

REGULAR MEETING

May 20, 2004

The Regular meeting of the Board of Trustees of the Village of Upper Nyack was held at the village hall on Thursday, May 20, 2004 at 7:00 PM.

Those present: Deputy Mayor Tarapata, Trustees Malcolm, Morgan, Smith, Village Clerk Carol G. Brotherhood, Village Attorney Lewis

Absent: Mayor Esmay, Treasurer MacCartney

Other's identified: Kevin Fitzpatrick, Edward Whalen, Frank & Irene Armbruster, Kate Buggeln, Steve Kulovits, Walter Karopczyc, Stephen Arena, Gregory Johnson, and Walter Sevastian Esq.

MINUTES – Postponed

PUBLIC HEARINGS –

- a) Local Law # 7 of 2004 – Amending Ordinance 5.6 Disorderly Conduct

The Clerk read the public hearing notice. The Deputy Mayor opened the public hearing. There were no comments from the public.

Trustee Smith made a motion to close the public hearing seconded by Trustee Morgan and so moved.

With no further discussion, Trustee Smith made a motion to adopt Local Law #7 of 2004, seconded by Trustee Morgan and so moved.

VOTE: AYES: Deputy Mayor Tarapata, Trustees Malcolm, Morgan & Smith NOES: None

- b) Local Law #8 of 2004 – Amending Article III Section 6.5 Tree Maintenance & Management Operations D. Cost and Penalties.

The Clerk read the public hearing notice. The Deputy Mayor opened the public hearing. There were no comments from the public.

Trustee Smith motioned to close the public hearing seconded by Trustee Morgan and so moved.

With no further discussion, Trustee Morgan made a motion that the Board adopts Local Law #8 of 2004, seconded by Trustee Malcolm and so moved.

VOTE: AYES: Deputy Mayor Tarapata, Trustees Malcolm, Morgan & Smith NOES: None

- c) Local Law #9 of 2004 – Minimum Road Standards

The Clerk read the public hearing notice. The Deputy Mayor opened the public hearing.

Kevin Fitzpatrick asked what defines a road.

Deputy Mayor Tarapata noted that existing roads would be grandfathered.

Any new subdivision will be required to follow the new road standards.

Trustee Smith made a motion to continue the public hearing to the June 17, 2004 meeting which was seconded by Trustee Morgan and so moved.

PUBLIC OFFICERS INDEMNIFICATION – Village Attorney Lewis explained that a law passed in 2002 supercedes an earlier law. After a brief discussion, Trustee Smith made a motion that Local Law #6 of 1981 is nullified and that Local Law #4 of 2002 will supercede the prior law seconded by Trustee Malcolm and unanimously approved.

POLICE REPORT – Read and noted. Incident reported of paint balls being shot at cars.

JUSTICE REPORT – Read and noted.

TREASURER'S REPORT – Not available. Treasurer will place in folders for workshop.

VOUCHERS – Read and approved for payment.

GREGORY JOHNSON, 206 Highmount Avenue

Mr. Johnson requests permission to maintain front porch and retaining walls in public right of way. Walter Sevastian, 3 Main Street, Nyack, NY was representing Mr. Johnson. Mr. Sevastian stated to the Board that Mr. Johnson purchased the house four years ago without a survey. The front entrance to the house is elevated approximately 10 feet off the ground. It is the only access to the house. The house was built in 1904. Mr. Johnson is seeking permission from the Board to allow this structure to remain.

Village Attorney Lewis proposed to the Board that they grant a license agreement which would allow the structures to remain as long as the village has no need for use of the property and to hold the village harmless.

The Board reviewed the agreement document and the only change indicated was #2, to change from 10 days notice to 30 days notice.

Trustee Morgan made a motion to enter into a license agreement with the adjustment indicated above, with Mr. Gregory Johnson, seconded by Trustee Malcolm and so moved. (Attached)

APPEALS – RELIEF FROM MORATORIUM –

1) Kevin Fitzpatrick, 190 Oak Street (appeals application #2)

Mr. Fitzpatrick would like to build a deck. After a brief discussion and no indication of any issues with this request,

Trustee Morgan made a motion that the Board grant relief from the moratorium due to the small scale of the proposed change and that it is unlikely to be affected by changes in the zoning code, seconded by Trustee Smith and so approved.

2) Kate Buggelin, 104 Lexow (appeals application #3)

Ms. Buggelin intends to build a small addition at the northern end of an existing house because of her need for increased space. The Board saw no issues and,

Trustee Morgan made a motion to grant relief from the moratorium given the fact that it is a modest addition on a $\frac{3}{4}$ acre lot, not subdividable unlikely to require any variances and unlikely to be affected by proposed changes to the zoning ordinance, seconded by Trustee Smith and it was so approved.

3) Walter Karopczyc, 2 Perry Lane (appeals application #4)

Mr. Karopczyc is looking to enlarge his garage and replace an attached shed and remove a well house. It is on a level section of his property. No issues indicated.

Trustee Morgan made a motion that the Board grant relief from the moratorium given the fact that the proposed alterations are essentially replacement of existing structures on a non-conforming lot and are unlikely to be affected by any proposed changes to the zoning ordinance, seconded by Trustee Malcolm and so approved.

4) Edward & Michele Whalen, 114 Birchwood Avenue (appeal App. #5)

This is a large addition to a small existing cape style house. There will be a one story kitchen addition, conversion of a garage to a 2-car garage with possible office space above.

Trustee Morgan made a motion that the Board grant relief from the moratorium based on the fact that the property is not subdividable, these are minor extensions to the home beyond the footprint, variances will be needed but unlikely to be affected by zoning ordinance changes and it would be a hardship to wait, seconded by Trustee Smith and so approved.

STEPHEN ARENA- Property owner of 530 Route 9W came before the Board to discuss his property the site of a former auto repair facility. It has been auto repair for the last 34 years. Has been trying to sell it but because it is not grandfathered in and is now zoned LO in the commercial district, he is having difficulty. Has become a financial burden. There was a CO issued over 30 years ago as auto repair and Mr. Arena doesn't understand why it isn't grandfathered.

Mr. Lewis suggested he hire an attorney, that he should be represented. He also noted that there had been several letters and violation notices that had been sent to Mr. Arena regarding a special permit for the tenant business (Volkswagen) and Mr. Arena did not respond.

Mr. Arena wants a response as soon as possible.

Village Attorney Lewis stated to Mr. Arena that to ask for a "Use Variance" he must go before the Zoning Board of Appeals. If it is not a "matter of right" or "special permit" then he would have to request a use variance from the ZBA. If the Village Board granted a zone change that would be considered spot zoning.

RUBBISH REMOVAL CONTRACT – Trustee Malcolm made a motion that the village accepts the contract with Minuto Contracting for pick up of village trash from June 1, 2004 until May 31, 2007, seconded by Trustee Morgan and with no further discussion it was so moved.

SIDEWALK & CURB BIDS- Trustee Malcolm asked for permission of the Board to meet with the low bidder and Mike Scanlan to investigate further their ability to handle the job.

The Village Attorney stated that the Board can accept the lowest responsible bidder. The Board decided to hold a Special Meeting to vote.

REQUESTS: BLOCK PARTY- ELLEN STREET – The Board discussed this request and would approve with the understanding that there can be no fireworks, a notification of surrounding neighbors and a signature of each property owner on Ellen Street indicating they approve of the party. Trustee Malcolm made a motion to approve the request, seconded by Trustee Morgan and so moved and approved.

STREET CLOSING – EMPIRE HOOK & LADDER CO. #1

Trustee Malcolm made a motion that the Board approves the request by Empire Hook & Ladder Co. #1 to close off North Broadway from Castle Heights Avenue to Birchwood Avenue from 2 PM until Midnight on

October 2, 2004 and further that they provide the village with a certificate of Insurance and that all music ceases by 11:00 PM, seconded by Trustee Smith and so approved.

RESOLUTION – SUNSET PROVISION – Trustee Smith made a motion that the Board of Trustees resolves to support the elimination of the sunset provision of the LGRMIF (Local Government Records Management Improvement Funds) seconded by Trustee Morgan and so moved.

GEORGE WASHINGTON BRIDGE CHALLENGE –

Trustee Morgan made a motion to approve the request for the George Washington Bridge Challenge to pass through the Village of Upper Nyack on June 13, 2004, and that they provide the village with a Certificate of Insurance naming the village as additionally insured, seconded by Trustee Malcolm and so approved.

Trustee Malcolm requested that the letter of approval include copies to the Clarkstown Police Dept. and Superintendent Scanlan.

APPOINTMENT OF SECRETARY PT- PAT JARDEN

The Board of Trustees confirmed the appointment by Mayor Esmay of Patricia Jarden, Secretary PT to the Planning, Zoning and Architectural Review Boards.

The Board discussed requests for on-street parking on North Broadway. The Village received three requests for the same day with some time overlap. The Clerk was asked to notify those requesting the parking that heavy use was expected that day (June 19, 2004) and they may want to make alternate arrangements.

INSURANCE RENEWAL PROPOSAL – Trustee Malcolm advised the Board that after research, the Village of Upper Nyack should continue with NYMIR and he requested increased coverage on the Village Hall and the contents.

Mr. Armbruster of 209 Lexow Avenue came to ask the Board what was the status of the easement abandonment on Hilltop Lane?

The Village Attorney noted that it had been voted on and approved by the Board of Trustees, the property owners had paid to cover the cost of the legal work.

Mayor Esmay arrived at the meeting at approximately 9:00 PM. He had been attending another municipal meeting.

Mayor Esmay stated to Mr. Armbruster that the Board did hold discussion and vote on the easement at a public meeting and that Mr. Smith recused himself and the Board did consider any vested rights of the property owners on Upper Lexow and it was determined that there weren't any.

Deputy Mayor Tarapata stated that the road will not be built ever because the Board is considering adopting minimum road standards. Mr. Armbruster was told the Board considers the matter closed.

Trustee Morgan made a motion to adjourn seconded by Trustee Smith and so moved. The meeting was adjourned at 9:50 PM.

Respectfully submitted,

Carol G. Brotherhood
Village Clerk

Resolution of Support for the Elimination of the Sunset Provision of the Local Government Records Management Improvement Fund (LGRMIF)

Whereas, the Local Government Records Management Improvement Fund was created in 1989 to provide technical assistance and grants to establish, improve or enhance records management programs in New York's more than 4300 local governments, and

Whereas, a sunset date for the LGRMIF was established in the original legislation to permit its operation as a five-year experiment, and

Whereas, the New York State Legislature in 1995 has twice extended the sunset date, most recently to December 31, 2005

Whereas, the LGRMIF has effectively supported essential advisory services and 6,300 grants totaling over \$113 million to improve the management of records for over half of all NYS local governments

Whereas, the LGRMIF and the programs it supports continue to operate at a high standard of excellence and provide direct and significant benefit to local governments at no cost to the taxpayers, and

Whereas, Village of Upper Nyack has benefited from technical assistance, training, publications and 1 grants totaling \$3,927 supported by the LGRMIF, and

Whereas, the LGRMIF continues to be critically important in the fulfillment of the many records and information related responsibilities of the Village of Upper Nyack, therefore

Be it resolved that the Village of Upper Nyack supports the elimination of said sunset provision of December 31, 2005 in order to make the LGRMIF permanent.

Vote on roll call:

AYES: Deputy Mayor Tarapata, Trustees Malcolm, Morgan and Smith

NOES: None

ABSENT: Mayor Esmay

CERTIFICATION OF RESOLUTION

**STATE OF NEW YORK
COUNTY OF ROCKLAND**

SS:

I, Carol G. Brotherhood, Village Clerk of the Village of Upper Nyack, Rockland County, New York, do hereby **Certify**, that the attached is a true and correct copy of a **Resolution** adopted by the Board of Trustees of the Village of Upper Nyack, at a Regular Meeting held on Thursday, **May 20, 2004**, the original which is on file in the Village Hall, Village of Upper Nyack, Upper Nyack, NY 10960.

(SEAL)

Carol G. Brotherhood
Carol G. Brotherhood, Village Clerk

Dated: May 26, 2004

WHAT HAPPENS IF THE SUN SETS?

- The records situation in local government prior to the 1987 Local Records Law was absolute chaos except in the rarest of instances.
- The LGR Law places the responsibility for managing their records firmly with the local governments that generates them. The Commissioner of Education was made responsible for regulating and providing technical assistance for LG records.
- While most LGs appointed Records Management Officers as required by the law, the law was a dry mandate, both in LG and at the state level. Resources were simply unavailable to carry out the responsibilities in either case.
- LGs and their professional associations came together to secure funding to address the local records problem. This effort resulted in the creation of the Local Government Records Management Improvement Fund.
- That Fund, which has a present sunset date, supports, through a competitive grants process, hundreds of projects to improve the management of local government records. It supports the identification and protection of archival records, the deployment of information technologies, the destruction of obsolete records and the storage of inactive ones.
- The Fund also supports a system of regionally-based technical assistance, in which State Archives professionals, backed up by content specialists in Albany, are sited in field offices in Hauppauge, Brooklyn, Poughkeepsie, Albany, Glens Falls, Binghamton, Utica, Rochester and Buffalo. Regional Advisory Officers provide free consultation and technical assistance to several hundred local governments, present in total 125 (or more) workshops annually and monitor Improvement Fund grants in their respective regions.
- Regional Advisory Officers work in a direct, intimate and supportive manner with nearly 4400 local governments, making hundreds of field visits each year, speaking at local and statewide meetings of local officials, and providing technical advice where local resources are not available.

If the sun sets, all this is gone.

Local governments will still generate their tons of records each day and their dwindling tax dollars will not adequately fund records management, if at all. Local governments will lose records or destroy them illegally, be indefensible in audit or litigation and lack the records that demonstrate due process and the genesis or abolition of programs. In short, local governments will lack the fiscal wherewithal and the specialized knowledge to carry on alone. The past tells us this and the peripatetic use of computers and other technologies serves only to worsen such a situation in the long run.

LICENSE AGREEMENT

THIS INDENTURE, made the 25th of May, 2004 between the Village of Upper Nyack, a Municipal Corporation, organized and existing under the laws of the State of New York, with its principal office in Village Hall, 328 North Broadway, Upper Nyack, Town of Clarkstown, County of Rockland, State of New York, hereinafter referred to as the "party of the first part" and Gregory L. Johnson residing at 206 Highmount Avenue, Upper Nyack, N.Y. 10960 hereinafter referred to as the "party of the second part",

WITNESSETH:

- 1) That the party of the first part, in consideration of the sum of One (\$1.00) dollar, paid by the party of the second part, does hereby grant and release unto the party of the second part, its successor and assigns a license for constructing and maintaining an enclosed porch with deck and retaining walls on the RIGHT-OF-WAY of the party of the first part, which is located upon the premises located at 206 Highmount Avenue, Upper Nyack, N.Y. and designated on the tax map as map 135, block B, lot 24 (County No. 60.17-01-44).
- 2) That the party of the second part, agrees and consent to the revocation of this license at any time, at the sole discretion of the party of the first part, upon thirty (30) days written notice.
- 3) That, upon revocation of this license, the party of the second part, agrees at his own expense, to remove any and all obstructions, structures and/or encroachments on the RIGHT-OF-WAY including but not limited to the enclosed porch with


deck, and retaining walls.

- 4) That the party of the second part, agrees to protect, defend, indemnify and hold the Village of Upper Nyack and its officers, employees, and agents and save it harmless from and against any and all losses, penalties, damages, settlements, cost, charges, professional fees or other expenses or liabilities of any kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind and character in connection with or arising directly or indirectly out of this indenture and/or the performance thereof. Without limiting the generality of the foregoing, any and all claims, etc., relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patten, trademark, copyright, (or application for any thereof), or any other violations of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, shall be included in the indemnity hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Indenture on the date and year first written above.

THE VILLAGE OF UPPER NYACK


Michael Esmay, Mayor


Gregory L. Johnson

STATE OF NEW YORK)
 : SS:
COUNTY OF *Rockland*)

On the *25* day of May, 2004, before me, the undersigned, personally appeared, MICHAEL ESMAY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Mayor of the Village of Upper Nyack and that by his signature on the instrument, the individual or the person on behalf of which the individual acted, executed the instrument.



BARRY MacCARTNEY
Notary Public, State of New York
No. 5003084
Qualified in Rockland County
Commission Expires 10-13-2006

STATE OF NEW YORK)
 : SS:
COUNTY OF *Rockland*)

On the *25th* day of May, 2004, before me the undersigned personally appeared, GREGORY L. JOHNSON, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual or the person on behalf of which the individual acted executed the instrument.

WALTER R. SEVASTIAN
Notary Public, State of New York
No. # 020E5033-02
Commission Expires Sept. 13, ~~2005~~ *2006*

