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Politics, Planning and Regional Mall Development: The Case of Webster, New York

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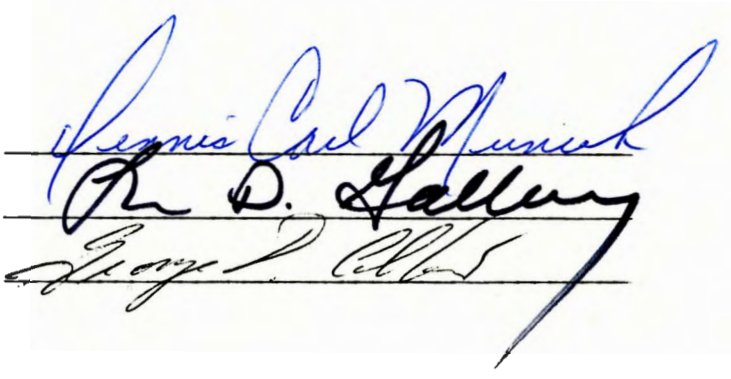
Major Professor 

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POLITICS, PLANNING AND REGIONAL MALL DEVELOPMENT:

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CHAPTER I. Introduction

Regional mall development usually elicits one of two responses -- wholesale support or wholesale rejection of the development proposal. Major mall developments involve all three sectors of the economic and policy making process: 1) the private sector, which is basically responsible for initiating the development proposal; 2) the public sector, which is responsible for protecting the "public interest"; and 3) private citizens within the affected jurisdiction who form support or opposition groups to the development as a means of insuring effective input throughout the process.

The political and economic ramifications of major retail development are numerous and have long-term, permanent effects upon an entire region, as well as the municipality in which they are located. The location and siting of regional malls has caused numerous debates because of these ramifications. A major issue revolves around whether the siting of these facilities serve as the impetus for commercial sprawl or result from the deficiencies in the local retail market. (Simmons, 1964: 1-14; Sternleib and Hughes, 1981; Schmore, 1963: 26, 30-32; Tucker, 1981: 41, in Sternleib and Hughes; Yehoshua, 1972: 25.) Determining this type of cause and effect relationship is difficult at best and relies heavily upon the area involved and previous development patterns.

The land development process, and the political processes that are assoicated with it, are issues that planners must deal with on a daily basis. The manner in which the planning process works among all of the above pressures depends, to a large extent,

upon one's theoretical perspective. While a generalized view of regional mall development may be useful, the most useful analysis occurs at a localized level, when viewing the effects of a mall on that area.

Government regulation has increased on all levels throughout the last decade. Popular theory places the burden of development delay upon the government agencies who are responsible for enforcing these regulations. Developers, Chambers of Commerce, and general business interests are constantly blaming red tape and delays on planners and other local officials. (Sternleib and Hughes, 1981.) Some basic notions are called into play when one attempts to analyze where the blame lies. Local government bodies are certainly responsible for some delay, but as developers compete for increasingly scarce and prime commercial sites, they are also responsible for numerous delays.

The case before us involves the Town of Webster, New York. Webster is located in the northeastern portion of Monroe County, just east of Rochester, New York. Two national development firms have proposed separate, regional mall developments for the town, which have spurred a volatile debate in town. Extensive litigation (over two years) and delays have caused local residents to lay much of the blame at the feet of local officials. (Embury Interviews, 1981.) While this mall location controversy may appear to be nothing more than project selection by the town, the undercurrents are much more significant than that. Very strong economic forces are hard at work attempting to gain hold of the last, large commercial area in the county.

This analysis demonstrates that the delays are a direct result of litigation between developers. While town officials have been parties to the lawsuits because of their administrative positions, they do not bear the primary responsibility for the delays. It is my premise that local government officials and regulations have become "straw men" which serve as the "scapegoats" and "whipping boys", while developers cause lengthy delays battling for very limited and prime commercial opportunities.

In the case of smaller, metropolitan communities like Webster, the government is placed in a position of responding and reacting to a development proposal. This reactive posture places the local government in a defensive position, making them appear "one step behind" the actions of the developers. This defensive posture leaves a perception of local government ineptness which results in delay. This perception endures in spite of any previous preparation or consequent actions that demonstarte otherwise. (A content analysis of local newspapers shows a tendency by some to blame the Webster delays on the local government. The local reporting has not addressed in any detail, that two competitors from a very select group are vying over a piece of valuable land and a captive market area.)

The question of an elite and its ensuing, local role has been continually debated over the years by such scholars as Domhoff (1970), Dahl (1961), Hunter (1953), Mills (1963) and Arkes (1981). The Mills/Hunter perspective points to a power elite that has the ability to influence any important question that arises in a community. This ability is not confined to positions of official authority. (Hunter,

1953; Arkes, 1981: 260.) The Webster controversy points to the involvement of a number of local economic interests who are exerting a number of powerful influences over this development situation.

The Mills/Hunter context makes it likely that "public men will make decisions that are allied with self-interest, and the question is... whether their personal concerns can be connected in a more wholesome way to the interests of their constituents." (Arkes, 1981: 269.) The analysis section of this research will elaborate on whether Webster Town officials were in fact acting in self-interest and if their decisions did have the interests of their constituents at heart.

Within the context of governance and self-interest, government serves two principal functions: 1) supplying goods and services; 2) managing political conflicts in matters of public importance. In many instances, these two functions are indistinguishable because they are performed simultaneously by the same institutions. (Banfield and Wilson, 1974: 75.) The function of supplying goods and services is quite evident in day to day operations. The managing of public conflicts is not always as evident, but is in its essence local politics. It is inevitable that someone will always perceive the public good in a manner that is different from the perception of others. This difference of opinion gives rise to local political conflict. Essentially, politics becomes the process of discussing, dissecting and expanding the perception of the "public interest". This debate is reveled in by some participants, but many of the citizens find this process

undesireable. It appears to them that decisions are based and implemented on considerations that have little to do with the issues themselves. Political, self-interested action though, does not necessarily preclude acting in the public interest. (Banfield and Wilson, 1974: 76.) As we review the Webster controversy, we must interpret the actions of town officials and assess the manner in which the public interest was addressed.

At some point in time, this political debate will and must involve the public and private sectors --- business and the "body politic". As part of their conflict management function, local government officials require developers to "jump through the proper hoops." The hoop requirements are vital to both groups. In Webster, citizens had to keep abreast of local requirements so that they could "properly" participate in the mall debate. For developers, the monetary stakes were/are tremendous, but no more important than the citizen requirements. The knowledge of and ability to meet the application, hearing and permitting deadlines is the essential life-blood for teh two developers in this case. The process transcends the exercise of brute power and becomes and exercise in the nuances of power. Reports, documents, public hearings and a variety of other responsibilities all translate into a considerable amount of pressure for the governing body at the local level, and specifically in Webster. (McBride and Clawson, 1970: 27-28.)

The pressure that is applied to local officials causes some to question the tenacity of the performance of duties by these officials. "Public officials are usually diligent in the performance of their

duties. In a few cases the public is abused. Those who decide on behalf of the public are in a position of responding to a request on the issue. The applicant is the initiator, the government the accomodators." (McBride and Clawson, 1970: 27-28.) As accomodators, local government officials often lack adequate cost-benefit analyses and documnetation that is independent from that provided by local developers. These officials are not necessarily in a position to demand information from the other branches of local government. The expertise and time may not be readily available. These officials must exert a great deal of effort and interest to stay abreast of the daily operations of local government. (McBride and Clawson, 1970: 27-28.)

Town of Webster officials have diligently pursued their duties during this controversy, although not everyone would concur with this assessment. This research supports the McBride/Clawson contention that independent cost-benefit analyses is not available to the local decision makers. Again, the reactionary posture local boards are placed in put them at a disadvantage in this process. Once the application process has begun, many localities do not have the technical support to conduct this type of analyses. In lieu, the decision makers must assess and rule on information that is provided by competing interests --- developer v. developer; citizens v. developer.

It is within this context that this study will seek to analyze the causes of a more than two year delay in the final approval process and the construction of a regional mall in Webster, New York. Several hypotheses are part of this analysis: 1) that the

"failure" of the "local planning process" is not responsible for the excessive delays in developments; 2) that developers who are in competition for the same limited market will act in an obstructionist manner to protect their economic interests; 3) as a result of developer actions, citizen participation is solicited, but has little effect upon any substantive development decisions.

In order to explore these questions of process in depth, this project involves a case study approach which places events in an analytical perspective. A number of tasks has taken place for this analysis: review of the literature on locational theory, political theory, other mall development situations, state and local laws that are applicable, review of the technical aspects of both mall proposals -- impact statements and plans; interviews; review of the permit applications, reviews, planning board and town board minutes; and an analysis of the situation in light of our current understanding of the theoretical literature.

The Webster controversy provides an opportunity to analyze and observe a major development in process. Planners deal on a regular basis with development projects of a large magnitude. As these projects increase in size and importance, their effects become more critical. Exploring the manner in which large-scale projects are affected by, and have an effect on, the local planning process is crucial to developing a better understanding of that process.

CHAPTER II. Town of Webster: Context for Development

Webster, New York is located in the eastern portion of Monroe County, just east of the City of Rochester, the third largest city in New York State. Until the 1950's, Webster was primarily a farming community which accepted minimal growth from the metropolitan area. During the 1950's, Webster began the evolution from a farming community to a bedroom community for Rochester.

The following population figures supply a cursory demographic comparison for the SMSA, Monroe, Wayne and Ontario Counties, Webster Town and Webster Village.

TABLE I. REGIONAL/SMSA POPULATION 1970 - 1985.

	1970(1)	1975(2)	1980(3)	1985(2)	Change 1970-1985	% Change 70-85
City of Rochester	295,011	265,000	241,539	254,000	-41,011	-13.9
Monroe Co. (Less Rochester)	416,906	463,000	459,992	494,810	77,904	18.7
All Monroe Co.	711,917	728,000	701,531	748,810	36,893	
Wayne Co.	79,404	82,166	84,456	89,952	10,548	13.3
Ontario Co.	78,849	85,054	88,505	99,720	20,871	26.5
TOTAL SMSA	961,516	971,465	969,935	1,029,313	67,797	7.1

(1) 1970 U.S. Census

(2) 1975 County, City Data Book. Monroe County Department of Planning; New York State Economic Board, Center for Government Research.

(3) 1980 U.S. Census.

All of the above as cited in the Webster and Expressway Mall Draft Environmental Impact Statements.

TABLE 2. POPULATION AND HOUSING DATA 1970 - 1980.

	Population				Housing Units			
	1970	%	1980	%	1970	%	1980	%
Monroe Co.	711,917		701,531		228,554		264,028	
Webster Town	24,739	(3.4)	28,895	(4.1)	7,078	(3.0)	10,066	(3.8)
Webster Village	5,037	(.07)	5,486	(.07)	1,607	(.07)	2,189	(.08)
Total (Town/Village)	29,776	(4.1)	34,371	(4.9)	8,685	(3.8)	12,255	(4.6)

SOURCE: 1980 U.S. Census Preliminary Count. PHC 80-P-34.

It is important to point out the reason for the Town/Village delineation. As can be observed in Map **5** , the Village of Webster is completly surrounded by the Town of Webster. In New York State, very strict jurisdictional guidelines exist between towns and villages. Although the village is contained within the Town, each entity is a separate governmental unit responsible for governmental functions within their boundaries.

Webster Town and Village have grown from 1970 to 1980, while Monroe County has declined by some 10,386 over that same period. These figures demonstrate that Webster is a growth community which is "bucking the trend" of Monroe County.

Webster possesses a diversity of land use which includes a mixed housing stock, open space, farm land, recreational areas, commercial and industrial concentrations. This diversity serves as an attractor for new residents. As the eastenmost town in Monroe County, with the largest tracts of available developable land, Webster will continue to experience outward growth pressure from the Metropolitan area. It appears that Webster will grow in spite of the development posture of the Town. Webster also borders Wayne County (part of the Rochester SMSA) which is

experiencing some growth and possesses no large regional commercial and retail center to accomodate its growth and market demands. (See Map 2 .)

Local government participation in the growth process involved a number of actors. In relation to the mall proposals, these actors have carried through a number of local elections and administrations, while others have only participated in certain phases along the way toward approval. This situation is a function of the terms of office of local officials. The Town Council consists of five (5) members -- four (4) councilmen and the supervisor. Every two years the supervisor and two councilmen are subject to local, at-large elections. This type of system allows for some continuity but can lead to a shift in ruling majorities on the Council. It is necessary to identify the council officials who were responsible for the bulk of these proposals and involved in the majority of decisions. Three Republicans -- Supervisor Kent, Edward Heligman and Nancy Thomas -- and two Democrats -- Henry Kujawa and Robert Murphy -- were most directly involved in the more controversial aspects of this process. (Webster Herald 1980 - 1981.)

The Webster Town Planning Board also played an integral part in this process. The Planning Board consisted of William Gray, Joseph Maier, Elmer Welke and Tony Casciani. The Board is appointed by the Supervisor, contingent upon the Town Council approval, and its members serve five (5) year terms. The Planning Board is responsible for reviewing sketch plans, development proposals, preliminary and final plan submissions. In order to integrate and understand the Planning Board's role in this particular controversy, it is beneficial to

review the process which had to be followed.

The Webster Zoning process was applied to each of the two developments, since a zone change was necessary for each proposal. Each developer had to submit a sketch plan to the Planning Board, per 59-25 of the Webster Zoning Ordinance. Whether this plan meets the Board's approval or disapproval, written findings must be transmitted to the Council in writing. In the case of Planning Board approval, these findings serve as an advisory opinion to the Town Council. When the Board disapproves the sketch plan, the written findings serve as the record. The Town Council then reviewed these projects in accordance with the Planned Unit Development requirements (59-23-25) and must issue findings within sixty (60) days. Within six months of this review the developer must submit a preliminary plan which the Planning Board reviews. Their findings are transmitted to the Town Council as an advisory opinion. The Town Council holds a public hearing before a decision is made. A final plan is then submitted for the same approvals. (Webster Town Zoning Ordinance.)

Although not a local public official, New York State Supreme Court Justice David O. Boehm played a significant role in this entire process. When the litigation began in this controversy, Judge Boehm handed down the decision which has carried the most weight throughout this process.

The mall controversy in Webster involves two national development rivals who have proposed regional shopping malls for sites that are approximately one-half mile apart. (See Map **5** .) The Expressway Mall development group is headed by National Shopping Centers, Inc. from Westchester County (the second largest mall developer in the country),

with Rudy Starr serving as the developer. The J.C. Penney Realty Company (a subsidiary of the J.C. Penney Company), the McCurdy Company (a local department store and mall anchor), the Webster Coalition for Quality (a local citizens' group) and Bruce Hegedorn (a local land owner, long-time local businessman and owner of the Expressway Mall site). Mr. Hegedorn plays a very forceful role in this process and scenario, although not fronting the development operation. His presence in the development group lends a local identity and legitimization to the Expressway Mall proposal. His long established presence in Webster makes Hegedorn a "known quantity", readily identified by all town residents. This visibility places Hegedorn in a unique position which presents an advantage to the Expressway developers. (Webster Herald 1980 - 1981.)

The Webster Mall group has considerably fewer individuals and less locally influential actors than the Expressway Mall group. The list of coalescing parties includes the Sears subsidiary Homart Development Corporation, with Leonard Dobbs as developer. Webster Associates has been described as a coalition of local citizens and businessmen who have formed to promote the Webster Mall proposal. The Webster Coalition for Proper Planning is a local citizens' group which does not want the Expressway Mall proposal approved and which is actively working for the approval of the Webster Mall proposal. (Webster Herald 1980 - 1981.)

As a means of demonstrating the importance of these proposals to the town and the metropolitan region, it is useful to compare the marketing and physical characteristics of these two developments.

TABLE 3. MALL COMPARISONS

	Webster Mall[1,3]	Expressway Mall[2,3]	Total
Land Area	93 Acres	95.8 Acres	188.8 Acres
Gross Leasable Area	905,000 sq.ft.	780,000 sq. ft.	1,685,000 sq.ft.
No. Major Stores	4	4	8
No. Retail Accessory Outlets	120	100	220
Parking Spaces	4600	4200	8800

SOURCES: (1) Webster Mall: Larry Smith adn Company Marketing.
(2) Expressway Mall: Gould Assoicates.
(3) Webster/Expressway Mall Draft Environmental Impact Statements.

TABLE 4. MALL MARKETING CHARACTERISTICS.

1. Approximately 250,000 people as market support.
2. Good location, access and local anchor stores.
3. Retail trade area: West - east side of Rochester
East - Wolcott (a town in Wayne County.)
South - Penfield, Macedon, Palmyra.

Zone A (primary) - Webster
Zone A (secondary) - South and East of the Town
Zone B (secondary) - East of Webster to Wolcott.
(See Map .)

4. Expenditure potential of market area:
1970 - $240,700,000
1979 - $280,600,000
1984 - $292,600,000
1986 - $199,600,000

SOURCES: Webster Mall: Larry Smith and Company Marketing.
Expressway Mall: Gould Associates
Webster Mall/Expressway Mall Draft Environmental Impact Statements. (1980).

TABLE 5. IMPACT OF WEBSTER MALL ON EXISTING REGIONAL FACILITIES.(Millions)

	Total Sales	Loss To Webster Mall	% Total Sales
Rochester CBD	87.0	8.0	9.0
Culver Ridge Plaza	8.0	2.3	29.0
Irondequoit Area	33.0	4.6	14.0
Primary Zone	11.5	4.0	35.0
Panorama Plaza	5.5	1.1	20.0
Pittsford Plaza	18.5	2.2	12.0
Eastview Mall	41.0	4.7	11.0
Greece Area	56.0	4.6	8.0
TOTAL	260.5	31.5	12.0

SOURCE: Larry Smith and Company Marketing.
Webster Mall Draft Environmental Impact Statement. 1980.

TABLE 6. IMPACT OF EXPRESSWAY MALL ON EXISTING REGIONAL FACILITIES.(Millions) (Transfers.)

Downtown Rochester		9.0
Long Ridge/Greece Town Malls		4.8
Culver Ridge Plaza		5.0
Eastway Plaza/Others		6.5
	TOTAL	25.3
Eastview Mall		8.2
	TOTAL	33.5

SOURCE: Gould Associates.
Expressway Mall Draft Environmental Impact Statement. 1980.

Tables 5 and 6 contain marketing data which estimate the transfer of commercial and retail dollars from the facilities listed. These facilities are considered major retail facilities to be effected in Monroe County. The proposed facilities are not offering or injecting any new services into the market area, but are capturing a portion of the market from other facilities.

As a matter of orientation, Downtown Rochester is a nine (9) mile, 12 minute drive from Webster and contains an 805,000 square foot mall facility, as well as other numerous retail and commercial facilities. Eastview Mall is a 14 mile, 20 minute drive and contains an 850,000 square foot facility. Long Ridge and Greece Town Malls are a 12 mile, 17 minute drive to a 1,200,000 square foot facility. (A regional mall, the Marketplace Mall in the Town of Henrietta, is in the process of construction and will alos draw from the region's retail markets.) (See Map 2.)

The debate over the two mall proposals began in October, 1979 when both developers announced their intentions for development. Preliminary site and development plans were drawn up by each developer, setting the approval process in motion. These proposals have developeed into a political and economic "war" which has divided the twon through sometimes volatile political debates and seemingly endless litigation. Local opinion seems at a loss for comprehending the nuances of this process and where these projects are at various stages of the process.

In an attempt to discover resident reaction to this approval process and controversy, informal discussions were held with a variety of town residents during the Christmas holidays, and through a content analysis of the local newspaper, the Webster Herald. Most Websterites were well aware of the controversy and its length. Some people expressed a preference for one or the other proposal, but when pressed, most expressed a desire for a mall to be built and wished that the actors would move on with the process. The townspeople have generally tired of the continuing controversy "and wonder whether anyone who

does not have a direct financial, political or locational stake in the projects is participating in the selection process." (Democrat and Chronicle 23 October 1980; Webster Herald 22 October 1980.) The "ordinary people" have been pushed aside by the monied interests who keep the debate flourishing. Throughout all of this, there is no indication that either developer has attempted to ascertain the preferences of town residents, other than the basic market research that has been conducted.

This controversial context was also fueled by the fact that six major developers had actively sought these parcels for the location of a mall since 1977. These requests have been turned down by the Town Council for a number of reasons and has caused everyone in the town to view these new proposals with a great deal of trepidation.

CHAPTER III. New York State Environmental Quality Review Act (SEQR)

The New York State Environmental Quality Review Act, referred to hereafter as SEQR, has institutionalized a process that has had a very profound effect on the entire process of mall development approval and the final decision process of the Town of Webster. SEQR has provided a legal and procedural arena for the developers in Webster to act out their power struggle for the siting of a mall. In order to understand SEQR's effect, it is necessary to understand the act itself, its requirements, intent and performance criteria.

In 1975, the New York Legislature passed SEQR as a law that was to become effective for state agencies in 1976 and local governments in June, 1977. SEQR required that: "All state agencies, boards, public benefit corporations, authorities, commissions and their local counterparts, including local governments, to examine the environmental effects of any actions they undertake or approve." (Varley, 1977: 294; New York State Environmental Conservation Law 8-0100-0117; Sandler, 1977: 114; Weinberg, 1980: 122.)

As a means of insuring compliance with SEQR, the statute requires an environmental impact statement (to be referred to as an EIS) for "any" action which may have a "significant" impact on the environment. The EIS msut analyze the impact of approved or proposed actions; consider reasonable alternatives; serve as a basis for administrative actions based on environmental effects of that action; full disclosure of these effects; serve as a basis for judicial review; expedite and provide for full public participation in agency decision making; and agencies must review their statutory authority, administrative regulations, policies and procedures to bring them into compliance with

SEQR. (Varley, 1977: 294; NYECL 8-0100-0117; Weinberg, 1980: 122; Sandler, 1977:114.)

SEQR was directly influenced by both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). NEPA became effective on January 1, 1970 and established a national policy for protecting the environment by requiring all federal agencies to consider the environmental consequences of their actions. This was accomplished through the preparation of an EIS.

The California Environmental Quality Review Act (CEQR) was the first state law to be enacted after NEPA. CEQR provided for the same provisions as NEPA, but added two new considerations for an EIS: a description of the growth-inducing aspects of a project and a description of the measures proposed to mitigate the threatened environmental damage. (California Public Resources Code, 1976; Varley, 1977: 297.)

From 1970 to 1974, the New York State Legislature considered a number of proposals for environmental legislation but none were enacted. This time period saw "New York lagging in the establishment of across-the-board procedures that would provide for a generally applicable environmental procedure and a general standard for decision making which would balance all factors." (Sandler, 1977:112.)

In 1972, the New York Department of Environmental Conservation took a first step toward a SEQR-like procedure through agency regulation. This regulation required an EIS whenever a private applicant sought a major DEC permit or approval for: air contamination source construction, public water supply approval, installation of wells of a certain depth on Long Island, stream protection, municipal waste

disposal system construction and industrial waste disposal system construction. This proved to be an inadequate system because the establishment of the necessity for an assessment and public hearing was a discretionary decision made by the DEC Commissioner. (Sandler, 1977: 113; Varley, 1977: 298.)

In 1974, the Environmental Protection Land Development Act was introduced. This bill would have provided the Commissioner of the DEC the power to utilize full-length reporting requirements for development projects. This bill died in the New York State Senate. (Varley, 1977: 298.)

When constructing environmental legislation, it is always a challenge to define parameters in such a way as to be politically palatable for a broad range of groups. Defining a term as nebulous as "the environment" can be difficult. The 1974 SEQR legislation very broadly defines the environment to include "natural resources, objects of history and aesthetic significance, existing patterns of population concentration, distribution of growth and existing community and neighborhood character." (NYSECL 8-0105-6; Varley, 1977: 298.)

OVERVIEW OF SEQR

An evident shortcoming of SEQR is that "neither the legislation nor the implementing regulations mandate a specific procedure for determining whether the act applies to a state or local agency's action. This determination is left to the agencies themselves." (Varley, 1977: 299.) This decision is made when an agency refers to a list of exemptions compiled by the Department of Environmental Conservation. These exemptions are divided as such:

Type I. This type usually, but not always, requires an EIS. Type I actions encompass: large scale developments; developments in critical areas such as tidal wetlands; adoption of land use plans and zoning regulations; allowing an industrial, commercial or residential use on 25 or more acres that are presently agricultural; construction of 10 or more homes in an unzoned municipality; construction of 50 or more homes if not connected to a municipal sewer; construction of 250 or more homes in a locality of less than 150,00 people, 1000 or more homes in a locality of less than 1 million, or 2500 or more homes in a locality of more than 1 million; any action involving a physical alteration of 10 or more acres.

(Weinberg, 1980: 122; Varley, 1977: 299.)

This list is not exhaustive and lack of inclusion does not waive the requirements of SEQR.

Type II. These actions never require an EIS: construction and/or alteration of a one or two family home; the repair of existing highways that does not include new lane construction; individual setback or lot variances; and routine permit granting where there is no change in pre-existing conditions. (Varley, 1977: 299; Weinberg, 1980: 122.)

When there is no specific exemption, an agency must make a preliminary assessment as to whether an EIS is necessary. If it is determined that an EIS is unnecessary, the reasons for this decision must be made public. If an EIS is deemed necessary, the EIS process is set in motion. No project action can take place until the EIS and the SEQR processes have been fully complied with, the lead agency's procedures are followed and any applciable NEPA requirements are satisfied. (Varley, 1977: 300; NYSECL 8-0109-4.)

After the preliminary assessment determines that an EIS is necessary, a Draft Environmental Statement (DEIS) is prepared. Upon its completion, the lead agency must issue a notice of completion. This notice must contain a brief project description, an invitation for public comment and instructions for obtaining copies of the DEIS.

Copies of the DEIS must also be filed with the local municipal clerk, the regional office of the DEC and its commissioner. If there is sufficient public interest, a hearing must be held in not less than 15 and not more than 60 days from the filing of the DEIS. Within 45 days of the close of the hearing, or within 60 days of the filing of the DEIS without a hearing, the final EIS must be completed. The final EIS must follow the same procedures as for the DEIS. This completes the process and only then can a project decision be made. (Varley, 1977: 300-301; NYSECL 8-0109-5)

The Environmental Impact Statement has three very important areas of concern: significant effects, timing and content. An EIS is required only for projects that will have a "significant impact". (This problem also exists with NEPA legislation.) The New York State Department of Environmental Conservation attempts to establish some criteria in its regulations, but they are brief and emphasize only absolute environmental impacts, not addressing the wide range of concern addressed in the SEQR legislation. This makes general interpretations of this "significant impact" aspect very difficult. (Varley, 1977: 302-303.)

The timing issue is critical to the process of SEQR and very important when litigation is involved. New York intended for SEQR to be implemented in the planning stage of a project. (NYSECL 8-0109-4) "This requirement exempts feasibility studies and the budgeting process but includes any related subsequent and contemporaneous effects that are part of any action. The early requirement is to avoid environmental damage and expedite administrative review." (Varley, 1977: 304.)

The most basic element of concern is the content of the EIS itself. SEQR legislation requires nine content areas for the EIS:

1. Description of the proposal and the environmental setting;
2. The long and short-term impact of the action;
3. Any unavoidable, adverse environmental impacts and effects if the action is implemented;
4. Alternative actions;
5. Irreversable and irretrievable resource commitments;
6. Mitigating measures to minimize impacts;
7. Growth inducing aspects of the action;
8. Effects of the action on the use and conservation of energy resources;
9. Enumeration of the objections from public and agency comments.

(Varley, 1977: 305-306.)

Nowhere does this legislation allow the substitution of memornada or other reports for sections of an EIS. The EIS must be written in a "brief and concise manner, capable of being read and understood by the public. Finally, the EIS must furnish a record that is detailed enough to provide an environmentally informed decision by the administrator, and to afford the public a basis for understanding and evaluating the administrator's decision." (Varley, 1977: 306.)

The content issue is basically one of full disclosure. The federal courts have ruled in NEPA cases that the amount of detail does not have to be perfect or contain every study. The EIS must be comprehensive and objective, containing more than conclusory language or simply serving as a warning to potential problems." It is anticipated that New York courts would consider these rulings when making SEQR determinations. (Varley, 1977: 306-307; Calvert Cliffs 449 F2d 1109; Sierra Club v.

Morton 510 F2d 813; Sierra Club v. Froehlke 486 F2d 446; NRDC v. Morton 458 F2d 827.)

The reason for such a detailed review of SEQR is to understand why it is employed in the litigation of the Webster case. The challenge, as brought under SEQR, is contingent upon the concept of judicial review of an administrator's actions under the Administrative Procedures Act of New York.

Under SEQR, judicial review examines: whether an EIS is required; public hearings; sufficiency of the EIS; substantive decisions after SEQR has been satisfied; and the sufficiency of agency prodedures to adopt and implement SEQR. (Varley, 1977: 315-316.) A shortcoming of SEQR is that it fails to provide the standards for judicial review. (The first three areas mentioned above are not specifically stated in the legislation.) This shortcoming is taken care of through Article 78 of the New York Civil Practice Law and Rules, which govern procedures.

> "Unless a statute expressly prohibits judicial review, the discretionary acts of an administrator may be examined to determine if they are arbitrary and capricious." (Varley, 1977: 316; 149 NE 2d 882; 26 NE 2d 10; North American v. Murdock 190 NYS 2d 708.)

SEQR, like NEPA, applies to governmental activities and actions, yet the legislation has a significant effect on the private sector, especially builders and developers. SEQR applies to the funding of projects and the issuance of permits by state and local agencies, which directly involve private parties who must comply with the regulations. (Private parties may have to provide an EIS or other reports to an agency.) (NYSECL 8-0109-3.) Even if private parties do not have to be formally involved in the process, they will as a means of pro-

tecting their private interests in the EIS process. (Varley, 1977: 319 - 325.)

In the Webster case, the developers are directly involved in this process through their preparation of the EIS for each project. This protects their interests and also places them within the scrutiny of both the lead agency (Webster Town Council) and the New York State Court system.

CHAPTER IV. A Chronology of Events.

The marketing data presented in Chapter 2 could cause some to conclude that Monroe County is saturated with shopping malls, shopping centers and smaller retail agglomorations. Many of the smaller and medium sized facilities have not died because of the larger facilities but have altered the services they provide to the market. What we are seeing with the Webster proposals are the last in a long line of retail developments for the county. Once a mall is constructed in Webster, any further, large scale development would be economically imprudent.

Before beginning a chronological accounting of events, it is important to trace the commercial past of Webster. The village served as the main retailing center for the Town and Village. As the Town began to expand, strip development began to occur outwardly from the Village, following Ridge Road, a major access artery. The two specific sites under consideration have long been part of the Town's development scheme for commercial expansion. The parcels are zoned for commercial development and only need to be rezoned for a planned commercial development (from a commercial shopping center) and are areas designated by the master plan as commercial shopping center locations.

In the mid-1970's, the Todd Mart Corporation, a local developer, attempted to win approval of a mall development proposal for the present Expressway Mall site. The Town Council rejected this proposal even though Todd Mart had met a Council prerequisite of having a commitment from two major anchors in hand. A zone change was denied due to traffic congestion, the proximity to schools, drainage problems,

unsuitable soils, the fact that Shipbuilders Creek (running through the site) was too environmentally sensitive and the fact that bordering homeowners did not want the proposal located on that parcel. This rejection vame about in spite of Planning BOard approval and was upheld in a court challenge. (Webster Herald 24 December 1979.)

The mall controversy commenced in late October, 1979 when Homart announced its proposal for the Webster Mall at a press conference. Earlier in the previous week, the National Shopping Center group announced its proposal for the Expressway Mall. Each mall site is bordered by two major access arteries -- Route 104, an expressway, and Ridge Road, a major east-west artery. As mentioned previously, both of these sites were prime commercial development sites which six major developers had actively sought since 1977. According to town officials, none of these developers would make a commitment of two major tenants to the town before obtaining approval of their development scheme. This requirement was a policy established by the Town Council in 1975. (Webster Herald 24 October 1979.) This policy severly limits the type of mall development that is allowed in the town, excluding any "alternative" models and only allowing the large developers to operate.

In November of 1979, the Planning Board granted approval of the sketch plan and preliminary plan for the Webster Mall. The Webster Town Council, in a 4-1 vote, granted preliminary approval of the project, determining that it met all of the town requirements and the zoning definitions of 59-19 and Articles IV and V. (See Appendix 3.)

On December 13, 1979, a 5-0 vote by the Town Council approved the intent to rezone the Webster Mall site from Commercial Shopping (CS) to

Planned Commercial Shopping (PCS) and extended the comment period for the Draft Environmental Impact Statement (DEIS). One week later, a 4-1 vote accepted the DEIS and the Council also determined that a final impact statement was not necessary. (The DEIS was submitted to the Town Council by Homart on November 28, 1979.) (Webster Herald 25 October 1980.)

The mall announcements were made during the height of the Webster town election campaign. Until the election of November 8, 1979, the Democrats held a one vote majority on the Council. After this at-large election, the majority shifted to the Republicans. The malls were part of the campaign's discussion but it was not a pervasive issue and not responsible for the shift in the majority. (The major issue appeared to be town management.) The Webster Mall was thus approved by a "lame duck" Council that was split along party lines. (Webster Herald 14 November 1979; 28 November 1979; 12 December 1979; 24 December 1979.)

A large number of important actors began to voice strong doubts about this process. Bruce Hegdorn felt that the present Council was ignoring the Expressway porposal. He felt that both proposals should be evaluated by the town residents through a referendum process. Supervisor-elect Kent strongly suggested that approval be delayed until after the newly elected council was seated. (Webster Herald 12 December 1979; 24 December 1979.)

For two months the approval process had been progressing on schedule and in accordance with all procedural laws. It is at this point that the process begins to bog down. Once approval was granted to the Webster Mall project group, the Expressway Mall group filed suit, claiming that the approval was illegal because the Council had not required the issuance of a final impact statement, (the Council was the designated lead agency

or the EIS review), although the New York State Environmental Quality Review Act (SEQR) requires such a statement. (Webster Herald 25 February 1981.) New York State Supreme Court Justice David O. Boehm ruled in favor of the Expressway Mall group by overturning the Webster Mall approval and requiring the filing of a final impact statement.

This ruling placed the Expressway Mall group at a logistical advantage. They could now move their proposal through the town processes and be far ahead of the Webster group in the "race for approval". It had been conceded in the marketing studies that only one mall could be supported in this market area, thus the first mall to win approval would win this "race".

The most colorful portion of this debate began in October of 1980, during the rezoning hearing for the Expressway Mall parcel. Previous to this hearing, the Town Council suggested that the proposal be expanded to include the anticipated uses of the parcel, that the EIS be submitted before the preliminary plat submission and that the Planning Board not act on the proposal until the Council reviewed the EIS. (This was all accomplished before this October meeting.)

At this meeting, Town Supervisor Irving Kent stated that: "With all things being equal, we want to see this mall on Hegedorn land." (Webster Herald 25 November 1980.) This caused quite a stir among the opposition, bringing claims of favoritism. When one analyzes this statement, it makes quite a deal of sense from a **local** perspective. The Expressway Mall group contained a number of local anchor stores commited to the development and, although Hegedorn stood to make a sizeable profit from this venture, his long standing in the community weighed heavily in his favor.

The March meeting was turbulent, involving much bantering over the issues involved. The conflict and symbolism for the meeting was well established by the two Democrats who strode in wearing white hats. Kujawa and Murphy then left the meeting, claiming that it was illegal (after they were recorded as present and attempted to move adjournment). They were both recorded as voting, in a 3-2 party line vote, which overrode the Planning Board's recommendation that the Expressway Mall not be approved. Through its approval, the Council rezoned the land and accepted the preliminary plat and EIS.

Earlier in the same meeting, William Gray, serving as the Planning Board spokesperson, read a ruling that the Planning Board had requested from the State Controller, concerning the Board's role in the development approval process. The ruling stated that the Planning Board's approval was a prerequisite to any further Council action. If the Board rejects a PUD application, there is no state or local zoning language that allows the Council to overrule that decision, thus ending the PUD application. The only recourse for the Town was to file a lawsuit that would question the local laws under the Municipal Home Rule Law of New York State.

The Town Attorney countered that the issue was decided by the Appellate Court in Todd Mart v. Webster. In this case, the Todd Mart Corporation wanted to develop a parcel of land close to the present Expressway site. The Planning Board approved the project but the Town Council had rejected it. The Court ruled in favor of the Council, thus reducing the Planning Board's role to that of advisory. After this legal rebuttal, Mr. Gray left the meeting. The approval of the Expressway Mall project by the Council constituted the final step in the Town's review process.

The only issue that remained was the disposition of the suits and countersuits that have been filed by the developers. (Webster Herald 22 October 1980; Democrat and Chronicle 24 October 1980.)

As a result of this meeting, the Webster Mall group filed suit in New York Superior Court in an attempt to overturn the approval of the EIS for the Expressway Mall. The suit also requested that Supervisor Kent be dismissed from the decisionmaking process. The basis for this request was an alllegation that Mr. Kent had worked for seven years for the approval of the Expressway Mall.* Judge Boehm was also asked to rule again on the powers of the Planning Board. (Webster Herald 22 October 1980; 3 December 1980; 21 January 1981; 25 February 1981; 4 March 1981.)

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* In my interview with Mr. Kent on Thursday, January 21, 1982, I inquired about this allegation. Mr. Kent explained that his backround was in banking, mortgage financing and venture capital. In the past, as a bank officer, he had contact with investors of both mall groups for other projects and transactions. As part of his personal evaluation, Mr. Kent spoke to the Supervisor for the Town of Greece concerning the responsiveness of both developers, who had built malls in that town. After this discussion, and after careful review of the financial commitment and the development proposals themselves, Mr. Kent's professional opinion was that the Expressway Mall was the most beneficial development for the Town of Webster. After giving this explanation and the allegations some careful thought, the allegations appear to be a smoke screen and last ditch effort by the Webster Mall developers to delay the Expressway project. It would have been negligent of Mr. Kent to not serve the public interest by utilizing his backround skills and knowledge to provide a professional assessment of the situation.

In his opinion, Jidge Boehm ruled that all procedures that were required of the Webster Town Council were followed in their approval of the Expressway Mall EIS. He determined that "no triable issue of fact" existed and that the Webster Mall group had no standing to sue because their interest in the case was purely economic. Boehm also refused to remove Supervisor Kent from deliberation of the proposals.

> "In New York, it has been long held that the courts may not inquire into the personal motives behind enactment of legislation, unless economic involvement by the official can be proven." (Webster Herald 25 February 1981.)

Nowhere could the judge find any evidence of impropriety; the record revealed no fraud, favoritism or misconduct. (Webster Herald 25 February 1981.)

The third opinion handed down in this decision concerned the jurisdiction of the Planning Board. Boehm dismissed the opinion of the State Controller, that the Council could not overrule the Planning Board. He said that the issue was decided in Todd Mart v. Webster.

Webster Associates cited New York State Town Law 274-1 (1976), which allows a town to delegate final authority to its Planning Board to approve or disapprove site plans for development. In the Todd Mart case, the town had refused to rezone a site for a shopping mall, even though the Planning Board had approved the proposal. The court ruled that the Planning Board renders an advisory opinion in the zoning and rezoning of parcels for development.

In an attempt to assuage the feelings of the Planning Board, Town Attorney Robert Teamerson stated that: "This ruling does not indicate that the function of the Planning Board is merely that of a rubber stamp. In this instance the efforts of the Planning Board were considered when the Town Council registered its decision to rezone..." (Webster Herald 25

February 1981.) Basically, these opinions reinforce the fact that the Town Council has jurisdiction over zoning matters as a legislative function. The Planning Board controls the actual site plan elements (soils, density, etc.) of a project. (Webster Herald 25 February 1981.)

The case dragged through the courts, with the Webster Mall group losing appeals at every turn. There was, however, a final determination of the court cases and the issues in December, 1981. Lawyers for Webster Mall Assoicates argued again that the Town Council had moved too quickly in approving the Expressway Mall plans. The suit contended that the Town Council should not have rezoned teh Expressway Mall site, since the Planning Board did not approve the preliminary plan, that the EIS did not thoroughly examine alternative sites (Webster Mall being one of those sites) and that Mr. Kent should not have voted on either proposal because of a conflict of interest. (Times Union 21 October 1981.)

Judge Richard Simon, New York State Appellate Court Judge, told the Webster Mall attorney that the case was being presented in an "either/or" posture. In fact this was not the case. The Town had the ability to accept or reject either proposal on its own merits, irrespective of the other proposal. (Times Union 21 October 1981.) The judge's ruling in this case upheld the decision rendered previously by Judge Boehm. (Democrat and Chronicle 22 October 1981; Webster Herald 23 October 1981.)

In summary, we have a classic development donnybrook. A number of actors, some no longer part of the process, have affected these proposals. Local officials have played out their adminstrative roles, while the developers "play for keeps" in the courts. The following chapter will analyze the role of citizens and the planning process in the development scheme in Webster.

CHAPTER V. Analysis

The analysis of the Webster Mall controversy is for the purpose of identifying general concepts that exist in the case and their ramifications for the development process in general. Despite in-fighting by Webster town officials over site specific location, the underlying issue in this controversy relates to overall town development. Webster has been able to retain much of its rural character while planning and promoting its development. The dilemma revolves around the town's ability to accept levels of growth, while retaining the positive, "quality of life" characteristics that have attracted growth.

That the town will grow has been accepted as a given by the majority of Websterites. (Webster Herald 28 January 1981.) An expressway that divides the town into two sections, has brought this realization home in the form of the mall proposals. This combination of a major access artery and the mall proposals has placed a great deal of pressure on the town to grow, placing it at a development "crossroads". Townspeople and administrators have rhetorically asked how the town will plan for this surge of development. The main concern is avoiding the congestion and sprawl that are readily evident in other county communities. (Webster Herald 29 January 1981.)

In an attempt to define the development process and its interrelationships, this analysis will employ a model that is utilized by Harvey Kaiser (1979). Kaiser's model suggests that four groups are participants in the development process --- landowners and speculators; developers, builders, bankers, et. al.; elected public officials; and non-elected public officials. The model is depicted in Figure 1 :

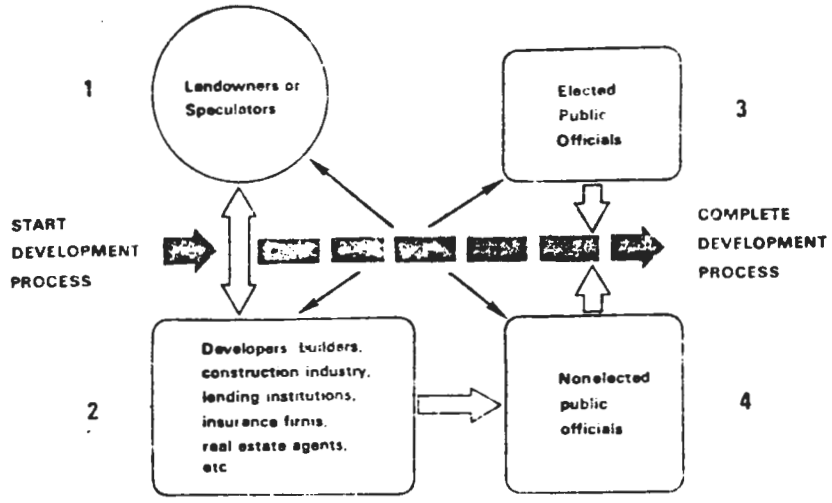

Figure 1 Interactions among participants in the land-development process

(Kaiser, 1978: 61.)

The Kaiser model depicts two modes of interaction in the land development process. Groups 1 and 2, landowners and developers interact with each other. This interaction is depicted by the large white arrows. Groups 3 and 4, elected and non-elected officials interact and are also depicted with the white arrows. Neither of these groups interact with the landowners/speculators but do interact with the developers. The thin black arrows demonstrate a minor interaction among groups 1 and 4, 2 and 3.

The pattern of interaction described is quite practical and reflective of what takes place in practice. Specualtors/landowners will interact with developers when selling land and are likely to interact with non-elected officials to assess the potential for their property within the limitations imposed by local government. Non-elected public officials are excellent functionaries for this and are actually meeting their job expectations by providing information to local citizens.

It is logical that the elected and non-elected officials will

interact through their normal administrative duties. Developers and builderss will do the same through the permitting and approval processes that are involved in development approval.

The model can be directly applied to Webster in the following manner:

1. Landowners/Speculators - Bruce Hegedorn; Webster Associates.
2. Developers, et. al. - Expressway Mall group; Webster Mall group.
3. Elected Public Officials - Town Council Members.
4. Non-Elected Public Officials - Planning Board Members; Judge Boehm; Chamber of Commerce; other town officials.

The process described in the earlier chapter indicates that, in Webster, these parties have interacted in accordance with Kaiser's model. The glaring weakness of the process, which is articulated through this model, is the absence of the public as a separate entity or integral part of one group.

What of the public in Webster during this controversy? It is interesting to note where the public statements have been made during this more than two year period. The majority of public comment can be found in two arenas -- the Webster Herald (the local weekly newspaper) and at public hearings. Comments have run the gammut from support to opposition, and include some criticism for almost everyone. Public hearings were initially well attended and a number of citizens expressed their views on the two malls.

The significance of public comment, however, can be found in the timing of this input and what has <u>not</u> taken place during the public comment periods. If one were to superficially explore this case, public comment would appear to have taken place in the initial stages of the development process. From a legalistic perspective, this is a correct assumption, given the governmental timetables for review. From a real-

istic perspective though, the development sites were chosen, land options purchased and the "true" development process was initiated many months prior to the time public comment and participation was mandated. This places public comment in an apparantly impotent position for altering the design or location of this development. The dye was already cast.

It is significant to note that only once (August 13, 1981.) could a direct editorial comment by the local weekly newspaper be found. This was very unusual since the malls represent the largest single development since the Xerox Corporation located in Webster in the 1960's. A possible explanation for this could be the fact that no one publicly questioned the wisdom of developing a regional mall, since most comments acknowledged that a mall was both necessary and inevitable. Only long after the legal battles raged and delays occurred did the Herald comment.

Enthusiastic comments also suggested that Webster could become almost a new town. (Webster Herald 28 January 1981.) The new town idea saw Webster as potentially a self-contained community, with industry (Xerox and others), housing, parks, educational facilities and the like already established in the town. The establishment of a mall would solidify this perception.

Webster provides us with a classic example of the conflict in growth communities. Development issues are debated publicly and privately, inter and intra organizationally and in the legal arena. All parties agree on the premise of a rational growth policy, but this becomes a secondary concern as a result of extensive litigation and public wrangling. Well conceived development yields to the pressure of economic and political expedienc.

The question then becomes one of who, in Kaiser's model, exerts the

most control in the land development process -- individual property owners, the community or the economic interests? Each development situation may be different, but the ensuing battle for control becomes time consuming and expensive. (Kaiser, 1978: 51.) "Land use control... continues to be largely in the hands of local governments in the U.S." (Muniak, 1980: 71.), but development process control and the pressure it places on land use control, is largely in the hands of developers throughout the land.

Planners who are integrally involved with this process must consider a broad range of factors. Initially, the planner must be perceptive enough to comprehend what special interests are involved in the process, who the leaders of these interests are and what relationships exist between these interests and the political decision makers. It is paramount that planners also be aware of the concerns of local residents in relation to the development proposal (i.e. effects on the quality of life, community services and similar concerns.) Thirdly, the social climate must be assessed relative to the development proposal. Finally, local planners must attempt to anticipate the bureaucratic response to the project at state and local levels. (This is to say nothing of the important metropolitan-wide impacts that receive amazingly little attention in this country.)

These four factors point to the central issues of development proposals -- the visible expression (the physical proposal) and the behavioral aspects of the individuals and organization (political). Physical change is the most dramatic issue affecting the lives and financial resources of actors. (Niehoff, 1966; Kaiser, 1978: 19-20.)

The political issue operates across a broad spectrum and is composed of a number of factors:

"1. Leadership. Who leads and how that leadership is exercised. Leaders are viewed in a group context and are quickly identified by the media. The public's attitude is influenced by whether the leader is from the public or private sector.

2. The nature of the project and individual responses. Unfavorable reactions are likely to occur if the proposal and the plan for its implementation are unclear.

3. Timing. If a community is not informed of a development proposal until the project is well along, a developer can be accused of trying to sneak something over on the town. If a community is advised well in advance of a proposal, many groups can mobilize. Developers accuse these groups of delay tactics.

4. Individual participation is predicated on a person's attitude toward a development. This participation is tempered by an individual's political awareness, sense of importance and alienation, knowledge of the proposal, the political process and, most importantly, an individual's economic stake in the proposal."

(Kaiser, 1978: 60; Davies, 1960; Wilson, 1977.)

Kaiser's model is an accurate portrayal of interaction within the development process. The fact that the public-at-large has not been included is no accident. The concerns of the public are seen as more of a nuisance to the development process than an integral, positive aspect of that process. The contention from this corner is that since there are so many avenues open to monied interests which allow them to diffuse public opinion, the public is viewed as another "cost of doing business" as opposed to a partner in that process. The avenues open to public officials for the same purposes are limited but still exist (i.e the manner in which meetings are run, scheduling, speed of the approval process, etc). A closer analysis of the Webster controversy will bear

this contention out.

In Webster, the question of the "public interest" has been decided by the town's master plan, which calls for a regional mall in either location. The town, its officials and citizens have decided what is in their interest. This has been championed by both developers throughout this controversy. The welfare of the community is assessed within the parameters of a shopping mall. Since the public interest question was decided previous to the introduction of these proposals, the implementation process (development approval) simply draws analytic attention.

The general public in Webster has a number of outlets through which they can theoretically affect the development process -- planning board meetings, Town Council public hearings, local pressure groups/coalitions, informal contact with local elected and non-elected officials and the courts. Each of these forums provides only for reaction to a proposal, providing no avenues in the formulation of a development proposal.

Planning Board meetings are accessible to the public, but provide the least amount of leverage since the Board's role has been legally defined as advisory to the Town Council. The public has little control over this non-elected advisory board. Town Council meetings provide a more meaningful source of input for the public since there is approval control for the development at this step. The Town Council is the "ultimate authority" but this does not guarentee that the Council will actively seek or act in accordance with the opinions expressed by only those citizens who speak out at meetings.

Local pressure groups and coalitions may be the most direct manner to effect a development proposal, either on their own or through the courts. Modifications or total stoppages have been accomplished through these types of groups. However, this has not been the case in

Webster because there are two proposals. As a result, local groups have sided for one or the other proposal and have removed any appearance of impartial judgement of the proposals in light of the public good. The Webster citizen groups have allied themselves so closely with one or the other proposal that they are, in fact, acting as surrogates for the developers in accomplishing much of the groundwork for local acceptance of their specific proposal.

Informal contact with elected and non-elected officials is a reality in Webster, since its population is relatively small. The quality of contact is directly proportional to a citizen's influence within a community. Thus business leaders will have a greater influence than the occassional homeowner. This informal contact with citizens or businessmen is not a practice openly promoted by politicians because of the obvious conflict of interest potential. Again this forum is a mismatch, with the developer holding the upper hand in Webster. The malls are proposed for sites that are compatible with the master plan. The informal contact would not change anything that is essential to the proposals.

A court challenge can prove to be successful for citizen input, if they can prove standing and probable cause. This is usually an expensive and time consuming process which not all citizens can pursue. The lawsuits filed in Webster have not been filed by the citizens, but rather by the developers. The election process can be effective only in removing an official after the fact. It has no direct influence on a development proposal at hand, if the controversy is not "hot" and in the limelight.

As we see, the citizens of Webster have little effective, formalized input for the mall siting decision. Rondinelli (1975) and Anderson (1976) suggest that "investment in a facility is made within the context of a centralized decision making process. This system is made operational through accepted discretionary powers exercised by local legislators." (Rondinelli, 1975: 4.) The interpretation being that developers and legislators accept this context (minus direct citizen input) as a "normal" aspect of the game.

Since the public is on the "outside looking in" during the development process, who, if anyone, attempts to project the public opinion and inject that opinion into the debate. Present economic realities have transformed administrative officials into tax-base hungry "magnets", who are more fiscal mercantilists than administrators. (Beeman, 1969: 5.) This situation makes it extremely difficult for non-elected officials, who must answer to the adminstrators, to work directly and actively on behalf of the public interest. In spite of the pressure, this task must be the responsibility of the planner. The planner must take this responsibility through the political process in order to be effective in the development process.

The planner must be aware that "land conversion is much more an ad hoc process than the profession had previously admitted.... It is inherently a satisficing rather than optimizing process." (McBride and Clawson, 1970; 22.) Policies and decisions affecting land use policies are often made simultaneously and since land use is contingent upon policies, then the planner must be fully aware of who the parties involved are and what they represent. Policy becomes what the government does rather than what they say they will do (Rider, 1980: 594.) which is

directly affected by pressure groups. (Dahl in Freiden and Morris, 1968: 225.)

Ad hoc land development is essentially a description of a political process, almost identical to that described in Chapter One of this paper. The planner is confined by an imperfect system that assumes democratic action but is influenced by pressure groups -- elites. The pressure groups in the development process are described here as elites because of their economic influence. These elites are highly capitalized and exert a disproportionate influence on the development process. The measuring of this elite influence can be broken down into four areas: 1) the distribution of influence, which is pervasive; 2) the pattern of influence, which is project specific and economic; 3) the extent of conflict and cohesiveness among the elite, in which we see cohesiveness of purpose and conflict when competing for the same market; 4) changes in the system, which may or may not occur depending upon the disposition of the community toward development. (Dahl in Freiden and Morris, 1968: 226.)

The influence of the economic elites is exercised through a use and control of money and credit, control over jobs, control of information and its distribution, knowledge and expertness and the social standing of the economic influentials. (Dahl in Freiden and Morris, 1968: 231.) Possession of these "tools" of influence does not guarentee resulting influence unless utilized to their fullest. Possession and utilization of influence, in conjunction with a sitaution that causes planners to react to development proposals, serve to place planners at a distinct disadvantage in the development process.

A more particularized view of the general planning process in

Webster, uncovers a critical situation for a growth community, and an especially critical situation for a community that is accepting a development as consequential as a regional mall. Webster does not have a town planner. Like a large number of smaller communities which border metropolitan areas, a planner has not been hired and is not seen as a necessity with the presence of the Monroe County Department of Planning. The Town relies on technical assistance from the County planners working in conjunction with the Town Planning Board. While the County planning staff supplies top quality technical assistance, a number of problems exist with this set up.

County planners may be able to keep abreast of Town issues but this will be on a secondary basis. Since they are not part of the community, nor part of the local administrative structure, the ability to review day-to-day operations and make a highly informed assessment of a complex process is next to impossible. County planners will only provide assessments when requested by the town, unless an extraordinary situation exists. This is understandable since "butting in" is not conducive to maintaining a good relationship with the same local officials who determine local contributions to County government, which pays the salaries of the planners. The planners are forced to operate as technicians only, avoiding any unpopular statements or assessments that might offend a political actor, and failing to become involved in a truly broad policy advisory role. This situation also removes the planners from any politically sensitive interaction which is essential to legitimizing the role of the planner and the technical tasks that are undertaken. Sensitive to this watered down assessment process and the absence of a day-to-day planning "department", developers have been quick to

provide any munber of experts and accompanying information, which places more pressure on those responsible for assessing this information.

This analysis would be remiss if it did not address the issue which has caused the most consternation in Webster -- time delays. As mentioned in previous chapters, popular opinion in Webster places much of the blame on town administrators. (This assessment is a result of a content analysis of letters to the editor to the Webster Herald and informal questioning by the author.) The fear that one of the developers would move the project to neighboring Wayne County, thereby forfeiting the tax revenue, increased the perception that local officials were dragging their feet. Some time was necessary for the preparation, acceptance and review of the draft and final EIS, but the town acted well within the mandated time frames during the review period. If there was any excessive delay, it came early on when the Town Council accepted a preliminary EIS for Webster Mall and did not require a final EIS. (See Chapter IV.) Delays resulted from the filing of lawsuits and legal briefs and the court process. Other than this situation, further delays have resulted from the extensive litigation initiated by teh developers. The majority of this litigation has emanated from the Webster Mall developers in their attempt to find fault with the Expressway development proposal and the behavior of local officials. The litigation has extended the process for over two years and, while caused by the developers, the public's perceprtion of who is causing the delay seems to have changed very little.

There are two reasons that appear to explaing this attitude of local residents. First of all, the local forum for all of the debates takes place in town facilities, at meetings presided over by town officials who carp at each other for political "point making" at these meetings

and in the newspapers. This lends creedance to the perception that town officials are running and ruining the process. The influentials (two main developers) have maintained a relatively low profile throughout. Presentations have been made, experts have been called and lawsuits filed but the link of total responsibility is missing. The local paper, the only real information outlet, has downplayed the developers' role. Local citizens know that each developer wants their own site to be the location of the mall, but fail to transmit this to an understanding of responsibility for the delays. The scenario has been acted out by local surrogates (town officials, citizen groups) which has allowed the developers to avoid consistent public exposure. This entire situation adds a great deal of saliency to the Hunter/Mills analysis offered in Chapter I, which claims that an economic elite, in fact, does control and influence major decisions in a community.

CHAPTER VI. Conclusion.

Webster, New York is the rule rather than the exception to the land development process. Ad hoc land development will not be radically altered by an impotent public and, by necessity, is reacted to and acted upon by local administrators who lack the one local technician who could offer a synthesis of local values, technical assessment and comprehensive review of the development proposals. Unfortunately, everyone feels that they can "plan" but not everyone has the tools to plan or the ability to implement the planning based decisions. The author doubts that the town's administrators nor residents understand the function of a planner.

This is not to suggest that a planner is the savior for a growth community, but the broad range of skills and resources should be an integral part of the administration of any community, regardless of their position on the growth-decline spectrum. The Monroe County Planning Department makes the best of a situation that is politically sensitive. However, there are a number of gaps that occur in such a process, for which the Department is not responsible.

The development process is an ad hoc process which is controlled by powerful economic interests competing for a particular market. The planning process becomes reactive rather than leading, and places local officials in a defensive posture which is difficult to extract themselves from. The ability to alter the public's perception of "ineffectiveness" becomes a nearly impossible task.

In Webster, the town was fortunate that the development proposal corresponded to the master plan. Any number of cases can be cited in which the master plan has been disregarded when a final development

decision was made. Until recently, there has been little legal impediment to this situation occurring any number of times. Recently though, some courts have recognized the master plan as a legal document. This can only support the planning process in the future and better define the development process locally.

While this may appear to be a cynical view of the process, there is a glimmer of hope. To remedy these problems a number of tasks msut be undertaken by planning professionals, the main one being public relations. Local planning organizations must make the public aware of what planners do, why and how that is beneficial to a community. This articulation must be combined with political action to make legislators sensitive to the planning "agenda".

Locally, planners must evolve from the technocratic mold to a diverse professional who operates within the entire, broad spectrum of local affairs, from politics through implementation and analysis. The local planner must educate the public. Visibility makes townspeople cognizant of the profession and its purpose. This is the only manner in which to gain acceptance at the local level for the planning process.

In the final analysis, the planning process will survive if planning establishes itself within the legal framework of land use (i.e. master plan as a legal document), planning establishes a working relationship with developers and the process is an integral part of active, on-going local policy making. This is the only means by which the profession can make an in-roads on the pervasive power developers hold over the land development process.

In his article, Muniak (1980) discusses the land development process through an analysis of the effects of local Conservation Commissions on the land development process in Massachusetts.

> Superimposing narrow focused development organizations over the existing, insitutitonalized planning framework, may drastically upset... land use planning. It is out of line with the costly investment of earlier efforts by the federal government to build a balanced planning capacity within local governments. The conflict and confusion... might well contribute to a public loss of confidence in local government's ability to manage this process." (Muniak, 1980: 73.)

While this is a paraphrase of Muniak's quote, this applies quite succinctly to land development in general. Local governments cannot afford to let the narrow interests of developers rule land development and ruin a federal effort to expand the planning capabilities of local governments. In some places around the country, and in Rhode Island, this has occurred and the public has, in fact, lost confidence in the local government's ability to manage the land development process.

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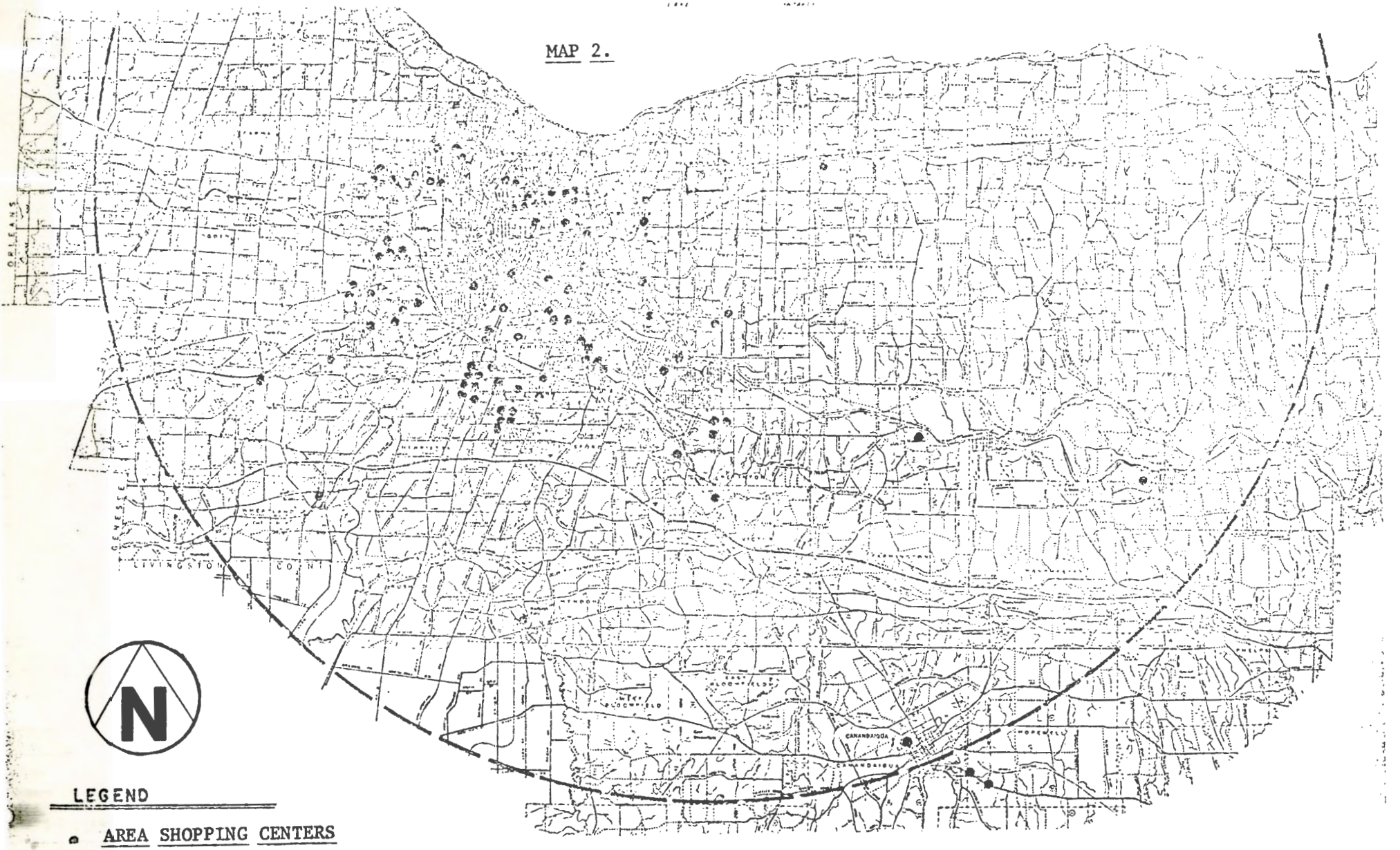
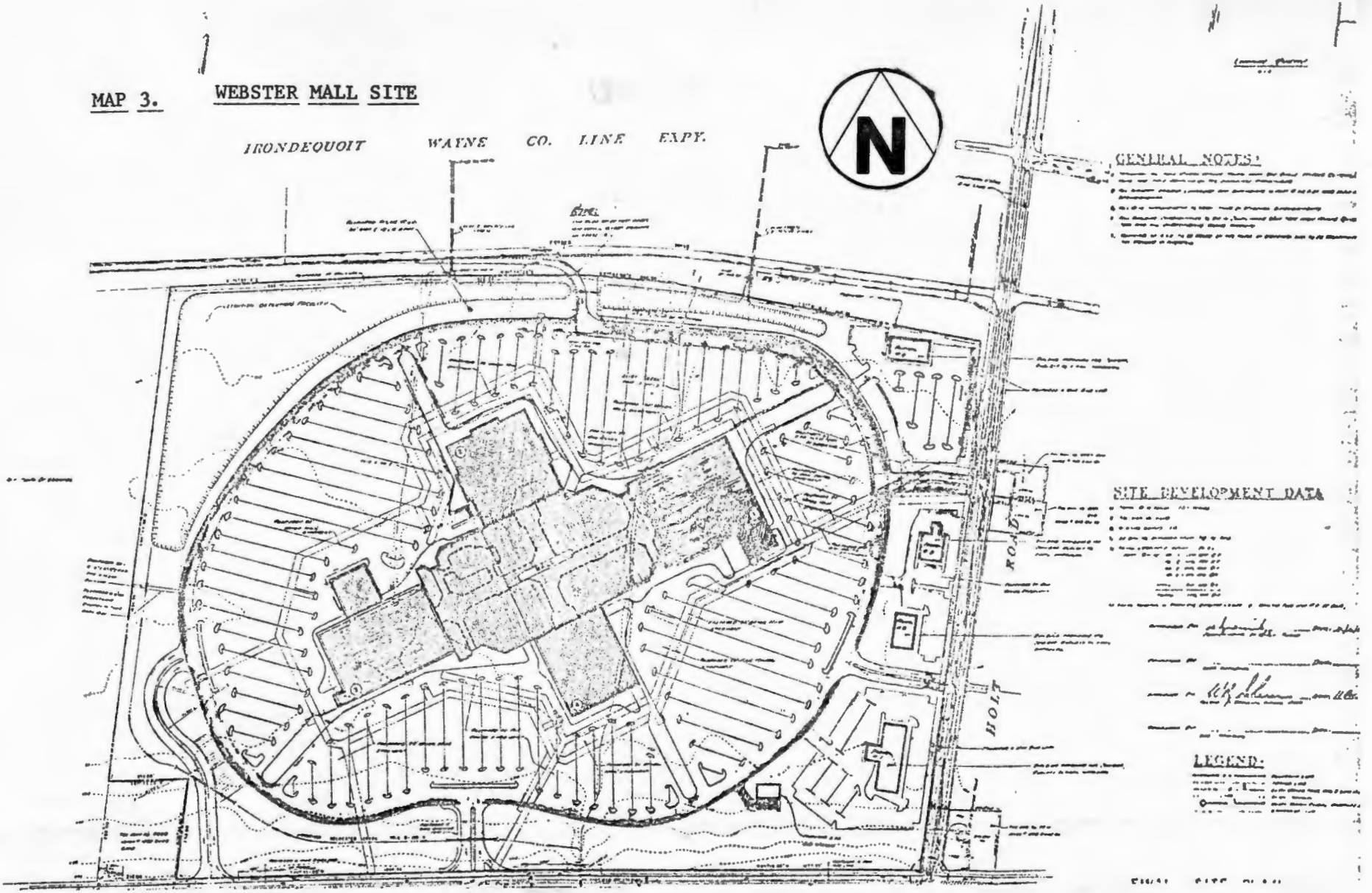
APPENDIX 1. MAPS

MAP 1. Regional Orientation

MAP 2.

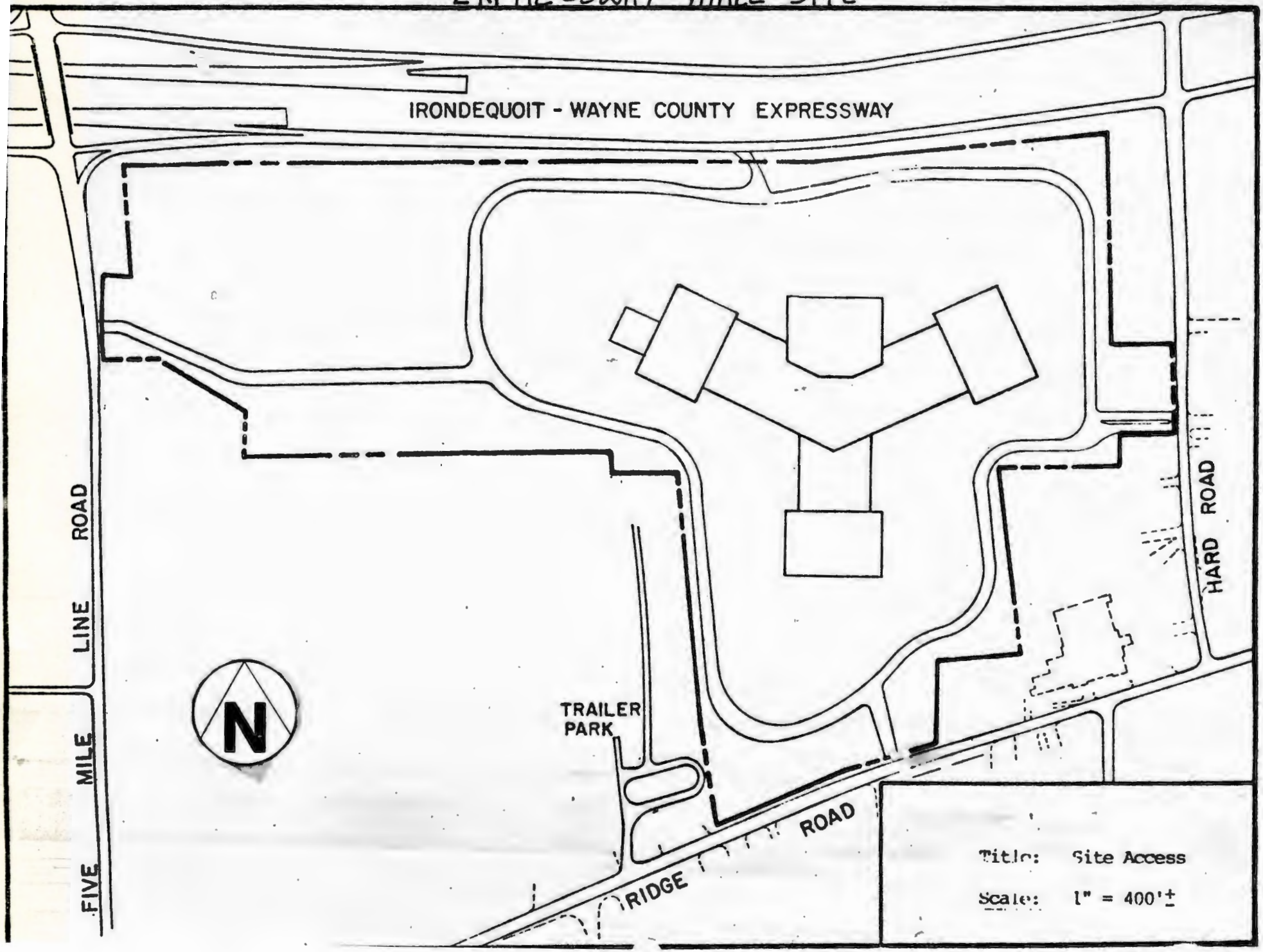


MAP 3. WEBSTER MALL SITE



MAP 4.

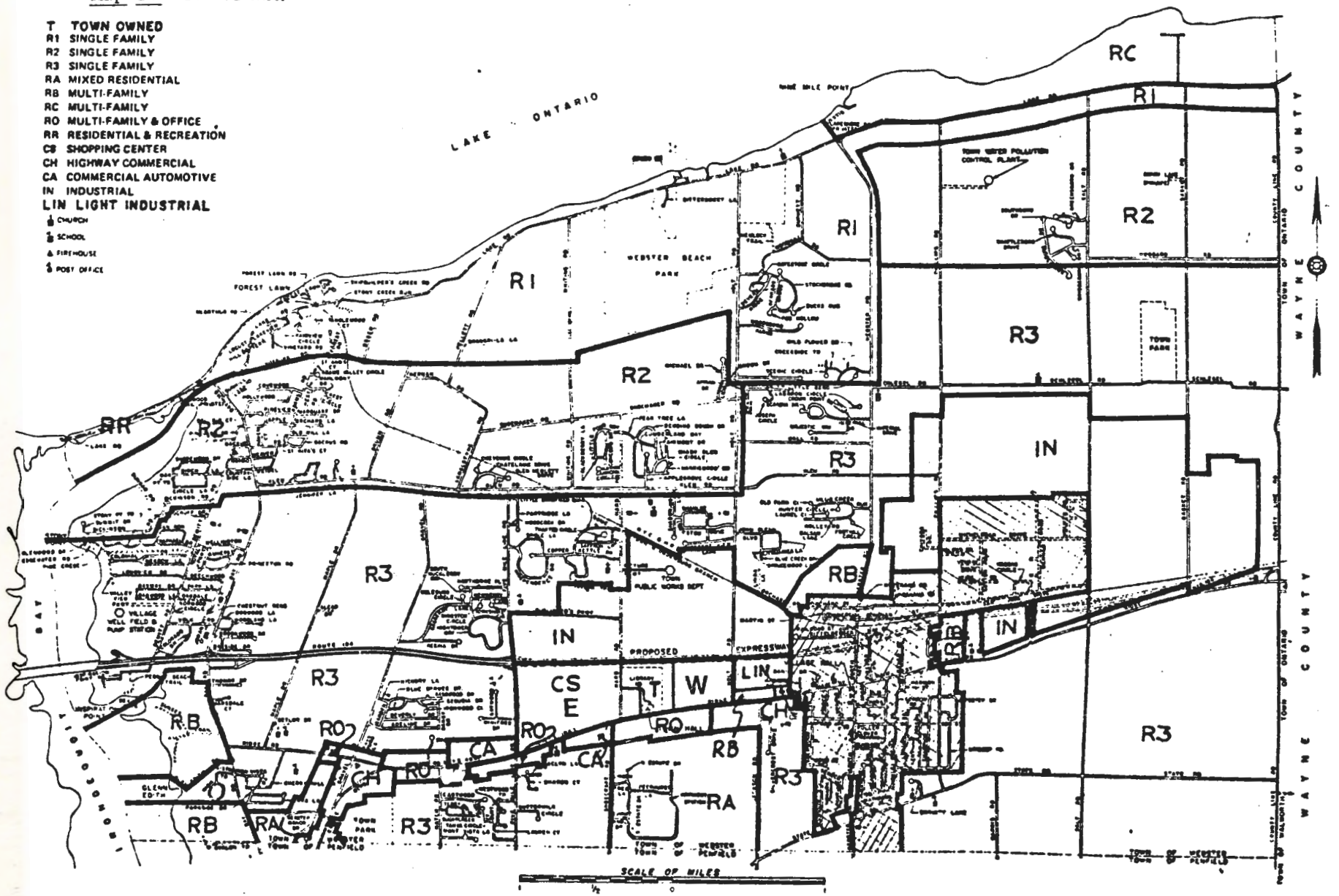
EXPRESSWAY MALL SITE



TOWN OF WEBSTER

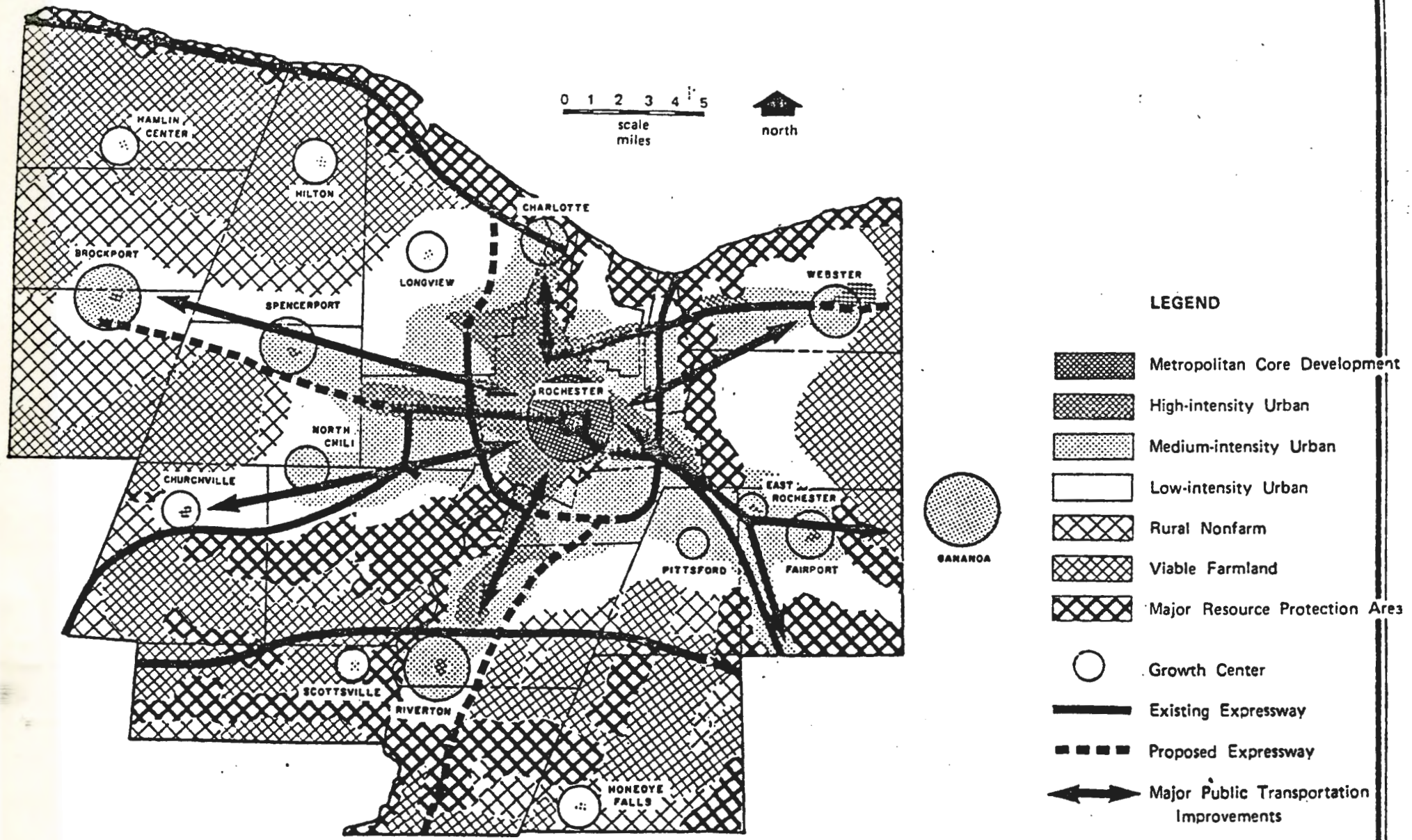
Map 5. ZONING MAP

T TOWN OWNED
R1 SINGLE FAMILY
R2 SINGLE FAMILY
R3 SINGLE FAMILY
RA MIXED RESIDENTIAL
RB MULTI-FAMILY
RC MULTI-FAMILY
RO MULTI-FAMILY & OFFICE
RR RESIDENTIAL & RECREATION
CS SHOPPING CENTER
CH HIGHWAY COMMERCIAL
CA COMMERCIAL AUTOMOTIVE
IN INDUSTRIAL
LIN LIGHT INDUSTRIAL
CHURCH
SCHOOL
FIREHOUSE
POST OFFICE



Map 6. GENERAL DEVELOPMENT PLAN

MONROE COUNTY NEW YORK STATE



APPENDIX 2. New York State Environmental Quality Review Act (SEQR).

ARTICLE VI—IMPLEMENTATION OF ENVIRONMENTAL QUALITY BOND ACT OF 1972

1972 Addition to Source Law

Article VI of the Environmental Conservation Law of 1970, L.1970, c. 140, which implemented the Environmental Quality Bond Act of 1972, was repealed by L.1973, c. 400, § 91, eff. June 5, 1973. The substance of such Article VI, consisting of sections 201 to 205, 220 to 222, 240 to 243, 260 to 265, 280 to 283, and 290 to 292, was incorporated into the Environmental Conservation Law of 1972, L.1972, c. 664, § 2, by L.1973, c. 400, § 90, eff. June 5, 1973, according to the following table:

Former Environmental Conservation Law Sections	*Recodified Environmental Conservation Law Sections*
201	*51-0101*
202	*51-0103*
203	*51-0105*
204	*51-0107*
205	*51-0109*
220	*51-0301*
221	*51-0303*
222	*51-0305*
240	*51-0501*
241	*51-0503*
242	*51-0505*
243	*51-0507*
260	*51-0701*
261	*51-0703*
262	*51-0705*
263	*51-0709*
264	*51-0711*
265	*51-0713*
280	*51-0901*
281	*51-0903*
282	*51-0905*
283	*51-0907*
290	*51-1101*
291	*51-1103*
292	*51-1105*

ARTICLE 8—ENVIRONMENTAL QUALITY REVIEW [NEW]

Sec.
8-0101. Purpose.
8-0103. Legislative findings and declaration.
8-0105. Definitions.
8-0107. Agency implementation.
8-0109. Preparation of environmental impact statement.
8-0111. Coordination of reporting; limitations; lead agency.
8-0113. Rules and regulations.
8-0115. Severability.
8-0117. Phased implementation.

§ 8-0101. Purpose

It is the purpose of this act to declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to en-

Effective Date. Section effective Sept. 1, 1976, pursuant to L.1975, c. 612, § 2; amended L.1976, c. 228, § 4.

Law Review Commentaries

A primer on New York's revolutionized environmental laws. 49 N.Y. S.B.J. 41, 111 (1977).

New York's SEQR—its importance for water pollution control. 50 N.Y. S.B.J. 572.

State Environmental Quality Review Act. 49 N.Y.S.B.J. 110 (1977).

Library References

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½. Construction

This article must be construed in the light of reason, and any limitations or conditions imposed accordingly must be governed by "reasonableness test" if they are to survive judicial review. Town of Henrietta v. Department of Environmental Conservation of New York, 1980, 76 A.D.2d 215, 430 N.Y.S.2d 440.

1. Purpose

General substantive policy of this article is flexible one, which leaves room for responsible exercise of discretion and does not require particular substantive results in particular problematic instances; it does, however, make environmental protection part of the mandate of every state agency and department. Town of Henrietta v. Department of Environmental Conservation of New York, 1980, 76 A.D.2d 215, 430 N.Y.S.2d 440.

Environmental review of determination of city director of planning and zoning that proposed amendment of zoning ordinance, which would add to list of allowable special permit uses in district, would have no significant adverse effect on environment and environmental impact study would not be required, was not premature, inasmuch as environmental review might be required on application for special permit. Kravetz v. Plenge, 1979, 102 Misc.2d 622, 424 N.Y.S.2d 312.

Sections 8-0101 to 8-0115 were intended to permit state and local agencies to intelligently assess and weigh environmental factors along with social, economic and other relevant considerations in determining whether project or activity should be approved or undertaken. Tuxedo Conservation and Taxpayers Ass'n v. Town Bd. of Town of Tuxedo, 1978, 96 Misc.2d 1, 408 N.Y.S.2d 668, affirmed 60 A.D.2d 320, 418 N.Y.S.2d 638.

2. Generally

This article requires decision maker to balance benefits of proposed project against its unavoidable environmental risks in determining whether to approve the project. Town of Henrietta v. Department of Environmental Conservation of New York, 1980, 76 A.D.2d 215, 430 N.Y.S.2d 440.

This article does not change jurisdiction between or among state or local agencies; and regulations thereunder expressly contemplate that each and every agency continue its practice of determining whether project complies with particular statutes it administers. Town of Poughkeepsie v. Flacke, 1980, 105 Misc.2d 149, 431 N.Y.S.2d 951.

This article was enacted in order to preserve and protect environment for the people of the State. New York State Builders Ass'n, Inc. v. State, 1979, 98 Misc.2d 1045, 414 N.Y.S.2d 956.

3. Statement of environmental impact

Intent of this article is that every public agency within state file with the Commission of Environmental Conservation of the State a statement concerning environmental impact of the project. New York State Urban Development Corp. v. Vanderlex Merchandise Co., Inc., 1979, 98 Misc.2d 264, 413 N.Y.S.2d 982.

§ 8-0103. Legislative findings and declaration

The legislature finds and declares that:

1. The maintenance of a quality environment for the people of this state that at all times is healthful and pleasing to the senses and intellect of man now and in the future is a matter of statewide concern.

2. Every citizen has a responsibility to contribute to the preservation and enhancement of the quality of the environment.

[illegible] including their enjoyment of the natural resources of the state.

4. Enhancement of human and community resources depends on a quality physical environment.

5. The capacity of the environment is limited, and it is the intent of the legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds from being reached.

6. It is the intent of the legislature that to the fullest extent possible the policies, statutes, regulations, and ordinances of the state and its political subdivisions should be interpreted and administered in accordance with the policies set forth in this article. However, the provisions of this article do not change the jurisdiction between or among state agencies and public corporations.

7. It is the intent of the legislature that the protection and enhancement of the environment, human and community resources shall be given appropriate weight with social and economic considerations in public policy. Social, economic, and environmental factors shall be considered together in reaching decisions on proposed activities.

8. It is the intent of the legislature that all agencies conduct their affairs with an awareness that they are stewards of the air, water, land, and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.

9. It is the intent of the legislature that all agencies which regulate activities of individuals, corporations, and public agencies which are found to affect the quality of the environment shall regulate such activities so that due consideration is given to preventing environmental damage.

Added L.1975, c. 612, § 1; amended L.1977, c. 252, § 1.

1977 Amendment. Subd. 6. L. 1977, c. 252, § 1, eff. June 10, 1977, added statement that the provisions of this article do not change the jurisdiction between or among state agencies and public corporations.

Subd. 9. L.1977, c. 252, § 1, eff. June 10, 1977, substituted "due consideration" for "major consideration".

Effective Date. Section effective Sept. 1, 1976, pursuant to L.1975, c. 612, § 2; amended L.1976, c. 228, § 4.

Index to Notes

Generally 1
Standing 2

1. Generally

Requirement of this article of environmental consideration to fullest [illegible] sets high standard which must be enforced by reviewing courts. Town of Henrietta v. Department of Environmental Conservation of New York, 1980, 76 A.D.2d 215, 430 N.Y.S.2d 440.

The "City of Ithaca Department of Planning and Development acting as Lead Agency," which Department was a creation of the Department of Planning of the City of Ithaca, was the properly designated agency to make environmental determinations in connection with proposal to subdivide 45 acres of undeveloped commercially zoned land in the city. Ecology Action v. Van Cort, 1979, 99 Misc.2d 664, 417 N.Y.S.2d 165.

In order to establish standing under this article, petitioners must show that they have suffered actual injury and show that such injury comes within zone of interests to be protected by statute in question. New York State Builders Ass'n, Inc. v. State, 1979, 98 Misc.2d 1045, 414 N.Y.S.2d 956.

Economic injury was not within zone of interest and could not serve as basis for standing under this article for purposes of review of administrative actions concerning State Energy Conservation Construction Code. Id.

Anyone who can show adverse environmental impact causing him or her injury as result of agency action would have standing to bring action

2. Standing

Anyone who can show adverse environmental impact causing him injury as result of agency action has standing to bring action challenging such agency action. Blick v. Town of Webster, 1980, 104 Misc.2d 852, 429 N.Y.S.2d 811.

Resident homeowners living adjacent to or very near subject property had standing to bring action seeking to invalidate rezoning by town board which created planned shopping commercial district within existing commercial shopping center district, even though homeowners were allegedly primarily motivated by economic considerations, because homeowners' interests fell within zone of interest protected by statutes involved, where they would pacts, and stated purpose of this article was to insure that due consideration was given to preventing environmental damage. Id.

Mere fact that landowner-local business operator had large economic concerns unrelated to environmental effects of proposed development was not enough, in and of itself, to deny standing to bring action seeking to invalidate rezoning by town board which created planned shopping commercial district within existing commercial shopping center district, where landowner-local business operator could show same probability of environmental damage as had other petitioners, who were resident homeowners living adjacent to or very near subject property. Id.

§ 8–0105. Definitions

Unless the context otherwise requires, the definitions in this section shall govern the construction of the following terms as used in this article:

1. "State agency" means any state department, agency, board, public benefit corporation, public authority or commission.

2. "Local agency" means any local agency, board, district, commission or governing body, including any city, county, and other political subdivision of the state.

3. "Agency" means any state or local agency.

4. "Actions" include:

(i) projects or activities directly undertaken by any agency; or projects or activities supported in whole or part through contracts, grants, subsidies, loans, or other forms of funding assistance from one or more agencies; or projects or activities involving the issuance to a person of a lease, permit, license, certificate or other entitlement for use or permission to act by one or more agencies;

(ii) policy, regulations, and procedure-making.

5. "Actions" do not include:

(i) enforcement proceedings or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings;

(ii) official acts of a ministerial nature, involving no exercise of discretion;

(iii) maintenance or repair involving no substantial changes in existing structure or facility.

6. "Environment" means the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character.

7. "Environmental impact statement" means a detailed statement setting forth the matters specified in section 8–0109 of this article. It includes any comments on a draft environmental statement which are received pursuant to section 8–0109 of this article, and the agency's response to such comments, to the extent that such comments raise issues

statement prepared pursuant to section 8–0109 of this article.
Added L.1975, c. 612, § 1; amended L.1976, c. 228, § 1; L.1977, c. 252, § 2.

1977 Amendment. Subd. 4, par. (i). L.1977, c. 252, § 2, eff. June 10, 1977, inserted "projects or activities" preceding the words "supported" and "involving".

1976 Amendment. L.1976, c. 228, § 1, eff. May 28, 1976, redesignated former subd. 1 as subds. 1 to 3, substituted the specific terms "State agency", "Local agency" and "Agency" for the single term "Agency", therein, and redesignated former subds. 2 to 6 as 4 to 8, respectively.

Effective Date. Section effective Sept. 1, 1976, pursuant to L.1975, c. 612, § 2, amended L.1976, c. 228, § 4.

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Industrial development agency 1
Projects or activities involving permit 5
Projects or activities within article 3
Urban development corporation 2

---

1. Industrial development agency

The Auburn Industrial Development Authority is a "State agency" and was required to comply with the first step of the phased implementation of the State Environmental Quality Review Act (SEQR) on September 1, 1976. 1976, Op.Atty.Gen. (Inf.) 294.

2. Urban development corporation

New York State Urban Development Corporation, designated by legislature to supervise state's partial funding of domed stadium facility for university, and city planning commission were "agencies" governed by this article and construction of domed facility was an "action" subject to such law and regulations. H. O. M. E. S. v. New York State Urban Development Corp., 1979, 69 A.D.2d 222, 418 N.Y.S.2d 827.

3. Projects or activities within article

Condition, imposed by Department of Environmental Conservation upon developers of regional shopping mall, regulating number of parking spaces at the mall, was integrally related to site-generated traffic volume, which was in turn directly related to air quality and therefore valid concern for Department of Environmental Conservation under this article. Town of Henrietta v. Department of Environmental Conservation of New York, 1980, 76 A.D.2d 215, 430 N.Y.S.2d 440.

State Environmental Quality Review Act, this article, applied to construction of domed facility at university. H. O. M. E. S. v. New York State Urban Development Corp., 1979, 69 A.D.2d 222, 418 N.Y.S.2d 827.

4. Actions

Application to amend text of zoning ordinance is an "action" subject to Environmental Conservation Law and regulations adopted thereunder. Kravetz v. Plenge, 1979, 102 Misc.2d 622, 424 N.Y.S.2d 312.

5. Projects or activities involving permit

County's issuance of permit required for village's spraying for mosquito control was a purely ministerial act and thus exempt from the requirement of the statutes governing environmental quality review. Marino v. Platt, 1980, 104 Misc.2d 386, 428 N.Y.S.2d 433.

6. Declaration of intent to rezone

Taken together, town zoning ordinance and this article made declaration of intent to rezone the point in rezoning process at which town board had to, as lead agency for SEQR purposes, have had SEQR process completed, and thus passage of such declaration without, or prior to, submission of draft environmental impact statement was in direct contravention of SEQR requirements, and for this reason alone, was invalid. Blick v. Town of Webster, 1980, 104 Misc.2d 852, 429 N.Y.S.2d 811.

§ 8–0107. Agency implementation

All agencies shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this article and shall recommend or adopt such measures as may be

set forth in this article. They shall carry out its terms with minimum procedural and administrative delay, shall avoid unnecessary duplication of reporting and review requirements by providing, where feasible, for combined or consolidated proceedings, and shall expedite all proceedings hereunder in the interests of prompt review.

Added L.1975, c. 612, § 1.

Effective Date. Section effective Sept. 1, 1976, pursuant to L.1975, c. 612, § 2; amended L.1976, c. 228, § 4.

1. Generally

In implementing this article, (1) agencies must use the procedures in 6 NYCRR Part 617 to the greatest extent possible, but may modify them to accommodate the particular requirements of each agency; (2) any procedural changes would be made by the body vested with the authority to do so; and (3) the town board may not designate one agency as permanent lead agency. 1979, Op.Atty.Gen. (Inf.) Apr. 26.

§ 8-0109. Preparation of environmental impact statement

1. Agencies shall use all practicable means to realize the policies and goals set forth in this article, and shall act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects, including effects revealed in the environmental impact statement process.

2. All agencies (or applicant as hereinafter provided) shall prepare, or cause to be prepared by contract or otherwise an environmental impact statement on any action they propose or approve which may have a significant effect on the environment. Such a statement shall include a detailed statement setting forth the following:

(a) a description of the proposed action and its environmental setting;

(b) the environmental impact of the proposed action including short-term and long-term effects;

(c) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(d) alternatives to the proposed action;

(e) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(f) mitigation measures proposed to minimize the environmental impact;

(g) the growth-inducing aspects of the proposed action, where applicable and significant;

(h) effects of the proposed action on the use and conservation of energy resources, where applicable and significant; and

(i) such other information consistent with the purposes of this article as may be prescribed in guidelines issued by the commissioner pursuant to section 8-0113 of this chapter.

Such a statement shall also include copies or a summary of the substantive comments received by the agency pursuant to subdivision four of this section, and the agency response to such comments. The purpose of an environmental impact statement is to provide detailed information about the effect which a proposed action is likely to have on the environment, to list ways in which any adverse effects of such an action might be minimized, and to suggest alternatives to such an action so as to form the basis for a decision whether or not to undertake or approve such action. Such statement should be clearly written in a concise manner capable of being read and understood by the public, should deal with the specific significant environmental impacts which can be reasonably anticipated and should not contain [illegible] and the significance of its potential impacts.

3. An agency may require an applicant to submit an environmental report to assist the agency in carrying out its responsibilities, including the initial determination and, (where the applicant does not prepare the environmental impact statement), the preparation of an environmental impact statement under this article. The agency may request such other information from an applicant necessary for the review of environmental impacts. Notwithstanding any use of outside resources or work, agencies shall make their own independent judgment of the scope, contents and adequacy of an environmental impact statement.

4. As early as possible in the formulation of a proposal for an action, the responsible agency shall make an initial determination whether an environmental impact statement need be prepared for the action. When an action is to be carried out or approved by two or more agencies, such determination shall be made as early as possible after the designation of the lead agency.

With respect to actions involving the issuance to an applicant of a permit or other entitlement, the agency shall notify the applicant in writing of its initial determination specifying therein the basis for such determination. Notice of the initial determination along with appropriate supporting findings on agency actions shall be kept on file in the main office of the agency for public inspection.

If the agency determines that such statement is required, the agency or the applicant at its option shall prepare or cause to be prepared a draft environmental impact statement. If the applicant does not exercise the option to prepare such statement, the agency shall prepare it, cause it to be prepared, or terminate its review of the proposed action. Such statement shall describe the proposed action and reasonable alternatives to the action, and briefly discuss, on the basis of information then available, the remaining items required to be submitted by subdivision two of this section. The purpose of a draft environmental statement is to relate environmental considerations to the inception of the planning process, to inform the public and other public agencies as early as possible about proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the agency in the decision making process in determining the environmental consequences of the proposed action. The draft statement should resemble in form and content the environmental impact statement to be prepared after comments have been received and considered pursuant to subdivision two of this section; however, the length and detail of the draft environmental statement will necessarily reflect the preliminary nature of the proposal and the early stage at which it is prepared.

The draft statement shall be filed with the department or other designated agencies and shall be circulated to federal, state, regional and local agencies having an interest in the proposed action and to interested members of the public for comment, as may be prescribed by the commissioner pursuant to section 8-0113.

5. After the filing of a draft environmental impact statement the agency shall determine whether or not to conduct a public hearing on the environmental impact of the proposed action. If the agency determines to hold such a hearing, it shall commence the hearing within sixty days of the filing and unless the proposed action is withdrawn from consideration shall prepare the environmental impact statement within forty-five days after the close of the hearing, except as otherwise provided. The need for such a hearing shall be determined in accordance with procedures adopted by the agency pursuant to section 8-0113 of this article. If no hearing is held, the agency shall prepare and make

specified time periods established by this article, an agency shall vary the times so established herein for preparation, review and public hearings to coordinate the environmental review process with other procedures relating to review and approval of an action. An application for a permit or authorization for an action upon which a draft environmental impact statement is determined to be required shall not be complete until such draft statement has been filed and accepted by the agency as satisfactory with respect to scope, content and adequacy for purposes of paragraph four of this section. Commencing upon such acceptance, the environmental impact statement process shall run concurrently with other procedures relating to the review and approval of the action so long as reasonable time is provided for preparation, review and public hearings with respect to the draft environmental impact statement.

6. To the extent as may be prescribed by the commissioner pursuant to section 8-0113, the environmental impact statement prepared pursuant to subdivision two of this section together with the comments of public and federal agencies and members of the public, shall be filed with the commissioner and made available to the public prior to acting on the proposal which is the subject of the environmental impact statement.

7. An agency may charge a fee to an applicant in order to recover the costs incurred in preparing or causing to be prepared or reviewing a draft environmental impact statement or an environmental impact statement on the action which the applicant requests from the agency; provided, however, that an applicant may not be charged a separate fee for both the preparation and review of such statements. The technical services of the department may be made available on a fee basis reflecting the costs thereof, to a requesting agency, which fee or fees may appropriately be charged by the agency to the applicant under rules and regulations to be issued under section 8-0113.

8. When an agency decides to carry out or approve an action which has been the subject of an environmental impact statement, it shall make an explicit finding that the requirements of this section have been met and that consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided.

Added L.1975, c. 612, § 1; amended L.1977, c. 252, § 3.

1977 Amendment. Subd. 1. L. 1977, c. 252, § 3, eff. June 10, 1977, inserted "to the maximum extent practicable," preceding "minimize" and deleted "to the maximum extent practicable" preceding "shall act" and "of state policy" following "essential considerations."

Subd. 2. L.1977, c. 252, § 3, eff. June 10, 1977, inserted in the introductory text "(or applicant as hereinafter provided)" following "agencies", preceding "proposed action" in par. (g) and "energy resources" in par. (h) the phrase ", where applicable and significant", the end phrase in par. (i) "of this chapter" and provisions of last sentence relating to clarity of the written statement, dealing with the statement of specific significant environmental impacts and limitation of the statement to appropriate details.

Subd. 3. L.1977, c. 252, § 3, eff. June 10, 1977, deleted "impact" preceding "report", inserted "the initial determination and, (where the applicant does not prepare the environmental impact statement)," following "including", authorized the agency to request such other information from an applicant necessary for the review of environmental impacts, and required the agencies to make their own independent judgment of the scope, contents and adequacy of a environmental impact statement.

Subd. 4. L.1977, c. 252, § 3, eff. June 10, 1977, in the first par., inserted "an" preceding and deleted statement and in all cases prior to preparation of an environmental impact statement" following "action", substituted "shall make an initial determination whether an environmental impact statement need be prepared for the action" for "shall prepare or cause to be prepared a draft environmental statement describing in detail the proposed action and reasonable alternatives to the action, and briefly discussing, on the basis of information then available to the agency, the remaining items set forth in subdivision one herein" and added provision that such determination shall be made as early as possible after the designation of the lead agency when an action is to be carried out or approved by two or more agencies; inserted second par. relating to initial determination of actions involving issuance of a permit or other entitlement; inserted the three introductory sentences of the third par. relating to the preparation of a draft environmental impact statement including description of the proposed action and reasonable alternatives to the action and brief discussion of the remaining items to be submitted by subd. 2 and reenacted as the concluding sentences of the third par. prior second and third sentences of the first par.

Subd. 5. L.1977, c. 252, § 3, eff. June 10, 1977, added provisions of the second par.

Subd. 7. L.1977, c. 252, § 3, eff. June 10, 1977, authorized a fee for the preparation or review of a draft environmental impact statement but prohibited separate fees for both the preparation and review of the statements.

Subd. 8. L.1977, c. 252, § 3, eff. June 10, 1977, deleted reference to requirements of "subdivision one of" this section and substituted "that consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided" for "that all practicable means will be taken to minimize or avoid adverse environmental effects."

Effective Date. Section effective Sept. 1, 1976, pursuant to L.1975, c. 612, § 2; amended L.1976, c. 228, § 4.

Library References

Health and Environment ⇐25.10.
C.J.S. Health and Environment § 64 et seq.

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1. Generally

Franklin County, as county from which state police troop headquarters were to be removed for relocation to Essex County, did not have standing to bring suit for a judgment declaring that there had been an illegal failure to fully comply with assertedly applicable provisions of this article and Executive Law § 814. Franklin County v. Connelie, 1979, 68 A.D.2d 1000, 415 N.Y.S.2d 110.

The balancing of progress and property rights with preservation of historic environment is not a judicial function, and is properly left to administrative agency especially created for that purpose. Center Square Ass'n, Inc. v. Corning, 1980, 105 Misc. 2d 6, 430 N.Y.S.2d 953.

Although this section states that environmental impact statement should describe "reasonable alternatives to the action," it is not the intention of the State Environmental Quality Review Act, this article, that such alternatives be based on other than environmental factors; it is not the function of SEQR to dictate what use must be made of private property even though it may restrict usage on accepted principles. Ecology Action v. Van Cort, 1979, 99 Misc.2d 664, 417 N.Y.S.2d 165.

Reasonable extension of time permitted for Department of Environmental Conservation and the Attorney General to comment on environmental impact statements is not prohibited by state enactment or Department regulations. Tuxedo Conservation and Taxpayers Ass'n v. Town Bd. of Town of Tuxedo, 1978, 96 Misc.2d 1, 408 N.Y.S.2d 668, affirmed 69 A.D.2d 320, 418 N.Y.S.2d 638.

Evidence that three facilities proposed by Department of Correctional Services were being converted from former use by the State Division of

[illegible] populations of 20% less than they had previously held, that the third would have the same number of inmates, that none of the facilities would require new city sewer or water service, and that none of the facilities would have any impact on wetlands or air quality sustained determination that proposed use of the facilities would not have a significant effect on the environment so that no environmental impact statement was required. New York Moratorium on Prison Const. v. State Dept. of Correctional Services, 1977, 91 Misc.2d 674, 398 N.Y.S.2d 525.

In view of fact that the Commissioner is charged by statute with conducting necessary tests for shellfish lands and that the Commissioner is obliged to issue necessary orders uncertifying such lands for harvesting shellfish, or if he has determined that the lands are not fit for such use, Commissioner should not be obliged to cease in the middle of such proceedings to conduct hearings bearing on the nature and effect of his actions and, therefore, Commissioner was exempt from filing an environmental impact statement and from conducting a public hearing prior to issuing order directing the closing of certain areas to harvesting shellfish on public health grounds. Villani v. Berle, 1977, 91 Misc.2d 663, 398 N.Y.S.2d 786.

2. Zoning

Determinations made by city director of planning and zoning that proposed amendment to zoning ordinance, which would add to list of allowable special permit uses in district the use of hotels, would have no significant adverse effect on environment and environmental impact study would not be required were not supported by evidence. Kravetz v. Plenge, 1979, 102 Misc.2d 622, 424 N.Y.S.2d 312.

In order to support negative declaration that proposed amendment to zoning amendment would have no significant impact on environment, record must demonstrate that city director of planning and zoning identified relevant areas of environmental concern, took a hard look at them and made reasoned elaboration of bases for determination. Id.

The enactment of a new zoning ordinance by the Town of Cortlandt which entirely revises the existing ordinance, creating new categories of the enactment of a wholly new zoning ordinance and thus constitutes action requiring an environmental statement under this article. 1978, Op.Atty.Gen. May 16.

3. Abuse of discretion

Where town board approved proposed $200,000,000 housing project on only the fourth business day after application, decision of town board constituted gross abuse of discretion which deprived state agencies and public of their statutory right to a reasonable time period in which to consider the final environmental impact statement. Tuxedo Conservation and Taxpayers Ass'n v. Town Bd. of Town of Tuxedo, 1978, 96 Misc.2d 1, 408 N.Y.S.2d 668, affirmed 69 A.D.2d 320, 418 N.Y.S.2d 638.

It was at least an abuse of discretion, if not illegal, for town board to tacitly countermand resolution of planning board with respect to time extension granted by the latter for Department of Environmental Conservation and the Attorney General to comment on the environmental impact statement for proposed housing development. Id.

4. Necessity for statement

Closing of elementary school for budgetary reasons and transfer of some 300 students to another elementary school was routine activity of educational institution which did not involve capital construction, and, therefore, it was not necessary for board of education to file environmental impact statement or follow any other procedure under this article. Engle v. Pulver, 1981, — A.D.2d —, 436 N.Y.S.2d 39.

No determination by town planning board that proposed shopping center required an environmental impact statement was required under this article since a freshwater wetland was not involved. City of Plattsburgh v. Mannix, 1980, 77 A.D.2d 114, 432 N.Y.S.2d 910.

City's challenge to town board's amendment to zoning ordinance without preparation of an environmental impact statement could not be sustained since such a statement was not required under this article applicable prior to the adoption of the amendment and, with regard to any other challenge to the amendment, city lacked requisite standing because it had a right to be heard at a public hearing on the proposed amendment, but no right to judicial review of the [illegible] Id.

within Environmental Conservation Law as a project for which an environmental impact statement was required, filing of statement was required where such project had significant impact on environment. H. O. M. E. S. v. New York State Urban Development Corp., 1979, 69 A.D.2d 222, 418 N.Y.S.2d 827.

To support Division for Youth's determination that conversion of three-building section of state mental hospital into detention facility for juveniles convicted of serious crimes would not have a significant impact on the environment and that therefore no environmental impact statement was required, the record had to show that the Division identified the relevant areas of the environmental concern, took a hard look at them, and made a reasoned elaboration of the basis for its determination. Harlem Valley United Coalition, Inc. v. Hall, 1980, 106 Misc.2d 627, 434 N.Y.S.2d 618.

Council of neighborhood associations and property owner could intervene in action brought by corporation seeking to annul determination of city environmental quality review board that proposed demolition of certain premises had no significant impact upon environment and thus, preparation of an environmental impact statement was not required pursuant to this section having made proper service on opposing parties and being interested parties. Center Square Ass'n, Inc. v. Corning, 1980, 105 Misc.2d 6, 430 N.Y.S.2d 953.

Corporation, council of neighborhood associations, and property owner had sufficient standing to maintain an Article 78 proceeding to annul determination of city environmental quality review board that proposed demolition of certain premises had no significant impact upon the environment and thus, preparation of an environmental impact statement was not required pursuant to this section where such parties had capacity to assume an adversary position, parties reflected position fairly representative of community or interest which they sought to protect, and adverse effect of decision which they sought to review was within zone of interest which they sought to protect. Id.

In order to uphold an administrative agency's determination with respect to whether environmental impact statement should be prepared, record must show that agency identified relevant areas of environmental [illegible] and that it has taken a hard look at them and made a reasoned elaboration of the basis for its determination. Id.

Evidence before the Department of Environmental Conservation sustained finding that its rules and regulations implementing Real Property Tax Law § 480-a providing for partial tax exemption for forest land would not have a significant impact on the environment so as to require the preparation of an environmental impact statement. Honeoye Central School Dist., Town of Livonia v. Berle, 1979, 99 Misc.2d 20, 415 N.Y.S.2d 565.

5. Mosquito control, spraying

Village's mosquito comfort control program which involved the aerial spraying of pesticides was subject to the requirements of section 8-0101 et seq. and therefore, village would be enjoined from conducting further aerial spraying in connection with mosquito control program until it complied with such statutes by performing an environmental impact study and filing a statement. Marino v. Platt, 1980, 104 Misc.2d 386, 428 N.Y.S.2d 433.

6. Purpose of statement

Environmental impact statement, as required by this article is intended to provide detailed information about effect which the proposed action is likely to have on the environment, to list ways in which any adverse effects of such action might be minimized, and to suggest alternatives to such action so as to form basis for decision whether to undertake or approve such action. Town of Henrietta v. Department of Environmental Conservation of New York, 1980, 76 A.D.2d 215, 430 N.Y.S.2d 440.

Environmental impact statement, required under this article for any action which may have significant effect on the environment, is meant to be more than simple disclosure statement; rather, it is to be reviewed as environmental "alarm bell" whose purpose is to alert responsible public officials to environmental changes before they have reached ecological points of no return. Id.

Since State Environmental Quality Review Act requires approving agency to act affirmatively upon adverse environmental impacts revealed in environmental impact statement, such statement must also be recognized as not mere disclosure statement but rather as aid in agency's decisionmaking process to evaluate and balance competing factors. Id.

7. Applicability of statement

Environmental impact statement filed pursuant to this article applied

Conservation of New York, 1980, 76 A.D.2d 215, 430 N.Y.S.2d 440.

8. Factors considered

This article requires approving agency to consider fully environmental consequences revealed in environmental impact statement and to take these consequences into account when reaching decision as to whether to approve an action. Town of Henrietta v. Department of Environmental Conservation of New York, 1980, 76 A.D.2d 215, 430 N.Y.S.2d 440.

9. Findings

Agency which approves an action must make written finding that it has imposed whatever conditions are necessary to minimize or avoid all adverse environmental impacts revealed in environmental impact statement filed pursuant to this article. Town of Henrietta v. Department of Environmental Conservation of New York, 1980, 76 A.D.2d 215, 430 N.Y.S.2d 440.

10. Evidentiary effect of statement

While environmental impact statement filed pursuant to this article does not require public agency to act in any particular manner, it constitutes evidence which must be considered by the public agency along with other evidence which may be presented. Town of Henrietta v. Department of Environmental Conservation of New York, 1980, 76 A.D.2d 215, 430 N.Y.S.2d 440.

While decision-makers must take environmental objectives into account, satisfactory answers to these objectives may be provided by reference to environmental impact statement filed pursuant to this article. Id.

11. Sufficiency of statement

Town board, which had rezoned subject property from commercial shopping center district to planned shopping commercial district, had failed to meet and draft environmental impact statement as satisfactory with respect to scope, contents and adequacy, as required by regulations enacted pursuant to this article, and thus board's declaration of intent to rezone was invalid. Bliek v. Town of Webster, 1980, 104 Misc.2d 852, 429 N.Y.S.2d 811.

12. Notice and hearing

Division for Youth was ordered to conduct public hearing before determining whether conversion of three-

would significantly affect the human environment such that an environmental impact statement would be required, notwithstanding the lack of statutory or administrative provisions for such public hearing. Harlem Valley, United Coalition, Inc. v. Hall, 1980, 106 Misc.2d 627, 434 N.Y.S.2d 618.

Fact that town board, which had rezoned subject property from commercial shopping center district to planned shopping commercial district, had published its notice of completion of draft environmental impact statement and notice of public hearing in weekly newspaper distributed in town area but not distributed regionally did not mean that board had not complied with regulation requiring publication of such notice in newspaper of general circulation, where area of potential impact, in environmental terms, was town area, petitioners, all of whom lived or owned property in impact zone, were within area served by weekly newspaper, and they did not argue that they did not receive notice. Bliek v. Town of Webster, 1980, 104 Misc.2d 852, 429 N.Y.S.2d 811.

Town board, which had rezoned subject property from commercial shopping center district to planned shopping commercial district, had erroneously failed to file notices of completion of draft environmental impact statement with state and federal clearinghouses in timely manner as required by applicable regulation, with result that publication by Department of Environmental Conservation of such notice, which did not occur until after public hearing on draft statement, was ineffective, and thus, on remand, town was directed to file required notice in timely fashion with state and federal clearinghouses. Id.

13. Forecast of future needs

Decision-makers are not precluded from forecasting future needs; rather, they are encouraged to make reasonable forecasts in preparation of environmental impact statement prepared pursuant to this article. Town of Henrietta v. Department of Environmental Conservation of New York, 1980, 76 A.D.2d 215, 430 N.Y.S.2d 440.

14. Sufficiency of evidence

City environmental quality review board's issuance of permit for demolition of certain premises was done in arbitrary and capricious manner and in violation of mandates of this sec-

tary evidence presented to board was directly contrary to their findings, city urban renewal agency found that premises was most significant example of arts and crafts style of architecture in down town area, and one not requiring extensive explanation yet there was not one shred of evidence placed before the board to support its determination. Center Square Ass'n, Inc. v. Corning, 1980, 105 Misc.2d 6, 430 N.Y.S.2d 953.

§ 8-0111. Coordination of reporting; limitations; lead agency

1. State and federal reports coordinated. Where an agency as herein defined directly or indirectly participates in the preparation of or prepares a statement or submits material relating to a statement prepared pursuant to the requirements of the National Environmental Policy Act of 1969,[1] whether by itself or by another person or firm, compliance with this article shall be coordinated with and made in conjunction with federal requirements in a single environmental reporting procedure.

2. Federal report. Where the agency does not participate, as above defined, in the preparation of the federal environmental impact statement or in preparation or submission of materials relating thereto, no further report under this article is required and the federal environmental impact statement, duly prepared, shall suffice for the purpose of this article.

3. State and local coordination. Necessary compliance by state or local agencies with the requirements of this article shall be coordinated in accordance with section 8-0107 and with other requirements of law in the interests of expedited proceedings and prompt review.

4. Effective date of coordinated reporting. The requirements of this section with regard to coordinated preparation of federal and state impact materials and reporting shall not apply to statements prepared and filed prior to the effective date of this article.

5. Exclusions. The requirements of subdivision two of section 8-0109 of this article shall not apply to:

(a) Actions undertaken or approved prior to the effective date of this article, except:

(i) In the case of an action where it is still practicable either to modify the action in such a way as to mitigate potentially adverse environmental effects or to choose a feasible and less environmentally damaging alternative, in which case the commissioner may, at the request of any person or on his own motion, in a particular case, or generally in one or more classes of cases specified in rules and regulations, require the preparation of an environmental impact statement pursuant to this article; or

(ii) In the case of an action where the responsible agency proposes a modification of the action and the modification may result in a significant adverse effect on the environment, in which case an environmental impact statement shall be prepared with respect to such modification.

(b) Actions subject to the provisions requiring a certificate of environmental compatibility and public need in articles seven and eight of the public service law; or

(c) Actions subject to the class A or class B regional project jurisdiction of the Adirondack park agency or a local government pursuant to section eight hundred seven, eight hundred eight or eight hundred nine of the executive law.

6. Lead Agency. When an action is to be carried out or approved by two or more agencies, the determination of whether the action may have a significant effect on the environment shall be made by the lead agency having principal responsibility for carrying out or approving such action and such agency shall prepare, or cause to be prepared by

there is a question as to which is the lead agency, any agency may submit the question to the commissioner and the commissioner shall designate the lead agency, giving due consideration to the capacity of such agency to fulfill adequately the requirements of this article.

Added L.1975, c. 612, § 1; amended L.1977, c. 252, § 4; L.1981, c. 119, § 1.

[1] 42 U.S.C.A. § 4321 et seq.

1981 Amendment. Subd. 5, par. (c). L.1981, c. 119, § 1, eff. May 18, 1981, inserted "class A or class B regional project" and "eight hundred seven, eight hundred eight or".

1977 Amendment. Subd. 2. L. 1977, c. 252, § 4, eff. June 10, 1977, deleted from the heading "to be supplemented" and from the end text ", supplemented by inclusion as may be applicable of those items of report under paragraphs (g) and (h) of subdivision two of section 8-0109, which are not included within the statutorily required scope of Federal environmental reporting" following "purpose of this article."

Effective Date. Section effective Sept. 1, 1976, pursuant to L.1975, c. 612, § 2; amended L.1976, c. 228, § 4.

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1. Functions of lead agency

Department of Environmental Conservation, which was designated as lead agency for purpose of carrying out environmental impact review of shopping mall project, had authority to attach conditions to permits it issued to developers of the mall. Town of Henrietta v. Department of Environmental Conservation of New York, 1980, 76 A.D.2d 215, 430 N.Y.S.2d 440.

2. Air quality monitoring

Condition, imposed upon developers of regional shopping mall by Department of Environmental Conservation, which condition required developers to submit plan to monitor carbon monoxide at the site, was arbitrary and unreasonable in light of record which disclosed that there were too many unquantifiable variables present, thereby making it unreasonable to determine how much traffic near the mall was generated solely because of the mall. Town of Henrietta v. Department of Environmental Conservation of New York, 1980, 76 A.D.2d 215, 430 N.Y.S.2d 440.

§ 8-0113. Rules and regulations

1. After consultation with the other agencies subject to the provisions of this article, including state agencies and representatives of local governments and after conducting public hearings and review of any other comments submitted, the commissioner shall adopt rules and regulations implementing the provisions of this article within one hundred and twenty days after the effective date of this section.

2. The rules and regulations adopted by the commissioner specifically shall include:

(a) Definition of terms used in this article;

(b) Criteria for determining whether or not a proposed action may have a significant effect on the environment, taking into account social and economic factors to be considered in determining the significance of an environmental effect;

(c) Identification on the basis of such criteria of:

(i) Actions or classes of actions that are likely to require preparation of environmental impact statements;

(ii) Actions or classes of actions which have been determined not to have a significant effect on the environment and which do not require environmental impact statements under this article. In adopting the rules and regulations, the commissioner shall make a finding that each action or class of actions identified does not have a significant effect on the environment;

sessing such effects, of actions determined to be likely to require preparation of environmental impact statements;

(e) Categorization of actions which are or may be primarily of statewide, regional, or local concern, with provisions for technical assistance including the preparation or review of environmental impact statements, if requested, in connection with environmental impact review by local agencies.

(f) Provision for the filing and circulation of draft environmental impact statements pursuant to subdivision four of section 8-0109, and environmental impact statements pursuant to subdivision six of section 8-0109;

(g) Scope, content, filing and availability of findings required to be made pursuant to subdivision eight of section 8-0109;

(h) Form and content of and level of detail required for an environmental impact statement; and

(i) Procedures for obtaining comments on draft environmental impact statements, holding hearings, providing public notice of agency decisions with respect to preparation of a draft environmental statement; and for such other matters as may be needed to assure effective participation by the public and efficient and expeditious administration of the article.

(j) Procedure for providing applicants with estimates, when requested, of the costs expected to be charged them pursuant to subdivision seven of section 8-0109 of this article.

(k) Appeals procedure for the settlement of disputed costs charged by state agencies to applicants pursuant to subdivision seven of section 8-0109 of this article. Such appeal procedure shall not interfere or cause delay in the determination of environmental significance or prohibit an action from being undertaken.

(l) A model assessment form to be used during the initial review to assist an agency in its responsibilities under this article.

3. Within the time periods specified in section 8-0117 of this article the agencies subject to this article shall, after public hearing, adopt and publish such additional procedures as may be necessary for the implementation by them of this article consistent with the rules and regulations adopted by the commissioner.

(a) Existing agency environmental procedures may be incorporated in and integrated with the procedures adopted under this article, and variance in form alone shall constitute no objection thereto. Such individual agency procedures shall be no less protective of environmental values, public participation, and agency and judicial review than the procedures herein mandated.

(b) Such agency procedures shall provide for interagency working relationships in cases where actions typically involve more than one agency, liaison with the public, and such other procedures as may be required to effect the efficient and expeditious administration of this article.

Added L.1975, c. 612, § 1; amended L.1976, c. 228, § 2; L.1977, c. 252, §§ 5, 6.

1977 Amendment. Subd. 2, par. (b). L.1977, c. 252, § 5, eff. June 10, 1977, deleted "with examples. Such criteria shall establish critical thresholds for the health and safety of the people of the state and protection of the environment," preceding "taking into account".

Subd. 2, pars. (j) to (l). L.1977, c. 252, § 6, eff. June 10, 1977, added pars. (j) to (l).

1976 Amendment. L.1976, c. 228, § 2, eff. May 28, 1976, substituted "the time periods specified in section 8-0117 of this article" for "one hundred twenty days after the commis-

Effective Date. Section effective Sept. 1, 1975, pursuant to L.1975, c. 612, § 2; amended L.1976, c. 228, § 4.

Review and Amendment of Rules and Regulations Concerning Environmental Impact Statement. L.1978, c. 460, § 4, eff. June 30, 1978, provided: "For the purposes only of simplifying procedures and clarifying the identification of actions and classes of actions that are likely to require preparation of an environmental impact statement as such matters are included in rules and regulations adopted pursuant to subdivision one of section 8-0113 of the environmental conservation law [subd. 1 of this section], the commissioner shall, wholly consistent with the provisions of article eight of the environmental conservation law, review such rules and regulations and adopt amendments to such rules and regulations not later than the first day of September, nineteen hundred seventy-eight."

Library References

Health and Environment ⇐20.
C.J.S. Health and Environment § 2 et seq.

issuance of state permits to sanitation company for construction and operation of sanitary landfill adjacent to fresh water wetlands within town would not absolve sanitation company from its obligation to obtain other approvals required by other jurisdictions, including town in which proposed landfill would be located. Town of Poughkeepsie v. Flacke, 1980, 105 Misc.2d 149, 431 N.Y.S.2d 951.

Prohibition in town zoning ordinance against use of land adjacent to wetlands as sanitary landfill by sanitation company did not create legal presumption of adverse environmental effects applicable to determination of Commissioner of Environmental Conservation whether to issue state permits to sanitation company for construction and operation of sanitary landfill. Id.

Term "routine activity" within regulation, which has been adopted pursuant to this section and which is to effect that environmental impact statements are not required in regard to "Routine activities of educational institutions which do not include capital construction," is not limited to day-to-day school activities. Petition of Hopkins, 1979, 99 Misc.2d 216, 415 N.Y.S.2d 774.

§ 8-0115. Severability

The provisions of this article shall be severable, and if any clause, sentence, paragraph, subdivision or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Added L.1975, c. 612, § 1.

Effective Date. Section effective Sept. 1, 1976, pursuant to L.1975, c. 612, § 2; amended L.1976, c. 228, § 4.

Library References

Statutes ⇐64(2).
C.J.S. Statutes § 96 et seq.

§ 8-0117. Phased implementation

1. With respect to the actions directly undertaken by any state agency, the requirement of an environmental impact statement pursuant to subdivision two of section 8-0109 of this article shall take effect on the first day of September, nineteen hundred seventy-six.

2. With respect to actions or classes of actions identified by the department as likely to require preparation of environmental impact statements pursuant to subparagraph (i) of paragraph (c) of subdivision two of section 8-0113 of this article directly undertaken by any local agency, whether or not such actions are supported in whole or in part through contracts, grants, subsidies, loans, or other forms of funding assistance from one or more state agency; and all other actions or classes of actions identified by the department as likely to require preparation of environmental impact statements pursuant to subparagraph (i) of paragraph (c) of subdivision two of section 8-0113 of this article involving the issuance to a person of a lease, permit, certificate or other entitlement for use or permission to act by one or more state or local agency, the requirement of an environmental impact statement pursuant to subdivision two of section 8-0109 of this article shall take effect on the first day of June, nineteen hundred seventy-seven.

3. With respect to actions or classes of actions identified by the department as likely to require preparation of environmental impact statements pursuant to subparagraph (i) of paragraph (c) of subdivision two of section 8-0113 of this article supported in whole or in part through contracts, grants, subsidies, loans, or other forms of funding assistance from one or more local agency; and with respect to actions or classes of actions identified by the department as likely to require preparation of environmental impact statements pursuant to subparagraph (i) of paragraph (c) of subdivision two of section 8-0113 of this article involving the issuance to a person of a lease, permit, certificate or other entitlement for use or permission to act by one or more state or local agency, the requirement of an environmental impact statement pursuant to subdivision two of section 8-0109 of this article shall take effect on the first day of September, nineteen hundred seventy-seven.

4. With respect to all other actions not included in subdivision two or three of this section which are subject to this article, the requirement of an environmental impact statement pursuant to subdivision two of section 8-0109 of this article shall take effect on the first day of November, nineteen hundred seventy-eight.

5. Agencies subject to this article shall adopt and publish the additional necessary procedures described in subdivision three of section 8-0113 of this article, as follows:

(a) With respect to actions included within subdivision one of this section, no later than August 1, 1976.

(b) With respect to actions included within subdivision two of this section, no later than April 1, 1977.

(c) With respect to actions included within subdivision three of this section, no later than July 1, 1977.

(d) With respect to actions included within subdivision four of this section, no later than November 1, 1978.

Any agency which has not adopted and published the additional necessary procedures described in subdivisions two and three of section 8-0113 of this article according to the dates set forth in this section shall utilize those procedures found in Part 617 of title six (environmental conservation) of the official compilation of the codes, rules and regulations of the state of New York for purposes of implementing this article until such time as such agency has adopted and published its own procedures.

Added L.1976, c. 228, § 3; amended L.1977, c. 252, §§ 7, 8; L.1978, c. 460, §§ 1, 2.

1978 Amendment. Subd. 4. L.1978, c. 460, § 1, eff. June 30, 1978, substituted "November" for "September".

Subd. 5, par. (d). L.1978, c. 460, § 2, eff. June 30, 1978, substituted "November" for "July".

1977 Amendment. Subds. 2, 3. L.1977, c. 252, § 7, eff. June 10, 1977, inserted in two instances in subds. 2 and 3 "or classes of actions identified by the department as likely to require preparation of environmental impact statements pursuant to subparagraph (i) of paragraph (c) of subdivision two of section 8-0113 of this article" following "actions".

Subd. 4. L.1977, c. 252, § 8, eff. June 10, 1977, added subd. 4. Former subd. 4 renumbered 5.

Subd. 5. L.1977, c. 252, § 7, eff. June 10, 1977, renumbered former subd. 4 as 5 and added par. (d) and provisions of last par. pertaining to implementation of this article through use of the official compilation of environmental conservation procedures pending adoption and publication of the prescribed procedures.

Effective Date. Section effective May 28, 1976, pursuant to L.1976, c. 228, § 6.

List of Approved Projects Not Subject to Article 8, Availability for

ed by L.1978, c. 460, § 3, eff. June 30, 1978, provided:

"§ 9. For the purpose of clarifying the identification of actions directly undertaken by a local agency included within subdivision two of section 8–0117 of the environmental conservation [this section] law which have been approved by such agency prior to the first day of June, nineteen hundred seventy-seven and, therefore, not subject to the provisions of article eight of such law [this article], not later than September first, nineteen hundred seventy-seven, each local agency shall submit to its chief fiscal officer a list of projects which such agency deems to have been approved. Within thirty days of such submission, the chief fiscal officer shall review such lists to certify that substantial time, work or money have been expended on such projects. The local agency shall maintain a copy of such certified list of projects which shall be deemed approved and therefore not subject to the provisions of article eight of the environmental conservation law. Such list shall be available for public inspection in the municipal office of such agency.

"§ 10. For the purpose of clarifying actions supported in whole or in part by a form of funding assistance from one or more state or local agencies included within subdivisions two and three of section 8–0117 of the environmental conservation law which have been approved and therefore not subject to the provisions of article eight of such law, each such agency shall submit to its chief fiscal officer a list of projects which such agency deems approved (1) in the case of state agency funded projects, by September first, nineteen hundred seventy-seven, and (2) in the case of local agency funded project, by November first, nineteen hundred seventy-seven. Within thirty days of such submission, the chief fiscal officer shall review such lists to certify that applications submitted to such agency have been approved or are in an approvable form. Each agency shall maintain a copy of such certified lists of projects which shall be deemed approved and therefore not subject to the requirement of an environmental impact statement. Such lists shall be available for public inspection in the main office of such agencies.

"§ 11. The provisions of article eight of the environmental conservation law shall not apply to actions in- [illegible] issuance of a permit or authorization for use or permission to act for which all final approvals shall have been obtained prior to the first day of September, nineteen hundred seventy-seven from local and state agencies having jurisdiction over such actions. As used in this section, the term 'final approval' shall mean:

"(a) in the case of the subdivision of land, an action in the nature of a conditional approval of a preliminary or final plat as that term is defined in section two hundred seventy-six of the town law, and an action in the nature of an approval of a preliminary plat with or without modification as defined in section 7–728 of the village law and section thirty-two of the general cities law;

"(b) in the case of a site plan, special permit, special use, conditional use, exception, variance or similar special authorization, an action in the nature of an approval with or without conditions or modifications by the appropriate local body such as a legislative body, board of appeals or planning board;

"(c) in the case of all other such actions requiring a permit or authorization from a state or local agency, the granting of each such permit or authorization.

"§ 12. For the purpose of clarifying the identification of actions directly undertaken by a local agency included within subdivision four of section 8–0117 of the environmental conservation law which have been approved by such agency prior to the first day of November, nineteen hundred seventy-eight and, therefore not subject to the provisions of article eight of such law, not later than November first, nineteen hundred seventy-eight, each local agency shall submit to its chief fiscal officer a list of projects which such agency deems to have been approved. Within thirty days of such submission, the chief fiscal officer shall review such lists to certify that substantial time, work or money have been expended on such projects. The local agency shall maintain a copy of such certified list of projects which shall be deemed approved and therefore not subject to the provisions of article eight of the environmental conservation law. Such list shall be available for public inspection in the municipal office of such agency.

"§ 13. For the purpose of clarifying actions supported in whole or in part by a form of funding assistance from one or more state or local environmental conservation law which have been approved prior to the first day of November, nineteen hundred seventy-eight and therefore not subject to the provisions of article eight of such law, each such agency shall submit to its chief fiscal officer a list of projects which such agency deems approved (1) in the case of state agency funded projects, by November first, nineteen hundred seventy-eight, and (2) in the case of local agency funded project, by [September] November first nineteen hundred seventy-eight. Within thirty days of such submission, the chief fiscal officer shall review such lists to certify that applications submitted to such agency have been approved or are in an approvable form. Each agency shall maintain a copy of such certified lists of projects which shall be deemed approved and therefore not subject to the requirement of an environmental impact statement. Such lists shall be available for public inspection in the main office of such agencies.

"§ 14. The provisions of article eight of the environmental conservation law shall not apply to actions included within subdivision four of section 8–0117 of such law requiring the issuance of a permit or authorization for use or permission to act for which all final approvals shall have been obtained prior to the first day of November, nineteen hundred seventy-eight from local and state agencies having jurisdiction over such actions. As used in this section, the term "final approval" shall mean:

"(a) in the case of the subdivision of land, an action in the nature of an approval of a preliminary plat as that term is defined in section two hundred seventy-six of the town law, and an action in the nature of an approval of a preliminary plat with or without modification as defined in section 7–728 of the village law and an action in the nature of an approval of a plat with or without modifications as referred to in section thirty-two of the general cities law;

"(b) in the case of site plan, special permit, special use, conditional use, exception, variance or similar special authorization, an action in the nature of an approval with or without conditions or modifications by the appropriate local body, such as a legislative body, board of appeals or planning board;

"(c) in the case of all other such actions requiring a permit or authorization from a state or local agency, the granting of each such permit or authorization."

Library References

Health and Environment ⇐25.10
C.J.S. Health and Environment § 64 et seq.

Index to Notes

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1. Applicability

This article was inapplicable to subdivision approvals granted by town planning board on ground that preliminary and final plat approvals were given prior to effective date of Act. Barton v. Halsey, 1979, 67 A.D. 2d 726, 412 N.Y.S.2d 659.

2. Environmental impact statement

Where condemnation action was undertaken or proved prior to effective date of this article, no environmental impact statement was required to be filed and exception, i. e., requirement that an impact statement be filed nontheless, could only come into being upon initiative of the Commissioner who had not so acted in particular case. New York State Urban Development Corp. v. Vanderlex Merchandise Co., Inc., 1979, 98 Misc. 2d 264, 413 N.Y.S.2d 982.

3. Measures to mitigate adverse effects

This article authorizes approving agency to implement measures designed to mitigate adverse environmental impacts identified, so long as these measures are reasonable in scope and are reasonably related to adverse impacts identified in environmental impact statement. Town of Henrietta v. Department of Environmental Conservation of New York, 1980, 76 A.D. 2d 215, 430 N.Y.S.2d 440.

APPENDIX 3. Webster Zoning Ordinance.

*59-19 C-S Commercial Shopping Center District.

A. All uses permitted in an R-3 District are permitted uses in a C-S District subject to the dimensional regulations of the R-3 District.

*B. The Town Board may establish a PCS Planned Shopping Center District in a C-S District in accordance with procedures set forth in Articles IV and V hereof.

ARTICLE IV

Establishment of Planned Unit Development Districts

59-21 Districts established.

The Town Board may, in areas designated on the Zoning Map of the Town of Webster, establish planned unit development districts as follows:

A. PRA Planned Mixed Residential District within an R-A District.

B. PRB Planned Multiple Family Residential District within an R-B.District

C. PRC Planned Multiple Family Residential District within an R-C.District

D. PRR Planned Residential Recreation District within a P-R District.

*E. PCN Planned Mixed Residential Neighborhood Commercial District within an R-3 District.

*F. PCS Planned Shopping Center Commercial District within a C-S District.

59-22 Intent

It is the intention of the planned unit development (hereafter called "PUD") section to provide performance criteria and permit regulatory flexibility which can result in small-to-large-scale residential, commercial and mixed developments within designated districts incorporating a variety of residential housing types and related nonresidential uses, and containing both individual building sites and common property which are planned and developed as a unit. Such a planned unit development shall be designed and organized to operate as a separate entity without dependence upon the participation of other building sites or other common property. This section is intended to encourage innovations in residential and commercial development so that the growing demands for housing at all economic levels may be met by construction of a greater variety in type, design and layout of dwellings and by the conservation and more efficient use of land in such developments. Commercial, retail and service functions are encouraged on a planned basis to serve expanding residential areas to be conveniently located in such a manner as to blend and coordinate residential and commercial uses in the best interests of the entire community.

59-23 Objectives.

In order to carry out the intention of this section, a PUD shall be designed to achieve the following objectives:

A. A maximum choice in the types of environment, occupancy tenure (e.g., cooperatives, individual, condominium, leasing) types of housing, lot sizes and community facilities available to town residents at all economic levels.

B. More usable open space and recreation areas and more convenience in location of commercial and services areas.

C. A development pattern which preserves trees, outstanding natural topography and geographic features and prevents soil erosion.

D. A creative use of land and related physical development which allows an orderly transition of land from rural areas.

E. An efficient use of land resulting in smaller networks of utilities and streets and thereby lower housing costs.

F. A development pattern in harmony with the objectives of this ordinance.

G. A more desirable environment than would be possible through the strict application of other Articles of this ordinance.

59-24 Approval required.

Whenever any planned unit development is proposed, before any permits for the erection of permanent buildings in such planned unit development shall be granted, and before any subdivision plat of any part thereof may be filed in the office of the Monroe County Clerk, the developer or his authorized agent shall apply for and secure approval of such planned unit development in accordance with the procedures set forth in this ordinance.

59-25 Application for sketch plan approval.

A. The applicant shall first submit a sketch plan of his proposal to the Planning Board. The sketch plan shall be approximately to scale, and it shall clearly show the following information:

(1) The location of the various uses and their areas in acres.
(2) The general outlines of the interior roadway system and all existing rights-of-way and easements, whether public or private.
(3) Delineation of the various residential areas indicating the number of residential units in each of the five (5) categories; single-family detached, single-family semi-detached, two-family town house and multiple-family; plus a calculation of the residential density in dwelling units per acre for each such area and overall district density.
(4) The interior open-space system.
(5) The interior drainage system showing drainage flows to streams and any existing watercourses.
(6) Principal ties to the community at large with respect to transportation, water supply and sewage disposal.
(7) Estimates of the additional school population and possible allocation to existing and proposed schools.
(8) A location map showing uses and ownership of abutting lands.

B. In addition, the following documentation shall accompany the sketch plan:

(1) Evidence of how the developer's particular mix of land uses meets existing community demands.
(2) Statement as to how common open space is to be owned and maintained.
(3) If the development is to be staged, a clear indication of how the staging is to proceed. Whether or not the development is to be staged, the sketch plan shall show the entire proposed project.
(4) Evidence in the applicant's own behalf to demonstrate his competence to carry out the plan and his awareness of the scope of such a project, both physical and financial.
(5) A calculation of the ratios of the types of residential dwelling units and the percent of land and building area to be devoted to each type of residential use and commercial use.'
(6) Certificate by the Town Assessor that the proposed multiple-family dwelling units, when constructed, taken together with existing multiple-family dwelling units, and units for which building permits have been issued, will not exceed approximately twenty percent (20%) of the single-family detached dwellings in the town, excluding the Village of Webster.
(7) A written statement certified by an authorized representative of the applicant in compliance with Section 59-100.

C. The Planning Board shall review the sketch plan and its related documents; and shall render either a favorable or unfavorable report to the applicant and the Town Board.

(1) A favorable report shall be based on the following findings which shall be included as part of the report:
  (a) The proposal meets the objectives of planned unit development as expressed in Section 59-23.
  (b) The proposal meets all the general requirements of the appropriate PUD section of this ordinance.[4]
  (c) The proposal is conceptually sound in that it meets a community need and it conforms to accepted design principles in the proposed functional roadway system, land-use configurations, open-space system, drainage system, and scale of the elements both absolutely and to one another.
  (d) There are adequate services and utilities available or proposed to be made available in the construction of the development.
(2) An unfavorable report shall state clearly the reasons therefor, and, if appropriate, point out to the applicant what might be done in order to receive a favorable report.
(3) If no report has been rendered within sixty (60) days of submission to the Planning Board, the applicant may proceed as if a favorable report were given to the Town Board.

D. The Town Board shall review the sketch plan and its related documents. Based thereon, the Town Board shall determine whether or not the proposal meets the objectives of the PUD section as set forth in Section 59-23 and whether its development would be in the public interest. The Town Board shall within sixty (60) days of receipt of report of the Planning Board render a favorable or unfavorable report and may make such recommendations in connection therewith as it may deem appropriate. Such determination or recommendations by the Town Board shall be advisory only and shall not constitute approval or disapproval of the plans for the project, nor shall it constitute a commitment or agreement by the Town Board to take any further action whether in the nature of legislation or otherwise in connection with such proposal.

59-26 Approval of preliminary development plan.

A. If, upon receipt of the determinations and recommendations of the Town Board, the applicant wishes to proceed, he shall within six (6) months thereafter submit a preliminary development plan to the Planning Board. Such development plan shall contain the following information prepared by a licensed engineer or registered architect:

(1) An area map showing applicant's entire holding, that portion of the applicant's property under consideration, and all properties, subdivisions, streets and easements within five hundred (500) feet of applicant's property.

(2) If grades exceed three percent (3%) or portions of the site have soil areas classified by the Soil Conservation Service of the United States Department of Agriculture as having a moderate to high susceptibility to erosion, or a moderate to high susceptibility to flooding and ponding, a topographic map showing contour intervals of not more than five (5) feet of elevation shall be provided.

(3) A preliminary site plan including the following information:
   (a) Title of drawing, including name and address of applicant.
   (b) North point, scale and date.
   (c) Boundaries of the property plotted to scale.
   (d) Existing watercourses.
   (e) A site plan showing location, proposed use and height of all buildings, location of all parking and truck-loading areas with access drives thereto: location and proposed development of all open spaces including parks, playgrounds and open reservations; location of outdoor storage, if any; location of all existing or proposed site improvements, including drains, culverts, retaining walls and fences, and any existing trees over four (4) inches in diameter; description of method of sewage disposal and location of such facilities; location of refuse facilities; location and size of all signs; location and proposed development of buffer areas; location and design of lighting facilities; and the amount of building area proposed for nonresidential uses, if any.
   (f) Preliminary plans for handling stormwater drainage in accordance with Town of Webster Drainage Control Law.[5]

(4) A tracing overlay showing all soil areas and their classifications, and those areas, if any, with moderate to high susceptibility to flooding, and moderate to high susceptibility to erosion. For areas with potential erosion problems, the overlay shall also include an outline and description of existing vegetation.

(5) Elevations or perspective drawings of proposed structures and improvements including single-family detached residences and their accessory buildings. The drawings need not be the result of final architectural decisions and need not be in detail.

(6) A development schedule indicating:

(a) The approximate date when construction of the project can be expected to begin.

(b) The stages in which the project will be built and the approximate date when construction of each stage can be expected to begin.

(c) The anticipated rate of development.

(d) The approximate dates when the development of each of the stages in the development will be completed.

(e) The area and location of common open space that will be provided at each stage.

(7) Agreements, provisions or covenants which govern the use, maintenance and continued protection of the planned development and any of its common open areas.

(8) The following plans and diagrams, insofar as the Planning Board finds that the planned development creates special problems of traffic, parking, landscaping or economic feasibility:

(a) An off-street parking and loading plan.

(b) A circulation diagram indicating the proposed movement of vehicles, goods and pedestrians within the planned development and to and from existing thoroughfares. Any special engineering features and traffic regulation devices needed to facilitate or insure the safety of this circulation pattern must be shown.

(c) A landscaping and tree planting plan and schedule.

(d) An economic feasibility report or market analysis.

B. Factors, for consideration. The Planning Board's review of a preliminary development plan shall include, but is not limited to, the following considerations:

(1) Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, channelization structures and traffic controls.

(2) Adequacy and arrangement of pedestrian traffic access and circulation including: separation of pedestrian from vehicular traffic, walkway structures, control of intersections with vehicular traffic and pedestrian convenience.

(3) Location, arrangement, appearance and sufficiency of off-street parking and loading.

(4) Location, arrangement, size and design of buildings, lighting and signs.

(5) Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or a noise-deterring buffer between adjacent uses and adjoining lands.

(6) In the case of multiple-family dwellings, the adequacy of usable open space for playgrounds and informal recreation.

(7) Adequacy of storm water and sanitary waste disposal facilities.

(8) Adequacy of structures, roadways and landscaping in areas with moderate to high susceptibility to flooding and ponding and/or erosion.

(9) Protection of adjacent properties against noise, glare, unsightliness or other objectionable features.

(10) The relationship of the proposed land uses to adjacent land use and the use of buffer areas and open space to provide a harmonious blending of existing and proposed uses.

(11) Conformance with other specific recommendations of the Town Board which may have been stated in the Town Board Resolution under Section 59-25D.

In its review, the Planning Board may consult with the Town Engineer, architectual or planning consultants, and other town and county officials, as well as with representatives of federal and state agencies, including the Soil Conservation Service and the New York State Department of Conservation. The Planning Board may require that the design of all structures be made or under the direction of, a registered architect whose seal shall be affixed to the plans. The Planning Board may also require such additional provisions and conditions that appear necessary for the public, health, safety and general welfare.

C. Action on preliminary application. Within sixty (60) days of the receipt of the application for preliminary site plan approval, the Planning Board shall act on it. The Planning Board's action shall be in the form of a written statement to the applicant and the Town Board stating whether or not the preliminary site plan is approved.

D. If the Planning Board approves the preliminary development plan, the Town Board shall hold a public hearing upon a proposition to zone the applicant's lands for the proposed planned unit development. If after the public hearing the Town Board shall determine that the proposed development conforms to applicable state, county and town laws, ordinances and regulations, and is in the public interest, it shall adopt a resolution declaring its intention to zone the applicant's property for the proposed planned unit development upon the applicant receiving approval of final plans therefor from the Planning Board and upon the developer meeting such additional conditions as the Town Board shall deem appropriate in each case and shall set forth in such resolution.

59-27 Approval of final development plan.

A. After receiving notice of zoning intention by the Town Board, the applicant shall submit a final detailed site plan to the Planning Board which shall substantially conform to the approved preliminary development plan. It shall incorporate any revisions or other features that may have been recommended by the Planning Board and/or Town Board. The applicant shall also submit evidence of compliance with all applicable state and county laws and regulations and establish that necessary permits from appropriate government units have been obtained. After the applicant has submitted a final site plan which conforms to the approved preliminary plan revised to comply with Planning and Town Board recommendations, and upon complying with such additional conditions as may have been set by the Town Board, the Planning Board shall mark such final plans "Approved Final Development Plans," shall file such plans in the Building Department and notify the Town Board, which shall then enact the legislation to create the appropriate planned unit development district. Prior to enacting any legislation, the Town Board may require that a development agreement be executed and appropriate financial guarantees be filed to assure compliance with conditions for approval of the development and the minimum requirements of this ordinance.

B. No building permit shall be issued until the final site development plan has been approved, the zoning change has been enacted by the Town Board, and, where required by Section 280-a of the Town Law, a plat approved by the Planning Board in accordance with the provisions of the Town of Webster Subdivision Regulations [6] has been filed in Monroe County Clerk's office. Such plat shall substantially conform in all respects to the approved final site plan and shall be in accordance with the staging plan submitted to and approved by the Town Board and Planning Board. For a period of two (2) years after adoption of this ordinance, the Planning Board shall not approve for filing in the County Clerk's office plats showing more than one hundred fifty (150) multiple-family dwelling units in any one (1) planned unit development.

59-28 Development schedule compliance.

A. From time to time the Planning Board shall compare the actual development accomplished in the various PUD districts with the approved development schedules. If the owner or owners of property in PUD districts have failed to meet the approved development schedule, the Planning Board shall so advise the Town Board and shall make such recommendations in connection therewith as they deem appropriate. The Town Board may proceed to rezone the property to the zone classification it held immediately prior to being zoned under this Article. Upon recommendation of the Planning Board and for good cause shown by the property owner, the Town Board may extend the limits of the development schedule.

B. The construction and provision of all of the common open spaces and public and recreational facilities which are shown on the final development plan must proceed at the same rate as the construction of dwelling units. At least once every six (6) months following the approval of the final development plan, the Building Officials shall review all of the building permits issued for the planned development and examine the construction which has taken place on the site. If he shall find that the rate of construction of dwelling units is greater than the rate at which common open spaces and public and recreational facilities have been constructed and provided, he shall forward this information to the Town Board, which may revoke the planned development zone amendment and direct that further building permits in the development be denied until required recreation or open space is provided and, if the developer fails or refuses to comply within a reasonable time, may rezone the property to the zone classification it held immediately prior to being zoned under this Article.

59-29 Changes in final plan after approval.

No changes may be made in the approved final plan during the construction of the planned development except upon application to the appropriate agency under the procedures provided below:

A. Minor changes in the location, siting and height, length and width of buildings and structures may be authorized by the Planning Board if required by engineering or other circumstances not foreseen at the time the final plan was approved. No change authorized by this section may increase the cube of any building or structure by more than ten percent, (10%).

B. All other changes in use, any rearrangement of lots, blocks and building tracts, any changes in the provision of common open spaces, and all other changes in the approved final plan, must be approved by the Town Board, under the procedures authorized by this ordinance for the amendment of the Zoning Map. No amendments may be made in the approved final plan unless they are shown to be required by changes in conditions that have occurred since the final plan was approved or by changes in the development policy of the community.

59-30 Control of planned unit development following completion.

A. Upon completion of the project or any stage thereof for which the developer shall seek a certificate of occupancy or other certificate certifying satisfactory completion of the project or portion thereof, the developer shall submit a certificate of his registered architect or licensed engineer in

form satisfactory to the Planning Board that the completed project, or portion thereof, substantially conforms to the plans therefor approved by the Planning Board. Upon receipt of such certification and based upon reports of appropriate town officials, the Planning Board shall issue a certificate certifying the completion of the planned development, and the clerk of the Planning Board shall note the issuance of the certificate on the recorded final development plan.

B. After the certificate of completion has been issued, the use of land and the construction, modification, or alteration of any buildings or structures within the planned development will be governed by the approved final development plan rather than by any other provision of this Zoning Ordinance.

C. After the certificate of completion has been issued, no changes may be made in the approved final development plan except upon application to the appropriate agency under the procedures provided below:

(1) Any minor extensions, alterations or modifications of existing buildings or structures may be authorized by the Planning Board if they are consistent with the purposes and intent of the final plan. No change authorized by this section may increase the cube of any building or structure by more than ten percent (10%).

(2) Any uses not authorized by the approved final plan, but allowable in the planned development as a permitted use under the provisions of this Zoning Ordinance, may be added to the final development plan upon receipt of approval of the Planning Board.

(3) A building or structure that is totally or substantially destroyed may be reconstructed only in compliance with the final development plan unless an amendment to the final development plan is approved as provided herein.

(4) Changes in the use of common open space may be authorized by an amendment to the final development plan under Subsection (5) below.

(5) All other changes in the final development plan must be approved by the Town Board, under the procedures authorized by this ordinance for the amendment of the Zoning Map. No changes may be made in the final development plan unless they are required for the continued successful functioning of the planned development, or unless they are required by changes in conditions that have occurred since the final plan was approved or by changes in the development policy of the community.

D. No changes in the final development plan which are approved under this Section are to be considered as a waiver of the covenants limiting the use of land, buildings, structures and improvements within the area of the planned development, and all rights to enforce these covenants against any changes permitted by this section are expressly reserved.

59-31 Legislative intent.

A. It is the intention of the Town Board in order to encourage the blending and mixture of various types of housing to create, upon proper application, planned multiple-family residential districts to be located within zoning districts only as such are designated on the official Zoning Map. Such planned multiple-family residential districts shall be approved by the Town Board based upon compliance with this ordinance, the availability and adequacy of sewerage facilities, public transportation, drainage, together with consideration of topographical and land characteristics and the suitability of development as all of the above affects the health, welfare and safety of the residents of Webster.

B. In order to promote the orderly development of the town, provide adequate fire and police protection, sanitary and stormwater drainage facilities, and to promote the general health, safety and welfare of the town, it is the determination of the Town Board based upon the comprehensive plan and the character of the community that multiple-dwellings shall at no time exceed approximately twenty percent (20%) of the single-family detached dwellings in the Town of Webster, excluding the Village of Webster.

C. The purposes of standards hereinafter set forth are to insure compatability among all the land uses, foster innovation in site planning and development, and encourage sound development in the interest of safety and general welfare of the public. The standards for planned unit districts are to provide the Planning Board and Town Board with a means to evaluate applications for these districts consistent with the provisions and general intent of the Zoning Ordinance. Such standards are intended to strengthen public control over development, while providing the necessary latitude for the developer to make creative and efficient use of property.

PERMITS/REVIEWS REQUIRED

Local Permits/Reviews:

1. Rezoning/site plan approval by Planning Board and Town Board

2. Sewer Line extension/connection approval by Webster Sewer System.

3. Water line extension/connection approval by Webster Water System.

County Permits/Reviews:

1. 239-m Review by County Planning Department on rezoning and/or site plan approval by town. 30 day review period.

2. County Department of Public Works:
   239-k review of proposed access to site; 10 day review period
   136 review of work within county right-of-way for driveways, utilities, drainage, etc. 10-20 day review period.

3. County Health Department:

   Article 17 review of proposed sewer extension/connections.
   Article 225 review of proposed water main extensions or connections.
   Above permits may be combined in 30 day review period.

4. Real Property Tax Service Agency - Must review final plans prior to filing with County Clerk if subdivision is involved.
   10 day review period.

State Permits/Reviews:

1. New York State Department of Transportation:

   Section 52 Permit for work within State Highway Right-of-way; review of proposed access design and construction, drainage, and utilities affecting a state highway right-of-way. 10 day review period.

2. Article 8 Part 617 State Environmental Quality Review Act (SEQR):

   a. Environmental Assessment Form must be prepared if project is a type I action: Commercial zoning change affecting 10 or more acres; commercial project involving physical alteration of 10 acres; parking for 1000 or more vehicles; substantially contiguous to publicly owned and operated park land.

   b. EAF must be mailed to all permit granting agencies for review (30 day review period).

   c. After review of EAF, lead agency must be assigned from permit granting agencies.

   d. Within 15 days of step c. a determination of significance shall be made (positive or negative declaration) and shall be mailed to all involved agencies.

e. Upon a positive declaration, lead agency shall cause a draft Environmental Impact Statement (DEIS) to be prepared. Upon completion of the DEIS, 30 day review period and optional public hearing commence.

f. A final EIS shall be prepared within 45 days of hearing or 60 days from preparation of DEIS, whichever is latest.

g. If a determination is made from DEIS that there will be no significant effect on environment, a final EIS is not required.

h. If a final EIS is prepared, a 10-30 day review period is required and the final EIS must be considered and recognized in the final decision on permit granting.

POSSIBLE PERMIT/REVIEW PROCESS:

1. Applicant submits sketch plan to Planning Board for review including EAF.

2. EAF distributed to permit-granting agencies and lead agency determined.

3. Lead agency determines significance of possible impacts and makes positive or negative declaration.

4. If negative declaration, applicant submits preliminary plans (step 6). If positive declaration, lead agency asks applicant to prepare DEIS.

5. DEIS prepared submitted to permit agencies for 30 day review.

6. Applicant prepares preliminary plans and submits to town, County Planning Health and DPW and NYSDOT for permit granting review.

7. Permit agencies comment on preliminary application and DEIS.

8. Lead agency determines if Final EIS is required, holds public hearing.

9. Lead Agency determines final environmental impact; town grants permits for project.