



Dealing with Locally Unwanted Land Uses

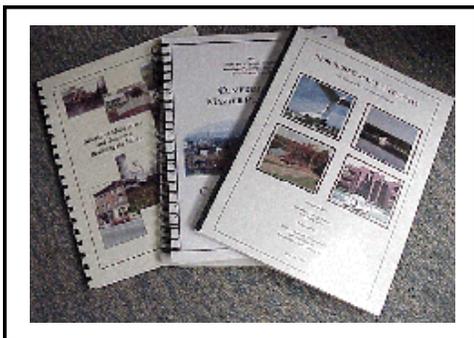
NYS Department of State

Terms

- LULU – Locally unwanted land uses
- NIMBY- Not in my backyard
- NIMEY – Not in my election year
- NIMTOO – Not in my term of office
- NOPE – Not on planet Earth
- BANANA - Build absolutely nothing anywhere near anything
- CAVEs - Citizens against virtually everything

It starts with good planning

- Provides legal support for regulatory changes
- Prioritizes municipal infrastructure investments
- Identifies areas for potential private investment in infrastructure
- Involves a process of seeking out public opinion on some controversial issues



Communities with Written Comprehensive Plans

Cities	90%
Towns	64%
Villages	62%
All	64%

Source: NYS Legislative Commission on Rural Resources (2003)

We know we don't want it

- Is your zoning clear?
- Generally, zoning laws will contain a provision which states that uses not listed as allowed are prohibited
- However, some uses have been given special status due to court decisions or state or federal law



Can we prohibit it?

Exclusionary Zoning has been defined as land use control regulations which singly or in concert tend to exclude persons of low or moderate income from the zoning municipality.

Examples include:

- Large lot/high minimum square footage requirements; exclusion of multiple dwellings or mobile homes
- Non-residential uses may be excluded if the action is supported by the comprehensive plan, unless there are constitutional issues



A
municipality
can exclude
almost all
commercial
uses

Can we rezone to help out one applicant?

You can rezone to accommodate an applicant seeking a zoning amendment to allow a use that the comprehensive plan supports

Zoning changes must be reasonably related to legitimate public purposes

Spot Zoning: "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners" [Rogers v. Tarrytown, 302 NY 115, 96 NE2d 731 (1951)]

Can we deny an application based on community opposition?

If allowed by zoning, and requirements are met by the applicant, general community opposition is not a valid basis for denial of a land use application



Catching your breath

Adopt a Moratoria Law

- To update a plan that will consider new uses
- To prevent inefficient and ill-conceived growth
- To prevent hasty decisions
- To update regulations
- To prevent immediate construction which might be inconsistent with future plan



Wrong Reasons For Moratoria:

To slow down development in hopes that the developer will go away

To halt development while the community considers buying the land

Inform and involve the public

Review boards should unearth controversy early on when applicants are more receptive to change and before the public feels steamrolled

- Is a public hearing required?
- Board can hold informational meeting with residents and community leaders/activists
- Involve public in early stages an application to identify and resolve concerns and issues



LULUs and the Media



- Most news people are generalists and not experts in municipal law, many don't understand the mechanisms of local government
- Knowledge of the workings of local government will help the media to interpret events accurately
- Educate them

LULUs and the Media

Controversial Applications

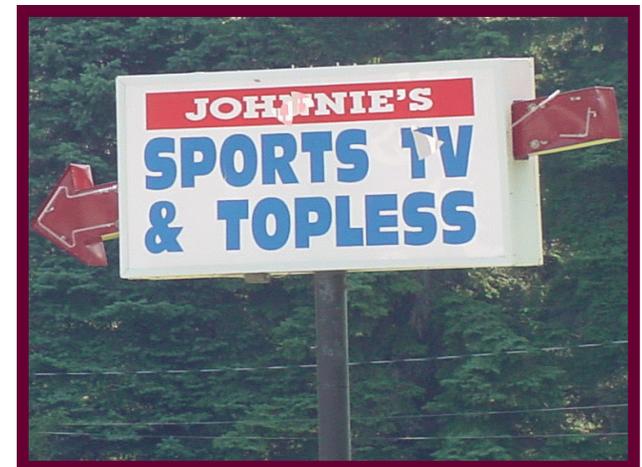
- Responding to a story *may* make it worse
- Decide how to respond
 - Press Release, News Conference, Off the Record, Exclusive Interview, Spokesperson
 - Define what “off the record” means
- Correct false assumptions
- Be wary of loaded words
- Don't repeat negative questions

A Quick Survey of Some LULUs

- Adult Uses
- Religious Uses
- Mining
- Non-Retail in Retail Districts
- Billboards
- Mobile Homes
- Political Signs
- Large-Scale Retail
- McMansions

Adult Uses

- Freedom of Expression
- The goal of regulations must be to control the secondary effects of adult businesses
- If locational restrictions are enacted, there must be viable locations, suitably zoned, for these businesses in the community
- Definitions are key
- Try business licensing



Religious Uses

Regulate characteristics that can create legitimate concerns: traffic generation, parking, signage

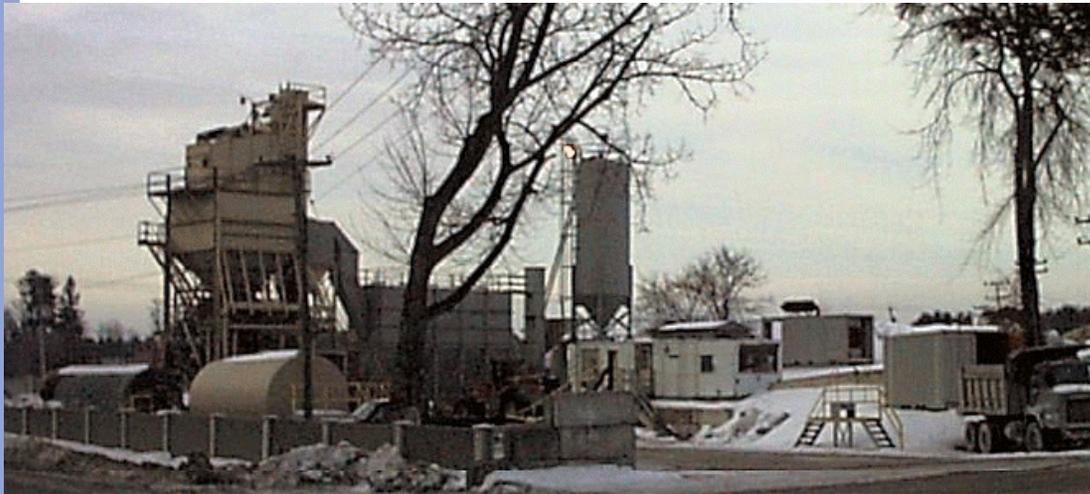
- Not exempt from local zoning laws, but can not exclude religious uses from residential districts
- Can also require special use permits, variances, etc.
- Greater flexibility required in evaluating applications
- Make every effort to accommodate

- Religious Land Use & Institutionalized Persons Act of 2000 - place no “substantial burden” on religious activity



- Don't prohibit if the impact of a religious use be similar to other allowed uses

Mining



A municipality may choose to prohibit mining in all zoning districts

The Mined Land Reclamation Law governs the regulation of certain mines when the mines are allowed by a municipality. A municipality may still regulate some aspects of mining within its boundaries.

- Egress to town roads
- Transport on town roads
- Enforcement of reclamation



Nonretail Uses in Retail Districts

- Issue: impact of nonretail uses on sales taxes, pedestrian traffic, retail core

Zoning Tools:

- Minimum percentage street-level retail in new development
- Special use Permits for Non-Retail in Storefronts
- Prohibition of Non-retail in Storefronts



Billboards



A municipality may regulate the size and location of signs, but not their content.

Methods of Regulation:

- State Uniform Code
- Zoning
- Site Plan Review
- Local Permit

NYS DOT has permitting jurisdiction for off-premise signs along interstate and primary highways

Local governments may still prohibit signs where DOT would allow them

See: www.dot.state.ny.us/red/sign_program.html

Mobile Homes

Can't exclude all Manufactured Homes from a municipality (Town of Pompey v. Parker)

Levels of Regulation

- Federal
 - Construction and Safety
- State
 - Installation Standards
 - Uniform Code
 - Manufacturer's Manual
 - Sanitary Code Part 17
- Local
 - Location, lot size, setback
 - Home site development



A farmer within a state agricultural district must be allowed to house farm workers in manufactured homes on the farm lot. (Town of Lysander v. Paul Hafner, Jr. et al.)

Group Homes for the Disabled

Site Selection of Community Residential Facilities

Mental Hygiene Law § 41.34.

“A community residence established pursuant to this section and family care homes shall be deemed a family unit, for the purposes of local laws and ordinances.”



Challengers must address whether the new facility results in such a concentration of community residential facilities for the mentally disabled or combination of such facilities and other facilities licensed by other state agencies that the nature and character of areas within the municipality would be substantially altered.

Large-Scale Retail Uses

- Can establish a maximum size
- Percent of grocery items
- Architectural and design elements
- Parking spaces – number, location, landscaping
- Sign standards
- Outdoor Storage – amount, location, design



Two adjacent developments exhibiting massing variation, below, and lack of variation, above.



Source: Fort Collins Design Manual

Political Signs

- Free expression issue
 - Regulate because of traffic safety, aesthetics, economic development, property values
- Regulate physical characteristics
- Treat as temporary signs
 - Size, height
 - Location – can ban all signs on public property
 - Fees – relate to administrative costs for processing application
 - Permits – must apply to all signs
 - Duration – must apply evenly, link to “event”



McMansions

- Require demolition permits for older homes
- Limit size of residential structures and establish floor area ratio (FAR)
- Establish way to measure height of building, number of stories
- Gross Floor Area - include all covered habitable space and outbuildings; count cathedral ceilings, stairwells, etc. as two floors
- Limit "Squarification" - require upper floors to be set back, control side yard setbacks
- Require site plan review for homes of a certain size or increasing by a certain percentage





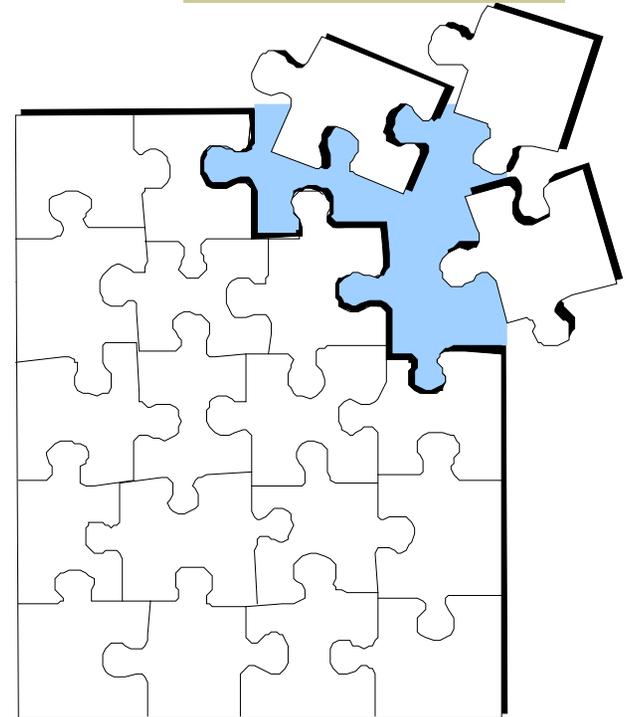
Defending Your Decisions

The Record is the Assembled Facts

The material in the record tells the story of the application.

Common items:

- Newspaper notices
- Minutes of meetings
- Application and supporting documentation
- SEQRA materials
- Testimony from public hearings
- Written submissions from public
- Expert opinion
- The decision, conditions, findings



Drafting the Findings

- Findings describe the reasons for the denial or approval of an application, and may also support why a condition was imposed
- Findings should be able to support a decision if it is challenged in court
- Conclusory statements are not “Findings”
 - A decision based upon conclusory statements, which is not supported by factual information contained in the record, will likely be struck down

Possible Content of Findings

- Applicant and interested groups
- Action requested by the applicant
- Property information: ownership, use, zoning
- Surrounding neighborhood
- Analysis of board
- Legal standards
- Facts as they relate to the legal standards

The New York State Department of State Office of Coastal, Local Government & Community Sustainability

Presents this Certificate of Completion to:

(Name - Please Print)

(Signature & Date)

For successful completion in 2014
of the 1-HOUR video tutorial:
"LULUs: Local Unwanted Land Uses"



Print this page and return to your Governing Board

The governing board of each municipality must pass a resolution to determine what training is eligible to meet the requirements of the New York State law. For more information, please see Annual Training for Planning and Zoning Board of Appeals Members at the Department of State's website: www.dos.ny.gov/lg/lut/index.html

Contacting the Department of State



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