

## **Land Use and Land Use Regulations**

### **Home Rule and Its Limitations**

What “home rule” means depends upon the context in which it is used. Home rule in a broad sense describes those governmental functions and activities traditionally reserved to or performed by local governments without undue infringement by the state. In its more technical sense, home rule refers to the constitutional and statutory powers given local governments to enact local legislation in order to carry out and discharge their duties and responsibilities. This affirmative grant of power is accompanied by a restriction upon the authority of the State Legislature to enact special laws affecting a local government’s property, affairs or government.

### **Interpreting Home Rule**

Originally, the powers of local legislation were derived from specific delegations from the State Legislature. These delegations concerned specific subjects and were narrowly circumscribed. The courts applied strict rules of construction when called upon to interpret state statutes that delegated legislative power to local governments. However, with the evolution of the broad home rule powers, which culminated in constitutional grants to all local governments in 1964, there emerged a gradual recognition that the rules of strict construction were no longer applicable to the interpretation of such delegated powers. Rather, the same rules of liberal construction applicable to enactments of the State Legislature should be applied to the local law power. Judicial interpretations of the Home Rule article illustrate the tension between the affirmative grant of authority to local governments and the reservation of matters outside the “property, affairs or government” of local governments to the State Legislature. In a society where many issues transcend local boundaries, a growing number of matters are considered to be matters of state concern. The home rule powers enjoyed by local governments in this state are among the most advanced in the nation.

By recognizing the extent of their powers and by continuing to exercise them, local governments can best avoid the erosion of such powers. In this fashion, local governments will not only serve the needs of the people, but will strengthen state-local relationships as well.

### **The Planning Board**

The local legislative bodies of cities, towns and villages may create planning boards in a manner provided for by state statute or municipal charter, and may grant various powers to the planning board (General City Law section 27; Town Law section 271; Village Law section 7-718). The statutes authorize municipal legislative bodies to provide for the referral of any municipal matter to the planning board for its review and report prior to final action. While the functions of a planning board may extend beyond land use, in most municipalities the planning board performs primarily a land use control function. Many local zoning laws or ordinances establish a procedure for referral to the local planning board of all applications for rezoning, variances and special use permits. Such planning board reports and recommendations are often of vital importance in deciding these matters. In addition, the local planning board can have an advisory role in preparing and amending comprehensive plans, zoning regulations, official maps, long-range capital programs, special purpose controls and compliance with the State Environmental Quality Review Act (SEQRA). Further, the local legislative body may grant the planning board such regulatory functions as control of land subdivision, site plan review and issuance of special use permits. Where these and related functions are effectively administered, the local planning board can do much to advance the land use and development policies of the local legislative body.

### **Comprehensive Planning**

Comprehensive planning can (and should) be performed by all municipalities, whether or not it results in a set of land use controls. Comprehensive planning logically forms the basis of all efforts by the community to guide the development of its governmental structure as well as its natural and built environment. Nonetheless, the most significant feature of comprehensive planning in most communities is its foundation for land use controls. Most successful planning efforts begin with a survey of existing conditions and a determination of the municipality’s vision for the future. This process should not be confused with zoning or other land use regulatory tools. Instead, the comprehensive plan should be thought of as a blueprint on which zoning and other land use regulations are based.

The state statutes define a comprehensive plan as “the materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other 148 NYS Department of State descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development” of the municipality (General City Law section 28a(3)(a); Town Law section 272-a(2)(a); Village Law section 7-722(2)(a)). While the use of the state comprehensive plan statutes is optional, they can guide boards through the comprehensive plan process (General City Law section 28-a; Town Law section 272-a; Village Law section 7-722). An important component of the process is public participation.

Under the statutes, this occurs both formally, through mandatory hearings held by the preparing board and by the legislative body prior to adoption of the plan, and informally, through the participation of the public at workshops and informational sessions.

Communities which do not have professional planners on staff to assist in the preparation of a comprehensive plan have several resources available to them. They may be able to receive assistance from their county or regional planning agency. They may also be able to contract with a professional planning or engineering firm that provides planning services. Also, municipal residents may possess expertise in planning or other environmental or design disciplines. However long or detailed the plan is, its real value is in how it is used and implemented. Since each municipality that has the power to regulate land use has a different set of constraints and options, the final form of each comprehensive plan will be unique. The size and format of the comprehensive plan will vary from municipality to municipality (and possibly from consultant to consultant). It may consist of a few pages or may be a thick volume of information.

### **County Planning**

New York’s counties have the statutory power to create planning boards (General Municipal Law section 239-c). The county legislative body may prepare a county comprehensive plan or delegate its preparation to the county planning board or to a “special board” (General Municipal Law section 239-d). Prior to adopting or amending a county official map, the county legislative body must refer the proposed changes to the county planning board and other municipal bodies (General Municipal Law section 239-e). In addition, the county legislative body may authorize the county planning board to review certain planning and zoning actions, including certain subdivision plats, by municipalities within the county (General Municipal Law section 239-c(3)). State laws require that any city, town or village located in a county possessing a “county planning agency” or “regional planning council” must refer to that agency certain zoning matters before taking final action on those matters. In addition, where authorized by the county legislative body, certain subdivision plats must be referred to the county by the town, village or city planning board before taking final action. Generally, referral must be made where a proposed zoning matter or subdivision plat affects real property within 500 feet of one or more enumerated geographic features, such as a municipal boundary. Referral to the county planning agency or regional planning council is an important aid to the local planning and zoning process. It provides local planning and zoning bodies with advice and assistance from professional county and regional staff and can result in better coordination of zoning actions among municipalities by interjecting inter-community considerations. In addition, it allows other planning agencies (county, regional and state) to better orient studies and proposals for solving local as well as county and regional needs.

### **Site Plan Review**

Site plan review is concerned with how a particular parcel is developed. A site plan shows the arrangement, layout and design of the proposed use of a single parcel of land. Site plan review can include both small and large scale proposals, ranging from gas stations, drive-through facilities and office buildings, to complex ones such as shopping centers, apartment complexes, and industrial parks. Site plan review can be used as a regulatory procedure standing alone, but is also often required in connection with other needed zoning approvals, such as special use permits. The authority to require site plan review is derived from the state enabling statutes (General City Law section 27-a; Town Law section 274-a; Village Law section 7-725-a). A local site plan

review requirement may be incorporated into the zoning law or ordinance, or may be adopted as a set of separate regulations. As in the case of special use permits, the local legislative body has the power to delegate site plan review to the planning board, zoning board of appeals, or another board. Alternatively, the legislative body may retain the power to exercise such reviews. The local site plan review regulations or local zoning regulations identify the uses that require site plan approval. Uses subject to review may be (1) identified by the zoning district in which they are proposed; (2) identified by use, regardless of the zoning district or proposed location within the community; or (3) located in areas identified as needing specialized design restrictions by way of an overlay zone approach, such as a flood zone or historic preservation district.

Site plan issues should be addressed through a set of general or specific requirements included in the local site plan review regulations. As an alternative to the installation of required infrastructure and improvements, the site plan statute allows a municipality to require the applicant to post a performance guarantee to cover their cost.

### **Subdivision Review**

There is probably no form of land use activity that has as much potential impact upon a municipality as the subdivision of land. The subdivision process controls the manner by which land is divided into smaller parcels. While a subdivision is typically thought of as the division of land into separate building lots that are sold to individual buyers, subdivision provisions may also apply to a simple division of land offered as a gift or which changes lot lines for some other reason. Subdivision regulations should ensure that when development does occur, streets, lots, open space and infrastructure are properly and safely designed, and the municipality's land use objectives are met.

Planning boards, when authorized by local governing bodies, may conduct subdivision plat review. A "plat" is a map prepared by a professional which shows the layout of lots, roads, driveways, details of water and sewer facilities, and, ideally, additional useful information regarding the development of a tract of land into smaller parcels or sites. The state enabling statutes contain specific procedures for the review of both preliminary and final plats (General City Law sections 32, 33; Town Law sections 276, 277; Village Law sections 7728, 7-730). Most municipalities use the two-step (preliminary and final plat) process.

Subdivision review is a critical tool in a municipality's land use management scheme and has important consequences for overall municipal development. The subdivision of large tracts may induce other related development in the neighborhood, produce demands for rezoning of neighboring land, or trigger the need for additional municipal infrastructure.

Largely derived from [http://www.dos.state.ny.us/lg/publications/Local\\_Government\\_Handbook.pdf](http://www.dos.state.ny.us/lg/publications/Local_Government_Handbook.pdf)

### **Zoning and Related Regulatory Controls**

The New York State Department of State defines zoning as "the strongest land control available to New York's cities, towns, and villages. Zoning regulates use, density, and location of structures on properties within a municipality. The goal of zoning is to regulate uses and their effects so they harmonize rather than clash. In many cases, zoning is used successfully to preserve or enhance the character of a place. Zoning is the implementation—in the form of a local law or ordinance—the visions of a comprehensive plan. Municipalities with zoning must have a zoning board of appeals to provide interpretations of zoning when needed and, when appropriate, relief from dimensional or even use restrictions of the regulations."

The New York State Department of State goes on to describe the importance of zoning in a township. "Towns rely on zoning to predict and control land uses within their borders". Another tool that local governments can use is "home rule". Per the NYS Local Government Handbook, "The constitutional and statutory foundation for local government in New York State provides that counties, cities, towns and villages are "general purpose" units of local government. They are granted broad home rule powers to regulate the quality of life in communities and to provide direct services to the people. In doing so, local governments must operate within the powers accorded

them by statute and the New York and United States Constitutions. The home rule powers available to New York local governments are among the most far-reaching in the nation. The extent of these powers makes each local government a full partner with the state in the shared responsibility for providing services to the people.” A local government’s power is primarily exercised by its legislative body. The general composition of legislative bodies for counties, cities, towns and villages is discussed in the individual chapters addressing each particular form of government. The New York State Constitution, however, guarantees and requires that each county, city, town and village have a legislative body elected by the people of the respective governments. Local legislative bodies are granted broad powers to adopt local laws in order to carry out their governmental responsibilities.”

Zoning regulates the use of land, the density of land use, and the siting of development. Zoning is the most commonly used local land use technique for regulating the use of land, accomplishing municipal goals and implementing comprehensive plans. According to a 1994 survey by the Legislative Commission on Rural Resources, 100 percent of cities, 67 percent of towns and 87 percent of villages in New York have adopted zoning laws or ordinances.

Zoning commonly consists of two components: a zoning map and a set of zoning regulations. The zoning map divides a municipality into various land use districts, such as residential, commercial, industrial or manufacturing. The land use districts that a municipality establishes can be even more specific, such as high, medium and low density residential, general commercial, highway commercial, light industrial, heavy industrial, or other. Mixed-use districts may also be appropriate, depending upon local planning and development goals as set forth in a comprehensive plan. Zoning regulations commonly describe the permissible land uses in each of the various zoning districts identified on the zoning map. They also usually include dimensional standards for each district, such as the height of buildings, minimum distances (setbacks) from buildings to property lines, and the permissible density of development. These are referred to as “area” standards, Local Government Handbook 149 as opposed to “use” standards. Zoning regulations will also set forth the steps necessary for approval by the type of use, the zoning district involved, or by both. For example, a single-family home is often permitted “as-of right” in a low-density residential zoning district. “As-of right” uses, if they meet the dimensional standards, require no further zoning approvals and need only a building or zoning permit in order for construction to begin.

### **Zoning Board of Appeals**

Zoning boards of appeals (ZBAs) are a basic part of zoning administration. The state zoning enabling statutes prescribe that zoning boards of appeals must be created when a municipality enacts zoning (General City Law section 81; Town Law section 267; Village Law section 7-712). ZBAs serve as “safety valves” in order to provide relief, in appropriate circumstances, from overly restrictive zoning provisions. In this capacity, they function as appellate entities, with their powers derived directly from state law. In addition to this inherent appellate jurisdiction, municipal legislative bodies may give ZBAs “original” jurisdiction over other specified matters, such as special use permits and site plan reviews. By state law, the ZBA must serve to provide for relief from the strict application of regulations that may affect the economic viability of a particular parcel or that may obstruct reasonable dimensional expansion. The state statutes give two varieties of appellate jurisdiction to ZBAs. An appeal seeking an interpretation of provisions of the zoning regulations is an appeal claiming that the decision of the administrative official charged with zoning enforcement is incorrect. It is a claim that the zoning enforcement officer misapplied the zoning map or regulations, or wrongly issued or denied a permit. By contrast, in an appeal for a variance, there is no dispute over the enforcement officer’s application of zoning provisions. Instead, the applicant feels there should be an exception made in his or her case, and that some of the zoning rules should not apply in a particular circumstance. A ZBA must then apply the criteria set forth in the state statutes in determining whether to grant the requested variance. Boards of Appeals’ members are appointed by the municipality’s legislative body in a manner provided by state statute or municipal charter. ZBAs function free of any oversight by the municipal legislative body. Where the zoning board of appeals has final decision-making authority, the legislative body may not review the grant or denial of variances, special use permits, or any other decisions; the statutes provide for review of ZBA decisions by state courts in Article 78 proceedings.

## **Official Map**

For any municipality to develop logical, efficient and economical street and drainage systems, it must protect the future rights-of-ways needed for these systems. Such preventive action saves a municipality the cost of acquiring an improved lot and structure at an excessive cost or resorting to an undesirable adjustment in the system. To protect these rights-of-ways, state statutes allow a municipality to establish and change an official map of its area, showing the streets, highways, parks and drainage systems (General City Law sections 26, 29; Town Law sections 270, 273; Village Law section 7-724; General Municipal Law section 239-e). Future requirements for facilities may be added to the official map. Without the consent of the municipality, the reserved land may not be used for other purposes.

The official map is final and conclusive in respect to the location and width of streets, highways, drainage systems, and locations of parks shown on it. Streets shown on an official map serve as one form of qualification for access requirements that must be met prior to the issuance of a building permit (General City Law sections 35, 35-a, 36; Town Law sections 280, 280-a, 281; Village Law sections 7-734, 7-736; General Municipal Law section 239-f).

## **Related Controls**

In some communities, the basic use and density separation provided by traditional zoning is all that is necessary to achieve municipal development goals and objectives. Many communities desire, however, development patterns that may be only partially achieved through traditional zoning. For example, a municipality may wish to strongly encourage a particular type of development in a certain area, or may wish to limit new development to infrastructure capacity. There are other land-use regulatory techniques available to address those objectives. Use of one or more particular techniques can serve to encourage and “market” the type of development and growth a municipality desires, thus more closely linking a municipality’s comprehensive plan with the means to achieve it. Six of these techniques (special use permits, site plan review, subdivision review, cluster development, incentive zoning, and transfer of development rights) are provided for in the enabling statutes and briefly discussed below.

## **Special Use Permits**

In most municipal zoning regulations, many uses are permitted within a zoning district as-of-right, with no discretionary review of the proposed project. On the other hand, municipalities may require a closer examination of certain designated uses. The special use permit zoning technique (sometimes referred to as conditional uses, special permits or special exceptions) allows a board discretionary authority to review a proposed development project in order to assure that it is in harmony with the zoning and will not adversely affect the neighborhood. A special use permit is applied for and granted by the reviewing board if the proposal meets the special use permit standards found in the zoning regulations. Typically, the standards are designed to avoid possible negative impacts of the proposed project with adjoining land uses or with other municipal development concerns or objectives, such as traffic impacts, noise, lighting, or landscaping. State statutes prescribe the procedure for all special use permit applications.

## **Sign Control**

The use and location of signs are typically subject to municipal regulation, either as part of a zoning law or as a separate regulation. Attention is focused on the number, size, type, design and location of signs. The issues that a municipality considers important can be brought together in a sign control program. Without a program, signs can overwhelm a municipality, damaging its character and reducing the effectiveness of communication, including traffic safety messages. With an effective program, signs can aesthetically enhance a locality and effect municipal character. A municipality is generally free to prescribe the location, size, dimensions, and manner of construction and design of signs. However, the U.S. Supreme Court has examined the constitutional questions concerning freedom of speech with respect to sign controls, and has placed limits on the authority of municipalities to control the content of the message conveyed on signs.

## **Other Land Use Controls**

In addition to the six techniques described above, four others are often employed: overlay zoning, performance zoning, and floating zones and planned unit development. They are not treated specifically in the enabling statutes, but have been considered to be lawful within the general statutory grants of zoning power.

## **Cluster Development**

Cluster development is a technique that allows flexibility in the design and subdivision of land (General City Law section 37; Town Law section 278; Village Law section 7-738). By clustering a new subdivision, certain community planning objectives can be achieved. The use of cluster development can greatly enhance a municipality's ability to maintain its traditional physical character while at the same time providing (and encouraging) new development. It also allows a municipality to achieve planning goals that may call for protection of open space, scenic views, agricultural lands, woodlands and other open landscapes, and may limit encroachment of development in, and adjacent to, environmentally sensitive areas. Cluster development is also attractive to developers because it can result in reduced development expenses relating to roadways, sewer lines, and other infrastructure, as well as lower costs to maintain that infrastructure. When it is used according to the enabling statutes, cluster development is a variation of conventional subdivision plat approval. Cluster development concentrates the overall maximum density allowed on property onto the most appropriate portion of the property. The maximum number of units allowed on the parcel must be no greater than that which would be allowed under a conventional subdivision layout for the same parcel.

## **Incentive Zoning (Bonus Zoning)**

The authority to incorporate incentive zoning into a municipality's zoning regulations is also set forth in the state planning and zoning enabling statutes (General City Law section 81-d; Town Law section 261-b; Village Law section 7-703). Incentive zoning is an innovative and flexible technique; it can be very effective in encouraging (Local Government Handbook 151) desired types of development in targeted locations. Conceptually, incentive zoning allows developers to exceed the dimensional, density, or other limitations of zoning regulations in return for providing certain benefits or amenities to the municipality. A classic example of incentive zoning would be an authorization to exceed height limits by a specified amount, in exchange for the provision of public open space, such as a plaza. If a municipality desires a certain type of development in particular locations, it can usually only wait to see if a developer will find it economical to build. Incentive zoning changes this dynamic by providing economic incentives for development that otherwise may not occur. Incentive zoning is also a method for a municipality to obtain needed public benefits or amenities in certain zoning districts through the development process. Local incentive zoning laws can even be structured to require cash contributions from developers in lieu of physical amenities, under certain circumstances.

## **Transfer of Development Rights (TDR)**

Transfer of development rights (TDR) is an innovative and complex growth management technique. It is based on the real property concept that ownership of land gives the owner a "bundle of rights," each of which may be separated from the rest. For example, one of these rights is the right to develop land. With a TDR system, landowners are able to retain their land, but sell the development rights for use on other properties. Under the state zoning enabling statutes (General City Law section 20-f; Town Law section 261-a; Village Law section 7-701), areas of the municipality that have been identified through the planning process as in need of preservation (e.g., agricultural land) or areas where development should be avoided (e.g., municipal drinking water supply protection areas) are established as "sending districts."

Development of land in such districts may be heavily restricted, but owners are granted rights under the TDR regulations to sell the rights to develop their lands. Those development rights may thereby be transferred to lands located in designated "receiving districts." Transferable development rights usually take the form of a number of units per acre, or gross square footage of floor space, or an increase in height. The rights are used to increase the density of development in a receiving district.

Receiving districts are established after the municipality has determined that they are appropriate for increased density based upon a study of the effects of increased density in such areas. Such a study is best incorporated within the community's comprehensive plan. The state zoning enabling statutes require that lands from which development rights are transferred are subject to a conservation easement limiting the future development of the property. The statutes also require that the assessed valuation of properties be adjusted to reflect the change in development potential for real property tax purposes.

### **Overlay Zoning**

The overlay zoning technique is a modification of the system of conventionally-mapped zoning districts. An overlay zone applies a common set of standards to a designated area that may cut across several different conventional or "underlying" zoning districts. The standards of the overlay zone apply in addition to those of the underlying zoning district. Some common examples of overlay zones are the flood zones administered by many communities under the National Flood Insurance Program, historic district overlay zones, areas of very severe slopes, waterfront zones and environmentally sensitive areas. The state enabling statutes do not contain provisions dealing with overlay zoning, but it is employed most often in conjunction with special use permits.

### **Performance Zoning**

Some communities have enacted zoning regulations that establish performance standards, rather than strict numerical limits on building size or location, as is the case with conventional zoning. Performance zoning regulates development based on the permissible effects or impacts of a proposed use, rather than by the traditional zoning parameters of use, area and density. Under performance zoning, proposed uses whose impacts would exceed specified standards are prohibited unless the impacts can be mitigated.

Performance zoning is often used to address municipal issues concerning noise, dust, vibration, lighting, and other impacts of industrial uses. It is also used by communities to regulate environmental impacts, such as stormwater runoff, scenic and visual quality impacts, and defined impacts on municipal character. The complexity and sophistication of these performance standards vary widely from one municipality to another, depending on the ob152 NYS Department of State objectives of the program and the capacity of the locality to administer it.

### **The Floating Zone**

Floating zones allow municipalities flexibility in the location of a particular type of use and allow for a use of land that may not currently be needed, but which may be desired in the future. The floating zone is also a way of scrutinizing significant projects for municipal impacts. The local legislative body must approve floating zones. The standards and allowable uses for a floating zone are set forth in the text of the municipality's zoning regulations, but the actual district is not mapped; rather, the district "floats" in the abstract until a development proposal is made for a specific parcel of land and the project is determined to be in accordance with all of the applicable floating zone standards. At that time, the local legislative body maps the floating zone by attaching it to a particular parcel or parcels on the zoning map. Because the floating zone is not part of the zoning map until a particular proposal is approved, the establishment of its boundaries on the zoning map constitutes an amendment to the municipal zoning regulations.

### **Planned Unit Developments (PUDs)**

Planned Unit Developments (PUDs) describe a zoning technique that allows development of a tract of land (usually a large tract of land) in a comprehensive, unified manner where the development is planned to be built as a "unit." As a mapping designation, they are also known as Planned Development Districts (PDD), and are often a form of floating zone; they are not made a part of the zoning map until a PUD project is approved. The PUDs that are shown on a zoning map may require approval by special use permit. The PUD concept allows a combination of land uses, such as single and multiple-family residential, industrial, and commercial, on a single parcel of land. It also may allow a planned mix of building types and densities. For example, a single project might contain dwellings of several types, shopping facilities, office space, open areas, and recreation areas. In creating a PUD, a municipal legislative body would need to follow the procedure for amending zoning to create a new zoning district or to

establish special use permit provisions. An application for a PUD district is typically reviewed by the planning board, and a recommendation is made to the legislative body, which may then choose to rezone the parcel.

### **Supplementary Controls**

The following is a discussion of “stand alone” laws that are commonly adopted to address specific municipal concerns, although they may also be usefully incorporated into zoning, site plan review or subdivision regulations.

### **Historic Preservation**

The development of a community policy to protect historic resources, and an identification of the particular resources to be protected in the community are the first steps to providing recognition of the historic value of property or a collection of buildings. Once a community has established a policy of historic preservation, it can seek to formally recognize individual historic structures or groups of structures. The first level of recognition can be achieved through the adoption of a local historic preservation law which enables the community to designate individual properties as local historic landmarks, or groups of properties as local historic districts. Such a local law is also likely to provide standards for protection of these designated properties.

The historical importance of a building can also be recognized at the state or national level through listing on the State or National Register of Historic Places. These listings are managed, respectively, by the State Office of Parks, Recreation, and Historic Preservation, and the Federal Department of the Interior, in cooperation with the property owner and local municipality. The National Register listing includes recognition of the historical importance of a single property, a group of properties, or a set of properties related by a theme. Listing on the National Register of Historic Places is an important recognition of a property or an area’s historic and cultural significance. Designation makes the property eligible for grants and loans and, possibly, federal tax credits. Additionally, any federal action that might impact such property must undergo a special review that is designed to protect the property’s integrity. Similarly, listing on the State Register of Historic Places means that State agency actions that effect a designated property are subject to closer review, and makes the property eligible for grant assistance. Neither a listing on the National nor State Register of Historic Places will protect a structure from the owner’s interest in redesigning or demolishing the historic structure. Only a locally-adopted historic preservation law can control such actions. If a municipality does not wish to adopt a local historic preservation law, it may want to consider a demolition law. Such a law could require review or a delay before demolition of a historically significant building. This allows time for a community to examine alternatives to demolition, such as purchase of the property by a government or not-for-profit group.

### **Architectural Design Control**

Many aspects of a building’s design are regulated through standards for siting, orientation, density, height and setback within a municipality’s zoning code. Some municipalities wish to go beyond dealing with the general size and siting of a building and its physical relationship with adjacent properties, to dealing with the appropriateness of the architectural design of the building. The review may include examining such design elements as facades, roof lines, windows, architectural detailing, materials and color. Architectural review generally requires a more subjective analysis of private development proposals than is possible within most zoning codes. To do this, communities often establish an architectural review board, which should be able to offer guidance on design issues to other boards, such as the planning board or zoning board of appeals. Where authorized, an architectural review board may conduct an independent review of the architectural features of a proposed project. Often, a community chooses to link design review to historic preservation controls, with a focus on the design of new buildings and alterations to existing buildings within historic districts.

### **Junk Yard Regulations**

If a municipality does not have its own junk yard regulations or zoning regulations addressing the siting of junkyards, it must apply the standards set forth in General Municipal Law section 136 for automobile junk yards. This law regulates the collection of junk automobiles, including the licensing of junk yards and regulation of certain aesthetic factors. The application of this state law is limited to sites storing two or more unregistered, old or



secondhand motor vehicles that are not intended or in condition for legal use on public highways. The law also applies to used motor vehicle parts, which, in bulk, equal at least two motor vehicles. A municipality may expand the state definition of “junk yard” to encompass other types of junk, such as old appliances, household waste, or uninhabitable mobile homes, in order to regulate aspects of junk not covered by state law and to ensure greater compatibility with surrounding land uses.

### **Control of Mining**

The New York State Mined Land Reclamation Law (Environmental Conservation Law section 23-2703 et seq.) regulates mining operations that remove more than one thousand tons or 750 cubic yards (whichever is less) of minerals from the earth. Mines that meet or exceed such thresholds require approval by the New York State 154 NYS Department of State Department of Environmental Conservation (DEC). Smaller mines may be regulated by a local mining or zoning regulation. However, even though DEC regulates larger mines, a municipality may regulate the location of all mines through its zoning regulations. When a municipality permits state-regulated mining to occur within its borders through a special use permit process, conditions placed on the permit may pertain to entrances and exits to and from the mine on roads controlled by the municipality, routing of mineral transport vehicles on roads controlled by the municipality, enforcement of the reclamation conditions set forth in the DEC mining permit, and certain other requirements specified in the state permit (ECL § 23-2703).

### **Scenic Resource Protection**

Scenic resources are important in defining community character. These resources can be threatened by development and many communities are now seeking ways to mitigate the impacts of development on the landscape. High priority is often placed on protecting specific scenic views or the general quality of a landscape. Policies to protect scenic resources may be included in a community’s comprehensive plan, along with maps illustrating the scenic resource. Once this has been done, it is important to integrate policies into regulations. Appropriate use, density, siting and design standards can protect scenic resources by such methods as limiting the height of buildings or fences in important scenic areas.

### **Open Space Preservation**

Many communities are now recognizing the value of “open space,” i.e. vacant land and land without significant structural development. A good way for a municipality to assess the importance of its open space resources is to produce an open space plan or to include an assessment of open space resources as part of its comprehensive plan. Here, a community decides how to categorize its open space resources, examine their use and function within the community, set priorities for their protection, and consider the best way to use and protect open spaces. When a community has identified its open space resources, it can develop policies to protect them. Those policies should be expressed in the open space plan and in the community’s comprehensive plan, along with the maps showing open spaces. Once this has been done, it is important to ensure that the open space policies of the comprehensive plan are implemented through the municipality’s land use controls.

### **Moratoria**

A moratorium is a local law or ordinance used to temporarily halt new land development projects while the municipality revises its comprehensive plan, its land use regulations, or both. In some cases, moratoria are enacted to halt development while a municipality seeks to upgrade its public facilities or its infrastructure. Moratoria, or interim development regulations, are designed to restrict development for a limited period of time. The courts have placed strict and detailed guidelines on the enactment and content of moratorium laws.

### **The Regional Planning Councils**

Unlike state-created regional agencies, regional planning councils are locally formed by the agreement of adjoining counties. The primary function of regional planning councils is to study the needs and conditions of an entire region and to develop strategies that enhance the region’s communities. Recognition was given to the regional council concept when the federal government authorized the establishment of area-wide planning agencies. These agencies were permitted to receive federal planning funds. The federal government then required proposals for

federal funding to be reviewed on a regional level to determine district-wide significance and potential conflict with master planning. This review was undertaken by the regional planning councils. The federal government later rescinded this requirement, but in the interest of regional planning, New York State continued the program.

Very few of us today live, work, and enjoy leisure time in the same neighborhood. Most of us live one place, work in another and enjoy recreational facilities in yet other places. This leads to a sharing of lifestyles, employment, and recreational/cultural opportunities, which can affect more than one local government in an area. A regional approach can be the best way to address these concerns, usually in a geographic area with interdependent social, economic, and physical environments. Regional councils were created to provide a regional approach to concerns that cross the lines of local governments' jurisdictions. Nationwide, there are over 670 of these regional councils, representing almost all 50 states. The councils are a vehicle for local governments to share their resources, and to make the most of funding, planning, and human resources. Most are voluntary associations, and do not have the power to regulate or tax. They are primarily funded by local governments, as well as by state and federal funds. The councils are responsible to the representatives of the communities in their regions. The regional view encourages an impartial, bipartisan conduit for the exchange of information. This exchange allows for objective recommendations for the resolution of problems, including the ability to interrelate many key areas such as housing, transportation, and economic development. Joint municipal presentation also gives local governments more influence with funding sources and legislative bodies.

Planning services provided by regional councils include transportation, housing and community development, groundwater protection, water resource management, wastewater treatment, solid waste disposal, land use, and rural preservation planning. Information services provided by regional councils include the operation of regional data centers, public education and information, and maintenance of regional Geographic Information Systems (GIS). Other services provided by regional councils may include special services for low-income and aging populations, job training and employment services, economic development activities, and small business promotion. Technical assistance to local governments may also be offered, and can include supplementation of local planning efforts, preparations of grant applications and coordination, cost effective regional purchasing, public administration, financial expertise, and information systems.

### **Legislation**

Articles 12-B and 5-G of the New York State General Municipal Law give affiliated municipalities the legal authority to create regional or metropolitan planning boards and joint-purpose municipal corporations.

### **Programs**

New York's regional planning councils provide comprehensive planning for the coordinated growth and development of their regions. This involves conducting regional studies to assess needs, promoting the region's economic climate, environmental health, recreational opportunities, etc., and providing technical assistance to communities within the region. By presenting a regional perspective on issues, regional councils promote intergovernmental cooperation and serve as a liaison between the State and federal governments and municipalities.

### **Conclusion**

It is apparent from the foregoing discussion that a panoply of land use techniques are available to local governments to assist them in carrying out their comprehensive planning goals to enhance community development and character. It is apparent from this discussion that a panoply of land use techniques are available to local governments to assist them in carrying out their comprehensive planning goals to enhance community development and character.

## **Agencies that Regulate or Influence Land Use:**

### **The New York State Department of Environmental Conservation (NYSDEC)**

Is in place "To conserve, improve and protect New York's natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being." DEC's goal is to achieve this mission through the simultaneous pursuit of environmental quality, public health, economic prosperity and social well-being, including environmental justice and the empowerment of individuals to participate in environmental decisions that affect their lives. More information can be found at <http://www.dec.ny.gov/24.html>.

**Cornell Cooperative Extension:** Cornell Cooperative Extension is a key outreach system of Cornell University with a strong public mission and an extensive local presence that is responsive to needs in New York communities. The Cornell Cooperative Extension educational system enables people to improve their lives and communities through partnerships that put experience and research knowledge to work.

**Cornell Cooperative Extension of Oneida County:** Works with farmers to sustain production agriculture and establish rural economic vitality. Also works with local municipalities to build strong economies, facilities, and programs to improve their quality of life while recognizing the critical role open space, agriculture, tradition, culture and heritage has on community identity and viability.

**NYS Department of Agriculture and Markets:** Our mission is to foster a competitive food and agriculture industry that benefits producers and consumers alike. Agriculture makes up one-quarter of the State's land area and contributes immensely to the quality of life in New York State by generating economic activity and producing wholesome products to nourish our families. We work diligently to promote a viable agricultural industry, foster agricultural environmental stewardship, and safeguard our food supply.

**Oneida County Soil and Water Conservation District:** To provide leadership in the development, wise use and management of soil, water and related resources in a way that will restore, enhance, protect and maintain their quality and quantity for the benefit of Oneida County and its residents.

### **U.S. Army Corps of Engineers' Vision**

A GREAT engineering force of highly disciplined people working with our partners through disciplined thought and action to deliver innovative and sustainable solutions to the Nation's engineering challenges.

**NYS Department of Environmental Conservation:** "To conserve, improve and protect New York's natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being."

**Herkimer Oneida Counties Comprehensive Planning Program:** The Planning organization in Oneida County and Herkimer County is somewhat unique in New York State. This uniqueness is a result of the interrelationship of three major planning organizations that are housed in one location, the programmatic emphasis of various planning activities, and the common link of the professional staffs. The planning activities within Herkimer and Oneida Counties are typically categorized and focus on: [Transportation Planning](#), [Land Use and Zoning](#), [Human Services Planning](#), [Census and Statistics](#), [Water Resources and Environmental Planning](#), [GIS Mapping](#), and [Economic Development](#). Local contact information: 798-5710

**Oneida County Department of Health:** Mission is to promote and protect the health of the residents of Oneida County. Guidance and regulations on wells, septic systems, drinking water systems, etc. Local contact information: 798-5064

**New York State Department of State:** In partnership with local leaders, DOS helps municipalities reduce costs and improve services that support local economies. In its efforts to ensure the health and life safety of all residents, the Department oversees the enforcement practices of local governments in matters pertaining to building construction, fire prevention, and energy conservation.

**Federal Emergency Management Agency:** FEMA's mission is to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards.

**New York State Office of Emergency Management:** For more than 50 years, the New York State Office of Emergency Management and its predecessor agencies have been responsible for coordinating the activities of all State agencies to protect New York's communities, the State's economic well-being, and the environment from natural and man-made disasters and emergencies. NYS OEM routinely assists local governments, voluntary organizations, and private industry through a variety of emergency management programs including hazard identification, loss prevention, planning, training, operational response to emergencies, technical support, and disaster recovery assistance.