

**TOWN OF DAY PLANNING BOARD  
REGULAR MEETING  
AUGUST 27, 2012, 7 P.M.**

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

**Members Absent:** Ted Mirczak

**Motion** by Jack Vaillancourt, seconded by Board Member Traeger to approve the minutes of August 6, 2012. Ayes: Cox, Mirczak, Traeger. Recusal: Brennan. Carried: 3-0.

**New Business:      Town of Day Zoning and Subdivision Law  
Public Hearing**

Chairman Cox stated the Public Hearing for the proposed Zoning and Subdivision Law was held on Saturday, August 18<sup>th</sup>. There were no questions from the audience which consisted of 3-4 people. There were no comments or opinions expressed and only one of the public was a Town of Day resident.

The Town Board will have this as an agenda item at their next meeting.

**Brennan, Harry & Eileen/Golden, John & Geraldine  
Tax Map No. 16.-1-17.1 & 2  
Boundary Line Adjustment**

Board Member Brennan submitted a survey map regarding a boundary line adjustment for Board discussion and comments. Board Member Brennan stated 13.85 acres from her mother's 47+ acre parcel will be merged into Board Member Brennan's existing parcel, Tax Map No.16.-1-17.2, which is a 3.01 acre parcel. The Golden parcel has substandard road frontage but as a result of this transfer would not lose any existing frontage. The Brennan parcel does not have any road frontage and is substandard in acreage, and would not gain any road frontage and is a pre-existing, non-conforming lot.

It was noted Green Acres Road is only paved for a short portion and becomes a dirt road as indicated on the survey map. Board Member Brennan has an easement to travel over the lands of her

mother on the private dirt road to access her gravel driveway. There are portions of the gravel driveway which are located on the Golden parcel along with a portion of the Brennan garage. The property transfer would place all of the Brennan structures and driveway on the Brennan parcel. Board Member Brennan stated Green Acres Road was a Town Road in the past but was abandoned. The only landowner who has used the dirt road (Steve Kathan Road) is Mark Garzia who also has additional access from the other side of his parcel. He further stated there is no significance in relation to the dirt road in regard to this discussion.

Chairman Cox stated there are heavy boundary lines indicated on the map except for that portion which is near the small stream. Town Attorney Avigdor stated he believes from reviewing the survey map the boundary line is the center of the small stream. He further stated the term "tie line" usually does not denote a boundary line but an artificial line that connects two points on a boundary line. When a curve or irregular line exists, it is a way to define it and it is not the boundary line. Also, there could be a setback violation by moving the line too close to a building (Golden structure) which would further support the argument that the boundary line is the stream and that would not result in setback violation. Also, the surveyor has three lines to denote the stream and Town Attorney Avigdor stated the first line would denote the left bank of the stream, the third would denote the right bank and the center would denote the boundary. The stream loses the third line as it appears in another area on the map.

Town Attorney Avigdor stated if Board Member Brennan is comfortable confirming that the boundary line is the center of the stream for the record, this Board can accept that statement and not require further clarification from Board Member Brennan's surveyor. Town Attorney Avigdor stated the existing Brennan parcel is substandard both in area and in lack of frontage. This is legal because it is grandfathered and the transfer would bring it into compliance in area but remain out of compliance with road frontage which cannot be remedied. The Golden parcel is out of compliance because of lack of road frontage and will remain unchanged and out of compliance in road frontage. The Golden parcel will become smaller in area but will remain in compliance in its zoning district.

Chairman Cox stated under existing zoning law, this boundary line adjustment is out of the jurisdiction of this Board but when the new law is adopted, it will be under their jurisdiction. Town Attorney Avigdor stated the Town Board is awaiting adoption of the law until

they receive a formal response from APA. He further stated he believed the Planning Board would be meeting in October without a change in the law. The earliest the Town Board could adopt the new law would be at their meeting in October which will occur after the October Planning Board meeting. In the past when portions of the zoning law were changed, it was usually effective immediately. In the case of the new law, it may be adopted with an effective date within thirty days due to outstanding building permits and/or zoning variance applications received and to enable each office make decisions under existing law.

Chairman Cox stated the transferred area would not be a buildable lot because it does not have road frontage. Board Member Brennan stated there would not be an additional dwelling unit on the parcel after the transfer. It was noted the parcel is located in the Rural Moderate Intensity District which requires 3.2 acres and 200 feet of road frontage.

Chairman Cox inquired if Board Member Brennan was seeking action by this Board in relation to declaring this a boundary line adjustment. Board Member Brennan stated she was. Board Member Brennan stated she would also abstain from the vote. Town Attorney Avigdor stated it must be determined by unanimous vote due to a super majority.

**Motion** by Jack Vaillancourt, seconded by Board Member Traeger to deem this application a boundary line adjustment based on the assertion that the boundary line would be the center of the stream and this application would be outside of the jurisdiction of this Board. Ayes: Cox, Vaillancourt, Traeger. Abstention: Brennan. Carried: 3-0.

Chairman Cox stated Board Member Brennan will provide copies of the recorded deed to this Board. Board Member Brennan stated she would.

**Old Business:**      **Cochrane, Robert**  
                              **Garrahan, Colleen**  
                              **Prior Tax Map #42.8-1-55**  
                              **New Tax Map #42.8-1-55.1 & 55.2**  
                              **Possible Illegal Subdivision**

Correspondence dated August 15, 2012 was received from the Fowler Law Office which included the warranty deed with the notation that it corrects the deed filed in February. Town Attorney Avigdor stated the correspondence states the deed would be

mailed to the County Clerk for recording. Town Attorney Avigdor stated he would like to know it is actually recorded. He further recommended this Board retain this item on the October agenda. The County Clerk routinely does not return the deed with the recording stamp for three weeks and he would hope the attorney realizes he should be providing this Board with a copy of the recorded deed. If it is not received before the October meeting, he would recommend the Secretary send a letter requesting a copy of the recorded deed so the restrictions can be removed which were placed on the parcel.

**Correspondence:** APA Local Government notification of webinars on protecting public water supply sources.

Town Attorney Avigdor stated while he will be out of town during the day of Monday, October 1<sup>st</sup> which will be the next regular meeting of this Board, it is his intention to arrive back in the area prior to the meeting in order to attend. He would be available before the scheduled meeting for any legal consultation. The Secretary will notify both the Chairman and Town Attorney if there is an agenda item prior to the meeting.

**Secretary's Report:** None.

**Public Participation:** None.

**Motion** by Eileen Brennan, seconded by Board Member Traeger to adjourn the meeting at 7:30 p.m. Ayes: Cox, Vaillancourt, Traeger. Carried: 3-0.

Respectfully submitted,

Diane Byrne  
Secretary