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December 7, 2016

VIA OVERNIGHT MAIL and E-Mail

Mayor and Board of Trustees
Village of Larchmont
120 Larchmont Avenue
Larchmont, New York 10538

Re: Local Laws Scheduled for Hearings on December 19, 2016

Dear Mayor and Trustees:

As you know, this office represents the owner of 40 Ocean Avenue, which has been the focus of a group calling itself Preserve Larchmont in its push to have the Village adopt various laws that would effectively prevent any development of my client's property.

We wish to thank the Village Board for giving consideration to issues we have raised previously. We understand that the Village Board does not have to make each and every change we propose. However, we are concerned that some of the provisions currently proposed do not take into consideration a number of likely scenarios that could substantially hinder reasonable development and result in deprivation of property rights of our client and other property owners in the Village. Therefore, we request that you give consideration to a few additional comments we have with regard to the modified local laws you recently posted for hearings to be held on December 19, 2016 and, if you agree, kindly make appropriate modifications that can be considered at the December 19, 2016 hearing. We have included with our comments suggested modifications that we believe can address the issues while hopefully also addressing what we believe to be the Village's concerns.

Proposed Local Law M: Demolition

With respect to this proposed local law, we simply ask that one clause be added to both the "Purpose and Intent" section and § 381-68.E.F.(3) to clarify what we believe is the intent of the law, but are concerned that as currently drafted it could be interpreted differently and in a way that would be detrimental to reasonable development.

As noted in the proposed local law, existing law requires site plan approval for demolition under certain circumstances. In addition, site plan approval is separately required for new improvements under certain circumstances. Our interpretation of the proposed local law is that a site plan application and the associated permits/approvals for new development is not required in order to obtain site plan approval for demolition; but in the event an applicant also applies for site plan approval for new improvements while a site plan application for demolition is pending, then the demolition cannot go forward until the applicant has obtained all permits and approvals for the new development.

Assuming this is the Board's intent in enacting this law, we simply ask that the proposed local law be slightly modified to incorporate the italicized language (or something similar) so there can be no question that site plan approval and related permits and approvals for new developments is not required in order to obtain site plan approval for demolition.

Purpose and Intent: This local law provides that such approval must also include demolition management and site restoration plans and that, in the event a site plan application for new improvements is pending, *which application is not required in order to obtain site plan approval for demolition*, demolition cannot occur until all permits and approvals for the new improvements have been obtained.

Subsection (3): *Only if a site plan application for new improvements is pending, which application is not required in order to obtain site plan approval for demolition*, that demolition not occur until the new improvements have all required permits and approvals.

If this local law were interpreted to require site plan approval and all other "permits and approvals for the new improvements", which could be interpreted to include subdivision approval, BAR approval, and a building permit, in order to obtain a site plan approval for demolition, this would be intrusive to a property owner's rights and could make any reasonable development cost-prohibitive.

For instance, a party may wish to pursue site plan approval to demolish an existing structure and leave the property vacant for a period of time, for any number of reasons, including flexibility in the reuse of the site, depending upon the prevailing market. To require site plan approval and related approvals/permits for new development prior to obtaining site plan approval for demolition would effectively compel development of a property where the full nature of such development is unknown or development is unwanted at the time. Further, our client may seek approval to subdivide his property into four lots in the future. Yet, he may not wish to seek subdivision immediately so that he can explore whether selling a single lot, or two lots, may be more beneficial to developing four lots. What our client and/or potential successors in interest ultimately decide to do with the property in terms of subdivision and development should not preclude the granting of a site plan approval to demolish an existing structure where the existing

structure could impede our client's ability to accurately assess the market for the property or otherwise impede his ability to obtain a reasonable return on his investment.

Even should our client ultimately decide he wants to pursue approval to subdivide the site into four lots, he will not be able to develop all four lots at once and may decide not to pursue development of all four lots at all. Typically, on a subdivision, a bank will only provide a loan for construction of one lot at a time. Often it is not until at least one house is built that enough interest is generated to allow the development and/or sale of other lots. Or, it may be that some or all of the lots are sold as vacant for the new owners to develop as they wish. The cost of engineers and architects for four lots is in the hundreds of thousands of dollars. Therefore, to require that all permits and approvals, including site plan approval, BAR approval and building permits be obtained before demolition may take place, where the full nature of such potential future development is unknown at the time, would effectively render development cost-prohibitive. It is unlikely a property owner would be able to obtain the necessary funding required to go through the process of obtaining these approvals all at once and then pursue the development before the permits and approvals would likely expire..

Moreover your code provides for subdivision at §367-19:

Before any building permit shall be issued, the subdivider shall either have completed all improvements required by the Planning Board in its resolution approving the subdivision plat and shall have obtained the approval of the Village Engineer who shall certify that all improvements are in accordance with the standards and specifications as set forth in §§ 367-8 through 367-18 of these regulations or, alternatively, shall have furnished a performance bond, issued by a bonding company, conforming in all respects to the Planning Board resolution approving the subdivision, which bond shall have been approved by the Village Board and the term of which has not expired.

If the proposed local law is read to require a building permit to be issued for any new improvements prior to demolition, applying the section above could preclude demolition until any and all improvements mandated by the Planning Board have been installed or a bond placed at significant expense, another unnecessary burden.

We agree it is not unreasonable to require that a restoration plan be approved prior to demolition, even though a number of other communities lack a similar requirement. However, in the event that this provision can be interpreted as requiring that all permits and approvals for full development of a site be obtained before demolition may take place, such a provision is a significant burden on a property owner that has the potential of preventing the development of a property and certainly will impose significant costs without any actual benefit to the Village. Therefore, because it is our interpretation and understanding that the intention of the law is not to create any such burden on a property owner, we respectfully request that the Board slightly amend the local law to include the proposed language above to make it clear going forward that a

property owner is not required to pursue and/or obtain site plan approval and all related permits and approvals for new development in order to apply for and obtain site plan approval for demolition.

In the event our interpretation is not correct, we request that, in view of the issues noted above, you consider modifying the provisions to prevent what would be a significant and unwarranted burden our client and others who seek to develop property in the Village.

Proposed Local Law K: Excavation

This revision relieves some of the burdens of the original draft but, for many of the same reasons cited above, it still is impractical in the real world of development of a multi-lot subdivision. Specifically, the proposed § 381-44 (B)(1), while somewhat improved, continues to present significant practical problems.

Rock removal is restricted to "38 consecutive calendar days". Yet, subsection (B)(2) states that work may only be conducted from 8:00 a.m. to 3:30 p.m. Monday through Friday, except holidays. To limit rock removal to a certain number of calendar days, but yet prohibit rock removal on certain calendar days (Saturdays, Sundays and holidays) effectively reduces the 38 days, which is already burdensome, to a considerably lesser amount of days. As an example, if someone were to commence excavation on December 15, 2017, which is a Friday, they would have 22 working days between that date and the expiration of 38 consecutive calendar days after excluding weekends and holidays. Perhaps an extreme example, but it demonstrates the arbitrary nature of limiting work to 38 calendar days, rather than work days when rock removal is actually permitted to occur. Moreover, aside from making it virtually impossible to complete excavation work and significantly increasing the costs for a developer, who must pay workers for a full work day, there is no reason to stop work before 5:00 p.m.

As noted above, it is often the case that lots are not developed at the same time or immediately one after the other due to circumstances beyond a property owner's control, such as financing and the prevailing market conditions. In addition, a property owner may obtain subdivision approval to subdivide the lots and then decide to sell them vacant and allow the purchaser to pursue development of the property. Thus, the provision as drafted appears to require that rock removal for all subdivided lots occur simultaneously or in straight succession, as it only allows 10 days per additional lot beyond the initial 38 days, yet this is likely not feasible if the lots are developed separately by one or more developers.

In addition, this would also likely render the value of at least some of the subdivided lots essentially worthless and preclude a property owner from subdividing the property and then selling the lots vacant so that the purchasers can develop the lots to their own desires and needs at different times. No one will want to buy a vacant lot to develop their own home if there is the risk that one of the other subdivided lots would obtain a rock removal permit before them, thus potentially precluding the subsequent lot purchaser from obtaining a rock removal permit because the allotted simultaneous time period for rock removal on all of the lots (38 days plus 10 additional days per lot) has expired.

Further, as the Board clearly recognizes that the time for excavation of a single lot is appropriately 38 days, were the Board to merely state that if the excavation is not done simultaneously, then each additional lot would have 10 days, fails to recognize the realities of time needed to excavate an individual lot. In order to alleviate this burden while still putting reasonable limitations on the duration of rock removal, we suggest that this provision be modified as follows. If, after the issuance of a mechanical rock excavation or blasting permit to the first subdivided lot, a permit for an additional lot in the subdivision is not applied for within three months of completion of excavation of any one of the lots, if and when a permit for an additional lot is applied for, a full 38 work days be allotted to such additional excavation work. This concept could be applied to every lot in a subdivision, such that unless the rock removal for some or all of the lots is done simultaneously or in straight succession (which as noted above is often not feasible), there will not be rock removal occurring for significantly extended time periods without a halt. There will be at least three months between rock removal on each lot or the removal on each additional lot will have to be performed within 10 additional days.

If the intention of the law is to provide a respite for neighbors from the work of excavation, putting a time limitation of 38 work days on the rock removal for an additional lot but only if there is at least a three month hiatus between rock removal for each subdivided lot, can accomplish the same purpose, without unduly limiting the ability to proceed with development of individual lots that may not be developed simultaneously for the reasons noted above. Thus, the unintended consequences can be avoided where the lots are sold to different buyers who wish to pursue their own development on their own time frames as the current language could potentially preclude a later purchaser from getting any rock removal permit if an earlier purchaser has already done so and the time frame for simultaneous rock removal has expired. This problematic scenario could also potentially be alleviated if the proposed local law exempted these requirements if the record owner of the subdivided lots seeking rock removal permits differed.

Lastly, the provision that once a developer runs out of the allotted days there must be an 18 month delay in issuing a new excavation permit is draconian. Delaying any further work for 18 months can cause loss of financing, loss of purchasers and foreclosure on properties. Moreover, what is the benefit to the Village or the residents of having a partially excavated lot sitting idle for 18 months; or worse, a partially excavated lot going into foreclosure?

We realize that the new draft provides some flexibility to the Planning Board, but it does not address all of the potential issues. Further, by setting such an inflexible schedule as the standard, the Planning Board may feel compelled to be more restrictive than would be appropriate under the circumstances, resulting in unintended consequences, or needless litigation over whether the terms fixed by the Planning Board are arbitrary. Therefore, we ask that the Board consider our comments and revise the proposed local law accordingly.

Proposed Local Law "J": Changes of Grade and Soil Removal

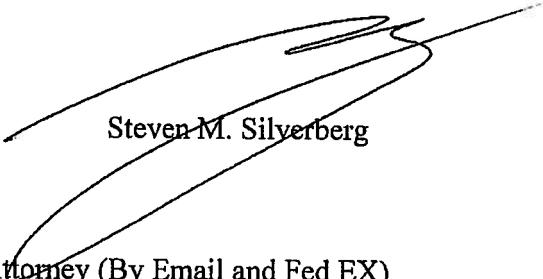
Larchmont Village Board
December 7, 2016

Excluding of basements and swimming pools from the limits on soil removal is a significant improvement in the draft. However, it appears that the purpose of this law is to control unnecessary changes in grade. If that is the case, our client believes that work on driveways and storm water management should also be excluded from the calculation of total soil removal. These are required improvements and limiting other soil removal will still accomplish the goal of preventing significant changes in grade, without unduly burdening a developer in its attempts to provide proper access and storm water management.

Thank you for your consideration of these additional comments.

Very truly yours,

SILVERBERG ZALANTIS LLP



Steven M. Silverberg

SMS:no

Cc:
James Staudt, Esq. Village Attorney (By Email and Fed EX)