

REGULAR MEETING  
August 19, 2004

approved 9/23/04

The Regular meeting of the Board of Trustees of the Village of Upper Nyack was held at the village hall on Thursday, August 19, 2004 at 7:00 PM.

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

**Others identified:** PO Healy (CPD), Frank Mancione, Greg Coffey Esq., Walter Lee, Sally Schoenberg, Barry Schoenberg, Jerome Muhlenberg, Marsha Kellar, Karl Koether, Robert Helmke, Stephen Arena, Wallace Beneville, Bernard Supreme, Rev. Louis Harry Toto, Danby Regis, Marie R. Laguerre, Ludovic Supreme, Michael Lagana, Craig Botrill, Bridgit Botril, Eric Fernandez

MINUTES – Trustee Morgan motioned to approve with corrections the minutes of 7/15/04 regular meeting, seconded by Trustee Smith and by a vote of Trustees Tarapata, Morgan & Smith the minutes were so approved.

POLICE REPORTS – Read and noted. No significant incidents to report. Report of a minor accident and a car being keyed.

JUSTICE REPORT - Read and noted.

TREASURER'S REPORT – Treasurer away. Report available at the next workshop

VOUCHERS – Read and approved for payment.

REVIEW OF BID PV-01-2004/2003-2004 PAVING PROGRAM –North Broadway – Trustee Malcolm read the Bid opening record and noted that the bid was advertised as required. The bidder, Tilcon did the paving on Castle Heights Avenue. They agree to complete the job in 2-3 days. The Board budgeted \$100,000 for the job and the bid came in below that. Bid document is attached

Trustee Smith made a motion that the Village of Upper Nyack accept the bid by Tilcon New York Inc. for \$67,723.25 for the project PV-01-2004, 2003 -2004 Pacing Program, seconded by Trustee Tarapata and so moved  
AYES: Mayor Esmay, Trustees Malcolm, Morgan, Smith and Tarapata  
NOES: 0

#### LOCAL LAW #11 OF 2004 –Nuisance Lighting –

The Mayor opened the public hearing and the clerk read the public hearing notice. Trustee Tarapata explained why the Board was looking to remove section d. from the law which prohibits strings of lights. Mayor Esmay noted to the public that the Board has a goal to review the General Ordinance and remove antiquated laws from the code, for example fat rendering and rug beating.

The Mayor asked if anyone from the public wished to speak and since no one did, Trustee Tarapata made a motion to close the public hearing, seconded by Trustee Morgan and so moved.

Trustee Morgan made a motion to adopt Local Law #11 of 2004 by eliminating section d. from Chapter 5.14 of the 1965 Code of General Ordinances, seconded by Trustee Tarapata and on a call for a vote:

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

NOES: 0

#### PILGRIM WESLEYAN CHURCH – Pastor Louis Harry Toto

Rev. Toto appeared before the Board and noted that he had been head of this congregation for 30 years and they have worshipped at St. Paul's in South Nyack. They are looking to relocate and are interested in the property at 530 North Highland Ave., (Route 9W) owned by Stephen Arena. Mayor Esmay explained to Rev. Toto that the village attorney was not present and the Board would seek his advice.

Rev. Toto noted that there are presently 100 plus parishioners and they hope the new location would help them to grow. He conducts 2 mid-week services and then Sunday am & pm. The property has about 46 current parking spaces and has village sewer and well water.

The Board questioned how it would fit into the LO district, # of sermons per week, concern with the size of the property and parking and if they re-located are more apt to drive?

The Mayor advised Rev. Toto to seek an interpretation from the Building Inspector and the Village Attorney.

#### APPEALS – RELIEF FROM MORATORIUM –

1) Deyrup, 309 North Broadway- (appeals application #8)

. Mr. Greg Coffey represented the Deyrup family. The family seeks relief from the moratorium so they can subdivide the property to separate out the Main house from two smaller houses on the property. Two sketches were submitted. One proposed with the existing buildings and one a hypothetical to show what could be built on the property.

Mr. Coffey noted that the Contract/Purchaser has agreed to a restrictive covenant on the deed.

During Board discussion, Trustee Morgan noted that 4 houses is not an as of right use (shown on the hypothetical sketch) because there is not enough frontage. Cluster Development consideration by the Planning Board is on a case by case basis and must be granted by the Village Board to the Planning Board to allow it to be considered.

Trustee Morgan made a motion to grant relief from Local Law #6 “Moratorium Law” because the applicant wishes to present to the Planning Board a simple subdivision on an existing lot, and there will be a restrictive covenant restricting further subdivision, no road construction is proposed, use is existing without change, and since the subdivision plan includes no new construction, there will be no impact on drainage and no downhill neighbor is affected by the subdivision, seconded by Trustee Tarapata and so moved.

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

NOES: 0

2) Eric Fernandez, 25 Rose Hill Rd., Suffern (appeals Application #12)

Property Location: 2 Tomkins Court, 60.14-1-12.2

Mr. Fernandez is the contract purchaser of a lot in an approved subdivision and seeks relief so he may appear before the Planning Board for approval to build a house. Mr. Fernandez noted he wants to build on the flat area of the lot and does not want to have to build an engineered retaining wall and has no plans to remove large trees.

After discussion with the application and current owner of the lot, Mr. Malkin, Trustee Morgan made a motion that relief be granted to Eric Fernandez for the lot at 2 Tomkins Court because it is an approved lot in an existing subdivision, there is a smaller footprint than the previous proposed house on the lot, less impervious surface than proposed prior, proximity to an active drainage stream may be affected by zoning changes and therefore the Planning Board should consider minimizing impact on existing stream and associated slopes, seconded by Trustee Tarapata and so moved.

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

NOES: 0

DRAINAGE ISSUES/Larchdale/Bexman Green

Individual residents who spoke: Jerome Muhlenberg & Marsha Kellar-107 Larchdale Ave., Walter Lee-105 Larchdale Ave.; Barry & Schoenberg-648 North Broadway; Karl Koether-2 Bexman Green; Michael Lagana-3 Bexman Green; Robert Helmke-North Broadway; Bert Fichman-633 North Broadway

Residents of Larchdale Ave., Bexman Green and Broadway appeared before the Village Board to comment and complain about past and recent water problems on their properties. During the most recent storm the property owners present complained about water cascading down through their lots with water and mud going into their pools causing damage to filters and requiring extensive clean up. Many also complained about water in their basements and damage to lawns and landscaping. The residents feel that much of the water is coming from the subdivision project on North Midland Ave. because of the amount of reddish dirt that is in the water. They feel that a road was started before retention ponds were put into place. Mr. Muhlenberg and Mr. Lee presented photos showing the amount of water in their yards and in the street. Mr. Schoenberg requested the Board view a videotape he had taken on the day of the storm. The Board agreed and the residents in attendance were able to see the heavy amount of water that was rushing through Mr. Schoenberg's property. The residents inquired what the Board could do to mitigate any further flooding.

Board members who spoke: Mayor Esmay, Trustees Malcolm & Tarapata: The Board agreed that there has been an increase in drainage issues recently. The village drainage project that was started on Larchdale was not designed to carry the amount of water that has come from the Subdivision on N. Midland. The plan may have been approved with poor data #'s from the county. The DEC has been reviewing the project and work has been stopped on at least two occasions. The Board noted that sand bags would be put in place on Larchdale but that more permanent curbing would be installed to help direct water. The Board also informed the audience that an engineering firm had been hired to do a preliminary study of the water flow into the village to get an idea of where the water was coming in and where major problem areas are. Drainage projects had been planned during budget meetings in March for projects on Larchdale, Lexow, Broadway, Oak, Maple & Centre to be completed over a period of time. When questioned, the Board also noted that money budgeted for paving is under a reimbursable state program called CHIPS and cannot be used for drainage projects. When asked if the Board should consider holding off on the DPW garage project the village had planned and put the money into drainage, the

Mayor and Trustee Tarapata noted that money has been budgeted and projected in the budget over the next few years and would be bonded. The Board told the public that they would use the engineering study as a guide and would consider hiring that firm or another to come up with a mitigation plan to address the drainage problems. The Board agreed there were infrastructure issues that they inherited and were doing their best to address them.

The Board also encouraged residents to check the village website for information, look for and read newsletters when they arrive or come to Board meetings because these were the best ways for the Board to communicate information to residents.

Mr. Wallace Beneville, North Broadway, came to inquire what was being done so the sewer pump station does not backup and overflow into the stream that runs through his property? Mr. Beneville also wanted to commend Mr. Scanlan, DPW superintendent for his quick response and all of the help he provided to deal with a most unpleasant situation. Trustee Malcolm informed Mr. Beneville that the pumps have been replaced and one reserve pump will always be available as back up.

Stephen Arena, owner of property at 530 North Highland Ave. (59.12-2-2) appeared before the Board and noted that all the offers that he has been receiving are not for office use. He continues to have difficulty trying to sell his building and property.

Mayor Esmay told Mr. Arena he would need to make a formal request to the village for a use variance. The process is to apply to the Building Inspector, get denied and then apply to the Zoning Board of Appeals for a use variance and must show hardship, make a case for a piece of property that he cannot sell.

Trustee Tarapata made a motion to allow Trustee Malcolm to proceed and finalize the lease with the Nyack Joint Fire District on the Board's behalf and with advice and counsel from Village Attorney Lewis, seconded by Trustee Smith and so moved

Trustee Tarapata made a motion to adjourn seconded by Trustee Smith and so moved.

The meeting was adjourned at 9:30 PM.

Respectfully submitted,

Carol G. Brotherhood  
Village Clerk