

TOWN OF DRYDEN

LOCAL LAW NO. _ OF THE YEAR 2016

A LOCAL LAW PROVIDING FOR A MORATORIUM ON CERTAIN PUBLIC UTILITY INSTALLATIONS FOR A PERIOD OF ONE HUNDRED EIGHTY (180) DAYS

Be it enacted by the Town Board of the Town of Dryden as follows:

Section 1. Findings and Purpose. The Town Board of the Town of Dryden finds:

A. The Town of Dryden Zoning Law provisions related to public utilities include Section 501, which allows public utilities in five specified zoning districts, provided that the Town Board issues a special use permit. Section 501 further provides that public utilities are not permitted in the Neighborhood Residential zoning district. Section 702 allows public utilities as a principal use in the three Varna zoning districts, provided that the Town Board issues a special use permit. Section 900.E states that public utility facilities (including electric, gas, telephone and television cable) and their necessary appurtenances are allowed uses in all zones by special use permit. Section 1201.B(2) requires site plan review whenever a special use permit is required.

B. Section 501's prohibition on public utilities in the Neighborhood Residential zone is inconsistent with Section 900.E's statement that public utilities are allowed uses in all zones.

C. In addition to this inconsistency, the Zoning Law's broad definition of "public utility" in Article III creates a question as to whether Sections 502 and 900 require special use permits and site plans only for larger public utility distribution and transmission facilities, or also for smaller facilities such as individual lot connections.

D. Town of Dryden Zoning Law Article XIII, Standards and Requirements for Certain Uses, lists certain uses that are subject to standards and requirements that are tailored for the specified uses. These standards and requirements are in addition to those imposed by other Zoning Law provisions, and they help to avoid or minimize the impacts of those uses. Public utilities currently are not included in the uses that are subject to Article XIII's additional standards and requirements.

E. The Town Board wishes to: review the Zoning Law's public utility definition and provisions to eliminate inconsistencies; clarify the applicability of requirements; and determine whether to add standards and requirements relating to public utility infrastructure and otherwise further the objectives of the Town of Dryden Comprehensive Plan.

F. The Town Board will be considering the following Town of Dryden Comprehensive Plan goals, among others, to determine whether Zoning Law amendments are needed to help assure that public utility projects are consistent with such

goals: protect and advance the quality of life of residents; protect the unique natural assets of the Town; and make optimum use of existing and future investments in public services and infrastructure.

G. While telecommunications facilities are included in the Zoning Law's definition of public utility, telecommunications facilities are separately regulated under the Town's Telecommunications Tower Siting Law. This latter law contains extensive provisions pertaining to special use permits and site plans for telecommunications towers. The Telecommunications Tower Siting Law states that the Town Board adopts an overall policy with respect to special use permits for telecommunications towers for the express purpose of achieving a number of goals. These goals include the promotion of the placement of telecommunications towers in a manner that causes minimal disruption to aesthetic considerations of the land, property, buildings, and other facilities in the tower area. Given the existing extensive regulations in the Telecommunications Tower Siting Law, the Town Board does not anticipate that its review and study will encompass that law.

H. It is anticipated that the Town Board's review, study and consideration of the issues described above can be completed within one hundred eighty (180) days of the effective date of this local law, and that legislation, if needed, can be drafted and properly adopted within that timeframe.

I. The Town Board is concerned that any new legislation would be subverted if public utility infrastructure projects that disturb a significant amount of land (one or more acres, which is also the threshold that triggers the need for a Basic Stormwater Pollution Prevention Plan) or exceed forty (40) feet in height (which is the highest allowable building height in the Town) were to be entertained and possibly approved before the Town Board considers legislation to address these issues.

J. Accordingly, to address these issues, and to protect the public health, safety and welfare, it is the intention of the Town Board to prevent the consideration and approval of certain public utility projects during the limited time the Town needs to complete its study, review and consideration of zoning revisions, and to adopt subsequent legislation.

Section 2. Prohibited Actions. For a period of one hundred eighty (180) days from the effective date of this local law, the Town Board hereby declares a moratorium prohibiting each of the following actions in the Town, regardless of the submittal or receipt of any application prior to the effective date of this local law, unless permitted under Section 3 hereunder:

A. Acceptance, consideration, preliminary approval or final approval by the Town of Dryden Town Board of any site plan or special use permit for new or modified public utility infrastructure (including, without limitation, pipelines, pipes, mains, and conduits), that involves an area of land disturbance associated with the public utility infrastructure of one or more acres, or that is proposed to exceed forty (40) feet in height.

B. Acceptance, consideration, preliminary approval or final approval by the Town of Dryden Zoning Board of Appeals of any application for variance in connection with any activity prohibited hereunder.

C. The issuance of building permits by a Town of Dryden Code Enforcement Officer in connection with any activity prohibited hereunder.

D. The issuance of any permit by the Town of Dryden for highway utility work in connection with any activity prohibited hereunder.

Section 3. Exemptions.

The following actions are exempt from the above-described moratorium to the extent set forth herein:

A. Any site plan, special use permit, variance, building permit or highway work permit in connection with a telecommunications tower or telecommunications structure, as those terms are defined in the Telecommunications Tower Siting Law for the Town of Dryden.

B. Any site plan or special use permit that has received conditional final approval from the Town Board, Planning Board or Zoning Board of Appeals prior to the effective date of this local law, and time extensions of such pre-existing approvals, shall be exempt from the above-described moratorium.

C. The Town Board and Zoning Board of Appeals may continue to consider and review any proposal or appeal otherwise prohibited hereunder, and make determinations under the State Environmental Quality Review Act (“SEQRA”) regarding such proposals and appeals, subject to the following terms and conditions:

1. The applicant has submitted a valid application as of the effective date of this local law.

2. The applicant assumes the sole risk of pecuniary or other loss, including without limitation the costs of technical and legal consultation and the costs of preparation of any submittals, reports or information required by the Town Board or Zoning Board of Appeals pursuant to the Town of Dryden Zoning Law, SEQRA or other applicable laws or regulations, arising out of such continued consideration and review during the pendency of this moratorium.

3. Applications processed under this subsection 3(C) will, unless otherwise stated herein, be determined by the provisions of the Comprehensive Plan of the Town of Dryden and the Town of Dryden Zoning Law in effect at the time of such determinations, and not as of the date of this local law.

4. Applicants are hereby informed that the Town Board of the Town of Dryden is considering changes to such Zoning Law which may address or affect the issues raised by their applications, and which may alter the determinations

thereon by the Town Board or Zoning Board of Appeals, as applicable, from those which might have occurred in the absence of such changes.

5. The Town Board and Zoning Board of Appeals shall not issue any preliminary or final approval of any application subject to the moratorium during its term.

Section 4. Waivers.

A. Any property owner may appeal to the Town Board for a waiver of the above prohibitions, and the Town Board shall have the power on good cause shown to grant such relief, or so much relief as said Board may determine to be necessary and appropriate. In determining the suitability of a waiver under this section, the Town Board shall consider the following factors:

1. Unnecessary hardship to the petitioner, which hardship is substantially greater than any harm to the general public welfare that would result from the granting of the waiver (for the purposes of this local law, unnecessary hardship shall not be the mere delay in receiving an approval, the granting of which is otherwise stayed, during the period imposed by this local law); and

2. The project's harmony (or lack thereof) with the existing character of the community as a whole and the area of the community in which the property is located; and

3. Whether the application for which the relief is requested is consistent with any interim data, recommendations, or conclusions which may be drawn at the time of the public hearing from the aforementioned review and study; and

4. Whether the application for which the relief is requested is consistent with proposed new or amended laws, ordinances or regulations, if and as such may exist at the time of the public hearing.

B. Waiver procedure. Such petition shall be the subject of a public hearing before the Town Board. Upon submittal of a written petition to the Town Clerk by the property owner seeking a waiver of this moratorium in a form to be provided by the Town Clerk, and supported by such documentation as the applicant deems relevant, the Town Board shall, within forty (40) days of receipt of such petition, conduct a public hearing on said petition upon five (5) days public notification in the official newspaper of the Town. At said public hearing, the property owner and other parties wishing to present evidence on the proposed waiver shall have an opportunity to be heard. The Town Board shall, within forty (40) days of the close of the public hearing, render its decision in writing, either granting or denying the petition for a waiver from the strict requirements of the moratorium.

C. It shall be within the discretion of the Town Board to grant in whole or in part, grant with conditions, or deny, the petition for relief from the terms of this moratorium.

Any subsequent consideration and approval by the Town Board or Zoning Board of Appeals, or subsequent permit issuance by the appropriate Town official, must comply with the Town of Dryden Zoning Law provisions in effect at the time of such approval or issuance, including any applicable provisions which the Town Board may adopt pursuant to the aforementioned review and study.

Section 5. Statement of Authority and Supersession.

A. The Town Board adopts this local law pursuant to authority in the New York State Constitution, Article IX, Section 2; section 10 of the New York Municipal Home Rule Law; section 10 of the Statute of Local Governments; the relevant provisions of the Town Law of the State of New York; the Zoning Law and other laws of the Town of Dryden; and the general police power vested with the Town of Dryden to promote the health, safety and welfare of all residents and property owners in the Town.

B. During the time that this law is in effect, it shall take precedence over and shall be considered controlling over contrary laws, ordinances and provisions. It is the intent of the Town Board, pursuant to authority under section 10, subdivision 1(ii)(d)(3), and section 22 of the Municipal Home Rule Law, to supersede inconsistent provisions of the New York State Town Law and the Town of Dryden Zoning Law.

1. In particular, it is the intent of the Town Board, pursuant to authority under sections 10 and 22 of the Municipal Home Rule Law, to supersede inconsistent provisions of the New York State Town Law and the Town of Dryden Zoning Law relating to time limits in connection with zoning and planning determinations. Without limitation, the instant local law hereby supersedes the following provisions of the Town Law of New York State:

a. Subdivisions 7 and 8 of section 267-a, relating to time limits for Zoning Board of Appeals hearings and decisions, respectively

b. Section 267-b, relating to the hearing of appeals for variances by the Zoning Board of Appeals.

c. Subdivision 8 of section 274-a, relating to time limits for hearings and determinations on site plan applications

d. Subdivision 6 of section 274-b, relating to time limits for hearings and determinations on application for special use permits

2. For the duration of this moratorium, the Town Board also intends to supersede, and the instant local law hereby supersedes, all provisions of the Town of Dryden laws which impose time limits on applications for approvals and permits subject to the instant moratorium, including without limitation Town of Dryden Zoning Law Article XI relating to hearings and determinations on site plan applications; Town of Dryden Zoning Law Article XII relating to hearings and determinations on special use permit applications; Town of Dryden Zoning Law Article XIV relating to Zoning Board of Appeals hearings and

determinations, Section 4(f) of Town of Dryden Local Law #1—2007 relating to issuance of building permits, and _____ of Town of Dryden Local Law # _____ relating to issuance of highway work permits.

3. For the duration of this moratorium, the Town Board also intends to supersede, and the instant local law hereby supersedes, section 262 of the Town Law of New York State to the extent that the provisions of said section are inconsistent with any provision herein.

Section 6. Fines, Penalties and Other Remedies. Any person or entity that develops, constructs or establishes any project or structure in violation of this local law shall be subject to the fines, penalties and other remedies set forth in Section 268 of the Town Law of the State of New York and/or Article XVIII of the Town of Dryden Zoning Law. Among other enforcement actions, the proper authorities of the Town may institute any appropriate action or proceeding to enjoin, prevent, restrain, correct or abate such violation of this local law.

Section 7. Term. This local law shall be in effect for a period of one hundred eighty (180) days from its effective date, provided, however, that the Fines, Penalties and Other Remedies section shall remain in full force and effect after such date for the purpose of prosecuting any violation which occurred during the effective period of this local law.

Section 8. Validity. In the event that any portion of this law is declared invalid by a court of competent jurisdiction, the validity of the remaining portions shall not be affected by such declaration of invalidity.

Section 9. Effective Date. This local law shall take effect immediately upon filing with the New York Secretary of State.