

## **Minutes - Board Meeting 1/14/09**

Minutes of the meeting of the Board of Trustees of the Incorporated Village of Mineola held Wednesday, January 14, 2009 at Village Hall, 155 Washington Avenue, Mineola, New York 11501.

**PRESENT:** Mayor Jack M. Martins  
Trustee Lawrence A. Werther  
Trustee Thomas F. Kennedy  
Trustee Paul A. Pereira

**ALSO PRESENT:** Village Attorney John Spellman  
Village Clerk Joseph R. Scalero

**Sunshine Observers:** Approximately 4 Observers

**Mayor Martins called the Work Session to order at 7:00 pm.**

### **Resolution No. 13-09**

Resolved to approve bills and payroll.

Motioned by Trustee Lawrence A. Werther  
Seconded by Trustee Paul A. Pereira

#### **Vote:**

<u><b>Yes</b></u>	<u><b>No</b></u>	<u><b>Abstain</b></u>
Mayor Jack M. Martins		
Trustee Paul A. Pereira		
Trustee Thomas F. Kennedy		
Trustee Lawrence A. Werther		

### **Resolution No. 14-09**

Resolved to approve the minutes of the meetings of the Board of Trustees of December 17, 2008 and January 7, 2009.

Motioned by Trustee Paul A. Pereira  
Seconded by Trustee Thomas F. Kennedy

#### **Vote:**

<u><b>Yes</b></u>	<u><b>No</b></u>	<u><b>Abstain</b></u>
Mayor Jack M. Martins		
Trustee Paul A. Pereira		
Trustee Thomas F. Kennedy		
Trustee Lawrence A. Werther		

### **Resolution No. 15-09**

Resolved to approve the recommendation of the Community Development Coordinator, Robert Hinck, authorizing the 34<sup>th</sup> Program Year contract for Community Development Block Grant Funding.

Motioned by Trustee Lawrence A. Werther  
Seconded by Trustee Thomas F. Kennedy

#### **Vote:**

<u><b>Yes</b></u>	<u><b>No</b></u>	<u><b>Abstain</b></u>
Mayor Jack M. Martins		
Trustee Paul A. Pereira		
Trustee Thomas F. Kennedy		
Trustee Lawrence A. Werther		

**Resolution No. 16-09**

Resolved to instruct the Village Treasurer to solicit proposals for consulting services for Governmental Accounting Standards Board 45 (GASB45) compliance.

Motioned by Trustee Thomas F. Kennedy  
Seconded by Trustee Paul A. Pereira

**Vote:**

<u><b>Yes</b></u>	<u><b>No</b></u>	<u><b>Abstain</b></u>
Mayor Jack M. Martins		
Trustee Paul A. Pereira		
Trustee Thomas F. Kennedy		
Trustee Lawrence A. Werther		

**Resolution No. 17-09**

Resolved to authorize 2008/09 Budget line transfers.

<u>Account</u> <u>Name</u>	<u>Account</u> <u>Number</u>	<u>Amount</u>	
		<u>Increase</u>	<u>Decrease</u>
Medical & Fitness	413-00		1200.00
Supplies -			
Miscellaneous	406-18	1200.00	
<b>TOTALS</b>		<b>1200.00</b>	<b>1200.00</b>

Motioned by Trustee Lawrence A. Werther  
Seconded by Trustee Paul A. Pereira

**Vote:**

<u><b>Yes</b></u>	<u><b>No</b></u>	<u><b>Abstain</b></u>
Mayor Jack M. Martins		
Trustee Paul A. Pereira		
Trustee Thomas F. Kennedy		
Trustee Lawrence A. Werther		

**Resolution No. 18-09**

Resolved to authorize a monthly benefit payout of \$440.00 from the Fire Service Award Fund to Mineola Fire Department volunteer firefighter Lawrence R. Ueland pursuant to the Length of Service Awards Program (LOSAP).

Motioned by Trustee Paul A. Pereira  
Seconded by Trustee Lawrence A. Werther

**Vote:**

<u><b>Yes</b></u>	<u><b>No</b></u>	<u><b>Abstain</b></u>
Mayor Jack M. Martins		
Trustee Paul A. Pereira		
Trustee Thomas F. Kennedy		
Trustee Lawrence A. Werther		

**Resolution No. 19-09**

Resolved to approve a contract for \$28,000.00 with General Code Publishers for recodification of the Village Municipal Code.

Motioned by Trustee Lawrence A. Werther  
Seconded by Trustee Thomas F. Kennedy

**Vote:**

**Yes**

Mayor Jack M. Martins  
Trustee Paul A. Pereira  
Trustee Thomas F. Kennedy  
Trustee Lawrence A. Werther

**No**

**Abstain**

**Resolution No.20-09**

Approval of Great Neck Games zoning application.

**BOARD OF TRUSTEES  
INCORPORATED VILLAGE OF MINEOLA**

**DECISION**

**APPLICATION OF EDWARD W. DICKMAN (ARCHITECT) FOR FINAL SITE PLAN  
APPROVAL FOR THE CONSTRUCTION OF A FIREPROOF ADDITION OF 4,410 SQUARE  
FEET ATTACHED TO AN EXISTING BUILDING**

**WHEREAS**, EDWARD W. DICKMAN ("Applicant") has made an application to the Board of Trustees of the Incorporated Village of Mineola (the "Board") for approval of a certain site plan for the construction of a fireproof addition of 4,410 square feet attached to an existing building (the "Project") at the premises known as 275 Jericho Turnpike, Mineola, New York 11501 (known and designated on the Nassau County Land and Tax Map as Section 9 Block 391 Lots p/o 11-17) (the "Property"), pursuant to Section 30-A.6 of the Mineola Municipal Code; and

**WHEREAS**, the Board has conducted a public hearing concerning the instant application and has received public comment thereon; and

**WHEREAS**, the application was referred to the Nassau County Planning Commission; and

**WHEREAS**, the Applicant appeared before the Village's Zoning Board of Appeals and was granted the required variance for the construction of the Project;

**WHEREAS**, the Applicant appeared before the Village's Planning Board and was granted preliminary site plan approval pursuant to Section 30-A.5;

**WHEREAS**, the Applicant appeared before the Village's Architectural Review Board and was granted approval; and

**WHEREAS**, the Board finds that the proposed application, subject to strict adherence to the conditions noted below will promote the Village's specific physical, cultural and social policies in accordance with the Village's comprehensive plan and in coordination with community planning mechanisms and land use techniques. Further, it is hereby determined that

the application will provide a desirable building to the area, will eliminate on-street loading and unloading of materials and will not be incongruous to the neighborhood by reason of excessive traffic.

**NOW, THEREFORE, BE IT RESOLVED** that the application of EDWARD W. DICKMAN to the Board for formal site plan approval is hereby **GRANTED**, subject to the following conditions:

1. All loading, unloading and parking of vehicles in connection with the business located at the property shall be performed solely within the property's interior and not on any street or sidewalk;
2. The condition set forth in this Decision is material to the approval granted by the Board of Trustees. Violations of the condition after reasonable notice and failure to cure shall subject Applicant or its successors to enforcement proceedings pursuant to the Mineola Municipal Code;
3. The representations made by Applicant on the record in this proceeding have been deemed material to this application and have been relied upon by the Board of Trustees in its deliberations and decisions. Said representations are deemed to be part of the conditions of this approval;
4. Violation of a condition set forth in this Decision shall be deemed a violation of the Village Zoning Law and shall subject Applicant or its successors to all penalties set forth in the Zoning Law; and
5. Applicant shall acknowledge that the conditions set forth in this decision are reasonable, fair and equitable. In the event that any legal action or proceeding shall be instituted by the Village in order to enforce any condition herein, the Village shall be entitled to an award of attorney's fees in the event that it shall prevail in any such action or proceeding.

This document constitutes the Decision of the Board of Trustees of the Incorporated Village of Mineola.

Motioned by Trustee Paul A. Pereira  
Seconded by Trustee Thomas F. Kennedy

**Vote:**

**Yes**

Mayor Jack M. Martins  
Trustee Paul A. Pereira  
Trustee Thomas F. Kennedy  
Trustee Lawrence A. Werther

**No**

**Abstain**

*Village attorney, John M. Spellman, presented the following memoranda in response to legal issues raised by residents at the Board of Trustees meeting of January 7, 2009.*

MEMORANDUM

To: Mayor Jack M. Martins  
Incorporated Village of Mineola

From: John M. Spellman, Village Attorney

Re: 217 Horton Highway  
Letter of Jesse Smith (November 3, 2008)

Date: January 13, 2009

You have requested that I review the status and validity of certain comments made by Mr. Jesse Smith of 215 Horton Highway concerning the construction of a new residence at 217 Horton Highway. Please accept this Memorandum as a response to your request.

In preparation of this response, I reviewed the Village's files concerning 217 Horton Highway (including architectural plans and decisions of the Zoning Board of Appeals and of the Architectural Review Board), met with the members of the Building Department, reviewed the Village's Municipal Code, reviewed the

Residential Code of New York State, viewed photographs and visited the site. Here are my comments and observations.

1. Building Height. It is asserted that the height of the new building constructed at 217 Horton Highway exceeds the maximum height (32 feet) permitted by the Village's Code in that it "actually measures 35 feet". Section 30.5 of the Village's Code is cited as requiring that building height be measured from curb level.

While the Village's Code definition of building height references a measurement from curb level to the highest point of the gable, this provision is at odds with Section R 202 of the Residential Code of New York State. The State Code bases height measurement from the grade or grade plane immediately surrounding the foundation walls or, where there is a drop-off in grade, from the property line but no further than six (6') feet from the foundation walls. The Village's Code also recognizes situations where no curb level has been established and measures height "from the mean natural level of the ground immediately adjacent to the base of the building." This latter form of measurement in the Village's Code is almost identical to that of the State Code.

In any event, based upon principles of pre-emption, the Village has for years measured building height from the mean natural level of the ground immediately adjacent to the base of the building. That same form of measurement is what has been utilized in this instance.

A question has arisen as to whether the mean natural grade level has been changed at the base of the building. In discussing this matter with the Village's Building Official (who, in Mineola is titled Superintendent of the Building Department), there is no evidence that the grade of this property has been manipulated in order to allow for a building height in excess of that which would have been applicable to the prior building at the site.

When building plans are submitted to the Village, they are subjected to many categories of review, including building height. It is the obligation of the architect and of the contractor to make sure that the plans are properly implemented once they are approved. The approved plans in this instance call for a 32' building height.

As is the practice of the Village, once a final inspection is requested, the Village will measure the final height of the building to make sure that it conforms to Code and to the approved plans.

The bottom line, however, is that the Building Department's method of building height measurement is appropriate.

2. Basement Windows. It is asserted that on the south side of the property "4-5 foot deep basement windows were installed which are not on the original plans". I reviewed the original as well as all subsequently amended plans with the Building Official. There are no "4-5 foot deep basement windows" on the plans. An inspection of the property shows that there are no "4-5 foot deep basement windows" that have been built.

The bottom line is that the basement windows which have been installed are permissible.

3. Window Grates. It is asserted that there are "subway-type grating" covering these windows and that these gratings required a variance which has not been obtained. It is also asserted that window wells servicing these windows are "permitted as an egress" but that egress should not be an issue since the original plans call for an unfinished basement with an outside cement staircase for egress.

An inspection of the premises shows that the originally approved cellar-type windows have been constructed and, since they are below grade, they sit in window wells. Since the wells adjoin the area leading to the rear of the property, they have been covered with a grate for safety purposes. The window wells are not a form of egress. One of them surrounds a venting system. The other surrounds two small windows. No variance is required for these window wells since they fall within the side yard variance dimensions previously established by the Village's Zoning Board of Appeals.

The plans for the basement have been subsequently modified to create a finished basement with a recreation room, but no sleeping quarters have been created.

The bottom line is that the basement window wells are permissible.

4. Cement Staircase. It is asserted that "the cement staircase on the south side of the premises is not in accordance with the NYS Building Code" in that it must be located "10 feet away from the property line". In this instance, the Village's Code applies. Minimum side-yard setbacks in the subject zoning district are six (6') feet on each side of the property with an aggregate of fourteen (14') feet. With respect to the south side of the building, the Village's Zoning Board of Appeals has already granted a variance of two (2') feet, thus permitting the staircase to be located within four (4') feet of the property line, which it is.

The bottom line is that, based upon the variance, the cement staircase is permissible.

5. Fences. It is asserted that the fences on the north and south sides of the property are not to code in that they exceed the height requirements of Section 30.61 of the Village's Code as a result of being "installed on top of a 14' +/- wall, which raises the height over code".

Section 30.61 of the Code permits a fence of up to four (4') feet in height along the side property line from the front building line to the rear building line and a fence of up to six (6') feet in height along the side property line from the rear building line to the rear property line. The Building Official advises that fence height is measured from interior property grade. An inspection of the property reveals that no fence is out of compliance with the Village's Code.

The bottom line is that there is no violation of the Village's fence law at this property.

6. Expiration of Building Permits. It is asserted that, "[a]ccording to Section 26.35 of the Village's Code, 'all building permits expire 6 months after date of issuance' and that no extensions were on file post April of 2007. It is further asserted that '[t]here should now be three extensions for this permit'. Finally, it is asked what constitutes 'good cause' for the granting of a permit extension.

Section 26.35 of the Village's Code was drafted by me and was added to the Village Code in 1992. At that time there were several sites in the Village where construction projects had begun but where the sites were virtually abandoned in unfinished condition for lengthy periods of time and, in some instances, for more than a year. The goal of Section 26.35 is to make sure that construction, once begun, continues to completion.

I have consulted with the Building Official concerning the Village's policy with respect to extending building permits. He has advised that he only seeks approval from the Board of Trustees for building permit extensions when there are special circumstances or hardships which prevent a resident from moving forward with construction. Illness, loss of a contractor, unemployment, death of a spouse have all been grounds for considering extensions.

Where a building permit has been issued and where construction is actually progressing, it is not the policy or practice of the Building Department to require extensions of permits. Many projects will have an anticipated construction time beyond six (6) months based upon their very nature. Projects such as CVS, Winthrop University Hospital, the Harrison Condominium, new homes and even the Winston cannot possibly be completed within six (6) months. As long as construction is progressing, a permit renewal will not be required.

With respect to what constitutes "good cause" for the extension of a permit when the Building Official directs that one is required, such is within the discretion of the Board of Trustees in each instance.

7. Property Grade. A question is asked as to what the regulations are in the Village's Code concerning the raising of a resident's property grade.

The answer is that the Code is silent on the matter. In any event, a review of the subject property's history shows that the grade at the site was quite varied. There is at least a two (2') foot elevation from the sidewalk line to the building line. The property grade did slant in the rear yard and on the southern side yard.

In response to complaints by the neighbor to the south, the Building Official requested that the owner of 217 Horton Highway secure the property line so that no water would flow to the south. This necessitated the installation of a curbing system/retaining wall so that the previous downward grade and consequent storm water run-off would be eliminated. The Building Official also asked the property owner to install additional drywells to hold water on the property in order to further the goals of the Village's Phase II Stormwater Management Plan. The property owner complied with these requests.

8. Code Enforcement. A question is asked as to who is responsible for ensuring that the Village Code is adhered to.

The answer is that the Building Official of the Village has that responsibility.

9. Amending Plans. A question is asked as to who is responsible for signing off on any changes to plans.

The answer is that the Building Official of the Village has that responsibility, just as he has the responsibility for approving the original plans.

10. Inspections. A question is asked as to where building inspection notations are concerning 217 Horton Highway since, it is claimed, "[t]he code states these should be in the file" and "as far as we can see, none exist".

Section 26.39 (A) of the Village's Code deals with inspections. It reads as follows:

"Work for which a building permit has been issued under this Article shall be inspected for approval prior to enclosing or covering any portion thereof and upon completion of each stage of construction, including but not limited to, building location, site preparation, excavation, foundation, framing, superstructure, electrical, plumbing, and heating and air conditioning. It shall be the responsibility of the owner, applicant, or his or her agent to inform the Enforcement Officer that the work is ready for inspection and to schedule such inspection."

Nowhere in the Code is there a requirement that inspection notations be maintained in the file for any premises.

I have reviewed the procedures of the Building Department with respect to inspections and can advise that a hard-stock inspection log exists for each building project. Inspection reports are not in the individual files since it has been the experience of the Department that these sometimes disappear.

The hard-stock log for 217 Horton Highway shows that inspections took place at least on the following dates: May 22, 2007; June 5, 2007; June 7, 2007; June 28, 2007; December 19, 2007; January 10, 2008; May 15, 2008 and June 30, 2008.

The bottom line is that appropriate inspections of this project have been undertaken and continue by the Village's Building Department.

11. Sanitation Service. It is asserted that the Village is picking up building construction debris from 217 Horton Highway in contravention of Section 72.35 of the Village's Code.

Section 72.35 of the Village's Code states the following: "Rubbish from building construction, alteration or repair or from contract operations on the premises will not be collected."

The purpose of this Section of the Code is to require contractors to use dumpsters serviced by private carters for major construction projects. With respect to "do-it-yourself" work by residents, the Code does provide for the pick-up of rubbish (including boxes, wood, disposable containers, packing crates and similar matter) which is appropriately bundled and which does not exceed seventy five (75 lbs.) pounds per pick-up.

The owner of 217 Horton Highway, himself an architect, is his own contractor. The record shows that he has had a number of dumpsters servicing the premises. I have reviewed receipts for six (6) dumpsters covering the period from June 20, 2007 through July 17, 2008. In the event that periodic rubbish, properly packaged and within the Code's weight limit, is set forth at the curb, it is the practice of the Village's Sanitation Department to accommodate residents by picking up this rubbish. It is my opinion that this practice of the Village's Sanitation Department does not violate the Village's Code. In addition, I have had the Village's Superintendent of Public Works meet with personnel who service the sanitation route connected to 217 Horton Highway and it has been determined that no construction debris has been picked up at that site.

12. Saw-cutting encroachments. It is asserted that the Village's Building Department somehow did not do its job since it did not issue a summons to the owner of 217 Horton Highway when that person saw-cut a portion of cement which he claimed encroached upon his property. This assertion is apparently based upon notations on surveys on file which state: "Offsets and dimensions shown NOT to be used for the removal, relocation, or layout of fences, hedges, curbs, walls, or any structure."

First of all, the cited survey notation was placed upon the survey as a disclaimer by the surveyor who prepared it. It was not added by the Village's Building Department. Its actual purpose and full meaning is unknown. It represents a private matter between the surveyor and the person who purchased the survey. It has no effect upon Village review or approval procedures.

Secondly, it was conceded by the owner of 215 Horton Highway when he spoke before the Village Board on January 7, 2009 that part of the driveway which he had been using encroached upon the property of his neighbor and that it was this encroaching portion which was removed by the neighbor. Nonetheless, disputes between neighbors as to exactly where property lines are located are not within the purview of the Village's Code or the Village's Building Department. They are private matters which are to be enforced by one neighbor against another in a non-Village forum.

13. Starting Time for Construction. It was additionally raised at the January 7, 2009 Village Board meeting that the owner of 217 Horton Highway violated the Village's starting time regulation for construction on numerous occasions and that he had been issued a summons for one of these violations.

The fact of the matter is that there is no starting time regulation in the Village's Code with respect to general construction. The only starting time limitation in the Code is with reference to licensed gardeners and landscapers (Section 15.47 (H) (iii)), which sets an 8:00 a.m. starting time on any day.

I understand that the Village's Building Department, in an effort to appease the owner of 215 Horton Highway with respect to his objection to pre-8:00 a.m. construction and in response to complaints by that owner, actually issued the owner of 217 Horton Highway a summons based upon Section 15.47 of the Village's Code. In an effort to work cooperatively with the Village, the owner of 217 Horton Highway actually agreed to withdraw his not-guilty plea in the Village's Justice Court and to pay a fine of \$250.00.

The fact of the matter is that the summons should never have been issued. There was never any violation of Section 15.47. That section applied only to licensed gardeners and landscapers.

14. Illegal Occupancy. It was raised at the January 7, 2009 meeting of the Village's Board of Trustees that the owner of 217 Horton Highway is actually occupying his house prior to the issuance of a Certificate of Occupancy for it. The owner has since submitted an application for a temporary Certificate of Occupancy and the Building Official has indicated that, based upon his inspection of the premises and the

fact that the building qualifies for such, a temporary Certificate of Occupancy will be issued in conformity with the general policies and practices of the Building Department.

15. Sprinkler System. It was further raised at the January 7, 2009 meeting that a representative of the Mineola Volunteer Fire Department had reviewed the constructed premises at 217 Horton Highway and had required that a sprinkler system be installed in the building so that it would not fall down onto 215 Horton Highway in the event of a fire.

The fact of the matter is that the Mineola Volunteer Fire Department has absolutely no jurisdiction in the Village with respect to construction oversight. Any firefighter who may have represented himself to have had any authority in this connection acted well outside the regulations of the Fire Department.

When the owner of 217 Horton Highway indicated that he wanted to utilize third floor space in the building as habitable, it was the Building Official who required the installation of a sprinkler system for the third floor and for all egress paths of travel. Thereafter, when plans were amended by the property owner to include a finished basement, the property owner decided to include a sprinkler system throughout the entire building.

16. General Considerations.

I would like to take just a moment to speak about the manner in which building permit applications are handled in Mineola.

Under New York State law, it is the Building Official who is charged with the review of building permit applications. That official analyzes the application with respect to the local zoning law and with respect to the applicable New York State building, plumbing and HVAC (heating, ventilation and air conditioning) codes. It is the Building Official who interprets these codes and their applicability to a specific project. If the plans submitted conform to the requirements of these codes, they are stamped "approved" and a permit is issued. If the plans require modifications, these modifications are noted on the documents and, if they are substantial or material, the plans are returned for redrafting. If the modifications are of a minor nature, notations are made on the drawings and a permit will be issued subject to the noted amendments.

If a building permit is denied due to the fact that the proposed construction is not in conformity with the Village's Zoning Code, the applicant has the right to appeal to the Village's Zoning Board of Appeals. The Zoning Board has the jurisdiction to confirm, modify or reverse the decision or opinion of the Building Official. Appeals must be brought within sixty (60) days of the decision or interpretation being appealed.

In many instances, an applicant aggrieved by a decision of the Building Official with respect to his application of or interpretation of the Village's Zoning Code will seek a variance from the Zoning Board of Appeals. This often happens with respect to regulations governing height, setbacks, lot coverage, lot size, parking and the like. If the variance is denied, the applicant may appeal the decision of the Zoning Board to the New York State Supreme Court. If the variance is granted, any other person aggrieved by the decision may also appeal it to the Supreme Court. By way of caution, however, it should be noted that the appeal must be taken within thirty (30) days from the date the decision of the Zoning Board is filed with the Village.

If the Building Official turns down an application based upon the New York State Uniform Fire Prevention and Building Code or any other applicable State code, the applicant may seek a variance from the Division of Code Enforcement and Administration of the New York State Department of State.

Not all matters affecting a person's residence involve the Village in a legal sense. Many issues which affect adjoining property owners are private matters which must be handled by the parties through the legal system. Situations which involve trespass or disturbance of the peace, for example, are not handled through Village departments.

In the instant case, the owner of 217 Horton Highway submitted plans to the Village to demolish his then existing house and to rebuild a new one. The plans were reviewed by the Building Official and they were disapproved based upon non-conformity with the following Zoning Code requirements: minimum lot area, minimum lot width, minimum front yard setback, and minimum side yard setback. The owner of 217 Horton Highway then appealed to the Zoning Board of Appeals for variances so that his new home could be built. By decision of the Zoning Board of Appeals, which was filed in the Office of the Village Clerk on December 20, 2006, the variances were granted with one condition: that the central air conditioning unit originally planned for the side yard be relocated to the rear yard.

The Building Official also disapproved the application for a building permit because the construction contemplated required approval of the Village's Architectural Review Board. After an application submitted by the property owner and after a public hearing on the matter, approval of the architectural design was granted by the Board. The Board found that the proposed building would "not be visually offensive or inappropriate, nor impair the use, enjoyment or desirability of an area nor be detrimental to the character of the neighborhood".

Neither the decision of the Zoning Board of Appeals nor the decision of the Architectural Review Board was challenged.



Based upon the nature of the application by the owner of 217 Horton Highway, this matter did not come before the Board of Trustees since this Board did not have jurisdiction over any aspect of the project.

Conclusion.

The Village's Municipal Code and the laws of New York State set clear paths for the submission, review, analysis, modification, approval, denial, extension, expiration, revocation and reinstatement of building permits. My review of the activities of Village officials and staff members concerning the subject building permit application and approval processes indicates that there has been full compliance with law in all instances and that the matter has been handled professionally and in conformity with best practices associated with the operation of municipal building departments.

Respectfully submitted,

/ S /

John M. Spellman  
Village Attorney

MEMORANDUM

To: Mayor Jack M. Martins  
Incorporated Village of Mineola

From: John M. Spellman  
Village Attorney

Re: 339 Latham Road  
Fence Permit No. 21533 (May 10, 2006)

Date: January 13, 2009

You have requested that I examine, based upon the public complaint of a resident, the circumstances surrounding the issuance of the above-referenced fence permit by the Village's Building Department.

The subject premises, 339 Latham Road, is a corner property. It is governed by the Village's fence law as codified in Section 30.61 (B) (1) of the Municipal Code. That Section, on the date the permit was issued, provided that for corner houses, "no rear yard fence shall extend nearer the street than the side line of the dwelling".

The application for 339 Latham Road, however, was unique. The description of the proposed work under the building permit is as follows: "Replace the existing fence, use the same exact location & measurements of old fence, the new fence will be white PVC fencing 4' height in front to back of house, 6' rest of property".

I met with the Village's Building Official and reviewed the procedures and practices of the Building Department in granting or denying fence permits. Under ordinary circumstances, when an applicant is replacing an existing fence in kind, the Building Department does not require a fence permit. However, since the replacement of the fence at 339 Latham Road involved a change in material to a PVC fence, the Building Official determined that a permit should be required.

A search of the Building Department's file did not reveal evidence of a permit for the original fence. The house itself goes back to at least 1947 and it is unclear what the fence permit policy of the Village was more than 60 years ago. The original fence may be completely legitimate; it may not. Thus, there may or may not have been a right to replace it.

Since there is uncertainty about this matter, the Building Official has written a letter to the current property owner requesting a conference concerning the fence. The issues affecting the current fence can then be discussed and, if necessary, further action may be taken. The Village's Code does provide at Section 26.37 (2) that a permit may be revoked where the Building Official "finds that the building permit was issued in error and should not have been issued in accordance with the applicable law".

Naturally, if it should be determined that an error has been made in the issuance of the 2006 fence permit by the Building Department, the property owner will have the ability to take the matter to the Village's Zoning Board of Appeals in hopes of receiving a variance. Further, since the fence law has recently been amended, it is possible that a minor relocation of the fence could bring it into compliance.

In any event, the matter is still under investigation and the property owner will be afforded every opportunity to address the issues raised by the complaining resident.

**Mayor Jack M. Martins requested a motion to close the Work Session at 8:10 pm.**

Motioned by Trustee Lawrence A. Werther  
Seconded by Trustee Paul A. Pereira

**Vote:**

<u><b>Yes</b></u>	<u><b>No</b></u>	<u><b>Abstain</b></u>
Mayor Jack M. Martins		
Trustee Paul A. Pereira		
Trustee Thomas F. Kennedy		
Trustee Lawrence A. Werther		

Respectfully submitted,

\_\_\_\_\_  
Joseph R. Scalero