

## REGULAR MEETING

January 17, 2008

The Regular meeting of the Board of Trustees of the Village of Upper Nyack was held at the Village Hall on Thursday, January 17, 2008 at 7:00 PM.

**Those present:** Mayor Esmay, Trustees Anderson, Diamond, Morgan & Sarna, Village Clerk Carol G. Brotherhood, Village Attorney Robert P. Lewis, Village Treasurer Barry MacCartney(absent)

**Others identified:** PO Barone, Gregory Fisher, Walter Aurell, Winston Perry, John Colgan, Andrew Grzegorzewski, Laurie Dodge, Lynne McManus, Issac Malkin, Jen Marraccino, William McDowell

POLICE REPORTS – Discussion regarding incident of police response to possible intruder. Resident had complained that the police had not responded quickly and did not respond to the home owner's request for a follow-up. Officer Barone noted that as indicated on the Police report, the Police had responded in a timely way.

The Board asked for increased enforcement of illegally parked cars.

Jennifer Marraccino, Wynddown road, informed the Board that on January 2, 2008 she met with the PTA, Nyack School District Rep, Supervisor Gromack and Capt Mahon of the CPD. They discussed traffic and parking enforcement. Ms. Marraccino requested the # of tickets actually written. Officer Barone told her how to get that information.

JUSTICE REPORT - Read and noted.

TREASURER'S REPORT – Submitted for review.

Note to Board: Currently not overspent in any category.

VOUCHERS – Read and approved for payment.

GREGORY FISHER – FENCE – Mr. Fisher, 600 North Broadway, came before the Board to request permission to erect a split rail fence in the village right-of-way, abutting his property. Mayor Esmay recused himself and took a seat in the audience.

Mr. Fisher has a hedge row that he would like to remove (deer are decimating it) and replace with a split rail fence. He hopes the fence would also deter people from parking on his lawn. He noted that the neighbor across the street has a stone wall in the right-of-way. (wall was grandfathered and was recently repaired, not new)

After discussion in which the Board noted they had recently received a similar request to place a stone wall in the right-of-way, were not inclined to set a precedent of giving away village property, and that it might interfere with the placing of sidewalks or other future projects in the right-of-way.

Mr. Fisher stated that he would remove the fence at his expense if the village needed to

do any work in that area and that it would be more esthetically pleasing if place only a few feet in from the road.

Trustee Morgan made a motion that the request by Gregory Fisher, 600 North Broadway, to construct a fence in the village right-of-way is denied, seconded by Trustee Diamond and so moved. On a call for a vote:

AYES: Trustees Anderson, Diamond, Morgan & Sarna

NOES: None

ABSTAIN: Mayor Esmay

TRAFFIC SAFETY - Jennifer Marraccino, of Wydendown Road, wanted to stress to the Board about the continued need for diligence and safety when it comes to the streets and crossings.

Ms. Marraccino also heard that there would be discussion of hiring a separate Code Enforcement Officer and was there anything the PTA could do to help.

The Board noted they would continue to stress these issues of safety with the Clarkstown Police and the Town Supervisor.

7:30 PM PUBLIC HEARING – Request by Summit Children's Residence Center Inc. for relief from the “Temporary Moratorium on Private Schools and Clubs located in either a commercial or residential zone.”

Those in attendance or who spoke on this matter: Walter Aurell (CPLA), Winston C. Perry Jr. (CPLA), John Colgan, (CPLA) Andrew Grzegorzewski, Lynne McManus, Issac Malkin, Laurie Dodge

The Clerk read the public hearing notice and took receipt of the return receipt postcards from Mr. Aurell who represented the Summit Children's Residence Center.

Mayor Esmay noted to Mr. Aurell that the Board has been working on proposed zone text amendments and hope to hold public hearings in March. Currently, there is a Moratorium in place. There has been no action on this application for 1 year and 3 months and no approvals have been granted. The Board believes that Summit Children's Residence Center should therefore request relief from the moratorium in order to move forward with their application.

A letter was sent to the village from Ali & Vanessa Seckin, 2 Tompkins Court. Copies were distributed to the members of the Board of Trustees and to village Attorney Lewis. A copy was also placed in the Waiver of Moratorium file.

Village Attorney Lewis read the section on the appeal process from the Moratorium Law.

Mr. Aurell then presented his appeal to the Board. It was noted by him that the applicant has had a pending application since December 2005 and have made 8 appearances before the Planning Board with the last appearance in September of 2006, and that the

applicant has been waiting for the State Education Dept. to release funds to allow moving forward with the project. Mr. Aurell stated that he has had contact with the Planning Board Secretary during this time. The applicant was on the agenda for the December PB meeting where they were hoping to get Final Site Plan Approval. Were told the day before that an appearance before the Village Board of Trustees would be required. Mr. Aurell also stated that he had spoken with Patricia Jarden, PB Secretary, each month and had asked to be continued to the next month.

Village Attorney Lewis noted that the Village had learned that there had been a sale of the property with the Deed transfer from the Summit Children's Residence Center to the Summit School. Mr. Aurell did not know anything about that.

Mr. Andrew Grzegorzewski, head of Buildings & Grounds at the Summit School noted that the School must own the land in order to receive the funds from the Dormitory Authority therefore the transfer had to occur. The Summit Children's Residence Center Inc. sold to the Summit School.

The Village Attorney noted that the application was made by the Summit Children's Residence Center Inc. not the Summit School.

Attorney Lewis noted that the applicant must prove hardship.

**The Board discussed the project and made various comments:**

Mayor Esmay noted the Board must receive testimony to prove hardship.

Trustee Morgan wondered if an application has a specific life span. No action on this application since October 2006.

Attorney Lewis noted that there is no specific language concerning an application's status unless the public hearing has been closed.

Walter Aurell noted that to the best of his recollection, he was called or received an email from the Planning Board secretary asking if they were prepared to be placed on the agenda or continue.

Funding for the project was held up so his firm did not further architectural work.

Trustee Anderson thought that 1) the Board should hear from Pat Jarden, the Planning Board secretary whether the statements made by Mr. Aurell are true.

2) change of ownership issue 3) Is it a hardship waiting for the moratorium to end or the zoning is passed?

Walter Aurell said his understanding was that pending application approval was imminent with a few changes that had to be made. The application had already gone through the SEQRA process. They anticipated that at the Planning Board meeting in December they would have received final approval.

John Colgan, (Colgan, Perry, Lawler & Aurell) interjected that he felt this was just a technical issue (the property transfer) and that bonding through the Dormitory Authority is common.

Winston Perry believes there is a hardship and the Summit School could (1) adopt the original application to solve the technical problem (2) Hardship because the school is currently busing students to an alternate location to other classrooms and this is a safety issue (3) Amount of money the school has already spent to get the plans to this point.

Andrew Grzegorzewski, Summit School, stated that the village engineer had requested changes that required them to change the site plan. The School had to search for new banks and pay off mortgages in order to transfer the property and these issues delayed them.

Mayor Esmay noted that it was the opinion of the Board that the applicant had no standing because no approvals had been made, the SEQRA negative declaration only.

Walter Aurell again noted there was no funding to pay any consultants during this time and therefore no work was done.

Village Attorney Lewis stated that the Summit Children's Residence Center Inc. could sign the consent portion over to the Summit School to correct the application.

Andrew Grzegorzewski said it didn't matter. They would do whatever needed to be done.

Trustee Sarna noted there is a significant distinction and if the Dormitory Authority (a state authority) says it matters who owns the land then it is true for the village too. It matters, the same principles would apply.

8:50 PM Mayor Esmay opened the public hearing for public comment:

Lynne McManus, 10 Tompkins Court, stated that the mailed notification for this hearing is the only notification she ever remembers receiving and has lived in the house for over 4 years. (Winston Perry stated they have always mailed notices based on the list given to them by the village)

Issac Malkin, 6 Tompkins Court, stated that this is also the only notice that he ever received.

The Village Clerk will check with the Planning Board Secretary.

Mr. Malkin continued to speak, noting he was very concerned with any expansion of this property. There is constant screaming and swearing going on from the school property. Mr. Seckin, 2 Tompkins Court noted in his letter that he had witnessed students engaging in sex on the school property and had a home invasion by a masked person. Mr. Malkin feels there needs to be some control, these are safety issues.

Lynne McManus asked about the hardship to the adjacent property owners? Would their taxes be reduced?

It was noted by Mr. Aurell, representing the applicant, that an extension of the Special Permit had been approved by the Planning Board at a previous meeting.

Mr. Lewis stated that the original Special Permit had been approved by the Zoning Board of Appeals in 1974.

Mr. Malkin thought something should be put in place to consider the safety issues and Trustee Sarna thought that request should be made to the Planning Board.

Village Attorney Lewis noted to the Board that they could:

1. Continue the public hearing if they feel they need further information on issues that were addressed
2. Close the public hearing
3. Grant or deny after closing the hearing

Trustee Sarna felt it should be continued and didn't feel they had addressed what the hardship was?

Winston Perry stated he had been on the Planning Board for 25 years and although 3 moratoriums had been in place a pending application was never subject to the moratorium

Trustee Sarna was ready to make a motion to continue the public hearing but stopped and the Board continued with further discussion. Trustee Sarna also noted that if the applicant had come in a year ago and was told the zoning amendments might not be in place for another year that might constitute a hardship.

Walter Aurell noted that he thought the Moratorium Waiver would be perfunctory and that he feels it has taken a turn. Feel they have done everything they have been asked and that this meeting would be more routine, procedural only.

Village Attorney Lewis read the scope and control section of the moratorium law which states that the law does not apply to pending applications.

Trustee Morgan noted that the applicant was acting in good faith and did have a pending application and continued to work with the village attorney and did continue the process.

Trustee Anderson made a motion to close the public hearing, seconded by Trustee Diamond and so moved.

AYES: Mayor Esmay, Trustees Anderson, Diamond, Morgan & Sarna

NOES: None

**Trustee Morgan made a motion that** the application by Summit Children's Residence Center Inc. requesting relief from the "Temporary Moratorium on Private Schools and Clubs located in either a commercial or residential zone," be granted based on the grounds that it was a pending application, and with the condition that,

given that the span of time between the last action of the Planning Board on this pending application, the applicant be required to conduct the normal notification of neighboring properties process prior to any further action by the Planning Board and,

with the further condition that the written consent of the current owner (Summit School) be obtained,

seconded by Trustee Diamond and with no further discussion and on a call for a vote to grant the relief:

AYES: Mayor Esmay, Trustees Anderson, Diamond, Morgan and Sarna

NOES: None

MINUTES – Trustee Morgan made a motion to accept the minutes of the Regular meeting of December 20, 2007 as corrected, seconded by Trustee Diamond and so moved.

AYES: Mayor Esmay, Trustees Anderson, Diamond & Morgan

NOES: None

Abstain: Trustee Sarna

#### MOCK TRIAL TEAM -

After a brief discussion, Trustee Morgan made a motion to delegate the Village Clerk to grant permission to the Nyack High School Mock Trial Team once they have supplied specific dates and times for use of the meeting room and that they abide by all rules including no food is to be consumed in the meeting room, seconded by Trustee Sarna and so moved.

AYES: Mayor Esmay, Trustees Anderson, Diamond, Morgan & Sarna

NOES: None

Trustee Morgan made a motion to adjourn seconded by Trustee Anderson and so moved. The meeting was adjourned at 10:30 PM.

Respectfully submitted,

Carol G. Brotherhood  
Village Clerk