Town of Conklin Zoning Board of Appeals – February 5, 2019

MEMBERS PRESENT:	William Northwood, Chairman; Elizabeth Einstein Norm Pritchard,
ABSENT:	Art Boyle, Hal Cole
ATTORNEY:	Keegan Coughlin -absent
ALSO PRESENT:	Nick Vascello, Code Officer Mary Plonski, Secretary Willie Platt, Town Board Liaison
VISITORS:	none
7:00 P.M.	Chairman Northwood called the meeting to order

Agenda Item #1 no case

Chairman Northwood reviewed SEQR material from a newsletter called Talk of the Towns.

(Attached is the article reviewed)

Chairman Northwood asked for a motion to adjourn.

Norm Pritchard motioned to adjourn the meeting. **Liz Einstein** second motion. All present board members approved.

Next Zoning Board Meeting will be held on Tuesday, March 5, 2019.

Northwood closed the meeting at 8:02 p.m.

Respectfully Submitted,

Mary Plonski – Zoning Board Secretary

is irrelevant. What's important is that in all matters and all policy, self-rule ought to be respected and local control preserved.

Another example of Home Rule erosion is when states push mandates onto local governments that increase the costs for those municipalities. These mandates take many forms and include intrusion into labor relations, tax cap restraints and various state-imposed rules and regulations that are costly and burdensome.

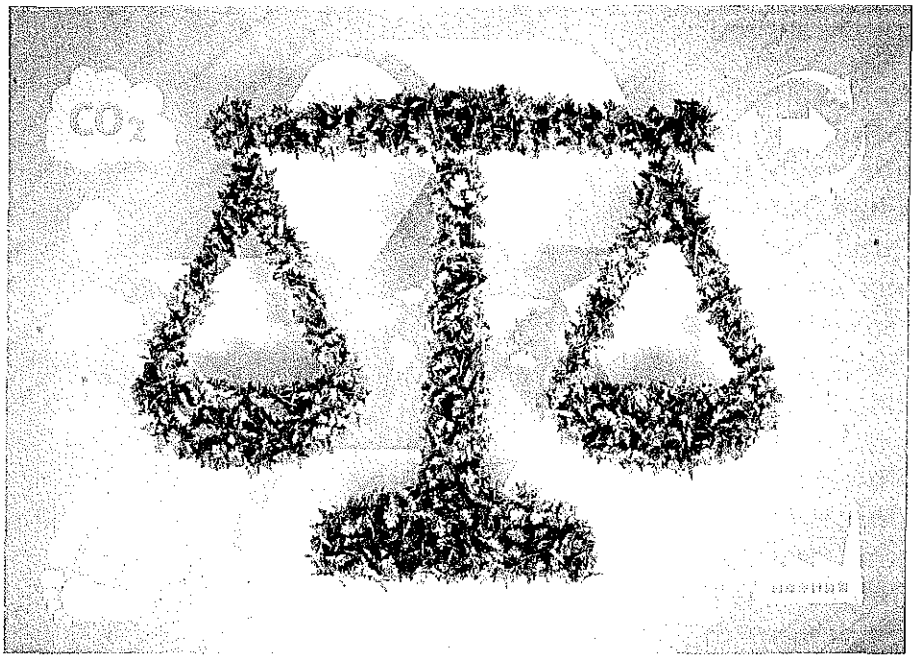
There are many reasons for us to protect Home Rule.

- First, local governments have a better understanding of community needs and can be better equipped to deliver solutions to local problems. Should an official from New York City tell a farmer in Schoharie what's best their community or vise-versa?
- Secondly, residents have much more access to elected officials in lower government than those at the county or state level, after all they are typically neighbors, fellow PTA members and they often shop in the same local businesses.
- Thirdly, local elected officials are intimately involved in promoting and protecting the interests of residents. It's their community too and they need to live with the decision that will ultimately impact the people who live there.
- Lastly, locally elected officials can more easily be held accountable by local voters for the way in which they manage these issues. Regional or statewide concerns may overpower a local issue at the ballot box. New York City's powerful electoral muscle seems to always outweigh the decisions of those in upstate New York, as a prime example.

Home Rule is a long-cherished principle that is worth preserving. A happy home leads to a happy life and the same is true for our neighborhoods. Tell big governments: hands off our communities. We support Home Rule. ❐

The New SEQRA Regulations Have Arrived

By Robert A. Stout Jr., Partner, Whiteman, Osterman & Hanna LLP, rstout@woh.com



Changes have been made to the regulations that implement the New York State Environmental Quality Review Act ("SEQRA"), located at 6 NYCRR Part 617. The changes are part of the New York State Department of Environmental Conservation's (DEC) efforts to modernize the environmental review process, which includes the adoption of new Environmental Assessment Forms in 2013, along with the related introduction of the online SEQRA workbooks and other web-based geographic information.

The newly enacted regulatory changes are the most comprehensive since 1995 and will apply to all actions for which a determination of significance has not been made prior to January 1, 2019. If determinations are made before that date, the existing regulations apply. As the year draws to a close, board members must familiarize themselves with the new regulations immediately, as it may be prudent in some instances to follow the new regulations if there is a possibility that a determination will not be issued until the new year. This may be particularly appropriate for the revised Type I list of actions, as well as the mandatory scoping provisions, both of which will be discussed in further detail below. Please note that the final regulations depart in many instances from DEC's earlier proposals.

Broadly speaking, SEQRA applies to state and local agencies (including town boards, planning boards and zoning boards of appeal) that make a discretionary decision to undertake, fund or approve an action that may affect the environment. Once an agency has determined that the action before it is subject to SEQRA, it must classify the action as either a Type I, Type II or Unlisted action. Type I and Type II actions are enumerated in the regulations at 6 NYCRR Part 617.4 and 617.5, respectively. Unlisted actions are those that are neither Type I nor Type II. (Most actions are Unlisted.)

The most significant changes contained in the amended regulations relate to the lists of Type I and Type II actions. Text of the regulatory changes is available on DEC's website, along with DEC's Final Generic Environmental Impact Statement on the Proposed Amendments to the Regulations that Implement the State Environmental Quality Review Act 6 NYCRR Part 617, which describes

See: SEQRA on Page 25

the basis for the changes made as well as proposed changes that were not enacted, at https://www.dec.ny.gov/permits/83389.html.

Type I Actions

Type I actions are those that are more likely to have significant adverse environmental impacts (thus requiring the preparation of an environmental impact statement). See 6 NYCRR Part 617.4(a). Most Type I actions are triggered by the achievement or exceedance of a certain threshold criteria listed in the regulations. For example, under existing regulations, the construction of new residential units that meet or exceed certain thresholds is a Type I action. See 6 NYCRR Part 617.4(b)(5). Those thresholds include the construction and related water/sewer connections of 250 units in cities, towns or villages with populations under 150,000; the construction of 1,000 units in cities, towns or villages with populations between 150,000 and 1 million; and the construction of 2,500 units in cities, towns or villages with populations greater than 1 million. Under the amended regulations, the thresholds have been lowered to 200, 500 and 1,000 units, respectively, along with other language clarifications. The thresholds were lowered because DEC believed they were initially set too high in 1978 and consequently fail to capture large-scale development projects that should be classified as Type I.

Similarly, DEC amended the threshold for parking spaces based on community size. See 6 NYCRR Part 617.4(b)(6). Now, the creation of 500 non-residential parking spaces (or expansion by more than half this amount for existing facilities) in a city, town or village having a population of 150,000 or less, or

See: SEQRA on Page 26

parking for 1,000 vehicles in all other cities, towns or villages, will be a Type I action. The previous standard was 1,000 parking spaces for all municipalities.

Certain actions, which would otherwise be Unlisted actions become Type I actions because of the proximity of the action to certain resources. The new regulations revise the threshold for designating Unlisted actions as Type I actions because of proximity to historic resources and those deemed eligible for listing. Under the new rules, an exceedance of 25 percent of any Type I threshold wholly or partly within, or substantially contiguous to, something that is listed on the National Register, the State Register, or which has been determined to be eligible for listing on the State Register, is now a Type I action.

Because of the timeframes involved for review and quickly pending implementation date of January 1, 2019, municipal boards may wish to treat all pending applications that exceed the new thresholds as Type I actions, to avoid having to "re-start" the environmental review process if a determination of significance on such project is not made prior to the end of the year. Please consult the new regulations to see the remaining modifications to the list of Type I actions.

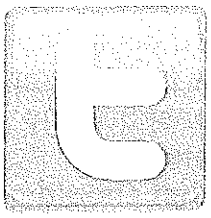
Type II Actions

Type II actions are those that have been determined not to have a significant impact on the environment or that are otherwise precluded from SEQRA review by statute. See 6 NYCRR Part 617.5. The revisions to the Type II list generally serve to expand the list to include more actions that are not subject to SEQRA. The new list is extensive, and includes definitional additions and modifications, so please consult Parts 617.2 and 617.5 to review the list in its entirety.

The additions include:

- the retrofitting of an existing structure to incorporate green infrastructure 6 NYCRR § 617.5(c)(3);
- the installation of telecommunication cables in existing highway or utility rights-of-way utilizing trenchless burial or aerial placement on existing poles 6 NYCRR § 617.5(c)(7);
- certain utility-scale and individual solar energy systems, depending on placement (such as closed landfills, brownfield sites, existing structures and other areas) 6 NYCRR § 617.5(c)(14) and (15);
- certain re-uses of existing residential or commercial structures 6 NYCRR § 617.5(c)(18);
- certain dedications of land for parkland 6 NYCRR § 617.5(c)(39);
- sale and conveyance of real property by public auction pursuant to Article 11 of the Real Property Tax Law § 617.5(c)(40);

See: SEQRA on Page 27



Follow @NYTowns on Twitter for all the latest information from the Association of Towns!

- construction and operation of certain anaerobic digesters, within currently disturbed areas at an operating publicly-owned landfill § 617.5(c)(40).

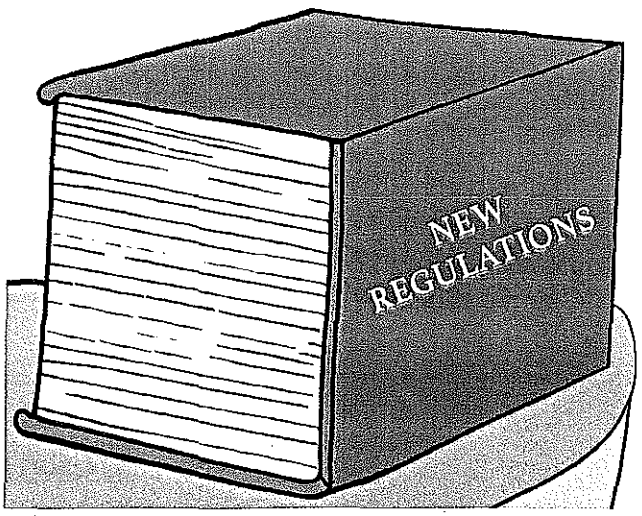
Scoping

In addition to modifying the Type I and Type II lists, the new regulations modify scoping requirements, including making the scoping process mandatory (except for supplement environmental impact statements). See 6 NYCRR Part 617.9. and revised definition of "scoping" at 617.2(ag). Scoping is the process by which a SEQRA lead agency identifies the issues and subjects that are to be included in a draft environmental impact statement ("DEIS"). In modifying the scoping regulations, DEC intends to have agencies identify issues earlier in the SEQRA process.

Notable among the modifications to the scoping section is a requirement to identify and discuss 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 (but only if the impact is "relevant and significant"), § 617.9(b)(5)(iii)(i). Additionally, the new regulations require that lead agencies must post draft and final scopes as well as draft and final environmental impact statements on a publicly available website. The documents must remain posted for a year after all necessary federal, state and local permits have been issued, or after the action is funded or undertaken, whichever is later, § 617.12(c)(5).

Municipal boards should consult with their attorneys to discuss the full extent and ramifications of the new regulations. Special care should be taken when reviewing newly proposed actions to determine if any of the new Type I or Type II actions are implicated. Please contact the author of this article if you would like more detailed training on the new regulations, or the SEQRA process generally. ❐

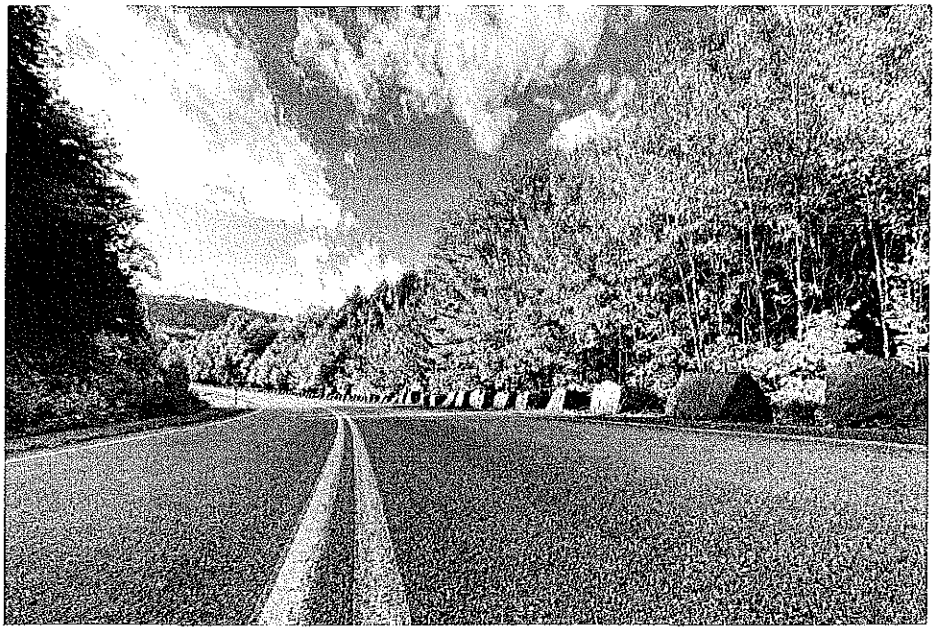
The author is a Partner at Whiteman Osterman & Hanna LLP in Albany, where his practice includes representing local town, planning and zoning boards of appeal on diverse municipal, planning, zoning and land use matters, as well as representing applicants, state and local agencies on SEQRA issues. He can be reached at RStout@woh.com.



Town's Road Salt Reduction Effort Protects Lake George, Saves Taxpayer Dollars

Lake George Becomes First Municipality in North America to Earn Sustainable Winter Management Certification

LAKE GEORGE, NY — The Town of Lake George has become the first municipality in North America to earn the Sustainable Winter Management (SWiM™) Program certification for employing best practices in maintaining safe winter driving conditions while reducing the use of road salt.



The FUND for Lake George has identified road salt runoff as one of the greatest threats to the water quality of Lake George and other area waterways, and is coordinating a multi-year salt-reduction effort among the municipalities in the Lake George basin — the most advanced effort in North America — with a goal of reducing road salt usage by 50% by 2020.

The Town of Lake George has been the leader among those municipalities in implementing best practices, reducing its road salt usage by more than 30 percent over the past two years and earning it the SWiM™ certification, which is administered by winter management consulting firm WIT Advisers, LLC, of Delanson, NY. The certification was announced on Oct. 3 at The FUND for Lake George's 4th Annual Salt Summit, which drew more than 100 public officials, highway superintendents, property managers, business owners and scientists to the Fort William Henry Conference Center in Lake George to learn about the impacts of road salt on area waters and the availability of new methods and equipment to reduce its use.

Among its best practices, the Town of Lake George applies a pre-coating of brine on town roads in advance of winter storms to minimize ice buildup; uses special "live edge" plows to remove more snow, closer to the road surface; and equips its plow trucks with technology that calibrates and tracks road salt application.

See: Lake George on Page 29