

**TOWN OF DRYDEN
PLANNING BOARD
February 28, 2019**

Present: John Kiefer, Chair, Thomas Hatfield, Joseph Wilson, Craig Anderson, Martin Hatch, Deborah Cipolla-Dennis, James Skaley (alternate), Tony Salerno (alternate)

Other Town Staff: Bambi Avery, Town Clerk
Khandikile Sokoni, Town Attorney
Ray Burger, Planning Director

Absent: David Weinstein

Liaisons: Alice Green (Town Board), Craig Schutt (Conservation Board), Dan Lamb (Town Board)

Chair John Kiefer opened the meeting at 7:00 p.m. He noted the Town's attorney would be addressing the role of the Planning Board and several topics that various board members are interested in discussing.

Public Comment

Bruno Schickel – I know you're starting work on the Comprehensive Plan and I would ask that you consider some things that need to be addressed.

- The primary thing, in my opinion, you should be thinking about is affordability. In everything that you do I think you must think, what is the economic impact and affordability for both housing and businesses?
- There is a new term being coined a lot called "the missing middle in housing" the point being how can we build housing for the middle class. Affordability.
- Where development happens and what we can do to bring greater development to the Dryden School District area. Right now, Dryden School District is probably \$6-\$7 a thousand more than people that live in Dryden but are in the Ithaca City School District.
- How we can do things that might support development and tax base growth in the Dryden School District.
- If you should make an "anything goes" zone in Dryden. Where development is encouraged and people know it's a mixed-use area. If you try to change zoning in an existing area with existing building there will be resistance from everybody.
- Most people today want the walkability environment to live in. That can only happen if you have density. And it can only happen if you have a place to walk from your house to a store, business, work. You have to mix all those things together and bring them in tight enough where it will happen.

I am going to give this information to Ray Burger, as it might be a good resource - National Association of Home Builders publishes case studies such as: Creating housing for all, and new opportunities for affordable housing. A resource to think about how these things impact us.

David Bravo-Cullen - My daughter lives in Texas in a high-growth area. They bought a house in a neighborhood where the lots are 1/8th acre, very high density, has a park and playground, very walkable. Wanted to reinforce what B. Schickel had stated.

Shirley Lyon – July 17, 2017 we asked the Town Board for some parcels to be rezoned that went from residential to mixed use and there have been multiple problems with surface water flooding, lack of water underneath (200-300' wells only producing only 1 ½ -3 gallons). I ask that any of the Planning Board members to drive up Mineah Road and look to the West side to see the steepness and the re-routing of the water. I want to thank Mr. Anderson and Mr. Hatfield, you were very inclusive when talking about the Comprehensive Plan about having round tables and talking to the people. When you use your terminology, you lose us. Maybe break it down a little more for the public so they can understand what you are taking about. Use an outline of terms that the Planning Board uses.

Ben Curtis, Zoning Board of Appeals (ZBA). I wanted to raise a couple of issues that have come up in our meetings a couple of times.

1. Concerned with the administrative sub-division procedure, where sub-divisions are approved by the planning commissioner as opposed to going through the Planning Board. I'm hoping that the Board will consider proposing that the Town of Dryden bring their procedures more in line with the Town Law 276, which would make that a Planning Board responsibility. We've dealt with some variances but it has been an awkward situation where the ZBA has had to try to weigh in on sub-divisions that were approved at the administrative level. Can't find basis for allocating that to an administrative official.
2. I've been on the ZBA for many years now and I can't tell you how many variances we've dealt with regarding front yard setbacks. Weighing community benefit vs burden on applicant it is difficult to know what the community benefit is.

Approval of Minutes

M. Hatch made a motion to approve the minutes of January 24, 2019, seconded by T. Hatfield – all in favor.

February 7, 2019 minutes

- J. Wilson – There is one comment, that there is no substantial change to the SEQR laws as a result of the 2018 legislation. He does not believe that is entirely accurate. I know the Khandi is going to offer some information about the amendments tonight, very late, I emailed a suggestion for an amendment. I think we need to more accurately state how the SEQR law has changed because of state legislative action.
- J. Kiefer – So your proposed changes to the minutes was a quote out of the SEQR handbook? J. Wilson – Yes, referring to a particular change in the regulations. The regulation, as I understand it, says if we are doing EIS we must consider climate change and its effects.
- C. Anderson has a few questions so it was decided approval or changes to the February 7th minutes will be put off until next month.
- B. Avery – One change suggested by R. Burger was in the table under #18, where it says Section 8 housing be changed to read affordable.

Other Business

J. Kiefer – One week from today the building energy committee will present their proposed additions to comprehensive plan (March 7 at 7:00 p.m.). These are a fairly narrow set of additions to the

comprehensive plan focused on building energy and sustainability. The purpose of the meeting is to seek feedback from the public. The effort of the building energy committee is different than the topic that was mentioned earlier – update to the comprehensive plan – which is a general update, and will involve a very large public outreach and a survey.

J. Wilson – the building energy subcommittee of the planning board meetings are public posted and typically occur every other Monday at 11:00 am or 11:30 am.

PRESENTATION BY KHANDIKILE SOKONI

Khandi did a PowerPoint presentation and reviewed associated handouts:

See attachments:

Town of Dryden Planning Board Training (PowerPoint Presentation and Handout)
SEQRA Amendments Are Now In Full Effect (Handout)
Code of Ethics (Handout)
Legal Case Examples (Handout)

In addition to the PowerPoint presentation the following items were discussed:

If there is a discrepancy in comprehensive plan and zoning law, Khandi would recommend that it be brought to the attention of the legislative body (Town Board) with a recommendation for change.

If there is a conflict of interest, a board member should recuse themselves. It is allowable for one board member to challenge another. Ethics questions could be presented to the County's ethics board in absence of us having our own ethics board.

Planning Board can advise/recommend to Town Board without having to have the Town Board request their input.

Requests and recommendations between the Town Board and Planning Board are best done by resolution.

J. Kiefer would like everyone to think about a couple of things:

- Our training budget is small and if people are interested in attending the Planning Federation Conference (at a roughly \$800 cost), we could possibly alternate someone attending each year. If needed, we can go back to the Town Board to request more money.
- We need to think about whether we want to move our meeting time up to 6:00 pm and possibly on the 2nd Tuesday of the month so we have extra time before the Town Board meets.
- Small scale wind ordinance, please come to the next meeting prepared to give feedback on this topic.

The next Planning Board meeting will be on March 28th at 7:00 p.m.

C. Anderson inquired of S. Lyons if she would be available to give Planning Board members a tour of the issues on Mineah Road and she is willing to do that.

There being no further business, the meeting was adjourned at 9:30 p.m.

Respectfully submitted,

Bambi L. Avery



TOWN OF DRYDEN PLANNING BOARD TRAINING ©

February 28, 2019

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Introduction

- Main goal: Overview of the role, duties and responsibilities of the Planning Board.
- Recent Legislative Updates (New SEQRA Rules/Regulations). 2018 Amendments.
- Review List of questions from PB.
- *Disclaimer: Not intended as legal advice for a specific project or set of facts. Training designed as a general overview.*

Overview

- Part 1: Going to the Source
 - Statutory Authority & Jurisdiction of Planning Boards.
 - Hierarchy of Sources of Authority.
- Part 2: Specific Duties of Planning Boards.
 - Terminology & Significance.
 - **LIMITATIONS ON AUTHORITY – *SHALL* * *MAY***
- Part 3: Review Legislative Updates (SEQRA 2018 Amendments & Questions Presented by Planning Board.
 - **[Refer to List]**

Part I: Going to the Source

- Hierarchy of Sources of Authority.

NY Constitution

Town Law

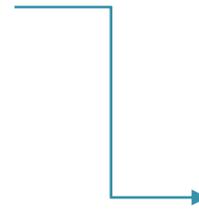


Dryden Laws (Local Laws/Ordinances/Resolutions)

- Statutory Authority & Jurisdiction of Planning Boards.
 - NY Town Law §271; §274-a; §276; §277
 - Dryden Zoning Law Article XV (§1501 et. seq.)
 - Dryden S/D Law

Part I: Statutory Authority cont'd

- What does the statute say?
- How have the courts interpreted the statutes?
- The Record.
- The Record.
- The Record.



WHAT DOES THE STATUTE SAY?

P/B Action/Review of Subdivision Application	Relevant Statutory Authority
<p>-Subdivision Review.</p>	<p>-NY Town Law 276(1): “...for the purpose of providing for the future growth and development of the Town and affording adequate facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of its population.</p>
<p>- PB may consider whether land can be used safely for building without danger to health or peril from fire, flood, drainage or other menace to neighboring properties or public health/safety/welfare.</p>	<p>NY Town 277(1):“Before the approval by the Planning Board of a plat...the Planning Board <u>shall</u> require that the land shown on the plat be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, drainage or other menace to neighboring properties or the public health, safety or welfare”.</p>
<p>- PB shall consider means of ingress/egress are included in development plan.</p>	<p>- NY Town Law 277(2)(a) .</p>

WHAT DOES THE STATUTE SAY?

P/B Action/Review of Subdivision Application	Relevant Statutory Authority
<ul style="list-style-type: none"> -PB shall consider whether fire protection concerns are addressed. 	<ul style="list-style-type: none"> -NY Town Law §277(8).
<ul style="list-style-type: none"> - The prospective character of the development is taken into account. 	<ul style="list-style-type: none"> NY Town Law 277(5).
<ul style="list-style-type: none"> - Except in the case of cluster development, the project complies with the municipal zoning ordinance of local law, if any. 	<ul style="list-style-type: none"> - NY Town Law 277(3).
<ul style="list-style-type: none"> - Definitions: <ul style="list-style-type: none"> › Subdivision: 	<ul style="list-style-type: none"> NY Town Law §276(4)(a): <ul style="list-style-type: none"> “...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 term “subdivision” may include any alteration of lot lines ...Subdivisions may be defined

WHAT DOES THE STATUTE SAY?

P/B Action/Review of Site Plan Application	Relevant Statutory Authority
<p>-Site Plan Review</p>	
<p>- Town Board may authorize the planning board of any other administrative board to review site plans prepared <u>in connection with local ordinance, law, rule or regulation</u>. Dryden Town Board authorizes the PB to review site plans that are not connected to a Special Use Permit application.</p>	<p>NY Town Law §274-a(2)(a) Dryden Zoning Law §1101(C)</p>
<p>- Building-mounted solar energy systems shall be exempt from Site Plan Review and Special Permit process UNLESS it will increase height of the structure by 6 feet or more in which case Planning Board conducts site plan review.</p>	<p>- Dryden “Solar Law” Renewable Energy Facilities Law.</p>
<p>- Definitions: › Site plan: “A rendering, drawing, or</p>	<p>- NY Town Law §274-a(1). FA...</p>

Illustration

- Hypothetical.

Developer submits a site plan application to construct a 60-space parking garage in the Town. The Code Officer has determined that the use is allowed in the zoning district although some Planning Board members disagree. The Planning Board (grudgingly) approves site plan BUT makes it clear in the record that this kind of use may not be allowed by the Zoning Law. Unhappy neighbors bring an Article 78 proceeding challenging the site plan approval and succeed in getting an injunction. The judge denies the parts of the Article 78 proceeding that challenged the site plan approval, but grants the part of the petition that alleged that the parking garage use is not permitted by the local Zoning Law.

- Questions?
 - Can the Planning Board deny site plan approval if it feels the Zoning Law does not allow a particular use ?
 - Was the Judge's ruling correct?

Part 2: Specific Duties/Powers of Planning Boards

- §1504 DL – PB shall have jurisdiction to review & approve, approve with modifications or disapprove site plans when a particular use set forth in this Law is subject to only Site Plan Review.
- §1507 DL – Mandatory prescribed training for PB members.
- NY Town Law §
- §1505 DL – The Town Board may by resolution provide for the referral of any matter ... to the PB before final action is taken by the TB or any other office or officer having final authority over such matter.



TB can set timer. If PB exceeds time set for providing its report final decision can be taken w/o PB report.

- LIMITATIONS ON AUTHORITY .

IS IT A “SHALL” OR A “MAY”? Determines whether the PB has discretion or has a mandatory duty.

Under NY Town Law and Laws of the Town of Dryden

- Some Mandatory Duties
of Planning Boards:

- Site Plan Review.
- Site Plan under Solar Law if building-mounted system increases structure by 6 feet or more
- Major Subdivisions.
- Minor Subdivisions but only if a public/private road is proposed.

- Planning Board in
Advisory Role:

- Advisory request transmitted via resolution of Town Board.

Dryden Laws...

- Some Mandatory Duties of PB Under Dryden Laws

→ Conservation Subdivision
(i.e. major S/D in CV
District).

→ Filing of final plat with
Town Clerk shall be done
within 5 business days from
date of adoption of the
resolution approving the plat .

- Planning Board in Advisory Role

Discretion & Limitations On Exercise of Discretion – CPLR 78

- Discretion – PB *may*:
 - *Extend S/D Lapse deadlines for plat approvals. E.g. § 500(C)(4) For good cause shown, the Planning Board **may** grant extensions of the time limits on such conditions as may be appropriate...No such extensions shall be granted unless a written request for such extension is filed prior to such lapse.” Dryden S/D Law.*
 - *§1003 On request of the sub divider, for good cause show, PB **may** waive the submission of any of the items required to be shown on the Sketch Plan, Preliminary Plat or Final Plat. Such waiver **shall** be by resolution and include all explanation and justification for the waiver. Dryden S/D Law.*

Limitations On Exercise of Discretion – CPLR 78

- PB cannot exercise discretion in manner that is:
 - ~ Without jurisdiction;
 - ~ Illegal
 - ~ Arbitrary
 - ~ An abuse of discretion

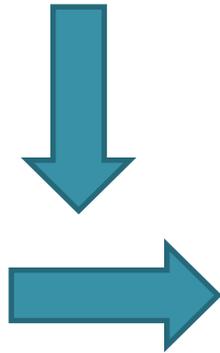
...continued ~ Discretion & Limitations On Exercise of Discretion – CPLR 78

- Discretion – PB may:
 - *Waiver of [S/D] requirements. The PB may waive, when reasonable, any requirements or improvements for the approval, approval with conditions... or disapproval of subdivisions. Any such waiver, which shall be subject to appropriate conditions, may be exercised in the event such requirements ...are found to not be requisite in the interest of public health, safety, and general welfare, or inappropriate because of adequacy or lack of connecting facilities adjacent or in proximity to the subdivision.*
 - *§900(C)(2)(a) In Conservation S/D, where proposed lot abuts an existing residence, a suitable buffer may be required. It shall be no less than what the minimum rear or side set backs are for the district in which residence is located.*

Part 2: Wrap-up

- Summarize important points.
- Questions.

- SIDE BAR



DIRECT APPEAL TO
ZBA IF S/D WILL
CREATE ZONING
DEFICIENCY
REQUIRING A VARIANCE

Part 3 Review Legislative Updates (SEQRA 2018 Amendments & Questions Presented by Planning Board.

- 2018 SEQRA Amendments Effective 01/01/2019. [Refer to hand-out].
- HIGHLIGHTS:
 - Create/Modify Thresholds in List of Type I actions.
 - List of Type II Actions Expanded.
 - Mandatory Scoping for all Environmental Impact Statements (EIS) subject to exceptions.
 - Must consider climate change impact when preparing EIS.
 - Defines “Green Infrastructure: “...green infrastructure means practices that manage storm water through infiltration, evapo-transpiration and reuse including only the following: the use of permeable pavement; bio-retention; green roofs and green walls; tree pits and urban forestry; storm water planters; rain gardens; vegetated swales; downspout disconnection; or stormwater harvesting and reuse.”

Part 3: Part 3: Questions Presented by Planning Board. [Refer to List]

- Reminder we are speaking in general terms.
 - Open Meetings Law. When is a subcommittee of the PB subject to OML?
 - Any recommendations for email communications among PB members?

Article 7 of Public Officers Law (aka Open Meetings Law – OML)

Purpose: “It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy.....” §100.

PART 3: CONTINUED...

* Remember.

- **Public Officers Law §103**
 - (a) Every meeting of a public body shall be open to the public.
 - (b) Reasonable efforts to hold public meetings in accessible facilities.
 - (c) Video conferencing permissible subject to meeting certain requirements.
 - (d) Shall be open to being photographed or otherwise broadcast.
 - (e) Public records being considered at public meeting to be made available to the public.

PART 3: CONTINUED...

Definitions Under OML

- “Meeting” means the official convening of a public body for the purpose of conducting public business, including the use of videoconferencing for attendance and participation by the members of the public body. §102(1).
- “Public body” means any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law, or committee or subcommittee or other similar body of such public body. §102(2).

Part 3: Wrap-up

- Jurisdiction.
- Statutory Basis for Acting.
- Proper Use of Discretion.
- It is all about the RECORD.

- Questions.

Summary

- Recap:

- Why does all this matter?
 - Public Confidence.
 - Fiscal Responsibility.
 - Liability.

 KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Town Law (Refs & Annos)
Chapter 62. Of the Consolidated Laws (Refs & Annos)
Article 16. Zoning and Planning (Refs & Annos)

McKinney's Town Law § 274-a

§ 274-a. Site plan review
Currentness

1. Definition of site plan. As used in this section the term "site plan" shall mean a rendering, drawing, or sketch prepared to specifications and containing necessary elements, as set forth in the applicable zoning ordinance or local law, which shows the arrangement, layout and design of the proposed use of a single parcel of land as shown on said plan. Plats showing lots, blocks or sites which are subject to review pursuant to authority provided for the review of subdivisions under section two hundred seventy-six of this article shall continue to be subject to such review and shall not be subject to review as site plans under this section.

2. Approval of site plans. (a) The town board may, as part of a zoning ordinance or local law adopted pursuant to this article or other enabling law, authorize the planning board or such other administrative body that it shall so designate, to review and approve, approve with modifications or disapprove site plans prepared to specifications set forth in the ordinance or local law and/or in regulations of such authorized board. Site plans shall show the arrangement, layout and design of the proposed use of the land on said plan. The ordinance or local law shall specify the land uses that require site plan approval and the elements to be included on plans submitted for approval. The required site plan elements which are included in the zoning ordinance or local law may include, where appropriate, those related to parking, means of access, screening, signs, landscaping, architectural features, location and dimensions of buildings, adjacent land uses and physical features meant to protect adjacent land uses as well as any additional elements specified by the town board in such zoning ordinance or local law.

(b) When an authorization to approve site plans is granted by the town board pursuant to this section, the terms thereof may condition the issuance of a building permit upon such approval.

3. Application for area variance. Notwithstanding any provision of law to the contrary, where a proposed site plan contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section two hundred sixty-seven-b of this article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

4. Conditions attached to the approval of site plans. The authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the town.

5. Waiver of requirements. The town board may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the ordinance or local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular site plan.

6. Reservation of parkland on site plans containing residential units. (a) Before such authorized board may approve a site plan containing residential units, such site plan shall also show, when required by such board, a park or parks suitably located for playground or other recreational purposes.

(b) Land for park, playground or other recreational purposes may not be required until the authorized board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the town based on projected population growth to which the particular site plan will contribute.

(c) In the event the authorized board makes a finding pursuant to paragraph (b) of this subdivision that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the authorized board may require a sum of money in lieu thereof to be established by the town board. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the authorized board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the town exclusively for park, playground or other recreational purposes, including the acquisition of property.

(d) Notwithstanding the foregoing provisions of this subdivision, if the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved pursuant to section two hundred seventy-six of this article, the authorized board shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.

7. Performance bond or other security. As an alternative to the installation of required infrastructure and improvements, prior to approval by the authorized board, a performance bond or other security sufficient to cover the full cost of the same, as estimated by the authorized board or a town department designated by the authorized board to make such estimate, where such departmental estimate is deemed acceptable by the authorized board, shall be furnished to the town by the owner. Such security shall be provided to the town pursuant to the provisions of subdivision nine of section two hundred seventy-seven of this article.

8. Public hearing and decision on site plans. In the event a public hearing is required by ordinance or local law adopted by the town board, the authorized board shall conduct a public hearing within sixty-two days from the day an application is received on any matter referred to it under this section. The authorized board shall mail notice of said hearing to the applicant at least ten days before said hearing and shall give public notice of said hearing in a newspaper of general circulation in the town at least five days prior to the date thereof and shall make a decision on the application within sixty-two days after such hearing, or after the day the application is received if no hearing has been held. The time within which the authorized board must render its decision may be extended by mutual consent of the applicant and such board. The decision of the authorized board shall be filed in the office of the town clerk within five business days after such decision is rendered, and a copy thereof mailed to the applicant. Nothing herein shall preclude the holding of a public hearing on any matter on which a public hearing is not so required.

9. Notice to county planning board or agency or regional planning council. At least ten days before such hearing, the authorized board shall mail notices thereof to the county planning board or agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law. In the event a public hearing is not required, such proposed action shall be referred before final action is taken thereon.

10. Compliance with state environmental quality review act. The authorized board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

11. Court review. Any person aggrieved by a decision of the authorized board or any officer, department, board or bureau of the town may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceedings shall be instituted within thirty days after the filing of a decision by such board in the office of the town clerk. The court may take evidence or appoint a referee to take such evidence as it may direct, and report the same, with findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The court shall itself dispose of the matter on the merits, determining all questions which may be presented for determination.

12. Costs. Costs shall not be allowed against the authorized board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

13. Preference. All issues addressed by the court in any proceeding under this section shall have preference over all civil actions and proceedings.

Credits

(Added L.1992, c. 694, § 1. Amended L.1994, c. 486, § 8; L.1995, c. 423, §§ 5, 6; L.1997, c. 458, § 23, eff. July 1, 1998.)

Editors' Notes

KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Town Law (Refs & Annos)
Chapter 62. Of the Consolidated Laws (Refs & Annos)
Article 16. Zoning and Planning (Refs & Annos)

McKinney's Town Law § 271

§ 271. Planning board, creation, appointment
Effective: January 1, 2007
Currentness

1. Authorization. The town board of each town is hereby authorized by local law or ordinance, to create a planning board consisting of five or seven members and shall, by resolution, appoint the members of such board and designate the chairperson thereof. In the absence of a chairperson the planning board may designate a member to serve as chairperson. The town board may, as part of the local law or ordinance creating said planning board, provide for the compensation of planning board members.

2. Appropriation for planning board. The town board is hereby authorized and empowered to make such appropriation as it may see fit for planning board expenses. In a town containing one or more villages, or parts thereof, such charges and expenses less fees, if any collected, shall be a charge upon the taxable property of that part of the town outside of said villages and shall be assessed, levied and collected therefrom in the same manner as other town charges. The planning board shall have the power and authority to employ experts, clerks and a secretary and to pay for their services, and to provide for such other expenses as may be necessary and proper, not exceeding in all the appropriation that may be made therefor by the town board for such planning board.

3. Town board members ineligible. No person who is a member of the town board shall be eligible for membership on such planning board.

4. Terms of members first appointed. The terms of members of the board shall be for terms so fixed that the term of one member shall expire at the end of the calendar year in which such members were initially appointed. The terms of the remaining members shall be so fixed that one term shall expire at the end of each calendar year thereafter. At the expiration of the term of each member first appointed, his or her successor shall be appointed for a term which shall be equal in years to the number of members of the board.

5. Terms of members now in office. Members now holding office for terms which do not expire at the end of a calendar year shall, upon the expiration of their term, hold office until the end of the calendar year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the board.

6. Increasing membership. Any town board may, by local law or ordinance, increase a five member planning board to seven members. Additional members shall be first appointed for single terms as provided by resolution of the

town board in order that the terms of members shall expire in each of seven successive years and their successors shall thereafter be appointed for full terms of seven years. No such additional member shall take part in the consideration of any matter for which an application was on file with the planning board at the time of his or her appointment.

7. Decreasing membership. A town board which has seven members on the planning board may by local law or ordinance, decrease the membership to five, to take effect upon the next two expirations of terms. However, no incumbent shall be removed from office except upon the expiration of his or her term, except as hereinafter provided.

7-a. Training and attendance requirements. a. Each member of the planning board shall complete, at a minimum, four hours of training each year designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four hours in any one year may be carried over by the member into succeeding years in order to meet the requirements of this subdivision. Such training shall be approved by the town board and may include, but not be limited to, training provided by a municipality, regional or county planning office or commission, county planning federation, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to, electronic media, video, distance learning and traditional classroom training.

b. To be eligible for reappointment to such board, such member shall have completed the training promoted by the town pursuant to this subdivision.

c. The training required by this subdivision may be waived or modified by resolution of the town board when, in the judgment of the town board, it is in the best interest of the town to do so.

d. No decision of a planning board shall be voided or declared invalid because of a failure to comply with this subdivision.

8. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the town board shall appoint the new member for the unexpired term.

9. Removal of members. The town board shall have the power to remove, after public hearing, any member of the planning board for cause. Any planning board member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the town board by local law or ordinance.

10. Chairperson duties. All meetings of the planning board shall be held at the call of the chairperson and at such other times as such board may determine. Such chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.

11. Appointment of agricultural member. Notwithstanding any provision of this chapter or of any general, special or local law or ordinance, a town board may, if an agricultural district created pursuant to section three hundred three of article twenty-five-AA of the agriculture and markets law exists wholly or partly within the boundaries of

such town, include on the planning board one or more members each of whom derives ten thousand dollars or more annual gross income from agricultural pursuits in said town. As used in this subdivision, the term "agricultural pursuits" means the production of crops, livestock and livestock products, aquacultural products, and woodland products as defined in section three hundred one of the agriculture and markets law.

12. Service on other planning boards. No person shall be disqualified from serving as a member of the town planning board by reason of serving as a member of a village or county planning board.

13. Rules and regulations. The planning board may recommend to the town board regulations relating to any subject matter over which the planning board has jurisdiction under this article or any other statute, or under any local law or ordinance of the town. Adoption of any such recommendations by the town board shall be by local law or ordinance.

14. Report on referred matters; general reports. a. The town board may by resolution provide for the reference of any matter or class of matters, other than those referred to in subdivision thirteen of this section, to the planning board before final action is taken thereon by the town board or other office or officer of said town having final authority over said matter. The town board may further stipulate that final action thereon shall not be taken until the planning board has submitted its report thereon, or has had a reasonable time, to be fixed by the town board in said resolution, to submit the report.

b. The planning board may review and make recommendations on a proposed town comprehensive plan or amendment thereto. In addition, the planning board shall have full power and authority to make investigations, maps, reports and recommendations in connection therewith relating to the planning and development of the town as it seems desirable, providing the total expenditures of said board shall not exceed the appropriation provided therefor.

15. Alternate members. a. A town board may, by local law or ordinance, or as part of the local law or ordinance creating the planning board, establish alternate planning board member positions for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest. Alternate members of the planning board shall be appointed by resolution of the town board, for terms established by the town board.

b. The chairperson of the planning board may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial planning board meeting at which the substitution is made.

c. All provisions of this section relating to planning board member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, and service on other boards, shall also apply to alternate members.

16. Voting requirements. Every motion or resolution of a planning board shall require for its adoption the affirmative vote of a majority of all the members of the planning board. Where an action is the subject of a referral

to the county planning agency or regional planning council the voting provisions of sections two hundred thirty-nine-m and two hundred thirty-nine-n of the general municipal law shall apply.

Credits

(Added L.1992, c. 663, § 1. Amended L.1993, c. 208, § 10; L.1993, c. 211, § 4; L.1994, c. 486, § 7; L.1995, c. 418, § 6; L.1997, c. 458, § 21, eff. July 1, 1998; L.1998, c. 137, § 4, eff. July 1, 1998; L.2002, c. 662, § 2, eff. July 1, 2003; L.2006, c. 662, § 5, eff. Jan. 1, 2007.)

McKinney's Consolidated Laws of New York Annotated
Town Law (Refs & Annos)
Chapter 62. Of the Consolidated Laws (Refs & Annos)
Article 16. Zoning and Planning (Refs & Annos)

THIS DOCUMENT
IS DOUBLE-SIDED

McKinney's Town Law § 276

§ 276. Subdivision review; approval of plats; development of filed plats

Effective: September 17, 2010

Currentness

1. Purpose. For the purpose of providing for the future growth and development of the town and affording adequate facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of its population, the town board may, by resolution, authorize and empower the planning board to approve preliminary and final plats of subdivisions showing lots, blocks or sites, with or without streets or highways, within that part of the town outside the limits of any incorporated village.

2. Authorization for review of previously filed plats. For the same purposes and under the same conditions, the town board may, by resolution, authorize and empower the planning board to approve the development of plats, entirely or partially undeveloped, which were filed in the office of the clerk of the county in which such plat is located prior to the appointment of such planning board and grant to the board the power to approve such plats. The term "undeveloped" shall mean those plats where twenty percent or more of the lots within the plat are unimproved unless existing conditions, such as poor drainage, have prevented their development.

3. Filing of certificate. The clerk of every town which has authorized its planning board to approve plats as set forth herein shall immediately file a certificate of that fact with the clerk or register of the county in which such town is located.

4. Definitions. When used in this article the following terms shall have the respective meanings set forth herein except where the context shows otherwise:

(a) "Subdivision" means 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 term "subdivision" may include any alteration of lot lines or dimensions of any lots or sites shown on a plat previously approved and filed in the office of the county clerk or register of the county in which such plat is located. Subdivisions may be defined and delineated by local regulation, as either "major" or "minor", with the review procedures and criteria for each set forth in such local regulations.

(b) "Preliminary plat" means a drawing prepared in a manner prescribed by local regulation showing the layout of a proposed subdivision including, but not restricted to, road and lot layout and approximate dimensions, key plan, topography and drainage, all proposed facilities unsized, including preliminary plans and profiles, at suitable scale and in such detail as local regulation may require.

(c) "Preliminary plat approval" means the approval of the layout of a proposed subdivision as set forth in a preliminary plat but subject to the approval of the plat in final form in accordance with the provisions of this section.

(d) "Final plat" means a drawing prepared in a manner prescribed by local regulation, that shows a proposed subdivision, containing in such additional detail as shall be provided by local regulation all information required to be shown on a preliminary plat and the modifications, if any, required by the planning board at the time of approval of the preliminary plat if such preliminary plat has been so approved.

(e) "Conditional approval of a final plat" means approval by a planning board of a final plat subject to conditions set forth by the planning board in a resolution conditionally approving such plat. Such conditional approval does not qualify a final plat for recording nor authorize issuance of any building permits prior to the signing of the plat by a duly authorized officer of the planning board and recording of the plat in the office of the county clerk or register as herein provided.

(f) "Final plat approval" means the signing of a plat in final form by a duly authorized officer of a planning board pursuant to a planning board resolution granting final approval to the plat or after conditions specified in a resolution granting conditional approval of the plat are completed. Such final approval qualifies the plat for recording in the office of the county clerk or register in the county in which such plat is located.

5. Approval of preliminary plats.

(a) Submission of preliminary plats. All plats shall be submitted to the planning board for approval in final form provided, however, that where the planning board has been authorized to approve preliminary plats, the owner may submit or the planning board may require that the owner submit a preliminary plat for consideration. Such a preliminary plat shall be clearly marked "preliminary plat" and shall conform to the definition provided in this section.

(b) Coordination with the state environmental quality review act.¹ The planning board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

(c) Receipt of a complete preliminary plat. A preliminary plat shall not be considered complete until a negative declaration has been filed or until a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the state environmental quality review act. The time periods for review of a preliminary plat shall begin upon filing of such negative declaration or such notice of completion.

(d) Planning board as lead agency under the state environmental quality review act; public hearing; notice; decision.

(i) Public hearing on preliminary plats. The time within which the planning board shall hold a public hearing on the preliminary plat shall be coordinated with any hearings the planning board may schedule pursuant to the state environmental quality review act, as follows:

(1) If such board determines that the preparation of an environmental impact statement on the preliminary plat is not required, the public hearing on such plat shall be held within sixty-two days after the receipt of a complete preliminary plat by the clerk of the planning board; or

(2) If such board determines that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is held, the public hearing on the preliminary plat and the draft environmental impact statement shall be held jointly within sixty-two days after the filing of the notice of completion of such draft environmental impact statement in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the public hearing on the preliminary plat shall be held within sixty-two days of filing the notice of completion.

(ii) Public hearing; notice, length. The hearing on the preliminary plat shall be advertised at least once in a newspaper of general circulation in the town at least five days before such hearing if no hearing is held on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat. The hearing on the preliminary plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(iii) Decision. The planning board shall approve, with or without modification, or disapprove such preliminary plat as follows:

(1) If the planning board determines that the preparation of an environmental impact statement on the preliminary plat is not required such board shall make its decision within sixty-two days after the close of the public hearing; or

(2) If the planning board determines that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within

forty-five days following the close of such public hearing in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of the public hearing on the preliminary plat. Within thirty days of the filing of such final environmental impact statement, the planning board shall issue findings on the final environmental impact statement and make its decision on the preliminary plat.

(iv) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board. When so approving a preliminary plat, the planning board shall state in writing any modifications it deems necessary for submission of the plat in final form.

(e) Planning board not as lead agency under the state environmental quality review act; public hearing; notice; decision.

(i) Public hearing on preliminary plats. The planning board shall, with the agreement of the lead agency, hold the public hearing on the preliminary plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement or if no public hearing is held on the draft environmental impact statement, the planning board shall hold the public hearing on the preliminary plat within sixty-two days after the receipt of a complete preliminary plat by the clerk of the planning board.

(ii) Public hearing; notice, length. The hearing on the preliminary plat shall be advertised at least once in a newspaper of general circulation in the town at least five days before such hearing if held independently of the hearing on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat. The hearing on the preliminary plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(iii) Decision. The planning board shall by resolution approve with or without modification or disapprove the preliminary plat as follows:

(1) If the preparation of an environmental impact statement on the preliminary plat is not required, the planning board shall make its decision within sixty-two days after the close of the public hearing on the preliminary plat.

(2) If an environmental impact statement is required, the planning board shall make its own findings and its decision on the preliminary plat within sixty-two days after the close of the public hearing on such preliminary plat or within thirty days of the adoption of findings by the lead agency, whichever period is longer.

(iv) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board. When so approving a preliminary plat, the planning board shall state in writing any modifications it deems necessary for submission of the plat in final form.

(f) Certification and filing of preliminary plat. Within five business days of the adoption of the resolution granting approval of such preliminary plat, such plat shall be certified by the clerk of the planning board as having been granted preliminary approval and a copy of the plat and resolution shall be filed in such clerk's office. A copy of the resolution shall be mailed to the owner.

(g) Filing of decision on preliminary plat. Within five business days from the date of the adoption of the resolution stating the decision of the board on the preliminary plat, the chairman or other duly authorized member of the planning board shall cause a copy of such resolution to be filed in the office of the town clerk.

(h) Revocation of approval of preliminary plat. Within six months of the approval of the preliminary plat the owner must submit the plat in final form. If the final plat is not submitted within six months, approval of the preliminary plat may be revoked by the planning board.

6. Approval of final plats. (a) Submission of final plats. Final plats shall conform to the definition provided by this section.

(b) Final plats which are in substantial agreement with approved preliminary plats. When a final plat is submitted which the planning board deems to be in substantial agreement with a preliminary plat approved pursuant to this section, the planning board shall by resolution conditionally approve with or without modification, disapprove, or grant final approval and authorize the signing of such plat, within sixty-two days of its receipt by the clerk of the planning board.

(c) Final plats when no preliminary plat is required to be submitted; receipt of complete final plat. When no preliminary plat is required to be submitted, a final plat shall not be considered complete until a negative declaration has been filed or until a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the state environmental quality review act. The time periods for review of such plat shall begin upon filing of such negative declaration or such notice of completion.

(d) Final plats; not in substantial agreement with approved preliminary plats, or when no preliminary plat is required to be submitted. When a final plat is submitted which the planning board deems not to be in substantial agreement with a preliminary plat approved pursuant to this section, or when no preliminary plat is required to be submitted and a final plat clearly marked "final plat" is submitted conforming to the definition provided by this section the following shall apply:

(i) Planning board as lead agency; public hearing; notice; decision.

(1) Public hearing on final plats. The time within which the planning board shall hold a public hearing on such final plat shall be coordinated with any hearings the planning board may schedule pursuant to the state environmental quality review act, as follows:

(a) if such board determines that the preparation of an environmental impact statement is not required, the public hearing on a final plat not in substantial agreement with a preliminary plat, or on a final plat when no preliminary plat is required to be submitted, shall be held within sixty-two days after the receipt of a complete final plat by the clerk of the planning board; or

(b) if such board determines that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is held, the public hearing on the final plat and the draft environmental impact statement shall be held jointly within sixty-two days after the filing of the notice of completion of such draft environmental impact statement in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the public hearing on the final plat shall be held within sixty-two days following filing of the notice of completion.

(2) Public hearing; notice, length. The hearing on the final plat shall be advertised at least once in a newspaper of general circulation in the town at least five days before such hearing if no hearing is held on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such final plat. The hearing on the final plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(3) Decision. The planning board shall make its decision on the final plat as follows:

(a) if such board determines that the preparation of an environmental impact statement on the final plat is not required, the planning board shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat, within sixty-two days after the date of the public hearing; or

(b) if such board determines that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of such public hearing in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of the public hearing on the final plat. Within thirty days of the filing of the final environmental impact statement, the planning board shall issue findings on such final environmental impact statement and shall by resolution conditionally approve, with or without modification,

disapprove, or grant final approval and authorize the signing of such plat.

(4) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board.

(ii) Planning board not as lead agency; public hearing; notice; decision.

(1) Public hearing. The planning board shall, with the agreement of the lead agency, hold the public hearing on the final plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement or if no public hearing is held on the draft environmental impact statement, the planning board shall hold the public hearing on the final plat within sixty-two days after the receipt of a complete final plat by the clerk of the planning board.

(2) Public hearing; notice, length. The hearing on the final plat shall be advertised at least once in a newspaper of general circulation in the town at least five days before such hearing if held independently of the hearing on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such final plat. The hearing on the final plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(3) Decision. The planning board shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat as follows:

(a) If the preparation of an environmental impact statement on the final plat is not required, the planning board shall make its decision within sixty-two days after the close of the public hearing on the final plat.

(b) If an environmental impact statement is required, the planning board shall make its own findings and its decision on the final plat within sixty-two days after the close of the public hearing on such final plat or within thirty days of the adoption of findings by the lead agency, whichever period is longer. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board.

7. Approval and certification of final plats. (a) Certification of plat. Within five business days of the adoption of the resolution granting conditional or final approval of the final plat, such plat shall be certified by the clerk of the planning board as having been granted conditional or final approval and a copy of such resolution and plat shall be filed in such clerk's office. A copy of the resolution shall be mailed to the owner. In the case of a conditionally approved plat, such resolution shall include a statement of the requirements which when completed will authorize the signing thereof. Upon completion of such requirements the plat shall be signed by said duly authorized officer of the planning board and a copy of such signed plat shall be filed in the office of the clerk of the planning board or filed with the town clerk as determined by the town board.

(b) Approval of plat in sections. In granting conditional or final approval of a plat in final form, the planning board may permit the plat to be subdivided and developed in two or more sections and may in its resolution granting conditional or final approval state that such requirements as it deems necessary to insure the orderly development of the plat be completed before said sections may be signed by the duly authorized officer of the planning board. Conditional or final approval of the sections of a final plat may be granted concurrently with conditional or final approval of the entire plat, subject to any requirements imposed by the planning board.

(c) Duration of conditional approval of final plat. Conditional approval of the final plat shall expire within one hundred eighty days after the resolution granting such approval unless all requirements stated in such resolution have been certified as completed. The planning board may extend for periods of ninety days each, the time in which a conditionally approved plat must be submitted for signature if, in the planning board's opinion, such extension is warranted by the particular circumstances.

8. Default approval of preliminary or final plat. The time periods prescribed herein within which a planning board must take action on a preliminary plat or a final plat are specifically intended to provide the planning board and the public adequate time for review and to minimize delays in the processing of subdivision applications. Such

periods may be extended only by mutual consent of the owner and the planning board. In the event a planning board fails to take action on a preliminary plat or a final plat within the time prescribed therefor after completion of all requirements under the state environmental quality review act, or within such extended period as may have been established by the mutual consent of the owner and the planning board, such preliminary or final plat shall be deemed granted approval. The certificate of the town clerk as to the date of submission of the preliminary or final plat and the failure of the planning board to take action within the prescribed time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of approval herein required.

9. Filing of decision on final plat. Within five business days from the date of the adoption of the resolution stating the decision of the board on the final plat, the chairman or other duly authorized member of the planning board shall cause a copy of such resolution to be filed in the office of the town clerk.

10. Notice to county planning board or agency or regional planning council. When a county planning board or agency or a regional planning council has been authorized to review subdivision plats pursuant to section two hundred thirty-nine-n of the general municipal law, the clerk of the planning board shall refer all applicable preliminary and final plats to such county planning board or agency or regional planning council as provided in that section.

11. Filing of final plat; expiration of approval. The owner shall file in the office of the county clerk or register such approved final plat or a section of such plat within sixty-two days from the date of final approval or such approval shall expire. The following shall constitute final approval: the signature of the duly authorized officer of the planning board constituting final approval by the planning board of a plat as herein provided; or the approval by such board of the development of a plat or plats already filed in the office of the county clerk or register of the county in which such plat or plats are located if such plats are entirely or partially undeveloped; or the certificate of the town clerk as to the date of the submission of the final plat and the failure of the planning board to take action within the time herein provided. In the event the owner shall file only a section of such approved plat in the office of the county clerk or register, the entire approved plat shall be filed within thirty days of the filing of such section with the town clerk in each town in which any portion of the land described in the plat is situated. Such section shall encompass at least ten percent of the total number of lots contained in the approved plat and the approval of the remaining sections of the approved plat shall expire unless said sections are filed before the expiration of the exemption period to which such plat is entitled under the provisions of subdivision two of section two hundred sixty-five-a of this article.

12. Subdivision abandonment. The owner of an approved subdivision may abandon such subdivision pursuant to the provisions of section five hundred sixty of the real property tax law.

13. *Repealed.*

Credits

(Added L.1992, c. 727, § 1. Amended L.1994, c. 486, §§ 10 to 13; L.1995, c. 423, §§ 7 to 11; L.1996, c. 235, § 6; L.1997, c. 458, § 25, eff. July 1, 1998; L.2010, c. 522, § 1, eff. Sept. 17, 2010.)

State Environmental Quality Review Act Amendments Are in Full Effect

Lucia Forte

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State Environmental Quality Review Act Amendments Are in Full Effect

In the past year, articles hinted at the New York State Department of Environmental Conservation (NYSDEC) implementing updates to modernize the State Environmental Quality Review Act (SEQRA) regulations in 6 NYCRR Part 617. Although the NYSDEC formally adopted the updates in 2018, the revised regulations officially took effect January 1, 2019.

Below are highlights of the changes to the SEQRA regulations, referred to as the “2018 Amendments”. Actions being considered in accordance with the SEQRA for which a determination of significance wasn’t issued prior to January 1, 2019, should follow these new regulations.

Definitions (6 NYCRR Part 617.2)

- “Green infrastructure” was formally defined and includes the names of specific practices that meet this definition.

Type I Actions (6 NYCRR Part 617.4)

The Type I Action list remained relatively untouched. However, there are three significant modifications that should be noted:

- Projects involving the connection of units to existing community or public water and sewerage systems, including sewage treatment work, received new thresholds involving the population of persons within the project site municipality and the number of units proposed for connection.
- New Type I thresholds were added to projects involving parking, particularly for large increases in parking within smaller communities.
- Changes for actions that potentially affect historic or cultural resources. Resources determined to be *eligible* for listing on the State Register of Historic Places should now be considered.

Type II Actions (6 NYCRR Part 617.4)

A large focus of the amendments is the addition of actions to the Type II Action

list. These project types were added to better streamline the SEQRA process since projects on the Type II list don't require further SEQRA consideration. The added projects were determined to not have a significant impact on the environment. The new Type II actions list is extensive, each with their own individual caveats. As a general guideline they're associated with the following types of activities:

- Green infrastructure retrofits,
- Upgrading buildings to meet energy codes,
- Telecommunication cable installations,
- Solar energy arrays installations,
- Lot line adjustments,
- Reuse of residential or commercial structures,
- County Planning Board referrals,
- Acquisition and dedication of parkland and conservation easements,
- Transfers of land for 1-3 family housing,
- Sale and conveyance of real property by public auction pursuant to Article 11 of the Real Property Tax Law, and
- Anaerobic digesters at publically-owned landfills.

Scoping (6 NYCRR Part 617.8)

Some of the most noteworthy modifications to the SEQRA affect projects that result in a Positive Declaration, requiring the issuance of an Environmental Impact Statement (EIS). Scoping, a step completed early in the EIS process, is used to focus the Draft EIS on issues that have the potential to cause significant adverse impacts and to eliminate further discussion of topics that are found to be irrelevant or not significant. This step used to be optional, but became a required component of the EIS process in the amendments (only Supplemental EIS' are exempt). Details of how and when to complete project scoping must be included in a project's Positive Declaration.

Preparation and Content of Environmental Impacts Statements (6 NYCRR Part 617.9)

This particular update addresses climate change. Consideration of measures to reduce an action's impact on climate change and associated impacts is now required when preparing an EIS. More specifically, this modification includes two components: mitigation of greenhouse gas emissions that cause and contribute to climate change, and assessing a project's vulnerability or resiliency to the effects of climate change.

Document Preparation, Filing, Publication and Distribution (6 NYCRR Part 617.12)

There are 6 main adjustments that deal with how noticing and publishing requirements are followed during the EIS process:

- Draft and final scopes must be published in the Environmental Notice Bulletin;
- Additional hard copies of electronic documents must be provided to a local public library if sufficient copies of the EIS are not available to meet public interest;
- The EIS in hard copy or electronic format must be sent to the NYSDEC Division of Environmental Permits in Albany;
- Draft and final scope (and draft and final EIS') are to be published on a publicly accessible website;
- Website posting may be discontinued one-year after all necessary federal, state, and local permits have been issued, or the action is funded or undertaken, whichever is later; and
- Printed filings and notices should clearly indicate the website address used for posting.

Environmental Assessment Forms (6 NYCRR Part 617.204)

Similar to other adjustments, wording changes were also applied to short and full environmental assessment forms (EAFs) to make them consistent with the other amendments. Additional resource updates to the EAF Workbooks released by the NYSDEC during the 2013 modifications are also on the way. The updated EAFs can be found on the NYSDEC's website: <https://www.dec.ny.gov/permits/6191.html>.

If you have any questions about the most recent revisions to the State Environmental Quality Review Act, or how to successfully steer an action through the review process, give our knowledgeable staff a call at 315-457-5200. More information concerning the NYSDEC's 2018 Amendments can be found here: <https://www.dec.ny.gov/permits/83389.html>.

PLANNING: Sections 239-l and 239-m Application*

Project Name: _____ Date Submitted: _____

Enclosed for your review and recommendation, pursuant to Sections 239-l and 239-m of General Municipal Law, is the following application for (check all that apply):

- Use Variance
- Area Variance
- Special Permit
- Site Plan Review
- Planned Development
- Rezoning
- Zoning Text Change
- Other _____

Project Sponsor/Applicant: _____

Project Location: _____

Tax Map Number(s): 1. _____; 2. _____; 3. _____; 4. _____

Municipality: _____

Zoning District: _____

Brief Project Description: _____

Other Pertinent Information: _____

This application is qualified for review because it meets one or more of the following (check all that apply):

Within 500 feet of the following:

- Municipal Boundary
- Farm in an Agricultural District
- State/County Road
- State/County Park
- State/County Drainageway/Watercourse
- Zoning Text Change
- Zoning Map Change
- Other _____

* Form prepared by Broome County Department of Planning and Economic Development.

The following public hearings and/or meetings are scheduled by the (check all that apply):

	Public Hearing Date	Meeting Date (if required)
<input type="checkbox"/> [City/Town/Village] Board	_____	_____
<input type="checkbox"/> Zoning Board of Appeals	_____	_____
<input type="checkbox"/> Planning Board	_____	_____
<input type="checkbox"/> Other _____	_____	_____

Respectfully submitted,

Signature

McKinney's Consolidated Laws of New York Annotated
Town Law (Refs & Annos)
Chapter 62. Of the Consolidated Laws (Refs & Annos)
Article 16. Zoning and Planning (Refs & Annos)

McKinney's Town Law § 277

§ 277. Subdivision review; approval of plats; additional requisites
Currentness

1. Purpose. Before the approval by the planning board of a plat showing lots, blocks or sites, with or without streets or highways, or the approval of a plat already filed in the office of the clerk of the county wherein such plat is situated if the plat is entirely or partially undeveloped, the planning board shall require that the land shown on the plat be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, drainage or other menace to neighboring properties or the public health, safety and welfare.

2. Additional requirements. The planning board shall also require that:

(a) the streets and highways be of sufficient width and suitable grade and shall be suitably located to accommodate the prospective traffic, to afford adequate light and air, to facilitate fire protection, and to provide access of firefighting equipment to buildings. If there be an official map, town comprehensive plan or functional/master plans, such streets and highways shall be coordinated so as to compose a convenient system conforming to the official map and properly related to the proposals shown in the comprehensive plan of the town;

(b) suitable monuments be placed at block corners and other necessary points as may be required by the board and the location thereof is shown on the map of such plat;

(c) all streets or other public places shown on such plats be suitably graded and paved; street signs, sidewalks, street lighting standards, curbs, gutters, street trees, water mains, fire alarm signal devices (including necessary ducts and cables or other connecting facilities), sanitary sewers and storm drains be installed all in accordance with standards, specifications and procedures acceptable to the appropriate town departments except as hereinafter provided, or alternatively that a performance bond or other security be furnished to the town, as hereinafter provided.

3. Compliance with zoning regulations. Where a zoning ordinance or local law has been adopted by the town, the lots shown on said plat shall at least comply with the requirements thereof subject, however, to the provisions of section two hundred seventy-eight of this article.

4. Reservation of parkland on subdivision plats containing residential units. (a) Before the planning board may approve a subdivision plat containing residential units, such subdivision plat shall also show, when required by such board, a park or parks suitably located for playground or other recreational purposes.

(b) Land for park, playground or other recreational purposes may not be required until the planning board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the town based on projected population growth to which the particular subdivision plat will contribute.

(c) In the event the planning board makes a finding pursuant to paragraph (b) of this subdivision that the proposed subdivision plat presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such subdivision plat, the planning board may require a sum of money in lieu thereof, in an amount to be established by the town board. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the subdivision plat which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the planning board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the town exclusively for park, playground or other recreational purposes, including the acquisition of property.

5. Character of the development. In making such determination regarding streets, highways, parks and required improvements, the planning board shall take into consideration the prospective character of the development, whether dense residence, open residence, business or industrial.

6. Application for area variance. Notwithstanding any provision of law to the contrary, where a plat contains one or more lots which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section two hundred sixty-seven-b of this article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations. In reviewing such application the zoning board of appeals shall request the planning board to provide a written recommendation concerning the proposed variance.

7. Waiver of requirements. The planning board may waive, when reasonable, any requirements or improvements for the approval, approval with modifications or disapproval of subdivisions submitted for its approval. Any such waiver, which shall be subject to appropriate conditions, may be exercised in the event any such requirements or improvements are found not to be requisite in the interest of the public health, safety, and general welfare or inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the subdivision.

8. Installation of fire alarm devices. The installation of fire alarm signal devices including necessary connecting facilities shall be required or waived pursuant to this section only with the approval of: (a) the board of supervisors or legislative body of the county if the installation is to be made in an area included in a central fire alarm system established pursuant to paragraph (h) of subdivision one of section two hundred twenty-five of the county law or (b) the town board in any other case unless the installation is to be made in a fire district in a town in which no central fire alarm system has been established pursuant to subdivision eleven-c of section sixty-four of this chapter,

in which case only the approval of the board of fire commissioners of such fire district shall be necessary. Required installations of fire alarm signal devices including necessary connecting facilities shall be made in accordance with standards, specifications and procedures acceptable to the appropriate board.

9. Performance bond or other security. (a) Furnishing of performance bond or other security. As an alternative to the installation of infrastructure and improvements, as above provided, prior to planning board approval, a performance bond or other security sufficient to cover the full cost of the same, as estimated by the planning board or a town department designated by the planning board to make such estimate, where such departmental estimate is deemed acceptable by the planning board, shall be furnished to the town by the owner.

(b) Security where plat approved in sections. In the event that the owner shall be authorized to file the approved plat in sections, as provided in subdivision ten of section two hundred seventy-six of this article, approval of the plat may be granted upon the installation of the required improvements in the section of the plat filed in the office of the county clerk or register or the furnishing of security covering the costs of such improvements. The owner shall not be permitted to begin construction of buildings in any other section until such section has been filed in the office of the county clerk or register and the required improvements have been installed in such section or a security covering the cost of such improvements is provided.

(c) Form of security. Any such security must be provided pursuant to a written security agreement with the town, approved by the town board and also approved by the town attorney as to form, sufficiency and manner of execution, and shall be limited to: (i) a performance bond issued by a bonding or surety company; (ii) the deposit of funds in or a certificate of deposit issued by a bank or trust company located and authorized to do business in this state; (iii) an irrevocable letter of credit from a bank located and authorized to do business in this state; (iv) obligations of the United States of America; or (v) any obligations fully guaranteed as to interest and principal by the United States of America, having a market value at least equal to the full cost of such improvements. If not delivered to the town, such security shall be held in a town account at a bank or trust company.

(d) Term of security agreement. Any such performance bond or security agreement shall run for a term to be fixed by the planning board, but in no case for a longer term than three years, provided, however, that the term of such performance bond or security agreement may be extended by the planning board with consent of the parties thereto. If the planning board shall decide at any time during the term of the performance bond or security agreement that the extent of building development that has taken place in the subdivision is not sufficient to warrant all the improvements covered by such security, or that the required improvements have been installed as provided in this section and by the planning board in sufficient amount to warrant reduction in the amount of said security, and upon approval by the town board, the planning board may modify its requirements for any or all such improvements, and the amount of such security shall thereupon be reduced by an appropriate amount so that the new amount will cover the cost in full of the amended list of improvements required by the planning board.

(e) Default of security agreement. In the event that any required improvements have not been installed as provided in this section within the term of such security agreement, the town board may thereupon declare the said performance bond or security agreement to be in default and collect the sum remaining payable thereunder; and upon the receipt of the proceeds thereof, the town shall install such improvements as are covered by such security and as commensurate with the extent of building development that has taken place in the subdivision but not exceeding in cost the amount of such proceeds.

10. Provision of improvements by town. (a) Adoption of resolution. Notwithstanding the foregoing provisions of

this section, with respect to plats approved by the planning board, the town board may adopt a resolution that sidewalks and/or water mains and/or sanitary sewers and/or storm drains required by the planning board pursuant to this section be constructed or installed at the expense of the town as authorized by articles three-A¹ and twelve-C² of this chapter or at the expense of an existing improvement district in which the plat is located. Such improvements may also be acquired without consideration by the town board on behalf of the town or an improvement district as authorized by article three-A, twelve,³ twelve-A⁴ or twelve-C of this chapter.

(b) Establishment of improvement district. If an improvement district has not been created for the area in which the plat is located, the town board may establish or extend an improvement district as provided in this chapter or in any applicable special law for the purpose of constructing or installing or acquiring without consideration such improvements shown on the map of any plat as the town board may determine.

(i) Execution of contracts. The town board resolution shall require that the owner or owners of real property execute such contracts with the town as the town board may deem necessary for the purpose of ensuring that the expense of such construction or installation, including the cost of issuing obligations to raise moneys to pay the expense thereof and interest on such obligations, shall not be an undue burden upon the property deemed benefitted by the agreements or of such improvement district or extension thereof as the case may be and may require a security agreement, including the filing of a surety bond, letter of credit or the deposit of cash or securities reasonably acceptable to the town board as to assure the performance of such contracts.

(ii) Any such surety agreement shall be executed in accordance with this subdivision, and may contain such other provisions as the town board may reasonably determine to be necessary to ensure the performance of such contracts.

11. Suffolk county; disposal of sewage from plats. (a) In the county of Suffolk, when the health department shall have directed that disposal of sewage from the plat shall be provided for by a communal sewerage system, consisting of a treatment plant and collection system, then the Suffolk county sewer agency shall determine, specify and direct the means and method by which the aforesaid system shall be best provided by and at the expense of the developer. Among the alternative means and methods the Suffolk county sewer agency may direct, shall be: (i) that the developer, at its own cost and expense, install, build and construct such system according to such plans, specifications, conditions and guarantees as may be required by the Suffolk county sewer agency, and upon satisfactory completion thereof, the developer shall dedicate and donate same, without cost to the Suffolk county sewer agency, or its nominee, and the developer shall also petition to form a county district, but if the Suffolk county sewer agency shall determine that a suitable complete communal sewerage system of adequate size cannot be properly located in the plat or is otherwise not practical, then, (ii) the developer shall install, build and construct temporary cesspools or septic tanks together with a sewage collection system according to such plans, specifications, conditions and guarantees as may be required by the Suffolk county sewer agency, and upon satisfactory completion thereof, the developer shall dedicate and donate same, without cost, to the Suffolk county sewer agency or its nominee, and in addition thereto, the agency may also require the payment to the Suffolk county sewer agency of a sum of money in an amount to be determined by the Suffolk county sewer agency, and the developer shall also petition to form a county district, or (iii) the developer shall install, build and construct temporary cesspools or septic tanks and, in addition thereto, shall pay to the Suffolk county sewer agency a sum of money in an amount to be determined by the Suffolk county sewer agency and the developer shall also petition to form a county district, or (iv) the developer shall provide such other means and methods or combination thereof as the Suffolk county sewer agency may determine, specify and direct.

(b) Any sums paid to the Suffolk county sewer agency pursuant to any provisions of this section, shall constitute a trust fund to be used exclusively for a future communal sewerage system which shall be owned and operated by a county sewer district, which district shall include the subject plat within its bounds. Such moneys and accrued interest, if any, when paid to such district, shall be credited over a period of time determined by the district, pro rata, against the sewer assessment of each tax parcel of the subject plat as may exist at the time of the payment of such moneys and accrued interest to such district. Provided, however, that if so directed by local law enacted by the Suffolk county legislature with approval of the county executive:

(i) the Suffolk county sewer agency may refund all moneys on deposit in said trust fund pursuant to agreements entered into before July first, nineteen hundred seventy-eight under the authority of subparagraphs (ii) and (iii) of paragraph (a) of this subdivision, and all accumulated interest, if any, earned thereon, to the owner as of July first, nineteen hundred eighty-eight of the subject plat from which moneys deposited into said trust fund were collected, or a predecessor in title if said predecessor establishes a superior right to the moneys and accumulated interest; and

(ii) the Suffolk county sewer agency may cease to accept money for deposit into the trust fund if said money is due and owing because of agreements entered into before July first, nineteen hundred seventy-eight under the authority of subparagraphs (ii) and (iii) of paragraph (a) of this subdivision.

(c) The useable value of any communal sewage collection system built under subparagraph (i), (ii) or (iv) of paragraph (a) of this subdivision shall be credited over a period of time determined by the district, pro rata, against the sewer assessment of each tax parcel of the plat as may exist at the time such system is incorporated into a county sewer district which shall include the subject plat within its bounds.

(d) While planning for and pending the formation or extension of a district contemplated hereunder which will incorporate a plat that has or is to have a dry lateral sewer collection system installed therein, the county legislature may contract in those instances where it feels an emergency exists, and the public health and welfare are in urgent need and will be best served, with any department, agency, subdivision, or political instrumentality of the state, county, town, or village, or an improvement district or a private entity having a treatment plant, to furnish sewerage disposal service to such plat on such terms and conditions and for such consideration as the Suffolk county sewer agency may recommend and the county legislature approves. The county legislature may finance, in whole or in part, pursuant to the local finance law, any expenditure made pursuant to this section. Upon the erection of the contemplated district, it shall reimburse the county for any funds the county may have expended to provide such interim disposal service to the plat.

Credits

(Added L.1992, c. 727, § 2. Amended L.1997, c. 458, § 26, eff. July 1, 1998.)

Editors' Notes

McKinney's Consolidated Laws of New York Annotated
Real Property Tax Law (Refs & Annos)
Chapter 50-a. Of the Consolidated Laws
Article 5. Assessment Procedure
Title 4. Miscellaneous Provisions (Refs & Annos)

McKinney's RPTL § 560

§ 560. Abandoned subdivisions
Currentness

1. Whenever more than five years has elapsed after the subdivision of any tract of land into lots, plots or sites, with or without proposed streets, the owner of such tract or any part thereof composed of two or more contiguous lots may, by an instrument in writing, duly executed and acknowledged, describing such land, disclaim and abandon such subdivision including any streets not opened, accepted or used by the public and which are not necessary for the use of an owner or occupant of any part of such tract. Thereafter, for the purpose of assessment, the lands described therein shall be regarded as a single tract, provided a copy of such instrument is filed (a) with the assessors, (b) if such tract is wholly or partly within a village, with the clerk of each such village, and (c) if such tract is wholly or partly within the unincorporated area of a town, with the town clerk of each such town, and, if a map of such subdivision has been filed in the office of a recording officer, provided such instrument is recorded in the office of such recording officer. A notice of the recording shall be endorsed by the recording officer upon the map at the time of recording the instrument.

2. Neither the assessors nor the recording officer shall accept such an instrument unless it has endorsed thereon or attached thereto a certificate of the county treasurer and a certificate of the collecting officer of any city, town or village wherein such property or any part thereof is situate, stating that all taxes which have been levied against such property have been paid according to the records in the office of the person making the certificate and a receipt of the clerk of each village or town in which any part of such tract is situate for the filing of such instrument and a certificate of the county director of real property tax services that the fee authorized by section five hundred three of this article, if any, has been paid. In such counties, no subdivision of any tract of land into lots, plots or sites or any part thereof shall be abandoned, nor shall the county land map or the county tax map be changed or altered to indicate such an abandonment except as provided in this section.

Credits

(L.1958, c. 959. Amended L.1963, c. 990, §§ 1, 2; L.1966, c. 75, § 1; L.1968, c. 54, § 1; L.1991, c. 413, § 65;
L.1994, c. 680, § 1.)

Notes of Decisions (6)

McKinney's R. P. T. L. § 560, NY RP TAX § 560
Current through L.2019, chapters 1 to 18.

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CODE OF ETHICS
Effective 12/70
Amended 9/90

Section 1. Pursuant to the provisions of section eight hundred six of the General Municipal Law, the Town Board of the Town of Dryden recognizes that there are rules of ethical conduct for public officers and employees which must be observed if a high degree of moral conduct is to be obtained and if public confidence is to be maintained in local government. It is the purpose of this resolution to establish a code of ethics for the officers and employees of the Town of Dryden. These rules shall serve as a guide for official conduct of the officers and employees of the Town of Dryden. The rules of ethical conduct of this code as adopted, shall not conflict with, but shall be in addition to any prohibition of article eighteen of the General Municipal Law or any other general or special law relating to ethical conduct and interest in contracts of municipal officers and employees.

Section 2. Definition. (a) "Municipal Officer or Employee" means an officer or employee of the Town of Dryden, whether paid or unpaid, including members of any administrative board, commission or other agency thereof. No person shall be deemed to be a municipal officer or employee solely by reason of being a volunteer fireman or civil defense volunteer, except a chief engineer or assistant chief engineer.

(b) "Interest" means a pecuniary or material benefit accruing to a municipal officer or employee unless the context otherwise requires.

Section 3. Standards of Conduct. Every officer or employee of the Town of Dryden shall be subject to and abide by the following standards of conduct:

(a) Gifts. They shall not directly or indirectly, solicit any gift; nor accept any gift having a value of seventy-five dollars or more, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence them, or could reasonably be expected to influence them, in the performance of their official duties or was intended as a reward for any official action on their part.

(b) Confidential Information. They shall not disclose confidential information acquired by them in the course of their official duties or use such information to further their personal interest.

(c) Representation before one's own agency. They shall not receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency over which they have jurisdiction or to which they have the power to appoint any member, officer or employee.

(d) Representation before any agency for a contingent fee. They shall not receive, or enter into any agreement, express or implied for compensation for services to be rendered in relation to any matter before any agency of the Town, whereby their compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this paragraph shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

(e) Disclosure of interest in legislation. To the extent that they know thereof, a member of the Town Board and any officer or employee of the Town of Dryden, whether paid or unpaid, who participates in the discussion or gives official opinion to the Town Board on any legislation before the Town Board shall publicly disclose on the official record the nature and extent of any direct or indirect financial or other private interest they may have in such legislation.

(f) Investments in conflict with official duties. They shall not invest nor hold any investment directly or indirectly in any financial business, commercial or other private transaction, which creates a conflict with their official duties.

(g) Private Employment. They shall not engage in, solicit, negotiate for or promise to accept private employment or render services for private interests when such employment or service creates a conflict with or impairs the proper discharge of their official duties.

(h) Future employment. They shall not, after the termination of service or employment with such municipality, appear before any board or agency of the Town of Dryden in relation to any case, proceeding or application in which they personally participated during the period of their service of employment or which was under their active consideration.

Section 4. Nothing herein shall be deemed to bar or prevent the timely filing by a present or former municipal officer or employee of any claim, account, demand or suit against the Town of Dryden, or any agency hereto on behalf of themselves or any member of their family arising out of any personal injury or property damage or for any lawful benefit authorized or permitted by law.

Section 5. Distribution of Code of Ethics. The Town Supervisor of the Town of Dryden shall cause a copy of this Code of Ethics to be distributed to every officer and employee of the Town of Dryden within 10 days after the effective date of this resolution. Each officer and employee elected or appointed thereafter shall be furnished a copy before entering upon the duties of their office or employment.

Section 6. Penalties. In addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate any of the provisions of this code may be suspended or removed from office or employment, as the case may be, in the manner provided by law.

Section 7. Effective Date. This resolution shall take effect immediately.

34 A.D.3d 1159, 824 N.Y.S.2d 781, 2006 N.Y. Slip Op. 08860

**1 In the Matter of Sally J. Swantz et al., Respondents

v

Planning Board of the Village of Cobleskill, Respondent, and Bassett Hospital of Schoharie County,
Appellant.

Supreme Court, Appellate Division, Third Department, New York

500748

November 30, 2006

CITE TITLE AS: Matter of Swantz v Planning Bd. of Vil. of Cobleskill

HEADNOTE

Municipal Corporations

Zoning

Court erred in granting petition seeking *1160 annulment of Planning Board's determination granting site plan approval of parking lot; since Planning Board had no power to interpret local zoning law, and no authority to deny site plan approval based on zoning issue, issue was not properly before court; proper challenge to Village's code enforcement official's determination that proposed use was permitted was to make application to zoning board of appeals.

Kane, J. Appeal from a judgment of the Supreme Court (McNamara, J.), entered February 17, 2006 in Albany County, which, inter alia, granted petitioners' application, in a proceeding pursuant to CPLR article 78, to annul a determination of respondent Planning Board of the Village of Cobleskill granting site plan approval of a parking lot to respondent Bassett Hospital of Schoharie County.

Respondent Bassett Hospital of Schoharie County (hereinafter BHSC) decided to construct a 60-space parking lot on its property in the Village of Cobleskill, Schoharie County. In furtherance of this project, it submitted an application for site plan review to respondent Planning Board of the Village of Cobleskill (hereinafter Board). After the Board approved BHSC's final site plan, petitioners, who own properties near the proposed parking lot, commenced this proceeding seeking an injunction and annulment of the Board's determination on **2 various grounds. Supreme Court dismissed most of petitioners' causes of action, but granted the petition to the extent that the parking lot was not a permitted use under the Village's zoning ordinance, thus justifying injunctive relief preventing BHSC from constructing the parking lot. BHSC appeals.

Supreme Court erred in granting the petition based on an alleged violation of the zoning ordinance. Planning boards are without power to interpret the local zoning law, as that power is vested exclusively in local code enforcement officials and the zoning board of appeals (see Village Law § 7-712-a [4]; § 7-712-b [1]; *Matter of Gershowitz v Planning Bd. of Town of Brookhaven*, 52 NY2d 763, 765 [1980]; *Matter of Jamil v Village of Scarsdale Planning Bd.*, 24 AD3d 552, 554 [2005]; *Matter of J & R Esposito Bldrs. v Coffinan*, 183 AD2d 828, 829 [1992]; *Rattner v Planning Commn. of Vil. of Pleasantville*, 103 AD2d 826, 826 [1984]). Here, during a public meeting, the Board noted that the Village's code enforcement official already determined that the proposed parking lot was a permitted use; the Board did not question that ruling, and the proper channel to challenge that official's decision was to make an application to the zoning board of appeals. Despite being made aware of this information, petitioners did not avail themselves of that proper avenue to challenge the code enforcement official's zoning determination. Thus, the Board had no authority to deny site plan approval based on the zoning issue and that issue was not properly before Supreme Court (see *Matter of Gershowitz v Planning Bd. of Town of Brookhaven*, *supra* at 765; *Matter of Jamil v Village of Scarsdale Planning Bd.*, *supra* at 554; *Matter of Mialto Realty v Town of Patterson*, 112 AD2d 371, 372 [1985], *lvs dismissed* 66 NY2d 601, 696 [1985]). Accordingly, we reverse and dismiss the petition.

Carpinello, J.P., Rose and Lahtinen, JJ., concur. Ordered that the judgment is reversed, on the law, without costs, and petition dismissed.

FOOTNOTES

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Footnotes

- * — Contrary to petitioners' argument, even if BHSC failed to fully raise this issue in Supreme Court, this Court may consider this purely legal issue for the first time on appeal (see *Branham v Loews Orpheum Cinemas, Inc.*, 31 AD3d 319, 323 n 2 [2006]; *Matter of Johnson v Shelmar Corp.*, 2 AD3d 1010, 1010 n [2003]).

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145 A.D.3d 729, 45 N.Y.S.3d 105, 2016 N.Y. Slip Op. 08238

**1 In the Matter of Ramapo Pinnacle Properties, LLC, Appellant,
v
Village of Airmont Planning Board, Respondent.
Supreme Court, Appellate Division, Second Department, New York

2014-11622, 882/14

December 7, 2016

CITE TITLE AS: Matter of Ramapo Pinnacle Props., LLC v Village of Airmont Planning Bd.

HEADNOTE

Municipal Corporations

Planning

Site Plan Approval

Burton Dorfman, P.C., Piermont, NY (Burton I. Dorfman and Mary Lou Chatterton of counsel), for appellant.
Sean Mack, Village Attorney, Airmont, NY (Daniel N. Kraushaar of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review two determinations of the Planning Board of the Village of Airmont dated April 24, 2014, and May 8, 2014, respectively, which, after a hearing, denied the petitioner's application for approval of its amended site plan and, upon reconsideration, denied so much of the application as sought access to its property from an abutting public roadway, the petitioner appeals from a judgment of the Supreme Court, Rockland County (Berliner, J.), dated October 24, 2014, which denied the petition and, in effect, dismissed the proceeding.

Ordered that the judgment is reversed, on the law, without costs or disbursements, the petition is granted, the determinations of the Planning Board of the Village of Airmont dated April 24, 2014, and May 8, 2014, are annulled, and the matter is remitted to the Planning Board of the Village of Airmont for further proceedings in accordance herewith.

The petitioner owns a medical office building in the Village of Airmont, which has one means of ingress and egress on the south side of the premises. It sought approval of an amended site plan to add additional parking spaces, improve drainage, and add another means of ingress and egress on the north side of the premises via DeBaun Avenue. The Planning Board of the Village of Airmont (hereinafter the Board) adopted a negative *730 declaration pursuant to the State Environmental Quality Review Act (hereinafter SEQRA), in which it expressly found, inter alia, that “[n]o additional traffic will be generated as a result of the Proposed Action,” the “new curb cut has the potential to reduce traffic volume at the intersection of Route 59 and Airmont Road,” and “[t]raffic calming, in the form of two raised speed bumps, have been proposed within the parking area to discourage outside traffic from cutting through the parking lot.”

At a hearing held by the Board on the petitioner's application, numerous community members, including the Mayor and two Village Trustees, opposed the access to DeBaun Avenue, **2 citing traffic and safety concerns. The petitioner agreed at the hearing to a request by the Board to amend its site plan to provide

for a one-way, entrance-only access via DeBaun Avenue. Nevertheless, on April 24, 2014, the Board denied the petitioner's application for approval of its amended site plan. On May 8, 2014, upon reconsideration of the application, the Board approved the petitioner's amended site plan, but the access to DeBaun Avenue was eliminated from the plan.

The petitioner commenced this proceeding pursuant to CPLR article 78 to review the April 24, 2014, determination or, alternatively, to review so much of the May 8, 2014, determination as eliminated the access to DeBaun Avenue. The Supreme Court denied the petition and, in effect, dismissed the proceeding. The petitioner appeals.

A local planning board has broad discretion in reaching its determination on applications such as the petitioner's, and judicial review is limited to determining whether the action taken by the board was illegal, arbitrary, or an abuse of discretion (see *Matter of Ifrah v Utschig*, 98 NY2d 304, 308 [2002]; *Matter of Davies Farm, LLC v Planning Bd. of Town of Clarkstown*, 54 AD3d 757, 758 [2008]; *Matter of Gallo v Rosell*, 52 AD3d 514, 515 [2008]; *Matter of Halperin v City of New Rochelle*, 24 AD3d 768 [2005]). A planning board's determination "should be sustained upon judicial review if it was not illegal, has a rational basis, and is not arbitrary and capricious" (*Matter of Gallo v Rosell*, 52 AD3d at 515; see *Matter of Sasso v Osgood*, 86 NY2d 374, 384 [1995]; *Matter of Kearney v Kita*, 62 AD3d 1000, 1001 [2009]; *Matter of Rivero v Voelker*, 38 AD3d 784, 785 [2007]; *Matter of Halperin v City of New Rochelle*, 24 AD3d at 772).

"Although scientific or other expert testimony is not required in every case to support a zoning board's determination, the board may not base its decision on generalized community *731 objections" (*Matter of Ifrah v Utschig*, 98 NY2d at 308). In contrast, a zoning board's reliance upon specific, detailed testimony of neighbors based on personal knowledge does not render a variance determination the product of generalized and conclusory community opposition (see *Matter of Caspian Realty, Inc. v Zoning Bd. of Appeals of Town of Greenburgh*, 68 AD3d 62, 76 [2009]; *Matter of Millennium Custom Homes, Inc. v Young*, 58 AD3d 740 [2009]; *Matter of Fagan v Colson*, 49 AD3d 877, 878 [2008]).

Here, we agree with the petitioner that the record lacks sufficient evidence to support the rationality of the Board's determinations denying the petitioner's application for site plan approval, as amended on consent of the petitioner to provide for a one-way, entrance-only access via DeBaun Avenue. **The only evidence in the record concerning the traffic and safety issues cited by the Board in the determinations was the conclusory opposition of neighboring residents, which was not supported by any of the Village's consultants and was contradicted by the negative SEQRA declaration adopted by the Board** (see *Matter of Pagnozzi v Planning Bd. of Vil. of Piermont*, 292 AD2d 613 [2002]; *Matter of SCI Funeral Servs. of N.Y. v Planning Bd. of Town of Babylon*, 277 AD2d 319, 320 [2000]). Under the circumstances, the Board's determinations were improperly based on generalized community opposition and should have been annulled (see *Matter of Bagga v Stanco*, 90 AD3d 919, 921 [2011]; *Matter of Necker Pottick, Fox Run Woods Bldrs. Corp. v Duncan*, 251 AD2d 333, 335 [1998]).

Accordingly, we remit the matter to the Board for the approval of the petitioner's amended site plan, with the condition, consented to by the petitioner, that it will provide an amended site plan with a one-way, entrance-only access via DeBaun Avenue. Rivera, J.P., Austin, Hinds-Radix and Maltese, JJ., concur.

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