

E-News Update - December 2013

Happy Holidays from all of us at New York Planning Federation

New York Planning Federation
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SAVE THE DATE NYPF 76th Annual Conference

March 30 -April 1, 2014
Gideon Putnum Resort
Saratoga Springs

It's not too early to mark your calendars for the NYPF's 2014 Planning & Zoning Conference. The dates will be March 30th to April 1st and the location will once again be the beautiful, historic Gideon Putnam Hotel in Saratoga Springs. All sessions at NYPF conferences qualify toward the four-hour training requirement for planning board and ZBA members. And, as in years past, the 2014 conference will also offer continuing education sessions for

Exempting Local Governments from Zoning Regulations

By David R. Everett, Esq. and Genevieve M. Trigg, Esq.

Prior to 1988, a municipality was exempt from zoning restrictions when carrying out its governmental functions, but was subject to such restrictions when engaged in a proprietary function. After years of debate to determine which functions were governmental and which proprietary, the Court of Appeals retired the old test and adopted the balancing of public interest approach. (See *Matter of County of Monroe v. City of Rochester*, 72 N.Y.2d 338 {1998}.)

Generally, the balancing of public interest approach provides that unless a statute expressly exempts it, the encroaching governmental unit is presumed to be subject to the zoning regulations of the host community where the land in question is located. The host community then considers several factors to determine whether or not it is in the public interest to continue to subject the encroaching government to its land use regulations.

Among the factors to be balanced are the nature and scope of the instrumentality seeking immunity; the kind of function or land use involved; the extent of the public interest to be served; the effect of local land use regulations upon the enterprise concerned; the impact upon legitimate local interests; the applicant's legislative grant of authority; alternative locations for the facility in less restrictive zoning areas; alternative methods of providing the needed improvement; and

attorneys, professional planners and code enforcement officers.

[2014 Conference Registration Form](#)

Award Nominations

Now Being Accepted.

[2014 Award Description & Nomination Forms](#)

Exhibitors Needed!!

We are currently accepting registrations for Conference Exhibitors & Sponsors!!

[Exhibitor Registration Form](#)

New York Planning Federation

Is a non-profit membership organization established in 1937. Our mission is to promote sound planning and zoning practice throughout New York State.

Membership, which currently includes nearly 10,000 individuals, is open and welcome to anyone supporting this mission. Membership categories include municipalities, counties, public

intergovernmental participation in the project development process and an opportunity to be heard.

The question of who makes the determination of governmental immunity remains open-ended. Neither the NY Court of Appeals nor State statutes indicate which board in the host municipality determines governmental immunity: it is a matter of speculation whether the governing board, the ZBA or the planning board conducts the balancing analysis to determine whether a local government should be subject to its own regulations.

Moreover, case law indicates mixed results. For example, compare *Volunteer Fire Assn. of Tappan, Inc. v. Town of Orangetown*, 54 A.D.3d 850, 851 {2d Dept. 2008} with *Town of Riverhead v. County of Suffolk*, 66 A.D. 3d 1004 {2d Dept. 2009}.

As part of its James A. Coon Local Government Technical Series, the NYS Department of State published a technical memorandum ("*Governmental Immunity from Zoning*" available at www.dos.state.ny.us) which provides the following suggestions:

"A municipal governing board may choose to bind some or all actions of its own municipality to the requirements of its zoning regulations by specifying so within the zoning law or ordinance. Where a municipality has done so, a zoning permit should be applied for. A referral to the planning board or zoning board for a special use permit or site plan review may be necessary as well. Any immunity challenge that the municipality wishes to make may be brought before the zoning board of appeal.

"Where a local government has not bound itself to the requirements of its zoning regulations, the municipal governing board must protect the public interest by examining the nine factors as applied to the current project. It must determine whether it is immune from the requirements of the zoning regulations, and whether a zoning permit is necessary. Even where a municipal governing board has declared an action immune from zoning, it may still wish to comply with the requirements of zoning, where practicable, and with public notices and hearing requirements."

organizations, private businesses, individuals and libraries.

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Examples of local government projects and facilities that *may be* exempt from zoning regulations include, without limitation:

- Wastewater treatment plants
- Water supply and distribution systems
- Ambulance facilities
- Public libraries
- Firehouses
- Police stations
- Housing for the homeless

Governmental zoning immunity serves an important function to free local governments from zoning restrictions where the project/facility serves a greater public interest. While it appears unlikely that a bright-line rule will be established in the near future declaring which board makes the determination of governmental immunity, it is well-settled that the balancing of public interest test is to be applied in making such determination.

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