

# **Subdivision Enforcement**

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**TUG HILL COMMISSION TECHNICAL PAPER SERIES**

**TUG HILL COMMISSION**

Dulles State Office Building

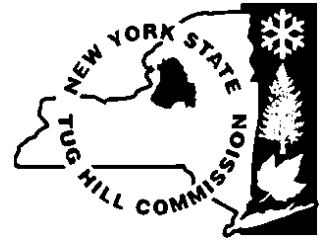
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The Tug Hill Commission *Technical and Issue Paper Series* are designed to help local officials and citizens in the Tug Hill region and other rural parts of New York State. The *Technical Paper Series* provides guidance on procedures based on questions frequently received by the Commission. The *Issue Paper Series* provides background on key issues facing the region without taking advocacy positions. Other papers in each series are available from the Tug Hill Commission at the address and phone number on the cover.



## **INTRODUCTION**

The control of land subdivision is important to assure the proper layout of parcels, streets, sidewalks, open space areas and other facilities; to ensure that public and private facilities such as roads, water lines, sewage disposal systems, stormwater drainage facilities, and parks and other facilities are designed to municipal specifications and properly located; and to ensure the proper protection of environmentally, historically and aesthetically significant features.

Subdivision reviews and approvals are also important because they are the only means of ensuring that key provisions of local zoning laws are complied with. Without subdivision review and approval, a land speculator or developer may either knowingly or unknowingly create lots which do not conform to local lot area, width, depth or other requirements of zoning laws. Substandard lots which do not conform to zoning requirements may create problems when conveyed to innocent purchasers of land. Innocent purchasers may find that they have purchased land which is ineligible for zoning permits. Thus, the improper subdivision of land can leave a scar on the community by creating undevelopable land and by impeding one of the primary purposes of community planning--to provide for the more efficient and economical layout of land for the provision of community facilities, now and in the future.

In communities without proper subdivision controls, planning and zoning officials are constantly under pressure to ease the hardships of unwary purchasers of improperly subdivided lands. They are also under pressure to make the best of illegal subdivision designs which would result in wasted and undevelopable land. As a consequence, they are often faced with pressure to issue permits for uses and structures on substandard lots, thus risking completely undermining the community planning process and making local zoning regulations ineffective.

In sum, it is important to the success of local community planning efforts that there be effective means of prevent the unlawful subdivision of land, for a variety of reasons.

## **THE ENFORCEMENT SYSTEM**

There are basically four means of encouraging subdividers to go through a local review procedure. These are 1) the threat of fines and imprisonment, 2) court issued injunctions against the sale of lots and improvements, 3) the withholding of zoning permits for unapproved lots, and 4) the prohibition on the filing of unapproved subdivisions with the county clerk.

## **Fines and/or Imprisonment**

Town and Village Law (Town Law Section 268, Village Law Section 7-714) provide for both fines and/or imprisonment for violation of the local subdivision laws. These provisions of state law are not self-executing, but must be adopted by the local municipality by either local law or ordinance. This enforcement option can be pursued through the local justice court. The disadvantage of relying on fines and imprisonment is that this mechanism only comes into play after a violation occurs, and after the subdivision has been created and presumably illegally filed. Often lots have already been conveyed to others, and a messy enforcement scenario is inevitable. The threat of fines and imprisonment, however, is often a useful tool to getting cooperation from a potential subdivider before an illegal subdivision is created.

## **Injunctions**

The same statutes that allow for fines and/or imprisonment above also allow for the municipality to seek injunctive relief through the court system. This is a step that must be pursued by the local municipal attorney. An injunction would allow the municipality to prevent the further sale of lots in an illegal subdivision, or its further development. This mechanism must also be adopted by the local municipality by either local law or ordinance.

## **Withholding Zoning Permits**

A municipality may by local law prohibit zoning permits from being issued for lots in unapproved subdivisions. This can encourage subdividers to comply with subdivision requirements as a means of ensuring the future possibility of developing, or of selling developable lots.

## **Prohibition on Filing with County Clerk**

The Town and Village Law (Town Law Section 279, Village Law Section 7-732) prohibit the filing of plats in the office of the county clerk without local planning board approval. The New York statutes (Real Property Law Section 333) also prohibit the filing of individual deeds for subdivided lands without indicating on the attached Real Property Transfer Report (EA-5217) whether the lot is part of a subdivision, and if so, whether the subdivision has been approved by the local planning board. While this procedure would seem to be a foolproof means of stopping illegal subdivisions from being filed, some county clerks have neglected to effectively administer it, and it cannot entirely be relied upon by local governments.

## **OTHER AIDS TO SUBDIVISION COMPLIANCE**

There are a number of notifications that can assist enforcement efforts. First, it is mandatory that the county clerk be notified when plat approval authority is granted to a municipal planning board (Town Law Section 276, Village Law Section 7-728). This will put the county clerk on notice to stop the filing of deeds and plats that have not received proper local approval.

Copies of your law might be sent to local surveyors who routinely do work in the municipality. This will help them to properly advise clients who are subdividing. For the same reason, it may also be advisable to send notification letters to local attorneys and realtors that subdivision controls are in effect. One or more press releases explaining the regulations may be useful, and often signs are posted at municipal boundaries notifying the public that land use controls are in effect.

Proper record keeping is also essential to effective enforcement. The planning board needs to take clear and complete minutes of meeting, keep records of findings, and checklists of actions taken. These are critical documents necessary to bring actions against illegal subdivision activities. These need to be filed in such a way that they are retrievable and usable in enforcement actions.

## **SUBDIVISION CONTROLS AS A LOCAL LAW**

Earlier New York State Statutes established a method of subdivision control adoption that is no longer permissible. Many older subdivision controls were adopted as administrative regulations of the planning board, adopted by the planning board upon public hearing by the planning board and a resolution of approval by the town or village board. An important thing to remember is that the NYS Statutes now require subdivisions controls to be adopted as local laws by the town or village board, upon public hearing by the town or village board. Planning boards no longer have a role in the actual adoption process for subdivision controls, and are now confined to the administration of the law. When updating and amending older subdivision regulations which were adopted as administrative regulations of the planning board, it will be necessary to make these changes by local law.

## **CHECKLIST OF THINGS TO LOOK FOR**

Check your laws, ordinances, regulations and procedures for the following:

- Have your subdivision controls been adopted by local law rather than as administrative regulations of the planning board?
- Are there meaningful penalties provisions in your local law?
- Does your local law provide for injunctions?
- Does your local law prohibit the issuance of zoning permits on illegally subdivided lots?
- Have you provided legal notification to the county clerk that your planning board has subdivision approval authority?
- Have you notified the media that you have subdivision controls in place?
- Have you posted signs at the municipal boundary announcing land use controls in effect?
- Have you notified local realtors, attorneys, and land surveyors of your subdivision controls?
- Do you have a clear enforcement system—a person to notify of violations, and a clear enforcement follow-up procedure?
- Does your planning board use administrative checklists to record dates of mandated actions and keep track of procedural steps?
- Does your municipality have an organized filing system to record administrative and enforcement records?