

THE SUFFOLK COUNTY PLANNING FEDERATION  
and the  
SUFFOLK COUNTY PLANNING COMMISSION  
In partnership with the  
AMERICAN PLANNING ASSOCIATION  
Presents the

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# Autumn Planning Conference 2011

Brookhaven National Laboratory  
Berkner Hall  
Upton, NY

Wednesday  
October 12, 2011

General Sessions 3:00-9:00 p.m.



Scan the QR code with your  
Smartphone for more information



## Resource Manual





PO Box 6100, Hauppauge, New York 11788-0099 631-853-5191

October 12, 20011

## **Suffolk County Planning Federation**

The Suffolk County Planning Federation was formed in 1994 to provide training opportunities for municipal planning and zoning officials. During the past 17 years, the Federation has hosted an annual training program that has attracted hundreds of local officials as well as town and village staff members, citizens and members of related professions, including environmental science, architecture and law. The programs have been offered at no charge to participants thanks to the support of the Suffolk County Water Authority, Brookhaven National Laboratory, Suffolk County, New York State, the American Planning Association and various event sponsors. This support is greatly appreciated.

This resource manual is a supplement to the presentations provided at the conference and can be used as a reference source. Copies of this manual and prior manuals are also available online at the following web address:

<http://www.suffolkcountyny.gov/Home/departments/planning/Suffolk%20County%20Planning%20Federation.aspx>

I would like to acknowledge the assistance of the Suffolk County Planning Commission in the development of the conference program and especially the guidance provided by David Calone, chair of the Commission.

I would also like to acknowledge the work of the following County Planning Department staff members in the preparation of the conference program:

Andy Freleng, Chief Planner  
Carl Lind, Cartographer  
Kate Oheim, Assistant Cartographer  
John Corral, Planner  
Vincent Leogrande, Land Management Specialist I  
Chrissy Einemann, Secretary  
Dotty Sonnichsen, Account Clerk Typist  
Christine DeSalvo, Clerk Typist  
Melissa B. Plescia, Intern

Thank you for your participation in the conference and for your interest in the future of your community.

Sarah Lansdale, AICP  
Director of Planning  
Suffolk County Department of Planning

*A cooperative alliance of municipalities dedicated  
to the improvement of planning knowledge and practice.*



## CONTENTS

**Letter from the Suffolk County Planning Federation**

**Message from Suffolk County Executive Steve Levy**

**Introduction**

Course Descriptions

Course Certification Key

Sponsors

Guest Lecturers, October 12, 2011

### ***General Session I***

**Chapter 2: Planning Board Overview**

**Chapter 3: BNL Sustainability Plan**

**Chapter 4: Directors Roundtable**

### ***General Session II***

**Chapter 5: Zoning Board of Appeals Overview**

**Chapter 6: Critical Regional Issues**

**Chapter 7: Social Media in Planning: Community Outreach**

### ***General Session III***

**Chapter 8: Planning and Zoning Case Law Update**

**Chapter 9: Food System Planning**

**Chapter 10: Striking the Sustainability Balance: Wastewater Infrastructure**



## Message from Suffolk County Executive Steve Levy

Welcome to the Autumn Planning conference of the Suffolk County Planning federation.

Suffolk County is pleased that Brookhaven national Laboratory has once again offered to host this event and assist in providing state of the art training for local planning and zoning board members and to all others with an interest in the most up to date ideas and trends in the field. Through training and knowledge, the best land use and planning decisions can be made for the benefit of both local communities and the broader region.

I would like to thank the SCWA, the Suffolk County Planning Commission and the Long Island Chapter of the American Planning Association for their assistance in putting this event together.

Finally, I would like to thank you for attending this training and for your commitment to your community. Your participation today is an important investment in the future of Suffolk County.

## COURSE DESCRIPTIONS

### **Planning Board Overview (c) (d) (e)**

This basic course addresses the powers and duties of town, village, and city planning boards and commissions. The administrative and regulatory roles of the planning board, including its review of site plans, special use permits, and subdivision plats are discussed, along with the planning board's role in the municipal comprehensive plan. The importance of board procedures, referral to the county planning agency, and making findings are also covered.

### **Brookhaven National Labs - Sustainability Plan (e)**

As one of the major science assets of the Department of Energy, Brookhaven National Laboratory (BNL) has developed a multi-year vision for sustainability. This Site Sustainability Plan identifies aggressive actions in a broad suite of areas including energy, environmental, and water management. The lab is leveraging the ongoing modernization of the site to improve facility sustainability, move toward an alternative fueled vehicle fleet, and incorporate renewable energy sources. A BNL Sustainability Steering Committee composed of senior managers has been established to integrate a growing energy research portfolio with site operations to begin creating a "living Laboratory" with a special emphasis on technology demonstration.

### **Directors Roundtable (e)**

The New York State Constitution provides that the principal authority for guiding community planning and development is vested in the cities, towns and villages of the state. This home rule authority has allowed the municipalities in Suffolk County to shape their development patterns and land uses in accordance with the needs, desires and visions of their community. With a population of over 1.5 million residents in the County of Suffolk and the potential for an estimated 300,000 new residents by 2035, critical issues face our county. Come hear a discussion on how Suffolk's municipalities are addressing future growth and how inter-community and regional issues affect these initiatives.

### **Zoning Board of Appeals Overview (c) (d) (e)**

This introductory course to the zoning board of appeals focuses on the statutory tests boards must follow to grant use and area variances and proper handling of zoning interpretations. Meeting procedures and notice requirements will also be discussed, along with the ZBA's relationship with enforcement officials and the planning board, and the importance of making good findings.

### **Critical Regional Issues (e)**

The Critical Regional Issues seminar will discuss policy initiatives and ideas relating to land use issues that have a significant impact on Long Island's future. Topics of particular emphasis will include housing, energy efficiency, storm water runoff and renewable energy.

### **Social Media in Planning: Community Outreach (e)**

This session on the use of Social Media in Community Outreach will examine how Social Media is influencing a shift in communication strategies and the community participation process. The session will be moderated by Jaci Clement of Fair Media Council and the panelists will present an overview of new technologies and methodologies they have been utilizing and will present new strategies for engaging the community and developing relationships. While social media helps to build community, improve government transparency, and develop connection with citizens, it brings some new challenges. The session will examine new community outreach strategies and will present an overview of the new planning practitioner's tool kit.

## Planning and Zoning Case Law Update (a) (b) (e)

Recent cases that pertain to land use will be summarized and the implications of them on land use regulation at the local level explored. Opinions by the New York State Attorney General, Office of State Comptroller, and Committee on Open Government that pertain to land use and local governance will also be reviewed.

## Food System Planning (e)

Food is a critical role in our health, economy, and culture. Sustainable communities require healthy, sustainable food systems. Learn how planning boards and municipal planners could play an important role in the development of healthy local and regional food systems.

## Striking the sustainability balance: Wastewater Infrastructure (e)

Our models of the future, trend analyses, comprehensive plans and reality anticipate population growth in the County. Our private business sector, government officials and economists say grow we must to engage in the global economy or even survive the latest recession. Yet we all recognize the threats to the quality of our aquifer and coastal waters. This panel will focus on resolving the tension: can we accommodate growth through planning, infrastructure improvements, science and technology or, to prevent environmental degradation must we declare we are done growing.

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## COURSE CERTIFICATION KEY

This completed course provides the following continuing education credits:

- (a) CEO 1 hr.
- (b) CLE 1 hr. \*
- (c) CEO 2 hrs.
- (d) CLE 2 hrs. \*
- (e) AICP 1.5 hrs. \*\*

CEO = Code Enforcement Officers;

CLE = Attorneys (Continuing Legal Education);

AICP = American Institute of Certified Planners;

*\*CLE credit through the Albany Law School Institute of Legal Studies and the NYS DOS. Attorneys requesting CLE credit pay a fee of \$25 to the Albany Law School Institute of Legal Studies (certified by the NYS Continuing Legal Education Board).*

*\*\* AICP credit has been requested from the APA through the Long Island Section. Credit was requested for all workshops and the plenary session. The 2008 Fall Planning Conference received credits for all programs. The highlighted workshops are most likely to be granted credits. Contact the APA Long Island Section at [LongIslandSection@nyplanning.org](mailto:LongIslandSection@nyplanning.org) for further information.*

**Accreditation:** The Albany Law School Institute of Legal Studies has been certified by NYS Continuing Legal Education Board as an Accredited Provider of Continuing Legal Education in the State of New York.

## SPONSORS

This seminar is provided by the Suffolk County Planning Federation with the assistance and cooperation of the following entities:

**Suffolk County Planning Commission** - Support and guidance in the planning and delivery of the program has been provided by the Suffolk County Planning Commission (David L. Calone, Chair, Constantine Kontokosta, Vice Chair, Adrienne Esposito, Secretary).

**Suffolk County Department of Planning** - Staff assistance is provided by the Suffolk County Department of Planning (Sarah Lansdale AICP, Director). The Planning Department provides research and planning services to the County Executive, the Legislature and the Suffolk County Planning Commission, including advice on open space acquisitions, farmland preservation, demographic trends, municipal land use and affordable housing.

**American Planning Association (APA)** - The APA represents over 30,000 planners, elected and appointed officials and citizens concerned with land use planning. The [Long Island Section](#) of the NY Metro Chapter of APA offers programs for private and municipal planners and planning and zoning board members. Receive their monthly e-newsletter by sending your contact information to [LongIslandSection@nyplanning.org](mailto:LongIslandSection@nyplanning.org) or calling David Berg AICP, Director, at 516-827-4900

**New York State Department of State (NYS DOS)** - The NYS Department of State (Governor David Paterson) provides training to municipal officials who are seeking basic information about local government powers and duties in relation to the land use review and approval process. Basic land use management training courses are offered for Planning Board and Zoning Board of Appeals members, elected officials, and zoning enforcement officers.

**Brookhaven National Laboratory (BNL)** - One of ten national laboratories overseen and primarily funded by the Office of Science of the U.S. Department of Energy (DOE), Brookhaven National Laboratory conducts research in the physical, biomedical, and environmental sciences, as well as in energy technologies and national security. Brookhaven Lab also builds and operates major scientific facilities available to university, industry and government researchers. Six Nobel Prizes have been awarded for discoveries made at the Lab.

**Suffolk County Water Authority** - It was during this period that the American Water Works Association designated the SCWA as the largest supplier in the nation based entirely upon groundwater. As we celebrated our 50th Anniversary, we were serving 352,763 residential and business customers-more than a million people.

SCWA provides the highest quality water at the lowest possible cost in an atmosphere of excellent customer service.



### GUEST LECTURERS

#### **Anthony Aloisio, Director of Planning & Environment, Town of Huntington**

Anthony Aloisio received a Bachelor of Urban Studies and Economics from the University of Columbia in 1976. He went on study at the graduate level at the University of Rhode Island, earning a Master of Community Planning in 1978. Anthony began his career in Planning at the City of New Britain, Connecticut as a Planner in 1979. In 1983, he advanced to a Senior Planner for the Town of West Hartford, Connecticut. In 1987, Anthony moved to New York as the Director of Economic Development/Executive Director of the Industrial Development Agency for the Town of Brookhaven. He maintained this post for 9 years before becoming taking his current post as the Director of Planning & Environment for Town of Huntington, New York. Anthony has been an active member of the American Institute of Certified Planners and the American Planning Association since 1984. He is also an Economic Development Professional and a member of the National Development Council since 1994.

#### **Lanny Bates, Assistant Laboratory Director for Facilities & Operations (F&O) at the Brookhaven National Laboratory**

Lanny Bates is Assistant Laboratory Director for Facilities & Operations (F&O) at the U.S. Department of Energy's Brookhaven National Laboratory. Named to that position in 2007, Mr. Bates oversees the directorate responsible for the **operations, protection and modernization of the Laboratory's physical plant and infrastructure, which includes more than 350 buildings on an almost 5,300-acre campus.** He manages some 560 employees and an annual budget of approximately \$100 million. At BNL, Mr. Bates initially completed a significant reorganization of his directorate, to focus more strategically on modernization of the lab along with better integrated operations and protective services. **More recently he has led the implementation of Integrated Facility Management which is a best practice "landlord/tenant" approach to managing the Laboratory's facility portfolio.** This has resulted in deployment of Directorate staff to **geographic "complexes" to improve customer service, work control, and facility planning.** Coming to Brookhaven Lab with 30 years of experience within the DOE laboratory system, Mr. Bates Previously served as the Director of the Facilities Development Division at Oak Ridge National Laboratory (ORNL) in Tennessee, where he oversaw a \$300-million, one-million-square-foot infrastructure modernization program. Bates also served as the Executive Vice President of University of Tennessee-Battelle Development Corporation, the not-for-profit established to facilitate private-sector **investment in ORNL's modernization.** Mr. Bates holds a 1975 B.S. in nuclear engineering from Mississippi State University and completed graduate courses in nuclear engineering at the University of Tennessee. He has been honored with the 1998 American Academy of Environmental Engineers Superior Achievement Award, the 1990 and 1998 Lockheed Martin Energy Systems Management Achievement Award, and the 2005 and 2007 ORNL Small Business Advocate Award.

#### **Michael Bebon, P.E., Deputy Director for Operations at Brookhaven National Laboratory**

Mr. Bebon is the Deputy Director for Operations at Brookhaven National Laboratory (BNL). He is one of the members of **BNL's three person senior leadership team (Lab Director, Deputy Director for Science & Technology, Deputy Director for Operations).** In this role he is responsible for all non-science functions at BNL including Facilities & Operations, ES&H, Finance, HR, environmental Restoration (EM) projects, IT, major construction, energy management and utility contracts management, community and stakeholder relations, and other mission support services. His responsibilities also include **work on a range of management initiatives across the Laboratory's science and support organizations.** BNL is one of the DOE Office of Science multi-program national laboratories, with 3,000 employees, over 4,000 visiting scientists, and an annual budget of \$700M. He holds a B.E. in Mechanical Engineering from New York University, an MBA from the University of Utah, and is a Licensed Professional Engineer (P.E.) in New York State. Before joining BNL he was Chief Engineer at the USDA Plum Island Animal Disease Center and a consultant on biological safety laboratory design to the United Nations World Health Organization. He consulted on several laboratory design and construction projects in Mexico and Panama. He subsequently worked for the Department of Energy, Brookhaven Site Office with responsibility for federal project management for a range of major scientific facilities at BNL and other sites in the northeast. He joined the BNL staff in 1987. Prior to his current position at BNL he served as Manager of the Plant Engineering Division and as Assistant Laboratory Director for Facilities & Operations. He has been in his present position since 2003. Mr. Bebon is a member of the Board of Directors of the Energy Facilities Contractors Group, a group of contractors associated with operations across the DOE complex. A Vietnam Era Veteran, Mr. Bebon is a retired Colonel, U.S. Air

## **INTRODUCTION**

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Force, with 28 years of service, including 23 years with the NY Air National Guard at Westhampton Beach, NY and 3 years active duty USAF. His military career in Civil Engineering and Mission Support closely paralleled his civilian career. He is a graduate of the USAF Air War College. In addition to his many years of military service, Mr. Bebon continues to work in support of the local community. He currently chairs the Advisory Board of Little Flower Children and Family Services (a non-profit agency serving children and families in Long Island, Brooklyn, and Queens NY) and is a past President of the Little Flower Union Free School District. He currently serves as a member of the Shelter Island, NY Community Housing Board, working to develop and provide affordable housing to Shelter Island residents. He is a member of the American Society for Quality, the Higher Education Facilities Officers Association, and the Society of American Military Engineers.

### **Tullio Bertoli, Planning Commissioner, Town of Brookhaven**

Commissioner Bertoli is a graduate of the Yale School of Architecture, Fulbright Scholar in Planning as well as APA, AICP, LEED AP and CNU certified. As Brookhaven Planning Commissioner, Mr. Bertoli oversees a staff of 110 persons in five divisions. His recent planning efforts include the Carmans River Watershed Protection Plan, the Ronkonkoma HUB TOD, Blight to Light initiative, The Meadows and other large redevelopments projects. Mr. Bertoli has introduced multiple code revisions that focus on Growth Management Principles, Form Based Zoning, New Urbanism, Tradition Neighborhood Development and LEED Green Building philosophies.

### **David L. Calone, Chairman, Suffolk County Planning Commission**

David Calone has been a member of the Commission since 2006 and Chair since February 2008. He is a the Managing Member of Jove Equity Partners, LLC, a firm that manages private equity and venture capital investments. He serves on the Board of Directors of six privately-held companies. Mr. Calone previously served as a federal prosecutor in the U.S. Department of Justice's Honors Program where he received a 2003 Attorney General's Award for his work in fighting terrorism-related and corporate international crime. Mr. Calone also served as a Special Assistant Attorney General in the New York State Attorney General's Office and was an associate at Paul Weiss Rifkind Wharton & Garrison in New York. He has a degree in economics from Princeton University and received a J.D. from Harvard Law School.

### **Jennifer Casey, Suffolk County Planning Commission**

Jennifer Casey is a partner in the Albertson office of Ahtmuty, Demers & McManus. Ms. Casey began her career with the Firm as a law clerk while attending law school in the evening. Ms. Casey is an experienced trial attorney and currently focuses her practice on construction site accident litigation, premises liability matters, products liability and complex automobile litigation including UM/SUM claims. In connection with her representation of various corporations, Ms. Casey also counsels and represents her clients on employment and labor law issues as well as commercial litigation matters. Ms. Casey handles commercial transportation and trucking litigation. She coauthored the US LAW Trucking Compendium for New York, the DRI Trucking Compendium for New York, and serves on the Firm's US Law Rapid Response Team. Ms. Casey has lectured to the Buffalo Claims Association and Syracuse Claims Association as well as various insurance carriers. She helped design and continues to implement the Firm's Continuing Legal Education Program which is accredited by the New York State Continuing Legal Education Board. Ms. Casey serves on the board of directors of various organizations including the National Association of Insurance Women (New York City Chapter), Huntington Economic Development Corporation, Suffolk County Child Care Council and Suffolk County Red Cross. She is a member of the Class of 2009 of The Energeia Partnership, The Academy for Regional Stewardship at Molloy College.

### **Matthew Chartrand, Suffolk County Planning Commission**

Matthew Chartrand was born in Brooklyn in 1967. When he was seven his parents moved to Long Island and he has lived in Islip Township for the past 35 years. His personal achievements include coaching West Islip football, serving as an Active Alumni of West Islip High School, performing volunteer work for the community, and Captain of the Varsity Football Team during his high school years. He was awarded the Computer Science Award and taught Computer Education to students in Junior High and Elementary Schools. He performed volunteer service building the Brookhaven Firefighters Museum. Matthew attended Stony Brook University for courses in Computer Science and Liberal Arts. He attained an Associates Degree in Liberal Arts from Nassau Community College and studied Business Management at St. John's University. In recent years he has completed courses in Business Management at Farmingdale University, Cornell ILR. Matthew owned a home improvement company until 1993. Matthew is presently a member in good standing of

## INTRODUCTION

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Iron Workers Local 361 and was officially initiated in 1994. He has performed all aspects of the Iron Working industry. He was appointed to the position of Business Agent in 2004 and is now the President of Iron Workers Local 361, which has 850 active members. He is also the Assistant Apprentice Coordinator, involved in the training of 250 Apprentices and 500 Journeymen who participate in upgrading courses. Matthew resides in West Islip with his wife Lori and his four children, Matthew, Jade, Michael and Maggie.

### **Jaci Clement, Executive Director, Fair Market Media**

Ms. Clement is a media expert with more than 20 years of experience in the communications industry. She is currently executive director of the Fair Media Council, headquartered at Briarcliff College on Long Island, New York. She is regularly interviewed on issues affecting local news and the subsequent impact on the news consumer; frequently contributes opinion pieces on the topic to a variety of publications, and speaks around the country on the importance of being a media savvy consumer. Her background in reporting and editing is complemented by extensive experience working on the business side of newspapers, including internal communications, marketing, advertising, circulation and research. Prior to her current position at FMC, she was an executive with Dolan Media, based in Minneapolis, MN and Times Mirror Co.

### **Walt Dawydiak, Suffolk County Department of Health**

### **Frank DeRubeis, Director of Building & Zoning Department, Town of Smithtown**

Frank DeRubeis is a native of New York City who was raised in Cleveland, Ohio. He attended John Carroll University in University Heights, Ohio where he received a Bachelor in Political Science. He then went on to receive a Master of **Political Science from St. Mary's University in San Antonio, Texas. Upon completion, Frank went on to study Politic Science for an addition two years at the New York School for Social Research in New York City.** In early 1973, Frank went to work for the Town of Smithtown as a Planner. In 1974 he joined the Suffolk County Department of Planning as a Planner and later continued with the Suffolk County Department of Transportation. Frank then returned to the Town of Smithtown working in Planning and becoming a Senior Planner. In 1981 he became the Director of Community Development in the Town of Smithtown. In 1985 Frank became the Planning Director for the Town of Smithtown and has maintained his dedication and duties there to the present day. As a Planning Director, Frank plays a critical supervisory role over staff and functions in an advisory role to many town committees, including the Town Board, the Planning Board, the Board of Site Plan Review and the Board of Zoning Appeals. Additionally, he administers **Smithtown's Community Development Block Grant Program and other housing assistance programs. Currently, Frank is overseeing the work on updating Smithtown's Comprehensive Plan.**

### **Dr. Nancy Douzinas, President, Rauch Foundation**

After a career of twenty years as a psychologist and family therapist, Nancy Rauch Douzinas decided to devote herself to expanding and building the Rauch Foundation, a family foundation created by her father and uncle in 1961. In 1990 she became President of the Foundation and under her leadership the Rauch Foundation has sought to be a change agent on Long Island and in Maryland. Understanding the value and cost/benefits of a prevention based approach to social and clinical problems, Dr. Douzinas helped develop such an orientation for the Foundation and its grants in the areas of children and families, the environment and the development of civic and non-profit leadership.

Dr. Douzinas has played a pioneering role in regard to sustainable development by creating the Long Island Index and convening its Advisory Committee. A status report on the quality of life on Long Island, the Long Island Index has received wide acclaim for being a catalyst for the development of regional awareness and understanding. Dr. Douzinas **writes a monthly article "What Every Long Islander Should Know" that appears in a number of Long Island business and community newspapers.**

In keeping with her broad range of community concerns and personal interests, Dr. Douzinas serves as a board member for Stony Brook Foundation, Society for the Preservation of Long Island Antiquities, the Energeia Partnership, North Shore Land Alliance and Teachers College at Columbia University.

A lifelong resident of the New York area, Dr. Douzinas graduated from Smith College and received a Masters degree and doctorate from New York University in Community Psychology where she wrote her dissertation on how young children

## INTRODUCTION

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cope with the birth of a sibling. She has traveled extensively, speaks several languages and has lived abroad for several years. She and her husband reside in Lloyd Harbor and have two married daughters and five grandchildren.

### **Adrienne Esposito, Suffolk County Planning Commission**

Adrienne Esposito has been a member of the Commission since 2006 and became Secretary of the Commission in 2008. She is the Executive Director of Citizens Campaign for the Environment (CCE). CCE is a non-profit organization working in NY and CT to protect natural resources and public health. CCE has 6 offices and conducts research, lobbying and public education on diverse environmental campaigns. Such campaigns include groundwater protection, land use planning, coastal water protection, estuary and ocean protection, protection of Great Lakes, toxic waste remediation, pesticides reduction, renewable energy campaigns, energy planning, clean air and public health issues. Previously she was Associate Executive Director of A Citizens Campaign for the Environment. Ms. Esposito holds a BA in Geology and Environmental Science from LI University, CW Post.

### **John Finn, Suffolk County Planning Commission**

John Finn is the Director of Leasing and Acquisitions at Damianos Realty Group LLC and a resident of Smithtown. John has been with Damianos Realty Group since 1998 and has proven himself to be an invaluable asset to the firm, playing an active role in its rapid growth and expansion, while still managing to oversee the day-to-day operations, and has **successfully negotiated countless transactions for the 21 properties in the firm's impressive commercial portfolio. In 2008, Damianos Realty Group was awarded the prestigious "Developer of the Year" award by The Association for a Better Long Island and The Commercial Industrial Broker Society for the firm's newest construction project located at 100 Hospital Road in Patchogue- a modern medical office building providing much-needed services to the local community.** John was instrumental in the design and development of this 54,000 square foot state-of-the-art medical building, and just a little over a year after the first shovel hit the ground, John and his team already had the building fully leased. John is a member of the Long Island Business News 40 under 40 Class of 2009, which recognizes outstanding individuals in the business community on Long Island. John is a recipient of the Top Commercial Real Estate Power Brokers of the Year award from Costar, the largest commercial real estate information company in the United States, and is an Associate Member of the Commercial Industrial Broker's Society. John is actively involved in charitable and fund-raising events throughout Long Island, including the YMCA of Long Island, Friends of Karen, Long Island Museums, and the March of Dimes. John was elected to the Corporate Board of Directors for the YMCA of Long Island in 2009. John Resides in the Town of Smithtown and has two children.

### **Carl Gabrielsen, Suffolk County Planning Commission**

Carl Gabrielsen is CEO of Gabrielsen Farms LLC one of Long Islands largest greenhouse operations with over 200,000 sq. feet of greenhouses. Gabrielsen Farms supplies flowering plants throughout the Long Island and New York Metro area. Currently, Gabrielsen Farms is in its 3rd year of transitioning into a "growing green" greenhouse facility. Using an integrated pest management system, he has reduced pesticide usage by 90%. Carl has also initiated a program which recycles water and curtails his energy consumption in half by installing energy saving curtains, high efficiency heaters, and smart computers. He also recruits high school students to work collaboratively on data collection as part of the integrated pest management program. His goal is to help other greenhouse facilities and farming operations become **more sustainable. Coming from a farming family which dates back to the 1800's, Carl knows the importance of embracing change.** Some of his current activities include Riverhead Industrial Development Agency Board member, Long Island Farm Bureau member, Ohio Florist Association member, Forget Me Not Foundation Co-Founder; raising funds for needy children and is a sponsor for St. Judes Children Hospital. He has also been a member of the NYS mentoring program for under privileged children, volunteered in soup kitchens and has raised funds for autism foundations. Carl's past professional experiences are comprised of corporate sales manager and grower for Jamesport Flower Shop, land investment on Long Island and upstate New York, Gabrielsen Builders on Eastern Long Island, and hay farming in upstate New York. He currently resides in the hamlet of Northville with his wife and children.

### **Carrie Meek Gallagher, Chief Sustainability Officer for the Suffolk County Water Authority**

Carrie Meek Gallagher is responsible for implementing a sustainability program, including source water protection, water quality improvement, water conservation, energy efficiency, renewable energy, recycling, green buildings and procurement, waste reduction, and environmental education. Prior to becoming Chief Sustainability Officer, she was the

## INTRODUCTION

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Suffolk County Commissioner of the Department of Environment and Energy, safeguarding the county's natural resources and providing a single centralized office for consideration of issues and activities from the perspective of their impact on the environment. Previously she also served as Deputy Director of Planning for Suffolk County; the inaugural director of the Long Island Index, an indicators project that measures the region's progress toward improving the quality of life for all Long Islanders; headed the Nassau County Economic Development Resource Center under County Executive Tom Suozzi; and developed Sustainable Long Island's Brownfields Redevelopment program. She holds a B.A. in Sustainable Development and Latin American Studies from Amherst College, an M.S. in Conservation Biology and Sustainable Development from the University of Maryland at College Park, and an MBA from the Frank G. Zarb School of Business at Hofstra University. Long Island Business News selected her as one of its 40 Rising Stars Under 40, Class of 2003, she is a member of Energeia, Class of 2006 and a LEED AP BD+C. Ms. Gallagher grew up in the Three Village area and currently lives in Stony Brook with her husband Tom, daughter Corrine and son Connor.

### **James F. Gaughran, Chairman Suffolk County Water Authority**

Chairman, term as Member expires in March 2013. Mr. Gaughran is an attorney in private practice, having begun his practice in 1984. He is admitted to practice in the New York State and U.S Eastern District of NY Courts. He has held a number of public sector appointments over the years including service as counsel to the Huntington Community Development Agency, Village of Northport, Town of Babylon and staff service to Congressman Gary Ackerman and the New York State Senate. From 1984-1987 he was an elected member of the Huntington Town Board, which included service as a Commissioner of the Dix Hills Water District. From 1988-1993 he was an elected member of the Suffolk County Legislature, representing the 17th District, during which time the Legislature aggressively supported and funded the Suffolk County Drinking Water Protection Program. Mr. Gaughran received a Bachelor of Arts degree in Political Science from Stony Brook University and a Juris Doctor degree from Hofstra University School of Law

### **David Genaway, Commissioner of Planning, Town of Islip**

Dave Genaway is the Commissioner of Planning for the Town of Islip in Suffolk County, New York. Dave is responsible for Comprehensive Planning and land policy analysis, overseeing the land development review process, and ensuring that the Planning Department operates smoothly. Dave also manages the Town's Geographic Information System along with various permit tracking systems and databases. Dave played basketball for the State University of New York at Buffalo from 1989 to 1993 and graduated with a B.S. in Urban Planning and Development. He later graduated with a Master of Urban Planning (MUP) degree from SUNY Buffalo in 1995. Dave gained his first professional experience while working at the Jackson Heights Community Development Corporation located in northern Queens, New York City. The JHCDC, is a non-profit organization involved in Community Development, housing counseling, and economic development. While at the JHCDC, he became the Senior Business Counselor and was instrumental in helping hundreds of new businesses attain critical start-up financing. Dave began work for the Town of Islip in 1997. During his time at Islip, Dave performed many aspects of land development review including: site plan review, Zoning Board of Appeals application analysis, and Zoning administration. Dave also supervises the Town's compliance with both the Governmental Accounting Standards Board (GASB) mandates along with the requirements of the Clean Water Act (EPA Phase II Stormwater management mandates). Today, Dave continues his efforts to modernize and streamline the operation of the Planning Department through the growth of the Town's GIS and through the on-going improvement of various computerized permit tracking systems. Dave is a member of the American Planning Association along with the American Institute of Certified Planners. Dave currently resides in Medford, Long Island with his wife Danielle and their two children Zachary and Madison.

### **Joseph M. Gergela III, Executive Director, Long Island Farm Bureau**

Joseph M. Gergela III knows what it's like to feel the soil run between his fingers; farming is in his blood. He owned, operated and managed his own farm in Riverhead for 11 years, where he grew vegetables. It is only logical that as executive director of the Long Island Farm Bureau since 1988, he lobbies on legislation for farmers, fishermen and agribusinesses at the local, county, state and federal levels.

Joseph received his bachelor's degree in business administration and computer science from Southridge State University in South Carolina. Among his many accomplishments are his contributions to legislation for the Breast Cancer Pesticide

## INTRODUCTION

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Registry in New York State. He was also a contributor to the drafting and passage of the Long Island Pine Barrens laws. In addition, Joseph participated in the establishment of the Peconic Region Community Preservation Fund. Gergela has been an active member of many organizations. He serves on the NYS Farmland Preservation Committee and on the LI Pine Barrens Advisory Board.

### **Chris Gobler, Associate Professor, Stony Brook University**

Christopher Gobler received his Ph.D. from Stony Brook University in 1999 where he continues his research and teaching on **phytoplankton, harmful algal blooms, estuarine ecology, and aquatic biogeochemistry**. Chris' research is primarily concerned with factors which promote phytoplankton growth and algal mortality in diverse aquatic ecosystems and **harmful algal blooms in various aquatic ecosystems throughout the US as well as locally**. Additionally, Chris' laboratory investigates the ecological functioning and trophic status of estuaries. Since estuaries represent some of the most productive, biodiverse, and important ecosystems on earth and impact 90% of New York State counties and 100% of Long Island townships, a series of environmental problems have arisen in these systems in recent decades which need to be understood. Chris' lab group is engaged in research aimed toward understanding how anthropogenic activities such as eutrophication, overharvesting of fisheries, and salt marsh/shoreline modification may alter the natural biogeochemical and/or ecological functioning of estuarine ecosystems.

### **Daniel Gulizio, Deputy Director of Planning, Suffolk County Department of Planning**

Dan Gulizio is the Deputy Director of Planning for Suffolk County. Prior to his appointment he has served as the Commissioner of Planning and Development for the Town of Islip and the Commissioner of Planning, Environment and Land Management for the Town of Brookhaven. Dan Gulizio is a graduate of Colby College and he holds a Master of Science degree in Urban and Regional Planning from Columbia University. He is also a graduate of St John's University School of Law.

### **Richard Hanley, Director of Planning, Town of Riverhead**

### **Linda Holmes, Suffolk County Planning Commission**

Linda G. Holmes has been a member of the Commission since 2004, representing Shelter Island. She served as Vice Chairman of the Planning Commission from 2006-2008. Ms. Holmes served as a member of the Shelter Island Town Planning Board from 1981-85, and has been active in environmental issues on the East End for 30 years. She is past president of the nation's oldest press club, the New York City-based Society of the Silurians, and is a director of the Overseas Press Club Foundation. She is a Pacific War historian, and has published two books about the Allied POWs in Japanese captivity during World War II. Ms. Holmes is a graduate of Scarsdale schools and Wellesley College. Her mother's family has been on Long Island since 1626.

### **Ann Marie Jones, Commissioner of Planning, Environment & Land Management, Town of Babylon**

Ann Marie Jones is currently the Commissioner of Planning and Development for the Town of Babylon. With a total population of 211,792 and an average of 3.03 persons living in 69,048 households, Babylon is the most densely populated town in Suffolk County. The Department of Planning and Development is one of the largest in town government, administers four divisions and four boards including the Building Division and the Zoning Board of Appeals, and is actively engaged in land use decisions and policies.

Prior to being appointed commissioner, Ms. Jones was the first person to head the Office of Downtown Revitalization and Economic Development in the Town of Babylon. Working in the Supervisor's office, Ms. Jones lead a multi disciplinary team dedicated to creating and implementing downtown community vision plans and economic development strategies for hamlets within the town. Her office secured over five million dollars in grants for downtowns in various communities. In 2005 Babylon received the largest Brownfield Opportunity Area (BOA) grant in Nassau and Suffolk Counties, for the community of Wyandanch. Since the Downtown Revitalization Office was expanded and relocated to the Planning Department Wyandanch has been named a Spotlight Community, one of only three in New York State.

## INTRODUCTION

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Prior to coming to the Town of Babylon Ms. Jones developed affordable housing in the towns of Riverhead, Brookhaven and Southampton as Planning Director for the Long Island Housing Partnership. In the early 1980's she was part of the team at the Town of Islip that laid the foundation for the current revitalization in downtowns Bay Shore, Brentwood and Central Islip.

Ms. Jones has been recently appointed to the New York State Brownfield Advisory Board and serves on the Suffolk Farmland Committee and the board of the Route 110 Partnership. She holds a Bachelor of Arts in studio art from Drew University and a Master of Science in city and regional planning from the Pratt Institute School of Architecture.

### **Michael Kelly, Suffolk County Planning Commission**

Michael Francis Kelly, Esq. is the Principal of Kelly Development Corp. focusing on the development of small subdivisions and consulting on various real estate issues for such organizations as The Long Island Housing Partnership, Avalon Bay Communities and the Clare Rose Organization. Mike is also a partner with Sean Rose in Rose and Kelly Development, LLC. Their focus is on redeveloping blighted sites throughout Long Island. Prior to forming his own businesses, Mike was the Vice President of Land Acquisitions for Pulte Homes of Long Island (2003-2008). He also worked for the Prudential Home Mortgage Company, Chase Manhattan Bank and the Law Firm of Meyer, Meyer and Keneally in Smithtown. Mike has over 20 years of diversified real estate industry experience and gained valuable experience working for these companies as well as TiBi Development. Mike is the Treasurer for LIBI and serves on the Board of Directors of the Down Syndrome Advocacy Foundation. He is also a member of the NY State Bar and its Committee on Land Use and Real Estate Legislation, as well as being a licensed real estate broker and a LIBOR member. **He has been honored as the recipient of the Paul S. Miller "With Liberty and Justice for All" award by Touro Law School in 2006 and The Good Neighbor of the Year from The Central Islip Civic Association in 2008.** Mike actively participates in the Friendly Sons of St. Patrick Society and the Brehon Law Society, both organizations deeply rooted in his Irish heritage. **Mike is a member of Energia, Long Island's regional leadership program within Molly College.** He is a member of the Business Improvement District for the Village of Patchogue. Mike graduated from Chaminade High School and has a B.S. in Finance from Providence College, an MBA from the University of St. Thomas, Minnesota and a Juris Doctorate from Touro Law School. His wife, Kathleen Feeley, Ph.D., is a world-renowned expert on children with Down Syndrome and Autism and a professor at C.W. Post University. Mike and Kathleen live in Stony Brook and have four children; Thomas, John, Owen – The Big O, and Catherine Mary.

### **Sarah Lansdale, AICP, Director, Suffolk County Department of Planning**

Sarah Lansdale, has been an at large member of the Commission since 2005. Ms. Lansdale was selected as Sustainable Long Island's second Executive Director in September 2004. Sarah has a diverse background, bringing experience in, environmental studies, and urban planning to the organization. Sarah has extensive community outreach experience, including two years as a Peace Corps Volunteer in Guatemala. Sarah holds a Masters Degree in Urban Planning from New York University and a Bachelor's of Science in Environmental Studies and Agricultural Economics.

### **Daniel Latorre, Vice President, Digital Placemaking, Project for Public Spaces To PPS**

Daniel brings rich online experience in human-centered digital media design, online marketing and communications, social media product strategy, and online technology planning. His attention shifted toward using effective design methods and today's powerful social technology tools for the civic realm in the movements around open commons, open government, and now, open urban planning. Currently, Daniel's focus for improving PPS's virtual Town Square is on digital engagement for Placemaking - translating PPS's place audits, survey methods, and place frameworks, into the digital realm, and evolving the organization's media communications practice in our highly networked era.

### **Heather Lanza, Director of Planning, Town of Southold**

Heather Lanza is the Planning Director for the Town of Southold. Ms. Lanza received a Master of Science in Conservation Biology from the University of Massachusetts at Amherst and earned her certification as a planner from the American Institute of Certified Planners. Prior to joining the Town of Southold, Ms. Lanza was the Assistant Planning Director in the Town of Brookhaven.

## INTRODUCTION

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### **Mike Lydon, Principal, The Street Plans Collaborative**

Mike is a leader in the practice of smart growth planning, active transportation design, and research techniques. Lydon was selected as one of thirty-four Urban Vanguard for the Next American City, a magazine created for and by a new generation of urban thinkers and leaders.

### **Tom McAdams, Suffolk County Planning Commission**

Thomas McAdam has been a member of the Commission since 2007. He holds a Bachelor & Master Degree's in the fields of Accounting, Finance and Government. Mr. McAdam is retired from Suffolk County Government after 30 years in the County Executive's Budget Office. Since 2001, he has been a Licensed Sales Associate with Prudential Douglas Elliman Real Estate. Mr. McAdam has been a Suffolk County resident for 45 years. Mr. McAdam holds accounting degrees from Long Island University and Adelphi University.

### **Paul Mobius, Chairman of the Planning Board, Town of Shelter Island**

Paul Mobius grew up in North Bellmore in Nassau County and has lived on Shelter Island since 1962, where he and his wife, Dorothy, raised two sons, Mark and Matt. A graduate of the U.S. Merchant Marine Academy with a degree in marine engineering, he was the recipient of its Superintendent's Cup for Character, marking the beginning of a lifetime of service to his country and his community. Named Shelter Island Lions Club "Citizen of the Year" in 2009, he also received a proclamation making May 30th "Paul Mobius Day" in Suffolk County from Legislator, Ed Romaine, and a citation from the Shelter Island Town, which followed its 2004 recognition of Paul's "long and deep involvement...an outstanding example and inspiration to the public." In addition to having served as the Chairman of the Shelter Island Planning Board, a Shelter Island Justice/Councilman, and six terms on the Town Council where he was Deputy Supervisor, he has volunteered on many town committees, most recently a special task force to review the Town's Comprehensive Plan. He has also served as director or president of the Shelter Island Chamber of Commerce, president of the Lions Club, as an officer of the local Republican Committee, an elder and trustee of the Presbyterian Church and a member of the Island's Historical Society, Friends of Music and its Community Chorus.

### **Patricia C. Moore, Esq., Moore Law Offices**

Patricia C. Moore, Esq. is an attorney practicing on the East End of Suffolk County since 1986. Her law office is in Southold where she works in all areas of Real Estate Law, Zoning and Land Use, with extensive experience in land use issues and wetland regulations. She works with her husband, William D. Moore Esq. with years of experience in Article 78 litigation. From 1988 to 1994 she was Town Attorney in Riverhead, representing the Town of Riverhead in all manner of land use issues. She is a member of the Suffolk County Bar Association and New York Bar Association. She is a board member of Southold Voice, providing her knowledge to a not-for-profit organization of north fork waterfront property owners which promotes awareness of issues affecting shoreline and marine resources.

### **Jefferson Murphee, Town Planning & Development Administrator, Town of Southampton**

As the Town Planning and Development Administrator, I am employed by the Town of Southampton, New York and am in charge of four divisions including Long Range Planning, Current Planning, Building and Zoning, Environment and the Administration Office. I have more than 30 years of public and private sector experience in planning, land use, development and environmental protection in California, Nevada, New Jersey and New York.

I am nationally certified in planning by the American Institute of Certified Planners and have a bachelor's degree in Geography from the University of Miami and a Masters degree in City and Regional Planning from the Edward Bloustein School of Planning and Public Policy – Rutgers University.

## INTRODUCTION

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I am currently a member of the Village of North Haven Planning Board, Co-Section Director for the Long Section of the American Planning Association and Treasurer of the Special Education Teaching Organization (East End of Long Island).

### **Brandon Palanker, Vice President for Marketing and Public Affairs, Renaissance Downtowns**

The only way to successfully implement large-scale downtown redevelopment within suburban regions is to actively engage the community. Renaissance's grass roots, social media program called Crowdsourced Placemaking, utilizes the internet and in-person meet-ups to help forward Triple Bottom Line (socially, economically and environmentally responsible) development in suburban downtowns.

### **Natasha Esther Phillip, Esq., Senior Attorney, NYS DOS**

Natasha Esther Phillip, Esq. received a Doctor of Jurisprudence degree from Albany Law School with a concentration in Environmental Law. Ms. Phillip frequently lectures and provides advice and assistance to local government officials in order to further their understanding and compliance with federal, state and local laws. Prior to joining the New York Department of State in April 2007, she trained and worked with land use planning and zoning practitioners at the Albany Law School Government Law Center. Her work with the Government Law Center on local government and land use planning issues earned her the 2005-06 American Bar Association State and Local Government Law Section Student Excellence Award and the 2006 Albany Law School Government Law Center Prize. Ms. Phillip is admitted to the practice of law in New York State. She is also a member of the New York State Bar Association, serving on its Committee on Attorneys in Public Service and the Executive Committee of its Municipal Law Section.

### **Barbara Roberts, Suffolk County Planning Commission**

Barbara B. Roberts has been a member of the Commission since 2006. Prior to her current career as a business consultant, she successfully built and sold FPG International, an agency representing the work of over 1,000 photographers worldwide, and Acoustiguide, the producer of audio tours and equipment for museums worldwide. Earlier in her career she worked on Wall Street for 15 years and was the first woman on the board of directors of Dean Witter. Ms. Roberts has served on numerous non-profit boards, particularly focused on promoting the economic and political empowerment of women, including the domestic violence center, The Retreat. She also has served on the boards of the Group for the South Fork and Guild Hall. She is a David Rockefeller Fellow and served as Chair of the Federal Reserve Bank of New York's Business and Agricultural Advisory Board, was on the Suffolk County Economic Development Board and was a member of the board of the 14th Street Local Development Corp/BID in Manhattan and heads the Women Presidents Organization Long Island Chapter. She holds an Economics degree from Goucher College.

### **Paulette Satur, Farmer and Business Owner, Satur Farms**

Paulette Satur grew up on her family farm in central Pennsylvania, studied Horticulture at The Pennsylvania State University and was awarded a graduate degree in Plant Physiology from The University of Arizona. After twelve successful years in the wine business in NYC, she returned to her love of the land when she and her husband purchased their farm.

Paulette Satur and her husband, chef Eberhard Müller own Satur Farms, a farm dedicated to growing the finest vegetables and culinary ingredients. They purchased their original farm on the North Fork of Long Island in 1997, with the intention of growing some vegetables and herbs for Chef Müller's restaurant. Colleagues in New York City asked if they might be able to buy their produce, and the farm as a business became a reality.

Satur Farms grows specialty salads, leafy vegetables, heirloom tomatoes, root vegetables, and herbs. Satur is committed to sustainable farming, not only in relation to the fields and the safe production of vegetables, but also ensuring employees continuing and livable wages. As well, Satur Farms adheres to sound agricultural practices with a focus on respect for the soil by utilizing crop rotations, planting cover crops, and using organically-approved sprays whenever possible. As well, Satur Farms uses only packaging materials which are 100% recyclable whenever possible. The company's social responsibilities, however, continue beyond our fence line, and Satur Farms donates to food rescue organizations and is involved in local fundraisers for farm organizations and for neighboring farm rescue.

## INTRODUCTION

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### **Lawrence Swanson, Chairperson, Council on Environmental Quality**

Lawrence Swanson is Associate Dean of the School of Marine and Atmospheric Sciences, Director of Waste Reduction and Management Institute, active with the Stony Brook Harbor Task Force and Suffolk County Council for Environmental Quality. His broad research concerns reducing the impact of waste generation on society. In the context of the ocean, **this translates to understanding and identifying the ocean's appropriate use as part of a comprehensive waste management strategy and the consequences of urban population centers, infrastructure and waste management practices of WRMI's development of new products with different forms/uses made from post-consumer waste**

### **Diana Weir, Suffolk County Planning Commission**

Ms. Diana Weir was appointed Vice President of the Long Island Housing Partnership in 2004. In the early 90's, Ms. Weir served on the Long Island Housing Partnership Board of Directors Executive Committee. Ms. Weir, a banker for over 25 years, was a Senior Vice President at the Banks of Smithtown and the Bank of the Hamptons. She served five years in Washington as Chief-of-Staff for the Congressman from Long Island's 1st Congressional District. She was elected to public office herself in 1999 and served for four years on the East Hampton Town Council. For over 30 years, Diana has been involved in her community, volunteering on various boards and committees dedicated to inclusion and equity for women, minorities and Latinos. New York City's El Diario/La Prensa newspapers honored her as one of the "100 Latin Women of Distinction." Ms. Weir served as a commission on the Suffolk County Human Rights Commission, chaired the Suffolk County Hispanic Advisory Board and the Board of the Bridgehampton Day Care Center. She co-chaired the Economic Development panel at the Long Island Hispanic Leadership Summit, and served on the original East Hampton High School site-based management team. Ms. Weir currently serves on the Stony Brook University Multicultural Advisory Committee and as a Commissioner for the 2nd Legislative District on the Suffolk County Woman's Commission.

### **Michael White, Of Counsel, Anthony E. Core, P.C.**

### **Marguerite Wolffsohn, Director of Planning, Town of East Hampton**

Marguerite Wolffsohn graduated in 1977 from the SUNY College of Environmental Science and Forestry in Syracuse, NY with a Bachelor of Forest Biology. She later continued studies on the graduate level at Long Island University C.W. Post Campus in Brookville, NY. She obtained a Master of Biology in 1987.

Before working directly in Planning, Marguerite worked as a Museum Curator and Wildlife Biologist for the Theodore Roosevelt Sanctuary Inc, in Oyster Bay, NY where she preserved and cared for wildlife, created exhibits for the public, and devised a 10 year plan for maintaining the property and its environment. In 1987, she began work for the Town of East Hampton Planning Department as a Planner, reviewing Natural Resource Special Permits. Marguerite quickly began to experience all the aspects and working of the Planning Department and was promoted to Assistant Planning Director in 1992. In 2001, Marguerite began serving in her current role as Planning Director for the Town of East Hampton.

Marguerite has authored and co-authored several Planning Department publications on the topics of Open Space for the Town Comprehensive Plan, Town of East Hampton Superblock III Study, Flora and Fauna Component of the Local Waterfront Revitalization Plan and others, as well as a contribution to American Birds.

### **John-David Wood, Land Use Training Specialist, NYS DOS**

J-D Wood is a Land Training Specialist with the New York State Department of State. He received a master's degree in Regional Planning from the State University of New York at Albany in 2003 and holds a B.A. in Behavioral Sciences from SUNY Plattsburgh. A former Nation park ranger, J-D applies his passion to open space, smart growth and preservation of natural and historic resources to much of this work. J-D has worked for several Capital Region planning firms, local government planning and advisory boards as well as being an advocate for grassroots change. A 20-year veteran in his local fire department, Lieutenant Wood also serves a member of an improvement association and other civic and church organizations.



**General Session I**  
Planning Board Overview



PLANNING BOARD  
OVERVIEW

New York State Department of State

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Statutory Authority

- Powers and duties
- Qualifications for membership
- Terms of office
- Removal of members
- Alternate members
- Appointment of chairperson
- State training requirements

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Powers and duties

- Administrative body
- Powers
  - Advisory – basic/inherent
  - Regulatory – must be authorized
- Public officers
  - Qualification requirements
  - Standards of conduct
- Statutory references
  - Town Law § 271
  - Village Law § 7-718
  - General City Law § 27

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### Qualifications for membership

- Age – at least 18
- Citizenship – United States
- Residency – resident of municipality
- Exception – no current member of governing board may serve



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### Conduct and ethics

- Members may be removed from office for “cause”
- Municipality may specify reasons for removal in local law
  - Poor attendance
  - Continued inappropriate behavior
  - Failure to receive training
- Governing board must hold public hearing before removing member for cause

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### Terms of office

- Appointing authority
  - Town board
  - City mayor
  - Village mayor with approval of trustees
- Number of members
  - Five or seven
- Terms equal to number of members
  - Staggered expiration
- Oath of office
  - Must be filed



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### Appointment of alternate members

- Local governing board adopts a local law or ordinance which allows alternates
- Appointed in same manner as regular members by same appointing authority
- Terms of office are established by governing board can be any number of years
- For alternates to serve for absent members, governing board must pass a law superseding state law

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### Appointment of chairperson

- Same appointing authority as for membership
- If no chairperson is appointed by mayor or town board, the planning board should select one
  - Vice-chairperson
- Possible duties:
  - Presides at meetings & hearings
  - Supervise agenda preparation
  - Liaison with governing board
  - Sign official documents
  - Supervise filing of documents



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### State training requirements

- Minimum of 4 hours annually
- Excess of requirement may be carried over
- What constitutes training must be decided by governing board
- Training can come from variety of sources and formats
- Failure to comply does not void decisions
- Failure to receive training results in ineligibility for reappointment
- Requirements may be waived or modified by resolution of governing board if judged to be in best interest of municipality
- Training tracked locally

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### Advisory Powers

- Development of comprehensive plan
- Land use studies
- Land use regulations
- Variance requests
- Capital budgets

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### Advisory powers

- Inherent power to advise in matters concerning planning & development:
  - Land use studies
  - Maps
  - Reports
  - Recommendations for land
- Additional jurisdiction from governing board:
  - May assign additional powers of advisement by resolution
  - May further stipulate recommendation before final approval is granted

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### Advisory - area variances

- In the case of **subdivisions**, ZBA must request written recommendation from planning board
- Applicant may make **direct appeal to ZBA for area variance** in conjunction with:
  - Subdivisions
  - Site plans
  - Special use permits



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## Comprehensive Plan

- Master plan
- Land use plan
- Comprehensive master plan

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## Comprehensive plan

- An expression of a municipality's goals and recommended action to achieve those goals
- Outline for orderly growth, providing continued guidance for decision-making
- Document which focuses on immediate and long-range protection, enhancement, growth and development of the municipality
- Now also defined in statute
  - General City Law § 28-a
  - Town Law § 272-a
  - Village Law § 7-722

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## Comprehensive plan - importance

- Zoning must be in accordance with comprehensive plan
- Defense against spot zoning challenges
- Can also provide the basis for other actions affecting development
  - Grant applications
    - LGE – Shared Services
    - LWRP – Local Waterfront Revitalization Project
  - Capital Improvements



Town of Milton Town Center Plan

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### Develop or update/revise your plan

Possible indications that it is time:

- Age of plan
- Periodic review provision
- Rapid growth or decline
- New infrastructure needed
- Community character at risk
- Special places disappearing
- Significant environmental or economic changes



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### Planning board's role - development

- Entire Planning Board act as 'Special Board'
- Only individual members serve on 'Special Board'
- Make recommendations on proposed plan
- Board preparing plan must have **public hearing**
- Adoption is the responsibility of governing board – not planning board or 'Special Board'



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### Governing board's role – adoption

- Action by the governing board is needed to **implement or amend** the plan
- **Public hearing** within 90 days of receiving draft plan
- Governing board also responsible for:
  - Amending land use regulations
  - Developing design guidelines
  - Budgeting for capital improvements
  - Applying for appropriate state, federal and privately funded programs and grants

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## Regulatory Powers

- Subdivision review
- Site plan review
- Special use permits
- Sign permits
- Historic preservation
- Architectural review

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## Regulatory powers

- Governing board may delegate review authority to planning board or another board
  - Exception – delegation of **subdivision** review is limited by statute to planning board
- Extent of regulatory powers must also be delegated
  - What aspects of application may be reviewed
  - What may be required of applicant
  - What fees apply

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## Subdivision

- The division of a parcel of land:
  - Into a number of lots, blocks or sites (with or without streets)
  - For the purpose of sale, transfer of ownership, or development
- Statutory authority
  - General City Law §32 & §33
  - Town Law §276 & §277
  - Village Law §7-728 & §7-730



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### “Major” and “minor” subdivisions

- Subdivisions may be defined and delineated by local regulation as either “major” or “minor”
  
- Typical thresholds used for local classification:
  - Number of proposed lots
  - Construction of new street(s)
  - Extension of municipal infrastructure
  - Configuration of proposed lots
  - Transfer of land from adjacent parcel(s)

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### Subdivision review elements

- Regulates design and improvements:
  - Lot configuration
  - Street pattern
  - Streets and roads
  - Sidewalks & curbs
  - Utility installation
  - Service access
  - Drainage
  - Landscaping



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### Cluster or “conservation” subdivisions

- Enables and encourages flexibility of design and development to preserve natural and scenic qualities of open lands
  
- Need specific authorization from governing board:
  - Mandate
  - Encourage
  
- Zoning identifies allowable:
  - Location by districts
  - Type of development



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### Subdivision review procedures

- Public hearing required
- County planning agency referral may be necessary
- State Environmental Quality Review Act (SEQRA) must be considered
- Parkland or money in lieu of parkland
- Beware of default approvals – 62 days after close of public hearing

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### Site plan review

- Drawing showing the proposed development of a single piece of property
- Zoning is not necessary to enact site plan review
- Statutory references
  - General City Law §27-a
  - Town Law §274-a
  - Village Law §7-725-a



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### Site plan – extent of authority

- List uses subject to review
- Delegate review board
- List elements board may review
- Specify submission requirements
- List local procedures – public hearing
- Identify enforcement authority for conditions of approval

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### Site plan – uses to be considered

- Specify land uses subject to review:
  - Type – Single type of use or several types of uses municipality-wide
  - Zoning District – All or some uses within a particular district
  - Area – All or some uses within an overlay zone, such as historic, architectural, or waterfront district

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### Site plan – review elements

- Consider if site plan is in accordance with comprehensive plan
- Examples of review elements:
  - Adjacent uses
  - Location/dimension of buildings
  - Screening & landscaping
  - Architectural features
  - Proposed grades/contours
  - Utilities
  - Sewage & storm drainage
  - Parking, access, traffic
  - Lighting
  - Signage
  - Other ....

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### Special use permit

- Authorization to use land in a way permitted by zoning, subject to requirements designed to assure that proposed use:
  - Is in harmony with zoning
  - Will not adversely affect the neighborhood if requirements are met
- Also known as “special exceptions” or “conditional uses”
- Statutory references
  - General City Law §27-b
  - Town Law §274-b
  - Village Law §7-725-b



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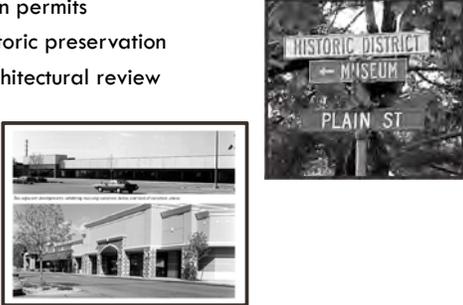
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### Other regulatory tools

- Sign permits
- Historic preservation
- Architectural review



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### Public Meetings and Hearings

- Public meeting notice and access
- Executive session
- Board procedures
- Quorum
- Public hearing noticing requirements

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### Public meetings

- To allow the public to listen and observe
- Subject to Open Meetings Law – Planning boards must discuss applications and other board business at meetings open to public
  - ▣ Notice and access requirements
  - ▣ Executive session – no meeting behind “closed doors”

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### Meeting – notice and access

- Provide access to public
- Provide notice to press
- Post notice in conspicuous place
- Post on municipal website
- Scheduled more than 1 week in advance – provide at least 72 hours (3 days) notice
- Scheduled less than 1 week in advance – provide notice to extent practicable



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### Executive session

- Portion of public meeting where public may be excluded
- Topic of discussion must be for one of 8 reasons:

- Public safety
- Protect identity
- Criminal investigations
- Actual litigation

- Collective negotiations
- History of person
- Exams
- Property value

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### Exceptions to Open Meetings Law

□ “Work Session,” “Agenda Meeting” or “Site Visit” is meeting subject to OML if quorum of members have planned to gather to discuss public business

□ Riverkeeper v. The Planning Board of the Town of Somers (Supreme Court, Westchester County, June 14, 2002):

The court concluded that a site visit by a planning board does not constitute a meeting subject to the Open Meetings Law so long as its purpose is not for anything other than to ‘observe and acquire information’

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## Applications

- Appoint an administrative official (formally or informally)
  - ZEO, municipal clerk, or board clerk
- Develop good forms
  - Include SEQR Environmental Assessment Form
  - Post on website
- Have clear submission requirements
  - Use a check list or flow chart
- Ensure time periods or deadlines comply with state law and are clear to all parties
  - Submission deadlines
- Ask applicant to provide extra copies of materials
  - County review (if required): send immediately
  - Other municipal department heads for recommendations

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## Adoption of board procedures

To be binding, must be adopted by governing board by local law or ordinance

### Examples include:

- |                                                                                                                                                                   |                                                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>□ Duties of officers or committees</li><li>□ Applications by non-owners</li><li>□ Signature on official documents</li></ul> | <ul style="list-style-type: none"><li>□ Agendas</li><li>□ Calling meetings</li><li>□ Hearings</li><li>□ Minutes</li><li>□ Referrals</li></ul> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|

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## Quorum

- Number of members who must be present for business to be legally conducted
- Must be at least a majority of full membership of board
- Full membership includes absent members and vacant seats
- NYS General Construction Law, Article 2 - §41

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## Public hearings

- Held for the purpose of receiving public comment on a particular matter
- Examples pertaining to the planning board include:
  - Subdivision
  - Special use permit
  - Preparation of preliminary comprehensive plan
  - Site plan (only if locally required)

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## Hearings – noticing requirements

- State noticing requirements:
  - Public meeting requirements
  - Legal notice in official newspaper
  - Only required to mail notice to neighboring properties of “certain public agencies” as defined by statute
- Examples of local requirements:
  - Signs on application property
  - Certified Mailings
  - Municipal website or ListServ



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## Making Legally Defensible Decisions

- State Environmental Quality Review Act (SEQRA)
- Notice to adjacent municipality
- County referral
- Voting
- Findings
- Decisions

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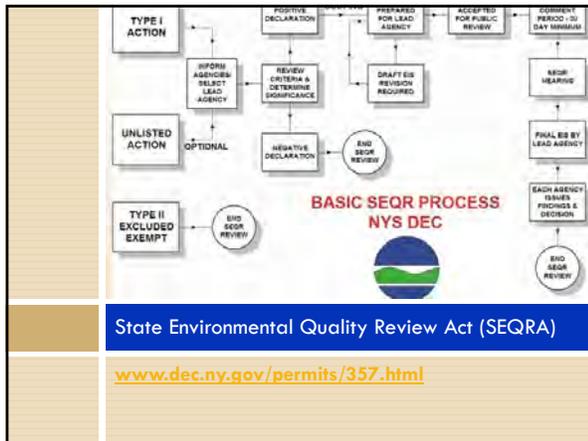
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- ### SEQRA Coordination
- Agency proposed action or receives application
    - Site plan
    - Special use permit
    - Subdivision
  - Action classified\*
  - Lead agency established
  - Significance of action determined\*
  - Environmental Impact Statement (EIS), if needed
  - Findings and agency decision\*
- \*SEQRA process can conclude at any of these points

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- ### Notice to adjacent municipality
- If property is within 500' of adjacent municipality, it must be referred to clerk
  - Send notice by mail or electronic transmission (email) at least 10 days prior to any hearing on proposed:
    - Subdivision
    - Site Plan
    - Special use permit
  - Statutory reference
    - General Municipal Law §239-nn

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### Referral to county planning agency

- Projects requiring referral:
  - Special use permits
  - Site plan
  - Other zoning authorizations
  - Subdivisions where authorized by county legislative body
- Statutory reference
  - General Municipal Law §239-m

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### Referral to county planning agency

#### Applications within 500' of:

- Municipal boundaries
- State or county parks or highways
- State or county streams or institutions
- Land on which state or county building is located
- Farm operations in state agricultural districts



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### County referral agreements

- The county planning agency and referring body may enter into agreement to exempt certain actions from county review
- Examples of exempt items:
  - Special use permits for accessory structures on residential lots
  - Site plan review for a change in tenant where modification of building footprint is less than 10%
  - Lot line adjustments

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### County referral timeline

- Special Use Permits & Site Plan – Full statement must be sent to the county planning agency at least 10 days prior to public hearing
- Site Plan – If no public hearing is needed locally, referral must be sent before final action can be taken
- Subdivisions – Referral only required where authorized by the county legislative body

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### Waiting to grant final approval

- Planning board may not take final action until the earlier of the following occurs:  
**Receipt of county planning agency's report** OR **30 days after full statement is received by county**
- Two-day exception requires consideration even after 30 days have passed, but at least 2 days before meeting where decision is made
- Time period may be extended if agreed to by both county and planning board
- Do not take early votes conditioned on county planning agency's positive recommendation

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### Voting

- A motion/resolution will only pass if it gets support of majority of entire membership of board
- A member may vote even if they missed previous presentations, public hearings, or other board meetings at which the project is discussed; member must first familiarize themselves with record
- Check statutory time frames – delayed decision on subdivisions may result in default approval

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### Voting contrary to county recommendation

If county recommends disapproval or modification within timeframe allowed....



....then it requires a majority plus one vote for municipality to approve application without recommended modifications

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### Findings

- Describe reasons for decision
- May also support why condition was imposed
- Based on analysis which applies law to facts, leading to conclusions
- Should be able to support decision if challenged in court
- Insert into Record/Application File

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### Decisions must be filed

- At local level, determine officially what action constitutes "filing with the municipal clerk"
- Examples of decision documents:
  - Minutes containing record of vote – takes more time, unless draft minutes
  - Document that records motion passed – can be done immediately
  - Other?
- Planning board decisions may be appealed to Supreme Court, not to ZBA or governing board

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### Tying up loose ends

- Send copy of decision to applicant
- If referred to county, send copy of the decision
- Attach findings to decision document



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### Contacting the Department of State

(518) 473-3355 Training Unit

(518) 474-6740 Legal Department

(800) 367-8488 Toll Free

Email: [localgov@dos.state.ny.us](mailto:localgov@dos.state.ny.us)

Website: [www.dos.state.ny.us](http://www.dos.state.ny.us)

<http://www.dos.state.ny.us/lq/lut-index.html>



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**Town Law § 271**  
**Planning board, creation, appointment.**

1. Authorization. The town board of each town is hereby authorized by local law or ordinance, to create a planning board consisting of five or seven members and shall, by resolution, appoint the members of such board and designate the chairperson thereof. In the absence of a chairperson the planning board may designate a member to serve as chairperson. The town board may, as part of the local law or ordinance creating said planning board, provide for the compensation of planning board members.
2. Appropriation for planning board. The town board is hereby authorized and empowered to make such appropriation as it may see fit for planning board expenses. In a town containing one or more villages, or parts thereof, such charges and expenses less fees, if any collected, shall be a charge upon the taxable property of that part of the town outside of said villages and shall be assessed, levied and collected therefrom in the same manner as other town charges. The planning board shall have the power and authority to employ experts, clerks and a secretary and to pay for their services, and to provide for such other expenses as may be necessary and proper, not exceeding in all the appropriation that may be made therefor by the town board for such planning board.
3. Town board members ineligible. No person who is a member of the town board shall be eligible for membership on such planning board.
4. Terms of members first appointed. The terms of members of the board shall be for terms so fixed that the term of one member shall expire at the end of the calendar year in which such members were initially appointed. The terms of the remaining members shall be so fixed that one term shall expire at the end of each calendar year thereafter. At the expiration of the term of each member first appointed, his or her successor shall be appointed for a term which shall be equal in years to the number of members of the board.
5. Terms of members now in office. Members now holding office for terms which do not expire at the end of a calendar year shall, upon the expiration of their term, hold office until the end of the calendar year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the board.
6. Increasing membership. Any town board may, by local law or ordinance, increase a five member planning board to seven members. Additional members shall be first appointed for single terms as provided by resolution of the town board in order that the terms of members shall expire in each of seven

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

7. Decreasing membership. A town board which has seven members on the planning board may by local law or ordinance, decrease the membership to five, to take effect upon the next two expirations of terms. However, no incumbent shall be removed from office except upon the expiration of his or her term, except as hereinafter provided.
- 7-A. Training and attendance requirements.
  - A. Each member of the planning board shall complete, at a minimum, four hours of training each year designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four hours in any one year may be carried over by the member into succeeding years in order to meet the requirements of this subdivision. Such training shall be approved by the town board and may include, but not be limited to, training provided by a municipality, regional or county planning office or commission, county planning federation, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to, electronic media, video, distance learning and traditional classroom training.
  - B. To be eligible for reappointment to such board, such member shall have completed the training promoted by the town pursuant to this subdivision.
  - C. The training required by this subdivision may be waived or modified by resolution of the town board when, in the judgment of the town board, it is in the best interest of the town to do so.
  - D. No decision of a planning board shall be voided or declared invalid because of a failure to comply with this subdivision.
8. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the town board shall appoint the new member for the unexpired term.
9. Removal of members. The town board shall have the power to remove, after public hearing, any member of the planning board for cause. Any planning board member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the town board by local law or ordinance.

10. Chairperson duties. All meetings of the planning board shall be held at the call of the chairperson and at such other times as such board may determine. Such chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.
11. Appointment of agricultural member. Notwithstanding any provision of this chapter or of any general, special or local law or ordinance, a town board may, if an agricultural district created pursuant to section three hundred three of article twenty-five-AA of the agriculture and markets law exists wholly or partly within the boundaries of such town, include on the planning board one or more members each of whom derives ten thousand dollars or more annual gross income from agricultural pursuits in said town. As used in this subdivision, the term "agricultural pursuits" means the production of crops, livestock and livestock products, aquacultural products, and woodland products as defined in section three hundred one of the agriculture and markets law.
12. Service on other planning boards. No person shall be disqualified from serving as a member of the town planning board by reason of serving as a member of a village or county planning board.
13. Rules and regulations. The planning board may recommend to the town board regulations relating to any subject matter over which the planning board has jurisdiction under this article or any other statute, or under any local law or ordinance of the town. Adoption of any such recommendations by the town board shall be by local law or ordinance.
14. Report on referred matters; general reports.
  - a. The town board may by resolution provide for the reference of any matter or class of matters, other than those referred to in subdivision thirteen of this section, to the planning board before final action is taken thereon by the town board or other office or officer of said town having final authority over said matter. The town board may further stipulate that final action thereon shall not be taken until the planning board has submitted its report thereon, or has had a reasonable time, to be fixed by the town board in said resolution, to submit the report.
  - b. The planning board may review and make recommendations on a proposed town comprehensive plan or amendment thereto. In addition, the planning board shall have full power and authority to make investigations, maps, reports and recommendations in connection therewith relating to the planning and development of the town as it seems desirable, providing the total expenditures of said board shall not exceed the appropriation provided therefor.

15. Alternate members.

- a. A town board may, by local law or ordinance, or as part of the local law or ordinance creating the planning board, establish alternate planning board member positions for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest. Alternate members of the planning board shall be appointed by resolution of the town board, for terms established by the town board.
- b. The chairperson of the planning board may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial planning board meeting at which the substitution is made.
- c. All provisions of this section relating to planning board member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, and service on other boards, shall also apply to alternate members.

16. Voting requirements. Every motion or resolution of a planning board shall require for its adoption the affirmative vote of a majority of all the members of the planning board. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of sections two hundred thirty-nine-m and two hundred thirty-nine-n of the general municipal law shall apply.

**CITY OF SARATOGA SPRINGS      CHAPTER 34      PLANNING BOARD**

**§ 34-1. Appointment; vacancies; removal; terms.**

A. Pursuant to § 27 of the General City Law, there shall be a City Planning Board, hereinafter called the "Board," appointed by the Mayor, which Board shall consist of seven members.

B. If a vacancy shall occur other than by expiration of a term, it shall be filled by appointment by the Mayor for the unexpired term.

C. Any member may be removed by the Mayor for cause and after public hearing.

D. Members of the Board shall hereafter be appointed for terms of seven years. Effective July 1, 1994, members now holding office for terms of less than seven years shall hold office until the end of the official year in which their term is scheduled to expire, except that at the beginning of the official year 1996, the Mayor shall have authority to reestablish the terms of the members of the Planning Board now holding office in the manner described in § 27, Subdivision 4 of the General City Law, so that the term of one member shall expire at the end of the official year 1996, and the terms of the remaining members shall be so fixed that one term shall expire at the end of each official year thereafter. At the expiration of the term of each member so appointed, his or her successors shall thereafter be appointed for terms of seven years.

**[Amended 1-2-1996 by L.L. No. 1-1996]**

**§ 34-2. Compensation; municipal officials; other city agencies.**

A. Such members shall receive no payment for their services as members of the Board.

B. The municipal officials on such Board shall not, by reason of membership thereon, forfeit their right to exercise the powers, perform the duties or receive the compensation of the municipal office held by them during such membership.

C. No member of the Planning Board shall be eligible for membership on the city's Zoning Board of Appeals.

**§ 34-3. Officers.**

The Chairperson of the Board shall be designated by the Mayor or, on failure to do so, shall be elected from and by its own members. The Vice Chairperson shall be designated by the Mayor.

**§ 34-4. Powers and duties.**

The Planning Board shall have and exercise the powers and duties as follows:

A. At the direction of the City Council, to prepare a City Comprehensive Plan for the development of the entire area of the city.

(1) Definition of City Comprehensive Plan. The term "City Comprehensive Plan" means the materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material, that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development of the city. The City Comprehensive Plan, as herein defined, shall, among other things, serve as a basis for land use regulation, infrastructure

development, public and private investment and any plans which may detail one or more topics of a City Comprehensive Plan.

(2) Content of a City Comprehensive Plan. The City Comprehensive Plan may include the following topics at the level of detail adapted to the special requirements of the city:

- (a) General statements of goals, objectives, principles, policies and standards upon which proposals for the immediate and long-range enhancement, growth and development of the city are based.
- (b) Consideration of regional needs and the official plans of other government units and agencies within the region.
- (c) The existing and proposed location and intensity of land uses.
- (d) Consideration of agricultural uses, historic and cultural resources, coastal and natural resources and sensitive environmental areas.
- (e) Consideration of population, demographic and socioeconomic trends and future projections.
- (f) The location and types of transportation facilities.
- (g) Existing and proposed general location of public and private utilities and infrastructure.
- (h) Existing housing resources and future housing needs, including affordable housing.
- (i) The present and future general location of educational and cultural facilities, historic sites, health facilities and facilities for emergency services.
- (j) Existing and proposed recreation facilities and park land.
- (k) The present and potential future general location of commercial and industrial facilities.
- (l) Specific policies and strategies for improving the local economy in coordination with other plan topics.
- (m) Proposed measures, programs, devices and instruments to implement the goals and objectives of the various topics within the Comprehensive Plan.
- (n) All or part of the plan of another public agency.
- (o) Any and all other items which are consistent with the orderly growth and development of the city.

(3) The City Council shall adopt or amend the Comprehensive Plan only after a public hearing, notice of which hearing shall be advertised at least three times in the official newspaper or in a newspaper of general circulation in the city at least five days but not more than 20 days before such hearing.

(4) The City Council may refer the Comprehensive Plan and its amendments to the Planning Board for review and comment. Within 45 days after receipt of the plan or any amendments, the Planning Board shall report its recommendations thereon to the Council. If the Planning Board fails to

respond within the prescribed time, the City Council may act without such report. The Board shall not act contrary to any City Council recommendation without first setting forth in the official record the reasons for such contrary action.

(5) The Comprehensive Plan and all modifications thereof shall be on file in the office of the Planning Board and in the offices of the City Engineer and City Clerk.

B. To make any investigations and reports relating to the planning of the city and its future growth and affording facilities for housing, transportation, distribution, comfort, convenience, safety, health and welfare of its population. Any expenditures of the Board for such investigations or reports shall not exceed the appropriation for its expenses. Copies of such investigations or reports shall be submitted to the City Council for their review and comment.

C. To prepare recommendations for changes to the Zoning Ordinance and districts, but any changes in or exemption from such plan after adoption shall be made by the City Council.

D. To issue advisory reports to the City Council on any proposed change in the text or Zoning District boundary under conditions set forth in § 240-15.3.

E. To issue advisory reports to the City Council on any proposed planned unit development applications under conditions set forth in § 240-3.10.

F. To make referrals for advisory opinions on any matter before the Board to the City Council, the Zoning Board of Appeals, the Design Review Commission, the Recreation Commission and any other body, agency or department of the city.

G. To review and make advisory recommendations on any matter referred to the Planning Board by the City Council, the Zoning Board of Appeals, the Design Review Commission, the Recreation Commission and any other body, agency or department of the city.

H. To assist the Mayor with the development of an annual submittal to the City Council of a six-year municipal capital funds plan.

I. To advertise and hold public hearings when it requires or desires. The minimum requirement shall be that notice of hearings shall be advertised at least three times in the official newspaper or in a newspaper of general circulation in the city at least five days before such hearing but not more than 20 days. The public hearing requirement of specific ordinances must be met as set forth.

J. To adopt, after public hearing by the Planning Board and approval of the City Council, subdivision rules and regulations.

K. To review, approve, approve with modification or disapprove all applications for subdivisions within the City of Saratoga Springs pursuant to the adopted subdivision rules and regulations.

L. To change or add to the Official Map of the city so as to lay out new streets, highways or parks or widen or close existing streets, highways or parcels. Drainage systems may also be shown on the map.

M. To review, approve, approve with modification or disapprove applications for site plans as required by § 240-5.2.

N. To review, approve, approve with modification or disapprove all applications for special use permit as required by § 240-6.2.

O. To submit its annual budget by the Mayor. All appropriations must be approved by the City Council.

P. To make necessary and proper expenditures, not exceeding in amount the appropriation that may be made for such Board by the City Council.

Q. To employ experts and a staff and to pay for their services and such other expenses as may be necessary, not exceeding in all the appropriation that may be made for such Board by the City Council.

R. To adopt rules and regulations in respect to procedure before it and in respect to any subject matter over which it has jurisdiction under this chapter, after public hearing by the Planning Board and subject to the approval of the City Council. The City Council shall move to approve, reject or modify the same within 30 days after submission. Failure of the City Council to so move shall be construed to constitute approval of such rules, bylaws and forms.

S. To express all other powers conferred upon it by the City Council.

**§ 34-5. Referrals to Board.**

The City Council, city departments or officers having final jurisdiction over any matter set forth in § 34-4 of this chapter may refer such matter to the Planning Board for a report, but if such Planning Board shall not have made its final report thereon within 30 days from the date of reference thereto, the authority having final jurisdiction may proceed to final action. This section shall not be construed to prevent the City Council from granting, in any specific case, such longer period as it may fix within which said Board may make its final report.

### Planning Board

# DECISION

OFFICE USE ONLY

Application No.: \_\_\_\_\_

Date of Vote: \_\_\_\_\_

Date filed with \_\_\_\_\_

Municipal Clerk: \_\_\_\_\_

At a meeting of the Planning Board on \_\_\_\_\_, 20\_\_\_\_\_,  
the following motion was made:

- I move that the Planning Board  deny
- approve
- approve with conditions (see below)

- the application for
- Site Plan Review Approval
  - Preliminary Subdivision Approval
  - Final Subdivision Approval
  - Special Use Permit Approval
  - Other \_\_\_\_\_

Made by \_\_\_\_\_  
(applicant name)

for property located at \_\_\_\_\_  
(address/ tax map number)

Approval of this application is subject to the following conditions:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Additional conditions are attached

BY \_\_\_\_\_ (Planning Board Secretary) \_\_\_\_\_ (Date)

## RECORD OF VOTE

	MEMBER NAME	AYE	NAY
Chair	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____

*PB- Alternate Members*

# Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE  
162 WASHINGTON AVENUE, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated in italics or underlining to indicate new matter.

STATE OF NEW YORK  
DEPARTMENT OF STATE  
**FILED**  
JUN 25 1998

*Alexander F. Ciccolini*  
Secretary of State

County

City of ROSLYN

Town

Village

Local Law No. 3 of the year 1998

A local law providing for the use of alternate members on the Planning Board  
*(Insert Title)*  
in the Village of Roslyn

Be it enacted by the BOARD OF TRUSTEES of the  
*(Name of Legislative Body)*

County

City of ROSLYN

Town

Village

as follows:

BE IT ENACTED by the Village of Roslyn as follows:

Section 1 Short Title and Applicability

Alternate Planning Board Members Act. This local law shall apply to the appointment, terms, functions and powers of alternate members appointed to serve on the Planning Board in the Village of Roslyn.

Section 2 Declaration of Policy

It is sometimes difficult to maintain a quorum on the Planning Board because members are ill, on extended vacation or find they have a conflict of interest situation on a specific matter before such board. In such instances, official business cannot be conducted which may delay or impede adherence to required time lines and which may delay the appropriate process for residents and taxpayers. The use of alternate members in such instances is hereby authorized pursuant to the provisions of this local law.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

**Section 3            Definitions**

A. "Planning Board" means the Planning Board of the Village of Roslyn as established by the Village Board of Trustees by local law or ordinance pursuant to the provisions of § 7-718 of the Village Law.

B. "Member" means an individual appointed by the Mayor to serve on the Village Planning Board pursuant to the provisions of the local law or ordinance which first established such Planning Board and any amendments thereto.

C. "Alternate Member" means an individual appointed by the Mayor to serve on the Village Planning Board when a regular member is unable to participate on an application or matter before the board, as provided herein.

**Section 4            Authorization/Effect**

A. The Village Board of Trustees of Roslyn hereby enacts this local law to provide a process for appointing "alternate" members of the Planning Board. These individuals would serve when members are absent or unable to participate on an application or matter before the board, but shall be given notice of and shall be encouraged to attend all meetings of such board.

B. Alternate members of the Planning Board shall be appointed by the Mayor subject to the approval of the Board of Trustees for a term of one (1) year. A maximum of three (3) alternate members may be appointed. Each alternate member shall be designated separately as "first alternate", "second alternate", and "third alternate" and shall be called to serve in that order.

C. The chairperson of the Planning Board may designate an alternate to substitute for a member when such member is unable to participate on an application or matter before the board. Alternates shall be designated in order of priority. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial Planning Board meeting at which the substitution is made.

D. All provisions of state law relating to Planning Board member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any provisions of a local law relating to training, continuing education, compensation and attendance, shall also apply to alternate members.

**Section 5            Supersession of Village Law**

This local law is hereby adopted pursuant to the provisions of § 10 of the NYS Municipal Home Rule Law and § 10 of the NYS Statute of Local Governments. It is the intent of the Board of Trustees, pursuant to § 10 of the NYS Municipal Home Rule Law, to supersede the provisions of § 7-718 of the Village Law relating to the appointment of members to Village planning boards.

**Section 6            Severability**

If any provisions of this local law are held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the local law shall remain in effect.

**Section 7            Effective Date**

This local law shall take effect upon filing with the Secretary of State.

LOCAL LAW NO. 1 OF 2011

# Town of Queensbury Planning Board Bylaws and Policies & Procedures

Prepared By Town of Queensbury Community Development Department Planning Staff

Autumn Planning Conference - 2011 Planning Board Overview

## PLANNING BOARD BYLAWS

### I Establishment and Purpose 2

- A. Planning Board 2
- B. Bylaws 2

### II Organization 2

- A. Membership and Terms 2
- B. Officers 2
- C. Responsibility of Officers 3

- 1. Chairperson 3
- 2. Vice Chairman 3
- 3. Secretary 3
- 4. Other Officers 4

### D. Planning Board Committees 4

- E. Alternate Members 4
- F. Vacancies 5
- G. Terms of Officers 5

### III Meetings 5

- A. Open Meetings Law 5
- B. Public Hearings and Public Information Sessions 5

- 1. As Required by Law 5
- 2. As Allowed 5
- 3. Advertisement 5
- 4. Conduct for all Public Hearings 5
- C. Schedule 6

- 1. Regular Meetings 6
- 2. Special Meetings 6
- 3. Emergency Meetings 6
- 4. Workshop Sessions 7
- 5. Annual Meeting 7

### D. Executive Session 7

### IV Proceedings 7

- A. Governing Rules 7
- B. Quorum 7
- C. Voting 7

- 1. Action 7
- 2. Disqualification 7

### V Minutes and Records of Meetings 9 A.

- Records 9
- B. Copies and Distribution 9
- C. Adoption 9

### D. Resolutions 9

### VI Public Information 10

### VII Ethics 10

- A. Town Code 10
- B. Disclosure 10

### VIII Amendments to Bylaws 10

## POLICIES AND PROCEDURES

### I Organizational Meeting 11

### II Establishment of Agenda 11

- A. Ready Agenda 11
- B. Meeting Agenda 11
- C. Agenda Limits 11

- 1. Maximum Number of Items 11
- 2. Application Placement on the Agenda 11
- 3. Agenda Modification 12

### III Site Visits 12

### IV Meetings 12

- A. Schedule 12
- B. Public Notice 12
- 1. Regular Meetings 12
- 2. Special Meetings 12
- 3. Emergency Meetings 12
- 4. Workshop Sessions 13
- 5. Public Hearings 13

### C. Order of Business 13

### D. Recording 13

### E. Public Participation 13

### F. Tabling Motions/Request for Additional Information 14

### G. Continuation of Public Hearings 14

### V Alternate Members 14

- A. Use of Alternate Members 14
- B. Duties 14

### VI Advisory Committees 14

- A. Town Committees 14
  - B. Planning Board Committees 15
  - C. Conduct of Planning Board Committees 15
- ### VII Application Review 15
- A. Schedule 15

### B. Pre-Application Conference 15

### C. Complete Application 16

### D. Staff Notes 16

- 1. Purpose 16
- 2. Format 16
- 3. Distribution 16
- 4. Other Assistance 16

### E. Consultant Notes 16

### F. Types of Applications 17

- 1. Administrative – Community Development Department Planning Staff 17
- 2. Zoning Changes – Planning Board Jurisdiction 17
- 3. Site Plan Review 17
- 4. Subdivision Applications 18
- 5. Freshwater Wetlands 18
- 6. Transient Merchant/Transient Merchant Market – Planning Board Jurisdiction 18
- 7. Telecommunication Towers 18
- 8. Interpretation Requests, Variances & Appeals 18

### G. Modifications 19

- 1. Site Plans 19
- 2. Subdivisions 19

### H. Planned Unit Developments (PUD's) 19

### I. Application Forms 19

### J. Expedited Review 20

- 1. Purpose 20
- 2. Classes of Project Eligible for Expedited Review 203.
- 3. Procedure 21

## VIII Planning Staff Duties 22

## Download at

<http://www.queensbury.net/Planning/Final%20Updated%20PB%20BPP%2010-17-2006.pdf>



## **General Session I**

Brookhaven National Laboratory - Sustainability Plan



# Brookhaven National Laboratory Sustainability Program

*Suffolk County Planning Meeting  
October 12, 2011*

*Lanny Bates  
Assistant Laboratory Director  
For Facilities and Operations*



# Topics

- Laboratory Overview and Energy Footprint
- Energy and Sustainability Accomplishments
- BNL Site Sustainability Plan
- Future Vision



# Brookhaven National Laboratory *A passion for discovery*



29 miles paved roads

12 miles sidewalks

Housing for ~800

5321 acres

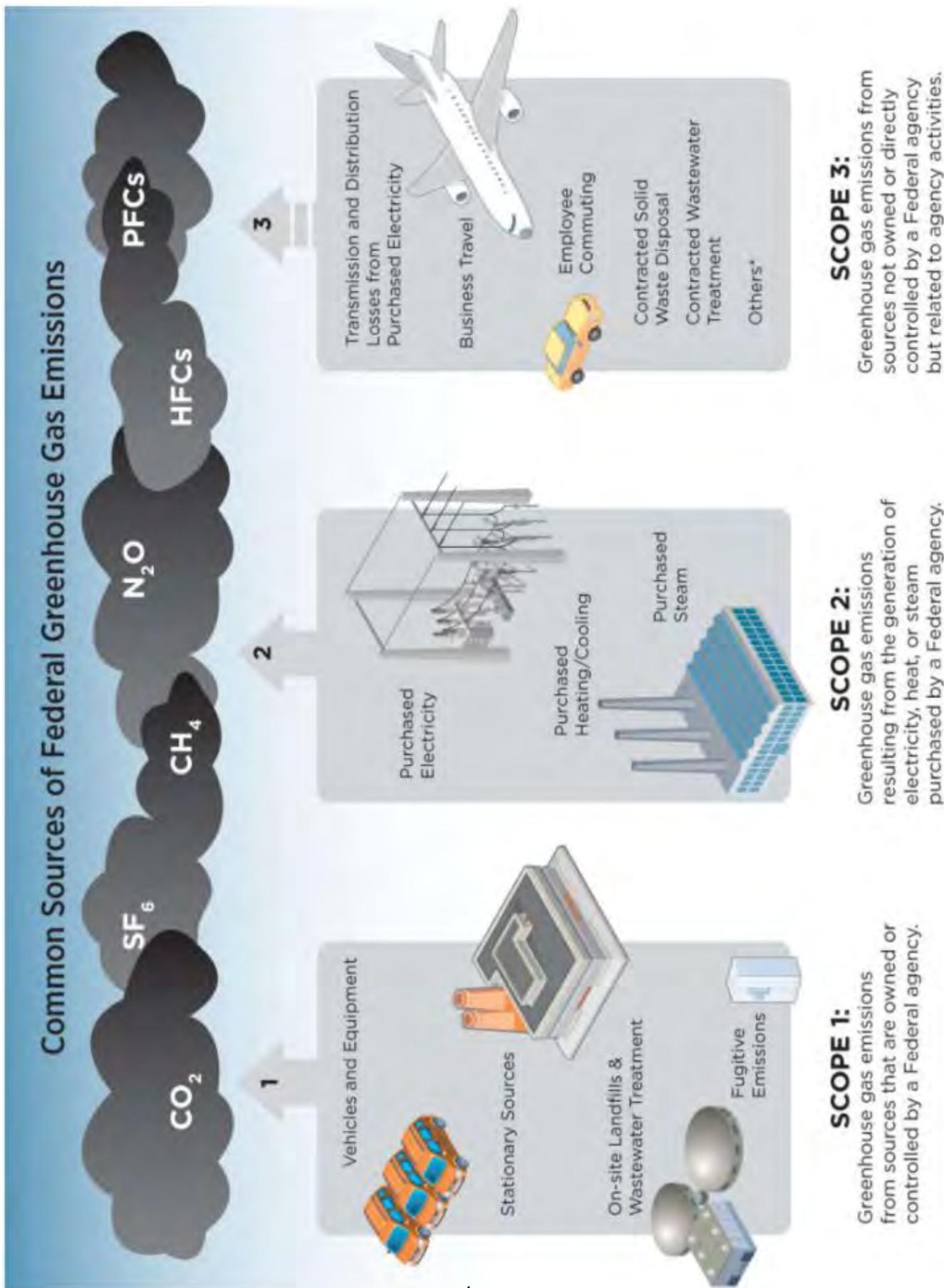
350 buildings

~3.2M sq ft

~2900 employees

>4000 guest users per year

FY 08	FY 09	FY 10	FY 11
\$532M	\$880M	\$700M	\$753M



# GHG Inventory



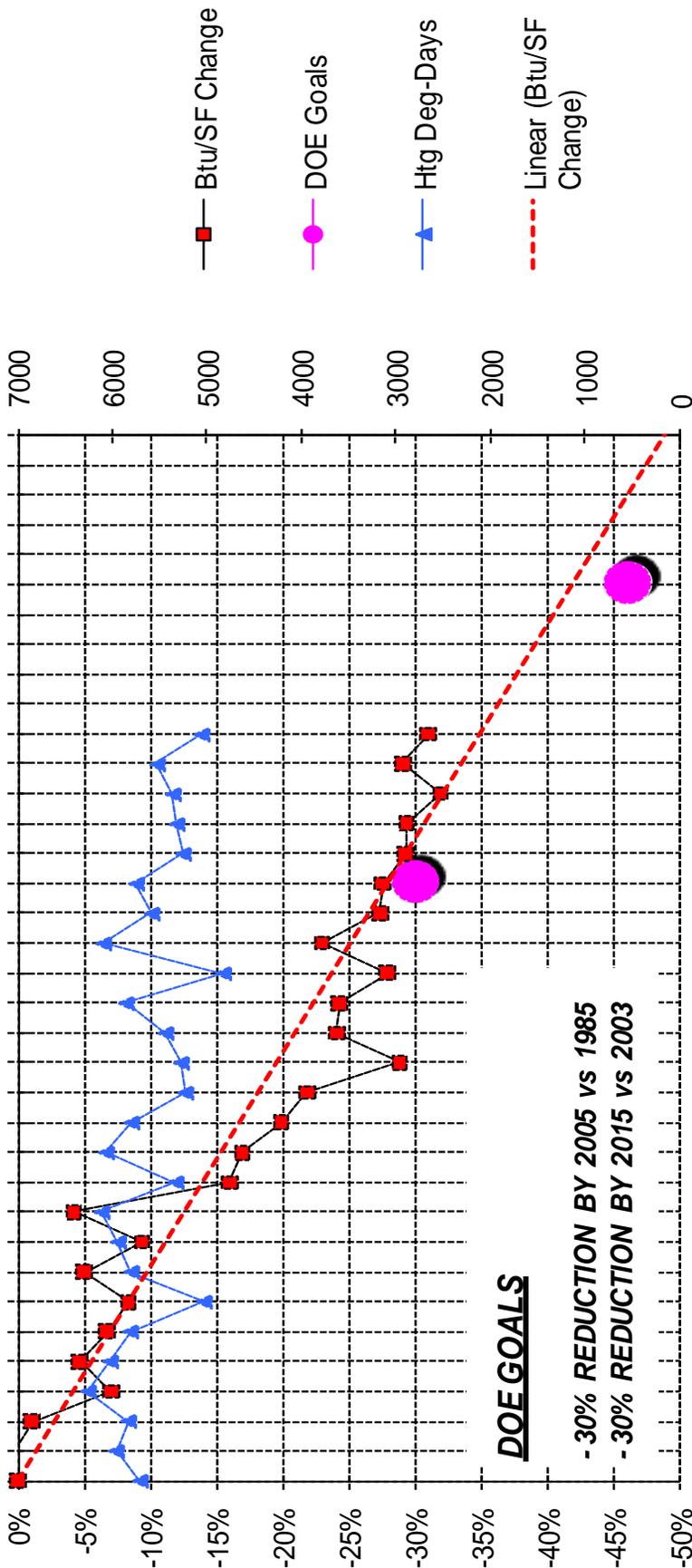
Scope	Group	Source	MtCO <sub>2</sub> E	% of Total GHG by Source	% of Total GHG by Group
1	Energy	Stationary Combustion	38,676	17	93
2		Electricity	162,442	71	
3		Transmission and Distribution Losses-Grid	11,124	5	
1	Transportation	Fleet	1,376	1	4
3		Commuting	4,138	2	
		Rental Cars	366	0.2	
		Airline Travel	3,652	2	
		Personal Auto (Business)	120	0.1	
1	Fugitives	Refrigerant Losses	235	0.1	0.2
		Evaporative Losses	15	0.01	
		Tandem Transfer Losses	59	0.03	
		Tandem Accelerator Leaks	15	0.01	
		Landfill Gas	67	0.03	
		WWTP Gas	7	0.00	
1	Processes	PHENIX Experiment	4,862	2	2
		STAR Experiment	222	0.1	
3	Waste	Waste	212	0.1	0.1
			<b>Total</b>	<b>227,588</b>	

# BNL's Energy Efforts – Some History

- BNL has a long and successful history of identifying and implementing energy conservation projects
- Began an energy conservation program in the 1970's to combat high energy costs
- Over \$60 million has been invested in a wide range of efforts that has curbed BNL's energy consumption dramatically
- Energy intensity (Btu/GSF) has been reduced by over 57% comparing FY2010 to FY1973
  - Saves about \$15 million/year in energy costs
  - Over 112,000 MTCO<sub>2e</sub> per year avoided

# BUILDING ENERGY PERFORMANCE

## BTU/FT<sup>2</sup> Change (%) vs. Baseline Years



# Leadership in Energy & Environmental Design (LEED)

- USGBC rating system that focuses on sustainable design:

- Sustainable Sites
- Water Efficiency
- Materials & Resources
- Energy & Atmosphere
- Indoor Environmental Quality
- Innovation and Design Process

- CFN & RSB both LEED Silver
- ISB-I is tracking toward LEED Gold
- NSLS II moving toward LEED Silver



Interdisciplinary Science Building (ISB) at Brookhaven National Laboratory



# NSLS-II LEED Status

- The NSLS-II facility is registered under two LEED projects both using LEED V2.2

- **Facility consists of:**

- Ring Building and

Hard X-Ray Nanoprobe (HXN) Building.

- 400 ksf process facility (accelerator and experimental beamlines)
- Lab-Office Buildings (LOBs) (5 @ 40 ksf each)
  - Identical buildings contiguous to Ring Building

- **The LOBs and Ring Building are two separate registrations with the intent to achieve a higher level with the LOBs**

- Ring Building /HXN Building – Goal of LEED Silver
- LOBs – Goal of LEED Gold

- **LEED Applications - will utilize a campus and multiple buildings approach**



# NLS-II LEED Features

- **Ring Building Features**
  - Adopts many features for sustainable sites and buildings
  - Most notable feature is process cooling design that substantially reduces use of mechanical cooling by increasing operating temperatures, “free cooling” via cooling tower.

- **Lab-Office Buildings**
  - Optimizes features for laboratory and office buildings including:
    - Efficient envelope, lighting, controls
    - Natural lighting, high reflectivity roof
    - Recycled & regional content,
    - Enhanced commissioning and monitoring
    - 34% energy reduction (ASHRAE 90.1 2004)



# Transportation Vehicles - Overview

- 292 Vehicles of mixed use on site:  
Roughly half are Alternative Fuel
- Compressed natural gas (CNG) fueling infrastructure installed 2001
  - BNL provides compressed natural gas refueling to local governments that partner with DOE Clean Cities
- E85 refueling infrastructure operational late 2010
- Biodiesel initiated in early 2010
- Secretary Directive for 35% reduction in vehicle fleet over 3 years



FY 2011 Government Vehicle Fleet – 292 Vehicles					
Fuel Type	Gasoline	CNG	Diesel	E-85	Total
Totals	137 (47%)	75 (25%)	34 (11%)	46 (17%)	292 (100%)



# GPS Tracking/Reporting Management

BNL will install and monitor a portion (25 vehicles) of the fleet with GPS technology.

- Increase Productivity
- Validate usage against requirements
- Control and reduce Fuel Costs
- Improve Customer Service
- Increase Fleet Security & Safety
- Reduce Operating Expenses
- Reduce Unauthorized Use



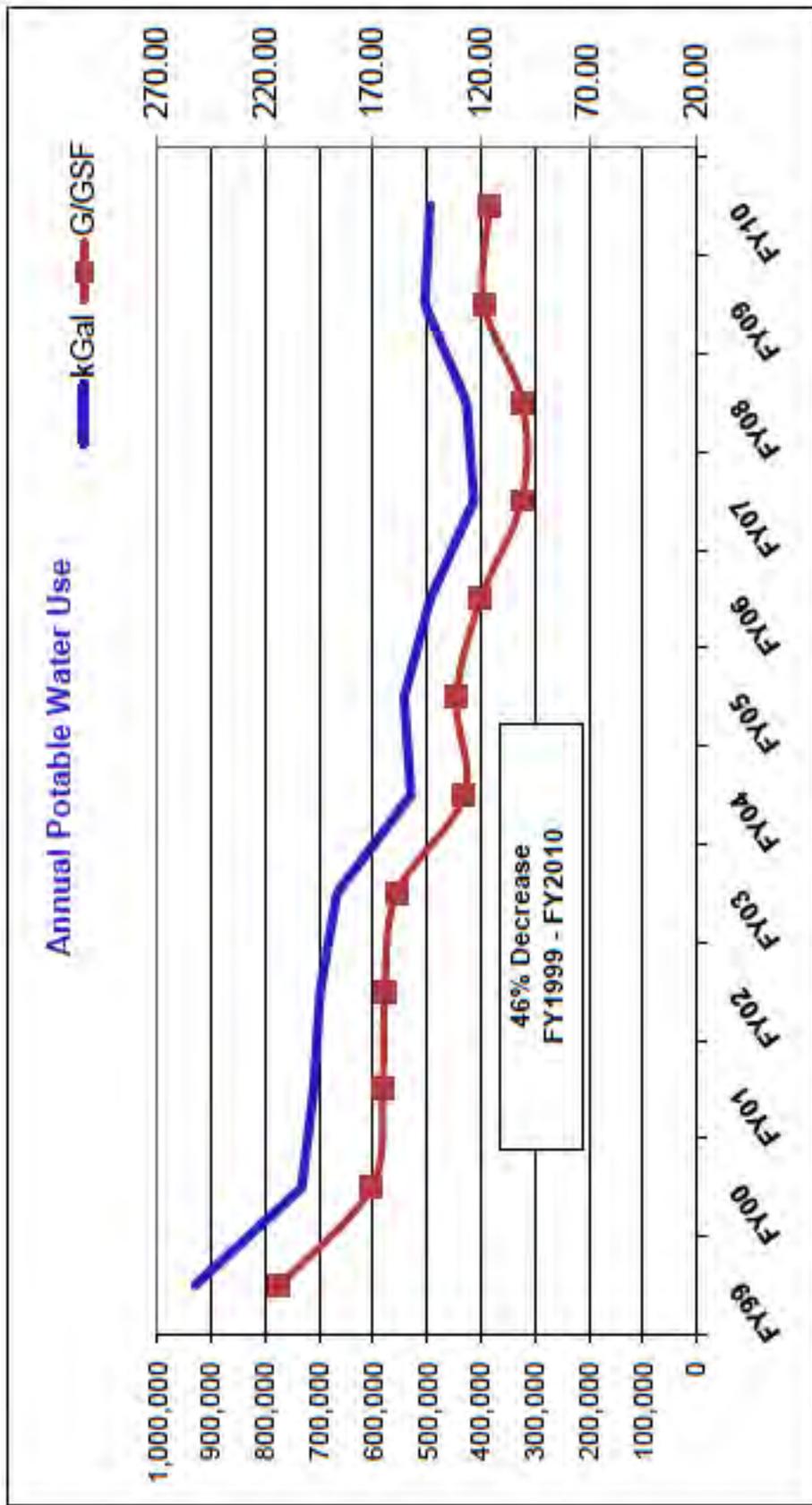
# Renewable Energy Initiatives

- Renewable Energy Credits (REC's)
  - 35 million kWh for 2010
  - 15 MW of Hydropower Secured for 2011+
  - 76,000 MTCO<sub>2</sub>e
- Biomass Feasibility Study Initiated
- Small Scale Solar Hot Water Heating
- Solar Demonstration Project on Line in 2010
  - Solar Combisystem that integrates flat panel solar collectors and a high efficiency condensing oil-fired boiler.



# Challenges: BNL Water Usage

16% water reduction by FY 2015 from a FY 2007 baseline, 26% by 2020  
 We are not on track to make goal



# Background

- DOE has developed a Strategic Sustainability Performance Plan in response to Executive Order 13514
- The plan establishes Department goals in a wide variety of areas of sustainability
- DOE has requested each site to develop and implement a Site Sustainability Plan to flow down these goals
- The first annual plan was submitted on December 31, 2010. Update for the 2011 submission is beginning.
- The DOE Science Labs are working together to develop a “portfolio approach”



# Site Sustainability Plan (SSP) - Goals

- **28% Scope 1 & 2 GHG reduction by FY20 from a FY08 baseline**
- **30% energy intensity reduction by FY15 from a FY03 baseline**
- **7.5% of a site's annual electricity consumption from renewable sources by FY10**
- **Every site to have at least one on-site renewable energy generating system by FY10**
- **10% annual increase in fleet alternative fuel consumption by FY15 relative to a FY05 baseline**
- **2% annual reduction in fleet petroleum consumption by FY15 relative to a FY05 baseline**
- **75% of light duty vehicle purchases must be AFVs by FY15**
- **Advanced metering for electricity, chilled water, steam, and natural gas and standard meters for water**

# Site Sustainability Plan (SSP)- Continued

- Cool roofs for all new construction and retrofits
- DOE facility energy managers to be Certified Energy Managers (CEM) by September 2012
- Sulfur hexafluoride (SF<sub>6</sub>) capture program by September 2012
- 13% Scope 3 GHG reduction by FY20 from a FY08 baseline
- All new construction and major renovations greater than \$5 MM to be LEED® Gold certified.
  - Meet high performance and sustainable building (HPSB) guiding principles if less than or equal to \$5 MM
- 15% of existing buildings larger than 5,000 GSF to be compliant with the five guiding principles of HPSB by FY15
- 16% water intensity reduction by FY15 from a FY07 baseline, 26% by FY20

# Major Sustainability Actions

- **Energy Conservation Projects: Phase I (UESC)**
  - Lighting upgrades (17 buildings)
  - Enhanced energy controls and retro-commissioning (10 Buildings)
  - Chiller efficiency project
  - Implemented with a Utility Energy Service Contract (UESC)
- **High Performance Sustainable Buildings (HPSB)**
  - Evaluate buildings to meet LEED HPSB standards
    - 18 are required by 2015
  - Data center efficiency improvements
- **Renewable Energy**
  - Hosting the LISF
  - Purchasing Renewable Energy Credits (REC's)
  - Northeast Solar Energy Research Center

# Major Sustainability Actions- Continued

## ■ Energy Conservation Projects: Phase II (UESC)

- Lighting upgrades, enhanced controls, retro-commissioning
- Steam system improvements
- Combined Heat and Power (CHP)
- Free cooling
- Chilled water storage increase
- Renewable energy projects (Evaluate and implement if feasible)
  - Small scale wind, solar PV



## ■ Other Initiatives

- Modernization of the BNL site
- Biomass evaluation
- Alternately fueled vehicle additions
- Reduction of waste
- Employee engagement and outreach

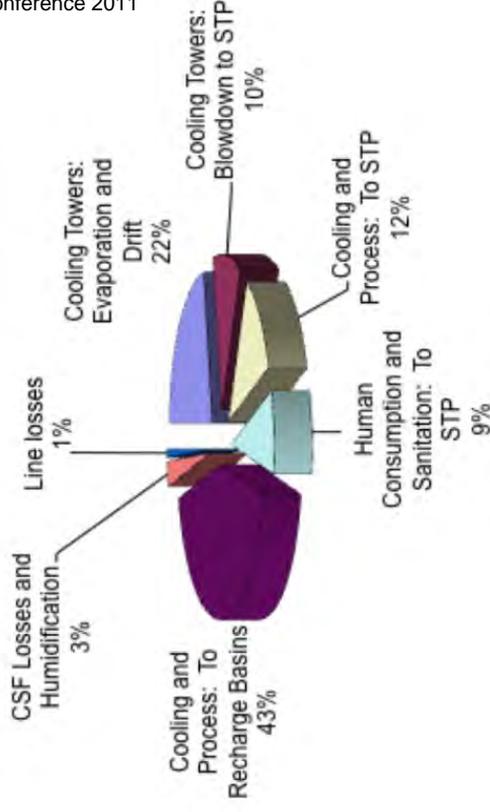


# SSP Goals Status

DOE Goal		Will Meet	Decisions Needed for Prioritization	Low Priority
2.1	28% Scope 1 & 2 GHG reduction by 2020 from 2008			
2.2	13% Scope 3 GHG Reduction by 2020 from 2008			
2.3	Comprehensive GHG Inventory			
2.4	High Performance Sustainable Design			
2.5	Regional and Local Planning			
2.6	Water Use Efficiency and Management			
2.7	Pollution Prevention			
2.8	Sustainable Acquisition			
2.9	Electronic Stewardship and Data Centers			
2.10	Innovation			

# BNL Water Management Facts

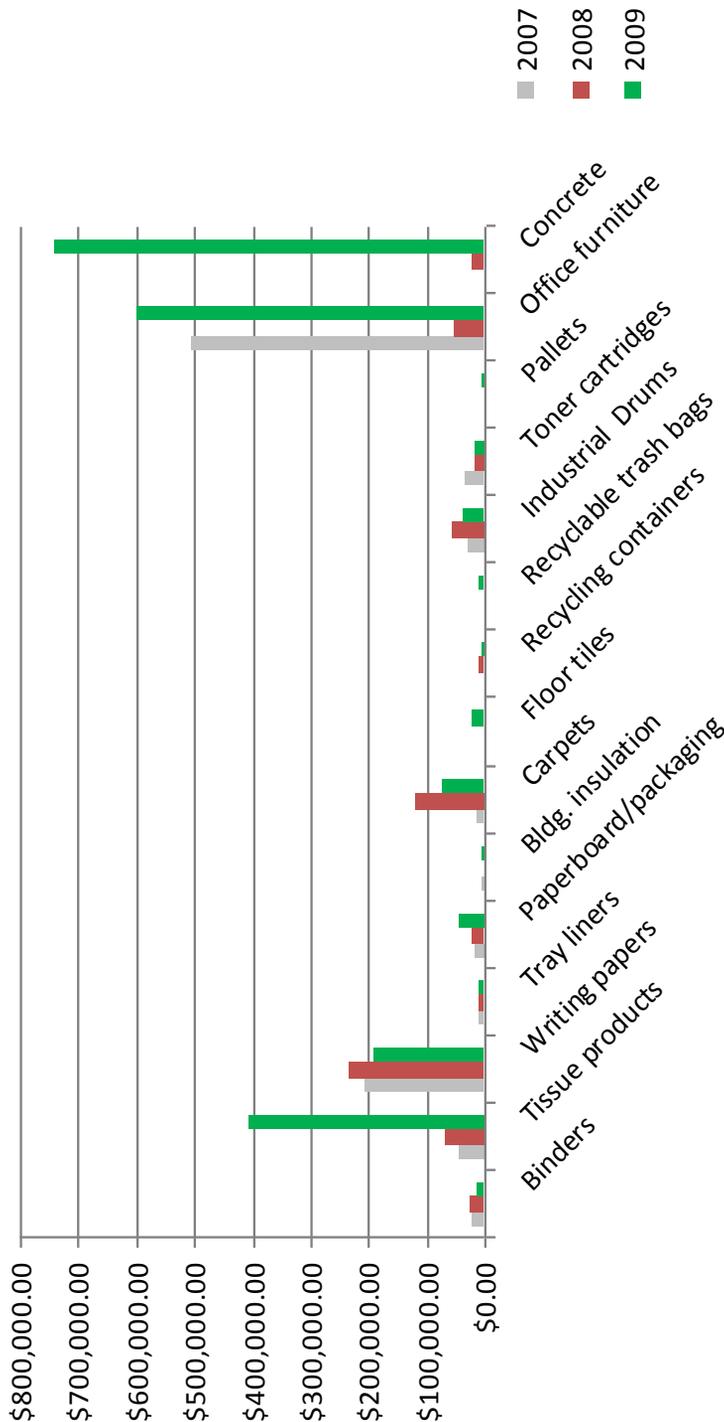
## BNL Potable Water Usage



- Water is plentiful at BNL
- Over 75% of BNL's water is returned to aquifer
- Remainder is evaporated in cooling towers
- BNL water costs ~ \$0.39/1000
- Water reduction projects are hard to cost justify
- Laboratory growth will increase water use
  - BNL water use is cooling process linked to BNL power use
  - NLS-II projected to increase water use by 12%

# Environmentally Preferable Purchasing (EPP)

**Environmentally Preferable Purchases at Brookhaven National Laboratory FY2007-FY2009**

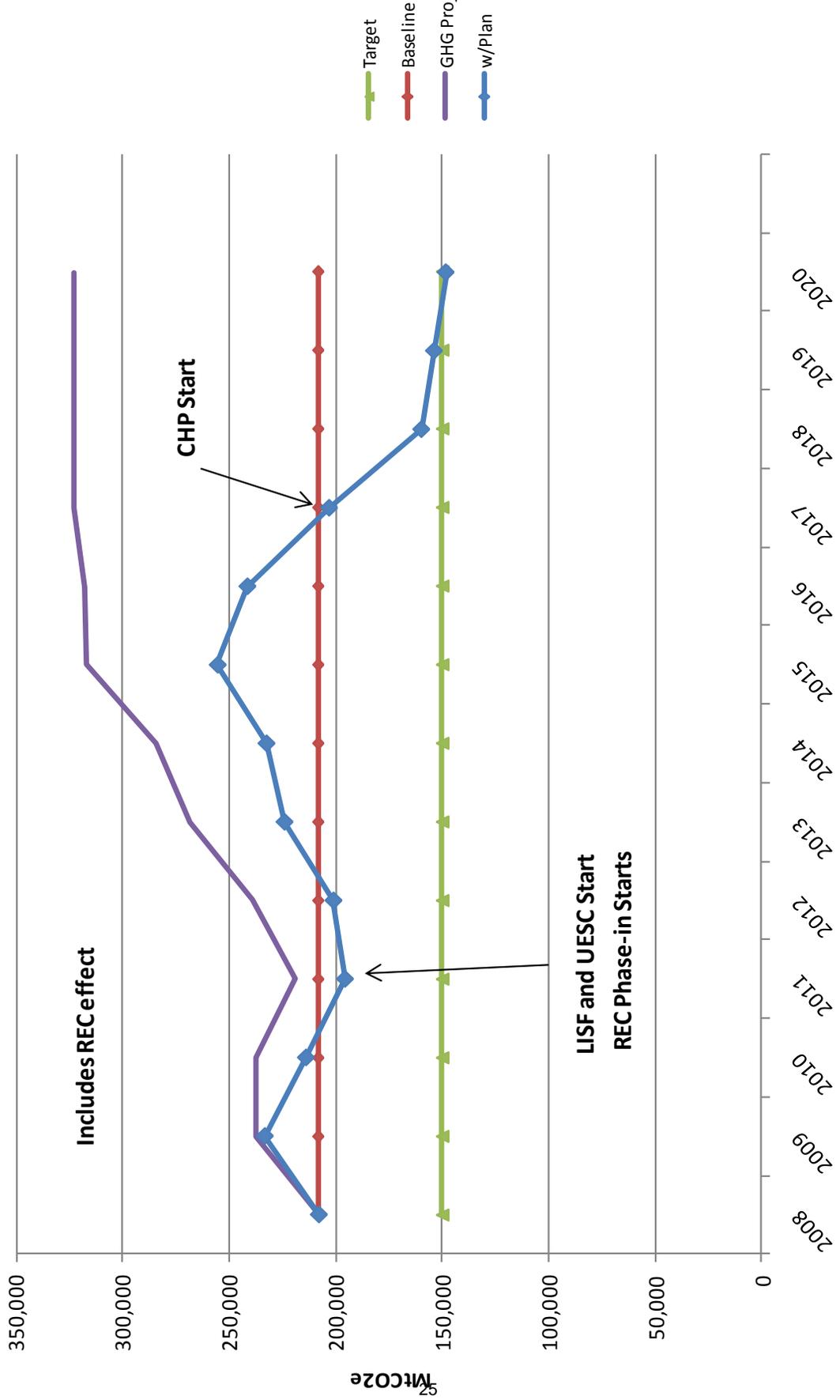


# BNL Concrete Crushing and Recycling

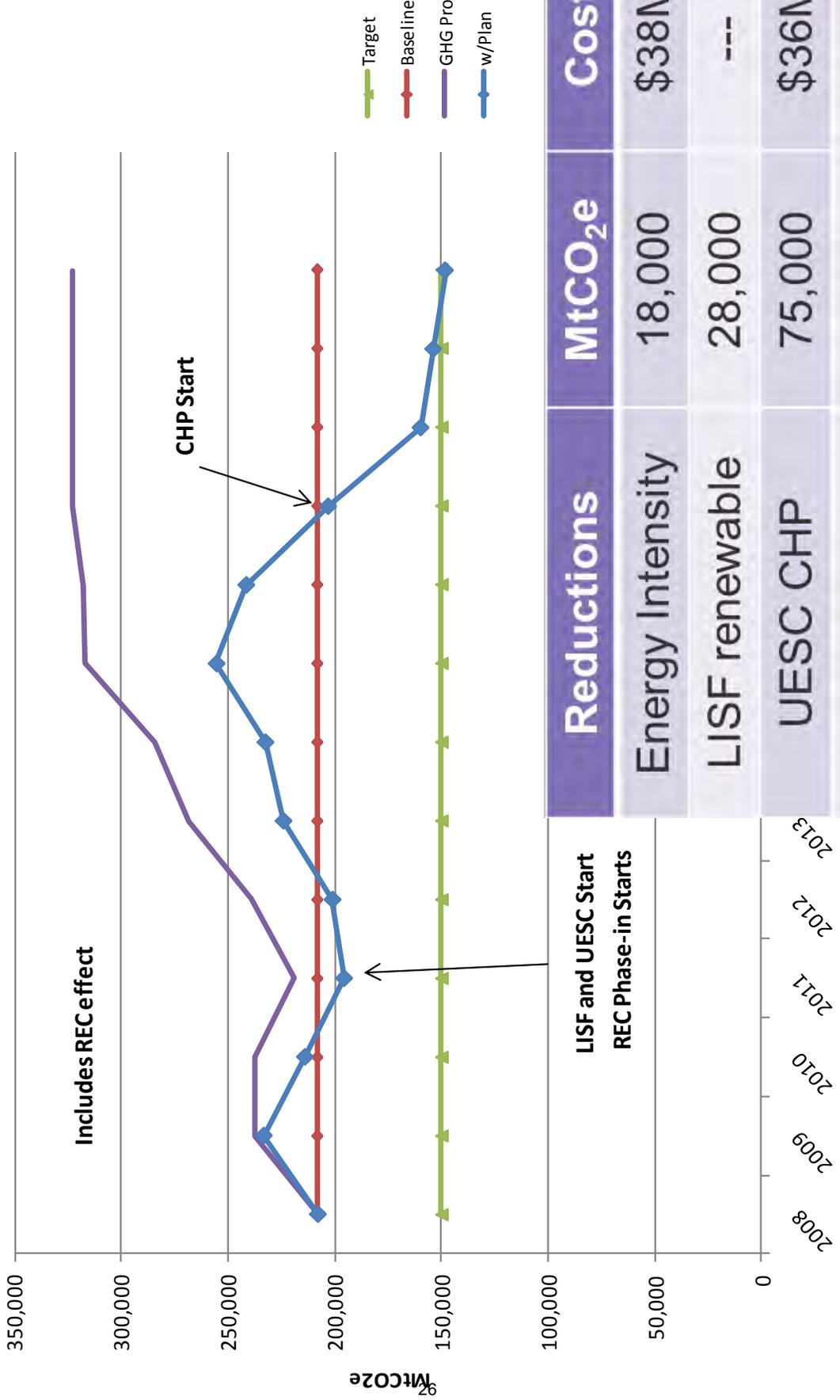


- **Achieved a 99%+ C&D recycling rate by storing most of its concrete rubble (from building demolitions) on-site until enough material is generated to warrant the cost of bringing in a contractor with a concrete crusher.**
- **Resulting crushed concrete is used on-site as aggregate for the Labs fire-break roads and as base materials for new parking lots.**
- **Total savings (including cost avoidance) averages ~\$350,000 per crushing event.**

# Brookhaven National Laboratory - GHG



# Brookhaven National Laboratory - GHG



Reductions	MtCO <sub>2</sub> e	Cost
Energy Intensity	18,000	\$38M
LISF renewable	28,000	---
UESC CHP	75,000	\$36M
REC Purchase	54,000	\$1.1M/yr
Goal	~173,000	

LISF and UESC Start  
REC Phase-in Starts

Costs do not include HPSB and other peripheral initiatives

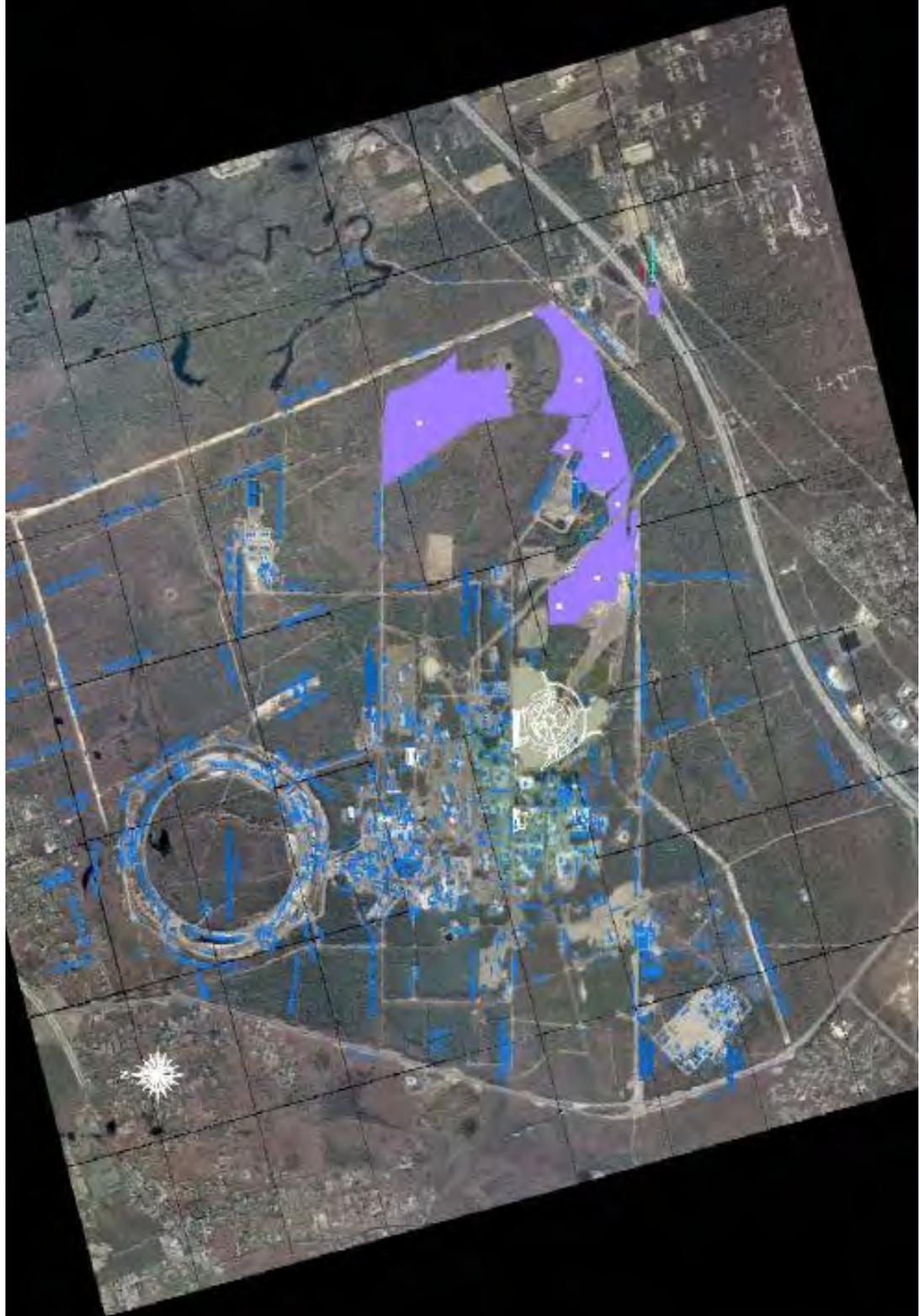
# Our Vision to Integrate Science and Sustainability

- **Creation of BNL Sustainability Steering Committee**
  - Senior Leadership from:
    - Research
    - Operations
    - ES&H
    - Communications / Public Affairs
- **32 MW Solar PV Project Host**
  - Currently (but briefly) the Largest Solar PV Project in the Country



- **Integrate research, operations, and master planning to create a demonstration site**
- **Major Research Initiatives**
  - Biofuels
  - Solar Energy - NRSC
  - Energy Efficiency and Storage
  - AEGIS – Advanced Electrical Grid Innovation, Information and Support Center
  - Smart Grid





# Long Island Solar Farm at BNL

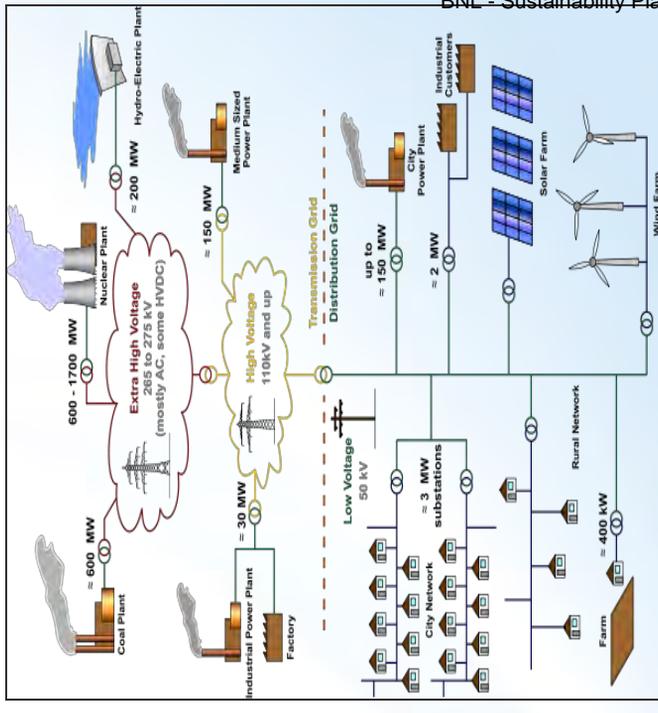
# Long Island Solar Farm

- DOE with BNL support has successfully made available the BNL site to host a major solar PV array
- The project was executed through a Request for Proposal from the local utility (LIPA)
- To promote renewable energy, 200 acres of federal land has been made available through an easement
- The project, nearing operations, will be 31.5 MW and avoid ~31,000 tons of carbon per year
- The large array and a smaller dedicated array will be utilized by BNL in research programs



# Key Issues for BNL Research

- **Variability and Non-Dispatchability**
  - Solar energy varies
  - Solar generation cannot be dispatched when needed
- **Grid Integration**
  - Grid is not designed for two-way power flow
  - Distributed generation can adversely impact grid control
- **Environmental Impacts**
  - Utility-scale solar PV plants can have impacts on local environment and ecology

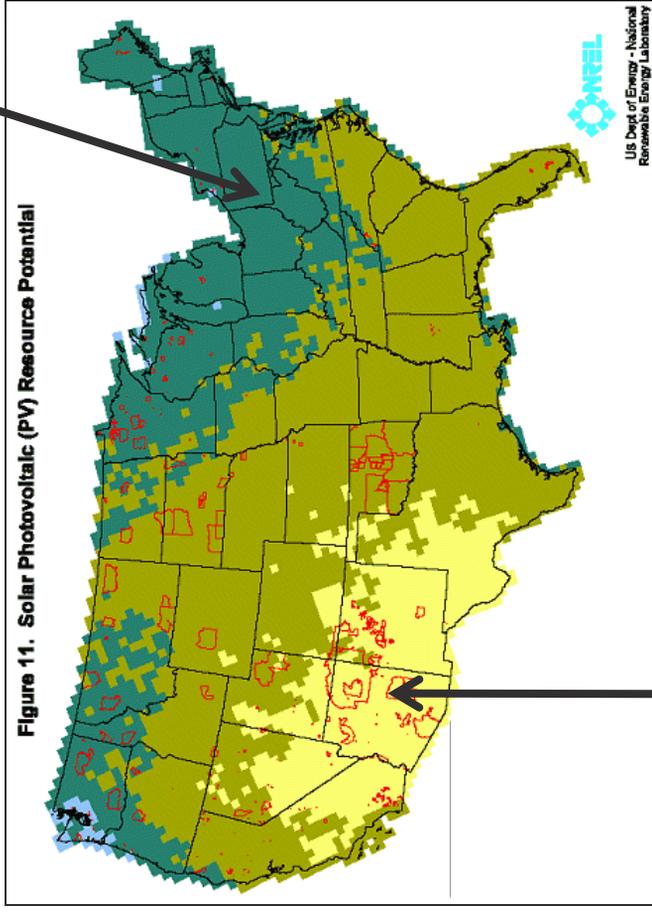


Source: <http://www.soldata.dk/pyr-80spc.htm>

# The LISF will also help characterize solar PV system performance in the Northeast..

- Solar generation tends to concentrate in the south and southwest
  - Highest solar insolation
- Performance data sets for utility-scale solar PV plants in the Northeast are not readily available
  - LISF data will help system designers

Lower solar insolation



Higher solar insolation

# Brookhaven National Laboratory *A passion for discovery*



## Questions?







**General Session I**  
Directors Roundtable





## **General Session II**

Zoning Board of Appeals Overview



**ZONING BOARD OF APPEALS OVERVIEW**

New York State Department of State

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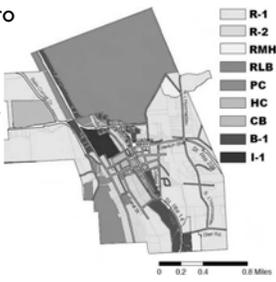
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### Zoning

- Divides municipality into districts
- Goal: avoid incompatible land uses
- Regulates:
  - Land use
  - Density
  - Placement of structures on site
- Optional




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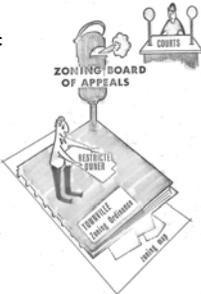
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### Zoning requires a safety valve

- Municipalities with zoning must have zoning board of appeals
- ZBA is a "buffer" for aggrieved applicants between decisions of zoning enforcement officer & State supreme court




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### Zoning enforcement officer

- Administrative official charged with enforcement of zoning code
  - Renders initial decision regarding conformity with zoning
  - Cites violations of zoning code
- Municipal official solely designated as ZEO or an official with dual responsibilities
  - Municipal planner
  - Code enforcement officer
  - Other

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### Statutory authority

	Town Law	Village Law	General City Law
Membership	§ 267	§ 7-712	§ 81
Procedure	§ 267-a	§ 7-712-a	§ 81-a
Variances	§ 267-b	§ 7-712-b	§ 81-b

Copies of state statutes may be found online at:  
[public.leginfo.state.ny.us/menuegf.cgi?COMMONQUERY=LAWS](http://public.leginfo.state.ny.us/menuegf.cgi?COMMONQUERY=LAWS)

Or in the DOS Publication:  
**Guide to Planning and Zoning Laws of New York State**

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### ZBA members are public officers

- Term of office
- "Oath of Office"
- Qualifications
- Removal reasons
- Training

"I do so solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the [Zoning Board of Appeals Member], according to the best of my ability."

Section 1, Article XIII – NY Constitution

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### State training requirements

- Minimum of four hours annually
- Excess hours carried over
- Necessary for reappointment
- Governing board approves training
- Requirements may be waived or modified
  - Resolution of governing board
  - Best interest of municipality
- Variety of sources & formats
- Tracked locally

**Failure to comply does not void decisions**

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### ZBA powers & duties

- All ZBAs have APPELLATE JURISDICTION**
  - Interpret zoning regulations
  - Issue or deny appeals for variances
- Some ZBAs have ORIGINAL JURISDICTION**  
(if authorized by governing board):
  - Site plan review
  - Special use permits

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### Before an appeal can be made

Zoning Enforcement Officer (ZEO) must act to:

- Grant permit
- Deny permit
- Make decision on applying zoning regulations
- Issue citation for violation or take another enforcement action

**Exception:**

Direct appeal for area variance with applications for:

- Site plan review
- Subdivision review
- Special use permit

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### Who has standing?



- Once denied a permit, or cited for a violation
- One claiming ZEO's action was incorrect, or special circumstances exist
- Third party standing to be harmed by ZEO decision
- Any "officer, department, board or bureau" of the municipality

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### When to file appeal

- Within 60 days after ZEO files copy of action
    - Exception:
      - Third Parties must file within 60 days from date they should have known
      - or could have knowledge of the ZEO's action
- File by letter, or municipality may have form;  
send copy to ZEO and ZBA

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An appeal "stays" enforcement proceedings

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	<b>Review Criteria</b>
Interpretations Use variances Area variances	

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	<b>Interpretations</b>

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<b>Appeal for interpretation</b>	
	<input type="checkbox"/> Appellant believes ZEO wrongly applied the law
<b>Common areas of interpretation:</b>	
<input type="checkbox"/> Definitions	
<input type="checkbox"/> Method of taking measurements	

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<b>Interpretations</b>	
Without definitions, the board must come to consensus on what they think term or regulation means	<ul style="list-style-type: none"> <li><input type="checkbox"/> Past decisions on same regulations or similar facts</li> <li><input type="checkbox"/> Minutes, hearing comments &amp; other records which reveal governing board's intention when they adopted zoning provision</li> <li><input type="checkbox"/> Ordinary meaning of terms, if term is undefined</li> </ul>

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<b>Use Variance</b>	

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<p>To use land for a purpose not allowed by zoning</p> <p>Alternative: rezone property</p>	

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**Use variance test**

The "burden of proof" is on the applicant

1. No reasonable return
2. Unique circumstances
3. No self-created hardship
4. No alteration to essential neighborhood character

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**1. No reasonable return**

Applicant must demonstrate no reasonable return under present zoning for:

- any permitted use
- a current lawful nonconforming use
- any use currently allowed by previous use variance

ZBA must consider property as a whole, not just the portion which is the subject of the application

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**Reasonable rate of return**

- No hard & fast numbers
  - Depends on particular facts of application
- ZBA determines
  - They do not have to agree with expert's opinion
  - Petruzzelli v. Zoning Bd of Appeals of the Village of Dobbs Ferry, 181 A.D.2d 825 (2d Dept. 1992)*




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## 2. Unique circumstances

- Parcel is only, or one of very few, affected to the extent zoning would create a hardship



- "Uniqueness of land" causing plight, not "uniqueness of the plight of the owner"

### Other circumstances:

- Physical features
- Historic or architectural features
- Adjacent uses

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## 3. Self-created hardship

### Examples:

- Request relief from restrictions which existed at time of sale;
- Owner bound by zoning restrictions, even without knowledge of them;
- Spending money on project not allowed by zoning




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## 4. Neighborhood character

- Is the proposed use consistent with existing development?
- Is there significant adverse impact on the neighborhood or community?




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Area variance

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### Area Variance

- To vary from dimensional requirements of zoning regulations



- Example:
  - Property on left needed an area variance for relief from setback requirements to construct driveway so close to lot line

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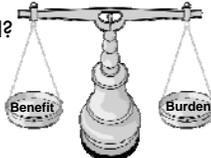
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### Area Variance test

1. Change to neighborhood character
2. Alternatives not requiring a variance
3. Substantiality of the request
4. Effect on physical or environmental conditions
5. Is the situation self-created?




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### 1. Change to neighborhood character

Would undesirable changes be eliminated with conditions imposed?



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### 2. Alternatives not requiring variance



Consider placing addition in rear instead of side



Applicant should present reasons for choosing one alternate over another:

- ✓ Better view
- ✓ Cheaper construction

- ✓ Better internal pattern
- ✓ Better overall aesthetics

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### 3. Substantiality of request

Amount of variance requested

Magnitude of variance requested



5' vs. 50' ?

5' of a 10' setback or 50' of a 300' frontage?

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### 4. Physical or environmental impacts

**Examples:**

- blocked views
- drainage problems
- impacted wetlands
- parking shortages




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### 5. Is situation self-created?

- If so, the owner is not necessarily precluded from being granted an area variance.



**Examples:**

- Shed needs setback relief because of substandard sized lot
- Addition begun in violation of height restrictions

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### Conditions

- Clearly specify conditions imposed
- Must be reasonably related to the impact of proposal being considered
- Nexus



"Such conditions might properly relate 'to fences, safety devices, landscaping, screening, and access roads related to period of use, screening outdoor lighting and noises...incidental to comfort, peace, enjoyment, health, or safety of the surrounding area."  
 St. Onge v. Donovan, 71 NY2d 507, 516 (1998).

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### Grant minimum variance necessary

Board need not grant or deny the variance request as submitted:

“The Board of appeals, in the granting of variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.”

- Town Law 267-b(3)(c)
- Village Law 7-712-b(3)(c)
- General City Law 81-b (4)(v)(c)

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### Procedures, Meetings, Hearings

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### Board rules of procedures

To be binding, board rules of procedures must be adopted by governing board by local law or ordinance. They cover a variety of issues, including:




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### State Environmental Quality Review Act

- Board determines environmental impacts if variance were granted
- Potential significant adverse environmental impacts must be evaluated, prior to decision

**Examples of Type II Actions**

- Interpretations
- Area variances from setbacks or for 1, 2, & 3-family residences

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### Open meetings

- Notice
  - Media
  - Posted in conspicuous place
  - Municipal website
- Access
- Executive sessions
  - No meeting behind closed doors to discuss applications or board business
  - Only held for reasons defined in OML
  - Open Meetings Law—Article 7 Public Officer's Law §105

A "work session" or "site visit" is a meeting subject to OML if quorum gathers to discuss public business




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### ZBA matters require public hearings

Send hearing notice to:

- Parties to the appeal
- Regional or State park commission (if applicable)
- Anyone required to receive a mailed notice by local law or ordinance
- Depending on property location:
  - County Planning Agency
  - Adjacent Municipalities



State Law does not require neighboring property owners be notified by mail when public hearing is scheduled. (Except certain public agencies.)

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### Hearing notice

If decision on interpretation will dictate whether or not variance will be required...  
 ...include language in notice for variance request in the event interpretation isn't in applicant's favor

LEGAL NOTICE (Excerpt)  
 NOTICE IS HEREBY GIVEN  
 .....  
 The Applicant requests an interpretation whether the Applicant's proposed single family dwelling complies with the sixty(60) foot setback from Pearl River Road. The Applicant also requests a variance from the sixty(60) foot setback from Pearl River Road in the event the Zoning Board of Appeals determines that the proposed dwelling's location does not comply with the sixty foot setback.

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### Notice to adjacent municipality

GML §239-nn

**Special Use Permits or Use Variances** within 500' of adjacent municipality require notifying neighboring clerk:

- by mail or electronic transmission
- at least 10 days prior to any hearing

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### County referral

Applications within 500' of:

- Municipal boundaries
- State or county parks, highways, streams, or institutions
- Land on which a state or county building is located
- Farm operations in State Ag. districts (does not apply to area variances)
- GML §239-m




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### Waiting to act

ZBA can not take final action until:

- ZBA receives the county planning agency's report

**OR**

- 30-days after county receives full statement



**Two day rule**

**Time period may be extended by mutual agreement**

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### Effect of county recommendation

- If county recommends disapproval or approval with conditions, the local board may act contrary to the county's recommendations by a supermajority vote

- A majority vote plus one vote




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### Taking action

- Motion/resolution only passes with the majority of ENTIRE board
- If motion fails:
  - Variance request or zoning interpretation request is denied\*
  - No action on matters of original jurisdiction, such as site plan review

**\*Additional votes taken within statutory time frame won't trigger rehearing process**

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### Rehearing

ZBA can vote to reconsider a matter it previously acted on if:

- Matter has not been previously reheard
- Motion to rehear matter receives unanimous vote of all present
- Change of original decision receives unanimous vote of all present

**Remember:** rehearing must comply with notice provisions

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### Decisions, Filings, and Findings

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### Decisions

- Must be made within 62 days after hearings close
- Minutes must contain record of each vote
- Should include language of motion & any conditions passed
- Send copy with findings to applicant, & county if applicable

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### Filings

Municipal clerk should stamp all records with the date they are received

- Begins when records are placed under municipal clerk's control
- File decisions within 5 business days after decision is rendered (or sooner)
- Start of 30 day appeals period for Article 78 proceeding is established




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### Findings

Finding should be able to support a decision if challenged in court

- Analysis applying law to facts, leading to conclusions
- Describe denial or approval reasons
- May also support why conditions were imposed
- Should be approved by board, not simply drafted by attorney & filed

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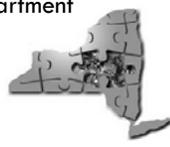
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### Contacting the Department of State

(518) 473-3355      Training Unit

(518) 474-6740      Legal Department

(800) 367-8488      Toll Free



Email: [localgov@dos.state.ny.us](mailto:localgov@dos.state.ny.us)  
 Website: [www.dos.state.ny.us](http://www.dos.state.ny.us)

New York Department of State

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## **Town Law § 267**

### **Zoning Board of Appeals**

1. Definitions. As used in this section:
  - (a) "Use variance" shall mean the authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.
  - (b) "Area variance" shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.
2. Appointment of members. Each town board which adopts a local law or ordinance and any amendments thereto pursuant to the powers granted by this article shall appoint a board of appeals consisting of three or five members as shall be determined by such local law or ordinance and shall designate the chairperson thereof. In the absence of a chairperson the board of appeals may designate a member to serve as acting chairperson. The town board may provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper, not exceeding the appropriation made by the town board for such purpose.
3. Town board members ineligible. No person who is a member of the town board shall be eligible for membership on such board of appeals.
4. Terms of members first appointed. In the creation of a new board of appeals, or the reestablishment of terms of an existing board, the appointment of members to the board shall be for terms so fixed that one member's term shall expire at the end of the calendar year in which such members were initially appointed. The remaining members' terms shall be so fixed that one member's term shall expire at the end of each year thereafter. At the expiration of each original member's appointment, the replacement member shall be appointed for a term which shall be equal in years to the number of members of the board.
5. Terms of members now in office. Members now holding office for terms which do not expire at the end of a year shall, upon the expiration of their term, hold office until the end of the year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the board.
6. Increasing membership. Any town board may, by local law or ordinance, increase a three member board of appeals to five members. Additional members shall be first appointed for single terms as provided by resolution in order that the terms of members shall expire in each of five successive years and their successors shall thereafter be appointed for full terms of five years. No such additional member shall take part in the consideration of any matter for which an application was on file with the board of appeals at the time of his or her appointment.
7. Decreasing membership. A town board which has increased the number of members of the board of appeals to five may, by local law or ordinance, decrease the number of members of the board of appeals to three to take effect upon the next two expirations of terms. Any board of appeals which, upon the effective date of this section has seven members, may continue to act as a duly constituted zoning board of appeals until the town board, by local law or ordinance, reduces such membership to three or five. However, no incumbent shall be removed from office except upon the expiration of his or her term.

## 7-A. Training and attendance requirements.

- (a) Each member of the board of appeals shall complete, at a minimum, four hours of training each year designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four hours in any one year may be carried over by the member into succeeding years in order to meet the requirements of this subdivision. Such training shall be approved by the town board and may include, but not be limited to, training provided by a municipality, regional or county planning office or commission, county planning federation, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to, electronic media, video, distance learning and traditional classroom training.
- (b) to be eligible for reappointment to such board, such member shall have completed the training promoted by the town pursuant to this subdivision.
- (c) The training required by this subdivision may be waived or modified by resolution of the town board when, in the judgment of the town board, it is in the best interest of the town to do so.
- (d) No decision of a zoning board of appeals shall be voided or declared invalid because of a failure to comply with this subdivision.

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

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

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

## 11. Alternate members.

- (a) A town board may, by local law or ordinance, or as a part of the local law or ordinance creating the zoning board of appeals, establish alternate zoning board of appeals member positions for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest. Alternate members of the zoning board of appeals shall be appointed by resolution of the town board, for terms established by the town board.
- (b) The chairperson of the zoning board of appeals may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial zoning board of appeals meeting at which the substitution is made.
- (c) All provisions of this section relating to zoning board of appeals member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy

in office, removal, and service on other boards, shall also apply to alternate members.

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**§ 267-a. Board of appeals procedure.**

1. Meetings, minutes, records. Meetings of such board of appeals shall be open to the public to the extent provided in article seven of the public officers law. Such board of appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.
2. Filing requirements. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the board of appeals shall be filed in the office of the town clerk within five business days and shall be a public record.
3. Assistance to board of appeals. Such board shall have the authority to call upon any department, agency or employee of the town for such assistance as shall be deemed necessary and as shall be authorized by the town board. Such department, agency or employee may be reimbursed for any expenses incurred as a result of such assistance.
4. Hearing appeals. Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town.
5. Filing of administrative decision and time of appeal.
  - (a) Each order, requirement, decision, interpretation or determination of the administrative official charged with the enforcement of the zoning local law or ordinance shall be filed in the office of such administrative official, within five business days from the day it is rendered, and shall be a public record. Alternately, the town board may, by resolution, require that such filings instead be made in the town clerk's office.
  - (b) An appeal shall be taken within sixty days after the filing of any order, requirement, decision, interpretation or determination of the administrative official, by filing with such administrative official and with the board of appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall forthwith transmit to the board of appeals all the papers constituting the record upon which the action appealed from was taken.
6. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the board of appeals, after the notice of appeal shall have been filed with the administrative official, that by reason of facts stated in the certificate a stay, would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.
7. Hearing on appeal. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the town at least five days prior to the date thereof. The cost of

sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.

8. Time of decision. The board of appeals shall decide upon the appeal within sixty-two days after the conduct of said hearing. The time within which the board of appeals must render its decision may be extended by mutual consent of the applicant and the board.
9. Filing of decision and notice. The decision of the board of appeals on the appeal shall be filed in the office of the town clerk within five business days after the day such decision is rendered, and a copy thereof mailed to the applicant.
10. Notice to park commission and county planning board or agency or regional planning council. At least five days before such hearing, the board of appeals shall mail notices thereof to the parties; to the regional state park commission having jurisdiction over any state park or parkway within five hundred feet of the property affected by such appeal; and to the county planning board or agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law.
11. Compliance with state environmental quality review act. The board of appeals shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations as codified in title six, part six hundred seventeen of the New York codes, rules and regulations.
12. Rehearing. A motion for the zoning board of appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of the board. A unanimous vote of all members of the board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.
13. Voting requirements.
  - a. Decision of the board. Except as otherwise provided in subdivision twelve of this section, every motion or resolution of a board of appeals shall require for its adoption the affirmative vote of a majority of all the members of the board of appeals as fully constituted regardless of vacancies or absences. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of section two hundred thirty-nine-m of the general municipal law shall apply.
  - b. Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement official within the time allowed by subdivision eight of this section, the appeal is denied. The board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in subdivision twelve of this section.



**CITY OF UTICA, NEW YORK  
ZONING BOARD OF APPEALS APPLICATION  
USE VARIANCE**

*It is the responsibility of the applicant to complete this form in its entirety, including all required attachments, and as precisely as possible. Failure to submit a complete application may result in a delay in being placed on a Zoning Board of Appeals agenda or a delayed decision from the Zoning Board.*

PROPERTY ADDRESS: \_\_\_\_\_

COUNTY TAX MAP IDENTIFICATION NUMBER: \_\_\_\_\_

**APPLICANT INFORMATION**

NAME _____	ADDRESS _____
PHONE _____	_____
	<i>City State ZIP</i>
FAX _____	E-MAIL _____

**OWNER INFORMATION**

*(complete **only** if applicant is not the owner of the property)*

NAME _____	ADDRESS _____
PHONE _____	_____
	<i>City State ZIP</i>
FAX _____	E-MAIL _____

**RELATIONSHIP OF APPLICANT TO PROPERTY:**

- |                                             |                                     |
|---------------------------------------------|-------------------------------------|
| <input type="checkbox"/> CONTRACT PURCHASER | <input type="checkbox"/> CONTRACTOR |
| <input type="checkbox"/> ARCHITECT/ENGINEER | <input type="checkbox"/> LESSEE     |

**OFFICE USE ONLY**

RECEIVED BY: _____	DATE/TIME RECEIVED: _____
FEE AMOUNT: _____	CHECK/MONEY ORDER #: _____
ZONING: _____	FEE TRANSMITTAL DATE: _____
AGENDA DATE: _____	DEADLINE DATE: _____

**BRIEF HISTORY OF PROPERTY** (historic use of property, ownership history, etc.)

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**DESCRIPTION OF PROPOSED ACTION** (include specific use proposed, hours, # of employees, etc.)

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**VARIANCE STANDARDS** (§ 2-29-67(d)(2))

*Applications for use variances must be based on alleviating a clearly demonstrable hardship, as opposed to a special privilege of convenience sought by the owner. Furthermore, the hardship must be peculiar to the land or building and must not generally apply to land throughout the neighborhood. An example of a property that may potentially have a valid case for a use variance is a corner store in a predominantly residential neighborhood. If the building has large plate glass storefront windows, a parking lot and loading docks in the rear, it would be extremely costly to convert the building to residential uses to comply with existing zoning regulations.*

**DESCRIPTION OF HARDSHIP** (describe the features or conditions of the property that restrict reasonable use of the property under current zoning regulations)

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**COMPATIBILITY WITH NEIGHBORHOOD** (describe the manner by which the proposed use will be consistent with adjoining development and will not cause substantial injury to neighboring properties)

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**APPLICATION ATTACHMENTS**

*To ensure appropriate and timely review of the application, please provide the following additional documentation in support of the application. Failure to provide all of the applicable materials listed below may result in a delay in scheduling the application for review by the Zoning Board of Appeals.*

- \$150.00 application fee (check or money order only payable to City of Utica)
- Detailed site plan (see sample on following page)
- Detailed drawings for parking layout, landscaping and signage
- Photographs of existing conditions

**APPLICANT/OWNER AFFIRMATION**

I, THE UNDERSIGNED, DO HEREBY AFFIRM THAT THE INFORMATION CONTAINED IN THIS APPLICATION IS TRUE TO THE BEST OF MY KNOWLEDGE AND I FURTHER UNDERSTAND THAT INTENTIONALLY PROVIDING FALSE OR MISLEADING INFORMATION IS GROUNDS FOR IMMEDIATE DENIAL OF MY APPLICATION.

FURTHERMORE, I UNDERSTAND THAT I (OR A DESIGNATED REPRESENTATIVE) MUST BE PRESENT AT THE MEETING TO REPRESENT THE APPLICATION AND RESPOND TO ANY QUESTIONS FROM THE ZONING BOARD OF APPEALS MEMBERS.

\_\_\_\_\_  
Signature (Applicant)

\_\_\_\_\_  
DATE

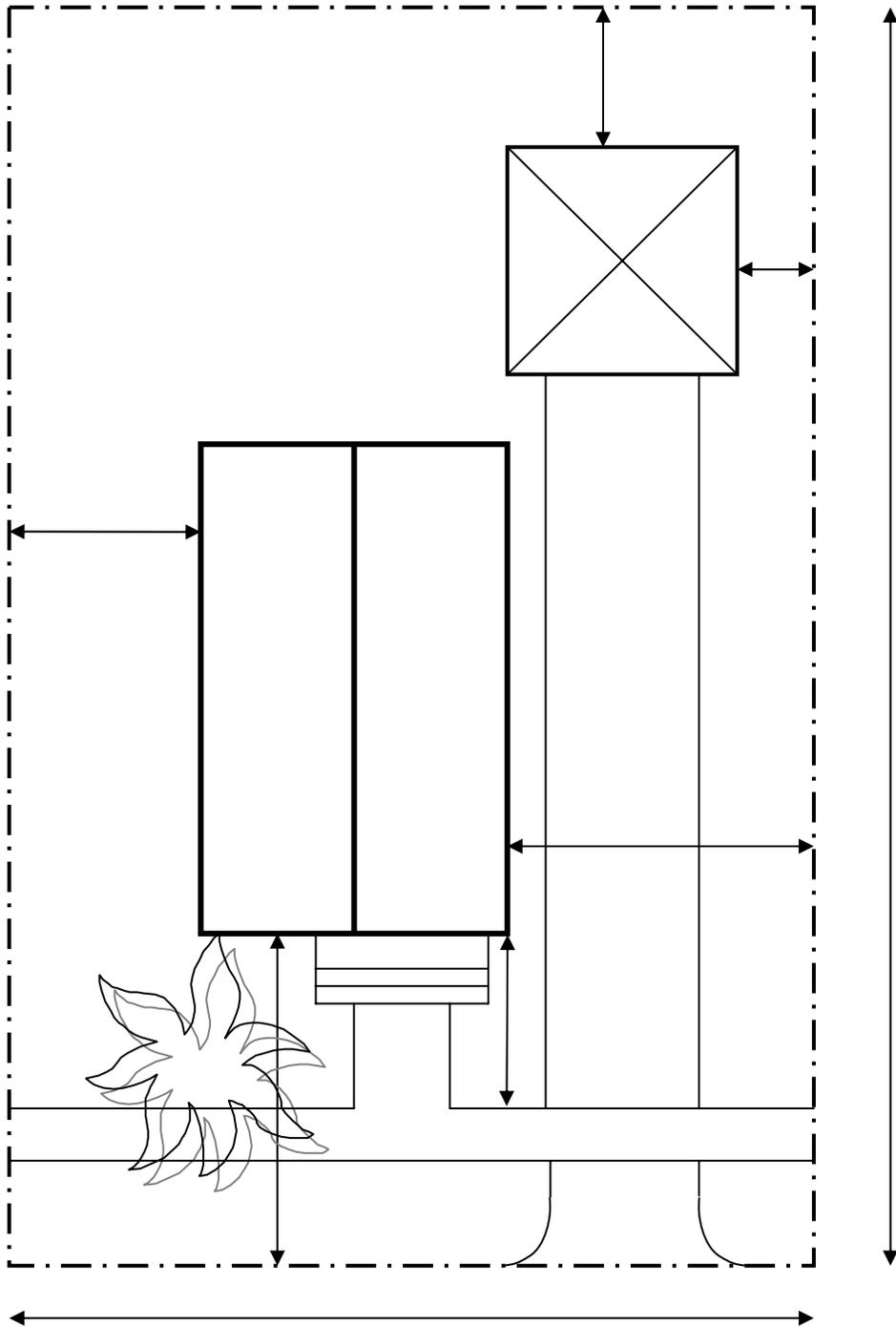
**IF APPLICANT IS NOT THE OWNER OF RECORD FOR SUBJECT PARCEL:**

I, THE UNDERSIGNED, HEREBY AFFIRM THAT I AM THE OWNER OF RECORD FOR THE SUBJECT PARCEL AT THE TIME OF APPLICATION. FURTHERMORE, I AM FAMILIAR WITH THE REQUEST BY THE APPLICANT AND AUTHORIZE SAID APPLICANT TO REPRESENT THE INTEREST OF THE OWNER(S) IN FURTHERANCE OF THE REQUEST.

\_\_\_\_\_  
Signature (Owner)

\_\_\_\_\_  
DATE

**DETAILED SITE PLAN (SAMPLE)**



Village of Pittsford  
Village Code, Excerpt

§ 210-111 Notice of public hearing.

[Added 3-14-2000 by L.L. No. 4-2000]

A. All applicants to the Board of Appeals, Planning Board or Board of Trustees for variances, site plan approval, special exception uses, special permits, temporary permits or any other application or appeal shall be required to give notice of such application and public hearing in the following manner not less than 10 days immediately preceding the public hearing date or any adjourned date. Said notice(s) shall contain the type of application being made and the date, time and place of the public hearing.

B. The applicant shall be required to erect a sign provided by the Village Clerk on the premises of the subject property or properties facing each public street on which the property abuts. The sign shall be erected not more than 10 feet from the property line facing the public street and not less than two feet nor more than six feet above the grade at the property line. The sign shall be securely attached to durable material and protected from the elements. The applicant shall take reasonable care that the sign is visible to the public at all times during the prescribed time period.

C. The Village Clerk shall notify, by regular mail, all property owners within 300 feet of the subject property or properties. A copy of the notice, the list of property owners and their mailing addresses shall be provided to the appropriate Board by the Village Clerk prior to the public hearing.

D. The applicant shall provide, prior to the public hearing, an affidavit of compliance with the provisions of this section.

# NOTIFICATION BY MAIL REQUIREMENT

This mailing is not performed until after submission of your APPLICATION and receipt of the NOTICE OF HEARING from the ZBA office.

Town of Huntington TOWN CODE §198-112(E) states:

“The applicant shall mail notices, post marked no less that thirty (30) days nor more that thirty five (35) days before the hearing, to the owners as well as the occupants of all adjoining properties within five hundred (500) feet of the exterior limits of the applicant’s total property holding, as shown on the current tax roll; with the exception of applications in the R-15, R-10 and R-5 zoning districts where notification to adjoining property owners and occupants shall be to those within two hundred (200) feet of the exterior limits of the applicants total property holding, as shown on the current tax roll.”

“In addition the applicant shall provide a “Certificate of Mailing” for each recipient, which legibly indicates the name and address of the person, including the occupant, to which the notice was mailed, and is duly certified by the post office.”

“The applicant shall also file an affidavit of mailing together with the duly certified “Certificates of Mailing” to the Zoning Board of Appeals office, in no less than five (5) working days before the hearing. Said affidavit shall include the name of the person that actually mailed the notices and the names and addresses of the property owners and the addresses of the occupants that were notified.”

“Failure to mail the notices and/or provide the affidavit and/or the Certificates of Mailing to the Zoning Board of Appeals office may result in postponement of the public hearing. . . .”

## POSTING A SIGN REQUIREMENT

Town of Huntington TOWN CODE §198-112(F) states:

As well as the notification provision in Subsection E above, the applicant or his/her authorized agent shall also post a sign on each frontage of the subject property giving notice that an application is pending before the Zoning Board of Appeals and the nature of that application as well as the date, time and place at which the public hearing will take place.

(1) The sign(s) shall be 20 inches by 30 inches and shall be supplied to the applicant by the Town Planning Department for a fee. Said sign shall be located at the center of the frontage of the property, not more than 10 feet back from the property line. It shall be nailed to a tree, pole or post not less that two feet nor more that six feet above grade and it must be clearly visible from the street. On or before the date and time of the public hearing the applicant or his/her agent shall certify, in writing, in a notarized affidavit to the Board, that he/she has erected the sign as described herein. At the discretion of the Board, failure to erect the sign or submit the affidavit may mean cancellation of the hearing.

(2) Such sign or signs shall be displayed for a period of not less than five days immediately preceding the public hearing and shall be removed by the applicant or his/her agent within three days after the hearing has taken place.

# USE VARIANCE FINDINGS & DECISION

(Dept. of State Example)

**OFFICE USE ONLY**

Application No. UV- \_\_\_\_\_  
 Date of Application: \_\_\_\_\_  
 (Postmarked or Hand Delivered)  
 Date of Public Hearing: \_\_\_\_\_  
 Date Notice Published: \_\_\_\_\_  
 Date of County Referral: \_\_\_\_\_  
 Date of Final Action: \_\_\_\_\_  
 Date of Filing of Decision with the  
 Municipal Clerk: \_\_\_\_\_

Applicant: \_\_\_\_\_

Appeal Concerns Property at the following address:

County Tax Map Section: \_\_\_\_\_ Block \_\_\_\_\_ Lot \_\_\_\_\_

Zoning District Classification: \_\_\_\_\_

Use for which Variance is Requested: \_\_\_\_\_

\_\_\_\_\_

Applicable Section of Zoning Code: \_\_\_\_\_

Permitted Uses of Property: \_\_\_\_\_

\_\_\_\_\_

TEST: No use variance will be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. The following tests must be met for each and every use allowed by zoning on the property, including uses allowed by special use permit.

1. The Applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial.: Yes \_\_\_ No \_\_\_

Proof: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. The alleged hardship relating to the property is unique. (The hardship may not apply to a substantial portion of the zoning district or neighborhood.): Yes \_\_\_ No \_\_\_

Proofs: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**ILLUSTRATIONS OF FINANCIAL EVIDENCE**

- Bill of sale for the property, present value of property, expenses for maintenance
- Leases, rental agreements
- Tax bills
- Conversion costs (for a permitted use)
- Realtor's statement of inability to rent/sell

**ILLUSTRATIONS OF UNIQUENESS**

- Topographic or physical features preventing development for a permitted use
- Why would it be possible to construct the applicant's proposal and not any of the permitted uses?
- Board member observations of the property and surrounding area.

PAGE 2 OF 4:

3. The requested use variance, if granted, will not alter the essential character of the neighborhood.: Yes\_\_\_No\_\_

Proof: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ILLUSTRATIVE NEIGHBORHOOD CHARACTER FACTORS**  
• Board members' observations of neighborhood.  
• Expected effect of proposal on neighborhood, for example, change in parking patterns, noise levels, lighting, traffic.

4. The alleged hardship has been self-created. : Yes\_\_\_No\_\_

Proof: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SELF-CREATED**  
• What were the permitted uses at the time the property was purchased by the applicant?  
• Were substantial sums spent on remodeling for a use not permitted by zoning?  
• Was the property received through inheritance, court order, divorce?

**DETERMINATION OF ZBA BASED ON THE ABOVE FACTORS:**

The ZBA, after reviewing the above four proofs, finds:

- That the applicant has failed to prove unnecessary hardship through the application of the four tests required by the state statutes.
- That the applicant has proven unnecessary hardship through the application of the four tests required by the state statutes. In finding such hardship, the ZBA shall grants a variance to allow use of the property in the manner detailed below, which is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community:

(USE) \_\_\_\_\_  
\_\_\_\_\_

Page 3 of 4:

CONDITIONS: The ZBA finds that the following conditions are necessary in order to minimize adverse impacts upon the neighborhood or community, for the reasons following:

Condition No. 1: \_\_\_\_\_

\_\_\_\_\_

Adverse impact to be minimized: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Condition No. 2: \_\_\_\_\_

\_\_\_\_\_

Adverse impact to be minimized: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Condition No .3: \_\_\_\_\_

\_\_\_\_\_

Adverse impact to be minimized: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Condition No. 4: \_\_\_\_\_

\_\_\_\_\_

Adverse impact to be minimized: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Chairman, Zoning Board of Appeals Date

### RECORD OF VOTE

	MEMBER NAME	AYE	NAY
Chair	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____

# ZONING BOARD OF APPEALS AREA VARIANCE FINDINGS & DECISION

**OFFICE USE ONLY**

Application No. AV- \_\_\_\_\_  
 Date of Application: \_\_\_\_\_  
 (Postmarked or Hand Delivered)  
 Date of Public Hearing: \_\_\_\_\_  
 Date Notice Published: \_\_\_\_\_  
 Date of County Referral: \_\_\_\_\_  
 Date of Final Action: \_\_\_\_\_  
 Date of Filing of Decision with the  
 Municipal Clerk: \_\_\_\_\_

Applicant: \_\_\_\_\_

Appeal Concerns Property at the following address:

County Tax Map Section: \_\_\_\_\_ Block \_\_\_\_\_ Lot \_\_\_\_\_

Zoning District Classification: \_\_\_\_\_

Requirement for which Variance is Requested: \_\_\_\_\_

Applicable Section(s) of Zoning Code: \_\_\_\_\_

TEST: No area variance will be granted without a consideration by the board of the following factors:

1. Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties: Yes \_\_\_ No \_\_\_

Reasons: \_\_\_\_\_

2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance: Yes \_\_\_ No \_\_\_

Reasons: \_\_\_\_\_

3. Whether the requested variance is substantial: Yes \_\_\_ No \_\_\_

Reasons: \_\_\_\_\_

4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood: Yes \_\_\_ No \_\_\_

Reasons: \_\_\_\_\_

5. Whether the alleged difficulty was self-created: Yes \_\_\_ No \_\_\_

Reasons: \_\_\_\_\_

DETERMINATION OF ZBA BASED ON THE ABOVE FACTORS:

The ZBA, after taking into consideration the above five factors, finds that:

- the Benefit to the Applicant DOES NOT Outweigh the Detriment to the Neighborhood or Community and therefore the variance request is denied.
- the Benefit to the Applicant DOES outweigh the Detriment to the Neighborhood or Community.

Reasons: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The ZBA further finds that a variance of \_\_\_\_\_ from Section \_\_\_\_\_ of the Zoning Code is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CONDITIONS: The ZBA finds that the following conditions are necessary in order to minimize adverse impacts upon the neighborhood or community, for the reasons following:

Condition No. 1: \_\_\_\_\_

Adverse impact to be minimized: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Condition No. 2: \_\_\_\_\_

Adverse impact to be minimized: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Chairman, Zoning Board of Appeals      Date



**RECORD OF VOTE**

	MEMBER NAME	AYE	NAY
Chair	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____

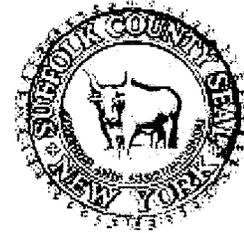




## **General Session II**

Critical Regional Issues





September 9, 2011

Dear Elected Official,

Many Long Islanders have installed renewable energy systems for their homes and businesses with the help of Long Island Power Authority (LIPA) rebates and local, state and federal tax incentives. However, varying permitting processes across Long Island's more than 100 municipalities hamper a more rapid scaling of solar energy installations. Our region is not alone in grappling with this issue as the U.S. Department of Energy has identified variability in solar permitting processes as a nationwide problem.

In 2009, the Suffolk County Planning Commission and the Nassau County Planning Commission along with LIPA launched a collaborative effort called the *Long Island Unified Solar Permitting Initiative* (LIUSPI). LIUSPI has brought together stakeholders and municipal officials from across Long Island to develop a model process that could be used by all municipalities throughout Long Island to handle the application for and approval of residential solar electric and solar hot water systems in each respective jurisdiction. Most recently, the New York Department of State has contributed its expertise to the effort and has helped shape the final LIUSPI process.

**The collaborative working group has developed the attached "Solar Energy System Fast Track Permit Application" process and explanatory memo for your municipality's consideration.**

LIUSPI's application process allows your municipality to meet all regulatory requirements and gather critical information while reducing jurisdictional differences in processes as well as the time and costs to your residents seeking to install solar energy systems. Importantly, what is proposed is an expedited and more uniform process for "standard" residential solar energy systems. A municipality need not apply this process to commercial installations or to residential installations that do not meet the criteria defined in the attached memo.

The LIUSPI application process calls for municipalities to adopt a plan for "standard" residential solar electric and solar hot water systems which will (a) require waived or minimal application fees, (b) provide permit determinations within 14 days of submittal of a completed application, and (c) utilize the "*Solar Energy System Fast Track Permit Application*" as an alternative to existing building permit forms. The Fast Track Application gathers targeted information about the proposed installation including a Professional Engineer or Registered Architect certified drawing of panel location and layout while not requiring a new property survey or other information not relevant to the solar energy system installation.

In addition, in order to aid first responders, for all solar installations (including commercial and "non-standard" residential installations) each municipality will (d) create a central registry of solar installations and (e) require warning labels on the utility meter and any AC disconnect switch.

LIUSPI also encourages municipalities to accept third-party (i.e. non-municipal) inspections and certification and to ensure that all inspectors involved in the application process have been trained in evaluating solar installations based on nationally recognized guidelines.

The Long Island Power Authority has committed to provide implementation assistance of \$15,000 to each township and \$5,000 to each of the first ten villages in Nassau and in Suffolk that adopt authorizing legislation sufficient to accomplish the five key components of the LIUSPI plan by December 31, 2011.

**An informational session regarding this effort will take place on September 23, 2011 from 2pm to 3:30pm at Molloy College at Republic Airport in Farmingdale. A light lunch will be served beginning at 1:45pm. Municipalities intending to send a representative should RSVP to either Beth Fiteni ([efiteni@si.molloy.edu](mailto:efiteni@si.molloy.edu)) or Leigh Musarra (516-678-5000, ext: 7562) from the Molloy College Sustainability Institute's Clean Energy Leadership Taskforce.**

This effort at local solar permitting consistency is one of the first of its kind in the country and – with the participation of Long Island's municipalities – can be another strong step in establishing Long Island as a national leader in creating a clean energy economy.

To advise the collaborative of your municipality's interest or for more information, please contact Sarah Lansdale from the Suffolk County Planning Department at 631-853-5190 or [planning@suffolkcountyny.gov](mailto:planning@suffolkcountyny.gov); or Sean Sallie from the Nassau County Planning Department at 516-571-9342 or [seansallie@nassaucountyny.gov](mailto:seansallie@nassaucountyny.gov). For information on LIPA's implementation assistance, please contact Todd Stebbins at 516-719-9227 or [tstebbins@lipower.org](mailto:tstebbins@lipower.org).

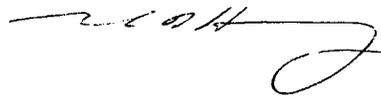
Sincerely,



David L. Calone  
Chairman  
Suffolk County  
Planning Commission



Jeffrey Greenfield  
Chairman  
Nassau County  
Planning Commission



---

Michael Hervey  
Chief Operating Officer  
Long Island Power Authority

Enclosures

## Long Island Unified Solar Permit Initiative (LIUSPI)

*Suffolk County Planning Commission*

*Nassau County Planning Commission*

*Long Island Power Authority*

The global demand for residential solar energy systems is projected to triple over the next few years. As consumer awareness of solar energy grows, panel and installation costs come down, and environmental and economic benefits become more pronounced, municipalities across Long Island need to prepare for the likely increase in solar installation applications by ensuring that the permitting approval process is tailored to provide the municipality with all relevant information while being swift and predictable for applicants.

The installation of solar energy systems on homes in your jurisdiction and throughout Long Island will reduce carbon emissions, help your neighbors reduce their energy costs, create new on-Island green jobs and reduce the load on our electric grid. While the number of Long Islanders who have installed solar panels on their roofs continues to increase – with the help of LIPA’s rebates and local, state and federal tax incentives – this momentum is swimming against the strong tide of “present bias,” the behavioral economics principal that each of us places more weight on the present hassle of change than we do on the long-term benefit of that change. For that reason, it is incumbent upon municipalities to remove the complexity and hassle of installation approvals by instituting a streamlined application process that is at once more relevant and more targeted than current building permit processes. Such a new process will save time, eliminate paperwork, reduce expenses, protect public safety and speed approvals.

### **Streamlined Application Process for Residential Rooftop Solar Energy System Installations**

The new LIUSPI plan is meant to apply to “standard” proposed solar electric panel and solar hot water installations where the installation is designed for a “typical equipment load,” is to be flush mounted on a single-layer residential roof, and is to be installed by a pre-screened installer using “approved equipment.” It is expected that this description will cover approximately 90% of proposed solar panel and solar hot water installations on Long Island.

#### **The new solar permit streamlining plan has two components:**

1. *Municipal Solar Approval and Certification Process Policies including the “Solar Energy System Fast Track Permit Application” (comprised of a Requirements Checklist, Project Information Sheet, and Diagram)*
2. *LIPA technical and financial support for each township and the first ten villages in Nassau and in Suffolk that adopt authorizing legislation by December 31, 2011 incorporating the principles and policies sufficient to accomplish the five key components of the LIUSPI plan including usage of the permit application attached herein.*

## **Municipal Solar Energy System Application and Certification Process Policies**

**In order to streamline and standardize the solar installation application process, municipalities will adopt the following policies:**

- A. For installations that meet the “Fast Track” requirements, the permit application fee will be waived or be no more than \$50.
- B. Provide permit determinations within 14 days of submittal of a completed application
- C. For “standard” installations, utilize the “*Solar Energy System Fast Track Permit Application*” (Attached) as an alternative to existing building permit forms.

A standard installation is defined by the “Requirements Checklist.” Critical attributes include that the installation must:

- Not be subject to review by an Architectural or Historical Review Board,
- be on a residential building or legal accessory structure
- be on a roof with a single layer of roof covering (waivable by the municipality)
- be flush-mounted parallel to the roof surface and no more than 6” above the surface
- have an 18” clearing at the roof ridge and an 18” clearing path to the ridge
- create a roof load of no more than 5 pounds per square foot for photovoltaic (PV) and 6 pounds per square foot for residential solar hot water (RSHW)
- be installed by pre-screened contractors
- use PV panels that have been certified by a nationally-recognized testing laboratory as meeting the requirements of the Underwriters Laboratory (UL) Standard 1703 and inverters must be on a list of NYS Public Service Commission type-tested inverters which are tested by UL or other nationally-recognized laboratories to conform with UL 1741: <http://www.dps.state.ny.us/08E1018/SIRDevices.pdf>
- use RSHW equipment that has been certified by the Solar Rating and Certification Corporation under its OG-100 standard for solar collectors:  
[http://securedb.fsec.ucf.edu/srcc/collector\\_search?action=search&msrcc\\_id=&mstatus=A&moptic\\_type=0&mstart\\_date=&mend\\_date=&results\\_per\\_page=400&submit=Summary](http://securedb.fsec.ucf.edu/srcc/collector_search?action=search&msrcc_id=&mstatus=A&moptic_type=0&mstart_date=&mend_date=&results_per_page=400&submit=Summary)
- use other equipment such as modules, combiner boxes and a mounting system that have been approved for public use as described in the “*Solar Energy System Fast Track Permit Application Requirements Checklist*”
- be in full compliance with all current National Electrical Code (NEC) requirements.

Highlights of the Application:

- The new application will provide the municipality with more targeted information about the solar energy system installations in its jurisdiction.
- A new property survey is not required, but if the solar energy system is proposed for an accessory structure on the residential property, the property owner will have to provide an existing survey and demonstrate that the accessory structure is legal.
- A Professional Engineer (PE) or Registered Architect (RA) – certified drawing (hand-drawn or better) of the solar panel location and layout on the roof as well as an equipment location diagram and a one line electrical diagram are required.
- A PE or RA is required to certify the load bearing and wind load sufficiency of the proposed solar installation.

**In order to assist first responders, municipalities will also:**

- D. Maintain a list by address of all solar energy installations to be shared with relevant first responder organizations.
- E. Require a sign on the utility meter and at any Alternating Current (AC) disconnect switch indicating that there is an operating solar electric co-generation system on site.

**In addition, municipalities are encouraged to:**

- Institute and accept third-party inspections and/or certifications of solar energy system. Like a municipal inspection, third-party inspection would ensure that the project is consistent with the applicable municipal codes and the submitted application documents. Third-party inspections often have the benefit of allowing a more detailed review than municipal inspections.
- Ensure that inspectors (municipal or third-party) have been trained in evaluating solar installations based on nationally recognized guidelines. For PV see:  
<http://irecusa.org/wp-content/uploads/2010/07/PV-Field-Inspection-Guide-June-2010-F-1.pdf>

**LIPA's Support of the LIUSPI Plan**

LIPA has committed to provide financial implementation assistance to each township and the first ten villages in Nassau and in Suffolk that adopt authorizing legislation by December 31, 2011 incorporating the principles and policies sufficient to accomplish the five key components of the LIUSPI plan including usage of the permit application attached herein. Specifically, LIPA will provide \$15,000 to each town and \$5,000 to the first ten villages in each of Nassau and Suffolk.

LIPA will ensure that its website provides access to third-party maintained lists of pre-screened solar installers at:  
<http://www.lipower.org/residential/efficiency/renewables/solar-installers.html>

LIPA will continue to support PV/RSHW inspector training (municipal and third-party) in its service territory.

## **Long Island Unified Solar Permit Initiative**

### ***Solar Energy System Fast Track Permit Application***

#### **Requirements for Application Submittal**

Before approval and issuance of permit(s) for a grid-tied Photovoltaic system (PV) or Residential Solar Hot Water system (RSHW), the applicant shall submit:

#### **1. Solar Energy System Fast Track Permit Application Requirements Checklist**

#### **2. Three (3) sets of plans which include:**

- Cover Sheet must include the following: (a) Project address, map, section, block and lot # of the property; (b) Owner's name, address, phone number, (c) Name, address and phone number of the person preparing the plans;
- Sheet index indicating each sheet title and number;
- Legend for symbols, abbreviations and notations used in the drawings;
- Configuration diagrams prepared by a Professional Engineer or Registered Architect which are sketched (hand-drawn or better) as follows:
  - **Roof Diagram** depicting modules or collectors and racking configuration on designated surface(s) to scale and dimensioned. The diagram should include any 18" clearance/access required as noted in the Fast Track Permit Requirements Checklist criteria
  - **Equipment Location Diagram** indicating the location(s) of the (1) modules or collectors; (2) main electrical service; (3) inverter(s); (4) the location of all equipment disconnects on the outside of the structure (i.e. A/C disconnect); (5) any interior equipment locations
  - **One line standard electrical diagram**
- Property Survey (only if system is proposed for an accessory structure)

#### **3. Solar Energy System Fast Track Permit Application Information Sheet**

### Solar Energy System Fast Track Permit Application Requirements Checklist

This form may be used for planned Photovoltaic (PV) & Residential Solar Hot Water Panel (RSHW) installations that meet the following criteria (check one for each criterion):

- Yes**  **No** Solar installation is not subject to review by an Architectural or Historical Review Board.
- Yes**  **No** Solar installation is to be mounted on a permitted roof structure of a residential building, or on a legal accessory structure. If on a legal accessory structure, a survey showing said structure is attached.
- Yes**  **No** The roof will have no more than a single layer of roof covering in addition to the solar equipment. *[At its discretion, a municipality may waive this requirement.]*
- Yes**  **No** Installation will be flush-mounted, parallel to and no more than 6" above the roof surface.
- Yes**  **No** An 18" wide clearing (free of solar equipment) will be provided along at least one side of the roof ridge either on the same side as the solar equipment or on another side of the ridge that does not have solar equipment on it. In addition, an 18" wide pathway (free of solar equipment) will be provided from at least one eave or gutter connecting to that 18" roof ridge clearing.
- Yes**  **No** Weight of the installed system will not exceed more than 5 lbs per square foot for photovoltaics and no more than 6 lbs per square foot for residential solar hot water.
- Yes**  **No** The Solar Installation Contractor complies with all licensing and other requirements of the jurisdiction and is named on the pre-screened installer lists on the LIPA website.
- Yes**  **No** The proposed equipment is certified under UL 1703 (PV) or has an OG-100 (RSHW) rating from the Solar Rating and Certification Corporation. Inverters used are listed on the NYS Public Service Commission list of type-tested certified interconnection equipment.
- Yes**  **No** PV modules and combiner boxes are identified by the manufacturer for use in grid-tied PV systems.
- Yes**  **No** The project will comply with current NEC requirements including Article 690 Solar Photovoltaic (PV) Systems.
- Yes**  **No** The mounting system has been approved for use in New York State by a licensed professional engineer or registered architect.

\_\_\_\_\_  
**Property Owner's Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Solar Installation Contractor Signature**

\_\_\_\_\_  
**Date**

### Solar Energy System Fast Track Permit Application Information Sheet

1. Property Address: \_\_\_\_\_

2. Is this  a grid-tied photovoltaic (PV) or  a Residential Solar Hot Water (RSHW) system? (Check One)

3. Provide the total system capacity rating (sum of all panels)

PV System: \_\_\_\_\_ DC kilowatts

RSHW System: \_\_\_\_\_ square foot gross area; \_\_\_\_\_ kBTU/day (Clear C) per SRCC OG-100 label(s).

4. Solar Installation Contractor:

Business Name & Address \_\_\_\_\_

Contact Name \_\_\_\_\_

Phone Number \_\_\_\_\_

License Number(s) \_\_\_\_\_

5. What is the existing roofing material? \_\_\_\_\_

6. Provide a letter from a Professional Engineer or Registered Architect certifying that the existing structure can support the additional gravity and wind loads of the solar energy system.

7. Provide an installation manual (or the internet address of a web-based version) for the mounting system.

8. Indicate type, brand and model size and weight including manufacturer's specification sheets of the:

Mounting System: \_\_\_\_\_

Make \_\_\_\_\_ Model \_\_\_\_\_ Mounting Method \_\_\_\_\_

Inverters: \_\_\_\_\_

Quantity \_\_\_\_\_ Make \_\_\_\_\_ Model \_\_\_\_\_

Modules: \_\_\_\_\_

Quantity \_\_\_\_\_ Make \_\_\_\_\_ Model \_\_\_\_\_

\_\_\_\_\_  
**Property Owner's Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Solar Installation Contractor Signature**

\_\_\_\_\_  
**Date**



## **General Session II**

Social Media in Planning: Community Outreach





# Social Media + Public Participation

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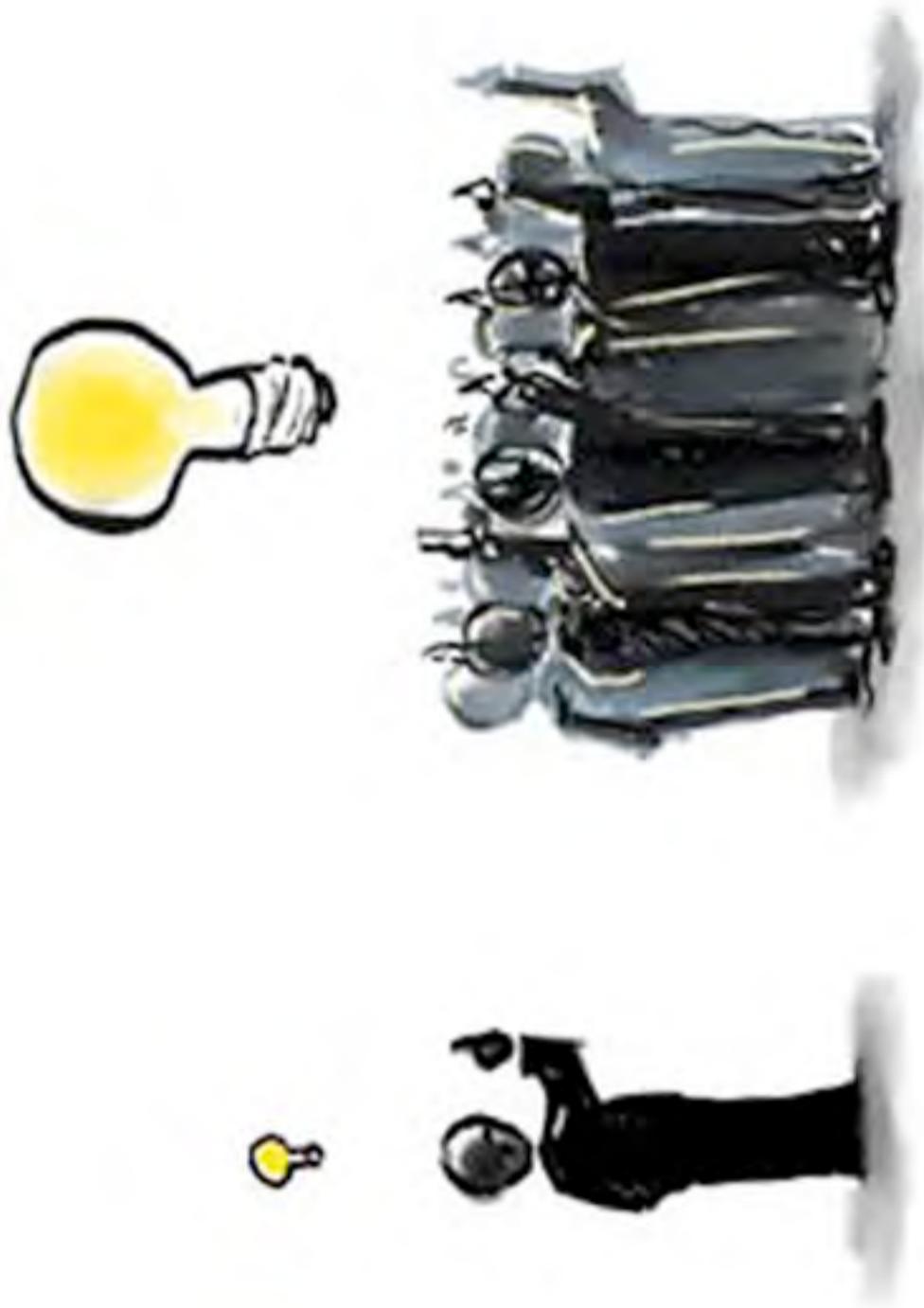
Mike Lydon, CNU  
Principal

The Street **Plans** Collaborative  
Miami || New York City

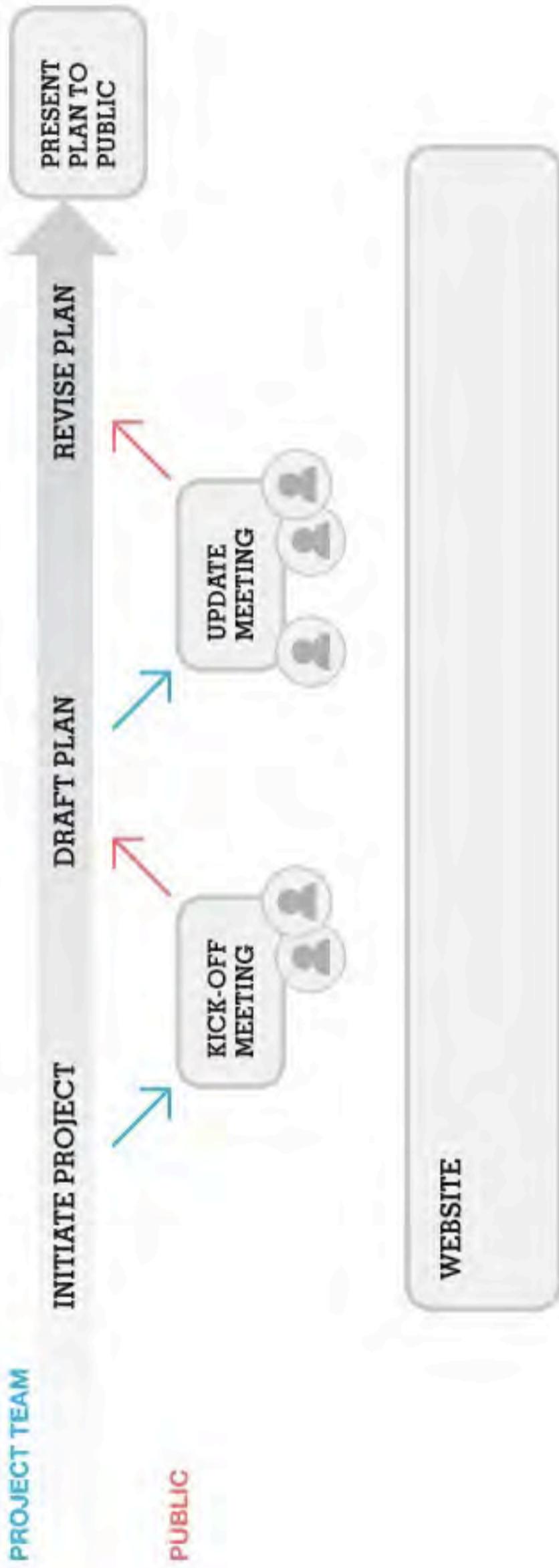
2011 - APA Long Island  
Autumn Planning and Zoning Conference

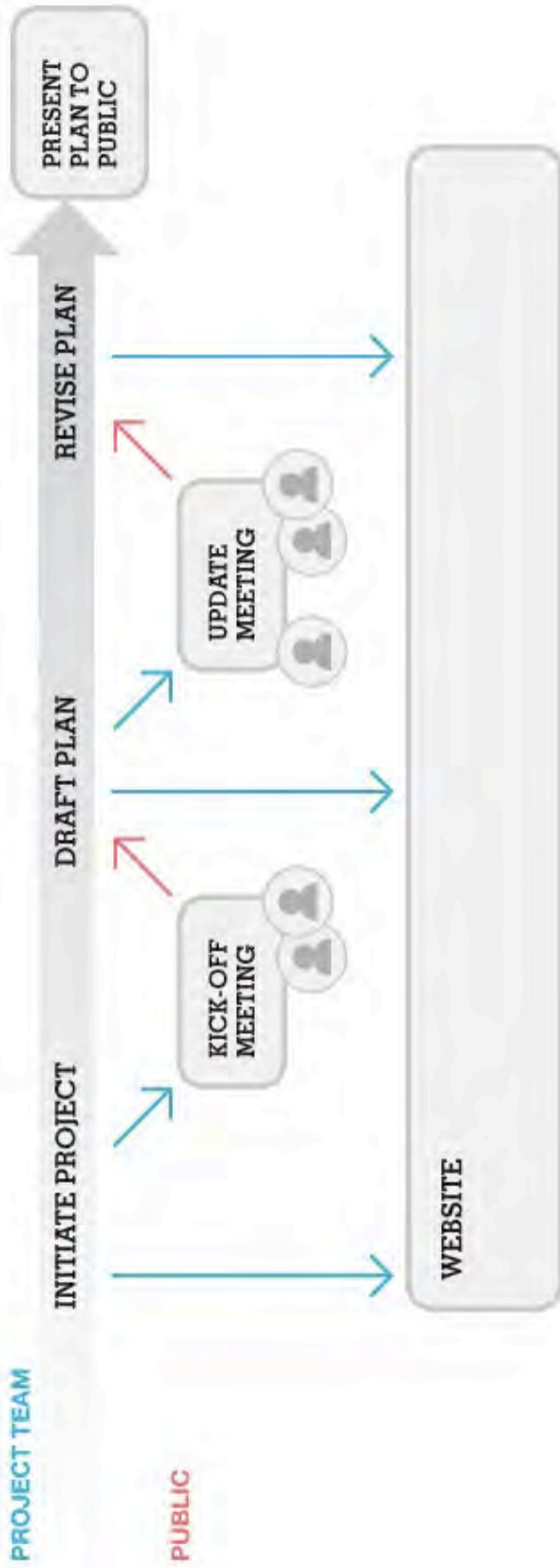


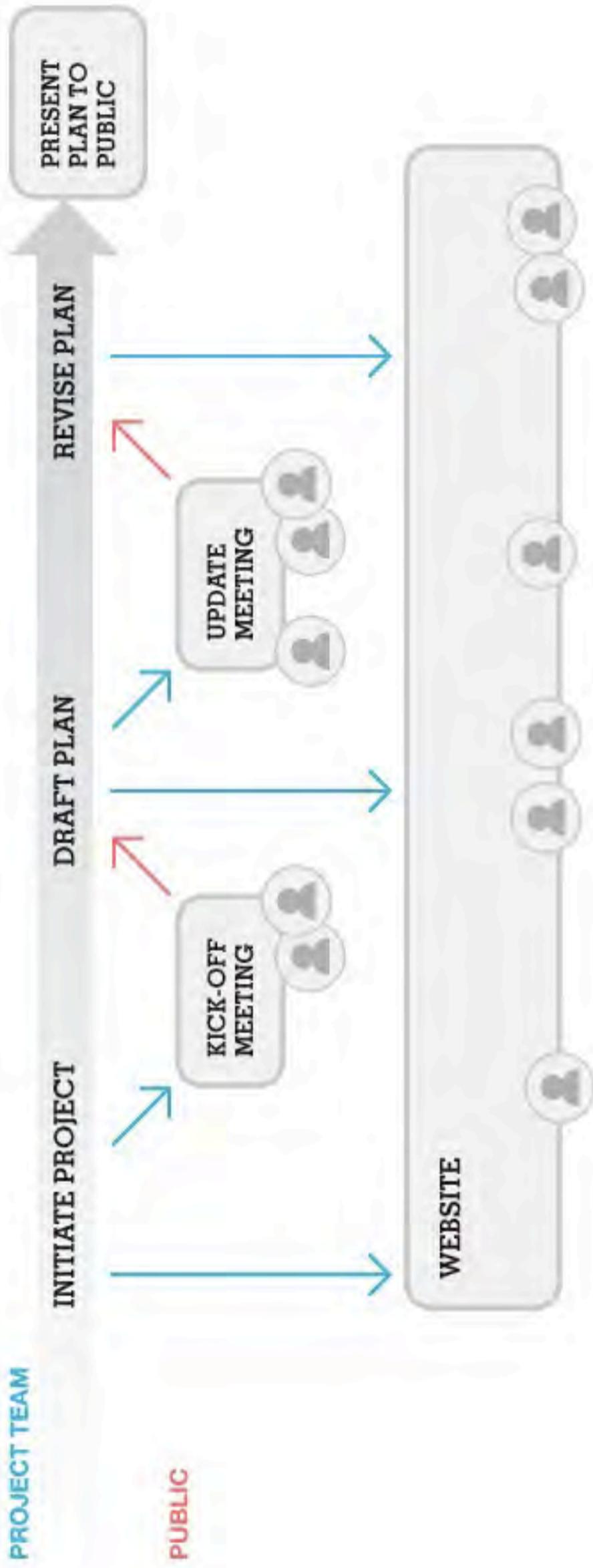
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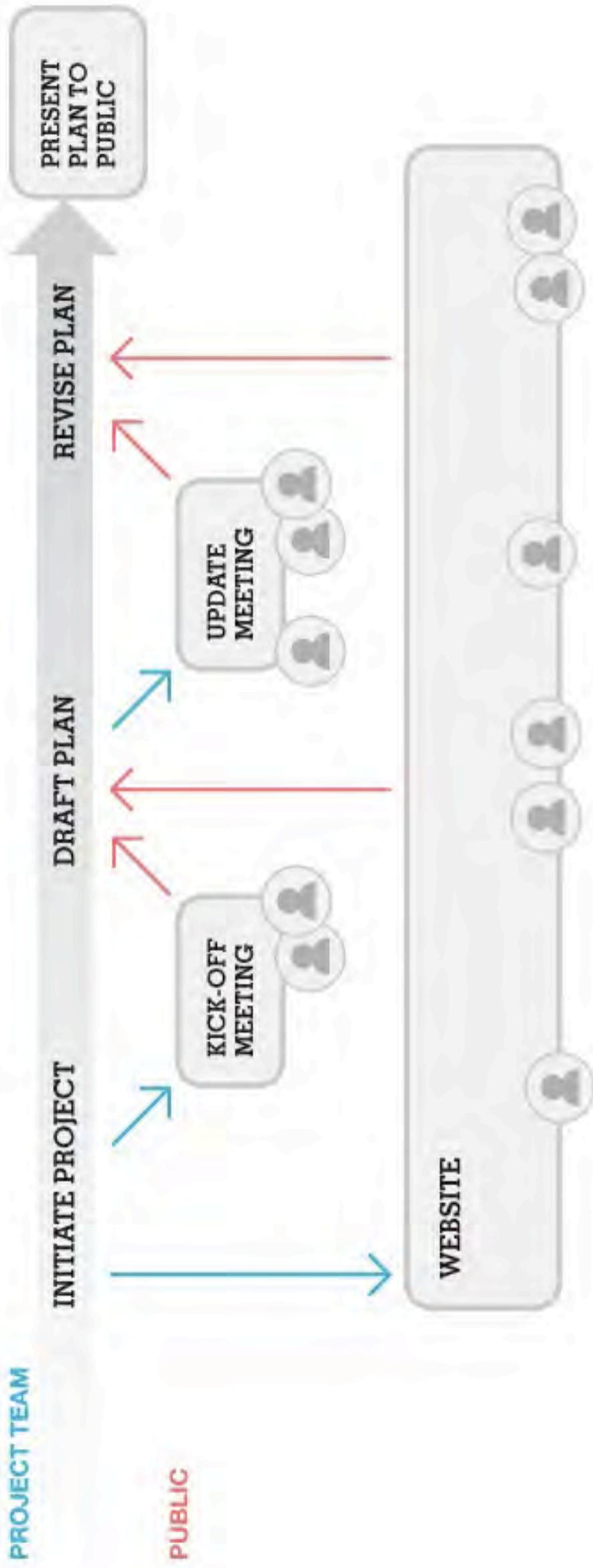


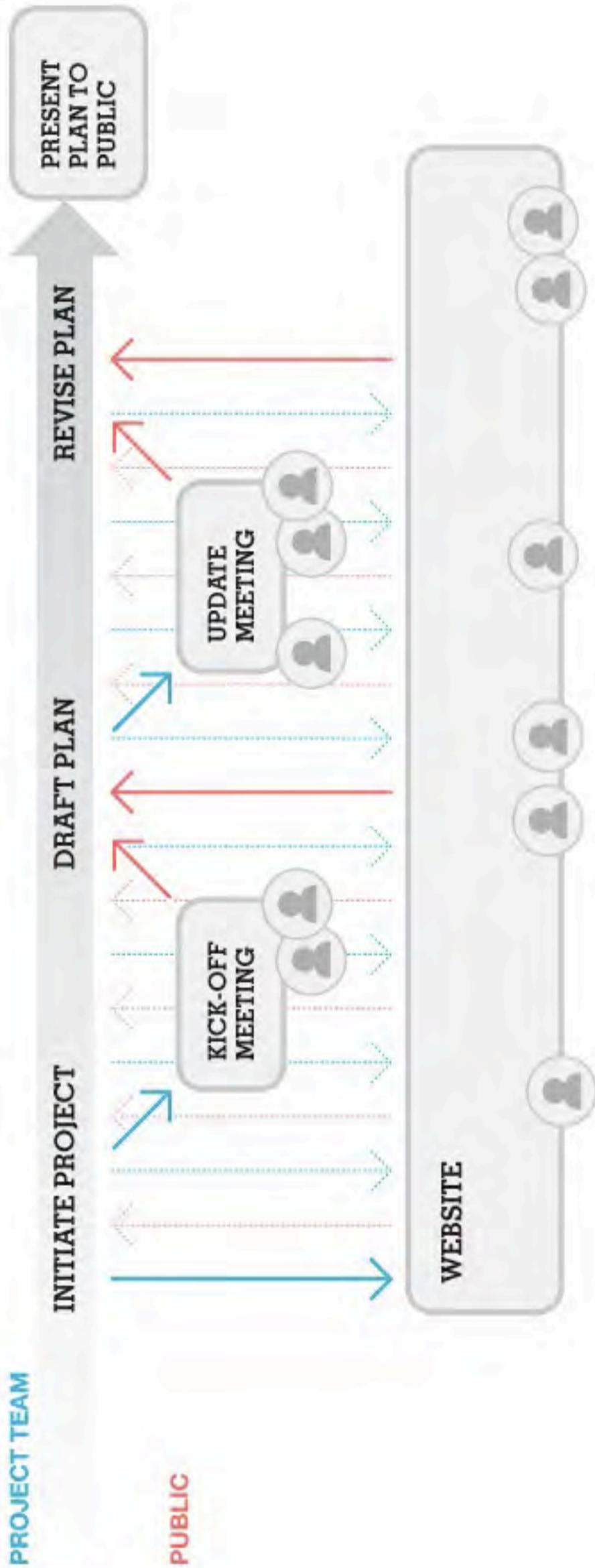


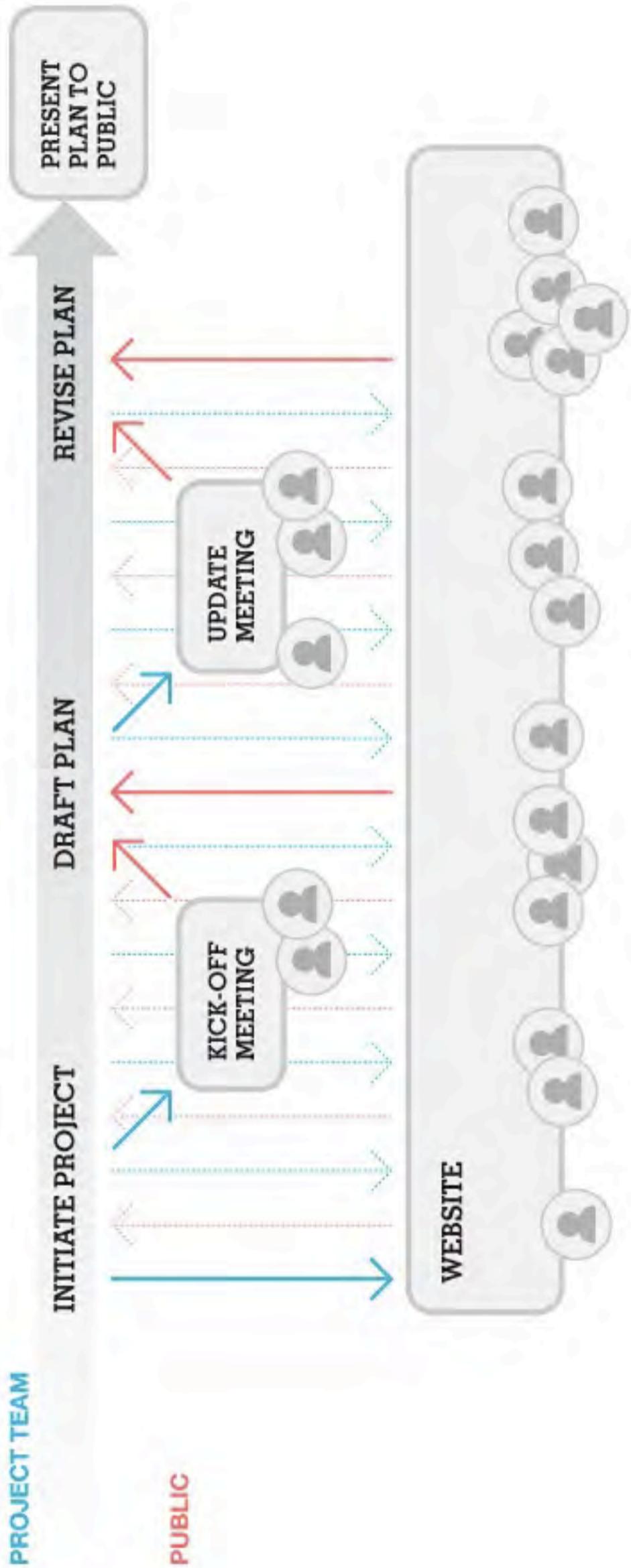


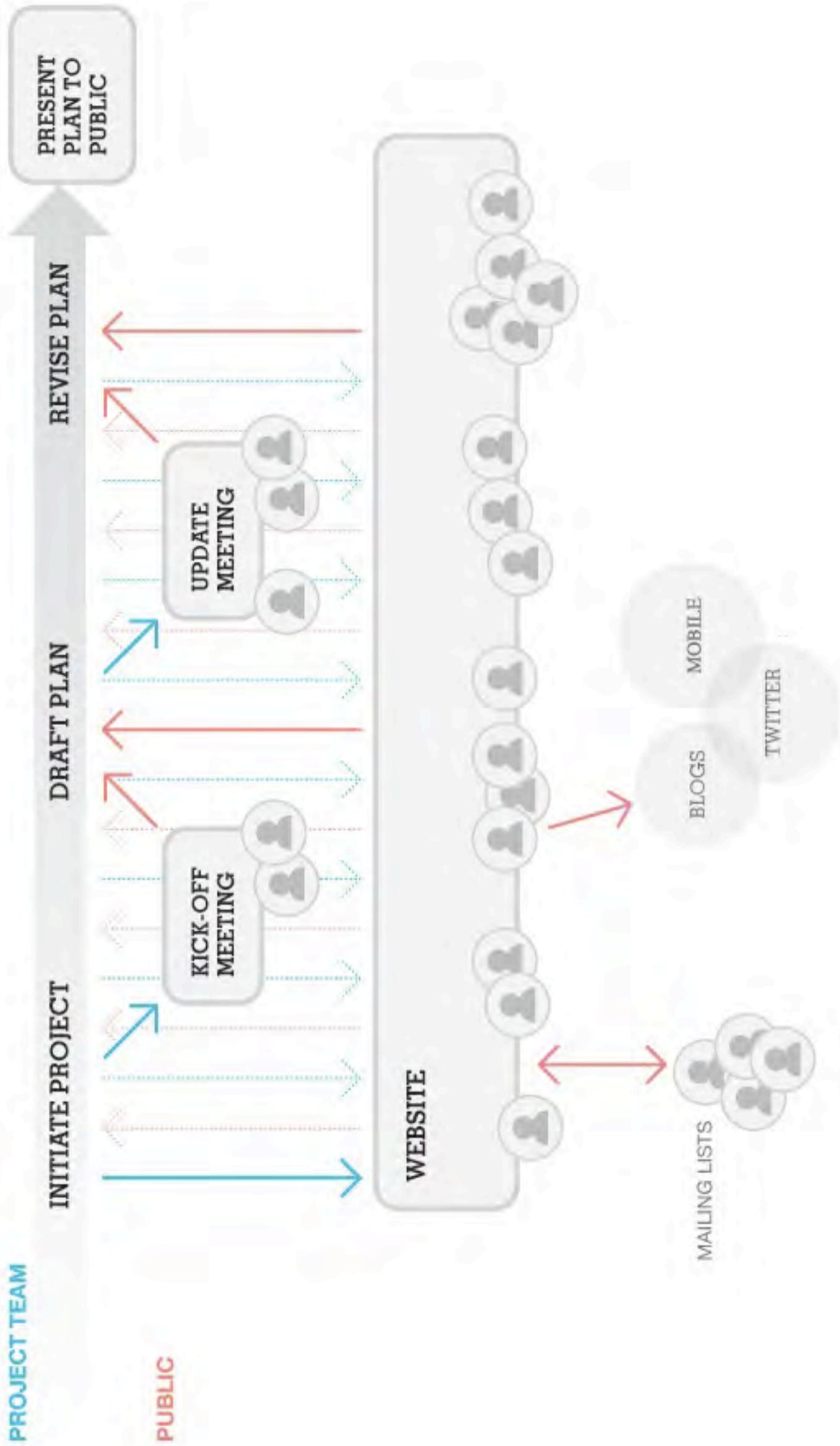


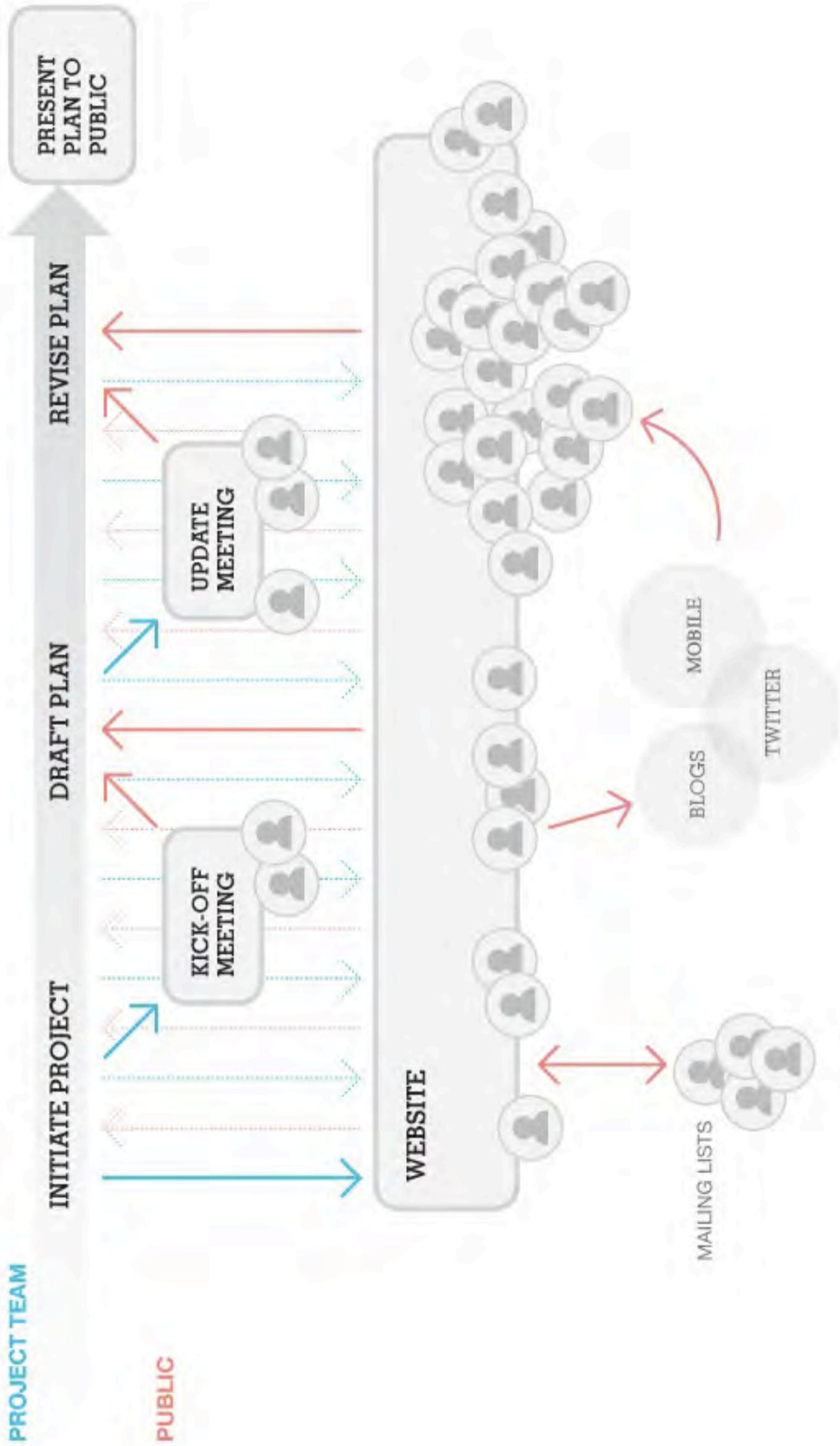


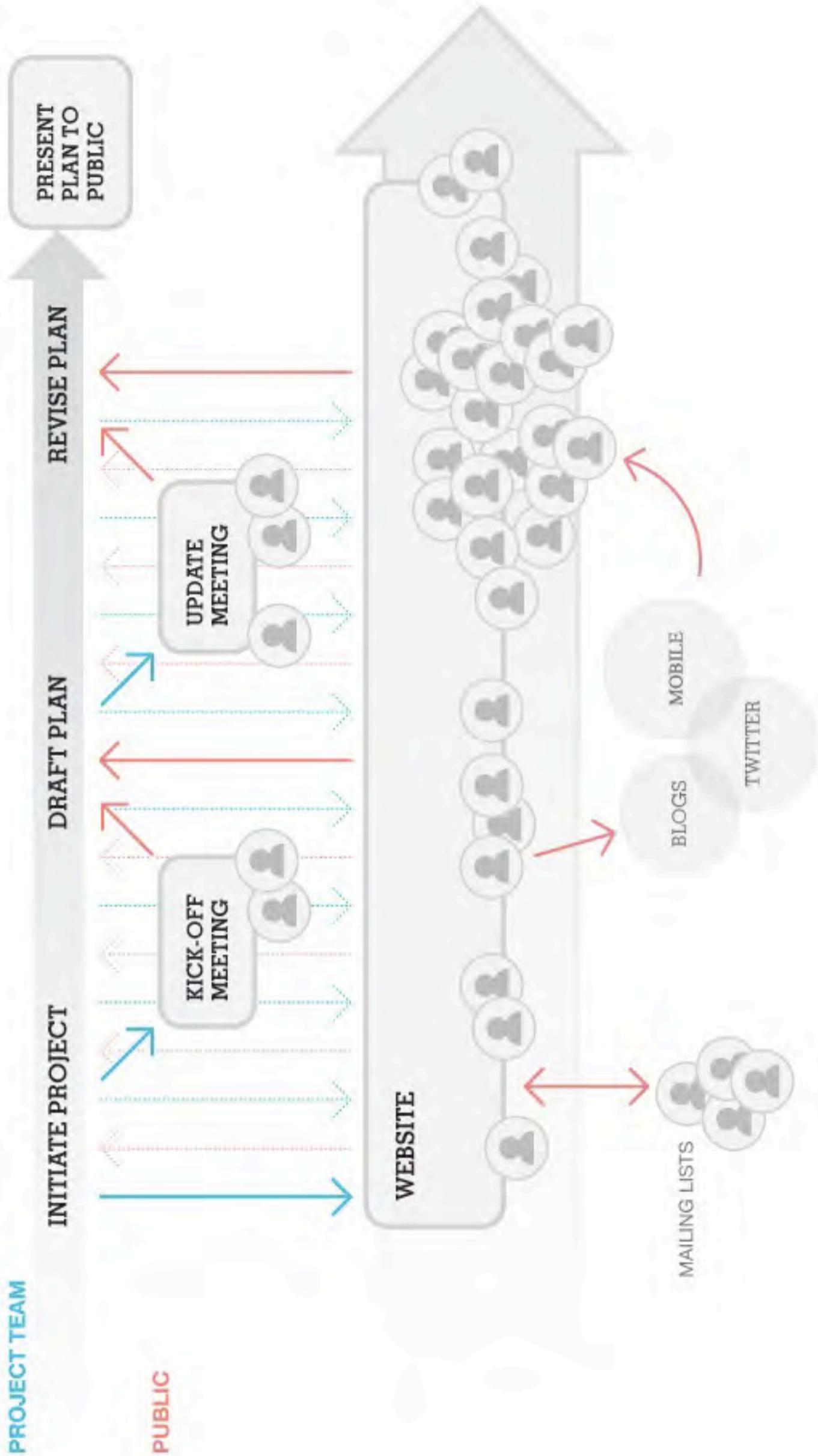




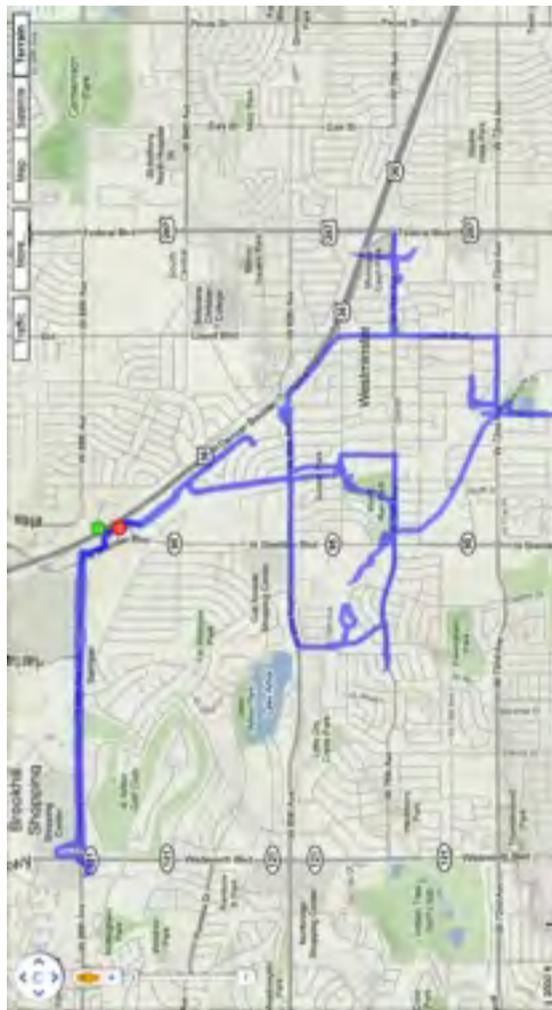
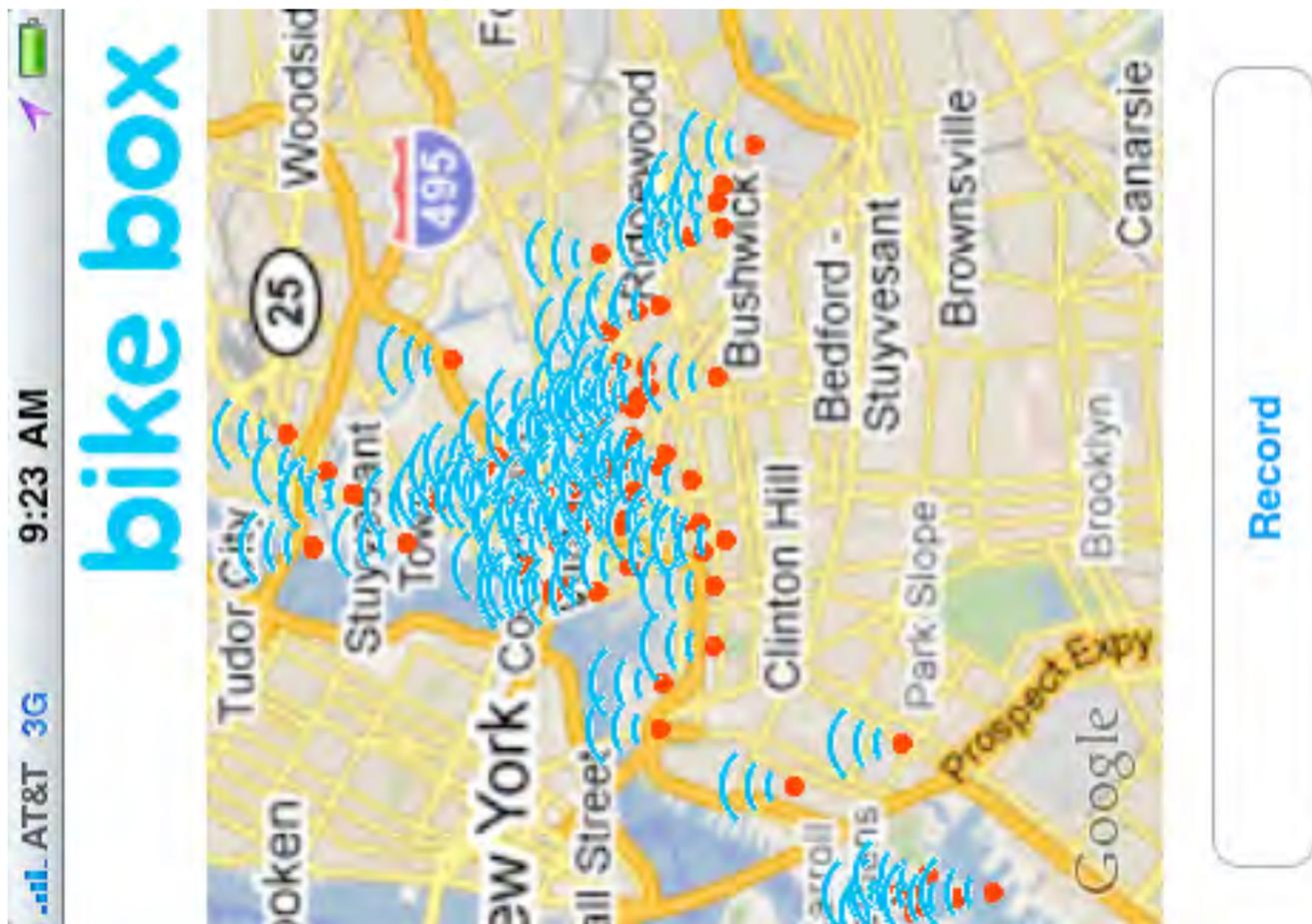








# Integrating digital tools into physical-planning



# Collaborative, Social Web Planning Tools

**BIKE WESTMINSTER**

Bike Planner Tool | News | Plan | Team | Documents | Photo Gallery | Take THIS Survey

**Bike Planner Tool**

Welcome to the Citizen Bike Planner. Here you will be able to share comments, questions and route suggestions with the project team via the interactive google map shown below. Simply zoom in on a location on the map you want to comment on and click. A red balloon will pop up which you can adjust to your location and report your comment. A running list of the comments submitted is shown to the right.

- Independence needs a shoulder  
1 person wants this fixed
- Independence East of Stanley Lake
- Please Complete Paving of Big Dry Creek Trail  
1 person wants this fixed
- Big Dry Creek East of 112th
- Increase opening width on Path  
1 person wants this fixed
- 9602 W 88th Ave  
Westminister, CO 80005, USA
- Increase gate opening width  
2 people want this fixed
- 9966 W 88th Ave  
Arvada, CO 80005, USA
- Simms needs a paved shoulder or bike lane  
3 people want this fixed
- 10800-10808 Simms St  
Westminister, CO 80021, USA
- narrow road, no shoulder  
1 person wants this fixed
- 7301-7459 W 112th Ave  
Westminister, CO 80021, USA

**facebook** 1.35 2 Search

**Westminster Bicycle Master Plan** Like

Wall | Info | Photos | Discussions

Westminster Bicycle Master Plan - Others | Westminster Bicycle Master Plan | Just Others

**Westminster Bicycle Master Plan** Master Plan Westminster's first public Bicycle Summit is tonight! Come join us at 6:30 pm in the City Park Recreation Center, which is located at 30455 Sheridan Boulevard. See you there!  
about an hour ago

**Westminster Bicycle Master Plan** Getting ready for tomorrow's Bicycle Summit.  
Yesterday at 8:39pm

**Westminster Bicycle Master Plan** A long day of riding/de-briefing bikeway opportunities in Westminster. The team is now breaking to go thrift store shopping. The Denver burbs are know for it! Thanks for the tip Inbar!  
Yesterday at 6:44pm

**Westminster Bicycle Master Plan** A portion of the afternoon ride, up near the Northpark, The Windings, and Hyland Green Subdivisions....top speed of 26.1 mph on the folding bike!  
Tuesday at 10:46pm · Share

Mike Normandin likes this.

**Westminster Bicycle Master Plan** Don't forget to take the 5-minute Westminster Bicycle Master Plan Survey. <http://bit.ly/bCnYh> Spread the word!  
SurveyMonkey - Log In

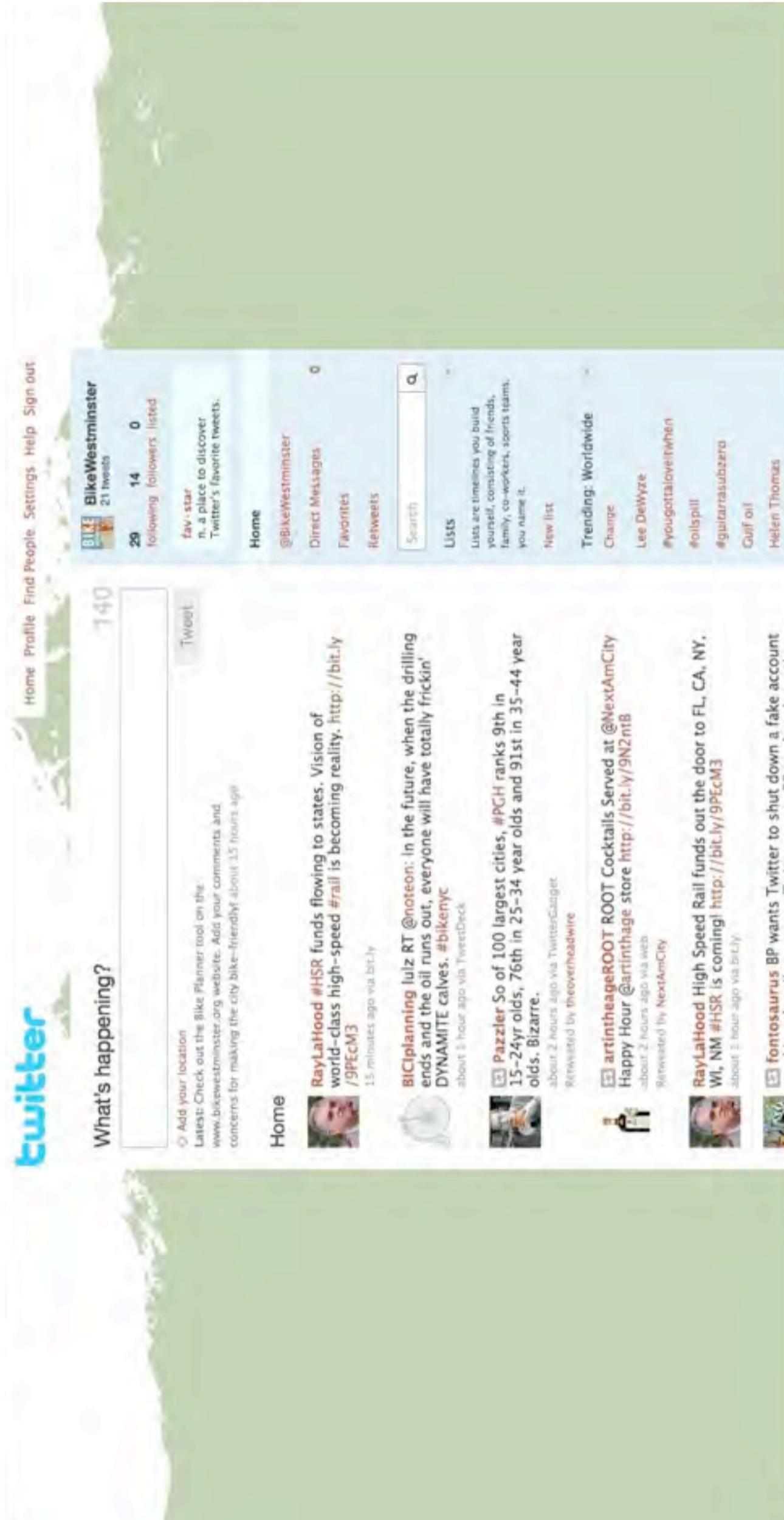
SurveyMonkey.com is a revolutionary tool to create and publish custom surveys in minutes, and those year results graphically and in real time.  
Tuesday at 10:31am · Share

Welcome to the Westminster Bicycle Plan  
Get involved:  
Web: [www.bikeplanning.com](http://www.bikeplanning.com)  
Twitter: @BikeWestminster  
Planning team:  
The Street Plans Collaborative [www.streetplans.org](http://www.streetplans.org)  
BKI Planning [www.bkiplanning.com](http://www.bkiplanning.com)

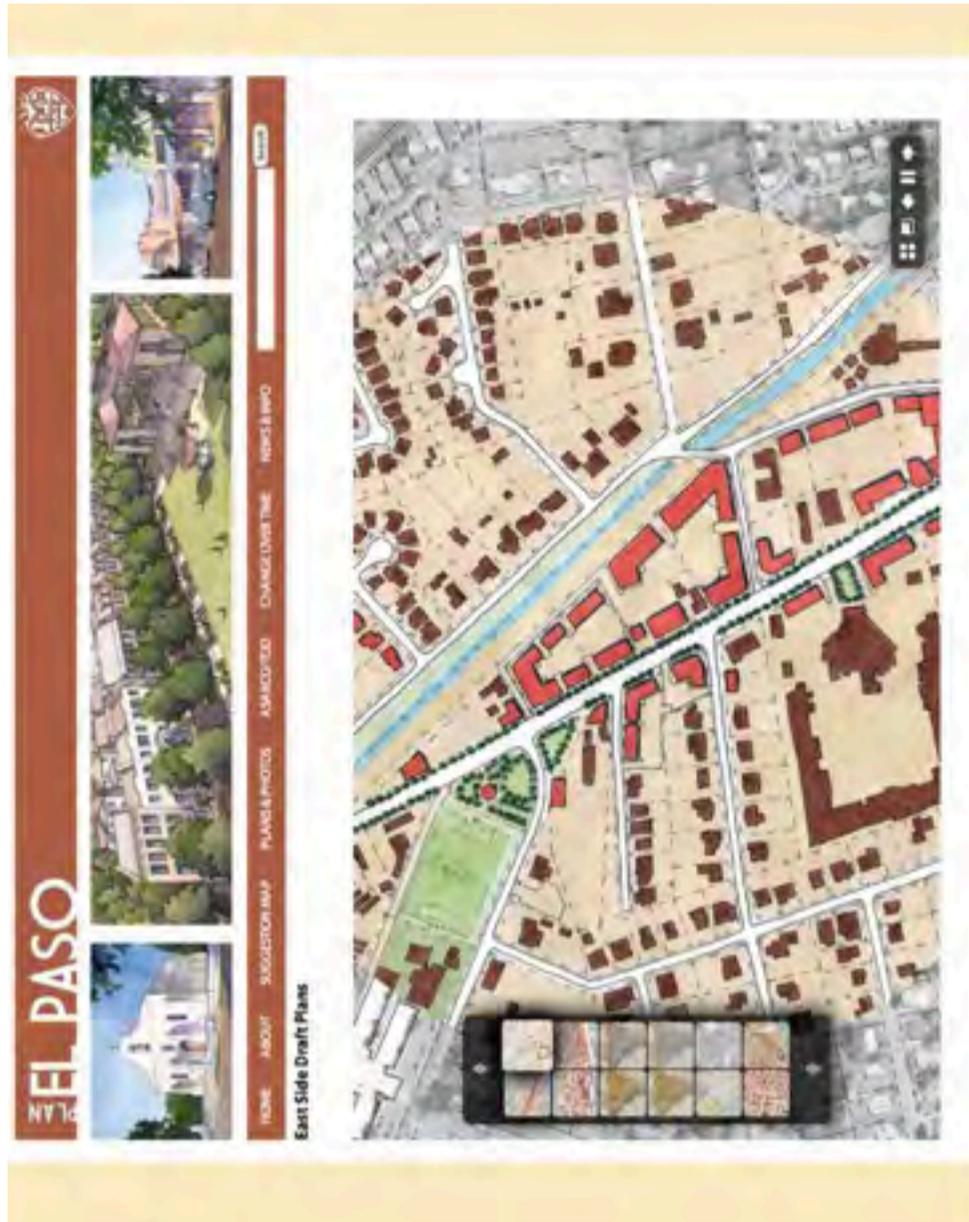
Information  
Website: <http://www.bikeplanning.com>

55 People Like This

# Tweet, Tweet



# Plan El Paso



# Open Streets, Open Source!

**Open Streets Project**  
Opening Streets to People, Sharing Resources, Transforming Communities

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**Open streets initiatives temporarily close streets to automobile traffic, so that people may use them for walking, bicycling, dancing, playing, and socializing.**

With more than 60 documented initiatives in North America, open streets are increasingly common in cities, offering innovative ways to achieve environmental, social, economic, and public health goals.

**Learn More...**

Open Streets Project website coming soon! Check back here for more information in the coming months.

Open Streets about 10 days ago

**Are you organizing an open streets initiative in your town?**  
Tell us about your initiative by adding it to our database.

**Add My Initiative**

**Recent News**

- Lorem ipsum dolor sit amet, consectetur adipiscing elit. Fusce utamcorper nisl at magna venenatis rhoncus. Duis dignissim sapien a scapulae (...)

**Are you organizing an open streets initiative in your town?**  
Tell us about your initiative by adding it to our database.

**Add My Initiative**

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**Open Streets Project**  
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**Initiatives**

Explore Open Streets initiatives from across the United States and Canada. To learn more about a particular initiative, use the map to the right or click on the list of states below to reveal the initiatives currently in that state. Use the filter tool below to search for specific types of initiatives. Don't see your initiative? [Add it to the Open Streets Project!](#)

**Filter the list by...**

State:  Neighborhood:  Area and Loop:  District:  Multi-neighborhood:  Linear:  Regional

Year of Initiative:  through:

Season:  Spring  Summer  Fall  Winter

Route Length (miles):  min  max

Prepared:

Model:

**Filter** **0 results**

California  
 ▾ Long Beach  
 Colorado  
 ▾ Downtown Boulder Summer Streets  
 Illinois  
 ▾ Chicago Open Streets

Kentucky  
 ▾ 2nd Sunday Lexington  
 Ohio  
 ▾ Open Streets Cleveland

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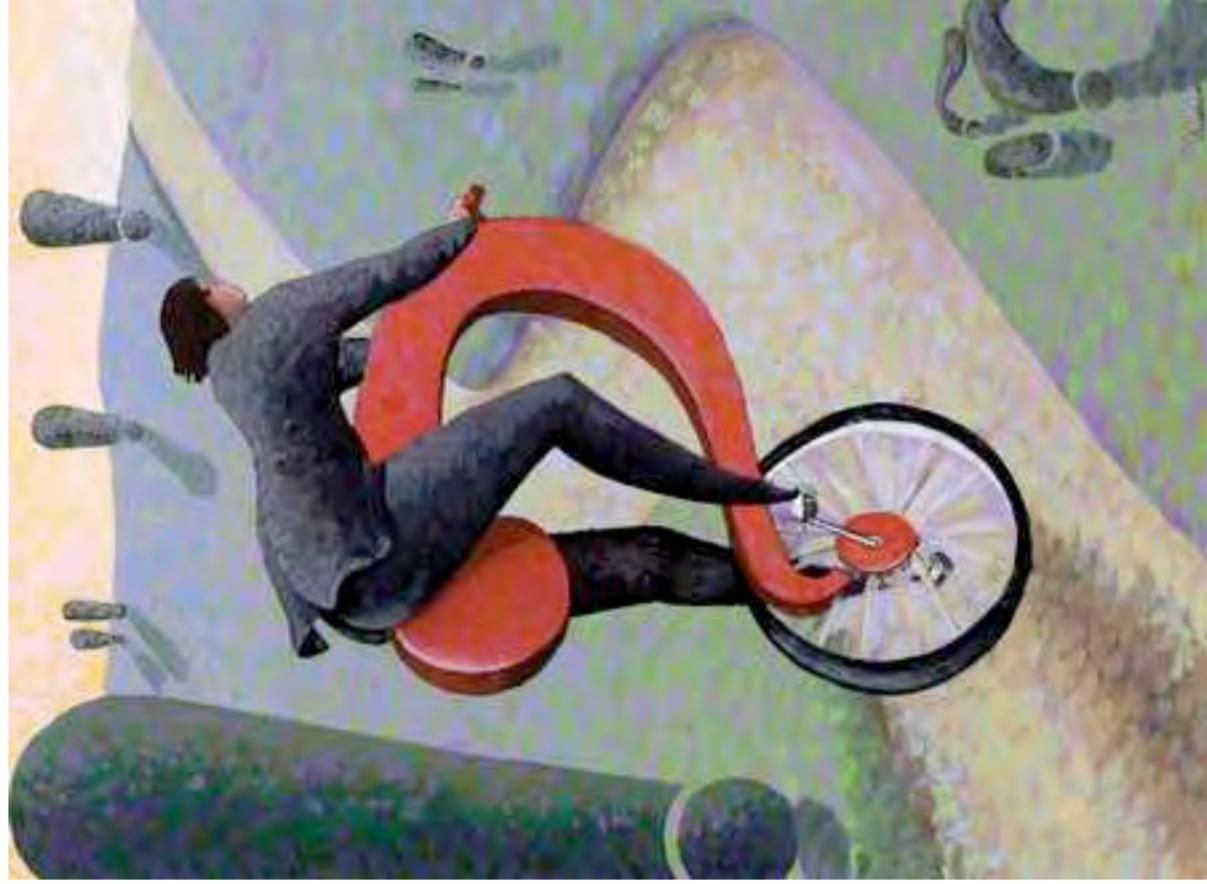


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## **General Session III**

Planning and Zoning Case Law Update

STATE OF NEW YORK  
**DEPARTMENT OF STATE**  
ONE COMMERCE PLAZA  
99 WASHINGTON AVENUE  
ALBANY, NY 12231-0001

# **PLANNING AND ZONING CASELAW UPDATE: 2011**

**PRESENTER:**

**Natasha E. Phillip, Esq.**

## Table of Contents

<b>Legislation</b>	<b>3</b>
<b>Agriculture and Farm Operations</b>	<b>3</b>
<b>Conditional Subdivision Approval</b>	<b>3</b>
<b>Long Island Workforce Housing Program</b>	<b>3</b>
<b>Cases</b>	<b>4</b>
<b>De Facto Taking</b>	<b>4</b>
<b>Eminent Domain</b>	<b>4</b>
<b>Administrative Review</b>	<b>7</b>
<b>Exhaustion of Administrative Remedies</b>	<b>8</b>
<b>Enforcement: Citizen Suits in Towns</b>	<b>10</b>
<b>Stipulation of Settlement</b>	<b>10</b>
<b>Re-Zoning</b>	<b>11</b>
<b>Comprehensive Plan</b>	<b>11</b>
<b>State Environmental Quality Review Act (SEQRA)</b>	<b>12</b>
<b>Certificate of Occupancy (NYS Uniform Code)</b>	<b>13</b>
<b>Certificate of Occupancy (Zoning Regulations)</b>	<b>14</b>
<b>Variances</b>	<b>14</b>
<b>Zoning Board of Appeals</b>	<b>17</b>
<b>Non-Conforming Use</b>	<b>18</b>
<b>Subdivision</b>	<b>21</b>
<b>Site Plan: Conditions</b>	<b>23</b>
<b>Open Meetings Law</b>	<b>24</b>
<b>Religious Use</b>	<b>25</b>
<b>Endnotes</b>	<b>27</b>

## **Legislation**

### **Agriculture and Farm Operations**

Chapter 497 of the Laws of 2011 amended sections 305-a and 308 of the Agriculture and Markets Law (AML), pertaining to agricultural practices.

Now, under AML §305-a(1)(b) a municipality, farm owner, or farm operator may request that the Commissioner of the Department of Agriculture and Markets (Commissioner) render an opinion as to whether proposed changes in local land use regulations, pertaining to agricultural practices, would unreasonably restrict or regulate farm operations. The requested opinion would be rendered to the appropriate local officials and those charged with enforcing and administering local land use regulations.

Chapter 497 also amended AML § 308 (the State Right to Farm Law). After an opinion is rendered by the Commissioner and the opinion is based on information acquired from the New York State College of Agriculture and Life Services, and the U.S.D.A. Natural Resources Conservation Service, the Commissioner may provide any such information to the municipality whose land use regulations were evaluated for consistency with AML § 305-a.

### **Conditional Subdivision Approval**

Town, village and city planning boards are now authorized to grant more than two additional 90-day extensions for conditional approval of a final plat. Chapter 522 of the Laws of 2010 made the change applicable in towns (Town Law §276(7) (c)). Chapter 561 of the Laws of 2011 made the change applicable in villages (Village Law §7-728(7) (c)) and cities (General City Law §32(7) (c)).

### **Long Island Workforce Housing Program**

On January 1, 2009, the Long Island Workforce Housing Act became effective.<sup>1</sup> Under this legislation, municipal approval of a site plan for mixed-use development containing five or more residential units on Long Island requires developers to set aside 10% of those units for affordable housing in exchange for a “density bonus” of at least 10% above the otherwise

maximum allowable residential density. Those developers that do not meet such requirement are subject to a fee.

## Cases

### De Facto Taking

A property owner who challenges land use regulations on the grounds that they affect a constitutional taking of property must demonstrate by dollars and cents evidence that under no permissible use, would the parcel as a whole be capable of producing a reasonable return. The evidence must show that the economic value, or all but a bare residue of the economic value, of the parcels must have been destroyed by the regulations at issue. The extent of monetary diminution necessary to support a conclusion that there was indeed a taking of property requires a loss in value of “one step short of complete.”

In *Adrian v. Town of Yorktown*,<sup>2</sup> it was alleged that actions of the Town resulted in the diminution in value of the approximately 15 acre parcel of property sought to be developed. Starting in or about 1988 and continuing until December 2000, the property owners said that the Town denied them permits to build a car wash and an auto body shop, denied wetland permits, imposed onerous environmental regulations on a supermarket project that they hoped to construct, and refused permission for the property to be included in a sewer district. In 2000, the property owners sold 11.07 of the 15 acres for the sum of \$3.6 million, instead of the appraised value of \$10,000,000. The court granted summary judgment to the Town, finding no de facto taking.

### Eminent Domain

In the last two years, two Court of Appeals decisions addressed the issue decided in *Kelo v. City of New London*,<sup>3</sup> a U.S. Supreme Court decision that upheld a Connecticut statute authorizing the taking of private land, on behalf of a private developer, for the purpose of implementing a broad economic development plan. *Kelo* further held that “public use” as used in the 5<sup>th</sup> Amendment of the United States Constitution does not have to mean public ownership or unlimited public access: economic development or revitalization, in and of themselves, are sufficient public uses to justify a taking.

The Court of Appeals held in *Goldstein v. New York State Urban Development Corporation*,<sup>4</sup> that the New York Empire State Development Corporation's (ESDC) exercise of its authority under the Urban Development Corporation (UDC) Act<sup>5</sup> to take private property by eminent domain to implement a proposed land use improvement project (known as Atlantic Yards), undertaken by a private developer, is in conformity with certain provisions of the New York State Constitution.<sup>6</sup>

The first phase of the improvement project proposes to construct a sports arena for the NBA Nets franchise and perform upgrades to the subway transportation hub. Other phases propose construction of certain commercial and residential uses and affordable housing units.

The ESDC decided to sponsor the proposed development as a "land use improvement project", within the definition under the UDC Act, based on its findings that the area in which the project will be located is "substandard and insanitary" or, in more common parlance, blighted. While certain properties located within the footprint of the project is and has been a blighted area, the litigation concerned those areas not previously designated as blighted which the Petitioners felt were not (only slightly dilapidated).

In upholding the finding of blight by ESDC, the court stressed that whether a matter should be the subject of a public undertaking – whether its pursuit will serve a public purpose or use – is ordinarily for the Legislature to decide and not the judiciary. Whether an area is blighted has further been delegated by the Legislature to the ESDC here. Judges may not substitute their views as to the adequacy with which the public purpose of blight removal has been made by such legislatively designated agencies. The court implied however that if "there is no room for reasonable difference of opinion" as to whether an area is indeed blighted, only then can a judge weight in. Since no such occasion was presented in this case, the decision of the ESDC was upheld.

Based on the above-discussed case the Court of Appeals decided *Kaur v. New York State Urban Development Corp.*<sup>7</sup> The issue presented in that case was whether ESDC's exercise of its eminent domain authority to acquire the properties of several owners in the Manhattanville neighborhood of West Harlem for the development of a new Columbia University campus was supported by a sufficient public use, benefit or purpose.

Columbia University proposed a \$6.3 billion expansion of its campus, consisting of an approximate expansion of 6.8 million square feet of additional space for classrooms, research

facilities, administration, housing, and parking. Because Columbia did not own all the acreage required for this expansion, ESDC determined that it would use its power of condemnation to purchase 17 acres of privately owned property, in connection with the Columbia expansion project.

In 2003, EDC hired an engineering, architecture and planning firm, to conduct a study, examining the neighborhood conditions of West Harlem (the Firm). The Firm documented and photographed the area of the Project site as well as the surrounding area and focused its analysis on four major criteria: (1) signs of deterioration, (2) substandard or unsanitary conditions, (3) adequacy of infrastructure and (4) indications of the impairment of sound growth in the surrounding community. The study, issued by EDC in August 2004, determined that the conditions in the study area merited a designation of blight.

In addition, in September 2006, ESDC retained an environmental planning and consulting firm (Environmental Firm) to perform a neighborhood conditions report of the Project site on its behalf. ESDC chose this Environmental Firm, in part, because it was already familiar with the Project site, having been hired by Columbia in 2004 to assist Columbia in seeking the necessary agency approval for its expansion project as well as to prepare the required environmental impact statement. The Environmental Firm issued its Manhattanville Neighborhood Conditions Study concluding that the project site was "substantially unsafe, unsanitary, substandard, and deteriorated" or, in short, blighted. Based, in part, upon these studies ESDC decided to proceed with its condemnation plan.

The Petitioners sought judicial review. They requested that the court order the release of certain documents in ESDC's possession, including its agreement with Columbia as well as its correspondence with the Environmental Firm. The Appellate Division upheld the Supreme Court's grant of the application for release of the agreement, calling into question the Environmental Firm's "tangled relationship" with both ESDC and Columbia. The Court of Appeals in *Matter of West Harlem Business Group v. Empire State Dev. Corp.*,<sup>8</sup> affirmed the order of the Appellate Division.

The Petitioners also challenged ESDC's substantive determinations. As decided in *Goldstein*, the Court of Appeals held that ESDC's findings of blight and determination that the condemnation of the subject properties qualified as a "land use improvement project" were rationally based and entitled to deference. ESDC adopted a General Project Plan (GPP) that

would enable Columbia to move forward with its plan to build an urban campus in West Harlem, after extensive studies and period for public hearings and comments. ESDC noted that the Project would create 14,000 jobs during the construction of the new campus as well as 6,000 permanent jobs following the Project's completion. Moreover, ESDC indicated that another purpose of the Project was the creation of much needed public space, creating "approximately 94,000 square feet of accessible open space and maintained as such in perpetuity that will be punctuated by trees, open vistas, paths, landscaping and street furniture and an additional ...28,000 square feet of space of widened sidewalks that will invite east-west pedestrian traffic."

The Court further concluded that ESDC's alternate finding that the Columbia project served a "civic purpose", likewise, was rationally based and entitled to deference. ESDC, the Court stated, is statutorily empowered to exercise eminent domain in furtherance of a civic project regardless of whether a project site suffers from blight. A civic project is defined as "[a] project or that portion of a multi-purpose project designed and intended for the purpose of providing facilities for educational, cultural, recreational, community, municipal, public service or other civic purposes". It was first found that the project would indeed construct new educational facilities. Thus, ESDC's determination that the Columbia expansion project fits within the "educational" component of the "civic purpose" definition was rational and entitled to deference.

The Court further stated that the Project will bestow other significant civic benefits to the public, such as the development of approximately two acres of gate-less, publicly accessible park-like and landscaped space as well as an open-air market zone along 12th Avenue; upgrades in transit infrastructure; and a financial commitment to the West Harlem Piers Park. Moreover, the Court credited the projections provided in the record, that the Project would stimulate job growth in the local area, hiring 14,000 people for construction at the Project site, and an estimated 6,000 permanent employees once the Project site is completed. The Court thus concluded that "there can be no doubt that the Project approved by ESDC... qualifies as a civic project."

## **Administrative Review**

Deference to a determination made by a zoning board of appeals is not required when a court reviews interpretation of a term in local zoning regulations.

In *Erin Estates, Inc. v. McCracken*,<sup>9</sup> Petitioner's property manager inquired of the Town of Erin Building Inspector whether the Petitioner could place on a lot within the manufactured home park it owned and operated, an unoccupied manufactured home it would like to sell to the public. The Town Building Inspector advised the Petitioner that such a proposal would constitute a commercial use and was not allowed under the Zoning Code. The Petitioner applied for an interpretation of the Code by the Town Zoning Board of Appeals, which determined that the use prohibited since it would have the effect of transforming the said residential lot into a dedicated lot or area for the commercial sale of a mobile home. The ZBA added that "casual sales" of mobile homes by individual owners in anticipation of moving did not violate the Code. Petitioner filed an Article 78 Proceeding to annul this determination.

The Appellate Division reversed the Supreme Court's dismissal of the Article 78 Proceeding, stating that there was no reason for the Supreme Court to accord deference to the decision of the ZBA. While a fact-based interpretation of a zoning regulation that determines the regulations' application to a particular use or property is entitled to "great deference", no such deference is required for a purely legal interpretation.

This case, the Court determined, presented a purely legal question, as its resolution would depend on an interpretation of the Town Zoning provision entitled "Commercial Sale of Mobile and/or Manufactured Homes". Under that provision, commercial sales within manufactured home parks are identified and prohibited based upon the purpose of the contemplated use of the land in the park. The first sentence states that manufactured home parks are permitted for the purpose of "habitation". The next sentence prohibits the use of a "sales lot or area" within the manufactured home park for the "purpose of selling mobile and/or manufactured homes." Taken as a whole, the provision looks to the future and distinguishes between permissible and impermissible uses based upon whether the home was placed in the park to be inhabited or to be sold. Since the subject manufactured home was to be placed on a lot within the park for the purpose of "habitation" in the park after sale, the Court held that the Petitioner's proposal did not fall within the use prohibited under the Zoning Code.

## **Exhaustion of Administrative Remedies**

A court has the discretion to dismiss a declaratory judgment action filed under circumstances where, the Plaintiff fails to exhaustion all administrative remedies. A party need

not pursue and exhaust all asserted administrative remedies, if to do so would be an exercise in futility.<sup>10</sup> In *Subdivisions, Inc. v. Town of Sullivan*,<sup>11</sup> the Plaintiffs (Subdivision, Inc. and J.B. Quarry, Inc.) filed a declaratory judgment action for a determination that its 80-acre parcel of property, presently being used for the growing of hay, was a nonconforming mining use.

The 80 acres is one part of a larger parcel of property upon which quarry mining occurs. In the 1800s limestone used to construct the Erie Canal and local churches was mined there until, at the turn of the century, mining ceased and the 80-acre parcel was used for timber production, the site of a sawmill, and the site for housing persons who mined at an adjacent quarry, also owned by Plaintiffs. In 1977, the Department of Environmental Conservation issued a mining permit,<sup>12</sup> under which the 8-acre parcel was referenced as “reserve land being farmed” to the adjacent quarry. The quarry was twice sold to different owners who continued the mining operations. The 80-acre parcel was separately conveyed to Plaintiff Subdivision, Inc., and Plaintiff J.B. Quarry applied in 2004 and was granted in 2006 a permit to mine the 80-acre parcel.<sup>13</sup>

The Town sought to dismiss the declaratory action on the grounds that the Plaintiffs failed to exhaust their administrative remedies. The Appellate Division upheld the Supreme Court’s finding that Plaintiffs demonstrated an exception to the exhaustion requirement. The Appellate Division stated that the requirement of exhaustion of administrative remedies assumes that adequate relief may be obtained under the challenged zoning ordinance. The Court further stated that there was doubt that adequate relief may indeed be obtained in this case. Moreover, the Court added that, although factual determinations must be made to resolve the matter here, such determinations are best addressed in the context of a declaratory judgment action. Even if Plaintiffs would be afforded a legitimate opportunity to submit proof of their entitlement to a nonconforming use status, the asserted administrative remedy that includes applying to the Town Zoning Board of Appeals for a certificate of nonconformity would be an exercise in futility *since Plaintiffs have asserted that they have a constitutionally protected right to mine the subject parcel*. To this point, the Court reasoned that there was consistent demonstration by the Town that they opposed Plaintiffs’ desired use of the 80-acre parcel and thwarted each and every attempt made to engage in their desired mining operations. Under these circumstances, the Court reasoned that it was readily apparent that the Plaintiffs are unlikely to receive an unbiased evaluation from the Town.

## Enforcement: Citizen Suits in Towns

Town (city and village) officials are not required to undertake enforcement actions against individuals who may be out of compliance with local zoning regulations. If town officials decide not to enforce such regulations, Town Law § 268(2)<sup>14</sup> provides for citizen enforcement of the applicable zoning provisions. Under this statutory provision, citizens are given the right to sue in the name of the town to stop an alleged zoning violation. Under Section 268 (2), an avenue for direct court action by resident taxpayers is created for citizens who are jointly and severally aggrieved by a zoning violation, where town officials fail to enforce the zoning laws within 10 days after receiving written notice.

In *Thilberg v. Mohr*,<sup>15</sup> the Appellate Division upheld the Supreme Court's grant of a motion for preliminary injunction to enjoin an alleged zoning violator from using property for nonresidential purposes while the matter is being litigated in court. The Court further held that the resident taxpayers were not required to show irreparable harm before a preliminary injunction could be obtained.

## Stipulation of Settlement

The case of *Fox Ridge Motor Inn, Inc. v. Town of Southeast*,<sup>16</sup> involves a so-ordered stipulation of settlement between the Petitioner and certain parties of the Town of Southeast.

The owner and operator of Fox Ridge Motor Inn (Petitioner) applied for a building permit to reconstruct the hotel, because it was torn down after it was destroyed by an explosion. The Town Building Department denied the application, Petitioner appealed this denial to the Town Zoning Board of Appeals (ZBA), and the ZBA confirmed the denial. An Article 78 Proceeding was filed by Petitioner to challenge the ZBA's determinations. During this time, the Town rezoned the parcel upon which the hotel stood; under the rezoning plan, a hotel was no longer a permitted use. On February 23, 2005, the Supreme Court approved a stipulation of settlement executed between the ZBA and Petitioner, and "to which the Town was a party."

Thereafter, in 2006, the Petitioner applied for and was issued a building permit. On June 25, 2009, that building permit was revoked by the building inspector on the ground that the Petitioner failed to obtain approval of the Town Architectural Review Board. Petitioner filed an Article 78 against the Town challenging the building inspector's determinations, and filed a

declaratory judgment action for a declaration that the building permit issued in 2006 was valid. The Supreme Court granted Fox Ridge's requests for relief.

The Appellate Division upheld the Supreme Court's determination stating that a "so-ordered stipulation is a contract between the parties thereto and, as such, is binding on them and will be construed in accordance with contract principles and the parties' intent." The Court further reasoned that the terms of the stipulation of agreement here, when read as a whole, did not require the Petitioner to obtain the approval of the Architectural Review Board prior to applying for a building permit.

## Re-Zoning

A jurisdictional defect occurs if a governing board undertakes change in zoning but fails to comply with the requirements under General Municipal Law § 239-m. In *EMB Enterprises, LLC v. Town of Riverhead*,<sup>17</sup> the Appellate Division, Second Department invalidated an attempted rezoning of Petitioner's property for failure of the Town Board of Riverhead to comply with the referral requirement of General Municipal Law § 239-m. Additionally, the proposed change to the zoning ordinance conflicted with the comprehensive plan for the Town, violating Town Law § 272-a(11)(a) which requires zoning as well as other land use regulations to be in accordance with a comprehensive plan.

## Comprehensive Plan

The procedures to be followed by a special board appointed to develop a comprehensive plan are not advisory, and must be followed as prescribed. Section 272-a (4) of the Town Law<sup>18</sup> provides that a board directed by the town board to prepare a comprehensive plan make its recommendations to the town board by resolution. Section 272-a (6) (c) also requires any board that prepares a comprehensive plan to hold a public hearing upon (at least) 10 days notice of such hearing published in a newspaper of general circulation in the town. During time allotted for notice of the public hearing, the proposed comprehensive plan must be made available for public review at the town clerk's office, as well as at any other public place like a public library.

In *Troy Sand & Gravel Co v. Town of Nassau*,<sup>19</sup> the Appellate Division, Third Department, nullified a comprehensive plan adopted by the Town Board of Nassau, because the

special board the Nassau Town Board directed to prepare the Town's comprehensive plan, failed to follow these preparation and public hearing procedures during development of such plan.

## **State Environmental Quality Review Act (SEQRA)**

SEQRA regulations set forth in 6 NYCRR 617.7(c) the criteria for determining environmental significance. A negative declaration may not be issued in relation to a Type I action or an Unlisted action until after the agency takes the requisite "hard look" at any relevant environmental criteria.

In *Prand Corp v. Town Board of Town of East Hampton*,<sup>20</sup> Petitioners challenged two local laws adopted in the Town of East Hampton. One challenge was to Local Law 16 of 2007. Local Law 16 upzoned or required more area for development of Petitioners' lots. The Supreme Court dismissed the challenge to Local Law 16 as untimely. The Appellate Division, Second Department, upheld the Supreme Court's holding.

The other challenge was to Local Law 25 of 2007 that amended the Town of East Hampton Open Space Preservation Law based on recommendations made under a 2005 comprehensive plan for the Town. When adopted, Local Law 25 would require the set aside and preservation of a larger percentage of open space as a condition of subdivision approval in three residential zones, while, at the same time, relax the land-clearing restrictions on the resultant subdivided lots.

For purposes of SEQRA, Local Law 25 was classified as an Unlisted action. A short environmental assessment form (EAF) was prepared. Three days later a negative declaration was issued on the EAF.

Although the Appellate Division, specifically noted that the 2005 Comprehensive Plan was adopted after 5 years of surveys, studies, and extensive community input, it affirmed the Supreme Court holding that Local Law 25 should be annulled. It found that the more liberal land-clearing allowances permitted under Local Law 25 implicated several of the environmental criteria in 6 NYCRR 617.7(c) used to determine whether a particular agency action would have a significant adverse impact on the environment. These criteria were specifically identified by the Appellate Division to be relevant here: (1) a substantial increase in the potential for soil erosion, flooding and drainage problems; (2) the removal of large quantities of vegetation; (3) substantial interference with natural resources in the area; (4) the creation of a material conflict with the

community's comprehensive plan; (5) impairment of the existing character of the community; and (6) a substantial increase in the intensity of the land use. Because the Town Board failed to take the requisite hard look for each relevant environmental criterion, Local Law 25 was invalidated.

## **Certificate of Occupancy (NYS Uniform Code)**

The New York State Uniform Fire Prevention and Building Code (Uniform Code) establishes minimum standards for both fire prevention and building construction.<sup>21</sup> The Uniform Code is a separate body of regulations from a municipality's zoning regulations. The Uniform Code is generally administered by a local code enforcement officer (CEO), who may also locally be designated as the administrative official charged to enforce a municipality's zoning regulations. Challenges to orders or determinations made by a CEO are reviewed under the dual process for obtaining variances from Uniform Code provisions. First, cases which involve a *de minimus* variance or modification that does not substantially affect the code's provisions for health, safety or security are classified as routine cases and are processed administratively by the Department of State.<sup>22</sup> Next, substantive variance requests are reviewed and decided by one of seven regional boards of review.<sup>23</sup>

In *Matter of Raymond Hadley Corp. v. New York Department of State*,<sup>24</sup> a Storage Group S-1 (moderate hazard storage) building permit was issued by a local code enforcement officer (CEO) for petitioner to construct a 40,000 square foot warehouse to store products related to its food packaging business. After the permit was issued, the CEO consulted the Division of Code Enforcement and Administration at the Department of State and was advised that, without firewalls the warehouse would exceed the maximum floor area for Storage Group S-1 permit occupancy, and, as such, a certificate of occupancy under the Uniform Code could not be issued.

The Petitioner appealed to the Capital Region – Syracuse Board of Review for the Department of State arguing that the CEO should have classified the warehouse in Storage Group S-2 (low hazard storage). The Syracuse Board of Review held a public hearing in 2009, and thereafter classified Petitioner's building as Storage Group S-1 (moderate hazard storage) for purposes of the Uniform Code. The Syracuse Board of Review's determination was then challenged by Petitioner in a Civil Practice Law and Rules Article 78 Proceeding.

The court upheld the determination of the Syracuse Board of Review. The court stated that Storage Group S-2 structures are building used for storage of noncombustible materials.

Petitioner presented evidence that it repackaged food products into paper cartons that are stored on wood pallets and wrapped in plastic. The Board consulted with the International Building Code, the code upon which the Building Code of New York State (2007) is based, and then concluded that since the food products are packaged in more than one layer of combustible packaging material a Storage Group S-1 classification was proper.

## Certificate of Occupancy (Zoning)

In *Haberman v. Zoning Board of Appeals of Town of East Hampton*,<sup>25</sup> a certificate of occupancy, issued pursuant to the Town's Zoning Code, was upheld despite claims by neighbors that the subject structure violated several height restrictions set forth in the Code.

The Town building inspector issued a certificate of occupancy to owners of land upon which a single-family residence was constructed. A neighboring property owner (approximately 50 feet away) appealed the certificate's issuance to the Town Zoning Board of Appeals (ZBA). The ZBA upheld the building inspector's determination, finding that the certificate was properly issued.<sup>26</sup>

The Appellate Division held that the Petitioner failed to meet his burden of demonstrating that the certificate of occupancy was improperly issued.<sup>27</sup> The party who seeks to have a certificate of occupancy revoked carries the burden at the public hearing before the zoning board of appeals of demonstrating that the certificate was improperly issued. The Petitioner supported his application before the ZBA with an elevation report from an engineer that alleged that the single-family residence had height restriction violations ranging from .66 feet to four feet.

Based on the ZBA record, the Court concluded that the Petitioner did not meet his burden and upheld the ZBA's decision as rational. The Petitioner's engineering expert testified and conceded that one aspect of nonconformity would not actually exceed the zoning law when the relevant distance for comparison is measured from the nearest property line, as the law expressly dictates. The expert also acknowledged that measurements he took in connection with at least one other alleged nonconformity may be less than accurate.

## Variations: Court of Appeals Decisions

In *Vomero v. City of New York*,<sup>28</sup> the Court of Appeals reversed the Appellate Division and found that the zoning board's decision to grant a use variance for construction of a commercial structure in a residentially-zoned area was an abuse of discretion.<sup>29</sup>

The Court of Appeals held that proof of “uniqueness” in order to grant a use variance must be “peculiar to and inherent in the particular zoning lot” rather than “common to the whole neighborhood.”<sup>30</sup> Thus, a residentially zoned corner property, situated on a major thoroughfare in a predominantly commercial area, does not suffice to support a finding of uniqueness since other nearby residential parcels share similar conditions.

In *Haberman v. Zoning Board of Appeals of City of Long Beach*,<sup>31</sup> the Court of Appeals held that where a ZBA has voted to grant a variance, the ZBA’s legal counsel, acting with actual or apparent authority, may agree to extend the time to build the improvements permitted by the variance without the issue being considered and voted on at another board meeting. Thus, the same formality is not required to extend a variance once it has been issued. In addition, an application for an extension need not be treated as a new application necessitating a new hearing or vote.<sup>32</sup>

## Variances

In *Witkovich v. Zoning Board of Appeals of Town of Yorktown*,<sup>33</sup> the Appellate Division reversed the Supreme Court’s dismissal of an Article 78 Proceeding, and annulled the decision of the Town ZBA that confirmed the Town Building Inspector’s issuance of a building permit for the construction of a garage. The Town ZBA determined that the proposed garage would constitute an accessory use to the primary residential structure located on the same site where the garage would be built, and no area variance would be required for construction of the garage.

The Appellate Division found that the design of the garage could not support a rational determination that it would be a “subordinate building... the use of which is customarily incidental to that of a main building on the same lot.” The garage would house at least eight or nine automobiles and would have nearly twice the square footage of the subject residential structure. Moreover, there was insufficient evidence to support a finding that the use of structures of such size as garages is “customarily incidental” to residential home in the applicable neighborhood. The Court also found that the no area variance determination by the ZBA was arbitrary and capricious. The Town Code requires that the height of an accessory building be no more than 15 feet. The subject garage would be over 15 feet. Thus, a variance would be required before constructing the garage.

In the case of *Kaiser v. Town of Islip Zoning Board of Appeals*,<sup>34</sup> Petitioners sought an area variance to allow them to construct an above-ground swimming pool on their 10,000 sq. ft. property located in a residential zone. The Town Code actually provided that such swimming pools could only be installed on lots that were 12,000 sq. ft. or larger. The ZBA denied the application on the basis that the requested variance, if granted, would produce an undesirable change in the character of the neighborhood or a detriment to nearby properties under Town Law § 267-b (3). The petitioners then appealed to the Supreme Court via an Article 78 proceeding for review of the ZBA determination.

The Supreme Court held that the ZBA determination was arbitrary and capricious, and not consistent with the ZBA's prior precedent. The Appellate Court reversed.

In arriving at its decision, the Appellate Court went through the balancing test and found that the evidence before the ZBA established that there were no swimming pools on substandard lots located within 500 feet of the petitioners' property. Moreover, only two permanent above-ground swimming pools were granted variances within the relevant community of approximately 300 homes, and that any hardship was self-created. The court also rejected the Petitioners' argument that the ZBA had previously granted two applications for area variances for above-ground swimming pools, and therefore was required to—but did not—explain its reason for departing from its prior precedent in Petitioners' application. The court's rejection was based on the fact that Petitioners failed to establish that either of the two cases bore sufficient factual similarity to the subject application so as to warrant an explanation from the ZBA.

Moreover, in *Friedman v. Board of Appeals of the Village of Quogue* it was held that a zoning board of appeals is not required to justify its determination on an area variance application, with supporting evidence on each of the five factors, if its ultimate determination balancing the relevant considerations is rational.<sup>35</sup> In that case, the Village ZBA granted two area variances. The area variances were requested by owners of a nonconforming house and an 885 square foot nonconforming deck, located on oceanfront property on the south shore of Long Island, who proposed to construct a conforming one family frame house with a pool and a new 385 foot. The first variance would setback the pool 15.7 feet (of the 25 feet required for setback) from the toe of the sand dunes. The second variances would allow the deck to be built more than 200 feet from the sand dunes; the maximum square footage allowed for decks on sand dunes is 200 feet. The zoning board of appeals granted the area variance application to permit

construction of a swimming pool within the required setback, and the construction of a 300 square foot deck.

Neighboring property owners challenged the grant of the variances in court, arguing that the project could be designed to fully comply with land use regulations. The challengers also argued that the Village ZBA failed to consider the factors set forth under Village Law section 7.712-b(3).<sup>36</sup>

The grant of the two area variances was upheld in court. The Appellate Division determined that there was sufficient evidence in the record to support the ZBA's determinations, and the Board's ultimate determination after balancing the relevant considerations, was rational. For example, the Court stated that the Board considered an alternative proposal, but rejected it because it would have a detrimental effect on the ocean views of the neighboring property owners. The area variance for the deck was determined to be substantial, so the Board reduced the size to 300 square feet upon the justification that "removal of the existing house and existing deck" provided some relief. In addition, the new deck was noted to be constructed "within the footprint of the existing house and deck to be removed." In making an area variance determination, the court further stated that the personal observations of members of the zoning board of appeals may be considered.

## **Zoning Board of Appeals: Procedures**

Failure of a zoning board of appeals to file its decision within five days after the decision is rendered, as set forth in state law, did render such decision invalid. In *Frank v. Zoning Board of Town of Yorktown*,<sup>37</sup> neighboring property owners challenged the ZBA's grant of an area variance that would legalize an existing fence which was taller than the zoning required, and variances for two sheds that did not meet required setbacks.

The neighbors argued that the ZBA failed to file its determination within five days after it rendered its decision, as set forth in Town Law § 267-a(9) (analogous provisions in Village Law § 7-712-a(9); General City Law § 81-a(9)). The court held that failure of the ZBA to file its final determination with the town clerk within five business days after the Board rendered its decision did not mandate annulment of the determination. One reason provided by the court was that Town Law §267-a(9)<sup>38</sup> did not specify a sanction for failure of a ZBA to comply with the five-day filing requirement. The neighbors next argued that, since the ZBA failed to make factual findings as to each of the relevant statutory factors in Town Law § 267-b(3)(b), its decision

should be annulled. In rejecting this argument the court stated: “The Board’s decision specified the evidentiary basis upon which its determination relied, and is sufficient to permit an informed judicial review.”

## Non-Conforming Use: Vested Rights

Nonconforming uses are permitted to continue in spite of contrary provision(s) in a zoning regulation, unless the nonconforming uses are abandoned or terminated.<sup>39</sup> Such property is generally held to have acquired a vested right to continue the non-conforming use. A property owner may acquire vested rights to complete a partially completed project under a validly issued permit, in New York, if such owner has undertaken substantial construction and made substantial expenditures.<sup>40</sup>

In *Glacial Aggregates LLC v. Town of Yorkshire*,<sup>41</sup> a mining company commenced an action against the Town seeking a declaration that it did not have to comply with a newly adopted zoning law, which required a special use permit to conduct mining, because its sand and gravel mine business predated the adoption of zoning and was in existence and operation on its property under a permit issued by the Department of Environmental Conservation (DEC).

Glacial Aggregates LLC was formed in 1996 to conduct sand and gravel mining. Beginning in 1996, Glacial began the “time-consuming and costly process” of fulfilling the requirements for a DEC mining permit. In September 1999, DEC granted Glacial a permit to mine 95 of its 375-acre property. In 1998, The Town Board adopted a resolution declaring a moratorium on gravel mining. On March 13, 2000, Glacial advised the Board of the issuance of the DEC permit. In response, the Town Board lifted the moratorium on gravel mining that same day. The Town adopted its first Zoning Law on June 11, 2001.

In applying the vested rights rule, the Court of Appeals found that Glacial Aggregate had acquired vested rights to mine the property. The Court stated that with the exception of completing the bridge and haul road required under the DEC permit, Glacial had readied the subject property for commercial mining by clearing trees, monitoring wells, submitting quarterly reports to DEC, and making various required annual payments. While Glacial did not finish the bridge or haul road, it had designed and obtained steel for the bridge at an estimated cost of \$80,000 to \$100,000 and obtained materials for the road at a cost of approximately \$10,000. The Court determined that, along with other expenditures made to finance its mining operation,

Glacial had invested roughly \$840,000 and had secured \$2.9 million loan commitment from a Buffalo bank. Collectively all of these activities constituted substantial construction and substantial expenditure, sufficient for Glacial to acquire vested rights.

### **What about the uniqueness of the use?**

A nonconforming use would be protected from applicability of a more restrictive zoning ordinance if it can be demonstrated that the property was not just contemplated for use but rather was indeed used for the nonconforming purpose at the time the restrictive zoning became effective. The Court of Appeals held in *Jones v. Town of Carroll*,<sup>42</sup> that when only part of a parcel has been used for a nonconforming use, a landowner can demonstrate that the use is unique and adaptable to the entire parcel and show that it took specific actions constituting an overt manifestation of its intent to utilize the property for the ascribed purpose. In *Mar-Vera Corp. v. Zoning Board of Appeal of the Village of Irvington*,<sup>43</sup> the Petitioner did not meet this standard.

The Petitioner received approval of a subdivision plan in 1979 to construct 27 single family houses and 14 attached townhouses on 37 acres of land (12 acres were to be dedicated to the Village for park use). The single family houses were built, but the townhouses were not. In 2000, the Petitioner applied for a building permit to construct the 14 townhouses. The Village Building Inspector denied the application on the grounds that, since the 1979 approval, new zoning regulations had been passed and, thus, the Petitioner would have to comply with them. The denial of the building permit was appealed to the ZBA, which confirmed the Village Building Inspector's denial of the building permit for Petitioner to undertake construction of the 14 townhomes under the 1979 approved subdivision plan.

An Article 78 Proceeding to challenge the ZBA's decision was filed by Petitioner. The Appellate Division affirmed the Supreme Court's dismissal of the Proceeding.

The Appellate Division reasoned that the construction of the 14 townhouses was not a nonconforming use, but rather a contemplated use. The Petitioner did not establish its entitlement to nonconforming use status for the 14 townhouse, and the lot designated on the 1979 plan for the townhouses was never developed or used for the townhouses.

## Non-Conforming Use: Amortization

In *Town of Plattekill v. Ace Motocross, Inc.*,<sup>44</sup> failure to comply with a local zoning provision concerning amortization of non-conforming uses caused Ace Motocross, and the owner of the property upon which Ace's commercial motocross racetrack was operated (collectively, Petitioners), their nonconforming use protection.

In 2005, the Town enacted a zoning provision to generally prohibit the commercial use of land for the operation of off-road motorized vehicles. One exception was that property owners who permitted any commercial operation of off-road motorized vehicles could apply to the Town Zoning Board of Appeals (ZBA) within 90 days of the 2005 law's enactment for a determination, if such a commercial operation occurred on their property prior to February 18, 1987. Any owner applying to the ZBA could receive authorization<sup>44</sup> to continue the nonconforming operations for up to 10 years.

Beginning in 2006, the Town Code Enforcement Officer (CEO) documented the continuing operation by Petitioners of the commercial motocross racetrack in violation of the zoning law. The CEO also issued zoning citations for such violations. After Petitioners failed to cease their activities, the Town sought an injunction to permanently enjoin the commercial operation of any off-road motorized vehicles on the subject property. At a certain point during the court action, Petitioners sought to amend their answer and include a counterclaim for the court to declare that the operation of the commercial motocross racetrack was a preexisting nonconforming use, and that such operation could continue for at least 10 years from the passage of the 2005 law.

The Appellate Division upheld the Supreme Court's grant of the Town's motion for a permanent injunction to permanently stop the defendants from operating the commercial motocross racetrack, and any other similar types of uses, in violation of the zoning law.

The court compared the Town's nonconforming use provision, under which Petitioners could have applied and gain authorization for continued racetrack operation for up to 10 years, to that of an "amortization period" adopted to allow a party to recoup expenditures by continuing the nonconforming use for a designated period of time. The then court reaffirmed the rule that a municipality may enact zoning laws that would eliminate prior nonconforming uses in a "reasonable fashion". Because the defendants failed to avail themselves of this local zoning remedy, they were foreclosed from seeking such relief in court.

## Subdivision

The 2007 Court of Appeals case of *O'Mara v. Town of Wappinger*<sup>45</sup> held that an open space restriction placed on a final subdivision plat, when filed in the Office of the County Clerk as required under Real Property Law § 334, is enforceable against a subsequent purchaser. The Appellate Division, Second Department, now states in the case of *Fuentes v. Planning Board of the Village of Woodbury*,<sup>46</sup> without must explanation, that, for the open space restrictions to be enforceable, the language recorded on the plat filed with the County Clerk must adequately convey a perpetual restriction on development.

The Petitioner in *Fuentes* purchased two undeveloped lots at a tax sale. After the purchase, it was discovered that the lots were designated as open area under a previously approved cluster subdivision plan, and subject to a map notation of “not approved for building lots.” Petitioner applied to the Village Planning Board requesting removal of the two open space restrictions, and was denied. Petitioner filed an Article 78 to have this determination invalidated. The Appellate Division upheld the Supreme Court’s decision to annul the Planning Board denial and remit the matter to the Board for a new determination. The Court seemed to invalidate the open space restriction on several grounds, reasoning that the Planning Board’s decisions lacked a rational basis.

Based on writings on the approved subdivision map that stated “cluster plan”, the Appellate Division first determined that the map was for a cluster subdivision. It then held that the Planning Board did not approve the “cluster plan” in accordance with state law, citing to Town Law § 278 (3)(b) and (c).<sup>47</sup> Next, the Court held that the Planning Board could not enforce the notation on the map which was in the Petitioner’s chain of title, because the language contained therein did not adequately convey a perpetual restriction on development of these lots.<sup>48</sup> Finally, the Court held that the Planning Board’s finding that removing of the restriction would be detrimental to the public welfare was conclusory and not supported by the record, and thus lacked a rational basis.

The case of *Matter of Davies Farms LLC v. Planning Board of the Town of Clarkstown*<sup>49</sup> holds that a Planning Board is not required to make a determination regarding a fee in lieu of parkland at the time of preliminary subdivision approval, but may wait until it grants final subdivision approval. The Court stated Planning Boards are authorized under the subdivision statutes to make a determination, under appropriate circumstances, that developers

should dedicate parkland for recreational purposes or that the developer should pay a fee in lieu of dedicating parkland. The court found that the practice of the particular planning board to make such determination at the time of final approval, rather than preliminary approval, is not arbitrary and capricious. The decision was also influenced by the fact that the applicant was told prior to preliminary approval that a fee would be fixed and that the same procedure was followed for a nearby development by the same applicant.

*Town of Huntington v. Beechwood Carmen Building Corp*<sup>50</sup> is another subdivision case. In that case, one portion of a 382-acre parcel, formerly owned and occupied by the State of New York, was sold. SBJ Associates purchased the parcel from the State. Respondents acquired the parcel from SBJ Associates after SBJ had obtained a zoning change for the parcel in 2000 (from a R-80 to a R-PUD zoning district), and had proposed and submitted a master development plan for one portion of the property to develop a senior residential community, known as The Greens at Half Hollow, and a community of single-family homes, known as Country Pointe at Dix Hills (master plan). The Town Board adopted a Final Generic Environmental Impact Statement (FGEIS) for the master plan, indicating therein that SBJ proposed a recreation area that would include the location of a community center and swimming pool in the single-family dwelling portion of the district. In 2002, the Huntington Planning Board approved the final subdivision map that designated and noted Lot 73 as the "Future Community Recreation Facility, Common Area". Respondents developed Lot 73 with a recreational facility that consisted of a tennis court, playground, and a gazebo.

The Town sued to have the community center and swimming pool constructed. Both the Supreme Court and the Appellate Division, Second Department, dismissed on the grounds that the FGEIS merely permitted and did not mandate the construction of a community center and swimming pool. Moreover, the Court stated that the Town Code provision establishing the R-PUD that required the development of a swimming pool and community center not to exceed 5,000 square feet was void as a matter of law, holding that the Planning and Zoning Enabling Laws (Town Law Article 16) do not permit towns to enact zoning regulations which mandate the construction of a specific kind of building or amenity.

Mandamus to compel is a remedy used to require the taking of a ministerial act. It may not be used to compel a body to perform a discretionary act. A planning board's grant of final

subdivision approval, following conditional subdivision approval, is a discretionary act, thus, mandamus was not available to compel such an action.

In *Rose Woods, LLC v. Weisman*,<sup>51</sup> the Petitioners proposed to develop a four lot residential subdivision development with individual sewer pumps on each lot. The individual sewer pump proposal was deemed unacceptable by the Town Engineer and the Town Sewer Department, because such pumps had presented maintenance problems in the past. The Town of Poughkeepsie Planning Board thus granted conditional subdivision approval, subject to 24 conditions, including a condition that one sewer pump serve the four lots. The conditional approval was filed on June 20, 2008, and, thereafter, two additional 90-day extensions for final subdivision approval were granted. Sometime during this period, the Petitioners requested final subdivision approval in a letter that specifically stated that the subdivision had been designed with individually owned pump stations and force mains. On June 9, 2009, the Town Sewer Department reiterated that the individual pump station proposal was unacceptable as such pumps had presented maintenance problems in the past. The day before the last 90-day extension was to expire, June 16, 2009, the Petitioners filed an Article 78 Proceeding seeking to compel, by mandamus, the Chair of the Planning Board to grant final subdivision approval. The Appellate Division affirmed the Supreme Court's dismissal of the Proceeding.

The Courts reasoned that a mandamus to compel a party is an extraordinary remedy available under limited circumstances to compel the performance of a ministerial act. The party requesting the issuance of a mandamus must clearly demonstrate the legal right to the relief. Where the circumstances involve the exercise of official discretion or judgment, a mandamus to compel would not lie. The grant of conditional subdivision approval was a determination of the Town Planning Board that became final and binding on the Petitioners upon adoption of the resolution of the Board on June 19, 2008.

## **Site Plan: Conditions**

In *Greencove Associates v. Town Board of North Hempstead*,<sup>52</sup> a 1999 site plan application approved expansion of a commercial shopping center and imposed certain conditions, such as improvements to the landscaped buffer. (The shopping center was constructed on a parcel of property under a 1979 zoning change that conditioned the maintenance of a landscaped buffer along the area adjacent to a residential neighborhood, which borders Town Path Road.) In 2010, another site plan application proposed expansion of the shopping

center to 10,000 square feet, in the area of the landscaped buffer. Under the 2010 application, the existing landscaped buffer, which measured 22 feet in width, would be reduced to four or five feet in width. The 2010 application was referred to the Nassau County Planning Commission pursuant General Municipal Law § 239-m, and it was recommended that the structure be reduced from 10,000 to 6,800 square feet, allowing the landscaped buffer width of 22 feet to be maintained; the Town Board granted approval to the 2010 site plan application with this proposed modification. The owner of the shopping center challenged the condition requiring the maintenance of the 22-foot landscaped buffer. The court found that the Town Board had authority to impose the condition, as it was a reasonable means of assuring that the existing landscaped buffer – which was designed to screen the adjacent residential neighborhood from the effects of the shopping center – would be preserved. The court further noted that, although the 10,000 foot structure would be dimensionally compliant with the Town Code, the structure could not be constructed without encroaching on the existing buffer.

## Open Meetings Law

Decisions made in violation of the Open Meetings Law do not always warrant annulment or invalidation.

After receiving site plan approval for a new home, Petitioner in *Cunney v. Board of Trustees of the Village of Grand View*<sup>53</sup> began and completed construction in accordance with the approved plan. However, due to an error in the topographical data used by Petitioner's architect, the completed home exceeded the zoning law's height restrictions by approximately three feet. The building inspector for the Village denied the issuance of a certificate of occupancy for the home, so Petitioner applied for an area variance from the ZBA. The ZBA granted the area variance and imposed the condition that the accessory pool house was to be removed and an unobstructed view was to remain on the northerly side of the property. Petitioner then brought an Article 78 proceeding to review the ZBA determination, on the grounds that the conditions were unreasonable and inconsistent with the spirit and intent of the zoning law and that the ZBA violated the Open Meetings Law.

The Supreme Court did not find that the condition imposed was unreasonable. On the other hand, the Supreme Court did find that the ZBA violated the Open Meetings Law when it failed to vote on the area variance application and render its determination in a session open to the public. The Appellate Court reversed stating: “[a]lthough the Legislature has granted the

courts the discretionary power, upon good cause shown, to declare void any action taken by a public body in violation of the Open Meetings Law, the petitioner failed to establish such good cause here.”<sup>54</sup>

In *Thorne v. Village of Millbrook Planning Board*,<sup>55</sup> the Appellate Division did not invalidate the Village Planning Board’s decision of November 12, 2008, because Petitioners were not aggrieved by the asserted violations of the Open Meetings Law. The Village Planning Board approved a development plan to build 91 homes in accordance with the conservation density development special permit, preliminary site plan and sketch-plan subdivision plat provisions applicable in the Bennett Campus District, a new district established in 2005 to encourage development of the 27.6 acre site of the former Bennett College. The Petitioners sought invalidation of the Planning Board’s approvals on several grounds, including that the Open Meetings Law was violated due to insufficient notice of meeting and failure to provide reasonable physical access to the November 12 meeting for persons with disabilities. The Appellate Division affirmed the Supreme Court’s rejection of Petitioners’ challenges under the Open Meetings Law. It found that the Petitioners were not aggrieved by any insufficiency in the notice of the November 12 meeting, and that the Petitioners were not aggrieved by the inaccessibility of the meeting to those with disabilities.

## Religious Uses

The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)<sup>56</sup> did not prevent the Appellate Division, Fourth Department, in *Libolt v. Town of Irondequoit Zoning Board of Appeals*,<sup>57</sup> from upholding the Town ZBA’s determination that Petitioners, a religious order called the Brotherhood of Saint Joseph, were in violation of Town zoning regulations by operating a “halfway house” in a single-family residential district.

Petitioners operated a temporary group housing program designed to facilitate the re-entry into society of men who had recently been incarcerated. The residence facility was located in a single-family residential zone. As a condition of residence at the facility, each man had to sign a “Post-Release Transitional Housing Contract” and pay a per diem fee of \$25. The residents were not required to attend religious services.

The Town issued Petitioners a notice of violation on the grounds that they were operating a “halfway house” on the property located in a single-family residential zone in violation of the zoning regulations. The Petitioners appealed to the ZBA. The ZBA also determined that

Petitioners were not using their property as a single-family residence, but as a “halfway house”, in violation of the zoning regulations. Petitioners brought an Article 78 proceeding to annul the ZBA’s determination on several grounds, including that the determination violated Petitioner’s rights under RLUIPA. The Court stated: “the cause of action alleging the violation of [RLUIPA] must fail, inasmuch as it cannot be said that the ZBA’s determination, i.e., the denial of permission to operate a “Transitional Housing” facility under contract with “clients” who pay a per diem fee... ‘imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution.’”<sup>58</sup>

*Capriola v. Wright*<sup>59</sup> is another religious use case. In that case, the Appellate Division, Second Department held that it was arbitrary and capricious for the Town ZBA’s to unconditionally deny applications for a special exception permit (special use permit) and area variances for off-street parking and the installation of a sign, submitted to continue a religious use on premises located in a residential zoning district. RLUIPA was not cited by the Court.

Since 2004 religious services were conducted on the premises as a matter of right. In 2007, the zoning regulations were amended to require a special exception permit (called a special use permit under State law) when establishing or expanding a religious use in a residential district. Such permit may only be denied upon a finding of significant negative impacts, except where such impacts “may be substantially mitigated by imposition of appropriate conditions that do not, by their cost, magnitude or volume, operate indirectly to exclude the use altogether.”

In conjunction with the application for the special exception permit, Pastor Jeanette Capriola proposed certain conditions. First condition: only 46 people would be allowed in the sanctuary at one time. Second condition: while religious services were being conducted, no other area of the premises would be used. The ZBA denied the application in its entirety.

The ZBA’s unconditional denial of the application was arbitrary and capricious. The Court found that the record did not reflect that the ZBA suggested any measures that would have accommodated the proposed religious use while, at the same time, mitigate the adverse effects on the surrounding community. The Court further highlighted that the conditions proposed by the Pastor were not considered by the ZBA. Essentially, the Court determined that the proposed religious use could have been substantially accommodated.

## Endnotes

- <sup>1</sup> Chapter 444 of the Laws of 2008, effective January 1, 2009.
- <sup>2</sup> 83 A.D.3d 746 (2d Dept. 2011, April 12).
- <sup>3</sup> 545 U.S. 469 (2005).
- <sup>4</sup> 13 N.Y.3d 511 (N.Y. November 24, 2009).
- <sup>5</sup> McKinney's Unconsolidated Law, chap. 24, subchapter I (2010).
- <sup>6</sup> Article I, section 7(a), quoting: "Private property shall not be taken for public use without just compensation"; Article XVIII, section 6, entitled "Loans and subsidies; restrictions on and preference in occupancy of projects".
- <sup>7</sup> 15 N.Y.3d 235 (N.Y. 2010, June 24).
- <sup>8</sup> 13 N.Y.3d 882, 884 (2009)( ESDC argued to the Court of Appeals and the courts below that the July 2004 paperwork related to its agreement with Columbia was exempt from disclosure under Public Officers Law § 87 (2) (c) because disclosure "would impair present or imminent contract awards or collective bargaining negotiations." We concluded, however, that ESDC failed to meet its burden under FOIL of establishing that those documents were exempt from disclosure because it did not articulate a particularized reason for denying disclosure. Accordingly, we affirmed the order of the Appellate Division).
- <sup>9</sup> 84 A.D.3d 1487 (3d Dept. 2011, May 5).
- <sup>10</sup> See, e.g., *Town of Oyster Bay v. Kirkland*, 81 A.D.3 812 (2d Dept. 2011, February 15), appeal dismissed, 17 N.Y.3d 778 (June 23, 2011)(requiring town to exhaust administrative remedies prior to bringing its claim in court, because no substantial constitutional question was directly involved).
- <sup>11</sup> 86 A.D.3d 830 (3d Dept. 2011, July 21); see also, *Subdivisions, Inc. v. Town of Sullivan*, 75 A.D.3d 978 (3d Dept. 2010, July 22)(granting motion by the Town Zoning Board of Appeals to intervene in the case, and denying summary judgment motion by landowners, because there was a genuine issue of material fact as to what use was in existence on the subject parcel when the zoning regulations were adopted).
- <sup>12</sup> Under the Mined Land Reclamation Law (MLRL), N.Y. Environmental Conservation Law, Article 23, Title 27, the Department of Environmental Conservation (DEC) issues permits for mining operations throughout the State.
- <sup>13</sup> Note: In the mining industry, prior nonconforming use status may be extended to portions of real property not quarried if the landowner can sufficiently demonstrate that, prior to the passage of a restrictive zoning law, it or its predecessors engaged in substantial quarrying activities on a portion of the property with the intention to do the same on other portions of the property not quarried. *Buffalo Crushed Stone, Inc. v. Town of Cheektowaga*, 13 N.Y.3d 88 (N.Y. 2009); see also, *Glacial Aggregates, LLC v. Town of Yorkshire*, 14 N.Y.3d 127 (N.Y. 2010); *People v. Miller*, 304 N.Y. 105 (N.Y. 1952).
- <sup>14</sup> It provides in relevant part: "...upon the failure or refusal of the proper local officer, board or body of the town to institute...appropriate action or proceeding for a period of ten days after written request by a resident taxpayer of the town so to proceed, any three taxpayers of the town residing in the district wherein such violation exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in like manner as such local officer, board or body of the town is authorized to do."
- <sup>15</sup> 74 A.D.3d 1055 (2d Dept. 2010, June 15).
- <sup>16</sup> 85 A.D.3d 785 (2d Dept. 2011, June 7).

<sup>17</sup> 70 A.D.3d 689 (2<sup>nd</sup> Dept. February 2, 2010).

<sup>18</sup> Analogous provision for cities is General City Law § 28-a, and for villages is Village Law § 7-722.

<sup>19</sup> 82 A.D.3d 1377 (3d Dept. 2011), 82 A.D.3d 1377 (3d Dept. 2011), affirming, 18 Misc.3d 1130(A) (Rensselaer County Sup. Ct. 2008)(upholding most of the special use permit/site plan review provisions in Town of Nassau Local Law 2 for 1986 regulates property use rather than mining acting, and as such is not preempted by the Mined Land Recreation Law [Environmental Conservation Law Article 27], but invalidating the “Additional Specific Standards” applicable to special use permit applications for commercial mining as preempted by the MLRL; holding that Troy Sand and Gravel needed to exhaust available administrative remedies before challenging a stop work order issued under the general special use permit/ site plan approval provisions in Local law 2 for 1986); 80 A.D.3d 199 (3d Dept. 2010, December 16) (granting motion to quash Troy Sand and Gravel subpoena duces tecum and ad testificandum issued to Katherine Bader, a Town of Nassau resident over whose land the Town allegedly passed to reach the quarry).

<sup>20</sup> 78 A.D.3d 1057 (2d Dept. 2011, Nov. 23), app. den., 17 N.Y.3d 703 (June 14, 2011).

<sup>21</sup> The Uniform Code consists of several subunits, each based on a model code developed by the International Code. They are: *Residential Code of New York State* (RCNYS); *Building Code of New York State* (BCNYS); *Plumbing Code of New York State* (PCNYS); *Mechanical Code of New York State* (MCNYS); *Fuel Gas Code of New York State* (FGNYS); *Fire Code of New York State* (FCNYS); and the *Property Maintenance Code of New York State* (PMCNYS).

In addition, Article 11 (sections 11-101 through 11-110) of the Energy Law, sets forth the process by which the **State Energy Conservation Construction Code** (Energy Code) is to be developed, maintained, administered, and enforced for the conservation of energy in buildings in New York State. The Energy Code is based on a model energy code, developed by the International Code Council.

The Uniform Code is applicable in every municipality of the State except the City of New York; the Energy Code is applicable in every municipality of the State including the City of New York. An individual city, town, or village cannot choose to exclude itself from the provisions of the Uniform Code and Energy Code. Under Executive Law § 381 however, the municipality may adopt a local law stating that it will not enforce the code and thereafter responsibility for enforcement will pass to the county in which the particular city, town, or village is located. If a county declines to enforce the code, it may likewise adopt a local law to that effect and responsibility for code enforcement will immediately pass to the Department of State. Consequently, if a municipality adopts a local law declining to administer and enforce the Uniform Code, the result is that the municipality will also relinquish responsibility for administering and enforcing the Energy Code.

<sup>22</sup> The code enforcement officer and fire official have the opportunity to comment on the request for variance prior to a variance being issued.

<sup>23</sup> The regulations establishing regional boards of review authorize them to hear appeals of orders or determinations made by an official responsible for enforcing the Uniform Code. An “aggrieved person” may petition the appropriate board of review for relief, and, in cases involving an appeal of a code official’s determination, the regulations authorize the board of review to “fashion suitable remedies so as to do justice among the parties.” A person filing an appeal to the board of review has the burden of proving that he or she is entitled to relief. Requests for variances from the Uniform Code are initiated by contacting the regional offices of the Codes Division.

<sup>24</sup> 86 A.D.3d 899 (3d Dept. 2011, July 28).

<sup>25</sup> 85 A.D.3d 1170 (2d Dept. 2011, June 28).

<sup>26</sup> The Appellate Division heard the merits of the case here, because the case was transferred to it by the Supreme Court. On this point of procedure, the Court stated that if an Article 78 petition does not raise a question of substantial evidence no transfer to the Appellate Division is warranted. Determinations of a ZBA are reviewed by a

court to see whether each had a rational basis and were not illegal, arbitrary and capricious, or an abuse of discretion. See, for example, Campbell v. Town of Mount Pleasant Zoning, 84 A.D.3d 1230 (2d Dept. 2011)(quoting “the substantial evidence standard of review is inapplicable to a zoning board’s determination of an application for an area variance, since such a determination is not made after a hearing at which evidence is taken pursuant to direction of law” citing to Matter of Matejko v. Board of Zoning Appeals of Town of Brookhaven, 77 A.D.3d at 949; see CPLR 7803(4). Rather, “when review the determinations of a Zoning Board, courts consider substantial evidence only to determine whether the record contains sufficient evidence to support the rationality of the Board’s determination” ...).

<sup>27</sup> Citing to Hariri v. Keller, 34 A.D.3d 583 (2d Dept. 2006).

<sup>28</sup> 13 N.Y.3d 840 (N.Y. November 19, 2009).

<sup>29</sup> Pecoraro v. Board of Appeals of Town of Hempstead, 2 N.Y.3d. 608, 613 (N.Y. 2004).

<sup>30</sup> Quoting Clark v. Board of Zoning Appeals of Town of Hempstead, 301 N.Y. 86, 91 (N.Y. 1950).

<sup>31</sup> 9 N.Y. 3d 268 ( 2007).

<sup>32</sup> Citing Matter of New York Life Insurance Co. v. Galvin, 35 N.Y.2d 52 (1974).

<sup>33</sup> 84 A.D.3d 1101 (2d Dept. 2011, May 17).

<sup>34</sup> 74 A.D.3d 1203 (2<sup>nd</sup> Dept June 22, 2010).

<sup>35</sup> 84 A.D.3d 1083 (2d Dept. 2011, May 17).

<sup>36</sup> (i.e., the variance grant would produce an undesirable change; benefit achievable by a more feasible method other than a variance; variance request is substantial; adverse effect or impact on the environmental conditions of the neighborhood or district; the hardship was self created).

<sup>37</sup> 82 A.D.3d 764 (2d Dept. 2011, March 1).

<sup>38</sup> Analogous provisions in Village Law § 7-712-a(9) ;General City Law § 81-a(9).

<sup>39</sup> People v. Miller, 304 N.Y. 105 (N.Y. 1952).

<sup>40</sup> Ellington Construction v. ZBA of the Village of Hempstead, 77 N.Y.2d 114, 122 (N.Y. 1990).

<sup>41</sup> 14 N.Y.3d 127 (N.Y. February 2010).

<sup>42</sup> 15 N.Y.3d 139 (N.Y. June 17, 2010).

<sup>43</sup> 84 A.D.3d 1238 (2d Dept. 2011, May 24).

<sup>44</sup> 87 A.D.3d 788 (3d Dept. 2011, August 4).

<sup>45</sup> 9 N.Y.3d 303(2007).

<sup>46</sup> 82 A.D.3d 883 (2d Dept. 2011, March 8).

<sup>47</sup> 3. Conditions....(b) A cluster development shall result in a permitted number of building lots or dwelling units which shall in no case exceed the number which could be permitted, in the planning board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the zoning ordinance or

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local law applicable to the district or districts in which such land is situated and conforming to all other applicable requirements. Provided, however, that where the plat falls within two or more contiguous districts, the planning board may approve a cluster development representing the cumulative density as derived from the summing of all units allowed in all such districts, and may authorize actual construction to take place in all or any portion of one or more of such districts. (c) The planning board as a condition of plat approval may establish such conditions on the ownership, use, and maintenance of such open lands shown on the plat as it deems necessary to assure the preservation of the natural and scenic qualities of such open lands. The town board may require that such conditions shall be approved by the town board before the plat may be approved for filing.

<sup>48</sup> Citing to... Pattern Corp v. Association of Prop. Owners of Sleepy Hollow Lake, 12 A.D.2d 996, 999-1000 (3d Dept. 1991).

<sup>49</sup> 54 A.D.3d 757 (2<sup>nd</sup> Dept. 2008).

<sup>50</sup> 82 A.D.3d 1203 (2d Dept. 2011, March 29).

<sup>51</sup> 85 A.D.3d 801 (2d Dept. 2011, June 7).

<sup>52</sup> 2011 WL 4389752 (2d Dept. 2011, September 20).

<sup>53</sup> 72 A.D.3d 960 (2<sup>nd</sup> Dept. April 20, 2010).

<sup>54</sup> Citing to N.Y. University v. Whalen, 46 N.Y.2d 734; Wilson v. Bd. of Ed. Of Harborfields Cent. School Dist., 65 A.D.3d 1158.

<sup>55</sup> 83 A.D.3d 723 (2d Dept 2011, April 5), app. den., 17 N.Y.3d 711 (September 22, 2011).

<sup>56</sup> 42 U.S.C. 2000cc, et. seq.

<sup>57</sup> 66 A.D.3d 1393 (4<sup>th</sup> Dept. October 2, 2009).

<sup>58</sup> Quoting 42 USC 2000cc(a)(1) and Third Church of Christ v. N.Y.C., 617 F.Supp.2d 201, 208-209 (S.D.N.Y).

<sup>59</sup> 73 A.D.3d 1043 (2<sup>nd</sup> Dept. May 18, 2010).





## **General Session III**

Food System Planning





## **General Session III**

Striking the Sustainability Balance: Wastewater Infrastructure

