

The Board of Trustees of the Village of Westhampton Beach held their Regular Meeting on Thursday, February 5, 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**

Mayor Teller opened the meeting with the Pledge of Allegiance.

Presentation – John Valente, Town of Southampton Assessor’s Office

John Valente, Senior Appraisal Systems Analyst for the Town of Southampton, gave a presentation regarding tax assessments in the Village (see attachment). He explained that his job with the Town is to do real estate analysis and trending analysis analyzing data over time. He said he has been in the appraisal business for about thirty years. He explained that the key issues they deal with in assessment are market value, assessment and the data value. He said all of those were critical to understanding your assessment and your taxes for your property. Market value in simple terms is the most probable selling price. It is not the highest or lowest price, it is the most probable or typical price a property would demand of a specific date. Assessments in the State of New York by the Office of Real Property Services must be between 95% and 105% of the weighted mean of all valid sales. He explained that mean is another word for average and the word weighted means they are trying to exclude the extremes. He said the date of value we are talking about for Southampton is July 1, 2008. Our standards are set by the Office of Real Property Services, as well as we are judged by that group as well. Our data is reviewed, the data for the Village of Westhampton Beach as well as for Southampton Town is reviewed every year to make sure it is accurate and reliable. He said these are the goals they have in Southampton Town and every community in New York has. Data has to be done and calculated precisely. He said you can't make mathematical errors and say it is okay, it has to be reliable and you have to be able to replicate the assessment process over and over and over again on multiple properties. It has to be equitable, which is a very key term. It has to be impartial. You can't have one side of town being over assessed and the other side of town being under assessed. It has to be equitable among all residents. It has to be fair and reasonably applied. It has to make sense. The last key point is that it has to be valid. He explained that the way they judge whether it is valid or not is to do some statistical measures. He said that timing is everything. In New York, all real property appraisals are retrospective, they are backwards in time. We are not looking forward in time. The values that are established on your tax roll in Southampton Town and in Westhampton Beach are historic values. They are not present day values. They are not reflective of what happened yesterday or two months ago or three months ago. They are reflective as of a specific date in time, which for us is July 1, 2008. He said he had looked for things that were said in July 1, 2008 about the real estate market in Westhampton Beach and in the Hamptons. He said these words and terms seem very odd to us now reading them, but this is what people were saying then. "It is showing stability this quarter". Prudential was saying that in July of 2008. Suffolk Research was saying, "The sales are down by 38%, however, the median price is going up by 1% roughly". "The luxury price homes are going up by 13.8%." "Some markets drastically increased in some neighborhoods but decreased in others." "Sag Harbor Village prices jumped 56.5%." That was Town and Country Realty in June 2008. The last statement by the Corcoran group was "the rental market has been phenomenal – there are a lot more people who want to be here than last year". Mr. Valente said he was sure that these statements would not be said today, but that was what they have to deal with when they value these properties – these statements are perspectives of the time. We look at what people say, but we analyze statistics to see what they actually did. What did they do when they bought property – how much did they pay for them. What was the relationship of selling price to our assessments. How accurate was the Town in coming

up with value – how reliable was the Town over time in coming up with the accurate value for that property, accurate assessment in relation to what it sold for? He said they look at a bunch of statistics. He showed the weighted mean for Westhampton Beach over time, over twelve months. He said that Westhampton Beach is roughly at 97.8% of value, so at that time, if you look at the assessments in relation to what the properties were selling for, the Town is roughly at 98% of value, which is within the standards of the Office of Policy and Research. He said they also have something called the price related differential at 1.019. The price related differential has to do with that bias and impartiality issue he had mentioned earlier. He said that if you have a number of over three, 1.03, 1.04, 1.05, it means you are really under-assessing expensive homes. That is called regressivity. He said that we are very close here to one, so we have passed the test. He said that means that in Westhampton Beach, we are not under-assessing expensive homes or over-assessing inexpensive homes. He said the last test is something called a coefficient of dispersion. He said that when you were in school, you used to average up numbers and come up with a great answer and it looked like the average was okay. But, the extremes were so huge and it really didn't make much sense. So, that is why there is this test called coefficient of dispersion and this is staying roughly within ten per cent of the mean, so it makes sense and is reasonable. He said the Village of Westhampton Beach has met the criteria for the State of New York based upon that data and statistics. There is a standard for COD, that dispersion around the mean is supposed to be at fifty or less and the Village is at ten and a half, roughly. There is the PRD, price related differentials, between 98 and 103. In those cases, Westhampton Beach has passed for that time period. He showed a trend line and said that they kind of visually look at things frequently to see if it makes sense again. He said there was a line of one, one meaning we are exactly on the assessment. Every time a property sells, if it is always at one, it means the assessment equals the selling price. Of course, there would be some weightiness here. These are the actual selling prices plotted over time in Westhampton Beach. Most are going below one, a few are going above one. He said the red line is a trend line, it is a predictor. He felt it looked as though from that predictor line, the values are pretty much level and even. In other words, they haven't changed over time, there hasn't been any substantive change in Westhampton Beach through that twelve month period. He said that if we were experiencing a declining market during that time, the assessments would start out below one and then they would start to go up, because here your assessments would be above what the properties were selling for. He said we don't want that – that's not fair, that's not equitable, if someone's assessment is above what it is selling for. He said that was not happening in Westhampton Beach, based upon the data we saw for that twelve month period. He talked about equitability, showing hypothetical examples on the attached presentation sheets. He stated that we have fair and equitable assessments in the Village of Westhampton Beach, based upon the statistics they reviewed for that period of time.

Village Clerk Kathy McGinnis indicated the Village would be holding Grievance Day, Tuesday, February 17th from 1 pm to 5 pm and that Mr. Valente would be coming for several informal sessions where he can meet one on one to help people and explain their assessments and help them to organize what their issues would be that they need to articulate.

Mayor Teller asked if anyone had any questions for Mr. Valente.

Dean Speir, 256 Main Street, asked regarding the coefficient of dispersion, if you are using a weighted system where you throw out anomalous highs and lows, then what value is the coefficient of dispersion.

Mr. Valente responded that you don't throw out all of them. You still keep some in. You throw out 2½ per cent in the top and 2½ percent in the bottom, so you are throwing out 5% of the samples, so you still always have a dispersion, it always exists unless everybody was exactly at one. You are going to have some dispersion around some number.

Mr. Speir said he understood that, but if you are throwing out the highs which you consider anomalous and the lows that you consider anomalous, that is of course going to bring everything closer to a coefficient of dispersion of one.

Mr. Valente said that is right, it does, but it doesn't bring it all the way down. You're talking about selling prices over time that can be between.....

Mr. Speir stated he was talking about Mr. Valente's graph and his explanation of what the weighted was in the coefficient of dispersion is. He said he was just wondering what the.....

Mr. Valente said that maybe he had misspoken or had misled him, but a weighted mean does not get rid of dispersion at all. It tries to get rid of the dispersion, is its intent, but it doesn't do that. That is why you do a coefficient of dispersion test.

Mr. Speir asked Mr. Valente just off the top of his head, what would the coefficient of dispersion be without a weighted mean.

Mr. Valente said the weighted mean does not influence the coefficient of dispersion. It is a different test. You add all the numbers up and it comes up with a weighted mean answer. If you did a mean, in that case instead of it being 10½ per cent, it might be 11 or 12%, it might be pushed by the numbers on the end, but it doesn't affect the coefficient dispersion. He said that removing the sales from the top and the bottom, yes, that affects the coefficient of dispersion. If you didn't remove those, you might have a coefficient of dispersion of 13 or 14%, but it still is below the standards that are required by the Office of Real Property Services of 15%.

PUBLIC HEARINGS:

Local Law to amend Zoning Code Chap. 197-10 Freeboard Height/Pond Point

Mayor Teller opened this public hearing and asked if anyone would like to address this issue.

Village Attorney Hermon Bishop explained that this was a local law to amend the height law in the R5 zoning district, which is the Pond Point area. He said that under the present law, dwellings can be two story in height and 20 feet above base flood elevation. Because of a recent change in the residential codes of the State of New York, they have required an addition of two feet of what they call freeboard and the buildings have to be located two feet higher than what was required. Therefore, houses will only be allowed to be 18 feet in height instead of 20 feet in height they are permitted now. By reason of that, this change merely allows the house to go to 20 feet and add an additional 2 feet to account for the additional freeboard the residential code requires. The houses will be the same size and it will not affect the height of other dwellings in the Dune Road area. They are still going to be 44 feet above mean sea level, so nothing changes with them.

Deputy Mayor Kametler asked if this was only the R5.

Mr. Bishop responded it was, this is the Pond Point area.

Mayor Teller asked if anyone in the audience would like to address the Board. There being no response, he made a motion to hold this hearing over to the March 5, 2009 meeting. Seconded by Trustee Birk and unanimously approved. 4 Aye, 0 Nay

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

Mr. Bishop explained that this deals with four amendments of the zoning code. The first section deals with changing the table of uses to include the Hamlet Commercial Residential District and to list all those uses in the appendix of uses. The Hamlet Commercial Residential District was created to provide a buffer between residential

properties in residential zones and the more least restrictive B1 business district zone, the uses that you see on the Village business district on Main Street. This amendment just lists all the uses that are permitted in the HC and the HC District allows all of the uses that are permitted in the B1, so all the uses that are permitted in the B1 District are permitted in the HC District. The only difference between the uses and the districts is that the setbacks in the HC District are greater. The difference between the two, also, is that in the B1 District, it does not allow residential uses. Residential uses are allowed in the HC District and that is why it is a buffer between the residential and the B1. The plan wants to permit residential uses in that district. The second portion of this law is to add a provision for accessory structures for residential uses in the HC zone. The third portion of the local law deals with distinguishing between a general and special contractor's office and a general and special contractor's administrative office. In 1999 there was a business district study which did not discuss contractor's offices at all, so as a result when they passed the ordinance changes in 1999, contractor's offices were not permitted. In 2003, an application came to the Board from Westhampton Glass. They said they wanted to have a contractor's office, their office, on Riverhead Road. The Village Board, at that time, said it was an appropriate use, we did not know why we didn't really allow this type of use into our ordinance when it changed in 1999, so they allowed general contractor's, they called it an administrative office then, but it was basically a contractor's office as we are defining it now. Since that time, there has been a plumber's contractor's office, there has been a roofing contractor's office and the Westhampton Glass contractor's office. The proposed code distinguishes between the two types of uses. The contractor's/administrative office relates only to the administrative aspects of the contractor's business, i.e., secretarial services, accounting, bookkeeping, storage of records, clerical functions, meeting with clients, those are all allowed in the contractor's administrative office. It does not include the meeting place of laborers, tradesmen, subcontractors, nor does it allow the storage of materials or equipment that relate to the contractor's business. It will be permitted in the business districts, subject to the special exception approval. The third part of this law is to enact conditions for approval and one of the conditions is the parking of any vehicle on the site cannot exceed 8,000 pounds or 20 feet in length. The second condition is that the exterior/interior storage of equipment, tools and supplies are not permitted in the contractor's administrative office. Finally, there can be no overnight parking of the contractor's vehicles or the employee's vehicles. This type of use we are talking about is not any different than a real estate administrative office, an architect's office, a lawyer's office, insurance agency office, it is all the same. The additional purpose of the law is to make sure that if somebody says they are going to have a contractor's administrative office and therefore they may not have to provide as much parking and they are not going to have their trucks there and it is only going to be just one employee, that they won't come back later and come in with their trucks and their trailers and their equipment, because this will limit their ability to do that. He said there was a case like this in the Village not too long ago and this will eliminate that. Whatever zone it is in, it will be protected, not only by the ordinance but by the special exception standards that will have to be complied with in order to obtain approval. The fourth provision of the local law just provides that for all office uses, regardless of what type of office, there is to be one space per 250 square feet. That was pursuant to the change of the law that we did in 2007 after the updated business district study was completed and it used to be one space for 200 square feet.

Mayor Teller asked if anyone in the audience would like to ask questions or address the Board.

Elyse Richman, 78 Rogers Avenue, asked why the Board felt the need to change the law that is already set and if they have a list of all the uses that are currently allowed.

Mr. Bishop responded that the problem with the uses they have right now is a contractor's administrative office is allowed now, but the problem is that the wording of our law is so vague that it really is permitted now. If you tried to tell someone they can't have a contractor's administrative office as was just defined here, the Village would be very hard pressed to enforce that.

Ms. Richman asked if the Village would be able to enforce the contractors to not have deliveries when the other businesses can have deliveries to their stores.

Mr. Bishop stated they could still have deliveries, there was no reason they could not have deliveries. He said it was just like any real estate office or attorney's office where if you need deliveries from UPS, etc., you can have the deliveries. He said what you cannot have are trucks that exceed 8,000 pounds on the site, which is really a pickup truck parked onsite or even on Main Street. You can't have these large box trucks parked there. First, that would not be permitted in the B1 and second, that would be considered a general contractor's office, not an administrative office. It would be permitted in the B2 and B3, but that would be subject to the site plan and subject to the special exception standards for that particular use. So, it is not like we are injecting a contractor's administrative office in the B1 zone. We are just distinguishing between two uses and preventing and mitigating any adverse impact that either use would have on the surrounding area.

Ms. Richman asked if a store is retail, would they have to have a change of use to become a contractor's office and if so, would they allow that to happen.

Mr. Bishop responded that if somebody wanted to change a retail store into a contractor's administrative office, they would have to go through site plan approval, maybe a waiver of site plan, depending on if there is not very much involved and they would have to comply with the special exception standards he had just spoken about such as no vehicles over 8,000 pounds and the other ones.

Building Inspector Paul Houlihan said that most pickup trucks that an average homeowner might have are under that 8,000 pounds. When you start getting above 8,000 pounds, you start getting into those double wheeled ones, the very large ones or the box trucks. He said that when Mr. Bishop spoke of pick up/drop off he was referring to what happens in a lot of full blown contractor's offices where many workmen might assemble there in the morning, leave their cars and use a disproportionate amount of parking spaces. That is a little bit of extra protection in the B1 to make sure that this was not happening. He said the most important thing is that we are now requiring, to protect the B1 so we don't have those kind of uses down there, whatever kind of a contractor's office it is, even if it is an administrative office, they still have to come in and go before the Planning Board. That is so the Planning Board can make it clear that they can't have trucks and men and equipment there, so there won't be any misunderstanding. He said that as it is right now, there are a lot of headings in the code like general business offices and management offices that clearly might be something that a contractor would say he fits under that and he just has an office and all of a sudden he is in there. He said that now it makes it crystal clear that if you want to come into that B1 zone, we want to protect that zone, we don't want that type of full blown contractor's use, so you are going to go before a Board so there won't be any misunderstandings with it.

Deputy Mayor Kametler asked if the enforcement part going to be written into this that if it does happen the Building Inspector will be able to go down there and have a little substance to take care of that situation.

Mr. Houlihan responded yes and that is the key element of bringing the Planning Board into this to even make the administrative contractor's office in the B1 zone a special exception. He said the Planning Board always has the right to put conditions on any approval, especially a special exception approval. So, oftentimes the Village attorney puts in if there is a violation against the Building Inspector and note it and demand that the property owner or the tenant come back before the Planning Board within thirty days and that happens on some of the regular site plan approvals, so yes, there can be that wording in there.

Deputy Mayor Kametler also asked regarding the weight on the pickup trucks, if your company has six pickup trucks with your name on it, can you park them on Main Street as an advertising type situation instead of having a sign.

Mr. Houlihan replied that with a contractor's administrative office it is very specific, but certainly if someone had a pickup truck with their company name on it, we have retail establishments that have a pickup truck with their company name on it. So, we couldn't stop them from doing that.

Deputy Mayor Kametler said he knew that, but what if they had six. He said there are several companies out there that may have six or seven vehicles.

Mr. Bishop said that in a case like that, there is a question as to whether this is an administrative office or a general contractor's office. If you see something like that, you usually see other activities as well, such as sub-contractors or tradesmen coming to the premises. He said that would certainly be a trigger for us to be watching something like that carefully.

Jacqueline Sprotte, 441 Dune Road, said she was wondering as a resident how this actually helps the downtown area. She said she has probably shopped in every town and she felt Westhampton Beach has something very unique. She said felt that putting contractor's offices on Main Street was really defeating the purpose of going to the beach and then coming down and going shopping, she did not see how this helps Main Street at all.

Mr. Bishop stated that this was not putting contractor's offices on Main Street. What it is doing, is limiting what can be on Main Street. He said right now you have contractor's offices on Main Street – Fred Martin, Mr. Lettieri at Six Corners, you have Marc Stinchi landscaping contractors. They are there, they can be there. What the Village is doing is limiting the definition to prevent unfavorable uses from being in the B1 district. This tightens up the language so that if you want to have a real estate office in the B1 zone, you cannot stop them from being there. You are allowed to have an attorney's office there, you are allowed to have other types of administrative offices, but this one would be a more highly regulated type of administrative office, where the other ones are not.

Ms. Sprotte asked if Mr. Bishop had said that the Village could change the ordinance so there couldn't be real estate offices.

Mr. Bishop said you can always change an ordinance, but he thought there would be a human outcry if you said there would be no more real estate offices.

Ms. Sprotte suggested the Board just grandfather the ones that are here. She felt more retail stores and restaurants were needed in the Village because it was a beautiful town.

Mr. Bishop said that was a debate for another day. He said if you look at the new updated plan, they talk about a mixture of business uses with retail and that is what makes for a more vital downtown business area. So, this is actually part of that plan.

Elyse Richman asked why this was all of a sudden being discussed. She felt there was something more to it.

Dean Speir said there was a recent application that had to do with a small store just east of the liquor store on Montauk Highway. He asked if this proposed legislation had been in effect a year ago, would the outcome of that determination been different and is that what the Board is trying to address.

Mr. Bishop responded yes, that is exactly what this is trying to address. He said that not only do you want to be concerned about the B1 district, but you need to also be concerned about what occurs in the B2, when somebody says they are just opening up a business administrative office and they say they don't need the parking, they are going to only have a secretary and then you give them the site plan approval and two days later he comes in with his box trucks and laborers and tradesmen and parking is all over the place and you have a mess. That was the difficulty the Planning Board has faced, so that is one of the evils that this law will deal with.

Mayor Teller said that was a painting contractor, Ince Painting.

Erin Finley said she was confused because she felt they were saying that an administrative contractor's office could right now apply to be on Main Street and what the Board is trying to do is to actually limit that use so you can't have a general contractor or their laborers or their deliveries.

Mr. Bishop said that was exactly right.

Ms. Finley said she did not know what the attraction was for a contractor down there. She felt this was certainly being precipitated by somebody who obviously wants to move down there. She said her biggest question was if the Village does this and you are talking about vehicles over a certain poundage and you are talking about not allowing the vehicles spend the night and talking about not having their cars on Main Street, we discussed and discussed the fact that enforcing all of these things and policing this is already an issue. How is this one going to be any different than the music, the two hour parking, anything right now that goes on at Main Street. She said they were adding yet another thing into the mix.

Mr. Bishop replied that this was not an enforcement so much as fines. What is at stake here is their entire site plan.

Ms. Finley asked how the Village would enforce this after they had been approved.

Mr. Bishop said that what is at stake here for the owner of the business is that if he doesn't comply, he loses site plan approval and he has to get out and we can enforce that. So, specifically, if somebody parks overnight, are we going to be able to enforce that? Maybe not, that may be true. Sure, they may be able to park over night some night or a couple of nights. We don't have any restrictions on real estate offices parking overnight. What we are trying to do is to make sure that if we give these administrative offices the right to be where they are, they have to comply with the strict standards of the special exception permit provision.

Ms. Finley said she fully understood that in order to get their permit. She said she did not understand the enforcement policy after they are already in and operating and how are you going to take away somebody's site plan approval when they have now put in an office that you have approved because you say okay, now you are breaking the rules. She asked who is going to be writing this up.

Mr. Bishop responded that it would be a notice of violation. As far as enforcement, maybe Mr. Houlihan would want to discuss that, but basically, the Village has the right to enforce its ordinance and to revoke a site plan. The Village has the right to do so if any person violates any condition of site plan approval and the Village has the right to issue summonses and to collect hefty fines if they find a judge that is willing to do so.

Ms. Finley said that having the right and having the manpower and the time to do it seem like two different things. The Village doesn't have a 24 hour law enforcement officer.

Mr. Houlihan addressed Ms. Finley saying that the Village can and they do. He said that one of the reasons we have these regulations coming out is because this is how we have enforced it. This is just putting it clear cut in writing and making sure that everyone understands exactly what is allowed, what isn't allowed. He told her that as far as code enforcement on other properties where they had a problem with a contractor's office that went in without approval, they took a picture and there were six, seven, eight workmen congregating in front of the building at 8:00 in the morning with trucks. They were leaving their trucks and cars there. They were picking up and dropping off people. They brought big box trucks in, the double wheeled back tires, they were clearly over 8,000 pounds. You could see that all happening. Meanwhile, the applicant was trying to say he was just a little office with his secretary and not to worry about it, but we took pictures of that. That is how we enforced it. This law is just laying out exactly what we are looking for and exactly how we delineate a contractor's office as opposed to an administrative office. It is somewhat common sense. The items that you would see or the operation that you would see with just an administrative office is similar to what you would see at an architect's or an engineer's or a surveyor's or an attorney's office. The contractor's office is what you would see from someone that was running a construction operation. That is what we are just trying to articulate in the code and make it crystal clear so there are no problems with it.

Ms. Finley asked if the person Mr. Houlihan was referring to was an applicant and not approved.

Mr. Houlihan replied no, when we had first engaged with this, they were someone who had moved into a place without approvals.

Ms. Finley said her bigger question was once you had given the approvals, it seems to be a lot more difficult to remove that approval and to write the violations after the fact after you have given the approval. She said that anyone who was going to violate it while they are in the midst of the application process, she felt they would not get the application approved. She felt that after it is approved, it seems to be a lot more difficult to enforce it and how many times do you violate something or get written for something, what would be the Village's recourse.

Mr. Houlihan said he respectfully disagreed with Ms. Finley. He said that the Planning Board members and their attorney take a lot of care and caution to write a resolution and try and put covenants and restrictions along with that resolution that can assist the Building Department with enforcement. He thought that when you have an approved site plan, that is the easiest enforcement job. He said that most of the time when we have a problem, the use is vague and ambiguous and there was no site plan or there was no modern day site plan. He said that the site plans that the Planning Board and the Village Attorney approve today are very tight.

Mayor Teller asked if anyone else would like to be heard. There being no further response, he made a motion to hold this over to March 5, 2009. Seconded by Trustee Tucker and unanimously approved. 4 Aye, 0 Nay

Local Law to amend Zoning Code Chap. 197 HC District – Residential District

Mayor Teller opened the public hearing and asked if anyone would like to address the Board.

Mr. Bishop explained that this law was to remove a quirk in the law that was passed in 2007 that allowed owners to build a single family residence that exceeds 3,000 square feet in the Hamlet Commercial zone by obtaining a variance. Under the present law an owner can build an up to 6,000 square foot building. You can build a 3,000 square foot building as a matter of right, but you can build up to a 6,000 square foot building, but for every 1,000 square feet over the 3,000 square feet or any portion thereof, you have to provide an affordable apartment on the second floor or you have to provide 25% of the lot area that must be used for public purposes, park area or open space. The problem we have is that this law was intended to deal with commercial buildings. You could have a person who has a 2,500 square foot in the Hamlet Commercial zone now and he wants to put a 600 square foot addition on it. That would be a 3,100 square foot building. That would mean that he would have to put an affordable housing apartment on the second floor and that was not what the law intended, it is sort of an absurd result. So, what we said was, okay, you can have up to 3,000 square feet. If you want it to be more than that, you have to go to the Zoning Board and get a variance. This is also in accordance with 197.34G which limits the floor area of buildings throughout all the zones in the Village. In the Hamlet Commercial zone it would be 3,000 square feet. So, you would have to get a variance anyway for a dwelling over 3,000 square feet. This is to correct that sort of quirk.

Dean Speir asked if there would be a fee as there is with a parking variance where you don't get it or if you get it, then you have to pay for missing space into a parking fee.

Mr. Bishop said it doesn't deal with parking.

Mr. Speir said he understood that, but you are triggering an application to the Zoning Board of Appeals, what else is there. They either say yea or nay and if they say yea, you just go ahead and do it without any sort of fee you just go ahead and do it? He said the reason he was asking is because Mr. Bishop had mentioned open space, park space. He said that Mr. Bishop had brought up the example of someone with 2,500 square feet and wanted to add 600, which would take it 100 square feet above, so it is an up or down vote and there is no paying into an open space fund.

Mr. Bishop responded yes, with a variance they can do it. There is no paying into open space, because the whole idea was to get residences into that zone. We just didn't think about that when we started talking about affordable housing and having affordable housing over the homes in the Hamlet Commercial if they exceeded certain square footage. We didn't intend it to apply to the person that had a residential house or was building a residential house and wanted to have a slightly bigger house.

Erin Finley asked if this change only affected residences or if it also affected commercial property.

Mr. Bishop said it does not affect commercial property.

Mayor Teller asked if anyone else would like to be heard. There being no further response, he made a motion to hold this over to March 5, 2009. Seconded by Trustee Levan and unanimously approved. 4 Aye, 0 Nay

Resolutions:

Accept minutes of Board of Trustees Meetings

Motion by Trustee Tucker:

RESOLVED, that the minutes of the Trustee Meeting of January 8, 2009 and Special Meeting of January 21, 2009 are hereby accepted.

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

Accept Departmental Reports

Motion by Trustee Birk:

RESOLVED, that the Treasurer's report for December 2008 and Justice Court, Police Department's & Building Inspector's reports for January 2009 are hereby accepted.

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

Approve 2007/08 Fiscal Year Annual Financial Statements

Motion by Deputy Mayor Kametler:

RESOLVED, that the 2007/2008 fiscal year Annual Financial Statements prepared by Lundy & Co. for the Village of Westhampton Beach and the annual audit of the Village Justice Court are hereby approved.

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

Authorize Bldg. Dept. Employees to attend FLBOA Training Conference

Motion by Trustee Levan:

RESOLVED, that Code Enforcement Officer Bridget Napoli and Bldg. Permits Coordinator Kerry Rogozinski are hereby authorized to attend the 2009 Finger Lakes 34th Annual Building Officials Conference in Hilton, New York on March 16-19, 2009, at

a total cost of \$780.00 for registration, \$298.00 for air fare and \$376.00 for lodgings, plus reimbursement for meals and incidental travel expenses not to exceed \$200.00.

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

Authorize purchase of Sonicwall TZ180 Internet Security Equipment

Motion by Trustee Tucker:

RESOLVED, that the purchase of a Sonicwall security appliance model TZ180 from East End Computers for the Village Office and Justice Court computer network at a cost of \$695.00, plus a monthly monitoring fee of \$59 is hereby approved.

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

Renew Fire Inspection Services Agreement with Town of Southampton

Motion by Trustee Birk:

RESOLVED, that the Mayor is hereby authorized to execute the 2009 Agreement for the Town of Southampton to provide the Village with Fire Inspection, Investigation and Hazardous Materials Response Services to be billed pursuant to the contract rate schedule.

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

Renew Southampton Town Assessment/Computer Services Agreement

Motion by Deputy Mayor Kametler:

RESOLVED, that the Mayor is hereby authorized to execute the 2009 agreement with the Town of Southampton for shared computer capability and assessing services at an annual cost of \$6,328.54, plus fees for time & materials.

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

Approve sale/disposal of surplus Village vehicles/equipment

Motion by Trustee Levan:

RESOLVED, that the Village-owned vehicles and equipment specified on the attached list are hereby declared surplus and obsolete for Village purposes; and be it further

RESOLVED, that the Dept. of Public Works is authorized to publicize the items for sale on Ebay and to dispose of any items that may remain unsold after the auction period.

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

Refer Special Exception application to Planning Board

Motion by Trustee Tucker:

RESOLVED, that the Special Exception application filed by Ronald Fabian, to establish a mini spa use in a 900 sq. ft. office located at 64 Old Riverhead Road and identified by SCTM# 905-2-2-07 is hereby referred to the Planning Board for review.

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

Approve February 2009 warrant

Motion by Trustee Birk:

RESOLVED, that the warrant for February 2009 in the amount of \$257,382.78 is hereby approved.

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

Public Discussion

Mayor Teller asked if anyone in the audience would like to address the Board.

Dean Speir, 256 East Main Street, asked about the expenses pursuant to the litigation involving upper Hazelwood Avenue. He said his understanding from the last meeting was that the Village is allowed or has entered into an agreement to recoup \$10,000. He asked if that was an award by.....

Village Attorney Hermon Bishop responded that the Village entered into a Stipulation of Settlement and one of the provisions of the Stipulation of Settlement was to enter a judgment action in favor of the Village reclaiming all of the land that had been taken from the Village on north Hazelwood and to eject the persons, Carnevale specifically, off of Hazelwood Avenue and if they do not do so within ninety days they will have to pay the Village for the expense of removing any encroachments. In addition, they have to pay \$10,000 in damages. The issue with respect to Hazelwood is that it was a mess. It should have been dealt with a long time ago, many years ago. The people who own the concrete plant were leasing Village property to the people who are using the concrete plant and also gave them the option to purchase, so they not only were leasing Village property, but they were selling Village property as well. It was dealt with by the Andon administration when the owners took ownership to this property and there was a faint attempt to deal with their encroachment onto the property and they finally in 1997 filed a series of "false deeds", that is what the Judge referred to them as, conveying the property to themselves and to the various corporations. Because of that, basically, we were drawn into litigation to recover possession of that property and also to stop them from operating the cement plant which was three times larger than it should have been. That plant originally started with five cement trucks and East End Concrete, the lessee who was the plaintiff, was operating over fifteen trucks continuously. This caused tremendous impact on the Village residents on Hazelwood Avenue. All of the way down the middle of Hazelwood Avenue, they had dust runoff from the trucks. The lessees, also the Carnevales, dumped their materials throughout the entire width of the road. They had a hopper in the middle of the road and they basically had used this road to increase the operation of their plant substantially. As part of the settlement, there was a settlement for damages for \$10,000 and that was a negotiation between all of the parties. That is based on issues of law that exist, based on facts within the confines of this case, but the most important aspect of this case is that we have this property back. We didn't lose it. We obtained CHIPS money on that road and we reduced the impact of the cement plant substantially by limiting them to conduct their operation on their own property. He said that is the whole story about this litigation and the \$10,000 is just a small portion of it. This action involved ten motions. It involved a seven day trial. It involved experts testifying and it consisted of at least four boxes.

Mr. Speir said his issue was not the amount of work that the Village put in, either Mr. Bishop or the experts that he had retained on behalf of the Village, but the approximately \$80,000 that he felt should be recoverable.

Mr. Bishop said he knows Mr. Speir feels that way and he had felt the same way. He said the problem is that it is very rare that a court will ever grant sanctions, which is what you are talking about. You can't obtain punitive damages. The question is whether or not you could obtain sanctions. It is rare for the court to grant sanctions. There has to be no coverable argument of fact or law that could be supported in order to obtain sanctions against a party or a tenant. Based on what could occur, Mr. Bishop said he would like to reclaim everything himself, but based on the existing case law that is out there and based on the facts of this case, the parties agreed to \$10,000.

Trustee Tucker added that this also guarantees more money spent on litigation and no guarantee of recouping any prior money or the continuous money from the litigation.

Mr. Bishop explained that the problem is that even if you obtain sanctions, you may be running \$20,000 to \$30,000 in doing that and no guarantee of success, then having to file an appeal and having to defend and prosecute an appeal. So, this is the decision that was made by all parties.

Mr. Speir said he accepts Mr. Bishop's explanation. However, it seems curious to him that since Mr. Bishop cited the words in Judge Tannenbaum's decision of the filing of a series of "false deeds". He felt that would seem to be a very compelling argument for greater sanctions for punitive damages or whatever you wish to call them legally than just \$10,000.

Mr. Bishop said it depends on what you mean by "false deeds" and it depends on what Judge Tannenbaum meant by "false deeds". I didn't say anything about criminality. I didn't say anything about what that term really meant in the Judge's mind. It was a term that he used and this settlement has not been approved by the court yet. It has been submitted and surprisingly, has not been signed yet, so we don't even know where we are in this settlement business. Also, the general rule in America is that each party bears their own weight as to legal fees. If this were England, we would recover all of our legal fees if we were successful. But, unfortunately, unless there is this extreme, and I do say extreme – you can count on one hand the times it has been granted, the extreme granting of sanctions based on the prevailing legal position of the parties, it is rare that sanctions are granted....

Mr. Speir said that \$84,000 to reclaim a piece of road that was always ours is a pretty good.....

Mr. Bishop said he did not receive \$84,000.

Mr. Speir said he understood that. He corrected the figure to be \$80,000.

Mr. Bishop said that was not what he was paid. He said this action started in October of 2006 and is still pending. It has been going on for over 2½ years. The asphalt plant has been going on for ten years. The legal fees ongoing there are substantially higher than this.

Mayor Teller asked if anyone else would like to address the Board. There being no further response Deputy Mayor Kametler made a motion at 8:10 p.m. to adjourn the meeting to Executive Session. Seconded by Trustee Birk and unanimously approved. 4 Aye, 0 Nay

Respectfully submitted,

Christine Owen
Deputy Clerk