

At a meeting of the Town Board of the Town of Newburgh, held at the Town Hall, 1496 Route 300, in the Town of Newburgh, Orange County, New York on the 15th day of July, 2009 at 7:00 P.M., Prevailing Time.

PRESENT:

Wayne C. Booth, Supervisor

George Woolsey, Councilman

Derek N. Benedict, Councilman

Elizabeth J. Greene, Councilwoman

RESOLUTION PROVIDING FOR  
TEMPORARY DEFERMENT OF  
PAYMENT OF RECREATION FEES  
IN LIEU OF PARKLAND AND THE  
DELIVERY OF PERFORMANCE  
SECURITY FOR LANDSCAPING

Councilman Benedict presented the following resolution which was seconded by Councilwoman Greene.

**WHEREAS**, the Town Board recognizes that the state of the economy, credit and real estate markets have in certain instances made it extraordinarily difficult for applicants for subdivision and site plan approval to meet certain of the Town of Newburgh's requirements prior to the signing of subdivision plats and site plans by the Planning Board Chairman; and

**WHEREAS**, the Town Board wishes to temporarily afford an accommodation to applicants during this extraordinary period.

**WHEREAS**, following review and discussion the Town Board has determined that it may temporarily provide for the postponement of the payment of recreation fees in lieu of parkland dedication and the delivery of performance security for landscaping without compromising the best interests of the Town of Newburgh.

**NOW, THEREFORE, BE IT RESOLVED**, that the Town Board of the Town of Newburgh in its capacity as governing body of the Town, does hereby determine that for a period of two (2) years commencing on July 16, 2009, provided the conditions listed in this resolution are met by an applicant, the following schedule shall apply in connection with site plan and subdivision applications:

1. The payment of Recreation Fees in Lieu of Parkland shall be deferred from before the signing of the final site plan or subdivision plat by the Chairman of the Planning Board to a point in time prior to the issuance of the first building permit for a building or structure in the site plan, subdivision or phase thereof. Accordingly, no building permit shall be issued for any building or structure on the site or any lot on the subdivision, as the case may be, until the Recreation Fee in Lieu of Parkland has been paid in full to the Town. The amount of the Recreation Fee in Lieu of Parkland must be specified for the entire site plan or subdivision and each phase thereof in the Planning Board's resolution of approval.

2. The delivery of Performance Security for Landscaping shall be deferred from before the signing of the final site plan or subdivision plat by the Chairman of the Planning Board to a point in time prior to the issuance of the first building permit for a building or structure in the site plan, subdivision or phase thereof. The amount of the landscaping performance security for the site plan or subdivision and each phase thereof must be approved prior to the signing of the plat and the Town may adjust said amount, if during the period between its approval and the proposed delivery of the performance security, the Town's consulting Landscape Architect recommends an adjustment due to changes in the market pricing of the required landscape materials. The performance security must otherwise conform to the Town's requirements. The initial deposit in escrow of funds required for the professional fees incurred for the inspections of landscaping installations by Town consultants, calculated in accordance with the Schedule adopted pursuant to Section 104-2G, must still be deposited prior to signing of the final site plan or subdivision plat by the Chairman of the Planning Board; and

**BE IT FURTHER RESOLVED**, that the following conditions shall apply to the above deferrals:

1. The deferrals shall apply only to final site plans and subdivision plats which are presented to the Planning Board Chairman prior to **July 16, 2011** and for which all other conditions of approval which must be met prior to Planning Board's Chairman's signing of the plat or plan have been fully satisfied.
2. The deferrals must be noted on the signed site plans filed in Town of Newburgh offices and subdivision plat(s) filed in the Orange County Clerk's Office in bold typeface which is as large as any other note on the Plat. The notes shall state substantially the following:

“Pursuant to Town of Newburgh Town Board Resolution dated July 15, 2009 the payment of Recreation Fees in Lieu of Parkland in the amount of (fill in proper amount) has been deferred until the issuance of the first building permit for the subject property. No building permit for the site or any lot in the subdivision shall be issued until the Recreation Fees in Lieu of Parkland have been paid in the full amount stated above to the Town of Newburgh” ; and

“Pursuant to Town of Newburgh Town Board Resolution dated July 15, 2009 the delivery of Performance Security for landscaping improvements in the approved amount of (fill in proper amount) has been deferred until the issuance of the first building permit for the subject property. No building permit shall be issued until performance security for landscaping satisfying all Town of Newburgh requirements is delivered to the Town of Newburgh. The Town of Newburgh has the right to require the adjustment of the amount set forth above” ; and

“In the event of any failure to comply with the above and a building permit is issued without payment of Recreation Fees in Lieu of Parkland or the performance security for landscaping being delivered and maintained in acceptable form, the Town of Newburgh, in addition to all other remedies, shall be entitled to (a) issue a stop work order for any and all work commenced on the subject property and (b) withhold or revoke any and all building permits issued for the subject property.”

3. The amounts of the Recreation Fee in Lieu of Parkland and the landscaping performance security must be specified for the entire site plan or subdivision and each phase thereof in the Planning Board’s resolution of approval.

4. Each applicant obtaining a deferral pursuant to this Resolution shall be required to execute and deliver a certificate and acknowledgement to the Planning Board which provides:

“The applicant represents, warrants, covenants and agrees that it shall notify all successors, assigns, purchasers and transferees of applicant’s interest in the subject property, or rights to develop the subject property, or membership interests in the applicant, of the deferral of the payment of the Recreation Fee in Lieu of Parkland and the delivery of the performance security for landscaping improvements and the conditions thereof and that it shall cause those conditions to be binding upon all such successors, assigns, purchasers and transferees.

The applicant agrees for itself and all successors, assigns, purchasers and transferees, that in the event of any failure to comply with any of terms and conditions of the deferral of payment of the Recreation Fee in Lieu of Parkland and the delivery of the performance security for landscaping improvements pursuant to the Town Board of the Town of Newburgh resolution dated July 15, 2009 by the applicant, its successors, assigns, purchasers or transferees, the Town of Newburgh, in addition to all other remedies, shall be entitled to (a) issue a stop work order for any and all work commenced on the Subject Property and (b) withhold or revoke any and all building permits issued for the Subject Property.”

and;

**BE IT FURTHER RESOLVED**, that copies of this resolution be delivered to the Planning Board and the Code Compliance Department; and:

**BE IT FURTHER RESOLVED**, that the aforesaid resolutions shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

George Woolsey, Councilman voting AYE

Derek N. Benedict, Councilman voting AYE

Gilbert J. Piaquadio, Councilman voting ABSENT

Elizabeth J. Greene, Councilwoman voting AYE

Wayne C. Booth, Supervisor voting AYE

The resolution was thereupon declared duly adopted.