

**TOWN OF GREENFIELD**

**PLANNING BOARD**

**APRIL 28, 2009**

**REGULAR MEETING**

A regular meeting of the Town of Greenfield Planning Board is called to order by Gary Dake at 7:00 p.m. On roll call, the following members are present: Gary Dake, Lorna Dupouy, Michael Ginley, John Streit, Michael Thrailkill, Tonya Yasenchak and Nathan Duffney, Alternate. Thomas Siragusa is absent. Gerry McKenna, Zoning Administrator and Charlie Baker, Town Engineer, are present.

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**MINUTES APRIL 14, 2009**

MOTION: J. Streit

SECOND: T. Yasenchak

RESOLVED, that the Planning Board waives the reading of and accepts the minutes of April 14, 2009 as submitted.

VOTE: Ayes: Dake, Duffney, Dupouy, Ginley, Streit, Thrailkill, Yasenchak

Noes: None

Absent: Siragusa

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**PLANNING BOARD CASES**

**ANTHONY VACCARIELLI – Minor Subdivision**

Route 9N (Triple J Way)

Anthony Vaccarielli and Paul Male are present. A public hearing is opened at 7:02 p.m. and the applicant explains that he is pursuing a 4 lot minor subdivision on an existing subdivision. A letter is read from the Greenfield Fire Commissioners with their concerns and comments on the plans. There being no further public comments, this public hearing is closed at 7:04 p.m.

G. Dake states that at the last meeting C. Baker shared with the Planning Board his review letter which was sent to the applicant and his engineer. P. Male states that he has been out of the office, but has spoken to C. Baker and knows what needs to be done and it will be done. C. Baker states that regarding the Fire Department letter, the road is being built to Town standards. P. Male states that he will look at the items of concern from G. McKenna and T. Yasenchak as well. T. Yasenchak was concerned with the proximity of the stream to the septic system on lot 4. G. McKenna noted the discrepancies in setbacks, standard notes needed to be updated; and the variance information should be on the plans. C. Baker states that he still needs more detail on the stream crossing and easement, if required, and this needs to be shown and described. He states that a set of plans should be forwarded to the Highway Department for W. Barss to review the estimate. T. Yasenchak states that her concern was for someone who was buying lot 4 to be aware that the septic would need to be a pump system. Question was raised regarding the perk tests. C. Baker states that usually we do not require perk tests for a subdivision approval as each system is individually designed. G. Dake asks the applicant to review the short form SEQRA that was submitted in 2005 for any possible changes and to update that.

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**GERALD & RHONDA MAHAY – Special Use Permit**  
Lake Desolation Road

G. Dake states that on January 14, 2009 the Board received a letter from the Town Attorney responding to a request from the Planning Board regarding whether or not the applicant has a driveway easement that is appropriate for the project that the applicant is proposing. The Town Attorney's wording was rather 'lawyerly' and said that the Planning Board had some interpretation. G. Dake states that his recollection of the Board's discussion, and we also subsequently received a letter from the Jacques and L. Wallace indicating their comments on the easement, and G. Dake's recommendation after the discussion and his recommendation to the Board, was that we will require the applicant to provide or persuade the Planning Board that they actually have an easement there. The Town Attorney has indicated that it is not clear that the applicant has permission to access this for anything other than their own personal use. G. Mahay states that he has Judge Williams order. He states that this is in reference to the old dug wagon road that used to be a right-of-way to their property which has been in their family for 40 years. He states that they have paid \$40,000 for this easement, that is what it has cost them in court proceedings, and they have all the documentation. They purchased this land in 1998 and this is going on the 11<sup>th</sup> year that they have paid taxes on this property and they were just recently able to access this property due to the fact that the Wallace, Jacques and Fetteroll family had blocked off the original right-of-way, which in turn made the applicants have to go to the Supreme Court because it was a civil matter. Judge Williams ruled in the applicants' favor in every aspect of that easement. G. Dake states that the Planning Board would probably like to get a copy of that because the question is not whether the applicant has access for personal use, we acknowledge that from our reading and that of the attorney. The question is whether the applicant has access for commercial activities. G. Mahay states that the Board should have a copy of the easement agreement with the stipulations. He states that he operates G. Mahay & Sons, a small contracting business and his son operates All American Stone, which is a small contracting business. He states that there is a conflict of interest because they are 40 year members of the Town and landowners, and the Jacques' had the Town Attorney represent them, which they lost in Supreme Court when they appealed Judge Williams decision. G. Mahay states that he can show the Board documentation where Jacques tried to rewrite the stipulations and the agreement, and G. Mahay would not sign it because that is not what was agreed to in Court and that was not what Judge Williams ordered. Stipulation #11 deals with licensees. He states that they are talking about a new easement to their property that was accessed by the old dug wagon road which was built by Oscar Granger in 1846. R. Mahay states that she has letters from David Jacques stating that he has no intention of restricting the land use. G. Mahay states that the property has been in R. Mahay's family since 1969 and he has owned it for 11 years. He states that when he purchased the land it was landlocked because the Jacques cut off the old dug wagon road. He states it was a court order, a civil matter, they had to go to court and it was resolved in court. This has been in process since 1998 and they have not yet been able to access the property without the Jacques, Wallaces and Fetterolls trying to intervene somehow. He states that his brother, Gary, owns 50+ acres and the applicant owns 119 acres. Since the easement has been in place, the Fetterolls have managed to manipulate their attorney and they want an additional \$20,000 in order for Gary Mahay to access his property. G. Mahay states that he thinks that is a Town decision because when he is dead and gone, that property will still remain in the Town. If he sells the property the easement clearly states that the easement goes with the property. He states that is why they have it in writing and documentations that state that any decision on that easement will be made by the Planning Board and the Town of Greenfield, not the Jacques, because they have not yet complied with the Mahays and it has already cost them \$40,000. G. Mahay states that as Town residents who have lived here their whole lives, they would like some support from the Planning Board on their behalf. He states that the other party tried to put stipulations and change the court order, that is not what was agreed to. He states that just like today, the Planning Board is trying to say that they cannot have a business here because the interpretation of the writing and that interpretation of this writing was done by the Town's attorney. The Town attorney is the same one who represented the other party. He asks if it is a conflict of interest that the Town attorney would represent the other party and not the Mahays, and they are both landowners in the Town of Greenfield. He states that is not fair. G. Mahay states that his brother who has owned property up here for ten years, has landlocked property as a result of this. Is

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the Town going to support him in any way, or the Mahays, or are they going to let other land owners keep putting stipulations on the easement when they are the cause of the Mahays not having access to their property to begin with? G. Dake states that he does not follow all the history, but that is fine. This is the first he has heard about any potential conflict and will raise the question with the Town Attorney. He states that it is a different attorney out of the same office that he sees referenced on this letter from 2006. G. Dake states that his interpretation of what we got from our attorney is that, based on what he knows, the applicant has unlimited access for the applicant personally, but he does not take that wording to extend to the applicants ability to run a commercial operation there. M. Thrailkill states that, in his mind, he does not think that it is very clear yet. There is some paperwork but he does not think that it has come back, or that he has seen anything, that is very clear that they have the right to go in and do a commercial business. J. Streit asks if the ruling is from Judge Frank Williams and the applicant stated that he has a ruling from Judge Williams stipulating that the applicant has personal, commercial and licensee. He asks when that was made. G. Mahay states that was in 2005. G. Dake states that the 'licensee' section is referenced in the memo from Mike Hill. J. Streit states that he would have to read the ruling to understand it more fully. G. Dake asks if the applicant can provide the Board with a copy of that ruling. G. Mahay states that he believes that he provided that. A partial document is in the file and the applicant will provide the entire copy. G. Mahay states that they plan to live on this property and continue running their businesses. J. Streit states that the way the applicant describes this, makes it sound that the applicant has complete rights to do this. It would be beneficial if the Board were able to peruse the legal statement that the applicant is referring to. They could see it and read it for themselves, and then check it against other letters that the Board has since that time to see where this discrepancy may or may not be. L. Dupouy states that if everything is the way that the applicant says and it is a matter of interpretation, she would say that the Planning Board bend toward the interpretation for the applicants to do what they want to do. M. Ginley states that he would lean towards the applicant, but the Planning Board would have to take a look at this more clearly. He is a little concerned regarding the attorney memo that the Board received from the conflict standpoint because it would have been alright for them to right that letter to us but maybe they should have put something in there disclosing that they had represented the other party. The memo did not give a firm direction for the Planning Board and left it for the Board to decide, and he is a little concerned about this. G. Mahay states that he has letters that state that the two parties were ordered to negotiate this, they have spent over \$40,000 so far and there is no making these people happy. Cathi Radner who works for Miller Mannix represented the other party. B. Duffney states that like L. Dupouy and M. Ginley, he is leaning towards the applicant, but in reading through the different letters from the different attorneys when this was brought in the last time, it looks to him that the attorneys just don't want to do their job and have the Planning Board make a decision. He is leaning towards the applicant but would like to get it more defined. T. Yasenchak states that she would like to see a copy of the ruling. Looking at the information that we had in the past, it seems like it wasn't complete. The information that was provided in the beginning of this process, it did seem that the intent was for the applicant to build a residence which she would agree could include a home business of some sort. The applicant had brought a very broad plan to the Planning Board and that might be part of the issue with the neighbor, she is just guessing, because there are a lot of different levels. However, T. Yasenchak states that if she had a piece of property and someone wanted to buy it to access their land for a home, she might not like it and might put them through some hoops, but it is their home. Now as it goes along, you find out that they want a shooting range, riding of ATV's, there might be hundreds of people camping in the backyard with guns – they might not feel so happy about that anymore, because they were thinking that they would just have some nice neighbors who have some trucks and operate their business. Commercial and home business is very, very different than the broad plan that the applicant brought in originally. She states that she would tend to say that she has no problem with the applicant having a business on the property because it does seem that they are allowed and the original agreement showed that, however, she would be very cautious of saying that the neighbor was aware of the broader plans, it doesn't seem like they were aware of the broader plans while they were going through the original easement agreement with the applicant. T. Yasenchak states that she would be cautious about allowing such a broad plan not knowing exactly what that is. M. Ginley states that the letter from the neighbor was also rather ambiguous. You would think that if they were against this they would have written a letter that said they are against it. It troubles him a little bit

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that they did not say they were against it, it is almost like they intentionally tried to leave it vague so that they could leave it up to more legal fights. G. Mahay states that is what they have done. He states that the Town of Greenfield has more to say about the land than people who moved here from New York City. G. Dake states that the Board would like to see the Williams decision. L. Dupouy states that the Board wants, instead of stories and opinions, any piece of paperwork regarding the easement that talks about what the judge said, anything from the neighbors regarding the agreement that would prove their point. M. Ginley states any documentation if there is correspondence going back and forth trying to get to that stipulation from the neighbors saying that they do not have any problems with commercial stuff, then that would be very helpful. J. Streit states that the applicant has used the terms 'residence', 'commercial' and 'licensees' so if he has that specific language in an agreement or judgment he should provide that. R. Mahay states that we have the decision. M. Ginley reviews the document and states that there should be more to it than what we have. G. Mahay states that the agreement they made pertaining to this easement was based on the fact that the old dug way road went through the Jacques property and they wanted to move it south on the property line. It used to access the Mahay property but the Jacques blocked it off. He states that he and his wife feel, since the family has owned this for 40 years, that the Town - not the applicant, not the Wallaces, not the Supreme Court, not anybody else other than the Town - because by rights it is a Town property, should have a say in what can or cannot be done on a persons property. The easement is for permitting people to access their property. His property used to have an easement and now it is an easement that is court ordered and has all kinds of regulations against it and it is out of the Town's control. G. Dake states that if we can get that one last piece, we will make copies of the easement, the letters and the Judge's decision and circulate that to the Board members. B. Duffney states that if a town road is abandoned ½ of each goes to each of the adjoining landowners if it split the two pieces of property. G. Mahay states that it was never abandoned. He states that the roads in the Town of Greenfield have to be designated as being abandoned and they did a title search on the property and the old dug wagon road was the right of way. When Lake Desolation Road was built they discontinued the use of the other. B. Duffney asks if the applicant can get documentation that it was never legally abandoned by the Town in the minute. G. Mahay states that he has that, but that has nothing to do with the Supreme Court. J. Streit states that this is obviously a legal point that we have to have resolved for us, we can't resolve a legal point, but he asks if the Board might see an advantage to either now or at some point in the future doing a site walk to see what is in dispute so we can picture this. G. Dake states that some of this may be subject to interpretation and that we may be the people required to make that determination. He states that he will talk to the Town Attorney to see if we should be getting outside counsel. We also need to figure out if we have what the total project is and go out there and look at what the other stuff is. M. Thraikill asks if the application has been streamlined. G. Mahay provides a handout with their ideas. M. Ginley states that it looks like they are taking any shooting off the table. G. Mahay states that they decided to keep it simple. The Kayaderosseras Ridge is a beautiful piece of property and this particular piece of property had an old homestead back in 1891 and there are stone walls, stone foundations, historical sites, etc. It is a beautiful piece of land, 1700 feet in elevation. He discusses the trails he would like to have. C. Baker asks how close the easement they were granted is to the existing home. G. Mahay states that there are no homes there. The Jacques live a couple miles away. T. Yasenachak asks if they are planning to have any other houses here other than their own. G. Mahay states no, they would like to build their house and have the recreational area. This application will be on the May 12, 2009 agenda.

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**DOUGLAS AND LORNA DUPOUY – PUD REFFERAL**

South Greenfield Road

L. Dupouy states that they are not ready, but can give an update of where they are. T. Yasenachak and B. Duffney recuse themselves. L. Dupouy states that she has submitted a letter to the Town Board requesting the change from an MDR2 zone to a PUD and they have 61.44 acres. This will not change the character of the neighborhood and she goes on to discuss the proposed uses in addition to the currently operating Etiquette School of New York which is a Type 2 home business as described in the information submitted - a very small, for business meetings, conference room; the Queen Bee Tea Emporium, very

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French, open 6 days a week during tourist season, not full time, during racing season and then weekends on holidays throughout the year; Villeroy Events for weddings, receptions, etc; the barn would be turned into a co-op mercantile, The Captain's Wife... Nautical Notions & Treasures from the Seven Seas, 2000 square feet on the bottom and 2000 on the second floor; the B&B is only 4 bedrooms. If they are really successful down the road, she would like to build 7 small guest cottages, probably less than 500 square feet each, for the wedding parties, etc. They would eventually like to construct a building to hold indoor events (Ceremonial, Cultural and Educational uses) with a commercial kitchen. L. Dupouy goes on to discuss Appendix B with the project description and objectives of her proposal. The new survey will show more detail and she indicates where things will be on the existing map. Everything would be happening in the back so that it doesn't affect the neighbors across the street. G. Dake states that a lot of what the applicant is talking about sounds like the old Wayside Inn back before the fire. He states that this sounds like a very interesting project with some great potential. M. Ginley states that the Town needs more activity. G. Dake states that some proposed timing would be helpful. L. Dupouy states that the first phase would include the B&B and the tea room.

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Meeting adjourned 7:52 p.m., all members in favor.

Respectfully submitted,

Rosamaria Rowland  
Secretary