

**BOARD OF TRUSTEES
VILLAGE OF WARWICK
OCTOBER 1, 2018**

7861

The regular bi-monthly meeting of the Board of Trustees of the Village of Warwick was held on Monday, October 1, 2018. Present were: Mayor Michael Newhard; Trustees Barry Cheney, Trustee Eileen Patterson and George McManus. Trustee Lindberg was absent. Also, present were Deputy Clerk, Barbara Ranieri and DPW Supervisor, Mike Moser. Also present: Raymond Maher, John Gruen, Joe Lawlor and Kathy Gerstner.

The Mayor called the meeting to order.

The Deputy Clerk held the roll call.

Continuation of Public Hearing for a special use permit application for the proposed construction of one, forty (40) unit apartment building with associated parking located on Forester Avenue, Warwick, NY, section, block and lot 211-12-1.

The Deputy Clerk read the public notice.

Mayor Newhard: The first part of this meeting is a continuation of a public hearing for a special use permit application. We will open it up to the public if anybody would like to make comments. I believe this is the third meeting we've had this public hearing open. Board, any more comments for the record?

Trustee Patterson: For the record one of the questions that I raised at the last meeting during the public hearing was whether there is a need for rental apartments in the Village. The gentleman who is the applicant said there is but of course you need to get a more objective answer. In my research I've determined through conversations with a variety of realtors that there is a tremendous need for rentals in the Village. I got my question answered and in a very informal way; it wasn't from the applicant. I felt better about hearing that.

Mayor Newhard: I can back you up because I asked the same question to multiple realtors to see what is the status and what is the need.

A **MOTION** was made by Trustee McManus, seconded by Trustee Patterson and carried to close the public hearing. Four Ayes.

Approval of Minutes

A **MOTION** was made by Trustee McManus, seconded by Trustee Patterson and carried to approve the minutes of September 17, 2018. Four Ayes.

Approved and Audited Bills

A **MOTION** was made by Trustee Cheney, seconded by Trustee McManus and carried to pay all approved and audited bills in the amount of \$229,648.05. Four Ayes.

Correspondence

Mayor Newhard: We don't have correspondence, but we received a letter today and I think it would be valuable to put it in this part of the meeting. The letter came from the law office of Elizabeth Cassidy and it's addressed to myself and the Village Trustees. It questions the zoning law as it appears in terms of cluster development and which there is on the agenda tonight is a resolution amending the schedule of fees regarding that. We did reach out to our attorney and our attorney's response to the letter, I think, is important for the record as well. It's up to the Board whether you want me to read both letters. How would you like it?

Trustee McManus: Can we get a copy of our counsel's letter?

Mayor Newhard: Of course, yes. While we're waiting I'll just read the letter from the office of Elizabeth Cassidy.

"Dear Mayor Newhard and Village Trustees:

"I represent Raymond and Lugene Maher in connection with their review and public comment on the proposed Village View Subdivision application presently before the Village Planning Board and the Village Board of Trustees.

"I understand that there is presently a proposed motion for your October 1, 2018 Village Board meeting concerning the reduction of the fee for cluster subdivision units from \$50,000 per lot to \$40,000 per lot. The motion should be denied or in the alternative tabled for further information gathering for the following reasons:

"1. The Village's current zoning law appears to be in direct conflict with New York State Law. Village Law §7-738(b) states, "A cluster development shall result in a permitted number of building lots or dwelling units which shall in no case exceed the number which could be permitted, in the Planning Board's judgement, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the zoning local law applicable to the district or districts in which such land is situated and conforming to all other applicable requirements. (emphasis added). Here, the Village's law directly contradicts State law and allows applicants to exceed the yield count for a price. Bestowing zoning benefits for cash has been rejected by the Courts. See Municipal Art. Soc. V. New York, 137 Misc.2d 832 (1st Dept 1987).

"2. The Village's own consultant, Fairweather Consulting, states in its letter of August 28, 2018 and its memo of September 18, 2018 three separate times that the sum of \$50,000 is a reasonable number and that the \$40,000 figure may be overly conservative.

"3. It appears that the motion is being made by the request of the applicant for the Village View Subdivision. See letter of Jay Myrow, dated February 6, 2018. Were the resolution to be adopted as proposed, it would result in a savings of \$170,000 to the developer while offering no commitment by the developer to improve Village infrastructure or providing other benefits such as affordable housing. Indeed, upon review of Planning Board minutes, the applicant and his representatives have repeatedly pushed back on both the cluster fee and providing affordable housing as too costly. The

developer has a solution: perfecting the 28-lot preliminary approval he has already received. It is not the Village of Warwick's role to guarantee the developer a profit to the detriment of Village taxpayers.

"4. I believe the Planning Board and special permit use process for Village View needs to run its course prior to altering the fee structure. The applicant, Planning Board and Village Board are still in the environmental review process and until process concludes, it is impossible to fully identify the potential impacts of projects such as Village View and what those impacts will cost the Village and its taxpayers. Adopting the motion now is premature.

"In short, the application of Village View Subdivision, seeking a 60% plus density bonus together with this proposed motion opens the door to a dangerous precedent, i.e. that the Village of Warwick can be bought. This Village and its residents have worked over decades to ensure a thriving downtown supported by a robust residential market. This motion if adopted flies in the face of that effort.

"I thank the Board for its consideration. Elizabeth K Cassidy"

Mayor Newhard: Just as a note on what is in our zoning, we have cluster regulations and there is something, if you create a denser subdivision you can go to the Village Board for a special use permit, that would create those extra lots. It's not through the Planning Board process, it's actually through the Village Board. But the one thing I want to say about Mr. Fairweather's report is that Mr. Fairweather is a planner who has a specific background in economics and planning combined. We asked him... we felt that because the original \$50,000 number came from our annexation policy that this was a very different process. The annexation policy is property going from the Town into the Village. This is property already in the Village that is then being clustered. It's a whole different ballgame. In the annexation policy, that's divided up between the Village and the Town and \$50,000 was based on the cost of a vacant building lot in the Town.

Trustee Patterson: Wait, I want to stop you before you read that because its attorney/client; so, you shouldn't actually read that.

Mayor Newhard: So, I won't read that. I just want to say that that was why we brought Mr. Fairweather in to review the particulars of our cluster regs and the cost of infrastructure, specifically the cost of infrastructure and if there was an increase in lots how that increase would basically equate. That's where the \$40,000 came from. Originally, he did have it at \$50,000 but we went back to him; he re-did it. He re-looked at it very carefully. He found a mathematical mistake and he came back to us with a lower figure. You can charge people whatever you want but I think that what we're looking for is a level of fairness; not that this will even happen, but at least when it comes to our regulations that they have a substantive backing; that we hired a planner with an economic forte and that he looked at it very carefully and came up with that number as a reasonable number and that that money, all those monies would go into an infrastructure fund.

Trustee Cheney: I think just to make it clear, we embarked on that study under the advisement of the Village Attorney. He suggested that we needed to have justification for that number whatever it might be that was part of the cluster regulations.

Trustee Patterson: I wonder, though, about Ms. Cassidy's point #4; if whether we should wait to make this change until after... I think she makes a good point there that we should wait until after the process is complete so it doesn't appear to be inter-mixed; with the caveat that the applicant, as I understand it, and please correct me if I'm wrong, but as I understand it the process was that the applicant would apply for a special permit from the Village and then move on to the Planning Board; but this question was outstanding, so the applicant opted to go through the process that they're currently going through with the Planning Board and opted to wait for the special permit application process until after this question was answered because it would determine whether or not... I don't know why, but they did. That's why it's happening in this order. I like that #4. I think it's a good reason to wait. I mean I like all of her points.

Trustee McManus: I agree.

Trustee Cheney: So, we'll withdraw those motions.

Mayor Newhard: We'll withdraw those motions, we'll hold off. I think that's great. I'd rather be slow and deliberate than...

Trustee Patterson: Plus, our attorney will be at our next meeting.

Mayor Newhard: Right, and I did speak to him on the phone before the meeting and that's exactly what I spoke about.

Privilege of the Floor

Two Village residents spoke about concerns regarding the Village View cluster development and questioned the Fairweather report. The Mayor responded that the Village Attorney thought it would be more prudent to remain with the conservative number. Raymond Maher disputed that comment and again referred to the Fairweather report. He requested that the Village slow down the process since this was the first cluster development in the Village. The Mayor agreed that he felt the Board agreed about taking it slow and that was the impetus for hiring Mr. Fairweather. The Mayor also commented that this was the first time this has come before the Board and it was very new. John Gruen expressed displeasure with a conversation with Kirk Rother. The Mayor directed him to go to the Planning Board public hearing and repeat his concerns there. The Mayor also explained that cluster development is a practice that could be very beneficial in the right shape and form; they can protect land and environment and create open space.

Motions

Trustee Cheney: We're withdrawing Motions #1 and #2.

Village View Estates, LLC

A **MOTION** was made by Trustee Cheney, seconded by Trustee Patterson and carried to acknowledge receipt of an application dated September 14, 2018 submitted by Village View Estates, LLC, for a special use permit authorizing creation of bonus density lots in a cluster development

subdivision pursuant to Village Code §145-29(D)(4) and to refer the application to the Village's Engineering Consultant and the Village Attorney for review and comment. Four Ayes.

A **MOTION** was made by Trustee Cheney, seconded by Trustee Patterson and carried to set \$2,500 as the escrow amount on the application of Village View Estates, LLC, for a special use permit authorizing creation of bonus density lots in a cluster development subdivision pursuant to Village Code §145-29(D)(4). Four Ayes.

Discussion

Trustee Patterson: Is that 80% of the anticipated cost?

Mayor Newhard: That came from our lawyer... that number.

Trustee Cheney: Is that the amount that we set?

Trustee McManus: 80% of anticipation.

Trustee Cheney: We set that it wouldn't be... it couldn't go below 80% of the amount that was required.

Trustee Patterson: I'm asking is \$2,500 below 80% of the...

Trustee Cheney: \$2,500 is 100% of what's in the fee schedule, I believe.

Trustee Patterson: The fee schedule... aren't these fees to cover the expense of the engineer and the Village Attorney?

Trustee Cheney: Yes, our fee schedule, I believe, stipulates that \$2,500 is the initial escrow amount for a special use permit. I think we established that.

Trustee Patterson: So, it's not based on the 80%; it's based on the fact that it's a special use permit.

Trustee Cheney: Yes, and if it gets below 80%, the \$2,500 then they have to replenish.

Trustee Patterson: Okay, thank you for clarifying.

Property Damage at 28-30 Forester Avenue

A **MOTION** was made by Trustee Cheney, seconded by Trustee McManus to waive reading the Resolution Authorizing Settlement of Claim for Property Damage at 28-30 Forester Avenue. One Aye (Trustee Patterson) Three Nays

Discussion

Trustee McManus: I would like to see us go back to our old way of doing it and read the resolutions and the propositions. I personally feel that waiving it and then just voting on it because people think we're trying to hide something.

Trustee Patterson: Well, it's part of the record.

Trustee McManus: Not to the people who are watching on television or the people over here. I would like to see us go back to our old way of reading.

Trustee Cheney: I don't have a problem reading ones that are this length but as far as a bond resolution goes, I don't think it's necessary under those cases.

Trustee McManus: We've done it for all the years before our new attorney and I'd like to see us go back to that practice.

Trustee Cheney: Everything, including bond resolutions?

Trustee McManus: Every resolution that we make, yes. We made a lot of resolutions at the first meeting last month that involved lots of figures and lots of money involved and nobody here or nobody on TV had any clue what they were. I think people feel that we're trying to hide something. I know we're not. I know we can do it this way; but my personal opinion is I'd like to go back to the old way of reading them.

Mayor Newhard: I would prefer to be able to select... I think something like this is worth reading but a bond resolution which are multiple pages long, we have the ability to make that decision as a Board.

Trustee Patterson: It's a boiler plate... the bond resolution. We worked really hard on that language.

Trustee Cheney: It's given to us by bond counsel... that language.

Trustee Patterson: Right, but we added in the part about the Mayor and the Village Treasurer having a say... I just remember over the years we worked hard on it to perfect that and as long as it's that same language that we review before the meeting then I'm comfortable with not having to read that out loud. Why don't we just treat it as a case by case and see how it goes?

Mayor Newhard: I think that that's appropriate.

Trustee Patterson: So, we're back to this case.

Resolution Authorizing Settlement of Claim for Property Damage
At 28-30 Forester Avenue.

WHEREAS, in or about September of 2012, the Village of Warwick received a claim from John Peruso and Lynn Peruso regarding damage to the parking lot of their property at 28-30 Forester Avenue, Warwick, New York caused by work upon a Village sewer rehabilitation project; and

WHEREAS, at that time the Village conducted an investigation of the claim and found that it was not frivolous and should be settled rather than litigated; and

WHEREAS, in or about December of 2012, an agreement was reached with John and Lynn Peruso under which the Village accepted responsibility for the property damage and agreed to pay its share of the costs of repairing the parking lot which, at that time, was determined to be \$5,800 in return for a general release; and

WHEREAS, repairs on the parking lot are now going forward and it is just and appropriate for the Village to make the said payment at this time.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. That the Village Board approves the payment of \$5,800 to John and Lynn Peruso in full settlement of the said claim for property damage, conditioned upon John and Lynn Peruso executing a general release in favor of the Village; and
2. That the Mayor is hereby authorized to execute any and all documents necessary to effect the aforesaid settlement.

Trustee Cheney presented the foregoing resolution which was seconded by Trustee McManus.

The vote on the foregoing resolution was as follows:

Barry Cheney, Trustee, voting	Aye
Michael Newhard, Mayor, voting	Aye
Eileen Patterson, Trustee, voting	Aye
George McManus, Trustee, voting	Aye

2018 Caterpillar 930 M Wheel Loader

A **MOTION** was made by Trustee Cheney, seconded by Trustee McManus and carried to purchase 2018 Caterpillar 930 M Wheel Loader in the amount of \$179,550 from H.O. Penn. Price reflects NJPA/Sourcwise Gov Discount #032515-CAT. \$250,000 was budgeted for this purchase; street equipment A.5110.2350 as per the DPW Supervisor's recommendation. Four Ayes.

Excelsior Hose Co. No. 1 – Coin Toss

A **MOTION** was made by Trustee Cheney, seconded by Trustee Patterson and carried to grant permission to Excelsior Hose Co. No. 1 to hold a coin toss on Oakland Avenue on October 6, 7 & 8, 2018 from 10 a.m. to 2 p.m. Proof of proper insurance has been received. Four Ayes.

Discussion

Mayor Newhard: Discussion, only because Barry, you and I were talking about this motion and then the following motion... about maybe coming up with specific procedures for this type of activity; such as reflective vests, cones that we can lend them for the activity...

Trustee Patterson: The Fire Department probably has that.

Mayor Newhard: The Fire Department does but the next one is the Knights of Columbus... but anything that would be a safety...

Knights of Columbus – Coin Toss

A **MOTION** was made by Trustee Patterson, seconded by Trustee Cheney to grant permission to Warwick Knights of Columbus Council 4952 to hold a coin drop fundraiser on Oakland Avenue or Galloway Road on Saturday, October 20, 2018 from 10 a.m. to 4 p.m. Funds being raised for the Carolina hurricane relief fund. Proof of proper insurance has been received – AMENDED

Discussion

Trustee Cheney: I would suggest that where the Fire Department has been setting up with theirs on Oakland Avenue, which they probably set up about 75-100 feet north of Linden, that that's probably a very appropriate spot. There's good site distance there. Approaching traffic is a little further away from the light at Galloway, so I would move to amend the motion so that it would read fundraiser on Oakland Avenue at a location 75-100 north of Linden.

A **MOTION** was made by Trustee Cheney, seconded by Trustee Patterson to grant permission to Warwick Valley Knights of Columbus Council 4952 to hold a coin drop fundraiser on Oakland Avenue at a location 75-100 feet north of Linden on Saturday, October 20, 2018 from 10 a.m. to 4 p.m. Funds being raised for the Carolina hurricane relief fund. Proof of proper insurance has been received – AMENDED

Discussion

Trustee McManus: Are we going to comment about proper safety equipment and clothing?

Mayor Newhard: If we could add that I think I would feel more comfortable.

Trustee Patterson: I'd like to add with instruction to the Knights of Columbus to borrow safety apparel and cones from the Village.

Trustee McManus: Do we have stuff we can loan them?

Mike Moser: Cones would not be an issue but vests...

Mayor Newhard: I believe we have a number of vests from our crossing guards.

A **MOTION** was made by Trustee Patterson, seconded by Trustee McManus and carried to grant permission to Warwick Valley Knights of Columbus Council 4952 to hold a coin drop fundraiser on Oakland Avenue, approximately 75-100 feet north of Linden on

Saturday, October 20, 2018 from 10 a.m. to 4 p.m. Funds being raised for the Carolina hurricane relief fund. Proof of proper insurance has been received; with instructions to the Knights of Columbus to use cones and safety vests and possibly borrow them from the Village if needed. Four Ayes.

Halloween Curfew

A **MOTION** was made by Trustee McManus, seconded by Trustee Patterson and carried to impose a Halloween curfew for all persons under the age of 18 unless accompanied by a parent or guardian on all Village streets and parks and other public areas in the Village of Warwick between the hours of 8 p.m. on Tuesday, October 30th to 6 a.m. on Wednesday, October 31, 2018 and again on Wednesday, October 31st, from 8 p.m. to 6 a.m. on Thursday, November 1, 2018. Four Ayes.

Halloween Parade

A **MOTION** was made by Trustee McManus, seconded by Trustee Patterson and carried to grant permission to the Village of Warwick Recreation Department and the Warwick Lions Club to hold a Halloween Parade on Wednesday, October 31, 2018. Lineup will be at 4:30 p.m. on Church Street and the parade will start at 5 p.m. and proceed down Main Street to Railroad Green where Halloween treats will be handed out, ending in a Costume Contest. A police escort will be needed to lead the parade. The proper insurance is on file. Four Ayes.

A **MOTION** was made by Trustee McManus, seconded by Trustee Patterson and carried to close Church Street from 4:15 p.m. to 5:15 p.m. on Wednesday, October 31, 2018. Four Ayes.

A **MOTION** was made by Trustee McManus, seconded by Trustee Patterson and carried to close Railroad Avenue for the Halloween Parade on Wednesday, October 31, 2018 from 4:30 p.m. to 5:45 p.m. Four Ayes.

A **MOTION** was made by Trustee McManus, seconded by Trustee Patterson and carried to close Oakland Court, Welling Avenue and Orchard Street west of Elm Street on Wednesday, October 31, 2018 from 4 p.m. until 8 p.m. Four Ayes.

Discussion

Mayor Newhard: I believe that it would be important to give some level of notification to the neighborhood; even though it has happened, its still our responsibility to make sure that they're totally aware. That local traffic would be allowed in...

Trustee McManus: Local traffic being residents.

Mayor Newhard: Residents, yes.

Trustee Patterson: So, you're going to have a sign that says local traffic only?

Mike Moser: We have a local traffic only sign that we can put there, but they drive right through there.

Trustee Patterson: That's bad, because people will say I'm from Warwick, I'm local.

Mike Moser: That's what they do when they drive up on a water main break.

Trustee Patterson: The people who live there first of all do an amazing job of preparing for Halloween and you're right to make sure that they know but I don't think that we allow anyone... it's such a dangerous night to even allow any cars in there especially when people who are trick or treating with their kids are expecting that there won't be any cars.

Trustee McManus: But there were comments at the police meeting that the police had complaints from residents that they wouldn't allow in their streets to get into their driveways.

Trustee Patterson: For four hours? I mean they can park...

Trustee Cheney: They can park out on Campbell or Orchard.

Mayor Newhard: I think notification is important and ask them to plan accordingly. It's four hours and it's probably the busiest and we want it to be the safest trick or treat spot.

Trustee McManus: How are we going to notify people?

Mayor Newhard: I think we can do it a number of different ways.

Trustee Patterson: The Facebook page will do the trick and maybe the DPW can walk around with a flyer.

Mike Moser: If you get a letter, I can handle it.

Veterans Day Parade

A **MOTION** was made by Trustee McManus, seconded by Trustee Patterson and carried to grant permission to the Veterans of Foreign Wars Post No. 4662 to hold a Veterans Day Parade Sunday, November 11, 2018 per the attached letter and map. Parade will begin at 10 a.m. and culminate at Memorial Park approximately 11 a.m. with a ceremony. Proof of proper insurance has been received. Four Ayes.

Intermunicipal Agreement

A **MOTION** was made by Trustee Cheney, seconded by Trustee McManus and carried to authorize the Mayor to sign the Intermunicipal Agreement by and between the Warwick Valley Central School District and the Village of Warwick for mowing and sweeping services as per the agreement for the period of July 1, 2018 through June 30, 2021. Four Ayes.

DPW Supervisor's Report

Mike Moser: Hydrant flushing has been completed; no issues to report there. The 18" valve was installed on the main distribution line from the filter plant. All parking meters with work orders have been repaired or replaced. All Village owned properties continue to be cut. We pick up the new RBC drive for the Wastewater Treatment Plant. I met with contractors to repair the front steps of Village Hall. I'm waiting on the quotes. We constructed the guardrail in Memorial Park to assist with traffic control. We repaired a sidewalk on Oakland Court that was disturbed during a water job. We repaired a broken curb valve on Oakland Avenue. The McFarland Path is about 95% complete. The path has been rolled, trees cut and removed, underbrush removed for sight vision from the road. We're waiting on the solar lights to be delivered and they will be installed this week. It's already getting a lot of use. All the locks have now been removed from the bridge and are still stored here at Village Hall. I need a final date... we're already passed the date that you gave them. We walked the stream and continued to check manholes and sewers for I/I. Asphalt patching continues throughout the Village. We're painting parking spots, crosswalks, etc. and continue to be spruced up. The reservoir property and dams cut and cleaned. We moved the driver feedback sign from Grand Street to West Street and now we need to see what's going on with it because it doesn't seem to be working at this point. We are beginning fall and winter preparations as the summer has flown by and we would like to thank all of the DPW staff for their continued hard work and the commitment to the Village.

Trustee Patterson: Can we put a speed limit sign near that driver feedback?

Mike Moser: Absolutely.

Trustee Patterson: Because it's kind of like okay, what am I supposed to be doing, if you don't know what the speed limit is. It always says 25 when I'm going by, but I mean for other drivers.

Mike Moser: The first day we put it up there was a police officer sitting down the street and he got somebody within minutes by using that.

Mayor Newhard: I just want to point out one thing to the Board members because you said it in one sentence that is we put the 18" valve... but that was a critical piece of infrastructure that we really needed, and we budgeted for. That is the main valve coming from our water treatment plant and last year we almost the disaster where that water main...

Mike Moser: It was three years ago.

Mayor Newhard: I just want to say it's a very important piece of infrastructure that we really needed and I'm glad that it's there. It makes me feel safer.

Trustee Cheney: What it does is it allows us to shut the water off coming into the Village through Pioneer and reroute it through Grove Street and Southern Lane.

Mayor Newhard: If there's any kind of problem at that end of the Village we have the ability to shut the water off...

Trustee Cheney: Either way.

Final Comments from the Board

There were no comments.

Executive Session

A **MOTION** was made by Trustee Patterson, seconded by Trustee McManus and carried to discuss the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation. Four Ayes.

A **MOTION** was made by Trustee Cheney, seconded by Trustee Patterson and carried to go back into the regular meeting. Four Ayes.

Adjournment

A **MOTION** was made by Trustee McManus, seconded by Trustee Cheney and carried to adjourn the meeting at approximately 8:45 p.m. Four Ayes.

Barbara Ranieri
Deputy Clerk