

Robert Falk  
3 Willow Lane  
Scarsdale, New York 10583

**By Electronic Mail**

Hon. Jane E. Veron  
Mayor of the Village of Scarsdale  
and the Village Board of Trustees  
Village Hall  
1001 Post Road  
Scarsdale, New York 10583

**Re: Comments on Proposed Stormwater Code Amendments, and Request For Information Regarding Stormwater Improvements in Cushman Road/Garden Road Area**

Dear Mayor Veron and Members of the Board of Trustees,

Please include this letter in your Record of the proposed amendments to Chapter 254.

Comments on Code Amendments

The proposed amendments, which appear limited to dealing with grading activities within buffer areas and certain definition changes, have nothing to do with the core problems relating to Sensitive Drainage Areas (“SDAs”) in the Village. Given all the havoc caused by Hurricane Ida, it is time that the BOT updates our Village Code to deal with the modern reality of intense storms of shorter duration. The 100-year storm metric is no longer the answer for safeguarding adjoining properties in SDAs, as recognized by the Planning Board’s own engineering consultant (discussed below).

The simple fact is that the 100-year storm design criterion in Village Code Section 254-9G (as well as in the NYS Stormwater Management Design Manual) does not work well, or at all, to protect properties in SDAs from adverse stormwater impacts from development activities. This design metric fails to account for the severe risks posed in SDAs when storms, like Ida, dump a lot of water in a short time. This is especially true in areas that do not have adequate municipal infrastructure to handle excess water that is not managed by private systems. We all saw the damage that occurred during Ida, including to my home and property. And Ida was not a 100-year storm. As documented in prior correspondence to the Village, the rainfall from Ida was approximately 6.5 inches in a 24-hour period. This is far short of the rainfall from a 100-year storm: 9.4 inches in a 24-hour period.

The Village Planning Board’s engineering consultant, Mott MacDonald NY, Inc., opined during a Planning Board Meeting in September 2021 that a land-disturbing activity in an SDA is not guaranteed to avoid adverse impacts to adjoining property owners simply by meeting the Village’s and DEC’s minimum standards (see attached Scarsdale Inquirer article). Has the BOT conferred with the consultant from MacDonald’s Office? The BOT should do so before accepting the currently proposed bare amendments to Chapter 254.

More specifically, the BOT should consult with Mott MacDonald NY, Inc. (and Mr. Goessl) about further amending Section 254-9G – which governs land-disturbing activities of greater than 1,500sf on lands located in an SDA – to require robust technical analyses for the design of stormwater systems in SDAs. It is notable that Chapter 254 already identifies SDAs as areas requiring special consideration given their propensity for flooding. The Village’s standards for new development activities in SDAs should go much further than simply designing for the 100-year storm.

For example, Chapter 254 should mandate that in SDAs, (a) testing for percolation and seasonal high ground water levels be performed by an independent expert (retained by the Village), and (b) that the ground water testing include forensic soil analysis to establish historical high ground water levels. This is critical because one of the key data points in stormwater design is the seasonal high ground water level. This data point is especially important in SDAs, which are known to have a high water table – a common condition in Scarsdale. If the seasonal high ground water level used to model the system is inaccurate and the actual level is higher or becomes higher over time, this will, among other things, compromise the capacity of detention facilities, and impair the system’s performance. This is not some imaginary scenario – in the proposed 80 Garden Road subdivision, for example, when such testing was performed, the applicant’s engineer’s ground water table data proved to be false.

Another suggestion is for the Code to mandate that the Planning Board evaluate factors that are particular to each SDA in which a new land-disturbing activity is proposed. Not all SDAs are the same. The Code should be amended to require the Planning Board during its subdivision and site plan reviews to accept evidence of and review all matters relevant to the subject SDA, such as (1) already-existing stormwater problems within an SDA; (2) the presence of wetlands; (3) the condition of the municipal drainage system in the area and its ability to accept incremental runoff without increased flooding; and (4) other pertinent facts. Consideration of these matters would ensure that the Board is aware of the damage that may ensue if a proposed stormwater management system does not perform as specified, and allow the Board to make an informed decision.

The Village’s in-house and outside engineering consultant would certainly have other ideas for protecting properties in SDAs from the type of flooding destruction that resulted during Ida, when stormwater systems designed to handle the 100-year storm proved ineffective. It would also be helpful to solicit input from the Planning Board, as that Board is on the front lines of implementing Chapter 254.

I would also be happy to meet with Village officials to discuss how the process could be improved to assure that the Planning Board is making decisions under Chapter 254 on fully an informed basis. The application review process needs to be strengthened to compensate for the perverse incentives which affect fair application of the provisions of Chapter 254. From a practical point of view, under the existing process, there is no meaningful opportunity for interested parties to engage with Village officials who participate in the application review process. Structured engagement by interested parties will help to compensate for the fact that developers seeking to hold down construction costs are incentivized to cut corners for things like stormwater management systems that do not affect house design and appearance. After all, the developer usually doesn’t suffer any consequences for building a shoddy stormwater management system – overflow typically flows down-gradient and/or defaults to the Village’s drainage system, and becomes some other, unlucky property owner’s problem.

In sum, until amendments are made to Chapter 254 consistent with these comments, Chapter 254 will continue to be exploited by developers and others, and the protections supposedly afforded by Chapter

254 will prove to be as illusory as they have been in the past. It is time to require more than designing for the 100-year storm. The proposed amendments relating to buffer areas may have a salutary effect at the margins; however, stormwater conditions, which have deteriorated over time, will continue to deteriorate, unless our Village officials and staff are willing to take a realistic look at ways in which Chapter 254 (and the review process under it) has been exploited by developers and others, and to take meaningful steps to prevent this from happening in the future.

#### Clarification of Proposed Stormwater Improvements

As a separate matter, I have reviewed the Village-Wide Comprehensive Drainage Study, dated June 21, 2022, prepared by STV. While culvert improvements are recommended near my home to alleviate flooding in the Cushman Road Area, it is not clear whether this work includes rerouting one of the Cushman Road drainage lines so that it connects to the drainage line running down Willow Lane. This would help alleviate much of the risk to my home by diverting some of the stormwater collected by the municipal system beyond my property, farther downstream.

As the Village knows, this reroute is of great concern to me – and indeed to the Village too, as it supposedly has been slated to occur for years. I would appreciate someone contacting me to clarify whether this culvert work includes this pipe reroute.

#### Conclusion

Thank you for the BOT's and staff's consideration of my comments. I hope to hear from someone soon about the Cushman Road pipe reroute.

Very truly yours,

Robert Falk

*Robert Falk*

3 Willow Lane

cc: Robert Cole, Village Manager  
Alex Marshall, Deputy Village Manager  
David Goessl, PE, Village Engineer  
Jeff Coleman, Superintendent of Public Works  
Greg Cutler, Village Planner  
Frank Diodati, Building Inspector