

MINUTES

VILLAGE OF CHESTER PLANNING BOARD

MARCH 25, 2014

REGULAR MEETING

PRESENT: Richard RAMSDELL, Chairman
Gene WINTERS, Member
John REILLY, Member
Anthony LASPINA, Member
Robert JANKEUNAS, Member
Ian SCHLANGER, Attorney
John ORR, Code Enforcement Officer

REGULAR MEETING – 7:00 PM

Chairman Ramsdell opened the Regular Meeting at 7:02PM.

1. MINUTES

Review Draft of October 2013 Planning Board Minutes

***MOTION** was made by Member Reilly, second by Member LaSpina, TO ACCEPT THE OCTOBER 2013 MEETING MINUTES AS DRAFTED. Motion passed 5-0.

2. Correspondence

None

3. Code Enforcement Officer Report

Presented by John Orr (copy attached)

4. Discussion of Local Law 4 2013 to end

Chairman Ramsdell began by advising that there were no new projects on the agenda and that the meeting will be a discussion of the Local Law 4 of 2003 (“LL4”); the current activity and some history on it.

Chairman Ramsdell advised that he would like to start with the Public Hearing that was held on March 10, 2014 at the Village Board Meeting. He stated that he had no prior knowledge of the Public Hearing until the day before it was to be held. He also advised that he knew of other people who also did not know about it. He continued on to say that on the day of the Public Hearing, he downloaded a copy of the latest version of the LL4 so he could take a look at it and review it since it had not been referred to the Planning Board.

Over the course of looking into this, Chairman Ramsdell looked at Chapter 98 Zoning of the Village Law and there was an Article 10 but if you look at Zoning it says Article X. It has to do with amendments and he was surprised by that. He reflected back to his early days on the Planning Board when his occupation had him commuting back and forth to the city and upon being selected as a Planning Board member, he decided to read, study and, eventually, memorize the entire Zoning Law. He remarked that the Zoning Law has undergone a lot of changes over the years and that he is not surprised that he will see a section within the Zoning Law that he is not familiar with. He referenced the particular section that begins with 93-39 but called attention to 98-42; Public Hearings. In section B it states that; “at least, 15

days notice of the time and place of such hearings should be published in an official newspaper of the Village". Everybody at the Public Hearing knows that it was approximately 5 days. In the amended section of the Zoning Law it states; 15 days notice. He continued stating that he felt positive that everyone would have appreciated extra time to be informed that a Public Hearing was going to be held. In section 90-42A, it states: "By resolution adopted at the meeting of the Village Board, the Village Board shall fix the time and place of the Public Hearing." I am familiar with that because if I don't make sure that we do that at our meeting, our counsel reminds me. I understand that this is another thing that did not happen.

In 98-39, initiations of amendments, it says that every such proposed amendment should be referred prior to a Public Hearing by the Village Board to the Planning Board for a report. I as well as other members of the Planning Board am quite familiar with the process because it has happen more than a hand full of times. He continued on that it is interesting that it says: "Every such proposed amendment" but this one was not. It is not a brand new amendment but is an amendment. Section 98-43 requirement that adjacent municipalities are to be notified of a Public Hearing 10 days prior, if they are within 500 ft. of the boundary of any other municipality. The Town of Chester does meet those criteria. There is also a similar situation with the county that is described in Section 98-44.

Finally, perhaps this is something that I should have first spoken about; the well understood factor, by the Planning Board, that decisions on amendments to the law are sole authority of the Village Board. Since the Planning Board is not acting in any particular official capacity: that should be understood by all. In 98-46, titled "Findings of the Village Board", the Code states: In all cases where the Village Board should approve an amendment to the Zoning Map, the said board should fully set forth the reasons for its finding." The Planning Board follows up on this so when the Village Board makes their decision, you will also have findings.

Since the matter was not referred to the Planning Board, it was difficult not to look at the new version of the LL4 which is the 3rd version. The decision that was made to create a new version by taking the Planning Board report and indicating changes on it made it a lot easier as well as less time and energy consuming to compare the new version against the last Planning Board report which was our report continuation.

Aside from the definition sections, there were 10 sections in the remaining report that had Planning Board editing work to present our viewpoint and recommendations. Without getting into all 10 sections specifically, changes were made from the Planning Board's last report that included deletions of almost every specific, written Planning Board involvement. Several sections in the Zoning Law, for many years, have included some language where the Planning Board may consider or the Planning Board may authorize, in those sections. In the case of the latest version of the Local Law; almost every mention of Planning Board involvement was deleted.

There were reversals and or replacements of specific language that was included in the Village Board's editing which resulted in reinstallation of previous LL4 proposed language. We suggested that it be taken out, and it was put back in. There were times when we had discussion, while this is not specifically a BT Holdings related exercise, they did attend 2 of our regular meetings which were held in November and December of 2013 as well as attending a workshop in December, 2013. While these meetings were not Public Hearings, they (Frank & Ann), were heard and we had a lot of open discussion with them.

We had provided the Village Board with a 10 section report and 9 of the 10 sections had been changed. This came as a big surprise to me. No one from the Village Board got back to us to ask for any clarification; it was just done and I was, again, very surprised. You don't normally find such broad diversion or disapproval with the Village Board. It may come down to us seeing what the reasoning was in the final decision. I heard that there was a thought that the Planning Board had done our report work,

in somewhat of a vacuum, and may not have utilized our connections with our consultants; Ian Schlanger and Mark Edsall. I looked back at my emails with Ian, Mark and Kristen O'Donnell and noted that I always advised them to "please comment". There was a lot of activity. We weren't shoveling something objectionable. The amendment process has always been a single exchange. We are now at version 3 and have provided reports on 1 and 2.

Chairman Ramsdell then asked if anyone on the board had anything to add. Member Reilly asked why we went to the second version. Attorney Schlanger responded to his question and advised that, originally, when the zoning was proposed, it was for the entire, new, zoning and that version was referred to the Planning Board as to how the property should be zoned. The Planning Board submitted a joint report back advising that a lot of things in RMN zone were indicative of what exists in the RM zone and therefore we don't recommend the adoption of the RMN zone and we propose zoning property as RM. This led to the Village Board looking at the RM zone and coming up with a new Local Law to be kept under the same title because it really is related and that was the Local Law that was referred over the second time and that was what was commented on. Chairman Ramsdell asked if that was why the second report was called a report continuation. He continued and advised that the Planning Board didn't have to recreate the standard, question responses, since they were fairly general comments that I would like to pass over to the Village Board in some official board response.

Attorney Schlanger made the following suggestions to the Planning Board; there is a workshop, which is an open meeting, being held on 4/3/14 which they can attend and participate in or if they want to make further comments on this, in writing form, they can do so and then it would be up to the Village Board to accept or not accept it into public record as comments. The Planning Board report is in the Public Records. Chairman Ramsdell advised that he would not be able to make the meeting on 4/3/14 because he has to pick up his sister from the airport. He stated that this is a matter of serious concern for reasons that we were not well informed of the process and things happened that fell short of what a Zoning Law stipulates.

LL4 is for amendments to the zoning law which is a village document that has, from its inception, been designed to provide standards for village wide properties and interest. If there is a special project, the procedure is always that they will go to the Zoning Board of Appeals. We don't look to tailor changes to the zoning law toward special projects. These are things that I wanted to bring up this evening. There is a matter of actual comparisons and Attorney Schlanger told me, earlier today, that it was a comparison document. I have not looked at it yet. I gave Attorney Schlanger my quick notes that resulted in 9 of 10 sections that we crafted being altered. Chairman Ramsdell then commented that this is not a Public Hearing but he is surprised that no one has said anything.

Mayor Valastro (in attendance at meeting) then asked Chairman Ramsdell if he had his code book with him and Chairman advised that he did not. Mayor Valastro advised the Chairman and the Board that he referred to section 12-1 for the Notice of Public Hearing which is found under the General Legislation Law section. Chairman Ramsdell advised that this section is not the Zoning Law section under Amendments. The Mayor advised that the section he referred to could have been a mistake or a problem but he wanted it to be clear to the public that this is the section he referred to when he made the decision.

Attorney Schlanger advised that Chairman Ramsdell pointed out to him earlier today that there is a 15-day notice in this type of Local Law. Obviously, the Planning Board is talking about the lack of notice and opportunity to comment or to have the re-notice publish again. There are 2 remedies available and the Village Board will make the call on this. Mayor Valastro advised that he wanted to make sure that everything regarding the holding of the Public Hearing is clear, especially for Ginny Privitar from the Chester Chronicle.

Chairman Ramsdell asked if anyone had anything brief that they wanted to comment on. Ted Talmadge asked who the Planning Board attorney is. After being told that it is Harold Pressberg who is part of the same law firm that Ian Schlanger is part of he questioned that there could possibly be a conflict of interest with the Village Board and the Planning Board because their respective attorneys are from the same law firm; Norton and Christensen. He also commented that he was under the impression that when a Public Hearing is scheduled; everyone who lives within 500 ft. of the project is supposed to receive notice of the Public Hearing. He then asked why that wasn't done. He continued on and remarked that it seems funny that Mr. Nussbaum comes to our town and wants things done for his benefit but when the local people of Chester want something done they are given a hard time.

David Stevenson began to ask about the second version of the proposed Local Law and Chairman Ramsdell stated that there were 3 versions and 2 Planning Board reports and asked which report Mr. Stevenson was referring to. Mr. Stevenson advised that he was not referring to any particular one but wanted to know how the decision was made, by the Village Board and the Village Board counsel, to ignore these reports. He also asked how is the legal language specified and did they come to this decision.

Attorney Schlanger advised that when a Local Law gets adopted for zoning purposes, a lot of experts, consultants and members of the board come together to produce the law. The law is then deferred to the Planning Board and they have 60 days to issue a report and then back to the Village Board and then the Public Hearing. Mr. Stevenson then asked who ultimately pulls the trigger. Attorney Schlanger advised that there may be a subcommittee who looks over the Planning Board changes and then will hold a Public Hearing and then a vote. Chairman Ramsdell fundamentally disagrees with the Village Board on this issue; a proposed Local Law for RM zone changes in a RM district primarily. After my discussion today with Chairman Ramsdell, I know that this is a provision in a lot of codes each time there are changes. Of course, I am not saying that the Planning Board doesn't have the ability to comment further and that would be when there would be a Public Hearing.

David Stevenson asked about when the Village Board re-entitles a document, is that actually voted on. Attorney Schlanger advised that there may be a smaller group of the board with decision making authority and they can make recommendations as to where they diverge, not diverge or accept the recommendations as it was in this case with the zoning. Whatever that version is, it will be presented to the rest of the Village Board members and then discussed and voted on. They can also say yes or no or table this and go back to the Planning Board. In this case it was; we will follow this recommendation and not this recommendation and back and forth.

Chairman Ramsdell then advised everyone, as to how he understood what Attorney Schlanger was saying; the subcommittee of the Village Board gets involved with deciding on what the ultimate direction of amendments will be and then it is voted on by the entire Village Board. Attorney Schlanger advised that they can't make an official decision without the board voting on it. They need a quorum to hold a meeting. Ted Talmadge then commented that this Local Law change could be done by 3 board members. Attorney Schlanger advised that in theory; yes. Mr. Talmadge asked if this would be legal. Attorney Schlanger advised that it would be. Mr. Talmadge asked if the Mayor could call a special meeting and do this. Attorney Schlanger advised that there would have to be a public notice. Ginny Privitar asked if the notice of a public meeting only has to be published once in the newspaper. Attorney Schlanger advised that notice of public meetings do not have to be advertised. If you have a week or more notice, you have to send notice to the local media. Ms. Timmouth then asked how the public would find out. Attorney Schlanger advised that it would be posted in Village Hall, on the village website and a notification to local media.

Chairman Ramsdell advised that there was one point he wanted to remake; the way I read this Zoning Law requirement, every such proposed amendment and it doesn't say every except those that are substantially changed, shall be referred. Gordon Shehab advised that when he looks at amendments to

law, I compare it word for word with the zoning code because I have a copy since I am on the Zoning Board. He went on to say that he noticed that there were spots where the advising of the Planning Board workshop was taken out in the amendments. He wanted to know who wrote the amendments; subcommittee with BT Holdings or BT Holdings. It appears that it was slanted towards BT Holdings. Mayor Valastro advised that he and the Village Board did not do that with BT Holdings. He advised that he has more integrity, then to sit down with a developer and allow him to write a law. He continued on to say that he has had his integrity questioned time and time again. He advised that he sat down with my counsel and other board members and prepared it. The other board member was Phil Roggia. It then went back to the Village Board.

Chairman Ramsdell then stated that in speaking for everyone; laws are important it is serious business when you are making changes and rewriting things. It needs to be done carefully and a lot of times, the Planning Board and Building Inspector can give people better ideas when they are involved. It is unnerving to see this stuff happening. The result of it is an open gate for people to do whatever they want.

Ginny Privitar then asked if the Village would have another Public Hearing on it. Attorney Schlanger advised that the Village will hold a workshop on 4/3/14. If the Village Board decides to go forward with a vote on the law presented, it is likely that there will be a Public Hearing.

Mayor Valastro then asked if they should have a joint Village Board, Planning Board meeting. Chairman Ramsdell advised that in addition to elimination of language that calls for Planning Board involvement, there was another change that got made regarding the density information for district regions. It stated how many units you could have and it said that it was dependent on the land condition. It included this but the information was identical but moved to another paragraph. Chairman Ramsdell read from the report and advised that it was taken out.

Leslie Smith asked what the procedure is if the motion is not used to call a Public Hearing. Attorney Schlanger advised that normally they do.

Member Winters then advised that when we made these recommendations to the Village Board, we took this very seriously. The Planning Board members went to various locations to do their homework. We met, talked and never looked at the clock.


Chairman Ramsdell then advised that they will put together a summary which he will circulate. Member Jankelunas advised Chairman Ramsdell that he shares his concerns. Chairman Ramsdell advised that Attorney Schlanger suggested that each board would have a designated board member to be at either meeting and would report back to their board.

Attorney Schlanger advised that all comments should be submitted to the Village Board and then put on-line.

Chairman Ramsdell then advised that he downloaded the latest version of the LL4 from the website but when he asked Missy Sosler, Planning and Zoning Board Secretary, to print it out, it wasn't there anymore. Attorney Schlanger advised that they will try to find out why it is not on the website. A discussion then ensued about the Village of Chester website.

Chairman Ramsdell asked if anyone had anything else to discuss and as there were no other comments, ***MOTION** was made by Member Jankelunas, second by Member LaSpina to ADJOURN THE MEETING. Motion passed 5-0. Meeting adjourned at 8:24PM.

Respectfully Submitted,



Missy Sosler
Planning Board Secretary