

TOWN OF GREENFIELD

PLANNING BOARD

MAY 12, 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, Michael Ginley, Thomas Siragusa, John Streit, Michael Thrailkill, Tonya Yasenchak and Nathan Duffney, Alternate. Lorna Dupouy is absent. Gerry McKenna, Zoning Administrator and Charlie Baker, Town Engineer, are present.

MINUTES APRIL 28, 2009

MOTION: J. Streit

SECOND: T. Yasenchak

RESOLVED, that the Planning Board waives the reading of and accepts the minutes of April 28, 2009 with the following correction:

Vaccarielli – public hearing was reopened from the previous meeting

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

Noes: None

Absent: Dupouy

PLANNING BOARD CASES

GREG SLYWKA – Site Plan Review

Maple Avenue/Hudson Avenue

Gary Robinson is present for the application and states that the property is located at the corner of Hudson Avenue and NYS Route 9 (Maple Avenue), World Chiropractic. This is where the chiropractic business is located now there is an apartment upstairs. G. Robinson believes that G. Slywka received a variance for the existing garage. Now that the zoning has changed, it actually complies with setbacks. They presently have an application before the ZBA for an area variance. The garage is presently just used for storage. G. Slywka's wife is a hairstylist and he would like to move her business from where it is currently located into this building. G. Robinson believes that she has 5 seats right now. The site is .65 acres and the requirement is 2 acres. He states that the biggest thing he is doing is the on-site septic system. He has done test holes on the site and they are located on the plans. He has done this for a hairstylist before and did a lot of homework on that one. He states that she tries to use as many organic products as she can, things that break down quickly. DEC's recommendation is 170 gallons. They do not have any records from where they are right now but he believes that they are in line and finds that 170 gallons is reasonable. They meet the rest of the bulk and density requirements. They have 17 parking spaces and need 14. G. Robinson states that there are a couple of things that they could not meet regarding the septic system. One is the separation between the building and the on-site septic system. It is less than 20' to the edge of the leach field and this is an Elgin system which is just a different type of system and it can be smaller than a conventional system. They did leave space for a replacement system. This is located so that they are in excess of 100' from the well at the neighbor's house. The applicant is also looking into putting a new well in the front of the

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property. Right now there is a well in the basement, it supplies enough water and they have never had any trouble with it. G. McKenna states that the application is before the Board for a Site Plan Review for two things - change of use and a personal service outlet. They are in front of the ZBA for lot size. C. Baker states that his biggest concern, as can be seen from his comment letter, is that there is an awful lot going on on a relatively small site. The new well is going to be less than 60' from the existing septic system and he is not sure how G. Robinson is planning to deal with that. G. Robinson states that they run across this all the time and that a large part of their business is on-site septic systems. For something that is existing, the rule that they follow is that they do the best that they can and they do better than what they have. Instead of a shallow point, the applicant will have a deep well a little farther away than the existing one. They are making the situation better, it is going to be a better system, a deep well, less likely to be contaminated and it is a little farther away. He states that they do it all the time but he does not know if it meets the Town's requirements. C. Baker states that he agrees that it is done all the time in situations where you are dealing with an existing system, you have a failure and you are trying to do something better. In this particular case you are adding another use to a lot. G. Robinson states that they meet the separation to the new system. G. Dake asks if the existing system is being abandoned. G. Robinson states that it is not. C. Baker states that he thinks that we need some details on the existing system - is it a drywell, is it trenches, etc. G. Robinson states that he was told it was trenches but does not know if the applicant knows the length or how many there are. C. Baker states that the age would be another question and if it fails, where are you going to go? It doesn't appear that there is any replacement area. G. Robinson states that they would replace it in place. He states that they do a bunch of replacements and it is very seldom that they go somewhere else. Usually they do it right in place, either between the existing lines that are there or they dig out what is there and replace it. M. Thrailkill asks if there is a tank there that gets pumped out periodically. G. Robinson states that there is a tank there but he doesn't know how often it gets pumped out, but he will find out. C. Baker states that his next comment is related to snow removal and it would appear that when that parking lot is plowed, there are only a few places where the snow can be piled. G. Robinson states that the first time he met with the applicant it was wintertime and there was snow. He indicates on the plan where the snow is plowed to and states that the applicant keeps it off of the existing septic area. The applicant's theory is that if it is too much, he will take it away. C. Baker states that regarding the existing well on the McGrath property, he would like to see some verification as to how it is constructed. He knows that might be difficult to do but if they can verify whether or not there is 50' of casing that would certainly be beneficial. He asks what G. Robinson's feeling is about the new well and it would appear that there may be over 25 people using it. G. Robinson states that as long as it is one owner, it is ok. C. Baker questions that a public water system is not required. G. Robinson states that he will check with DOH, but he believes it is ok as long as there is just one owner and he will check on the transient issues. C. Baker states that it just seems to him that there is a lot going on on a relatively small site and his concern would be the options for replacement and separation distances if these systems fail. T. Yasenachak states that she agrees with C. Baker regarding the well, the neighbor and the number of people who will be using it. They are not ingesting the water, but they are still having it put on their heads. She understands that it is one owner. A restaurant only has one owner but they still have public water. Regarding the neighbor's well, C. Baker commented that a waiver from DOH would be required if it is less than 50. Her question to C. Baker would be how do you incorporate the neighbor's rights into that? C. Baker states that DOH, when they issue the waiver, they are going to be the ones to make that decision. They will ask for the same information that C. Baker asked for and they will make the decision. T. Yasenachak states that the Planning Board would like to see lights, trash, etc. and asks if that can be shown on the plan. G. Robinson states that they are not proposing any additional lighting, no pole lighting, there will be some lighting on the building itself. He will show that information. T. Yasenachak questions that on the aerial photo it appears that the parking lot has two entrances and questions, in that case, that there will be enough parking spaces. She also questions that the building will be at grade or if any concessions will have to be made for handicap requirements. G. Robinson will check into this and states that that is generally done for the building permit. It is relatively flat. T. Siragusa questions that with the number of employees and customers, will there be enough parking or if are they planning to park in the street. G. Robinson states that he has been there a few times and has not seen a lot of cars but the applicant thinks he has plenty of parking with the 17 spaces and the Town of Greenfield requirement is 14. T. Siragusa asks if that calculation

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includes the realistic number of 5 stylists with 5 customers, plus customers waiting. G. Robinson states that he can say that there are not normally 5 people there. He states that in the existing business what they do is that at any one time the most they will have is three people and they work different hours during the day and they don't work all the same days. No one works more than 4 days a week. Right now there are only 4 people working with an extra chair. B. Duffney states that as far as where the new septic is going, it doesn't look like there will be any wells within close proximity of the neighbors. Being that it is a slab, with the new septic system being that close to the building, there would be no leaching into a basement, so that shouldn't be an issue, should it? C. Baker states that is correct and the DOH will be more apt to waive that situation than they would if there was a basement, footing drains, etc. G. Robinson states that he has been told by certain people that it is an old requirement that was there and it may disappear when the new regulations come out. He states that was for a time when people had laid up stone foundations. B. Duffney asks if the point well has ever been tested for contamination. G. Robinson states that he does not know but will find out. B. Duffney states that the other thing he was thinking about, and he has pretty much answered his own question looking at it, is if the septic could be tied into, from the existing building back into the new system, but he does not believe so because of the distance and it would have to go under the parking lot. J. Streit asks the size of the entire lot. G. Robinson states it is .65 acres. J. Streit questions that the only new construction will be the parking lot and the other structures exist. G. Robinson states that the parking lot also exists and the garage will be renovated. M. Thraikill states that there are a lot of engineering questions and he is good with those. As far as the water testing, he questions that the doctor probably gets it tested quarterly. There are building codes that will cover the handicap accessibility issues. G. Robinson states that he believes they will need one handicap space. M. Thraikill states that it seems like a good project, just the engineering issues. M. Ginley asks if there is a well across the street. G. Robinson states that there is not. C. Baker asks the size of the apartment. G. Robinson states that he is not sure but he believes it is 2 bedrooms. G. Dake states that the bulk of this is engineering. T. Yasenchak questions signage. G. Robinson states that there would be a sign on the building. T. Yasenchak questions the need for a buffer because this is commercial and residential. G. McKenna states that they would need 10'. G. Dake suggests that G. Robinson take a look at the code for what is required on a site plan review regarding lighting, signage, etc.

ZBA REFERRAL - G. Dake states that since this is also on for a ZBA referral, what would the Board like to tell the ZBA. The applicant requires an area variance for acreage. The Planning Board has a concern about the size of the lot and the ability for the water and septic to be handled. Perhaps we ask the secretary to forward a copy of the engineer's letter and say that those are the bulk of the Planning Board's concerns. These are challenges that the Planning Board will address. If the ZBA gives the variance, the Planning Board will tackle the issues.

Regarding a public hearing, R. Rowland states that the applicant is scheduled for a public hearing on June 2, 2009. The Planning Board will wait to see how the applicant makes out with the ZBA.

GERALD & RHONDA MAHAY – Special Use Permit
Lake Desolation Road

Gerald and Rhonda Mahay are present. G. Dake thanks the applicant for providing the information requested, it was very helpful to actually read what happened. He states that he has a much clearer picture of what happened and when. He sent the Board members questions and comments regarding what we want to do about the letter from our attorney, the fact that it is unclear and the potential for a conflict. He states that he spoke with the Town Attorney who said that while he does not believe there is a conflict because the Jacques are not current clients of theirs, he certainly understands the perception of a conflict and certainly would not be offended in any way if we wanted to get outside counsel. There are three options that the Board has to look at on what do we want to do about reviewing this easement based on what he heard back from the Board members in their e-mails. We can either just use the Mike Hill letter that we have which doesn't tell us an awful lot. We can hire an outside counsel of our own and ask for an interpretation based on

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this file, or we can ask the Mahays to provide us a letter from an attorney saying whether or not commercial activity is allowed. The question that T. Siragusa brought up, which G. Dake feels is a very salient point is, if we ask the applicant to provide a letter from their attorney, are we going to turn around and say of course that is what their opinion is going to be – it's their attorney. We don't say that about engineers when we ask for outside engineering issues. As C. Baker threw in, if this were an engineering issue, we would just be asking the applicant to provide us some documentation that this will work. The Board agrees that these are the three options. T. Siragusa questions that M. Hill had all the information that the Board has received, all the historical information or just the easement. G. Dake states that he does not know. T. Siragusa states that he learned a lot from the historical information. If you are just going by the easement, it seems pretty ambiguous. If you look at the history, you can at least glean intent. He states that there is only one instance with the word commercial. That seems to change things. G. Dake states that he thinks the record was clear to say that when all this went on, the discussion was for a single family home, but just because that was the intent when the easement was granted and written, if the easement as written doesn't preclude commercial activity, nor does it explicitly permit commercial activity, that really is the dilemma. Regardless of what the intent was, when you enter into a contract of any kind, you can have all the intent you want but it is what actually ends up in writing and is signed by the parties that matters. M. Ginley states that, like a merger, it doesn't matter all the other stuff ahead of time, whatever ends up in a document is what it is. You can't look at the other stuff; you have to look at the contract. M. Ginley states that the more he read, the more he is leaning towards hiring an outside third party to give the Planning Board their opinion. He thinks that with the Mannix firm, no matter what we do, there is this question – that the Mahays are going to always wonder, and he does not want that to reflect on the Planning Board that we didn't do the right thing and get a third party opinion. G. Dake asks M. Ginley, as an attorney, what he thinks about the idea of the applicant going back, like we would for an engineer if there was a sight distance issue, have an engineer provide us something that says the sight distance works and if they put their stamp on it, we let it go. M. Ginley states that he thinks that there is a big difference between an attorney opinion getting paid by a client and an engineer. An engineer has to go more on the facts and if they are wrong, what happens – whether it is a septic system blowing up, etc. Whereas with an attorney, this is just his opinion and there are not really any ramifications if he is wrong. B. Duffney questions what if an outside attorney does the same thing. M. Ginley states that at least he would not be being paid by the applicant. G. Dake states that if he were the neighbor, he would have the same concern about the Mahays' attorney that the Mahays' have about the Town's attorney, if you are using one that is paid by either side. The Planning Board is the one who doesn't have a side; we don't care what the right answer is just that we get it right. M. Thrailkill comments that then the Town is paying for one. M. Ginley states that we don't care which way they decide. M. Thrailkill questions that the neighbors understand that though. B. Duffney asks the applicant if they understand that the outside attorney could say no, the way this is written it says that it is only for residential and not commercial. G. Mahay states that that is not stated anywhere. B. Duffney states that he is just saying it, he is not pulling sides either way. G. Mahay states that what was agreed upon in a civil court before Judge Williams is what was agreed upon. He states that they provided the Board with the information that met what the stipulations really meant. He states that the way they see it, before the county road, Lake Desolation Road in 1940, the only road up over the top of that mountain was the old dug wagon road which was recorded on the Beers map of 1866 and Oscar Granger built it in 1846 when he built the glass factory. They feel, and they are not prejudice or on anybody's side, that this is town property that they are talking about. It was a town back in 1798 when they discovered gold up on the Kayaderosseras Ridge. That road was an old town road and it was replaced by the county road, it was never legally abandoned. They have spent many hours on Town records. That was the only access point to lot 149, which they now own, and has been in their family for 40 years, and David Jacques has only been in custody of that property for the last three years. They have been in custody for the last 11 and R. Mahay's family for 30 years before that. He states that they feel that the Town has a certain amount of bearing on any rights of way in the Town, regardless of who is involved. The other point of view is that this easement that is now accessing their road, according to Judge Williams, and he doesn't know why this wasn't resolved on the Town level or why it wasn't resolved between the Town and the County many years before they bought it. It has been an ongoing issue ever since Lake Desolation Road went in. As a result of the Town not caring for their easements and

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rights of way, and switching them to the County's control, now they (Mahay's) have a piece of property that has cost them \$40,000 just for that driveway. Not only do they feel that they are being forced to pay out of their pocket all of this money. This new easement that is accessing their property, is recorded in Saratoga County and runs with that land. G. Dake states that there is no question that the Mahays have an easement to access their property. The question is whether that easement allows them personal use or whether it allows them commercial use. He states that the Board is trying to make that decision, but we are not lawyers and what we are talking about is getting a legal opinion as to the language that the applicants and the Jacques agreed to. M. Ginley states that if at the time that the applicant entered into the stipulation with the court, if the applicant had said, this may be our proposed use in the future, and it was discussed and put in the agreement, then it would have been resolved. G. Mahay states that since the old dug wagon road was the right of way to his property and now it no longer exists, so the new right of way to their property should carry the same restrictions, etc. It should not be D. Jacques allowing him to have a business in there. M. Ginley states that if the applicant is making that argument, why didn't the lawyers make that argument. G. Mahay states that they did and they submitted paperwork and D. Jacques specifically put no commercial use in there, and the Mahays said that they would not agree to that. G. Dake states that the document says that it was clear to the court at the time that the stipulation was placed on record that the purpose of obtaining the easement and the construction of the driveway was to provide access to the land on which they were planning on building a single family residence and that heavy equipment would have to pass over the easement. G. Dake states that in several places it states that the intent was to build a single-family residence. The intent is different today, and that is ok, we don't have a problem with that, but what we have to do is say, based on not being able to foretell the future, that instead of a single family residence we want to do something else, they didn't write it to say that you definitely can do this or that you definitely cannot do this. G. Dake states that is what the Board is discussing, are we comfortable that we have enough information in front of us to make that decision or do we want to get the opinion of someone to read these documents who is an attorney, because the Jacques are going to say they don't want it and the applicant is going to say they do. G. Mahay states that the Jacques never did meet the requirements of Judge Williams. They were supposed to install the right of way costing \$40,000 and \$15,000 of that went right into their pockets in cash. Not since day one has it ever met the requirements of the Town to build a house or anything. He states that G. McKenna has seen the driveway and it is too steep of an incline. Even today, if he wanted to start building his house tomorrow, which he is supposed to have the power run up into there, the Jacques still have to be confronted about that easement to go down there and do work which the applicant has already paid to have done and they stopped work doing. They are not going to comply. G. Dake states that he will caution the applicant, as he kind of admonished G. Robinson to, you may talk long enough to dig yourself a hole, because if he states that the driveway, the access, is not currently built to be supportive to handle vehicles, then the Board is going to say that you do not have access to your property. G. Mahay states that he believes that the incline is not supposed to be more than 5% and it is 12%. M. Thrailkill reads from the easement document, #11, "that the driveway shall not be used for any purposes which violate the laws or ordinances of the Town of Greenfield." Can't the applicant do whatever he wants as long as it doesn't violate the rules and regulations of the Planning Board and the Town of Greenfield? G. Dake states that would be one of the interpretations. M. Ginley states that his interpretation in reading the easement was that he was completely in favor of the Mahays, but once he read the history of it, he is now back in the middle. That is why he was concerned about getting a third opinion. If you read the history, they fought to even get commercial vehicles up there to build a house. G. Mahay states that they blocked off the old dug wagon road and wouldn't let R. Mahay's grandfather onto his own property, that is the "kind of people you are defending." T. Siragusa asks if in March of 2006, did the applicant know he would possibly want to put this recreational area on that property. G. Mahay states no. T. Siragusa asks if he thought he might. G. Mahay states that there are 169 acres, he thought they would do hunting or mountain biking or something like that. He states he didn't know it then. T. Siragusa states that it seemed like a perfect opportunity to explain what his intent was for the easement. The letter from John Arpey states that he is concerned about inserting the term "commercial purpose" into the agreement, and that was the perfect opportunity to say that there might be other commercial and it seems that it wasn't taken. G. Mahay states that he could not foresee the future and when he bought the property, it didn't even have a legal right of way. M. Ginley states that he feels that we should

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send it out and he is not defending anyone, it was written as the parties wanted at the time. T. Siragusa is in favor of sending it out. T. Yasenchak agrees, not necessarily to ask them what their opinion is on the Planning Board's decision, but to give the Board better definitions and precedents of use of those definitions so that the Board can make an educated decision, their own decision. M. Thraikill agrees with hiring outside. He doesn't think that they knew what was going to happen down the road and it doesn't say one way or another. It does say as long as the applicant does not violate the rules and regulations of the Town, so he is leaning towards the applicant, but he could use a little more clarification. J. Streit agrees. B. Duffney states that he is fine with going along with the other Board members, but he wants the applicant to understand. You talk about history, he is third generation and he is all for people doing with their land what they have paid for and paid their taxes on for years, nobody is here to give the applicant a hard time. We are just trying to cover our bases, rather than have a lawsuit when your neighbors come to the Town. G. Dake states that we are not going to hire attorneys to do our job for us, we need them to help clarify the documents in an unbiased way so that the representatives of the Town can make the decision based on better information on how to interpret what is here. G. Mahay states that he agrees and would like the Board to consider the history. G. Dake states that he understands that it is important, but it is not necessarily relevant to the decision. G. Mahay asks when the old dug wagon road was blocked off, where was the Town Board? G. Dake states that he wishes that was the only piece of property in this Town that had that problem. He states that he will talk to the Town Counsel and the Town Board to find out how to execute this and we will make sure that everyone is copied on the results. G. Mahay provides the Board with a copy of a petition.

ZBA REFERRAL

Greg Slywka – see above.

Doreen & Charles Collins – G. McKenna explains that this is a request for an area variance to replace a mobile home with a modular. This is a pre-existing, non-conforming lot and it is the location of the well, septic and driveway that forces them to put the modular to the left side of the property. No Planning Board issues.

DISCUSSION

G. Dake asks if the Board has any interest in a site walk. He states that the Mahay property might be a possibility if we can get past the easement issue. The Dupouy PUD would be a good project when it comes before the Board. We can organize one or also do this on a case-by-case basis. G. Dake states that he had a meeting with some people regarding the land on the ridge up on Route 9, Stan's Flea Market, that may be coming to the Town with a PUD this summer. That would also be well worth walking. The access would all be in Wilton, we would have to have coordinated review, etc. The Makkay property on Goose Hollow Road would also be a good project to look at.

C. Baker states that he understands the logic in hiring outside counsel to look at the Mahay application, however his concern is as a taxpayer, with previous applicants when we hired outside help it was at the applicants expense. In this case, his concern is that if we hire an outside attorney, doesn't that open the Town up in the future when the Jacques challenge that decision? M. Ginley states that we are just looking for more guidance on interpreting the easement, the Planning Board will be making the decision and it will be on our shoulders one way or the other. One of the parties is going to be unhappy and might sue. G. Dake states that building a stronger record can do nothing but help. He does not know what the answer is going to be when it comes time. Does this ultimately get charged to the Mahays? They are not going to like that answer, but that is the discussion G. Dake has to have with the Town Board. G. McKenna states that if this becomes a commercial application, the applicant has to come up with an escrow for review. M. Ginley states that he thinks we would be in trouble if we voted against it and our Town Attorney's position in defending

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the Jacques was against it, then that opens up a can of worms. He thinks this protects us and builds the record better. G. Dake states that he is not concerned about getting sued. He states that he is not surprised that M. Schachner didn't know that C. Radner worked for these guys 10 years ago for one project. They are not current clients. He states that he will keep the Board posted. M. Ginley states that he can give the Town names of some attorneys who do a lot of real estate matters who might be able to do this.

Meeting adjourned 8:02 p.m., all members in favor.

Respectfully submitted,

Rosamaria Rowland
Secretary