

Creating the Community You Want: Municipal Options For Land Use Control

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

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INTRODUCTION

This publication summarizes the various land use management tools that New York municipalities can use to help deal with issues of community character and change. It is a primer that briefly describes both the importance of planning to identify how a municipality wishes to develop, as well as the regulatory techniques available to help it realize its goals. It begins with a discussion of the comprehensive plan, continues with a survey of various zoning tools and smart growth concepts that can be used to regulate land use and development, and concludes with an explanation of other methods useful for managing land resources and the built environment.

The growth management tools and techniques available to meet a community's goals can be grouped into five basic categories: (1) regulation of how land is developed and used through local laws and ordinances; (2) public spending and taxing policies; (3) land acquisition; (4) private voluntary preservation and development techniques; and (5) the location and capacity of infrastructure. This publication focuses on the first category.

In communities throughout New York and the United States, citizens, developers, and local governments have realized the importance and necessity of working together to foster creative development that protects valuable land as well as social, economic, and environmental resources. But each community has its own development goals and concerns, so the specific land use management device that works for one municipality may not be the best for another. It is suggested, therefore, that communities carefully pick and choose among the available measures.

COMPREHENSIVE PLAN

Most successful planning efforts begin with a survey of existing conditions and a determination of the municipality's vision for the future. This process, usually referred to as comprehensive planning, should not be confused with zoning or other land use regulatory tools. Instead, the comprehensive plan should be thought of as a blueprint upon which zoning and other land use regulations are based.

State statutes define a comprehensive plan as “the materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development” of the municipality.

To begin the process of developing a comprehensive plan, the legislative body of the city, town or village must determine whether it will prepare a comprehensive plan itself, or delegate the responsibility to its planning board or perhaps to a “special board” created for the purpose. The board that prepares the plan may then decide to work with a consultant or planning staff in preparing a draft plan.

COMPREHENSIVE PLAN

General City Law §28-a
Town Law §272-a
Village Law §7-722

The State statutes guide boards through the comprehensive plan process. A municipality has

the option to adopt a comprehensive plan under these statutes, or, alternatively, to proceed through a process which has evolved based on case law.

An important component of any comprehensive planning process is public participation. This occurs both formally, through mandatory hearings held by the preparing board and by the legislative body prior to adoption of a plan

under the statutes, and through the informal participation of the public at workshops and informational sessions.

What does a comprehensive plan look like?

While comprehensive plans may take many forms, there are elements common to all good plans. First of all, the plan should *be* comprehensive. This means that the municipality's documents must reflect a total planning strategy that recognizes the needs of the entire community. In contrast, development policies that serve special interests, or *ad hoc* actions that single out small parcels without a good reason, will usually fail legal challenges.

TYPICAL COMPREHENSIVE PLAN ELEMENTS

- General statements of goals, objectives, principles and policies
- Consideration of regional needs and the official plans of other government units
- Existing and proposed location and intensity of land uses
- Existing and proposed educational, historical, cultural, agricultural, recreational, coastal and natural resources
- Demographic and socioeconomic trends and projections
- Existing or proposed location of transportation facilities, public and private utilities and infrastructure
- Housing resources and future housing needs, including affordable housing
- Measures, programs, devices, and instruments intended to implement the goals and objectives of the various topics within the comprehensive plan

Is professional help available?

Communities that lack a professional planning staff have several resources available to them. First, they may be able to receive assistance from their county or regional planning agency. Second, they may be able to contract with a professional planning or engineering firm for the needed services.

Third, community residents may possess expertise in planning or other environmental or design disciplines, and may be willing to serve as volunteers on local planning committees, study groups or task forces.

When contracting for professional planning services, it is helpful to develop a request for proposals (RFP) that can be circulated to planning professionals. In the RFP it is important to describe the municipality's needs and the purpose of the planning efforts, but it is not necessary to provide a great deal of detail. Municipal officials should make clear exactly what they expect the planners to provide (does the plan need graphics, or special economic studies?). Officials should ask about the planner's experience, and ask for examples of his or her work. Finally, the planner should provide a time line for completion of the work.

Smart Growth

One concept that should be included in the comprehensive plans of all New York State communities is that of Smart Growth. Smart Growth embodies a set of principles that, taken together, use land efficiently, conserve the natural and ecologically valuable features of land even after it is developed, promote a mix of housing types, discourage "sprawl", encourage a variety of transportation options, and incorporate quality design focused on the preservation and formation of neighborhoods and a sense of "place", as opposed to repetitive design themes that bear little relation to the particular location. Smart Growth has been officially endorsed by the State of New York, which encourages all municipalities to accept and implement its various components within their comprehensive plans and land use regulations.

Some specific Smart Growth tools that can be used to carry out these goals on the local level include: mixed land uses; compact, conservation-oriented development; strategic farmland and open space preservation; historic preservation; brownfield clean-up and re-development; vacant property re-use; regional and inter-municipal land use and transportation planning; revitalization of existing developed areas; "green" buildings and infrastructure;

varied mobility choices; age-integrated communities; targeted investments in affordable housing; transit-oriented development; collaborative, public, inclusive and stakeholder-driven planning processes; transfer of development rights; accessible and well planned public spaces; and well-maintained parks.

How long or detailed does the municipality's comprehensive plan need to be?

Since each municipality has a different set of constraints and interests, the final form of each comprehensive plan will be unique to that community. The size and format of the comprehensive plan will vary from municipality to municipality (and from consultant to consultant). It may consist of a few pages, or it may be a thick volume of information.

However long or detailed the plan is, its real value is in how it is used and implemented. The following sections present ways in which community objectives expressed in the plan can be achieved.

ZONING & RELATED TOOLS

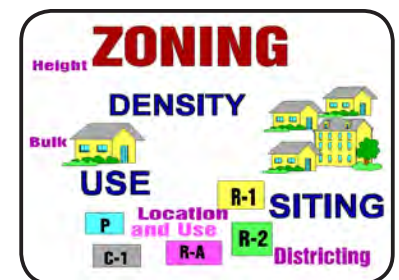
ZONING

Zoning regulates the use of land, the density of land use, and the siting of development. Zoning is a land use technique that can be used to help implement a municipality's comprehensive plan.

How common is zoning?

Zoning is the most commonly and extensively used local technique for regulating use of land as a means of accomplishing municipal goals.

According to a 2008 survey by the Legislative



Commission on Rural Resources, 100% of cities, 71% of towns and 89% of villages in New York have adopted zoning laws or ordinances--with the aggregate percentage of all communities having zoning being 78%.

Zoning regulations should be carefully constructed to make sure they will help carry out municipal planning goals. Some communities don't pay enough attention to the translation of those goals into the drafting of their zoning regulations. The result often brings frustration with zoning itself as a technique, when in reality the problem is that the zoning regulations have not been carefully enough constructed. This will in turn frustrate the achievement of municipal planning goals.

What does a zoning law or ordinance look like?

Zoning commonly consists of two components: a zoning map and a set of zoning regulations.

A zoning map divides a municipality into various land use districts, such as residential, commercial, and industrial or manufacturing. In reality, the districts that a municipality establishes can be infinitely specific, e.g., high-, medium- or low- density residential, general commercial, highway commercial, light industrial, heavy industrial, or other. Mixed-use districts may also be appropriate, depending upon local planning and development goals as set forth in a comprehensive plan. Mixed-use districts are especially useful for a community that desires to implement Smart Growth.

Zoning regulations describe the permissible land uses in each of the various zoning districts identified on the zoning map. They also include dimensional standards for each district, e.g., the height of buildings, minimum distances (setbacks) from buildings to property lines, and the density of development. These are referred to as "area" standards, as opposed to "use" standards.

Zoning regulations will also set forth the steps necessary for approval by the type of use, the zoning district involved, or by both. For example, a single-family home is often permitted "as-of-right" in

a low-density residential zoning district. "As-of-right" uses, if they meet the dimensional standards, require no further zoning approvals, and need only a building permit in order for construction to begin.

How does zoning address projects that will not meet the standards?

By law, relief must be provided from the strict application of regulations that may affect the economic viability of a particular parcel, or that may obstruct reasonable dimensional expansion. Such relief is in the form of a variance.

A variance from the zoning regulations is the granting of permission by an administrative, quasi-judicial body (the zoning board of appeals) to use land in a manner which is not in accordance with, or is prohibited by, the zoning regulations.

Zoning boards of appeals (ZBAs) are a basic part of zoning administration. They are required by law as "safety valves" in order to provide relief, in appropriate circumstances, from overly restrictive zoning provisions. In this capacity they function as appellate entities, with their powers derived directly from State law.

There are two types of variances: (1) a use variance; and (2) an area variance.

A *use variance* allows property to be used for an activity which is prohibited in a zoning district. For example, if a parcel of land is zoned for residential purposes and the owner wants to establish a commercial use, the owner would need to apply for a use variance.

An *area variance* allows relief from some dimensional requirement of the zoning regulations, although the use to be made of the property is allowed. For example, if

a property is zoned for residential purposes, but a natural feature such as a rock formation or ravine prevents the

**VARIANCE
STANDARDS**
General City Law §81-b
Town Law §267-b
Village Law §7-712-b

placement of the dwelling such that it complies with the setback requirements, an area variance may be appropriate.

Since by their very nature variances allow land to be used in a manner prohibited by zoning regulations, their issuance is therefore at odds with the community's planning goals. Frequently and imprudently granted variances (especially use variances) have the potential to undermine a municipality's land use and zoning plan over time. Ultimately, they can severely impede a municipality's ability to achieve its growth and development goals. On the other hand, the frequent need to issue variances that are legitimately supported may well be an indication that the municipal zoning regulations need to be revised.

How are land uses that existed prior to adoption of zoning dealt with?

With the initial adoption of zoning regulations, some pre-existing, lawful uses of land or buildings may be rendered illegal. To alleviate the problems and hardships that would ensue if such uses were forced to discontinue, the concept of "grandfathering" arose. Those lawful pre-existing uses are thus allowed to continue as legal "non-conforming uses".

Types of non-conformance include: (1) non-conforming use of land or buildings; (2) non-conforming building; and (3) non-conforming lot. While non-conforming uses may generally continue to exist, municipalities may regulate them. The types of regulation employed most frequently deal with limitations on the change, enlargement or alteration of a use, or concern its ability to be reconstructed if destroyed or abandoned.

Can some uses be allowed only if certain conditions are met?

In addition to "as-of-right" uses, a zoning law or ordinance will typically identify other uses which, while permissible in a given zoning district, require more involved review. Gas stations, office buildings, and home businesses are examples of such uses. Often

such uses are reviewed by the planning board or ZBA under special use permit guidelines.

Zoning occasionally appears rigid. Is there any way it can be made more flexible?

Yes. Traditional zoning typically consists of regulations controlling development by dividing a municipality into separate districts (separating uses) and then establishing lot, area, setback, height, lot coverage, and other similar types of development standards. While this type of zoning is effective in protecting established areas such as residential neighborhoods, it may lack the element of flexibility necessary for a particular municipality to fully realize its planning goals and vision for the future.

In some communities, the basic use and density separation provided by traditional zoning is all that is necessary to achieve municipal development goals and objectives. Many communities, however, desire development patterns that traditional zoning only partially achieves. For example, a municipality may wish to strongly encourage a given type of development in a certain area, or may wish to limit new development to infrastructure capacity.

Use of one or more special zoning techniques can serve to encourage and "market" the type of development and growth a municipality desires, more closely linking a municipality's comprehensive plan with the means to achieve it.

ZONING TECHNIQUES
Special Use Permits
Incentive Zoning
Overlay Zoning
Performance Zoning
Floating Zones
Planned Unit Developments
Cluster Development
Transfer of Development Rights

Among the zoning techniques available are special use permits, incentive zoning, overlay zoning,

performance zoning, floating zones, planned unit developments, cluster development, and transfer of development rights.

SPECIAL USE PERMITS

Special use permits (sometimes referred to as conditional uses, special permits or special exceptions) are a flexible technique for allowing a municipality to review a proposed development project in order to assure that the project is in harmony with the zoning and will not adversely affect the neighborhood. In most municipal zoning regulations, many uses are permitted within a zoning district “as-of-right,” with no discretionary review of the proposed project. Certain uses, on the other hand, require closer examination based on specific review standards. A use may be allowed through a special use permit, by using standards set forth in the zoning regulations.

Who grants a special use permit?

The special use permit is granted by the board delegated the authority to grant it in the local zoning regulations. Typically, the local planning board or zoning board of appeals is delegated this responsibility. The board grants the special use permit if the proposal meets the special use permit standards found in the zoning regulations. Those standards are designed to avoid possible negative impacts of the proposed project with adjoining land uses or with other municipal development concerns or objectives, such as traffic impacts, drainage, lighting, or landscaping.

SPECIAL USE PERMIT

General City Law §27-b
Town Law §274-b
Village Law §7-725-b

The special use permit standards established by a municipality should depend upon its planning objectives.

For example, if a municipality is concerned about protecting visual access to an important lake, but also wishes to encourage and accommodate specific commercial development adjacent to the water body, it could provide for such uses

as a marina by special use permit. Among the standards to be met by the applicant might be “protection of visual access to the lake” from public roads. For example, commercial buildings could be situated so as to preserve the view. The extent to which a proposed project complies with the general standard would have to be determined by the board reviewing the special use permit. Communities may also make such special use permit standards more specific, by, say, enacting a provision that requires the protection of a set viewshed angle.

Is there a procedure that must be followed before a special use permit may be granted or denied?

Yes. The State enabling statutes contain the procedure which must be followed when a board receives an application for a special use permit. A public hearing must be held, which must be properly noticed in the newspaper. In some instances, applications may need to be referred to the county or regional planning agency for review and recommendation.

INCENTIVE ZONING (BONUS ZONING)

The enabling statutes set forth the authority to incorporate incentive zoning into a municipality's zoning regulations, and prescribe the required procedures for such enactment.

Incentive zoning is an innovative and flexible technique. It allows developers to exceed the dimensional, density, or other limitations of zoning regulations

in return for the owner's providing certain benefits or amenities to the municipality. Incentive zoning can be very effective in implementing a comprehensive plan by encouraging desired types of development in targeted locations. As an example, the zoning regulations might authorize an owner to exceed building height limits by a specified amount, in exchange for the provision of public open space, such as a plaza.

INCENTIVE ZONING

General City Law §81-d
Town Law § 261-b
Village Law § 7-703

What value does incentive zoning have for a municipality?

By themselves, zoning regulations do not insure that development will occur. It can be said that zoning, by its nature, acts prospectively by indicating what uses will be allowed in the future. If a municipality wants a certain type of development in a particular location, it can ordinarily only wait to see if a developer will find it economical to build. Incentive zoning changes this dynamic by providing economic incentives for development that may not occur without the incentive. Incentive zoning is also a method for a municipality to obtain needed public benefits or amenities in certain zoning districts through the development process. Local incentive zoning laws can even be structured to require cash contributions from developers in lieu of physical amenities. For example, the allowable square footage of a proposed store in the central business district may be increased if adequate funds are contributed toward the construction of a municipal parking garage.

The array of benefits that can be provided via incentive zoning is theoretically limitless. Among others, it includes affordable housing, public access to water, public park improvements, and open space. Whatever system of incentive zoning a municipality adopts, it must be in accordance with the local comprehensive plan.

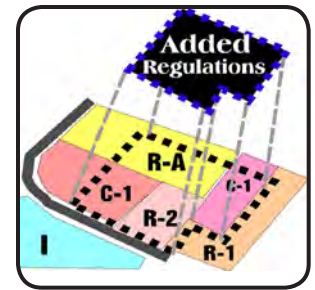
OVERLAY ZONING

The overlay zoning technique is a modification of the system of conventionally mapped zoning districts. An overlay zone applies a common set of standards to a designated area that may cut across several different conventional or “underlying” zoning districts, with the standards of the overlay zone applying in addition to those of the underlying zoning district. Some common examples of overlay zones are the flood zones administered by many communities under the National Flood Insurance Program, historic district overlay zones, areas of very severe slopes, a waterfront zone, or an environmentally sensitive area.

For example, flood plain overlay zone regulations could address such matters as floodproofing of

development, elevation of structures, or the anchoring of manufactured homes.

There are no specific procedures in the enabling statutes dealing with overlay zoning. Overlay requirements may be enacted or amended in the same manner as other zoning regulations.



PERFORMANCE ZONING

Some communities have enacted zoning regulations that establish performance standards, rather than strict numerical limits on building size or location, as is the case with conventional zoning. Performance zoning, as it is commonly called, regulates development based on the permissible *effects* or *impacts* of a proposed use, rather than by specifying the zoning elements of use, area and density. Under performance zoning, proposed uses (whatever they may be) whose impacts would exceed specified standards are prohibited unless the impacts can be mitigated or eliminated.

Performance zoning is often used to address municipal issues concerning noise, dust, vibration, lighting, and other impacts of industrial uses. It is also used by communities to regulate environmental impacts, such as stormwater runoff, scenic and visual quality impacts, and defined impacts on municipal character. The complexity and sophistication of performance standards vary widely from one municipality to another, depending on the objectives of the program and the capacity of the locality to administer it. In some communities across the United States, performance zoning has actually replaced traditional zoning districts and the dimensional standards of traditional zoning.

At times, performance zoning is used in combination with a point system. Under such a scheme, a proposed project must amass a minimum number of points in order to receive a permit. In contrast to the self-executing nature of traditional zoning, whereby a landowner can determine if a project is permissible by reading the zoning

map and zoning text, point systems require case-by-case review to determine if a specific project is permissible.

THE FLOATING ZONE

Floating zones allow a municipality flexibility in the location of a particular type of use and allow for a use of land that may not currently be needed, but which is desired in the future. The floating zone is also a way of scrutinizing significant projects for municipal impacts, as floating zones must be approved by the local legislative body. The standards and allowable uses for a floating zone are set forth in the text of the municipality's zoning regulations, but the actual district is not mapped; rather, the district "floats" in the abstract until a development proposal is made for a specific parcel of land and the project is determined to be in accordance with all of the applicable floating zone standards. At that time the municipality maps the floating zone by attaching it to a particular parcel or parcels on the zoning map. The technique may be used by communities that wish to provide, say, for a future industrial park.

Because the floating zone is not part of the zoning map until a particular proposal is approved, the establishment of its boundaries on the zoning map constitutes a zoning amendment requiring the approval of the local legislative body.

PLANNED UNIT DEVELOPMENTS (PUDs)

Planned unit developments, or PUDs as they are commonly called (sometimes the variant designation "PDD"--planned development district"--is used instead), describe a zoning technique allowing development of a tract of land, usually a large one, in a comprehensive, unified manner and in which the development is planned to be built as a single project. PUDs are often a form of floating zone in that they are not made a part of the zoning map until a PUD project is approved. PUDs that are shown on a zoning map may require approval by special use permit.

The PUD concept allows a combination of land uses, such as single and multiple residential, industrial,

and commercial, on a single parcel of land. It also may allow a planned mix of building types and densities. For example, a single project might contain dwellings of several types, shopping facilities, office space, open areas, and recreation areas.

PLANNED UNIT DEVELOPMENT

General City Law §81-f

Town Law §261-c

Village Law §7-703-a

The State enabling statutes authorize municipalities to enact PUD procedures, stating that they are intended to provide either for particular land uses or a mix of uses to create "economies of scale, creative architectural or planning concepts and open space preservation".

TRANSFER OF DEVELOPMENT RIGHTS (TDR)

Transfer of development rights (TDR) is an innovative and complex growth management technique. It is based on the concept that ownership of land gives the owner a "bundle of rights," each of which may be separated from the rest. For example, one of the "bundle of rights" is the right to develop land. With a TDR system, landowners are able to retain their land, but sell its development rights for use on other properties. TDR has been most often applied for preservation of farmland in New York. Under common TDR systems, farmers are able to keep their land as an agricultural use, by selling the property's development rights, which are then used on non-agricultural land.

Where can development be transferred to?

Under the State enabling statutes, areas of the municipality that have been identified through the planning process as in need of preservation (e.g., agricultural land) or in which development should be avoided (e.g., municipal drinking water supply protection areas) are established as "sending districts." Owners of land in these designated areas may sell the rights to develop their lands, and those development rights may be transferred to lands located in "receiving districts."

The rights to be transferred usually take the form of a number of units per acre, or gross square footage of floor space, or an increase in height. The rights are used to increase the density of development in the receiving district.

**TRANSFER OF
DEVELOPMENT RIGHTS**

General City Law §20-f
Town Law §261-a
Village Law §7-701

Receiving districts are those areas which the municipality has determined are appropriate for increased density based upon a study of the effects of increased density in such areas. For example, a town may determine that it is appropriate to preserve prime agricultural land, which it designates as a sending district. The town may also determine that its unincorporated hamlet area may be developed at a higher density, and designate it as a receiving district, where development rights can be used to increase density above what is ordinarily allowed.

In this manner, owners of land in sending districts are able to realize a level of economic return while the municipal goal of preserving the land is achieved. The TDR system will be successful, however, only where there is a demand to increase development in the receiving districts, and where the municipality does not undermine the incentive to purchase development rights by rezoning receiving districts to higher densities--a move which of itself might satisfy market demand and thus defeat the incentive mechanism.

How can municipalities be sure that sending districts are not developed in the future?

The State zoning enabling statutes require that land from which development rights are transferred are subject to a conservation easement limiting the future development of the property. The statutes also require that the assessed valuation of properties be adjusted to reflect the change in development potential for real property tax purposes.

TDR is a sophisticated land use management tool that requires a high degree of municipal staff experience and resources to initiate and maintain. It should be considered in that light, and only after a municipality has undertaken a thorough study of its implications.

SITE PLAN REVIEW

Site plan review is concerned with how a particular parcel is developed. A site plan shows the arrangement, layout and design of the proposed use of a single parcel of land. Site plan review can include both small and large-scale proposals, ranging from gas stations, drive-through facilities and office buildings, to complex ones such as shopping centers, apartment complexes, and industrial parks.

The authority to require site plan review is found in the State enabling statutes. Site plan review may be

SITE PLAN REVIEW

General City Law §27-a
Town Law §274-a
Village Law §7-725-a

incorporated into a local zoning law or ordinance, or may instead be adopted as a separate local law or ordinance. The local legislative body has the power to retain site plan review authority itself, or to delegate review to the planning board, zoning board of appeals, or another board.

What uses are subject to site plan review?

Local regulations (either in the site plan review law or elsewhere) determine which uses require site plan approval. Uses subject to review may be (1) identified by the zoning district in which they are proposed, (2) identified by use, regardless of zoning district or location, or (3) located in areas identified as needing specialized design restrictions by way of an overlay zone approach, such as a flood zone or historic preservation district.

Site plan review can be a valuable tool for commercial, industrial, or multi-family projects, or for uses intended for environmentally-sensitive

areas. The construction of single-family housing is usually not required to undergo site plan review.

What issues can site plan review address?

Site plan review can address a wide range of issues, including how traffic will flow within the site and how it will merge into existing transportation corridors. It can define where structures will be placed, where signage and parking will go, what landscaping and buffering will be required, where drainage facilities may be needed, and any range of development concerns the municipality determines to be appropriate.



Site plan issues should be addressed through a set of general or specific requirements included in local regulations. The reviewing board may be empowered to

waive certain requirements if they are not appropriate for a particular application, subject to conditions set forth in the local regulations. The review board cannot, however, waive *strict* requirements established by zoning for which no waiver is provided. In the event an applicant’s proposal includes a need for an area variance from the strict dimensional requirements of zoning, the applicant may apply directly to the zoning board of appeals without having to first apply for a permit from the zoning enforcement officer.

How does site plan review work?

Although the State enabling statutes provide for a one- stage formal process, many municipalities accord the applicant an initial, informal and non-binding “sketch plan” stage. A sketch plan allows the reviewing board to indicate to the applicant whether the proposal’s major features are generally acceptable for review, or if the proposal warrants modification before more expenses are incurred for detailed plans.

The site plan regulations will specify whether the board reviewing the site plan is required to hold a hearing on

the application. State law allows the municipality the option of conducting a hearing on a site plan application, but requires that if a hearing is held, it must be convened within 62 days of the board’s receipt of the complete application. The board reviews the layout and design of the proposed use based on the elements set forth in the local site plan regulations. It is important for local legislative bodies to note that the desired review elements *must* be set forth in the local site plan regulations regardless of the fact that there are elements set forth in State law. As with other types of land use approvals, the board must comply with the State Environmental Quality Review Act (SEQRA) and may need to refer the site plan to the county or regional planning agency for its review and recommendation. Notice may need to be provided to adjacent municipalities if a public hearing is held on the site plan application and the site is within 500 feet of an adjacent municipal boundary.

How can municipalities be sure that required improvements are made?

State enabling statutes allow a municipality to require the applicant to post a performance guarantee that the needed infrastructure and improvements will be completed as approved. Even on a relatively small site, this could be a useful technique to, say, insure that the developer of a commercial project that is completed and allowed to open for business in the fall will then complete required landscaping in the spring.

Are there any special provisions relating to residential development?

Site plan review is often applied to apartment, townhouse, and condominium developments. Because the future residents will contribute to the municipal need for recreational land or facilities, the reviewing board may require the developer to provide recreational land on the proposed site, or to contribute to a fund for the purchase or improvement of recreational land. The enabling statutes provide for the set-aside of land (or for a payment of cash in lieu of land) for residential site plans, just as the statutes provide for such a set-aside during the subdivision review process.

To apply this provision, the reviewing board must make findings evaluating the municipality's need for park and recreational facilities based on projected population growth to which the particular project will contribute. By having an updated comprehensive plan that addresses such issues, the board will find it easier avoid *ad hoc* or unfounded decisions on this issue.

SUBDIVISION REVIEW

One of the most common forms of land use activity is the subdivision of land. The subdivision process controls the manner by which land is divided into smaller units-- usually individual building lots. Subdivision regulations should ensure that when development does occur, streets, lots, openspaceandinfrastructureareadequatelydesigned and the municipality's land use objectives are met.

What is a subdivision?

"Subdivision" is defined in the State enabling statutes as:

... the division of any parcel of land into a number of lots, blocks or sites as specified in a local ordinance, law, rule or regulation, with or without streets or highways, for the purpose of sale, transfer of ownership, or development.

The phrase "as specified in a local ordinance, law, rule or regulation" means that each municipality is permitted to further define "subdivision" for its own purposes, in connection with its subdivision review procedure.

Must a subdivision involve the sale of land?

While a subdivision is typically thought of as the division of land into separate parcels that are to be sold to individual buyers (ownership "in fee"), subdivision provisions may also apply to land that is offered as a gift, or land that changes ownership for some other reason. Even when title to the land will remain with the original owner, the mere division of land can be

subject to subdivision regulations. Developments like townhouses, condominiums and timeshare units, where fee ownership may not include a separate plot of land, or manufactured home parks where parcels are rented but not sold, may also fall within the broad definition of subdivision by virtue of the division of land into "sites."

The State enabling statutes provide that a "plat" showing a division of land that is subject to a municipality's

subdivision review procedures may not also be subject to review under its site plan review authority. This avoids duplication of review. For example, depending on the structure of review authority in a municipality, a townhouse development that also involves the creation of new lots might, as an initial project, be subject to either subdivision or *site plan review*, but not both. On the other hand, once a plat is approved and lots are created, development that is subsequently proposed on a single lot *may* be subjected to site plan review. For example, a convenience store proposed on a lot that was once part of a subdivision of farmland might itself be required to undergo site plan review.

A "plat" is a map prepared by a professional which shows the layout of lots, roads, driveways, details of water and sewer facilities, and ideally other useful information regarding the development of a tract of land into smaller parcels or sites.

Who reviews subdivision plats at the local level?

Planning boards, when authorized by local governing bodies, conduct subdivision plat review. A planning board may be authorized to review final plats only (one-step) or both preliminary and final plats (two-step process). The State enabling statutes contain specific procedures for the review of both preliminary and final plats. Most municipalities use the two-step process. Often, an additional, informal, sketch plan stage is used to identify potential problems or concerns, even before the

SUBDIVISION REVIEW
General City Law § 32 & §33
Town Law §276 & §277
Village Law §7-728 & §7-730

formal submittal of a preliminary plat. This step cannot actually be required of an applicant without the adoption of a local law superseding the subdivision enabling laws.

The two-step process should include the submittal of a *preliminary* plat showing the layout of lots, roads, open space areas, utility and drainage facilities, and approximate dimensions including preliminary plans and profiles. The final plat should present the subdivision layout and other elements contained in the preliminary plat in greater detail, and should incorporate those changes required by the planning board as the result of preliminary plat approval.

Must all subdivisions follow the same procedures?

It is important that local subdivision regulations be drafted to set forth the scope and detail of information that the municipality feels is necessary to commence review of a plat. Municipalities may classify subdivisions as “minor” and “major”, with procedures and review criteria for each type set forth in local regulations. The definitions of what are “major” and “minor” subdivisions are the prerogative of each municipality. A minor subdivision might, for example, be one that involves no new streets, or one that results in fewer than five new lots.

Local regulations may also specify that the plat-review procedure is to be followed for the alteration of lot lines, even where no new lots are being created.

**REQUIRED CONTENTS
OF A PRELIMINARY PLAT**

At a minimum, State statutes require preliminary and final plats to show:

- road layout
- lot layout and approximate dimensions
- topography
- drainage
- proposed facilities unsized (including preliminary plans and profiles)

The State enabling statutes require that a public hearing be held on a subdivision plat. If the two-

step process is used, a hearing must be held at the preliminary stage. A second hearing may be held at the final stage, although it may be dispensed with if the final plat is in substantial agreement with the approved preliminary plat. If the single-stage procedure is used, the hearing will occur at that stage.

Why should a municipality adopt subdivision review?

Subdivision review is a critical tool in a municipality’s land use management scheme, and has important consequences for overall municipal development. Every community should therefore consider it imperative to determine whether roads, water systems, recreation areas and other services or amenities will be installed, and whether they will be privately or publicly owned. If such infrastructure is not to be installed prior to the sale of lots, provisions should be made by way of performance guarantees that require the subdivider to complete all common improvements to municipal standards *prior* to selling lots and constructing buildings.

The subdivision of large tracts may induce other related development in the neighborhood, or may produce demands for rezoning to allow commercial uses to serve large subdivisions. Those subdivisions connected to municipal facilities such as water or sewer infrastructure may require the formation of improvement districts, and should be examined for their impact on the capacity of such facilities.

In short, there is probably no other form of land use activity that has as much potential impact upon a municipality as the subdivision of land.

CLUSTER DEVELOPMENT

Cluster development is a technique that allows flexibility in the design and subdivision of land. It may provide for greater open space and recreational opportunities, and can result in reduced development expenses relating to roadways, sewer lines, and other infrastructure, as well as to lower costs in maintaining such infrastructure.

The cluster development is a subdivision in which the same number of housing units allowed in a

conventional subdivision are concentrated--or clustered--at a higher density in the most appropriate portion of the property, leaving larger areas to remain open and undeveloped. By clustering a new subdivision, certain community planning objectives can be achieved. For example, natural features of significance can be preserved, steep slope areas avoided, and open space areas can be left in large sections.

Cluster development has great potential for a municipality to maintain its existing physical character while at the same time providing (and encouraging) new development. It also allows a municipality to achieve planning goals that call for the protection of open space, scenic views, agricultural lands, woodlands and other open landscapes, and to limit the encroachment of development in and adjacent to environmentally sensitive areas. In these respects, cluster can be a powerful tool in implementing the principles of Smart Growth.

To use cluster development, the legislative body of the municipality must authorize the planning board to review cluster subdivisions. The legislative body of the municipality may also *require* that applicants for subdivisions submit clustered plats. Regardless of the form a cluster development may take--multi-family, townhouse, single family homes on smaller lots, or other non-residential building clusters -- the maximum number of units allowed on the parcel must be no greater than that which would be allowed under a conventional subdivision layout.

**CLUSTER
SUBDIVISION
DEVELOPMENT**
General City Law §37
Town Law §278
Village Law §7-738

SUPPLEMENTARY CONTROLS

It often occurs that a municipality has specific concerns that it wishes to address, and sometimes those concerns are best addressed through specific regulations that

focus on those individual concerns. The following is a discussion of the many types of “stand alone” actions that are commonly taken to address specific municipal concerns(although they may also be usefully incorporated into zoning, site plan review or subdivision regulations).

OFFICIAL MAP

For any municipality to develop logical, efficient and economical street and drainage systems, it must protect the future rights-of-way needed for these systems. Such preventive action saves a municipality the cost of acquiring an improved lot and structure at an excessive cost, or from resorting to an undesirable adjustment in the infrastructure system. To protect these rights-of-way, State statutes allow a municipality to establish an official map.

OFFICIAL MAP
General City Law §26, §29, §35, §35-A, & §36
Town Law §270, §273, §280, §280-A, & §281
Village Law §7-724, §7-734, & §7-736
General Municipal Law §239-e & §239-f

The governing body of the municipality may establish and amend an official map of its area, showing the layout of existing as well as proposed streets, highways, parks and drainage systems. Once the map is adopted, land so reserved may not be used for a purpose that would conflict with the purpose shown on the map without the consent of the municipal governing board.

The official map is final and conclusive with respect to the location and width of streets, highways and drainage systems and the locations of parks shown on it. Streets shown on an official map serve as one form of qualification for the access requirements which must be met under State law prior to the issuance of a building permit. Where the permit is denied, the law provides that the board of appeals may grant relief in the form of either an exception or an area variance.

The official map is not the zoning map, nor is it the comprehensive plan. It can, however, play an important

role in implementing a municipality's comprehensive plan.

SIGN CONTROL

The character of a community is almost always prominently reflected in its manner of public communication. Signs are vital for communication. They serve both a public and private purpose. They are important in providing directions and instructions that are important for the safety of a municipality. Signs are therefore important to community functions. Nonetheless, problems arise when signs are poorly located, improperly constructed or become too large or numerous. Without control, signs can overwhelm a municipality, damage its character, reduce the effectiveness of communication and compromise traffic safety. With appropriate controls, signs can enhance a locality and contribute to municipal character.

Sign regulations are typically enacted either as part of a zoning law or as separate regulations. Attention is focused on the number, size, type, design and location of signs within a municipality.

How may signs be controlled?

Many communities choose to link sign control with their zoning code. Zoning specifies the location and density of various land uses, and may also include standards for the nature, location and size of signs associated with such uses. As with other land use regulations, standards can be adopted that cover new as well as existing, non-conforming signs. These standards may also be established in a separate local law dealing specifically with signs. A municipal government should consider input from its commercial, industrial and residential segments in developing sign standards. There are many options available for regulating signs, as well as for the degree of regulation. For example, a municipality may decide that some signs may only need a building permit, while others may be approved within a site plan review procedure, and still others may only be placed following the grant of a special use permit. Enforcement of signage provisions should be assigned to a municipal officer, usually the building inspector or zoning enforcement officer.

While sign controls seek to limit the size and design of signs, often such regulation has extended to involve the textual or graphic *content* of a sign. The United States Supreme Court has examined the constitutional questions concerning freedom of speech with respect to sign controls, and has placed limits on the authority of municipalities to control the content of signs. The best approach for a municipality is to regulate the size, height, number and design of signs without regulating their content.

HISTORIC PRESERVATION

More and more communities are recognizing that they have significant historical and cultural resources that enhance their character and livability. These resources also provide economic benefits, as businesses are attracted by livable communities and tourists come to explore a municipality's heritage. Many communities seek to protect and enhance these resources.

It is important for a municipality to develop a comprehensive inventory of its historic properties and other cultural resources. By completing an historic resources survey, a municipality will be able to establish what buildings or collections of buildings are worthy of preservation. Community participation in such a survey can help improve awareness of community heritage and build consensus on the benefits of protecting this heritage.



How do we provide recognition to historic resources?

The development of a community policy to protect historic resources, and an identification of the particular resources to be protected in the community, are the first steps to providing recognition of the historic value of a property or of a collection of buildings. Once a community has established a policy of historic preservation it can seek to formally recognize individual

historic structures or groups of structures. The first level of recognition can be achieved through the adoption of a local historic preservation law that enables the community to designate individual properties as local historic landmarks, or groups of properties as local historic districts. Such a local law can also provide standards for protection of designated properties.

Historical importance can also be recognized at the state or national level through listings on the State or National Register of Historic Places. These listings are managed, respectively, by the State Office of Parks, Recreation, and Historic Preservation, and the United States Department of the Interior, in cooperation with the property owner and local municipality. National Register listing includes recognition of the historical importance of a single property, a group of properties, or a set of properties related by a theme.

**PROTECTION OF HISTORIC PLACES,
BUILDINGS AND WORKS OF ART**
General Municipal Law §96-a

Designation on the National Register of Historic Places makes a property eligible for grants and loans and, possibly, Federal tax credits. It also means that any Federal action that might impact the property must undergo a special review designed to protect the property's integrity. Similarly, listing on the State Register of Historic Places means that State agency actions that affect a designated property are subject to closer review, and makes the property eligible for grant assistance. Projects affecting properties listed on the National Register become Type I Actions under the requirements of the State Environmental Quality Review Act (SEQRA)--making it more likely that any actions affecting those properties will require an environmental impact statement. Many funding benefits are also applicable to those properties that are *eligible* for listing on either Register, but have not actually been so listed.

How does a municipality protect historic resources?

Once historic properties have been identified and recognized, it is necessary to provide means to protect them from degradation. Recognition in itself provides no

protection. The community should take steps to integrate the historic protection policies of its comprehensive plan into the municipality's zoning regulations and land use controls. Appropriate use, density, siting and design standards can go a long way to protect historic properties. In addition, General Municipal Law §96-a provides specific authority to a city, town, village or county to protect and enhance historic resources.

**LOCAL
HISTORIC
PRESERVATION
PROGRAMS**
General Municipal
Law §119-dd

A municipality may also consider adoption of a Local historic preservation law based on specific enabling legislation. Typically, the municipality establishes a local historic preservation committee, as well as procedures for designating either a historic property as a local landmark, or a collection of historic properties as an historic district. It can also provide for the review of construction, alteration or demolition of designated historic properties, and allow consideration of the impact of these proposals on an historic district.

If a municipality does not wish to adopt a local historic preservation law, it may want to consider a demolition law. Such a law would require a delay before demolition of a historically significant building. This allows time for a community to examine alternatives to demolition, such as purchase of the property by a government or not-for-profit group.

In addition to specific historic preservation initiatives, a community can use other planning, zoning and land management techniques to protect historic properties or districts. These include land use controls such as site plan review, clustering regulations and transfer of development rights, as well as other approaches such as SEQRA, local tax policies, building codes, acquisition, and improvement grants.

ARCHITECTURAL DESIGN CONTROL

Many municipalities have concerns over the impact of the design of individual buildings on both the character of the municipality and the way the buildings fit together.

Within its zoning code a municipality may regulate many aspects of a building's design through standards for siting, orientation, density, height and setback. Some municipalities want to go beyond dealing with the general size and siting of a building and its physical relationship with adjacent properties, to deal with the appropriateness of the actual architectural design of the building. The review may include examining such design elements as facades, roof lines, windows, architectural detailing, materials and color.

Architectural review generally requires a more subjective analysis of private development proposals than is possible within most zoning codes. To do this, communities often establish an advisory architectural review board, whose jurisdiction is established through local law or ordinance. Often communities focus design control on a limited geographic area within the community, such as a downtown commercial area, an important road corridor, or a historic area. The architectural review board should be able to offer guidance on design issues to other boards, such as the planning board or zoning board of appeals. Often a community chooses to link design review to historic preservation controls, with a focus on the design of new buildings and alterations to existing buildings within historic districts.

In addition to seeking to control design, some communities take the positive step of producing a design manual. Design manuals can provide guidance on acceptable design features and provide standards for review.

MANUFACTURED HOMES AND FACTORY-MANUFACTURED HOMES

There are two basic alternatives to site-built housing: *manufactured homes* (formerly known as *mobile homes*) and *factory-manufactured homes* (also known as *modular homes*).

Federal safety and construction standards, and industry efforts to improve product, have turned mobile homes-- more generally and properly referred to as manufactured

homes-- into an affordable alternative to site-built homes. Visually, they can be virtually indistinguishable from the rest of the homes in the neighborhood. Through provisions of local laws, such as foundation and skirting standards, a community can provide for the orderly development of attractive, affordable housing in a manner that preserves or enhances surrounding property values. Significantly, municipalities may not impose *construction* standards on manufactured homes which are not identical to the specifications established by the Federal Department of Housing and Urban Development.

TRAILER CAMPS
Town Law §130 (21)

May manufactured homes be regulated separately from site-built homes?

Just as a municipality may establish different location, setback, lot size and aesthetic requirements for multi-family homes than for single-family homes, a municipality may also establish separate standards for manufactured homes as distinct from site-built homes.

A municipality may regulate manufactured homes using a stand-alone law without zoning, or in combination with zoning. Such laws may regulate their placement and may confine such homes to districts or parks. The municipality may wish to include specific installation requirements for individual units and/or standards for manufactured housing developments to further ensure their conformance to community standards. Whatever kinds of restrictions a municipality places on manufactured housing, courts have held that a municipality cannot totally ban such housing from the community.

Modular, or factory-manufactured, homes

Modular homes, which generally are constructed to New York State Building Code standards, do not carry a HUD seal and are the pinnacle of what can be achieved in manufactured housing production. They are known in State regulations as "factory-manufactured homes," and are defined in the New York State Executive Law

as: “a structure designed primarily for residential occupancy constructed by a method or system of construction whereby the structure or its components are wholly or in substantial part manufactured in manufacturing facilities, intended or designed for permanent installation, or assembly and permanent installation, on a building site.” Because of their close similarity to conventional homes, many municipalities exclude modular homes from their manufactured home (mobile home) definition. Each municipality may exclude from regulation different types of manufactured housing, and these local definitions will govern.

JUNK YARD REGULATION

If a municipality does not have its own junk yard law or zoning law addressing the siting of junk yards, it must apply the standards set forth in General Municipal Law §136 for automobile junk yards. This State law regulates the collection of junk automobiles, including the licensing of junk yards and the regulation of certain aesthetic factors. The law is, however, limited in its application, to sites storing two or more unregistered motor vehicles that are unfit for highway use. The New York State Uniform Fire Prevention and Building Code also has provisions dealing with junk and property maintenance contained in the Property Maintenance Code of New York.

**CONTROL OF
AUTOMOBILE JUNK
YARDS**
General Municipal Law §136
Property Maintenance Code
§302.8

A municipality may expand the State definition of “junk yard” to encompass other types of junk, such as old appliances,

household waste, or uninhabitable manufactured homes, in order to regulate aspects of junk not covered by State law, and to ensure greater compatibility with surrounding land uses.

Through zoning, a municipality can limit junk yards to specific areas of the community. If properly drafted, zoning regulations may even phase out existing junk yards that are inappropriately located.

MINING CONTROL

The State Mined Land Reclamation Law (MLRL) regulates mining operations that involve the removal of more than one thousand tons or 750 cubic yards of minerals (whichever is less) from the earth within twelve successive calendar months. Such mines require approval by the New York State Department of Environmental Conservation (DEC). DEC must notify a municipality of all applications for new mining projects. In response, the municipality may make recommendations to the DEC regarding: appropriate setbacks; barriers to restrict access to the mine; dust control; hours of operation; and whether the proposed mine is in an area where mining is a permissible activity.

Can a municipality control the location of mines?

Yes. Even though the DEC regulates the actual operation of larger mines, a municipality may regulate the *location* of *all* mines through its zoning law. Local governments can enact zoning regulations establishing districts within which mining may or may not be a permissible use. The permissible use may be “as-of-right” or may require a special use permit. In addition, if a municipality through its comprehensive planning process has determined that mining is not a desirable use in its community, it may zone its land to prohibit the establishment of new mines within its borders.

MINED LAND RECLAMATION LAW
Environmental Conservation Law §23-2703
and §23-2711

Local governments also retain limited authority to impose traffic restrictions on mineral transport vehicles via special use permit with respect to *all* mines. Through its special use permit the municipality may also grant itself the authority to enforce reclamation requirements set by the DEC.

Operations falling under the tonnage/yardage threshold for State regulation can be comprehensively regulated by local mining or zoning laws.

SCENIC RESOURCE PROTECTION

Scenic resources are important in defining community character. As these resources can be seriously threatened by development, many communities are now seeking ways to mitigate the impacts of development on the landscape. High priority is often placed on protecting specific views and view points, as well as on the general quality of a landscape.

How does a municipality identify and protect important scenic resources?

One of the first steps is to devise a visual assessment program, which is often done through the comprehensive planning process. Development of such a program can lead to an identification of the important components in the landscape, key parcels or areas that need protection, and areas that may need improvement because existing man-made features might be impairing scenic quality.

Policies to protect scenic resources should be included in a community's comprehensive plan, along with maps illustrating the scenic resource. Once this has been done, it is important to integrate policies into regulations. Appropriate use, density, siting and design standards can protect scenic resources by methods such as limiting the height of buildings or fences in important scenic areas.

Once the local zoning code has been modified, the community should consider other planning, zoning and land management techniques to protect scenic resources. These include site plan review, subdivision, clustering, transfer of development rights, and the acquisition of easements.

OPEN SPACE PRESERVATION

Many communities are now recognizing the value of "open space", i.e. vacant land and land without significant structural development. Open space serves many functions within a community: economic; health and safety; recreational; ecological; aesthetics; and community character. As communities recognize such benefits, they are increasingly turning to ways of identifying and protecting open space resources.

A good way for a municipality to assess the importance of its open space resources is to produce an open space plan or to include an assessment of open space resources as part of its comprehensive plan. Here, a community decides how to categorize its open space resources, examines their use and function within the community, sets priorities for their protection, and considers the best ways to use and protect open spaces. It is important to remember that open space is more than just undeveloped or vacant land, but that it can include recreational sites, parks, greenways, trail networks, cemeteries, forests and woodlands, wetlands, agricultural land and even historic properties that are restricted from further development. All of these amenities come together with the developed land to provide community character.

As has been previously stated, the wise preservation of open space is one of the key components of implementing Smart Growth within a community.

Much has been written on the value and benefits of open space and how to prepare an open space plan. Once a community has identified its open space resources, it can develop policies to protect them. Those policies should be expressed in the open space plan and in the community's comprehensive plan, along with the maps showing open spaces. Once this has been done, it is important to ensure that the open space policies of the comprehensive plan are implemented through the municipality's land use controls.

AGRICULTURAL LAND PROTECTION

All communities should be keenly aware of the important contribution agriculture makes to the economy and character, both of their own community and of New York State. There is legitimate concern over the future of agriculture, both in terms of the loss of agricultural land to development, and in terms of the loss of economic viability of agricultural activity.

One of the critical issues involved in land use planning decisions for agricultural uses is to ensure that agriculture protection deals primarily with the preservation of agriculture as an *economic activity* and not just as a use of open space.

Traditionally, agricultural uses are part of large lot, low density, residential zoning districts. With increased residential development, however, conflicts between agricultural and residential uses have increased.

Complaints about noise, odors, dust, chemicals, and slow-moving farm machinery may occupy enough of the resources of a farmer so as to have a negative impact on the viability of his or her farming activities. To address those concerns and to maintain viable farming, municipalities sometimes turn to a variety of specific farmland preservation techniques. Such techniques include: agricultural zoning; subdivision; clustering; transfer (or outright purchase) of development rights; and easements. In addition, communities are utilizing agricultural districts, tax assessment incentives, and “right-to-farm” initiatives to help ensure the viability of agricultural activity.

What is a State agricultural district?

Article 25-AA of the Agriculture and Markets Law was enacted to conserve and protect land for agricultural production and as a valued natural and ecological resource. To accomplish those objectives the statute provides for the creation of agricultural districts. To be eligible for designation, an agricultural district must be certified by the county for participation in the State program. Once designated, participating farmers within the district can receive reduced property assessments and relief from local nuisance claims.

State law requires that municipalities evaluate and consider the possible impacts of certain projects on the functioning of farms in agricultural districts. These projects, which require “agricultural data statements”, include certain land subdivisions, site plans, special use permits, and use variances.

AGRICULTURAL DATA STATEMENTS
Town Law §283-a
Village Law §7-739

Applicants for the above types of approval for projects that involve property within 500 feet of a farm operation

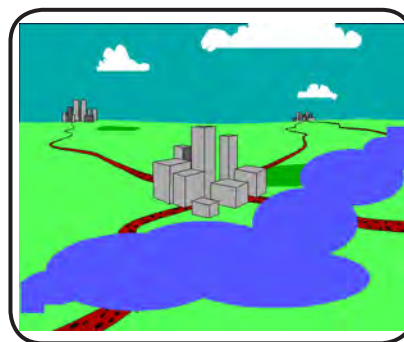
in an agricultural district must provide extra information to the local board reviewing the application. In addition, the neighboring farmers must be notified in writing of the proposed project, and the project must be referred to the county or regional planning agency for review.

FLOODPLAIN MANAGEMENT

Almost all municipalities in New York contain flood hazard areas. Flooding in developed areas can result in costly damage and destruction, as well as loss of life. Moreover, where a community does not participate in the National Flood Insurance Program, no flood insurance is available to individual landowners. This makes it critical for communities to seriously consider enacting floodplain regulations.

Floodplain regulations are land use controls governing the amount, type and location of development within defined flood-prone areas.

Federal standards that apply to communities eligible for Federal flood insurance protection require the identification of primary flood hazard areas, usually defined as being within the 100-year floodplain. Within flood hazard areas certain restrictions are placed on development activities, including that buildings be elevated above flood elevations or be flood-proofed, and also to prohibit the filling of land within a floodplain.



Municipalities can adopt their own floodplain regulations, which may be more stringent than the Federal standards. Such local regulations can identify a larger hazard area (such as a 500-year floodplain), and may also prohibit certain types of construction within flood hazard areas. In this way, localities can tailor flood hazard protection to local needs.

WETLAND PROTECTION

Wetlands are areas which are washed or submerged much of the time by either fresh or salt water. In state regulations, they are defined chiefly by the forms of vegetation present.

Wetlands provide a number of benefits to a community. Besides providing wildlife habitat, wetlands also provide habitat-related recreational opportunities, protect the water supply, and provide open space and scenic beauty that can enhance local property values. Wetlands also serve as storage for stormwater runoff, thus reducing flood damage and filtering pollutants. In coastal communities, they also serve as buffers against shoreline erosion. The preservation of wetlands can go a long way toward protecting water quality; increasing flood protection; supporting hunting, fishing and shellfishing; providing opportunities for recreation, tourism and education; and enhancing scenic beauty, open space and property values.

Doesn't the State regulate wetlands?

State wetland regulations protect freshwater wetlands greater than 12.4 acres (and as small as one acre in the Adirondack Park), freshwater wetlands of unusual local importance, and tidal wetlands. The State has established adjacent wetland buffer zones, prohibiting certain activities within such areas, and has established standards for permit issuance. The United States Government, through the Army Corps of Engineers, also regulates Federally-defined wetlands.

When considering enactment of a local wetland law, a municipality should consult with the New York State Department of Environmental Conservation, which regulates wetlands that are under State jurisdiction. Wetlands may also be indirectly regulated through subdivision and site plan review laws, which should guide development so as to avoid areas of a site that would inappropriately affect a wetland.

WATER RESOURCE PROTECTION

The main reason for protecting water resources is to protect municipal and private drinking water supplies

from disease-causing microorganisms. Failure to adequately protect drinking water supplies can lead to the need for treatment of drinking water at great expense to the landowner or the municipality.

Municipalities may adopt laws to protect groundwater recharge areas, watersheds and surface waters. Local sanitary codes may be adopted to regulate land use practices that have the potential to contaminate water supplies. Sanitary codes can address the design of stormwater drainage systems, the location of drinking water wells, and the design and placement of on-site sanitary waste disposal systems. Water resources can be further protected through the adoption of land use laws that prohibit certain potentially polluting land uses in recharge areas, watersheds and near surface waters. Site plan review laws and subdivision regulations may also be used to minimize the amount of impervious surfaces, and to require that stormwater systems be designed to protect water supplies.

Municipalities also have the authority under the Public Health Law to enact regulations for the protection of their water supplies, even if located outside of the municipality's territorial boundaries. Such regulations must be approved by the State Health Department.

EROSION AND SEDIMENTATION CONTROL

Development, earth-moving and some agricultural practices can create significant soil erosion and the sedimentation that inevitably follows. Through the adoption of proper erosion, sedimentation, and vegetation clearing controls, a community can protect development from costly damage, retain valuable soils, protect water quality, and preserve aesthetics.

Such regulations are often incorporated into one of the major land use control mechanisms. A municipality may, on the other hand, wish to establish such controls in a stand-alone law. Such a law can be specifically directed at grading, filling, excavation and other site preparation activities such as the clear-cutting of trees or the removal of all vegetation. Such a law can address the issue of how construction and other activities are

carried out and can include certain minimum standards. These standards can include, for example, limits on the time land can be allowed to remain in a disturbed state, land stabilization measures, stormwater management regulations, water-body protection, and “best management practices.” A system of review can also be established to ensure compliance with the standards. In addition, in a stand-alone law controls can be applied to projects regardless of whether those projects might also be subject to zoning, subdivision or site plan regulations.

ENVIRONMENTAL REVIEW

The State Environmental Quality Review Act (SEQRA) was established to provide a procedural framework whereby a suitable balance of social, economic and environmental factors would be incorporated into the community planning and decision-making processes. SEQRA applies to all State agencies and local governments when they propose to undertake an action themselves (such as constructing a public building), or when they are considering whether to approve or fund projects proposed by private owners. While in the narrow sense SEQRA is not a local land use technique, it presents local governmental agencies that must employ it with a range of options to wisely control development.

STATE ENVIRONMENTAL QUALITY REVIEW ACT

Environmental Conservation Law Article 8
NYS Codes, Rules &
Regulations, Title 6 Part 617

The intent of SEQRA is that a government agency review the environmental impacts of a proposed project and take those impacts into account when deciding to undertake, approve, or fund it. Those impacts that cannot be avoided through modification of the project should be mitigated through conditions.

When does SEQRA apply?

State regulations categorize all “actions” as either “Type I” (more likely to have a significant environmental

impact), “Type II” (no significant impact), or “Unlisted”. For example, the granting of an area variance for a single-family residence is a Type II action, therefore SEQRA does not apply to it and no SEQRA review is required. Type I Actions are those which are more likely to have an adverse effect on the environment, and a municipality’s decision regarding a Type I Action is subject to specific notice, filing and publication requirements set forth in the statute.

The first step in the SEQRA process is to determine if the statute is applicable. If SEQRA applies, then a Lead Agency must be established, and the lead agency must make a determination whether the action may have a significant adverse impact on the environment. If it is determined that it will not have a significant adverse impact, a Negative Declaration is made by the Lead Agency, after which any agency having authority over the project may proceed to its ordinary regulatory review of it. If it is determined that an action may have a significant adverse effect on the environment, an environmental impact statement (EIS) must be prepared by either the project sponsor or by the Lead Agency. The SEQRA regulations provide that an application for approval of an action is not complete until either a Negative Declaration is filed or a draft EIS has been accepted for public review by the Lead Agency. An action which is the subject of an EIS may not be approved until at least ten days after the filing of the final EIS.

Tailoring SEQRA to local needs

SEQRA review can serve to supplement local controls when the environmental impacts of a project are not adequately addressed by existing local land use laws. The SEQRA review process also helps to establish a clear record of decision-making should the municipality ever have to defend its actions.

Municipalities have the authority to adopt their own lists of Type I and Type II actions, but they may not delete any action already on the State Type I or Type II lists. They may also, after public hearing and notice to the Department of Environmental Conservation, designate a specific geographic area as a Critical Environmental

Area (CEA). Following designation, the potential impact of an action on the environmental characteristics of the CEA must be evaluated in determining the significance of a Type I or an Unlisted action.

SEQRA is a far reaching statute that can provide a municipality with critical information about the impacts of a land development project in order that a more informed decision may be made on it. In many cases a project can be modified to avoid the environmental effects disclosed through the SEQRA process. There are several publications available from DEC that thoroughly explain SEQRA. In addition, technical assistance can be obtained by contacting the Regulatory Affairs Unit at any Regional DEC Office or at the central office in Albany.

INTERIM DEVELOPMENT REGULATIONS

More commonly referred to as moratoria, interim development regulations are designed to restrict development for a limited period of time. Moratoria are a common interim development regulation. A moratorium is a local law or ordinance used to temporarily halt new land development projects while the municipality revises its comprehensive plan, its land use regulations, or both.

The duration of a moratorium should be specified when enacted, and should be tied to the time period necessary to develop a plan or adopt local regulations.

Communities have various options in the enactment of moratoria. They may, for example, enact a moratorium on *all* development. Alternately, they may place moratoria on specific types of development. Moratoria can apply to zoning approvals, site plan approvals, subdivision approvals, building permits as well as other land use approvals.

What should be included in a moratorium law?

The elements that should always be included in a legally-defensible moratorium law are: (1) a clear statement of the basis or reason for the moratorium; (2) a stated

duration that is no longer than necessary to accomplish the creation or update of comprehensive community plans or regulations, or to upgrade infrastructure; (3) clear definitions of the activity or activities placed under moratorium; (4) a treatment of whether activities or permit processes begun prior to the moratorium will enjoy vested rights; and (5) an administrative appeal process.

The municipality must also take care, when adopting a moratorium, to follow strictly the procedures of the State enabling laws for amending zoning. Finally, the municipality should proceed to active work on updating its zoning regulations or its comprehensive plan during the period the moratorium is in effect.

DEPARTMENT OF STATE LOCAL GOVERNMENT PUBLICATIONS

Some of the Department of State's publications available to local officials are:

Guide to Planning and Zoning Laws of New York State. This essential publication for municipal officials, attorneys and planning boards is regularly revised. It has the complete text of relevant laws-- including statutory changes from the most recent legislative session.

Zoning Board of Appeals. This booklet explains the legal framework surrounding the powers and duties of zoning boards of appeals. It includes all statutory provisions effective through the current legislative session.

Site Development Plan Review. This booklet discusses submission requirements, review standards, and development considerations regarding the site plan review process. It includes a discussion of the State enabling laws, illustrative plan regulations, a sample application and design review methodology.

Adopting Local Laws in New York State. This booklet is a plain language, step-by-step guide to drafting and adopting a local law. It provides useful

information on the scope of the home rule power and is invaluable for the municipal clerk or attorney.

Intergovernmental Cooperation. This publication outlines the statutory basis for intermunicipal agreements (IMAs), and provides practical suggestions, ideas and information.

Contact the Department of State, either through its website or at the telephone numbers given on the website, for a complete list of available publications.

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Several publications are also directly accessible at the Department of State's website:

<http://www.dos.state.ny.us>