

Appendix B –Local Waterfront Consistency Review Law

CHAPTER 129 LOCAL WATERFRONT REVITALIZATION

[HISTORY: Adopted by the Town Board of the Town of Tonawanda 4-19-1993 by L.L. No. 2-1993. Amendments noted where applicable.]

GENERAL REFERENCES

Environmental Conservation Commission — See Ch. 8.

Environmental quality review — See Ch. 76.

Zoning — See Ch. 215.

ARTICLE I General Provisions (§ 129-1 - § 129-6)

§ 129-1 Legislative intent

This Local Waterfront Revitalization Program (LWRP) Consistency Law for the Town of Tonawanda requires all Type I and unlisted actions [as defined by the State Environmental Quality Review Act (SEQRA) implementing regulations] that would be directly undertaken, approved or funded by the town to be reviewed by the Town Board for consistency with the Town of Tonawanda LWRP. This chapter further prohibits such actions from being carried out unless the Town Board finds and certifies that the action is consistent with the policies and purposes of the LWRP. This applies equally to actions involving the Town Board and town agencies. By adoption of this chapter, the Town Board is legally committing itself and its agents to comply with the provisions of the LWRP.

§ 129-2 Title

This chapter shall be known and may be cited as the "Town of Tonawanda LWRP Consistency Law."

§ 129-3 Purpose

The purpose of this chapter is to provide for the protection and beneficial use of the natural and man-made resources within the Town of Tonawanda coastal area by ensuring that actions to be undertaken, approved or funded by town agencies within the town's coastal area will be undertaken in a manner consistent with the policies and purposes of the Town of Tonawanda Local Waterfront Revitalization Program.

§ 129-4 Authority

This chapter is adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization and Coastal Resources Act of the State of New York (Article 42 of the Executive Law).

§ 129-5 Applicability

All agencies of the Town of Tonawanda must comply with this chapter prior to directly undertaking, approving or funding any action within the coastal area when such action is classified as Type I or unlisted under Part 617 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

§ 129-6 Definitions

As used in this chapter, the following terms shall have the meanings indicated:

ACTIONS

- A. Projects or physical activities such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure which:
 - (1) Are directly undertaken by an agency;
 - (2) Involve funding by an agency; or
 - (3) Require one or more permits or approvals from an agency or agencies.
- B. Agency planning and policy making activities that may affect the environment and commit the agency to a course of future conduct or decisions.
- C. Adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment.
- D. Any combinations of the above.

AGENCY

Any board, agency, department, office, other body or official or officer of the Town of Tonawanda.

APPLICANT

Any person making an application or other request to an agency to provide funding or to grant an approval or a permit in connection with a proposed action.

COASTAL AREA

The New York State coastal waters and adjacent shorelines, as defined in Article 42 of the Executive Law, which are located within the boundaries of the Town of Tonawanda as shown on the coastal area map on file in the Office of the Secretary of State and as delineated in the Town of Tonawanda LWRP.

CONSISTENT

That the action will fully comply with and not hinder any of the Town of Tonawanda LWRP standards and conditions and, whenever practicable, will advance one or more of such policies.

DIRECT ACTION OR DIRECTLY UNDERTAKEN

An action planned and proposed for implementation by an agency or the town. Direct actions include but are not limited to capital projects, promulgation of agency rules, regulations, local laws, codes or ordinances and policy making which commits an agency to a course of action.

ENVIRONMENTAL ASSESSMENT FORM (EAF)

The long form appearing at 6 NYCRR Part 617 used by an agency to assist it in determining the environmental significance or nonsignificance of actions. A properly completed EAF shall contain enough information to describe the proposed action, its location, its purpose and its potential impacts on the environment.

ENVIRONMENTAL IMPACT STATEMENT (EIS)

A written document prepared in accordance with 6 NYCRR Part 617. An environmental impact statement may either be draft or final form. A draft EIS is the initial statement prepared by either the applicant or the lead agency and circulated for review and comment. A generic EIS may also be prepared in accordance with 6 NYCRR Part 617.

FUNDING

Any financial support given by an agency, including contracts, grants, subsidies, loans or other forms of direct or indirect financial assistance in connection with the proposed action.

LOCAL WATERFRONT REVITALIZATION PROGRAM (LWRP)

The local waterfront revitalization program of the Town of Tonawanda as approved by the Secretary of State pursuant to the Waterfront Revitalization and Coastal Resources Act (Executive Law Article 42), a copy of which is on file in the office of the Town Clerk of the Town of Tonawanda.

PERMIT

Permit, lease, license, certificate or other entitlement for use or permission to act that may be granted or issued by an agency.

PERSON

Any agency, individual, corporation, government entity, partnership, association, trustee or other legal entity.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)

Article 8 of the Environmental Conservation Law of the State of New York.

STATE ENVIRONMENTAL QUALITY REVIEW REGULATIONS (PART 617)

6 NYCRR Part 617.

TOWN

The Town of Tonawanda.

TOWN BOARD

The Town Board of the Town of Tonawanda.

TYPE I ACTION

Shall include all those actions listed in 6 NYCRR Part 617 and any critical areas of environmental concern as the Town Board shall have designated pursuant to the authority and procedure of 6 NYCRR Part 617.

TYPE II ACTION

Shall include all those listed in 6 NYCRR Part 617, except as otherwise noted in this chapter.

UNLISTED ACTION

All actions not listed as a Type I or Type II Action and not an exempt or excluded action as those terms are defined in 6 NYCRR Part 617.

WATERFRONT ASSESSMENT FORM (WAF)

The form used by the Town Board to assist it in determining the consistency of an action with the LWRP.

ARTICLE II Consistency Review Procedures (§ 129-7 - § 129-10)

§ 129-7 Initial review

The Town Board or a town agency, when proposing to undertake, approve or fund a Type I or unlisted action within the coastal area, shall prepare or cause to be prepared a Waterfront Assessment Form (WAF) for the proposed action.

§ 129-8 Certification of consistency

[Amended 4-7-2008 by L.L. No. 2-2008]

- A. The Town Board is authorized to review and make determinations regarding the consistency of proposed actions with the LWRP policy standards and conditions set forth in Subsection F of this section. Whenever a proposed action is located in the Town's coastal area, the Town Board shall make a written determination of consistency in accordance with the LWRP policy standards and conditions. No agency shall undertake, approve or fund any Type I action or unlisted action in the coastal area without first obtaining this determination. No action which is reviewed under this section shall be undertaken until a determination of consistency has been made by the Town Board.
- B. Whenever an agency receives an application for approval or funding of an action to be located within the coastal area, the applicant shall prepare a Waterfront Assessment Form (WAF) to assist the Town Board with its consistency review. The agency shall refer a copy of the completed WAF and all accompanying maps, plans and application to the Town Board within 10 days of its submission for the determination of consistency
- C. As early as possible in an agency's formulation of a direct action which is proposed to be located within the coastal area, the agency shall prepare a Waterfront Assessment Form (WAF) to assist the Town Board with the consistency review.
- D. After receipt of a completed WAF and all documentation the Town agency or the Town Board requires for an action, the Town Board shall determine whether the proposed action is consistent with the LWRP policy standards and conditions set forth in Subsection F of this section. The Town Board or the appropriate Town agency shall require the applicant to submit

any completed applications, EAFs and any other information deemed to be necessary to its consistency determination.

- E. The Town Board shall render its written determination and reasons therefor within 30 days following the referral of the WAF and all required documentation from the application or the Town agency, unless either an EIS is being prepared or is under review in accordance with the requirements of 6 NYCRR Part 617, or the time period is extended by the Town Board for good cause. The time period for a Town Board determination of consistency shall be suspended pending receipt by the Town Board of any EIS and any explicit findings related to a proposed project as may be required pursuant to SEQRA. The Town Board shall have the authority in its findings of consistency to impose practicable and reasonable conditions on any action to insure that it is carried out in accordance with this chapter.
- F. Actions to be undertaken within the coastal area shall be evaluated for consistency in accordance with the following LWRP policy standards and conditions which are derived from and further explained and described in Section II of the Town of Tonawanda LWRP, a copy of which is on file in the Town Clerk's office and available for inspection during normal business hours. Actions which are directly undertaken shall also be evaluated for consistency with Section IV of the LWRP. The action shall be consistent with the policy to:
- (1) Revitalize and redevelop deteriorating industrial and commercial structures (Policies 1, 1A and 1B).
 - (2) Retain and promote water-dependent uses (Policies 1A and 2).
 - (3) Ensure that development occurs where adequate public infrastructure is available to reduce health or pollution hazards (Policy 5).
 - (4) Protect significant fish and wildlife habitats from human disruption and chemical contamination (Policies 7 and 8).
 - (5) Maintain and expand fish populations for recreational use (Policies 9 and 9A).
 - (6) Minimize flooding and erosion hazards through nonstructural means and carefully selected long-term structural measures (Policies 11, 11A, 12, 12A, 13, 13A, 14, 15, 16, 17 and 17A).
 - (7) Maintain and improve public access to the shoreline and to water-related recreational facilities while protecting the environment (Policies 19, 19A, 19B, 20, 20A, 21, 21A, 21B, 22, 22A, 22B, 22C and 22D).
 - (8) Protect and restore archaeological resources (Policies 23 and 23A).
 - (9) Protect and upgrade scenic resources (Policies 25, 25A and 25B).
 - (10) Operate existing power plants in an environmentally sound manner and expand them only if compatible with public energy needs, the environment and waterfront (Policy 27 and 27A).
 - (11) Undertake ice management practices in a manner that protects habitats and prevents shoreline erosion and does not interfere with hydroelectric production (Policies 7, 28 and 28A).

- (12) Protect surface and groundwaters from direct and indirect discharge of pollutants and from other overuse (Policies 30, 31, 33, 34, 36, 37 and 38).
- (13) Perform dredging and dredge soil disposal in a manner protective of natural resources (Policies 15 and 35).
- (14) Eliminate non-water-dependent handling of petroleum and hazardous materials from the waterfront (Policy 36).
- (15) Handle and dispose of hazardous waste in a manner which will not adversely affect the environment or expand existing landfills (Policies 39 and 39A).
- (16) Discharge of effluent from energy or industrial facilities shall not be unduly injurious to fish and wildlife and shall conform to state water quality standards (Policies 40 and 40A).
- (17) Protect air quality (Policies 41, 41A, 42 and 43).
- (18) Protect freshwater wetlands (Policies 44 and 44A).

G. Determinations

- (1) If the Town Board determines that the action would not be consistent with one or more of the LWRP policy standards and conditions, such action shall not be undertaken unless the Town Board determines with respect to the proposed action that:
 - (a) No reasonable alternatives exist which would permit the action to be undertaken in a manner which will not substantially hinder the achievement of such LWRP policy standards and conditions;
 - (b) The action would be undertaken in a manner which would minimize all adverse effects on such LWRP policy standards and conditions to the maximum extent practicable;
 - (c) The action will advance one or more of the other LWRP policy standards and conditions;
 - (d) The action will result in overriding town, regional or statewide public benefit.
- (2) Such finding shall constitute a determination that the action is consistent with the LWRP policy standards and conditions.

H. The Town Board shall maintain a file for each action made the subject of the consistency determination and shall include in that file any findings made pursuant to this chapter. Such files may be made available for public inspection upon a properly completed freedom of information request.

§ 129-9 Enforcement

[Amended 3-26-2007 by L.L. No. 2-2007]

The Code Enforcement Officer and his designees shall be responsible for enforcing this chapter. No work or activity on a project within the coastal area which is subject to review under this chapter shall be commenced or undertaken until the Building Department has been presented with a written determination from an applicant or agency that the action is consistent with the town's LWRP policy

standards and conditions. In the event that work or any activity is not being performed in accordance with this chapter or any conditions imposed thereunder, the Code Enforcement Officer shall issue a stop-work order, and all work shall immediately cease. No further work or activity shall be undertaken on a project so long as a stop order is in effect.

§ 129-10 Penalties for offenses; prosecution of violations

A. Penalties for offenses.

- (1) Any person convicted of a violation of this chapter shall be deemed to have committed a violation and shall be subject to a fine not exceeding \$250 or to imprisonment for a period not exceeding 15 days.
- (2) Any person taking part in or assisting in any violation of this chapter shall also be subject to the penalties herein.
- (3) Each day that a violation of this chapter is committed or is permitted to exist shall constitute a separate offense.

B. Violations.

- (1) The Town Attorney is authorized and directed to institute any and all actions and proceedings necessary to enforce this chapter. The Town Attorney is also authorized to seek damages and any civil penalties in any civil action, and such penalties shall be in addition to and not in lieu of any criminal prosecution and penalty.
- (2) In the event of any actual or pending violation of this chapter, the Town Attorney may, in addition to other remedies, institute any appropriate action or proceedings to prevent, restrain, correct or abate such violation.
- (3) In addition to other remedies provided by law, any appropriate action or proceeding, whether by legal process or otherwise, may be instituted or taken to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.
- (4) In addition to any fine or penalty imposed, the defendant shall pay all costs and expenses incurred by the town in determining such violation.