

**Village of Walden
Joint Board Meeting
June 30, 2008**

Mayor Becky Pearson called the joint board meeting to order at 6:30pm.

On roll call the following were:

Present:	Mayor	Becky Pearson
	Deputy Mayor	Mary Ellen Matisse
	Trustees	Mary Jean Norman
		Roy Wynkoop
		Richard Hurd
		Susan Rumbold
		Marcus Millspaugh, Jr.

Michael Ciardullo, Planning Board Member
James Corbett, Zoning Board Member
Brenda Martin, Zoning Board Member
Dave Ohlmer, Zoning Board Member

Also Present:	James Politi, Village Manager
	Kevin Dowd, Attorney

Mayor Pearson stated that this meeting is to see if there were some concerns the Board's had. One issue is the Introductory Local Law for the Town Housing which will be going to the Planning Board.

Member Ciardullo asked what the Mayor's concerns were with this.

Mayor Pearson stated that her concern is storm water runoff and where it is going. The Board was specific in how they wanted the townhouses to look and the vegetation. Also, the road coming in whether the Village wants to take it.

Member Ciardullo stated that a couple things were brought up at their last meeting that they were confused about. At the May 21st meeting Brian Paz was asking the Board to speed up the process for the annexed piece of property. If there is something the Board of Trustees wants the Planning Board to look at please let them know.

Mayor Pearson stated that the Board wanted it to go through the right channels.

Member Ciardullo asked how it got on their agenda.

Mr. Dowd stated that the Building Inspector received a request from the applicant to be placed on the work shop agenda.

Member Ciardullo stated that the Planning Board didn't know that the Board of Trustees hadn't dealt with the issue that they wanted. There is a communication gap.

Trustee Rumbold asked if the Building Inspector should check with someone before he puts something on the agenda.

Mr. Dowd stated no. Anyone who requests to be put on the agenda they get a freebee, a first appearance before any official application is filed, they give them the courtesy of coming before the Board and explaining what they want. This was a request by the applicant to ask the Planning Board for their recommendation to the Village Board about the zoning of the property. They probably were premature in May because the local law had not been introduced by the Village Board. The code requires the Village Planning Board to make a recommendation to the Village Board as to a zoning change. They did exactly what they were going to do anyway, so he doesn't know if there is a problem here.

Member Ciardullo stated that it was on their agenda and they didn't know what had happened at the Village Board. How should they know? The Deputy Mayor should have advised them that nothing was done with the Village Board yet and not to act on it.

Deputy Mayor Matise stated that she wasn't at the previous meeting and Mr. Dowd wasn't there either.

Mr. Dowd stated that what happened on the 21st of May that was the Planning Board meeting where the applicant was asking for direction of the Planning Board. The local law itself had not been introduced by the Village Board until May 27th, so it was premature in that respect.

Member Ciardullo stated that on June 10th at the Village meeting this was questioned.

Mayor Pearson stated that she questioned it because every meeting that she's been to that people come before the Board and they want to do action at the work session they've always been told, no we don't do action at a work session, we take them at the regular meeting. So they are put on the agenda for the regular meeting. Her thought was why was this work session different then other work sessions.

Mr. Dowd stated that is not entirely true. First of all any work session of a Board is a meeting of the Board and is a public meeting that has to be noticed. All the work shop meetings of the Planning Board are noticed at the beginning of the official year. So every work session on the first Monday of the month or second Monday if the first Monday is a holiday is noticed by the Village Clerk at the beginning of the year. Whether you call it a work session or regular meeting it's a meeting of a public body and they can take action. What has happened in the past is when applicants come before the Village Planning Board on the regular meeting date and they are trying to get a public

hearing set or an approval taken what they will end up doing is saying its not ready yet for an approval or for a public hearing to be set we will put you on for the work session and if you have all your maps amended appropriately at that meeting we will either take action or we will set a public hearing for the regular meeting. So, they do take action and legally they can take action. Most of the time they try not to, most of the time they just want to make sure the plans are up to date and ready for action at their regular meeting of the following month.

Deputy Mayor Matisse asked if the applicant can come to the Planning Board and start the whole process even though the final annexation is not complete and they can show the plans based on the intended annexation.

Mr. Dowd stated that is what Mr. Jacobowitz said. He needs to speak to him about when he's coming to the Planning Board because he believes it would be more appropriate for him to actually file the maps before he files an application with the Planning Board. To make sure those two acres is two acres, not three or one and a half.

Mayor Pearson stated that she had concerns with that map and they had concerns of even doing something before they had the survey done.

Mr. Dowd stated that he doesn't believe they've filed a formal application to appear before the Planning Board. He has to have that discussion with Mr. Jacobowitz.

Member Ciardullo stated that this whole matter brings out that there is a communication gap and we have to fix that. He also stated that John was told by the Mayor that the sewer plant doesn't have the capacity for this project.

Mayor Pearson stated that right now the digester is not working.

Member Ciardullo asked if there was anything in writing to back that up.

Deputy Mayor Matisse stated yes, engineer's reports.

Manager Politi stated that it doesn't mean the sewer plant doesn't work. It meets its SPEDES permit.

Mr. Dowd stated that is different from the capacity issue.

Manager Politi stated that your SPEDES Permit allows 1.2 million gallons per day through the sewer plant. That is your maximum and you don't want to get near that. On a typical day, non rainy or thunder stormy day, it takes in about 700 to 750 gallons a day. That is approximately 60% capacity. Now you're talking about 2200 units residential plus commercial and you're going to put in another 188 units, you're not near your capacity with that. So you're well away from your SPEDES permit limit. I & I in the eyes of DEC is what we have to settle. Right now if you put 188 homes into the

system it wouldn't matter because your problem is I & I, not adding those theoretical numbers to your average flow.

Deputy Mayor Matise asked about the digester not working.

Manager Politi stated that the digester can work as it is. It is working as it is but DEC said that's not how you built your plant and you need to bring that up to what its original process was.

Mayor Pearson stated that the Tinbrook pump station is not functioning.

Manager Politi stated that it is functioning.

Mayor Pearson stated that it's functioning, but it should have been fixed a long time ago. She said that they've been talking about the digester for six months now and nothing has been done.

Manager Politi stated that it's a bigger project than she thinks it is.

Mr. Dowd stated that the townhouse project is not going to be approved over night. It will be a Type 1 action and will require a draft environmental impact statement and it will take months to do.

Deputy Mayor Matise stated that there was another procedural issue in the letter the Board got regarding the current issue before the Zoning Board and that was about the public hearing. The engineer requested the public hearing be closed but then the applicant turned around and told people to go back to the Zoning Board so then you had 30 people show up who were irate. He didn't understand the public hearing was closed, but his representative asked for it to be closed.

Mr. Dowd stated that the Zoning Board held a public hearing at which everyone who was present had the ability to say what ever they wanted to say. It went on for a long time all expressing their displeasure with the application. At the end of the public comment this board in public session did just what it had to do legally and voted to close the public hearing. At the end of that motion that closed the public hearing that starts the 60 days clock, they went to Mr. Olley and said we would like you to come back next month and address these issues and some were the issues being raised by the public themselves as well as the Board. He read the letter and he understands that there is something that is totally beyond the jurisdiction and concern of this Board between perisheners and pastor that is obvious what is going on. They have an obligation of legal duty to process an application by an applicant and unless the applicant wants to amend that application or change that application they can't consider alternatives that the applicant doesn't want. They must consider the application itself.

Deputy Mayor Matise stated that it was said to her that the applicant then said to the members of the organization, go to their next meeting.

Mr. Dowd stated that he thinks he was referring to the meeting of the church council. He was trying to say that if your gripe is with the pastor over this application, go back and use the church council for the means of talking to the pastor. It wasn't come back here and we'll open the public hearing again.

Trustee Rumbold asked if churches have certain rights.

Mr. Dowd stated that the Federal Government has enacted a Federal Statute which is called the Religious Land Use and Institutionalized Persons Act and what that says is the Federal Law has basically has hand strung local land use Planning and Zoning Boards because of this statute and it says you must try to accommodate those kinds of religious uses and you must have compelling governmental interests in turning them down for their applications. It clearly takes away local home rule powers when it comes to these kinds of applications. The case of the Westchester Day School verses the Village of Mamaroneck which is a Federal Civil Rights action, the District Court made a decision affirmed by the Surrogates Court last year that basically says the statute is constitutional and the Village of Mamaroneck Zoning Board made a terrible mistake in how they processed this land use application. They said traffic and parking are not compelling governmental interest.

Trustee Rumbold suggested the Chairman of the Zoning Board preface the meeting by stating that this type of situation is guided by Federal Law and state the parameters.

Mayor Pearson asked if the church has to go before the Planning Board.

Mr. Dowd stated that they may be required to go for site plan approval because there is no existing site plan.

Member Ciardullo stated that he attended a Zoning Board meeting and he was very uncomfortable with a situation that happened. An applicant was asking for a variance on his property and they got into this entire financial discussion in the public.

Mr. Dowd stated absolutely, the applicant was asking for a use variance as opposed to an area variance. A use variance is one that is very rarely granted because the criteria is so difficult and one of the things the law says is that in order to qualify for a use variance you must prove that you cannot get a reasonable return on your property for any of the permitted uses in the zoning district where you're located. He would have had to say that the zoning law prevents me from getting a reasonable return on my property for every uses in the table. The courts have said that the reasonable return is dollars and cents proof. He had to do that publicly.

Trustee Rumbold stated that she's been attending the EEAC meetings. They are looking at land use. They haven't focused much on villages. They had a public hearing and what came out was that municipalities can control very little and one thing they can

control is what happens to their land. On Page 24 it gives an overview of what it would take for a property within the Town of Montgomery outside the Village to break even. Meaning what it would have to be taxed at in order for the Town to break even as far what it would cost the town for services. The break even market value of the house would have to be \$438,000. On Page 26 gives you an overview of what your return would be for certain businesses, and large scale retail. They are saying that when you look at your zoning you should try to balance because every time you allow a home in the Village you're in the red.

Manager Politi asked if they indicated that this chart may look different inside a Village.

Trustee Rumbold stated that it would only in the kind of money you're talking about.

Manager Politi stated that he gets email alerts that companies are looking for space, acreage and sized buildings and it's very seldom that he sees something that would fit inside in the Village.

Deputy Mayor Matise stated that she was advised that for the Village the market value has to be higher.

Trustee Rumbold stated that what she is asking is whatever available land we have in the Village we should think futuristically about how we want that to be used.

Member Ohlmer asked why the Zoning Board meetings can't start at 7pm.

Mr. Dowd stated that it's totally at the discretion of the Board when they have their meetings.

Trustee Millspaugh stated that he's looked at the Master Plan and was wondering how many of those were discussed from this point of time. A lot of the recommendations are marked immediate.

Member Ciardullo asked about police consolidation and what happened at the first meeting.

Mayor Pearson stated that it was just general discussion on them getting together and putting something on paper about how they think it would work. She just spoke to Trustees Rumbold and Wynkoop because at the second meeting they would like to have a representative from the Board come. She wants approval for Trustees Wynkoop and Rumbold to go.

Member Ciardullo asked if Maybrook and Montgomery were involved.

Mayor Pearson stated not as of yet. She will be speaking to both mayors.

Member Ohlmer stated that there are several interesting cases before the Zoning Board and there are lessons to be learned.

Trustee Norman stated that she would like information on the consolidation of the Police Department when it is available.

Member Martin stated that the comments at the last Village Board meeting sounded like we were moving in that direction.

Respectfully submitted,

Nancy Mitchell
Village Clerk