

PLANNING NEWS



New York Planning Federation

279 River Street, Suite 302, Troy, NY 12180

Winter 2006

Hot Topics in State Law

By James A. Boglioli, Esq. and Jennifer C. Thorne, MRP

New York State has been busy amending or proposing to amend a number of laws and regulations. Some of the more important and interesting changes are summarized below.

New Legislation

General Municipal Law §239-nn: The NYS General Municipal Law was amended by adding a new section, 239-nn. This section requires municipalities to provide a public hearing notice to neighboring municipalities for special permits, use variances, site plans and subdivisions within five hundred (500) feet of the neighboring municipality. This amendment becomes effective on July 1, 2006. The change impacts all boards that are deciding applications for special permits, use variances, site plans and subdivisions within 500 feet of the neighboring municipality. If notice is not given pursuant to this section, the board's action could be overturned in a court challenge.

Freedom of Information (FOIL) Modifications: Effective May 3, 2005, the NYS Public Officers Law was amended to address the issue of unreasonable delays in granting access to government records under FOIL. The amendments codify current court decisions which provide that if an agency provides an approximate date as to when it will grant or deny a FOIL request, that date must be reasonable under the circumstances. Where an agency determines to grant a FOIL request, and circumstances prevent the disclosure of the record within twenty (20) days from the date of the written acknowledgment, the amendments require an agency to state in writing both the reason for the inability to disclose within 20 days and a date certain when the request will be granted. The failure of an agency to comply with any of the new provisions will be deemed a denial of the request and permit the requestor to appeal.

Finally, the amendments also provide that an agency's failure to determine an appeal within ten (10) business days of receipt constitutes a denial of a request. The new regulations impact all municipal boards when receiving or responding to FOIL requests.

DEC Species of Special Concerns Modifications:

On October 4, 2005, Governor Pataki signed a bill amending the NYS Environmental Conservation Law to increase protections for species of special concern. The law authorizes the DEC to promulgate regulations with respect to the taking, importation, transportation, possession or sale of species of special concern and provide similar legal protections for such species as those currently afforded to threatened and endangered species. Species of special concern would be defined as those species of fish and wildlife designated by the DEC to be at risk of becoming endangered or threatened in New York State. Municipal boards granting land use approvals may need to pay more attention to a project's impacts or species of special concern under SEQRA. No such regulations have yet been proposed.

Proposed Legislation and Regulations

DEC Part 375 Regulation Modifications: The DEC has issued draft revisions to 6 NYCRR Part 375, the regulation governing the Inactive Hazardous Waste Disposal Site Remedial Program and the Environmental Restoration Program. The revisions are intended to clarify and streamline current regulations and to address issues raised by program stakeholders. The proposed rule seeks to facilitate the cleanup and reuse of contaminated sites; it is expected to stimulate economic

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279 River Street, Suite 302

Troy, New York 12180

(518) 270 9855 / 270 9857 (fax)

e-mail: nypf@nypf.org

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THE 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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Introducing NYPF's new President

David Kay was sworn in as NYPF's new President at last fall's annual conference in Saratoga Springs. A board member since 1997, David lives in Ithaca where he is an Extension Associate with the Cornell Local Government Program, Department of Applied Economics and Management. He earned his M.S. in Agricultural Economics at Cornell and has worked there since the early 1980s.

David's work has spanned many environmental, economic and community development topics; he has also been involved with both on- and off-campus partners in a broad range of applied research and extension topics. Most of his projects have a policy orientation and are focused on New York communities. A sample of his recent work involves such diverse issues as land use planning, rural land markets and sprawl, building local institutional capacity to manage community and farm-neighbor conflicts, local government fiscal stress and the role of child care in strategies for local economic development.

In addition to serving as an NYPF board member for nine years, David Kay has, for a number of years, also served as the Planning Official Development Officer with the New York Upstate Chapter of the American Planning Association. During much of the last decade, he was a member and Chair of the City of Ithaca Planning Board and the Tompkins County Planning Federation. Since then he has also served on a number of other local boards, nonprofits and *ad hoc* committees concerned with local land use and transportation planning issues. He has also just been reappointed to the City of Ithaca's planning board and recently completed training as a volunteer mediator with his local Community Dispute Resolution Center.

David is delighted at the opportunity to serve as President of the Planning Federation for the next two years and says he looks forward to helping the organization do everything it can to support New York State's planning and zoning community. ❖

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Land Use Training and Certification School



It has been over a year since we discussed the launching of a new land use training and certification program for local officials. Developed by the Pace University Land Use Law Center and the Planning Federation through the New York Municipal Insurance Reciprocal (NYMIR), the program is designed to teach the basics of New York land use law and is available free of charge to all municipalities.

By all accounts, the program has been a real success in Year One; communities across the State tell us that they are pursuing certification because they believe it will give their residents added confidence in the commitment of local boards to making informed decisions on planning and zoning matters.

When we first described the self-administered program in the Winter 2004 issue of *Planning News*, nine Dutchess County municipalities had already received certification. Since then, 16 additional communities have joined the ranks of the certified. They include:

Town of Beekman Planning Board
Town of Beekman Town Board
Town of Beekman ZBA
Town of Catskill Planning Board
Town of East Fishkill Planning Board
Village of Fishkill Planning Board
Town of Grand Island Planning Board
Town of Hyde Park Planning Board

Town of Indian Lake Planning Board
Town of Red Hook ZBA
Town of Red Hook CAC
Village of Red Hook ZMA
Village of Tivoli Planning Board
Town of Union Vale Planning Board
Town of Wappinger ZBA

While the training program has truly blossomed in Dutchess County, with a current total of 21 certified boards, interest and participation are spreading. Four communities representing Erie, Greene, Hamilton and Herkimer counties have become certified. The Town of Beekman is the first community to have all three of its boards certified, while the Town of Red Hook is the first to have certified its Conservation Advisory Council.

Unique to the program, which is also dubbed the “Zoning School,” is the self-paced process and self-certification, meaning that participants study the materials provided and test themselves at their convenience. The program offers nine topical tutorials, from which board members must select and pass at least five to receive certification. (A passing score is 80% or eight out of ten questions in all five tutorials.) These tutorials cover the basics of zoning, comprehensive planning, subdivision approval, site plan approvals, variances, special use permits, environmental review, local boards and strategic local laws.

The certification program should take approximately ten hours to complete. Each session was designed to take two hours. Certification is good for two years, since turnover in board members and the availability of new planning and zoning information make periodic recertification beneficial.

The land use training and certification program is downloadable. Additional information is available through the Planning Federation’s website (www.nypf.org) under “NYPF Member Services and Training Opportunities.” For questions or hard copy/CD-ROM versions (\$50.00), call Tiffany Zezula at the Pace Land Use Law Center (914-422-4034) for communities located in the Hudson Valley. For communities in the remainder of the State, call Katherine Daniels at NYPF (518 270 9855). ❖

Hot topics in New York State Law (continued from page 1)

revitalization, while ensuring the continued protection of public health and the environment. Additionally, the draft revisions include a regulation to implement the Brownfield Cleanup Program (BCP). If adopted, this regulation could affect all municipal boards as it involves site reuse, economic development and environmental remediation.

State Wetlands Protection: Last year the New York State Legislature was considering proposed legislation which would amend the current New York wetlands law to regulate wetlands of one acre or larger. The proposed bill sought to lower the jurisdictional threshold from 12.4 to one acre. The bill also proposed changing the basis for jurisdiction from whether a wetland is mapped to whether the land at issue meets the scientific criteria for wetland designation. While the bill passed in the Assembly, it never received a full vote in the Senate. It is likely that the bill will resurface; the proposed legislation would impose a more stringent standard on State regulated wetlands and could drastically affect land use patterns. ❖



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New Municipal Resources

The American Farmland Trust has just released a new publication titled *Guide to Local Planning for Agriculture in New York*. This hands-on, well-organized and thorough, yet concise 62-page guide is exactly what New York farm communities have long needed.

The product of input from many people and organizations (including NYPPF), the user-friendly, question and answer format walks readers through the process of identifying important agricultural resources and developing strategies to protect farmland and promote farming. The guide is intended to assist communities engage farmers and rural landowners in local planning efforts, to assess current town policies and their effectiveness, and to understand the range of tools available to help municipalities support local farms.

The guide contains more than 30 case studies both from within and outside New York State that demonstrate how municipalities are successfully planning for agriculture. In addition, over a hundred relevant publications, state laws, local plans and ordinances are available on an accompanying CD of reference materials. The *Guide to Local Planning for Agriculture in New York* is downloadable at no cost at AFT's Farmland Information Library: www.farmlandinfo.org. It is also available for purchase at www.farmland.org. ❖

Another example of useful, hands-on information is the Wind Energy Toolkit available on the New York State Energy and Research Authority (NYSERDA) website, www.powernaturally.org/programs/wind/toolkit.asp.

New York State has some of the highest potential for wind energy development of any state in the nation. Yet many local officials feel unprepared to evaluate proposed wind energy facilities that are increasingly coming before them. The Toolkit is designed to offer information on the various aspects of wind energy development to help municipalities decide how, where and whether wind energy facilities should be sited.

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Municipal Resources *(continued from page 4)*

The Toolkit consists of a series of short, topical papers on comprehensive plans, wind energy model ordinance options, examples of New York local government laws and zoning provisions on wind, environmental topics, overview of the power grid and wind power reliability, information on New York Independent System Operator (NYISO) interconnection requirements, development scenarios (including technical discussions), land acquisition, meteorological poles and towers, permitting and approvals, economic and socioeconomic impacts, and topics of general information.

The New York Planning Federation was asked to prepare three papers for NYSERDA, including Wind Energy Development and the Comprehensive Plan; Government Agencies' Role in the Approval Process; and Wind Energy Model Ordinance Options. These three papers are especially geared to answering the kinds of questions local officials are likely to have about planning and zoning for wind energy development.

The NYSERDA site provides a variety of case studies of wind energy facility siting, as well as examples of local wind ordinances that have been adopted by communities in New York State. The website also provides a link to NYSERDA's wind map, illustrating the areas within the State which have the greatest potential for wind energy development. While most of the material in the Toolkit is directed toward large wind energy facilities, information is also available on smaller facilities. ❖

Save the Date!

NYPF's annual conference is October 8-11, 2006. We'll be back at the Saratoga Hotel and Conference Center (formerly the PRIME) in the heart of Saratoga Springs, with a full line-up of diverse and informative sessions and presenters, as well as both CEO and CLE credits. Watch our website and *Planning News* for more information.

Welcome New Members

The following have joined the Planning Federation since our last newsletter. As a membership based not-for-profit, NYPF depends on – and is truly appreciative of – your support. Please pass the word along to neighboring communities and groups that may not be members, and encourage them to join us, as well. Membership brings reduced rates to publications and the annual conference, as well as technical assistance and *Planning News*.

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**Remember to visit
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answers to your
questions about
planning and zoning.**

NYPF Launches New Cooperative Initiative

As with other areas of the State and country, New York's Capital Region is experiencing a period of rapid land development with relatively little accompanying population growth. Recognizing that local governments have the primary power and responsibility to deal with development pressures, the New York Planning Federation is partnering with the Community Foundation for the Capital Region and the Capital District Regional Planning Commission in a new initiative to assist communities in the Capital Region help themselves prepare for future growth.

Known as *Empowering Communities: Partnership and Growth in the 21st Century*, the program will provide technical assistance and small grants for implementation projects and inter-municipal or partnership approaches related to sustainable development.

Phase I of *Empowering Communities* began last spring when NYPF staff members Katherine Daniels and Lael Locke contacted all 79 municipalities in the four-county region of Albany, Rensselaer, Saratoga and Schenectady to determine their needs and concerns re: development.

Many communities told us that they feel the need for additional technical expertise and financial resources to help them with approaches that will encourage cost-efficient development, protect important landscapes, preserve the quality of life and provide predictability and fairness for developers.

In addition, some 60 regional land trusts and conservancies, planning firms, educators, environmental organi-

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Cooperative Initiative (continued from page 6)

zations and State agencies were interviewed to help the partners learn more about their current work and programs in growth management and open space protection. A June 3, 2005 workshop with representatives from these organizations further helped define the direction that *Empowering Communities* will take.

As Phase II of the initiative gets underway, NYPF is helping identify potential sources of funding for projects in the four-county region served by the Community Foundation. Additionally, we are in the process of adding “best practices” examples of land use techniques, including model ordinances and other helpful information, to our website (www.nypf.org), along with links to other websites. Look for us to post a couple of new examples or links each month during the next year.

If the *Empowering Communities* initiative proves to be successful as a pilot program, the Community Foundation for the Capital Region is hoping to use it as a model for other community foundation partnerships across New York State. It is our hope that, by promoting specific and practical actions in direct response to community needs, *Empowering Communities* will build bridges of cooperation among individuals, local governments, civic organizations and businesses. ❖

Examining a Ban on Formula Businesses

From California to Maine, more than a dozen municipalities have enacted laws that ban or restrict “formula businesses” such as chain restaurants, motels, certain retailers and other establishments. The issue is about more than just preserving community character; it’s also about economics. Studies show that more money stays in a municipality if it is spent at local businesses vs. being spent at national retailers.

Carmel-by-the-Sea, CA was the first to enact a formula restaurant ban in the mid-1980s; since then, other communities in California, Washington, New York, Florida, Rhode Island and Maine have also passed similar laws.

In New York State, Port Jefferson (Suffolk County), enacted an ordinance in 2000 that bars fast food restaurants from locating in the Village’s three historic commercial and waterfront districts. The measure was proposed by the Port Jefferson Civic Association as a means of protecting the community’s character and ambience.

More information on this issue can be found at <http://www.newrules.org/retail/formula.html> where a copy of *Protecting Locally Owned Retail: Planning Tools for Curbing Chains and Nurturing Homegrown Businesses* by Stacy Mitchell can be downloaded. ❖

A portion of the above article was printed in “Rural Futures,” the newsletter of the Legislative Commission on Rural Resources.

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✓ **Model Cell Tower Ordinance** by Federation staff. A short article and model ordinance. Free to members, \$5.00 non-member. May be downloaded from www.nypf.org.

✓ **Adult Entertainment Tech Memo** a 12-page brochure prepared by Lydia R. Marola, Esq. Village of Scotia attorney, and Rebecca Lubin, AICP. Free to members, \$5.00 non-members. May be downloaded from www.nypf.org.

✓ **Software Provider Directory** by Federation staff. 6-pg. brochure describing companies that sell planning and zoning board software. Free to members, \$2.00 non-members

✓ **The Interaction of Commercial Forestry with Town Government in New York State** NYS Forest Resources Development Council, 1995. Results and analysis of a survey on local attitudes and regulations addressing timber harvesting. \$6.00 + \$3.00 s/h

✓ **A Municipal Official's Guide to Forestry in New York State** by Katherine H. Daniels, AICP (28 pg. illustrated). A joint publication of NYPF, NYS Dept. of Environmental Conservation and Empire State Forest Products Assn. A guide to planning and zoning that promotes multiple forestry uses, and best management practices. Free with \$3.00 s/h.

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