

VILLAGE OF WESLEY HILLS
VILLAGE BOARD MEETING
FEBUARY 13, 2007

PRESENT: Mayor R. Frankl
Deputy Mayor E. Mc Pherson
Trustee D. Goldsmith
Trustee D. Gantshar (arrived late)
Village Attorney F. Brown
Village Clerk J. Pagliaroli

ABSENT: Trustee H. Richman

The meeting was called to order by Mayor at 8 P.M.

Trustee Goldsmith made the following resolution:

RESOLUTION 13-07

RESOLVED, that the Minutes of the meeting of the Board of Trustees of the Village of Wesley Hills on January 9, 2007, as submitted by the Village Clerk, be approved, and that the reading of such Minutes be waived.

The resolution was seconded by Deputy Mayor Mc Pherson and so carried with a vote of 3 ayes and 0 nays.

Trustee Goldsmith made the following resolution:

RESOLUTION 14-07

RESOLVED, that the Minutes of the meeting of the Board of Trustees of the Village of Wesley Hills on February 6, 2007, as submitted by the Village Clerk, be approved, and that the reading of such Minutes be waived.

The resolution was seconded by Deputy Mayor Mc Pherson and so carried with a vote of 3 ayes and 0 nays.

Trustee Gantshar arrived at this time.

Mr. Joe Meyers was before the Board to discuss a resolution regarding the repeal of the RLUIPA Law. He said that he was beginning with the communities in Ramapo and working outward. He discussed the wording of his proposed resolution and his plan to contact other municipalities to have them pass the same or similar resolutions. Trustee Goldsmith asked if Mr. Brown were going to

draft a resolution for the Board's consideration. Mr. Brown said that he was waiting for input from New Hempstead's Village Attorney, Doris Ulman. Trustee Gantshar said that he was not in favor of passing a resolution to ask for the repeal of RLUIPS. Trustee Gantshar said that he did not understand how the Village Board could ask for the repeal of RLUIPA but voted for the downzoning of the Kwilecki property. He feels that the law has given a voice to people who did not have a voice in practice of their religion. Mr. Meyers disagreed and said that the laws of the State of New York before RLUIPA protect religious uses and also continued to give the local authorities control over zoning issues.

Mayor Frankl reported to the Board that he had begun investigating costs for the upcoming garbage contract. Mr. Brown asked if specifications were going to be approved at the next meeting. Mayor Frankl will let the Board know when the specs will be ready.

Mayor Frankl opened the meeting to the floor. Mr. Marcus was before the Board. He said he wanted to discuss something that happened at the last Village Board meeting. He said that the Village Attorney and the Village Clerk came up with a story and no one on the Board asked to have the document presented. Trustee Gantshar asked if the document did not exist or was it provided. Mr. Brown advised the Board that this appeal had been discussed and decided at the last meeting and should not be entertained by the Village Board at this time. Mr. Marcus alleged that the Village Attorney and the Village Clerk were in collusion to create a cover up. Mayor Frankl asked Mr. Marcus could he please put off this discussion until the present appeals were discussed. Mr. Marcus agreed. Trustee Goldsmith made the following resolution:

RESOLUTION 15-07

RESOLVED, that general fund claims #223 through 246 in the aggregate amount of \$77415.31, as set forth in Abstract of audited claims is made a part of the Minutes of this Board, are hereby approved.

The resolution was seconded by Deputy Mayor Mc Pherson and so carried with a vote of 3 ayes (Mayor Frankl, Trustee Goldsmith, and Deputy Mayor Mc Pherson) and 1 nay (Trustee Gantshar). Trustee Gantshar asked that the record reflect that he voted nay on Resolution 15-07 because of the inclusion of voucher #246 for Zarin & Steinmetz. He said he did not believe that the Village should be supporting lawsuits that extended beyond the Village boundaries.

The next item on the agenda was the consideration of appeals from determinations of records access officer pursuant to Freedom of Information Law. Mr. Marcus was before the Board again. He instructed the Board that

basically the FOIL laws have been changed to provide redress and to have all legal fees paid by the Village. Mr. Brown informed Mr. Marcus that it was his right to seek legal redress but he was confident that the Village would not have to pay the legal fees. Mr. Marcus stated that Mr. Brown was being a pain in the ass about his FOIL requests. Mr. Brown said that he was not going to stay at the meeting and be insulted by Mr. Marcus. Deputy Mayor Mc Pherson made a motion to adjourn the meeting because of the tense atmosphere in the room. Trustee Goldsmith asked not to adjourn the meeting and Deputy Mayor Mc Pherson, Trustee Goldsmith and Trustee Gantshar asked Mr. Brown not leave. Mr. Marcus stated that he believed that the big part of the problem was that Mr. Brown blocks access to information because he is consulted by the Village Clerk when a FOIL request is submitted. Mayor Frankl stated that is the proper procedure and what would Mr. Marcus have the Board do, fire Mr. Brown. Mr. Marcus said that he did not care what the Board did with Mr. Brown.

Frank Brown said that he would like to describe the appeal and what the response was from the Village Clerk and then the Board could ask questions. The Board felt that was the way to proceed. The first appeal was for information requested on November 27, 2006 for communications between Village Attorney F. Brown and Ira Emanuel. When the documents were produced for Mr. Marcus information was redacted. Mr. Brown explained to the Board that the information redacted were handwritten notes he made in the margins on the correspondence from Mr. Emanuel to discuss with the Village Board; and, therefore, the handwritten notes fell under attorney/client privilege. Mr. Marcus stated that he had only received three or four documents and that the information should not have been redacted. Trustee Gantshar made the following resolution:

RESOLUTION 16-07

WHEREAS, pursuant to Section 2 of the Regulations for Public Access to Records of the Village of Wesley Hills, adopted by the Board of Trustees of the Village of Wesley Hills on March 8, 1983 by Resolution #22-83, the Village Clerk is the records access officer, and

WHEREAS, on November 27, 2006, Neil Marcus presented a written request to the Village Clerk, pursuant to the Freedom of Information Law, for a copy of "Village Attorney Brown: records of all communications with Ira Emanuel", and

WHEREAS, on December 8, 2006, the Village Clerk provided access to all documents requested to Neil Marcus in writing, and

WHEREAS, on December 15, 2006, the Village Clerk responded to Neil Marcus in writing advising him that "This information has already been requested, answered and you have inspected the records on December 8, 2006", and

WHEREAS, on January 8, 2007, Neil Marcus presented a written appeal of such determination to the Village Clerk, which appeal complains that certain notations on said documents had been redacted, and

WHEREAS, pursuant to Section 7 of said Regulations for Public Access to Records of the Village of Wesley Hills, the Board of Trustees is the body designated to hear appeals from denial of access to records, and

WHEREAS, the Village Clerk has forwarded the appeal of Neil Marcus to the Board of Trustees, and the Board of Trustees thereupon has considered such appeal and has heard the testimony of the Village Attorney that the material redacted consisted entirely of his handwritten notes in the margin prepared to facilitate his discussion of issues with members of the Board of Trustees,

NOW, THEREFORE, BE IT RESOLVED, that the Board of Trustees hereby confirms the determination of the Village Clerk that the redactions were proper in that all material redacted was protected by the attorney-client privilege, and the Board of Trustees hereby denies the appeal of Neil Marcus, and

BE IT FURTHER RESOLVED, that the Village Clerk shall transmit copies of this resolution to Neil Marcus and to the New York State Committee on Public Access to Records forthwith.

The resolution was seconded by Trustee Goldsmith and so carried with 4 ayes and 0 nays.

The next appeal was regarding the request for "Accounting procedures utilized in Wesley Hills Stipulation of Settlement with Ira Wickes/Rockland Tree Experts". Mr. Brown explained that Mr. Marcus has been told previously that this document does not exist. Mr. Marcus stated that he found it impossible to believe that the Village could arrive at a number without producing such a document. Mr. Brown said that basically it was the amount of the attorney's fees charged the Village. Trustee Goldsmith said that he recalled the discussion regarding the amount to be included in the stipulation and the amount was basically what the Village had paid for attorney's fees.

Trustee Goldsmith made the following resolution:

RESOLUTION 17-07

WHEREAS, pursuant to Section 2 of the Regulations for Public Access to Records of the Village of Wesley Hills, adopted by the Board of Trustees of the Village of Wesley Hills on March 8, 1983 by Resolution #22-83, the Village Clerk is the records access officer, and

WHEREAS, on December 15, 2006, Neil Marcus presented a written request to the Village Clerk, pursuant to the Freedom of Information Law, for a copy of "Accounting procedures utilized in Wesley Hills Stipulation of Settlement with Ira Wickes/Rockland Tree Experts", and

WHEREAS, on December 15, 2006, the Village Clerk responded to Neil Marcus in writing advising him that "The documentation you are requesting does not exist", and

WHEREAS, on January 8, 2007, Neil Marcus presented a written appeal of such determination to the Village Clerk, and

WHEREAS, pursuant to Section 7 of said Regulations for Public Access to Records of the Village of Wesley Hills, the Board of Trustees is the body designated to hear appeals from denial of access to records, and

WHEREAS, the Village Clerk has forwarded the appeal of Neil Marcus to the Board of Trustees, and the Board of Trustees thereupon has considered such appeal and has heard testimony that no such documents ever have existed,

NOW, THEREFORE, BE IT RESOLVED, that the Board of Trustees hereby confirms that determination of the Village Clerk, and the Board of Trustees hereby denies the appeal of Neil Marcus, and

BE IT FURTHER RESOLVED, that the Village Clerk shall transmit copies of this resolution to Neil Marcus and to the New York State Committee on Public Access to Records forthwith.

The resolution was seconded by Trustee Gantshar and so carried with a vote of 4 ayes and 0 nays.

Mr. Brown explained that the next appeal was for missing records regarding pay vouchers for Mr. Brown and Mr. Osterman, the Village Planning Consultant. Mr. Marcus had claimed that several records were not in the present files. Mr. Marcus stated to the Board that he had gone over the files with the Village Clerk and had found all but five pay vouchers that he thought should have been billed BY Mr. Osterman and had requested a letter from the Village Clerk stating that the pay vouchers did not exist. Therefore, Mr. Marcus withdrew his appeal.

Mr. Brown explained that the next appeal was regarding a request for calendars of executive session meetings between Ira Wickes and his representatives including all executive sessions to settle ongoing litigation and the Stipulation of Settlement. The Village Clerk advised the Board that there were no such documentation. Mr. Marcus said that he found it impossible to believe that there was no calendar or record of the executive sessions with Mr. Wickes' representatives. Trustee Gantshar asked if it were a legal requirement to keep a calendar of these meetings. Mr. Brown stated that a notation had to be entered into the minutes of the Board that they had a motion to enter into executive session, the purpose of the executive session and a notation that no action had been taken in the executive session. Trustee Gantshar made the following resolution:

RESOLUTION 18-07

WHEREAS, pursuant to Section 2 of the Regulations for Public Access to Records of the Village of Wesley Hills, adopted by the Board of Trustees of the Village of Wesley Hills on March 8, 1983 by Resolution #22-83, the Village Clerk is the records access officer, and

WHEREAS, on January 8, 2007, Neil Marcus presented a written request to the Village Clerk, pursuant to the Freedom of Information Law, for "calendars of executive session meetings between Ira Wickes and his representatives" including "all executive sessions to settle ongoing litigation and the Stipulation of Settlement", and

WHEREAS, on January 12, 2007, the Village Clerk responded to Neil Marcus in writing advising him that "This document does not exist", and

WHEREAS, on January 25, 2007, Neil Marcus presented a written appeal of such determination to the Village Clerk, and

WHEREAS, pursuant to Section 7 of said Regulations for Public Access to Records of the Village of Wesley Hills, the Board of Trustees is the body designated to hear appeals from denial of access to records, and

WHEREAS, the Village Clerk has forwarded the appeal of Neil Marcus to the Board of Trustees, and the Board of Trustees thereupon has considered such appeal and has heard testimony that no such documents ever have existed,

NOW, THEREFORE, BE IT RESOLVED, that the Board of Trustees hereby confirms that determination of the Village Clerk, and the Board of Trustees hereby denies the appeal of Neil Marcus, and

BE IT FURTHER RESOLVED, that the Village Clerk shall transmit copies of this resolution to Neil Marcus and to the New York State Committee on Public Access to Records forthwith.

The resolution was seconded by Trustee Goldsmith and so carried with a vote of 4 ayes and 0 nays.

Mr. Brown explained that the next appeal was regarding a request for a calendar of meetings between Wesley Hills Village officials and Ira Wickes or his representatives. The Village Clerk explained that there is no such document. Trustee Goldsmith said that he can testify that he did meet with Ira Wickes but does not have the date in writing anywhere. Mr. Marcus said that he could not believe that there would be no record of all the meetings held with Mr. Wickes. Mayor Frankl said that he may not believe it but it was still a fact. Trustee Goldsmith made the following resolution:

RESOLUTION 19-07

WHEREAS, pursuant to Section 2 of the Regulations for Public Access to Records of the Village of Wesley Hills, adopted by the Board of Trustees of the Village of Wesley Hills on March 8, 1983 by Resolution #22-83, the Village Clerk is the records access officer, and

WHEREAS, on January 8, 2007, Neil Marcus presented a written request to the Village Clerk, pursuant to the Freedom of Information Law, for "calendars of meetings between Wesley Hills Village Officials and Ira Wickes or his representatives", , and

WHEREAS, on January 12, 2007, the Village Clerk responded to Neil Marcus in writing advising him that "This document does not exist", and

WHEREAS, on January 25, 2007, Neil Marcus presented a written appeal of such determination to the Village Clerk, and

WHEREAS, pursuant to Section 7 of said Regulations for Public Access to Records of the Village of Wesley Hills, the Board of Trustees is the body designated to hear appeals from denial of access to records, and

WHEREAS, the Village Clerk has forwarded the appeal of Neil Marcus to the Board of Trustees, and the Board of Trustees thereupon has considered such appeal and has heard testimony that no such documents ever have existed,

NOW, THEREFORE, BE IT RESOLVED, that the Board of Trustees hereby confirms that determination of the Village Clerk, and the Board of Trustees hereby denies the appeal of Neil Marcus, and

BE IT FURTHER RESOLVED, that the Village Clerk shall transmit copies of this resolution to Neil Marcus and to the New York State Committee on Public Access to Records forthwith.

The resolution was seconded by Deputy Mayor Mc Pherson and so carried with a vote of 4 ayes and 0 nays.

Mr. Brown advised the Board that the next appeal was for a request to the Village Clerk for a reasonably detailed current list, by subject matter, of all records in the possession of the Village. Mr. Brown explained that he had investigated and that this is a requirement to keep a list of current files. However, since this list does not exist, it is not recoverable by FOIL. The Village Board requested that the Village Clerk, in compliance with the Public Officers Law Section 87 to prepare and maintain such a list. Trustee Goldsmith made the following resolution:

RESOLUTION 20-07

WHEREAS, pursuant to Section 2 of the Regulations for Public Access to Records of the Village of Wesley Hills, adopted by the Board of Trustees of the Village of Wesley Hills on March 8, 1983 by Resolution #22-83, the Village Clerk is the records access officer, and

WHEREAS, on January 8, 2007, Neil Marcus presented a written request to the Village Clerk, pursuant to the Freedom of Information Law, for "a reasonable detailed current list, by subject matter, of all records in the possession of the Village", and

WHEREAS, on January 12, 2007, the Village Clerk responded to Neil Marcus in writing advising him that "This document does not exist", and

WHEREAS, on January 25, 2007, Neil Marcus presented a written appeal of such determination to the Village Clerk, and

WHEREAS, pursuant to Section 7 of said Regulations for Public Access to Records of the Village of Wesley Hills, the Board of Trustees is the body designated to hear appeals from denial of access to records, and

WHEREAS, the Village Clerk has forwarded the appeal of Neil Marcus to the Board of Trustees, and the Board of Trustees thereupon has considered such appeal and has heard testimony that no such documents presently existed,

NOW, THEREFORE, BE IT RESOLVED, that the Board of Trustees hereby confirms that determination of the Village Clerk, and the Board of Trustees hereby denies the appeal of Neil Marcus, and

BE IT FURTHER RESOLVED, that the Board of Trustees hereby directs the Village Clerk to prepare a list of records in conformance with Public Officers Law Section 87, subdivision 3 (c) within a reasonable time and thereafter to maintain such list, and

BE IT FURTHER RESOLVED, that the Village Clerk shall transmit copies of this resolution to Neil Marcus and to the New York State Committee on Public Access to Records forthwith.

The resolution was seconded by Trustee Gantshar and so carried with a vote of 4 ayes and 0 nays.

Trustee Gantshar asked Mr. Brown how much time he spent preparing these resolutions. Mr. Brown estimated about eight hours at a cost of \$1200. Trustee Gantshar said that while Mr. Marcus has every right to submit FOIL requests; however, this is an incredible waste of tax dollars. Trustee Gantshar said that it was an inappropriate action and seems absolutely ridiculous. Mr. Marcus said he

was seeking justice and would continue to do this. He said that the Board had already made up their minds before hearing the appeals. Trustee Gantshar and Trustee Goldsmith both said that was a false statement and that they had listened to everything that Mr. Marcus said. Deputy Mayor Mc Pherson said that Mr. Marcus and some of the neighbors of Wickes had come in to the Board with a list of requests. The Board has satisfied that list and now there is another list.

Mayor Frankl asked if there were any new business. There was none forthcoming.

Trustee Gantshar made a motion to adjourn, seconded by Trustee Goldsmith and so carried.

Respectfully submitted,

Julie Pagliaroli
Village Clerk