Guide to Planning and Zoning Laws of New York State

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

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NEW YORK STATE
George E. Pataki
Governor

DEPARTMENT OF STATE
Alexander F. Treadwell
Secretary of State

NEW YORK STATE DEPARTMENT OF STATE
DIVISION OF LOCAL GOVERNMENT SERVICES
41 STATE STREET
ALBANY, NEW YORK 12231
(518)473-3355
http://www.dos.state.ny.us

PREFACE

This publication, part of the Department of State's "James A. Coon Local Government Technical Series," is designed to help municipal officials and attorneys make more efficient use of planning and zoning laws. The guide provides the complete text of each pertinent section of law. Notes at the end of certain sections reference other related statutes and list Department publications, if any.

To ensure optimal use of this guide, readers should know that more than one set of statutes may apply to a municipal action. For example, provisions of the Town Law naturally govern towns, but important provisions affecting town planning and zoning laws also appear in the General Municipal Law, the Public Health Law and others. Therefore, all applicable statutes should be consulted.

Second, this booklet has been formatted for an electronic environment. The original document contains marginal notations that highlight key points of the law. In addition, the original contains an index of key words, which has been omitted in this format due to the ability to use the search features of the word processing program. Due to shifts caused by various printers and the conversions of this WordPerfect 5.1 file into other versions, the page numbers on the content pages have been omitted. Please fill in the page numbers as appropriate for your copy of the "Guide."

Third, this booklet contains the text of the statutes through the 1998 legislative session. Subsequent legislative changes will be mailed directly to individuals who have registered with the Department of State, and will be available on the Department of State web page. You may register for updates by sending your name and address by e-mail to the Department of State at the following address:

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GENERAL CITY LAW

§ 20. Grant of specific powers.

Subject to the constitution and general laws of this state, every city is empowered:...

24. To regulate and limit the height, bulk and location of buildings hereafter erected, to regulate and determine the area of yards, courts and other open spaces, and to regulate the density of population in any given area, and for said purposes to divide the city into districts. Such regulations shall be uniform for each class of buildings throughout any district, but the regulations in one or more districts may differ from those in other districts. Such regulations shall be designed to secure safety from fire, flood and other dangers and to promote the public health and welfare, including, so far as conditions may permit, provision for adequate light, air, convenience of access, and the accommodation of solar energy systems and equipment and access to sunlight necessary therefor, and shall be made with reasonable regard to the character of buildings erected in each district, the value of land and the use to which it may be put, to the end that such regulations may promote public health, safety and welfare and the most desirable use for which the land of each district may be adapted and may tend to conserve the value of buildings and enhance the value of land throughout the city.

25. To regulate and restrict the location of trades and industries and the location of buildings, designed for specified uses, and for said purposes to divide the city into districts and to prescribe for each such district the trades and industries that shall be excluded or subjected to special regulation and the uses for which buildings may not be erected or altered. Such regulations shall be designed to promote the public health, safety and general welfare and shall be made with reasonable consideration, among other things, to the character of the district, its peculiar suitability for particular uses, the conservation of property values and the direction of building development, in accord with a well considered plan.

Notes:

- Multiple Dwellings:
  1. Height, bulk, open spaces - see Multiple Dwelling Law, §26.
  2. Two or more buildings on same lot - see Multiple Dwelling Law, §28.

§ 20-f. Transfer of development rights; definitions; conditions; procedures.

1. As used in this section:

a. "Development rights" shall mean the rights permitted to a lot, parcel, or area of land under a zoning ordinance or local law respecting permissible use, area, density, bulk or height of improvements executed thereon. Development rights may be calculated and allocated in accordance with such factors as area, floor area, floor area ratios, density, height limitations, or any other criteria that will effectively quantify a value for the development right in a reasonable and uniform manner that will carry out the objectives of this section.

b. "Receiving district" shall mean one or more designated districts or areas of land to which development rights generated from one or more sending districts may be transferred and in which increased development is permitted to occur by reason of such transfer.

c. "Sending district" shall mean one or more designated districts or areas of land in which development rights may be designated for use in one or more receiving districts.

d. "Transfer of development rights" shall mean the process by which development rights are transferred from one lot, parcel, or area of land in any sending district to another lot, parcel or area of land in one or more receiving districts.

2. In addition to existing powers and authorities to regulate by planning or zoning including authorization to provide for transfer of development rights pursuant to other enabling law, the legislative body of any city is hereby empowered to provide for transfer of development rights subject to the conditions hereinafter set forth and such other conditions as the city legislative body deems necessary and appropriate that are consistent with the purposes of this section, except that in cities of over one million any transfer of development rights shall be provided in the zoning ordinance after adoption by the city planning commission and board of estimate. The purpose of providing for transfer of development rights shall be to protect the natural, scenic or agricultural qualities of open lands, to enhance sites and areas of special character or special historical, cultural, aesthetic or economic interest or value and to enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource. The conditions hereinabove referred to are as follows:

a. That transfer of development rights, and the sending and receiving districts, shall be established in accordance with a well-considered plan within the meaning of subdivision twenty-five of section twenty of this article. The sending district from which transfer of development rights may be authorized shall consist of natural, scenic, recreational, agricultural or open land or sites of special historical, cultural, aesthetic or economic values sought to be protected. Every receiving district, to which transfer of development rights may be authorized, shall have been found by the legislative body of the city, after evaluating the effects of potential increased development which is possible under the transfer of development rights provisions, to contain adequate resources, environmental quality and public facilities including adequate transportation, water supply, waste disposal and fire protection, and that there will be no significant environmentally damaging consequences and such increased development is compatible with the development otherwise permitted by the city and by the federal, state, and county agencies having jurisdiction to approve permissible development within the district. A generic environmental impact statement pursuant to the provisions of article eight of the environmental conservation law shall be prepared by the city for the receiving district before any such district, or any sending district, is designated, and such statement shall be amended from time to time by the city if there are material changes in circumstances. Where a transfer of development rights affects districts in two or more school, special assessment or tax districts, it may not unreasonably transfer the tax burden between the taxpayers of such districts. The receiving and sending districts need not be coterminous with zoning districts.

b. That sending and receiving districts be designated and mapped with specificity and the procedure for transfer of development rights be specified. Notwithstanding any other provision of law to the contrary, environmental quality review pursuant to article eight of the environmental conservation law for any action in a receiving district that utilizes development rights shall only require information specific to the project and site where the action will occur and shall be limited to review of the environmental impacts of the action, if any, not adequately reviewed in the generic environmental impact statement.

c. That the burden upon land within a sending district from which development rights have been transferred shall be documented by an instrument duly executed by the grantor in the form of a conservation easement, as defined in title three of article forty-nine of the environmental conservation law, which burden upon such land shall be enforceable by the appropriate city in addition to any other person or entity granted enforcement rights by the terms of the instrument. All provisions of law applicable to such conservation easements pursuant to such title shall apply with respect to conservation easements hereunder, except that the city may adopt standards pertaining to the duration of such easements that are more stringent than such standards promulgated by the department of environmental conservation pursuant to such title. Upon the designation of any sending district, the city shall adopt regulations establishing uniform minimum standards for instruments creating such easements within the district. No such modification or extinguishment of an easement

shall diminish or impair development rights within any receiving district. Any development right which has been transferred by a conservation easement shall be evidenced by a certificate of development right which shall be issued by the city to the transferee in a form suitable for recording in the registry of deeds for the county where the receiving district is situated in the manner of other conveyances of interests in land affecting its title.

d. That within one year after a development right is transferred, the assessed valuation placed on the affected properties for real property tax purposes shall be adjusted to reflect the transfer. A development right which is transferred shall be deemed to be an interest in real property and the rights evidenced thereby shall inure to the benefit of the transferee, and his heirs, successors and assigns.

e. That development rights shall be transferred reflecting the normal market in land, including sales between owners of property in sending and receiving districts, a city may establish a development rights bank or such other account in which development rights may be retained and sold in the best interest of the city. Cities shall be authorized to accept for deposit within the bank gifts, donations, bequests or other development rights. All receipts and proceeds from sales of development rights sold by the city shall be deposited in a special municipal account to be applied against expenditures necessitated by the municipal development rights program.

f. That prior to designation of sending or receiving districts, the legislative body of the city shall evaluate the impact of transfer of development rights upon the potential development of low or moderate income housing lost in sending districts and gained in receiving districts and shall find either there is approximate equivalence between potential low and moderate housing units lost in the sending district and gained in the receiving districts or that the city has or will take reasonable action to compensate for any negative impact upon the availability or potential development of low or moderate income housing caused by the transfer of development rights.

3. A legislative body of a city modifying its zoning ordinance or enacting a local law pursuant to this section shall follow the procedure for adopting and amending its zoning ordinance or local laws, as the case may be, including all provisions for notice applicable for changes or amendments to a zoning ordinance, local law or regulation.

4. Nothing in this section shall be construed to invalidate any provision for transfer of development rights heretofore or hereafter adopted by any local legislative body, or, in the case of cities over one million, by the board of estimate.

Notes:

- For a discussion of the concept and use of transfer of development rights, see DOS Legal Memorandum: "Transfer of Development Rights."

§ 20-g. Intermunicipal cooperation in comprehensive planning and land use regulation.

1. Legislative intent. This section is intended to illustrate the statutory authority that any municipal corporation has under article five-G of the general municipal law and place within land use law express statutory authority for cities, towns and villages to enter into agreements to undertake comprehensive planning and land use regulation with each other or one for the other, and to provide that any city, town or village may contract with a county to carry out all or a portion of the ministerial functions related to the land use of such city, town or village as may be agreed upon. By the enactment of this section the legislature seeks to promote intergovernmental cooperation that could result in increased coordination and effectiveness of comprehensive planning and land use regulation, more efficient use of infrastructure and municipal revenues, as well as the enhanced protection of

community resources, especially where such resources span municipal boundaries.

2. Authorization and effects.

(a) In addition to any other general or special powers vested in a city to prepare a comprehensive plan and enact and administer land use regulations, by local law or ordinance, rule or regulation, each city is hereby authorized to enter into, amend, cancel and terminate agreements with any other municipality or municipalities to undertake all or a portion of such powers, functions and duties.

(b) Any one or more municipalities located in a county which has established a county planning board, commission or other agency, hereinafter referred to as a county planning agency, are hereby authorized to enter into, amend, cancel and terminate agreements with such county in order to authorize the county planning agency to perform and carry out certain ministerial functions on behalf of such municipality or municipalities related to land use planning and zoning. Such functions may include, but are not limited to, acting in an advisory capacity, assisting in the preparation of comprehensive plans and land use regulations to be adopted and enforced by such municipality or municipalities and participating in the formation and functions of individual or joint administrative boards and bodies formed by one or more municipalities.

(c) Such agreements shall apply only to the performance or exercise of any function or power which each of the municipal corporations has the authority by any general or special law to prescribe, perform, or exercise separately.

3. Definitions. As used herein:

(a) "Municipality", means a city, town or village.

(b) "Community resource", means a specific public facility, infrastructure system, or geographic area of special economic development, environmental, scenic, cultural, historic, recreational, parkland, open space, natural resource, or other unique significance, located wholly or partially within the boundaries of one or more given municipalities.

(c) "Intermunicipal overlay district", means a special land use district which encompasses all or a portion of one or more municipalities for the purpose of protecting, enhancing or developing one or more community resources as provided herein.

4. Intermunicipal agreements. In addition to any other powers granted to municipalities to contract with each other to undertake joint, cooperative agreements any municipality may:

(a) create a consolidated planning board which may replace individual planning boards, if any, which consolidated planning board shall have the powers and duties as shall be determined by such agreement;

(b) create a consolidated zoning board of appeals which may replace individual zoning boards of appeals, if any, which consolidated zoning board of appeals shall have the powers and duties as shall be determined by such agreement;

(c) create a comprehensive plan and/or land use regulations which may be adopted independently by each participating municipality;

(d) provide for a land use administration and enforcement program which may replace individual land use

administration and enforcement programs, if any, the terms and conditions of which shall be set forth in such agreement; and

(e) create an intermunicipal overlay district for the purpose of protecting, enhancing or developing community resources that encompass two or more municipalities.

5. Special considerations.

(a) Making joint agreements. Any agreement made pursuant to the provisions of this section may contain provisions as the parties deem to be appropriate, and including provisions relative to the items designated in paragraphs a through m inclusive as set forth in subdivision two of section one hundred nineteen-o of the general municipal law.

(b) Establishing the duration of agreement. Any agreement developed pursuant to the provisions of this section may contain procedures for periodic review of the terms and conditions of the agreement, including those relating to the duration, extension or termination.

(c) Amending local laws or ordinances. Local laws or ordinances shall be amended, as appropriate, to reflect the provisions contained in intermunicipal agreements established pursuant to the provisions of this section.

6. Appeal of action by aggrieved party or parties. Any officer, department, board or bureau of any municipality with the approval of the legislative body, or any person or persons jointly or severally aggrieved by any act or decision of a planning board, zoning board of appeals or agency created pursuant to the provisions of this section may bring a proceeding by article seventy-eight of the civil practice law and rules in a court of record on the ground that such decision is illegal, in whole or in part. Such proceeding must be commenced within thirty days after the filing of the decision in the office of the city clerk. Commencement of the proceeding shall stay proceedings upon the decision from which the appeal is taken. All issues in any proceeding under this section shall have a preference over all other civil actions and proceedings.

7. Any agreements made between two or more municipalities pursuant to article five-G of the general municipal law or any other law which provides for the undertaking of any land use regulation or activity on a joint, cooperative or contract basis, if valid when so made, shall not be invalidated by the provisions of this section.

8. The provisions of this section shall be in addition to existing authority and shall not be deemed or construed as a limitation, diminution or derogation of any statutory authority authorizing municipal cooperation.

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§ 26. Official map, establishment.

Every city by ordinance, local law or resolution of the legislative body which has the authority to lay out, adopt and establish streets, highways and parks may establish an official map of the city showing the streets, highways and parks theretofore laid out, adopted and established by law. Drainage systems may also be shown on this map. Such map is to be deemed to be final and conclusive with respect to the location and width of streets, highways, drainage systems and the location of parks shown thereon. Such official map is hereby declared to be established to conserve and promote the public health, safety and general welfare. Said ordinance, local law or resolution shall make it the duty of some appropriate official or employee of said city at once to file with the clerk or register of the county or counties in which said city

is situated a certificate showing that the city has established an official map.

§ 27. Planning board, creation and appointment.

1. Authorization. The legislative body of each city, except a city having a population of more than one million, is hereby authorized by local law or ordinance to create a planning board consisting of five or seven members. Members and the chairperson of such planning board shall be appointed by the mayor or other duly authorized appointing authority. In the absence of a chairperson, the planning board may designate a member to serve as chairperson. In making such appointments, the mayor or other duly authorized appointing authority may require planning board members to complete training and continuing education courses in accordance with any local requirements for the training of such members. Not more than a minority of the members of such board shall hold any other public office or position in such city.

2. Appropriation for planning board. The legislative body of each city is hereby authorized and empowered to make such appropriation as it may see fit for planning board expenses. The legislative body may, as part of the local law or ordinance creating such planning board, provide for the compensation of planning board members. The planning board shall have the power and authority to employ experts, clerks and a secretary, and to pay for their services, and to provide for such other expenses as may be necessary and proper, not exceeding in all the appropriation that may be made therefor by the city legislative body for such planning board; excepting and providing that in cities in which the general power and authority to fix salaries and prescribe positions is placed in some other board or officer the foregoing power and authority shall be in such other duly authorized board or officer.

3. Legislative body members ineligible. No person who is a member of the legislative body of a city to which the provisions of this section are applicable, shall be eligible for membership on such planning board.

4. Terms of members first appointed. The terms of the members of the planning board first appointed shall be so fixed that the term of one member shall expire at the end of the official year in which such members were initially appointed. The terms of the remaining members first appointed shall be so fixed that one term shall expire at the end of each official year thereafter. At the expiration of the term of each member first appointed, his or her successor shall be appointed for a term which shall be equal in years to the number of members of the board.

5. Terms of members now in office. Members now holding office for terms which do not expire at the end of the official year shall, upon the expiration of their term, hold office until the end of the official year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the planning board.

6. Increasing membership. Any legislative body of a city may, by local law or ordinance, increase a five member planning board to seven members. Additional members shall be first appointed for single terms in order that the terms of members shall expire in each of seven successive years and their successors shall thereafter be appointed for full terms of seven years. No such additional member shall take part in the consideration of any matter for which an application was on file with the planning board at the time of his or her appointment.

7. Decreasing membership. A legislative body of a city which has seven members on the planning board may by local law or ordinance, decrease the membership to five, to take effect upon the next two

expirations of terms. However, no incumbent shall be removed from office except upon the expiration of his or her term, except as hereinafter provided.

8. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the mayor, or other duly authorized appointing authority, shall appoint the new member for the unexpired term.

9. Removal of members. The mayor, or other duly authorized appointing authority, shall have the power to remove, after public hearing, any member of the planning board for cause. Any planning board member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the city legislative body by local law or ordinance.

10. Compatibility of offices. The municipal officials or employees on such board shall not, by reason of membership thereon, forfeit their right to exercise the powers, perform the duties or receive the compensation of the municipal office or position held by them during such membership. No municipal officer or employee shall be appointed to the planning board in the event such officer or employee cannot carry out the duties of his or her position without a conflict in the performance of his or her duties as a member of the planning board.

11. Chairperson duties. All meetings of the planning board shall be held at the call of the chairperson and at such other times as such board may determine. Such chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.

12. Service on other planning boards. No person shall be disqualified from serving as a member of the city planning board by reason of serving as a member of a county planning board.

13. Rules and regulations. The planning board may recommend to the city legislative body regulations relating to any subject matter over which the planning board has jurisdiction under this article or any other statute, or under local law or ordinance of the city. Adoption of any such recommendations by the city legislative body shall be by local law or ordinance.

14. Report on referred matters; general reports.

a. The legislative body of the city may by general or special rule provide for the reference of any matter or class of matters, other than those referred to in subdivision thirteen of this section, to the planning board before final action is taken thereon by the legislative body or other office or officer of said city having final authority over said matter. The legislative body may further stipulate that final action thereon shall not be taken until the planning board has submitted its report thereon, or has had a reasonable time, to be fixed by the legislative body in said rule, to submit the report.

b. The planning board may review and make recommendations on a proposed city comprehensive plan or amendment thereto. In addition, the planning board shall have the full power and authority to make investigations, maps, reports, and recommendations in connection therewith relating to the planning and development of the city as it deems desirable, providing the total expenditures of said board shall not exceed the appropriation provided therefor.

15. Planning commission. In any city in which there is a planning commission created under article twelve-A of the general municipal law, the legislative body of the city, instead of authorizing the appointment of a planning board under this article, may provide that the existing commission shall continue, the members thereof thereafter to be appointed in accordance with the provisions of such article twelve-A, and to have the powers and duties as specified for a planning board appointed under this article, in addition to the powers and duties as specified in article twelve-A of the general municipal

law, provided, however, that in any such city section two hundred thirty-eight of the general municipal law shall not be in force.

16. Alternate members.

(a) The legislative body of each city except a city having a population of more than one million may, by local law or ordinance or as a part of the local law or ordinance creating the planning board, establish alternate planning board member positions for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest. Alternate members of the planning board shall be appointed by the mayor or other duly authorized appointing authority, for terms established by the legislative body of the city.

(b) The chairperson of the planning board may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial planning Board meeting at which the substitution is made.

(c) All provisions of this section relating to planning board member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, compatibility of office and service on other boards, shall also apply to alternate members.

Note:
- For planning commission provisions, see Article 12-A of General Municipal Law.

§ 27-a. Site plan review.

1. Definition of site plan. As used in this section the term "site plan" shall mean a rendering, drawing, or sketch prepared to specifications and containing necessary elements, as set forth in the applicable ordinance or local law, which shows the arrangement, layout and design of the proposed use of a single parcel of land as shown on said plan. Plats showing lots, blocks or sites which are subject to review pursuant to authority provided for the review of subdivisions under section thirty-two of this article shall continue to be subject to such review and shall not be subject to review as site plans under this section.

2. Approval of site plans.

a. The legislative body of each city may, as part of a zoning ordinance or local law adopted pursuant to subdivisions twenty-four and twenty-five of section twenty of this chapter or by local law or ordinance adopted pursuant to other enabling law, authorize the planning board or such other administrative body that it shall so designate, to review and approve, approve with modifications or disapprove site plans, prepared to specifications set forth in the ordinance or local law and/or in regulations of such authorized board. Site plans shall show the arrangement, layout and design of the proposed use of the land on said plan. The ordinance or local law shall specify the land uses that require site plan approval and the elements to be included on plans submitted for approval. The required site plan elements which are included in the local law or ordinance may include, where appropriate, those related to parking, means of access, screening, signs, landscaping, architectural features, location and dimensions of buildings, adjacent land uses and physical features meant to protect adjacent land uses as well as any additional elements specified by the legislative body in such zoning ordinance or local law.

b. When an authorization to approve site plans is granted by the legislative body pursuant to this section, the terms thereof may condition the issuance of a building permit upon such approval.

3. Application for area variance. Notwithstanding any provisions of law to the contrary, where a proposed site plan contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section eighty-one-b of article five-a of this chapter without the necessity of a decision or determination of an administration official charged with the enforcement of the zoning regulations.

4. Conditions attached to the approval of site plans. The authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the city.

5. Waiver of requirements. The legislative body may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety and general welfare or inappropriate to a particular site plan.

6. Reservation of parkland on site plans containing residential units.

a. Before such authorized board may approve a site plan containing residential units, such site plan shall also show, when required by such board, a park or parks suitably located for playground or other recreational purposes.

b. Land for park, playground or other recreational purposes may not be required until the authorized board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the city. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the city based on projected population growth to which the particular site plan will contribute.

c. In the event the authorized board makes a finding pursuant to paragraph b of this subdivision that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the authorized board may require a sum of money in lieu thereof to be established by the legislative body. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the authorized board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the city exclusively for park, playground or other recreational purposes, including the acquisition of property.

d. Notwithstanding the foregoing provisions of this subdivision, if the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved pursuant to section thirty-two of this article, the authorized board shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.

7. Performance bond or other security. As an alternative to the installation of required infrastructure and improvements, prior to approval by the authorized board, a performance bond or other security sufficient to cover the full cost of the same, as estimated by the authorized board or a city department designated by the authorized board to make such estimate, where such departmental estimate is deemed acceptable by the authorized board, shall be furnished to the city by the owner. Such security shall be provided to the city pursuant to the provisions of subdivision eight of section thirty-three of this article.

8. Public hearing and decision on site plans. In the event a public hearing is required by ordinance or local law adopted by the legislative body, the authorized board shall conduct a public hearing within sixty-two days from the day an application is received on any matter referred to it under this section. The authorized board shall mail notice of said hearing to the applicant at least ten days before said hearing and shall give public notice of said hearing in a newspaper of general circulation in the city at least five days prior to the date thereof and shall make a decision on the application within sixty-two days after such hearing, or after the day the application is received if no hearing has been held. The time within which the authorized board must render its decision may be extended by mutual consent of the applicant and such board. The decision of the authorized board shall be filed in the office of the city clerk within five business days after such decision is rendered, and a copy thereof mailed to the applicant. Nothing herein shall preclude the holding of a public hearing on any matter on which a public hearing is not so required.

9. Notice to county planning board or agency or regional planning council. At least ten days before such hearing, the authorized board shall mail notices thereof to the county planning board or agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law. In the event a public hearing is not required, such proposed action shall be referred before final action is taken thereon.

10. Compliance with state environmental quality review act. The authorized board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

11. Court review. Any person aggrieved by a decision of the authorized board or any officer, department, board or bureau of the city may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceedings shall be instituted within thirty days after the filing of a decision by such board in the office of the city clerk. The court may take evidence or appoint a referee to take such evidence as it may direct, and report the same, with findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The court shall itself dispose of the matter on the merits, determining all questions which may be presented for determination.

12. Costs. Costs shall not be allowed against the authorized board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

13. Preference. All issues addressed by the court in any proceeding under this section shall have preference over all civil actions and proceedings.

14. Applicability. This section shall not apply to any city having a population of more than one million.

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§ 27-b. Approval of special use permits.

1. Definition of special use permit. As used in this section the term "special use permit" shall mean an authorization of a particular land use which is permitted in a zoning ordinance or local law, subject to requirements imposed by such zoning ordinance or local law to assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met.

2. Approval of special use permits. The legislative body may, as part of a zoning ordinance or local law, authorize the planning board or such other administrative body that it shall designate to grant special use permits as set forth in such zoning ordinance or local law.

3. Application for area variance. Notwithstanding any provision of law to the contrary, where a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section eighty- one-b of article five-a of this chapter, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

4. Conditions attached to the issuance of special use permits. The authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit. Upon its granting of said special use permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the city.

5. Waiver of requirements. The legislative body may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of special use permits submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the ordinance or local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety and general welfare or inappropriate to a particular special use permit.

6. Public hearing and decision on special use permits. The authorized board shall conduct a public hearing within sixty-two days from the day an application is received on any matter referred to it under this section. Public notice of said hearing shall be printed in a newspaper of general circulation in the city at least five days prior to the date thereof. The authorized board shall decide upon the application within sixty-two days after the hearing. The time within which the authorized board must render its decision may be extended by mutual consent of the applicant and the board. The decision of the authorized board on the application after the holding of the public hearing shall be filed in the office of the city clerk within five business days after such decision is rendered, and a copy thereof mailed to the applicant.

7. Notice to applicant and county planning board or agency and regional planning council. At least ten days before such hearing, the authorized board shall mail notices thereof to the applicant and to the county planning board or agency and regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision two of section two hundred thirty-nine-m of the general municipal law.

8. Compliance with state environmental quality review act. The authorized board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

9. Court review. Any person aggrieved by a decision of the planning board or such other designated body

or any officer, department, board or bureau of the city may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceedings shall be instituted within thirty days after the filing of a decision by such board in the office of the city clerk. The court may take evidence or appoint a referee to take such evidence as it may direct, and report the same, with findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The court shall itself dispose of the matter on the merits, determining all questions which may be presented for determination.

10. Costs. Costs shall not be allowed against the planning board or other administrative body designated by the legislative body unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

11. Preference. All issues addressed by the court in any proceeding under this section shall have preference over all civil actions and proceedings.

12. Applicability. This section shall not apply to any city having a population of more than one million.

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§ 28-a. City comprehensive plan.

1. Application. This section shall not apply in a city having a population of more than one million.

2. Legislative findings and intent. The legislature hereby finds and determines that:

(a) Significant decisions and actions affecting the immediate and long-range protection, enhancement, growth and development of the state and its communities are made by local governments.

(b) Among the most important powers and duties granted by the legislature to a city government is the authority and responsibility to undertake city comprehensive planning and to regulate land use for the purpose of protecting the public health, safety and general welfare of its citizens.

(c) The development and enactment by the city government of a city comprehensive plan which can be readily identified, and is available for use by the public, is in the best interest of the people of each city.

(d) The great diversity of resources and conditions that exist within and among the cities of the state compels the consideration of such diversity in the development of each city comprehensive plan.

(e) The participation of citizens in an open, responsible and flexible planning process is essential to the designing of the optimum city comprehensive plan.

(f) The city comprehensive plan is a means to promote the health, safety and general welfare of the people of the city and to give due consideration to the needs of the people of the region of which the city is a part.

(g) The comprehensive plan fosters cooperation among governmental agencies planning and implementing capital projects and municipalities that may be directly affected thereby.

(h) It is the intent of the legislature to encourage, but not to require, the preparation and adoption of a comprehensive plan pursuant to this section. Nothing herein shall be deemed to affect the status or validity of existing master plans, comprehensive plans, or land use plans.

3. Definitions. As used in this section, the term:

(a) "city comprehensive plan" means the materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other 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 city.

(b) "land use regulation" means an ordinance or local law enacted by the city for the regulation of any aspect of land use and community resource protection and includes any zoning, subdivision, special use permit or site plan regulation or any other regulation which prescribes the appropriate use of property or the scale, location, and intensity of development.

(c) "special board" means a board consisting of one or more members of the planning board and such other members as are appointed by the legislative body of the city to prepare a proposed comprehensive plan and/or an amendment thereto.

4. Content of a city comprehensive plan. The city comprehensive plan may include the following topics at the level of detail adapted to the special requirements of the city:

(a) General statements of goals, objectives, principles, policies, and standards upon which proposals for the immediate and long-range enhancement, growth and development of the city are based.

(b) Consideration of regional needs and the official plans of other government units and agencies within the region.

(c) The existing and proposed location and intensity of land uses.

(d) Consideration of agricultural uses, historic and cultural resources, coastal and natural resources and sensitive environmental areas.

(e) Consideration of population, demographic and socio-economic trends and future projections.

(f) The location and types of transportation facilities.

(g) Existing and proposed general location of public and private utilities and infrastructure.

(h) Existing housing resources and future housing needs, including affordable housing.

(I) The present and future general location of educational and cultural facilities, historic sites, health facilities and facilities for emergency services.

(j) Existing and proposed recreation facilities and parkland.

(k) The present and potential future general location of commercial and industrial facilities.

(l) Specific policies and strategies for improving the local economy in coordination with other plan topics.

(m) Propose measures, programs, devices, and instruments to implement the goals and objectives of the various topics within the comprehensive plan.

(n) All or part of the plan of another public agency.

(o) Any and all other items which are consistent with the orderly growth and development of the city.

5. Preparation. The legislative body of the city, or by resolution of such body, the planning board or a special board, may prepare a proposed city comprehensive plan and amendments thereto. In the event the planning board or special board is directed to prepare a proposed comprehensive plan or amendment thereto, such board shall, by resolution, recommend such proposed plan or amendment to the legislative body of the city.

6. Referrals.

(a) Any proposed comprehensive plan or amendment thereto that is prepared by the legislative body of the city or a special board may be referred to the city planning board for review and recommendation before action by the legislative body of the city.

(b) The legislative body of the city shall, prior to adoption, refer the proposed comprehensive plan or any amendment thereto to the county planning board or agency or regional planning council for review and recommendation as required by section two hundred thirty-nine-m of the general municipal law. In the event the proposed plan or amendment thereto is prepared by the city planning board or a special board, such board may request comment on such proposed plan or amendment from the county planning board or agency or regional planning council.

7. Public hearings; notice.

(a) In the event the legislative body of the city prepares a proposed city comprehensive plan or amendment thereto, the legislative body of the city shall hold one or more public hearings and such other meetings as it deems necessary to assure full opportunity for citizen participation in the preparation of such proposed plan or amendment, and in addition, the legislative body of the city shall hold one or more public hearings prior to adoption of such proposed plan or amendment.

(b) In the event the legislative body of the city has directed the planning board or a special board to prepare a proposed comprehensive plan or amendment thereto, the board preparing the plan shall hold one or more public hearings and such other meetings as it deems necessary to assure full opportunity for citizen participation in the preparation of such proposed plan or amendment. The legislative body of the city shall, within ninety days of receiving the planning board or special board's recommendations on such proposed plan or amendment, and prior to adoption of such proposed plan or amendment, hold a public hearing on such proposed plan or amendment.

(c) Notice of a public hearing shall be published in a newspaper of general circulation in the city at least ten calendar days in advance of the hearing. The proposed comprehensive plan or amendment thereto shall be made available for public review during said period at the office of the city clerk and may be made available at any other place, including a public library.

8. Adoption. The legislative body of the city may adopt by resolution a city comprehensive plan or any amendment thereto.

9. Environmental review. A city comprehensive plan, and any amendment thereto, is subject to the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations. A city comprehensive plan may be designed to also serve as, or be accompanied by, a generic environmental impact statement pursuant to the state environmental quality review act statute and regulations. No further compliance with such law is

required for subsequent site specific actions that are in conformance with the conditions and thresholds established for such actions in the generic environmental impact statement and its findings.

10. Agricultural review and coordination. A city comprehensive plan and any amendments thereto, for a city containing all or part of an agricultural district or lands receiving agricultural assessments within its jurisdiction, shall continue to be subject to the provisions of article twenty-five-AA of the agriculture and markets law relating to the enactment and administration of local laws, ordinances, rules or regulations. A newly, adopted or amended city comprehensive plan shall take into consideration applicable county agricultural and farmland protection plans as created under article twenty-five-AAA of the agriculture and markets law.

11. Periodic review. The legislative body of the city shall provide, as a component of such proposed comprehensive plan, the maximum intervals at which the adopted plan shall be reviewed.

12. Effect of adoption of the city comprehensive plan.

(a) All city land use regulations must be in accordance with a comprehensive plan adopted pursuant to this section.

(b) All plans for capital projects of another governmental agency on land included in the city comprehensive plan adopted pursuant to this section shall take such plan into consideration.

13. Filing of city comprehensive plan. The adopted city comprehensive plan and any amendments thereto shall be filed in the office of the city clerk and a copy thereof shall be filed in the office of the county planning agency.

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§ 29. Official map, changes.

Such legislative body is authorized and empowered, whenever and as often as it may deem it for the public interest, to change or add to the official map of the city so as to lay out new streets, highways or parks, or to widen or close existing streets, highways or parks. Drainage systems may also be shown on this map. At least five days' notice of a public hearing on any proposed action with reference to such change in the official map shall be published at least once in an official publication of said city or in a newspaper of general circulation therein. No change in the official map shall be made for the lay out of a new street or the opening or widening of any street unless notice shall have been sent by registered mail, return receipt requested, to the person and address noted on the last preceding real property tax notice issued on the property which is to be included in such proposed layout, opening or widening of such streets. Before making such addition or change the matter shall be referred to the planning board for report thereon, but if the planning board shall not make its report within thirty days of such reference, it shall forfeit the right further to suspend action. Such additions and changes when adopted shall become a part of the official map of the city, and shall be deemed to be final and conclusive with respect to the location of the streets, highways and parks shown thereon. The layout, widening or closing, or the approval of the layout, widening or closing of streets, highways or parks by the city under provisions of law other than those contained in this article shall be deemed to be a change or addition to the official map, and shall be subject to all the provisions of this article.

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§ 31. Planning board, general reports.

The planning board shall have full power and authority to make such investigations, maps and reports and recommendations in connection therewith relating to the planning and development of the city as to it seems desirable providing the total expenditures of said board shall not exceed the appropriation for its expenses.

§ 32. Subdivision review; approval of plats; development of filed plats.

1. Purpose. For the purpose of providing for the future growth and development of the city and affording adequate facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of its population, the legislative body of the city may by resolution, authorize and empower the planning board to approve preliminary and final plats of subdivisions showing lots, blocks or sites, with or without streets or highways.

2. Authorization for review of previously filed plats. For the same purposes and under the same conditions, the legislative body of the city may, by resolution, authorize and empower the planning board to approve the development of plats, entirely or partially undeveloped, which were filed in the office of the clerk of the county in which such plat is located prior to the appointment of such planning board and grant to the board the power to approve such plats. The term "undeveloped" shall mean those plats where twenty percent or more of the lots within the plat are unimproved unless existing conditions, such as poor drainage, have prevented their development.

3. Filing of certificate. The clerk of every city which has authorized its planning board to approve plats as set forth herein shall immediately file a certificate of that fact with the clerk or register of the county in which such city is located.

4. Definitions. When used in this article the following terms shall have the respective meanings set forth herein except where the context shows otherwise:

(a) "Subdivision", means the division of any parcel of land into a number of lots, blocks or sites as specified in a law, rule or regulation, with or without streets or highways, for the purpose of sale, transfer of ownership, or development. The term "subdivision" may include any alteration of lot lines or dimensions of any lots or sites shown on a plat previously approved and filed in the office of the county clerk or register of the county in which such plat is located. Subdivisions may be defined and delineated by local regulation, as either "major" or "minor", with the review procedures and criteria for each set forth in such local regulations.

(b) "Preliminary plat", means a drawing prepared in a manner prescribed by local regulation showing the layout of a proposed subdivision including, but not restricted to, road and lot layout and approximate dimensions, key plan, topography and drainage, all proposed facilities unsized, including preliminary plans and profiles, at suitable scale and in such detail as local regulation may require.

(c) "Preliminary plat approval", means the approval of the layout of a proposed subdivision as set forth in a preliminary plat but subject to the approval of the plat in final form in accordance with the provisions of this section.

(d) "Final plat", means a drawing prepared in a manner prescribed by local regulation, that shows a proposed subdivision, containing in such additional detail as shall be provided by local regulation all information required to be shown on a preliminary plat and the modifications, if any, required by the planning board at the time of approval of the preliminary plat if such preliminary plat has been so approved.

(e) "Conditional approval of a final plat", means approval by a planning board of a final plat subject to conditions set forth by the planning board in a resolution conditionally approving such plat. Such conditional approval does not qualify a final plat for recording nor authorize issuance of any building permits prior to the signing of the plat by a duly authorized officer of the planning board and recording of the plat in the office of the county clerk or register as herein provided.

(f) "Final plat approval", means the signing of a plat in final form by a duly authorized officer of a planning board pursuant to a planning board resolution granting final approval to the plat, or after conditions specified in a resolution granting conditional approval of the plat are completed. Such final approval qualifies the plat for recording in the office of the county clerk or register, in the county in which such plat is located.

5. Approval of preliminary plats.

(a) Submission of preliminary plats. All plats shall be submitted to the planning board for approval in final form provided, however, that where the planning board has been authorized to approve preliminary plats, the owner may submit or the planning board may require that the owner submit a preliminary plat for consideration. Such a preliminary plat shall be clearly marked "preliminary plat" and shall conform to the definition provided in this section.

(b) Coordination with the state environmental quality review act. The planning board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

(c) Receipt of a complete preliminary plat. A preliminary plat shall not be considered complete until a negative declaration has been filed or until a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the state environmental quality review act. The time periods for review of a preliminary plat shall begin upon filing of such negative declaration or such notice of completion.

(d) Planning board as lead agency under the state environmental quality review act; public hearing; notice; decision.

(i) Public hearing on preliminary plats. The time within which the planning board shall hold a public hearing on the preliminary plat shall be coordinated with any hearings the planning board may schedule pursuant to the state environmental quality review act, as follows:

(1) If such board determines that the preparation of an environmental impact statement on the preliminary plat is not required, the public hearing on such plat shall be held within sixty-two days after the receipt of a complete preliminary plat by the clerk of the planning board; or

(2) If such board determines that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is held, the public hearing on the preliminary plat and the draft environmental impact statement shall be held jointly within sixty-two days after the filing of the notice of completion of such draft environmental impact statement in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the public hearing on the preliminary plat shall be held within sixty-two days of filing the notice of completion.

(ii) Public hearing; notice, length. The hearing on the preliminary plat shall be advertised at least once in a newspaper of general circulation in the city at least five days before such hearing if no

hearing is held on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat. The hearing on the preliminary plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(iii) Decision. The planning board shall approve, with or without modification, or disapprove such preliminary plat as follows:

(1) If the planning board determines that the preparation of an environmental impact statement on the preliminary plat is not required such board shall make its decision within sixty-two days after the close of the public hearing; or

(2) If the planning board determines that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of such public hearing in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of the public hearing on the preliminary plat. Within thirty days of the filing of such final environmental impact statement, the planning board shall issue findings on the final environmental impact statement and make its decision on the preliminary plat.

(iv) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board. When so approving a preliminary plat, the planning board shall state in writing any modifications it deems necessary for submission of the plat in final form.

(e) Planning board not as lead agency under the state environmental quality review act; public hearing; notice; decision.

(i) Public hearing on preliminary plats. The planning board shall, with the agreement of the lead agency, hold the public hearing on the preliminary plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement or if no public hearing is held on the draft environmental impact statement, the planning board shall hold the public hearing on the preliminary plat within sixty-two days after receipt of a complete preliminary plat by the clerk of the planning board.

(ii) Public hearing; notice, length. The hearing on the preliminary plat shall be advertised at least once in a newspaper of general circulation in the city at least five days before such hearing if held independently of the hearing on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat. The hearing on the preliminary plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(iii) Decision. The planning board shall by resolution approve with or without modification or disapprove the preliminary plat as follows:

(1) If the preparation of an environmental impact statement on the preliminary plat is not required, the planning board shall make its decision within sixty-two days after the close of

the public hearing on the preliminary plat.

(2) If an environmental impact statement is required, the planning board shall make its own findings and its decision on the preliminary plat within sixty-two days after the close of the public hearing on such preliminary plat or within thirty days of the adoption of findings by the lead agency, whichever period is longer.

(iv) Grounds for decision. The grounds for modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board. When so approving a preliminary plat, the planning board shall state in writing any modifications it deems necessary for submission of the plat in final form.

(f) Certification and filing of preliminary plat. Within five business days of the adoption of the resolution granting approval of such preliminary plat, such plat shall be certified by the clerk of the planning board as having been granted preliminary approval and a copy of the plat and resolution shall be filed in such clerk's office. A copy of the resolution shall be mailed to the owner.

(g) Filing of decision on preliminary plat. Within five business days from the date of the adoption of the resolution stating the decision of the board on the preliminary plat, the chairman or other duly authorized member of the planning board shall cause a copy of such resolution to be filed in the office of the city clerk.

(h) Revocation of approval of preliminary plat. Within six months of the approval of the preliminary plat the owner must submit the plat in final form. If the final plat is not submitted within six months, approval of the preliminary plat may be revoked by the planning board.

6. Approval of final plats.

(a) Submission of final plats. Final plats shall conform to the definition provided by this section.

(b) Final plats which are in substantial agreement with approved preliminary plats. When a final plat is submitted which the planning board deems to be in substantial agreement with a preliminary plat approved pursuant to this section, the planning board shall by resolution conditionally approve with or without modification, disapprove, or grant final approval and authorize the signing of such plat, within sixty-two days of its receipt by the clerk of the planning board.

(c) Final plats when no preliminary plat is required to be submitted; receipt of complete final plat. When no preliminary plat is required to be submitted, a final plat shall not be considered complete until a negative declaration has been filed or until a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the state environmental quality review act. The time periods for review of such plat shall begin upon filing of such negative declaration or such notice of completion.

(d) Final plats; not in substantial agreement with approved preliminary plats, or when no preliminary plat is required to be submitted. When a final plat is submitted which the planning board deems not to be in substantial agreement with a preliminary plat approved pursuant to this section, or when no preliminary plat is required to be submitted and a final plat clearly marked "final plat" is submitted conforming to the definition provided by this section the following shall apply:

(i) Planning board as lead agency; public hearing; notice; decision.

(1) Public hearing on final plats. The time within which the planning board shall hold a public hearing on such final plat shall be coordinated with any hearings the planning board may schedule pursuant to the state environmental quality review act, as follows:

(a) if such board determines that the preparation of an environmental impact statement is not required, the public hearing on a final plat not in substantial agreement with a preliminary plat, or on a final plat when no preliminary plat is required to be submitted, shall be held within sixty-two days after the receipt of a complete final plat by the clerk of the planning board; or

(b) if such board determines that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is held, the public hearing on the final plat and the draft environmental impact statement shall be held jointly within sixty-two days after the filing of the notice of completion of such draft environmental impact statement in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the public hearing on the final plat shall be held within sixty-two days following filing of the notice of completion.

(2) Public hearing; notice, length. The hearing on the final plat shall be advertised at least once in a newspaper of general circulation in the city at least five days before such hearing if no hearing is held on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such final plat. The hearing on the final plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(3) Decision. The planning board shall make its decision on the final plat as follows:

(a) if such board determines that the preparation of an environmental impact statement on the final plat is not required, the planning board shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat within sixty-two days after the date of the public hearing; or

(b) if such board determined that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of such public hearing in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of the public hearing on the final plat. Within thirty days of the filing of the final environmental impact statement, the planning board shall issue findings on such final environmental impact statement and shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat.

(4) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board.

(ii) Planning board not as lead agency; public hearing; notice; decision.

(1) Public hearing. The planning board shall, with the agreement of the lead agency, hold the public hearing on the final plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement or if no public hearing is held on the draft environmental impact statement, the planning board shall hold the public hearing on the plat within sixty-two days after the receipt of a complete final plat by the clerk of the planning board.

(2) Public hearing; notice, length. The hearing on the final plat shall be advertised at least once in a newspaper of general circulation in the city at least five days before such hearing if held independently of the hearing on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such final plat. The hearing on the final plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(3) Decision. The planning board shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat as follows:

(a) If the preparation of an environmental impact statement on the final plat is not required, the planning board shall make its decision within sixty-two days after the close of the public hearing on such final plat.

(b) If an environmental impact statement is required, the planning board shall make its own findings and its decision on the final plat within sixty-two days after the close of the public hearing on such final plat or within thirty days of the adoption of findings by the lead agency, whichever period is longer. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board.

7. Approval and certification of final plats.

(a) Certification of plat. Within five business days of the adoption of the resolution granting conditional or final approval of the final plat, such plat shall be certified by the clerk of the planning board as having been granted conditional or final approval and a copy of such resolution and plat shall be filed in such clerk's office. A copy of the resolution shall be mailed to the owner. In the case of a conditionally approved plat, such resolution shall include a statement of the requirements which when completed will authorize the signing thereof. Upon completion of such requirements the plat shall be signed by said duly authorized officer of the planning board and a copy of such signed plat shall be filed in the office of the clerk of the planning board or filed with the city clerk as determined by the legislative body of the city.

(b) Approval of plat in sections. In granting conditional or final approval of a plat in final form, the planning board may permit the plat to be subdivided and developed in two or more sections and may in its resolution granting conditional or final approval state that such requirements as it deems necessary to insure the orderly development of the plat be completed before said sections may be signed by the duly authorized officer of the planning board. Conditional or final approval of the sections of a final plat, may be granted concurrently with conditional or final approval of the entire plat, subject to any requirements imposed by the planning board.

(c) Duration of conditional approval of final plat. Conditional approval of the final plat shall expire within one hundred eighty days after the resolution granting such approval unless all requirements stated

in such resolution have been certified as completed. The planning board may extend by not more than two additional periods of ninety days each the time in which a conditionally approved plat must be submitted for signature if, in the planning board's opinion, such extension is warranted by the particular circumstances.

8. Default approval of preliminary or final plat. The time periods prescribed herein within which a planning board must take action on a preliminary plat or a final plat are specifically intended to provide the planning board and the public adequate time for review and to minimize delays in the processing of subdivision applications. Such periods may be extended only by mutual consent of the owner and the planning board. In the event a planning board fails to take action on a preliminary plat or a final plat within the time prescribed therefor after completion of all requirements under the state environmental quality review act, or within such extended period as may have been established by the mutual consent of the owner and the planning board, such preliminary or final plat shall be deemed granted approval. The certificate of the city clerk as to the date of submission of the preliminary or final plat and the failure of the planning board to take action within the prescribed time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of approval herein required.

9. Filing of decision on final plat. Within five business days from the date of the adoption of the resolution stating the decision of the board on the final plat, the chairman or other duly authorized member of the planning board shall cause a copy of such resolution to be filed in the office of the city clerk.

10. Notice to county planning board or agency or regional planning council. When a county planning board or agency or a regional planning council has been authorized to review subdivision plats pursuant to section two hundred thirty-nine-n of the general municipal law, the clerk of the planning board shall refer all applicable preliminary and final plats to such county planning board or agency or regional planning council as provided in that section.

11. Filing of final plat; expiration of approval. The owner shall file in the office of the county clerk or register such approved final plat or a section of such plat within sixty-two days from the date of final approval or such approval shall expire. The following shall constitute final approval: the signature of the duly authorized officer of the planning board constituting final approval by the planning board of a plat as herein provided; or the approval by such board of the development of a plat or plats already filed in the office of the county clerk or register of the county in which such plat or plats are located if such plats are entirely or partially undeveloped; or the certificate of the city clerk as to the date of the submission of the final plat and the failure of the planning board to take action within the time herein provided. In the event the owner shall file only a section of such approved plat in the office of the county clerk or register, the entire approved plat shall be filed within thirty days of the filing of such section with the city clerk in each city in which any portion of the land described in the plat is situated. Such section shall encompass at least ten percent of the total number of lots contained in the approved plat and the approval of the remaining sections of the approved plat shall expire unless said sections are filed before the expiration of the exemption period to which such plat is entitled under the provisions of section eighty-three-a of this chapter.

12. Subdivision abandonment. The owner of an approved subdivision may abandon such subdivision pursuant to the provisions of section five hundred sixty of the real property tax law.

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§ 33. Subdivision review; approval of plats; additional requisites.

1. Purpose. Before the approval by the planning board of a plat showing lots, blocks or sites, with or

without streets or highways, or the approval of a plat already filed in the office of the clerk of the county wherein such plat is situated if the plat is entirely or partially undeveloped, the planning board shall require that the land shown on the plat be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, drainage or other menace to neighboring properties or the public health, safety and welfare.

2. Additional requirements. The planning board shall also require that:

(a) the streets and highways be of sufficient width and suitable grade and shall be suitably located to accommodate the prospective traffic, to afford adequate light and air, to facilitate fire protection, and to provide access of firefighting equipment to buildings. If there be an official map or city comprehensive plan, such streets and highways shall be coordinated so as to compose a convenient system conforming to the official map and properly related to the proposals shown in the comprehensive plan of the city;

(b) suitable monuments be placed at block corners and other necessary points as may be required by the board and the location thereof is shown on the map of such plat;

(c) all streets and other public places shown on such plats be suitably graded and paved; street signs, sidewalks, street lighting standards, curbs, gutters, street trees, water mains, fire alarm signal devices (including necessary ducts and cables or other connecting facilities), sanitary sewers and storm drains be installed all in accordance with standards, specifications and procedures acceptable to the appropriate city departments except as hereinafter provided, or alternatively that a performance bond or other security be furnished to the city as hereinafter provided.

3. Compliance with zoning regulations. Where a zoning ordinance or local law has been adopted by the city, the plots shown on said plat shall at least comply with the requirements thereof subject, however, to the provisions of section thirty-seven of this article.

4. Reservation of parkland on subdivision plats containing residential units.

(a) Before the planning board may approve a subdivision plat containing residential units, such subdivision plat shall also show, when required by such board, a park or parks suitably located for playground or other recreational purposes.

(b) Land for park, playground or other recreational purposes may not be required until the planning board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the city. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the city based on projected population growth to which the particular subdivision plat will contribute.

(c) In the event the planning board makes a finding pursuant to paragraph (b) of this subdivision that the proposed subdivision plat presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such subdivision plat, the planning board may require a sum of money in lieu thereof, in an amount to be established by the legislative body of the city. In making such determination of suitability, the board shall assess the size and suitability of land shown on the subdivision plat which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any money required by the planning board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund

to be used by the city exclusively for park, playground or other recreational purposes, including the acquisition of property.

5. Character of the development. In making such determination regarding streets, highways, parks and required improvements, the planning board shall take into consideration the prospective character of the development, whether dense residence, open residence, business or industrial.

6. Application for area variance. Notwithstanding any provision of law to the contrary, where a plat contains one or more lots which do not comply with the zoning local law or ordinance, application may be made to the zoning board of appeals for an area variance pursuant to section eighty-one-b of this chapter, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations. In reviewing such application the zoning board of appeals shall request the planning board to provide a written recommendation concerning the proposed variance.

7. Waiver of requirements. The planning board may waive, when reasonable, any requirements or improvements for the approval, approval with modifications or disapproval of subdivisions submitted for its approval. Any such waiver, which shall be subject to appropriate conditions, may be exercised in the event any such requirements or improvements are found not to be requisite in the interest of the public health, safety, and general welfare or inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the subdivision.

8. Performance bond or other security.

(a) Furnishing of performance bond or other security. As an alternative to the installation of infrastructure and improvements, as above provided, prior to planning board approval, a performance bond or other security sufficient to cover the full cost of the same, as estimated by the planning board or a city department designated by the planning board to make such estimate, where such departmental estimate is deemed acceptable by the planning board, shall be furnished to the city by the owner.

(b) Security where plat approved in sections. In the event that the owner shall be authorized to file the approved plat in sections, as provided in subdivision seven of section thirty-two of this article, approval of the plat may be granted upon the installation of the required improvements in the section of the plat filed in the office of the county clerk or register or the furnishing of security covering the costs of such improvements. The owner shall not be permitted to begin construction of buildings in any other section until such section has been filed in the office of the county clerk or register and the required improvements have been installed in such section or a security covering the cost of such improvements is provided.

(c) Form of security. Any such security must be provided pursuant to a written security agreement with the city, approved by the legislative body of the city and also approved by the city attorney as to form, sufficiency and manner of execution, and shall be limited to:

(I) a performance bond issued by a bonding or surety company;

(ii) the deposit of funds in, or a certificate of deposit issued by, a bank or trust company located and authorized to do business in this state;

(iii) an irrevocable letter of credit from a bank located and authorized to do business in this state;

(iv) obligations of the United States of America; or

(v) any obligations fully guaranteed as to interest and principal by the United States of America, having a market value at least equal to the full cost of such improvements. If not delivered to the city, such security shall be held in a city account at a bank or trust company.

(d) Term of security agreement. Any such performance bond or security agreement shall run for a term to be fixed by the planning board, but in no case for a longer term than three years, provided, however, that the term of such performance bond or security agreement may be extended by the planning board with consent of the parties thereto. If the planning board shall decide at any time during the term of the performance bond or security agreement that the extent of building development that has taken place in the subdivision is not sufficient to warrant all the improvements covered by such security, or that the required improvements have been installed as provided in this section and by the planning board in sufficient amount to warrant reduction in the amount of said security, and upon approval by the legislative body of the city, the planning board may modify its requirements for any or all such improvements, and the amount of such security shall thereupon be reduced by an appropriate amount so that the new amount will cover the cost in full of the amended list of improvements required by the planning board.

(e) Default of security agreement. In the event that any required improvements have not been installed as provided in this section within the term of such security agreement, the legislative body of the city may thereupon declare the said performance bond or security agreement to be in default and collect the sum remaining payable thereunder; and upon the receipt of the proceeds thereof, the city shall install such improvements as are covered by such security and as commensurate with the extent of building development that has taken place in the subdivision but not exceeding in cost the amount of such proceeds.

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§ 34. Subdivision review; record of plats.

1. Filing of plat with county clerk or register.

(a) No plat of a subdivision of land showing lots, blocks or sites shall be filed or recorded in the office of the county clerk or register until it has been approved by a planning board which has been empowered to approve such plats. Further, such approval must be endorsed in writing on the plat in such manner as the planning board may designate.

(b) Such endorsement shall stipulate that the plat does not conflict with the county official map, where one exists, or in cases where plats do front on or have access to or are otherwise related to roads or drainage systems shown on the county official map, that such plat has been approved in the manner specified by section two hundred thirty-nine-f of the general municipal law.

2. Notification of filing. It shall be the duty of the county clerk or register to notify the planning board in writing within three days of the filing or recording of any plat approved by such planning board, identifying such plat by its title, date of filing or recording, and official file number.

3. Effect of filing. After such plat is approved and filed, the streets, highways and parks shown on such plat shall be and become a part of the official map or plan of the city.

4. Cession or dedication of streets, highways or parks.

(a) All streets, highways or parks shown on a filed or recorded plat are offered for dedication to the public unless the owner of the affected land, or the owner's agent, makes a notation on the plat to the

contrary prior to final plat approval. Any street, highway or park shown on a filed or recorded plat shall be deemed to be private until such time as it has been formally accepted by a resolution of the local legislative body, or until it has been condemned by the city for use as a public street, highway or park.

(b) In the event that such approved plat is not filed or recorded prior to the expiration date of the plat approval as provided in section thirty-two of this article, then such offer of dedication shall be deemed to be invalid, void and of no effect on and after such expiration date.

Note: Approval of plats related to roads or drainage systems shown on county official map - see General Municipal Law, §239-k

§ 35. Permits for building in bed of mapped streets.

For the purpose of preserving the integrity of such official map or plan no permit shall hereafter be issued for any building in the bed of any street or highway shown or laid out on such map or plan, provided, however, that if the land within such mapped street or highway is not yielding a fair return on its value to the owner, the board of appeals or other similar board in any city which has established such a board having power to make variances or exception in zoning regulations shall have power in a specific case by the vote of a majority of its members to grant a permit for a building in such street or highway which will as little as practicable increase the cost of opening such street or highway, or tend to cause a change of such official map or plan, and such board may impose reasonable requirements as a condition of granting such permit, which requirements shall inure to the benefit of the city. Before taking any action authorized in this section, the board of appeals or similar board shall give a hearing at which parties in interest and others shall have an opportunity to be heard. At least fifteen days notice of the time and place of such hearing shall be published in an official publication of said city or in a newspaper of general circulation therein. Any such decision shall be subject to review by certiorari order issued out of a court of record in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations.

Where a proposed street widening or extension has been shown on such official map or plan for ten years or more and the city has not acquired title thereto, the city may, after a hearing on notice as hereinabove provided, grant a permit for a building and/or structure in such street or highway and shall impose such reasonable requirements as are necessary to protect the public interest as a condition of granting such permit, which requirements shall inure to the benefit of the city.

§ 35-a. Limitation of time for revocation of permit.

An action or proceeding to revoke a building permit on the ground that the building erected pursuant thereto stands wholly or partly within the bed of any street or highway shown on the official map or plan of a city must be commenced within fifteen years from the time of the issuance of such permit; but if at the time this act takes effect more than fourteen years have elapsed since the time of the issuance of the permit, an action or proceeding to revoke the permit on such ground must be commenced within one year from the time this act takes effect. If no action or proceeding is commenced within the time limited, the permit shall be deemed as valid as if it had been issued pursuant to the provisions of section thirty-five of this chapter.

§ 36. Municipal improvements in streets, buildings not on mapped streets.

1. A city having a population of less than one million. No public municipal street utility or improvement shall be constructed by any city having a population of less than one million in any street or highway until it has become a public street or highway and is duly placed on the official map or plan. No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plan, which street or highway shall have been suitably improved to the satisfaction of the planning board in accordance with standards and specifications approved by the appropriate city departments as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway or alternately that a performance bond sufficient to cover the full cost of such improvement as estimated by such board shall be furnished to the city by the owner. Such performance bond shall be issued by a bonding or surety company approved by the corporation counsel of the city, or by the owner with security acceptable to the legislative body, and shall also be approved by such corporation counsel as to form, sufficiency and manner of execution. The term, manner of modification and method of enforcement of such bond shall be determined by the planning board in substantial conformity with section thirty-three of this article. The applicant for such a permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals or other similar board, in any city which has established a board having the power to make variances or exceptions in zoning regulations for: a) an exception if the circumstance of the case do not require the structure to be related to existing or proposed streets or highways and/or b) an area variance pursuant to section 81-b of this chapter and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal make any reasonable exception and issue the permit subject to conditions that will protect any future street or highway layout. Any such decision shall be subject to review under the provisions of article seventy-eight of the civil practice law and rules.

2. A city having a population of one million or more. No public municipal street utility or improvement shall be constructed by any city having a population of one million or more in any street or highway until it has become a public street or highway and is duly placed on the official map or plan, with the exception that a city may construct improvements and provide services to any public way (mapped or unmapped) if the public way has been open and in use to the public for a minimum of ten years. The existence of the public way must be attested to by documents satisfactory to the municipality, such as reports of city agencies providing municipal services. No certificate of occupancy shall be issued in such city for any building unless a street or highway giving access to such structure has been duly placed on the official map or plan, which street or highway, and any other mapped street or highway abutting such building or structure shall have been suitably improved to the satisfaction of the department of transportation of the city in accordance with standards and specifications approved by such department as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway, or, alternately, unless the owner has furnished to the department of transportation of such city a performance bond naming the city as obligee, approved by such department, to the full cost of such improvement as estimated by such department, or other security approved by such department, that such improvement will be completed within the time specified by such department. If such improvement has not been installed within the time specified by such department, such department may declare such performance bond or other security to be in default and shall collect, in the name of the city, the sum remaining payable thereunder. Upon receipt of the proceeds thereof, the city shall install such improvement. If the cost of such improvement exceeds the sum remaining payable under such bond or other security, the owner shall be liable for and shall pay to the city, the amount of such excess. Where the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and where the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, the applicant for such a certificate of occupancy may appeal from the decision of the administrative officer having charge of the issuance of certificates of occupancy to the board of

standards and appeals or other similar board of such city having power to make variances or exceptions in zoning regulations, and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal make any reasonable exception and issue the certificate of occupancy subject to conditions that will protect any future street or highway layout. Any such decision shall be subject to review under the provisions of article seventy-eight of the civil practice law and rules. No permit shall be granted for the erection of any building or structure in such city unless the owner has furnished to the commissioner of transportation of such city a policy of liability insurance, marked paid, in such amounts as may be fixed by such department, insuring, indemnifying and saving the city harmless from any claims, suits, demands, causes of action and judgments by reason of personal injuries sustained by any person or persons, including death, and from any claims, suits, demands, causes of action and judgments for damages to property, occurring on any such street or highway giving access to or abutting such structure, up to the date of the issuance of the certificate of occupancy or up to the date of the completion of the improvement of such street or highway as required by or pursuant to this section, whichever is later. In the event that the owner is covered by such a policy of liability insurance, the department of transportation may accept a certificate of endorsement extending such policy to include and cover the city. Every permit issued for the erection of any such building or structure shall contain a statement that no certificate of occupancy will be issued with respect to such building or structure unless a street or highway giving access to such structure has been duly placed on the official map or plan, which street or highway and any other mapped street or highway abutting such building or structure shall have been suitably improved to the satisfaction of the department of transportation of the city in accordance with standards and specifications approved by such department as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway or, alternately, unless the owner has furnished to the department of transportation a performance bond naming the city as obligee, approved by such department, sufficient to cover the full cost of such improvement as estimated by such department, or other security approved by such department, that such improvement will be completed within the time specified by such department.

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§ 37. Subdivision review; approval of cluster development.

1. Definitions. As used in this section:

(a) "cluster development" shall mean a subdivision plat or plats, approved pursuant to this article, in which the applicable zoning ordinance or local law is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks, and landscaping in order to preserve the natural and scenic qualities of open lands.

(b) "zoning districts" shall mean districts provided for in subdivisions twenty-four and twenty-five of section twenty of this chapter.

2. Authorization; purpose.

(a) The legislative body of the city may, by local law or ordinance, authorize the planning board to approve a cluster development simultaneously with the approval of a plat or plats pursuant to the provisions of this article. Approval of a cluster development shall be subject to the conditions set forth in this section and in such local law or ordinance. Such local law or ordinance shall also specify the zoning districts in which cluster development may be applicable.

(b) The purpose of a cluster development shall be to enable and encourage flexibility of design and development of land in such a manner as to preserve the natural and scenic qualities of open lands.

3. Conditions.

(a) This procedure may be followed at the discretion of the planning board if, in said board's judgment, its application would benefit the city. Provided, however, that in granting such authorization to the planning board, the legislative body of the city may also authorize the planning board to require the owner to submit an application for cluster development subject to criteria contained in the local law or ordinance authorizing cluster development.

(b) A cluster development shall result in a permitted number of building lots or dwelling units which shall in no case exceed the number which could be permitted, in the planning board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the zoning ordinance or local law applicable to the district or districts in which such land is situated and conforming to all other applicable requirements. Provided, however, that where the plat falls within two or more contiguous districts, the planning board may approve a cluster development representing the cumulative density as derived from the summing of all units allowed in all such districts, and may authorize any actual construction to take place in all or any portion of one or more of such districts.

(c) The planning board as a condition of plat approval may establish such conditions on the ownership, use, and maintenance of such open lands shown on the plat as it deems necessary to assure the preservation of the natural and scenic qualities of such open lands. The legislative body of the city may require that such conditions shall be approved by the legislative body of the city before the plat may be approved for filing.

(d) The plat showing such cluster development may include areas within which structures may be located, the height and spacing of buildings, open spaces and their landscaping, off-street open and enclosed parking spaces, streets, driveways, and any other features required by the planning board. In the case of a residential plat or plats, the dwelling units permitted may be, at the discretion of the planning board, in detached, semi-detached, attached, or multi-story structures.

4. Notice and public hearing. The proposed cluster development shall be subject to review at a public hearing or hearings held pursuant to section thirty-two of this article for the approval of plats.

5. Filing of plat. On the filing of the plat in the office of the county clerk or register, a copy shall be filed with the city clerk, who shall make appropriate notations and references thereto on the city zoning map.

6. Effect. The provisions of this section shall not be deemed to authorize a change in the permissible use of such lands as provided in the zoning ordinance or local law applicable to such lands.

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§ 38. Court review.

Any person or persons, jointly or severally aggrieved by any decision of the planning board concerning such plat or the changing of the zoning regulations of such land, or any officer, department, board or bureau of the city, may obtain a review in the manner provided by the civil practice law and rules provided the proceeding is commenced within thirty days after the filing of the decision in the office of the board.

Commencement of the proceeding shall stay proceedings upon the decision appealed from.

The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the planning board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

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§ 39. Separability clause.

If any part or provision of this article or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this article or the application thereof to other persons or circumstances and the legislature hereby declares that it would have enacted this article or the remainder thereof had the invalidity of such provision or application thereof been apparent.

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§ 81. Zoning board of appeals.

1. Appointment of members. The mayor or in a city having a city manager, the city manager of any city to which subdivisions twenty-four and twenty-five of section twenty of this chapter are applicable, shall appoint a board of appeals consisting of three or five members as shall be determined by local law or ordinance and shall designate the chairperson thereof. In the absence of the chairperson the board of appeals may designate a member to serve as acting chairperson. The legislative body may provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper, not exceeding the appropriation made for such purpose. In making such appointments, the mayor or other duly authorized appointing authority may require board of appeals members to complete training and continuing education courses in accordance with any local requirements for the training of such members.

2. Legislative body members ineligible. No person who is a member of the legislative body of the city shall be eligible for membership on such board of appeals.

3. Terms of members first appointed. In the creation of a new board of appeals, or the reestablishment of terms of an existing board, the appointment of members to the board shall be for terms so fixed that one member's term shall expire at the end of the official year in which such members were initially appointed. The remaining members' terms shall be so fixed that one member's term shall expire at the end of each official year thereafter. At the expiration of each original member's appointment, the replacement member shall be appointed for a term which shall be equal in years to the number of members of the board.

4. Terms of members now in office. Members now holding office for terms which do not expire at the end of the official year shall, upon the expiration of their term, hold office until the end of the official year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the board.

5. Increasing membership. The legislative body may, by local law or ordinance, increase a three member board of appeals to five members. Additional members shall be first appointed for single terms in order that the terms of members shall expire in each of five successive years and their

successors shall thereafter be appointed for full terms of five years. No such additional member shall take part in the consideration of any matter for which an application was on file with the board of appeals at the time of his or her appointment.

6. Decreasing membership. A legislative body which has increased the number of members of the board of appeals to five may, by local law or ordinance, decrease the number of members of the board of appeals to three to take effect upon the next two expirations of terms. Any board of appeals which, upon the effective date of this section has seven members, may continue to act as a duly constituted zoning board of appeals until the legislative body, by local law or ordinance, reduces such membership to three or five. However, no incumbent shall be removed from office except upon the expiration of his or her term.

7. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the mayor or in a city having a city manager, the city manager shall appoint the new member for the unexpired term.

8. Removal of members. The mayor or in a city having a city manager, the city manager shall have the power to remove, after public hearing, any member of the zoning board of appeals for cause. Any zoning board of appeals member may be removed for non-compliance with any minimum requirements relating to meeting attendance and training as established by the legislative body by local law or ordinance.

9. Compatibility of offices. The municipal officials or employees on such board shall not, by reason of membership thereon, forfeit their right to exercise the powers, perform the duties or receive the compensation of the municipal office or position held by them during such membership. No municipal officer or employee shall be appointed to the zoning board of appeals in the event such officer or employee cannot carry out the duties of his or her position without a conflict in the performance of his or her duties as a member of the zoning board of appeals.

10. Chairperson duties. All meetings of the board of appeals shall be held at the call of the chairperson and at such other times as such board may determine. Such chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.

11. Alternate members.

(a) The legislative body of each city except a city having a population of more than one million may, by local law or ordinance, or as part of the local law or ordinance creating the zoning board of appeals, establish alternate zoning board of appeals member positions for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest. Alternate members of the zoning board of appeals shall be appointed by the mayor or other duly authorized appointing authority, for terms established by the legislative body of the city.

(b) The chairperson of the zoning board of appeals may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial zoning board of appeals meeting at which the substitution is made.

(c) All provisions of this section relating to zoning board of appeals member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, compatibility of office and service on other boards, shall also apply to alternate members.

§ 81-a. Board of appeals procedure.

1. Meetings, minutes, records. Meetings of such board of appeals shall be open to the public to the extent provided in article seven of the public officers law. Such board of appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.

2. Filing requirements. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the board of appeals shall be filed in the office of the city clerk within five business days and shall be a public record.

3. Assistance to the board of appeals. Such board shall have the authority to call upon any department, agency or employee of the city for such assistance as shall be deemed necessary and as shall be authorized by the legislative body. Such department, agency or employee may be reimbursed for any expenses incurred as a result of such assistance.

4. Hearing appeals. Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination, made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. The concurring vote of a majority of the members of the board of appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to grant a use variance or area variance. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the city.

5. Filing of administrative decision and time of appeal.

(a) Each order, requirement, decision, interpretation or determination of the administrative official charged with the enforcement of the zoning local law or ordinance shall be filed in the office of such administrative official within five business days from the day it is rendered, and shall be a public record. Alternately, the legislative body of the city may, by resolution, require that such filings instead be made in the city clerk`s office.

(b) An appeal shall be taken within sixty days after the filing of any order, requirement, decision, interpretation or determination of the administrative official, by filing with such administrative official and with the board of appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall forthwith transmit to the board of appeals all the papers constituting the record upon which the action appealed from was taken.

6. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the board of appeals, after the notice of appeal shall have been filed with the administrative official, that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.

7. Hearing on appeal. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general

circulation in the city at least five days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.

8. Time of decision. The board of appeals shall decide upon the appeal within sixty-two days after the conduct of said hearing. The time within which the board of appeals must render its decision may be extended by mutual consent of the applicant and the board.

9. Filing of decision and notice. The decision of the board of appeals on the appeal shall be filed in the office of the city clerk or the zoning office if such office has been established, within five business days after the day such decision is rendered, and a copy thereof mailed to the applicant.

10. Notice to park commission and county planning board or agency or regional planning council. At least five days before such hearing, the board of appeals shall mail notices thereof to the parties; to the regional state park commission having jurisdiction over any state park or parkway within five hundred feet of the property affected by such appeal; and to the county planning board or agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law.

11. Compliance with state environmental quality review act. The board of appeals shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

12. Rehearing. A motion for the zoning board of appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of the board. A unanimous vote of all members of the board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

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§ 81-b. Permitted action by board of appeals.

1. Definitions. As used in this section:

(a) "Use variance" shall mean the authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

(b) "Area variance" shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

2. Orders, requirements, decisions, interpretations, determinations. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers

of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.

3. Use variances.

(a) The board of appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, as defined herein.

(b) No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

(I) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

(ii) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

(iii) the requested use variance, if granted, will not alter the essential character of the neighborhood; and

(iv) the alleged hardship has not been self-created.

(c) The board of appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

4. Area variances.

(a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

(b) In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

(I) 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;

(ii) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;

(iii) whether the requested area variance is substantial;
(iv) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

(v) 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.

(c) The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

5. Imposition of conditions. The board of appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

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§ 81-c. Article seventy-eight proceeding.

1. Application to supreme court by aggrieved persons. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals or any officer, department, board or bureau of the city, may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceeding shall be instituted within thirty days after the filing of a decision of the board in the office of the city clerk or the zoning office if such office has been established.

2. Costs of appeal. Costs shall not be allowed against the board of appeals unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

3. Preference of appeal to court. All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

4. Power of court. If upon the hearing by the supreme court, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his or her findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review determining all questions which may be presented for determination.

§ 81-d. Incentive zoning; definitions, purposes, conditions, procedures.

1. Definitions. As used in this section:

(a) "Incentives or bonuses" shall mean adjustments to the permissible population density, area, height, open space, use, or other provisions of a zoning ordinance, local law, or regulation for a specific purpose authorized by the legislative body of a city.

(b) "Community benefits or amenities" shall mean open space, housing for persons of low or moderate income, parks, elder care, day care, or other specific physical, social, or cultural amenities, or cash in lieu thereof, of benefit to the residents of the community authorized by the legislative body of a city.

(c) "Incentive zoning" shall mean the system by which specific incentives or bonuses are granted, pursuant to this section, on condition that specific physical, social, or cultural benefits or amenities would inure to the community.

2. Authority and purposes. In addition to existing powers and authorities to regulate by planning or zoning, including authorization to provide for the granting of incentives, or bonuses pursuant to other enabling law, a legislative body of a city is hereby empowered, as part of a zoning ordinance, local law or regulation, to provide for a system of zoning incentives, or bonuses, as the legislative body deems necessary and appropriate, consistent with the purposes and conditions set forth in this section. The purpose of the system of incentive or bonus zoning shall be to advance the city's specific physical, cultural and social policies in accordance with the city's comprehensive plan and in coordination with other community planning mechanisms or land use techniques. The system of zoning incentives or bonuses shall be in accordance with a locally-adopted comprehensive plan.

3. Implementation. A system of zoning incentives or bonuses may be provided subject to the conditions hereinafter set forth.

(a) The legislative body of a city shall provide for the system of zoning incentives or bonuses pursuant to this section as part of the zoning ordinance, local law, or regulations. In providing for such system, the legislative body shall follow the procedure for adopting and amending its zoning ordinance, local law, or regulations, including all provisions for notice and public hearing applicable for changes or amendments to such ordinances, laws, or regulations.

(b) Each zoning district in which incentives or bonuses may be awarded under this section shall be designated in the city zoning ordinance, local law or regulations, or amendment thereto.

(c) Each zoning district in which incentives or bonuses may be authorized shall have been found by the legislative body of a city, after evaluating the effects of any potential incentives which are possible by virtue of the provision of community amenities, to contain adequate resources, environmental quality and public facilities, including adequate transportation, water supply, waste disposal and fire protection. Further, the legislative body of a city shall, in designating such districts, determine that there will be no significant environmentally damaging consequences and that such incentives or bonuses are compatible with the development otherwise permitted.

(d) A generic environmental impact statement pursuant to the provisions of 6 NYCRR 617.15 shall be prepared by the legislative body of a city for any zoning district in which the granting of incentives or bonuses have a significant effect on the environment before any such district is designated, and such statement shall be supplemented from time to time by the legislative body of a city if there are material changes in circumstances that may result in significant adverse impacts. Any zoning ordinance, local law, or regulation enacted pursuant to this section shall provide that any applicant for incentives or bonuses shall pay a proportionate share of the cost of preparing such environmental impact statement, and that such charge shall be added to any site-specific charge made pursuant to the provisions of section 8-0109 of the environmental conservation law.

(e) The legislative body of a city shall set forth the procedure by which incentives may be provided to specific lands. Such procedure shall describe:

(i) the incentives, or bonuses, which may be granted by the city to the applicant;

(ii) the community benefits or amenities which may be accepted from the applicant by the city;

(iii) criteria for approval, including methods required for determining the adequacy of community amenities to be accepted from the applicant in exchange for the particular bonus or incentive to be granted to the applicant by the city;

(iv) the procedure for obtaining bonuses, including applications and the review process, and the imposition of terms and conditions attached to any approval; and

(v) provision for a public hearing, if such public hearing is required as part of a zoning ordinance, local law, or regulation adopted pursuant to this section, and give public notice thereof by the publication in the official newspaper of such hearing at least five days prior to the date thereof.

(f) All other requirements of article eight of the environmental conservation law shall be complied with by project sponsors for actions in areas for which a generic environmental impact statement has been prepared, including preparation of an environmental assessment form and a supplemental environmental impact statement, if necessary.

(g) Prior to the adoption or amendment of the zoning ordinance, local law, or regulation, pursuant to this section to establish a system of zoning incentives or bonuses, the legislative body of a city shall evaluate the impact of the provision of such system of zoning incentives or bonuses upon the potential development of affordable housing gained by the provision of any such incentive or bonus afforded to an applicant or lost in the provision by an applicant of any community amenity to the city. Further, the legislative body of a city shall determine that there is approximate equivalence between potential affordable housing lost or gained or that the city has or will take reasonable action to compensate for any negative impact upon the availability or potential development of affordable housing caused by the provisions of this section.

(h) If the legislative body of a city determines that a suitable community benefit or amenity is not immediately feasible, or otherwise not practical, the legislative body may require, in lieu thereof, a payment to the city of a sum determined by the legislative body. If cash is accepted in lieu of other community benefit or amenity, provision shall be made for such sum to be deposited in a trust fund to be used by the legislative body of the city exclusively for specific community benefits authorized by such legislative body.

4. Invalidations. Nothing in this section shall be construed to invalidate any provision for incentives or bonuses heretofore adopted by any city legislative body.

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§ 81-e. Article not applicable to certain cities.

The provisions of this article shall not apply to any city having a population in excess of one million except that any such city may by local law provide that this article or any section thereof may apply to such city.

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§ 82. Certiorari to review decision of board of appeals.

1. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals or any officer, department, board or bureau of the city, may apply to the supreme court for relief by a proceeding under article seventy-eight of the civil practice law and rules. Such proceeding shall be governed by the provisions of article seventy-eight of the civil practice law and rules, except that

(a) it must be instituted as therein provided within thirty days after the filing of a decision in the office of the board;

(b) the court may take evidence or appoint a referee to take such evidence as it may direct and report the same with his findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter, and

(c) the court at special term shall itself dispose of the cause on the merits, determining all questions which may be presented for determination under the provisions of section seventy-eight hundred three of said article.

2. Costs. Costs shall not be allowed against the board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

3. Preferences. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

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§ 83. Amendments, alterations and changes in district lines.

1. The common council may from time to time on its own motion or on petition, after public notice and hearing, which hearing may be held by the council or by a committee of the council or by the planning board, amend the regulations and districts established under any ordinance or local law adopted pursuant to paragraphs twenty-four and twenty-five of section twenty of this chapter. Wherever the owners of fifty per centum or more of the frontage in any district or part thereof shall present a petition duly signed and acknowledged, to the common council, requesting an amendment, supplement, change or repeal of the regulations prescribed for such district or part thereof, it shall be the duty of the council to vote upon said petition within ninety days after the filing of the same by the petitioners with the secretary of the council.

2. An amendment shall be effected by a simple majority vote of the council, except that an amendment shall require the approval of at least three-fourths of the members of the council in the event such amendment is the subject of a written protest, presented to the council and signed by:

(a) the owners of twenty percent or more of the area of land included in such proposed change; or

(b) the owners of twenty percent or more of the area of land immediately adjacent to that land included in such proposed change, extending one hundred feet therefrom; or

(c) the owners of twenty percent or more of the area of land directly opposite thereto, extending one hundred feet from the street frontage of such opposite land.

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§83-a. Exemption of lots shown on approved subdivision plats.

1. Notwithstanding any inconsistent provision of this chapter or of any general, special or local law, the provisions of a zoning ordinance or local law hereafter adopted, or of a change or amendment thereto, which provisions:

(a) establish or increase lot areas or lot dimensions which are in excess of the areas or dimensions of the lots shown and delineated on a residential subdivision plat which has been duly approved by the

planning board, or other board or officer vested with authority to approve subdivision plats, if any, of the city in which the land shown on said plat is situate and duly filed in the office of the recording officer of the county in which the land shown on said subdivision plat is situate; or

(b) establish or increase side, rear or front yard or set back requirements in excess of those applicable to lots under the provision of the zoning ordinance or local law, if any, in force and effect at the time of the filing of the said duly approved residential subdivision plat or first section thereof;

shall not, for the period of time prescribed in subdivision two of this section, be applicable to or in any way affect any of the lots shown and delineated on such subdivision plat.

2. If at the time of the filing of the subdivision plat or first section thereof referred to in subdivision one of this section there was in the city:

(a) both a zoning ordinance or local law and a planning board vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of three years after the filing of the approved subdivision plat or first section thereof; or

(b) a zoning ordinance or local law in effect in the city but there was no planning board in said city vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of two years after the filing of the approved subdivision plat or first section thereof; or

(c) no zoning ordinance or local law in the city but there was a planning board vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of two years after the filing of the approved subdivision plat or first section thereof; or

(d) no zoning ordinance or local law in the city and no planning board vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of one year after the filing of the subdivision plat or first section thereof.

3. Notwithstanding the date the first section of a subdivision plat was filed, the period of exemption for a subsequent section of such plat shall not be less than one year from the filing of such subsequent section.

TOWN LAW

§ 261. Grant of power; appropriations for certain expenses incurred under this article.

For the purpose of promoting the health, safety, morals, or the general welfare of the community, the town board is hereby empowered by local law or ordinance to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes; provided that such regulations shall apply to and affect only such part of a town as is outside the limits of any incorporated village or city; provided further, that all charges and expenses incurred under this article for zoning and planning shall be a charge upon the taxable property of that part of the town outside of any incorporated village or city. The town board is hereby authorized and empowered to make such appropriation as it may see fit for such charges and expenses, provided however, that such appropriation shall be the estimated charges and expenses less fees, if any, collected, and provided, that the amount so appropriated shall be assessed, levied and collected from the property outside of any incorporated village or city. Such regulations may provide that a board of appeals may determine and vary their application in harmony with their general purpose and intent, and in accordance with general or specific rules therein contained.

Note:
-Multiple dwellings:
1. Heights, bulk, open spaces --see Multiple Dwelling Law, §26.
2. Two or more buildings on same lot -- see Multiple Dwelling Law, §28.

§ 261-a. Transfer of development rights; definitions; conditions; procedures.

1. As used in this section:

a. "Development rights" shall mean the rights permitted to a lot, parcel, or area of land under a zoning ordinance or local law respecting permissible use, area, density, bulk or height of improvements executed thereon. Development rights may be calculated and allocated in accordance with such factors as area, floor area, floor area ratios, density, height limitations, or any other criteria that will effectively quantify a value for the development right in a reasonable and uniform manner that will carry out the objectives of this section.

b. "Receiving district" shall mean one or more designated districts or areas of land to which development rights generated from one or more sending districts may be transferred and in which increased development is permitted to occur by reason of such transfer.

c. "Sending district" shall mean one or more designated districts or areas of land in which development rights are designated for use in one or more receiving districts.

d. "Transfer of development rights" shall mean the process by which development rights are transferred from one lot, parcel, or area of land in any sending district to another lot, parcel, or area of land in one or more receiving districts.

2. In addition to existing powers and authorities to regulate by planning or zoning, including authorization to provide for transfer of development rights pursuant to other enabling law, a town board is hereby empowered to provide for transfer of development rights subject to the conditions hereinafter set forth and such other conditions as the town board deems necessary and appropriate that are consistent with the purposes of this section. The purpose of providing for transfer of development rights shall be to protect the natural, scenic or agricultural qualities of open lands, to enhance sites and areas of special character or special historical, cultural, aesthetic or economic interest or value and to enable

and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource. The conditions hereinabove referred to are as follows:

a. That transfer of development rights, and the sending and receiving districts, shall be established in accordance with a comprehensive plan within the meaning of section two hundred sixty-three of this article. The sending district from which transfer of development rights may be authorized shall consist of natural, scenic, recreational, agricultural, forest, or open land or sites of special historical, cultural, aesthetic or economic values sought to be protected. Every receiving district to which transfer of development rights may be authorized, shall have been found by the town board, after evaluating the effects of potential increased development which is possible under the transfer of development rights provisions, to contain adequate resources, environmental quality and public facilities, including adequate transportation, water supply, waste disposal and fire protection, and that there will be no significant environmentally damaging consequences and such increased development is compatible with the development otherwise permitted by the town and by the federal, state, and county agencies having jurisdiction to approve permissible development within the district. A generic environmental impact statement pursuant to the provisions of article eight of the environmental conservation law shall be prepared by the town board for the receiving district before any such district, or any sending district, is designated, and such statement shall be amended from time to time by the town board if there are material changes in circumstances. Where a transfer of development rights affects districts in two or more school, special assessment or tax districts, it may not unreasonably transfer the tax burden between the taxpayers of such districts. The receiving and sending districts need not be coterminous with zoning districts.

b. That sending and receiving districts be designated and mapped with specificity and the procedure for transfer of development rights be specified. Notwithstanding any other provision of law to the contrary, environmental quality review pursuant to article eight of the environmental conservation law for any action in a receiving district that utilizes development rights shall only require information specific to the project and site where the action will occur and shall be limited to review of the environmental impacts of the action, if any, not adequately reviewed in the generic environmental impact statement.

c. That the burden upon land within a sending district from which development rights have been transferred shall be documented by an instrument duly executed by the grantor in the form of a conservation easement, as defined in title three of article forty-nine of the environmental conservation law, which burden upon such land shall be enforceable by the appropriate town in addition to any other person or entity granted enforcement rights by the terms of the instrument. All provisions of law applicable to such conservation easements pursuant to such title shall apply with respect to conservation easements hereunder, except that the town board may adopt standards pertaining to the duration of such easements that are more stringent than such standards promulgated by the department of environmental conservation pursuant to such title. Upon the designation of any sending district, the town board shall adopt regulations establishing uniform minimum standards for instruments creating such easements within the district. No such modification or extinguishment of an easement shall diminish or impair development rights within any receiving district. Any development right which has been transferred by conservation easement shall be evidenced by a certificate of development right which shall be issued by the town to the transferee in a form suitable for recording in the registry of deeds for the county where the receiving district is situated in the manner of other conveyances of interests in land affecting its title.

d. That within one year after a development right is transferred, the assessed valuation placed on the affected properties for real property tax purposes shall be adjusted to reflect the transfer. A development right which is transferred shall be deemed to be an interest in real property and the rights evidenced thereby shall inure to the benefit of the transferee, and his heirs, successors and

assigns.

e. That development rights shall be transferred reflecting the normal market in land, including sales between owners of property in sending and receiving districts, a town may establish a development rights bank or such other account in which development rights may be retained and sold in the best interest of the town. Towns shall be authorized to accept for deposit within the bank gifts, donations, bequests or other development rights. All receipts and proceeds from sales of development rights sold by the town shall be deposited in a special municipal account to be applied against expenditures necessitated by the municipal development rights program.

f. That prior to designation of sending or receiving districts, the legislative body of the town shall evaluate the impact of transfer of development rights upon the potential development of low or moderate income housing lost in sending districts and gained in receiving districts and shall find either there is approximate equivalence between potential low and moderate housing units lost in the sending district and gained in the receiving districts or that the town has or will take reasonable action to compensate for any negative impact upon the availability or potential development of low or moderate income housing caused by the transfer of development rights.

3. The town board adopting or amending procedures for transfer of development rights pursuant to this section shall follow the procedure for adopting and amending its zoning ordinance or local law, as the case may be, including all provisions for notice applicable for changes or amendments to a zoning ordinance or local law. Nothing in this section shall be construed to invalidate any provision for transfer of development rights heretofore or hereafter adopted by any local legislative body.

Note:
- For a discussion of the concept and use of transfer of development rights, see DOS Legal Memorandum: “Transfer of Development Rights.”

§ 261-b. Incentive zoning; definitions, purpose, conditions, procedures.

1. Definitions. As used in this section:

(a) "Incentives or bonuses" shall mean adjustments to the permissible population density, area, height, open space, use, or other provisions of a zoning ordinance or local law for a specific purpose authorized by the town board.

(b) "Community benefits or amenities" shall mean open space, housing for persons of low or moderate income, parks, elder care, day care or other specific physical, social or cultural amenities, or cash in lieu thereof, of benefit to the residents of the community authorized by the town board.

(c) "Incentive zoning" shall mean the system by which specific incentives or bonuses are granted, pursuant to this section, on condition that specific physical, social, or cultural benefits or amenities would inure to the community.

2. Authority and purposes. In addition to existing powers and authorities to regulate by planning or zoning, including authorization to provide for the granting of incentives, or bonuses pursuant to other enabling law, a town board is hereby empowered, as part of a zoning ordinance or local law adopted pursuant to this article, or by local law or ordinance adopted pursuant to other enabling law, to provide for a system of zoning incentives, or bonuses, as the town board deems necessary and appropriate consistent with the purposes and conditions set forth in this section. The purpose of the system of incentive, or bonus, zoning shall be to advance the town's specific physical, cultural and social

policies in accordance with the town's comprehensive plan and in coordination with other community planning mechanisms or land use techniques. The system of zoning incentives or bonuses shall be in accordance with a comprehensive plan within the meaning of section two hundred sixty-three of this article.

3. Implementation. A system of zoning incentives or bonuses may be provided subject to the conditions hereinafter set forth.

(a) The town board shall provide for the system of zoning incentives or bonuses pursuant to this section as part of the zoning ordinance or local law. In providing for such system the board shall follow the procedure for adopting and amending its zoning ordinance or local law, including all provisions for notice and public hearing applicable for changes or amendments to a zoning ordinance or local law.

(b) Each zoning district in which incentives or bonuses may be awarded under this section shall be designated in the town zoning ordinance or local law and shall be incorporated in any map adopted in connection with such zoning ordinance or local law or amendment thereto.

(c) Each zoning district in which incentives or bonuses may be authorized shall have been found by the town board, after evaluating the effects of any potential incentives which are possible by virtue of the provision of community amenities, to contain adequate resources, environmental quality and public facilities, including adequate transportation, water supply, waste disposal and fire protection. Further, the town board shall, in designating such districts, determine that there will be no significant environmentally damaging consequences and that such incentives or bonuses are compatible with the development otherwise permitted.

(d) A generic environmental impact statement pursuant to the provisions of 6 NYCRR 617.15 shall be prepared by the town board for any zoning district in which the granting of incentives or bonuses have a significant effect on the environment before any such district is designated, and such statement shall be supplemented from time to time by the town board if there are material changes in circumstances that may result in significant adverse impacts. Any zoning ordinance or local law enacted pursuant to this section shall provide that any applicant for incentives or bonuses shall pay a proportionate share of the cost of preparing such environmental impact statement, and that such charge shall be added to any site-specific charge made pursuant to the provisions of section 8-0109 of the environmental conservation law.

(e) The town board shall set forth the procedure by which incentives may be provided to specific lands. Such procedure shall describe:

(i) the incentives, or bonuses, which may be granted by the town to the applicant;

(ii) the community benefits or amenities which may be accepted from the applicant by the town;

(iii) criteria for approval, including methods required for determining the adequacy of community amenities to be accepted from the applicant in exchange for the particular bonus or incentive to be granted to the applicant by the town;

(iv) the procedure for obtaining bonuses, including applications and the review process, and the imposition of terms and conditions attached to any approval; and

(v) provision for a public hearing, if such public hearing is required as part of a zoning ordinance or local law adopted pursuant to this section and give public notice thereof by the publication in the

official newspaper of such hearing at least five days prior to the date thereof.

(f) All other requirements of article eight of the environmental conservation law shall be complied with by project sponsors for actions in areas for which a generic environmental impact statement has been prepared including preparation of an environmental assessment form and a supplemental environmental impact statement, if necessary.

(g) Prior to the adoption or amendment of the zoning ordinance or local law pursuant to this section to establish a system of zoning incentives or bonuses the town board shall evaluate the impact of the provision of such system of zoning incentives or bonuses upon the potential development of affordable housing gained by the provision of any such incentive or bonus afforded to an applicant or lost in the provision by an applicant of any community amenity to the town. Further, the town board shall determine that there is approximate equivalence between potential affordable housing lost or gained or that the town has or will take reasonable action to compensate for any negative impact upon the availability or potential development of affordable housing caused by the provisions of this section.

(h) If the town board determines that a suitable community benefit or amenity is not immediately feasible, or otherwise not practical, the board may require, in lieu thereof, a payment to the town of a sum to be determined by the board. If cash is accepted in lieu of other community benefit or amenity, provision shall be made for such sum to be deposited in a trust fund to be used by the town board exclusively for specific community benefits authorized by the town board.

4. Invalidations. Nothing in this section shall be construed to invalidate any provision for incentives or bonuses heretofore adopted by any town board.

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§ 262. Districts.

For any or all of said purposes the town board may divide that part of the town which is outside the limits of any incorporated village or city into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings, throughout such district but the regulations in one district may differ from those in other districts

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Note:

- Chapter 191, Laws of 1973, added a new section, 262-a, to the Town Law, set forth below, regarding the Town of Lansing.

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§ 262-a. Town of Lansing; division of certain parts thereof

For any and all of the purposes set forth in article sixteen of the town law, the town board of the town of Lansing may divide all or part of that portion of the town which is outside the limits of any incorporated village or city into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this section; including construction, reconstruction, alteration or use of buildings, structures or land. All such regulations adopted by the town board shall be uniform for each class or kind of buildings, throughout such district; but the regulations in one district may differ from those in other districts.

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§ 263. Purposes in view.

Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets, to secure safety from fire, flood, panic and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

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§ 264. Adoption of zoning regulations.

1. Method of procedure. The town board shall provide for the manner in which such regulations, restrictions and the boundaries of such districts including any amendments thereto shall be determined, established and enforced. However, no such regulations, restrictions or boundaries shall become effective until after a public hearing in relation thereto, at which the public shall have an opportunity to be heard. At least ten days' notice of the time and place of such hearing shall be published in a paper of general circulation in such town.

   Every zoning ordinance and every amendment to a zoning ordinance (excluding any map incorporated therein) adopted pursuant to the provisions of this chapter shall be entered in the minutes of the town board; such minutes shall describe and refer to any map adopted in connection with such zoning ordinance or amendment and a copy, summary or abstract thereof (exclusive of any map incorporated therein) shall be published once in a newspaper published in the town, if any, or in such newspaper published in the county in which such town may be located having a circulation in such town, as the town board may designate, and affidavits of the publication thereof shall be filed with the town clerk. Such ordinance shall take effect ten days after such publication, but such ordinance or amendment shall take effect from the date of its service as against a person served personally with a copy thereof, certified by the town clerk under the corporate seal of the town; and showing the date of its passage and entry in the minutes. Every town clerk shall maintain a separate file or filing cabinet for each and every map adopted in connection with a zoning ordinance or amendment and shall file therein every such map hereafter adopted; said file or filing cabinet to be available at any time during regular business hours for public inspection.

2. Service of written notice. At least ten days prior to the date of the public hearing, written notice of any proposed regulations, restrictions or boundaries of such districts, including any amendments thereto, affecting property within five hundred feet of the following shall be served personally or by mail by the town upon each person or persons listed below:

(a) The property of the housing authority erecting or owning a housing project authorized under the public housing law; upon the executive director of such housing authority and the chief executive officer of the municipality providing financial assistance thereto.

(b) The boundary of a city, village or town; upon the clerk thereof.

(c) The boundary of a county; upon the clerk of the board of supervisors or other person performing like duties.

(d) The boundary of a state park or parkway; upon the regional state park commission having jurisdiction over such state park or parkway.

3. Additional requirements. The procedural requirements set forth herein shall be in addition to the requirements of the provisions of sections two hundred thirty-nine-l and two hundred thirty-nine-m of the general municipal law relating to review by a county planning board or agency or regional planning council; the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations which are codified in title six part six hundred seventeen of the New York codes, rules and regulations and any other general laws relating to land use and any amendments thereto.

4. Public hearing. The public, including those served notice pursuant to subdivision two of this section, shall have an opportunity to be heard at the public hearing. Those parties set forth in paragraphs (a), (b), (c) and (d) of subdivision two of this section, however, shall not have the right of review by a court as hereinafter provided.

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§ 265. Changes.

1. Such regulations, restrictions and boundaries may from time to time be amended. Such amendment shall be effected by a simple majority vote of the town board, except that any such amendment shall require the approval of at least three-fourths of the members of the town board in the event such amendment is the subject of a written protest, presented to the town board and signed by:

(a) the owners of twenty percent or more of the area of land included in such proposed change; or

(b) the owners of twenty percent or more of the area of land immediately adjacent to that land included in such proposed change, extending one hundred feet therefrom; or

(c) the owners of twenty percent or more of the area of land directly opposite thereto, extending one hundred feet from the street frontage of such opposite land.

The provisions of the previous section relative to public hearings and official notice shall apply equally to all proposed amendments.

2. Amendments made to any zoning ordinance (excluding any map incorporated therein) adopted pursuant to the provisions of this chapter shall be entered in the minutes of the town board; such minutes shall describe and refer to any map adopted in connection with such change, amendment or supplement and a copy, summary or abstract thereof (exclusive of any map incorporated therein) shall be published once in a newspaper published in the town, if any, or in such newspaper published in the county in which such town may be located having a circulation in such town, as the town board may designate, and affidavits of the publication thereof shall be filed with the town clerk. Such ordinance shall take effect upon filing in the office of the town clerk. Every town clerk shall maintain every map adopted in connection with a zoning ordinance or amendment.

Note:
-Notice of certain proposed municipal zoning actions to be submitted to county planning agency or regional planning council
-- see General Municipal Law §239-m.

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§ 265-a. Exemption of lots shown on approved subdivision plats.

1. Notwithstanding any inconsistent provision of this chapter or of any general, special or local law, the

provisions of a zoning ordinance or local law hereafter adopted, or of a change or amendment thereto, which provisions:

(a) establish or increase lot areas or lot dimensions which are in excess of the areas or dimensions of the lots shown and delineated on a residential subdivision plat which has been duly approved by the planning board, or other board or officer vested with authority to approve subdivision plats, if any, of the town in which the land shown on said plat is situate and duly filed in the office of the recording officer of the county in which the land shown on said subdivision plat is situate; or

(b) establish or increase side, rear or front yard or set back requirements in excess of those applicable to lots under the provisions of the zoning ordinance or local law, if any, in force and effect at the time of the filing of the said duly approved residential subdivision plat or first section thereof

shall not, for the period of time prescribed in subdivision two of this section, be applicable to or in any way affect any of the lots shown and delineated on such subdivision plat.

2. If at the time of the filing of the subdivision plat or first section thereof referred to in subdivision one of this section there was in the town:

(a) both a zoning ordinance or local law and a planning board vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of three years after the filing of the approved subdivision plat or first section thereof; or

(b) a zoning ordinance or local law in effect in the town but there was no planning board in said town vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of two years after the filing of the approved subdivision plat or first section thereof; or

(c) no zoning ordinance or local law in the town but there was a planning board vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of two years after the filing of the approved subdivision plat or first section thereof; or

(d) no zoning ordinance or local law in the town and no planning board vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of one year after the filing of the subdivision plat or first section thereof.

3. If such period of exemption would expire within one year from the date of the filing of a section of the approved plat, it shall be extended for that section for a period of one year from the date of the filing of such section.

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§ 266. Adoption of first zoning ordinance.

1. In order to avail itself of the powers conferred by this article, such town board shall appoint a commission to be known as the zoning commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein.

2. Where a planning board already exists it may be appointed as the zoning commission.

3. Such commission shall make a preliminary report and hold one or more public hearings thereon as deemed appropriate by the commission before submitting its final report.

4. The town board shall not hold its public hearing or take action until it has received the final report of such commission.

5. Upon adoption of a resolution by the town board accepting the final report, such commission shall cease to exist as a separate body.

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§ 267. Zoning board of appeals.

1. Definitions. As used in this section:

(a) "Use variance" shall mean the authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

(b) "Area variance" shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

2. Appointment of members. Each town board which adopts a local law or ordinance and any amendments thereto pursuant to the powers granted by this article shall appoint a board of appeals consisting of three or five members as shall be determined by such local law or ordinance and shall designate the chairperson thereof. In the absence of a chairperson the board of appeals may designate a member to serve as acting chairperson. The town board may provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper, not exceeding the appropriation made by the town board for such purpose. In making such appointments, the town board may require board of appeals members to complete training and continuing education courses in accordance with any local requirements for the training of such members.

3. Town board members ineligible. No person who is a member of the town board shall be eligible for membership on such board of appeals.

4. Terms of members first appointed. In the creation of a new board of appeals, or the reestablishment of terms of an existing board, the appointment of members to the board shall be for terms so fixed that one member's term shall expire at the end of the calendar year in which such members were initially appointed. The remaining members' terms shall be so fixed that one member's term shall expire at the end of each year thereafter. At the expiration of each original member's appointment, the replacement member shall be appointed for a term which shall be equal in years to the number of members of the board.

5. Terms of members now in office. Members now holding office for terms which do not expire at the end of a year shall, upon the expiration of their term, hold office until the end of the year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the board.

6. Increasing membership. Any town board may, by local law or ordinance, increase a three member board of appeals to five members. Additional members shall be first appointed for single terms as provided by resolution in order that the terms of members shall expire in each of five successive years and their successors shall thereafter be appointed for full terms of five years. No such additional member shall take part in the consideration of any matter for which an application was on file with the board of appeals at the time of his or her appointment.

7. Decreasing membership. A town board which has increased the number of members of the board of appeals to five may, by local law or ordinance, decrease the number of members of the board of appeals to three to take effect upon the next two expirations of terms. Any board of appeals which, upon the effective date of this section has seven members, may continue to act as a duly constituted zoning board of appeals until the town board, by local law or ordinance, reduces such membership to three or five. However, no incumbent shall be removed from office except upon the expiration of his or her term.

8. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the town board shall appoint the new member for the unexpired term.

9. Removal of members. The town board shall have the power to remove, after public hearing, any member of the zoning board of appeals for cause. Any zoning board of appeals member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the town board by local law or ordinance.

10. Chairperson duties. All meetings of the board of appeals shall be held at he call of the chairperson and at such other times as such board may determine. Such chairperson, or in his or her absence, the acting chair person, may administer oaths and compel the attendance of witnesses.

11. Alternate members.

(a) A town board may, by local law or ordinance, or as a part of the local law or ordinance creating the zoning board of appeals, establish alternate zoning board of appeals member positions for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest. Alternate members of the zoning board of appeals shall be appointed by resolution of the town board, for terms established by the town board.

(b) The chairperson of the zoning board of appeals may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial zoning board of appeals meeting at which the substitution is made.

(c) All provisions of this section relating to zoning board of appeals member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, and service on other boards, shall also apply to alternate members.

Note:

- For a complete discussion of zoning board of appeals powers and duties under this statute and applicable court decisions, see DOS Local Government Technical Series publication “Zoning Board of Appeals.”

§ 267-a. Board of appeals procedure.

1. Meetings, minutes, records. Meetings of such board of appeals shall be open to the public to the extent provided in article seven of the public officers law. Such board of appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.

2. Filing requirements. Every rule, regulation, every amendment or repeal thereof, and every order,

requirement, decision or determination of the board of appeals shall be filed in the office of the town clerk within five business days and shall be a public record.

3. Assistance to board of appeals. Such board shall have the authority to call upon any department, agency or employee of the town for such assistance as shall be deemed necessary and as shall be authorized by the town board. Such department, agency or employee may be reimbursed for any expenses incurred as a result of such assistance.

4. Hearing appeals. Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. The concurring vote of a majority of the members of the board of appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to grant a use variance or area variance. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town.

5. Filing of administrative decision and time of appeal.

(a) Each order, requirement, decision, interpretation or determination of the administrative official charged with the enforcement of the zoning local law or ordinance shall be filed in the office of such administrative official, within five business days from the day it is rendered, and shall be a public record. Alternately, the town board may, by resolution, require that such filings instead be made in the town clerk`s office.

(b) An appeal shall be taken within sixty days after the filing of any order, requirement, decision, interpretation or determination of the administrative official, by filing with such administrative official and with the board of appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall forthwith transmit to the board of appeals all the papers constituting the record upon which the action appealed from was taken.

6. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the board of appeals, after the notice of appeal shall have been filed with the administrative official, that by reason of facts stated in the certificate a stay, would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.

7. Hearing on appeal. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the town at least five days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.

8. Time of decision. The board of appeals shall decide upon the appeal within sixty-two days after the conduct of said hearing. The time within which the board of appeals must render its decision may be extended by mutual consent of the applicant and the board.

9. Filing of decision and notice. The decision of the board of appeals on the appeal shall be filed in the office of the town clerk within five business days after the day such decision is rendered, and a copy thereof mailed to the applicant.

10. Notice to park commission and county planning board or agency or regional planning council. At least five days before such hearing, the board of appeals shall mail notices thereof to the parties; to the regional state park commission having jurisdiction over any state park or parkway within five hundred feet of the property affected by such appeal; and to the county planning board or agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law.

11. Compliance with state environmental quality review act. The board of appeals shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations as codified in title six, part six hundred seventeen of the New York codes, rules and regulations.

12. Rehearing. A motion for the zoning board of appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of the board. A unanimous vote of all members of the board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

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§ 267-b. Permitted action by board of appeals.

1. Orders, requirements, decisions, interpretations, determinations. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.

2. Use variances.

(a) The board of appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, as defined herein.

(b) No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located,

(1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

(2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

(3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and

(4) that the alleged hardship has not been self-created.

(c) The board of appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

3. Area variances.

(a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

(b) In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

(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.

(c) The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

4. Imposition of conditions. The board of appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

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§ 267-c. Article seventy-eight proceeding.

1. Application to supreme court by aggrieved persons. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals or any officer, department, board or bureau of the town, may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceeding shall be instituted within thirty days after the filing of a decision of the board in the office of the town clerk.

2. Costs of appeal. Costs shall not be allowed against the board of appeals unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

3. Preference of appeal to court. All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

4. Power of court. If upon the hearing at the supreme court, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his or her findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review determining all questions which may be presented for determination.

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§ 268. Enforcement and remedies.

1. The town board may provide by local law or ordinance for the enforcement of this article and of any local law, ordinance or regulation made thereunder. A violation of this article or of such local law, ordinance or regulation is hereby declared to be an offense, punishable by a fine not exceeding three hundred fifty dollars or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than three hundred fifty dollars nor more than seven hundred dollars or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars nor more than one thousand dollars or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this article or of such local law, ordinance or regulation shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

2. In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is used, or any land is divided into lots, blocks, or sites in violation of this article or of any local law, ordinance or other regulation made under authority conferred thereby, the proper local authorities of the town, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, use or division of land, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure, or land or to prevent any illegal act, conduct, business or use in or about such premises; and upon the failure or refusal of the proper local officer, board or body of the town to institute any such appropriate action or proceeding for a period of ten days after written request by a resident taxpayer of the town so to proceed, any three taxpayers of the town residing in the district wherein such violation exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in like manner as such local officer, board or body of the town is authorized to do.

§ 269. Conflict with other laws.

Wherever the regulations made under authority of this article require a greater width or size of yards or courts, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local law, ordinance or regulation, the provisions of the regulations made under authority of this article shall govern. Whenever the provisions of any other statute or local law, ordinance or regulation require a greater width or size of yards or courts, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards, than are required by the regulations made under authority of this article, the provisions of such statute, or local law, ordinance or regulation shall govern.

In towns where the town boards have already adopted a zoning ordinance or local law, pursuant to the provisions of chapter three hundred twenty-two of the laws of nineteen hundred twenty-two, or chapter seven hundred fourteen or chapter seven hundred fifteen of the laws of nineteen hundred twenty-six, such boards shall not be required to adopt a new ordinance or local law and all actions taken and proceedings had by such town boards and boards of appeal under the provisions of said chapter, are hereby ratified and confirmed. All necessary expenses incurred by any such board in connection with the adoption and enforcement of the zoning ordinance or local law shall be a town charge.

§ 270. Official map, establishment.

The town board may establish an official map of that part of the town outside the limits of any incorporated city or village showing the streets, highways and parks theretofore laid out, adopted and established by law and drainage systems may also be shown on such map. Such map shall be final and conclusive with respect to the location and width of streets and highways, drainage systems and the location of parks shown thereon. Such official map is hereby declared to be established to conserve and protect the public health, safety and general welfare. The clerk of every town which has established such an official map shall immediately file a certificate of that fact with the clerk or registrar of the county in which said town is located.

Note:

- Effect of change in county official map on official map of municipality affected -- see General Municipal Law, §239-e.

§ 271. Planning board, creation, appointment.

1. Authorization. The town board of each town is hereby authorized by local law or ordinance, to create a planning board consisting of five or seven members and shall, by resolution, appoint the members of such board and designate the chairperson thereof. In the absence of a chairperson the planning board may designate a member to serve as chairperson. The town board may, as part of the local law or ordinance creating said planning board, provide for the compensation of planning board members. In making such appointments, the town board may require planning board members to complete training and continuing education courses in accordance with any local requirements for the training of such members.

2. Appropriation for planning board. The town board is hereby authorized and empowered to make such appropriation as it may see fit for planning board expenses. In a town containing one or more villages, or parts thereof, such charges and expenses less fees, if any collected, shall be a charge upon the taxable property of that part of the town outside of said villages and shall be assessed, levied and

collected therefrom in the same manner as other town charges. The planning board shall have the power and authority to employ experts, clerks and a secretary and to pay for their services, and to provide for such other expenses as may be necessary and proper, not exceeding in all the appropriation that may be made therefor by the town board for such planning board.

3. Town board members ineligible. No person who is a member of the town board shall be eligible for membership on such planning board.

4. Terms of members first appointed. The terms of members of the board shall be for terms so fixed that the term of one member shall expire at the end of the calendar year in which such members were initially appointed. The terms of the remaining members shall be so fixed that one term shall expire at the end of each calendar year thereafter. At the expiration of the term of each member first appointed, his or her successor shall be appointed for a term which shall be equal in years to the number of members of the board.

5. Terms of members now in office. Members now holding office for terms which do not expire at the end of a calendar year shall, upon the expiration of their term, hold office until the end of the calendar year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the board.

6. Increasing membership. Any town board may, by local law or ordinance, increase a five member planning board to seven members. Additional members shall be first appointed for single terms as provided by resolution of the town board in order that the terms of members shall expire in each of seven successive years and their successors shall thereafter be appointed for full terms of seven years. No such additional member shall take part in the consideration of any matter for which an application was on file with the planning board at the time of his or her appointment.

7. Decreasing membership. A town board which has seven members on the planning board may by local law or ordinance, decrease the membership to five, to take effect upon the next two expirations of terms. However, no incumbent shall be removed from office except upon the expiration of his or her term, except as hereinafter provided.

8. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the town board shall appoint the new member for the unexpired term.

9. Removal of members. The town board shall have the power to remove, after public hearing, any member of the planning board for cause. Any planning board member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the town board by local law or ordinance.

10. Chairperson duties. All meetings of the planning board shall be held at the call of the chairperson and at such other times as such board may determine. Such chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.

11. Appointment of agricultural member. Notwithstanding any provision of this chapter or of any general, special or local law or ordinance, a town board may, if an agricultural district created pursuant to section three hundred three of article twenty-five-AA of the agriculture and markets law exists wholly or partly within the boundaries of such town, include on the planning board one or more members each of whom derives ten thousand dollars or more annual gross income from agricultural pursuits in said town. As used in this subdivision, the term "agricultural pursuits" means the production of crops, livestock and livestock products, aquacultural products, and woodland products as defined in

section three hundred one of the agriculture and markets law.

12. Service on other planning boards. No person shall be disqualified from serving as a member of the town planning board by reason of serving as a member of a village or county planning board.

13. Rules and regulations. The planning board may recommend to the town board regulations relating to any subject matter over which the planning board has jurisdiction under this article or any other statute, or under any local law or ordinance of the town. Adoption of any such recommendations by the town board shall be by local law or ordinance.

14. Report on referred matters; general reports.

a. The town board may by resolution provide for the reference of any matter or class of matters, other than those referred to in subdivision thirteen of this section, to the planning board before final action is taken thereon by the town board or other office or officer of said town having final authority over said matter. The town board may further stipulate that final action thereon shall not be taken until the planning board has submitted its report thereon, or has had a reasonable time, to be fixed by the town board in said resolution, to submit the report.

b. The planning board may review and make recommendations on a proposed town comprehensive plan or amendment thereto. In addition, the planning board shall have full power and authority to make investigations, maps, reports and recommendations in connection therewith relating to the planning and development of the town as it seems desirable, providing the total expenditures of said board shall not exceed the appropriation provided therefor.

15. Alternate members.

(a) A town board may, by local law or ordinance, or as part of the local law or ordinance creating the planning board, establish alternate planning board member positions for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest. Alternate members of the planning board shall be appointed by resolution of the town board, for terms established by the town board.

(b) The chairperson of the planning board may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial planning board meeting at which the substitution is made.

(c) All provisions of this section relating to planning board member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, and service on other boards, shall also apply to alternate members.

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§ 272-a. Town comprehensive plan.

1. Legislative findings and intent. The legislature hereby finds and determines that:

(a) Significant decisions and actions affecting the immediate and long-range protection, enhancement, growth and development of the state and its communities are made by local governments.

(b) Among the most important powers and duties granted by the legislature to a town government is the authority and responsibility to undertake town comprehensive planning and to regulate land use for the purpose of protecting the public health, safety and general welfare of its citizens.

(c) The development and enactment by the town government of a town comprehensive plan which can be readily identified, and is available for use by the public, is in the best interest of the people of each town.

(d) The great diversity of resources and conditions that exist within and among the towns of the state compels the consideration of such diversity in the development of each town comprehensive plan.

(e) The participation of citizens in an open, responsible and flexible planning process is essential to the designing of the optimum town comprehensive plan.

(f) The town comprehensive plan is a means to promote the health, safety and general welfare of the people of the town and to give due consideration to the needs of the people of the region of which the town is a part.

(g) The comprehensive plan fosters cooperation among governmental agencies planning and implementing capital projects and municipalities that may be directly affected thereby.

(h) It is the intent of the legislature to encourage, but not to require, the preparation and adoption of a comprehensive plan pursuant to this section. Nothing herein shall be deemed to affect the status or validity of existing master plans, comprehensive plans, or land use plans.

2. Definitions. As used in this section, the term:

(a) "town comprehensive plan" means the materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other 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 town located outside the limits of any incorporated village or city.

(b) "land use regulation" means an ordinance or local law enacted by the town for the regulation of any aspect of land use and community resource protection and includes any zoning, subdivision, special use permit or site plan regulation or any other regulation which prescribes the appropriate use of property or the scale, location and intensity of development.

(c) "special board" means a board consisting of one or more members of the planning board and such other members as are appointed by the town board to prepare a proposed comprehensive plan and/or an amendment thereto.

3. Content of a town comprehensive plan. The town comprehensive plan may include the following topics at the level of detail adapted to the special requirements of the town:

(a) General statements of goals, objectives, principles, policies, and standards upon which proposals for the immediate and long-range enhancement, growth and development of the town are based.

(b) Consideration of regional needs and the official plans of other government units and agencies within the region.

(c) The existing and proposed location and intensity of land uses.

(d) Consideration of agricultural uses, historic and cultural resources, coastal and natural resources and sensitive environmental areas.

(e) Consideration of population, demographic and socio-economic trends and future projections.

(f) The location and types of transportation facilities.

(g) Existing and proposed general location of public and private utilities and infrastructure.

(h) Existing housing resources and future housing needs, including affordable housing.

(i) The present and future general location of educational and cultural facilities, historic sites, health facilities and facilities for emergency services.

(j) Existing and proposed recreation facilities and parkland.

(k) The present and potential future general location of commercial and industrial facilities.

(l) Specific policies and strategies for improving the local economy in coordination with other plan topics.

(m) Proposed measures, programs, devices, and instruments to implement the goals and objectives of the various topics within the comprehensive plan.

(n) All or part of the plan of another public agency.

(o) Any and all other items which are consistent with the orderly growth and development of the town.

4. Preparation. The town board, or by resolution of such town board, the planning board or a special board, may prepare a proposed town comprehensive plan and amendments thereto. In the event the planning board or special board is directed to prepare a proposed comprehensive plan or amendment thereto, such board shall, by resolution, recommend such proposed plan or amendment to the town board.

5. Referrals.

(a) Any proposed comprehensive plan or amendment thereto that is prepared by the town board or a special board may be referred to the town planning board for review and recommendation before action by the town board.

(b) The town board shall, prior to adoption, refer the proposed comprehensive plan or any amendment thereto to the county planning board or agency or regional planning council for review and recommendation as required by section two hundred thirty-nine-m of the general municipal law. In the event the proposed plan or amendment thereto is prepared by the town planning board or a special board, such board may request comment on such proposed plan or amendment from the county planning board or agency or regional planning council.

6. Public hearings; notice.

(a) In the event the town board prepares a proposed town comprehensive plan or amendment thereto,

the town board shall hold one or more public hearings and such other meetings as it deems necessary to assure full opportunity for citizen participation in the preparation of such proposed plan or amendment, and in addition, the town board shall hold one or more public hearings prior to adoption of such proposed plan or amendment.

(b) In the event the town board has directed the planning board or a special board to prepare a proposed comprehensive plan or amendment thereto, the board preparing the plan shall hold one or more public hearings and such other meetings as it deems necessary to assure full opportunity for citizen participation in the preparation of such proposed plan or amendment. The town board shall, within ninety days of receiving the planning board or special board's recommendations on such proposed plan or amendment, and prior to adoption of such proposed plan or amendment, hold a public hearing on such proposed plan or amendment.

(c) Notice of a public hearing shall be published in a newspaper of general circulation in the town at least ten calendar days in advance of the hearing. The proposed comprehensive plan or amendment thereto shall be made available for public review during said period at the office of the town clerk and may be made available at any other place, including a public library.

7. Adoption. The town board may adopt by resolution a town comprehensive plan or any amendment thereto.

8. Environmental review. A town comprehensive plan, and any amendment thereto, is subject to the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations. A town comprehensive plan may be designed to also serve as, or be accompanied by, a generic environmental impact statement pursuant to the state environmental quality review act statute and regulations. No further compliance with such law is required for subsequent site specific actions that are in conformance with the conditions and thresholds established for such actions in the generic environmental impact statement and its findings.

9. Agricultural review and coordination. A town comprehensive plan and any amendments thereto, for a town containing all or part of an agricultural district or lands receiving agricultural assessments within its jurisdiction, shall continue to be subject to the provisions of article twenty-five-AA of the agriculture and markets law relating to the enactment and administration of local laws, ordinances, rules or regulations. A newly adopted or amended town comprehensive plan shall take into consideration applicable county, agricultural and farmland protection plans as created under article twenty- five-AAA of the agriculture and markets law.

10. Periodic review. The town board shall provide, as a component of such proposed comprehensive plan, the maximum intervals at which the adopted plan shall be reviewed.

11. Effect of adoption of the town comprehensive plan.

(a) All town land use regulations must be in accordance with a comprehensive plan adopted pursuant to this section.

(b) All plans for capital projects of another governmental agency on land included in the town comprehensive plan adopted pursuant to this section shall take such plan into consideration.

12. Filing of town comprehensive plan. The adopted town comprehensive plan and any amendments thereto shall be filed in the office of the town clerk and a copy thereof shall be filed in the office of the

county planning agency.

§ 273. Official map, changes.

Such town board is authorized and empowered, whenever and as often as it may deem it for the public interest, to change or add to the official map of the town so as to lay out new streets, highways, drainage systems or parks, or to widen or close existing streets, highways, drainage systems or parks within that part of the town outside the limits of any incorporated city or village. At least ten days' notice of a public hearing on any proposed action with reference to any such change in the official map shall be published in a newspaper of general circulation in such town. Before making any such addition or change, the town board shall refer the matter to the planning board for report thereon, but if the planning board shall not make its report within thirty days of such reference, it shall forfeit the right further to suspend action. Such additions and changes, when adopted, shall become a part of the official map of the town, and shall be deemed to be final and conclusive with respect to the location of the streets, highways, drainage systems and parks shown thereon. The layout, widening or closing, or the approval of the layout, widening or closing, of streets, highways, drainage systems or parks, by the town board, or the town superintendent of highways, under provisions of law other than those contained in this article, shall be deemed to be an addition or change of the official map, and shall be subject to all the provisions of this article with regard to such additions or changes.

§ 274-a. Site plan review.

1. Definition of site plan. As used in this section the term "site plan" shall mean a rendering, drawing, or sketch prepared to specifications and containing necessary elements, as set forth in the applicable zoning ordinance or local law, which shows the arrangement, layout and design of the proposed use of a single parcel of land as shown on said plan. Plats showing lots, blocks or sites which are subject to review pursuant to authority provided for the review of subdivisions under section two hundred seventy-six of this article shall continue to be subject to such review and shall not be subject to review as site plans under this section.

2. Approval of site plans.

(a) The town board may, as part of a zoning ordinance or local law adopted pursuant to this article or other enabling law, authorize the planning board or such other administrative body that it shall so designate, to review and approve, approve with modifications or disapprove site plans prepared to specifications set forth in the ordinance or local law and/or in regulations of such authorized board. Site plans shall show the arrangement, layout and design of the proposed use of the land on said plan. The ordinance or local law shall specify the land uses that require site plan approval and the elements to be included on plans submitted for approval. The required site plan elements which are included in the zoning ordinance or local law may include, where appropriate, those related to parking, means of access, screening, signs, landscaping, architectural features, location and dimensions of buildings, adjacent land uses and physical features meant to protect adjacent land uses as well as any additional elements specified by the town board in such zoning ordinance or local law.

(b) When an authorization to approve site plans is granted by the town board pursuant to this section, the terms thereof may condition the issuance of a building permit upon such approval.

3. Application for area variance. Notwithstanding any provision of law to the contrary, where a proposed site plan contains one or more features which do not comply with the zoning regulations, application

may be made to the zoning board of appeals for an area variance pursuant to section two hundred sixty-seven-b of this article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

4. Conditions attached to the approval of site plans. The authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the town.

5. Waiver of requirements. The town board may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the ordinance or local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular site plan.

6. Reservation of parkland on site plans containing residential units.

(a) Before such authorized board may approve a site plan containing residential units, such site plan shall also show, when required by such board, a park or parks suitably located for playground or other recreational purposes.

(b) Land for park, playground or other recreational purposes may not be required until the authorized board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the town based on projected population growth to which the particular site plan will contribute.

(c) In the event the authorized board makes a finding pursuant to paragraph (b) of this subdivision that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the authorized board may require a sum of money in lieu thereof to be established by the town board. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the authorized board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the town exclusively for park, playground or other recreational purposes, including the acquisition of property.

(d) Notwithstanding the foregoing provisions of this subdivision, if the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved pursuant to section two hundred seventy-six of this article, the authorized board shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.

7. Performance bond or other security. As an alternative to the installation of required infrastructure and improvements, prior to approval by the authorized board, a performance bond or other security sufficient to cover the full cost of the same, as estimated by the authorized board or a town department designated by the authorized board to make such estimate, where such departmental

estimate is deemed acceptable by the authorized board, shall be furnished to the town by the owner. Such security shall be provided to the town pursuant to the provisions of subdivision nine of section two hundred seventy-seven of this article.

8. Public hearing and decision on site plans. In the event a public hearing is required by ordinance or local law adopted by the town board, the authorized board shall conduct a public hearing within sixty-two days from the day an application is received on any matter referred to it under this section. The authorized board shall mail notice of said hearing to the applicant at least ten days before said hearing and shall give public notice of said hearing in a newspaper of general circulation in the town at least five days prior to the date thereof and shall make a decision on the application within sixty-two days after such hearing, or after the day the application is received if no hearing has been held. The time within which the authorized board must render its decision may be extended by mutual consent of the applicant and such board. The decision of the authorized board shall be filed in the office of the town clerk within five business days after such decision is rendered, and a copy thereof mailed to the applicant. Nothing herein shall preclude the holding of a public hearing on any matter on which a public hearing is not so required.

9. Notice to county planning board or agency or regional planning council. At least ten days before such hearing, the authorized board shall mail notices thereof to the county planning board or planning agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law. In the event a public hearing is not required, such proposed action shall be referred before final action is taken thereon.

10. Compliance with state environmental quality review act. The authorized board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

11. Court review. Any person aggrieved by a decision of the authorized board or any officer, department, board or bureau of the town may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceedings shall be instituted within thirty days after the filing of a decision by such board in the office of the town clerk. The court may take evidence or appoint a referee to take such evidence as it may direct, and report the same, with findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The court shall itself dispose of the matter on the merits, determining all questions which may be presented for determination.

12. Costs. Costs shall not be allowed against the authorized board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

13. Preference. All issues addressed by the court in any proceeding under this section shall have preference over all civil actions and proceedings.

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§ 274-b. Approval of special use permits.

1. Definition of special use permit. As used in this section the term "special use permit" shall mean an authorization of a particular land use which is permitted in a zoning ordinance or local law, subject to requirements imposed by such zoning ordinance or local law to assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if

such requirements are met.

2. Approval of special use permits. The town board may, as part of a zoning ordinance or local law adopted pursuant to this article or other enabling law, authorize the planning board or such other administrative body that it shall designate to grant special use permits as set forth in such zoning ordinance or local law.

3. Application for area variance. Notwithstanding any provision of law to the contrary, where a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section two hundred sixty-seven-b of this article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

4. Conditions attached to the issuance of special use permits. The authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit. Upon its granting of said special use permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the town.

5. Waiver of requirements. The town board may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of special use permits submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the ordinance or local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular special use permit.

6. Public hearing and decision on special use permits. The authorized board shall conduct a public hearing within sixty-two days from the day an application is received on any matter referred to it under this section. Public notice of said hearing shall be printed in a newspaper of general circulation in the town at least five days prior to the date thereof. The authorized board shall decide upon the application within sixty-two days after the hearing. The time within which the authorized board must render its decision may be extended by mutual consent of the applicant and the board. The decision of the authorized board on the application after the holding of the public hearing shall be filed in the office of the town clerk within five business days after such decision is rendered, and a copy thereof mailed to the applicant.

7. Notice to applicant and county planning board or agency or regional planning council. At least ten days before such hearing, the authorized board shall mail notices thereof to the applicant and to the county planning board or agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law.

8. Compliance with state environmental quality review act. The authorized board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

9. Court review. Any person aggrieved by a decision of the planning board or such other designated body or any officer, department, board or bureau of the town may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceedings shall be instituted within thirty days after the filing of a decision by such board in the office of the town clerk.

The court may take evidence or appoint a referee to take such evidence as it may direct, and report the same, with findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The court shall itself dispose of the matter on the merits, determining all questions which may be presented for determination.

10. Costs. Costs shall not be allowed against the planning board or other administrative body designated by the town board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

11. Preference. All issues addressed by the court in any proceeding under this section shall have preference over all civil actions and proceedings.

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§ 276. Subdivision review; approval of plats; development of filed plats.

1. Purpose. For the purpose of providing for the future growth and development of the town and affording adequate facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of its population, the town board may, by resolution, authorize and empower the planning board to approve preliminary and final plats of subdivisions showing lots, blocks or sites, with or without streets or highways, within that part of the town outside the limits of any incorporated village.

2. Authorization for review of previously filed plats. For the same purposes and under the same conditions, the town board may, by resolution, authorize and empower the planning board to approve the development of plats, entirely or partially undeveloped, which were filed in the office of the clerk of the county in which such plat is located prior to the appointment of such planning board and grant to the board the power to approve such plats. The term "undeveloped" shall mean those plats where twenty percent or more of the lots within the plat are unimproved unless existing conditions, such as poor drainage, have prevented their development.

3. Filing of certificate. The clerk of every town which has authorized its planning board to approve plats as set forth herein shall immediately file a certificate of that fact with the clerk or register of the county in which such town is located.

4. Definitions. When used in this article the following terms shall have the respective meanings set forth herein except where the context shows otherwise:

(a) "Subdivision" means the division of any parcel of land into a number of lots, blocks or sites as specified in a local ordinance, law, rule or regulation, with or without streets or highways, for the purpose of sale, transfer of ownership, or development. The term "subdivision" may include any alteration of lot lines or dimensions of any lots or sites shown on a plat previously approved and filed in the office of the county clerk or register of the county in which such plat is located. Subdivisions may be defined and delineated by local regulation, as either "major" or "minor", with the review procedures and criteria for each set forth in such local regulations.

(b) "Preliminary plat" means a drawing prepared in a manner prescribed by local regulation showing the layout of a proposed subdivision including, but not restricted to, road and lot layout and approximate dimensions, key plan, topography and drainage, all proposed facilities unsized, including preliminary plans and profiles, at suitable scale and in such detail as local regulation may require.

(c) "Preliminary plat approval" means the approval of the layout of a proposed subdivision as set forth in a preliminary plat but subject to the approval of the plat in final form in accordance with the provisions

of this section.

(d) "Final plat" means a drawing prepared in a manner prescribed by local regulation, that shows a proposed subdivision, containing in such additional detail as shall be provided by local regulation all information required to be shown on a preliminary plat and the modifications, if any, required by the planning board at the time of approval of the preliminary plat if such preliminary plat has been so approved.

(e) "Conditional approval of a final plat" means approval by a planning board of a final plat subject to conditions set forth by the planning board in a resolution conditionally approving such plat. Such conditional approval does not qualify a final plat for recording nor authorize issuance of any building permits prior to the signing of the plat by a duly authorized officer of the planning board and recording of the plat in the office of the county clerk or register as herein provided.

(f) "Final plat approval" means the signing of a plat in final form by a duly authorized officer of a planning board pursuant to a planning board resolution granting final approval to the plat or after conditions specified in a resolution granting conditional approval of the plat are completed. Such final approval qualifies the plat for recording in the office of the county clerk or register in the county in which such plat is located.

5. Approval of preliminary plats.

(a) Submission of preliminary plats. All plats shall be submitted to the planning board for approval in final form provided, however, that where the planning board has been authorized to approve preliminary plats, the owner may submit or the planning board may require that the owner submit a preliminary plat for consideration. Such a preliminary plat shall be clearly marked "preliminary plat" and shall conform to the definition provided in this section.

(b) Coordination with the state environmental quality review act. The planning board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

(c) Receipt of a complete preliminary plat. A preliminary plat shall not be considered complete until a negative declaration has been filed or until a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the state environmental quality review act. The time periods for review of a preliminary plat shall begin upon filing of such negative declaration or such notice of completion.

(d) Planning board as lead agency under the state environmental quality review act; public hearing; notice; decision.

(i) Public hearing on preliminary plats. The time within which the planning board shall hold a public hearing on the preliminary plat shall be coordinated with any hearings the planning board may schedule pursuant to the state environmental quality review act, as follows:

(1) If such board determines that the preparation of an environmental impact statement on the preliminary plat is not required, the public hearing on such plat shall be held within sixty-two days after the receipt of a complete preliminary plat by the clerk of the planning board; or

(2) If such board determines that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is held, the public hearing on the

preliminary plat and the draft environmental impact statement shall be held jointly within sixty-two days after the filing of the notice of completion of such draft environmental impact statement in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the public hearing on the preliminary plat shall be held within sixty-two days of filing the notice of completion.

(ii) Public hearing; notice, length. The hearing on the preliminary plat shall be advertised at least once in a newspaper of general circulation in the town at least five days before such hearing if no hearing is held on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat. The hearing on the preliminary plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(iii) Decision. The planning board shall approve, with or without modification, or disapprove such preliminary plat as follows:

(1) If the planning board determines that the preparation of an environmental impact statement on the preliminary plat is not required such board shall make its decision within sixty-two days after the close of the public hearing; or

(2) If the planning board determines that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of such public hearing in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of the public hearing on the preliminary plat. Within thirty days of the filing of such final environmental impact statement, the planning board shall issue findings on the final environmental impact statement and make its decision on the preliminary plat.

(iv) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board. When so approving a preliminary plat, the planning board shall state in writing any modifications it deems necessary for submission of the plat in final form.

(e) Planning board not as lead agency under the state environmental quality review act; public hearing; notice; decision.

(i) Public hearing on preliminary plats. The planning board shall, with the agreement of the lead agency, hold the public hearing on the preliminary plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement or if no public hearing is held on the draft environmental impact statement, the planning board shall hold the public hearing on the preliminary plat within sixty-two days after the receipt of a complete preliminary plat by the clerk of the planning board.

(ii) Public hearing; notice, length. The hearing on the preliminary plat shall be advertised at least once in a newspaper of general circulation in the town at least five days before such hearing if held independently of the hearing on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such

preliminary plat. The hearing on the preliminary plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(iii) Decision. The planning board shall by resolution approve with or without modification or disapprove the preliminary plat as follows:

(1) If the preparation of an environmental impact statement on the preliminary plat is not required, the planning board shall make its decision within sixty-two days after the close of the public hearing on the preliminary plat.

(2) If an environmental impact statement is required, the planning board shall make its own findings and its decision on the preliminary plat within sixty-two days after the close of the public hearing on such preliminary plat or within thirty days of the adoption of findings by the lead agency, whichever period is longer.

(iv) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board. When so approving a preliminary plat, the planning board shall state in writing any modifications it deems necessary for submission of the plat in final form.

(f) Certification and filing of preliminary plat. Within five business days of the adoption of the resolution granting approval of such preliminary plat, such plat shall be certified by the clerk of the planning board as having been granted preliminary approval and a copy of the plat and resolution shall be filed in such clerk's office. A copy of the resolution shall be mailed to the owner.

(g) Filing of decision on preliminary plat. Within five business days from the date of the adoption of the resolution stating the decision of the board on the preliminary plat, the chairman or other duly authorized member of the planning board shall cause a copy of such resolution to be filed in the office of the town clerk.

(h) Revocation of approval of preliminary plat. Within six months of the approval of the preliminary plat the owner must submit the plat in final form. If the final plat is not submitted within six months, approval of the preliminary plat may be revoked by the planning board.

6. Approval of final plats.

(a) Submission of final plats. Final plats shall conform to the definition provided by this section.

(b) Final plats which are in substantial agreement with approved preliminary plats. When a final plat is submitted which the planning board deems to be in substantial agreement with a preliminary plat approved pursuant to this section, the planning board shall by resolution conditionally approve with or without modification, disapprove, or grant final approval and authorize the signing of such plat, within sixty-two days of its receipt by the clerk of the planning board.

(c) Final plats when no preliminary plat is required to be submitted; receipt of complete final plat. When no preliminary plat is required to be submitted, a final plat shall not be considered complete until a negative declaration has been filed or until a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the state environmental quality review act. The time periods for review of such plat shall begin upon filing of such negative declaration or such notice of completion.

(d) Final plats; not in substantial agreement with approved preliminary plats, or when no preliminary plat is required to be submitted. When a final plat is submitted which the planning board deems not to be in substantial agreement with a preliminary plat approved pursuant to this section, or when no preliminary plat is required to be submitted and a final plat clearly marked "final plat" is submitted conforming to the definition provided by this section the following shall apply:

(i) Planning board as lead agency; public hearing; notice; decision.

(1) Public hearing on final plats. The time within which the planning board shall hold a public hearing on such final plat shall be coordinated with any hearings the planning board may schedule pursuant to the state environmental quality review act, as follows:

(a) if such board determines that the preparation of an environmental impact statement is not required, the public hearing on a final plat not in substantial agreement with a preliminary plat, or on a final plat when no preliminary plat is required to be submitted, shall be held within sixty-two days after the receipt of a complete final plat by the clerk of the planning board; or

(b) if such board determines that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is held, the public hearing on the final plat and the draft environmental impact statement shall be held jointly within sixty-two days after the filing of the notice of completion of such draft environmental impact statement in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the public hearing on the final plat shall be held within sixty-two days following filing of the notice of completion.

(2) Public hearing; notice, length. The hearing on the final plat shall be advertised at least once in a newspaper of general circulation in the town at least five days before such hearing if no hearing is held on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such final plat. The hearing on the final plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(3) Decision. The planning board shall make its decision on the final plat as follows:

(a) if such board determines that the preparation of an environmental impact statement on the final plat is not required, the planning board shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat, within sixty-two days after the date of the public hearing; or

(b) if such board determines that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of such public hearing in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of the public hearing on the final plat. Within thirty days of the filing of the final environmental impact statement, the planning board shall issue findings on such final environmental impact statement and shall by resolution conditionally approve,

with or without modification, disapprove, or grant final approval and authorize the signing of such plat.

(4) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board.

(ii) Planning board not as lead agency; public hearing; notice; decision.

(1) Public hearing. The planning board shall, with the agreement of the lead agency, hold the public hearing on the final plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement or if no public hearing is held on the draft environmental impact statement, the planning board shall hold the public hearing on the final plat within sixty-two days after the receipt of a complete final plat by the clerk of the planning board.

(2) Public hearing; notice, length. The hearing on the final plat shall be advertised at least once in a newspaper of general circulation in the town at least five days before such hearing if held independently of the hearing on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such final plat. The hearing on the final plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(3) Decision. The planning board shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat as follows:

(a) If the preparation of an environmental impact statement on the final plat is not required, the planning board shall make its decision within sixty-two days after the close of the public hearing on the final plat.

(b) If an environmental impact statement is required, the planning board shall make its own findings and its decision on the final plat within sixty- two days after the close of the public hearing on such final plat or within thirty days of the adoption of findings by the lead agency, whichever period is longer. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board.

7. Approval and certification of final plats.

(a) Certification of plat. Within five business days of the adoption of the resolution granting conditional or final approval of the final plat, such plat shall be certified by the clerk of the planning board as having been granted conditional or final approval and a copy of such resolution and plat shall be filed in such clerk's office. A copy of the resolution shall be mailed to the owner. In the case of a conditionally approved plat, such resolution shall include a statement of the requirements which when completed will authorize the signing thereof. Upon completion of such requirements the plat shall be signed by said duly authorized officer of the planning board and a copy of such signed plat shall be filed in the office of the clerk of the planning board or filed with the town clerk as determined by the town board.

(b) Approval of plat in sections. In granting conditional or final approval of a plat in final form, the planning board may permit the plat to be subdivided and developed in two or more sections and may in its resolution granting conditional or final approval state that such requirements as it deems necessary

to insure the orderly development of the plat be completed before said sections may be signed by the duly authorized officer of the planning board. Conditional or final approval of the sections of a final plat may be granted concurrently with conditional or final approval of the entire plat, subject to any requirements imposed by the planning board.

(c) Duration of conditional approval of final plat. Conditional approval of the final plat shall expire within one hundred eighty days after the resolution granting such approval unless all requirements stated in such resolution have been certified as completed. The planning board may extend by not more than two additional periods of ninety days each, the time in which a conditionally approved plat must be submitted for signature if, in the planning board's opinion, such extension is warranted by the particular circumstances.

8. Default approval of preliminary or final plat. The time periods prescribed herein within which a planning board must take action on a preliminary plat or a final plat are specifically intended to provide the planning board and the public adequate time for review and to minimize delays in the processing of subdivision applications. Such periods may be extended only by mutual consent of the owner and the planning board. In the event a planning board fails to take action on a preliminary plat or a final plat within the time prescribed therefor after completion of all requirements under the state environmental quality review act, or within such extended period as may have been established by the mutual consent of the owner and the planning board, such preliminary or final plat shall be deemed granted approval. The certificate of the town clerk as to the date of submission of the preliminary or final plat and the failure of the planning board to take action within the prescribed time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of approval herein required.

9. Filing of decision on final plat. Within five business days from the date of the adoption of the resolution stating the decision of the board on the final plat, the chairman or other duly authorized member of the planning board shall cause a copy of such resolution to be filed in the office of the town clerk.

10. Notice to county planning board or agency or regional planning council. When a county planning board or agency or regional planning council has been authorized to review subdivision plats pursuant to section two hundred thirty- nine-n of the general municipal law, the clerk of the planning board shall refer all applicable preliminary and final plats to such county planning board or regional planning council as provided in that section.

11. Filing of final plat; expiration of approval. The owner shall file in the office of the county clerk or register such approved final plat or a section of such plat within sixty-two days from the date of final approval or such, approval shall expire. The following shall constitute final approval: the signature of the duly authorized officer of the planning board constituting final approval by the planning board of a plat as herein provided; or the approval by such board of the development of a plat or plats already filed in the office of the county clerk or register of the county in which such plat or plats are located if such plats are entirely or partially undeveloped; or the certificate of the town clerk as to the date of the submission of the final plat and the failure of the planning board to take action within the time herein provided. In the event the owner shall file only a section of such approved plat in the office of the county clerk or register, the entire approved plat shall be filed within thirty days of the filing of such section with the town clerk in each town in which any portion of the land described in the plat is situated. Such section shall encompass at least ten percent of the total number of lots contained in the approved plat and the approval of the remaining sections of the approved plat shall expire unless said sections are filed before the expiration of the exemption period to which such plat is entitled under the provisions of subdivision two of section two hundred sixty-five-a of this article.

12. Subdivision abandonment. The owner of an approved subdivision may abandon such subdivision pursuant to the provisions of section five, hundred sixty of the real property tax law.

§ 277. Subdivision review; approval of plats; additional requisites.

1. Purpose. Before the approval by the planning board of a plat showing lots, blocks or sites, with or without streets or highways, or the approval of a plat already filed in the office of the clerk of the county wherein such plat is situated if the plat is entirely or partially undeveloped, the planning board shall require that the land shown on the plat be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, drainage or other menace to neighboring properties or the public health, safety and welfare.

2. Additional requirements. The planning board shall also require that:

(a) the streets and highways be of sufficient width and suitable grade and shall be suitably located to accommodate the prospective traffic, to afford adequate light and air, to facilitate fire protection, and to provide access of firefighting equipment to buildings. If there be an official map, town comprehensive plan or functional/master plans, such streets and highways shall be coordinated so as to compose a convenient system conforming to the official map and properly related to the proposals shown in the comprehensive plan of the town;

(b) suitable monuments be placed at block corners and other necessary points as may be required by the board and the location thereof is shown on the map of such plat;

(c) all streets or other public places shown on such plats be suitably graded and paved; street signs, sidewalks, street lighting standards, curbs, gutters, street trees, water mains, fire alarm signal devices (including necessary ducts and cables or other connecting facilities), sanitary sewers and storm drains be installed all in accordance with standards, specifications and procedures acceptable to the appropriate town departments except as hereinafter provided, or alternatively that a performance bond or other security be furnished to the town, as hereinafter provided.

3. Compliance with zoning regulations. Where a zoning ordinance or local law has been adopted by the town, the lots shown on said plat shall at least comply with the requirements thereof subject, however, to the provisions of section two hundred seventy-eight of this article.

4. Reservation of parkland on subdivision plats containing residential units.

(a) Before the planning board may approve a subdivision plat containing residential units, such subdivision plat shall also show, when required by such board, a park or parks suitably located for playground or other recreational purposes.

(b) Land for park, playground or other recreational purposes may not be required until the planning board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the town based on projected population growth to which the particular subdivision plat will contribute.

(c) In the event the planning board makes a finding pursuant to paragraph (b) of this subdivision that the proposed subdivision plat presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet

the requirement cannot be properly located on such subdivision plat, the planning board may require a sum of money in lieu thereof, in an amount to be established by the town board. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the subdivision plat which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the planning board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the town exclusively for park, playground or other recreational purposes, including the acquisition of property.

5. Character of the development. In making such determination regarding streets, highways, parks and required improvements, the planning board shall take into consideration the prospective character of the development, whether dense residence, open residence, business or industrial.

6. Application for area variance. Notwithstanding any provision of law to the contrary, where a plat contains one or more lots which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section two hundred sixty-seven-b of this article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations. In reviewing such application the zoning board of appeals shall request the planning board to provide a written recommendation concerning the proposed variance.

7. Waiver of requirements. The planning board may waive, when reasonable, any requirements or improvements for the approval, approval with modifications or disapproval of subdivisions submitted for its approval. Any such waiver, which shall be subject to appropriate conditions, may be exercised in the event any such requirements or improvements are found not to be requisite in the interest of the public health, safety, and general welfare or inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the subdivision.

8. Installation of fire alarm devices. The installation of fire alarm signal devices including necessary connecting facilities shall be required or waived pursuant to this section only with the approval of:

(a) the board of supervisors or legislative body of the county if the installation is to be made in an area included in a central fire alarm system established pursuant to paragraph (h) of subdivision one of section two hundred twenty-five of the county law or

(b) the town board in any other case unless the installation is to be made in a fire district in a town in which no central fire alarm system has been established pursuant to subdivision eleven-c of section sixty-four of this chapter, in which case only the approval of the board of fire commissioners of such fire district shall be necessary. Required installations of fire alarm signal devices including necessary connecting facilities shall be made in accordance with standards, specifications and procedures acceptable to the appropriate board.

9. Performance bond or other security.

(a) Furnishing of performance bond or other security. As an alternative to the installation of infrastructure and improvements, as above provided, prior to planning board approval, a performance bond or other security sufficient to cover the full cost of the same, as estimated by the planning board or a town department designated by the planning board to make such estimate, where such departmental estimate is deemed acceptable by the planning board, shall be furnished to the town by the owner.

(b) Security where plat approved in sections. In the event that the owner shall be authorized to file the approved plat in sections, as provided in subdivision ten of section two hundred seventy-six of this article, approval of the plat may be granted upon the installation of the required improvements in the section of the plat filed in the office of the county clerk or register or the furnishing of security covering the costs of such improvements. The owner shall not be permitted to begin construction of buildings in any other section until such section has been filed in the office of the county clerk or register and the required improvements have been installed in such section or a security covering the cost of such improvements is provided.

(c) Form of security. Any such security must be provided pursuant to a written security agreement with the town, approved by the town board and also approved by the town attorney as to form, sufficiency and manner of execution, and shall be limited to:

(I) a performance bond issued by a bonding or surety company;

(ii) the deposit of funds in or a certificate of deposit issued by a bank or trust company located and authorized to do business in this state;

(iii) an irrevocable letter of credit from a bank located and authorized to do business in this state;

(iv) obligations of the United States of America; or

(v) any obligations fully guaranteed as to interest and principal by the United States of America, having a market value at least equal to the full cost of such improvements. If not delivered to the town, such security shall be held in a town account at a bank or trust company.

(d) Term of security agreement. Any such performance bond or security agreement shall run for a term to be fixed by the planning board, but in no case for a longer term than three years, provided, however, that the term of such performance bond or security agreement may be extended by the planning board with consent of the parties thereto. If the planning board shall decide at any time during the term of the performance bond or security agreement that the extent of building development that has taken place in the subdivision is not sufficient to warrant all the improvements covered by such security, or that the required improvements have been installed as provided in this section and by the planning board in sufficient amount to warrant reduction in the amount of said security, and upon approval by the town board, the planning board may modify its requirements for any or all such improvements, and the amount of such security shall thereupon be reduced by an appropriate amount so that the new amount will cover the cost in full of the amended list of improvements required by the planning board.

(e) Default of security agreement. In the event that any required improvements have not been installed as provided in this section within the term of such security agreement, the town board may thereupon declare the said performance bond or security agreement to be in default and collect the sum remaining payable thereunder; and upon the receipt of the proceeds thereof, the town shall install such improvements as are covered by such security and as commensurate with the extent of building development that has taken place in the subdivision but not exceeding in cost the amount of such proceeds.

10. Provision of improvements by town.

(a) Adoption of resolution. Notwithstanding the foregoing provisions of this section, with respect to plats approved by the planning board, the town board may adopt a resolution that sidewalks and/or water mains and/or sanitary sewers and/or storm drains required by the planning board pursuant to this

section be constructed or installed at the expense of the town as authorized by articles three-A and twelve-C of this chapter or at the expense of an existing improvement district in which the plat is located. Such improvements may also be acquired without consideration by the town board on behalf of the town or an improvement district as authorized by article three-A, twelve, twelve-A or twelve-C of this chapter.

(b) Establishment of improvement district. If an improvement district has not been created for the area in which the plat is located, the town board may establish or extend an improvement district as provided in this chapter or in any applicable special law for the purpose of constructing or installing or acquiring without consideration such improvements shown on the map of any plat as the town board may determine.

(I) Execution of contracts. The town board resolution shall require that the owner or owners of real property execute such contracts with the town as the town board may deem necessary for the purpose of ensuring that the expense of such construction or installation, including the cost of issuing obligations to raise moneys to pay the expense thereof and interest on such obligations, shall not be an undue burden upon the property deemed benefitted by the agreements or of such improvement district or extension thereof as the case may be and may require a security agreement, including the filing of a surety bond, letter of credit or the deposit of cash or securities reasonably acceptable to the town board as to assure the performance of such contracts.

(ii) Any such surety agreement shall be executed in accordance with this subdivision, and may contain such other provisions as the town board may reasonably determine to be necessary to ensure the performance of such contracts.

11. Suffolk county; disposal of sewage from plats.

(a) In the county of Suffolk, when the health department shall have directed that disposal of sewage from the plat shall be provided for by a communal sewerage system, consisting of a treatment plant and collection system, then the Suffolk county sewer agency shall determine, specify and direct the means and method by which the aforesaid system shall be best provided by and at the expense of the developer. Among the alternative means and methods the Suffolk county sewer agency may direct, shall be:

(i) that the developer, at its own cost and expense, install, build and construct such system according to such plans, specifications, conditions and guarantees as may be required by the Suffolk county sewer agency, and upon satisfactory completion thereof, the developer shall dedicate and donate same, without cost to the Suffolk county sewer agency, or its nominee, and the developer shall also petition to form a county district, but if the Suffolk county sewer agency shall determine that a suitable complete communal sewerage system of adequate size cannot be properly located in the plat or is otherwise not practical, then,

(ii) the developer shall install, build and construct temporary cesspools or septic tanks together with a sewage collection system according to such plans, specifications, conditions and guarantees as may be required by the Suffolk county sewer agency, and upon satisfactory completion thereof, the developer shall dedicate and donate same, without cost, to the Suffolk county sewer agency or its nominee, and in addition thereto, the agency may also require the payment to the Suffolk county sewer agency of a sum of money in an amount to be determined by the Suffolk county sewer agency, and the developer shall also petition to form a county district, or

(iii) the developer shall install, build and construct temporary cesspools or septic tanks and, in

addition thereto, shall pay to the Suffolk county sewer agency a sum of money in an amount to be determined by the Suffolk county sewer agency and the developer shall also petition to form a county district, or

(iv) the developer shall provide such other means and methods or combination thereof as the Suffolk county sewer agency may determine, specify and direct.

(b) Any sums paid to the Suffolk county sewer agency pursuant to any provisions of this section, shall constitute a trust fund to be used exclusively for a future communal sewerage system which shall be owned and operated by a county sewer district, which district shall include the subject plat within its bounds. Such moneys and accrued interest, if any, when paid to such district, shall be credited over a period of time determined by the district, pro rata, against the sewer assessment of each tax parcel of the subject plat as may exist at the time of the payment of such moneys and accrued interest to such district. Provided, however, that if so directed by local law enacted by the Suffolk county legislature with approval of the county executive:

(i) the Suffolk county sewer agency may refund all moneys on deposit in said rust fund pursuant to agreements entered into before July first, nineteen hundred seventy-eight under the authority of subparagraphs (ii) and (iii) of paragraph (a) of this subdivision, and all accumulated interest, if any, earned thereon, to the owner as of July first, nineteen hundred eighty-eight of the subject plat from which moneys deposited into said trust fund were collected, or a predecessor in title if said predecessor establishes a superior right to the moneys and accumulated interest; and

(ii) the Suffolk county sewer agency may cease to accept money for deposit into the trust fund if said money is due and owning because of agreements entered into before July first, nineteen hundred seventy-eight under the authority of subparagraphs (ii) and (iii) of paragraph (a) of this subdivision.

(c) The useable value of any communal sewage collection system built under subparagraph (I), (ii) or (iv) of paragraph (a) of this subdivision shall be credited over a period of time determined by the district, pro rata, against the sewer assessment of each tax parcel of the plat as may exist at the time such system is incorporated into a county sewer district which shall include the subject plat within its bounds.

(d) While planning for and pending the formation or extension of a district contemplated hereunder which will incorporate a plat that has or is to have a dry lateral sewer collection system installed therein, the county legislature may contract in those instances where it feels an emergency exists, and the public health and welfare are in urgent need and will be best served, with any department, agency, subdivision, or political instrumentality of the state, county, town, or village, or an improvement district or a private entity having a treatment plant, to furnish sewerage disposal service to such plat on such terms and conditions and for such consideration as the Suffolk county sewer agency may recommend and the county legislature approves. The county legislature may finance, in whole or in part, pursuant to the local finance law, any expenditure made pursuant to this section. Upon the erection of the contemplated district, it shall reimburse the county for any funds the county may have expended to provide such interim disposal service to the plat.

§ 278. Subdivision review; approval of cluster development.

1. Definitions. As used in this section:

(a) "cluster development" shall mean a subdivision plat or plats, approved pursuant to this article, in which the applicable zoning ordinance or local law is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks, and landscaping in order to preserve the natural and scenic qualities of open lands.

(b) "zoning districts" shall mean districts provided for in section two hundred sixty-two of this article.

2. Authorization; purpose.

(a) The town board may, by local law or ordinance, authorize the planning board to approve a cluster development simultaneously with the approval of a plat or plats pursuant to this article. Approval of a cluster development shall be subject to the conditions set forth in this section and in such local law or ordinance. Such local law or ordinance shall also specify the zoning districts outside the limits of any incorporated village in which cluster development may be applicable.

(b) The purpose of a cluster development shall be to enable and encourage flexibility of design and development of land in such a manner as to preserve the natural and scenic qualities of open lands.

3. Conditions.

(a) This procedure may be followed at the discretion of the planning board if, in said board's judgment, its application would benefit the town. Provided, however, that in granting such authorization to the planning board, the town board may also authorize the planning board to require the owner to submit an application for cluster development subject to criteria contained in the local law or ordinance authorizing cluster development.

(b) A cluster development shall result in a permitted number of building lots or dwelling units which shall in no case exceed the number which could be permitted, in the planning board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the zoning ordinance or local law applicable to the district or districts in which such land is situated and conforming to all other applicable requirements. Provided, however, that where the plat falls within two or more contiguous districts, the planning board may approve a cluster development representing the cumulative density as derived from the summing of all units allowed in all such districts, and may authorize actual construction to take place in all or any portion of one or more of such districts.

c) The planning board as a condition of plat approval may establish such conditions on the ownership, use, and maintenance of such open lands shown on the plat as it deems necessary to assure the preservation of the natural and scenic qualities of such open lands. The town board may require that such conditions shall be approved by the town board before the plat may be approved for filing.

(d) The plat showing such cluster development may include areas within which structures may be located, the height and spacing of buildings, open spaces and their landscaping, off-street open and enclosed parking spaces, streets, driveways and any other features required by the planning board. In the case of a residential plat or plats, the dwelling units permitted may be, at the discretion of the planning board, in detached, semi-detached, attached, or multi-story structures.

4. Notice and public hearing. The proposed cluster development shall be subject to review at a public hearing or hearings held pursuant to section two hundred seventy-six of this article for the approval of plats.

5. Filing of plat. On the filing of the plat in the office of the county clerk or register, a copy shall be filed with the town clerk, who shall make appropriate notations and references thereto on the town zoning map required to be maintained pursuant to section two hundred sixty-four of this article.

6. Effect. The provisions of this section shall not be deemed to authorize a change in the permissible use of such lands as provided in the zoning ordinance or local law applicable to such lands.

§ 279. Subdivision review; record of plats.

1. Filing of plat with county clerk or register.

(a) No plat of a subdivision of land showing lots, blocks or sites, shall be filed or recorded in the office of the county clerk or register until it has been approved by a planning board which has been empowered to approve such plats. Further, such approval must be endorsed in writing on the plat in such manner as the planning board may designate.

(b) Such endorsement shall stipulate that the plat does not conflict with the county official map, where one exists, or, in cases where plats do front on or have access to or are otherwise related to roads or drainage systems shown on the county official map, that such plat has been approved in the manner specified by section two hundred thirty-nine-f of the general municipal law.

2. Notification of filing. It shall be the duty of the county clerk or register to notify the planning board in writing within three days of the filing or recording of any plat approved by such planning board, identifying such plat by its title, date of filing or recording, and official file number.

3. Effect of filing. After such plat is approved and filed, the streets, highways and parks shown on such plat shall be and become a part of the official map or plan of the town.

4. Cession or dedication of streets, highways or parks.

(a) All streets, highways or parks shown on a filed or recorded plat are offered for dedication to the public unless the owner of the affected land, or the owner's agent, makes a notation on the plat to the contrary prior to final plat approval. Any street, highway or park shown on a filed or recorded plat shall be deemed to be private until such time as it has been formally accepted by a resolution of the local legislative body, or until it has been condemned by the town for use as a public street, highway or park.

(b) In the event that such approved plat is not filed or recorded prior to the expiration date of the plat approval as provided in section two hundred seventy-six of this article, then such offer of dedication shall be deemed to be invalid, void and of no effect on and after such expiration date.

Notes:
- County official maps - see General Municipal Law, §§239-g to 239-k.
- Approval of plats related to roads or drainage systems shown on county official map - see General Municipal Law, §239-k.

§ 280. Permits for buildings in bed of mapped streets.

For the purpose of preserving the integrity of such official map or plan no permit shall hereafter be issued for any building in the bed of any street or highway shown or laid out on such map or plan, provided,

however, that if the land within such mapped street or highway is not yielding a fair return on its value to the owner, the board of appeals, or other similar board, in any town which has established such a board having power to make variances or exceptions in zoning regulations, shall have power in a specific case by the vote of a majority of its members to grant a permit for a building in such street or highway which will as little as practicable increase the cost of opening such street or highway, or tend to cause a change of such official map or plan, and such board may impose reasonable requirements as a condition of granting such permit, which requirements shall inure to the benefit of the town. Before taking any action authorized in this section, the board of appeals or similar board shall give a hearing at which parties in interest and others shall have an opportunity to be heard. At least ten days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in such town. Any such decision shall be subject to review in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations.

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§ 280-a. Permits for buildings not on improved mapped streets.

1. No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plan, or if there be no official map or plan, unless such street or highway is

(a) an existing state, county or town highway, or

(b) a street shown upon a plat approved by the planning board as provided in sections two hundred seventy-six and two hundred seventy-seven of this article, as in effect at the time such plat was approved, or

(c) a street on a plat duly filed and recorded in the office of the county clerk or register prior to the appointment of such planning board and the grant to such board of the power to approve plats.

2. Before such permit shall be issued such street or highway shall have been suitably improved to the satisfaction of the town board or planning board, if empowered by the town board in accordance with standards and specifications approved by the town board, as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway. Alternatively, and in the discretion of such board, a performance bond sufficient to cover the full cost of such improvement as estimated by such board shall be furnished to the town by the owner. Such performance bond shall be issued by a bonding or surety company approved by the town board or by the owner with security acceptable to the town board, and shall also be approved by such town board as to form, sufficiency and manner of execution. The term, manner of modification and method of enforcement of such bond shall be determined by the appropriate board in substantial conformity with section two hundred seventy-seven of this article.

3. The applicant for such a permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board or appeals or other similar board, in any town which has established a board having the power to make variances or exceptions in zoning regulations for: a) an exception if the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, and/or b) an area variance pursuant to section 267-b of the town law, and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal make any reasonable exception and issue the permit subject to conditions that will protect any future street or highway layout. Any such decision shall be subject to review by certiorari order issued out of a special term of the supreme court in the same manner and pursuant to the same provisions as in appeals

from the decisions of such board upon zoning regulations.

4. The town board may, by resolution, establish an open development area or areas within the town, wherein permits may be issued for the erection of structures to which access is given by right of way or easement, upon such conditions and subject to such limitations as may be prescribed by general or special rule of the planning board, if one exists, or of the town board if a planning board does not exist. If a planning board exists in such town, the town board, before establishing any such open development area or areas, shall refer the matter to such planning board for its advice and shall allow such planning board a reasonable time to report.

5. For the purposes of this section the word "access" shall mean that the plot on which such structure is proposed to be erected directly abuts on such street or highway and has sufficient frontage thereon to allow the ingress and egress of fire trucks, ambulances, police cars and other emergency vehicles, and, a frontage of fifteen feet shall presumptively be sufficient for that purpose.

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§ 281. Municipal improvements in streets.

No public municipal street utility or improvement shall be constructed by the town in any street or highway within that part of the town outside the limits of any incorporated city or village until it has become a public street or highway and is duly placed on the official map or plan, provided, however, that subject to the discretion of the town board, a subsurface utility or improvement operated for revenue by the town or by a special district may be constructed by the town in a private street, provided a public easement satisfactory to the town board is obtained for such utility or improvement.

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§ 282. Court review.

Any person or persons, jointly or severally aggrieved by any decision of the planning board concerning such plat or the changing of the zoning regulations of such land, or any officer, department, board or bureau of the town, may have the decision reviewed by a special term of the supreme court in the manner provided by article seventy-eight of the civil practice law and rules provided the proceeding is commenced within thirty days after the filing of the decision in the office of the town clerk.

Commencement of the proceeding shall stay proceedings upon the decision appealed from.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the planning board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

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§ 283. Issuance of licenses and permits in certain towns.

If, in any town of the first class at the time of the enactment of this chapter, there exists a building department, set up as an adjunct of the planning board, all licenses or permits, whenever and in the manner required by any building zone ordinance, local law or building code, shall be issued by said department, and all fees therefor be collected as provided by the requirements of the building zone ordinance, local law or building code.

§ 283-a. Coordination with agricultural districts program.

1. Policy of local governments. Local governments shall exercise their powers to enact local laws, ordinances, rules or regulations that apply to farm operations in an agricultural district in a manner which does not unreasonably restrict or regulate farm structures or farming practices in contravention of the purposes of article twenty-five-AA of the agriculture and markets law, unless such restrictions or regulations bear a direct relationship to the maintenance of public health or safety.

2. Agricultural data statement; submission, evaluation. Any application for a special use permit, site plan approval, use variance, or subdivision approval requiring municipal review and approval by the town board, planning board, or zoning board of appeals pursuant to this article, that would occur on property within an agricultural district containing a farm operation or on property with boundaries within five hundred feet of a farm operation located in an agricultural district, shall include an agricultural data statement. The town board, planning board, or zoning board of appeals shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within such agricultural district. The information required by an agricultural data statement may be included as part of any other application form required by local law, ordinance or regulation.

3. Agricultural data statement; notice provision. Upon the receipt of such application by the planning board, zoning board of appeals, or town board, the clerk of such board shall mail written notice of such application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location, and may be sent in conjunction with any other notice required by state or local law, ordinance, rule or regulation for the said project. The cost of mailing said notice shall be borne by the applicant.

4. Agricultural data statement; content. An agricultural data statement shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within five hundred feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.

5. Notice to county planning board or agency or regional planning council. The clerk of the town board, planning board, or zoning board of appeals shall refer all applications requiring an agricultural data statement to the county planning board or agency or regional planning council as required by sections two hundred thirty- nine-m and two hundred thirty-nine-n of the general municipal law.

§ 284. Intermunicipal cooperation in comprehensive planning and land use regulation.

1. Legislative intent. This section is intended to illustrate the statutory authority that any municipal corporation has under article five-G of the general municipal law and place within land use law express statutory authority for cities, towns and villages to enter into agreements to undertake

comprehensive planning and land use regulation with each other or one for the other, and to provide that any city, town or village may contract with a county to carry out all or a portion of the ministerial functions related to the land use of such city, town or village as may be agreed upon. By the enactment of this section the legislature seeks to promote intergovernmental cooperation that could result in increased coordination and effectiveness of comprehensive planning and land use regulation, more efficient use of infrastructure and municipal revenues, as well as the enhanced protection of community resources, especially where such resources span municipal boundaries.

2. Authorization and effects.

(a) In addition to any other general or special powers vested in a town to prepare a comprehensive plan and enact and administer land use regulations, by local law or ordinance, rule or regulation, each town is hereby authorized to enter into, amend, cancel and terminate agreements with any other municipality or municipalities to undertake all or a portion of such powers, functions and duties.

(b) Any one or more municipalities located in a county which has established a county planning board, commission or other agency, hereinafter referred to as a county planning agency, are hereby authorized to enter into, amend, cancel and terminate agreements with such county in order to authorize the county planning agency to perform and carry out certain ministerial functions on behalf of such municipality or municipalities related to land use planning and zoning. Such functions may include, but are not limited to, acting in an advisory capacity, assisting in the preparation of comprehensive plans and land use regulations to be adopted and enforced by such municipality or municipalities and participating in the formation and functions of individual or joint administrative boards and bodies formed by one or more municipalities.

(c) Such agreements shall apply only to the performance or exercise of any function or power which each of the municipal corporations has the authority by any general or special law to prescribe, perform, or exercise separately.

3. Definitions. As used herein:

(a) "Municipality", means a city, town or village.

(b) "Community resource", means a specific public facility, infrastructure system, or geographic area of special economic development, environmental, scenic, cultural, historic, recreational, parkland, open space, natural resource, or other unique significance, located wholly or partially within the boundaries of one or more given municipalities.

(c) "Intermunicipal overlay district", means a special land use district which encompasses all or a portion of one or more municipalities for the purpose of protecting, enhancing or developing one or more community resources as provided herein.

4. Intermunicipal agreements. In addition to any other powers granted to municipalities to contract with each other to undertake joint, cooperative agreements any municipality may:

(a) create a consolidated planning board which may replace individual planning boards, if any, which consolidated planning board shall have the powers and duties as shall be determined by such agreement;

(b) create a consolidated zoning board of appeals which may replace individual zoning boards of appeals, if any, which consolidated zoning board of appeals shall have the powers and duties as shall be

determined by such agreement;

(c) create a comprehensive plan and/or land use regulations which may be adopted independently by each participating municipality;

(d) provide for a land use administration and enforcement program which may replace individual land use administration and enforcement programs, if any, the terms and conditions of which shall be set forth in such agreement; and

(e) create an intermunicipal overlay district for the purpose of protecting, enhancing or developing community resources that encompass two or more municipalities.

5. Special considerations.

(a) Making joint agreements. Any agreement made pursuant to the provisions of this section may contain provisions as the parties deem to be appropriate, and including provisions relative to the items designated in paragraphs a through m inclusive as set forth in subdivision two of section one hundred nineteen-o of the general municipal law.

(b) Establishing the duration of agreement. Any agreement developed pursuant to the provisions of this section may contain procedures for periodic review of the terms and conditions, including those relating to the duration, extension or termination of the agreement.

(c) Amending local laws or ordinances. Local laws or ordinances shall be amended, as appropriate, to reflect the provisions contained in intermunicipal agreements established pursuant to the provisions of this section.

6. Appeal of action by aggrieved party or parties. Any officer, department, board or bureau of any municipality with the approval of the legislative body, or any person or persons jointly or severally aggrieved by any act or decision of a planning board, zoning board of appeals or agency created pursuant to the provisions of this section may bring a proceeding by article seventy-eight of the civil practice law and rules in a court of record on the ground that such decision is illegal, in whole or in part. Such proceeding must be commenced within thirty days after the filing of the decision in the office of the town clerk. Commencement of the proceeding shall stay proceedings upon the decision from which the appeal is taken. All issues in any proceeding under this section shall have a preference over all other civil actions and proceedings.

7. Any agreements made between two or more municipalities pursuant to article five-G of the general municipal law or any other law which provides for the undertaking of any land use regulation or activity on a joint, cooperative or contract basis, if valid when so made, shall not be invalidated by the provisions of this section.

8. The provisions of this section shall be in addition to existing authority and shall not be deemed or construed as a limitation, diminution or derogation of any statutory authority authorizing municipal cooperation.

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285. Separability clause.

If any part or provision of this article or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part,

provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this article or the application thereof to other persons or circumstances and the legislature hereby declares that it would have enacted this article or the remainder thereof had the invalidity of such provision or application thereof been apparent.

VILLAGE LAW

Prior to its recodification, the Village Law empowered villages to enact zoning regulations by ordinance. The recodification of the Village Law (L. 1972, C. 892) substituted local law for ordinance as the vehicle for enacting zoning regulations, subject to a provision (§20-2000) that references to local law shall include power to act by ordinance. In 1973, §20-2000 was separately amended by two measures. Chapter 976 limited the ordinance power "to the extent that an ordinance could have been adopted prior to" the effective date of the recodified Village Law to repeal the authorization to act by ordinance. This repealing legislation took effect on September 1, 1974. Thus, since that date, the exclusive mechanism of enacting zoning regulations would be by local law.

§ 7-700. Grant of power.

For the purpose of promoting the health, safety, morals, or the general welfare of the community, the board of trustees of a village is hereby empowered, by local law, to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes. As a part of the comprehensive plan and design, the village board is empowered by local law, to regulate and restrict certain areas as national historic landmarks, special historic sites, places and buildings for the purpose of conservation, protection, enhancement and perpetuation of these places of natural heritage. Such regulations shall provide that a board of appeals may determine and vary their application in harmony with the general purpose and intent, and in accordance with general or specific rules therein contained.

Notes:
- Height, bulk, open spaces - see Multiple Dwelling Law, §26.
- Two or more buildings on same lot - see Multiple Dwelling Law, §28.

§ 7-701. Transfer of development rights; definitions; conditions; procedures.

1. As used in this section:

a. "Development rights" shall mean the rights permitted to a lot, parcel, or area of land under a zoning law respecting permissible use, area, density, bulk or height of improvements executed thereon. Development rights may be calculated and allocated in accordance with such factors as area, floor area, floor area ratios, density, height limitations, or any other criteria that will effectively quantify a value for the development right in a reasonable and uniform manner that will carry out the objectives of this section.

b. "Receiving district" shall mean one or more designated districts or areas of land to which development rights generated from one or more sending districts may be transferred and in which increased development is permitted to occur by reason of such transfer.

c. "Sending district" shall mean one or more designated districts or areas of land in which development rights are designated for use in one or more receiving districts.

d. "Transfer of development rights" shall mean the process by which development rights are transferred from one lot, parcel, or area of land in any sending district to another lot, parcel, or area of land in one or more receiving districts.

2. In addition to existing powers and authorities to regulate by planning or zoning, including authorization to provide for transfer of development rights pursuant to other enabling law, a board of trustees is

hereby empowered to provide for transfer of development rights subject to the conditions hereinafter set forth and such other conditions as a village board of trustees deems necessary and appropriate that are consistent with the purposes of this section. The purpose of providing for transfer of development rights shall be to protect the natural, scenic or agricultural qualities of open lands, to enhance sites and areas of special character or special historical, cultural, aesthetic or economic interest or value and to enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource. The conditions hereinabove referred to are as follows:

a. That the transfer of development rights, and the sending and receiving districts, shall be established in accordance with a comprehensive master plan within the meaning of section 7-722 of this article. The sending district from which transfer of development rights may be authorized shall consist of natural, scenic, recreational, agricultural or open land or sites of special historical, cultural, aesthetic or economic values sought to be protected. Every receiving district, to which transfer of development rights may be authorized shall have been found by the board of trustees, after evaluating the effects of potential increased development which is possible under the transfer of development rights provisions to contain adequate resources, environmental quality and public facilities, including adequate transportation, water supply, waste disposal and fire protection, and that there will be no significant environmentally damaging consequences and such increased development is compatible with the development otherwise permitted by the village and by the federal, state, and county agencies having jurisdiction to approve permissible development within the district. A generic environmental impact statement pursuant to the provisions of article eight of the environmental conservation law shall be prepared by the village for the receiving district before any such district, or any sending district, is designated, and such statement shall be amended from time to time by the village, if there are material changes in circumstances. Where a transfer of development rights affects districts in two or more school, special assessment or tax districts, it may not unreasonably transfer the tax burden between the taxpayers of such districts. The receiving and sending districts need not be coterminous with zoning districts.

b. That sending and receiving districts be designated and mapped with specificity and the procedure for transfer of development rights be specified. Notwithstanding any other provision of law to the contrary, environmental quality review pursuant to article eight of the environmental conservation law for any action in a receiving district that utilizes development rights shall only require information specific to the project and site where the action will occur and shall be limited to review of the environmental impacts of the action, if any, not adequately reviewed in the generic environmental impact statement.

c. That the burden upon land within a sending district from which development rights have been transferred shall be documented by an instrument duly executed by the grantor in the form of a conservation easement, as defined in title three of article forty-nine of the environmental conservation law, which burden upon such land shall be enforceable by the appropriate village in addition to any other person or entity granted enforcement rights by the terms of the instrument. All provisions of law applicable to such conservation easements pursuant to such title shall apply with respect to conservation easements hereunder, except that the board of trustees may adopt standards pertaining to the duration of such easements that are more stringent than such standards promulgated by the department of environmental conservation pursuant to such title. Upon the designation of any sending district, the board of trustees shall adopt regulations establishing uniform minimum standards for instruments creating such easements within the district. Any development right which has been transferred by conservation easement shall be evidenced by a certificate of development right which shall be issued by the village to the transferee in a form suitable for recording in the registry of deeds for the county where the receiving district is situated in the manner of other conveyances of interests

in land affecting its title.

d. That within one year after a development right is transferred, the assessed valuation placed on the affected properties for real property tax purposes shall be adjusted to reflect the transfer. A development right which is transferred shall be deemed to be an interest in real property and the rights evidenced thereby shall inure to the benefit of the transferee, and his heirs, successors and assigns.

e. That development rights shall be transferred reflecting the normal market in land, including sales between owners of property in sending and receiving districts, a village may establish a development rights bank or such other account in which development rights may be retained and sold in the best interest of the village. Villages shall be authorized to accept for deposit within the bank gifts, donations, bequests or other development rights. All receipts and proceeds from sales of development rights sold by the village shall be deposited in a special municipal account to be applied against expenditures necessitated by the municipal development rights program.

f. That prior to designation of sending or receiving districts, the legislative body of the village shall evaluate the impact of transfer of development rights upon the potential development of low or moderate income housing lost in sending districts and gained in receiving districts and shall find either there is approximate equivalence between potential low and moderate housing units lost in the sending district and gained in the receiving districts or that the village has or will take reasonable action to compensate for any negative impact upon the availability or potential development of low or moderate income housing caused by the transfer of development rights.

3. The board of trustees adopting or amending procedures for transfer of development rights pursuant to this section shall follow the procedure for adopting and amending a local law including all provisions for notice applicable for changes or amendments to a zoning ordinance or local law.

4. Nothing in this section shall be construed to invalidate any provision for transfer of development rights heretofore or hereafter adopted by any local legislative body.

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§ 7-702. Districts.

For any or all of said purpose the board of trustees may divide the village into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this article and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings throughout each district but the regulations in one district may differ from those in other districts.

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§ 7-703. Incentive zoning; definitions, purpose, conditions, procedures.

1. Definitions. As used in this section:

a. "Incentives or bonuses" shall earn adjustments to the permissible population density, area, height, open space, use, or other provisions of a zoning local law for a specific purpose authorized by the village board of trustees.

b. "Community benefits or amenities" shall mean open space, housing for persons of low or moderate income, parks, elder care day care or other specific physical, social or cultural amenities, or cash in lieu thereof, of benefit to the residents of the community authorized by the village board of trustees.

c. "Incentive zoning" shall mean the system by which specific incentives or bonuses are granted to applicants pursuant to this section on condition that specific physical, social, or cultural benefits or amenities would inure to the community.

2. Authority and purposes. In addition to existing powers and authorities to regulate by planning or zoning, including authorization to provide for the granting of incentives, or bonuses pursuant to other enabling law, a village board of trustees is hereby empowered, as part of a zoning local law adopted pursuant to this article, to provide for a system of zoning incentives, or bonuses, as the village board of trustees deems necessary and appropriate consistent with the purposes and conditions set forth in this section. The purpose of the system of incentive, or bonus, zoning shall be to advance the village's specific physical, cultural and social policies in accordance with the village's comprehensive plan and in coordination with other community planing mechanisms or land use techniques. The system of zoning incentives or bonuses shall be in accordance with a comprehensive plan within the meaning of section 7-704 of this article.

3. Implementation. A system of zoning incentives or bonuses may be provided subject to the conditions hereinafter set forth.

a. The village board of trustees shall provide for the system of zoning incentives or bonuses pursuant to this section as part of the zoning local law. In providing for such system the board shall follow the procedure for adopting and amending its zoning local law, including all provisions for notice and public hearing applicable for changes or amendments to a zoning local law.

b. Each zoning district in which incentives or bonuses may be awarded under this section shall be designated in the village zoning local law and shall be incorporated in any map adopted in connection with such zoning local law or amendment thereto.

c. Each zoning district in which incentives or bonuses may be authorized shall have been found by the village board of trustees, after evaluating the effects of any potential incentives which are possible by virtue of the provision of community amenities, to contain adequate resources, environmental quality and public facilities, including adequate transportation, water supply, waste disposal and fire protection. Further, the village board of trustees shall, in designating such districts, determine that there will be no significant environmentally damaging consequences and that such incentives or bonuses are compatible with the development otherwise permitted.

d. A generic environmental impact statement pursuant to the provisions of 6 NYCRR 617.15 shall be prepared by the village board of trustees for any zoning district in which the granting of incentives or bonuses may have significant effect on the environment before any such district is designated, and such statement shall be supplemented from time to time by the village board of trustees if there are material changes in circumstances that may result in significant adverse impacts. Any zoning local law enacted pursuant to this section shall provide that any applicant for incentives or bonuses shall pay a proportionate share of the cost of preparing such environmental impact statement, and that such charge shall be added to any site-specific charge made pursuant to the provisions of section 8-0109 of the environmental conservation law.

e. The village board of trustees shall set forth the procedure by which incentives may be provided to specific lands. Such procedure shall describe:

(1) the incentives, or bonuses, which may be granted by the village to the applicant;

(2) the community benefits or amenities which may be accepted from the applicant by the village;

(3) criteria for approval, including methods required for determining the adequacy of community amenities to be accepted from the applicant in exchange for the particular bonus or incentive to be granted to the applicant by the village;

(4) the procedure for obtaining bonuses, including applications and the review process, and the imposition of terms and conditions attached to any approval; and

(5) provision for a public hearing, if such public hearing is required as part of a zoning ordinance or local law adopted pursuant to this section and give public notice thereof by the publication in the official newspaper of such hearing at least five days prior to the date thereof.

f. All other requirements of article eight of the environmental conservation law shall be complied with by project sponsors for actions in areas for which a generic environmental impact statement has been prepared including preparation of an environmental assessment form and a supplemental environmental impact statement, if necessary.

g. Prior to the adoption or amendment of the zoning local law pursuant to this section to establish a system of zoning incentives or bonuses the village board shall evaluate the impact of the provision of such system of zoning incentives or bonuses upon the potential development of affordable housing gained by the provision of any such incentive or bonus afforded to an applicant or lost in the provision by an applicant of any community amenity to the village. Further, the village board of trustees shall determine that there is approximate equivalence between potential affordable housing lost or gained or that the village has or will take reasonable action to compensate for any negative impact upon the availability or potential development of affordable housing caused by the provisions of this section.

h. If the village board of trustees determines that a suitable community benefit or amenity is not immediately feasible, or otherwise not practical, the board may require, in lieu thereof, a payment to the village of a sum to be determined by the board. If cash is accepted in lieu of other community benefit or amenity, provisions shall be made for such sum to be deposited in a trust fund to be used by the village board of trustees exclusively for specific community benefits authorized by the village board of trustees.

4. Nothing in this section shall be construed to invalidate any provision for incentives or bonuses heretofore adopted by any village board of trustees.

Note:

- For a discussion of the concept and use of transfer of development rights, see DOS Legal Memorandum: "Transfer of Development Rights."

§ 7-704. Purposes in view.

Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, floods and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

§ 7-706. Method of procedure.

1. The board of trustees shall provide for the manner in which such regulations, restrictions and the boundaries of such districts including any amendments thereto shall be determined, established and enforced. However, no such regulations, restrictions or boundaries shall become effective until after a public hearing in relation thereto, at which the public shall have an opportunity to be heard. At least ten days notice of the time and place of such hearing shall be published in a paper of general circulation in such village.

2. Service of written notice. At least ten days prior to the date of the public hearing, written notice of any proposed regulations, restrictions or boundaries of such districts, including amendments thereto, affecting property within five hundred feet of the following shall be served personally or by mail by the village upon each person or persons as listed below:

(a) the property of the housing authority erecting or owning a housing project authorized under the public housing law; upon the executive director of such housing authority and the chief executive officer of the municipality providing financial assistance thereto;

(b) the boundary of a city, village or town; upon the clerk thereof;

(c) the boundary of a county; upon the clerk of the board of supervisors or other person performing like duties;

(d) the boundary of a state park or parkway; upon the regional state park commission having jurisdiction over such state park or parkway.

3. Public hearing. The public, including those served notice pursuant to subdivision two of this section, shall have the opportunity to be heard at the public hearing. Those parties set forth in paragraphs (a), (b), (c) and (d) of subdivision two of this section, however, shall not have the right of review by a court as hereinafter provided.

4. Additional requirements. The procedural requirements set forth herein shall be in addition to the requirements of the provisions of sections two hundred thirty-nine-l and two hundred thirty-nine-m of the general municipal law relating to review by a county planning board or agency or regional planning council; the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations which are codified in part six hundred seventeen of title six of the New York codes, rules and regulations and any other general laws relating to land use and any amendments thereto.

5. Filing. Every zoning law and every amendment thereto (excluding any map incorporated therein) adopted pursuant to the provisions of this chapter shall be entered in the minutes of the village board and a copy, summary or abstract thereof (exclusive of any map incorporated therein) shall be published once in the official newspaper and a copy of such local law or amendment together with a summary or abstract of any map incorporated therein shall be posted conspicuously at or near the main entrance to the office of the village clerk and affidavits of the publication and posting thereof shall be filed with the village clerk. Such minutes shall describe and refer to any map adopted in connection with such local law or amendment.

6. Map. Each village clerk shall maintain every map adopted in connection with a zoning local law or amendment.

7. Effective date. Such local law shall take effect upon filing in the office of the secretary of state, but such local law or amendment shall take effect from the date of its service as against a person served personally with a copy thereof, certified by the village clerk; and showing the date of its passage and entry in the minutes.

§ 7-708. Changes.

Such regulations, restrictions and boundaries may from time to time be amended. An amendment shall be effected by a simple majority vote of the board of trustees, except that an amendment shall require the approval of at least two-thirds of the members of the board of trustees in villages having three members on such board, and three-fourths of the members of the board of trustees in all the other villages in the event such amendment is the subject of a written protest, presented to the board and signed by:

1. the owners of twenty percent or more of the area of land included in such proposed change; or

2. the owners of twenty percent or more of the area of land immediately adjacent to that land included in such proposed change, extending one hundred feet therefrom; or

3. the owners of twenty percent or more of the area of land directly opposite thereto, extending one hundred feet from the street frontage of such opposite land.

The provisions of the previous section relative to public hearings shall apply equally to all proposed amendments.

Note:
- Notice of certain proposed municipal zoning actions to be submitted to county planning agency or regional planning council. See General Municipal Law, §239-m.

§ 7-709. Exemption of lots shown on approved subdivision plats.

1. Notwithstanding any inconsistent provision of this chapter or of any general, special or local law, the provisions of a zoning local law hereafter adopted, or of a change or amendment thereto, which provisions:

(a) establish or increase lot areas or lot dimensions which are in excess of the areas or dimensions of the lots shown and delineated on a residential subdivision plat which has been duly approved by the planning board, or other board or officer vested with authority to approve subdivision plats, if any, of the village in which the land shown on said plat is situate, and duly filed in the office of the recording officer of the county in which the land shown on said subdivision plat is situate; or

(b) establish or increase side, rear or front yard or set back requirements in excess of those applicable to lots under the provisions of the zoning ordinance or local law, if any, in force and effect at the time of the filing of said duly approved residential subdivision plat or first section thereof;

shall not, for the period of time prescribed in subdivision two of this section, be applicable to or in any way affect any of the lots shown and delineated on such subdivision plat.

2. If at the time of the filing of the subdivision plat or first section thereof referred to in subdivision one of this section there was in the village:

(a) both a zoning ordinance or local law and a planning board vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of three years after the filing of the approved subdivision plat or first section thereof; or

(b) a zoning ordinance or local law in effect in the village but there was no planning board in said village vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of two years after the filing of the approved subdivision plat or first section thereof; or

(c) no zoning ordinance or local law in the village but there was a planning board vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of two years after the filing of the approved subdivision plat or first section thereof; or

(d) no zoning ordinance or local law in the village and no planning board vested with authority to approve subdivision plats, then the exemption provided for in subdivision one of this section shall apply for a period of one year after the filing of the subdivision plat or first section thereof.

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§ 7-710. Adoption of first zoning local law.

1. In order to avail itself of the powers conferred by this article, the board of trustees of any village shall appoint a commission to be known as the zoning commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein.

2. Where a planning board already exists in the village, it may be appointed as the zoning commission.

3. Such commission shall make a preliminary report and hold one or more public hearings thereon as deemed appropriate by the commission before submitting its final report.

4. The board of trustees shall not hold its public hearing, or take action, until it has received the final report of such commission.

5. Upon adoption of a resolution by the board of trustees of the village accepting the final report, such commission shall cease to exist as a separate body.

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§ 7-712. Zoning board of appeals.

1. Definitions. As used in this section:

(a) "Use variance" shall mean the authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

(b) "Area variance" shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

2. Appointment of members. Each village board of trustees which adopts a local law and any amendments thereto pursuant to the powers granted by this article shall create a board of appeals consisting of three or five members as shall be determined by such local law. The mayor shall appoint the board of appeals and the chairperson thereof, subject to the approval of the board of

trustees. In the absence of a chairperson the board of appeals may designate a member to serve as acting chairperson. The board of trustees may provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper, not exceeding the appropriation made by the board of trustees for such purpose. In making such appointment, the village board of trustees may require board of appeals members to complete training and continuing education courses in accordance with any local requirements for the training of such members.

3. Board of trustees ineligible. No person who is a member of the village board of trustees shall be eligible for membership on such board of appeals.

4. Terms of members first appointed. In the creation of a new board of appeals, or the reestablishment of terms of an existing board, the appointment of members to the board shall be of terms so fixed that one member's term shall expire at the end of the village official year in which such members were initially appointed. The remaining members' terms shall be so fixed that one member's term shall expire at the end of each official year thereafter. At the expiration of each original member's appointment, the replacement member shall be appointed by the board of trustees for a term which shall be equal in years to the number of members of the board.

5. Terms of members now in office. Members now holding office for terms which do not expire at the end of a year shall, upon the expiration of their term, hold office until the end of the year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the board.

6. Increasing membership. Any board of trustees may, by local law, increase a three member board of appeals to five members. Additional members shall be first appointed for single terms as provided by resolution in order that the terms of members shall expire in each of five successive years and their successors shall thereafter be appointed for full terms of five years. No such additional member shall take part in the consideration of any matter for which an application was on file with the board of appeals at the time of his or her appointment.

7. Decreasing membership. A board of trustees which has increased the number of members of the board of appeals to five may, by local law, decrease the number of members of the board of appeals to three to take effect upon the next two expirations of terms.

8. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the mayor shall appoint the new member for the unexpired term.

9. Removal of members. The mayor shall have the power to remove, after public hearing, any member of the zoning board of appeals for cause. Any zoning board of appeals member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the village board of trustees by local law.

10. Chairperson duties. All meetings of the board of appeals shall be held at the call of the chairperson and at such other times as such board may determine. Such chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.

11. Alternate members.

a. A village board of trustees may, by local law or as a part of the local law creating the zoning board of appeals, establish alternate zoning board of appeals member positions for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest.

Alternate members of the zoning board of appeals shall be appointed by the mayor, subject to the approval of the board of trustees, for terms established by the village board of trustees.

b. The chairperson of the zoning board of appeals may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial zoning board of appeals meeting at which the substitution is made.

c. All provisions of this section relating to zoning board of appeals member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, and service on other boards, shall also apply to alternate members.

Note:

- For a complete discussion of zoning board of appeals powers and duties under this statute and the applicable court decisions, see DOS Local Government Technical Series publication "Zoning Board of Appeals."

§ 7-712-a. Board of appeals procedure.

1. Meetings, minutes, records. Meetings of such board of appeals shall be open to the public to the extent provided in article seven of the public officers law. Such board of appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.

2. Filing requirements. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the board of appeals shall be filed in the office of the village clerk within five business days and shall be a public record.

3. Assistance to board of appeals. Such board shall have the authority to call upon any department, agency or employee of the village for such assistance as shall be deemed necessary and as shall be authorized by the village board of trustees. Such department, agency or employee may be reimbursed for any expenses incurred as a result of such assistance.

4. Hearing appeals. Unless otherwise provided by local law, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any local law adopted pursuant to this article. The concurring vote of a majority of the members of the board of appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to grant a use variance or area variance. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the village.

5. Filing of administrative decision and time of appeal.

(a) Each order, requirement, decision, interpretation or determination of the administrative official charged with the enforcement of the zoning local law shall be filed in the office of such administrative official within five business days from the day it is rendered, and shall be a public record. Alternately, the village board of trustees may, by resolution, require that such filings instead be made in the village clerk`s office.

(b) An appeal shall be taken within sixty days after the filing of any order, requirement, decision, interpretation or determination of the administrative official, by filing with such administrative official and with the board of appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall forthwith transmit to the board of appeals all the papers constituting the record upon which the action appealed from was taken.

6. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such local law, from whom the appeal is taken, certifies to the board of appeals, after the notice of appeal shall have been filed with the administrative official, that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.

7. Hearing on appeal. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the village at least five days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.

8. Time of decision. The board of appeals shall decide upon the appeal within sixty-two days after the conduct of said hearing. The time within which the board of appeals must render its decision may be extended by mutual consent of the applicant and the board.

9. Filing of decision and notice. The decision of the board of appeals on the appeal shall be filed in the office of the village clerk within five business days after the day such decision is rendered, and a copy thereof mailed to the applicant.

10. Notice to park commission or county planning board or agency or regional planning council. At least five days before such hearing, the board of appeals shall mail notices thereof to the parties, to the regional state park commission having jurisdiction over any state park or parkway within five hundred feet of the property affected by such appeal and to the county, planning board or agency or regional planning council as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law.

11. Compliance with state environmental quality review act. The board of appeals shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations as codified in title six, part six hundred seventeen of the New York codes, rules and regulations.

12. Rehearing. A motion for the zoning board of appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of the board. A unanimous vote of all members of the board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

§ 7-712-b. Permitted action by board of appeals.

1. Orders, requirements, decisions, interpretations, determinations. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.

2. Use variances.

(a) The board of appeals, on appeal from the decision or determination of the administrative officer charged with the enforcement of such local law, shall have the power to grant use variances, as defined herein.

(b) No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located,

(1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

(2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

(3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and

(4) that the alleged hardship has not been self-created.

(c) The board of appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

3. Area variances.

(a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such local law, to grant area variances as defined herein.

(b) In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

(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.

(c) The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

4. Imposition of conditions. The board of appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

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§ 7-712-c. Article seventy-eight proceeding.

1. Application to supreme court by aggrieved persons. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals or any officer, department, board or bureau of the village, may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceeding shall be instituted within thirty days after the filing of a decision of the board in the office of the village clerk.

2. Costs of appeal. Costs shall not be allowed against the board of appeals unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

3. Preference of appeal to court. All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

4. Power of court. If upon the hearing at the supreme court, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his or her findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review determining all questions which may be presented for determination.

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§ 7-714. Remedies.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure or land is used, or any land is divided into lots, blocks or sites in violation of this act, or of any local law or other regulation made under authority conferred thereby, the proper local authorities of the village, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use or division of land, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises. All issues in any action or proceeding for any of the purposes herein stated shall have preference over all other civil actions and proceedings.

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§ 7-716. Conflict with other laws.

Wherever the regulations made under authority of this act require a greater width of size of yards or courts, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local law or regulation, the provisions of the regulations made under authority of this act shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this act, the provisions of such statute, or local ordinance or regulation shall govern.

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§ 7-718. Planning board; creation, appointment.

1. Authorization. The village board of trustees of each village is hereby authorized by local law to create a planning board consisting of five or seven members. Members and the chairperson of such planning board shall be appointed by the mayor subject to the approval of the board of trustees. In the absence of a chairperson the planning board may designate a member to serve as chairperson. The village board of trustees may, as part of the local law creating said planning board, provide for the compensation of planning board members. In making such appointments, the village board of trustees may require planning board members to complete training and continuing education courses in accordance with any local requirements for the training of such members.

2. Appropriation for planning board. The village board of trustees is hereby authorized and empowered to make such appropriation as it may see fit for planning board expenses. The planning board shall have the power and authority to employ experts, clerks and a secretary and to pay for their services, and to provide for such other expenses as may be necessary and proper, not exceeding in all the appropriation that may be made therefor by the village board of trustees for such planning board.

3. Village board of trustees ineligible. No person who is a member of the village board of trustees shall be eligible for membership on such planning board.

4. Terms of members first appointed. The terms of members of the planning board first appointed shall be so fixed that the term of one member shall expire at the end of the village official year in which such members were initially appointed. The terms of the remaining members first appointed shall be so fixed that one term shall expire at the end of each official year thereafter. At the expiration of the term of each member first appointed, his or her successor shall be appointed for a term which shall be equal in years to the number of members of the board.

5. Terms of members now in office. Members now holding office for terms which do not expire at the

end of the village official year shall, upon the expiration of their term, hold office until the end of the village official year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the board.

6. Increasing membership. Any village board of trustees may, by local law, increase a five member planning board to seven members. Additional members shall be first appointed for single terms in order that the terms of members shall expire in each of seven successive years and their successors shall thereafter be appointed for full terms of seven years. No such additional member shall take part in the consideration of any matter for which an application was on file with the planning board at the time of his or her appointment.

7. Decreasing membership. A village board of trustees which has seven members on the planning board may, by local law, decrease the membership to five, to take effect upon the next two expirations of terms. However, no incumbent shall be removed from office except upon the expiration of his or her term, except as hereinafter provided.

8. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the mayor shall appoint the new member for the unexpired term.

9. Removal of members. The mayor shall have the power to remove, after public hearing, any member of the planning board for cause. Any planning board member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the village board of trustees by local law.

10. Chairperson duties. All meetings of the planning board shall be held at the call of the chairperson and at such other times as such board may determine. Such chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.

11. Appointment of agricultural member. Notwithstanding any provisions of this chapter or any general, special or local law, the mayor may, if an agricultural district created pursuant to section three hundred three of article twenty-five-AA of the agriculture and markets law exists wholly or partly within the boundaries of such village, include on the planning board one or more members each of whom derives ten thousand dollars or more annual gross income from agricultural pursuits in said village. As used in this subdivision, the term "agricultural pursuits" means the production of crops, livestock and livestock products, aquacultural products, and woodland products as defined in section three hundred one of the agriculture and markets law.

12. Service on other planning boards. No person shall be disqualified from serving as a member of the village planning board by reason of serving as a member of the town or county planning board.

13. Rules and regulations. The planning board may recommend to the village board of trustees regulations relating to any subject matter over which the planning board has jurisdiction under this article or any other statute, or under any local law of the village. Adoption of any such recommendations by the village board of trustees shall be by local law.

14. Report on referred matters; general reports.

a. The village board of trustees may by resolution provide for the reference of any matter or class of matters, other than those referred to in subdivision ten of this section, to the planning board before final action is taken thereon by the village board of trustees or other office or officer of said village having final authority over said matter. The village board of trustees may further stipulate that final

action thereon shall not be taken until the planning board has submitted its report thereon, or has had a reasonable time, to be fixed by the village board of trustees in said resolution, to submit the report.

b. The planning board may review and make recommendations on a proposed village comprehensive plan or amendment thereto. In addition, the planning board shall have the full power and authority to make investigations, maps, reports, and recommendations in connection therewith relating to the planning and development of the village as it seems desirable, providing the total expenditures of said board shall not exceed the appropriation provided therefor.

15. Planning commission. In any village in which there is a planning commission created under article twelve-A of the general municipal law, the board of trustees, instead of authorizing the appointment of a planning board under this article, may provide that the existing commission shall continue, the members thereof thereafter to be appointed in accordance with the provisions of such article twelve-A, and to have the powers and duties as specified for a planning board appointed under this article, provided, however, that in such village section two hundred thirty-eight of the general municipal law shall not be in force.

16. Alternate members.

a. A village board of trustees may, by local law or as a part of the local law creating the planning board, establish alternate planning board member positions for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest. Alternate members of the planning board shall be appointed by the mayor, subject to the approval of the board of trustees, for terms established by the village board of trustees.

b. The chairperson of the planning board may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial planning board meeting at which the substitution is made.

c. All provisions of this section relating to planning board member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, and service on other boards, shall also apply to alternate members.

Notes:
- All village officers, other than elected mayor, trustees and village justices, are appointed by the mayor, subject to the approval of the board of trustees - see Village Law, §3-301.
- For village participation in establishment of county planning boad and regional planning council, see General Municipal Law, §239-c and §239-h.

§ 7-722. Village comprehensive plan.

1. Legislative findings and intent. The legislature hereby finds and determines that:

(a) Significant decisions and actions affecting the immediate and long-range protection, enhancement, growth and development of the state and its communities are made by local governments.

(b) Among the most important powers and duties granted by the legislature to a village government is the authority and responsibility to undertake village comprehensive planning and to regulate land use for the purpose of protecting the public health, safety and general welfare of its citizens.

(c) The development and enactment by the village government of a village comprehensive plan which can be readily identified, and is available for the public, is in the best interest of the people of each village.

(d) The great diversity of resources and conditions that exist within and among the villages of the state compels the consideration of such diversity in the development of each village comprehensive plan.

(e) The participation of citizens in an open, responsible and flexible planning process is essential to the designing of the optimum comprehensive plan.

(f) The village comprehensive plan is a means to promote the health, safety and general welfare of the people of the village and to give due consideration to the needs of the people of the region of which the village is a part.

(g) The comprehensive plan fosters cooperation among governmental agencies planning and implementing capital projects and municipalities that may be directly affected thereby.

(h) It is the intent of the legislature to encourage, but not to require, the preparation and adoption of a comprehensive plan pursuant to this section. Nothing herein shall be deemed to affect that status or validity of existing master plans, comprehensive plans, or land use plans.

2. Definitions. As used in this section, the term:

(a) "village comprehensive plan" means the materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other 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 village.

(b) "land use regulation" means an ordinance or local law enacted by the village for the regulation of any aspect of land use and community resource protection and includes any zoning, subdivision, special use permit or site plan regulation or any other regulation which prescribes the appropriate use of property or the scale, location and intensity of development.

(c) "special board" means a board consisting of one or more members of the planning board and such other members as are appointed by the village board of trustees to prepare a proposed comprehensive plan and/or an amendment thereto.

3. Content of a village comprehensive plan. The village comprehensive plan may include the following topics at the level of detail adapted to the special requirements of the village:

(a) General statements of goals, objectives, principles, policies, and standards upon which proposals for the immediate and long-range enhancement, growth and development of the village are based.

(b) Consideration of regional needs and the official plans of other government units and agencies within the region.

(c) The existing and proposed location and intensity of land uses.

(d) Consideration of agricultural uses, historic and cultural resources, coastal and natural resources and sensitive environmental areas.

(e) Consideration of population, demographic and socio-economic trends and future projections.

(f) The location and types of transportation facilities.

(g) Existing and proposed general location of public and private utilities and infrastructure.

(h) Existing housing resources and future housing needs, including affordable housing.

(i) The present and future general location of educational and cultural facilities, historic sites, health facilities and facilities for emergency services.

(j) Existing and proposed recreation facilities and parkland.

(k) The present and potential future general location of commercial and industrial facilities.

(l) Specific policies and strategies for improving the local economy in coordination with other plan topics.

(m) Proposed measures, programs, devices, and instruments to implement the goals and objectives of the various topics within the comprehensive plan.

(n) All or part of the plan of another public agency.

(o) Any and all other items which are consistent with the orderly growth and development of the village.

4. Preparation. The village board of trustees, or by resolution of such village board of trustees, the planning board or a special board, may prepare a proposed village comprehensive plan and amendments thereto. In the event the planning board or special board is directed to prepare a proposed comprehensive plan or amendment thereto, such board shall, by resolution, recommend such proposed plan or amendment to the village board of trustees.

5. Referrals.

(a) Any proposed comprehensive plan or amendment thereto that is prepared by the village board of trustees or a special board may be referred to the village planning board for review and recommendation before action by the village board of trustees.

(b) The village board of trustees shall, prior to adoption, refer the proposed comprehensive plan or any amendment thereto to the county planning board or agency or regional planning council for review and recommendation as required by section two hundred thirty-nine-m of the general municipal law. In the event the proposed plan or amendment thereto is prepared by the village planning board or a special board, such board may request comment on such proposed plan or amendment from the county planning board or agency or regional planning council.

6. Public hearings; notice.

(a) In the event the village board of trustees prepares a proposed village comprehensive plan or amendment thereto, the village board of trustees shall hold one or more public hearings and such other meetings as it deems necessary to assure full opportunity for citizen participation in the preparation of such proposed plan or amendment, and in addition, the village board of trustees shall hold one or more public hearings prior to adoption of such proposed plan or amendment.

(b) In the event the village board of trustees has directed the planning board or a special board to prepare a proposed comprehensive plan or amendment thereto, the board preparing the plan shall hold one

or more public hearings and such other meetings as it deems necessary to assure full opportunity for citizen participation in the preparation of such proposed plan or amendment. The village board of trustees shall, within ninety days of receiving the planning board or special board's recommendations on such proposed plan or amendment, and prior to adoption of such proposed plan or amendment, hold a public hearing on such proposed plan or amendment.

(c) Notice of a public hearing shall be published in a newspaper of general circulation in the village at least ten calendar days in advance of the hearing. The proposed comprehensive plan or amendment thereto shall be made available for public review during said period at the office of the village clerk and may be made available at any other place, including a public library.

7. Adoption. The village board of trustees may adopt by resolution a village comprehensive plan or any amendment thereto.

8. Environmental review. A village comprehensive plan, and any amendment thereto, is subject to the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations. A village comprehensive plan may be designed to also serve as, or be accompanied by, a generic environmental impact statement pursuant to the state environmental quality review act statute and regulations. No further compliance with such law is required for subsequent site specific actions that are in conformance with the conditions and thresholds established for such actions in the generic environmental impact statement and its findings.

9. Agricultural review and coordination. A village comprehensive plan and any amendments thereto, for a village containing all or part of an agricultural district or lands receiving agricultural assessment within its jurisdiction, shall continue to be subject to the provisions of article twenty-five-AA of the agriculture and markets law relating to the enactment and administration of local laws, ordinances, rules or regulations. A newly adopted or amended village comprehensive plan shall take into consideration applicable county agricultural and farmland protection plans as created under article twenty- five-AAA of the agriculture and markets law.

10. Periodic review. The village board shall provide, as a component of such proposed comprehensive plan, the maximum intervals at which the adopted plan shall be reviewed.

11. Effect of adoption of the village comprehensive plan.

(a) All village land use regulations must be in accordance with a comprehensive plan adopted pursuant to this section.

(b) All plans for capital projects of another governmental agency on land included in the village comprehensive plan adopted pursuant to this section shall take such plan into consideration.

12. Filing of village comprehensive plan. The adopted village comprehensive plan and any amendments thereto shall be filed in the office of the village clerk and a copy thereof shall be filed in the office of the county planning agency.

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§ 7-724. Official maps, changes in official map; notice of hearing.

Every village may by resolution of its board of trustees establish an official map of the village showing the streets, highways and parks theretofore laid out, adopted and established by law. Drainage systems may

also be shown on this map. Such map is to be deemed to be final and conclusive with respect to the location and width of streets, highways, drainage systems and the location of parks shown thereon. Such official map is hereby declared to be established to conserve and promote the public health, safety and general welfare. The clerk of every village which has established such an official map shall immediately file a certificate of that fact with the clerk or register of the county in which said village is located. Such board of trustees is authorized and empowered, whenever and as often as it may deem it for the public interest, to change or add to the official map of the village so as to lay out new streets, highways or parks, or to widen or close existing streets, highways or parks. There shall be a public hearing on any proposed action with reference to any such change in the official map. Before making any such addition or change the board of trustees shall refer the matter to the planning board for report thereon, but if the planning board shall not make its report within thirty days of such reference, it shall forfeit the right further to suspend action. Such additions and changes when adopted shall become a part of the official map of the village, and shall be deemed to be final and conclusive with respect to the location of the streets, highways and parks shown thereon. The granting by the board of trustees of a petition for the approval of the laying out, altering, widening, narrowing or discontinuing of a street, shall be deemed to be an addition or change of the official map and shall be subject to all the provisions of this article with regard to such additions or changes. Drainage systems may also be shown on this map.

Note:

- Effect of change in county official map on official map of municipality affected - see General Municipal Law, §239-e.

§ 7-725-a. Site plan review.

1. Definition of site plan. As used in this section the term "site plan" shall mean a rendering, drawing, or sketch prepared to specifications and containing necessary elements, as set forth in the applicable local law, which shows the arrangement, layout and design of the proposed use of a single parcel of land as shown on said plan. Plats showing lots, blocks or sites which are subject to review pursuant to authority provided for the review of subdivisions under section 7-728 of this article shall continue to be subject to such review and shall not be subject to review as site plans under this section.

2. Approval of site plans.

(a) The village board of trustees may, as part of a local law adopted pursuant to this article or other enabling law, authorize the planning board or such other administrative body that it shall so designate, to review and approve, approve with modifications or disapprove site plans, prepared to specifications set forth in the local law and/or in regulations of such authorized board. Site plans shall show the arrangement, layout and design of the proposed use of the land on said plan. The local law shall specify the land uses that require site plan approval and the elements to be included on plans submitted for approval. The required site plan elements which are included in the local law may include, where appropriate, those related to parking, means of access, screening, signs, landscaping, architectural features, location and dimensions of buildings, adjacent land uses and physical features meant to protect adjacent land uses as well as any additional elements specified by the village board of trustees in such local law.

(b) When an authorization to approve site plans is granted by the village board of trustees pursuant to this section, the terms thereof may condition the issuance of a building permit upon such approval.

3. Application for area variance. Notwithstanding any provisions of law to the contrary, where a proposed site plan contains one or more features which do not comply with the zoning regulations, applications may be made to the zoning board of appeals for an area variance pursuant to section 7-712-b of this

article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

4. Conditions attached to the approval of site plans. The authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the village.

5. Waiver of requirements. The village board of trustees may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular site plan.

6. Reservation of parkland on site plans containing residential units.

(a) Before such authorized board may approve a site plan containing residential units, such site plan shall also show, when required by such board, a park or parks suitably located for playground or other recreational purposes.

(b) Land for park, playground or other recreational purposes may not be required until the authorized board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the village. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the village based on projected population growth to which the particular site plan will contribute.

(c) In the event the authorized board makes a finding pursuant to paragraph (b) of this subdivision that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirements cannot be properly located on such site plan, the authorized board may require a sum of money in lieu thereof to be established by the village board of trustees. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the authorized board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the village exclusively for park, playground or other recreational purposes, including the acquisition of property.

(d) Notwithstanding the foregoing provisions of this subdivision, if the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved, the authorized board shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.

7. Performance bond or other security. As an alternative to the installation of required infrastructure and improvements, prior to approval by the authorized board, a performance bond or other security sufficient to cover the full cost of the same, as estimated by the authorized board or a village department designated by the authorized board to make such estimate, where such departmental estimate is deemed acceptable by the authorized board, shall be furnished to the village by the owner. Such security shall be provided to the village pursuant to the provisions of subdivision nine of section

7-730 of this article.

8. Public hearing and decision on site plans. In the event a public hearing is required by local law adopted by the village board of trustees, the authorized board shall conduct a public hearing within sixty-two days from the day an application is received on any matter referred to it under this section. The authorized board shall mail notice of said hearing to the applicant at least ten days before such hearing, and shall give public notice of said hearing in a newspaper of general circulation in the village at least five days prior to the date thereof and shall make a decision on the application within sixty-two days after such hearing, or after the day the application is received if no hearing has been held. The time within which the authorized board must render its decision may be extended by mutual consent of the applicant and such board. The decision of the authorized board shall be filed in the office of the village clerk within five business days after such decision is rendered and a copy thereof mailed to the applicant. Nothing herein shall preclude the holding of a public hearing on any matter on which a public hearing is not so required.

9. Notice to county planning board or agency or regional planning council. At least ten days before such hearing, the authorized board shall mail notices thereof to the county planning board or agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law. In the event a public hearing is not required, such proposed action shall be referred before final action is taken thereon.

10. Compliance with state environmental quality review act. The authorized board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

11. Court review. Any person aggrieved by a decision of the authorized board or any officer, department, board or bureau of the village may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceedings shall be instituted within thirty days after the filing of a decision by such board in the office of the village clerk. The court may take evidence or appoint a referee to take such evidence as it may direct, and report the same, with findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The court shall itself dispose of the matter on the merits, determining all questions which may be presented for determination.

12. Costs. Costs shall not be allowed against the authorized board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

13. Preference. All issues addressed by the court in any proceeding under this section shall have preference over all civil actions and proceedings.

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§ 7-725-b. Approval of special use permits.

1. Definition of special use permit. As used in this section the term "special use permit" shall mean an authorization of a particular land use which is permitted in a zoning local law, subject to requirements imposed by such local law to assure that the proposed use is in harmony with such local law and will not adversely affect the neighborhood if such requirements are met.

2. Approval of special use permits. The village board of trustees may, as part of a zoning local law, authorize the planning board or such other administrative body that it shall designate to grant special

use permits as set forth in such local law.

3. Application for area variance. Notwithstanding any provision of law to the contrary, where a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section 7-712-b of this article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

4. Conditions attached to the issuance of special use permits. The authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit. Upon its granting of said special use permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the village.

5. Waiver of requirements. The village board of trustees may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of special use permits submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular special use permit.

6. Public hearing and decision on special use permits. The authorized board shall conduct a public hearing within sixty-two days from the day an application is received on any matter referred to it under this section. Public notice of said hearing shall be printed in a newspaper of general circulation in the village at least five days prior to the date thereof. The authorized board shall decide upon the application within sixty-two days after the hearing. The time within which the authorized board must render its decision may be extended by mutual consent of the applicant and the board. The decision of the authorized board on the application after the holding of the public hearing shall be filed in the office of the village clerk within five business days after such decision is rendered, and a copy thereof mailed to the applicant.

7. Notice to applicant and county planning board or agency or regional planning council. At least ten days before such hearing, the authorized board shall mail notices thereof to the applicant and to the county planning board or agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of the matter under consideration, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law.

8. Compliance with state environmental quality review act. The authorized board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

9. Court review. Any person aggrieved by a decision of the planning board or such other designated body or any officer, department, board or bureau of the village may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceedings shall be instituted within thirty days after the filing of a decision by such board in the office of the village clerk. The court may take evidence or appoint a referee to take such evidence as it may direct, and report the same, with findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The court shall itself dispose of the matter on the merits, determining all questions which may be presented for determination.

10. Costs. Costs shall not be allowed against the planning board or other administrative body designated by the village board of trustees unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

11. Preference. All issues addressed by the court in any proceeding under this section shall have preference over all civil actions and proceedings.

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§ 7-728. Subdivision review; approval of plats; development of filed plats.

1. Purpose. For the purpose of providing for the future growth and development of the village and affording adequate facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of its population, the village board of trustees, may by resolution, authorize and empower the planning board to approve preliminary and final plats of subdivisions showing lots, blocks or sites, with or without streets or highways.

2. Authorization for review of previously filed plats. For the same purposes and under the same conditions, the village board of trustees, may, by resolution, authorize and empower the planning board to approve the development of plats, entirely or partially undeveloped, which were filed in the office of the clerk of the county in which such plat is located prior to the appointment of such planning board and grant to the board the power to approve such plats. The term "undeveloped" shall mean those plats where twenty percent or more of the lots within the plat are unimproved unless existing conditions, such as poor drainage, have prevented their development.

3. Filing of certificate. The clerk of every village which has authorized its planning board to approve plats as set forth herein shall immediately file a certificate of that fact with the clerk or register of the county in which such village is located.

4. Definitions. When used in this article the following terms shall have the respective meanings set forth herein except where the context shows otherwise:

(a) "Subdivision" means the division of any parcel of land into a number of lots, blocks or sites as specified in a law, rule or regulation, with or without streets or highways, for the purpose of sale, transfer of ownership, or development. The term "subdivision" may include any alteration of lot lines or dimensions of any lots or sites shown on a plat previously approved and filed in the office of the county clerk or register of the county in which such plat is located. Subdivisions may be defined and delineated by local regulation, as either "major" or "minor", with the review procedures and criteria for each set forth in such local regulations.

(b) "Preliminary plat" means a drawing prepared in a manner prescribed by local regulation showing the layout of a proposed subdivision including, but not restricted to, road and lot layout and approximate dimensions, key plan, topography and drainage, all proposed facilities unsized, including preliminary plans and profiles, at suitable scale and in such detail as local regulation may require.

(c) "Preliminary plat approval" means the approval of the layout of a proposed subdivision as set forth in a preliminary plat but subject to the approval of the plat in final form in accordance with the provisions of this section.

(d) "Final plat" means a drawing prepared in a manner prescribed by local regulation that shows a proposed subdivision, containing in such additional detail as shall be provided by local regulation all information required to be shown on a preliminary plat and the modifications, if any, required by the

planning board at the time of approval of the preliminary plat if such preliminary plat has been so approved.

(e) "Conditional approval of a final plat" means approval by a planning board of a final plat subject to conditions set forth by the planning board in a resolution conditionally approving such plat. Such conditional approval does not qualify a final plat for recording nor authorize issuance of any building permits prior to the signing of the plat by a duly authorized officer of the planning board and recording of the plat in the office of the county clerk or register as herein provided.

(f) "Final plat approval" means the signing of a plat in final form by a duly authorized officer of a planning board pursuant to a planning board resolution granting final approval to the plat or after conditions specified in a resolution granting conditional approval of the plat are completed. Such final approval qualifies the plat for recording in the office of the county clerk or register in the county in which such plat is located.

5. Approval of preliminary plats.

(a) Submission of preliminary plats. All plats shall be submitted to the planning board for approval in final form provided, however, that where the planning board has been authorized to approve preliminary plats, the owner may submit or the planning board may require that the owner submit a preliminary plat for consideration. Such a preliminary plat shall be clearly marked "preliminary plat" and shall conform to the definition provided in this section.

(b) Coordination with the state environmental quality review act. The planning board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

(c) Receipt of a complete preliminary plat. A preliminary plat shall not be considered complete until a negative declaration has been filed or until a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the state environmental quality review act. The time periods for review of a preliminary plat shall begin upon filing of such negative declaration or such notice of completion.

(d) Planning board as lead agency under the state environmental quality review act; public hearing; notice; decision.

(i) Public hearing on preliminary plats. The time within which the planning board shall hold a public hearing on the preliminary plat shall be coordinated with any hearings the planning board may schedule pursuant to the state environmental quality review act, as follows:

(1) If such board determines that the preparation of an environmental impact statement on the preliminary plat is not required, the public hearing on such plat shall be held within sixty-two days after the receipt of a complete preliminary plat by the clerk of the planning board; or

(2) If such board determines that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is held, the public hearing on the preliminary plat and the draft environmental impact statement shall be held jointly within sixty-two days after the filing of the notice of completion of such draft environmental impact statement in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the public hearing on the preliminary plat shall be held within sixty-two days of filing the notice of completion.

(ii) Public hearing; notice, length. The hearing on the preliminary plat shall be advertised at least once in a newspaper of general circulation in the village at least five days before such hearing if no hearing is held on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat. The hearing on the preliminary plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(iii) Decision. The planning board shall approve, with or without modification, or disapprove such preliminary plat as follows:

(1) If the planning board determines that the preparation of an environmental impact statement on the preliminary plat is not required, such board shall make its decision within sixty-two days after the close of the public hearing; or

(2) If the planning board determines that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of such public hearing in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of the public hearing on the preliminary plat. Within thirty days of the filing of such final environmental impact statement, the planning board shall issue findings on the final environmental impact statement and make its decision on the preliminary plat.

(iv) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board. When so approving a preliminary plat, the planning board shall state in writing any modifications it deems necessary for submission of the plat in final form.

(e) Planning board not as lead agency under the state environmental quality review act; public hearing; notice; decision.

(i) Public hearing on preliminary plats. The planning board shall, with the agreement of the lead agency, hold the public hearing on the preliminary plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement or if no public hearing is held on the draft environmental impact statement, the planning board shall hold the public hearing on the preliminary plat within sixty-two days after the receipt of a complete preliminary plat by the clerk of the planning board.

(ii) Public hearing; notice, length. The hearing on the preliminary plat shall be advertised at least once in a newspaper of general circulation in the village at least five days before such hearing if held independently of the hearing on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat. The hearing on the preliminary plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(iii) Decision. The planning board shall by resolution approve with or without modification or disapprove the preliminary plat as follows:

(1) If the preparation of an environmental impact statement on the preliminary plat is not required, the planning board shall make its decision within sixty-two days after the close of the public hearing on the preliminary plat.

(2) If an environmental impact statement is required, the planning board shall make its own findings and its decision on the preliminary plat within sixty-two days after the close of the public hearing on such preliminary plat or within thirty days of the adoption of findings by the lead agency, whichever period is longer.

(iv) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board. When so approving a preliminary plat, the planning board shall state in writing any modifications it deems necessary for submission of the plat in final form.

(f) Certification and filing of preliminary plat. Within five business days of the adoption of the resolution granting approval of such preliminary plat, such plat shall be certified by the clerk of the planning board as having been granted preliminary approval and a copy of the plat and resolution shall be filed in such clerk's office. A copy of the resolution shall be mailed to the owner.

(g) Filing of decision on preliminary plat. Within five business days from the date of the adoption of the resolution stating the decision of the board the preliminary plat, the chairman or other duly authorized member of the planning board shall cause a copy of such resolution to be filed in the office of the village clerk.

(h) Revocation of approval of preliminary plat. Within six months of the approval of the preliminary plat the owner must submit the plat in final form. If the final plat is not submitted within six months, approval of the preliminary plat may be revoked by the planning board.

6. Approval of final plats.

(a) Submission of final plats. Final plats shall conform to the definition provided by this section.

(b) Final plats which are in substantial agreement with approved preliminary plats. When a final plat is submitted which the planning board deems to be in substantial agreement with a preliminary plat approved pursuant to this section, the planning board shall by resolution conditionally approve with or without modification, disapprove, or grant final approval and authorize the signing of such plat, within sixty-two days of its receipt by the clerk of the planning board.

(c) Final plats when no preliminary plat is required to be submitted; receipt of complete final plat. When no preliminary plat is required to be submitted, a final plat shall not be considered complete until a negative declaration has been filed or until a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the state environmental quality review act. The time periods for review of such plat shall begin upon filing of such negative declaration or such notice of completion.

(d) Final plats; not in substantial agreement with approved preliminary plats, or when no preliminary plat is required to be submitted. When a final plat is submitted which the planning board deems not to be in substantial agreement with a preliminary plat approved pursuant to this section, or when no preliminary plat is required to be submitted and a final plat clearly marked "final plat" is submitted conforming to the definition provided by this section the following shall apply:

(i) Planning board as lead agency; public hearing; notice; decision.

(1) Public hearing on final plats. The time within which the planning board shall hold a public hearing on such final plat shall be coordinated with any hearings the planning board may schedule pursuant to the state environmental quality review act, as follows:

(a) if such board determines that the preparation of an environmental impact statement is not required, the public hearing on a final plat not in substantial agreement with a preliminary plat, or on a final plat when no preliminary plat is required to be submitted, shall be held within sixty-two days after the receipt of a complete final plat by the clerk of the planning board; or

(b) if such board determines that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is held, the public hearing on the final plat and the draft environmental impact statement shall be held jointly within sixty-two days after the filing of the notice of completion of such draft environmental impact statement in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the public hearing on the final plat shall be held within sixty-two days following filing of the notice of completion.

(2) Public hearing; notice, length. The hearing on the final plat shall be advertised at least once in a newspaper of general circulation in the village at least five days before such hearing if no hearing is held on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such final plat. The hearing on the final plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(3) Decision. The planning board shall make its decision on the final plat as follows:

(a) if such board determines that the preparation of an environmental impact statement on the final plat is not required, the planning board shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat, within sixty-two days after the date of the public hearing; or

(b) if such board determines that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of such public hearing in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of the public hearing on the final plat. Within thirty days of the filing of the final environmental impact statement, the planning board shall issue findings on such final environmental impact statement and shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat.

(4) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board.

(ii) Planning board not as lead agency; public hearing; notice; decision.

(1) Public hearing. The planning board shall, with the agreement of the lead agency, hold the public hearing on the final plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement or if no public hearing is held on the draft environmental impact statement, the planning board shall hold the public hearing on the final plat within sixty-two days after the receipt of a complete final plat by the clerk of the planning board.

(2) Public hearing; notice, length. The hearing on the final plat shall be advertised at least once in a newspaper of general circulation in the village at least five days before such hearing if held independently of the hearing on the draft environmental impact statement, or fourteen days before a hearing held jointly therewith. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such final plat. The hearing on the final plat shall be closed upon motion of the planning board within one hundred twenty days after it has been opened.

(3) Decision. The planning board shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat as follows:

(a) If the preparation of an environmental impact statement on the final plat is not required, the planning board shall make its decision within sixty-two days after the close of the public hearing on the final plat.

(b) If an environmental impact statement is required, the planning board shall make its own findings and its decision on the final plat within sixty-two days after the close of the public hearing on such final plat or within thirty days of the adoption of findings by the lead agency, whichever period is longer. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board.

7. Approval and certification of final plats.

(a) Certification of plat. Within five business days of the adoption of the resolution granting conditional or final approval of the final plat, such plat shall be certified by the clerk of the planning board as having been granted conditional or final approval and a copy of such resolution and plat shall be filed in such clerk's office. A copy of the resolution shall be mailed to the owner. In the case of a conditionally approved plat, such resolution shall include a statement of the requirements which when completed will authorize the signing thereof. Upon completion of such requirements the plat shall be signed by said duly authorized officer of the planning board and a copy of such signed plat shall be filed in the office of the clerk of the planning board or filed with the village clerk as determined by the village board of trustees.

(b) Approval of plat in sections. In granting conditional or final approval of a plat in final form, the planning board may permit the plat to be subdivided and developed in two or more sections and may in its resolution granting conditional or final approval state that such requirements as it deems necessary to insure the orderly development of the plat be completed before said sections may be signed by the duly authorized officer of the planning board. Conditional or final approval of the sections of a final plat may be granted concurrently with conditional or final approval of the entire plat, subject to any requirements imposed by the planning board.

(c) Duration of conditional approval of final plat. Conditional approval of the final plat shall expire within one hundred eighty days after the resolution granting such approval unless all requirements stated in such resolution have been certified as completed. The planning board may extend by not more than two additional periods of ninety days each the time in which a conditionally approved plat must be submitted for signature if, in the planning board's opinion, such extension is warranted by the particular circumstances.

8. Default approval of preliminary or final plat. The time periods prescribed herein within which a planning board must take action on a preliminary plat or a final plat are specifically intended to provide the planning board and the public adequate time for review and to minimize delays in the processing of subdivision applications. Such periods may be extended only by mutual consent of the owner and the planning board. In the event a planning board fails to take action on a preliminary plat or a final plat within the time prescribed therefor after completion of all requirements under the state environmental quality review act, or within such extended period as may have been established by the mutual consent of the owner and the planning board, such preliminary or final plat shall be deemed granted approval. The certificate of the village clerk as to the date of submission of the preliminary or final plat and the failure of the planning board to take action within the prescribed time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of approval herein required.

9. Filing of decision on final plat. Within five business days from the date of the adoption of the resolution stating the decision of the board on the final plat, the chairman or other duly authorized member of the planning board shall cause a copy of such resolution to be filed in the office of the village clerk.

10. Notice to county planning board or agency or regional planning council. When a county planning board or agency or regional planning council has been authorized to review subdivision plats pursuant to section two hundred thirty-nine-n of the general municipal law, the clerk of the planning board shall refer all applicable preliminary and final plats to such county planning board or agency or regional planning council as provided in that section.

11. Filing of final plat; expiration of approval. The owner shall file in the office of the county clerk or register such approved final plat or a section of such plat within sixty-two days from the date of final approval or such approval shall expire. The following shall constitute final approval: the signature of the duly authorized officer of the planning board constituting final approval by the planning board of a plat as herein provided; or the approval by such board of the development of a plat or plats already filed in the office of the county clerk or register of the county in which such plat or plats are located if such plats are entirely or partially undeveloped; or the certificate of the village clerk as to the date of the submission of the final plat and the failure of the planning board to take action within the time herein provided. In the event the owner shall file only a section of such approved plat in the office of the county clerk or register, the entire approved plat shall be filed within thirty days of the filing of such section with the village clerk in each village in which any portion of the land described in the plat is situated. Such section shall encompass at least ten percent of the total number of lots contained in the approved plat, and the approval of the remaining sections of the approved plat shall expire unless said sections are filed before the expiration of the exemption period to which such plat is entitled under the provisions of section 7-708 of this article.

12. Subdivision abandonment. The owner of an approved subdivision may abandon such subdivision pursuant to the provisions of section five hundred sixty of the real property tax law.

Notes:

- Approval of subdivision by Health Department - see Public Health Law, Article 11.

§ 7-730. Subdivision review; approval of plats; additional requisites.

1. Purpose. Before the approval by the planning board of a plat showing lots, blocks or sites, with or without streets or highways, or the approval of a plat already filed in the office of the clerk of the county wherein such plat is situated if the plat is entirely or partially undeveloped, the planning board shall require that the land shown on the plat be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, drainage or other menace to neighboring properties or the public health, safety and welfare.

2. Additional requirements. The planning board shall also require that:

(a) the streets and highways be of sufficient width and suitable grade and shall be suitably located to accommodate the prospective traffic, to afford adequate light and air, to facilitate fire protection, and to provide access of firefighting equipment to buildings. If there be an official map, village comprehensive plan or functional/master plans, such streets and highways shall be coordinated so as to compose a convenient system conforming to the official map and properly related to the proposals shown in the comprehensive plan of the village;

(b) suitable monuments be placed at block corners and other necessary points as may be required by the board and the location thereof is shown on the map of such plat;

(c) all streets or other public places shown on such plats be suitably graded and paved; street signs, sidewalks, street lighting standards, curbs, gutters, street trees, water mains, fire alarm signal devices (including necessary ducts and cables or other connecting facilities), sanitary sewers and storm drains be installed all in accordance with standards, specifications and procedures acceptable to the appropriate village departments except as hereinafter provided, or alternatively that a performance bond or other security be furnished to the village, as hereinafter provided.

3. Compliance with zoning regulations. Where a zoning ordinance or local law has been adopted by the village, the lots shown on said plat shall at least comply with the requirements thereof subject, however, to the provisions of section 7-738 of this article.

4. Reservation of parkland on subdivision plats containing residential units.

(a) Before the planning board may approve a subdivision plat containing residential units, such subdivision plat shall also show, when required by such board, a park or parks suitably located for playground or other recreational purposes.

(b) Land for park, playground or other recreational purposes may not be required until the planning board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the village. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the village based on projected population growth to which the particular subdivision plat will contribute.

(c) In the event the planning board makes a finding pursuant to paragraph (b) of this subdivision that the proposed subdivision plat presents a proper case for requiring a park or parks suitability located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such subdivision plat, the planning board may require a sum of money in lieu thereof, in an amount to be established by the village board of trustees. In

making such determination of suitability, the board shall assess the size and suitably of land shown on the subdivision plat which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any moneys required by the planning board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the village exclusively for park, playground or other recreational purposes, including the acquisition of property.

5. Character of the development. In making such determination regarding streets, highways, parks and required improvements, the planning board shall take into consideration the prospective character of the development, whether dense residence, open residence, business or industrial.

6. Application for area variance. Notwithstanding any provision of law to the contrary, where a plat contains one or more lots which do not comply with the zoning local law regulations, application may be made to the zoning board of appeals for an area variance pursuant to section 7-712-b of this article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations. In reviewing such application the zoning board of appeals shall request the planning board to provide a written recommendation concerning the proposed variance.

7. Waiver of requirements. The planning board may waive, when reasonable, any requirements or improvements for the approval, approval with modifications or disapproval of subdivisions submitted for its approval. Any such waiver, which shall be subject to appropriate conditions, may be exercised in the event any such requirements or improvements are found not to be requisite in the interest of the public health, safety, and general welfare or inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the subdivision.

8. Installation of fire alarm devices. The installation of fire alarm signal devices including necessary connecting facilities shall be required or waived pursuant to this section only with the approval of:

(a) the town board if the village is included in a central fire alarm system established pursuant to subdivision eleven-c of section sixty-four of the town law,

(b) the board of supervisors or legislative body of the county if the village is included in a central fire alarm system established pursuant to paragraph (h) of subdivision one of section two hundred twenty-five of the county law, or

(c) the board of fire commissioners of the village in any other case unless the installation is to be made in a fire district within the village, in which event only the approval of the board of fire commissioners of such fire district shall be necessary. The planning board may, with the approval of the appropriate board, completely waive any or all requirements in connection with the installation of fire alarm signal devices including necessary connecting facilities. When required, such installation shall be made in accordance with standards, specifications, and procedures acceptable to such board.

9. Performance bond or other security.

(a) Furnishing of performance bond or other security. As an alternative to the installation of infrastructure and improvements, as above provided, prior to planning board approval, a performance bond or other security sufficient to cover the full cost of the same, as estimated by the planning board or a village department designated by the planning board to make such estimate, where such departmental estimate is deemed acceptable by the planning board, shall be furnished to the village by the owner.

(b) Security where plat approved in sections. In the event that the owner shall be authorized to file the approved plat in sections, as provided in subdivision seven of section 7-728 of this article, approval of the plat may be granted upon the installation of the required improvements in the section of the plat filed in the office of the county clerk or register or the furnishing of security covering the costs of such improvements. The owner shall not be permitted to begin construction of buildings in any other section until such section has been filed in the office of the county clerk or register and the required improvements have been installed in such section or a security covering the cost of such improvements is provided.

(c) Form of security. Any such security must be provided pursuant to a written security agreement with the village, approved by the village board of trustees and also approved by the village attorney as to form, sufficiency and manner of execution, and shall be limited to:

(i) a performance bond issued by a bonding or surety company;

(ii) the deposit of funds in or a certificate of deposit issued by a bank or trust company located and authorized to do business in this state;

(iii) an irrevocable letter of credit from a bank located and authorized to do business in this state;

(iv) obligations of the United States of America; or

(v) any obligations fully guaranteed as to interest and principal by the United States of America, having a market value at least equal to the full cost of such improvements. If not delivered to the village, such security shall be held in a village account at a bank or trust company.

(d) Term of security agreement. Any such performance bond or security agreement shall run for a term to be fixed by the planning board, but in no case for a longer term than three years, provided, however, that the term of such performance bond or security agreement may be extended by the planning board with consent of the parties thereto. If the planning board shall decide at any time during the term of the performance bond or security agreement that the extent of building development that has taken place in the subdivision is not sufficient to warrant all the improvements covered by such security, or that the required improvements have been installed as provided in this section and by the planning board in sufficient amount to warrant reduction in the amount of said security, and upon approval by the village board of trustees, the planning board may modify its requirements for any or all such improvements, and the amount of such security shall thereupon be reduced by an appropriate amount so that the new amount will cover the cost in full of the amended list of improvements required by the planning board.

(e) Default of security agreement. In the event that any required improvements have not been installed as provided in this section within the term of such security agreement, the village board of trustees may thereupon declare the said performance bond or security agreement to be in default and collect the sum remaining payable thereunder; and upon the receipt of the proceeds thereof, the village shall install such improvements as are covered by such security and as commensurate with the extent of building development that has taken place in the subdivision but not exceeding in cost the amount of such proceeds.

10. Suffolk county sewer districts. If in the county of Suffolk the plat is not entirely situate within a county, town or village sewer district and the county department of environmental control or the county health department shall have directed that disposal of sewage from the plat shall be provided for by a communal sewerage system, consisting of a treatment plant and collection system, then the Suffolk

county sewer agency shall determine, specify and direct the means and method by which the aforesaid system shall be best provided by and at the expense of the developer. Among the alternative means and methods the Suffolk county sewer agency may direct, shall be:

(a) that the developer, at its own cost and expense, install, build and construct such system according to such plans, specifications, conditions and guarantees as may be required by the Suffolk county sewer agency, and upon satisfactory completion thereof, the developer shall dedicate and donate same, without cost to the Suffolk county sewer agency, or its nominee, and the developer shall also petition to form a county district, but if the Suffolk county sewer agency shall determine that a suitable complete communal sewerage system of adequate size cannot be properly located in the plat or is otherwise not practical, then,

(b) the developer shall install, build and construct temporary cesspools or septic tanks together with a sewage collection system according to such plans, specifications, conditions and guarantees as may be required by the Suffolk county sewer agency, and upon satisfactory completion thereof, the developer shall dedicate and donate same, without cost, to the Suffolk county sewer agency or its nominee, and in addition thereto, the agency may also require the payment to the Suffolk county sewer agency of a sum of money in an amount to be determined by the Suffolk county sewer agency, and the developer shall also petition to form a county district, or

(c) the developer shall install, build and construct temporary cesspools or septic tanks and, in addition thereto, shall pay to the Suffolk county sewer agency a sum of money in an amount to be determined by the Suffolk county sewer agency and the developer shall also petition to form a county district, or

(d) the developer shall provide such other means and methods or combination thereof as the Suffolk county sewer agency may determine, specify and direct. Any sums paid to the Suffolk county sewer agency pursuant to any provisions of this section, shall constitute a trust fund to be used exclusively for a future communal sewerage system which shall be owned and operated by a county sewer district, which district shall include the subject plat within its bounds. Such moneys and accrued interest, if any, when paid to such district, shall be credited over a period of time determined by the district, pro rata, against the sewer assessment of each tax parcel of the subject plat as may exist at the time of the payment of such moneys and accrued interest to such district. The useable value of any sewage collection system built under paragraph (b), (c) or (d) of this subdivision shall be credited over a period of time determined by the district, pro rata, against the sewer assessment of each tax parcel of the plat as may exist at the time such system is incorporated into a county sewer district which shall include the subject plat within its bounds.

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§ 7-732. Subdivision review; record of plats.

1. Filing of plat with county clerk or register.

(a) No plat of a subdivision of land showing lots, blocks or sites, shall be filed or recorded in the office of the county clerk or register until it has been approved by a planning board which has been empowered to approve such plats. Further, such approval must be endorsed in writing on the plat in such manner as the planning board may designate.

(b) Such endorsement shall stipulate that the plat does not conflict with the county official map, where one exists, or in cases where plats do front on or have access to or are otherwise related to roads or drainage system is shown on the county official map, that such plat has been approved in the manner specified by section two hundred thirty-nine-f of the general municipal law.

2. Notification of filing. It shall be the duty of the county clerk or register to notify the planning board in writing within three days of the filing or recording of any plat approved by such planning board, identifying such plat by its title, date of filing or recording, and official file number.

3. Effect of filing. After such plat is approved and filed, the streets, highways and parks shown on such plat shall be and become a part of the official map or plan of the village.

4. Cession or dedication of streets, highways or parks.

(a) All streets, highways or parks shown on a filed or recorded plat are offered for dedication to the public unless the owner of the affected land, or the owner's agent, makes a notation on the plat to the contrary prior to final plat approval. Any street, highway or park shown on a filed or recorded plat shall be deemed to be private until such time as it has been formally accepted by a resolution of the local legislative body, or until it has been condemned by the village for use as a public street, highway or park.

(b) In the event that such approved plat is not filed or recorded prior to the expiration date of the plat approval as provided in section 7-728 of this article, then such offer of dedication shall be deemed to be invalid, void and of no effect on and after such expiration date.

Notes:
- County official maps - see General Municipal Law, §239-e.

§ 7-734. Buildings in streets; permits; hearings; review.

For the purpose of preserving the integrity of such official map or plan no permit shall hereafter be issued for any building in the bed of any street or highway shown or laid out on such map or plan, provided, however, that if the land within such mapped street or highway is not yielding a fair return on its value to the owner, the board of appeals or other similar board in any village which has established such a board having power to make variances or exceptions in zoning regulations shall have power in a specific case by the vote of a majority of its members to grant a permit for a building in such street or highway which will as little as practicable increase the cost of opening such street or highway, or tend to cause a change of such official map or plan, and such board may impose reasonable requirements as a condition of granting such permit, which requirements shall inure to the benefit of the village. Before taking any action authorized in this section, the board of appeals or similar board shall give a hearing at which parties in interest and other shall have an opportunity to be heard. Any such decision shall be subject to review in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations.

§ 7-736. Construction of municipal utility in streets; permits for erection of buildings; appeal; review by court.

1. No public municipal street utility or improvement shall be constructed by the village in any street or highway until it has become a public street or highway and is duly placed on the official map or plan; except that the board of trustees may authorize the construction of a public municipal street utility or improvement in or under a street which has not been dedicated, but which has been used by the public as a street for five years or more, prior to March second, nineteen hundred thirty-eight, and is shown as a street on a plat of a subdivision of land which had been filed prior to March second, nineteen hundred thirty-eight, in the office of the county clerk or register of the county in which such village is located.

2. No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plan, or if there be no official map or plan, unless such street or highway is

(a) an existing state, county, town or village highway, or

(b) a street shown upon a plat approved by the planning board as provided under the provisions of this article, as in effect at the time such plat was approved, or

(c) a street on a plat duly filed and recorded in the office of the county clerk or register prior to the appointment of such planning board and the grant to such board of the power to approve plats. Before such permit shall be issued such street or highway shall have been suitably improved to the satisfaction of the planning board in accordance with standards and specifications approved by the appropriate village officers as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway, or alternatively, and in the discretion of such board, a performance bond sufficient to cover the full cost of such improvement as estimated by such board or other appropriate village departments designated by such board shall be furnished to the village by the owner. Such performance bond shall be issued by a bonding or surety company approved by the board of trustees or by the owner with security acceptable to the board of trustees, and shall also be approved by the village attorney as to form, sufficiency and manner of execution. The term, manner of modification and method of enforcement of such bond shall be determined by the appropriate board in substantial conformity with section 7- 730 of this article.

3. The applicant for such a permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals or other similar board, in any village which has established a board having the power to make variances or exceptions in zoning regulations for: a) an exception if the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, and/or b) an area variance pursuant to section 7-712-b of this chapter, and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal make any reasonable exception and issue the permit subject to conditions that will protect any future street or highway layout. Any such decision shall be subject to review in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations.

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§ 7-738. Subdivision review; approval of cluster development.

1. Definitions. As used in this section:

(a) "cluster development" shall mean a subdivision plat or plats, approved pursuant to this article, in which the applicable zoning local law is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks, and landscaping in order to preserve the natural and scenic qualities of open lands.

(b) "zoning districts" shall mean districts provided for in section 7-702 of this article.

2. Authorization; purpose.

(a) The village board of trustees may, by local law, authorize the planning board to approve a cluster development simultaneously with the approval of a plat or plats pursuant to the provisions of this article. Approval of a cluster development shall be subject to the conditions set forth in this section and

in such local law. Such local law shall also specify the zoning districts in which cluster development may be applicable.

(b) The purpose of a cluster development shall be to enable and encourage flexibility of design and development of land in such a manner as to preserve the natural and scenic qualities of open lands.

3. Conditions.

(a) This procedure may be followed at the discretion of the planning board if, in said board's judgment, its application would benefit the village. Provided, however, that in granting such authorization to the planning board, the village board of trustees may also authorize the planning board to require the owner to submit an application for cluster development subject to criteria contained in the local law authorizing cluster development.

(b) A cluster development shall result in a permitted number of building lots or dwelling units which shall in no case exceed the number which could be permitted, in the planning board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the zoning local law applicable to the district or districts in which such land is situated and conforming to all other applicable requirements. Provided, however, that where the plat falls within two or more contiguous districts, the planning board may approve a cluster development representing the cumulative density as derived from the summing of all units allowed in all such districts, and may authorize any actual construction to take place in all or any portion of one or more of such districts.

(c) The planning board as a condition of plat approval may establish such conditions on the ownership, use, and maintenance of such open lands shown on the plat as it deems necessary to assure the preservation of the natural and scenic qualities of such open lands. The village board of trustees may require that such conditions shall be approved by the board of trustees before the plat may be approved for filing

(d) The plat showing such cluster development may include areas within which structures may be located, the height and spacing of buildings, open spaces and their landscaping, off-street open and enclosed parking spaces, streets, driveways and any other features required by the planning board. In the case of a residential plat or plats, the dwelling units permitted may be, at the discretion of the planning board, in detached, semi-detached, attached, or multi-story structures.

4. Notice and public hearing. The proposed cluster development shall be subject to review at a public hearing or hearings held pursuant to section 7-728 of this article for the approval of plats.

5. Filing of plat. On the filing of the plat in the office of the county clerk or register, a copy shall be filed with the village clerk, who shall make appropriate notations and references thereto on the village zoning map required to be maintained pursuant to section 7-706 of this article.

6. Effect. The provisions of this section shall not be deemed to authorize a change in the permissible use of such lands as provided in the zoning local law applicable to such lands.

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§ 7-739. Coordination with agricultural districts program.

1. Policy of local governments. Local governments shall exercise their powers to enact local laws, ordinances, rules or regulations that apply to farm operations in an agricultural district in a manner which does not unreasonably restrict or regulate farm structures or farming practices in contravention

of the purposes of article twenty-five-AA of the agriculture and markets law, unless such restrictions or regulations bear a direct relationship to the maintenance of public health or safety.

2. Agricultural data statement; submission, evaluation. Any application for a special use permit, site plan approval, use variance, or subdivision approval requiring municipal review and approval by the village board of trustees, planning board, or zoning board of appeals pursuant to this article, that would occur on property within an agricultural district containing a farm operation or on property with boundaries within five hundred feet of a farm operation located in an agricultural district, shall include an agricultural data statement. The village board of trustees, planning board, or zoning board of appeals shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within such agricultural district. The information required by an agricultural data statement may be included as part of any other application form required by local law, ordinance or regulation.

3. Agricultural data statement; notice provision. Upon the receipt of such application by the planning board, zoning board of appeals, or village board of trustees, the clerk of such board shall mail written notice of such application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location, and may be sent in conjunction with any other notice required by state or local law, ordinance, rule or regulation for the said project. The cost of mailing said notice shall be borne by the applicant.

4. Agricultural data statement; content. An agricultural data statement shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within five hundred feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.

5. Notice to county planning board or agency or regional planning council. The clerk of the village board of trustees, planning board, or zoning board of appeals shall refer all applications requiring an agricultural data statement to the county planning board or agency or regional planning council as required by sections two hundred thirty-nine-m and two hundred thirty-nine-n of the general municipal law.

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§ 7-740. Review of decisions of planning board.

Any officer, department, board or bureau of the village, with the approval of the board of trustees, or any person or persons, jointly or severally aggrieved by any decision of the planning board concerning such plat or the changing of the zoning regulations of such land, may bring a proceeding to review in the manner provided by article seventy-eight of the civil practice law and rules in a court of record on the ground that such decision is illegal, in whole or in part. Such proceeding must be commenced within thirty days after the filing of the decision in the office of the board.

Commencement of the proceeding shall stay proceedings upon the decision appealed from.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the planning board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

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§ 7-741. Intermunicipal cooperation in comprehensive planning and land use regulation.

1. Legislative intent. This section is intended to illustrate the statutory authority that any municipal corporation has under article five-G of the general municipal law and place within land use law express statutory authority for cities, towns and villages to enter into agreements to undertake comprehensive planning and land use regulation with each other or one for the other, and to provide that any city, town or village may contract with a county to carry out all or a portion of the ministerial functions related to the land use of such city, town or village as may be agreed upon. By the enactment of this section the legislature seeks to promote intergovernmental cooperation that could result in increased coordination and effectiveness of comprehensive planning and land use regulation, more efficient use of infrastructure and municipal revenues, as well as the enhanced protection of community resources, especially where such resources span municipal boundaries.

2. Authorization and effects.

(a) In addition to any other general or special powers vested in a village to prepare a comprehensive plan and enact and administer land use regulations, by local law or ordinance, rule or regulation, each village is hereby authorized to enter into, amend, cancel and terminate agreements with any other municipality or municipalities to undertake all or a portion of such powers, functions and duties.

(b) Any one or more municipalities located in a county which has established a county planning board, commission or other agency, hereinafter referred to as a county planning agency, are hereby authorized to enter into, amend, cancel and terminate agreements with such county in order to authorize the county planning agency to perform and carry out certain ministerial functions on behalf of such municipality or municipalities related to land use planning and zoning. Such functions may include, but are not limited to, acting in an advisory capacity, assisting in the preparation of comprehensive plans and land use regulations to be adopted and enforced by such municipality or municipalities and participating in the formation and functions of individual or joint administrative boards and bodies formed by one or more municipalities.

(c) Such agreements shall apply only to the performance or exercise of any function or power which each of the municipal corporations has the authority by any general or special law to prescribe, perform, or exercise separately.

3. Definitions. As used herein:

(a) "Municipality", means a city, town or village.

(b) "Community resource", means a specific public facility, infrastructure system, or geographic area of special economic development, environmental, scenic, cultural, historic, recreational, parkland, open space, natural resource, or other unique significance, located wholly or partially within the boundaries of one or more given municipalities.

(c) "Intermunicipal overlay district", means a special land use district which encompasses all or a portion

of one or more municipalities for the purpose of protecting, enhancing or developing one or more community resources as provided herein.

4. Intermunicipal agreements. In addition to any other powers granted to municipalities to contract with each other to undertake joint, cooperative agreements any municipality may:

(a) create a consolidated planning board which may replace individual planning boards, if any, which consolidated planning board shall have the powers and duties as shall be determined by such agreement;

(b) create a consolidated zoning board of appeals which may replace individual zoning boards of appeals, if any, which consolidated zoning board of appeals shall have the powers and duties as shall be determined by such agreement;

(c) create a comprehensive plan and/or land use regulations which may be adopted independently by each participating municipality;

(d) provide for a land use administration and enforcement program which may replace individual land use administration and enforcement programs, if any, the terms and conditions of which shall be set forth in such agreement; and

(e) create an intermunicipal overlay district for the purpose of protecting, enhancing or developing community resources that encompass two or more municipalities.

5. Special considerations.

(a) Making joint agreements. Any agreement made pursuant to the provisions of this section may contain provisions as the parties deem to be appropriate, and including provisions relative to the items designated in paragraphs a through m inclusive as set forth in subdivision two of section one hundred nineteen-o of the general municipal law.

(b) Establishing the duration of agreement. Any agreement developed pursuant to the provisions of this section may contain procedures for periodic review of the terms and conditions, including those relating to the duration, extension or termination of the agreement.

(c) Amending local laws or ordinances. Local laws or ordinances shall be amended, as appropriate, to reflect the provisions contained in intermunicipal agreements established pursuant to the provisions of this section.

6. Appeal of action by aggrieved party or parties. Any officer, department, board or bureau of any municipality with the approval of the legislative body, or any person or persons jointly or severally aggrieved by any act or decision of a planning board, zoning board of appeals or agency created pursuant to the provisions of this section may bring a proceeding by article seventy-eight of the civil practice law and rules in a court of record on the ground that such decision is illegal, in whole or in part. Such proceeding must be commenced within thirty days after the filing of the decision in the office of the board. Commencement of the proceeding shall stay proceedings upon the decision from which the appeal is taken. All issues in any proceeding under this section shall have a preference over all other civil actions and proceedings.

7. Any agreements made between two or more municipalities pursuant to article five-G of the general municipal law or any other law which provides for the undertaking of any land use regulation or activity

on a joint, cooperative or contract basis, if valid when so made, shall not be invalidated by the provisions of this section.

8. The provisions of this section shall be in addition to existing authority and shall not be deemed or construed as a limitation, diminution or derogation of any statutory authority authorizing municipal cooperation.

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§ 7-742. Separability clause.

If any part or provision of this article or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this article or the application thereof to other persons or circumstances and the legislature hereby declares that it would have enacted this article or the remainder thereof had the invalidity of such provision or application thereof been apparent.

GENERAL MUNICIPAL LAW

SECTION INSERT PAGE NUMBER

§ 96-a. Protection of historical places, buildings and works of art.

In addition to any power or authority of a municipal corporation to regulate by planning or zoning laws and regulations or by local laws and regulations, the governing board or local legislative body of any county, city, town or village is empowered to provide by regulations, special conditions and restrictions for the protection, enhancement, perpetuation and use of places, districts, sites, buildings, structures, works of art, and other objects having a special character or special historical or aesthetic interest or value. Such regulations, special conditions and restrictions may include appropriate and reasonable control of the use or appearance of neighboring private property within public view, or both. In any such instance such measures, if adopted in the exercise of the police power, shall be reasonable and appropriate to the purpose, or if constituting a taking of private property shall provide for due compensation, which may include the limitation or remission of taxes.

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§ 99-g. Capital program.

1. Any municipal corporation, by resolution or ordinance of the governing board, may undertake the planning and execution of a capital program in accordance with the provisions of this section.

2. A capital program shall be a plan of capital projects proposed to be undertaken during a six-year period, the estimated cost thereof and the proposed method of financing.

3. The officer charged with the preparation of the tentative budget shall annually cause the capital program to be prepared, and shall submit it to the governing board with the tentative budget. It shall be arranged in such manner as to indicate the order of priority of each project, and to state for each project:

(a) a description of the proposed project and the estimated total cost thereof;

(b) the proposed method of financing, indicating the amount proposed to be financed by direct budgetary appropriation or duly established reserve funds; the amount, if any, estimated to be received from the federal and/or state governments; and the amount to be financed by the issuance of obligations, showing the proposed type or types of obligations, together with the period of probable usefulness for which they are proposed to be issued;

(c) an estimate of the effect, if any, upon operating costs of the municipal corporation within each of the three fiscal years following completion of the project.

4. The tentative budget shall include the amount proposed for the capital program to be financed by direct budgetary appropriation during the fiscal year to which such tentative budget pertains.

5. There shall be included in the budget message, if any, a general summary of the financial requirements for the capital program for the fiscal year to which the budget message relates. Additional comments and recommendations of any other board, officer or agency may also be included in the budget message.

6. The governing board shall annually adopt the capital program after review and revisions, if any. The provisions of any law relating to a public hearing on the tentative budget, and to the adoption of the budget, shall apply to the capital program.

7. At any time during the fiscal year for which the capital program was adopted, the governing board by

the affirmative vote of two-thirds of its total membership, may amend the capital program by adding, modifying or abandoning the projects, or by modifying the methods of financing. No capital project shall be authorized or undertaken unless it is included in the capital program as adopted or amended.

8. The term "capital project" as used in this section shall mean:

(a) any physical betterment or improvement, including furnishings, machinery, apparatus or equipment for such physical betterment or improvement when first constructed or acquired, or

(b) any preliminary studies and surveys relating to any physical betterment or improvement, or

(c) land or rights in land, or

(d) any combination of (a), (b) and (c).

9. Nothing in this section shall be construed to authorize a municipal corporation to incur indebtedness for which obligations may be issued except as provided by the local finance law.

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§ 119-u. Intermunicipal cooperation in comprehensive planning and land use regulation.

1. Legislative intent. This section is intended to illustrate the statutory authority that any municipal corporation has under article five-G of this chapter and place within land use law express statutory authority for cities, towns, and villages to enter into agreements to undertake comprehensive planning and land use regulation with each other or one for the other, and to provide that any city, town, or village may contract with a county to carry out all or a portion of the ministerial functions related to the land use of such city, town or village as may be agreed upon. By the enactment of this section the legislature seeks to promote intergovernmental cooperation that could result in increased coordination and effectiveness of comprehensive planning and land use regulation, more efficient use of infrastructure and municipal revenues, as well as the enhanced protection of community resources, especially where such resources span municipal boundaries.

2. Authorization and effects.

(a) In addition to any other general or special powers vested in a city, town or village to prepare a comprehensive plan and enact and administer land use regulations, by local law or ordinance, rule or regulation, each city, town or village is hereby authorized to enter into, amend, cancel and terminate agreements with any other municipality or municipalities to undertake all or a portion of such powers, functions and duties.

(b) Any one or more municipalities located in a county which has established a county planning board, commission or other agency, hereinafter referred to as a county planning agency, are hereby authorized to enter into, amend, cancel and terminate agreements with such county in order to authorize the county planning agency to perform and carry out certain ministerial functions on behalf of such municipality or municipalities related to land use planning and zoning. Such functions may include, but are not limited to, acting in an advisory capacity, assisting in the preparation of comprehensive plans and land use regulations to be adopted and enforced by such municipality or municipalities and participating in the formation and functions of individual or joint administrative boards and bodies formed by one or more municipalities.

(c) Such agreements shall apply only to the performance or exercise of any function or power which each

of the municipal corporations has the authority by any general or special law to prescribe, perform, or exercise separately.

3. Definitions. As used herein:

(a) "Municipality", means a city, town or village.

(b) "Land use regulation", means an ordinance or local law enacted by a municipality for the regulation of any aspect of land use and community resource protection and includes any zoning, subdivision, special use permit or site plan regulation or any other regulations which prescribe the appropriate use of property or the scale, location, and intensity of development.

(c) "Community resource", means a specific public facility, infrastructure system, or geographic area of special economic development, environmental, scenic, cultural, historic, recreational, parkland, open space, natural resource, or other unique significance, located wholly or partially within the boundaries of one or more given municipalities.

(d) "Intermunicipal overlay district", means a special land use district which encompasses all or a portion of one or more municipalities for the purpose of protecting, enhancing, or developing one or more community resources as provided herein.

4. Intermunicipal agreements. In addition to any other powers granted to municipalities to contract with each other to undertake joint, cooperative agreements any municipality may:

(a) create a consolidated planning board which may replace individual planning boards, if any, which consolidated planning board shall have the powers and duties as shall be determined by such agreement;

(b) create a consolidated zoning board of appeals which may replace individual zoning boards of appeals, if any, which consolidated zoning board of appeals shall have the powers and duties as shall be determined by such agreement;

(c) create a comprehensive plan and/or land use regulations which may be adopted independently by each participating municipality;

(d) provide for a land use administration and enforcement program which may replace individual land use administration and enforcement programs, if any, the terms and conditions of which shall be set forth in such agreement; and

(e) create an intermunicipal overlay district for the purpose of protecting, enhancing, or developing community resources that encompass two or more municipalities.

5. Special considerations.

(a) Making joint agreements. Any agreement made pursuant to the provisions of this section may contain provisions as the parties deem to be appropriate, and including provisions relative to the items designated in paragraphs a through m inclusive as set forth in subdivision two of section one hundred nineteen-o of this chapter.

(b) Establishing the duration of agreement. Any local law developed pursuant to the provisions of this section may contain procedures for periodic review of the terms and conditions, including those

relating to the duration, extension or termination of the agreement.

(c) Amending local laws or ordinances. Local laws or ordinances shall be amended, as appropriate, to reflect the provisions contained in intermunicipal agreements established pursuant to the provisions of this section.

6. Appeal of action by aggrieved party or parties. Any officer, department, board or bureau of any municipality with the approval of the legislative body, or any person or persons jointly or severally aggrieved by any act or decision of a planning board, zoning board of appeals or agency created pursuant to the provisions of this section may bring a proceeding by article seventy-eight of the civil practice law and rules in a court of record on the ground that such decision is illegal, in whole or in part. Such proceeding must be commenced within thirty days after the filing of the decision in the office of the board. Commencement of the proceeding shall stay proceedings upon the decision from which the appeal is taken. All issues in any proceeding under this section shall have a preference over all other civil actions and proceedings.

7. Any agreements made between two or more municipalities pursuant to article five-G of this chapter or other law which provides for the undertaking of any land use regulation or activity on a joint, cooperative or contract basis, if valid when so made, shall not be invalidated by the provisions of this section.

8. The provisions of this section shall be in addition to existing authority and shall not be deemed or constructed as a limitation, diminution or derogation of any statutory authority authorizing municipal cooperation.

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§ 119-dd. Local historic preservation programs

In addition to existing powers and authorities for local historic preservation programs including existing powers and authorities to regulate by planning or zoning laws and regulations or by local laws and regulations for preservation of historic landmarks and districts and use of techniques including transfer of development rights, the legislative body of any county, city, town or village is hereby empowered to:

1. Provide by regulations, special conditions and restrictions for the protection, enhancement, perpetuation and use of places, districts, sites, buildings, structures, works of art and other objects having a special character or special historical, cultural or aesthetic interest or value. Such regulations, special conditions and restrictions may include appropriate and reasonable control of the use or appearance of neighboring private property within the public view, or both.

2. Establish a landmark or historical preservation board or commission with such powers as are necessary to carry out all or any of the authority possessed by the municipality for a historic preservation program, as the local legislative body deems appropriate.

3. After due notice and public hearing, by purchase, gift, grant, bequest, devise, lease or otherwise, acquire the fee or any lesser interest, development right, easement, covenant or other contractual right necessary to achieve the purposes of this article, to historical or cultural property within its jurisdiction. After acquisition of any such interest pursuant to this subdivision, the effect of the acquisition on the valuation placed on any remaining private interest in such property for purposes of real estate taxation shall be taken into account.

4. Designate, purchase, restore, operate, lease and sell historic buildings or structures. Sales of such

buildings and structures shall be upon such terms and conditions as the local legislative body deems appropriate to insure the maintenance of the historic quality of the buildings and structures, after public notice is appropriately given at least thirty days prior to the anticipated date of availability and shall be for fair and adequate consideration of such buildings and structures which in no event shall be less than the expenses incurred by the municipality with respect to such buildings and structures for acquisition, restoration, improvement and interest charges.

5. Provide for transfer of development rights for purposes consistent with the purposes of this article.

Note:

- For additional provisions relating to local historic preservation programs, see General Municipal Law §§119-aa, 119-bb, and 119-cc.

§ 136. Control of automobile junkyards.

1. Legislative intent. A clean, wholesome, attractive environment is declared to be of importance to the health and safety of the inhabitants and the safeguarding of their material rights against unwarrantable invasion and, in addition, such an environment is deemed essential to the maintenance and continued development of the economy of the state and the general welfare of its citizens. It is further declared that the unrestrained accumulation of junk motor vehicles is a hazard to such health, safety and welfare of citizens of the state necessitating the regulation, restraint and elimination thereof. At the same time, it is recognized that the maintenance of junk yards as hereinafter defined, is a useful and necessary business and ought to be encouraged when not in conflict with the express purposes of this section.

2. Definitions.

For the purposes of this section, "junk yard" shall mean any place of storage or deposit, whether in connection with another business or not, where two or more unregistered, old, or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose; such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles which, taken together, equal in bulk two or more such vehicles provided, however, the term junk yard shall not be construed to mean an establishment having facilities for processing iron, steel or nonferrous scrap and whose principal produce is scrap iron, steel or nonferrous scrap for sale for remelting purposes only.

"Municipality" as used in this section shall mean a city of less than one million in population, town or village.

"Motor vehicle" shall mean all vehicles propelled or drawn by power other than muscular power originally intended for use on public highways.

3. Requirement for operation or maintenance. No person shall operate, establish or maintain a junk yard until he

(1) has obtained a license to operate a junk yard business and

(2) has obtained a certificate of approval for the location of such junk yard.

4. Application for license and certificate of approval. Application for the license and the certificate of approved location shall be made in writing to the governing board of the municipality where it is proposed to locate the junk yard, and, in municipalities having a zoning ordinance or local law and a zoning board, the application shall be accompanied by a certificate from the zoning board that the proposed location is not within an established district restricted against such uses or otherwise contrary to the prohibitions of such zoning ordinance or local law. The application shall contain a description of the land to be included within the junk yard.

5. Hearing. A hearing on the application shall be held within the municipality not less than two nor more than four weeks from the date of the receipt of the application by the legislative body. Notice of the hearing shall be given to the applicant by mail, postage prepaid, to the address given in the application and shall be published once in a newspaper having a circulation within the municipality, which publication shall be not less than seven days before the date of the hearing.

6. License requirements. At the time and place set for hearing, the governing board shall hear the applicant and all other persons wishing to be heard on the application for a license to operate, establish or maintain the junk yard. In considering such application, it shall take into account the suitability of the applicant with reference to his ability to comply with the fencing requirements or other reasonable regulations concerning the proposed junk yard, to any record of convictions for any type of larceny or receiving of stolen goods, and to any other matter within the purposes of this section.

7. Location requirements. At the time and place set for hearing, the governing board shall hear the applicant and all other persons wishing to be heard on the application for certificate of approval for the location of the junk yard. In passing upon same, it shall take into account, after proof of legal ownership or right to such use of the property for the license period by the applicant, the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings or other places of public gathering; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors or smoke, or of other causes.

8. Aesthetic considerations. At the hearing regarding location of the junk yard, the governing board may also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection the governing board may consider collectively the type of road servicing the junk yard or from which the junk yard may be seen, the natural or artificial barriers protecting the junk yard from view, the proximity of the proposed junk yard to established residential and recreational areas or main access routes thereto, as well as the reasonable availability of other suitable sites for the junk yard.

9. Grant or denial of application; appeal. After hearing the governing board shall, within two weeks, make a finding as to whether or not the application should be granted, giving notice of their finding to the applicant by mail, postage prepaid, to the address given on the application. If approved, the license, including the certificate of approved location, shall be forthwith issued to remain in effect until the following April first. Approval shall be personal to the applicant and not assignable. Licenses shall be renewed thereafter upon payment of the annual license fee without hearing, provided all provisions of this chapter are complied with during the license period, the junk yard does not become a public nuisance under the common law and the applicant is not convicted of any type of larceny or the receiving of stolen goods. The determination of the governing board may be reviewed under article seventy-eight of the civil practice law and rules.

10. License fees. The annual license fee shall be twenty-five dollars to be paid at the time the application

is made and annually thereafter in the event of renewal. In event the application is not granted, the fee shall be returned to the applicant. A municipality, in addition to the license fee, may assess the applicant with the costs of advertising such application and such other reasonable costs incident to the hearing as are clearly attributable thereto and may make the license conditional upon payment of same.

11. Fencing. Before use, a new junk yard shall be completely surrounded with a fence at least eight feet in height which substantially screens and with a suitable gate which shall be closed and locked except during the working hours of such junk yard or when the applicant or his agent shall be within. Such fence shall be erected not nearer than fifty feet from a public highway. All motor vehicles and parts thereof stored or deposited by the applicant shall be kept within the enclosure of the junk yard except as removal shall be necessary for the transportation of same in the reasonable course of the business. All wrecking or other work on such motor vehicles and parts and all burning of same within the vicinity of the junk yard shall be accomplished within the enclosure. Where the topography, natural growth of timber or other considerations accomplish the purposes of this chapter in whole or in part, the fencing requirements hereunder may be reduced by the legislative body, upon granting the license, provided, however, that such natural barrier conforms with the purposes of this chapter.

12. Effect of local ordinances or local laws. This section shall not be construed to affect or supersede zoning ordinances or local laws or any other ordinances or local laws for the control of junk yards now in effect or hereafter enacted in any municipality within the proper exercise of the police power of such a municipality and shall not be deemed to apply to any municipality which has any ordinance or local law or regulation to license or regulate junk yards.

13. Established junk yards. For the purposes of this section the location of junk yards already established shall be considered approved by the governing board of the municipality where located and the owner thereof deemed suitable for the issuance of a license. Within sixty days from the passage of this section, however, the owner shall furnish the governing board the information as to location which is required in an application, together with the license fee, and the governing board shall issue him a license valid until the next April first, at which time such owner may apply for renewal as herein provided. Such owner shall comply with all other provisions of this section including the fencing requirements set forth in subdivision eleven of this section.

14. Notwithstanding any of the foregoing provisions of this section, no junk yard, hereafter established, shall be licensed to operate of such yard or any part thereof shall be within five hundred feet of a church, school, hospital, public building or place of public assembly.

15. Violators of any of the portions of this section shall be guilty of an offense punishable by a fine not exceeding one hundred dollars and each week that such violation is carried on or continues shall constitute a separate violation.

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§ 234. Creation, appointment and qualifications.

Each city and incorporated village is hereby authorized and empowered to create a commission to be known as the city or village planning commission. Such commission shall be so created in incorporated villages by resolution of the trustees, in cities by ordinance of the common council, except that in cities of the first class, having more than a million inhabitants, it shall be by resolution of the board of estimate and apportionment or other similar local authority. In cities of the first class such commission shall consist of not more than eleven, in cities of the second class of not more than nine, in cities of the third class and incorporated villages of not more than seven members. Such ordinance or resolution shall specify the

public officer or body of said municipality that shall appoint such commissioners, and shall provide that the appointment of as nearly as possible one-third of them shall be for a term of one year; one-third for a term of two years, and one-third for a term of three years; and that at the expiration of such terms, the terms of office of their successors shall be three years; so that the term of office of one-third of such commissioners, as nearly as possible, shall expire each year. All appointments to fill vacancies shall be for the unexpired term. Not more than one-third of the members of said commission shall hold any other public office in said city or village. In a county containing a population of over three hundred thousand one of the members of any such commission may reside outside of such village or city as the case may be.

§ 235. Officers, expenses and assistance.

The commission shall elect annually, a chairman from its own members. It shall have the power and authority to employ experts, clerks, and a secretary, and to pay for their services and such other expenses as may be necessary and proper, not exceeding, in all, the annual appropriation that may be made by said city or village for said commission. The body creating the commission shall by ordinance or resolution provide what compensation if any, each of such commissioners shall receive for his services as such commissioner. Each city and incorporated village is hereby authorized and empowered to make such appropriation as it may see fit for such expenses and compensation, such appropriations to be made by those officers or bodies in such city or village having charge of the appropriation of the public funds.

§ 236. General powers.

The body creating such planning commission may, at any time, by ordinance or local law or resolution, provide that the following matters, or anyone or more of them, shall be referred for report thereon, to such commission by the board, commission, commissioner or other public officer or officers of said city or village which is the final authority thereon before final action thereon by such authority: the adoption of any map or plan of said city or incorporated village, or part thereof, including drainage and sewer or water system plans or maps, and plans or maps for any public water front, or marginal street, or public structure upon, in or in connection with such front or street, or for any dredging, filling or fixing of lines with relation to said front; any change of any such maps or plans; the location of any public structure upon, in or in connection with, or fixing lines with relation to said front; the location of any public building, bridge, statue or monument, highway, park, parkway, square, playground or recreation ground, or public open place of said city or village. In default of any such ordinance, local law or resolution all of said matters shall be so referred to said planning commission.

The body creating such planning commission may, at any time, by ordinance, local law or resolution, fix the time within which such planning commission shall report upon any matter or class of matters to be referred to it, with or without the further provision that in default of report within the time so fixed, the planning commission shall forfeit the right further to suspend action, as aforesaid with regard to the particular matter upon which it has so defaulted. In default of any such ordinance, local law or resolution, no such action shall be taken until such report is so received, and no adoption, change, fixing or location as aforesaid by said final authority, prior thereto, shall be valid. No ordinance, local law or resolution shall deprive said planning commission of its right or relieve it of its duty, to report, at such time as it deems proper upon any matter at any time referred to it.

This section shall not be construed as intended to limit or impair the power of any art commission, park commission or commissioner, now or hereafter existing by virtue of any provision of law, to refuse consent to the acceptance by any municipality of the gift of any work of art to said municipality, without reference of the matter, by reason of its proposed location or otherwise, to said planning commission. Nor shall this

section be construed as intended to limit or impair any other power of any such art commission or affect the same, except in so far as it provides for reference or report, or both, on any matter before final action thereon by said art commission.

§ 237. Maps and recommendations.

Such planning commission may cause to be made a map or maps of said city or village or any portion thereof, or of any land outside the limits of said city or village so near or so related thereto that in the opinion of said planning commission it should be so mapped. Such plans may show not only such matters as by law have been or may be referred to the planning commission, but also any and all matters and things with relation to the plan of said city or village which to said planning commission seem necessary and proper, including recommendations and changes suggested by it; and any report at any time made, may include any of the above. Such planning commission may obtain expert assistance in the making of any such maps or reports, or in the investigations necessary and proper with relation thereto.

§ 238. Private streets.

The body creating such planning commission may at any time, by ordinance or resolution provide that no plan, plot or description, showing the layout of any highway or street upon private property, or of building lots in connection with or in relation to such highway or street shall, within the limits of any municipality having a planning commission, as aforesaid, be received for record in the office of the clerk of the county where such real property is situated, until a copy of said plan, plot or description has been filed with said commission and it has certified, with relation thereto, its approval thereof. Such certificate hall be recorded as a part of the record of said original instrument containing said plan, plot, or description. No such street or highway which as not received the approval of the planning commission shall be accepted by said city or village until the matter has been referred to such commission under the provision of section two hundred and thirty-six of this article. But if any such street is plotted or laid out in accordance with the map of said municipality, adopted according to law, then it shall not be necessary to file such copy, or obtain or record such certificate.

§ 239. Rules.

Such commission may make rules not contrary to law, to govern its action in carrying out the provisions of this article.

§ 239-a. Construction of article.

This article shall be construed as the grant of additional power and authority to cities and incorporated villages, and not as intended to limit or impair any existing power or authority of any city or village. Any city or incorporated village in order to appoint a planning commission under this article shall recite, in the ordinance or resolution so creating the commission, the fact that it is created under this article.

Article 12-B
COUNTY PLANNING BOARDS AND

REGIONAL PLANNING COUNCILS

§ 239-b. Definitions. As used in this article and unless otherwise provided:

1. "Municipal legislative body" means the town board of a town, the board of trustees of a village; the board of aldermen, common council, council or commission of a city; and other elective governing board or body now or hereafter vested by state statute, charter or other law with jurisdiction to initiate and adopt local laws or ordinances.

2. "County legislative body" means the board of supervisors of a county, the county legislature, the county board of representatives, or other body vested by its charter or other law with jurisdiction to enact local laws or resolutions.

3. "Municipality" means a city, village, or that portion of a town located outside the limits of any city or village.

4. "County planning board" means any county planning board, or commission, including a county planning board established pursuant to section two hundred thirty-nine-c of this article.

5. "Special board" means a board consisting of one or more members of the county planning board and such other members as are appointed by the county legislative body to prepare a proposed county comprehensive plan or an amendment thereto.

6. “County comprehensive plan" means the materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other 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 county, as may be prepared pursuant to section two hundred thirty-nine-d of this article.

7. "Region" means an area which encompasses a regional planning council.

8. "Regional planning council" means a council established pursuant to section 239-h of this article.

9. "Regional comprehensive plan" means the materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other 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 region, as may be prepared pursuant to §239-i of this article.

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§ 239-c. County planning boards.

1. Legislative findings and intent. The legislature hereby finds and determines that:

(a) significant decisions and actions affecting the immediate and long-range protection, enhancement, growth and development of the state and its communities are made by county planning boards.

(b) county planning boards serve as an important resource to the state and its localities, helping to establish productive linkages between communities as well as with state and federal agencies.

(c) through comprehensive planning and special studies, county planning boards focus on opportunities

and issues best handled at a county-wide scale.

(d) the development of a county comprehensive plan can foster cooperation among governmental agencies in the planning and implementation of capital projects. Similarly, county comprehensive plans can promote intermunicipal cooperation in the provision of public services.

(e) citizen participation is essential to the design and implementation of a county comprehensive plan.

(f) the great diversity of resources and conditions that exist within and among counties requires consideration of such factors by county planning boards.

(g) it is the intent of the legislature therefore, to provide a permissive and flexible framework within which county planning boards can perform their power and duties.

1-a. Alternate members of county planning boards.

(a) A county legislative body may, by local law or as a part of the local law creating the county planning board, establish alternate planning board member positions for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest. Alternate members of the county planning board shall be appointed by resolution of the county legislative body, for terms established by such legislative body.

(b) The chairperson of the planning board may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial planning board meeting at which the substitution is made.

(c) All provisions of this section relating to county planning board member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, and service on other boards, shall also apply to alternate members.

2. Establishment of county planning board.

(a) Creation. In the absence of a county administrative code or county charter which may otherwise provide for the creation of a county planning board, the county legislative body alone, or in collaboration with the legislative bodies of the municipalities in such county may establish a county planning board.

(b) Membership. Members and officers of such board shall be selected in a number and manner determined by the county legislative body. In making such appointments, the county legislative body shall include members from a broad cross section of interests within the county. Consideration should also be given to securing representation by population size, geographic location and type of municipality. The terms of membership as well as the filling of vacancies on such board shall be determined by the county legislative body. The county legislative body may provide for the appointment of individuals to serve as ex-officio members of the county planning board. Said ex-officio members or their designees may participate in the deliberations of the county planning board, but shall not have voting privileges.

(c) Membership of elected or appointed officials. No person shall be precluded from serving as a member of a county planning board, as appointed by the county legislative body pursuant to this section,

because such member is an elected or appointed official of the county or a municipality, except that no member of a county planning board shall vote on any matter before such board which has been the subject of a proposal, application or vote before the county or municipality where he or she serves in such elected or appointed capacity.

(d) Training and attendance requirements. As a condition of appointment to the planning board, the county legislative body may establish training, continuing education and meeting attendance requirements for such members.

(e) Member reimbursement. The members of such county planning board shall receive no salary or compensation for their services as members of such board but may be reimbursed for authorized, actual and necessary travel and expenditures.

(f) Removal of members. The county legislative body may remove any member of such planning board for cause, and may provide by resolution for removal of any planning board member for non-compliance with minimum requirements relating to meeting attendance and training as established by the county legislative body by resolution.

(g) By-laws. The county planning board shall adopt by-laws governing its operation which shall be approved by the county legislative body and shall keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record.

(h) Appropriation; expenses. The county legislative body and municipal legislative bodies may, in their discretion, appropriate and raise by taxation, money for the expenses of such county planning board. Such bodies shall not be charged for any expense incurred by such board except pursuant to such appropriation. The county planning board shall have the power and authority to employ staff, consultants and other experts and to pay for their services, and to provide for such other expenses as may be necessary and proper, not to exceed the appropriation that may be made therefor by the county legislative body for such county planning board.

(i) Authority to receive and expend funds. In furtherance of the purposes of this article, the county planning board may receive and expend public funds and grants from private foundations or agencies and may apply for and accept grants from the federal government or the state government and enter into contracts for and agree to accept such grants, donations or subsidies in accordance with such reasonable conditions and requirements as may be imposed thereon.

3. County planning board powers and duties.

(a) Review of certain municipal planning and zoning actions. The county legislative body may, by resolution, authorize the county planning board to conduct reviews of certain classes of planning and zoning actions by a city, town or village within such county pursuant to sections two hundred thirty-nine-l and two hundred thirty-nine-m of this article, and to review certain subdivision plats pursuant to section two hundred thirty-nine-n of this article.

(b) County comprehensive plan. The county legislative body may request the county planning board to assist in the preparation of a county comprehensive plan and amendments thereto pursuant to section two hundred thirty-nine-d of this article.

(c) County official map. The county legislative body may request the county planning board to prepare a county official map and amendments thereto pursuant to section two hundred thirty-nine-e of this article.

(d) County studies. The county planning board may undertake studies relevant to the future growth, development, and protection of the county and municipalities therein, including studies in support of a county comprehensive plan.

(e) Local studies. The county planning board may assist a city, town, or village in the study of ways to obtain economy, efficiency and quality in the planning and provision of municipal services.

(f) Collection and distribution of information. The county planning board may collect and distribute information relative to county or municipal planning and zoning in such county. Upon request from the county or a municipality, the planning board may recommend to the legislative body of the county or such municipalities whose jurisdictions are served by the county planning board a comprehensive plan which shall designate suitable areas to be zoned for land uses, taking into consideration, but not limited to, such factors as existing and projected highways, parks, open spaces, parkways, public works, public utilities, public transportation terminals and facilities, population trends, topography and geologic structure.

(g) Local technical assistance. The county planning board may furnish such technical services as a municipality within the county may request. Such services may include, but not be limited to assistance with planning and land use functions, use of geographic information systems, infrastructure development, as well as inter-municipal services delivery, and may be provided directly by the county planning board or in coordination with other county departments or agencies. The charges, if any, to be made for such services shall be established by the county legislative body.

(h) Highway construction. Before the final approval of any plan involving the construction or reconstruction of any state or county highway, with or without federal aid, the county planning board shall be given an opportunity to examine such plans and offer suggestions with respect thereto. This paragraph shall in no manner be construed as nullifying or contravening the final approval of the commissioner of transportation.

4. Annual report. The county planning board shall submit an annual report to the county legislative body and include in such report topics that are required in the by-laws of the county planning board.

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§ 239-d. County comprehensive plan.

1. Content. The county comprehensive plan may include but shall not be limited to the following topics at the level of detail adapted to the special requirements of the county:

(a) General statements of goals, objectives, principles, policies, and standards upon which proposals for the immediate and long-range protection, enhancement, growth and development of the county are based;

(b) Consideration of regional needs and the official plans of other governmental units and agencies within the county;

(c) The existing and proposed location and intensity of land uses;

(d) Consideration of agricultural uses, historic and cultural resources, coastal and natural and scenic resources and sensitive environmental areas;

(e) Consideration of population, demographic and socio-economic trends and future projections;

(f) The location and types of transportation facilities, including the reuse of abandoned transportation facilities;

(g) Existing and proposed general location of public and private utilities and infrastructure;

(h) Existing housing resources and future housing needs, including affordable housing;

(i) The present and future general location of educational and cultural facilities, historic sites, health facilities, and facilities for emergency services

(j) Existing and proposed recreation facilities and parkland;

(k) The present and potential future general location of commercial and industrial facilities;

(l) Specific policies and strategies for improving the county economy in coordination with other plan topics;

(m) Proposed measures, programs, devices, and instruments to implement the goals and objectives of the various topics within the county comprehensive plan;

(n) All or part of the plan of another public agency;

(o) Any and all other items which are consistent with the protection, enhancement, orderly growth and development of the county; and

(p) Consideration of cumulative impacts of development, and other issues which promote compliance with the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

2. Preparation. The county legislative body, or by resolution of such body the planning board or a special board, may prepare a proposed county comprehensive plan and amendments thereto. In the event the planning board or special board is directed to prepare a proposed comprehensive plan or amendment thereto, such board shall, by resolution, recommend such proposed plan or amendment to the county legislative body.

3. Environmental review. A county comprehensive plan and any amendments thereto shall be subject to the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations. A county comprehensive plan may be designed to also serve as, or be accompanied by, a generic environmental impact statement pursuant to the state environmental quality review act statute and regulations. No further compliance with such law is required for subsequent site specific county actions that are in conformance with the thresholds established for such county actions in the generic environmental impact statements and its findings.

4. Agricultural review and coordination. A county comprehensive plan and any amendments thereto for a county containing all or part of an agricultural district or lands receiving agricultural assessments within its jurisdiction, shall continue to be subject to the provisions of article twenty-five-AA of the agriculture and markets law relating to the enactment and administration of local laws, ordinances, rules or regulations. A newly adopted or amended county comprehensive plan shall take into consideration applicable county agricultural and farmland protection plans as created under article

twenty-five-AAA of the agriculture and markets law.

5. Referrals. The county legislative body shall, prior to adoption, refer the proposed county comprehensive plan or any amendment thereto to the county and regional planning boards as well as to the legislative bodies and to the planning boards of each municipality within the county for review and recommendation.

6. Public hearings; notice.

(a) Prior to adopting or amending a county comprehensive plan, the county legislative body shall hold one or more hearings on such proposed plan or amendments thereto.

(b) Where a special board prepares the proposed county comprehensive plan the county legislative body shall, within ninety days of receiving the special board's recommendations on such proposed plan or amendment, and prior to the adoption of the plan or amendment, hold a public hearing on such proposed plan or amendment.

(c) Notice of a public hearing shall be published in a newspaper of general circulation in the county at least ten calendar days in advance of the hearing. Notice shall also be mailed to the chief executive officer and the chairperson of the planning board of each municipality at least ten days before such hearing. Representatives of the regional or county planning board, the commissioner of transportation or his or her representative, county departments, municipalities, citizens and other interested parties shall be given the opportunity to be heard.

7. Adoption. The county legislative body may adopt by resolution a county comprehensive plan or any amendment thereto.

8. Filing of adopted county comprehensive plan. The adopted county comprehensive plan and any amendments thereto shall be filed in the office of the county clerk or register and a copy thereof filed in the office of the county planning board, with the secretary of state, as well as with the clerk of each municipality within the county.

9. Effect of adoption.

(a) All county land acquisitions and public improvements, including those identified in the county official map adopted or amended pursuant to this article, shall be in accordance with a county comprehensive plan, if one exists.

(b) All plans for capital projects of a municipality or state governmental agency on land included in the county comprehensive plan adopted pursuant to this section shall take such plan into consideration.

10. Periodic review. The county legislative body shall provide, as a component of such proposed county comprehensive plan, the maximum intervals at which the adopted plan shall be reviewed.

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§ 239-e. County official map.

1. Legislative intent. It is the general intent of this section and section two hundred nine-f of this chapter to enable counties to utilize certain regulatory powers which are essential for providing for orderly growth and development, for affording adequate facilities for the safe, convenient, and efficient means for traffic circulation including the vehicular movement of goods, for protecting the public against flood

damage, and for providing needed space for public development. Such purposes are declared to be in promotion of the safety, convenience, and general welfare of the community.

2. Purpose. The county legislative body may adopt an official map in order to facilitate the planning and development of roads and drainage systems and sites for public development. County official maps shall be designed to assist in the protection of rights-of-way that will be needed for widened, realigned or new roads; protect drainage systems; and protect sites for public development. Such county official map shall serve as a basis for the adoption and administration of regulations for the control of development along or otherwise related to roads, drainage channels and sites for public development.

3. Content. The county official map shall show existing and proposed rights-of-way for drainage systems and for county roads as established pursuant to article six of the highway law. Such map shall be consistent with any county comprehensive plan adopted or amended pursuant to this article. In counties where the county legislative body has adopted such county comprehensive plan, the official map may also include: rights-of-way required for any proposed transportation network; and sites for any proposed county, state or federal development facilities, including parks, drainage courses, water courses, and public buildings. No state or federal development facility shall be included, changed or deleted in the official map until approved by the appropriate state or federal agency.

4. Adoption, amendment. After the conduct of a public hearing, as hereinafter provided, the county legislative body may adopt an official map covering the entire county, or portions thereof, and amend such map whenever it may deem it to be in the public interest.

(a) Notice, hearing. A public hearing shall be held on any proposed adoption of, or amendment to, the official county map. Notice of such hearing shall be published at least ten days prior to such hearing in a newspaper of general circulation in the county. Written notice shall be given to the appropriate state or federal agency for the development facilities affected.

(b) Referral to county planning board. Prior to adopting or amending a county official map, the county legislative body shall refer such proposed change to the county planning board, if any, and the county superintendent of highways or commissioner of public works for report thereon within thirty days of such reference.

(c) Referral to municipalities. The county legislative body shall refer such proposed amendment to the legislative body and planning board of each municipality within the county, which may report thereon to the county legislative body and to the county planning board. If the municipal legislative body of a disapproves by resolution such proposed amendment, the county legislative body may not so amend the official map except by a two-thirds vote of said body. In counties where the county legislative body has adopted a county comprehensive plan, the county legislative body may change the official map by a majority vote notwithstanding such municipal disapproval so long as the change is in accordance with the county comprehensive plan.

5. Effect.

(a) The official county map shall be final and conclusive with respect to the location, width and dimensions of all rights-of-way and sites as shown thereon. The county official map shall be deemed to be in addition to, or an amendment of, the official map of any municipality. If a municipality does not have an official map, the county official map as it affects such municipality shall be considered to be the official map of such municipality, and all provisions of law applying to municipal official maps shall be applicable in the case of county official maps where they affect municipalities. The adoption of a county official map shall in no way supersede or otherwise substitute for highway maps or procedures

adopted pursuant to the state highway law. No permit shall be issued for any building in any right-of-way or site, shown or laid out on a county official map, except in accord with the appeal procedures herein.

(b) All county land acquisitions and public improvements shall be in accordance with the county map and any comprehensive plan adopted or amended pursuant to this article.

6. Filing. Certified copies of such county official map and all amendments thereto shall be sent to each municipality, the secretary of state, and appropriate state and federal agencies affected, within ten days of the date of adoption.

7. Appeals. If the land within a right-of-way or site shown or laid out on the county official map is not yielding a fair return on its value to the owner, the owner may appeal to the zoning board of appeals, if any, or other board established by the municipality in which the land is situated to issue variances or make exceptions in zoning regulations.

(a) Notice, hearing. Notice of a public hearing on such appeal shall be published in a newspaper of general circulation in the municipality at least ten days prior to such hearing. Notice of such hearing shall also be given at least ten days in advance by a registered letter to the superintendent of highways or commissioner of public works, to the clerk of the county legislative body, and to the county planning board and those state and federal agencies affected.

(b) Conditions. The zoning board of appeals or other board authorized by the municipal legislative body to issue building permits shall, by the vote of two-thirds of its members in accordance with the provisions of section two hundred thirty-nine-f of this article, have the power to grant a permit for a building in such right-of-way or site which will as little as practicable increase the cost of acquiring such right-of-way or site or tend to cause a change of the county official map. Such board may impose reasonable requirements as a condition of granting such permit, which requirements shall inure to the benefit of the county and of the municipality in which such building is located.

(c) Court review. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals or other board authorized by the municipal legislative body to issue building permits may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such appeal shall be taken in the same manner and pursuant to the same provisions as appeals from the decisions of such zoning board of appeals or other authorized board.

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§ 239-f. Approval of building permits, curb cuts and subdivision plats.

1. Rules and regulations. The county superintendent of highways or the commissioner of public works in cooperation with the county planning board as well as the county building inspector, if any, shall promulgate rules and regulations governing the approval of building permits and curb cuts relating to elements contained in the county official map, including provision for direct application to him or her by prospective builders or by persons desiring to secure access to existing or proposed rights-of-way to alter existing means of access. Any approval of such application shall be subject to all the provisions of law pertaining to the municipality affected.

2. Procedure. No subdivision plat or building permit shall be issued or approved by any municipality when there are proposed structures, proposed new streets, or proposed buildings which shall have frontage on, access to, or be otherwise directly related to any existing or proposed right-of-way or site shown on the county official map, except in accord with the following procedures.

(a) Notification.

(i) Upon receipt of an application for approval of a subdivision plat, the clerk of the municipal planning board shall notify the county planning board and the county superintendent of highways or commissioner of public works.

(ii) Upon receipt of an application for a building permit the municipal building inspector or other authorized municipal official shall notify county officials. The county superintendent of highways or commissioner of public works shall notify appropriate state of federal agencies affected. Such state and federal agencies shall have ten working days in which to file their objections to an application for a building permit.

(b) Report.

(i) The county planning board shall review a subdivision application insofar as proposed structures or new streets may be related to any existing or proposed right-of-way or site shown on the county official map. Within ten working days of receipt of notification of a subdivision plat application, the county planning board shall report to the municipality on its approval, disapproval, or approval subject to stated conditions.

(ii) The county superintendent of highways or commissioner of public works shall review an application for a building permit insofar as proposed building, including curb costs or other means of access, may be related to any existing or proposed right-of-way or site shown on the county official map. Within ten working days of receipt of building permit application the county superintendent of highways or commissioner of public works may consult with the county planning board and shall report to the municipality on his or her approval disapproval, or approval subject to stated conditions. If such superintendent or commissioner fails to make a report within ten working days of such reference, the county shall forfeit the right to suspend action.

(c) Considerations. In making such report the county planning board and the county superintendent of highways or commissioner of public works shall take into consideration the following:

(i) the prospective character of the development;
(ii) any appropriate access standards or non-access or limited access provisions of state and federal agencies;
(iii) the design and frequency of access;
(iv) the traffic which the development will generate and the effect of said traffic upon existing or proposed rights-of-way or sites shown on the county municipal map;
(v) the effect of this development upon drainage as related to drainage systems; and
(vi) the extent to which such development may impair the safety and traffic carrying capacity of existing and proposed rights-of-way affected.

(d) Approval.

(i) A subdivision plat may be approved by the municipality subject to stated conditions, notwithstanding such county planning board report, by a two-thirds vote of all the members.

(ii) A building permit shall be issued in accord with and consistent with such report, provided that the board of appeals of other authorized board may vary the requirements of the report of the county superintendent of highways of the commissioner of public works by a two-thirds vote of all the

members. Before issuing such building permit, a notice of public hearing on such permit shall be published in a newspaper of general circulation in the municipality at least ten working days prior to such hearing. Such notice shall be forwarded at least ten working days in advance by a registered letter to the superintendent of highways or commissioner of public works, to the clerk of the county legislative body, and to the county planning board, if any, and appropriate state and federal agencies affected.

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§ 239-g. Planning associations or federations.

1. Establishment. In any county or counties, the municipalities may form a federation or association to promote community or inter-community planning within or by such municipalities, to provide for the collection and distribution of information on planning, subdivision and zoning matters and kindred subjects and to cooperate with appropriate state and county authorities in matters affecting the county comprehensive plan and county official map.

2. Appropriation, expenses. A municipal legislative body or a county legislative body, is hereby authorized to include annually in the budget and raise by taxation in such municipality or county a sum to meet the actual and necessary expenses of establishing, maintaining and continuing such association or federation. Such expenses may include activities in this state for the purpose of devising practical ways and means for obtaining greater economy and efficiency in the design, layout and development of a municipality or county; for promoting the public health, safety and general welfare by means of local and inter-community planning, subdivision and zoning activities; of for establishing and maintaining information services for the benefit of its members.

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§ 239-h. Regional planning councils.

1. Legislative findings and intent. The legislature hereby finds and determines that:

(a) Significant decisions and actions affecting the immediate and long-range protection, enhancement, growth and development of the state and its communities are made by regional planning councils.

(b) Regional planning councils serve as an increasingly important resource to the state and its localities, helping to establish productive linkages between communities as well as with state and federal agencies.

(c) Through comprehensive planning and special studies, regional planning councils provide focus on opportunities and issues best handled on a broad geographic scale.

(d) The development of a regional comprehensive plan can foster cooperation among governmental agencies in the planning and implementation cooperation in the provision of public services. Similarly, regional comprehensive plans can promote intermunicipal cooperation in the provision of public services.

(e) Citizen participation is essential to the design and implementation of a regional comprehensive plan.

(f) The great diversity of resources and conditions that exist within and among regions requires consideration of such factors by regional planning councils.

(g) It is the intent of the legislature therefore, to provide a permissive and flexible framework within which

regional planning councils can perform their powers and duties.

2. Definitions. For the purposes of this section and section 239-i of this article, the term "municipality" shall mean any city, town, village or county.

3. Establishment of regional planning council.

(a) Creation. Any municipal legislative body may collaborate with the legislative body of a contiguous municipal legislative body to create a regional planning council under this article. The legislative body of the municipalities participating in the regional planning council shall adopt by resolution an agreement setting forth the terms and conditions of such collaboration. The regional planning council shall be considered an agency of a political subdivision or municipality for purposes od sections 103, 104 and article 18 of the general municipal law and articles 6 and 7 of the public officers law.

(b) Membership. Membership and officers on such council shall be selected in a manner to be determined by the collaborating legislative bodies. In making such appointments, the collaborating legislative bodies shall include members from a broad cross section of interests within the region. Consideration should also be given to securing representation by population size, geographic location and type of municipality. The terms of membership as well as the filling of vacancies on such council shall be determined by collaborating legislative bodies. The collaborating legislative bodies may also jointly provide for the appointment of individuals to serve as ex-officio members of the regional planning council. Said ex-officio members or their designees may participate in the deliberations of the council, but shall not have voting privileges.

(c) Membership of elected or appointed officials. No persons shall be precluded from serving as a member of a regional planning council as appointed by municipal legislative body pursuant to this section, because such member is an elected or appointed official of a county or municipality, except that no member of a regional planning council shall vote on any matter before such council which has been the subject of a proposal, application or vote before the county or municipality where he or she serves in such elected or appointed capacity.

(d) Training and attendance requirements. As a condition of appointment to the regional planning council, the collaborating legislative bodies may establish training, continuing education and meeting attendance requirements for such members.

(e) Member reimbursement. The members of such regional planning council shall receive no salary or compensation for their services as members of such council, but may be reimbursed for authorized, actual and necessary travel and expenditures.

(f) Removal of members. The legislative body of each collaborating county and the legislative body of each collaborating municipality may remove any regional planning council member which said county or municipal legislative body has appointed for cause and may provide by resolution for removal of any such regional planning council member for non-compliance with minimum requirements relating to meeting attendance and training as established by the collaborating legislative bodies by resolution.

(g) By-laws. The regional planning council shall adopt by-laws governing its operation which shall be approved by the collaborating legislative bodies and shall keep a record of its resolutions, transactions, findings, and determinations, which record shall be a public record.

(h) Appropriation; expenses. Collaborating legislative bodies may, in their discretion, appropriate and raise by taxation, money for the expenses of the regional planning council; such bodies shall not be

covered with any expense incurred by the regional planning council except pursuant to such appropriation. The legislative body of each collaborating municipality is authorized to provide for the payment of the moneys so appropriated for the expenses of such council to an officer of the council designated in the council by laws to receive such moneys, provided that before any such money shall be paid to such officer, such officer shall have executed an official undertaking conditioned for the faithful performance of duties in the manner provided in section four hundred three of the county law and provided that such undertaking shall have been approved by the legislative body of each municipality. The regional planning council shall the power and authority to employ staff, consultants and other experts and to pay for their services, and to provide for such other expenses as may be necessary and proper.

(i) Authority to receive and expend funds. In furtherance of the purposes of this section, the regional planning council may receive and expend public and private funds and grants from non-public foundations, agencies, corporations and private entities and may apply for and accept grants from the federal government or the state government and enter into contracts for and agree to accept such grants, donations or subsidies in accordance with such reasonable conditions and requirements as may be imposed thereon.

4. Regional planning council powers and duties.

(a) The regional planning council shall have such of the following powers as shall be provided in the agreement among the collaborating municipalities.

(i) conduct surveys, studies and research programs which address regional needs and improve community services

(ii) distribute information resulting from such surveys, studies, and programs:

(iii) prepare a regional comprehensive plan and any amendments thereto pursuant to section two hundred thirty-nine-j of this article;

(iv) consult and cooperate with appropriate state, municipal and public or private agencies in matters affecting the region, including, but not limited to the general protection, enhancement, quality of life, growth and development of the region;

(v) assist with transportation planning in areas of the region not served by metropolitan planning organizations created pursuant to section fifteen-a of the transportation law; and

(vi) conduct review of certain classes of planning and zoning actions by a city, town or village pursuant to sections two hundred thirty-nine-l and two-hundred thirty-nine-m of this article, and review certain subdivision plats pursuant to section two hundred thirty-nine-n of this article.

(b) A regional planning council shall not undertake any capital construction project, including but not limited to the design, acquisition, construction, improvement, reconstruction or rehabilitation of any capital asset, whether in the nature of real or personal property.

(5) Annual report and audit. Every regional planning council shall submit an annual report to the collaborating legislative bodies and to the department of audit and control which report shall include a summary of council activities, including planning and technical services and grant and loan programs, a summary of the financial status of the council, including the annual budget as well as any federal, state and local funding and private sector financial assistance, and a summary of planned

future activities as well as the topics that are required in the by-laws of the regional planning council. Every regional planning council shall engage a certified public accountant to complete an annual financial audit and audit of the internal control structure of the regional planning council, a copy of which shall be included in the annual report.

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§ 239-i. Regional comprehensive plans.

1. Content of a regional comprehensive plan. The regional comprehensive plan may include the following topics of significance at the level of detail adapted to the special requirements of the region:

(a) general statements of goals, objectives, principles, policies, and standards upon which proposals for the immediate and long-range protection, enhancement, growth and development of the region are based;

(b) consideration of regional needs and the official plans of other government units and agencies within the region;

(c) the existing and proposed location and intensity of land uses;

(d) consideration of agricultural uses, historic and cultural resources, coastal and natural resources and sensitive environmental areas;

(e) consideration of population, demographic and socio-economic trends and future projections;

(f) the location and types of transportation facilities, including the reuse of abandoned transportation facilities;

(g) existing and proposed general location of public and private utilities and infrastructure;

(h) existing housing resources and future housing needs, including affordable housing;

(i) the present and future general location of educational and cultural facilities, historic sites, health facilities, and facilities for emergency services;

(j) existing and proposed recreation facilities and parkland;

(k) the present and potential future general location of commercial and industrial facilities;

(l) specific policies and strategies for improving the regional economy in coordination with other plan topics;

(m) proposed measures, programs, devices, and instruments to implement the goals and objectives of the various topics within the regional comprehensive plan;

(n) all or part of the plan of another public agency;

(o) any and all other items which are consistent with the protection, enhancement, orderly growth and development of the region; and

(p) consideration of cumulative impacts of development and other issues which promote compliance with

the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations;

2. Preparation. The regional planning council may prepare a proposed regional comprehensive plan and amendments thereto.

3. Environmental review. A regional comprehensive plan, and any amendment thereto, is subject to the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations. A regional comprehensive plan may be designed to also serve as, or be accompanied by, a generic environmental impact statement pursuant to the state environmental quality review act statute and regulations. No further compliance with such law is required for subsequent site specific actions that are in conformance with the conditions and thresholds established for such actions in the generic environmental impact statement and its findings.

4. Agricultural review and coordination. A regional comprehensive plan and any amendments thereto, for a region containing all or part of an agricultural district or lands receiving agricultural assessments within its jurisdiction, shall continue to be subject to the provisions of article twenty-five-AA of the agriculture and markets law relating to the enactment and administration of local laws, ordinances, rules or regulations. A newly adopted or amended regional comprehensive plan shall take into consideration applicable county agricultural and farmland protection plans as created under article twenty-five-AAA of the agriculture and markets law.

5. Referrals. The regional planning council shall, prior to adoption, refer the proposed regional comprehensive plan or any amendment thereto to the collaborating municipal legislative bodies and planning boards for review and recommendation.

6. Public hearings; notice.

(a) In the event the regional planning council prepares a proposed regional comprehensive plan or amendment thereto, the regional planning council shall hold one or more public hearings in each collaborating municipality and such other meetings as it deems necessary to assure full opportunity for citizen participation in the preparation of such proposed plan or amendment, and in addition, the regional planning council shall hold one or more public hearings in each collaborating municipality prior to adoption of such proposed plan or amendment.

(b) Notice of a public hearing shall be published in a newspaper of general circulation in each collaborating municipality at least ten calendar days in advance of the hearing. Notice shall also be mailed to the chief executive officer and the chairperson of the planning board of each municipality at least ten days before such hearing. The proposed regional planning comprehensive plan or amendment thereto shall be made available for public review during said period at the office of the county clerk of each collaborating municipality, and may be made available at any other place, including a public library.

7. Adoption. The regional planning council may adopt by resolution a regional comprehensive plan or any amendment thereto.

8. Filing of regional comprehensive plan. The adopted regional comprehensive plan and any amendments thereto shall be filed in the office of the clerk of each collaborating municipality.

9. Effect of adoption of the regional comprehensive plan. All plans for capital projects of another

governmental agency on land included in the regional comprehensive plan adopted pursuant to this section shall take such plan into consideration.

10. Periodic review. The regional planning council shall provide, as a component of such proposed regional comprehensive plan, the maximum intervals at which the adopted plan shall be reviewed.

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§ 239-l. Coordination of certain municipal zoning and planning actions; legislative intent and policy.

1. Definitions. For the purposes of this section and sections 239-m and 239-n of this article, the following terms shall apply:

(a) "County planning agency" means a county planning board, commission or other agency authorized by the county legislative body to review proposed actions referenced for inter-community or county-wide considerations subject to the provisions of this section, and sections 239-m, and 239-n of this article.

(b) "Regional planning council" means a regional planning board or agency established pursuant to the provisions of this chapter.

2. Intent. The purposes of this section, sections 239-m and 239-n of this article shall be to bring pertinent inter-community and county-wide planning, zoning, site plan and subdivision considerations to the attention of neighboring municipalities and agencies having jurisdiction. Such review may include intercommunity and county-wide considerations in respect to the following:

(a) compatibility of various land uses with one another;

(b) traffic generating characteristics of various land uses in relation to the effect of such traffic on other land uses and to the adequacy of existing and proposed thoroughfare facilities;

(c) impact of proposed land uses on existing and proposed county or state institutional or other uses;

(d) protection of community character as regards predominant land uses, population density, and the relation between residential and nonresidential areas;

(e) drainage;

(f) community facilities;

(g) official municipal and county development policies, as may be expressed through comprehensive plans, capital programs or regulatory measures; and

(h) such other matters as may relate to the public convenience, to governmental efficiency, and to the achieving and maintaining of a satisfactory community environment.

3. Review considerations. In no way shall the review of inter-community and county-wide considerations pursuant to the provisions of this section, or pursuant to sections 239-m and 239-n of this article, preclude a county planning agency or a regional planning council from making informal comments, or supplying such technical assistance as may be requested by a municipality.

§ 239-m. Referral of certain proposed city, town and village planning and zoning actions to the county planning agency or regional planning council; report thereon; final action.

1. Definitions. As used herein:

(a) The term "proposed" as used in subparagraphs (ii) and (iii) of paragraph (b) of subdivision three of this section shall be deemed to include only those recreation areas, parkways, thruways, expressways, roads or highways which are shown on a county comprehensive plan adopted pursuant to ection two hundred thirty-nine-d of this article or adopted on an official map pursuant to section section two hundred thirty-nine-e of this article.

(b) The term "referring body" shall mean the city, town or village body responsible for final action on proposed actions subject to this section.

(c) The term "full statement of such proposed action" shall mean all materials required by and submitted to the referring body as an application on a proposed action, including a completed environmental assessment form and all other materials required by such referring body in order to make its determination of significance pursuant to the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations. When the proposed action referred is the adoption or amendment of a zoning ordinance or local law, "full statement of such proposed action" shall also include the complete text of the proposed ordinance or local law as well as all existing provisions to be affected thereby, if any, if not already in the possession of the county planning agency or regional planning council. Notwithstanding the foregoing provisions of this paragraph, any referring body may agree with the county planning agency or regional planning council as to what shall constitute a "full statement" for any or all of those proposed actions which said referring body is authorized to act upon.

(d) The term "receipt" shall mean delivery of a full statement of such proposed action, as defined in this section, in accordance with the rules and regulations of the county planning agency or regional planning council with respect to person, place and period of time for submission. In no event shall such rule or regulation define delivery so as to require in hand delivery or delivery more than twelve calendar days prior to the board or county planning agency's or regional planning council's meeting date. In the absence of any such rules or regulations, "receipt" shall mean delivery in hand or by mail to the clerk of the county planning agency or regional planning council. Where delivery is made in hand, the date of receipt shall be the date of delivery. Where delivery is made by mail, the date as postmarked shall be the date of delivery. The provisions of this section shall not preclude the rules and regulations of the county planning agency or regional planning council from providing that the delivery may be a period greater than twelve days provided the referring body and the county planning agency or regional planning council agree in writing to such longer period.

2. Referral of proposed planning and zoning actions. In any city, town or village which is located in a county which has a county planning agency, or, in the absence of a county planning agency, which is located within the jurisdiction of a planning agency or regional planning council duly created pursuant to the provisions of law, each referring body shall, before taking final action on proposed actions included in subdivision three of this section, refer the same to such county planning agency or regional planning council.

3. Proposed actions subject to referral.

(a) The following proposed actions shall be subject to the referral requirements of this section, if they

apply to real property set forth in paragraph (b) of this subdivision:

(i) adoption or amendment of a comprehensive plan pursuant to section two hundred seventy-two-a of the town law, section 7-722 of the village law or section twenty-eight-a of the general city law;
(ii) adoption or amendment of a zoning ordinance or local law;
(iii) issuance of special use permits;
(iv) approval of site plans;
(v) granting of use or area variances;
(vi) other authorizations which a referring body may issue under the provisions of any zoning ordinance or local law.

(a) The proposed actions set forth in paragraph (a) of this subdivision shall be subject to the referral requirements of this section if they apply to real property within five hundred feet of the following:

(i) the boundary of any city, village or town; or
(ii) the boundary of any existing or proposed county or state park or any other recreation area; or
(iii) the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or
(iv) the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines; or
(v) the existing or proposed boundary of any county or state owned land on which a public building or institution is situated; or
(vi) the boundary of a farm operation located in an agricultural district, as defined by article twenty-five-AA of the agriculture and markets law, except this subparagraph shall not apply to the granting of area variances.

(b) The county planning agency or regional planning council may enter into an agreement with the referring body or other duly authorized body of a city, town or village to provide that certain proposed actions set forth in this subdivision are of local, rather than inter-community or county-wide concern, and are not subject to referral under this section.

3. County planning agency or regional planning council review of proposed actions; recommendation, report.

(a) The county planning agency or regional planning council shall review any proposed action referred for inter-community or county-wide considerations, including but not limited to those considerations identified in section two hundred thirty-nine-l of this article. Such county planning agency or regional planning council shall recommend approval, modification, or disapproval, of the proposed action, or report that the proposed action has no significant county-wide or inter-community impact.

(b) Such county planning agency or regional planning council, or an authorized agent of said agency or council, shall have thirty days after receipt of a full statement of such proposed action, or such longer period as may have been agreed upon by the county planning agency or regional planning council and the referring body, to report its recommendations to the referring body, accompanied by a statement of the reasons for such recommendations. If such county planning agency or regional planning council fails to report within such period, the referring body may take final action on the proposed action without such report. However, any county planning agency or regional planning council report received after thirty days or such longer period as may have been agreed upon, but two or more days prior to final action by the referring body, shall be subject to the provisions of subdivision five of this section.

5. Extraordinary vote upon recommendation of modification or disapproval. If such county planning

agency or regional planning council recommends modification or disapproval of a proposed action, the referring body shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof.

6. Report of final action. Within thirty days after final action, the referring body shall file a report of the final action it has taken with the county planning agency or regional planning council. A referring body which acts contrary to a recommendation of modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report.

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§ 239-n. Referral of certain proposed subdivision plats to the county planning agency or regional planning council; report thereon; final action.

1. Definitions. As used herein:

(a) The term "proposed" as used in subparagraphs (ii) and (iii) of paragraph (a) of subdivision three of this section shall be deemed to include only those recreation areas, parkways, thruways, expressways, roads or highways which are shown on a county comprehensive plan, adopted pursuant to subdivision seven of section two hundred thirty-nine-d of this article, or shown on an official map adopted pursuant to section two-hundred thirty-nine-e of this article.

(b) The term "undeveloped plat" shall mean those plats already filed in the office of the clerk of the county in which such plat is located where twenty percent or more of the lots within the plat are unimproved unless existing conditions, such as poor drainage, have prevented their development.

(c) The term "referring body" shall mean the city, town or village body authorized by a municipal legislative body to approve preliminary or final plats or to approve the development of undeveloped plats and/or plats already filed in the office of the county clerk.

2. Referral of proposed plats. In any city, town or village which is located in a county which has a county planning agency authorized by the county legislative body to review preliminary or final plats or to approve the development of undeveloped plats, the clerk of the municipal planning agency, upon receipt of application for preliminary and/or final approval of a subdivision plat or proposal to develop an undeveloped plat and/or plats already filed in the office of the county clerk, shall refer certain of such plats to the county planning agency. In the absence of a county planning agency, the county legislative body may authorize a regional planning council whose geographic area includes the county, to perform the review functions prescribed herein.

3. Plats subject to referral.

(a) The following applications for approval of preliminary or final plats and undeveloped plats shall be subject to the referral requirements of this section, if the application applies to real property within five hundred feet of the following:

(i) the boundary of any city, village, or town; or
(ii) the boundary of any existing or proposed county or state park or other recreation area; or
(iii) the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or
(iv) the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines; or
(v) the existing or proposed boundary of any county or state owned land on which a public building

or institution is situated; or

(vi) the boundary of a farm operation located in an agricultural district, as defined by article twenty-five-AA of the agriculture and markets law.

(b) The county planning agency or regional planning council may enter into an agreement with the referring body or other duly authorized body of a city, town or village to provide that certain proposed plats are of local, rather than inter-community or county-wide concern, and are not subject to referral under this section.

4. County planning agency or regional planning council review of proposed plats; recommendation, report.

(a) The county planning agency or regional planning council, when authorized by the county legislative body, shall review any referred plat for inter-community or county-wide considerations, including but not limited to those considerations identified in section two hundred thirty-nine-l of this article. The county planning agency or regional planning council may adopt such rules and regulations as are necessary to perform such function. Such county planning agency or regional planning council shall recommend approval, modification, or disapproval, of such plat, or report that such plat has no significant county-wide or inter-community impact.

(b) Such county planning agency or regional planning council, or an authorized agent of said agency or council, shall have thirty days after receipt of a preliminary or final plat or proposal to develop an undeveloped plat, or such longer period as may have been agreed upon by the county planning agency or regional planning council and the referring body, to report its recommendations to the referring body, accompanied by a statement of the reasons for such recommendations. If such county planning agency or regional planning council fails to report within such period, the referring body may take final action on the referred plat without such report. However, any county planning agency or regional planning council report received after thirty days or such longer period as may have been agreed upon, but two or more days prior to final action by the referring body, shall be subject to the provisions of subdivision five of this section.

5. Extraordinary vote upon recommendation of modification or disapproval. If such county planning agency or regional planning council recommends modification or disapproval of a referred plat, the referring body shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof.

6. Report of final action. Within thirty days after final action, the referring body shall file a report of the final action it has taken with the county planning agency or regional planning council. A referring body which acts contrary to a recommendation of modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report.

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§ 247. Acquisition of open spaces and areas.

1. Definitions. For the purposes of this chapter an "open space" or "open area" is any space or area characterized by

(1) natural scenic beauty or,

(2) whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources.

For purposes of this section natural resources shall include but not be limited to agricultural lands defined as open lands actually used in bona fide agricultural production.

2. The acquisition of interests or rights in real property for the preservation of open spaces and areas shall constitute a public purpose for which public funds may be expended or advanced, and any county, city, town or village after due notice and a public hearing may acquire, by purchase, gift, grant, bequest, devise, lease or otherwise, the fee or any lesser interest, development right, easement, covenant, or other contractual right necessary to achieve the purposes of this chapter, to land within such municipality. In the case of a village the cost of such acquisition of interests or rights may be incurred wholly at the expense of the village, at the expense of the owners of the lands benefitted thereby, or partly at the expense of such owners and partly at the expense of the village at large as a local improvement in the manner provided by article twenty-two in the village law entitled local improvements.

3. After acquisition of any such interest pursuant to this act the valuation placed on such an open space or area for purposes of real estate taxation shall take into account and be limited by the limitation on future use of the land.

4. For purposes of this section, any interest acquired pursuant to this section is hereby enforceable by and against the original parties and the successors in interest, heirs and assigns of the original parties, provided that a record of such acquisition is filed in the manner provided by section two hundred ninety-one of the real property law. Such enforceability shall not be defeated because of any subsequent adverse possession, laches, estoppel, waiver, change in character of the surrounding neighborhood or any rule of common law. No general law of the state which operates to defeat the enforcement of any interest in real property shall operate to defeat the enforcement of any acquisition pursuant to this section, unless such general law expressly states the intent to defeat the enforcement of any acquisition pursuant to this section.

MISCELLANEOUS SECTIONS OF LAW

EDUCATION LAW

§ 7209. Special provisions. (Excerpt)

1. Every professional engineer and every land surveyor shall have a seal, approved by the board, which shall contain the name of the professional engineer and the words "Licensed Professional Engineer" or the name of the land surveyor and the words "Licensed Land Surveyor" and such other words or figures as the board may deem necessary. All plans, specifications, plats and reports relating to the construction or alteration of buildings or structures prepared by such professional engineer and all plans, specifications, plats and reports prepared by such land surveyor or by a full-time or part-time subordinate under his supervision, shall be stamped with such seal and shall also be signed, on the original with the personal signature of such professional engineer or land surveyor when filed with public officials. No official of this state, or of any city, county, town or village therein, charged with the enforcement of laws, ordinances or regulations shall accept or approve any plans or specifications that are not stamped:

a. With the seal of an architect or professional engineer or land surveyor licensed in this state and bearing the authorized facsimile of the signature of such architect or professional engineer or land surveyor, or

b. With the official seal and authorized facsimile of the signature of a professional engineer or land surveyor not a resident of this state and having no established business in this state, but who is legally qualified to practice as such in his own state or country, provided that such person may lawfully practice as such in this state, and provided further that the plans or specifications are accompanied by and have attached thereto written authorization issued by the department certifying to such right to practice at such time.

3. No county, city, town or village or other political subdivision of this state shall engage in the construction or maintenance of any public work involving engineering or land surveying for which plans, specifications and estimates have not been made by, and the construction and maintenance supervised by, a professional engineer or land surveyor; provided that this section shall not apply to the construction, improvement or maintenance of county roads or town highways, nor to any other public works wherein the contemplated expenditure for the completed project does not exceed five thousand dollars. This section shall not be construed as affecting or preventing any county, city, town or village or other political subdivision of this state from engaging an architect licensed in this state for the preparation of plans, specifications and estimates for and the supervision of construction or maintenance of public works.

7. Nothing in this article shall be construed to apply:

a. To the preparation or execution of designs, drawings, plans or specifications for the construction or installation of machinery, or apparatus constructed or installed by the corporation preparing such designs, drawings, plans or specifications if the supervision of the preparation of any such designs, drawings, plans or specifications, construction or installation is done under the general direction of a professional engineer or land surveyor licensed under this article; or

b. To alterations to any building or structure costing ten thousand dollars or less which do not involve changes affecting the structural safety or public safety thereof nor to farm buildings, including barns, sheds, poultry houses and other buildings used directly and solely for agricultural purposes; nor to residence buildings of gross floor area of fifteen hundred square feet or less, not including garages, carports, porches, cellars, or uninhabitable basements or attics.

§ 7307. Special provisions. (Excerpt)

1. Every architect shall have a seal, approved by the board, which shall contain the name of the architect and either the words "Registered Architect" and such other words or figures as the board may deem necessary. All working drawings and specifications, prepared by such architect or by a full-time or part-time subordinate employed under his supervision, shall be stamped with such seal and shall also be signed on the original with the personal signature of such architect when filed with public officials. Except for plans and specifications excluded from the provisions of this article by section seventy-three hundred six of this article, no official of this state, or of any county, city, town or village therein, charged with the enforcement of laws, ordinances or regulations relating to the construction or alteration of buildings or structures, shall accept or approve any plans or specifications that are not stamped:

a. With the seal of an architect or professional engineer registered in this state and bearing the authorized facsimile of the signature of such architect or professional engineer; or

b. With the official seal and authorized facsimile of the signature of an architect or professional engineer not a resident of this state and having no established business in this state, but who is legally qualified to practice as such in his own state or country, provided that such person holds a limited permit issued by the department, and provided further that the plans or specifications are accompanied by and have attached thereto written authorization issued by the department for the specific project.

5. This article shall not apply to:

    1. Farm buildings, including barns, sheds, poultry houses and other buildings used directly and solely for agricultural purposes; nor to residence buildings of gross area of fifteen hundred square feet or less, not including garages, carports, porches, cellars, or uninhabitable basements or attics; or

    2. Alterations, costing ten thousand dollars or less, to any building or structure within the city of New York and twenty thousand dollars or less, to any building or structure outside the city of New York which do not involve changes affecting the structural safety or public safety thereof.

ENVIRONMENTAL CONSERVATION LAW

REALTY SUBDIVISIONS: SEWERAGE SERVICE

§ 17-1501. Definitions.

1. As used in sections 17-1501 to 17-1505, inclusive, and sections 17-1509 and 17-1511, the word “subdivision” shall mean any tract of land which is divided into five or more parcels, after the effective date of this act, along any existing or proposed street(s), highway(s), easement(s) or right(s)-of-way for sale or for rent as residential lots or residential building plots, and in the county of Suffolk also as business, commercial or industrial lots or building plots, regardless of whether the lots or plots to be sold or offered for sale, or leased for any period of time, are described by metes and bounds or by reference to a map or survey of the property or by any other method of description and regardless of whether the lots or plots are contiguous. A tract of land shall constitute a subdivision upon the sale,

rental or offer for sale or lease of the fifth residential lot or residential building plot therefrom within any consecutive three year period, and at this time the provisions of section 17-1505 of this chapter shall apply to all such parcels thereof, including the first four parcels, regardless of whether said parcels have been sold, rented or offered for sale or lease singly or collectively.

2. The word "tract" shall mean any body of land, including contiguous parcels of land, under one ownership or under common control of any group of persons acting in concert as part of a common scheme or plan.

3. "Residential lot" or "residential building plat" shall mean any parcel of land of five acres or less, any point on the boundary line of which is less than one-half mile from any point on the boundary line of another such lot in the same tract, unless any such lot may not legally be used for residential purposes. Without limiting the generality of the foregoing, the term "residential" shall include temporary, seasonal and permanent residential use.

4. For the purposes of this title sewage shall be defined as any substance, solid or liquid that contains any of the waste products or excrementitious or other wastes or washings from the bodies of human beings or animals.

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§ 17-1503. Local regulations.

1. Any city or county which has established or establishes a city, county or part-county department of health may adopt regulations for the control of such developments. Regulations adopted by a county or city board of health may include, but not be limited to, establishment of such requirements as it may deem necessary to guarantee the installation of such sewage facilities in accordance with the plans heretofore or hereinafter approved by the county or city department of health or any approved revision or revisions thereof.

2. Nothing contained in sections 17-1501 to 17-1505, inclusive, and sections 17-1511 and 17-1513, shall be construed to delegate the general powers of the department nor to impair nor to deprive the department of its powers and functions as now provided by law.

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§ 17-1505. Plans required to be filed and approved.

1. No subdivision or portion thereof shall be sold, offered for sale, leased or rented by any corporation, company or person, and no permanent buildings shall be erected thereon, until a plan or map of such subdivision shall be filed with and approved by the department or city, county or part-county department of health having jurisdiction and such plan or map thereafter filed in the office of the clerk of the county in which such subdivision is located.

2. Such plan or map shall show methods for obtaining and furnishing adequate and satisfactory sewerage facilities to said subdivision.

3. The installation of such facilities shall be in accordance with the plans or any revision or revisions thereof approved by the department or city, county or part-county department of health having jurisdiction.

4. The rules and regulations adopted by the department to implement this title and the provisions of article 70 of this chapter and rules and regulations adopted thereunder shall govern department

processing of approval applications and modifications under this title.

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§ 17-1507. Filing fees to accompany plans.

1. At the time of submitting a plan for approval as required by this title, a filing fee computed at the rate of one dollar and seventy-five cents per lot shall be paid to the department or to the city, county or part-county health district wherein such plans are filed, and where the approval sought is from the department, such additional fee as may be specified in article 70 of this chapter shall also be paid.

2. The department, or the city, county or part-county health district, shall not review or approve any such subdivision map submitted for approval after this section takes effect until such fee, as herein provided, has been received by it.

3. If any plan submitted to the department, or to a city, county or part-county health district, cannot be approved, such plan shall be returned to the person who submitted the plan with a summary of the reasons for disapproval.

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§ 17-1509. Cooperation with the Department of Health.

Notwithstanding any other provision of this title the Commissioner of Environmental Conservation is empowered to make administrative arrangements with the Commissioner of Health for joint or cooperative administration of this title and title II of Article 11 of the Public Health Law, such that only one plan must be filed and paid, except that where department approval is sought in connection with a particular plan or map, such additional fee as may be specified in article 70 of this chapter shall also be paid.

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§ 17-1511. Duty of county clerk or register in respect to filing of plans and map.

The county clerk or register shall not file nor record nor accept for filing or recording any map or plat showing a subdivision of land in any town, village or city having a population of less than one million unless there is endorsed thereon or annexed thereto a certificate of the department or city, county or part-county department of health having jurisdiction approving the sewerage systems proposed or installed for such subdivision and consenting to the filing of such map or plat.

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§ 17-1513. Remedy for purchaser of one parcel of unapproved realty subdivision.

1. The owner of a parcel of land acquired as one parcel for residential purposes may apply to the department or local health department having jurisdiction for a certificate approving the sewage facilities for said parcel as adequate and satisfactory. The application shall include the description of the parcel as specified in the instrument, by which owner acquired title.

2. The proper department shall entertain said application, and issue said certificate providing the sewage facilities will not, in the opinion of such department, result in the contravention of standards adopted for and assigned to the receiving waters pursuant to this chapter, or be injurious to public health for the public enjoyment of said waters, the propagation and protection of fish and wild life or the industrial development of the state or result in the exposure of sewage on the ground surface or impair the quality of the ground water for drinking purposes or otherwise create a nuisance, or menace or potential menace to health.

3. The certificate approving the sewage facilities for said parcel shall contain the name of the owner-applicant and the description of the property set forth in the application. The owner shall append the certificate of approval to a verified petition directed to the county clerk of the county wherein the property is located, praying that the petition and certificate of approval annexed be recorded and indexed against the owner-petitioner.

4. The county clerk upon receiving the petition with annexed certificate of approval, and upon tender of the lawful recording fees, shall record the same in his office and index it against the owner-petitioner. The recording of the petition with annexed certificate of approval shall be deemed compliance with section 17-1505, for the parcel described.

5.a. This section shall apply only to a single residential lot which was acquired without having complied with the provisions of former section 89 of the Public Health Law or section 17-1505 of this title but was:

1. acquired by the owner-applicant prior to January first, nineteen hundred seventy-one; or

2. acquired by the owner-applicant through devise or intestate succession; or

3. not at the time of acquisition of title by the owner-applicant, a part of a subdivision, as such term is defined in section 17-1501 of this title.

b. In addition, this section shall apply to a single residential lot which the appropriate department deems proper for approval because of hardship or other special circumstances established to its satisfaction by the owner-applicant.

MINED LAND RECLAMATION ACT

§ 23-2703. Declaration of policy.

1. The legislature hereby declares that it is the policy of this state to foster and encourage the development of an economically sound and stable mining industry, and the orderly development of domestic mineral resources and reserves necessary to assure satisfaction of economic needs compatible with sound environmental management practices. The legislature further declares it to be the policy of this state to provide for the management and planning for the use of these non-renewable natural resources and to provide, in con- junction with such mining operations, for reclamation of affected lands; to encourage productive use including but not restricted to the planting of forests, the planting of crops for harvest, the seeding of grass and legumes for grazing purposes, the protection and enhancement of wildlife and aquatic resources, the establishment of recreational, home, commercial, and industrial sites; to provide for the conservation, development, utilization, management and appropriate use of all the natural resources of such areas for compatible multiple purposes; to prevent pollution; to protect and perpetuate the taxable value of property; to protect the health, safety and general welfare of the people, as well as the natural beauty and aesthetic values in the affected areas of the state.

2. For the purposes stated herein, this title shall supersede all other state and local laws relating to the extractive mining industry; provided, however, that nothing in this title shall be construed to prevent any local government from:

a. enacting or enforcing local laws or ordinances of general applicability, except that such local laws or

ordinances shall not regulate mining and/or reclamation activities regulated by state statute, regulation, or permit; or

b. enacting or enforcing local zoning ordinances or laws which determine permissible uses in zoning districts. Where mining is designated a permissible use in a zoning district and allowed by special use permit, conditions placed on such special use permits shall be limited to the following:

(I) ingress and egress to public thoroughfares controlled by the local government;

(ii) routing of mineral transport vehicles on roads controlled by the local government;

(iii) requirements and conditions as specified in the permit issued by the department under this title concerning setback from property boundaries and public thoroughfare rights-of-way natural or man-made barriers to restrict access, if required, dust control and hours of operation, when such requirements and conditions are established pursuant to subdivision three of section 23-2711 of this title;

(iv) enforcement of reclamation requirements contained in mined land reclamation permits issued by the state; or

c. enacting or enforcing local laws or ordinances regulating mining or the reclamation of mines not required to be permitted by the state.

3. No agency of this state shall consider an application for a permit to mine as complete or process such application for a permit to mine pursuant to this title, within counties with a population of one million or more which draws its primary source of drinking water for a majority of county residents from a designated sole source aquifer, if local zoning laws or ordinances prohibit mining uses within the area proposed to be mined.

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§ 23-2711. Permits.

1. After September first, nineteen hundred ninety-one, any person who mines or proposes to mine from each mine site more than one thousand tons or seven hundred fifty cubic yards, whichever is less, of minerals from the earth within twelve successive calendar months or who mines or proposes to mine over one hundred cubic yards of minerals from or adjacent to any body of water not subject to the jurisdiction of article fifteen of this chapter or to the public lands law shall not engage in such mining unless a permit for such mining operation has been obtained from the department. A separate permit shall be obtained for each mine site.

2. Applications for permits may be submitted for annual terms not to exceed five years. A complete application for a new mining permit shall contain the following:

(a) completed application forms;

(b) a mined land-use plan;

(c) a statement by the applicant that mining is not prohibited at that location; and

(d) such additional information as the department may require.

3. Upon receipt of a complete application for a mining permit, for a property not previously permitted pursuant to this title, a notice shall be sent by the department, by certified mail, to the chief administrative officer of the political subdivision in which the proposed mine is to be located (hereafter, "local government"). Such notice will be accompanied by copies of all documents which comprise the complete application and shall state whether the application is a major project or a minor project as described in article seventy of this chapter.

(a) The chief administrative officer may make a determination, and notify the department and applicant, in regard to:

(i) appropriate setbacks from property boundaries or public thoroughfare rights-of-way,

(ii) manmade or natural barriers designed to restrict access if needed, and, if affirmative, the type, length, height and location thereof,

(iii) the control of dust,

(iv) hours of operation, and

(v) whether mining is prohibited at that location.

Any determination made by a local government hereunder shall be accompanied by supporting documentation justifying the particular determinations on an individual basis. The chief administrative officer must provide any determinations, notices and supporting documents according to the following schedule:

(i) within thirty days after receipt for a major project,

(ii) within thirty days after receipt for a minor project.

(b) If the department finds that the determinations made by the local government pursuant to paragraph (a) of this subdivision are reasonable and necessary, the department shall incorporate these into the permit, if one is issued. If the department does not agree that the determinations are justifiable, then the department shall provide a written statement to the local government and the applicant, as to the reason or reasons why the whole or a part of any of the determinations was not incorporated.

(c) A proposed mine of five acres or greater total acreage, regardless of length of the mining period, shall be a major project. The department shall, by regulation, provide a minimum thirty day public comment period on all permit applications for mined land reclamation permits classified as major projects.

4. Upon approval of the application by the department and receipt of financial security as provided in section 23-2715 of this title, a permit shall be issued by the department. Upon issuance of a permit by the department, the department shall forward a copy thereof by certified mail, to the chief executive officer of the county, town, village, or city in which the mining operation is located. The department may include in permits such conditions as may be required to achieve the purposes of this title.

5. A permit issued pursuant to this title or a certified copy thereof, must be publicly displayed by the permittee at the mine and must at all times be visible, legible, and protected from the elements.

6. The department may suspend or revoke a permit to mine for repeated or willful violation of any of the terms of the permit or provisions of this title or for repeated or willful deviation from those descriptions

contained in the mined land-use plan. The department may refuse to renew a permit upon a finding that the permittee is in repeated or willful violation of any of the terms of the permit, this title or any rule, regulation, standard, or condition promulgated thereto.

7. Nothing in this title shall be construed as exempting any person from the provisions of any other law or regulation not otherwise superseded by this title.

8. Notwithstanding any other provision of law, counties, cities, towns and villages shall be exempted from the fees for the permit, application, amendment and renewal required by this article.

9. Counties, cities, towns and villages shall not be required to obtain a permit if such county, city, town or village mines or proposes to mine from any mine site less than one thousand tons or seven hundred fifty cubic yards, whichever is less, of minerals from the earth within twelve successive calendar months and which does not require a permit pursuant to title five of article fifteen of this chapter.

10. The applicant, permittee or, in the event no application has been made or permit issued, the person engaged in mining shall have the primary obligation to comply with the provisions of this title as well as the conditions of any permit issued thereunder.

11. Permits issued pursuant to this title shall be renewable. A complete application for renewal shall contain the following:

(a) completed application forms;

(b) an updated mining plan map consistent with paragraph (a) of subdivision one of section 23-2713 of this title and including an identification of the area to be mined during the proposed permit term;

(c) a description of any changes to the mined land-use plan; and

(d) an identification of reclamation accomplished during the existing permit term.

12. The procedure for transfer of a permit issued pursuant to this title is the procedure for permit modification pursuant to article seventy of this chapter.

13. The rules and regulations adopted by the department to implement this title and the provisions of article seventy and rules and regulations adopted hereunder shall govern permit applications, renewals, modifications, suspensions and revocations under this title.

PUBLIC HEALTH LAW

REALTY SUBDIVISIONS: WATER SUPPLY

§ 1115. Realty subdivisions; definitions.

1. As used in sections one thousand one hundred fifteen to one thousand one hundred eighteen of this chapter, inclusive, the word "subdivision" shall mean any tract of land which is divided into five or more parcels, after the effective date of this act, along an existing or proposed street(s), highway(s), easement(s) or right(s)- of-way for sale or for rent as residential lots or residential building plots, and

in the county of Suffolk also as business, commercial or industrial lots or building plots, regardless of whether the lots or plots to be sold or offered for sale, or leased for any period of time, are described by metes and bounds or by reference to a map or survey of the property or by any other method of description and regardless of whether the lots or plots are contiguous. A tract of land shall constitute a subdivision upon the sale, rental or offer for sale or lease of the fifth residential lot or residential building plot therefrom within any consecutive three year period, and at this time the provisions of section eleven hundred sixteen of the public health law shall apply to all such parcels thereof, including the first four parcels, regardless of whether said parcels have been sold, rented or offered for sale or lease singly or collectively.

2. The word "tract" shall mean any body of land, including contiguous parcels of land, under one ownership or under common control of any group of persons acting in concert as part of a common scheme or plan.

3. "Residential lot" or "residential building plot" shall mean any parcel of land of five acres or less, any point on the boundary line of which is less than one-half mile from any point on the boundary line of another such lot in the same tract, unless any such lot may not legally be used for residential purposes. Without limiting the generality of the foregoing, the term "residential" shall include temporary, seasonal and permanent residential use.

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§ 1115-a. Remedy for purchaser of one parcel of unapproved realty subdivision.

1. The owner of a parcel of land acquired as one parcel for residential purposes may apply to the local or state health department having jurisdiction for a certificate approving the water supply for said parcel as adequate and satisfactory. The application shall include the description of the parcel as specified in the instrument, by which owner acquired title.

2. The proper department shall entertain said application and issue said certificate providing that the water supply shall, in the opinion of such department, be adequate in quality and potable and unobjectionable in physical and chemical quality and not be or become so polluted or subject to such pollution as to constitute a menace or potential menace to the public health or the health of persons using or who may use the water thereby supplied.

3. The certificate approving the water supply for said parcel shall contain the name of the owner-applicant and the description of the property set forth in the application. The owner shall append the certificate of approval to a verified petition directed to the county clerk of the county wherein the property is located, praying that the petition and certificate of approval annexed be recorded and indexed against the owner-petitioner.

4. The county clerk upon receiving the petition with annexed certificate of approval, and upon tender of the lawful recording fees, shall record the same in his office and index it against the owner-petitioner. The recording of the petition with annexed certificate of approval shall be deemed compliance with section eleven hundred sixteen of this title, for the parcel described.

5. This section shall apply only to a single residential lot which was acquired May third, nineteen hundred sixty-six without having complied with the provisions of former section eighty-nine of the public health law or section eleven hundred sixteen of this title but was:

(a) acquired by the owner-applicant prior to January first, nineteen hundred seventy-one; or

(b) acquired by the owner-applicant through devise or intestate succession; or

(c) not at the time of acquisition of title by the owner-applicant, a part of a subdivision, as such term is defined in section eleven hundred fifteen of this title. In addition, this section shall apply to a single residential lot which the appropriate department deems proper for approval because of hardship or other special circumstances established to its satisfaction by the owner-applicant.

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§ 1116. Realty subdivisions; plans required to be filed and approved.

1. No subdivision or portion thereof shall be sold, offered for sale, leased or rented by any corporation, company or person, and no permanent building shall be erected thereon, until a plan or map of such subdivision shall be filed with and approved by the department or city, county, or part-county department of health having jurisdiction and in the county of Suffolk until a plan or map shall have been also filed with and approved by the county department of environmental control and such plan or map thereafter filed in the office of the clerk of the county in which such subdivision is located.

2. Such plan or map shall show methods for obtaining and furnishing adequate and satisfactory water supply to said subdivision.

3. The installation of such facilities shall be in accordance with the plans or any revision or revisions thereof approved by the department or city, county or part-county department of health having jurisdiction.

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§ 1117. Realty subdivisions; duty of county clerk or register in respect to filing of plans and map.

The county clerk or register shall not file nor record nor accept for filing or recording any map or plat showing a subdivision of land in any town, village or city having a population of less than one million unless there is endorsed thereon or annexed thereto a certificate of the department or city, county or part-county department of health having jurisdiction approving the water supply system proposed or installed for such subdivision and consenting to the filing thereof.

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§ 1118. Realty subdivisions; local regulations.

1. Any city or county which has established or establishes a city, county or part-county department of health may adopt regulations for the control of such developments. Regulations adopted by a county or city board of health may include, but not be limited to, establishment of such requirements as it may deem necessary to guarantee the installation of such water supply in accordance with the plans heretofore or hereinafter* approved by the county or city department of health or any approved revision or revisions thereof.

2. Nothing contained in sections one thousand one hundred fifteen to one thousand one hundred eighteen of this chapter, inclusive, shall be construed to delegate the general powers of the department of environmental conservation nor to impair nor to deprive such department of its powers and functions as now provided by law.

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§ 1119. Realty subdivisions; filing fees to accompany plans.

1. At the time of submitting a plan for approval as required by this article, a filing fee computed at the rate of twelve dollars and fifty cents per lot shall be paid to the department or to the city, county or part-county health district wherein such plans are filed.

2. The department, or the city, county or part-county health district, shall not review or approve any such subdivision map submitted for approval after this section takes effect until such fee, as herein provided, has been received by it.

3. If any plan submitted to the department, or to a city, county or part-county health district, cannot be approved, such plan shall be returned to the person who submitted the plan with a summary of the reasons for disapproval.

4. Notwithstanding any other provision of this title the commissioner of health is empowered to make administrative arrangements with the commissioner of environmental conservation for joint or cooperative administration of this title and title fifteen of article seventeen of the environmental conservation law, such that only one plan must be filed and only one fee totaling twenty- five dollars per lot must be paid.

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§ 1120. Realty subdivisions; regulation by commissioner.

The commissioner of health may from time to time establish by rule or regulation standards for subdivisions necessary to effect the purposes of this title and not inconsistent with regulations of a city, county or part-county department of health having jurisdiction, now or hereafter adopted pursuant to law. In the event of and to the extent of such inconsistency, the standards established by the commissioner shall be deemed inapplicable.

HIGHWAY LAW

§ 89. Control of junkyards and scrap metal processing facilities.

(a) Definitions. As used in this section:

(a) "Interstate highway system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated, by the commissioner of transportation, and approved by the secretary of commerce or the secretary of transportation of the United States pursuant to the provisions of title twenty-three of the United States code, as amended.

(b) "Primary highway system" means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the commissioner of transportation, and approved by the secretary of commerce or the secretary of transportation of the United States pursuant to the provisions of title twenty-three of the United States code, as amended.

(c) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, scrapped, ruined, dismantled or wrecked motor vehicles or parts thereof, iron, steel and other old or scrap ferrous or nonferrous material.

(d) "Junkyard" means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying or selling junk, and shall include garbage dumps and sanitary fills.

(e) "Scrap metal processing facility" means an establishment having facilities for processing iron, steel, or nonferrous scrap and whose principal produce is scrap iron, steel or nonferrous scrap for sale for remelting purposes only.

2. The commissioner of transportation is hereby authorized and directed to implement a program prior to January first, nineteen hundred sixty-eight, for the effective control of the establishment and maintenance of junkyards and scrap metal processing facilities within one thousand feet of the nearest edge of the right of way and visible from the main traveled way of the interstate and primary highway systems. Effective control means that by January first, nineteen hundred sixty-eight, such junkyards and scrap metal processing facilities shall conform with subdivision four of this section or be screened by natural objects, plantings, fences or other appropriate means so as not to be visible from the main traveled way of such systems, or shall be removed from sight on or prior to July first, nineteen hundred seventy.

3. The commissioner of transportation is hereby authorized to promulgate and enforce regulations which are consistent with the purposes of this act and with section one hundred thirty-six of title twenty-three of the United States code, any amendments made thereto and the rules and regulations promulgated thereunder, in implementing such effective control program. Such regulations may provide standards for location, planting, construction and maintenance, including the materials used in any screening or fencing required by this section.

4. No person, firm or corporation shall establish, operate or maintain a junkyard or scrap metal processing facility, any portion of which is within one thousand feet of the nearest edge of the right-of-way of any interstate or primary highway, except the following:

(a) Those which are screened by natural objects, plantings, fences or other appropriate means so as not to be visible from the main traveled way of the interstate or primary highway system, or otherwise removed from sight.

(b) Those located within areas which are zoned for industrial use under authority of the state law.

(c) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by the regulations promulgated by the commissioner of transportation.

(d) Those which are not visible from the main traveled way of the interstate or primary highway system.

5. Any junkyard or scrap metal processing facility not conforming with subdivision four of this section and lawfully in existence on October twenty-second, nineteen hundred sixty-five; or lawfully along any highway made a part of the interstate or primary highway systems on or after October twenty-second, nineteen hundred sixty-five, and prior to January first, nineteen hundred sixty-eight, which is within one thousand feet of the nearest edge of the right-of-way and visible from the main traveled way of any highway on the interstate or primary highway systems, shall be screened, if feasible, by the commissioner of transportation at locations within the highway right-of-way or in areas acquired for such purposes outside the right-of-way so as not to be visible from the main traveled way of such highways. The commissioner of transportation may acquire such property as may be necessary for the purposes of this subdivision in the same manner as other property is acquired for state highway purposes pursuant to this chapter, except that any property in the city of New York, which is deemed by the commissioner of transportation and the city of New York to be necessary for the purposes of this subdivision, shall be acquired by the city of New York

in the same manner as provided in section three hundred forty-nine-c of this chapter relating to the acquisition of property for the state arterial system in the city of New York.

6. When the commissioner of transportation determines that the topography of the land adjoining the highway will not permit adequate screening of any junkyard or scrap metal processing facility specified in subdivision five of this section or the screening of such junkyard or scrap metal processing facility would not be economically feasible, the commissioner of transportation is authorized to acquire such property, in the same manner as other property is acquired for state highway purposes pursuant to this chapter, except that any property in the city of New York, which is deemed by the commissioner of transportation and the city of New York to be necessary for the purposes of this subdivision, shall be acquired by the city of New York in the same manner as provided in section three hundred forty-nine-c of this chapter relating to the acquisition of property for the state arterial system in the city of New York, as may be necessary to secure the relocation, removal or disposal of such junkyard or scrap metal processing facility, and to pay for the costs of relocation, removal or disposal thereof. Where additional property is acquired for the relocation of such junkyard, or scrap metal processing facility, the commissioner may enter into a written agreement with the owner of such junkyard or scrap metal processing facility to convey such property as is deemed necessary for the purposes of this subdivision to such owner on terms beneficial to the state. In connection with the acquisition of property for the purposes of this section, the commissioner of transportation may acquire, in the same manner as property is acquired for state highway purposes pursuant to this chapter, and dispose of, in any reasonable manner, all or any part or portion of the junk on such property.

7. Any junkyard or scrap metal processing facility established or maintained in violation of this section or any rule or regulation promulgated pursuant thereto, is hereby declared to be, and is, a public nuisance and such junkyard or scrap metal processing facility may be abated and removed through an action at law or in equity, or a combination thereof, brought by the commissioner of transportation in the name of the people of the state of New York, or such junkyard or scrap metal processing facility may be abated and removed by the commissioner of transportation giving thirty days' notice, by registered mail, to the owner of the property on which such junkyard or scrap metal processing facility is located to remove same and if the owner of the property fails to act within thirty days as required in the notice, the commissioner of transportation or his duly authorized agent shall cause the removal of such junkyard or scrap metal processing facility at the expense of the owner of the property.

8. Nothing in this section shall be construed to abrogate or affect the provisions of any statute, lawful ordinance, regulation or resolution which are more restrictive than the provisions of this section.

9. The commissioner of transportation is hereby authorized to enter into an agreement or agreements with the secretary of transportation of the United States, as provided by title twenty-three of the United States code, as amended, relating to the control of junkyards and scrap metal processing facilities in areas adjacent to the interstate and primary highway systems, and to take action in the name of the people of the state of New York to comply with the terms of any such agreement.

REAL PROPERTY LAW

§ 333. When conveyances of real property not to be recorded.

1. After September thirtieth, nineteen hundred and ten, a recording officer shall not record or accept for record any conveyance of real property executed subsequent to said September thirtieth, nineteen hundred and ten, unless the residence of the purchaser and if in a city of over five hundred thousand inhabitants according to the last federal census the street number of the residence of the purchaser shall be stated therein and such residence and street number shall be recorded with the conveyance. After May first, nineteen hundred and fourteen, a recording officer shall not record or accept for record any conveyance of real property executed subsequent to said first day of May, nineteen hundred and fourteen, if in a city of over two hundred thousand inhabitants according to the last federal census, unless the street number of the residence of the purchaser shall be stated therein and such residence and street number shall be recorded with the conveyance; provided, however, that this section shall not operate to invalidate any conveyance of real property, heretofore or hereafter executed, in which the residence or street number of the purchaser shall not have been stated, nor affect the record of any such conveyance accepted for record and recorded, heretofore or hereafter, contrary to the provisions of this section, nor impair any title founded on such a conveyance or record. After July first, nineteen hundred thirty-five, a recording officer of the county of Nassau shall not record or accept for record any conveyance of real property executed subsequent to said first day of July, nineteen hundred thirty-five, unless the city or incorporated village in which such real property is located be stated therein, and if not located in a city or incorporated village, then the township in which located shall be stated therein; provided, however, that this section shall not operate to invalidate any conveyance of real property, heretofore or hereafter executed, in which the description fails to designate the city or incorporated village in which the real property is located, nor affect the record of any such conveyance accepted for record and recorded, heretofore or hereafter contrary to the provisions of this section, nor impair any title founded on such a conveyance or record.

1-a. After September first, nineteen hundred forty, a recording officer shall not record or accept for record any conveyance of real property executed subsequent to said first day of September, nineteen hundred forty, unless the residence of the seller and of the purchaser, including the street and street number of the residence if any there be, shall be stated therein and such residences, including street and street number if any, shall be recorded with the conveyance; provided, however, that the provisions of this subdivision shall not operate to invalidate any conveyance of real property, executed subsequent to said first day of September, nineteen hundred forty, in which the residence, including street and street number if any, of the seller and of the purchaser shall not have been stated, nor affect the record contrary to the provisions of this subdivision, nor impair any title founded on such a conveyance or record.

1-b. With respect to instruments executed after September first, nineteen hundred forty-four, the terms seller and purchaser, as used in this section, shall include any party to a conveyance of real property.

1-c. With respect to instruments executed after September first, nineteen hundred forty-four, the term conveyance of real property as used in this section shall include any conveyance as defined in subdivision three of section two hundred ninety of the real property law and any instrument entitled to be recorded under section two hundred ninety-four of the real property law.

1-d. After September first, nineteen hundred fifty-five a recording officer shall not record or accept for record any deed transferring title to real property executed subsequent to September first, nineteen hundred fifty-five, unless the city, town and village in which such real property is located be stated therein; provided, however, that this section shall not operate to invalidate any such deed, heretofore or hereafter executed, in which the description fails to designate the city, town and village in which the real property is located, nor affect the record of any such deed accepted for record and recorded, heretofore or hereafter contrary to the provisions of this section, nor impair any title founded on such

deed or record.

1-e. i. A recording officer shall not record or accept for record any conveyance of real property affecting land in New York state unless accompanied by a transfer report form prescribed by the state board of real property services and a fee of twenty-five dollars pursuant to subdivision three of this section.

ii. Such transfer report form shall contain information as required by such board including:

(1) the mailing address of the new owner;

(2) the tax billing address, if different from the owner's mailing address;

(3) the appropriate tax map designation, if any;

(4) a statement of the full sales price relating thereto;

(5) a statement whether the parcel is located in an agricultural district and if so a disclosure notice has been provided pursuant to section three hundred thirty-three-c of this article;

(6) a statement whether the property described in such deed is the entire parcel owned by the transferor or transferors;

(7) that in the event the parcel conveyed by such deed is a portion of the parcel owned by the transferor or transferors, a statement whether the city, town or village in which such property is situated has a planning board or other entity empowered to approve subdivisions; and

(8) that in the event such planning board or other entity is empowered to approve subdivisions, a statement whether the parcel conveyed by such deed is

(a) not subject to such subdivision approval or

(b) such subdivision has been approved by the respective city, town or village planning board or other entity empowered to approve subdivisions.

iii. Such transfer report form shall not constitute part of nor be retained with the record of conveyance. For the purposes of this subdivision, the term "tax billing address" means the address designated by the owner to which tax bills shall be sent, and the term "full sales price" means the price actually paid or required to be paid for the real property or interest therein, whether paid or required to be paid by money, property, or any other thing of value, including the cancellation or discharge of an indebtedness or obligation, and the amount of any lien or encumbrance on the real property or interest therein which existed before the delivery of the deed and which remains thereon after the delivery of the deed, but excluding the fair market value of any personal property received by the buyer.

iv. The provisions of this subdivision shall not operate to invalidate any conveyance of real property where one or more of the items designated as subparagraphs one through eight of paragraph ii of this subdivision, have not been reported or which has been erroneously reported, nor affect the record contrary to the provisions of this subdivision, nor impair any title founded on such conveyance or record. Such form shall be certified as to the accuracy of the contents by the transferor or transferors and the transferee or transferees. Provided, however, if the conveyance

of real property occurs as a result of a taking by eminent domain, tax foreclosure, or other involuntary proceeding such form may be certified only by either the condemnor, tax district, or other party to whom the property has been conveyed, or by that party's attorney. The provisions of this subdivision shall not apply to a county wholly within the boundaries of a city. Any deed executed and delivered prior to July first, nineteen hundred ninety-four may nevertheless be recorded in the office of the county clerk providing there is submitted therewith, and in place of such form, a separate statement signed by the transferor or transferors and the transferee or transferees or any person having sufficient knowledge to sign such form which contains the same information required by the state board of equalization and assessment as set forth in subparagraphs one through four of paragraph ii of this subdivision.

1-g. Each conveyance of real property affecting land in Suffolk county presented to the recording officer of such county for recording shall, in addition to complying with the requirements of subdivision one-e of this section, contain in the body thereof or have endorsed thereon the map designation or designations of the property maps of the real property tax service agency of such county. The recording officer of such county shall not record or accept for record, any conveyance of real property affecting land in such county unless said instrument of conveyance is accompanied by a three dollar certification fee for each parcel of real property conveyed, to defray the cost of verifying the tax map designation prior to recording. This certification fee shall be payable to the Suffolk county clerk and shall be in addition to any other applicable recording fees or charges. The provisions of this subdivision shall not operate to invalidate any conveyance of such real property on which the appropriate map designation or designations shall not have been stated or which may have been erroneously stated nor affect the record contrary to the provisions of this subdivision, nor impair any title founded on such conveyance or record.

2. A recording officer shall not record or accept for record any conveyance of real property, unless said conveyance in its entirety and the certificate of acknowledgment or proof and the authentication thereof, other than proper names therein which may be in another language provided they are written in English letters or characters, shall be in the English language, or unless such conveyance, certificate of acknowledgment or proof, and the authentication thereof be accompanied by and have attached thereto a translation in the English language duly executed and acknowledged by the person or persons making such conveyance and proved and authenticated, if need be, in the manner required of conveyances for recording in this state, or, unless such conveyance, certificate of acknowledgment or proof, and the authentication thereof be accompanied by and have attached thereto a translation in the English language made by a person duly designated for such purpose by the county judge of the county where it is desired to record such conveyance or a justice of the supreme court and be duly signed, acknowledged and certified under oath or upon affirmation by such person before such judge, to be a true and accurate translation and contain a certification of the designation of such person by such judge.

3. The recording officer of every county shall impose a fee of twenty-five dollars for every sales reporting form submitted for recording as required under subdivision one-e of this section. In the city of New York, the recording officer shall impose a fee of twenty-five dollars for each real property transfer tax form filed in accordance with chapter twenty-one of title eleven of the administrative code of the city of New York. The recording officer shall return eighty-eight percent of the revenue collected to the state office of real property services every month. All revenue collected and returned to the state office of real property services shall be deposited in the improvement of real property tax administration account established pursuant to section ninety-seven-ll of the state finance law. The remainder of the revenue collected shall be retained by the county or by the city of New York.

§ 333-c. Lands in agricultural districts; disclosure.

Prior to the sale, purchase, or exchange of real property located partially or wholly within an agricultural district established pursuant to the provisions of article twenty-five-AA of the agriculture and markets law, the prospective grantor shall deliver to the prospective grantee a notice which states the following: "It is the policy of this state and this community to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products, and also for its natural and ecological value. This notice is to inform prospective residents that the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors." Failure of the seller to provide such information to the buyer shall not prevent the recording officer from filing such deed.

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§ 334. Maps to be filed; penalty for nonfiling.

It shall be the duty of every person or corporation who, as owner or agent, subdivides real property into lots, plots, blocks or sites, with or without streets, for the purpose of offering such lots, plots, blocks or sites for sale to the public, to cause a map thereof, together with a certificate of the licensed land surveyor filing said map attached showing the date of the completion of the survey by said land surveyor and of the making of the map by said land surveyor and the name of the subdivision as stated by the owner, to be filed in the office of the county clerk or, in any county having a register of deeds, in the office of the register of deeds, of the county where the property is situated prior to the offering of any such lots, plots, blocks or sites for sale; and a duplicate copy of such map shall also be filed in the office of the city, town or village clerk, where the property is situated, and, if situated in a county maintaining a tax map department, a copy shall also be filed with such department, before any such sale. All such maps must be printed upon linen or canvas-backed paper or drawn with a pen and India ink upon tracing cloth or printed on mylar, and must be a minimum of eight and one-half inches by eleven inches, and a maximum of thirty-four inches by forty-four inches in size, except that in the counties of Westchester, Putnam, and Rockland all maps presented for filing must be printed or drawn with pen and ink upon tracing cloth or printed on mylar; except that in the counties of Saratoga, Otsego, Dutchess and Monroe, all maps presented for filing in the office of the county clerk must be printed or drawn with pen and India ink upon transparent tracing cloth or printed on mylar or polyester film or be photographic copies on transparent tracing cloth or printed on mylar or polyester film and further, that such maps to be filed in the counties of Saratoga and Otsego shall be not less than eight and one-half inches by fourteen inches nor more than thirty inches by forty-two inches in size; except that in the county of Clinton all maps presented for filing in the office of the county clerk must be printed or drawn with pen and ink upon tracing cloth or canvas-backed paper or printed on mylar and must be either eighteen inches by twenty-four inches or twenty-four inches by thirty-six inches in size, and in the county of Putnam must be not less than twenty inches by twenty inches and not more than thirty-six inches by forty-eight inches in size, and in the counties of Warren, Sullivan and Greene all maps presented for filing must be printed or drawn with pen and India ink upon transparent tracing cloth or polyester film or printed on mylar or be photographic copies on transparent tracing cloth or polyester film or printed on mylar and further, that such maps to be filed in Warren county, must be not less than eight and one-half inches by eleven inches nor more than twenty-two inches by thirty-four inches, in the county of Sullivan must be not less than eight and one-half inches by eleven inches nor more than twenty-four inches by thirty-six inches and in the county of Greene must be not less than twelve inches by eighteen inches nor more than twenty-four inches by thirty-six inches and in the counties of Westchester and Dutchess must be thirty-six inches by forty-eight inches or less in size, and that such maps to be filed in the county of Monroe shall be in any one of the following sizes only: seventeen inches by twenty-two inches, twenty-two inches by thirty-four inches or thirty-four inches by forty-four inches. Every such subdivision map of property in the towns of Tonawanda, Evans, West Seneca, Cheektowaga, Amherst, Lancaster, Grand Island, Aurora,

Concord, Collins, Alden, Newstead, Clarence, Elma, Orchard Park and Hamburg, Erie county, located wholly or partly outside an incorporated village, shall before the filing thereof as herein provided, have attached thereto in writing, the approval of the town board of such town, and every such map of property located wholly or partly in an incorporated village in such town, shall, if located wholly within the village have attached the approval of the board of trustees of the village, and if located partly within a village and partly within one of such towns, have attached the approval of both the town board of the town and the board of trustees of the village. Every such map of subdivided land, whether intended as an original subdivision or as an alteration of a prior subdivision, shall have endorsed thereon or annexed thereto at the time such map is offered to be filed a certificate of the county treasurer or of an abstract and title company and a certificate of the tax collecting officer of any county, city, town or village wherein such property or any part thereof is situate, stating that all taxes levied and unpaid and in addition, all taxes which are a lien prior to the time such original or subsequent map is offered to be filed, whether assessed against the entire tract of land or against any lot or other part of such land, have been paid, and a certificate of the county director of real property tax services that the fee authorized by section five hundred three of the real property tax law, if any, has been paid and the county clerk shall not file any such map without such endorsements or certificates. All of such maps shall be placed and kept, by some suitable method, in consecutive order and shall be consecutively numbered in the order of their filing and shall be indexed under the initial letters of all substantives in the title of the subdivision. A failure to file any such map as required by the provisions of this section shall subject the owner of such subdivision, or of the unsold lots therein, to a penalty to the people of the state of twenty-five dollars for each and every lot therein sold and conveyed by or for such owner prior to the due filing of such map.

REAL PROPERTY TAX LAW

§ 574. Information to be furnished by recording officers and assessors.

1. On or before the fifteenth day of each month, the county recording officer or such other officer or agency as may be designated by the county legislative body shall furnish to the assessors of each assessing unit in the county, to the county equalization agency through the office of the county director of real property tax services and to the state board a report showing all transfers during the preceding calendar month of real property situated wholly or partly within such assessing unit. Such report shall include transfers of real property or interests in real property to the state by appropriation. It shall be the duty of the state at the time of filing a copy of a description and map of property or interests therein being acquired by appropriation in the office of the duly designated county recording officer, to deliver to and leave with said recording officer a duplicate paper copy thereof. The said county recording officer or another duly designated officer or agency shall include said duplicate copy of the description and map with his said monthly report to the assessors. Such reports shall be made in a form and manner approved by the state board and shall contain such information as the state board shall prescribe by regulation including

(a) the mailing address of the new owner;

(b) the tax billing address, if different from the owner;

(c) the appropriate tax map designation, if any;

(d) a statement of the full sales price as required by section three hundred thirty-three of the real property law;

(e) a statement whether the parcel is in an agricultural district and if so a disclosure notice has been

provided pursuant to section three hundred thirty-three-c of the real property law;

(f) a statement whether the property described in such deed is the entire parcel owned by the transferor or transferors;

(g) a statement that in the event the parcel conveyed by such deed is a portion of the parcel owned by the transferor or transferors, the city, town or village in which such property is situated has a planning board or other entity empowered to approve subdivisions;

(h) a statement that in the event such parcel conveyed by such deed is a portion of the parcel owned by the transferor or transferors and the city, town or village in which said property is located has an entity that is empowered to approve subdivisions and:

(i) the parcel conveyed by such deed is not subject to such subdivision approval, and

(ii) the parcel is subject to subdivision approval and has been approved by the respective city, town or village planning board or other entity empowered to approve subdivisions.

Where the assessor receives a report of a transfer occurring after taxable status date and at least thirty-five days prior to the last date prescribed by law for the annexation of the warrant to the assessment roll, including a warrant for the collection of school district or village taxes, the assessor shall notify the appropriate collecting officer no later than the thirtieth day preceding such last date for such annexation. Such notification shall be in any mutually agreeable format and shall include the names of the new owners, mailing addresses, tax billing addresses and tax map designations contained in the transfer report. Where the assessor receives a report of a transfer occurring after the thirty-fifth day preceding such annexation, the assessor shall notify the appropriate collecting officer within ten days of the receipt thereof; provided, however, that where the assessor receives such report less than five days prior to the expiration of the warrant or after the expiration of the warrant of the appropriate collecting officer, the assessor shall notify the appropriate officer charged by law with the enforcement of delinquent taxes. Such notification shall be in any mutually agreeable format and shall include the names of the new owners, mailing addresses, tax billing addresses and tax map designations contained in the transfer report. The assessor shall also be authorized to send a notice of increased assessment pursuant to section five hundred ten of this chapter to the new owner of real property appearing on the transfer report. In the event that there are no such transfers in an assessing unit, the report shall so indicate. Such reports to the assessors shall be in the number prescribed by the state board. The state board may require, by regulation, that the report may be copied and sent to designated officers.

2. Within fifteen days after receiving such reports, the assessors of all assessing units shall transmit notice of any errors contained therein to the state board and assessors of cities and towns shall transmit notice of any such errors to the county equalization agency through the office of the county director of real property tax services. The state board may require such other additional information relating to real property transfers as may be necessary for the performance of its duties pursuant to this chapter.

3. The county recording officer, or such other officer or agency as the board of supervisors may designate to carry out the provisions of this section, shall not be required to furnish such reports of transfers to the assessors of any city where such reports are prepared and furnished to such city assessors by an officer or agency of the city.

4. The provisions of this section shall not apply to a county wholly within the boundaries of a city.

5. Forms or reports filed pursuant to this section or section three hundred thirty-three of the real property law shall be made available for public inspection or copying in accordance with rules promulgated by the state board.

PUBLIC OFFICERS LAW

OPEN MEETINGS LAW (EXCERPTS)

§ 102. Definitions.

As used in this article:

1. "Meeting" means the official convening of a public body for the purpose of conducting public business.

2. "Public body" means any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law, or committee or subcommittee or other similar body of such public body.

3. "Executive session" means that portion of a meeting not open to the general public.

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§ 103. Open meetings and executive sessions.

(a) Every meeting of a public body shall be open to the general public, except that an executive session of such body may be called and business transacted thereat in accordance with section one hundred five of this article.

(b) Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in subdivision five of section fifty of the public buildings law.

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§ 104. Public notice.

1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting.

2. Public notice of the time and place of every other meeting shall be given, to the extent practicable, to the news media and shall be conspicuously posted in one or more designated public locations at a reasonable time prior thereto.

3. The public notice provided for by this section shall not be construed to require publication as a legal notice.

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§ 105. Conduct of executive sessions.

1. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only, provided, however, that no action by formal vote shall be taken to appropriate public moneys:

a. matters which will imperil the public safety if disclosed;
b. any matter which may disclose the identity of a law enforcement agent or informer;
c. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
d. discussions regarding proposed, pending or current litigation;
collective negotiations pursuant to article fourteen of the civil service law;
f. the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
g. the preparation, grading or administration of examinations; and
h. the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

2. Attendance at an executive session shall be permitted to any member of the public body and any other persons authorized by the public body.

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§ 106. Minutes.

1. Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.

2. Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the freedom of information law as added by article six of this chapter.

3. Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the freedom of information law within two weeks from the date of such meeting except that minutes taken pursuant to subdivision two hereof shall be available to the public within one week from the date of the executive session.

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§ 107. Enforcement.

1. Any aggrieved person shall have standing to enforce the provisions of this article against a public body by the commencement of a proceeding pursuant to article seventy-eight of the civil practice law and rules, and/or an action for declaratory judgment and injunctive relief. In any such action or proceeding, the court shall have the power, in its discretion, upon good cause shown, to declare any action or part thereof taken in violation of this article void in whole or in part. An unintentional failure to fully comply with the notice provisions required by this article shall not alone be grounds for invalidating any action taken at a meeting of a public body. The provisions of this article shall not affect the validity of the authorization, acquisition, execution or disposition of a bond issue or notes.

2. In any proceeding brought pursuant to this section, costs and reasonable attorney fees may be awarded by the court, in its discretion, to the successful party.

3. The statute of limitations in an article seventy-eight proceeding with respect to an action taken at executive session shall commence to run from the date the minutes of such executive session have been made available to the public.

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§ 108. Exemptions.

Nothing contained in this article shall be construed as extending the provisions hereof to:

1. judicial or quasi-judicial proceedings, except proceedings of the public service commission and zoning boards of appeals;

2.a. deliberations of political committees, conferences and caucuses.

b. for purposes of this section, the deliberations of political committees, conferences and caucuses means a private meeting of members of the senate or assembly of the state of New York, or of the legislative body of a county, city, town or village, who are members or adherents of the same political party, without regard to (i) the subject matter under discussion, including discussions of public business, (ii) the majority or minority status of such political committees, conferences and caucuses or (iii) whether such political committees, conferences and caucuses invite staff or guests to participate in their deliberations; and

3. any matter made confidential by federal or state law.

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§ 109. Committee on open government.

The committee on open government, created by paragraph (a) of subdivision one of section eighty-nine of this chapter, shall issue advisory opinions from time to time as, in its discretion, may be required to inform public bodies and persons of the interpretations of the provisions of the open meetings law.

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§ 110. Construction with other laws.

Any provision of a charter, administrative code, local law, ordinance, or rule or regulation affecting a public body which is more restrictive with respect to public access than this article shall be deemed superseded hereby to the extent that such provision is more restrictive than this article.

2. Any provision of general, special or local law or charter, administrative code, ordinance, or rule or regulation less restrictive with respect to public access than this article shall not be deemed superseded hereby.

3. Notwithstanding any provision of this article to the contrary, a public body may adopt provisions less restrictive with respect to public access than this article.

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§ 111. Severability.

If any provision of this article or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction such judgment shall not affect or impair the validity of the other provisions of the article or the application thereof to other persons and circumstances.

SOCIAL SERVICES LAW

§ 390. Child day care; license or registration required. (Excerpt)

1. Definitions.

(a)(i) "Child day care" shall mean care for a child on a regular basis provided away from the child's residence for less than twenty-four hours per day by someone other than the parent, step-parent, guardian, or relative within the third degree of consanguinity of the parents or step-parents of such child.

(ii) Child day care shall not refer to care provided in:

(A) a day camp, as defined in the state sanitary code;

(B) an after-school program operated for the purpose of religious education, sports, or recreation;

(C) a facility:

(1) providing day services under an operating certificate issued by the department;

(2) providing day treatment under an operating certificate issued by the office of mental health or office of mental retardation and developmental disabilities; or

(D) a kindergarten, pre-kindergarten, or nursery school for children three years of age or older, or after-school program for children operated by a public school district or by a private school or academy which is providing elementary or secondary education or both, in accordance with the compulsory education requirements of the education law, provided that the kindergarten, pre-kindergarten, nursery school, or after school program is located on the premises or campus where the elementary or secondary education is provided.

(b) "Child day care provider" shall mean any individual, association, corporation, partnership, institution or agency whose activities include providing child day care or operating a home or facility where child day care is provided.

(c) "Child day care center" shall mean any program or facility caring for children for more than three hours per day per child in which child day care is provided by a child day care provider except those programs operating as a group family day care home as such term is defined in paragraph (d) of this subdivision, a family day care home, as such term is defined in paragraph (e) of this subdivision, and a school-age child care program, as such term is defined in paragraph (f) of this subdivision.

(d) "Group family day care home" shall mean a program caring for children for more than three hours per day per child in which child day care is provided in a family home for seven to ten children of all ages, or up to twelve children where all of such children are over two years of age, except for those programs operating as a family day care home, as such term is defined in paragraph (e) of this subdivision, which care for seven or eight children. A group family daay care provider may provide

child day care services to two additional children if such additional children are of school age and such children receive services only before or after the period such children are ordinarily in school or during school lunch periods, or school holidays, or during those periods of the year in which school is not in session. There shall be one caregiver for every two children under two years of age in the group family home. A group family day care home must have at least one assistant to the operator present when child day care is being provided to seven or more children. This assistant shall be selected by the group family day care operator and shall meet the qualifications established for such position by the regulations of the department.

(e) "Family day care home" shall mean a program caring for children for more than three hours per day per child in which child day care is provided in a family home for three to six children. A family day provider may, however, care for seven or eight children at any one time if no more than six of the children are less than school age and the school-aged children receive care primarily before or after the period such children are ordinarily in school, during school lunch periods, on school holidays, or during those periods of the year in which school is not in session in accordance with the regulations of the department and the department inspects such home to determine whether the provider can care adequately for seven or eight children.

12.(a) Notwithstanding any other provision of law, except as may be required as a condition of licensure or registration by regulations promulgated pursuant to this section, no village, town (outside the area of any incorporated village), city or county shall adopt or enact any law, ordinance, rule or regulation which would impose, mandate or otherwise enforce standards for sanitation, health, fire safety or building construction on a one or two family dwelling or multiple dwelling used to provide group family day care or family day care than would be applicable were such child day care not provided on the premises. Nothing in this paragraph shall preclude local authorities with enforcement jurisdiction of the applicable sanitation, health, fire safety or building construction code from making appropriate inspections to assure compliance with such standards. The department of social services shall provide to the secretary of state on a monthly basis, a list of child day care registrants.

(b) Notwithstanding any other provision of law: for the purposes of this subdivision, no local government may prohibit use of a single family dwelling for family day care or group family day care where a permit for such use has been issued in accordance with regulations issued pursuant to this section; nor may any local government prohibit use for family day care or group family day care, of a multiple dwelling classified as fireproof or prohibit use for group family day care, of a dwelling unit located on the ground floor of a multiple dwelling not classified as fireproof, where in either case a registration or license for such use has been issued in accordance with regulations adopted pursuant to this section and such use is otherwise permitted under state fire and safety standards (the state code) and under any other existing standard for permitted uses of the multiple dwelling.

13. Notwithstanding any other provision of law, this section shall not apply to child day care centers in the city of New York.

Note:

- For a complete explanation of licensing and registration for child day care consult the statute and its implementing regulations.

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