

The Board of Trustees of the Village of Westhampton Beach held their Regular Meeting on Thursday, March 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. He asked for a moment of silence for Clara Hulse, widow of former Mayor Dode Hulse.

PUBLIC HEARINGS:

Local Law 2/2009 to amend Zoning Code Chap. 197-10 Freeboard Height/Pond Point

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.

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

Motion by Trustee Birk:

WHEREAS, a Resolution was duly adopted by the Board of Trustees for a public hearing to be held by the Board of Trustees at the Village Hall, 165 Mill Road, Westhampton Beach, New York at 7:00 PM on February 5, 2009, to hear all parties on a proposed Local Law entitled "A Local Law amending Section 197-10 of the Code of the Village of Westhampton Beach permitting a building height increase for freeboard;" and

WHEREAS, notice of said public hearing was duly advertised in the Southampton Press and posted at various public locations throughout the Village; and

WHEREAS, said public hearing was duly held at the Village of Westhampton Beach, on February 5, 2009 and March 5, 2009, and all parties in attendance were permitted an opportunity to speak on behalf of, or in opposition to, said proposed Local Law, or any part thereof, and

WHEREAS, the Board of Trustees determines that this action is subject to Part 617 of the implementing regulations pertaining to Article VIII of the Environmental Conservation Law (SEQRA), that it resolves itself lead agency, that it has reviewed the prepared EAF Part I and lists this action as a Type 2 action, pursuant to 6 NYCRR Section 617.5 (28), and accordingly, no further environmental review is necessary, and

WHEREAS, the Suffolk County Department of Planning, pursuant to Section 239-M of the General Municipal Law has not identified any significant county-wide or inter-community impacts associated with the proposed Local Law, and

WHEREAS, the Board of Trustees, after due deliberation, finds it is in the best interest of the Village of Westhampton Beach to adopt said Local Law,

NOW, THEREFORE, the Board of Trustees hereby adopts Local Law 2/2009 entitled “A Local Law amending Section 197-10 of the Code of the Village of Westhampton Beach permitting a building height increase for freeboard,” a copy of which is attached hereto and made a part hereof, and the Village Clerk be and she hereby is directed to enter said Local Law in the minutes of this meeting and to enter said Local Law in the Local Law Book of the Village, and to give due notice of the adoption of said Local Law to the Secretary of State.

Seconded by Trustee Tucker 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 local law has four parts to it. Two parts deal with the Hamlet Commercial/Residential District or HC District and the other two parts deal with the contractor’s administrative office and contractor’s office. He said these are two distinct types of uses. He said that this section of the law appears to be where there is some confusion and some misinformation that was generated which hopefully can be cleared up tonight. He said the first two sections deal with the HC District. The Hamlet Commercial District was intended to be a buffer between the B1 downtown least restrictive type of uses and the residential uses that were on the perimeter of those downtown uses. The Hamlet Commercial District surrounds the Business 1 District and all of the uses in the Business 1 District are allowed to be in the Hamlet Commercial District. The only difference is, in the Hamlet Commercial District the Board and the Village Planner wanted to allow the residential use in that district. The other difference is that in the Hamlet Commercial District there are greater setbacks than in the B1 District. The lot coverage in the B1 District, meaning the amount of coverage that you can build onto a lot is 50% and in the HC District it is 30%. Some of the residential district is brought into the Hamlet Commercial, but all of the uses of the B1 are brought into the Hamlet Commercial. The Board is really just putting into the table of uses that which was passed by the Board some time ago. The second part of the local law relates to accessory use structures and basically it says that accessory structures like garages, sheds and so forth have to be located in the rear yard. They have to be 15 feet from any boundary line and cannot be higher than 16 feet or if it is a garage, 20 feet. The third part of the law deals with special and general trade contractor’s offices and special and general trade contractor’s administrative offices. They are different and it is important to know the difference. In 1999 there was a business district plan that discussed all of the business districts in the Village and their uses in those districts and omitted any discussion or planning with respect to contractor’s offices. There was no law with respect to contractor’s offices and it was not permitted anywhere in the Village. In 2003 the contractor, Westhampton Glass, came to the Board and said he would like to put his office and showroom up on Riverhead Road and have trucks there. The Village said it is not permitted in the Village, but it is a good idea, so they changed the law to allow contractor’s offices like Westhampton Glass, not administrative offices, to be in the B2 and B3. After they did that, other contractors came up on Riverhead Road, a plumbing contractor, a roofing contractor. The contractor’s office is only permitted in the B2 and B3. Now, what has happened is we have had contractor’s come in and say

look, I don't want to have a contractor's office, but I would like to have an administrative office on downtown Main Street and it wouldn't be any different than a lawyer's office or a real estate office or an architect's office, because all they want to do is to use it for administrative purposes only. The purpose of this law is to restrict an administrative office, like a real estate office, so that it cannot have an adverse impact on the downtown area. He said that the Village does not regulate any other offices as we are regulating this particular type of office. This law protects the downtown. He felt that if it is not passed, it will injure the downtown area, because what exists now is an ordinance which basically must allow contractors to be located in the B1 Main Street District. The reason is because of the vagary, the vagueness in the law, we have provisions that allow a general services use and a business services use. He said that contractors have come in and said they are not really a contractor's office, all they are is a management service and the Village cannot really stop them because the use is so general and we have no definitions for these uses. It is very, very hard to stop these types of uses. This law defines exactly what a contractor's administrative office use is. Number one is that it can't be a place where there is a meeting place of subcontractors or drop off or pick up of laborers. There are special exception provisions that are provided for in the law, one of which is that the vehicles cannot exceed 8,000 pounds in weight and cannot be more than 20 feet long. Additionally, the administrative offices cannot contain any materials or tools or supplies of any nature and all of these offices would be subject to approval by the Planning Board and would be subject to the special exception standards that are being enacted in the final part of the law which he just discussed. He said that without passing this law, we would have more problems than we already have, which is why this law was being enacted. Mr. Bishop gave an example where a contractor was located in the B1 and said he was in the management services and manages houses. He said that before you knew it, the parking lot in the office complex where he was located was filled with his management vans. There was no way the Village could say there was anything in our code that stops this. He said this law does stop that. This defines what an administrative office is. It is limited only to secretarial services, accounting services, meeting clients and that is it. In addition, the approval process they go through will define what they can and can't do so the example he just cited doesn't happen again. He felt that without this, based on the definition of uses we have, it would be injurious to allow this to remain. This law restricts more so, unlike all of the other office uses that are permitted in the Village, this law restricts contractor's administrative offices to a large extent.

Jim Flood, 59 Rogers Avenue, asked if there was any possibility that the downtown area could be zoned retail only.

Mr. Bishop responded that in the 1999 business district study and in the 2006 update that was recently adopted by this Board, the plan called for a variety of business uses and retail uses together as a way to wind up with a vibrant business district. He said that one feeds off of the other. For example, somebody who has a real estate office in the Village would attract a group of people that would come to their office and then those people would perhaps shop at a card store or another place and get lunch in the Village. He said the plan basically states that both types of uses should occur on Main Street.

Mr. Flood said that many of his customers tell him there are too many real estate offices in the Village.

Mr. Bishop felt that if the Village were to say that all of the real estate stores have to be located on Riverhead Road and Montauk Highway, there would be an outcry from the real estate people. He said that would also be true about the other office uses that occur, offices, banks. He reiterated that the business district plans of 1999 and 2006 indicated there should be a mix of uses.

Irene Barrett of Quiogue said there are nine real estate offices and three banks on Main Street. She felt that the Village has people like Elyse Richman, owner of Shock, and this town is built in the summer on retail, not on contractor's offices. She felt that these contractor's would be selling things from these offices.

Mr. Bishop said they would not be selling anything. He explained that a contractor's administrative office relates only to the administrative aspect of the contractor's business. That means secretarial services, accounting or bookkeeping services, clerical functions, storage of records and meeting with clients, that is it. Nothing else is permitted. There is no sale of things, there are no showrooms. He felt this was a concern, because people had some misinformation about this, it was disseminated and he felt it was important to understand the difference. He said what Mrs. Barrett was talking about is a contractor's office. That would be a showroom, that would have the windows and that would be permitted in the B2 Riverhead Road/Montauk Highway district. He said that is why you need this law, because without this law we cannot be strict with contractor's offices the way we want to be strict. He said this is more restrictive than a real estate office.

Ms. Barrett felt the Village was changing from a retail place to real estate. She felt there would be nothing to attract the summer people here to buy homes and shop locally if there is no retail here. She felt if you wanted to do anything in the winter, you have to go to Southampton.

Mr. Bishop said this law is not allowing contractor's administrative offices, because they are already allowed.

Ms. Barrett said the Village of Southampton restricted it on Main Street.

Mr. Bishop indicated that Southampton Village has the office/business and that is all they have. It can be any type of office or business and they have no restriction on anything.

Ms. Barrett felt this town was real estate stores, period.

Mr. Bishop emphasized that this law was not allowing administrative offices on Main Street. They were already allowed.

Ms. Barrett said what the Board was saying is that they already can do it and now we are just going to restrict it, we're not going to change it, we're just going to restrict it.

Mayor Teller said that if you can't pay the rent, you can't move in. That is the problem. The real estate people can pay the rent.

Trustee Birk added that the Village has 2,000 year-round residents, but it is very much a summer-time community with a lot of second home owners, so we don't have the population here year-round. She felt it was very difficult for the retailers to be here and be open twelve months because there aren't enough people here year-round.

Ms. Barrett felt the streets would be lined with pickup trucks if this was passed.

Mr. Bishop explained that they have to come in before the Planning Board and say they are going to have an administrative office. That means they are going to have a secretary and the owner. That means two vehicles. It is going to be in the resolution that this is the amount of parking you are going to have and this is where you are going to park these vehicles.

Ms. Barrett asked who would enforce this. She said she had filed complaints with the Village and felt they weren't looked into.

Mr. Bishop stated there are numerous ways of enforcing this. If they don't comply with the site plan approval, we can revoke it and they will be given summonses. We will bring them into Justice Court to levy fines. Mr. Bishop said that he works with Mr. Houlihan to enforce the code and every single complaint that has been filed in this Village with Mr. Houlihan has been dealt with.

Elyse Richman, 78 Rogers Avenue, asked why the Village restricts retail on Riverhead Road.

Mr. Bishop responded that this goes back to the 1999 study where they wanted to have the retail use and other businesses in the downtown Village business district area, Main Street. They did not want retail uses on Riverhead Road, because they would compete with downtown. The Village could have built shopping centers and retail and so forth on Riverhead Road, but it was the sense of the Village Planner in 1999 and 2006 to make sure that the retail use stayed on Main Street.

Ms. Richman asked why they couldn't try and enforce that the opposite way and keep the contractor's off of Main Street and the retail on Main Street. She said she had been here for twenty-five years and she can pay her rent. She felt that a lot of the other people need help and she thought that opening offices is not the answers, but having more retail and restaurants is the answer to helping them survive. She asked why they can't be restricted, that the offices that are here are here, and no more can come. She said she can't open up on Riverhead Road if she went out of business here, so she felt it was not fair and should work both ways.

Mr. Bishop reiterated that was what was called for in the studies that were done in 1999 and 2006.

Ms. Richman asked who did the study. She said they were not the business owners or residents.

Mr. Bishop stated that the 2006 study was done with Charand and a group of residents and business owners in the Village. The 2006 update involved members of the business community and residents of the Village, but he didn't know too much about the 1999 Hyatt Palma study and how it was conducted.

Ms. Richman felt it should be more helpful to the retailers downtown because that is why people come here.

Dean Speir, 256 East Main Street, asked Mr. Bishop when he talked about a mix, if he meant in both studies or just in the 2006 study.

Mr. Bishop explained that the 1999 study talked about it and it was confirmed in the 2006 study and in the vision statement as well.

Mr. Speir asked if there was any formula suggested.

Mr. Bishop said there was no formula. It just stated generally that there should be a variety of uses.

Mr. Speir asked if there was one restaurant, one retail and the rest banks and that is still considered a mix.

Mr. Bishop responded that when government starts telling people you can't have certain businesses, you start running into some legal issues. He said unless there is a plan, there is no basis for this Board or any municipality to regulate uses unless they have an established plan to support that type of ordinance or legislation.

Mr. Speir agreed, and submitted that it was really a planning issue rather than.....

Mr. Bishop said absolutely, that is the only thing this Board can work with. You can't decide you're just going to change something and go against the plans that are the basis of our ordinance.

Mr. Speir said absolutely, but he sensed that Mr. Bishop's feeling is that he is kind of polishing off a couple of rough edges here and putting the finishing touches on this and

it seems that at least as far as the downtown area, you may need to revisit the plan for the downtown area.

Mr. Bishop said that is always something the Board can do. There was one done in 1999 and two years ago there was just another one.

Mr. Speir felt it didn't seem from hearing the people who have spoken here tonight that the plans have addressed, mostly in the B1 area.....

Mr. Bishop thought it might be a good idea to have Kyle Collins come and discuss this issue and have him explain what the concept is. He said he is not a planner; he is not here to defend the plan, but just to suggest an amendment to the plan.

Trustee Birk added that if she wasn't mistaken, when that group met in 2006 to review the plan, didn't we have a couple of public sessions to have the public give input on these before it was adopted in 2007.

Mr. Bishop said there were quite a few public hearings on it before it was passed, but if there are concerns and people are trying to understand why this concept exists, one possibility is to have Mr. Collins here.

Mayor Teller asked if anyone else would like to address the Board. There being no further response, he made a motion to hold this hearing over until April 2, 2009. Seconded by Trustee Birk and unanimously approved. 4 Aye, 0 Nay

Local Law 3/2009 to amend Zoning Code Chap. 197 HC District – Residential District

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.

Mayor Teller asked if anyone in the audience would like to address the Board regarding this matter. There being no response, he made a motion to close the public hearing. Seconded by Deputy Mayor Kametler and unanimously approved. 4 Aye, 0 Nay

Motion by Deputy Mayor Kametler:

WHEREAS, a Resolution was duly adopted by the Board of Trustees for a public hearing to be held by the Board of Trustees at the Village Hall, 165 Mill Road, Westhampton Beach, New York at 7:00 PM on February 5, 2009, to hear all parties on a proposed Local Law entitled "A Local Law amending the Code of the Village of

Westhampton Beach to permit single family dwellings in the HC District to be larger than 3,000 square feet, subject to Zoning Board of Appeals approval”; and

WHEREAS, notice of said public hearing was duly advertised in the Southampton Press and posted at various public locations throughout the Village; and

WHEREAS, said public hearing was duly held at the Village of Westhampton Beach, on February 5, 2009 and March 5, 2009, and all parties in attendance were permitted an opportunity to speak on behalf of, or in opposition to, said proposed Local Law, or any part thereof; and

WHEREAS, the Board of Trustees determines that this action is subject to Part 617 of the implementing regulations pertaining to Article VIII of the Environmental Conservation Law (SEQRA), that it resolves itself lead agency, that it has reviewed the prepared EAF Part I and lists this action as a Type 2 Action, requiring no further review; and

WHEREAS, the Suffolk County Department of Planning, pursuant to Section 239-M of the General Municipal Law has not identified any significant county-wide or inter-community impacts associated with the proposed Local Law; and

WHEREAS, the Board of Trustees, after due deliberation, finds it is in the best interest of the Village of Westhampton Beach to adopt said Local Law;

NOW, THEREFORE, the Board of Trustees hereby adopts Local Law 3/2009 entitled “A Local Law amending the Code of the Village of Westhampton Beach to permit single family dwellings in the HC District to be larger than 3,000 square feet, subject to Zoning Board of Appeals approval”; a copy of which is attached hereto and made a part hereof, and the Village Clerk be and she hereby is directed to enter said Local Law in the minutes of this meeting and to enter said Local Law in the Local Law Book of the Village, and to give due notice of the adoption of said Local Law to the Secretary of State.

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

RESOLUTIONS:

Accept minutes of Board of Trustees Meetings

Motion by Trustee Levan:

RESOLVED, that the minutes of the Trustee Meeting of February 5, 2009 are hereby accepted.

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

Accept Departmental Reports

Motion by Trustee Tucker:

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

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

Authorize St. Patrick's Day Parade "Kids Carnival"

Motion by Trustee Birk:

RESOLVED, that the Westhampton Beach St. Patrick's Day Parade Committee is hereby authorized to hold a "Kids Carnival" on the Great Lawn on Saturday, March 14th to be in use during and after the parade from 12 noon until 5 p.m.

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

Authorize St. Patrick's Day Parade Air Show 2 – 4 pm

Motion by Deputy Mayor Kametler:

RESOLVED, that the Westhampton Beach St. Patrick's Day Parade Committee is hereby authorized to hold an "Aerobatic Stunt Show" at Rogers Beach on Saturday, March 15th between 2:00 p.m. and 4:00 p.m.

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

Approve 2009 Beach & Marina Rates

Motion by Trustee Levan:

RESOLVED, that the attached Beach & Marina rate schedules and rules for the 2009 season are hereby approved.

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

Schedule public hearing on 2009/10 Tentative Budget

Motion by Trustee Tucker:

RESOLVED, that the Village Clerk-Treasurer is hereby authorized to publish and post a Notice of Public Hearing to be held on April 2, 2009 at 7:00 pm at the Village Hall on the Tentative Budget for the 2009/2010 fiscal year.

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

Appoint 2009 Election Inspectors

Motion by Trustee Birk:

RESOLVED, that Anne Creed is hereby appointed as Chairperson of the Election Inspectors, and Mary V.N. Gallagher, Gloria Vaczy and Kathy Clark are appointed as Election Inspectors 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 Deputy Mayor Kametler and unanimously approved. 4 Aye, 0 Nay

Approve March 2009 warrant

Motion by Deputy Mayor Kametler:

RESOLVED, that the warrant for the month of March 2009 in the amount of \$276,054.73 for the General Fund is hereby approved.

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

Public Discussion:

Michael Nobiletti, 8 Stillwaters Lane, said he believed this Board had the authority and jurisdiction regards to the zoning code and directing it to the Board. He said that in the flood zone you measure the height of the dwelling to insured habitable structure from the base flood elevation plus whatever code is required for building for any freeboard. He asked specifically when you measure the height of the accessory structures, the garage, pool house, shed, do you measure from grade or are you measuring from the base flood elevation plus the permitted height of such accessory structure. He asked if that applies to the accessory structure equally as it does to the primary insured dwelling.

Building Inspector Paul Houlihan explained that the height of the accessory structures in the Village code of any building in the flood plain is measured base flood elevation to the ridge. So, the answer is yes, on an accessory structure it is measured from the base flood elevation. The code is specific in that under the definition of building height.

Mayor Teller asked if that answered Mr. Nobiletti's question.

Mr. Nobiletti replied, no, it doesn't. He said that after reading the code, it does speak of building, he believed the intent of the wording when it speaks of building in terms of height, it is focused on the dwelling habitable structure of the home, the living structure as opposed to the uninhabitable accessory structure. This goes with the FEMA regulations, their definition of buildings and structures. Putting it in the perspective of a grade elevation of four or five in a flood zone, it would net out elevation twelve saying you could have a shed to be twelve, sixteen feet above elevation twelve when you are starting construction at four or five, he did not think that would be the intent of where you merge your height of accessory structures with the intent of what the minimum height is for a habitable insured flood plain construction.

Mayor Teller said he had a meeting tomorrow morning and he would try and have an answer for him.

Mayor Teller asked if anyone else would like to address the Board. There being no further response he made a motion at 8:45 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