

A special meeting was held on October 14<sup>th</sup>, 2004 at 6:00 pm in the Village Hall.

Present: Glenn Weyant, Mayor  
Paul Morra, Trustee  
Edward Legg, Trustee  
Robin L. Castle, Clerk  
Tal Rappleyea, Village Attorney

Also Present: Jeff Prince, Jason Shaw (representation for Thomas Hangarter), B. Wolny, E. Wolny, Ethel and Orville Slutzky, Jeanine Figiel – KSA, Barbara Lynch, Craig Bates, Bob Abrahamsen, Kim Vanucchi, Jim Wiltse, Mark Amodie, Donna Weyant

The Mayor opened the special meeting with the Pledge of Allegiance.

The Mayor stated that this meeting was in reference to The Yacht Club.

The Mayor then turned the meeting over to Tal Rappleyea.

Tal stated that we will follow the agenda and asked opposing counsel for a reinstatement of their position and progress, then we will have public comment and questions for the board.

Jason Shaw introduced himself as the new attorney from Rapport, Meyers, Shaw... from Hudson and gave a brief list of his background. He continued to state that he asked Mr. Hangarter to be present for this meeting, however he is in the hospital. He then referenced the minutes from the previous meeting where the board stated that Mr. Hangarter has not been present.

Mr. Shaw stated that he had spoken with Tal over the past few days and he sees three distinct issues and they should be separated into 3 considerations. The first issue is the building code issue which is a legit issue and in this case and will help the safety occupants to TYC. These building code issues must be resolved appropriately and to the satisfaction of the Village Building Inspector and the Village can take whatever action necessary to enforce the NYS Building codes. These issues are technical issues of expertise communication between the building inspector and the engineers. Progress has been made on those issues. Mr. Shaw stated that he doesn't expect all of those issues to be resolved tonight.

Mr. Shaw continued to state that the other two issues, the variance and the site plan review, could be resolved tonight. These two issues have been before the board for some time and the aspects on the applications are very well framed. They are not complicated applications, there is an addition to an existing structure and is the creation of a deck no a multiuse building. In regards to the Variance issue, the board has been submitted a survey from a licensed surveyor where the deck area is in relation to the adjacent property, and it is what it is.

Mr. Shaw continued to state that the board at this point should make a decision whether or not such a variance should be appropriate. He continued to state that he knows Mr. Pratt has expressed concern about the deck but his concern is not enough to allow the board to bury the application with no engineers report or violations. Mr. Hangarter has expressed willingness to try to attempt to alleviate Mr. Pratt's concerns. He understands Mr. Pratt's concern of the danger of fire.

Mr. Shaw then stated that he had a potential solution to that TYC would be (as a stipulation of the variance) that any outdoor cooking that there must be a certified fire extinguisher by the cooking area and the person cooking should have a certificate from the Tannersville Fire Department that that person has had training in the use of that fire extinguisher. TYC feels that this would take care of the concern if a fire broke out on the porch area.

Mr. Shaw then continued to state that in terms of the site plan review, this is a pre-existing use. In TYC's view, the board can do 2 things:

1. Vote on and approve the variance application tonight.
2. Vote on and approve the site plan review application.

If the board has approved those two items it will in no way hinge on the board's ability to enforce NYS Building codes relating to this property or any addition.

If Mr. Hangarter or any member of his corporation is operating in violation of the NYS Building codes, then the Village Board will have the obligation/ right to pursue any legal remedies it sees fit to prevent this violation from going any further.

The Village is concerned for the safety of the occupants.

Tal Rappleyea stated that the board recognizes that those are 3 separate issues and not legally interrelated. The Point is that the business has not been shut down except for a short period of time for building code problems. The board and the building inspector wanted to keep this business open despite the fact that there was work being done without a building permit, and even without any appropriate plans filed. The Board and the building inspector were promised numerous times to have this stuff filed. Once all of this was brought together, it became clear that the Village was going to require compliance and then this started moving forward, together with the appropriate plans recently filed by Barton and Logudice.

Tal continued to state that this board is required by Village and State Law, to make a determination on the variance and site plan review application within 62 days from the close of the public hearing. The Village closed for both public hearings last month, either at the last board meeting or the September 30<sup>th</sup> meeting.

Tal continued to state that Mr. Shaw is correct in exercising TYC's rights to call for a vote or nor more extensions. Any decision has to be rendered within 62 days and filed with the Village Clerk in writing afterwards. The Building and Fire code are separate from the site plan review. The site plan review and variance applications stand on their own and so do the code violations. The building department determined that those violations do exist and are a hazard to the people who go there. [The Building Inspector] had enough recourse to take action upon as he deems appropriate. The Building inspector is answerable to the board as an employee, but has certain restraint to comply with in accordance with the State Codes.

Tal continued to state that the process at this point, since the applicant has said no more extensions and that they want finality, the clock is ticking. The board could take a vote tonight. It has to be in writing and has to be based rationally, and is defensible in court if it goes before a judge.

Trustee Legg stated that he read in the minutes where Mr. Schlenker stated that they were going to get together with Mr. Pratt to try to work things out. One of which is that there would be no cooking on the deck. The Village has been waiting for them to take action and work something with Mr. Pratt. If the Village got that then Trustee Legg would find this acceptable. This statement has been made at least at two meetings and nothing has been done.

Mr. Shaw stated that in reading the minutes where Mr. Schlenker stated that there would be no cooking on the deck and that's one of the reasons why Mr. Hangarter was concerned with Schlenker and not cooking on the deck is something that he didn't want to do. Mr. Shaw stated that it is unusual for a board to ask to meet with the neighbor to address the concerns. If they did cook out on the deck they would have to comply with the NYS Fire code, and just cant in a restaurant situation, have an open flame at a particular setting.

If New York State did not believe that this was a sufficient concern, so that it become part of the NYS Building codes, it is unreasonable, in TYC's opinion to have Mr. Hangarter make a concession to a neighbor about that when NYS expertise and wisdom has not considered it to be a fire concern.

Mr. Shaw continued to state that if it has been in the codes, then no question that any outdoor cooking/ barbeque grilling has to be done in a way which complies with the

code. That may require no open flame outside, and may be via an electrical unit, etc. The point is if it is in the codes, it will be complied with. If it is not then it shouldn't be a condition for Mr. Hangarter.

Trustee Legg stated that we didn't have them require to do it { get in touch with Mr. Pratt). TYC stated they were going to do it and the Village was waiting for them to do it.

Trustee Morra stated that it doesn't help at all if there is a new lawyer every two weeks.

Tal asked TYC Counsel that pending the review of TYC's variance for the sprinkler system, for the occupancy no more than 99 people, is Mr. Hangarter still willing to abide by that occupancy level.

Mr. Shaw stated that it was never raised as a concern.

The Mayor stated that if sprinklered, TYC is looking to put almost 500 people in there. In regards to the statement that there is no change in use: If they are applying to NYS for a sprinkler system variance, they are basically changing the use in the building from 100 to 500 people. If there are 500 cars, where are they going to be put?

Mr. Shaw stated that there is not a change of use, but a more intensified use. There will be a few hundred more people, but it is still a restaurant. In terms of the site plan review, he does not know what the board has done at this point. If the Village board believes that the parking is now an issue, it was not made an issue at previous meetings because it was a pre-existing use.

Tal stated that it may not be the board that saw the site plan review to be an issue but TYC's representatives did not see an issue and asked for a permit. There was no real analysis of the parking or calculation with regards to cars required for the occupancy.

Mr. Shaw then asked if there was a Village standard.

Tal stated that the Village either bases it on square footage or on occupancy.

The mayor stated that [TYC has] had 5 different attorneys; we have held 20 meetings or more and the previous attorney did more in 6 weeks what should have been done 14 months ago. The root to the problem is we want to address the variance rule the Village has instead of going to court to figure this out. Previous counsel all agreed to chat with Mr. Pratt to come up with an agreement to satisfy both parties, which would eliminate us going to court to find out if our ordinance stands up to what the Village Board believes in. [This Village Board] is not in favor of litigation, or in favor of shutting people down. If the Village was, Mr. Hangarter would be shut down 100% along time ago. Mr. Hangarter went in and built without a permit. As this moved along, 4 architects were involved and Barton and Logudice identified to the Village exactly what the Village's fears were about the building. The Village tried to tell MR. Hangarter what was wrong. Now the Village has the appropriate plans. If an agreement had been worked out with Mr. Pratt, and we had received a letter from him today, there would be no variance issues, doubts, or having to go to court.

The Mayor continued to state that in his opinion, Mr. Pratt was not asking for things of great magnitude. He happened to have a fire in his building 20 years ago and he has paranoia about it. Now the Village board is put in the position that we have to take action, upon suggestion of the Village attorney, to shut the building down 100% and leave it shut down to go to court for the variance to see in fact if the ordinance that the Village has stands up in court.

The Mayor continued to state that the Village let Mr. Hangarter operate for 14 months. The Village does not want unemployment for the people who work there and the village wants business to come into this community.

What the Village fears is that if something happens in this building that is catastrophic, it would decimate the tourists that come into the community, and that is not what the

Village wants. Many people are trying to help Mr. Hangarter out. He went through 4 architects, 5 attorneys and we could have had a variance in place a long time ago.

Mr. Shaw stated that he agreed with the Mayor's comment on the fire and building code. The only stumbling block is the need for satisfaction from the neighbor, Mr. Pratt.

The Mayor stated that Mr. Pratt would like the picket fence removed that's blocking access, shorten the deck by 5 feet, and no fires.

Mr. Shaw stated that the picket fence would not be a problem. The shorting of the deck is something TYC cannot agree to. If they have fires, they will have to comply within the provisions of the building codes and fire codes.

The Mayor stated that the deck was put there illegally – without a permit.

Mr. Shaw stated that if this had done correctly from the beginning this would be a whole different ballgame. Mr. Pratt's request to cut back the deck doesn't make any sense.

Tal stated that the boards point is that there are some issues with the building that's gone on, and the deck. Even with regard to the variance and site plan review applications there are deficiencies there. The board may be willing to look the other way if the negative impacts to the neighbor are mitigated. If no then the board has to highlight the deficiencies in these applications.

Mr. Shaw stated that 5 feet more or less will have not have an impact on the use of the deck. He can understand the fire issue more than the 5 feet.

The Mayor asked Mr. Shaw what his suggestion was on what to do.

Mr. Shaw stated that the board could do a variance on the following condition: no outdoor flames be allowed unless they comply with the NYS building codes and the Department of Health. Or Limit the time that the outdoor area be used if it is a concern.

Trustee Leg asked if the building or the deck was in violation.

Shaw stated that the building foundation is within 20 feet from the property line.

Trustee Morra stated that the building didn't comply with the setback law.

The Mayor asked Mr. Shaw to contact Mr. Pratt and give him the suggestion he just made to the board, and to come up with a solution.

Mr. Shaw asked what if the two parties cant agree. Then Mr. Shaw asked if the board would consider to have a special meeting to give him time to talk to Mr. Pratt and come to agreement or not.

Trustee Legg stated that he would agree to vote if Mr. Shaw did that.

Trustee Morra stated that the board hasn't voted yet because TYC doesn't comply with anything they're supposed to. Instead of complying, lawyers change.

Mr. Shaw stated that he will come in [to the special meeting] with one thing, and the meeting wouldn't take long.

The Mayor stated that the board didn't have a problem with that suggestion because two things can happen:

1. If the agreement comes through – fabulous.
2. If no agreement comes through, then the Village board will have to take a vote plus or minus shutting TYC down.

The Mayor continued to state that the Village does not want to shut TYC down. That is not the objective. The point is that the Village does not want to take the ordinance to

litigation. IF the agreement does not come through, and two of three [requests from Pratt] are done, it's showing good effort and good faith.

---The Board then discussed setting the next meeting for Wednesday, October 27, 2004. The Village Attorney noted that he could make it if it was done at 5 PM. The meeting was then set for Wednesday, October 27<sup>th</sup>, 2004 at 5:00 pm in the Village Hall.

Orville Slutzky stated that the tone of this meeting was better than the last meeting. Only for weeks away from the winter season and [TYC] should be open.

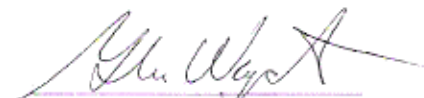
The Mayor stated that B&L was supposed to give the board a schedule of construction of when items are to be completed. The letter from them stated that there could be occupants but the tenants must vacate due to the lack of fire separation from the kitchen to the apartments. The letter relieved the Village of tremendous liability. One of Mr. Pratt's concerns was that the pig roasts were going to go to TYC.

Mrs. Wolny stated that pig roasts could have been done on the deck before.

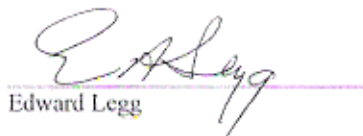
The Mayor stated that it was done on the back deck years ago. No matter where cooking is being done, it needs to be found out to make sure that it is in compliance with the NYS fire code and the Board of Health.

The Mayor asked the public and board for further comments. In Mr. Slutzky's letter to the board, he suggested that the Village Board meeting with Mr. Hangarter. The Village would have liked to meeting with him every time we had a meeting.

Being that there were no further comments, Trustee Legg made a motion to close the special meeting. Trustee Morra seconded. All In favor, motion carried.

  
Glenn Weyant, Mayor

  
Paul Morra, Trustee

  
Edward Legg