

Village of Mamaroneck Tree Committee
3 May 2023 Agenda

***Approval of the March 15, 2023 Minutes** (Attachment 1)

***Comments from Residents** (*Please limit in-person comments to 3 minutes*)

***Correspondence**

- Tree Donation, Josh Koller & Pypestream Staff (Attachment -)
- 629 Fairway Ave, Thank you (Attachment -)
- 330 Beach regarding Tompkins Farm Oak and other issues (Attachment -)

***Old Business**

VOM Inspection for Maintenance or Removal *Please provide street numbers when reporting tree-related issues*

- April requests, already sent to DPW (Attachment -)
- May requests (Attachment 6)
- Tompkins Farm Oak boundary question

Public and Private Tree Removals, Applications, Violations

- Tree Permit Application fillable form (Attachment 7)
- 1505 Stoneybrook application to remove 5, 7, or 12 more protected trees (how many?)
- 664 Shore Acres Drive removed 4 protected trees without permit (Saturday take down); fine of \$17,100 reduced by court to \$5,000
- 406 Heathcote cited for removing 18"+ tree

Tree Law Update

- Revision to Tree Law
 - o Replacement requirements for 3"- 8" trees on steep slopes or in wetland buffer zones
- Planting BROW and Tree Scholarships
 - o *(Murphy v. Erie Co., 28 N.Y.2d 80, 88 (1971) (Attachment 8)*
 - o Municipal Home Rule Law, §10(i)(a)(ii)(12) of the NY Const., Art IX, §2 (Attachment 9)

Spring Planting

- Rockland Pocket Park 3 black willow, 2 American black cherry
- Bishop St trees
- Parks Dept now taping letters about new trees to front doors
- List still fluid

***New Business**

- Inquiry about NYS Grant Funding for Tree Inventory (Attachment 10)
- Request for Structural Soil under Fayette sidewalks (Attachments 11 a & b)
- Maintaining a voluntary list of planned pruning of private trees (Attachment 12)

***Other Business** *(committee members please add any items not otherwise included in the agenda)*

***Calendar Notes**

- Wednesday, June 7, 7:30 pm, Tree Committee meeting. See new schedule (Attachment 13)
- Sunday, May 21, 1:00 pm, Guided Tree Walk, Columbus Park
- Thursday, May 4 (tomorrow), volunteers needed for planting more plants at Rockland Pocket Pollinator Park

Attachment 1
Draft: Minutes of Village of Mamaroneck Tree Committee meeting
March 15, 2023
Regatta Conference Room

Present:

Jerry Barberio, village manager
Beverley Sherrid, Chair
Wendy Zoland
Sarah Evans
Krishna Finkenberg
Marlene Star

*Call to order: 7:35 pm

***Approval of the February 15, 2023 Minutes**

***Correspondence**

- Henry Ave. question about street markings next to trees answered by Bev
- 540 Munro, requested new tree on Munro instead of Delancey; pruning of Delancey trees
- 330 Beach – Implicit Bias accusation. VOM has planted 36 trees on Howard and Lester. Tree Committee response: would have planted 57 but faced resistance from residents or utilities got in the way.
- The Parkway, Question about the condition of Sycamore. Peeling bark is normal.
- Prospect Ave. Resident thanked us for new trees and requested more but other residents declined.
- 330 Beach regarding Tompkins Farm Oak conditions. It is not a VOM tree.
- 1501 Pine Knoll Lane asked for new tree and stump removal

***Old Business**

VOM Inspection for Maintenance or Removal

- Google doc for committee use
- 1410 Shadow Lane, Tree Inspection Report from DPW is done. Jerry to send letter about Rye trees to Town of Rye administrator. Will replace VOM tree with a willow, as it is more resistant to root rot.
- 216 Melbourne, Question about action planned for street tree – pruning only.

Public and Private Tree Removals, Applications, Violations

- Revised Tree Permit Application shown to committee
- Tree inspection invitations to accompany Village Manager
- 1505 Stoneybrook regarding application to remove 7 more trees. Jerry asked resident for certified arborist opinion.

Tree Law Update

- 664 Shore Acres Drive violation issued for illegal removal
- In first year of new law, VOM received 89 permit applications as of 12/31.

Tree removal applications now part of building permit procedure.
Village lawyer to add tree question to Board of Architectural review applications.

Tree Maintenance Budget

Reduced from \$60k to \$40k for 2023-24 budget year due to budget constraints

Spring Planting

- Planting of 60 trees may begin third week of April depending on weather
- Letters sent to property owners about new ROW trees, some declined trees

*Calendar Notes

- 4/19/23, Regatta Conference Room, 7:30 pm, Tree Committee meeting
- **22 April 2023, rescheduled** Library Centennial Celebration, Tree Planting at Rushmore Ave Playground, HIP

*Adjourned 8:40 pm

Attachment 2
Tree Donation – Josh Koller & Pypestream Staff

Hi Josh. Thank you. This is an amazing idea.

BTW, I'm a big fan of your Mom.

I have copied Dan Sarnoff, Deputy VM, Mayor Murphy, liaison to the Tree Committee, and Jeff Ahne, Parks General Foreman. We will put a plan together and get back to you very soon.

I'll make sure we have several dates that will work. I have also taken the liberty of copying the tree committee members. We work very closely together.

Have a great weekend. We will talk, via email, soon. JB

Jerry Barberio
Village Manager

.....

.

From: Josh Koller <joshlmkoller@gmail.com>
Sent: Friday, April 21, 2023 4:48 PM
To: Jerry Barberio <jbarberio@vomny.org>
Cc: Gail Koller <gail.koller18@gmail.com>
Subject: Tree Planting - Josh Koller, Pypestream Group

Hi Jerry,

Thanks very much for your help in coordinating a potential corporate volunteer tree planting at Harbor Island Park in Mamaroneck.

I work as an Engagement Manager for Pypestream a digital NY based company and a group of our employees would like to take a positive collective action for Earth Day/Month.

We would love to make a donation specifically by way of purchasing tree(s) to then plant at HIP to help provide natural shade and shelter, improve air quality, promote biodiversity and ameliorate flooding, particularly after the loss of trees at the park following severe storms.

My budget to put towards the purchase of trees is dependent on my final headcount of company participants, figuring approximately \$50 per person with an upper limit of 15 to 20 participants.

We would of course like to buy trees that are best suited and most helpful for the specific environment so once we know what to look for - and if given the village's approval, we can move forward with securing the trees and scheduling a date.

Thanks again for your help in making this possible and helping us contribute to a greener Earth!

If you have any questions or need other information from me please let me know.

Best,
Josh

--

Josh Koller
(C) 914-434-2063

.....

Jerry,

I'm overwhelmed by the positive response to our idea both from you and others offline - thank you! I hope the Trustees were amenable to the idea if it came up at this week's meeting, and I'm excited to talk next steps with you whenever appropriate and convenient.

Talk soon,

Josh

Attachment 3
Thank you for the new trees

Hi Beverley,

Just a quick note to say thank you again.

Both trees blossomed last week.

They look great.

Best,

Sean

Attachment 4
330 Beach regarding Tompkins Farm Oak and other issues

Dear Mayor Murphy,

I don't believe I ever said that, this is just case of you again making up things about me to deflect from real issues.

I spent years in the tree business. I paid for the Consulting Arborist opinion on what effect the proposed trenching through the Tompkins Farm Oak's root system would have. I have fought have the Village act responsible to preserve it's health for 30 years. What have you done?

Anyone who know anything about how 300 year old trees die after construction damage know that it takes decades. Given that you likely don't know the difference between a maple and oak I don't expect you would.

The Tompkins Farm Oak will likely "live" longer than both of us. Unfortunately, hose of us who care about it will have to watch it's long sad demise.

This inspection was superficial and unprofessional and all your deflection won't change that.

Sincerely,

Stuart Tiekert

On Monday, March 27, 2023 at 07:25:47 AM EDT, Thomas A. Murphy <tmurphy@vomny.org> wrote:

I first heard about the TFO when I was campaigning for office in 2001 with Mayor Chapin. We met you on Beach Ave and you said that because of work that had been done the tree wouldn't survive 5 years.

I am so glad to see that it still lives.

Respectfully,

Tom Murphy

Mayor, Village of Mamaroneck

He/His/Him

On Mar 27, 2023, at 6:26 AM, stuart tiekert <tiekerts@yahoo.com> wrote:

Dear Chair and Members of the Tree Committee,

I am writing because apparently a year and half after I first wrote the TC about the decline of the Tompkins Farm Oak someone went and inspected it and reported that it "looks healthy but could use some pruning"

I don't know who offered that opinion but, seriously? Looks healthy?

Did whoever inspected the tree look at the image below of it a year and half ago showing the thinning of the crown and branch tip dieback? Why did a year and half pass before an inspection was done in the dead of winter? Did they not notice the several major pieces of dangerous deadwood overhanging the public street and adjacent properties?

In the words of the John McEnroe, "You cannot be serious!" that this passes as an credible inspection of the condition of the Village's oldest tree.

Sincerely,

Stuart Tiekert

On Saturday, March 4, 2023 at 08:40:28 AM EST, stuart tiekert <tiekerts@yahoo.com> wrote:

Dear Chair and Members of the Tree Committee,

Please see below an image of a large piece of deadwood that fell out of the Tompkins Farm Oak last night

Over a year ago, I wrote the TC -

"Six months ago I wrote the TC about the marked decline of the Tompkins Farm Oak (TFO), the oldest tree in the VOM, my original email is appended below. I have attached a recent photo below that shows the large pieces of deadwood overhanging the Pine Street roadway and cars that park under the canopy.

Trustee Lucas, who lives across the street, is knowledgeable of the history of community efforts to protect the TFO as well as the history of the Village ignoring common sense preservation recommendations from the NYSDEC Arborist that has led to it's untimely demise.

Except for putting my email on an agenda I don't think there has been any discussion of teachable moments from the TFO's untimely decline or steps going forward for possibly extending it's life and mitigating dangers from it's continuing decline. I hope the TC will take this up in the future."

I don't believe than in a year and a half any action has been taken to either evaluate whether anything can be done to help preserve the Tompkins Farm Oak's life or remove the clearly dangerous deadwood in the tree.

As I have expressed before, for those in the neighborhood who worked for years to protect this tree, it's disappointing how little interest the Tree Committee or Village have shown in caring for and preserving this

piece of Village history.

I urge you to take some meaningful action, if only to reduce the liability.

Sincerely,

Stuart Tiekert

----- Forwarded Message -----

From: stuart tiekert <tiekerts@yahoo.com>

To: TreeCom <treecom@vomny.org>; trees@vomny.org <trees@vomny.org>

Sent: Monday, January 31, 2022 at 09:49:26 AM EST

Subject: Fw: The Tompkins Farm Oak is in decline

Dear Chairs and Members of the Tree Committee,

Happy to New Year to everyone.

Here are a few issues I hope to see addressed in the coming months

Tree Law and ANSI 300 Standards -

The new Tree Law was approved four months ago but as of this morning Chapter 318 has not been update with the new law.

I provided the Village with a digital copy of the ANSI 300 Standards to the Village over two months ago and as of this morning I cannot find it on the Village website as the Planning Board requested would be done.

If property owners are expected to comply with the new Tree Law and the ANSI 300 Standards I believe they should at least be made available on the website.

Fall 2021 Tree Planting

Below are photos of two trees planted in Harbor Island Park. The first image is of an acceptable tree, the second is not and I don't believe it should have been accepted by the Village any year but certainly not under the exorbitant prices the Village paid for trees under the present contract. I urge the TC to ask the Village Manager to be more selective in what trees he accepts for planting.

Tompkins Farm Oak

Six months ago I wrote the TC about the marked decline of the Tompkins Farm Oak (TFO), the oldest tree in the VOM, my original email is appended below. I have attached a recent photo below that shows the large pieces of deadwood overhanging the Pine Street roadway and cars that park under the canopy.

Trustee Lucas, who lives across the street, is knowledgeable of the history of community efforts to protect the TFO as well as the history of the Village ignoring common sense preservation recommendations from the NYSDEC Arborist that has led to it's untimely demise.

Except for putting my email on an agenda I don't think there has been any discussion of teachable moments

from the TFO's untimely decline or steps going forward for possibly extending it's life and mitigating dangers from it's continuing decline. I hope the TC will take this up in the future.

Sincerely,

Stuart Tiekert

----- Forwarded Message -----

From: stuart tiekert <tiekerts@yahoo.com>

To: TreeCom <treecom@vomny.org>; trees@vomny.org <trees@vomny.org>

Sent: Monday, August 2, 2021, 06:23:45 AM EDT

Subject: The Tompkins Farm Oak is in decline

Dear Chairs and Members of the Tree Committee,

The oldest known tree in the Village, the Tompkins Farm Oak (TFO), is in sharp decline as can be seen in the photo below. The crown has thinned significantly and there are multiple branches, from the bottom to the top, where terminal end growth has stopped.

This is especially sad for the Tompkins Farm Oak neighborhood which for thirty years led the efforts to protect the tree from damage by developers and the Village.

I hope the Board will advise the BOT to take prudent steps to determine the present condition of the tree and any steps that may prolong it's life.

My suggestion would be that the Village hire a Consulting Arborist to evaluate the TFO.

Please don't let the Village Manager hire Frank Buddingh or Ken Almstead of Almstead Tree.

Mr. Buddingh is not a consulting arborist and is conflicted because he was the arborist the Village hired in 2012 to greenlight the work, against the NYSDEC Forester's recommendations, that likely put the kiss of death on the TFO.

Ken Almstead is a consulting arborist but his company will get paid to do any work on the tree. Also, it was Almstead Tree that was hired by the Village in 2012 to supervise the Pine Street excavation below the TFO and allowed contractor to ignore the preservation plan for the TFO.

Sincerely,

Stuart Tiekert

Attachment 5
330 Beach Regarding Open Meetings Law; Tree Committee Failure to Make List of Tree Removals Available to Public

Dear Mayor and Board of Trustees,

I am writing because at the meeting last night the Mayor continued to display either ignorance of or willful blindness to the requirements of the Board's written procedures and Open Meetings Law.

The Board's procedures clearly state under GUIDELINES FOR PUBLIC COMMENT that "Board members may, with the permission of the presiding officer, interrupt a speaker during their remarks, but only for the purpose of clarification or information." Maybe the Mayor believes this only applies to Trustees and he is permitted to bully and hector speakers as he likes, but one would hope he would not and instead abide by the same "rules of courtesy, decorum, dignity and good taste" required of members of the public that speak.

Also, regarding the lack of compliance with Open Meetings Law by the Tree Committee not making available the list of tree removals, if they received them from the Village Manager, Open Meetings Law is clear. As innumerable Advisory Opinions state, "when a public body schedules a document for discussion during an open meeting that is required to be made public pursuant to the Freedom of Information Law, it is required to make the record available to the public, to the extent practicable, online and prior to or at the meeting during which the record is discussed."

I hope trustees will urge the mayor to behave better in the future and abide by the Board's procedures and encourage compliance with Open Meetings Law not ignoring them.

Sincerely,

Stuart Tiekert

Attachment 6

VOM Tree Inspection, pruning, removals -- May

<u>Address</u>	<u>Street</u>	<u>Comments</u>
222	Carroll Ave	may need pruning; in the ROW?
<u>Pruning/Maintenance</u>		
222	Carroll Ave	appears to be failing; prune or remove?
222	Carroll Ave	appears to be failing; prune or remove?
507	Revere Rd	dropping branches
<u>Removal</u>		
1247	Drury Drive, open space facing house	2 dead arbor vitae, please remove we would like to replant in the fall

TREE REMOVAL PERMIT APPLICATION — {Page 1}

For activities in accordance with Village Code- Chapter 318

As per Village Code §318 a property owner may remove a tree on non-public property as of right, provided that:

- The tree is removed under an actual or ongoing emergency when such tree removal is necessary for the protection and preservation of life or property, including adjoining parcels. The property owner shall give notice of said removal to the Village as soon as practical.

Section: ____ Block: ____ Lot: ____ Application Date: _____

Property Owner: Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Email: _____

Tree Contractor: Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Email: _____

For activities that include proposed removal of tree(s) that straddle a property line, the signature from the adjacent/affected property owner acknowledging the application for tree removal(s) shall be included below.

Adjacent /Affected Property Owner Signature: Name: _____ Date: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Email: _____

ISA Arborist: Name: _____ ISA #: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Email: _____

Description of Project: _____

Any land use board determinations in the past 3 years that included an approved landscaping plan or tree preservation plan?

Yes: _____ No: _____

Date of Determination: _____

Is the proposed tree removal activity located within a freshwater wetland-controlled area?

Yes: _____ No: _____

Signature: _____ Printed Name: _____

TREE REMOVAL PERMIT APPLICATION — {Page 2}

Replacement trees shall be native to the Northeast United States, of a genus and species expected to grow to maturity at a similar size to the removed tree. Trees known to be invasive species are excluded for use as replacement trees. Replacement trees shall be selected by the property owner from the Village's list of recommended native trees.

For activities in accordance with Village Code—Chapter 318

PERMIT # _____

DATE: _____

Property Address: _____

PROPOSED TREE(S) FOR REMOVAL:

Tree #	Botanical or Common Name	DBH (Diameter@ Breast Ht.)	Reason for Removal	Village Comments	ISA Risk Assessment

- Diagram of property showing where tree(s) are located. Yes ___ No ___

- Ribbons tied around tree. Yes ___ No ___

- Color photos attached illustrating the existing conditions of the tree(s) Yes ___ No ___

Additional pages attached including supporting documentation prepared by a tree expert that may provide assessment indicating the condition of dead, dying, diseased or hazardous tree(s) Yes ___ No ___

For lots less than 14,500 sf	
DBH of tree removed (inches)	Replanting requirement
Under 8 inches	No replanting necessary
8 inches or greater	One 2 to 2 ½ inch DBH tree
For lots 14,500 sf and above:	
Under 8 inches	No replanting necessary
8 to 12 inches	One 2 to 2 ½ inch DBH tree
13 to 25 inches	Two 2 to 2 ½ inch DBH trees
26 inches or greater	Three 2 to 2 ½ inch DBH trees

GENERAL REQUIREMENTS — {Page 3}

Tree removal activities in accordance with Village Code Chapter 318

TREE REMOVAL PERMIT APPLICATION SUBMISSION REQUIREMENTS:

- The application for a Tree Removal Permit shall contain the address of the project including the section, block, and lot along with the name, phone number and email address of the owner, tree contractor and when applicable ISA certified arborist (tree expert) with completed ISA Assessment Form as well as a description of the project. The entire application must be filled out and signed to be accepted.
- The permit must be filed with the Building Department and will be valid for ninety days (90) or a permit extension will be required.
- Each application shall include the following information.
 - Site plan or survey and photos showing location of trees to be removed (type and size to be noted) including a copy of any land use board approved site plan and certifications applicable to the tree removal(s) proposed.
 - A list of tree species specifying types and DBH sizes of trees to be removed and the reason for removing the trees.
 - Permit fee, and any other information to support the application.
 - At the time of application submittal, the trees proposed for removal must be clearly marked with ribbons or stakes on site for Village staff review and verification.

 - Depending on the scope of the project, the Village may require:
 - A written statement from an ISA certified arborist or other tree expert stating the condition of trees requested for removal which may include a certification statement that all trees removed shall be removed and/or replaced in accordance with the approved permit and all provisions of Chapter 318 of the Village Code.
 - A tree preservation plan showing trees which are to be preserved and protected. Methods for tree preservation in areas affected by construction activities shall meet standards set by Westchester County Best Management Practices Manual.
 - Supporting documentation prepared by an ISA certified arborist attesting to any statement that a tree(s) is considered dead, dying, diseased or hazardous. The *ISA Basic Tree Risk Assessment* form is an industry accepted supporting document.

Fee Schedule

Permit Fees: \$25.00

Attachment 8
Municipal Funds Used On or Managed By Private Entity

Murphy v. Erie County

Summary

In *Murphy*, the county issued bonds to finance the construction of a stadium that would be leased to, or managed by, a private entity.

Summary of this case from [Bordeleau v. State](#)
[See 3 Summaries](#)

Opinion

Argued January 11, 1971

Decided March 3, 1971

Appeal from the Appellate Division of the Supreme Court in the Fourth Judicial Department,
MICHAEL CATALANO, J.

Francis X. Murphy and Peter B. Carr, appellants in person. *Victor T. Fuzak and Stephen M. Newman* for Kenford Company, Inc. and The Dome Stadium, Inc., respondents. *Robert E. Casey, Jr.*, County Attorney (*William E. Straub* of counsel), for Erie County, County Legislature of Erie County and B. John Tutuska, as County Executive of Erie County, respondents.

Chief Judge FULD.

In May, 1968, the State Legislature enacted a law empowering the Legislature of Erie County to enter into contracts and incur indebtedness in connection with the building of a stadium (L. 1968, ch. 252). Shortly thereafter, the County Legislature adopted a resolution authorizing issuance of bonds in the amount of \$50,000,000 to finance the construction of a domed stadium. The county then began discussions with the defendant Kenford Company, one of whose principal stockholders is the operator of the only similarly constructed stadium in the country, the Houston Astrodome. In June of 1969, Kenford presented a proposal to the county whereby Kenford would donate to the county the land on which the stadium would be built and, in return, Kenford — through a subsidiary, Dome Stadium, Inc. — would operate the structure under a 40-year lease from the county. Alternatively, it was proposed that, if the parties could not agree on a lease, Kenford would operate the stadium as manager under a 20-year contract.

Dome would be the New York arm of Kenford and, accordingly, throughout this opinion "Kenford" refers to both corporations.

Upon receipt of the offer, the County Legislature passed a resolution authorizing the County Executive to negotiate a contract with Kenford and, on August 5, the legislative body empowered him to sign the contract. The agreement provided, in general, that Kenford would operate the stadium as lessee and would pay to the county, over a 40-year term, some 63.75 million dollars, such amount to be reduced by tax revenues generated by the stadium. If the parties could not agree upon a lease within three months after the cost estimates and specifications for the stadium were received by the county, then, the contract specified, the parties would execute a 20-year management agreement whereby Kenford would operate the stadium in return for a percentage of the revenues.

This is the third taxpayers' suit which has been brought challenging the validity of the stadium project. The other two — brought by Jerome Murphy and Bradley J. Hurd, respectively — have been dismissed. Murphy's complaint was held insufficient on its face, without prejudice to amendment, while Hurd's, attacking the contract on the ground that it was entered into without competitive bidding, was dismissed on the merits. (*Hurd v. Erie County*, [34 A.D.2d 289](#).) In the present case, the plaintiffs allege that certain terms of the contract violated provisions of the State Constitution and effected a waste of county funds. They seek judgment (1) enjoining the county from spending any of its money or property on the stadium, from permitting the stadium to be operated by someone other than county employees and from executing the contract with Kenford and (2) declaring null and void the resolutions authorizing the building of the stadium and the execution of contracts with Kenford.

Both Kenford and Erie County moved to dismiss the complaint; the court at Special Term granted the motions because, first, the suit was barred on *res judicata* grounds by the *Hurd* action ([34 A.D.2d 289](#), *supra*) and, second, because, on the merits, no illegal, wrongful or dishonest acts existed. The Appellate Division, although disagreeing with Special Term as to the scope of *res judicata*, affirmed on the merits, and the plaintiffs appeal to this court as of right on constitutional grounds.

The defendants maintain that the *Hurd* action provides a complete defense to the present one, for the reason that it is *res judicata* as to all questions which might have been raised therein. The plaintiffs recognize that the doctrine of *res judicata* may be availed of in a taxpayer's suit but contend that it bars only proof of those matters which had actually been litigated in the prior action. This is critical in the case before us, since the present plaintiffs complain of far more than the absence of competitive bidding pleaded in *Hurd*. Strong policy reasons may be mustered for the position taken by each side. On the one hand, it is certainly desirable that there be an end to taxpayer suits with respect to a particular matter so that the governmental body involved may function without the fear of repeated complaints challenging the same action. On the other hand, taxpayers' actions serve a salutary purpose in providing a check on abuse of official power, and this purpose is undermined if an ineffectual suit is brought first and then is considered a bar to any further challenge. The decisions provide no clear answer. On balance, applying the standards suggested by Weinstein, Korn and Miller (N.Y. Civ. Prac., [vol. 5](#), par. 5011.35), we hold that *res judicata* applies only as to the matters actually litigated in the prior suit. This is justified because

the cases, commenced but a few days apart, pose completely different issues; in *Hurd*, the plaintiff raised only a threshold question — the necessity for competitive bidding on the contract — while the plaintiffs herein challenge the provisions of the contract itself. These provisions deserve judicial scrutiny, and the doctrine of *res judicata* should not prevent a court from passing upon the merits of contentions not previously advanced.

In addition, Erie County urges that the appeal should be dismissed for the reason that the controversy has become moot. It is the county's submission that, although it authorized financing at a level of \$50,000,000, the bids to construct the stadium — received after the Appellate Division had affirmed Special Term's order — amounted to over \$70,000,000, and it argues from this that the ability to build the structure for the smaller amount was a condition precedent to its obligation to Kenford under the contract. This being so, the argument continues, the present action to void the contract with Kenford has become unnecessary. The fact that the bids submitted exceeded the amount authorized by the county does not render the litigation moot. Whether the county is absolved from any obligation to Kenford and whether its legislature was justified in rescinding the contract by unilateral action are questions which require a factual determination as to the intention of the parties. In the cases relied on by the county, the fact that the challenged governmental action could not be effectuated was clear from the record. Such is not the situation here, and it may well be that Kenford will be able to prevail in a suit against the county based upon the contract. Under these circumstances, we may not say that a decision as to the constitutional validity of the provisions of the contract has become unnecessary.

We have also been informed that the County Legislature passed a resolution — after oral argument before us — declaring its relationship with Kenford to be at an end, without legal liability on the part of the county.

This brings us to a consideration of the merits of the plaintiffs' argument that the lease or management contract is not warranted by the act authorizing the county to build the stadium. It is sufficiently answered by the language of the legislation itself. Entitled "AN ACT relating to the construction and financing of a stadium by the county of Erie and authorizing, in aid of such financing, the leasing of such stadium", the statute specifically empowers the county to "enter into contracts, leases, or rental agreements with, or grant licenses, permits, concessions, or other authorizations, to any person or persons". Quite obviously, it was designed to give the county the broadest latitude possible in the operation of the stadium. It was perfectly reasonable for the county to conclude not only that it needed professional help in the complex running of a multi-million dollar, multi-purpose public arena but that it should arrange to employ the only company with experience in the field either as lessee or manager. The case of *Tierney v. Cohen* ([268 N.Y. 464](#)), relied on by the plaintiffs — in which the court held invalid a local bond provision in clear contravention of the enabling act there involved — is manifestly inapposite.

The plaintiffs, acknowledging that the erection of a stadium in Erie County is a public purpose, insist — and this point is at the heart of all their arguments — that, by giving control over the stadium to Kenford, for either 40 years under the lease or 20 years under the management contract and not retaining any right to use the facility, the county converted the stadium into a private use for Kenford's benefit. This position misconceives the nature of the public use which the stadium serves. As declared by the State Legislature, it is designed to "furnish to, or foster, or

promote among, or provide for the benefit of, *the people of the county of Erie*, recreation, entertainment, amusement, education, enlightenment, cultural enrichment" (L. 1968, ch. 252, § 2; emphasis supplied). That the county may not itself be using the stadium seems irrelevant to these purposes, for it is evident that the county's residents will be obtaining the full benefit for which the stadium is intended, the ability to view sporting events and cultural activities, regardless of the identity of the party operating the stadium. The fact that the very public purpose for which the stadium is authorized will be served by it, even though Kenford will also derive a benefit from it, distinguishes this case from those relied on by the plaintiff (see, e.g., *Denihan Enterprises v. O'Dwyer*, [302 N.Y. 451](#); *Schieffelin v. Hylan*, [236 N.Y. 254](#); *People v. Westchester County Bank*, [231 N.Y. 465](#); *Smith v. Smythe*, [197 N.Y. 457](#)), where the benefit of the challenged expenditure accrued only to a private party. In the *Denihan* case ([302 N.Y. 451](#), *supra*), for example, in which New York City desired to erect a parking facility and lease it to a private operator, our affirmance of the order denying dismissal of the complaint was placed on the ground that its allegations indicated that the private concern, not the public, would benefit from the new garage ([302 N.Y., at p. 459](#)). This is materially different from the situation in the present case, where the private benefit is "incidental" to the conceded public purpose of the stadium. "[A]n incidental private benefit," we wrote in *Denihan* ([302 N.Y., at p. 458](#)), "is not enough to invalidate a project which has for its primary object a public purpose".

It follows from what we have written that the lease here under attack may not be construed as a "loan" or "gift" of county property "in aid of any * * * private corporation or association, or private undertaking," as prohibited by article VIII (§ 1) of our State Constitution. As demonstrated above, the lease is in furtherance of a public and not a private purpose. It is established that a municipality may lease its public improvements to private concerns so long as the benefit accrues to the public and the municipality retains ownership of the improvement. (See *Salzman v. Impellitteri*, [305 N.Y. 414, 420](#); *Admiral Realty Co. v. City of New York*, [206 N.Y. 110, 128](#); *Martin v. Philadelphia*, [420 Pa. 14, 18](#); see, also, 10 Op. State Comp., 1954, Opn. No. 7002, p. 402.) In upholding the lease of a city subway system to a private operator, the court in *Admiral Realty* declared that "the municipality need not itself operate such railroads, but might provide for the operation thereof by some one else under a lease not in perpetuity" ([206 N.Y., at p. 128](#)). And in the *Martin* case ([420 Pa. 14, supra](#)), which involved a stadium in Philadelphia, the Pennsylvania high court noted that "the City has the power to lease the stadium to private enterprise" because such a lease would be "incident to providing for "the recreation or the pleasure of the public"" ([420 Pa., at p. 18](#)). This is precisely the situation in the case before us.

The other contentions advanced by the plaintiffs do not warrant discussion. Suffice it to say that they raise no substantial issues of illegality but only of the wisdom of the plan adopted by the county, and these are matters for the Legislature alone to resolve. (See, e.g., *Gaynor v. Rockefeller*, [15 N.Y.2d 120, 134](#).) In sum, the contract between Kenford and Erie County does not offend against constitutional or statutory provisions.

The order appealed from should, therefore, be affirmed, without costs.

Judges SCILEPPI, BERGAN, BREITEL, JASEN and GIBSON concur; Judge BURKE taking no part.

Order affirmed.

Attachment 9
Municipal Home Rule Law, §10(i)(a)(ii)(12) of the NY Const., Art IX, §2

General powers of local governments to adopt and amend local laws.

1. In addition to powers granted in the constitution, the statute of local governments or in any other law,

(i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government and,

(ii) every local government, as provided in this chapter, shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law, relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government:

a. A county, city, town or village:

(1) The powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees, except that cities and towns shall not have such power with respect to members of the legislative body of the county in their capacities as county officers. This provision shall include but not be limited to the creation or discontinuance of departments of its government and the prescription or modification of their powers and duties.

(2) In the case of a city, town or village, the membership and composition of its legislative body.

(3) The transaction of its business.

(4) The incurring of its obligations, except that local laws relating to financing by the issuance of evidences of indebtedness by such local government shall be consistent with laws enacted by the legislature.

(5) The presentation, ascertainment, disposition and discharge of claims against it.

(6) The acquisition, care, management and use of its highways, roads, streets, avenues and property.

(7) The acquisition of its transit facilities and the ownership and operation thereof.

(8) The levy and administration of local taxes authorized by the legislature and of assessments for local improvements, which in the case of county, town or village local laws relating to local non-property taxes shall be consistent with laws enacted by the legislature.

(9) The collection of local taxes authorized by the legislature and of assessments for local improvements, which in the case of county, town or village local laws shall be consistent with laws enacted by the legislature.

(9-a) The fixing, levy, collection and administration of local government rentals, charges, rates or fees, penalties and rates of interest thereon, liens on local property in connection therewith and charges thereon.

(10) The wages or salaries, the hours of work or labor, and the protection, welfare and safety of persons employed by any contractor or subcontractor performing work, labor or services for it.

(11) The protection and enhancement of its physical and visual environment.

(12) The government, protection, order, conduct, safety, health and well-being of persons or property therein. This provision shall include but not be limited to the power to adopt local laws providing for the regulation or licensing of occupations or businesses provided, however, that:

(a) The exercise of such power by a town shall relate only to the area thereof outside the village or villages therein.

(b) Except in a case where and to the extent that a county is specifically authorized to regulate or license an occupation or business, the exercise of such power by a county shall not relate to the area thereof in any city, village or area of any town outside the village or villages therein during such time as such city, village or town is regulating or licensing the occupation or business in question.

Attachment 10
Possible USDA Funding for Tree Inventory

Taryn,

Can I hire part time interns/staff to complete our tree survey in the Village?

Thx

Jerry Barberio
Village Manager

From: Taryn Pronko <tpronko@m-strat.com>
Sent: Monday, April 24, 2023 12:22 PM
To: Jerry Barberio <jbarberio@vomny.org>; Daniel Sarnoff <dsarnoff@vomny.org>
Cc: David Jenkins <djenkins@m-strat.com>
Subject: RE: Grant Opportunity: US Department of Agriculture

Hi all,

I'm following up on the email below regarding the USDA Inflation Reduction Act for Urban and Community Forestry Grants Program. Please see below for more information and let me know if you're interested.

Thanks,

Taryn

Taryn Pronko

Senior Grant Manager

Millennium Strategies

25 Smith Street, Suite 401
.....

From: app.converge@m-strat.com <app.converge@m-strat.com>
Sent: Monday, April 17, 2023 2:31 PM
To: jbarberio@vomny.org; dsarnoff@vomny.org; David Jenkins <djenkins@m-strat.com>
Subject: Grant Opportunity: US Department of Agriculture

Good afternoon,

Attached is information regarding the USDA Inflation Reduction Act for Urban and Community Forestry Grants Program. This opportunity supports applicants to complete tree planting and related activities, with a priority for projects that benefit underserved populations and areas. Please see attached for more information and let me know if you are interested.

Thanks,

Taryn

Taryn Pronko

Grant Manager

Millennium Strategies

25 Smith Street

Nanuet, NY 10954

Attachment 11a



Attachment 11b



Attachment 12
Question About Pruning

Dear Ms. Belin,

Thank you for the heads up about your pruning plans and for taking such good care of your trees.

You don't need to notify the Village before pruning. However, I've been thinking it might be a useful for the Village to know informally. Recently, many tree lovers have seen arborist equipment and asked the Village investigate possible unpermitted removals. I'll find out whether it would be possible to maintain a list of pruning plans so everyone could be reassured. Meanwhile, I'll keep track of your address and plans.

If your oak was in the Village right of way along the street, we'd be happy to replace it next fall. At the moment, we're not planting beyond the right of way on private property. I'm hoping this possibility will become available soon. If it does, I'll come by and talk about where you'd like a new tree.

Again, thank you for your email.

Best wishes,
Beverley Sherrid
Chair, VOM Tree Committee

.....
From: Sophie Belin <sophiebelin@yahoo.fr>
Sent: Tuesday, April 25, 2023 9:45 AM
To: TreeCom <treecom@vomny.org>
Subject: Tree pruning

Dear members,

I am planning to prune my trees, and want to make sure I don't have to ask for a permit (it's only pruning, no removal), do I need to give notice to the village before pruning?
Thank you for your guidance.

Secondly, we lost a massive and beautiful oak tree that was probably more than 100 years old during the Aug 2020 storm in our front yard. I was wondering if we would be eligible for the Village to plant a new tree. Please let me know the procedure if any.

Thank you!
Best regards,

Sophie Belin
13 5th street
Mamaroneck

Attachment 13
Tree Committee 2023 Revised Meeting Schedule

Tree Committee meetings are moving to the 1st Wednesday of month? Those dates would be:

- June 7
- July 5
- August 2
- September 6
- October 4
- November 1
- December 6

The Committee will meet at 7:30 in The Regatta conference room.