

TOWN OF DAY PLANNING BOARD

PUBLIC HEARING – MAY 7, 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
Bertha Kenyon
John and Marjorie Rauth
Judy Traeger
Dianne Cox
Kenneth Metzler, Code Enforcement Officer
Sharon and Steve McCray
Barry Lyon
Linda Reinemann
Pat Volpe

The Public Hearing regarding Richard Carbone, Stump Dump Permit Renewal, Tax Map #30-2-1.112 and 30-2-34 was declared open by David Cox, Chairman for the Planning Board at 7:05 p.m.

Chairman Cox stated this application was declared complete at the February 5, 2007 meeting of the Planning Board and a Public Hearing was originally scheduled for April 17, 2007 to continue the Stump Dump Permit on three acres on the above referenced tax maps which has been in existence since 1994. Action on whether to approve or deny this application was carried over to this May 7th meeting and this Board has 62 days to make its decision.

Board Member Mirczak stated he wished to disclose Mr. Carbone had performed work for him approximately six years ago, he had paid his invoice in full at that time and this would not affect his decision this evening. Chairman Cox stated he also wished to disclose that Mr. King, engineer for Mr. Carbone was a co-worker in NYS Canal Corp. and this will not affect his judgment in this application. Town Attorney Avigdor stated he has informed the Board Members it would be appropriate to recuse themselves if

either felt it would affect their judgment or the public would perceive it would affect their judgment. Board Member Traeger stated Mr. Carbone did perform work several years ago for him and it would not affect his judgment. Board Member Dreyer also stated he had contracted Mr. Carbone and it would also not affect his judgment.

Attorney Coseo, representing Mr. Carbone, stated Mr. Carbone had a 30-year lease from Mr. Kenyon running from 1995 to 2025 pursuant to the terms of the lease which authorized him to operate a stump dump. He further stated Mr. Carbone wished to make changes to the Permit which would include increasing the number of loads from 100 to 250 truck loads of materials (18 yards each) per calendar year; operation and deliveries from 7 a.m. to 7 p.m. Monday to Friday and 7 a.m. to 5 p.m. on Saturday; operation which require equipment such a dozer or excavator and loader shall not take place more frequently than 15 days per year; and the height of material when dumped out of the trucks before being pushed over the bank will not be more than eight feet high. Attorney Coseo stated Mr. King was present to confirm that Mr. Carbone is following all DEC regulations.

Chairman Cox asked for any comment from the public. Mr. John Jordan stated he was the owner of the property where the stump dump is located and had several points of information to enter into the record which included tickets issued by DEC and letters sent from DEC because Mr. Carbone was in violation of regulations. Mr. Jordan presented a map to the Board Members which show the entire property indicating the edge of the stump dump as it existed in June 2004 and showing a dash line where the stumpage was at the time. He stated Mr. Carbone has since moved out 40 feet. Mr. Jordan stated the stump dump has consumed nearly 50 percent of the designated three acres. Mr. Jordan also stated that in June 2004 he was attempting to work with Mr. Carbone on the boundaries of the stump dump and that was why he went to the expense to have the stump dump located on his map.

Board Member Vaillancourt asked for the location where Mr. Carbone is dumping stumps. Mr. Jordan stated it was on top of a hill where the septic lagoon was located and Mr. Carbone was working his way around that area. He further stated the map shows the pitch to the pond which is 100 feet from the pond subject to DEC regulations. Board Member Mirczak stated the lease does not show where the delineated area would be for the stump dump. Mr. Jordan stated Mr. Carbone said in a harassing way he would move it wherever he wished on Don King or Bertha Kenyon's property. Mr. Jordan presented numerous photographs to the Board of the stump dump. At this time, Mr. Jordan read a statement into the record which is attached.

Town Attorney Avigdor, referring to part of Mr. Jordan's statement, Page 5 bottom of the page, how does this Board know the following allegation is true "Its also been brought to my attention that some of the fill he brings into cover stumps comes from jobs where he removes old septic systems to put new in and digs out old tanks surrounded by rocky material. Bring that rocky material to stump dump...". Mr. Jordan stated he

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has spoken with individuals who are afraid to sign the petition or complain and they furnished this information to him. He further stated because the Planning Board issues

these permits for APA, it is our CEO's responsibility to oversee it. Mr. Jordan stated increasing the hours of the stump dump also would further interfere with those who live close to the stump dump. Mr. Jordan also presented a draft to the Board regarding the 25% grade. Mr. Jordan also presented photographs to the Board of culvert pipe and hydraulic oil cans present within the piles of stumps and photographs of cutting of trees on the site.

Mr. Jordan stated the map presented to the Zoning Board of Appeals in 1994 was inaccurate. He further stated Mr. Carbone stated to him that he had a right to dump sludge on Mr. Jordan's lot. Mr. Jordan stated a DEC letter informed Mr. Carbone how to treat sludge and liquids and he blatantly ignored those instructions which included removal of some sludge and liquids from the site. Mr. Jordan presented photographs to the Board from DEC to show where sludge was present on top of the ground and holes in the stumpage. Board Member Mirczak stated it was difficult to see either in the photographs. Mr. Jordan also presented his record of loads to the stump dump, a petition to close the stump dump and additional letters from Town residents who would like to see the dump closed.

Otto Kenyon stated he was the owner of the property where the septic lagoon was located. Mr. Kenyon stated he also contacted DEC Officers Tom Preston and Kevin Woods to attempt to close the septic lagoon. He further stated the process took over a year and a half to accomplish the closure of the septic lagoon. Mr. Kenyon stated that while he did not see Mr. Carbone's truck dump the prohibited materials in the stump dump, he can testify to seeing them present in the stump dump.

Bertha Kenyon stated as the previous owner of the parcel in question, she had contacted EnCon to have the septic lagoon closed as it was no longer permitted in New York State. Mr. Carbone stated the Federal Government passed certain ordinances that prohibited him from keeping the septic lagoon open. He explained the process of dumping sand to dry up the septic lagoon and that there were no provisions in his permit to require that he remove any liquids or sludge from the site. Mr. Carbone further stated CEO Metzler sent a representative from the Town to inspect the site and nothing further came of the complaint. He stated the Kenyon's subdivided the property after the lease was signed and that is how part of it ended up on the Jordan property. Mr. Carbone stated while he was out of town, DEC issued five tickets which he disputes calling these not five tickets per se but rather instruments to initiate an investigation of any wrongdoing on the site. He stated he met with DEC Officers Hayes and Wood and the issues were resolved and no court action occurred. Mr. Carbone stated he was never issued a violation on the site. He stated Mr. Jordan had a contractor working on his home and that person brought the prohibited materials into the stump dump site. Mr. Carbone stated he has control over the site and would not compromise the stump dump by violating the regulations by bringing in prohibited materials.

Attorney Coseo wished to note the petition presented by Mr. Jordan did not represent a significant number of Town of Day residents as many addresses were Corinth or Hadley addresses. He further stated Mr. Carbone has no control over who Mr. Kenyon

or Mr. Jordan allow to access the site and one contractor of Mr. Jordan's did bring in prohibited materials. Mr. King stated Mr. Carbone has the ability to meet all DEC regulations on this parcel. Mr. Carbone stated the only materials trucked in his vehicles are marked and some of the trees were knocked clearing the land. Chairman Cox inquired what happens to trees growing on the three-acre stump dump, does Mr. Carbone have the right to cut them down? Mr. Carbone stated he does have the right to cut them down and has spent two to three hours pushing stumps over and covering them with trucked in fill. He further stated DEC has inspected the site numerous times and also at Mr. Jordan's request and has not found anything buried which is prohibited. Attorney Coseo stated Town of Day Justice Court would be responsible for prosecuting any DEC violations.

John King presented the Board with two copies of a three-page map marked "Carbone Stump Dump" which indicates the boundary line between Jordan and Kenyon, the locations of the stump dump and closed septic lagoon, the gravel drive from Military Road and the setback of 50 feet. Chairman Cox inquired if Mr. King was a civil engineer. Mr. King stated he deals with environmental not structural matters. Board Member Mirczak inquired if this was the current deeded property line. Mr. King stated it was. Mr. King further stated this configuration indicated on the map allows Mr. Carbone to utilize his ability to use the dump. Mr. Jordan stated the APA has a 75 foot setback while DEC has a 50 foot setback requirement and it was his impression that the Town's regulations supersede DEC regulations. Attorney Coseo stated the 1995 lease applied to a 100 acre site which was not subdivided. Mr. King stated if the setback requirement were 75 feet rather 50 feet, this map could be reconfigured.

Chairman Cox inquired how high the stumps are currently at the stump dump. Mr. King stated there are no ground contours of the area until he obtains further information. However, this area was measured from a pin 105 feet from the back side of the current pile which could be moved 65 feet. He stated this was a proposal and not set in stone. Board Member Vaillancourt inquired if this were the original property line? Mr. King stated the map was prepared by a surveyor not himself. Board Member Vaillancourt inquired if it was prepared after the contract? Mr. Carbone stated the land was subdivided after the lease was in effect. Mr. Kenyon stated the original stump dump would be where Lee Hayes's skidder is located if Mr. King is proposing to move it. Mr. Carbone stated there are no stumps buried on the site Mr. Kenyon is indicating. He further stated that property was cleared to construct the septic lagoon. Mr. Carbone stated Art Kenyon, the original property owner, had a logging operation and some of the debris from that operation is located near the septic lagoon. Mr. Kenyon stated that loggers usually do not pull stumps and reasserted that Mr. Carbone brought the stumps in.

Chairman Cox inquired if anyone else wished to speak. No one wished to speak. Chairman Cox closed the Public Hearing at 8:30 p.m. Chairman Cox stated there may be no decision made at the Regular Meeting, that this was just to gather information and the decision may be postponed to a future meeting.