

TOWN OF GREENFIELD

PLANNING BOARD

November 30, 2010

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, Thomas Siragusa, John Streit and John Bokus, Alternate. Michael Gyarmathy and Lorna Dupouy are absent. Charlie Baker, Town Engineer, is present.

MINUTES – November 9, 2010

MOTION: T. Yasenchak

SECOND: J. Streit

RESOLVED, that the Planning Board waives the reading of and approves the minutes of November 9, 2010.

VOTE: Ayes: Dake, Duffney, Siragusa, Streit, Yasenchak, Bokus

Noes: None

Absent: Dupouy, Gyarmathy

PLANNING BOARD CASES

TONI HOLBROOK – Minor Subdivision

Locust Grove Road

Toni Holbrook is present for the application. G. Dake recuses himself. T. Yasenchak states that this subdivision has been amended from the original 5 lots to 2 lots. This is a natural subdivision as Locust Grove subdivides the property. C. Baker states that the map and notes look fine; it has all the typical notes on it. **The Board completes Part II of the Short Form SEQRA. All questions are answered “no”. J. Streit makes a motion to check Box B, indicating that this will not result in any significant negative environmental impacts. B. Duffney seconds the motion. All present in favor.** T. Holbrook states that she has a new amended application for G. Tubbs part 2 of the subdivision. What he is going to do is only make a total of three lots on the other side of Locust Grove Road, therefore the lot numbering will change and that will be changed on the Mylar prior to filing. J. Streit asks if Mr. Tubbs will be restricted by the 5-year rule. T. Yasenchak states that the Board has waived this on a natural subdivision but that the Board cannot weigh that in their decision or make a decision for a future Board. T. Holbrook states that she does not understand, does this become the waiver. T. Yasenchak explains that the Board cannot give a waiver for a future application and they are only voting on the application that is before them. When the application comes before the Board for the other side of the street, at that point the Board can waive that 5-year rule. T. Holbrook states that she does not want to jeopardize G. Tubbs application. T. Yasenchak states that was mentioned at the last meeting. The Board cannot waive it in this decision, because we cannot make a decision for a future Board. Whether that is in two weeks or in two years. T. Holbrook states that in the next application for the east side, G. Tubbs will request the waiver. T. Siragusa asks if a public hearing is needed. T. Yasenchak states in the past, when we have been looking at a natural subdivision, we have not.

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RESOLUTION – T. Holbrook, Minor Subdivision

MOTION: B. Duffney

SECOND: J. Streit

RESOLVED, that the Planning Board grants approval to Toni Holbrook for a minor subdivision for property located at 725 Locust Grove Road, TM#125.-2-26 per map submitted.

VOTE: Ayes: Duffney, Siragusa, Streit, Yasenchak, Bokus

Noes: None

Absent: Dupouy, Gyarmathy

Abstain: Dake

T. Holbrook asks C. Baker if G. Tubbs will still need to contact the Army Corp to look at the wetlands on the east side. Will he still need to do that if he is only going to subdivide into two lots, one being his own residence and one being a 60+ acre lot? C. Baker states that once we see the map and if we can clearly see that there is enough room that the wetlands can be avoided, they may not need to do that. T. Holbrook will drop off the new application. T. Yasenchak states that the Board will not necessarily be voting on the new application at the next meeting, but giving questions and comments for things the Board would like to see. J. Streit states that it would be beneficial for G. Tubbs to know that if he only subdivides into two lots, his residence and one other lot, that he might be prevented from subdividing again for 5 years. T. Yasenchak states yes, that if he subdivides it in that way, that would fall under that 5-year rule. The same rule applies if someone buys it from G. Tubbs.

CASEY CORNELL – Minor Subdivision

Bump Hill Road

Casey Cornell is present. G. Dake asks C. Cornell to explain what he is interested in doing. He states that it looks like partially a natural subdivision and then an additional 2 lots. C. Cornell explains that part would be a natural subdivision. There is a residence on the lot that is proposed as being approximately 3.3 acres. The idea was to have the existing residence on one lot and two lots for resale. G. Dake reads from G. McKenna's notes stating that this parcel is 12.5 acres and is separated by Bump Hill Road, a natural subdivision, and the applicant wishes to subdivide the other side (east side) into two new lots. No zoning issues. C. Baker states that the subdivision looks pretty straightforward. T. Yasenchak states that obviously we are going to need to see a better map from a surveyor and states that there is an area which is very wet so she would like to see if there are any official wetlands. We cannot make a lot that is not buildable. G. Dake states that is where the existing residence is located. C. Cornell states that this was the original plan, he has not closed on the property, he didn't want to until he had presented the idea and there were no huge issues. T. Yasenchak states that she would like to see where the house is in relationship to the line. C. Cornell states that the line can move if there is a setback issue. He drew it there because it was an easy place to draw the line. He states that he has spoken to a surveyor. G. Dake states that the applicant is just presenting a concept and looking for feedback. C. Cornell states that today they found a glitch; there are two deeds for this property. One of the deeds is for the residence with one acre. They didn't know about that until this morning. G. Dake states that he assumes that the tax map shows it as one parcel. C. Cornell confirms. G. Dake states that would suggest that we are still going to have to subdivide it. Deeds will not be an issue for the Planning Board. He states that the applicant would have to talk to G. McKenna about what happens if they wanted to maintain that original one-acre deed. G. Dake asks L. Fiorino if she knows of any reason for there being two deeds. L. Fiorino states that she does not know why there would be two deeds for one parcel. G. Dake states that it is not unheard of, but rare. L. Fiorino states that it might be something that Mapping at County Real Property may be able to research and fix, but she would have to call them and ask. C. Cornell states that they will cross that bridge, but right now this is the concept. He will make sure that the residence is on the survey and that it is within the setbacks. B. Duffney states that there is plenty of property on the second parcel proposed as 4.42 acres if it is necessary to move the line. He states that he does not see

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any issues with this. The natural subdivision of the 4+/- acres on the left side is all uphill grade. The two lots on the opposite side where the home is now are the lowest point of the whole property. The 4.42-acre parcel is pretty high and slopes towards the back also. C. Cornell states that if the house is too close to the wetlands, it is existing. G. Dake states that is correct and there is nothing we can do about the house. He states that what he is hearing from the Board is that conceptually the idea of what the applicant is trying to do is fine. He will have to demonstrate that the wetlands are not a problem, simple topo, demonstrating where the existing house is, where the lot line is, the topo on the 4.4 acre piece – should take care of that issue. We discussed setbacks and as the house is located, G. Dake states that he would make sure that the well and the septic system are located on the map. He states that the applicant has a little bit of homework to do, but the Board is saying that they have enough comfort in this that it is worth spending money on, it sounds very achievable. C. Cornell asks how long he has to complete this. G. Dake states that the applicant has as long as he wants as there are no clocks ticking as the application has not been deemed complete. C. Cornell asks if his next step would be to get the survey. G. Dake states that would be the next, best step as that is what the Board would need to start taking this seriously and being able to give some real engineering comments

ROCKY DANIELS – Special Use Permit

Daniels Road

Rocky Daniels and Tom Jarrett of Jarrett Engineers are present. T. Jarrett states that he has been retained by R. Daniels to address DEC storm water issues and was asked to come tonight to help address any issues the Board may have. G. Dake states that he has notes from G. McKenna and attached copies of correspondence; for those who were on the Board as we went through the 105-22-C-3 approval process; this is the old Mabb property and in December 2007 we did approve the use to be able to do some wood chipping. G. McKenna has determined that R. Daniels is seeking an expansion of that use. G. Dake states that if the applicant disagrees with that, the Board to talk to is the Zoning Board of Appeals who would review G. McKenna's decisions. As far as this Board is concerned, it is an expansion of use because G. McKenna says it is. The applicant was sent a letter to come back to the Planning Board after receiving a SWPPP and as part of the 105-22-C-3 we had approved some mobile homes on the property. That has expired according to a letter sent to R. Daniels February of 2010. We now have before us an application for a Special Use Permit and a Site Plan Review, which is effectively an expansion of the use that we approved in December 2007. The conditions that R. Daniels agreed to at that time were to continue operations as follows – Continue the chipping/grading operation no more than 5 days per month between the hours of 9:30 a.m. to 3:30 p.m.; the 4 closest residents be notified on their mailbox no less than 48 hours in advance of commencing the operation; addition of an 8' high fence on the west property line back up to the garage; No weekend hours. Those were what had been determined in 2007 in order to protect the neighbors. There were some concerns from the neighbors. We did do a site visit and listened to the "beast", if he remembers correctly the name of the piece of equipment, and the Board members did a lot of walking around and listening. We may choose to do that again. There has been a lot of back and forth between Code Enforcement and R. Daniels, which is really irrelevant to this application. We are just here to see what it is R. Daniels wants to do and figure out if we can make that happen in a way that won't bother the neighbors. R. Daniels states that he wants to open it up and the things he has is a yard and waste facility through the DEC. He has filed for permits through DEC to do it. He should have done it through DEC the first time to make sure it was legal, which he didn't know that it wasn't. He would like to expand his hours back to Monday through Friday 8:00 a.m. to 4:00 p.m. G. Dake states that is a rather large expansion. G. Dake states that one of the things that he does not know and will have to do some homework on is to go back and talk to the Town Attorney. The 105-22-C-3 was designed to make it easier to take something that was already happening and approve it. The reviews were not quite as rigorous as if R. Daniels were coming in today to open a new business. G. Dake states that he needs to know what the standard of review is because if you go through all of the Site Plan Review, Section 105-22, A-Q, there are some things in there that we may have difficulty satisfying. T. Yasenachak states that because this is a Special Use Permit, we will have to go through a public hearing and she is interested to hear what the neighbors have to say about whether they have

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been notified, and asks if that is something that the applicant has continued to do. R. Daniels states, yes. T. Yasenchak would be interested to hear what their thoughts are about the noise and so forth. She states that right now he is operating between 9:30 and 3:30. She asks if there are any other drop offs or anything that happens that is not within that time. R. Daniels states no, that the 9:30 to 3:30 is only for his grinding. It has nothing to do with his work time; it was only for the grinding hours. He states that the no weekends was just for the grinding, not for work time. T. Yasenchak states that when the Board has done Special Use Permits in the past, the Board does not look at just a specific operation, but the overall hours of work. This is a residential district that this is in and so the neighbors would not be hearing trucks and so forth at other times on the weekends and so forth. The Board does give specific hours of operation, not just hours of grinding. That is something that she is concerned about, that the Board looks at the hours of operation. R. Daniels states that he has had trucks coming in and out at night because they dump storm damage and stuff like that. T. Yasenchak states that she realizes that, but this is something that we are looking at as an expansion of use and when it was originally approved, for the neighbors, they were expecting a certain amount of use. Now it is expanding. She states that she would like to hear from the neighbors because if it were her backyard, having trucks in and out at all hours, that might not be acceptable in a residential neighborhood. She is very concerned about that. T. Yasenchak asks if the applicant has any kind of office or any thing that he would have "in-door" time. R. Daniels states that he does not. He was going to do an office in one corner of the garage, but he didn't know if he needed a permit. He was going to buy an Amish shed, but he wanted to make sure how big it could be before he needed a building permit. T. Yasenchak states that if he would like to put a building there the Board would like to see how big that would be and where it would be. T. Siragusa shares the same concerns as T. Yasenchak, mostly with the noise. When we went through this the first time, the fit in the neighborhood was the major concern. The Board listened to the grinder running and his opinion at that time was that it was much too loud for the neighborhood. The Board settled on the limited hours and actually notifying the neighbors when it was going to run. He asks the applicant if he has been doing that. R. Daniels states that he was doing the notices. T. Siragusa states that becoming a Monday thru Friday operation, he would be curious to see what the neighbors say. He states that his personal feeling is that it doesn't fit just with the noise levels and the type of operation on a residential road. Secondly, he would want to know more about the traffic coming in and hours of traffic on Daniels Road, which is not a straight road. Even though there is more enforcement there, people tend to move fast. B. Duffney asks about the hours expansion. R. Daniels states he would like to go from 8:00 to 4:00. B. Duffney asks if he would be grinding all 8 hours every day. R. Daniels states that he would not, but he wants to be able to grind between those hours when he needs to and not having to go over to notify the neighbors that he is going to be chipping for 20 minutes to an hour. He doesn't want to have to go notify the neighbors, he just wants to be able to do it when necessary. B. Duffney states that then he is asking to be able to grind any time between the hours of 8:00 to 4:00, whether it be for 45 minutes or 4 hours and 45 minutes. It is not an 8-hour grind everyday. R. Daniels states no, he wants to keep the stuff down, less view for everybody. He states that he has put a lot of time and effort into the place. He has put in a lawn in the front and is trying to make it look nice. B. Duffney asks if the applicant has a spot for firewood and logs. R. Daniels states that he does. B. Duffney states that the issues that come in time-wise would be the thing with the neighbors. He asks if the grinder is going to stay in the same place. R. Daniels states that was another issue. The Board has him down for an expansion of business. The Board gave him the permission to move over beyond the tree line to work on the other expansion and as soon as he started to do that this is where this expansion of business is. He states that it said he could move another 50 to 75-feet from the tree line over. When he did that, that's when G. McKenna said he was expanding the business. So he moved back to his original spot. G. Dake states that as T. Yasenchak stated with the building, the applicant should identify where he wants the grinder. Regardless of how the applicant got to where he is, the Board has to approve a new application. T. Jarrett asks R. Daniels if the grinder is where he wants it. R. Daniels states that it is. B. Duffney asks if he will continue with just one grinder. R. Daniels states he has a grinder and a chipper. B. Duffney states that he can say from experience that a chipper is not as loud as a grinder. J. Bokus asks about permission given for the trailer replacement. G. Dake reads the letter of February 11, 2010 stating that the pre-existing, non-conforming use has expired. The Special Use Permit to replace the wood-frame building with a new mobile home has expired. G. Dake states that you can generally not have a commercial operation and a residence on

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the same piece of property without an additional permit. It was as a pre-existing, non-conforming continuation and as being out of service and there not being a building there, not being a residence there, for more than a year, they abandoned the use. R. Daniels states that in Court he got a waiver for that, that he could still put the mobiles in. G. Dake states that again, if the applicant disagrees with Zoning Enforcement, he would need to go to the ZBA. T. Siragusa asks if the applicant is now the owner as he was not in 2007. R. Daniels that he is. He states that in 2004 he owned it but they didn't finish the paper work. C. Baker states that site distance is a crucial issue and based on the application before us, he would strongly recommend that we require a sight distance analysis and full traffic study. Another issue would be the storm water and we do have a completed SWPPP to take a look at once we get an idea of whether or not the application is something that the Board is proceeding on. He asks, for his own understanding, when the Special Use Permit was originally approved, his understanding was that it was a chipping operation – stumps and grinding. R. Daniels states that it was logs, stumps. G. Dake states that chipping and grinding is what was approved. C. Baker states that it looks to him now that the applicant wants to add processing of firewood, processing of logs. R. Daniels states that he was doing that all along. G. Dake states that then he was doing that illegally as he never had permission to do that on this site. That would be an expansion. C. Baker states that he is trying to understand the expansion issue as well. R. Daniels states that there was always firewood there over the years. G. Dake states that the approval letter that the applicant got in December 2007 says chipping and grinding. C. Baker states that something that he thinks would be helpful is a complete identification of what the applicant is going to do on that site. Is he going to be quartering logs, splitting logs, processing firewood, chipping, grinding, etc. – a list of everything that the applicant wants to do here. G. Dake states that will save the applicant trouble down the road because it will make it much more clear as to what is and is not allowed. R. Daniels states that he has mulch and stuff there. G. Dake states that is again something that was not approved. R. Daniels states that was what he put on the original application. G. Dake states that is not what was approved. C. Baker states that the applicant should try to identify the number of trucks he anticipates coming in and out of the site on a daily basis and the size of the trucks – tractor trailers, dump trucks, etc. Try to give a good estimate of the amount of traffic that he expects. G. Dake states that G. McKenna also recommended a sight distance study. He states that he would personally agree with C. Baker on a traffic study given the nature of the location. He asks how the rest of the Board feels about it. The Board concurs. J. Bokus states that there was a lot of traffic and this property was used during the construction of the water line. There didn't seem to be a problem with that. C. Baker states that that was identified as a work zone and it was flagged and signed accordingly. B. Duffney asks if R. Daniels plans on, at some point down the road, putting in a log concentration yard. R. Daniels states that is what he filed for. He put it there before because he thought that is what he was approved for before. B. Duffney states that the reason he is asking is because as C. Baker and G. Dake stated, so that everything is listed. T. Yasenachak asks what a log concentration yard is. B. Duffney explains that loggers will bring logs to a concentration yard where at that point they will be shipped to either Canada, local mills, put in overseas containers – which there is not a lot of that around here; you are separating your grades, etc. It would be small loggers bringing in. R. Daniels states that is why he wants to put an office in to buy and sell the logs, sell the mulch, try to give the Town of Greenfield a break on the prices of mulch, etc. He's trying to help the Town out. T. Yasenachak asks if selling will be just to commercial clients. R. Daniels states that it would not be. Residents could come and buy product. T. Yasenachak asks about restroom facilities. Whether he puts an addition on the garage or not, he has to consider that. If this is going to be a regular operating business there will need to be some kind of facilities. Discussion takes place about portable johns. C. Baker states that if the trailers are going to be replaced, and that would be a ZBA decision, then we will need to see septic designs and well locations for those. R. Daniels states that those are done. Right now he is concentrating on keeping the business going. T. Yasenachak states that regardless of whether he uses portable facilities, it will need to be indicated on the plans. G. Dake states that as far as the map, we need to have a clear understanding of what activities the applicant wants to be able to do and where they would be located. We are going to want to talk about traffic and the applicant is going to want to start investigating doing a traffic study including site distance, speed, turning movements, etc. Hours are going to be an issue, we know that from the first time, and we are going to have a public hearing and public comment period. This may be a case where we go back and have a public meeting prior to an official public hearing so that we can get

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some feedback early in the process so that you don't go through a bunch of design only to have us come back and ask that it be redesigned based on the public feedback. G. Dake states that the applicant should make sure he is clear with T. Jarrett on the grinder location and the other locations as to where the applicant really wants them to be. Even if he wants some flexibility, because the applicant spoke about a grinder and a chipper, where is each going to be located, are they going to move, is there an area in which they will be. The applicant may have a very clear picture in his mind, but the challenge is to present something to the Board as to exactly what it is he is trying to do. G. Dake reiterates that he needs to talk to the Town Attorney regarding the standards of review. T. Jarrett states that he would like to sit down with R. Daniels and clarify what he really wants to do on that sight and then maybe sit down with the Board at another meeting like this so we can fine tune what the Board wants to see and how. R. Daniels asks if the Planning Board does not allow this to be expanded then he has to abide by what he has already been approved for. G. Dake states that as he understands it, unless the Code Enforcement Officer knows something G. Dake does not, the applicant would have to make sure that he is staying between the hours of 9:30 and 3:30, no more than 5 days a month, and that he is notifying the 4 closest residences 48 hours in advance.

GERARD & CHRISTOPHER CHWAZ – Special Use Permit

NYS Route 9N and Spier Falls Road

B. Duffney states that he is doing a Timber Harvesting job for the applicant so he will recuse himself. G. Dake reads notes from G. McKenna stating that the NYS DOH approval for the septic system have expired, a stop work order has been issued for the septic system only. NYS DOH is re-reviewing the design per G. Chwaz. The applicants are requesting an extension of their existing Special Use Permit, which expires January 13, 2011. T. Yasechak states that she thinks that we covered everything the last time and not giving the applicant an extension really wouldn't do anyone any good. T. Siragusa asks what the timeframe looks like. G. Chwaz states that they are working on it out-of-pocket and they are trying to get it done as quickly as they possibly can. T. Siragusa asks if any of the plans have changed. G. Chwaz states that they have not. T. Siragusa states that he saw some excavating in the back. G. Chwaz states that is for the septic system. They just had their plumbing inspection approved by G. McKenna. G. Dake asks how long an extension they are looking for. G. Chwaz states at least a year. G. Dake states that he agrees with the statement of not doing anyone any favors by letting it sit there like it is.

RESOLUTION – G. & C. Chwaz, Special Use Permit

MOTION: J. Streit

SECOND: J. Bokus

RESOLVED, that the Planning Board approves an extension of the Special Use Permit for Gerard and Christopher Chwaz for property located at 2 Spier Falls Road, TM# 112.-1-24.2, as follows:

- **One year extension from the current expiration date of January 13, 2011 to January 13, 2012**

VOTE: Ayes: Dake, Siragusa, Streit, Yasechak, Bokus

Noes: None

Absent: Dupouy, Gyarmathy

Abstain: Duffney

CLIFF OLDER – Minor Subdivision

Lake Desolation Road

Cliff Older is present. G. Dake states that C. Older was not on tonight's agenda but he was made aware that C. Older would be here. C. Older states that he subdivided two lots from his land for two of his

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kids for building sites. Now his other daughter would like a lot and it has been less than 5 years since he subdivided. He states that his current lot has about 50 acres but it only has the minimum road frontage for one lot. Putting hers in the middle would make it a keyhole lot. G. Dake asks if G. McKenna told him he has enough road frontage to do a keyhole lot and still have his own frontage. C. Older states that he did. G. Dake states that then he would not need a variance for frontage. C. Older states that there is a shared driveway and so there needs to be language in each deed regarding that. G. McKenna explained that the driveway does not have to go through the frontage. G. Dake states that he does not want to make it so that the applicant would not get a variance. If G. McKenna said that the design works without getting a variance that's good enough for him. G. Dake states that keyhole lots have been relatively standard. We know the nature of the property since we have already approved a subdivision up there. It is a beautiful piece of property that is very hard to get to. What the applicant is trying to do is very logical. G. Dake states that the Board cannot say absolutely on the subdivision until they see a map. He asks how the Board feels in this situation about waiving the 5-year rule and how far we are from the 5 years. The subdivision was approved in September 2007. The preliminary map is reviewed. B. Duffney asks if C. Older's son is going to build up there. C. Older states that he is and already has his permit. G. Dake states that the spirit of the 5-year rule is to prevent people from doing the creep – coming in to do one lot at a time to try to get out of some level of review. He does not believe that C. Older's intent is to avoid a review or to make a minor subdivision into a major subdivision. He had a plan and something changed. G. Dake states how do you say that with the next applicant in mind. In the spirit of this, are the people in the Town being put out by waiving the 5 years. He would say the answer is no. However, you are putting in jeopardy the whole voracity of the rule when you start making exceptions. B. Duffney states that it is not like the applicant is just looking to take a piece of property that has already been subdivided to sell a piece and then sell another, etc. He is looking to give another one of his children a piece of the family farm so they are close to home. G. Dake states that he is comfortable with that and he wants to know that the Board is comfortable that that is the rationale. He would like the Board to think about the fact that if we tell the applicant to go ahead, we cannot commit until we have a real plan. When we go to make a motion, if your inclination is to waive that rule, he would like it to be made very clear, either in the minutes or the motion, preferably in the motion, the reason we are waiving the 5-year rule. He states that should help the Board if three years from now someone else comes in. That is what we have to think about. He is not worried about C. Older and his family, but he is worried about how are we misleading someone down the road who says you always grant it. T. Ysenchak states that not too long ago someone on Wilton Road, who through a very unfortunate marriage involvement issue, and we said that we would not waive it for them and they had some hardships with it, but we said no. She knows this area and does not think it is going to be an issue as far as the property is concerned, but we have to look at how the public is going to look at this and that we are not just favoring some people. B. Duffney asks the applicant's daughter if she is living in the area now. She states that she lives in Gansevoort, about ½ an hour away. J. Bokus asks when they would build. C. Older states that he wouldn't be surprised if they started in the spring, but first they have to get a surveyor, which is not easy. It could be a year and a half. J. Bokus states that his thought is it was unintentional; the applicant did not plan on doing a little bit at a time. The fact that it has been three-plus years and when they actually start construction it will be even closer. We have to grant the waiver before he can proceed. J. Streit states that he believes that G. Dake and B. Duffney have pretty well represented the way he feels about it. He does not think that we are harming the Town of Greenfield by going forward with this and he would be willing to, if he made the motion, include the stipulation as to why. T. Siragusa states that he thinks he would be inclined. His concerns are a couple. In general, he thinks that G. Dake correctly stated the intent of the law that there would be creep especially from developers, not necessarily homeowners. He thinks that maybe when the Board is asking questions of someone who is going to do a subdivision and we see that this is the intent, sometimes it is easier to add another lot at that time because it is easier to erase a line later than it is to draw one. He states that when he subdivided his property that is what they did. They really don't have a use for that second lot but they planned ahead. He thinks that on a case-by-case basis, this is something that he would think of a waiver on. It has been three years, he does not see any intent, and he does not expect the applicant to come back in two years to chop this lot up again. We don't know everything that is going to happen. T. Siragusa states that he thinks it is interesting enough that, he doesn't know whether it's worth having future review by the Town to

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understand how we apply this. If we waive it too many times, it doesn't have any meaning and then he does not know if it becomes a legal matter after that. G. Dake states that you do run a risk because someone can say that you are being arbitrary. B. Duffney asks if it is up to the Board to take this on a case-by-case basis. G. Dake states yes, but you are always open to challenge. The better job you can do describing the reason, the better off you are. The standard that Planning Boards get sued on, the actual phrase is being arbitrary and capricious, and if you are showing that it is just that you like an applicant and you don't like another, which is the extreme case, everything gets thrown out. However, if you can demonstrate that here is the set of criteria that you are looking at and this is the reason we are waiving it in this case, the Court is at least more likely to come back and say, they were acting as reasoned people with reason-based choices. Whether they agree with the choice or not, they want to make sure that you are doing something that is to a standard rather than just to flip a coin. J. Streit states that one point to him that makes a difference to define this issue is that this is a family as opposed to a commercial interest, it is an old time Greenfield family and to him that is a mitigating circumstance. T. Yasenchak states that she has been to many seminars about ethics and case law. The fact that she thinks that people in Greenfield should stay in Greenfield, and she has been here for 10 years and is going to stay as much as she can. She thinks it is great that families can stay together, however, we cannot use that as a definition of someone who can be allowed to do this. She comments that the other people on Wilton Road were asking on a monetary basis, it was need based and we said that we wouldn't do it. She does not think it is fair to say that just because someone has lived here for a long time that they get special privileges over people who haven't. She states that she does not disagree with this application, but has to think about how we can verbalize it if we do approve it so that it doesn't look like we are giving special favors to certain people. G. Dake states that we cannot vote on this tonight. He states that the applicant has a sense of the Board that you have several fairly strong yes responses, some no responses and some that are unsure. He states that it sounds as though, while it might be a close vote, and there is nothing that says that when we go back and look at this that there might not be some other problem for which it would not be approved. He states that if he is not mistaken this is in the KROD so we have to be aware of some of the visual issues as well. T. Yasenchak asks for clarification on the proposed lot lines. C. Older explains. T. Yasenchak states that this could not be subdivided again. It would not be physically possible. T. Siragusa states that another comment on the family situation, as much as we would ever want to do that, he thinks that the argument is that we don't know, as much as we want to be compassionate and respectful of the idea, we just don't know that that would be a turn of events that this could get turned around and sold. G. Dake states that the issue of time is a different one to him than the one of family because to T. Siragusa's point, when people come in and say, that's not a problem because that's my mother – Mom isn't going to live forever. He states that there is going to be somebody else living there some day and that is the piece that ultimately is a different question. The point is very valid that while it's family, it is only good for a certain amount of time and then none of us will be here. G. Dake asks the Board to think about this and how to articulate their opinions on this on whichever side they fall.

JEANNE VAN PATTEN/SARAH ROSHINSKI – Special Use Permit

Locust Grove Road

G. Dake states that in the notes R. Rowland provided for tonight, she spoke to Robert Reed. He stated that they have purchased property in Argyle and wanted to thank the Board and let you know that they appreciate the Board doing due diligence on the project.

G. Dake asks that R. Rowland pull the minutes from the various meetings when the Rocky Daniels/Mabb application was discussed and approved.

C. Baker states that we had a provision in the Town Code for family subdivisions and he understands that that has gone away, but asks why that was eliminated. The only reason he asks is that the Older case

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might be the perfect example of if we had something like that it would give a little more leeway. G. Dake states that he thinks that the reason it was put in in the first place was as a transitional thing to allow people to subdivide for their children. The original intent was that it be transitions for a limited period of time. He states that you do get into the judgment call of what constitutes a family. He believes it is much like the frontage on easements, the road to hell is paved with all good intentions, and any of those loop holes that you leave out there can be badly abused. T. Yasenchak states that you subdivide it for your kids and then a couple of them decide they want to live elsewhere and just use the money. Then you don't have a family subdivision. B. Duffney states that 25 years ago, shortly after zoning went in, someone said he wanted to subdivide for his kids; he bought 20 acres and subdivided it 6 times. Then all 6 lots were sold. He then bought another piece of property and did the same thing. C. Baker states that he understands how it could be abused, but he was thinking from a different angle, with the 5-year rule, that if you could present the argument that you are doing it for a family member, then that might be one reason to allow it. B. Duffney states that it is not a sale. G. Dake states that could be something that we go back and use as a rationale. He states that if you are consistently applying that as a reason to grant a waiver, you are more than likely to be upheld. If you consistently apply almost any standard, your odds of being upheld are pretty good. He states that is why he is asking the Board to think about how to describe the reason that they would waive it, if they waive it, so that we can use that same standard next time to approve or disapprove. T. Yasenchak's point was a good one, where does the family issue end? B. Duffney states that the other case on Wilton Road wanted to further subdivide to sell versus giving it to a family member - that is the point he is trying to make. It is not for a monetary gain; it is to give to a family member to live on.

T. Yasenchak comments that R. Rowland put a reminder in the folders about the Planning and Zoning Conference in January. Anyone who is interested in attending can get their registration forms to her and she can send it in with a voucher so that Board members do not have to pay for it and then get reimbursed.

Meeting adjourned 8:22 p.m., all members in favor.

Respectfully submitted,

Lorraine Fiorino