

TOWN OF DAY PLANNING BOARD REGULAR MEETING – OCTOBER 5, 2009

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

Members Absent: Ted Mirczak

Motion by Dick Traeger, seconded by Board Member Jack Vaillancourt to approve the minutes of August 3, 2009. Ayes: Cox, Traeger, Vaillancourt. Abstention: Brennan. Carried: 3-1.

Old Business: **TRAKS, Edward & Ellen**
 BLOND, Leonard PB08-03BLA
 Tax Map #43.14-1-10 & 13

There was no response to letters sent to adjoining property owner, Usher Family Trust. No one appeared representing any party involved in this boundary line adjustment. Town Attorney Avigdor stated the parcel in question (former Tax Map #43.14-1-10) which was merged with parcels owned by Blond (not yet assigned a new tax map number per Real Property website) would be flagged by Code Enforcement Officer Metzler and no permits would be issued.

New Business: **DuBOIS, Arthur & Sophie, Tax Map #42.11-2-41.2**
 RONDEAU, Joseph/ GEREMICK, Barbara & Kelly
 Tax Map #42.11-1-41.1
 Illegal Subdivision

Chairman Cox stated a search of Planning Board files found no record of a subdivision of the DuBois parcel. However, according to Real Property records, there was a subdivision of Tax Map #42.11-2-41. The newly created parcel Tax Map #42.11-2-41.1 was sold to Joseph Rondeau and Barbara and Kelly Geremick on March 21, 2005. This party is in the process of selling this parcel to Mark Swiderski who requested and received a Jurisdictional Determination (#J2009-581) from Adirondack Park Agency on September 23, 2009. It was this Determination which alerted this Board of the illegal subdivision. It is noted these are severely substandard parcels of .24 and .34 acres where 60,000 square feet would be required.

Town Attorney Avigdor advised the Board to issue a “no build” restriction on these subdivided parcels (Tax Map #42.11-2-41.1 Rondeau and Tax Map #42.11-2-41.2 DuBois) and notify Code Enforcement Officer Metzler of the restriction and that no permits of any kind should be issued to these property owners. The other means to deal with this issue would be to bring an action in State Supreme Court which has jurisdiction to reverse the subdivision and adjudicate the rights of the other parties. Or, bring an action before Town Court which would not have jurisdiction to adjust any matters of the land but can adjudicate any criminal behavior of reversing the illegal subdivision.

Town Attorney Avigdor stated the “no build” restriction is the avenue the Town usually takes due to how he is compensated for his services. He is on a flat annual salary for all services he renders for the Town with the exception of Court cases. The Planning Board could not request that the matter be brought before the Court due to it being a budget item and must be requested by the Town Board. Supervisor Johnson has stated it would be impractical to spend attorney’s fees due to the “no build, no permit” restriction. Therefore, there would be no harm that an illegal subdivision took place because no inappropriate building could occur. Board Member Vaillancourt inquired if this would be a permanent injunction against the property. Town Attorney Avigdor stated it would be until the matter is resolved by an after the fact subdivision if the Planning Board chooses to approve such a subdivision.

Correspondence: None.

Secretary’s Report: The Secretary has been in contact with Jason Kemper, Director of Saratoga County Planning regarding GIS Training. Mr. Kemper would be willing to conduct a training session for both Planning and Zoning Board Members on GIS Training and tips on navigating the County Planning Maphost website. At this time, the Town may not be purchasing the ArcView software as was previously discussed on the recommendation of Director Kemper. He believed it would be under utilized by staff, is a complicated program for a lay person to manipulate and expensive to purchase and maintain. The GIS training would be scheduled for the November if there are no agenda items.

Public Participation: Kenneth Johnsen, neighbor and “Buzz” Bradley, property owner appeared before the Board regarding Viewshed Protection regulations. Mr. Bradley purchased a 37-acre parcel from Ken Johnsen, Mr. Johnsen’s father, located behind the elder Johnsen

parcel at 1369 North Shore Road. Mr. Bradley shares a driveway with Ted Mirczak who owns the 37-acre parcel next to Mr. Bradley. Mr. Bradley contacted Code Enforcement Officer Metzler to obtain a permit to construct a home and Mr. Metzler informed him a site plan review was required because his parcel was located in the Viewshed Protection Area. With the help of Kenneth Johnsen, he flew balloons at the site of the proposed house to show that from a height of 75 feet, there is nothing visible from the lake. Mr. Bradley inquired what other requirements the Board had prior to Code Enforcement Officer Metzler's issuance of the necessary permits to commence construction.

Town Attorney Avigdor advised the Board that he would need to recuse himself because he was involved in the transfer with Ken and Gail Johnsen and had also drafted the easement agreement with Ted Mirczak. He further stated he did not believe the Board would have any legal issues but only questions of what is appropriate regarding the land.

Mr. Johnsen stated he could review the photographs referred to by Mr. Bradley which were taken from the lake toward the parcel and photographs of the actual site. Chairman Cox stated the concern would not only be from the lake but what is viewed from South Shore as those property owners would have a concern if a dwelling was constructed on the North Shore in the Viewshed Protection Area. Mr. Johnsen stated the photographs would clearly show there is no visibility of any portion of the proposed site from South Shore Road or any other aspect. The parcel plateaus out at the top of the hill and this is the area where the house will be built. Mr. Johnsen stated the balloons were 75 feet in the air above the treetops and not visible in any of the photographs nor could either Mr. Johnsen or Mr. Bradley see them from any area from which they took the photographs.

Chairman Cox inquired if the balloons were 75 feet in the air and above the treetops, why weren't they visible? Mr. Johnsen stated it was due to the angle of the trees and the balloons were at the site of the house which is located far from the edge of the ridge where there is no angle to see the lake. There is no view of the lake from the proposed construction site.

Chairman Cox inquired if Mr. Bradley had read the Viewshed Protection regulations and if he had a copy of them. Mr. Bradley stated he did have a copy and had read the regulations. Chairman Cox stated there are a number of requirements Mr. Bradley would have to meet in order to build within the Viewshed Area which

include contour lines, landscaping plans, which trees he intends to cut, driveway and house location, etc. Mr. Bradley inquired if this would apply to any home within the Viewshed or only those which are visible. Chairman Cox stated without having the benefit of the regulations in front of him, he believed that if a house is not visible, some of the requirements could be waived. He stated a contour map would be required to indicate why it would not be visible from the lake or the South Shore side.

Chairman Cox stated the balloons would need to be left in place for a few days in order that all Board Members would be able to observe them. Mr. Bradley inquired if the photographs would not be sufficient evidence for the Board Members at this time. Chairman Cox stated the Board Members would review the photographs but not draw any conclusions from them at this time. Board Member Vaillancourt inquired where the driveway would be located. Mr. Bradley stated it was located between the Johnsen and Mirczak parcels going up the hill and is not visible from North Shore Road.

Chairman Cox inquired if there was road frontage for this parcel. Mr. Bradley stated he had a joint driveway easement with Mr. Mirczak and Mr. Johnsen. Chairman Cox stated in any zone including those outside of the Viewshed Area, there is a road frontage requirement. Town Attorney Avigdor asked Mr. Bradley if he could address this concern of the Planning Board. Mr. Bradley stated Town Attorney Avigdor could speak. Town Attorney Avigdor stated Gail Johnsen appeared before this Board and requested permission for either a subdivision or boundary line adjustment and it was approved. The Secretary stated it was a boundary line adjustment. Town Attorney Avigdor stated he is not familiar with the details regarding the road frontage but the Board did have an opportunity to rule on that requirement at that time. He further stated that due to his conflict representing the property owners, the Board Members should review the file.

Board Member Vaillancourt inquired if the parcel was landlocked. Mr. Bradley stated it was except for the shared right-of-way. Board Member Vaillancourt inquired if any trees had been cut. Mr. Bradley stated there had been some cutting. Board Member Vaillancourt inquired if all the trees necessary to be removed in order to commence construction had been cut. Mr. Bradley stated "more or less", they had been removed.

Board Member Vaillancourt inquired what the tax map number would be. Mr. Bradley stated he did not have it. The Secretary

provided the file of the boundary line adjustment of Ken and Gail Johnsen to Chairman Cox and the tax map number is 42.1-7.3. Mr. Bradley reviewed the tax map with Board Member Vaillancourt including the location of the right-of-way. Chairman Cox inquired how deep the parcels are in front of the Bradley parcel and Mr. Bradley stated one parcel was recently extended and is 330 feet deep. Board Member Vaillancourt stated the Bradley parcel is located in RLD zone and requires 8.5 acres per dwelling.

Mr. Johnsen reviewed the photographs on his office computer in the Judge's office at the Town Hall. Photographs included:

- View of the driveway
- Panoramic series of photographs of the site looking downhill near the break of the hill
- Panoramic series of photographs of the opposite end of the site looking toward Glass House Creek and Yates Hill Roads
- Photograph of the main clearing
- Series of photographs taken from the lake from various points indicating no balloons visible
- Photographs of neighboring properties of Mirczak and Johnsen and lack of driveway view of Bradley
- Views from the lake indicating no balloons visible
- Photograph of a different site on South Shore Road which prompted the Viewshed Protection Act.

Mr. Bradley stated the building would be two story and 30 feet high which would be half the height the balloons were flown at.

After Chairman Cox reviewed the file of the Johnsen boundary line adjustment, he requested the complete file be copied and provided to each Board Member and be placed on the November 2nd agenda. He further stated that since this proposed house is in the Viewshed Area, this Board needs to take particular care that the house would not be visible. He noted Mr. Bradley has indicated the house would not be visible according to the submitted photographs but it would be necessary to submit a contour map which would not be necessary to be drawn by an engineer but must be drawn to scale. It would be necessary to arrange a mutually agreeable time to fly the balloons again in order for the Planning Board Members to verify that they are not visible.

Mr. Bradley expressed concerns with wind and winter weather if the balloons are required to be flown again. Board Members agreed to set a time for the balloons after they review the materials to be submitted by Mr. Bradley at the November 2nd meeting. Mr.

Bradley stated he believed he would have to fly the balloons at the height of the house which would be 35 feet. Chairman Cox stated it would be advisable to fly the balloons at 50 feet below the crowns of the trees but Mr. Bradley is only required to put them above the highest point of the house. This would give the Board Members ample time to review the submitted materials and the file on the boundary line adjustment to ascertain that it would be a proper building lot.

Mr. Bradley inquired if the Planning Board wished to be on the site where the balloons would be flown and if that could be accomplished within the next two to three weeks. Chairman Cox stated some or all of the Board Members would like to be at the site at the time the balloons are flown to observe the entire process. Mr. Bradley stated a concern about winter weather moving in unexpectedly. Board Member Traeger stated if the road is impassable during winter weather would a fire truck or ambulance be able to travel the road. Mr. Bradley stated it would be a three season home. Mr. Bradley gave permission for Board Members to visit the site at any time. While he did not know how far back his parcel was from North Shore Road, he stated the parcel was in excess of 1,000 feet deep.

Chairman Cox reviewed with Mr. Bradley that the Board would require the sketch plan with contours indicating the house location and height so the Board could scale it and verify with balloons that the house would not be visible. If the house cannot be seen, some of the requirements of the Viewshed Protection may be waived.

Due to an agenda item, the GIS training will be rescheduled.

Motion by Eileen Brennan, seconded by Board Member Vaillancourt to adjourn the meeting at 7:40 p.m. Ayes: Cox, Brennan, Traeger, Vaillancourt. Carried: 4-0.

Respectfully submitted,

Diane Byrne
Secretary