

BEGINNER'S GUIDE TO LAND USE LAW

Land Use Law Center
Pace University School of Law
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What is Land Use Law? – A Primer

Land use law, broadly defined, encompasses the full range of laws and regulations that influence or affect the development and conservation of the land.

This law is intensely intergovernmental and interdisciplinary; there are countless intersections among federal, state, regional, and local statutes. It is significantly influenced by other legal regimes such as environmental, administrative, and municipal law, to name a few.

By dividing their jurisdictions into zoning districts and prescribing the specifications for land development pertaining to each district, local governments create a blueprint for the future development of each community. The aggregate result of these blueprints, when aligned on an intermunicipal basis, is a plan for the future development of the region. These patterns evolve as local boards and agencies review, approve, and condition applications for site plans, subdivisions, and special permits; they change as the local legislature rezones discrete areas and as property owners are awarded variances from the strict application of the zoning law.

Many of the intersecting laws and regulations of higher levels of government are adopted either to influence or remedy the consequences of local land use planning and regulation. This is true particularly in the area of environmental law where state and federal agencies shape and sometimes preempt local decision-making in the interest of protecting endangered natural resources such as rivers and aquifers. Nonetheless, it is the decisions made by boards and agencies at the village, town, and city level that constitute the primary regulatory influence on the land.

What gives your town or village the authority to regulate what is done with privately-owned land?

Under the New York Constitution, the state legislature is authorized to adopt laws to protect the public health, safety, morals, and general welfare of the people. The legislature has, in turn, delegated significant authority to regulate land use to the local level: the over 1,600 villages, towns, and cities in the state. These acts of delegation are both specific and general.

Specific authority has been delegated to municipalities to adopt comprehensive plans and zoning laws and to adopt subdivision and site plan regulations under the Village, Town, and General City Law. General authority to legislate with regard to the public health, safety and welfare and the physical environment is delegated under the Municipal Home Rule Law, which is the source of authority often relied on to adopt natural resource protection regulations. The General Municipal Law provides specific authority to local governments to adopt laws relating to the protection of trees, the preservation of historic districts and landmarks, and the creation of conservation advisory boards, among other matters.

The state has retained authority to regulate certain aspects of land use, delegated some authority to county or regional agencies, and in certain instances has shared land use authority with local governments. Occasionally, the legislature withdraws this delegated authority by enacting legislation which preempts the local role.

County and Regional Actions

For their own purposes, counties can create planning boards, and adopt comprehensive plans and official maps. They can provide technical assistance to cities, towns and villages regarding the creation of comprehensive

plans and the adoption of land use regulations. Certain local land use actions that affect intermunicipal, county or state interests must be referred to and commented on by county or regional planning boards before they are taken by cities, towns and villages. Counties can build roads, establish sewer and water districts that service developed areas, and form or assist a variety of boards that affect land use matters such as soil and water conservation and farmland protection boards.

What are Zoning and Planning?

Perhaps the most significant land use power that the state legislature has delegated to local governments is the authority to adopt zoning laws. These laws divide land within the municipality into zones, or districts, and prescribe the land uses and the intensity of development allowed within each district. This delegated authority is found in the provisions of the Town, Village, and General City Law known as the zoning and planning enabling acts.

The enabling statutes require land use regulations to be "in accordance with a comprehensive plan" or "in accordance with a well considered plan." Planning "is the essence of zoning" says the judiciary in New York State. Comprehensive planning is society's insurance that the public welfare is served by land use regulation.

How the Law Supports Citizen Participation

Statutes delegating land use planning and regulatory authority to municipal governments encourage local officials to provide meaningful opportunities for citizens to shape and influence the development of comprehensive plans and land use regulations. Public hearings are required or encouraged to be held regarding all local board decisions on development proposals. In state regulations governing local environmental review of such proposals, local agencies are encouraged to involve all affected parties in the development of a scope of the content and methodology of the environmental study that is to be conducted on the proposal. These provisions express a clear policy favoring the early and continual input of involved parties at each stage of the local land use process.

Legal Doctrines That Help Balance Property Rights against the Public Interest

The critical role given to local governments in regulating land use involves them in a delicate act of balancing private property rights with the greater public interest. There are several legal doctrines which protect landowners' interests by limiting the government's authority to regulate land use.

- **Substantive Due Process:** Requires that land use regulations serve a legitimate public purpose.
- **Procedural Due Process:** Requires that the administrative process by which regulations are adopted and enforced must follow the prescriptions of state statutes and meet fairness requirements.
- **Equal Protection**: Localities must avoid improperly discriminating among similar parcels or against types of land users in violation of equal protection guarantees of the state or federal constitution.
- **Authority:** Since local governments in New York can exercise only those powers delegated to them by the state legislature, land use regulations cannot be beyond the local authority.
- **Taking of Property:** Local land use regulations must not effect a taking of private property for a public purpose without just compensation in violation of the "takings" provisions of the state and federal constitutions.
- **Vested Rights:** Limits the authority of municipalities in certain cases to impose significant new regulations on existing investments in land, such as completed structures or projects under construction.

- **State Preemption:** Local land use regulations are not permitted to control matters whose regulation has been preempted by the state legislature.
- **First Amendment Rights:** Local regulations must not abridge freedoms of speech, expression and the exercise of religion protected by the state and federal constitutions.

Fairness in Land Use

Local land use authority is subject to rights created by state and federal statutes and constitutional provisions. A number of these are based in equity, or notions of fairness. For example, a local zoning law that excludes all growth or types of housing affordable to lower income people is said to be unconstitutionally exclusionary. The state's police power is to be exercised in the interests of *all* the people of the state and cannot, by definition, be used for exclusionary purposes, an inherent constitutional principle. In New York, statutes provide that housing for groups of developmentally disabled individuals or substance abusers must be considered single-family housing and allowed in single-family zoning districts. The courts have found either an express or implied intention in these statutes to preempt local government's authority to exclude these types of group residences from single-family districts, the predominant residential zoning district in most communities.

How Zoning Works

Local governments in New York are not required to adopt zoning laws or other land use regulations. Instead, they have the discretion to do so. If a zoning law is adopted, the local legislature must establish a zoning board of appeals, but no other local land use agencies *must* be created. Most local governments in the state have adopted zoning laws and have established a zoning board of appeals and a planning board to perform various functions necessary to the efficient administration of the zoning regime. Others have adopted a comprehensive plan and have established a variety of other agencies such as a conservation advisory commission (CAC), architectural review board (ARB), historic district commission, or wetlands commission.

The roles that these bodies play and the procedures and standards they must follow are found in the state statutes. These are often supplemented extensively by provisions in the local zoning law and regulations. Local governments have flexible authority to establish standards and procedures that meet their unique needs.

Under the typical zoning law, private land use is governed by five basic techniques. Each triggers a different procedure and is governed by different substantive standards. These five categories are as follows:

As-of-Right Uses and their Accessory Uses

In each zoning district, certain land uses are permitted as the principal and primary uses of land; these are called as-of-right uses. Accessory uses that are customarily found in association with these principal uses, but which are incidental and subordinate to them, are also permitted as-of-right. In a single-family zoning district, a single-family home is the principal use and a garage or shed is allowed as an accessory use. In most cases, the owner of an individual lot who proposes an as-of-right use of that lot need only submit construction drawings and secure a permit from the building inspector or department. Typically, no zoning decisions are involved in such an application.

Nonconforming Uses

A use of land that was in existence when a zoning restriction was adopted and that is prohibited by that restriction is called a nonconforming use. Because of the landowner's investment in that use before it was

forbidden by law, most zoning laws permit nonconforming uses to continue but not to be expanded or enlarged. Typically, nonconforming uses may not be reestablished after they have been abandoned or reconstructed after serious damage. Where certain nonconforming uses are particularly inconsistent with the as-of-right uses permitted in a district, the zoning law can require the nonconforming uses to be terminated, or amortized, after a specified number of years. Nonconforming uses that are considered threats to public health or safety can be required to cease immediately. The local zoning administrator must decide questions raised as to whether a use is nonconforming or conforming, whether it has been abandoned, or whether proposed improvements constitute a prohibited expansion or enlargement. The administrator's decision on these matters can be appealed to the zoning board of appeals. Occasionally, the owners of nonconforming parcels request the zoning board of appeals to grant them a use variance which legalizes the nonconforming use and can allow it to be expanded or enlarged.

Variances

1. If a proposed use of property does not conform to applicable zoning restrictions it can be authorized by a use or area variance awarded by the zoning board of appeals in certain circumstances.

    - **Use variances** are defined by state statutes as "authorization by the zoning board of appeals for the use of land in a manner or for a purpose which is otherwise not authorized or is prohibited by the applicable zoning regulations." To qualify for such a variance, the petitioning property owner must prove to the zoning board of appeals that the property cannot yield a reasonable return under any use permitted under the zoning law and meet other burdens of proof required by the state statute.

    - **Area variances** are defined as "the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations." In considering a request for an area variance, the zoning board of appeals must use several statutory factors to balance whether the detriment to the community caused by granting the variance is outweighed by the benefit to the property owner. The statutes require the zoning board of appeals to "grant the minimum variance that it shall deem necessary." The courts have held that the imposition of conditions on variances is proper because they are "corrective measures designed to protect neighboring properties against the possible adverse effects" of the use of the property benefited by the variance.

Special Use Permits

2. In addition to permitting certain land uses as-of-right in zoning districts, the zoning law can authorize other uses to be made of the land, but only if they receive a special permit issued by a local administrative agency such as the zoning board of appeals or the planning board. Typical land uses that are permitted by special permit include religious institutions, nursing homes, and day care centers. When such uses are listed as specially permitted uses in the zoning law, they are declared by the local legislature to be uses that are harmonious with as-of-right uses, in general, with the recognition that, in a specific location, they can negatively impact adjacent properties and need to be limited or conditioned to mitigate such impacts. If an applicant for a special use permit can demonstrate conclusively that no such impacts will result, or that the proposal mitigates those impacts effectively, the special use permit will usually be granted.

Rezoning

3. Finally, where a proposed use is not permitted by one of the above devices, the property owner may request that the local government rezone the property, making the proposed activity an as-of-right use under that zoning amendment. Alternatively, the local legislature, at its initiative, can rezone a parcel or area in the public interest. In most cases, the local legislature is not required to entertain a single owner's rezoning petition.

What constitutes a valid zoning regulation has been the subject of much debate. The restrictive view is that zoning is a rigid, district bound technique and that the locality is constrained by a literal reading of the enabling statutes. This view asserts, additionally, that zoning can regulate only the "use," not the "user" of property. The breadth of the statutes delegating zoning authority to local governments and the presumption of validity accorded zoning regulations by the courts have made it possible, however, for localities to create a variety of zoning mechanisms not referred to in the statutes but upheld by the courts as within the locality's implied authority to legislate to achieve the most appropriate use of the land.

The Function of the Local Boards

In most municipalities, the most critical land use decisions are made by the local legislature, which adopts the zoning law and other land use regulations, and the planning board, the zoning board of appeals and the zoning enforcement officer which are charged with reviewing development proposals and enforcing the zoning law's provisions. The procedures that must be followed by the legislature in adopting laws and by these administrative agencies in reviewing and approving project proposals are contained in specific enabling statutes adopted by the state legislature as supplemented by the provisions of local law.

When an application for a building permit is submitted to the local building inspector or zoning enforcement officer, the administrator must ascertain before issuing the permit that the proposed construction is in compliance with the zoning law and other land use regulations. If the proposed development is not in compliance with the use and dimensional requirements of the zoning law, then the permit must be denied. This denial can be appealed to the zoning board of appeals which can reverse that determination or issue a use or area variance in conformance with the standards of state law.

If, on the other hand, the proposed development complies with the zoning provisions, but requires subdivision, site plan, special permit, or other approval, the applicant will be referred to the appropriate administrative agency for its review and determination. The local legislature is authorized to designate the planning board, the zoning board of appeals or other administrative agency to hear and decide upon applications for these land use proposals. The decision-making process must follow prescribed time periods, honor requirements to provide public notice of the matter and hold public hearings, maintain a record of the agency's deliberations, and to file and circulate its final determination on the matter. State law requires that local agency meetings be open to the public and that copies of local records be provided to the public upon request.

Only if the standards of local land use regulations are met and the proposal is approved by the administrative agency can a building permit be issued. To qualify for a building permit, the property owner must honor any conditions imposed by the approving agency and construction plans for the development must conform to the requirements of the state fire protection and building code, as amended by the local legislature.

Judicial Review of Land Use Decisions

Judicial review of local land use decisions involves the doctrine of separation of powers between the judicial and legislative branches of government. It is governed by special statutory provisions that limit both actions

against governmental bodies, in general, and against local land use decisions, in particular. The applicable rules of judicial review depend on the type of local body that is involved and the type of action that is challenged.

In general, courts defer to local land use decisions, particularly those of local legislatures, declaring that those decisions are given a presumption of constitutionality and correctness. The effect of this is to place a heavy burden of proof on those who challenge such decisions to show that they are unreasonable. On the other hand, ambiguities in local land use regulations tend to be resolved in favor of property owners who challenge them. It is said that land use restrictions are in derogation of common law property rights and, therefore, should be strictly construed.

Subdivision and Site Plan Regulation: Community Development

Local governments are authorized to adopt regulations governing the subdivision of parcels of land for development, known as subdivision regulations, and the development of individual parcels of land, known as site plan regulations. They do not have to adopt zoning laws before adopting subdivision and site plan regulations, but the normal process is to adopt zoning first. In the typical community, subdivision and site plan regulations supplement the prescriptions of the zoning law by allowing administrative agencies to review and approve specific site design and features for their impact on the neighborhood and community.

According to state statutes, the authority to adopt subdivision regulations serves "the purpose of providing for the future growth and development of the municipality and affording adequate facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of the population." The general purposes of adopting standards and procedures for site plan review and approval are to assure that the development of individual sites does not affect surrounding properties negatively and that the community develops in an orderly and cost-effective fashion.

Local practice in governing land subdivision and site plan development varies widely. Not all subdivisions and site development proposals are required to go through an approval process. The community can limit subdivision and site plan review to major development proposals, as they are defined locally. Some communities subject subdivision proposals first to a preliminary review process and then final review and approval.

Most communities designate their planning board as the body that is authorized to receive and review applications for subdivision and site plan approval. These responsibilities can be delegated to the zoning board of appeals or other administrative agency. Occasionally, the local legislature retains some types of subdivision or site plan review responsibility.

In their applications, subdividers and site developers can be required to show the location of water, sewer, electrical, sewage, drainage, transportation, landscaping, and other site features on a plat, or map, of the parcel that they then submit for review. By carefully reviewing, modifying and conditioning the features of these plats, the locality hopes to insure that new development is cost-effective, properly designed, and has a favorable, rather than negative, impact on the neighborhood. This authority is central to the local government's ability to control and shape its community development over time.

Local Environmental Review

Most actions of local governmental agencies that affect the use of the land may not be taken officially until those agencies have conducted a thorough review of their potential environmental impact. The state legislature has declared that all state, county and local agencies "are stewards of the air, water, land and living resources"

and " have an obligation to protect the environment for the use and enjoyment of this and all future generations."

The extensive provisions setting forth the procedures and requirements for the environmental review of local land use actions are found in the Environmental Conservation Law, Article 8, which is commonly referred to as the State Environmental Quality Review Act, or SEQRA, and in the regulations of the Department of Environmental Conservation. Under SEQRA, a local agency must determine whether an action it is considering may have a significant adverse environmental impact. If an action has such potential, the agency must first prepare an Environmental Impact Statement (EIS) which forces it to consider alternatives and to avoid or mitigate the adverse environmental impacts of a proposed project.

A failure to follow the procedures required by SEQRA will render the action invalid. The procedural steps required by SEQRA and the time periods within which they must be taken have been determined to take precedence over other statutory provisions and deadlines that regulate the land use actions of local governments.

SEQRA requires local agencies to "use all practicable means to realize the policies" of the legislation and to choose alternative actions or impose mitigation conditions, where practicable to "minimize or avoid adverse environmental effects, including effects revealed in the environmental impact statement." The Court of Appeals has held that this language imposes substantive, in addition to procedural, obligations on local decision-makers that force them to take effective action to protect the environment.

TOPICS COVERED IN DEPTH

Planning and Land Use Regulation

New York statutes encourage, but do not mandate, the creation of an overall plan for land development to be put in place at the local level. This plan is called a "comprehensive plan."

A comprehensive plan is a written document formally adopted by the local legislature that contains goals, objectives, and strategies for the future development and conservation of the community. The statutes list components that such plans "may" contain, but does not require localities to follow a fixed format in developing their plans for the future. New York statutes require that zoning, and all land use regulations, be in conformance with the comprehensive plan.

Adopting land regulations that conform with the comprehensive plan provides significant legal protection for such regulations. When a regulation is challenged, the court will inquire whether it significantly advances a legitimate public interest. When judges find that it was enacted to achieve an objective of the comprehensive plan, they generally resolve that issue in the community's favor.

Land use regulations are not confined to zoning provisions that separate the community into zoning districts and specify the land uses and building dimensions that are permitted in each zone. They may also include regulations that protect trees, slopes, wetlands, historic districts, and viewsheds. In addition, they may include regulations that govern the subdivision of land and development of individual sites.

Zoning Law and Its Amendment

The local zoning law divides a community into land use districts and establishes building restrictions limiting the height, lot area coverage, and other dimensions of structures that are permitted to be built within each district. At the time that the local legislature adopts a zoning law, it approves a zoning map. On this map, the zoning district lines are overlaid on a street map of the community. By referring to this map, it is possible to identify the use district within which any parcel of land is located. Then, by referring to the text of the zoning law, it is possible to discover the uses that are permitted within that district and the dimensional restrictions that apply to building on that land.

There is no required format for a zoning law in New York. As a result, where municipalities have codified their laws, local codes are organized in a variety of ways and range from relatively simple to extremely complex in their provisions. Most zoning chapters of municipal codes contain several articles covering such basic topics as: the purpose of the zoning law, various definitions, the establishment of zoning districts, the uses allowed within those districts, the building and parking restrictions that apply within each district, how preexisting, nonconforming uses are to be treated, uses that are allowed as accessory uses or by special permits within certain districts, the formation and operation of the zoning board of appeals, how amendments can be adopted, and how the code is to be enforced.

A host of additional topics can also be included in the zoning law such as standards that must be considered before an owner's application for a subdivision or site plan can be approved. Zoning laws can contain provisions that protect landmarks, historic districts, wetlands, floodplains or environmentally constrained land, or that regulate the placement of mobile homes or use of commercial and political signs.

The zoning map, implemented through the text of the law, constitutes a blueprint for the development of the community over time. It is a design for the community's development that is to be created with citizen input and that, as it is built out, has far reaching consequences for the quality and cost of life of those citizens.

Zoning provisions, once adopted, can be amended by the local legislature. The courts have held that in amending the zoning law, local legislatures have a great deal of flexibility in creating mechanisms to accomplish the statutory purposes of zoning. Under their implied authority to adopt appropriate mechanisms, for example, local laws have been upheld that created floating zones that apply to individual parcels of land, allow mixed uses on parcels in single use zones, and that rezoned individual properties subject to restrictive conditions that insure the appropriate use of the land as rezoned.

The Comprehensive Plan

A comprehensive plan is a written document that identifies the goals, objectives and devices for the “immediate and long-range protection, enhancement, growth and development” of the community.

The effect of adopting a comprehensive plan is that all local land development regulations must be in conformance with its provisions. Other governmental agencies, such as state agencies, must consider the local comprehensive plan in planning their capital projects within the locality.

The New York State Court of Appeals noted in *Udell v. Haas* that "the comprehensive plan is the essence of zoning. Without it, there can be no rational allocation of land use." Indeed, the statutes require that all land use regulations must be made "in accordance with a comprehensive plan." Therefore, planning should precede any adoption or amendment of a land use regulation.

New York statutes define a comprehensive plan as the "materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, report, and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices, and instruments for the immediate and long-range protection, enhancement, growth, and development of the [locality]."

While there are no required components of a comprehensive plan, the statutes suggest fifteen elements for inclusion:

- a general statement of goals, objectives, and standards upon which proposals for the immediate and long-range growth and development of the municipality are based;
- consideration of the regional needs and official plans of other government units within the region;
- existing and proposed location and intensity of land uses;
- consideration of agricultural uses, historic, and cultural resources, coastal and natural resources and sensitive environmental areas;
- consideration of population, demographics and socio-economic trends, and future projections;
- the location and types of transportation facilities;
- existing and proposed location of public and private utilities and infrastructure;
- existing housing and future housing needs, including affordable housing;
- present and future location of historic sites, educational, cultural, health, and emergency services;
- existing and proposed recreational facilities and parkland;
- present and future locations of commercial and industrial facilities;
- specific policies and strategies for improving the local economy in coordination with other plan topics;

- proposed measures, programs, devices, and instruments to implement the goals of the comprehensive plan;
- all or part of the plan of another public agency; and
- any and all other items which are consistent with the orderly growth and development of the municipality.

Why have a comprehensive plan?

The comprehensive plan creates a blueprint for the future development and preservation of a community. Often referred to as the "master plan," it is the policy foundation upon which communities are built. A good comprehensive plan guides not only the physical and economic development of the municipality, but also accommodates social, environmental, and regional concerns.

Home Rule Authority

Local governments in New York have “home rule” authority to adopt local laws for a variety of purposes. Normally, zoning and land use regulations are adopted by towns, villages, and cities under the authority delegated to them by the planning and zoning enabling provisions of the Town, Village, and General Cities Law, respectively. Most of the issues in this Guide assume that local governments have enacted their zoning and other land use regulations under these specifically delegated powers. The Municipal Home Rule Law and the Statute of Local Governments are two separate bodies of law that authorize local governments to adopt regulations relating to land use control. When local legislatures adopt laws under this authority, they are said to be exercising their home rule authority.

What home rule authority encompasses in terms of land use

The planning and zoning enabling provisions of the Town, Village, and General City Law authorize local governments to promote the health, safety, morals, and general welfare of the community by regulating land development. This includes regulating the size and shape of buildings, the percentage of lots that can be covered by development and the location of buildings for various land uses. In addition, zoning districts are created within which such regulations are to be uniform. Building regulations and zoning districts may be established for a very broad range of public purposes including the encouragement of the most appropriate use of land throughout the municipality. Zoning laws can also contain provisions regulating wetlands, steep slopes, soil erosion, and tree preservation, all enacted under this same authority.

The Role of County Government in Land Use

County governments in New York serve a number of important functions. For some purposes, they are regarded as an instrument of the state and carry out a number of roles in that capacity, including the provision of social services and the protection of public health. For other purposes, counties are regarded as independent units of local government that provide directly a number of governmental functions, such as the development of hospitals, correctional facilities and county roads, police, and library services. Increasingly, counties serve to coordinate and rationalize the activities of cities, towns, and villages within their jurisdictions and to provide a range of services to them for that purpose.

In all three capacities, county governments carry out a number of activities that influence land use conservation and development. This is true despite the fact that state law delegates primary land use planning and regulatory authority to towns, villages, and cities. Counties, for example, create planning boards and adopt comprehensive

plans and official maps. They provide technical assistance to local governments in land use matters and can, upon request, serve as the administrative arm of local governments regarding land use actions.

Counties review applications for the subdivision of land and proposed municipal actions that affect intermunicipal, county or state interests. They adopt, propose, and create water, sewage, and drainage districts. These districts can finance and construct infrastructure needed to support land development. In addition, counties acquire land for and finance parks, county roads, and facilities for transit, solid waste disposal and even affordable housing. County governments create and assist independent soil and water conservation districts, agricultural districts, farmland preservation boards and environmental management councils. Counties are authorized to act directly to acquire open space and develop recreational facilities for their populations. This power enables counties to affect significantly the shape of land development patterns through the acquisition of land needed to buffer development trends in the area.

Where local governments fail to act, counties can adopt regulations to control development in wetlands, to prevent coastal erosion and to administer the Uniform Fire Prevention and Building Code. Counties can apply for and administer a variety of federal programs including community development block grants. In limited instances, counties veto local land use actions and acquire development rights to farmland. County highway commissioners can control access to county roads.

Vested Rights

The doctrine of vested rights protects property owners from changes in zoning when they have received a valid building permit and have completed substantial construction and made substantial expenditures in reliance on the permit. When a court finds that a property owner has vested rights to a validly issued permit, the effect is to immunize the approved project from all changes in zoning or other land use regulations. This judicially created doctrine is called “common law” vested rights. There is also a more limited “statutory” vested rights rule in New York, adopted by the state legislature, that immunizes approved subdivision plats from changes in the dimensional or area requirements of zoning for a period of one to three years, depending on the circumstances.

In order to vest rights to the permit, the amount spent or the construction completed must be substantial in relation to the entire project. The cost of the land, demolition of existing structures, processing and consultant fees, and excavation work in preparation for construction is not enough to vest rights. A court will not consider a particular expenditure unless there is a “special connection” between the expenditure and the approved use. For example, in considering whether there had been substantial expenditures to entitle the completion of a mall, a court would not consider the expenditure of $120,000 to widen a road where the road would have to be constructed to serve the residential development that was allowed under the amended law.

Regulatory Takings

Occasionally, courts will find that the impact of a regulation on private property rights is so burdensome that it violates the constitutional guarantee that property shall not be taken for a public use without just compensation. What courts do not want to allow is the singling out of a few property owners to bear a burden that, in the interest of fairness and justice, the public as a whole should bear. In select situations, a land use regulation can be invalidated as a "regulatory taking," and compensation awarded to the regulated property owner for the damages caused.

Regulatory takings are sometimes referred to as inverse condemnations or de facto takings. Both these terms reference the government’s power of eminent domain, the authority to condemn title to land needed for a public purpose. Under both the U.S. and New York State Constitutions, such takings are allowed but the validity of the

public purpose must be demonstrated and just compensation paid to the owner of the condemned property. When a government regulation has the practical effect of a public condemnation, the owner may allege that the regulation is a regulatory taking, a de facto taking, or the inverse condemnation of the affected parcel.

When land use regulations, like zoning provisions, are challenged as regulatory takings, the courts presume that they are constitutional. This means that challengers must carry a heavy burden of proof that the regulations violate the constitutional guarantee; all reasonable doubts are resolved in favor of the regulator. To carry their burden of proof, property owners must produce dollars and cents evidence that all but a bare residue of the property's value has been destroyed by the regulation.

Judicial Review

When zoning provisions are adopted and land use determinations made by local legislative or administrative bodies, they are subject to review by the courts. There are a variety of rules that govern access to the courts, the timing of applications for judicial review, the standards used by courts to review such actions and the remedies that courts will employ to resolve disputes brought before them.

The courts in New York, relative to courts in other states, have adopted fairly liberal rules of access, typically allowing adjacent and nearby property owners and associations of residents to challenge land use decisions that affect them in some special way. On the other hand, the courts defer to the legislative and administrative judgments of municipal bodies by presuming the validity of their actions and imposing a fairly heavy burden of proof on those who challenge them. The state legislature has further protected municipal actions by requiring that challengers bring their challenge within 30 days or four months of the municipal action in most cases.

Courts are reluctant to order local legislatures to take specific actions; they are more comfortable issuing judgments that declare legislative actions valid or invalid and simply enjoining legislatures from enforcing invalid regulations or decisions. This reluctance to order legislatures to act is part of the important doctrine of separation of powers between the judicial and legislative branches of government. The judiciary is not so inhibited, however, when reviewing the actions of a planning or zoning board of appeals which are administrative agencies or perform quasi-judicial functions for the locality. With respect to the decisions and actions of these bodies and officials, courts will require specific actions to be taken, such as the award or revocation of a building permit or subdivision approval.

Variances

A variance allows property to be used in a manner that does not comply with the literal requirements of the zoning ordinance. There are two types of variances, area and use.

- A use variance permits "a use of the land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations." For example, if a piece of land is zoned for single-family residential use and the owner wishes to operate a retail business, the owner could apply to the zoning board of appeals for a use variance.

- An area variance allows for a "use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulation." An area variance is needed when a building application does not comply with the setback, height, or area requirements of the zoning ordinance. If an owner wants to build a deck on his house that encroaches slightly into a side yard setback area, he could apply to the zoning board of appeals for an area variance.

Why are variances allowed?

Variances provide flexibility in the application of the zoning law and afford the landowner an opportunity to apply for administrative relief from certain provisions of the law. A property owner may seek a use or area variance when an application for a building permit is denied on the grounds that the proposal violates the use or dimensional requirements of the zoning ordinance. Alternatively, the property owner could request the local legislative board to rezone the property so that the requested use is allowed.

Authority to issue variances

The zoning board of appeals has been delegated the statutory authority to issue use and area variances. The jurisdiction of the zoning board of appeals is limited to reviewing the decisions of, or hearing appeals from the determination of an administrative official charged with enforcing the zoning law. In other words, a landowner may not go directly to the zoning board of appeals for an interpretation of the zoning law or for a variance. The zoning enforcement officer must rule on the matter first and that ruling be appealed to the board. In order to grant a use or area variance, a concurring vote of the majority of the board is necessary. The board is limited to granting the minimum variance necessary that addresses the need for the variance while preserving the character, health, safety, and welfare of the community.

How variances work

When an application for permission to build is made to the local building inspector or department that does not comply with the literal requirements of the zoning law, the proposal must be denied. If the reason for the denial is that the application violates the use or area provisions of the law, the applicant may apply to the zoning board of appeals for a use or area variance.

New York law provides statutory standards for the issuance of use and area variances. The statutes impose a heavy burden upon an applicant of demonstrating that a use variance should be granted, as that applicant is requesting the zoning board of appeals to alter the local legislature's determination that a specific use is not appropriate in the zoning district. The legal burden is less stringent when applying for an area variance as the potential impact on the surrounding area is significantly reduced.

Statutory Standard for Use Variance

To obtain a use variance, the applicant must demonstrate that the applicable zoning regulations cause an unnecessary hardship. To prove unnecessary hardship, the applicant must establish that the requested variance meets the following four statutory conditions.

1. The owner cannot realize a reasonable return on the property as zoned. The lack of return must be substantial and proven with competent financial evidence. It is insufficient for the applicant to show only that the desired use would be more profitable than the use permitted under the zoning. For example, the owner of residentially zoned property sought a use variance to allow him to construct offices for an insurance agency and a real estate business. The owner testified in support of the application that it would not be economical to renovate the property for residential purposes and that a greater rent could be charged to a commercial rather than residential lessee. The court held that a showing that "the permitted use may not be the most profitable use is immaterial." What must be established is that "the return from the property would not be reasonable for each and every permitted use under the ordinance."

2. The hardship must be unique to the owner's property and not applicable to a substantial portion of the zoning district. If the hardship is common to the whole neighborhood, the remedy is to seek a change in the zoning, not to apply for a use variance. In another case, the applicant had failed to establish that the hardship -- being located near a city landfill -- was unique to his property. Rather, it was held that the hardship was common to all properties in the area. Thus, the property owner should make an application for rezoning to the local legislature.

3. Granting the variance will not alter the essential character of the neighborhood. In making this determination, the court often considers the intensity of the proposed development as compared to the existing and permitted uses in the neighborhood. For example, a use variance to permit construction of an office building in a single-family neighborhood where several tall commercial structures already exist would not alter the essential character of the neighborhood. Conversely, a cemetery would alter the essential character of a district zoned for residential development, despite the fact that the land in the district was undeveloped at the time of the application.

4. The hardship is not self-created. In *Clark v. Board of Zoning Appeals of Town of Hempstead*, the Court of Appeals held that "one who ... knowingly acquires land for a prohibited use, cannot thereafter have a variance on the ground of special hardship." For example, a developer may not acquire land zoned for residential use at the time of acquisition and successfully petition for a variance to construct office buildings. Whether the purchaser actually knew about the use restriction is not relevant; it was his responsibility to discover such restrictions.

In issuing a use variance, the board may impose "such reasonable conditions and restrictions as are directly necessary to and incidental to the proposed use of the property. Such conditions shall be ... imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community."

Statutory Standard for Area Variances

For a zoning board of appeals to grant a variance from the dimensional and area requirements of a zoning ordinance, it must find that the benefits to the applicant of the requested variance outweigh the detriment it will cause to the health, safety, and welfare of the neighborhood. The board must weigh the benefits of the requested variance to the applicant against the five factors set forth in the statute:

1. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of an area variance?

2. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance?

3. Is the requested area variance substantial?

4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

5. Is the alleged difficulty self-created? This consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

As an example, a case involved an application for an area variance to allow the property owner to build a boat house on a lot that was smaller than the required minimum lot size. The zoning board of appeals granted the

area variance and several neighbors challenged that decision. In upholding the determination of the zoning board of appeals, the court found that the board had carefully considered the five statutory criteria and made a rational decision. The zoning board had found that construction of the boat house would not cause a change in the character of the neighborhood as adjacent properties had similar structures; no alternatives other than an area variance existed because the subject parcel was smaller than required and there was no available adjacent land to be purchased so as to meet the minimum requirements. The fact that the hardship was determined to be self-created was not fatal to the granting of the variance. Even though the owner had knowledge that the lot was substandard when purchased, the statute specifically provides that this is just one factor to be considered and "shall not preclude the granting of an area variance."

Limitations on variances

Use variances involve an inherent contradiction. It is the prerogative of the legislative body to separate one land use from another. This is the essential purpose of dividing the community into zoning districts. Allowing a quasi-judicial body, such as the zoning board of appeals, to vary the uses allowed in a district must be limited in order to avoid that body usurping this essential legislative function. At the same time, the legislature does not want property owners to be denied a reasonable return on their property because of use restrictions, where some relief from these restrictions can be afforded without altering the underlying purpose of the zoning district. For this reason, zoning boards have been authorized to grant use variances subject to the requirements of the statute. The statute imposes a burden of proving several factors on the petitioner. Area variances involve similar tensions, but to a lesser degree. There, the zoning board of appeals is charged with the task of balancing the benefit of the variance to the petitioner against its impact on the area.

Subdivision

The subdivision of land involves the legal division of a parcel into a number of lots for the purpose of development and sale.

The subdivision and development of individual parcels must conform to the provisions of local zoning, which contain use and dimensional requirements for land development. Zoning, however, does not contain specifications regulating many of the details of development that determine, for example, the precise location and specifications for streets, drainage facilities, sanitary sewers, storm drains, and water mains. Subdivision standards go beyond zoning regulations and protect neighborhoods from flooding and erosion, traffic congestion and accidents, unsightly design, noise pollution, and the erosion of neighborhood character.

Under a typical set of subdivision regulations, the landowner must submit a map called a plat, which is a map, drawing, or rendering of the subdivision which can contain narrative elements. The plat must depict the proposed subdivision layout and approximate dimensions of lots and roads, the topography and drainage, and all proposed facilities at an appropriate scale.

Local regulations require that the subdivision plat show all streets at sufficient width and suitable grade, sanitary sewers and storm drains, water mains and systems, landscaping, sidewalks, curbs and gutters, fire alarm signal devices, street lighting, signs, and trees. Additional features may be required such as the location of floodplains, wetlands, building footprints, large trees, archeological sites, and utility easements and lines. Further, the statutes authorize the planning board, under certain circumstances, to require the applicant to reserve land for a park, playground or other recreational purposes, or to require the payment of a sum of money in lieu of such a reservation.

Where a subdivision application meets the standards contained in the regulations, it must be approved. Where it does not, the planning board may impose conditions on the standards to insure that it meets the specifications. Where the subdivision cannot meet the standards, it can be rejected.

By adopting and applying subdivision regulations, the community seeks to insure that new development is cost-effective, properly designed, and has a favorable, rather than negative, impact on the neighborhood.

Site Plans

A "site plan" is defined by state law as a drawing, prepared in accordance with local specifications, that shows the "arrangement, layout, and design of the proposed use of a single parcel of land."

Local site plan regulations require the developer of an individual parcel of land to file a drawing of that parcel's planned development for review and approval by a local board. Often, site plan regulations apply only to larger-scale commercial developments such as shopping malls, industrial and office parks, or residential developments such as condominium or town house projects. Some communities, however, subject smaller parcels to site plan review.

Parcels subject to site plan review are normally owned by a single individual or entity such as a condominium association, homeowners' association, corporation, or partnership. Since such parcels are not to be subdivided, their development would escape local review if it were not for the locality's site plan regulations. When such regulations have been adopted, individual parcels subject to their terms may not be developed until a site plan has been submitted, reviewed, and approved.

Site plan regulations require that certain elements be shown on the drawing including access, parking, landscaping and buffering, drainage, utilities, roads, curbs, lighting, and the location and dimensions of the principal and accessory buildings and any other intended improvements. Some communities require site plans, particularly those of larger projects, to show adjacent land uses and to provide a narrative statement of how the site's development will avoid or mitigate adverse impacts on them.

What a site plan accomplishes

The purpose of site plan regulations is to ensure that the development of individual parcels of land do not have an adverse impact on adjacent properties or the surrounding neighborhood. Such regulations also ensure that the parcel's development fits properly into the community and conforms to its planning objectives.

The development of individual parcels must conform to the provisions of local zoning which contain use and dimensional requirements for site development. Zoning, however, does not contain specifications regulating the details of a site's development that protect, for example, the design of vehicular access to the site, the provision of needed landscape features, the location of parking areas, and the architectural features of buildings. Site plan specifications go beyond those of zoning, and protect adjacent areas and the community's residents from flooding and erosion, traffic congestion and accidents, unsightly design, noise pollution, and the erosion of neighborhood character. This is their distinct purpose.

Special Use Permits

New York statutes define a special use permit as the "authorization of a particular land use which is permitted in a zoning ordinance or local law, subject to requirements imposed by such zoning ordinance or local law to

assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met." An example of a special use is a church in a single-family residential neighborhood. The legislature may conclude that the church should be permitted in a residential district, subject to conditions that ensure the size and layout as well as parking and lighting are carefully designed so that the neighborhood is not adversely affected.

A variety of uses may be permitted in various zones as special uses. These include adult homes, professional offices, group homes, swimming pools, nursing homes, or day care centers in residential zones; and drive-in establishments, video arcades, marinas, shopping centers, gas stations, and convenience stores in commercial districts. Once a special permit has been issued, it is not personal to the applicant, but affixes to, and runs with, the ownership of the land.

The local legislature must adopt standards to guide the review, conditioning, and approval of special uses. These standards will include, for example, requirements that gasoline stations and drive-in establishments provide adequate traffic safety improvements, that professional home offices provide adequate parking and landscape buffering, or that a shopping center provide adequate storm drainage and lighting controls to protect surrounding areas.

Special use permits are referred to by a variety of terms in local practice and court decisions. These terms include special exception use, special permit, conditional use permits, and special exceptions. The statutory term is special use permit.

Why Allow Special Uses?

Local legislatures achieve a degree of flexibility by adding special uses to the types of land uses otherwise permitted in zoning districts. In its inception, zoning was justified on the ground that the strict separation of uses was in the public interest and promoted the public health, safety, and welfare. This alone, however, would lead to the creation of single-family districts, residential districts, and neighborhood commercial districts where relatively few uses are allowed and thereby exclude a variety of uses historically associated with one another, such as the church in a residential neighborhood, or gasoline station in a neighborhood retail district. By allowing special uses, yet subjecting them to conditions, the legislature achieves needed diversity of uses while insuring compatibility with surrounding properties.

Building Permits and Certificates of Occupancy

A building permit is a certificate issued by the official charged with the enforcement of the Uniform Fire Prevention and Building Code (Uniform Code) in the municipality. T he purpose of the Uniform Code, and a building permit issued pursuant to it, is to provide a minimum level of protection from the hazards of fire and inadequate building construction. The Uniform Code contains detailed specifications regulating the design and construction of buildings in New York State. It requires the property owner to obtain a building permit for almost all new construction projects before building begins. Plans to alter existing buildings also require building permits, particularly if they involve any structural parts, safety features, or electrical work.

The building permit certifies that the plans submitted for new construction or alterations conform with the standards and specifications of the Uniform Code. After construction has been completed, before a new or rehabilitated building may be occupied, a certificate of occupancy must be obtained. A certificate of occupancy certifies that the building was completed in accordance with the approved construction plans and meets the provisions the local zoning law.

The Building Permit Application

As administered in many communities, an application for a building permit is the first step in the local land use process.

When an application is submitted, the building or zoning official charged with reviewing it determines whether the proposed project must first be reviewed and approved by another administrative body. If, for example, the proposal involves the development of an individual site that is subject to local subdivision or site plan regulations, the proposal must be submitted first to the planning board or other administrative agency charged with approving site plan and subdivision applications.

Upon the submission of an application for a building permit, the building or zoning enforcement officer must determine whether the proposal conforms with the dimensional and use provisions of the zoning law. If that officer determines that it does not, the application for a building permit must be denied. The applicant may ask the zoning board of appeals to review the building or zoning official's interpretation of the zoning provisions or, if it agrees that the proposal does not comply with zoning, the applicant may ask the zoning board for a use or area variance.

Local practice varies greatly in a state as diverse as New York regarding the above determinations. Some cities, villages, and more populous towns have a building inspector and a separate zoning enforcement officer. Most such communities require the local zoning enforcement officer to make all determinations regarding the compliance of proposed construction projects with zoning, subdivision, site plan, and special permit provisions. In these cases, it is the determination of the zoning enforcement officer that is appealed to the zoning board of appeals. Some of these communities have building or development departments within which different officials have been delegated Uniform Code and zoning enforcement responsibility. In many communities, however, the local building inspector is charged with zoning interpretation and enforcement as well as fire and building code responsibility.

A building permit may not be required for necessary repairs not affecting structural features and for alterations to existing buildings costing less than a stipulated amount if those repairs do not affect structural conditions, fire safety features, or electrical systems.

The application for a building permit must contain sufficient information to permit a determination that the intended work conforms to the requirements of the Uniform Code. Normally, this includes complete architectural drawings of all proposed building improvements. The building inspector reviews those drawings to determine if they comply with the Uniform Code. Determinations by building officials regarding submitted applications for building permits are to be made expeditiously and based solely on the legislated standards and specifications contained in the relevant codes. The building inspector is, in nearly all instances, a ministerial officer, who is not making decisions based on his discretion, but upon the specifications contained in relevant codes. In most cases, conditions are not imposed on building permits. The application either meets the provisions of the applicable codes or it does not. If it does, the permit should be issued.

Illustrations:

The zoning chapter of the municipal code of the Town of Wawayanda stipulates that it "shall be enforced by the Building Inspector, who shall be appointed by the Town Board to serve at the pleasure of the Town Board." Among the duties of the Building Inspector are "to issue…building permits and certificates of occupancy when compliance is made with the provisions of this [zoning] chapter and the New York State Uniform Fire

Prevention and Building Code. The zoning chapter also states that "where a building permit is required, no building hereafter erected…shall be used or occupied for any purpose until a certificate of occupancy…shall have been issued, stating that the building…and proposed use thereof comply with the provisions of this [zoning] chapter. (Chapter 195 Code of the Town of Wawayanda, §§ 80-82.)

In the Town of Pawling, the zoning chapter is to be enforced by the Code Enforcement Officer, who is also charged with the issuance of building permits and certificates of occupancy. (Chapter 215 Pawling Code §§ 49-50.)

Can a permit be revoked?

A building inspector should exercise extra caution in revoking a building permit. If the developer has incurred substantial expenditures and completed substantial construction, in relationship to the project as a whole, rights to the permit may have vested. In such a case, revocation can expose the municipality to significant damages for taking those vested rights without just compensation. Where the permit is revoked by the building inspector without justification, following orders from superior municipal officials, the municipality may be held liable for the inspector's acts. If the inspector revokes the permit innocently, based on a mistake of law, or because of the inspector's personal ill will toward the permit holder, the municipality may not be liable for damages caused by the revocation.

When a building inspector denies an application for a permit, the denial must be based on the failure of the application to meet the specific standards established in the Uniform Code or the zoning law of the community. Normally, building permit denials are not discretionary matters. The inspector may not deny a permit based on subjective considerations or fears that the building may be used illegally at some point in the future.

Municipalities are permitted to charge fees for the issuance of building permits and certificates of occupancy. The dollar amount of the fees should be reasonable. The measure of reasonableness is whether they are calculated to recover the cost to the municipality of administering the permit and certificate system. Where those fees are disproportionately large, a court may find them to be an illegal tax and declare the fee structure invalid.

Permit Conditions

Before approving an owner's application for a permit to develop land, local agencies are authorized to impose conditions that are directly related to and incidental to the proposed use of the property. Most applications for local land use approvals are discretionary in nature and conditions can be attached to any development permit to harmonize the proposed land use with surrounding properties and the community. The local agency uses the permit condition to balance the benefit to the owner of the approval against the potential adverse impact of that development on the surrounding area.

Once a condition is imposed on a local land use approval, it must be complied with before a building permit is issued by the local building inspector or department. If the condition is one that is to be met during construction, then its terms must be complied with before a certificate of occupancy is granted by local authorities.

Among the types of conditions that have been sustained by the courts in the proper circumstances are fences, safety devices, landscaping, screening, access roads, soil erosion prevention, drainage facilities, outdoor lighting, the enclosure of buildings, restrictive covenants preventing development of land in a floodplain, archeological site, or viewshed and a variety of measures to contain the emission of odors, dust, smoke, noise and vibrations.

Conditions can be imposed when the local legislature rezones a parcel as well as when local agencies approve applications for subdivision and site plan or issue special permits or variances. These local actions all involve discretionary decision-making on the part of a local agency to which permit conditions may be attached. When the agency fears that a project or proposal will negatively impact the community, it may deny the application or approve it subject to reasonable conditions that lessen or contain the negative impacts of that development.

Illustrations

The Planning Board of the Town of Greenville imposed a condition on the landowner's site plan approval for a private hunting preserve that precluded the use of any weapon other than a shotgun in the preserve. Evidence existed on the planning board's record that even the least powerful rifles are capable of firing bullets a distance that exceed the length and width of the landowner's property. The owner contended that the condition amounted to the rejection by the planning board of a use permitted by the zoning and that it lacked a rational basis. Because of the evidence on the record, the court held that the condition was justified and appropriate under the circumstances.

The Zoning Board of Appeals in the Village of Garden City granted an area variance from the minimum lot size to permit the land to be divided into two parcels. The zoning board of appeals conditioned the variance on the relocation of a brick garage on the original parcel to conform to the side yard requirement of the ordinance. At the hearing before the board, the fact that the garage encroached on the side yard set back requirement by two feet was discussed as a secondary issue. The property owners stated on the record that it would be very costly and inconvenient to move the garage as required; they indicated that they would have to destroy and rebuild it. The court held that this condition was unreasonable because its burden was simply too great in proportion to the variance granted. The court stated that "the grant of a variance may not constitutionally labor under a condition which deprives the owner of the effective enjoyment of the variance."

When the Town of Gates, as a condition to the rezoning of land to permit retail shopping use, required that the development be conducted by Wegman Enterprises, that condition was struck down. The court stated that "while it is proper for a zoning board to impose appropriate conditions and safeguards in conjunction with a change of zone or a grant of a variance or special permit, such conditions and safeguards must be reasonable and relate only to the real estate involved without regard to the person who owns or occupies it." In a separate matter, a variance for the use of a parcel as an automobile repair shop was inappropriately conditioned on the applicant discontinuing a second shop in another part of town. This condition, too, is unrelated to the impacts of the proposed land use before the zoning board of appeals.

Often, but not always, conditions that limit the details of operation of a business are set aside as not relating to the proposed use of the land. When a use variance for a real estate office in a residential district was conditioned on the requirement that it be used only in conjunction with the applicant's personal real estate business, that condition was set aside as unrelated to the impacts of the use proposed. When the details of the operation of a nursery school, including the age of students, hours of school operation and the number of hours to be worked by a caretaker, were the subjects of a condition imposed on the granting of a variance in the Village of Matinecock, the court determined that these details were unrelated to zoning matters and inappropriate. However, a condition limiting the period of operation of the school from September through June was deemed valid because the definition of a private school in the ordinance contained a similar limitation. In another case, a condition that limited an automobile repair shop from keeping more than two non-employee vehicles outside the shop during working hours was sustained as related to the use of the land proposed by the owner's application for a use variance.

Although the imposition of conditions is clearly within the authority of local governments, the conditions must comply with several standards or they can be declared invalid. Courts invalidate a condition when there is no rational basis in the record for its imposition, when the condition is unreasonable, or when it is not related to the impacts of the proposed development.

Nonconforming Uses

A nonconforming use is created when existing land uses, valid when established, are prohibited by a new or amended zoning law. Nonconforming use issues arise when the zoning law is first adopted. When a district is zoned residential, for example, all existing nonresidential uses in that district are rendered nonconforming. Later amendments to the zoning ordinance may have the same effect.

When property owners propose the improvement, expansion, rebuilding or other change in their nonconforming property use, they must be certain to comply with local regulations governing those matters. Normally, these regulations are found in a discrete article of the local zoning law, entitled Nonconforming Uses. The nonconforming use article of the zoning law will prohibit or limit changes in buildings and lot uses that are nonconforming and provide in a variety of ways for the termination of nonconforming uses, such as limiting their expansion or enlargement, prohibiting the reconstruction of damaged structures, disallowing the reestablishment of nonconforming uses after they have been discontinued for a time, or simply terminating them after the passage of a stipulated amount of time.

The policy of allowing nonconforming uses to continue originated with concerns that the application of zoning regulations to uses existing prior to the regulations' enactment might be construed as confiscatory and unconstitutional. It was assumed that, by limiting the enlargement and reconstruction of nonconforming uses, they will disappear over time. The allowance of nonconforming uses has been characterized by the courts as a "grudging tolerance" of them. The right of municipalities to adopt reasonable measures to eliminate them has been recognized. The ultimate goal of the zoning law is to achieve uniformity of property uses within each zoning district which can only be accomplished by the elimination of uses that do not conform to the specifications of district regulations.

There is obvious tension between protecting the investment of the owners of nonconforming uses and achieving uniformity of land use within zoning districts. To achieve this latter goal, a variety of provisions have been added to the typical zoning law to discourage the continuation of nonconforming uses over time. These include provisions that limit an owner's right to expand or enlarge the nonconforming use, to reconstruct such use after substantial damage, to change the property's use to different nonconforming use, or require the termination of the use after a specified period.

Reconstruction and Restoration

The local zoning ordinance may prohibit the restoration of a nonconforming structure that suffers significant physical damage and require that any such reconstruction must be for a use that conforms to the zoning law. Significant physical damage is defined usually as damage that exceeds a certain percentage of the structure's value. Typical standards range from 25 percent to 50 percent. These provisions are premised on the theory that owners do not have a right to reconstruct a nonconforming building after damage by fire, weather, natural disaster, or otherwise. In such a case, their property rights were destroyed by the disaster, rather than by the law. The owner is in a situation similar to the owner of a vacant lot, who must comply with the applicable zoning restrictions.

Enlargement, Alteration, or Extension

Similarly, local laws often prohibit the enlargement, alteration, or extension of a nonconforming use. To allow the expansion of nonconforming uses, which the zoning law wishes to eliminate over time, would defeat that underlying policy. Normally, the law allows the owners of nonconforming land uses to perform property repairs, conduct normal maintenance, and complete internal alterations that do not increase the degree of, or create any new, noncompliance with the locality's zoning regulations.

Courts have upheld prohibitions on the construction of an awning over a courtyard outside a restaurant, on the theory that it would create additional space for patrons to congregate and, in this sense, increase the degree of the nonconforming use. Similarly, the prohibition of the conversion of seasonal bungalows to year-round residences has been upheld as an acceptable method of preventing the enlargement of a nonconforming use.

Where nonconforming business operations are proposed to be expanded, the case law is somewhat less clear. Where roads and structures built on a parcel used as a gravel mining operation exhibited the owner's intention to use the entire parcel, the court held that expanding the mining operation to another location on the property was permitted. The addition of a body-toning operation to the premises containing a nonconforming beauty parlor, however, was considered a prohibited extension of the prior nonconforming use. The court's interest in protecting the owner's demonstrated investment in the gravel mining operation could explain the difference between these cases.

Nonconforming use provisions in zoning laws vary considerably from one locality to another. A municipality particularly intent on eliminating nonconforming uses may prohibit any physical expansion of a building; another may favor property use by allowing, for example, the construction of an additional story because it does not increase the footprint, or lot coverage, of the structure.

Changing to Another Nonconforming Use

The property owner's right to continue a nonconforming use does not allow the owner to change to a materially different use. The important question here is what constitutes a material change. The consequence of a finding that a material change in use has occurred, is to deem the prior nonconforming use abandoned and, therefore, terminated. The property owner could argue that the change of a nonconforming use from one commercial use to another, for example, should not be prohibited by the zoning law. The assertion is that to change a building's occupancy from a dairy plant to a business that rents machinery simply shifts the type of nonconformance from one commercial category to another. It has been held, however, that it is not only a change in the volume of business conducted but in the character of that business that determines whether one business use is a continuation of another. This is true despite the generic similarity between the old and new proposed use.

Occasionally, courts hold that changes from one use to another within the same category of use are permitted. In one case, for example, the owner was allowed to establish a storage business in a building that had been occupied as a nursery and florist enterprise. Determinations in these cases depend on the particular facts involved, the court's interpretation of how material the change will be and the specific language of the local ordinance that regulates changes in nonconforming uses.

Abandonment

A property owner's right to continue a nonconforming use may be lost by abandonment. Local zoning laws frequently stipulate that any discontinuance of the nonconforming use for a specified period constitutes

abandonment. Courts hold that such provisions are sufficient to establish the owner's intent to abandon the nonconforming use as a matter of law. Where the established period is reasonable, discontinuance of the use for that time amounts to an abandonment of the use. It has been held that local discontinuance periods apply even when the owner can prove that he did not actually intend to abandon the nonconforming use.

Amortization

Some local ordinances require certain nonconforming uses to be amortized over a specified period at the end of which they must be terminated. The term "amortization" is used to describe these provisions because they allow the owner some time during which to recoup her investment in the nonconforming use. The Court of Appeals has upheld such provisions "where the benefit to the public has been deemed of greater moment than the detriment to the property owner." The courts have said that the test for when an amortization period is reasonable is "a question that must be answered in the light of the facts of each particular case. Certainly, a critical factor is the length of the amortization period in relation to the investment. The critical question, however, is whether the public gain achieved by the exercise of the police power outweighs the private loss suffered by the owners of the nonconforming uses."

Contexts in which amortization provisions are likely to be upheld are:

1. When the common law of nuisance would allow neighboring property owners to enjoin the continuation of a nonconforming use. For example, a gravel pit, auto wrecking operation, or junkyard, harmful to children in a developing residential area, might be enjoined under a private nuisance action. Likewise, a zoning law can legally require such a nonconforming use to be terminated in an appropriate case. If an amortization provision is challenged, the municipality can show that the owner's property interest is slight because of its vulnerability to a nuisance action. In this context, however, the label "amortization" is inappropriate. The grace period, if any, allowed by the local statute is gratuitous if, in fact, the owner's use may be enjoined as a nuisance.

2. When the nonconforming use is somewhat noxious and the owner has little investment in it. For example, a provision requiring the owner to cease raising pigeons on the roof or to remove an old outdoor sign might withstand challenge because of the minimal nature of the owner's investment and the significant harm done to the zoning scheme if the owner's activity is allowed to continue. Harder cases are presented when the owner has a demonstrable investment in the use and the public interest in removing it is clear but where the threat to public health and safety is not imminent.

Limitations on the Restriction of Nonconforming Uses

The local legislature, in adopting zoning regulations, is most concerned with the separation of incompatible land uses. When a building, that preexisted the zoning requirements, is out of compliance with set-back, area, or height restrictions, it is not a nonconforming use in the technical sense; it is simply out of compliance with the dimensional requirements of zoning: a noncomplying building. Since noncomplying buildings do not offend the legislative policy of separation of incompatible uses, zoning provisions often do not so severely constrain their enlargement or reconstruction. A typical provision may require, for example, that no enlargement or reconstruction of a noncomplying building can increase the degree of noncompliance or create any new noncompliance.

A practice in some municipalities that extends the life of nonconforming uses is that of awarding use variances so that the nonconforming use can be enlarged, expanded, or reconstructed. This can occur when an owner is denied a building permit because the proposed construction would enlarge or reconstruct a nonconforming use. The owner can apply to the zoning board of appeals and, if the owner can show that the statutory criteria for a

use variance are satisfied, the board can award the requested variance. Although the board can impose reasonable conditions on the use of the property, the award of a use variance frees the property from the provisions of zoning that limit nonconforming uses. The effect of a variance is to declassify the use as nonconforming.

The property owner asking for a use variance must prove that the variance, if granted, will not alter the essential character of the neighborhood. If it does not, then and to this extent, the proposed use is compatible with the surrounding neighborhood. The property owner must also show by competent financial evidence that he cannot realize a reasonable return by using the property under any use allowed in the district or by continuing the nonconforming use in its unaltered condition. This financial requirement makes it very difficult for most owners of existing nonconforming uses to prove that they are entitled to a use variance.

Another local practice that influences the continuation of nonconforming uses is the interpretation of the building inspector as to what types of building improvements are prohibited by the language of the local zoning provisions. Usually, these provisions permit the repair and maintenance of nonconforming uses, or improvements that do not "enlarge or expand" the nonconforming use. Some building inspectors take a broad view of what repair and maintenance are and have a limited view of what constitutes an expansion or enlargement of the nonconforming use. By awarding building permits to improve nonconforming uses, the building inspector indirectly encourages their continuation.

Allowing the expansion and reconstruction of noncomplying buildings, granting variances to allow the expansion of nonconforming uses, and issuing building permits to improve nonconforming uses do not advance the policy of discontinuing nonconforming uses. They do, however, allow the municipality flexibility in accommodating the needs of property owners while mitigating the impacts of the continued presence of these uses to protect adjacent owners and surrounding neighbors.

Accessory Uses

Accessory uses are those uses of land found on the same lot as the principal use and that are subordinate, incidental to, and customarily found in connection with the principal use. For example, a garage may be accessory to a residential use of a property because it is customarily found in connection with and is incidental and subordinate to the principal residential use. Generally, zoning laws permit lot owners to use their land for a permitted principal use as well for activities that are accessory to that use.

In order to qualify as accessory, a use must also be incidental and subordinate to the principal use. To be incidental, an accessory use must be reasonably related to the principal use. For instance, a garage or recreational use are reasonably related to the principal residential use and thus, deemed incidental. To be subordinate, the accessory use must be proportionately smaller than the principal use. The garage is generally smaller than the house, for instance.

An accessory use must also be customarily found in conjunction with its principal use. A use is customary if it commonly, habitually, and by long practice has been reasonably associated with a principal use. A most common example of this is vehicle parking for a residence or business. But, a municipality need not be bound by specific uses that are customary, so long as the type of use is customary. For instance, a court upheld a zoning board of appeals determination that a skateboard ramp, which is a recreational use, was customary because recreational uses of property that serve the needs of the occupants are customary in a residential district. The test is whether the recreational use is incidental to the residential use, not whether landowners in the town are engaged in similar activities.

Why have Accessory Uses?

Accessory use provisions in zoning laws allow a range of incidental uses of property that owners expect to engage in when they purchase their property for its principal use. By permitting uses customarily incidental and subordinate to the principal activity, zoning ordinances allow property owners additional beneficial use of their property. Regulations which limit the accessory uses allowed in a district also recognize that some neighborhoods should be protected from accessory uses that are not consistent with the expectations of the property owners. This separation of inconsistent uses into zoning districts is part of the original purpose of zoning.

Illustrations

The Town of Southeast's zoning ordinance provides an example of how an accessory use may be defined. It provides that an accessory use is:

> A use incidental to the principal use and located on the same lot. In buildings restricted to residential use, the office of a professional, customary home occupations and woodworking and similar workshops not conducted for compensation shall be deemed 'accessory uses.' There may be no uses accessory to an accessory use.

Greenburgh, in Westchester County, has taken the approach of listing permitted accessory uses and prohibiting all others. The zoning ordinance lists the allowed accessory uses in each zoning district. For instance, § 285-10, the section which regulates the R-40, One-Family Residence zone, states:

> A. Permitted Uses. No building or premises shall be used and no building shall be erected, altered or added to unless otherwise provided in this chapter, except for the following uses: (1) Permitted uses . . . (2) Special permit uses . . . (3) Accessory Uses (a) Off-street parking, . . .(e) private swimming pools and tennis courts, (f) domestic gardens, . . .(i) the keeping of dogs and cats, (j) private garages . . . .

Home Occupations

Historically, single-family homes have been used by their occupants for a variety of occupational uses such as beauty parlors, dressmaking, laundries, and day care. Zoning limits single-family homes to residential uses and to those uses that are customarily associated with residential use and incidental and subordinate to that residential use. Does this mean that a single-family homeowner can conduct a particular business in a particular neighborhood, as an accessory use, or is the occupational use prohibited?

In some communities, this question is answered on a case-by-case basis without benefit of any special regulations. The zoning authorities examine the proposed occupational use and determine whether it is customary, incidental, and subordinate to the residential use. Other municipalities define "home occupations" more specifically in their zoning laws, requiring homeowners to conform their occupational uses to those definitions. Some adopt a list of permitted occupational uses of homes while others prohibit a specific list of occupations.

Why are there limitations on home occupations?

Permitting occupations to be conducted in single-family zoned neighborhoods honors expectations of homeowners that such uses have been permitted historically and are within the bundle of rights purchased with the single-family home. Zoning restrictions limiting the occupational use of homes recognize that residential districts must be protected from home occupations that are out of character with the neighborhood and are not uses that homeowners expect to be affected by when they purchase a home in a single-family area. One of the original purposes of zoning is to separate uses that are inconsistent with one another into distinct zoning districts.

The Village of Brewster defines a permitted "home occupation" as:

An occupation, profession, activity or use that is clearly a customary, incidental and secondary use of a residential dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood.

Illustrations

A broad definition of a home occupation is found in the Village of Brewster zoning law: "An occupation, profession, activity or use that is clearly a customary, incidental and secondary use of a residential dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood." Art. IV, §170-3B.

A more specific definition of a home occupation, containing a list of excluded uses, was adopted by the Village of Hastings-on-Hudson: "Any use customarily conducted entirely within a dwelling … , which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes …. The conducting of a clinic, hospital, barber shop, beauty parlor, tea room, tourist home, animal hospital, or raising of animals, or any similar use shall not be deemed to be a home occupation." Art. I, § 132.

The Town of Carmel's zoning law contains a definition of home occupation listing both included and excluded occupations: "An activity conducted within a dwelling and carried on by an inhabitant thereof, which use is secondary to the use of the dwelling for dwelling purposes as customarily found in the home, and does not change the character thereof. Individuals engaged in music instruction, including voice and instrument lessons, were limited to a single pupil at a time, and the occupations of dressmaker, milliner or seamstress are deemed to be "home occupations." Dance instruction, band instrument instruction in groups, tearooms, beauty parlors, barber shops, real estate offices or insurance offices shall not be deemed "home occupations." Art. III, § 63-7B.

A specific definition of a "home professional office" permitted as a home occupation is contained in the zoning ordinance of the Town of Harrison: "The office or studio of a resident physician, surgeon, dentist, or other person licensed by the State of New York to practice a healing art, lawyer, architect, artist, engineer, real estate broker or salesman, insurance broker or agent or teacher." Art. I, § 235-4.

Exclusionary Zoning and Affordable Housing

When local zoning laws prevent lower income households from living in the community, those laws are called exclusionary zoning and can be declared unconstitutional by the courts. Zoning laws and other municipal actions that are aimed at providing housing for persons of limited income are called inclusionary zoning. State

statutes provide municipalities with a variety of mechanisms that can be used to encourage and provide desired affordable housing. The topic of affordable housing covers both exclusionary and inclusionary zoning.

1. Exclusionary zoning

In New York, the obligation not to exclude households in need of affordable housing means that communities may not exclude from their residential zoning districts types of accommodations, such as multi-family housing, that generally are more affordable than single-family homes on individual lots. Developers are given standing to challenge zoning laws that exclude more affordable types of housing since their rights cannot "realistically be separated from the rights of . . . nonresidents, in search of a comfortable place to live." A locality that has been found zoned in an exclusionary fashion can be required by the court to amend its zoning laws to accommodate more affordable types of housing. This is one of the few instances in New York when the courts will direct a local legislature to take a particular action such as rezoning to accommodate a specific amount of affordable housing.

2. Inclusionary zoning

State statutes encourage local governments to adopt inclusionary programs regarding affordable housing. Localities have specific authority to provide zoning incentives, such as additional development density, to encourage private developers to set aside a percentage of residential units in a proposed development for affordable housing. Municipalities may abate local taxes, provide mortgage financing, acquire and dispose of property, and subsidize and provide infrastructure for affordable housing built by private and non-profit corporations organized under state housing laws. Cities, towns, and villages are authorized to establish municipal housing authorities that can issue bonds and make land available, provide infrastructure, and subsidize the costs of operating the projects of their municipal housing authorities.

Most discussions of affordable housing refer to state and federal subsidy programs that define affordable housing as synonymous with "low-income housing." The public housing programs and housing subsidy programs administered by the U.S. Department of Housing and Development and various state agencies have largely defined affordable housing in the public mind as high-rise rental housing for low-income families or publicly subsidized rural housing of a particular architectural design. There is, however, no standard definition of affordable housing that directs or binds a municipality that wishes to establish an inclusionary program or avoid a successful exclusionary zoning challenge. Localities may wish to encourage or assist either rental housing or housing that is for sale. Municipally encouraged or assisted affordable housing may be multi-family townhouses, garden apartments, attached low-rise units, single-family modular units, or any other housing type that can be affordably constructed. Local affordable housing initiatives can aim to serve any income group that is priced out of the local housing market.

Why encourage affordable housing at all?

The purpose of encouraging housing for those in need of affordable homes is to provide housing for individuals and families that the community wishes to accommodate to create a more efficient, workable, and equitable community. Local governments in New York have used their zoning authority to encourage the development of housing for all types of households: senior citizens, middle-income families, homeless families, employees of the municipality, volunteer firemen, farm workers, and first-time homebuyers.

When local legislators discover that municipal employees or volunteers, senior citizens, young families or other groups of households are having trouble locating affordable housing in the community, they may wish to take some action to encourage its development. Localities may want teachers in the local school system, municipal

employees, police officers, and fire fighters to live in the community for a variety of reasons related to the public interest. In high cost areas, older residents who have lived in the community for decades and young adults who grew up in the community may not be able to locate affordable housing there and may be forced to move elsewhere. When communities in a region do not zone to include affordable housing, businesses can suffer from a lack of workers or be required to pay higher salaries to subsidize their commuting costs.

Group Homes, Disabilities and Zoning

Group homes include residences for a variety of special populations groups in need of supervised living facilities. Individuals residing in group homes may be mentally or physically disabled, recovering substance abusers, teenaged mothers, or victims of domestic violence. Able-bodied elderly persons, college students, young professionals and other people not related by blood, marriage, or adoption also form groups that wish to live together. When such groups of unrelated persons seek housing in a single-family home, the question arises as to whether they are a "family" entitled to live in a residential unit in a single-family zoning district.

Some local governments have prevented such groups from living in single-family districts by narrowly defining the "family" permitted to live in a single-family home. A typical provision defines a family as comprising any number of persons related by blood, marriage, adoption, or a fixed number of persons not so related. These definitions have raised questions about whether treating "traditional" families differently from "nontraditional families" is legal, particularly where the nontraditional group functions like a traditional household.

Local zoning laws may accommodate residential facilities for nontraditional groups of people by allowing them upon the issuance of a special permit. In some communities, such groups are effectively excluded due to a restrictive definition of family and the absence of a special use provision.

Why regulate the number of people living in a home?

There are many legitimate purposes for limiting the number of individuals that may occupy single-family homes. These purposes may include controlling municipal services needed, limiting congestion and overcrowding, and preventing noise, traffic, and parking problems. In addition, some local governments have limited the number of nontraditional household members permitted in single-family zoning districts to preserve "family, youth or property values."

These municipal purposes may conflict with the overriding legal purposes of the state constitution or statutes adopted by the state legislature. For example, one purpose of the due process clause in the Constitution of the State of New York is to insure that zoning provisions are designed to accomplish legitimate public purposes and that the means chosen are rationally related to the achievement of those purposes. The equal protection clause of the Constitution of the United States insures that regulations treating groups of people differently are justified by legitimate public objectives. Some legal definitions of family for zoning purposes have been invalidated for violating these constitutional norms.

The Padavan Act limits the ability of municipalities to define who constitutes a family for zoning purposes. Its purpose is to promote and encourage the placement of mentally disabled individuals in community settings to provide the least restrictive environment consistent with the needs of such individuals. This law allows mentally disabled individuals to live in single-family homes and enable them to be as fully integrated and productive as possible. Local zoning provisions that frustrate the purpose of the Padavan Act are seldom upheld.

The federal Fair Housing Act and Amendments prohibits housing discrimination on the basis or color, race, religion, national origin, gender, and handicap including physical or mental impairment. The federal Americans with Disabilities Act implements a comprehensive approach to eliminating discrimination against the disabled. Local zoning provisions that violate these protections risk invalidation.

Environmental Review

The State Environmental Quality Review Act (SEQRA) applies to all agencies and instrumentalities of the state, which includes local agencies such as legislatures, planning boards and zoning boards of appeals. Local agency decisions on applications for site plan or subdivision approval or the issuance of variances and special permits must be preceded by an assessment of the environmental impact of the proposed project. The adoption of comprehensive plans and zoning ordinances, and their amendment, must also be accompanied by a review of their impact on the environment. SEQRA also applies to proposed plans of local governments to build capital projects or to provide funding for projects of any kind. The essence of SEQRA is the requirement that the impact of all such local actions on the environment be considered in the planning process and that local agencies act effectively to avoid any possible adverse environmental impacts.

SEQRA gives local land use agencies independent authority to impose conditions on land use approvals to mitigate the potential negative impacts of proposed projects on the environment. Since the environment is defined very broadly, SEQRA extends local agency authority to impose conditions on land use approvals for the protection of any aspect of the environment. Both with regard to these substantive conditions and to the procedures that proposals must follow, SEQRA amounts to a regulatory overlay on the process of reviewing and approving all other applications for land use approvals.

SEQRA also gives local governments additional authority to study and adopt plans for areas of environmental significance. In certain instances, localities may designate critical environmental areas, conduct cumulative impact analyses, and perform generic environmental impact statements. These environmental review tools expand the techniques available to villages, towns, and cities to anticipate and review future land use impacts in a more comprehensive manner.

Environmental Review Techniques

New York's State Environmental Quality Review Act, known as SEQRA, requires local agencies, when reviewing development projects, adopting plans, and establishing programs, to prepare an environmental impact statement for actions that may have a significant adverse impact on the environment. SEQRA requires such agencies to use all practicable means to minimize or avoid adverse environmental effects.

In SEQRA terms, the local land use review and approval agency is called the "lead agency" and a development approval, the adoption of a plan or enactment of land use regulations, are called "actions." When any local agency is about to undertake an action that is not exempt from review, it must consider the environmental impacts of that action and go through the procedures required by SEQRA.

When does Environmental Review come into play?

SEQRA applies to local land use actions such as approving applications for rezoning, subdivision and site plan review, the issuance of special permits and variances and the adoption of comprehensive plans and capital projects. Regulations issued under SEQRA list certain actions as Type II actions where no environmental review is required. The Type II list includes, for example, area variances for one, two, and three family houses,

the construction of noncommercial structures of less than 4,000 square feet and the construction or expansion of one, two, or three family homes on improved lots. Ministerial actions, such as the issuance of building permits where no discretion is exercised, are not subject to SEQRA.

With respect to other actions, the local lead agency must take a hard look at the potential environmental impacts and, where there may be a significant adverse impact on the environment, prepare an Environmental Impact Statement (EIS) on the proposal or project before granting, conditioning, or denying it. The regulations list certain actions as Type I which are deemed "more likely to require the preparation of an Environmental Impact Statement" than Unlisted Actions, which are simply not listed in the regulations, as either Type I or Type II actions. Some examples of Type I actions are the adoption of a comprehensive plan or zoning law, changes in allowable uses in any zoning district affecting 25 acres or more and the construction of 50 or more homes not to be connected to public water and sewerage systems.

Limitations on environmental review

The degree of detail required in an environmental review varies with the circumstances and nature of the proposal. Upon review, the court will look to see
if the determination of the lead agency was reasonable. With regard to issuing a negative declaration and adopting a findings statement on a Final Environmental Impact Statement (FEIS), the court looks to see whether the agency took a hard look at the environmental concerns and made a reasoned elaboration of the basis for its determinations. These standards are hard to quantify, but they mean, at the least, that local land use agencies must take their environmental review responsibilities seriously and justify their conclusions.

Since the penalty for failure to comply with SEQRA is the invalidation of the action taken by a local land use agency, the procedural requirements of the statute are often followed literally. SEQRA, however, also requires lead agencies to use all practicable means to protect the environment. They must balance environmental ends with economic and social considerations and the court will not second guess mitigation measures or alternatives chosen, so long as the agency made a reasonable attempt to identify and mitigate the adverse environmental consequences of the action.

Resource Protection

Local governments have extensive authority to protect their natural resources. The protection of open vistas, viewsheds and view corridors, and the prevention of visually blighting developments advance aesthetic objectives, an important aspect of the public welfare. State law authorizes localities to establish Conservation Advisory Councils and Architectural Review Boards as the stewards of these important matters. State law also encourages historic and landmark preservation by empowering localities to establish commissions or boards dedicated to the preservation of the community's cultural and historical heritage. Local waterfront management and agricultural land protection are encouraged by a variety of additional state statutes adopted to pursue important economic objectives while preserving and enhancing the existing character of the community.

Local Natural Resource Protection

Local legislatures frequently adopt regulations to minimize the adverse environmental impacts of new development and to protect and enhance the positive environmental features of the community. In fact, basic zoning provisions such as the creation of use districts and set back, minimum lot area, and height requirements serve environmental, among other, purposes. They set a context for future development by defining the community's environment and then providing for that environment to be altered by land uses permitted under

the zoning law. By designating zoning districts and specifying the land uses, densities, and dimensions of construction permitted in each one, zoning both permits and limits land development. To a degree, natural resources are permitted to be used and are protected from development by the typical zoning law.

Communities can go further and protect particular environmental resources that they fear will be affected negatively by the development that is permitted under zoning. They can regulate development to protect aquifers, woodlands, wetlands, watersheds, watercourses, lakes, ponds, habitats, floodplains, and open spaces. They can protect steep slopes and woodlands, prevent soil erosion and sedimentation, mitigate pollution from non-point sources, control chemical applications, and determine the location of solid waste facilities, junkyards, mines, and quarries. The local laws and ordinances that accomplish these objectives constitute the core of a community's environmental law.

There are five separate sources of authority that local governments in New York use to adopt regulations that protect natural resources. Their delegated zoning power enables localities to use zoning provisions to provide for the most appropriate use of the land, in accordance with the comprehensive plan, which may accommodate the preservation of natural resources. Under their home rule authority, localities can provide for the protection and enhancement of their physical and visual environment. Special state laws provide localities with authority to preserve trees and wetlands and provide for solid waste management. State laws delegating authority to local governments to adopt regulations for approving site plans, subdivisions, variances, and special use permits authorize land use agencies to impose conditions on approvals to protect the environment. Finally, the State Environmental Quality Review Act requires local land use agencies to use all practicable means to mitigate any adverse environmental impacts of projects that they review and approve.

Conservation Advisory Councils and Open Space Preservation

Conservation Advisory Councils (CACs) are created by local legislatures to advise on the development, management, and protection of local natural resources. The CAC is to cooperate with other official municipal bodies active in the area of community planning and development approvals.

CACs are created to study and protect local open areas including those areas characterized by natural scenic beauty which, if preserved, would enhance the value of surrounding development, establish a desirable pattern of development, achieve objectives of the comprehensive plan, or enhance the conservation of natural or scenic resources. CACs are directed to keep an inventory and map of all local open areas and obtain information pertinent to their proper utilization. The inventory should identify open areas and list them in priority order for acquisition or preservation. The map is to identify open areas designated for preservation including those having conservation, historical or scenic significance.

Once the local legislative body has received and approved the CAC's open area inventory and map, it may redesignate the CAC as a Conservation Board. At this juncture, the inventory and map become the official open space index of the municipality and the Conservation Board can be assigned additional duties to assist the community with its open area planning and to assure the preservation of its natural and scenic resources. These duties include:

- the review of applications made to other local bodies that seek approval to use or develop any area on the open space index; and
- the submission of a report on such requests for approval regarding the impact of the proposal on the listed open area and on the open area objectives of the locality.

Both CACs and Conservation Boards are authorized to perform other duties assigned to them by resolution of the local legislative body as long as they are consistent with their general statutory advisory role regarding the development, management, and protection of local natural resources.

The formation of a Conservation Advisory Council provides an opportunity for the legislature to appoint local experts in this subject matter to an official advisory body that can assist, guide, and encourage other local bodies in protecting and preserving open areas and natural resources. The work of an effective CAC accomplishes the purpose of identifying and collecting needed data regarding the community's natural resources, open areas, and historic and scenic assets. Once accepted by the local legislature, a CAC's open area inventory and map becomes the official index of these assets and expresses the community's commitment to their responsible management and protection.

CACs and Conservation Boards may also assist the planning board, special board or local legislature in preparing or amending the comprehensive plan with respect to open area information, policy, and protection. CACs and Conservation Boards can help prioritize the importance of open areas and advise their legislatures regarding effective strategies for protecting open areas including acquisition, cluster development, overlay zoning, and critical environmental area designation, among others. They can also assist local lead agencies when assessing and mitigating the adverse environmental impacts of development approvals and other local actions.

The Benefits of an Effective Conservation Advisory Councils

Most communities can benefit from the work of an effective Conservation Advisory Council. In rural areas where development pressure is less, advance planning can help preserve agricultural lands, maintain scenic beauty, and protect priority natural areas from the impacts of development. In developed communities, the conservation, enhancement, and increase of available open space and natural features can be a significant method of maintaining the quality of life and property values of local residents. The Conservation Board can also assist with the review and modification of development proposals that might affect priority open areas.

Conservation Easements and Land Trusts

A conservation easement is a voluntary agreement between a private landowner and a municipal agency or qualified not-for-profit corporation to restrict the development, management, or use of the land. The owner of the real property deeds an interest in the land, called a conservation easement, to a qualified public or private agency. That agency holds the interest and enforces its restrictions against the transferring owner and all subsequent owners of the land.

The conservation easement restricts the use of the property in such a way that its natural or man-made features are not altered or developed in a manner that is inconsistent with their conservation or preservation. Existing uses on the property and expansions of uses not inconsistent with the preservation or conservation of these features are allowed on the restricted parcel.

Conservation easements may be donated, sold at full-market value, or sold at below-market value by the owner of the land. If donated, or sold at below-market value, the landowner may qualify for an income tax deduction in the year of the donation or bargain sale. Subject to a conservation easement, the land may qualify for a lower estate tax valuation on the death of the owner, thereby reducing the tax burden on the beneficiaries of the owner’s estate. Similarly, the local property tax assessments may be lowered, benefiting the landowner on an annual basis thereafter.

A land trust is a local or regional not-for-profit organization, private in nature, organized to preserve and protect the natural and man-made environment by, among other techniques, holding conservation easements that restrict the use of real property. Land trusts usually pursue their own organizational agendas. However, under contract with a local government, a land trust may agree to serve as a vehicle for the negotiation, acquisition, holding, and enforcement of conservation easements agreed to by, or imposed on, landowners as part of the local development review and approval process.

What conservation easements and land trusts accomplish

The purpose of a conservation easement is to preserve or conserve the scenic, open, historic, archaeological, architectural, or natural condition of real property. The easement is used to preserve scenic viewsheds, wildlife habitats, ecosystems, forest land or farmland, historic buildings or districts and open space as such. In addition to restricting land use, conservation easements may permit public access, such as hiking over a trail on the property or biking along a designated path.

The purpose of involving a private land trust in a municipal conservation program is to save the local government the expense and inconvenience of holding, monitoring, and enforcing conservation easements and to take advantage of the land trust's expertise in these matters.

Watershed Protection/New York City Watershed Protection

Watershed management is much like the traditional planning and regulating that is done within a municipality, except that, rather than being confined to a locality's borders, the plans and regulations are applicable to an area defined by an aquatic resource. It is a broad concept that incorporates all currently available programs, resources, and regulatory tools to protect aquatic ecosystems and human health.

A watershed management program involves several phases. These include:

- identifying a stream, river, lake, or other water body in need of protection;
- drawing the boundaries of the land that drains into that water body;
- knowing the agency or agencies that will assume responsibility for the quality of water in that land area;
- understanding the causes of the deterioration of the quality of that water; and
- developing an effective plan of action to preserve and enhance the quality of the water.

A typical watershed management plan will include a physical description of the watershed area and a clear description of the land uses that threaten its future quality. It will also prioritize the features and areas of the watershed that must be preserved and improved to insure its vitality as a habitat, source of drinking water, or recreational resource.

Regulations to Protect the New York City Watershed

One example of blanket regulations used to protect a watershed are the New York City Department of Environmental Protection (DEP) Watershed Regulations which were enacted May 1, 1997. To call it the New York City Watershed is a misnomer, because it is really a collection of watersheds, from which New York City draws its drinking water. The boundaries of the watershed encompass areas east of the Hudson in Westchester, Putnam, and Dutchess Counties and west of the Hudson in Delaware, Schoharie, Green, Sullivan and Ulster Counties. The Regulations were promulgated by New York City to avoid filtration of and to prevent the contamination, degradation, and pollution of the City's water supply.

These Regulations were developed at the initiative of one municipality, New York City, which worked in conjunction with the affected communities. What developed was a Memorandum of Agreement (MOA) under which participating municipalities agreed to act in good faith to effect and comply with the watershed regulations. In return, the City agreed to make funds available to assist local governments in complying with many of the provisions of the Regulations.

While protecting the drinking water for the City, the Regulations impose significant limitations on local land use control because they prohibit and restrict activities necessary for development within the watershed. Three provisions in particular limit a municipality's ability to choose where and how to develop in its jurisdiction.

Protecting Aesthetic and Scenic Resources

Local legislatures frequently adopt regulations to minimize the negative aesthetic impacts of new development and to protect and enhance the positive aesthetic features of the community. In fact, basic zoning provisions such as set back, minimum lot area, and height requirements serve aesthetic, among other, purposes. They set a context for future development by defining the neighborhood environment and establishing scenic quality. The same can be said of the separation of land uses into zoning districts, which creates a physical environment that enhances the quality of life and property values. These zoning provisions protect and enhance community appearance as well as advance a variety of public health and safety objectives.

Communities protect local aesthetics and scenic resources in a variety of ways in addition to these basic zoning provisions. They regulate the size and placement of signs, limit the location - or require the removal - of billboards, and establish architectural review boards to enforce design standards in new construction. In addition, they adopt tree preservation ordinances and other natural resource protection laws, protect historic districts and landmarks, and impose conditions on subdivision, site plan, special permit, and rezoning approvals, and variances to protect the aesthetic quality of the affected neighborhood or of an identified viewshed or view corridor.

What is the legal justification for aesthetic regulations?

All land use regulations must protect the public health, safety, welfare, or morals. Aesthetic regulations are justified principally as a method of protecting the public welfare. They do so by stabilizing and enhancing the aesthetic values of the community. This enhances civic pride, protects property values, and promotes economic development. Vibrant communities generally contain natural and man-made features that provide visual quality and distinction that, in turn, enhance the reputation of the community as a desirable place to work, visit, and live. Regulations that protect important visual features from erosion and that prevent visual blight further the public welfare and constitute a valid exercise of the police power.

Agricultural Land Protection

The law of the State of New York provides dozens of mechanisms to protect agricultural land. These include authorizing and funding county Agricultural and Farmland Protection Boards and funding for the purchase of development rights on agricultural land. Within agricultural districts established by such Boards, state law provides property tax relief, freedom from nuisance suits and protection from public actions, including those of local governments that might threaten the viability of farming. In addition, state law offers an income tax credit to some farmers, provides some relief from wetlands regulation for farm operations, and helps farmers comply with other environmental regulations.

Although these provisions reflect the strong commitment of the State to protect agricultural land, the land use decisions of local governments greatly influence whether farmland in any community will remain viable. State law provides a number of tools to local officials who wish to protect their working farms and viable agricultural soils. These include providing for agricultural land protection in comprehensive planning, the power to adopt zoning provisions that allow, encourage, and protect farming, and authority to condition non-farm development projects so that they can co-exist with nearby farming. State law authorizes local governments to use transfer of development rights programs, incentive zoning, conservation easements, and land acquisition programs for the specific purpose of protecting existing farm areas and operations.

Other than requiring the consideration of the impact of certain local land use actions on agricultural lands and operations, however, New York State law does not mandate that local governments act effectively to protect agriculture. For this to happen requires interest, willingness, and effective initiative on the part of locally elected and appointed land use officials.

When are regulations to protect agricultural lands necessary?

Effective local action to protect farmland is needed in at least two instances.

First, farming in some communities struggles to compete and survive when property taxes are uncompetitively high or when the costs of doing business are increased by the demands of neighbors inconvenienced by farm operations. Since farmers in any given community compete with farmers in a much larger region, local competitive disadvantages can lead to the disappearance of economically and environmentally valuable farmland. Local action can lower or stabilize property taxes assessed against farmland and immunize farmers from the demands of their neighbors.

Second, farmland in developing communities can be lost to residential subdivision or other land uses that could be located in other parts of the community where they would be more cost-effective to service and profitable to their developers. When market forces demand land for development, localities may want to channel that demand into zoning districts where development can be more cost-effective and where viable agricultural lands do not exist.

Agricultural Zoning

Agricultural zoning designates a portion of the municipality as an agricultural district subject to specific regulation under the locality's zoning law. In an agricultural district, agricultural uses are permitted as-of-right and non-farmland uses are either prohibited or allowed subject to limitations or conditions. Permitted uses in an agricultural zone typically include all forms of agriculture, forestry, nurseries, and fisheries, among others. Various accessory uses may also be permitted as-of-right such as garages, machine sheds, barns and other farm buildings, beekeeping, and composting.

The purpose of agricultural zoning is to protect and promote the continuation of farming in areas with prime soils and where farming is a viable component of the local economy. The advantages of agricultural zoning are that it preserves large tracts of land for farming purposes, creates stability within the district, thereby promoting investment in farmland and farm facilities, prevents the pressures that threaten farming in developing regions and limits local property tax assessments by establishing agriculture as the primary and permitted use of land in the zoning district.

Freshwater Wetlands Regulation

Nearly all types of construction and development activities that are regulated by local land use laws may also be regulated under applicable federal, state, or municipal wetlands laws. There are a number of land use activities that may not proceed unless the landowner receives a wetlands permit if the activity affects a regulated wetland or buffer area. These include the construction of a home or residential subdivision, development of a commercial store or strip mall, extension of a driveway or road, the addition of a room, garage or tennis court, or the placing of any impervious surface on the land. In addition to this permit, the landowner must also receive approval under any applicable local regulations such as those governing land subdivision, site plan development, and the award of special permits or variances.

Other activities not typically regulated by local land use laws may be governed by wetlands laws. These include agricultural activities such as animal grazing, harvesting wetlands vegetation, draining or filling of any wetland, fence construction, fertilizer and chemical applications, and other personal or business activity on the land that could pollute a wetland or diminish its viability.

Wetlands laws typically contain a list of activities that are exempt from wetlands regulation. Examples of exempt activities include certain agricultural operations such as irrigation ditch construction and non-intensive recreational uses. Particularly harmful activities, such as the deposit of hazardous chemicals, may be prohibited altogether. Generally, landowners who propose to conduct regulated activities must apply to the designated administrative agency for a permit. Where certain standards and conditions can be met, a permit may be granted allowing the regulated activity to proceed. Conditions may be placed on the permit to avoid, minimize or mitigate the loss or degradation of wetlands.

Why do wetlands regulations exist?

The New York Freshwater Wetlands Act lists the critical public benefits that wetlands provide. These include flood and storm water control, aquifer protection, groundwater recharge, maintaining stream flow, pollution elimination, erosion control, and the provision of recreational opportunity, open space and habitat for wildlife, including threatened, rare, and endangered species. The purpose of adopting a wetlands law is to preserve these benefits for the public.

The federal and state legislatures passed wetlands laws when they concluded that wetlands provide important benefits to the public and were rapidly disappearing or deteriorating because of land use activities on or near them. Land development activities cause the loss of wetlands at a current national rate of around 100,000 acres annually. The federal and state governments adopted wetlands protections beginning in the 1970s to fight the even more rapid disappearance of wetlands that was occurring then.

Links for more or related information:

- Land Use Leaders
  - (http://landuseleaders.com)
  - An in-depth learning tool for those seeking a deeper understanding of Zoning
- The New York City Department of City Planning's Land Use home page:
  - http://home2.nyc.gov/html/dcp/html/landusefacts/landusefactshome.shtml
- New York State Geographic Information page
  - http://www.nysgis.state.ny.us
- Cornell University Geospatial Information Repository
  - http://cugir.mannlib.cornell.edu
- Multi-Resolution Land Characteristics Consortium (MRLC)
  - http://www.mrlc.gov

APPENDIX A: GLOSSARY OF TERMS AND PHRASES

Accessory Apartment. A second residential unit that may be contained within an existing single-family home, garage, or carriage house. An accessory apartment is usually required to be a complete housekeeping unit that can function independently, with separate access, kitchen, bedroom, and sanitary facilities.

Accessory Use. The use of land that is subordinate, incidental to, and customarily found in connection with the principal use allowed on a lot by the zoning law. A garage is incidental to the principal use of a lot as a single-family residence and is customarily found on a single-family parcel.

Action. Under the State Environmental Quality Review Act, any project or physical activity that is directly undertaken, funded, or approved by a state or local agency that may affect the environment. Actions include planning and policy-making activities and the adoption of rules and regulations that may affect the environment.

Administrative Body. A body created by local legislatures to undertake administrative functions such as the review of applications for site plans, subdivisions, and special use permits. See "Reviewing Board."

Adult Use. A business that provides sexual entertainment or services to customers. Adult uses include: X-rated video shops and bookstores, live or video peep shows, topless or fully nude dancing establishments, combination book/video and "marital aid" stores, non-medical massage parlors, hot oil salons, nude modeling studios, hourly motels, body painting studios, swingers clubs, X-rated movie theaters, escort service clubs, and combinations thereof.

Advisory Opinion. A report by a local administrative body, which does not have the authority to issue permits or adopt laws and regulations, prepared for the consideration by a local body that does.

Aesthetic Resources. Natural resources such as open vistas, woods, scenic viewsheds, and attractive man-made settings whose appearance is an important ingredient in the quality of life of a community.

Affordable Housing. Housing developed through some combination of zoning incentives, cost-effective construction techniques, and governmental subsidies which can be rented or purchased by households who cannot afford market-rate housing in the community.

Agency. Under the State Environmental Quality Review Act (SEQRA), any state or local agency – including zoning boards of appeals, local legislatures, planning boards, and, under certain circumstances, even building inspectors – that makes discretionary decisions that may affect the environment. These agencies are subject to SEQRA regulations whenever taking an "action."

Aggrieved Party. Only aggrieved parties may appeal a reviewing body or local legislature's land use decision to the courts. The decision must result in some demonstrable harm to the party that is different from the impact of the decision on the community as a whole.

Agricultural Land Protection. Any law, regulation, board, or process that has as its objective the preservation of farming on land dedicated to agricultural use. Examples include agricultural zoning, farmland preservation boards, property tax relief for farmers, and anti-nuisance laws.

Agricultural Zoning District. A designated portion of the municipality where agricultural uses are permitted as-of-right and non-farm land uses either are prohibited or are allowed subject to limitations or conditions imposed to protect the business of agriculture.

Amortization of Nonconforming Uses. Nonconforming uses that are particularly inconsistent with zoning districts within which they exist and are not immediately dangerous to public health or safety may be terminated or amortized within a prescribed number of years. This amortization period allows the landowner to recoup some or all of his investment in the offensive nonconforming use.

Appellate Jurisdiction. A zoning board of appeals has appellate jurisdiction to review determinations of the zoning enforcement officer. Denials of building permits and determinations that proposed land uses do not meet the zoning law's standards may be appealed to the zoning board of appeals. Land use decisions of the zoning board of appeals, planning board, and local legislature may be appealed to the courts, which exercise appellate jurisdiction over them.

Approval. A discretionary decision made by a local agency to issue a permit, certificate, license, lease, or other entitlement or to otherwise authorize a proposed project or activity.

Architectural Review Board. A body that reviews proposed developments for their architectural congruity with surrounding developments and either renders an advisory opinion on the matter or is authorized to issue or deny a permit. Its review is based upon design criteria or standards adopted by the local legislature.

Area Variance. A variance that allows for the use of land in a way that is not permitted by the dimensional or physical requirements of the zoning law. This type of variance is needed when a building application does not comply with the setback, height, lot, or area requirements of the zoning law. For example, if an owner wants to build an addition to a house that encroaches into the side-yard setback area, that owner must apply to the zoning board of appeals for an area variance.

Article 78 Proceeding. Article 78 of the Civil Practice Law and Rules allows aggrieved persons to bring an action against a government body or officer. This device allows review of state and local administrative proceedings in court.

As-of-Right Use. A use of land that is permitted as a principal use in a zoning district. In a single-family district, the construction of a single-family home is an as-of-right use of the lot.

Buffer. A designated area of land that is controlled by local regulations to protect an adjacent area from the impacts of development.

Building Area. The total square footage of a parcel of land which is allowed by the regulations to be covered by buildings and other physical improvements.

Building Code. The Uniform Fire Prevention and Building Code, as modified by local amendments. This code governs the construction details of buildings and other structures in the interests of the safety of the occupants and the public. A local building inspector may not issue a building permit unless the applicant's construction drawings comply with the provisions of the building code.

Building Height. The vertical distance from the average elevation of the proposed finished grade along the wall of a building or structure to the highest point of the roof, for flat roofs, or to the mean height between eaves and ridge, for gable, hip, and gambrel roofs.

Building Inspector. The local administrative official charged with the responsibility of administering and enforcing the provisions of the building code. In some communities, the building inspector may also be the zoning enforcement officer.

Building Permit. A permit that must be issued by a municipal agency or officer before activities such as construction, alteration, or expansion of buildings or improvements on the land may legally commence.

Bulk Regulations. The controls in a zoning district governing the size, location, and dimensions of buildings and improvements on a parcel of land.

Bulk Variance. See "Area Variance."

Capital Budget. The municipal budget that provides for the construction of capital projects in the community.

Capital Project. Construction projects including public buildings, roads, street improvements, lighting, parks, and their improvement or rehabilitation paid for under the community's capital budget.

Cellular Facility. An individual cell of a cellular transmission system that includes a base station, antennae, and associated electronic equipment that sends to and receives signals from mobile phones.

Central Business District (CBD). The traditional business core of a community, characterized by a relatively high concentration of business activity within a relatively small area. The CBD is usually the retail and service center of a community. Because of its compactness, there is usually an emphasis on pedestrian traffic in the CBD.

Certificate of Occupancy. A permit that allows a building to be occupied after its construction or improvement. It certifies that the construction conforms to the building code and is satisfactory for occupancy.

City Council. See "Local Legislature."

Cluster Subdivision. The modification of the arrangement of lots, buildings, and infrastructure permitted by the zoning law to be placed on a parcel of land to be subdivided. This modification results in the placement of buildings and improvements on a part of the land to be subdivided in order to preserve the natural and scenic quality of the remainder of the land.

Components. Elements of a comprehensive plan that are suggested by state law.

Comprehensive Plan. A written document that identifies the goals, objectives, principles, guidelines, policies, standards, and strategies for the growth and development of the community.

Condition. A requirement or qualification that is attached to a reviewing board's approval of a proposed development project. A condition must be complied with before the local building inspector or department can issue a building permit or certificate of occupancy.

Conditional Use Permit. See "Special Use Permit."

Conditioned Negative Declaration (CND). Under the State Environmental Quality Review Act, a CND is a negative declaration issued by a "lead agency" for an "unlisted action." This involves an action that, as initially

proposed, may result in one or more significant adverse environmental impacts but that, when modified by mitigation measures required by the lead agency, will result in no significant adverse environmental impacts.

Conservation Advisory Council (CAC). A body created by the local legislature to advise in the development, management, and protection of the community's natural resources and to prepare an inventory and map of open spaces.

Conservation Board. Once the local legislature has reviewed and approved an open-space inventory and map, it may designate the conservation advisory council as a conservation board and authorize it to review and comment on land use applications that affect community open space.

Conservation Easement. A voluntary agreement between a private landowner and a municipal agency or qualified not-for-profit corporation to restrict the development, management, or use of the land. The agency holds the interest and is empowered to enforce its restrictions against the current landowner and all subsequent owners of the land.

Conservation Overlay Zones. In conservation overlay zones, the legislature adopts more stringent standards than those contained in the underlying zoning districts as necessary to preserve identified resources and features in need of conservation or preservation.

Critical Environmental Area (CEA). A specific geographic area designated by a state or local agency as having exceptional or unique environmental characteristics. In establishing a CEA, the fragile or threatened environmental conditions in the area are identified so that they will be taken into consideration in the site-specific environmental review under the State Environmental Quality Review Act.

Cumulative Impact Analysis. In conducting an environmental review of a proposed project, its negative impacts on the environment may be considered in conjunction with those of nearby or related projects to determine whether, cumulatively, the adverse impacts are significant and require the preparation of an environmental impact statement.

Decision. The final determination of a local reviewing body or administrative agency or officer regarding an application for a permit or approval.

Deed Restrictions. A covenant or restriction placed in a deed that restricts the use of the land in some way. These are often used to insure that the owner complies with a condition imposed by a land use body.

Density Bonus. See "Incentive Zoning."

Density. The amount of development permitted per acre on a parcel under the zoning law. The density allowed could be, for example, four dwelling units per acre or 40,000 square feet of commercial building floor per acre.

Determination. A decision rendered by an officer or administrative body on an application or a request for a ruling.

Development Overlay Zones. In development overlay zones, the legislature may provide incentives, such as density bonuses or waivers of certain zoning requirements, for developers who build the type of development desired.

District. A portion of a community identified on the locality's zoning map within which one or more principal land uses are permitted along with their accessory uses and any special land uses permitted by the zoning provisions for the district.

Dwelling Unit. A unit of housing with full housekeeping facilities for a family.

Easement. An easement involves the right to use a parcel of land to benefit an adjacent parcel of land, such as to provide vehicular or pedestrian access to a road or sidewalk. Technically known as an easement appurtenant.

Eminent Domain. The government's right to take title to private property for a public use upon the payment of just compensation to the landowner.

Enabling Act. Legislation passed by the New York State Legislature authorizing counties, cities, towns, and villages to carry out functions in the public interest. The power to adopt comprehensive plans, zoning ordinances, and land use regulations is delegated to towns, villages, and cities under the Town Law, Village Law, General City Law, and Municipal Home Rule Law.

Environment. The environment is defined broadly under the State Environmental Quality Review Act to include the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archeological, historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, existing community or neighborhood character, and human health.

Environmental Assessment Form (EAF). As used in the State Environmental Quality Review Act process, this is a form completed by an applicant to assist an agency in determining the environmental significance of a proposed action. A properly completed EAF must contain enough information to describe the proposed action and its location, purpose, and potential impacts on the environment.

Environmental Impact Statements (EIS). A written "draft" or "final" document prepared in accordance with the State Environmental Quality Review Act. An EIS provides a means for agencies, project sponsors, and the public to systematically consider significant adverse environmental impacts, alternatives, and mitigation strategies. An EIS facilitates the weighing of social, economic, and environmental factors in the planning and decision-making process. A draft EIS (DEIS) is the initial statement prepared by either the project sponsor or the lead agency and circulated for review and comment before a final EIS (FEIS) is prepared.

Environmental Quality Review. The process that reviewing boards must conduct to determine whether proposed projects may have a significant adverse impact on the environment and, if they do, to study these impacts and identify alternatives and mitigation conditions that protect the environment to the maximum extent practicable.

Environmental Review. The State Environmental Quality Review Act requires local agencies that review applications for land use approvals to take a hard look at the environmental impact of proposed projects. Where the proposed project may have a significant adverse impact on the environment, the agency must prepare an environmental impact statement before approving the project. The adoption of comprehensive plans, zoning amendments, and other land use regulations is also subject to environmental review.

Exclusionary Zoning. When a community fails to accommodate, through its zoning law, the provision of affordable types of housing to meet proven regional housing needs, that community is said to practice exclusionary zoning.

Executive Session. A meeting, or part of a meeting, that is closed to the public because the topics to be discussed involve real estate, litigation, or sensitive personnel matters.

Facilitation. A process of decision-making guided by a facilitator who insures that all affected individuals and groups are involved in a meaningful way and that the decisions are based on their input and made to achieve their mutual interests. Facilitators may be neutral outside third parties or community leaders trained or experienced in the process.

Family. One or more persons occupying a dwelling as a single housekeeping unit.

Final Plat Approval. The approval by the authorized local reviewing body of a final subdivision drawing or plat that shows the subdivision, proposed improvements, and conditions as specified in the locality's subdivision regulations and as required by that body in its approval of the preliminary plat.

Floating Zone. A zoning district that is added to the zoning law but "floats" until an application is made to apply the new district to a certain parcel. Upon the approval of the application, the zoning map is amended to apply the floating district to that parcel of land.

Floodplain. The area on the sides of a stream, river, or watercourse that is subject to periodic flooding. The extent of the floodplain is dependent on soil type, topography, and water flow characteristics.

Floor Area Ratio (FAR). The gross floor area of all buildings permitted on a lot divided by the area of the lot. In zoning, the permitted building floor area is calculated by multiplying the maximum FAR specified for the zoning district by the total area of the parcel. A permitted FAR of 2 would allow the construction of 80,000 square feet of floor space on 40,000 square feet of land (40,000 x 2 = 80,000).

Freedom of Information Law. The Freedom of Information Law requires that the public be provided access to governmental records, including local land use documents, such as photos, maps, designs, drawings, rules, regulations, codes, manuals, reports, files, and opinions. Public access may be denied if it would constitute an invasion of privacy.

Freshwater Wetlands Regulation. Laws passed by federal, state, and local governments to protect wetlands by limiting the types and extent of activities permitted within wetlands. These laws require landowners to secure permits before conducting many activities, such as draining, filling, or constructing buildings.

Frontage. Zoning laws typically require that developable lots have a specified number of linear feet that front on a dedicated street. A 100-foot frontage requirement means that a lot must have 100 linear feet on the side of the parcel that fronts on a street.

Goals. Broad statements of ideal future conditions that are desired by the community and that are contained in the comprehensive plan. For example, a community may have a goal of "providing an ample stock of affordable housing."

Group Home. Residences for a variety of special populations in need of supervized living facilities. Individuals residing in group homes may be mentally or physically disabled, recovering substance abusers, teenaged mothers, or victims of domestic violence. Able-bodied elderly persons, college students, young professionals, and other people not related by blood, marriage, or adoption might also form groups that wish to

live together. When such groups of unrelated persons seek housing in a single-family home, the question arises as to whether they are a "family" entitled to live in a residential unit in a single-family zoning district.

Historic District. A regulatory overlay zone within which new developments must be compatible with the architecture of the district's historic structures. Alterations and improvements of historic structures must involve minimum interference with the historic features of the buildings. The local legislature establishes standards that a historic preservation commission uses to permit, condition, or deny projects proposed in historic districts.

Historic Preservation Commission. A commission established to review proposed projects within historic districts for compliance with standards established for new development or alteration or improvement of historic buildings and landmarks.

Home Occupation. A business conducted in a residential dwelling unit that is incidental and subordinate to the primary residential use. Regulations of home occupations usually restrict the percentage of the unit that can be used for the occupation, the exterior evidence of the business, and the amount of parking allowed and traffic generated.

Home Rule Authority. Home rule authority gives local governments the power to adopt laws relating to their local property, affairs, and government, in addition to the powers specifically delegated to them by the legislature. The Municipal Home Rule Law gives a municipality the authority to regulate for the "protection and enhancement of its physical and visual environment" as well as for the "government, protection, order, conduct, safety, health, and well being of persons or property therein." Zoning laws may also be adopted under home rule authority.

Implementation Plan or Measures. Implementation plans coordinate all the related strategies that are to be carried out to achieve the objectives contained in the comprehensive plan. An implementation plan answers the questions: who, what, where, and how.

Incentive Zoning. A system by which zoning incentives are provided to developers on the condition that specific physical, social, or cultural benefits are provided to the community. Incentives include increases in the permissible number of residential units or gross square footage of development, or waivers of the height, setback, use, or area provisions of the zoning ordinance. The benefits to be provided in exchange may include affordable housing, recreational facilities, open space, day-care facilities, infrastructure, or cash in lieu thereof.

Infrastructure. Infrastructure includes utilities and improvements needed to support development in a community. Among these are water and sewage systems, lighting, drainage, parks, public buildings, roads and transportation facilities, and utilities.

Intermunicipal Agreements. Compacts among municipalities to perform functions together that they are authorized to perform independently. In the land use area, localities may agree to adopt compatible comprehensive plans and ordinances, as well as other land use regulations, and to establish joint planning, zoning, historic preservation, and conservation advisory boards or to hire joint inspection and enforcement officers.

Involved Agency. An agency that has jurisdiction by law to fund, approve, or directly undertake an action, but does not have the primary responsibility for the action as does the lead agency under the State Quality Environmental Review Act.

Judicial Review. The oversight by the courts of the decisions and processes of local land use agencies. It is governed by special statutory provisions that limit both actions against governmental bodies in general and actions against local land use decisions in particular. The applicable rules of judicial review depend on the type of local body that is involved and the type of action that is challenged. The courts in New York have adopted fairly liberal rules of access, typically allowing adjacent and nearby property owners and associations of residents to challenge land use decisions that affect them in some special way.

Jurisdictional Defect. When a legislative action or a land use determination is taken without following a mandated procedure, such as referral to a county planning agency or the conduct of environmental review, the action or determination suffers from a jurisdictional defect and is void. Without following mandated procedures, public bodies do not have jurisdiction to act.

Land Trust. A not-for-profit organization, private in nature, organized to preserve and protect the natural and man-made environment by, among other techniques, holding conservation easements that restrict the use of real property.

Land Use Law. Land use law encompasses the full range of laws and regulations that influence or affect the development and conservation of the land. This law is intensely intergovernmental and interdisciplinary. In land use law there are countless intersections among federal, state, regional, and local statutes. It is significantly influenced by other legal regimes such as environmental, administrative, and municipal law.

Land Use Regulation [Local]. Laws enacted by the local legislature for the regulation of any aspect of land use and community resource protection, including zoning, subdivision, special use permit or site plan regulation, or any other regulation that prescribes the appropriate use of property or the scale, location, or intensity of development.

Landmark Preservation Law. A law designating individual historic or cultural landmarks and sites for protection. It controls the alteration of landmarks and regulates some aspects of adjacent development to preserve the landmarks' integrity.

Lead Agency. The "involved agency" under the State Environmental Quality Review Act that is principally responsible for undertaking, funding, or approving an action. The lead agency is responsible for determining whether an environmental impact statement is required in connection with the action and for the preparation and filing of the statement if one is required.

Local Board. See "Reviewing Body."

Local Law. The highest form of local legislation. The power to enact local laws is granted by the state constitution to local governments. Local laws, in this sense, have the same quality as acts of the state legislature, both being authorized by the constitution. They must be adopted by the formalities required for the adoption of local laws.

Local Legislature. The local legislature adopts and amends the comprehensive plan, zoning, and land use regulations, and sometimes retains the authority to issue certain permits or perform other administrative functions. The local legislature of a city is typically called the city council; of a village, the village board of trustees; and of a town, the town board.

Lot Area. The total square footage of horizontal area included within the property lines. Zoning laws typically set a minimum required lot area for building in each zoning district.

Lot. A portion of a subdivision, plat, tract, or other parcel of land considered as a unit for the purpose of transferring legal title from one person or entity to another.

Master Plan. A term used synonymously by many to refer to the comprehensive plan. The statutory, official name for the community's written plan for the future is the comprehensive plan.

Mediation. A voluntary process of negotiation, conducted by a trained mediator who works with all involved parties to identify their true interests and to achieve a resolution that responds effectively and fully to those interests.

Minutes. The minutes typically cover the important discussions, facts found, and actions taken at a meeting. The Open Meetings Law requires that the minutes provide a record of motions, proposals, and actions.

Mitigation Conditions. Conditions imposed by a reviewing body on a proposed development project or other action to mitigate its adverse impact on the environment.

Mixed Use. In some zoning districts, multiple principal uses are permitted to coexist on a single parcel of land. Such uses may be permitted, for example, in neighborhood commercial districts, where apartments may be developed over retail space.

Moratorium. A moratorium suspends the right of property owners to obtain development approvals while the local legislature takes time to consider, draft, and adopt land use regulations or rules to respond to new or changing circumstances not adequately dealt with by its current laws. A moratorium is sometimes used by a community just prior to adopting a comprehensive plan or zoning law, or a major amendment thereto.

Multi-Family Housing. Most zoning maps contain districts where multi-family housing is permitted by the zoning law. Under the district regulations, buildings with three or more dwelling units are permitted to be constructed, such as garden apartments or multi-story apartment buildings.

Municipal Clerk. The public official authorized by the local legislature to keep official records of the legislative and administrative bodies of the locality. Final determinations of reviewing boards ordinarily must be filed with the municipal clerk.

Negative Declaration ("neg dec"). A written determination by a lead agency, under the State Environmental Quality Review Act, that the implementation of the action as proposed will not result in any significant adverse environmental impacts. A "neg dec" concludes the environmental review process for an action.

Nonconforming Building. A building constructed prior to the adoption of the zoning law or zoning amendment which is not in accordance with the dimensional provisions, such as building height or setback requirements, of that law or amendment.

Nonconforming Use. A land use that is not permitted by a zoning law but that already existed at the time the zoning law or its amendment was enacted. Most nonconforming uses are allowed to continue but may not be expanded or enlarged.

Notice. Notice requirements are contained in state and local statutes. They spell out the number of days in advance of a public hearing that public notice must be given and the precise means that must be used. These

means may include publication in the official local newspaper and mailing or posting notices in prescribed ways. Failure to provide public notice is a jurisdictional defect and may nullify the proceedings.

Objectives. Statements of attainable, quantifiable, intermediate-term achievements that help accomplish goals contained in the comprehensive plan. For example, an objective would be to achieve "the construction of 50 units of affordable housing annually until the year ____."

Official Map. The adopted map of a municipality showing streets, highways, parks, drainage, and other physical features. The official map is final and conclusive with respect to the location and width of streets, highways, drainage systems, and parks shown thereon and is established to conserve and protect the public health, safety, and welfare.

Open Meetings Law. The Town, Village, and General City Law requires local legislative, administrative, and quasi-judicial bodies to open all their meetings to members of the public. This law applies to all meetings where a majority of the board members are present, except those meetings that are held as executive sessions.

Ordinance. An act of a local legislature taken pursuant to authority specifically delegated to local governments by the state legislature. The power of villages to adopt ordinances was eliminated in 1974. Technically, therefore, villages do not adopt, amend, or enforce zoning ordinances. Zoning provisions in villages are properly called zoning laws.

Original Jurisdiction. When an aggrieved party must appeal a determination to a quasi-judicial or judicial body in the first instance, that body has original jurisdiction over that matter. The zoning board of appeals, for example, has original jurisdiction to hear appeals of the determinations of the zoning enforcement officer.

Overlay Zone. A zone or district created by the local legislature for the purpose of conserving natural resources or promoting certain types of development. Overlay zones are imposed over existing zoning districts and contain provisions that are applicable in addition to those contained in the zoning law.

Parcel. A piece of property. See "Lot."

Planned Unit Development. An overlay zoning district that permits land developments on several parcels to be planned as single units and to contain both residential dwellings and commercial uses. It is usually available to landowners as a mixed-use option to single uses permitted as-of-right by the zoning ordinance.

Planning Board/Commission. Planning boards must consist of five to seven members. Planning boards may be delegated reviewing board functions and a variety of advisory functions, including the preparation of the comprehensive plan, drafting zoning provisions, or suggesting site plan and subdivision regulations, in addition to other functions. One important purpose of the planning board's advisory role is to provide an impartial and professional perspective on land use issues based on the long-range needs of the community contained in the comprehensive plan or other local policy documents.

Plat. A site plan or subdivision map that depicts the arrangements of buildings, roads, and other services for a development.

Police Power. The power that is held by the state to legislate for the purpose of preserving the public health, safety, morals, and general welfare of the people of the state. The authority that localities have to adopt comprehensive plans and zoning and land use regulations is derived from the state's police power and is delegated by the state legislature to its towns, villages, and cities.

Positive Declaration ("pos dec"). A written determination by a lead agency, under the State Environmental Quality Review Act, that the implementation of the action as proposed is likely to have a significant adverse impact on the environment and that an environmental impact statement will be required.

Preliminary Plat Approval. The approval by the authorized local administrative body of a preliminary subdivision drawing or plat that shows the site conditions, subdivision lines, and proposed improvements as specified in the locality's subdivision regulations.

Principal Use. The primary use of a lot that is permitted under the district regulations in a zoning law. These regulations may allow one or more principal uses in any given district. Unless the district regulations allow mixed uses, only one principal use may be made of a single lot, along with uses that are accessory to that principal use.

Public Hearing. A hearing that affords citizens affected by a reviewing board's decision an opportunity to have their views heard before decisions are made. State statutes require that public hearings be held regarding the application for a variance or a subdivision approval. Public hearings regarding site plan applications and draft environmental impact statements may be required as a matter of local practice.

Public Services. Services provided by the municipal government for the benefit of the community, such as fire and police protection, education, solid waste disposal, street cleaning, and snow removal.

Quasi-Judicial. A term applied to some local administrative bodies that have the power to investigate facts, hold hearings, weigh evidence, draw conclusions, and use this information as a basis for their official decisions. These bodies adjudicate the rights of the parties appearing before the body. The zoning board of appeals serves in a quasi-judicial capacity when it hears appeals from the determination of the local zoning enforcement officer.

Record. Local boards must keep a detailed record of their deliberations in making decisions on site plan and subdivision applications and the issuance of variances and special permits. These records may be kept in narrative form rather than in verbatim transcript form. A clerk or secretary hired by the municipality often manages these records. The records should include the application and reports, studies, documents, and minutes of the board meetings.

Recreational Zoning. The establishment of a zoning district in which private recreational uses are the principal permitted uses. The types of recreational uses permitted include swimming, horseback riding, golf, tennis, and exercise clubs open to private members who pay dues and user fees or to the public on a fee basis.

Recusal. A term used when a board member has a conflict of interest and must abstain from voting on any issues relating to that private interest. The board member is said to be recusing himself from all deliberations on the matter.

Redaction. The practice of striking or otherwise taking out of a public record sensative, private, or confidential information, in a way that does not disturb the meaning of the record.

Regulatory Taking. A regulation that is so intrusive that it is found to take private property for a public purpose without providing the landowner with just compensation.

Resolution. A means by which a local legislature or other board expresses its policy or position on a subject.

Restrictive Covenant. An agreement in writing and signed by the owner of a parcel of land that restricts the use of the parcel in a way that benefits the owners of adjacent or nearby parcels. See "Conservation Easement."

Reviewing Board. The administrative body charged with responsibility for reviewing, approving, conditioning, or denying applications for a specific type of land use such as a variance, special use permit, or site plan or subdivision approval.

Rezoning. An act of the local legislature that changes the principal uses permitted on one or more parcels of land or throughout one or more zoning districts. Rezoning includes the amendment of the zoning map, and of the use provisions in the district regulations applicable to the land that is rezoned.

Role of County Government. Functions carried out by county government that affect land use include the adoption of land use plans, public health reviews of plans for water supply and sewage disposal, planning reviews of certain local land use decisions, the development of county roads and projects including parks, the creation of environmental management councils, farmland protection boards, soil and water district boards, and other entities, and the provision of technical and coordination sources in the land use area.

Scoping. A process under the State Quality Environmental Review Act by which the lead agency identifies the potentially significant adverse impacts related to a proposed use and how they are to be addressed in an environmental impact statement (EIS). This process defines the scope of issues to be addressed in the draft EIS, including the content and level of detail of the analysis, the range of alternatives, and the mitigation measures needed, as well as issues that do not need to be studied. Scoping provides a project sponsor with guidance on matters that must be considered and provides an opportunity for early participation by involved agencies and the public in the review of the proposal.

Screening. The act of placing landscape features, such as trees, and shrubs, or man-made screens, such as fences or berms, to reduce the impact of development on nearby properties.

SEQRA. The State Environmental Quality Review Act requires local legislatures and land use agencies to consider, avoid, and mitigate significant environmental impacts of the projects that they approve, the plans or regulations they adopt, and the projects they undertake directly.

Setback. A setback restriction requires that no building or structure be located within a specified number of feet from a front, side, or rear lot line.

Sign Regulation. Local laws that regulate the erection and maintenance of signs and outdoor advertising with respect to their size, color, appearance, movement, and illumination, and their placement on structures or their location on the ground.

Site Plan. A site plan, consisting of a map and all necessary supporting material, shows the proposed development and use of a single parcel of land.

Special Exception Permit. See "Special Use Permit."

Special Use Permit. Special uses are allowed in zoning districts, but only upon the issuance of a special use permit subject to conditions designed to protect surrounding properties and the neighborhood from the negative impacts of the permitted use. Also called conditional use permit, special exception permit, and special permit.

Spot Zoning. The rezoning of a single parcel or a small area to benefit one or more property owners rather than to carry out an objective of the comprehensive plan.

Statute of Limitations. A law that requires that an aggrieved party file a legal action in a quasi-judicial or judicial forum within a specified period or lose the right to file that action. Regarding many land use determinations, the period begins from the date the determination is filed with the municipal clerk.

Strategies. A set of actions to be undertaken to accomplish each objective contained in a comprehensive plan. To obtain the objective of "50 units of affordable housing" the plan may include as strategies: (1) Form a housing trust fund, and (2) Allow for accessory apartments in residential units.

Subdivision Plat. See "Plat."

Subdivision. The subdivision of land involves the legal division of a parcel into a number of lots for the purpose of development and sale. The subdivision and development of individual parcels must conform to the provisions of local zoning which contain use and dimensional requirements for land development.

Taking. See "Regulatory Taking."

Town Board. See "Local Legislature."

Transfer of Development Rights. Provisions in a zoning law that allow for the purchase of the right to develop land located in a sending area and the transfer of those rights to land located in a receiving area.

Type I Action. Under the State Environmental Quality Review Act, an action that is more likely to have a significant adverse impact on the environment than unlisted actions. Type I Actions are listed in the regulations of the DEC commissioner. See also "Action."

Type II Action. An action that is not subject to environmental review under the State Environmental Quality Review Act. Type II Actions are listed in the regulations of the DEC commissioner. These actions have been determined not to have a significant impact on the environment or to be exempt from environmental review for other reasons. See also "Action."

Unlisted Actions. These are all of the actions that are not listed as Type I or Type II actions for the purposes of the State Environmental Quality Review Act process. These actions are subject to review by the lead agency to determine whether they may cause significant adverse environmental impacts.

Use District. See "Zoning District."

Use Variance. A variance that allows a landowner to put his land to a use that is not permitted under the zoning law. For example, if a parcel of land is zoned for single-family residential use and the owner wishes to operate a retail business, the owner must apply to the zoning board of appeals for a use variance. A use variance may be granted only in cases of unnecessary hardship. To prove unnecessary hardship, the owner must establish that the requested variance meets four statutorily prescribed conditions.

Variance. This is a form of administrative relief that allows property to be used in a way that does not comply with the literal requirements of the zoning ordinance. There are two basic types of variances: use variances and area variances.

Vested Rights. Vested rights are found when a landowner has received approval of a project and has undertaken substantial construction and made substantial expenditures in reliance on that approval. If the landowner's right to develop has vested, it cannot be taken away by a zoning change by the legislature.

Village Board of Trustees. See "Local Legislature."

Watershed. A geographical area within which rainwater and other liquid effluents seep and run into common surface or subsurface water bodies such as streams, rivers, lakes, or aquifers.

Wetlands. Wetlands may be either freshwater or tidal. They are typically marked by waterlogged or submerged soils or support a range of vegetation peculiar to wetlands. They provide numerous benefits for human health and property as well as critical habitat for wildlife, and are generally regulated by either federal, state, or local laws.

Zoning Board of Appeals. Under state statutes, a zoning board of appeals must be formed when a local legislature adopts its zoning law. It must consist of three to five members. The essential function of the zoning board of appeals is to grant variances. In this capacity, it protects landowners from the unfair application of the laws in particular circumstances. The zoning board of appeals also hears appeals from the decisions of the zoning enforcement officer or building inspector when interpretations of the zoning ordinance are involved.

Zoning District. A part of the community designated by the local zoning law for certain kinds of land uses, such as for single-family homes on lots no smaller than one acre or for neighborhood commercial uses. Only these primary permitted land uses, their accessory uses, and any special uses permitted in the zoning district may be placed on the land in that part of the community.

Zoning Enforcement Officer. The local administrative official who is responsible for enforcing and interpreting the zoning law. The local building inspector may be designated as the zoning enforcement officer. Land use applications are submitted to the zoning enforcement officer, who determines whether proposals are in conformance with the use and dimensional requirements of the zoning law.

Zoning Law or Ordinance. State law allows city councils and town boards to adopt zoning regulations by local law or ordinance. Since 1974, village boards of trustees have not had the authority to adopt legislation by ordinance; they may adopt legislation only by local law. Technically, zoning regulations adopted by villages are zoning laws. Only city and town legislatures may adopt zoning ordinances. Zoning regulations, however, are often referred to as zoning ordinances regardless of these technical distinctions.

Zoning Map. This map is approved at the time that the local legislature adopts a zoning ordinance. On this map, the zoning district lines are overlaid on a street map of the community. The map divides the community into districts. Each district will carry a designation that refers to the zoning code regulations for that district. By referring to the map, it is possible to identify the use district within which any parcel of land is located. Then, by referring to the text of the zoning code, it is possible to discover the uses that are permitted within that district and the dimensional restrictions that apply to building on that land. The zoning map, implemented through the text of the zoning law, constitutes a blueprint for the development of the community over time.