

Village of Fleischmanns
Public Hearing
October 4, 2010

The Village of Fleischmanns Board of Trustees held a Public Hearing on October 4, 2010 at the Skene Memorial Library at 4:00 p.m. Present were: Mayor David Morell, Deputy Mayor Todd Pascarella, Harriet L. Grossman, Fred Woller and Benjamin Fenton.

The Public Hearing was held to consider the proposed adoption of Local Law # 4 of 2010 repealing Local Law # 1 of 2010 entitled: "Amending the Zoning Law of the Village of Fleischmanns to Require Site Plan Review for Certain Actions in Furtherance of the Implementation of the Village's 2009 Comprehensive Plan."

Local Law No. 1 of the year 2010 reads as follows:

Section 1. Legislative Intent.

The Board of Trustees of the Village of Fleischmanns adopted the Fleischmanns Comprehensive Plan on December 14, 2009. Said Plan recommended various Zoning Map and Zoning Text Amendments. The Village Board has appointed a Zoning Review Committee to draft these recommended revisions to the Zoning Law. The proposed Zoning Law revisions are anticipated to take six or more months to enact. The Board of Trustees finds and determines that the amendment contained in this Local Law will enhance the land use policies of the Village by ensuring that non-residential and multi-family housing developments are subject to Site Plan Review by the Planning Board. The amendment contained in this Local Law will strengthen the protection of natural resources, expand housing choices, protect property values and enhance and protect the physical appearance of the community. It will do so by ensuring that the design and arrangement of proposed developments are compatible with surrounding land uses and are consistent with the recommendations of the Village's 2009 Comprehensive Plan.

Section 2. Amendments.

Section .6 (B) of the Village of Fleischmanns Zoning Law is hereby deleted and repealed and the following is hereby enacted in its place and stead:

7.6 Site Plan Review

B. Applications

All applications for building permits, or special permits, except for one and two family dwellings and their permitted accessory uses or any addition to a single family dwelling shall be accompanied by a site plan approval. No building permit shall be issued until all the requirements of this law have been met.

Section 3. Savings Clause.

If any clause, sentence, paragraph, section or part of this Local Law shall be adjudicated by any court of competent jurisdiction to be invalid, such judgment shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 4. EffectiveDate.

This local law shall take effect upon its filing with the Secretary of State.

Mayor Morell opened the Hearing to hear comments from the public.

Donald Kearney advised he didn't know why Local Law # 1 of 2010 was being repealed. Mr. Kearney advised he had heard that the Law was claimed to be unenforceable since it didn't have an emergency provision.

Village Attorney, John Fairbairn, III advised the purpose of this amendment was to control the issuance of permits while the zoning law is changed and that he believed that the law has too many deficiencies to let it stand. It contradicts the unamended portions of the zoning law and does not allow for emergency repairs or immediate needs. The law essentially prohibits the landowner from correcting violations until one gets site plan approval-which takes at least a month or even longer. The law also requires that a repair to a building be approved by the Planning Board after site plan approval.

Donald Kearney agreed; however felt that the law in the form of one paragraph was too broad. He felt it would leave the Village vulnerable without any coverage for site plan review; which is something we should have. Presently, site plan review in our original zoning is only required with a special use permit. If the Village repeals Local Law # 1 now, we will have no other site plan review process, so any kind of commercial issue that arises for a building permit doesn't need any kind of site plan review unless it happens to come under special use.

Mr. Fairbairn went on to explain that one of the applications for a permit our CEO received was a request to repair a roof collapsed by a snowstorm; a property on which the CEO had recently issued a violation because of the damaged roof. This law essentially prohibits the landowner from correcting this violation until he gets site plan approval-which takes at least a month or even longer. Moreover, there really is nothing that the Planning Board could review with these repair applications since the footprint, use, drainage, aesthetics are unchanged, and there are no environmental conditions to be studied. If the Planning Board was to conduct a public hearing, apply conditions or, worst of all, actually reject an application, the Village would be at significant peril because such a decision would be arbitrary and capricious-meaning a reversal of the denial as well as a possible award of damages in favor of the landowner. The problems created by this law run contrary to the intentions of the zoning law, the building code, and are not in the best interests of the community.

Donald Kearney stated that Local Law # 1 stated that one & two family buildings were excluded from the site plan review requirement anyway, leaving only commercial buildings. Mr. Kearney expressed the fact that he still thought it still left the Village vulnerable. A quick clause could have been drawn up that excluded any kind of work that's not above a \$20,000.00 threshold. Mr. Kearney also thought it was good policy for the Board to include a final clause in any law stating that the law can be amended by resolution of the Village Board; minor changes such as a threshold, etc.

Larry Reilly advised that the Local Law # 1 repealed a section of the current Zoning Law; therefore there is no zoning plan review.

Mr. Kearney then said that if Local Law # 4 repeals Local Law # 1 there is nothing in it that re-institutes the section in the original zoning that was deleted requiring a site plan review for special use permit. That means for period of time there is absolutely no site plan review; no oversight of any building project. Larry Reilly agreed with Mr. Kearney at least until the new zoning is adopted.

Mr. Fairbairn's argument would be by repealing the law you have undone whatever it did & by repealing the repeal, you have reinstated what was repealed. Attorney Fairbairn advised that if the Village Board directed him to add language, he would do that. Mr. Fairbairn recommended that we have language that says that the provisions of zoning that were repealed in Local Law # 1 be reinstated to be doubly sure that they are in fact in full force and effect.

Attorney Fairbairn, III will amend the proposal and change it to state that the provision in the original Zoning Law which were repealed by Local Law # 1 are hereby reinstated.

Public Hearing Closed

Motion made by Todd Pascarella to close the Public Hearing. Motion seconded by Benjamin Fenton. Todd Pascarella-Aye. Benjamin Fenton-Aye. David Morell-Aye. Harriet L. Grossman-Aye. Fred Woller-Aye. All in favor. Motion so carried.

Workshop Opened

Mayor Morell turned the meeting over to Deputy Mayor Todd Pascarella.

Village Trustee Harriet L. Grossman discussed problems she found in the easement for Sam Gil's property located on Main Street. She questioned why Tony Lanza's name was not mentioned in the easement along with Tony Perretta's as owners when Mr. Lanza's name was definitely on the deed. She pointed out that someone other than Mayor Morell should have signed the easement since he had recused himself from the issue & the Village had never voted on the easement which was a mistake. Ms. Grossman acknowledged that it was the entire Village Board's fault agreeing to allow the Mayor to go out and seek bids when he had already recused himself. Trustee Grossman expressed the fact and wanted it on record that she thought this was all just mistakes that were not intentional on the part of the Board; she is not saying anything improper occurred, but that it's just the appearance of...mistakes were made that were not intentional in order to expedite things. She spoke to two attorneys at NYCOM. They questioned what public purpose was being served, was it a temporary easement, and did we know if Sam Gil still wanted the fence because if he didn't, then we don't need a fence. She questioned if the easement was still a binding document since it was signed by Mayor Morell. Village Trustee Grossman stated that she wanted everyone on the Board to work together & not have any division. If the fence has to go up, then we will vote on the bid. Ms. Grossman admitted she was just as culpable & she should not have agreed to let Mayor Morell obtain bids for the fence.

Village Attorney, John Fairbairn, III advised that even though Mayor Morell had signed the easement, that mistake lies with him because he was the one who drafted the document with Mayor Morell's name on it. At the onset there was no issue. Mayor Morell's signing of the easement lies on the Village Attorney's plate as well as not including Tony Lanza's name on the document. The document is enforceable. It was signed and the Village is bound by the terms of the document. Mr. Fairbairn commented that at the Aug. 20th, 2010 Special Meeting, the Village Board agreed to erect the fence and await job estimates.

Todd Pascarella submitted the following statement dated Oct. 3, 2010 for the Village record:

I would like to simply state for the record that it is my opinion that the Village is potentially establishing several bad precedents with regards to it's following through with the fence project. The first is that we are considering breaking with the common practice of accepting the lowest bid where the services proposed are essentially the same. The second is that we are considering a bid which has attached to it a threat against the Village. Upon being asked for clarification of the details of the fence proposal, Cherry Fencing responded with a threat that the Village is breaking the law by doing so and that the Village will be "subject to complaints to the proper authorities." However, what law is being broken was not mentioned, nor was any evidence of law-breaking pointed to. Therefore, such a bid should be set aside in my opinion due to the potential difficulty in working cooperatively with a contractor that would make such inappropriate threats. Also, I would like to point out that I called Mr. Cherry shortly after he installed the fence at the pool to let him know that I had seen the handle break off of the gate. He was extremely rude and spouted off for several minutes about his displeasure with the Village Board. I had to cut him off eventually to ask him to just please fix the gate and I hung up the phone.

Lastly and most importantly, the Board's decision to consider the more expensive bid is apparently being driven by one Board member's suspicion of the Mayor's conduct without evidence to support such suspicion. As was the case with the debate over the Village employee's health insurance, such accusations and implications made without evidence to support are mere conjecture and should not sway the Board from doing what

is ultimately in the Village's best interest, which in this case is to build 90 feet of fence as inexpensively as possible to fulfill our contract and commitment. Furthermore, falsely impugning the character of the Mayor in this way reflects negatively on the credibility of the entire Board and especially those who impugn. In the end, the Village is done a disservice by the distraction which is created by all of this. I submit that the Board should resolve matters of opinion on issues swiftly by voting on them. Matters of opinion on character should be settled through elections which are coming up soon.

Four Seasons/Bid/Fencing

Motion made by Todd Pascarella to accept the bid of Four Seasons Landscaping to install 90' of 6' high stockade fencing along the western side of the Gil property on Main Street for the sum of \$2,000.00. Motion seconded by Benjamin Fenton. Todd Pascarella-Aye. Benjamin Fenton-Aye. Fred Woller-Abstained. Harriet L. Grossman-Nay. Motion not carried.

Cherry Fencing/Bid/Fencing

Motion made by Benjamin Fenton to accept the bid from Cherry Fencing to erect an 80' or 10 sections of 1 x 6 Board, Cedar Stain Applied, dog ear top, 6' high & 8' long. 2" posts set in concrete with caps and adapters from wood to metal in the amount of \$2,150.00. Motion seconded by Harriet L. Grossman. Benjamin Fenton-Nay. Todd Pascarella-Nay. Fred Woller-Abstained. Harriet L. Grossman-Nay. Motion not carried.

Todd Pascarella/Fencing/2 Volunteers

Motion made by Benjamin Fenton that Deputy Mayor Todd Pascarella find two (2) volunteers and put up the fence himself with costs being for material only. Motion seconded by Todd Pascarella. Benjamin Fenton-Aye. Todd Pascarella-Aye. Fred Woller-Abstained. Harriet L. Grossman-Aye. Motion so carried.

Samuel Gil/895 Main Street

The following letter dated September 30, 2010 addressed to the Village Board from Samuel Gil, owner of property at 895 Main Street read as follows:

Please be advised that I am requesting that once the work is completed off of Little Redkill Road/Schneider Avenue, I would like the entrance kept open behind my home on Main Street. The entrance that I am referring to is the one that leads to Schneider Avenue from the road that goes through my property.

I worked with the Village to help make the replacement of the culvert and bridge easier and was very cooperative, so I feel that this is a small request that can be met. I am not asking that anything be maintained just that the opening (gate) there remain Open. Thank you in advance for your consideration.

Motion made by Benjamin Fenton to deny the above request from Samuel Gil. Motion not seconded or carried.

Motion made by Todd Pascarella to approve the above request from Samuel Gil. Motion seconded by Harriet L. Grossman. Todd Pascarella-Aye. Harriet L. Grossman-Aye. Benjamin Fenton-Nay. Fred Woller-Aye. Motion so carried.

Police Car

Motion made by David Morell to take the police car off the road and leave it in the Village Garage. Motion seconded by Todd Pascarella. David Morell-Aye. Todd Pascarella-Aye. Harriet L. Grossman-Aye. Benjamin Fenton-Aye. All in favor. Motion so carried.

Fire Department

The Village Board discussed the Fire Department's budget for 2011-2012 received October 1, 2010. Trustee Fred Woller advised the Fire Dept. to itemize their monthly billings and fuel purchases. Mayor Morell asked Trustee Fred Woller to give an update as to the Fire Dept. along with any recommendations at the next Board meeting

Safety Audit

Todd Pascarella advised that a list of suggested sign changes were outlined in the Roadside Safety Audit. Mr. Pascarella suggested painting some crosswalks where the locations could be installed without altering the curbs. When the Main Street grant starts to filter in we can possibly use some of the streetscape money so that some of the crosswalks are permanent. The Board further discussed Mr. Pascarella's recommendations & possible improvements.

Mayor Morell requested a committee be put together to propose an action list with associated costs. Mayor Morell recommended Todd Pascarella & Larry Reilly for the committee & wanted Village Board representation on the committee.

Safety Audit Committee Members

Deputy Mayor Todd Pascarella, Larry Reilly and Village Trustee Harriet L. Grossman.

Trustee Fred Woller advised he would like to get two (2) do not enter signs and one stop sign for the Village parking lot next to La Cabana Rest. & Motel, especially since a girl was hit on her bike there & he doesn't want to see that happen again. Mayor Morell requested Trustee Woller present a plan with costs to the committee.

Pump Station/Senior Citizens

Benjamin Fenton had a conversation with Margaret Kearney on Sept. 22, 2010 as to use of the pump station by the senior citizens. Mr. Fenton will await further advice from Village Attorney, John Fairbairn, III & will have a full report as soon as he hears from the attorney.

Schneider Ave./Petition

Brief discussion was held by the Village Board as to the petition submitted by residents of Schneider Avenue requesting the upper side of Schneider Avenue being graded and finished with either tar and stone or blacktop and declaring Schneider Avenue a Village road. The Village is awaiting an opinion from the Village Attorney.

Dog Complaint/Rita Adami

The Village Clerk briefly updated the Village Board complaints made of a dangerous dog situation occurring on Wagner Avenue at Rita Adami's house and her concern for her boxers who she claims have been bitten by dogs harbored by a close neighbor. Reports have been filed with the State Police. Further discussion was held as to enforcing the leash law.

Monthly Report/Ending 8/31/10

The Board discussed questions on the monthly report ending Aug. 31, 2010 submitted by Russell Schebesta. Mayor Morell will look into some questions that were raised.

Beautification Committee

Trustee Harriet L. Grossman attended a Beautification Grant Program and advised there was a grant for \$2,000.00 with a \$1,000.00 match. The Village has to come up with something to get the panel excited; pocket parks, hanging flowers, etc. Mayor Morell asked Harriet to give a recommendation at the next meeting.

Adjourn

Motion made by David Morell to adjourn. Motion seconded by Todd Pascarella. David Morell-Aye. Todd Pascarella-Aye. Harriet L. Grossman-Aye. Fred Woller-Aye. Benjamin Fenton-Aye. All in favor. Motion so carried.