

TOWN OF CLARKSTOWN
SPECIAL TOWN BOARD MEETING

Town Hall

8/14/00

8:00 P.M.

Present: Supervisor Holbrook
Council Members Lasker, Mandia & Smith
Co. Maloney, absent
John Costa, Town Attorney
Patricia Sheridan, Town Clerk

Supervisor declared Special Town Board Meeting open. Assemblage saluted the Flag.

Supervisor explained that this was a joint meeting of the Clarkstown School District, their board and the Clarkstown Town Board to consider the matter of the settlement of the lawsuits that were brought against the Town of Clarkstown relative to the assessment of the Palisades Center. Asked the counsel who represented the school district and the Town in this action to briefly go over the terms of the settlement.

Appearance: Robert Kandell, esq.
Kaye, Scholer, Fiermen, Hays & Handler

Has been defending the Town against the assertion by the taxpayer, the Palisades Mall, that the assessed value of the mall in 1998, 1999 and in the year 2000 were unfair and excessive. Have been in contact the with Town Board and school district taking their advice and counsel in the examination and preparation of our case and we have been able to bring this case to a successful conclusion. He outlined the major terms of the settlement:

The taxpayer has agreed over a 5 year period to pay approximately 92% of the assessed values that have been established. For the year 2000, 2001 and 2002 they will pay taxes on the basis of 100% of the assessed value. In 1999 they will be paying on an assessment at 90%. In 1998 they will be paying on an assessment valued at 70% of the original value set by the assessor. The 1998 value recognizes that in that first year the mall was only partially occupied and in the process of being completed. In addition to that, the taxpayers have agreed not to challenge the assessed value for the next 2 years. This will provide the Town and the school district with stability and the basis for planning their budget over the next 2 year period. This assumes that there is no increase in the assessed value above a stated number of \$458 million market value. If the assessor believes that the market value is greater than that, he may state that value in his assessment roll, however, the taxpayer may only challenge the degree of increase that exceeds 458, he may not challenge anything below 458. In addition, as part of this we recognize that both the Town and school board experienced unnecessary and substantial expenses in defending this action. In particular, there were significant legal and consulting fees that were generated and there was a loss of income to the school board and the Town as they had to go out and borrow money because in 1998 the taxpayer chose not to pay any of his taxes. As a result, this settlement requires the taxpayer to pay a total of \$1 million to be used by the respective bodies to cover the expenses that I just referred to. In addition, because we have requirements that are being agreed to by the taxpayer, we have required that those requirements be backed up. Backed up in particular by a bond, the taxpayer will continue to pay taxes on time when due and in full, and various other terms and conditions. He is posting a bond valued at \$5 million. If the agreement is violated, the Town and school district could call on this bond to pay this money. We are also getting a bond for \$900, 000 which will assure payment in full of the \$1 million that I referred to before. We are also getting an indemnification from the taxpayer and personal guarantees from the partners that all payments will be made. In addition, we negotiated a provision whereby the taxpayer is giving up his claim to any benefits under section 485D of the real property tax law. This is an incentive program which is established however, the Town in its negotiations with the taxpayer in connection with the development of this center, asserted that it would not be available to

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the taxpayer, it was agreed to by the taxpayer and we have that confirmed in this agreement tonight. Finally, the settlement documents will terminate and discontinue all of the Article 7 petitions that have been filed by the taxpayer. In addition it will terminate the original action the taxpayer brought against the Town assessor challenging the way in which the assessor did the assessment. And finally to confirm everything, we have required the taxpayer to provide us with an opinion of its counsel that the entire agreement package is lawful, legally binding and enforceable against the taxpayer. All of those documents have been delivered to us and we are prepared with your approval of the agreement to obtain the necessary signatures and to file the appropriate papers with the Supreme Court in White Plains.

Supervisor opened the public portion of the meeting.

Appearance: Frank Hackett
Valley Cottage

Is there a method for determining how future valuations will be arrived at? The mall has a right to come back and expand the mall to a larger size. If they do that within this 5 year time frame, is there a method of calculating larger assessment.

Mr. Kandell responded that there is no formula but the agreement states that the assessor has absolute discretion to set the value of the Palisades Mall as he sees fit in the year 2001, 2002 and beyond. If they expanded the center, the assessor would be looking at new physical construction and he would be making the appropriate judgment of its value.

Mr. Hackett asked if the newspaper article stating that the school would be refunding money to the mall for overpayment of 1999 taxes was accurate? Is that instead going to be applied to the 1998 taxes underpayment?

The taxpayer is in compliance for 1998. With respect to 1999, he is entitled to a refund, and will make application for a refund. He has paid 20% of the 1998 tax bill and has 24 months to pay that balance. Although tardy in that payment, they are paying penalties and interest.

Supervisor explained that the county made the Town and the school district whole so the taxpayer owes the County the money and the penalties and interest.

Mr. Hackett asked if a \$5 million bond was enough.

Appearance: Martin Bernstein
New City

Asked about the assessment value and value of the property.

RESOLUTION NO.(659-2000)

Co. Mandia offered and Co. Smith seconded

WHEREAS, the Town Board authorized the defense of the lawsuits against the Town of Clarkstown entitled, "EKLECCO (formerly known as Pyramid Company of Rockland) v. NICHOLAS LONGO, as Assessor for the Town of Clarkstown, New York, et al" - Index No. 5651/98, and "PYRAMID COMPANY OF ROCKLAND and EKLECCO v. THE BOARD OF ASSESSORS AND/OR THE ASSESSOR OF THE TOWN OF CLARKSTOWN AND THE BOARD OF ASSESSMENT REVIEW" - Index No. 4348/98, and

WHEREAS, a settlement has been proposed which appears to be satisfactory to all parties;

RESOLUTION NO. (659-2000) continued

NOW, THEREFORE, be it

RESOLVED, that the Town Board hereby authorizes Kaye, Scholder, Fierman, Hays & Handler, LLP, special counsel to the Town of Clarkstown, to enter into a settlement of the lawsuits entitled, "EKLECCO (formerly known as Pyramid Company of Rockland) v. NICHOLAS LONGO, as Assessor for the Town of Clarkstown, New York, et al" - Index No. 5651/98, and "PYRAMID COMPANY OF ROCKLAND and EKLECCO v. THE BOARD OF ASSESSORS AND/OR THE ASSESSOR OF THE TOWN OF CLARKSTOWN AND THE BOARD OF ASSESSMENT REVIEW" - Index No. 4348/98, in accordance with the proposed settlement dated August 14, 2000, as revised, and be it

FURTHER RESOLVED, that said settlement agreement be approved as to form by the Town Attorney.

On roll call the vote was as follows:

Councilwoman Lasker No
Councilman Maloney Absent
Councilman Mandia Yes
Councilwoman Smith Yes
Supervisor Holbrook Yes

Co. Lasker made the following statement:

Given the past and present actions of the Pyramid Co., both here and in other parts of the state, I have decided to vote no on the tax settlement. I would have preferred that the Palisades Center was not given any concession and I have difficulty believing that they will live up to their part of the agreement in the years to come.

It seems to me that too many people have bent over backwards to accommodate Pyramid's needs. According to Mr. Alpert's appraisal, they are well over the 1.85 million gla that they had agreed to by signing a covenant with the Town. In fact, according to his calculations, they are over 2.2 million square feet in leaseable area and over 3 million when you consider unfinished areas that seem to be planned for future use. Also, the redefinition of gla by the Planning Board is questionable, since it has never, to my knowledge, been done anywhere else in the country. Taxpayers have also lost out on sales tax that could have been generated by the mall. The sales tax cut, has so far resulted in a one million dollar loss of revenue to the county, for the first quarter since it was enacted.

Pyramid has been sued by their own partners for non-payment of funds and they are currently working on a deal with the city of Syracuse, in which the government itself may subsidize, thru taxpayers funds, the expansion of the mall there to 3 times its original size. For a long period of time, they owed over \$30,000 in building permit fees to Clarkstown ad only just recently paid \$19,000. They still owe over \$12,000 of fees to the Town.

It seems to me that when Pyramid asked for the expansion of the mall, we all kept hearing about what a bonanza this was going to be for our Town; that it was going to bring in millions in both property and sales tax.. Meanwhile, we have had a loss of revenue from failed businesses, including the latest tax challenge filed by the Nanuet Mall, and a projected loss of \$4 million to the County due to the sales tax cut.

I believe, that Mr. Alpert's appraisal of the mall was accurate, if not somewhat on the conservative side, and I would have preferred that we, the school board and the Town Board had stood together firmly behind his evaluation and not conceded one dime, even if that had meant going to court.

In my opinion and past experience with the Pyramid Co. I cannot help but be suspect that they will hold up to their part of the settlement agreement, since I have seen too many instances where they have not honored their promises. Therefore, I am voting

no on this resolution, as I believe that Pyramid should be held to the same standards as every taxpayer in Clarkstown.

Supervisor Holbrook made the following statement:

There are three factors that brought a successful conclusion to this lawsuit, one, was a good appraisal; two, was good legal counsel and third, the cooperation between the school district and the Town. This is a huge amount of money and when we can walk away with 92% of value, we have to do what is right for the constituency that we represent. We would have liked 100% but the reality is that that was not going to be likely despite an assiduous court defense. I think that supporting the settlement is a vote for stability so that both the school district and the Town know what the future will bring to the best extent that it can.

RESOLUTION NO. (660-2000)

Co. Mandia offered and Co. Lasker seconded

RESOLVED, that Cheryl Poletto, 298 South Middletown Road, Nanuet, New York, is hereby appointed to the position of (temporary) Receptionist – Supervisor’s Office – at the current hourly rate of \$12.00 – effective August 28, 2000 – for a period not to exceed 30 days.

On roll call the vote was as follows:

Councilwoman Lasker Yes
Councilman Maloney Absent
Councilman Mandia Yes
Councilwoman Smith Yes
Supervisor Holbrook Yes

RESOLUTION NO. (661-2000)

Co. Mandia offered and Co. Lasker seconded

RESOLVED, that based upon the recommendation of the Traffic and Traffic Fire Safety Advisory Board, the superintendent of Highways is hereby authorized to install:

Curve signs with 20 MPH advisory panels beneath be installed on Roberts Road, New City. The first on the eastside of Roberts Road on the property line of Map 43, Block E, Lots 8.46 and 8.47.

The second on the eastside of Roberts Road on property line of Map 43, Block E, Lots 8.21 and 8.22.

and be it

FURTHER RESOLVED, that the Town Clerk be directed to forward copies of this resolution to the superintendent of Highways, Wayne Ballard, for implementation.

On roll call the vote was as follows:

Councilwoman Lasker Yes
Councilman Maloney Absent
Councilman Mandia Yes
Councilwoman Smith Yes
Supervisor Holbrook Yes

RESOLUTION NO. (662-2000)

Co. Mandia offered and Co.Lasker seconded

RESOLVED to decrease Appropriation Account A-7180-409 (Fees/Serv.) by \$3,600.00 and to increase A-7180-219 (Misc. Equip) by \$3,600.00.

On roll call the vote was as follows:

Councilwoman LaskerYes
Councilman MaloneyAbsent
Councilman Mandia Yes
Councilwoman Smith Yes
Supervisor HolbrookYes

RESOLUTION NO. (663-2000)

Co. Lasker offered and Co. Mandia seconded

RESOLVED, that the Supervisor is hereby authorized and directed to enter into an agreement with the library organization listed below, in a form approved by the Town Attorney, which provides a service for residents of the Town of Clarkstown which is deemed beneficial to Town residents, and be it

FURTHER RESOLVED, that said library shall receive library assistance, pursuant to §256 of the Education Law of New York State, in the amount of \$3,000 for the calendar year 2000.

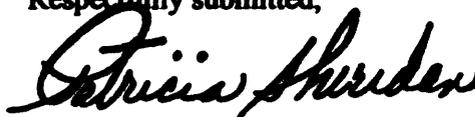
Nanuet Public Library

On roll call the vote was as follows:

Councilwoman LaskerYes
Councilman Maloney Absent
Councilman Mandia Yes
Councilwoman Smith Yes
Supervisor HolbrookYes

There being no further business to come before the Town Board and no one further wishing to be heard, on motion of Co. Mandia seconded by Co. Lasker and unanimously adopted, the Special Town Board Meeting was declared closed, time: 8:35 P.M.

Respectfully submitted,



PATRICIA SHERIDAN
Town Clerk

TOWN OF CLARKSTOWN
SPECIAL TOWN BOARD MEETING

Town Hall

8/14/00

9:10 P.M.

Present: Supervisor Holbrook
Council Members Lasker, Maloney, Mandia & Smith
John Costa, Town Attorney
Patricia Sheridan, Town Clerk

RESOLUTION NO.(664-2000)

Co. Maloney offered and Co. Lasker seconded

WHEREAS, the Superintendent of Highways has advised that the public improvements in the Camelot Subdivision, Section III, have not been constructed in accordance with Town specifications, and

WHEREAS, many homes constructed in said subdivision are now occupied which have frontage on Lady Godiva Way, and are not eligible for Town services because said road is unacceptable for dedication to the Town, and

WHEREAS, the Town Board believes that the developer has defaulted in its obligation to complete the public improvements in the right of way known as Lady Godiva Way, as required by the applicable State, Town and Planning Board laws, rules and regulations;

NOW, THEREFORE, be it

RESOLVED, that the Town Board hereby directs the Town Attorney to take all steps necessary to substitute the performance of the surety for the principal in the Camelot Subdivision.

On roll call the vote was as follows:

- Councilwoman Lasker Yes
- Councilman Maloney Yes
- Councilman Mandia Yes
- Councilwoman Smith Yes
- Supervisor Holbrook Yes

There being no further business to come before the Town Board and no one further wishing to be heard, on motion of Co. Mandia seconded by Co. Maloney and unanimously adopted, the Special Town Board Meeting was declared closed, time: 9:11 P.M.

Respectfully submitted,



PATRICIA SHERIDAN
Town Clerk