

SPECIAL MEETING
January 29, 2004

A Special meeting of the Board of Trustees of the Village of Upper Nyack was held at the village hall on Thursday, January 29, 2004 at 7:00 PM.

Those present: Mayor Michael Esmay

Trustees: Peter Malcolm

Vincent S. Morgan

David J. Smith

Karen Tarapata

Village Clerk: Carol G. Brotherhood

Village Attorney: Robert P. Lewis, Esq.,

Others identified: Robert M. Helmke, William McDowell, Alan Englander, Frank & Irene Armbruster

PUBLIC HEARING – “Land Clearing Operations and Tree Preservation”

The Mayor opened the public hearing and asked the clerk to read the public hearing notice.

Mayor Esmay noted that the Board is proposing this law to prevent wholesale cutting of the trees in the Village. The Board would like to control the cutting of mature or large trees or clearing of land prior to Planning Board approval. Mayor Esmay's opinion is that some trees should be saved because of size and beauty. This law allows for at least a chance of review prior to trees being cut.

He also noted that Trustee Tarapata had worked on this proposed law in conjunction with the Planning Board on and off for several years.

Mayor Esmay opened the public hearing.

Mr. Armbruster, Upper Lexow asked if this would be the only public hearing and if there would be a referendum.

Mr. Armbruster was told usually there is only one public hearing unless there is a need to continue and there would be no referendum.

Trustee Tarapata told some basic points of the law. 1) Clearing of more than 1000 sq. ft. is subject to review. 2) A building permit may be needed 3) Dead trees would be not be a problem to remove 4) A key goal is to avoid the clearing of land before a site plan review by the Planning Board.

Public who spoke:

Frank Armbruster, Irene Armbruster, William McDowell, Alan Englander, Robert Helmke

Trustee Malcolm wanted to know what was the concern of the public?

The Armbrusters wanted to know if their neighbor would be able to top a tree or remove a tree to give them the view they now enjoy.

Trustee Tarapata noted that trees removed must be based on a professional opinion.

Mr. Englander and Mr. McDowell wondered about decaying trees on private property. Mr. McDowell wondered if the Village of Upper Nyack has a public safety responsibility on private property as well as public. Mayor Esmay thought that dangerous trees on private property may be under another law.

Mr. Armbruster questioned "Why this law and why now?"

Trustee Tarapata stated that Planning Board member Ellen Simpson had collected land clearing and tree preservation laws from all over the country and had given them to Trustee Tarapata for review. There was great concern about property owners who go in and cut down trees before they have an approved site plan from the Planning Board.

Trustee Morgan noted that trees play a critical role on slopes to hold soil in place making it safer for properties below.

Robert Helmke, North Broadway, felt that the law seemed like too much control on private property.

When questioned about the notice of this meeting, Trustee Tarapata stated that the notice was in the newsletter, on our website and in the legal notice section of the Journal News newspaper. Mayor Esmay noted that the Board had been working on this law for two years.

Robert Helmke, North Broadway, also noted he understood the need for a building permit for a house or pool but if he wants to cut wood to heat his

house, doesn't feel he should have to pay a fee or replace the trees he removes.

Mr. Armbruster noted that he feels trees are not always good. They can trap moisture and cause damage.

Mayor Esmay and Trustee Tarapata noted that their discussions were based on provisions in other codes.

Mr. Armbruster wanted further discussion by the public before this law is passed.

William McDowell, Old Mountain Road, thought that it was excellent to consider tree removal during the planning stages to preserve trees but it is excessive and prohibitive on private property. It is also excessive to require a homeowner to have to plant more trees.

Trustee Malcolm noted that the law is meant to be protective not restrictive.

Alan Englander, Lexow Avenue, thought there should be a discussion of the appeals process in terms of having to plant more trees. Replacing one tree with two may be excessive.

Mayor Esmay noted that there may be mitigating factors and there would be an appeals process since this is part of the zoning ordinance.

The Village Clerk read into the record a letter received from Lawrence and Tracy Alpern, Birchwood Avenue.

Mayor Esmay kept the public hearing open and moved to discussion by the Board.

The Board discussed mitigating factors, prevention of mass clearing of trees, and significant trees. When polled by the Mayor each Trustee noted their opinion as follows:

Trustee Malcolm: May need to be difference for developed and undeveloped land with different guidelines for each. Not ready to vote on it at this time.

Trustee Tarapata: While it may need to be modified in the future, ready to vote on it tonight.

Trustee Morgan: Unless there were some modifications, not ready to vote on it tonight.

Trustee Smith: In favor of the law but after the discussion tonight may need to be some modification of “significant tree” and land that is already developed.

Trustee Tarapata noted that maybe the Board could decide to lower the fee but keep the penalty high for someone who does arbitrarily cut down a tree.

The Board considered keeping the public hearing open and continuing the discussion, creating guidelines for the Forester, tweaking the law with regards to canopy, amount of density, species in a location.

After careful consideration and comments by the public, the Board decided to continue the hearing.

Trustee Smith made a motion to continue the public hearing concerning Local Law #2 of 2004 with the hearing held open to February 12, 2004 at 7:00 PM, seconded by Trustee Tarapata and with no further discussion, it was unanimously approved.

Trustee Tarapata made a motion to hold a workshop on February 5, 2004 to discuss this law further and invited the public to attend, seconded by Trustee Malcolm and so moved.

Trustee Tarapata made a motion to set a public hearing on February 12, 2004 for a new section to be added to the General Ordinance that is currently known as “special considerations” under Land Clearing Operations, seconded by Trustee Morgan and so moved.

Village Attorney noted that in order to bring the Zoning Ordinance of the Village of Upper Nyack up to date with New York State Village Law a new section needs to be added.

Trustee Morgan made a motion that the Board hold a public hearing on February 26, 2004, to consider Local Law #5, 2004 by adding a new section 17:4 to the 1962 Zoning Ordinance of the Village of Upper Nyack, seconded by Trustee Tarapata and with no further discussion it was so moved.

The Clerk was instructed to provide all Board members with copies.

ABANDONMENT OF EASEMENT - Trustee Smith noted that there was a 25ft easement for highway purposes on Upper Lexow behind four houses that are on Hilltop Lane and Hilltop Drive. (Hilltop Lane: Smith and Stone/Hilltop Drive: Stein and Kintish) A map from 1961 shows the easement.

Village Attorney Lewis noted that he has signed letters from each of the property owners asking that the village abandon it so it may be removed from their deeds. Mr. Lewis noted that highway and abandonment law do not apply. Issues to be considered are the extent of the right-of-way, access to the property on the west, rights of other property owners along the private road (Upper Lexow), affect on the value of the properties especially if they try to sell.

Village Attorney Lewis noted that a quit claim deed must be signed.

Trustee Smith recused himself from all discussion and voting on this matter and would only provide information if requested.

After much discussion, Trustee Malcolm made a motion that the Village of Upper Nyack abandon the 25 ft easement for highway purposes for county tax ID Map 60.9 – section 1 and lots 35, 36, 37 and 49, seconded by Trustee Tarapata.

Discussion: Trustee Morgan feels it could bring potential harm to the village and may be precipitous. Not convinced based on the information.

Trustee Malcolm withdrew his motion until review of the map from the Guteral subdivision.

William McDowell, Old Mountain Rd., came before the Board to discuss a situation regarding his property. 150 feet in front of his property is macadam, not concrete. Why are his neighbors exempt from snow removal and get their “pathway” (also macadam) cleared?

Mayor Esmay noted that the sidewalk he mentioned will be replaced. After discussion by the Board the following was noted:

- 1) The DPW will be asked to not pile snow on the sidewalk and to drive slower when snow plowing
- 2) Property owners will be asked to shovel the pathway. Letters will be sent.

As there was no further business, Trustee Malcolm made a motion to close the meeting at 10:15 PM and Trustee Smith seconded and it was unanimously carried.

Respectfully submitted,

Carol G. Brotherhood
Village Clerk