board previously granted a gift lot with a fair amount of acreage which resulted in two buildable lots either side of the gifted lot and the only difference here is the amount of acreage (Cheryl Allen).

Motion by Eileen Brennan, seconded by Jack Vaillancourt: WHERAS Gail and Ken Johnsen have presented to the Board a plan to convey to Bradley by gift as strip of land as outlined in yellow on the map presented on which land there is currently an easement in favor of Bradley, and

WHERAS, Johnsen has certified that same is a gift and that there is no cash consideration changing hands, and

WHERAS, an alternative plan has also been presented whereby Johnsen would convey to Bradley a ten foot strip of land along the southwesterly border of Johnsen without consideration but with Bradley conveying to Johnsen said easement, and

WHERAS, the Board determines that said easement is without value and does not constitute consideration for the reason that it is an easement to no place with no value now,

THEREFORE, the Board determines that either a gift to Bradley by Johnsen of a simple interest in the land shown in yellow on the map presented or a conveyance of a ten foot strip at the southwesterly edge of the Johnsen property without cash consideration but with relinquishment of the Bradley easement constitutes a gift within the meaning of the Town of Day Subdivision Law and accordingly is outside the jurisdiction of this Board. Ayes: David Cox, Eileen Brennan, Jack Vaillancourt. Abstention: Ted Mirczak. Carried: 3-0.

Chairman Cox inquired if APA determines it is non-jurisdictional, would that mean the Johnsens would return to this Board. Town Attorney Avigdor stated it would mean that Johnsens would just be able to do it. Mrs. Johnsen completed the Affidavit Pertaining to Subdivision by Gift form which was notarized by Town Attorney Avigdor.

Chairman Cox stated he had a meeting with a representative from the Nature Conservancy from Keene Valley and they had purchased all the Finch-Pryn land and they are trying to determine which parcels will remain forever wild, which would be sustainable forests with conservation easements which would allow logging to continue, which had hunting club easements, etc. There is land in the Town of Day on Clute Mountain and the Nature Conservancy is trying to determine the best use of it and the Town suggested they allow a hiking easement to the overlook. The Nature Conservancy may wish to sell it to a logging company

as sustainable forests with a conservation easement which states it is unbuildable but can be logged. Hemlock Brook Hunting Club has a lease on this parcel. Board Member Vaillancourt inquired if the existing pathway would be accessible to ATVs. Chairman Cox stated it was only a footpath. Board Member Vaillancourt stated this was a concern that the State was buying up all this land and shutting it down, giving hunting camps five to ten years left to their leases. They are being shut down to ATVs and snowmobiles and he questions what they will do with this property if no one is allowed to use it. Chairman Cox stated this particular parcel in the Town of Day has no snowmobiling or ATV paths on it. They did not sound like they were interested in creating one and the Town did not suggest it. He further stated the Town did not feel the snowmobiles could do any damage to frozen grounds. Board Member Vaillancourt stated there would still be a need for a groomer and it would need to be wide enough for a snowmobile to pass. Chairman Cox stated he and Zoning Chairman Davidson will be visiting the site and that the overlook is listed on the County's open spaces plan.

Correspondence Board Member Mirczak may be attending Audubon International Sustainable Communities Summit on June 11th if space is available.

Secretary's Report None

Public Participation None

Motion by Ted Mirczak, seconded by Board Member Vaillancourt to adjourn the meeting at 8 p.m. Ayes: David Cox, Ted Mirczak, Jack Vaillancourt, Eileen Brennan. Carried: 4-0.

Respectfully submitted,

Diane Byrne
Secretary