**TOWN OF DAY PLANNING BOARD**

**REGULAR MEETING – APPROVED MINUTES**

**NOVEMBER 3, 2014**

**Members Present: Absent:**

Ted Mirczak, Chairman

Richard Traeger

Jack Vaillancourt

Eileen Brennan

Mary Ann Johnson

**Also Present:**

David Avigdor, Town Attorney

Chairman Mirczak opened the meeting asking if all members

received the final draft to review and if they wanted to make

any changes.

**Motion** by Mary Ann Johnson and seconded by Jack Vaillancourt to

approve the final draft of the minutes from October 6, 2014.

Ayes: Chairman Mirczak, Dick Traeger, Jack Vaillancourt,

Mary Ann Johnson, and Eileen Brennan.

Carried 5-0

**Old Business:** None

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

Tax Map #31-1-8.2

Subdivision

Chairman Mirczak stated that with there being no old business we

do have new business which is a subdivision requested by Ms. Tracy Ladd.

Mr. David Barrass, land surveyor is here with her. He asked Mr. David

Barrass if he would like to make comments for this subdivision.

Mr. David Barrass referred to the survey map and stated that Ms. Tracy

Ladd presently has a residence on her father’s lot and

would like to have it subdivided so that she has a lot of her own.

Mr. David Barrass asked if the board had any questions for him.

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Chairman Mirczak stated that the first question that came up for him was

the result of a search of the Saratoga County web site (copies of this were

given to each board member and Attorney Avigdor). This search showed

a little parcel of land that the surveyor Mr. David Barrass, labeled as

HRBRRD land which appears to be a parcel owned by a person named

Kelly Merlino. Chairman Mirczak showed this to Mr. David Barrass and

Mr. David Barrass stated he did not see this when doing his research.

Attorney Avigdor stated that he had some knowledge of this via another

person he is representing. In conjunction with this, the HRBRRD may

actually own this land and the individual owns an easement which allows

them to construct certain structures and engage in other activities on the

lot. He does not believe that there are structures on this piece but that

there are on the lake side, across the road.

Chairman Mirczak asked Attorney Avigdor what rights the Merlino’s have

relative to this piece of property.

Attorney Avigdor said “I can tell you what I think, I can’t give you legal

advice as I haven’t researched it.” What I think, HRBRRD owns the land

and my client owns the right to keep an existing structure on the land with

no additional structures permitted. Merlino has a house which they own

but is on HRBR property on the lake side of the road and I am not aware

of any structure on the 43-2-1.1 parcel, so I’m thinking that the rights have

been attributed to both parcels, which are on both sides of the road. I have

spoken with Kelly Merlino and I believe they only have rights to the HRBR

property. Mr. Barrass feels that this parcel has to be researched more, as

he had just downloaded his information at 4 p.m. before the meeting and

he did not see this in his research.

Attorney Avigdor stated that the Merlino’s have no rights to build anything

further on the HRBRRD property, so if Mr. Barrass’ approach here is that,

they don’t have the frontage but this is vacant land that isn’t going to be

built on, then I think you’re right.

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Mr. Barrass said his initial approach is that this is only an idea of a tax

technician because there is no piece of property there. Mr. Barrass did

go to the County DPW and had a meeting with Mr. Ted Serbolic about

this and he concurs, but has no documentation to prove it. Mr. David

Barrass stated that Mr. Ted Serbolic directed him to go to the HRBRRD,

which he did and was informed that they are understaffed and didn’t have

time to research it. Mr. David Barrass went on to say that when

the reservoir was created, (he presented a portion of a map of the taking

line), not only did they buy the land for the reservoir but they also bought a

strip of land around the reservoir for the highway which is now North Shore

Road and South Shore Road. The shade of yellow on the map is the strip

of land that became North Shore Road. What happened was that when

tax maps were created, the tax people drew a line there. When the

property was bought; they also bought to the line. Mr. Barrass spoke to the

County and asked what they considered to be their right of way and

Mr. Ted Serbolic said he considered it all to be County right of way, but the

tax people don’t. So Mr. Barrass contends that it is the County highway

right of way and doesn’t belong to the HRBRRD in the first place.

Mr. David Barrass also approached HRBRRD regarding the fact that the

existing driveway crossed this piece of property and they said they had

no problem with Ms. Tracy Ladd using this for access to the highway, even

if it is theirs. However, they will not give her anything in writing. Ms. Tracy

Ladd said she spoke with a John at HRBRRD and he said if anyone called

him on this he would say the same thing. This is already an established

driveway being used.

Chairman Mirczak said that if the little nob/parcel that we are talking about

is the right of way of the road, then the Ladd parcel does in fact have

frontage on the road.

Mr. Barrass stated that the County has no documentation of the land ever

being transferred from the HRBRRD to the County for North Shore Road

and South Shore Road.

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Attorney Avigdor stated that he couldn’t tell based on what is in front

of us now whether this parcel is HRBRRD or County road, but he believed

he could tell us based on what Mr. David Barrass presented and what he

looked at on his computer that question is government property.

Whether the government is County or HRBRRD, he couldn’t tell, but

it’s not Merlino private property. If the board is comfortable with what it

has and prepared to declare the application complete; then Merlino is

certainly someone that is going to get notice before the Public Hearing as

they are within 500’.

Chairman Mirczak asked if there’s a way to get a definitive answer as to

whether is this County right of way or HRBRRD property? Mr. David

Barrass said that he has tried to get an answer to this for a month. He

feels that if there is another way, it is going to be extremely time consuming

and expensive. He feels it may take a judge and some type of legal action.

The County has no record and HRBRRD said they don’t have time to

research it.

Chairman Mirczak had a second question about the zoning. He said he

believed that when we did the change about 4 to 5 years ago, the footage

for the lakefront residential zone was reduced to 528 feet from the

North Shore Road away from the lake. So in fact, if we were to draw a

528' line on this survey map, the entire proposed parcel falls in lakefront

residential. With the subdivision, the remaining part falls into a zone that

appears not to meet the requirements.

Attorney Avigdor advised Mr. Barrass that this case could be taken

to the Zoning Board for a zoning variance and the question for the Zoning

Board would be, how long have both of the residences been there? Ms.

Tracy Ladd said her home had been there since 1999 and her parents

have been there for about 30 years. Attorney Avigdor wondered if the 1999

added home was a density violation because of adding a principle building

in 1999. At that time we would have had a different zoning map. If the

entire parcel was in lake front residential/APA moderate density in 1999,

then it would have been 1.5 acres zoning and since there is more than

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3 acres it would have been permitted, presuming non-jurisdictionally that

there were no wetlands. Once it is there and it’s lawful, you are not

changing the residential density by this application. Therefore,

if you take a look at that and at the time, it was lawful, then you can make

an argument to the Zoning Board that you are not going to change

the density.

Attorney Avigdor went on to explain that the Zoning Board may say that

while you don’t want to change the density, they have had some

experience where once a subdivision occurs there is a greater chance to

expand and the Zoning Board has at times allowed the variance with

restrictions.

Chairman Mirczak stated that we still have a question of whether this is

road frontage. Mary Ann Johnson suggested that we need to go to the

HRBRRD to check on this. Chairman Mirczak stated that he knows

Someone he could talk to at HRBRRD regarding this. Mr. David Barrass

stated he left a message with someone named John who did not get back

to him. Ted Mirczak took copies of the taking line map that Mr. David

Barrass had and agreed to pursue this with HRBRRD.

Attorney Avigdor stated as a formal matter, the board should at this time

declare the application incomplete for the reason that it appears under

current zoning that there is not sufficient acreage for the remaining parcel.

Attorney Avigdor asked if timing was of importance on this. Ms.Tracy Ladd

stated that she would like this done by February. Attorney Avigdor

explained that with the various complications that time-frame may be

unrealistic.

**Motion** by Jack Vaillancourt and seconded by Eileen Brennan to declare

the application incomplete due to lack of definitive information as to the

status of the area shown on the survey map prepared by Mr. David Barrass

as HRBRRD property as well as an issue regarding adequate area for the

remaining parcel in the subdivision.

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Mary Ann Johnson had a question on the application on page 2 of the

SEQR form, it was checked –“Yes”. Attorney Avigdor stated this should be

changed to “No” as there is not going to be any new construction at this

time.

As this application is only for a subdivision at this time, Attorney Avigdor

advised the Secretary to change this to a “No”.

Mary Ann Johnson also stated that the situation with the property in

question could be checked on by seeing if the Merlino’s pay property

tax on the parcel in question. However, Attorney Avigdor stated that he

believes that they are paying on the house on the other side of the road

which is on the lake side of North Shore Road, not on the property.

Mr. David Barrass asked Chairman Mirczak if there is a new zoning map

and if he could get a copy as he does not have it. Chairman Mirczak

said that Ken Metzler has one and Mary Ann Johnson said that she

believes it’s on the Town of Day website.

Chairman Mirczak stated that we have a motion before us for two reasons,

the zoning issue in terms of inadequate area and a question about the

road frontage. Motion has been made first and seconded and everyone

is in favor.

Ayes: Chairman Mirczak, Mary Ann Johnson, Richard Traeger,

Eileen Brennan and Jack Vaillancourt

Carried 5-0.

Mr. David Barrass had another question to perhaps resolve the road

frontage issue. If, in fact, the existing proposal does not work,

if we provide a 40’ strip to the Bovee Road would we still have to have

a variance? Attorney Avigdor stated that it would be worse because of

insufficient frontage.

Chairman Mirczak stated he would like to see the first proposal resolved

and hoped we would be able to approve this resolution with better

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information. Attorney Avigdor stated we need to get any issues for this

application resolved before they go before the Zoning Board for a variance.

Attorney Avigdor told Ms.Tracy Ladd that through no fault of her own she

ended up with a piece of property with a lot of technical issues and she

ended up with the right professional to address those issues and he is

doing a good job. With this being our November meeting and because

we need to defer this, it will be discussed again in our December meeting.

The only other meeting is the one in January. We are going to do a lot

between now and January but we can’t promise this will be resolved

by February.

**Correspondence:** None

**Secretary’s Report:** The Bond’s Fall 2014 Zoning & Planning Case Law

Update information was emailed to all board members and mailed to Jack

Vaillancourt. The Saratoga meeting is on November 7, 2014 and two

members from the Zoning Board are signed up.

**Motion** by Mary Ann Johnson and seconded by Richard Traeger to adjourn

the Planning Board Meeting at 7:44 p.m.

Ayes: Chairman Mirczak, Mary Ann Johnson, Richard Traeger,

Eileen Brennan and Jack Vaillancourt

Carried 5-0.

Respectfully submitted,

Brenda Ward