

VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK
BOARD OF TRUSTEES
PUBLIC HEARING #1
JANUARY 11, 2005

A Public Hearing was held by the Board of Trustees on Tuesday, January 11, 2005 at 8:05 p.m. in the Meeting Room, Municipal Building, 7 Maple Avenue.

PRESENT: Mayor Wm. Lee Kinnally, Jr., Trustee Bruce Jennings, Trustee Peter Swiderski, Deputy Village Attorney Marianne Stecich, and Deputy Village Manager Susan Maggiotto.

ABSENT: Trustee Holdstein, Trustee Apel, Village Manager Hess.

CITIZENS: Seven (7).

Mayor Kinnally: Trustee Holdstein is away on business. Trustee Apel is home ill. The Manager is home after oral surgery.

Mayor Kinnally declared the Board in session for the purpose of conducting a Public Hearing in accordance with the legal notice that appeared in the December 31, 2004 issue of *The Rivertowns Enterprise* to consider the advisability of adopting Proposed Local Law No. 1 of 2005 amending the Zoning Law to modify methods of providing notice of public hearings as follows:

Section 1. Section 295-143.C (Notice of hearing) of the Local Zoning and Planning Law of the Village of Hastings-on-Hudson, New York is hereby amended to read (new language underlined):

In addition, the applicant shall provide actual notice to certain property owners as follows:

- (1) The applicant shall either deliver by hand or send by certified mail (return receipt requested) or any other method of delivery providing proof of delivery a copy of the notice of the hearing to all persons who, according to the latest completed assessment roll of the village, own property within a radius of 300 feet of the property lines of the subject property; provided, however, that where, in the opinion of the Building Inspector, the appeal may affect property located more than 300 feet from the property lines of the subject property, the applicant shall thus notify all owners of property within that affected area, as determined by

the Building Inspector, but need not notify any person owning property more than 500 feet from the property lines of the subject property.

- (2) The notices shall be delivered by hand not less than 10 days, or mailed or otherwise delivered not less than 13 days, before the date of the hearing to the street address of each of the properties specified in Subsection C(1), whether or not the owner resides there, to any other address indicated by the assessment roll as the address of an absentee owner and to any other address known by the applicant to be the actual business or residence address of an absentee owner.
- (3) The public hearing shall not be held unless the applicant has filed with the Board either the return receipts from or other proof of the mailing of notice or, if the notice was delivered by hand, a written affidavit of service; provided, however, that the Board of Appeals may excuse the failure to notify each property owner pursuant to this Subsection C upon proof by the applicant of diligent efforts to comply with the requirements of this Subsection C and upon a showing that reasonable grounds exist for that failure to comply, including, without limitation, difficulties in determining lot lines or the names or addresses of the property owners.
- (4) No hearing or action by the Board of Appeals shall be held to be invalid or illegal because of the failure of any person or any village officer, agency or board, including the Board of Appeals, to comply with this Subsection C.

Section 2. This local law shall take effect immediately.

Mayor Kinnally: The purpose of this change is to give people in the Village one more way of providing notice to adjacent property owners of an application for a variance under the zoning law. Anyone wishing to speak in favor of, or in opposition to, the Proposed Local Law please come forward and give your name and address for the record,.

Jim Metzger, 247 Warburton Avenue: What is an example of another method of proof of delivery? If someone showed up and said we went door-to-door and nobody was home but we tried: would that be an acceptable proof that you tried to deliver the notice?

Mayor Kinnally: It is, and another way is FedEx.

Mr. Metzger: Would it require a written receipt saying that delivery was made?

Mayor Kinnally: It couldn't be a written receipt because nobody was there to receive it. But an affidavit, right?

Deputy Village Attorney Stecich: Right. Right now, under the Code, you can deliver in person, but you have to provide an affidavit saying that you delivered it. That is not changed. Now the only mail service is certified mail, return receipt requested, which is very expensive. The post office has cheaper methods, one of which is called proof of delivery, which is 35 cents instead of three dollars extra and there is proof of delivery. As the mayor said, you could do it by FedEx. That would be expensive, but that is another method.

Jeff Bogart, 5 Jordan Road: I speak in support of it, but I would like to recommend that the Board improve notice in other ways. For example, notice should be put on WHOH and sent out via e-mail to the entire Village on the Village's e-mail distribution list. I would like to suggest that your ads in *The Enterprise* or *Journal News* not be in the small-size type that we find them in and that they not be buried in the rear, that they be put on the page, at least in *The Enterprise*, that is devoted to Hastings. You can do that with an ad. You can request that it be placed on a certain page and that the type size be larger. Also, the ad should be written in a way that would be easier to read, where you would not have to read through a lot of legalese to get at the gist more readily of what is being requested. That might be true of other types of property situations where the public would best be notified, such as rezoning applications.

Trustee Jennings: One other method that would fit under here would be e-mail. With e-mail you can be notified when the recipient has received the message and it gives you a written record. I would assume that this would do, also.

Mayor Kinnally: Assuming we have their e-mail address. That is the problem.

Trustee Swiderski: But that is not a guaranteed delivery. Anyone can claim they never got the e-mail.

Trustee Jennings: We are not talking about the Village sending it out. Suppose I happen to have the e-mail addresses of all my neighbors in the surrounding notification area. If I did

not get a kick-back, then I could try sending it in the mail. But it would be one way that I could take care of most of my neighbors quite easily.

Mayor Kinnally: But you have to insure that your neighbors are the owner of the property.

Deputy Village Manager Maggiotto: What would be the proof of delivery?

Trustee Jennings: In the e-mail program you can request a notification when the message is opened by the person at the other end. You get an e-mail back from the system which you could then print out and could submit to the Village.

Deputy Village Manager Maggiotto: Does it necessarily have to be the person whose e-mail it is who opens it?

Trustee Jennings: No, just as it does not have to be the person whose house it is who opens the mail that it delivered.

Deputy Village Attorney Stecich: I cannot do that on my service. But assuming that there is such a service and you could prove it, I do not think there is any reason it would not fit into this. AOL will only let you know if the person is AOL. If you are sending it to somebody who is on Hotmail, it will not tell you. But I imagine in a couple of years it is going to be more universal, and then I think that would fit within this language.

Mr. Bogart: I would like to suggest that you require apartment owners who receive notice to, in turn, notify the tenants in their buildings, at least in some situations. I can think of one situation where there was a request for a variance and/or rezoning where the tenants were up in arms because they had not been notified, or they claimed they had not been notified.

Hearing no further comments, Mayor Kinnally asked for a motion to close the Public Hearing.

CLOSE OF PUBLIC HEARING

On MOTION of Trustee Jennings, SECONDED by Trustee Swiderski with a voice vote of all in favor, Mayor Kinnally closed the Public Hearing at 8:20 p.m.