

**The Board of Trustees of the Village of Westhampton Beach held their Regular Meeting on Thursday, April 2, 2009 at 7 p.m. in the Municipal Building, 165 Mill Road, Westhampton Beach**

**PRESENT: Mayor Conrad Teller  
Deputy Mayor James Kametler  
Trustee Toni-Jo Birk  
Trustee Joan Levan  
Trustee Hank Tucker**

**Clerk Treasurer Kathleen McGinnis  
Village Attorney Hermon Bishop**

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Mayor Teller opened the meeting with the Pledge of Allegiance.

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**PUBLIC HEARINGS:**

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**Local Law to amend Zoning Code Chap.197 HC District – Contractor’s Office**

Mayor Teller explained that this local law was being tabled.

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**2009-2010 Tentative Budget**

Mayor Teller thanked the Village Clerk, the Village Board of Trustees and the department heads for all of the help they gave in putting this budget together.

Village Clerk Kathleen McGinnis explained that this year when the budget process was started, we had some challenges because as we had observed during the course of the year already, we knew that some of the revenue was decreasing, the mortgage tax receipts were less than we had normally received in the last few years. So, during the course of the year when we started the budget, we also asked the department heads to reduce spending and to focus in on just the necessary items and they were all very cooperative. This year we were able to reduce our budget substantially and trim the budget by \$394,191, so our proposed spending is \$8,928,697. We felt going forward, since revenue had declined during the year and all of the other municipalities are dealing with these declining revenues, we reduced what we were anticipating next year in order to make sure that the budget would be very conservative and we wouldn't encounter any shortfalls. This year, our levy, which is really the bottom line for the taxpayers – the total amount of money that we are going to be charging the taxpayers – is \$7,058,497, and that is really a \$5,234 increase totally, from last year. So, we were really very cognizant of not burdening the taxpayers, particularly in this economic crisis. Also, this year, some people will be happy to know that assessments are actually going down and rather than this year having increased assessments, we actually lost \$52,000,000 dollars in assessments. She said that meant that a lot of people are also happy, because their individual assessments are going down. Totally, because of the assessed value and because of the reduction in spending, we were able to bring in a tax rate of \$2.44 per thousand of assessed value. That is only an increase of 4.6 cents from last year's rate and it is a minimal increase of less than 2%. She felt the Board had worked very diligently, they had many sessions and many runs of the budget. She thought it was a very tight budget, but a very conservative budget and the Village should be fine next year.

Mayor Teller asked if anyone would like to address the Board regarding the tentative budget.

Harris Palmer, 69 Beach Road, remarked that circumstances in the economy have changed remarkably since a year ago when the current year's budget was prepared. He asked how the Village was doing this year compared with the budget.

Mayor Teller responded that we are just squeaking through.

Mr. Palmer asked if that meant that we would be within the overall budget without dipping into or adding to surplus of any kind.

Mrs. McGinnis said yes, the Village is absolutely not dipping into surplus and we should be fine.

Mr. Palmer asked if there were any major shifts that one might identify in the budget where maybe some department came out ahead that offsets another department that is not doing as well as budgeted.

Mrs. McGinnis explained that this year when we began the fiscal year, we actually had a budget for three additional police officers that we knew were retiring, so we were able to plan on that and we have replaced the three that left with one. So, we did have a nice buffer with the police department. We started with the salary line being down over a hundred thousand dollars, which was very good with absorbing step increases. During the course of this year, we did have relatively higher litigation costs, but we were certainly budgeted for it and we seem to be fine. She did not feel we were dipping into any reserves, we are not gaining any reserves, but we are adequately funded and we meet all of the state guidelines.

Mr. Palmer said they had done a good job and thanked the Board and Mrs. McGinnis.

Victor Levy, 58 Beach Road, said that regarding the litigation line, he knew we have had two items this year that ran up the litigation bills pretty high and he assumed the majority was the Muchnick issue and the.....

Village Attorney Hermon Bishop responded that Muchnick was one and that they were still in litigation on the Suffolk Asphalt Plant. He said we had just won two appeals on that, so we will be proceeding to quick discovery and hopefully a trial on these issues, the determination of the pre-existing use. He said that judging on just the potential exposure or litigation costs that might confront the Village, it was his recommendation that this amount of money be set aside for next year.

Mr. Levy thought that the results of the New York State Retirement System investments were probably somewhat devastating, as the rest of ours are. He asked if that would increase our costs any particular amount.

Mrs. McGinnis explained that from what she was hearing, the Village will probably expect increases in 2011, it is going to take a while. She said the fact that we had retirements, our estimated bill for the payment that we will be making in December is actually less because those people are done and off what we owe. She said they are predicting that in 2011 we will see the results of what these losses will cost the Village.

Mr. Speir asked what the two cases were that Mr. Bishop had mentioned earlier.

Mr. Bishop responded that Muchnick was one and the Suffolk Asphalt Plant litigation is still continuing and that is vigorously proceeding. He reiterated that they had just won two appeals on that so, hopefully they will be proceeding to trial. He said that as far as any other specific items that may he may foresee with respect to the legal requirements of the Village, he would not like to go into the specific names right now. He said he was trying to estimate what he thought the legal costs were going to be. There are other issues out there as well, so this was his recommendation that this be the budget line for this year.

Mr. Speir asked in respect to Muchnick, if that was over now or have they preserved their right for an appeal.

Mr. Bishop replied that they had not filed an appeal and their time to appeal is over. So, that is done, except the Village is investigating seeking legal fees.

Mr. Speir complemented Mr. Bishop and the Board on that. He felt that was an excellent idea.

Mr. Bishop said the Village had paid out approximately \$67,000 on Muchnick and they were investigating whether it would likely be successful or not attempting to get those fees back. He felt in his opinion there were some grounds, but they would be exploring that.

Mr. Speir asked if the Hazelwood Avenue litigation was done.

Mr. Bishop responded that it was all done. He said the Judge hadn't rendered a final decision, there is a stipulation of all parties with respect to the Village, but this Judge has decided to hold off an agreed to judgment until all of the issues of all of the parties are decided.

Mr. Speir asked since this was not agreed to by all parties, if this was an opportunity to go back in and seek a greater piece of the.....

Mr. Bishop said they had already stipulated to the amount, the settlement sets forth what the amount is. There is a stipulation of settlement that has been executed by all of the parties. The only thing that was left, and this was a little vague in the Southampton Press, the only thing that is left for this stipulation to be what is called "so ordered" So ordered means that the Judge actually turns that stipulation into an order and if there is any violation of that stipulation, you can hold a person in contempt of court. We don't know what the Judge is going to do. He may impose greater sanctions. You can't tell what a Judge is going to do until he actually renders his decision.

Mr. Speir asked if you can petition on that particular aspect of it.

Mr. Bishop said no, once you settle a case..... there is a section of law that says you can't file a frivolous law suit, or law suit that isn't supported by the law. It used to be both the facts of the law, but now the rule has been changed to it can't be supported by the law or any extension thereof. So, the question is, was that lawsuit filed against the Village supportable by law and sanctions are very rarely given, attorneys fees are very rarely given and we reached an agreement with them and all parties agreed to the damages that were set forth in the stipulation of \$10,000.

Mr. Speir said he was trying to read one line under Public Safety – Police Department Overtime – for last year was \$79,000 and for this year it was \$73,000. He asked if he was reading this correctly.

Mayor Teller stated yes, last year we had a gentleman on the Task Force, so we paid for his time while he was on the Task Force and he is back working here again.

Mr. Speir asked if that was why we were able to take three and make them one. He asked if the department is still reasonably whole.

Mayor Teller said that was so.

Mr. Speir asked if the Board was planning on voting on the adoption of this budget this evening.

Mayor Teller responded yes.

Mr. Speir said he felt it would be nice if we had more time to really study it before it is finalized.

Mrs. McGinnis stated the budget has to be adopted by May 1<sup>st</sup> according to state law.

Mr. Speir felt it could be adopted at the Work Session at the end of this month.

Mayor Teller asked if anyone else in the audience would like to address the Board regarding the proposed budget. There being no further response, he made a motion to close the public hearing. Seconded by Trustee Birk and unanimously approved. 4 Aye, 0 Nay

Motion by Trustee Birk:

WHEREAS, the Village Clerk Treasurer has presented to the Board of Trustees a Tentative Budget in compliance with the requirements of Section 5-508(1) Village Law; and

WHEREAS, the Trustees have had a chance to review said budget and to conduct a public hearing on the Tentative Budget in accordance with Section 5-508(1) on April 2, 2009; and therefore be it

RESOLVED, that, without further change, alteration, or additions, the Board of Trustees hereby adopt the 2009/2010 fiscal year tentative budget in its current form.

Seconded by Trustee Kametler and unanimously approved. 4 Aye, 0 Nay

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**Resolutions:**

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**Accept minutes of Board of Trustees Meetings**

Motion by Trustee Tucker:

RESOLVED, that the minutes of the Board of Trustees meeting of March 8, 2009 are hereby accepted.

Seconded by Trustee Kametler and unanimously approved. 4 Aye, 0 Nay

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**Accept Departmental reports**

Motion by Trustee Kametler:

RESOLVED, that the Treasurer's report for February 2009, Justice Court, Police Department and Building Inspector reports for March 2009, are hereby accepted.

Seconded by Trustee Levan and unanimously approved. 4 Aye, 0 Nay

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**Accept final assessment roll received from Town of Southampton**

Motion by Trustee Levan:

RESOLVED, that the final assessment roll for the Village of Westhampton Beach dated April 1, 2009 provided by the Town of Southampton Sole Assessor and the minutes of the February 17, 2009 Village Grievance Day are hereby accepted.

Seconded by Trustee Birk and unanimously approved. 4 Aye, 0 Nay

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**Approve Five Borough Bicycle Club use of Village Marina**

Motion by Trustee Tucker:

RESOLVED, that the Five Borough Bicycle Club is hereby authorized to use the Village Marina as a rest stop during the annual Montauk Bicycling Event to be held on Sunday, May 17<sup>th</sup> from 6.a.m to 6 p.m. and to install temporary restrooms.

Seconded by Trustee Birk and unanimously approved. 4 Aye, 0 Nay

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**Approve Mallot Club use of Village Green**

Motion by Trustee Birk:

RESOLVED, that the Mallot Club is hereby authorized to use the Village Green on Saturday, June 13, 2009 between 4 p.m. and 7 p.m. to hold an Introduction to Croquet program.

Seconded by Trustee Kametler and unanimously approved. 4 Aye, 0 Nay

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**Authorize SH Town Parks Dept. "Movie Night"**

Motion by Trustee Kametler:

RESOLVED, that the Town of Southampton Parks & Recreation Department is hereby authorized to hold the "Annual Movie Night" on the Great Lawn on Monday, July 20, 2009 from 6:00 p.m. to 11:00 p.m.

Seconded by Trustee Levan and unanimously approved. 4 Aye, 0 Nay

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**Approve Riverhead Kennel Club use of Village Marina for Dog Show**

Motion by Trustee Levan:

RESOLVED, that the Riverhead Kennel Club is hereby authorized to use the Village Marina on May 9<sup>th</sup> between 8 a.m. and 4 p.m. to hold an all breed match dog show.

Seconded by Trustee Birk and unanimously approved. 4 Aye, 0 Nay

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**Approve Special Olympics NY Run use of the Village Green**

Motion by Trustee Tucker:

RESOLVED, that Special Olympics New York (Long Island Region) is hereby authorized to use the Village Green to hold a fundraising race on Saturday, April 25<sup>th</sup> between 8:30 a.m. and 1 p.m.

Seconded by Trustee Birk and unanimously approved. 4 Aye, 0 Nay

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**Authorize renewal of Beach Bakery Café outdoor tables permit**

Motion by Trustee Birk:

RESOLVED, that the Board of Trustees hereby approve the renewal of the Beach Bakery outdoor tables permit for 2009 subject o the conditions as set forth in the Determination dated October 2, 2008, the plan date stamped August 7, 2008, and the applicable provisions of Chapter 196 of the Village Code,

Seconded by Trustee Kametler and unanimously approved. 4 Aye, 0 Nay

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**Authorize renewal of Beach Bakery Café outdoor music permit**

Motion by Trustee Kametler:

RESOLVED, that the Board of Trustees hereby approve the renewal of the Beach Bakery outdoor music permit for 2009 subject to the conditions as set forth in the Determination dated May 24, 2006 and the provisions of Chapter 196-2 of the Village Code.

Seconded by Trustee Levan and unanimously approved. 4 Aye, 0 Nay

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**Appoint Carol Matthews as 2009 Election Inspector**

Motion by Trustee Levan:

RESOLVED, that Carol Matthews is hereby appointed as an Election Inspector to perform the official duties of the Village General Election to be held on Friday, June 19, 2009 and to be compensated at the rate of \$12.50 per hour.

Seconded by Trustee Birk and unanimously approved. 4 Aye, 0 Nay

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**Renew Southampton Town Home Improvement Licensing Agreement**

Motion by Trustee Tucker:

RESOLVED, that the Mayor is hereby authorized to execute the renewal of a cooperative agreement with the Town of Southampton to permit the Town to administer a Home Improvement Contractor Licensing program for the Village pursuant to Chapter 75 of the Village Code.

Seconded by Trustee Birk and unanimously approved. 4 Aye, 0 Nay

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**Accept resignation of part time Fire Marshal Richard Tebaldi**

Motion by Trustee Birk:

RESOLVED, that the Board of Trustees regretfully accept the resignation of part time Fire Marshal Richard Tebaldi effective March 23, 2009.

Seconded by Trustee Kametler and unanimously approved. 4 Aye, 0 Nay

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**Authorize renewal of Funcho’s Fajita Grill outdoor dining permit**

Motion by Trustee Kametler:

WHEREAS, Funcho’s Fajita Grill has applied to renew the Outdoor Tables and Chairs Permit to place five (5) outdoor tables and twenty (20) chairs pursuant to Section 196-1 of the Code and

WHEREAS, there were no incidents or reports filed with the Police Department concerning said use, and therefore be it

RESOLVED, that the Board of Trustees hereby authorizes the placement of outdoor tables and chairs as shown on the original plan and subject to the same set of conditions.

Seconded by Trustee Levan and unanimously approved. 4 Aye, 0 Nay

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**Authorize renewal of Tonino’s Pizzeria outdoor dining permit**

Motion by Trustee Levan:

WHEREAS, Tonino’s Pizzeria has applied to renew the Outdoor Tables and Chairs Permit to place two (2) outdoor tables and eight (8) chairs pursuant to Section 196-1 of the Code and

WHEREAS, there were no incidents or reports filed with the Police Department concerning said use, and therefore be it

RESOLVED, that the Board of Trustees hereby authorizes the placement of outdoor tables and chairs as shown on the original plan and subject to the same set of conditions.

Seconded by Trustee Birk and unanimously approved. 4 Aye, 0 Nay

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**Approve April 2009 warrant**

Motion by Trustee Tucker:

RESOLVED, that the warrant for the month of April 2009 in the amount of \$178,844.04 for the General Fund is hereby approved.

Seconded by Trustee Birk and unanimously approved. 4 Aye, 0 Nay

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**Public Discussion**

Mayor Teller asked if anyone would like to speak.

Simon Jorna, of the Beach Bakery, asked if his outdoor seating and outdoor music had been approved.

Mrs. McGinnis explained that the way it was approved is the Board was renewing what he always had.

Mayor Teller added that the only other thing the Board would probably do is match up the dates when somebody else comes in requesting outdoor music, so there is no major conflict.

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Victor Levy, 58 Beach Road, congratulated the Board on the budget being so tight and for keeping it down so much. He said he assumed the Board would not be going ahead with any changes in the outdoor music, since they are now approving the applications.

Mayor Teller said they were going to ascertain whether there was a way to sufficiently check the amplifiers, but they had found out from the school, forget it, even the practice ones can be cranked right out of the rooms. So, they are going back to the paperwork and just doing a little tightening up on that. He said the Village doesn’t have too many complaints. We only have one real complainant and it was his understanding that he may have moved.

Mr. Levy felt the noise regulations were very, very difficult and he was actually glad to see the Board staying where they are. He said the only other question he had was that some time ago, about a year or so ago, there was going to be some re-written sign

ordinance produced and he was wondering where that had ended up. He felt that was never an easy thing to do.

Mayor Teller responded that it was close to being done.

Trustee Tucker said the committee was going to be reconvening in the near future. He said that Paul, Bridget and himself have taken the Village Planner Kyle Collins' recommendations based on what they have discussed at the committee meetings and they have put it into a format whereas now the committee members will be able to go out and view exactly what has been discussed in the committee meeting and see with everything they have talked about, they will be able to go out and picture it on Main Street and all of the various districts, B1, B2 and B3 and the HC. That way, we will be able to come to conclusions about some of the new things we have been looking at adding or just keeping things the same, that is for the committee to decide. Now that the trees will start blooming again, it is actually a better time. Because when you look at businesses, especially retail store on Main Street without the trees in bloom, it is very difficult when you are walking up and down the street and/or driving down the street to get a feel for exactly what something would look like. They should be able to see it now or all winter without the trees in bloom, but you won't necessarily be able to see that with the trees in bloom. He said that is where we are at now.

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Dean Speir, 256 East Main Street, wanted to get back to discussing the litigation. He said he had noticed what or who is at the root of several of these law suits and he was wondering if the Village had given any further thought to the formulation and adoption of an ethics code.

Mayor Teller stated they were working on it.

Mr. Speir felt that was pretty open ended and asked how close they were.

Mayor Teller responded he had discussed it with the Village Attorney and given it to him, but they were not that close as of yet. He said they had just started it.

Mr. Speir said he could understand that Mr. Bishop had other things on his desk.

Mayor Teller said yes, Mr. Bishop had been involved in other things that had been going on in the Village.

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Bill Bennett, 7 Parlato Place, wished to thank the Board and Highway Superintendent George Gordon for putting an osprey nest up in the Yacht Basin. He felt that it was beautiful and people will be able to watch the birds. He said he had one, but he had to take it down because he was too close to Main Street, they wouldn't come up there last year because it was too cold off the canal. He said if there was anyone in the Village who lives near the water, they can have it.

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Simon Jorna said he was surprised that no one asked him what kind of tables and chairs he was going to put out. He asked if he wanted to put out bright pink plastic chairs out and a Heineken umbrella, could he do that. He said he would not do that, but he was afraid that some people will do that. He felt that the outdoor seating should be approved by the Architectural Review Board or a little more closely by the Planning Board.

Building Inspector Paul Houlihan explained that the first time Mr. Jorna had applied for this permit, they did specify the type of tables and chairs, but because there had been no problems with him, the Board does not go back through it again. They would only look at it again if there had been problems.

Mr. Levy added that when he was on the Planning Board they had given Mr. Jorna specifications.

Mr. Houlihan said those specifications are still being referred to, but since Mr. Jorna had been doing such a good job with this and there had been no problems, they were still going by the original specifications.

Mayor Teller asked if anyone else would like to address the Board. There being no further response he made a motion at 7:35 p.m. to adjourn the meeting to Executive Session. Seconded by Trustee Birk and unanimously approved. 4 Aye, 0 Nay

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Respectfully submitted,

Christine Owen  
Deputy Clerk