

Executive Report

Land Use and Economic Development Task Force

Town of Caroline

December 9, 2020

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1. Summary

The purpose of this report is to present the findings and recommendations of the Town of Caroline Land Use and Economic Development Task Force to the Town of Caroline Town Board. The Task Force was charged with researching specific regulatory land use tools, including Formula Business Restrictions, Economic Impact Review, Zoning, and other tools that may promote the vision of the revised Comprehensive Plan (see Appendix A for Task Force Resolution).

Research included:

- Review of more than 20 examples of local land use regulation and policy;
- Reading over a dozen articles and publications on land use guidance;
- Discussion at 13 Task Force meetings (see Appendix B for Meeting Notes);
- Advice from Department of State Division of Local Government Services;
- Advice from Department of Environmental Conservation;
- Advice from Tompkins County Planning and Sustainability Department; and
- Counsel from the Town Attorney

The Task Force recommends the following actions to be taken by the Town Board:

Priority Actions

1. Adopt the revised Site Plan Review Law (Appendix C) ideally as part of a Zoning Ordinance
2. Appoint a Zoning Commission

Additional Actions

1. Prepare an economic inventory for the Town of Caroline that would guide economic impact review/assessment
2. Adopt a town-specific scenic resources inventory
3. Consider a Town Environmental Quality Review Act

2. Purpose and Background

2.1 Comprehensive Plan Update

Since 2014, the Town of Caroline has been working to update the 2006 Comprehensive Plan. The revised draft Comprehensive Plan establishes a clear vision of the future of Caroline and identifies specific goals and actions that will promote that vision.

Goals of the revised Plan include:

- Promoting economic activity in hamlets;
- Protecting agricultural and environmental resources;
- Promoting cluster development; and
- Incentivizing housing that is within designated focus areas.

Through its work on the revised Comprehensive Plan for the Town, the Planning Board identified suggested tools for guiding future land use to promote the community vision that the Town may wish to implement, including Formula Business Restrictions, Economic Impact Review Laws, and

Zoning Laws. The Planning Board recognized that achieving the goals of a Comprehensive Plan requires identification and careful development of appropriate regulatory tools.

2.2 Appointment of the Task Force

The Town of Caroline Land Use and Economic Development Task Force was appointed by the Town Board to research regulatory land use tools identified by the Planning Board that could promote the values and vision of the Town as expressed in the Comprehensive Plan. Specifically, the Task Force was charged with examining:

- Formula Business Restrictions
- Zoning Laws
- Economic Impact Review; and
- Any other tools that may promote the Town's vision at the discretion of the committee and subject to guidance and/or recommendations from the Town Board.

The Task Force was chaired by Town Councilmember Tim Murray and included the following Caroline residents: Yusmin Alim; Jonathan Bates*; Michele Brown; Ellen Harrison (Site Plan Review Board Member); Barbara Knuth; Barbara Lynch; Bill Podulka (Planning Board Member); Ken Miller; Rebecca Schillenback; and Kathryn Seely*.

The Task Force was divided into three sub-committees: Formula Business Restrictions; Economic Impact Review; and Site Plan Review/Design Standards.

**initially involved with the Task Force, but were not members at the time of this report*

3. Findings and Recommendations

3.1 Site Plan Review & Design Standards

Town Law Section 274-a grants authority to Towns to review plans showing the arrangement, layout, and design of a proposed development, i.e. Site Plan Review¹. Caroline's current Site Plan Review Law was adopted in 2018 and includes Design Guidelines, passed by separate resolution. The Site Plan Review Law can regulate the impacts of land uses by establishing the review process and requirements for specified types of development, but a zoning ordinance is needed in order to regulate land uses. When combined with zoning, Site Plan Review regulations become stronger because they integrate within the comprehensive control scheme that zoning regulations provide². Without zoning, the Site Plan Review Board is required to assess the impacts of a particular development plan without any commitment by the municipality as to the character of the surrounding property.

The Task Force identified Site Plan Review as an effective means of regulating the impacts of land development. Upon review of the current Site Plan Review Law, the Task Force focused on two broad areas for recommending revisions. The first centered on the thresholds or "triggers" for developments requiring Site Plan Review. For example, the current Law requires Site Plan Review for proposed commercial uses of 10,000 square feet or more. The Task Force

¹ Town Law Section 274-a: <https://codes.findlaw.com/ny/town-law/twn-sect-274-a.html>

² James A. Coon Local Government Technical Series: Site Plan Review (p. 3) online: https://www.dos.ny.gov/lg/publications/Site_Development_Plan_Review.pdf

recommends lowering that threshold to 3,000 square feet, in addition to other modifications to the thresholds.

The second major area of focus centered on the Design Guidelines, which are currently in question format. It is unclear how much authority a Site Plan Review Board has in disapproving a development that does not answer favorably to one of the Guideline questions. To reduce uncertainty, the Task Force re-worded the Design Guideline questions to become statements of required standards. The Department of State's advisement is consistent with this approach³.

Recommendation

The Task Force recommends that the Town of Caroline adopt the revised Site Plan Review Law (Appendix C) ideally as part of a Zoning Ordinance.

3.2 Zoning

Zoning is a regulatory power of local municipalities granted by Town Law Section 261 to dictate the location, siting, and density of land uses⁴.

The revised Comprehensive Plan aims to protect rural character and suggests that development should be concentrated in the hamlets of Caroline in order to steer larger or more intense development away from less dense areas of the Town. Zoning can establish intensities and types of uses allowed in defined areas or "zones" thereby promoting the vision the revised Comprehensive Plan.

In addition to the regulating the location, siting, and density of land uses, a Zoning Ordinance also establishes review procedures and review bodies, such as those for Site Plan Review, Special Use Review, and Appeals.

Recommendation

Contingent on the passage of the revised Comprehensive Plan, the Task Force recommends that the Town of Caroline appoint a Zoning Commission (see Appendix D), pursuant to Town Law Section 266⁵.

3.3 Formula Business Restrictions

Formula Business Restriction ordinances are typically used to limit the quantity and location of certain retail and restaurant establishments that are characterized by:

1. Their national or regional distribution;
2. Their standardization of goods and services provided; and
3. The standardization of the design of their stores.

³ "... a rural community lacking financial or professional resources to review the site development plan may need relatively detailed standards for use by the lay reviewing agency, while a municipality having qualified planning assistance available, could draft more flexible criteria." (James A. Coon Local Government Technical Series: Site Plan Review (p. 10) online: https://www.dos.ny.gov/lg/publications/Site_Development_Plan_Review.pdf)

⁴ Town Law Section 261: <https://codes.findlaw.com/ny/town-law/twn-sect-261.html>

⁵ Town Law Section 266: <https://codes.findlaw.com/ny/town-law/twn-sect-266.html>

Formula Business Restriction ordinances have been successful in municipalities with zoning ordinances, well-defined districts (e.g. historic, business, and waterfront), or both. Given Caroline's lack of zoning and limited commercial development pressure, a Formula Business Restriction ordinance would be legally unprecedented. However, significant public input on the matter suggests a proactive response to the potential development of formula businesses in the Town. Additionally, Caroline's revised Comprehensive Plan establishes the Town as a place with a unique rural and agricultural identity and the formulaic business model of national or regional businesses would be inconsistent with this identity.

Recommendation

The Task Force recommends defining Formula Business in the Site Plan Review Law and requiring Site Plan Review for any proposed development that meets the definition.

Proposed definition of Formula Business:

Any use, whether a principal or accessory use, that is required by contractual, franchise, or other legal arrangements to maintain, along with 10 or more other businesses in the US, the same primary business name, trademark or logo, and any of the following: standardized design, color scheme, décor, architecture, or signage on the interior or exterior of the building; standardized services or merchandise; or standardized employee uniforms. Formula businesses include, but are not limited to, restaurants, retail stores, fueling stations, banks, pharmacies, offices, salons, and lodging facilities.

3.4 Economic Impact Review

The purpose of an Economic Impact Review is to determine whether the expected benefits of a proposed development outweigh the expected harms of the development. This type of analysis would address economic-related topics including, but not limited to, the following:

- Types of goods or services the business produces
- Types of jobs (e.g. temporary, part-time, full-time, living-wage, etc.)
- Relationship of the business with community needs
- The goods or services the business produces in relation with underserved populations
- Impact on neighboring property values
- Tax revenue of the business
- Municipal costs incurred by the business

Most examples of Economic Impact Review are for large proposals, such as the City of Ithaca's Walmart⁶ and the Village of Trumansburg's proposed 46 South Street residential development⁷. Though developments as large as these examples are not likely to be proposed for Caroline, the Task Force maintained that Economic Impact Review is an important tool to promote the vision of the revised Comprehensive Plan. This type of review would require the Town to develop an economic inventory that would provide information on the number and nature of existing local enterprises as well as the ability of Town residents to access needed goods and services.

⁶ <https://www.cityofithaca.org/DocumentCenter/View/249/Economics-Study?bidId=>

⁷ <http://trumansburg-ny.gov/wp-content/uploads/2018/06/Camoin-Associates-Economic-and-Fiscal-Impact-Analysis.pdf>

Recommendation

The Task Force recommends that the revised Site Plan Review Law require completion of an Economic Information Sheet (Appendix E) as part of the Site Plan application.

4. Additional Recommendations

4.1 Economic Inventory

An economic inventory of Caroline would establish the market potential of the Town. The inventory can be used as a reference to inform a decision to require an Economic Impact Assessment from proposed businesses. It would also provide information useful in the development of policies and practices to encourage the types of businesses that best promote the vision for the Town embodied in the Comprehensive Plan.

An Economic Impact Assessment can be defined as:

An analysis that estimates potential changes in employment, including the number and type of jobs, income, and levels of business activity in the Town associated with a Development, and potential impacts on the Town's budget and fiscal context as a result of the Development, including additional tax revenues and added costs of services. The analysis would assess how the proposed development would impact the surrounding community in terms of changes in access to essential goods and services for Town residents, changes in the value of properties close to the Site, and effects on the viability of nearby commercial establishments. The analysis would also assess how the Development would contribute to the economic sustainability of one or more of the three Centers designated in the Town's comprehensive plan.

4.2 Scenic Resources

Scenic Resources are defined in the proposed Site Plan Review Law as “...an area of special visual appeal, whether it be natural or human made. Scenic Resources include those categorized by Tompkins County as Distinctive Views, Noteworthy Views, and Characteristic Views, as well as additional views in the Town that contribute to the quality of life of Town residents and attract visitors to the area.” The Task Force recommends that the Town of Caroline adopt a town-specific scenic resources inventory.

4.3 Town Environmental Quality Review Act (TEQR)

The State Environmental Quality Review Act (SEQR) provides procedures for reviewing land development classified as either Type I⁸ or Type II⁹ actions. SEQR allows local municipalities to adopt their own lists of Type I and Type II actions as long as they are more protective of environmental values than SEQR¹⁰. The Task Force recommends that the Town of Caroline consider a Town Environmental Quality Review Act.

⁸ NY Codes, Rules, and Regulations, Title 6, Chapter 6, Part 617.4: Type I Actions

⁹ NY Codes, Rules, and Regulations, Title 6, Chapter 6, Part 617.5: Type II Actions

¹⁰ NY Codes, Rules, and Regulations, Title 6, Chapter 6, Part 617.14: Individual agency procedures to adopt SEQR

5. Appendices

Appendix A

Resolution 103 of 2020. *Town of Caroline Land Use and Economic Development Task Force* to research development guidance tools in support of the community vision

Whereas, the Town adopted a 180-day Moratorium on June 10, 2020, to allow completion of the update to the Town's Comprehensive Plan in order to ensure that future residential and commercial land use developments are in congruence with the Town's vision of the community; and

Whereas, the draft updated Comprehensive Plan reiterates and amplifies many of the goals concerning small businesses in Caroline expressed in the 2006 Caroline Comprehensive Plan of:

- i. increased town pride, civic engagement, and community investment,
- ii. increased support of local businesses and opportunities for new small and home-based businesses, central to continued viability of the town,
- iii. economic development in hamlets compatible with other long-term goals,
- iv. encouraging locally-owned businesses that integrate with the rural residential and agricultural nature of the town, and discouraging commercial development that would negatively affect local agriculture, business, and residential communities, and
- v. encouraging businesses to protect air and water quality, reduce impact on traffic density and road quality, use clean and renewable sources of energy, and embrace sustainable business practices; and

Whereas, through its work on the revised Comprehensive Plan for the Town, the Planning Board identified a number of important tools for guiding future land use to promote the community vision that the Town may wish to implement, chief among them Formula Business Restrictions, Economic Impact Review Laws, and Zoning Laws; and

Whereas, achieving the goals of a Comprehensive Plan requires identification and careful development of appropriate regulatory tools; therefore be it

Resolved:

1. There is hereby created the ***Town of Caroline Land Use and Economic Development Task Force*** charged with researching tools (laws, ordinances, and regulations, etc.) that promote the values and vision of the Town as expressed in the Comprehensive Plan. The Town Board shall appoint members and a Chairperson, and a member of the Town Board shall serve as Liaison. The committee may adopt its own internal procedures and shall be an advisory committee to the Town Board. The Town Board shall appoint the Chair annually at its organizational meeting. The Town Board may hire a Planner and/or Attorney to support this effort. Interested persons should submit an application to the Town Clerk (Volunteer Application Form on the Town Committees page of the town website, <http://www.townofcaroline.org/volunteer-application-form.html>)
2. The committee shall keep minutes of meetings and submit them to the Town Clerk. The committee may request minute-taking assistance. The committee may work on issues as a whole or in groups, but any recommendations to the board should have the endorsement of a majority of the members.

3. The committee shall pursue and examine the following matters and charges identified by the Town's Planning Board in its update of the Town's Comprehensive Plan in respect to its basic mission to make recommendations and findings as will promote the values and vision of the Town:

i. Formula Business Restrictions

ii. Zoning Laws

iii. Economic Impact Review Laws

iv. Solar/Wind Siting Law

v. any other tools that may promote the Town's vision at the discretion of the committee and subject to guidance and/or recommendations from the Town Board.

4. The Town hereby solicits applications to serve on the Land Use and Economic Development Task Force immediately. Upon appointment of a Chair, the Task Force is charged to begin work.

Town of Caroline Land Use and Economic Development Task Force

Meeting 1

**September 14, 2020
7:00 PM**

Agenda

1. Introduction of the Task Force members
2. Review of the Task Force Resolution
3. Review Action Items in the draft Comprehensive Plan relating to land use tools that the Task Force will research
4. Planner will outline goals of the Task Force for the remainder of the year

Attendance

Yusmin Allim; Jonathan Bates; Michele Brown; Barbara Knuth; Rebecca Schillenback; Kathryn Seely; Ken Miller; Bill Podulka (Planning Board representative); Tim Murray (Town Board representative); and Greg Colucci (Planner); a few members of the public

Absent from the Task Force were Ellen Harrison and Barbara Lynch.

Notes

1. Tim Murray opened the meeting by welcoming all who joined the meeting. Tim gave an overview of the meeting schedule and format; meetings will be held on a regular basis and remotely using Zoom software for the remainder of the year. Tim discussed meeting logistics, etiquette, and procedures moving forward.

Task Force members introduced themselves and gave general background information about themselves including how long they have lived in Caroline, their professional background, and general interest for being part of this advisory committee to the Town.

2. Tim stated that the Task Force was created in response to issues arising in land and economic development planning in the Town, and as a means to promote the vision of the revised Comprehensive Plan (currently under review).

Tim stated the duties of the Task Force as outlined in the Resolution, noting that researching solar and wind siting laws have been removed from the charge of the Task Force; Energy Independent Caroline has agreed to pick up this task and work with the Planning Board on these energy topics.

Tim said that the Task Force was created in the middle of a 6 month “pause” on Site Plan review, i.e., a moratorium, with the intention of presenting an array of land use tools and steps for their implementation to the Town Board in early November.

3. Tim reviewed and discussed bulleted Action Items in the draft Comprehensive Plan that relate to the land use tools to be researched by the Task Force.

Livability

Tim stated the first bulleted Action Item:

Explore and enact land-use planning regulations such as zoning, design guidelines, and formula business regulations that encourage locally-owned businesses that integrate with the rural residential and agricultural nature of the town, and discourage commercial development that would negatively affect local agriculture, business, and residential communities.

Tim asked Greg Colucci to explain formula business restrictions. Greg stated that formula businesses (e.g. McDonalds) are those that have a set design formula for their external and internal appearance, including their merchandise. Land use restrictions pertaining to formula businesses are generally aimed at businesses external design.

Rebecca Schillenback asked for a definition of zoning. Greg explained that zoning is the regulation of the use of land. He stated that zoning is a powerful tool available to towns through the New York State Zoning Enabling Act to control the types of uses allowed in a town, where those uses are allowed, and how those uses develop.

Tim stated the second bulleted Action Item:

Develop a process to strengthen reviews of significant commercial development to include economic impact reviews.

Tim asked Greg to explain economic impact review laws. Greg stated that economic impact review laws pertain to the town's economic viability by setting thresholds for the number of similar businesses that may be allowed in the town.

Tim stated that developing a strategy for cell tower citing, which is one of the Livability Action Items, will not be part of the charge of the Task Force.

Barbara Knuth asked whether the Action Item pertaining to residential development guidelines will be part of the Task Force duties. Tim acknowledged that they will be.

Environmental Protection and Natural Resources

Tim stated the first bulleted Action Item:

Require review of a significant project to consider its impact on the natural resources of the town ... Specific areas of concern are open space, visual resources, air, water, noise, light, and climate change impacts.

Tim stated that this is more of a quality aspect (of development) than a quantity aspect; Greg agreed.

Ken Miller asked if these requirements would be part of Site Plan Review or Zoning and Greg answered that they could be part of either.

Tim explained the background of the second bulleted Action Item:

Require an “escrow fund” or similar assurance from significant projects developed on new sites to provide for site remediation in the event the site is abandoned rather than taken over by another business.

Tim stated that the third bulleted Action Item would be a longer term goal:

Create a town-level environmental review law (TEQR) so that the thresholds that trigger an environmental review can be made appropriate for Caroline.

Tim stated that the fourth bulleted Action Item would be a shorter term goal that could be included within Design Guidelines as well as Zoning (longer term):

Design guidelines should be reviewed to make sure they encourage sustainable over nonsustainable designs, durable over cheap designs, and flexible designs over single-use designs.

Tim stated that the seventh bulleted Action Item may or may not be something that the Task Force takes on:

Create an Environmental Justice statement to help guide land use planning decisions.

Ken asked for the definition of an Environmental Justice Statement and Tim answered that it pertains to social justice issues in regards to land development. Jonathan Bates pointed to the draft Comprehensive Plan (page 14) that uses excerpts from the EPA; the goal of environmental justice will be achieved when everyone enjoys the same degree of protection from environmental and health hazards, equal access to the decision making process, and to have a healthy environment in which to live, learn, and work. (Later in the meeting Greg referenced the Environmental Justice Areas as delineated by New York State: <https://www.dec.ny.gov/public/911.html>)

Yusmin Allim asked for clarification about language regarding watershed boundaries in the draft Comprehensive Plan (page 16). Tim explained that based on topography and stream networks, water either flows north to the Saint Lawrence Seaway or south to the Chesapeake Bay depending on location in the Town.

Rural Character

Tim stated the fourth bulleted Action Item:

Enact legislative land regulations which would preserve rural character in the face of development pressure, i.e. nodal development/development focus zones, traditional zoning, and/or formula business restrictions

Tim stated the fifth bulleted Action Item:

Empower the Review Board to utilize Design Guidelines to reach determinations regarding projects subject to Site Plan Review

Ken asked about nodal development and Bill answered that there concentrated places of development, i.e. nodes, that occur in specific areas of Town; focusing development in these areas could help preserve open space between the nodes. Tim said that certain areas of Caroline, such as Slaterville Springs and Speedsville, can be considered nodal development.

Ken asked about Right to Farm provisions and if Tompkins County has a law that if someone buys a house next to a farming operation they would have to sign a document to acknowledge that there will be farming activities next door. Bill said that he does not believe that such a document exists, but that Caroline is a Right to Farm community. Jonathan mentioned that Right to Farms laws are indicated in the draft Comprehensive Plan as a protection tool. Bill suggested to put any comments in writing and submit to the Planning Board as they review the draft Plan. Greg said that a signed document would only benefit the new homeowner and that a farmer is protected under the New York Agriculture and Markets Law. In other words, those buying a new home have an obligation to perform due diligence on where they are buying the home, and that Right to Farm laws protect farming operations from general nuisance claims (e.g. odor, noise).

4. Greg presented his approach to the Task Force stating that there are generally two paths to work towards: the first being to educate the Town Board on specific land use controls, and their implementation strategies; and the second would be to recommend approval of at least one by the time the moratorium has expired.

Tim mentioned that the Task Force could recommend extension of the moratorium if a preferred land use tool is too complex to be adopted in a short amount of time, but the Task Force should not prioritize this.

Greg suggested getting everyone up to speed in the next couple of weeks on the relevant land use controls available. This will be done through researching the specific tools recommended for research in the Task Force Resolution, and others as deemed necessary.

Greg explained that typical land use regulation is adopted after a Comprehensive Plan in the form of a Zoning Ordinance; zoning is a useful regulatory tool to help accomplish the policies set forth in the Comprehensive Plan. Greg said that once zoning is adopted, more specific land use controls -- often by use or district/area -- can be adopted by a

municipality to further accomplish land use goals. Caroline is going through the vital step of revising its Comprehensive Plan, however because it does not have a Zoning Ordinance, it lacks a strong regulatory tool to help realize its land use goals envisioned in the Plan. Consequently, Caroline is in need of short-term land use controls while it develops long-term solutions. Greg suggested that commercial design guidelines are likely the best short-term course of action and that a Zoning Ordinance should be developed in the long-term; however, the Task Force will ultimately decide how best to proceed with its recommendations to the Town Board.

Tim said that after reading a few articles by the next meeting, the Task Force might be able to decide on certain topics to further investigate by the end of the meeting.

Kathryn Seely asked if there would be specific directives given for the readings. Tim answered that the goal for the readings is to provide a common background for the Task Force on the land use controls. The Task Force will ideally be able to come to a consensus on not only which topics to investigate, but which ones to not investigate.

Barbara pointed out that the Task Force is charged with researching specific land use tools bulleted in the Resolution and not just design guidelines and zoning. Greg acknowledged this point of clarification and re-iterated that it would be a committee decision on how to best proceed.

Michele Brown asked how the Task Force should be expected to report on the readings; Greg suggested taking note on what it may take for Caroline to adopt the restrictions we read about and whether they would be short-term or long-term steps.

Jonathan offered his understanding that without zoning some of the land use tools may not work and that some tools could be attached to laws that Caroline already has, such as design guidelines; he suggested this may be a good way to filter topics to work on.

Tim closed the meeting by stating that we will be working on short-term and long-term solutions as part of the Task Force duties; for now the committee will do some readings to come to a common ground and understanding on specific land use tools.

Meeting adjourned at 9:00 PM

Meeting notes prepared by Greg Colucci

**Town of Caroline
Land Use and Economic Development Task Force**

Meeting 2

**September 21, 2020
7:00 PM**

Agenda

1. Privilege of the floor
2. New Introductions (Barbara Lynch and Ellen Harrison)
3. Open Discussion, Current Town Laws and options
4. Discussion of Reading Pertaining to Formula Business Restrictions
5. Discussion of Reading Pertaining to Economic Impact Review
6. Discussion of Reading Pertaining to Design and Site Plan Review
7. Summary Reflections, Greg Colucci
8. Discussion of Path Forward

Attendance

Yusmin Allim; Jonathan Bates; Michele Brown; Barbara Knuth; Kathryn Seely; Ken Miller; Barbara Lynch; Ellen Harrison (Site Plan Review Board representative); Bill Podulka (Planning Board representative); Tim Murray (Town Board representative); Mark Whitmer (Town Supervisor); and Greg Colucci (Planner); a few members of the public

Absent from the Task Force was Rebecca Schillenback

Notes

1. Tim Murray opened the meeting by allowing privilege of the floor; no member of the public spoke.
2. Ellen Harrison and Barbara Lynch introduced themselves to the Task Force. All other Task Force members introduced themselves.
3. Tim asked about everyone's availability to meet the following Monday, September 28, and there were no objections.

A member of the public, Milt, introduced himself to the Task Force.

Ellen asked for clarification of the charge of the Task Force; Tim answered that the charge is to consider short and long term goals for land use guidance and make appropriate recommendations to the Town Board.

Ken Miller brought up that there is a disclosure form in the Right to Farm Law of the Town that if a permit is being issued within a certain distance of a farm, the owner needs to sign a form to acknowledge it; Tim clarified that it's an addendum to a building permit.

4. Tim asked for feedback on the readings pertaining to Formula Business Restrictions (FBRs).

Bill Podulka asked about the interaction between FBRs and zoning; Greg Colucci said that it appears that most places with FBRs have tied them to zoning, i.e., using zone districts to restrict those types of businesses in specific areas.

Ellen asked for clarification because she understood that FBRs do not have to do with zoning and that they could be tied into design guidelines. Greg suggested that the Task Force should look into the possibility of incorporating FBRs into design guidelines.

Michele Brown brought up that the readings were conflicting; one of the readings suggested that FBRs should be enacted through Municipal Home Rule Law and not through the Zoning Enabling Statutes and another reading suggested enacting them through zoning.

Kathryn Seely took away from the readings that a town needs to have a set of regulations related to the Comprehensive Plan; she said that it seems that there does need to be some form of zoning as a precedent to other regulations.

Ellen asked whether design guidelines can be done without zoning. She understood from the readings that FBRs or design guidelines can be added to the Town's Site Plan Review Law. She wants the Task Force to read the Town's Site Plan Review Law.

Barbara Lynch said that she understands that FBRs are about design guidelines and have nothing to do with social purpose.

Greg said that it would be useful to know more about the applicability of FBRs without zoning; because Caroline has Design Guidelines as part of their Site Plan Review Law, then it seems that FBRs incorporated in design guidelines without zoning may be valid. Whether design guidelines without zoning can delineate areas in a town is another subject. This may not be useful for Caroline, but it might be worth researching.

Bill also wants to know whether design guidelines can be attainable without zoning; he wants to know if this will be a good recommendation to the Town as a short term option and if zoning could be a recommendation for a longer term solution. Bill also brought up that he understands FBRs to not only restrict design, but that they could also regulate the density of those types of businesses.

Ken said that he understands that design aspects, such as lighting, are not zoning; he said he understands that zoning is about where certain uses are allowed. Greg commented that design guidelines can be incorporated into a Zoning Ordinance or they can be completely separate. He also commented that New York enables local municipalities broad power in discretionary approval; this is generally a good thing however local municipalities in New York often do not have much criteria to review a development against. Instead there are often “considerations” about the development (e.g. Caroline’s Site Plan Review Law), which are retroactive in nature; they require case-by-case analysis instead of having set criteria to review against a development.

Tim asked what kind of teeth design guidelines have outside of zoning and how binding they can be for the Site Plan Review Board. Greg suggested that this question deserves more research and legal advice, but it appears that as long as the law (e.g. design guidelines) ties to the Comprehensive Plan [and does not violate property rights, equal protection and similar protections] it should be enforceable. It’s important that the Comprehensive Plan has specific language to back up specific laws. Taking this further, Greg wants to know whether a design guideline law can “break up” a town into certain areas or if, without zoning, they need to be town-wide. It would be good for the Task Force to understand what the Town can legally do under New York State law.

Tim followed up by asking why Caroline would need to be so area-specific with design guidelines, and not just have them apply town-wide. Greg referenced Dryden’s Design Guidelines that delineate a corridor along Route 13 to which the guidelines apply.

Bill agreed with Tim that design guidelines would be more appropriate town-wide, as long as there are certain thresholds established that would exempt less intensive uses (e.g. a roadside farm stand).

Bill asked Ellen about her discussions with Guy Krogh, the Town Attorney, regarding what could be required through the Site Plan Review. Ellen explained that the Site Plan Review requires certain criteria to be met, including consistency with the Comprehensive Plan. Guy said that the Comprehensive Plan is a visionary document and not a law, but Ellen felt she could not approve something that is inconsistent with the Comprehensive Plan. She believes that the Comprehensive Plan is more binding than what was originally believed, but would like clarification on that.

Jonathan Bates said that it makes sense to hold off on detailed conversations about area-specific design guidelines, but if the Task Force does suggest town-wide guidelines the Town runs into the challenge of not defining areas where it does want development and where it does not. It seems to him that town-wide design guidelines would be a short term answer because there could potentially be stores spread out all over Town and not concentrated in more desired areas.

Following up on Greg's comment earlier, Ken said that he understands that design guidelines can be in zoning or separate, but because the Town doesn't have zoning, FBR should be incorporated in the Site Plan Review process.

Barbara Knuth, referencing an earlier discussion topic, noted that she read that FBRs could be enacted through Zoning Enabling Laws or Municipal Home Rule Law. She brought up that the Town's Site Plan Review Law is legislated under the Home Rule Law and she wants to know what else could be enacted under that law, other than Zoning and Site Plan Review, that the Task Force should be considering.

Ellen added that she would like to know the difference between the two laws - Municipal Home Rule Law and Zoning; Greg said that one difference is that zoning can be adopted through an ordinance or through a local law and the difference seems to be in the public hearing and notification requirements.

Barbara Knuth asked if the Caroline Site Plan Review Law makes use of all the powers afforded to a town under the law or if there is something different, or in addition, that Caroline can consider. Two questions she would like answered: What else does the Municipal Home Rule Law allow the Town to do other than the Site Plan Review?; and is there anything under the current Site Plan Review Law that could be changed or added to give the Town more power to implement the vision of the Comprehensive Plan?

Tim commented that the Site Plan Review Law should get anchorage from the Comprehensive Plan. He would also like those questions answered.

Bill said that the Municipal Home Rule Law simply enables land use regulation by the Town within its boundaries.

Ken brought up SEQRA (New York's [State Environmental Quality Review Act](#)); even if communities do not have zoning, SEQRA can still help communities regulate land use.

Bill said that we still do not have the answer on if design guidelines can be enforced absent zoning; Greg cited Caroline's currently adopted Design Guidelines as an example where a Town has that type of law without zoning. He noted that Caroline's Design Guidelines are "considerations" in the form of questions and are not criteria. This leaves a lot of gray area for development; the review board does not have specific criteria to weigh a development against.

Tim asked Greg if he was suggesting that the Design Guidelines should be more comprehensive as opposed to question format. Greg said that he believes so.

Ellen brought up an example of a Site Plan Review consideration that is "mushy" and suggested that it's worth talking about making the criteria clearer.

5. Tim asked for feedback on the readings of Economic Impact Review (EIR), starting off by commenting that they appear to be used by larger communities with more robust economic business districts. Tim asked the Task Force how scalable they believe EIRs can be.

Ellen suggested that EIRS should be something to be considered in Caroline, given the small business areas of the Town, such as Brooktondale and Speedsville.

Yusmin Allim discussed the example of increased traffic as a trigger for an EIR in relation to changes along Route 79.

Bill suggested that there could be a threshold of development impact (e.g. size) when EIR would be required; he suggested that EIRs could be incorporated in Site Plan Review.

Barbara Lynch asked if there are tools to encourage economic development as the Comprehensive Plan envisions. Kathryn followed up on this saying that the Town wants to encourage small businesses, and she wants to know how the Town can do this.

Greg noted that there are many types of municipal laws that are not just “sticks” but “carrots” to incentive certain types of development in the Town; he used the example of Transfer of Development Rights (TDRs), which allows an owner of property to sell their development rights to a “receiving” property.

Bill noted that TDRs work only in a zoning context so they could not work at this time; the Town can grant conservation easements. He also wants to know how the Town can encourage small business development.

Kathryn asked if farming can still take place under a conservation easement and Tim confirmed that it could. Ellen followed up by saying that there are negotiations that happen between the owner and the Town setting the types of restrictions and allowances that would apply per the easement agreement.

6. Agenda item 6 was incorporated in the previous discussion
7. Agenda item 7 was incorporated in the previous discussion.
8. Tim asked the Task Force where it wants to go from here; he hoped that after next week the Task Force could break into smaller groups researching definitive actions that could be delivered to the Town Board by mid-November. Tim suggested that the Task Force should do more research on Municipal Home Rule to understand what the Town can fully do. Tim suggests that the Task Force reads Danby’s and Dryden’s Design Guidelines, as well as researching other types of FBRs in relation with design guidelines.

Ellen asked if Danby's and Dryden's Design Guidelines address formula businesses; Greg said that Dryden's address "national brands."

Tim brought up the threshold of 10,000 square feet in Caroline's Site Plan Review Law that requires review for commercial developments over that size; he questioned why it's at that threshold and if it can be looked at being amended. Kathryn and Yusmin agreed that the Task Force should look into this and possibly redefine the threshold.

Ken mentioned that the Task Force should be mindful of populations of lower income as these restrictions may adversely affect them.

Bill said that he does not know how the 10,000 square foot threshold came to be, but it should be looked at to possibly be revised.

Greg brought up examples of formula businesses that are smaller than 10,000 square feet, such as [Starbucks](#) and [dollar stores](#).

Tim said that readings will be distributed to be read by next week's meeting. He also asked the committee to consider meeting every week instead of every other week.

Ken asked whether the Task Force is working on the draft Comprehensive Plan or just the items in the Task Force Resolution; Tim reiterated that the committee is charged with researching practical options for land use guidance that the Town Board could utilize per recommendations in the revised Comprehensive Plan anticipated to be adopted this fall.

Meeting adjourned at 9:00 PM

Meeting notes prepared by Greg Colucci

**Town of Caroline
Land Use and Economic Development Task Force**

Meeting 3

**September 28, 2020
7:00 PM**

Agenda

1. Privilege of the floor
2. Comments from the Task Force
3. Red Hook Formula Business, precedents, questions
4. Continuing Discussion of Design Guidelines for Site Plan Review (e.g. Danby, Dryden)
5. Zoning, process
6. Establishment of smaller working groups
7. Adjournment

Attendance

Yusmin Allim; Jonathan Bates; Michele Brown; Barbara Knuth; Kathryn Seely; Ken Miller; Barbara Lynch; Rebecca Schillenback; Ellen Harrison (Site Plan Review Board representative); Bill Podulka (Planning Board representative); Tim Murray (Town Board representative); Greg Colucci (Planner); four members of the public

Absent from the Task Force was

Notes

1. Tim Murray opened the meeting by allowing privilege of the floor; no member of the public spoke.
2. Rebecca Schillenback brought up the Red Hook Formula Business Ordinance, which banned those businesses all together and asked if that was even legal; Tim said we could discuss this later in the meeting.

Greg Colucci followed-up on questions posed at the previous meeting about options of land use control for Caroline under the Municipal Home Rule Law vs. Town Law. Municipal Home Rule Law grants the Town authority to enact legislation for “the protection and enhancement of its physical and visual environment.” The extent of this allowance has been defined over time by court cases. Town Law also allows for a Town to enact laws based on land use. The law does not regulate aesthetics, which has been the topic of some of the conversations (Design Guidelines), but common law has provided a path for Town’s to pass legislation based on aesthetic considerations.

Tim said a planner from Tompkins County may join the next Task Force meeting; he also proposed meeting every week. Tim's conversation with Town Attorney Guy Krogh confirms that the Town can enact design restrictions in relation to Site Plan Review. One of Guy's cautions is that a Town should not regulate everything via Design Guidelines, but the Town certainly has the authority to implement stricter guidelines as long as they relate to the Town's revised Comprehensive Plan. Another precaution is that certain review criteria may be appropriate for one development but not another. Lastly, the Design Guidelines are meant to mitigate impacts, but not the use itself; that is zoning.

Ellen Harrison brought up the current Site Plan Review, which allows the review board to disapprove a proposal, but it does not give the board any criteria to disapprove it. She asked whether a size restriction for a building would need to be in Zoning or in Site Plan, and whether Formula Business Restrictions would be passed as their own separate law or added to the Site Plan Review. Tim stated, per his conversation with Guy, that the 10,000 square foot threshold in the current Site Plan Review is arbitrary and could be amended.

Yusmin Allim brought up the reading on "Adopting Zoning for the First Time" and asked if the Town would need to follow the seven steps outlined in the reading; Tim stated that those seven steps are state prescribed and would need to be followed if zoning was adopted.

Ken Miller asked if he could send emails to everyone and there were no objections; he drafted his own definition of formula business and wants to share it. Ken asked Bill Podulka if comments for the draft Comprehensive Plan would be posted on the Town website; Bill said that the Town Board has not decided yet.

Bill asked if the Task Force was concerned that there was a meeting participant identified as "Cornell" and whether that person should identify themselves; Greg stated that Open Meetings Law [Advisory Opinion] does not require meeting participants to identify themselves.

Lin (a student at Cornell) introduced himself to the Task Force.

3. Tim asked for feedback on the Red Hook reading. He noted that the Red Hook's ordinance was an amendment to its Zoning.

Bill mentioned how short and to the point the ordinance was to simply ban formula businesses in a specific zone district. He noted that an outright ban town-wide doesn't sound legal, but that if it's allowed in certain zones then it could be legal to ban in others. He asks that the Task Force look into all options for the Town in regards to formula businesses, whether by a ban, by allowing them in certain areas, or by regulating them through Site Plan Review.

Barbara Lynch brought up that the revised Comprehensive Plan suggests that the more important land use consideration is location of certain uses and not necessarily banning them or the design of the uses.

Ellen said that's not what she understood about the Plan, but asked for clarification. She also asked whether without zoning the Town can regulate uses by location.

Bill answered the Comprehensive Plan questions stating that it encourages preservation of open space and other environmental resources so that development is encouraged in specific areas; Bill also noted that Dryden's Design Guidelines delineate areas of the Town into "character areas" that differ from the zone district boundaries.

Greg followed up saying that zoning is the primary tool to regulate location of uses.

Jonathan Bates said that, based on his understanding of Municipal Home Rule Law, a Town doesn't need zoning to ban something. He said that if the Town wants to regulate the size of a building, it wouldn't necessarily need zoning to do so.

Bill agreed with Jonathan and said that a law would need to be passed to ban something; a land use couldn't be banned as part of Site Plan review.

Tim cited Town Law saying that a local law could be the mechanism for a town-wide ban.

Barbara Knuth agreed with the interpretations thus far that absent zoning a town-wide ban on a land use could still take place. She asked if there is currently a formula business in Caroline and if so what would happen if an ordinance were passed relating to it. Tim answered that the Dandy Mini-mart in Slaterville Springs is considered a formula business, but it could be grandfathered in to new regulations; Greg agreed.

Greg said he is aware of bans based on use and size, but not design, which is what he understood Formula Business Restrictions to be; Michele said that she understood the discussion on bans to be about use, not design.

Tim followed up noting that Formula Business Restrictions seem to be more about the activity, and not just the design; Barbara Knuth agreed citing the Red Hook example.

Bill said that the rural character of Caroline can be used to define design considerations; he also agreed with the others that FBRs are about use and design.

Kathryn Seely asked the group to consider the other socio-economic populations of the Town as those who may shop at a formula business instead of the Brookton.

Jonathan said that the business model of certain formula businesses is to have as many as possible so if someone really wants to go to one they can drive 10 miles and find one. Ellen brought up Economic Impact Analysis in that if the Town does consider this approach, it should include factors such as whether the business is using local goods. She supports a limitation on formula businesses in the Town, including requiring other design standards. There could be exemptions, or waivers, where if a formula business cannot meet certain requirements then an Economic Impact Analysis could be required.

Barbara Knuth brought up the exemption of agricultural based businesses being exempted from the Red Hook ordinance example as an indication that the Formula Business Ordinances are at least in part use-based.

4. Tim asked for feedback on Design Guidelines, which are included under various tools that the Town Board charged the Task Force with researching.

Ken said he understood that design might be okay per law, but pitting formula businesses with other types of businesses might not be allowed. He also followed-up on a previous point made about formula businesses being too close together if unregulated saying that if those stores were further apart people traveling to them would contribute more to climate change.

Tim asked for feedback on Danby or Dryden's Design Guidelines; Ken listed items that could be considered in reviewing design and siting of a land use.

Barbara Knuth liked the visuals and graphics of both example guidelines saying that they could be good to incorporate in Caroline's.

Bill felt that the example guidelines mostly have more teeth than Caroline's, but there is some squishiness to the guidelines. The Dryden example has character areas, which are relatable to Caroline's hamlet areas. He also mentioned that the Dryden Design Guidelines have an "escape clause" saying that they are intended to be used as a framework for development, but are not necessarily required.

Barbara Lynch worried that the Dryden Design Guidelines are encouraging a suburban preciousness. She said that design requirements may create a sense of false uniformity if taken too far and that other factors such as use, location, and size are more important factors to consider.

Rebecca asked about the enforcement mechanism to design guidelines; Greg said that Danby's are an appendix to the Zoning Ordinance.

Bill clarified Rebecca's question saying that the Town could amend the current Design Guidelines within the Site Plan Review Law.

Jonathan asked for clarification on the mechanism of Danby's and Dryden's Design Guidelines; Greg answered that Danby's is an appendix to the Zoning Ordinance and Dryden's is not - it's a separate document to be adhered to by developers. Jonathan said we need "pre-zoning" solutions so we should look at solutions that don't require zoning. Bill clarified that design guidelines do not require zoning.

Ellen said that the design guideline examples are specific in some areas and general in others. She asked whether size restrictions can go in design guidelines; Tim said he believed so. Greg said he is not sure if this could happen, but Site Plan Review is a place to include thresholds on size.

Tim said that Danby's Design Guidelines talked about "imported pre-fab materials" which could discourage drop-in-place formula businesses. These wouldn't ban the use.

Jonathan talked about zoning laws requiring lots to be certain sizes and wondered if similar types of laws can be adopted without zoning.

Bill said he expects that the Town could pass a law prohibiting certain sized developments. Greg referenced the Town of Ulysses Zoning Ordinance that restricts agricultural buildings to 20,000 square feet.

Yusmin asked to talk about what Caroline needs now because the group was talking about places that have zoning; Kathryn agreed and suggested that the group was getting too fine grained in the discussion, especially on design. She brought up that good land for development is often good land for farming, so it might be worth defining potential areas for development and areas not for development to better have direction.

Ellen discussed the current Site Plan Review and suggested that the Design Guidelines (or Standards, as she suggested to rename) should state that prime agricultural land cannot be developed. She is interested in using Design Guidelines as a tool.

Bill suggested breaking into a few groups. He said the group needs to figure out what can be achievable in a few months -- protect prime agricultural land and restrict out-of-town businesses, economic analysis included. He thinks short term goals should be working on design guidelines, see a smaller square footprint before Site Plan is triggered, and incorporating an Economic Impact Analysis.

5. Agenda item discussed above.
6. Tim recommended the Task Force is ready to break into groups

Kathryn suggested the groups to be Economic Impact Analysis/Review, Design Standards, and Formula Business Restrictions.

Ellen agreed, and wanted to add that the group for Formula Business Restrictions to research the types of standards for these types of businesses.

Michele asked about the need for a consultant in an Economic Impact Analysis; Tim said that one of the requirements for example could be to hire an outside consultant.

The following working groups were established:

Economic Impact Analysis: Barbara Lynch; Yusmin; Ken; Rebecca

Design Guidelines/Standards: Ellen Harrison; Michele; Barbara Knuth

Formula Business Restrictions: Kathryn; Jonathan; Tim

Greg Reynolds, a farm owner in the Town, asked for privilege of the floor; he asked that the separate group meetings be available to the public. Ellen and Ken asked if posting the recordings on the website would be okay and Greg agreed this was fine.

Meeting adjourned at 9:00 PM

Meeting notes prepared by Greg Colucci

**Town of Caroline
Land Use and Economic Development Task Force**

Meeting 4

**October 5, 2020
7:00 PM**

Agenda

1. Privilege of the floor
2. Question and answer from Joan Jurkowich, Tompkins County Planner
3. Discussion
4. Break-out sessions of subgroups researching Design Guidelines, Economic Impact Review/Analysis, and Formula Business Restrictions

Attendance

Yusmin Allim; Michele Brown; Barbara Knuth; Rebecca Schillenback; Kathryn Seely; Barbara Lynch; Ken Miller; Bill Podulka (Planning Board representative); Tim Murray (Town Board representative); Greg Colucci (Planner); and one member of the public

Absent from the Task Force was Jonathan Bates.

Notes

1. Tim Murray opened the meeting with privilege of the floor and no member of the public spoke.
2. Tim introduced Joan Jurkowich, a planner for Tompkins County, and explained the charge of the Task Force to her. Tim asked that Joan give her perspective on what Caroline may do in relation to the charge.

Joan explained that there is broad authority at the local level to regulate land use; a town just needs to define well enough what they are trying to accomplish, and then define how to do it. The current law allows a fair amount of creativity as long as the town is not being discriminatory.

Tim said that the Task Force is researching potential tools outside of zoning and that there will be recommended tools to the Town Board.

Tim asked if there are precedents in Tompkins County for Caroline to consider, such as design guidelines and economic impact review.

Joan answered that design guidelines are typical in historic districts; but she emphasized that just because something has been done through zoning doesn't mean it can't be done without zoning. She said a town just can't distinguish between areas of town without zoning.

Bill Podulka asked if towns with design guidelines have been able to successfully change the plans of an applicant.

Joan answered yes, but it's usually because a planning staff person is able to guide the developer to those standards. She said that Dryden's Design Guidelines are a good example of design guidelines.

Ellen Harrison brought up design guidelines versus design standards and if a town can be stricter with the review standards.

Joan said that a town can hold a developer's feet to the fire whether they're guidelines or standards, but she acknowledged that if a town has standards, it is better.

Joan reminded the group that precedence becomes an issue; once a design element is allowed a certain way -- for example, parking in front of a building rather than behind it -- it is hard for the town to require it in any other way for a future development.

Bill asked whether a review board can say no to a project based on a design standard, such as an exterior building material.

Joan answered yes, that the town can say no if a development doesn't meet a certain standard and it would stand up. She asked if the reviewing board would be willing to have the same level of scrutiny for a project applicant whom they know in the community.

Ellen asked if the town can restrict commercial businesses by size.

Joan answered that the town could adopt a local law to restrict the size of commercial buildings under Municipal Home Rule. She said that the town could also make a zoning ordinance about commercial uses only and keep it very simple.

Kathryn asked about the definition of a zoning ordinance.

Joan answered that a zoning ordinance has two parts, text and a map. The map shows different districts and the text says what you can and can't do in those districts. She stated that a town can be creative with zoning; for example, many small, rural towns don't need standards about parking and signs. If Caroline wants to focus on commercial uses they can hypothetically have a zoning ordinance that defines 3 areas -- one for smaller businesses that serve hamlets, another area that allows businesses on a highway, and a third area that doesn't allow any businesses.

Ken Miller asked if economic impact analysis needs to be a separate law or be put in site plan review.

Joan answered that it can be part of either.

Ken asked if the threshold for building size can be lowered.

Joan answered yes, and that something smaller than that wouldn't trigger an economic impact analysis.

Rebecca asked for the difference between a zoning law and an ordinance.

Joan suggested that an attorney may know how to answer that question as she uses them interchangeably.

Barbara Knuth asked if there is a downside to having zoning.

Joan answered that enforcement can be challenging; a town would need to set up board structures for administration; and the zoning law/ordinance could be too big for what the community needs, i.e., certain standards might not be needed.

Barbara Knuth asked about other approaches, such as requiring review standards.

Joan answered that it depends what the town is trying to accomplish; the town could have a zoning ordinance that isn't too complicated and just addresses what they need to address.

Ellen said she is concerned about farmland and that she is aware of preservation tools, such as Purchase of Development Rights, but asked about other ways to protect farmland.

Joan believes the best tool to preserve farmland is Transfer of Development Rights, but that it needs a staff person to manage the program.

Ellen asked whether clustering of development is possible on farmland to be developed.

Joan answered yes, that it could be in a law, but the challenge is with the property owner who likely wants to develop one lot time at a time. She said the town could work with farmers on a plan for their property (and pay for a planner or engineer to develop the plan). However, she said she hasn't seen this approach work – towns don't have the money and farmers usually don't want to work on these plans with the town.

Joan said the Purchase of Development Rights program in Tompkins County has only protected 2000 acres – this is good, but it's not making a difference.

3. Tim asked for feedback on Joan's question and answer session.

Greg Colucci said it was good to hear about how simple and tailored zoning can be; he referenced a publication by the NY Department of State recommending that rural towns adopt design standards as opposed to guidelines, which are more appropriate in cities or towns with staff planners; he also brought up another tax relief tool that Danby is looking into to reduce taxes on large properties.

Ellen said that Danby's proposal requires State approval.

Michele Brown brought up that New Hampshire has a good tax policy to preserve farmland.

Barbara Lynch asked for clarification if Joan said that Economic Impact Review should be separate from Site Plan.

Greg said that it could be separate or stand alone.

Tim asked each sub-group to take notes on their discussions and asked whether he should invite Guy Krogh, the Town Attorney, for the following week's meeting.

Ellen suggested waiting another week to invite Guy and Tim agreed.

Ken brought up that fire districts assess property for the entire value of the property in New York, but that firemen of those districts can vote to reduce tax assessment on those properties; most don't as this would impact their district's budget. He believes that the NY law doesn't go far enough and said that Vermont has good tools to protect farmland.

4. Sub-groups for Design Guidelines, Economic Impact Review/Analysis, and Formula Business Restrictions met separately.

Design Guidelines

Charge to the group: read Caroline Site plan review law; mushy guidelines; Which are mushy? Do design guidelines in their current form support Comp Plan?

Danby and Dryden guidelines are long and detailed and include many very specific items versus Caroline Guidelines which are simply questions and as such they are not standards with requirements.

Could we convert the design guidelines to standards? The sub-group agreed to divide up the Caroline Design Guidelines and consider how they might be changed into standards. Barbara Knuth will look at the first 8; Ellen the second 8; and Michele will do the last 9.

They agreed to meet again on Monday at 4 to discuss this before the Task Force meeting at 7.

They will ask Bill Podulka to review current design guidelines to see consistency with the draft Comp Plan.

The sub-group also recognized that the Task Force might consider recommendations:

- Revising the Site Plan Review law to reduce the square footage that come under the law and triggers site plan review
- Establishing a law that bans commercial development that is a certain size or type
- Establishing a law that bans industrial development that is a certain size or type

Economic Impact Review/Analysis

Does an economic impact analysis need to relate to zoning? Why or why not?

Our conclusion from the previous conversation is that Economic Impact Analysis doesn't need to relate to zoning, but it can. We can use this tool without zoning.

But it brings us back to the question: what do we want to see in and for our town? What would be assessed in an economic impact review? What are we trying to determine?

Page 10 in the Comprehensive Plan gives us guidance: how do we support and encourage local businesses? Pages 12 and 13 also speak to how the goals of a comprehensive plan as outlined seem to directly support the establishment of an economic impact analysis clause, law, or ordinance.

There are other things that came forward in the rest of the literature that also seemed significant. If a business adds employees but those employees are not adequately compensated, that is a negative impact, for example.

Two issues that the readings raised:

1. What is the threshold that would trigger the economic impact review? What's the criteria/criterion that initiate(s) the analysis? The square footage threshold for Site Plan Review? Or a different criterion? i.e, the annual budget of a proposed enterprise? Scale of business? Number of employees?
2. What are the elements that ought to go into the economic impact assessment? What do we care about? i.e. living wage, competition with local enterprises, etc.

Pages 9-12 Essential Smart Growth Fixes for Rural Planning, Zoning, and Development Codes offer concrete guidance.

The purpose of an economic impact analysis is to determine whether the expected benefits of a proposed business venture outweigh the expected harms or detriments of the business. The following queries should/could guide our cost/benefit analysis.

1. What is the nature of the proposed enterprise? Selling same type of goods already for sale in the town? For more or less? Selling completely different items? Selling only a few of the same items? Year-round item sales?
2. What jobs will be added to the local economy? Gain in jobs vs loss of employment from local businesses? Full vs Part time? Local workers and materials for construction?
3. Does the enterprise pay a living wage? Prevailing wages (state mandated) vs higher to entice employees. Living Wage standards important for community.
4. Does the enterprise meet current community needs? Does it aim to meet future community needs? providing goods and services that underserved populations have no access too? A variety of different items and prices? Will the project contribute to revenue retention in the local economy?
Environmental Justice Statement may be warranted.
5. What tax revenue will the town expect to receive from the proposed enterprise? Property and school tax? Sales tax?
6. What municipal costs will be incurred by this proposed enterprise? road repair for municipality? Abandonment costs? Traffic safety? Costs of public and social services?
7. What are the ecological impacts of this proposed enterprise? Water runoff, trash collection, climate change? Lessen carbon footprints by shortening trips?
8. What effect will this enterprise have on Property values? increase or decrease in area around the proposed enterprise? what are the projections over time?

Outstanding questions:

Is there a difference between 'thresholds' and 'triggers'? What is the threshold that triggers the economic impact review?

Will an economic impact review analysis fall under the site plan review or be a separate law independent of it?

(If it can stand alone under home rule law, that's where Ken thinks it should be.)

If under the site plan review, that would mean the same threshold or trigger to initiate the analysis.

Would we restrict an economic impact review only to formula businesses?

Formula Business Restrictions

Formula Business Restriction ordinances are used to limit the quantity and location of certain retail and restaurant establishments that are characterized by (1) their national or regional distribution, (2) their standardization of goods and services provided, and (3) the standardization of the design of their stores. Formula Business Restriction ordinances have been successful in municipalities with zoning ordinances, well-defined districts (e.g. historic, waterfront, etc.), or both.

Given Caroline's lack of zoning and limited commercial development pressure, a Formula Business Restriction ordinance would be legally unprecedented. However, the majority of public input on the matter favors a proactive response to the potential development of formula businesses in the Town. Additionally, Caroline's revised Comprehensive Plan establishes the Town as a place with a unique rural and agricultural identity and the typical formulaic business model of national or regional businesses would be inconsistent with this identity. As such, the Formula Business Restriction sub-group recommends that the Task Force continue to develop enhanced design standards for commercial uses, not just for formula businesses, and to begin investigating basic zoning tools for Caroline.

Meeting adjourned at 9:00 PM

Meeting notes prepared by Greg Colucci; sub-group notes prepared by members of those groups with minor edits made by Greg for clarity.

**Town of Caroline
Land Use and Economic Development Task Force**

Meeting 5

**October 12, 2020
7:00 PM**

Agenda

1. Privilege of the floor
2. Formula Business Restrictions sub-group report
3. Economic Impact Review sub-group report
4. Design Guidelines sub-group report

Attendance

Yusmin Allim; Michele Brown; Barbara Knuth; Kathryn Seely; Ellen Harrison; Barbara Lynch; Ken Miller; Tim Murray (Town Board representative); Greg Colucci (Planner); and Mark Whitmer (Town Supervisor)

Absent from the Task Force were Jonathan Bates and Rebecca Schillenback

Notes

1. Privilege of the floor; no member of the public joined the meeting
2. Kathryn Sealy summarized the Formula Business Restrictions (FBRs) sub-group report (available in the October 5 Task Force Meeting Notes) noting that these types of businesses are not consistent with the vision in the revised Comprehensive Plan and likely not economically viable in the Town; the sub-group also recommended that the Town investigate basic zoning tools.

Tim Murray added that communities that have FBRs are typically larger than Caroline and all have zoning; there are complex legal challenges with FBRs all based around zoning issues. He referenced a town in Maine that did not approve the development of a formula business based on design, not on FBRs; in other words, well thought out design standards might be able to restrict formula businesses. Tim noted that the sub-group recognized that development of minimal zoning guidelines would provide a template for enforcement of formula businesses in future; thus the sub-group's conclusion is to focus on design guidelines and zoning.

Barbara Knuth asked if the sub-group came across a minimum size of buildings in which FBRs would apply.

Tim answered that most FBRs are aimed at businesses like Walmart, which have a very large footprint.

Greg Colucci said that he is not aware of an FBR being applied for businesses less than 10,000 square feet.

Ellen Harrison asked for clarification from the FBR sub-group that they are not recommending a specific law to regulate these businesses.

Tim confirmed that, yes, given the legal precedent of challenges to FBRs around the country, Caroline is likely not in a position to adopt such a law; he also noted that there are residents of the Town that prefer to shop at such businesses.

Ellen said that if the sub-group is recommending that formula businesses should be dealt with through design standards, the current Site Plan Review law would need to be amended because their size is typically lower than the current review threshold of 10,000 square feet.

Michele Brown asked how difficult it would be to change building size threshold in the Site Plan Review law.

Tim replied that it wouldn't be difficult.

Michele noted that rather than calling them Design Guidelines, they should be called Design Standards.

Ellen asked if a definition for formula businesses could be put in the Site Plan Review law to act as a trigger for review, similar to the size of buildings and area of disturbance.

Greg said that he believes that is an option. As long as the law defines the issue and defines how it plans to mitigate it (and as long as it's not discriminatory), it should be legal. Greg urges legal advice on this possibility.

Yusmin Allim said that the Task Force should consider multiple triggers, not just building size. He referenced a number of triggers in the Economic Impact Review (EIR) sub-group report that would require EIR.

Tim said that the Town likely can't attract large businesses due to the availability of water, but that smaller businesses could be held to similar thresholds.

Michele asked if not allowing formula businesses would fall under discrimination and asked for clarification on interstate commerce protections.

Greg asked if Michele's question was about separating out formula businesses from the rest of retail or restaurant uses; Michele answered yes.

Barbara Knuth said that she believes this is question needs legal advice.

Ellen added that defining formula businesses as types of businesses that would need to adhere to design standards might not be discriminatory.

Tim suggested that it's not discriminatory to regulate formula businesses, but what is discriminatory is if certain types of formula businesses are regulated and not others.

Barbara Knuth cited an example of discrimination in the readings where an FBR was invalidated based on the presence of similar types of businesses already established in the community.

Tim asked if the group agrees that FBRs are not the best approach for Caroline.

Barbara Knuth agreed with not having FBR as a separate law, but wants to explore a definition of formula businesses within Site Plan Review law and how that definition, if met, triggers certain design standards.

Greg and Tim agreed with this approach.

Greg asked if the group wants to still consider triggers for Site Plan and/or design standards, other than for just those that met a definition of formula business.

Barbara Knuth thought this would be appropriate.

Ken Miller agreed this would be a good approach if the Town doesn't need to do zoning; he wants to understand the difference between regulation and restrictions; he suggested that the group consider regulations (for all types of businesses) over restrictions.

Tim acknowledged this point, but also added that the FBR sub-group recommended the Town explore zoning.

Tim asked for consensus to shift attention away from FBRs.

Barbara Knuth agreed, but asked that the group work on a definition for formula businesses to incorporate into other tools.

Kathryn referenced an FBR case study that included a quota and asked if this should be explored.

Tim said that those cases were also in places with zoning, but that a definition for formula business shouldn't be a major challenge as there are a number of precedents that delineate this option for the Town.

3. Economic Impact Review (EIR) sub-group report

Barbara Lynch stated that EIR is not the same as Site Plan Review; EIR considers the economic impact of a proposed business, whether positive or negative. The sub-group ended up with a lot more questions than they started. The questions revolve around thresholds or triggers for EIR, but also questions such as: do we care whether employees (in these new businesses) are paid a living wage or not? Can competition be a reason for restriction, or rather a trigger for review? Does the town need a bank or a pharmacy?

Ken said there were more questions than answers; he doesn't believe that the focus should be whether the business will be profitable, but what benefit it is to the community and what cost it is to the community (e.g. more need for trash services).

Tim asked if the sub-group came across requiring EIR for some, such as formula businesses, but not for others, such as for those that require a living wage.

Barbara Lynch said this did come up in the research; in terms of the vision in the revised Comprehensive Plan and in terms of the benefit and cost to the Town, it's worth considering.

Yusmin said that EIR could be "the first door" for a business to be established in the Town. Once they pass through this door and it's determined that the business will be a benefit to the Town, then other reviews can happen.

Michele asked what would trigger an EIR.

Yusmin answered that it can be many things – dimensions of the business, business operations, employees, and other impacts.

Tim asked if EIR can be applied outside of zoning.

Yusmin answered that he does not believe so, based on the research, but cited what Joan Jurkovich (Tompkins County Planner) said at the last meeting that there could be something simpler, other than zoning.

Barbara Lynch suggested that just as there is a Site Plan Review law, there could be a an EIR law, separate from zoning and that instrument would have to include a set of triggers and thresholds for review. One measure she keeps thinking about is the relationship between the size of the business footprint and economic benefit to the community.

Ellen said that the Design Standards group included language in their suggested edits of the current Design Guidelines that would require a closer look at the economic impact of a proposed development. In other words, the EIR may not need to be a separate law, but could be included in the Site Plan/Design Standards law.

Tim asked whether the sub-group came across cost of the review, noting that an EIR could be cost-prohibitive for smaller businesses. He said Caroline would want to be cautious of that.

Michele said that the sub-group created a list of issues in EIR that they hope could be addressed; for example, requiring a business to address potential abandonment through creating an escrow account.

Barbara Knuth asked if Greg has seen any abandonment clauses for developments; Greg answered that he has seen abandonment clauses in solar facility regulations.

Barbara Knuth followed up asking how a town would administer an abandonment clause – which mechanism would it be under; Greg answered that it has been done through zoning regulations or local laws.

Ellen suggested that the scale of businesses might take care of itself; in other words, a small business would be required a small (EIR) report and a larger business would be required a larger report. It may not be overly burdensome due to the scale of the business and impact.

Barbara Knuth said that with an EIR there are some standardized questions to be answered regardless of size, so answering those questions adequately may be costly for a smaller business.

Ellen said that this would be true of reviewing businesses against design standards. It's important to understand the triggers for EIR and Site Plan review.

Barbara Knuth asked to find out the size of Brookton Market to get an understanding of size of businesses and what the appropriate thresholds may be for reviews.

Ellen followed up asking for the size of the Dandy Mart and the convenience store in Speedsville; she also brought up other design elements that may trigger a review, such as a pump station at a convenience store.

Barbara Lynch added that size of paved area could also be a trigger for review.

Tim noted that a pump station may be reviewed under environmental review.

Greg said that environmental review (per the State Environmental Quality Review Act) is a part of all development proposals and depending on impact, there are different types of review; this is a separate review from Town laws. He also added that the County tax assessor would have sizes of building footprints.

Michele asked if the footprint includes the paved area; Greg answered, no, that the tax assessor is just looking at the building footprint.

Michele followed up saying that maybe the Town should look more closely at the paved area in their reviews.

Barbara Knuth added the Site Plan Review law looks at area of disturbance, which would include the paved area.

Barbara Lynch added that she also wants the Town to look at the paved area of businesses a little more closely and how they contribute to the overall benefit of the business.

Tim asked if the EIR sub-group would like to continue to refine this topic and follow-up on recommendations as it sounds like more information is needed.

Barbara Lynch said yes, and that the Task Force should look at if the Town should incorporate the EIR in Site Plan Review. She asked Greg to find more examples of EIR.

Greg commented that Site Plan Review, Design Standards, and EIR can all be triggered by different issues and don't need to all be applied unilaterally.

Greg also brought up that it would be difficult for the Town to impose an EIR without a baseline understanding of its market conditions. In other words, there needs to be proof of current market conditions in the Town in order to impose an EIR with specific criteria to review businesses against.

Tim asked for confirmation that, before the Town Board could consider an EIR law, the Town would need to understand baseline market conditions; Greg confirmed.

Barbara Lynch asked if the Town knows its baseline market conditions; Tim said no. She followed up saying that perhaps a student at Cornell would conduct a study. Tim thinks this could be a good approach, but it would be a long-term goal.

4. Design Guidelines/Standards sub-group report

Barbara Knuth discussed the sub-group's report beginning with asking the Task Force to continue looking at the minimum square footage for buildings as a threshold for Site Plan Review. The current Design Guidelines are a set of questions; the first major recommendation is to call them "standards" instead. The sub-group modified the guidelines primarily by using the word "must" to require certain criteria; for example "the development *must* meet ___" rather than "the development *should* meet ___"

The sub-group also took a close look at guidelines pertaining to impacts on Unique Natural Areas and prime agricultural soils; they will continue to develop standards pertaining to protecting those critical environmental resources.

Ellen reiterated that changing standards to using the word "must" was important so that criteria are required and not just discussion points. Other areas not included in the current design guidelines were also looked at. The sub-group looked at Dryden's design guidelines as a point of reference. Ellen said that the Town does not have Critical Environmental Areas, but she did talk to someone who is familiar with bird habitats and this area may be considered for important environmental resources to protect. She said that the sub-group will continue to look at triggers for design standards.

Michele wants to look more at wildlife areas and wetland areas.

Tim said that wetlands fall under the DEC purview and that if there are impacts on them they would be captured in a SEQR review.

Barbara Knuth added that wetlands are regulated by State and Federal agencies.

Tim asked if the sub-group had a chance to look at the Danby design guidelines; Barbara Knuth said they would look at them next.

Barbara Knuth asked for the Task Force to have a discussion at the next meeting on the proposed revised Design Guidelines (Standards); Tim agreed.

Tim asked if the EIR group would continue to refine their questions and topics and if the FBR group would look into basic zoning tools.

Ellen added that the FBR group should come up with a definition of formula businesses; Tim agreed.

Ellen suggested the Town consider other topics, such as an ordinance on billboards and on junkyards; she asked if these topics could be put on the radar. Kathryn agreed with looking into junkyards.

Tim recommended that the Task Force continue to look into the current land use topics they have been researching, but that those topics (junkyards and billboards) are of concern to be looked into in the near future.

Ellen said that the revised Comprehensive Plan recommends the Town looking into junk and other nuisance laws; Tim said that the Town is hiring a new Code Enforcement Officer soon and this will help because these types of laws need enforcement.

Barbara Knuth asked if the Task Force should be considering the changes to the revised Comprehensive Plan in regards to the charge to the committee.

Tim said that there haven't been any significant changes to the Comprehensive Plan that would alter the charge to the Task Force; Tim said the other thing to consider is a possible extension of the moratorium due to the timing of the pending adoption of the revised Comprehensive Plan.

Tim said the Planning Board has two vacancies and asked the members of the Task Force to consider applying.

Ken asked what the EIR sub-group should do with the questions that they have (see sub-group report in October 5 meeting notes); Greg said he can send more examples of EIR, but wants to hear what the group suggests because EIR is a much more involved long-term project.

Tim suggested that the Task Force table the EIR for now and look into the Site Plan Review and draft Design Standards for the next meeting.

Ken said that the EIR questions could possibly be included as the thresholds to look at as part of the Site Plan Review.

Ellen suggested that the EIR group could include some of the questions in their review of the design standards.

Ken clarified his comment at the last meeting regarding assessment of property for fire districts and asked that the notes reflect his comment accurately; Greg acknowledged that this change would be made (see October 5 notes).

Meeting adjourned at 9:00 PM
Meeting Notes prepared by Greg Colucci

**Town of Caroline
Land Use and Economic Development Task Force**

Meeting 6

**October 19, 2020
7:00 PM**

Agenda

1. Privilege of the floor
2. Discussion of Design Standards
3. Discussion of Definition of Formula Business
4. Discussion of Future Directions

Attendance

Yusmin Allim; Michele Brown; Barbara Knuth; Barbara Lynch; Ellen Harrison; Ken Miller; Tim Murray (Town Board representative); Greg Colucci (Planner); and Mark Whitmer (Town Supervisor)

Absent from the Task Force were Rebecca Schillenback and Kathryn Sealy

Notes

1. Privilege of the floor; no member of the public joined the meeting
2. Tim Murray asked Greg Colucci to give an overview of where the Task Force is currently and how the group may proceed

Greg said that given everything the committee has received so far from the sub-groups, he would like to put together a draft document of design standards for the group's review by the following meeting. Greg acknowledged outstanding questions that should be discussed before drafting the document, such as triggers for an economic impact analysis and for a traffic impact analysis. Greg suggested that these types of analyses may be more appropriate for intensive development proposals, but not all proposals.

Barb Knuth asked that the committee review the proposed design standards at this meeting before Greg drafts the document. She asked for a high level review on the proposed standards for general consensus purposes.

Tim agreed with this approach.

Ellen Harrison reiterated Barb's point and asked for a conceptual buy-in on the standards or a discussion if so needed.

Barb Knuth led the review of the proposed design standards; the sub-group used the existing Design Guidelines and referenced the design guidelines of Danby and Dryden as model examples. She asked if the group concurs with beginning the document with an "intent" statement.

Ellen suggested that additional language could be added, such as a statement about protecting prime agricultural land.

Tim asked how the proposed intent statement would relate to the Site Plan Review law.

Michele Brown answered that the intent statement was modeled from Danby's design guidelines and doesn't yet relate to the current Site Plan Review.

Ken Miller asked if the standards would apply to residential development.

Ellen answered that they only apply to those developments required to be reviewed under Site Plan Review law, and residential housing is not subject. She said that the group should consider other triggers for a Site Plan Review.

Ken said that residential development should go through Site Plan Review.

Barb Knuth reiterated that the sub-group is recommending that the Task Force consider other types of development that would trigger Site Plan Review.

Ken followed-up stating that recent housing developments do not reflect rural character and even if the design standards currently being reviewed are not appropriate to address residential uses, he suggests that the Task Force consider this topic.

Ellen acknowledged that residential development is a topic of concern, but that currently the Task Force is focusing on other topics. She asked if the design standards apply to subdivisions as this could address Ken's concerns.

Greg answered that the Subdivision Design Guidelines are separate from the Site Plan Design Guidelines. He added that the current Site Plan Review law requires 15 types of development to go through review.

Tim asked that the group focus on the proposed design standards and the Site Plan Review requirements could be discussed at a different time.

Ken proposed that clarifying language should be added to the design standards that states that "any development that requires Site Plan Review..."

Barb Knuth acknowledged this consideration. She asked that Greg reword and re-organize the document once the standards are reviewed.

Barb Knuth asked for consensus on the first two proposed standards relating to consistency of land development with existing laws and the Comprehensive Plan; no objections.

Barb Knuth asked for feedback on the next set of proposed standards relating to development impacts on wetlands, floodplains, and steep slopes.

Tim asked if some of the proposed design standards would be more appropriate in the general Site Plan Review law.

Barb Knuth said that the first task was re-wording the existing design guidelines, which are a set of questions, to be requirements instead and then using the Danby and Dryden design guidelines to layer additional language.

Ellen said that most of the proposed design standards are not new concepts; they're just reworded from the existing guidelines.

Tim acknowledged this and asked that Greg look at which topics may be best suited under the Site Plan Review law versus in the design standards.

Ken asked for clarification on exemption language regarding "essential infrastructure" and "passive recreation amenities."

Barb Knuth and Ellen answered that these would be things such as public buildings, utilities, roads, or boardwalks for example.

Yusmin Allim suggested that certain proposed standards could be combined.

Barbara Lynch asked if there was consideration on the size of wetland buffers.

Michele said that the sub-group proposed 50 feet as this is used by Ithaca.

Barb Knuth brought up the standard regarding protection of agricultural soils and asked for the committee's consensus; no objections.

Ken asked if the proposed 50-foot wetland buffer would be on the development property and what would happen if the property wasn't big enough to comply. He suggested that the standard be revised to be 25 feet.

Barb Knuth answered that the proposed standard is consistent with the Town's Erosion and Sediment Control Law and that the Site Plan Review law pertains to sites that are more than one acre; additionally a developer cannot use a neighboring property not owned by them to meet the standard.

Barbara Lynch asked for clarification on the proposed standard requiring the wetland buffer to be of native species and avoid invasive species; she believes this would be hard to enforce.

Ellen said this standard is more for developments that add plant species; it's not intended to require the developer to rip certain species out.

Barb Knuth asked for feedback on the proposed standard relating to preservation of mature woodlands and open spaces of more than 5 acres.

Tim asked if the language about 5 acres was an addition to the proposed standard or if it was in the existing design guidelines.

Ellen answered that the language is in the current law.

Tim said this requirement may preclude development from being setback further from the road if it's in a large wooded lot and has a long driveway.

Barb Knuth said that an exception to this standard could be considered.

Ken asked how this proposed standard relates to another similar standard.

Barb Knuth answered that those similar standards would likely be combined. She moved on to the proposed standard that requires preservation of hilltops and scenic ridges and recognized that requiring developments to be sited in lower lands might conflict with protecting agricultural lands.

Ellen said that there was a county-wide survey on scenic resources and these few areas are reflected in the Comprehensive Plan. She recommends that the Town look into studying its scenic resources further.

Ken said that a building on top of a hill might be less conspicuous than on the side of a hill.

Ellen stated that this proposed standard is problematic because it seems to address the view of a scenic hillside in general, but not necessarily the view from a road to that scenic hillside.

Ken brought up that the Comprehensive Plan only maps a few views that are most important.

Barbara Lynch asked if there is a process to get people involved in agreeing on scenic views of importance rather than just through Site Plan Review.

Greg commented that scenic resources are typically reviewed if and when a development goes through the SEQR process; the DEC has a policy that states official designations of scenic resources are those that are defined in a Comprehensive Plan or through zoning. If the scenic resource is not identified in a Comprehensive Plan, the Town would need a separate study identifying those resources to be protected.

Barb Knuth asked for feedback on the proposed standard regarding impacts on historical, archaeological, or other cultural resources; no discussion.

Ken asked for clarification on the committee's decision regarding the proposed standard on impacts to scenic views.

Barb Knuth answered that the standard would stay in the document, but that it may need to be limited to scenic views identified in the Comprehensive Plan.

Barb Knuth asked for feedback on the proposed standard relating to impacts on natural areas.

Barbara Lynch asked for inclusion of impacts to herptiles.

Barb Knuth said that this can be considered; she asked for feedback on impacts to traffic and impact on roads.

Yusmin asked if certain standards could be re-ordered and combined.

Tim asked if some of the standards related more to economic impact analysis and traffic impact analysis.

Barb said that they do, but that the sub-group would need to look at the triggers that would require such analyses.

Greg stated that these types of analyses are not design-related and would be more appropriate in the general Site Plan Review law.

Ken asked for clarification on the proposed standard that would prohibit developments from fronting on public roads.

Greg said this is indicative of non-urban type development. Urban development design language typically requires development to front on a public road.

Ken asked if this would require parking to be located in front of the building between the road.

Greg said possibly, but this is also proposed to be regulated through another design standard.

Ellen said that this standard came from an existing design guideline.

Greg suggested that design standards in one area of the Town may not be appropriate for other areas of the Town, such as the hamlets. For instance, the Town might want buildings to be brought closer to the street in hamlets than in a more rural area of Town.

Barbara Lynch said that even though the Town doesn't have zone districts in which to regulate different areas of town, there could be triggers to require different standards.

Ellen asked if the design standards could exempt out certain areas of the town.

Greg said that it's possible to delineate hamlets outside of zoning, but it makes the process more complicated when crafting these standards.

Barb Knuth asked if some of these questions could be sent to the Attorney.

Tim recommended waiting to send the Attorney a more finalized document than to send questions.

Greg suggested that the Comprehensive Plan's identification of the Town's hamlets could be referenced in the standards.

Barb Knuth asked for feedback on the proposed standards related to design of buildings, parking, lighting, and signage.

Yusmin suggested that two separate proposed lighting standards be combined.

Tim suggested that some of the proposed language for building materials could be strengthened.

Michele said that the language primarily came from Danby's design guidelines.

Ken asked if the proposed standard regarding building materials would differentiate being visible from a road versus those materials that are not visible.

Greg commented that design standards will often define materials that are acceptable or prohibited on a "the public facing facade."

Ken asked that the proposed standard requiring buildings greater than 1500 square feet be increased.

Barb Knuth said that the committee would take a look at increasing this size.

Ken asked for clarification that the proposed standard would require a 4500 square foot building to be 3 separate buildings.

Ellen clarified that a 4500 square foot building would not need to be 3 smaller buildings, but designed to look like smaller buildings.

Greg shared his screen to show a graphic in Danby's design guidelines that has an example of a large building designed to look like a series of smaller buildings.

Barb Knuth asked for feedback on a proposed standard relating to parking.

Tim asked if it's possible to delineate distance from existing properties.

Greg answered that this is typically regulated through zoning.

Ellen said that even though the Town doesn't have zoning, it may be possible to state distance that parking needs to be from property lines.

Ken said he was required to build his barn 3 feet from his property line.

Greg said this is probably regulated through the building code.

Ellen asked if the committee would consider a required setback for parking from a property line.

Greg said that the location of parking is often regulated in relation to a building.

Ellen said she would like to know if parking's location (e.g. setback) can be regulated without zoning.

Greg suggested that design standards could require screening of parking lots (that are within a certain distance of a property line, for example.)

Barb Knuth asked for feedback on a proposed standard that requires lighting to be consistent with the International Dark Sky Association specifications.

Ellen asked for clarification if lighting can be restricted to certain times of day.

Barb Knuth asked for feedback on proposed sign standards; no discussion.

Barn Knuth asked for feedback on a proposed standard relating to a development's energy use.

Tim suggested that the County's Energy Recommendations for New Construction would be the best source to reference and the Town Board would likely comment.

Ken said that the proposed standard requiring 20% more insulation on new buildings than what is required per the energy code would be exorbitant.

Tim commented that this is in the existing law.

Barb Knuth asked if a proposed standard requiring an escrow account for new development in the event of building abandonment is a design standard.

Greg answered that it is not a design standard but could be in the Site Plan Review law.

Greg asked if the design standard sub-group is going to look more closely at the Site Plan Review law.

Ellen asked for the group to consider amended triggers for Site Plan Review.

Yusmin brought up that economic impact review should be considered.

Tim suggested that economic impact review is a larger discussion and the Town would need more information in order to begin making a decision on it.

Ellen reviewed proposed Site Plan Review recommendations such as lowering the commercial use threshold from 10,000 square feet to 3,000 square feet; a formula business would be required to go through a Site Plan Review; and any industrial use would be required, lowered from 25,000 square feet.

Tim agrees with the lowering of the commercial use, but cautioned against having too many triggers.

Barbara Lynch asked if industrial use includes dry cleaners or body shops, as these uses would impact water quality.

Tim asked if these uses would trigger SEQR; Greg said possibly.

Tim commented that water quality and water supply are defined in the current Site Plan Review law.

Ken asked about the 25,000 square foot threshold in the existing law for industrial uses, and asked if the committee would consider commercial or industrial use above 3,000 square feet to go through Site Plan Review.

Ellen said she is not sure where the 25,000 square foot threshold of industrial uses in the current Site Plan Review law came from, but she would not like to see any industrial uses in Town.

Ellen asked for feedback on the suggested restriction on all buildings to be no larger than 10,000 square feet.

Greg said that this might be difficult to defend. The Town of Ulysses has recently amended their zoning capping agricultural buildings at 20,000 square feet, but this could be challenged under the Ag and Markets Law.

Greg asked if the committee wants to have a formula business definition as a trigger for Site Plan Review, stating that it may be possible to require review of formula businesses in another trigger, such as further lowering the commercial use size threshold. There was no consensus from the committee to remove the formula business definition from the amended Site Plan Review law.

Ellen said there are other things that should be required for review, such as drive-throughs.

Barb Knuth sent Greg the revised design standards to work on in advance of the next meeting and the sub-group will review the Site Plan Review law.

Meeting adjourned at 9:10 PM
Meeting Notes prepared by Greg Colucci

**Town of Caroline
Land Use and Economic Development Task Force**

Meeting 7

**October 26, 2020
7:00 PM**

Agenda

1. Privilege of the floor
2. Meeting of Full Task Force
3. Meeting of Site Plan/Design Subcommittee

Attendance

Yusmin Allim; Michele Brown; Barbara Knuth; Barbara Lynch; Ellen Harrison; Ken Miller; Tim Murray (Town Board Representative); Bill Podulka (Planning Board Representative); Irene Weiser (Town Board Member); Mark Whitmer (Town Supervisor); Greg Colucci (Planner); and a few members of the public

Absent from the Task Force were Rebecca Schillenback and Kathryn Sealy

Notes

1. Privilege of the floor; members of the public expressed concern about development pressure in the Town, especially relating to loss of agriculture, and voiced their support for Caroline considering stronger land use tools.
2. Tim Murray asked Greg Colucci to explain the difference between site plan, design, and zoning.

Greg explained the local power of Site Plan Review, citing [Town Law 274-a](#); Site Plan Review is a good tool that a town can use to regulate the impacts of development. A Site Plan Review law can set standards for development, but without zoning they are limited in their applicability. Design Standards can be included in the Site Plan Review Law or as a separate document. The current Design Guidelines were adopted as a Resolution for ease of amendment by the Town Board.

Irene Weiser said she thought that Site Plan Review law cannot set standards, and that it has to reference federal, state, or local laws. This would be followed up with the Town Attorney.

Bill Podulka asked if the Site Plan Review law can prohibit uses over a certain size; Greg said that this could be done through zoning.

3. The Site Plan Review/Design Subcommittee met to discuss proposed changes to the current Site Plan Review Law and Design Guidelines to be shared with the group at the following meeting.

Meeting adjourned at 8:00 PM

Meeting notes prepared by Greg Colucci

**Town of Caroline
Land Use and Economic Development Task Force**

Meeting 8

**November 2, 2020
7:00 PM**

Agenda

1. Privilege of the floor
2. Discussion
3. Review of proposed Site Plan Review Law changes

Attendance

Yusmin Allim; Michele Brown; Barbara Knuth; Barbara Lynch; Ellen Harrison; Ken Miller; Tim Murray (Town Board Representative); Mark Whitmer (Town Supervisor); Bill Podulka (Planning Board Representative); and Greg Colucci (Planner)

Absent from the Task Force was Rebecca Schillenback

Notes

1. Privilege of the floor; no member of the public joined the meeting.
2. Greg Colucci summarized a call he had with State representatives who advised that Caroline consider zoning as a stronger means to implement Site Plan Review and regulate development overall than only relying on a stand-alone Site Plan Review Law. Mark Whitmer summarized his call with the Town Attorney who confirmed this as well; Site Plan Review at the level of detail for what is currently being considered by the Task Force would be better housed in a zoning ordinance.

Barb Knuth recognized that Site Plan Review (SPR) can go better with zoning, but asked that the Task Force continue to work on the SPR in the short term.

Ellen Harrison suggested that more ephemeral standards/guidelines can go into the separate Design Standards document so they may be amended in the future

Tim opined that he would like to see the design standards incorporated into the Site Plan Review Law and would like to have them reviewed in a public setting.

3. The Site Plan/Design Standard subcommittee presented suggested changes to the current (2018) Site Plan Review Law.

Section 1.030 Intent and Purpose

Barbara Lynch suggested that the order of intent statements be revised to reflect importance to the Town (e.g. protecting agricultural land may be more important than design of buildings)

Yusmin Allim asked about the statement of purpose; Tim said the purpose is stated before the Intent statements.

Ellen asked about the intent statement relating to “accessibility for all” and if the law and standards actually reflect this.

Tim said ADA (Americans with Disabilities Act) covers accessibility.

Ken Miller suggested removing language about development being consistent with “design traditions of Upstate New York” and just keeping “design traditions of Town of Caroline”; there were no objections to removing this language.

Ken asked about the statement pertaining to providing pedestrian accessibility throughout the Town; it is intended for those developments that get reviewed by Site Plan Review Law, not requiring them on properties that aren’t under review.

Ken asked for clarification on the statement about design being consistent with contiguous parcels; this statement is not meant to regulate properties that aren’t under review, but to encourage design consistency with adjacent properties.

2.010 Applicability of Review Requirements

Barb Knuth reviewed the first set of proposed changes, such as reducing the size of commercial buildings required to go through review from 10,000 square feet to 3,000 square feet.

Ken asked for clarification about home occupations with drive-throughs being exempted from SPR.

Bill Podulka said that the Town intended to exempt small, home businesses from SPR and said there are some home occupations that have drive up services.

Michele Brown said that there is a home that sells ice cream that people can drive up to.

Bill asked what the rationale was to reduce the size threshold of industrial uses going through SPR from 25,000 square feet to 3,000 square feet.

Ellen said that this reduction was consistent with the commercial use threshold.

Michele added that 3,000 square feet is an average size of many commercial uses.

Ken asked about the review required for CAFO operations, as these operations are covered and reviewed by the State under Ag and Markets Law.

Barb Knuth said that the review requirement is just to have the CAFO submit permits to the Town as documentation.

Ellen concurred that the Town doesn’t have much control over CAFOs, per Ag and Markets, but that it’s good to have permits submitted to document changes.

Bill suggested that the CAFO review requirement should be moved to a different section.

Barbara Lynch asked which types of CAFO development falls within the law of Ag and Markets and which do not, such as making fertilizer.

Ellen believes that making fertilizer would be considered an industrial use.

Greg said that certain types of CAFO developments, even protected by Ag and Markets, can still get reviewed by the Town, often through Special Use Permit reviews (e.g. biogas converters). It's a good way to document the development in the Town for public knowledge.

Tim said that the Attorney would decide whether the review requirement about CAFOs would be appropriate or not.

Barb Knuth brought up the proposed review requirement for solar facilities.

Bill said that the Town is currently considering a solar facility siting law and how this Site Plan Review law would relate to it.

Greg said there needs to be coordination with both laws; the most ideal scenario is that solar regulations are housed in a zoning ordinance. Absent zoning, the SPR can reference the proposed solar law.

Mark Whitmer suggested to think long term and not have two conflicting solar related laws. It was agreed to leave the solar review requirement in the SPR for now, but that it may be removed when the SPR goes for review if there is another solar siting law at that time.

2.040 Definitions

The definition for Agricultural Resources is proposed to be expanded to include all lands that meet the definition and not just those lands within established Agricultural Districts.

Ken questioned the language about Prime Agricultural Soils if Drained because some lands cannot be drained per State requirements. He said he can do some tile drainage, but not a lot as there are strict guidelines.

Barb Knuth referenced the State definition of Prime Agricultural Soils in Drained.

There were no objections to adding a definition for Building Energy Model.

There were no objections to adding a definition for Common Birds in Steep Decline.

Mark asked if there would be Specific Standards (already in the SPR) and Design Standards, or if they would be combined.

Barb Knuth said that for now they would be proposed as two different sets of standards.

Regarding the proposed definition for Prime Agricultural Soils, Bill suggested referencing the State definition as their definition could change in the future; no objections.

There were no objections to adding a definition for Formula Businesses.

Ken asked if the definition of Glare would include signs that have reflective surfaces and Barb Knuth said she believed it would.

Ken asked about the definition for Gross Floor Area; Greg said that a municipality can typically choose for itself what is included in this definition (e.g. often a porch is not included, and just those areas that are conditioned)

Ellen asked if the definition for GFA should be expanded; Greg said it could be considered especially if the Town is considering looking more closely at commercial uses (e.g. should a walk-in cooler count towards gross floor area?)

No objections to expanding the types of religious uses to Institutional Uses definition.

Ken asked for Greenhouse Gas (GHG) Emissions to be defined in the SPR law.

Ken asked about "LCD" in the Luminaire definition; Greg said that signs often use this advanced technology.

Barbara Lynch asked for clarification regarding the Scenic Resources definition; Bill said that the definition references the County's visual resources and there was not a Town-specific survey.

Ellen suggested the Town consider a process to identify important views in the future.

Mark suggested refining the definition to not suggest that there is a list of official Town views.

Tim suggested changing the language of Scenic Resources to say "views in the town that contribute to quality of life and attract town visitors"

Species of Greatest Concern definition pertains to animal and plant species.

"Uplight" is any light that is above the horizontal plane of a light fixture. Ken said there are signs in the town that have light pointing upwards.

Ellen asked if sign standards can be included in zoning and Greg answered yes.

3.010 Site Plan Considerations

Barbara Lynch asked if solid waste can be included; Barb Knuth said that the SP consideration currently includes waste, which includes solid waste by definition.

Greg said that the Impacts on Agricultural Resources can be modified to not include Ag Soils etc., as these are included in the definition of Ag Resources.

Ken asked about the SP consideration pertaining to the adequacy of development impacts on flooding and ponding; Tim said this was in the original law and has been standard practice.

3.020 Specific Standards and Considerations

Ken suggested that the proposed stream buffer of 50 feet be modified to 25 feet.

Michele referenced studies that recommend 50 feet to streams.

Barbara Lynch suggested consistent use of the word “avoid” in recommendations for construction activity to protect water quality.

Under Transportation Plan, proposed language to include a Traffic Impact Analysis may be required as part of a requirement.

Barbara Lynch asked what reasonable soil erosion would be, as opposed to unreasonable soil erosion that is referenced in an SP standard, and suggested to say “minimize soil erosion” instead.

Ken suggested that the Chesapeake water regulations should be included in the Water Supply SP standard and consideration.

“The development must not result in permanently increased traffic” is probably unrealistic as all new development will likely result in some increased traffic. Greg suggested that if the SPR allows a review board to require a Traffic Impact Analysis, this would be enough to understand the impacts.

“The development must not preclude any future agricultural use on lands with Prime Agricultural Soils, and must avoid Prime Agricultural Soils...” should include “if drained” afterwards.

The Task Force decided to conclude the review of the revised SPR at next week’s meeting.

Meeting adjourned at 9:00 PM
Meeting notes prepared by Greg Colucci

**Town of Caroline
Land Use and Economic Development Task Force**

Meeting 9

**November 9, 2020
7:00 PM**

Agenda

1. Privilege of the floor
2. Discussion
3. Review of proposed changes to the Site Plan Review Law

Attendance

Michele Brown; Barbara Knuth; Barbara Lynch; Ellen Harrison; Ken Miller; Tim Murray (Town Board Representative); Mark Whitmer (Town Supervisor); and Greg Colucci (Planner)

Absent from the Task Force were Yusmin Allim, Bill Podulka, and Rebecca Schillenback

Notes

1. Privilege of the floor; no member of the public joined the meeting.
2. Tim Murray reviewed the Town Board calendar for the remainder of 2020 and asked for a report from the Task Force by the December 1 meeting.

Barb Knuth asked how the process for adopting the proposed Site Plan Review Law and Design Standards would be impacted by the Town calendar and related to the expiration of the moratorium.

Mark Whitmer said that the Town Board is primarily expecting recommendations from the Task Force and not necessarily a draft law to review.

3. Continued review of suggested changes to Site Plan Review Law (the Law)

3.020 Specific Standards and Considerations

The Law is an appropriate place to ask for plans or data relating to air quality of the proposed development.

Regarding the impacts of noise, the decibel level in the proposed changes likely came from an unsuccessful noise ordinance. Additional research was needed to verify if these levels are appropriate to regulate.

Impacts on lighting are proposed to be modified by adding language stating that excessive lighting for promotional purposes is not allowed (rather than stating they are discouraged). The curfew for lighting (for projects that fall within the scope of the Law) is proposed to be reduced from 11 PM to 10PM.

Ken Miller suggested that reducing the hours of lighting may adversely affect delivery schedules.

There were comments about not wanting to live next to a business that has late night deliveries.

Greg Colucci said that lighting restrictions can be administered well through zoning so that areas of commercial uses, their lighting impacts, and their regulation can be predictable.

Ken asked if developments going through Site Plan Review need to notify adjacent property owners of the proposed development. Greg said that this currently applies to property in agricultural districts. Developers are typically not required to notify residential properties, unless the Town requires.

Ellen Harrison suggested that the Town should require notification for all developments required to go through Site Plan Review.

Greg said that this can often be exhausting for a Town when there are a lot of development applications. Given Caroline's size it may not be overly burdensome. Greg will draft language for the Task Force to consider.

The Energy Use and Greenhouse Gas Emissions standards are proposed to be moved from the now-Standards document to the Law so as to ground their requirement in law rather than the more "ephemeral" standards document, which, as it is currently, may be adopted by Resolution.

The standard regulating the impact of visual resources is proposed to be modified to state "as seen from the public right-of-way" rather than a public road, so as to capture public trails.

Relating to impacts on plant and animal resources, Tim asked how the proposed standard to "preserve and maintain contiguous mature woodlands of 5 acres or greater" would impact the development of a residential street and subdivision.

Greg suggested that an environmental quality review may be a good mechanism to weigh the impacts of development on woodlands, as cumulative impacts on all environmental resources between projects could vary even if they disturbed similar areas of woodlands.

Forest management operations would not conflict with the proposed standard.

The proposed standard regulating architectural and design features references topics in the currently proposed Design Standards; if the two documents are merged the requirements in the Design Standards would be housed here.

The proposed standard requiring buffer areas does not state numerical distances, which is likely more appropriate given Caroline's lack of zoning.

Section 3.030 Economic and Fiscal Impact

The proposed section allows the Site Plan Review Board to ask for an Economic Impact Assessment of a development proposal.

Greg said that a definition of Economic Impact Assessment will need to be included in the Law.

There was discussion on what should be required to be shown in the Economic Impact Assessment.

Tim asked if the law would preclude a development that was in direct competition with an existing business.

Ellen said the Law wouldn't preclude the new business from developing.

Greg said that the Law may not even have to reference this topic and the Site Plan Review Board may simply be in its right to ask for one regardless whether it's stated or not. Greg referenced an economic impact analysis submitted for a proposal in the Village of Trumansburg and the Village does not specifically require this in any law. If it's stated, it needs to be elaborated more, such as including a definition of Economic Impact Assessment.

3.040 Site Restoration Requirements for Formula Business and Heavy Industry

Ken suggested that this section should be required for all developments coming under Site Plan Review; there were no objections.

3.4 Site Plan Requirements

There were questions about the extent of floodplains needing to be shown on the development plans; Greg said that it would be those regulated by Federal and State agencies.

Ellen suggested that ephemeral streams should also be included with streams requiring to be shown on development plans.

Greg said that requiring this may be overly burdensome on the developer, and ephemeral channels can typically be seen on topographic maps.

Ken asked about language requiring developers to show "suitable habitat" for rare and endangered species is even possible to show.

Barb Knuth clarified that endangered species would also have to be within range of the subject property, not just include suitable habitat for endangered species.

Ellen suggested that asking a developer to do endangered species surveys may be onerous.

Greg said the threatened and endangered species habitat areas can be mapped easily using the DEC Environmental Resource Mapper, but asking for mapped habitat to be shown on plans for Common Birds in Steep Decline, for example, might be a lot to ask of a developer.

Ken asked if there is a fee schedule for permits and Tim answered yes.

Barbara Lynch suggested that solid waste management practices should be required to be shown in submitted plans; there were no objections.

The Task Force concluded with the review of the proposed Site Plan Review Law.

Greg said he would send around examples of Town Environmental Quality Review Acts, as some of the topics in the proposed Site Plan Review Law could be reviewed against a local EQR.

Meeting adjourned at 9:00 PM
Meeting notes prepared by Greg Colucci

**Town of Caroline
Land Use and Economic Development Task Force**

Meeting 10

**November 16, 2020
7:00 PM**

Agenda

1. Privilege of the floor
2. General Discussion
3. Review of proposed changes to the Design Standards
4. Final Report to Town Board
5. Zoning

Attendance

Michele Brown; Barbara Knuth; Barbara Lynch; Ellen Harrison (Site Plan Review Board Member); Ken Miller; Yusmin Allim; Bill Podulka (Planning Board Member); Tim Murray (Town Board Representative); Mark Whitmer (Town Supervisor); and Greg Colucci (Planner)

Absent from the Task Force was Rebecca Schillenback

Notes

1. Privilege of the floor; no member of the public joined the meeting.
2. Tim Murray asked for a report from the Task Force no later than the December 9 Town Board meeting.
3. Greg Colucci reviewed the proposed changes to the Design Guidelines document, which is now proposed to be titled Design Standards

Building and site elements are proposed to be included in the Design Standards and anything that is not related to building and site design (from the current Design Guidelines) is added to the proposed Site Plan Review Law.

Building Placement and Design

1. A building must not front directly on existing public roads to maintain rural character and vehicular safety.
2. The architectural design and details of proposed buildings or structures must be compatible with the scale, type of construction and landscaping characteristic of the surrounding area.

Any reference to hamlets differing in design from those areas outside of hamlets is more appropriate within a zoning framework. There could be separate, hamlet-specific design standards if there was zoning.

Added: walkways adjacent to buildings shall be covered.

Roofing

1. Roofing shall have a minimum pitch of 4:12.

Will be modified to include exceptions for “environmental purposes.”

2. Corrugated metal as a roofing material is prohibited.

Remove #2

Ken Miller asked whether the standard requiring buildings to be compatible with surrounding structures would conflict with standards requiring, for example, a specific roof pitch.

Greg answered that “compatibility” is typically interpreted as cumulative compatibility, so one design element may not be a reason to disapprove a development.

Massing

1. Buildings that are larger than 1,500 square feet must be designed as a series of smaller buildings.

Materials

1. Materials should be consistent with Caroline building design including the use of clapboard, shingle, and board and batten.

Vinyl siding and hardi board will be added.

2. Stone, masonry block, brick, metal, and modern stucco is allowed on up to 30% of the public-facing façade.

Stone, masonry block, brick will be removed

Language will be revised to say “metal is allowed as a *minor* component of the public...”

3. Cement, cinder, and concrete blocks are prohibited on public-facing facade

Fenestration

1. Public facing facades shall have a window area of at least 15% of the façade.
2. Windows should be arranged and grouped between 2 feet and 10 feet above the finished exterior grade.

Removed #2

Canopies

1. Drive through or drive under canopies, typically associated with gas stations should draw on design traditions of Caroline
2. Canopies should have a pitched roof
3. Canopy supports should be visually proportional to the roof structures

Added: the canopy should be visually compatible with the primary structure

Rooftop Equipment

1. Antennas, satellite dishes, and other mechanical equipment on a roof should not be visible from public roadways.
2. Screening of rooftop equipment is required and must appear integral to the building design.

Lighting

1. Site and parking lot light poles should not exceed 18 feet above surrounding grade.
2. Light fixtures should be shielded to direct light downward and contained within the site.

Parking

1. Parking areas associated with the Development must be located no closer to the road than the closest façade of the building, unless approved by the Town. If an exception is granted, parking areas located between structures and public roads are limited to a maximum of 15 spaces, and should be softened with a low growing hedge and/or an attractive fence or wall between the parking and the road.
2. Shared parking lots and interconnected service drives to reduce new curb-cuts and maintain road safety and function should be used to the extent practicable.
3. Internal pedestrian connections (on site, from parking lots, to adjacent lots, etc.) must be provided as appropriate to the Site to provide pedestrian access to and around the Development.
4. Large expanses of parking should be broken up with tree and shrub plantings.
5. A vegetative buffer or fence must screen a parking area located within 20 feet of a property line.

#5 will be modified: A parking area located within 20 feet of a property line must have a vegetative buffer or fence between the parking area and property line.

Screening of Accessory Equipment

1. Equipment located at grade, such as compactors, dumpsters, HVAC equipment, on-site utility boxes, loading docks, and other infrastructure shall be screened from public roads and adjacent residential uses in a manner approved by the Board.
2. Screening materials and design must be attractive and compatible with the building and overall landscape designs.

Signage

1. Wall signs:
 - Channel letters, halo lit letters, or downcast externally lit letters are encouraged.
 - Cabinet or box signs are discouraged.

2. Ground mounted signs
 - Shall be no taller than 6 feet above finished grade.
 - Shall be monument style, rather than pole-mounted, unless the Review Board grants an exception.
 - Shall be externally illuminated, and downcast, if using lighting.
3. Ample landscaping must be provided at the base of signs of any type.
4. Digital signs (including LCD signs) with changing, moving, or flashing text are prohibited.

To add: A maximum size for signs.

Landscaping

1. Landscaping should enhance the site and screen undesirable features from view.

Landscaping cannot practicably be used for noise impacts.

Sustainable Transportation Infrastructure

1. The Development is encouraged to provide to the extent possible support for transportation choices such as bike racks and/or storage, dedicated car-share parking spaces, a car or van pooling service, electric vehicle charging stations, or local public transportation infrastructure for persons with disabilities
4. Final Report to Town Board
 1. Summary
 2. Purpose and Background
 3. Findings of the Task Force
 1. Formula Business Restrictions
 2. Economic Impact Review
 3. Site Plan Review and Design Standards
 4. Zoning
 4. Recommendations

Greg will re-order the Findings section

5. Zoning

Greg explained that zoning can regulate the location, siting, and density of development whereas other land use tools cannot. A number of concerns with land development that have been brought up – such as residential development, commercial/industrial development, and having hamlet-specific regulations – can be appropriately managed via zoning.

Ken Miller voiced his opposition to zoning because it can be too restrictive and may negatively affect farmers who want flexibility to sell off land for other uses.

Greg said that zoning can regulate which uses would be allowed in agricultural areas – some communities only allow agricultural uses in Agricultural Zone Districts, but others allow more types of uses than just agricultural uses.

Ellen Harrison reminded the committee that the Task Force is just charged with either recommending that the Town look into zoning further or not, and not the specifics of the zoning ordinance.

Barbara Lynch commented that one of the goals of the Town is to have more commercial development in hamlets and zoning could be an appropriate tool to allow that to happen, in addition to other incentives.

Tim suggested that zoning can be more incentivizing than merely just restricting as it's often characterized. Zoning can also be a stronger framework for some of the land use tools that the committee has been considering, such as design standards.

Meeting adjourned at 9:00 PM
Meeting notes prepared by Greg Colucci

**Town of Caroline
Land Use and Economic Development Task Force**

Meeting 11

**November 23, 2020
7:00 PM**

Agenda

1. Privilege of the floor
2. Proposed edits to the Site Plan Review Law
3. Zoning Discussion
4. Recommendations of the Task Force

Attendance

Michele Brown; Barbara Knuth; Barbara Lynch; Ellen Harrison (Site Plan Review Board Member); Rebecca Schillenback; Ken Miller; Yusmin Allim; Bill Podulka (Planning Board Member); Tim Murray (Town Board Representative); Mark Whitmer (Town Supervisor); and Greg Colucci (Planner)

Public: Renate Ferro

Notes

1. Privilege of the floor; Renate Ferro voiced her support for a Town Zoning Ordinance.
2. Greg Colucci reviewed the latest proposed edits to the Site Plan Review Law

Definitions

- Agricultural Operations
Includes "...practices that allow land used for agricultural activity to lie fallow for a period not exceeding five consecutive years"

This means that if agricultural land is fallow for more than 5 years, it is not an Agricultural Operation anymore. It would still be an Agricultural Resource.

Site Plan Standards and Considerations

- Sound
 - Barbara Lynch advocated for including decibel levels; she will do more research and propose decibel levels
 - A Nuisance Law can address sound levels town-wide, rather than regulating sound via Site Plan Review or zoning.
 - Agricultural operations are exempt
- Transportation
 - "The development shall not result in significantly increased traffic on local roads..." might be impractical, as all development will likely increase traffic to some degree.

- Language will be modified: The Development shall not result in a significant decrease in the quality of the road and increased negative impacts on the safety all users of the road.
- The Site Plan Review Board has discretion to ask for a Traffic Impact Analysis.

Economic and Fiscal Impact

- Proposed Section 3.030 requires a development to submit an Economic Impact Assessment at the Site Plan Review Board's discretion
 - The Department of State advised that if the Town wants to have specific information shown in an Economic Impact Assessment, the Town should prepare an economic baseline analysis.
 - The Site Plan Review Law can ask for a "data sheet" of all characteristics of the development that may help the Review Board understand the economic and fiscal impacts of the development.

Site Restoration Requirements

- Proposed Section 3.040 allows the Site Plan Review Board to require an escrow fund of development to mitigate the financial effects on a Town of an abandoned development.
 - The requirement may need to be applied to a certain threshold of development rather than having it be discretionary.

Greg proposed that the word "density" should be removed from Section 3.020 (Site Plan Standards and Considerations) and Section 4.34 (Site Plan Checklist) because this refers to lot coverage, which is not explained or regulated anywhere in the proposed law. The word "density" is often referred to in a zoning context as well. The word "placement" of buildings adequately addresses the issue of reviewing a building's placement on the lot.

3. Zoning Discussion

Mark Whitmer asked Greg what is unique about zoning versus the other land use tools that have been considered by the Task Force.

Greg explained that the uniqueness of zoning is that it can regulate the location of land uses whereas other land use tools cannot. Zoning can allow regulations to be tailored to uses in their separate zone districts. Zoning can also establish procedures for review boards together in one document rather than having separate local laws.

Bill Podulka reminded the committee that some of the goals of the Comprehensive Plan may not be attainable without zoning, such as protection of open space and environmental resources and concentrating more intensive uses in specific areas. He suggested a simple zoning ordinance may be enough.

Rebecca Schillenback commented that there also need to be incentives in addition to zoning.

Overlay zoning applies to specific, delineated areas with their own set of regulations in addition to an underlying zone district. Examples of overlay zone districts include floodplain, historic, lakeshore, and others.

Most agricultural zone districts allow for single family homes to be built by right. Other uses in agricultural zone districts may be allowed by right or by another procedure, such as Special Use or Site Plan Review, or both.

Ken Miller asked if property zoned commercial could still be used for agricultural uses while the property owner waits to sell it for commercial uses. Greg answered “yes” because the Town is a Right to Farm community meaning that farming is a use by right no matter what other land use laws there are.

The degree of flexibility of zone districts will need to be discussed by the Town if the process of Zoning commences.

Rebecca asked if there is another land use tool to use to encourage nodal development without zoning. Greg said not really and Bill followed up that there may be certain tax policies to create incentive for developing in the nodes.

There are a few types of zoning: Euclidian (use-based), performance, and form-based zoning, or a combination of these types. Euclidian zoning was the traditional model as it regulated where certain land uses can be located. Now form-based zoning is becoming more widely used. Form-based zoning essentially regulates developments based on the form of buildings – density, height, massing, for example – under the philosophy that the *form* of development should be mitigated more heavily than the *use* of a development.

4. Recommendations of the Task Force:

Adopt the revised Site Plan Review (inclusive of Design Standards)

The committee agreed that this should be adopted in a Zoning Ordinance, otherwise it should be adopted as a stand-alone Local Law.

Adopt a Zoning Ordinance

Other recommendations:

Economic Baseline Analysis

Nuisance Ordinance (for sound)

Junk Ordinance

Scenic Resources Inventory

Meeting adjourned at 9:10 PM

Meeting notes prepared by Greg Colucci

**Town of Caroline
Land Use and Economic Development Task Force**

Meeting 12

**November 30, 2020
7:00 PM**

Agenda

1. Privilege of the floor
2. Proposed edits to the Site Plan Review Law
3. Edits to the draft Executive Report of the Task Force

Attendance

Michele Brown; Barbara Knuth; Barbara Lynch; Ellen Harrison (Site Plan Review Board Member); Ken Miller; Yusmin Allim; Tim Murray (Town Board Representative); Mark Whitmer (Town Supervisor); and Greg Colucci (Planner)

Absent: Rebecca Schillenback and Bill Podulka

Notes

1. Privilege of the floor; no member of the public joined the meeting.
2. Greg Colucci reviewed the latest proposed edits to the Site Plan Review Law

Definitions

- Living Wage was added: “the minimum needed to support a person above the poverty level. The minimum wage for Tompkins County is determined by the Tompkins County Workers’ Center based on studies conducted annually by Ithaca’s Alternatives Federal Credit Union”

Economic and Fiscal Impact

- Language allowing the review board to ask for an Economic Impact Assessment in proposed Section 3.030 was removed over concerns that it would be arbitrary without an economic baseline of the Town.
- The Task Force recommended that the Site Plan Review Law should require developers to submit an Economic Information Sheet to help the Review Board understand the economic and fiscal impacts of the development.
 - Greg will draft an Economic Information Sheet

3. Executive Report of the Task Force

Research included

- Added “advice from Department of Environmental Conservation”
- Added “advice from Tompkins County Planning and Sustainability Dept.”

Priority Actions

- Amended “Adopt the revised Site Plan Review Law in a Zoning Ordinance” to just say “Adopt the revised Site Plan Review Law”
- Amended “Adopt a Zoning Ordinance” to say “Appoint a Zoning Commission”

Task Force Appointment

- Amended committee member list to note that Jonathan Bates and Kathryn Sealy were original members and had resigned prior to consensus of the final report
- Added subcommittees of Formula Business Restrictions; Economic Impact Review; and Site Plan Review/Design Standards.

Zoning

- Added references to State Law authorizing local governments to appoint a Zoning Commission and to enact zoning regulations.

Formula Business Restrictions

- Removed “Restrictions” from “Formula Business Restrictions”

Economic Impact Review

- Revised example questions that the Town would ask of a development to be topical categories
- Revised the recommendation to require an Economic Data Sheet as part of Site Plan Review
- Removed Economic Impact Assessment (and relocated it to being referenced in Additional Recommendations)

Additional Recommendations

- Removed Nuisance/Noise and Junk Ordinances
- Added Town economic inventory to inform a decision to require an Economic Impact Assessment from proposed businesses
- Added Town Environmental Quality Review Act

Meeting adjourned at 9:00 PM
Meeting notes prepared by Greg Colucci

**Town of Caroline
Land Use and Economic Development Task Force**

Meeting 13

**December 7, 2020
7:00 PM**

Agenda

1. Privilege of the floor
2. Edits to the draft Executive Report of the Task Force
3. Proposed edits to the Site Plan Review Law

Attendance

Michele Brown; Barbara Knuth; Barbara Lynch; Ellen Harrison (Site Plan Review Board Member); Ken Miller; Yusmin Allim; Tim Murray (Town Board Representative); Bill Podulka (Planning Board Member); Mark Whitmer (Town Supervisor); and Greg Colucci (Planner)

Absent: Rebecca Schillenback

Notes

1. Privilege of the floor; no member of the public joined the meeting.
2. Greg Colucci reviewed the latest edits to the draft Executive Report of the Task Force

Appendices

- Added Appendix D: Adopting Zoning for the First Time (DOS publication)

Priority Actions

- Amended “Adopt the revised Site Plan Review Law” to include “ideally as part of a Zoning Ordinance”

Additional Actions

- Amended “Consider adopting a Town Environmental Quality Review Act”

Site Plan Review Law

- Proposed amendments to add language explaining that Site Plan Review is stronger in the context of a Zoning Ordinance.
 - Greg will draft language
- Amended the recommendation to adopt the revised Site Plan Review Law to include “ideally as part of a Zoning Ordinance”

Formula Business Restrictions

- Added “Restrictions” to “Formula Business” to be consistent with the charge of the committee.

Additional Recommendations

- Amended Economic Inventory to include the following language:

- “It would also provide information useful in the development of policies and practices to encourage the types of businesses that best promote the vision for the Town embodied in the Comprehensive Plan.”
- Added Town Environmental Quality Review Act
 - Greg will draft language for this recommendation

3. Site Plan Review Law edits

Specific Standards and Considerations

- Added “or lifetime” to the following Transportation criteria:
 - “The Development shall not result in a significant decrease in the quality or lifetime of the road and increased negative impacts on the safety of all users of the road.”

Economic and Fiscal Impact

- Proposed language allowing the review board to ask for an Economic Impact Assessment was added to Section 3.030.
- Economic Impact Assessment was added back to the definitions

Meeting adjourned at 9:00 PM

Meeting notes prepared by Greg Colucci

**TOWN OF CAROLINE, TOMPKINS COUNTY, NEW YORK
LOCAL LAW NUMBER __ OF 20__**

SITE PLAN REVIEW LOCAL LAW

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TOWN OF CAROLINE, TOMPKINS COUNTY, NEW YORK
LOCAL LAW NUMBER ____ OF 20__

SITE PLAN REVIEW LOCAL LAW

BE IT ENACTED by the Town Board of the Town of Caroline as follows

1.010 Enactment

Article I - Introductory Provisions

The Town Board of the Town of Caroline, Tompkins County, New York, does hereby adopt and enact the Town of Caroline Site Plan Review Local Law pursuant to, *inter alia*, the authority and provisions of § 10 of the Municipal Home Rule Law and § 274-a of the Town Law.

1.020 Short Title

This local law shall be known as the “Site Plan Review Law” or, herein, as the “local law.”

1.030 Intent and Purpose

Through Site Plan review, it is the intent of this local law to promote the health, safety and general welfare of the Town and its residents by providing for the review and approval of Development plans to ensure that land Development occurs in harmony with surrounding uses and the Town’s Comprehensive Plan, and mitigate impacts to neighboring parcels, public facilities, infrastructure, natural environment, and climate. The Site Plan review process is intended to guide and protect the Town’s physical development so that it takes place in an orderly, efficient, safe, and economical manner which maintains and reflects the uniqueness of the Town and the character of the Town as a rural community and a beautiful and desirable place in which to live. It is further the intent of this local law to ensure that Development complies to the greatest extent possible with the currently adopted Town of Caroline Comprehensive Plan. It is not the intent of this local law to prohibit *per se* any Land Use Activities, but to ensure all new Land Use Activities subject to Site Plan review as specified in this law will meet the standards set forth in this local law.

It is the Town’s intent and purpose to:

- Encourage designs that have continuity with the design traditions of the Town of Caroline;
- Foster attractive buildings sites with thoughtful design and high quality materials;
- Seek visual and design coordination on contiguous parcels which can be viewed from public rights-of-way;
- Preserve and maintain prime and important agricultural soils in the Town;
- Preserve and maintain natural areas and habitats that support plant and animal species of conservation concern;
- Promote energy savings and discourage reliance on fossil fuels;
- Foster the preservation and enhancement of significant scenic resources and characteristics of the natural landscape;
- Support sustainability and promote the re-use or re-development of existing structures rather than the proliferation of new buildings on previously undeveloped land; and
- Promote accessibility for all and enhance pedestrian access, particularly in hamlets.

1.040 Authorization of Review Board to Review Plans

The Review Board is hereby authorized to review and approve, approve with conditions, or disapprove Site Plans for land uses within the Town, as hereinafter designated and pursuant to and in accordance with the standards and procedures set forth in this local law.

Article II - Applicability and Definitions

2.000 Exemptions

Agricultural operations as defined in this law are exempted except as specified in this section 2.010 (l) below.

2.010 Applicability of Review Requirements

The following new Land Use Activities, and modifications of existing Land Use Activities as listed in this section, shall require Site Plan review and approval before being undertaken and before a building permit or certificate of occupancy can be issued:

- a. Commercial uses having Gross Floor Area of 3,000 square feet or more and/or Site Disturbances greater than one acre.
- b. Commercial uses of any size having a Drive-Through Facility, excepting home occupations.
- c. Formula Businesses of any size.
- d. Institutional uses-having Gross Floor Area of 3,000 square feet or more and/or Site Disturbances greater than one acre.
- e. Heavy Industrial Uses of any size, including temporary and permanent facilities.
- f. Light Industrial Uses having Gross Floor Area of 3,000 square feet or more and/or Site Disturbances greater than one acre.
- g. Multi-Family Residential uses as defined in Section 2.040 (cc) of this law.
- h. Staging, storage or parking areas for vehicles, equipment, or materials, whether temporary or permanent, that are established as the result of a Land Use Activity that falls within the jurisdiction of the Site Plan Review Law.
- i. Waste disposal and Waste storage, processing, or bulk transfer areas.
- j. Wind Energy Facilities greater than 80 feet in height.
- k. Mixed Uses of any size, involving a combination of two or more of the uses listed in this section on a single Site.
- l. Any Development activity involving the handling, storage, placement, or transfer of hazardous substances or Hazardous Materials.
- m. Concentrated Animal Feeding Operations (CAFOs), as such terms are used and defined in New York State Law, including in the Environmental Conservation Law and the Agriculture and Markets Law, and the regulations of the Department of Agriculture and Markets and Department of Environmental Conservation.
- n. Any proposed Land Use Activities that may negatively affect important Agricultural Resources as defined in § 2.040(d) of this Law.
- o. Any modification of any existing Site or facility on the above list for which no previous Site Plan review and approval had occurred.
- p. In any of the above use categories, any: (i) expansion of existing buildings or structures which involves an increase in the Gross Floor Area of an existing building or structure by more than 10 % in the aggregate since any previous Site Plan approval; (ii) expansion of outdoor inventories that includes new products or materials or that increase gross storage area volumes by more than 10% in the aggregate since any previous Site Plan approval; or (iii) any new outdoor Land Use Activity that was not previously subject to Site Plan review or that was not issued any Site Plan approval.
- q. Solar Photovoltaics other than those serving the property being developed.

Any Person uncertain of the applicability of this local law to a given Land Use Activity may apply in writing to the Enforcement Officer, or other Person designated by the Town Board, for a written

jurisdictional determination.

2.020 Effect on Existing Uses

This law does not apply to uses and structures that are lawfully in existence as of the date this local law becomes effective, except for modifications of existing uses or structures as specified in § 2.010. Any use which would otherwise be subject to this law, which has been discontinued for a period of one (1) year or more, shall be subject to review pursuant to the terms of this law before such use is resumed. Any use or structure shall be considered to be in existence provided the same has been substantially commenced as of the effective date of this local law and fully constructed and completed within one (1) year from the effective date of this local law.

2.030 Authority and Relationship of This Law to Other Laws and Regulations

This local law is enacted under the authority granted to the Town of Caroline in Town Law Section 274-a and Municipal Home Rule Law Sections 10(1)(ii)(a)(11) and (12); Section 10(1)(ii)(d)(3); and Section 22.

Further, this local law does not affect the provisions or requirements of any other federal, state, or local law or regulations. Where this local law is in conflict with any other such law or regulation, the more restrictive shall apply.

2.040 Definitions

- a. Agricultural Data Statement - A statement identifying farm operations within an Agricultural District located within five hundred feet of the boundary of property upon which Development is proposed, as provided in Agriculture and Markets Law § 305-a.
- b. Agricultural District - An agricultural district established by Tompkins County under the provisions of Agriculture and Markets Law Article 25-AA.
- c. Agricultural Operation – Shall mean and include: (i) any land or structures, whether upon contiguous parcels or otherwise, used in relation to the raising, production, storage, distribution, delivery, or sale of agricultural products, such as crops (grains, seed, fruits, vegetables, nuts, sod, and similar agricultural goods), livestock, poultry and dairy goods, ornamental and green- house products, woodland products, bee keeping and apiary products, forest management products and activities, and timber harvesting operations, in each case also including the management, preservation, preparation, or processing of such agricultural goods predominantly on Site; (ii) practices that allow land used for agricultural activity to lie fallow for a period not exceeding five consecutive years; and (iii) agricultural activities as defined and constructed pursuant to New York State Agriculture and Markets Law § 301.
- d. Agricultural Resources – Lands and soils with the potential for agricultural production, including Farmland of Statewide Importance, Prime Agricultural Soils, and Prime Agricultural Soils if Drained. Agricultural Resources include the soil, water, air, plant communities, watersheds, human resources, natural and physical attributes, and man-made developments, which together comprise the resources for production by the agricultural community.
- e. All Weather Surface - Any roadway, driveway, alley or parking lot surface paved with crushed stone, asphalt, concrete, or other pervious or Impervious Surface material in a manner that will support the weight of anticipated vehicular traffic in all weather conditions and minimize the potential for ruts, potholes or pooling of water.
- f. Applicant - The Applicant is any Person applying for a building permit or Site Plan review, and such term also includes the developer of the Development and the Development Site.
- g. Building Energy Model – A physics-based model or simulation to predict and analyze building system-level effects and performance related to energy use.

- h. Clerk of the Review Board - The Caroline Town Clerk.
- i. Commercial Use - Any business use or activity providing consumer goods, services, or administrative functions, not including Light Industrial Uses or Heavy Industrial Uses as defined in this local law. Examples of commercial uses include, but are not necessarily limited to, retail stores, shopping centers, hotels and motels, restaurants, bars or taverns, professional and administrative offices, gasoline and other fuel filling or service stations, banks, supermarkets, and other similar uses.
- j. Common Birds in Steep Decline – Those species of birds occurring in the Town that are identified by Partners in Flight as of concern because their numbers are declining rapidly.
- k. Critical Environmental Area (CEA) - As defined in State Environmental Quality Review Regulations § 617.14, and meaning: (i) any specific geographic area with identified or identifiable boundaries which possesses specific environmental characteristics as do or would warrant a CEA designation; and/or (ii) any such designated area recognized by the Town and/or NYS- DEC.
- l. Design Standards – Design Standards are statements created by resolution of the Town Board, guided by principles in the Town’s Comprehensive Plan, and must be addressed by the Review Board and a project applicant during the Site Plan Review process.
- m. Development - Any land use change, Land Use Activity, or project that requires a building permit or will result in changes to the physical condition, appearance, intensity of use and/or type of use of the Site.
- n. Drive-Through or Drive-In Facility - An establishment or facility that by design of physical facilities permits customers to receive a service or obtain a product (including food) while remaining in a motor vehicle on the premises.
- o. Dwelling Unit - A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation as defined in the Building Code of New York State § 310.2.
- p. Economic Impact Assessment – An analysis that estimates potential changes in employment, including the number of temporary, part-time, full-time, permanent, and living-wage jobs, income, and levels of business activity in the Town associated with a Development, and potential impacts on the Town’s budget and fiscal context as a result of the Development, including additional tax revenues and added costs of services. The analysis would assess how the proposed development would impact the surrounding community in terms of changes in access to essential goods and services for Town residents, changes in the value of properties close to the Site, and effects on the viability of nearby commercial establishments. The analysis would also assess how the Development would contribute to the economic sustainability of one or more of the three Centers designated in the Town’s comprehensive plan.
- q. Enforcement Officer – The Town Code Enforcement Officer and/or such other Persons as designated as Enforcement Officers by resolution of the Town Board. The enforcement officer shall be responsible for the overall inspection of Site improvements and coordination with the Review Board and other officials and agencies, as appropriate.
- r. EIS – an Environmental Impact Statement prepared in accordance with SEQRA.
- s. Farmlands of Statewide Importance – Undeveloped, privately held lands so designated by the State of New York.

- t. Flood Damage Prevention Local Law – The Flood Damage Prevention Local Law of the year 2011, entitled “A local law for Flood Damage Prevention as authorized by the New York State Constitution, Article IX, § 2, and Environmental Conservation Law, Article 36.”
- u. Floodplain - Any land located within a Regulatory Floodway defined in the Flood Damage Prevention Local Law.
- v. Formula Business -- Any use, whether a principal or accessory use, that is required by contractual, franchise, or other legal arrangements to maintain, along with 10 or more other businesses in the US, the same primary business name, trademark or logo, and any of the following: standardized design, color scheme, décor, architecture, or signage on the interior or exterior of the building; standardized services or merchandise; or standardized employee uniforms. Formula businesses include, but are not limited to, restaurants, retail stores, fueling stations, banks, pharmacies, offices, salons, and lodging facilities.
- w. Glare - Light entering the eye directly from luminaires or indirectly from reflective surfaces that causes visual discomfort or reduced visibility.
- x. Gross Floor Area – The combined square footage of all human habitable or usable space within any whole or partial enclosure or within any external walls, with each level or floor contributing separately to the total, and each structure also contributing separately to the total (see examples). Areas outside the external walls (e.g., balconies, decks, patios) are not considered part of Gross Floor Area.
- y. Hazardous Materials - Means (i) any material, including any substance, Waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed, and/or (ii) “Hazardous Materials” as defined under or in relation to any environmental law, rule, regulation or order, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq. and 40 CFR §302.1 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq. and 40 CFR § 116.1 et seq.), the Superfund Amendment and Reauthorization Act (“SARA”), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the New York State Environmental Conservation Law, the New York State Navigation Law, and those federal, state and local laws relating to lead based paint, hydrocarbons, asbestos, flammable materials, explosives, radioactive or nuclear substances, polychlorinated biphenyls, carcinogens, oil and other petroleum products, radon gas, urea formaldehyde, chemicals, gases, solvents, and other pollutants or contaminants that could be a detriment or pose a danger to the environment or to the health or safety of any Person, each and all as now exist or as hereafter amended or re-codified, together with and including any other hazardous or toxic materials, Wastes and substances which are defined, determined or identified as such in any past, present or future federal, state or local laws, bylaws, rules, regulations, codes, orders, ordinances, or any judicial or administrative interpretation thereof.
- z. Hydric Soil - Soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part as defined in the Storm Water Management and Erosion and Sediment Control Local Law No. 2 of 2007.
- aa. Impervious Surface - Any material or surface that substantially reduces or prevents the infiltration of water into the ground, including areas covered by buildings, conventionally surfaced roads and highways, driveways and parking lots, and sidewalks.
- bb. Industrial Use, Light – Any non-retail Commercial Use or industrial operation that is not classified as a Heavy Industrial Use, generally including manufacturing or maintenance

operations conducted wholly within one or more structures where: (i) any process is used to alter the nature, size, or shape of articles or raw materials, or where articles are assembled and such goods or services are consumed or used at another location; and (ii) the exterior appearance of the structures resemble office buildings; and (iii) the impacts of the use, such as noise, fumes, and vibrations, shall not exceed those typically associated with an office-type use; and (iv) the use is typically a non-significant polluting use, with no significant use of Hazardous Materials; and (v) such use has only light to moderate energy demands. By way of illustration, and not limitation, these may include indoor or outdoor warehousing and storage, smaller-scaled printing, publishing and bookbinding operations, research and development facilities utilizing office spaces, indoor scientific laboratories, and small product assembly businesses.

- cc. Industrial Use, Heavy – Any non-retail Commercial Use or industrial operations engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembly of component parts, the creation of products, and the blending of materials such as oils, resins, solvents, or liquors, where such uses have measurably greater impacts than Light Industrial Uses in terms of traffic, noise, fumes, odors, and vibrations and are more likely to involve large quantities of Waste materials or Hazardous Materials. Heavy Industrial Uses all include any activity and its related premises, property, facilities, or equipment involving extractive or solution mining operations, regardless of whether any New York State permit is required. In determining whether any proposed or existing use is a Heavy Industrial Use, the following guidelines shall apply and any such use that meets any three or more of the following criteria or thresholds may be presumed to be a Heavy Industrial Use: (i) such use has or is likely to have a significant negative or deleterious impact upon the environment; (ii) such use has or is likely to materially contribute to illnesses or mortality in the Town; (iii) such use involves the use, storage, or creation of Hazardous Materials or radioactive materials and poses a risk of harm due to the purposeful or inadvertent release, emission, or transmission of any such substance; (iv) such use involves any significant volume of detrimental or obnoxious noise, smoke, vibration, odor, traffic, dust, or other impacts, conditions, or characteristics that may or will constitute a public nuisance; (v) such use employs, directly or indirectly, 100 or more on-site workers; (vi) such use is located within facilities containing in excess of 200,000 square feet of Gross Floor Area or utilizes in excess of 10 acres of land; (vii) such use involves more than 10 vehicle trips per month by vehicles subject to special permitting due to their size, weight, or the size or nature of the load carried; (ix) such use would utilize, store, remove, deliver, or sequester more than 250,000 gallons of water from whatever source in a given year; (x) such use would require an internal or external 3 phase or greater power supply or station, the installation of high power or high tension power lines, or would use more than 250 kilowatts of power or electricity per day (or its equivalent in therms or other energy consumption equivalencies).
- dd. Institutional Uses - A non-profit, religious, or public use, such as a church, mosque, synagogue or other religious facility, library, public or private school, hospital, or government owned or operated building, structure or land used for public purpose. Other examples include but are not limited to day care centers, cemeteries, funeral homes, nursing homes, group homes, fire stations, community buildings, fraternal organizations, publicly owned recreation areas or any similar government or public use.
- ee. Land Use Activity - Any construction or other activity which changes the use or appearance of land or a structure or the intensity of use of land or a structure.
- ff. Location Efficiency – Housing and related development located in a walkable area near transportation alternatives, employment opportunities, schools, and other retail and service amenities that allow residents to drive less, thereby reducing transportation costs and associated GHG emissions, as well as possibly reducing the need for new utility infrastructure.
- gg. Greenhouse Gas (GHG) – A gas that absorbs and emits radiant energy within the thermal

infrared range. GHGs cause the greenhouse effect on planets. Primary GHGs of concern in Earth's atmosphere include carbon dioxide, methane, nitrous oxide, and ozone.

- hh. Luminaire - A complete or partial lighting system, including a lamp or lamps, diodes, LCDs, and similar light-emitting objects and assemblies, including any materials that are luminescent and emit light beyond the fixture or surface upon which they may be located or emplaced, and their attendant light fixture(s).
- ii. Liquid Crystal Display (LCD) – A flat-panel display or other electronically modulated optical device that uses the light-modulating properties of liquid crystals combined with polarizers.
- jj. Living Wage – the minimum needed to support a person above the poverty level. The minimum wage for Tompkins County is determined by the Tompkins County Workers' Center based on studies conducted annually by Ithaca's Alternatives Federal Credit Union
- kk. Mixed Use - a combination of two or more of the following uses on one Site: commercial, industrial, residential, agriculture, or any use listed in § 2.010 of this local law.
- ll. Multi-family Residential - A building or group of buildings or mobile homes on one lot containing 4 or more dwelling units. Also includes all types of congregate housing and boarding houses, whether or not intended for medical or mental health purposes, substance abuse treatment, or other social welfare or public health reasons.
- mm. NYCRR – Means the official compilation of New York State regulations known as the New York Codes, Rules and Regulations.
- nn. Performance Guaranty – Means a cash deposit, a letter of credit, a payment bond, a performance bond, or such other form of suretyship, promise, or security as the Town Board may approve in its reasonable discretion. The required amount of any Performance Guaranty shall be set by the Town Board. However, no payment or performance bond shall be accepted or acceptable where the party whose payment or performance is being bonded has indemnified the bond issuer, and all bond issuing agencies shall certify that the bonded or insured party has not agreed to any indemnification or defense of the issuer, and that the issuer has no obligation to obtain the consent of the bonded party before honoring, paying, or performing under such bond.
- oo. Person – Means any natural person, any corporation, limited liability company, trust, or other entity.
- pp. Photometric Plan – a study or survey of the Site with a proposed lighting solution.
- qq. Prime Farmlands – Undeveloped, privately held lands so designated by the State of New York.
- rr. Prime Farmlands if Drained – Undeveloped, privately held lands so designated by the State of New York.
- ss. Review Board - The Board appointed by and under this local law to review Site Plans and Developments.
- tt. Residential - The use of land, buildings, and structures for housing of one or more Persons, including farm worker housing as defined and regulated by and under Department of Agriculture and Markets laws and regulations.
- uu. Scenic Resources – As defined in the Town's Comprehensive Plan, a scenic resource is an area of special visual appeal, whether it be natural or human made. Scenic Resources include those

categorized by Tompkins County as Distinctive Views, Noteworthy Views, and Characteristic Views, as well as additional views in the Town that contribute to the quality of life of Town residents and attract visitors to the area.

- vv. Site - Any tract, block, or parcel of land separated from other parcels or tracts by ownership or title, by description, by natural barriers or geologic or geographic features, or by metes and bounds.
- ww. Site Development - The maintenance or improvement of a Site in accordance with an approved Site Plan, including construction of buildings and structures, the rearrangement of the land surface, and the burying or construction of subsurface structures.
- xx. Site Disturbance - All activities, including clearing, grubbing, grading, excavation, stockpiling, importing or movement of fill, paving, installation of utilities, and construction of buildings or structures, that result in soil disturbance and/or removal of existing vegetation.
- yy. Site Plan - A “Site Plan” is a rendering or drawing of the proposed Development or use of one or more Sites showing the layout and design of all existing and proposed elements, including but not limited to topography, vegetation, drainage, Floodplains, marshes and waterways, open spaces, walkways, means of ingress and egress, utility services, landscaping, above and below surface structures, signage, lighting, screening devices, and any other information required by this local law or the Review Board.
- zz. Sketch Plan - A statement and rough sketch showing the locations and dimensions of principal and accessory structures, All Weather Surface areas, active agricultural land and Agricultural Districts, existing and proposed vegetation (woodlands, existing fields, pastures, meadows, hedgerows, and tree lines), other planned features, surface water features including creeks, Wet- lands, and ponds, historic sites, Steep Slopes, Critical Environmental Areas, and anticipated changes in the existing topography and natural features (See § 3.020 of this Law).
- aaa. SEORA - The State Environmental Quality Review Act constituting Environmental Conservation Law Article 8 and the implementing regulations found at 6 NYCRR Part 617.
- bbb. Solar Photovoltaics (PV) - The structures and associated equipment that convert solar energy into usable mechanical or electrical energy, including photovoltaic panels, associated anchors and foundations, mounts, connected facilities such as generators, alternators, inverters and batteries, and other associated equipment.
- ccc. SPDES - The State Pollutant Discharge Elimination System, administered generally under the Environmental Conservation Law and the Public Health Law.
- ddd. Special Flood Hazard Area - Areas subject to inundation by a 100-year flood event as shown on the Flood Insurance Rate Maps for the Town of Caroline, prepared by the Federal Emergency Management Agency.
- eee. Species of Greatest Conservation Need (SGCN) – Species as identified by New York State whose status is known and conservation action is needed. SGCN are experiencing some level of population decline, have identified threats that may put them in jeopardy, and need conservation actions to reach or maintain stable population levels or sustain recovery.
- fff. Species of Special Concern – Species designated as defined by New York State in Section 182.2(i) of 6NYCRR Part 182. Species of Special Concern are any native species for which a welfare concern or risk of endangerment has been documented in New York State.
- ggg. Steep Slopes - Any land or Site that exceeds a slope of 15%.

- hhh. Streambank – The land adjacent to both sides of the streambed that defines the watercourse under bank full conditions.
- iii. Subdivision - The division of any lot, tract, or parcel of land into two or more parcels, lots, plots, tracts, or Sites, and including any other form of division of land, or the use thereof, for any purpose, including, but not limited to, leasing, condominiums, and lot leasing, whether for immediate or future use and regardless of whether new buildings or Development is planned or may occur.
- jjj. Town - The Town of Caroline, Tompkins County, New York.
- kkk. Town Board - The Town Board of the Town of Caroline.
- lll. Traffic Impact Analysis – A study assessing the adequacy of the Town’s transportation infrastructure to accommodate additional trips generated by the Development.
- mmm. Transportation Plan – a plan defining problems and identifying alternatives to control or reduce traffic associated with a Development.
- nnn. Unique Natural Areas (UNAs) – Land designated by the Tompkins County Environmental Management Council as having outstanding environmental qualities that deserve special attention for preservation and protection.
- ooo. Uplight – For an exterior luminaire, flux radiated in the hemisphere at or above the horizontal plane.
- ppp. Visual Impact Assessment – A report prepared by a registered Landscape Architect or other qualified professional that includes a Visual Assessment Form pursuant to SEQRA, and visually illustrates and evaluates the relationship of proposed new structures or alterations to nearby natural landscapes and to pre-existing structures in terms of visual character and intensity/scale of use (e.g., scale, materials, color, door and window size and locations, setbacks, roof and cornice lines, and other major design elements). Such report also includes an analysis of the visual impacts on neighboring properties from the proposed development and alterations, and of the location and configuration of proposed structures, parking areas, open space, and gradient changes. Photo-simulations or balloon tests may be required as part of the Visual Impact Assessment.
- qqq. Waste - Unwanted material that requires disposal, or such garbage, rubbish, and other materials regulated under the NYS Building Codes, including, but not limited to, the Existing Building Code and the Property Maintenance Code.
- rrr. Wetland¹ - Any area, which meets one or more of the following criteria:
 - a. Jurisdictional and Mapped Wetlands – Lands and waters that meet the definition provided in 24-0107.1 of the New York State Environmental Conservation Law, “Freshwater Wetlands Act.” The approximate boundaries of such lands and waters are as delineated upon or indicated by those Wetlands shown upon the official Wetlands map promulgated by the Commissioner of the New York State Department of Environmental Conservation, including those Wetlands as are delineated and awaiting placement upon such maps.
 - b. Other Lands That Are Deemed Wetlands After Delineation – All areas containing or

¹ The U.S. Army Corps of Engineers is responsible for federal Wetland regulation. The New York State Department of Environmental Conservation is responsible for state Wetland regulation. The Town of Caroline and Tompkins County are responsible for “wetlands of local importance.” Developers are encouraged to contact these agencies concerning potential federal, state, or local regulation of Wetlands on their property.

supporting Hydric Soils and/or which are inundated or saturated by surface or groundwater at a frequency or duration sufficient to support, and under normal conditions do support, a prevalence of hydrophytic vegetation as defined by the Federal Interagency Committee for Wetlands Delineation, 1989, in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, Washington, DC, and adopted by the US Army Corps of Engineers, US Environmental Protection Agency, and the US Fish and Wildlife Service, or as amended and updated. Hydric Soils referenced above shall include the soil types taken from the Tompkins County Soil Survey Series, 1965, or such revised, updated and adjusted soil surveys as may be completed.

- rrr. Wetland Delineation - The process of determining Wetlands and their boundaries. The boundaries of a Wetland shall be determined by procedures outlined in US Army Corps of Engineers Wetland Delineation Manual, Technical Report Y-87-1 (Environmental Laboratory, 1987). Identification of the general location of Wetlands shall be aided by reference to: The Freshwater Wetlands Map by the New York State Department of Environmental Conservation, as amended and updated; the Soils Map of Tompkins County – Soil Survey Series 1965, as from time to time updated; and othe maps such as the 1990 US Fish and Wildlife Service Map which assist in the location and delineation of Wetlands. Wetlands not depicted on any such maps are not thereby exempted from regulation under provisions of this law.
- sss. Wind Energy Facilities - The structures and associated equipment that convert wind energy into usable mechanical or electrical energy, including towers, turbines, guy wires, associated anchors and foundations, mounts, connected facilities such as generators, alternators, inverters and batteries, and other associated equipment.

Any term used in this local law which is not defined hereinabove shall carry its customary meaning unless the context otherwise dictates.

Article III - Review Criteria

3.010 Site Plan Considerations

The review criteria are intended to provide for orderly development within the Town and to provide for the development and coordination of adequate facilities for the housing, transportation, distribution, comfort, convenience, climate, safety, health and welfare of the Town and its residents, guests, and visitors. The Review Board's review of the Site Plan shall include, as appropriate, but is not limited to, the following general considerations:

- a. Location, arrangement, size, massing, design, aesthetics, architectural features, and general Site compatibility of buildings, lighting and signs.
- b. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.
- c. Location, arrangement, appearance and sufficiency of off-street parking and loading.
- d. Adequacy and arrangement with vehicular and non-vehicular traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian safety and convenience, including access for all abilities.
- e. Adequacy of and impacts on adjacent and affected streets and intersections, including name, location, width.
- f. Adequacy of stormwater and drainage facilities.
- g. Adequacy of water supply and sewage and Waste disposal facilities.

- h. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the Applicant's and adjoining lands and public roadways, including the maximum retention of existing vegetation.
- i. Adequacy of fire lanes and other emergency zones.
- j. Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
- k. Overall impact on existing neighborhood character, form and function.
- l. Site restoration for any Land Use Activities that are proposed to be temporary or short-term in duration.
- m. Impacts on Agricultural Resources.
- n. Impacts on Floodplains and Wetlands.
- o. Impacts on Scenic Resources.
- p. Impacts on energy use and GHG emissions associated with the siting, design, and operation of buildings and related Development activity.
- q. Location, arrangement, size, design, and general Site and Site Development compatibility for renewable energy systems.
- r. Impacts on plant and animal resources, including Unique Natural Areas, Critical Environmental Areas, or areas of habitat suitable for or containing endangered or threatened species, Species of Special Concern, Species of Greatest Conservation Need, or Common Birds in Steep Decline.
- s. Consistency of Land Use Activities with the Town's Comprehensive Plan.

3.020 Specific Standards and Considerations

The following specific standards shall apply in conjunction with the subject uses or in the designated areas.

- a. Compliance with Laws – The Site Plan shall comply with all existing local, state, and federal laws.
- b. Comprehensive Plan – The proposed Development shall be consistent with the Town's Comprehensive Plan.
- c. Water Quality - The following standards are intended to ensure that the quality of water in the Town is not unreasonably adversely affected as a result of new Development. Water quality is also addressed in these regulations, in part, through sections dealing with erosion and sediment control and stormwater runoff.
 - I. All proposed Development shall comply with the Town of Caroline Local Law No. 2 of 2007- Stormwater Management and Erosion and Sediment Control, Tompkins County Sanitary Code, the New York State Environmental Conservation Law, the New York State Public Health Law, and the regulations promulgated thereunder at 6 NYCRR and 10 NYCRR respectively, with regard to the design, construction and maintenance of sewerage systems.
 - II. Plans shall be reviewed by the Tompkins County Department of Health. All Department of Health plan approvals are required prior to issuance of any permits. The potential impact on water quality of the proposed Land Use Activities shall be identified and mitigation measures proposed. Examples of Land Use Activities that may raise concerns are: large parking or loading areas without any method of containing oil and sediment deposited on All Weather Surfaces; storage of petroleum products, hazardous waste, or chemicals on the Site; and the use of fertilizers, pesticides, or other chemicals on large expanses of land or near wells, streams, or drainage ditches. To ensure the long-term water quality in the Town, appropriate management, response and maintenance plans shall be developed, including the construction and maintenance of permanent practices. The Town may require Performance Guaranties to ensure the proper construction, management, and monitoring of such permanent practices or other mitigation measures. Final Development approval shall be subject to the actual receipt of all required permits from local, state, and federal regulatory agencies, and the fulfillment and satisfactory completion of permit conditions or requirements. Where the subject permit may take a significant length of time to obtain, a conditional approval may be issued; however, the failure to actually later obtain such permit makes such conditional approval revocable and, once so revoked, the application process

shall be deemed to have been concluded, all Development, Disturbances, and Site Development activities shall cease and the Applicant shall be required to re-apply for review should the Applicant desire that its proposed use or project be permitted within the Town.

III. If the Development is a CAFO subject to the New York State Department of Environmental Conservation (DEC) CAFO General Permit the Applicant shall: (i) submit copies of their Notice of Intent, Annual Nutrient Management Plan for large CAFOs or their Comprehensive Nutrient Management Plan Certificate for small and medium sized CAFOs (ii) submit copies of their permit application and permit to the Town Clerk's Office so that the permit information is available for inspection by the public; and (iii) provide any updates regarding changes in the DEC permit or permit status to the Town Clerk's Office.

IV. The Development shall protect all Wetlands, Floodplains, and Steep Slopes from clearing, grading, filling, and/or construction, except as may be approved by the Town for essential infrastructures or passive recreation amenities. Wetlands are a natural filter for water, removing sediments and pollutants, and are often a natural recharge areas for groundwater resources. Floodplains, Wetlands and potential Wetland areas within any Site shall be identified. Any proposed Disturbance of a Wetland either during or after construction should be minimized and shall be mitigated, and a 50 foot buffer of vegetation maintained. ~~and~~ Any required permits shall be obtained and provided to the Town.

V. The following construction methods are recommended to protect water quality:

- i. Avoid construction on Hydric Soils.
- ii. Avoid Impervious Surfaces in favor of pervious surfaces.
- iii. Use bioengineering techniques rather than traditional construction methods to manage water on-site.
- iv. Avoid crossing streams and ditches with roads and driveways.
- v. Establish 50 foot vegetated buffers along streams, creeks, springs, lakes, ponds, and other watercourses and adjacent to Wetlands. Such buffer should be of native species and avoid invasive species to the extent possible.
- vi. Incorporate the use of "green infrastructure" such as rain gardens, bioretention areas, vegetated swales/dry swales, green roofs, porous pavement, xeriscaping, and re-use of water resources.

d. Water Supply - The proposed Development shall have a supply of water adequate for the proposed uses without unreasonably adversely affecting the availability of groundwater for other properties. Groundwater is the principal source of drinking water in the Town of Caroline. In addition, groundwater often serves as the sole supply of water to surface water systems. The following standards are intended to ensure that the supply of water is adequate for the proposed Development and will not unreasonably interfere with existing users of the same supply of water, including groundwater and surface waters:

- I. A source of water for the proposed Development shall be identified.
- II. All proposed Development shall comply with the latest editions of Recommended Standards for Water Works, (Great Lakes Upper Mississippi River Board of State Public Health and Environmental Managers) and Rural Water Supply, (New York State Department of Health).
- III. When the proposed source of water for the Development is groundwater, the Review Board may require the Applicant or developer to undertake well and pump tests to determine the adequacy of the supply of groundwater to serve the Development
- IV. When the proposed source of water for a Development is ground water, the Review Board may require the applicant to undertake studies including a hydrogeologic study to determine the impact of the proposed withdrawal of ground water on surface water flows and on existing users of the same supply of water.
- V. In determining the need for studies or additional information from the Applicant or developer, the Review Board shall be guided by the history, if any, of ground water supply problems at the Site and in the vicinity of the proposed Development and by any available

groundwater or aquifer studies.

- e. Erosion and Sediment Control - The proposed Development shall soil erosion, during construction and after the project is completed, and shall comply with Town of Caroline Local Law #2 of 2007, Stormwater Management and Erosion and Sediment Control.
- f. Stormwater Runoff - The proposed Development shall not result in any increased stormwater runoff and shall comply with Town of Caroline Local Law # 2 of 2007, Stormwater Management and Erosion and Sediment Control.
- g. Transportation - The Site Plan shall provide for diverse and safe pedestrian, bicycle, emergency service vehicles, and motorized traffic measures. The following standards are intended to ensure that the siting of proposed Developments and the associated transportation services for pedestrians, bicycles, emergency service vehicles, and motorized traffic are safe, efficient, and designed for proper future maintenance. In order to achieve these goals, the Review Board may require the developer to prepare and implement a Transportation Plan and/or a Traffic Impact Analysis.
 - I. Any highways to be dedicated to the Town shall meet the Town Highway Specifications and the provisions of Local Law No. 2 of the year 1996 (local road classification) except where the provisions of such local law shall conflict with the provisions herein, in which case the provisions herein shall govern.
 - II. For road sections to be dedicated to the Town (whether by title in fee or by easement), highways and highway appurtenances (such as, but not limited to culverts) shall be constructed to serve the anticipated traffic and protect the roadway without requiring resurfacing or repair for a period of not less than twenty (20) years.
 - III. The highway system shall be designed with due regard to the need for:
 - i. Convenient traffic access and circulation,
 - ii. Traffic control and safety,
 - iii. Safe movement of emergency service vehicles on road system, and within drive-ways,
 - iv. Adequate sight distances at all intersections, and along and over all curves and hills, and
 - v. Stormwater management.
 - IV. Highways shall be designed to promote a coordinated highway system. When a proposed Development adjoins undeveloped land, its streets shall be laid out to promote suitable future street connections with the adjoining land where appropriate.
 - V. In areas served by the local public transportation system, the Development shall be designed to provide for the efficient and safe operation of such services. The Review Board may require that local public transportation provider(s) have an opportunity to review and comment upon any Development and its related plans.
 - VI. The Development shall not result in a significant decrease in the quality or lifetime of the road and increased negative impacts on the safety of all users of the road.
 - VII. The Development is encouraged to provide to the extent possible support for transportation choices such as bike racks and/or storage, dedicated car share parking spaces, a car or van pooling service, electric vehicle (EV) charging stations, or local public transportation for persons with disabilities.
- h. Public Services - All appropriate public service providers shall be provided information regarding the proposed Development. The Applicant shall provide a narrative describing how the following public service providers have been notified in writing of the proposed Development and shall provide to the Review Board copies of all written responses:
 - I. Fire Protection and Emergency Medical Services - The appropriate fire department and emergency ambulance service provider should be provided plans.
 - II. Street Lighting - The lighting district commissioner, currently the Town Board, should be provided lighting plans.

- III. School Services - Site Plan applications should be provided to the appropriate school district.
- IV. Public Transportation – Public transportation providers should be provided with the Development Plan.
- i. Utility Services - All appropriate utility service providers shall have an opportunity to review the proposed Development, shall provide a narrative describing how the following utility service providers have been notified in writing of the proposed Development, and shall provide to the Review Board copies of all written responses:
 - I. Electricity - The appropriate utility company should be provided plans.
 - II. Gas - The appropriate utility company should be provided plans.
 - III. Telecommunications - The appropriate telephone, cable and internet or broadband provider company should be provided plans.

Further, all Developments and Land Use Activity proposals shall take into account the potential future need and impact upon neighboring properties relative to future utility extensions, line and service capacities, and the size and location of any service easements or installations.

- j. Flood Hazard Prevention - The proposed Development shall not create new or increase existing flooding hazards in flood hazard zones. In order to prevent inundation by flood waters, when a Development is within or adjacent to a Special Flood Hazard Area, all Development (including filling, paving, and storage of equipment and materials) shall be in compliance with the Local Law No. 2 of 2007, Stormwater Management and Erosion and Sediment Control.
- k. Agriculture - The proposed Development shall minimize impacts on existing Agricultural Operations, Agricultural Districts, or Agricultural Resources, and the following matters shall be adhered to:
 - I. The Development shall to the extent possible avoid precluding future agricultural use of lands with Prime Agricultural Soils, Prime Agricultural Soils if Drained and Farmlands of Statewide Importance through such tools as clustering of structures and minimizing paving.
 - II. When Land Use Activities subject to Site Plan review are located in or within 500 feet of an Agricultural District the Applicant or developer shall complete and submit an Agricultural Data Statement and address the impact the Development will have upon agriculture and Agricultural Operations (such as light, sound, smell, dust, etc.), as well as the impacts Agricultural Operations may or will have on the proposed Development. Upon filing an application, the Applicant shall mail written notice to the owners of land identified in the Agricultural Data Statement and provide proof of mailing of the same to the Review Board. Such notice shall include a description of the Development and its location, and such notice may be sent in conjunction with any other notice(s) required by this local law. The cost of mailing said notice shall be borne by the Applicant or developer.
 - III. When required by law, a Notice of Intent or other impact statement delivered to NYSDAM in accord with the Agriculture and Markets Law.
- l. Air Quality - Development plans shall comply with air quality standards set forth by the NYS Department of Environmental Conservation and US Environmental Protection Agency thresholds for air emissions. The Review Board may request the Applicant submit copies of required documents or permits from these agencies to the Board.
- m. Sound -
 - I. Structures shall be located, constructed, and insulated to mitigate on-site noise from interfering with the use of adjacent properties.
 - II. Methods for blocking noise shall be used where appropriate and may include sound baffles, soundproofing, fencing, walls, and natural buffers, such as berms and landscape planting with deciduous and coniferous trees and large shrubs.
 - III. Sounds produced at magnitudes, frequencies, timing, and/or for durations deemed to

have negative impacts on human health shall be avoided to the extent possible.

n. Lighting -

- I. Exterior lighting shall enhance the building design and the adjoining landscape.
- II. The number of Luminaires and the intensity of lighting shall be appropriate to illuminate the location for safety, without Glare to adjoining properties and streets. Luminaires shall be shielded to prevent light from shining beyond the lot lines onto neighboring properties or public ways. The light level at the lot line shall not exceed 0.2 foot candles, measured at ground level. Glare shall be controlled as follows:
 - i. Any Luminaire with a lamp or lamps rated at a total of more than 1,800 lumens, and all flood or spot Luminaires with a lamp or lamps rated at a total of more than 900 lumens, shall not emit any direct light above a horizontal plane through the lowest direct-light-emitting part of the Luminaire.
 - ii. The number of Luminaires and the intensity of lighting shall be appropriate to illuminate the location for safety, while minimizing Glare to adjoining properties and streets and minimizing Uplight. To achieve this goal, as much as practical the lighting should conform to the non-residential lighting requirements of the model lighting ordinance of the International Dark-Sky Association (“IDA”), Tucson, Arizona.
- III. Excessive lighting for promotional/visibility purposes is not allowed. The operation of searchlights for advertising purposes is prohibited.
- IV. To the extent possible, controls should be provided that automatically extinguish outdoor lighting when sufficient daylight is available using a control device or system. All lighting must be turned off between 10:00 p.m. and 6:00 a.m. Exceptions will be granted on a case-by-case basis for those facilities which are operating or have a demonstrated need of lighting during these hours.
- V. The Review Board may require a Photometric Plan with the Site Plan to show that the above criteria are met.

o. Energy Use and Greenhouse Gas (GHG) Emissions – In the interest of project design that reduces energy demand, maximizes the energy efficiency of new facilities, and encourages the adoption of renewable energy systems, site Plans for proposed Developments and Land Use Activity shall adhere to the SEQRA process, including a discussion of energy use and GHG emissions that encourages the utilization of on-site mitigation measures to reduce GHG emissions. All applications will be reviewed with respect to the goals of the Town’s Comprehensive Plan as well as County and State energy guidelines and plans. The Review Board, either as Lead Agency under SEQRA or in consultation with another body serving as Lead Agency will review all applications requiring a discussion of energy use and GHG emissions under SEQRA, in accordance with the methods and procedures in the NYS DEC *Guide for Assessing Energy Use and Greenhouse Gas Emissions in an Environmental Impact Statement*, as referenced in the DEC’s SEQR Handbook, 3rd Ed., 2010. The Review Board may require a Building Energy Model to demonstrate optimized energy performance to significantly reduce GHG emissions.

- I. The Development shall address climate change and work to mitigate energy use and GHG emissions per the NYS DEC Guide for Assessing Energy Use and Greenhouse Gas Emissions in an Environmental Impact Statement, if required per SEQR.
- II. The Applicant shall demonstrate how energy and water use will be managed for the Development in relation to the County’s Energy Recommendations for New Construction.
- III. The Site Plan for the proposed Development shall demonstrate the Site’s Location Efficiency.
- IV. The owner of the Development, once complete, shall conduct 3rd party building commissioning to ensure ongoing energy efficiency performance of buildings and share these results with the Town.

- V. The Development is encouraged to utilize best practices in its design of building envelopes—foundations, walls, windows—that will minimize heating and cooling costs, including, but not limited to, using 20% more insulation (cellulose and spray foam preferred) than required by current energy code, implementing window-to-wall ratios of less than 25%, and minimizing window placements in low-occupancy areas, avoiding unusually complex building shapes, minimizing infiltration and stack effect results to maximize the overall thermal energy performance of buildings in this region of New York State.
 - VI. The Development is encouraged to utilize EnergyStar–certified products, such as those that conserve energy use in permanent appliances (apartment refrigerators, restaurant cooking equipment, air-source heat pump water heaters, smart meters, thermostat systems) and water use (low-flow fixtures that meet U.S. EPA Water Sense requirements) in its built structures.
 - VII. To the extent possible, structures should be oriented and designed to be “solar receptive”, meaning roof areas are maximized for the installation of Photovoltaic and/or solar hot water systems.
 - VIII. To the extent possible, the Development should forego the use of fossil fuels and instead use an electric energy program such as an air-source or ground-source geothermal heat pump system (that is not boiler-assisted), or a combination of heat pump system powered by renewable solar Photovoltaics.
- p. Scenic Resources – The design of the Development must not block or alter Scenic Resources, particularly as seen from public roads, trails, and public access rights of way. The Review Board may request a Visual Impact Assessment be submitted.
 - q. Plant and Animal Resources – The Development should minimize disturbance of mature woodlands and existing hedgerows and tree lines between fields/pastures/meadows to the extent practicable. The Development must not adversely impact important natural resources including Critical Environmental Areas, Unique Natural Areas, and State-mapped areas of Significant Natural Communities, nor species that are endangered or threatened, and shall conserve to the extent possible the habitats of Species of Special Concern, Species of Greatest Conservation Need, and Common Birds in Steep Decline.
 - r. Historic, Archeological, and Cultural Resources - The design shall incorporate and preserve sites of historic, archeological, or cultural value, and their environs, insofar as needed to safeguard the character of the feature.
 - s. Architectural and Design Features – Developments shall comply with the Town Design Standards in Article 9 of this Law. Developments shall be compatible with the rural character of the Town as expressed in the Town’s Comprehensive Plan and with nearby natural and built features. This includes but is not limited to building placement, materials, massing, fenestration, entrances, rooftop equipment, parking, accessory or service equipment, signage, fencing, and lighting.
 - t. Buffering Existing Uses - The Development shall maintain sufficient buffer areas between the Development and adjacent areas to minimize conflicts between the Development Site and neighboring uses, including Residential and agricultural uses.

3.030 Economic and Fiscal Impact

The Development shall support the Town’s continued economic viability. In addition, the Development shall not have a negative net fiscal impact on the Town budget. The Review Board may require an Economic Impact Assessment based goals of the Comprehensive Plan and information provided in the Economic Information Sheet.

3.040 Site Restoration Requirements

Developments may, at the discretion of the Review Board, be required to post escrow funds sufficient for restoring a site to approximating the pre-Development state, to mitigate potential future abandonment by the applicant.

Article IV - Site Plan Review Process

4.010 General Procedures

Prior to undertaking any Development, Disturbance, Site Development, or Land Use Activity subject to this local law, a Site Plan approval by the Review Board is required. The Enforcement Officer will review all building permit applications to determine whether the proposed Development or activity falls under the purview of this law. If it is determined that it does, the Enforcement Officer will notify Applicant of the need to file a Site Plan review application and refer the Applicant to this local law. Applicants must comply with all procedures and requirements of this local law. The Site Plan review process is as follows:

1. Sketch Plan Conference (4.020);
2. Submission of Preliminary Site Plan Application (4.040) and Permit Fee (4.031);
 - a. Review Board Review (4.042);
 - b. Town Board Review (as appropriate; 4.050);
 - c. Tompkins County 239 Review (as appropriate; 4.043b);
 - d. Public Hearing (4.044) – as appropriate;
 - e. Decision (4.045b)
3. Submission of Final Site Plan Application (4.060);
 - a. Public Hearing (4.062) – as appropriate;
 - b. Final Decision (4.070).

4.020 Sketch Plan

A Sketch Plan conference is required between the Review Board and the Applicant prior to the preparation and submission of a formal Site Plan. The intent of such a conference is to enable the Applicant to inform the Review Board about the proposed Development prior to the preparation of a detailed Site Plan, and for the Review Board to review the basic Site design concept, advise the Applicant as to potential problems and concerns, and to generally determine the information to be required on the Site Plan. In order to accomplish these objectives, the Applicant shall provide the following:

1. A project narrative and draft plan showing the locations and dimensions of principal and accessory structures, All Weather Surface areas, active agricultural land and Agricultural Districts, existing and proposed vegetation (woodlands, existing fields, pastures, meadows, hedgerows, and tree lines), other planned features, surface water features including creeks, Wetlands, and ponds, historic sites, Steep Slopes, Critical Environmental Areas, Unique Natural Areas, anticipated changes in the existing topography and natural features, and, where applicable, measures and features to comply with flood hazard and flood insurance regulations;
2. An area map showing the parcel under consideration for Site Plan review, its location within the Town, and all properties, subdivisions, streets, rights-of-way, easements and other pertinent features, including potential impacts related to lighting and sound, within 200 feet of the boundaries of the Site(s); and
3. A topographic or contour map of adequate scale and detail to show Site topography and existing Site conditions, including those affecting drainage and stormwater runoff.

Sketch Plan materials shall be submitted at least 15 days before the conference at which it is to be

considered by the Review Board. The Applicant shall submit via email a package that includes the date, signature of the Applicant and/or representing party, and a cover page detailing the Sketch Plan Application contents, plus one hardcopy for each member of the Review Board (5 total), and one (1) hardcopy delivered to the Town Clerk.

4.021 Waiver of Submission Requirements

As part of a Sketch Plan submission, the Applicant may request that the Review Board waive the requirement for the submission of particular information as part of the Sketch Plan submission or the Site Plan application. The Review Board, in making the determination, shall consider:

1. Whether the information required by this law is unrelated to the findings it is required to make under the law, or
2. Whether the information required by this law is not relevant to the proposed Site Plan application.

The Applicant may submit a waiver to the Review Board outlining the request in writing, signed and dated, via hardcopy delivered to the Town Clerk or by email sent to the Town Clerk and copied to the Code Enforcement Officer.

4.022 SEQRA Classification

As part of the Sketch Plan review, the Review Board shall make a preliminary determination as to whether the proposed project is a Type I Action, a Type II Action, or an Unlisted Action under SEQRA, and whether any review under NEPA or a FONSI is required.

4.030 Application Requirements

A formal application for Site Plan approval shall be made in writing to the chairperson of the Review Board and shall be accompanied by information contained in the checklist in § 4.033. The information included in the application shall be drawn from the checklist in § 4.033 as determined necessary by the Review Board at the previously held Sketch Plan conference.

4.031 Submit Permit Fee

The Town Board shall by resolution periodically set a fee schedule for the review and processing of Site Plan applications and for the inspection of Development. This receipt must be filed with the application as evidence of payment. No application review will begin until the appropriate fee is filed with the Town Clerk with the Preliminary Site Plan Application

4.032 Review Board Use of Legal Counsel

The Review Board shall seek legal counsel of the Town Attorney in the Site Plan Review process such as attendance at meetings with applicant and counsel regarding matters of meeting process and interpretation of these regulations.

4.033 Retention of Expert Assistance and Reimbursement by Applicant

1. At any point in the Site Plan Review process the Review Board may elect to retain private consultants or refer to the county or regional planning staffs for review, comment, and advice on any aspect of the evaluation and approval of the site plan process at the expense of the applicant.
2. An Applicant shall deposit with the Town funds sufficient to reimburse the Town for the reasonable anticipated costs of engineering, legal, and other consultant and expert evaluations and consultation reviews, as incurred by the Town or by the Review Board in connection with the review of any application. The Code Enforcement Officer or other such agent as the Town Board may designate shall calculate the fee for each application. The initial deposit shall be in an amount as reasonably assessed by the Town, set forth in a fee schedule, and adopted by Town Board resolution. These funds shall accompany the filing of an application and the Town will maintain a separate escrow account for all such funds. The Town may draw-down such account to reimburse for permissible, allowed costs of professional or consultant reviews and consultations, and if at any time

during the review process the amount in the said escrow account drops below \$500.00, additional funds shall be submitted to the Town in an amount to be reasonably determined by the Town before any further action or consideration will be permitted on the application. In the event that any funds remain after final approval of the project or the issuance of any Site Plan review determination, the balance of such funds shall be promptly refunded to the Applicant.

3. The fee schedule set forth in this Section may vary with the scope and complexity of the proposed project, the completeness of the application, and other information as may be needed by the Review Board or its consultant/expert to complete the necessary review and analysis.
4. The Review Board at the Sketch Plan meeting with the Applicant, and at any other time, shall have the authority to review any amounts determined as required deposits for any Applicant or application review process by the fee schedule and the Enforcement Officer. The Review Board may adjust or amend any amounts required downward at the request of the Applicant or whenever the Review Board deems the amount required unnecessary or excessive, but in no case may the Review Board increase any amount of deposit(s) so required by the fee schedule and the Enforcement Officer.

4.034 Site Plan Checklist

1. Title of drawing, including name and address of Applicant and Person responsible for preparation of such drawing;
2. North arrow, scale of not more than 100 feet to the inch and date;
3. Existing conditions, including:
 - a. Active agricultural land, Agricultural Districts, Prime Farmland, Prime Farmland if Drained, and Farmland of Statewide Importance;
 - b. Floodplains, Wetlands, Steep Slopes;
 - c. Woodlands, existing fields, pastures, meadows, hedgerows, and tree lines;
 - d. Surface waters, including creeks, streams, springs, lakes and ponds, and vernal pools;
 - e. Existing wells, springs and sewage systems on the property or within 200 feet of any boundary;
 - f. Topography with contours of no more than two (2) foot intervals where any construction or Site Disturbance will occur, and, otherwise, no more than five (5) foot intervals; with such topographic or other map being required to denote and identify the location of rock outcrops, the depth to bedrock, the soil types and characteristics, and existing or proposed watercourses;
 - g. Historic, archeological, or cultural sites and resources;
 - h. Any feature mapped by DEC on the Environmental Resource Mapper;
 - i. Critical Environmental Areas;
 - j. Unique Natural Areas;
 - k. Areas of habitat suitable for or containing endangered or threatened species, or Species of Special Concern, Species of Greatest Conservation Need, or Common Birds in Steep Decline (see resources available by the DEC and on the Town website);
 - l. Scenic Resources on or adjacent to the site or within view of the Development;
 - m. Streets and intersections, including name, location, width of right-of-way and pavement, centerline elevations at intersections and other critical points;
 - n. Rights-of-way and easements, including location, width, owner, and any use restrictions;
 - o. Drainage facilities, including ditches, ponds, and culverts, and, as appropriate, their location, invert elevations, sizes and gradients;
 - p. Utility systems, including water, sewage disposal, gas, electric, and, as appropriate, the size and owner of such systems; and
 - q. Test hole data with date, location and a graphic representation of findings.
4. Proposed Development, including, as appropriate:

- a. Building placement.
- b. Building design, including but not limited to massing, materials, fenestration, entrances, canopies, fencing, accessory or storage areas for service equipment, and rooftop equipment;
- c. Streets, including proposed new highways and any improvements to existing highways, right-of-way and pavement width, and preliminary horizontal alignment;
- d. Proposed All Weather Surface areas including parking and truck loading areas, showing access and egress;
- e. Proposed temporary access, parking, storage and staging areas or areas that may be disturbed during construction;
- f. Proposed future use of the land within the Development;
- g. Drainage facilities, including location of proposed drainage facilities or improvements, with pipe sizes, grades, and directions of flow;
- h. Location of utilities, including gas, electricity, telephone, cable, and street lights;
- i. Erosion control plans, including grading plans if existing elevations or contours are to be changed more than four feet;
- j. Proposed restrictions on the use of the land, including easements, rights-of-way, and covenants;
- k. Proposed vegetative buffers and landscaping;
- l. Location and proposed development of all buffer areas, including existing vegetative cover;
- m. Location and design of outdoor lighting facilities;
- n. Location, size and design of any proposed signs;
- o. Predicted energy use and measures to minimize energy use and use of fossil fuels, including energy specifications and ratings of the building's construction and operation;
- p. Predicted noise at the property line, including magnitude, frequencies, timing and duration, and design to minimize noise;
- q. Predicted waste production and waste management plans for the Development;
- r. An estimated project construction schedule, including a phasing plan if the project is to be built in phases.
- s. Record of application for and status of all necessary permits from other governmental bodies;
- t. Identification of any permits from other governmental bodies required for the project's execution;
- u. Economic Information Sheet (see Town website); and
- v. Other elements integral to the proposed Development as may be considered necessary in the particular case by the Review Board, including various analyses or reports as noted in prior sections that may be required by the Review Board.

4.040 Preliminary Site Plan Application

An application for preliminary Site Plan review shall be submitted at least forty-five (45) days before the meeting at which it is to be considered by the Review Board. The developer shall submit via email a package that includes the date, signature of the applicant and/or representing party, and a cover page detailing the Site Plan Application contents, plus one hardcopy for each member of the Review Board (5 total), and one (1) hardcopy delivered to the Town Clerk. The Review Board may, at its discretion, accept a preliminary Site Plan for review less than forty-five (45) days before it is to be reviewed but no less than 15 days prior to a meeting to allow for adequate review. A Site Plan application shall not be considered complete until the SEQRA review process has been concluded, and all timelines otherwise stated in this local law shall be deemed automatically extended as reasonably necessary to allow the SEQRA process to proceed and become completed, including, where elected or required, allowing sufficient time to conduct and conclude any public hearings and public comment periods.

4.041 Preliminary Review of Site Plan Application

The Chairperson of the Review Board will provide a preliminary review of the Site Plan application to

ensure that it is complete and contains all information necessary for review by the Board. No review or other deadlines or timelines shall begin to run for the Town or the Review Board until the Chairperson has determined that a complete application has been submitted and the Review Board has concurred in such opinion.

4.042 Review Board Review

1. Review Criteria - The Review Board shall review the preliminary Site Plan application for the applicability of Review Criteria (Article III) of this local law.
2. Design Standards - The Review Board shall review the preliminary Site Plan application to determine whether it complies with the Design Standards in Section 9.020. With permission of the property owner which shall not be unreasonably withheld, the Review Board may make a site visit to the proposed Development, with notification made to the applicant. If the proposed Development has been reviewed under the Design Standards as part of a Sketch Plan review, the Review Board shall review the preliminary Site Plan application for its compliance with the results of that review.

4.043 Referral to Other Agencies and Town Board

1. Coordinated Review - The Review Board may refer the Site Plan for review and comment to local and county officials or their designated consultants, and to representatives of federal, state, and county agencies, including but not limited to the Soil Conservation Service, the New York State Dept. of Transportation, the State Dept. of Environmental Conservation, and the state or county Dept. of Health, whichever has jurisdiction.
2. Required Referral - Prior to taking the final action of the Site Plan, and where applicable: (i) the Review Board shall refer the plan to the Tompkins County Planning Department for their review and approval pursuant to §§ 239-l, -m, and/or -n of the General Municipal Law; and (ii) the Review Board shall refer the matter to the Town Board, particularly where permanent infrastructure is proposed or proposed to be dedicated to the Town.

4.044 Public Hearing (Preliminary Site Plan)

The Review Board may conduct a public hearing on the preliminary Site Plan if considered desirable by a majority of its members. Such hearing shall be held within sixty-two (62) days of the receipt of application for preliminary Site Plan review and shall be noticed as required by Town Law § 274-a. Currently, such notice periods being at least ten (10) days notice to the Applicant and five (5) days notice to the public. However, if a SEQRA public hearing is elected or required, then at least 14 days notice is required (see also § 4.045(3)).

4.045 Review Board As Lead Agency Under SEQRA

1. Public Hearing - The time within which the Review Board shall hold a public hearing on the preliminary Site Plan shall be coordinated with any hearings the Review Board shall schedule pursuant to SEQRA, as follows:
 - a. If the Review Board determines that the preparation of an EIS on the preliminary Site Plan is not required, the public hearing on such plan shall be held within sixty-two (62) days after the receipt by the Clerk of the Review Board of a complete preliminary Site Plan application; or
 - b. If the Review Board determines that an EIS is required, and a public hearing on the Draft EIS is held, the public hearing on the preliminary Site Plan and the Draft EIS shall be held jointly within sixty-two (62) days after the filing of the notice of completion of such Draft EIS in accordance with the provisions of SEQRA. If no public hearing is held on the Draft EIS, the public hearing on the preliminary Site Plan shall be held within sixty-two (62) days

- of filing the notice of completion.
 - c. The hearing on the preliminary Site Plan shall be advertised as required by law upon at least 14 days notice if a SEQRA public hearing is to be held, and the hearing on the preliminary Site Plan shall be closed upon motion of the Review Board within one hundred twenty (120) days after it has been opened.
2. Decision - The Review Board, by resolution, shall approve, with or without modification, or disapprove such preliminary Site Plan as follows:
- a. If the Review Board determines that the preparation of an EIS on the preliminary Site Plan is not required the Review Board shall make its decision within sixty-two (62) days after the close of the public hearing; or
 - b. If the Review Board determines that an EIS is required, and a public hearing is held on the Draft EIS, the Final EIS shall be filed within forty-five (45) days following the close of such public hearing in accordance with the provisions of SEQRA. If no public hearing is held on the Draft EIS, the Final EIS shall be filed within forty-five (45) days following the close of the public hearing on the preliminary Site Plan. Within thirty (30) days of the filing of such Final EIS, the Review Board shall issue findings on the Final EIS and make its decision on the preliminary Site Plan application.
 - c. Grounds for Decision - The grounds for a modification, if any, or the grounds for disapproval shall be stated on the record. When approving a preliminary Site Plan, the Review Board shall state in writing any modifications it deems necessary for submission of the plan in final form.

4.046 Review Board Not As Lead Agency Under SEQRA

1. Public Hearing - The Review Board may, with the agreement of the lead agency, hold the public hearing on the preliminary Site Plan jointly with the lead agency's hearing on the Draft EIS. Failing such agreement, or if no public hearing is held on the Draft EIS, the Review Board shall hold the public hearing on the preliminary Site Plan within sixty-two (62) days after the receipt by the Clerk of the Review Board of a complete preliminary Site Plan application. The hearing on the preliminary Site Plan shall be advertised as required by law, and shall be closed upon motion of the Review Board within one hundred twenty (120) days after it has been opened.
2. Decision - The Review Board shall by resolution approve, with or without modification or conditions, or disapprove the preliminary Site Plan as follows:
 - a. If the preparation of an EIS on the preliminary Site Plan is not required and the SEQRA process has been concluded, the Review Board shall make its decision within sixty-two (62) days after the close of the public hearing on the preliminary Site Plan.
 - b. If an EIS is required, the Review Board shall make its own SEQRA findings and submit the same to the Lead Agency in accordance with the requirements of SEQRA.
 - c. If an EIS is required, no approval of the preliminary or final Site Plan shall be issued until the SEQRA process has been concluded in accord with SEQRA, generally, and 6 NY- CRR 617.11(c), specifically. However, a public hearing, if required, shall be conducted within sixty-two (62) days after the close of the SEQRA process if no claims, extensions, or challenges to the SEQRA process or determination are then pending.
3. Grounds for Decision - The grounds for a modification, if any, or the grounds for disapproval shall be stated on the record. When approving a preliminary Site Plan, the Review Board shall state in writing any modifications it deems necessary for submission of the Site Plan in final form.

4.047 Review Board Action

1. Certification and Filing of Preliminary Site Plan - Within five (5) business days of the adoption of the resolution granting approval to a preliminary Site Plan, such Site Plan shall be certified by the

Clerk of the Review Board as having been granted preliminary approval and a copy of the Site Plan and resolution shall be filed in the Town Clerk's office. A copy of the resolution shall be mailed to the Applicant or developer.

2. Effect of Approval of Preliminary Site Plan - Approval of a preliminary Site Plan shall not constitute approval of the final Site Plan. The preliminary Site Plan shall be a guide to the preparation of the final Site Plan. The act, in itself, of the Review Board granting preliminary Site Plan approval shall not be interpreted to create a presumption, or in any way imply, that the Review Board will give final approval to the Development if all conditions contained in the preliminary approval have not been met to the satisfaction of the Review Board, or if the Review Board determines that the Applicant or developer has not met all other requirements of any applicable rule, regulation, code or law or any other requirements which the Review Board may reasonably impose before any final approval is given.
3. Revocation of Approval - Within six months of the approval of the preliminary Site Plan, the Applicant or developer must submit the Site Plan in final form. If the final Site Plan is not submitted within six months, the Review Board may revoke approval of the preliminary Site Plan.

4.050 Town Board Review

The purpose of Town Board review is for the Town Board to have an opportunity to review proposed Development where the Town will be asked to accept any offer of dedication of public highways or other public facilities, or to accept financial guarantees for the completion of any required infrastructure in the Development. The Town Board review, when required, shall occur after the Review Board has approved a preliminary Site Plan, but before the filing of a final Site Plan application.

4.051 Offers Of Dedication

When any public highways or other facilities are proposed to be offered by the Applicant for dedication to the Town, the Town Board shall review the approved preliminary Site Plan of the Applicant or developer. The Town Board shall notify the Applicant and the Review Board in writing whether the proposed highways or other facilities are eligible for acceptance. A finding by the Town Board that the proposed highways or other facilities are eligible for acceptance shall not obligate the Town Board to accept such facilities after they are constructed and formally offered to the Town. No application for final Site Plan review shall be considered complete until such review by the Town Board has been completed.

4.052 Performance Guaranties

When an Applicant wishes to file or record the final Site Plan prior to completion of the proposed improvements, the Town Board may accept a Performance Guaranty for the completion of said work. In such cases, the Performance Guaranty shall be furnished by the Applicant for all required public improvements and utilities, and for all earthwork, landscaping, and Site restoration which are integral parts of the final Site Plan. No building permit shall be issued for a structure with an approved final Site Plan until the Applicant has furnished a Performance Guaranty. No final certificate of occupancy or certificate of compliance shall be issued until all improvements included in the Site Plan are completed, or until a sufficient Performance Guaranty has been approved by the Town Board for improvements not completed. The Town Board may waive the requirements of this Section or may accept other evidence or promises of completion for required improvements if, in its discretion, it determines that there is no need for a Performance Guaranty. No application for final Site Plan review shall be considered complete until the Town Board has accepted, as to form and amount, a Performance Guaranty, or waived such requirement with or without conditions.

4.060 Final Site Plan Application

An application for final Site Plan review shall be submitted at least 45 days before the meeting at which it is to be considered by the Review Board. The Applicant shall submit via email a package that includes the date, signature of the applicant and/or representing party, and a cover page detailing the Site Plan Application contents, plus one hardcopy for each member of the Review Board (5 total), and one (1)

hardcopy delivered to the Town Clerk. The Review Board may, at its discretion, accept a final plan for review less than 45 days before it is to be reviewed but no less than 15 days prior to a meeting to allow for adequate review.

4.061 Final Application in Substantial Agreement

When a final Site Plan application is submitted which the Review Board deems to be in substantial agreement with a preliminary Site Plan approved pursuant to Article 4 of this local law, the Review Board shall by resolution conditionally approve with or without modification or conditions, disapprove, or grant final approval and authorize the signing of such plan, within sixty-two (62) days of its receipt by the Clerk of the Review Board. In the case of a conditionally approved final plan, the Review Board's resolution shall include a statement of the requirements which, when completed, will authorize the signing of the plan, and all conditions of approval and other conditions that affect permitted land uses or that otherwise run with the land shall be stated upon such Site Plan map, and the Applicant shall be required to file such map at the Tompkins County Clerk's Office and index the same to the underlying deed(s) showing title to the affected land(s).

4.062 Public Hearing (Final Site Plan)

The Review Board may conduct a public hearing on the final Site Plan if considered desirable by a majority of its members. Such hearing shall be held within sixty-two (62) days of the receipt of application and noticed in accord with law.

4.070 Review Board Decision

Within sixty-two (62) days of receipt of the application for Site Plan approval or if a public hearing is held, within sixty-two (62) days of the public hearing, the Review Board shall render a decision on the Site Plan. In its decision the Review Board may approve, approve with modifications or conditions, or disapprove the Site Plan. The time period in which the Review Board must render its decision can be extended by mutual consent of the Applicant and the Review Board or where required by law, such as due to a SEQRA review.

1. Approval - Upon approval of the Site Plan, and payment by the Applicant of all fees and reimbursable costs due the Town, the Review Board shall endorse its approval on a copy of the Site Plan and shall immediately file it and a written statement of approval with the Town Clerk. A copy of the written statement of approval shall be mailed to the Applicant by certified mail, return receipt requested.
2. Approval with modifications - The Review Board may conditionally approve the final Site Plan. A copy of written statement containing the modifications required by the conditional approval will be mailed to the Applicant by certified mail, return receipt requested. After adequate demonstration to the Review Board that all conditions have been met, and payment by the Applicant of all fees and reimbursable costs due the Town, the Review Board shall endorse its approval on a copy of the Site Plan and shall immediately file it and a written statement of approval with the Town Clerk. A copy of the written statement of approval shall be mailed to the Applicant by certified mail, return receipt requested. The grounds for a modification, if any, shall be stated upon the record.
3. Disapproval - Upon disapproval of the Site Plan the decision of the Review Board shall immediately be filed with the Town Clerk and a copy thereof mailed to the Applicant by certified mail, return receipt requested, along with the Review Board's reasons for disapproval. The grounds for disapproval shall be stated upon the record.

Article V - Waivers and Appeal of Review Board Decision

5.010 Waivers and Special Circumstances

The purpose of this Section is to set forth those conditions and circumstances under which the requirements of this Local Law may be modified or waived by the Review Board. Where the Review Board finds that, due to the special circumstances of a particular case, a waiver of certain requirements or procedures is justified, a waiver may be granted. In all cases, no waiver shall be granted unless the Review Board finds and records in its minutes that: *i*) granting the waiver would be keeping with the intent and spirit of this Local Law and is in the best interests of the community; *ii*) there is no known, potential, or anticipated material adverse effect upon the character, appearance, or welfare of any adjacent neighborhood or the environment; *iii*) there are special circumstances involved in the particular case; *iv*) denying the waiver would result in undue hardship, provided that such hardship has not been self-imposed; and *v*) the waiver, if granted, would be the minimum necessary degree of variation from the requirements of this Local Law.

5.020 Appeals from Administrative Decisions of the Enforcement Officer

Any Applicant for Site Plan approval or other Person who is aggrieved by a requirement or determination of the Enforcement Officer effecting the interpretation, applicability, compliance with or enforcement of any term or requirement of this local law, may appeal to the Review Board for a review of such requirement or determination. The appeal by any aggrieved Person shall be made in writing, shall set forth in a reasonably concise manner the determination or matter from which an appeal is made, and a full statement of the particulars and reasons why the Person believes the requirement or determination should be reviewed. Such appeal must be filed with the Chair of the Review Board at least twenty (20) days prior to the next meeting of the Review Board at which the appeal shall be heard. The Review Board, at its sole discretion, may waive the aforesaid requirement and permit an appeal to be reviewed in a shorter period of time. The Review Board shall render its decision to the applicant in writing within forty-five (45) days of the meeting at which the appeal is reviewed.

5.030 Appeals from Review Board Determinations

An appeal from any determination of the Review Board shall be made in accordance with the requirements of Civil Practice Law and Rules Article 78, but any such claim must be filed within thirty (30) days of the filing of any decision of the Review Board with the Clerk of the Town Board or from the date the claim accrues, whichever first occurs.

Article VI - Administration

6.010 Responsibility for Administration

These regulations shall be administered by the Review Board in cooperation with the Town Board and other agencies, and shall be enforced by the Enforcement Officer or by any other Person that the Town Board may designate.

6.020 Fees

The Town Board shall by resolution from time to time set a fee schedule for the review and processing of Site Plan applications and for the inspection of Developments. The Enforcement Officer or other such agent as the Town Board may designate shall calculate the fee for each application. Each fee shall be paid to the Town Clerk, who shall issue a receipt stating the purpose of the payment. This receipt must be filed with the application as evidence of payment.

6.030 Public Hearings

Unless a different time is otherwise provided herein, a notice of public hearing shall comply with the requirements of law, including Town Law § 274-a, and a minimum of 10-days notice shall be provided to Applicants and 5-days to the public generally. Compliance with the requirements of notice as set forth in the Town Law or under SEQRA laws and regulations shall be for all purposes proper notice. However, where circumstances suggest, in the sole discretion of the Review Board without recourse, that the

provision of notice to additional Persons would be beneficial to the Review Board, the Review Board may direct the provision of a sign posted on the subject property with information regarding the proposed Development and written mailed notices to all property owners owning land within 500' of the boundaries of parcel proposed to be developed. The Review Board shall specify the number of days notice so required, but in no event shall less than 5-days notice be directed. In all cases, notice shall be deemed to have been received 5 days after depositing such notice, properly addressed and with proper postage affixed, in the exclusive care and custody of the United States Post Office. The Applicant shall file proof of such mailing or delivery with the Town no later than the date of the hearing. The Applicant shall pay all expenses of such mailings. Failure to notify property owners near a proposed Development of a public hearing shall not be a jurisdictional defect and shall not affect any action taken by any board, employee, or agent of the Town in connection with such public hearing. However, the failure to provide such notification may be grounds, should the Review Board in its discretion so determine, to decline to conduct a scheduled public hearing.

6.040 Building Permit Issuance

The Code Enforcement Officer shall not issue a building permit or Certificates of Occupancy or Compliance for any structure(s) requiring a permit, such Certificates, or any approval hereunder, unless the approved final Site Plan is filed or recorded in the office of the Town Clerk, and until any other applicable requirements have been met.

6.050 Effect of Failure to Receive Approvals

Until the Review Board has given final approval to a Site Plan and the final Site Plan has been filed or recorded in the offices of the Town Clerk, no building permit for construction shall be issued and no other work on the property shall be permitted, including any Site Development or Disturbances. Any permit or approval improperly or erroneously issued may be revoked by the Enforcement Officer. Any action taken or work performed upon or with respect to the lands within the Site Plan area, and any expenses incurred prior to final approval of the Site Plan, shall be assumed and undertaken solely at the risk of the owner of the land or the Applicant, and such expenditures, claims, or losses shall not give rise to any claim for damages against the Town or the Review Board by the landowner, Applicant, or developer.

Article VII - Review Board

7.010 Establishment

The Review Board created under the Town of Caroline's Subdivision Local Law of 2000 to administer Subdivision Review is hereby imbued with all requisite authority to also administer Site Plan Review. The Review Board shall consist of five members, each of whom shall be appointed by the Town Board. No Person who is a member of the Town Board shall be eligible for membership on the Review Board, and no public officer or employees of the Town, or of any other governmental agency, who are ineligible for appointment due to conflicts of interest or compatibility of offices rules may be so appointed or remain upon such Review Board. Review Board members shall be residents of the Town of Caroline.

7.020 Appointment of Members; Chairperson

The Town Board shall appoint members of the Review Board to staggered full five-year terms. The Town Board shall, by resolution, annually, designate the chairperson thereof.

7.030 Powers and Duties

The Review Board shall have the following powers and duties:

- a. Administering the Site Plan review regulations of the Town as provided herein.

- b. Recommending to the Town Board amendments to this local law.

7.040 Responsibilities of Review Board Members

- a. Review Board members shall, per each year of service on the Review Board, participate in four (4) hours of training or continuing education courses related to their duties as required by law. The Town Board shall grant prior authorization for such training. Failure to attend and complete any required training or continuing education courses shall be grounds for removal from the Review Board. Tracking member(s) completion of training requirements shall be done by the Town Clerk, and a report shall be presented to the Town Board in November of each year.
- b. Review Board members are expected to attend all meetings. Failure to attend any three regularly scheduled meetings of the Review Board within any twelve-month period shall be grounds for removal from the Review Board.

7.050 Vacancy in Office

If a vacancy shall occur other than by expiration of a term, the Town Board shall appoint any member for the unexpired portion of the term.

7.060 Removal of Members

The Town Board shall have the power to remove, after public hearing, any member of the Review Board for cause as governed by the requirements of New York State Public Officers Law, including failure to comply with the minimum requirements for annual training and attendance at meetings (Section 7.040).

7.070 Chairperson Duties

All meetings of the Review Board shall be held at the call of the Chairperson and at such other times as the Review Board may determine. The Chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.

7.080 Alternate Members

The Town Board may appoint an alternate member to the Review Board for such term as designated by the Town Board for the purpose of substituting for a Review Board member when, in the reasonable determination of the Chairperson, the regular member is unable to act, is not present, is recused, or is deemed to have a conflict of interest. When so designated, the alternate member shall possess all the powers and responsibilities of a Review Board Member. Such designation shall be entered into the minutes of the Review Board meeting at which the substitution is made. All provisions of this local law applying to Review Board members shall also apply to alternate members.

Article VIII - Legal Provisions

8.010 Separability

If any word, phrase, part, section, subsection, or other portion of this local law, or the application thereof to any Person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this local law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this local law or the application hereof to any other Persons or circumstances. If necessary as to such Person or circumstances, such invalid or unenforceable provision shall be and be deemed severed here

from, and the Town Board hereby declares that it would have enacted this local law, or the remainder hereof, even if, as to such particular provisions and Persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

8.020 Effective Date

This local law shall become effective immediately.

8.030 Integration of Procedures

Whenever the circumstances of proposed Development require compliance with this local law and with any other local law, ordinance or requirement, the Review Board shall attempt to integrate, as appropriate, Site Plan review with the procedural and substantive provisions of such other law, ordinance, or requirements.

8.040 Performance Guaranties

If the Review Board determines it is necessary to ensure that all items on the Site Plan providing for adequate traffic flow, utilities, stormwater management, and other similar infrastructure items, are constructed in accordance with the approved final Site Plan and any other pertinent specifications and requirements, or that a Performance Guaranty is needed to endure adequate Site restoration, the Review Board shall make a written recommendation to the Town Board concerning the same and the Town Board shall determine whether any Performance Guaranty is required, and if so the type, sufficiency, and amount of the same. Until the required Performance Guaranty is provided to the Town, the Review Board shall not issue any approvals and the Enforcement Officer shall not issue building permits or certificates of completion, occupancy, or compliance, and all timelines for the same shall be extended until 10 days after a proper Performance Guaranty is so delivered and reviewed and accepted by the Town Board.

8.050 Completion of Improvements

No final certificate of occupancy or certificate of compliance shall be issued until all improvements shown on the final Site Plan as approved by the Review Board, reasonably necessary to the proper and safe operation and occupancy of any completed facilities, are installed or until a sufficient Performance Guaranty has been provided to the Town for improvements not yet completed.

8.060 Stop Work Orders

The Code Enforcement Officer may issue stop work orders for: (i) the construction or development of any infrastructure that is inconsistent with the approved Site Plan; (ii) any conditions stated in or upon such Site Plan that are not being complied with; (iii) the violation or breach of any agreements related to such Site Plan; (iv) the failure, withdrawal, loss, revocation, or expiration of any Performance Guaranty; (iv) any uniform code violation; (v) any violation of any SEQRA condition or requirement; (vi) any failure to comply with the terms and conditions of any SPDES general or special permits; (vi) any failure to comply with the orders of a Code Enforcement Officer (including per Executive Law § 382); or (vii) for any other just and legal cause. Stop Work Orders shall be issued by regular and certified mailings.

8.070 Enforcement and Penalties

- a. A violation of this local law is hereby declared to be a criminal offense, prosecutable as a violation, and punishable by a fine not exceeding three hundred fifty dollars or imprisonment for a period not to exceed five (5) days, or both, for conviction of a first offense;
- b. A conviction of a second offense (also a violation), where both of such violations were committed within a period of five (5) years, is punishable by a fine not less than three hundred fifty dollars nor more than seven hundred dollars or imprisonment for a period of not to exceed ten (10) days, or both; and
- c. A conviction for a third or subsequent offense (also a violation), where all of such violations were committed within a period of five (5) years, is punishable by a fine not less than seven hundred dollars nor more than one thousand dollars or imprisonment for a period not to exceed fifteen (15) days, or both.
- d. Each week of continued violation shall constitute a separate additional violation.

- e. For purposes of conferring jurisdiction, such violations shall be deemed unclassified misdemeanors, but for purposes of hearing, conviction, fine, and penalties, such offenses shall be deemed violations.
- f. In addition to the penalties provided by statute, and in accord with Town Law §§ 65(1) and 135, the Town Board may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, use or division of land, to restrain, correct or abate such violation, to prevent the occupancy of buildings, structures, or land or to prevent any illegal act, conduct, business, or use.
- g. Nothing herein precludes the Town from pursuing any other right or remedy it has, or may in the future have, in respect of the enforcement of this local law, or to prohibit the violation hereof, whether in law or equity, and the remedies herein stated are cumulative and in addition to any such rights or remedies. The election by the Town of any one option or remedy shall not constitute an election of remedies or a waiver of any other rights or privileges, and the Town is free to pursue multiple simultaneous or sequential remedies, claims, procedures, proceedings, and the like, in its own and sole discretion.

8.080 General Construction

Whenever any federal, state, or local law, ordinance, regulation, or similar rule (collectively for purposes of this paragraph, a “Law”) is referenced herein, such reference shall include all references to such Law and its substantive and procedural rules and requirements as now promulgated and as hereafter amended, codified, or re-stated. All terms herein used in the singular or the plural sense shall be construed or applied as the context thereof admits or requires. All terms stated in any gender tense shall be construed in the masculine, feminine, or neuter tense as the context thereof admits or requires. Subject headings herein are for convenience only and shall not be used to limit or define the phrases occurring thereunder. In the event of any alleged or apparent conflict between this local law and any other Law, the terms hereof shall be read and construed as harmoniously as possible with such other Law, and if such harmony of construction is not possible then the terms of this Law shall be read as controlling.

Article IX – Design Standards

9.010 General Principles

It is the expectation of the Town of Caroline that the design of any Development requiring Site Plan Review should be appropriate to the Site's physical, natural, agricultural, historic, energy, and cultural features and resources, and should be consistent with the Town's Comprehensive Plan. It is the intent of this section to provide standards for the design of Sites.

9.020 Standards

In reviewing a proposed Site Plan, the Review Board shall consider whether the proposed Plan adheres to the standards listed below. With permission of the property owner, the Board may make a site visit to the proposed Development, with notification made to the applicant, to consider alternative designs that may better address the following standards.

Building Placement and Design

1. A building must not front directly on existing public roads to maintain rural character and vehicular safety.
2. The architectural design and details of proposed buildings or structures must be compatible with the scale, type of construction and landscaping characteristic of the surrounding area.



Carson Groundworks on Route 79

Entrances

1. Building entrances should be clearly defined, in scale with building façade, relate to the public realm, and have weather cover.
3. Walkways that are adjacent to a building shall be covered.

Roofing

1. Roofing shall have a minimum pitch of 4:12. Exceptions for environmental or energy-related designs may be allowed.



Speedsville General Store

Massing

1. Buildings with footprints larger than 1,500 square feet must be designed as a series of smaller masses or design components.

Materials

1. Materials should be consistent with Caroline building design. Use of clapboard, hardi board, shingle, board and batten, and vinyl siding is encouraged.
2. Metal is allowed as a minor component of the public-facing façade.
3. Cement, cinder, or concrete masonry blocks or units are prohibited on the public facing façade.



The Livery Plaza in Besemer

Fenestration

1. Public-facing facades shall have a window area of at least 15% of the façade. Windows shall be real, functional clear glass windows with views into the building or an internally lit display area.



Brooktondale Post Office

Canopies

1. Drive through or drive under canopies should draw on the design traditions of the Town of Caroline.
2. Canopies should have a pitched roof.
3. The canopy should be designed to be visually compatible with the primary structure.
4. Canopy supports should be visually designed and proportional to the roof structure.



Celebrations Banquet Hall on Route 79

Signage

1. Wall signs:
 - o Channel letters, halo lit letters, or downcast externally lit letters are encouraged.
 - o Cabinet or box signs are discouraged.
2. Ground mounted signs
 - o Shall be no taller than 6 feet above finished grade.
 - o Shall be monument style, rather than pole-mounted, unless the Review Board grants an exception.
 - o Shall be externally illuminated, and downcast, if using lighting.
3. Ample landscaping must be provided at the base of signs of any type.
4. Digital signs (including LCD signs) with changing, moving, or flashing text are prohibited.
5. The maximum size for any sign shall be 50 square feet.



The Dandy Mini Mart in Slaterville Springs

Parking

1. Parking areas associated with the Development must be located no closer to the road than the closest façade of the building, unless approved by the Town. If an exception is granted, parking areas located between structures and public roads are limited to a maximum of 15 spaces, and should be softened with a low growing hedge and/or an attractive fence or wall between the parking and the road.



Brookton's Market in Brooktondale

2. Shared parking lots and interconnected service drives to reduce new curb-cuts and maintain road safety and function should be used to the extent practicable.
3. Internal pedestrian connections (on site, from parking lots, to adjacent lots, etc.) must be provided as appropriate to the Site to provide pedestrian access to and around the Development.
4. Large expanses of parking should be broken up with tree and shrub plantings.
5. A parking area located within 20 feet of a property line must have a vegetative buffer or fence between the parking area and property line.

Screening of Accessory Equipment

1. Equipment located at grade, such as compactors, dumpsters, HVAC equipment, on-site utility boxes, loading docks, and other infrastructure shall be screened from public roads and adjacent residential uses in a manner approved by the Board.
2. Screening materials and design must be attractive and compatible with the building and overall landscape designs.

Rooftop Equipment

1. Antennas, satellite dishes, and other mechanical equipment on a roof should not be visible from public roadways.
2. Screening of rooftop equipment is required and must appear integral to the building design

Lighting

1. Site and parking lot light poles should not exceed 18 feet above surrounding grade.
2. Light fixtures should be shielded to direct light downward and contained within the site.

Landscaping

1. Landscaping should enhance the site and screen undesirable features from view.

Sustainable Transportation Infrastructure

1. The Development is encouraged to provide to the extent possible support for transportation choices such as bike racks and/or storage, dedicated car-share parking spaces, a car or van pooling service, electric vehicle charging stations, or local public transportation infrastructure for persons with disabilities.



*Electric Vehicle Charging Station
at the Brooktondale Post Office*



**Division of Local
Government Services**

ADOPTING ZONING FOR THE FIRST TIME

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

A Division of the New York Department of State

Andrew M. Cuomo, Governor

Rossana Rosado, Secretary of State

NEW YORK STATE DEPARTMENT OF STATE
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This document is intended to give general guidance.
Local governments seeking to adopt zoning for the first
time are encouraged to obtain legal counsel.

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INTRODUCTION

Cities, towns and villages in New York State are authorized by state statutes (called “zoning enabling laws”) to regulate the use of land by enacting what is commonly referred to as “zoning.” Zoning governs the way land in a municipality is used and developed. Its goal is to carry out the municipality’s long range land use objectives. Zoning regulates the uses to which property may be devoted, the siting of development on land, and the density of development on property.

Zoning operates by dividing the whole community into separate districts, or zones--hence, the term “zoning.” These districts are shown on the municipality’s zoning map. Within each district, all properties are subject to a uniform set of zoning regulations that restrict the use and development of property.

Since New York is a home rule state, a municipality has the choice of whether or not to adopt zoning and if it does, how the zoning regulations will work in the community. Where it is most successful, zoning is written in a way that compliments the planning goals of communities and addresses the needs of residents and businesses in the municipality. Zoning protects health and safety and property values by separating potentially incompatible uses. A well-written zoning regulation permits appropriate uses in each zone and can even regulate the location of the development on the site and its building design. If applied this

way, zoning can preserve or even enhance the character of a neighborhood or community. On the other hand, if not well-tailored to the needs of the community, zoning can needlessly separate compatible mixed uses and result in monotonous patterns of development. Some landowners oppose zoning because of the restrictions it places on the ability to use their land or believe it diminishes their ability to sell the land to someone for a high price. Balanced against this concern is the recognition that zoned properties often retain their value precisely because landowners know that nearby properties can only be occupied by compatible uses.

The authority for adopting local zoning regulations is set forth in New York State’s “enabling” laws - General City Law §20(24) and (25), Town Law, Article 16, and Village Law, Article 7. For example, Town Law §261 (which is part of Article 16) provides, in part, as follows:

“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...”.

Additionally, the Municipal Home Rule Law and the Statute of Local Governments provide independent power to adopt, amend and repeal zoning regulations via the adoption of local laws. (Statute of Local Governments §10(6), which is incorporated into Municipal Home Rule Law §10 (1)(ii)(a)(14).) This source of power may also be utilized in conjunction with the zoning enabling laws described above.

Procedures to be Discussed

The procedures for adopting zoning for the first time differ significantly from those for subsequent zoning amendments. Before town board or a village board of trustees can adopt zoning for the first time, a zoning commission must be established and, among other duties, make recommendations for the first set of zoning regulations. Once those duties have been completed, the zoning commission goes out of existence. Thereafter the local governing board itself becomes responsible for taking action on the recommendations of the zoning commission and adopting the zoning text, map, and any other proposals.

Since all cities in New York have adopted zoning, this booklet will address only the Town Law and Village Law procedures. Town Law, Article 16 and Village Law, Article 7, set forth specific procedures which must be followed by towns and villages, respectively, that desire to adopt zoning regulations. Towns may adopt zoning by either local law or ordinance but villages can only adopt zoning regulations by local law. The term “zoning regulation” is being used here for the convenience of the reader, to refer both to zoning *ordinances* and to zoning *local laws*.

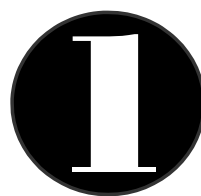
While zoning regulations are commonplace, it is important to remember that such regulations directly impact the use of private property. For this reason, the zoning enabling laws contain very specific procedures for adopting zoning which are designed to inform the public and

adjoining municipalities of the proposed regulations. These procedures must be carefully followed in order to avoid court challenges based on procedural defects, which, if successful, would result in invalidation of the enactment.

The adoption procedure for establishing a municipality’s first zoning regulations consists of the following steps:

- Step 1 - Cr e a t i o n of the zoning commission;
- Step 2 - Performance of the zoning commission; public participation and final report;
- Step 3 - C o m p l i a n c e w i t h t h e comprehensive plan and environmental assessment ;
- Step 4 - Performan ce of t h e local governing board; notice and public hearing;
- Step 5 - Referral by the local governing board to the county planning agency or regional planning council;
- Step 6 - Enactment procedures; voting and entry into the minutes;
- Step 7 - Publication, posting, filing and effective date.

This publication discusses each of these steps in some detail, but the Department of State strongly recommends early consultation with the municipal attorney for legal advice relating to adoption of zoning regulations.



Creation of the Zoning Commission

When a town or village desires to adopt its first zoning regulations, the local governing board - the town board in towns and the village board of trustees in villages - is

required to appoint a **zoning commission**. (*Town Law §266, Village Law §7-710*.) The zoning commission must be appointed before the adoption of the first zoning regulations.

A zoning commission has the duty to recommend the boundaries of the original zoning districts and appropriate regulations to be enforced therein, make a preliminary report, hold public hearings and submit a final report to the local governing board before the local governing board may take action to pass a zoning local law or ordinance. The function of the zoning commission was described early on as a “precautionary measure to make sure that the zoning shall not be adopted hurriedly or impulsively, but only after careful study and consultation with property owners.” (Bassett, E.M., *Zoning* (1940), p. 34.)

The zoning commission is a separate body, set apart from the responsibilities of the local governing board and planning board. This separate status allows the commission to focus solely upon its limited mandate to prepare draft zoning regulations.

Zoning Commission Membership

The enabling laws do not specify how many members serve on a zoning commission. In practice, a commission of fewer than 10 members has been a workable number. A commission of this size can afford a diversity of membership in terms of municipal representation, yet be small enough to guarantee ease of administration. A member of the local governing board may not serve as a member of the zoning commission. (10 Op.State Compt. 350 (1954)). However, one appellate court ruled that the unanimous vote of all zoning commission members to recommend a set of zoning regulations to the town board was not so irregular as to prevent eventual adoption of the first zoning ordinance, simply because two commission members were town board members.

There are two appointment options available to the local governing board:

- P appointment of a zoning commission composed of the already-existing planning board; or
- P appointment of a zoning commission, separate from the planning board. If a planning board already exists, the new zoning commission should contain at least one member of the planning board.

The presence of planning board members on the zoning commission can bridge the potential gap between the community’s past investment in planning and its concern with regulating and guiding future growth. If the local governing board appoints to the zoning commission persons who participated in the preparation of a comprehensive plan, these people can often articulate and help to implement the background decisions upon which comprehensive plan recommendations were based.

The commission’s membership can ensure representation of specific geographic areas or of population groups that may be especially concerned or affected by adoption of zoning regulations. The zoning enabling laws offer the opportunity to appoint highly-skilled and knowledgeable residents to this task, thereby taking advantage of their expertise and abilities.



Performance of the Zoning Commission; Public Participation and Final Report

In order to avail itself of the zoning powers under the zoning enabling acts, the local governing board must appoint a zoning commission to “recommend the boundaries of

the various original districts and appropriate regulations to be enforced therein.” (*Town Law* §266, *Village Law* §7-710.) The zoning commission has task of examining the existing conditions within the locality and making appropriate zoning recommendations for regulating future development. Where a comprehensive plan has been prepared, it should be utilized as an advisory document by the zoning commission when developing the zoning regulations. (1991 N.Y. Op. Atty. Gen. (Inf) 1023.)

A zoning commission is a public body, and its meetings must be open to the public as provided in the Open Meetings Law (Article 7 of the Public Officers Law). Additionally, the zoning commission may find it useful to conduct several public information sessions as it prepares its preliminary report. The zoning commission can answer questions from the public and the public can participate in a discussion of the proposed zoning regulations. Not only will this approach be beneficial to the public, but it can also be of equal benefit to the zoning commission. The commission itself should profit from the suggestions of residents and their detailed knowledge of local conditions. In addition, public awareness of the reasoning behind certain zoning proposals should tend to decrease areas of conflict and increase public support for the zoning effort.

Public support and knowledge are invaluable as a prelude to the public hearing or hearings to be held by the zoning commission.

Public Hearing

These zoning recommendations should be developed with the input of the general public. Accordingly, the zoning commission is required to hold at least one public hearing on its “preliminary report” before the report may be adopted and transmitted to the town board or village board of trustees. This requirement for holding a public hearing is considered

jurisdictional and is a mandatory requirement to the local governing board attaining power to adopt its first set of zoning regulations. *Incorporated Village of Muttontown v. Friscia*, 58 Misc.2d 912, 298 N.Y.S.2d 8 (Sup. Ct. Nassau Co. 1969).

The required public hearing performs two important functions. First, it provides an opportunity for the public to be heard before government action is taken--which is an essential facet of due process. Second, the comments received at the hearing could provide the commission with additional information, resulting in a more refined set of draft zoning regulations that may not need major changes prior to adoption by the local governing board.

At the zoning commission hearing (or hearings, if more than one is held), the initial “testing” of the draft text and map begins. It is at these hearings that the public comes to be heard as part of the formal process.

New York’s zoning enabling acts contain no specific requirements relative to the zoning commission’s public hearing notice. The laws do, however, detail the *governing board’s* notice requirements in conducting its mandated hearings prior to adopting zoning regulations. (*Town Law* §264; *Village Law* §7-706.) It is both advisable and common practice for the zoning commission to conduct itself in an identical manner. Following this procedure, the commission must publish notice to the public in a newspaper of “general circulation” at least 10 days prior to the hearing.

The content of the commission’s public notice should give the average reader reasonable warning that land in which he or she has an interest may be affected by the regulations that will be discussed. The printed notice need not contain a portion of the proposed zoning map or text of the regulations, but it should state

the nature of the proposed action: adoption of a new zoning law. The notice should also state that the purpose of the hearing is to hear from the public.

Reference should be made within the notice to the fact that the full, preliminary text of the regulations and map, which are the subject of the hearing, will be available for public inspection in the municipal clerk's office and possibly at other convenient locations, such as public libraries. In order to keep the local governing board informed of its work, it is a good idea for the zoning commission to send the board a copy of the draft text and map prior to the public hearing.

The zoning commission should be prepared for a lengthy hearing. The initial hearing notice may even include multiple dates and times for the zoning hearings. If a hearing does become a lengthy session, it may be best to adjourn the hearing and reconvene at the next scheduled meeting, or at another later date.

A public hearing has physical aspects which are important to consider. The commission should pay attention to the building where the hearing is to be held to assure adequate seating and that all who wish to participate will be reasonably accommodated in compliance with the Americans with Disabilities Act. (*United States Code, Title 42, Chap. 126; Title 47, Chap. 5.*)

The format of the public hearing may vary from one community to another. Generally, however, there is an introductory explanation of the commission's work and the objectives it seeks, along with a general review of the commission's proposed report. This introduction should be followed by a period for comment from the audience. The commission should make copies of the hearing agenda available for those present.

The zoning commission should establish clear and fair rules of order as a guide for public participation during the hearing. For example, it may require speakers to register. The commission should make a sincere effort to encourage participation by as many members of the audience as possible. With this announced purpose in mind, the commission chair should request individuals to limit the length of their remarks. If necessary, the commission can limit the time for a speaker to make his or her initial comments, and, if requested, grant the speaker additional time once everyone has had the opportunity to speak. Such rules of order should reasonably assure registered attendees that those wishing to speak will have an opportunity to be heard.

The zoning commission should keep a detailed record of the proceeding. It should hear persons in support of the issues under consideration as well as those who disagree. Their names, addresses and statements should be accurately recorded. All petitions should be accepted by the commission. The zoning commission should also give persons the opportunity to comment in detail with a written statement, to be entered into the record of the hearing. The commission should set a reasonable deadline for the receipt of such statements. To allow people to respond in writing to oral comments, this deadline may be *after* the close of the oral hearing.

Final Report

Following the hearing, the zoning commission should review all of the testimony, giving it careful consideration, with the possibility of doing further study to resolve issues that may exist.

There is a need, throughout the span of the commission's labors, to provide a liaison with the local governing board. The most efficient and effective way to accomplish this is for members of the local governing board to be

present at each of the commission's meetings. But the commission should also appoint one of its members as liaison to the local governing board, and should request periodic reports from that member. Additionally, the commission may make periodic progress reports to the local governing board.

After considering the record of the public hearing, the commission prepares the final report for submission to the local governing board. The zoning commission adopts its final report and directs its submission to the local governing board by resolution. If the zoning commission plans to submit a final report which contains substantial changes from the preliminary report on which a hearing was held, the zoning commission should hold a further hearing or hearings on the amended report before submitting the final report to the local governing board. (1969 Op. Atty. Gen. No. 122.)

The zoning commission's final report is an official government document, and should therefore follow certain formalities. One format for its contents could be as follows:

- P a formal transmittal or cover letter;
- P a statement of membership appointments with reference to the date of the official creation of the commission and its responsibilities under the enabling acts;
- P a description of the public meetings and hearings conducted by the commission, including date(s), time(s), place(s) and names of participants;
- P a description of the actions taken by the commission, including descriptions of preliminary drafts/maps, as well as reasons for any changes made thereto during the course of the commission's proceedings, whether on the commission's own initiative or as the result of comments

made at public hearings;

- P a copy of the recommended zoning regulations with a full explanation of their provisions; and
- P a copy of the resolution by which the commission adopted the final report.

Upon adoption of a resolution by the local governing board accepting the final report, the zoning commission passes out of existence.



Comprehensive Plan and Environmental Assessment

The Comprehensive Plan

The enactment of zoning regulations must be preceded by the adoption of a "comprehensive plan". Although zoning must be accomplished in accordance with a comprehensive plan, the courts have said that a comprehensive plan "need not be contained in a single document labeled as such; indeed, it need not be written at all (see, *Asian Americans for Equality v. Koch*, 72 N.Y.2d 121, 131(1988). All that is required is that the court be able to satisfy itself, based upon a review of all available evidence, that such plan in fact exists and that the municipality is acting in the public interest in furtherance thereof." *Skenesborough Stone Inc. v. Village of Whitehall*, 254 A.D.2d 664, 666 (3rd Dept. 1998). In *Skenesborough*, the comprehensive plan was identified based on a review of the first set of zoning regulations, the zoning map, the generic environmental impact statement and the minutes of the various meetings conducted by the zoning commission and the local governing board. The State zoning enabling laws now also define the term "comprehensive plan" and provide an optional process for formally

adopting one. Once a comprehensive plan is adopted using those provisions, the zoning regulations and other land use regulations of the town or village must be in accordance with it. (*Town Law*, §272-a and *Village Law*, §7-722.) While comprehensive planning is critical to the development and adoption of zoning regulations, it is the topic of another Department of State publication, *Zoning and the Comprehensive Plan*. (www.dos.ny.gov/LG/publications/Zoning_and_the_Comprehensive_Plan.pdf)

A comprehensive plan may, after analyzing conditions in a community, recommend that portions of a community to be left unzoned. Such part-town or part-village zoning is permissible provided the comprehensive plan considers the entire community and identifies those areas where zoning is not needed. See *Connell v. Granby*, 12 A.D.2d 177, 209 N.Y.S.2d 379 (3rd Dept. 1961).

The Environmental Assessment

An agency of government, including a local government, may not undertake, fund or approve any “action” until it complies with the State Environmental Quality Review Act (*SEQRA*; see Article 8 of the Environmental Conservation Law and its implementing regulations at 6 NYCRR Part 617.) The term “action” includes the adoption of a zoning local law or ordinance. (6 NYCRR §617.2(b).) The adoption of an initial zoning local law or ordinance by the local governing board is considered a “Type I” action, which means that it is an action more likely than not to require the preparation of an environmental impact statement (EIS). (6 NYCRR §§617.2(ai); 617.4(a) and (b)(1).)

The SEQRA regulations explain the purposes of SEQRA as follows:

“The basic purpose of SEQR is to incorporate the consideration of

environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQRA requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.” (6 NYCRR §617.1(c).)

The SEQRA processes apply *in addition to* the adoption processes required by the zoning enabling laws.

The “lead agency” is primarily responsible for determining whether an action may have a significant adverse impact, and for preparing or overseeing preparation of an environmental assessment and/or environmental impact statement (EIS). (6 NYCRR §617.2(u).) Since town boards and village boards of trustees are the only “agencies” that can adopt zoning laws and ordinances, they are usually the lead agencies for such actions. SEQRA also, however, requires early consideration of environmental impact and the initial determination of potential “significance.” (See 6 NYCRR §617.6.) Nonetheless, there is a need to consider environmental impact even at the zoning commission stage, even though the commission is not the lead agency.

Ultimately, the local governing board remains responsible for determining whether the adoption of the first set of zoning regulations would have a significant adverse affect on the environment, while still allowing for early consideration of environmental impacts as the draft zoning regulations are being prepared.

If the local government has already adopted a comprehensive plan according to the zoning enabling statutes, an environmental review

may well have already taken place. Possibly, a generic environmental impact statement will have been prepared, which could be used to contribute to environmental review of the new zoning regulations.



Performance of the Local Governing Board; Notice and Public Hearing

Upon receiving the zoning commission's final report, the local governing board may accept it by resolution. The zoning commission ceases to exist when the local governing board accepts its report. (*Town Law*, §266(5); *Village Law*, §7-710(5).)

The local governing board is not constrained by the enabling laws to adopt the zoning regulations proposed by the zoning commission. But if it proposes to adopt *any* zoning regulations, whether those recommended by the zoning commission or those it has fashioned on its own, it must first hold at least one public hearing upon proper notice to the public. This hearing may not commence until after the zoning commission has prepared and forwarded its final report. Additionally, the public hearing should not be held until the DEIS has been prepared and deemed adequate, or until a negative determination of significance has been made.

The hearing notice must be published in a newspaper of general circulation at least ten days before the public hearing. (*Town Law*, §264(1); *Village Law*, §7-706(1).) Legislative bodies are advised to comply strictly with this time period. Proper notice, as to both time and content, can not be understated. In a case concerning the rezoning of a residential parcel, the court in *Vizzi v. Town of Islip* (71 Misc.2d 483 (Sup. Ct., Nassau Co., 1972)) described the underlying purposes served by notice as follows:

"The published notice is the fundamental vehicle for communicating to the public any local legislative changes which affect residential interests. It may be the only informational source that warns local property owners of zoning changes affecting their land's use and value, either adversely or beneficially, directly or indirectly. The viability of the statutory scheme of public hearing in relation to zoning changes is dependent upon proper advance notice." (71 Misc.2d at 485.)

The notice must reasonably inform the public of the purpose of the hearing, the general character and scope of the proposed regulations, and the time(s) and place(s) where the hearing will be held. (*Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y.2d 668 (1996); *Coutant v. Town of Poughkeepsie*, 69 A.D.2d 506 (2nd Dept., 1979); *2525 East Ave. v. Town of Brighton*, 33 Misc.2d 1029 (Sup. Ct., Monroe Co., 1962), *aff'd* 17 A.D.2d 908 (4th Dept., 1962); *Vizzi v. Town of Islip, supra.*) This standard does not require that the text of the proposed zoning regulations must be published in the hearing notice, although some local governments do publish the text for informational purposes. The public notice should identify the location(s) where the full text of the proposed zoning regulations may be seen. In any case, paper copies of the full text should be available for viewing at the office of the town or village clerk. In addition, the text may be posted on the town's or village's website. It is also advisable to have public notices reviewed by the municipal attorney before publication.

The local governing board must serve written notices of the public hearing to certain public bodies. Service may be made either personally or by mail. The notices must be served on the officers or persons identified in the enabling laws when the proposed zoning regulations will affect property within 500 feet of: the property of a housing authority; the boundary

of a city, village, town or county; or the boundary of a state park or parkway. (*Town Law*, §264(2); *Village Law*, §7-706(2).) These entities are given a right to be heard at the public hearing, but are not given a right to judicial review. (Other bases for judicial review could, however, apply. For example, the Westchester County Charter accords the right to judicial review in this instance.)

The same considerations regarding space requirements and the need for multiple hearing dates and rules of order, apply as well to the zoning commission's public hearing as to the hearing conducted by the local governing board.

Must a local governing board hold yet another public hearing, upon renewed notice, when changes are made to the proposed zoning regulations *after* the initial public hearing is held? Perhaps. It is common for changes to be made at this point, since the public hearing provides the opportunity for new information and various points of view to be presented to the local governing board. The question of whether a new public hearing is required will hinge on whether the change was embraced within the original public notice. Changes made after the public hearing that make the proposal substantially different from the one originally noticed will require new notice and opportunity to be heard:

“When events subsequent to the publication of notice lead to an amendment that is substantially different from that which was noticed, new notice and opportunity to be heard may be required....However, where the amendment as adopted is embraced within the public notice, the notice has satisfied its purpose of alerting the public to potential and contemplated revisions of the local ordinance, and the notice will generally be deemed sufficient....” (*Gernatt Asphalt Products, Inc. v. Town of*

Sardinia, *supra*, 87 N.Y.2d at 679; see also *Lighthouse Shores v. Town of Islip*, 41 N.Y.2d 7 (1976); *Coutant v. Town of Poughkeepsie*, *supra*.)

Referendum on Zoning?

The question often arises whether a local governing board may seek to gauge public opinion on the proposed zoning regulations by holding a referendum. There is, however, no statutory provision authorizing the submission of zoning to a referendum, regardless of whether the regulations are adopted via ordinance or local law. (*Elkind v. City of New Rochelle*, 5 Misc.2d 296 (Sup. Ct., Westchester Co., 1957), *aff'd* 4 AD.2d 761 (2nd Dept., 1957), *aff'd* 5 N.Y.2d 836 (1958); 1959 Op. Atty. Gen. 127.) These decisions have held that, under New York law, a referendum may **only** be conducted if a state statute authorizes it; otherwise, a referendum cannot be held.



Referral to the County and Adjoining Municipalities

Under certain circumstances, zoning enactments must be reviewed at the county or regional level before they can be put into effect. General Municipal Law §239-m requires that the local governing board must refer any proposed zoning law or ordinance to the county planning agency for review and recommendation, if the proposal would affect real property lying within 500 feet of the boundary of

- P any city, town, or village;
- P any existing (or proposed) county or state park or other recreation area;
- P any right-of-way of any existing (or proposed) county or state parkway,

- thruway, expressway, road or highway;
- P any existing (or proposed) right-of-way or any stream or drainage channel owned by the county or for which the county has established channel lines;
- P any existing (or proposed) boundary of any county or state-owned land on which a public building or institution is situated;
- P a farm operation located in a designated agricultural district.

If there is no county planning agency in existence, the proposal must instead be referred to the regional planning council having jurisdiction within that county. As any new, first-time zoning law or ordinance will necessarily affect real property falling within 500 feet of the municipal boundary, it follows that such an enactment must be referred under GML §239-m for this, if for no other, reason.

The referral must be in the form of a “full statement”. In the case of a new zoning law or ordinance, this must include:

- the complete text of the proposed local law or ordinance;
- the text of any existing provisions to be affected by the proposal, if those existing provisions are not already in the possession of the county (or regional) planning agency;
- a completed environmental assessment form;
- any additional material required by the local governing board to make its determination of significance under SEQRA (see Section 3 above).

Alternatively, the statutes allow the county or region and the referring body to agree as to what constitutes a “full statement”. (*General Municipal Law §239-m(1)(c).*) For example, a mutual agreement could require inclusion of local background materials that explain the reasons for adopting the proposed zoning regulations, such as the comprehensive plan or

the zoning commission’s final report.

Within 30 days after receipt of the “full statement”, or such longer period as may have been agreed to between the two entities, the county or region must report its recommendations to the local governing board. The local governing board has no jurisdiction to act on the proposal until it either receives the county’s or region’s recommendation, or the required review period expires, whichever occurs first.

Review Considerations

When it reviews proposed new zoning regulations, the county or regional agency must consider several factors. These factors are all set forth in General Municipal Law §239-l. They are:

- P the compatibility of various land uses with one another;
- P traffic-generating characteristics of various land uses:
 - in relation to the effect of such traffic on other land uses, and
 - in relation to the adequacy of existing and proposed thoroughfare facilities;
- P the impact of proposed land uses on existing and proposed county or state institutions or other uses;
- P the protection of the community character as regards:
 - predominant land uses, and
 - population density;
- P the relationship between residential and non-residential areas;
- P community appearance;
- P drainage;
- P community facilities;
- P official development policies, municipal and county, as may be expressed through comprehensive plans, capital programs or regulatory measures; and
- P other such matters as may relate to:
 - public convenience,

- governmental efficiency, and
- achieving and maintaining a satisfactory community development.

Under GML §239-m the county or regional planning agency must make one of four recommendations to the local governing board:

- Approval;
- Modification;
- Disapproval;
- Report that the proposed action has no significant county-wide or inter-community impact.

In its report, the county or regional agency must include reasons for its recommendations. While there is no required structure for the drafting of these reasons, the following are some suggested bases for disapproval of a proposed zoning law:

- P establishment of incompatible development across municipal boundaries, such as a heavy industrial zoning district adjacent to an abutting community's single-family residential zone;
- P the ignoring of regional housing needs and demands; or
- P allowing high-intensity development to conflict with a proposed county or state facility, or with a scheduled improvement to an existing facility, such as a highway relocation or widening.

Benefits of Referral

Referral is an important aid to the local planning and zoning process. Here are just a few examples of the broader benefits of referral:

- P local planning and zoning bodies are provided with advice and assistance from professional county and regional staff;
- P zoning actions are coordinated among

municipalities, aiding in the recognition of inter-community considerations;

- P local tax dollars may be saved in cases where deficiencies in the referral, overlooked by the municipal body, would, among other things, have resulted in expensive litigation, or in unanticipated infrastructure improvements;
- P other planning agencies (county, regional and state) can better orient studies and proposals for solving local as well as county and regional needs; and
- P other levels of government are made aware of, and made sensitive to, the types of problems facing local legislators.

Referral can be a two-way street. Review can assist the county or regional agency in determining potential growth areas, enabling it to anticipate facilities and service expansions to provide for future development demands.

Overriding the County or Regional Recommendation

If the county or regional planning agency sends a timely response and recommends approval, or reports no significant county-wide or inter-community impact, the local governing board is free to act on the proposal by a simple majority vote. If, on the other hand, the county or regional agency recommends either *disapproval* or *modification*, then the local governing board may approve the proposal in its original, referred form, only by a vote of a *majority plus one* of all of its members (commonly known as a “supermajority”). (*General Municipal Law*, §239-m(4)(b), §239-m(5).)

If the 30-day response period elapses with no recommendation having been received, the local governing board is, again, free to take any action it desires by a simple majority vote. But even where the response period expires, a late response by the county or regional

planning agency will still trigger the “supermajority” rule if:

--the local governing board has not yet acted;

--the recommendation is received *more than two days prior* to the date of the local governing board’s vote; and

--it is a recommendation of disapproval or modification. (*General Municipal Law*, §239-m(4)(b).)

Within 30 days after taking final action, the local governing board must file a report of the final action it has taken with the county or regional planning agency. A local governing board that acts contrary to a recommendation of modification or disapproval of the proposed zoning regulations must set forth the reasons for the contrary action in this report. (*General Municipal Law*, §239-m(6).)



Enactment Procedures; Voting and Entry into the Minutes

Upon complying with the requirements of county and inter-municipal referral, the local governing board enters the last phase of the zoning adoption procedure. As with the taking of any official action, zoning may be adopted by the local governing board only at a duly-constituted meeting at which a quorum of members is present. (*General Construction Law*, §41; *Public Officers Law* §102.)

Voting and Recording the Vote

Both town and village local governing boards may adopt zoning regulations by an affirmative vote of a majority of the board’s total membership. Total membership of the board is the full number of board members,

counting vacancies and absences. (*General Construction Law* §41.) Remember, also, that if a “supermajority” is needed, it is a “supermajority” of this *full* membership.

Failure to adopt by a proper vote will result in invalidation of the zoning law or ordinance upon successful court challenge. As a bulwark against such possible challenge, it is vital that the record of each board member’s vote be entered in the minutes of the local governing board’s meeting. (See *Home Depot USA, Inc. v. Baum*, 243 A.D.2d 476 (2nd Dept., 1997); *Pub. Off. Law* §106(1).)

Exclusive of the zoning map, every zoning ordinance or local law adopted must be entered in the minutes of the local governing board. (*Town Law*, §264(1); *Village Law* §7-706(5).) The minutes must “describe and refer” to any map adopted in connection with a zoning ordinance or local law. In towns, the town clerk must maintain a separate file or filing cabinet for each map adopted in connection with a zoning ordinance or zoning amendment. (*Town Law* §264(1).) The Village Law merely requires that the village clerk maintain the zoning maps. (*Village Law*, §7-706(6).)

The municipal clerk must be careful and diligent when entering the zoning ordinance or local law. The clerk need not hand-copy the entire regulations into the minutes of the board’s adoption. Printed copies are sufficient.

The purpose of these requirements is to ensure that an official copy of the zoning regulations, every amendment to them, and an updated zoning map, be available at the local clerk’s office where it can be readily accessed. Village and town clerks generally have responsibility to record and maintain custody of all village or town local laws or ordinances. (*Town Law*, §30; *Village Law* §4-402.)

Map Quality and Maintenance

The map must clearly and definitively show the zoning district boundary lines. Imagine the citizen, reading the restrictions set forth in new zoning district regulations, then examining the zoning map, only to find that she cannot determine whether her property falls within the new district--or even if she is in any way affected by the regulation.

There will be changes to the text of the regulations as the zoning ordinance or local law is amended over the years. Changes to the regulations may alter zoning district boundaries, or may insert additional zoning districts with specific requirements. Such amendments usually depend on the zoning map for their delineation and clarification. The local governing board will therefore need to make complementary amendments to the zoning map. It is essential that the zoning map be kept current.

SEQRA Findings

If an environmental impact statement has been prepared accompanying the new zoning, the town or village local governing board must make a written findings statement at the time of, or before adoption of, the new zoning regulations. (6 NYCRR §617.11(c).) The findings must show that all potential, significant environmental impacts identified in the EIS have, to the maximum extent practicable, been avoided or minimized. (6 NYCRR, §617.11(d).)



Publication, Posting, Filing and Effective Date

Once the zoning regulations have been adopted by the local governing board, the enabling statutes require the municipality to

provide general notice of their adoption to the community through publication and posting.

Post- Adoption Publication

In the case of both towns and villages, the enabling statutes require that a copy, summary or abstract of the newly-enacted zoning regulations must be published at least once in a newspaper. The Town Law and Village Law differ to a degree on this issue. The Town Law specifies that publication be made in a newspaper published in the town, or in a newspaper published in the county and having town-wide circulation, and that is designated by the town board. (*Town Law* §§264(1) and 64(11); see also *General Construction Law* §60 and *Public Officers Law* §70-a.) The Village Law requires publication in a newspaper designated by the village board as its “official” newspaper. (*Village Law* §7-706(5); *General Construction Law* §60 and *Public Officers Law* §70-a.). The post-adoption publication requirements are mandatory and if the local government fails to publish the summary or abstract following passage of the zoning, the zoning enactment can be invalidated. *Barry v. Town of Glenville*, 8 N.Y.2d 1153, 209 N.Y.S.2d 834 (1960)

To reduce publication costs, many towns and villages opt to publish a summary or abstract, rather than a copy of the entire text, of the zoning regulations. Summaries should be carefully written, and reviewed by the municipal attorney, prior to publication.

An affidavit of publication, routinely provided by the newspaper publisher, must be filed with the municipal clerk. (*Town Law* §§133 and 264(1); *Village Law* §7-706.)

Posting

Village Law, §7-706(5) requires that both the text of the zoning law and a summary or

abstract of the zoning map must be posted conspicuously near the main entrance to the office of the village clerk. An affidavit of posting must be filed with the village clerk. There is no requirement of posting in towns.

Filing with the Secretary of State

When the zoning regulations are adopted as a local law, the town or village clerk must file a copy of it, including any zoning map which is part of it, with the Secretary of State's office within 20 days of its adoption. (*Municipal Home Rule Law* §27.) The filing must be made in the manner prescribed by the Secretary of State's regulations for filing local laws. These regulations can be found on the Department of State's website, noted at the end of this publication, and can also be found in the Department's publication *Adopting Local Laws in New York State*.

The clerk will receive an acknowledgment letter from the Secretary of State's office verifying that the local law has been filed. This letter serves as proof of filing, and should be maintained by the clerk.

Filing with the Secretary of State applies only to *local laws*, not to *ordinances*.

Effective Date

The effective date of a zoning enactment differs depending upon whether it is adopted by local law or ordinance.

When a town adopts zoning by local law, the zoning law must be filed with the Secretary of State and will become effective on the twentieth day after its adoption, unless a different date is prescribed in the local law. When a village adopts a zoning local law, it becomes effective immediately upon its filing with the Secretary of State. (*Village Law*, §7-706(7).) In no case, however, may a local law

become effective until it is filed with the Secretary of State. (*Municipal Home Rule Law*, §27(1).)

When a town adopts zoning using its ordinance power, the zoning ordinance will become generally effective ten days after newspaper publication of the ordinance or the summary thereof, as described above.

The only exception to these time and filing rules is that the effective date of the local law or ordinance can be accelerated by "personal service" on the individual(s) involved. This requires the direct "service" of the local law or ordinance, accompanied by the clerk's certification of adoption, showing its date of passage and entry into the minutes. (*Town Law*, §264(1); *Village Law*, §7-706(7).)

Availability to the Public

Local laws and ordinances are public records that must be made available to the public. Zoning regulations have a broad impact on town or village residents, and are frequently consulted by real estate professionals, builders, architects, homeowners and attorneys, among others. Because of this, many local governments have current copies of their zoning regulations readily available at the office of the clerk or zoning enforcement officer or on their official websites.

ADOPTING LOCAL LAWS

This publication has focused on how the zoning enabling statutes in the Town Law and the Village Law direct that zoning regulations be adopted. The New York Municipal Home Rule Law and the Statute of Local Governments also give local governments in New York the power to adopt local laws on a wide variety of topics. Among these, for cities, towns and villages, is the power to adopt zoning by local law. These statutes have been utilized directly by many local governments to address land use regulation issues not specifically identified in the zoning enabling laws (e.g., aesthetics, architectural review, or historic preservation).

The Municipal Home Rule Law also empowers towns to adopt local laws regarding any matter which they have been given the specific power to address via ordinance. This includes zoning. Finally, towns and villages are accorded limited power to *supersede* the Town Law or Village Law, respectively, unless otherwise prohibited by law. (*Municipal Home Rule Law* §§10(1)(ii)(e)(3) for villages and 10(1)(ii)(d)(3) for towns.) The courts have upheld the use of the “supersedure power” in certain land use contexts. (*Sherman v. Frazier*, 84 A.D.2d 401 (2nd Dept., 1982); *Kamhi v. Town of Yorktown*, 74 N.Y.2d 423 (1989); *North Bay Associates v. Hope*, 116 A.D.2d 704 (2nd Dept., 1986); *Walker v. Hempstead*, 84 N.Y.2d 360(1994).)

Because the powers it grants are broad and strong, the Municipal Home Rule Law is frequently used by local governments that seek to remove any doubt as to the underlying power to regulate in the manner proposed. This is especially true where a new or innovative type of zoning regulation is being considered. In addition, the home rule power *must* be used where the Town or Village Law is being superseded.

The Municipal Home Rule Law also provides the procedure for adopting local laws. This procedure applies to *all* local laws, regardless of topic. Towns or villages that adopt zoning by local law, using either the authority given to them in the zoning enabling statutes *or* the authority of the Municipal Home Rule Law, will still look to Municipal Home Rule Law Article 3 for the procedure to adopt the zoning local law. Local officials may also wish to consult the Department of State publication *Adopting Local Laws in New York State* for these procedures.

Local governments seeking to adopt zoning for the first time should consult their municipal attorneys early on to determine what source of authority they will be using to enact zoning, as well as to determine the appropriate procedures for adoption. Case law has indicated that since the Municipal Home Rule Law provides an alternative procedure for adopting zoning, local zoning laws may be enacted using its procedures alone. (*Pete Drown Inc. v. Town Board of the Town of Ellenburg*, 229 A.D.2d 877 (3rd Dept., 1996); *Kamhi v. Town of Yorktown*, *supra*; *Yoga Society of New York, Inc. v. Town of Monroe*, 56 A.D.2d 842 (2nd Dept., 1977), app. dism., 42 N.Y.2d 910 (1977); *Village of Savona v. Soles*, 84 A.D.2d 683 (4th Dept., 1981); *Kasper v. Town of Brookhaven*, 142 A.D.2d 213 (2nd Dept., 1988); but see *Stone v. Village of Baldwinsville*, 138 Misc. 2d 164 (Sup. Ct., Onondaga Co., 1988).)

Any town or village that seeks to adopt zoning under the Municipal Home Rule Law, and at the same time dispense with any procedure set forth by the Town Law or Village Law, should carefully consider the underlying authority and method, particularly as to whether supersedure provisions must be employed. (In particular, see *Turnpike Woods, Inc., v. Town of Stony Point*, 70 N.Y.2d 735 (1987) regarding use of the supersedure power.

CONCLUSION

This publication has attempted to clarify the initial zoning adoption and enactment process by describing seven linked steps. When each step is performed according to law, the likely result will be a validly-instituted municipal zoning ordinance or local law.

At the completion of the adoption procedure, it will be necessary for the local governing board to provide for the enforcement and interpretation of the zoning ordinance or local law by appointing an enforcement officer and a board of appeals. The zoning enforcement officer bears the primary responsibility in handling individual inspection, and enforcement against violations. The zoning officer's decisions are subject to appeal to the zoning board of appeals, and ultimately to the courts.

LOCAL GOVERNMENT PUBLICATIONS

Some of the Department of State's publications available to local officials are:

Guide to Planning and Zoning Laws of New York State. This publication for municipal officials, attorneys and planning boards is continually revised to include relevant statutory changes. It has the complete text of the State zoning enabling laws, including the statutes referred to in this publication.

Adopting Local Laws in New York State. This booklet combines legal analysis of the home rule power with a plain language, step-by-step guide to drafting and adopting a local law. It is invaluable for the municipal clerk or attorney.

Zoning Board of Appeals. This booklet explains the legal framework surrounding the powers and duties of zoning boards of appeals.

Zoning Enforcement for Towns and Villages. This booklet explores the zoning enforcement process, including options for enforcement and sample forms.

Record Keeping Tips for Zoning Administration. Tips on managing zoning-related paperwork. Sample forms.

Zoning and the Comprehensive Plan. This publication describes and explains the essential relationship between the community's zoning regulations and its comprehensive plan.

Contact the Department of State at the address listed on the inside cover for a complete list of publications you can order. Many of the Department's publications may also be downloaded from the Department of State's website.

The web address is:
<http://www.dos.ny.gov>

Local law filing instructions and forms can be accessed at:

<http://www.dos.ny.gov/forms/corporations/0239-f-l.pdf>

Economic Information Sheet
Site Plan Application Addendum
Town of Caroline, NY

The following questions are designed to help the Town of Caroline understand the economic impact of the proposed business as part of Site Plan Review.

Please submit answers to these questions with the Site Plan Application

Job Creation

How many jobs will the business create?

What types of jobs will the business create? (Indicate temporary, part-time, and full-time positions)

Will the employees be paid a living wage? (*The living wage for Tompkins County is determined by the Tompkins County Workers' Center based on studies conducted annually by Ithaca's Alternatives Federal Credit Union.*)

Will local contractors or workers be used in the construction of the development?

Business Characteristics

What product or service will the business provide?

Will the products or services be offered year-round, seasonal, or both?

If the business offers products for sale, what percentage of those products are local?

If the business offers products for sale for which an energy rating exists, what percentage are EnergyStar-certified?

What percentage of the materials used in the construction or operation of the business will be locally purchased?

What tax revenue might be expected from this development (property, school, sales tax)?

What are the anticipated costs to the Town of the business from its construction and operation?

How will the business meet current and future community needs?