

REGULAR MEETING

March 16, 2006

The Regular meeting of the Board of Trustees of the Village of Upper Nyack was held at the village hall on Thursday, March 16, 2006 at 7:00 PM.

Those present: Mayor Esmay, Trustees Anderson, Malcolm, Morgan, & Tarapata

Village Clerk: Carol G. Brotherhood

Village Attorney: Robert P. Lewis Esq.

Village Treasurer: Barry MacCartney

Others identified: PO Barone, Jeffrey Berman, Tom Imperato, Richard Windram, McFall Kerbey III Esq., Pamela Goldstein, David MacCartney, Steven Gerber, Emilie Spaulding, Clare Dorfman, John Urban, and various representatives of Cablevision and Verizon who did not sign in.

POLICE REPORTS – Officer Barone explained the new report format which has three categories: Traffic, Incident Reports (call, check, if unfounded then incident only) Case Reports (call; check if something found then becomes case).

JUSTICE REPORT - Read and noted.

MINUTES - Regular Meeting – Trustee Morgan motioned to approve with corrections the minutes of 2/16/06, seconded by Trustee Tarapata and with no further discussion it was so approved.

AYES: Mayor Esmay, Trustees Anderson, Malcolm, Morgan & Tarapata

NOES: 0

TREASURER'S REPORT –Submitted for review. Trustee Tarapata made a motion to set a public hearing to discuss the Tentative Budget on April 20, 2006 at 7:30 PM, seconded by Trustee Morgan and so moved with all in favor.

VOUCHERS – Read and approved for payment.

REQUEST FOR STREET CLOSING –

Trustee Tarapata made a motion authorizing the closing of North Broadway between Castle Heights Avenue and Birchwood Avenue for the Upper Nyack Elementary PTA Goosetown Bazaar from 10:30 am until 4 pm on Saturday, May 20, 2006 and that they provide a Certificate of Insurance

naming the village as additionally insured, seconded by Trustee Anderson and unanimously approved.

AYES: Mayor Esmay, Trustees Anderson, Malcolm, Morgan & Tarapata

NOES: 0

The Village Clerk will send a letter notifying the residents of North Broadway, Perry Lane and lower Castle Heights Avenue of the closing. The Clerk will also notify the Clarkstown Police liaison officer so that auxiliary police can be provided. The Village of Upper Nyack DPW will supply saw horses to block off the street.

Trustee Tarapata made a motion to hold a public hearing on April 20, 2006 to consider amending Section 6.5 Tree Maintenance and Management Operations of the 1962 Zoning Ordinance of the Village of Upper Nyack, seconded by Trustee Morgan and so moved.

AYES: Mayor Esmay, Trustee Morgan, Smith and Tarapata

NOES: 0

Trustee Tarapata made a motion that the Village Board of Trustees authorize the mayor to sign a cooperating letter of intent for the Stormwater Consortium of Rockland County Cooperating MS4 letter of Intent seconded by Trustee Anderson and after a brief discussion it was so moved. The mayor signed the letter.

Trustee Anderson made a motion to surplus the computer formerly used by the file clerk and donate it to PC Renew, seconded by Trustee Tarapata and so moved. All voted in favor.

AYES: Mayor Esmay, Trustee Anderson, Malcolm, Morgan and Tarapata

NOES: None

7:30 PM Public Hearing- Verizon-Cable TV Franchise

Kathryn Lebeau, a court reporter from Rockland & Orange Reporting took verbatim minutes of the public hearing. A copy of the transcript is on file in the village hall office along with all documents related to the Verizon Cable TV Franchise agreement. The minutes of the Board give a general account of the hearing.

The Village Clerk read the public hearing notice. Mayor Esmay announced that Verizon and Cablevision would each be allowed one half hour for their respective presentations and then the hearing would be open to the public for comments or questions.

Richard Windram and McFall Kerbey spoke on behalf of Verizon. Mr. Kerbey read the list of 40 documents sent to or received from the Village in regards to the Cable TV Franchise. Mr. Kerbey noted that Verizon had signed franchise agreements in Massapequa Park, LI, Nyack and South Nyack. The goal in obtaining a franchise is for stabilized prices, improved customer service and choice.

Davis MacCartney, Ferris, Lynch & McCartney, representing Cablevision noted that they were not there to stop competition but want to make sure that what is being presented is fair to the Village and to Cablevision. Steven Gerber presented comparison charts of the current Cablevision franchise agreement and what Verizon is proposing.

Mayor Esmay asked if anyone from the public would like to speak but no one from the public commented. Mayor Esmay allowed each representative rebuttal time. Mr. Kerbey and Mr. Gerber made brief comments.

Mr. Lewis, Village Attorney, read the section from Village Law 4-4.12 Village law subsection 6 that gives authority to the village to grant franchises. The PSC (Public Service Commission) 895.3 calls for a level playing field.

The Village Clerk then read into the record a letter from David Dillon, a resident who resides at 415 Cedar Ave, who is a Verizon employee and who spoke in favor of the franchise.

Mr. Kerbey noted to the Board that the PSC requires that a customer service branch must be at a location that is a reasonable distance from the community.

A discussion followed regarding the 10 day limitation for the notification of a claim. It was also noted that 15 years is the maximum a municipality can grant for a franchise. When Cablevision's franchise was granted only 10 years was allowed.

Mr. Kerbey responded to a comment by Cablevision reps regarding notification by stating that the public hearing notice must be published 10 days prior to the hearing being held and the application must be filed 10 days prior but there is no law that requires the agreement to be available to the public 10 days prior.

Trustee Morgan made a motion that the Board declares itself lead agency for environmental review under NYSEQRA in regards to the Verizon Franchise agreement, seconded by Trustee Tarapata and on a call for a vote:

AYES: Mayor Esmay, Trustees Anderson, Malcolm, Morgan & Tarapata

NOES: None

It was deemed an "Unlisted Action" under NYSEQRA and Trustee Morgan read into the record the SEAF for unlisted actions with a finding of no adverse environmental impact. The document was signed by the Mayor and Trustee Morgan as preparer of the document.

Mr. Kerbey submitted two volumes which contained the documents he listed (40 items) at the start of the meeting.

The Board having heard from both parties represented tonight and as there were no comments from the public and the comments of the Board were recorded by a court reporter, the Board decided to close the public hearing. Trustee Tarapata made a motion to close the public hearing, seconded by Trustee Malcolm and so approved with all in favor.

The resolution, agreeing to the franchise agreement, was read into the record and recorded by the court reporter. The resolution was motioned by Trustee Morgan, seconded by Trustee Anderson and with no further discussion the vote was as follows:

AYES: Mayor Esmay, Trustees Anderson, Malcolm, Morgan & Tarapata

OPPOSED: None

ZONE TEXT AMENDMENT- OB District- After discussion the Board of Trustees agreed to hold over this item to the workshop of 3/23/06. Tom Imperato, Wilder Balter Partners appeared briefly and will attend the workshop.

Mayor Esmay noted several items that were discussed at the Planning Board meeting of 3/15/06, which were the Summit School, residential additions and Omnipoint cell tower.

Mayor Esmay commended Trustee Morgan for all the work he did on the language for accessory apartments to be discussed in the future.

Mayor Esmay noted that Superintendent Scanlan was looking into renting a sanitary sewer flow meter because it was too costly to purchase. The idea was to get an idea of the flow from the sewer system to Orangetown before any agreement could be signed.

Trustee Morgan motioned to adjourn at 10:35 PM, seconded by Trustee Malcolm and it was so moved.

Respectfully submitted,

Carol G. Brotherhood
Village Clerk