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MEMORANDUM

TO: Board of Trustees of the Village of Pleasantville

FROM: Keane & Beane, P.C.

RE: Proposed Local Laws Concerning Unsafe Properties and Property Maintenance Provisions

DATE: August 21, 2019

The Village of Pleasantville has asked our office to prepare local laws to address concerns pertaining to the maintenance of vacant and abandoned properties. Please find attached: (1) a proposed local law creating Chapter 140 of the Code of the Village of Pleasantville which establishes substantive local property maintenance standards and procedures to enforce the 2015 International Property Maintenance Code (“Property Maintenance Code of the State of New York) and Chapter 140, as proposed; and (2) a proposed local law amending Chapter 98, Section 19 of the Code of the Village of Pleasantville to regulate unsafe properties in the Village.

Proposed Local Law Concerning Property Maintenance

Our office recommends the Village Board consider adopting a local Property Maintenance Law to ensure that structures are maintained in a safe and blight-free manner. The Village Code of the Village of Pleasantville does not presently include any local Property Maintenance Law. A local Property Maintenance Law may address general property conditions such as the outdoor storage of junk, rubbish or debris on private property, as well the cutting, trimming or removing of brush, grass or weeds. Most importantly, the proposed local law establishes local enforcement mechanisms to enforce the Property Maintenance Code of the State of New York and the Village’s local property maintenance standards. The proposed local law creates Chapter 140 of the Code of the Village of Rye Brook to govern the maintenance, appearance and conditions of all buildings and properties within the Village to ensure the health, safety and welfare of its residents.

If an owner or occupant of a property fails to maintain his or her property in accordance with the provisions of Property Maintenance Code of the State of New York or Chapter 140 of the Village Code, the Building Inspector may serve upon such owner or occupant a written notice of violation and an order to correct such violation. If an owner or occupant fails, neglects, or refuses to comply with the notice of violation the Building Inspector may report in writing to the Village Board of the Village of Pleasantville his or her findings and recommendations in regard to the correction of such violation. Thereafter, the Village Board would hold a public hearing in regard to the validity and

remediation of the violation. If after the public hearing the owner or occupant fails to correct or remove such violation within ten (10) days of the public hearing, the Village may correct or remove the violation. All costs and expenses incurred by the Village to correct or remove the violation can be charged as a lien against the property.

Where it reasonably appears that there is present a clear and imminent danger to the life, safety or health of any person or property unless action is taken immediately, the Building Inspector shall have the power to abate, correct or remove the emergency immediately, and any costs and expenses incurred by the Village abating, correcting or removing the emergency shall be charged to the owner or occupant of the property at issue and may become a lien against the property if not paid within thirty (30) days following the mailing of such costs.

In addition, the proposed local law establishes penalties for any violation of the provisions of the Property Maintenance Code of the State of New York or Chapter 140 of the Code of the Village of Pleasantville. These penalties would be enforced in Village Justice Court.

Unsafe Buildings

a. Existing Provisions Regulating Unsafe Buildings and Structures in the Code of the Village of Pleasantville

Chapter 98, Section 19 of the Code of the Village of Pleasantville, entitled “Unsafe Buildings and Structures,” currently regulates unsafe buildings and structures as described below.

Section 98-19A of the Code of the Village of Pleasantville provides that:

Any building, wall, structure or any part of a building, wall or structure or any equipment that from any cause is or shall become dangerous or unsafe shall be taken down and removed or made safe and secure in compliance with the provisions of this chapter. Dangerous and/or unsafe buildings, walls, structures or equipment shall include buildings or equipment structurally unsafe, unstable or unsanitary; inadequately provided with exit facilities; constituting a fire hazard; otherwise dangerous to life or property; unsuitable or improper for the use or occupancy to which it is put; constituting a hazard to health or safety because of inadequate maintenance, dilapidation, obsolescence, decay, deterioration or abandonment; a nuisance; having parts which are so attached that they may fall and injure members of the public, or public or private property; and those buildings, walls, structures or equipment existing in violation of any provision of the

Codes of the State of New York, this chapter or other applicable provision of this Code.

Pursuant to Section 98-19B, the Building Inspector shall serve or cause to be served a notice of violation and/or appearance ticket upon the person, individual, partnership or corporation owning, operating or maintaining the structure that is in a dangerous or unsafe condition.

In the event a violation is not corrected, the Building Inspector may recommend that the dangerous or unsafe structure be demolished. To proceed, the Building Inspector must sign and notarize an affidavit setting forth the facts of the dangerous or unsafe condition. The Building Inspector then has the authority to cause unsafe premises to be vacated and take necessary protective measures including securing, replacing or boarding up broken doors and windows; securing any part of the property that may be deemed an attractive nuisance; or removing any vermin, nuisance, hazard, debris or litter. The property owner is responsible for reimbursing the Village for any expenditure involved in making the structure safe. All unpaid costs and expenses incurred by the Village in connection with any work done to remove the danger or in connection with the demolition and removal of any such building or structure shall become a lien upon such premises if not paid within a certain amount of time.

b. Concerns Pertaining to the Village’s Existing Provisions Regulating Unsafe Buildings and Structures

A concern exists that the Village’s existing code provisions concerning unsafe buildings and structures violate the procedural due process provisions of the U.S. and New York State Constitutions because the law fails to provide the property owner with notice and an opportunity to be heard prior to the structure being demolished. In addition, the law is inconsistent with the 2015 International Property Maintenance Code, Sections 107-110. For example, under the International Property Maintenance Code whenever the code official has condemned a structure or equipment, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner. *See* Section 108.3. The Village Code does not require such notice to be posted and it does not appear the required Affidavit must be served on the property owner.

We recommend that the Village update Section 98-19 of the Village Code concerning unsafe buildings and structures to comply with the International Property Maintenance Code and due process requirements to include additional notice requirements and establish an appeal procedure.

c. Proposed Local Law Concerning Unsafe Buildings and Structures

Our office has prepared the attached local law amending Chapter 98, Section 19 of the Code of the Village of Pleasantville to address the concerns described above. Under the proposed local law an unsafe building or structure is defined as “one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the

event of fire, or because such structure is so inadequately maintained, damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation that partial or complete collapse is possible.” The law provides a list conditions that may require a building or structure to be deemed unsafe.

When, in the opinion of the Building Inspector, or his or her designee, any building, structure or equipment located in the Village of Pleasantville appears to be unsafe or dangerous, he or she shall make a formal inspection thereof and prepare a written report of his or her findings. Whenever the Building Inspector determines, based on his or her inspection that a building, structure or equipment is dangerous or unsafe the Building Inspector shall serve written notice on the property owner, or any other person having a vested or contingent interest in the building or structure. The notice shall automatically become a final order if there is no compliance or compliance has not been achieved to the satisfaction of the Building Inspector, or if there has been no request for an appeal within twenty (20) days after the notice was served, or, if having requested an appeal, there has been no appearance at the hearing by the person who has requested the appeal.

When, in the opinion of the Building Inspector, there is imminent danger of failure or collapse of a building or structure that endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, the Building Inspector is authorized and empowered to order and require the occupants to vacate the premises and to take action to make the premises safe for the public in general.

Any person aggrieved by the service of a notice and order may appeal the notice and order, including any requirement to undertake repairs, vacate the building or structure and/or demolish the building or structure, to the Village Board of the Village of Pleasantville. Please note the Property Maintenance Code of the State of New York provides that “any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the board of appeals...” Section 111.1. The proposed local law provides that all appeals shall be heard by the Village Board and not by the Zoning Board of Appeals of the Village of Pleasantville. We believe that the Village Board is the more appropriate municipal board to hear appeals pertaining to unsafe building determinations and to make any final decisions concerning necessary repairs and required demolition of any building or structure since this directly impacts property rights.

In addition, the proposed local law provides all costs and unpaid expenses incurred by the Village in connection with any unsafe building, structure or equipment shall be charged against the property and may be placed as a lien against the property in the event such costs and expenses are not paid.

Please do not hesitate to contact our office if you have any questions.