

The Land Use Law Center's 17th Annual
Alfred B. Delbello Land Use and Sustainable Development Conference

Sustainable Development as a Market Driver

December 6, 2018



CONFERENCE
SUMMARY
REPORT

LAND  USE
LAW CENTER

PACE
UNIVERSITY
ELISABETH HAUB
SCHOOL OF LAW



Empire State
Development

Land Use and Sustainable Development 2018 Annual Conference

Sustainable Development as a Market Driver

Conference Summary Report

The 17th annual Alfred B. DelBello Land Use and Sustainable Development Conference was held on Thursday, December 6, 2018. The conference “*Sustainable Development as a Market Driver*” brought together more than 250 attorneys, business professionals, and local leaders who spent the day learning about national, regional, and local innovations, challenges, and best practices in sustainable development and land use. The featured sessions covered comprehensive and target area plans, zoning tools for a new economy, water infrastructure and sign regulations, among other topics. The morning keynote address - “*Walkable Urbanism is the Future of the Suburbs; Identifying Winners and Losers of this Trend*” - was given by [Christopher Leinberger](#), a land use strategist, professor, real estate developer, researcher, speaker, and author. The luncheon keynote speaker was [Sam Schwartz](#) discussing his new book, [No One at the Wheel](#).

This year also marked the 25th anniversary of the Land Use Law Center at Pace Law. Established in 1993, the Land Use Law Center is dedicated to fostering the development of sustainable communities and regions through the promotion of innovative land use strategies and dispute resolution techniques. Through the work of its programs, centers, and institutes, the Land Use Law Center offers conferences, seminars, clinics, academic law school courses, continuing legal education programs, audio podcasts, and frequent publications and resources on contemporary land use, real estate, and environmental issues. The Center has spent more than two decades educating local and regional land use leaders and supporting municipalities. The annual Land Use and Sustainable Development conference is one example of how the Center brings together leaders, policy makers, and attorneys to analyze, discuss, and offer solutions to the challenges faced in land use.

The Center used its regional conference, this year, to help advance economic growth in the region. It highlighted local government approaches for overcoming challenges and finding solutions that target new ways to plan, regulate, and design communities for economic development and redevelopment readiness. Below is a summary of the panel sessions at the conference. Each session section includes a panel summary, a link to the video presentation, a bibliography of resources, PowerPoints presented, and biographies of panelists.

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Walkable Urbanism is the Future of the Suburbs; Identifying Winners and Losers of this Trend¹

For the past two decades, there has been a reversal of the mid to late 20th century trend toward drivable suburban development. This reversal has included the redevelopment of American center cities, but often overlooked is the urbanization of the suburbs. Research has shown that upwards of 50% of the growth of walkable urban development has been in the suburbs. This means there are winners, such as downtown White Plains, Jersey City and Princeton, but there are also losers as poverty is now growing much faster in the suburbs than the center city. This speech will focus on how to prepare for walkable urbanism in the suburbs and point out the downsides of this trend, what the speaker referred to as “The Next Slum” in The Atlantic.

VIDEO OF PRESENTATION:

https://mediaspace.pace.edu/media/Sustainable+Development+as+a+Market+Driver+-+Plenary+Session+.mp4/1_0kgo2r5j/31792771

BIBLIOGRAPHY OF RESOURCES:

“Catalytic development: (Re)creating walkable urban places”

With the introduction of low-cost automobile and truck transport, as well as support by market preferences, government subsidies, zoning regulations, and well-understood financing formulas, drivable suburban development quickly controlled the real estate market in the mid- to late 20th century. Since then, market trends have shifted back toward walkable urban development, inspiring a new place-based model known as “catalytic development” to facilitate large-scale investment in concentrated, walkable communities.

<http://chrisleinberger.com/docs/reports/paper-may-2018.pdf>

“Core Values: Why American Companies are Moving Downtown”

Hundreds of companies across the United States are moving to walkable downtown locations in order to, *inter alia*, attract and retain talented workers, build brand identity and company culture, support creative collaboration, centralize operations, and support triple-bottom line business outcomes. When choosing a new location, companies generally look for vibrant, walkable neighborhoods in which employees can both live and work.

<http://chrisleinberger.com/docs/reports/american-comp.pdf>

“Foot Traffic Ahead: Ranking Walkable Urbanism in America’s Largest Metros” (June 2014)

Walkable urban places, or “WalkUPs,” have been identified in 30 of the largest metropolitan areas in the United States and have been ranked according to current and future levels of walkable urbanism. Research indicates that walkable urbanism is positively correlated with the education of the workforce in, as well as the economic vitality of, metropolitan areas.

<http://chrisleinberger.com/docs/reports/foot-traffic-ahead-2014.pdf>

¹ Thank you to Pace Law student Amy Lee for her contribution to this report.

“Foot Traffic Ahead: Ranking Walkable Urbanism in America’s Largest Metros” (June 2016)

WalkUPs have been identified in 30 of the largest metropolitan areas in the United States and are gaining market share over their drivable suburban competition. Research indicates that walkable urbanism has positive impacts on the education of the workforce in, as well as on the social equity and wealth of, metropolitan areas.

<http://chrisleinberger.com/docs/reports/foot-traffic-ahead-2016.pdf>

“Retrofitting Tysons: From Edge City to Walkable Urban Place”

Tysons, formerly known as Tysons Corner, in northern Virginia has been considered the largest “edge city” in the United States since the 1980s. However, in response to the growing demand for walkable urbanism, Tysons, which once served as a model for drivable suburbanism, is being transformed into a WalkUP.

<https://www.naiop.org/en/Magazine/2018/Summer-2018/Development-Ownership/Retrofitting-Tysons-From-Edge-City-to--Walkable-Urban-Place>

“The WalkUP Wake-Up Call: New York”

The tri-state region has structurally shifted toward walkable urbanism to a greater degree than any other metropolitan area in the United States. However, WalkUPs in the tri-state region have been confined to less than 2.5% of said region, indicating a need for a change in policy and investment strategies.

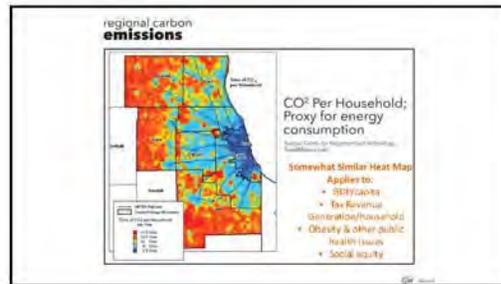
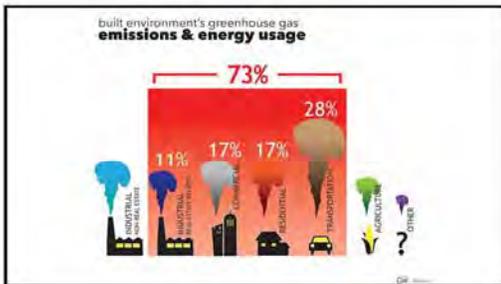
<http://chrisleinberger.com/docs/reports/WalkUPWakeupNY.pdf>

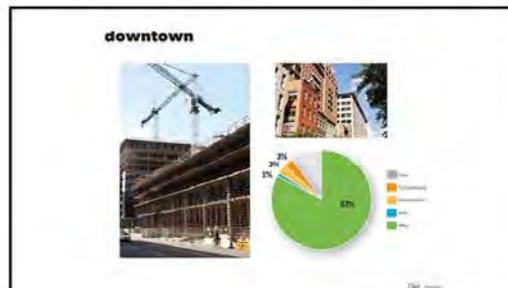
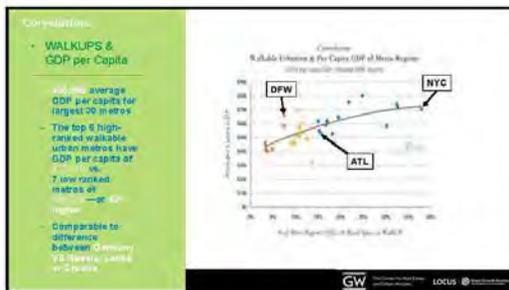
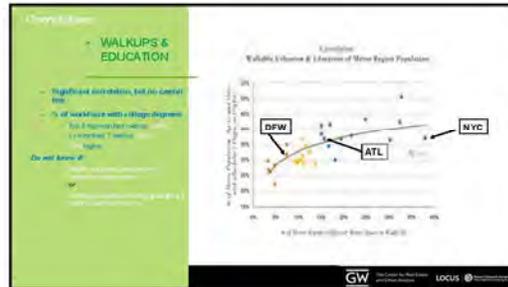
“9th Annual Commercial Real Estate Forum | Walkable Urbanism” – Video Link

Christopher Leinberger discusses the shifting focus from drivable suburbanism to walkable urbanism and delves into the growing market demand for walkable neighborhoods.

<https://www.youtube.com/watch?v=7Gc1wqkt-ys&feature=youtu.be&t=3m45s>

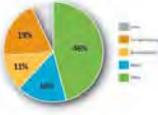
POWERPOINT PRESENTATION:





suburban town center &
strip commercial redevelopment





Form & Function
of Metropolitan
America;

**Arlington, VA
Home of HQ2
Metro DC**

THE Model of the
Urbanizing Suburb in
the country

METROPOLITAN LAND USE OPTIONS

	FRIENDLY NEIGHBORHOODS	TRANSIT-ORIENTED
	 WALKABLE NEIGHBORHOODS 50% FOOTING, 15% PARKING, 35% MIXED USE	 TRANSIT-ORIENTED 40% FOOTING, 10% PARKING, 50% MIXED USE
	 SPRINKLE SUBURBAN 50% FOOTING, 50% PARKING, 0% MIXED USE	 SUBURBAN CONVENTIONAL 40% FOOTING, 60% PARKING, 0% MIXED USE

GW

Arlington Starts 1 transforms in 1980s:
Rail Transit, Overlay Zoning & Place Mgmt




Two blocks north and south, single family housing that is highest priced in Arlington on \$/Foot basis
Best of Two Worlds
11% of the land=50%+ of government revenues
Among best schools in Country

Suburban Town Center: Bethesda, MD



Suburban Town Center: Silver Spring



Could Be Anywhere Strip Mall:
White Flint Metro Station, MD



Pike and Rose, The Pike District (Federal Realty)
 Replacing Mid-Pike Plaza Strip Mall

Office, Rental Apartment & Retail by NYSF BEIT? Used to Only Drive Strip Mall, Now 100% Pedestrian is Walkable Urban

Pike & Rose at Build Out, Montgomery County, MD

Development Magazine June 2018 Cover
 NAIOP
 Christopher B. Leinberger
 GWU Professor & Arcadia Land Company

Retrofitting Tysons

Tysons 1938 & 1988

Probable Tysons WalkUps

New Tysons—Walkable Urban

How the Mighty Have Fallen:
National Cancer Institute & Marriott HQ

10-20% of 2005 Value in 2017

Reston Town Center;
Grand Daddy of Green Field WalkUPS

Brownfield: Crystal City/National Landing: HQ2

King of Prussia Town Center
Main Street retail (Metro Philadelphia)

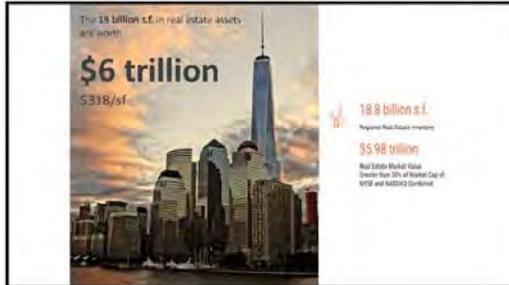
Town Green (above)
Children's water park in Town Green (upper right)
Main Street retail (right)

Methodology:
Identifying Land Use Options

Tri-State Region Land Use Options (WalkUP + Drive-In)

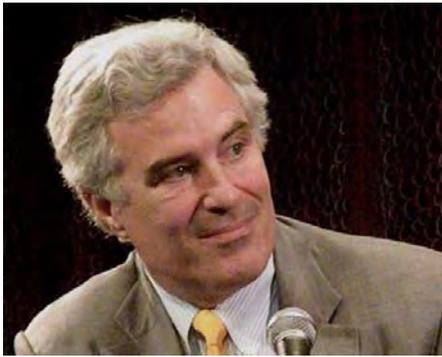
The metro New York tri-state region is the largest regional economy in the United States.

- 12,800 sq. mi. Regional Land area
Larger than State of Maryland
- 303 sq. mi. New York City Land Area (2.4%)
- 22.5 million Regional Population
- 8.4 million New York City Population (37.2%)
- 10.2 million 3rd largest "metro"
- \$1.17 trillion Gross Regional Product (GRP)
7% of U.S. GDP of \$17 Trillion
Larger than California or Texas





BIOGRAPHY:



Christopher B. Leinberger

Charles Bendit Distinguished Scholar and Research Professor at the George Washington University School of Business and Chair of the Center for Real Estate and Urban Analysis

Founding Partner of Arcadia Land Company, a New Urbanism and Transit-Oriented Development Firm

Principal of Walkable Urban Places Advisors, Inc.

Christopher B. Leinberger is a land use strategist, developer, professor, researcher and author. He balances business realities with social and environmental issues. Mr. Leinberger has the following institutional connections:

- Charles Bendit Distinguished Scholar and Research Professor at the **George Washington University School of Business** and Chair of the **Center for Real Estate and Urban Analysis**. Please refer to <https://creua.business.gwu.edu/>.
- Founding partner of **Arcadia Land Company**, a New Urbanism and transit-oriented development firm that is dedicated to land stewardship and building a sense of community. His partners are Robert Davis, the developer of Seaside, Florida, Joe Duckworth, who has run two Builder 100 home building companies, and Jason Duckworth, the current CEO. The firm currently has active developments in the Philadelphia metropolitan area. Arcadia was the managing partner of the catalytic developer for the revitalization of downtown Albuquerque, New Mexico, of which Mr. Leinberger was the managing partner. Please refer to www.arcadialand.com.
- Principal of **Walkable Urban Places Advisors, Inc.**, his consulting firm, which engages in strategic planning for walkable urban places (e.g., downtowns, suburban town centers, redeveloped suburban office and retail centers, etc.). He has developed strategic and implementation plans for the downtowns of Chattanooga, Lancaster (Pennsylvania), Detroit, Albuquerque, Santa Fe Railyards and Somerville (Massachusetts), among other places. His work includes creating “catalytic development” companies.

For 21 years, Mr. Leinberger was Managing Director and co-owner of **RCLCO** (formerly, Robert Charles Lesser & Co.), the largest independent real estate advisory firm in the country that, today, works on over 600 projects a year for developers, corporations and municipalities. Please refer to <http://www.rclco.com/>.

Mr. Leinberger was also the founder and, for eight years (2008-2016), the President of **LOCUS: Responsible Real Estate Developers and Investors**. LOCUS advocates for transportation, tax reform and the environment before Congress, as well as at various state and metropolitan levels. LOCUS is sponsored by Smart Growth America. Please refer to <http://www.smartgrowthamerica.org/locus/>.

He has been a Nonresident Senior Fellow (2005-2018) of **The Brookings Institution** in Washington, DC. Please refer to <http://www.brookings.edu/experts/leinbergerc.aspx>.

Mr. Leinberger has served on the boards of **AvalonBay Communities**, one of the country's most respected equity REITs (NYSE), and **AMRESO Capital Trust**, a former NASDAQ real estate mortgage trust. He has been a member of the **Urban Land Institute (ULI)** for 30 years, serving on the jury of JC Nichols Award for Excellence in Urbanism, and was the founder, as well as served in the leadership, of the Transit-Oriented Development Council.

Mr. Leinberger has also been active on several committees of the **National Academy of Sciences**, including the creation of the National Biological Survey, which was sponsored by Secretary of the Interior Bruce Babbitt, and a panel to improve metropolitan governance.

Mr. Leinberger has written two books, the most recent of which is *The Option of Urbanism, Investing in a New American Dream*, published in 2008 by Island Press and released in paperback in 2009. Planetizen, an urban planning and architecture website, selected it as one of the top 10 books of 2008. He is also the author of *Strategic Planning for Real Estate Companies*, originally published by ULI in 1993, which was revised by his former RCLCO partners and re-published by ULI in 2008 with the Introduction written by him.

He has contributed chapters to 15 books, the most recent of which include *Companion to Real Estate Development* (Routledge) and *New Urbanism and Beyond* (Rizzoli).

He is an Op-Ed Contributor to the *New York Times* and has written articles for periodicals, including *The Atlantic Monthly*, *Urban Land*, *Wall Street Journal*, *Chicago Tribune*, *Washington Monthly*, *Canada's National Post* and *Los Angeles Times*, among others. He is often quoted by periodicals such as the *New York Times*, *Washington Post*, *Wall Street Journal*, *Newsweek*, *Business Week* and *Associated Press*, among others. He has been profiled by *CNN*, *Urban Land Magazine*, *Today Show*, academic journals, *Canadian National Radio*, *USA Radio* and *CBS Radio*, as well as numerous times by programs on *National Public Radio*, including *Morning Edition*, *All Things Considered*, *Weekend Edition Saturday* and *Marketplace*.

Mr. Leinberger has given speeches to nearly every major real estate, downtown management and land use organization in the country and many abroad, as well as to many chambers of commerce, councils of governments and environmental organizations. He has been a visiting lecturer at the Santa Fe Institute, Harvard University, Swarthmore College, University of Wisconsin, UCLA, University of Pennsylvania, Virginia Tech, University of New Mexico (as an adjunct professor), Rollins College, Simon Frasier University and other institutions of higher education.

Mr. Leinberger received a Bachelor of Arts degree from **Swarthmore College**, where he double-majored in Political Science and Urban Sociology, and a Master of Business Administration from the **Harvard Graduate School of Business**. He also attended the **Martin Luther King School of Social Change**, the Institute of Social Research at the **University of Michigan**, and was a **Coro Foundation** Fellow in Public Policy in Los Angeles.

Mr. Leinberger was voted one of “The 100 Most Influential Urbanists” of all time in a poll conducted by Planetizen in 2017 at <https://www.planetizen.com/features/95189-100-most-influential-urbanists>. He was the 2010 William H. Whyte Urbanism Award winner from Partners for Livable Communities.

Mr. Leinberger lives in the Dupont Circle area of Washington, DC, with his wife, Lisa.

No One at the Wheel¹

Autonomous vehicles will be the most disruptive technology to hit society worldwide. In *NO ONE AT THE WHEEL: Driverless Cars and the Road of the Future*, Sam Schwartz's latest book, he lays out the future—good, bad and ugly. While we will see some major benefits—fewer crashes, less parking, and greater productivity while motoring—we also need to be aware of the big concerns. Autonomous vehicles (AVs) will affect family and work life, business, politics, ethics, the environment, travel, and health. City planning will change significantly as AVs will dominate transportation over the next generation. The streetscape, as we know it today, may be dramatically altered. *NO ONE AT THE WHEEL* will provide a roadmap for how to respond to the inevitable changes that autonomous vehicles will bring. Stakeholders and citizens will need to work together with government to maximize the benefits of this technology while minimizing its downsides.

VIDEO OF PRESENTATION:

https://mediaspace.pace.edu/media/Sustainable+Development+as+a+Market+Driver++Keynote+Address.mp4/1_1j3x7958/31792771

BIBLIOGRAPHY OF RESOURCES:

No One at the Wheel: Driverless Cars and the Road of the Future by Sam Schwartz
Sam Schwartz describes how the driverless vehicle revolution will transform highways, cities, workplaces and laws across the globe.

<https://www.amazon.com/No-One-Wheel-Driverless-Future/dp/1610398653>

Street Smart: The Rise of Cities and The Fall of Cars by Sam Schwartz

In this book, Sam Schwartz retrospects the dazzling and affectionate history of the struggle for control of American cities, and envisions a more vibrant, active, and vigorous urban future with multimodal and multinodal transportation systems.

https://www.amazon.com/Street-Smart-Rise-Cities-Fall/dp/1610395646/ref=sr_1_1?s=books&ie=UTF8&qid=1539893005&sr=1-1&keywords=Street+Smart%3A+The+Rise+of+Cities+and+The+Fall+of+Cars

How Autonomous Vehicles Will Reshape Our World by Sam Schwartz

Sam Schwartz explains the changes autonomous vehicles will bring to our life in this Wall Street Journal Article.

<https://www.wsj.com/articles/how-autonomous-vehicles-will-reshape-our-world-1539871201>

Autonomous Driving: Technical, Legal and Social Aspects by Markus Maurer, J. Christian Gerdes, Barbara Lenz, Hermann Winner

According to Google Books: “This book takes a look at fully automated, autonomous vehicles and discusses many open questions: How can autonomous vehicles be integrated

¹ Thank you to Pace Law student Siyi Shen for her contribution this report.

into the current transportation system with diverse users and human drivers? Where do automated vehicles fall under current legal frameworks? What risks are associated with automation and how will society respond to these risks? How will the marketplace react to automated vehicles and what changes may be necessary for companies?"

https://www.amazon.com/Autonomous-Driving-Technical-Social-Aspects/dp/3662488450/ref=sr_1_1?ie=UTF8&qid=1539894798&sr=8-1&keywords=%09Autonomous+Driving%3A+Technical%2C+Legal+and+Social+Aspects

Preparing for the Future of Transportation: Automated Vehicles 3.0 by U.S. Department of Transportation

According to the Executive Summary of the document: "In AV 3.0, U.S. DOT's surface transportation operating administrations come together for the first time to publish a Departmental policy statement on automation. This document incorporates feedback from manufacturers and technology developers, infrastructure owners and operators, commercial motor carriers, the bus transit industry, and State and local governments.² This document considers automation broadly, addressing all levels of automation (SAE automation Levels 1 to 5), and recognizes multimodal interests in the full range of capabilities this technology can offer."

<https://www.transportation.gov/av/3/preparing-future-transportation-automated-vehicles-3>

The End of Driving: Transportation Systems and Public Policy Planning for Autonomous Vehicles (1st Edition) by Bern Grush and John Niles

According to Amazon, this book "explores both the potential of vehicle automation technology and the barriers it faces when considering coherent urban deployment. The book evaluates the case for deliberate development of automated public transportation and mobility-as-a-service as paths towards sustainable mobility, describing critical approaches to the planning and management of vehicle automation technology. It serves as a reference for understanding the full life cycle of the multi-year transportation systems planning processes, including novel regulation, planning, and acquisition tools for regional transportation."

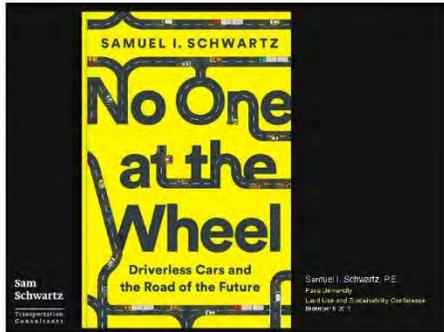
<https://www.amazon.com/End-Driving-Transportation-Planning-Autonomous/dp/0128154519>

Webinar: The Rise of Auto Tech — What's Coming, Who's Doing it, and Who Will be Affected by CB Insights

This webinar introduces six aspects of autonomous vehicles: the activity in auto tech in private market, the changing landscape of auto insurance, the car as a computer, the corporates in autonomous vehicles, regulations surrounding self-driving cars, and how will autonomous vehicles change our lives.

<https://www.youtube.com/watch?v=moH6TWagJ1M>

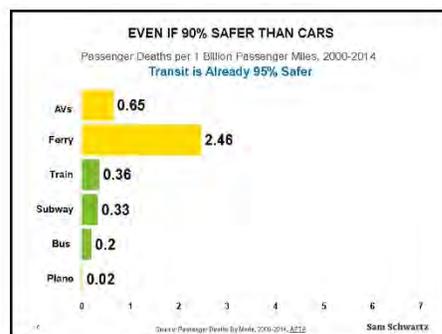
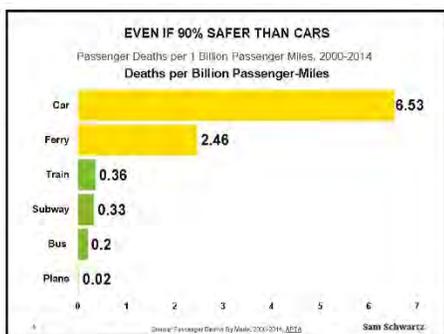
POWERPOINT PRESENTATION:



KEY TAKEAWAY

Don't let the safety argument blind you to a more holistic approach toward the introduction of AVs to our society.

Sam Schwartz



SELF-DRIVING CRASH HISTORY (WHAT WE KNOW)

Fatalities: 0 known in USA

- In 2016, there were 1.17 fatalities per 100 million miles conventional driving
- 2 fatalities in conventional vehicles would take us ~250 autonomous drives
- Number of miles driven is 1.4x to 1.6x (mode-agnostic)
- Who may have to be doing hundreds of thousands of miles to demonstrate an safety case based on operationally

Crash Frequency: Self-Driving vs. Conventional Vehicles (September 2014 - November 2017)

Category	Crashes
Google/Waymo	36,510
GM Cruise	16,180
Conventional Vehicles	492,280

Source: LaBrecq 2018
Sam Schwartz

AV CARS WORK WELL WITHOUT PEDESTRIANS & CYCLISTS

Some pedestrians such as the following may not be detected by the radar sensor and camera sensor, preventing the system from operating properly:

- Pedestrians shorter than approximately 3.2 ft. (1 m) or taller than approximately 6.5 ft. (2 m)
- Pedestrians wearing oversized clothing (a rain coat, long skirt, etc.), making their silhouette obscure
- Pedestrians who are carrying large baggage, holding an umbrella, etc., hiding part of their body
- Pedestrians who are bending forward or squatting
- Pedestrians who are pushing a stroller, wheelchair, bicycle or other vehicle
- Groups of pedestrians which are close together
- Pedestrians who are wearing white and look extremely bright
- Pedestrians in the dark, such as at night or while in a tunnel

Source: JTI Drive Process (2017) The Center for Model (2018/2019), Page 21
Sam Schwartz

NO REASON TO WAIT FOR AVs TO SAVE LIVES

Most safety benefits can be achieved with "safe cars" without full automation.

Professor Jason Krusekramer, Polytechnic University

U.S. Memo: 94% of traffic fatalities due to human error

Swedish Memo: Humans are fallible and make mistakes. Vision Zero through design, road system, vehicles, technology, enforcement.

- U.S. Fatalities down 11% (1997-2016)
- Swedish Fatalities plummet 49% (1997-2017)

- NYC adopts V2, fatalities drop 28% 2014-2017 (Pedestrians down 45%)
- Unsafe at Any Speed (1965) by Ralph Nader - fatalities per 100M miles driven drops 78% in 50 years

Source: Motor Vehicle Fatality Facts in U.S. by NHTSA (2017/2018)
Sam Schwartz

MOTOR VEHICLES USED AS WEAPONS RISING

Nice Attack: At Least 84 Killed By Lorry At Bastille Day Celebrations
15-16 July 2016

Christmas Carnage in Berlin
12 Killed
The Daily Telegraph (25-2016)

Van Hits Pedestrians in Deadly Barcelona Terror Attack
13 Killed
17-18 June - August 17, 2017

8 Killed As Truck Plows Into Pedestrians in Downtown NYC Terror Attack
19-20 June - October 30, 2017

Sam Schwartz

INACTIVITY TAKES MORE LIVES THAN CRASHES

World Deaths (Inactivity vs. Crashes)

Cause of Death	Number of Deaths
Obesity/Inactivity (World) - Lowest estimate	5.3
Obesity/Inactivity (World) - WHO estimate	3.2
Motor Vehicle Crashes (World)	1.25

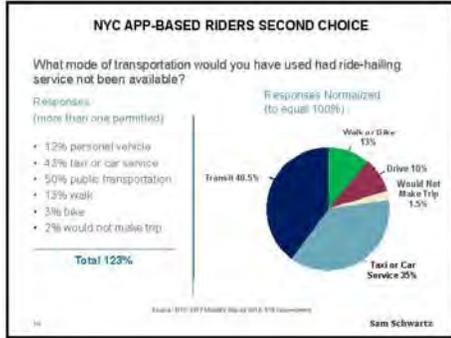
U.S. Percent of Deaths Attributable to Inactivity

Cause of Death	Percent of Deaths
Heart Disease	8.70%
Type 2 Diabetes	8.30%
Breast Cancer	12.40%
Colon Cancer	12%
All-Cause Mortality	10.80%

Inactivity Links: U.S. - 40.5%
Source: WHO, N. Amour Study, Council, 2019; The Lancet, 2016; Source: CDC, 2016
Sam Schwartz

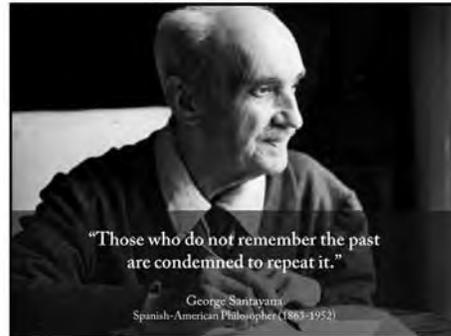
WALL-E

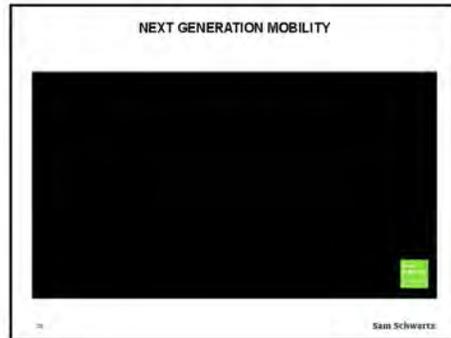
Sam Schwartz



- ### SO WHAT SHOULD WE DO?
- Government and Society Should Get Ahead of the Curve
- Discourage private AV ownership, support AV-transit integration
 - Maintain and support good mass transit
 - Emphasize last mile in sprawl areas and transit deserts
 - Ensure system equity for low income, disabled, and elderly
 - Utilize congestion pricing strategies to maintain adequate mobility
 - Don't mess with biked growth in cities
 - Reallocate parking for better use
 - Enact legislation and enforcement policies preemptively
 - Get AV sector support for some infrastructure upgrades & maintenance
 - Develop a counter-terrorism strategy
 - Humanize street design: narrow lanes, wider sidewalks, don't add lanes
 - Establish AV street typology plan
- Sam Schwartz







BIOGRAPHY:



Sam Schwartz, President, and CEO of *Sam Schwartz Transportation Consultants*

Mr. Schwartz is President, and CEO of *Sam Schwartz Transportation Consultants* a firm that specializes in transportation planning and engineering. In addition to his 1982 to 1986 post as Traffic Commissioner at the New York City Department of Transportation, he has served as an adjunct professor of engineering at Cooper Union, Long Island University, and Brooklyn College. Mr. Schwartz is also the Inaugural Ted Kheel Fellow at Hunter College's Roosevelt House Public Policy Institute. Among the many roles he has held throughout his career, he is the acclaimed author of ***Street Smart: The Rise of Cities and The Fall of Cars***, and ***No One at the Wheel: Driverless Cars and the Road of the Future*** (2018). He also pens the "Gridlock Sam" and "Transit Sam" columns in the *New York Daily News* and *Downtown Express*.

Mr. Schwartz serves on the board of the Regional Plan Association, the Sports and Arts in Schools Foundation, and is a Fellow of the Institute of Transportation Engineers. His accomplishments over the course of his career have been recognized with a wide array of awards, including, most recently, Transportation Alternatives' David Gurin Award, Riders Alliance Honoree, the NYC Zoning Advisory Council Honor Award, and the AAA Traffic Safety Award.

Capturing Smart Growth: The Planning Net¹

Great efforts and shared ideas continue to facilitate sustainable, healthy downtowns for our communities: smart growth, complete streets and adaptive reuse initiatives are leading the way. Ensuring these ideas are comprehensively captured through planning is a pivotal contribution to a sustainable future.

VIDEO OF PRESENTATION:

https://mediaspace.pace.edu/media/Sustainable+Development+as+a+Market+Driver+-+Capturing+Smart+Growth+.mp4/1_3iky7bu/31792771

BIBLIOGRAPHY OF RESOURCES:

Westchester County Association's Policy Playbook Planning Section, available here:

https://www.westchester.org/wp-content/uploads/2018/12/PolicyPlaybook-12.2018-SPREADS_NEW.pdf

Introduction to Comprehensive Planning-

[https://www.crcog.net/vertical/Sites/%7B6AD7E2DC-ECE4-41CD-B8E1-BAC6A6336348%7D/uploads/Introduction to the Comprehensive Plan.pdf](https://www.crcog.net/vertical/Sites/%7B6AD7E2DC-ECE4-41CD-B8E1-BAC6A6336348%7D/uploads/Introduction%20to%20the%20Comprehensive%20Plan.pdf)

Zoning and the Comprehensive Plan New York State Department of State (2015)

John R Nolon, Land Use and Sustainable Development Law Cases and Materials, 9th Edition (2017)

Michael Chandler, 10 Steps in Preparing a comprehensive Plan, Planning Commissioners Journal, Number 39. (2000) <http://plannersweb.com/wp-content/uploads/2000/07/135.pdf>

Developing Goals and Strategies for Target Areas, Department of Housing and Urban Development. <https://www.hudexchange.info/resources/documents/Developing-Goals-And-Strategies-For-Target-Areas.pdf>

¹ Thank you to Pace Law student Letisya Tekiroglu for her contribution to this report.

BIOGRAPHIES:



Jessica A. Bacher, Esq., *Executive Director, Land Use Law Center and Adjunct Professor*

Jessica Bacher is the Executive Director of the Land Use Law Center. Established in 1993, the Land Use Law Center is dedicated to fostering the development of sustainable communities and regions through the promotion of innovative land use strategies and dispute resolution techniques. As the Executive Director, Ms. Bacher's responsibilities include development and implementation of projects relating to local land use practice, distressed property remediation, transit-oriented development, sustainable communities, land use responses to sea level rise, and code enforcement, as well as providing strategic assistance to numerous municipalities. Most recently, she led the City of Newburgh, New York, in the development of a distressed property remediation implementation plan that focuses on the development of a land bank. Additionally, Ms. Bacher serves as a trainer for the Center's award-winning Land Use Leadership Alliance Training Program that has educated over 2,500 local leaders in land use strategies, consensus building, and regional stewardship. Ms. Bacher also chairs the Distressed Properties Sub-Committee of the Land Use Planning & Zoning Committee for the American Bar Association's Section of State and Local Government Law. At Pace Law School, Ms. Bacher serves as adjunct professor, teaching Land Use Law, Sustainable Development Survey, and the Advanced Land Use and Sustainable Development Seminar. She also administers the Center's academic programs and guides student research. In addition, she is a guest lecturer and project supervisor at Yale School of Forestry and Environmental Studies, where she manages the School's Land Use Clinic. Ms. Bacher authors regular land use features in New York and national publications and has edited numerous small books in the fields of Land Use and Real Estate Law, including *Breaking Ground and Planning and Building in Priority Growth Districts*. She also presents at regional and national conferences and served on the New York State Sea Level Rise Task Force Legal Work Group. Ms. Bacher was selected by the American Bar Association to receive the Jefferson B. Fordham Award, an award presented to a young practitioner who has shown great promise through her contributions to the field. Ms. Bacher received her J.D. summa cum laude from Pace Law School in 2003, along with a certificate in Environmental Law.



Sabrina D. Charney Hull, AICP, *Director of Planning, Town of New Castle*

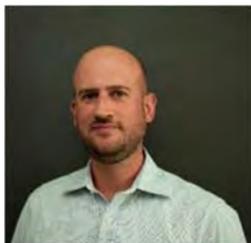
Sabrina has been a practicing planner for over 20 years. She began her career working for the City of Madison, Wisconsin (Neighborhood Planning) and the State of Wisconsin, Department of Natural Resources (Watershed Planning) when she was working on her Master's Degree in Urban and Regional Planning. Shortly after finishing her Master's Degree, specializing in water resource planning, Sabrina moved back home to the East Coast and began working with the Westchester County Department of Planning handling storm water and watershed planning in the County's watersheds and negotiating the historic Memorandum of Agreement to protect New York City's Drinking Water Supply (MOA). She remained with

Westchester County for ten years working on water quality planning issues and implementation of the MOA and then moved to the local level of government as the Town Planner for the Town of Somers, New York where she continued her work related to water quality and storm water planning and working with the Croton Watershed municipalities to further comply with the MS4 storm water permit while undertaking local subdivision, site plan and environmental permit reviews. After almost 8 years of planning for the Town of Somers in April 2012, she accepted an offer to join the Town of New Castle where she has been responsible for the Development Department, consisting of the Building, Engineering, Planning and Zoning Divisions of the Town. She is working to move forward the Town's Capital Planning Projects as exemplified through implementation of a \$14-million-dollar hamlet revitalization project and in July of 2017 the Town adopted an its Comprehensive Plan Update. New Castle's Comprehensive Plan "A Framework for The Future" has been awarded a 2017 Meritorious Achievement Award by the American Planning Association New York Metro Chapter; a 2017 Commendation of Outstanding Planning Achievement by the Westchester Municipal Planning Federation; and the Town of New Castle has received a 2018 Special Recognition Award for Best Practice in Land Use Planning by the Westchester County Association. Sabrina is a member of the American Institute of Certified Planners; she obtained her undergraduate degree from the Pennsylvania State University and her Master's degree from the University of Wisconsin-Madison. Sabrina lives in Newtown, Connecticut with her husband and her two children.



William V. Cuddy, Jr., *Executive Vice President, CBRE Advisory & Transaction Services*

William V. Cuddy, Jr. has been a commercial real estate professional for 33 years serving the needs of his clients on a regional, national and international basis. As Executive Vice President working from CBRE's Westchester/Fairfield office, he provides brokerage and consulting services to corporations and institutions.



Kevin A. Kain, PP, AICP, *Director of Planning & Sustainability, City of New Rochelle*

Kevin A. Kain, PP, AICP is the Director of Planning and Sustainability for the City of New Rochelle, NY. He is a professional planner with experience in both the public and private sectors. Kevin is a member of the American Institute of Certified Planners, and is licensed in the State of New Jersey.



Ashley Ley, AICP, Senior Technical Director, AKRF, Inc.

AKRF, Inc. Ashley Ley, AICP is a Senior Technical Director in AKRF's Environmental Services Group. Ms. Ley has more than a decade of experience in municipal land use planning and zoning, including the preparation of special area plans; comprehensive plans; zoning text, map, and code amendments; visual impact assessments; urban design standards; and sign regulations. Ms. Ley currently serves as a planning consultant for several municipalities in the Hudson Valley region. Her experience also includes the preparation of environmental impact statements under New York's State Environmental Quality Review Act (SEQRA) and the National Environmental Policy Act (NEPA) for public actions, private development projects, and large transportation and infrastructure projects.



Valerie Monastra, AICP, Director of Planning, VHB

Valerie Monastra is a Director of Planning at VHB. She previously worked as the Director of Planning for the Village of Ossining. She currently serves as President for the Westchester Municipal Planning Federation (WMPF). She holds Master's degree in Environmental Policy and Planning from Tufts University, and a Master's degree in Geochemistry from Cornell University.



Matt Robbie, Senior Associate, Skeo Solutions, Inc.

Matt has 15 years of experience supporting local governments and agencies in aligning cleanup and reuse at contaminated and underutilized properties. His primary expertise is site redevelopment and area-wide revitalization planning. Matt is recognized nationwide for his expertise in building strong working relationships, forging partnerships across diverse stakeholder groups, delivering innovative stakeholder engagement processes, analyzing site, market and redevelopment feasibility, and crafting sustainable strategies and action plans. In New York State, he has supported cities, villages, county and regional partners through eight (8) BOA planning initiatives, and he has delivered similar support for 80 communities nationwide.

Capturing Smart Growth: The Regulatory Net¹

Great efforts and shared ideas continue to facilitate sustainable, healthy downtowns for our communities: smart growth, complete streets and adaptive reuse initiatives are leading the way. Ensuring these ideas are comprehensively captured through zoning is a pivotal contribution to a sustainable future. This session will continue the dialogue from the morning planning session.

VIDEO OF PRESENTATION:

https://mediaspace.pace.edu/media/Sustainable+Development+as+a+Market+Driver+-+Capturing+Smart+Growth+.mp4/1_r1ic4np2/31792771

BIBLIOGRAPHY OF RESOURCES:

Westchester County Association's Policy Playbook Zoning Section, available here:

https://www.westchester.org/wp-content/uploads/2018/12/PolicyPlaybook-12.2018-SPREADS_NEW.pdf

New York Department of Environmental Conservation, Final Express Terms 2018 Amendments to 6 N.Y.C.R.R. Part 617 (2018)

New York Department of Environmental Conservation, Findings Statement for SEQRA Amendments, (2018)

New York Department of Environmental Conservation, Type I Actions
<https://www.dec.ny.gov/permits/43711.html> (accessed October 3, 2018)

New York Department of Environmental Conservation, Type II Actions
<https://www.dec.ny.gov/permits/39800.html> (accessed October 3, 2018)

¹ Thank you to Pace Law student Taylor Laverty for his contribution to this report.

POWERPOINT PRESENTATION:

NEW YORK
STATE OF
ENVIRONMENT

Department of
Environmental
Conservation



2018 Amendments to the Regulations Implementing SEQR

Land Use and Sustainable Development
Conference, December 6, 2018

2

Overview of Amendments

- Type I List
- Type II List
- EIS Scoping
- EIS Preparation
- Document Preparation
- SEQR Fees



3

DEC's 2018 Amendments – Critical Documents

<https://www.dec.ny.gov/permits/83389.html>



4

Type I List

617.4 (b) (5) (iii) - (v)

Lowered thresholds for residential units:

- From 250 to 200 units; in pop. 150,000 or less
- From 1,000 to 500 units; in pop. 150,001 to 999,999
- From 2,500 to 1,000 units; in pop. 1,000,000 or greater



5

Type I List

617.4 (b) (6) (iii) – (iv)

Existing rule only applies to 1000 vehicles

The amendments add a threshold for parking spaces in smaller communities:

- 500 or more vehicles – pop. of 150,000 or less and 1,000 or more vehicles – pop. of 150,001 or more



6

Type I List

617.4 (b) (9)

- Adds thresholds to historic properties similar to other sensitive resources
- Adds "eligible" historic properties
- Eligible properties will appear on EAF Mapper



7

Type II List

- 617.5 (c) (2) - Upgrading buildings to meet state energy code



8

Type II List

- 617.5 (c) (3) Green infrastructure - retrofit

“Green infrastructure” means practices that manage storm water through infiltration, evapo-transpiration and reuse including only the following: the use of permeable pavement; bio-retention; green roofs and green walls; tree pits and urban forestry; storm water planters; rain gardens; vegetated swales; downspout disconnection; or storm water harvesting and reuse.”



9

Type II List

- 617.5 (c) (7) - Installation of telecommunications cables in existing ROWs with trenchless burial or use of existing poles



10

Type II List

- 617.5 (c) (11) - Conveyances of land in connection with 1-3 family residence



11

Type II List

- 617.5 (c) (14) & (15) – Installation of Solar (on rooftops, closed landfills, brownfield and Superfund sites, wastewater treatment facilities, parking lots/garages and industrial areas)



12

Type II List

- 617.5 (c) (16) - Lot line adjustments

“granting of individual setback and lot line variances and adjustments”



13

Type II List

- 617.5 (c) (18) - Reuse of a commercial or residential structure including mixed use
 - must be permitted under the applicable zoning, including by special use permit
 - the action does not trigger a Type I (617.4) threshold



14

Type II List

- 617.5 (c) (39) Acquisition/dedication of parkland or conservation easement



15

Type II List

- 617.5 (c) (41) Organic digesters at operating publicly-owned landfills
 - Must be within currently disturbed areas
 - Feedstock capacity of < 150 wet tons/day
 - Only produces Class A digestate



16

Scoping (617.8)

- Scoping will be required for all EISs (similar to Federal and NYC requirements) except for supplemental EISs
- New process for late-filed comments on scope



17

EIS Preparation

- 617.9 (a)(2) - Clarify procedures to define when a DEIS is adequate for public review
- Meets the requirements of:
 - the final written scope
 - sections 617.8 (g) & 617.9 (b); late filed comments & EIS content respectively



18

EIS Content

- 617.9(b)(5)(iii)(i) - Addition of requirement, where relevant, to evaluate "measures to avoid or reduce both an action's impacts on climate change and associated impacts due to the effects of climate change such as sea level rise and flooding".



13

Contact Information
DEC, Division of
Environmental Permits
625 Broadway, Albany NY
12233-1750
james.eldred@dec.ny.gov
(518) 402-9167
<http://www.dec.ny.gov/permits/33300.htm> (regulatory documents)



BIOGRAPHIES:



Patrick Cleary, AICP, CEP, PP, LEED AP, CNU-A, *Principal, Cleary Consulting*

Patrick Cleary, AICP, CEP, PP, LEED AP is professional planner with over 38 years of experience in the field of planning. Mr. Cleary serves as the Principal of Cleary Consulting a professional planning firm established in 1990, with offices in Northport, NY - offering a full range of planning and environmental services for government and the private sector throughout the New York metropolitan area. Prior to the formation of Cleary Consulting, Mr. Cleary served as a staff planner for communities in Westchester and Long Island, and also worked for private consulting firms. Mr. Cleary is an accredited member of the American Institute of Certified Planners, and is a licensed Professional Planner in the state of New Jersey. Mr. Cleary is a member of the American Planning Association, Urban Land Institute, National Association of Environmental Professionals, New York Planning Federation, Westchester Municipal Planning Federation and the National Charrette Institute. Mr. Cleary is a member of the US Green Building Council, is an accredited member of the Congress for New Urbanism and was one of the first in the nation to obtain LEED AP certification in the specialty of Neighborhood Development (first offered in 2010). In 2011, Mr. Cleary was a member of the first class of approximately 30 professionals nationwide to obtain the Certified Environmental Planner (CEP) credential offered by the American Institute of Certified Planners. Mr. Cleary is on the Board of Directors of the Westchester Municipal Planning Federation, formally served on the national Board of Directors of the American Society of Consulting Planners, and is the Chairman of the Village of Asharoken Planning Board



Michael V. Curti, Esq. *Harris Beach PLLC*

Michael V. Curti is a member of the Harris Beach PLLC Public Finance and Economic Development Practice Group, which represents numerous industrial development agencies and local development corporations throughout the State as bond and agency counsel in connection with bond financings for capital projects and on all types of economic development projects. The group also serves as bond counsel to most of the major New York state issuers, as general obligation bond counsel to more than 90 municipalities, school districts and fire districts throughout the state, and as underwriter counsel on major state and local bond transactions. He is former Corporation Counsel for the City of Yonkers and General Counsel for the Yonkers Public Schools. In those roles, he represented both the city and the school district in matters of a strategic nature, such as public finance and development, while also addressing daily operational issues, such as human resources, policy and procedure, contracts and general New York State Education and Municipal Law. He also oversaw all litigation for the City and School District and is a former Westchester County assistant district attorney and principal law secretary to a New York State Supreme Court Justice.



Anthony B. Gioffre, III, Esq., Partner, Cuddy & Feder LLP

Tony is a Partner at the firm and is the Chairman of the firm's Land Use, Zoning & Development Group. He practices in real estate development, zoning, environmental law and related litigation. Tony also serves as a member of the firm's Management Committee. Tony regularly represents national developers, retailers, religious institutions, individuals and the telecommunications industry before municipal and state land use, zoning and environmental agencies. Tony assists clients with all aspects of the land use permitting and regulatory compliance

process, including compliance with New York's State Environmental Quality Review Act (SEQRA).

Tony regularly publishes articles and lectures across the country at Continuing Legal Education Seminars on current land use and zoning issues. He is also a New York State approved real estate instructor.



David B. Smith, Principal, Planning & Development Advisors

Dave Smith is a Principal at Planning & Development Advisors, a sole proprietary land use planning and real estate development consulting firm. Mr. Smith's career as a planning and development professional has spanned nearly three decades, with extensive experience in providing land use planning, environmental and entitlement services to municipalities, public agencies, not-for-profits, and private developers.

One of the highlights of Mr. Smith's career has been his work with the Village of Sleepy Hollow. Starting in 1997, he has helped guide the Village through numerous project reviews include Kendal on Hudson, a new Village Reservoir, Ichabod's Landing, Rivers Edge and the Edge on Hudson development at the former North Tarrytown General Motors Assembly Plant. Away from the office Mr. Smith is a Coach for Fordham University's Men's Ice Hockey program and volunteers his time as a special assistant teaching disabled youth to play hockey



Andrew M. Spatz, Esq., Andrew M. Spatz, PLLC

Andrew M. Spatz is an attorney admitted to the bar in the State of New York since 2000. His practice covers a broad range of legal areas, including real estate and civil litigation with a focus on Land Use and Landlord/Tenant matters. In addition to maintaining a solo practice in the Sound Shore and managing his family's real estate holdings, Mr. Spatz has appeared before numerous Land Use Board and Committees within Westchester County on matters regarding complex development [both commercial and residential], subdivisions and special use applications by business establishments.

In addition to extensive experience litigating Landlord/Tenant matters, Mr. Spatz also continues to serve as an Arbitrator for the New Rochelle City Court, Small Claims Calendar, since January 2002. Mr. Spatz serves his immediate community in various ways. He serves on volunteer boards and commissions, including, the Mamaroneck Village Industrial Area Committee (IAC), which has embarked upon an effort to seek long term economic and environmental longevity in the Mamaroneck Village Industrial Area [aka: MAKER Zone]. He also serves on the Mamaroneck Village Flood Mitigation Advisory Committee (FMAC), which continues to identify potential solutions to flooding, educate residents as to flooding and safeguards, researching grants as well as hosting public meetings on flooding and flood mitigation. Most recently, Mr. Spatz participated in the endeavor to seek a grant from the Army Corps of Engineers [“ACE”] to mitigate flooding in the Sound Shore, including testifying before ACE during the Spring of 2017 to secure said funding. The “Water Resource Development Act” was approved by Congress on October 12, 2018 and signed by the President on October 23, 2018. This Act will directly benefit the Sound Shore area with the goal of flood mitigation. Nationally, Mr. Spatz has provided assistance to the American Bar Association Center for ProBono and Public Service providing legal services and assistance to the victims of natural disasters, like Hurricane Katrina, Hurricane Rita and “Superstorm” Sandy. Mr. Spatz routinely makes appearances on Westchester’s own, WVOX Radio and LMCTV Programming, discussing ongoing events in the legal field, in particular, regarding developments with the implementation of the Mamaroneck Village Industrial Area Overlay and flood mitigation in the Sound Shore. Mr. Spatz has also previously made on air appearances on “True TV” (f/k/a: “Court TV”) discussing various legal matters.



John A. Verni, Esq., *Verco Properties LLC*

John Verni is an attorney and local real estate “re-developer”. Mr. Verni also serves as the Chairman of the Planning Board in the Village of Mamaroneck and Co-Chair of the Mamaroneck Industrial Area Committee. Mr. Verni and his family’s company, Verco Properties LLC, are engaged in the rehabilitation and adaptive reuse of historic properties and own and manage a portfolio of 30 mixed-use properties. One example is the historic 1888 Mamaroneck Train Station building which was purchased from the MTA and redeveloped into a successful restaurant and loft-style offices. The project won the Westchester Municipal Planning Federation’s 2013 Adaptive Reuse Award. Mr. Verni and his company recently broke ground on the Harrison Playhouse Lofts, an adaptive reuse of the long vacant Harrison movie theater into a mixed-used transit-oriented development. The project includes new market rate apartments and rehabilitated commercial spaces bringing new life to downtown Harrison. The project includes several “green building” features and is being built to FitWel healthy building standards. As Chairman of the Village of Mamaroneck Planning Board, Mr. Verni has been involved in the review and approval of several transit-oriented projects to a scale consistent with this small village on the Long Island Sound. Also in his role on the Planning Board, Mr. Verni has also been involved in the preservation of historic structures with the adoption of an adaptive reuse law; the review of the Village’s “floor-area-ratio” (FAR) laws to discourage the building of “McMansions”; and a full review of the Village’s Comprehensive Plan. As Co-Chair of the Village of Mamaroneck’s Industrial Area Committee along with Andrew Spatz, Esq., Mr. Verni

has been actively involved in examining the potential rezoning and improvement of the industrial area by encouraging new uses as an environmentally and economically sustainable driver of smart growth and economic opportunity. Mr. Verni has also appeared before the Army Corps of Engineers and the Office of Management and Budget in Washington, D.C. concerning the Village of Mamaroneck's flood mitigation project that has been under review for several years and recently passed by Congress. Prior to joining his family's real estate firm, Mr. Verni served for six years as an Assistant District Attorney in Westchester County (1991 to 1997) handling the prosecution of crime throughout Westchester County, and then ten years as an attorney in private practice with Kent, Hazzard, Wilson, Conroy, Verni & Freeman, LLP in White Plains (1998 to 2008) specializing in real estate and land use matters. Mr. Verni has also done extensive pro bono work for many not-for-profit organizations. Mr. Verni has served as the past President of Habitat for Humanity of Westchester and is presently on the Board of the Washingtonville Housing Alliance, two organizations that provide affordable housing in Westchester County. Mr. Verni is also a Board member of At Home on the Sound, an organization providing "aging in place" services to residents in Mamaroneck and Larchmont, and a Trustee of the Mamaroneck Historical Society.

The Local Role in State Climate Goals¹

Local government action is a critical component of New York State’s economic, clean energy, transportation and sustainable land use policies. In this session you will learn about available resources and guidelines for local implementation of NY-SUN, Climate Smart Communities, Clean Energy Communities and Downtown Revitalization Initiative, and Model Resiliency Laws programs. Experts from the State will discuss how communities can help accelerate economic development, increase the availability of renewable energy sources, promote environmental sustainability of transportation infrastructure and mitigate the impact of climate change on their residents through reducing GHG emissions and increasing resilience of the built and natural environment.

VIDEO OF PRESENTATION:

https://mediaspace.pace.edu/media/Sustainable+Development+as+a+Market+Driver+-+The+Local+Role+in+State+Climate+Goals.mp4/1_umadqvfo/31792771

BIBLIOGRAPHY OF RESOURCES:

Climate Smart Communities (CSC):

Climate Smart Communities Summary for Local Officials: a DEC webpage describing the challenges to communities from climate change and the different steps that local governments can take to avoid its worst impacts and develop plans to adapt, including through participation in the CSC program: <http://www.dec.ny.gov/energy/50851.html>

Climate Smart Communities- Getting Started: This New York State webpage provides instructions on how to access the CSC Online Portal covering program requirements. Through this portal, a community can register to become a Registered Climate Smart Community after local adoption of a Model Municipal Resolution in the attached form, pursuant to which the local government pledges to address ten “Pledge Elements” reflecting the key areas of program focus. After taking specific actions described on the portal relating to those Pledge Elements, the community can then upload required documentation to earn points toward certification as a CSC: <https://climatesmart.ny.gov/actions-certification/getting-started/>

Climate Smart Communities- Actions & Certification: This NYS webpage lists the specific climate smart actions associated with each Pledge Element of the program, a subset of which are currently eligible for funding under DEC’s competitive CSC grants: <https://climatesmart.ny.gov/actions-certification/>.

¹ Thank you to Pace Law student Harriette Resnick for her contribution to this report.

Climate Smart Communities- Certification Actions: the CSC Action Checklist on this webpage provides further information on the requirements for each action, and replaces the CSC Certification Manual issued in 2014: <https://climatesmart.ny.gov/fileadmin/csc/documents/CSCC-ActionChecklist-6-6-2018.pdf>

A Guide to Local Action: this DEC webpage contains detailed information to help communities develop and implement climate-smart practices as part of the Climate Smart Communities Program. It includes explanations of the ten Pledge Elements, and links to step-by-step guidance for planning and implementation of related actions, information on resources and funding, examples of successful implementation, and considerations for measuring and monitoring success: <https://www.dec.ny.gov/energy/50845.html>

Clean Energy Communities (CEC):

NYSERDA Clean Energy Communities Program: NYSERDA's webpage contains an overview of the main features of the CEC Program. [It describes the Program requirements, including completion of four out of ten possible High Impact Actions, and](#) the application process for a local government to be designated as a CEC and qualify for grant funding. <https://www.nyserdera.ny.gov/All-Programs/Programs/Clean-Energy-Communities>.

Clean Energy Communities Program Guidance Document (Program Opportunity Notice (PON) 3298, Revised February 1, 2018): This guidance, prepared by NYSERDA, contains details of the grant selection criteria as well as the specific elements of the High Impact Actions that are eligible for grants under the program: <https://portal.nyserdera.ny.gov/servlet/servlet.FileDownload?file=00Pt0000005xEq2EAE>

High-Impact Action Toolkits: A step-by-step guide to implementing the ten High Impact Actions, including important forms, template legislation, and case studies. This website also provides access to NYSERDA's program portal and links to information about current funding opportunities and associated documentation: www.nyserdera.ny.gov/cec.

Downtown Revitalization Initiative and Model Local Laws for Resilience:

New York State Programs- Downtown Revitalization Initiative: This website contains links to information about this program, including FAQs and details on recent grant recipient communities selected in Round 3 of funding: <https://www.ny.gov/programs/downtown-revitalization-initiative>

New York State Programs- Downtown Revitalization Initiative Guidebook (April 2018): This Guidebook describes the Downtown Revitalization Initiative, a program involving DOS and other state agencies initiated in 2016 with the objective of catalyzing local economic development in communities through investments that re-energize their downtown cores. Communities that are selected by Regional Economic Development Councils receive \$10 million each to engage in strategic investment planning for downtown revitalization. With

the assistance of consultants, Local Planning Committees develop projects to implement their community's strategic goals, including through leveraging DRI funding to obtain financial support from other public or private sources. Projects can incorporate energy efficiency, emissions reductions, and adaptation to climate change, including through actions under the Climate Smart Community or Clean Energy Community programs: https://www.ny.gov/sites/ny.gov/files/atoms/files/DRI_Three_Guidance.pdf

Model Local Laws to Enhance Community Resiliency: Pursuant to the requirements of the NYS Community Risk and Resiliency Act (CRRA), enacted in 2014, state funding, facility-siting regulations and permits must include consideration of the effects of climate risk and extreme-weather events. To implement this mandate, model laws are being developed by the Department of State to provide tools for local governments to regulate the use and development of land to enhance community resiliency, including consideration of future risks due to sea-level rise, storm surge and flooding.ⁱ

Draft Sample Local Law for Stormwater Management and Erosion and Sediment Control, October 21, 2016. One of the areas of focus of the CRRA is stormwater management. The Department of Environmental Conservation (DEC) and Department of State (DOS) prepared this draft sample local law with updated provisions to incorporate the current requirements of the Construction General Permit and proposed draft Municipal Separate Storm Sewer Systems (MS4) renewal, referenced below. There are two versions:

Draft Sample Local Law for Stormwater Management and Erosion & Sediment Control with Plug-in Provisions for Impaired Waters and Enhanced Phosphorus Removal Watersheds: This "Base Version" includes green infrastructure practices pursuant to the NYS Stormwater Management Design Manual: http://www.dec.ny.gov/docs/water_pdf/smpllocllawsedctrl.pdf

Draft Sample Local Law for Stormwater Management and Erosion & Sediment Control with Additional Provisions for Community Resiliency. This "Resiliency Version" provides for a more detailed green infrastructure site planning process, incorporating riparian buffers and other natural resource protections. Although not mandatory, MS4 Operators are encouraged to consider this version: http://www.dec.ny.gov/docs/water_pdf/smpllocllawresilncy.pdf

Draft State Pollutant Discharge Elimination System (SPDES) General Permit For Stormwater Discharges from MS4s: this is the form of Permit referenced in both versions of the Sample Local Law: https://www.dec.ny.gov/docs/water_pdf/draftms4genpmt2016.pdf

Community Risk and Resiliency Act- Draft Guidance for Smart Growth Public Infrastructure Assessment (June 2018): The DEC, in consultation with the DOS, has published draft guidance on implementation of CRRA requirements for smart growth assessments by any

state public infrastructure agencies when approving, undertaking, supporting or financing public infrastructure projects:
https://www.dec.ny.gov/docs/administration_pdf/nysdga.pdf

Draft NYS Flood Risk Management Guidance for Implementation of the Community Risk and Resiliency Act (June 20, 2018): This guidance was prepared by DEC to assist state agencies in implementing CRRA's requirement to consider flooding risk in connection with applications for projects involving new and substantially improved structures or repair of substantially damaged structures. This document provides guidance on taking into account sea-level rise, storm surge and flooding when adopting regulatory changes and/or preparing program-specific guidance. Among other objectives, this draft provides the foundation for Model Local Laws for Community Resiliency:
https://www.dec.ny.gov/docs/administration_pdf/nysfrm.pdf

NY-Sun:

NYSERDA- NY-Sun: This webpage provides an overview of the NY-Sun Program's objectives, its regulatory framework and resources for making solar energy more accessible to homes, businesses, and communities: <https://www.nyserda.ny.gov/All-Programs/Programs/NY-Sun>

NY-Sun- Communities and Local Governments: This NYSERDA webpage contains resources and guidance to assist local governments implement solar energy systems in their communities: <https://www.nyserda.ny.gov/All-Programs/Programs/NY-Sun/Communities-and-Local-Governments>

New York Solar Guidebook for Local Governments: a compilation of information, tools and step-by-step instructions to support local governments in developing solar energy resources. The updated 2018 Guidebook includes a revised Unified Solar Permit and chapters covering rooftop access and ventilation requirements, property tax exemptions, landowner considerations for solar land leases, and decommissioning ground-mounted solar installations. It also contains a model Solar Energy Law, a solar procurement toolkit, and addresses the SEQR process for large-scale solar energy systems: <https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Siting/Solar-Guidebook>

NYSERDA- Technical Assistance and Workshops: This webpage lists training resources for local governments relating to the NY-Sun program, including workshops on Understanding Solar PV Permitting and Inspecting in New York State, Understanding New York State's Real Property Tax Law Section 487 and an Overview of the Model Solar Energy Law: <https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Siting/Technical-Assistance-and-workshops>

GreenLITES:

NYS Department of Transportation (DOT)- GreenLITES: This DOT website contains a description of the GreenLITES program, which is designed to promote sustainability in transportation systems, and contains links to related resources for local governments, including the Local Projects Certification Program:
<https://www.dot.ny.gov/programs/greenlites>

NYS DOT Sustainability & GreenLITES- Growing GreenLITES: This Factsheet describes the objectives and features of this transparent, metrics based, self-assessment program:
https://www.dot.ny.gov/programs/greenlites/repository/GreenLITES%202011%20sustainability%20flyer_092111.pdf

NYS DOT GreenLITES Local Government Certification Program: This DOT webpage contains details on the certification process and links to resources such as a PowerPoint overview, design document and the form of Project Environmental Sustainability Rating System Scorecard spreadsheet that local governments can use to evaluate their federally funded transportation projects: <https://www.dot.ny.gov/programs/greenlites/local-projects-cert>

NYS DOT GreenLITES Resources and Links: This webpage provides other valuable background information and resources on transportation sustainability, design, and related programs at the federal level and in other states and localities:
<https://www.dot.ny.gov/programs/greenlites/links>

POWERPOINT PRESENTATION:

Supporting Sustainability through Downtown Revitalization



Sarah Stern Crowell, AICP
Office of Planning, Development & Community Infrastructure
NYS Department of State



Downtown Revitalization Initiative

March 5, 2019

Downtown Revitalization Initiative (DRI)

A comprehensive approach to boosting local economies by transforming communities into vibrant neighborhoods where the next generation of New Yorkers will want to live, work and raise a family.



- \$10 million each to 10 downtowns
- Funding to plan and implement plans

Office of the Governor, NYS Department of State



Office of Planning and Development

March 5, 2019

Downtown Revitalization is the Embodiment of Sustainability



The Triple Bottom Line:
Every decision should consider the economic cost, the environmental impacts and the effect on social equity. Sustainability exists at the intersection of these three elements.

Office of the Governor, NYS Department of State



Office of Planning and Development

March 5, 2019

Downtown Revitalization Benefits



- Older, mixed-use neighborhoods are more walkable.
- Young people love old buildings.
- The creative economy thrives in older, mixed-use neighborhoods.
- Older business districts provide affordable, flexible space for entrepreneurs from all backgrounds.
- Older, smaller buildings provide space for a strong local economy.
- Older commercial and mixed-use districts contain hidden density.

March 5, 2019

Compact Development is Sustainable Development

- Allows people to live, work, and shop in the same place
- Offers transportation choices (Walking, cycling, transit, etc.)
- Reduces automobile dependency, which reduces carbon emissions
- It's also healthier!



Watertown DRI Area

Office of the Governor, NYS Department of State



Office of Planning and Development

March 5, 2019

"The greenest building is one that's already built."

~Carl Elefante

Office of the Governor, NYS Department of State



Office of Planning and Development

March 5, 2010 7

Revitalizing and Reusing Older Buildings is a Sustainable Practice

- Many historic buildings have passive systems that are energy efficient
- Preservation and reuse of historic buildings reduces resource and material consumption
- Renovation consumes less energy than demolishing and constructing new buildings
- Existing buildings are already served by utilities



Source: FEMA

Office of Planning and Sustainability

March 5, 2010 8

Adaptive Reuse Can Transform Relics of the Past



Current



Proposed

- Save money on building materials and new construction.
- Help to revitalize an area and spur economic development in walkable, compact area.
- Incentive redevelopment of brownfield or greyfield structures or areas.
- Restore or add character and charm, enhance neighborhood pride, and foster a strong cultural identity.

Office of Planning and Sustainability

March 5, 2010 9

Using Existing Infrastructure is a Sustainable Practice

Downtowns are already served by utilities such as water, gas, electrical, phone and cable lines, and sewers.

Current



Proposed



Batavia: Renovate a large underused building into Ellicott Place, a new mixed-use gateway to downtown

Office of Planning and Sustainability

March 5, 2010 10

DRI Vision Statement Example

Geneva:
Beautiful, Prosperous, Equitable, Connected, and Sustainable.




Office of Planning and Sustainability

March 5, 2010 11

Traditional Sustainability Projects in DRI Plans

Hudson: North Bay ReGeneration Project



Oswego: Harbor View Square Mixed Use Development



Geneva: Lake Tunnel Solar Village



Office of Planning and Sustainability

March 5, 2010 12

DRI Grant Funds for Upgrading Existing Buildings

DRI Area	Feature
Corhant	Renovate & upgrade commercial and residential buildings. Emphasis on reducing city's environmental footprint
Oneonta	Provide loans or grants to overcome cost impediment older structures face to meeting contemporary standards.
Elmira	Loans to overcome cost of renovation that can't be covered by current rental rates of the marketplace.
Watertown	Matching grants for facade improvements & small business support



Historic buildings can be upgraded with new technologies to maximize energy performance.

Office of Planning and Sustainability

March 5, 2010 13

DRI Projects that Revitalize Older Buildings

Olean: Four Mile Brewing



Olean: Manny Hanny Building



Oswego: Buckhout-Jones Building



March 5, 2010 14

DRI Adaptive Reuse Projects

Cortland: Multi-Use Entertainment Facility

Batavia: Ellicott Station Residential and Commercial Hub

Middletown: Rail Trail Commons



March 5, 2010 15

DRI Investments in the New Economy



Watertown: Rendering of Lincoln Building Co-Working Space

Project Examples

- Watertown: Co-working space for entrepreneurs and artists
- Jamaica: Space for entrepreneurs
- Cortland: Hub for commerce and culture
- Watkins Glen: Co-working space & shared kitchen
- Bronx: Artist-maker co-working space, gallery, cafe

March 5, 2010 16

"The knowledge-based economy of the future looks for communities with a real sense of place and the shiny brights coming out of college are not going to stay in your jurisdiction or return to your jurisdiction if there is no sense of place."

-Parris Glendening

March 5, 2010 17

State Funding Programs Support Downtown Revitalization

Examples:

- Restore NY
- New York Main Street Program
- Local Waterfront Revitalization Program
- Brownfield Opportunity Area Program
- Smart Growth
- Complete Streets
- Recreational Trails Program
- Green Innovation Grant Program
- Arts and Cultural Facilities Improvement Program



CFA applications that advance downtown revitalization receive priority consideration

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More Information:
www.ny.gov/DRI

NEW YORK STATE OF OPPORTUNITY | Department of Environmental Conservation

Climate Smart Communities

Support for Local Government Action on Climate Change

Mark Lowery
DEC Office of Climate Change



NEW YORK STATE OF OPPORTUNITY | Climate Smart Communities

State Support for Local Climate Action



- Assistance to local government leaders to
 - reduce greenhouse gas pollution,
 - build resiliency in the face of climate change,
 - build a green economy.
- Voluntary. No fees. Sponsored by 6 state agencies.
- Comprehensive. Flexible.



CSC By the Numbers



- 243 Registered** (since 2009)
 - 7.5 million people live in these "pledged" communities (39% of New York's population)
- 21 Certified** (since 2014)
 - Leaders who have documented progress
 - 840 certification actions completed

Full list at <https://climatesmart.ny.gov/actions-certification/participating-communities/>



Climate Smart Communities Benefits

- Free technical assistance
 - Regional coordinators through NYSERDA
- Guidance & tools on mitigation & adaptation
 - Extensive website with information and decision-support tools
 - Monthly webinars, email list
- Leadership recognition: Certification
- Networking
- Funding
 - CSC grants
 - ZEV rebates




Certification Portal Launched in April 2018



- <https://climate-smart.ny.gov/> streamlines application process, access reports from certified communities



How are CSC & CEC related?

Climate Smart Communities Certification

- Comprehensive climate action program
- 100+ unique actions
- Improve score on CSC grant applications

Clean Energy Communities (NYSERDA)

- Focused on clean energy
- 10 high-impact actions
- 1 of 10 is becoming a Certified CSC
- Complete 4 actions to access CEC grants

Earn points toward CSC Certification by doing CEC actions
 > Do both!





Funding Programs

Why ZEV Rebates?

Main Sources Of Greenhouse Gases in NYS
From New York State's Greenhouse Gas Inventory (FY 2010)

- NYS has one of the cleanest electrical grids in the country
- ZEVs get cleaner as the grid gets cleaner

DEC Municipal Clean Vehicle Rebates

- Purchasing or lease EV, PEV, or HFCV
- \$2,500 for 10-50 miles electric range
- \$5,000 for over 50 miles electric range

How to Apply for ZEV Rebates

- Apply via NYS Grants Gateway (grantsgateway.ny.gov).
- Register through the Grants Reform website (grantsreform.ny.gov/Grantees) for access.
- Download "Registration Form for Administrator" and MAIL form to the address specified.
- For more info, email ZEVrebate@dec.ny.gov and see <http://www.dec.ny.gov/energy/109181.html>.

CSC Grants

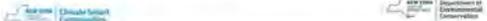
Climate Smart Communities Grants (2 rounds)

- \$20 million awarded for 38 adaptation and mitigation projects
- Round 3 awards to be announced in December
- \$1,000,000 awarded for 26 *Climate Smart Communities Certification Projects* (planning, inventory and assessment)

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Climate Smart Communities Grants

- Counties, cities, towns, villages only
- No need to be a CSC
- Other entities (non-profits, etc.) may be partners
- Required local match is 50% of eligible project costs
- May include in-kind, including salaries
- No state or federal funds
- Eligible costs: travel & equipment, salaries & fringe benefits, contractual services

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CSC Grants – Round 3

Implementation Category (\$10k to \$2M per project)

- Mitigation or adaptation project implementation

Certification Category (\$10k to \$100k per project)

- Completion of specified CSC certification actions



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CSC Grants – Certification

- Completion of specified CSC certification actions
- Workplan must match certification requirements for funded action, as described at portal
- Need not apply for certification but must upload required documentation

Funded projects:

- Greenhouse gas inventories
- Fleet management plans
- Vulnerability assessments
- Adaptation planning
- Shoreline restoration/stabilization
- Sustainable comprehensive planning
- Organic waste management planning
- Natural resource inventories




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CSC Grants – Implementation (Mitigation)

Reduce GHGs from non-power sources:

- VMT reduction
- Organic waste reduction
- Enhanced landfill gas capture
- Refrigerant leakage reduction

Funded projects:

- Construction/expansion of composting or waste-handling sites
- Sidewalk construction, complete streets amenities
- Commuter trails (bike/ped)
- Transportation demand management programs




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CSC Grants –Implementation (Adaptation)

Projects to reduce risk of climatic hazards, including, but not limited to,

- increasing/preserving natural resilience,
- flood-risk reduction,
- replacing or right-sizing flow barriers,
- extreme-heat preparation,
- emergency preparedness.

Funded projects:

- Critical facility relocation
- Shoreline/streambank stabilization
- Culvert right-sizing
- Stormwater management projects
- Flood-risk reduction
- Flood-warning systems



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Climate Smart Communities Grants

Watch for Round 4!

- Round 4 announcement expected spring 2019
- Deadline for Round 4: late July 2019



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Key Information Sources

- **CSC Certification Portal** <https://climatesmart.ny.gov>
- **Climate change projections & data:**
 - ClimAid Report (specific to NY): <http://www.nysenda.ny.gov/climald>
 - NY Climate Change Sci. Clearinghouse: <https://www.nyclimatescience.org/>
- **Greenhouse gas inventories** <http://www.dec.ny.gov/energy/57170.html>
 - Contact climatechange@dec.ny.gov for your town's GHG data (from 2010)
- **Sustainable Shorelines** <https://www.hrmr.org/hudson-river-sustainable-shorelines/>



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Thank You!

- NYS DEC Office of Climate Change
- 625 Broadway, Albany NY 12233
- climatechange@dec.ny.gov
- 518-402-8448



Connect with us:
 Facebook: www.facebook.com/NYSDEC
 Twitter: <https://twitter.com/NYSDEC>
 Flickr: www.flickr.com/photos/nysdec/

CSC funding programs: <http://www.dec.ny.gov/energy/10981.html>



NEW YORK STATE OF ENVIRONMENT & CONSERVATION | NYSERDA

The Local Role in State Climate Goals

Houtan Moaveni
Senior Advisor to the President for Strategy and Clean Energy Siting
NYS DG Interconnection Ombudsman

December 6, 2018

2

New York Energy Policy

- Reforming the Energy Vision (REV) is Governor Andrew Cuomo's strategy to build a clean, resilient and affordable energy system for all New Yorkers.
- Clean Energy Standard: 50% renewable energy by 2030
- Clean Energy Fund (CEF)
 - 10-year, \$5 billion funding commitment
 - Reshapes NY's energy efficiency, renewable energy and energy innovation programs
 - Reduces the cost of clean energy
 - Accelerates the adoption of energy efficiency to reduce load
 - Increases renewable energy to meet demand
 - Mobilizes private investment in clean energy

50% renewable energy by 2030



3

NY Solar Guidebook for Local Government

New York Solar Guidebook for Local Governments



- Chapter 1: Introduction to Renewable Energy in New York State
- Chapter 2: How to Engage with Local Government
- Chapter 3: Solar Environmental Quality Review Process
- Chapter 4: Utility and Interconnection Process
- Chapter 5: Solar Energy Incentives and Tax Breaks
- Chapter 6: Solar Energy Financing Options
- Chapter 7: Solar Energy Jobs and Training
- Chapter 8: Land Use and Zoning for Solar Energy
- Chapter 9: Solar Energy Siting
- Chapter 10: Solar Energy Energy Code

4

Technical Assistance for Local Governments

NYSun offers local governments free one-on-one assistance on:

- Adopting a Payment-in-Lieu-Of-Taxes (PILOT) law and agreement
- Completing the SEQR process for large solar installations
- Planning and Zoning for Solar
 - Adopting a Model Solar Energy Law
 - Siting PV in Agricultural Districts and agricultural areas
 - Updating master plans and zoning regulations
- Municipal Solar Procurement
- Permitting and Inspections
 - Adopting and implementing the Unified Solar Permit
 - Technical consulting to relieve administrative burdens



5



Thank you
For additional questions, please contact me at:
Houtan.Moaveni@nyseda.ny.gov





Clean Energy Communities in NYS

Driving the Next Level of Action

 Brad Tito, Program Manager

 Communities and Local Government Team at NYSERDA

 December 6, 2018

Clean Energy Communities Program

 An opportunity for communities to **win grants and recognition** by demonstrating leadership in the area of clean energy. All city, town, village, and county governments, tribes, and nations may apply.

STEP 1: Earn the Clean Energy Community designation by completing 4 out of 10 high-impact, clean energy actions.

STEP 2: Apply for a grant of between \$5k and \$250k, with no local cost share, to support additional clean energy projects.

 Expert guidance is provided by dedicated and knowledgeable Clean Energy Communities Coordinators located in each region of the state at no cost to the local government.

 *Qualities are available for each high-impact action with things like guides, template resolutions, calculators, and case studies to let the staff time needed to participate even further.

Regional Coordinators



10 High-Impact Actions

1. Benchmarking
2. Clean Energy Upgrades
3. LED Street Lights
4. Clean Fleets
5. Solarize
6. Unified Solar Permit
7. Energy Code Enforcement Training
8. Climate Smart Communities Certification
9. Community Choice Aggregation
10. Energize NY Finance



NYSERDA's Clean Energy Communities Program



228 Clean Energy Communities

505 Participating Communities

1,378 High-impact Actions Completed

Sample of Real World Results

262,500 Street Lights Converted to LED

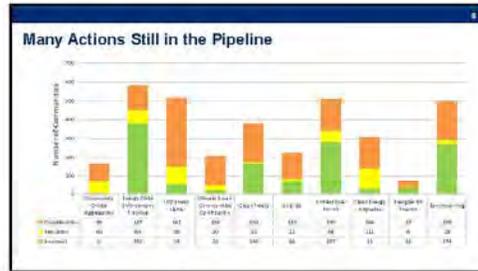
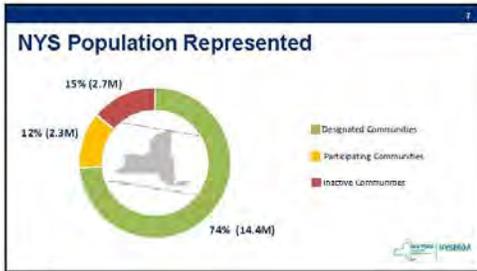
626 Electric Vehicles Deployed

856 Electric Vehicle Charge Ports Installed

984 Municipal Offices that have completed Energy Code Enforcement Training

274 Benchmarking exercises passed to track and report energy use in most large buildings

287 Communities That Have Adopted the NY Unified Solar Permit



A Few Words from Local Elected Officials

This is a great program
Mayor of Saratoga Springs, NY

We are honored to be recognized by NYSERDA.
Mayor of Saratoga Springs, NY

It's a smart way to save money for the Village and promote clean energy at the same time.
Village of Saratoga Springs, NY

We are proud to be New York's first city to be declared a Clean Energy Community.
City of Saratoga Springs, NY

The beauty of these things is that they are better for the environment and can actually save us money.
Mayor of Saratoga Springs, NY

It's important to show that we're already doing this and this small village is able to do these type of things.
Village of Saratoga Springs, NY

A win-win for the town, both in terms of cost-savings and the environment.
Mayor of Saratoga Springs, NY

- ### Lessons Learned
- Local governments and communities often struggle with a lack of funding, lack of staff capacity, and lack of information needed to prioritize and implement clean energy solutions.
 - Technical support from trusted, local coordinators allows even resource-constrained local governments to complete high-impact actions.
 - The economic benefits of clean energy are broadly appealing. Clear guidance, recognition opportunities, and even small grants will drive action.
 - Once one action is completed, communities are much more likely to pursue additional actions.
 - Get them in the door with low hanging fruit but then go deeper.

Thank you!

[Bradford Tilo](mailto:Bradford.Tilo@nyserd.org)
Bradford.Tilo@nyserd.org
 518-971-5342 x3545

Website: www.nyserd.org/coc
 Program Email: coc@nyserd.org

Communities and Local Government Team
 New York State Energy Research and Development Authority (NYSERDA)
www.nyserd.org

BIOGRAPHIES:



Jessica A. Bacher, Esq., *Executive Director, Land Use Law Center and Adjunct Professor*

Jessica Bacher is the Executive Director of the Land Use Law Center. Established in 1993, the Land Use Law Center is dedicated to fostering the development of sustainable communities and regions through the promotion of innovative land use strategies and dispute resolution techniques. As the Executive Director, Ms. Bacher's responsibilities include development and implementation of projects relating to local land use practice, distressed property remediation, transit-oriented development, sustainable communities, land use responses to sea level rise, and code enforcement, as well as providing strategic assistance to numerous municipalities. Most recently, she led the City of Newburgh, New York, in the development of a distressed property remediation implementation plan that focuses on the development of a land bank. Additionally, Ms. Bacher serves as a trainer for the Center's award-winning Land Use Leadership Alliance Training Program that has educated over 2,500 local leaders in land use strategies, consensus building, and regional stewardship. Ms. Bacher also chairs the Distressed Properties Sub-Committee of the Land Use Planning & Zoning Committee for the American Bar Association's Section of State and Local Government Law. At Pace Law School, Ms. Bacher serves as adjunct professor, teaching Land Use Law, Sustainable Development Survey, and the Advanced Land Use and Sustainable Development Seminar. She also administers the Center's academic programs and guides student research. In addition, she is a guest lecturer and project supervisor at Yale School of Forestry and Environmental Studies, where she manages the School's Land Use Clinic. Ms. Bacher authors regular land use features in New York and national publications and has edited numerous small books in the fields of Land Use and Real Estate Law, including *Breaking Ground and Planning and Building in Priority Growth Districts*. She also presents at regional and national conferences and served on the New York State Sea Level Rise Task Force Legal Work Group. Ms. Bacher was selected by the American Bar Association to receive the Jefferson B. Fordham Award, an award presented to a young practitioner who has shown great promise through her contributions to the field. Ms. Bacher received her J.D. summa cum laude from Pace Law School in 2003, along with a certificate in Environmental Law.



Sarah Stern Crowell, AICP, *Director, Office of Planning, Development & Community Infrastructure, NYS Department of State*

Sarah Crowell is the Director of the Office of Planning, Development and Community Infrastructure at the New York Department of State, where she oversees the Downtown Redevelopment Initiative (DRI), Brownfield Opportunity Area (BOA) Program and Local Waterfront Revitalization Program (LWRP). An accomplished urban planner, Sarah has 20 years of both public and private sector experience in community and regional planning, with a focus on sustainable and equitable development. She is a certified planner with the American Institute of Certified Planners (AICP) and holds both a bachelor's degree in environmental

ethics and a master's degree in urban and environmental planning from the University of Virginia, where she was an Echols Scholar.



Mark D. Lowery, *Climate Policy Analyst, Office of Climate Change, NYS Department of Environmental Conservation*

A 30- year veteran of the New York State Department of Environmental Conservation, Mark Lowery has served as a climate policy analyst in DEC's Office of Climate Change since 2007. His principal areas of responsibility have included leading public outreach efforts for the Regional Greenhouse Gas Initiative, Sea Level Rise Task Force and climate action planning. He oversees OCC's adaptation and municipal support program, including the Climate Smart Communities program. He conceived and oversaw development of the Climate Smart Communities certification program and portal, and directs the Climate Smart Communities grants programs. Mark also leads implementation of the Community Risk and Resiliency Act, including promulgation of the state's sea-level rise projection regulation and development of state flood risk management guidance.

Mark holds a bachelor's degree in biology from Franklin and Marshall College, Lancaster, Pa. and a master's degree in environmental and forest biology from the State University of New York College of Environmental Science and Forestry, Syracuse, N.Y.



Houtan Moaveni, *Senior Advisor to the President for Strategy and Clean Energy Siting, New York State Interconnection Ombudsman, NYSERDA*

Houtan Moaveni is currently serving the dual role of a Senior Advisor to the President for Strategy and Clean Energy Siting, as well as the New York State Distributed Generation Interconnection Ombudsman at New York State Energy Research and Development Authority (NYSERDA). Mr. Moaveni is an accomplished energy professional with over 14 years of experience in solar from design, analysis and operation to policy, planning, program design, and implementation. He has a proven track record of successfully delivering a wide range of solar initiatives, supporting the U.S. Department of Energy (DOE), states, utilities, and public service commissioners which has resulted in receiving several awards over the years.



Brad Tito, *Program Manager, Communities & Local Governments, NYSERDA*

As Program Manager, Communities and Local Government at NYSERDA, Brad Tito works with communities across New York State to save energy and improve the environment. He helped design and together with his team launch NYSERDA's Clean Energy Communities initiative. He specializes in municipal sustainability initiatives including LED street lights and community choice aggregation (CCA). Prior to joining NYSERDA, Brad served as Director of Sustainability for the City of Yonkers - New York's fourth largest city - where he led a number of high-profile initiatives

including an award-winning LED streetlight conversion project and the establishment of mandatory green building standards. Prior to Yonkers, Brad served as the Director of Environmental Coordination for Nassau County on Long Island where he developed a broad range of environmental and health initiatives. He has a master's degree in Urban Policy Analysis and Management from the New School University and a bachelor's degree in Sustainable Development from Prescott College in Arizona.



Meghan A. Taylor, *Regional Director, Mid-Hudson, Empire State Development*

In January 2015, Meghan Taylor joined Empire State Development Corporation as the Mid-Hudson Regional Director. Meghan's experience in the creation and development of economic strategies has proven to be vital in the success of Mid-Hudson's economic growth. As Regional Director, Meghan is responsible for guiding and managing ESD's Regional Office and Regional Economic Development Council initiatives through sourcing, originating, developing, and guiding new deals to promote economic vitality to the region.

Prior to her role as ESD's Regional Director, Meghan was the President of the Putnam County Economic Development Corporation where she drove smart economic growth through influencing policy making decisions, identifying key sites and economic corridors as well as moderating negotiations. Additionally, Meghan served as the Director of Business Attraction for the Orange County Partnership where she was responsible for increasing the County's commercial tax base and creating jobs by increasing corporate attraction through marketing and sales initiatives.

Meghan holds a Masters of Business Administration from Mount Saint Mary College and a Bachelor of Finance from SUNY Binghamton. She currently resides in Westchester County with her husband and their rescue dog.

ⁱ These Model Laws are forthcoming from the DOS. *See* https://www.dos.ny.gov/opd/laws_regs.html ; <http://www.dec.ny.gov/energy/102559.html>

The New (and Old) Secrets About SEQRA¹

If you work in land use, development projects, or are a practicing environmental attorney in NY State, come learn about the recent and upcoming changes to SEQRA from land use attorneys, planners, and State DEC employees. Learn how to streamline the SEQRA process and use it as a tool to balance protecting environmental resources while achieving economic development goals.

VIDEO OF PRESENTATION:

https://mediaspace.pace.edu/media/Sustainable+Development+as+a+Market+Driver+-+The+New+%28and+Old%29+Secrets+about+SEQRA.mp4/1_t8btzk9q/31792771

BIBLIOGRAPHY OF RESOURCES:

New York Department of Environmental Conservation, Final Express Terms 2018 Amendments to 6 N.Y.C.R.R. Part 617 (2018)

New York Department of Environmental Conservation, Findings Statement for SEQRA Amendments, (2018)

New York Department of Environmental Conservation, Type I Actions
<https://www.dec.ny.gov/permits/43711.html> (accessed October 3, 2018)

New York Department of Environmental Conservation, Type II Actions
<https://www.dec.ny.gov/permits/39800.html> (accessed October 3, 2018)

¹ Thank you to Pace Law student Brendan Cassidy for his contribution to this report.

POWERPOINT PRESENTATION:

NEW YORK
STATE OF
ENVIRONMENT
Department of
Environmental
Conservation



2018 Amendments to the Regulations Implementing SEQR

Land Use and Sustainable Development
Conference, December 6, 2018

Overview of Amendments

- Type I List
- Type II List
- EIS Scoping
- EIS Preparation
- Document Preparation
- SEQR Fees

DEC's 2018 Amendments – Critical Documents

<https://www.dec.ny.gov/permits/83389.html>



Type I List

617.4 (b) (5) (iii) - (v)

Lowered thresholds for residential units:

- From 250 to 200 units; in pop. 150,000 or less
- From 1,000 to 500 units; in pop. 150,001 to 999,999
- From 2,500 to 1,000 units; in pop. 1,000,000 or greater

Type I List

617.4 (b) (6) (iii) – (iv)

Existing rule only applies to 1000 vehicles

The amendments add a threshold for parking spaces in smaller communities:

- 500 or more vehicles – pop. of 150,000 or less and 1,000 or more vehicles – pop. of 150,001 or more

Type I List

617.4 (b) (9)

- Adds thresholds to historic properties similar to other sensitive resources
- Adds "eligible" historic properties
- Eligible properties will appear on EAF Mapper

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Type II List

- 617.5 (c) (2) - Upgrading buildings to meet state energy code



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Type II List

- 617.5 (c) (3) Green infrastructure - retrofit
- "Green infrastructure" means practices that manage storm water through infiltration, evapo-transpiration and reuse including only the following: the use of permeable pavement; bio-retention; green roofs and green walls; tree pits and urban forestry; storm water planters; rain gardens; vegetated swales; downspout disconnection; or storm water harvesting and reuse."



9

Type II List

- 617.5 (c) (7) - Installation of telecommunications cables in existing ROWs with trenchless burial or use of existing poles



10

Type II List

- 617.5 (c) (11) - Conveyances of land in connection with 1-3 family residence



11

Type II List

- 617.5 (c) (14) & (15) – Installation of Solar (on rooftops, closed landfills, brownfield and Superfund sites, wastewater treatment facilities, parking lots/garages and industrial areas)



12

Type II List

- 617.5 (c) (16) - Lot line adjustments
- "granting of individual setback and lot line variances and adjustments"



13

Type II List

- 617.5 (c) (18) - Reuse of a commercial or residential structure including mixed use
 - must be permitted under the applicable zoning, including by special use permit
 - the action does not trigger a Type I (617.4) threshold



14

Type II List

- 617.5 (c) (39) Acquisition/dedication of parkland or conservation easement



15

Type II List

- 617.5 (c) (41) Organic digesters at operating publicly-owned landfills
 - Must be within currently disturbed areas
 - Feedstock capacity of < 150 wet tons/day
 - Only produces Class A digestate



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Scoping (617.8)

- Scoping will be required for all EISs (similar to Federal and NYC requirements) except for supplemental EISs
- New process for late-filed comments on scope



17

EIS Preparation

- 617.9 (a)(2) - Clarify procedures to define when a DEIS is adequate for public review
- Meets the requirements of:
 - the final written scope
 - sections 617.8 (g) & 617.9 (b); late filed comments & EIS content respectively



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EIS Content

- 617.9(b)(5)(iii)(i) - Addition of requirement, where relevant, to evaluate "measures to avoid or reduce both an action's impacts on climate change and associated impacts due to the effects of climate change such as sea level rise and flooding".



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Contact Information
DEC, Division of
Environmental Permits
625 Broadway, Albany NY
12233-1750
james.eldred@dec.ny.gov
(518) 402-9167
[http://www.dec.ny.gov/permits/
33300.htm](http://www.dec.ny.gov/permits/33300.htm) (regulatory
documents)



BIOGRAPHIES:



Jennifer L. Gray, Esq., *Member, Keane & Beane, P.C*

Jennifer L. Gray is a partner at Keane & Beane, P.C. where her practice is devoted to the areas of planning and zoning, and litigation pertaining to land use, municipal and real estate matters. Ms. Gray presents applications to municipal boards on behalf of private sector clients, and also serves as counsel to local planning and zoning boards. Her litigation experience includes matters related to compliance with the New York State Environmental Quality Review Act (SEQRA),

challenges to local planning and zoning board decisions, disputes concerning real property, as well as both prosecution and defense of zoning and building code violations. Ms. Gray is a lecturer on issues related to land development and zoning for the Westchester Municipal Planning Federation, New York Planning Federation and local bar associations.

Ms. Gray received her juris doctor, cum laude, from the Elisabeth Haub School of Law at Pace University in 2006, with a Certificate in Environmental Law, and received her bachelor's degree from the University of Vermont in 2002. She is admitted to practice in New York, Connecticut and the Southern District of New York. Ms. Gray is a past Vice-President of the Westchester Women's Bar Association, Co-Chair of the WWBA's Environmental and Land Use Committee, Co-Chair of the Municipal Law Section of the Westchester County Bar Association, and an elected member of the Alumni Board of the Elisabeth Haub School of Law at Pace University where she recently concluded two terms on its Executive Committee as Secretary. Ms. Gray is also a member of the New York State Bar Association.



Seth M. Mandelbaum, Esq., *Partner, McCullough, Goldberger & Staudt, LLP*

Mr. Mandelbaum is admitted to the New York State Bar; the Connecticut State Bar; U.S. District Courts for the Southern, Eastern and Northern Districts of New York, and the District of Connecticut. Mr. Mandelbaum holds a J.D., cum laude, and an Environmental Law Certificate from Pace University School of Law, where he was an Articles Editor for the Pace Environmental Law Review; and a B.A.,

with Honors, from the University of Florida, where he majored in Environmental Policy.

Mr. Mandelbaum is a member of the New York State and Westchester County Bar Associations, as well as the Westchester County Association and The Business Council of Westchester. Mr. Mandelbaum is a member of the WCA Housing Task Force and Co-Chair of the SEQRA Subcommittee. In addition, Mr. Mandelbaum serves as Vice Chairperson of the Board of Trustees of the Westchester Parks Foundation (formerly Friends of Westchester County Parks). He was also appointed as Co-Chair of the Environmental Law Committee of the Westchester County Bar Association in 2012. In 2009, Mr. Mandelbaum was a recipient of the Business Council of Westchester "Rising Stars — 40 under 40" award.

Mr. Mandelbaum practices in the areas of land use and environmental law, alternative energy, municipal law, and not-for-profit organizations. In addition, Mr. Mandelbaum is one of only a small group of attorneys in New York to be certified by the U.S. Green Building

Council as a Leadership in Energy and Environmental Design Accredited Professional (LEED® AP).



David B. Schiff, AICP, PP, Senior Project Manager, Kimley-Horn of New York, P.C.

PROFESSIONAL CREDENTIALS

Master, Civil Engineering (Transportation Systems Division), Massachusetts Institute of Technology, 1973

Bachelor, Environmental Systems Engineering/City Planning, Cornell University, 1971

Diploma in Real Estate Investment Analysis, NYU Real Estate Institute, 1984

Urban Land Institute, Immediate Past Chair, Westchester-Fairfield Chapter

With more than four decades of professional experience, Dave is recognized as a leader in the land, community, and regional planning fields with particular expertise in land use, housing, redevelopment, zoning, and environmental studies. He has worked on a broad range of plans throughout the New York Metro Area, including municipal comprehensive plans, corridor studies, downtown redevelopment plans, campus master plans, economic studies, affordable housing development, and State Environmental Quality Review Act (SEQRA) documentation.



Nicholas M. Ward-Willis, Esq., Member, Keane & Beane, P.C.

Nicholas Ward-Willis represents businesses, developers, individuals, property managers and public bodies in a variety of land use, real estate and environmental issues, ranging from commercial and real estate transactions to state and federal environmental litigation. Mr. Ward-Willis has extensive experience in negotiating orders on consent with state and federal agencies in a variety of matters, including hazardous waste sites and oil spill

sites. In the course of representation of his clients, Mr. Ward-Willis interacts with consultants on oil spills, mold and hazardous waste remediations. He represents private clients before various land use boards and assists the firm's public and private sector clients in complying with the State Environmental Quality Review Act, the New York City Watershed Regulations and other environmental laws.

In addition to processing land use applications on behalf of clients, Mr. Ward-Willis has prosecuted and argued Article 78 cases before trial and appellate courts. He counsels property managers, cooperatives, condominiums, homeowners' associations and municipalities. Mr. Ward-Willis manages the firm's role as City Attorney for the City of Beacon, Dutchess County and, on behalf of the firm, serves as counsel to several planning Boards in Westchester County, including the Village of Rye Brook.

Mr. Ward-Willis joined Keane & Beane following his graduation from law school.

Lawrence H. Weintraub, Esq., *Office of General Counsel, New York State Department of Environmental Conservation*

Lawrence (“Larry”) H. Weintraub has worked in DEC’s Office of General Counsel from 2007. He serves as the program counsel for DEC’s Division of Environmental Permits. The Division of Environmental Permits administers the State Environmental Quality Review Act and the Uniform Procedures Act for the agency and manages most of the major environmental permitting work of DEC. The Division of Environmental Permits played a leadership role within DEC in promulgating the 2018 amendments to the SEQR regulations that will become effective on January 1, 2019. Larry has also counseled the agency with respect to many of its major permitting and environmental reviews that have occurred since 2007 including ones involving resort development around Belleayre Mountain in the Catskills and oil and gas matters. Larry also represents the DEC staff in proceedings before the Public Service Commission and the Federal Energy Regulatory Commission. Before joining the DEC, Larry worked in both government and private practice. The focus of his practice was on environmental and municipal law. He graduated from the David C. Clark School of Law at the University of the District of Columbia (formerly Antioch School of Law), and received a BA degree in Geology from the State University of New York at Binghamton. He is admitted to the New York Bar and several Federal Courts. For Larry’s work on the environmental assessment form workbooks and EAF Mapper, he is a group recipient of the 2014 American Planning Association, New York Upstate Chapter’s Best Practice Award.

A Sign (Code) of the Times¹

A community's aesthetic character is frequently driven in substantial part by signage: how much, where it is located, and what it looks like. But regulating signs is fraught with legal issues because signs are a form of speech protected by the First Amendment. This session will review First Amendment issues in sign regulation, and will also cover practical aspects of sign regulation today, touching on matters such as electronic signs, vehicle signs, building wraps, and other new technologies.

VIDEO OF PRESENTATION:

https://mediaspace.pace.edu/media/Sustainable+Development+as+a+Market+Driver+-+A+Sign+%28Code%29+of+the+Times+.mp4/1_sd4wqmg5/31792771



"Wall of Diner Signs" on Route 66 in Albuquerque. Credit: tripadvisor.com

BIBLIOGRAPHY OF RESOURCES:

White Plains, New York, Municipal Code art. I, § 9-10 (2018).

The City of White Plains imposes regulations for illuminated signs by requiring licensed electricians to install them and for the traffic colors red and green to be avoided for safety.

https://library.municode.com/ny/white_plains/codes/code_of_ordinances?nodeId=TITIXZ_OPLBUST_CH9-10OUSIAW_ARTIINGE

Saratoga Springs, New York, Municipal Code art. IV § 203-11(A) (1993).

The Commissioner of Public Works is given broad discretion in determining whether signage poses a threat to public safety.

<https://ecode360.com/6520813>

Saratoga Springs, New York, Municipal Code art. I, § 98-2(A)(17) (2005).

The City has implemented regulations in anticipation of signage at local demonstrations and events which work to maintain public safety and protect the freedom of speech.

<https://ecode360.com/6518992>

¹ Thank you to Pace Law student Morgan Lynk for her contribution to this report.

Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015).

Neutrality of purpose was recognized as a requirement for content-neutrality in sign regulation in addition to facial neutrality.

<https://advance.lexis.com/document/?pdmfid=1000516&crd=405ba631-da3b-41bc-b7ae-5713b108bd34&pddocfullpath>

Best Practices in Developing Sign Regulations, Sign Research Foundation (2018).

Stakeholder involvement is emphasized as a best practice in adopting sign regulations.

<https://signresearch.org/research-best-practices/>

Sign Regulation after Reed: Suggestions for Coping with Legal Uncertainty, 47 Urban Law 1569 (2015).

Questions relating to the *Reed* decision are addressed and methods to minimize associated risks are described.

https://law.wustl.edu/landuselaw/BookFSL/UL%2047-4_01Weinstein.pdf

POWERPOINT PRESENTATIONS:



Regulating Signs and Speech, 3 ½ Years After *Reed*

Brian J. Connolly
Land Use Law Center Conference • December 6, 2018
White Plains, New York

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General Reminders

- Every sign carries some form of First Amendment protection
- Government regulation of signs loses the normal presumption of constitutionality and is subject to heightened scrutiny
- Sign litigation is common, expensive, and risky
- Most sign ordinances contain at least a few provisions of questionable constitutionality, particularly following *Reed*

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General Reminders

- Sign codes should reflect a careful balance of...
 - Community tolerance for legal risk
 - Community desire for aesthetic beautification



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Legal Issues in Sign Regulation

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Sources of Sign Law

- First Amendment
- Other constitutional provisions
 - Fifth Amendment Takings Clause, Fourteenth Amendment Due Process and Equal Protection clauses
- State constitutions
- Federal Highway Beautification Act of 1965, state highway advertising acts
- State zoning enabling laws
- Local codes

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First Amendment Concepts

- Content (or message) neutrality
- Time, place or manner regulations
- Commercial vs. non-commercial speech
- Off-site vs. on-site signs
- Bans and exceptions
- Permits and prior restraints
- Vagueness and Overbreadth
- Public forum doctrine

Important Cases

- *Virginia Pharmacy Board v. Virginia Consumer Council*, 425 U.S. 748 (1975)
- *Linmark Associates v. Willingboro Twp.*, 431 U.S. 85 (1977)
- *Metromedia v. City of San Diego*, 453 U.S. 490 (1981)
- *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789 (1994)
- *Ward v. Rock Against Racism*, 491 U.S. 781 (1989)
- *City of Ladue v. Gilleo*, 512 U.S. 43 (1994)
- *Hill v. Colorado*, 530 U.S. 703 (2000)
- *McCullen v. Coakley*, 134 S. Ct. 2518 (2014)
- *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015)

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Content Neutrality

- Content neutrality looks at **subject matter**
- Viewpoint neutrality looks at **point of view**
 - a ban on **all signs** is content neutral *and* viewpoint neutral
 - a ban on **all political signs** is *not* content neutral but *is* viewpoint neutral
 - a ban on **signs that criticize government** is neither content neutral nor viewpoint neutral

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Content and Viewpoint Neutrality

"Signs containing a political message are permitted in residential zoning districts."

As enforced against this sign, is this provision viewpoint neutral?

Content neutral?

What if another regulation allowed *ideological* signs in this setting?



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Examples of Time, Place and Manner Regulations

- Maximum size/height
- Maximum number per lot/building/support structure
- Specific sign locations
 - corner lots
 - setbacks/spacing
 - zoning districts
 - uses
 - corridors
- Prohibited signs
- Regulations of materials, lighting and form
 - internal/external lighting
 - flashing/animation
 - neon
 - materials/colors*
 - monument/pole signs
 - design review and incentives
 - Cabinet/channel letter wall signs

*Note: Federal protection of color of federally registered trademarks/logos.

Content Neutrality: Implications

- A regulation that is "content-based" will be subject to strict scrutiny: compelling governmental interest, least restrictive means, and narrow tailoring
- A regulation that is "content-neutral" will be subject to intermediate scrutiny: significant/important governmental interest unrelated to suppression of speech, substantially related means, narrow tailoring, and ample alternative channels for communication
- Regulations of commercial speech are subject to the *Central Hudson* intermediate scrutiny test

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Commercial Speech Doctrine

- Commercial speech is reviewed differently from noncommercial speech
 - Commercial speech gained First Amendment protection in 1975
 - Content neutrality not required (but...)
- *Central Hudson* test: (1) lawful speech, (2) substantial governmental interest, (3) regulation must directly advance governmental interest, and (4) no more extensive than necessary



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Prior Restraint

- Two ways sign regulations could be unconstitutional under the prior restraint doctrine:
 - Lacking procedural safeguards—sign regulations require a brief timeframe for permit application review
 - Unbridled discretion—sign regulations lack definite standards for review of permit applications

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Public Forum Doctrine

- Classifications of **public property**
 - *Traditional public fora*: sidewalks and public parks, content neutrality required
 - *Designated public fora*: content neutrality required
 - *Limited public fora*: viewpoint neutrality required, reasonable in light of forum's purpose
 - *Nonpublic fora/nonforum*: no limitation on government regulation



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Reed v. Town of Gilbert: The Case

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Reed v. Town of Gilbert: Background



Source: acentral.com

- § 4.402.A requires all signs to be permitted, unless excepted by § 4.402.D
- § 4.402.D contained 23 exceptions to permitting requirement, including:
 - "Political signs"
 - "Ideological signs"
 - "Temporary directional signs relating to a qualifying event"

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Gilbert Sign Code

- **Political signs**: "A temporary sign which supports candidates for office or urges action on any other matter on the ballot of primary, general or special elections relating to any national, state or local election."
 - Up to 16 square feet on residential property, 32 square feet on nonresidential property, up to 6 feet in height
 - Must be removed 10 days after election
- **Ideological signs**: "Sign communicating a message or ideas for non-commercial purposes" (that is not also another sign type)
 - Up to 20 square feet, 6 feet in height

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Gilbert Sign Code

- **Temporary directional signs**: Temporary sign "intended to direct pedestrians, motorists and other passersby to a qualifying event." Qualifying event is an event sponsored or hosted by religious, charitable, community service, educational, or other nonprofit organization.
 - 6 feet in height, 6 square feet in area, 4 signs per property
 - May be placed 12 hours before event, must be removed 1 hour after

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Gilbert Sign Code



The diagram shows four overlapping boxes representing sign categories:

- Homeowners Assn signs** (top, light blue)
- Political signs (nonresidential zone)** (middle, dark blue)
- Ideological signs** (left, yellow)
- Qualifying Event signs** (bottom right, green)

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Reed v. Town of Gilbert: Outcome



- Distinctions between forms of noncommercial speech are content based
 - “Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.”
 - “[C]ommonsense meaning of the phrase ‘content based’ requires a court to consider whether a regulation of speech ‘on its face’ draws distinctions based on the message a speaker conveys.”

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Reed v. Town of Gilbert: Outcome



- Apply strict scrutiny
- Law was not narrowly tailored to Town’s proffered interests
 - Town failed to show that limiting temporary event signs more than other temporary signs reduced visual clutter, etc.

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Justice Alito’s concurrence (+2)



- **“I join the opinion of the Court but add a few words of further explanation.”**
- “I will not attempt to provide anything like a comprehensive list, **but here are some rules that *would not be content-based:***”

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Justice Alito’s concurrence (+2)



- Rules regulating size
- Rules regulating locations in which signs may be placed
- Rules distinguishing between –
 - “lighted and unlighted signs”
 - “signs with fixed messages and electronic signs with messages that change”
 - “placement of signs on
 - public and private property;
 - commercial and residential property”

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Justice Alito’s concurrence (+2)



- “Rules distinguishing between on-premises and off-premises signs”
- “Rules restricting the total number of signs per mile of roadway”
- Rules imposing time restrictions on signs advertising a one-time event,” which are “akin to rules restricting times within which speech or music is allowed.”
- The government itself may “put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots.”

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Reed v. Town of Gilbert: The Postscript

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Political Sign Regulations

- **Wagner v. City of Garfield Heights**, 675 Fed. App'x 599 (6th Cir. Jan. 13, 2017) (size restriction on political signs rejected)
- **Marin v. Town of Southeast**, 136 F. Supp. 3d 548 (S.D.N.Y. 2015) (special regulations of political signs rejected)
- **Yesse v. City of New York**, 144 F. Supp. 3d 627 (S.D.N.Y. 2015) (limitation on lighted signs more than 40 feet above sidewalk was content neutral, survived strict scrutiny)
- **Peterson v. Vill. of Downers Grove**, 150 F. Supp. 3d 910 (N.D. Ill. 2015) (restriction on painted wall signs was content neutral, survived strict scrutiny)
- **www.RaindropsPete.com v. City of Baltimore Park**, No. 2:16-cv-00167-CREIG(S), 2017 WL 2962772 (C.D. Cal. Jul. 10, 2017) (finding, on motion for preliminary injunction, that allowance for additional temporary signs before election day was content based)

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Time, Place, and Manner Regulations

- **Lone Star Security & Video, Inc. v. City of Los Angeles**, 827 F.3d 1192 (9th Cir. 2016) (ban on mobile advertising devices upheld against challenge that "advertising" was content based regulation of speech)
- **Luce v. Town of Campbell**, 872 F.3d 512 (7th Cir. 2017) (ban on overhead signs and banners upheld, remanded for further proceedings on restriction on signs with in 100 feet of highway right-of-way)
- **Wilson v. City of Bel-Nor**, 298 F. Supp. 3d 1213 (E.D. Mo. 2018) (denying a motion for preliminary injunction pertaining to one-sign limitation on yard signs)

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Billboards and Off-Premises Signs

- **Contest Promotions LLC v. City & Cnty. of San Francisco**, 874 F.3d 597 (9th Cir. 2017) (upholding billboard ban, finding *Reed* does not apply to commercial speech)
- **Citizens for Free Speech, LLC v. Cnty. Of Alameda**, 114 F. Supp. 3d 952 (N.D. Cal. 2015) (*Reed* does not alter the analysis for laws regulating off-site commercial speech; "Plaintiffs have not identified any distinct temporal or geographic restrictions on different categories of permitted signs in Section 17.52.520 based on those signs' content. Consequently, *Reed* does not apply here.")
- **Calif. Outdoor Equity Partners v. City of Corona**, 2015 WL 4163346, at *10 (C.D. Cal. 2015) ("*Reed* does not concern commercial speech, let alone bans on off-site billboards. The fact that *Reed* has no bearing on this case is abundantly clear from the fact that *Reed* does not even cite *Central Hudson*, let alone apply it. *Metro-media*, 453 U.S. at 511-14, and its progeny remain good law; the City's sign ban is therefore not patently unconstitutional.")

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Billboards and Off-Premises Signs

- **Adams Outdoor Advertising Limited Partnership v. Penn. Dept. of Transp.**, No. 5:17-cv-01253, 2018 WL 822450 (E.D. Penn. Feb. 9, 2018) (denying motion to dismiss First Amendment challenge to constitutionality of Pennsylvania highway advertising act)
- **Thomas v. Schroer**, 248 F. Supp. 3d 868 (W.D. Tenn. 2017) (finding Tennessee highway advertising act content based and not the least restrictive means of achieving a compelling governmental interest)
- **Auspro Enterprises, LP v. Texas Dept of Transp.**, 506 S.W.3d 688 (Tex. Ct. App. 2016) (Texas highway advertising law invalidated on basis of content discrimination)
- **E&J Equities, LLC v. Board of Adjustment**, 146 A.3d 623 (N.J. 2016) (challenge to New Jersey township ban on digital billboards found content neutral, fails intermediate scrutiny because ban was not narrowly tailored)

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Commercial Speech, cont'd

- **Strict Scrutiny Media, Co. v. City of Reno**, No. 3:16-CV-00734-MMD-WGC, slip op., 2017 WL 5505040 (D. Nev. Nov. 15, 2017) (denying motion to dismiss on claim that new billboard ban violates *Central Hudson*)
- **International Outdoor, Inc. v. City of Troy**, 2017 WL 2831702 (E.D. Mich. Jun. 30, 2017) (denial of variance to allow billboard upheld under *Central Hudson*)
- **Palmer v. City of Missoula**, CV-16-54-M-DLC, 2017 WL 1277460 (D. Mont. Apr. 4, 2017) (prohibition on wind signs, streamers, flags, etc. upheld against challenge under *Central Hudson*)

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Commercial Speech Regulation

- **RCP Publications Inc. v. Chicago**, No. 1:2015cv11398 (N.D. Ill. Mar. 31, 2018) (ordinance banning commercial advertising material in public right-of-way was unconstitutionally vague because it lacked a definition of prohibited material)

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Commercial Speech Regulation

- **Lamar Central Outdoor, LLC v. City of Los Angeles**, 199 Cal. Rptr. 3d 620 (Cal. App. 2016) (California constitution recognizes distinction between commercial and noncommercial speech, on-premises/off-premises signs)
- **GEFT Outdoor, LLC v. Consolidated City of Indianapolis and County of Marion**, 187 F. Supp. 3d 1002 (S.D. Ind. 2016) (substitution clause saved Indianapolis sign code)
- **Rzadkowski v. Township of Metamora**, ___ F. Supp. ___, 2016 WL 2756518 (E.D. Mich. May 12, 2016) (upholding township billboard restrictions to particular districts, sizes, nonconformities BUT finding unconstitutional prior restraint due to unclear approval criteria)

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Event Signs

- **Act Now to Stop War and End Racism Coal. v. Dist. of Columbia**, 846 F.3d 391 (D.C. Cir. 2017) (regulation requiring signs related to a specific event to be removed within 30 days of the event upheld)

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Artwork

- **Cent. Radio, Inc. v. City of Norfolk**, 811 F.3d 625 (4th Cir. 2016)
 - Exemption for “works of art which in no way identify or specifically relate to a product or service.”
 - Challenge to ordinance related to anti- eminent domain mural



Source: (1/10)

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Architectural Review

- **Burns v. Town of Palm Beach**, No. 17-CV-81152, 2018 WL 4868710 (S.D. Fla. Jul. 13, 2018)
 - Beachfront home found not to constitute expressive conduct
 - No First Amendment analysis

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Resources

Rocky Mountain Sign Law

www.rockymountainlaw.com



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Resources

Local Government, Land Use, and the First Amendment: Protecting Free Speech and Expression (ABA 2017)



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Additional Resources

- Daniel Mandelker, John Baker and Richard Crawford, *Street Graphics and the Law*, revised edition (American Planning Association, forthcoming 2015)
- Brian J. Connolly & Alan C. Weinstein, *Sign Regulation after Reed: Suggestions for Coping with Legal Uncertainty*, 47 Urb. Law, 563 (2015)



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Questions and Answers



Source: Royalty

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Practical Suggestions for Avoiding Legal Challenges under Reed v. Gilbert

Don Elliott, FAICP
Director, Clarion Associates

Practical Suggestions



- 28-4.10 Sign Standards
- Purpose
 - Applicability
 - Prohibited Signs
 - Signs that Do Not Require a Permit
 - Regulations Based on Land Use and Area
 - Regulations Based on Type of Sign

Practical Suggestions



Source: aicodisb.org

- Review your sign code NOW for potential areas of content bias.
- If fixing your sign code will take a while, so coach permit and enforcement staff to avoid enforcing content-based distinctions.

Practical Suggestions

3. Add a **strong severability clause** if you don't have one.
 - Yes, even if you have a general severability clause for the entire zoning code
4. Be sure your code contains a **substitution clause**.
 - A non-commercial message may be substituted for a commercial message on any sign permitted by this code



Source: dslj.com

Message Substitution

Substitution of Messages Allowed

A protected noncommercial message of any type may be substituted, in whole or in part, for the message displayed on any sign for which the sign structure or mounting device is legal without consideration of message content. This provision applies to all signs, including outdoor general advertising devices (billboards), allowed under this Division 10.10. Such substitution of message may be made without any additional approval, permitting, registration or notice to the City.

Practical Suggestions

5. Make sure your sign code has a strong **purpose statement** – including compliance with content neutrality
6. Tie the purpose statement and regulatory approach to **data and studies**, wherever possible.
7. Review **exemptions** and **exceptions**, and reduce wherever possible.



Sign Code Exemptions

The following signs and displays are exempted from this Chapter:

- (1) Any sign displaying a public notice or warning required by a valid and applicable federal, state or local law, ordinance or regulation;
- (2) Flags of any nation, government or non-commercial organization, subject to the provisions of Paragraph 13.09.040(5) below;
- (3) Any sign inside a building that is not attached to the window or door and is not legible from a distance of more than three (3) feet beyond the building on which the sign is located;
- (4) Any work of art that does not display a commercial message or have a commercial representation;
- (5) Any religious symbol that does not display a commercial message;
- (6) Any traffic control sign, such as "STOP" or "YIELD," located on private property that meets applicable governmental standards pertaining to such signs and does not display a commercial message.

Sign Code Exemptions

- (7) Signs erected by state or local government agencies or their contractors, or public utility companies to facilitate the construction, maintenance or operation of transportation facilities or to warn of danger or hazardous conditions, including signs indicating the presence of underground cables, gas lines and similar devices.
- (8) Holiday and community special event decorations that do not display a commercial message;
- (9) Signs on athletic fields and scoreboards intended for on-premises viewing; and
- (10) Kiosks and similar sign structures used for the posting of flyers, posters and notices of a general nature;
- (11) Signs located on public parks, public trails and designated public open space, including any such parks, trails and open space open to the public, whether owned and maintained by the Town or by another entity;
- (12) Signs located on any other Town-owned property not specifically addressed in this Chapter.

Sign Code Exemptions (simplified)

- The following signs are exempted from this Chapter:
 - Signs placed, constructed, erected or displayed by any entity of federal, state, or local government, or signs required to be placed, constructed, erected or displayed by such entity(ies), including but not limited to public notice signs and any sign which conforms or is required by law to conform to the *Manual of Uniform Traffic Control Devices*.
 - Any sign located on a parcel, inside or outside of a structure, which is either invisible or illegible from any public right-of-way, public property, or other parcel of property.
 - In any mixed-use or non-residential zone district, any sign no more than three square feet in area and with a maximum height not more than three feet above grade, that is not visible or legible from a public right-of-way.

Practical Suggestions

8. Reduce the number of sign categories – particularly for non-commercial signs
9. Change sign regulation vocabulary to think more about the function, less about the message.



Old Sign Categories

Sign Tables

Sign Type	Sign Location	Sign Area (sq. ft.)	Sign Height (feet)	Sign Color (Background/Text)	Sign Structure (Height/Width)	Sign Illumination
Over-the-Door Party Invitations	Over the entrance to the home	2	n/a	n/a	n/a	n/a
Neighborhood Watch Signs	On a window or entrance	32	Pre-emptive	n/a	Pre-emptive	n/a
Residential Signs (Real Estate, etc.)	On a sign post in building	4	n/a	n/a	4' x 4'	n/a
Residential Signs (Real Estate, etc.)	On a sign post in building	32	8	n/a	n/a	n/a

Old Sign Categories

- Political Signs
- Private Parking Directional Sign
- Real Estate Project Directional Sign
- Real Estate Sign
- Special Event Signage
- Special Sale Sign
- Community Event Sign
- Construction Sign
- Development Sign
- Directional Sign
- Garage Sale Sign
- Grand Opening Sign
- Historic Marker
- Informational Sign

Sample New Sign Categories

Classification based on structure

- Attached permanent sign
 - e.g., wall, awning, window
- Detached permanent sign
 - e.g., pole, monument
- Attached temporary sign
 - e.g., window sign, poster, banner attached to building
- Detached temporary sign
 - e.g., site sign, swing sign, yard sign, banner

Practical Suggestions

11. If you allow LED signs (electronic message centers), consider the emerging standard parameters
- No moving images (except maybe in pedestrian areas)
 - Max 6-8 images/minute
 - Change images in < .25 sec
 - Auto shutoff if short/lightning
 - Adjust to ambient light
 - Max ≤ 5000 nits day and ≤ 500 nits night



Practical Suggestions

12. Focus on what you can enforce - and want to enforce:
- That will make a real difference to the character of the community; and
 - That is worth the staff time available to enforce it
- Often general number, size, and height restrictions make more difference to community character than other controls



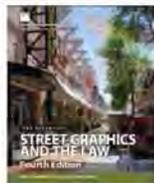
Practical Suggestions

13. Think about new/difficult types of commercial signs that you may or may not want to regulate.
- Projected light displays
 - Signs inside stores clearly designed to be read from outside
 - Ice machine, dumpster (and other) wraps



Additional Resources

- Daniel Mandelker, John Baker and Richard Crawford, *Street Graphics and the Law*, revised edition (American Planning Association, forthcoming 2015)
- *Local Government, Land Use and the First Amendment*, Brian Connolly, ed. (ABA, forthcoming 2016)
- Brian J. Connolly & Alan C. Weinstein, *Sign Regulation after Reed: Suggestions for Coping with Legal Uncertainty*, 47 Urb. Law 1569 (2015)



A SIGN (CODE) OF THE TIMES

Victoria L. Pollock, Esq.
Rosenblum Crane LLP

2015

- Reed vs. Town of Gilbert – Requires “content neutrality”. A local government cannot vary sign regulations according to message type (political, ideological, directional, etc.).



What can a municipality regulate?

- Rules regarding the size of signs. The Town of Pleasant Valley regulates the size of permanent signs based on the location and make of the sign. The permitted size of a wall sign is based on the size of the establishment’s principal façade, while a monument sign can be no larger than 16 square feet on each side and no taller than six feet.

What can a municipality regulate?

- Rules regarding the lighting of signs. The Village of Fishkill has adopted different sign regulations for different zoning districts within the Village. Internally illuminated signs are permitted along Route 9 and I-84 but prohibited within the historic main street area.

What can a municipality regulate?

- Rules regarding signs with fixed messages and electronic signs with messages that change. The Town of Poughkeepsie prohibits electronic message display signs (EMDs) in all residential districts, hamlet districts and in certain commercial districts. Where such signs are permitted, the Town regulates the distance between EMDs, the location of EMDs, and requires a message to be displayed for no less than 12 hours without change.

What can a municipality regulate?

- Rules regarding the placement of signs on public and private property. The Town of Red Hook prohibits signs in the public right of way.

What can a municipality regulate?

- Rules regarding on-premises and off-premises signs. The Town of LaGrange prohibits billboards in all district. A Billboard is defined as "an off-premises sign that is lease or rented for profit."

What can a municipality regulate?

- Rules restricting the total number of signs permitted per mile of roadway or frontage. The Town of Hyde Park regulates signs on establishments within a shopping center. Each establishment may have a sign no more than one square foot for each lineal foot that the establishment occupies, up to 100 square feet.

What can a municipality regulate?

- Regulations regarding building materials and moving parts. The Town of Dover Zoning Law prohibits signs from containing or consisting "of any moving, rotating, or revolving device."

What can a municipality regulate?

- Rules regarding permanent versus temporary signage.

What can a municipality regulate?

- Rules imposing time restrictions on signs advertising a one-time event or allowing signs leading up to an election or other event, so long as signs of any topic whatsoever are permitted.

2015 to Present

Many municipalities have not taken any action to update their sign regulations.

Content based example

- Permitted signs. The following types of signs are permitted, provided that they comply with all other provisions of this chapter:
 - (a) Awning and canopy lettering, as regulated in § 220-19E
 - (b) Temporary signs and banners related to political, civic, philanthropic, educational or religious activities. Such signs shall be limited to 20 square feet in area and to display for a period not exceeding 45 days.
 - (c) Directional signs larger than two square feet, as otherwise defined under exempt signs in § 220-19G
 - (d) Externally illuminated signs, as regulated in § 220-19D(d)



Village of Fishkill

- The Village of Fishkill proactively amended sign regulations in 2018 to comply with the *Reed* Decision
- Changed the definition of sign to exclude a "government sign"

"GOVERNMENT SIGN"

A sign that is constructed, placed or maintained by the federal, state or local government or a sign that is required to be constructed, placed or maintained by the federal, state or local government either directly or to enforce a property owner's rights.





Government Signs do not count towards total signage.

TEMPORARY SIGNS

- "Election Signs"

Up to 25 square feet of temporary yard and lawn signs displayed only during election campaigns, drives or special events shall be allowed per business or residence. Signs shall be allowed in any zoning district and must be removed within five calendar days after the completion of the occasion for which the signs were installed. Furthermore, signs may not be installed earlier than 30 days prior to the first date of the special event, drive or election being publicized. No permit shall be required for such sign.

Signs in Residence Districts

The previous version of the sign regulations did not permit signage in residential districts except for:

- 1) An identification sign
- 2) A sign identifying a home occupation
- 3) Signs for other permitted uses.

The Code was amended to permit "One sign not exceeding two square feet in area" on every residential lot.



Town of Hyde Park

- Old Law:
- Property signs not exceeding two square feet in area and bearing only the property name, numbers, postal route box numbers, 911 emergency address numbers, image or logo, or names of occupants of the premises.

Town of Hyde Park

- New Law:
- Property identification signs not exceeding two square feet in area such as signs bearing only the property name, numbers, postal route box numbers, 911 emergency address numbers, image or logo or names of the occupants of the premises.



Town of Hyde Park

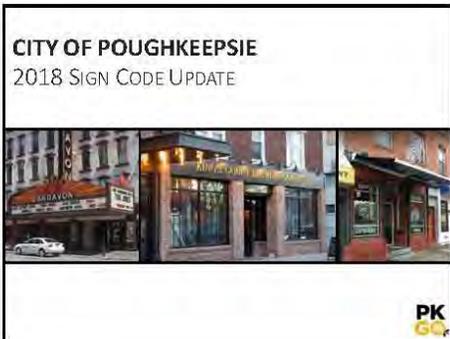
Other temporary signs. Other temporary signs may be erected on property within any zoning district subject to the following requirements:

- Such signs shall not consist of a sign prohibited by § 109-26.4;
- Such signs shall not exceed six (6) square feet in total area;
- Such signs shall not be displayed for more than 60 days total in any one calendar year on any one property;
- Portable signs are permitted by the placement of the same shall not be for longer than 60 days total per year;
- No lighting of such temporary signs is permitted;
- No more than one temporary sign may be displayed on a property at any one time.

CONCLUSION

- Communities should review their sign regulations to treat all non-commercial speech the same way
- Avoid regulations based on message content or category (directional vs non-profit vs election) and instead focus on characteristics of the sign (temporary vs permanent, size, materials and duration).
- Consider whether content based regulations would pass strict scrutiny test (ie, identification signs)







PROCESS

- Vetted 2010 sign code as baseline
- "What do we like" tour
- Reviewed regulations of neighboring communities
- One-on-one with Planning Board members
- Case law rewrites

PK
GO

CHALLENGES / ADVICE

- ✓ Attend this session at Pace Conference
- Acknowledge the process as complex and involve experts
 - Temporary signs
 - Exempt & prohibited signs
- Only regulate what you are prepared to enforce
- Don't regulate if you don't have to

PK
GO

RESULTS

- Adopted in Summer 2018
- Cut down approval time to 7 days on average
- No sign applications before Planning Board or ZBA
- Upcoming education / compliance blitz on Main Street

PK
GO

BIOGRAPHIES:



Brian J. Connolly, Esq., *Otten Johnson Robinson Neff + Ragonetti PC*

Brian Connolly represents public- and private-sector clients in matters relating to zoning, planning, development entitlements and other complex regulatory issues. Brian's practice encompasses a broad range of land use matters including zoning compliance, rezonings and other regulatory amendments, planned-unit developments, development agreements, private covenants and restrictions, land use and zoning litigation, initiatives and referenda associated with land use approvals, and real estate transactions. Brian has received national recognition for his work on First Amendment issues associated with local government regulation, including signs and outdoor advertising, and his work on fair housing matters in local planning and zoning, particularly in the area of housing for people with disabilities. Prior to practicing law, Brian was an urban planner in the planning department of Westchester County, New York.



Donald L. Elliott, Esq., FAICP, *Director, Clarion Associates, LLC*

Donald L. Elliott is a Director with Clarion Associates, LLC, a land use consulting firm with offices in Denver and Chapel Hill, and affiliate offices in Chicago, Cincinnati, and Philadelphia. Don's practice focuses on land planning and zoning, growth management, and international land and urban development issues. He has also advised numerous local governments in Russia on land use issues, served as the Democracy and Governance Advisor to the United States Agency for International Development in Uganda for two years, and performed independent research on Indian urbanization and slum upgrading in Delhi for two years. He has managed planning and zoning projects that have been state level award recipients from the American Planning Association in Colorado, Arizona, and Pennsylvania. Don teaches graduate level course on Land Use Regulation at the University of Colorado at Denver School of Architecture and Planning and is a member of the Denver Planning Board. He is the author of *A Better Way to Zone* (Island Press 2008), co-author of *The Rules that Shape Urban Form* (APA 2012) and *The Citizen's Guide to Planning* (APA 2009) and has served as the editor of *Colorado Land Planning and Development Law* for over 20 years. Don has a bachelor's degree in Urban Planning and Policy Analysis from Yale University, a law degree from Harvard Law School, and a master's degree in City and Regional Planning from the John F. Kennedy School of Government at Harvard.



Natalie Quinn, *Senior Planner, City of Poughkeepsie*

Natalie Quinn is an urban planner specializing in transit-oriented development policy, neighborhood revitalization, and community-engagement techniques. She has diverse experience working on urban planning projects on both coasts of the US and around the world.

Natalie joined the City of Poughkeepsie as Senior City Planner in January 2018. Natalie is responsible for guiding Poughkeepsie's

growth and development on both the macro and micro scale. She has led long-range strategic planning efforts for the city through the implementation of the Poughkeepsie Innovation District policy and zoning code update, revisions to city-wide sign regulations, and an update to the city's Local Waterfront Revitalization Program ("LWRP"). Before joining the City of Poughkeepsie, Natalie worked in the private, public and non-profit planning sectors in New York City. As Junior Associate at Kevin Dwarka Land Use & Economic Consulting, Natalie provided municipal clients throughout the New York Metro Region with expert regulatory and policy analysis focused on the rejuvenation of commercial districts, achievement of smart growth principles, and adoption of transit-supportive land use policies.



Victoria L. Polidoro, Esq., *Rodenhausen Chale LLP*

Victoria L. Polidoro is a partner in the firm and concentrates her practice in environmental, land use, and municipal law. She currently serves as planning board attorney or zoning board attorney, or both, for the Towns of Dover and Hyde Park and the Villages of Fishkill and Red Hook. She has experience representing public and private clients in connection with a wide variety of matters including planning and zoning matters, contracts and grant agreements, environmental compliance, drafting and preparation of local laws, special district proceedings, intermunicipal agreements, easement and real estate matters, and historic preservation issues. Ms. Polidoro studied at the Pace Land Use Law Center throughout law school and was a senior associate on the Pace Environmental Law Review. She has participated in the Land Use Law Center's Land Use Leadership Alliance Training Program as a facilitator and lecturer during its training programs for local officials. In 2014, she was selected for the Upstate New York Super Lawyers Rising Star list.

Pipes, Pumps & Plants: Developing Infrastructure to Grow Communities¹

The development of mixed-use smart growth communities is a challenge for those without the proper infrastructure to support it. Developing and maintaining water and sewer infrastructure to support expanding populations takes innovative planning, tailored regulations, and funding! This panel will discuss the strategies that can be employed by local governments to develop, design, support, and finance infrastructure in new and existing dense development.

VIDEO OF PRESENTATION:

https://mediaspace.pace.edu/media/Sustainable+Development+as+a+Market+Driver+-+Pipes%2C+Pumps+and+Plants.mp4/1_c4zy9stu/31792771



Rain Garden in Leominster, Mass.

BIBLIOGRAPHY OF RESOURCES:

Water Infrastructure Financial Leadership: Successful Financial Tools for Local Decision Makers, United States Environmental Protection Agency (Sept. 2017)

This document provides local governments and community leaders with steps, tools, and resources they can use to navigate the process of investing in and financing water infrastructure. It provides examples of communities that have had success with engaging stakeholders, bringing capital to the community, and developing infrastructure.

https://www.epa.gov/sites/production/files/2017-09/documents/financial_leadership_practices_document_final_draft_9-25-17_0.pdf

Can Chen and John R. Bartle, *Infrastructure Financing: A Guide for Local Government Managers*, Public Administration Faculty Publications 77 (2017)

This article discusses the different types of infrastructure that communities can invest in, including: transportation, government buildings, water facilities, schools, and healthcare

¹ Thank you to Pace Law student Amy O'Brien for her contribution to this report.

facilities. It discusses trends in financing, infrastructure spending, and available state and federal grants.

https://digitalcommons.unomaha.edu/cgi/viewcontent.cgi?article=1076&context=pubadf_acpub

Sustainable Design & Green Building Toolkit for Local Governments, United States Environmental Protection Agency (June 2013)

This document assists local governments in encouraging and incorporating sustainable design practices. It provides guidance on implementing resource preservation, water conservation, pollutant control, and stormwater management, among other topics.

https://www.epa.gov/sites/production/files/2014-09/documents/sustainable-design-permitting-toolkit-06_27_13_formatted.pdf.

Clean Water State Revolving Fund (CWSRF), United States Environmental Protection Agency

The Clean Water State Revolving Fund program is a federal-state partnership that provides communities a permanent, independent source of low-cost financing for a wide range of water quality infrastructure projects. This site provides guidance to local governments regarding how the program works, eligibility requirements, and application procedures.

<https://www.epa.gov/cwsrf>.

Drinking Water State Revolving Fund (DWSRF), United States Environmental Protection Agency

The Drinking Water State Revolving Fund program is a federal-state partnership to help ensure safe drinking water. The program provides financial assistance to support water systems and state safe water programs. This site provides guidance to local governments regarding how the program works, eligibility requirements, and application procedures.

<https://www.epa.gov/drinkingwatersrf>.

Environmental Facilities Corporation, New York State

The Environmental Facilities Corporation is a public benefit corporation that provides financial and technical assistance primarily to municipalities by providing low-cost financing for their water quality infrastructure projects. This site provides information regarding EFC's grant programs, loan programs, and application procedures.

<https://www.efc.ny.gov/>.

Water Finance Clearinghouse, United States Environmental Protection Agency

The Water Finance Clearinghouse is a database that local governments can use to search for all available water infrastructure funding in their area.

<https://ofmpub.epa.gov/apex/wfc/f?p=165:1>.

Community Solutions for Stormwater Management: A Guide for Voluntary Long-Term Planning (Draft), United States Environmental Protection Agency (Oct. 2016)

This document assists states and local governments in developing new or improving existing stormwater management plans to integrate economic development, infrastructure investment, and environmental compliance.

https://www.epa.gov/sites/production/files/2016-10/documents/draftlongtermstormwaterguide_508.pdf.

What is Green Infrastructure, United States Environmental Protection Agency

Green infrastructure is a cost-effective, resilient approach to managing stormwater and impacts of extreme weather. This site provides information and guidance on a variety of green infrastructure elements that local governments can incorporate to reduce the detrimental effects of excessive stormwater.

<https://www.epa.gov/green-infrastructure/what-green-infrastructure#rainwaterharvesting>.

Planning for Sustainability: A Handbook for Water and Wastewater Utilities, United States Environmental Protection Agency (Feb. 2012)

This document is designed to assist state and local governments in developing comprehensive plans for sustainable water infrastructure, as well as developing plans for long-term maintenance of existing infrastructure.

<https://www.epa.gov/sites/production/files/2016-01/documents/planning-for-sustainability-a-handbook-for-water-and-wastewater-utilities.pdf>.

BIOGRAPHIES:

John Benvegna, PG(NU), CPG, WSP USA

John Benvegna is a Hydrogeologist and former partner of Leggette Brashears & Graham Inc., which is now part of WSP USA. He is a licensed professional geologist in the State of NY and he manages WSP's White Plains, NY office. Mr. Benvegna has over 30 years of experience providing environmental consulting services to public and private clients related to groundwater contamination and groundwater supply development. Over the course of his career he has developed and tested water supplies for numerous projects in the Hudson Valley including golf courses, residential developments and municipalities. Many of these projects were completed in support of environmental impact statements, required in accordance with the NY State Environmental Quality Review Act (SEQRA) and Mr. Benvegna provided hydrogeologic expertise and public testimony as part of a multidisciplinary project team.



Mary Beth Bianconi, Delaware Engineering, D.P.C.

Mary Beth Bianconi is a Partner and Senior Project Manager at Delaware Engineering, D.P.C. with over 25 years of experience as a consultant to public and private entities with a focus on infrastructure and economic development. She applies her expertise to conceptualizing, permitting and financing municipal infrastructure projects as well as aiding community planning and zoning boards. Ms. Bianconi is practiced in the application of the State Environmental Quality Review Act (SEQRA) as well as the National Environmental Policy Act (NEPA). A frequent speaker on infrastructure, land use and planning topics, she holds a BA from SUNY Geneseo and a Master of Regional Planning from SUNY Albany. Ms. Bianconi is a graduate of Hudson Valley Pattern for Progress Fellows Program and is a member of the Board of Directors of Hudson Valley Pattern for Progress.



Michèle R. Greig, AICP Four Corners Planning

Michèle R. Greig, AICP is the principal planner with Four Corners Planning, a land use consulting firm. She has over 20 years of experience in environmental review, land use planning and zoning. She currently serves as the planning consultant for the Town of Red Hook, the Village of Tivoli, and the Village of Wappingers Falls. She assisted the Town of Red Hook in the development of its Centers and Greenspaces Code Amendments designed to protect agricultural lands in the Town and permit compact, walkable neighborhoods adjacent to the Village. The project received the New York State Planning Federation's Pomeroy Award for Zoning Achievement and the Northern Dutchess Alliance's Charting Our Course Award. Michèle graduated summa cum laude from the University of Toronto with a bachelor's degree in English, and holds an MPhil from Oxford University and a PhD from Johns Hopkins University. She is a graduate of the Land Use Leadership Alliance Training Program, and a recipient of the Pace University Land Use Law Center's Groundbreaker's Award.



Kenneth Kearney, *Kearney Realty & Development*

Kenneth Kearney is the founder and president of The Kearney Realty & Development Group, a diversified real estate development and property management firm based in Carmel, New York. Mr. Kearney's nearly 23-year career in real estate development features a consistent string of accomplishments resulting in completed, successful projects located throughout the Hudson Valley in New York State. To date, The Kearney Realty & Development Group has built commercial and residential projects valued at more than \$100 million and is currently at some stage of development in projects worth another \$50 million. Known by friends and associates as "a businessman with a big heart," Mr. Kearney brings experience, tenacity, a strong work ethic, and solid professional relationships to any project he undertakes.

Mr. Kearney began his development career in the early '90s renovating historic, vacant, single family homes in the City of Beacon (Dutchess County) and the City of Newburgh (Orange County). In each case, Mr. Kearney forged public/private partnerships with city and county government agencies that ultimately became a recurring theme of his development strategy for addressing the adaptive re-use of challenging urban properties. Similar projects were successfully undertaken in the Town of Catskill (Greene County) and in Connecticut. These early projects set the tone for the impressive undertakings that were to follow, including:

- The Garden Street Revitalization Project (1997-2000) - \$5 million multi-phased initiative to restore a blighted and predominantly vacant city block in the City of Poughkeepsie (Dutchess County). Financing included city, New York State, nonprofit and private sources.
- Wynwood Oaks Development Project (1999-2002) - \$10.5 million, 80-unit affordable senior apartment complex in the City of Yorktown (Westchester County).
 - This project began a new phase for Kearney, as the company took ownership, development and overall project management responsibilities for the entire development.
- Red Hook Commons (2006-2014) - \$20 million project combining senior housing, commercial and market rate development property in Red Hook, NY (Dutchess County), a county-owned brownfield site. Kearney worked with the state Department of Environmental Conservation (DEC), the Brownfields Remediation Program, and the Village of Red Hook to reclaim and find a positive new use for the previously abandoned and contaminated property. The senior housing is complete and already has tenants.
- Pendell Commons (\$17 million) in The Town of Poughkeepsie (Dutchess County) and Liberty Commons (\$16 million) in the Village of Liberty (Sullivan County) - Collectively produce 146 units of senior and workforce housing, designed to provide rental apartments for income-eligible families and seniors from the surrounding communities.

- The Mews at Baldwin Place (2010) - \$21 million, 73-unit affordable senior housing project in Somers, NY (Westchester County), in partnership with the Housing Action Council.
- Poughkeepsie Commons (2012) - \$14 million, 72-unit in the City of Poughkeepsie, designed to serve special needs populations, including frail elderly, low-income elderly, and disabled, homeless veterans.
- Highridge Gardens (2015) – in partnership with Rehabilitation Support Services, these two residential buildings located in the City of Poughkeepsie will contain 50 studio apartments with units set aside as supportive housing for people who have mental disabilities and twenty four (24) one bedroom units that will be affordable work-force, non-senior housing.
- The Mews at Baldwin Place II (2015) – The second phase of The Mews at Baldwin Place, designed to complement the first phase. In partnership with Housing Action Council, two residential buildings located in the Town of Somers containing 75 apartments for low-income seniors.
- The Hamlet at Pawling (under development) – in partnership with Castagna Realty - a mixed use, market rate affordable senior housing project on Route 22 in Pawling. This development will yield over 300 units of senior housing and 200,000 square feet of office and medical office space.

Recently, The Kearney Realty & Development Group has partnered with Abilities First, Inc. on The Mews at Hopewell Junction, a six building project consisting of 89 affordable workforce housing units in the Town of East Fishkill. OPWDD has committed to grant subsidies and supportive services for 22 of the units.

Since 2002, The Kearney Realty & Development Group has successfully developed over 800 units of senior housing and affordable senior/work force housing throughout the Hudson Valley.

In 2009, Kenneth Kearney was recognized by the nonprofit Mid-Hudson Pattern for Progress as its “Hudson Valley Developer of the Year.”

Kenneth is a board member on two non-for-profit organizations, Patterns for Progress and Hudson Valley Community Foundations. Kenneth and his family are involved in numerous philanthropic ventures in the areas in which he works.

A native of Mahopac, Kenneth and his wife Jean, continue to reside there.



Gerhard M. Schwalbe, P.E., *Divney Tung Schwalbe, LLP*

Jerry Schwalbe is a partner in multidisciplinary planning and engineering firm Divney Tung Schwalbe, LLP, whose offices are located in downtown White Plains. Jerry is a licensed civil engineer with over 40 years of experience in site development engineering, municipal infrastructure design, project management and site development projects. Jerry's knowledge of site and utility design and their interrelationships with environmental issues and zoning requirements is invaluable in assisting clients to determine the most efficient and cost-effective means of utilizing their properties. Jerry is principal-in-charge of the firm's engineering services provided for Acadia Realty's Shopping Center in the Town of Cortlandt and Westchester Medical Center campus improvements in Valhalla. Other noteworthy projects include Westchester's Ridge Hill, a mixed-use development in Yonkers, New York, for Forest City Ratner Companies and the LifeTime Fitness facility in Harrison, New York. Jerry provides guidance in the design and documentation of site infrastructure in support of LEED-designated projects and directs and coordinates the processing of their clients' stormwater management plans, road and utility permits and subdivision applications with municipal boards and state agencies. He has an Associate in Applied Science from Westchester Community College and a Bachelor of Engineering in Civil Engineering from Manhattan College. Jerry is a licensed professional engineer in New York, New Jersey and Connecticut. He serves as a vice chairman in his town's Inland Wetlands Commission in Connecticut and is a member of ASCE and NSPE. He lives in Fairfield County Connecticut with his wife Barbara and daughter Anna.

Recent Developments in Land Use Law¹

This section will discuss the implications of recent decisions in land use law with perspectives ranging from local New York issues to national land use issues decided by the Supreme Court. The panel is composed of national legal experts who will discuss the holdings and implications of the past year's decisions in Land Use law.

VIDEO OF PRESENTATION:

https://mediaspace.pace.edu/media/Sustainable+Development+as+a+Market+Driver+-+Recent+Developments+in+Land+use+Law.mp4/1_h0uqwsos/31792771

BIBLIOGRAPHY OF RESOURCES:

Law of the Land Blog

- This blog, maintained by Touro College Jacob D. Fuchsberg Touro Law Center Dean and Professor of Law Patricia Salkin, is designed to provide a forum for the discussion of current laws, policies and decisions that affect the use of land. It highlights new court decisions, new state and federal laws and policies, and actions at the local government level that guide and/or impact land use and community development.
- <https://lawoftheland.wordpress.com/>

Land Use Prof Blog

- This blog is a member of the Law Professor Blogs Network. It is maintained by the following land use law professors: Matthew J. Festa (South Texas), James Kelly, Jr. (Notre Dame), Stephen R. Miller (Idaho-Boise), Jessica Owley (Buffalo), Kenneth A. Stahl (Chapman). The blog catalogs news and developments in land use law across the country.
- https://lawprofessors.typepad.com/land_use/

The following cases were discussed by the panelists at the conference. They are discussed further in the Overview Section:

- *Knick v. Twp. of Scott*, 862 F.3d 310 (3d Cir. 2017), cert. granted in part, 138 S. Ct. 1262 (2018).
- *Weyerhaeuser Co. v. United States Fish & Wildlife Serv.*, 139 S. Ct. 361 (2018).
- *Board of County Commissioners of Teton County v. Mackay Invs., LLC*, 413 P.3d 1120 (Wyo. 2018).
- *Valencia v. City of Springfield, Illinois*, 883 F.3d 959 (7th Cir. 2018).
- *Gerald Emmett Beard v. City of Ridgeland*, 245 So. 3d 380 (Miss. 2018).
- *Winfield v. City of New York*, 2017 WL 5664852 (S.D.N.Y. Nov. 27, 2017).
- *Dabbs v. Anne Arundel County*, 232 Md. App. 314 (2017).
- *Filippi v. Board of County Commissioners of Torrance County*, 424 P.3d 658, 2018 - NMCA- 050 (2018).

¹ Thank you to Pace Law student Michael Cavanaugh for his contribution to this report.

- *Charter Twp. of York v. Miller*, 322 Mich. App. 648 (2018)
- *Bovee v. Town of Hadley Planning Bd.*, 160 A.D.3d 1102 (N.Y. App. Div. 2018)

POWERPOINT PRESENTATIONS:

Recent Developments in Land Use Law

Moderator:
Michael D. Zuck
Professor, Zorn & Steinmetz



Panelists:

Michael Allan Wolf
Esq., Professor of Law & Richard E. Nelson Chair in Local Government Law, University of Florida Levin College of Law

Donald E. Elliott
FAICP, Director, Clutter Associates, LLC

Dwight H. Merriam
FAICP, Esq., Attorney at Law, Hartford, Connecticut

John H. Nelson
Esq., Counsel, Land Use Law Center & Professor of Law, Elizabeth Haas School of Law at Pace University

Michael Allan Wolf
*Esq., Professor of Law
 Richard E. Nelson Chair in Local Government Law
 University of Florida Levin College of Law*



Case Law Update: Knick and a Trick

Michael Allan Wolf
*Richard E. Nelson Chair in Local Government Law
 University of Florida Levin College of Law*

*17th Annual Land Use and Sustainable Development Conference:
 Sustainable Development as a Market Driver
 Pace Law School
 December 6, 2018*



I. Knick v. Twp. of Scott, 862 F.3d 310 (3d Cir. 2017), cert. granted in part, 138 S. Ct. 1262 (2018)



I. Knick v. Twp. of Scott, 862 F.3d 310 (3d Cir. 2017), cert. granted in part, 138 S. Ct. 1262 (2018)

Whether the Court should reconsider the portion of *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 194-96 (1985), requiring property owners to exhaust state court remedies to ripen federal takings claims, as suggested by Justice Alito's dissent in *San Remo Hotel, LP v. City and County of San Francisco*, 545 U.S. 282, 340 (2005) (Rehnquist, C.J., joined by O'Connor, Kennedy, and Thomas, JJ., concurring in judgment).

I. Knick v. Twp. of Scott, 862 F.3d 310 (3d Cir. 2017), cert. granted in part, 138 S. Ct. 1262 (2018)

[Justice Alito:] I thought your claim was that there is a violation of the takings clause and you can, therefore, bring a suit under [42 U.S.C. §] 1983 when the state does something that constitutes a taking but at the same time says we're not paying you anything for this.

Now it's not a question of when they would have to pay once they've admitted that there's a taking, but when they do something that constitutes a taking, and they say, no, this isn't a taking at all, and therefore, you're getting zero, which I understand to be your claim here, then you can go directly to federal court and bring an action under 1983.

And to require you to go to state court before you do that is essentially to require you to exhaust state remedies before you can bring a 1983 claim, which is never required under 1983.

This case is restored to the calendar for argument. The parties and the Solicitor General are directed to the letter brief, not to exceed 10 pages, addressing petitioner's alternative argument for vacatur, discussed at pages 12-15 and 40-42 of the transcript of oral argument and to footnote 14 of petitioner's brief on the merits.

I. Weyerhaeuser Co. v. United States Fish & Wildlife Serv., 2018 U.S. LEXIS 6932, 2018 WL 6174253 (Nov. 27, 2018)



"Only the 'habitat' of the endangered species is eligible for designation as critical habitat. Even if an area otherwise meets the statutory definition of unoccupied critical habitat because the Secretary finds the area essential for the conservation of the species, Section 4(a)(3)(A)(i) [of the Endangered Species Act] does not authorize the Secretary to designate the area as critical habitat unless it is also habitat for the species."

II. Bd. of County Comm'rs v. Mackay Invs., LLC, 413 P.3d 1120 (Wyo. 2018)



II. Bd. of County Comm'rs v. Mackay Invs., LLC, 413 P.3d 1120 (Wyo. 2018)

In 2015, Mackay transferred undivided tenant in common fee ownership interests in JH Fireside Resort to twenty-one separate entities (FS JH 1 LLC through FS JH 21 LLC). Mackay retained an undivided tenant in common fee ownership interest in the campground. As a result, the JH Fireside Resort is now owned by twenty-two separate entities, each as a tenant in common with an undivided interest in the whole. After a similar transaction, Buffalo Valley Fireside Resort is also owned by twenty-two separate entities (Mackay and FS BV 1 LLC through FS BV 21 LLC) as undivided tenants in common. . . .

Section 6.1.5.D.2.f of the Teton County Land Development Regulations provides as follows: "Each of the compounds located at a campground shall be owned by the same entity that owns the campground. No fractional ownership, tenancy or membership of compounds is permitted." The County asserts that the tenancy in common ownership of JH Fireside Resort and Buffalo Valley Fireside Resort violates this regulation. Mackay does not seriously dispute the violation, but contends that the regulation is illegal and unenforceable.

Don Elliott, FAICP
 Director, Clarion Associates
 Denver, CO



Potpourri for \$100

Valencia v. City of Springfield, Illinois (7th Circuit Court of Appeals)

- City defines a family as up to 5 unrelated adults, but requires 600 sq ft spacing for group homes
- Facility with 3 disabled adults locates across street from existing group home without knowledge
- City determines that facility #2 is a group home, not a family.
- When zoning enforcement action is filed based group home spacing, facility #2 applies for conditional use permit to legitimize the use, but is denied.
- Group home #2 files Fair Housing action claiming discrimination against three disabled adults in a way that it would not prohibit three non-disabled adults from living together – and that failure to grant a conditional use permit is denial of a request for "reasonable accommodation"
- Preliminary injunction applied for, granted, and appealed

HELD

- Group home #2 wins
- Likelihood of success on "failure to approve a reasonable accommodation" theory shown, so Court did not need to reach the "affirmative discrimination" claim.
- City claims nothing in statute affirmatively allows three non-disabled adults to live in a single family home, but Court notes not evidence of City ever enforcing this interpretation

Potpourri for \$100

Board v City of Ridgeland, Mississippi (MS Supreme Court)

- City adopts new comprehensive plan and rezones some land from C-4 to C-2A, limiting their uses because of potential traffic and proximity to residential districts
- City considers "Project Santa Claus" (i.e. CostCo), which wants a C-2A site but a fueling facility and other C-4 Uses
- City creates "Large Master Planned Commercial Development "brick-wrapped" to meet CostCo needs and adds it to the C-2A district, subject to Mayor and Council approval (but no objective criteria)
- City designates the area as a "cultural retail attraction" to qualify for state tax benefits.
- City claims changes are a "text amendment" that does not need quasi-judicial notice that would be required for a "re zoning", and neighbors file suit based on illegal spot zoning case

HELD

- Neighbors win
- Area had been rezoned only a few years ago and no evidence of changed conditions
- The proposed use created exactly the type of traffic impacts the rezoning to C-2A avoided
- This was effectively a rezoning designed to favor someone – i.e. illegal spot zoning

Potpourri for \$100

Winfield v City of New York (U.S. District Court)

- NYC's Community Preference Policy sets aside 50% of some affordable housing lotteries for homeless persons whose last known address is in the same community district.
- Plaintiffs file Fair Housing Act claim that this tends to perpetuate racial segregation, and that deciding to adopt and continue the policy is "disparate treatment" (i.e. intentional discrimination) based on race and also creates "disparate impacts" on black and Hispanic residents.
- Discovery requests are very broad, City "vigorously" objects, lots of compromises, discovery takes forever, Technology Assisted Review (TAR) ordered, and plaintiff complains that system is coded to search too narrowly in a variety of ways – plaintiffs generally win most of these arguments

HELD

- Split decision on discovery dispute
- "No evidence of gross negligence or unreasonableness" in NYC's search process – "Far from it"
- TAR process was trained properly and 20 mis-coded documents out of 10,000 is not too bad
- Plaintiffs cannot look under the hood of the TAR coding beyond agreeing a search terms
- But plaintiff showed enough evidence of mistakes to require NYC to produce 400 randomly selected documents that TAR coded as "non-responsive" to see if they are in fact responsive

Dwight H. Merriam FAICP, Esq.



Dabbs v. Anne Arundel County

Court of Appeals of Maryland
April 16, 2018



Dr. Dabbs

- County impact fee legislation with area-wide applicability Imposed predetermined impact fees from a schedule on anyone wishing to develop in the development district

- **Nollan (1987) and Dolan (1994)**
 - "Government may not condition the approval of a land-use permit on the property owner's/applicant's relinquishment of a portion of his property unless there is a nexus and rough proportionality between the government's demand and the effects of the proposed land development or use." (from Dabbs)



- **Koontz (2013)**
 - "Expanded *Nollan* and *Dolan* to apply to a monetary exaction for mitigation as a condition for issuing a land-use permit to enable development of an individual property." (from Dabbs)



- **Held: Not subject to Nollan and Dolan scrutiny**



http://www1.nyc.gov/assets/mehma/section/downloads/pd/du38e-840-report/3a18a_10qscm%20en%20report_2018.pdf

Lessons Learned



- Impact fees imposed by legislation applicable on an area-wide basis are not subject to higher scrutiny.

Filippi v. Torrance County, NM

Court of Appeals of New Mexico
May 22, 2018

- Cultivating cannabis in a "conservation district" intended to protect wildlife, among other resources




Charles G. (Jack) Oviatt
Ph.D. 1984, University of Utah
Professor of Geology

- Held: Exempt from conditional use permit regulation because it is a permitted use as "[c]ultivation and harvesting of plants and croplands" and not a commercial use under the zoning ordinance

Marijuana producers with highest net profits
Compassionate Distributors 5671, 654
R Greenleaf, 5671, 141
Natural RX, 5558, 285

Lessons Learned



- The history of determinations may be persuasive and good definitions can avoid many problems.

Twp. of York v. Miller

Court of Appeals of Michigan
January 22, 2018

- Outdoor cultivation of marijuana by registered caregivers

The MMMA governs medical marijuana use. Under MCL 333.2642(7)(a), the "medical use of marijuana is allowed under state law to the extent that it is carried out in accordance with the provisions of this act." MCL 333.2642(9) defined the term "medical use" to include:
the acquisition, possession, cultivation, manufacture, extraction, use, internal possession, delivery, transfer, or transportation of marijuana, or paraphernalia relating to the administration of marijuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

- Held: State marijuana law preempts



https://www.health.ny.gov/facilities/regulated_marijuana/docs/marijuana_legislation_impact_assessment.pdf

"It is important to understand that effective implementation and regulation will be an ongoing process that will take continued work from State and local officials. **Every step of a regulated marijuana program will require planning and regulation.** Thoughtful input will be required on the development of legislation, regulations, policies, and implementation strategies. In addition, precise technical guidelines will need to be developed in public health, public safety, and consumer protection to ultimately ensure the program is established with a harm reduction approach." [page 24 of the report]

Lessons Learned



- Preemption is, and will continue to be, an issue in marijuana legalization for state and local governments.

John R. Nolan Esq.,
Distinguished Professor of Law
Elisabeth Haub School of Law at Pace
University
Counsel to the Land Use Law Center



Do Plans Matter? Does Planning?

- The **"May – Shall" Dilemma**: all land use regulations shall be in conformance with....
- The Mystery of the Town of Hadley case. (2018)
- What is left of the **In Accordance With Requirement?**



"Plans Don't Matter, but Planning Does"
Dwight D. Eisenhower

The Military and the Judiciary Agree:



Plans are Important; Planning is Required.

Udell v. Haas Court of Appeals (1951) Confronting the Dilemma

- Commercial application in commercial zone denied.
- Zoning was immediately changed to residential.
- Applicant alleged lack of conformance with the comprehensive plan.
- But the Village had no comprehensive plan! What to do?
- Court created the **All Available Evidence Rule**

Dur Bar Realty v. Ithaca 3rd Dept. (1977)
How to Win Due Process Challenges

- Controversial land conservation district with no as-of-right uses allowed was challenged.
- Court held that the provisions relating to parcels within flood plan were in accordance with a well-considered plan and, therefore, **did not violate due process**
- Also:
 - not ultra vires**
 - Not impermissible delegation** of power to the ZBA

Bonnie Briar Syndicate, Inc. v. Mamaroneck Court of Appeals (1999)
How to Win a Regulatory Takings Case

- Town limited development on 400+ acres to recreational uses.
- Upheld because it was the result of extensive planning and studies.
- Court was impressed held that zoning **substantially advanced legitimate state interests** in furthering open space, recreational opportunities, and flood control, and thus did not result in a regulatory taking requiring just compensation.

Golden v. Ramapo, Court of Appeals (1972)
How to Benefit from Judicial Deference

- 100 page "master plan" -- four volumes to impress the court.
- Court sustained growth management based on the plan.
- Court **deferred to Town Board's judgment** because of the plan.

Rodgers v. Tarrytown, Court of Appeals (1959)
How to Win a Spot Zoning Case

- Application of floating zone to particular site **not spot zoning**.
- Because it was in conformance with the comprehensive plan.
- Affirmed: Matter of Star Property Holding, LLC. v. Town of Islip 2nd Dept. (2018).**

Bovee v. Town of Hadley Planning Board - 3rd Dpt. (2018)
Evidence of Comprehensive Planning in the Site Plan Law Itself

- No comp plan -- No zoning
- Only Site Plan Review Law
- Plaintiff challenged regulations as ultra vires: not in conformance with the comprehensive plan
- Court found evidence of comprehensive planning in the Site Plan Review Law itself: "protecting the health, safety, and welfare, creating a wholesome environment, and ensuring the optimum conservation of natural and people-related resources of the Town."

What is Left of the Comprehensive Plan, if Bovee is Good Law?
Just Planning is Enough.

According to the courts, the key factor is whether **forethought** has been given to the community's problems

More planning is better for greater certainty and all the legal benefits...but remember

The May/Should Dilemma and "All Available Evidence Rule."

Plan or Planning You Have a Choice!

A Formal Plan **makes it more likely** that the municipality:

- Will win Due Process Challenges,
- Will avoid ultra vires arguments,
- Can justify tough calls like managing growth, recreation only uses, or no as-of-right uses,
- Can make spot zoning legal, and
- Will win regulatory takings cases.

Plan or Planning You Have a Choice!

Just Planning May be Enough. What the Hadley Town Board Said (population 1971):

- The Site Plan Review Law will protect the public health, safety, and welfare, and
- Ensure optimum overall conservation, development, and use of natural and people-related resources,
- Without the need for zoning that prohibits land use activity.

Plan or Planning You Have a Choice!

The Lawyer and the Pompous Minister



Recent Developments in Land Use Law

Moderator:
Michael D. Zarin
Partner, Zarin & Steinmetz



Land Use Law Center 25th Anniversary Wine & Cheese Reception

- When?
 - Now
- Where?
 - 20-Rotunda
- What?
 - California Wines
 - Artisanal Cheeses
 - Charcuterie
 - Crackers
 - Fruit
 - Crostinis



BIOGRAPHIES:



Donald L. Elliott, Esq., FAICP, Director, Clarion Associates, LLC

Donald L. Elliott is a Director with Clarion Associates, LLC, a land use consulting firm with offices in Denver and Chapel Hill and affiliate offices in Cincinnati and Philadelphia. Don has assisted over 40 U.S. communities to update plans and regulations related to housing, zoning, subdivision, and land development. He has also advised numerous local governments in Russia on land use issues, served as the Democracy and Governance Advisor to the United States Agency for International Development in Uganda for two years, and performed independent research on Indian urbanization and slum upgrading in Delhi for two years. He has managed planning and zoning projects that have been state level award recipients from the American Planning Association in Colorado, Arizona, Indiana, New Mexico, and Pennsylvania. Don teaches graduate level course on Land Use Regulation at the University of Colorado at Denver School of Architecture and Planning and is a member of the Denver Planning Board. He is the author of *A Better Way to Zone* (Island Press 2008), co-author of *The Rules that Shape Urban Form* (APA 2012) and *The Citizen's Guide to Planning* (APA 2009) and has served as the editor of *Colorado Land Planning and Development Law* for over 20 years. Don has a bachelor's degree in Urban Planning and Policy Analysis from Yale University, a law degree from Harvard Law School, and a master's degree in City and Regional Planning from the John F. Kennedy School of Government at Harvard.



Dwight H. Merriam, Esq.

Mr. Merriam, of Hartford, Connecticut, has practiced law for four decades. He represents land owners, developers, governments, and individuals in land use matters. Dwight is a Fellow and Past President and of the American Institute of Certified Planners, a former Director of the American Planning Association, a former chair of APA's Planning and Law Division, a former chair of the American Bar Association's national Section of State and Local Government Law; the Connecticut member of Owners' Counsel of America, a former Fellow of the Royal Institution of Chartered Surveyors, a Fellow of the American Bar Foundation, a member of the Rocky Mountain Land Use Institute National Advisory Board, a Fellow of the Connecticut Bar Foundation, a Counselor of Real Estate, a member of the Anglo-American Real Property Institute, and a Fellow of the American College of Real Estate Lawyers. He has taught land use law at the University of Memphis, the University of Bridgeport, Vermont Law School, the University of Connecticut School of Law, and the Quinnipiac University School of Law and has published over 200 articles and twelve books including *INCLUSIONARY ZONING MOVES DOWNTOWN*, *THE TAKINGS ISSUE*, *THE COMPLETE GUIDE TO ZONING*, *EMINENT DOMAIN USE AND ABUSE: KELO IN CONTEXT*, and *GROUP HOMES*. He is lead author of the leading casebook in his field, *PLANNING AND CONTROL OF LAND DEVELOPMENT*, and co-editor of the leading treatise in the field, *RATHKOPF'S THE LAW OF PLANNING AND ZONING 4TH*. Dwight has

been named to the Connecticut Super Lawyers list in the area of Land Use Law since 2006, named as one to the Top 10 Connecticut Super Lawyers in 2016 and 2017 (ranked number 2 in the state); was one of the Top 50 Connecticut Super Lawyers in Connecticut 2014; one of the Top 100 New England Super Lawyers in 2014 and 2016 (Super Lawyers is a registered trademark of Key Professional Media, Inc.), ranked in Chambers USA: America's Leading Lawyers for Business in Connecticut in the area of Real Estate, listed in The Best Lawyers in America® in the areas of Land Use & Zoning Law and Real Estate Law since 1991 and the areas of Litigation - Land Use & Zoning and Litigation - Real Estate for 2012, and in 2017 in four areas: Land Use and Zoning Law, Litigation - Land Use and Zoning, Litigation Real Estate, and Real Estate Law. He was also listed in The Best Lawyers in America® as Hartford Lawyer of the Year in the area of Litigation - Land Use & Zoning for 2013 and in the area of Land Use & Zoning Law for 2012. He received his B.A (cum laude) from the University of Massachusetts, his Masters of Regional Planning from the University of North Carolina, where he was invited back as the graduation speaker in 2011, and his J.D. from Yale. He is a featured speaker at many land use seminars, and presents monthly audio land use seminars for the International Municipal Lawyers Association. Dwight has been cited in the national press from The New York Times to People magazine and HGTV magazine and has appeared on NBC's The Today Show, MSNBC and public television. Dwight served for seven years on active duty in the Navy as a Surface Warfare Officer, including three tours in Vietnam, and 24 more years in the reserves, retiring as a Captain following his command of the reserve augmentation unit of the Naval Undersea Warfare Center.



John R. Nolon, Esq., *Of Counsel, Land Use Law Center and Distinguished Professor of Law, Elisabeth Haub School of Law at Pace University*

John R. Nolon is Distinguished Professor of Law at the Elisabeth Haub School of Law at Pace University where he teaches property, land use, and sustainable development law courses and is Counsel to the Law School's [Land Use Law Center](#) which he founded in 1993. He served as Adjunct Professor of land use law and policy at the Yale School of Forestry and Environmental Studies from 2001-2016.

Professor Nolon was named one of two Distinguished Professors in 2014 by Pace University. Previously, he served as the James D. Hopkins Professor from 2009-2011 and the Charles A. Frueauff Research Professor of Law during the 1991-92, 1997-98, 1999-2000, and 2000-01 academic years. He received the Richard L. Ottinger Faculty Achievement Award in 1999 and won the Goettel Prize for faculty scholarship in 2006, and was named Outstanding Teacher of the Year in 2016-2017. In 2009, he was awarded the National Leadership Award for a Planning Advocate by the American Planning Association. The International City/County Management Association presented its Honorary Membership Award to Professor Nolon in 2014, its highest award to a person outside the city management profession for exemplary service to local government. Professor Nolon received his J.D. degree from the University of Michigan Law School where he was a member of the Barrister's Academic Honor Society. His undergraduate degree is from the University of Nebraska, where he was President of the Senior Honor Society. He has served as a consultant to President Carter's Council on Development Choices for the 1980's, President Clinton's Council on Sustainable Development, New York Governor George Pataki's Transition Team, and Governor Elliot Spitzer's Transition Team. He is a member of

the Editorial Board of The Land Use and Environmental Law Review, published by Thomson-West and of the State and Local Government eJournal of the American Bar Association. Professor Nolon received a Fulbright Scholarship to study sustainable development law in Argentina in 1994-1995.

Professor Nolon is co-author of the nation's oldest casebook on land use law: *Land Use and Sustainable Development Law: Cases and Materials*, currently in its ninth edition. He is co-author of Thomson-West's *Land Use in a Nutshell* and *Climate Change and Sustainable Development Law in a Nutshell*. Professor Nolon's article entitled "The Advent of Local Environmental Law," published in the *Harvard Environmental Law Review*, was selected by Thompson-West's *Land Use and Environmental Law Review* as one of the ten best articles on environmental and land use law published in 2002. Professor Nolon's article on the origins of smart growth, published in *The Urban Lawyer*, was also selected as one of the top ten articles in the nation on the topics of environmental and land use law in 2003. His article "Champions of Change: Reinventing Democracy Through Land Law Reform," published by the *Harvard Environmental Law Review*, won the Goettel Prize for faculty scholarship for 2006 at Pace University School of Law. In 2013, Professor Nolon won one of eight Pace University Research Excellence Awards.

Professor Nolon received a Fulbright Scholarship to develop a framework law for sustainable development in Argentina where he worked from 1994 through 1996. A collection of articles produced as a result of this work appeared in a symposium edition of the Pace Environmental Law Review. An anthology of seven of his articles was published in 2006 as a special issue of the Pace Environmental Law Review. He has produced four books published by the Environmental Law Institute on the topics of land use law, open space protection, local environmental law, and the mitigation of damage caused by natural disasters. His current research interest is the management of climate change through sustainable development law. He published nearly 50 articles in the New York Law Journal and over sixty law review articles on various aspects of land use and sustainable development law.



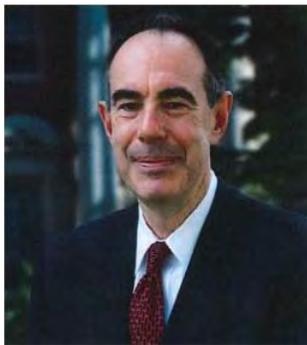
Michael Allan Wolf, Esq., *Professor of Law & Richard E. Nelson Chair in Local Government Law, University of Florida Levin College of Law*

Mr. Wolf joined the faculty of the University of Florida Levin College of Law in August, 2003, as the first occupant of the Richard E. Nelson Chair in Local Government Law. Professor Wolf has been teaching and writing for more than three decades in the areas of land use planning, property, local government, constitutional, environmental, and urban revitalization law; and legal and constitutional history. He earned his B.A. degree from Emory University, his J.D. degree from the Georgetown University Law

Center, and his A.M. (history) and Ph.D. (History of American Civilization) degrees from Harvard University. Professor Wolf, who was Professor of Law and History at the University of Richmond, held his first law teaching appointment at Oklahoma City University and has also served as a visiting professor, first at the University of Richmond, then at American University.

Since 2000, Professor Wolf has been the General Editor of *Powell on Real Property* (17 volumes), the most prominent treatise in the area that is regularly cited by state and federal courts, and the co-author since 2015 of *Land Use Planning* (with Daniel R. Mandelker). Other

recent books include *The Supreme Court and the Environment: The Reluctant Protector* (2012), *Land Use Planning and the Environment: A Casebook* (with Charles M. Haar, 2010), *Powell on Real Property: Michael Allan Wolf Desk Edition* (a one-volume abridgement of the treatise, 2009), *The Zoning of America: Euclid v. Ambler* (2008), and *Strategies for Environmental Success in an Uncertain Judicial Climate* (editor and contributor, 2005). His writings have also appeared in a wide variety of law and law-related journals (including the *Harvard Law Review*, *Michigan Law Review*, and *Fordham Law Review*), many of them contributions to symposia on topics in land-use regulation, environmental law, eminent domain, and regulatory takings. His commentaries have been featured in national newspapers and on National Public Radio.



Michael D. Zarin, Esq., Partner, Zarin & Steinmetz

Mr. Zarin has extensive experience representing municipalities and private interests in the areas of land use, zoning, real estate, and environmental law, including, general land use litigation, SEQRA/NEPA, urban renewal and public-private redevelopment, historic preservation, multi-party environmental litigation, site remediation, real estate transactions, and all aspects of environmental due diligence, counseling and general administrative law. He is currently a member of the Executive Committee of the New York State Bar Association's Environmental Section and Co-

Chair of the Land Use Committee. He has taught courses at the New York University Real Estate Institute, and has been a guest lecturer at the Pace University School of Law Environmental Master's Program. He is currently an Adjunct Professor at Hofstra University School of Law, teaching a seminar entitled "Land Use Regulation." Mr. Zarin also assisted the Chief Administrative Judge for the Ninth Judicial District in the formation of a Special Environmental Part for the District. Michael also serves on a number of private and nonprofit Board of Directors.

Mr. Zarin received his Juris Doctor from Hofstra University School of Law in 1985, where he served as Articles Editor for the Hofstra Law Review. He also received a Bachelor of Arts from the University of Wisconsin at Madison in 1976. Prior to forming Zarin & Steinmetz in 1997, he was a partner at Sive, Paget & Riesel, one of the most prominent environmental and land use law firms in the country, and manager of its White Plains office (1990-1997). He began his legal career as an associate at Weil, Gotshal & Manges in its Business Reorganization Department (1985-1987). He has been chosen as one of the Top Land Use Attorneys in the New York Metropolitan Area through 2015.

Mr. Zarin also served as an urban and community development consultant and organizer for a Washington D.C. firm, the Center for Community Change, and as a consultant for the Wisconsin Governor's Manpower Planning Office, forming the first statewide Youth Employment and Training network/coalition. He ran for New York State Senator for the 37th District in 1996, obtaining the most votes for a Democrat previously in the District.