

TOWN OF GREENFIELD

PLANNING BOARD

October 12, 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, Nathan Duffney, Lorna Dupouy, Michael Gyarmathy, Thomas Siragusa and John Streit. Charlie Baker, Town Engineer, is present. Tonya Yasenchak is absent.

MINUTES – September 28, 2010

MOTION: T. Siragusa

SECOND: B. Duffney

RESOLVED, that the Planning Board waives the reading of and approves the minutes of September 28, 2010 with minor corrections

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

Noes: None

Absent: Yasenchak

PLANNING BOARD CASES

JASON MILLER – Special Use Permit, Transfer

Coy Road

Jason and Jack Miller are present. G. Dake states that as he understands it, Jason Miller is the owner of the property where Dick Chandler was operating on Coy Road and as per Section 105-59, since the permit was granted to D. Chandler, the applicant is required to come back on any change of ownership of the business, even though the underlying property did not change hands, it has to come back for a reaffirmation of the Special Use Permit. G. McKenna's notes state that there are no violations and no complaints have been received. The original Special Use Permit was granted November 27, 2007 under Section 105-22-C-3 to D. Chandler. J. Miller states that the property is located at 328 Coy Road, right next to the Pompa Brothers stone quarry pit entrance. It is for the use and storage of excavation and mechanical equipment for maintenance and business. B. Duffney asks if they are going to be keeping the same screening on the front. J. Miller states that it will all be the same except for what the Town took down for road improvements. B. Duffney states that he sees no problems whatsoever with J. Miller taking over what D. Chandler was doing. D. Chandler used it for maintenance and storage of his excavation equipment. T. Siragusa asks if all the equipment is inside the barn. J. Miller states that he was told it should be under large equipment storage, so they unload their trucks there as well. J. Streit asks if the building is already in existence and the planned use is what has already been occurring here as well. J. Miller confirms this. G. Dake states that a public hearing is optional and asks if the Board would like to schedule one or asks if they are comfortable with the Code Enforcement Officer's statement that there are no complaints or violations. L. Dupouy states that she does not feel that one is needed since the neighbors are mostly family and this is being transferred as the result of D. Chandler's death. B. Duffney agrees and states that this property is surrounded by family and the Pompa Bros Stone Quarry and Mr. Dejnozka. T. Siragusa asks if Mr. Dejnozka knows the applicant's plans. J. Miller states that he is aware that D. Chandler has passed away and reiterates that everything is going to remain the same.

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RESOLUTION – J. Miller, Special Use Permit

MOTION: B. Duffney

SECOND: J. Streit

RESOLVED, that the Planning Board waives the public hearing and transfers the Special Use Permit of Dick Chandler to Jason Miller for a continuation of the present use for property located at 328 Coy Road, Tax Map # 149.-2-2.11.

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

Noes: None

Absent: Yasenchak

JEANNE VAN PATTEN & SARAH ROSCHINSKI – Site Plan Review

Locust Grove Road

Jeanne Van Patten, Robert Reed, and Jill Cunningham are present for this application. G. Dake recuses himself as he is a neighboring property owner. L. Dupouy, as acting Chair, states that the public hearing was closed at the last meeting. R. Reed reviews the proposed project. L. Dupouy states that Board members did a site visit and those who did attend found it beneficial. C. Baker states that at the last meeting we had asked the applicant to come back with a map and he has since spoken with the applicant regarding that since there is a rather large investment to have that map prepared. They had a discussion related to the neighbor's well issue. Because of an e-mail that was generated by the DOH to Dave Capano, it is quite clear as to DOH's interpretation of the separation requirement from the well and the pasture. It does say in the e-mail that there be a 200' separation. C. Baker has since talked to other people at DOH in Glens Falls and they are not in full agreement with that, but C. Baker does not believe it is the Town's position to argue that. He suggested to the applicant that it might be in their best interest to talk to their attorney and maybe have the attorney discuss this with DOH. He states that he has had conversations with DOH regarding the separation to pastures and they have said that that has not been a hard and fast followed requirement. There are numerous cases throughout the Town of Greenfield, throughout any neighboring towns in New York, where they do not maintain a 200' separation from wells. There is some clarification that needs to be made with DOH as to whether or not they are going to enforce that. C. Baker states that it is DOH's regulation and as Town Engineer, he is not going to sit here and advise that the Town does not follow that recommendation, but he would suggest that the applicant possibly take that further if they choose. At this point in time, his recommendation would be that we follow the DOH guidance until we have something different from them. B. Duffney states that in this report from NYS DOH, "Reportedly, this proposed contamination source is upgrade of your well and is in the direct path of drainage of your well." He states that at the site visit it was observed that the drainage goes more towards the back. Yes, it does slope towards the neighbors well, but there is a berme, it looks like an old stonewall, that would actually catch the water and deflect it down through. There is one low spot in the berme that could be built back up. He states that he does not believe that the well is in the direct path of the drainage. He asks R. Reed what the dimension was from the proposed manure storage area to the well. R. Reed states that it was 275' from the manure storage to the corner fence property line and then an additional 45' to the neighbor's well. T. Siragusa states that he found the site visit useful. It had just rained so you could see where the standing water was and as B. Duffney stated, it really was in the back as you walked towards the back. The property seemed sound. He states that he is not an engineer so he cannot debate the DOH, but it seemed clear. He states that some of the things to keep in mind, the animals that have the biggest impact on this project are horses of which there are 4, talking about 45 chickens – is not a number, and then there are the alpacas which are pretty small and kept to one area. He states that it is hard to imagine, not being an engineer, that the 200' rule on that sloping property is in the best interest of the applicant. One thing that we do not know and he does not know how it would be taken up if the applicant were to seek further advice, the thing that is not known about the well in question is how deep the casing is. Perhaps it goes far enough down that the DOH would have a different opinion. He

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states that he thinks it would be practical, it is a nice piece of property, it would be nice to see it go back to agricultural use, as that is what it used to be. Maybe there are other ways around this that he is not aware of. M. Gyarmathy states that he was on the site visit and agrees with T. Siragusa that it appears to be a sound piece of property. It looks like all the water is far to the backside where the animals will not be. He also did a little homework going through DOH rules and regulations. He found some contradictory information regarding the pasture. What he found is the distance to be only 100' and he thinks the manure pile is far enough away from the well. There are things that we do not know. We don't know if the well is sealed. The rules he read state if the well has 19' or less of casing, it has to be sealed. If it is 20' or more of casing it does not have to be sealed. He states that he is at a little bit of a loss and feels that it is up to the applicant to find out this information and sort through it all. J. Streit states that he also went on the site walk. There were three letters where people made presentations and 1 informally, which he thinks is the way things are supposed to be. As someone moves in and might have some influence on existing neighbor's properties, the proper thing is for those neighbors to voice their objections and people did in an eloquent, organized and reasonable manner, and that's why he thinks the system works. From the site walk, he has already stated that this area has been one of agricultural use for a long, long time and the houses that are in existence surrounding this farm were built fairly recently. He states that he has never lived in a house under 100 years old so anything under 50, to him, is sort of recent. He would not know certain things if it weren't for M. Gyarmathy doing the homework to which he has alluded. One of the regulations is that if the well is dug with 19' or less of room from the bedrock to the surface, it is the person who drills the wells obligation to make sure that the casement is grouted. What M. Gyarmathy also pointed out is that the 200 feet is based on the land beneath the pasture area being loose gravel and this is very deeply compacted soil. It is 200' if it is a gravelly surface, which it is not, so the rule would be 100'. He states that if the neighbor's distance from the well to the fence is 48' and the applicant puts the fence 50' from that surface that would be giving the required 100'. He states that as the others have suggested, if the applicant went to the appropriate authority and investigated with the DOH what is and what is not. The e-mail from M. Hallock states that "in his opinion" the homeowner is not required to ascertain whether his well is adequately protected. J. Streit states that is a legal opinion from a public health officer, which doesn't stand up. He thinks that the comment that it should be a certain distance needs to be investigated, whether it be 100' or 200'. He states that he does not think that M. Hallock is entitled to make an opinion that the homeowner is not entitled to check on his casing. J. Streit states that he thinks that of all the objections that people made the only possible question is that raised by D. Capano about whether the pasture being used for that was safe in regards to his well. All the other people who raised objections, the site visit proved conclusively that none of those were of any validity. The other properties could not possibly be affected in the manner that they were concerned about. He thinks that the issue raised by D. Capano should be investigated by the appropriate authority and he does not know that the Planning Board can go against the position in M. Hallock's e-mail. B. Duffney states that regarding the part of the pasture up front where the horses will be, there have already been horses in that part of the pasture for years. The 22 alpacas will be out towards the back. R. Reed states that S. Roschinki has sold 2. Basically what we have here with the issue of the horses, it has been a pre-existing use, there have been horses there on and off for years, since it was the pasture for the dairy farm. He asks the applicants if they know how deep the well is for the farmhouse. J. Cunningham states that it is approximately 30' of casing, there was a hand dug well, but the new well was put in before M. Hanafin owned it, approximately 15 to 20 years ago. B. Duffney asks if anyone has had the water from that well tested. J. Cunningham states that she had it tested when she purchased the house 5 years ago, there have never been any problems. She states that her property grade is below that of M. Hanafin's who has had 75 horses. The well is right next to the right side of the house towards the pasture. B. Duffney states that he took measurements of the distance from his well to his barn, and his well is kind of on the same grade as D. Capano's, and the land kind of lays the same way. The biggest part of the grade goes towards the back the way the farm does, but there is still a grade towards the front. His barn has been there for 40 years and the well is 28' deep. The well is just a little over 100' from the barn and they have had no issues over the 40 years. R. Reed asks if he is allowed to ask D. Capano if he has had any issues with his well. L. Dupouy states he is not. She asks if the applicant wants to investigate this further. J. Streit states that in his own mind, the only possible reservation is D.

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Capano's contention that the pasturing of horses within 100', let's say, of his well runs the risk of contaminating the water. He thinks that all other uses of the site as the applicant has suggested, are totally appropriate and offer D. Capano and any of the neighbors no problems whatsoever. He states that one possibility is that a contingency could be placed on a motion that until the issue is resolved by the DOH, the applicable rules and regulations to this issue, that a contingency could be made that if the applicant agreed to keep any grazing animal 100' from D. Capano's well until that determination was made. J. Cunningham states that this is a Farms First Community and this is an existing farm, someone moves in 20 years later and builds the well close to the boundaries which was approved by the Planning Board of the Town, you are now saying that this farm is in jeopardy of doing farming because his well was built later on? This pasture has a right to have horses on it. She is putting 3 on this weekend. She asks if she is being told that the farm doesn't have the right to farming because of the well. L. Dupouy states that not only are we to care for our neighbors who are already here, but we also should be open and welcoming to people who want to come here and live the same type of lifestyle that we all basically live, having picked this town. She states that the Board has another responsibility and that is to make sure that the Town is not in any position where legal steps could be taken against the Town of Greenfield for this. Since this is a DOH issue, she thinks that we really need to have attorneys look at this because none of the Board members are qualified to make that legal clarification. C. Baker states that an attorney might be one factor but the other thing that could work in their favor too is that if they had a professional engineer evaluate the situation and make their interpretation of the DOH rule and tell us what a lot of the Board members have alluded to tonight. That way the Town is not in a position, as L. Dupouy said, that if down the road that well becomes contaminated. You are correct in wanting to remove this Board from that issue. Really the onus is on the applicant to prove to this Board that if you allow them to have this use on this property that they are going to be doing that in a legal manner. R. Reed states that if they are allowed the same use for which it is already being used for, there should be no change, because the horses that have been on that property on and off are legal right now. T. Siragusa states that the thing that is different is that we have an e-mail from the DOH that says that you should adhere to the 200' boundary. M. Gyarmathy states that the applicant hasn't provided anything to contradict that. C. Baker states that the other thing that is important to point out is that the applicant is not just putting horses there anymore, they are talking about a substantial increase in the amount of animals that are going to be housed on that property. That is what is different and that is what this Board is looking at. J. Cunningham states that the criteria that the Town has for LDR to have a Special Use Permit, that doesn't fly. So whatever engineer put that together that doesn't stand true. L. Dupouy states that is not what we are saying. What the Board is saying is that in this particular case, with these particular circumstances, at this particular location this is the situation. J. Cunningham states that she wants to clarify this because she just rented the barn out. If she puts horses out there this weekend she is going to be sued if the neighbor's well gets contaminated by a raccoon pooping in the stream? How can you define that when it has been a farm first? She states that then as to DOH, everyone who has a farm in Greenfield and has a boundary next to someone else's well has to move their fencing in. That is what she is hearing and that is going to open a can of worms for the farmers. Now the Board is telling her she has to move the fence line, that fence has been there since she has owned it. L. Dupouy states that there is no moving of any fence line. Every case is different. The obligation here is to make sure, and basically it is your business until you make it someone else's, until it impinges upon someone else. The neighbor wants to make sure that their water and their lifestyle is not going to be compromised in anyway. For the applicants to move in and do what they want to do, at this point we are saying because of this letter from M. Hallock, these are things that need to be answered or these are points that need a professional, that we here at this Board are not qualified to make simply as members of the community. You need a professional statement here from either DOH or a professional engineer to address those issues. J. Streit states that in his opinion there is only one question that is debatable and that is the validity of the letter from M. Hallock to us and that is what the reservations of the Planning Board are. There are a number of points that should be made, one is his interpretation of a certain footnote that made it 200' as opposed to 100' from a silo. He thinks it is not applicable. This is hard-packed dirt so the distance should be 100' and not 200'. C. Baker states that soils are one part of this. The other part is that when a well is located down gradient of a pollution source, it does increase that to 200'. J. Streit states that a number of times M.

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Hallock states, and J. Streit does not know him and makes no comment on him, but going by the words he uses, M. Hallock states "in my opinion it is not your responsibility". J. Streit states that he does not think that M. Hallock has the right to make an opinion that the homeowner was not obligated to install his well in the proper manner. This man does not have the ability to disregard that. In another place he, in regard to the point raised that this has always been farmland, M. Hallock states that "according to my interpretation" these stringent regulations are in complete disregard to whether it is a farm community. He states that we are not qualified to judge that. That determination has to be made by an attorney or a professional engineer. He reiterates that there are a number of issues within this letter that are open to question that have to be resolved. J. Cunningham states that when she spoke with M. Hallock she asked if he had done a site visit and he said he had not. She asked him if he would and he said no, and that the e-mail was based on what he gathered and his opinion. C. Baker states that if the applicant hires a professional engineer, what that engineer will probably want to do is get a map first to prove that the well is or is not in direct path of the surface runoff. Once he does that, then he would evaluate the soils. The soils are heavy and that is another part of the argument, but that is something that he would do under his license, being familiar with the regulations of the State of New York and that is what the applicant needs to do for the Planning Board. The applicant needs to give the Planning Board some type of proof to show that. L. Dupouy states that the Board is not making a decision tonight because we do not have all the information that we need. The applicant needs to get someone to address the issues so that not only does it protect the applicant, it satisfies the neighbors and it also keeps the Board in the position that we need to be. If the applicants take a moment and reflect on everything they have heard, they can see that no one is against the project, but we are going to try to make sure that everything is done right. J. Streit states that what L. Dupouy and C. Baker have said is that there has been a valid question raised, we want to rule either positively or negatively on that valid question, there is a method to do it, we are not voting for or against or even implying that we have a prejudice in favor or against, but if that one issue is resolved by a competent person then the Board can take a position. J. Cunningham states that M. Hanafin stated that this had happened to him when he was subdividing the property and received the same letters and threats, and nothing ever happened. M. Hanafin would have loved to be here tonight but he is in Florida. This application will be on the October 26, 2010 agenda. B. Duffney asks if this is the only issue so that the applicant does not go through with getting the engineer and then have something come back. J. Streit states that another consideration for the Board is that the whole issue seems to be whether horses should be allowed on that field where they have always been before or not. He asks what if the applicant agreed to come in and not put animals there until this ruling could be made? J. Cunningham states that then where would they put them. She is going to have horses there this weekend because she has a right to have them there. Is she going to be told that she can't? R. Reed states that even if they don't buy this, J. Cunningham is going to have to deal with this. She has a right to have horses there. J. Streit states that similar to the first case, someone had permission to do something on a certain site. The Board had to grant that permission over again to another person having the same rights on the same site. J. Cunningham states that G. McKenna is a great zoning guy who follows up. The Town is in accordance with following up and protecting those neighbors if someone does something. That is why we have zoning. There are other larger issues in this Town than this.

Meeting adjourned 7:42 p.m., all members in favor.

Respectfully submitted,

Rosamaria Rowland