

REGULAR MEETING

May 15, 2008

The Regular meeting of the Board of Trustees of the Village of Upper Nyack was held at the village hall on Thursday, May 15, 2008 at 7:00 PM.

Those present: Mayor Esmay, Trustees Anderson, Diamond & Morgan, Village Clerk Carol G. Brotherhood, Village Attorney Lewis, Treasurer MacCartney

Absent: Trustee Sarna

Other's identified: PO Landry CPD, William Fay-Supervisor of Public Works, Kristen Kelley Wilson Esq., David MacCartney Esq., Jan Degenshein-Architect, Ronnie Rugys, Karen Tarapata

Mayor Esmay noted that Trustee Sarna would be attending tonight but would be arriving late.

POLICE REPORT – Read and noted. PO Landry discussed the increase in tickets written for speeding in the village.

JUSTICE REPORT – Read and noted.

MINUTES – Trustee Morgan motioned to accept as corrected the minutes of the Regular meeting of 04/17/08, seconded by Trustee Diamond and so moved.

AYES: Mayor Esmay, Trustees Anderson, Diamond & Morgan

NOES: None

ABSENT: Trustee Sarna

Trustee Morgan motioned to accept as corrected the minutes of the Public Hearing of 04/29/08, seconded by Trustee Diamond and so moved.

AYES: Mayor Esmay, Trustees Anderson, Diamond & Morgan

NOES: None

ABSENT: Trustee Sarna

TREASURER'S REPORT – Not available

VOUCHERS – Read and approved for payment.

BUDGET 2008-2009 - Adoption – Mayor Esmay noted that a public hearing on the tentative budget was held on 4/17/08 and the budget was discussed and the hearing closed. The budget was made available to the public.

Trustee Anderson made a motion that the Board of Trustees adopt the 2008-2009 budget as presented, seconded by Trustee Diamond and with no further discussion it was so moved. On a call for a vote:

AYES: Mayor Esmay, Trustees Anderson, Diamond and Morgan

NOES: None

ABSENT: Trustee Sarna

Discussion- Proposed Law - Left Turn Prohibited

Mayor Esmay asked that the Board consider proposing a law to prohibit turning left onto Van Houten from Ellen St.. Mayor Esmay noted that it is happening frequently and that the turn is acute and extremely dangerous.

Supervisor Fay mentioned that the it is almost impossible to make that turn and that the guardrail has been knocked down.

Trustee Anderson made a motion that the Board of Trustees hold a public hearing to consider amending Ordinance 2.9 "Left Turns Prohibited" by adding a section prohibiting left turns from Ellen St. turning east onto Van Houten St., seconded by Trustee Morgan and so moved.

AYES: Mayor Esmay, Trustees Anderson, Diamond & Morgan

NOES: None

ABSENT: Trustee Sarna

ZONE TEXT AMENDMENTS – Consideration of adoption of local Laws #1, #2 & #3.

Mayor Esmay addressed the Board and those in the audience noting that the Board had been working on the amendments for nearly two years and have had several moratoriums in place and the current moratorium expires at the end of July and the Board does not want to extend it. The Mayor and Board feel what is being proposed does not need any further modification at this point. There has been some discussion about the notification process which requires notifying property owners within 200 feet. The Board discussed putting a mechanism in place to extend that especially if a project might become contentious.

Attorney Wilson noted that can be done. She further stated that notice procedures can be made part of the individual boards rules and procedures.

After further discussion, the Board decided not to make any change to the notification process at this time.

Mayor Esmay asked the Board if they were ready to adopt the laws. Mayor Esmay also noted that the laws contain regulations of items that exist and are allowed to exist in the Village. These laws crate a mechanism for the Board to regulate those uses. The Board is not creating any new uses. Current zoning law has been in place since 1962.

David MacCartney (Feerick Lynch & MacCartney) asked if he could make a brief comment. Village Attorney Lewis noted that the public hearing has been closed and public comments were allowed up to May 13, 2008.

Mayor Esmay allowed him to comment.

Mr. MacCartney, representing Julius Petersen Inc., stated that they had reached out to the Village to meet with the Board and representatives and planners for Petersen's to discuss residential housing to be built on the Petersen Boatyard property. Mr.

MacCartney said there was no response by the Village. Their analysis of the code is illegal under RLUPA and the Federal Fair Housing Act. There could be a very costly and expensive fight because there is a lot at stake. Mr. MacCartney urged the Board to vote no. They would like the Board to consider a zone change to R-5. Currently it is in his opinion a unique zone, its own zone.

Trustee Morgan inquired "In what way did your client or firm reach out to the village?"

Mr. MacCartney noted orally and was not sure if in any other form.

Mayor Esmay requested that the Board now consider the adoption of the zone text amendments.

Trustee Morgan made a motion that the Board of Trustees adopt Local Law # 1 of 2008, seconded by Trustee Anderson and with no further discussion it was so moved.

On a call for a vote:

AYES: Mayor Esmay, Trustees Anderson, Diamond and Morgan

NOES: None

ABSENT: Trustee Sarna

Trustee Morgan made a motion that the Board of Trustees adopt Local Law # 2 of 2008, seconded by Trustee Diamond and with no further discussion it was so moved. On a call for a vote:

AYES: Mayor Esmay, Trustees Anderson, Diamond and Morgan

NOES: None

ABSENT: Trustee Sarna

Trustee Morgan made a motion that the Board of Trustees adopt Local Law # 3 of 2008, seconded by Trustee Anderson and with no further discussion it was so moved. On a call for a vote:

AYES: Mayor Esmay, Trustees Anderson, Diamond and Morgan

NOES: None

ABSENT: Trustee Sarna

Attorney Wilson and Village Attorney noted that the clerk will publish a notice of adoption of the local laws once filed with the State.

The Board continued a discussion with Mr. MacCartney and the Mayor noted his concern whether Mr. MacCartney could do an informal presentation.

Mr. MacCartney noted they wanted to start a dialog all along and this is not an application and not a stunt. His client was ready to present their ideas tonight. Mr

Degenshein, architect, had plans with him.

Mayor Esmay went on to say a Use Variance or Zoning change request to the Board and a ZBA application would be a more formal application. Mayor Esmay stated he would never entertain an informal application.

Karen Tarapata, resident and former Trustee, thought that this could be a slippery slope. All other large developments have gone through the proper channels.

Trustee Anderson stated that the Mayor communicated and did respond to them and the village was threatened with a lawsuit for passage of a zone text change that doesn't affect the clients property. Trustee Anderson feels very uncomfortable with how it is being handled by Attorney Lynch.

Trustee Diamond and Trustee Sarna have recently attended a Land Use Conference and the idea when working on development is to always try to reach an accommodation.

David MacCartney noted that it has never been their position that any formal application was ever presented. No response was ever communicated to them.

Mayor Esmay stated this was not true.

Mayor Esmay asked the Board to share their ideas and thoughts on this matter.

Trustee Anderson again noted he did not appreciate the 10 page tome stating application had been submitted and rejected.

Trustee Morgan noted he never heard any formal proposal and agrees with Trustee Anderson. Trustee Morgan suggests they go to the Planning Board, even informally, to get their input. The Planning Board can give a response to the applicant about the process and steps to take to get their application looked at. Trustee Morgan noted he has no objection to any application.

8:15 PM – Trustee Sarna arrived at the meeting.

Mayor Esmay explained to Trustee Sarna what had transpired and that the local laws had been passed. The Board was discussing allowing an informal discussion. He noted that Trustee Anderson does not want to allow an informal discussion.

Trustee Sarna stated, in his opinion, that to this point this has been handled unproductively. Workshops are held twice a month. This could have been done without threatening litigation and without cutting and pasting legal briefs and presenting it in the form of a letter. There are 1 or 2 informal methods to accomplish what the Board has been told has been attempted. Trustee Sarna suggested that, if an informal

presentation were allowed to be made, it must be clear to Mr. MacCartney and his client that such a presentation:

- does not constitute a formal application before any Village Board; and
- since it is not a formal application, there will be no formal decisions made and therefore no right of appeal

Trustee Sarna wanted to make clear that the threat of litigation puts this potential applicant in an adversarial position with the village and makes it difficult to be collaborative. However, if Mr. MacCartney and his firm and its client were prepared to stop threatening litigation, then he would recommend that they make an informal presentation to the Board at a regularly scheduled workshop. However, before he would suggest entertaining an informal presentation, Trustee Sarna strongly opined that it must be acknowledged by Mr. MacCartney and his firm on behalf of its client that this option to make a presentation at a workshop, which is an option that is available to all citizens who may have business before the Board, is informal. It is intended to be part of a collaborative process and in the nature of a discussion, not the basis for a litigation.

Karen Tarapata asked if the review was a function of the Planning Board, formal or informal?

Treasurer MacCartney asked if they would need a review by the Village Board before they could go to the Planning Board?

David MacCartney spoke again, noting that he grew up in Nyack and certainly cares about the area. He understands that it is such a difficult process to get an application approved for development. It was not the perception of his firm (Feerick Lynch MacCartney) that they were threatening. A religious use has come into play and it is a unique opportunity for Julius Petersen Inc. It is not a “give us residential or we'll sue!” tactic.

Karen Tarapata stated they should make an application like everyone else.

David MacCartney stated that he brought Mr. Degenshein along in the event he would be allowed to show their ideas. The Mayor considered allowing them to speak.

Trustee Sara asked to address some of his concerns.

Trustee Sarna noted that he spoke with the owners of Petersen's Boatyard at another meeting or event a while back and tried to contact them but received no reply.

Trustee Sarna also noted that Attorney Lynch is combative and contentious and there is no collaboration. The correspondence from Attorney Lynch characterized that he was heading towards litigation. Trustee Sarna feels it is disingenuous to say “How did we get to this point?”

Jan Degenshein, architect & planner, spoke and noted he was not privileged to read any letters between Petersen's and the Village or any communications. He was approached by the Beneville's to come up with ideas for the best use of the property. He has a preliminary conceptual plan to show.

Trustee Sarna feels it should be presented at a workshop. Trustee Anderson found it acceptable to present at a workshop and the other Board members seemed amenable to that.

David MacCartney and Jan Degenshein will contact the Village Clerk for dates of the upcoming workshops.

Trustee Sarna wanted it noted for the record that he fully supports the votes taken on the Zone Text amendments and on the Budget for 2008-09.

Ronnie Rugys, 218 Glenbrook Road, came to inquire if the Board would be discussing the village lot on Roseland Road and to again state that she and other residents are concerned and hope it would be considered for residential use.

The Village received a letter from Donna L. Nye, 309 Front Street, regarding a parking problem at the northwest corner of Highmount and North Midland Ave. Cars park and create a blind spot for drivers trying to enter onto N. Midland. The Police were notified but stated that there was no sign prohibiting the parking. The resident who lives in the corner house has also come into the village hall office and signed a complaint that cars are parked there leaving him no space to place his garbage for pick up. If left behind the cars, the carter has left it.

Trustee Sarna also noted that he often walks his daughter to the bus stop there and has observed the situation and agrees it could be dangerous.

The Board discussed the parking and whether the law should indicate a distance or "no parking here to corner sign"

Trustee Morgan made a motion that the Board of Trustees hold a public hearing on June 19, 2008 to consider amending Ordinance 2.2 (e) Parking of Vehicles and it was seconded by Trustee Anderson and so moved.

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

NOES: None

8:57 PM Mayor Esmay informed the public the public that the Board would now be going into Executive Session to discuss potential litigation.

The Board was in agreement to enter an attorney-client meeting.

The Attorney-Client meeting began at 8:57 PM

The Attorney-Client meeting ended at 9:30 PM

Trustee Anderson made a motion to adjourn, seconded by Trustee Morgan and so moved. The meeting was adjourned at 9:30 PM.

Respectfully submitted,

Carol G. Brotherhood
Village Clerk