



Four Awards Presented at NYPF Conference

At its 2011 Annual Conference, the New York Planning Federation presented four awards recognizing excellence and achievement in New York State in the areas of planning and zoning. Recipients were given their awards at a luncheon on Monday October 10th at the Albany Crowne Plaza.

The Pomeroy Award for Zoning Achievement, “given to a community or individual for high quality work and outstanding contributions to zoning in New York State through the development of a specific zoning law or legal agreement” was presented to the Town of Red Hook for its “Centers and Greenspaces” zoning amendments. The landmark legislation promoting smart growth was based on a plan prepared by the Intermunicipal Task Force of the Town of Red Hook and the Villages of Red Hook and Tivoli; it established two new zoning districts in the Town – an Agricultural Business District and a Traditional Neighborhood Development District – that were deemed “a model of sustainable development for New York State” by Tiffany Zezula, Managing Director of the Land Use Law Center at Pace University School of Law, who submitted the award nomination.

Receiving the award on behalf of the Town of Red Hook were William O’Neill, Chair of the Intermunicipal Task Force; Harry Colgan, a Town Board member; Brent Kovalchik, a Village of Red Hook Board Member; and Mark Castiglione, Acting Executive Director of the Hudson River Valley Greenway.

The Heissenbuttel Award for Planning Excellence is “given to an individual, municipality or agency for outstanding and innovative accomplishment in the planning field.” The 2011 recipient was the Town of Cato in recognition of its Plan for Agriculture and Farmland Protection. After receiving a \$25,000 Farmland Protection Grant from the NYS Department of Agriculture and Markets in 2009, the Town Board created a five-member Agricultural Planning

Committee to help develop a strategy for the future.

The committee partnered with the Cayuga County Planning Department, local residents and farmers to eventually produce an extensive document that prioritized 13 strategies for farmland protection. County Planner Geoff G. Milz, AICP, who submitted the nomination, says that the Committee’s efforts “culminated in the development of a unique, rational and strategic plan which builds in an administrative mechanism for implementation (in the form of) an ongoing Agricultural Advisory Committee.”

Milz was one of those present to receive the Heissenbuttel Award, which was accepted by Tom Lloyd, Chair of the Town of Cato Planning Board.

The Levine Community Service Award, given to “a volunteer member of a municipal board who has done an outstanding job for his or her community” went to Ben Clark, a member of the Village of Chatham ZBA. Nominated by Chatham’s former Mayor, Paul

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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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welcomes comments from its readers. Manuscripts may be submitted for possible publication. Call the newsletter editor, Lael Locke, to discuss your ideas. If published, such articles may be edited to conform with format requirements and become the property of **Planning News**. The opinions and views expressed in **Planning News** are those of the authors and do not necessarily represent the views of the NYPF.

From the Executive Director



The 73rd Annual conference was held this year from October 9-11 in downtown Albany. More than 270 were entertained – yes, entertained – by our keynote speaker Dwight Merriam, and attendees gave us two thumbs up on the quality of his and all other sessions.

We hold our yearly membership meeting at the annual conference. This year, there was a change in officers: our new Executive Committee now consists of Fred T. Wilcox III as President; Laura Moore, 1st Vice President; Jack Benjamin, 2nd Vice President. Wendy Salvati, our former President, will now become Immediate Past President.

We also swore in our newest board members: Nina Peek, AICP, representing the Low/Mid Hudson Valley; Jon Kanter, AICP, representing the Southern Tier; and David Hess, representing Central New York. And we welcomed three new Members-at-Large: Robert Galvin, AICP; Mark Schachner, Esq.; and Ken Swanekamp. I feel very fortunate to be working with a dedicated Executive Committee and Board and know that their leadership will ensure that the NYPF continues to work hard for its members.

We are still looking for new board members to represent Long Island, the NYC Metropolitan Region, the Adirondack/North Country Region; and the Finger Lakes. Please do not hesitate to contact me if you are interested in filling one of these vacancies.

The Planning Federation continues to be strong; even though many municipalities are experiencing financial hardships, we have over 9,000 individual members statewide who tell us that the value of our affordable annual dues is a worthwhile investment for their communities. Remember that we not only offer training at our yearly conference, but we can also provide personal training in your town, city or village, as well as on-line courses. Members can also call our toll-free number (1-800-366-NYPF) to ask any planning or zoning related questions they may have. And don't forget to look at our newly-designed website – we anticipate adding new training modules to it within the year, and we already have the capacity to handle book orders and conference registration on-line.

Finally, I want to take this opportunity to thank the NYPF staff for its hard work and dedication. Lael Locke put together a great conference with the help of Susan Terwilliger, our bookkeeper, and Anne Rounds, our Administrative Assistant. Paula Gilbert, our intern for the past 18 months, completed her MRP degree in May – we wish her well in her next endeavor. The entire staff works tirelessly on behalf of our membership to ensure that the NYPF continues its mission “to promote sound planning, land use and zoning practice in New York State which fosters orderly growth and development, balanced with the protection of natural resources.”

Once again, the holiday season is upon us. On behalf of the staff and Board of the NYPF, we wish each of you a Happy Holiday.

Judith Breselor, AICP
Executive Director

How to Improve Your Board's Decision Making Process

By Matthew G. Rogers, AICP

As a member of a planning or zoning board, your decisions must be legally and technically sound. Prior to making these decisions, however, you are typically bombarded with a significant amount of information on almost every project.

Each decision issued by your board must be primarily based on facts gathered during the project review period. As you well know, organizing and weeding through all this information in order to identify the pertinent facts can be a daunting process. How can you and your fellow board members absorb all the necessary information and arrive at a sustainable decision?

Having an approach to gather, organize, sift and record necessary information will facilitate sound, sustainable and fair decisions. The following ten simple recommendations may help boards improve the decision making process. Even if your board has a process in place that works, these recommendations may offer a few new ideas that could tighten up the existing process.

Know your Jurisdiction:

The first step that every board member should take when receiving an application is to determine your municipality's jurisdiction over the proposed project. A simple solution to this issue is for the board chair to review the application with the code enforcement officer and then prepare an agenda clearly identifying the approval requested and the action to be considered by the board. This is not to say that board members should avoid a healthy discussion confirming jurisdiction and related issues, but they do want to avoid coming to a meeting without a clear understanding of their jurisdiction.

The Pre-Application Meeting:

The preparation of an application is one of the most important steps in project review. The board can play a significant and positive role in guiding a proposal so that it complies with land use regulations.

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New Date and Location for the 2012 Conference

In order to offer training during the period of peak demand, the NYPF Board of Directors has decided to move next year's Annual Planning & Zoning Conference from its usual fall slot to the spring.

The dates for next year's conference are April 15-17, 2012. By popular request, we are heading back to the Saratoga Hilton in Saratoga Springs, a favorite location right in the midst of that popular community's shops, restaurants and attractions.

Praised as "the most productive way of getting training," the NYPF Annual Conference offers a wide range of important land use topics for all levels of experience. We will have much more information on the new spring conference in the weeks to come; be sure to check www.nypf.org for updates on presenters, topics, exhibitors and registration.

We are also adding a new comprehensive planning award category for 2012. A committee is hard at work defining the qualifications for this award and also revising the standards and application form for the Heissenbuttel, Pomeroy, Levine, Allee and Cross awards. These prestigious awards honor some of the finest land use work being done across our state. Since nominations come from those who live and work in each community, please be thinking of local achievements that you would like to see recognized, and consider submitting a nomination.

For more information, please visit our website, www.nypf.org or phone our office toll-free at 1-800-366-NYPF. You can also email the general mailbox nypf@nypf.org, Executive Director Judith Breselor (jbreselor@nypf.org) and/or Community Planner/Conference Coordinator Lael Locke (llocke@nypf.org) with specific questions or concerns.

Four Awards Presented at NYPF Conference

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Boehme, and enthusiastically seconded by Peter Wenk, Chair of the ZBA, Clark was praised for his ongoing involvement in community affairs, which has run the gamut from researching issues before the ZBA to updating zoning codes, serving on the board of the local public library, and working with the Village's senior population.

Edward Colello, chair of the Town of Southeast Zoning Board of Appeals, was the recipient of the 2011 David Allee Award for outstanding ZBA chair. Chair for the past 15 years, Colello was cited by nominator Thomas Costello for his "overriding sense of fairness with the applicants, the public and his fellow board members, and for the high standards to which he holds both attorneys and developers" who come before his board.

Mr. Clark and Mr. Colello were both present at the October 10th luncheon to personally accept their respective New York Planning Federation awards



NYPF President Wendy Salvati presents the 2011 Heissenbuttel Award to Town of Cato Planning Board Chair Tom Lloyd (R), as Geoff Milz, Cayuga County Planner (C) looks on.

Case Study Newburgh, New York

Stimulating Investment and Implementing Land Use Policy through Property Tax Incentives

By Edward Lynch, AICP

City planners are commonly familiar with government grants, capital budgets, zoning codes, subdivision regulations and other monetary and regulatory tools that have been successful in stimulating and regulating investment in urban areas.

In a low-income, shrinking city like Newburgh, distressed older neighborhoods suffer property abandonment and disinvestment. Though not impacted as much by abandonment, non-distressed neighborhoods contain many property owners who lack confidence in the City's financial health and fear the continuing rise in property taxes that were raised an unprecedented 71% in order to fund the 2011 budget. To help create owner/investor confidence that might stabilize neighborhoods and achieve economic revitalization, bold and creative actions are generally viewed as necessary.

With seed funding from the Ford Foundation and participation of the Pace University Land Use Law Center, a Land Bank entity was created in 2011 which, if adequately funded for future operations, will serve as an alternative reinvestment housing entity to rehabilitate and return dozens of City-owned blighted properties to the tax rolls. The entire targeted

Land Bank area is located within Newburgh's East End Historic District, where old housing stock has multiple problems with lead paint, asbestos and PCB-containing caulk, and where the costs of remediation are very high. Consequently, the financial feasibility of producing code-conforming housing from this historic housing stock is a challenge.

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Adding to the problem is the difficulty of obtaining permits from the Architectural Review Commission for building demolition in the East End Historic District, due in part to State regulations that must be followed in authorizing a demolition permit.

The federal government and State offer income tax credits to individuals or corporations wishing to rehabilitate historic structures. For the handful of owners/investors familiar with the process and willing to complete the extensive paperwork associated with the programs, some financial subsidy is available. For low and moderate income qualified owner-occupants, the federal office of Housing and Urban Development (HUD) offers grants and loans through its Community Development and Block Grants (CDBG) program. Landlords in Newburgh can also obtain grants if the housing produced is guaranteed to rent for a limited time to low and moderate income families and individuals. The NYS Department of Housing and Community Renewal (DHCR) also offers developers financial assistance in producing new housing or rehabilitating existing housing stock that will be income-restricted for a period of time to lower income households.

But what happens after the historic housing stock is improved and the owner/investor receives the one-time tax write-off or a one-time grant or loan for making improvements? What happens after the certificate of occupancy is issued to enable the investments to be financially productive? From the point of view of the Real Property Tax Law (RPTL), these structures are now worth more than they were prior to the improvements. By law, they are now candidates for increased county, city and school taxes which, in Newburgh, have already had significant increases in the past few years.

Given the national economic recession and the remaking of bank lending policies, private lenders require higher down payments and predictability in terms of future property taxes before lending money for home improvements that may be amortized over a 15-30 year period. A payment in lieu of taxes (PILOT), which can be granted by industrial development agencies or with council approval under the NYS Housing Finance Law, is not practical or available for small owners/investors.

Following the lead of a few older upstate cities with similar problems, the Newburgh City Council took action in 2011 to adopt multiple local laws providing property tax exemptions when owners/investors make improvements to properties, especially to housing

stock. In fact, Newburgh has probably adopted more tax-exemption legislation than any other New York city within the past twelve months. City staff looked carefully at the State Real Property Tax Law for available enabling legislation and found authority for taxing jurisdictions to adopt local laws or resolutions that provide tax exemptions under special circumstances.

Individually and collectively (if also approved by the county and school districts), these property tax incentives provide financial relief for limited periods of time and for different purposes. Most significantly, properties generally remain on the tax roll and continue to pay taxes for the assessed value prior to the improvements. The categories of property tax relief now adopted by Newburgh are as follows:

Improvements to structures in the East End Historic District that “contribute” architecturally to the character of that district. The website of the Tax Assessor provides details as to which properties are contributing and what tax relief is provided through the Historic Alteration or Rehabilitation Exemption (RP-444a). After prompting by City officials, the Newburgh Enlarged City School District also adopted a resolution authorizing a tax exemption from school district taxes, making the incentive even more valuable to owners/investors.

Improvements to residential properties owned and occupied by first-time homebuyers. The State extended this exemption authority (RP-457) in early 2011, and the Newburgh City Council took advantage of continuing it.

Property tax exemption on the increased property value resulting from improvements made to one- and two-family dwellings. Adopted in July 2011, this exemption (RP-421-f) is viewed as critical to stimulating investments in neighborhoods that the City hopes to stabilize. It can also be used in the distressed Land Bank area for one- and two-family residences that may be rehabilitated in the future, but cannot be used in conjunction with the First-Time Homebuyer Exemption.

Property tax exemptions for renovating existing non-residential structures. In Newburgh, many of these candidates are vacant and/or underutilized industrial and commercial buildings. An exemption is possible if new dwelling units are created and the building becomes a mixed-use occupancy (RP-485-a).

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How to Improve Your Board's Decision Making Process

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The Pre-Application Meeting:

The preparation of an application is one of the most important steps in project review. The board can play a significant and positive role in guiding a proposal so that it complies with land use regulations. If a poor or incomplete application is submitted, or if the project is inconsistent with your municipal planning goals, the review process is likely to take longer than necessary, resulting in additional costs to the applicant and additional time for board members. A review process that starts off on the wrong foot will permeate throughout the remainder of the project review period.

One method that may avoid problems at the beginning of the review process is to invite the applicant to a pre-application meeting which generally involves the code enforcement officer and the board chair. Provided there is no quorum, additional members of the board might also participate, but be sure to comply with regulations of the Open Meetings Law. The pre-application meeting provides the applicant with a comfortable setting in which to describe his proposal; it is also the perfect setting for community representatives to identify any potential obstacles and to give recommendations that may help improve the project proposal. Be aware that not all projects will require a pre-application meeting. Your local land use regulations should provide the option to hold these meetings and, in some cases, require them.

Project Review Checklist:

Having a guiding checklist when reviewing each project will provide consistency and significantly reduce the chances of missing important items. You and your board can develop a checklist that each member uses to evaluate elements such as access, pedestrian connections, stormwater, setbacks, traffic, impacts on adjoining uses, etc. These items are found in the municipal land use and zoning laws, specifically in the site plan and special use permit requirements. By transferring them into a checklist form, your job of evaluating the completeness of applications and determining approvability may be more organized and efficient.

Use an Organized Q&A with the Applicant:

Many board meetings are run more like interrogations than project review meetings. Even for those applicants who are represented by seasoned consultants, it can be a daunting task to absorb all the questions and requests for additional information when board members speak

in rapid succession and move quickly from one topic to another. The above project review checklist will help the board chair guide his/her members through the Q&A process in a logical and efficient manner.

At the end of the discussion, it is helpful to both the applicant and board to provide a list of the requested additional information in writing. Even with smaller, routine projects it can be a time saver for the board to write down all requests for the applicant and board to review; at the next meeting the board can then easily refer to this document and determine if the requested information was provided.

Take Notes:

Do not rely on anyone but yourself to take notes and formulate a decision. Each member of the board makes the decision, not just the chair. When asked to vote, all board members must fully understand the issues and be able to explain their decisions. Again, a project review checklist can be a very handy guide. Note-taking also provides board members with the ability to quickly reference facts from previous meetings and can become a good reference source for reviews of future similar projects.

Ensure that the Application is “Substantially” Complete:

With few exceptions, boards should always deem an application complete prior to proceeding to public hearings, and certainly before issuing a final decision. The project checklist is an integral tool for efficiently determining an application as complete. If the checklist has been used since the first meeting, and all requests for additional information have been provided in writing (as necessary), it should be fairly straightforward for your board to evaluate completeness.

When a situation arises where the applicant has not provided every item on the checklist, the board should ask itself “how much information is necessary to consider the application complete?” Decisions must be made on a case-by-case basis, based upon the importance of the element that was requested. If it has no direct bearing on the decision of approvability, the applicant may be permitted to provide the information prior to the project's approval, the application may be considered complete with conditions, and the board can proceed to the public hearing.

Coordinate with Involved Agencies and Community Departments:

Once an application is deemed complete and suitable for public review, don't forget to make all necessary referrals in a timely manner to involved agencies and the county/regional planning board. Your board chair should also reach out to the different community departments as necessary (DPW, parks, fire, police, etc.) to obtain their input and recommendations.

Use a Template to Draft your Decision:

Just as the project review checklist may improve your board's efficiency and organization, so too may a decision-making template. Each community can make its own version that aligns with the specific approvals being considered. With the template in front of them, each board member can jot down notes and issues regarding approvability and begin to formulate decisions. Ultimately, the board chair, attorney or secretary may draft the final decision using the template and information provided by the rest of the board.

Be Respectful:

Perhaps the most important recommendation is to be respectful. Sometimes as a board member you may have to bite your tongue and let an applicant or member of the public vent. Always avoid getting into an argument – many times, the correct response to an inappropriate public statement is “thank you for your comment,” and you then move on to the next person.

This can be a little more difficult when dealing with an applicant. However, board members must remain calm even if tempers flare and not give into the temptation of engaging in a volley of insults or argument over an issue for which no resolution is immediately possible. If board members keep their cool, treat the applicant with respect and avoid engaging in arguments, many times the applicant will alter his demeanor once he realizes that the board is there to assist him through the application process.

Follow the Process:

If there is one bit of advice to heed above all others, it is to follow the process required in your local land use regulations, as well as relevant regional and state requirements. Not doing so will most likely lead to unnecessary delays and quite possibly put your board's decision at risk of a successful court challenge.

Matthew Rogers is the Director of Planning and Economic Development at Saratoga Associates. He routinely assists communities with the preparation of economic redevelopment plans, comprehensive and special district plans, brownfield and waterfront redevelopment plans, as well as updating existing and preparing new land use laws. He may be reached at mrogers@saratogaassociates.com ■

How To Avoid Article 78 Proceedings

By Scott Chatfield

CPLR Article 78 is a statutory embodiment of three ancient writs controlling the actions of administrative elements of government. The three writs were known as certiorari, mandamus and prohibition.

Certiorari is the most common form of Article 78 relief. In this type of proceeding, the Court is asked to review an administrative determination to see if it was: “a determination made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion or, if a hearing was involved, at which evidence was taken pursuant to direction by law was, on the entire record, supported by substantial evidence.”

In other words, if your board made a determination to grant or deny a site plan, special permit, use or area variance, subdivision, interpretation or any similar

administrative determination, such determination may be challenged by way of an Article 78 proceeding in the nature of certiorari for all sorts of reasons.

Number One is the failure to follow a lawful procedure. Almost every Article 78 proceeding in the nature of certiorari includes some element of failure to follow lawful procedure, mainly because there are so many procedures to follow. Most procedural errors also include an element of an error of law. Occasionally, however, a board may make an interim determination based upon a misapplication of law (i.e. refusing to allow a non-resident to speak at a public hearing, or rejecting a protest petition on the basis that the landowner across the street isn't qualified to protest, or failure to recognize a prohibited conflict of interest under the General Municipal Law.)

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How To Avoid Article 78 Proceedings

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Likewise, most Article 78 proceedings allege that the decision was arbitrary and capricious or an abuse of discretion. Arbitrary and capricious means just what the words suggest – that the decision lacks a well-considered rationale. For example, the failure to refer an application to the County Planning Agency, where required, is not arbitrary or capricious, but it does violate lawful procedure. If a decision is arbitrary and capricious, then almost by definition it can't be supported by substantial evidence in the record. Suffice it to say that an Article 78 proceeding in the nature of certiorari will almost always allege all of these grounds in one long paragraph.

The second writ, Mandamus, is a way to make an administrative official do something which the law mandates that he/she do. In the language of the statute: "Whether the body or officer failed to perform a duty enjoined upon it by law." Mandamus relief will not be granted if the "duty" is discretionary (i.e. refusal of a CEO to cite someone for a violation) but will be granted where the duty is clear, but a particular outcome may be discretionary (i.e. refusal of a CEO to issue a determination on a formal request for interpretation because his determination is a prerequisite to the jurisdiction of the ZBA to decide the appeal – he just can't be compelled to decide the question in any particular way.)

An Article 78 proceeding in the nature of Prohibition is probably the rarest of types in land use. Prohibition is used to prevent an administrative body or official from doing something beyond their authority. In the language of the statute: "Whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction."

An example of this type of relief might be: suppose a planning board granted site plan approval and the neighbors didn't like it so they appeal to the ZBA to have it set aside, and the ZBA is about to hold a hearing. (Note that if the ZBA had already overruled the planning board's decision, prohibition would not be appropriate, but so too would the grounds of "error of law" and "in violation of lawful procedure.")

An Article 78 proceeding is NOT the appropriate way to challenge the substance of a legislative decision (think zoning change). This should be done by a Declaratory Judgment Proceeding. However, an Article 78 proceeding IS appropriate to challenge a zone change for failure to follow a lawful procedure, or for an error of law (failure to refer to the County Planning Agency where required, or failure to comply with SEQR).

In most cases, a skillful lawyer who is challenging a legislative enactment in the land use field will bring what is called a hybrid proceeding; that is, he will join an Article 78 proceeding and a Declaratory Judgment proceeding in the same set of papers. The Courts will usually overlook this distinction and will readily convert one type of proceeding into the other. However, be aware that there are different statutes of limitations for the types of proceedings.

Among the common problems leading to Article 78 Proceedings are:

1. Failure to comply with notice requirements

(e.g. public hearing notices, nature of public meetings, local requirements for notice to neighbors);

2. Failure to properly constitute the board

(e.g. improper number, oath of office, prohibited conflicts, lack of residency);

3. Failure to observe application

procedures (e.g. No General Municipal Law certification, lack of written decision by CEO, failure to establish right to relief, inadequate submission under local regulations);

4. Open meetings problems

(e.g. "private" conversations, executive sessions, discussions outside of meeting, minute keeping);



5. Prohibited conflicts (e.g. financial interest of board members, failure to disclose, failure to recuse);

6. General Municipal Law Section 239 (e.g. failure to refer, failure to consider, inadequate vote to override);

7. Failure to notify in certain circumstances (e.g. State Parks Commission 267-a(10), new or amended zoning codes 264(2), agricultural data statutes 283-a);

8. Conduct of meeting or hearing (e.g. lack of fundamental fairness/due process);

9. SEQR (e.g. improper designation, hard look, reasoned elaboration, timing of decision);

10. Decision writing/documentation

11. Post decision procedures (e.g. filing, publication, notification)

Scott Chatfield is an attorney in private practice in Marietta, NY. Since 1976, his practice has concentrated on Municipal Law with an emphasis on planning and zoning. Over the years, he has represented (and sued) many municipalities in and around Central New York. Mr. Chatfield has been a frequent lecturer on municipal and land use topics for the NYS Bar Association, numerous County Bar Associations, the New York Planning Federation, the Association of Towns, NYCOM, the Tug Hill Commission, and many others. ■

Case Study Newburgh, NY

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It provides a tax exemption for 12 years after improvements are made; the property becomes fully taxable in the 13th year. The advantage of this program is that the benefit may be passed on by a developer to condominium buyers, thereby reducing monthly operating costs and making new housing units more marketable in today's challenging lending environment.

Property tax exemptions for constructing and renovating commercial and industrial properties.

Differing slightly from the above, the RP-485-b exemption covers construction costs, as well as renovation. It provides a 50% exemption for 12 years after improvements are made, increasing to full tax payments in Year 13. The local law authorizing this exemption was originally adopted around 1998 and is credited with the commercial redevelopment of Newburgh's waterfront. In 2010, 13 local property owners were taking advantage of this tax relief; in 2011, 7 of those properties began to pay taxes on the full assessed value after the expiration of the 12-year exemption. Without this tax relief, it is questionable whether investments would have been made in these restaurants and other commercial buildings.

These tax incentives may not be needed or appropriate in some municipalities, especially if private real estate investment is occurring and populations are stable and/or increasing. However, the incentives may be appropriate in formerly industrial, shrinking cities where populations are declining and private investment is not taking place. Albany, Syracuse and Rochester have adopted property tax incentives, but not with the recent aggressiveness of Newburgh.

In order to be effective and widely used, tax exemptions need to be marketed and the public educated about their advantages. As might be expected, New York State law allows the Newburgh City Council to rescind its local law if it finds that private sector investments become commonplace and self-sustaining. Properties whose owners have applied for and been approved for exemptions prior to the date of rescission would be grandfathered.

More information about the details of each Newburgh exemption can be found at: www.cityofnewburgh-ny.gov/assessor/exemption.

The author is the former Director of Planning and Development for the City of Newburgh. ■

Appointing Alternate Board Members

Planning boards and ZBAs carry out the important functions of ensuring that land use activities meet identified local priorities.

On certain occasions, members of these boards may be absent due to illness or vacation, or faced with a conflict of interest – perhaps an applicant before the board is a relative of a board member, or perhaps a board member holds a substantial financial interest in an application before the board. These, and other situations, may require a board member to excuse him/herself from participating in a discussion or decision on an application. Problems may then arise in obtaining a majority of the board to move an action forward or to take final action on an application.

To avoid the above situations, a board may want to appoint alternate members. A 1998 amendment to §27 and 81 of the General City Law, §267 and 271 of the Town Law, §7-712 and 7-718 of the Village Law and §21-c of the General Municipal Law authorized counties, cities, towns and villages to provide for the

appointment of alternate members to planning boards and ZBAs to serve in cases of conflict of interest. However, alternates thus appointed may also fill in for sick or vacationing board members when needed.

In order to effect this authorization, the legislative body must adopt a local law or ordinance providing for alternate members, or insert language into the local law or ordinance that originally created the planning board and/or ZBA. This local law should state

under which circumstances an alternate may serve, as well as set term limits for the alternate. Note that both the number of alternate positions created and the length of their terms of office are up to the legislative body.

Once an alternate has been appointed, he/she possesses all the powers and responsibilities of the regular board member who has been recused. Note also that the designation of the alternate member by the board chair must be entered into the minutes of the initial board meeting at which the substitution is made.

Finally, state statutes provide that all existing provisions of law relating to training, continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, compatibility of office and service on other boards, are to apply to alternates in the same manner as they apply to regular board members. Details regarding how or when an alternate is to be summoned to participate in a matter before the board is left to local practice, as is the determination of whether a conflict of interest exists and/or who should make this determination.

While a local code of ethics adopted pursuant to General Municipal Law §806(1)(a) could establish standards requiring a member to disqualify him/herself in given factual situations, it seems safest to assume that a member should have the right to disqualify him/herself any time he/she honestly feels that a conflict – or even the appearance of one – may exist. It is therefore advisable that the legislative body consider adopting procedures which will encourage the identification of conflicts as early as possible in the process to allow the timely summoning of an alternate.

Additionally, an alternate member who has been asked to serve on a board should familiarize him/herself with the record of any application that is in progress. Along these lines the courts have held that a regular board member must familiarize him/herself with the record of any particular matter before being lawfully qualified to vote on it. This amendment relates to both planning boards and ZBAs (except in cities with a population of over one million), while the General Municipal Law amendment relates to county planning boards.

On certain occasions, members of these boards may be absent due to illness or vacation, or faced with a conflict of interest... These, and other situations, may require a board member to excuse him/herself from participating in a discussion or decision on an application.

As noted earlier, many municipalities have local laws in place that provide for service by alternate members in non-conflict of interest situations. The Attorney General has opined that towns and villages may, in fact, use their authority under the Municipal Home Rule Law to amend or supersede town or village law by expanding the circumstances under which an alternate may be appointed, providing they properly follow the applicable procedures of the Municipal Home Rule Law. Note that the local law must specify the provision of state law that is being amended or superseded. Failure to adhere substantially to this requirement may affect the validity of the local law.

In May, 1999 the New York Legislative Commission on Rural Resources prepared a model local law for the appointment of alternate members to municipal planning and zoning boards. Noting that the model local law need not apply to both these boards, the Commission said that each local government would need to tailor its local law to fit circumstances that best serve community needs. It also provided a cautionary note that the option of using an alternate member is intended to provide flexibility for planning boards and ZBAs in short-term situations. If individual board members have chronic difficulties participating in meetings, each locality should then weigh the use of alternates against replacing the individual member in question.

Information for this article was taken from Legal Memorandum LU06 prepared by the Office of Counsel of the New York State Department of State, as well as from the New York State Legislative Commission on Rural Resources. A copy of the model local law for appointing alternate board members is available from the New York Planning Federation. Email llocke@nypf.org to obtain one. ■

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