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

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

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INTRODUCTION

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

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

In communities throughout New York State and the country, citizens, developers, and local governments have realized the importance and necessity of working together to foster creative development that protects valuable land, social, economic, and environmental resources.

Each community has its own development goals and concerns, so the specific land use management device that works for one municipality may not be the best for another. It is suggested, therefore, that communities carefully pick and choose among the available measures.

COMPREHENSIVE PLAN

This section will look at how a municipality can use comprehensive planning to support its objectives and create a vision for the future.

How do we begin?

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

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

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

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

The Legislature has enacted statutes to guide boards through the comprehensive plan process. A municipality has the option to adopt a comprehensive plan under these statutes, or to proceed through a planning process which has evolved based on case law.

An important component of the process is public participation. This occurs both formally, through mandatory hearings held by the preparing board and by the legislative body prior to adoption of the plan, and through the informal participation of the public at workshops and informational sessions.

TYPICAL COMPREHENSIVE PLAN ELEMENTS

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

What does a comprehensive plan look like?

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

Is professional help available?

Communities which do not have professional planners on staff have several resources available to them. First, they may be able to receive assistance from their county or regional planning agency. Second, they may be able to contract with a professional planning or engineering firm which provides planning services. Third, municipal residents may possess expertise in planning or other environmental or design disciplines.

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

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

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

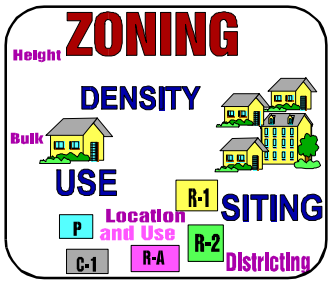
However long or detailed the plan is, its real value is in how it is used and implemented. The following sections present ways in which community objectives expressed in the plan can be achieved.

ZONING & RELATED TOOLS

ZONING

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

How common is zoning?



Zoning is the most commonly and extensively used local technique for regulating use of land as a means of accomplishing municipal goals. According to a 1994 survey by the Legislative Commission on Rural Resources, 100% of cities, 67% of towns and 87% of villages in New York had adopted zoning laws or ordinances.

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

What does a zoning law or ordinance look like?

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

The zoning map divides a municipality into various land use districts, such as residential, commercial, and industrial or manufacturing. The land use

districts that a municipality establishes can be even more specific, such as high density residential, medium density, low density, general commercial, highway commercial, light industrial, heavy industrial, or other. Mixed-use districts may also be appropriate, depending upon local planning and development goals as set forth in a comprehensive plan.

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

Zoning regulations will also set forth the steps necessary for approval by the type of use, the zoning district involved, or by both. For example, a single-family home is often permitted "as-of-right" in a low-density residential zoning district. "As-of-right" uses, if they meet the dimensional standards, require no further zoning approvals, and need only a building permit in order for construction to begin.

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

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

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

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

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

An *area variance* allows relief from some dimensional requirement of the zoning regulations, although the use to be made of the property is allowed. Typically due to setback or other dimensional requirements, a proposed structure on the property cannot be built in conformity with zoning standards. For example, if a property is zoned for residential purposes, but a natural feature, such as a rock formation, or a ravine, prevents the placement of the dwelling so that it complies with the setback requirements, an area variance may be appropriate. If the owner of a single family dwelling wishes to build an addition, which would violate a side-yard restriction, an area variance may also be necessary.

By their very nature, the issuance of variances allows land to be used in a manner prohibited by zoning regulations. If frequently and imprudently granted, variances (especially use variances) have the potential to undermine a municipality's land use and zoning plan over time, and ultimately, a municipality's ability to achieve its growth and development goals. On the other hand, the frequent need to issue variances that have met the statutory tests may well be an indication that the municipal zoning ordinance needs to be revised.

Are there different standards for use and area variances?

Yes. These standards are set forth in the Town, Village and General City Laws. Additional information about how zoning boards of appeals apply these standards can be found in the Department of State publication, Zoning Board of Appeals.

VARIANCE STANDARDS
General City Law §81-b
Town Law §267-b
Village Law §7-71

What is a "zoning board of appeals" and what powers does it have?

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

The State zoning enabling statutes prescribe that zoning boards of appeals must be created when a municipality enacts zoning. ZBA members are appointed by the municipality's legislative body. ZBAs function free of any oversight by the municipal legislative body. The legislative body may not review the grant or denial of variances, special use permits, or any other decisions made by the ZBA. However, the statutes do provide for review of zoning boards of appeals decisions by the courts in an Article 78 proceeding.

ZONING BOARD OF APPEALS
General City Law §81
Town Law §267
Village Law §7-712

In addition to the appellate role, some ZBAs are given authority by the municipal legislative body over other specified matters. This usually involves the issuance of special use permits.

One of the basic appellate powers of ZBA is the authority to issue variances. A variance request may be heard by the ZBA either as an appeal of a decision by the municipal zoning officer, or where it becomes apparent that an application for subdivision, site plan or special use permit approval does not comply with a dimensional requirement of the zoning law.

Specifically, the State statutes provide:

> "Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing an order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article . . . Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau" of the municipality.

What is the difference between an appeal for a variance and an appeal for an "interpretation?"

The State statutes specifically give a ZBA the power to hear appeals seeking interpretations of provisions of the zoning regulations. An appeal seeking an interpretation is an appeal claiming that the decision of the administrative official was incorrect. It is a claim that he or she misinterpreted the zoning map or regulations, or wrongly issued or denied a permit. By contrast, in an appeal for a variance there is no dispute whether the enforcement officer applied the zoning correctly. Instead, the applicant feels there should be an exception made in his or her case, and that some of the zoning rules should not apply. A ZBA must then apply the criteria set forth in the State statutes, in its determination whether to grant the variance requested.

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

With the initial adoption of zoning regulations some pre-existing uses of land or buildings may not comply for one reason or another with the zoning regulations. In order to alleviate the problems and hardships that may be caused if lawfully pre-existing uses were forced to discontinue upon adoption of zoning regulations, the concept of "grand fathering" certain uses was created. Those uses are referred to as legal "non-conforming uses."

Types of non-conformance include: (1) non-conforming use of land or buildings; (2) non-conforming building; and (3) non-conforming subdivision of land or lot of record.

While non-conforming uses may generally continue to exist, municipalities may regulate them. The types of regulation employed most frequently deal with limitations on the change, enlargement or alteration, or concern the destruction or abandonment of non-conforming uses. A municipality may require a non-conforming use of land or buildings to be discontinued if the use is abandoned, and may impose restrictions on the expansion of such uses.

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

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

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

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

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

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

Among the zoning techniques available are special use permits, incentive zoning, overlay zoning, performance zoning, floating zones, planned unit developments, cluster development, and transfer of development rights.

ZONING TECHNIQUES

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

SPECIAL USE PERMITS

Special use permits (sometimes referred to as conditional uses, special permits or special exceptions) are a common technique for allowing a municipality to review a proposed development project in order to assure that the project is in harmony with the zoning and will not adversely affect the neighborhood. In most municipal zoning regulations, many uses are permitted within a zoning district "as-of-right," with no discretionary review of the proposed project. Certain uses, on the other hand, require closer examination.

Who grants a special use permit?

If special circumstances are met, a use may be allowed through a special use permit, in which case the municipality's planning board or zoning board of appeals, or in a few cases, the legislative body, reviews the individual project.

The special use permit is granted by the board if the proposal meets the special use permit standards

found in the zoning regulations. Typically, the standards are designed to avoid possible negative impacts of the proposed project with adjoining land uses or with other municipal development concerns or objectives, such as traffic impacts, noise, lighting, or landscaping.

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

The special use permit standards established by a municipality should depend upon its planning objectives. For example, if a municipality is concerned about protecting visual access to an important lake, but also wishes to encourage and accommodate specific commercial development adjacent to the water body, it could provide for such uses by special use permit. Among the standards to be met by the applicant might be "protection of visual access to the lake" from public roads. For example, commercial buildings could be situated so as to preserve the view. The extent to which a proposed project complies with a general standard would have to be determined by the board reviewing the special use permit. Communities may also make such special use permit standards more specific.

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

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

INCENTIVE ZONING (BONUS ZONING)

The authority to incorporate incentive zoning into a municipality's zoning regulations in New York State is set forth in the State planning and zoning enabling statutes. The zoning enabling statutes set out a specific procedure to be followed when the local legislative body decides to adopt incentive zoning.

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

Incentive zoning is an innovative and flexible technique. Conceptually, it allows developers to exceed the dimensional, density, or other limitations of zoning regulations in return for providing certain benefits or amenities to the municipality. Incentive zoning can be very effective in encouraging desired types of development in targeted locations.

A classic example of incentive zoning would be an authorization to a developer to exceed height limits by a specified amount, in exchange for the provision of public open space, such as a plaza.

What value does incentive zoning have for a municipality?

By themselves, zoning regulations do not insure that development will occur. It can be said that zoning, by its nature, acts prospectively by indicating what uses will be allowed in the future. If a municipality wants a certain type of development in particular locations, it can usually only wait to see if a developer will find it economical to build. Incentive zoning changes this dynamic by providing economic incentives for development that may, without the incentive, not occur.

Incentive zoning is also a method for a municipality to obtain needed public benefits or amenities in certain zoning districts through the development process. Local incentive zoning laws can even be structured to require cash contributions from developers in lieu of physical amenities. For example, the square footage of a proposed store in the central business district may be increased if adequate funds are contributed towards the

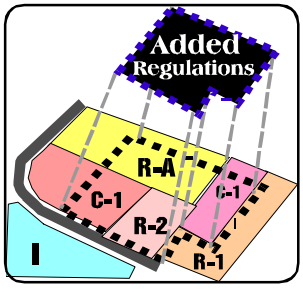
construction of a municipal parking garage.

Incentive zoning can provide an array of public benefits to a municipality. For instance, communities can use incentive zoning to provide various public amenities such as affordable housing, public access to a water body's edge, public park improvements, and a host of other public benefits specified in the municipality's incentive zoning provisions.

Whatever system of incentive zoning a municipality adopts, it must be in accordance with the local comprehensive plan. Incentive zoning can be an effective means of implementing many of the goals of a comprehensive plan.

OVERLAY ZONING

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



For example, flood plain overlay zone regulations would address such matters as flood-proofing of development, elevation of structures, or anchoring of mobile homes. These "overlay" requirements do not replace the underlying zoning district regulations, but are in addition to them.

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

PERFORMANCE ZONING

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

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

At times, performance zoning is used in combination with a point system. Under such a scheme, a proposed project must amass a minimum number of points in order to receive a permit. In contrast to the self-executing nature of traditional zoning, where a landowner can determine if a project is permissible by reading the zoning map and zoning text, point systems require case-by-case review to determine if a specific land use is permissible.

THE FLOATING ZONE

Floating zones allow a municipality flexibility in the location of a particular type of use and allow for a use of land that may not currently be needed, but which is desired in the future. The floating zone is also a way of scrutinizing significant projects for municipal impacts, as floating zones must be approved by the local legislative body.

The standards and allowable uses for a floating zone are set forth in the text of the municipality's zoning regulations, but the actual district is not mapped; rather, the district "floats" in the abstract until a development proposal is made for a specific parcel of land and the project is determined to be in accordance with all of the applicable floating zone standards. At that time the municipality maps the floating zone by attaching it to a particular parcel or parcels on the zoning map. The floating zone technique may be used by communities that wish to provide for a future industrial park, for example.

Because the floating zone is not part of the zoning map until a particular proposal is approved, the establishment of its boundaries on the zoning map constitutes an amendment to the municipal zoning regulations which requires the approval of the local legislative body.

PLANNED UNIT DEVELOPMENTS (PUDs)

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

The PUD concept allows a combination of land uses, such as single and multiple residential, industrial, and commercial, on a single parcel of land. It also may allow a planned mix of building types and densities. For example, a single project might contain dwellings of several types, shopping facilities, office space, open areas, and recreation areas.

There is no specific enabling legislation in New York State for creating PUD districts. In creating one, a municipal legislative body would need to follow the procedure for amending zoning to create a new zoning district or to establish special use permit provisions. An application for a PUD district is typically reviewed by the planning board, and a recommendation is made to the legislative body, which may then choose to rezone the parcel(s).

TRANSFER OF DEVELOPMENT RIGHTS (TDR)

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

Where can development be transferred to?

TRANSFER OF DEVELOPMENT RIGHTS
General City Law §20-f
Town Law §261-a
Village Law §7-701

Under the State zoning enabling statutes, areas of the municipality which have been identified through the planning process as in need of preservation (e.g., agricultural land) or in which

development should be avoided (e.g., municipal drinking water supply protection areas) are established as "sending districts." Owners of land in these designated areas may sell the rights to develop their lands, and those development rights may be transferred to lands located in "receiving districts."

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

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

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

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

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

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

SITE PLAN REVIEW

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

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

The authority to require site plan review is derived from the State enabling statutes. A local site plan review requirement may be incorporated into the zoning law or ordinance, or may be passed as a separate local law or ordinance. The local legislative body has the power to delegate site plan review to the planning board, zoning board of appeals, or another board.

What uses are subject to site plan review?

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

Site plan review can be a valuable tool for commercial, industrial, multi-family projects or uses which occur in environmentally sensitive areas. The development of single family housing is usually not required to undergo site plan review.

What issues can site plan review address?

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

Site plan issues should be addressed through a set of general or specific requirements included in the local site plan review regulations. The review board may be empowered by the local legislative body to waive certain requirements if they are not appropriate for a particular application, subject to conditions set forth in the local regulations. The review board cannot, however, waive *strict* requirements established by zoning for which not waiver is provided for in the regulations. In the event an applicant's proposal includes a need for an area variance from the strict dimensional requirements of zoning, the applicant may apply directly to the zoning board of appeals without waiting for a denial from the zoning enforcement officer.

How does site plan review work?

Although the State enabling statutes provide for a one stage process, many municipalities have adopted a multistage process which includes a sketch plan review phase and final plan review. In the sketch plan phase, the review board may indicate to the applicant whether the proposal's major features are generally acceptable for review, or if the proposal warrants modification before more expenses are incurred for detailed plans.

The site plan regulations will specify whether the board reviewing the site plan is required to hold a hearing on the application. State law does not require that a hearing be held, but if one is held, it must be convened within 62 days of the board's receipt of the application.

The board reviews the layout and design of the proposed use based on the elements set forth in the State enabling statutes, as well as any other additional elements specified in the local law or ordinance. As in other land use approvals, the board must comply with the State Environmental Quality Review Act and may need to refer the site plan to the county planning agency for its review and recommendation.

How can municipalities be sure that required improvements are made?

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

Are there any special provisions relating to residential development?

Site plan review is often applied to apartment, townhouse, and condominium developments. Because the future residents are often expected to contribute to the municipal need for recreational land or facilities, municipalities may require the developer to provide recreation land on the proposed site, or to contribute to a fund for the purchase or improvement of recreational land. The

State enabling statutes provide for the set aside of land (or payment in lieu of land) for residential site plans, just as the statutes provide for the set aside of land during the subdivision review process.

In order to avail itself of this provision, a municipality must make findings evaluating its needs for park and recreational facilities, based on projected population growth to which the particular project will contribute. By having a comprehensive plan which addresses such issues, a municipality can avoid ad hoc decisions regarding whether a residential site plan will contribute to the need for park or recreational facilities.

SUBDIVISION REVIEW

One of the most common forms of land use activity is the subdivision of land. The subdivision process controls the manner by which land is divided into smaller tracts of land. Subdivision regulations should ensure that when development does occur, streets, lots, open space and infrastructure are adequately designed and the municipality's land use objectives are met.

What is a subdivision?

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

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

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

Must a subdivision involve the sale of land?

While a subdivision is typically thought of as the division of land into separate parcels which are sold to individual buyers (ownership in "fee"), subdivision provisions may also apply to land which is offered as a gift or which changes ownership for some other reason. Even when title to the land will remain with the original owner, the mere division of land can be subject to subdivision regulations. Developments like townhouses, condominiums and timeshare units, where fee ownership does not include a separate lot, may also fall within the broad definition of subdivision by virtue of the division of land into "sites."

The enabling statutes provide that a "plat" showing a division of land which is subject to a municipality's subdivision regulations, may not also be subject to review under its site plan review authority. This avoids duplication of review. For example, a townhouse development may be subject to either, but not both, types of review. Once a plat is approved and lots are created, however, development proposed on a single lot may be subject to site plan review. For example, a convenience store proposed on a lot that was once part of a subdivision of farmland, might itself be required to undergo site plan review.

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

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

Who reviews subdivision plats at the local level?

Planning boards, when authorized by local governing bodies, may conduct subdivision plat review. A planning board may be authorized to review final plats (one-step) or both preliminary and final plats (two-step process). The State enabling statutes contain specific procedures for the review of both preliminary and final plats. Most

municipalities use the two-step (preliminary and final plat) process. Often, an informal sketch plan process is used to identify potential problems or concerns, even before the formal submittal of a preliminary plat. This earlier, informal step cannot be required of an applicant without a local law adopted pursuant to the Municipal Home Rule Law.

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

Must a two-lot and a twenty-lot subdivision follow the same procedures?

It is important that local subdivision regulations be drafted to contain the scope and detail of information that the municipality feels is necessary to commence review of a subdivision plat. Municipalities may classify subdivisions as "minor" and "major", with procedures and review criteria for each type set forth in local regulations. A minor subdivision, for example, might be one involving no new streets and not more than four lots. Local regulations may also specify a procedure to be followed for the alteration of lot lines, such as where no new lots are being created.

The State enabling statutes require that a public hearing be held on a subdivision plat. If the two-step process is used, a hearing must be held at the preliminary stage. A second hearing may be held at the final stage, although it may be dispensed with if the final plat is in substantial agreement with an approved preliminary plat.

Why should a municipality adopt subdivision regulations?

Subdivision review is a critical tool in a municipality's land use management scheme, and has important consequences for overall municipal development. It must be determined whether roads, water systems, recreation areas and other services or amenities will be privately or publicly owned. Provisions should be made, in the way of performance guarantees, requiring the subdivider to complete common improvements to municipal standards, prior to the commencement of lot sales and building construction.

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

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

CLUSTER DEVELOPMENT

REQUIRED CONTENTS OF A PRELIMINARY PLAT

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

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

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

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

Cluster development concentrates the overall maximum density allowed on property onto the most appropriate portion of the property. By clustering a new subdivision, certain community planning objectives can be achieved. For example, natural features of significance can be preserved, steep slope areas avoided, and open space can be left in large sections.

Cluster development has great potential for a municipality to maintain its traditional physical character, while at the same time providing (and encouraging) new development. It also allows a municipality to achieve planning goals that may call for protection of open space, protection of scenic views, protection of agricultural lands, protection of woodlands and other open landscapes, and limiting encroachment of development in and adjacent to environmentally sensitive areas.

In order to use cluster development, the legislative body of the municipality must authorize the planning board to review cluster subdivisions. The legislative body of the municipality may also authorize the planning board to *require* that applicants cluster development. Regardless of the form a cluster development may take - multi-family, town house, single family homes on smaller lots, or other non-residential building clusters - the maximum number of units allowed on the parcel must be no greater than that which would be allowed under a conventional subdivision layout. In order to allow an increase in density, the municipality must adopt a zoning change.

SUPPLEMENTARY CONTROLS

Many times, a municipality has some specific concerns that it wishes to address. Sometimes these concerns are better addressed through specific regulations that focus on the individual concerns to be addressed. The following is a discussion of the many types of "stand alone" laws that are commonly adopted to address these specific municipal concerns, although they may also be usefully incorporated into zoning, site plan review or subdivision regulations. Such laws range from laws regulating the size, type and placement of signs to the protection of water resources.

OFFICIAL MAP

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

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

Under the statutes, the governing body of the municipality may establish an official map of its area, showing the streets, highways, parks and drainage systems established by law. It may add future requirements for facilities to the official map and the land so reserved may not be used for other purposes without the consent of the municipality.

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

The official map is not the zoning map, nor is it the comprehensive plan. However, it can play an important role in implementing a municipality's comprehensive plan .

SIGN CONTROL

The use and location of signs are typically subject to municipal regulation, either as part of a zoning law or as a separate regulation. Attention is focused on the number, size, type, design and location of signs within a municipality. The issues that a municipality considers important can be brought together in a sign control program.

Signs are vital for communication. They serve both a public and private purpose. They are important in identifying businesses but they are also essential for providing directions and instructions that are important for the safety of a municipality. Signs are important to municipal character. Problems arise when signs are poorly located, improperly constructed or become too large or numerous. Without control, signs can overwhelm a municipality, damaging its character, reducing the effectiveness of communication and providing a traffic safety. With control, signs can enhance a locality and contribute to municipal character.

How may signs be controlled?

Many communities choose to link sign control with their zoning code. Zoning specifies the location and density of various land uses and it can also include standards for the nature, location and size of signs associated with these land uses. As with other land use regulations, standards can be adopted which cover new, as well as existing non-conforming signs. These standards may also be established in a separate local law dealing specifically with signs.

Input from the commercial, industrial and residential segments of the municipality should be considered in developing sign standards. There are many options available to a municipality as to how to regulate signs, as well as to the degree of regulation. For example, some signs may only need a building permit to be placed, other signs may be approved within a site plan review procedure, and still other signs may only be placed following the grant of a special use permit. Enforcement of signage provisions should be assigned to a municipal officer, usually the building inspector or zoning enforcement officer.

Sign controls shall seek to limit the size and design of signs. Often, however, this regulation has extended to involve the *content* of a sign. The U.S. Supreme Court has examined the constitutional questions concerning freedom of speech with respect to sign controls, and has placed limits on the authority of municipalities to control the content of signs. The best approach for a municipality is to regulate the size, height, number and design of signs without regulating the content.

HISTORIC PRESERVATION

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

It is important for a municipality to develop a comprehensive inventory of its historic properties and other cultural resources. By completing an historic resources survey, a municipality will be able to establish what buildings or collection of buildings

are worthy of preservation. Community participation in such a survey can help improve awareness of community heritage and build consensus on the benefits of protecting this heritage.

How do we provide recognition to these resources?

The development of a community policy to protect historic resources, and an identification of the particular resources to be protected in the community are the first steps to providing recognition of the historic value of property or collection of buildings. Once a community has established a policy of historic preservation, it can seek to formally recognize individual historic structures or groups of structures. The first level of recognition can be achieved through the adoption of a Local Historic Preservation Law which enables the community to designate individual properties as local historic landmarks, or groups of properties as local historic districts. Such a local law is also likely to provide standards for protection of these designated properties.

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

Listing on the National Register of Historic Places is an important recognition of a property's or an area's historic and cultural significance. Designation makes the property eligible for grants and loans and, possibly, federal tax credits. It also means that any federal action that might impact the property must undergo a special review that is designed to protect the property's integrity. Similarly, listing on the State Register of Historic Places means that State agency actions that affect a designated property are subject to closer review, and makes the property eligible for grant assistance. Projects affecting properties listed on the National Register may become Type 1 actions under the requirements of the State Environmental Quality Review Act. Many of these review actions and funding benefits are also applicable to those properties that are *eligible* for listing on either Register, but have not actually been listed.

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

How does a municipality protect these historic resources?

Once historic properties have been identified and recognized, it is necessary to provide means to protect them from degradation. Recognition in itself provides no protection. It is important to ensure that the historic protection policies of the comprehensive plan are integrated within the municipality's zoning regulations and land use controls. Appropriate use, density, siting and design standards can go a long way to protect historic properties. In addition, General Municipal Law §96-a provides specific authority to a city, town, village or county to protect and enhance historic resources .

LOCAL HISTORIC PRESERVATION PROGRAMS
General Municipal Law §119-dd

A municipality may also consider adoption of a Local Historic Preservation Law based on State enabling legislation. Typically, the municipality establishes a Local Historic Preservation Committee, as well as the procedures for designating historic properties as local landmarks and collections of historic properties as

historic districts. It can also provide for the review of construction, alteration or demolition of designated historic properties, and allow consideration of the impact of these proposals on an historic district.

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

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

ARCHITECTURAL DESIGN CONTROL

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

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

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

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

MOBILE HOME REGULATIONS

Mobile homes come in all shapes and sizes. As a use distinct from site-built homes, their placement in a community can be permitted or prohibited in certain zoning districts.

MOBILE HOMES
Town Law §130 (21)
Village Law §4-412(1)

Federal home safety and construction standards, and industry efforts to improve their product, have turned mobile homes, also known as "manufactured housing," into an affordable alternative to site-built homes. Visually, they can be virtually indistinguishable from the rest of the homes in the neighborhood. Through provisions of local laws, such as foundation and skirting standards, a community can provide for the orderly development of attractive, affordable housing in a manner that preserves or enhances surrounding property values. Municipalities may not impose construction standards on mobile homes which are not identical to the specifications established by the Federal Department of Housing

and Urban Development.

Regardless of the similarities, may a municipality treat mobile homes differently from site-built homes?

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

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

JUNK YARD REGULATIONS

If a municipality does not have its own junk yard law or zoning law addressing the siting of junk yards, it must apply the standards set forth in General Municipal Law §136 for automobile junk yards. This state law regulates the collection of junk automobiles, including the licensing of junk yards and regulation of certain aesthetic factors. The law is limited in its application, however, to sites storing two or more unregistered motor vehicles.

CONTROL OF AUTOMOBILE JUNKYARDS
General Municipal Law §136

A municipality may expand the state definition of "junk yard" to encompass other types of junk, such as old appliances, household waste, or uninhabitable mobile homes in order to regulate aspects of junk not covered by state law, and to ensure greater compatibility with surrounding land uses.

If done through zoning, a municipality can limit junkyards to specific areas of the community. If properly drafted, such zoning regulations may even phase out existing junkyards that are inappropriately located.

MINING CONTROL

Can a municipality control the location of mines within its borders?

Local governments can enact zoning regulations establishing districts within which mining may or may not be a permissible use. The permissible use may be "as-of-right" or may require a special use permit. In addition, if a municipality through its comprehensive planning process has determined that mining is not a desirable use in its community, it may zone its land to prohibit the establishments of new mines within its borders.

In general, the New York State Mined Land Reclamation Law regulates mining operations that intend to remove more than one thousand tons or 750 cubic yards of minerals from the earth within twelve successive calender months. Such mines require approval by the New York State Department of Environmental Conservation (DEC). Mines smaller than this threshold can be regulated by a local mining or zoning law. However, even though DEC regulates larger mines, a municipality may regulate the location of all mines through its zoning law.

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

Under the Mined Land Reclamation Law, when a municipality permits state-regulated mining to occur within its borders, the municipality may regulate (1) the entrances and exits to and from the mine on roads controlled by the municipality, (2)

routing of mineral transport vehicles on roads controlled by the municipality, and (3) enforcement of the reclamation conditions set forth in the DEC mining permit.

DEC must notify a municipality of all applications for new mining projects. In response, a municipality may make *recommendations* to the DEC regarding such things as: appropriate setbacks, barriers to restrict access to the mine, dust control, hours of operation, and whether the proposed mine is in an area where mining is a permissible activity.

SCENIC RESOURCE PROTECTION

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

How does a municipality identify and protect important scenic resources?

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

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

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

OPEN SPACE PRESERVATION

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

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

Much has been written on the value and benefits of open space and how to prepare an open space plan. One such publication, "Local Open Space Planning, A Guide to the Process", is available from the New York State Department of Environmental Conservation.

Once a community has identified its open space resources, it can develop policies to protect them. Those policies should be expressed in the open space plan and in the community's comprehensive

plan, along with the maps showing open spaces. Once this has been done, it is important to ensure that the open space policies of the comprehensive plan are implemented through the municipality's land use controls.

AGRICULTURAL LAND PROTECTION

Many communities are aware of the important contribution agriculture makes to the economy and character of their community and New York State. They are also concerned over the future of agriculture, both in terms of the loss of agricultural land to development, and in terms of the loss of economic viability of agricultural activity.

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

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

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

What is a State agricultural district?

Article 25-AA of the Agriculture and Markets Law was enacted in 1971 to conserve and protect agricultural land for agricultural production and as a valued natural and ecological resource. To be eligible for designation, a State agricultural district must be certified by the county for participation in the State program. Once designated, participating farmers within the district can receive reduced property assessments and relief from local nuisance claims.

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

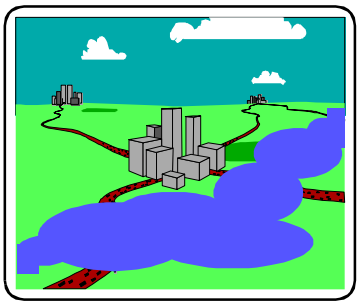
AGRICULTURAL DATA STATEMENTS
Town Law §283-a
Village Law §7-739

Applicants for the above types of approval for projects which involve property within 500 feet of a farm operation in an agricultural district, must provide extra information to the municipal board reviewing the application. In addition, the neighboring farmers must be notified in writing of the proposed project, and the project must be referred to the county planning board for review.

FLOODPLAIN MANAGEMENT

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

Federal standards which apply to communities which that are eligible for Federal Flood Insurance Protection, include identification of primary flood hazard areas, usually defined as being within the 100-year floodplain. Within flood hazard areas, certain restrictions are placed on development activities. The restrictions include a requirement that buildings be elevated above flood elevations or be flood-proofed, and also include prohibitions on the filling of land within a floodplain.



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

Virtually all municipalities in New York contain flood hazard areas. Flooding in developed areas can result in costly damage and destruction, as well as loss of life. And, for communities that don't participate in the National Flood Insurance Program, no flood insurance is available to individual land owners.

WETLAND PROTECTION

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

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

Doesn't the State regulate wetlands?

State wetland regulations protect freshwater wetlands greater than 12.4 acres (1 acre in the Adirondack Park), freshwater wetlands of unusual local importance, and tidal wetlands. The State has established adjacent wetland buffer zones, prohibiting certain activities within such areas, and has established standards for permit issuance. The United States Government, through the Army Corps of Engineers, also regulates federally-defined wetlands.

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

WATER RESOURCE PROTECTION

The main reason for protecting water resources is to protect municipal and private drinking water supplies from disease-causing microorganisms. Failure to adequately protect drinking water supplies can lead to the need for treatment of drinking water at great expense to the land owner or the municipality.

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

protect water supplies.

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

EROSION AND SEDIMENTATION CONTROL

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

Such regulations are often incorporated into one of the major land use control mechanisms. However, a municipality may wish to establish such controls in a stand-alone law. Such a law can be specifically directed at grading, filling, excavation and other site preparation activities such as the clear-cutting of trees or the removal of all vegetation. Such a law can address the issue of how construction and other activities are carried out and can include certain minimum standards. These standards can include, for example, limits on the time land can be allowed to remain in a disturbed state, land stabilization measures, storm-water management regulations, water-body protection, and "best management practices." A system of review can also be established to ensure compliance with the standards. In addition, in a stand-alone law controls can be applied to projects regardless of whether those projects might also be subject to zoning, subdivision or site plan regulations.

ENVIRONMENTAL REVIEW

The State Environmental Quality Review Act (SEQRA) was established to provide a procedural framework whereby a suitable balance of social, economic and environmental factors would be incorporated into the community planning and decision-making processes. SEQRA applies to all State agencies and local governments when they propose to undertake an action themselves (such as construct a public building), or when they are considering whether to approve or fund projects proposed by private owners.

STATE ENVIRONMENTAL QUALITY REVIEW ACT
Environmental Conservation Law Article 8
NYS Codes, Rules & Regulations Part 617

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

When does SEQRA apply?

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

The first step in the SEQRA process is to determine if the statute is applicable. If SEQRA applies, then a "lead agency" must be established, and the lead agency must make a determination whether the action may have a significant adverse impact on the environment. If it is determined that it will not have a significant adverse impact, a "Negative Declaration" is made by the lead agency, after which it may proceed to its ordinary regulatory review of the matter under consideration. If it is determined that an action may have a significant adverse effect on the environment, an

Environmental Impact Statement (EIS) must be prepared by either the project sponsor or by the lead agency. The SEQRA regulations provide that an application for approval of an action is not complete until either a negative declaration is filed or a draft EIS has been accepted for public review by the lead agency. An action which is the subject of an EIS may not be approved until at least ten days after the filing of the final EIS.

Can a municipality tailor SEQRA to municipal needs?

SEQRA review can serve to supplement local controls when the scope and environmental impacts of a project exceed those anticipated by existing land use laws. The SEQRA review process also helps to establish a clear record of decision-making should the municipality ever have to defend its actions.

Municipalities have the authority to adopt their own lists of Type I and Type II actions, but they may not delete any action already on the State Type I or Type II lists. They may also, after public hearing and notice to the Department of Environmental Conservation, designate a specific geographic area as a Critical Environmental Area (CEA). Following designation, the potential impact of an action on the environmental characteristics of the CEA must be evaluated in determining the significance of a Type I or an Unlisted action.

SEQRA is a far-reaching statute that can provide a municipality with critical information about the impacts of a land development project, in order that a more informed decision may be made on the project. In many cases, a project can be modified to avoid the environmental effects disclosed through the SEQRA process. This publication is not intended to be a guide to SEQRA, and because strict observation of its procedures is required, it is important to gain at least a basic knowledge of the statute. There are several publications available from DEC which thoroughly explain SEQRA. This material is available at your nearest DEC office. In addition, technical assistance can be obtained by contacting the Regulatory Affairs Unit at your Regional DEC Office or at the central office in Albany.

MORATORIA (INTERIM DEVELOPMENT REGULATIONS)

A moratorium is a local law or ordinance used to temporarily halt new land development projects while the municipality revises its comprehensive plan, its land use regulations, or both.

Moratoria, or interim development regulations, are designed to restrict development for a limited period of time. The duration of a moratorium should be specified when enacted, and should be tied to the time period necessary to develop a plan or adopt local regulations. In some cases, moratoria are enacted to halt development while a municipality seeks to upgrade its public facilities or its infrastructure.

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

What should be included in a moratoria law?

The elements which should be included in any legally defensible moratorium law are (1) a clear statement of the basis or reason for the moratorium; (2) a stated duration no longer than necessary to accomplish the creation or update of comprehensive community plans or regulations, or to upgrade infrastructure; (3) clear definition of the activity or activities placed under moratorium; (4) a treatment of whether activities or permit processes begun prior to the moratorium will enjoy vested rights; and (5) an administrative appeal

process.

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

DEPARTMENT OF STATE LOCAL GOVERNMENT PUBLICATIONS

If you would like more information relating to local government powers and responsibilities, please contact the Department of State's Division of Local Government. Some of the publications available to local officials are:

Guide to Planning and Zoning Laws in New York State. This essential publication for municipal officials, attorneys and planning boards is newly revised. It has the complete text of relevant laws -- including statutory changes from the 1996 Legislative Session.

Zoning Board of Appeals. Newly revised, this booklet explains the legal framework surrounding the powers and duties of zoning boards of appeals. It includes all statutory provisions effective as of July 1, 1994.

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

Adopting Local Laws. This booklet is a plain language, step-by-step guide to drafting and adopting a local law. It provides useful information on the scope of the home rule power and is invaluable for the municipal clerk or attorney.

Intergovernmental Cooperation. This publication outlines the statutory basis for intergovernmental agreement, and provides practical suggestions, ideas and information.

Contact the Division of Local Government Services for a complete list of available publications. Call (518) 473-3355, or write to:

New York State Department of State
Division of Local Government Services
41 State Street
Albany, New York 12231

Several publications are also available for downloading from the Department of State's Internet home page. The Internet address is:

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