

9/3/2023

**Village of Mamaroneck Tree Committee  
6 September 2023 Agenda**

**\*Approval of the July 6, 2023 Minutes** (Attachment 1)

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

**\*Correspondence**

- 130 Beach regarding spring planting (Attachment 2)
- 130 Beach regarding pruning and planting techniques (Attachment 3)
- 130 Beach regarding Tree Scholarship program (Attachment 4)
- 130 Beach regarding removal of two VOM trees (Attachment 5)
- 130 Beach regarding photo of clear cutting at 951 E. Boston Post Road (see below) (Attachment 6)

**\*Old Business**

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

- VOM trees for inspection etc. (Attachment 7)
- Tompkins Farm Oak, Pine St (Attachment 8)
  - o Fair condition
    - Over-pruned
    - Compacted soil, paved street, buried sidewalk
    - 2016 trenching improved rooting possibilities
    - Remediation possible but expensive, requires cooperation of resident (parking)
- American Elm 420 S. Barry
- Florence Park dead trees correspondence (Attachment 9)
- 845 Palmer Ave private tree hazard (Attachment 10)
- Woodbine, two tree issues (Attachment 11)

**Tree Law**

- Revision to Tree Law, replacement requirements for 3"- 8" trees on steep slopes or in wetland buffer zones, referred to Village Attorney
- 951 E. Boston Post Road (Attachments 12, 13, 14)

**Reporting Active Tree Removals**

- Call Building Department (914) 777-7731
- **After hours, call Police Desk 914-777-1122**; Courtney will show them how to find list with status of permits.

**New Trees**

- New tree planting to be divided between Fall 2023 and Spring 2024
- Bishop St trees to be planted this fall

- Spring trees that failed have been removed, will be replaced Fall 2023
- **Murphy v. Erie County, 1971 (Attachment 15)**
- Tree Scholarships, working with Laura Abate, Washingtonville Neighborhood Association, and Robert Ingenito
  - o Fall pilot program, flyer posted two weeks ago (Attachment 16)
  - o Eleven responses, five trees scheduled for this fall
  - o St. Vito's
- Collaboration with CFTE, new trees and pollinator garden at dog park

### **\*New Business**

- VOM trees that need stakes removed Google Doc (Lilia) (Attachment 17 to come)
- Fall public program, library screening of "Clear Day Thunder, Rescuing the American Chestnut", ACF documentary (Attachment 18)
  - o October 25, 6:30 pm
  - o Discussion led by ACF following screening
  - o Jerry Barberio to donate light refreshments
- Spotted Lantern Fly
  - o VOM has deployed and distributed 30 traps
  - o Meeting of Mandy Sticos (CFTE), Gail Koller, Jerry Barberio proposed a public education program targeted at student awareness "The Great Mamaroneck Spotted Lanternfly Squish-a-thon"
  - o Library will host VOM workshop building SLF traps Saturday, October 23
  - o Need: educational flyer for e-blast, distribution at workshop

### **\*Other Business**

Fall Guided Tree Walk

Fall Pruning Workshop

### **\*Calendar Notes**

- Wednesday, October 4, 2023, Tree Committee meeting 7:30 pm
- Saturday, October 23, SLF trap workshop, Library Community Room
- Wednesday, October 25, 2023, American Chestnut documentary, Library Community Room, 6:30 pm

7/13/2023

**Attachment 1**  
**Village of Mamaroneck Tree Committee**  
**6 July 2023 DRAFT Minutes**

**Present:** Beverley Sherrid, Lilia Ramos-Dries, Wendy Zoland, Tom Murphy; **remote:** Marlene Starr;  
**by invitation:** Gail Koller

The meeting was opened at 7:36 pm

**VOTE:** Approval of the March 15, 2023 Minutes

Correspondence from residents was reviewed.

Requests for DPW inspections will be sent.

The Village Manager's office has researched the deeds relevant to the Tompkins Farm Oak and determined that it is a VOM tree.

Discussion about BROW /Tree Scholarships program.

Guided Tree Walk May 21 – Columbus Park, eleven participants

Tree Committee will prepare letter commenting on CFTE proposed Resolution regarding Native Plants

Recommended Tree List was reviewed and will be amended

Meeting scheduled for July 19, 2023 cancelled.

Next meeting: Wednesday, August 2, will be hybrid.

The meeting was adjourned at 8:50 pm.

**Attachment 2**  
**130 Beach Regarding Spring Planting**

Dear Chair and Members of the Tree Committee,

I am writing because through FOIL I received the list of proposed planting locations for the spring of 2023 and I have visited all the locations and want to share my findings. Below is the list of the proposed locations and what I found.

Here a summary of my findings of the 44 proposed planting locations:

- I was unable to find trees at 20 of the locations
- Of the 24 trees I found that 9 of the trees were dead or dying
- 2 of the living trees appeared to be planted on private property

That means of the 44 trees proposed for planting only 13 trees, less than a third, can be verified as being planted on public property.

I believe as a community we should be able to do better.

Sincerely,

Stuart Tiekert

253 Melbourne - Tree  
253 Melbourne - Tree Dead  
423 Hinman - No tree  
580 Lawn Terrace - Tree (BROW)  
280 Guion - Tree Dying  
1403 Stoneybrook - No Tree  
1320 Stoneybrook - No Tree  
1311 Stoneybrook - No Tree  
1309 Stoneybrook - No Tree  
1303 Stoneybrook - No Tree  
407 Wagner - Tree  
133 Jensen - No Tree  
207 Jensen - No Tree  
208 Jensen - No Tree  
227 Jensen - No Tree  
406 Tompkins - Tree  
406 Tompkins - Tree

412 Tompkins - Tree  
420 Tompkins - Dead Tree  
604 Tompkins - Tree  
579 The Parkway - No Tree  
579 The Parkway - No Tree  
536 Munro - Dead Tree  
540 Munro - Dead Tree  
708 Munro - Dead Tree  
718 Munro - Dead Tree  
718 Munro - Tree  
122 Fennimore - No Tree  
122 Fennimore - No Tree  
122 Fennimore - No Tree  
405 Cortland - Dead  
518 Cortland - No Tree  
518 Cortland -No Tree  
175 Rockland - Tree  
605 Lorraine - Tree  
605 Lorraine - Dead  
407 Wagner - Tree (BROW)  
122 Jensen - Tree  
216 Jensen - Tree  
434 Fayette - No Tree  
517 Fayette - Tree  
526 Fayette - Tree Small Tree but no wires  
603 Fayette - No Tree  
610 Fayette - No Tree

**Attachment 3**  
**130 Beach Ave regarding pruning and planting issues**

Dear Chair and Members of the Tree Committee,

I am writing because I did some pruning last week and have a couple of observations.

The first is that the tree's in front of 532 West Boston Post Road were pruned, badly. Please see the photo below of poorly made cuts and damage to the trunk from what appears to be from the use of a chainsaw. I don't know who pruned the trees but if it was Village workers they should be advised about the correct way to make pruning cuts and that work on this size tree is better done with hand tools to avoid this kind of collateral damage.

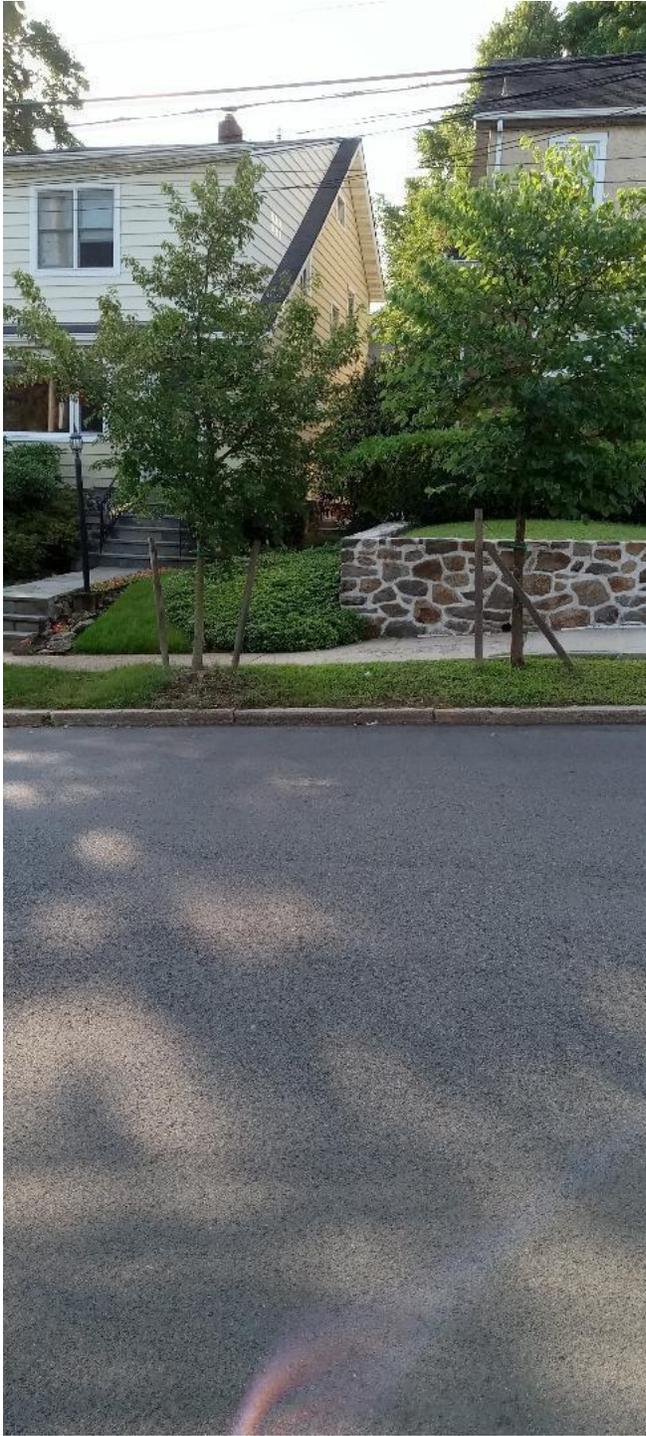
The second is that I keep coming across newly planted trees that violate the spacing guidelines adopted by the Tree Committee and Board of Trustees. Below are two images, one of two large trees planted less than twenty feet apart when the guidelines are forty and two two small trees plant less that twelve feet apart when the guidelines are thirty. As can be seen the two small trees' growth are almost tipped out already. Planting trees to close to each other is a bad practice, it leads to future maintenance and disease issues and should be stopped.

Sincerely,

Stuart Tiekert







**Attachment 4**  
**130 Beach Regarding Tree Scholarship Program**

Dear Mayor Murphy,

I am writing you because in your last post on Nextdoor you said that residents should write you with any questions about your Tree Scholarship initiative which is fundamentally a beyond the right of way (BROW) tree planting program.

Based on your quote above you know of my efforts over forty year history to improve the Village's urban forest so I am supportive of this program as long as it conforms with the law.

Below I have appended an excerpt from the Tree Management Plan adopted under your leadership with guidance about how any beyond the right of way (BROW) planting of trees by the Village should take place.

Based on the Tree Management Plan guidance, here are my questions:

- Will the Village enact a local law to allow the planting of trees to on private property?
- Will the Village limit the planting of trees to within ten feet of the right of way?
- Will the Village only plant shade trees?
- Will the Village seek buy in to the new law and program from the Tree Committee?

Sincerely,

Stuart Tiekert

.....

Dear Mayor Murphy,

Please see the following comments:

- *Will the Village enact a local law to allow the planting of trees to on private property?*
  - Please see LL 318-7 E "The Board of Trustees may authorize the planting of a tree on private property at the expense of the Village upon obtaining the consent of the property owner and determining that the planting of the tree will serve the purposes and provide the benefits of trees identified in this chapter. The property owner must execute an agreement, acceptable in form to the Village Attorney, acknowledging that the tree, once planted, is the responsibility of the property owner."
- *Will the Village limit the planting of trees to within ten feet of the right of way?*
  - A ten-foot limit is not required by the tree law.

- *Will the Village only plant shade trees?*
  - The Village is offering residents a selection from a list of four species that are tall at maturity and two that are small at maturity. All are deciduous trees i.e. shade trees. Tall trees, while offering greater benefits, are not appropriate for all locations and are not desired by all property owners. Small trees convey significantly more benefits than no trees at all.
  
- *Will the Village seek buy in to the new law and program from the Tree Committee?*
  - The Tree Committee has been searching for a way to plant trees in neighborhoods without space in the right-of-way from its earliest drafts of the tree law.

In 1971, NYS case law (*Murphy v. Erie County*) established that municipal funds may be deployed on private property if the investment conveys full benefits to the public. This is certainly a good description of the effects of planting trees in any neighborhood, particularly one in which there has been no other way of introducing Village street trees, thereby creating an unwanted "economic injustice."

Trees should be regarded as a form of diffuse infrastructure. Their benefits include summer heat mitigation, air purification, rainwater uptake, noise and stress reduction, wildlife support, and much more. They can be located anywhere on a property to convey these benefits; no need to be lined up along centrally accessed construction. If one tree goes down, there is no disruption in the performance of the rest of the trees.

It is important to remember that the Management Plan was drafted six or seven years ago and issued in 2017. Its horizon was five years, since ended. In the years since its completion, there have been a number of events that could not possibly have been forecast, such as the Hurricane Ida floods, accelerating summer heat temperatures, and the economic fallout of the covid pandemic. Like any plan, it was a set of recommendations, not a law. The tree law is the law.

Beverley Sherrid  
Chairman, VOM Tree Committee

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Dear Mayor Murphy,

Thank you for your response. I hope your weekend was relaxing also.

I also received an email from the Chair of the Tree Committee that provided her answers to some of my questions below which I will be responding to separately. However as the Mayor and apparently the person spearheading this program, at some point, whether publicly or privately I hope you will answer the questions asked plus a couple of others raised by this response.

Who is the "we" you refer to as acting to greenlight this program? I see no indication that the BOT has discussed this and the Tree Committee hasn't even met for five months. Has the Village Attorney opined whether the program conforms state and Village law? If so, I hope you will make his opinion available.

As you know I have always encouraged the growth and preservation of our urban forest as well the Village following the rule of law. From what has been made available I don't see that this program will necessarily do both. Planting a crabapple in a backyard with have precious little environmental benefit.

There is no need to ram this through. I hope you will consider bringing it to the Tree Committee, full BOT and public prior to implementation.

Sincerely,

Stuart Tiekert

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Dear Ms. Sherrid,

Thank you for copying me on your email to the Mayor.

As you know, I have always advocated and worked for the systematic and orderly growth and care of the Village's urban forest. It's unclear how this program as presently constituted accomplishes that those objectives.

First, it's disappointing how casually you dismiss the relevance of the Tree Management Plan that was adopted in

2018, not 2017. I truly do not understand why you would unilaterally declare irrelevant the most extensive, professional guidance on the management and care of the Village's urban forest ever adopted by the Board of Trustees.

The section of Chapter 318 you reference appears to not be being followed under the present program. The section of Village code you cite only permits the Board of Trustees to authorize the planting of trees on private property **after** an agreement has been executed acknowledging the tree, post planting, is the property owner's responsibility. The code does not provide a blanket authorization for planting trees and the online application form does not contain the acknowledgement of ownership.

Although the Village Code does not discuss the size and placement of trees, the Tree Committee has discussed the exponentially greater environmental benefit of shade over ornamental trees. Research shows "Planting large tree species also has significant economic benefits. One study reports that the annual net benefit of planting large tree species is 44 per cent higher than that of a medium tree species and 92 per cent higher than that of a small tree species." That is why the Tree Management Plan's Beyond Right Of Way (BROW) recommendation specifically called for the "[the planting] **shade** trees acquired with state, local, or private funds upon adjoining land **at a distance not exceeding ten feet from the**

edge of a right-of-way;" Planting a crabapple in a backyard will produce little environmental benefit for the public.

The [Murphy v Erie](#) case law is clear that it only permits the expenditure of public funds for private benefit when the private benefit is "incidental" to the public benefit. Again, planting small ornamental trees in backyards will provide little to no public benefit, the benefit will be primarily private.

There should be no rush instituting this program, in the past the Village has successfully planted trees into December. For the sake of good order and ensuring this program is compliant with the law I urge the Tree Committee to review it at your next meeting and if they approve it advise the Board of Trustees adopt a program that complies with Village Code and the law.

Sincerely,

Stuart Tiekert

**Attachment 5**  
**130 Beach Regarding Removal of Two VOM Trees, Old White Plains Road**

Dear Chair and Members of the Tree Committee,

I am writing because the Village's Onceler is at it again, removing healthy, mature, native trees. This time two thirty inch magnificent Pin Oaks on Old White Plains Road.

This Village Manager has removed more healthy, mature, native trees in his short tenure than every other Village Manager combined in the forty years since I have lived here. When will this end?

Maybe it will end if the the Board of Trustees and Tree Committee begins requiring that the Village Manager, before slaughtering any more trees, complies with 318-4(K) of Village Code that requires the Tree Committee to "Review any proposal by the Village Manager or the Village Manager's designee to remove a tree on public property."

I hope that folks appreciate the irony that today the Village lost more environmental benefit from trees than it will gain from the Mayor's Tree Scholarship vote buying scheme.

Sincerely,

Stuart Tiekert

.....





**Attachment 6**  
**130 Beach Photograph of 951 E. Boston Post Road After Removals**



Attachment 7

**VOM Tree Inspection, pruning, removals -- July 2023**

<b><u>Address</u></b>	<b><u>Street</u></b>	<b><u>Comments</u></b>
<b><u>Inspection</u></b>		
<b><u>Pruning/Maintenance</u></b>		
850	Pirates Cove across (island)	multiple trees need pruning
<b><u>Removal</u></b>		
312-322	Prospect	house between these addresses
	Harbor Island Park	between dog park and water tmt plant
	Harbor Island Park	between dog park and water tmt plant
		<u>also please remove stumps and two old ones</u>



“Arbor Scientiae”

# Buddingtree Consultancy LLC

“Balancing the Needs of Trees and People”

Tree Management and Diagnostics  
Tree Advocacy



1968-2023 Fifty-five Years Dedicated Service to Trees

Ossining, 11 August 2023

Village of Mamaroneck  
Attn. Mr. Jerry Barberio, Village Manager  
Mamaroneck 10843

Per email: [jbarberio@vomny.org](mailto:jbarberio@vomny.org)

## RE: Tompkins Farm Oak

Dear Jerry,

“The Tompkins Farm Oak has been a Village landmark since before the Revolutionary War. It shaded Noah Tompkins’s barns during the Civil War and has survived the waves of residential construction over the centuries”.

The Patch, 04-19-2012

The last time I was intimately involved with the Oak was in 2016 when underground services were updated.

The last measurement of the oak I had on file was 72” in diameter.  
The measurement taken 3 days ago was 78” in diameter, an annual stem increment of just under 1 inch per year. That is a fair expansion rate.

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E-mail: [buddingtree@buddingtree.com](mailto:buddingtree@buddingtree.com)

Web: [www.buddingtree.com](http://www.buddingtree.com)



3 August 2023, 16.03h

Office: 88 Broadway PH1 Ossining NY 10562 USA

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Web: [www.buddingtree.com](http://www.buddingtree.com)

The tree was visited on August 3, and August 10, 2023

### Canopy observations

- There are signs of overall stress and canopy 'over pruning', judging by the numerous stem shoots on the upper trunk and limbs in the lower canopy.



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- foliage density is less than what typically can be expected for red oak, and leaf size seems somewhat reduced.
- The end grain in the very upper canopy is dying off.
- Too many vertical shoots in the canopy's lower half indicate over-pruning.

### Available rooting space



- When facing the tree, the left-hand side of the rooting area is restricted by asphalt [parking space].
- The right-hand space appears to be free rooting space, but soil probe tests revealed that the grass area is either severely compacted or there is old pavement that has been grassed over [at approximately 3 to 4 inches of depth
- Rooting underneath the road surface is [was] minimal when the root system was inspected during the trenching works for underground services in 2016. Few roots were encountered, and when the trench was refilled, rooting opportunity was improved by using gravel/humus tree soil [similar to the infill underneath the footpaths of Main Street when the trees were replaced and new trees were planted].

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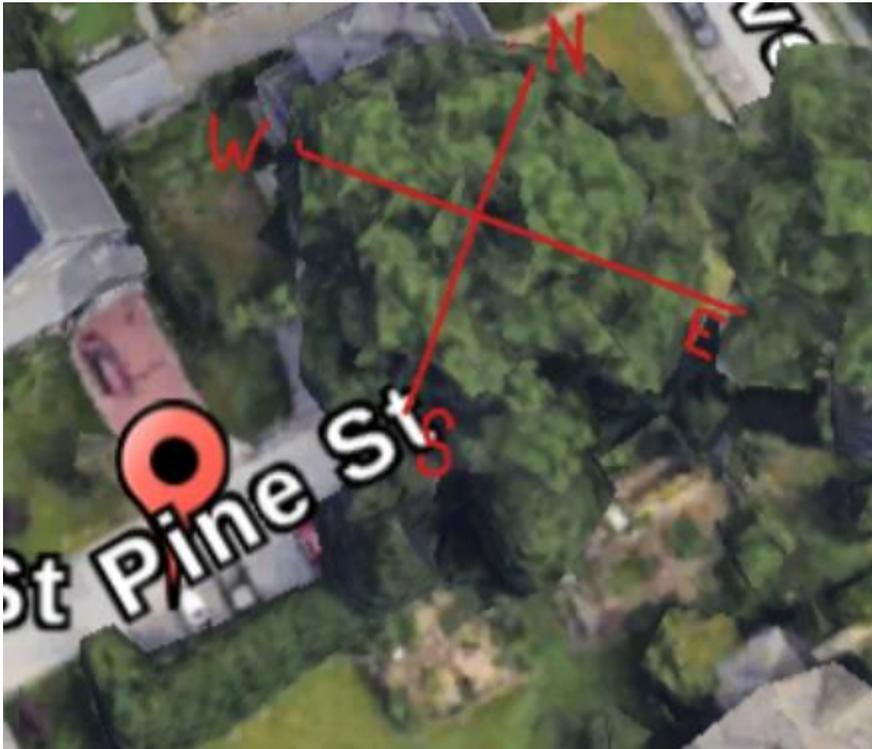
E-mail: [buddinghtree@buddinghtree.com](mailto:buddinghtree@buddinghtree.com)

Web: [www.buddinghtree.com](http://www.buddinghtree.com)

## Internal trunk condition

When audibly tapping the tree, it was determined that digital probing would be prudent. Below are the graphics of these probes:

Probe approaches

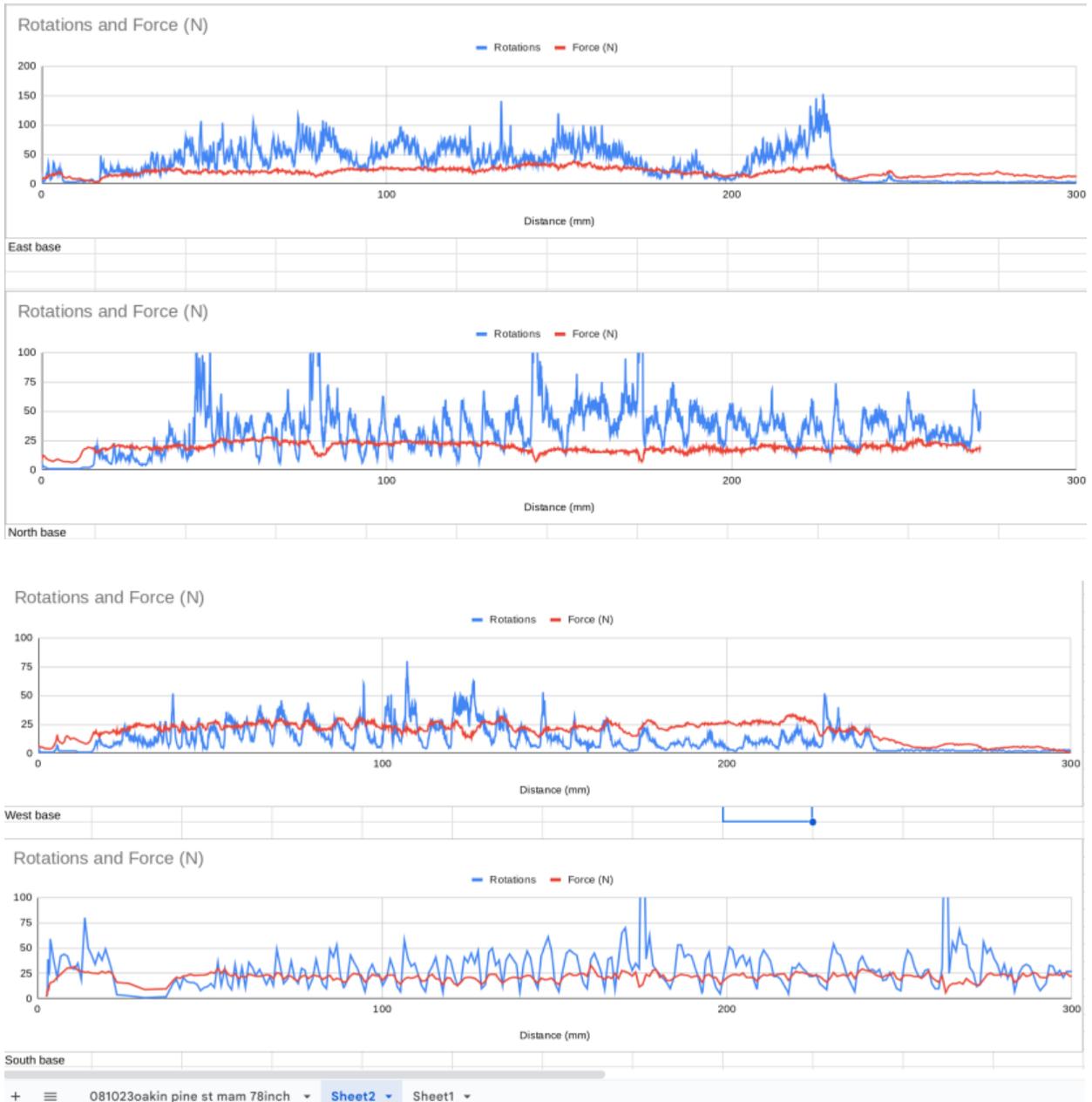


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Notes:

All excess points are near ground level and in valleys between root flares.

The East approach shows internal decay - a cavity at 250mm or 9.84-inch depth.

The North approach shows highly dense wood.

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The West base shows compromised wood tissue resulting in a cavity at 250mm or 9.84-inch depth.

The South base shows healthy or solid wood.

The tree shows no signs of soil cracks around the roots, implying compromised stability.  
The root flares are all in healthy condition.

The center internal decay calls, however, for caution:

Westchester, in general, provides shallow rooting space due to rocky subsoils. A healthy root system represents approximately 80% of the overall canopy mass. In a shallow rooting profile, and the case of this oak, roots can and must travel three times the length of the canopy diameter and be in good shape to sustain the healthy functioning of the tree.

Root development under the road deck is historically limited - the road has long been there. Rooting opportunities should have improved after digging the trenches for underground services in 2016.

Rooting opportunity under the private parking space is limited due to the impermeable asphalt.

The green space/grass area is compacted, so normal root development cannot occur.

The canopy shows multiple signs of stress: reduced leaf size, large dead wood, and end-grain die-back in the upper canopy.

Internal decay patterns tend to arise from the rocky sub-soil substrate and rise slowly upwards in the stem. Still, in the process, it tends to affect the strength of primary anchoring roots by affecting healthy root tissue on the lower side of the roots.

I recall trees with similar internal decay patterns that stopped as low as three feet above ground level.

Trees look perfectly healthy but can suddenly fail. The target range will affect public amenities and private dwellings if the tree fails.

I am laying this out because if you wish to consider mitigation to retain this historic tree longer, then you will have to consider expenditure for the following:

On the provision that the adjacent resident is agreeable:

- Remove, redesign, and reinstall the private parking lot for proper aeration and water access. Soil exchange to stimulate root growth before the new open pavement is designed for car and light truck parking.
- Remove the grass area between the street and the house, ideally to the street corner with Beach Ave. Remove impermeable rocks/old pavement, improve soil, apply long-term slow-release fertilizer, mulch, and plant with ground covers.
- Carry out remedial canopy thinning/pruning: selective shoot removal, dead wood removal, and peripheral canopy pruning to reduce weight and lower wind resistance.

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The above-proposed measures aim to encourage long-term healthy development, stimulating the growth process so that the tree can fight internal decay and compartmentalize decay.

There remain questions:

- Is the Village, as the owner and managing Guardian of a significant historic and veteran tree, willing to live with a tree that needs short-term essential maintenance yet presents a relatively high risk?
- The mitigation costs will be considerable and yet we are dealing with living plant material, which can fail to respond to the proposed improvements?
- Is the Village prepared to seek a joint venture with a local resident?

It is indeed a question of 'Balancing the Needs of Trees and People'

Sincerely,



**Frank C Buddingh** MSc.Hol.Sc. FRIH  
Buddinghtree Consultancy LLC  
"Balancing the Needs of Trees and People"

---

"One is wise to cultivate the tree that bears fruit in our soul"  
Henry David Thoreau, 1817-1862

**The following Waiver applies to all consultancy work commissioned:**

**Plants are living organisms. We use the most up-to-date equipment to assess the condition and/or trends of your trees' structural weakness and advise accordingly. However, we cannot be held liable if our findings regarding stability, structure, or general health do not match actual conditions. Nor can we be held responsible for any future calamities/damages after implementing our recommendations.**

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Attachment 9  
Florence Park Maintenance Correspondence, Tree Removals

Re: question about VOM tree removals



Beverley Sherrid

To: James Barney

Cc: Jerry Barberio



Thu 8/3/2023 9:25 AM



☑ Show all 5 attachments (6 MB)    ↓ Download all

Good morning James,

These are the four trees in Florence that were reported to me as dead and still standing as recently as last week. Also including a more recent one in the park that needs a limb removed. I'm going to forward a couple of emails with questions about other pruning to you and recommend that this person, Jeff Langus, contact you directly going forward, I saw Jerry's email regarding plans to take down a tree in Florence today, perhaps it's one of these.

Beverley



Can you tell me which other trees you are referring to. As of Monday, all the trees provided to the contractor had been removed. If possible, I would like to see what is being reported to you and what was actually deemed a take down by Jerry.

**James Barney**  
**General Foreman of Public Works**  
**Village of Mamaroneck**  
**(914) 351-6380**

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**From:** Beverley Sherrid <BSherrid@vomny.net>  
**Sent:** Tuesday, August 1, 2023 8:50 AM  
**To:** James Barney <jbarney@vomny.org>  
**Cc:** Jerry Barberio <jbarberio@vomny.org>  
**Subject:** question about VOM tree removals

Good morning James,

I've had a couple of follow up emails from people about when previously reported dead VOM trees might be removed. I know you build a list until it's economically feasible to bring in a contractor. Are we close to that point? Some may be hazardous, e.g. the cherry on Creek or some in the parks.

I'll be sending the July list after Wednesday's Tree Committee meeting.

Thanks.  
Beverley



8/3/2023

Florence Park removal today  



**Attachment 10**  
**845 Palmer Ave Hazardous Private Tree**

Village of



Mamaroneck

*Village Hall At The Regatta*

*P.O. Box 369*

*123 Mamaroneck Avenue*

*Mamaroneck, N.Y. 10543*

<http://www.Village.Mamaroneck.ny.us>

OFFICE OF  
AGOSTINO A. FUSCO  
CLERK TREASURER

Tel (914) 777-7722

Fax (914) 777-7787

August 2, 2023

Via Registered Mail

**Re: 845 PALMER AVENUE 9-5-54**

SRN Corporation  
845 Palmer Avenue  
Mamaroneck, NY 10543

Dear Property Owner:

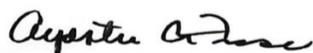
It appears based on the observations by the Village Manager or the Village Manager's designee that there is a dangerous tree on your property, at 845 Palmer Avenue, that has created a hazardous condition. The tree is located on Palmer Avenue across the street from 866 Palmer. It is rotted at the base and precariously leaning over the sidewalk and wires. Photos of the tree are enclosed.

This situation requires immediate attention. The tree must be removed as soon as possible. Since the tree is on your property, Village Code § 318-7(A)(2) requires that you remove the tree. This must be done within 30 days from the date of this notice.

**Further, Village Code § 318-7(B-C) provides that if you do not remove the dangerous tree within 30 days from the date of this letter, the Village Manager or the Village Manager's designee may cause the dangerous tree to be removed and charge the cost of doing so to you. If you do not pay that cost within 30 days of the date on which notice of the cost is served on you, you must pay a penalty of 5% of the amount due. An additional penalty of 1% of the amount due will be charged for each succeeding month or any portion of the month during which the charge is not paid. If the charges remain unpaid for 60 days, they will be added to your Village tax bill and will be a lien on your property.**

Please take care of this issue as soon as possible. If you have any questions or would like to speak with our General Foreman, James Barney, please call 914.777.7745.

Very truly yours,



Agostino A. Fusco  
Clerk-Treasurer

/sjr





**Attachment 11**  
**Woodbine, Two Tree Issues**

Hi James,

I just took a look at these trees.

809 Woodbine -- I don't think this tree is lifting the pavement. The slab directly in front of it is at most 1/2" lower than its two neighbors, but the slab is level. I think root interference generally lifts the pavement in an upside down "V" formation.

There are no public utility wires on this side of the street, but one limb on the top is growing toward one of the private lines leading to the house. It would probably reassure the resident if the Village would trim back that limb. At the same time, someone did some bad pruning of street level branches some time ago and it would benefit the tree if those stubs were correctly pruned back (Citizen Pruners were here about four years ago, should have made a return visit).

This is a crabapple and I don't think it's ever going to grow to more than about 20'.

814 Woodbine -- The tree is a very vigorous and beautiful cherry. I would hate to see it taken down because it's too healthy.

It's definitely growing into the lower overhead utility wires but still well below the Con Ed wires, and probably will never reach them. It would really benefit from a lot of pruning, which would take away a lot of the risk for the wires.

The roots have caused a lot of sidewalk interference. If you're going to replace the slabs (three of them need it), why not lift them, put down Cornell structural soil, and replace the slabs with a gradual incline?

This street definitely needs some canopy so if we can work with the trees, I wish we would try to do it.

Beverley

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**From:** James Barney <jbarney@vomny.org>  
**Sent:** Thursday, August 10, 2023 6:54 AM  
**To:** Jerry Barberio <jbarberio@vomny.org>  
**Cc:** Pablo Ruiz <pruiz@vomny.org>; TreeCom <TreeCom@vomny.org>  
**Subject:** RE: Trees lifting sidewalks and pushing wires

Beverley,

Was this location ever looked at by you or the committee?

Please let me know, we received another call on the sidewalks.

Thanks,

**James Barney**

*General Foreman of Public Works*

*Village of Mamaroneck*

**(914) 351-6380**

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**From:** Jerry Barberio <jbarberio@vomny.org>

**Sent:** Monday, June 12, 2023 9:40 AM

**To:** James Barney <jbarney@vomny.org>

**Cc:** Pablo Ruiz <pruiz@vomny.org>; TreeCom <TreeCom@vomny.org>

**Subject:** Re: Trees lifting sidewalks and pushing wires

We will ask Beverley to this to the tree committee. I am inclined to approve it, but I want to discuss placement of a new tree with Tree Com at the next meeting.

JB

**Attachment 12**  
**951 E. Boston Post Road Clear Cutting**

Mamaroneck Tree Committee:

My name is John Lozito and I live at 915 Stuart Ave.

Yesterday, 8/16/2023, I noticed that the owners of 951 E Boston Post Road (corner of Stuart and BPR) were in the process of cutting down no fewer than 4 large trees on their property. Considering the size of the job and the seemingly ongoing mismanagement at this commercial address (e.g. overgrown yard and curb strips, garbage and dumpsters sitting outside for months-- attracting rats and having already drawn other village citations) I decided to call the village to affirm a permit had been issued.

I have since been notified by the village that no permit had been issued for this work and that they would be cited and fined for this action. I imagine the implications of these actions will go to some type of legal proceeding, but I would ask members of the committee to attempt to require some type of tree replanting in the space. My guess is the trees taken down were at least 40-50 years old, and provided significant coverage for Stuart Avenue from Boston Post Road noise / buildings / traffic as well as from the view of 951 building, itself. In my opinion, this action has severely changed this side of Stuart Avenue and quality of life.

If this tree action does not require some type of environmental restitution, I am not sure of the purpose of this committee. Otherwise, actions such as this will simply continue to happen if someone is willing to bear the monetary cost of violating statute.

Thanks in advance and I can be reached at 917 748 4032.

John P Lozito

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**Attachment 13**  
**Letter to VOM Justices About 951 E. Boston Post Road 1**

Dear Judge Derrick and Judge Gallagher,

I am a member of the VOM Tree Committee. The tree committee worked for more than 10 years to carefully draft and help pass a tree law to give law enforcement the authority to safeguard trees, the village's most valuable asset. I am writing because a village resident has made the VOM Tree Committee aware of an egregious violation of the law at 951 East Boston Post Rd. Six large trees were removed without a legal permit.

The purpose of this hard-won law is to crack down on this illegal and immoral behavior by levying steep fines on the perpetrator and requiring trees to be replanted. When judges like yourselves enforce our law, it sends a clear message that such behavior will not be tolerated. We owe it to our residents and their families to preserve our trees, especially the mature ones, which take decades to replenish and provide countless benefits to all of us. These benefits go beyond providing shade and enhancing our property values because trees are beautiful. They range from cooling our temperature to freshening the air we breathe to mitigating the risk of flooding and providing habitat for birds and other wildlife.

If you have any questions on the provisions of the law, please don't hesitate to reach out to myself or any member of the committee.

Thank you for your attention to this very important matter.

Sincerely,  
Marlene Star

**Attachment 14**  
**951 E. Boston Post Road Letter to VOM Judges #2**

The Hon. Christie L. Derrico  
The Hon. Daniel J. Gallagher  
Village of Mamaroneck Justice Court  
169 Mt. Pleasant Ave.  
Mamaroneck, NY 10543

2 September 2023

Dear Judges Derrico and Gallagher,

I am writing to call your attention to the recent clear cutting of trees at 951 E. Boston Post Road. Eleven large trees were taken down without a tree permit, and two more were severely pruned in a way that suggests the owner intended to remove them as well. These two will probably die. Separately, I am sending several photographs via USPS.

In this case, a nearby resident alerted the Village to the activity, but not in time to save the trees. I understand that a violation and fine totaling \$40,000 was issued for the six trees exceeding the protected diameter of 8" at breast height. In addition, the area has a steep slope, defined in the tree law as 1' of rise over every 4' of distance, which means the law protects even those trees between 3" and 7.9" diameter to prevent erosion, although no fine is assessed. The remaining five trees fell into this category.

I think it likely the owner will attempt to appeal the fine. I know the Village courts have sometimes reduced these fines significantly.

I urge you not to countenance a reduction, should the penalty be appealed. It is the only mechanism available to compel compliance with our tree law among those who find laws inconvenient.

As you undoubtedly know, large, mature trees stabilize the soil (especially on steep slopes), clean water, absorb rainfall, reduce summer temperatures, filter air pollution, support wild life, and increase property values, among their other benefits. Scientists agree that a community needs a minimum of 40% canopy cover, which includes trees on private property, to achieve the full benefits of trees. A 2020 study using USGS satellite data determined that the Village of Mamaroneck had only a 25% canopy cover, a number that has likely declined because of continued clear cutting by developers. Although the Village has a robust program planting new trees on municipal ground, and requires replacement planting of protected trees on private property, these young trees will not generate full benefits for several decades.

The East Boston Post Road area is particularly devoid of tree canopy. Stuart Avenue residents near the Post Road have suddenly lost the benefits of at least eleven mature trees. Their

light has changed. They are subjected to noise, heat, pollution, and loss of privacy from a very busy road.

Again, should the owner of 951 E. Boston Post Road appeal this penalty, please do not grant any reduction.

Thank you for your attention.

Sincerely yours,

Beverley Sherrid  
Chairman, VOM Tree Committee  
625 The Parkway  
Mamaroneck, NY 10543

**Attachment 15**  
**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.

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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.

# Tree Giveaway



To increase the tree canopy in the Village of Mamaroneck's Washingtonville Neighborhood, the Village of Mamaroneck is offering up to 50 FREE trees (first come, first serve) to property owners in Washingtonville to plant on their property.

In consultation with the property owner, the Village will:

- Identify the best spot for planting the tree by marking the approximate location of ConEd gas pipelines and Village sewer lines.
- Assign Parks Department employees to plant the tree at no cost to the property owner.
- Provide a FREE "TreeGator Bag" to fill with water to help your tree thrive.

As they grow, trees will:

- Lower summer temperatures around your home.
- Absorb rainfall and ground water.
- Clean pollution from the air.
- Support butterflies, bees, and birds.
- And much, much more!



[bit.ly/FreeTreesMamaroneck](https://bit.ly/FreeTreesMamaroneck)

While the Village regularly plants and maintains trees along Village streets, in parks, and on public rights of way, this FREE Tree Giveaway initiative focuses on one primary goal: to increase the Village's tree canopy by providing FREE TREES to Washingtonville property owners, where there is not enough space in the public right of way to plant street trees. To accomplish this goal, the Village is joining forces with the Tree Committee, Parks Department, and the Washingtonville Neighborhood Association. If you are interested in planting a tree this fall, use the QR code or website above by Friday, August 25th to get started. (We'll re-open this process again in the winter for planting spring trees.) For more information, contact the Village Manager at (914) 777-7703.

# FAQ

## What kinds of trees are available?

You have a choice of either a tree that will grow to be tall or small (under 30'). Tall trees have many more environmental benefits, but may be too large for some locations. Tall trees include: London plane (fall planting), hornbeam (spring planting), white oak, or red maple. Small trees include: Redbud or Crabapple. The types of trees may change depending on the grower's availability.

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## Where do I have to plant my tree?

You may plant anywhere on your property, as long as it's not on top of any underground utilities like gas pipes or sewer pipes. The Village will help coordinate with the property owner, Con Edison, and the Village's Department of Public Works to mark out underground utilities.

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## Who will take care of my tree?

After it's planted, the tree is yours. The Village will provide you with a gator bag to help with watering in the first few years. If you like, Village volunteers will help you prune it when it is about three years old.

# CLEAR DAY THUNDER

RESCUING THE  
AMERICAN CHESTNUT

A documentary film about the tree that forged a connection with humankind has been embraced in turn by humans who, invigorated by hope, are working tirelessly to revive this magnificent tree -- so that it can once again help shape the future.

FEATURING

President Jimmy Carter, Dolly Parton, Barbara Kingsolver and more!

## FREE!

**Wednesday, Oct 25 @ 6:30pm**

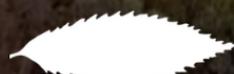
**in the Community Room**

**Light Refreshments will be served**

**Register @ [mamaronecklibrary.org/events](http://mamaronecklibrary.org/events)  
Drop-Ins Welcome!**

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