

LAND USE LAW CENTER
PACE UNIVERSITY SCHOOL OF LAW
WHITE PLAINS  NEW YORK

STREAMLINING NEWBURGH'S LAND USE PROCESS

Final Recommendations

This report presents the Land Use Law Center's recommendations for streamlining the City of Newburgh's current land use process to remove obstacles to redevelopment and better open the City for business. To generate these recommendations, the Center began by meeting with each of Newburgh's land use boards individually. Then, the Center conducted two trainings to identify problems with Newburgh's current project review and approval process. After this, Center staff conducted research to discover process streamlining best practices from across the state of New York and the country to help address these issues. On April 28, 2012, the Center presented these best practices to board members at a third training and received much feedback on these recommendations from board members at this meeting and via email. The final recommendations contained in this report derive from the boards' and City staff's assessment of those best practices at the April 28th training, as well as subsequent email comments.

These recommendations include two overarching suggestions that the City should consider initially. First, the City should seek funding to update its zoning code. Current zoning is outdated and often requires variances or rezoning to facilitate individual development projects. An updated zoning code would eliminate unnecessary regulatory barriers and speed up the City's redevelopment process. Further, New York State legally cannot approve Newburgh's updated Local Waterfront Revitalization Program (LWRP) until the City adopts strategies to implement the program, such as new zoning.

In addition to this, the Center recommends that the City create a new Conservation Advisory Council (CAC) and consolidate all existing environmental and advisory committees into this body. As such, the new CAC would absorb the Waterfront Advisory Committee (WAC) and the Shade Tree Commission, along with their responsibilities, and formally link to the Department of Public Works. Initially, the CAC would inventory the City's open space and natural resources, including Crystal Lake, Snake Hill, the Quassaick Creek estuary and gorge, Downing Park, the waterfront, and the drinking watershed that serves Washington Lake and Brown's Pond. Following this, the CAC would advise City Planning and Engineering staff, as well as City Council, the Planning Board, and the Zoning Board of Appeals with regard to environmental and conservation issues raised by permit and approval applications. These issues may include surface drainage, community gardens, sensitive habitat and watershed protection, waste stream management, waterfront preservation, clean water initiatives, green infrastructure improvements, and urban forestation. The City should seek funding for the CAC's initial inventory, which may include historic resources. This inventory will assist the City with its future zoning overhaul.

This report adds to these two initial suggestions by presenting specific recommendations to streamline Newburgh’s process for New York’s State Environmental Quality Review Act (SEQRA) review, coastal consistency review, historic preservation, and general project review. For each of these topics below, the report describes the required legal framework to which municipalities in New York must adhere, Newburgh’s current process, and specific process recommendations for Newburgh.

SEQRA Review

Required Legal Framework

Under the State Environmental Quality Review Act (SEQRA), local land use boards must conduct an environmental analysis before they approve a project. This applies to any planning board, zoning board of appeals, and architectural review board or commission. As permitting agencies, these are denominated involved agencies under SEQRA. Applicants for site plan and subdivision approvals, variances, and certificates of appropriateness must attach to their applications a short or long Environmental Assessment Form (EAF),¹ depending on the type of action their application triggers.

Under state SEQRA regulations, actions are grouped either as Type I, Type II, or Unlisted Actions. Type II actions are exempt from review. Type II actions include maintenance or repair involving no substantial changes in an existing building; replacement, rehabilitation or reconstruction of a structure or facility; construction or expansion of a single-family, a two-family or a three-family residence on an approved lot; construction, expansion or placement of minor accessory structures; certain area variances; and official acts of a ministerial nature that involve no exercise of discretion, including building permits and historic preservation permits.² Type I actions meet certain published thresholds and are more likely than others to have a significant adverse environmental impact. Unlisted Actions are neither exempt nor Type I actions. Applicants whose projects are Unlisted must submit the short EAF; Type I actions require submission of the long EAF. With regard to Unlisted and Type I actions, the local land use board must make a determination of significance, that is, whether the project is likely to have a significant adverse environmental impact. If that declaration is negative, a “neg dec,” no further environmental review is required. Where that declaration is positive, a “pos dec,” a full Environmental Impact Statement must be prepared. The time and expense involved with a full EIS are significant. State regulations permit localities to add actions to the Type II list as long as they do not qualify as Type I actions or exceed listed Type I thresholds.

When an agency undertakes an environmental review, it must review the full scope of issues that can give rise to environmental impacts. Its review may not be limited to its area

¹ DEC, Draft Model Short and Full EAFs, *available at* <http://www.dec.ny.gov/permits/70293.html>.

² SEQRA § 617.5 (c).

of expertise. For an agency that is not a permit agency, but rather an advisory board, its review does not require an environmental analysis.

Under state SEQRA regulations, when a project requires two or more permits, the SEQRA review can be coordinated, with one of the involved agencies taking responsibility as “lead agency” and the others reporting any environmental concerns to it. Under a coordinated review the lead agency performs the full environmental review and makes the determination of significance. Alternatively, where two or more boards are involved in permitting the action, the review can be uncoordinated, with each agency conducting a review of all possible environmental impacts. If any one of the agencies determines that the project may have a significant adverse impact, a pos dec, then the review must be coordinated, with one agency taking lead agency status. If the project is a Type I action, the review must be coordinated with one lead agency.

State regulations permit agencies to use a conditional negative declaration for Unlisted Actions where a full EAF is submitted and where a coordinated review is completed. For actions with significant impacts below Type I thresholds, the conditioned negative declaration imposes mitigation conditions without requiring the applicant to complete a full EIS.

Effective October, 2012, the state requires applicants to use new EAFs that are much longer and require much more information than the previous short and long EAFs.³ This will impose greater burdens on either applicants or the city staff or both.

Newburgh’s Current Process

Chapter 158 of Newburgh’s Code adopts the state SEQRA regulations contained in Part 617 of Title 6 of NYCRR.⁴ Section 158-2 seems to mandate that all Type I actions require a full Environmental Impact Statement, although this is not required under state regulations and Newburgh typically does not follow this practice. Most actions taken by local boards in Newburgh do not involve significant adverse impacts, do not lead to pos decs, and are handled through the uncoordinated review process. During the uncoordinated review process, local boards normally limit the scope of their environmental review to the specific project features they are asked to approve. For example the Architectural Review Commission limits its environmental review to architectural design guidelines. On occasion, the Waterfront Advisory Committee reviews the Environmental Assessment Form and conducts an environmental review; as an advisory board, it is not required to do so.

Recommendations

EIS Not Required for All Type I Actions

³ DEC, Draft Model Short and Full EAFs, *available at* <http://www.dec.ny.gov/permits/70293.html>.

⁴ City of Newburgh, N.Y., Code § 158-1.

Newburgh should not automatically require a full EIS for Type I actions because that requirement imposes significant costs and time delays on applicants. To avoid this, the City should amend City Code Section 158-2 to eliminate any mandate requiring a full EIS for all Type I actions.

Review of All Environmental Impacts

Newburgh should require its local boards to review all environmental impacts that an action might involve, rather than limiting this review to the scope of a board's substantive review. This is because SEQRA requires that all environmental impacts of an action be reviewed.

Coordinated Review Process

When one involved agency declares a pos dec, Newburgh should subject the project to a coordinated review process as required under SEQRA regulations.

Actions Added to Type II List

To exempt them from environmental review, Newburgh should add more appropriate types of actions to their Type II list. For example, Newburgh could add demolition permits to its Type II list.

Clear Application Forms

Newburgh should amend its application forms to clarify that if a project is a Type II, no EAF or environmental review is required. Many actions taken by the City's Architectural Review Commission are Type IIs. For example, Type II actions include projects of routine maintenance or repair that involve no substantial change of any structure or building. Also projects that involve reconstruction of a structure, in kind, on the same site are Type II actions.

Reduced Burdens in New EAFs and Other Forms

The new EAFs will impose new burdens on applicants.⁵ Newburgh staff should review EAF provisions to see what new information it requires and whether the staff can be helpful in filling in some parts of the form for unsophisticated applicants. For example, the new short EAF asks whether a project involves connection to public water or sewer or is adjacent to public transit. Additionally, it asks whether a project is located in an environmental justice community of concern as defined by the Federal EPA. Newburgh should maintain and provide to applicants relevant maps that help them determine this location. Further, Newburgh should provide GIS mapping online to help applicants answer other EAF questions.

Mitigation Conditions Imposed through Conditioned Neg Decs

Newburgh should relieve applicants from completing a full EIS for an Unlisted Action by imposing mitigation conditions through the use of conditioned negative declarations. This can save applicants much time and expense without sacrificing environmental protection.

⁵ DEC, Draft Model Short and Full EAFs, *available at* <http://www.dec.ny.gov/permits/70293.html>.

Consolidated Form

To streamline the application process, Newburgh should draft a consolidated form that collects all required application information in one document. The consolidated form should include the expanded EAFs in conjunction with information required on the Coastal Assessment Form, which can link to the Short EAF. See Expanded Short Form EAF and CAF Informational in the Coastal Consistency Review section below. Additionally, this form should include information from design guidelines for the historic district and architectural design district. After preparing this consolidated form, municipal staff should use it during workshops or informationals to help guide applicants through the approval process. Prior to this, municipal staff and boards should be trained to use the consolidated form for workshops/informationals and the approval process. See Training for Local Board Members below in the section entitled, Streamlining the Project Review and Approval Process.

Pre-application Negotiations

Newburgh staff should negotiate with developers in a pre-application meeting to remove from their plan any problems that will lead to a pos dec. In *Merson v. McNally*, 90 N.Y2d 742 (1997), the New York Court of Appeals sanctioned informal multi-party negotiations during the local environmental review process. The Court found that a proposed project involving several potentially large environmental impacts can be mitigated through project changes negotiated early in the SEQRA review process. For a full discussion of pre-application workshops and informationals, see Pre-application Workshops below in the section entitled, Streamlining the Project Review and Approval Process.

Coastal Consistency Review

Required Legal Framework

New York municipalities along major coastal and inland waterways may coordinate with the New York Department of State (DOS) to prepare a Local Waterfront Revitalization Program (LWRP). The LWRP consists of a comprehensive land and water use plan for a community's waterfront and developed waterfront resources. A municipality's LWRP addresses waterfront redevelopment, expansion of public access to water, resource protection, and water dependent uses. After the New York Secretary of State and the federal Office of Coastal Resources Management approve an LWRP, state and federal actions must be consistent with it. Additionally, all LWRPs must include a local consistency review law. These laws ensure that municipal actions are consistent with the LWRP's policies, uses and projects, as well.⁶

⁶ NYS Department of Env, Cons., Coastal and Inland Waterways Programs, <http://www.dec.ny.gov/permits/55204.html>.

To ensure consistency of local actions with LWRP policies, all local consistency review laws must require the preparation and evaluation of a coastal assessment form (CAF).⁷ DOS distributes model local consistency review laws that they encourage municipalities to adopt.⁸ These model laws include the same basic consistency review process for local actions:

When a municipal agency receives an application for approval or funding of such an action or contemplates a direct action in the coastal area, the agency must refer a completed CAF to an advisory agency within ten days of its receipt. Following this referral, the advisory agency must consider whether the proposed action is consistent with LWRP policy standards and must require the applicant to submit all completed applications, CAFs, EAFs, and any other information deemed necessary to its consistency recommendation. The advisory agency must render its written recommendation to the acting agency within thirty days of the referral, unless extended by mutual agreement between the advisory agency and applicant or acting agency in the case of direct action.

Once it receives the recommendation, the acting agency must make a written determination of whether the proposed action is consistent with the LWRP policy standards. The acting agency must consider the advisory agency's recommendation, the CAF and other relevant information while making this determination. If the advisory agency's recommendations are not forthcoming within the specified time, the acting agency must make its consistency decision without this recommendation.

Actions within a municipality's coastal area deemed consistent with LWRP policies may have site-specific impacts subject to State Environmental Quality Review Act (SEQRA) review as well.⁹ During the SEQRA process, reviewers must consider coastal impacts along with other environmental impacts, regardless of any LWRP consistency determination.¹⁰ If a SEQRA positive declaration is issued, then an Environmental Impact Statement (EIS) must address potential impacts on LWRP policies.¹¹ In the event of a proposed action's LWRP consistency determination and a SEQRA determination of positive significance, EIS completion is still required.¹²

According to DOS's three model consistency review laws, the selected advisory agencies may vary by municipality. One model law designates the town's Conservation Advisory Council as the advisory agency,¹³ while another designates the City Council as the advisory

⁷ Id; NYS DOS Coastal Management Program, Coastal Assessment Form, <https://www.dot.ny.gov/divisions/engineering/environmental-analysis/manuals-and-guidance/epm/repository/4-2-a-1.pdf>.

⁸ Town of Rhinebeck, NY, code Ch. 118; Town of Southold, NY, code Ch. 268; City of Watertown, NY, App. A. Proposed Coastal Consistency Review Law, Draft Local Waterfront Revitalization Program, http://nyswaterfronts.com/LWRP/City%20of%20Watertown/default/City_of_Watertown_LWRP.htm.

⁹ NYS Department of Env, Cons., Coastal and Inland Waterways Programs, <http://www.dec.ny.gov/permits/55204.html>.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Town of Rhinebeck, NY, code Ch. 118.

agency.¹⁴ Still another designates as the advisory agency the town's LWRP Coordinator, a staff person designated by the town board.¹⁵ Further, the model laws illustrate that in the event of a negative declaration, it is not necessary to comingle the SEQRA process with the LWRP consistency review process. As discussed above, however, if an action receives a positive declaration, the draft EIS must identify LWRP policies and discuss the proposed action's effects on coastal resources.

Newburgh's Current Process¹⁶

Newburgh's local consistency review law follows the model process outlined above and designates Newburgh's Waterfront Advisory Committee (WAC) as the advisory agency.¹⁷ When reviewing an action in Newburgh's coastal area, the acting agency must refer a completed copy of the CAF¹⁸ to the WAC, which then must issue a written advisory opinion within 30 days. After receiving the WAC's recommendation, the acting agency must release a consistency determination based on the CAF, the WAC's recommendation, and other necessary information. If the WAC does not submit its recommendation within 30 days, the acting agency must make its determination without the recommendation. Newburgh's local consistency review law requires consistency review for actions defined in SEQRA regulations¹⁹ as Type I and unlisted actions.²⁰ Because the WAC is an advisory committee with no substantive jurisdiction, applicants are not required to appear at WAC meetings and the WAC is not required to make a SEQRA determination.

Recommendations

CAC Advisory Recommendations and Management of LWRP

Newburgh should create a new Conservation Advisory Council (CAC) that consolidates all existing environmental and advisory committees (*see* introductory language above). This new CAC would absorb the WAC and assume its responsibilities. In this role, the CAC would become the advisory agency in the local coastal consistency review process and issue all advisory recommendations required by law. Additionally, the CAC would assume all LWRP management functions and advise City Council on LWRP implementation and policy, budget priorities, and amendments. In the Town of Rhinebeck, New York, the Town's CAC acts as advisory agency during local consistency review and helps coordinate state and

¹⁴ City of Watertown, NY, App. A. Proposed Coastal Consistency Review Law, Draft Local Waterfront Revitalization Program, http://nyswaterfronts.com/LWRP/City%20of%20Watertown/default/City_of_Watertown_LWRP.htm.

¹⁵ Town of Southold, NY, code Ch. 268.

¹⁶ BFG Planning completed an updated LWRP for the City in 2008. City of Newburgh, NY, Local Waterfront Revitalization Plan (LWRP) and Harbor Management Plan, <http://www.cityofnewburgh-ny.gov/devel/LWRP.htm>. However, NYS will not approve this draft LWRP until the City updates its zoning.

¹⁷ City of Newburgh, NY, code Ch. 296, *available at* <http://www.ecode360.com/10875449>.

¹⁸ NYS DOS Coastal Management Program, Coastal Assessment Form, <https://www.dot.ny.gov/divisions/engineering/environmental-analysis/manuals-and-guidance/epm/repository/4-2-a-1.pdf>.

¹⁹ 6 NYCRR §617.2, since amended as 6 NYCRR §617.46, NY ADC 617.4

²⁰ City of Newburgh, NY, code Ch. 296.

federal consistency review, assists with State funding applications for coastal management, and helps implement the Town's LWRP.²¹

CAC Advisory Opinion Only When SEQRA Threshold is Met

Newburgh's local consistency review law should authorize advisory recommendations from the CAC in certain circumstances only. The law should continue to require the acting agency to make coastal consistency determinations for all Type I and Unlisted actions in the coastal area but should instruct the CAC to issue an advisory consistency recommendation only when a SEQRA threshold is met, for example when a positive declaration of significance is made. New York municipalities may vary review procedures according to SEQRA classifications. In Mamaroneck, New York, the lead agency must determine whether Type II actions are consistent with LWRP policies. For Type I and unlisted actions, the Coastal Zone Management Commission must make this determination.²²

Expanded Short Form EAF and CAF Informational

To streamline the process, Newburgh should add or link CAF content to the expanded SEQRA Short Environmental Assessment Form (EAF).²³ For example, Newburgh could link to the CAF through questions 15 or 18, which address wetlands/waterbodies and stormwater respectively, in Part One of the expanded short EAF. To better guide applicants through the local consistency review process, Newburgh then should provide informational sessions that offer applicants assistance with filling out the short EAF that links to the CAF. This provides applicants with the opportunity to identify CAF impact criteria, thereby easing the application process for coastal actions.

Approaches for Multiple Acting Agencies

Sometimes more than one agency may issue an approval for a project within the coastal area. Newburgh should amend its local consistency review law to deal with these cases. For example, the law could authorize one agency to decide which acting agency will conduct the coastal consistency review. In the Town of East Hampton, New York, if an action requires the approval of more than one agency, those agencies must coordinate to determine which agency will conduct the consistency determination. If no agreement is reached, the Planning Department (agency also responsible for LWRP coordination) will designate an agency to review and determine consistency.²⁴

Alternatively, Newburgh could designate directly which acting agency is responsible for conducting coastal consistency review in the case of multiple acting agencies. For example, the law could authorize the Planning Board as the reviewing agency if the Planning Board is involved in the action. In the Village of Lindenhurst, New York, the Planning Board is authorized to review and make all determinations regarding coastal consistency for

²¹ **ERROR! MAIN DOCUMENT ONLY.** TOWN OF RHINEBECK, NY, CODE Ch. 118, Waterfront Consistency Review.

²² MAMARONECK, NY, CODE §§ 240-26 to -30.

²³ DEC, Revised Model Short EAF, *available at* <http://www.dec.ny.gov/permits/70293.html>.

²⁴ TOWN OF EAST HAMPTON, NY, CODE §150-50(E).

proposed actions within the coastal area.²⁵ In the same example, Newburgh could designate the Zoning Board of Appeals (ZBA) as the reviewing agency if the Planning Board is not an acting agency but the ZBA is. Lindenhurst designates the ZBA as the agency to review and determine consistency if the action is a variance.²⁶

Training for Acting Agencies

Newburgh should provide coastal consistency training for all local agencies involved in coastal consistency review and/or determinations to ensure board members are qualified to engage in these analyses.

Historic Preservation

Required Legal Framework

The National Historic Preservation Act of 1966 established the national historic preservation program, which operates as a decentralized partnership between the federal government and the states. The 1980 amendments to the National Historic Preservation Act authorized the Certified Local Government (CLG) program, a federal-state-local preservation partnership. Under this program, the Secretary of the Interior certifies local governments as CLGs if they meet several requirements developed by the National Park Service and State Historic Preservation Office (SHPO).²⁷

New York State's SHPO administers the State's CLG. The CLG program aims to help municipalities develop and maintain historic resource preservation efforts by partnering with them through the process of identifying and evaluating community resources and protecting historic properties. Over 60 communities participate in the State's CLG program, including the City of Newburgh.²⁸

In order to achieve and maintain CLG status, a New York municipality must adhere to several CLG program requirements.²⁹ Local historic preservation legislation must establish an independent historic preservation commission with the power to designate or recommend designation of historic properties; provide historic preservation guidance; and approve or disapprove any demolition, relocation, new construction, or exterior alteration

²⁵ Village of Lindenhurst, NY, Appendix A. Waterfront Consistency Review Law in Draft Local Waterfront Revitalization Program, *available at* http://nyswaterfronts.com/LWRP/Village%20of%20Lindenhurst/default/Village_of_Lindenhurst_LWRP.htm.

²⁶ *Id.*

²⁷ CLG Program, Information and Regulations Regarding the Certification Process 3, <http://nysparks.com/shpo/certified-local-governments/documents/CLGProgramNYS.pdf>.

²⁸ Field Services Bureau, Division for Historic Preservation, NYS Office of Parks, Recreation and Historic Preservation, Introduction to the New York State Certified Local Government Program, <http://nysparks.com/shpo/certified-local-governments/documents/CLGIntroductoryPacketRegulations.pdf>.

²⁹ CLG Program, Information and Regulations Regarding the Certification Process 6-8, <http://nysparks.com/shpo/certified-local-governments/documents/CLGProgramNYS.pdf>.

affecting designated properties within its jurisdiction. Further, legislation must establish criteria and procedures for historic property designation; procedures for commission actions; and standards and criteria for decisions that are consistent with the Secretary of the Interior's Standards for Archeology and Historic Preservation. The municipality must maintain a system for the survey, identification and inventory of historic properties and resources within its jurisdiction using SHPO survey methods, standards and format.³⁰ All commission meetings must be open to the general public, announced by public notice, and all decisions and reasons for those decisions must be recorded as required under the NYS Open Meetings Law.³¹ Finally, all policies, procedures and guidelines must be in written form and be readily accessible to the general public.³²

Several benefits accompany participation in the CLG program.³³ As a member CLG, a municipality may obtain technical assistance from SHPO; receive a quarterly newsletter; and access an online CLG discussion group. Additionally, CLGs may participate in SHPO programs, including eligibility determinations for State and National Registers of Historic Places listings; training opportunities; and statewide and national CLG networks. Further, the CLG Grant Program offers financial assistance to CLG municipalities.³⁴

Newburgh's Current Process

The City's Historic and Architectural Design Overlay Districts regulation,³⁵ which establishes the Architectural Review Commission (ARC) and its power, is closely modeled after and consistent with the CLG program's Model Historic Preservation Law.³⁶ In 1977, Newburgh's City Council designated the East End Historic District. In 1985 the district was enlarged and added to the National Register of Historic Places.³⁷ This historic district is based on two surveys: a 1978 survey of properties north of Broadway and a 1979 survey of properties south of Broadway, including part of the Heights. A 1980 survey ranks and

³⁰ Id. at 7-8, 12; Field Services Bureau, Division for Historic Preservation, NYS Office of Parks, Recreation and Historic Preservation, Recommended Standards for Historic Resources Surveys, <http://nysparks.com/shpo/survey-evaluation/documents/RecommendedStandardsHistoricResourcesSurvey.pdf>; A. Derry et al., National Park Service, Guidelines for Local Surveys: A Basis for Preservation Planning, <http://www.nps.gov/nr/publications/bulletins/nrb24/>.

³¹ Articles 6 and 7 of Chapter 47 of the Consolidated Laws—Public Officers Law; CLG Program, Information and Regulations Regarding the Certification Process 8, 12-13.

³² Id.

³³ NYS Historic Preservation Office, Certified Local Governments, <http://nysparks.com/shpo/certified-local-governments/>.

³⁴ See CLG Grants Program Criteria <http://nysparks.com/shpo/certified-local-governments/documents/CLGGrantsProgramCriteria.pdf>; Sample CLG Program Grant Projects; including examples of grants for design guidelines, survey/nominations, commission training, public workshops, and publications/website (pg. 7-8), <http://nysparks.com/shpo/certified-local-governments/documents/CLGIntroductoryPacketRegulations.pdf>.

³⁵ City of Newburgh, NY, Zoning Code, §§ 300-23 to 29.

³⁶ CLG Program, Model Historic Preservation Law for Municipalities in New York State, <http://nysparks.com/shpo/certified-local-governments/documents/ModelLawForLocalGovernments.pdf>.

³⁷ City of Newburgh, NY, Architectural Review Commission, <http://www.cityofnewburgh-ny.gov/advisory/arch.htm>.

color-codes the historic properties into categories indicating the properties' importance, such as "contributing" and "non-contributing," and ARC members use these rankings when evaluating applications. In 2005, City Council approved and designated the Colonial Terraces Architectural Design District.

Projects within the East End Historic District and Colonial Terraces Architectural Design District must obtain a Certificate of Appropriateness (COA) for any exterior alteration, restoration, reconstruction, demolition, new construction, or moving of a landmark. In addition, a COA is required for any material change in the appearance of such a property, its light fixtures, signs, sidewalks, fences, steps, paving, or other exterior elements visible from the public street or alley that affect the appearance and cohesiveness of a district and its designated properties.³⁸ The Commission may not consider changes to interior spaces, unless they are open to the public, or to architectural features not visible from a public place, public street or alley.³⁹ The Commission's decision to grant a COA is based on a project's compatibility with the area's historic character and with Design Guidelines for the two Districts.⁴⁰ If the ARC denies a COA for a proposed demolition, the applicant can apply for relief on the ground of hardship.⁴¹ In order to prove a hardship exists, the property must be incapable of earning a reasonable return, unable to be adapted for any other use, and efforts to find a buyer interested in purchasing and preserving the property have failed.⁴²

Newburgh adopted design guidelines for the Colonial Terraces Architectural Design District in 2005⁴³ and adopted updated Design Guidelines for the East End Historic District in 2008.⁴⁴ Additionally, the City distributes a reference guide for the historic district, entitled "Preserving Newburgh". This guide presents a map of the historic district subject to the Commission's jurisdiction, as well as guidance for choosing materials that will maintain the historic character of a home or building within the historic district.⁴⁵

Recommendations

Non-Material and Non-Visible Changes Defined in Legislation or Design Guidelines

Both the Model Historic Preservation Law and Newburgh's Historic and Architectural Design Overlay District Law require a COA for a "material change" or exterior elements visible from a public street within the historic district and architectural design district. To clarify existing jurisdiction, Newburgh should define clearly what is not a material change

³⁸ City of Newburgh, NY, Zoning Code, § 300-26(A).

³⁹ City of Newburgh, NY Zoning Code, § 300-26(B).

⁴⁰ City of Newburgh, NY, Zoning Code, § 300-26(C).

⁴¹ City of Newburgh, N.Y., Code § 300-27(C).

⁴² City of Newburgh, N.Y., Code § 300-27(A)(1-3).

⁴³ Colonial Terraces Design Guidelines, <http://www.cityofnewburgh-ny.gov/press/2009/colonialterraceguidelines.pdf>.

⁴⁴ Design Guidelines for Newburgh's East End Historic District, <http://www.cityofnewburgh-ny.gov/advisory/docs/EEHD-DesignGuide2008.pdf>.

⁴⁵ Preserving Newburgh, <http://www.cityofnewburgh-ny.gov/advisory/docs/PrerservingNewburghGuide.pdf>.

or visible from a public street, and thus not subject to COA review, in its historic preservation law and/or design guidelines. The City of Elmira, New York, a fellow CLG, adopted a landmark and historic district preservation ordinance that expressly exempts the following project activities from obtaining a COA:

- a) Repair, replacement and installation of electrical, plumbing, heating, and ventilation systems, provided that such work does not affect the exterior of the structure
- b) Repainting of exterior surfaces provided that destructive surface preparation treatments, including, but not limited to waterblasting, sandblasting and chemical cleaning are not used. (Although color schemes do not require review, assistance is available from the Commission on color choices to compliment different architectural styles.)
- c) Repair or partial replacement of porches, cornices, exterior siding, doors, balustrades, stairs, or other trim when the repair or replacement is done in-kind to closely match existing material and form.
- d) Caulking, weather-stripping, glazing and repainting of windows.
- e) Repair, replacement or installation of storm windows (exterior, interior, metal or wood) provided they match the shape and size of historic windows and that the meeting rail coincides with that of the historic window. Color should match trim.
- f) Installation of new window jambs or jamb liners.
- g) Repair or replacement of awnings when work is done in-kind to closely match existing materials and form.
- h) Roof repair or replacement of historic roofing with material which closely matches the existing material and form or better. Cement asbestos shingles may be replaced with asphalt based shingles.
- i) Repair, replacement or installation of gutters and downspouts.
- j) Installation of insulation where exterior siding or trim is not altered or damaged.
- k) Replacement of non-significant flat stock trim in kind or with materials which match in appearance.
- l) Repair or replacement of existing roads, driveways, sidewalks, and curbs provided that work is done so that there are only minimal changes in dimension or configuration of these features.
- m) Exterior lead paint abatement that includes scraping and repainting of exterior work and masonry surfaces.
- n) Repair or replacement of fencing when work is done in-kind to closely match existing material and form.
- o) Repair or replacement of water, gas, storm and sewer lines.
- p) Emergency repairs necessitated by a casualty to the property (fire, storm, flood, etc.); and
- q) Demolition of buildings, structures and objects except as set forth in paragraphs (a)(2), (a)(3) and (a)(4) of Section 440.4.⁴⁶

⁴⁶ City of Elmira, NY, Zoning Ordinance, §§ 440.5(a)(1), 440.12;
http://www.cityofelmira.net/usr/City%20Hall/is_zoning_ordinance.pdf.

In the City of Kingston, New York, another CLG, the Landmark Commission does not review building use; most interior changes; exterior changes not visible from the street; roof, siding, and exterior feature replacements of the same material; and removal of dangerous conditions if ordered by a qualified public official such as the Fire Marshall or Building Inspector.⁴⁷ Kingston includes this list of items in its Preservation Guidelines.⁴⁸

Consent Agenda

Consent agendas allow a commission to approve, as a group, relatively routine COA applications without the applicants' attendance at a board meeting. The City of Baltimore, Maryland's Landmarks Preservation Commission (LPC) has a Consent Agenda notice that allows LPC staff to review and suggest items that are appropriate for LPC approval, as submitted, without a need for discussion before the vote to approve. These items are placed on the Consent Agenda. Following this, the Chairman will identify each Consent Agenda item during an LPC meeting and ask whether anyone present wishes to speak against approval. If there is no objection, the Chairman then will accept a single motion for the approval of all the items as submitted.⁴⁹

The City of Alexandria, Virginia, has a similar Consent Calendar process. Generally, items recommended for inclusion on the consent calendar are those that are noncontroversial and that conform to past board practices and policies. In order for an item to be considered for inclusion on the consent calendar it must meet the criteria set forth in the Design Guidelines. Any item proposed for the Consent Calendar may be removed by a member of the Board or a member of the public, and a full hearing will be held on the application.⁵⁰

Newburgh should create a pre-approved consent agenda list of routine changes that require a COA. The ARC should adopt a policy statement or resolution that establishes a list of items eligible for consent agenda status. To accomplish this, Newburgh should assemble a team led by a City staff representative to generate the list of items and materials. This list, for example, could include specific window models from Home Depot or paint colors from Benjamin Moore. This provides an opportunity to for the team to consider energy efficiency, livability standards, and costs/feasibility when making these choices. This team also must design the consent agenda process and update the design guidelines accordingly. Once approved, the list should be revisited on a regular basis to keep it current.

Municipalities have preapproved the following items for properties in historic districts:

⁴⁷ City of Kingston, NY, Historic Preservation Guidelines, <http://www.kingston-ny.gov/filestorage/708/710/720/HistoricPresGuidelines.pdf>.

⁴⁸ Id.

⁴⁹ LPC's Consent Agenda, <http://resources.baltimorecountymd.gov/Documents/Planning/historic/consentagenda082305.pdf>.

⁵⁰ Guide to the Board of Architectural Review Process, http://www.alexandriava.gov/goto.aspx?u=http%3A//alexandriava.gov/uploadedFiles/planning/info/pnz_barreviewprocess.pdf&i=14&s=content&h=BAR%20Review%20Process.

- The “America’s Heritage” color palette by Sherwin Williams (Township of Neptune, New Jersey and City of Durango, Colorado)⁵¹
- Benjamin Moore paint colors in “Essex Green” and “White” and Sherwin Williams paint colors in “Cobbled Path” and “Sand Dollar,” among others (City of Montgomery, Alabama)⁵²
- Jeld-Wen Siteline EX aluminum clad wood windows with factory finish and Renewable by Anderson Series 1 fibrex windows with factory finish (City of San Marino, California)⁵³
- Tamko Heritage 50/30 Laminated Asphalt Shingles (City of Durango, California)⁵⁴

Elimination of ARC Advisory Opinion for Zoning Variances

Newburgh Code Section 300-80(I) requires the Zoning Board of Appeals (ZBA) to obtain from the ARC an advisory report for any requests for appeals or applications for variances within the City’s historic district and architectural design district. Further, sec. 300-80(I) requires the ZBA to defer its decision pending receipt of this report. The City should eliminate this requirement because it can seriously delay the ZBA’s decision and is unnecessary given the ARC’s COA jurisdiction over any material or visible change to buildings in the historic district or architectural design district.

Ranking Buildings by Historic or Architectural Importance

Newburgh could authorize administrative review or a consent agenda based on architectural or historical ratings. This rating system would establish the required approval process based on building type and could use color coding to classify buildings. Generally, the amount of process required would decrease with building importance. After ranking its buildings by historic importance, Newburgh could add to its consent agenda list demolitions for wholly insignificant buildings and emergency/hazard situations. In order to implement this rating system, Newburgh must update its survey of historic properties.⁵⁵ The City of New Orleans, Louisiana, assigned each building in their historic district a rating (by color) of architectural and historical significance. The City bases level of review upon these rating levels:

⁵¹ Neptune Township, NJ, *HPC Regular Meeting Minutes*, March 8, 2011, available at http://www.neptunetownship.org/upload/documents/2011LandUse/HPC_030811_Minutes.pdf; E-mail from Nicol Killian, AICP, Planner II, Planning and Community Development, City of Durango, CO (Apr. 19, 2012).

⁵² City of Montgomery, AL, Color Palette, <http://www.montgomeryal.gov/index.aspx?page=767>.

⁵³ City of San Marino, CA, Window Replacement Procedures and Pre-Approved Window Materials, http://www.ci.san-marino.ca.us/pdf_forms/pnbforms/FINALPreApprovedWindows.pdf.

⁵⁴ E-mail from Nicol Killian, AICP, Planner II, Planning and Community Development, City of Durango, CO (Apr. 19, 2012).

⁵⁵ Any new survey should include properties not found within the existing historic district. The new CAC’s initial inventory may include historic properties; this could provide a funding source for the survey. Additional funding opportunities for such surveys are available at: Field Services Bureau, Division for Historic Preservation, NYS Office of Parks, Recreation and Historic Preservation, Introduction to the New York State Certified Local Government Program 5-8, <http://nysparks.com/shpo/certified-local-governments/documents/CLGIntroductoryPacketRegulations.pdf>; NYS Office of Parks, Recreation and Historic Preservation, Grant Programs: CLG Program, <http://nysparks.com/grants/certified-local-government/default.aspx>.

- Purple**- Of National Architectural or Historic Importance.
- Blue**- Of Major Architectural or Historical Importance.
- Green**- Of Local Architectural or Historical Importance.
- Pink**- Of Local or Major Architectural or Historical Importance That Has Been Detrimentially Altered (but, if properly restored, could be upgraded to Blue or Green).
- Yellow**- Contributes to the Character of the District.
- Orange**-Unrated 20th Century Construction.
- Brown**- Objectionable or of no Architectural or Historical Importance.⁵⁶

The City assigns levels of review for these rating levels as follows (AC=Architectural Committee, VCC=Vieux Carre Commission):⁵⁷

Rating	Minor Policy Guided, Paint Repair to Matching Existing	Limited Changes	Significant Changes	Major Changes
Brown	Staff	Staff(AC)	AC	VCC
Orange	Staff	Staff(AC)	AC	VCC
Yellow	Staff	Staff(AC)	AC	VCC
Pink	Staff	AC	AC	VCC
Green	Staff	AC	AC	VCC
Blue	Staff (AC)	VCC	VCC	VCC
Purple	AC	VCC	VCC	VCC

Streamlined COA Process for Demolitions

Currently, Newburgh requires applicants who wish to demolish a building in a historic district or design review district to apply for a COA, be denied, and then apply for relief on grounds of hardship. To streamline this process, Newburgh instead should allow applicants to apply for relief based on economic hardship during or in lieu of the COA approval

⁵⁶ Vieux Carré Commission Ratings, http://www.hnoc.org/vcs/documents/VCC_HDLC_Ratings.pdf.

⁵⁷ Vieux Carré Commission, Decision Making Levels of Authority, <http://www.nola.gov/RESIDENTS/Vieux-Carre-Commission/Operations/Decision-Making-Levels-of-Authority/>.

process. The City of Davenport, Iowa's Historic Preservation Ordinance does not require a COA for building demolitions in designated historic districts.⁵⁸ Instead, the ordinance includes a demolition review process authorizing the Historic Preservation Commission to issue a Certificate of Economic Hardship allowing the issuance of a demolition permit.⁵⁹ During the demolition review process, the Commission considers various hardship criteria.⁶⁰

Newburgh also should explore the possibility of additional policy considerations for a demolition application. These may include 1) whether the property is dangerous to health, safety or life, 2) whether the property needs significant repair, 3) whether the property has little historic value, or 4) whether the property should receive differential treatment under a hardship theory.

Finally, Newburgh should preapprove demolitions for in rem properties prior to auction where appropriate. This would create a public/private opportunity for the purchaser to obtain a COA or demolition approval up front when City property is transferred. In exchange, the purchaser must demolish or rehabilitate the property within a certain amount of time after purchase. Newburgh should provide private market sellers with a similar opportunity to improve their resale prospects.

Improved Guidance

Newburgh should usher applicants through the COA approval process more smoothly by providing improved guidance. Newburgh could distribute guidelines that clearly outline the process steps for an applicant⁶¹ and develop and distribute detailed submittal guidelines for applications.⁶² Additionally, Newburgh could create and circulate an easy-to-read brochure outlining preservation goals, historic district and design review district information, and the review process.⁶³ Further, the City could offer enhanced preservation guidelines. These may recommend ways to expedite the review process, including by adhering to guidelines, requesting informal review, opinions, and including pictures and drawings with the application.⁶⁴ Newburgh could distribute a list of contractors and/or architects who have experience working on/with historic buildings.⁶⁵ Finally, the City could provide a handout with information about federal and state tax incentives available for

⁵⁸ City of Davenport, Iowa, Code § 17.23.080(A).

⁵⁹ Id. § 17.23.090.

⁶⁰ Id. § 17.23.090(B).

⁶¹ "The Review Process: How it Works" in City of Kingston, NY, Preservation Guidelines, <http://www.kingston-ny.gov/filestorage/708/710/720/HistoricPresGuidelines.pdf>; Town of New Paltz, COA Instructions,

http://www.townofnewpaltz.com/index.php?option=com_docman&task=doc_download&gid=135.

⁶² City of Charleston BAR, Submittal Requirements for New Construction, Alterations and Renovations,

<http://www.charleston-sc.gov/shared/docs/0/bar%20submittal%20reqs-general.pdf>.

⁶³ Historic Preservation in the City of Elmira,

<http://www.cityofelmira.net/usr/documents/CityOfElmiraBrochure.pdf>.

⁶⁴ "Ways to Expedite the Process" in City of Kingston, NY, Preservation Guidelines, <http://www.kingston-ny.gov/filestorage/708/710/720/HistoricPresGuidelines.pdf>.

⁶⁵ City of Burlington, VT, Repairs and Restoration, <http://www.burlingtonvt.gov/PZ/Historic-Preservation/Repairs-and-Restoration/>.

historic preservation, adaptive reuse of historic buildings, as well as other types of development.⁶⁶ Newburgh should task a team, such as its Consent Agenda team, to create this improved guidance.

Historic District and Design Review District Project Informational

To better guide applicants through the COA process, Newburgh should provide informational sessions that offer applicants technical assistance with the SEQRA Short EAF,⁶⁷ historic district guidelines, and architectural design district guidelines. Staff also should review any “non-material and non-visible changes” list or consent agenda items list with the applicant.

Streamlining the Project Review and Approval Process

Required Legal Framework

The local project review and approval process must adhere to several requirements. The decisions of local land use boards must be made in an open and fair manner, by impartial board members, and must be based on reliable evidence that is contained in the record of the board’s deliberations. This record must be detailed enough to ensure that board decisions are not arbitrary, capricious or an abuse of discretion. Additionally, land use actions can be taken only after a hearing is held following adequate notice and where the public is invited to be heard in a fair and impartial manner. Local boards must allow public access both to their meetings⁶⁸ and governmental records, including photos, maps, designs, drawings, rules, regulations, codes, and manuals as well as reports, files, and opinions.⁶⁹

Most community planning boards and commissions simply enforce the required standards and follow the legally-prescribed steps in their review and approval process; however, this does not prevent a review board from asking an applicant to accomplish something the standards do not require if given appropriate policy approval. If authorized, review boards also may supplement the required process steps in order to streamline the approval process. Such steps may include informational sessions with applicants, pre-application workshops, and technical assistance.

Newburgh’s Current Process

⁶⁶ See NYS Office of Parks, Recreation and Historic Preservation, State Historic Preservation Office, <http://nysparks.com/shpo/>.

⁶⁷ DEC, Revised Model Short EAF, *available at* <http://www.dec.ny.gov/permits/70293.html>.

⁶⁸ The requirements of state law regarding the conduct of open meetings are found in the Public Officers Law, Article 7. Although quasi-judicial proceedings are excluded from this requirement under § 108(1), the meetings of the zoning board of appeals must be open under the provisions of the Village Law § 7-712-a(1), the Town Law § 267-a(1), and the General City Law § 81-a(1).

⁶⁹ The requirements to provide information to the public are found in the Public Officers Law, Article 6. Section 86(4) requires maps, drawings, regulations, and other documents pertaining to land use decision-making to be provided to the public on request.

The City of Newburgh’s several land use boards and commissions adhere to these requirements. Developers submit applications for the various permits and approvals to multiple administrative offices. Applications for most development permits (e.g., building, blasting, and demolition permits) are submitted to the Department of Codes Compliance. In addition, applications for dumpster permits are submitted to the Department of Public Works; requests for variances are submitted to the Zoning Board of Appeals; and applications for subdivisions, site plans, and special use permits are submitted to the Planning Board. Newburgh’s land use boards and commissions hold regularly scheduled monthly meetings to handle various applications according to the following monthly calendar:

	Monday	Tuesday	Wednesday	Thursday	Friday
1st			Planning Board Work Session 9:00 am		
2nd		ARC Meeting 7:30 pm			
3rd		Planning Board Meeting 7:30 pm	WAC Meeting 7:00 pm	Shade Tree Comm. Meeting 7:00 pm	
4th		ZBA Meeting 7:30 pm			

The City of Newburgh supplements its project review and approval process with work sessions and informational reports. Applicants for larger projects involving subdivisions, site plans, and special use permits attend work sessions, while small project applicants may request an informational.

Prior to its appearance before the Planning Board, the Planning Board Engineer reviews an application and makes recommendations to the Planning Board at a work session meeting with an applicant.⁷⁰ At this work session, the engineer alerts the applicant to all permits and approvals the project requires and provides detailed, technical advice to help complete the plan or plat. For example, the engineer may give technical advice to help the applicant

⁷⁰ City of Newburgh Planning Board letter, <http://www.cityofnewburgh-ny.gov/advisory/docs/PBinstructions-July09.pdf>.

meet stormwater regulations or make proper sewage connections. The applicant must follow this technical assistance to make the plan or plat complete prior to a Planning Board meeting. In addition, the engineer and a city planner may provide the applicant with discretionary assistance, suggesting improvements the applicant can make to mitigate any site problems and ensure the project's benefit to the applicant outweighs any negative affect on surrounding neighbors. To be placed on an upcoming work session agenda, the applicant must submit an application, checklist, SEQRA Environmental Assessment Form, five sets of plans, and fees to the Secretary of the Board by the third Friday of the month prior to the work session.

Additionally, the City allows applicants to request an Informational Report from a single municipal staff person. Prior to submitting any application, the applicant can fill out the "Request for Informational" form and return it to the City of Newburgh Building Inspector's Office. The applicant then receives a report describing the proposed project and outlining the required applications.⁷¹ First, a completed informational includes a description of the property, the proposed property use and whether it is permitted under current zoning, the property's current certificate of occupancy and occupancy classification, and any existing zoning variances or special permits for the property. Next, the report indicates whether the applicant must apply for a use, area, and/or parking variance from the Zoning Board of Appeals; a special permit, site plan approval, sub-division approval, lot line change, or sign from the Planning Board; or a certificate of appropriateness from the Architectural Review Commission. Finally, the report lists required process steps the applicant must take after obtaining all approvals. These include submitting a building permit application, using a City of Newburgh licensed electrician and plumber for trades work, and obtaining a certificate of occupancy.

Recommendations

Central Permit Information Desk with One-Stop Permitting

Newburgh should create a central permitting office that manages all permit applications and approval processes. In this position, a process manager should handle the intake of all applications, manage any work sessions or informationals, guide sequencing of approvals, schedule and manage cut-off dates and public meetings, and guide applicants through the approval process. The process manager should ensure that this central process incorporates all federal, state (DEC, DOS, CAF) and county⁷² processes into workshops or informationals, sequencing, and scheduling. Newburgh should hire a staff person to fill this role.

To streamline its development process, Randolph County, North Carolina, created a central office where citizens can obtain all development permits or applications required for land use development.⁷³ The centralized office is staffed by cross-trained technicians who help

⁷¹ Request for Informational Report on file with author.

⁷² See General Municipal Law § 239(m).

⁷³ RANDOLPH CNTY., CENTRALIZED PERMITTING ORDINANCE (2005), available at <http://www.co.randolph.nc.us/ordinances/ordinances/CentralPermittingOrdinance.pdf>.

guide applicants through each stage of the permit process. The office also manages the sequencing of inspections. Similarly, Brevard County, Florida, created a One-Stop Review Center in 1991 to provide a central reviewing agency for the County's permitting system.⁷⁴ This Center provides easy access to forms and information relevant to land development, the building code, natural resources management, lot drainage, and utility services.⁷⁵ The Center offers eight different "Application Packages and Guides"⁷⁶ that include the actual application, a checklist of documents needed to submit a complete application, and excerpts from relevant local ordinances that control the application process.⁷⁷ These packages are available for: (1) "Additions & Alterations"⁷⁸; (2) "Commercial New"⁷⁹; (3) "Demolition"⁸⁰; (4) "Generator Permitting & Installation"⁸¹; (5) "Manufactured Building"⁸²; (6) "Minor Project: Including Fences, Doors, HVAC, Re-Roof, Electric, Generator, Etc."⁸³; (7) "Pool"⁸⁴; and, (8) "Single Family Residence."⁸⁵

Guidelines and Helpful Information

Newburgh should provide guidelines to help applicants through the approval process. For example, Mendocino County, California, distributes a document entitled the "Permit Place" to applicants.⁸⁶ The Permit Place presents an overview of the County's permit process and tips for navigating this process.⁸⁷ It also provides applicants with a permit checklist to fill out after which agency staff help the applicant identify any required permits.⁸⁸ Further, this resource provides a list of all County permits with short descriptions;⁸⁹ contact information

⁷⁴ *Brevard County One-Stop Permitting*, BREVARD COUNTY, <http://ww3.brevardcounty.us/onestop/home/> (last visited Feb. 26, 2012).

⁷⁵ *Id.*

⁷⁶ *Downloadable Forms*, BREVARD COUNTY, OREGON, <http://ww3.brevardcounty.us/onestop/home/forms2.cfm> (last visited Mar. 10, 2012).

⁷⁷ *E.g.*, BREVARD CNTY. BLDG. CODE, APPLICATION SUBMITTAL GUIDE: NEW CONSTRUCTION, *available at* http://ww3.brevardcounty.us/onestop/home/documents/Pkg-SFR_003.pdf.

⁷⁸ BREVARD CNTY. BLDG. CODE, APPLICATION SUBMITTAL GUIDE: ADDITIONS AND ALTERATIONS, *available at* http://ww3.brevardcounty.us/onestop/home/documents/Pkg-Add_003.pdf.

⁷⁹ BREVARD CNTY. BLDG. CODE, APPLICATION SUBMITTAL GUIDE: COMMERCIAL NEW CONSTRUCTION, *available at* http://ww3.brevardcounty.us/onestop/home/documents/Pkg-Cnew_003.pdf.

⁸⁰ BREVARD CNTY. BLDG. CODE, APPLICATION SUBMITTAL GUIDE: DEMOLITION, *available at* http://ww3.brevardcounty.us/onestop/home/documents/Pkg-Demo_003.pdf.

⁸¹ BREVARD CNTY. BLDG. CODE, PERMITTING AND INSTALLATION GUIDE FOR RESIDENTIAL WHOLE HOUSE GENERATORS, *available at* http://ww3.brevardcounty.us/onestop/home/documents/Genr_000.pdf.

⁸² BREVARD CNTY. BLDG. CODE, APPLICATION SUBMITTAL GUIDE: MANUFACTURED BUILDING, *available at* http://ww3.brevardcounty.us/onestop/home/documents/Pkg-Mfg_003.pdf.

⁸³ BREVARD CNTY. BLDG. CODE, APPLICATION SUBMITTAL GUIDE: MINOR PROJECTS (ELECTRIC, HVAC, RE-ROOF, FENCE, ETC.), *available at* http://ww3.brevardcounty.us/onestop/home/documents/Pkg-Mnr_004.pdf.

⁸⁴ BREVARD CNTY. BLDG. CODE, APPLICATION SUBMITTAL GUIDE: POOLS, *available at* http://ww3.brevardcounty.us/onestop/home/documents/Pkg-Pool_003.pdf.

⁸⁵ BREVARD CNTY. BLDG. CODE, APPLICATION SUBMITTAL GUIDE: NEW CONSTRUCTION - SFR, *available at* http://ww3.brevardcounty.us/onestop/home/documents/Pkg-SFR_003.pdf.

⁸⁶ Mendocino County, *Welcome to the Permit Place, Overview of County Permitting*, MENDOCINO COUNTY PLANNING AND BUILDING DEPARTMENT, (September 2008), http://www.co.mendocino.ca.us/planning/pdf/1-Introduction_Binder_Edited.pdf.

⁸⁷ *Id.* at I-4.

⁸⁸ *Id.* at I-5 to I-7.

⁸⁹ *Id.* at I-8 to I-11.

for each department;⁹⁰ a list of regularly scheduled meetings for boards, committees, and commissions that includes meeting times, addresses, and contact information;⁹¹ a list of other helpful resources;⁹² and a short, descriptive guide to project review.⁹³ Finally, a second Permit Place document includes a table listing which office applicants should go to for various permits and services,⁹⁴ expected waiting times for various permits,⁹⁵ a list of “frequently asked questions,”⁹⁶ and “how to” instructions for a variety of approvals.⁹⁷ In addition to these guidelines, Newburgh could provide applicants with information regarding available tax incentives for various types of development. Any guidelines the City produces should use layman’s terms, be made available in Spanish, and be accessible online.

Expanded Online Resources

Newburgh should expand its website to provide online services that improve and streamline its project approval process. This should include an online permitting system that provides electronic permit applications and submittals for sophisticated applicants, as well as any guidelines and helpful information City staff produces. In addition to applications, applicants could submit required plans and other documentation electronically or by CD. Further, the online system could facilitate board coordination and communication by alerting boards immediately to newly submitted applications and providing internal results for projects that come before boards.

Clear Road Map of Approval Process

To help applicants navigate the project review and approval process, Newburgh should create and distribute “road maps” that clearly delineate all process steps. These roadmaps should reflect appropriately sequenced board approvals that result in the most efficient process for applicants and should include county, state and federal processes. After preparing these roadmaps, Newburgh’s boards should schedule board meetings to reflect the newly sequenced process.

The Town of Woodstock, Connecticut, provides applicants with a flow chart or checklist for the subdivision application process, the building permit application process, and the special permit application process.⁹⁸ These flowcharts lay out the steps an applicant must

⁹⁰ Id. at I-12.

⁹¹ Id. at I-13.

⁹² Id. at I-14 to I-15.

⁹³ Id. at I-16 to I-17.

⁹⁴ Mendocino County, *Planning and Building Services, The Permit Place*, MENDOCINO COUNTY PLANNING AND BUILDING DEPARTMENT, II-4 to II-5 (September 2008), http://www.co.mendocino.ca.us/planning/pdf/2-Planning_Binder_Edited.pdf.

⁹⁵ Id. at II-8 to II-11.

⁹⁶ Id. at II-12 to II-15.

⁹⁷ Id. at II-17 to II-36.

⁹⁸ TOWN OF WOODSTOCK, CT., SPECIAL PERMIT FLOW CHART (2012), *available at* <http://woodstockct.gov/documentsforms/category/48-documents.html>; TOWN OF WOODSTOCK, CT., STEPS TO A BUILDING PERMIT (2012), *available at* <http://woodstockct.gov/documentsforms/category/48-documents.html?start=20>; TOWN OF WOODSTOCK, CT., SUBDIVISION FLOW CHART (2012), *available at* <http://woodstockct.gov/documentsforms/category/48-documents.html?start=20>.

take to obtain a subdivision approval or special permit approval. Additionally, the flowcharts include “optional, but recommended” steps in appropriate places to further assist applicants. Where relevant, the flowcharts also include a mandatory timeframe for certain steps. The building permit checklist lists a series of conditions that require additional permits, such as wetland and driveway permits. This checklist uses laymen’s terms to describe what must be included in the building permit application and provides instructions on how to calculate estimated building permit fees.

Expanded Use of Pre-application Workshops

Pre-application workshops help get all parties on the same page early in the process, avoiding conflict and confusion later. Newburgh should expand its pre-application workshops and informationals to provide applicants with a range of workshop services based on project type.

To begin with, Newburgh should require a mandatory workshop or work session for commercial or non-residential projects, residential subdivision projects, and projects that involve more than one board. During these workshops, City staff should help applicants identify required approvals and map out the proper sequence for these approvals, ensuring efficient coordination between boards. In addition, City staff should provide applicants with more technical assistance for various application requirements and help them complete all applications properly. For example, the City of Albuquerque, New Mexico, requires a pre-application conference for subdivision applicants.⁹⁹ The subdivider must meet with the Planning Director who provides guidance regarding the proposal’s adherence to city and county plans, policies and regulations. Additionally, the Planning Director advises the subdivider “regarding requirements for general layout of streets, for dedications of land, for provision of infrastructure improvements, drainage considerations, fire protection, and similar matters, as well as the availability of existing services.”¹⁰⁰ Similarly, the Towns of Amenia, Dover, and Gardiner in New York, all have a mandatory pre-application meeting requirement for special permit applications.¹⁰¹ In each town, if the Code Enforcement Official reviews a proposal and classifies a project as major, the applicant must attend a preliminary meeting with the Planning Board to discuss the nature of the proposed use and determine the information the site plan must include.¹⁰²

In addition, Newburgh should offer a monthly roundtable for smaller, residential project applicants and other interested landowners to attend on a voluntary basis. This roundtable should offer general information and help familiarize attendees with the City’s approval processes. The City should time workshops and roundtables so they can include both staff and representatives from all boards. Mendocino County, California, invites certain applicants to attend voluntary, roundtable conferences that offer general advice regarding

⁹⁹ CITY OF ALBUQUERQUE, NM, CODE OF ORDINANCES § 14-14-3-1.

¹⁰⁰ Id.

¹⁰¹ TOWN OF AMENIA, NY, CODE § 121-62(A); TOWN OF DOVER, NY, CODE, § 145-62(A); TOWN OF GARDINER, NY CODE § 220-62(A).

¹⁰² Id.

development permits and requirements to multiple applicants at one time.¹⁰³ Staff from several County departments attends roundtable conferences, which occur bimonthly. An applicant may attend a roundtable conference after submitting a questionnaire at least one week prior to the meeting and calling the Department of Planning and Building to schedule the meeting.

Reduced Application Form Requirements

Newburgh should review all permit and approval application forms and remove unnecessary or cumbersome requirements. For example, the City should eliminate costly, time consuming requirements from the Certificate of Appropriateness (COA) application process for non-material or non-visible changes, consent agenda items, and other projects. For non-material or non-visible changes and consent agenda items, Newburgh should amend the COA application to require only one original and one copy of information that demonstrates the proposed project involves only work that is exempt from obtaining a COA or that is on the pre-approved consent agenda list. Additionally, the application should exempt from completing a SEQRA Short EAF projects of routine maintenance or repair that involve no substantial change of an existing structure or building and projects that involve reconstruction of a structure, in kind, on the same site. Finally, the application should exempt all projects from submitting a site plan or drawing if the project does not involve changes or additions to the footprint of the building, structural elements of the site, or major vegetation. In addition to reducing substantive application requirements, Newburgh should reduce required paperwork by amending application forms to allow submissions via CD or other electronic media.

Consolidated Form

Newburgh should consolidate its permit and approval applications into one form that includes all application requirements. This form should include the SEQRA Short Environmental Assessment Form (EAF); the Coastal Assessment Form, which can link to the Short EAF (see Expanded Short Form EAF and CAF Informational in the Coastal Consistency Review section above); the historic district design guidelines, architectural design district guidelines, and Certificate of Appropriateness application; and the “non-material changes” list and/or consent agenda item list (see Non-Material Changes Defined in Legislation or Design Guidelines and Consent Agenda in the Historic Preservation section above), as well as other applications. The new consolidated application form should use layman’s terms, and a Spanish language version should be made available. Because the consolidated form will require information that many applicants will have trouble providing, City staff should help applicants complete the form during a workshop or informational session.

Training for Local Board Members

Trained boards help create a smooth process. To ensure board members are prepared to perform project reviews and approvals, Newburgh should certify that each serving board member has completed a training program. These training programs should train board

¹⁰³ Mendocino County Planning and Bldg. Dept., Welcome to the Permit Place: Overview of County Permitting, 23-26 (2008), http://www.co.mendocino.ca.us/planning/pdf/1-Introduction_Binder_Edited.pdf.

members on the City's new streamlined process and consolidated form, help board members understand their unique functions within the overall system, and cover the rules for approvals, public participation, and ethics. To keep track of board training, Newburgh could maintain a tracking system that logs training needed for individual board members, as well as completed training. To facilitate inter-board communication, Newburgh should hold quarterly meetings of board chairs and require members from all boards to attend at least one annual training to discuss board interactions.