

**VILLAGE OF UPPER BROOKVILLE  
SPECIAL BOARD OF TRUSTEES' MEETING  
OCTOBER 6, 2020  
BY ZOOM**

A special hearing of the Board of Trustees of the Incorporated Village of Upper Brookville, Nassau County, New York, was held by Zoom on Tuesday October 6, 2020 at 5:00 P.M.

Present:	Elliot S. Conway	Mayor
	Carl A. Friedrich	Deputy Mayor
	Edward J. Madden	Trustee
	Innis O'Rourke III	Trustee
	Antje Dolido	Trustee

Also Present: Tracy L. Lynch, Clerk/Treasurer  
Thomas Mullen, Assistant to Board of Trustees  
Stephen Limmer Esq. of McLaughlin & Stern  
LLP, Special Council for the  
Village

The Mayor called the meeting to order at 5:05 P.M. and stated that the meeting is being held in person at Village Hall and also by Zoom which is now legally permitted by the New York Governor's Executive Order 202.1 and extended by Executive Order 202.67. The Mayor explained that providing Zoom access expands the number of people who can participate as the "Reopening New York" guidelines limit the number of workforce and attendees to a maximum 25% of occupancy. The maximum occupancy of Village Hall is 40, so our capacity is only 10. He noted that the Village has provided for Zoom access at the Village Hall for interested parties.

Next, the Clerk presented the affidavits of mailings to the Village's designated paper and confirmed that the hearing notice was published in and Zoom details emailed to the designated paper, posted on the Village website and at Village Hall. She agreed to annex this information to the minutes of this meeting.

The Mayor mentioned the Special Village Counsels' opinion that the notification efforts by the Village of posting the notice of hearing on the Village's website and at the Village Hall and sending the notice to the official paper was adequate and sufficient to serve as a good faith effort by the Village to notify the public and meets and exceeds the required notice.

The Mayor polled the Trustees to find if they concurred with counsel's opinion. The Board members unanimously agreed that they concurred with counsel and that tonight's hearing may proceed.

**PLEDGE OF ALLEGIANCE**

Deputy Mayor Friedrich lead the participants in the Pledge of Allegiance.

## **LETTERS FROM OTHER VILLAGES**

The Mayor reported that a few hours earlier in the day, the mayors of Old Brookville, Matinecock, Mill Neck, Brookville, and Cove Neck delivered virtually identical letters objecting to the placement of a monopole tower that will be constructed at no cost to the public and provide improved cell service to up to 40% of the homes in Upper Brookville. He noted that none of the mayors objected to the construction of an alternate monopole tower that would provide no cell service and that will require \$175,000 in public funds in the identical location. These are five of the six villages that lease the property, valued at \$1.2 million, from the Village of Upper Brookville for \$1 per year.

Each of the letters were forwarded to the Trustees upon receipt.

The Mayor reported that the following issues were cited in the letters and he responded to each of them as follows:

- 1. The use of the police parking lot for the purpose of contractors coming and going in order to construct and maintain the cell tower is inevitable which, as pointed out by the Chief, will no doubt adversely affect Police Department operations.**
  - a. The Chief has not explained how this will adversely affect PD operations. We have been working on the project for four years. The Chief raised no concerns in the first three years. In fact, the former Chief liked the cell tower idea.
  - b. The OBPD alternative is to build a different monopole tower, providing no cell service, with only the police antenna atop, and at a considerable cost to the public. This alternate tower will also involve contractors coming and going in order to construct and maintain it. It will, however, not improve cell service.
- 2. The Police Department will lose at least one and more likely two of the seven parking spaces on the west side of police headquarters as well as the two parking spaces in this same area that are parallel to Route 25A.**
  - a. The Police department has 23 potential parking spaces. The wireless companies will commit in the lease to use one space at the westernmost side of the property. If that space is filled, they will park on Wolver Hollow Road where the Village of Upper Brookville has agreed to amend its code to permit expanded parking.
  - b. The Police Department parking lot is open to the public.
- 3. It will also have to relocate the Department's storage sheds.**
  - a. AT&T will relocate one of the two sheds to the east side of the Headquarters building on the flat portion of the hill. The second storage shed will remain in place, as it is sited entirely on Cemetery property.
- 4. A generator would be running close to headquarters that could cause excessive noise and therefore additional disruption to operations.**
  - a. The police have a similar generator in operation already, on which there are no recorded complaints of excessive noise and disruption to

operations. The cell tower generator will be located further away and encased in a high sound attenuation housing. Both the police and wireless tower generators will only operate when the power is lost.

**5. The Mayors assert “it would appear that the foregoing would in fact violate our lease.”**

- a. The lease was renewed this year by all the mayors. It says that “the Lessor (Village of Upper Brookville) may use the Premises for other uses hereby reserved by the Lessor which, in Lessor’s reasonable sole discretion, do not prevent or interfere with the use of the Premises for police operations.”
- b. The lease goes on to say the Lessor shall have the right to “sublease any portion of the Premises and receive any and all income from any such sublease provided the same does not interfere with normal police operations conducted by the Lessee.” This lease provision was put in for the specific purpose of putting a cell tower on the police property.
- c. The Village of Upper Brookville obtained independent confirmation from Center for Government Research (CGR) a preeminent municipal consulting firm, to review the matter and advise the Village. They concluded “The construction and ongoing operations of the AT&T tower should not prevent or interfere with the use of the premises for police operations.”
  - i. CGR concluded “while the installation of a mobile phone antenna at the Old Brookville Police station may have some negative impacts in regard to aesthetics, this impact is more than offset by the improved level of service for the public, including health and safety benefits, and the additional revenue to the Village.
  - ii. ...The amount of traffic to and from the site will be minimal, with only a visit or two a month at most, which seems reasonable for this location.
  - iii. ...In summary, they concluded the chief factors in favor of allowing AT&T to install a mobile phone tower are improved service to the many AT&T customers (and to those of future other carrier(s)), improved access to 911 for mobile phone users, the related health and safety benefits, and the financial benefits to the community both from avoiding the cost of installing their own tower and the ongoing revenue from the lease.
  - iv. ... The factors in favor are measurable and seem compelling to be supportive of AT&T’s proposal.
- d. The Village engaged Special Council Stephen Limmer, a Partner of McLaughlin & Stern, who is participating on this call. He opined in writing to the Board that “once you obtain a conditional permit from your Village’s Board of Appeals, you have the unrestricted right under the current lease for Old Brookville Police Department Headquarters at the northwest corner of Northern Boulevard and Wolver Hollow Road to erect a 140-foot wireless telecommunications service facility at the

Premises.”

- a. Mr. Limmer further concluded that “if you obtain the conditional permit, the lessee would be in violation of its lease if it attempted to prevent you” from constructing the monopole cell tower.
6. The Mayor stated this is an area with little or no cell service in the center of Upper Brookville. The tower should improve the health and safety of the community by permitting cellphone access to 911 in emergencies. The CDC estimates that nationwide, over 61% of adults and over 70% of children live in wireless-only households. It is estimated that in many areas, 80% or more of 911 calls are placed from wireless devices [FCC-NENA].
7. The Mayor also read excerpts from two recent villager letters into the record. They expressed concerns for the lack of cell service in the area and asked the Board to make Upper Brookville a safer place to live.
  - The first stated the lack of cell service was “downright dangerous especially for those of us that work from home, protecting ourselves from COVID, and aging with medical issues... honestly, it is not healthy to continue to be an Upper Brookville resident... The lack of cell service is unacceptable... We are hoping you can make a change so Upper Brookville becomes a safer place to live and function in our world.”
  - And from a doctor who is a “30-year resident of Upper Brookville” who “practiced medicine for 55 years.” He wrote “This letter registers a serious complaint” citing a negligent, dangerous disservice to this community...the shameful lack of adequate cell service in a community prone to power outages...” as “Pitiful, especially when construction of cell phone towers about the Village would prevent loss of potential life-saving connection (i.e. 911 and EMT response).” He requested the Board to “...bring their best efforts to expeditiously correct this primitive, inadequate situation.”
  - Confirming the doctor’s letter, the Mayor reported that COVID has made the situation more acute. The Cleveland Clinic reported they saw telehealth visits jump from 3,400 a month to over 60,000 a month. A lot of our residents have seen their lives change as they leave the city and begin working locally from home.

Chief Walsh interjected at various points during the meeting that the current tower “doesn’t get maintained”. He said he’d been at the OBPD for 31 years and in this period, he could not recall one contractor maintaining the tower once it was constructed. The Mayor pointed out that the tower is no longer functional—the transmission apparatus having been connected at a much lower level. The Chief agreed the parking lot was open to the public but it was often at capacity, forcing the public and others to park on Wolver Hollow Rd. He said he didn’t understand how the loss of one or more parking spaces would not interfere with police operations. He was also concerned that there will be multiple carriers on the tower requiring the use of additional parking spaces. He also stated that the existing generator is located at the rear of the headquarter building and could not be heard inside, but the AT&T generator located further away from the building in a high sound attenuated shell would interfere with police radio operations. Also,

he requested that the record reflect that the former Chief was neither in favor of or against a cell tower. The Mayor pointed out that former Chief Smith was in favor of the cell tower in personal discussions and did not object at Police Commissioner meetings for three years starting in 2016 when updates were reported. Chief Walsh (the current chief) did not attend these meetings.

## HEARING ON PROPOSED LOCAL LAW A-2020

The Mayor then opened the hearing at 5:25 P.M. He explained the hearing is on proposed Local Law A-2020 which amends the second sentence of Section 205-20(I)(24), Community facilities and institutions, of Chapter 205, Zoning, of the code of the Village of Upper Brookville to read: “For applications by the Village involving property owned by or leased to the Village, the Board of Appeals shall waive or modify any of the conditional use permit standards and criteria in order to allow the erection and use of high wireless telecommunication at property owned by or leased to the Village.”

He polled the Board individually and they unanimously agreed to waive the reading of the notice of hearing.

When asked for Board comments, Trustee Friedrich emphasized the importance of cell service to the community. He said he has heard from a number of constituents with similar comments to the letters read by the Mayor. He said the Village has considered other locations for the cell tower. When balancing the public benefit and the economics involved in placing it at the police location, it led to the obvious conclusion that this is the best location of Village owned land at this time for a cell tower. Speaking as a resident who lives about a quarter or half mile from the police station on Peacock Lane, there is little to no cell service. When the cable is out, he said, he has no telecommunication ability.

The Mayor then opened the hearing to public comment.

Mayor Tom Zoller of Cove Neck was worried that the proposed Village law would change the zoning code in a way that would not provide for notice to or input from residents and neighbors about the cell tower. He also expressed concerns about future liabilities. The Mayor responded that the proposed law does not alter the requirement for proper notice and a hearing before the Zoning Board of Appeals where residents and neighbors can express concerns in the zoning hearing.

Mayor Zoller also requested to read the mayor’s letter into the record. The Mayor stated that he had already summarized the comments made in Mayor Zoller’s letter and that the letters from each mayor would be annexed to the minutes of the meeting.

The Mayor then asked Special Council Stephen Limmer to respond to the point raised by Mayor Zoller.

Special Council Limmer responded that the existing authority of the Board of Trustees of the Village of Upper Brookville is not being changed. It already has the authority that is granted in this particular section of the zoning ordinance. He said, all this does, right now, is extend that authority relating to Village-owned property. What this change does with respect to the Village authority is to expand it to property leased by the Village. So, the Board can now use this provision which excludes certain considerations when going before the Zoning Board of Appeals, as to land leased by the Village, as well as land owned by the Village. So—if the Village should decide to build the cell tower on land other than the Police Department, on land leased by the Village, it can do so with the same

authority. He said it is not unusual for villages to be exempt from their own zoning requirements when fulfilling public purposes, such as providing cell communications to its residents, which is an important health and safety factor.

Responding to a follow up from Mayor Zoller where he voiced the same concern, Special Council Limmer confirmed the law does not change the Village's existing authority and the board's review of Village applications to the board of appeals. Those do not change at all. Residents of the Village will be able to appear at a hearing and will be able to voice their concerns. He said that Mayor Zoeller's concerns are not affected by the proposed law. If anything, he continued, it gives the Village more ability to locate a tower on leased land or Village owned land and better serves Mayor Zoller's purpose than distracts from it.

Deputy Mayor Albert Kalimian of Matinecock asked what leased property does the Village have that we are amending a law to allow for this ability. The Mayor responded that he was not aware of any leased properties but there is the prospect of a leased property. Deputy Mayor Kalimian then requested that the letter from Mayor Goodman be read into the record so the Upper Brookville Trustees could directly hear Mayor Goodman's concerns. The Mayor then polled the Trustees. They unanimously responded that they had all read the letters and were aware of the mayors' and the Chief's concerns. Trustee Kalimian also suggested that since the lack of cell service affects all the Villages, why not look at alternative sites for the tower that would benefit all, such as the lot a mile away (former Gulf station) on the Northeast corner of Northern Blvd and Cedar Swamp Road. The Mayor replied that the Village had considered a nearby site and did not think that a cell tower at this location would benefit a similar population of Upper Brookville residents.

Mayor Goodman said he completely supported the concept of improved cell service for public health and safety reasons. He said, in fact, "every village on the North Shore is woefully lacking in cell service". He said he relies on Chief Walsh's view as an expert on the impact of the cell tower as impeding the ability of the police to perform their function.

The Mayor said he would be delighted to work with the Chief to address any of his objections as they come up as he has done thus far—in particular, by moving the proposed location of the tower from the site in the back of the building to the western side of the building. He pointed out that this is the identical site proposed by the police to locate a new 120-foot tower in lieu of the AT&T proposed tower.

Paula Youngs Weir, representing the Brookville Cemetery, requested that the retaining wall and shed from the Police Department parcel be removed from the cemetery property and she expressed her concerns that the construction of the cell tower will impinge on the cemetery property and possibly damage nearby plots as well as potentially devalue the plots near the tower. She asked for a guarantee that the graves located just feet from the Northern boundary will not be touched.

The Mayor acknowledged the Village received her letter some time ago expressing some of these concerns. He said in response to her letter, the Village changed the location of the tower to the new location nowhere near the graves or Northern boundary. As to the shed location, he directed Ms. Wier to follow up with Chairman Colgate. He reiterated that in the event AT&T does not construct the cell tower on the OBPD site, the OBPD, mayors and Commissioners plan to construct a 120-foot tower in its place.

A resident of Upper Brookville, Stephanie Clark, stated her view that any delay or impingement on the access of the police department is a much greater health and safety risk

to our residents than her ability to get cell phone service. Accordingly, she said, the Village should look at alternate locations for the tower.

Deputy Mayor Kalimian then recommended a collective effort of all the villages to purchase the former gas station property at the corner of Northern Boulevard and Cedar Swamp Road as an alternate site for a cell tower. The Mayor responded that it may be a great site for Old Brookville and Brookville, but it would likely not serve the population the OBPD tower could reach in Upper Brookville. He pointed out that LIU Post was close to the gas station and a tower at the gas station may be duplicative with the cell tower already there. Deputy Mayor Kalimian said the OBPD proposed tower only serves 250 residents [note: it would serve 250 homes with likely 750 residents] and that was not as important as police service to 10,000 residents in the six villages. He said if [Upper Brookville] asked all the other mayors to contribute to purchase the site “it would be an absolute go”. The Mayor reported having reviewed a site in a drainage reserve area close to the gas station. AT&T had no interest. The Mayor added that a cell tower at the former gas station could compliment a tower at the police station.

Trustee Friedrich stated that when we talk about a delay in police response due to the positioning of the tower on police property, residents want to know that when they call the police, they’ll come. “The police can’t come if they never get the call. That’s an important part of the analysis here. To the extent that we’re bringing up delays in police service, I’d like to emphasize that there is no delay greater than when the police are not able to get the call on the first, second or third attempt due to inferior cell service in the area”.

Mayor Serota said “we are all for cell service”. He said he was concerned about the function of the police force and the safety of our 10,000 residents. He said he relies on the police department to determine whether there will be potential interference.

The Chief then spoke up to say that four of the police officers who responded to the Wolver Hollow Road pit collapse [where two construction workers died] were at the OBPD headquarters changing when the call came in. He said he knew the workers couldn’t be saved, but if the police were blocked in by any maintenance or utility vehicles and couldn’t get out of the building in time—if there was one extra minute of delay—they wouldn’t have had any chance of saving anybody. The Chief said: anything that interferes with his job, which is an efficient and effective operation of the police for everybody, [Upper Brookville] included, should not be interfered with.

The Mayor said he totally agreed. He said he had been honored to be part of a presentation from Nassau County Police Commissioner Patrick Ryder and County Executive Laura Curran where citations were given to each of these brave men who jumped into the pit. He added with respect to the pit collapse, there is no cell service on the site. He understood the reason they were able to make a cellphone call to the police was that the owner had installed a wireless booster device enabling workers to make the call. But—without that device, you might have had a story like the Linden Lane accident that occurred a few months later where a contractor fell off a concrete foundation into the pit and they medevac’d him out [by Nassau County helicopter]. It took about 5 minutes to find a cell signal to call the police. So—if the owner of the pit collapse site on Wolver Hollow had not made a special arrangement, it could have been a longer time before the officers—as eager as they were and capable as they were—would have shown up. He said, we know our Trustees and the police are very concerned about the health and safety in the Village and we know you are, too. The Mayor said he would be delighted to work with the chief to resolve the details and happy to meet to discuss it.

Commissioner Matthew Schamroth of Old Brookville said he felt that the tower will be a detriment to the police service and asked the Village to look for alternate locations for the tower. He said it is a detriment to the other five partners.

Trustee John Colgate, Chair of the Board of Police Commissioners, said it is not often that all five villages agree on one thing and that is there is not enough room at police headquarters for the cell tower [note that the OBPD serves 6 villages; in this case 5 of them agree]. He asked the Village to look for alternate locations for the tower. He said “we’re not against it...we all believe in the cell tower, but that is the wrong spot.”

The Mayor then noted that no one else asked to be heard.

The Board then resolved, seconded and then unanimously voted to close the hearing.

#### **ADOPTION OF LOCAL LAW 1-2020.**

The Board then considered the adoption of Local Law 1-2020.

After discussion, and on motion duly made by Trustee Friedrich and seconded by Trustee Madden, the Board unanimously **RESOLVED** to adopt Local Law 1-2020.

Votes in favor of adoption:	Elliot S. Conway      Aye
	Edward J. Madden      Aye
	Antje B. Dolido      Aye
	Carl A Friedrich      Aye
	Innis O'Rourke III      Aye

Votes against adoption:	None
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A copy of the local law is appended to these minutes.

The meeting was adjourned at 6:10 p.m.

Signed by TL Lynch on 1/21/21

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Tracy Lynch  
Village Clerk