

**MINUTES  
BOARD OF TRUSTEES  
REGULAR MEETING  
COURT ROOM OF THE POLICE HEADQUARTERS BUILDING  
350 NORTH MAIN STREET  
VILLAGE OF PORT CHESTER, NEW YORK  
MEETING HELD WEDNESDAY JULY 5, 2017  
6:00 PM**

Meeting was called to order by Mayor Falanka followed by The Pledge of Allegiance. Mayor Falanka welcomed all present.

**ROLL CALL**

**PRESENT:** Mayor Richard A. Falanka  
Deputy Mayor Luis A. Marino  
Trustee Gregory K. Adams  
Trustee Daniel U. Brakewood  
Trustee Eugene R. Ceccarelli  
Trustee Francis Ferrara

**ABSENT:**  
Trustee Bart A. Didden

**ALSO PRESENT:** Village Clerk, Janusz R. Richards  
Village Manager, Christopher Steers  
Village Attorney, Anthony Cerreto  
Village Treasurer, Leonie Douglas – Arrived at 7:  
Village Corporation Council Anthony M. Provenzano  
Director of P & D, Eric Zamft  
Village Engineer, Vincent J. Masucci  
Chief of Police, Richard Conway  
Chief Engineer, Michael De Vittorio  
Human Resource Officer, Ed Brancati  
Daniel Messplay, Planer  
Attorney Brian S. Sokoloff

It should be noted that Trustee Gregory Adams arrived at 06:07 p.m.

On motion of TRUSTEE CECCARELLI, seconded by TRUSTEE FERRARA the meeting was declared opened at 06:03 p.m.

**ROLL CALL**

**AYES:** Trustees Brakewood, Ferrara, Ceccarelli, Marino and Mayor Falanka.

**NOES:** None.

**ABSENT:** Trustees Didden and Adams.

**DATE:** July 5, 2017

## **MOTION FOR EXECUTIVE SESSION**

At 06:03 p.m., on motion of TRUSTEE CECCARELLI, seconded by TRUSTEE MARINO, the Board adjourned into an executive session regarding:

- 1) *Water front access project.*
- 2) *Consult with counsel with regard to the recent incident at the site of the former United Hospital.*
- 3) *Consultation with Village Attorney regarding Community Policing Development (CPD) Program.*

### **ROLL CALL**

**AYES:** Trustees Brakewood, Ferrara, Ceccarelli, Marino and Mayor Falanka.

**NOES:** None.

**ABSENT:** Trustees Didden and Adams.

**DATE:** July 5, 2017

### **ALSO PRESENT:**

Village Clerk, Janusz R. Richards  
Village Manager, Christopher Steers  
Village Attorney, Anthony Cerreto  
Village Treasurer, Leonie Douglas – Arrived at 7:  
Village Corporation Council Anthony M. Provenzano  
Director of P & D, Eric Zamft  
Village Engineer, Vincent J. Masucci  
Chief of Police, Richard Conway  
Chief Engineer, Michael De Vittorio  
Human Resource Officer, Ed Brancati  
Daniel Messplay, Planer  
Attorney Brian S. Sokoloff ES – 1 and 2 only

At 06:59 p.m., a motion to come out of executive session was made by TRUSTEE BRAKEWOOD, seconded by TRUSTEE MARINO, the Board of Trustees closed the executive session.

### **ROLL CALL**

**AYES:** Trustees Brakewood, Ferrara, Adams, Ceccarelli, Marino and Mayor Falanka.

**NOES:** None.

**ABSENT:** Trustee Didden.

**DATE:** July 5, 2017

At 7:01 p.m. the meeting was called back to order by Mayor Falanka followed by The Pledge of Allegiance. Mayor Falanka welcomed all present.

Trustee Marino acknowledge that we had a tragedy in our Village of Port Chester and we lost a resident a kid. I ask for a moment of silence for Chis Aguilar.

### **PUBLIC COMMENTS** on the Resolution

Mayor Falanka asked if there was anyone from the audience who would like to make any public comments.

Comments were made by:

**Mr. Louis Youngles** commented he is happy to be part of the Latino Community. We feel comfortable being able to call the Police without being asked our status. He is glad the Police are not applying for the grants because this will affect the families coming into Port Chester. We are here to support Port Chester.

**Ms. Nicole Barras** commented that it is a big relief as a child of an immigrant to know the Board is not pursuing the Grant from the State. It is good to know we can trust our Police Department.

**Ms. Zelma Sanchez**, Community coordinator for Sustainable Port Chester Alliance, commented there should be a Spanish translator at the Board meetings. One of the Resolutions on tonight's agenda is regarding a Spanish translator an interpretation at the Board meetings, which should be passed. As an undocumented immigrant she hopes that she can trust the Police.

**Mr. Greg Hamilton** commented that the residents of all stripes are thankful that the Board has made the decision not to apply for the Grant. It could be harmful in our Village. We are all immigrants – recent or descended from them. There has to be trust between the residents and the local police department. This Grant offer comes with strings attached.

**Ms. Michal Gayl** commented on the Board's commitment to the American people. Those who come and want to work here and be a part of the country must go through a process to the love the country and treat it well.

**Mr. Segundo Wendi** thanked the Board for the decision they made. We have a good communication with the Police.

**Ms. Marcela Kenis** commented that Latinos are part of the community. We work very hard and we pay taxes. Thank you for your decision.

**Ms. Mai Gonzalez** commented that 59% of Port Chester residents are Latino. Some of the people who make decisions in this town forget that.

**Mr. Daniel Vitagliano** made the following statement:

“I attended a meeting at St. Peter’s Church this past Thursday where many gathered to discuss the Community Oriented Policing Services hiring program (aka COPS). Chief Conway & Trustee Marino were there. At this meeting a multitude of people that expressed concerns continuously attempted to make it seem that the Board of Trustees’ impulse to move forward with the application was racially motivated embedded within a desire to target members of the Latino community in hopes of deporting the undocumented aliens that reside in our Village.

This could not have been any further from the truth. It’s preposterous that our Board of Trustees would allow these trite platitudes to shift their focus away from our need to apply for this federal program.

“Our Village has proven to be tolerant of all in the Village without regard to their immigration status. The policy of the Village is documented in the Police Department’s Immigration Status Protocol to not inquire of one’s status when calling upon the Police.

“Port Chester is, always has been and will continue to be a community that welcomes, respects and embraces its diversity, in particular the Latino community.

“We are a Village and country made up of immigrants. For all those that attempted to make this a matter of immigration, deportation, and ICE are fracturing and dividing our community, and that’s wrong.

“This is a fiscal matter that impacts the public safety of our residents. This is not a matter of race, immigration, deportation, etc. and shame on those that tried to make it seem as such. Those who attempted to make this application anything other than a fiscal matter are simply divisive and contributing to the rift and fissure that continues to grow in our community.

“Our Village government’s mission is, “to enhance the quality of life within the community and provide for the professional delivery of public services.”

When managing a local government the predominant issue that often takes precedent when making decisions is obviously:

- (1) Finances - the budget of course and being able to afford the services our residents need and desire

I have spoken before the board numerous times regarding fiscal matters:

- Moving the Starwood Re-development site forward to expand our property tax base
- Making cuts in the budget & lighting a fire under the staff to get the job done with the limited resources that the Village is able to afford

“In the words of our Village Manager, “The past several budget cycles have challenged us to earnestly evaluate our needs and carefully assess our capacities; including our

ability to continue to deliver basic services in the face of declining revenue streams.” & “we continue to feel the strain of understaffing at every level.”

“Aside from finances, another facet of government operations that is undeniably paramount

- (2) Public Safety and funding our Police Department – ensuring our law enforcement has the man power and resources they need to keep our residents safe

“According to the Port Chester Police Department’s 2016 Annual Report, Port Chester is tied for the lowest number of officers per 1000 residents of all the municipalities listed at 2.0 & Port Chester stands alone with the highest crimes per officer rate in all of Westchester County at 10.6.

It’s abundantly clear that we need more cops and we needed them many years ago. This grant would have enabled us to hire 3 additional officers for ¼ of the price. Who knows, maybe an additional cop patrolling our Village could prevent a future drunk driving accident, or maybe they could have prevented people from trespassing at the United Hospital site, or maybe even prevented one of the many fatal drug overdoses that we’ve become so accustomed to seeing. One thing is for certain, by not adding these additional cops it will always be easy to speculate which future crime could have been prevented.

“It is crystal clear that our Village’s needs are exceeding its revenues. This grant would have provided our Police Department with some additional staffing it desperately needs to maintain and improve public safety. We don’t have the money for a paid fire department; we better make sure we have the money for an adequate police force.

“I’ve heard members of the Board say how we need more funding to provide our residents the services it needs, including a strong police presence, and that this is the reality of living in a growing village. I’ve also heard members of the Board stress the need for our Village to seek out additional revenue streams.

“Why are we turning down funding because of spurious fears of there being objectionable strings attached or that we can’t adequately comply with the stipulations in this grant?

There’s a clear disconnect here. We want to apply for grants, we want funding, but we don’t have the people to properly administer and oversee the implementation of such grants? If someone is not qualified to do the work required to accept a grant they ought to be reevaluated when their annual personnel review comes up. This is a management issue.

“Now, our Village has an opportunity to apply for federal grants to cover 75% of the costs of hiring of 3 new police officers. The fact that this caused an uproar, is being debated, and that any members of the Board are contemplating to not apply for this grant could be described as anywhere from perplexing to absurd to laughable. It’s a no brainer that the Village should move forward with this. Your decision must be made from a fiscal standpoint while considering the positive effects that additional police manpower will have on public safety.”

**Ms. Lora Waldman** thanked the Board of Trustees for making the right decision. We have to remember that all men are created equal.

**Mr. Keith Morlino** spoke on the grant for the police officers. This is unrelated to the immigration issue in Port Chester. We should take advantage of getting more officers.

**Ms. Joanna E. Cuevas** Ingram made the following statement:

Dear Honorable Trustees, Mayor Falanka, and Citizens of Port Chester Village:

My name is Joanna E. Cuevas Ingram, and I serve as Associate Counsel at Latino Justice PRLDEF (LJP), a nonprofit civil rights legal defense and education fund working to advance the civil and constitutional rights of diverse Latinx communities throughout the U.S. We provide our services to the public pro bono, and we often bring successful constitutional and civil rights class action and impact litigation of national importance including cases brought under 42 U.S.C. § 1983.

Given our grave concerns about increasing threats to the public trust and safety of Latinx Americans and broader immigrant communities by the policy positions advanced by the current administration in Washington, we are writing to encourage Port Chester to join over 677 other jurisdictions across the country – including over 5 states, 39 cities and 633 counties, the University of California and hundreds of other county and public school boards to adopt constitutional municipal policies that increase public trust, end racial profiling, protect vulnerable undocumented immigrant community members – and avoid liability for severe constitutional violations.

LJP is happy to provide the Village of Port Chester with our legal research, report findings and analysis, originally published together as a joint Latino Justice PRLDEF and Demos Report, Sanctuary, Safety and Community: Tools for Welcoming and Protecting Immigrants Through Local Democracy, copies of which we can provide to the Village Clerk’s Office. This report reveals that the liability and unconstitutional risks of collaborating or engaging in any federal immigration enforcement are simply too high for local jurisdictions, including the Village of Port Chester, to stomach. Federal civil rights and constitutional rights case law underscore this truth. A growing number of federal court rulings have rejected the authority of state and local law enforcement agencies to detain immigrants pursuant to federal detainer requests issued by the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE). Indeed, the majority of recent federal court rulings have held that local law enforcement of federal detainers violates the Fourth Amendment and Due Process.

The growing weight of the federal case law in this area indicates that jurisdictions that cooperate with and honor detainers issued by Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) risk unconstitutionally violating Fourth and Fifth Amendment Due Process, as well as Fourteenth Amendment Equal Protection guarantees, not to mention the risk of incurring cost-prohibitive Monell municipal county or city liability for these civil rights violations under federal law, 42 U.S.C. Section 1983. Local governments may actually risk losing \$11.6 billion, in the aggregate, in annual tax revenue, where they choose to cooperate with federal immigration enforcement efforts.

While the federal government may maintain “exclusive jurisdiction” over immigration enforcement, not all state and local laws impacting immigrants are preempted by federal authority. The local “police power” established under state sovereignty under the Tenth Amendment to the U.S. Constitution, includes the ability to legislate and regulate to ensure public safety, education, health and welfare. Furthermore, any general federal funding received under

Federal Community Development Block Grants or Health and Human Services Grants cannot, and should not be constitutionally threatened, under recent Supreme Court jurisprudence, regardless of what Executive Order 13768 purports to threaten. Such threats exceed federal executive authority and are plainly unconstitutional.

The one federal law specifically contemplated under Executive Order 13768, which expressly preempts state or local immigration policies, 8 U.S.C. §1373 (“Section 1373”), does not require state or local government entities or officials to inquire immigration status or provide the same information. In fact, federal court here in New York found that Section 1373 “does not require, in and on itself, any government agency or law enforcement official to communicate with the Immigration and Customs Enforcement (ICE).” The court characterized the voluntary information exchange found in the statute as “optional” and not “intrusive.” The U.S. Conference of Mayors and Major Cities Chiefs Association recently agreed, observing:

“While the Executive Order initially defines a sanctuary jurisdiction as one that willfully does not comply with §1373 (a federal law which prohibits local and state governments from enacting laws or policies that limit communication regarding an individual’s immigration status with the Department of Homeland Security), it also describes a sanctuary jurisdiction as one that has in effect a statute, policy or practice that prevents or hinders enforcement of federal law -- a definition open to broad interpretation. While the provisions of § 1373 have been enacted by Congress, the latter description has not. Local police departments work hard to build and preserve trust with all of the communities they serve, including immigrant communities. Immigrants residing in our cities must be able to trust the police and all of city government.”

Well-crafted local legislation and policies, which do not collect any immigration status information, which do not respond to federal requests for immigration detention, refusing to sign or engage in Secure Communities or 287(g) agreements, ensuring that your local law enforcement personnel and police force do not engage in racial profiling or countenance hate crimes, and that your local school district, community college district and higher education institutions are providing safe, nondiscriminatory educational environments – are all clearly constitutional choices within the power of state and local governments.

The U.S. Conference of Mayors and the Major Cities Chiefs Association, which represents the 68 largest law enforcement agencies in the United States, recently issued a statement of concern and reservation regarding the recent January 25, 2017 Executive Order threatening “sanctuary” cities, and has similarly concluded that commingling the work of local police with federal immigration enforcement efforts “would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.” Altogether, the data suggest that when the focus for local law enforcement remains on keeping communities safe, rather than becoming entangled in federal immigration enforcement efforts, communities are safer and community members stay more engaged in the local economy – local economies and taxes are in fact dependent on the significant contributions of immigrant communities. This in turn brings benefits to individual households, communities, counties, and grows the economy as a whole.

The Village of Port Chester is a rich tapestry of diversity. According to the latest 2015 U.S. Census American Community Survey Estimates, nearly 64% of Port Chester residents identify as Latinx/Hispanic, sharing heritage from across Latin America. This total population represents citizens, legal permanent residents, and undocumented residents. All are people who, without a shred of a doubt, contribute meaningfully to the fabric of the community and the vibrant economy of the Village of Port Chester. The Village of Port Chester and Westchester County alike cannot afford an increase in crimes against Latinx residents, regardless of their immigration status. In New York State’s most recent assessment of hate crimes, Westchester County ranked third highest outside of New York City counties.

Recognizing that the true source of greatness in America is the diversity of its people, our nation's highest challenge is to create a democracy that truly empowers people of all backgrounds who come to its shores seeking to build a better life and achieve the American dream. Our democracy currently faces threats related to hate crimes, racial profiling, mass deportation, violations of equal protection and other unconstitutional actions. However, there are various ways in which local communities are working to fight these issues and protect their own residents. Our enclosed report provides some key examples of the common types of protections that numerous jurisdictions have implemented, and that the Village of Port Chester can adopt, including:

Policies affirming constitutional protections against racial profiling and equal protection of all persons, and demonstrating the jurisdiction's commitment to aggressively prosecuting hate crimes.

Policies prohibiting immigration enforcement in public schools, where constitutional equal protection guarantees safeguard undocumented students.

Policies prohibiting immigration enforcement in other sensitive locations, such as churches and hospitals.

Inclusive programs that provide benefits to undocumented immigrants and their families, such as provisions that expand access to identification cards or health care; extend professional licenses; and/or strengthen workers' rights in areas that predominantly affect low-wage immigrant workers (including farmworkers' and domestic workers' rights).

Policies or practices of declining federal civil immigration detainers, which are requests issued by Immigration and Customs Enforcement (ICE) that local law enforcement continue to detain individuals already in custody.

Policies limiting use of local community resources for enforcement of federal immigration law (or the civil provisions thereof), and policies providing public funds for legal services for undocumented immigrants, including those facing deportation.

Policies restricting inquiries into or investigations about immigration status.

Broader criminal justice reforms aimed at ending racial profiling, including stop and frisk policies, de-criminalizing minor drug possession offenses, funding counseling and recovery programs, bail reform, and increasing access to public defenders, as well as local clean slate expungement programs and state pardons.

As we discuss in our report, all of these recommended policy reforms, including local criminal justice reforms, are urgently needed in this time of great distrust, fear and uncertainty. They would also help stem over-incarceration, not only of native born Latina/o/x U.S. citizens, but also of individuals with varying immigration statuses, who risk what maybe the harshest sentences of all: deportation and permanent separation from their homes and families.

The Office of the New York State Attorney General recently released guidance for localities and local law enforcement agencies interested in developing sanctuary policies. The NYS AG report recommends that ICE or CBP detainers are honored only when "(1) ICE or CBP presents a judicial warrant or (2) there is probable cause to believe that the individual committed a limited number of criminal offenses, including terrorism related offenses." Implementation of the Office of the New York State Attorney General's guidance does not appear to conflict with 8 U.S.C. § 1373, and remains well within the constitutional powers localities have to limit cooperation with or coercion from the federal government.



We hope this information is helpful, and we encourage the Village of Port Chester to consider adopting these policies in order to maintain constitutional rights protections, counting the Village among the 677 inclusive local democracies across the country that reject unconstitutional discrimination and due process violations by welcoming and including immigrant communities in local policy changes. We hope to support you in your efforts to promote and advance inclusive public safety and security measures for your entire community, in the way that remains in compliance with the dictates and safeguards of the U.S. Constitution, and that best meets your local community needs.

Please feel free to contact me, by phone at 212.739.7576, or by email at [jcuevas@latinojustice.org](mailto:jcuevas@latinojustice.org), if you would like to schedule a time to meet and discuss further. Thank you for your time and consideration.

Respectfully submitted,

Joanna E. Cuevas Ingram Associate Counsel”

### **PUBLIC COMMENTS**

**Ms. Beatrice Conetta** commented on building a 34 unit complex on South Regent Street. We don't need one more person in this Village. South Regent Street is a main thoroughfare. Children will come out of that.

**Ms. Joan DiBono** attended the Planning Commission meeting. She commented about the traffic situation on South Regent at Westchester Avenue, Summit and Prospect and over by Corpus Christi Church, Cassone's Bakery and to the Post Road.

**Mr. Richard Abel** asked if the BOT was the lead agency on this project.

### **PRESENTATION**

***Master Developer Redevelopment Approach.***

Following the presentation the Board of Trustees agreed on

# Master Developer Redevelopment Approach

Presentation to the Board of Trustees  
July 5, 2017

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## Agenda

- What is the Issue?
- What is a Master Developer?
- How could it help Port Chester?
- What would they get out of it
- What would be the process?
- RFQ
- What are the Next Steps?

Master Developer Presentation

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# What is the Issue in Port Chester?

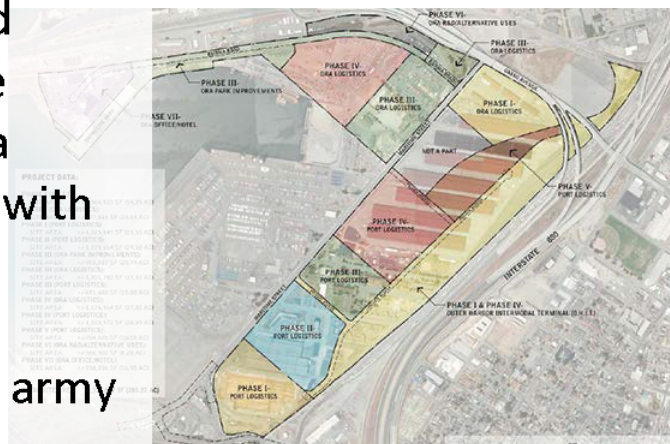
- Development currently ad-hoc that treats each project in isolation
  - Impacts (SEQRA, traffic, school-aged children)
  - Market saturation
  - Economies of scale
  - Limited community input

Master Developer Presentation

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## What is a Master Developer?

The term “Master Developer” gained prominence in the 1960s and 70s in a suburban context with master planned communities, redevelopment of army bases, and resort developments.



Master Developer Presentation

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# What is a Master Developer?



San Angelo, Texas

More recently, the master developer approach has become more common with larger, more-urban infill sites, as well as sections of communities.

Master Developer Presentation

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# What is a Master Developer?

## Communities in the Region Utilizing a Master Developer Approach

- New Rochelle
- Yonkers
- Town of Babylon (Wyandanch, East Farmingdale)
- Village of Hempstead
- Town of Southampton (Riverside)
- Town of Riverhead
- Village of Amityville

Master Developer Presentation

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# What is a Master Developer?

## A Master Developer IS

- *A team* that has dealt with all aspects of large-scale projects and redevelopment efforts
- *A partner* that will work with the Village, community, and property owners
- *An entity that will bring resources* in planning, development, and finance to create a detailed, community-driven plan to facilitate and implement projects

Master Developer Presentation

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# What is a Master Developer?

## Representative Responsibilities :

- Contract Negotiations (all agreements required for implementation)
- Development Schedule and Scope of Work
- Public Engagement and Community Outreach
- Planning and Design, including feasibility studies
- Entitlement Process/Development Approvals
- Financing
- Construction

Master Developer Presentation

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# What is a Master Developer?

## A Master Developer IS NOT

- *A builder or contractor* – that will bring all of their own resources at the expense of local contractors and builders
- *A single person* – No one person has the experience or knowledge on his/her own
- *Going to dictate the process* – the community will always be in charge of its future

Master Developer Presentation

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# What is a Master Developer?

## Traditional Approach

- Project-based
- Individual developers
- Limited community input
- Narrow benefits
- Can be divisive

## Master Developer Approach

- Comprehensive
- Partnership
- Community as partner
- Community benefits
- Aimed for consensus

Master Developer Presentation

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## How Could it Help Port Chester?

- Provides for a holistic, comprehensive approach
- Increase planning and development capacity
- Real-world development and financing experience
- Will be charged to engage with community and individual property owners

Master Developer Presentation

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## What are the Possible Downsides of Using a Master Developer?

- Loss of Control
- Seek Profit over What's Best for the Community
- Limited ability to “benchmark” proposals
- Cost to the Village (see next slide)

Master Developer Presentation

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# What Would They Get Out of It?

- Fee; and/or
- Ability to Redevelop Publically-Owned Property; and/or
- Ability to act on Village's behalf in helping to assemble public and private property

Master Developer Presentation

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# What Would be the Process?

- Request for Qualifications (RFQ)
- RFQ review and short-list
- RFP process
- Selection of Master Developer
- Master Developer process begins

Master Developer Presentation

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# RFQ

- Introduces the concept/generate enthusiasm and interest in Port Chester
- Focus on experience, capabilities, resources
- Does not commit the Village to select or go through a Master Developer Process.
- No cost to the Village.

Master Developer Presentation

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## What are the Next Steps?

### Two (2) Options

1. Take no action at this time
2. Direct staff to prepare and release RFQ.
  - Staff receive and review RFQs.
  - Staff report back to BOT.
  - BOT further direction.

Master Developer Presentation

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## **REPORT**

*A Local Law Amending the Code of the Village of Port Chester, Chapter 5, “Appearance Tickets”, Chapter 269 “Sewers”, Chapter 283 “Streets and Sidewalks”, and Chapter 175 “Fees” with Regard to Street Openings and Sidewalks.*

The following Local Law was presented to the Board of Trustees for their consideration.

Village of Port Chester, New York

Local Law No. I\_\_\_\_ of the year 2017

Be it enacted by the Board of Trustees of the Village of Port Chester, New York:

### **A LOCAL LAW AMENDING THE CODE OF THE VILLAGE OF PORT CHESTER WITH REGARD TO STREET OPENINGS AND RELATED PERMIT PROCESSES**

#### **SECTION 1: Purpose and Intent.**

The Village has been experiencing a number of issues related to excavations within the Village streets which are the subject of Chapter 283 of the Village Code. Regulated utilities, constitute the overwhelming majority of those who engage in such excavations. As a group, the nature and extent of work undertaken requires that such utilities be regulated in a more rigorous manner so as to adequately protect the public safety. An interdepartmental working group of Village staff was tasked to review existing provisions of the Village Code, seek out the experiences in other municipalities and ascertain “best practices” in this area so as to provide the Board of Trustees with necessary and appropriate changes to the Code. This local law is the result of such staff review. The Board finds and determines the need to target regulated public utilities for greater regulatory oversight, streamline the administrative process, and promote effective enforcement for violations. Additional provisions are made to the Village Code so as to provide for the role of the Village Engineer and update other related permit processes.

**SECTION 2: The Code of the Village of Port Chester, Chapter 5, “Appearance Tickets”, is hereby amended as follows:**

§ 5-4. Persons authorized to issue tickets.

The following persons are authorized to issue appearance tickets:

...

J. Village Engineer.

§ 5-5. Applicable subject matter.

A. Specific authority to persons designated to issue appearance tickets shall be as follows:

....

(9) Village Engineer: all violations of Chapter 283, Streets and Sidewalks and Chapter 269, Sewers.

SECTION 3: The Code of the Village of Port Chester, Chapter 175, “Fees”, is hereby amended as follows:

175-4. Enumeration of fees.

The following are the applicable fees, the chapter in the Code in which the activity is set out and the amount of the annual fee:

License or Activity	Code Reference	Annual Fee
...		
Sewer connection permit	§ 269-5	[\$75]
<u>Single- and Two-Family Residential</u>		<u>\$250 per connection</u>
<u>Multi-Family Residential, Commercial, or Industrial</u>		<u>\$750 per connection</u>
Street opening permit <sup>1</sup>	§ 283-3	[\$400]
<u>Standard</u>		<u>\$750</u>
<u>Major</u>		<u>\$750, plus \$1 per each additional square foot</u>
<u>Emergency</u>		<u>\$1,500, plus \$2 per each additional square foot</u>
<u>Renewal/Extension</u>		<u>\$500</u>
Inspection fees	§ 283-8	
Standard [inspection]		<u>[\$500] Included within permit fee, except for re-inspections</u>
[Resident inspection]		<u>[\$70 per hour to be determined at time of application; such fees may be adjusted by</u>

<sup>1</sup> If a community work plan is not on file with the Engineer, then a penalty of two (2) times shall be added to the base permit fee.

<u>Major</u>	resolution of the Board of Trustees]	<u>\$750, plus \$1 per each additional square foot, to cover initial and final inspection</u>
<u>Emergency</u>		<u>\$1,500, plus \$2 per each total additional square foot total, for each inspection</u>
<u>Progress inspection</u>		<u>\$500 for each</u>
<u>Re-inspection</u>		<u>\$100 for first and \$250 for each additional, or actual cost, whichever is greater</u>
Building drain construction permit	§ 283-17	[\$5] <u>\$75</u>

SECTION 4: The Code of the Village of Port Chester, Chapter 269, Sewers”, Section 269-5, is hereby amended as follows:

§ 269-5. Connections to sewers required.

- B. [The fee for each sewer connection permit shall be \$50.] A sewer connection permit shall be obtained from the Engineer based upon application and provision of the appropriate fee, as provided for in Chapter 175.

SECTION 5: The Code of the Village of Port Chester, Chapter 283, “Streets and Sidewalks”, is hereby amended as follows:

Part 1. [Streets] Definitions

[Article I. Excavating in Streets]

§ 283-1. Definitions.

- A. The following words, when used in this [article]Chapter, shall have the meaning ascribed to them in this [article]Chapter:

**APPLICANT**  
Any person who makes application for a permit.

**EMERGENCY**  
Any unforeseen circumstance, occurrence, or other exigent condition calling for the immediate opening of a street to prevent imminent loss or injury to person or property.

ENGINEER

The Village Engineer.

PERMITTEE

[Any]The person [who has been issued] obtaining a permit [and has agreed to fulfill all the terms of this article], or his/her duly authorized representative.

PERSON

Includes any natural person, partnership, firm, corporation, company, association, or joint-stock company.

REGULATED PUBLIC UTILITY

A utility that is regulated by the New York State Public Service Commission, including electric, gas, telecommunications, steam, water, and cable.

SIDEWALK

The improved portion adjacent to the street intended for the use of pedestrians.

STREET

[Includes a]Any public street, public easement, public right-of-way, public highway, public alley, public way, [public sidewalk] or public road accepted and maintained by the Village of Port Chester.

[SUPERINTENDENT OF PUBLIC WORKS

The Superintendent of Public Works of the Village of Port Chester.]

Part 2. Streets

§ 283-2. [Permit required] General provisions.

- A. Administration by Engineer. The Engineer shall administer and enforce all of the provisions of this Chapter. He/she or his/her designee is authorized to promulgate rules and regulations to implement the provisions of this Chapter.

Article I Excavating in Streets.

§ 283-3. Street openings; Permit required.

- A. [Unless otherwise excepted]Except for those actions listed in § 283-3.B, no person shall open or cause to be opened, by cutting or excavating, the surface or soil of any street for any purpose, including, but not limited to, construction, reconstruction, or maintenance of cable television, gas services, fiber optic, electric services, telephone services, installation of water mains, storm drains, sewers, and appurtenances, without first obtaining a permit for street opening under the provisions of this [article]Chapter.
- B. [Underground vaults shall be considered an appurtenance requiring a permit.

Signposts with gauging stations for gas mains are also appurtenances requiring a permit before installation]Exceptions. The following actions that include a street opening that is incidental to the primary action do not require a street opening permit:

- (1) Construction, removal, replacement or repair of a sidewalk, curb. Applicants shall obtain the appropriate sidewalk permit, as set forth in Article V of this Chapter.
- (2) Connection of any building drain on private property into the Village of Port Chester stormwater system. Applicants shall obtain the appropriate building drain construction permit, as set forth in Article III of this Chapter.
- (3) Connection from private property into the Village of Port Chester sanitary sewer system. Applicants shall obtain the appropriate sewer connection permit, as set forth in § 269-5 of Code of the Village of Port Chester.

C. Permit classification. Permits shall be classified into three categories:

- (1) Standard permit. Any request for a street opening of less than 50 square feet. All permits for one- and two-family dwellings shall be considered standard permits.
- (2) Major permit. Any request for a street opening of greater than 50 square feet.
- (3) Emergency permit. A permit issued on an [appurtenance requiring a permit. Signposts with gauging stations for gas mains]expedited basis to respond to an emergency situation. Emergency permit requirements are [also appurtenances requiring a permit before installation.]described in § 283-9.

§ 283-[3]4. Application requirements.

[It shall be the duty and responsibility of an applicant to:]

A. Application. [Make]In order to obtain a street opening permit, an applicant must make a written application in a form provided by the Village with the Engineer [Village Manager or his or her designee. No work shall commence until the Village Manager or his or her designee has approved the application and in compliance with all permit requirements, together with payment of all fees required in the schedule of fees contained in Chapter 175] The following items are required to be included in the application:

- (1) The name and address of the applicant/owner performing or having the work performed on its behalf;
- (2) The name and address of the contractor or person performing the work, if

applicable;

- (3) The name and address of the engineer or other designated professional representing the applicant;
- (4) A maintenance and protection of traffic plan;
- (5) A detailed description of the type of facilities to be installed;
- (6) The proposed location of the facilities to include plans, technical specifications, and a map of the proposed work area, if applicable;
- (7) A description of the right-of-way being utilized and the identification of any other existing utilities located in the work area;
- (8) The estimated length of time necessary to complete construction to include a timetable and plan for phased construction and proposed road restoration; and
- (9) Any other information the Engineer shall find reasonably necessary to the determination of whether a permit should be granted hereunder.

B. Plan. [Furnish, in triplicate, a plan] The application shall include one (1) original, signed and sealed plan by a New York State licensed and registered engineer and three (3) copies or one (1) digital copy of the plan, showing the work to be performed under such permit. Such plan shall provide for the following: [include plans for erosion plans for erosion and sediment control, manner of street opening, excavation and backfill, restoration and maintenance and control of traffic.]

- (1) Erosion and sediment control;
- (2) Manner of street opening;
- (3) Excavation and backfill;
- (4) Restoration;
- (5) Maintenance and protection of traffic;
- (6) Details on utility connections, such as sewer and stormwater, as approved by the Engineer;
- (7) A map of the proposed work area at a scale of one (1) inch equals ten (10) feet for areas less than 50 square feet and at a scale of one (1) inch equals twenty (20) feet for areas greater than 50 square feet; and

(8) Vertical profiles, where necessary, shall be at a scale of one (1) foot equals two (2) feet.

C. Compliance. All applications must demonstrate compliance with all applicable laws, rules, and regulations, including the notification provisions of 16 NYCRR Part 753 regarding protection of underground facilities.[ If said application is approved by the Village Manager or his or her designee upon review and recommendation, one copy of such plan shall be returned to the applicant.]

D. Insurance.

(1) No permit for a street opening shall be issued until the applicant shall have first placed on file with the [Village Manager or designee, without cost to the Village,]Engineer satisfactory evidence of general liability insurance in the [amounts]amount set forth herein [and satisfactory evidence that the insurance has been approved as to form, correctness, and adequacy by the Village Attorney so as to insure the Village against any loss, injury or damage due to the negligence or wrongful act of the applicant, his or her agents, servants or employees in connection with the opening of the street or any work related thereto.

(2) Such insurance must remain in force throughout the effective period of the permit, as well as any authorized extensions thereof, and shall carry an endorsement to the effect that the insurance company will give at least ten (10) days' written notice to the Village of any modification or cancellation of any such insurance.

(3) Each application for a permit shall be accompanied by a certificate of insurance, in form approved by the Village Attorney, and issued by an insurance company rated A.M. Best A- or better, duly authorized to do business in the State of New York, evidencing that the applicant has provided general liability insurance of not less than: \$1,000,000 to \$2,000,000 per person/aggregate [and \$5,000,000 excess coverage ]to save and hold harmless the Village, its officers, agents, employees, consultants, and the Engineer from all claims, actions and proceedings brought by any person for injury to person or property resulting from or occasioned by any negligent or wrongful act or omission of the permittee or anyone acting on his or her behalf. For major and emergency permits only, the application shall also be accompanied by a certificate of insurance evidencing that the applicant has provided \$5,000,000 excess coverage. The Village, its officers, agents, employees, consultants, and the Engineer shall be included as an additional insured on the policy. A certificate evidencing statutory workers' compensation and employer's liability shall also be provided. In the case of a regulated public utility that is self-insured, it shall certify same.



- E. [Amount of work. No person to whom a permit has been granted shall perform any of the work authorized by such permit in any amount or quantity greater than that specified in the permit. However, upon the approval of the Village Manager or designee, additional work may be done under the provisions of the permit in an amount that does not exceed 10% of the amount specified in the permit. Any deposit posted in connection with the original permit shall be deemed to cover the additional work that may be approved.]Hold harmless agreement; indemnification. In addition to the insurance requirements, the applicant shall file with the Village on a form provided by the Village an agreement to indemnify and save the Village, its officers, agents, employees, consultants, and the Engineer harmless.
- F. Fee. As part of the application, the applicant shall provide the appropriate fee, as provided in Chapter 175.
- G. Upon receipt of a complete application, the Engineer shall provide the Police Department, Fire Department, Emergency Medical Services, and the Department of Public Works with a copy for their review and report to the Engineer..

§ 283-[4]5. Commencement and completion time; renewals and extensions [; permits nontransferable].

- A. Length of permit; expiration date. Permits shall be granted for no longer than ninety (90) days, as determined by the Engineer, which shall be indicated on the permit.
- B. Commencement. The work for which a permit has been issued shall commence within thirty (30) days after the issuance of the permit[. A permit may be renewed for a period of 15 days from the original expiration date without payment of additional permit fees. If not so commenced by the expiration of the renewal expiration date, the permit may be renewed only] or it shall lapse. In such event a new permit must be obtained under the same requirements as the original permit.
- C. Renewal/extension. Every permit issued under this article shall expire at the end of the period of time set out in the permit. If the permittee shall be unable to complete the work within the specified time, he or she shall, at least ten (10) days prior to the expiration of the permit, present, in writing, to the [Village Manager or designee]Engineer a request for [an ]a renewal/extension of time, setting forth the reasons for the requested renewal/extension. If such [an ]a renewal/extension is necessary and not contrary to the public interest, the permittee may be granted an additional [time]period of thirty (30) days from the original expiration date to complete the work[.] upon payment of the appropriate renewal/extension fee, as provided in Chapter 175.
- D. [Permits are not transferable and may not be assigned. The work shall not be made

in any place other than the location specifically designated in the permit.]No work shall commence until the Engineer has approved the application and plan as complete and in compliance with all permit requirements, together with payment of all fees required in the schedule of fees, as presented in Chapter 175.

- E. In all phases of the work, the Engineer shall be notified as indicated in the permit.
- F. Certificate of compliance. The Engineer shall issue a certificate of compliance when all work is completed to his/her satisfaction and all permit and inspection fees, as provided in Chapter 175, have been paid.

§ 283-[5]6. Revocation of permit.

- A. A permit may be revoked by the [Village Manager or designee]Engineer after notice to the permittee for:
  - (1) Violation of any condition of the permit or of any provision of this [article]Chapter;
  - (2) Violation of any provision of any other applicable provision of law, rule or regulation relating to the work;or
  - (3) Existence of any condition or the performance of any act or omission creating a public nuisance or endangering persons or the property of others.
- B. [Written notice]Notice of any such violation or condition shall be [served upon]delivered to the permittee or agent engaged in the work. The notice shall contain a brief statement of the grounds relied upon for the proposed revocation of the permit and an opportunity to be heard with respect thereto. Notice may be given [either by personal delivery or by regular and certified or registered United States mail addressed to the applicant at the address given in the application for a permit]by any method reasonable under the circumstances.
- C. When any permit has been revoked and the work authorized by the permit has not been completed, the [Village may do such work as may be necessary]permittee shall be required to restore the street or part thereof to ensure that it is in as good a condition as it was before the opening was made. [All expenses incurred by the Village may be recovered from the deposit the permittee has filed] Such permittee shall be subject to the penalties and fines, as provided for in this Chapter. Such permittee shall also be subject to other enforcement proceedings brought by the Village and shall reimburse for any costs incurred by the Village during such proceedings.

§ 283-[6. Deposit]7. Regulated public utilities.

- A. [An applicant shall, at the time of application, make a deposit to cover the cost of restoration of the street. Such deposit may be in the form of a certified, treasurer's or cashier's check or in lawful money of the United States]Community work plan. On January 2<sup>nd</sup> of each year, all regulated public utilities shall be required to file with the Engineer a plan indicating all work anticipated to be performed in the Village for the upcoming calendar year. In turn, the Village shall notify the regulated public utility of scheduled street capital projects for the upcoming calendar year.
- B. [The amount of deposit shall be computed by the applicant in accordance with good engineering practice and prevailing costs in Westchester County and contain an itemized estimate of costs which would be incurred in replacing pavements and other areas that are the subject of the opening. The amount of such estimate shall deem the deposit. An additional deposit may be required if deemed necessary by the Engineer] Blanket performance bond/Indemnity Agreement. Regulated public utilities must post a blanket performance bond in the amount of \$250,000, to guarantee the satisfactory completion of work performed and issued under this Chapter, including restoration of the street. Such bond, which shall be in the form of cash or other security acceptable to the Village. Such bond shall be in effect and maintained at such level at all times. Such utilities shall also keep on file an indemnification agreement in form satisfactory to the Village Attorney holding the Village harmless from any loss, damage or injury arising out of their activities.
- C. [The amount of deposit shall be retained by the Village during the term of the permit and for the duration of the period of maintenance as defined in the following section]Maintenance bond. Regulated public utilities must post a maintenance bond in the amount determined by the Engineer, which shall be in the form of cash or other security acceptable to the Village. The period of maintenance shall be considered as a period of twenty-four (24) months after the date of final completion, as determined by the Engineer, which shall be in the form of cash or other security acceptable to the Village. The period of maintenance shall be considered as a period of twenty-four (24) months after the date of final completion, as determined by the Engineer, of the work to be done pursuant to the terms of the permit; except, however, that in the event that the termination of said twenty- four (24)-month period falls within the months of December, January, February, March or April, then the period of maintenance shall be considered as extending until the first day of the following May.
- [
- D. Upon the failure or default by the permittee to restore the street to the satisfaction of the Engineer, upon five days' written notice, or in the case of an emergency, upon notice that is practicable, the Village may perform the restoration work and utilize the [deposit] performance bond. In the event that the costs of such restoration are greater than the [deposit] bond, the permittee shall be liable to the Village for the

overage.

[E. [The period of maintenance for all work performed under a permit shall be six months from the date the opening was closed as certified by the Engineer. However, in the event that the termination of the six-month period shall fall within the months of December, January, February, March or April, then the commencement of the period of maintenance shall be deemed extended until the first day of June next thereafter.]

[F.The permittee shall be responsible for the entire work subject to the permit and shall keep every portion of such work in good order and repair during the period of maintenance.]

[G.The deposit, or any balance therefrom, shall be promptly returned to the permittee after the period of maintenance has expired and the Engineer has certified the final restoration as having been made in accordance with the specifications hereafter.]

[§ 283-7. Blanket bond; hold harmless agreement.

In lieu of a deposit for each individual street opening, a public service corporation or regulated utility may file with the Village and maintain a blanket bond in the amount set forth in Chapter 175, to guarantee the restoration of the street. In addition to the insurance requirements, a public service corporation or regulated utility shall file with the Village an agreement to indemnify and save the Village harmless, approved as to form by the Village Attorney].

§ 283-8. Specifications.

A. The street opening and the final restoration shall be performed in accordance with [rules and regulations promulgated and] the plan approved by the Engineer[, but] and shall include the following as minimum requirements:

- (1) All excavations shall be backfilled with controlled density backfill material (K-Krete), up to the bottom of the lowest course of pavement.
- (2) If a new patch is to be made where there is an existing patch, the entire [area]top course of the existing patch plus two (2) feet on all sides shall be removed and replaced in full.
- (3) Restoration of the top course of pavement for openings running parallel to the centerline of the street shall be curb to curb [and shall extend two feet on either side of the trench].
- (4) If the new work is to be restored with multiple patches and the area of disturbance is 20% or greater of the length of a street block multiplied by one (1) foot, then the entire road in the block shall be resurfaced curb to curb. If the area of disturbance is less than 20% then restoration from the curb to the

centerline may be sufficient at the discretion of the Engineer.

- (5) Restoration of the top course of pavement for openings or patches running perpendicular to the centerline of the street shall extend at least two (2) feet outside all sides of the opening.
- (6) [The]Any new patch or restoration of pavement shall have the same contour as the adjacent road surface.
- (7) If the street pavement is asphalt, the replacement shall be asphalt. The existing pavement shall be saw-cut to its base or binder course and shall be restored to twelve (12) inches wider than the [trench]opening. The existing top course shall be saw-cut and restored to twenty-four (24) inches wider than the opening. A binder course of 4 ½ inches and a top course of 1 ½ inches shall be required. The seam between the new and existing pavement shall be sealed with hot asphaltic cement.
- (8) If the street pavement is concrete, at the surface or below an asphalt overlay, the replacement shall be concrete, with an asphalt overlay where necessary to match existing pavement surface. The existing [pavement ]concrete slab shall be saw cut to its base, drilled and doweled to a minimum depth of twelve (12) inches with the dowels two (2) feet on center and anchored with epoxy. The new concrete slab shall extend to a minimum of twelve (12) inches outside the trench. If any portion of a panel of concrete is disturbed then the entire panel must be replaced. The seam shall be sealed with hot asphaltic cement.
- [
- (9) If there are multiple patches and the area of disturbance exceeds 20% of the length of a street block multiplied by one foot, then the entire road in the block shall be resurfaced. All pavement disturbances shall be made by clean, straight saw-cuts.
- (10) Plates must be securely bolted or wedged and, if in place between November 15<sup>th</sup> and April 1<sup>st</sup>, must be recessed and flushed to the adjacent pavement. In no circumstance shall the plates be in excess of one (1) inch above the pavement.

B. Unless it is an emergency, [no]work shall be [done on weekends or a legal holiday]restricted to 8:00 AM to 6:00 PM, unless authorized by permit to other times.

C. Inspections. All work shall be done in a good and workman-like manner, and will be inspected by the Engineer[, as follows]:

- (1) Standard inspection: [Covering inspection at excavation; at compaction of

- base; prior to and during backfill of utility lines and road restoration] To be conducted for installations, repairs, or new connections to any utilities. All inspections, outside of re-inspections, shall be included as part of the inspection fee, as provided in Chapter 175.
- (2) Major/emergency inspection: To be conducted at excavation; at compaction of bedding of trench; prior to and during backfill of utility lines and road restoration. For major permits, the initial and final inspections shall be included as part of the inspection fee stated in Chapter 175. For emergency permits, a fee for each inspection shall be required, as provided in Chapter 175.
- (3) [Resident inspection: Covering installations, repairs or new connections to Village sanitary sewer or storm drains.]Progress inspection: For all permit types, the Engineer shall have the ability to request an inspection at any time during the project. A fee for each progress inspection shall be required, as provided in Chapter 175.
- (4) Re-inspection: Should a regular inspection not occur due to a delay caused by the permittee or if the Engineer determines that the work has not been done correctly, an additional fee for a re-inspection and each additional re-inspection, as provided in Chapter 175.

D. Security; maintenance and protection of traffic [mitigation ]plan

- (1) The permittee shall erect and maintain suitable barricades and fences around all [of the work]excavations until [it]all of the work is completed, as well as arrange for the work to be done in such a manner so as to cause a minimum of inconvenience and delay to vehicular and pedestrian traffic. [As a condition of approval of an application for a permit, the Village Manager, or his or her designee, may, upon the recommendation of the Police Chief or his or her designee require a traffic mitigation plan from the applicant.]
- (2) The permittee shall provide around open excavations and road depressions greater than two (2) inches from structures warning flags or signs, suitably lighted flashing lights[, and watchmen] especially during nighttime, and qualified flagger in such number as deemed necessary by the Village, in accordance with the [New York State Department of Transportation]Federal Highway Administration Manual on Uniform Traffic Control Devices and New York State Supplement.
- (3) Where the free flow of traffic is interfered with during work hours, the permittee shall designate competent persons to direct and expedite traffic by means of lights or flags.

- (4) Unless otherwise authorized by the Village, vehicular traffic shall be maintained at all times during the progress of the work being performed under the permit. If vehicular traffic cannot be maintained through the work area then a maintenance and protection of traffic plan must be submitted to the Village for review and approval prior to construction. Any necessary detour signs must be posted prior to the start of construction.
- (5) The aforementioned security and protective measures shall be performed in accordance with the [New York State Department of Transportation]Federal Highway Administration Manual on Uniform Traffic Control Devices and New York State Supplement.
- E. Protection of existing structures. It shall be the duty of the person, firm or corporation by whom any street opening is to be made for any purpose whatsoever, to notify the operators of all underground facilities forty-eight (48) hours prior to commencing any work within the Village of Port Chester in conformance with 16 NYCRR Part 753.
- F. Damage of existing improvements. All damage done to existing improvements during the progress of the excavation work shall be repaired by the permittee. Materials for such repair shall conform to the requirements of any applicable code or ordinance.
- G. The permittee shall keep the [original copy of the ]permit and [an approved]a copy of the plan at all times while such work is in progress at the location for which the permit was granted and show such permit or plan upon demand by the Village.
- H. The Police Department, Fire Department, Emergency Medical Services, and the Department of Public Works shall be provided a copy of the permit and all approved plans by the Engineer.

§ 283-9. Emergencies.

- A. In the event of an emergency, application may be made to the [Village Manager or his or her designee]Engineer for an emergency permit in person, via email, or by telephone or fax, and authority shall be granted to proceed with the necessary work.
- B. If such emergency should develop outside the regular business hours of the Village[ Manager or his or her designee], notification of such emergency shall be made to the Police Department in person or by telephone before proceeding with the street opening.
- C. It shall be the duty of every person who undertakes to [open a]do an emergency street opening under the provisions of this section to place warning signs, lights and

barriers to protect the public and otherwise provide adequate security and protection to protect the public as hereinbefore required in § 283-8.

- D. Within twenty-four (24) hours of the onset of the emergency or the next following business day [of the Village Manager or his or her designee, such], whichever comes first, the person undertaking the work shall [make] complete a full application detailed in [the course of this article] § 283-4, or be held in violation of this chapter and subject to the penalties provided in this chapter.

§ 283-10. Penalties for offenses.

A. A violation of the provisions of this article shall be punishable by a fine of not more than \$750 [\$500] per day or by imprisonment for not more than 15 days, or both for the first violation and a fine of not more than \$1,250 per day or by imprisonment for more than 15 days, or both for the second and any subsequent violation. Each day's violation shall constitute a separate and distinct offense.

B. In addition, the Village may prosecute a violation through the commencement of a civil action or injunction proceeding by the Village Attorney in a court of competent jurisdiction.

Article III. Construction of Building Drains

§ 283-16. Permit required.

- A. [Issued by Clerk.] Permit. No person shall construct or maintain any building drain which passes across or beneath any part of any street, road or highway, or sidewalk, unless the owner of such building shall first have obtained a permit from the [Village Clerk] Engineer.
- B. Certificate [by Engineer]. A certificate by the [Village] Engineer that such drain is necessary and that its construction will not [injure] damage the street or other public or private property shall be issued as a condition precedent to granting the permit.

§ 283-17. Fees.

For every application for a permit [granted hereunder], a fee as set forth in Chapter 175, Fees, shall be paid.

§ 283-18. Bonds.

No permit shall be issued unless the applicant [posts bonds] insurance of the same nature and in the same amounts as provided for permits to excavate in the streets in Article I [§ 283-3] to save the village harmless from the payment of damages for injury to persons or property because of fault or default. [By him.]

Part 2. Sidewalks



## Article V. Construction of Sidewalks

### § 283-28. Permit required.

A. Before any person, persons, firm or corporation, association or owner of real property shall construct or lay a sidewalk in front of property abutting upon any public highway, or a curb cut connection between the sidewalk or highway, in the Village of Port Chester, New York, he shall make application for a permit therefore from the Village [Clerk of said village] Engineer. Said application for such permit shall require the following information:

- (1) The name and residence of the applicant.
- (2) The location by lot and block number of the premises in front of which the sidewalk is to be constructed and for the curb is to be cut.
- (3) The name and address of the owner of said premises.
- (4) The name and address of the contractor or other person who is to construct the sidewalk and for cut the curb.

B. Upon the approval of said application by the Village Engineer[ of], the [Village of Port Chester, New York, the Village Clerk]Engineer shall issue a permit for the construction of said sidewalk and a permit for said curb cut. There shall be paid to the [Clerk of the ]Village[ of Port Chester], for each sidewalk and curb cut permit so issued, the fee as set forth in Chapter 175, Fees.

C. Excavations.

- (1) Before any person[, persons, firm, corporation, association or owner of real property] shall dig into any sidewalk to lay or relay any material, cable or anything through, on, over or under any sidewalk or place any object, obstruction, box, call box, pole, sign or other property on any sidewalk or street in the Village[ of Port Chester], an application, including a drawing showing the proposal or object, including the name of the applicant and the location of the proposal shall be made to the [Village Clerk, who shall refer the same to the Village Engineer, Police Chief and highway foreman for report. On receipt of such reports, the Clerk shall submit the reports and application to the Board of Trustees, which shall schedule a date to hear the same, at which time the applicant and/or representative, together with such members of the village staff as the Board deems necessary, shall be heard.]Engineer, who shall refer the same to the Police Department and Department of Public Works for report.

### § 283-30. Duty of making repairs.

D. There shall be paid a fee [to the Clerk/Treasurer] for each permit to repair a sidewalk, [a cash deposit or bond] as set forth in Chapter 175. Fees.

Article VI. Care and Maintenance

§ 283-31. Land levels adjoining sidewalks.

Any person owning, leasing or in possession of lands in the village shall maintain them at a level or grade not lower than the level established for the adjoining sidewalk or sidewalk line, as fixed by the Village Engineer, to a distance of not less than six feet from the sidewalk or sidewalk line, unless he shall have protected or walled off said land from the sidewalk or street by a fence of such height and construction as shall have been approved by the [Superintendent of Public Works] Engineer.

SECTION 6: Severability

If any provision of this local law is held to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions shall continue in full force and effect.

SECTION 7: Effective Date

This local law shall take effect immediately upon filing with the Secretary of State.

SETTING A PUBLIC HEARING TO CONSIDER THE ADVISABILITY OF  
ADOPTING A LOCAL LAW AMENDING THE CODE OF THE VILLAGE OF PORT  
CHESTER WITH REGARD TO STREET OPENINGS AND RELATED PERMIT  
PROCESSES

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

RESOLVED, that the Board of Trustees hereby sets a public hearing on Monday, August 7 2017 at 7:00 p.m., or as soon thereafter, at the Port Chester Justice Court, 2<sup>nd</sup> Floor Courtroom, 350 North Main Street, Port Chester, to consider the advisability of adopting a local law amending a the code of the Village Of Port Chester with regard to street openings and related permit processes

**ROLL CALL**

**AYES:** Trustees Brakewood, Ferrara, Adams, Ceccarelli, Marino and Mayor Falanka.

**NOES:** None.

**ABSENT:** Trustee Didden.

**DATE:** July 5, 2017

## **RESOLUTIONS**

### **RESOLUTION #1**

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

RESOLVED, that Anthony M. Provenzano, with law offices at 320 Westchester Avenue, Port Chester, New York, be and he hereby is appointed CORPORATION COUNSEL of the Village of Port Chester, New York, at an annual compensation of \$20,000.00 or as heretofore adopted by the Board of Trustees to be paid every two weeks; and it is further

RESOLVED, that Mr. Provenzano shall furnish facilities necessary for the performance of said duties, that actual cash disbursements incurred, cash advances, stationery and other incidentals shall be paid by the Village; and it is further

RESOLVED, that Mr. Provenzano shall perform such legal services for the Board of Trustees at such times and within such hours as provided for in the Request For Proposals (RFP# 2017-06); and it is further

RESOLVED, that he shall perform such services as an independent contractor, and, as such, determine the means and manner of same, and shall not be prevented by virtue of this appointment to render legal services to others; and it is further

RESOLVED, that this appointment shall be effective immediately and shall expire on April 1, 2019.

### **ROLL CALL**

**AYES:** Trustees Brakewood, Ferrara, Adams, Ceccarelli, Marino and Mayor Falanka.

**NOES:** None.

**ABSENT:** Trustee Didden.

**DATE:** July 5, 2017

### **RESOLUTION #2**

GRANTING WAIVER FOR CONSTRUCTION NOISE AT 11-15 PEARL STREET

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

WHEREAS, by letter dated June 23, 2017, Neri Kids, LLC. (“Petitioner”) has requested a waiver for construction noise at 11-15 Pearl Street (“Subject Premises”); and

WHEREAS, the Petitioner intends to convert and upgrade the Subject Premises to a parking lot pursuant to a building application with the Building Department; and

WHEREAS, Petitioner is requesting that its contractor be permitted to work on the Subject Premises between the hours of 8:00 p.m. and 8:00 a.m. on weekdays, and between the hours of 7:00 p.m. and 10:00 a.m. on weekends; and

WHEREAS, Section 224-3.1 of the Village Code provides that the Board of Trustees may issue a waiver of the foregoing time limitations on the grounds of exceptional circumstances; and

WHEREAS, the Board has considered Petitioner’s request, which is accompanied by the requisite proof of prior notice of same on surrounding properties and posting on the Subject Premises. Now, therefore, be it

RESOLVED, that the Board of Trustees finds as follows:

--That the Subject Premises is located in both the C5T and C2 Zoning Districts,  
--That Petitioner would suffer a hardship unless the waiver is granted. The business operations (retail bakery and the restaurant across the street) would be impacted if required to only do the work in the day-time hours.

--That the granting of the waiver will not cause a substantial or undue adverse impact upon adjacent properties or the public health, safety and welfare. In fact, conducting the work in the night-time would enable it to be done more quickly without exacerbating the existing congested traffic conditions on Pearl Street.

--That the activity, operation and noise would be temporary. Petitioner represents that the work will be done within thirty (30) days of the issuance of the building permit.

--That there are no reasonable alternatives to the Petitioner. It would otherwise have to do the work in the day-time with the accompanying impacts described above; and be it further

RESOLVED, that this matter is classified as a Type II Action under the State Environmental Quality Review Act (“SEQRA”), thereby requiring no further action; and be it further

RESOLVED, after due deliberation thereof, the Board determines to grant the Petition of Neri Kids, LLC., 31 Pearl Street, Port Chester, for a waiver for construction noise at 11-15 Pearl Street, to enable construction of a parking lot in the evening hours,

subject, however, to the condition that a building permit be obtained in the next thirty (30) days and that the work is completed no later than thirty (30) days thereafter.

Approved as to Form:

\_\_\_\_\_  
Anthony M. Cerreto, Village Attorney

**ROLL CALL**

**AYES:** Trustees Brakewood, Ferrara, Adams, Ceccarelli, Marino and Mayor Falanka.

**NOES:** None.

**ABSENT:** Trustee Didden.

**DATE:** July 5, 2017

**RESOLUTION #3**

**DECLARING MOTOR VEHICLES AND EQUIPMENT SURPLUS TO VILLAGE NEEDS AND AUTHORIZING SALE**

On motion of TRUSTEE BRAKEWOOD, seconded by TRUSTEE FERRARA, the following resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, the Village’s General Foreman has identified a number of motor vehicles and equipment that are beyond their useful life with high mileage and/or in need of extensive repair or are otherwise surplus to Village needs; and

WHEREAS, Board action is required to dispose of these vehicles and equipment. Now, therefore, be it

RESOLVED, that the following vehicles and equipment are hereby declared surplus to the Village and shall be disposed of by private auction on such terms and conditions as determined by the Village Manager or his designee in the best interest of the Village of Port Chester.

Vehicle	Year	Vehicle Identification Number
Ford Contour	1999	1FAFP6533XK196709
Toyota Solara	2000	2T1CG22P3YC297667
Chevrolet Impala	2002	2G1WF55K629361766
Chevrolet Impala	2003	2G1WF55K03921600
Chevrolet Impala	2010	2G1WD5EM5A1207733

Ford F-550	2001	1FDAF57F51EB25490
Pierce Arrow XT	2010	4P1CA01AXAA011155
Grumman F-10	1988	1D91D31EOJ1008922
Kawasaki Mule	2001	JK1AFCG1518500660
Tennant	2000	ID#4300-1359
Bobcat	1999	
Sreco	1986	ID#861365

Office Trailer

Police Boat

Approved as to Form:

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Anthony M. Cerreto, Village Attorney

**ROLL CALL**

**AYES:** Trustees Brakewood, Ferrara, Adams, Ceccarelli, Marino and Mayor Falanka.

**NOES:** None.

**ABSENT:** Trustee Didden.

**DATE:** July 5, 2017

**RESOLUTION #4**

**AUTHORIZING THE SUBMISSION OF A NEW YORK STATE  
CONSOLIDATED FUNDING APPLICATION BY THE VILLAGE OF PORT  
CHESTER**

On motion of TRUSTEE FERRARA, seconded by TRUSTEE BRAKEWOOD, the following resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, New York State is accepting applications for the 2017 Funding Round of the New York State Consolidated Funding Application (“CFA”) Program.

NOW, THEREFORE, be it

RESOLVED, by the Village of Port Chester Board of Trustees that the Village Manager be and is hereby authorized to submit a Consolidated Funding Application for the 2017 Funding Round from New York State for programs including, but not limited to: the New York State Department of Environmental Conservation (NYSDEC)/Environmental Facilities Corporation (EFC) Wastewater Infrastructure Engineering Planning Grant, the Office of Parks, Recreation and Historic Preservation (OPRHP) Environmental Protection Fund Grant Program for Recreational Trails, the New York State Urban Development Corporation's Empire State Development (ESD) Grant Program, NYSDEC's Green Innovation Grant Program and New York Department of State's (NYSDOS) Local Waterfront Revitalization Program, and upon approval of said request to enter into and execute a project agreement with the State for such financial assistance to the Village of Port Chester; and be it further

RESOLVED, that the aforementioned grant agreement application is subject to the approval of the Village Attorney as to form and content.

Approved as to Form:

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Village Attorney, Anthony Cerreto

## **ROLL CALL**

**AYES:** Trustees Brakewood, Ferrara, Adams, Ceccarelli, Marino and Mayor Falanka.

**NOES:** None.

**ABSENT:** Trustee Didden.

**DATE:** July 5, 2017

## **RESOLUTION #5**

### **APPOINTMENT OF MEMBER TO LDC**

On motion of TRUSTEE FERRARA, seconded by TRUSTEE BRAKEWOOD, the following resolution as adopted by the Board of Trustees of the Village of Port Chester, New York:

RESOLVED, that RICHARD T. O'CONNELL, JR., residing in Port Chester New York, be and hereby is appointed as a member of the Port Chester Local Development Corporation (LDC) to fill the seat previously held by former Mayor Dennis Pilla.

APPROVED AS TO FORM:

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Anthony M. Cerreto, Village Attorney

**ROLL CALL**

**AYES:** Trustees Brakewood, Ferrara, Adams, Ceccarelli, Marino and Mayor Falanka.

**NOES:** None.

**ABSENT:** Trustee Didden.

**DATE:** July 5, 2017

**RESOLUTION #6**

**BUDGET AMENDMENT – USE OF THE DEA ASSET FORFEITURE FUNDS TO UPGRADE AND PURCHASE HANDGUNS FOR THE POLICE DEPARTMENT**

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

WHEREAS, the Police Chief is recommending that the presently issued .40 caliber Glock handgun be traded in and upgraded to the 9 mm Glock pistol and be purchased for \$8,850.76 from Amchar Wholesale, Inc., 100 Airpark Drive, Rochester, NY 14624, NYS OGS Contract PC66331. Now therefore be it

RESOLVED, that the Board of Trustees of the Village of Port Chester, New York hereby authorizes the Village Treasurer to modify the FY 2017-18 General Fund Budget as follows:

**GENERAL FUND**

Balance Sheet:

001-001-0695            Deferred Revenue Police DEA            \$(8,850.76)

Revenues:

001-0001-2613            Use of Deferred DEA Revenue            \$8,850.76

Appropriations:

001-3120-0220            Service Equipment            \$8,850.76

APPROVED AS TO FORM:

\_\_\_\_\_  
Anthony M. Cerreto, Village Attorney

**ROLL CALL**

**AYES:** Trustees Brakewood, Ferrara, Adams, Ceccarelli, Marino and Mayor Falanka.

**NOES:** None.

**ABSENT:** Trustee Didden.

**DATE:** July 5, 2017



**RESOLUTION #7**

**BUDGET AMENDMENT – USE OF THE DEA ASSET FORFEITURE FUNDS TO PURCHASE DUTY HOLSTERS FOR THE POLICE DEPARTMENT**

On motion of TRUSTEE BRAKEWOOD, seconded by TRUSTEE CECCARELLI, the following resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, the Police Chief is recommending of the presently issued duty holsters be upgraded to Safariland ALS Duty Holster, Glock 19 due to functional deficiency in the area of weapon retention and that said duty holsters be purchased for \$7,717.50 from United Uniform, Distribution, LLC, 495 North French Road, Buffalo, NY 14228, NYS Contract PC66337. Now therefore be it

RESOLVED, that the Board of Trustees of the Village of Port Chester, New York hereby authorizes the Village Treasurer to modify the FY 2017-18 General Fund Budget as follows:

**GENERAL FUND**

Balance Sheet:

001-001-0695            Deferred Revenue Police DEA            \$(7,717.50)

Revenues:

001-0001-2613            Use of Deferred DEA Revenue            \$7,717.50

Appropriations:

001-3120-0220            Service Equipment            \$7,717.50

APPROVED AS TO FORM:

\_\_\_\_\_  
Anthony M. Cerreto, Village Attorney

**ROLL CALL**

**AYES:** Trustees Brakewood, Ferrara, Adams, Ceccarelli, Marino and Mayor Falanka.

**NOES:** None.

**ABSENT:** Trustee Didden.

**DATE:** July 5, 2017

**RESOLUTION #8**

**AWARD FOR COURT SPANISH TRANSLATING AND INTERPRETING SERVICES RFP# 2017-05**



AWARD FOR COURT REPORTER SERVICES, RFP #2017-04

On motion of TRUSTEE BRAKEWOOD, seconded by TRUSTEE ADAMS, the following resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, the Village sought proposals from qualified court reporter services through a Request for Proposal (“RFP”) process; and

WHEREAS, three proposals were received; and

WHEREAS, the Court Clerk recommends that the proposal from Astarte Reporting Service, 405 Tarrytown Road, Suite 1035, White Plains, New York be accepted; and

WHEREAS, Astarte is the incumbent, has satisfactorily performed her duties in such position, and has provided the lowest rate of payment. Now, therefore, be it

RESOLVED, that the proposal of Astarte for court reporter services be accepted for RFP #2017-04, with payment to be as follows:

Appearances:

Court Reporting Services –calendar sessions

(Day/Evening per diem coverage) \$230.00

Hearings/Planning Boards \$230.00

Jury Trials \$290.00

Non-Jury Trials \$250.00

Transcript Service Fee:

Original: per page rate (14 business day turnaround) \$4.85

Copy: per page rate \$4.65

1 day expedite (business overnight) \$3.00

2 day expedite \$2.75

3 day expedite \$2.00

10 day expedite \$.25

with a term to expire on May 31, 2019; and it also be it further

RESOLVED, that the Village Manager be authorized to enter into a retainer agreement with Astarte Reporting Service on such terms and conditions, and be it further

RESOLVED, that the Village Board of Trustees authorizes the Village Treasurer to transfer \$25,000 from the General Fund FY 2017-18 Contingency A/c 1.1990.400 to

Court Reporter a/c 1.1110.408, thereby increasing said account from \$10,000 to \$35,000 to cover the yearly charge of the Court Reporter.

Approved as to Form:

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Anthony M. Cerreto, Village Attorney

## **ROLL CALL**

**AYES:** Trustees Brakewood, Ferrara, Adams, Ceccarelli, Marino and Mayor Falanka.

**NOES:** None.

**ABSENT:** Trustee Didden.

**DATE:** July 5, 2017

## **CORRESPONDENCES**

*From the Traffic Commission regarding Irving Avenue and North Regent Street.*

The Board referred the correspondence to Chief of Police without objection.

*From Corpus Christi-Our Lady of the Rosary Parish requesting two handicapped parking spaces on Washington Street.*

The Board referred the correspondence to Traffic Commission and Sergeant without objection.

*From BRAKING AIDS® Ride requesting to travel through the Village of Port Chester on Sunday, September 10, 2017.*

The Board referred the correspondence to staff without objection.

*Teddy Poneman regarding Port Chester Waterfront Clean Up on July 8th.*

The Board referred the correspondence to Village Manager without objection.

## **PUBLIC COMMENTS AND BOARD COMMENTS**

Mayor Falanka asked if there was anyone from the audience who would like to make any public comments.

Comments were made by:

### ***Public***

Mr. George Ford commented on the fire truck that will be sold at auction. Is it legal for us to sell that truck while the taxpayers are paying it off? Village Treasurer Douglas commented that whatever we receive for the truck will be set aside to pay down the debt. There should be a two term limit for serving on the Board.

### ***Board***

Trustee Brakewood commented on term limits in serving on the Board. We received a draft report on public access to the Waterfront.

Trustee Ferrara thanked Mayor Ferrara for his good leadership. This Board has done a stellar job. We have gotten a lot accomplished in a short amount of time. Taking on a city status is a long shot but we will try our best to establish a City Status Committee. If residents want to get involved they should send their resume to the Clerk's Office. Senator Latimer has co-sponsored a bill that would allow properties not under a pilot to be allowed in the 2% tax cap calculation.

Trustee Adams commented on the directional arrows on the Boston Post Road. The area of South Regent Street and the Boston Post Road has become a used car lot. They also sell trucks. He thanked the first responders for their efforts at the United Hospital incidents.

Trustee Ceccarelli thanked Dom Neri for the fireworks on July 4<sup>th</sup>.

Trustee Marino thanked the police and fire departments for their efforts at the United Hospital incident.

Mayor Falanka commented Hope Klein and the Independence Day Committee for an outstanding program on July 4<sup>th</sup>. The students did a marvelous job with their essays. We had the best fireworks display in Westchester County.

### **Add-on Resolution**

Following the Public and Board Comments section of the meeting, TRUSTEE FERRARA asked for a motion to add-on a resolution to authorize the Mayor to sign a letter of support regarding S02122-A and A.1841-A relating to payments in lieu of taxes and the 2 percent real property tax cap.

There being no objection TRUSTEE MARINO, made a motion to add-on a resolution to authorize the Mayor to sign a letter of support regarding S02122-A and A.1841-A relating to payments in lieu of taxes and the 2 percent real property tax cap.,

seconded by TRUSTEE CECCARELLI, the motion received a unanimous vote of those present.

**ROLL CALL**

**AYES:** Trustees Brakewood, Ferrara, Adams, Ceccarelli, Marino and Mayor Falanka.

**NOES:** None.

**ABSENT:** Trustee Didden.

**DATE:** July 5, 2017

**RESOLUTION (ADD-ON)**

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

RESOLVED, that the Board of Trustees authorizes the Mayor, to sign a letter of support regarding S02122-A and A.1841-A relating to payments in lieu of taxes and the 2 percent real property tax cap.

**ROLL CALL**

**AYES:** Trustees Brakewood, Ferrara, Adams, Ceccarelli, Marino and Mayor Falanka.

**NOES:** None.

**ABSENT:** Trustee Didden.

**DATE:** July 5, 2017

[Date]

Alphonso David, Esq.  
Counsel to the Governor  
The Executive Chamber  
State Capitol  
Albany, New York 12224

Dear Mr. David:

RE: A.1841-A (Morelle, et al) relating to payments in lieu of taxes and the 2 percent real property tax cap

**(Your organization)** supports the above-referenced legislation, which would allow assessed property under a Payment In Lieu of Tax agreement (PILOT) to be factored into the calculation

for determining the Tax Levy Growth Factor, which governs how much a local taxing jurisdiction can increase its tax levy.

**(Your organization)** supported and supports the 2 percent Real Property Tax cap enacted five years ago. One of the purposes of the cap is to allow a taxing jurisdiction's tax levy to increase due to "quantity change," or new growth or significant additions to existing properties. The additional new growth is to be factored into the "Tax Levy Growth Factor" to determine the amount of increase from the prior year that taxing jurisdictions can increase their tax levy.

However, new growth that is subject to an IDA Payment In Lieu of Tax agreement is excluded from the calculation for determining a jurisdiction's Tax Levy Growth Factor. As a result, communities that are successful in attracting new economic growth through incentives provided by an IDA are penalized, thereby preventing taxing jurisdictions – especially school districts – from gaining tax revenue they would otherwise receive if the project did not receive assistance from an IDA. Thus, a community that must pay for new services and infrastructure, including educating new students, providing EMS, police, and fire protection, to support new economic growth cannot grow its tax base sufficiently to pay for these additional costs if the property is improved through incentives provided by an IDA.

The subject legislation would correct this inequity by allowing properties that are subject to a PILOT to be included in the Tax Levy Growth Factor.

**(Your organization)** supports this legislation and urges its adoption.

Sincerely,

Mayor Falanka asked for a motion to adjourn the meeting.

On a motion of TRUSTEE FERRARA, seconded by TRUSTEE MARINO, the meeting was adjourn at 09:05 p.m.

## **ROLL CALL**

**AYES:** Trustees Brakewood, Ferrara, Adams, Ceccarelli, Marino and Mayor Falanka.

**NOES:** None.

**ABSENT:** Trustee Didden.

**DATE:** July 5, 2017

Respectfully submitted,

Janusz R. Richards  
Village Clerk