

Minutes of the Regular Meeting and Public Hearing of the Board of Trustees of the Village of Montgomery held in the Meeting Room at 133 Clinton Street, Montgomery, NY 12549 on Tuesday, **August 19, 2008** at 6:30 P.M.

Present: Mayor Brescia, Deputy Mayor Scheels, Trustee Andolsek, Trustee Cantiello, Trustee Kiernan; Atty. Dowd; O-I-C. Luffman; Marc Devitt, Ed Devitt, Atty. Catalano (Devitt Management & Association); Frank Tyrell; Boy Scout Michael Mont; Vlg.Hist.Wild; Johanna Sweikata; Andy Roepe; Richard Neidermeyer; Wallkill Valley Times reporter

Mayor Brescia opened the meeting with the Pledge of Allegiance to the flag.

**RE: DPW**

Moved by Deputy Mayor Scheels, seconded by Trustee Andolsek, the Board approved to move Richard Nelson from Laborer B to Laborer A, effective August 18, 2008, at the rate in the Agreement between the Village of Montgomery Department of Public Works and Transport Workers Union of America AFL-CIO and its Local 225. Motion carried 4-AYES, 0-NAYS.

Moved by Trustee Andolsek, seconded by Deputy Mayor Scheels, the Board appointed Tylor Woznick to the position of Cleaner, part time, at the rate in the Agreement between the Village of Montgomery Department of Public Works and Transport Workers Union of America AFL-CIO and its Local 225 with Mayor Brescia, Deputy Mayor Scheels, Trustee Andolsek voting AYE and Trustee Cantiello voting NAY. Motion carried 3-AYES, 1-NAY.

DPW Supt. Nelson reported Chandler Lane has been reclaimed and will be paved before General Montgomery Day.

**RE: EXECUTIVE SESSION**

Moved by Deputy Mayor Scheels, seconded by Trustee Andolsek, the Board entered EXECUTIVE SESSION at 6:40 P.M. under Public Officer Law §7(d) to discuss pending litigation, Village v. Wild, with Atty. Watson, Vlg.Atty. Dowd and Village Clerk Thompson in attendance. Motion carried 4-AYES, 0-NAYS.

Moved by Deputy Mayor Scheels, seconded by Trustee Andolsek, the Board went out of EXECUTIVE SESSION at 6:46 P.M. Motion carried 4-AYES, 0-NAYS.

Moved by Trustee Cantiello, seconded by Trustee Andolsek, the Board entered EXECUTIVE SESSION at 6:47 P.M. under Public Officer Law §7(e) to discuss PBA union negotiations with Vlg.Atty. Dowd and with Village Clerk Thompson in attendance. Motion carried 4-AYES, 0-NAYS.

Moved by Trustee Andolsek, seconded by Deputy Mayor Scheels, the Board went out of EXECUTIVE SESSION at 6:49 P.M. Motion carried 4-AYES, 0-NAYS.

Moved by Deputy Mayor Scheels, seconded by Trustee Andolsek, the Board entered EXECUTIVE SESSION at 6:50 P.M. under Public Officer Law §7(d) to discuss pending litigation, Byrnes v. Village, with Atty. Sklarin, Vlg.Atty.Dowd and Village Clerk Thompson in attendance. Motion carried 4-AYES, 0-NAYS. (Trustee Kiernan arrived)

Moved by Trustee Andolsek, seconded by Deputy Mayor Scheels, the Board went out of EXECUTIVE SESSION at 7:20 P.M. Motion carried 5-AYES, 0-NAYS.

**RE: PUBLIC HEARING – LOCAL LAW NO. I-1 OF 2008 – REZONING (P.D.D.)**

Moved by Trustee Andolsek, seconded by Trustee Cantiello, the Board opened the Public Hearing on introductory Local Law No. I-1 of 2008 – Zoning from I-1 to P.D.D. Motion carried 5-AYES, 0-NAYS.

The Board so noted the original Notice of Hearing, Affidavits of Posting and Publication were present and ordered they be filed

*Deputy Mayor Scheels:* We are here tonight to have a public hearing on the adoption of Introductory Local Law No. I-1 of 2008 – to allow the PDD on the property on Chandler Lane. Does the Board have anything to address at this time? The Boar collectively responded 'no'. Is there anyone from the public who wants to comment?

*Frank Tyrell:* I have question. My understanding prior to the last meeting and I read something in the Wallkill Valley Times that we are leaning toward ower-occupied condominiums and commercial?

*Deputy Mayor Scheels:* Right.

*Frank Tyrell:* Not rentals?

*Deputy Mayor Scheels:* Right.

*Frank Tyrell:* Alright, I just want that clarified because I heard rumors through the grapevine that it was rent with the option to buy condominiums.

*Deputy Mayor Scheels:* We are working with the Findings Statement to have condominiums, owner-occupied. We have been trying to work out where we can allow for people to have an option to save up for a down payment. Right now, we are not to that point. We are just at the point at allowing the project to go in. But, it is definitely condominiums not a rental situation.

*Atty. Dowd:* I think what the Board is looking to do is, the rentals will become condominiums. The only time it will not be owner-occupied is if the person who is occupying it is under a contract for sale and is actually making payments to the owner to purchase the condominium units. So, it is not a down payment. As you pay the rent you are paying down on the purchase of the unit. That is the intent of the Board. No units can be rented. It has been taken out and that's not allowed.

*Frank Tyrell:* That would not fly with most of the public.

*Deputy Mayor Scheels:* Our idea was that the people would be allowed to pay toward the down payment, but that would be contracted and it would not be a rental agreement. That is the only way we would accept it. Are there any other questions?

*Frank Tyrell:* There is also going to be commercial business besides the condos?

*Deputy Mayor Scheels:* Yes.

*Atty. Dowd:* There is still 100-110,000 sq. ft. The important part of that is as this project goes to the Planning Board and it gets phased, each phase must have a percentage of commercial rateables as part of that phase. So, you are not just getting all the impact of the residential, you are also getting the rateables in a proportionate share. That was part of the original law to make sure that happens. So, there is an economic benefit.

*Deputy Mayor Scheels:* We really tried to listen to the public. We really tried to get everything incorporated.

*Trustee Kiernan:* We can honestly say we tried to consider everything from the public and tried to incorporate that in our decisions . . . we went over the schedules pretty thoroughly, and on a number of occasions with two Board members at a time and the attorney and then with the group at the public hearing a couple of weeks ago. I think you residents up in that area will be very happy with everything.

*Deputy Mayor Scheels:* Are there any other questions, comments? Yes.

*Atty. Catalano:* It is my understanding at the public hearing as far as adoption of the local law, will there be an opportunity for us to address the Board regarding some of the revisions to the Schedule? We are obviously in support of the Board adopting the local law.

*Deputy Mayor Scheels:* Yes you will be able to. If there is no further input from the Board or the public the public hearing can be closed.

Moved by Trustee Andolsek, seconded by Trustee Cantiello, the Public Hearing was closed at 7: 40 P.M. Motion carried 5-AYES, 0-NAYS.

Moved by Trustee Kiernan, seconded by Trustee Cantiello, the Board adopted Local Law No. 1 of 2008 with modifications to Schedule A to rezone the 36.55 acre parcel from I-1 (Industrial) to PDD (Planned Development District) - location Chandler Lane and Rt. 211. Motion carried 5-AYES, 0-NAYS vote.

**RE: LOCAL LAW NO. 1 OF 2008 – REZONING FOR PDD**

Atty. Dowd advised the Board has declared Lead Agency under SEQRA and can take action on the local law if they so choose.

Moved by Trustee Kiernan, seconded by Trustee Cantiello, the Board adopted Local Law No. 1 of 2008 entitled “Rezoning for a Planned Development District” with discussion on the attached Schedule A.

Atty. Catalano advised there are a couple of points that should be made regarding Schedule A. On the first page (1.ii.), the number of condominiums, single-family detached units stayed at 34, which should be changed from maximum to minimum. On the plan we put 34 units as a minimum, but if we could add a few more we would like to do that. It would also change the commercial square footage. We don’t think that we can get that many more in that area, but we thought the Board preferred that. Deputy Mayor

Scheels thought that too. Atty. Dowd explained that he was trying to make sure the total number of units does not exceed the number the Board agreed too. If the Board wants to change that back to minimum, he does not have a problem doing that . . . Deputy Mayor Scheels said after discussion that should be changed from maximum to minimum as it was our intent if they could get a few more there, they would then make a few less in the attached. The total number of units would not change.

Atty. Catalano stated the other thing under 2. Uses Allowable is ...excluding large scale medical clinics, we do not have any objection to. But under restaurants the change -- no more than one fast food establishment -- what does the Board mean? Deputy Mayor Scheels said what we consider fast food is like a McDonalds or Burger King. Atty. Dowd said the Board did not want a lot of one thing. Trustee Kiernan said they probably want a better description. Marc Devitt stated when they originally came up with this plan they did not envision one fast food, but on the other hand they do not want their hands tied. Maybe it could be fast food, but maybe it is a little different and maybe they would want it. When we get to that point then we can come back to the Board with it. It is not our intent to put any of them there. Trustee Kiernan expresses his concern with fast food restaurants and the garbage that it generates. A pizza parlor or delicatessen is not considered fast foods. A Wendy's or Kentucky Fried Food is. Atty. Catalano asked if this could be something that is addressed at the site plan stage? Trustee Kiernan said that would probably be a help. Atty. Dowd explained the SEQRA was done based upon traffic studies and making changes for a high volume traffic usage would change the SEQRA document. Atty. Catalano agreed saying we don't want to exceed what is in those documents without coming back to the Board...anything that would affect the community character, the traffic, the noise, etc. We just don't want it to be predetermined in concrete before we go to market the project. The more flexibility at the beginning stage, the better it is for us to make everything work. Also, outdoor displays, it is not their intention for outdoor flea markets on the street. If you are talking delis, you are talking about outdoor news racks. Atty. Dowd added it is the Board's concern of what the outdoor appearance would look like. If you have a clothing store, you don't want racks of clothes outside referring to similar incidents that has happened in the downtown business district in the Village. Atty. Catalano advised that can be addressed with specific notes on the site plan. Another issue is under No. 7 Other Agency Approvals. After a discussion, Deputy Mayor Scheels and the Board agreed to delete that part after PDD-Chandler Lane about issuance of building permits prior to site plan approval. Atty. Catalano advised one last issue under 2. b.Uses: Allowable loft/live-work units over first-floor non-residential use (2 BR max). The way it has been lumped together seems to be more than renting the bottom floor and renting the top floor. Atty. Dowd advised it was done that way because it was a two bedroom max. Atty. Catalano said the live/use units are actually a separate type of use where the work and live units will be sold as one unit. At this time we don't know if this is going to fly . . . and explained it is not known if there is a market out there and recommend separating them out again. It is a limited number of units. The Board agreed that it could be separated. Atty. Catalano advised the last issue he would like the Board to address is the changing of the time when recreational fees are due, No.9.d. The language seems to say the recreation fees are paid prior to the first issuance of a C.O. Atty. Dowd advised that means at the end of each phase the recreation fees must be paid, not for the entire project. Atty. Catalano asked if the Board consider a little more leeway. Atty. Dowd responded saying it has been done before but it did not to work creating an administrative fiasco because of the number of departments and people that are involved to make sure it is paid. Trustee Cantiello asked how it is done in other places. Atty. Dowd explained the fee is

collected before the map is signed. Trustee Kiernan stated there is no hesitation from the applicant to pay the fees, the Board has to find out the best approach to get the fees paid. Marc Devitt said the Board has given discounts in the past. If the Board would like to do that then it can be paid upon signing of the site plan. If not, they are asking for flexibility in the recreation fees. Atty. Dowd stated it is hard to give a discount when there is no site plan. The recreation fee is used for the impact on the recreation facilities for the new residents. Deputy Mayor Scheels asked the Board what they would like to do. Trustee Kiernan asked whose responsibility is it to collect the recreation fee? Atty. Dowd explained the way that it works is fees are paid before the site plan is stamped by the Village. Deputy Mayor Scheels suggested paying the village clerk for each phase, get a receipt, give it to the building inspector and they can get a building permit. Trustee Andolsek agrees saying a memo can then be issued thereafter. Trustee Kieran and Trustee Cantiello said they agreed with that. Nothing has to be changed in Schedule A. Atty. Catalano said the last remaining comment concerns the owner-occupancy issue. We don't object to that but feel the Board is unreasonably restricting the form of ownership of the condominium units. The intention was to allow homeowners to rent the unit while they are not there, i.e a homeowner has another home for the winter and comes back here in the summer. It is not an absentee landlord situation. They feel they could work out any rental issues without impact to the village by a condominium association. Marc Devitt added the Village has not in the past put those kinds of restrictions on other projects in the Village. Spring Meadows has a home owners association with probably less than four rentals. The condominium homeowners should not be restricted. All we ask is when the HOA agreement is setup is if the Board would look at it with an open mind to see if they could legitimately deal with any impacts – the Board agreed that would be fare enough.

Atty. Dowd added that there is nothing stopping the applicant from coming back to the Planning Board asking for a change. The Schedule A gives the Planning Board guidelines, something to work from. The Board agreed.

The Board adopted with Local Law No. I-1 of 2008 with Schedule A modifications as addressed. Motion carried 5-AYES, 0-NAYS vote.

#### **RE: MINUTES**

Moved by Trustee Cantiello, seconded by Trustee Andolsek, the Board approved the minutes of June 23, 2008 with Deputy Mayor Scheels, Trustee Andolsek, Trustee Cantiello, Trustee Kiernan voted AYE, Mayor Brescia abstained (not present). Motion carried.

Moved by Deputy Mayor Scheels, seconded by Trustee Cantiello, the Board approved the minutes of July 1, 2008. Motion carried 5-AYES, 0-NAY vote.

Moved by Trustee Andolsek, seconded by Deputy Mayor Scheels, the Board approved the minutes of August 1, 2008. The motion carried 5-AYES, 0-NAY vote.

#### **RE: PROPOSED CHG&E LINE UPGRADE**

Moved by Deputy Mayor Scheels, seconded by Trustee Kiernan, the Board adopted a resolution to support Central Hudson Gas & Electric proposed plans to move the power

lines from the Village of Montgomery residential area to the Town of Montgomery. Motion carried 5-AYES, 0-NAY vote.

**RE: MUSEUM – BOY SCOUT PROJECT**

Michael Mont (Boy Scout Troop) advised as a scout project he would like to build a case to protect the old books in the museum and presented a sketch to the Board. He has spoken with Vlg. Historian Wild who is in favor of the project. The books would be stored horizontally. Mayor Brescia asked if it should be climate controlled? Michael stated the historian said this would work. He would like to begin in September. Trustee Kiernan added Doug Hantusch could work with him on the project. Michael also said he is meeting with Senator Larkin concerning the condition of the railroad tracks and to see what can be done. The Board expressed their appreciation for the thoughtfulness and welcomed the addition of the bookshelf for the museum. Vlg. Historian Wild supports Michael's worthwhile project because of the number of 1800 books that should be out of the lights, air and heat in order to preserve them.

Moved by Trustee Kiernan, seconded by Trustee Andolsek, the Board approved of Boy Scout Michael Mont's Eagle Scout Project to build a book case for the Village Museum. Motion carried 5-AYES, 0-NAY votes.

**RE: POLICE DEPARTMENT**

Moved by Trustee Kiernan, seconded by Deputy Mayor Scheels, the Board approved to hire up to 12 Crossing Guards at \$14 per hour to work on General Montgomery Day. Motion carried 5-AYES, 0-NAY vote.

Mayor Brescia asked O-I-C Luffman to work with the officers who are not making the hours for the month.

**RE: COURT GRANT THROUGH DCJS**

Moved by Deputy Mayor Scheels, seconded by Trustee Andolsek, the Board adopted a Resolution authorizing the Mayor to File an Application for Funding from the State of New York Unified Court System through the Justice Court Assistance Program for such things for automation, equipment, furniture, supplies, training and education. Motion carried 5-AYES, 0-NAY vote.

**RE: TEEN CENTER RENTAL**

Moved by Trustee Kiernan, seconded by Trustee Cantiello, the Board approved for the Hungarian Group to use the Teen Center for approximately 6 weeks at \$225 per occasion, plus \$250 cleanup deposit subject a certificate of insurance and coordinating dates and time with the Little League. Motion carried 5-AYES, 0-NAY vote.

**RE: OC PARKS GRANT – PLAYGROUND EQUIPMENT**

Moved by Deputy Mayor Scheels, seconded by Trustee Cantiello, the Board authorized the Mayor to sign the Agreement for Orange County Municipal Park Planning Program Inter-Municipal Cooperation Agreement in the amount of \$15,000 for new playground equipment in Veterans Memorial Park. Motion carried 5-AYES, 0-NAY vote.

Andy Roepe, Playground Committee, asked the Board to consider moving the new playground equipment to where the basketball court is presently to be more visible. Mayor Brescia advised he does not see that in the near future and explained any improvements or additions to the Pleasure Ground Park cannot be done without the approval of the State of New York Office of Parks.

**RE: LETTER OF APPRECIATIONS- PD & DPW**

Mayor Brescia and the Board acknowledged a letter from Mr. & Mrs. Stockburger commending the Department of Public Works on the company they hired to remove a tree that was endangering their home and property. The Board also acknowledged Mr. LoGuidice letter commending the Police Officers Marcario, DeAntonia and Gallo when responding to a recent call at his residents. They acted in an utmost professional manner and said that was a reflection of the OIC Luffman.

**RE: OVERPAYMENT WATER/SEWER BILL**

Moved by Trustee Andolsek, seconded by Trustee Cantiello, the Board approved to refund Eva Santos of 150 Chandler Lane for water and sewer bills that were over estimated as a result of the water meter being replaced for a period not to exceed two years. Motion carried 5-AYES, 0-NAY votes.

**RE: ATTORNEY-CLIENT SESSION**

Moved by Trustee Kiernan, seconded by Deputy Mayor Scheels, the Board adjourned at 8:31 p.m. to attorney-client communication to seek legal advice concerning an Orange County contract with Atty. Gross, Airport Dir. Llerena, Atty. Dowd and with Vlg.Clerk Thompson in attendance. Motion carried 5-AYES, 0-NAY votes.

Moved by Trustee Andolsek, seconded by Deputy Mayor Scheels, the Board adjourned back to the regular meeting at 9:12 p.m. Motion carried 5-AYES, 0-NAY vote.

**RE: ADJOURNMENT**

Moved by Deputy Mayor Scheels, seconded by Trustee Kiernan, the Board adjourned the meeting at 9:14 p.m. Motion carried 5-AYES, 0-NAY votes.

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Village Clerk Linda L. Thompson