

Table of Contents

CHAPTER 1. EVOLUTION OF LAND USE CONTROLS

A. SCOPE AND ARRANGEMENT

- § 1:1 Developments in land use control: 1984-1999
- § 1:2 Scope of treatise; arrangement of chapters

B. PREZONING RESTRICTIONS ON THE USE OF LAND

- § 1:3 Development of land use controls
- § 1:4 Common-law nuisance
- § 1:5 Restrictive covenants
- § 1:6 Eminent domain
- § 1:7 Police power

C. PLANNING, ZONING AND SUBDIVISION CONTROLS

- § 1:8 Planning for community development
- § 1:9 Implementing the community plan
- § 1:10 Comprehensive zoning
- § 1:11 Subdivision control
- § 1:12 Urban renewal and other methods of implementing the community plan

D. IMPACT OF LAND USE CONTROLS

- § 1:13 Impact of land use controls; generally
- § 1:14 Effect of zoning regulations upon the marketability of title
- § 1:15 Land value in condemnation proceedings
- § 1:16 Effect of existing zoning regulations
- § 1:17 Zoning amendment or variance
- § 1:18 Collateral attack on zoning ordinances

CHAPTER 2. SOURCES OF ZONING POWER

A. LEGISLATIVE POWER OF THE STATE

- § 2:1 State power to regulate the use of land
- § 2:2 State planning and zoning legislation

B. MUNICIPAL HOME RULE

- § 2:3 Local zoning power; generally

- § 2:4 —Statute of local governments
- § 2:5 —Municipal Home Rule Law
- § 2:6 —Cities
- § 2:7 —Villages
- § 2:8 —Towns
- § 2:9 —Counties

C. DELEGATION OF POWER; THE ZONING ENABLING ACTS

- § 2:10 Zoning enabling acts; cities
- § 2:11 —Villages
- § 2:12 —Towns

CHAPTER 3. LEGISLATIVE LIMITATIONS ON THE ENACTMENT, AMENDMENT, AND REPEAL OF ZONING REGULATIONS

A. INTRODUCTION; PROCEDURAL REQUIREMENTS—GENERALLY

- § 3:1 Litigation relating to legislative procedure: 1984-1999
- § 3:2 Mandatory character of procedural requirements
- § 3:3 Municipal Home Rule Law
- § 3:4 —Supersession
- § 3:5 Procedural requirements applicable to cities
- § 3:6 Procedural requirements applicable towns
- § 3:7 Procedural requirements applicable to villages

B. PRELIMINARY PLANNING

- § 3:8 Adopting the first zoning ordinance; generally
- § 3:9 —Cities
- § 3:10 —Towns
- § 3:11 —Villages
- § 3:12 County planning agency or regional planning council
- § 3:13 Coordination with SEQRA

C. LEGISLATIVE HEARINGS

- § 3:14 Notice and hearing
- § 3:15 —Cities
- § 3:16 —Towns
- § 3:17 —Villages
- § 3:18 Timeliness of notice
- § 3:19 Publication or service of notice
- § 3:20 Contents of notice
- § 3:21 Necessity for second hearing
- § 3:22 Nature of hearing

TABLE OF CONTENTS

D. FINAL LEGISLATIVE ACTIONS

- § 3:23 Voting requirements; towns
- § 3:24 Voting requirements—Villages
- § 3:25 —Cities
- § 3:26 Executive approval
- § 3:27 Introduction; caption; subject
- § 3:28 Entry in minutes; filing
- § 3:29 Publication, posting, and personal service
- § 3:30 Referendum
- § 3:31 Power to amend
- § 3:32 —Planning boards
- § 3:33 Amendment procedure
- § 3:34 Applicability of amendments
- § 3:35 Application for zone change
- § 3:36 Protest petitions; towns
- § 3:37 Protest petitions—Villages
- § 3:38 —Cities
- § 3:39 —New York City
- § 3:40 Construction of protest requirements
- § 3:41 —New York City
- § 3:42 Repeal

CHAPTER 4. LEGISLATIVE LIMITATION ON THE SUBSTANCE OF ZONING REGULATIONS

A. INTRODUCTION

- § 4:1 Substantive limitations on the zoning power

B. THE COMPREHENSIVE LAND USE PLAN

- § 4:2 A comprehensive or well-considered plan—historical development
- § 4:3 Statutorily defining the comprehensive land use plan
- § 4:4 Content of the comprehensive plan
- § 4:5 Preparation of the plan; generally
- § 4:6 Coordinating preparation of the plan under SEQRA
- § 4:7 —Referral pursuant to General Municipal Law 239-m
- § 4:8 Procedures leading to adoption
- § 4:9 Effect of plan adoption; periodic review

C. SPOT ZONING, PIECEMEAL ZONING AND THE “FLOATING ZONE”

- § 4:10 Spot zoning; generally
- § 4:11 Spot zoning; size of the area reclassified
- § 4:12 Consistency with surrounding land uses
- § 4:13 Spot zoning; benefit or detriment to property owners and the general public

- § 4:14 Spot zoning; comprehensive plan consistency
- § 4:15 Spot zoning; planning history of an amendment
- § 4:16 Piecemeal zoning
- § 4:17 Moratoria, interim or stop-gap zoning
- § 4:18 “Floating zone”

D. MISCELLANEOUS LIMITATIONS

- § 4:19 Uniformity
- § 4:20 Failure to establish a board of appeals
- § 4:21 Zoning ordinances affecting approved subdivision plats
- § 4:22 Conflict with state law
- § 4:23 Territorial limitations

CHAPTER 5. CONSTITUTIONAL LIMITATION ON THE ZONING POWER

A. INTRODUCTION

- § 5:1 Constitutional litigation
- § 5:2 Validity of zoning ordinances

B. CONSTITUTIONAL CONCERNS OF THE DRAFTERS OF THE EARLY ZONING ORDINANCES

- § 5:3 Legal context of early zoning
- § 5:4 Hedging against constitutionality
- § 5:5 Early state decisions

C. LANDMARK CASES

- § 5:6 *Village of Euclid v. Ambler Realty Company*
- § 5:7 *Nectow v. City of Cambridge*
- § 5:8 *Arverne Bay Construction Co. v. Thatcher*

D. PRESUMPTIONS AND BURDEN OF PROOF

- § 5:9 Presumption of constitutionality
- § 5:10 Burden of proof
- § 5:11 Fairly debatable issue
- § 5:12 Beyond a reasonable doubt
- § 5:13 Balancing of interests
- § 5:14 Dollars and cents proof

E. CRITERIA OF CONSTITUTIONALITY

- § 5:15 Highest and best use
- § 5:16 Reduction in value
- § 5:17 Confiscation of land
- § 5:18 Suitability to permitted use; size, shape, and grade of parcel
- § 5:19 Incompatible adjacent uses

TABLE OF CONTENTS

§ 5:20 Effect of the demand for land

F. REGULATORY TAKINGS

§ 5:21 Introduction

§ 5:22 Background

§ 5:23 Physical takings

§ 5:24 The tests

§ 5:25 The *Penn Central* takings test

§ 5:26 Total takings

§ 5:27 The total parcel rule

§ 5:28 Temporary regulatory takings

§ 5:29 Ripeness

§ 5:30 Essential nexus and rough proportionality

§ 5:31 Close causal nexus scrutiny

§ 5:32 1997 Court of Appeals decisions—What’s in the bundle of rights?

§ 5:33 *Palazzolo v. State of Rhode Island*—The Notice Rule

G. EQUITY TAKINGS

§ 5:34 Equity takings

H. SUBSTANTIVE DUE PROCESS

§ 5:35 Substantive due process claims

I. EQUAL PROTECTION

§ 5:36 Equal protection

§ 5:37 Similarly situated

§ 5:38 Selective enforcement

J. PROCEDURAL DUE PROCESS

§ 5:39 Procedural due process

K. RIGHT TO PETITION GOVERNMENT

§ 5:40 Right to Petition Government

CHAPTER 6. EMINENT DOMAIN

A. IN GENERAL

§ 6:1 Nature of the power

§ 6:2 Constitutional provisions and amendments since 1821

§ 6:3 Relationship between federal and state constitutional provisions

§ 6:4 Delegation of the power

§ 6:5 Property subject to condemnation

§ 6:6 The Public Use Requirement—Generally

- § 6:7 The public use requirement—Standard of review
- § 6:8 —Necessity
- § 6:9 —Excess condemnation
- § 6:10 —Private use
- § 6:11 —Pretext and bad faith
- § 6:12 —Redevelopment, blight removal, and economic development takings
- § 6:13 The public use requirement—Utilities and common carriers

B. THE EMINENT DOMAIN PROCEDURE LAW

- § 6:14 The Eminent Domain Procedure Law—Generally
- § 6:15 —Notice, public hearings, determination and findings
- § 6:16 —Section 206 exemptions
- § 6:17 —Judicial review
- § 6:18 —Article 4 vesting procedure
- § 6:19 —Article 3 offers and negotiations
- § 6:20 —Just compensation, generally
- § 6:21 —Consequential damages
- § 6:22 —Interest, costs, and other reimbursable expenses
- § 6:23 —Abandonment and post-condemnation matters

CHAPTER 7. THE LEGITIMATE OBJECTIVES OF ZONING

A. INTRODUCTION

- § 7:1 The purpose of zoning regulation
- § 7:2 Legislative limitations; the enabling acts
- § 7:3 Constitutional limitations; the police power

B. ZONING FOR AESTHETIC PURPOSES

- § 7:4 Generally
- § 7:5 Public funds; eminent domain
- § 7:6 Common-law nuisance
- § 7:7 Regulation of billboards
- § 7:8 Zoning ordinances
- § 7:9 —Residential districts
- § 7:10 —Setback restrictions
- § 7:11 —Lot area requirements
- § 7:12 —Floor space requirements
- § 7:13 Use restrictions based upon aesthetics; the early cases
- § 7:14 Aesthetics as an allowable secondary purpose
- § 7:15 Aesthetics as the single purpose of zoning regulation
- § 7:16 Aesthetic purpose and balancing of interests

C. MISCELLANEOUS OBJECTIVES OF ZONING RESTRICTIONS

- § 7:17 Conservation of property values

TABLE OF CONTENTS

- § 7:18 Preservation of the character of the neighborhood
- § 7:19 Zoning to insure adequate governmental services; the enabling acts
- § 7:20 Zoning to minimize traffic congestion
- § 7:21 Zoning to regulate competition
- § 7:22 Zoning to maintain or increase tax revenues
- § 7:23 Zoning to minimize condemnation costs
- § 7:24 Zoning to prevent civil disturbance
- § 7:25 Zoning to provide housing for the aged

CHAPTER 8. TYPES OF ZONING REGULATION

A. INTRODUCTION

- § 8:1 Litigation relating to types of zoning regulation
- § 8:2 Types of zoning regulation

B. DISTRICTS AND BOUNDARY LINES

- § 8:3 Zoning districts
- § 8:4 District boundary lines
- § 8:5 —Split lots
- § 8:6 —New York City
- § 8:7 —Underwater land

C. GENERAL CHARACTERISTICS OF ZONING ORDINANCES

- § 8:8 Cumulative zoning ordinances
- § 8:9 Exclusive zoning
- § 8:10 —New York City
- § 8:11 Prohibition of uses
- § 8:12 Special use permits
- § 8:13 Exceptions
- § 8:14 Conditional zoning
- § 8:15 Contract zoning
- § 8:16 Restrictive covenants
- § 8:17 Incentive zoning

D. USE RESTRICTIONS

1. RESIDENTIAL USE DISTRICTS

- § 8:18 Residential districts; generally
- § 8:19 —Exclusion of multiple dwellings
- § 8:20 —Exclusion of commercial uses
- § 8:21 —Accessory uses
- § 8:22 Single-family districts; generally
- § 8:23 —Unrelated persons; communes

- § 8:24 —Group homes; foster homes
- § 8:25 —Physically or mentally disabled persons

2. COMMERCIAL USE DISTRICTS

- § 8:26 Commercial districts
- § 8:27 —Accessory uses

3. INDUSTRIAL USE DISTRICTS

- § 8:28 Industrial districts
- § 8:29 —Performance standards

4. AGRICULTURAL USE DISTRICTS

- § 8:30 Agricultural districts

5. FLOOD PLAIN ZONING

- § 8:31 Flood plain zoning

6. REGULATIONS TO CONTROL COMMUNITY DEVELOPMENT

- § 8:32 Control of community development; generally
- § 8:33 Euclidian zoning
- § 8:34 Restrictions on permits
- § 8:35 Sequential development; the Ramapo plan

E. HEIGHT, BULK, AND AREA RESTRICTIONS

- § 8:36 Height, bulk, and area regulations
- § 8:37 Height regulations
- § 8:38 Setback regulations
- § 8:39 Yard regulations
- § 8:40 Lot area regulations
- § 8:41 Frontage regulations
- § 8:42 Substandard lots
- § 8:43 Lot coverage regulations
- § 8:44 Restrictions on families or dwelling units
- § 8:45 Floor area regulations
- § 8:46 Offstreet parking requirements
- § 8:47 Solar access

F. ARCHITECTURAL CONTROLS

- § 8:48 Regulation of exterior design
- § 8:49 Design control in areas of historic interest
- § 8:50 Preservation of historic landmarks
- § 8:51 Transfer of development rights
- § 8:52 Enabling statutes
- § 8:53 Public parks and boulevards

TABLE OF CONTENTS

- § 8:54 Community-wide controls
- § 8:55 Validity of design regulations; the police power
- § 8:56 —Enabling acts
- § 8:57 Standards of design
- § 8:58 Extraterritorial jurisdiction

G. LOT MERGERS

- § 8:59 Mergers
- § 8:60 Form Based-Codes

CHAPTER 9. MUNICIPAL PLANNING

A. INTRODUCTION

- § 9:1 Planning departments; planning boards and commissions

B. PLANNING BOARDS: CREATION AND ORGANIZATION

- § 9:2 Establishment of planning board; cities
- § 9:3 —Towns
- § 9:4 —Villages
- § 9:5 Qualifications for membership
- § 9:6 Appointment of alternate members
- § 9:7 Organization; staff; rules
- § 9:8 Records
- § 9:9 Compensation of members
- § 9:10 Appropriations for planning board expenses
- § 9:11 Powers and duties of planning boards
- § 9:12 Preparation of comprehensive plan
- § 9:13 General reports; specific referrals
- § 9:14 Approval of plats; review of proposed changes in maps
- § 9:15 Voting
- § 9:16 Other referrals
- § 9:17 Training
- § 9:18 Immunity

CHAPTER 10. ANNEXATION

- § 10:1 Introduction
- § 10:2 The New York Municipal Annexation Law
- § 10:3 Federal constitutional and statutory considerations
- § 10:4 The annexation petition
- § 10:5 Annexation without petition of uninhabited property
belonging to a city or village
- § 10:6 Who may sign an annexation petition
- § 10:7 Limits on annexation—Adjoining property
- § 10:8 —Statutory prohibitions
- § 10:9 Compliance with State Environmental Quality Review Act

- § 10:10 Intergovernmental agreements
- § 10:11 Public hearing
- § 10:12 Determinations of local governments
- § 10:13 Judicial action on annexation petitions
- § 10:14 Determining the overall public interest
- § 10:15 Annexations found to be in the overall public interest
- § 10:16 Annexations found not to be in the overall public interest
- § 10:17 The annexation election
- § 10:18 Adoption of a local law
- § 10:19 Consequences of annexation
- § 10:20 Impact on local, state, and federal voting districts
- § 10:21 Impacts on zoning and state or county agricultural districts
- § 10:22 Disposition of property in annexed area
- § 10:23 Assumption of debt and other liabilities
- § 10:24 Disposition of taxes and other charges against property
- § 10:25 Impact of annexation on town fire districts, fire alarm districts, fire protection and other town or county special districts—Annexation by county
- § 10:26 —Annexation by city of town territory
- § 10:27 —Annexation by village of town in which it is situated, or of another village located in that town or another town
- § 10:28 —Annexation by town of territory within another town
- § 10:29 Impact on school districts
- § 10:30 Village Incorporation

CHAPTER 11. COUNTY AND REGIONAL PLANNING

A. INTRODUCTION

- § 11:1 Regional planning: an historical perspective

B. PLANNING BOARDS: ESTABLISHMENT AND ORGANIZATION

- § 11:2 County boards
- § 11:3 Regional planning councils
- § 11:4 Expenses of county planning boards and councils
- § 11:5 Planning associations and federations

C. PLANNING BOARDS: POWERS AND DUTIES

- § 11:6 Powers of county planning boards, regional planning councils; collection and distribution of information
- § 11:7 Regional planning councils
- § 11:8 —Comprehensive plan; preparation and adoption
- § 11:9 —Zoning; legislative policy
- § 11:10 —Zoning; review of municipal action

TABLE OF CONTENTS

D. ADOPTION AND EFFECT MAP

- § 11:11 Official county map; establishment and purpose
- § 11:12 —Change in county map
- § 11:13 Permits for building in mapped roads or drainage rights of way
- § 11:14 Permits to build with access to county roads or rights of way

E. STATE PLANNING AGENCIES

- § 11:15 State planning agencies; generally
- § 11:16 Adirondack Park
- § 11:17 Adirondack Park Agency; purpose
- § 11:18 —Composition
- § 11:19 —Powers
- § 11:20 —Land use and development plan
- § 11:21 —Procedure and review
- § 11:22 Lake George Park Commission; other state agencies
- § 11:23 Hudson River Valley Greenway Communities Council
- § 11:24 Long Island Pine Barrens Joint Regional Planning Council
- § 11:25 State Commission on Tug Hill
- § 11:26 New York State Canal Recreationway Commission

F. INTERJURISDICTIONAL COOPERATION IN PLANNING AND ZONING

- § 11:27 Intermunicipal cooperative ageements
- § 11:28 Practical considerations
- § 11:29 Smart growth
- § 11:30 Adjacent municipalities

CHAPTER 12. ZONING AND LAND USE IN NEW YORK CITY

- § 12:1 Introduction
- § 12:2 Administration
- § 12:3 —Department of buildings
- § 12:4 —Board of standards and appeals
- § 12:5 —City Planning Commission
- § 12:6 —Community boards
- § 12:7 —Borough president
- § 12:8 —City Council
- § 12:9 —Landmarks Preservation Commission
- § 12:10 Uniform Land Use Review Procedure
- § 12:11 New York City Zoning Resolution
- § 12:12 —Zoning variances
- § 12:13 —Special permits
- § 12:14 —Interpretive appeals
- § 12:15 Historic preservation

§ 12:16 City Environmental Quality Review (CEQR)

**CHAPTER 13. THE ADIRONDACK PARK
AGENCY ACT AND RELATED AUTHORITIES
ADMINISTERED BY THE ADIRONDACK PARK
AGENCY WITHIN THE ADIRONDACK PARK**

- § 13:1 Introduction
- § 13:2 New land use, development and subdivision in the Adirondack Park
- § 13:3 The Adirondack Park Land Use and Development Plan (APLUDP)
- § 13:4 Project review and relation to other authorities in the Adirondack Park
- § 13:5 Statutory requirements
- § 13:6 Project review process
- § 13:7 Other functions and regulatory time-clocks
- § 13:8 Determining land use classification
- § 13:9 Applying the land use classifications
- § 13:10 Critical Environmental Areas (CEA)
- § 13:11 Wetlands—Including bogs, swamps, wet meadows or marshes
- § 13:12 Shoreline restrictions of the APA Act
- § 13:13 New York State Wild Scenic and Recreational Rivers
- § 13:14 Variances
- § 13:15 Changing the official map
- § 13:16 Local government role under the APA Act
- § 13:17 Towns with local zoning, planning, site plan review
- § 13:18 Towns with agency approved local land use programs
- § 13:19 Enforcement authority
- § 13:20 State Environmental Quality Review Act (SEQRA)
- § 13:21 Additional resources

**CHAPTER 14. PLANNING AND ZONING
WITHIN NEW YORK'S COASTAL ZONE**

- § 14:1 Introduction
- § 14:2 The Coastal Zone Management Act
- § 14:3 CZMP Administration in States
- § 14:4 —Requirements of states that adopt a plan
- § 14:5 CZMP in New York State
- § 14:6 —Purpose
- § 14:7 —Department of State (Agency Implementation)
- § 14:8 —Policies
- § 14:9 —Policies and climate change
- § 14:10 Local waterfront revitalization plans
- § 14:11 —Introduction to LWRPs; What is an LWRP?
- § 14:12 —Benefits of an LWRP
- § 14:13 —Content of an LWRP

TABLE OF CONTENTS

§ 14:14	—Hazard mitigation plan as Component of LWRP
§ 14:15	—Approval of an LWRP
§ 14:16	Introduction to Federal and State/Local Consistency
§ 14:17	—Consistency in New York State
§ 14:18	—When is consistency determination required
§ 14:19	Financial assistance for coastal areas
§ 14:20	Integration of LWRP with local land use planning & zoning
§ 14:21	Amendments to a LWRP
§ 14:22	Withdrawal of a plan
§ 14:23	SEQR & LWRP's
§ 14:24	Standing to enforce
§ 14:25	Other issues related to waterways
§ 14:26	Other water-related regulations
§ 14:27	Conclusion

CHAPTER 15. PROTECTION, LIMITATION, AND TERMINATION OF NONCONFORMING USES

A. NONCONFORMING USE PROBLEM

§ 15:1	Nonconforming use litigation: the last twenty-five years
§ 15:2	Nonconforming use; definition
§ 15:3	Nonconforming use problem
§ 15:4	Enabling acts
§ 15:5	Retroactive zoning; vested interest
§ 15:6	Pattern of municipal regulation
§ 15:7	—New York City

B. ESTABLISHMENT OF NONCONFORMING USE

1. TIME OF USE

§ 15:8	Generally
--------	-----------

2. LEGALITY OF USE

§ 15:9	Legality of use
§ 15:10	—Uses which offend zoning ordinances
§ 15:11	—Uses established under illegal permits
§ 15:12	—Uses without permit or license
§ 15:13	—Miscellaneous, improper or unlawful uses

3. NATURE AND EXTENT OF USE

§ 15:14	Generally
§ 15:15	Existing business use
§ 15:16	Application for permit
§ 15:17	Issuance of permit

- § 15:18 Permit plus construction
- § 15:19 Delay, denial, and revocation of permit
- § 15:20 Regulations which protect permit holders or applicants

C. RESTRICTIONS ON NONCONFORMING USE

- § 15:21 Limitations on nonconforming use

1. CHANGE OF USE

- § 15:22 Generally
- § 15:23 Change in volume of use
- § 15:24 Change in location of use
- § 15:25 Change of ownership
- § 15:26 Change to more restrictive use
- § 15:27 Accessory use
- § 15:28 Change with administrative approval
- § 15:29 Defects in the common restrictions on change of use

2. EXTENSION OF USE

- § 15:30 Generally
- § 15:31 Volume of use
- § 15:32 Enlargement of building
- § 15:33 Use of new land
- § 15:34 Approval of the zoning board of appeals
- § 15:35 Defects in common restrictions on extension of use

3. ALTERATION OF STRUCTURE

- § 15:36 Alteration of nonconforming structure
- § 15:37 Variance of nonconforming use
- § 15:38 Special permit to alter nonconforming use

4. REPAIR OR RESTORATION OF STRUCTURE

- § 15:39 Repair of nonconforming structure
- § 15:40 Restoration of nonconforming structure
- § 15:41 Defects in provisions restricting restoration of nonconforming structure

5. ABANDONMENT OR DISCONTINUANCE

- § 15:42 Abandonment or discontinuance of use
- § 15:43 Ordinances which supply or remove the element of intent to abandon
- § 15:44 Abandonment by change of use

D. TERMINATION OF NONCONFORMING USE

- § 15:45 Amortization of nonconforming uses
- § 15:46 —Harbison v. City of Buffalo

TABLE OF CONTENTS

§ 15:47 Miscellaneous limitations on nonconforming uses

**CHAPTER 16. REGULATION OF USES WHICH
HAVE A UNIQUE RELATION TO PUBLIC
WELFARE**

A. INTRODUCTION

§ 16:1 Uses having a unique relation to the public welfare

§ 16:2 Regulation of particular uses

B. USES OF LAND BY THE GOVERNMENT

§ 16:3 Municipal uses

§ 16:4 —New test—balancing the public interests

§ 16:5 —Intermunicipal problems

§ 16:6 State uses

§ 16:7 Federal uses

C. EDUCATIONAL USES

§ 16:8 Generally

§ 16:9 Exclusion of schools

§ 16:10 Regulation of schools

§ 16:11 Dimensions of the term “educational use”

§ 16:12 Private and parochial schools

§ 16:13 Colleges and universities

§ 16:14 Nursery schools and daycare

§ 16:15 Mentally disabled and delinquent children

§ 16:16 Recreational uses; day camps

§ 16:17 Instruction in arts, crafts, and sports

§ 16:18 Student housing

D. PUBLIC UTILITIES

§ 16:19 Public utilities

§ 16:20 Prohibition of transmission lines, etc

§ 16:21 Special permits

§ 16:22 Variances

§ 16:23 Municipally owned utilities

§ 16:24 State regulation

§ 16:25 Siting of power plants

§ 16:26 Wind farms

§ 16:27 Solar energy

§ 16:28 Natural gas

§ 16:29 Climate change

E. AIRPORTS

§ 16:30 Airports; condemnation of flight hazards

- § 16:31 Airport zoning
- § 16:32 Administration and appeal

F. USES OF LAND BY RELIGIOUS INSTITUTIONS

- § 16:33 Religious uses
- § 16:34 Exclusion of religious uses
- § 16:35 Regulation of religious uses
- § 16:36 Permits; conditions
- § 16:37 Dimensions of religious uses

G. MISCELLANEOUS USES NOT FOR PROFIT

- § 16:38 Uses not for profit
- § 16:39 Clubs
- § 16:40 Dimensions of club use
- § 16:41 Neighborhood or community centers
- § 16:42 Hospitals
- § 16:43 Drug Treatment Centers
- § 16:44 Homeless shelters
- § 16:45 Animals
- § 16:46 Water
- § 16:47 Temporary Storage Units
- § 16:48 Short Term Rentals

CHAPTER 17. HISTORIC PRESERVATION AND LAND USE LAW

- § 17:1 Introduction
- § 17:2 Statutory Authority for Historic Preservation
- § 17:3 State Environmental Quality Review Act
- § 17:4 Local Laws and Ordinances
- § 17:5 Model Ordinance/Local Law
- § 17:6 Landmark designation
- § 17:7 Purchase
- § 17:8 Grants and Tax Credits

CHAPTER 18. THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (RLUIPA)

- § 18:1 In general
- § 18:2 “Land use regulations” covered by RLUIPA
- § 18:3 RLUIPA’s “substantial burden” rule
- § 18:4 “Religious exercise” protected by RLUIPA
- § 18:5 Compelling interests under RLUIPA
- § 18:6 RLUIPA’s individualized assessment requirement
- § 18:7 RLUIPA’s equal terms provision
- § 18:8 RLUIPA’s nondiscrimination provision
- § 18:9 RLUIPA’s unreasonable exclusion provision

TABLE OF CONTENTS

- § 18:10 Ripeness under RLUIPA
- § 18:11 Attorneys' fees in RLUIPA cases

CHAPTER 19. TELECOMMUNICATIONS FACILITIES AND LAND USE REGULATION

- § 19:1 Introduction
- § 19:2 Zoning and telecommunications regulation
- § 19:3 Siting in New York: development of telecommunications companies as public utilities
- § 19:4 The TCA and zoning in New York
- § 19:5 —Right to judicial review
- § 19:6 Wireless siting
- § 19:7 Satellite dishes
- § 19:8 Making decisions within a reasonable time
- § 19:9 Middle Class Tax Relief Act and wireless facility upgrades
- § 19:10 Prohibiting service
- § 19:11 Unreasonable discrimination between functionally equivalent services
- § 19:12 Denials in writing, supported by substantial evidence in a written record
- § 19:13 No consideration of environmental effects of RF emissions
- § 19:14 “Categorical rules” rule
- § 19:15 Getting to court: bringing suit, standing and related issues
- § 19:16 Need for facilities and level of service
- § 19:17 Burden of proof
- § 19:18 Who must be served by the facility?
- § 19:19 Aesthetic considerations
- § 19:20 Co-location of facilities
- § 19:21 Use of public property
- § 19:22 Remedies for violations
- § 19:23 Removal of facilities
- § 19:24 Frequency emissions issues
- § 19:25 Conclusion

Table of Contents

CHAPTER 20. COMMERCIAL AND INDUSTRIAL USES

- § 20:1 Commercial and industrial uses; generally
- § 20:2 Coordination with SEQRA
- § 20:3 Environmental justice
- § 20:4 Animals
- § 20:5 Beaches and swimming pools
- § 20:6 Billiard parlors
- § 20:7 Bowling lanes
- § 20:8 Cemeteries
- § 20:9 Drive-in theatres
- § 20:10 Golf courses; miniature golf
- § 20:11 Greenhouses and nurseries
- § 20:12 Heliports
- § 20:13 Junkyards
 - § 20:14 —Definition and classification
 - § 20:15 —Licensing
 - § 20:16 —Regulations which exclude junkyards
 - § 20:17 —Enclosure of junkyards
 - § 20:18 —Nonconforming junkyards
- § 20:19 Laundry and drycleaning establishments
- § 20:20 Hotels, motels, and tourist homes
 - § 20:21 —Tourist homes
 - § 20:22 —Motels
- § 20:23 Racetracks
- § 20:24 Radio and television towers
- § 20:25 Restaurants and bars
 - § 20:26 —Fast food establishments
 - § 20:27 —Alcoholic beverages
- § 20:28 Shopping centers and malls
- § 20:29 Tennis courts
- § 20:30 Vending machines
- § 20:31 Video games
- § 20:32 Newsstands
- § 20:33 Solid waste facilities

CHAPTER 21. ZONING FOR FARMLAND, AGRICULTURAL USES, AND OPEN SPACE

- § 21:1 Agriculture in New York State
- § 21:2 Local land use regulations and agriculture
- § 21:3 Agricultural districts
- § 21:4 Purchase of development rights (PDR)

- § 21:5 Transfer of development rights (TDR)
- § 21:6 State Environmental Quality Review Act (SEQRA)
- § 21:7 Other environmental statutes and programs
- § 21:8 Open space and land conservation districts
- § 21:9 Parks
- § 21:10 Backyard chickens
- § 21:11 Microbreweries

CHAPTER 22. MARIJUANA AND LAND USE

- § 22:1 Legalization of Marijuana in New York
- § 22:2 Federal Preemption Under the Controlled Substances Act
- § 22:3 State Preemption
- § 22:4 Opt-Out Provision
- § 22:5 State Office of Cannabis Management and the Cannabis Control Board
- § 22:6 Local Zoning Regulation
- § 22:7 Hemp and Agriculture
- § 22:8 Sample Local Opt-out Laws

CHAPTER 23. MINING OPERATIONS

- § 23:1 Introduction
- § 23:2 The State Mined Land Reclamation Law (MLRL)
- § 23:3 —Scope of the MLRL
- § 23:4 —Declaration of policy
- § 23:5 The MLRL express supersession provision—pre-1991 amendments
- § 23:6 —post 1991 amendments
- § 23:7 Procedures for local regulation of mining under the 1991 MLRL amendments
- § 23:8 Decisions of note since the 1991 MLRL amendments
- § 23:9 —Exclusionary zoning
- § 23:10 —Site plan review and other permissible local land use regulation
- § 23:11 —Special use permits
- § 23:12 Supersession of “other state laws.”
- § 23:13 —Mining projects within the Adirondack Park
- § 23:14 The DEC’s processing of MLRL applications in the absence of local approval of the project
- § 23:15 Conclusion

CHAPTER 24. GASOLINE STATIONS AND RELATED USES

- § 24:1 Gasoline stations; generally
- § 24:2 Exclusion of gasoline stations
- § 24:3 Gasoline stations as specially permitted uses
- § 24:4 —New York City
- § 24:5 Variances to establish gasoline stations
- § 24:6 Nonconforming gasoline stations

TABLE OF CONTENTS

- § 24:7 Factors considered in reviewing applications for special permits or variances; consent requirements
- § 24:8 —Fire hazards
- § 24:9 —Traffic congestion
- § 24:10 —Control of competition
- § 24:11 —Depreciation of neighboring property
- § 24:12 Location of gasoline stations in relation to other uses
- § 24:13 Self-service gasoline stations
- § 24:14 Related or accessory uses; garages
- § 24:15 —Carwash facilities
- § 24:16 —Truck rentals and miscellaneous uses
- § 24:17 —Sale of alcohol

CHAPTER 25. SIGN CONTROL

- § 25:1 Sign control; objectives of regulation
- § 25:2 Constitutional limitations
- § 25:3 —On-site and off-site signs
- § 25:4 Signs near public highways, thruways, and parks
- § 25:5 Exclusion from the municipality; exclusion from certain districts
- § 25:6 Height, size, and construction
- § 25:7 Nonconforming signs
- § 25:8 Regulating political signs

CHAPTER 26. ADULT USES

- § 26:1 Introduction
- § 26:2 Types of adult use zoning laws
- § 26:3 Criteria for adult use zoning generally
- § 26:4 Highlights of *Young v. American Mini Theatres, Inc.*
- § 26:5 Highlights of *City of Renton v. Playtime Theaters, Inc.*
- § 26:6 Highlights of *Town of Islip v. Caviglia*.
- § 26:7 Highlights of *Stringfellow's of New York, Ltd. v. The City of New York*
- § 26:8 Highlights of *City of Los Angeles v. Alameda Books*
- § 26:9 Secondary effects of adult uses
- § 26:10 Substantial governmental interest and burden on free speech
- § 26:11 Reasonable alternative avenues of expression
- § 26:12 —Impact of the Internet and cable television
- § 26:13 Definition of adult uses
- § 26:14 Amortization of adult uses
- § 26:15 Regulation by special permit
- § 26:16 Moratoria
- § 26:17 Other types of regulation of adult uses
- § 26:18 —New forms of entertainment and new types of regulation
- § 26:19 Items to consider when conducting a municipal study on the secondary effects of adult uses
- § 26:20 Sample zoning law to regulate adult uses

CHAPTER 27. SUBDIVISION CONTROLS

A. INTRODUCTION

- § 27:1 The objectives of subdivision control
- § 27:2 Subdivision defined
- § 27:3 Municipal definitions
- § 27:4 Major and minor subdivisions
- § 27:5 Other

B. REVIEW OF PLATS

- § 27:6 Approval of plats; planning board
- § 27:7 —Department of Health
- § 27:8 Application requirements
- § 27:9 Procedure for review of plats
- § 27:10 Notice of the public hearing
- § 27:11 Decision of preliminary plat
- § 27:12 —Certification and filing
- § 27:13 —Revocation
- § 27:14 Final plat approval
- § 27:15 —Final plats in substantial agreement with the preliminary plat
- § 27:16 —Final plat where there was no preliminary plat
- § 27:17 —Final plats not in substantial agreement with preliminary plat; and no preliminary plat
- § 27:18 —Decision on final plats
- § 27:19 Approval and certification of final plats
- § 27:20 —Conditional approvals
- § 27:21 —Approval of plat in sections
- § 27:22 —Filing of the decision on a final plat
- § 27:23 —Filing of plats
- § 27:24 —Default approvals
- § 27:25 —Referral to county or regional planning agency

C. STANDARDS FOR APPROVAL OF PLATS

- § 27:26 Subdivision regulations
- § 27:27 Standards for plat approval; official map and comprehensive plan
- § 27:28 —Zoning regulations
- § 27:29 —Monuments; improvements generally
- § 27:30 —Water supply; sewers; drainage
- § 27:31 —Fire-alarm signal devices
- § 27:32 —Streets and highways; suitable improvement
- § 27:33 —Streets and highways; access
- § 27:34 —Open development areas
- § 27:35 —Reservation of land for parks
- § 27:36 —Money in lieu of land for parks
- § 27:37 —Miscellaneous considerations

TABLE OF CONTENTS

- § 27:38 Other fees
- § 27:39 Cluster subdivision
- § 27:40 Effect of approval on power to rezone

D. RELIEF FROM SUBDIVISION REGULATION

- § 27:41 Waiver of requirements
- § 27:42 Variance or exception
- § 27:43 Performance bond in lieu of improvements
- § 27:44 Time to appeal
- § 27:45 Miscellaneous
- § 27:46 Environmental review

CHAPTER 28. EXCLUSIONARY ZONING/ AFFORDABLE HOUSING

A. INTRODUCTION

- § 28:1 The exclusionary zoning problem; generally
- § 28:2 Exclusionary zoning defined
- § 28:3 Patterns of exclusionary zoning

B. TECHNIQUES OF EXCLUSIONARY ZONING

- § 28:4 Zoning to exclude persons of a certain race or color
- § 28:5 Euclidian zoning; minimum lot area
- § 28:6 —Minimum floor area
- § 28:7 —Exclusion of multiple dwellings
- § 28:8 —Exclusion of manufactured homes

C. CHALLENGES TO EXCLUSIONARY ZONING

- § 28:9 State developments: National Land & Investment Company through Mount Laurel and its progeny
- § 28:10 Federal development: Arlington Heights
- § 28:11 New York applications: Berenson
- § 28:12 The “fair share” concept; remedies
- § 28:13 Standing

D. AFFIRMATIVELY PROVIDING AFFORDABLE HOUSING

- § 28:14 The statutory approach
- § 28:15 Local initiative: the Westchester experience
- § 28:16 Affordable housing as a valid public purpose

CHAPTER 29. MOBILE AND MANUFACTURED HOMES AND PARKS

- § 29:1 Mobile homes
- § 29:2 Definition of mobile home/manufactured home and mobile home court

- § 29:3 Regulation of mobile homes; zoning
- § 29:4 —Confinement to mobile home courts
- § 29:5 —Exclusion of mobile homes
- § 29:6 Modular homes
- § 29:7 Licensing of mobile homes
- § 29:8 Regulation of mobile home courts; zoning
- § 29:9 —Nonconforming mobile home courts
- § 29:10 Licensing of mobile home courts
- § 29:11 Taxation of mobile homes and courts

CHAPTER 30. HOME OCCUPATIONS

A. INTRODUCTION

- § 30:1 Home occupations: 1973-1999
- § 30:2 Home occupations, generally
- § 30:3 —New York City

B. RESTRICTIONS ON HOME OCCUPATIONS

- § 30:4 Limitations on home occupations
- § 30:5 —New York City

C. PROFESSIONAL AND RELATED USES

- § 30:6 Professional offices
- § 30:7 —Doctors, dentists, and surgeons
- § 30:8 —Physical Therapists
- § 30:9 —Veterinary medicine
- § 30:10 —Attorneys
- § 30:11 —Engineers and architects
- § 30:12 —Accountants
- § 30:13 —Real estate, insurance, and other business uses
- § 30:14 —Music studios
- § 30:15 —Dance studios
- § 30:16 —Artists' studios

D. MISCELLANEOUS USES

- § 30:17 Barber shops; beauty salons
- § 30:18 Dressmaking
- § 30:19 Funeral home
- § 30:20 Parking commercial vehicles
- § 30:21 Boarding houses and rooming houses
- § 30:22 Nursing and convalescent homes

CHAPTER 31. SENIOR HOUSING AND ZONING

- § 31:1 Introduction
- § 31:2 Senior housing options

TABLE OF CONTENTS

- § 31:3 Zoning districts for the elderly
- § 31:4 Shared living residences
- § 31:5 Multi-family housing for seniors
- § 31:6 Accessory apartments
- § 31:7 Elder cottages
- § 31:8 Affordable housing for seniors
- § 31:9 Special needs housing
- § 31:10 ADA and FHA claims

CHAPTER 32. PLANNED UNIT DEVELOPMENT

- § 32:1 Planned unit development; generally
- § 32:2 —Purpose
- § 32:3 —Elements
- § 32:4 —The floating zone feature
- § 32:5 —The mixture of uses
- § 32:6 —Clustering
- § 32:7 Administrative features of planned unit development; creation of the district
- § 32:8 —Review of site plans

CHAPTER 33. SITE DEVELOPMENT PLAN REVIEW

- § 33:1 Introduction
- § 33:2 Nature of the site plan review process
- § 33:3 —Coordination with SEQRA
- § 33:4 Site plan review structure
- § 33:5 Review procedure overview
- § 33:6 Pre-submission conference
- § 33:7 Preliminary site development plan phase
- § 33:8 Site development plan phase (final)
- § 33:9 Expert assistance
- § 33:10 Referral
- § 33:11 Public hearing
- § 33:12 Decision
- § 33:13 Submission requirements
- § 33:14 —Legal data
- § 33:15 —Impact of proposal on environs
- § 33:16 —Natural features
- § 33:17 —Existing development and infrastructure
- § 33:18 —Proposed development
- § 33:19 Review standards
- § 33:20 Development considerations
- § 33:21 Review
- § 33:22 —Statute of limitations
- § 33:23 Illustrative site development plan regulations—integrated with zoning local law or ordinance
- § 33:24 —separate local law

- § 33:25 Sample application for site development plan approval
- § 33:26 Sample site development plan review checklist
- § 33:27 Sample design review methodology—apartments and condominiums
- § 33:28 —drive-in facilities

CHAPTER 34. THE ADOPTION AND AMENDMENT OF OFFICIAL MAPS

A. ADOPTION OF MAP

- § 34:1 Official map; adoption and filing
- § 34:2 —New York City

B. AMENDMENT OF MAP

- § 34:3 Amendment of the official map
- § 34:4 —New York City
- § 34:5 —Filing an approved plat
- § 34:6 —Dedication and acceptance; private and public streets
- § 34:7 —Closing streets

C. EFFECT OF MAP

- § 34:8 Effect of adoption of official map; evidence of location
- § 34:9 —New York City
- § 34:10 Permits for building in mapped streets

CHAPTER 35. ZONING ADMINISTRATION: THE INSTRUMENTS AND AGENCIES OF ENFORCEMENT

A. INTRODUCTION

- § 35:1 The problem of zoning administration *[Deleted]*

B. THE INSTRUMENTS AND AGENCIES OF ADMINISTRATION

- § 35:2 Building permits *[Deleted]*
- § 35:3 —Fees
- § 35:4 Occupancy permits *[Deleted]*
- § 35:5 Registration of uses *[Deleted]*
- § 35:6 The building inspector *[Deleted]*
- § 35:7 The zoning administrator *[Deleted]*
- § 35:8 The zoning board of appeals
- § 35:9 Municipal Attorney

C. PURPOSES OF THE ZONING BOARD OF APPEALS

- § 35:10 Purposes of the zoning board of appeals

TABLE OF CONTENTS

- § 35:11 —To provide a safety valve
- § 35:12 —To perfect the zoning ordinance
- § 35:13 —To safeguard the constitutionality of the zoning ordinance
- § 35:14 —To interpret the zoning ordinance

D. CREATION AND COMPOSITION OF ZONING BOARD OF APPEALS

- § 35:15 Establishment of zoning boards of appeal
- § 35:16 —Cities
- § 35:17 —Towns
- § 35:18 —Villages
- § 35:19 Qualifications for membership on boards of appeal

E. ORGANIZATION AND STAFF OF THE ZONING BOARD OF APPEALS

- § 35:20 Organization of the zoning board of appeals
- § 35:21 Staff services; compensation

F. MEETINGS, RULES, AND QUORUMS

- § 35:22 Meetings
- § 35:23 Quorum requirements
- § 35:24 Records
- § 35:25 Jurisdiction of zoning boards of appeal
- § 35:26 Appellate jurisdiction; review of administrative decisions
- § 35:27 —Validity of the zoning ordinance
- § 35:28 —Variances
- § 35:29 Original or appellate jurisdiction; exceptions and special permits
- § 35:30 Power to stay proceedings
- § 35:31 Power to require building inspector to act
- § 35:32 Power to make final disposition
- § 35:33 Power to assess costs
- § 35:34 Other powers
- § 35:35 Immunity

CHAPTER 36. PROCEDURE OF THE ZONING BOARD OF APPEALS

A. INTRODUCTION

- § 36:1 Procedure of the zoning board of appeals: the last quarter century
- § 36:2 Generally

B. PARTIES

- § 36:3 Who may appeal to the zoning board of appeals

C. PLEADINGS

- § 36:4 Application for relief
- § 36:5 Content of application
- § 36:6 Time within which an appeal may be perfected

D. NOTICE

- § 36:7 Notice and hearing
- § 36:8 Timeliness of notice
- § 36:9 Parties who must be notified
- § 36:10 Publication of notice
- § 36:11 Content of notice

E. HEARING

- § 36:12 Hearings before the zoning board of appeals
- § 36:13 Public hearing; executive session
- § 36:14 Evidence; generally
- § 36:15 —Oaths
- § 36:16 —Cross-examination
- § 36:17 Personal inspection by board members
- § 36:18 Personal knowledge of board members
- § 36:19 The municipal attorney
- § 36:20 The municipal planning staff; staff reports
- § 36:21 Other governmental agencies
- § 36:22 The right to counsel
- § 36:23 Privilege and immunity
- § 36:24 Hearing by a quorum

F. DECISION

- § 36:25 Member may vote although he did not hear
- § 36:26 Required majorities
- § 36:27 Time within which decision must be rendered
- § 36:28 Record of vote

G. THE DECISION AND FINDINGS

- § 36:29 The decision
- § 36:30 The board must make findings
- § 36:31 Findings conclusory in form
- § 36:32 Findings must be supported by substantial evidence

H. REHEARING

- § 36:33 New evidence
- § 36:34 Rehearing; procedure
- § 36:35 New application for identical relief
- § 36:36 New application for different relief

TABLE OF CONTENTS

I. REFERRAL

- § 36:37 Referral to county planning agency or regional planning council

CHAPTER 37. VARIANCES

A. INTRODUCTION

- § 37:1 Variance defined
§ 37:2 Special use permit distinguished
§ 37:3 Nonconforming use distinguished
§ 37:4 Use variance
§ 37:5 Area variance

B. USE VARIANCES

1. STATUTORY TEST

- § 37:6 Unnecessary hardship test for use variances

2. ELEMENTS

- § 37:7 Lack of reasonable return
§ 37:8 Unique circumstances
§ 37:9 Essential character of the neighborhood
§ 37:10 Self-created hardship

3. METHODS OF ESTABLISHING THE ELEMENTS

- § 37:11 “Dollars and cents” proof

C. AREA VARIANCES

1. STATUTORY TEST

- § 37:12 Balancing test for granting an area variance

2. FACTORS

- § 37:13 Undesirable change in the neighborhood
§ 37:14 Alternatives to the variance
§ 37:15 Size of the variance
§ 37:16 Adverse effect or impact on the physical or environmental conditions
§ 37:17 Self-created hardship

3. METHODS OF ESTABLISHING THE FACTORS

- § 37:18 Types of acceptable proof

D. ZONING BOARDS OF APPEAL

1. DEFERENCE GIVEN TO THE ZONING BOARDS OF APPEALS

- § 37:19 Authority of the zoning boards of appeal and variances
- § 37:20 Standard of review—Rational basis support by substantial evidence
- § 37:21 Inconsistency in granting and denying variances
- § 37:22 Effect of public opinion
- § 37:23 Refusal to decide

2. SPECIFIC LIMITATIONS ON THE POWER TO GRANT VARIANCES

- § 37:24 No power to amend a zoning ordinance
- § 37:25 No power to deny relief on grounds not authorized by law
- § 37:26 No power to vary a building code or specific safety requirement
- § 37:27 No power to vary a consent requirement

3. POWER TO ATTACH CONDITIONS TO VARIANCES

- § 37:28 Conditions generally
- § 37:29 Form and effect of conditions
- § 37:30 Permissible subject matter of conditions
- § 37:31 Conditions improperly imposed
- § 37:32 Conditions imposed by courts

4. POWER TO IMPOSE TIME LIMITATIONS

- § 37:33 Imposing time limitations on variances and special permits
- § 37:34 Granting time extensions

E. PROCEDURAL ISSUES

- § 37:35 Time frames for rendering decisions, filing of decisions, and filing of appeals
- § 37:36 Rehearings

F. MISCELLANEOUS

- § 37:37 Effect of miscellaneous governmental rulings

CHAPTER 38. ADMINISTRATIVE RELIEF FROM ZONING REGULATIONS: SPECIAL USE PERMITS

- § 38:1 Introduction
- § 38:2 Variances distinguished
- § 38:3 Uses commonly subject to special use permit review

TABLE OF CONTENTS

§ 38:4	Area variances and special use permits
§ 38:5	Conditions
§ 38:6	Temporary permits and renewals
§ 38:7	Waiver of requirements
§ 38:8	Delegation of powers
§ 38:9	Reservation of powers
§ 38:10	Public hearing
§ 38:11	Notice to the public, applicant, and regional planning council
§ 38:12	Notice to the public, applicant and regional planning council—Notice to adjacent municipality
§ 38:13	Compliance with SEQRA
§ 38:14	—Decision
§ 38:15	Basis of issuance or denial of special use permit
§ 38:16	—Public safety
§ 38:17	—Traffic congestion
§ 38:18	—Control of competition
§ 38:19	—Impact on surrounding community and comprehensive plan
§ 38:20	—Generalized community objections
§ 38:21	—Anticipated violations
§ 38:22	—Inadequacy of municipal services
§ 38:23	Court review
§ 38:24	Findings
§ 38:25	—Range of discretion

CHAPTER 39. ETHICAL CONSIDERATIONS

§ 39:1	Introduction
§ 39:2	Contractual conflicts of interest for board members
§ 39:3	Familial conflicts of interest
§ 39:4	Other conflicts of interest
§ 39:5	Conflicts of interest addressed at the municipal level
§ 39:6	Appointment of alternate members of planning and zoning boards
§ 39:7	Dual office holding
§ 39:8	Ex parte contacts
§ 39:9	When bias is in issue
§ 39:10	Bad faith
§ 39:11	Who is the client?
§ 39:12	Lawyer-client confidentiality
§ 39:13	Conflicts of interest for land use attorneys
§ 39:14	Attorney appearances before former municipal clients
§ 39:15	The part-time municipal land use counsel
§ 39:16	New ethical considerations on “pay to play”
§ 39:17	Strategies for promoting ethical conduct
§ 39:18	Ethics resources for land use law practitioners
§ 39:19	Model local law for the appointment of alternate members to municipal planning boards and zoning boards of appeal
§ 39:20	Other conduct

§ 39:21 Miscellaneous ethics issues

CHAPTER 40. MEDIATION AND LAND USE DISPUTES

§ 40:1 Introduction

§ 40:2 Defining mediation

§ 40:3 When to use the mediation process

§ 40:4 Benefits of using mediation to resolve land use disputes

§ 40:5 Concerns and drawbacks to using a land use mediation option

§ 40:6 Drafting a local option land use mediation law

§ 40:7 A model local law

CHAPTER 41. SUSTAINABLE DESIGN AND GREEN BUILDINGS

A. INTRODUCTION

§ 41:1 Why sustainable design and green buildings?

§ 41:2 Superstorm sandy

§ 41:3 Reforming the energy vision and the clean energy standard

§ 41:4 Power NY Act of 2011

§ 41:5 Climate Leadership and Community Protection Act

§ 41:6 70 × 30 Plan forward

§ 41:7 Why municipal action?

§ 41:8 What is sustainable design?

§ 41:9 What is a green building?

B. GREEN BUILDING RATING SYSTEMS

§ 41:10 In general

§ 41:11 LEED

§ 41:12 Green Globes

§ 41:13 Energy Star

§ 41:14 —Products and building systems

§ 41:15 Energy Star for Homes

§ 41:16 Energy Star for buildings and manufacturing plants

§ 41:17 The Passive House

§ 41:18 National Green Building Standard

§ 41:19 WaterSense

C. MODEL CODES

§ 41:20 In general

§ 41:21 2012 International Energy Conservation Code (IECC)

§ 41:22 ASHRAE 189.1 Green Standard

§ 41:23 International Green Construction Code (IgCC)

§ 41:24 NYSERDA Stretch Energy Code

D. FEDERAL LAWS AND LEGAL ISSUES

§ 41:25 In general

TABLE OF CONTENTS

- § 41:26 Federal energy laws
- § 41:27 The Energy Policy Act of 1992
- § 41:28 The Energy Policy Act of 2005; the Energy Independence and Security Act of 2007
- § 41:29 American Recovery and Reinvestment Act of 2009 (ARRA)
- § 41:30 The Clean Water Act

E. FEDERAL PREEMPTION

- § 41:31 In general
- § 41:32 *Air Conditioning, Heating, and Refrigeration Inst. (A.H.R.I.) v. City of Albuquerque*
- § 41:33 *Bldg. Indus. Ass’n of Wash. v. Wash. State Bldg. Code Council*
- § 41:34 Antitrust issues
- § 41:35 Due process issues—Vagueness
- § 41:36 —Delegation of legislative power

F. NEW YORK STATE’S BUILDING CODE REGULATORY STRUCTURE

- § 41:37 In general
- § 41:38 The New York State Uniform Fire Prevention and Building Code Act
- § 41:39 The 2010 State Energy Conservation Construction Code Act (State Energy Code)
- § 41:40 State preemption of local laws
- § 41:41 Article 10

G. NEW YORK STATE SUSTAINABLE DEVELOPMENT ORDERS, LAWS, AND PROGRAMS

- § 41:42 Executive Law § 94-c and the Renewable Action through Project Interconnection and Deployment (RAPID) Act
- § 41:43 Clean Energy Resources Development and Incentives Program
- § 41:44 Executive Orders
- § 41:45 Governor’s Smart Growth Cabinet
- § 41:46 New York Climate Action Plan
- § 41:47 Promotion of sustainable farms
- § 41:48 New York Energy Efficiency Portfolio Standard
- § 41:49 Green Residential Building Program
- § 41:50 The New York State Smart Growth Public Infrastructure Policy Act

H. THE ROLE OF THE COMPREHENSIVE PLAN

- § 41:51 Community Risk and Resiliency Act
- § 41:52 Sustainable design and green building in the comprehensive plan
- § 41:53 Green plans

- § 41:54 PlaNYC
- § 41:55 Inclusion of sustainable design/green building in land use plans
- § 41:56 Implementation strategies

I. ADOPTION OF COMPREHENSIVE RATINGS SYSTEMS AND MODEL CODES

- § 41:57 Generally
- § 41:58 Adoption of LEED or other building rating systems
- § 41:59 Combining rating systems with local programs
- § 41:60 Administrative provisions
- § 41:61 —Covered actions; exemptions
- § 41:62 —Review process; green building compliance official
- § 41:63 —Conflict prevention, appeals, equivalency approval, and dispute resolution
- § 41:64 —Benchmarking and disclosure requirements
- § 41:65 —Commissioning
- § 41:66 —Use of codes, covenants, and restrictions (CC&Rs)
- § 41:67 —Green building fees and rebates
- § 41:68 —Fees as taxes
- § 41:69 —Life cycle costing

J. ADDRESSING SPECIFIC GREEN BUILDING AND SUSTAINABLE DESIGN ISSUES

- § 41:70 In general
- § 41:71 Anti-sprawl (smart growth) measures
- § 41:72 —Traditional Neighborhood Development (TND)
- § 41:73 —Transit-Oriented Development (TOD)
- § 41:74 —“Smart shrinking”
- § 41:75 —Redevelopment and infill programs
- § 41:76 —Urban renewal programs
- § 41:77 —Cluster development
- § 41:78 Energy efficiency
- § 41:79 Indoor air quality
- § 41:80 Construction materials
- § 41:81 Construction and demolition (C & D) debris
- § 41:82 Water conservation

K. SPECIALIZED TOOLS FOR IMPLEMENTING SUSTAINABLE DESIGN AND GREEN BUILDING REGULATIONS

- § 41:83 Incentive zoning
- § 41:84 —Sample benefits
- § 41:85 —Sample incentives
- § 41:86 Floating zones (overlay districts)
- § 41:87 Planned unit developments

TABLE OF CONTENTS

- § 41:88 Zoning for Microgrids, Storage, and Distributed Energy Resources (DER)
- § 41:89 Solar and Wind Facility Model Zoning Laws
- § 41:90 Complete Streets
- § 41:91 NYC's Climate Mobilization Act

CHAPTER 42. PROCEEDINGS IN THE NATURE OF CERTIORARI AND MANDAMUS

- § 42:1 Proceedings in the nature of certiorari and mandamus
- § 42:2 Judicial review of administrative conduct; the principal statutes
 - § 42:3 —Cities
 - § 42:4 —Villages
 - § 42:5 —Towns
- § 42:6 Parties entitled to review; a person aggrieved by administrative decision
 - § 42:7 —Owners
 - § 42:8 —Sellers and purchasers
 - § 42:9 —Tenants
 - § 42:10 —Associations and agencies
 - § 42:11 —Competitors
 - § 42:12 —The municipality as an aggrieved party
- § 42:13 Indispensable parties
- § 42:14 Time within which Article 78 proceedings must be initiated
 - § 42:15 —New York City
- § 42:16 Proceedings in the nature of certiorari to review
- § 42:17 The dimensions of review; the presumption of validity
 - § 42:18 —Miscellaneous restrictions on review
 - § 42:19 —Not a trial de novo
- § 42:20 Remand, transfer, or final disposition
- § 42:21 Proceedings in the nature of mandamus
- § 42:22 Exhaustion of administrative remedies
- § 42:23 Amendment while review is pending
- § 42:24 Judicial estoppel
- § 42:25 Stays
- § 42:26 Statute of limitations

Table of Contents

CHAPTER 43. INJUNCTIONS

- § 43:1 The role of injunctions in the enforcement of zoning ordinances
- § 43:2 Action to enjoin enforcement or to enjoin violation by a public official
- § 43:3 Action to enjoin nuisance which does not violate the zoning regulations
- § 43:4 Temporary injunction
- § 43:5 Parties; the municipality
- § 43:6 —Taxpayer's action
- § 43:7 —Private action
- § 43:8 Laches
- § 43:9 Exhaustion of administrative remedies
- § 43:10 Mootness
- § 43:11 —Estoppel

CHAPTER 44. DECLARATORY JUDGMENTS

- § 44:1 Declaratory judgments; availability of remedy
- § 44:2 Justiciable controversy
- § 44:3 Parties plaintiff; landowners
- § 44:4 —Sellers and purchasers
- § 44:5 —Tenants
- § 44:6 —Associations, corporations and boards
- § 44:7 —Municipalities
- § 44:8 Parties defendant
- § 44:9 Commencement of action
- § 44:10 Pleadings
- § 44:11 Exhaustion of administrative remedies
- § 44:12 —Pleading exhaustion of remedies
- § 44:13 Mootness
- § 44:14 Effect of compliance, violation, or application for administrative relief
- § 44:15 Summary judgment
- § 44:16 Effect of judgment
- § 44:17 Other claims
- § 44:18 Statute of limitations
- § 44:19 Standing

CHAPTER 45. ENFORCEMENT

A. INTRODUCTION

- § 45:1 The purpose and importance of zoning enforcement

§ 45:2 Sources of enforcement authority

B. THE PLAYERS IN ZONING ENFORCEMENT

§ 45:3 The building inspector

§ 45:4 The zoning enforcement officer

§ 45:5 The zoning board of appeals

C. THE INSTRUMENTS OF ZONING ADMINISTRATION

§ 45:6 Building permits

§ 45:7 Occupancy permits

§ 45:8 Registration of uses

D. ENFORCEMENT PROCESS

§ 45:9 Discovery, inspection, and searches

§ 45:10 Informal communications, warning letters, and
notifications of violations

§ 45:11 Enforcement techniques

§ 45:12 Violator's options

E. ADMINISTRATIVE ACTIONS

§ 45:13 Revocation or suspension of permits

§ 45:14 Stop work orders

§ 45:15 Cease and desist orders

§ 45:16 Correction period

F. CIVIL PROCEEDINGS

§ 45:17 Generally

§ 45:18 Private actions

§ 45:19 Civil penalties and disgorged profits

§ 45:20 Penalties for failure to comply with filing of subdivision
maps

§ 45:21 State building code enforcement

G. CRIMINAL PENALTIES

§ 45:22 Town Law penalties

§ 45:23 Village Law penalties

§ 45:24 City Law penalties

§ 45:25 New York City Law penalties

§ 45:26 Accusations

§ 45:27 Burden of proof

§ 45:28 Criminal defenses

H. LIMITATIONS AND OTHER DEFENSES

§ 45:29 State-certified, County-adopted Agricultural Districts

§ 45:30 First Amendment limitations

TABLE OF CONTENTS

- § 45:31 Substantive due process
- § 45:32 Takings claims
- § 45:33 Discretion of enforcement
- § 45:34 Laches and estoppel
- § 45:35 Discriminatory enforcement
- § 45:36 Vested rights

I. OTHER ENFORCEMENT ISSUES

- § 45:37 Conflict of laws
- § 45:38 Extra-territorial enforcement
- § 45:39 Special relationship

CHAPTER 46. GEOGRAPHIC INFORMATION SYSTEMS & PLANNING AND ZONING

- § 46:1 Introduction
- § 46:2 What Is GIS
- § 46:3 Specific Uses with a Focus on Land Use Planning
 - § 46:4 —Land Use Planning
 - § 46:5 —Real Estate
- § 46:6 New York Resources
- § 46:7 Liability
 - § 46:8 —Malpractice
 - § 46:9 —Private Liability
 - § 46:10 —Government Liability
- § 46:11 Access
- § 46:12 Freedom of Information Law
 - § 46:13 —Costs
 - § 46:14 —Copyright
- § 46:15 Privacy: Constitutional
- § 46:16 Privacy: Informational
- § 46:17 Privacy: Governmental Regulation
- § 46:18 Litigation
 - § 46:19 —Environmental
 - § 46:20 —Evidentiary
 - § 46:21 —Taxation
 - § 46:22 —Redistricting
 - § 46:23 —Tax Status of GIS Providers
- § 46:24 Conclusion
- § 46:25 Appendix of Selected Information on NYS Datasharing Cooperative Website

CHAPTER 47. THE FREEDOM OF INFORMATION LAW

- § 47:1 The Freedom of Information Law
- § 47:2 Agencies subject to FOIL
- § 47:3 Records subject to FOIL, generally
- § 47:4 Electronic records

- § 47:5 Records required to be maintained under FOIL
- § 47:6 Procedures under FOIL
- § 47:7 Reproduction fees
- § 47:8 FOIL Certifications
- § 47:9 Time limits for responding to FOIL requests
- § 47:10 Requirement that request reasonably describe records
- § 47:11 Duplicative requests
- § 47:12 Standing to seek judicial review under FOIL
- § 47:13 Judicial review
- § 47:14 Burden of proof and presumption of access
- § 47:15 Attorneys fees
- § 47:16 Exceptions to right of access—§ 87(2)(a), Statutory confidentiality
- § 47:17 —§ 87(2)(a), Statutory confidentiality, Attorney-client privilege
- § 47:18 —§ 87(2)(b), Privacy, generally
- § 47:19 —§ 87(2)(b), Privacy, public employee information
- § 47:20 —§ 87(2)(b), Privacy, names and contact information
- § 47:21 —§ 87(2)(b), Privacy, commercial requests and solicitation
- § 47:22 —§ 87(2)(c), Impairment of contract awards
- § 47:23 —§ 87(2)(d), Trade secrets
- § 47:24 —§ 87(2)(e), Law enforcement records
- § 47:25 —§ 87(2)(f), Endangerment of life or safety
- § 47:26 —§ 87(2)(g), Interagency and intra-agency materials
- § 47:27 —§ 87(2)(h), Examination questions and answers
- § 47:28 —§ 87(2)(i), Security of electronic information
- § 47:29 The Committee on Open Government
- § 47:30 Records retention and management requirements under the Arts and Cultural Affairs Law
- § 47:31 Relationship between FOIL and the federal Freedom of Information Act
- § 47:32 Common law and First Amendment access to government records

CHAPTER 48. THE OPEN MEETINGS LAW

- § 48:1 The intent of the Open Meetings Law
- § 48:2 The definition of “public bodies” under the Open Meetings Law; generally
- § 48:3 The definition of “public bodies” under the Open Meetings Law; committees, advisory boards, etc.
- § 48:4 The definition of “meetings” under the Open Meetings Law
- § 48:5 Meeting facilities and barrier-free access
- § 48:6 Audio and video recording at public meetings
- § 48:7 Meeting materials
- § 48:8 Public participation
- § 48:9 Videoconferencing
- § 48:10 Notice
- § 48:11 Executive session; generally
- § 48:12 Executive session; litigation

TABLE OF CONTENTS

- § 48:13 Executive session; contractual matters
- § 48:14 Executive session; personnel matters
- § 48:15 Executive session; real property transactions
- § 48:16 Minutes of meetings
- § 48:17 Enforcement of the Open Meetings Law; standing
- § 48:18 Enforcement of the Open Meetings Law; annulment of action
- § 48:19 Enforcement of the Open Meetings Law; attorney fees and litigation costs
- § 48:20 Exemptions from the Open Meetings Law
- § 48:21 Application of the Open Meetings Law to social media and digital communications

CHAPTER 49. LAND USE RESOURCES ON THE INTERNET

- § 49:1 Introduction
- § 49:2 Comprehensive sites
- § 49:3 Federal government sponsored sites
- § 49:4 Land use codes
- § 49:5 Nonprofit organizations
- § 49:6 Academic sponsored sites
- § 49:7 Miscellaneous sources and topics of interest
- § 49:8 Blogs
- § 49:9 Blogs national in scope
- § 49:10 State specific blogs
- § 49:11 Blogs on environmental law and climate change
- § 49:12 Blogs on eminent domain
- § 49:13 Blogs on social justice and community development
- § 49:14 Conclusion

CHAPTER 50. THE LANGUAGE OF ZONING

- § 50:1 The language of zoning; strict construction
- § 50:2 Preambles; purpose clauses; rules of construction
- § 50:3 Common meaning
- § 50:4 Sample definitions

CHAPTER 51. ORDINANCE AND CHARTER PROVISIONS ADOPTED BY NEW YORK MUNICIPALITIES: PLANNING, ZONING AND SUBDIVISION CONTROL

A. ENACTMENT, AMENDMENT, AND REPEAL

- § 51:1 Charter sections delegating zoning power
- § 51:2 Ordinances establishing amendment procedures; cities
- § 51:3 —Towns
- § 51:4 —Villages

- § 51:5 Special voting requirement where amendment disapproved
by planning board

B. PRESERVATION, LIMITATION, AND TERMINATION OF NONCONFORMING USES

- § 51:6 Definitions of nonconforming uses
- § 51:7 Preservation of nonconforming uses
- § 51:8 Unlawful uses
- § 51:9 Permit holders and permit applicants
- § 51:10 Change from one nonconforming use to another
- § 51:11 Change to a use of higher classification
- § 51:12 Change of use with administrative approval
- § 51:13 Extension of a nonconforming use
- § 51:14 —With administrative approval
- § 51:15 Change in intensity of use
- § 51:16 Alterations and repairs
- § 51:17 —With administrative approval
- § 51:18 Restoration of nonconforming use
- § 51:19 Abandonment of use
- § 51:20 Discontinuance of use
- § 51:21 Amortization of nonconforming uses

C. PURPOSE OF ZONING RESTRICTIONS

- § 51:22 Purpose statement: New York City, 1916
- § 51:23 —General
- § 51:24 —Residential districts
- § 51:25 —Bulk regulations
- § 51:26 —Off-street parking regulations
- § 51:27 Office districts
- § 51:28 —Commercial districts
- § 51:29 —Industrial districts

D. DISTRICTS: MAPS AND BOUNDARIES

- § 51:30 Establishment of zoning map
- § 51:31 Interpretation of boundaries

E. TYPES OF ZONING ORDINANCES

- § 51:32 Cumulative zoning ordinance
- § 51:33 Exclusive zoning ordinance
- § 51:34 Ordinances excluding certain uses

F. USE RESTRICTIONS

- § 51:35 Residential districts
- § 51:36 Commercial districts
- § 51:37 —Office districts
- § 51:38 —Heavier commercial uses

TABLE OF CONTENTS

- § 51:39 Industrial districts
- § 51:40 Performance standards
- § 51:41 Agricultural districts
- § 51:42 Planned development districts
- § 51:43 Open Land Districts
- § 51:44 Flood Plain Districts

G. AREA RESTRICTIONS

- § 51:45 Height restrictions
- § 51:46 Setback restrictions
- § 51:47 —Corner lots
- § 51:48 —Permitted encroachments
- § 51:49 Yard requirements
- § 51:50 Lot size regulations
- § 51:51 Frontage requirements
- § 51:52 Provisions for substandard lots
- § 51:53 Special provisions for split lots
- § 51:54 Lot coverage limitations
- § 51:55 Density restrictions
- § 51:56 Bulk, parking, and floor area requirements
- § 51:57 Off-street parking requirements

H. DESIGN CONTROLS

- § 51:58 Site plan review
- § 51:59 Ordinance protecting Niagara Falls area
- § 51:60 Architectural control ordinances
- § 51:61 Incentive zoning provisions

I. PARTICULAR USES

- § 51:62 Exception of municipal uses
- § 51:63 Public utilities
- § 51:64 Airports
- § 51:65 Recreational uses; clubs
- § 51:66 —Adult entertainment
- § 51:67 —Swimming pools
- § 51:68 —Bowling lanes
- § 51:69 Home Occupations
- § 51:70 Rooming and boarding houses
- § 51:71 Animals
- § 51:72 Gasoline stations
- § 51:73 —Special permits
- § 51:74 —Location
- § 51:75 Greenhouses and nurseries
- § 51:76 Junkyards; exclusion
- § 51:77 —Location
- § 51:78 —Enclosure
- § 51:79 —Amortization

- § 51:80 Laundries; laundromats
- § 51:81 Mobile homes
- § 51:82 —Limitations
- § 51:83 Hotels, motels and tourist homes
- § 51:84 Radio transmission towers
- § 51:85 Removal of topsoil; landfill
- § 51:86 Quarries
- § 51:87 Dumps
- § 51:88 Hospitals
- § 51:89 Cemeteries
- § 51:90 Outdoor advertising

J. INTERPRETATION OF ZONING ORDINANCES

- § 51:91 Interpretation clause

CHAPTER 52. ORDINANCE AND CHARTER PROVISIONS ADOPTED OR PROPOSED BY NEW YORK MUNICIPALITIES: ZONING ADMINISTRATION

- § 52:1 Building permit
- § 52:2 Occupancy permit
- § 52:3 Building inspector
- § 52:4 Zoning board of appeals; cities
- § 52:5 —Towns
- § 52:6 —Villages
- § 52:7 Qualifications for membership
- § 52:8 Organization
- § 52:9 Meetings; quorum
- § 52:10 Rulemaking
- § 52:11 Jurisdiction; powers
- § 52:12 Special permits
- § 52:13 Variances
- § 52:14 Interpretation
- § 52:15 Power to stay
- § 52:16 Final disposition
- § 52:17 Conditional and temporary permits
- § 52:18 Consent requirements
- § 52:19 Legislative power to grant special permits
- § 52:20 Applications and appeals
- § 52:21 Notice and hearing
- § 52:22 Decision
- § 52:23 Violations, complaints, and penalties; cities
- § 52:24 —Villages
- § 52:25 —Towns

TABLE OF CONTENTS

**CHAPTER 53. FORMS RELATING TO ZONING
ADMINISTRATION**

A. PROCEDURES

- § 53:1 Town ordinance concerning building department
- § 53:2 Town ordinance concerning zoning board of appeals
- § 53:3 Zoning permit procedure
- § 53:4 Zoning appeals procedure
- § 53:5 Petition for Comprehensive Plan Amendment

**B. BUILDING PERMITS: CERTIFICATES OF
OCCUPANCY**

- § 53:6 Application for building permit
- § 53:7 Sample procedure for obtaining a building permit for
commercial and business permits
- § 53:8 General application for building permit
- § 53:9 Application for residential building permit
- § 53:10 Application for commercial building permit
- § 53:11 Miscellaneous forms to accompany building permit
application
- § 53:12 Plot Plan
- § 53:13 Specifications and description of materials
- § 53:14 New York State Uniform Fire Prevention and Building
Code Checklist for: General Building Construction
- § 53:15 Sidewalk and barricade information
- § 53:16 Worker's Compensation Statement
- § 53:17 Application for sign permit (space inside block to be filled
in by Building Inspector)
- § 53:18 Building permit
- § 53:19 Building Inspector's record
- § 53:20 Application for certificate of occupancy
- § 53:21 Change of occupancy request
- § 53:22 Certificate of compliance
- § 53:23 Certificate of occupancy
- § 53:24 Application for dwelling permit
- § 53:25 Application for building permit for small projects (pools,
decks, etc.)
- § 53:26 Fence, wall, or berm approval application
- § 53:27 Application for demolition permit
- § 53:28 Extension of expired permit
- § 53:29 Affidavit of average setback (for application to build or
install)
- § 53:30 Application for demolition or construction other than
buildings
- § 53:31 Affidavit of excavation or demolition
- § 53:32 Land clearing permit application
- § 53:33 Application for detached accessory (non-habitable) storage
building

- § 53:34 Bulkhead and dock permit application
- § 53:35 Road opening application form
- § 53:36 Application for Zoning Verification and Building/Zoning Permit
- § 53:37 Sign Permits
- § 53:38 Application for Certificate of Appropriateness

C. APPLICATIONS TO THE ZONING BOARD OF APPEALS

- § 53:39 Application to zoning board of appeals
- § 53:40 Application for variance
- § 53:41 Multipurpose application to the zoning board of appeals
- § 53:42 Application for special permit
- § 53:43 Checklist for special permit
- § 53:44 Application for special exception
- § 53:45 Lot coverage calculations worksheet for zoning board review
- § 53:46 Rezoning application form
- § 53:47 Application to the zoning board of appeals, request for interpretation
- § 53:48 Multi-purpose application review form (zoning appeals)

D. NOTICES OF HEARING

- § 53:49 Towns.
- § 53:50 Villages
- § 53:51 Affidavit of mailing

E. RECORDS AND RESOLUTIONS

- § 53:52 Sample Minutes of a zoning board of appeals
- § 53:53 Zoning Board of Appeals Area Variance Findings & Decision
- § 53:54 Zoning Board of Appeals Use Variance Findings & Decision
- § 53:55 Sample Decision
- § 53:56 Affidavit of mailing
- § 53:57 Affidavit of delivery
- § 53:58 Affidavit of posting notification of zoning appeals hearing

F. REFERRAL

- § 53:59 Referral form for County Review.
- § 53:60 Report on proposed zoning action from county planning board or regional zoning council.
- § 53:61 Petition for Zoning Amendment
- § 53:62 Application for PUD Zoning Amendment
- § 53:63 Change of Zone Application
- § 53:64 Applicant Ethics Disclosure Form

TABLE OF CONTENTS

G. MISCELLANEOUS

- § 53:65 Lot inspection/flagging/verification request form
- § 53:66 Agricultural data statement
- § 53:67 Freedom of information request form (addressed to building inspector)
- § 53:68 Flood hazard area permit application
- § 53:69 Grading permit application
- § 53:70 Application with checklist for wetlands permit

CHAPTER 54. FORMS RELATED TO ENFORCEMENT

- § 54:1 Complaint of Violation
- § 54:2 Initial Follow-up Letter of Citizen Complaint
- § 54:3 Final Follow-up Letter of Citizen Complaint
- § 54:4 Notice of Complaint
- § 54:5 Administrative Search Warrant and Related Documents
- § 54:6 Inspection Report Form
- § 54:7 Notice of Violation/Order to Remedy
- § 54:8 Stop Work Form
- § 54:9 Enforcement Checklist
- § 54:10 Information and Complaint Form
- § 54:11 Proof Chart Form
- § 54:12 Appearance Ticket Form
- § 54:13 Criminal summons
- § 54:14 Information and complaint
- § 54:15 Fire prevention and building code administration and enforcement

CHAPTER 55. ORDINANCES AND ADMINISTRATIVE FORMS RELATING TO SUBDIVISION CONTROLS; SITE PLAN AND OFFICIAL MAPS

A. REGULATIONS

- § 55:1 Minor subdivision requirements
- § 55:2 Major subdivision requirements
- § 55:3 Subdivision design and production

B. SUBDIVISION FORMS

- § 55:4 Application for approval of preliminary plat
- § 55:5 Application for approval of final plat
- § 55:6 Application for zoning verification
- § 55:7 Application for subdivision of land
- § 55:8 Notice of hearing on plat
- § 55:9 Resolution of planning board approving plat

- § 55:10 Subdivision plat review; administrative check list
- § 55:11 -Technical checklist
- § 55:12 Minor subdivision approval
- § 55:13 Owner Authorization for Site Plan/Subdivision Review
- § 55:14 Affidavit by Corporate Owner and/or Developer
- § 55:15 Affidavit by Individual Owner and/or Developer
- § 55:16 Application for Letter of Credit—Revision
- § 55:17 Application for Grading
- § 55:18 Initial planned development district application
- § 55:19 Amendments to existing planned development districts application
- § 55:20 Initial mixed economic development district application
- § 55:21 Application for subdivision approval of a sketch plan
- § 55:22 Application for subdivision of land/lot line modification and environmental assessment form part I
- § 55:23 Statement of disclosure of interest
- § 55:24 Minor subdivision application for legalization of pre-existing illegal subdivision
- § 55:25 Initial land division application

C. SITE PLAN REVIEW

- § 55:26 Application for site plan review
- § 55:27 Owner Authorization for Site Plan/Subdivision Review
- § 55:28 PUD Site Plan
- § 55:29 Initial site plan/ special use permit application
- § 55:30 Site plan pre-submission request

D. REVIEW PROCEDURES

- § 55:31 Minor subdivision review procedure
- § 55:32 Major subdivision review procedure
- § 55:33 Site plan review procedure

E. OFFICIAL MAPS

- § 55:34 Ordinance establishing official map
- § 55:35 Ordinance changing official map
- § 55:36 Notice of hearing before village trustees on change of street

CHAPTER 56. STATE ENVIRONMENTAL QUALITY REVIEW FORMS

- § 56:1 Introduction
- § 56:2 ENB SEQRA notice publication form
- § 56:3 Short environmental assessment form part 1
- § 56:4 Short environmental assessment form part 2
- § 56:5 Full environmental assessment form part 1
- § 56:6 Full environmental assessment form part 2
- § 56:7 Full environmental assessment form part 3

TABLE OF CONTENTS

§ 56:8	Visual EAF addendum
§ 56:9	Positive declaration form
§ 56:10	Notice of completion of Draft/Final EIS
§ 56:11	Notice of completion of draft and notice of SEQR hearing
§ 56:12	Coastal assessment form
§ 56:13	LWRP consistency application
§ 56:14	Coastal assessment form coastal management program
§ 56:15	SEQR findings statement

CHAPTER 57. FORMS RELATING TO COURT PROCEEDINGS IN ZONING MATTERS

A. ARTICLE 78 PROCEEDINGS: CERTIORARI

§ 57:1	Petition for annulment of decision relating to nonconforming use
§ 57:2	Petition for review of variance granted by village board of zoning appeals
§ 57:3	Answer and return of town board of zoning appeals
§ 57:4	Petition for order to show cause why building permit should not issue
§ 57:5	Answer and affirmative defenses to petition for order to show cause
§ 57:6	Reply to affirmative defenses to petition for order to show cause why building permit should not issue
§ 57:7	Order to show cause why variance should not be annulled
§ 57:8	Order to show cause why decision of town board of zoning appeals should not be annulled

B. ARTICLE 78 PROCEEDINGS: MANDAMUS

§ 57:9	Petition for order to issue permit
§ 57:10	Order to show cause why building permit should not be ordered
§ 57:11	Order directing issuance of building permit by town
§ 57:12	Order directing issuance of a building permit by village

C. DECLARATORY JUDGMENTS.

§ 57:13	Complaint declaring a zoning ordinance invalid—spot zoning
§ 57:14	Complaint declaring a zoning ordinance invalid as unreasonable and confiscatory
§ 57:15	Complaint for judgment declaring zoning ordinance invalid as being adopted without comprehensive zoning plan
§ 57:16	Judgment declaring zoning ordinance invalid and enjoining enforcement thereof
§ 57:17	Judgment declaring amendment to zoning ordinance invalid and enjoining enforcement thereof
§ 57:18	Affidavit in support of injunction pendente lite

- § 57:19 Order to show cause why village should not be enjoined
pendente lite

D. INJUNCTION

- § 57:20 Complaint by private person to enjoin violation of village
zoning ordinance
- § 57:21 Complaint to enjoin violation of town zoning ordinance.
- § 57:22 Complaint by village to enjoin violation of zoning
ordinance
- § 57:23 Judgment restraining violation of village zoning ordinance

APPENDICES

APPENDIX A. TABLE CROSS-REFERENCING APPLICABLE
STATE STATUTES FOR LAND USE
CONTROLS

APPENDIX B. SOURCES OF TECHNICAL ASSISTANCE

Table of Laws and Rules

Table of Cases

Index