

**WESTCHESTER MUNICIPAL PLANNING FEDERATION
COMPREHENSIVE PLANNING AND THE ROLE OF THE
PLANNING BOARD:
LEGAL PERSPECTIVES ON COMPREHENSIVE PLANS**

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Historical Overview

- The Town Board's regulations "shall be made in accordance with a comprehensive plan. . ." (New York Town Law § 263; see also New York Village Law § 7-704; New York General City Law § 20[25].)
- Udell v. Haas, 21 N.Y.2d 463, 288 N.Y.S.2d 888 (1968).
 - There is an "almost universal statutory requirement that zoning conform to a well-considered plan. . ."
 - Rationale is that "local authorities must act for the benefit of the community as a whole following a calm and deliberate consideration of the alternatives and not because of the whims of either an articulate minority or even majority of the community."
 - New York courts had yet to define the term "comprehensive plan."
 - "Comprehensive plan" can be determined by examining "all relevant evidence."
- Can come from "any available source, most especially the master plan of the community, if any has been adopted, the zoning law itself and the zoning map."

Historical Overview

- Town of Bedford v. Village of Mt. Kisco, 33 N.Y.2d 178, 351 N.Y.S.2d 129 (1973).
 - Rejects argument that 1968 rezoning must fail because it did not comply with 1958 Comprehensive Plan because it failed to recognize “that the proper standard was *current* comprehensive planning.”
 - “What is mandated is that there be comprehensiveness of planning, rather than special interest, irrational *ad hocery*.”
 - “The obligation is support of comprehensive planning, not slavish servitude to any particular comprehensive plan. Indeed sound planning inherently calls for recognition of the dynamics of change.”

Enactment of Town Law § 272-a

- 1993 Amendments
 - Defines “comprehensive plan” and clarifies that the comprehensive plan is the basis for land use regulation, infrastructure development, and other public decision-making.
 - Assigns power to enact Comprehensive Plan to Town Board.
 - Goal is to stimulate closer involvement in municipal planning by elected representatives.
- 1995 Amendments
 - Encourages use of Planning Boards and/or “Special Boards” in formulating comprehensive plans.
 - More “public” involvement in formulating Comprehensive Plans.
 - Increases likelihood that comprehensive plan will be supported and implemented.

Town Law § 272-a

- Town Board may prepare, or the Town Board may authorize the Planning Board or a Special Board to prepare, the comprehensive plan or an amendment to the plan. (Town Law § 272-a (4))
 - Special Board: “a board consisting of one or more members of the planning board and such other members as are appointed by the town board to prepare a proposed comprehensive plan and/or an amendment thereto.” (Town Law § 272-a (2)(c)).
- Planning Board or Special Board (when authorized) must by resolution recommend plan to Town Board (Town Law § 272-a (4)).

Preparation of the Comprehensive Plan and the Referral Process

- If Town Board prepares comprehensive plan, they may refer it for “review and recommendation” to the Town planning Board.
- Town Board must refer to County Planning Board pursuant to GML § 239-m.
- Planning Board or Special Board may request comments from a County Planning Board.

Public Hearings

- Town Board “shall hold one or more public hearings” and such “other meetings as it deems necessary to assure full opportunity for citizen participation in the preparation” of the proposed Plan.
- In addition, the Town Board “shall hold one or more public hearings prior to adoption of such proposed plan.” (Town Law § 272-a (6)(emphasis added)).

Public Hearings

- If Planning Board or Special Board prepares Comprehensive Plan in first instance, that Board “shall hold one or more public hearings and such other meetings as it deems necessary to assure full opportunity for citizen participation in the preparation of such proposed plan or amendment.”
- Town Board must hold additional hearing within ninety (90) days of receipt of plan from the Planning Board or Special Board.

Notice of a Public Hearing

- Notice of a Public Hearing must be published in a newspaper at least ten (10) days before the hearing.
- During this time the proposed plan/amendment must also be available for public review at Town Clerk.
- Troy Sand & Gravel Co. v. Town of Nassau, 82 A.D.3d 1377, 918 N.Y.S.2d 667 (3d Dep't 2011).
 - Town Board failed to make proposed comprehensive plan public for ten (10) days prior to the public hearing.
 - Special Board failed to adopt a resolution recommending the proposed plan to the Town Board.
 - Town of Nassau incorrectly argued that the applicable Section 272-a provisions are “advisory” and not mandatory.

The Comprehensive Plan and SEQRA

- Comprehensive plans are “Type I actions” under SEQRA. (6 NYCRR 617.4(b)(1)).
- Comprehensive plan may be designated as a Generic Environmental Impact Statement (“GEIS”) (Town Law § 272-a (8)).
 - Sets forth specific conditions/criteria under which future actions will be undertaken/approved (6 NYCRR § 617.10(c)).
- Generally, GEISs may be appropriate when addressing issues that “will affect a wide range of resources or geographic areas and for which an exploration of a range of mitigation measures that would work in various circumstances.” (SEQR Handbook p. 145).
- “If a municipality chooses to prepare a generic EIS for a comprehensive plan, the comprehensive plan and generic EIS should be made available for public review as a joint document.” (SEQR Handbook p. 180).

Periodic Review and Effect of Adoption

- Town Board must provide in the Comprehensive Plan the “maximum intervals at which the adopted plan shall be reviewed.” (Town Law § 272-a (10)).
- Once the Comprehensive Plan is adopted all town land use regulations and plans for capital projects of another governmental agency must be in accordance with the Plan. (Town Law § 272-a (11)).

Effect of Adoption: Case Law

- Osiecki v. Town of Huntington, 170 A.D.2d 490, 565 N.Y.S.2d 564 (2d Dep't 1991).
 - At a minimum, Town must articulate a reason if it decides to deviate from a master plan.
 - Without an articulated reason, for deviations, municipalities could engage in “ad hoc and arbitrary application of zoning power that the comprehensive planning requirement was designed to avoid.”
- Infinity Consulting Group v. Town of Huntington, 49 A.D.3d 813, 854 N.Y.S.2d 524 (2d Dep't 2008).
 - Subject property located at the entrance to a residential neighborhood from a commercial roadway. Town deviated from the Comprehensive Plan and decided not to rezone the property for commercial use.
 - Town Board had legitimate concerns that rezoning the property for commercial use would adversely affect traffic congestion and the residential character of the neighborhood.
- Francis Development & Management Co. v. Town of Clarence, 306 A.D.2d 880, 761 N.Y.S.2d 760 (4th Dep't 2003).
 - Town Board properly denied a special exception use permit for a mini-storage facility due to conflicts with the Town's Master Plan.
 - Zoning ordinance conditioned approval of a special exception use permit on the condition that the use does not conflict with the Master Plan.

Effect of Adoption: Local Example

- City of Yonkers- § 43-60 (4) “General standards for special use permit applications”
 - “That such a use shall not conflict with the direction of building development in accordance with the City of Yonkers Comprehensive Plan or other such plans as may have been adopted by the City Council or Planning Board.”

Contents of a Comprehensive Plan

- A Town's Comprehensive Plan may consider (Town Law § 272-a (3)):
 - Regional needs;
 - Affordable Housing;
 - Berenson v. Town of New Castle, 38 N.Y.2d 102, 378 N.Y.S.2d 672 (1975);
 - Historic and cultural resources ;
 - Coastal and natural resources and sensitive environmental areas;
 - NYSERDA, “Responding to Climate Change in New York State” (Nov. 2011).
 - Population, demographic and socio-economic trends, and future projections;
 - Recreational facilities and parkland;
 - Commercial and industrial facilities;
 - Improving local economy;
 - Incentive zoning.

Handling Projects In The Pipeline

- “Special Facts” Exception
 - Ronsvalle v. Totman, 303 A.D.2d 897, 757 N.Y.S.2d 134 (3d Dep’t 2003).
 - “It is well settled that ‘when a zoning law has been amended after the submission of an application seeking. . . [a project’s] approval, but before a decision is rendered thereon by the reviewing agency, the courts are bound to apply the law as amended unless ‘special facts’ indicated that the [Town] Board ‘acted in bad faith and unduly delayed acting upon [the] application while the zoning law was changed.’”
 - Proposed Revisions as Alternative Analysis?
 - Moratoria
 - Allow applicants to continue processing?
 - Tahoe-Sierra Preserv. Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302, 122 S. Ct. 1465 (2002).

Questions and Comments

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