

Tivoli Site Plan Review and  
Approval Training Program  
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## Site Plan Regulation

In the Village of Tivoli, development on an individual parcel of land is controlled through Article IX, §§ 231-61 through 231-68 of the Zoning Law entitled “Site Plan Approval.” A “site plan” is defined by § 7-725-a of New York State Village Law as *“a rendering, drawing, or sketch prepared to specifications and containing necessary elements, as set forth in the applicable local law, which shows the arrangement, layout and design of the proposed use of a single parcel of land...”* This authority is different from subdivision regulation, which governs the division of land into multiple parcels. Site Plan reviews are a way to ensure that new development meets the Village *Comprehensive Plan’s* policies as well as the commonly accepted design practices of the Village as articulated in the Village Board’s Site Plan regulations (i.e. §§ 231-61 through 231-68).

Site Plan review allows the Planning Board to conduct both a qualitative and quantitative assessment of a development project based upon the standards, guidelines and principles of the Site Plan regulations. Zoning principally controls the use and dimensional requirements for all site development, but site plan approval cannot change the use requirements of the Zoning. The Site Plan regulations, however, do contain specifications regulating the details of a site’s development like vehicular access, landscaping, location and number of parking spaces, signs, screening, buffering, refuse storage, lighting, open space and the architectural features of buildings. The Site Plan regulations require that the Planning Board look at how a project will *“fit in with”* adjacent

buildings, areas and neighborhoods and the impact of the project on drainage and erosion, aesthetics, roadways, and the natural environment.

### Authority

Since 1976, villages, towns, and cities in New York State have had the authority to adopt and implement site plan regulations. While site plan regulations are permitted to be adopted, they are not required by State law. The State enabling acts authorize municipalities to impose conditions on site plan approval; waive requirements where they are not needed to protect the public; require the reservation of parkland on the site if it is to be developed residentially, or require the payment of a sum of money in lieu thereof (after finding an adequate basis for the exaction); require the posting of a performance bond to secure the development of improvements on the site; and to require compliance with the State Environmental Quality Review Act (SEQR).

### Applicability

Parcels subject to site plan review in the Village include all uses in the GB and RB districts and all special permit uses regardless of the Zoning District. Some communities require all building permits to be subject to Site Plan review by the Planning Board while others limit the application of site plan regulations to particular zoning districts, special areas such as historic districts, floodplains, ridgelines or environmentally sensitive areas or coastal zones.

Other approaches used by municipalities include requiring all single parcel development to comply with site plan regulations with certain exceptions, like single-family residential projects, accessory buildings, or specified low impact uses. Often, the development of an individual lot contained in an approved subdivision is exempt from site plan review but in some municipalities, single family dwellings are not exempt.

The Village Board has the authority to provide different procedures for various types of site plan applications. Development projects may be divided between those considered minor and those whose impacts can be considered major, defined usually by type, location, or size. Some waiver provisions may also be appropriate for certain elements involving minor or low impact projects. Others require major site plan applications to go through two phases of review including preliminary and final, much like the Subdivision Regulations for minor and major subdivisions.

### Site Plan Elements

The Village Board has used its authority to decide what standards and site plan elements must be included on a site plan drawing, to determine what sites are subject to approval, and to appoint the Planning Board as the review body. The Village Board may retain the authority to review and approve all or just specified site plan applications, but in Tivoli it has delegated that authority solely to the Planning Board.

When delegating site plan authority to the Planning Board, it must be guided by specific standards so that its decisions are not wholly discretionary. If adequate standards are not provided to guide the Planning Board, the actions taken could be invalidated if too much discretion is involved. This is avoided by providing clear and adequate standards. While Tivoli's standards are clear, they could be strengthened by additional guidance. An example of such guidance, in the form of a model site plan regulation, is attached to this document.

### Limitations on Authority

The Planning Board has three options after reviewing a site plan. It may approve the application, approve it subject to conditions or modifications, or it may deny the application. If an applicant for site plan approval demonstrates that the application meets local site plan standards, the application must be approved. If that burden is not met, the application must be denied. If the standards can be met with modifications, the application may be approved subject to conditions.

If an applicant meets all the standards in the regulations, the Planning Board must approve the application. If an application that meets the criteria in the regulations is denied, that decision is subject to reversal by the Courts. The Planning Board must have facts in the record to support their position; to do otherwise risks having their determination annulled by the Courts.

Similarly, the Planning Board cannot base its denial on matters that are beyond its authority. For example, a denial based on the failure of the proposed use to comply with the Zoning Law is beyond the Planning Board's authority. That determination can only be made by the Zoning Enforcement Officer (ZEO) as per § 231-62 of the Zoning Law or by the Village Zoning Board of Appeals (ZBA).

### Decisions and Hearings

In making decisions on site plan applications, the Planning Board needs to keep a detailed written record of its discussions. These records can be in narrative form rather than a verbatim transcript. The findings of the Board and its decision must be based on evidence contained in the record. The record may be the minutes of the Board and may include any other records, documents, or studies submitted for the Board's review. If an application is denied, the applicant can resubmit a new application with a different site plan for the parcel for further review.

The Planning Board's decision must be filed in the office of the Village Clerk and Zoning Enforcement Officer within five business days of the decision and a copy must be mailed to the applicant.

The Board of Trustees has retained the authority to determine when a public hearing is required on site plan applications but has given the Planning Board the discretion to hold public hearings. Where public hearings are held, they must be conducted within 62 days from the date of

complete application, public notice must be published at least five days before the hearing, and the applicant must be mailed notice of the hearing ten days in advance. The agency's final decision on the application must be made within 62 days of the close of the public hearing (60 days in Tivoli's Zoning Law), but this deadline can be extended by mutual consent.

## Conditions

New York State Village Law limits the Planning Board's ability to impose conditions that are "*directly related to and incidental to*" the impact of the proposed plan on the Village. Conditions add an element of flexibility in decision-making so that an approved project is responsive to applicants as well as to those affected by the project. Conditions balance potential benefits to the owner against the potential adverse impacts of the development on the Village. The applicant must show that the conditions imposed have been met before the ZEO can issue a building permit or certificate of occupancy. There must be a nexus between the conditions imposed and the impact of the project on the community given the standards developed by the Village Board.

The standards in the Zoning Law for site plan applications must be reviewed by the Planning Board to insure the proposed development is in compliance. Often, an approval is granted with the developer agreeing to modify the design so that it meets the regulations. Once a condition is imposed on a project, it must be complied with before a building permit

can be issued. If the condition is one that must be met during construction, then its terms must be complied with before the construction is complete and a certificate of occupancy is issued.

There are many conditions that have been upheld by the courts including landscaping, screening, access, erosion controls, stormwater facilities, lighting, restrictive covenants preventing development of land in a floodplain, viewshed protection, and a variety of safety measures to restrict the emission of smoke, noise, odors, dust, and vibrations.

### Limitations on Conditions

While the imposition of conditions are clearly within the authority of the Planning Board, they must comply with several standards or they can be declared invalid. Courts may invalidate a condition when there is no rational basis in the record for its imposition, when the condition is unreasonable, or when it is not related to the impacts of the proposed development (i.e. nexus).

**Rational Basis:** Courts invalidate conditions which are not supported by evidence in the record that justifies their use. The evidence must demonstrate that the Planning Board carefully deliberated the issue, complied with basic due process requirements, and obtained specific evidence of the need for the condition. In several instances, courts have invalidated conditions which were justified only by a neighbors' opposition to the project. Some courts

have stated that the administrative agency has a “burden of proving” the need for the condition; this burden requires, at least, that the agency consider evidence that justifies the imposition of the condition.

**Reasonableness:** The statutes and cases authorizing the imposition of conditions state that they must be “reasonable.” Conditions may be invalidated when, under the circumstances, they impose an undue burden on the landowner. In these instances, it may be that the cost, inconvenience, or other impact on the landowner is too onerous, given the benefit to the public of the condition. This is particularly so when there is a less burdensome alternative to the condition or no indication that the agency considered less burdensome conditions that are adequate to protect the public.

**Relatedness:** The authority to impose most conditions makes it clear that they must be “directly related to and incidental to the proposed land use.” This means there must be a close relationship between the condition imposed and the impacts of the proposed development. When the condition does not relate to, or lessen, the particular impacts of the development, it is not related or incidental to the proposed land use as required by law.

**Vagueness:** Conditions can be attacked for vagueness. Agencies imposing conditions must be careful to articulate them clearly and

definitely so they can be implemented without confusion by the landowner and Building Inspector. The property owner should not be left in any doubt as to what is permitted.

In summary, conditions must be:

1. Reasonable;
2. Directly related to the proposed use of the property;
3. Consistent with the Zoning Law and other local laws; and
4. Imposed for the purpose of minimizing the impact on the surrounding community.

## SEQR Reviews

SEQR requires all State and local agencies to consider the impacts of their land use decisions on the environment. These provisions must be complied with by the Planning Board for any site plan application. Where the approval of a site plan may have a significant adverse impact on the environment, the extensive procedural requirements and the extended timetable of SEQR must be followed and coordinated with other requirements for site plan approval. A flowchart of the SEQR process has been attached to this document.

The Village of Tivoli is located wholly within the Hudson River National Historic Landmark District. This means that all decisions of the Village Planning Board, unless specifically identified in the SEQR regulations as a Type 2 Action, must be classified as a Type 1 Action. Type 1 Actions

carry with them the presumption that they may have a significant adverse impact on the environment and may require an EIS. If there are other agencies that must approve or provide funding to an action subject to Village Site Plan approval, then the Planning Board must conduct a coordinated review to determine lead agency. There are also additional filing and other responsibilities for projects that are classified as Type 1 such as exclusive use of the Full Environmental Assessment Form (EAF) and publication of a Notice of Negative Declaration in the Statewide Environmental Notice Bulletin (ENB).

A site plan submission is not deemed complete until the Planning Board has determined that the project will not have an adverse impact on the environment or, if it may have such an impact, until the Planning Board has completed preparation of a draft environmental impact statement. The time periods contained in the New York State and local site plan provisions do not begin to run until one of these two events has occurred. Further changes in the Site Plan review process may be required to comply with SEQR depending on how the environmental review process is handled and whether the Planning Board is the lead agency responsible for that process.

### Dutchess County Planning Review

In certain instances, site plans must be submitted to the Dutchess County Planning and Development Department in accordance with § 239-1 of General Municipal Law. Such referral must be sent at least ten days

before the public hearing on the site plan, accompanied by a full statement of the matter under consideration.

The County must make a recommendation within 30 days. If the County recommends modification or disapproval, the Planning Board may accept and implement the recommendation, or it may hold a vote to override the County with a supermajority vote.

### Streamlining the Process

The Site Plan review process can be daunting for a landowner who merely wants to use his or her land to make a living and in a way that they believe benefits the Village. But, site plan review and approval has a noble purpose which is as a legitimate tool for implementing the municipal comprehensive plan, ensuring that development enhances the municipality's physical, social and economic environment while minimizing impacts on the ecology and natural environment of a community, among other factors.

There are a variety of methods that can be implemented to streamline the Site Plan Review and approval process. These methods are designed to help foster active collaboration and communication among local officials, permit applicants, consultants and other stakeholders. By establishing well-crafted institutional mechanisms, villages and towns can help to bolster efficient communication and to establish a culture of collaboration

that serves all interests in the development approval process. The following practices can be used to improve the process:

### Single Point of Contact

One person can be assigned the responsibility to work with applicants. The point of contact person is responsible for coordination of the applicant's efforts to apply for the necessary approvals. While the Planning Board Chair could serve in this role, the Zoning Enforcement Officer or a consultant could also serve as the contact. The individual would have no authority to negotiate any commitments which would bind the Planning Board. The **benefits** include providing clarity and productivity for both the applicant and the Planning Board and making sure all parties are apprised of their responsibilities. **Challenges** include a lack of staffing, time constraints and resistance to procedural change. This could be implemented without changes in the Zoning Law.

### Publish Users Guide

A quick reference guide to the Site Plan and other approval processes guide applicants through the review processes. Attached to this document are suggested Planning Board Procedures for meetings, and previously provided were Planning Board policy documents including project checklists, a referral checklist and record, formal "Application for Site Plan/Special Use Permit Approval," and a Site Plan approval checklist. These documents could all be assembled into a "User's Guide" together with other suggested documents. The **benefits** include a clear explanation

of what activities require approvals, it could describe what each board's function is, could provide contact information, list meeting dates and submission requirements for such meetings, and present a flowchart of the process. The **challenges** include the need for regular updating, and the resources necessary for printing the documents and providing them as PDF files on the Village's website.

### Concurrent Application Review and Hearings

In Tivoli, Site Plan approval is conducted by the Planning Board while Special Use Permit approval is conducted by the Zoning Board of Appeals (ZBA). While it is generally preferable that the Planning Board conduct both reviews (as is now commonly done elsewhere), municipal procedures do not always allow this option. Thus, the ability to submit concurrent applications can save time and encourage greater collaboration among boards.

The application itself for both Site Plan and Special Permit review should contain all information needed when both approvals are required. Follow-on sections can contain the information needed by each respective board. The sequence of the review and hearing process should be clearly spelled out. Consolidated public hearings, which are encouraged by the State's SEQR regulations, should be considered for projects that involve both site plan and special permit reviews. A consolidated timetable should be prepared and available in print and website forms so applicant's and each board knows exactly what is expected. The **benefits** are that the review

process may be shortened, reviews can be coordinated, particularly of large or complex projects, and overlapping jurisdictions can be reconciled. The **challenges** are that some projects simply do not qualify for concurrent reviews (such as those that may require a denial from the Planning Board because of the need for a variance from the ZBA first). Also, both boards need to be aware of the conditions of the other board so that any relevant ones can be incorporated into the other's decision.

### Pre-Application Review

The purpose of a pre-application review is for representatives to meet to discuss development concepts, potential issues and concerns prior to a formal application. These meetings can promote better communication between the board and applicants, particularly before a large investment is made for detailed planning and engineering required by an application.

Some municipalities even involve the public early on by advertising these meetings, so that all stakeholders are aware of what is forthcoming and so that meaningful concerns can be expressed prior to formal public hearings. These meetings are also an opportunity to explain the process, requirements, timetables and any additional information that may be required, taking into consideration the uniqueness of all development projects.

## Use of Third Party Consultants

Contracting with a consultant to review development projects can provide needed expertise to the community, identify significant impacts, and create a more efficient process. The Village Board has the authority to impose reasonable fees on applicants for the cost of such consultants in order to fully fund the review of projects. The **benefits** of such a program are to allow specialized review of complex issues, such as those encountered during a SEQOR review process. Not only does this provide for timely review but it also alerts the developer if additional information is needed. The **challenges** include the need for a Fee Schedule and the establishment of escrow accounts for each project, the consultants must be held accountable for the quality, timeliness and efficiency of their work, and the municipal bookkeeper must be involved to keep track of the accounting that is necessary to track expenses.

This Training Program has been presented by:

J. Theodore Fink, AICP

GREENPLAN Inc.

302 Pells Road

Rhinebeck, NY 12572

845.876.5775

[JTFink@greenplan.org](mailto:JTFink@greenplan.org)