

Appendix A Waterfront Consistency Review

Chapter 15

PLANNING

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ARTICLE I. IN GENERAL

Sec. 15-1. Preservation of fresh water wetlands.

(a) *Definitions.* The definitions contained in Environmental Conservation Law § 24-0107 are hereby adopted and incorporated herein by reference. The term "local government" shall mean the village.

(b) *Declaration of policy.* It is declared to be the public policy of the village to preserve, protect and conserve the fresh water wetlands and the benefits derived therefrom, to prevent the despoliation of fresh water wetlands and to regulate the use and development of such wetlands to secure the natural benefits of fresh water wetlands, consistent with the general welfare and beneficial economic and social development of the village.

(c) *Statement of findings.* The statement of findings as set forth in Environmental Conservation Law § 24-0105 are hereby adopted and incorporated herein by reference wherever such findings are or may be applicable to the village.

(d) *Regulations.* The provisions for activities requiring a permit, the application procedures and the method for granting permits and other considerations required in Environmental Conservation Law §§ 24-0701, 24-0703 and 24-0705 are hereby adopted and incorporated herein by reference.

(e) *Implementation.* Wherever a provision is contained in Environmental Conservation Law art. 24 which has not been adopted through the enactment of the provisions hereinbefore provided, which are required to be adopted to comply with the provisions contained in Environmental Conservation Law § 24-0501, such provisions are hereby adopted and incorporated herein by reference.

(Code 1978, § 15-1; L.L. No. 5-1976, §§ 1—5)

Sec. 15-2. Planning fees.

The following planning fees are hereby established:

(1) Major subdivision application	\$100.00
(2) Minor subdivision application	50.00
(3) Request for special planning meeting	30.00
(4) Application for development plan approval	50.00
(5) Subdivision application package	2.00
(6) State environmental quality review environmental assessment form (SEQREAF)	50.00

(Code 1978, § 15-2; Res. of 5-3-1976; L.L. No. 9-1992, § 1)

Secs. 15-3—15-15. Reserved.

ARTICLE II. PLANNING COMMISSION***Sec. 15-16. Authorized.**

The village is hereby authorized to create a planning commission pursuant to General Municipal Law § 234, which commission shall be known as the village planning commission. (Code 1978, § 15-16; Ord. No. 8.2, § 1, 10-3-1966)

Sec. 15-17. Membership; terms.

(a) The village planning commission shall consist of five members, who shall be residents of the village, to be appointed by the mayor, subject to the approval of the board of trustees. Successors to the members of the commission first appointed shall be appointed to hold office for terms of two years and shall be filled in the same manner as the original appointment.

(b) The term of office of a member appointed to such commission shall commence on June 1 in the year of appointment and expire in the year of expiration of such term.

(c) Vacancies in such commission occurring other than by expiration of term shall be filled only for the unexpired term and shall be filled in the same manner as the original appointment.

(d) Requirements of General Municipal Law § 234, as the same provides for members and terms of office of the planning commission, are hereby superseded within the village for all matters and things which may properly be the subject of control by a local law herein and hereafter adopted by the board of trustees.

(Code 1978, § 15-17; Ord. No. 8.2, § 2, 10-3-1966; L.L. No. 8-1975, §§ 1, 2)

Sec. 15-18. Organization.

The village planning commission shall annually elect a chairman from its own members. It shall have the power and authority to employ experts, clerks and a secretary and to pay for their services and such other expenses as may be necessary and proper, not exceeding in all, the annual appropriation made by the board of trustees. The commission shall also adopt rules and regulations in respect to procedure before it and in respect to any subject matter over which it has jurisdiction in accordance with the provisions of General Municipal Law art. 12-A (General Municipal Law § 234 et seq.).

(Code 1978, § 15-18; Ord. No. 8.2, § 3, 10-3-1966)

Sec. 15-19. Powers and duties.

(a) The board of trustees may, at any time by resolution, provide that the following matters, or any one or more of them, shall be referred for report thereon, to the village planning commission by the board of trustees, zoning board of appeals, building inspector or other public officer of the village which is the final authority thereon before final action thereon by such authority:

- (1) The adoption of any map or plan of the village or part thereof including drainage and sewer or water system plans or maps for any such public waterfront, or marginal street, or public structure upon, in or in connection with such front or street, or for any dredging, filling or fixing of lines with relation to said front.

*State law reference—Village planning commission, General Municipal Law § 234 et seq.

- (2) Any change in any such maps or plans.
- (3) The location of any public structure upon, in or in connection with, or fixing lines with relation to said front.
- (4) The location of any public building, bridge, statue or monument, highway, park, parkway, square, playground or recreation ground, or public open place of the village.

(b) Such report upon any matter or class of matters referred to the commission shall be returned to the board of trustees within 30 days from the time such report was requested or the planning commission shall be in default and shall forfeit the right further to suspend action unless the time limitation for the return of the report is otherwise stated by the board of trustees when the report is initially requested.

(c) The planning commission shall have full powers and authority to make such investigations, maps, reports and recommendations in connection therewith relating to the planning and development of the village as to it seems desirable or which have been requested by any public body or officer.

(d) Such planning commission may cause to be made a map of the village or any portion thereof, or of any land outside the limits of the village so near or so related thereto, that in the opinion of the planning commission it should be so mapped. Such plans may show not only such matters as by law have been or may be referred to the planning commission, but also any and all matters and things with relation to the plan of the village which to the planning commission seem necessary and proper, including recommendations and changes suggested by it; and any report at any time made may include any of the above. Such planning commission may obtain expert assistance in the making of any such maps or reports, or in the investigations necessary and proper with relation thereto, not exceeding in all, the annual appropriation made by the board of trustees.

(e) The planning commission shall have power to approve plans showing lots, blocks or sites, with or without streets or highways, and to approve the development of plats, entirely or partially undeveloped and which have been filed in the office of the clerk of the county prior to the appointment of such planning commission and the grant to such board of the power to approve plats.

(f) In addition, the planning commission shall have all other powers and duties given and prescribed by General Municipal Law art. 12-A (General Municipal Law § 234 et seq.).

(g) The planning commission shall be responsible for the review and evaluation of proposed actions in the coastal area of the village in accordance with article IV of this chapter. The planning commission shall evaluate the consistency of the proposed action with the policies and purposes of the adopted local waterfront revitalization program (LWRP) for the village and shall provide its considerations and recommendations to the village board of trustees for final determination and certification of consistency with the LWRP.

(Code 1978, § 15-19; Ord. No. 8.2, §§ 4—6, 10-3-1966; L.L. No. 7-1989, § 1)

State law reference—General powers of planning commission, General Municipal Law § 234 et seq.

Secs. 15-20—15-42. Reserved.

ARTICLE III. ENVIRONMENTAL QUALITY REVIEW OF CERTAIN ACTIONS

Sec. 15-43. Definitions.

Unless the context shall otherwise require, the terms, phrases, words and their derivatives used in this article shall have the same meanings as those defined in Environmental Conservation Law § 8-0105 and Part 617 of Title 6 NYCRR.

County, city, town, or village means the Village of Lewiston.

Local waterfront revitalization area (LWRA) means that portion of the state coastal area within the village, as delineated in the village waterfront revitalization program.

Local waterfront revitalization program (LWRP) means the local program to implement the state coastal management program within the village, as adopted by the village board of trustees and as approved by the secretary of state pursuant to the Waterfront Revitalization and Coastal Resources Act of 1981.

WAF means waterfront assessment form.

(Code 1978, § 15-73; L.L. No. 2-1977, § 1; L.L. No. 7-1989, § 2)

Sec. 15-44. Compliance with article required; exceptions.

No decision to carry out or approve an action other than an action listed in section 15-75(b) or Section 617.12 of Title 6 NYCRR as a Type II action, shall be made by the board of trustees or by any department, board, commission, officer or employee of the village until there has been full compliance with all requirements of this article and Part 617 of Title 6 NYCRR, provided, however, that nothing herein shall be construed as prohibiting:

- (1) The conducting of contemporaneous environmental, engineering, economic feasibility or other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action which do not commit the village to approve, commence or engage in such action; or
- (2) The granting of any part of an application which relates only to technical specifications and requirements, provided that no such partial approval shall entitle or permit the applicant to commence the action until all requirements of this article and Part 617 of Title 6 NYCRR have been fulfilled.

(Code 1978, § 15-74; L.L. No. 2-1977, § 2)

Sec. 15-45. Classification of actions.

(a) Consistent with Part 617 of Title 6 NYCRR and the criteria therein, the actions listed in Section 617.12 of Title 6 NYCRR as Type I actions are likely to have a significant effect on the environment.

(b) Consistent with Part 617 of Title 6 NYCRR and the criteria therein, the actions listed in Section 617.12 of Title 6 NYCRR as Type II actions are deemed not to have a significant effect on the environment.

(c) Consistent with Part 617 of Title 6 NYCRR and the criteria therein, those actions similar to the actions listed in Section 617.4 of Title 6 NYCRR as Type I actions, but not specifically identified are classified as unlisted actions and may have a significant effect on the environment as determined in accordance with Section 617.11 of the Title 6 NYCRR.
(Code 1978, § 15-75; L.L. No. 2-1977, § 3; L.L. No. 7-1989, § 3)

Sec. 15-46. Application and statement.

(a) For the purpose of assisting in the determination of whether an action may or will not have a significant effect on the environment, applicants for permits or other approvals shall file a written statement with the board of trustees setting forth the name of the applicant; the location of the real property affected, if any; a description of the nature of the proposed action; and the effect it may have on the environment. In addition, applicants may include a detailed statement of the reasons why, in their view, a proposed action may or will not have a significant effect on the environment. Where the action involves an application, the statement shall be filed simultaneously with the application for the action. The statement provided herein shall be upon a form prescribed by resolution by the board of trustees and shall contain such additional relevant information as shall be required in the prescribed form. Such statement shall be accompanied by drawings, sketches and maps, if any, together with any other relevant explanatory material required by the board of trustees.

(b) In the event that an action will occur within or will impact the LWRA a WAF shall be completed and filed with the board of trustees. The WAF, and any additional material as may be necessary to explain the nature and extent of the action, shall be required prior to the board of trustees determination of significance pursuant to Title 6 NYCRR.
(Code 1978, § 15-76; L.L. No. 2-1977, § 4; L.L. No. 7-1989, § 4)

Sec. 15-47. Application fee.

Every application for determination under this article shall be accompanied by a reasonable fee as set forth in this section to defray the expenses incurred in rendering such determination. The fee shall be the sum of \$25.00 for each application.
(Code 1978, § 15-77; L.L. No. 2-1977, § 7)

Sec. 15-48. Notice of proposed action to be posted.

Upon receipt of a complete application and a statement, the board of trustees shall cause a notice thereof to be posted on the signboard, if any, of the village maintained by the village and may also cause such notice to be published in the official newspaper of the village, if any, or in

a newspaper having general circulation within the village, describing the nature of the proposed action and stating that written views thereon of any person shall be received by the board of trustees no later than a date specified in such notice.

(Code 1978, § 15-78; L.L. No. 2-1977, § 5)

Sec. 15-49. Determination on application.

(a) The board of trustees shall render a written determination on the application filed under section 15-46 within 15 days following receipt of a complete application and statement; provided, however, that, such period may be extended by mutual agreement of the applicant and the board of trustees. The determination shall state whether such proposed action may or will not have a significant effect on the environment or the coastal resources of the village. The board of trustees may hold informal meetings with the applicant and may meet with and consult any other person for the purpose of aiding it in making a determination on the application.

(b) If the board of trustees determines that the proposed action is not an exempt action, or an action listed in section 15-45(b) or Section 617.13 of Title 6 NYCRR as a Type II action and that it will not have a significant effect on the environment, the board of trustees shall prepare, file and circulate such determination as provided in Section 617.10(b) of Title 6 NYCRR and thereafter the proposed action may be processed without further regard to this article. The determination shall include certification as to consistency with the policies and purposes of the LWRP for those actions subject to a WAF. Certification shall include a review and evaluation of the action in accordance with article II of this chapter and a determination that the proposed action is consistent with the policies and purposes of the LWRP based on the following criteria:

- (1) The action will not substantially hinder the achievement of any of the policies and purposes of the LWRP and whenever practicable will advance one or more such policies; or
- (2) If the action will substantially hinder the achievement of any policy or purpose of the LWRP, then the action may be determined to be consistent to the maximum extent practicable with the LWRP provided that:
 - a. No reasonable alternatives exist which would permit the action to be undertaken in a manner which would not substantially hinder the achievement of such policy or purpose;
 - b. The action will minimize all adverse effects on such policy or purpose to the maximum extent practicable;
 - c. The action will advance one or more of the LWRP policies and purposes; and
 - d. The action will result in an overriding local, regional or statewide public benefit.

The action shall not be directly undertaken, funded, or approved by the village board or any department, office, other body or officer of the village, unless the action has been determined to be consistent with the policies and purposes of the LWRP.

(c) If the board of trustees determines that the proposed action may have a significant effect on the environment or the coastal area, the board of trustees shall prepare, file and circulate such determination as provided in Section 617.10(c) of Title 6 NYCRR; and thereafter the proposed action shall be reviewed and processed in accordance with the provisions of this article and Part 617 of Title 6 NYCRR.

(Code 1978, § 15-79; L.L. No. 2-1977, §§ 6(a), 8; L.L. No. 7-1989, §§ 6, 7)

Sec. 15-50. Draft environmental impact statement—Preparation.

(a) Following a determination pursuant to section 15-49 that a proposed action may have a significant effect on the environment, the board of trustees shall, in accordance with the provisions of Part 617 of Title 6 NYCRR:

- (1) In the case of an action involving an applicant, immediately notify the applicant of the determination and shall request that the applicant prepare an environmental impact report in the form of a draft environmental impact statement.
- (2) In the case of an action not involving an applicant, shall prepare a draft environmental impact statement.

(b) If the applicant decides not to submit an environmental impact report, the board of trustees shall prepare or cause to be prepared the draft environmental impact statement or, in its discretion, notify the applicant that the processing of the application will cease and that no approval will be issued. The board of trustees may require an applicant to submit a fee to defray the expense to it of preparing a draft environmental impact statement or reviewing same if it is prepared by the applicant. Such fees shall be determined as follows: An amount equal to one-half of one percent of the action's total cost unless otherwise reduced by resolution of the board of trustees.

(c) When an action will occur within or will impact the LWRA, the draft environmental impact statement shall include an identification of the applicable policies and purposes of the LWRP and a discussion of the effects of the action on such policies and purposes.

(Code 1978, § 15-80; L.L. No. 2-1977, § 9; L.L. No. 7-1989, § 8)

Sec. 15-51. Same—Notice of completion.

Upon completion of a draft environmental impact statement prepared by or at the request of the village, a notice of completion containing the information specified in Section 617.7(d) of Title 6 NYCRR shall be prepared, filed and circulated as provided in Section 617.7(e) and (f) of Title 6 NYCRR. In addition, it will be published in the official newspaper, if any, of the village or if none, a newspaper having general circulation within the village, and a copy thereof shall also be posted on a signboard of the village. Copies of the draft environmental impact statement and the notice of completion shall be filed, sent and made available as provided in Section 617.9 of Title 6 NYCRR.

(Code 1978, § 15-81; L.L. No. 2-1977, § 10)

Sec. 15-52. Same—Hearing; notice.

If the board of trustees determines to hold a public hearing on a draft environmental impact statement, notice thereof shall be filed, circulated and sent in the same manner as the notice of completion and shall be published in the official newspaper of the village, if any, or if none, in a newspaper having general circulation within the village at least ten days prior to such public hearing. Such notice shall also state the place where substantive written comments on the draft environmental impact statement may be sent and the date before which such comments shall be received. The hearing shall commence no less than 15 calendar days nor more than 60 calendar days of the filing of the draft environmental impact statement, except as otherwise provided where the board of trustees determines that additional time is necessary for the public or other agency review of the draft environmental impact statement or where a different hearing date is required as appropriate under other applicable law.

(Code 1978, § 15-82; L.L. No. 2-1977, § 10)

Sec. 15-53. Effect of determination that proposed action will not have significant effect on environment.

If, on the basis of a draft environmental impact statement or a public hearing thereon, the board of trustees determines that an action will not have a significant effect on the environment, the proposed action may be processed without further regard to this article, except that for actions subject to a WAF, a certification of the consistency of the action with the policies and purposes of the LWRP shall be made in the manner and according to the criteria provided in section 15-49(b).

(Code 1978, § 15-83; L.L. No. 2-1977, § 11; L.L. No. 7-1989, § 9)

Sec. 15-54. Final environmental impact statement—Preparation.

Except as otherwise provided herein, the board of trustees shall prepare or cause to be prepared a final environmental impact statement in accordance with the provisions of Part 617 of Title 6 NYCRR; provided, further, that, if the action involves an application, the board of trustees may direct the applicant to prepare the final environmental impact statement. Such final environmental impact statement shall be prepared within 45 days after the close of any hearing or within 60 days after the filing of the draft environmental impact statement, whichever last occurs; provided, however, the board of trustees may extend this time as necessary to complete the statement adequately or where problems identified with the proposed action require material reconsideration or modification. Where the action involves an application, such final environmental impact statement shall be accompanied by the fee specified in this section to defray the expenses of the village in preparing and/or evaluating same. The fee shall be determined as follows: An amount equal to one-half of one percent of the action's total cost unless otherwise reduced by resolution of the board of trustees.

(Code 1978, § 15-84; L.L. No. 2-1977, § 12)

Sec. 15-55. Same—Notice of completion.

A notice of completion of a final environmental impact statement shall be prepared, filed and sent to all persons to whom the notice of completion of the draft environmental impact

statement was sent. Copies of the final environmental impact statement shall be filed and made available for review in the same manner as the draft environmental impact statement. (Code 1978, § 15-85; L.L. No. 2-1977, § 13)

Sec. 15-56. Same—Filing and consideration prerequisite to decision to carry out or approve actions subject to article.

No decision to carry out or approve an action which has been the subject of a final environmental impact statement by the board of trustees or by any other agency shall be made until after the filing and consideration of the final environmental impact statement. Where the board of trustees has been the lead agency for an action, it shall make a decision whether or not to approve the action, within 30 days of the filing of the final environmental impact statement.

(Code 1978, § 15-86; L.L. No. 2-1977, § 14)

Sec. 15-57. Findings to be made upon decision to carry out or approve actions; filing of copy.

(a) When the board of trustees decides to carry out or approve an action which may have a significant effect on the environment it shall make the following findings in a written determination:

- (1) Consistent with social, economic and other essential considerations of state policy, to the maximum extent practicable, from among the reasonable alternatives thereto, the action to be carried out or approved is one which minimizes or avoids adverse environmental effects, including the effects disclosed in the relevant environmental impact statements; and
- (2) All practicable means will be taken in carrying out or approving the action to minimize or avoid adverse environmental effects.

(b) For actions subject to a WAF, the written determination shall include a certification of the consistency of the action with the policies and purposes of the LWRP made in a manner and according to the criteria provided in section 15-49(b).

(c) For public information purposes, a copy of the determination shall be filed and made available as provided in Part 617 of Title 6 NYCRR.

(Code 1978, § 15-87; L.L. No. 2-1977, §§ 15, 16; L.L. No. 7-1989, §§ 10, 11)

Sec. 15-58. Maintenance of files of notices, statements, certificates and written determinations required.

The village shall maintain files open for public inspection of all notices of completion, draft and final environmental impact statements, certifications of consistency with local waterfront revitalization program policies and written determinations prepared or caused to be prepared by the board of trustees.

(Code 1978, § 15-88; L.L. No. 2-1977, § 17; L.L. No. 7-1989, § 12)

Sec. 15-59. Procedure when more than one agency is involved in an action.

Where more than one agency is involved in an action, the procedures of Sections 617.4 and 617.8 of Part 617 of Title 6 NYCRR shall be followed.
(Code 1978, § 15-89; L.L. No. 2-1977, § 18)

Sec. 15-60. Coordination of time limitations.

The time limitations provided in this article shall be coordinated with, to the extent practicable, other time limitations provided by statute or local law, ordinance or regulation of the village.
(Code 1978, § 15-90; L.L. No. 2-1977, § 6(b))

Sec. 15-61. Exemption of actions undertaken or approved prior to certain dates.

Actions undertaken or approved prior to the dates specified in Environmental Conservation Law art. 8 for local agencies shall be exempt from this article and the provisions of Article 8 of the environmental conservation law and Part 617 of Title 6 NYCRR; provided, however, that, if, after such dates the board of trustees or a department, board, commission, officer or employee having jurisdiction modifies an action undertaken or approved prior to that date and the board of trustees determines that the modification may have a significant adverse effect on the environment, such modification shall be an action subject to this article and Part 617 of Title 6 NYCRR.
(Code 1978, § 15-91; L.L. No. 2-1977, § 19)

Secs. 15-62—15-99. Reserved.

ARTICLE IV. HISTORIC PRESERVATION*

Sec. 15-100. Title.

This article shall be known as and may be cited as the Village of Lewiston Historic Preservation Law.
(Code 1978, § 15-100; L.L. No. 1-1978, § 1)

Sec. 15-101. Legislative intent.

The village finds that many buildings, structures and sites, or districts of such buildings, structures and sites within its borders, have a unique character and special aesthetic interest and represent fine architectural products of distinct periods in the area's history. The village also finds that such buildings, structures, sites, or districts of such may be damaged without adequate consideration of the irreplaceable loss to the citizens of the village. Therefore, it is

*State law reference—Historic preservation, General Municipal Law § 119-aa et seq.

hereby declared to be a matter of public policy and a valid exercise of the inherent police powers of the village to protect, enhance and perpetuate such buildings, structures, sites or districts as is necessary to:

- (1) Promote the health, prosperity and safety of village citizens;
- (2) Safeguard the area's heritage by preserving elements of its cultural, political, economic and aesthetic history;
- (3) Foster civic pride in the beauty and noble accomplishments of the past; and
- (4) Promote the use of such buildings, structures, sites, or districts for the education, pleasure and welfare of the people of the area.

(Code 1978, § 15-101; L.L. No. 1-1978, § 2; L.L. No. 6-1990, § 1)

Sec. 15-102. Definitions.

The definitions contained in appendix B, the zoning code of the village, shall be applicable to this article. In addition thereto, the following definitions are deemed controlling regarding terms utilized in this article:

Alteration means any act or process which changes one or more of the exterior architectural features of a building, structure or site designated as historically significant or any such building, structure or site in an historic district. The term "alteration" includes relocation of property and new construction.

Certificate of approval means that document issued by the historic preservation commission which entitles the applicant for such to alter or demolish a designated property.

Demolish means to raise, remove, destroy, obliterate or contribute to substantial deterioration of any portion of a designated property or exterior architectural feature thereof.

Designated property means a building, structure or site determined to be historically significant and all buildings, structures and sites within an historical district.

Exterior architectural feature means the architectural style, design, general arrangement, and components of a designated property, including, but not limited to, color of paint, type of all windows, doors, lights, signs and other fixtures appurtenant to such portion and all buildings, structures, outbuildings, walls, fences, steps, topographical features, earthworks, paving and signs located on the designated property.

Historic district means any area which:

- (1) Has a special character or special historic, architectural, archeological or cultural value; or
- (2) Represents one or more periods or styles of architecture typical of one or more areas; and
- (3) Causes such area, by reason of such factors, to constitute a distinct section.

Relocation means moving a building to another site within the historic district or moving designated historic properties from or to other areas in the village.

Styles of architecture means styles recognized by one of the following organizations:

- (1) The National Register of Historic Places.
- (2) The Historic American Buildings Survey.
- (3) The Historic American Engineering Record, U.S. Department of the Interior, National Park Service.
- (4) The Division for Historic Preservation, New York State Office of Parks and Recreation.
- (5) The National Trust for Historic Preservation.
- (6) The Society of Architectural Historians.

(Code 1978, § 15-102; L.L. No. 1-1978, § 3; L.L. No. 7-1980, § 1; L.L. No. 6-1990, §§ 2—4)

State law reference—Similar provisions, General Municipal Law § 119-bb.

Sec. 15-103. Historic preservation commission—Established; composition; term of office; officers; meetings.

(a) There shall be created by the village board an historic preservation commission which shall consist of five members to be appointed by the village board. The village historian shall be a nonvoting and ex officio member of the commission.

(b) Said members shall be residents of the village and shall include, if available, two architects, one of whom shall be a landscape architect, and one a municipal planner. Other appointees shall be qualified by reason of training, experience, or demonstrated interest in law, local law, business or the history or historical preservation of the village. A vacancy occurring in the membership for any cause shall be filled for the unexpired portion of the term by the village board of trustees.

(c) The term of office shall be five years, provided that of those five members initially appointed by the village board, one shall be for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years and one for a term of one year.

(d) The commission shall elect one member as chairman and one member as vice-chairman, and shall submit an annual report in the last week of May to the village board of trustees encapsulating its activities of the past year and listing goals and objectives for the ensuing year. Such report shall also include recommendations that the commission deems necessary to carry out the principles of this local law and to enhance the historic and aesthetic qualities of the village.

(e) Meetings of the commission shall be held at such times as the commission may determine or at the call of the chairman or at the call of at least two commission members, and must be held within 30 days of receipt of complete application for a certificate of appropriate-

ness by the village building inspector. All commission meetings shall be open to the public and notice of such shall be posted on the municipal bulletin board at the municipal building at least five days prior to the meeting.

(f) The commission shall keep regular minutes of its proceedings and show the vote of each member upon any question. It shall also keep records of its examinations and official actions.

(g) The commission shall also constitute the architectural review board and act as such board when reviewing and submitting recommendations pursuant to section 15-104(f).

(h) During such time as there are less than four members constituting the historic preservation commission, the duties of the historic preservation commission shall be performed by the village planning commission.

(Code 1978, § 15-103; L.L. No. 1-1978, § 4; L.L. No. 8-1979, § 5; L.L. No. 7-1980, § 2; L.L. No. 5-1989, § 1; L.L. No. 6-1990, §§ 5, 6; L.L. No. 5-1993; L.L. No. 6-1993, §§ 1, 2; L.L. No. 2-1996, § 1)

Sec. 15-104. Same—Duties and powers.

(a) The commission shall inventory and designate all historically significant buildings, structures, sites or districts of such within the village enlisting the voluntary assistance of interested civic and social organizations. The initial inventory shall be completed within one year of the effective date of this local law or the date of first appointment of members to the commission created hereunder, whichever is later, or such other extended times as adopted by resolution of the board of trustees and such inventory shall be reviewed, updated or revised where necessary each year thereafter before the submission of the annual report. Such initial inventory and annual alterations shall be distributed to the village building inspector, clerk, historian and assessor.

(b) The commission shall determine the acceptability of applications for certificates of appropriateness.

(c) In addition to the aforementioned powers, the commission shall have the power to:

- (1) Retain or employ professional consultants, secretaries, clerks or other such personnel as may be necessary to assist the commission in carrying out its duties and with budgetary limitations;
- (2) Formulate recommendations concerning the preparation of maps, brochures and historical markers for selected historic sites and buildings or districts;
- (3) Advise owners of historic buildings on problems of preservation and restoration.

(d) Nothing in this article shall be construed as authorizing the commission, in acting with respect to any designated property, to amend the existing zoning requirements or grant any variance from those requirements.

(e) In reviewing the construction, alteration or demolition of designated properties, the commission may impose conditions or determinations that are more restrictive than those prescribed in the zoning law, building code and other provisions of law applicable to such activities.

(f) The commission shall review and submit its recommendations to the planning commission upon matters referred to them for their review by said commission. Such review shall concern the appropriateness of exterior architectural features, as defined in section 15-102, of buildings and structures, plans for the preservation, drives, parking and circulation, and other appropriate features. In reviewing a matter so referred, the commission shall apply the standards as set forth in section 10R of the zoning law (appendix B to this Code). (Code 1978, § 15-104; L.L. No. 1-1978, § 5; L.L. No. 4-1979, § 1; L.L. No. 8-18-1989, § 1; L.L. No. 5-1989, § 2; L.L. No. 6-1990, § 7)

Sec. 15-105. Criteria and procedure for designation of buildings, structures, sites, or districts.

(a) Buildings, structures, sites and historic districts may be designated as historically significant if, by virtue of association with historic personages or events or as representative examples of historic styles or methods of construction, they are important in the chronological record of the village, its neighborhoods, the state or the nation and/or such entity's cultural, political, economic, or aesthetic heritage.

(b) When evaluating historic significance, the commission shall consider date of erection and period of historic significance, architectural style, scarcity of the type or period in the village, quality of design, integrity of the original design, present condition and appearance and, in the case of historic districts, the collective merits and interrelationship of neighboring properties.

(c) Procedure for designation.

- (1) Notice of the fact that the commission is considering designation of a building, structure, site or district as historically significant shall be served upon the owner of such building, structure, site or district.
- (2) Said notice shall contain the date, time and place of the meeting at which the proposed designation will be considered, and shall invite owners to comment upon the proposal in person or by providing written comments.
- (3) The notice shall be given at least ten days, but not more than 20 days prior to the date of the scheduled meeting.
- (4) Such notice shall be served personally upon said owner if the owner is a resident of the village; or if the owner is not a resident of the village, said notice shall be sent by certified mail to the last known address as set forth on the latest tax rolls of the village.

- (5) The commission may at its discretion call a public hearing to receive comments concerning a proposed designation. Notice of such hearing shall be served on owners as provided in subsection (c)(4) of this section and shall be announced by public notice at least five days prior to the scheduled hearing.
 - (6) Designation shall be made by resolution of the historic preservation commission and notification of such designation shall be sent to the owner by certified mail.
- (Code 1978, § 15-105; L.L. No. 1-1978, § 6; L.L. No. 7-1980, §§ 3, 4; L.L. No. 6-1990, §§ 8—10)

Sec. 15-106. Criteria and procedure for certificate of approval.

(a) Notwithstanding any inconsistent ordinance, local law, code, rule or regulation concerning the issuance of building permits, no alteration to a designated property shall be commenced without first obtaining a certificate of approval from the commission, nor shall any building permit to demolish, alter, initiate new construction on a designated property be issued without such a certificate of approval having first been issued. The certificate of approval required by this section shall be in addition to and not in lieu of any building permit that may be required by any ordinance, local law, code, rule or regulation of the village.

(b) Application for a certificate of approval shall be made to the commission, in writing, in duplicate and upon forms prescribed by the commission. The application shall be sufficiently detailed for the commission to evaluate whether the proposed changes will be in harmony with the historic building, structure or site and shall be accompanied, unless their necessities are waived by the commission, by plans illustrating the designated property, the proposed changes and the relationship of such to adjacent property and in addition, unless waived, shall include:

- (1) Name, address and telephone number of the applicant;
- (2) Location of the building, structure or land the exterior architectural features of which are proposed to be changed;
- (3) Elevations of the proposed change;
- (4) Perspective drawing;
- (5) Samples of the color or materials to be used in the proposed change;
- (6) Where the proposed change includes signs or lettering, a scale drawing showing the type of lettering, all dimensions and colors; a description of the materials to be used and the method of illumination, if any; and a plan showing the location on the building or property.

(c) Within a reasonable time after the application is filed, but in all events within 30 days (Saturdays, Sundays and legal holidays excluded), unless otherwise mutually agreed upon by the applicant and the commission, the commission shall invite the owner or the owner's representative to attend a meeting when the commission reviews the application. If it approves the application, the commission shall attach a certificate of approval to the building permit, if applicable, or give the certificate of approval to the applicant if no building permit is required. If the commission approves the application, it shall issue a certificate of approval

which shall be attached to the building permit, if applicable, and immediately transmitted to the building inspector, or applicant if no building permit is required. The commission shall also stamp all submitted plans. If the commission disapproves an application, it shall state its reasons for doing so and shall transmit a record of such action and reasons therefor to the applicant and building inspector. The commission may advise what it considers proper if the application is denied, and the applicant, if he so desires, may modify his plans and resubmit his application after doing so.

(d) In approving or denying an application, the commission shall be guided by the secretary of the interior's standards for historic preservation projects. The commission shall consider the historical and architectural importance of the property, the site in relation to its surroundings, the value to the community, the condition of the property at the time of application, the severity of the change in exterior design and the degree of harmony and integration of the proposed changes with the original property. Also to be considered is whether denial of a certificate will cause economic hardship to the applicant, and if so, to what extent.

(e) An applicant whose certificate of appropriateness has been denied may within ten days of such denial apply for relief from the strict application of the historic preservation local law on the grounds of economic hardship. The commission shall meet within 30 days of the application for relief. At the meeting, proponents and opponents of the application will be provided the opportunity to present their views.

(f) The commission may solicit expert testimony or require that the applicant make submissions concerning any or all of the following information before it makes a determination on the application:

- (1) Estimate of the cost of the proposed construction, alteration, demolition, or removal and an estimate of any additional cost that would be incurred to comply with the recommendations of the commission for changes necessary for the issuance of a certificate of appropriateness;
- (2) All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing or ownership of the property;
- (3) Any listing of the property for sale or the rent price asked and offers received, if any, within the previous two years;
- (4) Assessed value of the property according to the two most recent assessments;
- (5) Real estate taxes for the previous two years;
- (6) Form of ownership or operation of the property, whether a sole proprietorship, for profit or not-for-profit corporation, limited partnership, joint venture or other;
- (7) In the case of a proposed demolition, an estimate from an architect, appraiser, or other real estate professional experienced in rehabilitation as to the economic feasibility or rehabilitation or reuse of the existing structure on the property;

- (8) If the property is income-producing, the annual gross income from the property for the previous two years, itemized operating and maintenance expenses for the previous two years, and depreciation deduction and annual cash flow before and after debt service, if any, during the same period; and
 - (9) Any other information considered necessary by the commission for a determination as to whether the property does yield or may yield a reasonable return to the owners.
- (g) For all applications, except those involving demolition or removals, the applicant shall, in order to prove the existence of economic hardship, establish that:
- (1) a. He will suffer significant and unreasonable economic or financial injury if required to comply with the commission's decision as applied to his property; and
 - b. The character of the landmark and/or historic district will be preserved and not substantially changed by the proposed alteration; or
- (2) The property is incapable of earning a reasonable return.
- (h) For applications involving demolition or removal of a landmark or structure within a historic district, the applicant shall, in order to prove the existence of economic hardship, establish that:
- (1) The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
 - (2) The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return;
 - (3) Reasonable efforts to find a purchaser interested in acquiring the property for rehabilitation and preservation have been made and have failed; and
 - (4) The owner has not created his own hardship through waste and neglect, thereby permitting the structure to fall into a serious state of disrepair.
- (i) Throughout the hardship procedures, the applicant shall consult in good faith with the commission, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property.
- (j) Failure of the commission to approve or disapprove an application within 30 days after its filing or within the time period mutually agreed upon by the applicant and the commission shall be deemed to constitute approval by the commission.
- (Code 1978, § 15-106; L.L. No. 1-1978, § 7; L.L. No. 7-1980, § 5; L.L. No. 6-1990, §§ 11—14)

Sec. 15-107. Appeals.

(a) *Appeal from designation.* Any owner whose building, structure, site or district has been designated pursuant to section 15-105 shall have ten days after the adoption of the resolution designating the building, structure, site or district to file an appeal with the village board.

(b) *Appeal from disapproval of application.* Upon a disapproval of an application for a certificate of approval, if the applicant refuses to modify the application to meet the commission's recommendations, he shall have ten days after the issuance of the commission's decision pursuant to section 15-106, to file an appeal with the village board.

(c) *Review.* The village board shall use the same criteria as the commission in reviewing an appeal under subsections (a) and (b) of this section, and shall consider no other facts beyond those contained in the application, the proceedings before the commission and the commission decision, and shall render a decision within 30 days after the filing of said appeal.

(d) *Deadline for appeal.* All properties heretofore designated by the historic preservation commission shall be entitled to file an appeal from such designation pursuant to subsection (a) of this section to the board of trustees provided such appeal is filed within 20 days from the adoption of the local law from which this section is derived.

(Code 1978, § 15-107; L.L. No. 1-1978, § 8; L.L. No. 3-1982, § 1; L.L. No. 6-1990, § 15)

Sec. 15-108. Exceptions and exemptions.

(a) *Ordinary maintenance and repair.* Nothing in this law shall be construed to prevent ordinary maintenance and repair using material that duplicates the original in design, color, texture and other visual qualities.

(b) *Interior changes.* The commission shall have no control over interior changes in any building or structure unless evidence of such change is apparent on the exterior of such building or structure.

(c) *Materials and methods.* Upon approval of an application and subsequent issuance of a certificate of approval, applicant will use materials and methods specified in the approval.

(d) *Exterior design or appearance.* Nothing contained herein shall be construed as to require the owner of any presently existing building or structure if designated historically significant pursuant to this law to make any change in the exterior design or appearance of such building.

(Code 1978, § 15-108; L.L. No. 1-1978, § 9; L.L. No. 6-1990, § 16)

Sec. 15-109. Violations and penalties.

(a) Violation of any provision of this local law is hereby declared to be an offense, as defined in the New York State Criminal Procedure Law, punishable by a fine not to exceed \$250.00.

(b) Each and every week that a violation of this local law is allowed to continue shall be considered a separate offense.

(c) Nothing contained herein shall prevent further prosecution under other local laws of the village or under the laws of the state.

(Code 1978, § 15-110; L.L. No. 1-1978, § 11)

State law reference—Penalties for violation of village legislation, Penal Law §§ 55.10, 70.15, 80.05, 80.10, Village Law § 20-2006, Municipal Home Rule Law § 10(4)(b.).