

THE REGULAR MEETING OF THE BOARD OF TRUSTEES OF THE VILLAGE OF MONTEBELLO WAS HELD ON WEDNESDAY, JUNE 20, 2007 AT THE VILLAGE HALL. THE MEETING WAS CALLED TO ORDER AT 8:03 P.M. FOLLOWED BY THE PLEDGE OF ALLEGIANCE.

Present: Jeffrey Oppenheim Mayor
Lance Millman Deputy Mayor
Marc Citrin Trustee
Stacy Caridi Trustee
Steven Sorrillo Trustee

Warren Berbit Village Attorney

Recording Secretary, Debra Mastroeni, Village Clerk/ Treasurer

The Village Board held a special workshop meeting which began at 7:30 p.m. for the purpose of honoring the high school students residing within the Village who placed in the top 10% of their graduating class. Mayor Oppenheim announced that this was the first ceremony honoring outstanding achievement in academic accomplishment by placing in the top 10% of their class.

The following students were present to receive their certificates: Michael Weinberg, Valedictorian; Eric Love, Salutarian; Stephanie Levinson; Dalila Gittens. The certificate read as follows: The Village of Montebello proudly recognizes (name of student) for graduating in the top 10% of their senior class at Suffern High School.

Each Board member expressed their congratulations and wished them well as they move on to college.

Certificates will be mailed to the following students who were unable to attend tonight=s meeting: Oren Brecher, Hannah Gobetz, Adam Golden, Jesse Solomon-O=Connell, Julieann Reimer.

No one wished to speak during Public Comment.

The Mayor=s report was the next agenda item: Mayor Oppenheim announced that the Board has scheduled a Special Election for July 10th to approve a bond referendum to purchase the Reform Temple of Suffern site which encompasses 2.39 acres. Because of the Special Election the Planning Board meeting also scheduled for that evening has been moved to the Holiday Inn. Mayor Oppenheim advised the Board and the public that he is proceeding with the grant application for a half million dollars from the NYS Department of Parks Environmental Protection Fund. The Mayor gave an update on the status of the Pines Park dredging, noting that there is an ongoing technical problem involving placement of the dredging material. Village Engineer, Martin Spence, is working on a solution for the catch basins on Coe Farm Road. Building Inspector, Harry Lewis, has informed the Mayor that the conservation easement report is almost complete and 70% of the inventory contains some type of intrusion or violation. Mayor Oppenheim reported that he and the Village Attorney have met with representatives from Verizon to discuss a franchise agreement with fiber optic service, equivalent to what Cablevision presently provides. The plan to pave Mayer Drive and install the speed humps is moving forward. The Mayor also advised that discussion was needed regarding the parkland on Route 202 and maintaining the meadow and vista.

Parks Commission Business: Bob Congionti and Amy Rapoport apprised the Board that some of the paths for the Pines Park DEC application are relocated and will have to be updated into the final design plan by Colgan Perry for submission. Chairman, Bob Congionti, reported on the Family Camp Out that it was very successful, including 50% virtual campers. Attendance was a little less than last year, 149 people attended compared to 214.

Mayor Oppenheim commended the Parks Commissioners for doing a great job.

The parkland on Route 202 was discussed, Mayor Oppenheim noted that the vista to the barn should be maintained and the height of the meadow kept down to one or two feet.

Amy Rapoport suggested haying the field like we used to do to the field on the Village Hall grounds.

Deputy Mayor Millman announced that he and Trustee Caridi would be running Montebello Day and asked for help from the Parks Commission. Montebello Day to be scheduled in September or early October.

The next agenda item was a Resolution held over from last month to allow Trustee Citrin to revise language that the Board felt would be more appropriate. Trustee Citrin had the Village Attorney review the revisions. Trustee Citrin thanked the Deputy Mayor from the Village of Airmont, Joe Meyers for bringing the intent of the resolution to the Board's attention.

Resolution: 07-091

Village of Montebello

Title: Calling Upon the US Congress to Review the Religious Land Use Provisions of the Religious Land Use and Institutionalized Persons Act of 2000

WHEREAS, in the Year 2000 the United States Congress passed, and then President Clinton signed, the Religious Land Use and Institutionalized Persons Act (RLUIPA) which provided, in part, that No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person unless the government demonstrates that imposition of the burden on that person, assembly, or institution-(A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest; and

WHEREAS, while it appears that RLUIPA was intended to be a shield to prevent unfair treatment of religious institutions, it is being used by some as a sword to thwart conventional land use decision-making and protections, and therein has generated substantial litigation nation-wide, which has been costly to municipalities in legal fees and other court-related expenses; and

WHEREAS, while municipalities must reimburse plaintiffs for legal fees if the plaintiff prevails in a RLUIPA lawsuit, the standard by which a municipality may be reimbursed, if successful in the defense of the litigation, is substantially higher and almost impossible to attain; and

WHEREAS, prior to the enactment of RLUIPA, Congress did not invite input, comment or information from the municipalities that have the obligation to regulate land use within their jurisdictions; and

WHEREAS, although the legislative intent behind RLUIPA might be laudable, in many instances judicial applications of the Act have intended to negate essential and reasonable environmental and land use controls, causing our citizens the impression of a virtually automatic land use approval process which is unable to protect them from adverse impact; and

WHEREAS, the high legal fees incurred in defense of RLUIPA claims taken together with the risk that the defending municipality will have to pay potentially large legal fees to the applicant if the municipality loses an RLUIPA claim without the reciprocal right to recover legal fees if the municipality is successful, and in the face of the additional threat of Justice Department prosecution sometimes without regard to reasonable exercise of legitimate police powers of the local municipalities, all represent a substantial financial burden to a small or moderate sized municipality, thus creating a likelihood that municipal land use decisions in religious applications have and will be made largely based on the threat of potentially incurring crippling legal fees versus applying sound and fair land use consideration, and an appropriate interpretation of RLUIPA; and

WHEREAS, the Village of Montebello recognizes its responsibility to address the diverse land use needs of its citizens, including the importance of enabling religious institutions to serve the needs of our community, while RLUIPA, as it has been applied, an unnecessary and has not accomplished its original purpose, especially since the law in New York State is to reasonably accommodate religious land use applications irrespective the existence of RLUIPA.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Trustees of the Village of Montebello does hereby formally call upon the United States Congress to hold hearings for the purpose of reviewing the religious land use provisions of RLUIPA, and to consider information provided by impacted municipalities for the purpose of amending this statute in an effort to give appropriate direction to persons and entities charged with land use decision-making and to the courts charged with interpreting this law to restore balance to accommodate religious needs while recognizing the legitimate need of municipalities to wisely exercise their land use police powers to the benefit of all citizens; and

BE IT FURTHER RESOLVED, that the Board of Trustees of the Village of Montebello urges Congress to amend Section 722(b) of the Revised Statutes (42 U.S.C.1988(b)) to require that the standard for legal fees for prevailing defendants shall be the same as the standard for prevailing plaintiffs; and

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to each member of the United States Congressional delegation from New York State as well as the Speaker of the House of Representatives and the Majority Leader of the United States Senate.

Motion: Trustee Sorrillo

Second: Trustee Caridi

Upon vote, the Resolution carried unanimously

Joe Meyers thanked the Board members for a thoughtful resolution and went on to say that he thought this Board=s resolution was better than in any other municipality. Mr. Meyers noted that RLUIPA cases are constantly evolving and legislative changes are necessary for interpretation of RLUIPA in a way that makes sense.

Resolution: 07-092 Village of Montebello

Title: Establishment of Rio Vista of Montebello Homeowner=s Association

WHEREAS, Rio Vista of Montebello, LLC, by virtue of a letter with attachments dated January 26, 2007, submitted to the Village Board proposed Declarations for the Rio Vista of Montebello Home Owner=s Association for Areview and approval@ stating reliance upon Article XI Section 4 8).10 of the Village=s Comprehensive Plan, which reads:

The Village Board shall approve the formation of a Homeowner=s Association to manage common areas@; and

WHEREAS, said application, which first came before the Village Board on April 18, 2007, relates to 20 carriage style town homes sought to be located on the northerly side of Montebello Road approximately 50 feet north of Hemion Road in the Estate Preservation (EP) Overlay District encompassing the Mansion known as Montebello Park, and in particular the vacant land surrounding same, as said District is established at '195.62 of the Village Code which, as consistent with the Comprehensive Plan, contains the identical language at '195.62 8)(11) as afore quoted; and

WHEREAS, the Village Attorney reported at the first meeting having reviewed said Declarations, and the comments with respect to same of the Village Planner and the Assistant Village Attorney assigned to the Planning Board, that the Village Board=s involvement more pertained to whether a Homeowner=s Association shall be formed, and less to the specifics of the Declarations for same, except, in his opinion, to recommend that it at least be certain of the following:

1. That said Declarations not purport to contravene the requirements of the Village Code in general, and in particular with respect to said EP Overlay District, nor with the conditions imposed by the Planning Board or the Zoning Board of Appeals in actions taken with respect to said project, or as said conditions may appear on the site plan, or as conditioning the resolutions of such boards, or as set forth in the Minutes thereof.
2. That said Declarations set up procedures and conditions sufficient for the Association to act in furtherance of establishing and monitoring the 55 years or older requirement for all occupants, with reporting to the Village such that it may monitor compliance.
3. That said Declarations make it certain that the Association shall properly establish and safely maintain at its expense all common areas, including the roadways, parking areas and plantings; and

WHEREAS, at the first public meeting the representatives of Rio Vista raised the question of whether a strict, all occupants 55 years or older age requirement was intended under the Village Code, and whether such was violative of the federal Fair Housing Act (FHA); and

WHEREAS, legal research and checking of the Village=s records since the first meeting did not reveal that such age requirement violated the FHA, and did confirm that such was in conformity with the legislative intent of the Village Board in enacting the associated Zoning District; and

WHEREAS, the Declarations were amended by counsel to Rio Vista, including to address the foregoing concerns as summarized by the Village Attorney, and the version being considered is that dated and presented to the Village Attorney and Village Clerk on June 19, 2007, referred to as if fully set forth hereinafter; and

WHEREAS, this matter has again come before the Village Board to be heard on June 20, 2007; and

WHEREAS, after the Board deliberated in public and heard from the applicant, whose attorney accepted the following as friendly amendments, it wished to condition its action on the following changes to be made to the June 19, 2007 version of the Declarations:

1. Add definition of occupant: Aa person who regularly resides as a member of a household for a period of 30 or more continuous days, or 60 or more days per annum. @

2. Amend Article XII (1) (h), first sentence, to read: AIf the occupants of a particular dwelling unit fail to comply with the age verification procedures, the Association may, if there is sufficient evidence, consider if an occupant meets the occupancy requirements.@

THEREFORE, BE IT RESOLVED, after due deliberation in public, that the Village Board hereby approves creation of the Rio Vista of Montebello Home Owner=s Association as a necessary step in the process without purporting to address overall approval of the project, and that it defers to the Planning Board as to the exact form and content of the Declarations, except that no provision of the June 19, 2007 version of the Declarations, with the above changes, shall be altered substantively without the subsequent approval of the Village Board.

Motion: Deputy Mayor Millman

Second: Trustee Caridi

Discussion:

Warren Berbit, Village Attorney - advised the Board that he and Mr. Shulman, attorney for the applicant, had gone back and forth discussing the language of the Declarations and that the June 19th version encapsulated the changes that the Village Board was looking for, all issues have been addressed.

Trustee Citrin asked if the term Aoccupant@ was defined?

Mr. Berbit responded: Anothing specific@.

Mr. Shulman noted that the term Aoccupant@ is defined in the Village=s Zoning Code and would carry over.

Discussion ensued among the Board members, Village Attorney and Mr. Shulman as to defining the term Aoccupant@ and enforcing the 55 age restriction.

Mr. Berbit suggested a friendly amendment: if the occupants of a particular dwelling unit fails to comply with the age verification procedure, the Association may, if, there is sufficient evidence, consider if an occupant meets the occupancy requirements.

Mr. Shulman had no objection to that change in language.

The definition of an Aoccupant@ was also determined as: a person who resides as a regular member of a household for a period of thirty (30) or more continuous days or sixty (60) or more days per annum.

Mayor Oppenheim reiterated that when the Village Board enacted the Comprehensive Plan and amended the Zoning Code in October of 2003 it was understood that the absolute intent for this property was a 55 and over only development.

Roll call vote: Trustee Sorrillo	Aye
Trustee Citrin	Aye
Trustee Caridi	Aye
Deputy Mayor Millman	Aye
Mayor Oppenheim	Aye

The Resolution carried unanimously.

Resolution: 07-093 Village of Montebello

Title: Amending Schedule of Fees B Solar Power

WHEREAS, by Resolution No. 07-037, the Village Board approved the acquisition and installation of a NYSERDA approved solar energy electric power generating system at Village Hall, and expressed the associated desire that by this action others be encouraged to invest in solar power to help combat global warming and break the stranglehold of foreign oil reserves on power generation; and

WHEREAS, in furtherance of the above, the Village Board finds that capping the Building Permit Fee associated with building such a system will be beneficial.

THEREFORE, BE IT RESOLVED, that effective July 1, 2007, the Schedule of Fees be amended, and have noted therein, as follows:

The Building Permit Fee associated with construction of a NYSERDA approved solar energy electric power generation system shall not exceed \$250, irrespective the actual cost of construction of the system.

Motion: Trustee Citrin

Second: Deputy Mayor Millman

The Resolution carried unanimously.

Resolution: 07-094

Village of Montebello

Title: Support for US Mayors Climate Protection Agreement

BE IT RESOLVED, that Mayor Jeffrey Oppenheim is hereby authorized to sign in support of the US Conference of Mayors Climate Protection Agreement Resolution

Motion: Mayor Oppenheim

Second: Deputy Mayor Millman

Upon vote, the Resolution carried unanimously

Resolution: 07-095

Village of Montebello

Title: Appointment of Election Inspectors

The Board of Trustees of the Village of Montebello does hereby appoint the following persons to serve as election inspectors for the upcoming Special Village election to be held on July 10, 2007.

Name Address

Doris Whalen 242 Spook Rock Road
Suffern, New York 10901

Mary Desiderio 200 Dashew Drive
Apartment H14
Suffern, New York 10901

Doug Whipple 55 Church Road
Airmont, New York 10952

BE IT FURTHER RESOLVED, that their compensation be set at a rate of \$12.00 per hour.

Motion: Trustee Sorrillo

Second: Trustee Caridi

Upon vote, the Resolution carried unanimously.

Resolution: 07-096

Village of Montebello

Title: Resurfacing of Village Roads

BE IT RESOLVED, in furtherance of the purpose set forth in the Bonding Resolution No. 05-105 and the associated formal resolution, and upon the prioritized listing by condition of the Village Roads as prepared by the then Village Engineer, Eve Mancuso, in her letter dated April 18, 2006, as updated by the present Village Engineer, Martin Spence, in his report dated June 11, 2007, referenced as if set forth hereinafter, true copies of which shall be appended to the Minutes hereof, that authorization is hereby granted to resurface the following Village Roads according to specifications proposed by the Village Engineer:

1. Karsten Drive
2. Robin Hood (select locations)
3. Mayer Drive (Montebello Road to East Mayer); and

BE IT FURTHER RESOLVED, that the proposal of Tilcon New York Inc., dated May 23, 2007, referenced as if set forth hereinafter, a true copy of which shall be appended to the Minutes hereof, for all the work associated with installing speed humps on Mayer Drive according to the Boswell Engineering Specifications, at a total cost of \$14,135.00, be included in the work hereby authorized to be performed in furtherance of Resolution No. 07-033 adopted May 18, 2007, given that the associated road is to be milled and repaved; and

BE IT FURTHER RESOLVED, that a contract be entered into with Tilcon in an amount of approximately \$129,464.85, but not to exceed \$150,000, for said road resurfacing and speed humps according to the aforesaid proposal and the unit pricing of paving under the Town's Master Contract of \$70.50 per ton, which price can fluctuate with the market; and

BE IT FURTHER RESOLVED, that the sum expended hereby be paid out of the following, in numerical order:

1. Remaining bond proceeds
2. CHIPS; and
3. Current budgetary funds to the extent necessary to supplement the above.

Motion: Trustee Citrin

Second: Deputy Mayor Millman

Upon vote, the Resolution carried unanimously.

Trustee Sorrillo would like the Village to go out to bid in the future to compare costs.

Resolution: 07-097

Village of Montebello

Title: Approval of Abstract and Schedule of Claims

BE IT RESOLVED, the Abstract and Schedule of Claims dated June 20, 2007 and totaling \$140,802.44 are hereby approved and the claims listed thereon shall be paid

Motion: Deputy Mayor Millman

Second: Trustee Caridi

Upon vote, the Resolution carried unanimously

Resolution: 07-098

Village of Montebello

Title: Approval of Minutes

BE IT RESOLVED, the minutes of the Re-organizational Meeting of April 18, 2007 be and are hereby approved

Motion: Trustee Caridi

Second: Trustee Sorrillo

Upon vote, the Resolution carried unanimously

Resolution: 07-099

Village of Montebello

Title: Approval of Minutes

BE IT RESOLVED, the minutes of the Special Meeting of May 31, 2007 be and are hereby approved.

Motion: Trustee Caridi

Second: Trustee Sorrillo

Upon vote, the Resolution carried unanimously

Resolution: 07-100

Village of Montebello

Title: Appointment of Deputy Village Clerk

BE IT RESOLVED that, effective June 25, 2007, upon the recommendation of the Mayor and Village Clerk/ Treasurer, Shelly Ramos be and hereby is hired as Deputy Clerk to fill the vacancy created by the termination of the prior Deputy Clerk at a salary of \$36,000 per annum; and

BE IT FURTHER RESOLVED, said hiring is to be considered as probationary for three (3) months, also according to the recommendation of the Mayor and the Village Clerk/ Treasurer

Motion: Trustee Sorrillo

Second: Deputy Mayor Millman

Upon vote, the Resolution carried unanimously.

Public Comment: No one wished to speak.

Old and New Business:

Expansion of the irrigation system was discussed and installation of outdoor hose spigots.

The Board agreed that a postcard should be mailed to residents making them aware of the upcoming Special Election on July 10th.

Deputy Mayor Millman invited any and all residents to share their opinion of any topic they would like brought up at Village Board meetings.

Trustee Caridi made a motion to adjourn, seconded by Deputy Mayor Millman. Upon vote, the motion carried unanimously. The meeting adjourned at 9:27 p.m..