Starting Ground to Shifting Ground

Patrick Cleary, AICP, CEP, PP, LEED AP, CNU-A, *Principal, Cleary Consulting*
Lee J. Ellman, AICP, *Deputy Commissioner, Planning & Development, City of Yonkers*
Christian K. Miller, AICP, *City Planner, City of Rye*
Linda B. Whitehead, Esq., *Partner, McCullough, Goldberger & Staudt, LLP*

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STARTING GROUND TO SHIFTING GROUND

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Materials for Case Study – Croton-on-Hudson Harmon Gateway Overlay Zoning District Amendments

Patrick Cleary, AICP, CEP, PP, LEED AP, CNU-A, *Principal, Cleary Consulting*
Lee J. Ellman, AICP, *Deputy Commissioner, Planning & Development, City of Yonkers*
Christian K. Miller, AICP, *City Planner, City of Rye*
Linda B. Whitehead, Esq., *Partner, McCullough, Goldberger & Staudt, LLP*
With assistance from Liz Marrinan, *retired Planner, Village/Town of Scarsdale*

History Of Settlement Patterns

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Smart Growth in New York State: A Discussion Paper – Office of the New York State Comptroller

Additional Links:

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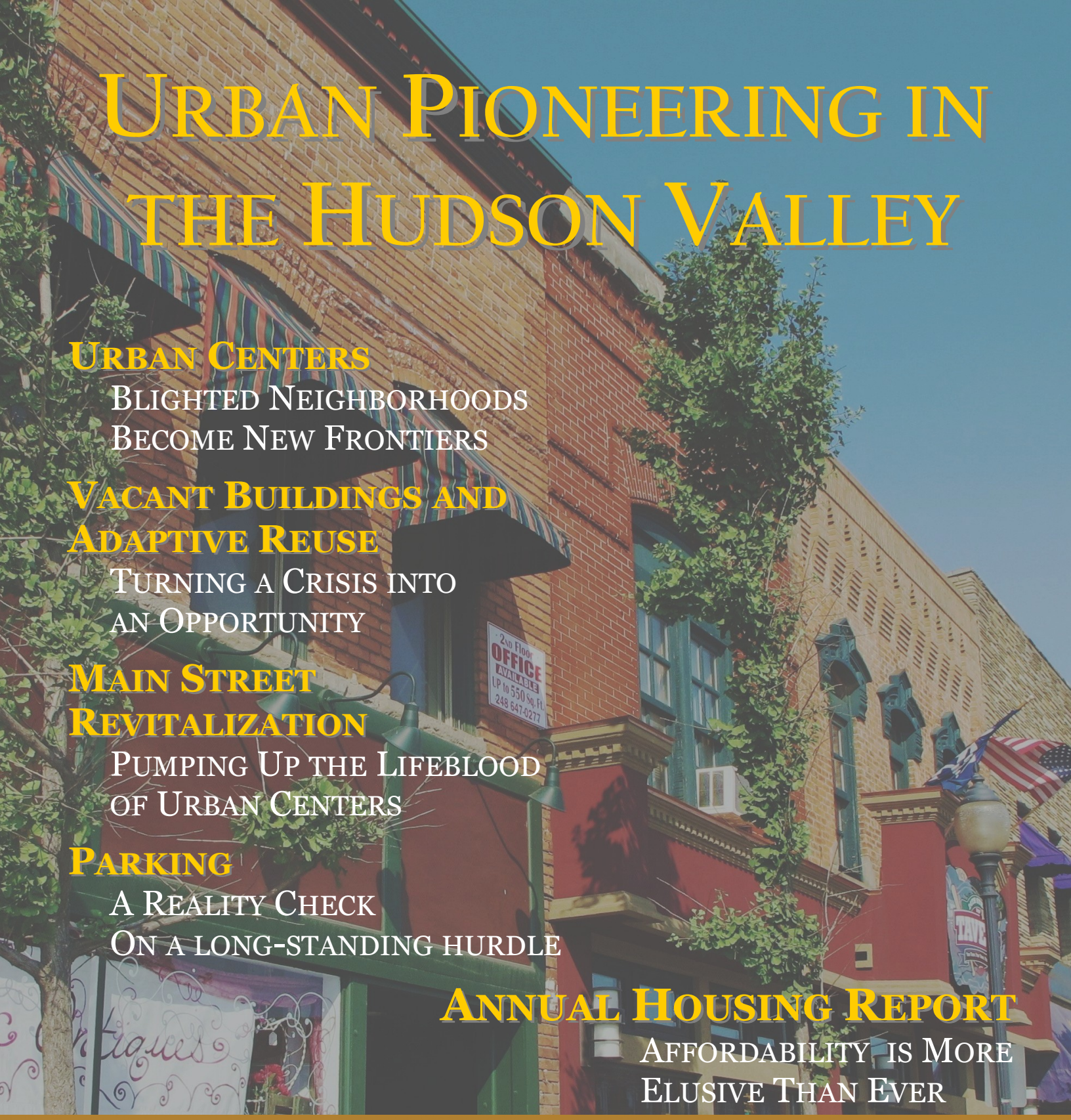
Urban Pioneering in the Hudson Valley



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September 2014

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Is there life after urban blight? For some, the answer is, "Yes." On the national level and to some degree in the Hudson Valley, walkable urban centers near employment, transportation, services, the arts, culture and entertainment are enjoying an upsurge in allure. This development is especially true for the Hispanic and aging populations as well as Millennials, aged 18 to 34.

Many see these groups as new pioneers. The term "Urban Pioneering" has become more common in a number of the region's old industrial cities. "Urban Pioneering" is a grassroots effort that breaks down social and economic barriers and represents a paradigm shift to create a living environment with more flexible and efficient regulatory requirements that do not inhibit the revitalization process. The result can be culturally diverse urban centers with adaptive and effective systems, policies and regulations that assist in transforming neglected buildings and blighted neighborhoods into desirable places to live, work and play.

Many communities and neighborhoods in the Hudson Valley are littered with vacant commercial, industrial, institutional and residential buildings. This is not only an issue in our urban centers, but also represents a major concern in the suburbs and rural areas. In the Hudson Valley's most distressed urban center, the City of Newburgh, there are more than 700 vacant structures. In more economically stable communities such as the Village of Nyack, there are only a dozen.

For area residents, vacant buildings attract crime and debris and also pose health and safety concerns. As the number of vacant properties increase and the condition of buildings deteriorates, the value of properties and neighborhoods rapidly declines.

The responsibilities and expense of maintaining vacant properties often fall on already-strapped local municipalities when taxes are typically left unpaid and the properties are effectively abandoned. The largest strain is on local police, fire, DPW and building departments. The vacant properties are typically boarded-up. However, these structures also represent opportunities. Reinvestment in urban centers through the adaptive reuse of vacant buildings comes at a high capital cost. The alternative is further abandonment, continued decline of property value and the loss of neighborhood pride.

As communities in the Hudson Valley, especially the urban centers, continue their slow recovery from the economic downturn, it is vital to reduce the number of vacant properties in an effort to mitigate and reduce disinvestment. It is just as important to reduce vacancies in suburban and rural areas, which were significantly impacted by the foreclosure crisis and have been incrementally gaining ground toward higher values.

Why Did This Occur?

The industrial and manufacturing economy declined over the past 50 years throughout the Northeast and certainly within the urban centers of the Hudson Valley. Once major centers of employment, cities such as Newburgh, Kingston, Poughkeepsie and Middletown, lost much of the blue collar economy and the associated ancillary businesses that once lined the vibrant Main Streets. Simultaneously, the creation of the interstate road system, more efficient automobiles and the development of housing subdivisions in the suburbs pulled the population out of the cities. Commuting by car, train and bus became commonplace. The development of regional shopping malls and now internet shopping hampered Main Street and urban centers even more.

As a result of lost business and industry, residential developments began to shoulder the property and school tax burden. The overall economy declined as did household formations as the wages and pure number of employment opportunities declined for young adults with a college degree and enormous student debt. Household formation declined as young adults were forced to continue to live with their parents or simply moved out of the Hudson Valley. This has been evidenced by the lack of population growth and declining school enrollment. All of these factors left many of the urban, suburban and rural areas with vacant buildings, empty storefronts and large numbers of foreclosures.

A Paradigm Shift is Occurring

The recent change in demographics and the desirability of living in an urban center is starting a resurgence of Main Streets and is beginning to ignite the interest of developers in the urban core. Municipal officials, funding agencies and community and economic development practitioners are positioning neighborhoods for redevelopment. Once vacant and abandoned buildings are now leading the way as new places to live, work and play. A sense of pride and ownership is returning to urban centers and the excitement and vibrancy is palpable.

Let's Take a Look Inside . . .

This report examines the issues faced within urban centers through best practices, tools and case studies in the field of community development, Main Street revitalization, zoning and affordable housing. The report also provides demographic and real estate data, housing cost burden analysis and research establishing and documenting the need for continued support in the preservation and development of affordable housing.

VACANT BUILDINGS: A PROACTIVE APPROACH NEEDED

As the demographics of the Hudson Valley change and evolve, it is vital that local governments and school districts understand how to effectively address the impact of vacant buildings on the community. Hudson Valley Pattern for Progress conducted an assessment of this issue in municipalities throughout the region. The assessment began by surveying building inspectors, who are typically responsible for ensuring buildings and properties are safe, to determine whether they identified vacancies as a major problem for their municipalities. The surveys were followed up with questions concerning who is responsible for the taxes and maintenance of the properties; whether any new developments are currently under construction; and most importantly, how building departments were tracking the vacant structures and empty parcels of land in their municipalities.

In the attempt to compile an inventory of vacant property, Pattern found that many municipal building departments lack a system for tracking vacant commercial and residential properties. Most officials were unclear as to whether a comprehensive list exists outlining vacant structures and parcels of land. In many cases, the tax assessor maintained a listing of vacant structures as records were required for property tax purposes. The tax assessor could and often provided a baseline estimate of the number of vacant properties, but detailed data is very limited.

Resources such as staff time in many of the municipalities is limited and budgets are already stretched, therefore, establishing and maintaining a vacant building system is often very difficult. The inability to aggregate property conditions makes it difficult for municipal governments to identify common issues with properties, and hinders attempts at addressing these challenges. One building inspector described their listing of vacancies as "complaint driven." Other inspectors indicated the time lapse between the identification of the vacant building and notifications to the owner results in further decay of the property. In the case of an absentee owner, further decay results in more costly repairs, which municipal governments end up shouldering.

Impressively, the building inspector for the Village of Nyack had a comprehensive listing of the vacant structures, which not only included property details but also included notes on the condition of the property. The City of Newburgh has more than 700 vacant properties which are privately held, owned by the city or a financial institution. Newburgh has developed and adopted a vacant building ordinance. The ordinance includes a requirement for registering vacant buildings by the owner and there is a fee structure and regulations that must be adhered to. There are a number of code requirements the owner must follow such as: maintaining the grounds, enclosing and securing the structure, posting a sign affixed to the structure with the owner's contact information and maintaining liability insurance. Newburgh has also established enforcement of the ordinance and penalties for offenses.

Recommendations

- Use a standardized system for proactively tracking vacancies before they become expensive problems for which the municipality has to take responsibility
- Determine a process and identify a municipal department responsible for monitoring vacancies
- Employ a coding system to demarcate the types of damage a structure has sustained
- Establish a council of building inspectors who meet quarterly to discuss issues and share best practices
- Recover maintenance costs through municipal liens

Foreclosures

Vacant buildings in the rural, suburban and urban setting are often a result of foreclosure. As Pattern has previously reported, foreclosures have run rampant in the Hudson Valley. Although the number has declined slightly over the past three years, foreclosures still represent a major issue for both homeowners and municipal officials.

The term "Zombie Foreclosures" is used to describe properties that are in the foreclosure process where the owner has vacated the home. "Zombies" are, in part, a result of the lengthy judicial process in New York State. Many homeowners that vacate their homes during the foreclosure are not aware the property and school tax liability still rests with them. Local municipalities are impacted due to the delayed or lost property tax revenues. RealtyTrac reports properties in New York State have the longest average time in the foreclosure process (418 days) compared to all other states. According to the report, the three financial institutions with the largest inventory of Zombie foreclosures are Wells Fargo, Bank of America and Chase.

One way to solve the Zombie issue is for the homeowner to go through a short sale, which must be approved through the lender. Another method to resolve the Zombie foreclosure is through counseling and education.

Proactive Strategy

New York State Attorney General Eric Schneiderman proactively dedicated $60 million from the National Mortgage Settlement to support the original Homeowner Protection Program (HOPP). The HOPP provides direct funding to support legal services and housing counseling agencies that provide no cost representation to struggling homeowners. Services are provided in the Hudson Valley through accredited housing agencies such as RUPCO, Hudson River Housing, Rockland Housing Action Coalition, Housing Action Council, Putnam County Housing Corp., Westchester Residential Opportunities and Community Housing Innovations.

In July, the Attorney General announced that $182 million – $92 million in cash, and at least $90 million in consumer relief – would be allocated to New York State as part of a $7 billion settlement with Citigroup to assist homeowners struggling with foreclosure.

CASE STUDIES - ADAPTIVE REUSE OF VACANT BUILDINGS

Lace Mill - Kingston

The "Lace Mill" is an early twentieth century (circa 1903) mill structure located in the blighted mid-town area of the city of Kingston. This structure is historically significant in that it is a prominent monument to a once thriving textile manufacturing activity in Kingston, in an industrial district adjacent to the rails that stretched from the Strand Gate of the former stockade across the plain to the Roundout shipyards. Located just 100 miles from the New York City fashion district, the United States Lace Curtain Mills employed hundreds of Kingstonians over several generations.

RUPCO, a local not-for-profit multi-faceted housing organization, has successfully achieved listing the property on both state and federal historic registers. The existing building totals approximately 53,000 sf of floor area on a 1.6 acre urban site. The building has a varied history of industrial and warehousing uses. It has been largely underutilized over the past two decades and presents as a blighted and forgotten structure featuring boarded windows, presenting no public interface and representing lost opportunity.

RUPCO, the project developer and managing agent, envisions an historically sensitive and energy-efficient adaptive reuse of the structure to accommodate artist housing, effectively leveraging private investments already made in the local and regional cultural economy. The project will create significant new capacity to enhance the existing and growing artistic community of Kingston and the surrounding area. The restoration will further benefit the community as an opportunity to remove blight, create short-term construction jobs, provide necessary housing and act as a catalyst for economic rejuvenation in this area of the city of Kingston.

> *"The adaptive reuse of the Lace Mill builds upon the creative placemaking movement that is occurring in the City of Kingston. We eliminate blight, revitalize a historic structure and attract the creative class by building artist housing. We are contributing to the economic uplift and creating a place where people want to be!"* ***– Kevin O'Connor, CEO, RUPCO***

The "Lace Mill" is planned to accommodate 55 units of low income housing (50-60% AMI) with a preference to those engaged in the arts as their primary source of income. The unit mix is projected to be 5 studios, 32 one bedroom units, 17 two bedroom units and 1 three bedroom unit. These units are anticipated as true artist loft spaces featuring high ceilings and northern light promoting active studio space in a live-work unit concept. All units will be handicapped accessible. The existing subterranean boiler room will allow for development as community and gallery space with anticipated amenities that will cater to the arts community. A community sculpture garden is anticipated to compliment the interior gallery space, offering on-site passive recreational space to tenants and community alike. The site will accommodate ample tenant parking and provide a turnaround drop off at the building's main entrance. Operational programming will include on-site services including financial counseling, pre-homeownership courses and counseling, medical and nutritional services and youth and senior programming. The project's location is central to all civic, retail and entertainment services available in the city of Kingston including public transportation. It also offers proximity to several art-related businesses and galleries.

The total project costs are estimated at approximately $18.2million. New York State Housing Finance Agency is using 4% tax credit and bond financing to complete the project. Funding sources include Federal Low Income Housing Tax Credits, Federal and State Historic Tax Credit programs, Housing Finance Agency grants, EPF preservation grant, NYS Urban Initiatives (UI) program, NY Main Street program, NeighborWorks America, NYSERDA incentives for qualified measures and a private mortgage. The project has been awarded a Central Hudson Main Street Revitalization Program grant and a TD Charitable Foundation Housing for Everyone grant. The City of Kingston has committed local Community Development Block Grant funding to support the project as well. The project received local approval in September 2013 and construction began on January 2014. Units will be ready for occupancy on June 2015.

WHAT WAS ONCE OLD IS NEW AGAIN

Poughkeepsie Underwear Factory

Hudson River Housing
Poughkeepsie Underwear Factory

Built circa 1874 as a dry goods factory, over the years, the factory operated under various owners. In 1902 it became the Poughkeepsie Underwear Company, manufacturing undergarments for women and children and distributed throughout the United States. The factory was also known for its manicured grounds and tennis court for use by its employees, a very unusual workplace amenity for its day. The factory was listed on the National Register of Historic Places in 1982.

Hudson River Housing (HRH) acquired the property and adjoining lot bordering the Fallkill for approximately $175,000 in 2012. HRH developed the adaptive reuse concept including the commitment to keep one third of the building commercial or light industrial to create training and employment opportunities and spur economic development in the Middle Main neighborhood. In addition to the commercial/light industrial portion of the building, HRH will build 15 affordable rental apartments and work/live lofts.

The projected $5 million project financing and funding will be approximately 35% owner equity and equity from sale of Federal and State Historic Tax Credits, 50% private and public grants and donations, and 15% debt financing. The project has already received significant financial support from New York State, Dutchess County, NeighborWorks America, Central Hudson Gas and Electric and numerous private donors. Most recently, the Poughkeepsie Underwear Factory has been selected as a priority project by the Mid-Hudson Regional Economic Development Council. The project is in design and anticipated to receive NYS Historic Preservation Office and National Park Service approval by the end of 2014. Rehabilitation of the exterior is expected to commence in early fall of this year.

"By bringing affordable housing and local food production together in the re-purposed 19th century Poughkeepsie Underwear Factory, we expect to re-energize the core of Poughkeepsie. This is much more than a real estate development; it is about engaging the community in the revitalization of an entire neighborhood."
- Ed Murphy, Executive Director, HRH

Mill at Middletown

Jack Kucy

The Mill Building is located at the corner of Mill and Harding Street in the City of Middletown. The Mill Building was built in 1875 and has been used for light industry and retail. Uses included hat and shoe manufacturing, wood furniture manufacturing and new automobile parts retail.

The project, developed by Excelsior Housing Group and RECAP, includes the rehab of the historic mill building (and a related outbuilding) and the new construction of a four-story addition. Specifically, the project proposes the rehabilitation of the mill structure (~30,000 sf), renovation of the outbuilding into the residents' community building, and the construction of a new four-story addition (~17,180 sf). The main three-story mill building will be converted into residential apartments and community service facility with tenant storage. The new four-story addition will connect to the mill building and will include apartments, a mailroom, the laundry room and an elevator. A landscaped courtyard will connect the new addition to the community room and a play area.

Magnusson Architecture and Planning

There will be 17 one-bedroom, 22 two-bedroom and 3 three-bedroom units for a total of 42 apartments. The Mill will serve 20 working individuals and families making up to 50% of area median income; 13 will be reserved for homeless individuals and families; 8 Project Based Vouchers will be allocated to the complex and there will be 1 on-site superintendent.

"The Mill at Middletown project will have a catalytic effect on this part of the downtown. The project will not only save and restore a major historic treasure, but it will create high quality housing so that people can live and shop in the downtown while also creating jobs for Middletown residents". ***– Patrick Normoyle, Excelsior Housing***

Funding sources include Federal Low Income Housing Tax Credits, NYS Housing Trust Fund, NYS Urban Initiatives, Orange County HOME, Federal Home Loan Bank of New York, NYSERDA MPP and the Community Preservation Corporation. The total development cost is approximately $14.3million.

Breathing New Life into Main Street

"Main Streets" in the hearts of urban centers are critically important to the overall health of the community; they represent positive economic opportunity growth and civic pride. A vibrant Main Street attracts residents, encourages investment, establishes a sense of place and provides the opportunity to create housing. A healthy Main Street protects the property values of the surrounding residential neighborhoods.

The traditional Main Street district is ideal for small, local independent and family-owned businesses, which, as a result, allow for the recirculation of profits within the community. The revitalization of a Main Street also reduces sprawl by concentrating development in an area with existing infrastructure. A blighted Main Street with vacant buildings promotes crime and disinvestment and is costly for the local municipality due to lost tax revenue and an increase in providing services such as police, fire and maintenance.

Over the past 15 to 20 years, urban revitalization and reinvestment emerged as a priority in community and economic development. Renovating storefronts, façades and sidewalks is vital, but is simply not enough. The creation of new and the preservation of existing housing in the downtown is vital to the overall revitalization of a neighborhood. Vacant industrial, commercial and institutional buildings can play significant roles in redevelopment efforts and offer opportunities to become anchors of a community. The redevelopment of these structures shapes the image of a neighborhood, increases desirability and helps to create a walkable and thriving downtown.

Why Should Main Street Be Revitalized?

The Main Street district or downtown represents the opportunity to be a prominent employment center, if not already. Although many of the employers may be small, in the aggregate it is likely they represent the largest concentration of businesses and jobs in a community. The downtown also serves as an incubator for new businesses. The downtown may not represent the most dominant shopping center; however, it is the home of unique shops and services.

The population of the urbanized area will increase as additional housing options are made available through main street revitalization. Investing in housing above store fronts, especially affordably priced housing, equates to more disposable income for residents, which in turn benefits the local shop owners.

The existing infrastructure, although in need of upgrade and repairs, represents an enormous value - as compared to building these systems from scratch. The downtown is usually the home of government services which provide a natural draw of residents. Neighborhoods with vibrant downtowns attract better teachers for area schools and residents with higher levels of education. Main Street offers a sense of place, connectivity, integration and cohesion for residents.

Small businesses typically found in urban centers and on Main Streets, in the aggregate represent the largest employer base in New York State, according to the U.S. Small Business Association Office of Advocacy. State and local officials must embrace this and design policy, programs, incentives and funding centered on the retention and enhancement of small business. The state cannot continue to swing for the home run in its attraction of only large scale employers. The multi-million dollar economic development deals that employ hundreds of workers are very important; however, economic development officials and local leaders must not lose sight of our economic base found in the urban centers and on our Main Streets.

Beacon - A Shining Example

We need to look no further than Beacon, New York, to see a very successful Main Street revitalization, which has benefitted from the NYS Main Street funding. This City also benefitted from major investments by the Community Preservation Corporation and by Dutchess County through their HOME and Community Development Block Grant funds.

In the early 90's the Main Street was vacant, boarded up and attracted crime. The City of Beacon used many of the strategies described in this report and today, Main Street Beacon, is vibrant and filled with shops, cafes, offices and housing.

A number of local developers had a vision for Beacon and through a combination of private and public partnerships, the Main Street slowly became a major regional attraction and destination. There were major adaptive reuse projects completed that became anchors for Main Street including The Roundhouse at Beacon Falls and DIA. Beacon has successfully built off of its unique attributes, amenities and historic architecture.

Main Street Funding Levels in Deep Decline

New York State has administered a Main Street Program since 2004. These state grant dollars are made available through the New York State Office for Homes and Community Renewal (HCR). The purpose of the Main Street Program is to provide an economic boost, jobs and affordable housing for local communities. Municipalities and not-for-profit agencies must compete for these funds through an annual application process. Applicants are required to show evidence of need, local community involvement, and the leveraging of private investment and resources in a targeted area within a Main Street district. The funds may be used toward planning activities, façade and building renovations, downtown anchor projects, streetscape enhancements and the preservation and development of housing.

In 2010, the Hudson Valley received $2.5million (16.4%) out of the $15.2million pool of funding. In 2013 the total statewide allocation was $3,593,382, which represented a 90.4% decline from 2010. The **overall decline in funding for the Main Street Program from 2010 to 2013 was 76.4% statewide**. Although the 2014 award winners have not been announced, **only $2.2 million was available this year.** The decline in Main Street funding has clearly continued and contradicts the aggregate size of Main Street businesses in New York State.

Funding Levels			
Year	**Hudson Valley***	**Total**	**Percent**
2010	$2,500,000	$15,284,050	16.4%
2011	$1,032,338	$8,703,608	11.9%
2012	$500,000	$6,259,375	8.0%
2013	$240,000	$3,593,382	6.7%

** excludes Columbia & Greene County (HCR's Capital District)*

Main Street revitalization cannot be solely left up to the New York State Main Street Program. Local governments also play a vital role in reinvestment strategy. In addition to streamlining the approval process for the revitalization of urban centers, local municipalities could allow for and provide tax incentives. Comprehensive plans and zoning could be re-evaluated and revised to promote housing downtown. High quality, attractive and affordable housing in the heart of the Main Street helps establish a market for the businesses.

Many local governments also receive Community Development Block Grants and HOME funds directly from the federal government, which should be used in tandem and in concert with local private investment. New York State funding through the Department of State, Environmental Conservation, Parks and Recreation and Empire State Development Corporation resources could be tapped for comprehensive financing. Equity investment may also be added into the financing proforma through the use of Historic Tax Credits to preserve the local architecture, which is a major attraction for both tourists and residents. All of these funds may be used for the creation and preservation of housing, which increases downtown populations and establishes a market for the local professional services, shops and restaurants.

In order to advance the revitalization of Main Streets, public infrastructure investment is paramount. Community and economic development funding represents a small piece of the reinvestment puzzle. The federal and state government should allocate more funding for the infrastructure of our urban centers to include water, sewer, sidewalks, roads, traffic flow patterns and streetscape enhancements.

Toolbox of Strategies for Main Street

Here are a few recommendations and strategies to assist in Main Street revitalization efforts:

1. Embrace and attract a culturally and ethnically diverse population of all ages and incomes through the creation of new and the preservation of existing housing
2. Update local zoning and Comprehensive Plans to maximize and allow housing above storefronts and the adaptive reuse of vacant industrial, commercial and institutional buildings for high density housing of all types for all income levels
3. Create Transit Oriented Development to include retail, office, parking and housing
4. Design long-term, politically neutral Main Street Revitalization Programs that are consistent with local, county and regional planning documents; this is critical to the procurement of state and federal grant funds
5. Conduct a blight study and existing-conditions report as a tool for the potential establishment of an Urban Renewal District or a Business Improvement District
6. Utilize "Complete Streets" designs to make Main Street pedestrian-friendly and maximize all aspects of the downtown to enhance the shopping experience by establishing a 24/7 presence and ground floor activities
7. Slow traffic and develop green space and parks using Placemaking practices to create a pedestrian-friendly environment such as façade and front-yard enhancements to promote visual interest and attention
8. Host an annual Main Street Day to showcase and promote the downtown - invite developers, local residents, existing and potential storefront tenants, elected officials, Realtors and funding agencies
9. Create local tax incentives for new investment and streamline the local approval process by providing a clear, sensible but flexible regulatory framework for development to maximize public and private resources and partnerships
10. Develop diverse high-density housing options with services and amenities that build upon the community, boost the local economy and promote historic preservation

PARKING REQUIREMENTS AND THE COST TO AFFORDABLE HOUSING

Thinking Outside of the "*Parking Box*" in the Urban Center

Parking in the core of the downtown has always been a hot issue with the plea for more parking by visitors and sometimes erroneous requirements by the municipality. When developing rental housing, whether in an urban center or in the suburban markets, many local ordinances require more parking spaces than are actually needed or used. This is particularly an issue when developing affordable housing, especially in higher density developments that are associated with adaptive reuse of vacant buildings in the urban core.

Development costs associated with additional land and construction and the continued maintenance of these large seas of asphalt are prohibitive, not to mention environmentally unsound. The requirements for parking also reduce the number of affordable housing units and the potential for amenities, including open space, on-site child care services and the possibilities for mixed use such as ground floor retail and professional offices. In some communities, due to the pure number of required parking spaces, the lots become the focal point in the design and detract from the neighborhood character.

Most downtowns actually have sufficient parking if counting the total number of spaces. Part of the issue is wrapped in a paradigm called "Line of Site." The theory simply states that if you cannot see your destination on a Main Street - it is too far and therefore is not enough parking. In actuality, parking in a vast majority of the downtowns, is within closer proximity than at the suburban malls. Urban revitalization, which may include the adaptive reuse of non-residential buildings into high-density housing and allowing housing above storefronts in combination with the "Line of Site" theory has many planning and zoning boards nervous about parking. The result is local ordinances that require more parking spaces than are actually used.

The formulas used to calculate parking spaces are analogous to the formulas typically utilized by municipalities when examining the impact of rental housing on the number of additional school children. Local officials along with planning, zoning and school boards have always had major concerns with the number of children being added to the local school when housing is developed in the community. When rental housing is proposed, the alarm bells of 2.5 kids per unit still rings true in many communities, which has been proven incorrect by numerous studies. Clearly the closing of over 30 school buildings in the past 15 years and the continued declining school enrollment (with rare exception) should be sufficient data to prove that old formula as a fallacy - parking spaces are no different.

The Millennials are attracted to pedestrian and environmentally friendly urban centers where getting to work is either by foot or by mass transit. Owning a car is not always necessary, which also may alleviate the need some parking spaces.

Seniors are also attracted to urban centers based upon walkability and proximity to services, arts and cultural events. Housing developed either through adaptive reuse of non-residential buildings or above existing storefronts, are typically studios or one-bedroom units. These smaller units are occupied by one person. Therefore the likelihood of a Millennial or senior citizen owning a vehicle is slim and owning two is rare.

Too Many Spaces in Suburban Housing Developments

Reality Check

In the suburban areas, which typically have lower density housing, municipalities generally require two parking spaces per unit. However, often times, the local boards base the number of parking spaces on the number of bedrooms - more bedrooms equates to more parking. Regardless of using bedrooms or units in the formula, the question at hand - are the parking spaces needed?

Pursuant to Pattern's survey of 56 multi-family housing developments in Ulster, Sullivan, Dutchess, Orange and Putnam Counties - the results were astounding. Of the total 3,949 required parking spaces, only 2,521 are used on a daily basis (64%) - leaving 1,428 spaces in excess capacity (36%).

County	# of complexes	Type of Complex		Parking Spaces		
		Family	Senior	Required	Used	Excess
Ulster	11	6	5	527	352	175
Sullivan	7	4	3	591	370	221
Dutchess	10	4	6	752	420	332
Orange	24	4	20	1,945	1,313	632
Putnam	4	0	4	134	66	68
Total	**56**	**18**	**38**	**3,949**	**2,521**	**1,428**

Source: Pattern for Progress

Assuming each parking space, overflow and associated turning areas comprise approximately 450 sf, there is a total of 642,600 sf of excess paved areas, which is almost 14.75 acres of land. The typical affordable housing development occupies 12 units per acre, therefore an additional 177 units would be made available to the ever-increasing demand for affordable housing.

The cost of the land, construction and long term maintenance is covered through a combination of higher rents, deeper public subsidies and additional debt on the development. The upfront cost and long term expense could be used to build additional units or to provide amenities and/or services for residents.

Parking Solutions

Regardless of location, whether urban, suburban or rural, local ordinances for parking standards can be adjusted to reflect demographic, geographic and management factors. Municipalities should recognize and account for the likelihood of vehicle ownership in age-restricted housing. Access and distance to services and shopping also play an important role in determining the number of spaces.

In an urban setting, one way to change parking requirements is to provide residents with alternatives to driving. Designing walkable communities combining professional office space, retail, services and both high-density housing and apartments above storefronts reduces the need for vehicles.

Unbundling parking is yet another strategy. As opposed to automatically requiring a specific number of parking spaces associated directly to the building space, parking may be "unbundled" and either rented or sold separately. Assuming a rental apartment "comes with" two parking spaces, the developer would "unbundle" the parking from the rental unit and reduce the monthly rent if only one space is needed by the resident. This option allows the developer and resident to adjust their parking supply to their demand.

Municipalities should work in collaboration with developers to create a car-sharing option. This would allow for the downtown dweller to enjoy the use of a vehicle without the cost of ownership and further reduce the number of parking spaces needed. Or potentially, if the municipality needs more downtown parking, find an operator that benefits from the parking spaces and create a system for the owner of the housing unit to "purchase" additional space.

Flexible zoning codes that provide for a "deferred" minimum parking requirement, allows a developer to hold open space in a "landscape reserve" for additional parking based upon proven need. This approach saves costs and is more responsive to community needs. Open space and "green" amenities also increase desirability of a community thereby raising demand.

MARKET VALUES AND TAXES...SHOULDERING THE BURDEN

The real estate market remains in flux with swings in the inventory and sales data. There have been no major economic changes in the past year, interest rates have essentially remained the same, underwriting criteria is still strict, inability for some seniors to sell their homes, student debt remains a drag on purchasing power and there has been a decline in the creation of new households. Overall, the market data does not show any significant emerging trends and markets that widely differ within each county.

Rockland, Westchester, Ulster and Dutchess have all witnessed an uptick in the median sales price from Q2 2013 to Q2 2014, while Orange, Putnam, Sullivan, Columbia & Greene have all shown declines. The increases in median sale price have been minor, however, slow and steady increases may offer a stronger foundation to a continued trend.

The number of sales, which is sometimes referred to as the "Lifeblood" of the real estate market, has shown large declines in Orange, Putnam, Westchester, Dutchess and Sullivan. Rockland and Greene have shown small increases, while Ulster is flat. Columbia County sales have increased substantially; however, the median sales price in Columbia County has declined by more than 16%, which represents the largest decline in the Hudson Valley.

The inventory of homes on the market has dramatically increased in Orange County, which is due in large part to the number of distressed properties, the slow moving short sales process and an inventory that has simply accumulated over time. Some believe there is an impact due to the possibilities of casinos. Putnam, Westchester, Ulster and Dutchess have all witnessed a steady increase in inventory, while Columbia and Green have declined and Rockland remains flat.

2nd Quarter	Inventory			Existing Home Sales*			Median Sale Price*		
County	2012	2013	2014	2012	2013	2014	2012	2013	2014
Putnam	796	894	956	162	182	170	$299,500	$310,500	$285,000
Orange	2,633	2,522	3,023	444	552	485	$234,500	$239,750	$232,500
Dutchess	3,033	2,331	2,406	489	477	422	$240,000	$238,000	$246,000
Westchester	4,120	3,702	3,913	1,151	1,425	1,232	$619,000	$650,000	$651,250
Rockland	1,206	1,034	1,027	307	333	347	$374,900	$390,000	$408,750
Ulster	2,354	1,988	2,053	378	329	332	$205,000	$210,050	$212,000
Columbia	1,168	1,160	1,103	139	152	169	$185,000	$215,000	$180,000
Greene	1,140	1,243	1,186	106	112	117	$151,500	$199,500	$168,000
Sullivan	1,692	1,238	1,107	148	120	105	$115,500	$110,000	$103,525

Source: NYS Association of Realtors, Mid-Hudson Multiple Listing Services, LLC and Hudson Gateway Assoc of Realtors (annually adjusted).
**Ulster, Dutchess, Sullivan, Columbia & Greene include condos; Orange, Putnam, Rockland and Westchester exclude condos & coops*

Taxes, Taxes, Taxes...

Although the median sales price of homes has declined significantly since the housing boom of the mid-2000's, a major obstacle in affordability is the tax bill, specifically school taxes. Taken as a whole, school taxes in the Hudson Valley are significantly higher than the balance of the state north of Manhattan and represent the lion's share of a homeowner's annual tax bill.

County	Average Annual Residential Taxes in 2011 (not adjusted by median sales price)						
	County	% of total	City/Town	% of total	School	% of total	Total
Putnam	$928	11.2%	$1,318	15.9%	$6,040	**72.9%**	$8,286
Orange	$754	12.8%	$1,078	18.4%	$4,036	**68.8%**	$5,868
Dutchess	$935	15.8%	$940	15.9%	$4,038	**68.3%**	$5,913
Westchester	$2,021	15.9%	$2,298	18.1%	$8,398	**66.0%**	$12,717
Rockland	$857	9.9%	$2,171	25.0%	$5,663	**65.2%**	$8,691
Ulster	$925	17.7%	$1,005	19.2%	$3,299	**63.1%**	$5,229
Columbia	$1,392	27.9%	$547	11.0%	$3,048	**61.1%**	$4,987
Greene	$661	19.6%	$667	19.7%	$2,050	**60.7%**	$3,378
Sullivan	$948	22.5%	$832	19.8%	$2,429	**57.7%**	$4,209

Source: NYS Office of Real Property Tax Services

Positive Traction for New Buyers

It has become a "renter's world" as described in last year's Housing the Hudson Valley report "American Dream Revised," but there is positive traction for new homebuyers.

Access to credit since the housing bubble burst in the late 2000's has been very difficult. Prior to the "Great Recession," underwriting criteria was much more relaxed and flexible than what it is today. The combination of lower wages, higher taxes, an increase in student debt and strict underwriting are all barriers to obtaining a mortgage. Those factors in combination with the lack of household formation have had a detrimental impact on the housing recovery, which is shown by the market report earlier in this brief. However, things may be looking up. There are two positive changes in regard to credit scores that may influence home buying.

Policy Alert: FICO Scores

The Fair Isaac Corporation (FICO), the nation's main gauge of consumer credit, made drastic changes in their credit scoring calculation policy. As of August 2014, FICO will stop including any record of a consumer failing to pay a bill if it has been paid or settled with a collection agency. FICO will also reduce the impact of unpaid medical bills that are with a collection agency.

An increase in consumer FICO scores will not only increase the available pool of potential homebuyers, it will also reduce the interest rate charged to borrowers. For example, a borrower who receives a 25 basis point reduction in interest on a 30 year mortgage will save approximately $12,900 on a $250,000 loan.

Based upon the recalculations of the FICO score, now referred to as FICO Score 9, a borrower may see an improvement of between 25 and 100 points. This may shift a loan application from "denied" to "approved" or may shift an approved borrower into a lower-risk bracket.

The policy changes are anticipated to boost consumer lending, especially those that have been denied mortgages. Furthermore, the policy changes may impact the ability to purchase large ticket items and shift the economy in a positive direction. The goal, according to the Consumer Financial Protection Bureau, is to increase lending without creating more credit risk.

"This move will ultimately make a real difference in the lives of millions of Americans, who have been shut out of the housing market or forced to pay higher mortgage interest rates because of flawed credit scores," said National Association of Realtors President Steve Brown. "Since the housing crash, overly restrictive lending has been the greatest obstacle to homeownership."

There are critics to this new scoring—as some believe it will allow those who cannot handle credit to fall farther behind, may lead to bankruptcy and result in losses for financial institutions.

Renters Credit Reporting

Renters do not build credit by making their monthly housing payments on time as opposed to the benefit enjoyed by homeowners with a mortgage. The opportunity for renters to establish credit as a financial asset is possible if rental payments were reported to the credit bureaus. Affordable housing agencies and property managers can position themselves to provide this benefit through rent reporting. Rent reporting is a valuable and workable option to establish and build credit, especially for low-income renters.

Benefits to Renters:

- Build credit without assuming additional debt
- Establish a new positive, active trade line on their credit report
- Increase access to safe and affordable credit products and decreased reliance on predatory lenders

Benefits to Property Managers:

- Positive incentive to pay rent on-time every month by their residents
- Opportunity for relationship building between property management and residents
- Increase competitiveness for rental property owners

Another Strategy to Assist Renters

The creation of a Lease to Purchase Program helps renters become home owners. These programs allow a tenant to become a homeowner if certain conditions are met. Those conditions usually require the tenant/buyer to pay an initial Option Fee and a monthly lease payment for a specified period of time.

A portion of the monthly rental payment is used as a credit towards the purchase of the home to begin building equity in the home during the lease period. However, if the option to purchase the home is not exercised, the credit is lost. At the end of the lease, the tenant becomes a buyer and is required to secure financing to purchase the home. The buyer would pay the purchase price minus the accumulated monthly rental credits. Assuming a rental credit of $400 per month over a two-year period, the buyer would save $9,600 toward the down payment. Here are a few more benefits:

- Easier to qualify for than a traditional mortgage
- Renters can repair their credit while living In the home
- Renters can start building equity from the beginning
- Renters maximize savers clubs

Housing Cost Burden Analysis

Defining Financial Hardship

For the past three years, Pattern has provided evidence of the lack of affordable housing in the Hudson Valley. Taxes are a main driver, stagnant wages that do not keep pace with the cost of living and the low supply of affordable housing are factors.

According to the U.S. Department of Housing and Urban Development (HUD), an affordable home is typically based upon a housing payment of no more than 30% of household monthly income. When a household pays more than 30%, housing is considered to be unaffordable and at more than 50% it is severely cost burdened. Establishing the number of households experiencing cost burden is critical when assessing the ability of existing and proposed housing stock to adequately provide for the needs.

This HUD data is based upon "custom tabulations" from the U.S. Census Bureau that are largely not available through standard Census statistics. These data, known as the "CHAS" data (Comprehensive Housing Affordability Strategy), demonstrate the extent of housing problems and housing needs, particularly for low-income households. The primary purpose of the CHAS data is to demonstrate the number of households in need of housing assistance. This is estimated by the number of households that have certain housing problems and have income low enough to qualify for HUD's programs (primarily geared toward 30, 50, and 80 percent of median income).

The CHAS data are used by local governments to plan how to spend HUD funds, and may also be used by HUD to distribute grant funds. The CHAS data is based on the 2007-2011 American Community Survey (ACS) 5-year data and the 2009-2011 ACS 3-year data, which are the most recent tabulations produced by HUD. It was made available in May 2013 and the table generator was updated on May 28, 2014.

Housing Cost Burden is the ratio of housing costs to household income. For renters, housing cost is gross rent (contract rent plus utilities). For owners, housing cost includes mortgage payment; utilities; association fees; insurance; and real estate taxes.

Affordability is expressed in three levels:

Affordable - Household spends **less than 30%** of their gross income toward housing costs

Unaffordable - Household spends **more than 30%** of their gross income toward housing costs

Severe - Household spends **more than 50%** of their gross income toward housing costs

Cost Burden Threshold for Renters and Homeowners						
	% of Renters w/income at or below 80% Household Area Median Income			% of Owners w/income at or below 80% Household Area Median Income		
County	Affordable	Unaffordable	Severe	Affordable	Unaffordable	Severe
Columbia	44.3%	30.9%	25.8%	41.3%	25.3%	33.4%
Dutchess	25.1%	30.2%	44.7%	32.4%	25.8%	41.8%
Greene	29.9%	29.9%	40.2%	37.6%	22.7%	39.4%
Orange	25.8%	28.3%	45.9%	27.3%	27.4%	45.3%
Putnam	26.0%	27.5%	46.5%	21.8%	24.3%	53.9%
Rockland	24.3%	28.2%	47.5%	20.0%	23.2%	56.8%
Sullivan	34.7%	25.7%	39.6%	27.7%	25.7%	46.6%
Ulster	26.7%	29.5%	43.8%	33.3%	26.0%	40.7%
Westchester	28.0%	30.7%	41.3%	24.9%	22.3%	52.8%

The Impact

Based upon the limited number of affordable housing units throughout the Hudson Valley, many households must sacrifice on quality and location for their home. As a result of families living with a housing cost burden, households have limited dollars for other necessities such as food, clothing and healthcare.

Extremely low income families that do not receive rental housing assistance or live in an affordable housing development are severely housing cost burdened. The combination of living in substandard housing, paying more than 50% of their income for housing and not having access to healthcare is devastating to families and to the overall community.

OUT OF REACH - 25 YEARS LATER . . .

Where are we now?

The National Low Income Housing Coalition published the first Out of Reach report in 1989 in an effort to shed light on the affordable housing crisis facing the nation. This annual report is widely recognized in the affordable housing industry and used by housing agencies, advocates, not-for-profits, developers and policy makers to move the dial on building and preserving affordable housing.

The data for 2014 continues to show how far out of reach housing is for the very low and low-income renters in each county of the Hudson Valley. The gap between Fair Market Rent (FMR) and Affordable Rent at the Mean Renter's Wage Rate continues to grow and there is an insufficient supply of new affordable housing units being constructed in the Hudson Valley. Regardless of declining or stagnant unemployment rates, wage rates are simply not keeping up with the cost of rent. In fact, the Mean Hourly Renter's Wage Rate declined in every Hudson Valley county from 2013 to 2014, except for Orange County - which rose by $0.07/hr. This change is significant as a percentage of income. For example, the wage rate in Putnam County dropped by 14.2% and by 9% in Sullivan County.

Mean Renter's Hourly Wage Rate			
County	2013	2014	% change
Columbia	$10.90	$10.67	-2.10%
Dutchess	$12.91	$12.63	-2.20%
Greene	$10.15	$10.03	-1.20%
Orange	$9.91	$9.98	0.70%
Putnam	$10.60	$9.10	-14.20%
Rockland	$12.29	$12.25	-0.30%
Sullivan	$10.12	$9.21	-9.00%
Ulster	$9.82	$9.20	-6.30%
Westchester	$17.60	$17.29	-1.80%

Affordable housing is sorely needed and in demand. Today's newly constructed rental units are not affordable to a majority of today's renters. In Putnam County, 62% of the renters are unable to afford a two bedroom unit at the fair market rent.

OUT OF REACH 2014	Columbia	Dutchess	Greene	Orange	Putnam	Rockland	Sullivan	Ulster	Westchester
2BR Fair Market Rents (FMR)	$896	$1,258	$781	$1,258	$1,440	$1,440	$907	$1,062	$1,449
Hourly Living Wage Rate to Afford 2BR FMR[1]	$17.23	$24.19	$15.02	$24.19	$27.69	$27.69	$17.44	$20.42	$27.87
Annual Living Wage Rate to afford 2BR FMR	$35,840	$50,320	$31,240	$50,320	$57,600	$57,600	$36,280	$42,480	$57,960
Estimated Mean Renter's Hourly Wage Rate[2]	$10.67	$12.63	$10.03	$9.58	$9.10	$12.25	$9.21	$9.20	$17.29
Rent Affordable at the Mean Renter's Wages[3]	$555	$657	$521	$498	$473	$637	$479	$478	$899
GAP between FMR and Affordable Rent at the Mean Renter's Wage Rate	($341)	($601)	($260)	($760)	($967)	($803)	($428)	($584)	($550)
Weekly Hours Needed at Renter's Mean Hourly Wage to Afford 2BR FMR	65	77	60	101	122	90	76	89	64
% of Renters unable to Afford 2BR FMR	50%	58%	50%	60%	62%	60%	58%	58%	59%

Notes: According to HUD, "affordable" rents represent the generally accepted standard of not more than 30% of gross income spent on gross housing costs. Fiscal Year 2014 Fair Market Rent.

[1] Hourly wage rate required to afford the Fair Market Rent for a 2BR unit, assumes 30% of income toward rent

[2] Renter wage information is based on 2012 data reported by the BLS in the Quarterly Census of Employment and Wages and projected to April 1, 2014. For each county, mean hourly earnings are multiplied by the ratio of median renter income to median total household income in the American Community Survey (2008-2012) to arrive at an estimated average renter wage.

[3] Affordable rent at the Renter's Mean Wage Rate (Hourly Rate x 2080÷12 x 30%)

Change is Needed

Housing policy must change and more resources must be allocated to provide decent, safe and affordable housing for very low (under 50% of area median income) and low (under 80% of are median income) income renters. As reported by the Bipartisan Policy Center's 2013 Housing Commission, the U.S. government spends $180 billion annually through direct appropriations and tax subsidies, but only 27% ($48 billion) supports low-income renters. A majority of today's housing policy and funding supports homeownership, through mortgage interest and real estate tax deductions, while the rate of homeownership continues to decline. The Commission goes on to suggest that the reestablishment of mortgage finance system should include a fee structure for securitizing mortgages to generate revenues that would fund a National Housing Trust Fund (NHTF). The NHTF would provide funding to construct new affordable rental housing and preserve the existing affordable housing portfolio. One of the most effective manners in which to address the issue of affordable housing is to create jobs with a living wage rate.

AFFORDABLE HOUSING FOR EXTREMELY LOW INCOME HOUSEHOLDS

High Demand - Low Inventory

The supply of affordable housing for households earning less than 30% of the median annual income is almost non-existent in the Hudson Valley. The Urban Institute, a well respected national research and policy organization, completed a study on the availability of affordable housing for low-income households based upon an analysis of data from the Census, American Community Survey and the U.S. Department of Housing and Urban Development. "Not one county in the United States has an even balance between its ELI households and its affordable and available rental units," the Urban Institute study said.

> *"America's housing policy has never fully met the demand for affordable rental housing, and the number of households served by federal rental assistance has essentially plateaued. Today, only 24 percent of the 19 million eligible households receive assistance - basically, only one in four households wins the housing assistance lottery."*
>
> ***- Urban Institute***

The gap in affordable housing continues to grow every year, especially as wages have not kept up with the cost of living. The table below shows the gap in the supply of affordable and available housing units for extremely low income renter households for each county in the Hudson Valley. The total number of housing units needed to meet the demands is nearly 63,000, according to the Urban Institute study.

Hudson Valley: Available Housing by County for Extremely Low Income Households

County	Annual Income ELI* Renter HH's *(A)*	# of units per 100 ELI* Renter HH's *(B)*	# of ELI* Renter HH's *(C)*	# of Affordable and Available Rental Units *(D)*	GAP *(C - D) = (E)*
Columbia	$21,300	54	1,051	568	483
Dutchess	$26,150	18	10,328	1,816	8,512
Greene	$17,700	54	964	521	443
Orange	$26,150	27	13,567	3,621	9,946
Putnam	$24,900	15	2,178	333	1,845
Rockland	$27,925	19	10,065	1,905	8,160
Sullivan	$18,450	56	1,934	1,076	858
Ulster	$22,150	15	6,571	1,016	5,555
Westchester	$28,625	30	38,487	11,355	27,132
		Totals	**85,145**	**22,211**	**62,934**

Source: Urban Institute
*Extremely Low Income (ELI) is calculated at 30% of the area median income for a 4-person household.
Key: (A) annual income level for ELI 4-person renter household; (B) number of affordable and available units for every 100 ELI renter households; (C) number of ELI renter households; (D) number of affordable and available rental units; (E) Gap between the number of ELI renter households and available units

Advocacy and Education Affirmatively Further Fair Housing

"Fair housing" means having "equal and unrestricted access to housing regardless of factors such as race, color, religion, sex, familial status, disability, national origin, marital status, age, sexual orientation, gender identity and expression, military or veteran status, receipt of public assistance, receipt of housing subsidies or rental assistance, ancestry, and genetic information." (HUD) New York State has strong fair housing laws in addition to those of the federal government. However, illegal discrimination still limits housing choice in the Mid-Hudson region. This is compounded by factors such as land use policies that sometimes have the effect of being exclusionary.

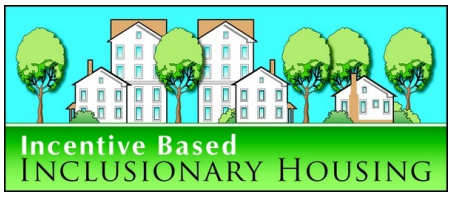
Educating property owners and community members about fair housing laws and supporting vigorous enforcement of the law is imperative in our communities. Testing and the ongoing monitoring of discriminatory practices are key pieces in eliminating bias in housing choice. The lack of knowledge of fair housing laws can often lead to discrimination on the basis of familial status. These discriminatory practices are even more evident when affordable housing developments is proposed for very low income residents.

INCLUSIONARY ZONING AS A TOOL

Local governments can do a great deal to encourage and facilitate the construction of more affordable housing within their borders. One of the most widely used tools is Inclusionary Zoning.

Mandatory Inclusionary Zoning

A community may amend its zoning code to officially require that a certain percentage of units be priced affordably in all new developments. The community rewards the developer with density bonuses, expedited permit processes, relaxed design standards, reduced parking requirements, and waivers of certain municipal fees. For example, a "moderately priced dwelling unit program" requires every new subdivision or development with 35 or more units to price between 12.5 and 15 percent of its units affordably. The affordable units are targeted to households earning less than the area mean income, with priority given to people who live or work within the county.



Voluntary Inclusionary Zoning

In many instances, a community will use the presence of an informal policy or a voluntary program to aggressively negotiate with developers for the creation of some affordable homes or apartments within market-rate developments. As with mandatory programs, benefits to the developer may include density bonuses, expedited permit process, relaxed design standards, reduced parking requirements and waivers of certain municipal fees. Government representatives negotiate directly with developers using these incentives.

Based upon the data provided earlier in this report on cost burden, the Out of Reach study and the overall lack of affordable housing, in combination with the continual decline in federal and state resources, municipalities should consider adopting Inclusionary Zoning to increase the supply of affordable homes. There are three local municipalities that have Inclusionary Zoning on the books; these are the Town of East Fishkill, the City of New Rochelle and the Town of Wawayanda.

Inclusionary Zoning is a local initiative that requires a portion of housing units in a new housing development to be reserved as affordable. Inclusionary zoning (IZ) requires developers to make a percentage of housing units available to low- and moderate-income households. In return, developers receive non-monetary compensation in the form of density bonuses, zoning variances, and/or expedited permits-that reduce construction costs. By linking the production of affordable housing to private market development, IZ expands the supply of affordable housing while dispersing affordable homes throughout a municipality to broaden opportunity and foster mixed-income communities.

- Smart Growth, Better Neighborhoods; Communities Leading the Way, Leah Kalinosky

Benefits of Inclusionary Zoning

1. Allows higher-income communities to achieve a balance in socio-economic demographics when used in concert with density bonuses and other developer incentives
2. Helps limit sprawl by concentrating more development in a single location
3. Provides affordable housing without requiring municipal funding
4. Streamlines the development process by providing a uniform and more predictable process that gives more certainty up front about the feasibility of a development proposal

Berenson and the Two-Pronged Test

Berenson v. Town of New Castle, 38 N.Y.2d 102 (1975) - In the leading New York State case on affordable housing, the Court of Appeals declared unconstitutional a town zoning ordinance that failed to permit multi-family housing in any of its twelve zoning districts. In so holding, the court established a two-pronged test for the validity of a zoning ordinance excluding multi-family housing as a permitted use.

1. A review of the municipality's existing housing to determine whether the types of housing present, "adequately meet the present needs of the town and it must be determined whether new construction is necessary to fulfill the future needs of the [town] residents, and if so, what forms the development ought to take."
2. In recognition that local zoning often has substantial implications beyond the boundaries of the municipality, a requirement that consideration be given to regional needs as well. Where residents of the region "may be searching for multiple-family housing in the area to be near their employment or for a variety of other social and economic reasons . . . there must be a balancing of the local desire to maintain the status quo within the community and the greater public interest that regional needs be met."

- John C. Cappello, Esq., Jacobowitz and Gubits, LLP

ACCOMPLISHMENTS 2014

Center for Housing Solutions and Urban Initiatives

Our commitment to housing and community development throughout the Hudson Valley remains strong. Once again, we have had an incredibly busy year and have assisted many communities by providing vital information advocating for affordable housing, community and economic development and the revitalization of our urbanized centers."

- Joe Czajka, executive director, Center for Housing Solutions at Hudson Valley Pattern for Progress

The Center for Housing Solutions and Urban Initiatives has been in operation since September 2012. The Center has assisted housing agencies, developers, builders, Realtors, municipalities and advocates for affordable housing. Below is an overview of the Center's accomplishments this year:

- **Completed the first county-wide Housing Needs Assessment for Putnam County and Strategic Plan for the Putnam County Housing Corporation**
- **Commissioned by NYS HCR to analyze affordable housing and linkages between housing and community development in Newburgh, Poughkeepsie, Kingston, Beacon, Peekskill and Brewster**
- **Conducted numerous presentations on the State of Housing in the Hudson Valley, Main Street strategies, Placemaking and emerging demographic trends for municipal zoning and planning board members, financial institutions, Neighborhood and Rural Preservation Corporations, elected officials, mortgage brokers and Realtors**
- **Distributed more than 150 emails containing federal, state and local updates on housing programs, regulations, articles and reports on housing policy and trends, funding notices, grant opportunities, statistics, demographics and market data**
- **Responded to and assisted with more than 75 requests for statistics, demographics and narrative reviews from municipalities, not-for-profit housing agencies and for-profit developers in support of affordable and market rate housing development**

The Center would like to thank its investors:

MJJ Builders Corp.™ Excellence in Affordable Housing

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CHW Cannon Heyman & Weiss, LLP

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To learn more about investment opportunities, contact Joe Czajka.

This report represents a snapshot in time and is based upon available information and the analysis of existing markets, demographics, data and statistics. The report is not meant to be used as a financial forecasting model or for any financial decisions now or in the future.

Pattern for Progress is the Hudson Valley's public policy, planning and advocacy organization that creates regional solutions to quality-of-life issues by bringing together business, nonprofit, academic and government leaders from across nine counties to collaborate on regional approaches to affordable/workforce housing, municipal sharing and local government efficiency, land use policy, transportation and other infrastructure issues that most impact the growth and vitality of the regional economy.

Join Pattern and be part of the solution!

HUDSON VALLEY PATTERN FOR PROGRESS

3 Washington Center, Newburgh, NY 12550 (845) 565 4900 www.Pattern for Progress.org

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SMART GROWTH IN NEW YORK STATE:

A DISCUSSION PAPER

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Introduction

"Smart growth" is a frequently used term that is often defined in different ways by different people. It is hard to argue with the core idea of smart growth – that there are connections between development patterns and our quality of life, economy and environment, and that growth should improve rather than harm our communities. However, as a discussion progresses toward more specific definitions and policies, there can be many points of contention.

For example, many define smart growth as directing development to existing communities, while discouraging continuing development in outlying areas. Others would not support this goal, or would differ over how to implement it. Another common definition of smart growth is that it is more town-centered, more pedestrian- and transit-oriented, and provides a greater mix of housing, commercial and retail uses than current development patterns do. The smart growth movement, in other words, is premised on dissatisfaction with current development practices. Ironically, dissatisfaction is sometimes greatest in growing and economically successful areas.

This paper is intended to help stimulate a vigorous debate on smart growth in New York State by providing a general background and helping to define major issues. New York has a unique urban and natural heritage, and a rich diversity of communities, many of which need to be brought back to a healthy condition. These resources need to be conserved and developed wisely, in an economically sustainable and environmentally sound manner.

Most of our cities – the traditional population, business and cultural centers – are losing people and jobs, and serious fiscal, economic and social problems result. At the same time, many other communities are experiencing rapid and often unwanted growth and development. Much of this new development is low-density and occurs at the fringe of settled areas, consuming forest and farmland. A recent study on Upstate New York found that this pattern of sprawl is accelerating even as population growth slows, and that it is undermining the region's quality of life and economic health.

Because growth occurs across municipal borders, many smart growth principles involve regional planning and solutions. These solutions may be difficult to achieve given the fragmented structure of land use, transportation, and economic development planning, as well as the tendency for local governments to compete for relative advantage. In other states where reforms have been implemented, state governments have played a leading role in promoting change. While it is true that positive initiatives are taking place in many communities across New York State, there are also many problems. Without major changes in approach, development will continue in the current sprawling pattern.

To say that choices made today have ramifications extending far into the future is a platitude, but it is nonetheless true, and it is particularly true of land use and development decisions. Given current economic and fiscal challenges, the temptation is to view any development as positive, and some may think that smart growth is an issue New York State should focus on later. This thinking misses the point that smart growth *is* an economic and fiscal issue, as much as it is a quality of life and environmental issue.

Smart growth is an economic and fiscal issue, as much as it is a quality of life and environmental issue.

Local fiscal conditions are driven by local tax bases and service needs, both of which are heavily affected by the type of development that occurs. Development patterns drive the creation and maintenance of public infrastructure, and the efficiency of transportation and government services. Economic growth is dependent, among other things, on the availability of property for occupation or development, transportation systems, and local taxes. Business location decisions have also long been known to be influenced by quality of life, as well as the availability of a good workforce. Given these interrelationships, the question is not whether governments can afford to focus on smart growth – it is whether they can afford not to.

Many states, including some of our neighbors, have developed aggressive smart growth agendas. Certainly aspects of smart growth will differ from community to community, and few, if any, would suggest that there should be a standardized approach. That proposition, however, should not be used to argue against state-level action. In fact, it is generally held that state-level leadership and actions are needed to successfully counter current sprawling growth patterns, as well as to effectively address various other smart growth issues. To develop a successful approach here, New York State must address what smart growth is, as well as what it is not.

Sprawl and the Need to Guide Development

Two million square feet of retail space, 300 miles of new roads and hundreds of houses have been built in the newer suburbs of Monroe County in the past five years, even though the population has remained virtually unchanged. This has left Rochester and its older suburbs with two million square feet of vacant retail space and empty homes while Monroe County residents commute an extra 3,000 miles per family per year and pay higher taxes for the roads on which they commute.[1]

Over a period of 35 years, Clifton Park in Saratoga County has gone from a rural town to one where two-thirds of the land is covered by homes, schools, highways and shopping centers. Interstate Route 87 (the "Northway") is the major commuting route linking Clifton Park to Albany. Despite lane additions, the route is plagued by daily traffic jams and seemingly never-ending construction projects. This commute – which should be a 30-minute drive – often takes more than an hour. The growth in Clifton Park which has spurred a variety of responses from the Town, including a building moratorium and an open space plan is in stark contrast with the situation in the City of Albany, where a recent survey revealed 800 vacant buildings.

Monroe County and Clifton Park are not anomalies. This continuing dispersion of population and development – "sprawl" as it is termed – has become a national issue. All over the country there are suburban towns and rural communities experiencing rapid development at the same time the population in central cities and older inner-ring suburbs declines. Rapid and sometimes haphazard growth can create a number of problems in the places where it occurs, as does the loss of population and abandonment of properties in other areas. State and local taxes pay for new sewers and roads at the same time existing infrastructure is underutilized elsewhere, and fiscally depressed areas look to the State for assistance. Vacant residential, commercial and industrial properties are eyesores that have a variety of negative economic, fiscal, social and environmental impacts.

[1] City of Rochester website (http://www.cityofrochester.gov/mayor/sprawlrs/reality.htm); this data is from 1998, and the trends may have even accelerated since that time.

For cities – the historic population, business, educational and cultural centers – a spiral of decline can develop as population and businesses leave. This pattern often results in city governments without resources sufficient to support public infrastructure or the needs of remaining residents. However, some of the greatest concerns about sprawl exist among residents of growing suburban and rural communities, where continuing, poorly planned development can damage the quality of life.

In growing areas, sprawl causes transportation problems, environmental degradation, increasing local taxes for expanded services (particularly schools), and the loss of farmland, natural areas and other open space. These pressures are being felt particularly in rapidly growing areas like the Hudson Valley, where local governments and regional organizations are looking for ways to preserve quality of life and ease transportation difficulties while promoting economic prosperity.

A recent Brookings Institution study on Upstate New York found that sprawl – defined as the continuing urbanization of forest and farmland at the fringe of metropolitan areas – is accelerating even as population growth declines, and that it is undermining the economic health and quality of life in the region. According to the study, "Sprawl has been shown fairly consistently to degrade wildlife habitat, threaten agricultural productivity, and raise the cost of public services at all levels of government."[2] The study documents how Upstate land has been developed at 12 times the rate of population growth in the last two decades, and new housing units are being developed about twice as fast as new households are created. This occurs at the same time "brownfields" (environmentally compromised industrial/ commercial sites), "grayfields" (empty malls, failed office complexes and other unused or underutilized commercial properties), and vacant housing all proliferate in cities and older suburbs.

A recent Brookings Institution study on Upstate New York found that sprawl - defined as the continuing urbanization of forest and farmland at the fringe of metropolitan areas - is accelerating even as population growth declines, and that it is undermining the economic health and quality of life in the region.

Under various names, sprawl has long been considered a local fiscal issue. Among developing bedroom communities, for example, it is an axiom that new residential development does not generally pay its own way (meaning growth in the costs of services exceeds the growth in taxable property). There are countless examples of local communities seeking to stop new residential projects, fearing both an adverse fiscal impact and erosion in the quality of life.

Sprawl is also increasingly being discussed as an economic development concern. National leaders in business and government have acknowledged this issue, as have a number of governors. Local leaders are also increasingly making smart growth an explicit part of their agenda. For example, the Nassau County Executive has also made it an integral part of his economic development agenda, saying he wants to build a county-wide consensus on smart growth.[3]

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[2] "*Sprawl Without Growth: the Upstate Paradox*, Rolf Pendal, Brookings Institution Survey Series/Center on Urban and Metropolitan Policy (October 2003), p. 2

[3] See for example, Nassau County Executive Thomas R. Suozzi's 2003 State of the County address (available online at: http://www.co.nassau.ny.us/Exec/TSindex.html)

Big city mayors have long complained about both the fiscal and economic impacts of population and job losses associated with sprawl. The City of Buffalo, for example, raised smart growth in its four-year financial plan as a fundamental issue connected with the City's long-term financial viability, stating that "no plan to address [the City's] financial straits is complete until and unless it addresses how sprawl has contributed to [its] troubled financial condition."[4] Mayor Johnson of Rochester has become an outspoken advocate of smart growth policies and an equally outspoken critic of urban sprawl and the devastating effects of disinvestment on urban areas. He is also an ardent proponent of regionalism, promoting collaboration among municipalities within their regions to increase economic competitiveness.[5]

Defining Smart Growth

Like many other reform terms, there is no universally accepted definition of what "smart growth" is. However, an underlying concept in almost all definitions is that new development should be planned and beneficial rather than haphazard and damaging. While smart growth is usually associated with an anti-sprawl theme, the term is also used to describe any policies or approaches that help communities develop in ways they consider positive.

Various ideas advanced under the rubric of smart growth cover a wide spectrum, ranging from rehabilitation of city, town and village centers while strictly limiting peripheral growth – to supporting any growth where the value of more development is perceived to outweigh potential negative effects. In short, everyone is *for* smart growth, but it may be defined very differently depending on the perspective of the user.

> ***[Smart Growth is]development that serves the economy, community, and the environment. It provides a framework for communities to make informed decisions about how and where they grow.***
>
> - International City/County Management Association (ICMA)

The International City/County Management Association (ICMA) has offered a broad definition of smart growth, calling it "development that serves the economy, community, and the environment. It provides a framework for communities to make informed decisions about how and where they grow."[6] This definition provides room for many different interpretations and approaches.

A number of organizations have been formed to advance the smart growth agenda. One particularly influential group is the Smart Growth Network (SGN), which is a partnership of approximately 25 organizations (including the ICMA, which serves as the organizational "home" for the network). The network was organized in 1996, when the U.S. Environmental Protection Agency joined with several non-profit and government organizations in response to increasing community concerns about the need for new ways to grow that boost the economy, protect the environment, and enhance community vitality. The partner organizations include environmental groups, historic preservation organizations, professional organizations, developers, real estate interests, and government entities.

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[4] City of Buffalo Original Four-Year Financial Plan," p. 45 (available at http://www.bfsa.state.ny.us/Links.html)

[5] "Metropolitan Pressure Points," Mayor William A. Johnson, Jr. *Planning Commissioners Journal* (Number 32, Fall 1998)

[6] *Getting to Smart Growth: 100 Policies for Implementation* Smart Growth Network/ICMA (2003), p. i. ICMA is the professional and educational organization for chief appointed managers, administrators, and assistants in cities, towns, counties, and regional entities. Established in 1914, ICMA provides technical and management assistance, training, and information resources to its members and the local government community. More information is available on its website (icma.org).

The Smart Growth Network has promulgated ten principles for smart growth that help to define the term, at least from the perspective of its supporting organizations. According to the SGN principles, smart growth policies should:

- Strengthen and direct development toward existing communities,
- Preserve open space, farmland, natural beauty and critical environmental areas,
- Mix land uses (residential with retail and business),
- Take advantage of compact building design,
- Foster distinctive, attractive places with a strong sense of place,
- Create walkable neighborhoods,
- Provide a variety of transportation choices,
- Create a range of housing opportunities and choices,
- Encourage community and stakeholder collaboration, and
- Make development decisions predictable, fair and cost-effective.

The SGN principles are explained in great detail in a number of their publications and many examples of successful policies are provided.[7] A recent SGN publication stresses that successful approaches need to incorporate many of these principles and notes that many initiatives have been incorrectly characterized as smart growth in order to capitalize on the popularity of the term. Examples of this include directing growth away from certain areas without identifying parcels appropriate for development, high-density projects without a mix of uses, and large-scale revitalization without affordable housing.[8]

Thus, while the definition of smart growth may be somewhat in the eye of the beholder, it is generally acknowledged that there are a lot of problems to address, and that development continues to occur in ways that are not beneficial. The existence of the smart growth movement and the term itself imply that many development decisions have not been all that smart.

Smart growth is generally associated with various ways of preventing or mitigating the negative effects of sprawl, redirecting growth toward established communities and building more compact neighborhoods. While there is certainly debate on the issue, sprawl is often described as the direct result of long-standing public policies, including tax laws, highway subsidies, most zoning laws, and a system of dispersed local governments and planning. From this viewpoint, these systems are themselves the problem, and solutions require basic changes. Most zoning laws, for example, focus on minimum lot sizes, setback and parking requirements, all of which contribute to low-density development and sprawl.

Many of the seminal concepts behind smart growth were developed as part of a design movement known as "new urbanism." The group representing this perspective – the Congress for the New Urbanism (CNU) – was one of the original members of the SGN. Founded in 1993, CNU seeks to reform all aspects of real estate development, in part by altering the way regional and local plans and land use controls affect public and privately built infrastructure. CNU views disinvestment in central cities, the spread of placeless sprawl, increasing

[7] A complete description of the ten principles, as well as a wealth of other information on the orgranization and the reference materials it provides is available from the Smart Growth Network website (smartgrowth.org).

[8] Getting to Smart Growth II: 100 More Policies for Implementation, Smart Growth Network/ICMA (2003)

separation by race and income, environmental deterioration, loss of agricultural lands and wilderness, and the erosion of America's built heritage as one interrelated community-building challenge.[9]

An organization created by architects and designers, CNU is concerned with building design as well as patterns of development, and it seeks to address the dissatisfaction many express with the current "built environment" – including streets, neighborhood layout, public spaces, and architectural design of public and private buildings. The group promotes the creation of walkable neighborhoods that contain a diverse, balanced range of housing and jobs, and supports strong regional planning for open space and appropriate architecture and planning.

In many ways, CNU is more specific than SGN in describing what sort of growth is consistent with new urbanist principles. For example, CNU does not support new projects that are gated, lack sidewalks, or have a tree-like street system, rather than a grid network. They believe that projects should connect well with surrounding neighborhoods, developments, or towns, while also protecting regional open space, and they rule out "single-use" projects that are just housing, just retail, or just office. Under CNU principles, various types of buildings should be seamlessly integrated, from different types of housing, to workplaces, to stores. Projects should have a neighborhood center within that is an easy and safe walk from all dwellings in the neighborhood. Buildings should be designed to make the street feel safe and inviting, by having front doors, porches, and windows facing the street – rather than having a streetscape of garage doors. Neighborhoods should include formal civic spaces and squares. Finally, CNU urges a "popsicle test" – meaning that an eight-year-old should be able to safely bike to a store to buy a popsicle.

Rather than approaching every new real estate development as a separate entity, CNU and others advocate planning neighborhoods and taking steps to ensure that new development is appropriately connected to the existing town layout, and meets certain standards. This is sometimes referred to as traditional neighborhood development, or TND. The "rules" include that a neighborhood should be laid out on a network (often a grid) that provides alternative routes to every destination. Streets within a neighborhood are to be suitably narrow and provide for parking, trees and sidewalks. There should be a mixture of large and small dwellings, outbuildings and shops and offices, all of which are compatible in size and disposition on their lots. Civic buildings for education, community meetings, religion and culture should serve as landmarks by being located at public squares and the termination of street vistas.

In essence, TND advocates a return to standards of neighborhood construction that preceded the almost complete reliance on automotive transportation that is now the rule in many suburban communities. In a TND neighborhood, walking is a viable alternative, and children and others can go about daily tasks without being dependent on automobile transportation.

[9] A complete description of this organization is available on its website (cnu.org), from which this extract *is drawn. Another useful source for understanding the concepts advanced by* the organization is *The New Urbanism: Toward an Architecture of Community*, by Peter Katz, Vencine Scully Jr. (McGraw-Hill, 1993)

It must be pointed out that in many ways current building codes, zoning ordinances and transportation standards conflict with this type of development. Minimum lot sizes and setbacks required by zoning laws are a prime example, as are prohibitions on mixing residential and commercial uses. Traffic engineers have also long focused on safety as being related to the width of roadways and the absence of trees or other objects with which vehicles can collide. However, there is growing evidence that wider roads in residential areas are actually less safe, because they encourage speeding. "Traffic calming" is a term referring to techniques that help slow traffic (such as narrower, treed streets with sidewalks) and situations that make for a more pedestrian-friendly environment (such as sharp angles, rather than rounded turns at four-way intersections).

A variety of books have been written on the concepts advanced by the new urbanists. One of the most popular is *Suburban Nation*[10] written by architects Andres Duany, Elizabeth Plater-Zyberk, and Jeff Speck. This book provides a compelling narrative, describing how current land use and building practices have produced sprawling residential subdivisions that are economically and environmentally unsustainable. The authors contend that such development patterns have destroyed the traditional concept of neighborhood, eroding safety, citizenship and other values. The impact of complete automobile dependence that is a consequence of the way developments have been built is described, including social isolation, the necessity of driving children to every event, bored teenagers, stranded elderly, and weary commuters. The once common pleasure of meeting neighbors on the street is much less likely when every outing requires a car trip (and the likelihood of running into people you know at a regional mall is much lower).

James Kunstler is another influential author who has written several books indicting current land use, transportation and building practices. Kunstler describes a "tragic landscape of highway strips, parking lots, housing tracts, mega-malls, junked cities, and ravaged countryside" that is "not simply an expression of our economic predicament, but in large part a cause."[11] While Kunstler's contentions are fervent, he is not alone in his thinking. His books have struck a chord among a large group of people who are looking for a more pleasant physical environment and a restored sense of community.

Smart Growth and Regionalism

Because sprawl occurs across metropolitan areas with many different local governments, smart growth is often associated with regionalism, or ways to foster cooperation around shared regional goals. Many of the major smart growth concepts, such as that growth should be directed to existing communities, involve regional planning and solutions. The fragmented structure of local land use regulation is a fundamental challenge to a true, regional smart growth agenda, as is the natural tendency for local governments to compete for relative advantage.

Most local governments rationally want to maximize their tax base and minimize their service needs, and these specific goals often supersede regional concerns. Many communities, for example, do not want high-density or affordable housing constructed within their borders, fearing that this type of growth will cost more in services

[10] *Surburban Nation: The Rise of Sprawl and the Decline of the American Dream*, Andres Duany, *et al*; North Point Press (April

[11] *The Geography of Nowhere*, James Howard Kunstler, Simon and Schuster (1993). See also, *Home from Nowhere* Simon and Schuster (1996).

than it will produce in tax revenues or detract from a perception of exclusivity. The question for an individual local government often is not whether there is an adequate supply of such housing available within the region – it is whether such development should take place within its borders. One of the primary results of urban flight and sprawl is the mismatch between need and fiscal capacity in cities and other core communities.

Regional solutions, however, are often as much about efficiency as equity. A 2001 report from a University at Buffalo professor, *Regionalism on Purpose*, describes mushrooming interest in regionalism to deal with border-crossing problems including sprawl, sluggish economies, uncoordinated land use policy, environmental decline, and intraregional inequities in housing, education and fiscal capacity. The report describes the history of regionalism, as well as the philosophical, political, and practical challenges, using case studies of the major efforts around the country.[12]

In a "home rule" state such as New York, with land use planning and control powers disbursed among more than 1600 municipalities, it can be very difficult to develop regional solutions to sprawl and other smart growth issues. The complex local government structure found in New York and other Northeastern states may have made sense at the time it was designed, when cities were the population centers, and the natural economic and social communities were generally encompassed within a single municipality. In today's environment, where the vast majority of people live and work within metropolitan areas encompassing many local governments, and where economic, fiscal, social, transportation and environmental issues all cross municipal borders, it is evident that regional solutions are needed for many problems.

While there are many examples of cooperation among local governments, there is also a tendency to compete, and it is important to understand the pressures facing local decision makers in considering the ways that regional smart growth goals can be achieved.

A recent book from two prominent New York State academics, *Regionalism and Realism*, examines the history of state and local governments in the tri-state region, analyzing various approaches to regionalism. Among the book's major conclusions is that acting regionally is almost always up to state (not local) governments. Only state governments, it is noted, can "control both the political and financial incentives and disincentives that can influence whether local jurisdictions collaborate or go it alone."[13]

Many smart growth principles cannot be implemented piecemeal in each municipality, and encouragement alone is simply not enough to promote systemic change. Successful smart growth initiatives often need at least a regional focus, and usually state-level changes are necessary in order to significantly alter current patterns of development. A subsequent section of this report discusses reforms taking place in other states.

Points of Contention

Smart growth has many proponents, but it also has its share of critics. Even among those who support smart growth as a concept, there are many differences in approach.

[12] *Regionalism on Purpose*, Kathryne A. Foster, Lincoln Institute of Land Policy (2001)

[13] *Regionalism and Realism*, Gerald Benjamin and Richard P. Nathan, A Century Foundation Book, Brookings Institution Press (2001), page 259.

A major criticism of smart growth is that it seeks to substitute a certain set of judgments for the natural products of free enterprise and local control, which ultimately reflect the choices of citizens with regard to where and how they live, work and travel. Another argument has been that smart growth proponents are unrealistic and that the policies they advocate and the type of development they wish to encourage are simply not possible on a large scale, given current economic and social realities, and the need to accommodate continuing population growth.

For example, a recent academic study concurs that sprawl is ubiquitous and continues to expand (in agreement with smart growth advocates). The authors conclude, however, that rather than being the result of government policies or poor planning, sprawl is the "inexorable product of car-based living [and] the primary social problem associated with sprawl is the fact that some people are left behind because they do not earn enough to afford the cars that this form of living requires."[14] Some argue that suburbanization is, in fact, an effective "congestion reduction mechanism" that shifts road and highway demand away from densely developed inner cities.[15]

It is inarguable that sprawl is a result of choices made by citizens in the automobile age. On the other hand, real estate development occurs under rules specified by three levels of governments, and development decisions can therefore hardly be said to occur in a free market. For example, subsidized highway construction and national energy policy are major causative factors in current "autocentric" development patterns.

It should be pointed out that choices made in a market situation show only what people prefer among the available alternatives. Real estate developers (i.e., the creators of the choices) are striving to maximize profits within an environment defined by government policies. Most land use controls prohibit high density development or mixed use at the same time that endless outward expansion is not only allowed, but subsidized by debt-funded highway projects and other public infrastructure. In this environment, sprawling growth will occur. In fact, under the zoning regulations found in most growing areas, it is all but impossible to build the compact traditional neighborhoods that were the accepted pattern for growth in the earlier part of the 20th Century.

Smart growth advocates point to the high market values of either well-preserved traditional neighborhoods or newly constructed communities following traditional neighborhood design principles as evidence that this type of development would be preferred by many – if only it could be built. From this standpoint, the struggle is not to change preferences, but to change the land use regulation and development system in ways that would allow such choices to be made available to consumers.

At least one survey by a market research firm has found that homebuyers are not satisfied with the type of development currently found in conventional suburbs, and would prefer the town model typical of pre-1950 development patterns (i.e., traditional neighborhood design). For example, by large majorities, consumers preferred a town center surrounded by a village green, shops and civic buildings, narrow streets in a grid pattern, and a less automobile-centered environment.[16]

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[14] Sprawl and Urban Growth, Edward L. Glaeser and Matthew E. Kahn (May 2003). NBER Working Paper No. W9733. (http://ssrn.com/abstract=412880)

[15] *Alternatives to Sprawl*, Lincoln Institute of Land Policy (1995); available online at: (http://www.lincolninst.edu/pubs/pub-detail.asp?id=864)

[16] *Why Smart Growth - A Primer*, International City/County Management Association, p. 25 (http://www.epa.gov/livability/pdf/WhySmartGrowth_bk.pdf)

Another fundamental conflict is whether regional choices should supersede local choices. There are many regional efforts consisting of cooperative, often voluntary efforts that many would argue are quite successful. It is also extremely difficult for any level of government or community to cede powers currently held. There are strong philosophical underpinnings to this issue. As described in *Regionalism on Purpose*, regionalism faces "the classic dilemma of a diverse and democratic society: how to realize the common good while safeguarding individual freedoms." In this context, "individual freedom" is that of individual municipalities being in control of their destinies (even if this limits the ability of the region as a whole to shape its destiny).

Academic studies, as well as public leaders, have often concluded that because of this conflict, as well as political and practical realities, that the most productive direction for the State to take on regionalism is to encourage regional cooperation, possibly through financial incentives.

Land Use Regulation

In New York State, virtually all land use *regulation* takes place at the municipal level (i.e., in a city, village or town government).[17] Land use *planning* is also primarily a municipal function. While State law provides for certain planning functions at the county or regional level, these mechanisms are largely advisory, whereas municipal planning is directly related to land use regulation.

The most common method of municipal land use control is to adopt "zoning" laws, which regulate the use of land by area or district, including the type of development that can occur (e.g. residential or commercial), as well as the density of such development (multifamily vs. single family, acres per building lot, etc.) and the siting requirements (building height, access, parking requirements, etc.).

Zoning is typically implemented through two components: a zoning map and zoning regulations. The map divides a municipality into various land use districts, such as residential, commercial, and industrial or manufacturing (or even more specific designations such as high-, medium-, and low-density residential, general commercial, highway commercial, light-industrial, heavy-industrial, etc.). Zoning regulations commonly describe the permissible land uses in the various zoning districts on the map and also include dimensional standards for each district, such as building heights, minimum lot sizes and distances (setbacks) from buildings to property lines and/or the street, as well as the steps necessary for approval of certain types of use. For example, a single family home may be permitted "as-of-right" in a low-density residential zoning district, meaning no further approvals are needed as long as the basic requirements are met (other than a building or zoning permit). For other types of properties (usually larger and more complex, such as shopping centers, office or apartment complexes), or subdivisions (plans to subdivide and develop larger parcels of land), additional procedures and reviews are typically required.

[17] The State Constitution (Article IX, Section 2) as well as various enabling statutes, gives individual city, town and village governments the power to control land use, including the power to decide whether to control use and to determine the nature of the controls. While a comprehensive examination of land use regulation is beyond the scope of this report, an excellent description, including the legal basis for these powers, can be obtained in the *Local Government Handbook (5th Edition)*, published by the NYS Department of State (January 2000) and available online (www.dos.state.ny.us/lgss/pdfs/Handbook.pdf).

Local governments are empowered to create planning boards, to which planning and regulatory matters can be referred prior to action by municipal legislative bodies. For example, planning boards often play an important advisory role in preparing and amending comprehensive plans, zoning regulations and long-range capital programs. Certain regulatory functions such as subdivision approval and site plan review (e.g., of the layout and design of a shopping center, apartment complex, or office building) can also be delegated to planning boards.

State law provides for municipalities to prepare and amend a comprehensive plan, which generally forms the foundation for land use controls. Since each municipality chooses its own approach to land use regulation, the form of each plan will be unique. Some plans consist of only a few pages, while others are thick volumes with heavily detailed maps and illustrations. Professional planning firms are often used to help carry out this function.

Comprehensive planning is not required, but has been broadly promoted by State government as an invaluable tool for communities because it can provide a basis for all local efforts to guide development of the built environment, as well as preservation of natural areas and open space. This includes land use controls where they are imposed, but also public investments in roadways, sidewalks, sewer and water systems, parks and other amenities. Public participation is an important component of the planning process, and can occur formally through hearings and informally through workshops and informational sessions. Comprehensive planning is a very good way to review a community's land use strategy in a smart growth context. Many communities do not have comprehensive plans (about 40 percent, according to a 1999 study[18]); among those that do have plans, most were prepared decades ago and are severely out of date.

There are other laws and tools that can be used to regulate and influence development, including building codes, architectural design control, historic preservation, environmental review, open space preservation, agricultural protection, and sign control.

Within the context of a zoning law, there are also a variety of alternative techniques available (i.e., other than dividing a community into various use districts via a map). These include the following:

- Cluster zoning – a variation of traditional subdivision approval that allows higher density construction within a portion of a property being subdivided.

- Incentive or bonus zoning – allows developers to exceed dimensional, density or other limitations of zoning regulations in exchange for providing various amenities such as a park or plaza.

- Planned unit development (PUD) – a zoning technique that provides for development of a large tract of land as a "unit" that allows mixed use and density within a single area).

- Floating Zones – an approach that allows definition of a zone that is not mapped, but "floats" in the abstract until a large scale development proposal is made (PUD is often a form of floating zone).

[18] *Land Use Planning and Regulations in New York State Municipalities: A Survey*, NYS Legislative Commission on Rural Resources (1999). According to this report, 84 percent of cities; 58 percent of towns and villages; and 59 percent of all municipalities have written comprehensive plans.

- Performance zoning – this form of regulation establishes performance standards, usually in terms of impact on the community such as traffic, noise, scenic and visual quality impacts.

Transfer of development rights is another innovative technique that can be used to help preserve areas in which development should be avoided, such as agricultural land or water supply protection areas. Under this approach, the right to develop properties in a protected area is exchanged for the ability to develop land in a target area more intensively than the law would otherwise allow. Sale of development rights is another option. For example, an agreement between the State and the International Paper Company to preserve nearly 260,000 acres in the Adirondack Park through working forest conservation easements was recently announced.[19]

A moratorium on development can be used to temporarily halt new land development projects while a municipality's comprehensive plan, land use regulations or both are revised. This is considered an interim development regulation to restrict development for a limited period of time (and the courts have placed strict and detailed guidelines on their use).

To many advocates, the current approach to land use control stands directly in the way of smart growth. This problem, however, has two distinct aspects, one of which is very difficult to change and another which may not be. The more difficult thing to change (because many would argue that it should not be changed) is the almost exclusive location of land use control at the lowest level of government (i.e., the municipal level), and the inherent weakness of regional planning that results. This conflict is at the heart of the smart growth/regionalism connection previously discussed. However, it is a difficult and controversial issue because the potential positive of coordinated planning (if, for example, land use decisions were subjected to greater county or regional control), is countered by the negative of weakening the powers currently enjoyed by municipalities which, it can be argued, are closer to those affected, and therefore more accountable. This is a difficult theoretical and political issue of great controversy.

However, a second and equally important aspect of land use regulation is that the majority of present zoning laws tend to reinforce sprawling growth patterns and prevent the construction of the traditional walkable, mixed-use, attractive and compact neighborhoods that smart growth advocates and new urbanists promote. This is a problem that individual communities can address on their own, and the tools to do so already exist. An aggressive statewide public information and education campaign could therefore be very effective at bringing about change.

The preponderance of current zoning laws, for example, focus on minimum lot sizes, setback and parking requirements, all of which contribute to low-density development and sprawl. These zoning techniques are often used to prevent large-scale development from taking place, or to prevent other types of development from occurring. Unfortunately, this approach to zoning is a major factor causing sprawl, because it causes developments to use more land per housing unit. Under this approach, piecemeal, developer-proposed subdivisions are the norm for new housing, and when land runs out or becomes scarce in one community, the development "leapfrogs" to further out communities.

[19] NYS Governor Pataki's press release of April 22, 2004 (http://www.state.ny.us/governor/)

While conventional zoning codes more often than not stand in the way of smart growth development, there are many creative approaches that can be used, including those described above. Planners and architects have developed new types of codes that encourage adaptable, mixed-use, pedestrian-friendly communities. Architectural reviews and other tools can be used to ensure quality construction that is consistent with a community's character.

Planned traditional neighborhood development generally will not happen under typical approaches to zoning. However, it can be accomplished using a variety of techniques such as those described above. The Smart Growth Network, for example, has compiled a library of successful zoning codes built on these and other techniques (*Smart Growth Zoning Codes)* as well as a number of other resources.

While the NYS Department of State provides a number of training opportunities and reference materials on zoning law and issues, including the creative techniques described above, none of their courses or reference manuals are directed specifically to the topic of smart growth or traditional neighborhood development.

Smart Growth in the Empire State

A variety of activities related to smart growth have been taking place in New York for some time, and it is useful to consider these efforts in the context of thinking about what else could be done.

Historic Preservation and Environmental Review

To the extent that it exists, the roots of smart growth planning at the State government level in New York can be traced to two significant pieces of federal legislation: (i) the National Historic Preservation Act of 1966, that required federal agencies to take into account the effects of their undertakings on historic properties, and (ii) the National Environmental Policy Act (NEPA) of 1969, that required examination of environmental impact from many points of view. It was during this era that New York State made a formal commitment to historic preservation and environmental soundness, creating the Historic Trust Office to administer a state program similar to the National Historic Preservation Act. That office later expanded to include many preservation activities and eventually became part of the State Office of Parks, Recreation and Historic Preservation (OPRHP). In 1978, the S**tate Environmental Quality Review Act** (SEQR) was enacted, which looks beyond historic impact and requires all state and local government agencies to consider environmental impacts equally with social and economic factors during discretionary decision-making.

Improvements in Municipal, County and Regional Planning

In the 1990s, the New York State Legislative Commission on Rural Resources and its Land Use Advisory Committee successfully advocated for a series of planning reforms that included: the establishment of a statutory procedure for preparing and adopting local comprehensive plans and definitions of what those plans should contain; encouragement of coordinated planning between local jurisdictions and state agricultural districts; a statutory framework for intermunicipal cooperation in planning; and the authorization for local governments to award incentive zoning credits or bonuses to developers who provide communities with qualifying benefits.

New York's counties have the statutory power to create planning boards and prepare a county comprehensive plan. The plan should include goals, objectives, principles, policies and standards upon which proposals for immediate and long-range development of the county are based. Despite encouragement from the State to prepare comprehensive plans, fewer than half the counties in the State have such plans; many were adopted years ago and are undoubtedly out of date,[20] as are many municipal comprehensive plans.

In New York State, municipalities also have the authority to create regional or metropolitan planning boards. Regional councils have been created in 45 of 62 counties and are collectively represented by the New York State Association of Regional Councils (NYSARC). A regional council is another vehicle for promoting regional planning and fostering smart growth. These councils are designed to promote inter-county cooperation for common and cross-boundary issues, and to develop and execute strategies that positively contribute to the region's well-being.

The regional councils were created to provide a comprehensive planning mechanism for coordinated growth and development. This includes promoting the region, and providing services such as economic development, land use, transportation, environment and water resources management, human resources management and regional data services. However, regional councils may only suggest; they lack the statutory power to compel local governments to cooperate.

While State law does require certain municipal zoning matters be referred to county planning boards or regional planning councils where they exist, the circumstances under which this occurs are limited (generally referral occurs when a proposed zoning matter affects property within 500 feet or more of a boundary or certain highways). The municipality, moreover, can override the county or regional planning body's recommendation in most cases.

Some of the most active regional planning agencies are non-profit organizations without any statutory power. For example, the Mid-Hudson Pattern for Progress is a non-profit public policy research and planning institute that has been very active in promoting smart growth topics in the Hudson Valley. Its mission is to "preserve and promote the social, economic and natural environments of the region by building a consensus for a pattern of growth that will ensure a high quality of life through the balance of a healthy environment and a vibrant economy."[21]

Quality Communities

A "Quality Communities Interagency Task Force" was formed by executive order in 2000, composed of staff from various executive branch agencies and chaired by the Lieutenant Governor. Interestingly, although the Quality Communities (QC) effort was fundamentally concerned with issues related to smart growth, the term itself was not used. The Task Force was to "study community growth in New York State and develop measures to assist those communities in implementing effective land development, preservation and rehabilitation strategies that promote both economic development and environmental protection."
The Task Force had a very broad charge, seeking to deal with issues such as revitalizing central cities, main

[20] A County Comprehensive Plan survey from the Department of State (January 2003) shows that only 13 counties are known to have comprehensive plans, and of these, 8 were adopted in the 1970's or before. In this survey, 17 counties stated they did not have comprehsensive plans; the situation for a number of counties is unclear.

[21] The website for the Mid-Hudson Pattern for Progress contains a full description of the organization's activities (*pattern-for-progress.org*).

streets and small towns; agriculture and farmland protection; conservation of open spaces and other critical environmental resources; transportation and more livable neighborhoods; and sustainable economic development. The QC Task Force issued a report[22] including 41 recommendations that were referred to a permanent interagency work group formed in April 2001. Most of the recommendations, however, only endorsed good practices – they did not call for changes in New York State policies or statutes to address smart growth issues.

The QC recommendations are aimed at very positive goals, such as using technology to distribute information and create development tools, promoting open space conservation, renewing agriculture, promoting shared services and encouraging sound transportation planning. There are many success stories within the recommendations, such as a pilot program to show local governments how to implement transfer of development rights.

The Quality Communities Demonstration Program, which provides grants to support planning initiatives, has benefited many communities. Other initiatives, such as the acquisition of forest and parkland, are also extremely positive, and have received greater attention as a result of being a focus of the QC effort.

However, many of the QC recommendations, while promoting positive goals, do not acknowledge that significant changes in current practices may be needed to accomplish these goals. For example, the report recommends coordination of highway improvement projects with community development plans, but it does not recommend any changes in State or local planning practices. From a smart growth perspective, there is no comprehensive transportation plan that attempts to connect road construction decisions with abandonment of downtown residential and commercial centers and the extension of suburban sprawl.

The QC working group, which is co-chaired by the Lieutenant Governor and Secretary of State, has a Quality Communities Clearinghouse web site (http://www.dos.state.ny.us/qc/) that refers to a variety of reference materials and funding sources, and which describes a large number of accomplishments including: cooperation and coordination among state agencies, training on planning and zoning for local officials, environmental protection measures, preservation of forest land and historic structures, and many more. Many of the accomplishments are the result of long-standing programs that are now included under the QC umbrella. QC also issues a newsletter that describes various projects and provides other relevant information.

The original Task Force report also called for the State to adopt a set of uniform "Quality Communities Principles" that all executive agencies would be directed to use as a guide for the allocation and administration of state resources. This concept is similar in approach to various recommendations from smart growth advocates, because it is believed that state actions are often either out of synch with, or even in direct opposition to, smart growth goals. However, the QC principles are all very general, and while positive, they could be said to have been in general use even before the Task Force met. The principles are:

- Revitalize our Downtowns and City Centers,
- Promote Agriculture and Farmland Protection,
- Conserve Open Space and Other Critical Environmental Resources,
- Enhance Transportation Choices and Encourage More Livable Neighborhoods,

[22] The report is available from the Department of State, the Lieutenant Governor's Office, or online at: http://www.state.ny.us/ltgovdoc/cover_pdf.html

- Encourage Sustainable Development,
- Strengthen Intergovernmental Partnerships, and
- Help Create, Implement and Sustain the Vision of a Quality Community.

There are, of course, many improvements included within the principles and related recommendations, some of which are currently being implemented. From a smart growth perspective, however, the principles do not effectively describe either a full or a specific enough agenda (as do, for example, the Smart Growth Network principles). While some Quality Community goals are similar to SGN goals, they do not generally call for the State to make any changes that would, for example, direct growth to existing communities or take advantage of compact building design. This should not be read as a failure of the QC effort, however, as it clearly was not an explicit part of the agenda set by the Governor. In fact, the QC efforts continue to avoid use of the smart growth term, without, it might be noted, actually articulating why the term is objectionable. This approach makes it more difficult to tie into national efforts, or to promote practices that are being advanced under the heading of smart growth elsewhere.

The Smart Growth Network principles, in comparison, outline a clear smart growth agenda that would be a dramatic change from current practices. The SGN principles are used by many state, local and regional smart growth groups to help define and clarify their goals, and a variety of publications expand on the principles, providing specific policies and steps for implementation.

Local Government Perspectives

Many local government leaders strongly support smart growth principles, but there is by no means unanimity in this regard. While smart growth initiatives can be popular, and the term is often used to describe local initiatives in a positive way, the linkage with regionalism and the contention that parochial views from local governments regulating land use are a large part of the problem tend to make it difficult for many local government officials to support smart growth in an unqualified manner.

New York's local government associations (NYCOM, NYSAC and the Association of Towns) do not track their members' smart growth initiatives, per se. However, they do have opinions on what the State should or should not do to help municipalities with smart growth. They are strongly opposed to any legislation that would restrict local decision-making or involve new State mandates. They argue that differing types of communities across the State require individualized approaches to development, and that local governments should be allowed to control their own destinies. However, the associations do support increased State funding to local governments for smart growth, such as that provided through the Quality Communities Demonstration Project, as well as money for the purchase of development rights, and tax credits for rehabilitating historic buildings.

The NYS Conference of Mayors and Municipal Officials (NYCOM) has put forth a group of "Smart Growth Economic Development Proposals," which call for incentives to locate businesses and people in urban areas, State support for property tax relief, regional economic development and tourism plans, brownfield remediation and open space preservation. NYCOM has also been very active in promoting "Main Street" redevelopment and rehabilitation of brownfields (properties with pollution problems from previous industrial and commercial uses that have fallen into disuse). NYCOM has training programs for their members on these and other issues.

Current Legislation

A variety of bills have been offered recently to address smart growth issues, including legislation to establish smart growth task forces, commissions and offices, and a revolving loan fund. Another proposal would provide tax exemptions for development projects meeting certain quality-of-life criteria, such as pedestrian-friendly design, mixed-use, parking kept behind buildings, and architectural qualities that enhance neighborhoods. Many of these proposals have been one-house bills, and none to date have been successful. However, this year there are several major smart growth bills with sponsorship in both houses that may have a better chance of enactment. These measures could provide a fundamental turnaround in State policies, helping to counter current sprawling growth patterns. A short description of each follows.

The State Smart Growth Public Infrastructure Policy Act (A. 8651 DiNapoli, Hoyt, Brodsky et al/S. 6255-A LaValle) – This bill would require State agencies and authorities to fund infrastructure in a manner consistent with smart growth principles. The principles enunciated in the bill include a priority for projects or actions that maintain or improve existing infrastructure or preserve agricultural land, forests, water, air quality, recreational and open space; as well as others to foster mixed-use and compact development, downtown revitalization, brownfield redevelopment, enhancement of public spaces, a diversity of housing in proximity to places of employment, recreation and commercial development, and the integration of all income and age groups. The principles support improved public transportation and reduced automobile dependency, as well as municipal, intermunicipal and regional planning.

Each infrastructure agency (including the Departments of Environmental Conservation, Transportation, Health, Economic Development, and the State Education Department, Housing Finance Agency, Environmental Facilities Corporation, Dormitory Authority, and Thruway Authority) would be required to give funding priority to existing infrastructure and projects that are consistent with these principles, as well as with local governments' plans for development. Each agency would also have to establish a smart growth advisory committee.

The bill's purpose is to "augment the State's environmental policy by declaring a fiscally prudent state policy of maximizing the social, economic and environmental benefits from public infrastructure development through minimizing unnecessary costs of sprawl," including environmental degradation, disinvestment in urban and suburban communities and loss of open space. It states that sprawl is "facilitated by the funding or development of new or expanded transportation, sewer and … other publicly supported infrastructure inconsistent with smart growth." The sponsor's memorandum states that infrastructure funding decisions in New York State have supported a pattern of settlement and land use which necessitates expansive and expensive infrastructure resulting in new roadways, water supplies, sewer treatment facilities, utilities and other public facilities at great cost to the taxpayer and the ratepayer. With this pattern of dispersed development, public investment in existing infrastructure located in traditional main streets, downtown areas and established suburbs has been underutilized and those areas have suffered economically.

The Smart Growth for a New Century Act (A. 8652 DiNapoli, Hoyt, Brodsky, et al./S. 5483 LaValle) – This bill creates an optional process for communities to create smart growth plans that adhere to certain principles; development projects consistent with those plans would be eligible for low-interest loans through a smart growth revolving loan fund, as well as being eligible for property tax exemptions and priority for state financial assistance. A process is created under two or more individual municipalities can develop a shared

vision by creating a "smart growth compact" using a public discussion process and special councils. The plan would have to adhere to a series of principles, including conservation, accounting for and minimizing social, economic and environmental costs of new development, providing transportation and housing choices, and supporting mixed-use and integration of income and age groups. Local plans would be reviewed by a statewide smart growth review panel. Development projects in a compact area that are not consistent with smart growth compact plans would then not be approved by any government entity or supported by state financial assistance. Each municipality's land use regulations would have to be consistent with the compacts. The bill also creates an office of local assistance within the Department of State to provide technical, scientific, and financial assistance to localities for smart growth planning.

The Community Preservation Act (A.10053 DiNapoli/S. 6949 Marcellino) – This bill would authorize towns in New York State to adopt, after a local referendum, a real estate transfer tax of up to 2 percent for the purpose of establishing a community preservation fund to be used for conservation. The bill is based on the successful effort of five towns at the east end of Long Island in establishing a community preservation fund to protect drinking water, conserve parkland, safeguard habitats and help halt sprawl into pristine, green locations. It would allow communities across the State to establish their own voter-approved community preservation funds. Currently, municipalities must get specific legislative approval before asking their voters for a tax on real estate transfers for preservation purposes. The bill contains a provision to provide an exemption equal to the median residential sales price in the county (thus exempting more affordable, existing housing from the transfer tax).

Progress in Many Areas

Many individual local governments and regional groups in New York State are making progress in dealing with problems related to growth. The discussion presented in this paper, while alluding to areas where improvements could be made, should not be interpreted to be dismissive of these efforts. Those who believe that smart growth issues can be dealt with locally often point to these successes as evidence that progress can be achieved without any further state-level changes. The successful examples provided below are presented for illustration. It would not be possible in a report of this size to comprehensively list all local successes, and we have chosen just a few examples.

Onondaga County Settlement Plan

The Onondaga County Settlement Plan is an application of new urbanism principles put together over a two-year period beginning in 1999. It is a regional plan prepared for the joint Syracuse-Onondaga County Planning Agency by pioneering architect Andres Duany. The Plan's intention is to "encourage and enable municipalities in Onondaga County to improve their residents' quality of life through a renewed emphasis on neighborhoods." Specifically, the Plan began by acknowledging that the County's greatest strength was its tradition of historic neighborhoods, and then focused on providing the tools that could most effectively reinforce that tradition.[23] The Settlement Plan was preceded by the 2010 Development Guide, adopted in 1991, which laid out a policy

[23] *Onondaga County Settlement Plan - The Regional Plan and Pilot Projects*, Duany Plater-Zybeck & Company (2001), available at: http://www.syracusethenandnow.net/SettlementPlan/Regional%20Plan%20Final.pdf

under which Onondaga County would use its responsibilities for roads, water supply and wastewater treatment to direct growth to existing urban areas and community centers and to avoid unnecessary new infrastructure costs. Specifically, the Guide made it County policy not to extend water and sewer lines to serve new residential development.

As described in the Settlement Plan, Onondaga has experienced two forms of growth: traditional neighborhood development and suburban sprawl. The dominant model until World War II was the traditional neighborhood, which is characterized by mixed use (e.g., shopping and residential), pedestrian scale, and clear identity. The dominant model since that time has been suburban sprawl, characterized by the strict separation of land uses, an environment unfriendly to pedestrians, and a complete dependence on automobile transportation. The traditional neighborhood model – represented by the villages, hamlets and city neighborhoods – is associated with a high quality of life, while suburban sprawl is associated with erosion in this quality of life, increased traffic, inner-city deterioration, and a general sense of placelessness.

The Settlement Plan consists of a regional plan, pilot projects, traditional neighborhood development (TND) guidelines and codes. It is important to understand that the post-war sprawl occurred under existing zoning and subdivision regulations that effectively outlawed traditional neighborhood development. The Settlement Plan accordingly provides descriptive guidelines for traditional neighborhood development, as well as a prototypical traditional neighborhood zoning code, which can be adopted by municipalities in the area.[24] Syracuse has used the prototype TND zoning code in its lakefront area and two suburban towns, Dewitt and Tully, are in the process of incorporating elements of TND within their existing zoning laws and comprehensive plans. Design and planning projects for seven pilot neighborhoods have been well received, and some have had development projects start already. For example, the Village of Liverpool, currently cut in half by a six-lane road is to become a revived, pedestrian-friendly Main Street area with connections to Onondaga Lake Park. The plan includes redesign of the Lake Parkway from a high-speed commuter road to a naturalized parkway. A new urbanist neighborhood project is also under construction in a pilot project in the Town of Camillus.

Genesee County Smart Growth Plan

The Genesee County Smart Growth Plan, enacted in 2001, was designed to prevent sprawl from occurring in connection with the extension of public water to many areas. Under a plan to obtain water from the Monroe County Water Authority, a pipe system is to be installed that follows almost every State highway in the County. While the system was needed to meet existing needs, the fear was that wide availability of public water could spur sprawling development across the County, destroying its rural character, even as its villages and hamlets continued to decline.

Genesee's Smart Growth Plan protects farmland and the rural character of the area by using several zoning techniques that the County Planning Department is working with local governments to adopt (including cluster zoning), as well as a water hook-up policy that effectively prevents sprawl. Under the plan, hook-ups will be restricted to existing development (before enactment of the plan) and future development that is located within predetermined and mapped development areas surrounding villages and hamlets. The idea is to target

[24] The traditional neighborhood guidelines, codes, and other reference materials are available online: http://www.syracusethenandnow.net/SettlementPlan/SettlementPlan.htm

development of new homes and businesses in development areas served by public water, building up existing villages and hamlets while protecting farmland from sprawling development. This plan is almost equivalent in impact to an Oregon-style urban growth boundary (see below), and is accomplished using existing zoning techniques, as well as a very specific water hook-up policy.

Activities in the Capital District

Actions in a variety of Capital District communities illustrate how smart growth issues are being advanced. In rapidly growing successful suburbs, town governments are taking steps to protect themselves from the effects of sprawl. In Clifton Park, for example, the town has created a plan for saving selected open spaces before they are developed, and put a moratorium on building in the Western section of town. In the Town of Bethlehem, a moratorium on new residential construction has been adopted (applied to new projects of four or more units), while the town works on its master plan. Albany is trying to lower the number of vacant buildings and revitalize low-income neighborhoods by offering financial incentives to homebuyers, encouraging city police to live in the neighborhoods and preserving historic structures.

On a regional level, the Center for Economic Growth (CEG), a business-supported regional economic development organization, has been leading efforts to shape a regional development strategy, in connection with promoting "Tech Valley" – high-tech manufacturing in the Capital and Hudson Valley Regions. In addition to traditional economic development goals, CEG is working with community leaders on what is in essence a smart growth agenda, creating urban centers that are cultural hubs and regional magnets for young technology workers, creating and maintaining infrastructure that supports sustainable residential and commercial development patterns that balance growth with quality of life. This effort has also been supported by the State Pension Fund Upstate Venture Capital Investment Fund, which has made a $55 million commitment to two Capital Region-based private equity partnerships that will establish and expand high-tech start-up companies in Upstate New York.

Lessons from Other States

A variety of state-led smart growth initiatives are taking place across the nation, including our neighboring states. While several pieces of legislation have been proposed, and the Quality Communities Task Force effort is ongoing, New York State really has no corresponding effort.

Smart growth is a broad and complex topic, and there is, and will continue to be, debate about what state governments should do to promote it. At a minimum, however, to provide effective leadership in this area, state governments must address the term – smart growth – or efforts to promote various approaches associated with the national smart growth movement will be handicapped. A successful effort must provide guidance to local government officials and encourage strong regional cooperative efforts, even as changes in law or procedures are considered. Our neighboring states are actively involved in such efforts.

Many have concluded that regional action is a necessary condition for a truly successful smart growth initiative. Researchers and others have also concluded that regional reforms generally only occur when initiated by state governments, which can control political and financial incentives and disincentives and set the rules under which local governments operate. Among the things state governments can do to encourage regional action are: adopt rules to reorganize particular governmental operations, require or encourage certain levels of cooperation, remove legal and other barriers to cooperation, finance studies that advance regional cooperation, tie state aid or reimbursement formulae to regional approaches, or establish subsidies that reduce local costs for services only if delivered on a broad geographical basis. More subtly, states can act in ways that change the political environment, altering citizens' expectations of their local governments.[25]

Following are some examples of activities in Oregon, considered by many to have the most advanced state smart growth program, and our neighboring states of New Jersey and Connecticut.

Oregon

To supporters and detractors of smart growth alike, Oregon is the quintessential model. During the 1960s and '70s, when Oregon's population was increasing considerably, the impact on its environment and economy became major issues of concern. Wanting to preserve its natural resources, including its environmentally based forestry and farming industries, the state required cities and counties to adopt comprehensive land use regulations. While Oregon does not have one formal land use plan with which all municipalities must comply, it has established statewide standards (statutes, planning goals and administrative rules) against which local land use plans are reviewed.[26]

A key element of Oregon's land use policy is the requirement that every city and major region delineate an urban growth boundary (UGB) within which development and publicly funded infrastructure expansion are to be confined. Supporters emphasize that the UGB is not a device to stop growth, but a means of allowing a community to define the territory within which it can reasonably provide public services economically. Land outside the UGB is generally used for forestry, farming or low-density residential development, but will not have urban services, such as sewers, extended there. Proponents describe immense benefits of UGBs, especially environmental protection. Critics say the UGB system drives up land prices within the boundary area and stifles growth. UGBs can be expanded, provided that modifications adhere to statewide land use and planning laws. This type of smart growth approach is remarkably effective at reining in sprawl, while allowing for planned expansion.

New Jersey

New Jersey's Governor has made smart growth a major goal, declaring in his 2003 State of the State address that there is "no single greater threat to our quality of life than the unrestrained development that is driving up property taxes, crowding our schools, and threatening our water supply." New Jersey's Office of Smart Growth is charged with implementing the New Jersey State Development and Redevelopment Plan, which calls for preventing pollution, traffic congestion, and sprawl, while developing economic vitality and building a better quality of life.[27]

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[25] *Regionalism and Realism*, Gerald Benjamin and Richard P. Nathan, A Century Foundation Book, Brookings Institution Press (2001).
[26] *Oregon's Statewide Land Use Planning Fast Facts*, p. 1 http://www.lcd.state.or.us/fastpdfs/fastfacts.pdf
[27] New Jersey Department of Community Affairs, Office of Smart Growth website: http://www.nj.gov/dca/osg.team/executivedirector.shtml

The Transfer of Development Rights bill recently passed in New Jersey is designed to steer developers toward the village centers and away from farmland. According to one observer, the law lets municipalities effectively set growth boundaries so preservation areas can be established where they could not have been before. New Jersey also has a Business Employment Incentive Program that offers businesses 80 percent of personal income tax withholdings from new jobs added in targeted "'smart growth" urban communities or distressed municipalities, with businesses creating jobs elsewhere eligible for 50 percent of such withholdings.

Connecticut

Connecticut is now deliberating the fifth five-year update of a conservation and development plan first adopted in 1979. The new plan includes six growth-management principles and is described as being more prescriptive than previous plans for the state's 169 municipalities and 15 regional planning organizations. The draft plan lists the following principles:

- Redevelop and revitalize regional centers and areas with existing or currently planned physical resources
- Expand housing opportunities and design choices to accommodate a variety of household types and needs,
- Concentrate development around transportation nodes and along major transportation corridors to support the viability of transportation options,
- Conserve and restore the natural environment, cultural and historical resources, and traditional rural lands,
- Protect and ensure the integrity of environmental assets critical to public health and safety, and
- Promote integrated planning across all levels of government to address issues on a statewide, regional and local basis.

The proposed plan is augmented by a "locational guide map," and strongly supports regional efforts, stating: "Creating an ethic of regional coordination is key to the successful implementation of all the growth management principles … Regional coordination is about pragmatic, rather than political, solutions to the mounting fiscal burdens on Connecticut taxpayers." Among its references, the draft plan lists the recent report by a Blue Ribbon Commission on Property Tax Burden and Smart Growth Incentives, which confirms other study findings that "current patterns of development in Connecticut are not sustainable." The Commission defined smart growth as "a comprehensive planning process that encourages patterns of development that can accommodate and sustain economic growth while at the same time limiting sprawl, reducing transportation congestion, protecting natural resources, preserving the traditional character of communities and ensuring equitable access to affordable housing, jobs and community services."[28]

The Connecticut Conference of Municipalities (CCM) has taken a strong position in favor of smart growth. Based on concerns about sprawling growth, resulting property tax increases, erosion of the environment and quality of life, and a negative impact on economic development, CCM formed a smart growth task force that produced 10 specific principles for smart growth in Connecticut. CCM is urging the Connecticut state government

[28] Connecticut Office of Policy & Management (12/2003), (www.opm.state.ct.us/)

to take steps to implement a smart growth policy, including (1) obtaining the information needed to know where land use is today and where it is heading, (2) developing consensus on short- and long-term goals and actions, and (3) devoting state, local, private-sector and other resources to make smart growth work.[29]

Support is growing for steps to rein in sprawl, according to a *Hartford Courant* editorial urging passage of a sound anti-sprawl bill that would encourage development in urban areas, which already have an infrastructure of roads, sewers, schools and public safety services. The bill would allow for improved planning, call for a study of sprawl, and allow big cities to adopt a split-rate property tax system with land taxed at a higher rate than buildings.[30]

Smarth Growth and Economic Development

Many local, state and national leaders have said that smart growth and economic development should complement one another, and be viewed as mutually reinforcing, rather than conflicting goals. Opponents of smart growth, on the other hand, often argue that it stands in the way of economic development.

There are two basic aspects to the relationship between smart growth and economic development. The first is smart growth's potential impact on local fiscal conditions (which in turn affect local economies) and the second is the direct effect that smart growth can have on business conditions by improving an area's quality of life (including the environment, housing, cultural and recreational opportunities), transportation system, and economic profile (synergistic businesses or industry clusters within a region, for example).

The impact of growth patterns on local fiscal conditions has been acknowledged and discussed long before the smart growth term was used. Development patterns obviously affect local tax bases and service costs, which in turn affect local tax rates. While there is some disagreement over the extent to which local taxes influence business location decisions and/or economic growth, and whether the effects of good government services or a well-educated workforce outweigh higher taxes, no one would say that there is not a relationship between local taxes and the business climate. To the extent that it can result in a more efficient governmental structure, both physically and organizationally, smart growth is therefore a fundamental ingredient of a successful local economic development strategy. In contrast, poorly planned, sprawling growth has the following negative fiscal impacts:

- It increases costs for local services in rapidly growing communities.
- More sparsely used infrastructure, such as more road and water/sewer miles per housing unit, drives higher unit costs in both growing and declining communities.
- Development that is exclusively residential in many communities fails to offset the cost of new services, particularly for schools.
- In cities and other declining population centers, middle-class exodus results in a concentration of disadvantaged residents, creating greater costs at the same time underutilized infrastructure results in inefficiencies.

[29] *Advocacy and Public Policy* (September 20, 2002, Number 02-04) Connecticut Conference of Municipalities
[30] "Anti-Sprawl Bill would Stimulate New Construction in Urban Areas," *Hartford Courant* 3/3/2004

Local officials have for years used various short-hand assumptions concerning the fiscal costs of certain types of development. Expressions such as "every time I see a new house, I say there goes another $1,600" are common, because as a general rule, residential development generates more costs than revenues.[31] Local officials also speak about "chasing after rateables" – meaning the more fiscally beneficial forms of development, including office buildings, motels, manufacturing plants and shopping centers. There are studies, in fact, that show the average ratio of tax revenues to costs of services for various types of business enterprises.[32]

A more comprehensive view of the costs of sprawl must compare the relative impact of sprawling growth versus planned growth – a difficult thing to quantify. However, there are a number of approaches that can be used and a number of studies that have done such analyses. One of the most frequently cited is an impact assessment that was prepared by Rutgers University for the New Jersey State Development and Redevelopment Plan,[33] which found significant savings for planned, rather than sprawling, growth. Planned development was estimated to consume 20-45 percent less land than sprawl, costing 15-25 percent less for local roads and 7-15 percent less for water and sewer lines. The estimated comparisons for housing costs and overall fiscal impacts (municipal and school services), while favoring planned development, exhibit less of a difference.

The impact of smart growth directly on economic development is more difficult to measure, and in some cases conceptualize, but it has long been recognized. Economic growth is dependent on the availability of locations for business occupation or development, and business location decisions have long been known to be driven by a variety of considerations, including those relating to transportation, business environment, local taxes, etc. However, it is also known that location decisions are also influenced by quality of life considerations. These considerations are becoming increasingly important in the "new economy," where "knowledge workers" or the "creative class" is the fundamental economic input. Simply put, in this type of a business, where people *want* to live is more important as a location factor.

Increasingly, local leaders are recognizing the impact of quality of life and what might be called the business quality of life. For example, New York City's preeminence as a location for corporate headquarters, the financial industry, and more currently, "new economy" knowledge and creative businesses has always been driven by the amenities of the area and the concentration of these types of business there. Regional strategies built on these fundamental relationships (i.e., it's a nice place to live and operate this sort of business) are being pursued across New York State and the nation. The Tech Valley initiative, for example, which is being aggressively promoted on a regional basis, is much more than a direct effort to attract technology firms. It includes a strong focus on making the region ready for such development through smart growth policies that ensure that the region will remain an attractive place to live, and even improve, as new development occurs.

The number of efforts that could be listed in this regard is limitless, because they are and have been the focus of virtually every major civic, business, economic development and regional planning group, whether the term smart growth is used or not. The real question, then, is not whether such relationships exist, but whether a more focused statewide effort on smart growth can broaden and accelerate smart economic development. If a

[31] *Why Smart Growth: A Primer*, International City/County Management Associations/SGN, p. 17.

[32] See, for example, "The Relative Importance to Montgomery County of Selected Economic Activities" as described in *Why Smart Growth: A Primer*, p. 18.

[33] Impact Assessment of the New Jersey Interim State Development and Redevelopment Plan, prepared for the New Jersey Office of State Planning by Rutgers University - Center for Urban Policy Research, Robert W. Burchell, et al (February 1992), (http://www.state.nj.us/dca/osg/docs/iaexecsumm022892.pdf)

heightened focus on smart growth throughout the State helps make each region a better place to live, in other words, would that not have a positive, self-reinforcing impact on the economy?

New York State's current economic development policies, including the Empire Zone program and the activities of local Industrial Development Authorities (IDAs), have come under intense scrutiny, and there is a general perception that these devices are increasingly being used (or manipulated) to merely subsidize the movement of businesses and jobs from one area of the State to another.

The Empire Zone program has been criticized by many as straying from its initial focus, which was to assist areas in economic stress, because zones can now be created almost anywhere. In recent testimony on the State budget, for example, the Sierra Club criticized the Luther Forest proposal in Saratoga County to designate an empire zone to attract micro-chip manufacturing plants: "The zones are being used to incentivize the destruction of open space in areas that are characterized as rapid growth and are pretty well off financially. In an age when we talk about promoting smart growth and quality communities, there is something distasteful about using state incentives to destroy open space."[34]

The Comptroller has proposed a number of reforms aimed at refocusing the Empire Zones program on its mission of creating jobs and attracting private investment to stimulate economic activity in struggling communities around the State.

Industrial Development Authorities (IDAs) have faced similar criticisms. Although IDAs were never intended to lure businesses from one location within the State to another – a practice often referred to as job "pirating" – many IDA projects seem to have this impact. When tax incentives are used in a manner that only produces relocation, there is no benefit to the State in terms of job creation. Pirating also works against efforts to create a strong regional approach to economic development.

IDAs are also prohibited from providing financial assistance for retail projects (including stores and other retail operations, such as motels, legal or medical offices, etc.). Retail ventures are treated differently because by definition they do not increase the level of demand or production, and can damage competitors or put them out of business. For example, a chain grocery store opening up in a community generally will not increase the demand for groceries, but will lure shoppers away from already established, often smaller and independently-owned neighborhood stores, potentially putting them out of business and severely damaging neighborhood convenience. The difference in jobs produced by a new store and the jobs lost by the store closing might even be a net loss. Unfortunately, the general prohibition on retail projects has a number of exceptions (implemented at the discretion of local IDA boards) that make the prohibition almost completely ineffective.

A 1996 report from the Assembly's Local Governments Committee found that despite the anti-pirating provision, pirating still accounted for a large part of IDA activity, and the retail sales prohibition was found to be similarly ineffective. Comptroller's audits and other reports have had similar findings. The Comptroller has launched a public authorities reform initiative and is reviewing IDA reporting.

[34] Testimony of the Sierra Club -- Atlantic Chapter, presented to the Joint Hearing on the Budget (2/10/2004).

Concluding Policy Questions

This is a propitious time to consider broad changes in New York State's approach to land use and economic development policies. A variety of economic and social forces are acting upon both the State and its municipalities, forcing consideration of fundamental changes. As cities continue to hemorrhage population and jobs, and some falter on the verge of financial collapse, people in surrounding regions are recognizing that deterioration of their core communities is a fundamental threat to regional economic and cultural well-being. There is a renewed interest in shared services and consolidation, and city-county mergers are even being discussed.

A number of vital questions should be reviewed in a robust public dialogue, even as current legislative proposals are considered. Simply put, there are a number of big-picture questions that should be answered, including the following:

- What are the monetary and other costs of sprawl to New York State, and to what extent is sprawl an impediment to healthy local economies?
- What approaches would be most effective in modifying current sprawling growth patterns (e.g., changes in planning requirements, fiscal incentives)? What approaches should be avoided?
- How far can (or should) New York State go to promote regional solutions to regional problems?
- Is the current fragmented system of local economic development agencies and land use planning and regulation an impediment to effective regional smart growth and economic development? Are there better ways to make the system work?
- Should comprehensive planning be required at the local, county, regional or State level? Is there a way to effectively coordinate these plans within an overall smart growth and smart economic development plan?
- Can the State do a better job of promoting traditional neighborhood development and assisting local governments with developing zoning codes to support this type of development?
- What are the economic benefits of an aggressive smart growth agenda? Are there economic costs for some approaches?
- Should the State use financial or other incentives to direct development toward existing communities? Should the use of economic development incentives in ways that promote sprawl be discouraged or prohibited?
- Could a State-level smart growth cabinet help ensure that the actions of State agencies and public authorities support smart growth principles?

Appendix: Resources

National

- Smart Growth Network (http://www.smartgrowth.org)
- The Congress for New Urbanism (http://www.cnu.org)
- International City/County Management Association (http://www.icma.org)
- Lincoln Institute of Land Policy (www.lincolninst.edu)

New York State

- *The Local Government Handbook (5th Edition)*, NYS Department of State (January 2000) and available online (www.dos.state.ny.us/lgss/pdfs/Handbook.pdf)
- New York Main Street Alliance (http://www.cardi.cornell.edu/nymsa/resources.cfm)
- NYS Quality Communities Clearinghouse (http://www.dos.state.ny.us/qc/home.shtml)
- Onondaga County Settlement Plan (http://www.syracusethenandnow.net/SettlementPlan/SettlementPlan.htm)

Other States

- Oregon's Statewide Land Use Planning Fast Facts (http://www.lcd.state.or.us)
- New Jersey Department of Community Affairs, Office of Smart Growth (http://www.nj.gov/dca/osg/)
- Connecticut Conference of Municipalities (http://www.ccm-ct.org/index.html)

Reading List

- *Suburban Nation: The Rise of Sprawl and the Decline of the American Dream*, Andres Duany, et al, North Point Press (April 2001)
- *The Geography of Nowhere*, James Howard Kuntsler, Simon and Schuster (1993)
- *Home From Nowhere: Remaking Our Everyday World For The 21st Century*, James Howard Kuntsler, Simon and Schuster (1998)
- *Changing Places – Rebuilding Community in the Age of Sprawl*, Richard Moe and Carter Wilkie, Henry Holt and Company, Inc. (1997)
- *Why Smart Growth – A Primer*, International City/County Management Association (ICMA) (http://www.epa.gov/livability/pdf/WhySmartGrowth_bk.pdf)
- *Getting to Smart Growth: 100 Policies for Implementation* ICMA (2003) (http://www.smartgrowth.org/pdf/gettosg.pdf)
- *Getting to Smart Growth II: 100 More Policies for Implementation* ICMA (2003) (http://www.smartgrowth.org/library/articles.asp?art=870)
- *Alternatives to Sprawl*, Lincoln Institute of Land Policy (1995) (www.lincolninst.edu/pubs/pub-detail.asp?id=864)

Evolution of Environmental Regulations

Contents:

Model Ordinance for Wetland Protection – Westchester County Soil and Water Conservation District
Village of Hastings-on-Hudson Steep Slopes Ordinance
City of Rye Wetlands Ordinance

Additional Links:

https://planning.westchestergov.com/images/stories/reports/StatusOfPlanning1987.PDF
https://planning.westchestergov.com/images/stories/reports/WetlandOrdinance.pdf
https://planning.westchestergov.com/images/stories/reports/FLOODGUIDE.pdf
https://planning.westchestergov.com/images/stories/reports/TreeRegsReport92.pdf
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MODEL ORDINANCE FOR

WETLAND PROTECTION

WESTCHESTER COUNTY
SOIL AND WATER CONSERVATION DISTRICT

January 1998

WESTCHESTER COUNTY SOIL AND WATER CONSERVATION DISTRICT

The Westchester County Soil and Water Conservation District was created in 1967 by act of the County Board of Supervisors (now Board of Legislators) pursuant to the New York Soil and Water Conservation Districts Law. Unlike its more than 50 agricultural counterparts statewide, the District has developed a program with a distinct suburban/urban conservation orientation. Originally established to address issues of flooding in the county, over the past 20 years the District has broadened its focus to consider a range of soil, water and ecological conservation and protection concerns, including the protection and management of streams, water bodies, flood plains and wetlands, and management of land disturbance to minimize stormwater pollution and impacts to surface water quality. In 1989, the New York State Legislature officially expanded the stated objectives of districts to include nonpoint source pollution programming and remediation.

The District consists of a five-member citizen Board of Directors appointed by the County Executive. Administrative and technical assistance to the Board is provided by staff of the county Department of Planning. Through written cooperative agreements, the District provides natural resource planning and policy assistance to 38 Westchester County municipalities and other governmental agencies.

For further information about wetlands management and protection or to review National Wetlands Inventory (NWI) maps, New York State Freshwater Wetlands and Tidal Wetlands maps, and USDA-NRCS “Soil Survey of Putnam and Westchester Counties,” New York (1994), please contact:

Westchester County Soil and Water Conservation District
148 Martine Avenue, Room 432
White Plains, New York 10601
(914)285-4422

MODEL ORDINANCE FOR WETLAND PROTECTION

WESTCHESTER COUNTY EXECUTIVE

Andrew J. Spano

WESTCHESTER COUNTY DEPARTMENT OF PLANNING

Joyce M. Lannert, AICP, Commissioner
Gerard E. Mulligan, AICP, Deputy Commissioner
Gina T. D'Agrosa, AICP, Director of Environmental Planning

PROJECT STAFF
Robert E. Doscher, PWS, Associate Environmental Planner, *Project Manager*
Linda Dillon, Secretary II

SOIL AND WATER CONSERVATION DISTRICT
BOARD OF DIRECTORS

Carol Coggeshall, Chair
Peter Van de Water, Vice Chair
Nancy Jane Woolley, Secretary
Edith Silberstein, Treasurer
Carl Pratt

May 1997, revised January 1998

The Westchester County Soil and Water Conservation District also wishes to acknowledge the contributions of the following individuals during the comment phase of document preparation:

Ms. Diane Goetke, New York State Department of Environmental Conservation
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INTRODUCTION

The District's Model Ordinance for Wetland Protection

In the early 1980s, municipal governments and other groups began asking the Westchester County Soil and Water Conservation District for technical and policy guidance in identifying, delineating, evaluating, managing, and regulating wetlands. In 1985, in response to continued interest in the topic, the District began a wetlands assistance program composed of three major components: (1) public training workshops; (2) assistance in reviewing development and other projects and activities, including wetland boundary verification and delineation, wetland functional analysis, impact assessment, and site development plan review; and (3) assistance in revising and developing municipal ordinances to regulate wetlands. The District continues to provide these services today.

In the course of reviewing and commenting on dozens of proposed local laws governing wetland protection, the District noted significant variations in regulatory approach, definition, scope of applicability, and degree of protection afforded wetlands among a host of municipal regulations. In 1988, the District published its first "Model Ordinance for Wetland Protection." The model ordinance was intended to encourage municipalities throughout Westchester County to seriously consider the issue of wetland protection and standardize their approaches to wetland management, both in terms of criteria used to define these ecosystems and regulatory philosophy.

The 1988 model has assisted municipalities with the protection of wetlands and watercourses within their boundaries. To date, 16 municipalities in Westchester County have incorporated, in whole or in part, the essential components of the model ordinance into their existing or pending wetland protection ordinances. Model ordinances in other counties also have been patterned after the District's model.

However, much has changed in wetland management and regulation since 1988. New state and federal manuals for delineating wetlands have been developed, the science of wetland restoration and creation has matured, and state and federal guidelines, policies and laws have changed over the years to reflect a greater understanding of wetlands and their relationship to humans. To reflect current wetland management techniques, guidelines and laws, the District has revised its model ordinance, incorporating applicable comments from reviews by local, state and federal agencies into this updated model.

The District's model ordinance allows for a more streamlined process of regulating wetlands. Many of the provisions in this model, such as impact avoidance, minimization and mitigation, satisfy the requirements of state and federal agencies. Therefore, it is assumed that applicants who comply with the requirements of this model ordinance also will comply with many, if not most, of the wetland protection requirements of state and federal agencies. However, this does not alleviate the obligation of applicants to acquire permits from appropriate local, state and federal agencies.

TYPES OF WETLAND REGULATION

Federal Regulations

The principal federal laws that regulate activities in wetlands are Sections 404 and 401 of the Clean Water Act, and Section 10 of the Rivers and Harbors Act. Other federal laws include the National Environmental Policy Act, the Coastal Zone Management Act, and the Swampbuster provision of the Food, Agriculture, Conservation and Trade Act of 1990. The federal wetland protection law most commonly applied in Westchester County is the Clean Water Act. Under this law, applicants who want to conduct a regulated activity, such as excavating or filling a wetland, must demonstrate that the wetland impacts will be avoided and minimized to the fullest practicable extent and that unavoidable adverse impacts will be mitigated. According to recent revisions, the U.S. Army Corps of Engineers must be notified by applicants proposing to impact one-third of an acre to three acres of wetland before conducting the activity under Nationwide Permit No. 26. Any activity impacting more than three acres requires the applicant to first acquire an Individual Permit from the Army Corps; applications under this permit are reviewed by the U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, and National Marine Fisheries Service. Any activity impacting less than one-third of an acre does not require a federal permit but requires that the Army Corps be notified of the activity. The law does not regulate any upland (non-wetland) buffer adjacent to wetlands.

State Regulations

The principal New York State regulations affecting development activities in and near wetlands include the Freshwater Wetlands Act, the Tidal Wetlands Act, and the Adirondack Park Agency Act. Administration of the Tidal Wetlands Act [Article 25 of the State Environmental Conservation Law (ECL)] rests solely with the State Department of Environmental Conservation (DEC). The Freshwater Wetlands Act (Article 24 of the ECL) is administered by the DEC in all of New York State outside of Adirondack Park. Inside Adirondack Park, the Adirondack Park Agency administers both the Freshwater Wetlands Act and the APA Act. The Freshwater Wetlands Act regulates only wetlands which are equal to or greater than 12.4 acres in size or which are of “unusual local importance” and have been so designated. It also regulates a 100-foot-wide buffer adjacent to these wetlands.

Other state laws that may apply to activities in or near wetlands include the State Environmental Quality Review Act (SEQRA), the Waterfront Revitalization of Coastal Areas and Inland Waterways Act, the Coastal Erosion Hazard Areas Act, and the Use and Protection of Waters Program. In addition, the New York Uniform Procedures Act applies to procedural aspects of the review and permitting process. Also, the DEC administers the Water Quality Certification program pertaining to Section 401 of the Clean Water Act, which requires state certification that federal permits meet state water quality standards.

Local Regulations

Variability of Local Ordinances

Many local governments in New York have their own wetland protection ordinances or provisions in their other ordinances that regulate activities proposed in or near wetlands. In Westchester County, 30 of the county's 43 municipalities regulate freshwater wetlands at the local level (for more information on municipal wetland ordinances, see the District's "Wetland Protection in Westchester County: A Survey of Municipal Wetland Ordinances," revised May 1997). All of these regulate under Municipal Home Rule authority. But because there is considerable variation in the provisions of these local regulations, it is necessary to contact the appropriate local government agency to determine the local provisions that affect a particular wetland. In some cases, local regulations may cover wetlands not covered by state and federal regulations, and may be more restrictive than those of state or federal regulations. If local laws are less restrictive, projects must still comply with state and federal laws

Wetlands also may be indirectly regulated by additional ordinances, such as sensitive areas or clearing and grading ordinances. Special analysis and review may be required for projects affecting wetlands covered by local sensitive areas ordinances. Such policies and regulations may regulate wetlands and/or activities that are not covered under state and federal laws.

Other local mechanisms that may be used to regulate development affecting wetlands include comprehensive plans, zoning ordinances, and flood plain management regulations. Local planning and public works agencies can assist project sponsors in determining local requirements.

Local Adoption of State Regulations

As of 1975, the New York State Freshwater Wetlands Act (Article 24 of the Environmental Conservation Law) allows local governments to assume jurisdiction for regulating wetlands wholly or partially within their boundaries. Local wetland protection laws or ordinances may simply adopt the state law, or may strengthen the law (for example, by protecting smaller wetland areas). However, no local law or ordinance that is adopted pursuant to the act can be less protective of wetlands than the act. To date, three local governments, all outside of Westchester County, have taken over the state program.

MODEL ORDINANCE

Municipal Home Rule Authority

The District's model ordinance recommends that municipalities regulate all wetlands within their jurisdiction pursuant to Municipal Home Rule authority rather than Article 24 of the ECL (Freshwater Wetlands Act). This approach maximizes the effectiveness of local wetland protection by giving municipalities more control over how wetlands are regulated within their boundaries, including their authority over wetlands not regulated by the state. It also allows municipalities and the State to both regulate activities in state-designated wetlands. However, municipalities may elect not to regulate activities within state-designated wetlands and may do so by drafting a wetlands definition that specifically excludes the definition used under Article 24 of the ECL; in this case, the review of activities within or near state-designated wetlands would be under the sole jurisdiction of the New York State DEC (and federal laws, as applicable). On the other hand, municipalities may assume regulatory authority over State-designated wetlands from the DEC pursuant to Article 24 of the ECL by adopting local laws which incorporate specific provisions set by the State (see Appendix A). To assume this authority, local governments must demonstrate to the State adequate technical, administrative and enforcement capabilities to carry out the state program. To date, no local government in Westchester County has assumed this authority.

In general, the criteria and standards set forth in this ordinance are more stringent than those set forth by the state, and these standards should result in a local decision acceptable to the latter authority. Furthermore, by continuing to regulate pursuant to Municipal Home Rule authority, municipalities are not required to adopt the Classification System and Minimum Land Use Regulations set by the state. These requirements, while useful and appropriate for regional wetland management whose perspective is broad, do not adequately reflect local issues and concerns as well as the diminishing wetland base within Westchester's suburban and urban areas.

Wetland Definition

The technical definition of wetlands presented in this document is based on a methodology developed by four federal agencies - Environmental Protection Agency, Army Corps of Engineers, Fish and Wildlife Service, and Natural Resources Conservation Service. The methodology is contained in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1989). It requires consideration of three parameters in establishing wetland boundaries: vegetation, soils, and hydrology. It also addresses certain conditions which may warrant the consideration of only two parameters. The District believes that this method of defining wetlands will result in the most objective and comprehensive delineation of these systems, and therefore maximize the potential for effective regulation.

Structure of Model Ordinance

This document is arranged in two sections. In the first, the text of the "model ordinance" is presented on right-hand pages and is accompanied by "explanatory notes" on each left-hand page. Of special note is the presentation on mitigation policy (Section 5.5), which outlines mitigation plan requirements in an effort to standardize mitigation proposals. Also, Section 5.4 sets specific standards for permit decisions to guide regulatory boards in reviewing and ruling on permit applications. The second section, Appendix A, outlines the changes to be made to the model ordinance if municipalities decide to regulate pursuant to Article 24 of the ECL rather than Municipal Home Rule. This section also lists the major references used in drafting this model municipal ordinance.

SECTION 1: FINDINGS OF FACT AND INTENT

1.1 Findings of Fact

In their natural state, wetlands serve multiple functions, including:

1. removing pollutants from surface waters by trapping sediment, removing nutrients and detoxifying chemicals;

2. recharging ground water, including aquifers, and surface waters, thereby maintaining stream flows needed by plants and animals to survive;

3. controlling flooding by storing and then slowly releasing stormwater runoff;

4. stabilizing shorelines by protecting against erosion caused by stream currents and waves;

5. providing unique or essential habitat for diverse fish and wildlife species, including many of those on the New York State and federal lists of special concern, threatened, rare and endangered species;

6. supporting unique vegetative associations specifically adapted for survival in low oxygen environments and/or brackish or salt water;

7. providing areas of unusually high plant productivity which support wildlife diversity and abundance;

8. providing open space and visual relief from intense development in urbanized and growing areas;

9. providing recreational opportunities, including fishing, hunting, nature study, hiking and wildlife watching; and

10. serving as outdoor laboratories and living classrooms for the study and application of biological, natural and physical sciences.

Considerable acreage of these important natural resources has been lost or impaired by draining, dredging, filling, excavating, building, polluting, and other acts inconsistent with the natural uses of such areas. Wetland losses in New York State and Westchester County are estimated to be greater than 60 percent of the total original wetland acreage. Remaining wetlands are in jeopardy of being lost, despoiled, or impaired by such acts, contrary to public safety and welfare.

It is therefore the policy of the **Municipality** to protect its citizens, including generations yet unborn, by preventing the despoliation and destruction of wetlands and watercourses while taking into account varying ecological, water quality, economic, recreational, and aesthetic values. Activities that may damage the functions or cause the loss of wetlands and watercourses should be avoided and, where avoidance is not practicable, minimized to the fullest practicable extent. Any remaining impact to the functions and benefits of wetlands and watercourses and any loss of

wetlands should then be compensated by restoring or creating wetlands.

1.2 Intent

It is the intent of the **Municipality** that activities in and around wetlands and watercourses conform with all applicable building codes, sediment control regulations, and other regulations, and that such activities not threaten public safety, the natural environment, or cause nuisances by:

1. impeding flood flows, reducing flood storage areas or destroying storm barriers, thereby resulting in increased flood heights, frequencies, or velocities on other lands;

2. increasing water pollution through location of domestic waste disposal systems in wet soils; inappropriate siting of stormwater control facilities; unauthorized application of fertilizers; pesticides; herbicides and algicides; disposal of solid wastes at inappropriate sites; creation of unstabilized fills; or the destruction of wetland soils and vegetation serving pollution and sediment control functions;

3. increasing erosion;

4. decreasing breeding, nesting, and feeding areas for many species of waterfowl and shorebirds, including those rare and endangered;

5. interfering with the exchange of nutrients needed by fish and other forms of wildlife;

6. decreasing habitat for fish and other forms of wildlife;

7. adversely altering the recharge or discharge functions of wetlands, thereby impacting ground water or surface water supplies;

8. significantly altering the wetland hydroperiod and thereby causing either short- or long-term changes in vegetational composition, soils characteristics, nutrient recycling, or water chemistry;

9. destroying sites needed for education and scientific research, such as outdoor biophysical laboratories, living classrooms, and training areas;

10. interfering with public rights in navigable waters and the recreation opportunities provided by wetlands for fishing, boating, hiking, bird watching, photography, camping, and other passive uses; or

11. destroying or damaging aesthetic and property values, including significant public vistas.

SECTION 2: APPLICABILITY AND NON-CONFORMING ACTIVITIES

2.1 Wetlands and Wetland Buffers: New Projects

This ordinance shall apply to all land defined as Wetland, Watercourse or Wetland/Watercourse Buffer in Section 3 and to any proposed regulated activity as defined in Section 4.2 except any land use, improvement or development for which final approval shall have been obtained prior to the effective date of this ordinance from the local governmental authority or authorities having jurisdiction over such land use and as further defined in Section 2.3.

2.2 Rules for Establishing and Interpreting Wetland Boundaries

The boundaries of a wetland or watercourse ordinarily shall be determined by field investigation, flagging, and subsequent survey by a licensed land surveyor unless the last is waived by the Approval Authority. The Approval Authority may consult, and/or may require the Applicant to consult with wetland scientists, biologists, hydrologists, soil scientists, ecologists/botanists, or other experts as necessary to make this determination.

2.3 Grandfathered Projects

The provisions of this local law shall not apply to any land use, improvement or development for which final approval shall have been obtained prior to the effective date of this ordinance from the local governmental authority or authorities having jurisdiction over such land use. As used in this section, the term “final approval” shall mean:

1. in the case of the subdivision of land, conditional approval of a final plat;
2. in the case of a site plan not involving the subdivision of land, approval by the appropriate body or office of a village, town or city of the site plan; and
3. in those cases not covered by subdivision (1) or (2) above, the issuance of a building permit or other authorization for the commencement of the use, improvement or development for which such permit or authorization was issued or in those local governments which do not require such permits or authorizations, the actual commencement of the use, improvement or development of the land.

2.4 Current Projects and Non-conforming Activities

A regulated activity that was approved prior to passage of this ordinance but which is not in conformity with the provisions of this ordinance may be continued subject to the following:

1. All such activities shall continue to be governed by the present laws of the Municipality.

2. No such activity shall be expanded, changed, enlarged, or altered in such a way that increases its non-conformity without a permit.

3. If a non-conforming activity is discontinued for twelve (12) consecutive months, any resumption of the activity shall conform to this ordinance.

4. If any non-conforming use or activity is destroyed by human activities or a natural catastrophe, it shall not be resumed except in conformity with the provisions of this ordinance.

5. Activities or adjuncts thereof that are or become nuisances shall not be entitled to continue as non-conforming activities.

SECTION 3: DEFINITIONS

Words or phrases used in this ordinance shall be interpreted as defined below, and where ambiguity exists, words or phrases shall be interpreted so as to give this ordinance its most reasonable application in carrying out the regulatory goals stated in Section 1:

ADJACENT AREA: See "Wetland/Watercourse Buffer."

AGRICULTURAL ACTIVITY: The activity of an individual farmer or other landowner in: grazing and watering livestock; making reasonable use of water resources for agricultural purposes; harvesting the natural products of wetlands, excluding peat mining and timber harvesting; and selective cutting of trees. Agricultural activity does not mean clear cutting of trees; filling or deposition of spoil; mining; or draining for growing agricultural products or for other purposes.

APPLICANT: A person who files an application for permit under this local law and who is either the owner of the land on which the proposed regulated activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such person.

APPROVAL AUTHORITY: The municipal or administrative board or public official or municipal employee empowered to grant or deny permits under this local law, to require the posting of bonds as necessary, and to revoke or suspend a permit where lack of compliance to the permit is established. The Approval Authority for the **Municipality** is _____.

AQUICULTURE: Cultivating and harvesting products, including fish and vegetation, that are produced naturally in freshwater wetlands, and installing cribs, racks, and other in-water structures for cultivating these products; but does not include filling, dredging, peat mining, clear cutting, or the construction of any buildings or any water-regulating structures such as dams.

BOUNDARY OF A WETLAND: The outer limit of the soils and/or vegetation as defined under "Wetland/Freshwater Wetland."

CLEAR CUTTING: Any cutting of more than 30 percent of trees six (6) inches or more in diameter at breast height (dbh) over any 10-year cutting cycle as determined on the basis of wetland area per lot or group of lots under single ownership, including any cutting of trees which results in the total removal of one or more naturally occurring species, whether or not the cut meets or exceeds the 30 percent threshold.

COMMISSIONER: The Commissioner of the Department of Environmental Conservation of the State of New York.

CREATION: To construct a new wetland, often by excavating and/or flooding land not previously occupied by a wetland.

DAMS AND WATER CONTROL MEASURES: Barriers used, or intended to, or which, even though not intended in fact do, obstruct the flow of water or raise, lower, or maintain the level of water.

DATE OF RECEIPT OF APPLICATION BY APPROVAL AUTHORITY: An application shall be deemed "Received" by the Approval Authority on the date of the first regular meeting of the Approval Authority following the filling of the application and supporting plans pursuant to the provisions of this law.

DEPOSIT: To fill grade, discharge, emit, dump, or place any material or the act thereof.

DISCHARGE: The emission of any water, substance, or material into a wetland or wetland buffer whether to not such substance causes pollution.

DOMINANT(S) or DOMINANCE: A dominant species is either the predominant plant species (i.e. the only species dominating a vegetative unit) or a co-dominant species (i.e. when two or more species dominate a vegetative unit). Dominant species are considered to be those with 20 percent or more areal coverage in the plant community. The measures of spatial extent are percent areal cover for all vegetation units other than trees, and basal area for trees. In this ordinance, dominance refers to the spatial extent of a vegetative species because spatial extent is directly discernible or measurable in the field.

DRAIN: To deplete or empty of water by drawing off by degrees or in increments.

DREDGE: To excavate or remove sediment, soil, mud, sand, shells, gravel, or other aggregate.

EXCAVATE: To dig out and remove any material from a wetland, watercourse or wetland/watercourse buffer.

FACULTATIVE SPECIES: Vegetative species that can occur in both upland and wetland systems. There are three subcategories of facultative species: facultative wetland, straight facultative, facultative upland. Under natural conditions, a facultative wetland species is usually (estimated probability of 67 percent to 99 percent) found in wetlands, but occasionally in uplands; a straight facultative species has basically a similar

likelihood (estimated probability of 34 percent to 66 percent) of occurring in both wetlands and uplands; a facultative upland species is usually (estimated probability of 67 percent to 99 percent) found in uplands, but occasionally in wetlands.

FERROUS IRON: The reduced form of iron found in waterlogged soils.

FILL: See "Deposit."

FRESHWATER WETLANDS MAP: The final freshwater wetlands maps for Westchester county promulgated by the Commissioner of the New York State Department of Environmental Conservation pursuant to subdivision 24-0301.5 of the New York State Freshwater Wetland Act, or such map as has been amended or adjusted, and on which are indicated the approximate locations of the actual boundaries of wetlands regulated pursuant to Article 24 of the Environmental Conservation Law.

GRADING: To adjust the degree of inclination of the natural contours of the land, including leveling, smoothing, and other modification of the natural land surface.

GROWING SEASON: The portion of the year when soil temperatures are above biologic zero (5 degrees C); the growing season for Westchester County is March through October.

HISTOSOLS/ORGANIC SOILS: A taxonomic order composed or organic soils (mostly peats and mucks) that have organic materials in over half the upper 32 inches unless the depth to rock or to fragmented rock materials is less than 32 inches (a rare condition), or the bulk density is very low, and as further defined under "Wetland."

HYDRIC SOIL: A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part and as further defined under "Wetland."

HYDROPHYTIC VEGETATION: Macrophytic plant life growing in water, soil or substrate that is at least periodically deficient in oxygen as a result of excessive water content.

LONG DURATION: A duration class referring to flooding or inundation in which inundation for a single event ranges from 7 days to 1 month.

MATERIAL: Liquid, solid, or gaseous substances including but not limited to soil, silt, gravel, rock, clay, peat, mud, debris, and refuse; any organic or inorganic compound, chemical agent or matter; sewage sludge or effluent; or industrial or municipal solid waste.

MICROSITE: A small site supporting facultative or obligate vegetation anomalous within the context of the larger vegetative unit. Microsites may be drier or wetter than surrounding areas as a result of altered drainage, incidental topographic variation or a related characteristic.

MINERAL SOIL: A soil consisting predominantly of, and having its properties determined predominantly by, mineral matter. Mineral soils usually contain less than 20 percent organic matter by weight.

MITIGATION PLAN: The plan prepared by the Applicant pursuant to Section 5.5 when the Applicant has demonstrated that either losses or impacts to the wetland or wetland buffer are necessary and unavoidable as defined in Section 5.4.4 and have been minimized to the maximum extent practicable.

MUNICIPALITY: The (Town/Village/City) of _____.

MUNSELL SOIL COLOR CHARTS: A soil color designation system that specifies the relative degree of the three simple variables of color: hue, value, and chroma, produced by the Kollmorgen Corporation, 1992, or as amended or updated from time to time.

OBLIGATE UPLAND SPECIES: Plant species that, under natural conditions, always occur in uplands (i.e. greater than 99 percent of the time). The less than 1 percent difference allows for anomalous upland occurrences (i.e. occurrences that are the result of human-induced disturbances and transplants). Obligate wetland species for New York State are listed in "Wetland Plants of the State of New York 1986" published by the U.S. Fish and Wildlife Service in cooperation with the National and Regional Wetland Plant List Review Panels and as updated from time to time.

PERMIT: That form of written Municipal approval required by this law for the conduct of a regulated activity within a wetland, watercourse or wetland/watercourse buffer.

PERSON: See "Applicant."

POLLUTION: Any harmful thermal effect or the contamination or rendering unclean or impure of any wetland or waters by reason of erosion, or by any waste or other materials discharged or deposited therein.

PROJECT: Any proposed or ongoing action which may result in direct or indirect physical or chemical impact on a wetland, including but not limited to any regulated activity.

REMOVE: To dig, dredge, suck, bulldoze, dragline, blast, or otherwise excavate or grade, or the act thereof.

RENDERING UNCLEAN OR IMPURE: Any alteration of the physical, chemical, or biological properties of any wetland or waters including but not limited to change in odor, color, turbidity, or taste.

RESTORATION: To reclaim a disturbed or degraded wetland to bring back one or more functions that have been partially or completely lost by such actions as draining or filling.

SELECTIVE CUTTING: Any cutting of trees within the boundaries of a wetland or wetland/watercourse buffer that is not "Clear Cutting" as defined in this Section.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA): The law pursuant to Article 8 of the New York State Environmental Conservation Law providing for environmental quality review of actions which may have a significant effect on the environment.

STRUCTURE: Anything constructed or erected, the use of which requires location on or in the ground or attachment to something having location on the ground, including but not limited to buildings, tennis courts, and swimming pools.

SUBDIVISION: Any division of land into two or more lots, parcels or sites, whether adjoining or not, for the purpose of sale, lease, license or any form of separate ownership or occupancy, including any grading, road construction, installation of utilities, or other modifications or any other land use and development preparatory or incidental to any such division, by any person or by any other person controlled by, under common control with, or controlling such person, or by any group of persons acting in concert as part of a common scheme or plan. "Subdivision" of land shall include any map, plat or other plan of division of land, whether or not previously filed. "Subdivision" of land shall not include the lease of land for open space recreational use and shall not include the division of land by bona fide gift, devise or inheritance. "Subdivision" shall include the creation of units in the condominium form of ownership and the creation of leaseholds in a cooperative.

VERY LONG DURATION: A duration class referring to flooding or inundation in which inundation for a single event is greater than 1 month.

WATER TABLE: The zone of saturation at the highest average depth during the wettest season.

WATERCOURSE: Any natural or artificial, intermittent, seasonal or permanent, and public or private water body or watercourse. A water body is intermittently, seasonally or permanently inundated with water and contains a discernible shoreline and includes ponds, lakes and reservoirs. A watercourse includes rivulets, brooks, creeks, streams, rivers and other waterways flowing in a definite channel with bed and banks and usually in a particular direction.

WETLAND/FRESHWATER WETLAND: Any area which meets one or more of the following criteria:

Lands and waters of the State that meet the definition provided in subdivision 24-0107.1 of the New York State Freshwater Wetlands Act (Article 24 and title 23 of Article 71 of the Environmental Conservation Law) and have an area of at least 12.4 acres or, if smaller, have unusual local importance as determined by the Commissioner pursuant to subdivision 24-0301.1 of the Act. The approximate boundaries of such lands and waters are indicated on the official freshwater wetlands map promulgated by the Commissioner

pursuant to subdivision 24-0301.5 of the Act, or such a map that has been amended or adjusted pursuant to section 24-0301.6 of this Title.

All areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of hydrophytic vegetation as defined by the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (January 1989) prepared by the Federal Interagency Committee of the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and U.S.D.A. Natural Resources Conservation Service.

WETLAND/WATERCOURSE BUFFER: The wetland/watercourse buffer is a specified area surrounding a wetland or watercourse that is intended to provide some degree of protection to the wetland or watercourse from human activity and other encroachment associated with development. The wetland buffer shall be subject to the regulations for wetlands as defined in this ordinance and shall be determined to be the area extending 100 feet horizontally away from and paralleling the outermost boundary of a wetland and/or point of mean high water of a watercourse, or greater than 100 feet where designated by either the Commissioner of the New York State Department of Environmental Conservation or the local Approval Authority.

WETLAND HYDROLOGY: The sum total of wetness characteristics in areas that are inundated or have saturated soils for a sufficient duration to support hydrophytic vegetation.

WETLAND PLANTS OF THE STATE OF NEW YORK: In the National List of Plant Species That Occur In Wetlands: Northeast (1988), the list of facultative and obligate upland and wetland plant species with appropriate indicator status developed by the U.S. Department of the Interior, Fish and Wildlife Service, for the National Wetland Inventory, as amended and updated from time to time.

WETLAND SCIENTIST: A person having special knowledge by reason of education and work experience in natural, physical and biological sciences related to the identification, assessment and management of wetlands to a degree acceptable to the Approval Authority.

SECTION 4: PERMIT REQUIREMENTS

No regulated activity shall be conducted in a wetland or wetland buffer without a written permit from the Approval Authority and full compliance with the terms of this ordinance or other applicable regulations. All activities that are not permitted as-of-right or by permit shall be prohibited.

4.1 Permitted Uses

The following uses shall be permitted as-of-right within a wetland or wetland buffer to the extent that they are not prohibited by any other ordinance; and to the extent that they do not constitute a pollution or erosion hazard or interfere with proper drainage; and

provided they do not require structures, grading, fill, draining, or dredging except as authorized by permit:

1. normal ground maintenance including mowing, trimming of vegetation and removal of dead or diseased vegetation around a residence;
2. selective cutting as defined in Section 3;
3. repair of walkways and walls;
4. decorative landscaping and planting in wetland buffers, excluding those activities regulated in Sections 4.2(11) and 4.2(12);
5. public health activities, orders, and regulations of the Westchester County Department of Health and/or the New York State Department of Health for emergencies only;
6. deposition or removal of natural products of wetlands in the process of recreational or commercial fishing, shellfishing, aquiculture, hunting or trapping, but excluding excavation and removal of peat or timber, except as provided in Section 4.1.2;
7. agricultural activities as defined in Section 3, but shall not include grazing or watering of livestock used only for recreational activities (e.g., horseback riding) or livestock not directly associated with farm-related activities.

4.2 Regulated Activities

Regulated activities include all activities within a wetland, watercourse or wetland/watercourse buffer, other than those specified in Section 4.1, and may be permitted upon written application to the Approval Authority. Regulated activities include, but are not limited to:

1. placement or construction of any structure;
2. any form of drainage, dredging, excavation, or removal of material either directly or indirectly;
3. any form of dumping, filling, or depositing of material either directly or indirectly;
4. installation of any service lines or cable conduits;
5. introduction of any form of pollution, including but not limited to the installation of a septic tank, the running of a sewer outfall, or the discharging of sewage treatment effluent or other liquid wastes into or so as to drain into a wetland;
6. alteration or modification of natural features and contours;
7. alteration or modification of natural drainage patterns;
8. construction of dams, docks, or other water control devices, pilings or bridges, whether or not they change the natural drainage characteristics;
9. installation of any pipes or wells;
10. clear cutting of any area of trees;
11. removal or cutting of any vegetation except as permitted in Section 4.1.2;
12. deposition or introduction of organic or inorganic chemicals within a wetland or watercourse, including herbicides and pesticides regulated pursuant to Article 33 of the New York Environmental Conservation Law and Section 608 of the New York Public Health Law;
13. grazing or watering of livestock used for recreational activities or livestock

not directly associated with farm-related activities, and any agricultural activity which involves filling, draining or excavation of a wetland, except as permitted in Section 4.1.7;

14. any other activity that may impair the natural function(s) of a wetland as described in Section 1 of this ordinance.

SECTION 5: STANDARDS AND PROCEDURES FOR PERMITS

5.1 Procedures for Permits

1. No regulated activity shall be conducted without an issuance of a written permit from the Approval Authority. Application for a permit shall be made in duplicate to the Approval Authority on forms furnished by the Municipal Clerk.

2. The Approval Authority shall establish a mailing list of all interested persons and agencies who wish to be notified of such applications. Upon receipt of the completed application, the Approval Authority shall notify the individuals and agencies, including Federal, State, and local agencies having jurisdiction over or an interest in the subject matter, to provide such individuals and agencies with an opportunity to comment.

3. An application shall not be deemed complete until and unless an Applicant has complied fully with the procedures of the State Environmental Quality Review Act (Article 8 of the State Environmental Conservation Law).

4. All permits shall expire on completion of the acts specified and, unless otherwise indicated, shall be valid for a period of one year from the date of issue. An extension of an original permit may be granted upon written request to the Approval Authority by the original permit holder or his/her legal agent at least 90 days prior to the expiration date of the original permit. The Approval Authority may require new hearings if, in its judgment, the original intent of the permit is altered or extended by the renewal, or if the Applicant has failed to abide by the terms of the original permit in any way. The request for renewal of a permit shall follow the same form and procedure as the original application except that the Approval Authority shall have the option of not holding a hearing if the original intent of the permit is not altered or extended in any significant way.

5. Within five (5) days of its receipt of a completed application for a permit, the Approval Authority shall provide the Applicant with a Notice of Application which the Applicant shall publish at his or her own expense at least once in each of at least two newspapers having a general circulation in the **Municipality**. Said Notice of Application shall be in a form prescribed by the Approval Authority and shall:

a. specify that persons wishing to object to the application should file a notice of objection by a specified date, together with a statement of the grounds of objection to the application, with the Approval Authority;

b. specify that the application, including all documents and maps

therewith, is available for public inspection at the office of the Clerk of the **Municipality**.

5.2 Permit Applications

1. Prior to any person proposing to conduct or causing to be conducted a regulated activity ad defined in Section 4.2, shall file an application for a permit with the Approval Authority together with a filing fee. All permit applications must include the following information:

a. Name, address and telephone number of the applicant and/or owner (if the applicant is not the owner, the written consent of the owner must be attached);

b. Street address and tax map designation of the property;

c. Statement of proposed work and purpose thereof, and an explanation why the proposed activity cannot be located at another site, including an explanation of how the proposed activity is dependent on wetlands or other water resource(s);

d. A list of the names of the owners of record of lands adjacent to the wetland or watercourse and wetland/watercourse buffer in which the project is to be undertaken, and the names of known claimants of water rights, of whom the applicant has notice, which relate to any land within or within one hundred (100) feet of the boundary of the property on which the proposed regulated activity would be located;

f. Complete plans and estimates for the proposed site improvements, which shall be certified by an engineer, architect, land surveyor, or landscape architect licensed in the State of New York, drawn to a scale no less detailed than one inch equals forty (40) feet, and showing the following:

(1) the boundaries of all wetlands as defined herein and as determined by a qualified wetland scientist no longer than 12 months prior to the date of filing the application;

(2) a description of the vegetative cover of the regulated area, including dominant species;

(3) a description of the on-site soil types, including ground water table elevations showing depth to water table and direction of flow and hydrologic connections with surface water features;

(4) location of the construction area or area proposed to be disturbed, and its relation to property lines, roads, buildings, and watercourses within 250 feet of the proposed activity;

(5) the exact locations and specifications for all proposed draining,

filling, grading, dredging, and vegetation removal, including the amount computed from cross-sections, and the procedures to be used;

(6) location of any well(s) and depth(s) thereof, and any disposal system within 50 feet of area(s) to be disturbed;

(7) existing and proposed contours at two (2)-foot intervals in all proposed areas to be disturbed areas and to a distance of 50 feet beyond; at the discretion of the Approval Authority, the existing contours of the remaining portion of the site owned or controlled by the applicant or owner at contour intervals of no greater than 5 feet;

(8) details of any drainage system proposed both for the conduct of work, and after completion thereof, including locations at any point discharges, artificial inlets, or other human-made conveyances which would discharge into the wetland or wetland buffer, and measures proposed to control erosion both during and after the work;

(9) where creation of a lake or pond is proposed, details of the construction of any dams, embankments, outlets or other water control devices; and analysis of the wetland hydrologic system, including seasonal water fluctuation, inflow/outflow calculations, and subsurface soil, geology, and groundwater conditions;

(10) where creation of a detention basin is proposed, with or without excavation, details of the construction of any dams, berms, embankments, outlets, or other water control devices, and an analysis of the wetland hydrologic system, including seasonal water fluctuation, inflow/outflow calculations, and subsurface soil, geology, and groundwater conditions;

(11) details of erosion and sediment control practices, including a diagram showing what and where erosion and sediment controls practices will be implemented and a schedule for their installation and maintenance;

(12) a completed Environmental Assessment Form as required by the New York State Environmental Quality Review Act.

2. The Approval Authority may require additional information as needed such as the study of flood, erosion, or other hazards at the site and the effect of any protective measures that might be taken to reduce such hazards; and other information deemed necessary to evaluate the proposed use in terms of the goals and standards of this ordinance.

3. An application fee shall be charged according to the following schedule and shall be presented at the time the application is filed:

a.	Residential Uses	$XXX
b.	Commercial Uses	$XXX
c.	All Other Uses	$XXX

In the event that an application requires the **Municipality** to incur additional expenses for technical assistance in the review of an application, the applicant shall pay the reasonable expenses incurred by the **Municipality**. The applicant shall be notified of the expenses and shall deposit said necessary funds prior to the cost being incurred.

4. All information relating to a permit application, including but not limited to the application itself, additional required materials or information, notices, record of hearings, written comments, and findings shall be maintained on file in the office of the Clerk of the **Municipality**.

5. The Approval Authority, its agents or employees, may enter upon any lands or waters for good cause shown for the purpose of undertaking any investigations, examination, survey, or other activity for the purposes of this ordinance.

5.3 Public Hearings

The Approval Authority shall hold a public hearing on the application at such time as it deems appropriate, in order to give the public at least fifteen days notice thereof. It shall publish notice thereof in each of at least two newspapers having a general circulation in the **Municipality**, and give at least fifteen (15) days notice to each of the persons named in the application pursuant to Item (e) of Subsection 5.2(1) of the information required therein. Insofar as possible, any public hearing on the application shall be integrated with any public hearing required or otherwise held pursuant to any other law, including the State Environmental Quality Review Act. Any hearing may be held by the Approval Authority or by a hearing officer designated by the Approval Authority.

All hearings shall be open to the public and a full and complete record of each hearing shall be made. The record of any hearing shall become part of the permanent record of a permit application as specified in Section 5.2.4.

Any party may present evidence and testimony at the hearing. At the hearing, the Applicant shall have the burden of demonstrating that the proposed activity will be in accord with the goals and policies of this ordinance and the standards set forth below.

5.4 Standards for Permit Decisions

1. In granting, denying, or conditioning any permit, the Approval Authority shall evaluate wetland functions and the role of the wetland in the hydrologic and ecological system in which it is part, and shall determine the impact of the proposed activity upon public health, safety and welfare, flora and fauna, water quality, and additional wetland functions listed in Section 1 of this ordinance. In this determination, it shall consider the following factors, and shall issue written findings with respect to:

a. the direct and indirect impact(s) of the proposed activity, and existing and reasonably anticipated similar activities, upon neighboring land uses and wetland functions as set forth in Section 1 of this ordinance, including but not limited to the:

(1) infilling of a wetland or other modification of natural topographic contours;
(2) disturbance or destruction of natural flora and fauna;
(3) influx of sediments or other materials causing increased water turbidity or substrate aggradation;
(4) removal or disturbance of wetland soils;
(5) reduction in wetland ground or surface water supply;
(6) interference with wetland water circulation;
(7) damaging reduction or increase in wetland nutrients;
(8) influx of toxic chemicals and/or heavy metals;
(9) damaging thermal changes in the wetland water supply; and
(10) destruction of natural aesthetic values.

b. any existing wetland impact(s) and the cumulative effect of reasonably anticipated future activities in or adjacent to the wetland subject to the application;

c. the impact of the proposed activity and reasonably anticipated similar activities upon flood flows, flood storage, shoreline protection, and water quality;

d. the safety of the proposed activity from flooding, erosion, hurricane winds, soil limitations, and other hazards, and possible losses to the Applicant and subsequent purchasers of the land;

e. the adequacy of water supply and waste disposal for the proposed use;

f. consistence with Federal, State, County and municipal comprehensive land use plans, and regulations;

g. the availability of preferable alternative locations on the subject parcel or, in the case of an activity which cannot be undertaken on the property without disturbance to wetlands, the availability of other reasonable locations for the activity whether or not such locations are under the ownership or control of the Applicant; and

h. the demonstration by the applicant that any direct and indirect impact(s) has/ have been avoided to the maximum extent practicable and that any remaining unavoidable direct and indirect impact(s) has/have been minimized to the extent practicable.

2. The Approval Authority shall deny a permit if:

a. the proposed activity may threaten public health, safety or welfare, result in fraud, cause nuisances, impair public rights to the enjoyment and use of public lands and waters, threaten a rare or endangered plant or animal species, violate pollution control standards, or violate any other local, State or Federal regulations or laws; or

b. it finds that the detriment to the public, measured by the factors listed in this Section, that would occur on issuance of the permit outweighs the non-monetary

public benefits associated with the activity; or

c. both the affected landowner and the local government have been notified by a duly filed notice in writing that the State or any agency or political subdivision of the State is in the process of acquiring any freshwater wetland by negotiation or condemnation with the following provisions:

(1) The written notice must include an indication that the acquisition process has commenced, such as that an appraisal of the property has been prepared or is in the process of being prepared.

(2) If the landowner receives no offer for the property within one year of the permit denial, this ban to the permit lapses. If its negotiations with the applicant are broken off, the State or any agency or political subdivision must, within six months of the end of negotiation, either issue its findings and determination to acquire the property pursuant to Section 204 of the Eminent Domain Procedure Law or issue a determination to acquire the property without public hearing pursuant to Section 206 of the General Domain Procedure Law, or this ban to permit lapses.

3. Preference will be given to activities that must have a shoreline or wetland location to function and that will have as little impact as possible upon the wetland, watercourse and/or wetland/watercourse buffer. In general, permission will not be granted for dredging or ditching solely for the purpose of draining wetlands, controlling mosquitoes, creating ponds, providing spoil and dump sites, or building roads or structures that may be located elsewhere. The regulated activity must, to the extent feasible, be confined to the portion of a lot outside of a wetland and wetland buffer. All reasonable measures must be taken to minimize direct and indirect impacts upon the wetland.

4. The Approval Authority shall require preparation of a mitigation plan by the applicant pursuant to Section 5.5 when the Applicant has demonstrated that wetland and wetland buffer impacts are necessary and unavoidable and have been minimized to the maximum extent practicable. In the evaluation of the least environmentally-damaging, practicable alternatives, mitigation may not be used as a means of reducing environmental impacts; a mitigation wetland is designed to replace lost wetland acreage and functions. For the purposes of this ordinance, wetland impacts are necessary and unavoidable only if all of the following criteria are satisfied:

a. the proposed activity is compatible with the public health and welfare;

b. there is no feasible on-site alternative to the proposed activity, including reduction in density, change in use, revision of road and lot layout, relocation, elimination or consolidation of proposed structures, and/or related site planning considerations that could accomplish the Applicant’s objectives; and

c. there is no feasible alternative to the proposed activity on another site that is not a wetland or wetland/watercourse buffer.

5.5 Mitigation Policy; Plan Requirements

1. After it has been determined by the Approval Authority pursuant to Section 5.4.4 that impacts to wetland or wetland/watercourse buffer are necessary and unavoidable and have been minimized to the maximum extent practicable, the Applicant shall develop a mitigation plan which shall specify mitigation measures that provide for replacement wetland that recreates as nearly as possible the original wetland in terms of type, functions, geographic location and setting, and that is larger, by a ratio of at least 1.5 to 1.0, than the original wetland. On-site mitigation shall be the preferred approach. Off-site mitigation shall be permitted only in cases where on-site alternatives are not possible; in these instances, emphasis should be placed on mitigation within the same general watershed as the original wetland.

2. Mitigation may take the following forms, either singularly or in combination, for disturbances in wetland/watercourse buffers and wetlands:

For disturbance in a wetland/watercourse buffer:

a. implementation of preventative practices to protect the natural condition and functions of the wetland; and/or

b. restoration or enhancement (e.g., improving the density and diversity of native woody plant species) of remaining or other upland buffer to offset the impacts to the original buffer.

For disturbance in a wetland:

a. restoration of areas of significantly disturbed or degraded wetlands at a ratio of at least 1.5 (restored wetland) to 1.0 (impacted wetland) by reclaiming significantly disturbed or degraded wetland to bring back one or more of the functions that have been partially or completely lost by such actions as draining or filling, provided the area of proposed mitigation occurs in a confirmed disturbed or degraded wetland having significantly lesser functional values as a result of disturbance or degradation; and/or

b. the in-kind replacement of impacted wetland by the construction of new wetland, usually by flooding or excavating lands that were not previously occupied by a wetland, that recreates as nearly as possible the original wetland in terms of type, functions, geographic location and setting, and that is larger than, by a ratio of at least 1.5 to 1.0, the original wetland.

3. The Approval Authority shall monitor, or shall cause to have monitored, projects, according to the specifications set forth in the permit, to determine whether the elements of the mitigation plan and permit conditions have been satisfied and whether the restored or created wetland function(s) and acreage mitigate the impacted function(s) and acreage. To this end, the Approval Authority may contract with an academic institution, an independent research group, or other qualified professionals at

the expense of the Applicant, or may use its own staff expertise. An annual monitoring report prepared by the appropriate monitor shall be submitted to the Approval Authority. Mitigation projects shall be monitored for an appropriate period of time, as determined by the Approval Authority, on a case-by-case basis. Long-term monitoring is generally needed to assure the continued viability of mitigation wetlands. In general, the monitoring period shall be from three to five years.

The requirements for monitoring shall be specified in the mitigation plan and shall include, but not be limited to:

a. the time period over which compliance monitoring shall occur;

b. field measurements to verify the size and location of the impacted wetland area and the mitigation (restored or replacement) wetland area;

c. the date of completion of the restoration and/or replacement; and

d. field verification of the vegetative, hydrologic, and soils criteria as specified in the mitigation plan and permit.

4. If the Approval Authority requires a mitigation plan pursuant to 5.5(1) hereof, the following shall apply:

(1) All mitigation measures shall balance the benefits of regaining new wetland area(s) with the loss to upland (non-wetland) area(s) caused by wetland creation. On-site mitigation shall be the preferred approach; off-site mitigation shall be permitted only in cases where an on-site alternative is not possible and shall emphasize mitigation within the same general watershed.

(2) Mitigation plans developed to compensate for the loss of wetland or wetland/watercourse buffer shall include base line data as needed to adequately review the effectiveness of this plan.

(3) Any mitigation plan prepared pursuant to this section and accepted by the Approval Authority shall become part of the permit for the application to conduct a regulated activity.

5. All mitigation plans shall include:

(a) A map with sufficient detail and at a scale to be able to determine where the wetland is located and its size, boundaries and topographic features.

(b) A narrative which describes goals and specific objectives for the mitigation wetland or wetland/watercourse buffer, including the functions and benefits to be provided and clear performance standards and criteria for assessing project success.

(c) A description of the physical, hydrological and ecological characteristics of the impacted wetland and/or wetland/watercourse buffer and proposed restored and/or created wetland and/or buffer in sufficient detail to enable the Approval Authority to determine whether wetland and/or buffer impacts will be permanently mitigated.

(d) Details on construction, including:

o diking, excavation, or other means by which the wetland will be restored or created, including existing and proposed topographic contours;

o construction schedule;

o measures to control erosion and sedimentation during construction;

o plantings: source of stock, procedures for transplanting/seeding the stock, area(s) to be planted, and planting schedule. If vegetation from the wild is to be used, identify the source and measures to prevent introduction of undesirable exotics.

o chemicals: if applicable, explain why chemicals will be used and precautions to be taken to minimize their application and protect the wetland and/or watercourse from excessive chemicals.

(e) Details on management of the mitigation site, including:

o measures to assure persistence of the wetland (e.g., protection against predation by birds and other animals);

o vegetative management;

o sediment and erosion control;

o plans for monitoring site during and after construction, including methods and schedule for data collection and provisions for mid-course corrections;

o provisions for long-term protection of the site (e.g., permanent conservation easement;

o provision for bonding or other financial guarantees.

(f) A description of the periodic reporting, including at the end of construction, during the monitoring period and at the end of the monitoring period.

(g) Identify the name, qualifications and experience of the person(s) implementing the mitigation plan (i.e., contractor who will restore or construct the wetland).

5.6 Permit Conditions

1. Any permit issued pursuant to this ordinance may be issued with conditions. Such conditions may be attached as the Approval Authority deems necessary, and pursuant to Section 5.4.4, to assure the preservation and protection of affected wetlands and to assure compliance with the policy and provisions of this ordinance and the provisions of the Approval Authority's rules and regulations adopted pursuant to this ordinance.

2. Every permit issued pursuant to this ordinance shall be in written form and shall contain the following conditions:

a. Work conducted under a permit shall be open to inspection at any time, including weekends and holidays, by the Approval Authority, or their designated representative(s).

b. The permit shall expire on a specified date; unless otherwise indicated, the permit shall be valid for one (1) year.

c. The permit holder shall notify the Approval Authority, in writing, of the date on which the regulated activity is to begin at least five (5) days in advance of such date.

d. The Approval Authority's permit shall be prominently displayed at the project site while the regulated activity authorized by the permit are being undertaken.

e. The boundaries of the regulated activity and wetlands and watercourses shall be staked and appropriately marked in the field so as to be clearly visible to those at the project site.

3. The Approval Authority shall set forth in writing in the file it maintains regarding a permit application, its findings and reasons for all conditions attached to any permit. Such conditions may include, but shall not be limited to:

a. limitations on lot size for any activity;

b. limitations on the total portion of any lot or the portion of the wetland on the lot that may be cleared, regraded, filled, drained, excavated or otherwise modified;

c. modification of waste disposal and water supply facilities;

d. imposition of operation controls, sureties, and deed restrictions concerning future use and subdivision of lands such as preservation of undeveloped areas in open space use, and limitation of vegetation removal;

e. dedication of easements to protect wetlands;

f. erosion control measures;

g. setbacks for structures, fill, excavation, deposit of spoil, and other activities from the wetland;

h. modifications in project design to ensure continued ground and surface water supply to the wetland and circulation of waters; and/or

i. replanting of wetland vegetation or construction of new wetland areas to replace damaged or destroyed areas.

4. The Approval Authority shall include in the file it maintains regarding a permit application a copy of any mitigation plan prepared pursuant to Section 5.5.4, all comments received pursuant to Section 5.1.5, and a record of any hearing held pursuant to Section 5.3

5. The Approval Authority shall cause notice of its denial, issuance, or conditional issuance of a permit to be published in a daily newspaper having a broad circulation in the area wherein the wetland lies.

5.7 Performance Bond

1. The Approval Authority may require that, prior to commencement of work under any permit issued pursuant to this ordinance, the Applicant or permittee shall post a bond in an amount and with surety and conditions sufficient to secure compliance with the conditions and limitations set forth in the permit. The particular amount and the conditions of the bond shall be consistent whit the purposes of this ordinance. The bond shall remain in effect until the Approval Authority or its designated agent certifies that the work has been completed in compliance with the terms of the permit and the bond is released by the Approval Authority or a substitute bond is provided. In the vent of a breach of any condition of any such bond, the Approval Authority may institute an action in the Courts upon such bond and prosecute the same to judgment and execution.

2. The Approval Authority shall set forth in writing in the file it keeps regarding a permit application its findings and reasons for imposing a bond pursuant to this Section.

5.8 Other Laws and Regulations

No permit granted pursuant to this ordinance shall remove an Applicant's obligation to comply in all respects with the applicable provisions of any other Federal, State, or local law or regulation, including but not limited to the acquisition of nay other required permit or approval.

5.9 Suspension or Revocation of Permits

1. The Approval Authority may suspend or revoke a permit in the form of a

Stop work Order if it finds that the Applicant or permittee has not complied with any or all of the terms of such permit, has exceeded the authority granted in the permit, or has failed to undertake the project in the manner set forth in the approved application.

2. The Approval Authority shall set forth in writing in the file it keeps regarding a permit application its findings and reasons for revoking or suspending a permit pursuant to this Section.

SECTION 6: GENERAL POWERS OF THE APPROVAL AUTHORITY

In order to carry out the purposes and provisions of this ordinance, and in addition to the powers specified elsewhere in this law, the Approval Authority shall have the following powers:

to adopt, amend, and repeal, after public hearing (except in the case of rules and regulations that relate to the organization or internal management of the Approval Authority) such rules and regulations consistent with this ordinance as it deems necessary to administer this ordinance, and to do any and all things necessary or convenient to carry out the policy and intent of this law;

to consult or contract with expert persons or agencies in reviewing a permit application;

to hold hearings and subpoena witnesses in the exercise of its powers, functions, and duties provided for by this ordinance.

SECTION 7: VIOLATIONS AND PENALTIES

7.1 Administrative Sanctions

1. Damages

Any person who undertakes any wetland activity without a permit issued hereunder, or who violates, disobeys, or disregards any provision of this law or any rule or regulation adopted by the Approval Authority pursuant to this law, shall be liable to the **Municipality** for civil damages caused by such violation for every such violation. Each consecutive day of the violation will be considered a separate offense. Such civil damages may be recovered in an action brought by the **Municipality** at the request and in the name of the Approval Authority in any court of competent jurisdiction.

2. Restitution

The **Municipality** shall have the authority, following a hearing before the Approval Authority and on notice to the violator, to direct the violator to restore the affected wetland to its condition prior to violation, insofar as that is possible, within a reasonable time and under the supervision of the Approval Authority or its designate. Further, the Approval Authority shall be able to require an adequate bond in a form and amount approved by the Approval Authority to ensure the restitution of the affected wetland. Any

such order of the Approval Authority shall be enforceable in an action brought in any court of competent jurisdiction. Any order issued by the Approval Authority pursuant to this subdivision shall be reviewable in a proceeding pursuant to Article 78 of the State Civil Practice Law and Rules. The Approval Authority may attach any order issued pursuant to this subdivision to the land records of the **Municipality** for the property on which the violation occurred. This order shall remain attached to the land records for the duration of the violation; the Approval Authority shall, upon satisfactory removal of the violation, remove the order from the land records.

3. Stop Work Order - Revocation of Permit

In the event any person holding a wetlands permit pursuant to this ordinance violates the terms of the permit, fails to comply with any of the conditions or limitations set forth on the permit, exceeds the scope of the activity as set forth in the application, or operates so as to be materially detrimental to the public welfare or injurious to wetlands or watercourses, the Approval Authority may suspend or revoke the wetlands permit, as follows:

(a) Suspension of a permit shall be by a written Stop Work Order issued by the Approval Authority and delivered to the permittee or his agent, or the person performing the work. The Stop Work Order shall be effective immediately, shall state the specific violations cited, and shall state the conditions under which work may be resumed. A Stop Work Order shall have the effect of suspending all authorizations and permits granted by the town or any agency thereof. The Stop Work Order shall remain in effect until the Approval Authority is satisfied that the permittee has complied with all terms of the subject permit or until a final determination is made by the town board as provided in section (b) contained herein below.

(b) No site development permit shall be permanently suspended or revoked until a public hearing is held by the Approval Authority. Written notice of such hearing shall be served on the permittee, either personally or by registered mail, and shall state:

i) grounds for complaint or reasons for suspension of revocation in clear and concise language.

ii) the time and place of the hearing to be held

Such notice shall be served on the permittee at least one week prior to the date set for the public hearing unless the Stop Work Order is issued for a violation occurring less than one week before the next regularly scheduled public meeting of the Approval Authority. At such hearing, the permittee shall be given an opportunity to be heard and may call witnesses and present evidence on his behalf. At the conclusion of the hearing, the Approval Authority shall determine whether the permit shall be reinstated, suspended or revoked. The term “Person,” as used herein, shall mean a natural person or a corporate person.

Any offender also may be ordered by the Approval Authority to restore the affected

freshwater wetland to its condition prior to the offense, insofar as possible. The Approval Authority shall specify a reasonable time for the completion of such restoration, which shall be effected under the supervision of the **Municipality**.

7.2 Criminal Sanctions

Any person convicted of having violated or disobeyed any provision of this chapter, any order of the Approval Authority or any condition duly imposed by the Approval Authority in a Permit granted pursuant to this Chapter, shall, for the first offense, be punishable by a fine of not less than one thousand dollars ($1,000,00). For each subsequent offense, such person shall be punishable by a fine of not less than two thousand dollars ($2,000.00), nor more than fifteen thousand dollars ($15,000.00), and/or a term of imprisonment of not more than fifteen (15) days. Each consecutive day of the violation may be considered a separate offense.

SECTION 8: ENFORCEMENT

The **Municipality** is specifically empowered to seek injunctive relief restraining any violation or threatened violation of any provisions of this ordinance and/or compel the restoration of the affected wetland or wetland/watercourse buffer to its condition prior to the violation of the provisions of this law.

SECTION 9: APPEALS

A. Any determination, decision or order of the Approval Authority may be judicially reviewed by the applicant or any other aggrieved party by the commencement of an action pursuant to Article 78 of the Civil Practice Law and Rules within thirty (30) days after the date of the filing of the determination, decision or order of such Approval Authority with the Clerk of the Municipality and/or County.

B. In the case of an application decided by an authorized individual or municipal entity other than the Approval Authority, the applicant or any other party aggrieved by such determination may seek review by appealing to the Approval Authority, in which case the Approval Authority shall become the approving authority for such application. Such review shall be requested not later than twenty (20) days after the filing of the subject decision by the said authorized individual or municipal entity.

SECTION 10: SEVERABILITY

If any clause, sentence, paragraph, section or part of this ordinance or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other person or circumstances and to this end the provisions of each section of this law are hereby declared to be severable.

SECTION 11: AMENDMENTS

This ordinance may from time to time be amended in accordance with the procedures and requirements of the general statutes and as new information concerning soils, hydrology, flooding, or botanical species peculiar to wetlands becomes available.

Any person may submit in writing in a form prescribed by the Approval Authority a request for a change in the regulations. The request shall be considered at a public hearing held in accordance with the provisions of the general statutes not less than ninety days after receipt of the written request.

SECTION 12: ASSESSMENT RELIEF

Assessors and boards of assessors shall consider wetland regulations in determining the fair market value of land. Any owner of an undeveloped wetland who has dedicated an easement or entered into a perpetual conservation restriction with the Approval Authority or a nonprofit organization to permanently control some or all regulated activities in the wetland and/or wetland/watercourse buffer shall be assessed consistent with those restrictions. Such landowner also shall be exempted from special assessment on the controlled wetland to defray the cost of municipal improvements such as sanitary sewers, storm sewers, and water mains.

SECTION 13: EFFECTIVE DATE

This law shall take effect immediately upon filing in the office of the Secretary of the State of New York in accordance with the provisions of the Municipal Home Rule Law.

APPENDIX A

REGULATION PURSUANT TO ARTICLE 24 AUTHORITY: REQUIRED MODIFICATIONS TO THE DISTRICT MODEL ORDINANCE

Municipalities choosing to regulate their freshwater wetlands pursuant to New York State Article 24 authority rather than pursuant to Home Rule Authority as recommended by the Soil and Water Conservation District, should consult the New York State Department of Environmental Conservation "Local Government Implementation of the Wetlands Act" for guidance. This document contains the suggested material content for the technical and administrative capability statement that must be prepared and submitted by the local government, and approved by the State, before Article 24 regulatory authority is granted.

To adapt the District's "Model Ordinance for Wetland Protection" for regulation pursuant to Article 24 of the ECL, the following changes must be made to the ordinance:

SECTION 3: DEFINITIONS

The following definition of "Agricultural Activity" must replace the definition provided in the Model Ordinance (please note that this results in the exemption from regulation of a broad range of activities if they are performed for purposes of agricultural operations);

AGRICULTURAL ACTIVITY: The activity of an individual farmer or other landowner in: (i) grazing and watering livestock; (ii) making reasonable use of water resources for agricultural purposes; (iii) harvesting the natural products of wetlands; (iv) the selective cutting of trees; (v) the clear-cutting of vegetation, other than trees, for growing agricultural products; (vi) constructing winter truck roads of less than five meters (approximately 16 feet) in width for removing timber cut in accordance with subparagraph (iv) of this paragraph, where construction is limited to cutting vegetation and compacting ice and does not alter water flows; (vii) operating motor vehicles for agricultural purposes; (viii) draining for growing agricultural products; (ix) erecting structures, including fences, required to enhance or maintain the agricultural productivity of the land; (x) using chemicals and fertilizers according to normally accepted agricultural practices, in order to grow crops for human and animal consumption or use, in or adjacent to wetlands, where authorized by other State, Federal, or local laws, including application of stabilized sludge as fertilizer when applied at agronomic loading rates in accordance with a valid 6 NYCRR Part 360 or Part 364 landspreading permit; or (xi) otherwise engaging in the use of wetlands for growing agricultural products such as crops, vegetables, fruits or flowers; BUT does NOT mean: (a) clear-cutting trees; (b) constructing roads that require moving earth or other aggregate or that alter water flow or in any way deviates from subparagraph (vi) or this paragraph; (c) filling or deposition of spoil, even for agricultural purposes; (d) mining; or (e) erecting structures not required to enhance or maintain the agricultural productivity of the land.

SECTION 4: PERMIT REQUIREMENTS

A new Section 4.1, "Exempted Uses," must be added, and the existing Sections 4.1 and

4.2 must be changed to 4.2 and 4.3, respectively, and modified as follows:

4.1 Exempted Uses (New Section 4.1)

Agricultural activities as defined in Section 3 are not regulated under this ordinance. However, land altered by an agricultural activity after its original designation as a wetland on the official New York State Wetland Maps is still protected under this ordinance and under the New York State Wetlands Act, so that any other activities on that land subsequent to the original designation are subject to the provisions of the Act and this local ordinance.

4.2 Permitted Uses (Revision of original Section 4.1)

Delete Item No. 7 which is now covered under 4.1 (Exempted Uses).

4.3 Regulated Activities (Revision of original Section 4.2)

Add "and Section 4.2" after "...other than those specified in Section 4.1...

Reword Item No. 11 to read "removal or cutting of any vegetation except as permitted in Sections 4.1 and 4.2."

Delete Item No. 13 from the existing subsection on "Regulated Activities."

SECTION 5: STANDARDS AND PROCEDURES FOR PERMITS

Add the following as subsection 5.4.5:

5. For regulatory authority of State-designated wetlands pursuant to Article 24, in granting, denying, or modifying permit, the Approval Authority shall apply the standards for permit issuance contained in Section 665.7(e) and (g) of Part 665 of Title 6 of the New York State Environmental Conservation Law.

SECTION 7: VIOLATIONS AND PENALTIES

The following wording should replace the current Sections 7.1 and 7.2:

7.1 Administrative Sanctions (Replaces the original Section 7.1)

Any person who violates, disobeys or disregards any provision of Article 24 of the Environmental Conservation Law (ECL), including Title 5 and Section 24-0507 thereof or any rule or regulation, local law or ordinance, permit or order issued pursuant thereto, shall be liable to the State for a civil penalty of not to exceed three thousand dollars ($3,000) for every such violation, to be assessed, after a hearing or opportunity to be heard upon due notice and with the rights to specification of the charges and representation by counsel at such hearing, by the Commissioner or **Municipality**. Such penalty may be recovered in an action brought by the Attorney General at the request and

in the name of the Commissioner or **Municipality** in any court of competent jurisdiction. Such civil penalty may be released or compromised by the Commissioner or **Municipality** before the matter has been referred to the Attorney General; and where such matter has been referred to the Attorney General, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the Attorney General with the consent of the Commissioner or **Municipality**. In addition, the Commissioner or **Municipality** shall have power, following a hearing held in conformance with the procedures set forth in Section 71-1709, to direct the violator to cease his violation of the act and to restore the affected freshwater wetland to its condition prior to the violation, insofar as possible within a reasonable time and under the supervision of the Commissioner or **Municipality**. Any such order of the Commissioner or **Municipality** shall be enforceable in an action brought by the Attorney General at the request and in the name of the Commissioner or **Municipality** in any court of competent jurisdiction. Any civil penalty or order issued by the Commissioner or **Municipality** pursuant to this subdivision shall be reviewable in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules.

7.2 Criminal Sanctions (Replaces original Section 7.2)

Any person who violates any provision of Article 24 of the ECL, including any rules or regulation, local law or ordinance, permit or order issued pursuant thereto, shall, in addition, for the first offense, be guilty of a violation punishable by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000); for a second and each subsequent offense he shall be guilty of a misdemeanor punishable by a fine of not less than one thousand dollars ($1,000) nor more than two thousand dollars ($2,000) or a term of imprisonment of not less than fifteen (15) days nor more than six (6) months or both. Instead of these punishments, any offender may be punishable by being ordered by the court to restore the affected freshwater wetland to its condition prior to the offense, insofar as possible. The court shall specify a reasonable time for the completion of such restoration, which shall be effected under the supervision of the Commissioner or **Municipality**. Each offense shall be deemed a separate and distinct offense and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.

Any ordinance drafted for local government assumption of Article 24 regulatory authority should be submitted for preliminary review to the New York State Department of Environmental Conservation, Division of Fish and Wildlife, 50 Wolf Road, Albany, NY 12233. Any such ordinance approved by the municipality must be submitted to the NYS DEC for approval (see 6NYCRR Part 665.4).

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Chapter 249

STEEP SLOPES

[HISTORY: Adopted by the Board of Trustees of the Village of Hastings-on-Hudson 12-16-2008 by L.L. No. 28-2008.[1] Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 101.

Environmental quality review — See Ch. 131.

Zoning — See Ch. 295.

§ 249-1. Purpose and intent.

A. A fundamental responsibility of the Planning Board is protection of the people and the land within the borders of the Village. The topography of Hastings-on-Hudson is hilly and characterized by steep slopes and rocky outcroppings. Construction on such terrain has the inherent risk of causing damage to the ecology.

B. In the past, the inability to build on such sites created a natural form of protection. Recent developments in the technology of construction have now exposed more sensitive sites to development and, consequently, potential risk to the environment. In addition, the scarcity of buildable land has made these sites more desirable.

C. Steep slopes are environmentally sensitive areas and a valued natural resource. The Planning Board recognizes the need to protect these areas from any adverse effects of disturbance in order to ensure the public health, safety and general welfare. At the same time, the Planning Board recognizes the need to achieve a balance between protecting the public interest and safeguarding the rights of property owners regarding the use of their land.

D. Steep slopes, including vegetation and rock outcroppings located on them, are important environmental features that contribute significantly to the visual impression one forms when traveling through Hastings-on-Hudson. Areas that are highly visible from roadways, other public places and adjacent and nearby properties are particularly important in maintaining Hastings-on-Hudson's character. Overdevelopment of or improperly managed disturbance to these areas are detrimental to the visual character of Hastings-on-Hudson.

E. It is in the public interest to regulate, preserve, protect and conserve steep slopes so as to maintain and protect the natural terrain and its vegetative features, preserve wetlands, water bodies and watercourses, prevent flooding, protect important scenic views and vistas, preserve areas of wildlife habitat, provide safe building sites and protect the subject property and adjoining properties by preventing erosion, creep and sudden slope failure.

1. **Editor's Note: This local law also superseded former Ch. 249, Steep Slopes, adopted 2-16-1993 by L.L. No. 1-1993, as amended.**

F. The intent of this chapter is twofold: to preserve steep slopes to the greatest extent practicable and to regulate their use by minimizing the deleterious effects of development on slopes both to adjacent and nearby properties.

G. The MR-C and the CC Districts are excluded from the application of § 249-5 because of the existing development and the desired density in these downtown districts and other provisions in the Zoning Code to control the height of buildings in these districts.[2]

§ 249-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

SLOPE — The ratio of vertical to horizontal distance, measured in a minimum area of 1,000 square feet.**[Amended 12-20-2011 by L.L. No. 1-2012]**

STEEP SLOPE(S) — Ground area(s) of at least 1,000 square feet with a slope of 15% or more, as measured in accordance with § 249-3.

§ 249-3. Determination of steep slopes.

Slope is to be determined from on-site topographic surveys prepared with a two-foot contour interval. The vertical rise is to be measured, on the basis of two-foot contours, in a ten-foot horizontal length.

§ 249-4. Applicability. [Amended 12-20-2011 by L.L. No. 1-2012]

Any construction, development, paving, regrading, or stripping of vegetation that might affect or create a steep slope requires steep slope approval granted in accordance with this chapter.

§ 249-5. Restrictions on steep slope disturbances.

A. For any lot that contains a slope in excess of 15% but not greater than 25%, not more than a total of 35% of such steep slope shall be:

   (1) Developed;

   (2) Paved;

   (3) Regraded; or

   (4) Stripped of vegetation without appropriate measures to prevent erosion.

B. For any lot that contains a slope in excess of 25%, not more than a total of 25% of such steep slope shall be:

   (1) Developed;

   (2) Paved;

   (3) Regraded; or

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2. **Editor's Note: See Ch. 295, Zoning.**

(4) Stripped of vegetation without appropriate measures to prevent erosion.

C. If the proposed activity for which application is being made or approval is being sought would create a steep slope, such steep slope shall be subject to the restrictions of Subsections A and B above.

D. The provisions of this section shall not apply to the MR-C and CC Districts. **[Added 12-20-2011 by L.L. No. 1-2012]**

§ 249-6. Applications involving cluster plat review.

In any application involving the review of a cluster subdivision plat, submitted pursuant to Village Law § 7-738, the Board of Trustees or the Planning Board, whichever is vested with final authority in determining the maximum number of dwelling units that would be permitted if the land were subdivided into lots conforming to the minimum lot size and density requirements of otherwise applicable zoning regulations, shall first subtract from the square footage reflected in the plat that amount of land which is restricted from development or disturbance, pursuant to § 249-5 of this chapter.

§ 249-7. Steep slope approval application requirements. [Amended 12-20-2011 by L.L. No. 1-2012]

A. Applications for steep slope approval shall include the following information in addition to any other information required by this chapter or by the Building Inspector:

(1) A detailed site plan of the property showing, at a scale of not less than 10 feet equals one inch, the applicant's entire property, the adjacent properties, and existing streets and showing the following information:

(a) The location of all existing and proposed structures and paved surfaces on the applicant's property and any existing septic systems and wells on such property;

(b) The location of the proposed area of disturbance on the applicant's property and its relation to neighboring properties' structures, roads, watercourses and wetlands;

(c) The location on the applicant's property of all existing watercourses, wetlands, marshes, wooded areas, rock outcrops, single trees with a diameter of eight inches or more measured three feet above the base of the trunk, and all other significant existing land features; and

(d) The existing grades on the applicant’s property, indicating proposed paved areas, storm drainage facilities, retaining walls and ground cover, as well as the location of trees and ornamental shrubs. Site topography must be colored, cross-hatched or otherwise marked to show different slope categories.

(2) A landscaping plan for the applicant's property, indicating proposed paved areas, storm drainage facilities, retaining walls and ground cover, as well as the location of trees and ornamental shrubs.

(3) Architectural plans, elevations, sections of the structures and related improvements.

(4) A statement prepared by a licensed architect, registered landscape architect or engineer describing:

(a) The methods to be used in overcoming foundation and other structural problems created by slope conditions, in preserving the natural watershed and in preventing soil erosion;

(b) The methods to be used to eliminate or mitigate water runoff on all adjacent properties and any other property that will be naturally affected by increased water runoff; and

(c) The methods used to minimize the impact of changes in topography on adjacent and nearby properties through landscaping, retaining walls and terracing of gardens.

(5) A plan submitted under the seal of a licensed professional engineer showing and certifying the following:

(a) All existing and proposed natural and artificial drainage courses and other features for the control of drainage, erosion and water.

(b) The calculated volume of water runoff from the slope(s) and from the lot in question, as unimproved.

(c) The calculated volume of water runoff from the slope(s) and from the lot in question, as improved.

(d) The existence, location and capacity of all natural and artificial drainage courses and facilities within 500 feet of the lot which are or will be used to carry or contain the water runoff from the slope(s) and the lot.

(6) A statement made under the seal of a licensed professional engineer certifying that:

(a) The proposed activity will disturb the steep slope area to the minimum extent possible; and

(b) The proposed mitigation measure will prevent, to the maximum extent practical, the adverse effect of any disturbance of the steep slope area on the environment and any neighboring properties.

(7) Proof that all adjacent property owners have been notified of the steep slope application and of the Planning Board meeting at which it will be considered. Notice shall be provided in accordance with § 295-143C, except that only adjacent property owners need be notified.

(8) The Planning Board may, at its discretion, waive any of the requirements of Subsection A except Subsection A(7).

B. The application shall be reviewed by the Building Inspector who shall determine whether the application is complete and includes all information and submissions

required by this section. If the Building Inspector determines that the application is complete, (s)he shall review it and refer it to the Planning Board with his or her recommendation.

C. The Planning Board shall review the application and all information and submissions and, within 60 days of the receipt of a complete application, shall approve, approve with condition or deny the application.

§ 249-8. Special hardship exception.

The Planning Board may grant a special hardship exception to an applicant who cannot meet the requirements of § 249-5 of this chapter, provided that the applicant demonstrates that:

A. The lot cannot be developed without disturbing more than the percentage limits in § 249-5;

B. The proposed construction/disturbance is not contrary to the objectives of this chapter;

C. The steep slope area or areas will be disturbed to the minimum extent consistent with the objectives of this chapter;

D. Appropriate mitigation measures will be taken to prevent, to the maximum extent practical, the adverse environmental effects of such disturbance of the steep slope area; and

E. The requirements of § 249-7 of this chapter are met.

Chapter 195

WETLANDS AND WATERCOURSES

[HISTORY: Adopted by the Council of the City of Rye 12-18-1991 by L.L. No. 28-1991. Amendments noted where applicable.]

§ 195-1. Findings; intent; powers of Planning Commission.

A. Findings of fact.

(1) In their natural state, wetlands and watercourses serve multiple functions, including:

(a) Protecting water resources by providing sources of surface water, recharging groundwater and aquifers, serving as chemical and biological oxidation basins and/or functioning as settling basins for naturally occurring sedimentation.

(b) Controlling flooding and stormwater runoff by storing or regulating natural flows.

(c) Providing nesting, migratory and wintering habitats for diverse wildlife species, including many on the New York State and federal endangered species lists.

(d) Supporting vegetative associations specifically adapted for survival in low-oxygen environments and/or brackish water or saltwater.

(e) Providing areas of unusually high plant productivity which support significant wildlife diversity and abundance.

(f) Providing breeding and spawning grounds, nursery habitats and food for various species of fish.

(g) Serving as nutrient traps for nitrogen and phosphorous and filters for surface water pollutants.

(h) Helping to maintain biospheric stability by supporting particularly efficient photosynthesizers capable of producing significant amounts of oxygen and supporting bacteria which process excess nitrates and nitrogenous pollutants and return them to the atmosphere as inert nitrogen gas.

(i) Providing open space and visual relief from intense development in urbanized and growing areas and recreational and aesthetic enjoyment for area residents.

(j) Serving as outdoor laboratories and living classrooms for the study and appreciation of natural history, ecology and biology.

(2) Considerable acreage of these important natural resources has been lost or impaired by draining, dredging, filling, excavating, building, polluting and other acts inconsistent with the natural uses of such areas. Remaining wetlands

are in jeopardy of being lost, despoiled or impaired by such acts contrary to the public safety and welfare.

(3) It is therefore the policy of the City of Rye to protect its citizens, including generations yet unborn, by preventing the despoilation and destruction of wetlands and watercourses while taking into account varying ecological, economic, recreational and aesthetic values. Activities that may damage wetlands or watercourses should be located on upland sites in such a manner as not to degrade these systems.

B. Intent

(1) It is the intent of the City of Rye that activities in wetlands, watercourses and wetland/watercourse buffers conform with all applicable building codes, sediment control regulations and other regulations and that such activities not threaten public safety, the natural environment or cause nuisances by:

(a) Impeding stormwater and flood flows, reducing stormwater and flood storage areas or destroying storm barriers, thereby resulting in increased flood heights, frequencies or velocities on other lands;

(b) Increasing water pollution through location of domestic waste disposal systems in wet soils; inappropriate siting of stormwater control facilities; unauthorized application of fertilizers, pesticides, herbicides and algaecides; disposal of solid wastes at inappropriate sites; creation of unstabilized fills; or the destruction of wetland soils and vegetation serving pollution and sediment control functions;

(c) Increasing erosion;

(d) Decreasing breeding, nesting and feeding areas for many species of waterfowl and shorebirds, including those rare and endangered;

(e) Interfering with the exchange of nutrients needed by fish and other forms of wildlife.

(f) Decreasing the habitat for fish and other forms of wildlife.

(g) Adversely altering the recharge or discharge functions of wetlands, thereby impacting groundwater or surface water supplies;

(h) Significantly altering the wetland hydroperiod and thereby causing either short or long-term changes in vegetational composition, soils characteristics, nutrient cycling or water chemistry;

(i) Destroying sites needed for education and scientific research, such as outdoor biophysical laboratories, living classrooms and training areas;

(j) Interfering with public rights in navigable waters and the recreation opportunities provided by wetlands for fishing, boating, hiking, bird watching, photography, camping and other passive uses;

(k) Destroying or damaging aesthetic and property values, including significant public viewsheds; or

(l) Allowing cumulative loss of wetlands or buffers through incremental encroachment on wetland or buffer areas.

(2) The Planning Commission shall have the power to promulgate and from time to time amend and repeal rules and regulations it deems necessary to effectuate the purposes of this chapter, after a public hearing and subject to approval by the City Council. Copies of the rules and regulations shall be filed with the City Clerk, the City Conservation Commission/Advisory Council, the City Naturalist, the City Planner and the City Building Inspector.

§ 195-2. Applicability to existing nonconforming uses.

A. The provisions of this chapter shall not apply to any land use, improvement, development or activity legally existing on the effective date of this chapter, including grounds maintenance and the application of pesticides and fertilizers, subject to the following limitations:

(1) The land use, improvement, development or activity shall not be expanded, changed, enlarged or altered in such a way that increases its nonconformity without a permit.

(2) If destroyed, damaged or removed by any cause, water-dependent and non-water-dependent land uses, improvements, developments or activities legally existing on the effective date of this chapter may be replaced, restored or reestablished in the same location without a permit, provided that the replaced, restored or reestablished uses, buildings, structures, features and other development will not be closer to any wetland or watercourse or result in a greater intensity of activity than before they were destroyed or damaged, and subject to the following additional limitations:

(a) In a Membership Club District, as defined in Chapter 197, Zoning, of this Code, club uses, buildings, structures, features and other development will not be closer to a property line or larger than before they were destroyed or damaged.

(b) Water-dependent uses and related structures not located in a Membership Club District, as defined in Chapter 197, Zoning, of this Code, may be replaced, restored or reestablished only if permitted by the Rye City Board of Appeals pursuant to § 197-5A(6) of this Code.

(c) Non-water-dependent land uses, improvements, development or activity may be replaced, restored or reestablished, provided that there will be no greater coverage of land than before they were damaged or destroyed.

B. This chapter shall not apply to any land use, improvement, development or activity granted a final approval and not completed prior to the effective date of this chapter, subject to the following limitations:

(1) The land use, improvement, development or activity has substantially commenced within one year of the effective date of this chapter.

(2) The land use, improvement, development or activity shall not be expanded,

changed, enlarged or altered in such a way that increases its nonconformity without a permit.

(3) For the purposes of this chapter, such land use, improvement, development or activity, upon completion in accordance with its final approval, shall thereafter be considered as existing on the effective date of this chapter, and if destroyed, damaged or removed by any cause, may not be reestablished, restored or used except in accordance with the requirements of § 195-2A.

C. The provisions of this chapter shall not apply to dams, floodgates and sluices as were in existence on the effective date of this chapter or are hereafter approved pursuant to the procedures provided for in this chapter.

D. The provisions of this chapter shall not apply to cemetery grave plots in use or designated for future use as cemetery grave plots as of the effective date of this chapter.

E. The provisions of this chapter shall not apply to the repair or maintenance of existing utility facilities in existence on the effective date of this chapter or hereafter approved pursuant to the procedures provided for in this chapter.

§ 195-3. Definitions.

Words or phrases used in this chapter shall be interpreted as defined below, and where ambiguity exists words or phrases shall be interpreted so as to give this chapter its most reasonable application in carrying out the regulatory goals stated in § 195-1:

ADJACENT AREA — See "wetland/watercourse buffer."

AGRICULTURAL ACTIVITY — The activity of the landowner in making reasonable use of water resources for agricultural purposes, harvesting the natural products of wetlands, excluding peat mining and timber harvesting, and selective cutting of trees. "Agricultural activity" does not mean clear-cutting of trees; filling or deposition of dredged soil or draining for growing agricultural products or for other purposes.

APPLICANT — A person or entity who files an application for a permit under this chapter and who is either the owner of the land on which the proposed regulated activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity or the authorized agent of such person.

AQUACULTURE — Cultivating and harvesting products, including fish and vegetation, that are produced naturally in wetlands and installing cribs, racks and other in-water structures for cultivating these products, but does not include filling, dredging, peat mining, clear-cutting or the construction of any buildings or any water-regulating structures such as dams.

BOUNDARY OF A WETLAND — The approximate outer limit of the soils and/or vegetation as defined under "wetland" and shown on the City of Rye Wetlands and Watercourses Map.

CITY BUILDING INSPECTOR — The Building Inspector for the City of Rye or such representative as designated by the City Manager.

CITY NATURALIST — The Naturalist for the City of Rye or such qualified representative as designated by the City Manager.

CITY PLANNER — The City Planner for the City of Rye or such representative as designated by the City Manager.

CLEAR-CUTTING — Any cutting of more than 30% of trees four inches or more in diameter at approximately 4 1/2 feet above the ground over any ten-year cutting cycle as determined on the basis of wetland area per lot or group of lots under single ownership, including any cutting of trees which results in the total removal of one or more species, whether or not the cut meets or exceeds the thirty-percent threshold.

COMMISSIONER — The Commissioner of the Department of Environmental Conservation of the State of New York.

DAMS AND WATER-CONTROL MEASURES — Barriers used or intended to or which, even though not so intended in fact do, obstruct the flow of water or raise, lower or maintain the level of water.

GRADING — To adjust the degree of inclination of the natural contours of the land, including leveling, smoothing and other modification of the natural land surface.

GROWING SEASON — That portion of the year when soil temperatures are above biologic zero (5º C.); the growing season for the City of Rye is March through October.

HYDRIC SOIL — A soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part, and as further defined under "wetland."

HYDROPERIOD — The seasonal pattern of the water level of a wetland, which defines the rise and fall of the wetland surface and subsurface water.

HYDROPHYTIC VEGETATION — Macrophytic plant life growing in water or on soils that are at least periodically anaerobic as a result of excessive water content, and as further defined under "wetland."

MACROPHYTIC — Referring to any plant species that can be readily observed with the naked eye.

MATERIAL — Liquid, solid or gaseous substances, including but not limited to soil, silt, gravel, rock, sand, clay, peat, mud, debris and refuse; any organic or inorganic compound, chemical agent or matter; sewage sludge or effluent; or industrial or municipal solid waste.

OFFICIAL SUBMITTAL DATE — The date on which an application is officially submitted to the Planning Commission is the date of the first regular meeting of the Planning Commission following the filing of the application and supporting plans pursuant to the provisions of this chapter.

PERMIT — That form of written approval required by this chapter for the conduct of a regulated activity within a wetland, watercourse or wetland/watercourse buffer.

PERSON — See "applicant."

POLLUTION — Any harmful thermal effect or the contamination or rendering unclean or impure of any wetland or waters by reason of erosion or by any waste or other materials discharged or deposited therein.

PROJECT — Any proposed or ongoing action which may result in direct or indirect physical or chemical impact on a wetland, including but not limited to any regulated

activity.

REMOVE — To dig, dredge, suck, bulldoze, dragline, blast or otherwise excavate or grade or the act thereof.

RENDERING UNCLEAN OR IMPURE — Any alteration of the physical, chemical or biological properties of any wetland or waters, including but not limited to change in odor, color, turbidity or taste.

SELECTIVE CUTTING — Any cutting of trees within the boundaries of a wetland or wetland/watercourse buffer that is not "clear-cutting" as defined in this section.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) — The law pursuant to Article 8 of the New York State Environmental Conservation Law providing for environmental quality review of actions which may have a significant adverse effect on the environment.

STRUCTURE — Anything constructed or erected, the use of which requires location on or in the ground or attachment to something having location on the ground, including but not limited to buildings, tennis courts and swimming pools.

SUBDIVISION — See Chapter 170, Subdivision of Land, of the Code of the City of Rye.

WATERCOURSE — Any natural or artificial, permanent or intermittent, public or private water body or water segment, such as ponds, lakes, reservoirs, brooks and waterways, that is contained within, flows through or borders on the City of Rye.

WETLAND — Any area which meets one or more of the following criteria:

A. Lands and waters of the state that meet the definition provided in § 24-0107, Subdivision 1, of the New York State Freshwater Wetlands Act (see Article 24 and Title 23 of Article 71 of the Environmental Conservation Law) and have an area of at least 12.4 acres or, if smaller, have unusual local importance as determined by the Commissioner pursuant to § 24-0301, Subdivision 1, of the Act. The approximate boundaries of such lands and waters are indicated on the official freshwater wetlands map promulgated by the Commissioner pursuant to § 24-0301, Subdivision 5, of the Act or such a map that has been amended or adjusted pursuant to § 24-0301, Subdivision 6, of said Act.

B. Lands and waters of the state that meet the definition provided in § 25-0103, Subdivision 1, of the New York State Tidal Wetlands Act (see Article 25 of the Environmental Conservation Law). The approximate boundaries of such lands and waters are indicated on the official tidal wetlands inventory promulgated by the Commissioner pursuant to § 25-0201 of the Act or such an inventory that has been amended or adjusted pursuant to § 25-0201, Subdivision 6, of said Act.

C. All other areas that comprise hydric soils or are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of hydrophytic vegetation, all as defined by the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1989), which manual shall be available for inspection in the City Naturalist's office and in the City Planner's office.

WETLAND HYDROLOGY — The sum total of wetness characteristics in areas that

are inundated or have saturated soils for a sufficient duration to support hydrophytic vegetation.

WETLANDS AND WATERCOURSES MAP — The City of Rye Wetlands and Watercourses Map, adopted by the Council of the City of Rye pursuant to this chapter or such map as has been amended or adjusted and on which are indicated the approximate boundaries of the known wetlands, watercourses and wetland/watercourse buffers defined pursuant to this chapter. The map shall be available for inspection in the City Naturalist's office and in the City Planner's office. Areas not indicated as being a wetland, watercourse or wetland/watercourse buffer may contain wetlands, watercourses and wetland/watercourse buffers defined and regulated by this chapter. General Note: The City of Rye Wetlands and Watercourses Map is intended to provide general guidance in locating and determining those areas which constitute wetlands and watercourses and their related buffers, as defined in this chapter. The boundaries of wetlands and watercourses and related buffers shall be delineated by the Planning Commission or its consultant in the field.

WETLAND/WATERCOURSE BUFFER — A specific area surrounding a wetland/ watercourse extending 100 feet horizontally away from and paralleling the wetland/ watercourse boundary.

§ 195-4. Permit requirements; regulated activities; determining wetland boundaries.

No regulated activity shall be conducted in a wetland, watercourse or wetland/ watercourse buffer without a written permit from the Planning Commission and full compliance with the terms of this chapter and other applicable regulations. All activities that are not permitted as of right or by permit shall be prohibited. The City Planner, City Engineer and City Building Inspector shall, in the course of reviewing any application before them, advise the applicant of the existence of this chapter and refer information regarding such applications to the City Naturalist.

A. Wetlands and watercourses map — purpose and applicability.

(1) Purpose. Wetlands, watercourses and wetland/watercourse buffers are defined in § 195-3 of this chapter and are generally indicated on the Rye City Wetlands and Watercourses Map. The City of Rye Wetlands and Watercourses Map is intended to provide general guidance in locating and determining those areas which constitute wetlands and watercourses, their boundaries and their related buffers. Areas indicated as being wetlands, watercourses or wetland/ watercourse buffers may not actually be a wetland, watercourse or wetland/ watercourse buffer and areas not indicated as being a wetland, watercourse or wetland/watercourse buffer may contain wetlands, watercourses and wetland/ watercourse buffers. The boundaries of wetlands and watercourses and related buffers shall be delineated by the Planning Commission or their consultant in the field.

(2) Applicability to activities requiring other City approvals. Areas indicated as being wetlands, watercourses or wetland/watercourse buffers may not actually be a wetland, watercourse or wetland/watercourse buffer and areas not indicated as being a wetland, watercourse or wetland/watercourse buffer may contain wetlands, watercourses and wetland/watercourse buffers. Potential

applicants for permits required by this chapter and other City approvals shall attach a copy of the determination from the City Naturalist to their application. The granting of an approval by a City agency or official pursuant to any other chapter of the Code of the City of Rye or the granting of an approval by any state or federal agency shall in no way excuse or exempt any person from the requirements of this chapter even if the property is not shown as being a wetland, watercourse or wetland/watercourse buffer on the map. In the case of City official and agency approvals, such officials and agencies shall, upon notification by the City Naturalist that an activity also requires a permit pursuant to this chapter, take such action as is necessary to stop any part of the work being undertaken that is subject to regulation pursuant to this chapter until a permit has been granted.

(3) Applicability to activities not requiring other City approvals. Areas not indicated as being a wetland, watercourse or wetland/watercourse buffer may contain wetlands, watercourses and wetland/watercourse buffers subject to this chapter, but a permit under this chapter can only be required upon a finding by the Planning Commission that the area is a wetland, watercourse or wetland/watercourse buffer. Such finding shall be in writing and shall also authorize the City Naturalist to issue a stop-work order if the Planning Commission finds that the activity has not been substantially completed. Said finding must be approved by an affirmative vote of at least five members of the Planning Commission, and thereafter the Planning Commission shall delineate the boundary of the wetland, watercourse and wetland/watercourse buffer at the cost of the City and recommend an amendment to the map for the purpose of future regulation. In the event that the Planning Commission makes a finding that a wetland, watercourse or wetland/watercourse buffer does exist but does not authorize the City Naturalist to issue a stop-work order, said activity shall be deemed to have been permitted as if a permit had been issued. However, the Planning Commission, City Naturalist and their agents or employees may thereafter, with the owner's permission, enter upon said land to delineate the boundary and seek an appropriate amendment to the map. If the owner of the property bars such entry, the City Naturalist, Planning Commission and their agents or employees are empowered to apply to the City Court for an administrative search warrant permitting entry onto said land to delineate the boundary and seek an appropriate amendment to the map.

B. City Naturalist determination and appeals. **[Amended 5-6-1992 by L.L. No. 5-1992]**

(1) City Naturalist's determination. The City Naturalist, in consultation with the Conservation Commission/Advisory Council and the City Planner, shall, within five business days of receiving a written request for a determination, determine if the proposed activity is in an area that may be subject to the requirements of this chapter. The written request for such determination must be accompanied by a payment of a fee to the City of Rye. Such fee shall be set annually by resolution of the City Council. The City Naturalist shall make one of two possible determinations: that the area may be subject to the requirements of this chapter or that the area is not subject to the requirements of this chapter. In performing this evaluation, the City Naturalist should

consult the Rye City Wetlands and Watercourses Map. In addition, the City Naturalist may also consult the Westchester County Soil Survey Maps, prepared by the United States Department of Agriculture Soil Conservation Service, revised in 1986 and as further revised from time to time, which show the approximate location of hydric soils that indicate the potential presence of a wetland as defined in this chapter, and may also consult the National List of Plant Species That Occur in Wetlands: Northeast (Region 1), the list of upland wetland plant species developed by the United States Department of the Interior Fish and Wildlife Service in cooperation with the National and Regional Interagency Review Panels, as amended and updated from time to time. The maps and list shall be available for inspection in the City Naturalist's office and in the City Planner's office. **[Amended 12-17-1997 by L.L. No. 19-1997]**

(2) Appeal of City Naturalist's determination that a property is not subject to the requirements of this chapter. In the case of a subdivision or site development plan application, a resident or property owner in the City of Rye may petition the Planning Commission to reverse a determination of the City Naturalist that a property is not subject to the requirements of this chapter. The petitioner shall have the burden of demonstrating that the City Naturalist's determination should be reversed. Such petition must be filed within 15 business days of the City Naturalist's determination. Said petition shall be in the form set forth in the Planning Commission's rules and regulations adopted pursuant to this chapter.

(3) Appeal of City Naturalist's determination that a property may be subject to the requirements of this chapter. If the City Naturalist determines that an area may be subject to the requirements of this chapter, the property owner may petition the Planning Commission to determine that the area is not subject to the requirements of this chapter. Said petition shall be in the form of the permit application as set forth in § 195-5B, but the application need only provide the data required under § 195-5B(2)(b) for a waiver. If additional information is needed by the Planning Commission to decide the petition, the petitioner shall provide said additional information. The petitioner shall have the burden of demonstrating that the City Naturalist's determination was incorrect. Such petition must be filed within 15 business days of the City Naturalist's determination. If the Planning Commission determines that the decision of the City Naturalist was correct, the property owner may complete the application by paying the permit application fee and submitting all other required permit information or withdraw the application.

C. Regulated activities. Except as specified in § 195-4D, the following are regulated activities when within a wetland, watercourse or wetland/watercourse buffer and may be granted a permit upon written application to the Planning Commission:

(1) Placement or construction of any structure.

(2) Any form of draining, dredging, excavation or removal of material either directly or indirectly.

(3) Any form of dumping, filling or depositing of material either directly or

indirectly.

(4) Installation of any service lines or cable conduits.

(5) Introduction of any form of pollution, including but not limited to the installation of a septic tank, the running of a sewer outfall or the discharging of sewage treatment effluent or other liquid waste into or so as to drain into a wetland.

(6) Alteration or modification of natural features and contours.

(7) Alteration or modification of natural drainage patterns.

(8) Construction of dams, docks or other water-control devices, pilings or bridges, whether or not they change the natural drainage characteristics.

(9) Installation of any pipes or wells.

(10) Clear-cutting any area of trees.

(11) Removal or cutting of any vegetation, except selective cutting as permitted in § 195-4D(2).

(12) Deposition or introduction of organic or inorganic chemicals, including pesticides and fertilizers.

(13) Any agricultural activity which involves the draining or excavation of a wetland, except as permitted in § 195-4D(7).

(14) Any other activity that may impair the natural function(s) of a wetland as described in § 195-1 of this chapter.

D. Uses as of right — no permit required. The following uses shall be allowed as of right within a wetland, watercourse or wetland/watercourse buffer without a permit to the extent that they are not prohibited by any other chapter and to the extent that they do not constitute a pollution or erosion hazard or interfere with proper drainage:

(1) Normal ground maintenance, including mowing, trimming of vegetation and removal of dead or diseased vegetation.

(2) Selective cutting as defined in § 195-3.

(3) Repair of existing structures, including interior renovations, walkways, walls and docks.

(4) Decorative landscaping and planting in wetland/watercourse buffers, excluding those activities regulated in § 195-4C(11) and (12).

(5) Public health activities, orders and regulations of the Westchester County Department of Health and/or the New York State Department of Health for emergencies only.

(6) Deposition or removal of natural products of wetlands in the process of recreational or commercial fishing, shellfishing, aquaculture, hunting or

trapping, but excluding excavation and removal of peat or timber, except as provided in § 195-4C(2).

(7) Agricultural activities as defined in § 195-3.

(8) Normal beach maintenance, including restoration of an eroded shoreline to its original state.

E. Rules for determining boundaries. The Planning Commission shall determine the boundaries of a wetland or watercourse. The boundaries of a wetland ordinarily shall be determined by field investigation. In so doing the Planning Commission may consult and/or may require the applicant to consult with qualified biologists, hydrologists, soil scientists, ecologists/botanists/zoologists or other experts as necessary to make this determination. After the boundary has been determined by the Planning Commission, it may require, at the expense of the applicant, a survey to be drawn up by a licensed land surveyor.

§ 195-5. Permit standards and procedures.

A. Procedures for permits.

(1) No regulated activity shall be conducted without issuance of a written permit from the Planning Commission.

(2) All permits shall expire on completion of the acts specified and, unless otherwise indicated, shall be valid for a period of one year from the date of issue. A one-year extension of an original permit may be granted upon written request to the Planning Commission by the original permit holder or his/her legal agent at least 90 days prior to the expiration date of the original permit. The Planning Commission may require new hearings if, in its judgment, the original scope of the permit is altered or extended by the renewal or if the applicant has failed to abide by the terms of the original permit in any way. The request for renewal of a permit shall follow the same form and procedure as the original application, except that the Planning Commission shall have the option of not holding a hearing if the original scope of the permit is not altered or extended in any significant way.

B. Permit applications.

(1) Application for a permit shall be made to the Planning Commission on forms furnished by the City Planner pursuant to the Planning Commission's rules and regulations adopted pursuant to this chapter.

(2) An application for a permit shall not be deemed complete if it does not include all of the information required by the Planning Commission's rules and regulations adopted pursuant to this chapter and the following:

(a) The application fee.

(b) Complete plans and estimates as set forth in the Planning Commission's rules and regulations adopted pursuant to this chapter. In the case of applications for projects where the total amount of disturbed area is less than one-fourth acre or projects whose total cost does not exceed $10,000

or projects which propose encroachment into the wetland/watercourse buffer only, the Planning Commission may waive the requirements for complete plans and estimates set forth in its rules and regulations adopted pursuant to this chapter, provided that a plan clearly showing the extent and details of the project has been submitted with the application.

(c) Evidence that the applicant has complied fully with the procedures of the State Environmental Quality Review Act (Article 8 of the New York State Environmental Conservation Law) and has submitted a full environmental assessment form, except that a short environmental assessment form may be submitted at the discretion of the Planning Commission.

(3) The Planning Commission may require additional information as needed, such as the study of flood, erosion or other hazards at the site and the effect of any protective measures that might be taken to reduce such hazards and other information deemed necessary to evaluate the proposed use in terms of the goals and standards of this chapter.

(4) By filing an application, the applicant thereby consents to the entry onto his land by the City Naturalist, City Planner or other agents designated by the Planning Commission for the purpose of undertaking any investigation, examination, survey or other activity necessary for the purposes of this chapter. If the owner of the property bars such entry, the City Naturalist, Planning Commission and their agents or employees are empowered to apply to the City Court for an administrative search warrant permitting such inspection.

C. Public hearings and public notification by applicant. **[Amended 3-10-2010 by L.L. No. 4-2010[1]]**

(1) When an activity subject to regulation under this chapter also requires Planning Commission approval pursuant to another chapter of the Code of the City of Rye, the requirements for public hearings and public notification by the applicant shall be the same as required for the other approval. When the only other approval involves Chapter 73, Coastal Zone Management Waterfront Consistency Review, the requirements below shall apply. When an activity subject to regulation under this chapter does not also require Planning Commission approval pursuant to another chapter of the Code of the City of Rye and, in the case of Chapter 73, Coastal Zone Management Waterfront Consistency Review, before the Planning Commission acts on the application, it shall hold a public hearing. The applicant shall provide additional public notification in accordance with the public notification requirements set forth in the Planning Commission's rules and regulations adopted pursuant to this chapter. All public notifications must be mailed via certified mail with a certificate of mailing. At least five days prior to the public hearing, all certificates of mailing must be turned into the Planning Commission.

(2) Insofar as possible, any public hearing on the application shall be integrated

1. **Editor's Note: This local law provided that it shall take effect 5-1-2010.**

with any public hearing required or otherwise held pursuant to any other law, including the State Environmental Quality Review Act, and only one public notice need be prepared, provided that the notice contains all of the information required for each hearing.

(3) Any party may present evidence and testimony at the hearing. At the hearing, the applicant shall have the burden of demonstrating that the proposed activity will be in accord with the goals and policies of this chapter and the standards set forth in § 195-5D.

D. Standards for permit decisions.

(1) In granting, denying or conditioning any permit, the Planning Commission shall evaluate wetland functions and the role of the wetland in the hydrologic and ecological system and shall determine the impact of the proposed activity upon public health and safety, rare and endangered species, water quality and additional wetland functions listed in § 195-1 of this chapter. Impacts and losses shall be avoided to the maximum extent practicable or, if they cannot be avoided, they shall be minimized to the maximum extent practicable. In this determination, it shall consider the following factors and shall issue written findings with respect to those factors which are applicable:

(a) The impact of the proposed activity and existing and reasonably anticipated similar activities upon neighboring land uses and wetland functions as set forth in § 195-1 of this chapter, including but not limited to the following:

[1] The filling in of a wetland or other modification of natural topographic contours.

[2] Disturbance or destruction of natural flora and fauna.

[3] Influx of sediments or other materials causing increased water turbidity and/or substrate aggradation.

[4] Removal or disturbance of wetland soils.

[5] Reductions in wetland water supply.

[6] Interference with wetland water circulation.

[7] Damaging reduction or increases in wetland nutrients.

[8] Influx of toxic chemicals and/or heavy metals.

[9] Damaging thermal changes in the wetland water supply.

[10] Destruction of natural aesthetic values.

(b) Any existing wetland impacts and the cumulative effect of reasonably anticipated future wetland activities in the wetland subject to the application.

(c) The impact of the proposed activity and reasonably anticipated similar

activities upon flood flows, flood storage, storm barriers and water quality.

(d) The safety of the proposed activity from flooding, erosion, hurricane winds, soil limitations and other hazards and possible losses to the applicant and subsequent purchasers of the land.

(e) The adequacy of water supply and waste disposal for the proposed uses.

(f) Consistency with federal, state, county and local comprehensive land use plans and regulations.

(g) The availability of preferable alternative locations on the subject parcel or, in the case of activity which cannot be undertaken on the property without disturbance to wetlands, the availability of other reasonable locations for the activity.

(2) The Planning Commission shall deny a permit if:

(a) It finds that it will threaten public health and safety, result in fraud, cause nuisances, impair public rights to the enjoyment and use of public waters, threaten a rare or endangered plant or animal species, violate pollution control standards or violate other federal, state or local regulations; or

(b) It finds that both the affected landowner and the City of Rye have been notified by a duly filed notice, in writing, that the state or any agency or political subdivision of the state is in the process of acquiring the wetland by negotiation or condemnation with the following provisions:

[1] The written notice must include an indication that the acquisition process has commenced, such as that an appraisal of the property has been prepared or is in the process of being prepared.

[2] If the landowner receives no offer for the property within one year of the permit denial, this ban to the permit lapses. If its negotiations with the applicant are broken off, the state or any agency or the City of Rye must, within six months of the end of negotiation, either issue its findings and determination to acquire the property pursuant to § 204 of the Eminent Domain Procedure Law or issue a determination to acquire the property without public hearing pursuant to § 206 of the Eminent Domain Procedure Law or this ban to permit lapses.

(3) Special consideration will be given to activities that must have a shoreline or wetland location in order to function and that will have as little impact as possible upon the wetland, watercourse and wetland/watercourse buffer. In general, permission will not be granted for dredging or ditching solely for the purpose of draining wetlands, controlling mosquitoes, lagooning, constructing factories, providing spoil and dump sites or building roadways that may be located elsewhere.

E. Replacement/compensation plan requirements.

(1) Where losses of wetlands or impacts on wetlands are deemed unavoidable by the Planning Commission, the Commission may require the applicant to develop a replacement/compensation plan which shall specify measures that provide for replacement wetlands that re-create as nearly as possible the original wetlands in terms of type, function, geographic location and setting. On-site replacement/compensation shall be the preferred approach; off-site replacement/compensation shall be permitted only in cases where an on-site alternative is not possible. In the case of applications for projects where the total amount of wetland or buffer area is disturbed is less than 2,000 square feet, the Planning Commission may waive or modify the requirements outlined in this subsection.

(2) Replacement/compensation plans developed to compensate for the loss of wetlands shall include the baseline data set forth in the Planning Commission's rules and regulations adopted pursuant to this chapter, as deemed necessary by the Planning Commission.

(3) The Planning Commission shall monitor or shall cause to have monitored projects, according to the specifications set forth in the permit, to determine whether the elements of the plan and permit conditions have been met and whether the wetland acreage created replaces the wetland acreage lost. To this end, the Planning Commission may contract with an academic institution, an independent research group or other qualified professionals, at the expense of the applicant, or may use its own staff expertise. The requirements for monitoring shall be specified in the plan and shall include but not be limited to the requirements set forth in the Planning Commission's rules and regulations adopted pursuant to this chapter.

(4) Any plan prepared pursuant to this section and accepted by the Planning Commission shall become part of the permit for the application.

F. Permit conditions.

(1) Any permit issued pursuant to this chapter may be issued with conditions. Such conditions may be attached as the Planning Commission deems necessary and pursuant to § 195-5D to assure the preservation and protection of affected wetlands and to assure compliance with the policy and provisions of this chapter and the provisions of the Planning Commission's rules and regulations adopted pursuant to this chapter.

(2) Every permit issued pursuant to this chapter shall be in written form and shall contain the standard conditions and may contain the optional conditions set forth in the Planning Commission's rules and regulations adopted pursuant to this chapter.

G. Performance bond. A bond shall be posted with the Planning Commission by the applicant, prior to the issuance of a permit, to secure to the City the satisfactory installation and maintenance of structures and devices necessary to ensure protection of the wetland, watercourse and wetland/watercourse buffer during construction and satisfactory installation of permanent structures and devices necessary to ensure protection of the wetland, watercourse and wetland/watercourse buffer, which shall be in an amount equal to the cost to install and maintain said

structures and devices during construction and the cost to install said permanent structures and devices, except as waived or reduced by the Planning Commission. The bond shall be released by the Planning Commission upon completion of the work permitted by said permit, provided that said work is found to be in accordance with the provisions of the permit and such other ordinances as may apply and is completed to the satisfaction of the City Naturalist or other City officials responsible for the enforcement of such City ordinances. If the City finds that said installation and maintenance is not being done by the applicant or is not satisfactory and the applicant fails to correct the situation in the time period specified by the City, the City may proceed against the bond in order to correct for any deficiencies. Not less than 10% of the bond shall be in cash.

H. Other laws and regulations. No permit or waiver granted pursuant to this chapter shall remove an applicant's obligation to comply in all respects with the applicable provisions of any other federal, state or local law or regulation, including but not limited to the acquisition of any other required permit or approval, including but not limited to the New York State Tidal Wetlands Regulations, New York State Freshwater Wetlands Regulations and New York State Coastal Erosion Management Regulations.[2]

I. Stop-work order.

(1) A stop-work order may be issued if the applicant or permittee has not complied with any or all of the terms of such permit, has exceeded the authority granted in the permit or has failed to undertake the project in the manner set forth in the approved application.

(2) If a stop-work order is issued it shall be set forth in writing, a copy of which shall be filed with the Planning Commission, and shall contain the finding and reasons for issuing the stop-work order pursuant to this section.

(3) A stop-work order shall be issued when authorized by the Planning Commission pursuant to § 195-4A(3).

J. Consultants and related fees. **[Added 10-8-1997 by L.L. No. 14-1997]**

(1) The Planning Commission in the review of any application may refer such application to such engineering, planning, legal, technical or environmental consultant or other professionals, hereinafter referred to as "consultant or consultants," as it deems reasonably necessary to enable it to review such application as required by law, provided that the required expertise is not available from City staff, and subject to the following:

(a) The detailed statement of the consulting services to be provided by the consultant shall include the consultant's fees for said services and a statement by the consultant that the applicant, not the City, shall be ultimately responsible to the consultant for the services provided. The detailed statement shall be sent to the applicant by the City Planner via certified mail, return receipt requested.

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2. Editor's Note: See the Environmental Conservation Law, §§ 25-0101 et seq., 24-0101 et seq. and 34-0101 et seq., respectively.

(b) If the applicant wishes to review the services and the costs with the Planning Commission, the request for a review shall be in writing and mailed to the City Planner via certified mail, return receipt requested, within seven days of the applicant's receipt of the service and cost statement provided by the City Planner. The Planning Commission shall review the services and costs with the applicant at its next regular meeting following receipt of the request.

(c) The City Planner shall authorize the consultant to proceed if he/she has not received a written request for a review of the consultant's services and costs from the applicant within seven days of the applicant's receipt of the City Planner's transmittal. The receipt date is the date shown as received on the return receipt card returned by the post office.

(d) The applicant shall pay the consultant's fee upon receipt of the consultant's detailed statement for the services provided. The statement will be forwarded to the applicant by the City Planner.

(e) Payment of the consultant's fees shall be required in addition to any and all other fees required by this or any other section of this chapter or any other City law or regulation.

(f) The Planning Commission document taking final action on the application shall not be issued until all consultant's fees charged in connection with the review of the applicant's project have been paid. Payment of the consultant's fees shall be by check made payable to the consultant and shall be submitted to the City Planner for transmittal to the consultant.

(g) This Subsection J shall expire two years after the date of its adoption, unless specifically reenacted by the City Council.

§ 195-6. Referral to Conservation Commission/Advisory Council. [Amended 6-16-1993 by L.L. No. 8-1993]

The City Planner shall refer all applications and proposed replacement/compensation plans prepared pursuant to § 195-5E to the Conservation Commission/Advisory Council for review and report. The Conservation Commission/Advisory Council shall report back to the Planning Commission within 30 days of the date of the referral by the City Planner when an activity subject to regulation under this chapter also requires Planning Commission approval pursuant to another chapter of the Code of the City of Rye. When the only other approval involves Chapter 73, Coastal Zone Management Waterfront Consistency Review, the requirements described below shall apply. When an activity subject to regulation under this chapter does not also require Planning Commission approval pursuant to another chapter of the Code of the City of Rye and in the case of an activity regulated under this chapter and only Chapter 73, Coastal Zone Management Waterfront Consistency Review, the Conservation Commission/Advisory Council shall report back to the Planning Commission within 20 days of the date of the referral by the City Planner. Failure to reply within the specified time period may be deemed as indicating no objections to the application. In cases where Planning Commission determinations under this chapter are not consistent with the Conservation

Commission/Advisory Council report, the Planning Commission shall issue written findings detailing the basis for their determination in variance with the Conservation Commission/Advisory Council report. The City Planner shall provide a copy of the proposed permit decisions and conditions to the Chairman of the Conservation Commission/Advisory Council concurrent with distribution of such proposed permit decisions and conditions to the Planning Commission.

§ 195-7. Penalties for offenses.

A. Civil sanctions. Any person who violates any of the provisions of this chapter shall be liable for a civil penalty of not more than $3,000 for every such violation. Each consecutive day of violation will be considered a separate offense. Such civil penalty may be released or compromised by the Planning Commission. In addition, the Planning Commission shall have power, following a hearing, to direct the violator to restore the affected wetland to its condition prior to the violation, insofar as that is possible.

B. Criminal sanctions. Any person, firm or corporation who willfully violates any of the provisions of this chapter or permits promulgated thereunder, excluding provisions set forth in the rules and regulations promulgated thereunder, upon conviction thereof of the first offense, shall be guilty of a violation punishable by a fine of not less than $500 and not more than $1,000 and for a second offense and each subsequent offense, shall be guilty of a violation punishable by a fine of not less than $1,000 nor more than $2,000 or a term of imprisonment of not more than 15 days, or both. In addition to these punishments, any offender may be ordered by the court to restore the affected wetland to its condition prior to the offense, insofar as that is possible. Each consecutive day of violation will be considered a separate offense.

§ 195-8. Enforcement.

The City Naturalist shall be the enforcement officer for this chapter. No work or activity subject to review under this chapter shall be commenced or undertaken until the City Naturalist has been presented with a wetland permit approved by the Planning Commission. The City of Rye is specifically empowered to seek injunctive relief restraining any violation or threatened violation of any provisions of this chapter and/or compel the restoration of the affected wetland, watercourse or wetland/watercourse buffer to its condition prior to the violation of the provisions of this chapter.

§ 195-9. Judicial review.

Any determination, decision or order of the Planning Commission may be judicially reviewed pursuant to Article 78 of the Civil Practice Law and Rules in the Supreme Court for the county in which the wetlands affected are located within 30 days after the date of filing of the determination, decision or order of such Planning Commission with the City Clerk of the City of Rye.

§ 195-10. Severability.

If any clause, sentence, paragraph, section, or part of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent

jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other person or circumstances, and to this end the provisions of each section of this chapter are hereby declared to be severable.

§ 195-11. Action on permit application.

A. When an activity subject to regulation under this chapter also requires Planning Commission approval pursuant to another chapter of the Code of the City of Rye, the time limit for taking action on the application shall be the same as required for the other approval. When the only other approval involves Chapter 73, Coastal Zone Management Waterfront Consistency Review, the time limit for taking action is described in Subsection B of this section. The Planning Commission shall, within said time limit, approve, modify and approve or disapprove the permit. If the permit is disapproved, the reasons for such action shall be stated on the records of the Planning Commission and a copy of such reasons will be sent to the applicant. If the permit is approved, it shall not be signed by the approved officers of the Planning Commission until the applicant has met all the conditions of the action granting approval of such permit.

B. When an activity subject to regulation under this chapter does not also require Planning Commission approval pursuant to another chapter of the Code of the City of Rye and in the case of Chapter 73, Coastal Zone Management Waterfront Consistency Review, the Planning Commission shall, within 30 days from the official submittal date of the application or at the meeting following the meeting at which the Conservation Commission/Advisory Council's report was received, whichever occurs last, approve, modify and approve or disapprove the permit. If the permit is disapproved, the reasons for such action shall be stated on the records of the Planning Commission and a copy of such reasons will be sent to the applicant. If the permit is approved, it shall not be signed by the approved officers of the Planning Commission until the applicant has met all the conditions of the action granting approval of such permit.

Tools and Methodologies for Change

Contents:

Town of Harrison Zoning Ordinance Provisions for uses in former corporate parks
Village of Tarrytown TOD Zoning in ID District

Additional Links:

https://ecode360.com/39302605 (Mount Vernon West TOD)

https://ecode360.com/38033684 (Ossining Form Based Overlay)

https://planning.westchestergov.com/images/stories/reports/patternsforwestchester.pdf

https://planning.westchestergov.com/initiatives/westchester-2025

https://planning.westchestergov.com/images/stories/pdfs/compplan22.pdf

W. SB-0 stand-alone fitness centers.
[Added 8-4-2011 by L.L. No. 6-2011]

(1) The minimum lot area for an SB-0 stand-alone fitness center shall be 20 acres. SB-0 stand-alone fitness centers shall only be permitted on parcels located on roads with direct access to Westchester Avenue, and located between I-287, I-684, the connector road from 1-287 to 1-684, and the Hutchinson River Parkway.

(2) Every application for a stand-alone fitness center use shall include a circulation plan, indicating all internal roadways, all roadways, intersections and driveways bounding the site, all off-street parking and truck loading areas and pedestrian accessways on the site; and also, a traffic survey and analysis, with estimates of on-site traffic generation and its impact, if any, on existing and projected traffic volumes, roadway capacity and highway safety in critical highway locations in the vicinity and proposals related to accommodating such traffic generation in each location, as well as any required on-site or off-site mitigation measures, as may be required by the Planning Board.

(3) No paved vehicular area other than necessary access roads into the site shall be located

within a required buffer strip.

(4) Off-street parking and truck loading areas shall be designed pursuant to the requirements of Article **VII**, and, further, they shall include provisions for landscaping and screening and for landscaped islands within the parking areas in the proportion of 15 square feet for each parking space.

(5) The entrance to all off-street parking and truck loading spaces shall be from an internal driveway system and not from a public street.

(6) On-site bicycle storage racks shall be provided with at least 1 bicycle space per 10,000 square feet of gross building floor area. Where feasible, some or all of this bicycle storage shall be provided within a secure, enclosed bicycle storage space.

(7) Every application for a stand-alone fitness center use shall include a detailed and specific landscape plan, incorporating native species wherever feasible, showing the proposed treatment of all open areas on the site and, more specifically, analyzing the need for the screening of service areas, outdoor use areas and buffer strip landscaping and how such need will be met on a year round basis.

(8) Every application for a stand-alone fitness center use shall include a detailed and specific outdoor lighting plan meeting the standard set forth in § **235-18A(9)**, which documents all proposed site lighting. Site lighting shall be restricted to the minimum necessary to allow for the appropriate and safe operation of the facility, and shall include automatic controls to turn off exterior lighting when sufficient daylight is available and when lighting is not required during nighttime hours, include fixture integrated lighting controls such as motion sensors to reduce light levels, use cut-off and shielded luminaries to prevent light trespass beyond property lines and unnecessary glare, among other measures."

(9) Signs.

(a) The design and location of each proposed sign shall be submitted with the application for a stand-alone fitness center use, which signs shall conform to the provisions of Article **VIII**, except that instead of two freestanding signs as provided in § **235-47A**, a stand-alone fitness center may have one freestanding sign with an area of not more than 150 square feet and an overall height not exceeding 18 feet; and two (2) wall signs with an area of not more than 200 square feet each.

(b) In addition to the freestanding sign provided for above and in addition to the signs permitted under § **235-47A** a stand-alone fitness center may have signs located on its property for the purpose of indicating traffic directions and information concerning location of on-site facilities. The total area of any such sign shall not exceed 35 square feet, and the height of any such sign shall not exceed eight feet. The number of signs and the location and design of such signs shall be subject to the approval of the Town Board.

(10) All intensive outdoor activities shall be set back at least 100 feet from any property line and shall be so located that they shall be reasonably screened from view and compatible with the existing or potential use of neighboring properties.

(11) Competitions, tournaments, matches, festivals and other similar events that would attract spectators, who are not members or guests of the stand-alone fitness center, are prohibited, except with the prior consent of the Town/Village Board.

(12) Notwithstanding the provisions of § **235-37** of the Town of Harrison Zoning Ordinance to the contrary, the minimum off-street parking for a stand-alone fitness center shall be provided as follows: 6 per each 1,000 square feet of floor area (not including any floor area devoted exclusively to tennis courts), plus 4 per each tennis court.

X. SB-0 Multifamily Residential. This use has been established to provide housing opportunities for

young people and empty nesters who are seeking efficient, well designed, conveniently located housing opportunities and who are not anticipated to create additional demands on the Harrison School District.
[Added 4-7-2016 by L.L. No. 1-2016; amended 9-20-2022 by L.L. No. 4-2022]

(1) The applicant shall submit a recent (no earlier than 12 months from the date of application) market survey indicating there are a sufficient number of individuals that would occupy the proposed number of housing units in the proposed price range (either purchase or rental) to assist the Planning Board in its review of the feasibility of the proposed project.

(2) The site for an SB-0 Multifamily Residential project shall have a minimum of five acres. SB-0 Multifamily Residential projects shall only be permitted on parcels located south of I-684.

(3) The site shall have a minimum frontage of 350 feet on a mapped public or private roadway except where lesser frontage is permitted pursuant to § **235-17X(15)**, below.

(4) No SB-0 Multifamily Residential project shall contain more than 450 dwelling units.

(5) Lot building coverage shall not exceed 45%.

(6) All buildings shall comply with the applicable requirements set forth in the Table of Dimensional Regulations for the SB-0 Zoning District, as modified in this section.[4]
[4] *Editor's Note: See the Business Districts Table of Dimensional Regulations included as an attachment to this chapter.*

(7) A minimum of 475 square feet shall be provided for efficiency (studio) apartments, and a minimum of 600 square feet shall be provided for one-bedroom apartments. The maximum number of bedrooms or potential bedrooms in an apartment/dwelling unit shall be three.

(8) The design of the project, number of bedrooms, size of units, unit mix and all other factors relating to the intended occupants of the dwelling units shall be primarily geared toward young people, empty nesters, and residents without young children.

(9) A minimum of 2,500 square feet of recreation space, which may include interior spaces such as a community or recreation room, shall be provided at the site. This requirement is intended to supersede the usable open space requirements set forth in § **235-25** of the Zoning Ordinance, which shall not apply to SB-0 Multifamily Residential projects.

(10) A minimum of 1.25 off-street parking spaces for each dwelling unit shall be provided.

(11) In cases where an SB-0 Multifamily Residential project abuts a nonresidential use, a landscape buffer a minimum of 40 feet in depth for side and rear yards and 25 feet in depth for front yards shall be provided. Landscaped parking areas, outdoor patio associated with the restaurant use, retaining walls, stormwater management facilities, wetland restoration/enhancement areas, driveway access, and internal circulation walkways/roadways (including those for emergency vehicle access) may be located within a required buffer strip.

(12) An SB-0 Multifamily Residential project may also incorporate retail, retail service or restaurant uses within the project, subject to the special exception use requirements of § **235-17Y**. When included within the same building as the residential uses, the nonresidential use shall be restricted to the first floor and shall not exceed 25,000 square feet of gross floor area.

(13) The main entrance of an SB-0 Multifamily Residential project shall be located no more than 1,300 feet (1/4 mile) from a mass transit link. If located further than 1,300 feet, a suitable alternative means of minimizing vehicle trips to and from the site must be employed, such as the use of a shuttle bus.

(14) The dimensional requirements for any SB-0 Multifamily Residential project site shall be as follows:

Lot Area (square feet)	
Minimum	5 acres
Minimum per family unit	350 square feet
Lot coverage	
Maximum building coverage	45%
Lot width	300
Required yards	
Front	50*
Side (adjoining residence district)	100
Side (adjoining business district)	40
Rear	45
Habitable Area (minimum)	475
Height	
Stories	6**
Floor area ratio	No requirement

Notes:

*The front yard may be reduced to 25 feet, for an area not to exceed 25% of the total width of that portion of the building located parallel to the required front yard.

**If the SB-0 Multifamily Residential project features structured parking that is partially below grade the parking floor that is located partially below grade shall not constitute a story for the purposes of calculating height.

(15) Redevelopment of previously developed parcels.

(a) In instances where the configuration of previously developed parcels prevents the provision of required frontage, such as in the case of a landlocked parcel, the minimum frontage of an SB-0 Multifamily Residential project site may be reduced or eliminated if permanent access to a public or private roadway via common ownership or an easement recorded against the subject properties, in a form to be approved by the Town Attorney, is provided through another lot providing the required frontage. Where such landlocked parcels exist, the front lot line shall be the lot line facing the roadway to which said parcel has access.

(b) Where an SB-0 Multifamily project site is created on a parcel that also supports an existing office building, the Planning Board, subject to the following requirements, may permit a reduction in the number of off-street parking spaces that would otherwise be required for the existing office building, with the following limitations:

[1] The applicant shall submit a parking survey indicating there is a sufficient number of off-street parking spaces located on the same parcel as the existing office building to accommodate the existing office building.

[2] Required parking shall be provided at a ratio of not less than one off-street parking space per 300 square feet of floor area.

[3] If there is any future change in the nature of the use of the existing office building that results in significantly greater daily parking demand, such as a change from general office to medical office, Planning Board review may be required at the discretion of the Building Inspector and Town Planner, to determine if additional

off-street parking is required to accommodate the new use.

(c) Where an SB-0 Multifamily project site is created on a parcel that also supports an existing office building, access drives supporting an SB-0 Multifamily project may be located within a required landscape buffer for the existing office building.

(16) Whenever an SB-0 Multifamily Residential project is authorized for development in any portion of a floodplain, the volume of space occupied by the authorized fill or structure below the base flood elevation shall be compensated for at a 4:1 ratio and balanced by a hydraulically equivalent volume of excavation taken from below the base flood elevation at or adjacent to the development site. All such excavations shall be constructed to drain freely to the watercourse. No area below the waterline of a pond or other body of water can be credited as a compensating elevation.

Y. SB-0 retail use; retail service use; restaurant use.
[Added 4-7-2016 by L.L. No. 1-2016]

(1) An SB-0 retail use, retail service use or restaurant use shall not exceed 25,000 square feet in gross floor area. An SB-0 restaurant use may include outdoor dining to be located on the same parcel as the SB-0 restaurant use.

(2) If the SB-0 retail use, retail service use, or restaurant use is provided within a mixed-use building, the retail use shall be limited to the first floor.

(3) In instances where the SB-0 retail use, retail service use, or restaurant use will be combined with other uses on the site, the Planning Board may, subject to the submission of a vehicle trip-generation report by the applicant, reduce the required off-street parking requirement from one space per 175 square feet of floor area to no less than one space per 400 square feet of floor area for retail and retail service uses, and from one per four permanent seats or 150 square feet of floor area to one per six permanent seats or 300 square feet of floor area, whichever is greater, for restaurant use.

(4) Shared parking between any SB-0 retail use, retail service use, or restaurant use shall be provided wherever feasible.

(5) Signage for any SB-0 retail use, retail service use, or restaurant use shall be restricted to the site's individual monument sign or shall be mounted on the building itself. No separate freestanding signs shall be permitted on the site.

(6) The architecture of the SB-0 retail use, retail service use, or restaurant use building, whether freestanding or included within a mixed-use building, shall reflect the high-quality architectural character of the surrounding office parks and shall minimize the individual corporate logos or branding of the retail use, in favor of a unified, comprehensive site and area-wide design.

(7) Provisions shall be made for deliveries and loading. For retail, retail service and restaurant uses exceeding 20,000 square feet in floor area, a separate loading space shall be provided in accordance with § **235-41I**.

AA. SB-0 Stand-Alone Retail.
[Added 4-6-2017 by L.L. No. 2-2017]

(1) The minimum lot area for an SB-0 Stand-Alone Retail use shall be 20 acres. SB-0 Stand-Alone Retail uses shall only be permitted on parcels located on roads with direct access to Westchester Avenue, and located between I-287, I-684, the connector road from I-287 to I-684, and the Hutchinson River Parkway.

(2) All SB-0 Stand-Alone Retail buildings shall comply with the applicable underlying dimensional requirements set forth in the Table of Dimensional Regulations for the SB-0 Zoning District,[5] except to the extent that such requirements are modified by this section.

[5] *Editor's Note: See the Business Districts Table of Dimensional Regulations included as an attachment to this chapter.*

(3) The yard setback and landscape buffer dimensional requirements for any SB-0 Stand-Alone Retail project site shall be as follows:

Required Yards	
Side	40 feet
Rear	50 feet
Required Landscape Buffer	25 feet

(4) Every application for a Stand-Alone Retail use shall include a detailed and specific landscape plan, incorporating native species wherever feasible, showing the proposed treatment of all open areas on the site, and, more specifically, analyzing the need for the screening of service areas, outdoor use areas and buffer strip landscaping and how such need will be met on a year round basis. Landscaped parking areas, outdoor patios, retaining walls, stormwater management facilities, wetland restoration/enhancement areas, driveway access, and internal circulation walkways/roadways (including those for emergency vehicle access) may be located within a required landscape buffer.

(5) Off-street parking and truck loading areas shall be designed pursuant to the requirements of Article **VII**, and, further, they shall include provisions for landscaping and screening and for landscaped islands within the parking areas in the proportion of 15 square feet for each parking space.

(6) Notwithstanding the provisions of § **235-23** of the Town/Village of Harrison Zoning Ordinance, and except as hereinafter provided, nothing shall restrict the height of the following for SB-0 Stand-Alone Retail uses: spires, belfries, cupolas, domes, chimneys, ventilator elevators or stair bulkheads, water tanks and necessary mechanical appurtenances usually carried above the roof level. Such features shall be built only to such

height as is necessary to accomplish the purpose that they are to serve and shall not:

(a) Exceed 25% of the ground floor area of the building.

(b) Exceed 20 feet in height. Where a building is not located within 500 feet of any residential zoning district, such features may reach 30 feet in height.

(c) Be used for residence or tenancy purposes.

(d) Have any sign, nameplate, display or advertising device whatsoever inscribed upon or attached to such building or structure.

(7) Notwithstanding the provisions of § **235-26** of the Town/Village of Harrison Zoning Ordinance, retaining walls constructed in connection with a Stand-Alone Retail use may not exceed 10 feet in height within a required side or rear yard or six feet in height within a required front yard. To the extent such retaining walls are terraced, there must be a minimum of six feet between the faces of such terraced walls.

(8) The design and location of each proposed sign shall be submitted with the application for a Stand-Alone Retail use, which signs shall conform to the provisions of Article **VIII**, except that instead of two freestanding signs as provided in § **235-47A** and a single wall sign as provided in § **235-47B**, each building in a Stand-Alone Retail use may have two freestanding signs with an area of not more than 150 square feet each and an overall height not exceeding eighteen feet; and five wall signs with a total area of not more than 1,200 square feet. Such signs may be visible off the premises.

(9) Notwithstanding the provisions of § **235-37** of the Town/Village of Harrison Zoning Ordinance to the contrary, the minimum off-street parking for a Stand-Alone Retail use shall be provided as follows:

(a) Retail Uses: 1 per each 200 square feet of floor area.

(b) Restaurant Uses: 1 per 4 permanent seats or 150 square feet of floor area, whichever is the greater.

(10) Multifamily residential facilities over first floor nonresidential uses as transit-oriented development, provided the following criteria are met.
[Added 2-16-2021 by L.L. No. 4-2021]

(a) Applicability. Multifamily residential over first floor nonresidential uses shall only be permitted on parcels that are:

[1] A minimum of one-acre lot area;

[2] Located within 100 linear feet from direct access to a platform for the Metro-North Train Station.

(b) Uses and standards. Where not modified herein, the requirements of the ID District shall apply.

[1] A minimum of 50% of the total first floor square footage shall be dedicated to nonresidential uses permitted in the ID District, which shall be limited to those identified in Subsection **A(1)**, **(8)**, and **(9)** above, with at least 5% of the floor area being those uses listed in Subsection **A(8)** or **(9)**;

[2] Any portion of the first floor facing towards the closest public road or walkways extending from the train station shall contain uses listed in Subsection **A(8)** or **(9)** or an entry lobby area for the residential use, so that same shall appear open and inviting to the public.

[3] The applicant shall provide a pedestrian circulation plan showing connections to the existing walkways and any adjacent related uses and access to and from adjacent streets and the train station/platform.

[4] For any property directly abutting the railroad tracks, the rear yard setback may be reduced to zero.

[5] To allow for multifamily residential development, the maximum height may be increased to 48 feet and four stories.

[6] Parking requirements. Given that the multifamily residential will be part of a transit-oriented development, as well as a mixed-use development with opportunities for shared parking, parking requirements for the residential use shall be 1.05 spaces per residential unit. The width of a parking space may be reduced to 8 1/2 feet. Required parking can be provided on-site or on an adjacent property, provided that the applicant has a long-term agreement for parking satisfactory to the Village Attorney. The parking requirement for nonresidential uses may be provided through shared parking as may be approved by the Planning Board. For commercial storage uses, two loading spaces shall be provided.

[7] The number of residential units shall not exceed 75 units per acre and shall include a mix of studio, one- and two-bedroom units.

[8] The maximum floor area ratio for the residential use, excluding entry lobby and amenity spaces, shall not exceed 1.75.

[9] The applicant must show that all new sewer, water and traffic impacts generated from the proposed project can be mitigated so as to not negatively impact the existing network. Efforts shall be made to incorporate green infrastructure to reduce impacts.

[10] The applicant shall provide a pedestrian circulation plan showing safe pedestrian access within the property and connecting to the community.

[11] The project shall comply with all FEMA regulations and the regulations set forth in 6 NYCRR Part 490 so as to address issues of sea level rise and not worsen potential for flooding in the area.

[12] Buildings shall be designed such that no facade shall exceed 150 feet in length without architectural features acceptable to the Planning Board to break up the visual effect of the building and avoid a box-like appearance, which may be accomplished through the use of variations in height and with offsets, projections, balconies, setbacks and other distinctive architectural elements.

[13] The project shall comply with sound environmental sustainability standards, including, for example, but not limited to, the following:

[a] Use of solar panels for electric usage.

[b] Use of geothermal sources to power heat pumps and air handlers.

[c] Utilize WaterSense plumbing fixtures, drip irrigation and water submeters to reduce water usage.

[d] Utilize ENERGY STAR® appliances, low-VOC products, high-efficiency filters, UV treatment for air handling units.

[e] Utilize materials that have environmental product declaration as well as health product declaration and sound construction waste management.

[f] The project will achieve an energy-efficient rating better than 15% of ASHRAE 90.1 standards.