

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of Red Hook

Local Law No. A (Proposed) of 2021

A local law placing a six-month moratorium on the issuance of permits for work within the right of way of a Town Highway in the Town of Red Hook.

Be it enacted by the Town Board of the Town of Red Hook as follows:

SECTION 1. LEGISLATIVE INTENT

The purpose of this local law is to suspend temporarily the issuance of any permits for alteration, modification, or opening of roadways under the Town’s jurisdiction in the Town of Red Hook while the Town Board of the Town of Red Hook considers amendments to the Town’s Highway Specifications. The Highway Specifications were last amended in 2014 and have not undergone a comprehensive review since at least 1995. The Town has engaged a third-party engineering consultant to perform a comprehensive review of the Town’s Highway Specifications and to offer recommendations on changes to the Highway Specifications. This local law is intended to allow the Town to receive the report and recommendations of its engineering consultant and update its Highway Specifications to make the regulations therein consistent with applicable provisions of the Town Code and relevant authorities, including but not limited to the Town of Red Hook Zoning Law, the Centers and Greenspaces Plan, and the Town of Red Hook Complete Streets policy. The overall purposes of these amendments will be to ensure safety of those traveling along Town roadways and to promote community planning values by regulating roadway development based on a carefully considered plan. This local law is an interim measure intended to preserve the status quo pending the adoption of amendments to the Highway Specifications and prevents a “race of diligence” by those seeking to obtain approvals before new Highway Specifications are in place. This local law will protect the health, safety, and welfare of Town Residents until amended Highway Specifications are adopted.

SECTION 2. MORATORIUM

A. Pursuant to the Town of Red Hook Highway Specifications, adopted pursuant to New York State Highway Law and Town Law, the Town of Red Hook Highway Superintendent has been authorized to issue permits for construction within the right of way of highways owned and/or maintained by the Town of Red Hook (“Town Highways”) A moratorium is hereby imposed from the effective date of this local law for a period of six (6) months on the issuance of

permits or approvals for any construction within Town Highways, including the modification, alteration, or opening of streets, roadways, highways, or driveways, unless expressly exempted pursuant to subsection 2(D) of this local law.

B. The Town of Red Hook Highway Superintendent shall not consider any applications, including any such application currently pending before the Superintendent, for matters within the scope of this moratorium for the term of this moratorium, unless expressly exempted pursuant to subsection 2(D) of this local law.

C. No permit shall be issued by any official of the Town of Red Hook under the Town of Red Hook Code or Highway Specifications for any matters within the scope of this moratorium for the term of this moratorium, unless expressly exempted pursuant to subsection 2(D) of this local law.

D. Notwithstanding the restrictions provided above, applications for permits for work construction within a Town Highway may be considered, granted, or approved by applicable officials under the following limited circumstances:

- i. Where any road opening or modification permit for work subject to this moratorium has been granted and is on file with the Building Inspector prior to February 9, 2021, the applicant therefor shall be permitted to commence and complete the activities within the scope of said approved permit.
- ii. Where an applicant seeks a permit to allow the opening, construction, or modification of a driveway serving no more than four dwelling units, the relevant permitting authority may consider the application and approve the permit.
- iii. Work undertaken by or on behalf of the Town of Red Hook Highway Department determined to be necessary in the interests of public safety.
- iv. Installation of public utilities permitted by law and existing franchise rights.
- v. Nothing herein shall be deemed to waive or eliminate any other applicable regulations, restrictions, limitations, or expirations for said activities, permits, or approvals, which must otherwise be in full compliance with all applicable laws and regulations in effect on the date of issuance of said permit or approval.

E. This local law provides notice to all applicants that, although applications for municipal approvals such as site plan approvals, subdivision approvals, area variances, and use variances may proceed through the Planning Board or Zoning Board of Appeals review processes, applicants proceed at their own risk because such applications may be affected or denied because of a change to the Highway Specifications.

SECTION 3. STATEMENT OF AUTHORITY.

This local law is authorized by the New York State Constitution, Article IX, Section 2, the provisions of the New York Municipal Home Rule Law (MHRL), the provisions of the Statute of Local Governments, the relevant provisions of the Town Law of the State of New York, the laws of the Town of Red Hook and the general police power vested with the Town of Red Hook to promote the health, safety and welfare of all residents and property owners within the Town.

SECTION 4. SUPERSESSION

Pursuant to the authority granted in MHRL Section 10(ii)(d)(3) and in accordance with MHRL Section 22(1), this local law supersedes Sections 276, 277, and 278 of the New York State Town Law, Sections 140, 171, and 213 of the New York State Highway Law, and any other provision of law that the Town may supersede pursuant to the MHRL and the Constitution of the State of New York. Any reviewing courts is specifically requested to take notice of this legislative intent and apply such intent in the event the Town has failed to specify any provision of law that may require supersession. The Town Board hereby declares that it would have enacted this local law and superseded such provision had it been apparent.

SECTION 5. HARDSHIP WAIVER

A. The Town Board may waive the provisions of this moratorium upon the application of an owner of property pursuant to the standards and requirements herein. An applicant seeking such relief shall be required to show by clear and convincing evidence, and the Town Board must find, that, taking into account the impact of the relief on the purposes of the Town's Highway Specifications and this local law (1) the application of the moratorium to the permit application will constitute an unjust result and cause the applicant substantial economic hardship, (2) the proposed work will not harm the public health, safety and welfare, and (3) the proposed work is consistent with the all other aspects of the Manual on Uniform Traffic Control Device the Red Hook Town Code, the Centers and Greenspaces Plan, and the Town of Red Hook Complete Streets guidelines.

B. Upon submission of written application to the Town Clerk by the property owner seeking a hardship waiver to this moratorium, the Town Board shall, within thirty (60) days of receipt of such application, schedule a public hearing. Public notice of such hearing shall be given at least five (5) days prior to the date thereof in the official newspaper of the Town. At said public hearing, the property owner, and other parties wishing to present evidence with regard to the application, shall have an opportunity to be heard, and the Town Board shall within thirty (30) days of the close of said public hearing render its decision either granting, with or without conditions, or denying the application.

C. The applicant or any other person aggrieved by a decision of the Town Board hereunder may apply to the state supreme court pursuant to Article 78 of the Civil Practice Law and Rules.

SECTION 6. PENALTIES FOR VIOLATION

This local law may be enforced by any police agency with jurisdiction in the Town of Red Hook, including but not limited to the NYS Troopers, Dutchess County Sheriff, Village of Red Hook Police, and Town of Red Hook Building Inspector. Any infraction of the provisions of this local law shall constitute a violation. Any person who violates this local law or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$250 or imprisoned for not more than 15 days or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Building Inspector of the Town of Red Hook from taking such other lawful action as necessary to prevent or remedy an infraction, including but not limited to seeking injunctive relief.

SECTION 7. SEVERABILITY

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this local law shall not affect the validity of any other part of this Local Law, which can be given effect without such part or parts.

SECTION 8. EFFECTIVE DATE

This local law shall take effect immediately after it is filed with the Secretary of State as provided in section twenty-seven of the Municipal Home Rule Law.

JOHN M. WAGNER
PARTNER
jwagner@certilmanbalin.com

February 24, 2021

VIA E-MAIL SUBMISSION

Town Board of the Town of Red Hook
7340 South Broadway
Red Hook, NY 12571

Re: **Local Law A (Proposed) of 2021**

Supervisor and Members of the Town Board:

As noted in my e-mailed comments to the Town Board in advance of the Board's February 9, 2021 meeting, at which meeting all members of the Town Board improperly voted to schedule Local Law A (Proposed) of 2021 (hereinafter "the proposed Local Law") for public hearing before the Town Board this evening, I am the attorney for The Preserve at Lakes Kill, LLC, which is the owner of approximately 100 acres of property on the northerly side of Feller-Newmark Road in the Town of Red Hook, which property (Tax Map Parcel Nos. 6372-00-718975, 6372-00-754955, and 6373-00-790095) has been, for several years, the subject of an application for residential subdivision known as "The Preserve at Lakes Kill." Such subdivision has received both preliminary and final conditional approvals from the Town Planning Board and includes the proposed permanent protection, by conservation easement, of approximately 89 acres (i.e., a remarkable 89%) of the subdivision property.

I am also the attorney for Landmark Properties of Suffolk, Ltd. and PB Developers, Inc., which are the former owners of the aforesaid subdivision property and were the original applicants for "The Preserve at Lakes Kill" subdivision.

The proposed Local Law, as presented at the Town Board's February 9, 2021 meeting, purports to impose, upon its effective date, a moratorium, for a period of six (6) months from such effective date, "on the issuance of permits or approvals for any construction within Town highways, including the modification, alteration, or opening of streets, roadways, highways, or driveways, unless expressly exempted pursuant to subsection 2(D) of this local law," and further purports to provide, among other things, that "[t]he Town of Red Hook Highway Superintendent shall not consider any applications, including any such application currently pending before the Superintendent, for matters within the scope of this moratorium for the term of this moratorium, unless expressly exempted pursuant to subsection 2(D) of

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this local law” and “[n]o permit shall be issued by any official of the Town of Red Hook under the Town of Red Hook Code or Highway Specifications for any matters within the scope of this moratorium for the term of this moratorium, unless expressly exempted pursuant to subsection 2(D) of this local law.”

For the reasons set forth in this letter, (1) Town Supervisor Robert McKeon and Town Councilman Bill Hamel must each recuse themselves both from participating in discussions of, and from voting upon, the proposed Local Law, and (2) the Town Board must not proceed with purported adoption of the proposed Local Law.

SUPERVISOR McKEON AND COUNCILMAN HAMEL MUST RECUSE THEMSELVES FROM PARTICIPATING IN DISCUSSIONS OF THE PROPOSED LOCAL LAW, AND ANY VOTE TO APPROVE SUCH PROPOSED LOCAL LAW, AND THE PRESERVE AT LAKES KILL, LLC, LANDMARK PROPERTIES OF SUFFOLK, LTD., AND PB DEVELOPERS, INC. EXPRESSLY DEMAND THAT THEY DO SO

Town Supervisor Robert McKeon is the owner of large tracts of land directly adjacent, on the west, to “The Preserve at Lakes Kill” subdivision and has repeatedly publicly stated (e.g., at Planning Board meetings or hearings held on 8/20/2012, 11/19/2012, 12/17/2012, 3/4/2013, 3/18/2013, 11/18/2013, 12/16/2013, and 1/6/2014) his opposition to the subdivision application and the subdivision itself.

In addition, Town Councilman Bill Hamel, upon information and belief, also owns property on Feller-Newmark Road and has publicly stated (e.g., at a 4/7/2014 Planning Board meeting) his opposition to the subdivision application and the subdivision itself.

It is well-settled that expressed opposition to a land use application indicates prejudgment of the application or its underlying facts and requires recusal of the person expressing such opposition from involvement with, review of, and action upon the application. See, e.g., 1988 N.Y. Op. Atty. Gen. (Inf.) 117 (N.Y.A.G.), 1988 WL 410578. It is also settled that, in resolving conflict-of-interest questions, one fundamental principle predominates (a public official must avoid circumstances that compromise his or her ability to make impartial decisions solely in the public interest); it is the policy of the law to keep an official so far from temptation as to ensure his unselfish devotion to the public interest; it is critical that the public be assured that their officials are free to exercise their best judgment without any hint of self-interest or partiality, especially if a matter under consideration is particularly

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controversial; and, where a public official is uncertain about whether he should undertake a particular action due to an actual or potential conflict, he must recuse himself from the matter in question unless he procures an opinion from a local ethics board that concludes otherwise. See, e.g., Tuxedo Conservation & Taxpayers Assn. v. Town Board of Town of Tuxedo, 69 A.D.2d 320, 325, 418 N.Y.S.2d 638 (2nd Dept. 1979); Dudley v. Town Board of Town of Prattsburgh, 22 Misc.3d 1128(A), 2009 WL 513401 (Sup. Ct., Steuben Co. 2009), quoting Matter of Byer v. Town of Poestenkill, 232 A.D.2d 851, 852, 648 N.Y.S.2d 768 (3rd Dept. 1996); 2002 N.Y. Op. Atty. Gen. (Inf.) 1024 (N.Y.A.G.), 2002 WL 437994, citing 1998 N.Y. Op. Atty. Gen. (Inf.) 1087, 1998 WL 643364. See also, 1999 N.Y. Op. Atty. Gen. (Inf.) 1052, 1999 WL 626048 (recusal requires the official in question to avoid “taking any actions with respect to that matter”).

Moreover, the participation of Supervisor McKeon and/or Councilman Hamel in either the Town Board’s deliberations or vote upon the proposed Local Law would constitute a violation of Subsections A and B of Section 13-5 (“Standards of Conduct”) of the Town’s “Code of Ethics,” which is Article III of Chapter 13 of the Town Code, in that the proposed Local Law constitutes a matter that they have reason to know may provide a personal financial benefit to them, or secure to them an unwarranted privilege because (1) adoption of the proposed Local Law could result in the indefinite delay of completion of “The Preserve at Lakes Kill” subdivision, which they oppose, and (2) their deliberation, vote, or other participation in or upon the proposed Local Law, and their personal opposition to “The Preserve at Lakes Kill” and issuance of a road opening permit therefor would compromise their ability to make decisions solely in the public interest, violate the spirit of the Town’s Ethics Code, and create an impermissible appearance of impropriety.

Under these circumstances, both Supervisor McKeon and Councilman Hamel -- apparently recognizing their clear conflicts of interest -- have previously recused themselves from matters involving “The Preserve at Lakes Kill” subdivision. In this regard, Councilman Hamel, during his tenure as a member of the Town Planning Board, repeatedly recused himself (e.g., on 5/15/2017, 6/5/2017, 4/2/2018, 5/7/2018, 6/18/2018, 10/1/2018, 2/4/2019, 5/6/2019, 5/20/2019, 7/1/2019, 7/15/2019, 10/7/2019, and possibly other occasions) from discussing and/or acting with respect to “The Preserve at Lakes Kill” subdivision.

Moreover, both Supervisor McKeon and Councilman Hamel recused themselves, and did not participate with respect to, the Town Board’s February 3, 2021 proceedings concerning a proposed resolution pertaining, among other things, to Town Board acceptance of a proposed “Grant of Permanent Drainage Easements” and “Deed of Conservation Easement” in connection with “The Preserve at Lakes Kill” subdivision.

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Notwithstanding its lack of specific reference to “The Preserve at Lakes Kill” subdivision or the application for road opening permit for that subdivision, which was submitted to the Town Highway Superintendent on November 27, 2020, the proposed Local Law, and the moratorium contained therein, are obviously targeted against the “The Preserve at Lakes Kill” subdivision and The Preserve at Lakes Kill, LLC, Landmark Properties of Suffolk, Ltd., and PB Developers, Inc., and are designed and intended to derail “The Preserve at Lakes Kill” -- for which applications have been pending for approximately 12 years -- by indefinitely preventing The Preserve at Lakes Kill, LLC, Landmark Properties of Suffolk, Ltd., and PB Developers, Inc. from obtaining a road opening permit for their subdivision improvements, which is one of the few remaining conditions to be met for the Planning Board Chairman to sign the final subdivision, which will allow the subdivision map to be filed with the County Clerk and the subdivision itself to be completed, developed, and marketed.

Such targeting is evident from, among other things, the facts that (1) the road permit application for “The Preserve at Lakes Kill” was submitted to the Town Highway Superintendent on November 27, 2020; (2) it is public knowledge that receipt of the road opening permit for “The Preserve at Lakes Kill” is one of the few remaining conditions to be satisfied for the Planning Board Chair to sign the final plat of the subdivision; (3) the aforesaid application for a road opening permit for “The Preserve at Lakes Kill” was, upon information and belief, the only such application pending before the Highway Superintendent -- and which would be affected by the proposed moratorium on road opening permits -- at the time the proposed Local Law was introduced to the public at the Town Board’s February 9, 2021 meeting; (4) the subject moratorium, if imposed prior to issuance of a road permit for the subdivision, may indefinitely delay completion of the subdivision, to the benefit of Town Supervisor McKeon and Councilman Hamel, who have repeatedly opposed the subdivision; and (5) despite their aforesaid recusals with respect to matters pertaining to the “Preserve at Lakes Kill,” Town Supervisor McKeon and Councilman Hamel -- who have publicly opposed “The Preserve at Lakes Kill” subdivision, as set forth above -- voted in favor of advancing the proposed Local Law to public hearing at the Town Board’s February 9, 2021 meeting.

Based on the foregoing, Town Supervisor McKeon and Councilman Hamel have clear conflicts of interest with respect to “The Preserve at Lakes Kill” subdivision and the proposed Local Law and must -- in accordance with applicable caselaw and Subsection C of Section 13-5 of the Town’s Code of Ethics (Article III of Chapter 13 of the Town Code -- recuse themselves from any participation in the Town Board’s deliberations and vote upon

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the proposed Local Law. The Preserve at Lakes Kill, LLC, Landmark Properties of Suffolk, Ltd., and PB Developers hereby **demand that they so recuse themselves.**

THE TOWN BOARD HAS NO LEGAL AUTHORITY TO ADOPT THE PROPOSED LOCAL LAW

Application for permits for work in Town roads are reviewed, and such permits (“road opening permits”) are issued, by the Town’s Superintendent of Highways, who has been specifically delegated authority by the New York State Legislature, pursuant to Section 140 of the New York State Highway Law, to, among other things, “[h]ave the care and superintendence of the town highways. . .” Moreover, also relevant to road opening permits, Section 213 of the Highway Law provides that “[t]he owners or occupants of lands shall construct and keep in repair all approaches or driveways from the town highway, under the direction of the town superintendent. . .” (emphasis added)

The Town and Town Board have no powers other than those expressly conferred upon them by statute. See, e.g., People v. Scott, 26 N.Y.2d 286, 289, 309 N.Y.S.2d 919 (1970) (“Unknown at common law, the town is a creature of the Legislature and may not act in excess of the powers conferred upon it by statute”).

Although the New York State Municipal Home Rule Law (“MHRL”) -- unspecified provisions of which are cited as purported authority for the proposed Local Law, in Section 3 thereof -- provides the Town certain authority to adopt local laws, Section 10 of the MHRL, which provides the “general powers of local governments to adopt and amend local laws,” expressly provides, in Section 1(i) thereof, that the every local government has power only to adopt and amend local laws that are “not inconsistent with the provisions of the constitution or not inconsistent with any general law¹ relating to its property, affairs, or government.” (emphases added)

Since the proposed Local Law purports to preclude the Highway Superintendent from exercising her statutory powers and duties, under Highway Law Sections 140 and 171 or any other applicable general law, to care for and superintend Town highways by the issuance of

¹ Section 2 of the MHRL defines a “general law” as “[a] state statute which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages.” The State Highway Law is clearly such a “general law.”

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road opening permits, it is plainly inconsistent with such “general law” and is not authorized by the MHRL.

Moreover, the statement, in Section 4 of the proposed Local Law, that the proposed Local Law “supersedes” several provisions of the Highway Law -- including Sections 140 and 171 thereof, set forth above -- “pursuant to the authority granted in MHRL Section 10(ii)(d)(3) and in accordance with MHRL Section 22(1)” is flatly wrong.

First, there is no MHRL Section “10(ii)(d)(3).” While there is an MHRL Section 10(1)(ii)(d)(3), that section expressly grants power to a Town to supersede only provisions of the New York State Town Law, and not provisions of the Highway Law or any other general law of the State. See, Sherman v. Frazier, 84 A.D.2d 401, 446 N.Y.S.2d 372 (2nd Dept. 1982). See, also, 1997 Op. Atty. Gen. (Inf.), 1997 WL 464202, wherein it was determined that the inquiring Town had no power, under MHRL Section 10(1)(ii)(d)(3), to supersede provisions of the Uniform Justice Court Act, rather than provisions of the Town Law.

Accordingly, the proposed Local Law, to the extent it purports to supersede Highway Law provisions giving the Town Highway Superintendent authority to review and issue road opening permits, or to restrict the Highway Superintendent from performing the functions and duties delegated to her by the Highway Law is completely beyond the Town Board’s powers and is illegal and invalid on its face.

THE PROPOSED LOCAL LAW WOULD BE IMPROPER AND ILLEGAL AS THERE IS NO EMERGENCY OR CRISIS THAT WARRANTS ADOPTION OF THE MORATORIUM ON ISSUANCE OF ROAD OPENING PERMITS THAT IS PROVIDED UNDER THE PROPOSED LOCAL LAW, AND SUCH MORATORIUM IS NOT REASONABLE OR NECESSARY

An exercise of police power that interferes with the enjoyment of property -- such as the moratorium in the proposed Local Law -- may not be invoked “as a pretext to assuage strident community opposition,” such as has been expressed by Supervisor McKeon and Councilman Hamel with respect to “The Preserve at Lakes Kill” subdivision. Rather, such an exercise of police power “must be a reasonable, necessary, and limited response directed at redressing a genuine crisis or emergency.” See, Cellular Telephone Co. v. Village of Tarrytown, 209 A.D.2d 57, 66, 624 N.Y.S.2d 170, 175-176 (2nd Dept. 1995), leave to appeal denied, 86 N.Y.2d 701, 631 N.Y.S.2d 701 (1995) (emphasis added).

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It is evident that there is no “genuine crisis or emergency” that would justify the Town Board’s imposing the draconian moratorium in the proposed Local Law, and, further, that such moratorium is not reasonable or necessary. Upon information and belief, the application for road opening permit for “The Preserve at Lakes Kill” subdivision was the only road opening permit pending with the Town Highway Superintendent at the time the proposed Local Law was presented by the Town Board on February 9, 2021, and there is no evidence that such lone application constituted any “crisis” or “emergency.” Moreover, the application for road opening permit for “The Preserve at Lakes Kill” was granted by the Highway Superintendent, and a road permit was issued by her, on February 19, 2021. Accordingly, as of today there are no pending applications for road opening permit before the Town Highway Superintendent, so there is clearly no crisis or emergency that would justify adoption of the proposed Local Law and implementation of its moratorium provisions.

Moreover, the February 9, 2021 letter of the Highway Superintendent that was filed with the Town Board for its February 9, 2021 meeting (a copy of which is attached to this letter) indicates that she did not agree with the proposed moratorium on road opening permits to allegedly update the Town Highway Specifications, the moratorium proposal was not initiated by the Highway Department, she did “not see a need to stop all permitting in order to update the current Highway Specifications,” “[a] total overhaul of the Town Highway Specifications is a costly and time-consuming endeavor,” “[i]t does not seem prudent to spend our limited funds on a project of this scope during this time of economic insecurity,” she “had not been properly included in Town Board conversations about this issue,” she “would like to know [the Town Board’s] reasons for making this a priority at this time when there are so many other problems that need addressing and/or engineering consultation, such as our three deficient bridges, the lack of a proper drainage district in Forest Park, the deteriorating conditions of our underfunded road network and the lack of financing for manpower and equipment,” and the “sudden proposal for a road opening permit moratorium seems like a want and not a need.” This letter confirms there is no “crisis” or “emergency” regarding road opening permits that would warrant imposition of the proposed moratorium.

THE TOWN BOARD HAS FAILED TO MAKE THE NECESSARY REFERRAL OF THE PROPOSED LOCAL LAW TO THE DUTCHESS COUNTY PLANNING AGENCY

Pursuant to Section 239-m(2) and (3) of the New York State General Municipal Law, a “full statement” of the proposed Local Law must be referred to the Dutchess County planning

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agency before the Town Board takes final action to the proposed Local Law. In fact, Paragraph 2 of the resolution purportedly adopted by the Town Board, on February 9, 2021, to schedule this evening's public hearing on the proposed Local Law specifically authorizes and directs the Town Clerk "to refer a copy of Local Law A (Proposed) of 2021" to the Dutchess County Department of Planning and Development for a report and recommendation thereon pursuant to Section 239-m of the General Municipal Law."

Moreover, pursuant to General Municipal Law Section 239-m(4)(b), the County planning agency has at least 30 days after receipt of a "full statement" of the proposed Local Law, to report its recommendations to the Town Board, "accompanied by a statement of the reasons for such recommendations."

There is, however, no indication that the Town Board has referred the mandatory "full statement" of the proposed Local Law to the Dutchess County planning agency. In addition, even if such "full statement," has been referred to the County planning agency, 30 days have not elapsed since the aforesaid direction, by the February 9, 2021 Town Board resolution, to make such referral. Accordingly, the Town Board is not in any position to take any final action upon the proposed Local Law tonight or at any other time until the referral requirements of General Municipal Law Section 239-m have been fully met. Any attempted adoption of the proposed Local Law without complying with the General Municipal Law Section 239-m referral requirements would be null and void. See. e.g., Roanoke Sand & Gravel Corp. v. Town of Brookhaven, 24 A.D.3d 783, 785, 809 N.Y.S.2d 95, 97 (2nd Dept. 2005) and the cases cited therein.

CONCLUSION

The proposed Local Law purports to improperly, and without any legal authority, abrogate the powers of the Highway Superintendent, under the New York State Highway Law and other applicable laws, to issue road opening permits for proposed work in Town highways. For this reason, among others, the proposed Local Law, if adopted, would be unauthorized and beyond the powers delegated to the Town Board by the New York State Legislature (i.e., *ultra vires*), illegal, invalid, void, and wholly unenforceable, and, to the extent it would have the effect of delaying or precluding the rights of The Preserve at Lakes Kill, LLC to fulfill the conditions of the final approval of "The Preserve at Lakes Kill" subdivision, to have such subdivision map signed or filed, and to develop and use the subdivision property, would violate the constitutional rights of The Preserve at Lakes Kill, LLC and its predecessors in title (i.e., the subdivision applicants Landmark Properties of Suffolk, Ltd. and PB

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Developers, Inc.), under the New York State and United States Constitutions, to petition government, to due process, and to the equal protection of the laws, and would further represent an unconstitutional taking of the property of The Preserve at Lakes Kill, LLC, Landmark Properties of Suffolk, Inc., and PB Developers, Inc.

As set forth above and as is otherwise apparent, the proposed Local Law has no valid public purpose and is, rather, a transparent, unconstitutional, illegal, tortious, targeted, and outrageous attempt to thwart completion of "The Preserve at Lakes Kill" subdivision and to frustrate and preclude The Preserve at Lakes Kill, LLC from developing and using its property in accordance with its rights under the United States and New York State Constitutions and other applicable laws.

Please be advised that, should the Town Board proceed -- despite the evident negative biases and conflicts of interest of several Town Board members with respect to "The Preserve at Lakes Kill" subdivision, the lack of any valid public purpose, and the incontrovertible fact that such actions are clearly targeted against The Preserve at Lakes Kill, LLC and completion of its long-pending subdivision -- to purport to adopt the proposed Local Law or its purported moratorium provisions, The Preserve at Lakes Kill, LLC will pursue all appropriate remedies against the Town of Red Hook, all involved Town Board members, and all other persons involved in such actions, including, but not limited to, holding the Town of Red Hook, all involved Town Board members, and all other persons involved in such actions responsible and liable -- in both their governmental and individual capacities -- for violation of the constitutional and other legal rights of The Preserve at Lakes Kill, LLC, Landmark Properties of Suffolk, Ltd., and PB Developers, Inc., as well as all damages resulting from or related to such conduct, including, but not limited to, punitive or exemplary damages for such persons wholly-reprehensible conduct with respect to The Preserve at Lakes Kill, LLC, Landmark Properties of Suffolk, Ltd., PB Developers, Inc., and "The Preserve at Lakes Kill" subdivision. Please be guided accordingly.

The Preserve at Lakes Kill, LLC, Landmark Properties of Suffolk, Ltd., and PB Developers, Inc. reserve all rights.

Respectfully submitted,



John M. Wagner

Attachments

cc: Christine M. Chale, Esq.

Public Comment

**Town of
Red Hook**



**Highway
Department**

28 Glen Pond Drive, Red Hook NY 12571 845-758-4615

February 9, 2021

Supervisor Robert McKeon
Councilperson Bill O'Neil
Councilperson Christine Kane
Councilperson Bill Hamel
Councilperson Jacob Testa

Public comment for the February 9th, 2021 Town of Red Hook Town Board meeting

Re: Moratorium on Road opening permits and Updating Highway Department Specifications:

I received an email from a Town Board member less than 24 hours before tonight's Town Board meeting of February 9, 2021. The email notified me that the Town Board is proposing to pass a local law that will result in a moratorium for road opening permits in order to update the Town Highway Specifications. I want to be clear that I do not agree with this proposal.

This proposal to put a moratorium in place was not initiated by the Highway Department. I do not see the need to stop all permitting in order to update the current Highway Specifications. In the past, any changes and updates to the Town specifications were made individually, on an as needed basis. A total overhaul of the Town Highway Specifications is a costly and time-consuming endeavor. It does not seem prudent to spend our limited funds on a project of this scope during this time of economic insecurity.

During budget talks the Town Supervisor and the Town Board made it very clear that funding was limited. In the A fund, there was not enough money to support reinstating my clerk's hours, which would cost \$5,600.00. In the DB fund, we had to cut staffing and equipment purchasing, impacting my Department's operations. The B fund has ample balances to support the Highway Department's priority needs, but has not been made available, instead, the funding that used to supplement the Highway Department DB fund has been reversed.

I have not been properly included in Town Board conversations about this issue and I have not been informed of the cost estimates that have been presented for the project. Again, I have to ask the question, what budget line will be used to finance the engineering bills that will be incurred?

I would like to know your reasons for making this a priority at this time when there are so many other problems that need addressing and/or engineering consultation, such as our three deficient bridges, the lack of a proper drainage district in Forest Park, the deteriorating conditions of our underfunded road network and the lack of financing for manpower and equipment.

Public Comment

This sudden proposal for a road opening permit moratorium seems like a want and not a need. I don't believe that it should be a requirement if you do decide go forward with updating the Highway Specifications.

Respectfully yours,

Theresa Burke

Theresa Burke
Highway Superintendent