



February 9, 2022

Via Email Only

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

Re: **Garden Road Neighbors Group – Request for Development Moratorium**

Dear Mayor Veron and Members of the Board of Trustees:

Our firm represents a group consisting of twenty-nine (29) Village residents that live on Garden Road, Cushman Road, Willow Lane and Sheldrake Road (the “Garden Road Neighbors Group”). Members of the Garden Road Neighbors Group reside in a part of Scarsdale designated as a Sensitive Drainage Area and prone to flooding.

We are writing on behalf of our clients to urge the Board of Trustees to adopt a temporary moratorium prohibiting the filing, acceptance, and/or approval of any applications for subdivision or development within the Village’s Sensitive Drainage Areas. As explained below, it is squarely within this Board’s authority to adopt a moratorium while it evaluates revisions to the Village Code to address severe flooding occurrence and prevention, stormwater runoff and land disturbance in the Village.

Westchester County 2021 Hazard Mitigation Plan Update (“HMP”)

Flooding problems in the Village are long-standing and well documented. After reviewing the Village’s hazard event history, the Village identified flooding and insufficient conveyance of stormwater on Cushman, Garden and Sheldrake Roads as a distinctive vulnerability. (HMP at 9.43-25). The Village also acknowledged that the building and flood prevention standards in the Village Code do not adequately address flooding. (HMP at 9.43-29).

To address this issue, the Village indicated that it would be considering the adoption of higher regulatory standards to manage flood risk. (HMP at 9.43-29). More specifically, the HMP stated that “a draft local law is being prepared by the Village Attorney in collaboration with the Village Engineer. It is anticipated that the local law will soon be introduced to the Board of Trustees for consideration and subsequent adoption.” The HMP indicated that the adoption of higher regulatory standards was “in progress.”

290 Madison Avenue, 4th Floor
New York, NY 10017
212-380-6170
helen@mintzermauch.com

As part of the Village's efforts to respond to Tropical Storm Ida, on December 1, 2021, the Superintendent of Public Works wrote to the Village Manager recommending, among other things, changes to sections of the Village Code, including Chapter 167 – Flood Damage Prevention, Chapter 254 – Stormwater management and Chapter 302- Division of Watercourses. The Village Engineer identified a list of potential Code amendments relating to flooding, stormwater runoff and land disturbance that were discussed at a staff meeting in mid-December.

By Resolution dated January 11, 2022, the Board of Trustees unanimously adopted the HMP in its entirety and resolved to execute the actions identified in the HMP that pertain to the Village, which included stricter regulatory standards to manage flood risk.

Adoption of a Temporary Moratorium is Proper and Prudent

It is well-settled that the municipal power to act in furtherance of the public health and welfare justifies a moratorium on development which is reasonably limited as to time. [Charles v. Diamond](#), 41 N.Y.2d 318, 324 (1977).

Courts have uniformly found that the enactment of a moratorium upon certain land use or development within a municipality is a valid stopgap or interim measure where it is reasonably designed to temporarily halt development while the municipality considers comprehensive zoning changes or changes to address a genuine crisis or emergency. *Id.*; *see also, Matter of Laurel Realty, LLC v. Planning Board of Town of Kent*, 40 A.D.2d 857, 859 (2d Dept. 2007) (local law which imposed an eight-month moratorium on Planning Board review of certain subdivision applications was a “valid stopgap or interim measure, reasonably designed to temporarily halt development”); *119 Development Associates v. Village of Irvington, et al.* 171 A.D.2d 656 (2d Dept. 1991); *Matter of Dune Assocs. v Anderson*, 119 A.D.2d 574 (2d Dept. 1986).

There is ample evidence of the serious harm flooding has caused to properties in Sensitive Drainage Areas. The changes that the Village is considering to various chapters of the Village Code relating to flooding, stormwater runoff and land disturbance will further public health, safety and welfare. Stricter regulatory standards, once adopted, should be applied uniformly to all pending and future applications for subdivision and development in vulnerable areas to appropriately manage flood risk.

Accordingly, we respectfully submit that the Board consider adoption of a local law imposing a temporary moratorium on the acceptance, processing and approval of applications for subdivision or development within Sensitive Drainage Areas while the Board evaluates revisions to the Village Code to address the dire flooding situation in the Village.

Such a moratorium is a prudent exercise of this Board's authority and is manifestly proper and reasonable. Thank you in advance for your consideration of this matter.

Respectfully submitted,

MINTZER MAUCH PLLC



By: Helen C. Mauch, Esq.

cc: Rob Cole, Village Manager (rcole@scarsdale.com)
Dan Pozin, Esq. (dpozin@mccarthyfingar.com)
David Goessl, P.E. (dgoessl@scarsdale.com)
Greg Cutler, AICP (gcutler@scarsdale.com)