**TOWN OF DAY PLANNING BOARD**

**REGULAR MEETING – APPROVED MINUTES**

**DECEMBER 1, 2014**

**Members Present: Absent:**

Ted Mirczak, Chairman Mary Ann Johnson

Richard Traeger Eileen Brennan

Jack Vaillancourt

**Also Present:**

David Avigdor, Town Attorney

Chairman Mirczak opened the meeting asking if all members

received the final draft to review for the Town of Day Planning Board

meeting of November 3rd. He then asked if any member wanted to make

revisions to this. Chairman Mirczak said he had two small changes to

be made and the first one is on page 4 in the fourth paragraph “looked

at on his computer that that” only need one that and on page 5, the

first paragraph in the third line “application therefore” change to

application. Therefore.

**Motion** by Jack Vaillancourt and seconded by Richard Traeger to

approve the final draft of the minutes from November 3, 2014 as revised by

Chairman Mirczak.

Ayes: Chairman Mirczak, Dick Traeger, and Jack Vaillancourt.

Carried 3-0

**Old Business:** Ladd, Ronald & Juanita

Tax Map #31-1-8.2

Subdivision

Chairman Mirczak said that he heard from surveyor David Barrass and he

will not be able to make it tonight as his father passed away recently. He

asked that we do keep him posted on this application.

Chairman Mirczak stated that we do have a few questions pending this

application and he sent out some emails pertaining to these. For purposes

of the record, Chairman Mirczak summarized the emails.

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The first question that came up was if the structures were legal. Chairman

Mirczak spoke with Code Enforcement Officer Metzler and was informed

that permits were filed with Town of Day, and that each structure has a

valid certificate of occupancy.

The second issue concerned who actually owns a little piece of land that

sits above the road and below the line, known as Merlino property.

Chairman Mirczak had a conversation with John Hodgson and Mike Clark

from the HRBRRD and they said they actually own the land. John

Hodgson said that there are probably hundreds of pieces of land around

the lake like this and they are aware of it. Chairman Mirczak asked them

if the county had any claim to this property and HRBRRD said they did not

have documentation to this. The HRBRRD has given an easement to the

county to access as though it were road right of way. HRBRRD said that if

the county wanted to put in a road pipe for drainage or do some grading

they could do this without concern from HRBRRD.

The third question was that Tracy Ladd has a driveway that goes across

this and the question to HRBRRD was do they object to this driveway. He

said there are probably hundreds of driveways that cross little parcels that

are part of the HRBRRD land. They do not object to the driveway and the

county is the one that manages the permits for them.

Chairman Mirczak said that his conclusion from his discussion with

HRBRRD is that this little piece of property is tantamount to being road

right of way for Tracy Ladd. So this means that proposed subdivision

parcel has adequate frontage on the road, right-of- way.

Attorney Avigdor added the he had a relationship with the Merlino property

purchase and in looking at the purchase file, the Merlino’s did not pur-

chase the land, they purchased the right to have a house on the land and

HRBRRD owns the land. At the time of the taking, the road was the

northern edge of the property but since then the road has been moved and

straightened and HRBRRD would now treat this as highway.

Member Vaillancourt said he called Gene Merlino and when he

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spoke with Gene he stated that they bought just the house on the lakeside

with three easements across the street, he wasn’t sure where all the pieces

were but he said if someone wants to put in a driveway, he does not care.

Chairman Mirczak said that he feels that this board can make the decision

that the Ladd lot does have adequate road frontage.

Attorney Avigdor stated that “Yes, this is true, however, let me just say

in a court of law this would not be proof with he says, she says, and the

deed of the public record would be evidence. However, we are not in

court and I think you can use your judgment and make an informed

decision.”

Chairman Mirczak states that this seems like a little piece of orphaned land.

Attorney Avigdor stated that what changes this is that HRBRRD stated that

they have given an easement to the county for those pieces that are on the

north side of the road. Attorney Avigdor said that the board can decide

whether this piece is road right of way.

Chairman Mirczak stated that if we consider this piece as the road right of

way, the board should be able to vote on this.

Richard Traeger said that if HRBRRD said they let the county maintain

this property and don’t care if a driveway is across this then we should be

able to consider this road frontage.

Chairman Mirczak said that we should formalize our conclusion by

entertaining a motion to say that in our judgment this is tantamount to

being road frontage in which case that parcel of land has adequate road

frontage and they don’t need an easement for road frontage.

Attorney Avigdor suggested before a motion is made; for purposes of the

Town of Day law requirement that a new subdivided parcel have a

specified amount of road frontage on a public road and that the subject

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Ladd parcel shall be deemed sufficient road frontage based upon

the evidence presented tonight.

**Motion** by Chairman Mirczak and seconded by Jack Vaillancourt that

the Ladd parcel be deemed to have adequate road frontage for this

application.

Ayes: Chairman Mirczak, Richard Traeger, and Jack Vaillancourt.

Carried 3-0

Chairman Mirczak said that the next issue concerns the area of the sub-

divided parcels. From the map that we have which is part of our official

Zoning Law from November 2011. Chairman Mirczak blew up the

section, parcel in question for everyone to take a look at.

The 1.5 acre parcel is totally within the Lakefront Residential Zone and

meets the area requirements. The remaining parcel of about 6 acres is

partially in the Rural Low Density Zone, and must meet an 8.5 acre

requirement. In November of 2011 we modified the Lakefront Residential

Zone from 1,056’ to 528’, which creates a need for a variance for the

subdivision.

Attorney Avigdor stated that the Planning Board has resolved the issue of

frontage and the legality of the structure issue, but now we have an area

issue for which David Barrass could file an application with our Zoning

Board for a variance.

Attorney Avigdor addressed Tracy Ladd as to whether she understood the

technical issues of what was just presented. He gave her an explanation,

that the whole property that you have right now is in two different zones.

One is in Lakefront Residential and the other is in Rural Low Density. The

parcels have different acreage requirements. You do not have enough

acreage to do the subdivision. The Zoning Board will have to review this to

determine if they can grant you a variance for this subdivision. The next

meeting for the Zoning Board is two weeks from tonight and the application

will have to be submitted by next Wednesday. You would then be put on

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the agenda for the Zoning Board meeting. If the Zoning Board accepts

the application as complete, there would be a public hearing at the

following meeting in January then back to the Planning Board for approval

for the subdivision. Attorney Avigdor said that this application had three

major issues, two are resolved and one has to be resolved with the Zoning

Board. He said Mr. David Barrass asked him to email him with the results

of this meeting and we will need this application by next Wednesday to give

to the Zoning Board. The ZBA members need time to review this before

their next meeting on Monday, December 15th. Attorney Avigdor does

intend to email Mr. Barrass with this information tonight after the meeting.

Chairman Mirczak stated that he would like it noted in these minutes that

if the Zoning Board sees fit to grant the area variance, the Planning Board

has no problem with this application going forward assuming that nothing

is presented at the Public Hearing that would lead us to a different

conclusion.

**Motion** by Jack Vaillancourt and seconded by Richard Traeger in favor of

informing the Zoning Board that the Planning Board has no problem

with this application going forward assuming that nothing

is presented at the Public Hearing that would lead us to a different

conclusion.

Ayes: Chairman Mirczak, Richard Traeger, and Jack Vaillancourt.

Carried 3-0

Chairman Mirczak stated that we as the Planning Board should declare

ourselves lead agency for SEQR. Chairman Mirczak explained to Tracy

Ladd what this means.

**Motion** by Richard Traeger and seconded by Jack Vaillancourt to declare

the Planning Board lead agency for SEQR.

Ayes: Chairman Mirczak, Richard Traeger, and Jack Vaillancourt.

Carried 3-0

Chairman Mirczak explained to Tracy Ladd what the sequence of events

will now be. First, your application will be filed with the Zoning Board of

Appeals. The next step is a Public Hearing at their January meeting and, if

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everything looks good at the hearing they will consider that and other

factors as to whether to grant you the variance. The Planning Board, will

then have another Public Hearing as we have different issues. Once that

hearing is closed, the Planning Board will have all the information it needs

to make a final decision on the subdivision.

Attorney Avigdor said that the Zoning Board of Appeals typically takes a

denial from Code Enforcement Officer, Ken Metzler. However, this is

going from the Planning Board to the Zoning Board of Appeals, the

application will have to be filed now with the Zoning Board of Appeals.

Chairman Mirczak asked Tracy Ladd if she had any other questions

regarding what will be taking place next. She did not.

**New Business:** Chairman Mirczak said the agenda had no new business,

however, he wanted to bring up the issue of canceling the meeting due to

bad weather which was a discussion at the last Zoning Board Meeting.

Chairman Mirczak said he would like to set up the cancel meeting protocol

the same as what the Zoning Board adopted. If the weather is bad,

any board member may call him to discuss cancelling the meeting.

The decision will be made by 5:30 p.m. that afternoon. Chairman Mirczak

stated he would make sure to get a note on the door for notice to the

public that the meeting will not be held and the meeting would either be

cancelled or moved to the following Thursday instead.

Attorney Avigdor stated that this sign on the door should be moved to

the Clerk’s bulletin board the next day. He also stated that if a Public

Hearing was to be held that evening; a notice would have to be given to

the Post Star.

Attorney Avigdor also stated that if possible, the notice of cancellation

should also be posted on the Town of Day website. Chairman Mirczak

stated that he could call Matthew Turcotte to get this posted.

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Attorney Avigdor stated that it used to be that if the schools were closed,

the Town Hall was also closed; however, this rule has been changed

and it is up to the Chairman of the Board as to whether the meeting should

be canceled.

**Correspondence:** Saratoga County Planning & Zoning Conference – Save the Date – Wednesday – January 28th

**Secretary’s Report:** Vouchers for Year End 2014 for members to confirm and sign.

New Meeting Schedule for 2015

**Motion** by Jack Vaillancourt and seconded by Richard Traeger to adjourn

the Planning Board meeting at 7:45 p.m.

Ayes: Chairman Mirczak, Jack Vaillancourt, and Richard Traeger.

Carried 3-0

Respectfully submitted,

Brenda Ward

Secretary