

**MEETING HELD SEPTEMBER 4, 2012**

A meeting of the Board of Trustees of the Village of Port Chester, New York, was held on Tuesday, September 4, 2012 at 7:00 P.M., in the Court Room of the Police Headquarters Building, 350 North Main Street, Port Chester, New York, with Mayor Dennis Pilla presiding.

Present in addition to Mayor Pilla, were Trustees, Daniel Brakewood, Bart Didden, Luis Marino and Joseph Kenner.

It should be noted that Trustees Saverio Terenzi and John Branca were absent.

Also present were appointed Village Manager, Christopher Steers; Village Attorney, Anthony Cerreto; Village Clerk, Janusz R. Richards and Village Treasurer Leonie Douglas.

\* \* \* \* \*

On motion of Trustee Brakewood, seconded by Trustee Didden, the meeting was declared opened at 7:04 p.m.

AYES: Trustees Brakewood, Didden, Marino, Kenner, and Mayor Pilla

NOES:

ABSENT: Trustees Terenzi and Branca

\* \* \* \* \*

**AFFIDAVIT OF PUBLICATION AND NOTICE OF PUBLICATION RE:**

Public Hearing to consider the advisability of adopting an interim local law amending the Code of the Village of Port Chester establishing a Permit Amnesty Program.

The following Public Notices were duly published in the Journal News and the Westmore News on August 24, 2012, certified by Cecilia Hernandez, Principal Clerk of the Journal News and Angelina Brescia, Office Manager of the Westmore News.

**PUBLIC NOTICE**

PUBLIC NOTICE is hereby given that the Board of Trustees of the Village of Port Chester, New York, will hold a PUBLIC HEARING on Tuesday, September 4, 2012, at 7:00 P.M., at the Village Justice Courtroom, 350 North Main Street, Port Chester, New York, to consider the advisability of adopting an interim local law amending the Code of the Village of Port Chester, establishing a "Permit Amnesty Program."

Interested persons will be <sup>1</sup>afforded the opportunity to be heard at this time. The proposed local law is available at the Village Clerk's office or online at the Village website [www.portchesterny.com](http://www.portchesterny.com)

Christopher Russo  
Village Manager  
Dated: August 21, 2012

On motion of Trustee Kenner, seconded by Trustee Didden, the public hearing was declared open.

AYES: Trustees Brakewood, Didden, Marino, Kenner, and Mayor Pilla  
NOES:  
ABSENT: Trustees Terenzi and Branca

Mr. Richards noted for the record a memo to the Board regarding the Amnesty Law – Type II SEQRA Determination. Please insert “A”

Mr. Steers noted for the record a recommendation resolution from the Port Chester Planning Commission and a letter from Mr. Edward Burroughs, Commissioner of Westchester County Planning Board. Please see inserts “B” and “C”.

Mr. Cerreto asked the Board for an amendment in the proposed permit amnesty local law in Section “2”, Paragraph “B”, after the end of the first sentence should read as follows:

**unless otherwise extended by resolution of the Board of Trustees.**

Mayor Pilla commented that he does not think 90 days is enough time.

Trustee Brakewood asked the Board to wait until December to see if staff needs more time to extend the law.

On a motion of Trustee Kenner, seconded by Trustee Marino, the requested amendment was **withdrawn** for the proposed permit amnesty local law in Section “2”, Paragraph “B”, after the end of the first sentence.

AYES: Trustees Brakewood, Didden, Marino, Kenner, and Mayor Pilla  
NOES:  
ABSENT: Trustees Terenzi and Branca

Mayor Pilla asked if there was anyone who would like to speak in favor or against the permit amnesty program.

Comments were heard from Ms. Goldie Solomon, Ms. Bea Conetta and Mr. Tom Kissner. Mr. Aldo Vitagliano, P.C. commented regarding the amnesty process and also submitted his comments in writing to the Board for the record. Please see insert “D

On motion of Trustee Didden, seconded by Trustee Kenner, the public hearing was closed.

AYES: Trustees Brakewood, Didden, Marino, Kenner, and Mayor Pilla  
NOES:  
ABSENT: Trustees Terenzi and Branca

On motion of Trustee Kenner, <sup>2</sup>seconded by Trustee Marino, the following interim local law was adopted: ***Please see insert “LL#4” for adopted local law.***

ROLL CALL

AYES: Trustees Brakewood, Didden, Marino, Kenner, and Mayor Pilla  
NOES:  
ABSENT: Trustees Terenzi and Branca

Mayor Pilla thanked everyone for coming out to the public hearing.

## **PUBLIC COMMENTS**

Mayor Pilla asked if there was anyone from the audience who would like to make any comments. Ms. Goldie Solomon commented about the Board representing the citizens and tax payers of Port Chester. Ms. Bea Conetta commented regarding the Village Clerk position.

## **RESOLUTIONS**

### VILLAGE BOARD OF TRUSTEES PORT CHESTER, NEW YORK RESOLUTION

RESOLUTION OF THE BOARD OF TRUSTEES OF THE VILLAGE OF PORT CHESTER (THE "VILLAGE") (i) AUTHORIZING THE ESTABLISHMENT OF THE PORT CHESTER LOCAL DEVELOPMENT CORPORATION (THE "CORPORATION"); (ii) APPROVING A FORM OF CERTIFICATE OF INCORPORATION FOR THE CORPORATION; (iii) AUTHORIZING THE CORPORATION TO PERFORM ESSENTIAL GOVERNMENTAL FUNCTIONS INCLUDING ACTIVITIES ASSOCIATED WITH JOB CREATION AND THE PROMOTION OF COMMUNITY AND ECONOMIC DEVELOPMENT INITIATIVES; AND (iv) AUTHORIZING THE CORPORATION TO ISSUE CERTAIN BONDS ON BEHALF OF THE VILLAGE.

On motion of TRUSTEE DIDDEN, seconded by TRUSTEE MARINO, the following resolution was adopted by the Village of Port Chester, New York:

WHEREAS, it the policy of the State of New York to promote the economic welfare and prosperity of its inhabitants and to actively promote, attract, encourage and develop economically sound commerce and industry; and

WHEREAS, the Village of Port Chester (the "Village") is tasked with the responsibility and burden to promote the health, safety and general welfare of the residents of the Village by among other things preventing unemployment and economic deterioration including by increasing and maintaining employment opportunities and attracting and sustaining economically sound commerce; and

WHEREAS, it is essential for the Village to support the operations and activities of both for-profit and not-for-profit entities and corporations within the Village in furtherance of both job creation and retention opportunities within the Village; and

WHEREAS, in furtherance of the foregoing, the Village desires to establish a new local development corporation pursuant to Section 1411 of the Not-for-Profit Corporation Law ("N-PCL") to undertake certain projects and initiatives for the benefit and to relieve the burdens of the Village, including, but not limited to undertaking certain financings through the issuance of tax exempt and taxable bonds, notes and other instruments for the benefit of both for-profit and not-for-profit entities and corporations located within the Village; and

WHEREAS, a proposed certificate of incorporation (the "Certificate of Incorporation", a copy of which is attached hereto as Exhibit A) for the establishment of Port Chester Local Development Corporation (the "Corporation") pursuant to N-PCL Section 1411 (the "LDC Act") has been prepared for review by the Village Board of Trustees (the "Village Board"); and

WHEREAS, in furtherance of the foregoing public purposes and the LDC Act, the Village desires to establish the Corporation to undertake the purposes and powers as set forth within the LDC Act, including (1) to construct, acquire, rehabilitate and improve for use by others industrial or manufacturing plants in the territory in which its operations are principally to be conducted, (2) to assist financially in such construction, acquisition, rehabilitation and improvement, to maintain such plants for others in such territory, (3) to disseminate information and furnish advice, technical assistance and liaison with federal, state and local authorities with respect thereto, (4) to acquire by purchase, lease, gift, bequest, devise or otherwise real or personal property or interests therein, (5) to borrow money and to issue negotiable bonds, notes and other obligations therefor, and (6) to sell, lease, mortgage or otherwise dispose of or encumber any such plants or any of its real or personal property or any interest therein upon such terms as it may determine to be suitable; and

WHEREAS, to accomplish the purposes and powers as set forth within the LDC Act and Certificate of Incorporation, including relieving the burdens of the Village and the undertaking of projects for the benefit of both for-profit and not-for-profit entities and corporations in furtherance of their access to cost-effective capital for projects that enhance, create and preserve employment opportunities for residents of the Village, the Village desires to task the Corporation with such burdens and responsibilities and authorizes the Corporation, once established, to issue bonds on behalf of the Village for such purposes pursuant to and in accordance with applicable provisions of the Internal Revenue Code (the "Code").

NOW, THEREFORE, BE IT RESOLVED, by the Village Board that the Village hereby authorizes the establishment of the Corporation pursuant to the LDC Act through the filing of the Certificate of Incorporation in substantially the form attached hereto as Exhibit A, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as may be approved by the Village Attorney; and be it

FURTHER RESOLVED, that the Village shall serve as the sole member of the Corporation, and the Village hereby appoints the following individuals to serve as Directors of the Corporation, the terms of such Directors to be co-terminus with each individual's term as Member of the Village of Port Chester Industrial Development Agency:

Neil Pagano  
Hon. Dennis Pilla  
Hon. Joseph Kenner  
James Taylor  
John Heinsch  
Philip C. Semprevivo  
Richard Cuddy

And be it

FURTHER RESOLVED, that <sup>4</sup> the Corporation is hereby designated as an on behalf of issuer of the Village for the purposes of issuing bonds, notes and other instruments with authority to exercise on the Village's behalf all lawful powers as may be deemed necessary to accomplish its public purposes including to enhance, create and preserve employment opportunities for residents of the Village, such purposes and powers to include, but not be limited to, those powers contained within the LDC Act and the Certificate of Incorporation, with the power to issue tax exempt and taxable bonds, notes, or other instruments on behalf of the Village in furtherance of its purposes, provided however that any obligations issued by the Corporation shall never be a debt of the State of New York, the Village or any political subdivision thereof (other than Corporation) and neither the State of New York, the Village or any political subdivision thereof (other than Corporation) shall be liable thereon; and be it

FURTHER RESOLVED, that the Village Board hereby authorizes the Village to covenant and agree with the Corporation in any transaction undertaken by the Corporation in furtherance of the LDC Act, the Certificate of Incorporation, and any initiatives described herein, and for the benefit of the Corporation and the holders from time to time of any bonds, notes or other instruments or other securities (hereinafter collectively, the "Securities") issued by the Corporation that the Village will not limit or alter the rights of the Corporation to fulfill the terms of its agreements with the holders of the Securities or in any way impair the rights and remedies of such holders of the security for the Securities until the Securities, together with the interest due thereon or payable in respect thereof and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. Authorized representatives of the Village are hereby granted the power to make such a covenant to and agreement with the Corporation and to take any and all actions necessary or desirable to cause such covenant and agreement to be made or enforced. The Corporation is hereby authorized to assign to or for the benefit of the holders of its Securities any covenant or agreement made by the Village pursuant to the foregoing provisions.

Approved as to Form:

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Anthony Cerreto, Village Attorney

AYES: Trustees Brakewood, Didden, Kenner, Deputy Mayor Marino and Mayor Pilla

NOES:

ABSENT: Trustees Branca and Terenzi

DATE: September 4, 2012

**EXHIBIT A**

**FORM OF CERTIFICATE OF INCORPORATION**

**CERTIFICATE OF INCORPORATION**

**OF**

**PORT CHESTER LOCAL DEVELOPMENT CORPORATION**

A Not-For-Profit Local Development Corporation  
under Section 1411 of the Not-For-Profit  
Corporation Law of the State of New York

**THE UNDERSIGNED**, being \_\_\_\_\_ over the age of eighteen years, for the purpose of forming a not-for-profit \_\_\_\_\_ local development corporation pursuant to Section 1411 of the Not-For-Profit Corporation Law of the State of New York, hereby certifies as follows:

FIRST: The name of the corporation shall be "Port Chester Local Development Corporation" (hereinafter referred to as the "Corporation").

SECOND: The Corporation will be a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York and, as provided in Section 1411 of the Not-For-Profit Corporation Law, will be a Type C Corporation as defined in Section 201 of the Not-For-Profit Corporation Law. The Corporation shall serve as a supporting organization for, but operate separate and apart from the Village of Port Chester, New York (the “Village”).

THIRD: The purposes for which the Corporation is to be formed and operated are exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to relieve and reduce unemployment, promote and provide for additional and maximum employment, improve and maintain job opportunities, lessen the burdens of government, and act in the public interest. In furtherance of said purposes, the Corporation’s powers shall include:

(a) To construct, acquire, rehabilitate and improve for use by others, facilities in the territory in which its operations are principally to be conducted, to assist financially in such construction, acquisition, rehabilitation and improvement, to maintain and/or lease such facilities on its behalf or for others in such territory; to disseminate information and furnish advice, technical assistance and liaison with federal, state and local authorities with respect thereto;

(b) To acquire by purchase, lease, gift, bequest, devise or otherwise real or personal property or interests therein;

(c) To apply for loans and borrow money without limit as to amount; to make, draw, accept, endorse, execute and issue negotiable bonds, debentures, notes and other obligations therefor;

(d) To sell, lease, mortgage or otherwise dispose of or encumber any such facilities or any of its real or personal property or any interest therein upon such terms as it may determine;

(e) To enter into covenants and agreements and to comply with all the terms, conditions and provisions thereof, and otherwise to carry out its corporate purposes and to foster and encourage the location or expansion of facilities and related businesses in the territory in which the operations of the Corporation are principally to be conducted;

(f) To apply for and make grants and loans and to execute any and all documents necessary in connection therewith;

(g) To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors, officers or any private person.

(h) In general, to perform any and all acts and things, and exercise any and all powers which may now or hereafter be lawful for the Corporation to do or exercise under and pursuant to the laws of the State of New York for the purpose of accomplishing any of the foregoing purposes of the Corporation.

FOURTH: The Corporation's mission and public objective, which the Corporation's purposes will achieve, shall include the lessening of the burdens of government and fostering the creation, retention and expansion of jobs and economic opportunities for the benefit of the Village, New York State and local economies.

FIFTH: The operations of the Corporation will be principally conducted within the Village of Port Chester, New York and surrounding communities.

SIXTH: Pursuant to the requirements of Section 1411(e) of the Not-For-Profit Corporation Law:

(a) All income and earnings of the Corporation shall be used exclusively for its corporate purposes with the intent being that all income and earnings will be expended or deposited in appropriate reserves for corporate purposes; to the extent not so used, the income and earnings will accrue and be paid to the Job Development Authority to the extent required by Section 1411 of the Not-for-Profit Corporation Law.

(b) The property of the Corporation is irrevocably dedicated to its corporate purposes. No part of the income or earnings of the Corporation shall inure to the benefit or profit of, nor shall any distribution of its property or assets be made to, any member, director or officer of the Corporation, or private person, corporate or individual, or to any other private interest, except that the Corporation may repay loans made to it and may repay contributions (other than dues) made to it to the extent that any such contribution may not be allowable as a deduction in computing taxable income under the Internal Revenue Code of 1986, as amended.

(c) If the Corporation accepts a mortgage loan or loans from the New York Job Development Authority, the Corporation shall be dissolved in accordance with the provisions of paragraph (g) of Section 1411 of the Not-For-Profit Corporation Law upon the repayment or other discharge in full by the Corporation of all such loans.

SEVENTH: (a) The Corporation shall not attempt to influence legislation by propaganda or otherwise, or participate or intervene, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office.

(b) The Corporation shall not engage in any activities not permitted to be carried on by an organization exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

EIGHTH: In the event of the dissolution of the Corporation or the winding up of its affairs, the Board of Directors shall, after paying or making provision for the payment of all debts and liabilities of the Corporation of whatsoever kind or nature, distribute all of the remaining assets and property of the Corporation to the Village for furtherance of the purposes set forth in Section 1411 of the Not-for-Profit Corporation Law. Any of such assets not so disposed of shall be disposed of by order of the Supreme Court of the State of New York pursuant to Section 1008 of the Not-For-Profit Corporation Law.

NINTH: The office of the Corporation shall be located in Westchester County, New York.

TENTH: The offices of the Corporation shall be functionally separate from those of the Village or any of its affiliated entities (collectively, the "Village Entities") (although such office may be in a facility leased from the Village or any of its affiliates on arms-length terms). The Corporation at all times shall:

(a) maintain separate accounting records and other corporate records from those of the Village Entities;

(b) not divert the Corporation's funds to any other person or for other than the use of the Corporation and not commingle any of the Corporation's assets with those of the Village Entities;

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(c) pay any employee, consultant or agent of the Corporation, or any other operating expense incurred by the Corporation, from the assets of the Corporation and not from the assets of any of the Village Entities;

(d) maintain its own deposit account or accounts, separate from those of the Village Entities, with commercial banking institutions and/or trust companies;



(e) to the extent that the Corporation contracts or does business with vendors or service providers where the goods and services provided are partially for the benefit of any other person, the costs incurred in so doing shall be fairly allocated to or among the Corporation and such persons for whose benefit the goods and services are provided, and the Corporation and each such person shall bear its fair share of such costs;

(f) conduct its business in its own name and conduct all material transactions between the Corporation and the Village Entities only on an arm's-length basis;

(g) observe all necessary, appropriate and customary corporate formalities, including, but not limited to, holding all regular and special members' and directors' meetings appropriate to authorize all corporate action, keeping separate and accurate minutes of such meetings, passing all resolutions or consents necessary to authorize actions taken or to be taken, and maintaining accurate and separate books, records, and accounts, including, but not limited to, intercompany transaction accounts. Regular members' and directors' meetings shall be held at least annually;

(h) ensure that decisions with respect to its business and daily operations shall be independently made by the Corporation (although the officer making any particular decision also may be an employee, officer or director of the Village Entities);

(i) act solely in its own corporate name and through its own authorized officers and agents, and use its own stationery;

(j) other than as expressly provided herein, pay all expenses, indebtedness and other obligations incurred by it;

(k) not enter into any guaranty, or otherwise become liable, with respect to any obligation of the Village Entities;

(l) cause any financial reports required of the Corporation to be prepared in accordance with generally accepted accounting principles and be audited annually and be issued separately from, although they may be consolidated with, any reports prepared for any member of the Village Entities; and

(m) ensure that at all times it is adequately capitalized to engage in the transactions contemplated herein.

ELEVENTH: The types or classes of Membership in the Corporation and the number of Members of the Corporation shall be described in the Corporation's By-laws. The initial Member of the Corporation shall be the Village.

TWELFTH: The Corporation shall be managed by a Board of Directors consisting of not less than three (3) not more than seven (7) Directors. Any subsequent increase or decrease in the size of the Board of Directors will require the unanimous approval of the Members and the affirmative vote of a majority of the Directors.

THIRTEENTH: The names and addresses of the initial Directors of the Corporation will be as follows:

Name	Address
Neil Pagano	222 Grace Church Street, Port Chester, New York 10573
Hon. Dennis Pilla	222 Grace Church Street, Port Chester, New York 10573
Hon. Joseph Kenner	222 Grace Church Street, Port Chester, New York 10573
James Taylor	222 Grace Church Street, Port Chester, New York 10573
John Heinsch	222 Grace Church Street, Port Chester, New York 10573
Philip C. Semprevivo	222 Grace Church Street, Port Chester, New York 10573
Richard Cuddy	222 Grace Church Street, Port Chester, New York 10573

FOURTEENTH: The duration of the Corporation shall be perpetual.

FIFTEENTH: The Corporation shall indemnify each Member, each Director, each officer, and, to the extent authorized by the Board of Directors, each other person authorized to act for the Corporation or on its behalf, to the full extent to which indemnification is permitted under the Not-For-Profit Corporation Law.

SIXTEENTH: The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is as follows: Port Chester Local Development Corporation, 222 Grace Church Street, Port Chester, New York 10573.

SEVENTEENTH: The By-laws of the Corporation may be adopted, amended or repealed by a majority of <sup>10</sup> the Directors of the Corporation.

EIGHTEENTH: The Corporation will not do any of the following:

(a) Without the affirmative vote of all Members of the Corporation and the affirmative vote of a majority of the Directors, increase or decrease the number of Members of the Corporation or increase or decrease the number of Directors of the Corporation.

(b) Without the affirmative vote of a majority of the Directors of the Corporation and all of the Corporation's members, (i) dissolve or liquidate, in whole or in part, or institute proceedings to be adjudicated bankrupt or insolvent, (ii) consent to the institution of bankruptcy or insolvency proceedings against it, (iii) file a petition seeking or consenting to reorganization or relief under any applicable federal or state law relating to bankruptcy or insolvency, (iv) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Corporation or a substantial part of its property, (v) make a general assignment for the benefit of creditors, (vi) admit in writing its inability to pay its debts generally as they become due or (vii) take any corporate action in furtherance of the actions set forth in clauses (i) through (vi) of this paragraph.

(c) Without the affirmative vote of all of the Directors of the Corporation and all of the Corporation's members, merge or consolidate with any other corporation, company or entity or, except to the extent contemplated by paragraph THIRD hereof, sell all or substantially all of its assets or acquire all or substantially all of the assets or capital stock or other ownership interest of any other corporation, company or entity.

IN WITNESS WHEREOF, this certificate has been subscribed this \_\_\_\_th day of \_\_\_\_\_, 2012.

/s/ Justin S. Miller  
Justin S. Miller, Esq., Incorporator  
Harris Beach PLLC  
677 Broadway, Suite 1101  
Albany, New York 12207

CERTIFICATE OF INCORPORATION

OF

PORT CHESTER LOCAL DEVELOPMENT CORPORATION

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(Under Section 1411 of the Not-For-Profit Corporation Law of the State of New York)

Filed by:  
Justin S. Miller, Esq.  
Harris Beach PLLC  
677 Broadway, Suite 1101  
Albany, New York 12207

## **DISCUSSIONS**

### ***Sewer rent project update.***

Ms. Douglas spoke regarding the information received from the Public Service Commission.

### ***Valet parking pilot project.***

Mayor Pilla spoke regarding the proposed concepts from Mr. Russo and Mr. Cerreto. There was further discussion with the Board and Mayor Pilla asked staff to come back to the Board when they have more information.

### ***Recommendation for 2012 road resurfacing project.***

The Board asked staff for the resolution at the September 18<sup>th</sup> Board meeting with the list of streets.

## **CORRESPONDENCES**

The Clerk presented correspondence from the Park Commission recommending Mayor and Board of Trustees ban smoking in designated areas. The Board asked that the Port Chester Cares Community Coalition come to the next Board meeting to present their recommendation to the Board.

The Clerk presented correspondence from Jarden for use of Village roadways on Sunday, September 23, 2012 for the Westchester Triathlon. The Board referred the request to staff subject to restrictions.

## **REPORT**

The Clerk presented a report from Fire Patrol & Rescue Co. No. 1 on the election of new member Brian Nicholson. The Board congratulated Mr. Nicholson on his election and referred the report to staff.

## **PUBLIC COMMENTS AND BOARD COMMENTS**

### **Public Comments:**

Mayor Pilla asked if there was anyone from the audience who would like to make any comments. There were none.

### **Board Comments:**

Trustee Brakewood apologized for missing the August 20<sup>th</sup> meeting and congratulated Mr. Richards and Mr. Steers on their new positions. Trustee Brakewood also commented regarding the Capital Theater. Trustee Didden commented about the parking pilot program and the permit amnesty program. Trustee Didden also commented regarding the hiring process for the Village Clerk position. Trustee Kenner commented about the opening of the Capital Theater. Mayor Pilla thanked staff for their hard work.

Trustee Kenner made a motion to close the meeting at 8:53 p.m., Trustee Didden seconded the motion.

AYES: Trustees Brakewood, Didden, Marino, Kenner, and Mayor Pilla

NOES:

ABSENT: Trustees Terenzi and Branca

Respectfully submitted,

Jacqueline Johnson  
Deputy Village Clerk



## Village of Port Chester

### Department of Planning and Development

222 Grace Church Street, rm. 202 Port Chester, New York 10573

Ph. (914) 937-6780

To: Hon. Mayor Pilla and Board of Trustees

From: Christopher Gomez, Director of Planning and Development *CG*

Re: Amnesty Law - Type II SEQRA Determination

CC: C. Russo, C. Steers, T. Cerreto, L. Douglas, J. Richards

Date: September 4, 2012

Adoption of the proposed Amnesty Law by the Board of Trustees is classified as a Type II action under SEQRA section 617.5(c)(27), "adoption of regulations, policies and local legislative decisions...". Further, the actual effect of the law itself fits within SEQRA section 617.5(c)(19) "official acts of a ministerial nature involving no exercise of discretion, including building permits...where the issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building codes...".

By definition, SEQR applies to discretionary decisions, not for ministerial decisions where a building permit or certificate of occupancy is issued if a given set of circumstances are met as proposed in the Amnesty Law. No further environmental review is required.

INSERT "A"

**RECOMMENDATION RESOLUTION  
OF THE VILLAGE OF PORT CHESTER  
PLANNING COMMISSION**

**Interim Local Law Establishing a Permit Amnesty Program**

**August 27, 2012**

**WHEREAS**, As referred by the Village Board of Trustees on August 20, 2012, the Planning Commission considered a proposed local law to establish a Permit Amnesty Program; and

**WHEREAS**, under §345-34 (D) of the village code, every amendment or change to the zoning code shall be referred to the Planning Commission by the Village Board of Trustees; and

**WHEREAS**, the Permit Amnesty Program would provide the necessary legislative sanction to code enforcement efforts to encourage voluntary code compliance with respect to open building permits and certificates of occupancy; and

**WHEREAS**, applicants under the proposed Permit Amnesty Program would still be required to obtain any necessary approvals from the Planning Commission, Zoning Board of Appeals approval or any other board approval, except as specified in this local law; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission hereby recommends the adoption of the local law to establish a Permit Amnesty Program; and

**BE IT FINALLY RESOLVED** that this resolution shall have an effective date of August 27, 2012.

On the motion of Commissioner Gregory, seconded by Commissioner Baxter, it was adopted by the following vote:

**AYES:** Baxter, Cervinka, Coperine, Gregory, Pellon, Scarola

**NAYES:**

**ABSENT:** Antaki



Michael Scarola, Chairman

INSERT "B"



Robert P. Astorino  
County Executive

County Planning Board

August 27, 2012

Christopher Gomez, AICP, Director of Planning  
Village of Port Chester  
222 Grace Church Street  
Port Chester, NY 10573

Subject: Referral File No. PCH 12-004 – Amnesty Program Local Law

Dear Mr. Gomez:


The Westchester County Planning Board has received a proposed Local Law and related material for a proposed "Permit Amnesty Program" which would commence on October 1, 2012 and end on December 31, 2012. The program would offer amnesty to all properties within the Village for site improvements done without building permits, certificates of occupancy or with violations, if those property owners submit applications for the approvals that are required. The proposed local law also allows for deviance from certain requirements of the Village's 1975 zoning regulations under certain conditions.

We have reviewed this matter under the provisions of Section 239 L, M and N of the General Municipal Law and Section 277.61. The proposed local law appears to have a valid and specific intent and should not extend beyond a reasonable time frame. This action is a matter for local determination in accordance with your community's planning and zoning policies.

Thank you for calling this matter to our attention.

Respectfully,  
WESTCHESTER COUNTY PLANNING BOARD

By:

  
Edward Burroughs, AICP  
Commissioner

EEB/LH

432 Michaelian Office Building  
148 Martine Avenue  
White Plains, New York 10601

INSERT "C"

LAW OFFICES  
OF  
ALDO V. VITAGLIANO, P.C.  
ATTORNEY AT LAW

150 PURCHASE STREET - RYE, NEW YORK 10580-2136

(914) 921-0333

FAX: (914) 921-0796

E-mail: avvpc@verizon.net

ALDO V. VITAGLIANO\*

\*Also admitted in Fla. & Conn.

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ANGELO A. GUGLIELMO\*\*

\*\*Also admitted in Conn.

September 4<sup>th</sup>, 2012

Hon. Dennis Pilla, Mayor and  
Board of Trustees  
Village of Port Chester  
222 Grace Church Street  
Port Chester, NY 10573

Re: Amnesty Hearing

Mayor and Board of Trustees:

My comments tonight on the proposed Amnesty for building code infractions are made by myself as a concerned citizen, and not on behalf of any specific client. While I applaud the effort, I do believe that you need to do some more work on this to make sure what you pass is a fair program.

My first comment, relates to the fact that amnesty is not available to one that already is subject to building department enforcement. What this means to me, and perhaps I am wrong, is that any clients who were either interested in learning their property's compliance, or perhaps in selling, that maybe were advised to go to the Building Department, and ended up with a Violation Notice, are now ineligible for amnesty. Those who did what the Board suggested, (find out ahead of time) and learned they are not in compliance (95% of Port Chester homes are not in compliance) are not able to avail themselves of this program. It is simply unfair. This only compounds the current deleterious effect your program has had on the real estate market. Remember, your notices do not say - see us, possible issue, notice of potential violation condition, it says NOTICE OPEN VIOLATIONS in a big stamp. On the several times when we have pointed out mistakes within these reports, until there is total compliance, the NOTICE OPEN VIOLATIONS is not lifted. You must come up with a different threshold or standard for this, or else attentive property owners who did exactly what you told them to do, will not be able to avail themselves of this program. Perhaps the standard needs to be raised to whether the Violation condition rose to a Court filing, or dealt with overcrowding, though that may be hard to draft.

My second comment relates to the fact that properties that received a Certificate of Occupancy for work done according to later or recent codes, should not be asked to clean up your failure to properly monitor your records. Recall the property on Shelley Avenue I spoke to you once, where a later improvement for a kitchen extension which had received necessary variances, and had a building permit which was closed out with a certificate of occupancy were connected to an illegal house, simply because a permit from 1928 was not closed out. How ridiculous is that? This was not a case of - hey you owe us a fee to close out a permit - it involved a re-review of the plans, a trip to the zoning board of Appeals, electrical update, payment of fees, etc.. Is anyone going to reimburse us for the expenses we had? Will anyone reimburse Port Chester property owners for

INSERT "D"

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the diminution in property values the current program has had? That is a rhetorical question of course. A non rhetorical question is where were these records anyway? Were they always available? Why were they never consulted? Is this simply about collecting money, or a subterfuge to root out perceived negative occupancies?

My third comment relates to a more fundamental issue. I firmly believe that the doctrine of municipal estoppel ought to bar Port Chester from any efforts to enforce older permits. Most if not all early permits should be grandfathered, without the need for expensive upgrades except for minimal fire and safety issues. Port Chester has a substantial number of properties with third story occupancies. If you want to cause them to be upgraded with the new building code, say that, do that, do not dance around the issue behind the veil of ancient permit compliance.

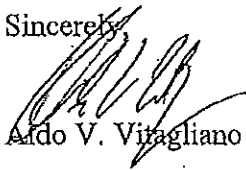
Personally, I believe that the doctrine of municipal estoppel needs to be applied. Municipal estoppel is a legal argument that prevents a municipality from acting, when they had plenty of time and opportunity to act, and when individuals relied on their failure to act to their current detriment. Factors that come into play include the length of time between granting and subsequent revocation or enforcement of the zoning ordinance, as well as the potential damage to the public if the municipality is estopped from enforcement seeking in essence revocation of earlier permits.

Referencing an as yet unpublished but timely pending Law Review Article on this subject at the Cardozo School of Law, the argument goes like this. A zoning estoppel claim based on reliance on an illegal permit or failure to close a permit, is asking the court to disable the municipality from enforcing the laws and regulations that it is tasked with enforcing. Therefore a zoning estoppel claim is not simply an inquiry as to whether there was good faith reliance on a governmental act, but also a balance of the government's duty to regulate land development for the public interest with the damage to the public if it is estopped from doing so. I would argue that there is no damage to the public interest in Port Chester if earlier permits are simply grandfathered.

Port Chester is on thin ice with the administration of its current draconian program, particularly when delaying access to determination of what I believe is an obviously available estoppel argument. I have one case where I am still waiting since June 28<sup>th</sup>, 2012, for a response from Port Chester to an unequivocal and expeditious request demanding a CO for permits taken out in 1930, disclosed for the first time in a report issued by the Building Department March 2, 2012. I want to present this argument for one client to the Zoning Board of Appeals, and am being estopped from doing so by the failure of Port Chester to either grant a CO, or deny it. Restricting access to the Zoning Board of Appeals, just like restricting access to a fair amnesty program on these or many other reasons is unconscionable. If the goal is to ensure Port Chester has safe housing and buildings, that goal can best be met by encouraging upgrades and compliance with a fair and open system.

Again I commend your efforts to address this important relief valve to current "over the top" enforcement. However, to be fair to the residents of Port Chester, new and old, you must err on the side of a generous benevolent amnesty program that shares responsibility for the current state of affairs. Thank you.

Sincerely,

  
Aldo V. Vitagliano

AN INTERIM LOCAL LAW AMENDING THE CODE  
OF THE VILLAGE OF PORT CHESTER ESTABLISHING  
A PERMIT AMNESTY PROGRAM

SECTION 1: Purpose and Intent.

The Board of Trustees has made code enforcement its first policy priority and has taken the initiative by supporting the development and implementation of a comprehensive, non-discriminatory code enforcement program.

The Board has knowledge that work has been done without a building permit, or work that was done with a permit was not properly closed out with the requisite inspection and certificate of occupancy. Such requirements are not new, and have been in effect since the adoption of the initial Village's Zoning Regulation in 1927.

The Board finds that the current situation with regard to such permits and certificates is not only long-standing, but pervasive throughout the entire village and poses a real and present danger to the safety of all residents. The Board has been advised that such situations often include zoning issues involving area and dimensional requirements. The Board finds that existing legal administrative structures in the Zoning Board of Appeals do provide relief, but that there is a need to address deviances that are deemed de minimus, or so minor as to have no appreciable impact on the neighborhood or surrounding properties.

There is currently an active and effective code enforcement program that may otherwise subject property owners to substantial fines who have failed to obtain permits, failed to close out permits, and/or have failed to obtain the required certificate of occupancy. The Building and Code Enforcement Departments have proactively engaged property owners to resolve permit and certificate of occupancy issues on a case-by-case basis. However, the Board finds and declares that an amnesty program herein would provide the necessary legislative sanction to such efforts and ultimately significantly encourage voluntary code compliance.

SECTION 2: Permit Amnesty Program.

- A. There is hereby established a Permit Amnesty Program that shall apply to all properties within the Village of Port Chester. Such program shall include all permitted work without certificates of occupancy, unpermitted past work, and unpermitted work in progress at the time of the adoption of this local law.
- B. The application period for the Permit Amnesty Program shall commence on October 1<sup>st</sup>, 2012 and end on December 31<sup>st</sup>, 2012. This shall be known as the Amnesty Period. To be deemed complete all applications shall be accompanied by an application for a "Certificate of Occupancy, Open Permits, Stop Order, Open Violations Verification Request", and an application for a "Zoning Verification Request"; which will thereby provide the initial basis for related permitting, building inspections, fire inspections, and/or applications to any Boards or Commissions.

- C. The Village of Port Chester Building Department shall accept complete applications on the forms designed for such purpose under the Amnesty Program during the Amnesty Period. No applications shall be accepted for amnesty after the end of the Amnesty Period. Applicants with accepted complete applications shall be vested in the Amnesty Program and deemed eligible for same.
- D. Within 18 months after the completion of any such searches and the date of an Amnesty Consultation with the Building Department the applicant shall complete all requirements as may be necessary for and to obtain any required certificate of occupancy. The Building Inspector, upon showing of just cause, may extend this deadline by not more than six (6) additional months. This shall be known as the compliance period.
- E. Failure of the applicant to cooperate and comply with the lawful directives of the Building Inspector in conjunction with the Permit Amnesty Program shall be cause for loss of their eligibility there under.
- F. The Village Manager or his designee may adopt rules of procedure, consistent with this regulation, for the purpose of assuring efficient and uniform administration of its provisions.

### SECTION 3: Permits

For those applications under the Amnesty Program involving open expired permits, the Building Inspector is authorized to renew said permit(s) under the umbrella of a single new permit that will encompass any number of open expired permits. All work related to those open expired permit(s) may be closed out under a single new permit as may be practical in the judgment of the Building Inspector. Such expedited process would avoid the need for an applicant to obtain a new permit and pay the requisite fees for each expired permit.

### SECTION 4: Zoning

For those applications under the Permit Amnesty Program regarding open expired permits issued prior to the effective date of the 1975 Zoning Regulation that may involve the need for some dimensional variance from the requirements under the applicable zoning regulation, the Building Inspector is authorized to accept deviance from certain of the requirements as "de minimis". To qualify as eligible for this determination, the following standards must be strictly satisfied:

1. The building or structure must be pre-existing and have been issued a building permit prior to the effective date of the 1975 Zoning Regulation.
2. The subject building or structure must otherwise comply with the applicable building code at the time of construction or alteration.
3. The area or dimensional requirement involves front, rear, and/or side yard setback(s).
4. The set-back encroachment is ten (10) inches or less.

5. The building or structure complies with all other aspects of the Village of Port Chester planning and zoning regulations.

Such deviances may be deemed "de minimis" as prescribed above and shall not require waiver or variance from the Zoning Board of Appeals.

#### SECTION 5: Fees.

Notwithstanding the fees established in Chapter 175 Fees of the Village Code, the following shall apply during the Amnesty Period:

- A. All administrative fees for construction activities without a building permit (i.e. fee of ~~\$~~\$250.00 or three (3) times the permit fee) are hereby waived.
- B. For work completed prior to the effective date of the 1975 Zoning Regulation:
  1. Building permit fees shall be reduced by fifty percent (50%). Zoning application fees shall be waived.
  2. Planning application fees may be waived or reduced by fifty percent (50%) depending upon the nature of the application at the discretion of the Village Manager or his designee.

This shall apply to all building, planning, and zoning applications submitted in conjunction with and under the auspices of the Permit Amnesty program within the Amnesty Period intended to correct the targeted violations.

#### SECTION 6: Inspections.

All premises participating in the Permit Amnesty Program shall be subject to a complete walkthrough inspection by the Building Department prior to the issuance of a certificate of occupancy.

#### SECTION 7: Exemptions.

The Amnesty Program is based on voluntary participation. Any and all applicants and/or their subject properties that have either been cited for such violations and are currently under enforcement action and any and all applicants and/or their subject properties that are cited and otherwise put under code enforcement action are not eligible for the Permit Amnesty Program.

#### SECTION 8: Other land use approvals.

Applicants under the Amnesty Program are still required to obtain any necessary approvals from the Planning Commission, Zoning Board of Appeals approval or any other board approval, except as specified in this local law. All supporting documentation and all fees associated with such land use approvals other than those waived or reduced herein, must be submitted. Although

the Board of Trustees strongly encourages that such applications be reviewed and determined in an expeditious manner, the application processes and typical procedures for all such applications shall otherwise be followed.

SECTION 9: Penalties and Notices

- A. Those applicants who properly submit complete applications within the Amnesty Period shall not be subject to enforcement action through the court system unless the apparent violations are deemed to be an immediate threat to the health safety and welfare to the Village and/or the occupants of the subject premises, or if there are additional violations not specifically addressed by the permit application. Such determination shall be made by the Building Inspector and Code Enforcement Director.
- B. Applicants that fail to obtain the required Certificate of Occupancy at the expiration of the Compliance Period shall be subject to enforcement action as may be necessary.

SECTION 10: Supereession, sunset

- A. So as to fully accomplish the intentions of the Board of Trustees, this local law supercedes any inconsistent or otherwise applicable provision of the Village Code, in particular, chapters 151, 175 and 345.
- B. This local law is in the nature of interim legislation and shall terminate by its terms.

SECTION 11: Validity and severability.

Should any section of, or provision, of this local law be decided by a court of competent jurisdiction to be held unconstitutional or otherwise invalid, such decision shall not affect the validity of the local law not in whole or in part so decided to be unconstitutional or otherwise invalid.

SECTION 12: Effective date.

This local law shall be effective upon due publication and filing with the Secretary of State.