

May 17, 2022

By Hand Delivery

Mayor Neil S. Dwyer,
and the Honorable Board of Trustees of the
Village of Monroe
7 Stage Road
Monroe, New York 10950

**Re: Public Hearing Comments:
Proposed Local Law:
Moratorium on Land Development Approvals**

Dear Mayor Dwyer and the Honorable Board of Trustees:

On behalf of Joel Mann, the owner of properties located at 236, 238, 240, and 252 Elm Street (Section, Block and Lot Numbers 203-5-26.1, 26.2, 27 & 28) and Avigdor Waldman, the owner of properties located at 424 and 430 North Main Street and 434 New York Route 208 (Section, Block and Lot Numbers 202-1-1, 2 & 4), we respectfully write to object to the proposed Local Law to establish a broad and unjustified Moratorium on Land Development Approvals (the "Proposed Local Law") in the Village of Monroe ("Village"). We submit that it would be extreme error and an unjustified taking of private property for your Board to adopt the Proposed Local Law. Respectfully, as drafted, the Proposed Local Law reads more as an invalid pretext for stifling all development in the Village than as part of any good faith effort to preserve the status quo while the Village legitimately addresses actual and specifically identified crisis issues pertaining to its land use controls. At a minimum, the Proposed Local Law should exclude land use applications that are already pending before any Village land use agency or department, where developers, in reliance on the Village's existing land use controls have concrete and reasonable investment backed expectations.

The Proposed Local Law provides no basis for the sweeping and untailored halt of virtually all development in the Village that it contemplates, and certainly does not purport to address any "dire necessity" or "crisis condition" that it is "reasonably calculated to alleviate." See Belle Harbor Realty Corp. v. Kerr, 35 N.Y.2d 507, 512, 364 N.Y.S.2d 160, 163 (1974). The New York State Court of Appeals has unambiguously held that "a municipality may not invoke its police powers solely as a pretext to assuage strident community opposition," but, instead, in

order “[t]o justify interference with the beneficial enjoyment of property,” a municipality must establish that: (1) it is acting in response to a “dire necessity;” (2) that its action is “reasonably calculated” to alleviate or prevent the “crisis condition”, and; (3) that it is presently taking steps to rectify the problem:

[A] municipality may not invoke its police powers solely as a pretext to assuage strident community opposition. To justify interference with the beneficial enjoyment of property the municipality must establish that it has acted in response to a dire necessity, that its action is reasonably calculated to alleviate or prevent the crisis condition, and that it is presently taking steps to rectify the problem. When the general police power is invoked under such circumstances it must be considered an emergency measure and is circumscribed by the exigencies of that emergency.

Id.,¹ see also Westwood Forest Estates v. Village of South Nyack, 23 N.Y.2d 424 (1969) (amendment to zoning ordinance barring new construction of dwellings was invalid because the amendment effectively restricted the use of plaintiff’s property so much so as to constitute an illegal “taking” of property); Cellular Telephone Co. v. Vill. of Tarrytown, 624 N.Y.S.2d 170, 177 (2d Dep’t 1995) (moratorium found null and void where it “clearly was not adopted for the proper and reasonable purposes of responding to a genuine crisis or dire necessity”).

Thus, subsequent to the Belle Harbor case, caselaw on moratoria have been amplified to establish that, to be valid, moratoria must (1) have a reasonable time frame for the action to be accomplished during the term; (2) have a valid public purpose; (3) be shared substantially by the public at large and not targeting a particular property or group; (4) strictly adhere to procedure for adoption, and; (5) have a time certain when the moratorium will expire. See James A. Coon Local Government Technical Series “Land Use Moratoria,” available at <https://dos.ny.gov/system/files/documents/2021/09/land-use-moratoria.pdf>.

Here, however, the Proposed Local Law proffers no good faith purpose for the contemplated moratorium. The Proposed Local Law asserts no crisis, no specific problem, nor even any real detail about what would purportedly would be rectified while a moratorium were in place. Rather, the “Legislative Purpose” section of the Proposed Local Law simply makes a conclusory and blanket assertion that the Village is considering undefined changes to its comprehensive plan and land use regulations “to provide for controlled growth” and that the Law’s “purpose” “is to promote community planning values by regulating land development based on a carefully considered plan.” (See Proposed Local Law, § 1.) Thus, while the Proposed Local Law

¹ A municipality’s power to regulate land use is derived solely from its right to use its police powers to promote the morals, health, welfare and safety of the community. See Cornell University v Bagnardi, 68 N.Y.2d 583, 594, 510 N.Y.S.2d 861, 866 (1986). The imposition of any requirement unrelated to the public’s health, safety or welfare, is beyond the scope of the municipality’s police power, and, thus, impermissible. See id. At 597, 510 N.Y.S.2d at 868.

asserts that “several planning issues affecting the Village’s growth should be addressed,” (see id.), it cannot articulate any “dire necessity” or “crisis condition” that must be addressed. See Belle Harbor Realty Corp., 35 N.Y.2d at 512, 364 N.Y.S.2d at 163.

Respectfully, the vacuity of the Proposed Local Law’s ostensible Legislative Purpose is laid bare by its inconsistency with the scope of the contemplated moratorium. The Proposed Local Law, for example, lists, without any explanation, a wide variety of “planning issues” that should be addressed,” ranging from senior citizen housing, preserving historic buildings and structures, “updating use and bulk regulations to maintain the character of the Village housing stock,” developing overlay districts to protect critical environmental resources and scenic viewsheds, developing regulations pertaining to the Village’s Historic District, and creating architectural regulations, (see Proposed Local Law, § 1), but none of the identified “issues” offer any basis for halting development for commercial uses, such as our clients are pursuing, much less any “dire necessity” or “crisis condition” in this regard. See Belle Harbor Realty Corp., 35 N.Y.2d at 512, 364 N.Y.S.2d at 163.

Similarly, while the Proposed Local Law is purportedly intended to provide breathing room for the Village to consider issues including preserving historic buildings and regulations pertaining to the Village’s Historic District, (see Proposed Local Law, § 1), the Proposed Local Law would exempt applications for the reuse of historic buildings.” (See Proposed Local Law, § 3(A)(3).) As such, with all due respect, it appears that the reality is that the Proposed Local Law is simply a pretext to unjustifiably obstruct development.

As such, the Proposed Local Law conflicts with well-established law that to have a “valid public purpose” a moratorium on land use development must be reasonably calculated to respond to an actual emergency or crisis conditions. See MHC Greenwood Village NY, LLC v. County of Suffolk, 58 A.D.3d 735, 738 (2d Dep’t 2009), quoting Belle Harbor, 35 N.Y.2d at 512. Again, the proposed Local Law does not attempt to identify any emergency, crisis condition, or dire necessity as a justification for the contemplated moratorium. As such, respectfully, the Proposed Local Law is an abuse of the moratorium device, and it is neither necessary nor lawful. See Jeffrey v. Ryan, 961 N.Y.S.2d 358, 2012 N.Y. Slip Op. 51881(U) at *6 (Sup. Cr. Broome Co. 2012) (“Respondents have failed to provide any evidentiary proof that would provide a justification, based upon the health and safety of the community, for [the moratorium] Instead of proof, Respondents have produced only conclusions.”).

For much the same reason, the Proposed Local Law is unreasonable in scope. Again, it contains no specificity as to the supposed basis for a moratorium, and, consequently, is overbroad in the type of projects it would halt (i.e., essentially all projects besides single-family homes). Cellular Telephone Co., 624 N.Y.S.2d at 66 (“indefinitely passing successive moratoria while [] commission[ing] long-term studies or await[ing] the results of studies which might be conducted by others” would render the moratoria unreasonable). If there were truly a “dire necessity” or “crisis” relating to the Village’s land use controls, the Village would be able to specifically articulate what it is, what sort of revisions the Village Board may consider to address such emergency situation, and then tailor a moratorium to the crisis at hand.

Moreover, the Proposed Local Law offers no time frame for the alleged “changes to [the Village’s] comprehensive plan” or “changes to its land use regulations” that it claims necessitate the moratorium. Because of the apparent lack of any actual “dire necessity” or crisis” for a moratorium, the Proposed Local Law cannot explain what evaluation has to be done, what studies will occur, how long they will take, or even what these “changes” might be.

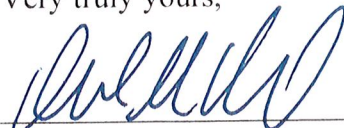
In addition, the Proposed Local Law is so broad as to entirely fail to consider “the economic impact of the regulation on [property owners in the Village] and, particularly, the extent to which the regulation has interfered with [their] distinct investment-backed expectations.” See Penn Cent. Transp. Co. v. City of N.Y., 438 U.S. 104, 124, 98 S. Ct. 2646, 2659 (1978). The Proposed Local Law offers no basis for the crushing impact it would have on developer’s reasonable investment backed expectations when it does not articulate why their interest must be adversely impacted other than in the most generic fashion.

In sum, there is no legitimate basis for the Proposed Local Law, as it does not respond to any identified dire necessity or crisis, but instead, broadly aims to stifle virtually all development within the Village.

At a minimum, the Proposed Local Law and any future zoning changes should exclude land use applications that are already submitted to any Village land use agency or department. The Proposed Local Law does not explain why the Village cannot study and analyze changes to its land use controls while projects move forward in the ordinary course. The reasonable investment backed investment expectations is particularly strong for developers who are presently advancing plans that effectively comport with the Village’s existing land use controls, and the Proposed Local Law provides no valid basis for interfering with these interests.

We appreciate the Board’s time consideration, and we are available to answer any questions your Board may have. Please let us know if the Board has any questions or would like us to elaborate on any points(s) raised in this letter.

Very truly yours,

By : 
 Daniel M. Richmond
 Lee J. Lefkowitz