

A **Regular Meeting** of the Board of Trustees of the Village of Port Washington North was held on Monday, **October 24, 2005** at 7:30pm at the Village Hall, 71 Old Shore Road, Port Washington, New York.

Present:	Mayor	-	Robert Weitzner
	Trustees	-	Steven Cohen
		-	Daria Hoffman
		-	Michael Malatino
		-	Michael Schenkler
	Attorney	-	Stephen Limmer
	Clerk	-	Palma Torrisi
	Public Stenographer	-	Thomas Basile

## 1. Public Hearings

A. Mayor Weitzner opened the public hearing, duly advertised in the October 6, 2005 Port Washington News, to consider the adoption of **Bill 11C of 2005**, a proposed local law with regard to **illegal residential occupancies** and **illegal over-occupancies** in dwellings in the Village of Port Washington North. A stenographic transcript of the hearing is on file with the Village Clerk. There being no further comment, the Mayor closed the public hearing. On motion of Trustee Cohen, seconded by Trustee Schenkler, it was RESOLVED that Bill 11C of 2005 be and hereby is adopted as **Local Law 10 of 2005** to read as follows:

### Local Law 10 of the year 2005

A local law with regard to illegal residential occupancies in buildings and illegal over-occupancies in dwellings in the Village of Port Washington North

Be it enacted by the Board of Trustees of the Village of Port Washington North

#### Section 1. Legislative findings.

A. This Board has found that there are instances in the Village of owners of properties exploiting their buildings for financial gain by creating illegal residential occupancies in those buildings and/or illegal over-occupancies in dwellings, which expose the residents therein to living in substandard rooms or apartments and often create substantial fire and health hazards. Such practices are in derogation of the health, safety, and welfare of the Village and its residents, especially of the tenants of those buildings, who are entitled to the suitable and safe housing intended by the regulations set forth in the Village Code and the New York State Building, Residential, and Fire Codes.

B. Often, although it is known that such illegal occupancies and illegal over-occupancies exist, it is difficult obtaining the assistance of neighbors to provide affidavits attesting to the violations or to testify in court for fear of retribution.

C. Accordingly, in order to curtail such illegal occupancies and illegal over-occupancies, this Board finds that it is in the best interests of the health, safety, and welfare of the Village to adopt the following legislation.

Section 2. Chapter 176, Zoning, of the Code of the Village of Port Washington North, is hereby amended by adding a new article, Article XX, Illegal Residential Occupancies and Illegal Over-Occupancies in Dwellings, to read as follows:

### **“ARTICLE XX Illegal Residential Occupancies and Illegal**

## Over-Occupancies in Dwellings

§ 176-210. Provisions relating to prosecutions for the illegal residential occupancies and illegal over-occupancy in dwellings.

- A. In all civil and criminal prosecutions brought for the enforcement of this Code's provisions with respect to the illegal use of any building for residential purposes or the illegal residential occupancy of any dwelling or dwelling unit by more families than the number of families permitted for such dwelling or dwelling unit under this Code, the following rebuttable presumptions shall apply:
- (1) That any detached dwelling or dwelling unit, which maintains more than one mail box or mail receptacle, more than one gas meter, more than one electric meter, and/or more than one water meter, is being used as the residence of two or more families.
  - (2) That any detached dwelling or dwelling unit, which maintains more than two mail boxes or mail receptacles, more than two gas meters, more than two electric meters, and/or more than two water meters, is being used as the residence of three or more families.
  - (3) That any detached dwelling or dwelling unit, which maintains any entrance or entrances thereto, which entrance or entrances have not been set forth on any plans approved by and on file with the Village Building Department, is being used as the residence of two or more families.
  - (4) That any detached dwelling or dwelling unit, which maintains any third or additional entrances thereto, which entrance or entrances have not been set forth on any plans approved by and on file with the Village Building Department, is being used as the residence of three or more families.
  - (5) That any building, which has been advertised in any newspapers, magazines, or advertising publications as being available for sale or rent for residential purposes, in whole or in part, which advertisement expressly or implicitly provides that such building or the dwellings or dwelling units therein contain rooms for rent, contain more than one separate dwelling living unit, or may be occupied by more than one separate family, is being used as a dwelling containing the number of rooms for rent, dwelling units, or families stated or implied in such advertisement.
  - (6) That any dwelling or dwelling unit, which maintains two or more doorbells, is being used as a dwelling for the same number of families as there are doorbells.
  - (7) That any single-family dwelling unit or dwelling unit, at which there are:
    - (a) Permanent partitions or internal doors, which have not been set forth on any plans approved by and on file with the Village Building Department, which may serve to bar access between segregated portions of the dwelling, including but not limited to bedrooms, or the inability of any occupant or person in possession thereof to have unimpeded and/or lawful access to all parts of the dwelling unit; and/or
    - (b) Two or more kitchens, which have not been set forth on any plans approved by and on file with the Village Building Department, each containing one or more of the following: a range, oven, microwave, or

other similar device customarily used for cooking or preparation of foods,

is being used for two or more families.

(8) That any two-family dwelling unit, at which there are:

(a) Permanent partitions or internal doors, which have not been set forth on any plans approved by and on file with the Village Building Department, which may serve to bar access between three or more segregated portions of the dwelling, including but not limited to bedrooms; and/or

(b) Three or more kitchens, which have not been set forth on any plans approved by and on file with the Village Building Department, each containing one or more of the following: a range, oven, microwave, or other similar device customarily used for cooking or preparation of foods,

is being used for three or more families.

B. The rebuttal of the aforesaid presumptions shall be an affirmative defense by the defendant that notwithstanding the existence of such conditions, once such conditions have proven to the court, the subject building is not being used as a dwelling or the subject dwelling is not being used for more families than permitted under this Code.

C. A person charged with a violation of this Code as described herein may demand an inspection by the Village Building Department of the subject building or dwelling to rebut such presumption. Such demand shall be in writing addressed to the Village Building Department. The Building Department inspector shall prepare a report of the findings of the inspection together with photographs, if appropriate.

§ 176-211. Penalties for offenses.

A. Notwithstanding any provision of this Code inconsistent herewith, for each Code violation involving an illegal residential occupancy or an illegal over-occupancy of a dwelling or dwelling unit, the owner and any person who is in charge of the subject building, dwelling, or dwelling unit at the time of the violation shall be liable to a fine of not more than \$3,500 for the first violation; for a second and any subsequent violation, the fine shall be not less than \$5,000.

B. Alternative sentence. If a person, including any corporation, partnership, limited liability company, or any other legal entity has gained money or property through the commission of any violation involving an illegal residential occupancy or an illegal over-occupancy of a dwelling, then upon conviction thereof, the court, in lieu of imposing the fine authorized for the offense under this Code, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense, as such gain is reasonably determined by the Court. The intent of this section is, pursuant to the authority granted to villages by Municipal Home Rule Law §10(1)(ii)(e)(3), to supersede subdivisions 5 and 6 of § 80.05 of the Penal Law, to the extent necessary, to define 'persons' to include corporations, partnerships, limited liability companies, and all other legal entities.

C. Each day that a violation continues to exist shall constitute a separate and distinct violation.”

Section 3. Effective Date. This local law shall take effect immediately.

Vote was recorded as follows: Trustee Cohen-aye, Trustee Hoffman-aye, Trustee Malatino-aye, Trustee Schenkler-aye, Mayor Weitzner-aye. Motion carried.

B. Mayor Weitzner opened the public hearing, duly advertised in the October 6, 2005 Port Washington News, to consider the adoption of **Bill 12A of 2005**, a proposed local law amending the provisions of the **Residence C District** of the Village of Port Washington North. A stenographic transcript of the hearing is on file with the Village Clerk. There being no further comment, the Mayor closed the public hearing. On motion of Trustee Schenkler, seconded by Trustee Cohen, it was **RESOLVED** that **Bill 12A of 2005** be and hereby is adopted as **Local Law 11 of 2005** to read as follows:

Local Law 11 of the year 2005

A local law amending the provisions of the Residence C Districts  
of the Village of Port Washington North

Be it enacted by the Board of Trustees of the Village of Port Washington North

Section 1. § 176-30, Lot area requirements, of Article V, Residence C Districts, of Chapter 176, Zoning, of the Code of the Village of Port Washington North, is hereby amended to read as follows:

“No single-family dwelling shall be constructed on a lot with an area less than 4,000 square feet. No lot upon which a legal pre-existing nonconforming two-family dwelling exists shall be reduced to an area of less than 8,000 square feet.”

Section 2. § 176-36, Side yard requirements for other than detached one- or two-family and existing nonconforming buildings, of said Article V, is hereby renamed and amended to read as follows:

“§ 176-36. Side yard requirements for other than detached one-family dwellings.

All buildings, other than buildings being used as detached one-family dwellings, shall have side yards of at least 15 feet. Notwithstanding the foregoing, the side yards of any legal pre-existing nonconforming building in excess of 31 feet in height shall not be reduced to less than 20 feet.”

Section 3. § 176-38, Street frontage and front yard width, of said Article V, is hereby amended to read as follows:

“The minimum street frontage and front yard width for single-family dwellings shall be 40 feet. The minimum street frontage and front yard width for any legal pre-existing nonconforming two-family dwellings shall not be reduced to less than 50 feet.”

Section 4. Effective Date. This local law shall take effect immediately.

Vote was recorded as follows: Trustee Cohen-aye, Trustee Hoffman-aye, Trustee Malatino-aye, Trustee Schenkler-aye, Mayor Weitzner-aye. Motion carried.

2. Clerk

A. On motion of Trustee Schenkler, seconded by Trustee Cohen, it was unanimously  
RESOLVED that the reading of the minutes of the Board of Trustees meetings of August 22, 2005 be waived and that they be and hereby are approved as prepared by Clerk Torrisi.

B. On motion of Trustee Schenkler, seconded by Trustee Hoffman, it was unanimously  
RESOLVED that the Board of Trustees designates the following offices as vacant at the end of the current official year, to be filled at the **Village Election** to be held on March 21, 2006 for the following terms:

Trustee	- Two Years
Trustee	- Two Years
Village Justice	- Four Years

C. On motion of Trustee Schenkler, seconded by Trustee Hoffman, it was unanimously  
RESOLVED that the regular monthly meeting of the Board of Trustees of the Village of Port Washington North is rescheduled to Tuesday, December 13, 2005 at 7:30 p.m. at the Village Hall, 71 Old Shore Road, Port Washington, New York.

### 3. Treasurer

A. On motion of Trustee Schenkler, seconded by Trustee Cohen, it was unanimously  
RESOLVED that the reading of the Abstract of Vouchers #43, totaling \$32,231.13, and the Abstract of Trust & Agency Vouchers #10, totaling \$2,415.35, be waived and that it be and hereby are approved as prepared by Treasurer Stack.

B. On motion of Trustee Schenkler, seconded by Trustee Hoffman, it was unanimously  
RESOLVED that the Budget Report as of August 31, 2005, showing the General Fund Balance to be \$1,974,331.00, and the Trust & Agency Fund Balance to be \$97,776.00, be and hereby is accepted as prepared by Treasurer Stack.

### 4. Reports

#### A. Building Department

1. On motion of Trustee Cohen, seconded by Trustee Hoffman, it was unanimously  
RESOLVED that the Building Department reports for September 23/26 through October 21/24, 2005 be and hereby are accepted as presented.

#### 2. Sign Permit Applications – Wachovia Bank

On motion of Trustee Schenkler, seconded by Trustee Cohen, it was unanimously  
RESOLVED that Sign Permits #S05-31 and #S05-33 for signs for Wachovia bank at 19 Soundview Marketplace, Shore Road, Port Washington, be and hereby are approved in accordance with the applications, and plans submitted on October 7, 2005.

### 3. Sign Permit Application – Romantico of Capri

On motion of Trustee Cohen, seconded by Trustee Schenkler, it was unanimously

RESOLVED that Sign Permit #S05-32 for a sign for Romantico of Capri restaurant at 45A Shore Road, Port Washington, be and hereby is approved in accordance with the application and plans submitted on October 19, 2005, upon the condition that the existing banner is removed within one month.

#### B. Public Works Department

1. On motion of Trustee Cohen, seconded by Trustee Schenkler, it was unanimously

RESOLVED that the Public Works report for the month of September 2005 be and hereby is accepted as submitted.

2. Signs indicating that there shall be no overnight parking of commercial vehicles will be posted on Mill Pond Road.

### 5. Old Business

#### A. Valet Parking Permit – La Piccola Liguria

On motion of Trustee Schenkler, seconded by Trustee Hoffman, it was unanimously

RESOLVED that the Valet Parking Permit application of Victor Raimondo, to permit valet parking for La Piccola Liguria restaurant at 47 Shore Road, 49 Shore Road, 1 Small Place and 65 Shore Road, in accordance with plan "A-1", dated 8/24/05, prepared by Budd Mogensen/Architect.

#### B. Snow Removal & Sanding 2005 – 2008 Contract

Treasurer Stack recommended Dejana Industries as the lowest bidder. On motion of Trustee Malatino, seconded by Trustee Schenkler, it was unanimously

RESOLVED that the Snow Plowing, Sanding and Salting of Village Streets contract be awarded, on the basis of hourly rates, for 2005/6 to Dejana Industries Inc., in accordance with its bid dated October 6, 2005, as the lowest responsible bidder, and that Mayor Weitzner is hereby authorized to execute said contract on behalf of the Village.

#### C. Leaf Removal Contract

Clerk Torrisi reported that the following bids for the fall leaf removal had been received by 12:00 noon on October 20, 2005 at the Village Hall:

	<u>2005</u>	<u>2006</u>
Dom's Lawnmaker Inc.	26,885.	26,885.
Robert Keogh Inc.	24,400.	26,800.

Superintendent McDonough recommended Robert Keogh Inc. as the lowest responsible bidder. On motion of Trustee Schenkler, seconded by Trustee Cohen, it was unanimously

RESOLVED that the Village enter into a contract with Robert Keogh Inc. for the removal of leaves from Village streets for 2005 and 2006, as more particularly set forth in a written proposal dated October 20, 2005, waiving the requirement for a performance bond and a labor & material bond.

## 6. New Business

### A. Bill 13B of 2005 – Regarding Tree Protection

Mayor Weitzner introduced Bill 13B of 2005, a proposed local law amending the provisions of the Code of the Village of Port Washington North with regard to **Tree Protection**. A copy of the bill was delivered to each of the members of the Board of Trustees. The Mayor also presented a short environmental assessment form prepared by the Village Attorney. On motion of Trustee Hoffman, seconded by Trustee Cohen, the following resolution was unanimously adopted:

WHEREAS Bill 13A of 2005, amending certain provisions of the Code of the Village of Port Washington North with regard to Tree Protection, has been submitted to the Board of Trustees for its consideration; and

WHEREAS a short environmental assessment form has been submitted on behalf of the Village; and

WHEREAS the members of the Board have carefully reviewed said assessment form; and

WHEREAS the subject bill concerns the legislative action of this Board;

NOW, THEREFORE, BE IT RESOLVED that this Board hereby designates itself as the lead agency for environmental review with regard to the adoption of the proposed local law and this Board determines that the proposed local law is an unlisted action as determined by the Commissioner of the Department of Environmental Conservation, and that it will not have an adverse impact on the environment, and sets a public hearing with regard to the proposed adoption of this local law for the 28<sup>th</sup> day of November 2005 at 7:30 p.m. at the Village Hall, 71 Old Shore Road, Port Washington, New York.

### B. Street Light Maintenance Contract

Clerk Torrisi reported that competitive bidding is not required for the Street Light Maintenance 2005-2006 contract. However, a competitive price was obtained from Lighting Maintenance Inc. indicating that it would continue the current contract with a ten-percent increase in price to cover the increase in the price of fuel. On motion of Trustee Cohen, seconded by Trustee Hoffman, it was unanimously

RESOLVED that the **Street Light Maintenance 2005-2006** contract be and hereby is awarded to New York Trenchless Inc. at a cost not to exceed \$335.00 per month and as more particularly set forth in a written agreement for November 1, 2005 through October 31, 2006.

### C. Maintenance Requirements Contract

In reviewing the Maintenance Requirements contract, the Board stated its desire to break the Maintenance Requirements contract into components to attract new bidders and, possibly, to lower the rates paid by the Village.

### D. Stop & Shop – Performance Bond Reduction

On motion of Trustee Schenkler, seconded by Trustee Cohen, it was unanimously

RESOLVED that the Performance Bond for Stop and Shop be and hereby is reduced, by \$34,000.00, to \$26,000.00, subject to confirmation by the Village's Building Inspector that the steps and handicap ramp at George Street are all that remain to be completed.

Attorney Limmer stated that a letter from Stop and Shop authorizing the release of a \$34,000 check directly to the Village for the Local Safe Streets & Traffic Calming grant is needed.

#### 7. Executive Session

On motion of Trustee Schenkler, seconded by Trustee Cohen, it was unanimously RESOLVED that the Board enter into executive session for advice of counsel.

On motion of Trustee Hoffman, seconded by Trustee Malatino, it was unanimously RESOLVED that the executive session be closed and that the regular meeting be reconvened.

Mayor Weitzner announced that no action was taken during the Executive Session.

#### 8. New Business (continued)

##### A. Publishers Clearing House – Tax Certiorari Proceeding

On motion of Trustee Schenkler, seconded by Trustee Hoffman, the following resolution was unanimously adopted:

(insert Publishers Clearing House tax cert settlement)

On motion of Trustee Malatino, seconded by Trustee Cohen, it was unanimously RESOLVED that the meeting be and hereby is adjourned at 10:15 p.m.

Palma Torrisi, Village Clerk