

**Village of Walden
Board of Trustee
February 19, 2009**

Mayor Becky Pearson called the special meeting of the Village of Walden Board of Trustees 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
		Susan Rumbold

Absent:	Trustee	Richard Hurd
		Marcus Millspaugh Jr., later present

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

General Code Review

Chapter 9, Appearance Tickets

Mr. Dowd stated that in the code recodification Section 4, Page 5: which is Chapter 9 in the code book, Appearance Tickets. Section 9-1 says, statutory authority is attributed to 150.10 of the Criminal procedure Law which provides for the definition, form, and content of an appearance ticket. Statutory authority for the enactment of this chapter is provided by Subdivision 4(a) of Section 10 of Municipal Home rule Law. General Code says replace 150.10 with subdivision 4(a) of 10 of Municipal Home Rule Law. He has no objection to that and he feels the Board should accept that recommendation.

Board agreed.

Mr. Dowd stated same with C, he recommends that their recommendation of C is in Section 9-4; all appearance tickets issued pursuant to this chapter are requested to be served personally. Subdivision 2 of Section 150.4 of Criminal Procedure Law is amended to read as follows, basically it allows you to serve personally or any other manner authorized for service under this criminal practice a procedure rules. He feels this is a good change and a very useful one and it should be changed.

Board agreed.

Trustee Rumbold asked if in the codification will the statute be somewhere where it's easily referenced.

Mr. Dowd stated that there will be a cross reference.

Mr. Dowd stated that Part B of this recommendation recommends it be revised after discussion with the Village Board. B says that in 9-3 are any other Village officers authorized to issue appearance tickets or have any changes been made to existing authorized persons. Do we want to revise who can serve appearance tickets?

Trustee Rumbold asked what the attorney recommended.

Mr. Dowd stated that e. is Village Manager, Walden Code Chapters 1-148. That came about when Darren Hernandez was manager. It never was that way. If you go through the code and look at who can serve what, the question is do you want to leave it alone or not.

Mayor Pearson asked if there would ever be a situation where someone is on vacation and there is something that needs to be cited. Would the manager be able to do that?

Mr. Dowd stated that with the building inspector they usually have the engineer fill in or have a building inspector from another community come in and issue a violation.

Manager Politi stated that he is not a trained building inspector so he wouldn't be comfortable doing that.

Deputy Mayor Matise stated that it is really better to keep the manager out of this.

Mayor Pearson stated that it's not something that is most likely abused; it's something that is needed if necessary.

Mr. Dowd stated that you could end up with a manager who is a building inspector or engineer.

Deputy Mayor Matise stated that we presently have two code enforcement officers' they're not both on vacation at the same time.

Mr. Dowd stated that he is not sure if Mr. Penney is authorized.

Trustee Rumbold asked if 9-3 enumerates everyone that is allowed.

Mr. Dowd stated yes. What they are saying is have we created another position whether we see the need to designate someone else, such as the dog control officer.

Trustee Rumbold stated that she feels there are enough people.

Mayor Pearson stated that it is fine because they are leaving the manager in there.

Consensus of the Board leave as is.

Chapter 14, Business Improvement Districts

Mr. Dowd indicated that General Code isn't recommending any revisions to this. We haven't used it. The intention was to create a mechanism in which to help facilitate fixing the downtown business area. If you create a business district and you want to do improvements to it you can actually tax the entity so they would be paying for improvements for the downtown.

Board agreed to retain as written.

Chapter 18, Code of Ethics

Mr. Dowd stated that Parts A, B, C and E of the requests to retain as written and Part D revise as suggested. Section A, definition of interest is somewhat different than the definition contained in Section 800 of the General Municipal Law. It is somewhat different but that is the luxury in having a municipal home rule law that you can make up your own definition. Our definition was a slight variation on the State law. He doesn't see any reason for changing it.

Deputy Mayor Matise asked what indirect pecuniary is.

Mr. Dowd explained that it is monetary. You get secondary advantage from some sort of monetary benefit.

Board agreed to retain Part A as written.

Mr. Dowd stated that Part B they are saying in Section 18.2, the last sentence of the definition "municipal Officer or employee" could be revised to conform to the definition in Section 800 of General Municipal Law by amending the last sentence, as follows: For the purpose of this chapter, no person shall be deemed a "Village officer" or "Village employee" solely by reason of being a volunteer fireman or a civil defense volunteer, and add except a fire chief or assistant fire chief. He doesn't see the need to add that.

Board consensus was to leave as written.

Mr. Dowd stated that Part C says that In Section 18-6, the Village Clerk provides for the distribution of copies of the Code of Ethics. Subdivision 2 of Section 806 of General Municipal Law provides for the distribution of copies by the chief executive officer of the municipality. He suggested it remain the Village Clerk.

Board agreed to retain as written.

The recommendation for Part E is to retain as written. It states that a quorum is the minimum number of officers and members of a committee or organization who must be present for valid transaction of business. Section 18-7A states that the Board of Ethics is a five member board and that three members constitute a quorum, yet requires a vote of at least four members to take any action. Does the Village wish to change the quorum requirements to four members. Mr. Dowd does not recommend that, you want four.

Board agreed to retain.

Mr. Dowd's recommendation for Part D is to follow General Code's recommendation. Section 18-6 could be revised to add the following wording form Subdivision 2 of Section 806 of General Municipal Law:

Failure to distribute any such copy or failure of any officer or employee to receive such copy shall have no effect on the duty of compliance with such code, nor the enforcement of provisions thereof.

Board agreed.

Chapter 19, Defense and Indemnification of Officers and Employees

Mr. Dowd stated that they are asking whether we should change the word Mayor to Village Manager since the Manager is the Chief Administrative Officer of the Village. We are following Public Officers 4(d), Section 18 of Public Officer Law, so they are suggesting and he agrees it should be changed from Mayor to Village Manager. He further stated that this is a provision that protects the whole Board that when they are sued in their official capacity that you're entitled to a defense and indemnification at the cost to the Village. Sometimes because of the way the cases may come down the insurance company may defend the Village but they may not want or they may think they have a conflict with the individual Trustee. So the Trustee is entitled to a defense and indemnification, so that individual goes out and hires a private attorney to defend them in the law suit and the Village has to pay that attorney. At the end of the trial you're hit with a judgment of \$10,000 personally, the Village has to pay that \$10,000. Section 18 of the law that allows you all to adopt this says, upon entry of a final judgment against the employee or upon settlement of a claim the employee shall serve a copy of such judgment or settlement personally or by registered or certified mail within 30 days of the date of entry upon the Chief Administrative Officer of the public entity. What they are saying is that is what the state law says, the Chief Administrative Officer is not the Mayor and in the Village Manager form of government it's the Village Manager. So to be consistent with your form of government and the Public Officer's Law they suggest you change the word Mayor to Village Manager. It doesn't change the provision of the law. He suggested the change.

Board agreed.

Chapter 42, Traffic Violations Bureau

Mr. Dowd stated that you have an entire Traffic Violations Bureau here. They say it's consistent with General Municipal Law and they recommend no changes. He doesn't know what the judge does on Traffic tickets. It seems its okay if they want to leave it.

Trustee Rumbold suggested they ask the Judge.

Manger Politi stated that he will contact the Judge.

Chapter 58, Brush, Grass and Weeds

Mr. Dowd stated that some of these things are updating the language of the code, because when these things were written years ago. They say that Part A in 58-1 the Village could add the following definition of "weeds" from Section 302.4 of the New State Property Maintenance Code:

WEEDS – All grasses, annual plants and vegetation other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens.

Mr. Dowd stated that he doesn't see any reason to add that definition.

Deputy Mayor Matise stated that she feels they need a definition.

Mr. Dowd stated that it's not a bad idea to have a definition; the question is whether we should add anything else to the definition.

It was the consensus of the Board to add the definition of weeds.

B. In Section 58-2, the height limit for weeds, grass or other rank vegetation is five inches. Section 302.4, Weeds, of the new State Property Maintenance Code provides in part as follows: "All premises and immediate exterior property shall be maintained free from weeds or plant growth in excess of 10 inches (254 mm)". The Attorney suggested retain as written.

Mayor Pearson stated that some of the decorative grasses are higher than 10 inches. She asked if they needed a definition of plant growth.

It was the consensus of the Board to retain as written.

C. In Section 302.4 of the new State Property Maintenance Code, all noxious weeds are prohibited. To reflect this, Section 58-2 could be revised to removed "rank vegetation: from the list of vegetation allowed to a height not greater than five inches.

It was the consensus of the Board to remove “rank vegetation” and add All noxious weeds shall be prohibited.

Chapter 79, Flood Damage Prevention

Mr. Dowd stated that General Code says retain as written. This is going to be changed because the DEC has just finished remapping flood zones and in order to qualify for flood insurance the Village will have to amend the code. All the communities have been waiting for that to be finalized and normally they send out a model code telling us what they recommend us to adopt.

Manager Politi stated that he just received the model law today.

Table until manager and attorney can review model law.

Chapter 81, Freshwater Wetlands

Mr. Dowd suggested they delete this because we’ve never used it. DEC and EPA have their regulated wetlands and there is a small area of wetlands that are not regulated by anyone. They are called isolated wetlands or just temporary wetlands. The Village adopted Chapter 81 to allow the Village to get into wetlands protection on a local level. Yet they never passed any regulations as to how you would carry it out.

Mayor Pearson stated that the guidelines are in there.

Mr. Dowd stated as a resident you can’t pick up the code and know what that means and what you can or cannot do without going back to Article 24. If it refers back to Article 24 why would you need a local wetlands code.

Mayor Pearson suggested they leave this in and work on it.

Mr. Dowd stated that in Monroe they have the procedures, one the Building Inspector handles and the other the Planning Board handles.

Mayor Pearson asked to see Monroe’s procedures.

Mr. Dowd stated that he will show them what he has, but it’s not an easy thing to administer. There is a tremendous amount of cost to the people who own property and want to build a deck.

Deputy Mayor Matise asked Mr. Dowd to see if General Code has any samples.

It was the consensus of the Board to review the procedures.

Chapter 85, Garbage, Rubbish and Refuse

A. Are there any residential buildings with more than five dwelling units (e.g. a townhouse with six townhouse units) in the Village: If so, such residential buildings are excluded from the definition of “residence: contained in Section 85-8.

Mr. Dowd recommended this be retained as written.

Trustee Rumbold asked if this will change with the Kidd project.

Mr. Dowd stated no, because they won’t have garbage picked up by the Village.

B. If such residential buildings exist, is it desired to exclude them from the Village’s municipal garbage collection system, as described in Section 85-9B? The code provides that all “residences” are deemed part of the Village’s municipal garbage collection system, but is silent with respect to residential buildings that does not fall within the definition of “residence.”

Mr. Dowd suggested this be retained as written.

Board agreed.

C. In 85-14 are the penalties sufficient?

Consensus of the Board was to retain as written.

D. In Section 85-15, is enforcement by the Village Manager still desired?

Consensus was to retain as written.

Chapter 97, Jewelry, Secondhand

Mr. Dowd suggested this be deleted.

Consensus of the Board was to delete.

Chapter 112, Parks

General Code will review the chapter title to “Parks and Recreation” as mentioned in the history section of this chapter. No changes are recommended.

Consensus of the Board is to revise the title.

Chapter 114, Peddling and Soliciting

Mr. Dowd stated that there are constant cases coming out from time to time up in

the courts about peddling and soliciting and how much regulations you can or cannot do. There have been problems in the whole area of people coming and seeking exemptions from the requirements because they are not for profits. They had a minister from Long Island come with his inner city kids to solicit money for their organizations. There was a problem identifying all these people who were watching these kids. They indicated that it was benefiting local children. They had a hard time verifying if they were a not for profit. They can leave this as is, but there may be some revisions at a later date.

It was the consensus of the Board to have a fee of \$25.00 per day, \$100.00 a month, and \$500.00 six months.

Chapter 115, Performance and Maintenance Bonds

In the “HISTORY” section of this chapter, reference is made to the provisions of Section 7-730(a) of the Village law. Such section does not exist. We will revise the reference to Section 7-730 of Village Law. That should be Village Law 7-739(A).

It was the consensus of the Board to correct the section number.

Chapter A151, Fees

Consensus was to add the peddlers and solicitors fees.

Chapter A152.1, Penalties

A. In Section A152, the penalties for violation of Chapter 63A are missing.

Revise Section A152.1 to include “Chapter 63A Clearing Filling and Grading: in the list of chapters.

Consensus of the Board to set a penalty of \$250.00 per day and or 15 days in jail for the first offense and second offense is \$500.00 and or 15 days in jail and the third offense \$1000.00 and or 15 days in jail.

Mr. Dowd stated that he will get the board information on wetlands, and the fees will be adopted at the next meeting. At the next meeting they will be looking at zoning, subdivision regulations, and water/sewer.

Deputy Mayor Matise stated that it’s still in the code book that the fire department is still under the Village. That needs to come out. She also stated that under dogs and other animals we need a kennel definition. She also asked about Fire Prevention. General Code didn’t recommend any changes.

Mayor Pearson indicated that the code states that the Fire Chief can.

Mr. Dowd stated that Code Publishers says that as with all building code related legislation this fire prevention chapter requires technical review by you code officials against the uniform code to determine if revisions are warranted. Is some or all of this chapter superseded by Chapter 61. The Building Inspector needs to look at that.

Mayor Pearson asked when can the Board meet to review more of the recodification.

Mr. Dowd stated that he will get it to the Board within a week or so.

JMK Enterprises, LLC

Manager Politi asked Trustee Millspaugh if he's seen JMK's response.

Trustee Millspaugh stated that he still has a question as to how it got arrived at when they had unit prices. Another thing occurred to him, did the contractor think he was doing the permanent patch. He brought hot material in.

Manager Politi stated that was a temporary patch.

Trustee Millspaugh asked who got the permit to work on Coldenham Road.

Manager Politi stated that they did.

Trustee Millspaugh asked if the county advised him what he had to do there.

Manager Politi stated yes.

Trustee Millspaugh stated that is a big price for a temporary patch.

Manager Politi stated that beginning in November until spring you cannot open a county road and close it permanently. Permanent patch is done from March until November. We had to get that project started and it was after November, so the patch was temporary. In the spring they have to rip that out and put a permanent patch in. In the contract there was a cost for the permanent.

Trustee Millspaugh stated that it was funny that the temporary cost more than the permanent.

Manager Politi stated that he is off the site; he will not work until he gets paid for this. The manager needs to know if he can pay the bill.

Trustee Millspaugh stated that it seems he could have done it with cold patch.

Trustee Rumbold moved to approve the change order payment request of JMK Enterprises, LLC. Seconded by Trustee Norman. All ayes with the exception of Trustee Millspaugh abstaining. Motion carried.

Letter to Planning Board

Manager Politi stated that a letter was received from the chairman of the Planning Board asking that the joint meeting not include Central Hudson or the Town of Montgomery Planning Board. March 2nd is a scheduled work session for the Village of Walden Planning Board and there are three applicants on the agenda and it would be unfair to the applicants to have to cut their appearance short or not have their applications addressed that evening. It would not be fair to keep Central Hudson and the Town of Montgomery waiting. They request that they reschedule.

Mr. Dowd stated that the Planning Board would like the Village Board to explain what their preferences are and then bring in Central Hudson and the Town.

Trustee Rumbold asked if the Planning Board has seen the plans.

Mr. Dowd stated, not the latest ones.

Mayor Pearson stated that they are back to the same plan it was.

Mr. Dowd stated that the actual board that gives the approval is the Planning Board. They are the ones that grant the site plan and the special permit.

Mayor Pearson stated that she doesn't understand what the issue is.

Trustee Rumbold asked why there are two separate presentations. Get everyone together in one room.

Mr. Dowd suggested they set up a special meeting with the Planning Board, Village Board and Central Hudson and make one presentation.

Trustee Rumbold stated that when there are presentations before this Board make sure the Planning Board is aware of that.

Trustee Rumbold moved to authorize a letter go to the Planning Board advising them not to attend the meeting on March 2, 2009 and the Building Inspector is to coordinate a date for the Board to meet with the Town Planning Board, Village Planning Board and Central Hudson. Seconded by Trustee Norman. All ayes. Motion carried.

Adjournment

Trustee Norman moved to adjourn. Seconded by Trustee Rumbold. All ayes. Meeting adjourned.

Respectfully submitted,

Nancy Mitchell
Village Clerk