

MINUTES OF THE MEETING OF THE BOARD OF TRUSTEES
Wednesday, August 18, 2010
7:00 PM

A meeting of the Board of Trustees of the Inc. Village of Head of the Harbor was held on Wednesday, August 18, 2010 at 7:00 p.m., at the Village Hall located at 500 North Country Road in said Village. Those present were Deputy Mayor Swanson, and the following Trustees Margaret Shutka and Judy Ogden. Also in attendance were Village Attorney; Anthony B. Tohill, Village Clerk; Margaret O'Keefe, and Village Treasurer; Patricia Mulderig. Not in attendance this evening Mayor Tartamella, nor Trustee Naughton.

Deputy Mayor Swanson convened the public hearing of LOCAL LAW (Intro.)#3 OF 2010, "A LOCAL LAW REGULATING OPEN BURNING".

Discussion ensued. There being no further comments from the floor or the Board of Trustees; it was upon motion by Trustee Shutka, second by Trustee Ogden and unanimously adopted:

RESOLUTION #068-10

RESOLVED, to close the public hearing on the proposed LOCAL LAW (Intro.)#3 OF 2010, "A LOCAL LAW REGULATING OPEN BURNING".

The public hearing was convened for LOCAL LAW (Intro.) #4 OF 2010, "A LOCAL LAW AMENDING VILLAGE CODE CHAPTER 73". Discussion ensued. There being no further comments from the floor or the Board of Trustees, it was upon motion by Trustee Shutka, second by Trustee Ogden and unanimously adopted:

RESOLUTION #069-10

RESOLVED, to close the public hearing on the proposed LOCAL LAW (Intro.) #4 OF 2010, "A LOCAL LAW AMENDING VILLAGE CODE CHAPTER 73".

The public hearing was convened for LOCAL LAW (Intro.) #5 OF 2010, "A LOCAL LAW AMENDING VILLAGE CODE § 165-52". Discussion ensued. There being no further comments from the floor or the Board of Trustees, it was upon motion by Trustee Ogden, second by Trustee Shutka and unanimously adopted:

RESOLUTION #070-10

RESOLVED, to close the public hearing on the proposed LOCAL LAW (Intro.) #5 OF 2010, "A LOCAL LAW AMENDING VILLAGE CODE § 165-52".

The public hearing was convened LOCAL LAW (Intro.) #6 OF 2010, "A LOCAL LAW ENACTING VILLAGE CODE § 165-80(C)". Discussion ensued. There being no further comments from the floor or the Board of Trustees, it was upon motion by Trustee Ogden, second by Trustee Shutka and unanimously adopted:

RESOLUTION #071-10

RESOLVED, to close the public hearing on the proposed LOCAL LAW (Intro.) #6 OF 2010, "A LOCAL LAW ENACTING VILLAGE CODE § 165-80(C)".

Deputy Mayor Swanson convened the regular monthly meeting of the Board of Trustees.

1. Deputy Mayor – R. L. Swanson:

- **Minutes of June 16, 2010 7 PM** Trustees meeting were presented. It was, upon motion by Trustee Shutka, second by Trustee Ogden, and unanimously adopted:
RESOLUTION #072-10
RESOLVED, to adopt the minutes of the above referenced meeting as presented.
- **Minutes of June 16, 2010 6 PM** Board of Trustees meeting were presented. It was, upon motion by Trustee Shutka, second by Trustee Ogden, and unanimously adopted:
RESOLUTION #073-10
RESOLVED, to adopt the minutes of the above referenced meeting as presented.
- **Minutes of July 21, 2010 6 PM** Board of Trustees meeting were presented. It was, upon motion by Trustee Shutka, second by Trustee Ogden, and unanimously adopted:
RESOLUTION #074-10
RESOLVED, to adopt the minutes of the above referenced meeting as presented.
- Thursday, August 5, 2010, at 12:00 p.m. the Village Engineer and Village Clerk publicly opened all bids received for the 2010/2011 DRAINAGE REQUIREMENTS CONTRACT. Comparisons presented to the board and will be affixed to the official minutes. The lowest responsible bidder was D. F. Stone. It was, upon motion by Trustee Shutka, second by Trustee Ogden and unanimously adopted:
Resolution #075-10
RESOLVED, to award the above referenced contract to D. F. Stone, and authorize Mayor Tartamella to execute said contract in his official capacity.

- Thursday, August 5, 2010, at 12:00 p.m. the Village Engineer and Village Clerk publicly opened all bids received for the 2010/2011 PAVING PROGRAM REQUIREMENTS. Comparisons presented to the board and will be affixed to the official minutes. The lowest responsible bidder was Kings Park Industries. It was, upon motion by Trustee Ogden, second by Trustee Shutka and unanimously adopted:

Resolution #076-10

RESOLVED, to award the above referenced contract to Kings Park Industries, and authorize Mayor Tartamella to execute said contract in his official capacity.

2. Financials – Patricia Mulderig, Treasurer:

- Report submitted to the Board, including itemized journal entries and bank reconciliation reports.
- Adjustments to tax assessments received from the Town of Smithtown subsequent to the acceptance of the tax rolls. The amount presented totaled \$4,317.61, itemized list attached to the official minutes. Discussion ensued. It was, upon motion by Trustee Ogden, second by Trustee Shutka and unanimously adopted:

Resolution #077-10

RESOLVED, to authorize and direct the Village Treasurer to refunds the taxes as per the successful grievances.

- Abstract #126405- Vouchers chosen to be paid from the General Fund in the amount of \$1,953.74. Discussion ensued. It was, upon motion by Trustee Shutka, second by Trustee Ogden, and unanimously adopted:

Resolution #078-10

RESOLVED, to adopt Abstract #126405 in the amount of \$1,953.74 to be paid as presented.

- Abstract #126406- Vouchers chosen to be paid from the General Fund in the amount of \$2,438.75. Discussion ensued. It was, upon motion by Trustee Shutka, second by Trustee Ogden, and unanimously adopted:

Resolution #079-10

RESOLVED, to adopt Abstract #126406 in the amount of \$2,438.75 to be paid as presented.

- It was upon motion by Trustee Ogden, second by Trustee Shutka and unanimously adopted:

Resolution #080-10

RESOLVED, the village clerk is to investigate the feasibility of moving from Broadview Networks to Optimum Voice as the village's phone carrier. A request is to be made for a test line and technician to ensure the Avaya phone system is compatible with a voiceover IP.

3. Legal Matters – Anthony B. Tohill, Village Attorney:

- No new matters to report.
- It was, upon motion by Trustee Ogden, second by Trustee Shutka and unanimously adopted:

Resolution #081-10

RESOLVED, the adoption of a local law as follows:

**LOCAL LAW (Intro.)#3 OF 2010
FILING # 3 of 2010
A LOCAL LAW REGULATING OPEN BURNING**

BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF HEAD-OF-THE-HARBOR AS FOLLOWS:

SECTION 1. PURPOSE.

The purpose of this local law is to regulate open burning which is outdoor fires or any outdoor smoke producing process from which air contaminants are emitted directly into the outdoor atmosphere. Open burning can cause serious environmental and health effects. As stated in November 2000 by the U.S. Environmental Protection Agency in "Agricultural Burning":

Burning creates a concentrated plume of smoke that can travel many miles. Although burning is usually conducted for short periods of time, the lingering cloud can affect air quality in communities both in the immediate area of the burn and those miles away.

* * *

Scientific studies – along with thousands of complaints – indicate that smoke is unhealthy. It is harmful because very fine particles, gases and other products of burning (some toxic) can be inhaled deeply into the lungs. Exposure to fine particles, either alone or combined with other air pollutants, has been linked to difficulty in breathing, aggravated asthma, increased emergency room visits and hospital admissions, and, in some cases, premature deaths. Those most at risk are children, the elderly and people with chronic respiratory problems.

Besides these health effects, dense smoke can impair local visibility and may create a public nuisance and dangerous driving conditions.

In view of the adverse effects incident to open burning, this local law is intended to limit this activity to those circumstances least hazardous and without any alternative.

SECTION 2. DEFINITIONS.

As used herein, the following terms shall have the indicated meanings:

- (a) Agriculture shall mean the science, art and business of cultivating the soil, producing crops (including field crops, fruits, vegetables and horticultural specialties) which are primarily intended to be sold.
- (b) Open burning shall mean any outdoor fire or outdoor smoke producing process from which air contaminants are emitted directly into the outdoor atmosphere. Open burning does not include burning in outdoor wood-fired boilers that are used to heat buildings which is prohibited under Village Code § 165-34.1.
- (c) Management-ignited prescribed fire, prescribed fire or prescribed burn shall mean the intentional setting of land on fire under carefully controlled conditions to achieve a vegetative or wildlife management goal adhering to a written and approved prescribed fire plan.
- (d) Prescribed burn plan or prescribed burn management plan or fire plan shall mean a written design for the use of fire to accomplish management goals.

SECTION 3. REGULATIONS.

- (a) Permit Required. Excepting as otherwise permitted under this local law, open burning is prohibited in the Village of Head-of-the-Harbor.
- (b) Permit Process. Any application for a permit shall be submitted to the Board of Trustees at least ninety (90) days prior to any proposed burning on an application form available from the Village Clerk, accompanied by an application fee of Five Hundred (\$500.00) Dollars. Any such application shall upon submission of a complete application be scheduled for a public hearing within forty-five (45) days.
- (c) Permit Standards. Issuance of any permit hereunder shall be subject to the following:
 - (i) Absence of Any Alternative. Applicant shall demonstrate by competent evidence that there is no alternative available except to conduct open burning.
 - (ii) Minimum Setback. Any open burning shall be distant at least 1,000 feet from any residence, school, place of public assembly (indoors or outdoors) including by way of illustration, not limitation, a park, any area within a park, bathing beach, playground, recreational facility or the like.
 - (iii) Emergency Personnel. Any public hearing shall include the participation of an authorized representative of any fire department, police department and ambulance squad servicing the site of the application and any municipal fire marshal for any adjacent municipality if that municipality is within 1,000 feet of the site. Applicant shall bear the burden of obtaining the participation of such third parties.
 - (iv) Prohibited Materials. No open burning at any site shall include debris piles or other material producing excessive smoke or other special risks including by way of illustration, not limitation, yard waste, garbage, construction debris, rubber, plastic, wire insulation, tires, wet grass, leaves, commercial waste, chemically treated wood (including coated, stained, sealed, glued or otherwise adulterated wood), pesticide containers, fertilizer or fertilizer bags, synthetic materials or fuel of any kind.
 - (v) Manager. Applicant shall identify a manager of the proposed open burning including a verifiable listing of qualifications, expert credentials, communication contacts and the manager's personal knowledge of local weather conditions, the nearby area and emergency resources.
 - (vi) Fire Plan. Any application shall include a prescribed fire plan, including by way of illustration, not limitation, a map at an appropriate scale, a description of all identifiable risks, a list of all neighbors (names and addresses) within 1,500 feet of the site, the objective(s) of the open burning, any reasonable alternative, an accurate description of the vegetative cover and fuel loads at the site, expected and allowable and prohibited weather conditions including by way of illustration, not limitation, wind speed, wind direction, air temperature, humidity and the like, a listing of any public or private event with an expected attendance of 25 or more persons scheduled at the same time within 1,500 feet of the site and/or using public roads within 3,000 feet of the site for vehicle parking, duration of the burn, anticipated flame length and rate of spread, personnel on hand including respective duties and qualifications, fire management equipment on site, plan for containment of any fire to the site, a copy of any permit under 6 NYCRR Part 194 or 215, anticipated volume, content, direction and duration of smoke and available on-site water source including details of available volume.
 - (vii) Notification. Applicant shall at least 21 days prior to any public hearing notify by certified mail, return receipt requested, each property owner within a 1,500 foot radius of the site, and proof of said notification shall be submitted to the Village Clerk prior to any such hearing.
 - (viii) Payment of Municipal Costs. In the event the Board of Trustees in the exercise of its discretion deems it necessary to engage an expert on fire management applicant shall pay any reasonable fee for said expert, the application shall include a signed acknowledgement of this obligation and, upon request of the Village Clerk in the event such an engagement resolution is adopted by the Board of Trustees, any fees shall be paid by applicant within 72 hours and shall be a condition of any public hearing being conducted or continued or a permit issued.

SECTION 4. EXCEPTIONS.

This local law shall not apply to burning incident to:

Recreational bonfires, barbecue grills, portable cooking appliances, ceramic or clay fire pits, small fires used to dispose of flags or religious items or incident to a religious activity, emergency disposition of dangerous or contraband material by law enforcement, agricultural smudge pots, authorized fire training, recreational cooking, camp fires and agricultural waste disposition provided same is on a site used for agriculture with an area greater than five (5) acres.

SECTION 6. ENFORCEMENT.

The Building Inspector, any Village Code Enforcement Officer and any member of the Village Police Department is hereby vested with authority to enforce the provisions of this chapter.

SECTION 7. PENALTY.

Any person, firm, association, corporation or other entity violating any provision of this chapter is subject to a penalty in a sum not exceeding \$1,000.00.

SECTION 8. SUPERSESION.

This local law shall supersede any inconsistent law, state or local, including by way of illustration, not limitation, 6 NYCRR Part 215 and Part 194. This declaration of supersession is made by authority of the Village's municipal home rule law powers, pursuant to §§10 (1)(ii)(a)(14) and 10(1)(ii)(e)(3) of the Municipal Home Rule Law, § 10(6) of the Statute of Local Governments, and Article 9, § 2(b)(3) of the New York State Constitution.

SECTION 9. SEVERABILITY.

Should any part or provision of this local law be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the local law as a whole nor any part thereof other than the part so decided to be unconstitutional or invalid.

SECTION 10. EFFECTIVE DATE.

This local law shall take effect immediately upon filing with the Secretary of State as provided by law.

- It was, upon motion by Trustee Shutka, second by Trustee Swanson called for a vote LOCAL LAW (Intro.) NO. 4 OF 2010, "A LOCAL LAW AMENDING VILLAGE CODE CHAPTER 73", abstention by Trustee Ogden (2-0-1). Due to an insufficient number of votes for a quorum, the above referenced will before the Board of Trustees at their next regularly scheduled meeting, Wednesday, September 15, 2010 at 7 PM, Village Hall, 500 North Country Rd., St. James, NY 11780.
- It was, upon motion by Trustee Shutka, second by Trustee Ogden and unanimously adopted:
Resolution #082-10
RESOLVED, the adoption of a local law as follows:

LOCAL LAW (~~Intro.~~) NO. 5
FILED AS #4 OF 2010
A LOCAL LAW AMENDING VILLAGE CODE § 165-52

BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF HEAD-OF-THE-HARBOR AS FOLLOWS:

SECTION 1. PURPOSE.

The purpose of this local law is to update the language at Village Code § 165-52 consistent with state law amendments.

SECTION 2. REPEAL OF § 165-52.

Village Code § 165-52 in its present text is repealed.

SECTION 3. ENACTMENT OF § 165-52.

Section 165-52 is enacted as follows:

§ 165-52 Board of Appeals.

- A. Board of Appeals continued. The Zoning Board of Appeals (also referred to herein as the "Board of Appeals" or the "Zoning Board"), created by the Zoning Code adopted on June 29, 1974, and in continuous existence since that time, is hereby continued.
- B. Terms of members. The current members of the Board and their terms of office shall continue as heretofore established. If a vacancy on the Board shall occur otherwise than by the expiration of a member's term, the Board of Trustees shall appoint a new member for the unexpired term.
- C. Village Board members ineligible. No person who is a member of the Board of Trustees shall be eligible for membership on the Board of Appeals.

- E. Removal of members. The Mayor shall have the power to remove any member of the Board of Appeals for cause and after a public hearing.
- F. Chairperson and Vice Chairperson. The Mayor shall designate a Chairperson subject to the approval of the Board of Trustees and the Board of Appeals shall appoint a Vice Chairperson.
- G. Duties of Chairperson and Vice Chairperson. All meetings of the Board of Appeals shall be held at the call of the Chairperson and at such other times as the Board may determine. The Chairperson, or in his absence the Vice Chairperson, may administer oaths and compel the attendance of witnesses.
- H. Reappointment. To be eligible for reappointment each member must have completed the annual training required under Village Law § 7-712.

SECTION 4. SEORA.

This is a Type II action under 6 NYCRR § 617.5(c)(20).

SECTION 5. SEVERABILITY.

Should any part or provision of this local law be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the local law as a whole nor any part thereof other than the part so decided to be unconstitutional or invalid.

SECTION 6. EFFECTIVE DATE.

This local law shall take effect immediately upon filing with the Secretary of State as provided by law.

- It was, upon motion by Trustee Shutka, second by Trustee Ogden and unanimously adopted:

Resolution #083-10

RESOLVED, the adoption of a local law as follows:

LOCAL LAW (Intro) NO. 6 OF 2010

FILED AS #5 of 2010

A LOCAL LAW ENACTING VILLAGE CODE § 165-80(C)

BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF HEAD-OF-THE-HARBOR AS FOLLOWS:

SECTION 1. PURPOSE.

The purpose of this local law is to supplement the present language at Village Code § 165-80 consistent with state decisional law developments.

SECTION 2. ENACTMENT OF § 165-80(C).

Section 165-80(C) is enacted as follows:

- C. Any provision in this Chapter 165 or otherwise in the Village Code to the contrary notwithstanding, any application to both the Planning Board and Zoning Board of Appeals shall first be forwarded to the Planning Board prior to any action taken by the Zoning Board of Appeals and the Planning Board may in its discretion either hear and decide the application to conclusion or prepare an interim report to the Zoning Board of Appeals reserving full site plan review or subdivision review or other review until after the Zoning Board of Appeals decides the matter.

SECTION 3. SEORA.

This is a Type II action under 6 NYCRR § 617.5(c)(20).

SECTION 4. SEVERABILITY.

Should any part or provision of this local law be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the local law as a whole nor any part thereof other than the part so decided to be unconstitutional or invalid.

SECTION 5. EFFECTIVE DATE.

This local law shall take effect immediately upon filing with the Secretary of State as provided by law.

4. Building Department-Jerry Harris:

- Architectural Review Board reviewed four applications.
- Planning Board did not meet

5. Police Department- Chief Thompson:

- Officers James Jernigan and Edward Zimmerman retired on July 31, 2010. It was, upon motion by Trustee Shutka, second by Trustee Ogden, and unanimously adopted:
Resolution #084-10
- **RESOLVED**, Officers James Jernigan and Edward Zimmerman be reappointed as part-time police officers as of August 1, 2010.

6. JCC- Elizabeth Shepherd, Chairwoman:

- HARBOR DAY is scheduled for Saturday, August 21, 2010.

7. Other Matters- Deputy Mayor R.L. Swanson:

- **ANNUAL FINANCIAL STATEMENTS AND AUDITORS REPORT FOR FISCAL YEAR 2009 – 2010**

It was upon motion by Trustee Shutka, second by Trustee Ogden, and unanimously adopted:

RESOLUTION #085-10

WHEREAS, an annual financial audit was performed by an independent certified accounting firm; and
WHEREAS, the accounting firm of Cullen & Danowski, LLP conducted said audit of the Inc. Village of Head of the Harbor's accounts, including the Justice Court; and

WHEREAS, Cullen & Danowski, LLP have presented their Audit Report, and prepared the Inc. Village of Head of the Harbor's Financial Statements for Fiscal Year 2009-2010; and

WHEREAS, much of this data and addition information is required by regulations promulgated by the NYS State Comptroller; and

WHEREAS, these report has been examined and reviewed by the Board of Trustees;

NOW THEREFORE BE IT RESOLVED, that the Board of Trustees does hereby accept the Cullen & Danowski, LLP Audit Report and Annual Financial Statements for Fiscal Year 2009-2010; and

BE IT FURTHER RESOLVED, that the Village Clerk is hereby authorized to provide notice to the media of the availability to view these documents during regular village office hours, and release these reports to the public and provide copies as requested.

8. Public Comment-Charles Chiaramonte:

Presentation made on behalf of Harley Cook of Fountain Square Development.

There being no other matters to be brought before the Board; it was, upon motion by Trustee Shutka, second by Trustee Ogden and unanimously adopted, to adjourn the meeting at 8:37 PM.

Respectfully Submitted,

Margaret O'Keefe
Village Clerk