

**The Board of Trustees of the Village of Westhampton Beach held their Regular Meeting on Thursday, March 1, 2012 at 7 p.m. in the Municipal Building, 165 Mill Road, Westhampton Beach**

**PRESENT: Mayor Conrad Teller  
Trustee Patricia DiBenedetto  
Trustee Leola "Sue" Farrell  
Trustee Hank Tucker**

**ABSENT: Deputy Mayor Toni Jo Birk  
  
Clerk-Treasurer Rebecca Molinaro  
Village Attorney Richard Haefeli**

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**PUBLIC HEARINGS**

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**Local Law Relating to Household Garbage**

Mayor Teller made a motion to open the public hearing on a local law to amend the definition of household garbage, seconded by Trustee Tucker and unanimously approved. 3 Aye, 0 Nay.

Mayor Teller asked Chief Building Inspector Paul Houlihan to say a few words about the proposed local law.

Mr. Houlihan said this proposal came about after discussions with Village Highway Superintendent John Kearns who has been having issues with the Main Street garbage receptacles and people filling them up with household garbage. They are supposed to be used to dispose of things purchased on Main Street, wrappers and such. Mr. Kearns wanted a way to identify household garbage in the code and make it something that is prohibited to be placed in the Village containers.

Jim Flood asked if the Board could consider something for people who dump in the dumpsters they use for their stores. They have the same problem as the Village, the businesses pay for the dumpsters and people put their garbage in or leave it outside. It is unsanitary, and looks terrible.

Mayor Teller thanked him for his comments and said that is currently covered under Penal Law.

Village Attorney Dick Haefeli said he would like to be able to do something but since it is private property, the Village cannot cover it.

Mayor Teller made a motion to close the public hearing and it was unanimously approved. 3 Aye, 0 Nay.

Motion by Trustee Tucker:

WHEREAS, this Board has advertised a local law amending Chapter 103 of the Village Code, entitled "Littering" and

WHEREAS, a public hearing was held on March 1, 2012 and

WHEREAS, this Board has resolved that it is the lead agency for purposes of SEQRA review, and

WHEREAS, this Board has reviewed the submitted EAF Part I and the applicable criteria pursuant to 6 NYCRR 617.7 in determining the environmental significance of this action, and

WHEREAS, this Board has determined that the proposed local law is one of general applicability.

IT IS THEREFORE RESOLVED that the proposed action will not have a significant effect on the environment and therefore this Board issues a negative declaration with respect to this proposed action, and

WHEREAS, all persons present at the meeting have had an opportunity to speak on behalf of or in opposition to the proposed Local Law, or any part thereof, and

NOW THEREFORE, that after due deliberation the Board of Trustees of the Village of Westhampton Beach finds that it is in the best interest of the Village to adopt the Local law as advertised and attached.

Seconded by Trustee Farrell and unanimously approved. 3 Aye, 0 Nay

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**RESOLUTIONS**

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**Accept Minutes of Board of Trustees Meeting**

Motion by Trustee Tucker:

RESOLVED, that the minutes of the Board of Trustees Meeting of February 2, 2012 are hereby accepted.

Seconded by Trustee Farrell and unanimously approved. 3 Aye, 0 Nay

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**Accept Departmental Reports**

Motion by Trustee Farrell:

RESOLVED, that the Treasurer's report for January 2012, Justice Court, Police Department's and Building Inspector's reports for February 2012, are hereby accepted.

Seconded by Trustee DiBenedetto and unanimously approved. 3 Aye, 0 Nay

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**Schedule Public Hearing on Local Law to Authorize Property Tax Levy Limit Override**

Motion by Trustee DiBenedetto:

RESOLVED, that the Village Clerk-Treasurer is hereby directed to publish and post a Notice of Public Hearing to be held on Thursday, April 5, 2012 at 7:00 p.m. at the Village Hall on a local law to authorize a property tax levy in excess of the limit established in General Municipal Law §3-c.

Seconded by Trustee Tucker and unanimously approved. 3 Aye, 0 Nay

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**Schedule Public Hearing on 2012–13 Tentative Village Budget**

Motion by Trustee Tucker:

RESOLVED, that the Village Clerk-Treasurer is hereby directed to publish and post a Notice of Public Hearing to be held on Thursday, April 5, 2012 at 7:00 p.m. at the Village Hall on the 2012–13 Tentative Village Budget.

Seconded by Trustee Farrell and unanimously approved. 3 Aye, 0 Nay

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**Schedule Public Hearing on Sandwich Club Outdoor Dining Permit**

Motion by Trustee Farrell:

RESOLVED, that the Village Clerk-Treasurer is hereby directed to publish and post a Notice of Public Hearing to be held on Thursday, April 5, 2012 at 7:00 p.m. at the Village Hall on the Outdoor Dining Permit Application submitted by the Sandwich Club located at 4 Hazelwood Avenue and identified as SCTM# 905-6-1-19.

Seconded by Trustee Tucker and unanimously approved. 3 Aye, 0 Nay

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**Appoint Member to Village Architectural Review Board-Jim Badzik**

Motion by Trustee DiBenedetto:

RESOLVED, that Jim Badzik is hereby appointed to the Village Architectural Review Board for a term to expire May 31, 2015.

Seconded by Trustee Tucker and unanimously approved. 3 Aye, 0 Nay

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**Approve 2012 Beach Rates and Regulations**

Motion by Trustee Tucker:

RESOLVED, that the attached 2012 beach rates and regulations are hereby approved.

Seconded by Trustee DiBenedetto and unanimously approved. 3 Aye, 0 Nay

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**Approve Use of Village Property-WHB Parade Committee Carnival**

Motion by Trustee Farrell:

RESOLVED, that the Westhampton Beach Parade Committee is hereby authorized to use the Great Lawn on Saturday, March 10, 2012 from 12 p.m. to 5 p.m. for their Annual St. Patrick's Day Parade Carnival.

Seconded by Trustee DiBenedetto and unanimously approved. 3 Aye and 0 Nay

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**Approve Use of Village Property-East End Little League**

Motion by Trustee DiBenedetto:

RESOLVED, that East End Little League is hereby authorized to use the Great Lawn Monday through Friday from March 15 to June 30, 2012 from 3 p.m. to 7 p.m. for tee ball and minor league baseball games.

Seconded by Trustee Tucker and unanimously approved. 3 Aye and 0 Nay

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**Approve Use of Village Property-Greater Westhampton Chamber of Commerce**

Motion by Trustee Tucker:

RESOLVED, that the Greater Westhampton Chamber of Commerce is hereby authorized to use Village property pursuant to the attached 2012 Schedule of Events.

Seconded by Trustee DiBenedetto and unanimously approved. 3 Aye, 0 Nay

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**Approve Use of Village Property-Sean Bancroft Wedding Ceremony**

Motion by Trustee Farrell:

RESOLVED, that Sean Bancroft is hereby authorized to use Rogers Beach on Saturday, June 16, 2012 from 11:00 a.m. to 12:30 p.m. for the purposes of a wedding ceremony.

Seconded by Trustee Tucker and unanimously approved. 3 Aye, 0 Nay

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**Approve Use of Village Property-John Sweeney Wedding Reception**

Motion by Trustee DiBenedetto:

RESOLVED, that John Sweeney is hereby authorized to use the Lashley Beach parking lot on Saturday, June 16, 2012 from 6:00 p.m. to 1 a.m. for valet parking for a wedding reception to be held at 363 Dune Road, Westhampton Beach.

Seconded by Trustee Farrell and unanimously approved. 3 Aye, 0 Nay

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**Approve Use of Village Property-Westhampton Cultural Consortium**

Motion by Trustee Tucker:

RESOLVED, that the Westhampton Cultural Consortium is hereby authorized to use the Village Green for their annual Thursday evening concerts from July 5<sup>th</sup> through August 30<sup>th</sup>, 2012 beginning at 7:30 p.m. until 9:30 p.m.

Seconded by Trustee DiBenedetto and unanimously approved. 3 Aye, 0 Nay

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**Authorize Payment of 2010/11 Assessment Roll Certiorari/Small Claims Property Tax Reductions**

Motion by Trustee Farrell:

RESOLVED, that the Board of Trustees hereby authorize the payment of 2011/12 tax year property tax reductions in the amount of \$17,457.91 to the property owners specified on the attached list as a settlement of Small Claims & Certioraris as ordered by the NYS Supreme Court.

Seconded by Trustee Tucker and unanimously approved. 3 Aye, 0 Nay

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**Authorize Renewal of 2012 Goldberg's Outdoor Dining Permit**

Motion by Trustee DiBenedetto:

WHEREAS, Goldberg's Deli has applied to renew the Outdoor Dining Permit for 2012 to place four (4) tables and twelve (12) chairs pursuant to §196-1 of the Village Code; and

WHEREAS, there were no incidents or reports filed with the Police Department concerning said use; now therefore be it

RESOLVED, that the Board of Trustees hereby authorizes the placement of outdoor tables and chairs as shown on the submitted plan approved in 2008 and subject to the same set of conditions.

Seconded by Trustee Farrell and unanimously approved. 3 Aye, 0 Nay

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**Approve Warrant for March 2012**

Motion by Trustee Tucker:

RESOLVED, that the warrant for March 2012 in the amount of \$ 200,902.98 for the General Fund is hereby approved.

Seconded by Trustee Farrell and unanimously approved. 3 Aye, 0 Nay

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**PUBLIC DISCUSSION**

Andrew Mendelson, says he is concerned that he is not getting a fair shake as a property owner in the Village of Westhampton Beach. He says Mr. Haefeli informed him that the Village would not be considering his petition and he wanted to direct further comments to the Board. He says the Mayor commented in the press last week that taking the issue to the public was not the way to go about it. The Town Attorney said it is nothing more than an attempt to avoid a request to rezone the 2 districts. An application would require full rezoning of the 2 districts and that is only if the Board permits it. Tonight he wants to give the Trustees and the press a map to show what he is talking about. It is a map of the Village and the area highlighted are the I-1 and B-3 districts. He says he has also catalogued the properties in the districts; there are 4 pieces of industrial and 8 pieces of B-3. Based on this, the easiest request for him to make would be to ask for the words grocery store to be added and he doesn't understand how this can be complicated. It would only affect 12 pieces of property and he owns 2 of them. He strongly urges the Board to take

into account the results of the poll he paid for and where 700 people said they wanted this. He asked them to reconsider.

Trustee DiBenedetto asked when he purchased the property, what were his intentions?

Mr. Mendelson said it was zoned for mini-storage and he did build mini-storage there but what was permitted to build was way too much.

Trustee DiBenedetto asked was it zoned then what it is zoned now?

Mr. Mendelson said yes.

Trustee DiBenedetto asked in 2006 if there was some rezoning that took place?

Mr. Mendelson said the Village asked if he would consider changing industrial district property to hotel district property.

Village Attorney Dick Haefeli said that is not what happened at all. He said the Village proposed a local law to change all the industrial properties, excluding the tennis club, to multi-family where you opposed it and said you would litigate it if the plan went through and the Village decided to not proceed with your property and allow it to stay in the district it was in and the district it is in currently. Mr. Haefeli said he wanted to make sure the record was clear; it was not an "ask"; the Village did a study and proposed it, you said you did want to do it.

Mr. Mendelson said yes, they could not imagine building multi-family residences on the rail road, which is why they opposed it.

Trustee DiBenedetto asked if the poll he conducted was geared toward rezoning or geared toward whether another grocery store was warranted.

Mr. Mendelson said the poll was geared toward whether people wanted a grocery store or not. He said that when you get into zoning, its gets complicated. He wanted to come tonight and explain it is not complicated, it only affects 12 pieces of property and a tiny piece of the entire Village.

Trustee DiBenedetto said she does not think that is the issue, she thinks the issue is setting a precedent on how easy it could be to change an existing code. She says a new grocery store would be great but....

Mr. Mendelson said if you go back a read the zoning history, you will see that grocery store zoning was there in the shopping center overlay. The planners said the overlay should stay and he doesn't understand why it was taken out.

Mr. Haefeli said Mr. Mendelson's comments are partially correct. The property was never zoned to permit a stand-alone grocery store. The prior zoning permitted a grocery store as long as it was in a shopping center and the main tenant had to occupy at least 40% of the leased space. You could never put a grocery store alone on a piece of property, it had to be part of a shopping center. The Village subsequently, after having another study done of the area decided to do away with it. There has never been a permitted stand alone grocery store on Montauk Highway or Old Riverhead Road.

Mr. Mendelson said the planners did say to leave the grocery store shopping.

Trustee DiBenedetto asked if this was the only possible use for the land, to put a grocery store?

Mr. Mendelson said it's not the only possible use but it is the only use people in the Village have been asking him to build. He has spent a lot of money and time to see what the residents want.

Trustee DiBenedetto said members of the public are invited to come speak at any time, and no one has come to speak out at the recent meetings. She appreciates the information he has provided and sometimes people aren't always aware of all the information out there.

Mr. Mendelson agreed and said that's why he is trying to get people understand that while some are trying to say it is complicated, it really is not complicated. The Board should consider what the people want.

Mayor Teller thanked Mr. Mendelson for his comments.

Jim Flood said he does not think this is a good idea. He has operated a store on Main Street for 31 years and Waldbaum's has brought shoppers to the area and all Main Street businesses have benefitted from Waldbaum's being there. If a store is built away from Main Street, it is going to draw shoppers away from the downtown area and hurt the downtown area. He asked what is penalty for throwing away garbage?

Mayor Teller said it is up to the Judge and you have to witness the individual throwing it away.

Frank Isler of the Law Firm Smith, Finkelstein, Lundberg, Isler and Yakaboski and he represents Mr. Mendelson. He did not intend to speak tonight but he heard the questions that were asked of his client and there were a few things he wanted to point out. Whether a zoning application is complicated or easy, it does not really set a precedent because they are each dealt with on their own merits. Complexity or simplicity is not a factor he thinks the Board should be considering for a petition. By presenting the petition they are not asking to grant the underlying zoning at this point, all they are asking to do is for the Board to entertain their request for zoning. Then the Board would have a public hearing, like with any other code amendment, and all these questions that are coming up can be addressed in that proper forum. By not allowing the petition to be entertained you have closed this off. You asked for a formal petition because we originally asked for a public meeting to take place, and then the decision could be made for a formal proceeding. We are asking you to entertain it, let people come and speak on the zoning proposal, it does not force you to adopt it. It starts a normal process to be heard. Addressing it at the end of a board meeting, in a piecemeal approach, does not work. Do not confuse granting the petition as granting approval of the zoning, it only allows the hearing process to go forward. He urges the Board to grant their request only to the extent to have a public hearing at Village Hall, let the public be heard and then have a vote. If a majority votes no, then it does not move forward. But you are stopping it before there is an opportunity to be heard. This should be addressed in a public hearing.

Mr. Haefeli said your request was to add 2 uses to 2 separate districts, one of them the Industrial District which has never had a grocery store permitted in it, and in his opinion, this is nothing more than an attempt to avoid a comprehensive study of the area that was done four years ago when the people of this community came together, had hearings and your client could have participated, no one said they wanted the grocery store up there. What you are proposing could not take place without a rezoning of the district. You cannot put a grocery store in an Industrial District when there never has been a grocery store. I have said this to your client, I have said to the Board and the request is rezoning and it should go under a comprehensive plan. How can your client justify asking for a new comprehensive plan when one was done four years ago.

Mr. Isler said we can debate this at a public hearing and discuss these things. What you are suggesting is once there is a Master Plan, there is an age test on it, that you cannot change it, or revise it. That is not the case.

Mr. Haefeli said that is not the case. Your client was the owner in 2007 and he never came forward and said he wanted a grocery store considered for that area and this would be a huge consideration to come out now and change the Master Plan. Your client must justify to the Board why now there should be an update when one was only done four years ago. The burden is not on this Board, it is on your client. As of now, your client has not done that.

Mr. Isler said at the first meeting he attended that his client spoke at he made the request eight years ago and was shot down by the Board.

Mr. Haefeli said that is absolutely not correct, I was Village Attorney eight years ago and your client never made that request.

Mr. Isler said this is simple request of a government body. The Board can reject it. You

can see the small size of your industrial district, it is miniscule. This is not a major redevelopment of the entire Village, it is four parcels in the Industrial zone. Again, these are issues to discuss in a public forum. You're not letting the public be heard on the issue. There may be a public and politic feeling for this. I have taken enough of your time. Thank you.

Dean Speir, Main Street. One question for Mr. Haefeli-is there a mechanism whereby petitions can be accepted by the Village? He mentions not a formal application but a formal request but a petition.

Mr. Haefeli said is there something in the Code? No. Anyone can petition the Board, that is what Mr. Mendelson is doing. It is up to the Board to consider or not consider it.

Mr. Speir said that Mr. Mendelson said in his presentation that his proposal would only affect 12 properties, 2 of which he owns, and he tends to skirt the facts to his own agenda. Mr. Mendelson said it would only affect 12 parcels but it would affect the entire B-1 district of the Village and his assertion it would only affect few parcels is disingenuous at best. He also brought up the costs he has gone through. I wonder what the expense it, I don't care, but what actually is it? What would the costs be relative to what an actual application would be.

Mr. Haefeli said the Village had to hire outside experts and do a Phase I environmental, the whole nine yards. It's a lot of money and the Village would pay for part of it and the applicant would pay for part of it. You would need an Environmental Impact Statement, and be considered a Phase I. the Village has initiated the rezoning itself, so they paid for it. Mr. Mendelson would have to pay portions of it, a good portion of planning fee and Environmental Impact fee.

Colin Bester, he does not like the current supermarket and his wife and her friends shop everywhere but Westhampton Beach. Money is leaving this area when people shop in Riverhead and Hampton Bays. We have a horrible supermarket and people are leaving. If someone is going to pay for it, let him pay for it. The more you have of similar stores, you will attract more people and bring more people to Main Street.

Mayor Teller asked if anyone else would like to be heard. There being no further response, he made a motion at 7:42 p.m. to adjourn the meeting and go into Executive Session. The motion was seconded by Trustee Tucker and unanimously approved. 3 Aye, 0 Nay

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Respectfully submitted,

Rebecca Molinaro  
Clerk-Treasurer