Land Use Planning Update

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Municipal SEQRA Overview

- Time-consuming
- Expensive
- Code Enforcement Officer
- Usefulness

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2

County Role

- County's own decision-making
- Referrals under General Municipal Law §239

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Planning Board

- Local Code
- Site Plan Review
- Special Use Permit
- Subdivisions
- Public/political opinion

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4

Zoning Board of Appeals

- Area variance
- Use variance
- Appeals

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Local Historic Preservation Board

- Generally reviews exterior work
- Issues certificates of appropriateness
- Demolition

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SEQRA

- Type of Action
- Environmental Assessment Form (EAF)
- Determination of Significance
  - Negative Declaration
  - Environmental Impact Statement (EIS)

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Proposed SEQRA Update

- Still just proposed
- First major update since 1995
- Intended to "streamline" review

Type II Expansion

- General Municipal Law §239 referrals
- Reuse of properties
- Parkland
- "Green" Projects
- Public Auctions

Type I Thresholds

- Sewer/Water hookups
- Parking
- Residential
- Proximity to historical sites

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Scoping

- For all EIS Projects
- Electronic Publication
- Energy conservation and renewability

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Other Change

- Agency charge back of costs

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Legal Challenges

- Timing
- Standard of review
- Usual challenges

Disclaimer

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CAASNY 2017 Annual Meeting
Land Use Planning Update
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Select "green" proposed text changes to SEQRA regulations

New definitions (6 NYCRR 617.2)

(r) "Green infrastructure" includes practices that manage storm water through infiltration, evapo-transpiration and reuse such as the use of permeable pavement; bioretention; green roofs and green walls; tree pits; storm water planters; rain gardens; vegetated swales; urban forestry programs; downspout disconnection; and storm water harvesting and reuse.

(af) "Previously disturbed" means a parcel of land in a municipal center that was occupied by a principal building used for residential or commercial purposes where the building has been abandoned or demolished.

New Type II Actions (6 NYCRR 617.5)

(14) installation of cellular antennas or repeaters on an existing structure that is not listed on the National or State registers of historic places or located within a district listed in the National or State registers of historic places or that has not been determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places pursuant to sections 14.07 or 14.09 of the Parks, Recreation and Historic Preservation Law;

(15) Installation of five megawatts or less of solar energy arrays on a sanitary landfill, brownfield site that has received a brownfield site clean-up order certificate of completion (under 6 NYCRR 375-.3.9), waste-water treatment facilities, sites zoned for industrial use or installation of five megawatts or less of solar canopies at or above residential and commercial parking facilities (lots or parking garages).

(16) installation of five megawatts or less of solar energy arrays on an existing structure that is not listed on the National or State Register of Historic Places or located within a district listed in the National or State Register of Historic Places or on a structure or within a district that has not been determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places pursuant to sections 14.07 or 14.09 of the Parks, Recreation and Historic Preservation Law;

(19) on a previously disturbed site in the municipal center of a city, town or village having a population of 20,000 persons or less, with an adopted zoning law or ordinance, construction of a residential or commercial structure or facility involving less than 8,000 square feet of gross floor area, not requiring a change in zoning or a use variance or the construction of new roads, where

the project is subject to site plan review, and will be connected (at the commencement of habitation) to existing community owned or public water and sewerage systems including sewage treatment works that have the capacity to provide service;

(20) on a previously disturbed site in the municipal center of a city, town or village having a population of more than 20,000 persons but less than 50,000 persons, with an adopted zoning law or ordinance, construction of a residential or commercial structure or facility involving less than 10,000 square feet of gross floor area, not requiring a change in zoning or a use variance or construction of new roads, where the project is subject to site plan review, and will be connected (at the commencement of habitation) to existing community owned or public water and sewerage systems including sewage treatment works that have the capacity to provide service;

(21) on a previously disturbed site in the municipal center of a city, town or village having a population more than 50,000 persons but less than 250,000 person , with an adopted zoning law or ordinance, construction of a residential or commercial structure or facility involving less than 20,000 square feet of gross floor area, not requiring a change in zoning or a use variance or construction of new roads, where the project is subject to site plan review, and will be connected (at the commencement of habitation) to existing community owned or public water and sewerage systems including sewage treatment works that have the capacity to provide service;

(22) on a previously disturbed site, within one quarter of a mile of a commuter railroad station, in a municipal center of a city, town or village having a population of 250,000 persons or more, with an adopted zoning law or ordinance and within a transit oriented zoning district or transit oriented overlay zoning district, construction of a residential or commercial structure or facility involving less than 40,000 square feet of gross floor area, not requiring a change in zoning or a use variance or construction of new roads, where the project is subject to site plan review, and will be connected (at the commencement of habitation) to existing community owned or public water and sewerage systems including sewage treatment works that have the capacity to provide service;

(23) in a city, town or village with an adopted zoning law or ordinance, reuse of a commercial or residential structure where the activity is consistent with the current zoning law or ordinance;

(48) brownfield site clean-up agreements pursuant to Title 14 of Article 27 of the Environmental Conservation Law, provided that design and implementation of the remedy do not commit the Department or any other agency to specific future uses or actions or prevent an evaluation of a reasonable range of alternative future uses of or actions on the remedial site;

(49) Construction and operation of an anaerobic digester, at a publically-owned wastewater treatment facility or a municipal solid waste landfill, provided the digester has a feedstock capacity of less than 150 tons per day, and only produces Class A digestate that is beneficially used or biogas to generate electricity or to make vehicle fuel, or both.

Recent Land Use Cases

33 Seminary LLC v. City of Binghamton, 2016 U.S. App. LEXIS 21024 (2d Cir. Nov. 23, 2016).

City had denied approvals for renovation of house into multiple apartments because applicant could provide no off-street parking. Applicant sued, alleging equal protection claims under selective enforcement and class of one theories because City had granted approvals to other applicants where less than required number of parking spaces had been required. District Court determined that applicant had failed to state an equal protection claim because the other approvals he cited as being "similar" were not comparable. Second Circuit affirmed lower court dismissal of action. Now on appeal to Supreme Court.

E. Deane Leonard v. Planning Bd. of Town of Union Vale, 136 A.D.3d 868, 869–70, 26 N.Y.S.3d 293, 295–96 (2nd Dept. 2016)

In 1987, Town issued negative declaration relative to developers' plan to subdivide a 950–acre parcel of real property. A portion of the property was subdivided and developed. In 2012, the developers applied for preliminary plat approval to subdivide the remainder of the parcel. The 2012 preliminary plat application relied upon the 1987 negative declaration. Planning Board then rejected the application as incomplete. The Planning Board based its rejection of the application upon its determination that the 1987 negative declaration was not operative with respect to the instant application, which the Planning Board found to be a new action requiring SEQRA review.

The Appellate Division determined that the 1987 negative declaration had not expired because subdivision of the remainder of the property did not constitute a new action under SEQRA. While Planning Board could either amend or rescind initial negative declaration, it could not merely deem it "expired."

Lucente v. Terwilliger, 144 A.D.3d 1223 (3d Dept. 2016).

Negative declaration was issued, preliminary subdivision plat was approved, when application for final approval was been submitted. The final plat contained differences from the preliminary plat, most importantly related to stormwater management. Before deciding on the final plat, the Town of Ithaca Planning Board enacted a moratorium that prohibited the application from being processed further. When the moratorium ended, the Town and applicant engaged in a number of meetings about the subdivision, but the Town had taken no further formal action on the application occurred until nearly five years after the moratorium ended. Finally, the applicant demanded the Town Clerk issue a default approval because the Planning Board failed to act on the final plat application within the 62 day default period. The Town Clerk denied petitioner's request stating that, among other things, additional SEQRA review was

required because of the modifications in the final application, and such review had not taken place.

The 3rd Department held that time period within which planning board was required to act on final subdivision application never began to run because final SEQRA review had not been done. The court stated that "the default approval mechanism does not provide a remedy for a planning board's untimeliness in complying with SEQRA requirements. It went on to state that since al SEQRA requirements had never been completed, the time period within which the Planning Board was required to act on the final subdivision application never began to run. Accordingly, the applicant was not entitled to a default approval.

FINAL SCOPE
for the
Generic Environmental Impact Statement (GEIS)
on the
Proposed Amendments
to the
State Environmental Quality Review Act (SEQRA)

6 NYCRR - Part 617

PREPARED BY THE NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL PERMITS & POLLUTION PREVENTION
November 28, 2012

1.0 Description of the Action & Environmental Setting

The New York State Department of Environmental Conservation (DEC) proposes to amend the regulations that implement the State Environmental Quality Review Act ("SEQR", Part 617 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York . The principal purpose of the amendments is to improve and streamline the SEQR process without sacrificing meaningful environmental review. The changes being proposed are modest in nature, not intended to change the basic structure of an environmental review, build on the changes made to the environmental assessment forms and are within the authority of the DEC to implement without seeking additional legislative action. SEQR applies to all state and local agencies in New York State when they are making a discretionary decision to undertake, fund or approve an action.

DEC has proposed changes to the SEQR regulations, which it does not expect to have a significant impact on the environment. However, given the importance of the SEQR regulations in general in all areas of environmental impact review, DEC has chosen to use a generic environmental impact statement (GEIS) as the means to discuss the objectives and the rationale for the proposed amendments, present alternative measures which are under consideration and provide the maximum opportunity for public participation.

2.0 Summary of Proposed Amendments to 6 NYCRR Part 617

617.2 DEFINITIONS

- Add definition of "Green Infrastructure"
- Add definition of Minor Subdivision"
- Add definition of "Municipal Center"
- Add Definition of "Replacement in Kind"
- Add definition of "Substantially Contiguous"

- Revise definitions of:
  - "Negative Declaration"
  - "Positive Declaration"

617.4 TYPE I ACTIONS

- Reduce number of residential units in items 617.4(b)(5)(iii), (iv) & (v);
- Reduce number of parking slots for municipalities with a population under 150,000; and
- Reduce the threshold reduction for historic resources [617.4(b)(9)] in line with other resource based items on the Type I list and add eligible resources.

617.5 TYPE II ACTIONS

- Add new Type II actions to encourage development on previously disturbed sites in municipal centers and to encourage green infrastructure projects;
- Add new Type II actions to encourage the installation of solar energy arrays;
- Add new Type II action that allows for the sale, lease or transfer of property for a Type II action;
- Add new Type II action for minor or small scale subdivisions;
- Add a new Type II actions to make the disposition of land by auction a Type II action; and
- Add a new Type II action to encourage the renovation and reuse of existing structures.

617.8 SCOPING

- Make scoping mandatory;
- Provide greater continuity between the environmental assessment process, the final written scope and the draft environmental impact statement (EIS) with respect to content;
- Strengthen the regulatory language to encourage targeted EISs;
- Clarify that issues raised after the completion of the final written scope cannot be the basis for the rejection of the draft EIS as inadequate.

617.9 PREPARATION AND CONTENT OF ENVIRONMENTAL IMPACT STATEMENTS

- Add language to require that adequacy review of a resubmitted draft must be based on the written list of deficiencies; and
- Revise the timeline for the completion of the FEIS.

617.12 DOCUMENT PREPARATION, FILING, PUBLICATION AND DISTRIBUTION

- Add language to encourage the electronic filing of EISs with DEC.

617.13 FEES AND COSTS

- Add language to require that a lead agency provide the project sponsor with an estimate of review cost, if requested; and
- Add language to require that a lead agency provide the project sponsor with a copy of invoices or statements for work done by a consultant, if requested.