

20 Corporate Woods Blvd.
Albany, New York 12211
tel: 518 462 0300
fax: 518 462 5037
www.girvinlaw.com

Salvatore D. Ferlazzo
Partner
sdf@girvinlaw.com

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To: Maria Lull, Town Supervisor,
Members of the Board, and
Members of the public

**Re: Informational Meeting at Tri-Village Fire Department on
Local Law No. 2 of 2019.**

I write to clarify the major legal issues that arose relating to the numerous written and oral questions during the July 8, 2019 informational meeting relating to the zoning revisions in Local Law 2 of 2019 (“Local Law”) so that the entire Town may better understand the process. While I understand that the Town Board will be cataloging all the written questions and providing responses to the various topics, I thought it beneficial for those who did not attend to understand the procedural and legal issues impacting the Board’s consideration of this Local Law.

The first question to the Board was if the Town could simply put the revised zoning code up to a public vote in a referendum. My research confirmed that this option is prohibited by Municipal Home Rule Law Sections 23 and 24. As stated in an Opinion of the New York Attorney General, referendum topics must be specifically authorized by the State Legislature and zoning modifications are not included in permitted referendum topics. Therefore, the option simply does not exist.

In addition, the Board was asked whether funds were available to defend against any legal claims that may arise out of the passage of the proposed Local Law. As I explained at the meeting, it is exceedingly difficult to successfully overturn a municipality’s decision to revise its own code as long as the municipality complies with all state law procedural requirements. Absent a procedural abnormality, to successfully overturn a Local Law a challenger has to establish that the provision is, among other things, arbitrary and capricious, was made without substantial evidence or exceeds the Town’s legal authority. Based on the Town Board’s broad discretion to protect the health, safety and welfare of all its citizens, it would be very difficult for a challenger to meet that burden in this case. The fact that a small percentage of the community feels adversely affected by the proposed Local Law is not a sufficient basis for a legal challenge.

Accordingly, while I am not aware of any funds which have been specifically set aside for the purpose of defending the proposed Local Law, I believe the cost associated with defending the

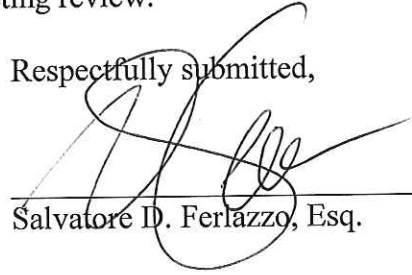
new provision if it is passed would not be significant and would be a normal contingency expense for any municipality.

More importantly, the fact that this Town Board has gone well beyond the requirements of state law by providing an informational meeting answering scores of questions after the public hearing is closed would help in any court defense. It shows that the Town is both transparent and accommodating to all viewpoints before it exercised its discretion on a final vote. While some at the meeting expressed displeasure at not having immediate answers, statutory interpretation is not an easy task and even judges, when asked to rule on zoning interpretations, have 60 days to render a decision. Thus, the information provided that night and afterwards is a bonus for the citizens since New York law does not require any additional citizen input after the public meeting closes.

Finally, I understand that a citizen suggested to a local news broadcast prior to the meeting that only written questions would be allowed and that controversial questions would be withheld from being read at the meeting. As one of the people that was sorting questions, nothing could be further from the truth. Pre-meeting, we tried to sort questions in a logical order but we were inundated with so many cards that we eventually placed them in the order in which they were submitted. Moreover, the most controversial question was the first one read! People applauded when the question about a referendum was raised but we addressed the legality of that option immediately, as well as questions concerning budgeting or even if a person could have a party at their home or allow a child to play a violin. Oral follow up questions were allowed on numerous occasions. In sum, the two hour time slot did not allow all questions to be asked and answered but in no way did we seek to prevent any question from being addressed and I understand that all written questions will be considered as part of the post meeting review.

Respectfully submitted,

By:


Salvatore D. Ferlazzo, Esq.

Cc: John Lyons, Esq
Nan Stolzenburg