

Village of Central Square

Planning Board

August 16, 2007

Present: Harry Penoyer, Shirley Jones, Roger Crouse, John Metzger, Jerry Kirker, Mayor Murphy, Mike Wildrick, Marilyn Penoyer, Heather Stevens

Called to order at 7:00 by John Metzger.

Mayor Murphy brought to the board, a discussion as to the duty of the planning board vs. planning commission.

Mayor Murphy expressed concern that the code book refers to both a planning commission and a planning board. Attorney Chatfield feels that the board is referenced as a commission.

Kevin Caracoli did research that the board is a “board” and not a “commission”. He recommends to the village board to amend the code to eliminate any references to commission and replace with the word “board”.

Mr. Metzger stated references that indicated that a commission is developed to handle specific tasks, and we need to clarify the role of the board.

Mayor Murphy – 1957 Mayor Dave _____ initiated subdivision regulations and the planning commission was formed as a result, to make laws on the subdivision of land. After the commission accomplished their task there was a resolution to go to a planning “board” on 9/23/57. The board minutes for the time period of 1949 to 1959 have not been found in the village office. Subsequent minutes reference the planning “board”. Only within the past year has this become a question, which requires clarification.

Heather Stevens reviewed the minutes from previous meetings and indicated that the heading on the minutes refer to both Planning Board and Planning Commission.

Mr. Chatfield also previously questioned board vs. commission. Both could be empowered to do the same things, subdivisions, site plans, etc. Mr. Caracoli clarified with Mr. Chatfield that Central Square has a planning “board”.

Mayor Murphy read an email from Mr. Caracoli on the matter. (attached).

Mayor Murphy indicated that a Public Notice was published on May 29 for Local Laws 3 & 4. These laws were not passed as they were rejected by the Attorney General’s Office, for reasons of being out of numerical sequence with laws already on file.

These laws refer to the following: Local Law #3 amending Chapter 216 of the Village Code relating to subdivisions. Local Law #4 refers to fees for development projects.

Mayor Murphy indicated that Mr. Chatfield was not the village attorney authorized to sign the filing. Mr. Chatfield was asked by the village clerk to act as the attorney.

Hiscock and Barclay was the firm used in the Walmart deal and has become the model because of the way it was handled by Hiscock and Barclay with Caracolli as back up. Discussion was held as to whose responsibility it is to handle this situation, the planning board or the village board, and who the attorney of record was at the time.

Mr. Chatfield indicated that the planning board has the power and authority to hire their own specialists.

Mr. Metzger read the law from Mr. Caracolli's email.

Mr. Kirker stated the village board makes appropriations that the planning board can use and the planning board can select its own experts.

Mr. Metzger feels that each person can read and interpret the statement in a different way.

Mrs. Jones asked if there are appropriations within the village budget for the board to hire and pay their own specialists. Mayor Murphy indicated that it would have to fall within the village budget.

Mr. Chatfield indicated that he never requested payment for his services. Mayor Murphy stated that a voucher for \$750 was issued recently for the Renaissance Development group. Mr. Chatfield stated he was asked by Mayor Dixon to assist in planning draft laws. The drafts were taken elsewhere for decisions of village board. Mr. Chatfield did not participate in the decisions and offered to accept no pay. Whether the laws are adopted are up to the legislative body.

Deficiencies in subdivision regulation were discussed. Implementation of MS4 regulations drafted by Mr. Chatfield.

Mr. Wildrick stated that the Village Board decided instead of enacting the law effective a certain date they would wait to file Adopted as #2 but didn't file. In the meantime, #3 was filed and rejected as out of sequence. Mr. Chatfield returned the filing to the village clerk to resubmit. It can be re-filed by changing the law number.

Mr. Chatfield – planning boards are unique as they are the only bodies given power to hire their own people regardless of legislative bodies so they can function free from political pressure. They cannot be removed and given power to exercise authority. Board must exercise their legal prerogative in choosing a legal representative. Could use the same attorney as the village board but should function independently from the village board.

Mayor Murphy – a wedge should not be driven between the planning board and the village board.

Mr. Chatfield – having and hiring their own representative does not drive a wedge, but is a check and balance. Just because you exercise your prerogative does not mean you are at odds with the village board

Mr. Chatfield stated that he indicated at the beginning that he would do this at zero local taxpayer impact. A flat fee was discussed and agreed upon. Mr. Chatfield has made no request for change to that flat fee agreement.

Mr. Metzger asked for clarification on the mayors objection – is it that the mayor wants a specific lawyer?

Mayor Murphy feels that Hiscock & Barclay is advisors to the board and serves the long range needs of the board.

Mr. Metzger – is it implied that if another is chosen they will not get paid?

Mayor Murphy – that is not true – there is money in the budget for the cost.

Mr. Metzger asked Mayor Murphy just to clarify his interest. Mayor Murphy indicated his interest is for the village.

Mr. Chatfield – a practice with one lawyer vs. a large firm is a judgment call. Mr. Chatfield feels the planning board will run into legal conflict with Article 78 and Chatfield assured the board that he has handles more of these than Hiscock and Barclay. Mr. Chatfield has had 37 years representing Planning Boards and ZBA's. His feeling is that H & B will not be available to attend meetings and that Mr. Chatfield already has answered the call above and beyond.

Mr. Wildrick stated that Mr. Chatfield was contacted by Mr. Wildrick when Mr. Genant was not available for a while due to illness and matters did not get handled expeditiously. No one from the planning board has requested another attorney.

Mr. Metzger offered his opinion on the situation as follows: Previously the lawyer was Mr. Genant. Jacques Monica was the chair at the time and Mr. Chatfield was asked to help out during Mr. Genant's illness. Planning board took Mr. Chatfield on for his expertise. So far Mr. Chatfield as left Thursdays open and he comes to the meetings. The need to table something if there is no representation present pushes the board's decisions back. Mr. Metzger has no experience with a large firm to base an opinion on, but feels they may be deep in resources.

Main purpose is to clarify where decision lies. The same conclusion is reached – that the power is given to the planning board to employ their own experts. However, the village board does not have the power to fire and the village board and the planning board must respect the powers and limitations of each role. The concern is to follow the state law.

The agenda was to decide the legal expert and who has the power to employ them. The board vs. commission issue is clear. Discussion needs to take place on the attorney. Will go to executive session to discuss, but not sure if decision will be reached today.

Mr. Chatfield asked Mayor Murphy if the board has taken a position on Local Law #3 & #4. Have they decided they are wise or unwise?

Mayor Murphy responded that the board has felt these Local Laws unwise and has revoked.

Mr. Chatfield – because of the flat fee question?

Mayor Murphy – there is no need to share that information. It was not accepted. No need to clarify why.

Mr. Chatfield – the subdivision amendment is good. Developers deposit laws. A flat fee is the village board perogative and can choose to pay through village taxes. If the village regresses to the developer deposit, the village will lose and will be sued. Mr. Chatfield urged the board to maintain the wisdom of the local law of flat fees.

How to pay is subject to appropriations. The amount cannot exceed the budget. All of Mr. Chatfield's clients are "at pleasure" appointments and he can be hired or fired at any time. He has no expectation of employment from one month to the next. He does not want to be forced out. It is important in the long run to notice what happens with political change. Consistency in decision making is critically important. The board must insist on exercising own prerogative. Mr. Chatfield left the meeting at 8:08.

Mayor Murphy encouraged the planning board to take their time in decision making.

Mr. Kirker indicated that if they were to hire an attorney, the attorney should be present at the meeting.

Mr. Chatfield re-entered the meeting and stated that an executive session can be called at a regular meeting and no minutes are needed.

Need motion to go to executive session and the reason for the session must be stated. The executive session must include only the members of the planning board.

Mr. Metzger requested the name and phone number of the representative from Hiscock & Barclay. The names are Matt Kirwin and Andy Lamb. Mr. Metzger will set up a time with them. A request was not made for the attorneys to be present at this meeting. Mayor Murphy stated they were invited to attend, but could not on only one day notice.

Questions regarding Mike Wildrick's replacement.

The Village Board is talking with the Town of Hastings to enter into a tentative municipal agreement. Mike Kraus works with Mark Bombardo in the town office. We will offer Mike set hours at the village, but not full time. This agreement will be re-evaluated in December. If this works, he will remain on Town payroll, but the village will be billed for his time in the village.

Need to discuss a possible part time fire inspector. Because of Mike Wildrick's fire experience, we did not previously have the need. But now we need to be sure we are covering it.

Mayor Murphy also made a request for each person to complete a form for address and email address to be sure the line of communication is good.

The NYCOM book was discussed. Everyone needs a copy of it. It is on CD and will be provided to all board members.

Mr. Metzger would like to be able to talk to several attorneys. Need to announce a special board meeting to interview them. Also need to know how money is appropriated. Mr. Crouse added that we should make it understood that they need to be present at board meetings. Mayor Murphy agreed that the attorneys should be present when decisions are being made.

Mike Wildrick was thanked for his services to the Village of Central Square.

Motion by Shirley Jones to accept minutes from previous meeting. Seconded by Roger Crouse. Motion carried.

Motion to adjourn meeting by Roger Crouse, seconded by Dr. Penoyer. Meeting adjourned at 8:28.