FREQUENTLY ASKED QUESTIONS
TO THE VILLAGE BOARD OF TRUSTEES
ABOUT THE NYACK COLLEGE APPLICATION

Many questions arise when a significant parcel of property in a municipality is sold or involves a land use application. Due to the recent events surrounding the Nyack College Property and an Application by Nyack College to amend a Special Permit, the Village of South Nyack has prepared this FAQ format to help all concerned fully understand the proceedings and process followed by the Board of Trustees.

**QUESTION:** Can a municipality require that parties to a private contract disclose any details of the contract, such as the identity of the buyer?

**ANSWER:** No. A municipality cannot compel private contractual parties to disclose any information. If the municipality has laws, codes, rules or any regulations that require an applicant to the Village to disclose non-public information, the Village could so require such information of an applicant to be produced. In the case of Nyack College’s application, the only applicant was Nyack College which fully disclosed its identity.

**QUESTION:** Can a municipality make decisions about land use based upon the identity of a property owner or a potential buyer?

**ANSWER:** No. It would be contrary to law for any municipal land use decision to be based upon the property owner or property buyer. A municipality can and should look at the use of the property in any land use application by a property owner or property buyer as well as the impacts of such use on the public generally and surrounding property owners specifically. Examining the use of the property and all details and impacts of any land use application has nothing to do, however, with who does or will own the property at the time of an application.

**QUESTION:** What was the process that lead to the rejection of the Nyack College application to amend a Special Permit.

**ANSWER:** Nyack College filed an application with the Village to “amend a Special Permit”. While that application generated much interest, the Village was
specifically focused only on reviewing the application as permitted by law. When the Village Board of Trustees determined that Special Counsel was needed to comprehensively review this application, that review was undertaken and a proposed Resolution was prepared by Special Counsel Dennis Lynch who recommended to the Board of Trustees that by law the Board must reject the application because Nyack College’s request did not satisfy the applicable legal requirements. Village law does not permit anyone to seek any amendment to any Special Permit. The Board of Trustees acted promptly on that legal advice when received on May 26, 2020.

**QUESTION:** Why is there a need for Special Counsel?

**ANSWER:** Under normal circumstances, the Village can rely on its Village Attorney and Land Use Board Counsel. When land use applications are made that present unusual issues, it is appropriate and necessary for the Board to seek the assistance of other Counsel with specifically related extensive legal experience.

**QUESTION:** What happens now that the Nyack College application to amend its Special Permit was rejected by the Village?

**ANSWER:** The Village can only act on an application made to the Village. The application of Nyack College was received, reviewed, and rejected by the Board of Trustees. There is no pending application by Nyack College before the Village for Village Trustees to act upon at this time. Nyack College has a lawful right to make further applications to the Village as permitted by law. The Village will always follow the law when considering any and all applications. The rejection of the Nyack College application to amend its Special Permit was made on the grounds that the applicant, by law, was not entitled to the relief requested. Again, the Village simply followed the applicable law in making its decision with legal guidance; and the Board of Trustees’ decision best protects Village Taxpayers.

**QUESTION:** What about the future use of the Nyack College property?

**ANSWER:** The Village has an absolute right to enact zoning laws that govern the current and future use of any property in the Village. The Village has zoning laws in place that regulate uses on all properties in the Village, including the Nyack
College property. The Village cannot by law enact any zoning laws that are not intended to promote the health, safety and welfare of the entire Village community. The Village can lawfully employ professional planners and those experienced in economic development to address all land use issues in the Village, but such review may not focus only a specific parcel of property.

**QUESTION:** What is the purpose for an “Open Session” of a Village Board of Trustees Meeting when so noted on the Village Board Meeting Agenda?

**ANSWER:** An Open Session of a Board of Trustees Meeting is held to provide a forum for members of the public to comment on matters not on the stated Agenda. The Village Board of Trustees is present to listen to and learn about such concerns. The Open Session is not, however, a forum for uncivil dialogue with elected officials. Comments and even questions are welcomed, but some questions cannot be answered if they involve matters that may result in litigation. Also, sometimes questions are presented that need research or professional expertise to be answered. Many people are under the wrong impression that the Village Attorney is hired to answer legal questions presented by the public. The Village Attorney can only ethically give legal advice or answers to his or her client, the Village, and not to any member of the public. Doing so would present a potential conflict of interest.

**QUESTION:** Why did Village Officials not answer every question presented during the most recent Open Session of the Board of Trustees Meeting?

**ANSWER:** As noted above, an “Open Session” is not a public debate nor the opportunity to engage in exchanging opinions that effectively result in taking the deposition of a Village official. Every comment made by a Village official in a public meeting could be used in litigation against the Village. Rockland County legal history is replete with comments made by municipal officials being used to successfully sue a municipality and collect millions of taxpayer dollars as a result. Our Special Counsel’s own case of Orangetown v. Magee rendered in 1996 resulted in the Town of Orangetown paying millions of dollars because of public statements made by municipal officials. When there is any potential for litigation on land use applications, wise municipal officials follow the advice of counsel and limit public statements that could be used against the municipality. The Village Board of Trustees did so and must do so in the future to protect Village taxpayers.