2026 Planning and Zoning Case Law Update – NYPF Annual Conference 2026



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Presentation Overview

Explore recently decided cases dealing with planning & zoning topics:

1. Matter of McClean v. City of Yonkers *re: Special Use Permits and Community Objections;*
2. Matter of Moes's Motor Cars v. Town of Ulster *re: SUPs and Reasonable Need;*
3. Maldonado v. Village of Valley Stream ZBA *re: Basis for Variance Denial;*
4. Matter of Smith v. Town of Thompson Planning Bd. *re: Necessity and Jurisdiction for Zoning Code Interpretation;*
5. Hoefler v. Town of Pompey Planning Bd. *re: SEQRA Sufficiency;* and
6. Matter of Johnson v. Village of Brockport ZBA *re: County Referral (GML 239-m).*

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SUP Overview

What is a Special Use Permit?

Pursuant to Town Law Section 274-b(1), a SUP is a permit which authorizes a particular land use, where that use is permitted subject to requirements imposed by the local zoning law. The requirements aim to ensure that the use is harmonious with and will not adversely affect the neighborhood.

Specially Permitted Uses and Legislative Presumption

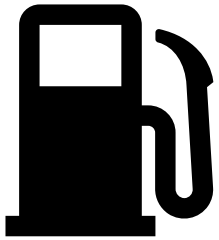
Courts have regularly provided that where a use is listed a "specially permitted," this is "tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood" where applicable SUP requirements are met.

SUPs are Not Variances

SUPs are distinct from uses which require use variances - Variances require individualized showings of hardship and are granted only when strict criteria are satisfied.

Matter of 853-855 McClean, LLC v. City of Yonkers 237 AD3d 1189
(2d Dept. April 30, 2025)

re: Special Use Permits and Community Objections



- Property in the City of Yonkers operating as a gas station, auto and motorcycle repair shop and scrap yard since about 1963.
- Current owner wishes to redevelop into modern gas station and convenience store.
- City of Yonkers requires SUP for convenience store component (existing gas station was permitted).
    - First, Planning Board approval. Then, City Council approval.
- Applicant proceeds through the process, including appearing before both Boards for public hearings, and is approved by PB, but denied by City Council. Applicant sues.

Matter of 853-855 McClean, LLC v. City of Yonkers

- Supreme Court: " . . . while a special use permit is not *automatically* given to an applicant, as long as the necessary conditions for use are met **the [special use] permit must be granted unless there are reasonable grounds for its denial**."
  - ". . . land use pursuant to a special use permit is in essence a legislative finding that such use is in harmony with zoning objectives and will not adversely affect the neighborhood where the use will occur."
- Supreme Court: "sum total of their [the public's] opposition was nothing more than **generalized opposition**."
- For example, the Supreme Court noted the following generalized objections by the public:
  - Feared increase in noise and air pollution and general traffic congestion, but no specific explanation on how materially created by a convenience store.
  - Referral to the special use permit as a variance and conclusory opinion that the project adds nothing to the neighborhood and is in fact a detriment.
  - Opinion that this was a "non-conforming use" of the property that would bring noise pollution, litter and increased traffic congestion, but did no detail on how.
  - Opinion that there are already enough convenience stores in the area and that another will not add anything to the benefit of the neighborhood.
  - A gas station owner who owns a competing business "unsurprisingly opposed" plan.



Matter of 853-855 McClean, LLC v. City of Yonkers

- Supreme Court noted that few who opposed realized that the gas station was already approved and that only the convenience store aspect of the business was in contention.

- Supreme Court also noted of Board member comments:
  - It was "clear that the **residents of this general area are not in favor** ... " and the **tax will not counteract**, "the change in quality of life that these residents feel that they will see in their community." ". . .
    - Court→ Other than these conclusory feelings, offered nothing concrete.
  - Court: Another Board Member cited "an amorphous and **speculative detrimental impact** on quality of life for his vote against the permit."
  - Another Board Member: " ... it is unfortunate for this applicant who has done nothing wrong, followed every procedure, has been under a microscope and his petition is clearly not going to pass tonight and that's unfortunate because I **can't give him a clear reason why *other than it's not wanted here***."

- Supreme Court: No clear reason because nobody, including Board members "gave any evidence, concrete or even anecdotal, about how the neighborhood quality of life would be negatively impacted by the addition of a convenience store to an already approved gas station and service station nor could [anyone] show how the convenience store would somehow aggravate any existing quality of life problems already called into existence by the gas station/service station."



Matter of 853-855 McClean, LLC v. City of Yonkers

- **Supreme Court agrees with Applicant, and directs City Council to issue SUP:**
  - A determination " . . . must be confirmed if it is *rational and not arbitrary and capricious*", that is, if it is *supported by, 'some objective factual basis, as opposed to resting entirely on subjective considerations such as general community opposition*.'"
  - The City Council's determination rested entirely on general community opposition.
  - Neither the public nor the City Council was able to "articulate a concrete reason" for denial.
  - Court concluded that the **denial was due to store simply not being wanted as voiced via general community opposition → such a reason is invalid**.

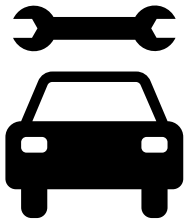


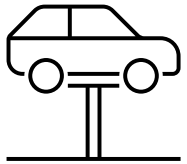
- **City Appeals Decision → to Appellate Court:**
  - The "'inclusion of the permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood.." (so long as conditions/requirements met).
  - "Once an applicant shows 'that the contemplated use is in conformance with the conditions imposed, a special [use] permit . . . **must be granted** unless there are reasonable grounds for denying it that are supported by substantial evidence.'"
  - "'A denial of a SUP must be supported by evidence in the record and may not be based solely upon community objection.'"
  - The City Council denial lacked a rational basis – no evidence to support denial (community opposition insufficient). Supreme Court decision requiring SUP issuance is upheld.

Matter of Moe's Motor Cars, LLC v. Town of Ulster, 229 AD3d 984 (3d Dept. July 18, 2024)

re: Special Use Permits and Reasonable Need

- Applicant applies to construct automotive sales facility on vacant land in the Town of Ulster.
  - Auto sales are permitted within the "Office Manufacturing District" via Special Use Permit.
- Simultaneously, applicant seeks a variance via the NY DOS from NY State Regulations that would otherwise require a bathroom and related appurtenances.
- Planning Board recommends approval of SUP to Town Board.
- NY DOS approves variance, permitting portable toilet and hand sanitizing station in lieu of bathroom.
  - Variance forwarded by NY DOS to TB on 2/17.
- Public hearing held where neighbors objected to the proposal, arguing that the use was of no benefit to the Town.
- Town Board denies application on 2/18, based upon the following:
  - 1. Application did not propose a bathroom, in violation of State Code. Lack of bathroom creates a safety risk.
  - *2. The applicant did not establish a reasonable need for the auto sales facility.*
- Plaintiffs sue the Town to overturn denial.





Matter of Moe's Motor Cars, LLC v. Town of Ulster

- Supreme Court: Determination must be upheld unless made in violation of lawful *procedure*, affected by an *error of law*, or *arbitrary or capricious or abuse of discretion*.
- → Two Errors of Law by TB:
  - 1. Lack of bathroom was *not* in violation of law since NY DOS approved variance.
    - Fact that variance was appealable for 15 days and not "final" at time of TB decision was *not* a rational reason for denial → Would be *unreasonable* to expect applicant to appeal favorable outcome.
  - 2. Requiring "reasonable need" for the auto sales facility → Invalid Requirement.
    - This is an *improper burden* to place on application – it is not a valid requirement.
    - As a general matter, "A landowner is not required to use its land for the benefit either of its neighbors in particular or the Town in general."
    - The Board was permitted to consider whether the proposal would be "affirmatively detrimental" to nearby properties, but did not have authority to require the use to benefit the community.
- Denial was based upon two errors of law → TB is directed to reconsider application consistent with above.
- Town appeals Supreme Court decision.

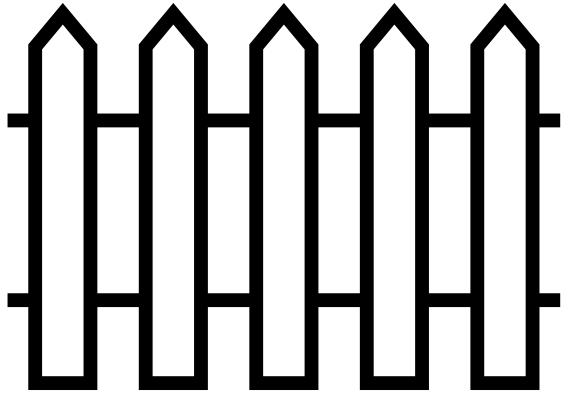
Matter of Moe's Motor Cars, LLC v. Town of Ulster

Appellate Court:

- Since the TB received NY DOS variance before it made its decision, denial based upon purported violation was an error of law and therefore an improper basis to deny.
- Denial must be based *". . . specific, reasonable grounds* . . . " supported by "substantial evidence."
- In making a determination, the municipality "must consider" that where a zoning law enumerates a use as allowed by special use permit, such enumeration is "*tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood.*'"
- ". . . [G]eneralized community objection, without more, is an improper basis for denial of a special use permit."
- Supreme Court decision upheld.

Maldonado v. Village of Valley Stream ZBA, 244 AD3d 1210 (2d Dept. Dec. 31 2025) **re: Basis for Variance Denial**

- Property in Village of Valley Stream is issued fence permit for fencing consistent with Code.
- Fence is installed, including side yard fencing with six-foot height.
- Village Code: Maximum height of four feet for side-yard fences.
- Owner seeks a fence permit for the six-foot height and is denied.
- Owner then seeks a variance from ZBA for fence and is denied.
- Owner commences lawsuit to overturn ZBA denial of variance for six-foot fence.



Maldonado v. Village of Valley Stream ZBA

- Court: "'Where, as here, a zoning board's determination is made after a public hearing, its **determination should be upheld if it has a rational basis and is supported by evidence in the record**.'"
- Court: ZBA required to engage in balancing test, weighing the **statutory factors**:
  - (1) whether an undesirable change will be produced in the **character of the neighborhood** or a detriment to nearby properties will be created by the granting of the area variance;
  - (2) whether the benefit sought by the applicant can be achieved by some **method, feasible for the applicant to pursue, other than an area variance**;
  - (3) whether the requested area variance is **substantial**;
  - (4) whether the proposed variance will have an **adverse effect** or impact on the physical or environmental conditions in the neighborhood or district; and
  - (5) whether the alleged difficulty was **self-created**; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.



Maldonado v. Village of Valley Stream ZBA

- Court: "The zoning board, in applying the balancing test, is **not required to justify its determination with supporting evidence for each of the five statutory factors** as long as its determination balancing the relevant considerations is rational."
- Court notes that ZBA found :
  - The variance "was **substantial** in comparison to other fences in the vicinity of the petitioner's property,"
  - The variance would produce an **undesirable** change in the character of the neighborhood,
  - "The benefit sought could be achieved by **another method, such as landscaping**," and
  - Petitioner's alleged hardship was **self-created**.

- Court ruling: based upon the above, contrary to the owner's contention, "the **record reflects** that the Board engaged in the *requisite balancing of interests* and considered the appropriate factors" per Village Law, and thus "the Board's determination had a rational basis and was supported by the record."



Matter of Smith v. Town of Thompson Planning Bd., 233 AD3d 1107 (3d Dept. 2024)

re: Necessity and Jurisdiction for Zoning Code Interpretation

- In 2006, a developer sought to construct mixed-use R and C development known as "Rock Hill Town Center."
  - ~560 acres → 1,613 residential units and 60,000 SF or retail space.
  - PB completed SEQR (EIS) and approved Town Center Project. But the Project did not ultimately move forward.
- In April 2021, a revised proposal was submitted:
  - 1400 residential units and no retail space.
  - Also including a 2 million SF facility – "Avon Commercial Park" – three buildings for "warehouse/distribution."
- PB declared revised Proposal a Type 1 SEQR Action and scheduled a Public Hearing.
- In Nov./Dec. 2021 – Developer modified Proposal to reduce the 2 million SF facility to 560k SF – now only two buildings for "warehouse."
  - Developer: This was to address market conditions and comments from PB, consultants and public.
- Early 2022 – PB held public hearing, considered reports, etc.
- June 2022 – PB issued SEQRA negative declaration and approved SUP and Site Plan.
- Property owners in Town of Thompson then commenced suit – arbitrary and capricious.
  - Lower Court dismissed, but property owners appealed.

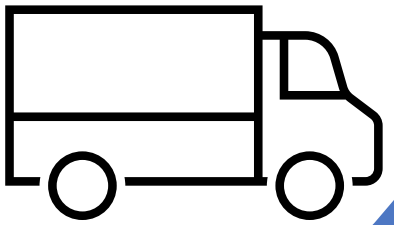
Matter of Smith v. Town of Thompson Planning Bd.

- Petitioners: PB should have referred proposal to ZBA for Code determination (due to ambiguity).
  - Ambiguity about whether Project was actually a *warehouse or a distribution center*.
  - Developer ultimately represented "Avon Commercial Park" as a *warehouse* – a permitted use.
  - Plaintiffs argued it was actually a *distribution* center – which is prohibited.



- Thompson Zoning Code:
  - Warehouse – "[a] building or structure utilized for the storage of various goods."
  - Distribution center - "[a]n area and building where trucks load and unload cargo and freight, and where the cargo and freight may be transferred to other vehicles or modes of transportation. Storage facilities such as warehouses, incidental to the principal use, may also be part of a distribution center."

- Project Documents and Info:
  - Documents from Developer include references to warehouse/distribution" and "warehousing/distribution center."
  - PB engineer referred to project as "warehouse/distribution facility."
  - Certified planner opined that the # and density of loading docks suggested distribution center.
  - In the face of the above information, Developer attorney submitted letter asserting "that the project is, in fact, a warehouse and not a distribution center."

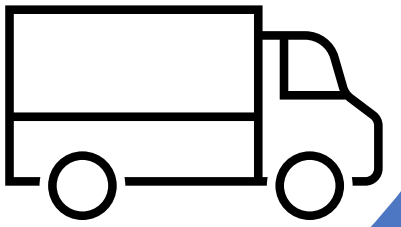


Matter of Smith v. Town of Thompson Planning Bd.



Court on Use Question:

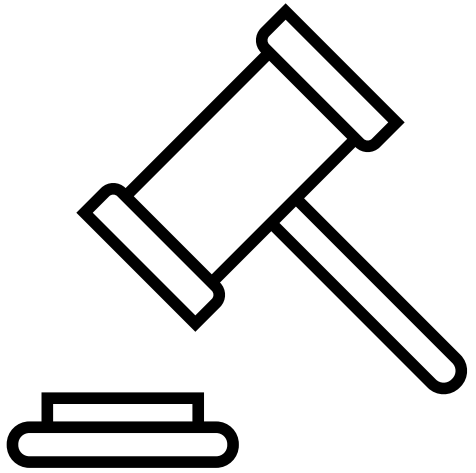
- ". . . a genuine question exists as to whether the project will fall within a permissible or prohibited use . . ."
- " . . . [t]he Planning Board improperly resolved this issue on its own."
- "**Planning boards are without power to interpret the local zoning law, as that power is vested exclusively in local code enforcement officials and the zoning board of appeals**."
- "Without an appropriate zoning code interpretation in hand, the Planning Board could not properly issue a special use permit and site plan approval."



Matter of Smith v. Town of Thompson Planning Bd.

Court Determination:

- PB could not issue Site Plan, SUP or SEQR without zoning interpretation.
- SUP may only be granted where use is allowed in zoning district. If not allowed, would need a use variance, not a SUP.
- SP would be improperly issued if premised on wrong use, and cannot stand without interpretation.
- SEQR cannot stand (without zoning code interpretation).



Dissent:

- No ambiguity existed that would necessitate a zoning code interpretation.
- "A Planning board need not 'refer a matter to a zoning board for a superfluous interpretation of an unambiguous provision contained in the zoning code.'"
- **Approval expressly conditioned on the proposed revised use for warehousing, with "'[a]ll other uses . . . prohibited without further review and approval by the Planning Board.'"**

SEQRA

What is SEQRA?

New York State regulations more formally known as the "State Environmental Quality Review Act." In sum, SEQRA requires governmental agencies to assess and balance the potential adverse environmental impacts of an action against the social and economic benefits of the action.



When to Complete SEQRA?

Prior to any determination on an action subject to SEQRA (e.g., prior to Site Plan Approval, Subdivision Approval, etc.).

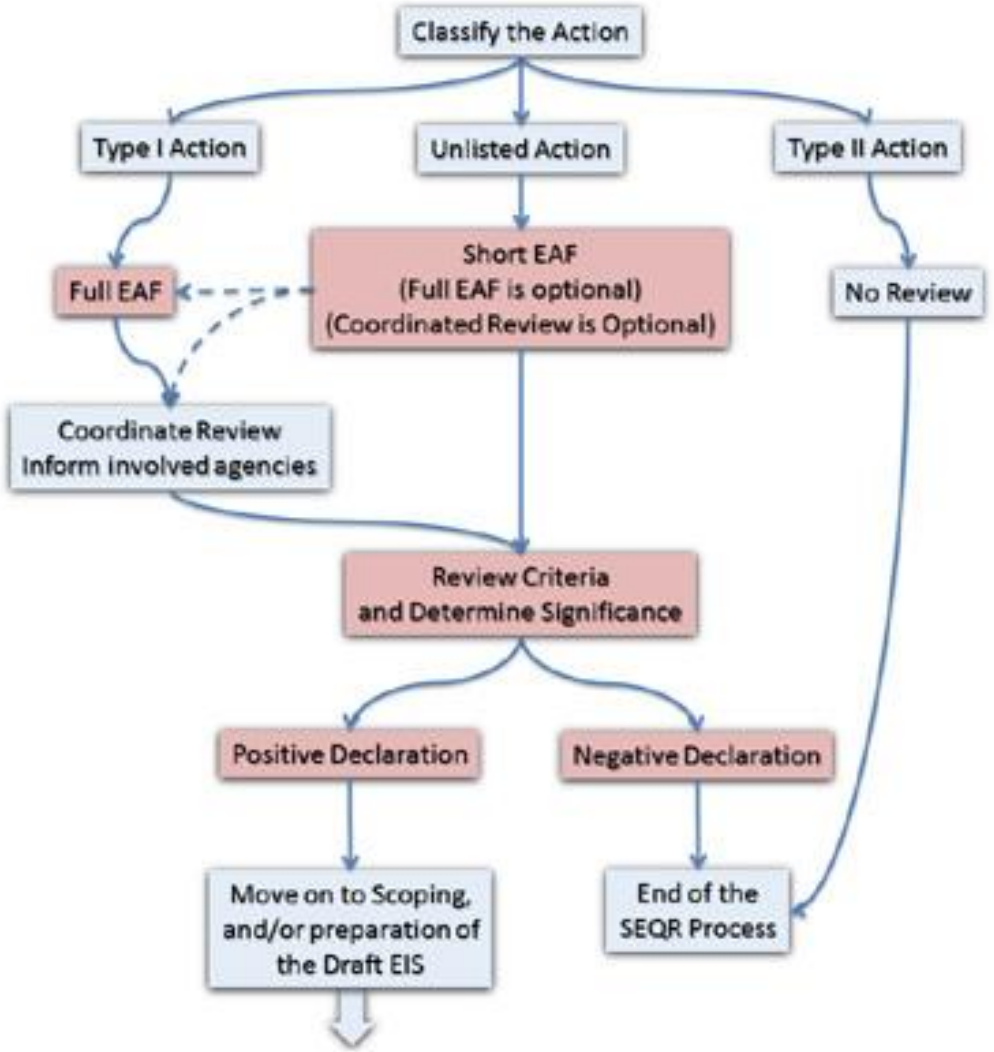
SEQRA

The Environmental Assessment Form ("EAF")

Part 1 – Identifies and organizes info relevant to the environmental review.

Part 2 - Assessment. Used to identify the categories / magnitude of a range of potential impacts.

Part 3 – Reasoned Elaboration and Determination. Used to examine and determine significance of moderate/large potential impacts.



Hoefler v. Town of Pompey Planning Bd., 243 A.D.3d 1366 (4th Dept. Nov. 21, 2025) **re: SEQRA Sufficiency**

- Owner of 285 acres of land zoned "Farm" in Town of Pompey has been operating "Heritage Hill" since 2017, a farm brewery producing and selling craft beers, including a tasting room.
- In March of 2023, owner applies to PB to additionally build and operate a meat processing facility on these lands.
- Opposition by neighbors given intensity of proposal combined with existing operations.
- PB ultimately held PH, completed SEQRA via a negative declaration, and approved the facility via site plan approval.
- Neighbors commenced lawsuit, including among other issues alleging SEQRA violations and seeking to annual SEQRA negative declaration.





Hoefler v. Town of Pompey Planning Bd.

Record reveals:

- Town Engineer completed a review and issued written commentary which was specifically incorporated into the Town's SEQRA findings.
- The plans were modified in response to County comments.
- The plans were modified after PB commentary, including location of structures.
- Town's SEQRA findings were detailed, with narrative addressing, for example:
  - No impact relative to land use / zoning, as the proposal was compliant with zoning.
  - Noting that while a change in intensity of the land would occur, given the context of the large parcel and its use, the intensity was not significant.
- Stormwater was addressed in detail, including:
  - Applicant submitted engineering response addressing such issues.
  - Town Engineer confirmed no stormwater management was necessary due to less than an acre of disturbance.

Hoefler v. Town of Pompey Planning Bd.

Court:

- Judicial review "'is limited to whether the agency **identified** the relevant areas of environmental concern, took a **hard look** at them, and made a **reasoned elaboration** of the basis for its determination.'"

- "'An agency's substantive obligations under SEQRA must be viewed in light of a **rule of reason**. Not every conceivable environmental impact, mitigating measure or alternative must be identified and addressed before a [final environmental impact statement] will satisfy the substantive requirements of SEQRA.'"

- Court Conclusion: The Planning Board complied with its obligations under SEQRA when it issued a negative declaration because it took the requisite "hard look" at the relevant environmental factors, including noise, lighting, wastewater, and parking considerations, and thus "**made a 'reasoned elaboration**' of the basis for its determination."





Hoefler v. Town of Pompey Planning Bd.

News Update per Syracuse.com on November 28, 2025

- "Unfortunately, the delays caused by the lawsuit and appeal resulted in the loss of the expansion opportunity for us" says the owner.

- Town approval was in August of 2023, lawsuit was commenced and then initially dismissed in March of 2024, but since it was appealed, no final determination until November 2025.

- Owner says that in this time, investors have moved on, and thus "the plans to expand are 'dead.'"

Matter of Johnson v. Zoning Bd. of Appeals of the Village of Brockport, 2025 NY Slip Op 04326 (4th Dept. July 25, 2025)

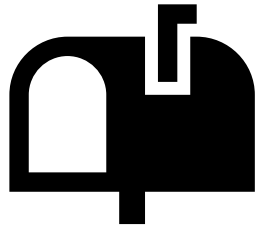
re: County Referral per General Municipal Law Section 239-m

- Earthborn Materials, LLC operates a landscape and construction material processing business in the LI District in the Village of Brockport.
- Village Code requires that, in the LI District:
  - Uses, including equipment for the handling of processes, shall be conducted inside of a completely enclosed building, and
  - No materials, supplies or equipment shall be permitted to be permanently stored outside any building.
- Earthborn sought variances from these two provisions in connection with its business so that it could process and store materials outside.
- ZBA met, considered the variance criteria, and issued the area variances.
- Opponents commenced a lawsuit to overturn the approvals.
  - Opponents: ZBA failed to refer the Application to the County Planning Board, pursuant to GML Section 239-m.

Matter of Johnson v. Zoning Bd. of Appeals of the Village of Brockport

NY General Municipal Law Section 239-m (and do not forget related referral statute for subdivisions, GML 239-n):

- Municipality shall, prior to taking final action, **make a referral to County** Planning for its consideration, where:
  - The **action is one enumerated,** including:
    - Comprehensive plan adoption / amendment,
    - Zoning law adoption / amendment,
    - Special use permit,
    - Site plans,
    - Area and use variances, or
    - "Other authorizations which a referring body may issue under the provisions of any zoning ordinance or local law."
  - AND, so long as the action is related to **real property within 500 feet** of an enumerated action, including a:
    - Municipal boundary,
    - Boundary to county or state park or any other recreation area,
    - County or State ROW,
    - County stream or drainage channel, or
    - Boundary of county or State land where a public building is located, or
    - Boundary of a farm operation located in an agricultural district (except for farm operations).
  - HOWEVER, county and municipality may enter into an **agreement identifying actions which are not subject to referral** (i.e., agree to exempt certain actions as they are deemed of "local, rather than inter-community or county-wide concern.").



Matter of Johnson v. Zoning Bd. of Appeals of the Village of Brockport

- Earthborn makes a motion to dismiss the lawsuit as untimely filed. However:
  - Court: Where there is a jurisdictional defect, the statute of limitations does not begin to run upon the filing of [the] jurisdictionally defective document.
  - The failure to comply with GML 239-m "is a jurisdictional defect that renders the action invalid."
  - As such, if failure to comply with 239-m, no time barring limitation here.



- Earthborn argues that referral was not required pursuant to written exemption agreement with the County, thus no violation of GML 239-m.
- The Village did have a GML 239-m exemption agreement with the County, listing a variety of matters exempt from referral, including, e.g.:
  - Certain area variances relating to setbacks, lot area, height, etc., and
  - Use variances without direct access to a State or County road.
- There was some argument about whether the variances were properly classified as "area" rather than "use" variances.
- However, no dispute that the *referral was not actually made*.

Matter of Johnson v. Zoning Bd. of Appeals of the Village of Brockport

- Court concluded that since ZBA explicitly handled project as "area" variances and applied the area variance test, the matter would be addressed by Court as "area" variances.
- Court concluded that while many area variances were in the exemption agreement, the type of area variances here (location indoor vs. outdoor) were not listed in the exemption agreement.
- Thus, Village did not comply with GML 239-m referral requirement, and, as such:
  - Approval of the application was jurisdictionally defective,
  - The statute of limitations did not begin to run, and
  - Approval of the application was "null and void."
- Application must go back to ZBA for new review/determination, inclusive of referral.

