

TOWN OF DAY PLANNING BOARD REGULAR MEETING – MAY 5, 2008

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

Members Absent: None

Motion by Jack Vaillancourt, seconded by Board Member Mirczak to approve the minutes of the April 7, 2008 meeting. Ayes: David Cox, Ted Mirczak, Jack Vaillancourt, Dick Traeger, Eileen Brennan. Carried: 5-0.

Old Business: None.

New Business: **KOVALESKI, Jan PB08-04BLA Tax Map #30-2-22**
KING, Donald Tax Map #30-2-1.12
Boundary Line Adjustment

Chairman Cox stated Mr. Kovaleski submitted an application for a boundary line adjustment in Residential Low Density District where a minimum lot size is 8.5 acres. Board Member Vaillancourt inquired if Resource Conservation District was located on the opposite side of the road where the minimum lot size is 40 acres. Town Attorney Avigdor stated it was. Mr. Kovaleski stated he was purchasing the 8.5752 acre parcel from Mr. King. Mr. King was present and agreeable to the purchase. Mr. Kovaleski stated it would not be a subdivision because he would be adding the purchased parcel to his existing deed. Chairman Cox stated he agreed it would be a boundary line adjustment. There would be a 600 foot boundary line from Stone Road to 660 feet on Military Road. Board Member Mirczak inquired how many feet would remain on the King property on Military Road. Mr. Kovaleski stated there was 645 feet on Military Road.

Board Member Mirczak stated it would meet all the requirements of a parcel located in RLD District. Mr. Kovaleski stated he owned a separate parcel which he purchased from Bertha Kenyon which would remain on a separate deed.

Motion by Ted Mirczak, seconded by Board Member Traeger finding this would be a boundary line adjustment. Ayes: David Cox, Ted Mirczak, Jack Vaillancourt, Dick Traeger, Eileen Brennan. Carried: 5-0.

**TRAKS, Edward & Ellen PB08-03BLA
Tax Map #43.14-1-10
BLOND, Leonard & Helen Tax Map #43.14-1-13
Boundary Line Adjustment**

Board Member Mirczak stated he wanted to determine who owned the road which would be transferred in this application. Chairman Cox stated Mr. Traks owned the right-of-way, a portion of which would be transferred to Mr. Blond. Chairman Cox stated it was not clear from the submitted map which parcels Mr. Traks owned. Town Attorney Avigdor stated he wished to state for the record that he represented Mr. Traks in a law suit which involved ownership of the road but not in regard to this “T” portion to be transferred. He further stated he had spoken to Mr. Traks and informed him in this instance he would be representing the Town and Mr. Traks had no objection.

Town Attorney Avigdor stated Mr. Traks purchased a parcel from the previous owner (Fowler) who had originally subdivided the parcels in this area in 1939 prior to APA and Town of Day regulations. He further stated the “paper” right-of-way was to provide access to those back lots. Chairman Cox inquired if Mr. Traks owned Lot 12 or 13. Board Member Mirczak stated Blond owned Lot 13. Town Attorney Avigdor stated Mr. Traks’ lot was located in an area in another part of the Fowler subdivision. He further stated Mr. Traks wished to purchase a lot the Fowler family owned. At that time, it was the only remaining lot in the subdivision along with the right-of-way. The sale was contingent upon Mr. Traks purchasing the lot and the right-of-way. He further stated anyone who has legal access over the right-of-way would still have access even if it is transferred to another owner. Chairman Cox stated it would be a bona fide boundary line adjustment because it will be included in Mr. Blond’s existing deed.

Motion by Jack Vaillancourt, seconded by Board Member Mirczak finding this would be a boundary line adjustment. Ayes: David Cox, Ted Mirczak, Jack Vaillancourt, Dick Traeger, Eileen Brennan. Carried: 5-0.

Family Gift Lots

Chairman Cox stated the Town Board at its last meeting requested the Planning Board review the Gift Lot Provision of the Subdivision Code and inform the Town Board of any changes or suggestions or our opinion of this portion of the law. The Board reviewed the Gift Lot law and APA regulations regarding gift lots. Town Attorney Avigdor stated half of the towns in the Park have gift lot exception and the remaining do not. Some towns, in particular Corinth, have struggled and gone back and forth. Chairman Cox stated we do have a gift exception as does APA. Town Attorney Avigdor stated APA law applies only to the person not the family who owned the land in 1973 so that APA exemption will self expire as time goes on and property is sold by those 1973 owners. If a 1973 owner passed away and left the property to a family member, the gift exemption would expire with the original owner. He stated that APA would be a very limited gift exemption while ours is ongoing where any person can give any person a gift of land.

Chairman Cox inquired given these two definitions, which is the Town of Day bound by, the stricter of the two? Town Attorney Avigdor stated they are bound by both, the Town has a subdivision law which allows gift exceptions but it has to comply with APA. He further stated our minimum lot size is larger than APA, however, if it may meet APA minimum lot size. Town Attorney Avigdor further explained that APA does not have a "minimum" lot size but rather an "average" lot size or density. If a property owner has 100 acres in the Residential Low Density District where 8.5 acres are required and wishes to divide it into two lots of 99 acres and one acre, it would be legal under APA regulations but not under our regulations. However, if it was a gift from person to person, it would make it legal under our code.

Town Attorney Avigdor stated the Town first passed the Subdivision Law in 1991 or 1992 and he was present during the debate at the time and the gift exemption was added. He further stated approximately a year and a half later, they passed the Zoning law and nothing was mentioned about gift exemptions creating a mismatch between the two. He further stated under Subdivision law; a person can gift a parcel as small as he wants but if it does not comply with Zoning law, it is not a buildable lot. It would not be breaking the law. If a party wished to create something they could build on, they would have to meet the requirements of the zoning law.

Chairman Cox stated if a property owner wished to gift a lot which is substandard, our zoning would not allow a structure to be built but APA law might. Town Attorney Avigdor stated that both regulations must be complied with. Chairman Cox inquired in order for the building to be built; this Board would have to abide by the stricter of the two codes. Town Attorney Avigdor stated it would have to comply with both. Chairman Cox inquired if one code would permit it but the other would not, which code would be followed. Town Attorney Avigdor stated the stricter of the two. He further stated while there is an overlap of the two different laws, you have to comply with both.

Chairman Cox stated at last month's meeting, two sisters applied for a subdivision which could also be considered a gift exemption. It would meet Town of Day requirements and not APA regulations because you cannot be an owner of the parcel and it would not have been permitted. Town Attorney Avigdor stated he did not recall all the particulars of that application and could not address the question. Chairman Cox inquired of a case where there is a property in joint ownership and the parties wish to gift a parcel to each other. In that case, it would comply with Town of Day law but it would not comply with APA regulations. Town Attorney Avigdor stated it would need approval from APA which would be accomplished through a jurisdictional inquiry. APA would render a jurisdictional determination which would likely state it was not under their jurisdiction due to lack of wetlands or previous subdivisions and may make it possible under each set of codes. Board Member Mirczak stated it would not be able to be considered a gift lot because the individuals share an interest in the property but would be considered a subdivision under APA rules and a gift lot under Town of Day rules.

Board Member Mirczak stated under APA codes, it states the person receiving the gift must be an immediate family and Town of Day code states it would be "person to person". Town Attorney Avigdor stated in the debate on that aspect of the gift exemption due to the very personal nature of relationships in the community, the Board did not wish to become the entity to determine familial relationships between individuals. The giftor would gift a lot most likely to a daughter, wife, nephew, etc. and not to a stranger. He stated that "natural person" may seem like a strange term but in law, simply the word "person" may apply to a person or a corporation, LLC, partnerships, etc. Whereas "natural person"

refers to an individual and individuals do not give gifts to corporations and vice versa. Town Attorney Avigdor stated he would recommend the Board ignore APA regulations because there are few people who own property today who owned it in 1973. He further stated the “chips will fall where they may” and that this Board must decide if they wish to leave that door open or close it. Board Member Vaillancourt stated in his experience, there hasn’t been any problem with the way the law is now. Town Attorney Avigdor agreed and stated that both he and Code Enforcement Officer Metzler have explained the gift lot exemption to property owners which may leave them with an unbuildable lot. This has discouraged some individuals while others feel it would become a wood lot or a place to pitch a tent, an access to Sacandaga, etc.

Chairman Cox stated, for example, he was to gift to his son a substandard lot which he cannot build on but receives approval by our Subdivision Law. He further stated it is within the Town of Day and also under APA jurisdiction and would need APA approval. Town Attorney Avigdor stated it would. He further stated as an example, Chairman Cox would split a substandard piece of property between two sons not for the purpose of building. Ten years later one son wishes to sell his portion and represents it as a building lot innocently because he was young and unaware of the circumstances. The purchaser finds out after the sale that it is not a buildable lot which would be potential problem which has not occurred yet within the Town. Town Attorney Avigdor feels the Board should have a simple application similar to the Boundary Line application which would not require a Public Hearing or application fee. This would clearly state it is a gift exemption application which would present all the facts surrounding the application. It would be approved as a gift lot and not buildable unless it complies with zoning and is recited in the deed of gift. It would remain in the chain of title and anyone who researches the deed would find it. The APA issues permits which are recorded and remain in the chain of title. He further stated it would have to have some level of approval process.

Town Attorney Avigdor stated the law could be amended and he would draft language which the Board could review. Board Members agreed that would protect persons in the future from purchasing unbuildable lots. Chairman Cox stated in reference to APA, how often are less than average sized lots approved? Town

Attorney Avigdor stated they are approved often and the average lot would be 1.3, 3.2, 8.5, etc. Chairman Cox stated if a person had a four acre parcel and that was the size permitted by APA law and wished to divide it into two lots of 3 and one acre. Town Attorney Avigdor stated the APA has jurisdictional and non-jurisdictional lots and having a lot under the zone size creates jurisdiction. He further stated if you had a four acre parcel which you wished to divide it into two two-acre parcels and these were minimum average lot sizes. If it did not have any previous subdivisions or wetlands, it would be found to be non-jurisdictional. However, if you had a four-acre parcel which you wished to divide into a one and three-acre parcel that would create jurisdiction. It is approved if they found it would be appropriate. He further stated if you have 85 acres in an 8.5 acre zone, you could create ten 8.5 acre lots. APA would prefer nine two-acre lots which would leave the remaining portion of open space. Chairman Cox stated it would become a cluster subdivision.

Chairman Cox stated that while the nine two-acre parcels would be acceptable to APA, it would not be acceptable to the Town of Day. Town Attorney Avigdor stated it could as a cluster development and the Town of Day has never had a cluster application or a ten lot subdivision application. Board Member Vaillancourt stated the property owner could apply for a building permit for the remaining 67 acres. Town Attorney Avigdor stated he could but he could only build one principle residence on that large lot and it would be indicated in the deed.

Chairman Cox stated the matter would be tabled to the next meeting. Town Attorney Avigdor stated he would work on the language and forward that on to the Board Members.

Correspondence: Letter from the State Liquor Authority regarding licensing referred to the Board for informational purposes only.

Capital District Regional Planning Commission Local Government Planning and Zoning Workshop Session Change notice.

Secretary's Report None.

Public Participation None.

Motion by Eileen Brennan, seconded by Board Member Vaillancourt to adjourn the meeting at 7:45 p.m. Ayes: David Cox, Ted Mirczak, Dick Traeger, Eileen Brennan, Jack Vaillancourt. Carried: 5-0.

Respectfully submitted,

Diane Byrne
Secretary