

## FOCUS: MUNICIPAL LAW

# Ordinances to protect trees on private property

### Municipalities work to balance conflicting interests

A growing concern with environmental issues has prompted a number of municipalities in Nassau County (as well as elsewhere) to enact ordinances to prevent the destruction of, or undue harm to, trees on private property. The perceived necessity of such ordinances arises from the awareness, now widely shared, that trees are of substantial value to the community as a whole and that their benefits reach far beyond the boundaries of the property on which they are situated. The issue takes on added urgency every time a concerned

resident witnesses the destruction of a mature tree and realizes that, even if a replacement is promptly planted, it could take generations for the new planting to replace the lost tree in any meaningful way. Local governments are increasingly willing to devote time and resources to safeguarding trees even where such action brings the municipalities into conflict with their own taxpayers and property owners. The drafting and enactment of a tree protection ordinance requires the balancing of a number of factors – the interests of the public at large must be weighed against those of property owners, and tree protection efforts must be sufficiently targeted so that undesirable trees,

particularly those that may be dangerous if allowed to stand, can be trimmed or removed without the need for compliance with onerous regulations.

In recognition of the value of trees and the appropriateness of legal measures to preserve them, in 1978 the New York State legislature enacted Sec. 96-b of the General Municipal Law, entitled "Tree Conservation," empowering cities, counties, towns and villages "... to provide for the protection and conservation of trees and related vegetation,"<sup>1</sup> and stating that a municipality "may require appropriate conditions



Seth Ross

applicable to any activity involving the removal or destruction of trees or the substantial alteration of grade level around trees ..."<sup>2</sup> The statute goes on to allow, "where appropriate, requirements that the activity be done as specified in an approved landscape plan and that the removed trees be replaced by the same or alternate species of trees, and may provide, in connection therewith, required plantings for screening purposes."<sup>3</sup> A requirement of a performance bond is also authorized.<sup>4</sup>

See TREES, Page 19

# Considerations for bringing a claim against a municipal entity

The first consideration when evaluating a prospective personal injury claim is to identify the appropriate parties. This determination is particularly vital in the context of claims against public corporations, also known as municipalities, such as counties, cities, towns and/or public schools. The State Legislature provides protection to public corporations against unfounded claims in order to ensure that the corporation has the opportunity to explore the merits of a claim while relevant informa-



Christian R. Oliver

tion is still readily available. The legislative policy attempts to accomplish this goal by mandating that all claimants place the public corporation on notice of any prospective claims within ninety days. While this may seem to be a simple task for the plaintiff's counsel, there are a plethora of "pseudo" municipal entities that fall within these notice requirements. As such it is essential to ascertain the proper tortfeasor and determine whether a notice of claim is mandated

within the statutorily prescribed time period. Failure to do so can be fatal to an otherwise meritorious claim.

### Notice Requirements

General Municipal Law section 50-e makes the service of a notice of claim is a condition precedent to a suit against a public corporation. This notice requirement is applicable to any and all personal injury claims irrespective of the subject matter. Thus, notice is required whether it is a claim for premises liability, medical malpractice, intentional infliction of emotional distress, or any other type of action. Specifically, section 50-e (1) requires that

the notice of claim be served within 90 days after the claim arises.

Although there is no template or form that the notice must follow, section 50-e(2) states that the notice shall be in writing, sworn to or on behalf of the claimant, and set forth:

- (1) the name and post office address of each claimant, and of his attorney, if any;
- (2) the nature of the claim;
- (3) the time when, the place where and the manner in which the claim arose; and
- (4) the items of damage or injuries claimed to have been sustained so far as the practicable...

If the municipal corporation has a pop-

See CLAIM, Page 17

**REIN**  
bar & bistro

"Where Long Island Business Wines & Dines Top Clients."

Menu available at [www.reinbar.com](http://www.reinbar.com)

Seal the Deal Over a Power Meal.

The Garden City Hotel is the Home of Long Island's Power Meals.

The Ideal Lunch, Dinner, Late Night Dinner & Meetings.

THE GARDEN CITY HOTEL

100 South Street, Garden City, NY 11530  
Tel: 516.466.1000  
Fax: 516.466.1001  
www.gardencityhotel.com

## TREES ...

Continued From Page 9

In addition to ordinances providing that trees be taken into account in connection with site plan approvals, a substantial number of municipalities now prohibit the destruction or trimming of trees on private property without a permit as a general proposition.<sup>5</sup> The Town of Oyster Bay, which in 1973 became first town on Long Island to enact legislation to protect trees, replaced its then-existing ordinance (which only protected trees on public property) in 2007 to protect trees on private property.<sup>6</sup> One can expect the number of municipalities adopting such measures to continue to grow.

The objectives that ordinances protecting trees on private property are intended to promote include aesthetic benefits, reduction of air and water pollution, the lowering of ambient temperatures in summer, energy savings, erosion control, noise abatement, and maintenance of natural habitats for wildlife. Economic rationales also play a major part. Perhaps the most often cited of these is the enhancement of property values in the community, but municipalities have found other economic bases for such ordinances as well. At least one village has enlarged on the perception that trees enhance property values by finding that protection of trees aids in the maintenance of the village's tax base.<sup>7</sup> Other villages have noted that the indiscriminate removal of trees and other vegetation increases village costs for drainage control,<sup>8</sup> which is also one of the reasons given for tree protection legislation in the state's enabling statute.<sup>9</sup>

Case law establishes that where a decayed and unsound tree falls and damages an adjacent property, the owner of the property where the tree stood is liable for resulting damage that was reasonably foreseeable, just as he would be liable if the damage arose from an unsafe building on his property.<sup>10</sup> Obligations of property owners regarding the trimming or removal of undesirable trees have commonly been spelled out in local ordinances. The rationales for these ordinances rest on grounds including the prevention of injury to persons and damage to property from falling trees or limbs, obstruction of sight lines of motorists caused by certain trees (particularly those located at intersections), interference with overhead power lines, and damage to sidewalks and obstruction of pedestrian traffic. In addition, tree removal may benefit the community when trees are diseased or infested with insects. Tree protection ordinances often include exceptions to permit requirements for trees that pose an imminent danger to life or property.<sup>11</sup>

Even in the absence of any actual danger from a tree that needs to be trimmed or taken down, ordinary landscape maintenance often involves the trimming of trees. In recognition of this fact, and in order to avoid excessive limitations on the freedom of property owners and administrative burdens to both owners and municipal governments, tree protection ordinances commonly permit normal maintenance and trimming without a permit.<sup>12</sup>

Although many tree protection ordinances have been on the books for decades, in most communities their history is relatively short, and ever-changing conditions and issues not foreseen or not adequately addressed in the drafting of the ordinances continue to pose challenges. Enforcement has become particularly difficult as demand for new housing has made homebuilding, often on rel-

atively small, newly subdivided lots, hugely profitable for developers. As stated in the tree protection ordinance of the Village of Roslyn Estates, "for many developers, the value of subdivided property and new construction is so great, that fines for the violation of tree laws are merely costs of doing business ..."<sup>13</sup> In 2006, the Village of Baxter Estates, noting a pattern of violations of its ordinance on the part of both developers who might treat the resulting fines as a cost of doing business and homeowners who simply wanted to rid their properties of unwanted trees,<sup>14</sup> amended its tree protection ordinance to make it more stringent. The ordinance now provides for a fine of up to \$5,000 for each tree illegally removed on private property.<sup>15</sup> The frustration with developers experienced in these two villages arose during a time when residential construction was quite active. Current market conditions are likely alleviating the concern somewhat even without any change in legislation, but the problem is one that will remain a long-term concern for local governments.

Tree protection ordinances raise a broad range of issues relating to efficacy, the balance between costs and benefits to the community, the cost and difficulty to property owners associated with compliance, enforcement, and unintended consequences. In the current economic climate, cost benefit analysis of local ordinances is becoming particularly important in light of growing financial constraints faced by municipalities. Nevertheless, mounting scientific evidence and public awareness of the environmental importance of trees are likely both to motivate municipalities to introduce new protections or strengthen existing ones and to encourage property owners to view their own trees and those of their neighbors as valuable resources. Over time, legal protection of trees on private property will have to continue to be monitored and observed by interested parties, and the various ordinances that have been promulgated will have to continue to be evaluated to ensure that they are serving their function at reasonable cost and with a minimum of unintended consequences.

**Seth H. Ross, a partner in the real estate practice group at Jaspan Schlesinger LLP, is the chairman of the Zoning Board of Appeals of the Village of Scarsdale.**

1. General Municipal Law Sec. 96-b.2

2. *Ibid.*

3. *Ibid.*

4. *Ibid.*

5. Municipalities in Nassau County that have adopted such measures include the City of Glen Cove (City Code Chapter 263) and the Villages of Garden City (Village Code Chapter 188), Baxter Estates (Village Code Chapter 161), Kensington (Village Code Chapter 141), Manorhaven (Village Code Chapter 143), Plandome Manor (Village Code Chapter 169), Port Washington North (Village Code Chapter 156), Roslyn Estates (Village Code Chapter 184, Article II), Sands Point (Village Code Chapter 157), Laurel Hollow (Village Code Chapter 125), Matinecock (Village Code Chapter 59), Old Brookville (Local Law #1 of 1999), and Upper Brookville (Chapter 191).

6. Code of the Town of Oyster Bay New York v64 Updated 12-31-2008, Part II, General Legislation, Chapter 225

7. Village of Baxter Estates, Local Law 4 of 2006

8. Code of Village of Laurel Hollow, Sec. 125-1B; Code of Village of Old Brookville, Sec. 100.1B

9. General Municipal Law Sec. 96-b.1

10. *Gibson v. Denton*, 4 A.D. 198, 38 N.Y.S. 554 (3d Dept. 1896)

11. See, e.g., Code of City of Glen Cove, Sec. 263-4.B; Code of Village of Plandome Manor, Sec. 169.3.C(2); Code of Village of Roslyn Estates, Sec. 184-10; Code of Village of Sands Point, Sec. 157-3C(2)

12. See, e.g., Code of Village of Kensington, Sec. 141-3B; Code of Village of Plandome Manor, Sec. 169.3.C(1); Code of Village of Sands Point, Sec. 157.3C(1); Code of Village of Laurel Hollow, Sec. 125-3B

13. Code of Village of Roslyn Estates, Sec. 184-8.D

14. Village of Baxter Estates, Local Law 4 of 2006, Sec. 1.C

15. Code of Village of Baxter Estates, Sec. 161-16

## DUFFY & POSILICO AGENCY INC.

*Court Bond Specialists*

**BONDS • BONDS • BONDS • BONDS**

• Administration • Appeal

• Executor • Guardianship • Injunction • Conservator

• Lost Instrument • Stay • Mechanics Lien

• Plaintiff & Defendant's Bonds

*Serving Attorneys since 1975*

*Complete Bonding Facilities*

**1-800-841-8879**

**FAX: 516-741-6311**

**Immediate Service!**

1 Birchwood Court • Mineola, NY 11501 (Across from Nassau County Courts)

NYC Location: 108 Greenwich Street • New York, New York 10006

## Edwin J. Mulhern, Esq.

**COUNSEL TO THE PROFESSION**

AV RATED LAW FIRM ESTABLISHED IN 1954

Representing Clients In The Areas Of:

**GRIEVANCE COMPLAINTS  
GRIEVANCE PROCEEDINGS**

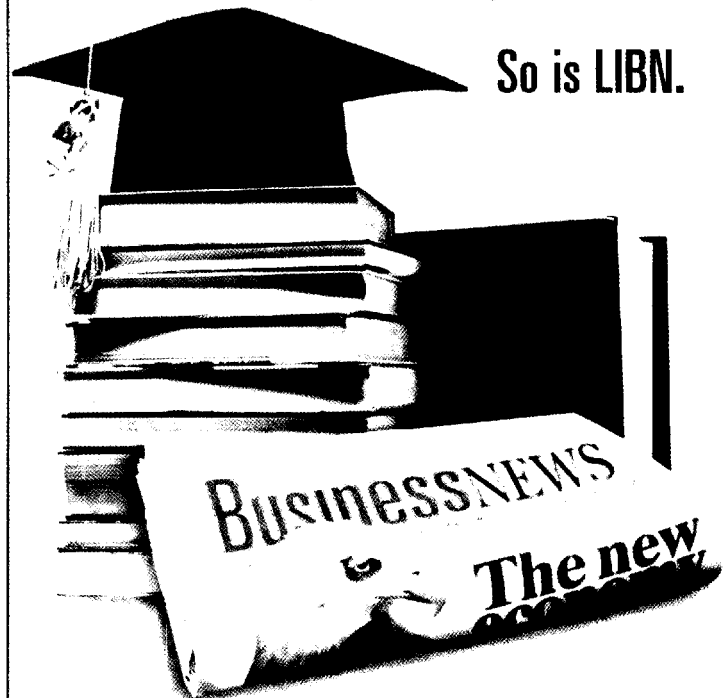
**Edwin J. Mulhern, Esq.**

Former Chairman of Nassau County Bar Assn. Grievance Committee  
Former Member of the Grievance Committee For The 10th Judicial District  
Past President Criminal Courts Bar Assn. of Nassau County

**One Old Country Rd. • Carle Place • New York 11514 • 516-294-8000**

**These days, an MBA  
is important to your career.**

**So is LIBN.**



**Long Island's Only All Business News Journal  
Go to LIBN.com and Subscribe Today!**