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**Tug Hill Commission
Local Government Conference**

**ENFORCEMENT OF LOCAL
LAND USE REQUIREMENTS**

Define the Players

- Town/Village Board
- Zoning Enforcement Officer (ZEO)
- Zoning Board of Appeals (ZBA)
- Planning Board

The Town/Village Board

- Appoints planning board, zoning board and zoning enforcement officer
- Delegates powers: enforcement, site plan review, special permits, variances, subdivisions
- Once delegated, can't overrule other bodies
- Enacts land use laws

ZE0's duties

- to prepare or acquire forms
- issue zoning permits
- conduct inspections and investigations
- issue a zoning certificate of compliance or occupancy
- maintain records of all administrative actions and papers
- enforce the zoning law.

ZEO's powers

- The ZEO's power is limited to enforcement of the law as it is written.
- The ZEO must deny a permit whenever s/he is in doubt about a project's legality, or about how the zoning law applies to the particular case.
- The ZEO must pursue all violations of the law without undue bias for or against a particular person.

ZBA

- Provides interpretations
- Hears appeals from ZEO action
- Also may grant variances (area or use)

Planning Board

- Special permits
- Subdivisions
- Site plans
- Other (ex: historic or lake overlays)

Where Are Local Land Use Requirements Found

- State Building Code
- Zoning and other local land use laws
- Conditions on land use approvals
- State Environmental Quality Review Act

Building Code

- Generally implemented at local level.
Executive Law 381
- Only enforced by code enforcement personnel with proper training – Code Enforcement Officer (CEO)
19 NYCRR Part 443

Local Zoning And Land Use Laws

- Town Law Article 16, Village Law Article 7 and General City Law Article 5-A authorize the adoption of land use and zoning requirements.
- Towns, Villages and Cities adopt local laws or ordinances to implement.

Local Zoning and Land Use Requirements

- Requirements are either in the form of standards or prohibitions. Many of the standards are implemented through a permit or approval process.
- Permits and other approvals may be approved with conditions.

Permits and Approvals

- Site Plan Approval
- Subdivision Approval
- Special Use Permits
- Variances

State Environmental Quality Review Act (SEQRA)

- Most zoning and land use approvals are subject to SEQRA. ECL Article 8 and 6 NYCRR Part 617. Exceptions are non-discretionary approvals like building permits.
- SEQRA requires a determination of whether a proposed action may have a significant effect on the environment (positive declaration) or not (negative declaration). 6 NYCRR 617.7
- As a result of either the positive declaration or the negative declaration, there may be conditions imposed.

SEQRA Conditions

- Positive Declaration – EIS
 - ◆ Conditions can be imposed by any involved agency if needed in order to make required findings. 6 NYCRR 617.11
 - ◆ However, involved agency cannot impose conditions that are squarely within the jurisdiction of another involved agency.
6NYCRR 617.3(b)

SEQRA Conditions

- Negative Declaration – No EIS
 - ◆ If action is unlisted, lead agency can issue a conditioned negative declaration
6 NYCRR 617.7(d)
 - ◆ Whether action is unlisted or Type I, Court of Appeals has held that a negative declaration based on conditions generated as part of give and take of the application process in an open and deliberative process were not to be considered conditioned negative declarations and were permissible.
Merson v. McNally, 90 N.Y.2d 742

Drafting Conditions

- Must be a connection between the condition and one or more criteria for approval.
- Must be supported by the administrative record.
- Should clearly state the requirement and the dates for compliance.
- Should have an objective test for compliance to the extent possible.
- Should be relatively easy to verify compliance.

Embedding Remedies and Other Aids to Enforcement of Conditions

- Rights to Inspect
- Reporting
- Financial Security/Performance
- Revocation, Suspension or Modification of Approval
- Liquidated Penalties

Principal Enforcement Agencies

- Code Enforcement Officer/Building Inspector
- Zoning Enforcement Officer
- Police and Peace Officers
- Governing Board/Municipal Attorney
- Planning Board and Zoning Board of Appeals
- Citizen Enforcement

Enforcement Process

- **Discovery of Violation**
 - ◆ Complaint
 - ◆ First-hand Observation

 - ◆ **Issues**
 - ★ Anonymous complaints
 - ★ Acknowledging complaints, informing of resolution
 - ★ Verbal complaints

Appendix 1--Complaint Form

Tax Parcel Number: Section: _____	Block: _____	Lot: _____
		Log No.: _____

COMPLAINT OF VIOLATION

Form of Complaint: **Phone** **Letter (attach)**

Complainant: _____
Address: _____
Phone: _____
Site Location: _____
Property Owner: _____
Nature of Complaint: _____

ACTION BY ENFORCEMENT OFFICER:

Possible violation of Article _____, Section _____, Subsection _____ of the
_____ *(name of the law)* _____

Site Inspection completed on _____ *(date)* _____ at _____ *(time)* _____ [AM/PM]

Report of Findings: _____

Action taken: _____

Zoning Enforcement Officer

Enforcement Process

- Inspection / Investigation
 - ◆ Entry Authority (emergencies)
 - ◆ Consent – Explicit or Implied
 - ◆ Administrative Warrant

Appendix 2—Enforcement Inspection Report Form

Tax Parcel Number:	Section:	Block:	Lot: _____
			Log No.: _____

ENFORCEMENT INSPECTION REPORT

Parcel

Location: _____

Property Owner: _____

Address: _____

Phone: _____

Initiated by:

Referral from Official Unrelated Inspection Citizen Complaint

Drive-by Inspection Routine Enforcement Inspection

Date of Inspection: _____

Violation Type:

Use Building Condition Setback

Sign Junk or trash Abandoned Auto

Weeds Erosion

None Observed Other (Specify): _____

Describe Violation: _____

Photos Taken: _____ Date: _____

Violation of Article _____ Section _____

Informal Contact Results: _____

Deadline(s) set (if applicable):

Date: _____

Administrative Actions: CEO/Building Inspector or ZEO

- Notice of Violation / Notice to Remedy
 - ◆ Informal / Formal
 - ◆ Keep record of contacts
 - ◆ Notice of Apparent Violation
- Revocation or Suspension of Building Permits or CO's
- Deny or Withhold Permits on Pending Applications
- Stop Work Order
- Cease and Desist Order

Response to NOV

- May appeal to ZBA
 - ◆ Precedent?
 - ◆ Stays further enforcement
 - ◆ ZEO may seek lift of stay if imminent peril
- May seek variance from ZBA
 - ◆ Use vs. Area
- Petition Town/Village Board for amendment
- Supreme Court Action

Planning or Zoning Boards

- No Explicit Enforcement Authority
- Under MHRL, municipalities could include provision in their zoning, subdivision and other land use laws authorizing the administrative boards to revoke, suspend or modify prior authorizations. MHRL (1)(i)
- Such an enactment would be by local law and should include the procedures for reopening a prior authorization and the procedures for doing so.

Judicial Enforcement: Civil Actions

- **Must be Authorized by Governing Body**
 - ◆ **Civil Penalties**
 - ★ Recent Opinion of Attorney General on Civil Penalties in Local Laws (2005-18).
 - ◆ **Injunctive Relief in Supreme Court**
 - ★ TRO / preliminary injunction
 - ★ Reasonable chance of success
 - ★ Permanent injunction

Judicial Enforcement: Criminal Actions

- Police or Peace Officers; CEO or ZEO upon Authorization of Board. MHRL 10(4)(a).
- Generally heard in local justice court.
- Zoning violations considered misdemeanors for jurisdictional purposes.
- Criminal Procedure Law applies.
- District Attorney involvement
 - ◆ Delegated in writing to Town Attorney (blanket)
 - ◆ File oath of office with county clerk

CPL Protections

- Right to appointed counsel
- Right to jury trial CPL 340.40(1), (2)
- Proof beyond reasonable doubt

How to Initiate Proceeding

- File Information and Complaint
 - ◆ Accusatory part
 - ◆ Factual part
 - ◆ Attestation part
 - ◆ Supporting Deposition
 - ◆ Photographs / Documents
 - ◆ Court then issues Summons

OR

How to Initiate Proceeding

- Appearance Ticket
 - ◆ Takes place of summons
 - ◆ File information and complaint, supporting depositions later

Enforcement – Penalties Towns

- Town Law 268 provides that violations are misdemeanors (imprisonment up to 6 months) and imposes fines:
 - ◆ 1st offense - \$350
 - ◆ 2nd offense - \$350 - \$700
 - ◆ 3rd or subsequent offense \$750 - \$1,000
 - ◆ May be increased under supersession authority. MHRL 10(1)(ii)(d)(3)

Villages

- Village Law 20-2006 and MHRL 4(B) provide that violations are misdemeanors (imprisonment up to 6 months) and impose fines:
 - ◆ 1st offense - \$350
 - ◆ 2nd offense - \$750
 - ◆ 3rd offense of subsequent - \$1,000
 - ◆ May be increased under supersession authority MHRL 10(1)(ii)(e)(3)

Cities

- General City Law Section 20(22) provides for enforcement of ordinances or local laws by fines or imprisonment.
- Under Second Class Cities Law Section 42, ordinance may provide for a fine of \$150 or 150 days imprisonment or both;
- Council may provide for fine of \$500 to be recovered in a civil proceeding.

Criminal Procedural Protections Apply If:

- Fine can exceed \$150 or
- Imprisonment > 15 days
Penal Law 10.00(4) and CPL 1.20(39)
- If no possibility of imprisonment, then protections do not apply, regardless of size of fine. Penal Law 55.10(3)(a)

Department of State, Zoning Enforcement,
Local Government Technical Series

Municipalities Can Reduce Maximums to Avoid Criminal Protections

- Under Recent Attorney General opinion, MHRL can be used by Towns and Villages to increase the penalty and eliminate incarceration to avoid criminal procedural protections.

Opinion Attorney General 18(2005).

Successive Violations

- Due Process considerations
- 1 per week
- Repeated inspections
- First information may include multiple violations

Citizen Enforcement

- Town Law 268(2).
 - ◆ Notice of violation to Town
 - ◆ Failure to institute proceeding in 10 days
 - ◆ 3 taxpayers located in district where violation occurs
 - ◆ Who are aggrieved

May take same enforcement action as could
Town to enjoin zoning violation



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