

# TOWN OF DAY PLANNING BOARD REGULAR MEETING – APRIL 7, 2008

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

**Members Absent:** None

**Motion** by Ted Mirczak, seconded by Board Member Traeger to approve the minutes of the March 3, 2008 meeting. Ayes: David Cox, Ted Mirczak, Dick Traeger, Eileen Brennan, Jack Vaillancourt. Carried: 5-0.

**Old Business** None.

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

Chairman Cox stated a subdivision application had been received from Mrs. Hilicus to subdivide a parcel jointly owned with her sister, Donna Peek. The total parcel is 1.34 acres with each subdivided parcel to be .67 acres. Chairman Cox stated the minimum requirement for parcels in Lakefront Residential District is 60,000 square feet and both of these subdivided parcels would be substandard. They both have the required road frontage of 150 feet. If the subdivision is not approved, the applicants may gift the lots to each other.

Chairman Cox asked Town Attorney Avigdor if it would be possible to gift the lots if the Planning Board determines that it could be done. Town Attorney Avigdor stated the law contains an exception that states any gift between natural persons is exempt from subdivision regulations. He further stated when the Town Board passed the subdivision law; they wished to exempt families but did not state “families”. In 1991, under subdivision regulations they did include gift lots but two years later when the zoning law was created, they did not make any provision for gift lots. He further stated that while under subdivision law, gift lots between persons would not be under the jurisdiction of Planning Board, it would not mean it would be a buildable lot. The people who received those gifts would be able to own them but may not legitimately build on them. In the case of this application because there are currently structures on each lot, it is currently built out.

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Town Attorney Avigdor stated he spoke with Code Enforcement Officer Metzler to ascertain if either building was newly constructed and the applicants were trying to circumvent the law. He assured Town Attorney Avigdor one building was decades old and the new mobile home replaced a mobile home which was also decades old. The buildings are grandfathered and the building credits have existed for many years.

Town Attorney Avigdor stated he would request that the applicant certify that it is a legitimate gift. This could be accomplished by both of the women completing and signing the gift affidavit which he had drafted for the Town. In this case, the Planning Board would not have jurisdiction. Chairman Cox stated each sister could gift the lots to each other and the lots would have separate ownership. Town Attorney Avigdor stated Code Enforcement Officer Metzler allowed replacement of the mobile home due to the grandfathering lasting one year from removal. Board Member Vaillancourt stated there was construction on the camp located on the Peek lot during last summer. Board Member Mirczak stated he would encourage improvements to any existing properties. He also stated in regard to the Hilicus/Peek parcels, since all buildings, septic and well currently exist, he would not object to the gift lots. He stated nothing would change other than a line through the properties. Board Member Traeger stated they would be illegal lots. Town Attorney Avigdor stated they would be substandard but legal because of the gift exemption. Board Member Traeger inquired what if the structures were destroyed or damaged by fire. Town Attorney Avigdor stated the property owner would still be able to repair or replace and in this case, because of setback requirements may be limited to building on the existing footprint. Chairman Cox inquired if the Health Department would be involved. Town Attorney Avigdor stated only if it were considered to be a realty subdivision of five lots or more on five acres or less.

Chairman Cox inquired if the Health Department would be involved if the wells or septic were within 150 feet of each other. Town Attorney Avigdor stated only if it was new construction or if they failed.

**Motion** by Jack Vaillancourt, seconded by Board Member Brennan to deny the two-lot minor subdivision of Christine Hilicus, Application No. PB08-02SUB, Tax Map. #31.15-2-16 due to substandard acreage (.67 acres for each parcel where 60,000 square feet are

required). Ayes: David Cox, Ted Mirczak, Jack Vaillancourt, Eileen Brennan, Dick Traeger. Carried: 5-0.

Board Member Mirczak inquired if there was any discussion relevant to persons not specifying relatives because it is difficult to prove that relationship. Town Attorney Avigdor stated there was and people did not want to consider “do you count a former spouse, a child by a former spouse, etc.”

Chairman Cox stated Edward and Ellen Traks sent correspondence regarding a subdivision which is in fact a boundary line adjustment involving a paper street and this Board has not taken action on it because supporting documents have been received. One owner owns a paper street and he wishes to sell it to an adjoining owner which changes the property line between those two owners. He further inquired how that would affect those with rights-of-way over that paper street. Town Attorney Avigdor wished to state for the record that he represented the Traks in their dispute of ownership of this right-of-way ten years ago which concluded they did own the paper street. He further stated that the Traks could transfer ownership of lands subject to rights-of-ways but they can't extinguish those rights. Chairman Cox stated the rights-of-way would still exist but under a different owner. He further stated in this case the paper street extends to Hudson River Black River property and would those property rights exist subject to HRBR regulations. Town Attorney Avigdor stated his answer would be the same.

**Correspondence** None.

**Secretary's Report** None.

**Public Partipation** None

**Motion** by Eileen Brennan, seconded by Board Member Vaillancourt to adjourn the meeting at 7:20 p.m. Ayes: David Cox, Ted Mirczak, Dick Traeger, Eileen Brennan, Jack Vaillancourt. Carried: 5-0.

Respectfully submitted,

Diane Byrne  
Secretary