

# VILLAGE OF OYSTER BAY COVE

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Board of Trustees Meeting - May 16, 2017

Mayor: Rosemary Bourne

Trustee/Deputy Mayor: Charles Goulding

Trustee: Ralph Fumante

Trustee: George Sheehan

Trustee: Richard MacDougall

7:30 pm - East Woods School, Yellow Cote Road

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Presentation by Mrs. Elizabeth O'Neill and neighbors regarding numerous Code Violations at 156 Cove Road from August 2016 through the present.

# Disturbance of protected Wetland Areas

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In early August, 2016, Mr. Allen Yu (the “Neighbor”) began clearing brush and trees and installing chain-linked fences with cement pilings inside and along the stream that follows his and the O’Neill’s property line.



Fence installations commenced Saturday, August 6, 2016 (photo by E. O'Neill)

# Disturbance of protected Wetland Areas

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- ❑ Although ostensibly the fence was to keep the Neighbor's Doberman Pincer and Mastiff on his property, large gaps rendered the fence ineffective.
- ❑ Situating the fence directly adjacent to the O'Neill residence and posting 17 neon "Beware of Dog" and "Security Camera In Use" signs suggested the action was in retaliation for the O'Neills complaining about the dogs' annoying and menacing behavior.\*

\* On April 19, 2017 Acting Justice Frank Esposito ruled the Doberman was "a vicious and annoying animal" and ordered the dog removed from the Village.

On the weekend of September 24 and 25, 2016, additional pilings, fence sections and barricades were installed.



Multiple fence posts extending 7 to 8 feet above grade, violating Section 320-57(A) that prohibits “fence, piers and gates which exceeds 6 1/2 feet in height.”

Neighbor constructed a plywood barricade at the footbridge near the O'Neill's back door. The footbridge had been used by owners of both properties for over 50 years.



Orange "Beware of Dog" signs violating Section 320-23(B) that prohibits "neon-type" signs.

# Village Stop Work Notice

- ❑ On September 26, 2016 the Building Inspector issued a *Stop Work Notice*. The order cites habitual failures to obtain building and zoning permits as well as the Neighbor's failure to comply with an Aug. 10 directive to remove the "fence barriers."
- ❑ The Order notes the Neighbor's "complete disregard of the Building Department's direction and lack of respect for the authority of the Building Inspector and rules of the Village."

Due to the complete disregard of the Building Department's direction and lack of respect for the authority of the Building Inspector and rules of the Village - **ALL WORK** on the subject property must **CEASE AND DESIST** immediately. Enclosed with this Stop Work Order are Appearance Tickets issued to Mr. James Murphy, acting on your behalf, citing all the violations that need to be remedied before this STOP WORK ORDER can be lifted. If you have any questions please contact the Village Building Department Monday, Wednesday, and Friday between 10:00 AM – 2:00 PM. Failure to comply with the **STOP WORK ORDER** will cause the Village to seek additional remedies included

# Subsequent Violations of Stop Work Notice

On April 8, 2017 Neighbor began installing additional chain-link fencing on his northwest property line, disregarding the Stop Work Notice.



## Subsequent Violations of Stop Work Notice

The fence runs for over 250 linear feet and appears to be a dog run. It is situated close to a small pond and stream bed in the Northern wetland buffer area.





# Subsequent Violations of Stop Work Notice

The dog run removes all pretext that the chain link fence along the O'Neill property (Southern wetland area) is for dog control.



On Easter Sunday, April 16, 2017, Neighbor began adding lights on fence posts of in violation of Chapter 200(1)(J), which prohibits installation of lights along fences.

## Specific Code violations - Wetland Areas

Neighbor's fence installations and other alterations violate the intent of Chapter 177 of the Village Code, titled "Freshwater Wetlands and Steep Slopes," which declares:

"It is necessary and appropriate to enact regulations which will preserve, protect and conserve wetlands, including water bodies and watercourses, prevent their despoliation and destruction, and to regulate the use and development of properties which contain such features. The preservation and maintenance of such natural features in an ***undisturbed condition*** is important for physical, ecological, social, aesthetic, recreational and economic reasons related to promoting the health, safety, comfort and general welfare of present and future residents of the Village, as well as ***residents of neighboring communities and downstream drainage areas.***"

Section 177-1(a)(1)

# Area designated a protected wetland

The Village has already determined the two streams and their 100 foot buffer areas are subject to protection under **Chapter 177** “Freshwater Wetlands and Steep Slopes.”



Site Plan obtained through FOIL. Colorized to show wetland setbacks (yellow) and Conservation Easement (blue).

## Area qualifies as protected wetland because it:

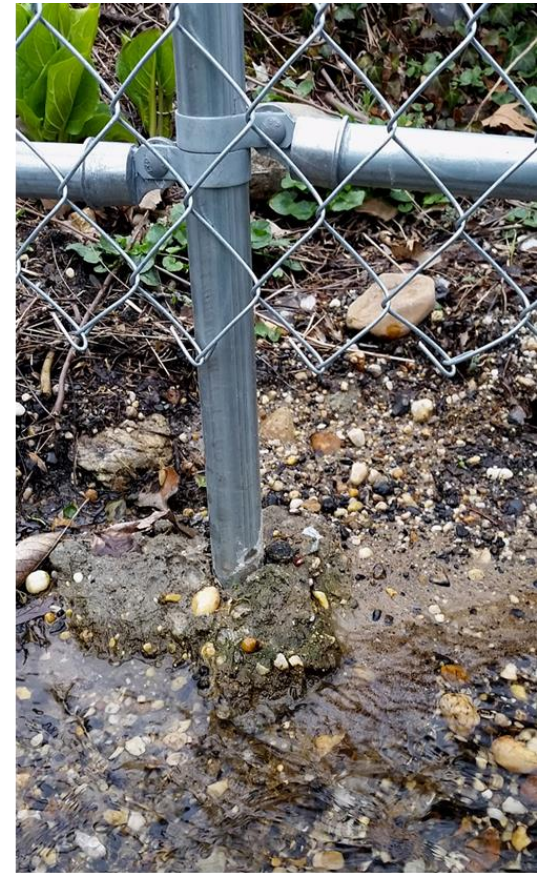
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- ❑ Lies within the Oyster Bay Special Groundwater Protection Area (SGPA).
- ❑ Has been designated a Critical Environmental Area pursuant to the NY State Environmental Quality Review Act and Article 55 of the Environmental Conservation Law.
- ❑ Lies within the Tiffany Creek Watershed and forms the terminus of the Village's only nature preserve.
- ❑ Has been designated a part of a critically important clean watershed area that protects valuable shell fishing waters in Oyster Bay Cove (per the NY State Dept. of Environmental Conservation and NY State Office of Parks, Recreation and Historic Preservation).
- ❑ Includes two acres protected by a **Conservation Easement** established to preserve the area "*in its open, undeveloped, natural and scenic state.*"

## Chapter 177-3(A) (6) specifically prohibits:

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“Construction of . . . pilings or bridges, whether or not they change the natural drainage characteristics.”

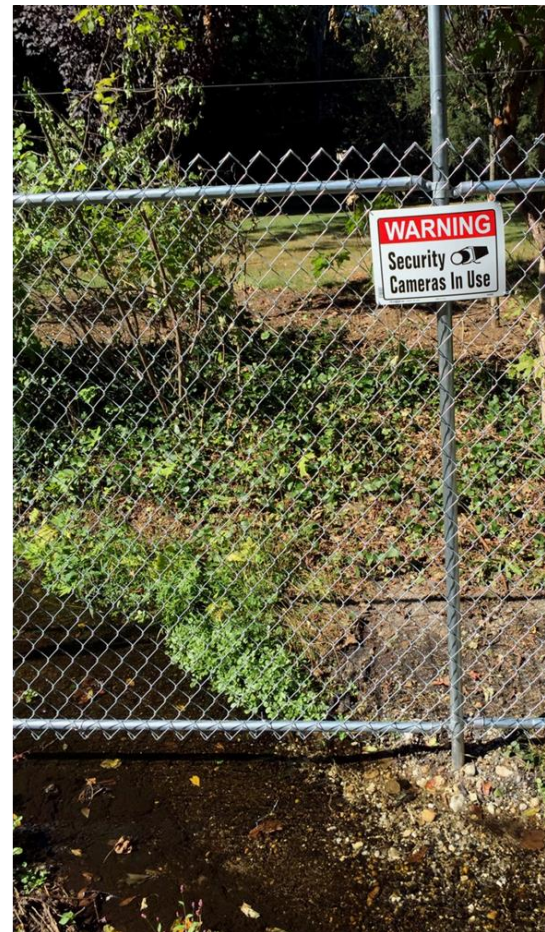


Cement pilings in stream and stream bed.

## Chapter 177-3(A)(5) specifically prohibits:

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“The alteration or modification of natural drainage patterns.”



Jagged bottom edges of fence likely to trap debris and disrupt the natural flow of water downstream.

## Chapter 177-3(A)(11) specifically prohibits:

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“Any other activity which may impair the natural functions of a wetland, water body or watercourse, as described herein.”



Another jagged edge likely to clog and disrupt water flow downstream.

## Chapter 177-3(A)(11) implicitly prohibits:

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Compromising a wetland's value as a natural habitat.



Natural stream bed recently despoiled by cement pavers, gravel walkway, lamp posts and fence.



## Chapter 177-3(A)(11) implicitly prohibits:

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Previous area as seen at night.

Threats to wildlife historically found in the natural corridor formed by the two streams on Neighbor's property lines, including:

- deer
- foxes
- raccoons
- hedgehogs
- wild turkeys
- song birds
- waterfowl
- snakes
- turtles
- native tiger salamanders (very rare)
- American eel

## Chapter 177-3(A)(8) specifically prohibits:

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“The removal or cutting of any vegetation. . .”



Clear cutting of trees and brush near protected stream bed.

# Dangerous and Illegal Lighting

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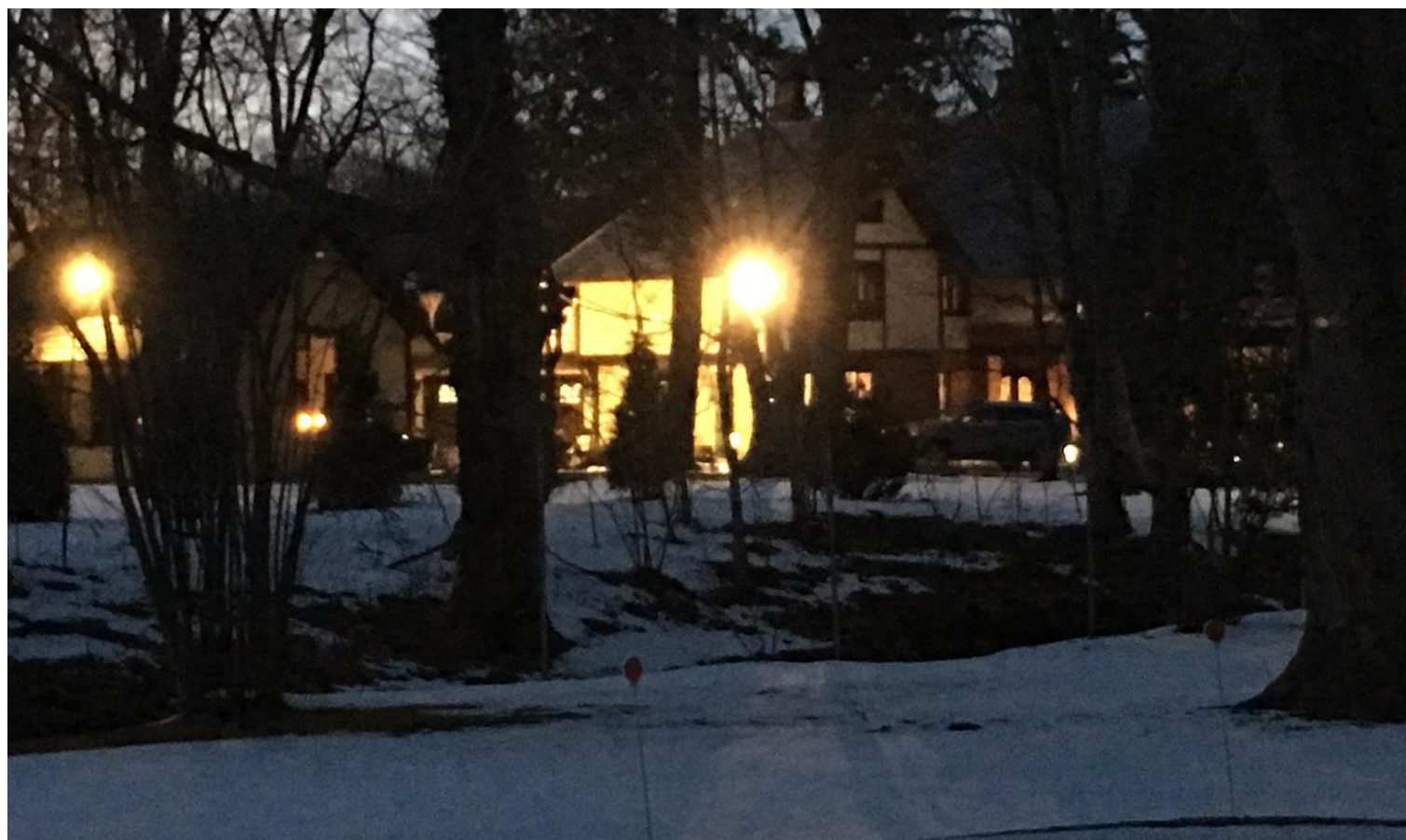
Neighbor's installation of flood lights and other outdoor lighting violates multiple provisions of Chapter 200, Section 1 of the Village Code regarding "Outdoor Lighting." Violations include subsections:

- A. not fully shielded and directed downward
- B. mounted higher than 12 feet
- C. illuminating a private or public road or a conservation easement
- D. spilling over onto adjoining property
- E. neon exterior lighting (blue)
- G. not turned off at midnight or temporary holiday tree lighting not disabled within 15 days after the holiday.
- I. illuminating a walkway mounted higher than 18 inches above grade
- J. installed along fences (see previous slide re: chain link dog run)
- K. causing distracting glare

## Chapter 200-1 specifically prohibits spotlights that:

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- ❑ Illuminate private and public roads, spill onto adjoining property, and cause distracting glare.
- ❑ Residents have complained that the glare makes it difficult to drive safely down Shutter Lane.



## Chapter 200-1 specifically prohibits spotlights that:

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- ❑ Are not fully shielded and directed downward, and are mounted higher than 12 feet.
- ❑ Spot lights on cottage (left) and main house (right) aimed at O'Neill residence and Shutter Lane.



## Chapter 200-1 specifically prohibits lights that:

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- ❑ Are neon color and not turned off at midnight.



Located at south entrance to property off Cove Road.

## Chapter 200-1 specifically prohibits lights that:

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- ❑ Are temporary holiday tree lighting not disabled within 15 days after the holiday.



Located at North entrance to property off Cove Road.

## Chapter 200-1 specifically prohibits lights that:

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- ❑ Are illuminating a walkway mounted higher than 18 inches above grade.



Lights are approx. seven feet high. Walkway follows protected stream at South property line.



## Chapter 320-90: Scenic and Historic Byways

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- ❑ Exterior illumination violates the spirit, if not the letter, of Chapter 320-90, which was enacted to prevent alterations that are "visually offensive or inappropriate... or strike visual discord in relation to the site or surroundings, (2) mar the appearance of the area; (3) impair the use, enjoyment and desirability of neighboring properties, and are (4) detrimental to the character of the neighborhood."



View of Neighbor's façade as seen from Shutter Lane and when driving westbound on Cove Road.

# Remedies Sought

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## Disturbance of protected Wetland Areas

- ❑ Petitioners request the Village Justice order immediate restoration of the damaged premises and maximum punitive penalties per Section 177-13:

“Each week that a violation of this chapter continues, and each violation of a different provision of these regulations, shall be considered a separate and distinct offense. In addition to any other penalty provided by law, ***the court may direct any person who commits a violation of this chapter to restore the subject premises*** to its condition immediately prior to the issuance of the permit.” (Emphasis added.)

- ❑ Such measures are warranted because:
  1. the Neighbor did ***not*** file for a permit to disturb a freshwater wetland but simply went ahead and did so.
  2. the Neighbor ***ignored*** the Village’s Stop Work Order regarding installation of fences and other code violations.

# Remedies Sought

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## Terms for a “Notice to Remedy” disturbed Wetland Areas

- ❑ Document the area to be restored and lists specific remedies.
- ❑ Require compliance within 10 days.
- ❑ Include options if the Neighbor fails to comply:
  1. Direct that remediation be performed by the Village or third-parties and the cost thereof applied as a lien, charge, and levy on the property until paid.
  2. Permit the O’Neills to remove any fence, pilings and signs on the wetlands or buffer area adjacent to their property at their own expense and recoup the costs via civil action.
- ❑ Warn the Neighbor that any future attempts to disturb the protected area without prior Village approval will be deemed a “Disturbance of the Peace” and halted by Village Police intervention.

# Remedies Sought

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## Removal of non-conforming outdoor lighting

- ❑ Document the light sources that are non-compliant.
- ❑ Require removal within 10 days.
- ❑ Include options if the Neighbor fails to comply:
  1. Direct that removal be performed by the Village or third-parties and the cost thereof applied as a lien, charge, and levy on the property until paid.
- ❑ Warn the Neighbor that any future violations of Village Code Chapter 200-1 without prior Village approval will be deemed a “Disturbance of the Peace” and halted by Village Police intervention.
- ❑ Such actions are warranted because of the Neighbor's long history of "complete disregard of the Building Department's direction and lack of respect for the authority of the Building Inspector and rules of the Village."

# Larger Ramifications

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## Reduced quality of life

There are mounting concerns among residents that the Village lacks the will to maintain the quality of life supposedly protected under its rules and regulations. For over nine months the O'Neill family has been forced to under conditions that resemble a New York State prison:

- ❑ Habitual guard dog barking
- ❑ Vicious guard dog attacks (resolved after 8 months)
- ❑ “Security Camera In Use” signs
- ❑ “Beware of Dog” signs
- ❑ Chain link fences
- ❑ Plywood barricades
- ❑ Flood lights aimed at their home, driveway and Shutter Lane.

# Larger Ramifications

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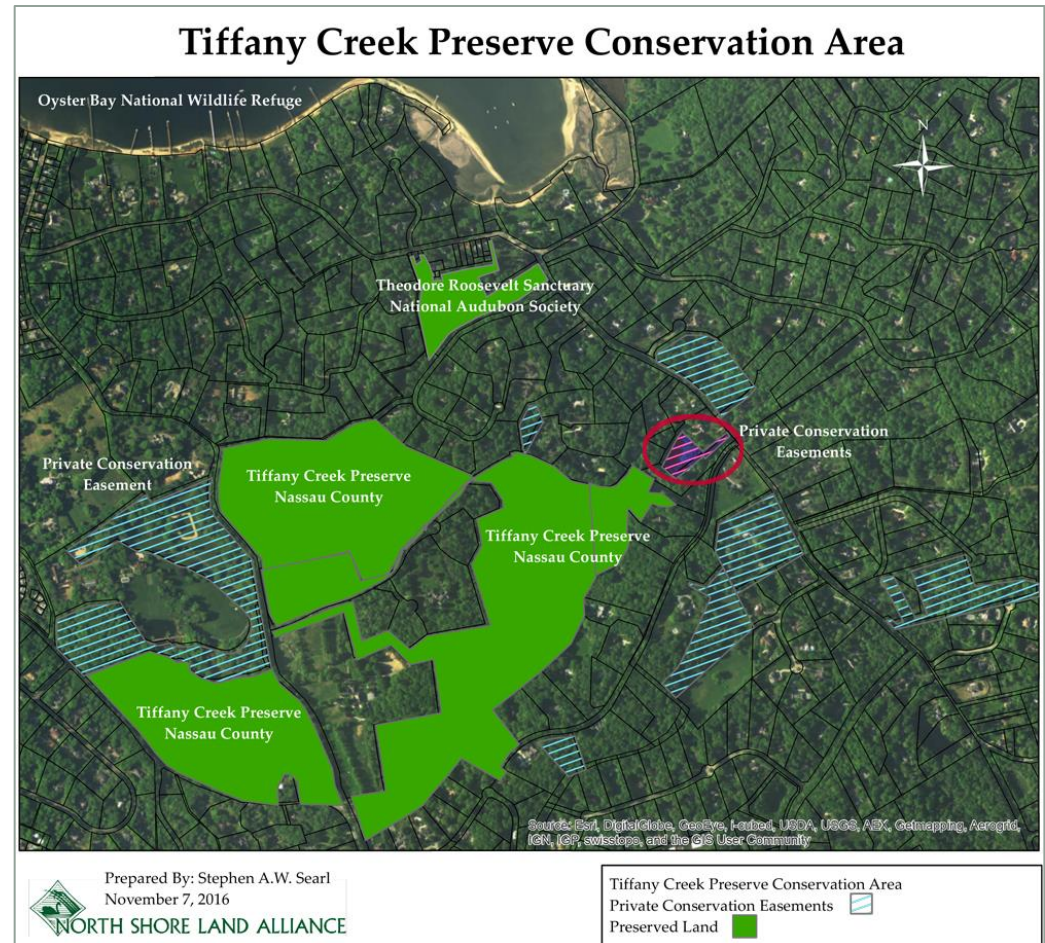
## Adverse impact on property values

- ❑ Two local realtors (Daniel Agency and Piping Rock Realty) have stated the chain link fence, multiple signs announcing “Dangerous Dogs,” and garish lighting have greatly diminished the fair market value of Mrs. O’Neill’s property. One broker described the fence as “Pure poison.”
- ❑ Neighbors are concerned such fences, signs, guard dogs and lighting can appear overnight on *their* property lines, with no prompt remedy.
- ❑ A precedent is being set that any individual or LLC can purchase a Village residence and then make virtually any alternation with no fear of reprisal other than a summons.
- ❑ If this precedent becomes known, real estate brokers will be incentivized to steer desirable purchasers away from the Village and steer undesirable purchasers towards available properties.

# Larger Ramifications

## Future Conservation Easement donations discouraged.

Village residents will hesitate to make Conservation Easement donations when they realize a subsequent purchaser may freely alter the property regardless of Village Law or the terms of the Easement.



# Larger Ramifications

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## Liability to the Village

Chronic delays in remedying Code violations expose the Village to liability risks regarding:

- ❑ Injury to residents from dangerous or at large animals.
- ❑ Reduction in property values due to adverse publicity in the press or social media.
- ❑ Losses and damages to downstream property owners.
- ❑ Adverse impact to protected wetlands and wildlife populations.
- ❑ Liability from State and Federal agencies re: non-enforcement of State and Federal environmental laws.

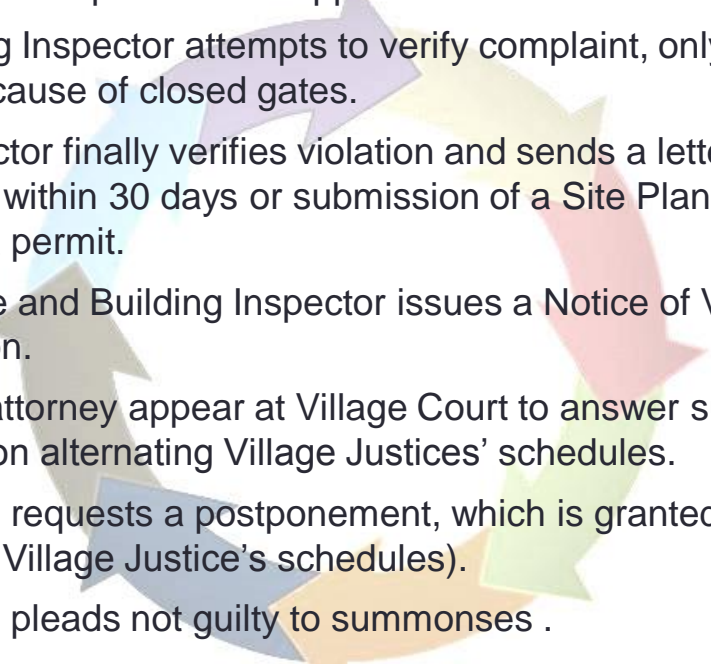


# Larger Ramifications

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## Crisis in confidence over Village's enforcement policies

Simply issuing summonses only sets up a 100 day "Cycle of Non-Resolution:"

1. Village resident complains of an apparent code violation.
  2. Village Building Inspector attempts to verify complaint, only to be denied access to Yu property because of closed gates.
  3. Building Inspector finally verifies violation and sends a letter to Yu demanding Code compliance within 30 days or submission of a Site Plan for structures already installed without a permit.
  4. 30 days elapse and Building Inspector issues a Notice of Violation or Request for Further Information.
  5. Yu and or his attorney appear at Village Court to answer summonses (30 to 60 days, depending on alternating Village Justices' schedules).
  6. Attorney for Yu requests a postponement, which is granted (for 30 to 60 days, depending on the Village Justice's schedules).
  7. Attorney for Yu pleads not guilty to summonses .
  8. Village Prosecutor files additional summonses from Building Inspector for new complaints, as well as weekly violations for existing charges, restarting the cycle.
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# Larger Ramifications

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## Crisis in confidence over Village's enforcement policies

- ❑ As of April 19, 2017 the Village Prosecutor had filed what Acting Justice Esposito described as "a 370 count Indictment of Mr. Yu and North Long Island Realty, LLC."<sup>\*</sup>
- ❑ As of the current date, it is believed Mr. Yu has not paid a single fine and continues to enjoy his numerous building and land-use alterations that were installed without permits ***beginning in July, 2014.***
- ❑ The Village gives the appearance of trying to protect itself and Mr. Yu – at the expense of the Community - by offering minimal compliance with FOIL requests submitted by Mrs. O'Neill.

<sup>\*</sup> Mr. Yu's attorney later corrected the Acting Justice, stating "your Honor did not technically use the word 'indictment' to mean an indictment. As you know, this is a 'Court Information' [sic]."

# Conclusion

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The Village of Oyster Bay Cove, through its Board of Trustees, needs to take a firmer stance to restore its credibility and the long-standing quality of life its residents deserve.

They can accomplish this by:

- ❑ Directing law enforcement agencies to issue “Notice to Remedies”
- ❑ Directing the Village Prosecutor to apply more stringent legal tactics:
  - ❖ Filing Preliminary Injunctions
  - ❖ Seeking Summary Judgments against Mr. Yu to remedy long-outstanding damages
  - ❖ Pressing for denial of court postponements
- ❑ Directing more frequent and thorough inspections of alleged violations
- ❑ Directing local police to follow-through on future complaints by residents

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Mr. Yu – and future homeowners like him - are not going to comply with Village laws and norms voluntarily. Concerted and coordinated efforts by Village Officials and Residents alike are required.



High-speed mowing on Conservation Easement, Sunday, May 6, 2017, 7:00 PM



Non-confirming iron gates, 156 Cove Road