



**TOWN BOARD
TOWN OF OSSINING
BIRDSALL-FAGAN POLICE/COURT FACILITY
86-88 SPRING STREET
OSSINING, NEW YORK**

**FEBRUARY 22, 2011
7:30 P.M.**

**SUPERVISOR
Catherine Borgia**

**COUNCILMEMBERS
Geoffrey Harter Michael L. Tawil
Peter Tripodi Northern Wilcher**

I. CALL TO ORDER – PLEDGE OF ALLEGIANCE – ROLL CALL

The Regular Meeting of the Town Board of the Town of Ossining was held on February 22, 2011 in the Police/Court Facility, 86-88 Spring Street in Ossining. The meeting was called to order at 7:30 p.m. by Supervisor Catherine Borgia. Members of the Board present were: Councilmembers Michael Tawil, Peter Tripodi and Northern Wilcher. Councilman Geoffrey Harter was absent. Also present were Town Attorney Wayne Spector and Town Clerk Mary Ann Roberts.

II. PUBLIC HEARING –In the matter of the Application for a Cabaret License for the Tuscan Grille, 518 North State Road, Briarcliff Manor.

At 7:35 P.M., the Public Hearing was opened.

Ms. Tana McGuire, co-owner of the Tuscan Grille, stated that they are looking for a cabaret license to continue to offer karaoke with a DJ. We have been in compliance with time limits and we are requesting a renewal of this license.

Mr. Andre LaMarre, Haymont Terrace, questioned what the definition of Cabaret was?

Town Attorney Wayne Spector replied that a cabaret allows for music at certain times of the day and utilizing certain instruments.

Ms. Mindy LaMarre, Haymont Terrace, questioned whether it was different in every case?

Town Attorney Spector responded that there are police reports that are reviewed and the Board may make special requests of applicants. The code just specifies the policy and procedure. If the Board has questions and/or restrictions they can do so and this is done on a case by case basis.

At 7:40 P.M., the Councilmember Tawil moved and it was seconded by Councilmember Wilcher that the Public Hearing be closed.

III. ANNOUNCEMENTS

Councilperson Tripodi stated that he has been sending emails over the past two weeks attempting to have items added to the agenda and has not received a response.

Supervisor Borgia responded that the information should be provided to the Supervisor's office the Friday prior to the next Work Session. This is a collaborative board and you want to give people enough time to review the material.

Supervisor Borgia asked Councilman Tripodi to follow the usual process and to let the Supervisor's office know.

IV. PUBLIC COMMENT ON AGENDA ITEMS

Ellen Kahan, Ganung Drive, questioned whether Resolution G (Calling for a Public Hearing to consider Local Laws to amend the Zoning Law) will apply to restaurants or non-conforming locations. Would this be for new businesses or existing businesses? Cabarets should be prohibited in residential areas.

Town Attorney Spector responded that existing non-conforming would have to go before the Zoning Board of Appeals and would require various mitigating efforts. The cabaret in residential areas is being reviewed due to the Master Plan.

Mindy LaMarre, Haymont Terrace, looked at the new definitions with catering-implying food. Can a club be a private restaurant? There has been a change in zoning regarding non-conforming areas. Studio Hill Road has not had a restaurant for 3 years. The zoning stated that a restaurant no longer exists after being vacant for three months has been expanded to one year.

Supervisor Borgia stated that the Board has been wrestling with this issue. Communication has been taking place with specific owners.

Town Attorney Spector stated that there is a party interested in Studio Hill Road, but there is not a signed lease.

Ms. LaMarre questioned what would I do to have it declared abandoned? Town Attorney Spector stated that it was a matter for Town Officials. Supervisor Borgia responded that the Building Inspector is the enforcement officer.

Town Attorney Wayne Spector stated the Town Board is not a judicial Board.

Councilperson Tripodi stated that these zoning changes were made to make businesses go away. Mrs. LaMarre also commented on Resolution I (Authorizing continuation of medical benefits for retirees with 30 years of service or more and not covered by a collective bargaining agreement) as irresponsible with a bad precedent being set.

V. BOARD RESOLUTIONS

A. Approval of Minutes

Councilmember Tawil moved and it was seconded by Councilmember Wilcher that the following be approved:

Resolved, that the Town Board of the Town of Ossining hereby approves the February 8, 2011 Minutes of the Regular Meeting as presented.

Motion Carried: Unanimously

B. Approval of Voucher Detail Report

Councilmember Tawil moved and it was seconded by Councilmember Wilcher that the following be approved:

Resolved, that the Town Board of the Town of Ossining hereby approves the Voucher Detail Report dated February 22, 2011 in the amount of \$ 3,937.79 for 2010 and \$ 313,484.98 for 2011; for a total of \$317,422.77.

Vote: 3-0-1
Voting Aye: Wilcher,
Tawil & Borgia
Voting Nay: Tripodi

C. Referral to Planning Board-Westchester County Fair and Affordable Housing Implementation Plan

Councilmember Tawil moved and it was seconded by Councilmember Wilcher that the following be approved:

Whereas, Westchester County has undertaken obligations under the Stipulation and Order of Settlement and Dismissal to settle litigation known as U.S. ex rel Anti-Discrimination Center vs. Westchester County which related to the promotion of fair and affordable housing in Westchester County; and

Whereas, as part of the stipulation, the County agreed to adopt an implementation plan that would specify how the County would overcome the impediments to fair and affordable housing; include a model zoning ordinance; and provide a discretionary County funding policy to ensure municipalities receiving County funds are committed to further fair and affordable housing; and

Whereas, municipalities are required to consider the model ordinance provisions and take other actions necessary to qualify for County discretionary funds; and

Whereas, as stipulated in the Town Code, all zoning amendments shall be referred to the Planning Board for a report and recommendation; now therefore be it

Resolved, that the Town Board of the Town of Ossining hereby refers the Westchester County Fair and Affordable Housing Implementation Plan including the model zoning ordinance provisions and discretionary funding policy to the Planning Board for a report and recommendation.

Motion Carried: Unanimously

D. Calling for a Public Hearing to consider a proposal to amend the Town of Ossining Zoning Map

Councilmember Tawil moved and it was seconded by Councilmember Wilcher that the following be approved:

Whereas, James Zappi, P.E. (Perryco Homes, NY) has submitted an application to the Town Board for the rezoning of an approximately 22,198 square foot portion of a 0.956-acre parcel located on the easterly side of North State Road and designated section 90.15, Plate 7A, Block 2, Lot 6, from R-10 to General Business (GB), so that the entire property would be zoned GB, so as to permit a project which would consist of 12 town homes on 12 individual lots, with three of the dwelling units constituting affordable housing (the "Proposed Action"); and

Whereas, in accordance with Section 200-52, Zoning, of the Town of Ossining Code, the Town Board referred the proposed amendment of the Zoning Map to the Planning Board and Westchester County Planning Department for a report and recommendation; and

Whereas, the Planning Board issued a report dated February 14, 2011 recommending that the entire subject property be zoned General Business (GB) expressly for the purpose of constructing a residential development with a maximized affordable housing component, in accordance with Section 200-18B(1) and Article VI of the Town's Zoning Law, and subject to the Town and the property owner entering into a voluntary contract to ensure the implementation of this purpose and no other; and

Whereas, the Westchester County Planning Department indicated that the County Planning Board supports the proposed rezoning if it will provide the foundation for a residential development that will include affordable affirmatively furthering fair housing units; now therefore be it

Resolved, that the Town Board hereby calls for a Public Hearing on Tuesday, March 8, 2011, 7:30p.m. at the Police/Court Facility, 86-88 Spring Street, Ossining, NY to consider the rezoning of an approximately 22,198 square foot portion of a 0.956-acre parcel located on the easterly side of North State Road from R-10 One-Family Residence District to General Business (GB), which property is designated on the Tax Assessment Map of the Town of Ossining as Section 90.15, Plate 7A, Block 2, Lot 6, and to hear all persons interested in the subject thereof concerning the same; and be it further

Resolved, that the Town Clerk shall transmit to the Village of Briarcliff Manor Village Clerk the proposed zoning map amendment in accordance with Section 200-52, Zoning, of the Town Code.

Motion Carried: Unanimously

E. Authorizing levy of Administrative Fee-Unpaid Alarm Fines

Councilmember Tawil moved and it was seconded by Councilmember Wilcher that the following be approved:

Resolved, that the Town Board of the Town of Ossining hereby authorizes the Receiver of Taxes to levy an administrative fee in the amount of \$100.00 for unpaid alarm fines; and be it further

Resolved, that the \$100 administrative fee will be applied to the town/county tax bill.

Motion Carried: Unanimously

F. Authorizing levy of Administrative Fee-Unpaid Water Charges

Councilmember Wilcher moved and it was seconded by Councilmember Tawil that the following be approved:

Whereas, pursuant to an Intermunicipal agreement (“Water IMA”) dated January 1, 2002, the Village of Ossining supplies water to the Unincorporated Area of the Town of Ossining (“Town Outside”) and directly bills consumers in the Town Outside for water supplied pursuant to the Water IMA; and

Whereas, pursuant to the Water IMA, any water charge that is delinquent for three or more months shall be levied against the delinquent property owner on the property tax bill by the Town and shall be subject to penalty in the manner provided by law, in which event, upon collection by the Town, the Town shall remit the amount collected to the Village of Ossining; and

Whereas, the Town Board wishes to recover the additional expenses incurred by the Town in administering the collection of the unpaid Village water rents,

Now, therefore be it Resolved, that the Town Board of the Town of Ossining hereby authorizes the Receiver of Taxes to levy an administrative fee in the amount of \$100.00 for unpaid water charges.

Motion Carried: Unanimously

G. Calling for a Public Hearing to consider Local Laws to amend the Zoning Law

Councilmember Tawil moved and it was seconded by Councilmember Wilcher that the following be approved:

Resolved, that the Town Board of the Town of Ossining hereby calls for a Public Hearing on Tuesday, March 8, 2011, 7:30p.m. at the Police/Court Facility, 86-88 Spring Street, Ossining, NY to consider the following local laws:

1. A local law to amend the Zoning Law to remove the R-35 and R-15X One-Family Residence Office Districts
2. A local law to amend the Zoning Law to add new definitions to Section 200-53, Definitions
3. A local law, for the purpose of amending Section 200-18, General Business District, of the Zoning Law Regarding Permitted Uses, Setbacks and Landscape Requirements, and Amending Section 200-33 of Article VI, Affordable Housing, of the Zoning Law as it pertains to the GB District.
4. A local law, for the purpose of amending the Zoning Law and Zoning Map to create a multi-family-inn (MF-1) Zoning District and to place a certain property on Hawkes Avenue into the new district.
5. A local law, for the purpose of amending the Town Zoning Law and Zoning Map to change the O-RM Office-Research-Manufacturing District to an O-RB Office-Research Business District, to create a new O-RE Office-Research Education District, and to place a certain property located on Executive Boulevard into the new O-RE District.
6. A Local Law, for the purpose of amending the Zoning Law regarding fences, non-conforming uses, parking and impervious surfaces.

Vote: 3-0-1
Voting Aye: Wilcher,
Tawil & Borgia
Voting Nay: Tripodi

H. Zarin & Steinmetz

Councilmember Tawil moved and it was seconded by Councilmember Wilcher that the following be approved:

Resolved, that upon the recommendation of the Town Attorney, the Town Board of the Town of Ossining hereby retains the firm of Zarin & Steinmetz, Attorneys at Law, 81 Main Street, White Plains, New York 10601 to serve as special counsel for litigation pertaining to the Village of Briarcliff Manor v. Town of Ossining, in accordance with the letter correspondence dated February 16, 2011.

Motion Carried: Unanimously

I. Authorizing continuation of medical benefits for retirees with 30 years of service or more and not covered by a collective bargaining agreement

Councilmember Tawil moved and it was seconded by Councilmember Wilcher that the following be approved:

Resolved, that effective March 15, 2011, all employees of the Town of Ossining not covered by the terms of a collective bargaining agreement at the time of retirement, who retire with a minimum of 30 years of service to the Town, shall be provided family health insurance coverage into retirement at no cost to them under the Town's health insurance plan in effect at the time of retirement, subject to any subsequent changes in the Town's health insurance carrier and/or coverage that may occur; and be it further

Resolved, if and when such a retiree becomes eligible for Medicare, the Town's obligation to provide retiree health insurance coverage shall be limited to providing secondary coverage that is not covered by Medicare.

Vote: 3-0-1
Voting Aye: Wilcher,
Tawil & Borgia
Voting Nay: Tripodi

J. Retirement- Hon. Justice Shapiro

Councilmember Wilcher moved and it was seconded by Councilmember Tawil that the following be approved:

Resolved, that the Town Board of the Town of Ossining hereby accepts, with regret, the retirement of Hon. Edwin Shapiro effective March 15, 2011.

Motion Carried: Unanimously

K. Appointment of Town Representative to the Westchester County Community Development Advisory Group

Councilmember Tawil moved and it was seconded by Councilmember Wilcher that the following be approved:

Resolved, that the Town Board hereby appoints Catharine Gorycki, as Ossining Town Representative to the Westchester County Community Development Advisory Group effective February 23, 2011 through February 23, 2012.

Motion Carried: Unanimously

L. Planning Board-Re-appointment – Greg McWilliams

Councilmember Wilcher moved and it was seconded by Councilmember Tawil that the following be approved:

Resolved, that the Town Board hereby re-appoints Greg McWilliams to the Town of Ossining Planning Board for a five year term expiring December 31, 2015.

Motion Carried: Unanimously

M. Zoning Board of Appeals-Re-appointment-James F. Blair

Councilmember Tawil moved and it was seconded by Councilmember Wilcher that the following be approved:

Resolved, that the Town Board hereby re-appoints James F. Blair to the Town of Ossining Zoning Board of Appeals for a five-year term expiring December 31, 2015.

Motion Carried: Unanimously

N. Zoning Board of Appeals-Re-appointment-Sal Carrera

Councilmember Wilcher moved and it was seconded by Councilmember Tawil that the following be approved:

Resolved, that the Town Board hereby re-appoints Sal Carrera as Chairperson to the Zoning Board of Appeals for a five-year term expiring December 31, 2015.

Motion Carried: Unanimously

O. Personnel-Part-Time Appointment-Chauffeur

Councilmember Tawil moved and it was seconded by Councilmember Wilcher that the following be approved:

Resolved, that the Town Board of the Town of Ossining hereby appoints Gloria Sanchez, Underhill Road, Ossining, to the part-time position of Chauffeur in the Senior Center effective February 28, 2011 at \$13.00/hr.

Motion Carried: Unanimously

P. Grant Application-ELLA/WAC Stream Restoration and Conservation Initiative

Councilmember Wilcher moved and it was seconded by Councilmember Tawil that the following be approved:

Resolved, that the Town Board of the Town of Ossining hereby endorses a grant application to be submitted by the Town and Village of Ossining to Teatown Lake Reservation -ELLA (Environmental Leaders Learning alliance) in the amount of \$2,500 to pay for ecology signage for the Sing Sing Kill; and be it further

Resolved, that the Town Board authorizes the Supervisor to sign any documents pertaining to this grant application.

Motion Carried: Unanimously

Q. Dale Cemetery-State and National Registers of Historic Places Program

Councilmember Tawil moved and it was seconded by Councilmember Wilcher that the following be approved:

Resolved, that the Town Board of the Town of Ossining hereby authorizes the Supervisor to sign an application for submission to New York State Office of Parks, Recreation, and Historic Preservation for the potential inclusion of Dale Cemetery on the National Register of Historic Places.

Motion Carried: Unanimously

R. Justice Court-Interpreters

Councilmember Tawil moved and it was seconded by Councilmember Wilcher that the following be approved:

Resolved, that the Town Board of the Town of Ossining authorizes the Town Justices to retain the interpreting services of Jessica Zhinin-Yanqui at an hourly rate of \$20.00/hr.; and be it further

Resolved, that Carlos Castro may also perform interpreting services for the Court at the rate of \$20.00 per hour. He shall continue to be compensated for Constable services provided to the Court, if any, at the rate of \$16.17 per hour in accordance with the resolution passed by the Town Board on January 11, 2011 naming him as Constable.

Motion Carried: Unanimously

S. Justice Court-Pitney Bowes Machine

Councilmember Tawil moved and it was seconded by Councilmember Wilcher that the following be approved:

Resolved, that the Town Board of the Town of Ossining authorizes the Town Court to assume the Police Department's Pitney Bowes lease for a digital mailing system including equipment maintenance for a term of thirty (30) months at a cost of \$207.00 per quarter; and be it further

Resolved, that the Supervisor is authorized to sign any documents pertaining to this lease agreement.

Motion Carried: Unanimously

VI. MONTHLY REPORTS

Councilmember Tawil moved and it was seconded by Councilmember Wilcher that the following be approved:

Resolved, that the Town Board of the Town of Ossining hereby accepts the monthly reports for the month of January 2011 from the John F. Welch Learning Development Center .

Motion Carried: Unanimously

VII. VISITOR RECOGNITION

Mindy LaMarre, Haymont Terrace, questioned whether Cedar Lane Park is owned or leased by the Town? Did they pay rent?

Supervisor Borgia responded that Blueberry Pond is leasing the Shine House. Recently there has been some damage done to the property. They owe us rent and electricity and the relationship is about to be terminated.

Bobby Williams, Spring Street, congratulated Judge Shapiro and wished him well in his retirement. Mr. Williams stated that he was the Village representative to the Westchester County Community Development Advisory Group. There is no money involved as this is strictly an all volunteer position.

Supervisor Borgia thanked Mr. Williams for the clarification on the position of County Representative for Community Development. It seems that some developers are coming in at a cheaper price.

Mr. Fred Indorf, North State Road, expressed his concern relative to the businesses on North State Road.

Mr. Ray Santucci, North State Road, stated that many Ossining people are employed by the businesses on North State Road and they are looking to grow. Even though business has been slow, we haven't laid anyone off.

Supervisor Borgia stated that the physical plant may be full to capacity. The Board is not seeking to dislodge any businesses. They are looking to make it a more successful business area.

Councilman Tripodi agreed with Mr. Santucci as he understands since his father is also a small business. Councilmember Tripodi feels that the best way to build business on North State Road is to utilize the Police Department by moving the Supervisor's office, Tax Receiver's office and the Building Department thus eliminating the rent paid for 16 Croton Avenue. A Walmart and/or a Target should also be buildings on North State Road; plus a bank allowing the Tax Receiver to make deposits. Councilman Tripodi feels that the current legislative plan does not meet the needs of North State Road.

Councilman Tawil did not speak of specifics of the lots; however, they are still under the existing zoning laws. A vast majority of the businesses would not be able to expand due to set back plans.

Mr. Joe Ferrara, co-owner of Briarcliff Auto Body, stated that their business does have room for expansion as they have bought additional lots on either side of their establishment.

Mr. Tom Baccari, Baccari Auto Body, questioned whether auto related businesses would be able to rebuild or not in the event of a fire or other such catastrophe.

Supervisor Borgia responded that this is respect to non-conforming uses. This was a recommendation of a comprehensive plan and a requirement from New York State. Supervisor Borgia explained the legal process and how it unfolds. In addition, this is a legal zoning process that allows municipalities to do this.

Town Attorney Wayne Spector stated that the zoning has been around for a long time and is mandated by New York State Law. It is a right of government to engage in this process.

Councilperson Tawil explained that zoning is one of the basic things that we do in society. Zoning is a legitimate function of what we do and when we zone certain things they will or will not be excluded.

Mr. Antonio Santucci, North State Road, was very disappointed and felt threatened by this zoning discussion. He has been in business for 52 years and his son has been in business with him for 10 years. Can I sell as a body shop because if I can't, it will cut down on the value of the property?

Supervisor Borgia stated that the zoning changes are not meant to de-value your property and is not seeking to dislodge anyone. It is our hope that it will increase the value of the property/land. This meeting is intended to receive feedback from the public.

Mr. Bob Rigoso, North State Road, questioned the address of the location of the property which is discussed in Resolution D (Calling for a Public Hearing to consider a proposal to amend the Town of Ossining Zoning Map).

Supervisor Borgia will e-mail that information to Mr. Rigoso.

Mr. Andre LaMarre, Haymont Terrace questioned why auto body shops were being singled out and not restaurants, law firms, dentists?

Mindy LaMarre, Haymont Terrace, questioned whether 25 Studio Hill Road could be rebuilt if it burned down?

Town Attorney Wayne Spector explained that Studio Hill is a non-conforming use and it cannot be expanded. If the zoning code changes and current uses become non-conforming uses the same rules will apply to those uses as to any other non-conforming use including the one Ms. LaMarre referenced.

VIII. ADJOURNMENT –EXECUTIVE SESSION-LITIGATION

At 9:25 P.M. Councilmember Tawil moved and it was seconded by Councilmember Wilcher that the meeting be adjourned in memory of Charlotte Hahn Arner.

Approved:

Mary Ann Roberts, Town Clerk

September 30, 2010

Supervisor Catherine Borgia
TOWN OF OSSINING
16 Croton Avenue
Ossining, NY 10562

Hand delivered

Dear Supervisor Borgia:

Would you please tell us what determines whether a nonconforming use has been abandoned, and what the proper procedure is, under Town law, to officially declare that use "abandoned."

We believe that the property at 25 Studio Hill Road, Briarcliff Manor, NY, which had enjoyed nonconforming use as a restaurant/catering establishment in an R-15 residential zone, is no longer operating as such and, in fact, has not done so, legally, since June 30, 2008. What proof does the Town have to the contrary?

We'd appreciate a written response at your earliest convenience.

Sincerely,

Andre and Mindy Lamarre
12 Haymont Terrace
Briarcliff Manor, NY 10510

cc: Wayne Spector, Town Attorney