



# Town of Yorktown

*Office of the Supervisor*

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## **FINAL TOWN BOARD WORK SESSION AGENDA**

**April 24, 2018**

### **6:45 PM EXECUTIVE SESSION (Closed Session):**

A motion will be made to go into Executive Session to discuss the following item(s):

#### PERSONNEL

- John C. Hart Memorial Library
- Police Department

#### LITIGATION AND NEGOTIATIONS

- Legal Department

### **7:30 PM WORK SESSION (Open Session)**

#### **Discussion Items**

- Washington Prime – Mall at Jefferson Valley
- Water Department – Ken Rundle, Superintendent
- Ethics Board to discuss procedural guidelines and proposed changes
- MS4 Stormwater Management Permit – 3423 Stony Street
- Mobil Gas Station – Saw Mill River Road
- Pump stations in Hallocks Mill Sewer District – Town Engineer
- Parking issues on Front Street
- Request reduction of fees for use of YCCC rooms by SPARC
- 230<sup>th</sup> Anniversary Discussion

**The following items will be placed on the Town Board Agenda for May 1, 2018:**

#### **Authorize Supervisor to sign easements for the Orchard View Subdivision**

RESOLVED, the Supervisor is authorized to sign a Conservation Easement, Utility Easement, Stormwater Control Facility Maintenance Agreement, Stormwater Access and Drainage Easement, and a Right-of-way Easement and Easement for Orchard View Court for the Orchard View Subdivision, required by Planning Board Resolution #17-18 on December 18, 2017.

#### **Authorize Supervisor to sign an agreement with Westlaw - Legal Department**

RESOLVED, that the Town Supervisor is hereby authorized to sign an agreement with Westlaw, a Thomson Reuters business, c/o Bud Palumbo, 26 Webster Court, Monroe, NY 10950 for a 2-

year license/subscription agreement for legal research database access, commencing on June 1, 2018 at a cost of \$722.50 per month. In addition, the Town Board authorized the Comptroller to pay Westlaw invoices for additional search fees charged, if any, for research performed by the Town Attorney in databases not included in the subscription plan, up to \$500 per year, from June 1, 2018 to May 31, 2020.

**Authorize Highway Superintendent to erect signs on town roads directing people to town parks and trails**

RESOLVED, the Highway Superintendent is authorized to erect signs on town roads that will direct people to the Town's parks and trails.

**Authorize the Town Clerk to refer out proposed Local Law amending Chapter 270 of the Code of the Town of Yorktown entitled, "Trees."**

A LOCAL LAW to amend Article II Chapter 270 of the Code of the Town of Yorktown entitled "TREES,"

Be it enacted by the town board of the town of Yorktown as follows:

Section I. Statement of Authority.

This local law is authorized by the New York State Constitution, the provisions of the New York Municipal Home Rule Law, the relevant provisions of the Town Law of the State of New York, the laws of the Town of Yorktown and the general police power vested with the Town of Yorktown to promote the health, safety and welfare of all residents and property owners in the Town.

Section II. Section 270 is amended to read as follows:

ARTICLE I  
PRESERVATION OF YORKTOWN'S FORESTED ENVIRONMENT

**§ 270-1. Enabling authority**

This chapter is enacted pursuant to the Municipal Home Rule Law and any and all applicable laws, rules and regulations of the State of New York; nothing contained herein shall be deemed to conflict with any such laws, rules or regulations.

**§ 270-2. Legislative intent**

- A. This chapter regulates certain activities in the Town relating to tree removal with the goal of preserving both individual trees and trees that are an integral part of a healthy woodland and/or forest community that also includes other plant layers such as shrub understory and ground cover. It is also the Town's goal to accommodate reasonable development and protect landowners' rights to make reasonable aesthetic judgments about the lawful use of their own private property while still preserving trees, woodlands and forests.

- B. Preference for Preservation. Because individual trees, woodlands and forests provide a myriad of benefits as described below, as well as play an important role in avoiding, to the fullest extent possible, the aesthetic, environmental, and communal degradation that may flow from irresponsible tree cutting, the Town Board declares its preference for preservation of both individual trees, woodlands and forests in order not to:
- (1) Create surface drainage problems;
  - (2) Increase municipal expenditures to control drainage;
  - (3) Impair the stability and value of nearby properties;
  - (4) Adversely affect fundamental ecological systems; and
  - (5) Create unsightly and barren conditions.
- C. Need for Town-wide Forest Management Plan. A Town-wide Forest Management Plan is an important component of a tree preservation program. A Town-wide Forest Management Plan will further the overall goal of preserving the Town's trees, woodlands and forests.
- D. Responsible removal. Notwithstanding the above mentioned benefits and the preference for preserving individual trees, woodlands and forests, the Town recognizes that responsible removal of trees may be desirable, necessary or unavoidable for purposes such as:
- (1) Avoiding hazardous conditions;
  - (2) Maintaining the health of trees by removing damaged and/or diseased trees;
  - (3) Managing woodlots, woodlands and forests for lawful purposes such as sustainable timber harvesting, recreation and management of biodiversity;
  - (4) Maintaining the long-term viability of woodlots, woodlands and forests by managing the age and species distribution;
  - (5) Protecting native tree species and forest communities by the removal of invasive species;
  - (6) Facilitating the operation of agricultural activities, and
  - (7) Protecting landowners' rights to make reasonable aesthetic judgments about the lawful use of their own private property.

**§ 270-3. Findings of fact**

The Town Board finds that:

- A. Benefits of individual trees, woodlands and forests

- (1) Healthy trees provide oxygen, slow climate change by acting as a sink for carbon dioxide and mitigate other air pollution problems. Trees also help to stabilize soil, reducing the risk of soil erosion and siltation in watercourses and clogging of drainage channels. Additionally, trees, woodlands and forests yield advantageous microclimatic effects, temper noise and provide wildlife habitat.
- (2) Trees have an intrinsic aesthetic value that contribute to the character and visual amenities of the Town. Trees soften the hard edges of developed areas, enhance scenic vistas, provide continuity in areas undergoing dynamic change, visually connect and define the character of neighborhoods, enhance privacy through visual buffering and enhance property values and the quality of life within the Town.
- (3) Trees, woodlands and forests provide natural habitat for wildlife, promoting biodiversity and enhancing ecosystem stability and are important parts of integrated ecological systems, both terrestrial and aquatic.
- (4) Woodlands and forests function as vital ecological communities not just because of the presence of trees, but because the presence of canopy, shrub and ground cover layers of vegetation. Therefore protecting the integrity of woodlands and forests requires regulating the removal of any of these three layers in such communities.

#### **§ 270-4. Definitions**

As used in this chapter, the following terms shall have the meanings indicated:

**ADMINISTRATIVE PERMIT** – A permit issued by the Town Engineer, pursuant to §270-8A for the conduct of regulated activities where such conduct of regulated activities is limited in scope and limited in potential impact as determined by this chapter.

**AGRICULTURAL ACTIVITY** – Activities traditionally associated with farming, or appropriate to an agricultural district, such as is now defined, whether or not Westchester County continues its program of agricultural districts, and whether or not the agricultural activity is within an agricultural district. Such activities may include, without limitation, grazing and watering livestock, planting and harvesting crops, fruit, vegetable, flower, or woody plant crops, or nurseries, and operating an orchard that is maintained for commercial food production.. The term “agricultural activity” does not include the construction of new structures associated with agricultural activities, nor does it encompass a garden or accessory to a residential use.

**APPLICANT** — Any individual or individuals, firm, partnership, association, corporation, company, or other legal entity of any kind, including municipal corporations, government agencies or subdivisions thereof, who has a request for a permit to conduct a regulated activity before the approval authority or has an application pursuant to this chapter.

**APPROVAL AUTHORITY** – The Planning Board, Town Board or Town Engineer as specified in § 270-7 of this Chapter.

**ARBORIST** – A person who is (a) certified as an arborist by the International Society of Arboriculture, or (b) is licensed as a Registered Consulting Arborist of the American Society of Consulting Arborists.

**DIAMETER AT BREAST HEIGHT ("dbh")** – The diameter of the trunk of a tree measured in inches at a point 4<sup>1</sup>/<sub>2</sub> feet above the base of the tree on the uphill side.

**ECOLOGIST** – A person with a graduate degree in ecology, conservation biology or a related field from an accredited college or university.

**FORESTER** – A person (a) certified as a forester by the Society of American Foresters; (b) certified by the State Department of Environmental Conservation as a cooperating forester or watershed qualified forester; (c) certified by the New York City Department of Environmental Protection as a certified forester or a certified watershed agricultural forester; or (d) who has received a B.S. or higher degree in forestry from an accredited college or university.

**FOREST STEWARDSHIP PLAN** – A written program approved by an agency of or created by the State of New York, or developed by or with the assistance of an ecologist or forester, governing the sustainable use of a forest for commercial, conservation or recreational purposes, including but not limited to wood harvesting, biodiversity enhancement, bird watching, hiking, wildflower appreciation, picnics, hunting, trapping. In no instance shall a Forest Stewardship Plan developed pursuant to this Chapter exceed a period of fifteen years. If developed pursuant to this Chapter, alteration of the natural landscape shall not be deemed “Land Conversion”.

**HAZARDOUS CONDITION** – A tree or portion of a tree that poses a danger to life, health, property or natural resources.

**LAND CONVERSION** – The removal of 1000 sq ft of woodland and the subsequent permanent alteration of the site such that a woodland can no longer regenerate on the site in its altered state. Such permanent alteration may include, but is not limited to paving or installation of other impervious surfaces, soil removal, soil compaction, or intentional flooding. Activities defined as land conversion may require a permit under other sections of the Town Code, but do not require subdivision, site plan, parking permit or special permit approval.

**LANDSCAPED PROPERTY** – A property that has plantings specified as a requirement of an approved site plan under Chapter 195 of the Town Code.

**MITIGATION PLAN** A written plan prepared by an arborist, ecologist or forester and approved by the approval authority that offsets the removal of trees and woodlands associated with the proposed activity.

**NORMAL MAINTENANCE** – Activities such as pruning, trimming or otherwise preserving live trees, where possible employing Best Management Practices and/or American National Standards Institute (ANSI) Standards of arboriculture.

**PROTECTED TREE** – A tree, either deciduous or coniferous, having a dbh of six inches or greater, any street tree, or a specimen tree as herein defined.

REGULATED BUFFER ZONES ON RESIDENTIAL PROPERTY – On lots of one acre or less, five feet from the front, side or rear yards as measured inward from the property line.

SPECIMEN TREE – Any tree with a dbh of 18 inches or greater.

STREET TREE – A tree designated by the approving authority to be planted as part of an approved site plan and/or any tree whose base is at least 50% in the land enclosed by property lines on either side of a public right-of-way.

TREE BANK – Town owned lands or Town right-of-way lands to be designated by resolution of the Town Board as receiver sites for off-site mitigation plantings or other activities identified in an approved mitigation plan that satisfy mitigation requirements which cannot be met on site.

TREE BANK FUND — A dedicated capital reserve fund to be established by and administered in accordance with a resolution of the Town Board providing for the payment of fees as part of an approved mitigation plan where tree replacement or other mitigation measures cannot be met on site, as well as payments for fines received pursuant to this chapter. Monies in the Fund shall be made available only for use on town owned land and for initiatives that conform to and further the intent, findings and goals of this Chapter.

TREE CONSERVATION ADVISORY COMMISSION – The Commission established by Article VIII of Chapter 10 of this Code.

TOWN-WIDE FOREST MANAGEMENT PLAN – A plan developed under the direction of the Tree Conservation Advisory Commission and approved by the Town Board which shall govern the maintenance and preservation of trees, woodlands and forests on Town- owned land.

WOODLAND — A contiguous area containing a stand of trees, including conifers, whose total combined canopy covers an area of 5,000 square feet or more, consisting of canopy, shrub layer and ground layer. A protected woodland as herein defined shall be deemed to exist notwithstanding that a) there is an uneven distribution of canopy, shrub layer and ground layer elements within the area, or b) there is a significant presence of invasive species which have degraded the woodland community.

WOODLOT – A segment of a woodland capable of small-scale production of forest products such as wood fuel, sap for maple syrup, saw logs, as well as recreational uses such as bird watching, hiking and wildflower appreciation, hunting and trapping.

#### **§ 270-5. Permit Required**

- A. The provisions of this section shall apply to all property in Town, whether privately owned, publicly owned, or held in common by homeowners' associations.
- B. The following activities require a tree removal permit:
  - (1) Individual trees:

- (a) In a period of eighteen (18) consecutive months, removal of more than ten (10) protected trees in a 10,000 square foot area.
  - (b) In a period of eighteen (18) consecutive months, removal of more than three protected trees within any town jurisdictional wetland or wetland buffer area.
  - (c) Removal of any protected tree located on a slope greater than 15% as determined by Town topographic maps.
  - (d) Removal of any tree which had been designated to be planted as part of an approve site plan, subdivision plan, parking plan or special permit.
  - (e) Removal of any specimen tree.
- (2) Regulated buffer zones:

In a period of eighteen (18) consecutive months, removal of more than two (2) protected trees within a regulated buffer zone.

- (3) Woodlands and woodlots:

The removal of 30% or more of any combination of the three layers of woodland vegetation (i.e., canopy trees, shrub layer, ground layer)

**§ 270-6. Permit Not Required**

No tree removal permit shall be required for the following activities:

- (1) Removal of any tree which has been determined by an arborist to be dead, hazardous, damaged beyond salvaging or in an advanced state of decline.
- (2) Removal of invasive species as designated by the New York State Department of Conservation.
- (3) Normal maintenance of trees, such as trimming and pruning less than 20% of the tree crown area or bracing.
- (4) Within five feet of an existing or approved sidewalks or driveway or within the area occupied by a proposed driveway or sidewalk.
- (5) Removal of trees within 10 feet of any component of an existing or approved septic system as required by the Westchester County Health Department, or within 10 feet of a subsurface sewer structure.
- (6) Removal of trees in a woodland or woodlot in accordance with a forest management or stewardship plan, or as part of an Agricultural Activity

- (7) Tree removal on landscaped property as defined in this chapter, so long as the Planning Board approves an amended site plan.
- (8) Tree removal as part of wildlife habitat management in accordance with a specific forest stewardship plan, prepared by a qualified ecologist and approved by the Conservation Board.
- (9) Tree removal for a purpose not regulated pursuant to Subpart 270-5 above and not otherwise prohibited.
- (10) Removal of any tree that creates an actual or ongoing emergency condition pursuant to this Chapter.

**§ 270-7. Approval authority**

The approval authority under this chapter shall be as follows:

- A. The Planning Board shall be the approval authority with respect to an application that requires the issuance of another permit or approval from the Planning Board or the Zoning Board of Appeals.
- B. The Town Board shall be the approval authority with respect to an application under this chapter that requires the issuance of another permit or approval from the Town Board.
- C. The Town Engineer shall be the approval authority with respect to all other regulated activities under this chapter and for all administrative permits.

**§ 270-8. Permit procedures**

- A. Administrative permits.
  - (1) The performance of regulated activities requiring a permit, as set forth in § 270-5 which do not require subdivision, site plan, or parking plan approval, or a special permit issued by the Town Board, Planning Board or Zoning Board of Appeals are determined by this chapter to be limited in scope and in potential impact and are acts permitted with an administrative permit.
  - (2) Exceptions.  
Notwithstanding the foregoing, any activity in a wetland or wetland buffer that does not qualify for the administrative wetland permit process shall not be eligible for an administrative permit under this subsection.
  - (3) An administrative permit application shall require the following information, plus such other information as may reasonably be required by the approval authority:
    - (a) The name, address, phone number and original signature of the property owner or holder of an easement.



- (b) If the tree removal is to be done by someone other than the property owner, the name, address and phone number of the party who will be doing the removal.
  - (c) The tax-map designation of the property.
  - (d) A sketch or plan (or annotated copy of an aerial photograph) showing the following:
    - [1] The location of the property in town and property boundaries.
    - [2] The approximate location of existing structures, driveways and roadways on the property.
    - [3] The approximate location of existing protected trees or of woodlands, on the property at the time of the application.
    - [4] The approximate location of each proposed tree to be removed.
    - [5] The size, including approximate dbh and the species of each tree to be removed.
  - (e) Whether tree stumps are to be left in place or removed.
  - (f) If additional vegetation such as shrubs will be removed.
  - (g) If more than one tree is to be cut, and if the proposed tree cutting is to be done in stages, the timing of each stage.
  - (h) Statement confirming that each tree to be removed has been marked with paint or other distinctive means, so as to be readily visible to the approval authority and the tree remover.
- (4) Review of application by Town Engineer.
- (a) The Town Engineer shall review the application to determine if it is eligible for review under the provisions of § 270-8A.
  - (b) Upon receipt of a completed application, the applicant shall be required to send a notice by first class mail to adjoining property owners and those across any street adjoining the involved property, explaining the proposed activity. Such property owners shall have 20 days from said day of notice to submit written comment to the Town Engineer with regard to said application.
  - (c) Except as noted below, the Town Engineer may refer any application to the Tree Conservation Advisory Commission and Conservation Board for review and report. The date of the referral shall be deemed to be the date of the first regularly scheduled monthly meeting of either board

after receipt of a complete set of pertinent materials from the Town Engineer.

- (d) In the event that an application has been referred to the Tree Conservation Advisory Commission and/or the Conservation Board, the board/s shall report back to the Town Engineer within 30 days of such referral. Failure by the Tree Conservation Advisory Commission or Conservation Board to report back within the specified time period shall be interpreted by the Town Engineer as indicating no objection to the application.
- (e) For applications involving a land conversion or the removal of 30% or more of a woodland that is not part of an application for a subdivision, site or parking plan or special permit, the Town Engineer shall refer the application to the Tree Conservation Advisory Commission and Conservation Board for review and report. The date of the referral shall be deemed to be the date of the first regularly scheduled monthly meeting of either board after receipt of a complete set of pertinent materials from the Town Engineer.
- (f) The Town Engineer may refer any application to the Town Board or Planning Board if it is determined that a public hearing on the application is appropriate.
- (g) Mitigation. For any application that involves a land conversion or the removal of 30% of more of a woodland, the Town Engineer shall require the applicant to submit a mitigation plan pursuant to this chapter.

#### (5) Action by Town Engineer

The Town Engineer shall make a determination to approve, approve with modifications or disapprove the issuance of a permit in accordance with the provisions of this Chapter within two (2) weeks after the expiration of the public comment period and/or the receipt of reports from the Tree Conservation Advisory Commission, Conservation Board as provided for herein.

#### (6) Appeal and review

Any decision or order of the Town Engineer made pursuant to or within the scope of this Chapter may be reviewed by the Town Board at the request of any interested party, provided that such review is commenced by the filing of a notice of review with the Town Board within 30 days after filing of such order or decision with the Town Clerk.

#### B. Non-administrative permits.

- (1) Non-administrative permits shall be required for all applications that require subdivision, site or parking plan approval, or a special permit issued by the Town Board, Planning Board or Zoning Board of Appeals, or any activity in a wetland or wetland buffer that does not qualify for the administrative wetland permit.

- (2) Applications for non-administrative permits shall contain the following information:
- (a) The name, address, phone number and original signature of the property owner or holder of an easement.
  - (b) If the tree removal is to be done by someone other than the property owner, the name, address and phone number of the party who will be doing the removal.
  - (c) The map designation of the property.
  - (d) A description of other approval/s being requested and from which board/s.
  - (e) A plan which shall be certified by an engineer, architect, land surveyor, or landscape architect licensed in the State of New York, or by a forester, arborist or ecologist, drawn to a scale no less detailed than one inch equals 50 feet, and showing the following:
    - [1] The area of disturbance proposed for tree removal and its relation to property lines, roads, buildings, both existing and proposed, and watercourses within 250 feet of the property line.
    - [2] Within the proposed area of disturbance the location of existing protected trees and/or woodlands.
    - [3] Within the proposed area of disturbance, the anticipated number of protected trees to be removed and their location, the species of the trees and the area or square footage, or boundary of additional vegetation such as shrubs and ground cover in a woodland that will be removed or damaged.
    - [4] If proposed tree cutting is in stages, the location and timing of each stage.
    - [5] Any additional information reasonably required by the approval authority.
- (3) Referral.
- (a) The approval authority shall refer an application submitted to it pursuant to this chapter to the Conservation Board and the Tree Conservation Advisory Commission and may also refer the application to any other Town advisory commissions or boards for review and reporting. The date of referral (after receipt of a complete set of pertinent materials from the approval authority) shall be deemed to be the date of the first regularly scheduled meeting of the advisory group or groups receiving the referral.
  - (b) The Conservation Board and Tree Conservation Advisory Commission and any other Town advisory commission or board shall report back within 30 business days of referral. Failure by such boards or commissions to report back within the specified time period shall be interpreted by these approval authorities as indicating no objection to the application.
  - (c) The approval authority may refer any application to a consultant hired by the Town and paid for by the applicant for the purpose of providing an expert assessment of the existing trees and woodlands on the site

proposed for development, including but not limited to an assessment of the health, quality and function of the trees and woodlands.

(4) Public hearing.

A public hearing on the application shall be held simultaneously with the public hearing required for any other approvals related to the subdivision, site or parking plan or special permit that is pending before the approving authority pursuant to the local laws and ordinances of the Town. Notice of such hearing shall be issued and/or published in the same manner and simultaneously with the notice required for the other public hearings.

(5) Action by the approving authority.

The approving authority shall review said application to ensure conformity with the requirements of this Chapter. A determination shall be made to approve, approve with modifications or disapprove the issuance of such permit simultaneously with the determination by the approving authority of any other permit or approval for which application was made.

(6) Appeal and review

Any final determination, decision or order of the Planning Board or Town Board pursuant to or within the scope of this chapter may be judicially reviewed pursuant to Article 78 of the Civil Practice Law and Rules in the Supreme Court for Westchester County.

C. Emergency permits.

- (1) Nothing in this chapter shall be deemed to conflict with provisions of the Town Code that allows an otherwise regulated activity to occur without a permit under emergency conditions.
- (2) For projects carried out in response to an emergency, all procedural requirements of this chapter related to application processing are waived, except as provided in this section.
- (3) Whenever prior notice to the approval authority is not possible, the Town Engineer must be notified by the party taking emergency action within two business days after commencement of the action. Notification must be in written or electronic form. This notification must be followed within two business days by submission of the following information to the Town Engineer:
  - (a) A description of the action that was taken.
  - (b) Location map and details of the tree removal that took place.
  - (c) Reasons why the situation was an emergency.

## § 270-9 Standards for approval

- A. Permits shall be issued by the approval authority pursuant to this Chapter only if the approval authority finds that the proposed regulated activity is consistent with the policies and goals of this chapter as stated herein.
- B. Absent extraordinary circumstances, a permit will be denied for the following proposed activities:
  - (1) Removing 30% or more of a woodland or woodlot without a mitigation plan.
  - (2) Land conversion without mitigation.
  - (3) An activity which would be likely to cause personal injury or interfere with safety, health or the reasonable use of property.
- C. Natural vegetation shall be preserved and protected wherever possible and based on best management practices that reflect the experience and most up-to-date standards of practice as accepted by professional associations in the field.
- D. In granting, denying or conditioning any application for a permit required by this chapter, the approving authority shall evaluate the proposed activity, its purpose, and available alternatives and shall determine that the impact of the proposed activity upon, including but not limited to, public health and safety, soil erosion, wildlife habitat, and drainage, will not be detrimental and shall be in accordance with the following additional standards, considerations and conditions:
  - (1) Trees shall be felled so that erosion is avoided. All tree-cutting debris shall be kept at least 20 feet from all public roads and rights-of-way.
  - (2) Consideration shall be given to preserving protected trees and woodlands where feasible and practical.
  - (3) Mitigation
    - (a) For administrative permits, the Town Engineer may require the preparation of a mitigation plan, except permits involving a land conversion or removal of 30% or more of a woodland shall require a mitigation plan as set forth herein.
    - (b) For non-administrative permits, the approval authority shall require the preparation of a mitigation plan, prepared by a qualified professional. Prior to its adoption, the plan shall be referred to the Conservation Board and Tree Conservation Advisory Commission for their review and comment.
    - (c) For the purposes of mitigation, on-site mitigation shall be the preferred approach; off-site mitigation shall be permitted only in cases where an on-site alternative is not feasible.

- (d) The mitigation plan shall document the number of protected trees that will be removed and their total dbh and the square footage of woodland that will be removed, damaged or degraded and their functional impact on the site. This documentation shall serve as a guideline when determining the type and quantity of required mitigation measures.
  - (e) The mitigation plan shall address and compensate for the impact of the removal of protected trees and removal or degrading of woodland on the surrounding area.
  - (f) In the case of tree removal in a regulated buffer as defined by this Chapter, consideration shall be given to mitigating the impact of the tree removal on adjacent property owners and to mitigating any impact on the visual character of the area.
  - (g) The approval authority shall require an adequate bond in a form and amount approved by the approval authority to ensure compliance with the conditions set forth in the permit and that the mitigation measures are consistent with the purposes of this Chapter. The bond shall remain in effect until the approval authority or its designated agent certifies that the required mitigation measures have been completed in compliance with the terms of the permit.
- (4) After consultation with the Conservation Board and the Tree Conservation Advisory Commission, at the discretion of the approval authority, the mitigation plan may include, but not be limited to, the following measures, either singly or in combination.
- (a) When tree replacement is part of a mitigation plan, the total dbh of replacement mitigation trees must be equal to the total dbh of trees to be removed. In the case of the removal of more than 30% of a woodland, the Approving Authority may require a more than 1:1 dbh replacement.
  - (b) The approval authority may require a great than 1:1 replacement if replanting is the only mitigation measure.
  - (c) Planting new trees on-site pursuant to this Chapter.
  - (d) Planting new trees off-site on Town owned land or Town right-of-way lands pursuant to this Chapter.
  - (e) Removal of invasive species on Town owned land pursuant to an approved Forest Management Plan
  - (f) Installation of fencing designed to prevent deer from overgrazing existing or newly-planted or naturally regenerating trees and shrubs (“deer exclosures”) without obstructing wildlife corridors, consistent with Town regulations.
  - (g) Planting new trees and/or shrubs along degraded stream corridors on town owned property.
  - (h) Implementation of other measures on town owned land pursuant to an approved Forest Management Plan
  - (i) Payment into the Tree Bank Fund. In lieu of replacing a lost protected tree or woodland area, the payment shall be \$100 for every protected tree removed, and \$300 for every 5,000 square feet of woodland or woodlot removed.

### **§ 270-10. Permit duration**

- A. Activities specified by the permit shall be undertaken pursuant to any conditions of same and shall be completed according to any schedule set forth therein.
- B. An administrative permit shall expire upon completion of the permitted activity or one year from the permit's issuance, whichever shall occur first. Applications for permit renewals may be submitted to the Town Engineer no less than 30 calendar days prior to the date of expiration. A renewal extension of greater than one year is not permitted.
- C. If the non-administrative permit is approved as part of the approval for a subdivision, site or parking plan or special permit then the non-administrative permit shall expire upon the expiration of the underlying approval, except that if the approval authority extends the underlying approval, the tree removal permit will be likewise extended for the same time period.
- D. If the non-administrative permit is for the removal of more than 30% of the woodland, then the permit shall expire upon completion of the permitted activity or one year from the permit's issuance, whichever shall occur first. Applications for permit renewals may be submitted to the original approval authority no less than 30 calendar days prior to the date of expiration. A renewal extension of greater than one year is not permitted.
- E. In the event a permit has expired and is past the period of permissible extension, an applicant seeking renewal will be required to refile the permit application and pay all applicable fees as if no prior permit had been issued.
- F. The approval authority may revoke or suspend a permit if it finds that the applicant has not complied with any of the conditions or limitations set forth in the permit.

### **§ 270-10 Security**

In granting a permit, the approval authority shall require a performance bond, guarantees or other conditions in order to ensure compliance with the requirements and limitations set forth in the permit.

### **§ 270-11 Inspection and monitoring of activities.**

- A. The approving authority may inspect or cause to be inspected by its designee or representative activities undertaken pursuant to a permit so as to ensure satisfactory compliance with its terms and conditions.
- B. The approving authority may require that the activities undertaken pursuant to a permit be monitored and/or supervised by an arborist, including but not limited to the provision of written status reports at specified intervals with respect to the activities undertaken pursuant to the permit.

### **§ 270-12 Permit fee**

*(Whether to impose a fee to be decided by the Town Board. One possibility could be a 2-tier fee schedule: a modest fee for administrative permits and larger fee for non administrative permits that typically involve site plans and subdivision plans.)*

**§ 270-13. Enforcement; penalties for offenses**

**A. Administrative sanctions.**

(1) Stop-work order.

- (a) The Town Engineer or designee may post a stop-work order for any tree removal activity if any of the following conditions exist:
  - [1] Any tree removal activity regulated under Chapter 270 is being undertaken without a permit.
  - [2] Any of the conditions of the permit are not being met.
- (b) The stop-work order shall be effective immediately, shall state the specific violations and shall state the conditions under which work may be resumed.
- (c) In the case of work for which there is a permit, the stop-work order shall be mailed by first class mail to the address listed by the permittee on the permit. In the case of work for which there is no permit, the stop-work order shall be mailed to the person listed as owner of the property by the Town Assessor on the tax roll. Additionally, a copy of a stop-work order shall be posted on the site of the tree removal activity in reasonable proximity to a location where the tree removal activity is taking place.
- (d) If the permittee or person violating this Chapter does not immediately cease the activity or comply with the tree permit or permit conditions upon receipt of the stop-work order, the approval authority may revoke the permit or any other permit issued to the permittee by the Town for the same property.
- (e) If the owner or person/s using the land where no permit has been issued, does not cease the tree removal activity, the approval authority shall request the Town Attorney to obtain injunctive relief from a court of competent jurisdiction.

(2) Restoration.

The Town Board shall have the authority, following a hearing and on written notice to the violator, to direct the violator to restore the affected area/s to their condition prior to violation, insofar as that is possible, within a reasonable time and under the supervision of the approval authority or its designate. In the event the approval authority determines that the restoration shall require the planting of replacement trees, the trees must be a minimum of 3½" caliper and the approval authority may require a greater than 1:1 replacement if the total dbh of the removed trees is known. Restoration may also include measures outlined in § 270-9 D (4), except that all restoration measures shall be done on-site.

Further, the approval authority shall require an adequate bond in a form and amount approved by the approval authority to ensure the restoration of the affected area. Any such order of the approval authority shall be enforceable in



an action brought in any court of competent jurisdiction. Any order issued by the approval authority pursuant to this subsection shall be reviewable in a proceeding pursuant to Article 78 of the State Civil Practice Law and Rules.

- (3) The Town Engineer or his designee shall enforce the provisions of this chapter and when necessary issue and serve appearance tickets in connection with any violation of this chapter.

B. Civil damages.

Any person who undertakes or procures any person to undertake any tree removal activity without the prior issuance of a permit hereunder or who otherwise violates any provision of this chapter or any permit restriction adopted by the approval authority pursuant to this chapter shall, in addition to any penal liability, be liable for any civil damages that might have been caused by such violation.

C. Criminal sanctions.

- (1) Any person who violates or procures any person to violate any provision of this Chapter shall be guilty of a violation punishable by a fine that shall not exceed \$1,000 per protected tree for the first offense, plus an additional amount that shall not exceed \$50 for each dbh inch up to 18 inches, and \$100 for each dbh inch over 18 inches. Where the diameter of a removed tree (or trees) cannot be ascertained, the fine for a first offense shall not exceed \$2500 for each tree unlawfully removed.
- (2) For a second and each subsequent offense within a period of three years, the maximum fine shall be twice that applicable to a first offense or a term of imprisonment up to 15 days, or both.

- D. In addition to the remedies specified above, no building permit or permanent certificate of occupancy shall be issued to any lot for which a stop-work order, or notice of violation has been issued until such violation has been remedied by restoration performed to the reasonable satisfaction of the approval authority, or until such notice of violation has been dismissed by a court of competent jurisdiction.

## ARTICLE II: TOWN WIDE FOREST MANAGEMENT

### § 270-14. Town-wide Forest Management Plan

- A. The Town of Yorktown Tree Conservation Advisory Commission shall cause the development of a Town-wide Forest Management Plan based on the goals and regulatory criteria set forth in this chapter and including standards and specifications for the maintenance, protection and re-establishment of town owned woodlands, forests and street trees. The plan shall also include recommendations to the Town Board regarding the development of tree banks and the use of funds in the Tree Bank Fund as defined in this chapter.

The Forest Management Plan shall be approved by the Town of Yorktown Town Board and shall govern the sustainable use of trees located on public lands for commercial, conservation or recreational purposes, including but not limited to wood

harvesting, biodiversity enhancement, bird watching, hiking, wildflower appreciation, picnics, hunting, trapping, water quality protection and the prevention of erosion and flooding.

The Town-wide Forest Management Plan shall be adopted by the Town Board and its implementation overseen by the Tree Conservation Advisory Commission.

An annual report which shall describe the status of implementation of the Forest Management Plan shall be presented to the Town Board.

B. The Yorktown Tree Conservation Advisory Commission shall conduct public outreach and education.

C. Tree Bank Fund

Monies in the Fund shall be made available only for use on town owned land and for initiatives that conform to and further the intent, findings and goals of this Chapter.

### ARTICLE III: Arbor Day

#### **§ 270-15. Designation.**

To recognize the benefits trees provide, the last Friday of every April shall be designated Arbor Day in the Town. Arbor Day shall be used to facilitate tree planting within the Town.

#### **§ 270-16. Arbor Day ceremonies**

The Planning Department shall coordinate and conduct Arbor Day ceremonies designed to facilitate tree planting within the Town, particularly along Town roads, in Town parks a. Tree Bank Funded open spaces and in or around wetlands.

### ARTICLE IV

#### **§ 270-17. Supersession of conflicting law.**

Where the requirements of this Local Law impose a different restriction or requirement than imposed by other sections of the Code of the Town of Yorktown, the requirements of this Local Law shall prevail. The provisions of this law are not intended to impede the application of different standards to an activity regulated under this Chapter, where other aspects of that activity are subject to the provisions of a different Chapter of the Code of the Town of Yorktown rules or regulations.

#### **§ 270-18 Severability.**

The invalidity of any work, section, clause, paragraph, sentence, part or provision of this local law shall not affect the validity of any other part of this local law that can be given effect without such invalid part or parts.

##### Section I. Severability.

If any clause, sentence, phrase, paragraph or any part of this local law shall for any reason be adjudicated finally by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this local law, but shall be confined in its operation

and effect to the clause, sentence, phrase, paragraph or part thereof, directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of this local law would have been adopted had any such provisions been excluded.

Section II. Repeal

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed.

Section III. Effective Date.

This local law shall become effective upon filing in the office of the Secretary of State in accordance with the provisions of the Municipal Home Rule Law.

**ADJOURN MEETING**

- A motion will be made to adjourn the Town Board meeting.

Dated: April 20, 2018

DIANA L. QUAST, RMC  
TOWN CLERK  
TOWN OF YORKTOWN

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**AGENDAS ARE SUBJECT TO CHANGE**

**Americans with Disabilities Act:** If you need special assistance to participate in a Town meeting or other services offered by this Town, please contact the Town Clerk's office, (914) 962-5722, x210. Assisted listening devices are available at all meetings.