

Town Board Meeting January 2, 2020

TOWN BOARD RESOLUTION #1 OF 2020

**Motion by Eckler Second by Bello to accept TBR #1 of 2020**

WHEREAS: § 265 of Town Law and § 9.1 of Richfield's Land Use Ordinance both stipulate that in the presence of written objections, signed by owners of 20% or more of the affected land, a zoning change requires a super-majority for passage, and

WHEREAS: Written objections, signed by the owners of well in excess of 20% of the affected land were submitted to the Town Clerk, and signed for by her on September 23rd, 2019, and

WHEREAS: On September 30, 2019 the Town Board voted 3-2 in favor of the new zoning law, and

WHEREAS: The petitions were deemed insufficient on the basis of a single unsigned, unidentified sheet of 8.5 x 11 copier paper, on which was printed a spreadsheet in 4 point type, and

WHEREAS: No resolution of the Town Board ever authorized such a "sufficiency test," and

WHEREAS: Said spreadsheet was presented to the Town Board just minutes before the vote on the zoning law, and

WHEREAS: The calculation of what constitutes 20% of the affected land, contained in a footnote, is incorrect on its face, in that the proposed multi-use district, the two hamlet districts and the lake-front district are improperly included in the acreage requirement, and

WHEREAS: The participation by Town Board members and by the chairman of the Land Use Board of Appeals in soliciting petition retractions raise serious questions of intimidation, and

WHEREAS: Most of the petitions disqualified by the unsigned spreadsheet were found to be inadequate for lack of supporting documentation, and

WHEREAS: Richfield has no requirement that protest petitioners provide supporting documentation, and

WHEREAS: New York courts have found that municipalities may not burden § 265 petitioners with requirements for additional documentation, not even by local law, and

WHEREAS: Procedurally deficient legislative actions, including the adoption of zoning laws, are subject to declaratory judgments by the courts, and

WHEREAS: The statute of limitations for declaratory judgments is six (6) years, and

WHEREAS: The Town Board finds it unacceptable to expose the township to six years of uncertainty, risking the possibility that five and a half years from now an action could commence in court, in which the zoning law might be found never to have passed, and,

WHEREAS: The consequences of such a finding, years hence, would be extremely disruptive and expensive, and

WHEREAS: Richfield voters have just sent the Town Board clear instructions to step lightly on property rights,

THEREFORE, Be it resolved that former attorney for the town, David Merzig, Esq., of Oneonta, be engaged to conduct an independent review of the zoning protest petitions, and of the unsigned sheet purporting to find the petitions insufficient to require a super-majority vote, and to advise the Board of his findings, in writing. Expense to the Town not to exceed \$750.

Bello- yes

Eckler- yes

Frigault- no

Seamon- no

Palevsky- yes