

THREE THOUSAND THREE HUNDRED TWENTIETH
REGULAR AGENDA MEETING

Rutherford Hall
Village Hall
February 13, 2019

A Regular Meeting of the Board of Trustees of the Village of Scarsdale was held in Rutherford Hall in Village Hall on Wednesday, February 13, 2019 at 8:00 P.M.

Present were Mayor Hochvert, Trustees Arest, Callaghan, Crandall, Finger, Ross, and Veron. Also present were Village Manager Pappalardo, Deputy Village Manager Cole, Village Attorney Sapienza-Martin, Assistant Village Manager Richards, Deputy Village Attorney Garrison, Village Treasurer McClure, Village Clerk Conkling, and Assistant to the Village Manager Ringel.

The minutes of the Board of Trustees Regular Meeting of Tuesday, January 22, 2019 were approved on a motion entered by Trustee Crandall, seconded by Trustee Finger and carried unanimously.

Bills & Payroll

Trustee Crandall reported that she had audited the Abstract of Claims dated February 13, 2019 in the amount of \$1,115,123.28 which includes \$3,676.16 in Library Claims previously audited by a Trustee of the Library Board which were found to be in order and she moved that such payment be ratified.

Upon motion duly made by Trustee Crandall and seconded by Trustee Finger, the following resolution was adopted unanimously:

RESOLVED, that the Abstract of Claims dated February 13, 2019 in the amount of \$1,115,123.28 is hereby approved.

Trustee Crandall then reported that she had examined the payment of bills made in advance of a Board of Trustees audit totaling \$191,832.21 which were found to be in order and she moved that such payments be ratified.

Upon motion duly made by Trustee Crandall and seconded by Trustee Arest, the following resolution was adopted unanimously:

RESOLVED, that payment of claims made in advance of a Board of Trustees audit totaling \$191,832.21 is hereby ratified.

Mayor's Comments

Mayor Hochvert stated that this evening there is a special guest in attendance, Assemblywoman Amy Paulin. She will explain the effort to make their taxes go a little bit further.

Assemblywoman Paulin explained to the community why they are about to embark on a potential lawsuit with the IRS. She stated that this goes back to December 2017 when the US Congress decided to limit the SALT deductions. At the time that this was done, there was a group of 13 tax professors from around the country from prestigious law schools and they wrote a white paper about what they believed could be done by states and by municipalities in the event that SALT was adopted. The white paper was circulated, once SALT was adopted, to her and after reading it she realized that one of the options in that white paper was establishing a charitable fund and that could potentially help communities like Scarsdale with very high property taxes. That proposal was voted into the State budget; New York was not the only state to do this – New Jersey and Connecticut also adopted the same proposal emanating from those white papers. After that, the Village took the initiative of establishing a charitable fund, as did 14 other communities across the State. Three of them are in Westchester County – Town of Rye, Village of Rye Brook and Scarsdale. In August of last year, the IRS came out with proposed rules dealing with SALT and specifically Charitable Funds. At that point, she stated that some of them brought together many groups including three Counties – Nassau, Suffolk and Westchester – 8 statewide groups including the New York Conference of Mayors, Towns, Counties, School Superintendents, School Boards, among others. Eighteen municipalities and 18 school districts formed what they called the 3CD Coalition. That Coalition wrote comments on the proposed rules and regulations. There were 7,700 written comments at the hearing that was held. Since then they have been waiting for the issuance of the final regulations, which has not yet occurred.

Ms. Paulin stated that they are in the position of waiting for the final regulations and when they happen they want to be in a position to challenge them. The best plaintiffs, according to the lawyers that they are working with are communities that have already adopted Charitable Funding because they have a liability if the rule is sustained and the final rule is adopted. The Town of Rye has already passed a resolution to become a plaintiff in the lawsuit; some individuals may be included. With Scarsdale joining the effort, they will be taking an action to protect its residents. She applauded the Board for being part of that

effort because she believed that this is their only chance at averting what could be a real catastrophe for the property owners.

Ms. Paulin continued, stating that should the Village join the effort, the liability to the Village is nothing; they have formed a 501(c)(4). The 501(c)(4) will have all the liability on themselves; it will hopefully be raising some money but the law firm has told them that whatever they raise is fine but because they understand the importance of this lawsuit and the prestige of this lawsuit.

In conclusion, Ms. Paulin stated that this is very important to everyone across the State. She stated that we stand to lose possibly \$2.3 billion dollars in New York State taxes and the potential harm to the Village and to the communities surrounding us is very great. It is very important to move ahead. She again applauded the Board for their participation in advance.

Mayor Hochvert thanked Assemblywoman Paulin and informed the audience that she is going to stay to respond to any questions that may arise during public comment.

Mayor Hochvert then reported that on January 23rd he performed a wedding ceremony, followed by the Community Forum on Safety and Security which included a panel consisting of representatives from the Village, Schools, Scarsdale Edgemont Family Counseling Services, and three houses of worship. He stated that it is important to have a broad look at things, and quoted from Aesop's Fables – 'You can break a stick, but you can't break a bundle of them.'

On January 26th, Mayor Hochvert reported that there was a gathering of the League of Women Voters. Assemblywoman Paulin, Senator Andrea Stewart-Cousins, County Executive George Latimer, and County Board of Legislators Chair Ben Boykin were in attendance sharing information with the people attending the event. This was followed by Benny Salanitro's, Superintendent of Public Works retirement party where he learned much about Benny from people who told stories at the event.

On January 28th, he and Trustee Veron had a Land Use kickoff meeting with a group that is looking at the bulk and height of buildings in town.

On January 29th, an all-day budget meeting was held which began at 10:30 a.m., ending approximately 7:00 p.m.

On January 31st, a Bronx River Advisory Board meeting was held; Trustee Crandall will comment on this during her report. Another budget meeting was held that evening at 6:00 p.m., finishing sometime after midnight.

On February 1st, some of the Board members attended a PT Council Legislative Committee meeting at the Quaker Ridge School. He noted that Judith Johnson, New York State Regent, who has led an effort to change the evaluation of teachers back to the schools where they work, rather than the plan put forward several years ago, was in attendance.

On February 2nd, some of the Board members were at the Scarsdale Chinese Association meeting at the JCC. On their website, they note that they need to get more involved in the community. Looking around the room, he saw many of the people in that Association are volunteers for the Village. This was followed by Scarsdale Forum's Winterfest, another pleasant evening.

Mayor Hochvert noted that unfortunately, a co-winner of the Scarsdale Bowl had passed away – Eleanor November. There was a memorial service at Hitchcock Presbyterian Church. He stated that he had never seen that church as full as it was that day. People came from all over the country to attend the service.

On February 4th, a SNAP meeting was held and he noted that it was the first time that all 17 neighborhood associations were represented. The one neighborhood association that had not been represented for the last few years was Secor Farms. However, there is now a representative from every one of the neighborhood associations. Some of the discussion surrounded the Freightway redevelopment project; the budget, and the charitable contribution issue.

Mayor Hochvert stated that he attended a City 2.0 activity and had an opportunity to teach a group of very talented high school students. At that time, a group of students from the Peekskill Schools led by a couple of the people that he has known for years in the administration. He stated that this is a different way to get closer to the schools so they can find things to do together.

On February 7th, Mayor Hochvert stated that he attended the ribbon cutting for a new firm in town, Medi Tresse at 2 Overhill Road. He noted that most of the street level locations in the downtown area have been filled in the past two years with only two vacancies. He then attended the State of the County address given by County Executive George Latimer, whom Mayor Hochvert lauded for his speaking abilities, at the Forum's meeting.

On February 10th, there was a celebration for Andrea Stewart-Cousins becoming the Chair of the State Senate. He noted that Senator Schumer was in attendance and shook hands with everyone. That afternoon, there was a Sunday speaker, Neil Bicknell, a former Scarsdale resident, who flew all the way from Colorado to introduce the JFK Last Speech which was done in 1964 at Amherst College where Mr. Bicknell graduated. Mayor Hochvert noted that it is a very moving movie/book.

Mayor Hochvert stated that he had a brief interview with Bloomberg News and there was a small article stating that Scarsdale is the 2nd wealthiest community in the United States. He stated that he explained that part of that was because Scarsdale has one of the finest school systems in the United States.

Today there was a Con Edison Moratorium session regarding new gas connections. There is a proposal to begin a moratorium on March 15th. Assemblywoman Paulin spoke there against that as well as several others, including the County Executive.

A Committee of the Whole/Land Use Committee meeting was held this evening, which Trustee Veron will speak to. Mayor Hochvert stated that he made a commitment to assemble some information about the question about the impact of the Freightway project on the schools. There has been a lot of cooperation from the schools regarding this. He will put together a piece on this so that the residents will know that the impact is not what was heard the last time the Board met.

Manager's Comments

None.

Trustee Committee and Liaison Reports

Trustee Crandall gave the following report:

"Several of us greatly enjoyed meeting new people at the Scarsdale Chinese Association celebration on February 2nd. Happy Lunar New Year of the Pig! Later that day I also went to the Scarsdale Forum Winterfest party. Every year these and other events are open to all Scarsdale residents. No matter where you're from, it's up to you to make Scarsdale your hometown. Please make an effort to meet your neighbors.

Why am I mentioning this? I learned from attending the Scarsdale Safe Coalition meetings as their Village Board Liaison, that according to the CDC, a welcoming community is a protective factor that helps to prevent community violence. The Coalition last met on January 25th. They wrote an article about Cyber bullying that appeared in Friday's edition of the Scarsdale Inquirer. Here's the last line: "By tempering our own online posts we not only ensure civility, but model for our children that such behavior will not be tolerated in our community." The Coalition is a committee of Scarsdale Edgemont Family Counseling Service.

The Friends of Scarsdale Parks met on January 23rd. They are currently reviewing responses to the Request for Expressions of Interest regarding the Freightway Redevelopment Project. Save April 27th for their annual Community Planting Day.

On January 31st I attended the Westchester County Bronx River Advisory Board committee meeting with Mayor Hochvert. We learned about a New York State Regional Economic Development Council grant award of \$245,428 to Westchester County. This award is intended to implement a collaborative, multi-jurisdictional planning process to update the Bronx River Inter-Municipal Watershed Plan. The Bronx River Alliance will serve as Project Manager. This effort includes updating goals for the watershed, as well as looking at new climate change strategies. In general, the importance of enforcing current laws that prevent flooding and water pollution was discussed by all. Also, the Bronx River Alliance is looking for local volunteers to help with their ongoing study of garbage in the Bronx River. For more information, see their website www.bronxriver.org.

You may have seen members of the Conservation Advisory Council (CAC) promoting food scrap composting these last three days at Cooked & Company on Garth Road. If you'd like to join over 1,000 fellow residents who already reduce waste by recycling food scraps, just go to the Village website or send an email to composting@scarsdale.com.

I attended the CAC meeting on February 11th. They recently published an article on the Scarsdale10583 website entitled, "Tree Pruning: Late Winter and Very Early Spring are Good Times to Prune Trees." They also submitted information to the Village Board regarding potential sustainable goals and Green Building Practices with respect to the Freightway Redevelopment Project. They are planning to publish more educational materials on a variety of environmental topics."

Trustee Ross reported as liaison to the Finance Committee, stating that he has two announcements; the first being that he is very pleased to announce that Village now has in hand \$7.5 million from the Capital Campaign for the Scarsdale Public Library renovations. This was the original goal of the campaign. Since this goal was met in pledges, the campaign has received additional pledges of \$500,000, bringing the total to \$8 million, but actually right now \$7.5 million is in the bank. This is a great achievement on the part of the Friends of the Scarsdale Library with very important support from the Library Board, the Director and the Staff, and many others. This would not have happened without the very generous support of many members of the community which shows not only their generosity but also their desire for a first rate library that will be a major asset to the community. He congratulated and thanked all of those involved in this effort.

Trustee Ross next reported that tomorrow evening there will be a meeting of the Finance Committee at 6:00 p.m. in the Trustees' Room in Village Hall. This is one of a series of meetings leading to the adoption of the 2019-2020 Village Budget.

Trustee Arest stated that he had “two personnel matters he would like to discuss this evening; the first being for current and potential resident volunteers. The Personnel Committee is working with the current Board, Committee and Council members and their respective Chairs to determine vacancies and needs. Most appointments will take place in April. Please consider volunteering for a Board, Council or Committee. Thanks to a collaboration between the Personnel Committee, Communications Council and Village Staff, the process for researching various positions and applying is now better and easier than ever. From the Scarsdale.com homepage, click on the Resident tab at the top and then choose Volunteer Opportunities. That page will give you information on the process and has icons to take you directly to the application as well as to additional information on each Board, Council and Committee. Please take the time to find the three best positions for your background and interests and submit an application today. If computers are not your thing, simply reach out to our Village Clerk's office directly at [722-1175](tel:722-1175). Should you need more information or help choosing which position might be right for you, I can be reached at justinarest.scarsdaletrustee@gmail.com. If you are currently serving, please share your experiences with your friends and neighbors and encourage them to join you in continuing the incredible volunteer tradition of Scarsdale.

The second matter has to do with our Village Assessor. Despite serving a term ending September 30th of this year, our assessor, Nanette Albanese, has elected to resign, effective Friday, March 1, 2019. Our immediate priority is to ensure we have a plan in place to effectively complete this year's assessment roll. One option being considered, in the interest of continuity, is to keep Ms. Albanese on in a part time capacity. As it pertains to finding a replacement for our assessor, the Westchester County Tax Commission Executive Director has shared the opening with Assessors in Westchester County and Real Property Directors throughout New York State. There have also been postings made with the New York State Assessor's Association and the International Association of Assessing Officers. A search committee for this position will be finalized soon. While I do not have more information to share at this time, my goal tonight and going forward will be to keep the community as informed as possible. As always, should you have any comments or suggestions that are personnel related, please feel free to email me or the Board. Thank you.”

Trustee Veron stated that feedback has been gathered from residents by the Scarsdale Police Department and the feedback came in extremely high. Residents are very pleased with and overwhelmingly support the Scarsdale Police Department.

Trustee Veron continued, stating that the Advisory Council on Parks and Recreation (PRC) continues to review the Independent Sports Organizations requests. They are also looking into policy to insure broad participation and insure that there is a connection to the high school policies. She noted that these volunteer committees do a tremendous amount of work for the community and she encouraged residents to apply for the various openings on the Boards, Councils and Committees of the Village.

As liaison to the Library Committee, Trustee Veron stated when the bond issue was before the Board for the Library renovation project, they could never have imagined that they would have \$7.5 million cash in hand at this moment. The efforts of the Library Board and the Friends of the Scarsdale Library are to be commended. Casino night is scheduled in March, tickets are available now and are at a reduced rate.

Trustee Veron reported that the SBA (Scarsdale Business Alliance) is working on stimulating business in the Village Center and all retail hubs in Scarsdale. They are planning a Health and Wellness Fair in the spring, and a food and wine festival in the fall. Rock the Dale, a community event, is being planned in the spring to bring music to the Village Center along with an art installation which will be discussed in the future.

Trustee Veron commented on the work being done on the Freightway Redevelopment project. During the public feedback session on January 29th, it became clear that there is a wide spectrum of understanding of the project. Some residents have been following the Freightway project from the beginning. However, there are others who have been far less involved. The Board would like to make sure that all residents who are interested feel that they are well informed. Committees are in the process of preparing materials that will bring everyone up to speed. FAQ's, etc. will be developed.

Trustee Callaghan reported as liaison to the Council for People with Disabilities, stating that they are currently working on two projects. One has to do with the increased incidents of people parking in handicapped parking spaces without a permit. There are also people using the handicapped permits who are not disabled. The other effort is to get steps properly marked in the post office so those who are visually impaired can better negotiate the steps. The Council is also working with the adult services of Westchester County and trying to fit what they do into its services to see if they can exchange them on a non-fee basis. This will be discussed further in the future.

Trustee Callaghan then reported as liaison to the Advisory Council on Senior Citizens. The Council met last Friday and had Village Attorney Angela Martin address them and hold a question and answer period. He explained that they try to bring in a Department

Head from each Village department at the monthly meetings to familiarize the seniors with what they do.

Trustee Callaghan then stated he received a letter in the mail from County Executive George Latimer appointing him to the Council on Senior Citizens for the County of Westchester. Mr. Latimer nominated him to the County Legislature and they approved it. In addition, Mr. Latimer asked him to serve as his special representative to that Council. To his knowledge, this is the first time a Scarsdale resident has sat on that Council. They develop and implement policies and procedures that aid the senior citizens.

Village Manager Pappalardo stated that he would like to add just a note to Trustee Arest's report concerning the Village Assessor. He stated that Ms. Albanese did in fact submit a resignation, but it is in contemplation of retiring from the New York State Retirement System. She does have a retirement effective date of March 1st.

Public Hearing

Before opening the public hearing, Trustee Finger stated that he wanted to make some observations. He stated that this has been a long project that started out with committees and various organizations. A step was taken last year in amending the Tree Code. This amendment is to try to address what was pointed out to the Board at that time as being the absence of a remedy which would meet the concerns regarding large scale tree removal, clear cutting and similar action. This proposed change is at least an attempt to address the highest degree of tree removal by adding a requirement for replacement trees or potentially a fee in lieu which would give the Village the ability to plant more trees in other locations when they might not be feasible at the site where they were removed.

Trustee Finger noted that in the legislation that has been circulated there is one amendment: Section 281-4E 2. In line 5 appears the word 'by' and that should and is being changed to the word 'and'.

Trustee Finger stated these changes do not apply for the most part to someone who is removing a dead tree, a dying tree, a diseased tree, or someone who seeks to remove a hazardous tree. These situations are not impacted. This change would not affect those people who are removing up to 71" at dbh of trees. Above that, it would have an impact. It will not affect approximately 75% of those people who apply for permits to remove a tree. People removing one or two trees will not be impacted. We have tried to target a situation where there will be a large scale change in the number of trees on a property.

Trustee Finger opened the Public Hearing to consider a proposed local law to amend Chapter 281 of the Scarsdale Village Code, entitled Trees, Grass, Brush and Weeds and relevant sections of Chapter 18 Board of Architectural Review, Chapter 77 Planning Board, Chapter A317 Architectural Review Board Rules and Regulations, and Chapter A319 Subdivision of Land; Planning Board Regulations of the Scarsdale Village Code.

Ron Schulhof, Springdale Road, speaking in his capacity as Chair of the Conservation Advisory Council read the following letter on behalf of the CAC regarding the proposed tree amendment:

“The Conservation Advisory Council (CAC) supports the proposed amendments to the Tree code as submitted in the Board of Trustees packet dated February 13, 2019. The CAC believes the proposed amendments provide important updates to the Village Tree Code to help maintain Scarsdale’s beautiful tree canopy for current and future Scarsdale residents. The proposed updates provide a thoughtful solution to address large scale tree removals (commonly referred to as “clear cutting”) while maintaining property rights and flexibility for homeowners who either need to or want to remove trees on their property. Scarsdale’s “Village in a Park” scenic setting is comprised of individual trees on each property in the community. Each individual tree contributes to the beauty of Scarsdale and is a cherished community resource. It is important we ensure this resource is maintained. In addition to being part of the landscape of the community, trees provide significant and important social and environmental benefits. The CAC has been working with the Board of Trustees, village staff, other boards and councils and the community over several years to find a reasonable way to ensure the community’s tree canopy is maintained. Significant research was done, numerous proposals were considered, and many meetings were held to solicit community feedback. A complete archive of reports and presentations is available on the CAC page of scarsdale.com. The CAC believes the proposal being presented tonight represents a thoughtful and reasonable update to the Tree code. The Conservation Advisory Council would like to thank the current and past Board of Trustees, Village Staff, Friends of Scarsdale Parks, former CAC members and other organizations for their work on this issue. We would also like to thank the many residents who have provided feedback over the last several years.”

Joan Weissman, Kingston Road, stated that she is a member of the CAC and is speaking this evening as a concerned resident. She stated that the tree code amendments before the Board this evening are a step in the right direction and she commended the Board of Trustees for taking that step. Based on the amount of permits issued last year, they know that developers and residents are cutting down trees in record numbers. Permit numbers, however, do not reflect all the trees cut down. Common sense dictates that in order to keep our tree canopy, every tree that is cut down, regardless of its size has to be replaced and each one has to be replaced by at least one with similar coverage and maturity. She noted that Scarsdale does not have an arborist on staff and that should be rectified. The Board has the

responsibility and duty to protect the health, safety, and welfare of the residents and she urged them to fulfill that responsibility by passing the amendments to the Tree Code.

Michelle Sterling, Brayton Road, stated that she is a member of the CAC and is Co-chair of the Scarsdale Forum Sustainability Committee and is speaking as a resident this evening. She stated that she supports the amendment and applauds the Board of Trustees for bringing it forward. The 50% canopy in this Town is a community asset and is part of what makes this town so great. When you remove a 24" or greater tree, it can take a lifetime to replace that tree. When you see the clearcutting happening, it's been distressing. She stated that she really appreciates the work that has gone into the tree code amendments.

Madelaine Eppenstein, Autenrieth Road, thanked the Board for the opportunity to serve on the group working on the tree code amendments. She stated that the Friends of the Scarsdale Parks submitted a letter to the Board which covers some of the items that have been discussed so far. She quoted Nina Bassuk, Professor at Cornell University's Urban Horticulture Institute, School of Integrative Plant Science (and FOSP lecturer in 2014), and her fellow arborists who recommend a version of "aggregate" replacement as a sound way to stem tree canopy attrition:

"A healthy tree population must necessarily be composed of large numbers of small young trees. It is these young trees that will grow into the large trees that make up the future landscape. Because of the dynamic nature of an urban forest planting, young trees must always represent a significant portion of the tree population to account for the loss of trees over time. Continued, active planting of young trees is crucial to maintaining a sustainable and resilient tree population. In the ideal tree population, there are a large number of small trees, with increasingly fewer trees in larger size classes. . . . Each year new trees must be planted to compensate for future loss of the older trees."

Ms. Eppenstein noted that there are large trees that are removed by the Village in the right-of-way or in the park based on disease or other factors that require the tree to be cut down. She stated that it would be a good idea for the Village to also take heed of the attrition of trees in the right-of-way.

Robert Berg, 32 Tisdale Drive, stated that he has been opposed to the tree code 'odyssey' for the past year; it's been successful in creating a tree code more complex than the Internal Revenue Code. He stated that it is overreaching legislation that imposes unnecessary burdens on most homeowners when the real problem is developers and the clearcutting they do. He stated that it is bad governance to participate in this type of legislating and imposes bureaucracy and unneeded costs on the residents.

Bernard Kobroff, 107 Brewster Road, stated that he thinks the legislation is a very good idea; he does not think it goes quite far enough but it is a very good start. He stated that he would like to see the numbers and how it actually works in practice.

As there were no further comments, Trustee Finger closed the public hearing at this time and asked if there were any comments from the Board.

Trustee Arest stated “At the April 24, 2018 Board Meeting, I made it clear that I was not really satisfied with the changes that had been proposed. They would not directly address a major concern that has environmental and aesthetic impacts, which is clear cutting. The process for that tree amendment had been over four years in the making and a previous Board, to which I was not a part of, made the conscious decision to remove aggregate language in favor of something closer to what was adopted and hoped to use the land-use process to counter clear cutting concerns. I also was not in favor of making the Code too restrictive for regular homeowners which is what an earlier draft of the proposed legislation would have done. I had intended to vote no. However, amendments made, including that evening, turned the proposed legislation into something that I believed was palatable and an incremental step that I could support. I believe we find ourselves as a community in a rather tough position. We are proud of our brand as a Village in a Park. I am extremely cognizant that such an impressive distinction is not one that can be created overnight but can be destroyed in a relatively short amount of time if the proper protections are not in place.

However, we are also dealing with an aging tree stock and weather patterns that are only getting more punishing. Many residents, rightfully so, have significant safety concerns for their families and we need to find ways to incentivize homeowners to maintain and turn over their tree stock. We have not given our previous change a full year and spent time to analyze the relevant data in order to determine how effective the changes have been. To anyone that has concerns that we have left the community naked, the code has always permitted a rather high level of discretion from the Village Engineer. Such discretion is a defense against clearcutting when used properly and allows the Village Engineer to require additional replacements and/or monies to the tree fund. I should note that there is one change I have been a strong proponent of for some time and do appreciate- which is providing a relief valve for residents that feel the engineer’s discretion might be unreasonable. When a Village employee is given such discretion I believe it is only fair that a resident has an appeal process to pursue rather than being forced to go to court immediately.

Turning specifically to what is being discussed tonight:

The idea of an aggregate is not a bad idea. But, if we are truly using it here as mechanism to prevent clear cutting, more analysis is required to ensure that not only does it achieve that goal but also ensures that regular homeowners will not be overly burdened while trying to make improvements to their home for safety or otherwise. I tried to help find consensus while at the committee meeting by suggesting a higher level of aggregate DBH before the new changes would apply. I think that a higher number would still ensure

clear cutting is affected, we would still have our engineer's discretion should it not be enough, and there is a much smaller chance that it would harm homeowners with smaller projects. My suggestion was to work with that new structure for a set period of time and use the data collected to determine whether more changes would be needed. Unfortunately, this was rebuffed by the committee.

One other concern that I have is regarding the creation of a definition for hazardous. I understand that our engineer had some concerns but we unfortunately did not have enough discussions on this. The new definition requires not only proximity to a target but also an expert opinion that there is a defect in the tree that will likely result in failure. This is concerning because it adds an extra cost as well as delays to homeowners trying to remove what they perceive as a risk and also does not address what happens if the expert does not find or misses a defect. Could this create a deterrent that prevents trees that could pose threats from being removed? I have a report given to the town of Weston, CT from Bartlett Tree Experts. It is a Tree Risk Assessment Report done by an ISA Qualified Tree Risk Assessor. In the Appendix of this report, it reads in part, "However, the overall risk rating, the mitigation recommendations, or any other conclusions do not preclude the possibility of failure from undetected conditions, weather events, or other acts of man or nature. Trees can unpredictably fail even if no defects or other conditions are present." We have already agreed that these are trees that pose a potential threat to a target such as a home or children's play area. I think we can do better.

Therefore, I do not intend to support the proposed changes as currently drafted. Thank you."

Trustee Veron stated that she was on the Board when the first set of changes were made to the Tree Code and she strongly supports regulation with respect to trees as the tree canopy is so important. However, she also engages with many residents, specifically during the harrowing storms and she stated that she is particularly concerned with the newest language with respect to hazardous trees. The residents made very clear to the Board that there were trees that were adjacent to their home that they felt would put their families at risk. The trees that came down during the storm would not have necessarily been designated defective trees. She is very uncomfortable with the dual requirement under hazardous trees. She stated that the residents have a right to take down trees that they think put their families at risk. Therefore, she cannot support the hazardous definition. She has been very involved with the discussions in regard to aggregate, and still prefers the discussion to reside at the Land Use Board level. She feels it is more important to measure the effectiveness of the current legislation, gather the data, and speak to staff before we put another layer of complexity into the tree code.

Trustee Crandall stated that she has been studying trees in the Village for a number of years. She served as president of the Friends of the Scarsdale Parks, as a member of the CAC, and has independently attended many lectures on the topic. She stated that when it

comes to having any of the trees evaluated by an ISA Certified Arborist, most if not all in our area will do a hazard inspection and even write a letter for free. If one needs an ISA Certified Arborist, there is a website, www.treesaregood.org, and a tab on the site to find an arborist in your area. You need someone who has training, knowledge and experience as well as certification when it comes to evaluating trees on your property and also potentially giving you bad advice. You can always get a second opinion; it is worth the time to speak to someone knowledgeable.

Trustee Crandall stated that you must also select the right tree for the right place; one that will thrive without any additional chemicals or even need extra watering once it is situation on your site. The CAC will at some point come out with an educational piece on proper tree planting and selection.

In regard to the importance of Land Use boards, she agreed wholeheartedly with the other Board members who spoke to this. There is more to be done, because every site is truly site specific. Some lots have a lot of rock, others are next to the watercourses or wetlands. It is important to plant trees where it makes sense. It is important to take down trees that are hazardous; she noted that the new definition for hazardous trees was in response to the Village Engineer telling us that he was getting letters stating that there is a hazardous tree that needs to come down. We need to protect trees that are good, prevent clearcutting and have trees replanted in an intelligent way. They cool our streets, protect us from flooding, beautifies our neighborhoods and protects our home values. Trustee Crandall stated that she does intend to vote yes on the proposed amendment to the Tree Code.

Trustee Finger stated that he would like to make some points in response to some of the comments. In regard to a public comment that this would impact most homeowners in a negative way, the fact is that it will not impact most homeowners. This will impact only the top 25% or so of tree removers. The same comment indicated that the new amendment was not targeted at developers. Trustee Finger stated that it is not targeted at developers; however, most of the developers who are removing a substantial amount of trees are going to be in that top 25%. Factually speaking, it is not affecting most people and it is targeted at the most significant tree removals.

Secondly, Trustee Finger stated that as Trustee Crandall stated, there is presently no definition for hazardous trees and there is presently no right to appeal a determination by the Village Engineer. This is not a prohibition against removing hazardous trees. If you are only removing one tree and it is less than 24" you are in no different position tomorrow than you are today. While he respects his colleague's concerns, they are not borne out by these changes. In fact, these changes are positive to some of their concerns. In essence, we are getting an improvement all around taking into consideration the comments heard this evening.

Trustee Arest asked Trustee Finger if he said that one can appeal the definition of hazardous to the Planning Board. Trustee Finger responded by stating that previously there was no right to appeal anything from the Village Engineer. Now you have a definition of hazardous which is not a determination by the Village Engineer – you can appeal his discretion.

Upon motion entered by Trustee Finger, seconded by Trustee Crandall, the following Local Law was approved by the vote indicated below:

INTRODUCTORY LOCAL LAW #2 OF 2019
A LOCAL LAW AMENDING CHAPTER 281 TREES, BRUSH AND WEEDS,
CHAPTER 18 BOARD OF ARCHITECTURAL REVIEW, CHAPTER 77 PLANNING
BOARD, CHAPTER A317 ARCHITECTURAL REVIEW BOARD RULES AND
REGULATIONS, AND CHAPTER A319 SUBDIVISION OF LAND; PLANNING
BOARD REGULATIONS OF THE SCARSDALE VILLAGE CODE

BE IT ENACTED by the Board of Trustees of the Village of Scarsdale as follows:

Chapter 281 Trees, Grass, Brush and Weeds

ARTICLE I
Trees

§ 281-1. Legislative findings and intent.

The Village of Scarsdale finds that trees within the Village provide an important contribution to the health, safety, aesthetics and general welfare of Scarsdale residents and the community at large. Trees provide shade, and aesthetic appeal, enhance green space, improve air quality, reduce energy use and atmospheric carbon dioxide, provide and promote habitat for wildlife, impede soil erosion, aid water absorption, inhibit excess runoff and flooding, provide screening, offer a natural barrier to noise, provide other environmental benefits and generally enhance the quality of life within the Village. These social, economic, and ecological benefits often increase as trees mature and the Village community's investment in trees has accrued over many years. This investment can be rapidly lost and is not easily nor quickly replaced due to the long length of time for a tree to mature. The destruction of and damage to trees and the indiscriminate and excessive cutting of trees can create barren and unsightly conditions, as well as, surface drainage problems, increase municipal costs to control drainage, impair the value of real property and adversely affect the environment, health and character of the community. This article seeks to address these conditions and promote the preservation of trees within the Village.

§ 281-2. Definitions.

Terms as used in this chapter shall have the meanings:

DBH - The diameter of a tree trunk measured at 54 inches above the ground on the uphill side.

DISEASED TREE – A tree not capable of being cured by a tree expert and capable of infestation of the disease to other trees and plant life.

DISTRIBUTION LINE - An electric line having a voltage of less than 69 kilovolts.

EMERGENCY - A serious situation or occurrence that happens unexpectedly and demands immediate action.

ENTITY - Any corporation, limited liability company, partnership, limited partnership or other non-municipal enterprise recognized by the State of New York or its agents and contractors.

HAZARDOUS TREE- Any tree which meets two criteria: (1) a defect which will likely result in a failure, as determined in accordance with the ISA (International Society of Arboriculture) Risk Assessment Manual, and (2) the existence of a target; including structures, objects, power lines, or people that would suffer personal injury or property damage if said tree failed.

HERITAGE TREE - A tree designated by the Village with the consent of the owner upon a finding that the tree is unique and/or of importance to the community as set forth in § 281-7.

INJURY TO TREES - Any action, during the course of permitted or nonpermitted work, that causes significant damage to a tree that causes or is likely to cause death of the tree.

INVASIVE SPECIES - A nonnative species that adversely affects the habitats it invades economically, environmentally or ecologically and is listed ~~as a prohibited species~~ in the Prohibited and Regulated Invasive Species Plant list of the New York State Department of Environmental Conservation and the New York State Department of Agriculture and Markets, as amended from time to time.

LANDSCAPE ARCHITECT – A person who holds a license to practice landscape architecture.

LANDSCAPE PLAN - A design for the exterior landscape of a property that includes the common and botanical names, DBH, condition size, type and location of trees, shrubs and other natural elements and may include grading, tree removal and tree preservation measures which is reviewed and approved by a land use board.

LAND USE BOARDS - Independent bodies that make decisions in regard to land use in the Village under the enabling authority given by the State of New York, county and/or local law. These include the Board of Architectural Review (BAR), the Zoning Board of Appeals (ZBA) and the Planning Board.

NONPUBLIC PROPERTY - Any lands not owned by the Village of Scarsdale or any other governmental entity.

PERSON- Any corporation, firm, partnership, association, trust, estate and one or more individuals.

PROTECTED TREE - A tree designated as protected in accordance with the Protected Tree List maintained by the Village, which shall include but is not limited to those trees listed in the Endangered Protected Native Plants list of the New York State Department of Environmental Conservation, as amended from time to time, and heritage trees. The Protected Tree List shall be maintained by the Engineering Department.

PUBLIC PROPERTY - Lands owned by the Village of Scarsdale, which includes rights-of-way (ROW), parks, open space and Village facilities.

REPLACEMENT TREE - Any tree planted under the provisions of this chapter or required by a decision of a land use board. Replacement trees must be native to the Northeast United States, excluding invasive species, and at least three inches DBH at the time of planting, unless specifically approved as part of a tree replacement plan.

RIGHT-OF-WAY (ROW) - Generally, the space owned by the Village extending approximately 13 feet from each curblines, but may include specific lands under an agreement or definition of law.

TREE - Any woody plant of a species which grows at maturity to an overall height of 10 feet or more, has a single trunk or multiple trunks which are, in combination, a sum of six inches DBH.

TREE EXPERT - An ISA-certified arborist or other professional certified by a recognized program of higher education or governmental agency as a tree expert.

TREE PRESERVATION FUND - A fund established by the Village of Scarsdale to receive payments pursuant to this chapter, as well as voluntary donations to be used in accordance with this chapter or to augment the planting of public trees.

TREE REMOVAL PERMIT – A permit issued by the Village Engineer in conformance with an application submitted by an applicant and approved by the Village Engineer.

VILLAGE ENGINEER - A person employed by the Village of Scarsdale, certified and licensed by the State of New York as a professional engineer or licensed architect, or his or her designee, with responsibilities that include reviewing plans for various projects on public and private land within the jurisdiction of the Village of Scarsdale.

§ 281-3. Activities permitted as of right on nonpublic property.

A property owner may remove a tree(s) on nonpublic property as of right, provided that tree removal is not regulated by the provisions of Chapter 171 Freshwater Wetlands, as well as the following:

- A. The tree(s) to be removed are six inches DBH or less, except the following small caliper native trees may only be removed, without a permit, if provided that they are three inches DBH or less:
- (1) Hawthorn, *Crataegus* species and its cultivars or hybrids;
 - (2) Crabapple, *Malus* species and its cultivars or hybrids;
 - (3) Redbud, *Cercis* species and its cultivars or hybrids;
 - (4) Mountain Ash, *Sorbus Americana* species and its cultivars or hybrids;
 - (5) Amelanchier (Serviceberry), species and its cultivars or hybrids, *A. arborea* and *A. laevis* species and its hybrid and cultivars and hybrids;
 - (6) Birch, *Betula* species and its cultivars or hybrids.
- B. The tree is removed under an actual or ongoing emergency when such tree removal is necessary for the protection and preservation of life or property, including adjoining parcels. The property owner shall give notice of said removal to the Village Engineer as soon as practical.
- C. The tree is an invasive species as defined herein.
- D. Two trees on each property greater than 6 inches DBH and less than 24 inches DBH may be removed within a 12-month period. Prior to removal, a written notification of removal shall be delivered to the Village Engineer.

§ 281-4. Tree removal permit.

- A. The following tree removal activity requires a tree removal permit under this article:

- (1) Except for those trees removed pursuant to § 281-3(D), the removal of one or more trees greater than six inches DBH.
 - (2) The removal of one or more small caliper native trees as identified under § 281-3(A).
 - (3) Trees identified to be removed or protected as a result of a land use board determination.
 - (4) Removal of replacement tree(s) six inches or less DBH that are planted as a result of a land use board determination or pursuant to § 281-11.
 - (5) Removal of tree(s) determined to be preserved by a land use board for at least two growing seasons after the issuance of a certificate of occupancy or land use board approval.
 - ~~(6)~~ Removal of one or more trees greater than six inches DBH that are dead, dying, ~~diseased, or hazardous or diseased~~ as determined by a tree expert. These tree removals without a fee and shall not be subject to a fee or the replacement requirements under § 281-5.
 - ~~(7)~~ Tree removals governed by Chapter 171 of this Code titled "Freshwater Wetlands".
- B. In making a determination to grant or grant with conditions a permit under this article for the removal of any tree, the Village Engineer's consideration shall include, but is not limited to, the following:
- (1) Whether the location of the tree endangers the health, safety or welfare of the general public, the property owner or an adjoining property owner.
 - (2) Whether the tree interferes with a permitted use of the property and/or is specifically identified for removal in a wetland permit, special use permit, subdivision plan, site plan or Board of Architectural Review approved landscape plan.
 - (3) Whether the location of the tree interferes with a proposed permitted construction or alteration on the property and the construction or alteration cannot be reasonably adjusted to accommodate such tree.
 - (4) Whether the location of the tree prevents compliance with state, county or local laws or regulations for visual obstructions, sight lines, driveways or intersections.

- (5) Whether the tree, due to advanced age, disease, blight, infestation, storm damage, accident or other condition, causes undue hardship for the property owner to maintain such tree.
 - (6) Whether the tree is located within three feet of an existing sidewalk, driveway or private roadway or if the tree is located within 10 feet of any existing dry well or other subsurface improvement or within 10 feet of any existing permanent structure or improvement.
 - (7) The number of trees for which a tree removal permit is being sought.
 - (8) The number of trees, if any, removed from the property during the preceding ~~36~~24 months (other than trees removed pursuant to § 281-3A, B, or C).
 - (9) Whether the granting of a tree removal permit complies with the restrictions set forth in Chapter 171 of this Code titled “Freshwater Wetlands”.
- C. The determination of the Village Engineer denying the grant of a permit application shall be in writing and set forth the basis for such decision, as prescribed in § 281-4(E)(6), which decision may be appealed to the Planning Board.
- D. Notwithstanding any other provision of this chapter, any property owner, developer or person who has applied for and received a permit involving an approved subdivision, approved site plan, wetland permit, special permit, or any permit that requires the removal of tree(s) on any nonpublic property shall, in addition to strict compliance with any terms of such approved subdivision, approved site plan, wetland permit, special permits, or any permit that requires the removal of tree(s), make an application to the Village Engineer for a tree removal permit. There shall be no site disturbance, and the status quo shall be maintained until such time as a tree removal permit is granted or denied and the appeal process is completed. The Village Engineer may grant, grant with conditions, or deny such application for a tree removal permit on such terms and conditions as he or she may prescribe, it being understood that there must be full compliance with any approved subdivision, approved site plan, wetland permit, special permit or other development approval required by the land use boards. In no event shall a tree removal permit be issued for the removal of any tree specifically designated to be saved by the Planning Board, Board of Appeals or Board of Architectural Review, unless said tree is determined to be dead, dying, diseased or hazardous to life or property or as subsequently approved by a land use board.
- E. Applications.
- (1) All applications for permits shall be made in writing upon forms prescribed by the Village Engineer.

- (2) The Village Engineer may require the applicant to submit plans showing existing and proposed contours at two-foot intervals on a map or plan at a scale no smaller than one inch equals 40 feet; existing trees, specifying ~~types and sizes~~ the common and botanical names, DBH and condition of the trees to be removed and the reasons for removing said trees. The plans must detail all replacement trees and specify the planting location, ~~size, species and type~~ common and botanical names, DBH and condition for all replacement trees.
- (3) The Village Engineer may require additional information in plans that include the design for all tree protection measures, including but not limited to protective fencing, tree wells and any other appurtenance that is deemed to be pertinent in reviewing an application.
- (4) The Village Engineer may require the applicant to pay for the retention, by the Village, of a tree expert, as defined herein, to supervise and ensure that any tree removal is carried out in compliance with any permit of approved land use plan.
- (5) An applicant may be required to furnish the Village with a performance bond or a cash deposit in an amount determined by the Village Engineer in a form to be approved by the Village Attorney sufficient to cover 100% of the planting and restoration work to be completed after the removal of any tree pursuant to plans that are required to accompany all applications. Cash shall be deposited in a trust account as established by the Village Treasurer. The performance bond or cash deposit shall remain in effect for a period of two growing seasons after the issuance of a certificate of occupancy (CO), or where a CO is not required after final inspection and approval by the Village Engineer.
- (6) The Village Engineer, within 30 days from the date an application is submitted in final form, shall issue a permit or deny the application, unless the parties agree to extend the time for the Village Engineer to render a determination.
- (7) The Village Engineer may issue a stop-work order against any approved tree removal permit if the work performed is not proceeding in accordance with the requirements of the permit or in an orderly and diligent manner.
- (8) An application fee shall be set by resolution of the Village Board in an amount that would cover Village costs for the administration and enforcement of this chapter. The Village Manager, as appropriate, shall recommend to the Village Board fees under this chapter.
- (9) The Village Engineer shall maintain a written record of all tree removal permits.

§ 281-5. Replacement trees.

- A. The following trees removed pursuant to § 281-4, excluding § 281-3(D) and § 281-4(A)(6), shall be replaced with a replacement tree, when applicable for trees removed from the same property, whether by single or multiple tree removal permits, within any consecutive three year period, regardless of ownership. A tree removed pursuant to § 281-4, excluding § 281-4(A)(6), that is 24 inches DBH or greater shall be replaced with a replacement tree:
- (1) A tree removed that is 24 inches DBH or greater.
 - (2) Permitted trees removed having an aggregate DBH of 48 inches or greater.
 - a. A replacement tree of a genus and species expected to grow to maturity at a similar size to the removed tree or trees shall be planted for every 24 inches of DBH removed up to 120 inches of aggregate DBH, excluding the aggregate DBH of any tree(s) removed pursuant to § 281-5(A)(1).
 - b. Two replacement trees of genus and species expected to grow to maturity at a similar size to the removed tree or trees shall be planted for every 24 inches of DBH removed above 120 inches of aggregate DBH and less than 240 inches aggregate DBH, excluding the aggregate DBH of any tree(s) removed pursuant to § 281-5(A)(1).
 - c. Three replacement trees of a genus and species expected to grow to maturity at a similar size to the removal tree or trees shall be planted for every 24 inches of DBH removed above 240 inches aggregate DBH, excluding the aggregate DBH of any tree(s) removed pursuant to § 281-5(A)(1).
- B. The Village Engineer, as a condition to the granting of any tree removal permit, shall have the authority to require replacement trees of comparable size or species to be planted. Where existing trees are so large and mature that it is not practical to replace such trees of comparable size or where extensive tree removal is planned as part of a tree removal permit, the Village Engineer may order the planting of multiple trees and/or payment to the Tree Preservation Fund in an amount that would reimburse the Village for the cost of purchasing planting and maintaining any such replacement tree(s), the amount of which shall be determined by the Village Board in its annual fees and charges schedule. Where existing conditions on a lot make the planting of required replacement trees not feasible the applicant shall be required to make a payment to the Tree Preservation Fund in accordance with the annual fees and charges schedule. The applicant may appeal the Village Engineer's determination pursuant to

this subsection to the Planning Board, which shall hear, review and determine said appeal.

§ 281-6. Protected trees.

Protected Trees may not be removed unless the tree is dead, dying, hazardous or diseased, as determined by a tree expert and certified in writing. Notwithstanding this provision, where a protected tree, excluding protected trees located within any of the required setback areas, is determined by the Village Engineer to create a hardship, it may be removed subject to the requirements of § 281-4 and the provisions of § 281-5.

§ 281-7. Heritage trees.

- A. Upon the written request and consent by any property owner, the Board of Architectural Review may designate a tree as a "heritage tree."
- B. A tree may be designated as a heritage tree upon a finding that it is unique and of importance to the community. The following factors may be considered by the Board of Architectural Review when considering designating a heritage tree:
 - (1) It is an outstanding specimen of a desirable species.
 - (2) It is one of the largest or oldest trees in Scarsdale.
 - (3) It possesses distinctive form, size, age, location, and/or historical significance.
- C. After Board of Architectural Review approval of a heritage tree designation, the Village Engineer shall notify the property owner(s) in writing. A listing of trees so designated, including the specific locations thereof, shall be kept by the Building Department.
- D. Once designated, a heritage tree shall be subject to the provisions of this article unless removed from the list of heritage trees by action of the Board of Architectural Review. At its discretion the Board of Architectural Review may remove a tree from the list upon written request by the property owner.

§ 281-8. Tree expert.

The Village may employ or retain a tree expert to advise the Village in regard to the planting, growing, pruning, removal or preservation of any tree on public and nonpublic property.

§ 281-9. Restoration and replacement.

- A. All persons who remove trees or cause trees to be removed with or without a tree removal permit shall restore the area by backfilling all holes and by creating an acceptable grade and covering. Any tree damaged for any reason during construction or development of a property, or removed in violation of an approved subdivision plan, site plan, special permit, wetland permit or landscape plan, shall forfeit all or a portion of any escrow deposit or bond in an amount determined by the Village Engineer. Minor tree damage shall be treated in accordance with accepted tree surgery and best practices.
- B. Tree stumps shall be removed except where trees are removed pursuant to § 281-3 or the Village Engineer determines that the stumps are to be left for aesthetic purposes, to prevent soil erosion, or for other reasons. After the replacement of any tree, removal of all debris in the disturbed area shall be made immediately. The property where such planting is done must be left in a neat and orderly condition in accordance with good and acceptable planting and tree surgery practice.
- C. All tree planting, tree dressing and associated restoration work must be substantially completed within one year from the date of issuance of any tree removal permit not associated with a building permit, except that the tree removal permit may be extended by the Village Engineer for a period not to exceed six months. Under all circumstances the performance bond or cash escrow held by the Village shall continue in full force and effect until there has been full compliance and approval by the Village Engineer of all restoration work. In the event that the planting and restoration work is not substantially completed within one year of the date of issuance of a permit, and no extension has been granted, the Village Engineer shall consider the work and permit to be abandoned and declare the performance bond and/or the escrow deposit in default, and the proceeds from the bond and/or cash deposit shall be transferred to the Tree Preservation Fund.
- D. All trees planted pursuant to this article which fail to survive two growing seasons shall be replaced by the permit holder at the expense of the permit holder. Said replacement shall be within the longer of 60 days following written notice from the Village Engineer or the period of time as may be specified in such notice. Should the permit holder fail to timely replace the trees, the Village Engineer shall serve a court appearance ticket and/or declare the bond and/or escrow deposit in default and apply the proceeds to the Tree Preservation Fund.

§ 281-10. Certificate of occupancy.

A final certificate of occupancy shall ~~not~~ be issued by the Building Inspector only after all tree planting, tree dressing and associated restoration is completed to the satisfaction of the Village Engineer, except that between October 31 and April 1, the permit holder may obtain a temporary certificate of occupancy. In the case where a temporary certificate of occupancy

is issued, all planting and restoration work in this instance must be completed to the satisfaction of the Village Engineer on or before the first day of the following May. The escrow cash deposit and performance bond shall continue in full force and effect until the planting and restoration work has been completed and the planting has survived two full growing seasons. Should the permit holder fail to complete the restoration work on or before May 1, the Village Engineer shall declare said performance bond or escrow in default and apply the proceeds from the bond or escrow to the Tree Preservation Fund.

§ 281-11. Enforcement; penalties for offenses.

- A. The terms of this chapter shall be enforced by the Village Engineer and the Building Department, except where such enforcement may be vested in the laws of the State of New York.
- B. Any person violating any of the provisions of this article shall be guilty of a violation and shall be fined not less than \$250, or more than \$1,000 for the first two trees. Thereafter, not less than \$500, or more than \$2,500 for each additional tree. In cases where a person is found guilty of knowingly violating a provision of this article, or of removing an excessive number of trees without a permit, the Village Justice shall have the discretion to set a fine in excess of these limits. No building, demolition, or excavation permit may be issued, and if previously issued shall be revoked, until such violation is cured in accordance with § 281-89 herein.
- C. In addition thereto, any person violating any of the provisions of this article shall replace each tree injured, removed, killed or destroyed in accordance with the provisions of § 281-5.

ARTICLE II
Distribution Lines

§ 281-12. Distribution lines, rights-of-way.

- A. Legislative findings and intent. The Village of Scarsdale wishes to promote the reliable delivery by public utilities of electric power to residents and businesses within the Village. The Village recognizes that tree limbs may interrupt such reliable delivery if they become entangled with electric lines and therefore public utilities must, from time to time, cut and/or remove trees. The Village also wishes to recognize and preserve the benefits of trees to the community, including, without limitation, shade and aesthetic appeal, enhancing green space, improving air quality, reducing energy use and atmospheric carbon dioxide, providing and promoting habitat for wildlife, impeding soil erosion, aiding water absorption, inhibiting excess runoff and flooding, providing screening, offering a natural barrier to noise, providing other environmental benefits and general enhancing the quality of life within the Village. Removal of trees, if not

regulated locally, would be deleterious to the environment and adversely impact all property in the Village.

- B. Any tree work in the Village right-of-way by a public utility, or its agent, including trimming and/or removal of trees must comply with nationally recognized standards and, further, that when tree removal is necessary, reasonable efforts are to be made to mitigate the loss of trees and any resulting threat by such removal by replanting, or such other actions that are necessary to protect the public health, safety, environment and general welfare.
- C. Utilities or their agents responsible for maintaining ROWs in the Village shall follow the tree maintenance practices for utilities established by the National Arbor Day Foundation, as amended from time to time, unless otherwise authorized in writing by a tree expert under such terms and conditions as may be specified. Nothing in this article prevents a public utility from contracting with a private entity to perform tree maintenance, as long as such tree maintenance conforms to the standards established by the National Arbor Day Foundation and provisions of this Article II.
- D. Except for tree pruning and trimming permitted by Subsection B above, no utility or its agents or contractors shall cut, top or remove a tree on a Village ROW, unless such tree poses a danger to a distribution line. A certification by a tree expert that such tree(s) are diseased or dying or, with respect to a healthy tree, such tree is so entangled with a distribution line that pruning and maintenance practices cannot reasonably be expected to prevent such tree from falling on or otherwise interfering with the distribution line is to be filed with the Village Engineer before any work takes place. Notwithstanding any provisions of this Article II, an entity may trim, top or remove a tree on a ROW if it has fallen on a distribution line or, in the judgment of the utility, is in imminent danger of doing so.
- E. Except for tree pruning and trimming maintenance practices permitted by this Article II, any public utility or other entity removing a tree on a ROW or trimming to such a degree that would constitute removal, including if done on an emergency basis, shall replant a replacement tree, as defined herein, for each such tree removed and take such action as shall be determined by the utility's consulting tree expert so that no adverse environmental effects, including, but not limited to, drainage and soil erosion, impact the Village or adjacent property owners.

§ 281-13. Enforcement penalties: Utilities and ROWs.

- A. The Village Engineer may issue such regulations and forms as it deems appropriate for the administration of this Article II and may issue stop-work orders for violations.

- B. If any provision of this article is violated by any utility or its agent, the Village may, in any court of competent jurisdiction, seek injunctive relief restraining any violation of this article and/or compel the restoration described under the violation. Any violation of this article shall be punishable by a fine in the amounts set forth in § 281-11.

ARTICLE III

Infestations, Poisonous, Harmful Weeds and Plants

§ 281-14. Unlawful to allow infestations.

- A. It shall be unlawful for the owner of any land in the Village to maintain or permit to remain thereon harmful flora or fauna which is likely to cause destruction of or damage to trees or shrubs or create a potential hazard or a public nuisance, including prohibited species listed on the Prohibited and Regulated Invasive Species plant lists of the New York State Department of Environmental Conservation.
- B. It shall also be unlawful for the owner of any land in the Village to maintain or permit to remain thereon any poisonous or harmful weed or plant that is likely to spread to other properties or become a public nuisance.

§ 281-15. Duty of owners to correct.

It shall be the duty of the owner of any land in the Village containing harmful flora, fauna or poisonous or harmful weed or plant which violates § 281-14 to destroy or cause to be destroyed such harmful flora or fauna or poisonous or harmful weed or plant.

§ 281-16. Action by Village.

In case any owner of land in the Village fails to comply with the provisions of this article, the Village Engineer shall issue a notice of correction by regular mail or in person, directing such owner(s) to comply with the provisions of this article.

§ 281-17. Penalties for offenses.

Any person committing an offense against any provision of this Article III shall, upon conviction thereof, be guilty of a violation pursuant to the Penal Law of the State of New York, punishable by a fine not exceeding \$250. The continuation of an offense against the provisions of this article shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.

ARTICLE IV

Planting and Protection of Trees, Shrubs and Plants in Public Places

§ 281-18. Planting in public places.

No person shall plant any tree, shrub or plant that may create a traffic hazard or other visual obstruction, pursuant to Chapter 294 of this Code, within limits of any public ROW, park or other public place, without first securing a written permit from the Village Engineer or license agreement from the Village and complying with the following conditions and requirements: the permit or license shall be granted only upon a determination by the Village Engineer after consulting with the Director of Public Works that such planting does not interfere with the use of such public ROW, park or other public place and that such planting will enhance the beauty and appearance of the public ROW, park or other public place and the surrounding area.

- A. Trees planted within the limits of any public ROW, park or other public place shall be of a quality and species approved by the Village Engineer and shall be planted at least 30 feet apart unless otherwise authorized by the Village Engineer. Each such tree shall measure not less than three inches DBH.
- B. Should any tree, shrub or plant planted within the limits of any public ROW, park or other public place pursuant to any such permit, in the opinion of the Village Engineer, interfere at any time with the use of such public ROW, park or other public place by the public or detract from the beauty and appearance of the public ROW, park or other public place or the surrounding area, the Village Engineer shall mail a notice in writing to the permittee or his or her successor in ownership of the abutting premises to remove such tree, shrub or plant and to restore such public ROW, park or other public place to its original condition within 15 days of the mailing of the notice. If such permittee or owner shall fail to comply with such notice, the Village Engineer may cause the tree, shrub or plant to be removed, and the public ROW, park or other public place to be restored to its original condition at the expense of such permittee or owner. Any cost incurred by the Village in the performance of such work involving the removal of any such tree, plant or shrub in any public ROW, park or other public place shall be paid by such permittee or owner, upon notice from the Village of Scarsdale, in full within 30 days of the date of such notice. In the event of nonpayment by the owner of the property or building, such costs will be assessed as a lien on the property.
- C. Any tree, shrub or plant planted within the limits of any public ROW, park or other public place pursuant to such a permit or license agreement shall be maintained by the owner of the abutting premises, and the Village shall not be responsible for any damage caused to or by such tree, shrub or plant.

§ 281-19. Removal, cutting and trimming in public places.

No person shall remove, kill, cut, break or trim any tree or shrub in any public ROW, park or other public place in the Village or remove any device set for the protection of any such

tree or shrub, without first securing a written permit from the Village Engineer and complying with such specifications as the Village Engineer may prescribe.

§ 281-20. Interference in public places.

No person shall, without first securing a written permit from the Village Engineer, cause any wire or insulator or any device for the holding of any electric wire to be attached to any tree in any public ROW, park or other public place or cause any wire or other conductor charged with electricity to come in contact with any such tree or place or maintain any pole or post in such a manner as to interfere with any tree or shrub in any public ROW, park or other public place.

§ 281-21. Fastening animals and signs in public places.

No person shall fasten or tie any animal to or attach any sign, bill, card, notice or advertisement to any tree or shrub in any public ROW, park or other public place or allow any animal under his or her control to injure any such tree or shrub.

§ 281-22. Obstructing nutrients to roots in public places.

No person shall place or maintain on the ground in any public ROW, park or other public place any stone, excess soil or other substance in such manner as may obstruct the free access of air or water to the roots of any tree therein without first securing a written permit from the Village Engineer.

§ 281-23. Deleterious substances about roots in public places.

No person shall cause any brine, oil, gas, gasoline, liquid dye or other substance deleterious to tree life to pass onto or into the soil about the roots of any tree in any public ROW, park or other public place.

§ 281-24. Penalties for offenses.

Any person, or entity violating any of the provisions of this Article IV shall, upon conviction thereof, be guilty of a violation pursuant to the Penal Law of the State of New York, punishable by a fine in amounts set forth in § 281-11 with respect to trees and as provided in § 281-17 for all other vegetation.

ARTICLE V
Land Use Boards

§ 281-25. When inventory, plans and bond agreements required.

- A. Applications for subdivision or site plan approval or for activities in a freshwater wetland controlled area before the Planning Board; for special permits for tennis courts, swimming pools and other buildings before the Board of Appeals; and for permit approval before the Board of Architectural Review shall be accompanied by:
- (1) A tree inventory plan, prepared by a tree expert or licensed landscape architect ~~or~~ ~~surveyor~~ of all trees on the property having a DBH of four inches or more and trees having a DBH of three inches or less which are enumerated in § 281-3(A), identifying all trees by common and botanical names, DBH and condition. The Planning Board may defer the inventory requirement in lot merger and subdivision applications for which no development is proposed.
 - (2) A tree preservation plan showing trees which are to be preserved identified by common and botanical name, DBH and condition. Methods for tree preservation in areas affected by construction activities shall meet standards set by Westchester County Best Management Practices Manual. This shall be documented on the tree preservation plan.
 - (3) A tree removal and replacement plan prepared by a tree expert or landscape architect, if required.
 - (4) An agreement by the applicant to post a performance bond, cash deposit or other surety where required under this article, in an amount to be determined by the Village Engineer and approved as to form by the Village Attorney, to assure replacement of trees shown on preservation or replacement plans which were not fully protected or properly planted as required under this article and which do not survive for two complete growing seasons after completion of construction and that it not be released until after the foliage is out at the start of the third growing season, at which time staff would be able to verify that the tree(s) had survived.
- B. No certificate of occupancy shall be issued for new construction unless the applicant meets all conditions for providing a tree inventory, a tree preservation plan, a replacement plan and the posting of a bond and/or cash deposit, when required.

Chapter 18 Board of Architectural Review

§ 18-10 Applications; information required.

- A. Determination of compliance; transmittal of copies; notices; exemption from referral.
- (1) As soon as practicable the Building Inspector shall determine that an application for a building permit for the construction, reconstruction or

alteration of any building or structure complies with all provisions of Chapters 158, Fences, Walls and Plantings; 171, Freshwater Wetlands; 182, Historic Preservation; 247, Signs; 251, Site Plan Review; 281 Trees, Grass, Brush and Weeds; and 310, Zoning. The Building Inspector shall transmit a copy of the application and plans to each member of the Board of Architectural Review a minimum of five days prior to the meeting, where the building or structure has not been directly approved by the Board of Trustees or where approval of the building or structure has not been delegated to the Board of Appeals by § 310-79A(2)(swimming pools), (4) (tennis courts) or (5) (dish antennas) of Chapter 310, Zoning, of this Code, and which is not exempt from review under the provisions of Subsection A(3) below, which comes within either of the following categories:

- (a) Construction of any new buildings or structures; or
 - (b) An addition to or reconstruction or alteration of any existing building or structure in such manner as to change substantially the exterior character and appearance of the building or structure.
- (2) Notices.
- (a) The Board is authorized to require applicants to serve notices to the owners of neighboring properties, as specified in Chapter A317, Architectural Review Board Rules and Regulations, on the following types of applications:
 - [1] Construction of any new residence, accessory building larger than 100 square feet, commercial building or other public structure.
 - [2] Construction of an addition to an existing structure which is in the front yard or increases its height at the front by one story or more or more than 50%.
 - (b) The Board may also require notices to neighbors in other types of applications, as may be required in Chapter A317.
- (3) The Board is empowered and authorized, through the promulgation of regulations, subject to the approval of the Board of Trustees, to designate certain minor alterations and some decks and fences as exempt from referral by the Building Inspector to the Board for its review.

- B. Applications must be accompanied by plans showing all elevations of new structures and all affected elevations in the case of additions or alterations. For all new structures, a site plan with a scale minimum of one inch equals 20 feet must be submitted, showing the following;
- (1) Property lines, including curblines of adjacent streets.
 - (2) Outline of structure, including walks, driveways, terraces, walls and fences.
 - (3) Existing and proposed contours at two-foot intervals.
 - (4) Existing trees and trees to be removed having a DBH of four inches or more and trees having a DBH of three inches or less which are enumerated in § 281-3(A), identifying all trees by common and botanical names, DBH and condition, with a trunk diameter of four inches or more at a point 54 inches above the ground.
 - (5) All proposed plantings.
- C. The Building Inspector or the Board of Architectural Review may require submission of all or a portion of the above information as part of the application for an addition to an existing structure. The Building Inspector or the Board of Architectural Review may require the applicant to furnish grades and elevations of adjacent property and structures where they deem this information applicable to a proper evaluation of the relationship between existing and proposed structures.

Chapter 77 Planning Board

§ 77-1 Powers and duties.

Until further action of the Board of Trustees, the Planning Board of the village is hereby authorized and empowered to:

- A. Report on any proposed final action by the Board of Trustees to change or add to the Official Map of the village so as to create or abandon streets, highways or parks or to change the Village Zoning Map or the Village Code provisions on zoning and related matters.
- B. Report on any proposed final action by the Board of Trustees to adopt or change any map of the village or any part thereof relating to extensions or relocations into new areas of primary elements of the storm drainage or sanitary sewerage systems or the water distribution pipe system but excluding replacements or reinforcements to meet operating problems.

- C. Report on any proposed final action by the Board of Trustees with respect to the location and site plan for public buildings and the location and development of bridges, statues or monuments, parking areas, parks, parkways, squares, playgrounds or recreation grounds or public open spaces in the village.
- D. Approve plats showing lots, blocks or sites, with or without streets or highways, and to conditionally approve preliminary plats.
- E. Approve site plans for the erection, enlargement or alteration of buildings on lots located at a distance from any street, pursuant to § 310-19 of Chapter 310, Zoning, of the Code of the Village of Scarsdale, and for lots approved under the provisions of Village Law § 7-738.
- F. Approve site plans for the erection, enlargement or alteration of nonresidential buildings and multifamily dwellings, pursuant to Chapter 251, Site Plan Review, of the Code of the Village of Scarsdale.
- G. Approve subdivision applications submitted pursuant to Village Law § 7-738 and to modify applicable provisions of Chapter 310, Zoning, of the Code simultaneously with the approval of plats in Residence A Zoning Districts, subject to the provisions of § A319-45 of the Code. The Board is also authorized to require an applicant to submit an application pursuant to Village Law § 7-738 on lots with an area of 40,000 square feet or larger.
- H. At intervals of no more than five years, conduct hearings, review the village's Comprehensive Plan and make recommendations thereon to the Board of Trustees.
- I. Advertise and hold public hearings when the Planning Board desires or when required by law or the Planning Board's rules and regulations.
- J. Consider changes to the rules and regulations relating to any subject matter over which the Planning Board has jurisdiction, after a public hearing. Recommendations for changes to the rules and regulations shall be made to the Board of Trustees, and adoption shall be by local law.
- K. Review and act upon applications for the conduct of a controlled activity in freshwater wetlands as defined in Chapter 171, Freshwater Wetlands, of the Code of the Village of Scarsdale, and report on any proposed action by the Village Board to amend the Freshwater Wetlands Map.

- L. Hear appeals from rulings of the Village Engineer and decide on requests for variances from the requirements of Chapter 167, Flood Damage Prevention, of the Code of the Village of Scarsdale.
- M. Make recommendations to the Board of Trustees on monetary payments in lieu of land donations in new subdivisions, pursuant to Village Law § 7-730, Subdivision 4(c).
- N. Require such performance bonds, insurance and warranties as may be provided for under Article 7 of the Village Law.
- O. Employ experts, clerks and a secretary and to pay for the services and such other expenses as may be necessary and proper, not exceeding in all the appropriations which may be made for the Planning Board by the Board of Trustees.
- P. Impose such reasonable conditions and safeguards as it may deem appropriate in connection with the approval of any application.
- Q. Hear appeals from rulings of the Village Engineer and decide on requests for waivers from rulings on curb cuts, as contained in § 256-23, as provided in § 256-23I, and on rulings on freshwater wetlands applications, as contained in § 171-6A, as provided in § 171-12A.
- R. Approve special use permits for nonresidential uses and buildings as specified in Chapter 310, Zoning.
- S. Consider and report on such other matters as may from time to time be referred to the Planning Board by the Board of Trustees.
- T. Exercise such further powers as may be delegated by resolution or local law adopted or enacted by the Board of Trustees or conferred on planning boards by State law.
- U. Hear, review, and determine appeals from rulings of the Village Engineer regarding tree removal and replacement pursuant to the requirements of Chapter 281-4(C) and 281-5(B) of the Code of the Village of Scarsdale.

Chapter A317 Architectural Review Board Rules and Regulations

ARTICLE II Applications and Review

§ A317-6 Requirements for all applications.

All plans shall be drawn in scales commonly in use and shall include such drawings as shall clearly represent those structural, topographical and design features so that the Board can arrive at an evaluation of the proposed construction, addition, reconstruction or alteration.

A. In general, applications shall include:

- (1) Drawings of all full elevations upon which any construction, addition, reconstruction or alteration is proposed, showing both existing and proposed conditions. Treatment of architectural details, i.e., facias, corner boards, gutter returns, location of downspouts, etc., shall be clearly and completely indicated. Materials and treatment for roofing, siding, doors, windows, trim, shutters, chimneys, exposed foundation walls, exposed mechanical equipment, lighting, etc., shall be clearly indicated.
- (2) One set of photographs of all elevations or sites affected by the applicant's proposal shall be presented during the meeting or hearing.
- (3) A plot or site plan.
- (4) Floor plans.

B. In addition, applications for new construction and major alterations shall include:

- (1) One set of photographs of adjacent buildings and sites within 200 feet of the proposed structure shall be presented during the meeting or hearing.
- (2) Accurate locations and heights of roofs and first floor levels of buildings and structures on contiguous lots.
- (3) Landscaping plans delineating screenings and other plantings, driveways, entrance walks, exterior stairs, retaining walls and all existing trees measure and described in accordance with Chapter 281-25(A)(1), ~~over 12 inches in diameter (measured from a point 54 inches from the ground)~~ and methods of tree preservation, in accordance with Chapter 281-25(A)(2).
- (4) Samples of building materials.

C. In addition to any requirements set forth in this Article, an application may include renderings, scale models, displays and other visual representations of the proposed construction and written or graphic representations of the surrounding neighborhood, topography, etc., as the applicant wishes to submit.

- D. The Board may require such additional informational material as it deems necessary or desirable to a proper determination on any application. Drawings or interior details and structural, mechanical and electrical drawings need not be submitted unless specifically requested by the Board.

Chapter A319 Subdivision of Land; Planning Board Regulations

ARTICLE V General Requirements

§ A319-27 Compliance.

Each subdivision, site plan and special use permit shall comply with the following standards and requirements:

- A. The proposed development shall be consistent with the public health, safety and general welfare, the comfort and convenience of the public and the provisions, general purposes and intent of the Zoning Code.
- B. The property shall be such that it can safely be used for the purposes contemplated by the plan, without danger to health or peril from fire, flood or other menace, taking into consideration its location, elevation, grade and drainage.
- C. Land deemed by the Board to be unsatisfactory for habitation shall not be platted for residential occupancy, nor for such other uses as may endanger health, life or property.
- D. Any street created, enlarged or altered as part of a subdivision shall be of sufficient width and suitable grade as hereinafter provided and shall be suitably located to accommodate the prospective traffic, to facilitate fire protection and to provide access for fire-fighting equipment to buildings and shall be designed to relate safely and conveniently to the surrounding street system. Intersections with or extensions of existing streets shall be so located as not to create traffic hazards or congestion, and the arrangement of streets shall properly relate to any Comprehensive Plan then in effect and to the Official Map.
- E. Monuments, curbs, gutters, water mains, sanitary sewers, storm drains, street and other paving, streetlights and other improvements, including, if required by the Board, sidewalks and street trees, shall be installed, all in accordance with these rules and regulations and standards, specifications and procedures acceptable to the appropriate departments of the Village.
- F. Surface water control systems in any subdivision shall be designed for the maximum lot coverage permitted under § 310-22 and § 310-23 of the Code of the Village of

Scarsdale, shall be adequate to protect other property owners from damage, shall be designed to avoid silting, clogging or overload of existing public storm drains and shall be designed to offset any increase in the rate of surface water runoff from the proposed development pursuant to the requirements of § A319-37. If the installation and use of the storm drainage system, alone or in conjunction with other prospective subdivisions in the area, will, in the opinion of the Village Engineer, require changes in the existing public storm drainage system serving the area, the applicant shall furnish a deposit or suitable bond or guaranty in an amount estimated by the Board to be sufficient to pay the share attributable to the subdivision of the cost to the Village of providing adequate additional storm drainage capacity.

- G. Surface water control systems shall be provided at the applicant's expense in accordance with the requirements of § A319-27F. The adequacy of the system to dispose of all surface water runoff from the property shall be the responsibility of the applicant, and the Board's conditional approval of a preliminary plat and approval of a construction plan and a final plat shall not constitute a determination by the Board as to the adequacy of the system.
- H. Subdivision applications shall show, when required by the Board, open space suitably located for playground or other recreation purposes. If the Board determines that a suitable open space for such purposes cannot be properly located in any such plat or is otherwise not practical, the Board may require, as a condition to the approval of any such plat, a payment to the Village of a sum to be determined by the Board of Trustees upon the recommendation of the Board, which sum shall constitute a trust fund to be used by the Board of Trustees exclusively for neighborhood park, playground, open space or recreation purposes, including the acquisition of land.
- I. The landscape of the subdivision, site plan or special use permit shall be preserved in its natural state by minimizing tree and soil removal, and a tree preservation and replacement plan in accordance with Chapter 281, shall accompany each application, unless deferred as provided by § ~~281-18A(1)~~ 281-25(A)(1) of the Code of the Village of Scarsdale. If development of the site necessitates removal of established trees and plantings, the Board shall, before approving any such application, be satisfied as to the planting of replacement trees or other landscape treatment. The Board may require the applicant to post a performance bond, cash deposit or other approved surety where required pursuant to § ~~281-18~~ 281-25 of the Code of the Village of Scarsdale. Except under such circumstances as the Board may determine, no subdivision, site plan or special use permit approval shall be permitted of any land from which principal trees have been removed within one year which principal trees have been removed within one year prior to the date such application was submitted.

- J. Any remaining tract of land not subdivided into building lots shall be provided with satisfactory rights-of-way giving means of access to existing or proposed streets. Access to public land shall not be restricted by any reserve strip.
- K. No part of a lot shall be included in calculating the lot area, except such part as falls within either a quadrilateral, no part of which is less than 1/3 of the required width, or an inscribed circle. No more than 10% of the required lot area shall consist of any body of water or portion thereof, floodplain property or property designed as a retention basin for drainage.
- L. In lots at a distance from the street, the Board shall designate the front, rear and side lot lines.
- M. No new driveway or parking space may be designed in a way that would require a vehicle to back out onto a county or state highway.

ARTICLE VII
Rules for Various Applications

§ A319-40 Final plan requirements where earlier plans waived.

In applications for subdivisions where the Board has acted pursuant to § 319-38B to waive certain requirements, eight copies shall be filed, drawn at a scale of not more than 20 feet to the inch, and shall contain the following except where variation may be specifically authorized by the Board:

- A. The location and dimensions of property lines of each lot, block or site in relation to all streets and surrounding properties, including names of streets and of immediately adjacent and opposite property owners. In addition, the location of adjacent and opposing driveways shall be shown.
- B. Existing contours showing elevations based on Scarsdale datum, at intervals of not more than two feet, including existing contours and proposed regrading.
- C. The location and dimensions of all existing structures, sewers, watercourses, drains, utilities, easements, the size and species of trees with a trunk diameter of four inches or more at a point 4 1/2 feet above the ground level (except where the Board, pursuant to ~~§ 281-18A~~ § 281-25(A)(1) of the Code of the Village of Scarsdale, may require a less restrictive inventory), driveways, parking areas and other improvements.

- D. Calculations for each lot, showing that the minimum lot area required for the zoning district falls within either a quadrilateral, no part of which shall have less than 1/3 the required width, or an inscribed circle.
- E. The calculations of the area of the lot that lies within a floodplain, a detention basin or in the bed of a pond, stream or other water body.
- F. The zoning district or districts in which the land to be subdivided is located according to the Zoning Code.
- G. The date, North point and scale.
- H. The title under which the proposed subdivision is to be recorded, with the name of the owner or proposed owner.
- I. An indication that the corners of the proposed new lots have been staked in the field.
- J. Such other information as the Board may require.

§ A319-41 Applications for subdivisions where submission of preliminary plat was not waived.

- A. In any application for a subdivision not subject to waivers pursuant to § A319-38B, conditional approval of the preliminary plat and approval of the construction plan is required prior to submission of the final plat, but such approvals shall not constitute acceptance of the final plat nor prevent the Board from requiring that changes, modifications or a complete revision be incorporated in such final plat.
- B. Applications for approval of preliminary and final plats and construction plans shall be submitted as follows:
 - (1) Application for approval of a preliminary plat shall include the following:
 - (a) A signed statement to the Board setting forth:
 - [1] The nature and extent of proposed street improvements.
 - [2] The nature and extent of any recreational features, parks, playgrounds, water supply, sewerage and drainage rights-of-way, easements, retention basins and other land to be set aside or to be dedicated to public use and, if dedicated, the

conditions under which dedication is to be made to the Village.

- [3] A warranty that the owner will install all improvements in accordance with the standards prescribed by the departments of the Village having jurisdiction and set all monuments shown on the final plan in such manner as the Board may designate.
- (b) Eight copies of such preliminary plat shall be submitted, which shall be drawn at a scale of not more than 100 feet to the inch and shall contain, in addition to information required in § 319-40, the following:
- [1] The lots; the location, names and width of existing and proposed streets; the nearest streets in actual use and street intersecting such streets; existing driveways adjacent to and opposite the proposed subdivision; all easements and other encumbrances on any part of the land to be subdivided, including but not limited to wetland areas, floodplain areas and detention basins; the location and ownership of adjacent lots; and the location of major trees as required in ~~§ 281-18~~ §281-25 of the Code of the Village of Scarsdale.
 - [2] The location and size of any existing and proposed sewers, water mains, culverts and drain pipes on the property to be subdivided and the connections of any such proposed utilities to existing utility systems.
 - [3] Contours, showing elevations based on Scarsdale datum, at intervals of not more than two feet, including existing contours, and proposed new contours showing regrading where required for construction or alteration of streets and other site improvements.
 - [4] The proposed arrangement and the approximate area, width and length of street frontage of each lot for the purpose of demonstrating to the Board that the proposed location of streets makes possible a layout of lots in accordance with the requirements of the Zoning Code for the district or districts in which the subdivision is located.

- [5] Where applicable, all parcels of land proposed to be dedicated to the public use or to be set aside for park, recreation or open space purposes.
 - [6] An indication that the corners of the proposed new lots have been staked in the field.
- (2) When notified of conditional approval of the preliminary plat, the applicant shall file with the Board eight copies of a construction plan drawn at a scale of not more than 50 feet to the inch horizontal, showing the proposed location, in plan and profile, of all details of construction of the proposed subdivision and containing the following:
- (a) The stationing of the center lines of streets indicated by stakes at fifty-foot intervals and adequate reference of the center lines to monuments and other established points.
 - (b) The locations and widths of all streets, pavements, curbs, sidewalk areas, easements, parks and other open spaces, the proposed names of all streets and the radii of all curves in street lines.
 - (c) The location and ~~species~~ common name and botanical name of street trees, if installation of street trees is required by the Board.
 - (d) The location and design of streetlighting standards.
 - (e) The proposed water supply system.
 - (f) The proposed sanitary sewer system.
 - (g) The proposed stormwater drainage system, with locations of catch basins and method of disposal of the collected stormwater.
 - (h) Any other proposed underground utilities.
 - (i) The typical cross section of the roadway for the full right-of-way width, showing character, width and depth of pavement and subbase, location of utilities, character and dimensions of the sidewalk, if required, and the curb and side slope grading.
 - (j) The cross section of intersections and other special sections showing details of surface construction.

- (k) The designs of any bridges, culverts, retaining walls and other special features.
 - (l) The proposed lot lines.
 - (m) The title under which the proposed subdivision is to be recorded, with the name of the owner or proposed owner.
 - (n) The date, North point and scale.
 - (o) Profiles, showing original ground surface and finished street surface at center lines of all streets, percentage of grades of proposed streets, stationing and elevations of all points of curvature, points of intersection and points of tangency and of proposed sewers, drains, culverts, manholes and other features, also showing invert elevations and grades of sewers and drains and surface and invert elevations of manholes, stationing showing accurate center-line distances, elevations of the original ground surface showing the nearest tenth of a foot and of fixed points to the nearest hundredth of a foot, all elevations based on Scarsdale datum.
- (3) When notified of approval of the construction plan, the applicant shall submit a final plat, together with a written application, for final approval by the Board.
- (a) Eight copies of the final plat shall be filed with the Clerk of the Board. The final plat shall be drawn at a scale of not more than 100 feet to the inch and shall contain the following:
 - [1] The bearing and length of all straight lines and the radii, lengths and central angles of all curves along all property and street lines.
 - [2] The area of each lot in square feet.
 - [3] The connection by proper measurement between street center lines where such streets are not continuous straight across an intersecting street, both within the subdivision and where opposite existing streets or subdivisions.
 - [4] A system of monuments, with at least two monuments in each block, not more than 300 feet apart.

- [5] The names of all subdivisions immediately adjacent and opposite or, if not subdivided, the names of the owners of record of adjacent and opposite property, together with map numbers as recorded in the County Office of Land Records, and Westchester County block index numbers.
 - [6] The title, showing the name of the subdivision, owner, scale, date and North point.
 - [7] The boundaries of the properties, the lines of proposed lots, streets and parks, the lines of all adjoining streets, their names and exact survey locations. Lot numbers, obtained from the Village Assessor, shall be shown on each lot.
 - [8] A certificate of the licensed engineer or land surveyor making such plan to the effect that the plan is correct and made from an actual survey.
 - [9] A statement that the plan is in compliance with the Zoning Code.
 - [10] A certificate signed by the proper authority that the subdivision has the approval of the Westchester County Department of Health.
 - [11] A statement reading as follows: "Approved under authority of a resolution adopted _____ by the Planning Board of the Village of Scarsdale _____ Clerk."
 - [12] If any lot lines have been modified from those shown on the preliminary plat, an indication that the revised corners of the proposed new lots have been staked in the field.
- (b) The final plat shall be accompanied by the following, all in form satisfactory to the Village Attorney:
- [1] An offer of dedication to the Village of all streets shown to be improved which are to be dedicated and such other areas which are to be dedicated. Such offer shall be in the form of an executed deed of dedication delivered to the Village Attorney, who shall hold said deed in escrow until the Village Board accepts the dedication. The applicant shall deed no fee rights in such streets or other areas which are to be dedicated.

- [2] A deed of dedication of all easements shown on the plat for sewers, drains, water mains, pavements, curbs, walks, fire alarm ducts or any other public use in or on all streets for the full width thereof as shown on said plat, which deed shall convey such easements free and clear of all encumbrances, including a waiver of claim for damages occasioned by the establishment of grades as finally approved, or the alteration of the surface of any portion of the streets or other dedicated sites to conform to the grade so established.
 - [3] A written offer of easements as required across lots of parcels of land not covered by the above offers of dedication, giving the Village the right to install, construct, reconstruct and maintain therein all drains, sewers, water mains and other Village services.
 - [4] A certificate of title showing the ownership of all property and easements to be dedicated to the Village.
- (c) The applicant shall submit to the Clerk, within the time limit prescribed in such approval, all aforementioned deeds of dedication, easements and certificates of title, together with all bonds, deposits and insurance policies as may be required by the Board.
 - (d) Upon compliance by the applicant with the foregoing requirements and upon acceptance by the Village Board of all deeds of dedication and easements, and upon submission of the final plat incorporating all changes required by the Board, the Clerk will certify the final plat for filing in the County Office of Land Records. Approval of the final plat of the subdivision by the Board shall become operative upon evidence of said plat having been filed in the office of the County Office of Land Records.
 - (e) After the plat is filed with the County Office of Land Records, the applicant shall file one copy of the plat in ink on Mylar or cloth and three prints. These copies shall include the date the plat was filed and the county's file number.

§ A319-42 Site plans for lots not fronting on streets.

An application for approval of a site plan pursuant to § 310-19 of the Code of the Village of Scarsdale shall be submitted with eight copies, drawn at a scale of not more than 20 feet to

the inch and containing the following, except where variation may be specifically authorized by the Board:

- A. The location and dimensions of property lines of the lot and of the access to the street, in relation to the street and all surrounding properties, and with their driveway access.
- B. Existing and proposed contours, showing elevations based on Scarsdale datum, at intervals of not more than two feet.
- C. The location and dimensions of existing structures, sewers, drains, utilities, driveways, parking areas and other improvements and the size and species of trees with a trunk diameter of four inches or more at a point 4 1/2 feet above the ground level (except where the Board, pursuant to ~~§ 281-18~~ § 281-25 of the Code of the Village of Scarsdale, may require a less restrictive inventory).
- D. The calculation of the area of the lot that lies within a federal floodplain, a detention basin or in the bed of a pond, stream or other water body. For wetland areas shown on the Federal Flood Insurance Maps, elevations should be based on the National Geodetic Vertical Datum of 1929, not Scarsdale datum.
- E. The location and dimensions of all proposed structures, sewers, drains, utilities, driveways, parking areas and other improvements.
- F. Calculations, showing the lot coverage pursuant to § 310-20 of the Code of the Village of Scarsdale as provided for on a form supplied by the Village.
- G. An indication that the corners of the proposed new buildings, additions to buildings, decks, swimming pools, tennis courts and other improvements have been staked in the field.
- H. Such other information as the Board may require.

§ A319-43 Site plans and special use permits for nonresidential and multifamily dwellings.

Applications for approval of a site plan and for a special use permit for a nonresidential building or multifamily dwelling, pursuant to Chapter 251, Site Plan Review, of the Code of the Village of Scarsdale, shall be submitted with eight copies drawn at a scale of not more than 20 feet to the inch and containing the following, except where variation may be specifically authorized by the Board:

- A. The location and dimensions of property lines of the lot in relation to the street and all surrounding properties, and with their driveway access.
- B. The gross area of the lot and of all existing and proposed buildings.
- C. The location and dimensions, including height, of all structures, with entrances and exits.
- D. The extent and types of uses to be made of all existing and proposed buildings.
- E. Changes which have taken place since the erection of such existing building or buildings which have led to the proposed expansion or enlargement and any anticipated future need for further expansion or enlargement.
- F. Calculations, showing the lot coverage pursuant to § 310-20 of the Code of the Village of Scarsdale as provided for on a form supplied by the Village, if the subject lot is in a single-family residential use in Residence A Zoning Districts.
- G. Existing and proposed contours showing elevations based on Scarsdale datum, at intervals of not more than two feet.
- H. The layout and dimensions of any off street parking area, showing the number of spaces and their arrangement, the method of traffic circulation, all ingress and egress drives, areas to be screened and the type of screening to be used, the illumination of parking areas and the location and layout of any service and play area.
- I. The type of surfacing of parking areas, drives and walks and other improvements.
- J. The location and dimensions of all sewers, drains and utilities and other improvements.
- K. The location of any wetland controlled areas or watercourses.
- L. The size and species of trees with a trunk diameter of four inches or more at a point 4 1/2 feet above the ground level, except where the Board, pursuant to ~~§ 281-18~~ 281-25(A)(1) of the Code of the Village of Scarsdale, may require a less restrictive inventory.
- M. An indication that the corners of the proposed new buildings, additions to buildings, parking lots and other improvements have been staked in the field.
- N. Such other information as the Board may require.

§ A319-44 Permits for controlled activities in freshwater wetlands.

A permit is required from the Board for any controlled activity as set forth in §§ 171-3 and 171-4 of the Code of the Village of Scarsdale. Application for such permits shall be submitted with eight copies and shall contain the following information:

- A. A written statement describing the use or activity proposed for the property.
- B. Plans, maps and other technical information supporting the written proposal for use of the land.
- C. The location and dimensions of property lines, lots or blocks in relation to all streets and surrounding property.
- D. The location of existing and proposed structures, driveways and other improvements.
- E. The location and species of trees and shrubs in the area of the proposed wetland activity. All trees with a trunk diameter of four inches or more at a point 4 1/2 feet above the ground level will be specifically located and identified on the plan, except where the Board, pursuant to § ~~281-18~~ 281-25 of the Code of the Village of Scarsdale, may require a less restrictive inventory.
- F. Calculations showing the lot coverage pursuant to § 310-20 of the Code of the Village of Scarsdale, as provided for on a form supplied by the Village.
- G. The location of all freshwater wetlands areas on the applicant's property and on abutting properties. The plans should include existing and proposed contours in the areas to be altered by the proposed construction showing elevations, at intervals of not more than two feet. For wetlands areas shown on the Federal Flood Insurance Maps, elevations should be based on the National Geodetic Vertical Datum of 1929, not Scarsdale datum.
- H. An indication that the corners of the proposed new buildings, additions to buildings, decks, swimming pools, tennis courts and other improvements have been staked in the field.
- I. Such other information as the Board may require.

EFFECTIVE DATE

This Local Law shall take effect immediately upon filing with the Secretary of State.

AYES

Trustee Callaghan
 Trustee Crandall
 Trustee Finger
 Trustee Ross
 Mayor Hochvert

NAYS

Trustee Arest
 Trustee Veron

ABSENT

None

Before voting, Trustee Arest stated that he was disappointed because he thought the Board was moving away from voting on legislation the evening of the Public Hearings; however, he is voting nay.

Public Comment

Mayor Hochvert opened the public comment section of the meeting at this time; he stated that if there are any questions for Assemblywoman Paulin, those will be addressed at the end of the public comment period.

Robert Berg, 32 Tisdale Road, stated that he received a text message from the Village on Friday afternoon announcing the posting of this evening's Board agenda. He noted that the Board would be considering a resolution regarding an authorization to execute an engagement letter to provide no cost legal services in connection with participation as a plaintiff challenging IRS charitable gift reserve fund regulations. He stated that this would be a misadventure that would bring the Village's good name into National derision. The 2017 tax legislation that has largely eliminated SALT deductions from Federal income tax returns in high tax states such as New York and California capping at a maximum of \$10,000 per year is especially painful in Scarsdale where the median property tax is about \$30,000 per year and his is more than double that. It is also decimating the Village's real estate market. In an effort to restore the SALT deductions for taxpayers, Governor Cuomo enacted State legislation creating a Charitable Gift Reserve Fund work around which would allow New York taxpayers to deduct as a charitable gift to their school district and municipal and county governments the property taxes they owe to those entities and receive a 95% credit against their property tax bills for these 'charitable contributions'. The IRS issued preliminary regulations warning taxpayers against using this bypass.

Mr. Berg continued, stating that Assemblywoman Paulin has been working for months to initiate a lawsuit challenging the final IRS regulations when they come out against New York's Charitable Reserve Fund work around as arbitrary and capricious. She has convinced this Board that this lawsuit with the Village of Scarsdale leading the charge as one of two names plaintiffs will be an excellent idea and a wise use of our Village's name and limited resources. Any discussions regarding this have not been held publicly nor has the

Village Board ever discussed the pros and cons of engaging in this litigation with the public. If the Board moves ahead with this litigation against the IRS, Mr. Berg stated that they will be putting the good name of Scarsdale in great jeopardy and will be violating their fiduciary duties to the residents. He stated that just this morning Bloomberg issued a news story ranking Scarsdale as the second wealthiest town in the entire country. He asked if the Board could imagine the scorn nationwide the Village will face if they bring this lawsuit against the IRS stating that the poor residents are being hurt by the new Federal tax law changes because they can't write off the bulk of their high property taxes which pay for the luxury services that the Village and schools provide. The pundits will have a field day dragging Scarsdale through the mud.

Mr. Berg stated that he doesn't give the Assemblywoman's proposed lawsuit much of a chance of success on the merits, and presented his concerns as to why he is disturbed on how this litigation is proposed to be funded and run. He stated that he strongly feels that it is highly improper, unethical, and a violation of fiduciary duty for the Mayor of the Village and the Trustees to enter this agreement with an undefined 501(c)(4) organization, the Citizens for the Charitable Contribution Deduction, without a full and open public discussion. The lack of participation from other municipalities suggests to him that the Village is being 'suckered' into being the plaintiff to suit a political agenda. This is a very serious issue and answers are needed before the Board moves forward.

Ann Hintermeister, 40 Chase Road, stated that she feels more information is needed about the Citizens for the Charitable Contribution Deduction. She thanked Assemblywoman Paulin for being present to answer any questions. She stated that she is specifically concerned as to whether the Committee has raised any funds, how it will go about raising funds, what happens if it doesn't raise enough funds to cover Baker & McKenzie's fees. She stated that she is also concerned about who will be directing the litigation. Also, she asked Assemblywoman Paulin to address why she feels the Village of Scarsdale will be a particularly good plaintiff in this lawsuit. Do they believe the Village has standing to challenge the validity of the final tax regulations?

Robert Harrison, 65 Fox Meadow Road, stated he is a 39 year resident of Scarsdale and a 34 year volunteer director of the Scarsdale Spring and Summer Youth Tennis League program. He stated that he is speaking this evening on the comfort station that has been on the back burner for several years. He noted that it is in the proposed Capital Budget as a joint project with the School Board. He stated that the situation at the Middle School field and tennis courts is that this is a heavily used area – field hockey and soccer games are held there as well as the activity at the tennis courts. There are also physical education classes at the field. He stated that he went to the School Board meeting on Monday night and there is nothing in their facilities plan for a comfort station at the Middle School tennis and field area. He noted that the Village Board has an upcoming joint meeting with the School Board on March 11th at 6:15 p.m. at the High School and stated that he is hoping the Board have

the necessary documents sent to the School Board and will go into that meeting and discuss this with the School Board.

Trustee Finger informed Mr. Harrison that the Board has asked the School Board to add this item to the agenda for the joint meeting and they expect to be discussing it.

Bob Selvaggio, 16 Rochambeau Road, stated that it is highly likely that the only way the Village is going to have the SALT reduction restored is by convincing our Federal legislative executive branch that it should be restored. He expressed his opinions on why SALT should be restored. He stated that our municipal, Federal and State payments are not charitable contributions. The initiative being considered this evening can only serve to subject the Village to ridicule, because tax payments are simply not charitable contributions. He stated that there are other avenues to explore, such as for those who have no children in Scarsdale schools or choose private schools for their children could argue that there is absolutely no quid pro quo for them and they should be able to deduct school taxes as charitable contributions, just as they deduct contributions to their alma maters. He stated that we should also take out every single expenditure out of our Village and School budgets that is legitimately a charitable expense and have those covered by a tax-exempt community chest as does Port Washington in Nassau County. The proposal to reclassify income and property taxes as charitable contributions is a political gimmick doomed to failure.

Michelle Sterling, Brayton Road, CAC member, Chair of the Forum Sustainability Committee, speaking as a resident, spoke in regard to the resolution on this evening's agenda concerning the amendment of sections of the Scarsdale Village Code Architectural Review Board Rules and Regulations. She attended the agenda committee meeting and noted that the resolution may be tabled this evening. She stated that the CAC, over three years ago, started working together with Village management and the Board of Architectural Review to find a way to make the process better and address alternative energy in this Village in a way that is comparable with what other towns in Westchester are doing. Right now it is not the fairest process; sometimes solar applications are approved, sometimes they are not. The CAC, BAR, Building Department and Village management have had meetings and have come to a great place after three years of work where everyone feels comfortable. She thanked Village management, Building Inspector Frank Diodati, CAC members and to the BAR for working together. She stated that it is very important to move this to a public hearing so that residents know what is going on. She asked the Board to meet on February 26th and bring this resolution to vote and move this item forward.

Robert Harrison, 65 Fox Meadow Road, stated that he has some concerns regarding the resolution concerning the engagement letter for the Village to participate as a plaintiff in challenging the IRS regarding the Charitable Gift Reserve Fund regulations. He asked Ms. Paulin if she were aware of the discussion held between the Governor and the President concerning SALT. He stated that he is in favor of restoring the SALT taxes and has sent an email to Washington.

Assemblywoman Amy Paulin responded to comments made during public comment. She stated that a lot of the questions had some overlap. She thanked Mr. Berg for laying out so plainly and clearly the harm to the Scarsdale community and to the residents. He presented the case very well.

She said that we want to absolutely protect the Village and the residents. In regard to Scarsdale being a good plaintiff, she stated they had 47 municipalities, school districts, statewide organizations, and counties that signed up. Scarsdale and Rye Town, the two municipalities that have agreed to go forward with the litigation are the two that have established Charitable Funds. In the eyes of the lawyers, Baker and McKenzie among others, and tax professors from Stamford, the University of Chicago, UCLA, NYU, etc. who will be reviewing the brief. There is a lot of support in the legal community.

Ms. Paulin stated that Scarsdale has standing because they are harmed, like Rye Town because they established the fund and therefore they cannot raise money for that fund. She stated that they will also try to bring in some plaintiffs that have individual standing. The County of Westchester wanted to be plaintiff, as did Nassau and Suffolk Counties and others but they recognize that they are not the best plaintiff but are supporting us. The lawyers did not believe that they would have standing.

The role of the Village will be that as any plaintiff; they will have sign off on the litigation papers, make decisions about appeal, but the lawyer team that she identified will be writing the brief. There won't be a need for the Village's active involvement.

Ms. Paulin stated that there was a public meeting on September 8th in the White Plains library which was attended by representatives of the Village to see if a coalition could be formed. The meeting was well attended; and the Scarsdale Inquirer published an article about it. The case that the lawyers made is the same case they are going forward with. It was very public and remains so. She informed Mr. Berg that the papers are public and she would be happy to provide him with them. The arguments are all very up front and in those papers that everyone who participated had access to at that initial public meeting in September.

As far as convincing the Federal government to restore SALT, she commented 'Good Luck'. She hoped that one day SALT would be overturned. Once the money has been given away, it is hard to get back. Those deductions that were given to people in red states as opposed to the blue states will be hard to take back. It will be hard to reverse SALT. Although the Governor tried to speak to the President regarding the restoration of SALT it was actively rejected. In her opinion, the charitable deductions is the only possibility of perhaps doing all those things to protect the taxpayers.

Ms. Paulin continued, stating that the lawyers felt that this was the way to go is because there are already 70 active programs across 24 states that specifically do this already. They have tax credit programs mostly for parochial schools, but they have a tax credit for things that would not necessarily be considered charitable.

In regard to the 501(c)(4), it was decided to have an entity to take the burden completely off the Village and the Town of Rye and Baker and McKenzie has told us essentially that they will take whatever money we can raise, whether it's a dollar or a lot more. This entity was their way of taking the liability off the Village and the Town of Rye and at the same time giving residents an opportunity to participate in the way that they can which is to make the contribution. She stated that she is the President of the 501(c)(4), David Buchwald, her colleague is the Secretary and Tim Foley of Scarsdale is the Treasurer. There are no other members, nor do they have any intention of having any other members. It is their way of making sure that the Village is completely immune from cost. If we are not involved in this lawsuit, she stated that she could see a situation where there could be a carve-out for some tax credit programs that help some states and yet not addressing ours. She said that this is the right thing for the Village to do and will make this the best effort going forward.

Trustee Finger stated that there are many different types of retainers, agreements, relationships, etc. that attorneys can have with clients where there is another entity, as in this case, paying the bill. That does not create a conflict of interest. We spoke with the attorney and they understand the ethics associated with representing a client and that they will endeavor avoid a conflict of interest. There is no reason to think that they won't be able to perform their representation of the Village adequately. The only argument against this appears to be that people will say bad things about Scarsdale. He stated that for himself, the risk of people making fun or commenting in some way about Scarsdale is outweighed by the potential benefit to the constituents. He stated that he will most likely vote in favor when the resolution is read.

As no further comments were offered, the Mayor closed the Public Comment portion of the meeting.

Mayor Hochvert

Upon motioned entered by Mayor Hochvert, and seconded by Trustee Finger, the following resolution regarding Authorization to Execute an Engagement Letter to Provide No-Cost Legal Services in Connection with Participation as a Plaintiff in Challenging Internal Revenue Service Charitable Gift Reserve Fund Regulations was approved by the vote indicated below:

- WHEREAS,** in response to the Federal Tax Cuts and Jobs Act (TCJA), the State of New York has enacted legislation as part of its FY2019 Budget that authorizes counties, local governments, and school districts to establish charitable gifts reserve funds that may be used to defray some of the costs related to public education, healthcare, or other public services provided by those entities; and
- WHEREAS,** the State of New York has also enacted legislation which allows counties, local governments, and public school districts the option to authorize by means of resolution a real property tax credit of up to 95% of the amount of a property owner's monetary contribution(s) to an established charitable reserve fund during the "associated credit year"; and
- WHEREAS,** on May 8, 2018, the Board of Trustees established a charitable gift reserve fund consistent with the requirements of Section 6-u of the General Municipal Law; and
- WHEREAS,** on June 8, 2018, the Board of Trustees passed Local Law #4 of 2018, which established a charitable gifts reserve fund tax credit for the Village of Scarsdale, by which any owner of real property located within the Village who makes an unrestricted charitable monetary contribution to the Village's charitable gifts reserve fund shall be issued a written acknowledgment of such contribution and may claim a credit against their Village property tax equal to 95 percent of the charitable gifts reserve fund donation; and
- WHEREAS,** the charitable gifts reserve fund continues to function and has received donations from individual residents of the village; and
- WHEREAS,** the Internal Revenue Service (IRS) issued on August 23, 2018 proposed regulations providing rules on the availability of federal charitable contribution deductions when the taxpayer receives or expects to receive a corresponding state or local tax credit; and
- WHEREAS,** the proposed regulations state that a taxpayer who makes a contribution to a charitable reserve fund and subsequently receives a state or local tax credit that exceeds 15 percent of the contribution must reduce his or her charitable deduction by the amount of any tax credit he or she received at the state or local level; and
- WHEREAS,** the proposed regulations, if adopted as written, would cause harm to contributing taxpayers and the Village of Scarsdale; and

WHEREAS, on October 11, 2018, the Village of Scarsdale joined Nassau, Suffolk, and Westchester Counties, 16 additional municipalities, 17 school districts, the Association of Towns of the State of New York, the Lower Hudson Education Coalition, the New York Conference of Mayors, the New York State Association of Counties, the New York State Council of School Superintendents, the New York State School Boards Association, the Association of School Business Officials of New York, and the Westchester Putnam School Boards Association on a public comment submitted as part of the IRS public comment period, detailing how, under binding IRS precedent and longstanding published guidance by the IRS, the new proposed regulations if enacted would treat otherwise identically-situated taxpayers differently without a Congressional mandate or any other rationale for doing so, and in doing so constitute an arbitrary and capricious interpretation of federal tax law, and therefore urged that the proposed regulations be withdrawn; and

WHEREAS, under the Administrative Procedure Act, if a legal action is brought against final regulations, a federal district court has jurisdiction to determine if the regulations are contrary to statute or arbitrary and capricious and, if so, must set them aside; and

WHEREAS, on December 11, 2018, Assembly member Amy Paulin, who drafted the original legislation authorizing the use of charitable reserve funds and has coordinated the response by local governments to the IRS regulations, requested that the Village Board of Trustees consider serving as one of multiple plaintiffs should a suit in federal court be necessary to challenge the IRS regulations regarding charitable reserve funds, said participation to be at no financial cost to the Village of Scarsdale; and

WHEREAS, the Village of Scarsdale continues to believe that the regulations as drafted are arbitrary and capricious and therefore invalid under federal law; and

WHEREAS, the implementation of these regulations as drafted would harm Scarsdale residents who have already made donations or who might seek to make donations in the future to the charitable gift reserve fund, and would directly harm the ability of the charitable gift reserve fund in its capital raising efforts as envisioned under New York State law; and

WHEREAS, the law firm of Baker & McKenzie LLP, 300 E. Randolph Dr., Suite 5000, Chicago, Illinois 60601, has proffered a Letter of Engagement for Legal Services with all associated costs with such Engagement to be the sole responsibility of Citizens for the Charitable Contribution Deduction, Inc., a 501(c)(4) having no other relationship with the Village of Scarsdale; now, therefore, be it

RESOLVED, that the Mayor is herein authorized to execute the professional services agreement with Baker & McKenzie LLP, 300 E. Randolph Dr., Suite 5000, Chicago, Illinois 60601, in substantially the form attached hereto.

AYES

Trustee Arest
Trustee Crandall
Trustee Finger
Trustee Ross
Trustee Veron
Mayor Hochvert

NAYS

Trustee Callaghan

ABSENT

None

Before casting his vote, Trustee Arest stated that he talks a lot about limitations put on local government about what can and can't be done and obviously, things are decided above us. This is something that we actually can do. We did this in 2017 where a previous Board made sure we could prepay our taxes when the SALT deduction limit was announced. We did it in June of last year, when we created a charitable fund, and we didn't do this arbitrarily or unilaterally, this was something authorizing created by the State. So all the actions are taken done within the law. This is not some scheme that we are just creating on our own. Obviously we join this coalition, a bipartisan group of municipalities and organizations including the Scarsdale School District that joined with top law firms, Baker McKenzie supported by Proskauer and Cleary. We are a suitable plaintiff because it is believed we will have standing. The (c)(4) that has been created is to help fund the cost. To be clear, Baker as lead and Proskauer and Cleary in support will be representing us with the understanding that they will be compensated by them. If there are inadequate monies to cover the anticipated cost, the lawsuit will continue at our discretion and at the expense of the firms involved.

Trustee Arest made one other point, stating that the (c)(4) is not itself a client of Baker McKenzie; we are client of Baker and McKenzie, we will make the decisions. The (c)(4) will have no influence on the decisions we make.

In summation, Trustee Arest stated that “ This is not our only option, but again, in our position, I believe it is our best option. There is always the possibility of lobbying our representatives to make changes through the legislative process. But who says we still can’t and who says we are not? I have been with Congressman Engel at least three times at local events recently and spoken with him about the impact of SALT deductibility. I also very much enjoyed watching Bob Harrison give our Congressman a hard time on the issue at the Forum’s Winterfest. I should thank Mr. Harrison for a comment he made at our December 11, 2018 Board meeting. We had met with Amy and Baker McKenzie that evening. I was certainly intrigued by what was discussed. But, candidly, I had concerns about what negative impact such a suit could have on the Village and knew that I needed time to digest, carefully consider the risks and formulate follow up questions to help me come to a decision. Bob had read the meeting notice and inquired about the meeting at the Board’s Agenda Meeting. We shared what we could and during Public Comments at the Board Meeting and without a complete understanding of what was discussed earlier, he strongly expressed his hope that we were doing whatever we could to fight the tax changes because they were having a material impact on many of our residents including seniors. Bob is well aware that the median household tax burden in Scarsdale is about \$35,000. That is more than three times what can now be deducted at the Federal level and that only takes property taxes into account. And so, Mr. Harrison, that is how I view my vote tonight. It is not about partisan politics, it is simply about doing what I can as a Trustee to fight for our residents and to fight for Scarsdale. I therefore vote Aye.”

Trustee Callaghan stated that he would vote ‘nay’ for the following reasons: He stated at this time this represents an unacceptable risk to the residents of the Village. The funding from the Charitable Contributions deduction – what happens if that stops – what is the goal and what is the amount that this group thinks they need? Who is going to monitor the activity of this fund? Who is going to set timelines and who is going to set milestones? Remember the reval and what happened there. There doesn’t seem to be that many people involved in this in Westchester County or in the nation and he wondered why. Also, the current political atmosphere in the United States should be considered which will probably be around until 2121. At this time, this is an unacceptable risk.

Trustee Crandall thanked Assemblywoman Amy Paulin for taking a leadership position on this issue. It is a great effort to try to protect our local residents as well as other residents in other communities. She informed Mr. Berg that yes, she is an attorney but officially retired from the practice of law several years ago. She was registered with the Office of Court Administration under her maiden name. Tonight she stated she is hopeful and proud to vote yes.

Trustee Finger responded to Trustee Callaghan’s comments regarding the funding. He stated that the retainer agreement provided by Baker and McKenzie is pretty clear and our agreement is clear that we have nothing to do with the funding. We are the client and they will continue to represent us. In regard to monitoring the lawsuit, we are the plaintiffs,

and he would expect that as with any lawsuit that appropriate periodic reports will be received. The Village Attorney will be interfacing with the lawyers with regularity and he is sure appropriate information will be provided to the Board and appropriate decisions will be made. Regarding the reason that there are not that many parties involved in the County or in the Country – there were many people involved in the County, there were almost 8,000 comments and there may be multiple lawsuits – not only this one dealing with this issue. There are only three municipalities that were able to put together the Charitable Fund in a timely fashion so that they could even have an option to be a proper party to this lawsuit. One of those communities decided not to for whatever reason. What is relevant is what this impact this is having on this community and citizens and if there is anything that can be done to potentially alleviate that burden, then he would be in favor of it and therefore votes ‘aye’.

Trustee Ross thanked Assemblywoman Paulin for her leadership on this issue. He stated that a strong argument is made that our residents are being denied equal treatment under the law with others that are similarly situated. We now have an opportunity and therefore he believes it is their responsibility to take steps to vindicate those rights. A comment was made to the effect that this lawsuit will be an unwise use of the Village’s resources. No funds of the Village are to be committed to this effort, and he believes that such time on the part of staff and the Board and the Mayor as may be required are entirely appropriate in light of the interest of the residents they are attempting to protect. Therefore he votes ‘aye’.

Trustee Veron stated that the Board had the opportunity to speak again with counsel and to underscore the importance that the Village has no financial obligation, in fact, the letter was made even stronger that this is exceedingly clear, that the Village would have no financial risk. That was something that this Board was very careful about. The Board did not take this decision lightly, they spent a lot of time gathering information and learning about the potential lawsuit. In the end, the Board believes it is their duty to protect the residents. She votes ‘aye’.

Mayor Hochvert stated that he thinks it is okay to take a risk when you have so much to gain for the people they represent. The risk is very, very small because most of the people the Board represents will not see anything but an effort to help them. He votes ‘aye’.

Finance Committee

Upon motion entered by Trustee Ross, and seconded by Trustee Crandall, the following resolution regarding Acceptance of a Gift for the Scarsdale Public Library Addition and Renovation Project was approved by a unanimous vote:

WHEREAS, the Scarsdale Library Master Plan, dated June 10, 2013, supported by the Scarsdale Village Board of Trustees via resolution dated April 8, 2014, identified a number of building renovations and additions that would transform the Library into a multi-purpose community asset for future generations, maintain its preeminent status among free public libraries in the County and State, enhance its technological capacity to further library services, and create a physical environment constituting a welcoming and versatile learning center; and

WHEREAS, the Library Addition and Renovation Project is anticipated to cost \$20,176,755, inclusive of a 5% construction cost contingency, with over \$8,000,000 in project funding already raised through the Library Capital Campaign, courtesy of the philanthropy exhibited by Scarsdale residents; and

WHEREAS, the following donation has been offered to the Scarsdale Public Library Addition and Renovation Capital Improvement Project: Friends of the Scarsdale Library - \$271,869.67.

WHEREAS, pursuant to Policy #106: “*Gifts to the Village of Scarsdale*” of the Village of Scarsdale Administrative Policies & Procedures Manual, acceptance of all gifts valued at \$500 or greater must be approved by the Village Board of Trustees; now, therefore, be it

RESOLVED, that the Village Board hereby accepts the following gift toward the Scarsdale Public Library Master Plan Improvement Project: \$271,869.67 from the Friends of the Scarsdale Library; and be it further

RESOLVED, that the Village Treasurer take the necessary steps to complete the transaction and accept the financial gift totaling \$271,869.67 and deposit said funds into the Library Capital Campaign Account; and be it further

RESOLVED, that the Board of Trustees hereby extends their heartfelt thanks and great appreciation to the Friends of the Scarsdale Library for their generosity and commitment to the Scarsdale Public Library and the community it serves.

* * * * *

Law Committee

Upon motion entered by Trustee Finger and seconded by Trustee Arest, the following resolution regarding Calling for a Public Hearing on a Local Law to Amend Section A317-24 of Chapter A317 of the Scarsdale Village Code Entitled Architectural Review Board Rules and Regulations was tabled to the next regular Board meeting of February 26, 2019 (a Committee meeting will be held that same date to discuss details):

RESOLVED, that a Public Hearing is hereby scheduled by the Board of Trustees of the Village of Scarsdale to be held in Rutherford Hall in Village Hall on Tuesday, February 26, 2019, at 8:00 p.m. to consider a proposed local law to amend Section A317-24 of Chapter A317 of the Scarsdale Village Code entitled Architectural Review Board Rules and Regulations; and be it further

RESOLVED, that the Village Clerk is hereby directed to publish notice of said hearing pursuant to Village Law.

* * * * *

Upon motion entered by Trustee Finger, and seconded by Trustee Crandall, the following resolution regarding Authorization to Execute a License Agreement for 26 Hampton Road was adopted by the vote indicated below:

WHEREAS, Christin Levine and Scott Levine (hereinafter "Licensee") are the current owners of certain real property known as 26 Hampton Road and identified on the official tax map of the Village of Scarsdale as Section 04, Block 04, Lot 517 (hereinafter "Property"); and

WHEREAS, the Licensee is desirous of replacing and maintaining a previously existing walkway traversing in a straight line from the house to the street on Hampton Road, encroaching upon the grass area of the Village right-of-way; and

WHEREAS, the Licensee has requested that the Village Board approve a license agreement to permit the installation and maintenance, at the Licensee's expense, of the walkway partially located within the Village right-of-way, with such installation performed in accordance with the associated plans dated October 11, 2017, included as "Exhibit A" of the License Agreement, attached hereto and made a part hereof; and

WHEREAS, the Village Engineer visually inspected the area and, subject to certain conditions, recommended to the Village Attorney the granting of a

revocable license agreement, as the walkway would not create a visual or other obstruction or hazard and would simply replace the walkway segment temporarily removed during recent construction renovations to the home and property; and

WHEREAS, Licensee will indemnify and hold harmless the Village in all actions, claims, judgments, costs or expenses arising from said maintenance and use of the walkway, as well as provide the Village with a certificate of liability insurance naming the Village as an additional insured at limits approved by the Village Attorney; and

WHEREAS, the granting of said revocable license agreement will not interfere with the Village’s present and future use and maintenance of said Village right-of-way; now, therefore, be it

RESOLVED, that the Village Manager is herein authorized to execute a revocable license agreement, in substantially the same form as attached hereto, with Christin Levine and Scott Levine of 26 Hampton Road, Scarsdale, N.Y. 10583, to install and maintain a stone walkway partially located in the Village right-of-way, in accordance with the associated plans dated October 11, 2017, and attached as “Exhibit A” of said License Agreement; and be it further

RESOLVED, that Licensee herein agrees to indemnify and hold the Village of Scarsdale harmless in all actions, claims, judgments, costs or expenses arising from said installation, maintenance, and use of the walkway, and to provide the Village with a certificate of insurance naming the Village as an additional insured at limits approved by the Village Attorney; and be it further

RESOLVED, that the Licensee shall pay the Village the sum of \$1,250.00 as an administrative fee associated with the preparation and execution of the license agreement pursuant to the Fiscal Year 2018/19 Village-Wide Fees and Charges Schedule, as well as an annual maintenance fee of \$150.00 for each year the encroachment remains in-place.

<u>AYES</u>	<u>NAYS</u>	<u>ABSENT</u>
Trustee Arest	None	None
Trustee Callaghan		
Trustee Crandall		
Trustee Finger		
Trustee Ross		
Trustee Veron		

Mayor Hochvert

Land Use Committee

Upon motion entered by Trustee Finger, and seconded by Trustee Crandall, the following resolution regarding SEQRA Review and Determination Relating to the Proposed Amendment of Chapters 310-2, 310-12, 310-67, 310-70 and 310-89 of the Village Code to Regulate the Commercial Sale of Guns and Electronic Nicotine Delivery Systems was approved by the vote indicated below:

- WHEREAS,** the Village Board has considered the proposed amendment of the zoning code to regulate the commercial sale of guns and electronic nicotine delivery systems (ENDS) by requiring businesses selling these items obtain a Special Use Permit from the Planning Board and meet certain conditions regarding location and storage; and
- WHEREAS,** the proposed amendment would permit the commercial sale, storage, possession and display of firearms, ammunitions and explosives in the VCR-1.0 zoning district but not closer than 250 ft. from any public or private school, nursery school, day care center, playground or house of worship, nor within 250 ft. of any other such establishment engaged in the commercial sale, storage, possession and display of firearms, ammunitions and explosives; and
- WHEREAS,** the proposed amendment would permit the sale of ENDS products in all of the Village business zoning districts, but not closer than 1000 ft. of any public or private school, nursery school, day care center, house of worship, youth center, playground, park, library, arcade nor within 1000 ft. of any other such establishment engaged in the commercial sale, delivery and/or transfer of ENDS and/or ENDS components and parts; and
- WHEREAS,** the proposed amendment is intended to protect the public health, safety and welfare of the persons in the Village of Scarsdale by regulating the commercial sale of firearms and ENDS products; and
- WHEREAS,** the proposed amendment will not adversely impact environmental conditions in the Village including traffic, energy usage, water supply, archeological resources, natural resources, stormwater runoff or flooding; now, therefore, be it

RESOLVED, that after careful examination of the proposed law and evaluation of the information included in the Short Environmental Assessment Form, the Village Board determined that the amendment of the zoning code to regulate the commercial sale of guns and ENDS products is an Unlisted action pursuant to Chapter 152 of the Village Code and 6 NYCRR 617.2(ak); and further determined the proposed action will not have a significant adverse impact on the environment.

AYES

Trustee Arest
 Trustee Callaghan
 Trustee Crandall
 Trustee Finger
 Trustee Ross
 Trustee Veron
 Mayor Hochvert

NAYS

None

ABSENT

None

Trustee Finger stated that the following local law regarding the restrictions on the sale of ENDS products and gun sales – in particular the restrictions on ENDS products was given a significant effort by staff; it is one of the few things in the 4 years he has been on the Board that really has the potential to significantly impact the safety and health of our youth. This is a serious problem for all children and students, including the disruptions that are caused frequently in our schools as a result of these items being used. There are many health hazards that have been heavily documented. A public hearing was held and there were a number of comments in support of this legislation, which he stated he appreciated.

Trustee Arest thanked Deputy Mayor Finger for his leadership on this item. He stated that this is really important legislation.

Trustee Veron also thanked Trustee Finger, stating that his leadership was extraordinary.

Upon motion entered by Trustee Finger, and seconded by Trustee Ross, the following Local Law was adopted by the vote indicated below:

INTRODUCTORY LOCAL LAW # 1 OF 2019
 A LOCAL LAW AMENDING SECTIONS 310-2, 310-12, 310-67, 310-70 AND 310-89
 OF CHAPTER 310 OF THE SCARSDALE VILLAGE CODE
 ENTITLED ZONING

BE IT ENACTED by the Board of Trustees of the Village of Scarsdale as follows:

Section 1: Purpose and Intent: The Board of Trustees finds that it is necessary to regulate commercial sale, storage, possession and display of firearms, ammunitions and explosives pursuant to 139-d of the General Municipal Law in order to provide for the public health, safety and welfare of the persons in the Village of Scarsdale. The Board of Trustees finds that the location of such activities close to educational and religious uses is not compatible with such uses and can pose a danger to residents through fire or explosion, or as a result of burglaries and robberies at such locations. The Board of Trustees intends to regulate the location of such activities and to place additional regulations upon those activities in order to assure that such activities are conducted in a safe manner. The regulations found herein shall be in addition to Federal, State and County Law and regulations.

Additionally, the Board of Trustees finds that it is necessary to regulate commercial sale, storage and display of ENDS and ENDS components and parts pursuant to 139-d of the General Municipal Law in order to provide for the public health, safety and welfare of the persons in the Village of Scarsdale. The Board of Trustees finds that the location of such products close to educational, religious, and other uses frequented by youth is not compatible with such uses and can pose a danger to residents. The negative health effects of tobacco products has been well researched and documented. ENDS products pose a specific threat to young persons in the Village of Scarsdale through their unique appearance and marketing. Studies have shown a relationship between the density and proximity of the marketing and sales of tobacco products, including ENDS products, to schools and other locations frequented by youth and the likelihood of youth using these products, as well as changing the attitudes of young people towards these products to the detriment of their health. Furthermore, the Board of Trustees intends to regulate the location of such activities and to place additional regulations upon these activities in order to deter youth in Scarsdale from using ENDS products. The regulations found herein shall be in addition to Federal, State and County Law and regulations.

Section 2: Chapter 310 of the Scarsdale Village Zoning Code is hereby amended as follows:

§ 310-2. Definitions.

The words and phrases set forth below have the following meanings when used in this chapter:

AMMUNITION

Cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

BUILDING

Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of persons, animals or chattels.

BUILDING, ACCESSORY

A separate building, such as a private garage, private toolhouse, studio, gazebo, children's playhouse or a noncommercial greenhouse, which is accessory to a principal building on the same lot and which is used for purposes customarily incidental to those of the principal building. Where an accessory building is located within 10 feet of the principal building, unless located in the rear yard of a lot which is less than 110 feet in depth, such accessory building shall be considered part of the principal building for setback purposes.

BUILDING, NONRESIDENTIAL

A building which is used primarily for other than residential purposes.

COMMERCIAL SALE OF ENDS

The sale of one of more ENDS.

COMMERCIAL SALE OF ENDS COMPONENTS AND PARTS

The sale of one or more ENDS components and/or parts.

COMMERCIAL SALE OF FIREARMS

The sale of one or more gun, pistol, or any other firearm capable of discharging ammunition.

COURT

An open unoccupied space other than a yard on the same lot with a building and bounded on at least three sides by such building. An outdoor court is a court which for its full required minimum width opens without obstruction on a street or on an unoccupied space at least 15 feet wide on the same lot and adjoining a boundary line of such lot and which court has a maximum horizontal dimension not exceeding twice its width. An "inner court" is any court other than an outer court.

CURB LEVEL

For the purpose of measuring the height of a building, the mean of the established curb level in front of the building. If no curb exists, the curb level shall be deemed to be the mean of the established grade at the center line of the street in front of the building. If the lot is higher than the curb level as defined above, the average level of the finished grade of the lot along the front wall of any building to be erected thereon may be taken as the curb level for the purpose of determining all vertical measurements. If a lot fronts on two or more streets of different levels, the mean curb level of the highest street may be taken as the curb level for the purpose of determining all vertical measurements within a distance of 120 feet back from the street line of the highest street. If a building exceeds 100 feet in length along a street, each 100 feet thereof shall conform to the highest regulations of this chapter, and the curb level, for the purpose of determining the permitted height, shall be the mean curb level in front of each 100 feet of such building.

DWELLING UNIT

The quarters designed to be used as a dwelling by one family.

ELECTRONIC NICOTINE DELIVERY SYSTEM (ENDS)

Noncombustible tobacco products that use an electronic or other power source to heat e-liquids, tobacco, or other material derived from tobacco to create an aerosol,

including but not limited to vapes, vaporizers, vape pens, hookah pens, electronic cigarettes, and e-pipes.

ELECTRONIC NICOTINE DELIVERY SYSTEM (ENDS) COMPONENTS AND PARTS

Products used in conjunction with ENDS, including but not limited to e-liquids, atomizers, cartridges, cartomizers and clearomizers, tank systems, drip tips, and flavorings for ENDS.

FAMILY

Any number of individuals, related by blood, marriage or adoption, or not more than five individuals who are not so related, living together as a single housekeeping unit, using rooms and housekeeping facilities in common and having such meals as they may eat at home prepared and eaten together.

FENCE

A structure of wood, metal or plastic, or any combination thereof, erected to enclose, separate, divide or define a lot or a portion thereof.

FIREARM

Any firearm as defined in 18 U.S.C. 921(a)(3), "antique firearm" as defined in 18 U.S.C. 921(a)(16), and the components, parts and accessories thereof.

FLAT ROOF

A flat roof is one with a rise of not more than 1/2 inch per foot.

FLOOR AREA RATIO

The gross floor area on a lot divided by the gross lot area. Any area of land dedicated to the Village of Scarsdale for parking, roadway widening or traffic circulation purposes, if contiguous to the lot or within 200 feet therefrom, shall be calculated as a part of gross lot area for FAR purposes. If part of a lot is used for railroad tracks, 1/2 of the area so used may be counted in calculating the gross floor area permitted on the lot, provided that construction is actually proposed over such railroad track area or such area above the tracks is permanently preserved for open space purposes.

GARAGE, PUBLIC

A garage operated for gain, whether or not it is available to the public generally.

GROSS FLOOR AREA

The sum of the gross horizontal areas of all floors of a building measured to the exterior of the outside walls of the building, but excluding any floor area housing building mechanical equipment, basement storage to which the public is not admitted and floor area devoted to required or incentive off-street parking and loading facilities.

GROSS LEASABLE FLOOR AREA

The total floor area designed for tenant occupancy and exclusive use on all floors, including mezzanines, but excluding floor area used for parking or for basement storage to which the public is not admitted, measured from the center line of joint partitions and from the interior of outside walls and walls adjoining common areas, such as hallways, elevator shafts, etc.

GROSS LOT AREA

The total horizontal area included within the property lines bounding a lot.

GROUND FLOOR

Any floor or floors designed to provide direct access to a street or to a public pedestrian area adjacent to a street, with less than half a story of grade change from such street.

HEIGHT

For buildings in Residence A District, the vertical distance measured, in the case of a building with a flat roof, from the proposed final grade or the existing grade, if that is lower, along the perimeter of the building to the level of the highest point of the roof beams and, in the case of a building with a pitched roof, from the proposed final grade or the existing grade, if that is lower, along the perimeter of the building to the level of the point midway between the peak and the plate of the highest section of the roof. For buildings in all other districts, "height" is the vertical distance measured, in the case of a building with a flat roof, from the curb level to the level of the highest point of the roof beams and, in the case of a building with a pitched roof, from the curb level halfway between the top of the plate and the ridge.

HOME OCCUPATION

See Article XI.

LINE, FRONT LOT

The "front lot line" of a lot which is not a corner lot is its street line or, if such lot extends through a block, the street line from which the principal building sets back the lesser distance. However, in the case of a lot no part of which adjoins any street, "front lot line" is the boundary line of such lot which is designated as such in an application for a permit to erect or alter a building on such lot or, if not so designated, the boundary line which is nearest and most nearly parallel to a street, or as designated by the Planning Board pursuant to § A319-27L. In the case of a corner lot, the "front lot line" is the front street line, as designated in an application for a permit to erect or alter a building on such lot or, if not so designated, the street line from which the principal building sets back the greatest distance or, if its setback is equal distance from two or more street lines, the street line which is nearest to the main entrance of the principal building.

LINE, REAR LOT

The lot boundary line which is opposite and most distant from the front lot line or, in the case of a lot which is irregular in shape, the lot boundary line which is most nearly parallel to and at the greatest average distance from the front lot line, or as designated by the Planning Board pursuant to § A319-27L.

LINE, SIDE LOT

Any lot boundary line which is not a front lot line or a rear lot line.

LINE, STREET

The boundary between a lot and the edge of street right-of-way shown on the official map of the Village and/or on a filed map in the office of the Westchester County

Clerk, regardless of whether such right-of-way is a public street, a private street open to public use or an undeveloped street.

LOT

A parcel or plot of land shown on a plat filed in the County Office of Land Records and occupied or designed to be occupied by one principal building and its accessory buildings if any, including such yards or open spaces as are arranged or designed to be used in connection with such buildings.

LOT, DEPTH OF

The mean horizontal distance from its front lot line to its rear lot line, measured in the general direction of its side lot lines.

LOT, IMPROVED

A lot on which a building or buildings stand. An "unimproved lot" is a lot on which no building stands.

LOT, WIDTH OF

The mean width of a lot measured at right angles to its depth.

NEAREST TO LOT LINE

- A.** In determining the part of a building or story thereof which is nearest to a particular lot line, there shall be disregarded, if such building is in any residence district, the below-specified portion nearest to such lot lines of the following parts of such building or story:
- (1) Windowsill, belt courses or other ornamental features: six inches.
 - (2) Cornices: three feet.
 - (3) In the case of a front lot line, bay windows on the ground story, not aggregating in width more than 1/3 of the frontage of the building: three feet.
 - (4) In the case of a front or rear lot line, an open porch or stoop on the ground story: five feet. In the case of a front lot line, such open porch may have a roof that is supported by columns, but may not be enclosed or screened on the sides or front, and is limited to a width of no more than four feet wider than the entry door and a height of no more than 1 1/2 stories. The roof may not extend past the five-foot allowance.
- B.** There shall be disregarded, if such building is in a Residence C District or a business district, the below-specified portion nearest to such lot line of the following parts of such building or story:
- (1) In the case of a side or rear lot line, chimneys, each not exceeding 10 square feet in horizontal cross section: two feet.
 - (2) In the case of a side or rear lot line, a fire escape, outside stairway or balcony to a fire tower, as permitted by Chapter 132, Building Construction and Fire Prevention, of this Code: five feet.

PARKING SPACE FOR ONE MOTOR VEHICLE

An area available for parking an automobile, exclusive of adequate ingress and egress driveways and aisles, subject to the requirements specified in § 310-70.

PERMANENT STANDBY GENERATOR

A backup electrical system powered by a permanent fixed fuel source, including but not limited to natural gas, liquid propane or diesel that has:

- A. An automatic transfer switch; and
- B. Is installed in compliance with all federal, state and local laws, including the New York State Uniform Fire Prevention and Building Code (including all referenced codes and standards), as amended from time to time.

PERSONAL SERVICE ESTABLISHMENT

An establishment engaged in providing services generally to individuals, such as a dry cleaner, beauty salon, barbershop, shoe repair shop, portrait photographic studio and other such similar uses.

PROFESSIONAL OFFICE

The office of a professional engineer, architect, landscape architect, surveyor, certified public accountant or attorney.

RESIDENCE PURPOSES

A building or a part thereof shall not be deemed to be "used for residence purposes" unless it is used for such purposes by persons other than a janitor or caretaker of such building or the family of such janitor or caretaker.

RESTAURANT, FAST-FOOD

A business enterprise primarily engaged in the retail sale of meals selected by patrons from a limited number of prepared, specialized items, such as but not limited to hamburgers, chicken, fish and chips, pizza, tacos and hot dogs, for consumption either on or off the premises, served in disposable containers in a facility where the major portion of the sales to the public is by drive-in or stand-up service.

RETAIL STORE

An establishment engaged in selling merchandise for personal or household consumption and rendering services incidental to the sale of the goods, excluding the commercial sale, delivery and/or transfer of firearms, ammunitions, ENDS, and/or ENDS components, and parts.

SEMPUBLIC USE

Any religious or private educational use permitted in a residence district, as well as office, meeting and similar facilities of charitable, fraternal and community organizations.

SETBACK

The shortest horizontal distance from a lot line to the part of the building or of the story which is nearest to such lot line.

SOLID

As applied to fences, walls and retaining walls, having less than 50% open space when viewed from a position which is at a right angle to the face of the fence, wall or retaining wall.

STORY

That part of a building included between any floor and the floor next above or, if there is no floor above, the ceiling or flat roof above.

STORY, FIRST

For the purpose of determining a building's height in stories, the lowest story whose exterior walls or at least all of the area of one and at least 80% of the area of each of the remaining exterior walls are entirely above the level of the ground adjacent to the building.

STREET

A road or highway, available for use as a thoroughfare by the public generally, which affords the means of access to adjoining property.

STRUCTURE

An assembly of materials forming a construction designed for useful purposes, including, among others, buildings, stadiums, swimming pools, tennis courts, handball walls, decks, balconies, signs, radio towers, water tanks, storage sheds, equipment pads and shelters.

SWIMMING POOL

Any body of water or receptacle for water having a depth at any point greater than two feet, used or intended to be used for swimming or bathing, and constructed, installed or maintained in or above the ground outside any building.

TELEPHONE EXCHANGE

A telephone company central office in which lines are connected to permit telecommunications service. Such central office does not serve as a supply depot or dispatch point for external work orders for a telephone company or as a manufacturing or repair facility or include wholesale distribution operations or retail sales or include storage of trucks or other industrial equipment.

WALL

A structure of wood, stone, brick, concrete or other masonry materials or any combination thereof, more than two feet high, erected to enclose, separate, divide or define a lot or a portion thereof.

WALL, RETAINING

A wall designed to retain or resist the lateral displacement of earth or other materials, whether or not it serves to enclose or subdivide any part of the lot on which it is located.

YARD, FRONT

The space within and extending the full width of the lot from the front lot line to the part of the principal building which is nearest to such front lot line.

YARD, REAR

The space within and extending the full width of the lot from the rear lot line to the part of the principal building which is nearest to such lot line.

YARD, SIDE

The space within the lot extending the full distance from the front yard to the rear yard and from the side lot line to the part of the principal building which is nearest to such side lot line.

§ 310-12. Village Center Area Districts

B. Village Center Area Zones. The following separate zones applying to specific areas are hereby established within the framework of the Village Center Area District for the purposes specified and in accordance with the regulations as set forth for each:

(1) Village Center Retail - 2.0 (VCR - 2.0).

(a) It is the purpose of this zone to preserve the existing architectural character while reflecting the present nature and intensity of land use in the heart of the Scarsdale Village Center Area and at the same time strengthening its pedestrian shopping pattern. It is recognized that the historical development pattern in this zone is such that the only available parking for existing developed properties is, and will continue to be, that provided in Village parking facilities. However, any proposals for additional building development or for conversion from residential to commercial use should be permitted only if all off-street parking requirements which would result from such an approval can be satisfied on private property by the applicant. The permitted uses within this zone are intended to balance its land use function with its parking limitations.

(b) In the Village Center Retail - 2.0 Zone, no building or premises shall be used or maintained and no building shall hereafter be erected, enlarged or altered if, as so erected or as a result of such enlargement or alteration, such building or any part thereof is arranged, designed or intended to be used for any except the following principal purposes:

- [1] Ground floor: retail stores, personal service establishments, restaurants and other places serving food or beverages (except fast-food restaurants), and public and semipublic uses, excluding any type of drive-up commercial facility.
- [2] Upper floors: ground-floor uses, plus professional, medical and dental, business and administrative offices and residences.
- [3] Receive-only satellite dish antennas of a diameter of one meter or less when mounted on the roof.

(2) Village Center Retail - 1.0 (VCR - 1.0).

(a) It is the purpose of this zone to encourage the continuation of the present pattern of land use and development in a portion of the Scarsdale Village Center Area which forms an extension of a business district primarily located in the adjacent area of the Town of Eastchester. It is recognized

that the historical pattern of building development in this area precludes any substantial provision of on-site parking and that the primary responsibility for meeting those needs will continue to rest with the Village. Any proposal for additional building development or for conversion from residential to commercial use should be permitted only if all off-street parking requirements which would result from such an approval can be satisfied on private property by the applicant.

- (b) In the Village Center Retail - 1.0 Zone, no building or premises shall be used or maintained and no building shall hereafter be erected, enlarged or altered if, as so erected or as a result of such enlargement or alteration, such building or any part thereof is arranged, designed or intended to be used for any except the following principal purposes:
- [1] Ground floor: retail stores, personal service establishments, commercial sale, delivery and/or transfer of firearms, ammunitions, ENDS and/or ENDS components and parts subject to the requirements specified in § 310-89, restaurants and other places serving food or beverages (except fast-food restaurants), and public and semipublic uses, excluding any type of drive-up commercial facility.
 - [2] Upper floors: ground-floor uses, plus professional, medical and dental, business and administrative offices and residences.
 - [3] Receive-only satellite dish antennas of a diameter of one meter or less when mounted on the roof.

§ 310-67 Nonconforming uses, lots and buildings.

[Amended 7-15-1975 by L.L. No. 4-1975; 3-14-1989 by L.L. No. 6-1989; 3-12-1991 by L.L. No. 1-1991; 9-27-1994 by L.L. No. 9-1994; 5-23-1995 by L.L. No. 7-1995; 4-8-1997 by L.L. No. 3-1997; 1-23-2001 by L.L. No. 1-2001; 5-13-2008 by L.L. No. 3-2008; 1-13-2015 by L.L. No. 1-2015]

A. Nonconforming uses. Nonconformity of any use with any provision of this chapter shall not be a violation of this chapter if such use existed on March 1, 1957, and was permitted by the Zoning Ordinance in effect immediately prior to that date or if the use was permitted on the effective date of any modification of this chapter which rendered the use nonconforming. Such use shall be permitted to continue subject to the provisions of Subsection **D(3)** of this section and the following conditions:

- (1) No building housing a nonconforming use may be enlarged or altered structurally, except as may be required or permitted by law. For the purposes of this section, an increase in the fuel storage capacity of a service station is not considered to be an expansion of a nonconforming use.

- (2) No such nonconforming use shall be enlarged or extended, nor shall it be changed to another nonconforming use, nor shall it be moved to another building (either conforming or nonconforming).
- (3) No such nonconforming use, if changed to a use which conforms to the provisions of this chapter, shall be changed to a nonconforming use.
- (4) No such nonconforming use that shall have ceased for six months or longer, whether or not with intent to abandon, shall be resumed.
- (5) Any otherwise legal, preexisting, nonconforming use in a residential district may be continued, subject to the issuance of a special use permit by the Board of Appeals for residential uses or by the Planning Board for nonresidential uses.
 - (a) The initial application for such nonconforming use special use permit shall be filed by the owner of the property within one year of the effective date of this subsection or, if later, the effective date of the applicability of this subsection to a particular nonconforming use. If the initial application is not so filed, it may be initiated at any time by the Village or by the owner of any property, any part of which is within 300 feet of any part of the property on which a nonconforming use exists or is asserted to exist.
 - (b) Upon the filing of an application or other initiation of the nonconforming use special use permit process, the Board of Appeals or the Planning Board, as applicable, shall, after a public hearing, determine:
 - [1] Whether a nonconforming use exists on the site.
 - [2] If such nonconforming use exists, what terms and conditions applied to the lawful use of the property immediately prior to the date upon which the use became nonconforming.
 - [3] Whether the use of the property at the time of the special use permit proceeding is in full compliance with such immediately prior terms and conditions. In making this determination, the applicable board shall consider all factors which may be pertinent under such immediately prior terms and conditions, which in particular cases may include, without limitation, building design, functional uses, emissions (noise,

vibration, smoke, dust, odors or others), hours of operation, off-street parking, traffic, lighting, landscaping and screening.

- (c) If the applicable board determines, pursuant to Subsection **A(5)(b)[3]** above, that there is a nonconforming use and that such use of the property at the time of the special use permit proceeding is in full compliance with the aforementioned immediately prior terms and conditions, it shall grant the nonconforming use special use permit, setting forth the immediately prior terms and conditions so determined, which are to continue to pertain as long as the nonconforming use is lawfully continued.
- (6) Any commercial sale, delivery and/or transfer of firearms, ammunitions, ENDS and/or ENDS components and parts which was lawful prior to the adoption of § 310-89(11) and § 310-89(12) shall be deemed a nonconforming use. These nonconforming uses will be permitted to continue for a period not to exceed 12 months unless sooner terminated pursuant to another provision of § 310-67.

B. Construction on nonconforming unimproved lots.

- (1) An unimproved lot, that does not conform to the requirements of § **310-14** and § **310-15A**, is merged with an adjoining improved or unimproved lot if that lot is owned or controlled by the same owner of the adjoining improved or unimproved lot, unless said unimproved lot meets the requirements noted in Subsection **B(2)** or **(3)** below.
- (2) A building may be erected, altered or maintained on a lot in accordance with the setback and lot coverage requirements of this Code, subject to the special setback provisions of § **310-18** or **310-36**, even if the lot does not conform to § **310-14** or § **310-15A**, provided that the following lot criteria are met:
- (a) On April 1, 1947, the lot conformed to the Zoning Ordinance in effect immediately prior to that date and the lot was shown on a plat filed in the County Office of Land Records; and
- (b) The lot was not reduced in area after February 1, 1947; and
- (c) The lot has an area of at least 75% of the current requirement; and
- (d) The lot has a width and length of streetline frontage of at least 85% of the current requirement.

- (3) A building may be erected, altered or maintained on a lot in accordance with the setback and lot coverage requirements of this Code, subject to the special setback provisions of § 310-18 or § 310-36, if a lot is rendered nonconforming by any amendments to the Zoning Map (§ 310-4) adopted after October 2000, provided that the lot meets the following criteria:
- (a) The lot conformed to the Zoning Ordinance in effect immediately prior to the effective date of the amendment; and
 - (b) The lot was not reduced in area in the month prior to the effective date of any amendment; and
 - (c) The lot has an area of at least 65% of the current requirement; and
 - (d) The lot has a width and length of streetline frontage of at least 80% of the current requirement.

C. Construction on nonconforming improved lots.

- (1) Subject to the special setback provisions of § 310-18, a building may be enlarged, altered or maintained on a lot in accordance with the setback and lot coverage requirements of this Code even if the lot does not conform to § 310-14 or § 310-15A, provided that the following criteria are met:
- (a) A building existed on the lot that on April 1, 1947, conformed to the Zoning Ordinance in effect immediately prior to the date; and
 - (b) The lot was not reduced in area after February 1, 1947.
- (2) Subject to the special setback provisions of § 310-18 and § 310-36, and Subsection D(1) of this section, if applicable, an existing building may be enlarged, altered or maintained on a lot in accordance with the setback and lot coverage requirements of this Code if the lot is rendered nonconforming by zoning amendments to the Zoning Map (§ 310-4) adopted after October 2000, provided that the lot meets the following criteria:
- (a) The building conformed to the Zoning Ordinance in effect immediately prior to the effective date of the amendment; and
 - (b) The lot was not reduced in area in the month prior to the effective date of any amendment.

- D.** Nonconforming buildings. Nonconformity of any building shall not be a violation of this chapter if such building existed on March 1, 1957, and was permitted by the Zoning Ordinance in effect immediately prior to the date or if the building was permitted on the effective date of any modification of this chapter which rendered the building nonconforming. Such nonconforming building shall be permitted to continue, subject to the following conditions:
- (1) No such building which is nonconforming with respect to height, area of lot occupied or setback from any lot line shall be enlarged in any respect as to the portion thereof which is nonconforming, subject to the provisions of this chapter and § 310-18 or § 310-36. Notwithstanding the foregoing, alterations of the portion thereof which is nonconforming, but which would not increase the existing nonconformity, shall be permitted.
 - (2) No such nonconforming building, if changed to a conforming building which conforms to the provisions of this chapter, shall be changed to a nonconforming building.
 - (3) No such nonconforming building, if all or substantially all thereof is destroyed due to any cause, shall be restored in a nonconforming form or location or for the continuance of a nonconforming use, except that such a building, if destroyed accidentally due to fire, explosion or other cause, may be restored in substantially the same form and location, but without enlargement, for a conforming use or the continuance, but without enlargement, of the nonconforming use. This provision shall not apply to the lot coverage limitations of § 310-20 through § 310-23 when one nonconforming impervious surface such as a driveway, walk or patio is being replaced without expansion with another impervious surface.

Editor's Note: Section 14 of this local law provided as follows:

"This local law shall not prevent the issuance of a permit for any new building, building addition or alteration in compliance with the laws in effect prior to the effective date hereof for which a complete application was submitted prior to such date." (This local law became effective April 4, 1991.)

§ 310-70. Off-street parking.

- A. The following is the minimum number of off-street parking spaces which shall be provided and maintained on private premises by the owner thereof for each use of land or buildings which is hereafter enlarged, altered, changed or created, except as such requirements may be modified elsewhere in this chapter.
- (1) Apartment: one space for each 750 square feet of gross residential floor area.
 - (2) Hotel or lodging house: one space for each guest sleeping room.
 - (3) Auditorium or place of assembly in which seats are provided for 25 persons or more in the main assembly room on the premises of a church or other place of

- worship, club, lodge, community center building or in a school, college, academy, seminary, library, museum, stadium, athletic field, theater or other similar place of assembly: one space for each four seats which are so provided.
- (4) Restaurant or other place serving food or beverages: one space for each 75 square feet or major fraction thereof of gross leasable floor area, except in the Village Center Area District described in § 310-12, where the parking requirements for a restaurant or other place serving food or beverage is one space for each 150 square feet or major fraction thereof of gross leasable floor area.
 - (5) Recreation facility, health or exercise club: one space for each employee, plus one space for each player or participant when the facility is operating at maximum capacity.
 - (6) Retail store or shop, commercial sale, delivery and/or transfer of firearms, ammunitions, ENDS and/or ENDS components and parts, or personal service establishment: one space for each 150 square feet or major fraction thereof of gross leasable floor area on the first floor and one space for each 250 square feet or major fraction thereof of gross leasable floor area on all other floors.
 - (7) Bank: 10 spaces, plus five spaces for each teller in excess of two, but in no case less than the number which would be required for a retail store. Where drive-up teller services are provided, a minimum of five queuing spaces shall be provided for each drive-up teller window in addition to the space at the teller window itself.
 - (8) Office: one space for each 200 square feet or major fraction thereof of gross leasable floor area, except one space for each 150 square feet or major fraction thereof of gross leasable floor area for medical, dental and real estate offices.
 - (9) Gasoline station: five spaces, or five spaces per service bay, whichever requirement is greater.
 - (10) Group training or instruction: one space for each employee, plus two spaces for each three students or participants, but in no case less than the number which would be required for a retail store.
 - (11) For all land and building uses which do not fall within the categories listed in Subsection A(1) through (10), the Planning Board, based upon a consideration of the above standards in relation to the estimated parking generation characteristics of the proposed use, shall establish such off-street parking requirements as it may determine reasonable and appropriate in each individual case.
 - (12) Single-family houses in a Residence AA-1, A-1, A-2, A-2a or A-3 District: two spaces.

§ 310-89. Nonresidential special use permits.

- A. The special uses for which conformance to additional standards is required by this section shall be deemed to be permitted uses in the respective districts, subject to the

satisfaction of the requirements, standards and safeguards set forth herein, including such additional requirements as may be specified by the Planning Board, provided that the Board determines the individual use in harmony with the general purposes and intent of the Zoning Code. All such uses are declared to possess characteristics of such a unique and special nature that each specific use shall be considered as an individual case. The Planning Board will give public notice and hold a hearing on each application prior to approval of a special use permit, which hearing will be combined with the hearing on a site plan application as provided in Chapter 251 of this Code. The Board may also:

- (1) Permit, in any residence district, a private school, including a parochial grade school, middle school or high school, or a college, academy or seminary; a club, lodge or community center building, except one whose chief activity is a service customarily carried on as a gainful business; or, subject to due consideration of the needs of the Village for public health and safety, a hospital, sanatorium or nursing home, not including, however, any such institution to be used for the care or treatment of animals; all subject to the provisions of § **310-7F** and the provisions of § **310-70** and Chapter **251**, Site Plan Review, of this Code.
- (2) Permit the continuance of a legal, preexisting, nonconforming nonresidential use in a residential zoning district pursuant to § **310-67** of this chapter.
- (3) Permit required parking spaces to be provided and maintained other than on the same lot with the building or premises for which such parking spaces are provided, subject to the provisions of § **310-70A(11)** of this chapter.
- (4) Permit parking areas and playgrounds of a public, private or parochial grade school, middle school or high school or church or other place of worship to be provided and maintained other than on the same lot with the principal building, upon a determination that such use is consistent with the public health, safety, morals and general welfare of the community, subject to the provisions of § **310-70** of this chapter.
- (5) Permit, in the VCO - 0.8 and PUD - 1.0 to 2.0 Districts, a service station or public garage, upon a determination that the arrangement and location thereof are not inconsistent with the public health, safety or general welfare of the community, subject to the provisions of § **310-12B(5)** and **(7)** of this chapter, provided that such use meets the following requirements:
 - (a) The number, size, type, arrangement and location of the fuel dispensers, lighting fixtures, storage tanks and other fixed equipment shall be approved by the Planning Board. There shall be no canopy larger than necessary to cover the fuel dispensers.
 - (b) All fuel storage tanks shall be underground outside of any building.

- (c) No pump, tank or service appliance shall be nearer than 20 feet to any street line.
 - (d) The incidental operation of an automobile rental business is considered an acceptable accessory use for such station, provided that such business use shall have been approved by the Planning Board as not inconsistent with the public health, safety and general welfare of the community.
 - (e) No more than 50 square feet may be devoted to the sale of prepackaged merchandise unrelated to servicing motor vehicles.
- (6) Permit offices for physicians or dentists, irrespective of the residence of the personnel of such offices:
- (a) Provided that the Board shall determine in each case that the proposed offices:
 - [1] Will not create or seriously aggravate a traffic or other hazard.
 - [2] Will not be incongruous or detrimental to the prevailing residential character of the neighborhood.
 - [3] Will not impair the use, enjoyment or value of adjacent residential properties.
 - [4] Will in general be consistent with the public health, safety, morals and general welfare of the community.
 - (b) Provided, further, that such use meets the following requirements:
 - [1] All parts of the lot on which such offices are located must be within 600 feet of property zoned by the Village, as of August 30, 1957, for business uses.
 - [2] The lot on which such offices are located must have a minimum area of one acre and both a width and length of street line frontage of at least 150 feet.
 - [3] The building housing such offices must not exceed one story, except that a second story penthouse is permitted on the main building, provided that it does not exceed 12% of the

gross floor area of the first floor of the building and is set back no less than 20 feet from the walls of the first story.

- [4] The building(s) must not exceed 20 feet in height above the average level of the finished grade adjacent to the building, the gross floor area may not exceed 10,000 square feet and must have at least the following setbacks from lot lines:
 - [a] Thirty feet from the front lot line, all of which shall be landscaped with evergreen screening in accordance with a plan approved by the Planning Board.
 - [b] Ten feet from the side lot line, which must be landscaped with evergreen screening if and as required by the Planning Board.
 - [c] Thirty feet from the rear lot line, of which not less than the first 10 feet contiguous to such rear lot line shall be landscaped with evergreen screening if and as required by the Planning Board.
 - [5] The buildings must be architecturally designed to harmonize with surrounding residences.
 - [6] The buildings must not provide overnight accommodations, except in cases of emergency.
 - [7] The buildings may not be occupied by more than eight physicians or dentists at any one time, regardless of whether they are employed by the primary occupant of the buildings or employed by others.
 - [8] Off-street parking shall be provided, with a minimum number of parking spaces prescribed by the Planning Board pursuant to § 251-2 of Chapter 251, Site Plan Review, of this Code, which number may not be less than 10 parking spaces for each of the maximum number of physicians or dentists permitted to use such building at any one time.
- (c) The Planning Board may set time limits on the length of the permit and the hours of operations.

- (7) Permit an outdoor off-street parking lot in a Buffer Parking District for use in connection with existing or proposed business buildings on adjacent property zoned for business and under the same ownership, provided that, after considering the need for a parking lot in the area and the extent to which land in the area should be used to satisfy such need, existing parking and traffic conditions in the surrounding area, the public health, safety and general welfare and the comfort and convenience of the public, a majority of the entire Board as if there were no vacancies shall determine in each case that:
- (a) Such parking lot will improve parking and traffic conditions in the area.
 - (b) Such parking lot will not create hazards affecting the public safety.
 - (c) Such parking lot will not seriously impair the value, use and enjoyment of neighboring residential properties.
- (8) (Reserved)[1]
- (9) Permit, in a Residence A, Business A or Village Center Area District, a service station, but only in cases of existing legally nonconforming service stations or those operating under previous variances approved by the Board of Appeals, upon a determination that the arrangement and location thereof are not inconsistent with the public health, safety or general welfare of the community. The Planning Board may set a time limit on the length of the permit and the hours of operations. Such use shall meet the following requirements:
- (a) The number, size, type, arrangement and location of the pumps, lighting fixtures, storage tanks and other fixed equipment shall be approved by the Planning Board.
 - (b) All fuel storage tanks shall be underground outside of any building.
 - (c) No pump, tank or service appliance shall be nearer than 20 feet to any street line.
 - (d) No servicing of vehicles shall be permitted outdoors, other than for fuel, oil, tires, air and water.
 - (e) No outdoor display or vending of merchandise other than cans of oil in racks shall be permitted.

- (f) No temporary signs, such as but not limited to pennants, pinwheels, banners and flashing lights, shall be permitted.
 - (g) In the Residence A and Business A Districts, the following additional requirement shall apply:
 - [1] No outdoor parking of vehicles overnight unless specifically approved by the Planning Board.
- (10) Permit, in the Business A, VCO - 2.0, VCO - 0.8 and PUD 0.8 - 1.4 Districts, a telephone exchange, provided that such use meets the following requirements:
- (a) On site, off-street parking for employees and visitors, as may be required by the Planning Board pursuant to §§ 310-70A(11), B and C.
 - (b) Landscaping and building design, as may be required by the Planning Board, using the general guidelines contained in § 310-12C(3).
 - (c) Uses of the building are limited to those outlined in the definition of "telephone exchange" in § 310-2. There may be no office or other uses beyond those that are reasonably related to the functions of a telephone exchange and for the employees permanently based in the building.
- (11) Permit, in the VCR -1.0 District, commercial sale, transfer and/or delivery of firearms, provided that such use meets the following requirements:
- (a) Location
The commercial sale, delivery and/or transfer of firearms and/or ammunitions shall not be located within 250 feet of any public or private school, nursery school, day care center, playground, or house of worship, nor within 250 feet of any other establishment engaged in the commercial sale, delivery, and/or transfer of firearms and/or ammunitions. Such distance shall be measured from the nearest point of the portion of the building or structure engaged in the commercial sale, delivery and/or transfer of firearms and/or ammunitions to the nearest point of the lot line of the property with a public or private school, nursery school, day care center, playground, house of worship, or building or structure engaged in the commercial sale, delivery and/or transfer of firearms and/or ammunitions.
 - (a) Storage when open for business.
 - (1) All ammunition when being displayed shall be kept in a locked case or behind the counter in an area not accessible to the public.

- (2) No firearm shall be stored, exhibited, or displayed in windows of the premises.
- (3) All firearms shall be located in a locked display case, counter or storage area, which the public shall not have access to. The keys or codes to such areas shall not leave the control of authorized personnel.
- (b) Storage when not open for business shall be in accordance with one of the following:
- (1) All firearms shall be stored in a locked fireproof safe or vault located within the business premises;
- (2) All firearms must be secured by a hardened steel rod or cable of at least one-fourth (1/4") inch in diameter and shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a lock cutter and the rod or cable shall be anchored in a manner that prevents the ready removal of the firearm from the premises;
- (c) Security
Security for the premises must include an alarm system and surveillance cameras that are operational when the premises is open and closed for business. Surveillance footage shall be retained for a minimum of 6 months.
- (12) Permit, in Business A, Business C, Village Center Retail (VCR)- 2.0, VCR - 1.0, VCR - 0.8, Village Center Office (VCO) - 2.0, VCO - 1.0, VCO - 0.8, Planned Unit Development (PUD) - 1.0, and PUD - 0.8-1.4 commercial sale, transfer and/or delivery of ENDS and/or ENDS components and parts, provided that such use meets the following requirements:
- (a) Location
The commercial sale, transfer and/or delivery of ENDS and/or ENDS components and/or parts shall not be located within 1,000 feet of any public or private school, nursery school, day care center, house of worship, youth center, playground, park, library, arcade nor within 1,000 feet of any other establishment engaged in the commercial sale, delivery and/or transfer of ENDS and/or ENDS components and parts. Such distance shall be measured from the nearest point of the portion of the building or structure engaged in the commercial sale, delivery and/or transfer of ENDS and/or ENDS components and/or parts to the nearest point of the lot line of the property with a public or private school, nursery school, day care center, playground, or house of worship or building or structure engaged in the commercial sale, delivery and/or transfer of ENDS and/or ENDS components and/or parts.
- (a) Storage when open for business.
- (1) No ENDS or ENDS components or parts shall be stored, exhibited, or displayed in windows of the premises.

(2) All ENDS or ENDS components and parts shall not be accessible to the public without assistance of authorized personnel.

EFFECTIVE DATE

This Local Law shall take effect immediately upon filing with the Secretary of State.

<u>AYES</u>	<u>NAYS</u>	<u>ABSENT</u>
Trustee Arest	None	None
Trustee Callaghan		
Trustee Crandall		
Trustee Finger		
Trustee Ross		
Trustee Veron		
Mayor Hochvert		

Upon motion entered by Trustee Veron, and seconded by Trustee Ross, the following resolution regarding Authorization of Rider to 0 Farragut Road Restrictive Covenant was approved by the vote indicated below:

- WHEREAS,** Avital and Greg Soldatenko (hereinafter “Owners”) are the owners of certain real property located at 0 Farragut Road (hereinafter “Property”), as shown on the official tax map of the Village of Scarsdale as Section 18, Block 02, Lot 217B; and

- WHEREAS,** pursuant to an agreement between Owners’ predecessor in title and the Village of Scarsdale dated December 1, 1966, recorded on January 31, 1967, with the Westchester County Clerk (hereinafter “Agreement”), attached hereto, the Village has accepted conveyances of certain future development rights to the Property; and

- WHEREAS,** pursuant to the Agreement, the Property is subject to certain covenants, conditions, and restrictions, specifically the covenant that no building or structure shall be erected on the restricted portion of the Property except for uses incidental or accessory to a one family dwelling, as set forth in the Agreement; and

WHEREAS, by letter dated January 2, 2019, Owner requested to erect a single-level attached residential garage on the restricted portion of the Property; and

WHEREAS, the Village Board of Trustees met on January 22, 2019, to review the Owners’ proposal in consideration of the Agreement, and Owners’ request to amend the Agreement to specify that a single-level attached residential garage is an accessory residential structure of the purposes of the Agreement; now, therefore, be it

RESOLVED, that the Mayor is herein authorized to execute the Rider to the Agreement, attached hereto, on behalf of the Board of Trustees, indicating that that a single-level attached residential garage is an accessory residential structure of the purposes of the Agreement, and be it further

RESOLVED, that the Owners, Avital and Greg Soldatenko, or their representative, shall record the Rider to the Agreement in the Office of the Westchester County Clerk, Division of Land Records.

AYES

- Trustee Arest
- Trustee Callaghan
- Trustee Crandall
- Trustee Finger
- Trustee Ross
- Trustee Veron
- Mayor Hochvert

NAYS

None

ABSENT

None

Municipal Services Committee

Upon motion entered by Trustee Veron, and seconded by Trustee Crandall, the following resolution regarding an Intermunicipal Agreement with Westchester County for Organic Yard Waste Hauling was approved by the vote indicated below:

WHEREAS, pursuant to an Intermunicipal Agreement (IMA) with Westchester County that has been in-place since the year 2000, the Village of Scarsdale has operated an organic yard waste Transfer Site at the Recycling Center, 110 Secord Road, whereby the Village collects

organic yard waste which is then hauled by the County to private composting facilities; and

WHEREAS, the existing IMA expired on March 31, 2018, and Westchester County has proposed a new agreement for a five year term commencing retroactively on April 01, 2018, and concluding on March 31, 2023; and

WHEREAS, Westchester County’s hauling fee under the current IMA, \$17.35 per ton, is competitive with private haulers and will continue into the new IMA, subject to an annual adjustment factor equal to the percentage change in the Consumer Price Index for all Urban Consumers in our region; and

WHEREAS, the Village Environmental Officer has determined that continuation of the Village’s existing Transfer Site and associated handling of organic yard waste materials constitutes a Type II Action under the New York State Environmental Quality Review Act, requiring no further environmental review; now, therefore, be it

RESOLVED, that the Village Manager is herein authorized to execute the attached Intermunicipal Agreement with Westchester County, in substantially the form attached hereto, and to undertake administrative acts as may be required under the terms of the IMA.

<p><u>AYES</u> Trustee Arest Trustee Callaghan Trustee Crandall Trustee Finger Trustee Ross Trustee Veron Mayor Hochvert</p>	<p><u>NAYS</u> None</p>	<p><u>ABSENT</u> None</p>
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Trustee Veron stated that the Police Department has been working with us on managing and enforcing parking in the Village Center and the following resolution offers a tool that will help in that effort. The Village has been working diligently to relieve the stressors of parking, particularly in the Village Center. One of the items heard by herself and the Mayor in discussions with the merchants, employees and SBA in the parking meter study is that they mostly want convenience. She stated that in the next couple of weeks there will be a resolution to provide a parking payment app. This resolution this evening will enable the Village to

modernize our parking management program with the purchase of a License Plate Reader. LPRS are high speed computer controlled camera systems. With this purchase, Village will give more convenience to stakeholders with permit issuance, and for overall parking management and enforcement. This technology provides a vast number of benefits. She underscored how much the Village Manager's office has been working on these efforts.

Upon motion entered by Trustee Veron, and seconded by Trustee Crandall, the following resolution regarding Purchase of a License Plate Reader for Parking Operations, and Associated Funding Transfer was approved by the vote indicated below:

- WHEREAS,** the Village of Scarsdale currently conducts several components of our parking management program manually, including the processing, printing and mailing of roughly 1,600 parking permits annually; and
- WHEREAS,** License Plate Readers (LPRs) can be used to modernize this practice, thus improving the efficiency of parking permit issuance and enforcement, while also increasing permit holder convenience; and
- WHEREAS,** having investigated the technical specifications for several LPR vendor products, staff have determined that only one, SecureWatch24, is capable of properly managing shared permits, while also enabling more standard features, including virtual permitting, scofflaw identification, and virtual chalking; and
- WHEREAS,** municipal representatives from other communities using the SecureWatch24 LPR system were contacted for references, and all reported positively, including having confirmed operational efficiencies; and
- WHEREAS,** staff recommends the purchase of an LPR, supporting software, and four-year extended warranty from SecureWatch24 for a total cost of \$63,544, pursuant to NYS Contract PT 64408; now, therefore, be it
- RESOLVED,** that the purchase of a License Plate Reader for enhanced parking management systems from SecureWatch24, One Penn Plaza, Suite 4000, New York, NY 10119 is herein approved to be funded from a transfer of \$26,000 from the audited 2017-2018 Assigned General Fund Balance and \$37,544 in unexpended balances in the Village Manager's Parking Division Operating Budget, pursuant to the following General Fund transfers to the Capital Fund, as executed by the Village Treasurer:

FROM: A-9999-9999-9999 Use of Fund Balance	\$26,000
FROM: A-1230-PRKG-OPEN-400 499	\$20,000
FROM: A-1230-PRKG-ADMIN-400-499	\$10,000
FROM: A-1230-PRKG-PRKG-FRGT-400-499	\$7,357
TO: A-9990-TRNFR-TRNFR-950-9550-.0	\$63,357
TO: H-1000-030-5031-01 Transfer from General Fund	\$63,357
TO: H-3397-962 2019-064	\$63,357

; and be it further

RESOLVED, that the Village Manager is hereby authorized to execute the attached quote with SecureWatch24, and to undertake all associated administrative acts as required.

<u>AYES</u>	<u>NAYS</u>	<u>ABSENT</u>
Trustee Arest	None	None
Trustee Callaghan		
Trustee Crandall		
Trustee Finger		
Trustee Ross		
Trustee Veron		
Mayor Hochvert		

Recreation Committee

Upon motion entered by Trustee Callaghan, and seconded by Trustee Crandall, the following resolution regarding Authorization to Conduct the Annual 15K/4M Road Races was approved by a unanimous vote:

WHEREAS, for the past 49 years, the Village of Scarsdale Parks, Recreation, and Conservation Department has partnered with the Scarsdale Antiques Running Club to sponsor annual 15K, 4-mile, and Kids Fun Run road races on the same day in the Fox Meadow and Greenacres neighborhoods; and

WHEREAS, this year’s race is proposed for Sunday, April 7, 2019, from approximately 9:00 AM to 12:30 PM, as per the attached special event application and accompanying course map; and

WHEREAS, the Scarsdale Police Department and Village Manager recommend Village Board approval of the application, inclusive of necessary staff

support activities, such as implementing traffic control activities and measures, event management, and public notification of race day detours; now, therefore, be it

RESOLVED, that the Board of Trustees of the Village of Scarsdale herein approves the Parks, Recreation, and Conservation Department application to conduct the 49th annual 15K, 4-mile, and Kids Fun Run road races on Sunday, April 07, 2019, in the Fox Meadow and Greenacres neighborhoods in accordance with the course map attached hereto and inclusive of necessary staff support functions, such as public notifications, traffic control, and event management.

* * * * *

Written Communications

Village Clerk Conkling reported that twenty communications have been received since the last regular Board of Trustees meeting. Please note that all written communications may be viewed on the Village's website at www.scarsdale.com.

- Thirteen (13) communications in support of the proposed local to limit the sale of vape products from the following:
 - Julie Stonberg
 - Mary Leptak
 - Margot Milberg
 - Nancy & James Kardon
 - Nancy Mayerfield
 - Scarsdale High School PTA Executive Committee
 - Dr. Alison Gedalowitz
 - Ariana Green & Samuel Kardon
 - Debra Franco
 - James Tulley
 - Lynne Elcik
 - Laura Gelblum
 - Joe Muller

- Four (4) communications were received concerning the proposed amendments to the Tree Ordinance from the following:
 - Louise Bedicheck
 - Eileen Flagg
 - Michael Levine
 - Bernard Kobroff

- Two (2) communications were received regarding the Freightway Redevelopment Project from the following:
 - Feng Chen
 - S. Donald Friedman, GIC Realty NY Corp.

- An email from Susan Levine regarding conditions on Palmer Avenue in front of Heathcote School.

* * * * *

There being no further business to come before the Board, on a motion entered by Trustee Finger, seconded by Trustee Ross and carried unanimously, the meeting adjourned at 10:46 P.M.

Donna M. Conkling
Village Clerk