

McLAUGHLIN & STERN, LLP

MEMORANDUM

TO: Mayor and Board of Trustees, Village of Plandome Heights

FROM: Christopher J. Prior, Esq.

DATE: April 1, 2024

RE: Village of Plandome Heights: Lease or Purchase of Real Property

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The Board of Trustees (the “Board”), of the Village of Plandome Heights (the “Village”), has requested that I confirm my advice regarding the legal processes under which the Village may acquire by lease or purchase real property to be used as a Village Hall.

Introduction. Under our representative democracy, qualified voters elect representatives to act on their behalf. Our system recognizes that the average citizen is primarily engaged in private matters and so delegates government decision-making to fellow residents who, by standing for election demonstrate their engagement in governance, and while serving, develop an understanding of the varied issues that confront their constituents and how to balance them. This engagement and experience, and the deliberative process of a board that acts by majority vote, make elected officials uniquely suited to make decisions for all constituents.

In the Village, the voters elect the Mayor and the six trustees to determine whether to undertake actions that a village is empowered to take. A village has only the enumerated powers delegated to it by the New York State Legislature, which are found in the NYS Village Law. A village is authorized to purchase or lease real property pursuant to NYS Village Law §1-102. Under NYS Village Law §4-412, the Board exercises that power.

The right of eligible Village residents to vote is limited to the following: (i) to elect representatives; (ii) upon matters expressly made subject to mandatory referendum by the NYS Legislature (e.g., school district budgets, certain types of local laws); and (iii) upon matters expressly made subject to permissive referendum by the NYS Legislature if a petition to have the matter made subject to a referendum is duly filed.

A village may not permit a referendum on a matter that the NYS Legislature has not expressly made subject to a referendum.

Lease of Real Property. New York law does not permit Village residents to vote on whether to lease real property for a Village Hall. Obviously, the financial obligation of a village under a real property lease for a term can be a significant portion of the budget of a small municipality like the Village. Nevertheless, the NYS Legislature makes the decision to commit

to that obligation the Board's responsibility, which is executed through the adoption by majority vote of a Board resolution at a public meeting.

Similarly, it is the exclusive authority of the Board to commit to other long-term and significant financial commitments. For example, the Village has enjoyed the benefits of long-term sanitation and snow removal contracts awarded by the Board to third party vendors. The financial obligation of the Village under the sanitation contract was approximately \$1.4 million over the contract's 10-year term. It would have been unlawful for the Board to have delegated such decision-making to voters.

Purchase of Real Property. New York law does not permit Village residents to vote on whether to purchase real property for a Village Hall. The NYS Legislature makes any decision to commit to such an obligation the Board's responsibility, which is executed through the adoption by majority vote of a Board resolution at a public meeting.

Financing Purchase of Real Property. Certain means of financing the purchase of real property are subject to permissive referendum.

If the Board determines to purchase real property for a Village Hall, and to finance all or a portion of the purchase price with (i) proceeds of a bond financing for a term greater than five years, or (ii) Village capital reserve funds, then the residents would be permitted to vote on such a bond issuance or capital reserve fund expenditure if a petition seeking a referendum is duly filed. But the vote is on the long-term bond issuance, or capital reserve fund expenditure, or both, as applicable, not on the underlying purchase transaction.

However, if the Board of Trustees determines to acquire real property for a Village Hall, and, for all or a portion of the purchase price, to use (i) money available in a Village fund other than a capital reserve fund, and/or (ii) proceeds of a bond issuance for a term not greater than five years, then the Board may not allow the residents to vote on the matter. Note that the NYS Comptroller has concluded that the law permits a village to use money available in a village general fund to purchase or improve real property. Other villages in Nassau County have done so in recent years.

It is worth noting that, if a Village Board resolution to finance a real property purchase with a long-term bond or capital reserve fund expenditure is defeated in a permissive referendum, but the Village Board nevertheless determines that the best interests of the Village and its residents are served by that purchase, then the Board is empowered to finance that purchase through means that are not subject to referendum, as described above.