



PLANNING E-NEWS

Fall, 2013

Basics of Site Plan Review

By Graham Trelstad, AICP, PP
and Nina Peek, AICP

Site plan review involves checking the plan submission for the following:

Required Information: This part of the application refers to the completeness of the site plan. During this step, check that all of the information required by the zoning ordinance is on the plan. Requirements include general items such as the date of last revision, as well as more specific items such as a landscaping plan, lighting plan, the location of existing natural features and the location of proposed utilities.

Compliance with Objective Standards: In this step, check the dimensions of the site plan to ensure that the numbers provided by the applicant comply with your zoning code. This includes measuring the size of parking spaces and checking the width, length and setbacks of the proposed building. Also check to make sure that the required zoning information has been transposed correctly by the applicant's engineer (e.g., correct zoning district is noted, correct lot and bulk requirements are listed).

Consistency with Special Permit Standards (if applicable): Certain uses are considered "Special Permit Uses" or "Conditional Uses" in the zoning code. These uses have specific provisions with which they must comply. Analyze the proposed project against the Special Permit or Conditional Use permit conditions, and identify any areas that do or do not comply, along with areas that could be improved.

Discretionary Review of On-Site Issues: New York statutes give the planning board the ability to impose such reasonable conditions and restrictions as are "directly related to and incidental" to a proposed site plan. Therefore, when reviewing a site plan requiring a discretionary permit, the Planning Board may suggest that the applicant make changes or impose reasonable conditions such as those listed later in this article under "General Site Planning Considerations."

Discretionary Review of Off-Site Issues: When the Planning Board has discretionary review of a site plan, its members should consider the relationship of the proposed plan to the surrounding area and ask the following questions:

- a) Does the scale or massing of the proposed buildings relate to the buildings off-site?
- b) Where there are architectural considerations, is the detailing of the proposed buildings compatible with the objectives of a commercial area master plan and/or off-site buildings?
- c) How well are the proposed uses identified?
- d) How well is internal circulation designed, given proposed uses?
- e) If a traffic impact analysis has been conducted, what impacts will the site activities have on neighboring streets and intersections? What measures can be taken, if any, to address these impacts?
- f) How does the site plan relate to off-site public transit stops?

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New Home for the NYPF

Last month, the New York Planning Federation moved to an historic downtown Albany location. Our new office is on the ground floor of 600 Broadway, right across the street from NYS DEC. We invite our friends and members to stop in when they're in town. Our phone and fax numbers remain the same, so if you need to contact us with any questions, please call 518 512-5270, fax 518 512-5274, or use our toll-free line, 1-800-366-NYPF. And of course you can email us at nypf@nypf.org. Meanwhile, don't forget to check the website www.nypf.org for updates and information on the 2014 Annual Planning & Zoning Conference. The dates are March 30th to April 1st, and we'll be back at the Gideon Putnam Hotel & Conference Center in Saratoga Springs.



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The New York Planning Federation also maintains a toll-free number for members at 1-800-366-6973 (NYPF)

New York Planning Federation

Is a non-profit membership organization established in 1937. Our mission is to promote sound planning and zoning practice throughout New York State. Membership, which currently includes nearly 10,000 individuals, is open and welcome to anyone supporting this mission. Membership categories include municipalities, counties, public organizations, private businesses, individuals and libraries.

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From the Executive Director

I hope you are all enjoying this beautiful fall weather and appreciating all of the great scenic assets throughout the entire state. It is a perfect time to enjoy the bountiful harvests from our many farms; tour our many wineries; or visit our waterways. Fall is also a time that the Staff is working to put together our fall training sessions and completing course offerings for our annual conference. The 2014 conference will once again be held at the Gideon Putnam Hotel in Saratoga Springs, March 30 – April 1, 2014. Also, please take note that the NYPF has been working with State Code Enforcement and anticipate introducing sessions that will offer credit for Code Enforcement Officers.

For those of you who are still in need of getting your required training credits for 2013, the NYPF is holding a one day training conference November 14th at the Wallace Center in Hyde Park. Our morning session will include training on the new EAF's forms which have been revised and must be used commencing October 7, 2013. We will also offer concurrent breakout sessions for both planning and zoning board members; the fee for the one day training seminar is \$60 for members and \$95 for non-members, and includes a morning break and lunch; registration is from 8:00 – 9:00 and will end at 3:00. Registration also includes a complimentary admission to the FDR Library and Museum. Last year we had over 100 attendees so please register early by email nypf@nypf.org, fax (518) 512-5274, or by calling our office (518) 512-5270. We look forward to seeing you in Hyde Park.

As a member of the New York Planning Federation we offer many services to our members. A service that we provide is individualized training in your community on planning related issues that are important to you. Please do not hesitate to contact our office to discuss how we can help with your community land use issues.

Seeking Nominations for NYPF Excellence Awards

Every year at its annual conference, the New York Planning Federation presents awards in six categories, each recognizing excellence and achievement in an area of land use in New York State. Recipients of these awards have been nominated by their peers in local municipalities, or by planning consultants who have worked with a community to achieve a notable new law, comprehensive plan or plan update.

Listed alphabetically, the awards are as follows:

David Allee Award presented to an outstanding *chair of a Zoning Board of Appeals*;

John O. Cross Award presented to an outstanding *chair of a Planning Board*;
Heissenbittel Award presented to an individual, municipality or agency for outstanding *accomplishment in the field of planning*;

Levine Community Service Award presented to an *appointed member of a municipal board or committee who has done an outstanding job for their community*; municipality or agency for an *outstanding and/or innovative comprehensive plan or plan update adopted by the municipality's legislative body within the past 3 years*;



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- g) Will the site plan as proposed result in any off-site impacts on stormwater that the existing system cannot accommodate?
- h) Will the proposed use be compatible with uses in the adjoining neighborhood? If not, what aspects about the use can be mitigated, if at all?

Natural Resources: Check the NYSDEC Environmental Mapper (www.dec.ny.gov/animals/38801) to see if the project site contains any regulated wetlands or wetland buffers, or has the potential to support threatened or endangered species. If wetlands are found, request that the applicant contact DEC to flag the wetland and/or determine the status of any water bodies/streams. If the potential for threatened or endangered species is found, request that the applicant contact the NY Natural Heritage Program to determine which ones, as well as a basic habitat study. This should be done prior to a SEQRA determination.

Historic and Archaeological Resources: Check the SHPO website (www.nysparks.state.ny.us/shpo) to see if the project has the potential to house historic or archaeological resources. Depending on the scale of the project, you may request that the applicant prepare an archaeological survey prior to a SEQRA determination.

General Site Planning Considerations:

1. Compatibility of onsite uses;
2. Integration of proposed uses with existing and proposed adjacent uses;
3. Density and bulk of buildings;
4. Orientation of buildings to street;
5. Visual impact of the site from the community;
6. Physical buffers such as open space, trees, earth berms, etc.
7. Screening of parking and loading areas from adjacent development, neighborhood drives and roads;
8. Location and screening of mechanical equipment;
9. Adequacy of landscaping;
10. Extent of pavement;
11. Orientation of parking to stores and buildings;
12. Connectivity of new sidewalks to adjoining ones;

13. Pedestrian access to and within the site;
14. Adequate stacking room at driveway/street intersections as necessary;
15. Adequacy of queuing area for drive-thrus;
16. Location and access to pick up and loading areas;
17. Access to delivery and storage of bulk materials;
18. Signage (plaza, anchor store, tenant, way-finding, temporary, seasonal, specials and sales);
19. Criteria for outside storage, display and special events;
20. Illumination;
21. Restrict development on sensitive land (steep slopes, wetlands, areas of unique vegetation and filled areas);
22. Stormwater runoff and management;
23. On-site infrastructure (water and sewer);
24. Off-site infrastructure improvements.

This article was excerpted from a presentation by the authors at the 2013 NYPF Annual Planning & Zoning Conference. Graham Trelstad, AICP, PP is Director of Planning with the firm AKRF. Nina Peek, AICP is Senior Technical Director at AKRF and a member of the New York Planning Federation Board of Directors.

Seeking Nominations, continued from page 2

NYPF Comprehensive Plan Award presented to a municipality or agency for an *outstanding and/or innovative comprehensive plan or plan update adopted by the municipality's legislative body within the past 3 years;*

Pomeroy Award presented to an individual, municipality or agency for consistent high quality work and/or an *outstanding accomplishment in the field of zoning.* An Awards Committee carefully reviews each nomination according to the above criteria; winners are notified prior to the annual conference and invited to attend the awards luncheon as guests of the Planning Federation.

Nominations for the upcoming 2014 conference, which runs from March 30th to April 1st, are due on January 31st, 2014. An application form and other information concerning the NYPF Awards can be found on our website (www.nypf.org). Please call the office at 800-366-NYPF with any questions.



Should NYS Offer Property Tax Exemptions for Flood Mitigation Improvements?

By Ed Lynch, AICP

In the Fall 2011 issue of *Planning News*, this author wrote an article titled “Stimulating Investment and Implementing Land Use Policy,” using Newburgh as a case study. The previous year, Newburgh’s City Council and school board had adopted numerous property tax incentives to incentivize investors. While some of the incentives mentioned had also been adopted in Albany, Rochester and Syracuse, none had been utilized in downstate municipalities.

This article proposes that New York consider a new type of property tax exemption, one that would stimulate *resiliency* investments for existing flood-prone buildings. Superstorm Sandy changed the way that planners and local officials view sustainable development in communities that will be exposed to future rises in sea level. Moreover, the substantial financial impacts on property owners living in high hazard flood areas that may result from increases in flood insurance premiums will require a more holistic understanding of monthly operational costs.

As a matter of background information, some state property tax exemptions are termed *non-discretionary*. They are granted uniformly to all property owners who meet specific statutory requirements. One example is the real property STAR exemption. Other tax exemptions apply to non-profit organizations, veterans, seniors, and those disabled or living on limited incomes.

Discretionary tax exemptions are enabled by state statutes for defined public purposes. The decision to adopt them is made by the local governing body if it believes the exemption will be beneficial or may result in private sector investment in the municipality. The state authorizing legislation typically allows a local governmental body and a local school board to

include tax exemptions given for rehabilitating historically significant properties, for improvements made to commercial buildings, or to remove architectural barriers for disabled individuals.)

Most of these discretionary examples operate in the following manner:

- Properties remain on the tax rolls and continue to pay taxes based on the assessed property value before the improvements are made;
- Tax exemptions are limited to a defined period of time (usually 4-12 years), and are phased in gradually during that period;
- Tax exemptions are granted only for the increased assessed value of the property resulting from the improvements. Documentation must be provided to the local tax assessor.
- Local governing bodies may cancel the tax exemption at any time. However, those properties which have met the eligibility requirements and have been authorized by the assessor to participate in the program are grandfathered for the allotted period of time;
- All properties eventually become taxable at the full market value once the grace period expires.

To date, no tax exemption has been authorized by New York State for property improvements that improve the *flood resiliency* of real property. Such resiliency might come from raising buildings and/or building systems and components above base flood elevations.

By law, tax assessors are obliged to collect taxes based on the approved tax roll. The Senate recently approved two bills to rebate taxes paid by owners whose assessments had been lowered because of substantial damage or destruction by Sandy.

Tax assessors are also required to increase the assessed value of properties when improvements are made, such as raising buildings or building components. The cost paid to a contractor is not dollar for dollar the increase that would result in reassessed property valuation. However, from a tax assessor’s perspective, as well as the private market, that property clearly has a higher market value than properties



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which have not been raised or improved with newer systems that are more resilient to impacts from hurricane and flooding.

Unfortunately, some property owners will experience higher property taxes at a time when they may be least able to pay them. Because of loans taken to pay building contractors, or because of catching up with delayed mortgage payments while the damaged property was vacant, some owners will be financially stretched and have difficulty paying off future monthly operating expenses.

In the short term, a local jurisdiction might be faced with a lost opportunity for not fully taxing properties that have been improved by being made more resilient to flooding. However, a tax exemption incentive program for resiliency improvements might motivate more property owners to elevate homes or building systems, knowing that they will not have to pay additional taxes immediately and might benefit from flood insurance discounts. In the long term, the municipality's tax base could actually be made stronger and more resilient, especially where flooded areas are likely to expand.

A property tax incentive for flood mitigation improvements could function similarly to other public purpose exemptions, in that the state could create the statutory authority for granting the exemption, as well as the rules associated with that exemption. Local governing bodies would then be able to decide, based on jurisdiction-specific analysis of fiscal and community benefits, if the exemption would have positive benefits (while also realizing that the law could be rescinded in the future).

Every amendment to the NYS Real Property Tax Law must be reviewed and supported by the state's finance committee. Members on this committee include numerous individuals whose constituents are from areas impacted by Sandy, as well as other communities that have experienced unusual inland flooding in recent years. They might well appreciate the potentially positive long term economic effect that an exemption for building mitigation improvements could bring.

Unfortunately, except for professionals skilled in the narrow and specialized subject of property tax assessment and administration, local officials are usually unfamiliar with state property tax laws and how they might be crafted to stimulate investment. RP-444-a,

which enables a property owner to obtain a tax exemption for the amount of the assessment increase resulting from the rehabilitation of an historic property, might be a good model for a resiliency exemption. The RP-444-a exemption runs for 5 years, starting with a 100% exemption, and decreasing over the 5 years to no exemption at all.

The flood resiliency tax exemption should probably apply only to properties that have not lost more than 50% of their assessed value. Pursuant to the NYS Building Code, owners of properties that have been totally destroyed or have lost more than 50% of their assessed value must elevate the first habitable floor of their structure to at least 2 feet above flood elevation.

In conclusion, the author believes that a flood resiliency tax exemption would provide a desirable financial incentive to motivate owners of properties not considered "substantially damaged" to elevate buildings or make mitigation improvements to critical building systems which would make their properties more resilient to future flooding events.

Ed Lynch, AICP is the former Director of Planning and Development for the City of Newburgh.

Conference Presenters Wanted

We are busy putting together sessions for our upcoming 2014 conference and welcome ideas for topics and/or presenters. If you or someone in your firm is interested in offering a session whose topic would be of interest to either planning or zoning board members, please contact the New York Planning Federation at nypf@nypf.org to discuss your ideas. Our 2014 conference will be offering credits for Code Enforcement Officers, professional planners and attorneys, as well as providing the 4 hours of required training for planning boards and ZBAs.



When to Remove an Appointed Board Member

Since many New York State communities find it difficult enough to recruit members for their Planning Boards and ZBAs, it seldom happens that one of these individuals is asked to leave his or her position by the governing body that first made the appointment. However, removal of an appointed board member does happen for one reason or another and can often become a long, drawn-out and unpleasant process.

The NYPF publication *The Short Course: A Basic Guide for Planning Boards and Zoning Boards of Appeal in New York State*, notes: “Current State enabling law provides that members of planning and zoning boards are appointed by the governing board or, in some cases by a mayor, for a term of years equal to the number of members of the board” (i.e., *five years for a five-member board and seven years for a seven-member board*). While the governing body may, at the end of a term, choose either to reappoint or not reappoint one of these ZBA or Planning Board members, the individual may be removed during his or her term “for cause,” given sufficient notice, a statement of charges, and a hearing at which the individual is given an opportunity to defend him/herself.

According to *The Short Course*, actions constituting grounds for removal include “repeated ethical transgressions, such as conspiring to conceal substantial private interests in applications before the board...So would a criminal conviction involving activity bearing on a member’s public integrity. A substantial number of absences could constitute neglect of duty, as would continual failure to perform duties established by local regulation or reasonably assigned to [a board member] by vote of the board or by the chairperson.” Threatening and intimidating behavior that creates a hostile working environment is yet another reason for removal.

In extreme circumstances, a board member may be removed during his/her term by the Appellate Division of State Supreme Court upon application by any citizen of the municipality in question, or by the county District Attorney. This latter procedure is used only when it can be shown that the individual has been guilty of misconduct while in office.

New York Planning Federation Publications

- ◆ **All You Ever Wanted to Know About Zoning.** 5th Edition (2011). Sheldon Damsky and James Coon. The latest version of our most popular book includes key legislation and case law. \$50.00 (Member), \$60.00 (Non-member) + \$3 shipping/handling. Bulk rates are available for 5+copies.
- ◆ **A Practical Guide to Comprehensive Planning.** (2002). David Church and Cori Traub. An overview of the importance of planning and the steps involved in preparing a comprehensive plan including case studies. \$18.00 (Member), \$20.00 (Non-member) +\$3 shipping/handling. Bulk rates are available for 5+copies.
- ◆ **The Short Course: A Basic Guide for Planning Boards and Zoning Boards of Appeal in NYS.** (2007). A review of the full range of knowledge and skills needed by planning or zoning officials. Recipient of the Public Education Award by the American Planning Association Upstate New York Chapter. \$18.00 (Member), \$20.00 (Non-member) +\$3 shipping/handling. Bulk rates are available for 5+copies.
- ◆ **A Guide to Procedures Governing Public Meetings.** (2012). Daniel Carroll and Daniel Sexton. Important information that every planning board, zoning board of appeals, elected official and citizen should know about public meetings and hearings. \$8.00 +\$3 shipping/handling.