

## Donna Conkling

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**From:** robertbergesq@aol.com  
**Sent:** Tuesday, June 21, 2022 4:29 PM  
**To:** Mayor; Manager's Department; Attorney's Office; Clerk's Department  
**Cc:** robertbergesq@aol.com  
**Subject:** Draft Village Sign Law

**CAUTION:** External sender.

Dear Mayor, Village Manager, Village Trustees, and Village Attorney:

I write in regard to the Village's latest misguided attempt to legislate away residents' First Amendment rights to political speech in front of their homes -- i.e., by broadly banning any signs from the Village right of way everywhere in the Village. The purported justification for this wildly overreaching legislation is to prevent driver distraction and improve traffic safety. Best practices in local government calls for restraint and careful study before legislating only when a substantial public need has been identified which can be met, solved, or ameliorated by the new enactment, provided the legislation is both constitutional and within the power of the Board to enact. In this case, the Village Board fails yet again.

The impetus for this legislation is a mystery -- at least to the public. Why this legislation and why now? The only logical explanation I can come up with is that the Village Attorney and Village Manager perhaps think that the proposed law might strengthen the Village's ability to keep political signs out of the Village right of way, notwithstanding the Village's minor victory in my lawsuit before the Second Circuit, with the Court having dismissed my appeal in a summary, non-precedential, unpublished decision. But the proposed law doesn't immunize the Village from any future constitutional challenges. The Second Circuit made that clear by making its summary decision non-precedential and limiting the decision to the parties and facts before it -- facts that won't ever exist again.

Moreover, the Village continues to maintain multiple code sections that purport to regulate signs in the Village right of way, using vague and ambiguous language, and the police department and Village engineer no doubt will continue to engage in unconstitutional selective enforcement. The proposed law won't solve the problems going forward.

In particular, proposed Section 1 provides that "The Board of Trustees finds that it is appropriate to promote and protect the public health, safety, and welfare by regulating outdoor signs of all types within the public right-of-way. Same is intended to reduce hazards which may be created by inappropriately located signs, to reduce sign distractions and obstructions that may contribute to traffic accidents, to protect and enhance the physical appearance of the community and preserve its scenic, man-made and natural beauty; to reduce visual pollution, and to protect property values." That's very nice hortatory language. But you ignore the evidentiary record from the 30 plus year collective memories of former Village manager Pappalardo and the current Chief of Police, former Police Captain Thomas Altizio, and then Police Lieutenant Dusavage that no sign in the public right of way has ever been found to have caused a traffic accident or obstruction. See Appendix at 211-12; 223-23; 496-97; 673-76, in *Berg v. Village of Scarsdale*, No. 20-4130-cv; No. 20-4237-cv (2nd Cir.). Signs in the public right of way rarely are a cause of community complaints. In fact, other than the very rare complaint about a real estate or commercial sign in the right of way by an unhappy neighbor, the only sign complaints concerned my political signs in the right of way during my various campaigns for Village Trustee or Mayor and the Vote Yes signs in the right of way supporting the school bond referendum with which I was involved.

Your proposed law will make it illegal for residents to post Go Raiders signs, Class of 2022 signs, Black Lives Matter signs, Hate Has No Place Here signs, Support our Local Heroes signs, and the like within the Village right of way in front of their homes. Most homes in Scarsdale are not on large-sized plots. Rather, the majority are on plots of 1/3 acre or less, with a large number on 1/16 acre or 1/8 acre lots. For the small Scarsdale Village lots, the 13 foot wide Village right of way swath inward from the street curb occupies a large portion of what the residents believe to be their front yards. While in reality, this land is Village property, these homeowners actually maintain the Village-owned property as their own (likely unknowingly), mowing the lawn, and planting shrubs and flowers. The Village could, of course, issue summonses and fine these residents for "vandalizing" or "damaging" or "trespassing on" Village property. Instead, the Village instead takes full advantage of the residents' ignorance that this portion of their front yard is Village property, and quietly allows the residents to perform *gratis* lawn and garden maintenance services for the Village. In return, the Village should at least allow residents to post temporary signs in the Village right of way in front of their homes expressing their support of Scarsdale sports teams or local heroes or politicians or political causes.

My suggestion is to exempt residential zones from the "no signs in the Village right of way" prohibition. That way, residents will be able to freely exercise their First Amendment rights in front of their homes. The police always have the ability to move signs which are, in fact, presenting a traffic or safety hazard, from the right of way, so that won't be a problem. Commercial signs shouldn't be a problem either because homeowners don't have an interest in allowing such signs in front of their homes beyond the short period when a contractor may be finishing a job there. The annoying commercial signs which are stapled to utility poles can be dealt with by Section 196-17 of the Village Code, as they have been for decades.

I hope you find my suggested solution acceptable. I think it will avoid future unpleasantness. Best regards, Bob Berg.