

**TOWN OF GREENFIELD**

**PLANNING BOARD**

**January 25, 2011**

**REGULAR MEETING**

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

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**MINUTES – January 11, 2011**

MOTION: T. Yasenchak

SECOND: B. Duffney

RESOLVED, that the Planning Board waives the reading of and approves the minutes of January 11, 2011, as submitted.

VOTE: Ayes: Dake, Duffney, Dupouy, Gyarmathy, Siragusa, Yasenchak

Noes: None

Absent: Streit

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**PLANNING BOARD CASES**

**F. CLIFF OLDER – Minor Subdivision**

Lake Desolation Road

Bonnie Older and her daughter, Nicole Witham, are present for this application. G. Dake reads from G. McKenna's notes that the applicant would like to subdivide the existing 48.6 acre lot to create two lots – one lot 8.1 acres and one 40.5 acres. However, the proposed subdivision would create 2 additional lots and he thinks that this issue could be addressed with deed language. B. Older states that there is the property across the road. G. Dake states that then that becomes the connection – the property across the road. G. Dake states that the big question on all of this becomes that this would require a waiver of the 5-year rule. We had a little bit of discussion on this before and that is the key issue in this case. There are concerns on some Board members parts as to when it is a problem. Where we have done natural subdivisions, meaning that it is divided by a highway, we have fairly consistently, although not be enormous consent, been pretty consistent in allowing a waiver of the 5-year rule. He states that something that he thinks T. Yasenchak brought up at the last meeting, since it would be difficult to divide again, something that we could potentially stand by if we decided we wanted to do this, if the applicant would be willing to put a no further subdivision restriction on this property. If the deed language stated that there would be no further subdivision, that is the kind of thing that might allow comfort to those who have concerns about waiving the 5-year rule. B. Older asks if that means within the 5 years or ever. G. Dake states forever, that he is not committing the applicant to anything – just throwing an idea out there. The concern is always that the Board waives it for an applicant, then they come back again and again. The question is how practical does it end up being. C. Baker states that the engineering issues would be the length of the driveway and turn arounds. B. Older states that the deeds all say that they have to use the common driveway. T. Yasenchak asks when the subdivision took place. G. Dake states that it was September of 2007. T. Yasenchak states that she has no problem with the subdivision but with the 5-year rule. She states that we have had people come before the Board with really dire financial issues and dire marriage issues who we have denied just because of the rule.

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We need to be consistent and as much as we all like the applicant. They have been part of the community for a long time, she does not want to go on record as saying that that is ok when there might be someone who comes down the road who has only lived here for a year and wants to subdivide for a reason that may seem more dire. She does not like being in the position of saying who needs it more. That is why the 5-year rule is there. That is her only sticking point. Maybe if we did do something with the no further subdivision, that 5-year rule is there so that it does not become compartmentalized, so that we could look at it all at the same time. If we could have looked at this all when they came in the first time, that would have been the best for everyone. B. Older states that at the time, her daughter had just bought a house with her husband and they weren't even thinking about this. T. Yasenchak states that the whole purpose is to be able to encourage development correctly so that things don't end up being little strips. She knows the property and does not think it is going to be too dense or over developed. For her to be comfortable with waiving the 5-year rule she would need to see something in there that we could stand on if someone else comes in and asks about it so that we can say this is why and what makes a situation unique. T. Siragusa feels similarly to T. Yasenchak and that there is an intent in the original law to push back on commercial development and trickery, which is obviously not the case here, but also to slow down development and be able to manage it. He thinks that the Town could have gone to the Board and said slow down development in a way that you see fit. It is tempting to look at the law that way and say here is an exception. He is not sure what that exception would be and the Town Board did not tell us to use our best judgment per se. There is a 5-year rule; there is a code for dealing with that. He tends to agree, that right now he thinks of it more as sticking to the 5-year rule because that is why there are rules, unless there is something greater like T. Yasenchak was suggesting. B. Duffney states that a lot of the subdivisions that come in with financial problems, marriage problems are basically to sell off a piece of property and maintain a piece of property. What he believes that the Olders are looking to do is to subdivide, within the 5 years, a piece of family-owned property and not to sell it for development; it is to try to keep your family close to home. He questions if there would be anything where if it were subdivided that it could not be sold for 5 years. He does not believe that it is the applicant's intent to sell it at any point. G. Dake states he does not know how you would enforce it, but certainly the Board has the power to make any condition that they want. B. Duffney states that it is common knowledge that he tries to look out for the young people and the elderly, and try to help them out. If there were some way to say that it could not be sold for a period after the home was built. J. Bokus states that he does not know how the 5-year rule is written, but he assumes from what he hears that the intent was to prevent tricky subdividing by someone who comes in and gets approval and then comes in with another idea, etc. He feels that this is not the case we have here; this property does not adapt itself to further subdivision. He is not sure he is comfortable with saying that we will waive the rule 'because'. What happens to the next guy who comes in and wants the rule waived? He thinks that it's family, there is no trickery involved, it doesn't lend itself to any further subdivision and he thinks that it should be granted. L. Dupouy states that she has no problem with the subdivision, but does hold fast to the 5-year rule. She states that it is written the way it is written, we all wish we had foresight and if you don't you just wait the amount of time you have to wait. M. Gyarmathy states that he is torn, he believes that we should uphold the 5-year rule as well, but also it is really hard to have a family in front of you where the father wants to give his daughter a piece of land. He is not looking to profit from this, he is not looking to develop the property per se, he is looking to give his daughter a place to build a home. He states that maybe someone should sit down and take a look at this rule and maybe there should be exceptions for family members where a family member is allowed to give a piece of property to their children or to one another. Right now the way it stands, the 5-year rule is in place. G. Dake states that the Board does have the power to waive for whatever reasons we so choose. He states that it has been very interesting to see the angst he can feel from all the Board members on their concerns over this and this is one of the reasons that it is important to understand and to know what your reasons for changing a rule are. The fact that we like the Olders is not a reason that will stand up in court if we ever have to go back and defend our actions. He states that is a reason to be consistent, not only out of pure fairness but our responsibility as agents for the Town and we are representing all the residents of Greenfield. Should the Board deny someone and they point to someone who was approved, we have to show that we are not being arbitrary and capricious. The reason he does not have a problem with a natural subdivision, as opposed to L. Dupouy's position, is that we are consistently applying a standard. Doesn't make it right, but it makes it

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defensible in court. That is what he is looking at and what he was suggesting at the beginning, if we can find a reason other than they are nice people, something that we are willing to do consistently. That is one of the problems that we ran into with the family clause, someone could give some of their land to their kid and then the kid can turn around and sell it in his name. Now all of a sudden you are following the same rules but you have a completely different set of circumstances. That is the challenge we always have with writing and applying rules. He states that he cannot argue with those Board members who have opposed it, their points are valid and if someone can come up with what an exception that will be persuasive to the majority of the Board, great. If not, what he is hearing from the Board, he did not count enough votes to get 4 ayes on waiving the 5-year rule. Then we would be out of luck until September 2012 unless we can come up with something that this Board is going to be able to stand behind every time it came up. J. Bokus reiterates that it is family, and that is part of the reason, and it doesn't lend itself to any real subdivision. T. Siragusa states that he thinks that is potentially valid, as M. Gyarmathy was suggesting, but there is certainly nothing on the books. There is also no precedent so unless we were willing as a Board to step out and set one, that is the only way it should be done. G. Dake states that we can set that precedent. We can foresee the other scenarios that are going to come up and that is always the danger in doing it. G. Dake states that he is the least bound by precedent person. Every project that has been before us in the last 17 years has been different in one way or another, so he does not worry as much about precedent. He states that J. Bokus is not wrong. If 4 people are comfortable saying that we are convinced that this is to keep family at home and that is good enough for us, and we apply that consistently to other people who come in, it's fine. B. Duffney questions that if we granted a subdivision within the 5 years for a parent to give to one of their children, and they sold it immediately afterwards and then came back in for another subdivision within a 5 year period from that point. G. Dake asks B. Older if this is an actual gift of the land. B. Older states that it is, they have given it to the other children also. G. Dake states that he could certainly sign on to a family member giving a piece of property to another family member that we are convinced by them that the intent is for that family member to be living there. He would grant that. M. Gyarmathy states that he feels that it is different when it is gifted. L. Dupouy states that the flip side to that is that if you know it is family; you know that it is just a matter of time, then you can do what you want to do. If you want to build a house, just wait the two years and then get the paper work done. C. Baker states that you cannot get a building permit for two homes on one lot. L. Dupouy questions that if she wants to build a house on her property she can't because she already has one. R. Rowland states that you can build a garage apartment under the current code. G. Dake states that what he thinks he is hearing B. Duffney and J. Bokus say, and he is not sure about M. Gyarmathy, he could sign on to that as a gift of a piece of property to a family member. He could apply that consistently. He states that he can say that easily not thinking that it is going to come up very often, but at least therefore we have a reason to stand behind the next person who comes in and asks why it was approved for someone, at least we can answer the question. That is really, to G. Dake, what one of the issues is. T. Siragusa states that he doesn't know why it doesn't work. He thinks it would work fine. He would like to look at it a little more as we are intentionally setting a precedent but we are also, it seems, changing the law at the same time. If we make a big change of a pretty general statement of the 5-year rule and we create a new category, are we changing the law, are we doing the Town Board's work? He does not know what other considerations there might be. He would be hesitant to vote on it right of way. C. Baker states that back to the family clause, everyone knows and likes the Olders, but let's say Mr. X is standing there and says that he is going to give a piece of property to his son. What is to say that his son can't turn around 6 months down the road, sell the property and give the money to his father? N. Witham asks if there could be a stipulation in the subdivision. G. Dake states that it is hard to do, that is the problem. Deed restrictions are discussed. G. Dake states that having done this for a really long time, he has learned that when he calls the Town Attorney he tries to be very clear about the question. If he just calls with a question, he is always told what he cannot do. If he calls and says this is what I am trying to do, how do I do it, he gets a completely different answer. He states that he is sitting here personally saying that he would like to find a way to do this. Is there a creative solution to this problem? On the Remillard's previous application, we didn't grant them a subdivision but T. Yasenchak found a solution through a lot line adjustment that allowed them to do what they wanted to do without violating the 5-year rule. Is there something, is there some creative solution, is there some logic we can apply, if we agree this is something we want to do, is there some way that we can come up with something that 4 of us at least can go

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home and feel like we didn't do the devil's work tonight, if we allow it to happen. T. Siragusa states that he is ok with that; there is no enjoyment in saying no. T. Yasenchak asks who owns the property around this. B. Older explains. G. Dake states that we can make precedent, we are not passing a law, we are doing something and explaining our reason for doing it for the record so we can try to do our best to be consistent. If we find it doesn't work, we can change the way do things. Any future Board is not going to be bound by this Board's actions. C. Baker is right, there is a risk. G. Dake states that he would err on the side of taking the risk. He states that the reason he lets people pump gas before paying is because he doesn't want to penalize the 99 honest customers for the 1 jerk who is going to drive off. He states that there are lots of things we do with conditions and we don't have inspectors out there checking to see that those conditions are met. We trust that when people say they are going to do it, they do it. B. Duffney asks if in the previous zoning laws there was something about family subdivisions. G. Dake states that there was, a long time ago, and it was a transitional thing. Like 105-22-C-3 made it easier. J. Bokus states that he would be in favor of granting this.

**RESOLUTION – F. Cliff Older, Minor Subdivision**

MOTION: J. Bokus

SECOND: B. Duffney

RESOLVED, that the Planning Board waives the 5-year rule and grants a minor subdivision to F. Cliff Older for property located at Lake Desolation Road, TM# 136.-1-2.1 on the grounds stated and contingent upon:

- **Providing an adequate map**

T. Yasenchak states that she still feels uncomfortable. She is torn because she has absolutely no problem with this subdivision and no one is even going to know that the house is there, but she just needs something concrete in the law to say that we can do that. G. Dake states that in the law, we can waive for whatever reason we want. T. Yasenchak states that the whole point is that there is a law and we should have a reason. G. Dake states that he agrees. T. Yasenchak states that we have had people crying because they are losing their lifetime dream and we have had to say no. She states that she does not have kids and if she wants to be able to give land to someone, she does not think that that should be a precedent. L. Dupouy states that you also have to weigh that as much as you want to help one person, you still have the responsibility to keep things fair for other people. J. Bokus asks what part is not fair. L. Dupouy states that if you buy and subdivide, you know what those parameters are, that nothing is to be done with that land until 5 years. J. Bokus states that we want to grant it because of a family situation. Those people where a family situation doesn't apply, have to wait. T. Yasenchak states that is unfair to people who don't have families. T. Siragusa asks what if he needed to sell a lot to not lose his house so that he could pay his mortgage which is in arrears? What if someone came to us with that? L. Dupouy states that is not pertinent here, it is not the situation. T. Siragusa asks what is the situation, why doesn't it open the door for any other situation just because this family is gifting. M. Gyarmathy states because it is gifting. T. Siragusa states that gifting doesn't mean anything, because anyone could gift the land and then do what they want afterwards. It doesn't necessarily mean family, it sounds good, and it is good. There is no question about it. T. Yasenchak states that she is not questioning that. There are people we have turned down who had dire need. This is really, really nice. It is great that you have the ability to do that. But when we have turned down people who have had dire needs and then we are looking at this just because it is nice and we all think it is good, she just doesn't think that is fair. B. Duffney states that as G. Dake said, we are setting a precedent. He states that if someone is going to lose their house and it's not 5 years yet, and they have the ability to split off a piece of property, he is not going to sit here and say they can't. L. Dupouy states that this isn't that issue. B. Duffney states that if someone is going to lose his or her house and has to sell; he doesn't have a problem with it being less than the 5 years. L. Dupouy states that would be a situation to deal with at that time. T. Siragusa asks why. L. Dupouy states that there would be a hardship. T. Siragusa states that just because there is a hardship, everyone has hardships. He states that L. Dupouy would not have done that in the past with someone who had a hardship. He states that then she is saying that there are exceptions to the 5-year rule. L.

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Dupouy states that she hasn't met any of them yet. T. Siragusa asks how one would prove it. L. Dupouy states that she does not think it would be for divorce. She states that is not what is before us. T. Siragusa states that he is talking about how do you open the door. We have already opened the door a little bit saying that it is a natural subdivision and we have been consistent about that. Under the broad line of hardship or family or something, those are softer? How do you decide? He states that L. Dupouy seems sure but he is not so sure that as a Board we would be consistent in applying. L. Dupouy states that if someone came with a family member dying of cancer and they needed to sell for the money for the treatments, they could prove that with tests. G. Dake asks J. Bokus if he would be willing to amend his motion to make it just on waiving the 5-year rule so that we can decide whether to do SEQRA if we approve the waiver.

### **AMENDMENT TO RESOLUTION**

#### **RESOLUTION – F. Cliff Older, Minor Subdivision**

MOTION: J. Bokus

SECOND: B. Duffney

RESOLVED, that the Planning Board waives the 5-year rule for F. Cliff Older for a minor subdivision for property located at Lake Desolation Road, TM# 136.-1-2.1.

VOTE: Ayes: Dake, Duffney, Gyarmathy, Bokus

Noes: Dupouy, Siragusa, Yasenchak

Absent: Streit

### **SEQRA**

**The Board completes Part II of the Short Form SEQRA. All questions are answered “no”, with the exception of C2, which is mitigated by the Town Code KROD regulations. B. Duffney makes a motion to check Box B, indicating that this will not result in any significant negative environmental impacts. J. Bokus seconds the motion. All present in favor.**

C. Baker questions that the vote on the waiver, does the Board think that it is important to put in the reasons. G. Dake states that he does not think it is important for the motion, as he would rather have it in the record. He states that we are not creating a new rule. It is a Board practice and he thinks there is adequate record to indicate what the reasoning was. There was a good debate and he thinks that the debate actually will help us demonstrate, if we were to be sued, that we did take the matter seriously and we are not simply acting arbitrarily. We had a good strong debate on the subject and we did not just say that we like the applicant and gave them what they want. It was a strong, reasoned decision with descent that shows that we did our jobs. As he has tried to explain before, he has learned through some of the courses that he has taken, you don't get sued for being wrong. The judge will always say you used your best judgment. You get sued for just being inconsistent. There is no wrong, there is only arbitrary.

#### **RESOLUTION – F. C. Older, Minor Subdivision**

MOTION: B. Duffney

SECOND: J. Bokus

RESOLVED, that the Planning Board waives the public hearing and grants a minor subdivision to F. Cliff Older for property located at Lake Desolation Road, TM# 136.-1-2.1 on the grounds stated and contingent upon:

- **Providing an adequate map**
- **Engineering review**

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T. Yasenchak states that she just wants to make it clear because there is a large lot left, where does that 5-year rule start again. G. Dake states that it would start now. T. Siragusa states that if the applicant comes back before the 5 years and says that they are gifting 5 acres to their son, it would be impossible for the Board to say no. G. Dake states that is not correct.

VOTE: Ayes: Dake, Duffney, Dupouy, Gyarmathy, Siragusa, Yasenchak, Bokus  
Noes: None  
Absent: Streit

The applicant is reminded that after getting the subdivision filed they will need to come back to the Planning Board under the KROD regulations for a site plan review.

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**ROLLAND HOAG – Site Plan Review**

Maple Avenue

Rolland Hoag is present. R. Rowland states that this new application for a funeral home is in Board members files for the next agenda. G. Dake states that the applicant is on the next agenda and we have no notes from G. McKenna, so he does not know anything about this code wise. R. Hoag states that there are not a lot of changes he actually has to do to the building. He is 50% on parking and most of the traffic will be after hours. He believes this is something that the community needs. He is currently affiliated with Tunison Funeral Home in Saratoga and is attempting to move one of the companies to this location. G. Dake states that he assumes that the applicant will be licensed by the Department of Health and asks if they want to see building plans. R. Hoag states that he has to have the Town's approval first and then the DOH will come out to inspect. He is renting the building now so timing is an issue and he states that he has spoken to G. McKenna who will come out and inspect the building also. He may not need an additional door right away because he is trying to get open and started with what he has right there. G. Dake states that the application is on the February 8, 2011 agenda, which will give C. Baker an opportunity to make any initial comments. T. Siragusa asks if the applicant will be offering any additional services. R. Hoag states that they will be a full service funeral home; he discusses the cultural changes regarding funeral arrangements and the celebration of ones life. They offer after care help for families such as helping them with insurance paperwork, etc. T. Siragusa states that he recently read an article where larger funeral homes were adding life event services like proms, weddings and other things. R. Hoag states that under State law, he cannot provide food or beverages, but would like to bring something to the community by offering the use of the building for other functions. G. Dake asks if the applicant is going to have an externally lit sign. R. Hoag states that he does not want to do a lot of signage, as he does not have a huge budget. G. Dake states that the applicant should review what is required under site plan review. The Board is going to want to know about lighting, signs, parking, etc. Even if he is not going to change any of the outside lighting, know where they are and that they are on plot plan. Those are the questions that we generally will ask. There is a shared driveway there with the Elks Lodge. R. Hoag states that plans were submitted with the application. C. Baker states that he will need some information on the septic. R. Hoag states that he thinks they are sewer and city water. C. Baker states that hopefully it is on city sewer because this is very close to the Loughberry reservoir and there will be some issues.

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**THOMAS DiPAOLA – Minor Subdivision**

Braim Road

Gerry Magoolaghan has requested that this case be postponed to February 8, 2011. C. Baker has provided a review letter.

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**MIKE REMILLARD – Minor Subdivision**  
Wilton Road

M. Remillard has requested to have this case postponed to February 8, 2011.

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**DISCUSSION**

G. Dake states that R. Rowland has provided a list to him of outstanding open cases. The list is reviewed and some additions are made to the list. R. Rowland states that she and G. McKenna have discussed sending a letter to some of these people to find out if they plan to pursue the applications.

C. Baker states that the Town of Greenfield is being audited this year by DEC for MS4 compliance.

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**ANIMAL KEEPING RIGHTS**

G. Dake states that he spoke to Jason Kemper, Saratoga County Planning, who said that they do have rules that they can send to us from Wilton and Clifton Park – two towns who have dealt with this issue. That way we can have some model ordinances to look at and J. Kemper stated that when he was on the Clifton Park Board, it was all dependent upon the Code Enforcement Officer as to where the line got drawn. G. Dake asked him when you are talking about 2 chickens versus 2 dogs versus 2 goats, and where do you draw the line. J. Kemper stated that a lot of that is up to code enforcement. G. Dake states that obviously the only reason G. McKenna brought this one up is because of a neighbor complaint. T. Siragusa provides copies of some information that he has researched on some regulations specific to chickens. L. Dupouy refers to a case that recently took place in Cohoes or Troy where the judge stated that they could not have the chickens but the owners argued that they did not have any ‘gain’ from it, they are not selling the eggs, etc. The judge denied them saying that they misinterpreted what the word ‘gain’ meant in legal-eze.

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Meeting adjourned 8:13 p.m., all members in favor.

Respectfully submitted,

Rosamaria Rowland  
Secretary