

**VILLAGE OF UPPER BROOKVILLE
PUBLIC HEARING AND BOARD OF TRUSTEES MEETING
COTTAGE AT 24 WOLVER HOLLOW ROAD
MAY 23, 2022 at 5:30 p.m.**

A Public Hearing and a regular meeting of the Board of Trustees of the Incorporated Village of Upper Brookville, Nassau County, New York, was held on Monday May 23, 2022, at 5:30 p.m.

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

Also Present:	Linda Scherer, Assistant Clerk
	Laurie Dooney, Building Clerk
	Peter MacKinnon, Esq. of Humes & Wagner, LLP
	Attorneys for the Village
	Sam Vergata, Road Commissioner
	Andrew Campanelli, Esq.
	Village Residents

HEARING ON PROPOSED LOCAL LAW A-2022

The Mayor called the hearing on proposed Local Law to order at 5:40 p.m. The affidavit of publication of the notice of hearing and mailing of the local law and notice were presented and ordered annexed to the minutes of this hearing. In addition to other attachments, also annexed a communication from the Nassau County Department of Public Works Planning Commission, dated April 8, 2022, confirming the local law had been received and was deferred to the Village to take such action as it deems appropriate. (*See Attached Exhibit A*)

He, and the Village Attorney, explained that the proposed local law will amend Chapter 205, "Zoning," Section 205-20, "Community facilities and institutions," of the Code of the Village of Upper Brookville. The proposal deletes the reference to Village property located on Chicken Valley Road as a priority location for a high wireless telecommunication services facilities, and only permits the Board of Appeals to waive or modify standards for Village property located at the intersection of NYS Route 25A and Wolver Hollow Road.

The Mayor asked for comments on the local law. The Village Attorney read the proposed local law amendment, noting that the local law had been published in the Village's Official Newspaper.

He said the code provided in a 2018 revision, two priority sites for wireless telecommunication on Village property: one on Chicken Valley Road and the other at the Old Brookville Police Station. The provision being proposed removes the Chicken Valley Road site

as a priority site. The Village Attorney noted that the Village has no applications for a cell tower site at this time.

The Mayor said the Board's goal is to address a situation which many residents consider a health and safety issue. Often, after a large storm, residents can be without power for up to two weeks. Upper Brookville's low density means it is often one of the last communities to be reenergized. Without power, telephone landlines as well as most internet phones don't function. In some locations of the Village there is no cell reception making it impossible for residents with emergencies to call first responders like the police, the Fire Company, EMS and other first responders. It is difficult for first responders to locate the houses with their GPS maps without cell reception.

The Mayor said the Board was trying to be responsive to the feelings of the residents, and following the last meeting, it appeared that the people most concerned about the cell tower were residents of the Chicken Valley Road and Chestnut Hill Drive. The Board proposed the local law change to find out through this hearing or other means whether residents that would potentially benefit wanted a tower in this location or not. He said he's received about 50 or 60 complaints over the past 6 years about the lack of cell service and the potential dangers. However, he said, he has had few comments from residents who oppose cell towers in the Village.

The Mayor said the Board is responsible for, on one hand, weighing the desires of residents who prefer a village without visible cell towers against, on the other hand, the risk that residents with potentially sudden and life-threatening medical conditions have no power and can't call an ambulance.

A resident closer to Chicken Valley and Wolver Hollow Road said she had zero cell service at home. She said she has an internet phone, and she must go to one specific spot near a window when there is a power outage to get any kind of signal. During a recent overnight power outage, her alarm company couldn't reach her because her cell booster wasn't working. Thankfully, she said, there was no real emergency, but she said there is a real need for this problem to be addressed. She said she has tried T-Mobile—there's no service. AT&T had no service. Verizon has one bar in one specific location. She said, "if there's an emergency, I'm going to have to get on the street and walk."

A question was asked about a village-wide referendum and the Village Attorney said a permissive referendum on the ballot is not permitted. The Mayor said the Board will consider a surveying residents following a review of the wireless telecommunications law, to determine the views of the community.

The Village Attorney reminded all those present in the room that the provision for the priority designation of the site was adopted in 2018 and was not a "new" amendment.

There being no further comments on the proposed law, the Mayor closed the hearing at 6:00 p.m.

THE PLEDGE OF ALLEGIANCE

MINUTES

The Mayor then called for approval of the Regular Meeting Minutes of the Trustee Meeting held on March 21, 2022, April 11, 2022 and April 27, 2022.

On motion duly made and seconded, the March 21, 2022 minutes were unanimously approved. (*See Attached Exhibits B, C & D*)

PUBLIC COMMENT

Andrew Campanelli introduced himself as an attorney representing a resident who retained him to draft a new wireless communication code update.

He said he drafted the code for Fishkill, Woodstock and Ithaca.

The Mayor asked Mr. Campanelli, how many villages in New York State have adopted his code. He said “Fishkill, the Town of Fishkill, the Town of Ithaca and the Town of Woodstock. The Mayor said he had reviewed the Village of Fishkill code and that code leaves the decision on Special Use Permits for cell towers with the Board of Trustees.

The Mayor then asked Mr. Campanelli, how many villages in New York State provide that the siting decision for cell towers will be done solely by the Board of Trustees? He said that very few give sole power to the Board of Zoning Appeals or the Planning Boards. The Mayor said in his review, virtually all the New York State village telecommunication laws gave the siting decision to the Board of Trustees. Mr. Campanelli responded that he “didn’t care which board in this village is vested with the power” to make the decision on the siting of cell towers, rather his goal is to give the village the maximum power under the Federal Telecommunications Act to control the placement of wireless facilities.

The Mayor said a lot of the people in the room were there because of a letter that was circulated earlier implying the Board of Trustees had illegally usurped the authority of the Zoning Board whereas, in fact, Upper Brookville is one of the very few, of perhaps a handful of villages in New York State, that vests any authority with the Zoning Board. He then asked Mr. Campanelli, what percent of New York State villages either (a) vest the authority for cell tower siting decisions on village-owned or controlled property with the Board of Trustees, or, (b) exempt the siting decisions on these properties from any Special Use permitting process? Mr. Campanelli said: “that is different.” He agreed that the Board of Trustees has the power to alter the code to exempt village properties from their village zoning requirements. And he agreed that, in those cases, there are no public hearings.

The Village Attorney mentioned that the Board of Trustees can listen to the comments and views of the residents at the Zoning Board hearing, after which it can decide to grant the application or not. The law does not in any way deprive residents from providing input and information before any official action is taken. There will be discussion of the technical aspects, who is served, what a tower will look like. These are factors that will be presented to the Board of Trustees and the residents.

Mr. Campanelli argued that Upper Brookville has a public hearing requirement, but the

Zoning Board has no power to deny the application. The Village Attorney said the Board of Trustees makes the decision with respect to any cell tower on Village-owned property and is not required to grant any application.

The Village Attorney said Mr. Campanelli was missing the central point. This is Village owned property. The Village must approve or not, anyone coming onto the Village property. This Board must entertain any application to erect a cell tower on municipal property. It doesn't go initially to go to the Zoning Board. It doesn't say the Board of Trustees "shall approve". It is up to the discretion of the Board of Trustees whether it is approved. And the Board of Trustees considers the views of the residents on any siting decision. An unacceptable tower application might never get to the Board of Zoning Appeals.

The Mayor said the Upper Brookville code is unique in New York State. Generally, in New York State villages, the Board of Trustees make all the cell tower siting decisions, particularly on village-owned property. When the Board of Trustees decides on cell tower applications, there is no requirement in these village codes for any hearing. If the Board of Trustees changes a law, there is a hearing. But a cell tower siting decision is not a change of law. Mr. Campanelli agreed that siting decisions on village-owned property was an exception to the requirement for a variance from the village zoning laws.

The Mayor said the Board of Trustees, under the New York State Constitution, is responsible for management of village-owned property. The Board of Trustees is also responsible for health and safety in the village. It is precluded from considering the effects of radio frequency transmission, but it considers everything else.

He said, what is unique in Upper Brookville—and it doesn't exist in the vast majority of village codes in New York State—is that the Upper Brookville village code provide an additional mechanism for public comment and participation by have a hearing on a cell tower soliciting resident opinions through the Board of Zoning Appeals even though the tower is on village owned property.

The Mayor then listed a number of villages that leave the siting decision for all cell towers with the Board of Trustees. They included Bella Terra, Briarcliff Manor, East Aurora, Great Neck Estate, Lloyd Harbor, North Hills, Old Westbury, Plandome Manor, Sea Cliff, Roslyn Harbor, Rye Brook, Thomaston, Woodsboro, Lynbrook and the Town of Bedford.

He added that two thirds of these villages specifically exempt village-owned property from their zoning codes and any requirements for special use or other permits.

He mentioned the Town of Bedford code was recommended by the wireless telecommunication specialist at the New York Conference of Mayors (NYCOM) as recently as the previous week. That code has a provision with the same effect as the Upper Brookville code. In that code, "Section 125-85.2-3 (E) Permits for wireless communication" says:

Notwithstanding the provisions set forth in this section..., in the event an application seeks to place a wireless telecommunications facility on property owned or controlled by the town...such application shall be exempt from the requirements of this section and shall remain within the sole and absolute discretion of the Town Board, which may impose such conditions on any such use as it deems appropriate.

NYCOM believes that the Bedford code contains many provisions that reflect the most recent FCC interpretations issued in 2018 based on 22 years of nationwide litigation of the Telecommunications Act of 1996.

He said the Board is considering modernizing the wireless communication section of the Village code and are interested in community input with respect to the two sites. He said, later in the meeting, the Board will discuss whether to vote on the code change and whether additional information is needed. He said, the Upper Brookville code is an outlier in a good way, in that our code provides for public input and participation while other similar village codes do not. Under the New York State Constitution and Village Law, these villages all have the right to approve cell tower sites on village owned property. The villages' respective Board of Trustees also have the power to determine the cell tower siting criteria and to vest the Planning Board, the Board of Zoning Appeals with powers to issue Special Use Permits under the Board's criteria.

Various issues were raised, including:

- The history of wireless cell service discussions in the village,
- Current intentions for use of the building housing the Old Brookville Police Department,
- The formation of the new *Brookville* Police Department and the facilities they will use in Brookville.
- Whether any code modifications will predate formal negotiations or a substantive agreement with a tower company? The Mayor said he expected they would.
- How switching to Nassau County 9-1-1 dispatch will shorten police response considerably. An emergency call will dispatch a local car, typically, in less than 30 seconds.
- Whether a future cell tower lease would have a provision for future emission testing to ensure compliance. The Mayor said he expected it would.
- How many police cars are we buying from the OBPD. Answer: two cars.
- How many police cars were in Muttontown. Answer: six police cars with a new car on order.
- A resident asked who to call if there for a parking permit or a lost dog. Deputy Police Commissioner Carl Friedrich recommended calling 9-1-1 for a lost or found dog, saying that 9-1-1 is no longer just for emergencies as we have all been taught in the past. He said he expected that 9-1-1 calls we now will see improved response times. He recommended calling 516-696-9900 for a parking permit.
- Following a question about Village insurance there were no additional questions. The Mayor then thanked everyone for their comments and closed the public comment period.

NEW YORK MUNICIPAL ENERGY PROGRAM

Representatives from Good Energy explained how residents can save money on coordinated, volume purchases of natural gas. They asked the Board for their approval to obtain statistical data on residential properties from National Grid. The Board decided to wait on the proposal until prices stabilize and the savings increase.

FINANCIAL REPORT

Bills

The Assistant Clerk discussed all claim forms listed on the General Fund Check Details dated May 19, 2022, in the total sum of \$16,585.22 and June 1, 2022, totaling \$155,894.00 and reported that she and the Clerk reviewed the supporting invoice details and/or purchase contracts with a Trustee prior to the meeting.

After discussion by the Trustees and on motion duly made and seconded, the Trustees unanimously

RESOLVED, to ratify and approve the bills listed on the General Fund Check Details dated May 19, 2022, in the total sum of \$16,585.22 and June 1, 2022, totaling \$155,894.00 which are annexed to these minutes. *(See Attached Exhibit E & F)*

Treasurer's Report

After presentation by the Assistant Clerk and examination, on motion duly made and seconded, the Board unanimously

RESOLVED to approve and file the Treasurer's Report for the month ending April 2022. *(See Attached Exhibit G)*

VILLAGE CLERK'S REPORT

Fund Balance Transfers

The Assistant Clerk explained that the Clerk had discussed end of year transfers with the Village Auditor and they recommended that the transfers be recorded once the audit was conducted, which is scheduled for July.

After presentation by the Assistant Clerk and examination, on motion duly made and seconded, the Board unanimously

RESOLVED to approve the transfer of funds from the Unassigned Fund Balance to the Assigned Fund Balance, for the new village hall, road improvement projects and police once the audit is completed and the final quarter of police payments are known. The transferred amount will comply with the Comptrollers recommendations.

Capital Account Transfers

The Assistant Clerk reported that the total balance in the Capital Account is approximately \$400,000. The funds are assigned to the Carriage House, New Village Hall, Roads, Earned Interest and the Charitable Reserve Fund which are the funds collected from the prepayment of the 2018/19 taxes as donations. *(See Attached Exhibit H)*

She reported that the Clerk recommended that the funds assigned to the Carriage House and the Charitable Reserve Fund be reassigned to the New Village Hall for future use.

After discussion by the Trustees and on motion duly made and seconded, the Trustees unanimously

RESOLVED to reassign \$48,893.11 from the Carriage House and \$15,358.20 from the Charitable Reserve to the New Village Hall increasing the total to \$333,573.63.

East Norwich Fire Company (ENFC) Liabilities

The Assistant Clerk explained that the Village has not signed a contract with the ENFC for years 2021 and 2022 and continues to pay the 2019 fire protection contract rate. The Village also has not paid the amount billed for cancer coverage.

As a result, the Village underpaid ENFC in fiscal year 2021/22 in the amount of \$20,357.80 and the Clerk transferred the monies owed into an accrued liability account. *(See Attached Exhibit I)*

After discussion by the Trustees and on motion duly made and seconded, the Trustees unanimously

RESOLVED to ratify the action taken by the Clerk to transfer the underpaid amount for fire protection and cancer coverage to the ENFC for the 2021/22 fiscal year, totaling \$20,357.80, to an accrued liability account, increasing the total to \$36,366.78.

Village Engineer Rate Proposal for 2022/23

The Assistant Clerk reported that the Clerk received LiRo Engineers, Inc. billing rate proposal for the 2022/23 fiscal year. The proposal includes an increase of 3.0% to the hourly rate of the Village Engineer and other titles.

After discussion by the Trustees and on motion duly made and seconded, the Trustees unanimously

RESOLVED to approve the LiRo billing rate schedule for the 2022/23 fiscal year. *(See Attached Exhibit J)*

Building Department Computer

The Assistant Clerk presented an estimate submitted to the Clerk from North Shore Technology Systems for the purchase of a new computer for the Building Department. The total estimate of \$2,499 includes the computer, monitor, accessories and setup costs. Trustee Madden requested that the Clerk get additional estimates for alternate models and present to the Board next month. (*See Attached Exhibit K*)

After discussion, the Board requested that the Clerk obtain additional quotes and present at the June meeting.

Wheatley Right-of-Way (ROW)

The Assistant Clerk reported that the Clerk has received several complaints from residents about the conditions of the right of way (ROW) along Wheatley Road. It is overgrown and littered with trash and downed tree branches. Since this is a county road, the Clerk has requested multiple times for them to cleanup the ROW but they have not been responsive.

The Board agreed this was an area that needed to be attended to and requested that the Road Commissioner obtain landscape estimates to clean-up the west side ROW of Wheatley Road.

Juneteenth Federal Holiday

The Board discussed Juneteenth National Independence Day which became an official federal holiday in 2021.

After discussion by the Trustees and on motion duly made and seconded, the Trustees unanimously

RESOLVED to adopt all federal holidays, including Juneteenth. Juneteenth will be a “pass day” holiday as recognized in New York State pursuant to Governor Cuomo’s Executive Order. Eligible employees will earn either an additional day, or, 7.5 or 8 hours of holiday leave to be used at another time, subject to supervisory approval.

Generator Program

The Assistant Clerk explained that the Building Department continues to receive applications for the installation of generators and asked the Board to extend the generator program to the end of the year, eliminating the permit fee through December 2022.

After discussion by the Trustees and on motion duly made and seconded, the Trustees unanimously

RESOLVED to approve the extension of the generator program through December 2022.

Garbage District Opt-Out

The Mayor reported that about 25 residents requested to opt-out of the Garbage District after the March 15th deadline.

The Assistant Clerk also reported that about another 30 residents have not paid their annual invoice. The Village Attorney recommended that the bill becomes a lien on the property so that if the property is sold, there would be an outstanding lien for garbage collection.

After discussion by the Trustees and on motion duly made and seconded, the Trustees unanimously

RESOLVED to approve the resident requests to opt-out of the Garbage District, subject to them paying for June garbage collection from DF Allen by Mary 31st and

FURTHER RESOLVED, to approve adding a property lien to the homeowners who have not paid their annual invoice, which will be mailed along with the village 2022/23 tax bill.

Village Official Emails

Following up on last month's discussion, Trustee Madden reported that it will cost \$25 per month email address for Village officials. He explained the reason for a single form of communication for village business is to assist in email archiving.

After discussion by the Trustees and on motion duly made and seconded, the Trustees

RESOLVED to approve the setup of email addresses for elected officials.

FIRE & STORM WATER MANAGEMENT REPORT

The Mayor noted that the Storm Water Management Program Annual Report for Year 19 prepared by West Side Engineering, PC for the period March 10, 2021 through March 9 2022, has been posted on the Village website and at the Upper Brookville Village Hall at 24 Wolver Hollow Road, for review by the public. To date, no comments have been received. It was noted that the annual report must be filed with the New York State Department of Environmental Conservation no later than June 1, 2022.

After discussion, the Board authorized the Mayor to review the report and accept on behalf of the Village, the filing of the Annual Report and all required documents in accordance with the Department of Environmental Conservation regulations. A copy of the report was directed to be annexed to the minutes.

Accordingly, on motion duly made and seconded, the Board unanimously

RESOLVED, that the Village of Upper Brookville's Storm Water Management Program Annual Report, as required by the Federal Storm Water Phase II Regulation, be and it hereby is accepted and directed that it be filed with the appropriate agencies and

FURTHER RESOLVED, that the Village Engineer, West Side Engineering, PC be and it is hereby authorized and directed to file the required 19 year Storm Water Management Program Annual Report on behalf of the Village of Upper Brookville in compliance with the Federal Storm Water Phase II Regulations, including any and all other required compliance documents and

FURTHER RESOLVED, that the Mayor be, and he hereby is authorized to sign any and all documents necessary for compliance with Storm Water Phase II Regulations. *(See Attached Exhibit L)*

ROAD COMMISSIONER/CODE INSPECTOR REPORT

The Road Commissioner reported that he received the arborists report for the two white pines along the roadway in front of 11 Locust Lane. The arborist drilled into each of the trees and discovered that there was 2" to 8" of decay in each tree as well as decay of the upper root system. He also noted that the upper canopies of both trees are very sparse and there are a few broken branches. The arborists report concludes that the Village is justified in removing the two trees. *(See Attached Exhibit M)*

After discussion by the Trustees and on motion duly made and seconded, the Trustees

RESOLVED to approve an expenditure up to \$6,000 for the removal of the two white pines and an additional dead tree along the roadway in front of 11 Locust Lane.

The Road Commissioner also reported that he had discussed with the Mayor the hiring of a temporary laborer to replace the one who recently left. He would assist with ROW maintenance throughout the Village as well as filling potholes. He also reported that the Locust Lane street sign was damaged by a car and needed to be replaced.

After discussion by the Trustees and on motion duly made and seconded, the Trustees

RESOLVED to ratify the approval of a temporary laborer for the season at the rate of \$18.75/hour and the purchase of a replacement street sign for Locust Lane at a cost of \$220.

BUILDING DEPARTMENT REPORT

The Assistant Clerk referred to the report submitted by the Building Department Clerk for April 2022 activity. *(See Attached Exhibit N)*

MAYOR'S REPORT

The Mayor and Trustees discussed a number of questions from residents where feedback in the form of a survey would be helpful to the Board of Trustees. The Board agreed that a survey would be useful and the Mayor agreed to circulate a draft with questions and description of the issues in the week following the meeting.

POLICE REPORT

No Report

FIRE & STORM WATER MANAGEMENT REPORT

No Report

ARCHITECTURAL REVIEW REPORT

The Commissioner reported on a Clews Drive property that removed additional trees in the buffer area without a permit. She instructed the Building Department to request a planting plan and not issue any building permits until the plan is submitted and approved.

LEGAL REPORT

No Report

PUBLIC COMMENT

No Comment

The Mayor closed the meeting at 7:30 and on motion duly made and seconded, the Board unanimously

RESOLVED to enter Executive Session.

At 8:28 p.m., on motion duly made and seconded, the Board unanimously

RESOLVED to come out of Executive Session after discussing contract matters, litigation, personnel matters and compensation.

On motion duly made and seconded, the Trustees unanimously

RESOLVED to survey residents on a possible leaf blower ban as well as whether we should adopt private roads, and other questions which have come before the Board.

RESOLVED to ratify the engagement of Stephen Limmer to answer the complaint in connection with the Cell Tower lawsuit.

FURTHER RESOLVED to approve the reimbursement of pandemic related expenses to eligible employees, on behalf of the Village, not to exceed more than 3% of annual compensation and

FURTHER RESOLVED to offer new members of the Garbage District two months free collection, provided that Emmi Industries will covering the cost of one of the months. Having more members in the Garbage District will make for more efficient collection of garbage, reduce the number of heavy collection vehicles on the roads, lengthen the life of the village roads and driveways and reduce fossil fuel emissions, and

FURTHER RESOLVED to review and study the current Village cell tower law and authorize the Mayor to obtain proposals from consultants who are knowledgeable in cell tower legislation and technology to recommend revisions to the law for a fee not to exceed \$10,000. The objective is to approve the code revision before the Village either enters into formal negotiations or approves any cell tower contract. In connection with this review, the Mayor may also survey the village residents regarding any proposed tower site.

FURTHER RESOLVED to authorize the Mayor to approve a lease extension allowing The Village of Old Brookville to remain in the property located at the Northwest corner of Northern Boulevard and Wolver Hollow Road designated as Section 22, Block 9, Lot 1, until June 15, 2022 solely for the benefit and use of the Village of Old Brookville Police Department.

At 8:45 p.m., on motion duly made and seconded, the Board unanimously

RESOLVED to come out of Executive Session and the meeting was adjourned.

The next regular meeting is scheduled for Thursday June 23, 2022 @ 5:30 p.m.

Signed by TL Lynch June 18, 2022

Tracy Lynch
Village Clerk