

When a municipality is contemplating banning a particular land use it is usually because residents already perceive a real threat from a use they feel may have a significant negative impact on themselves and the community. The pressure starts from the outside and creates an environment for decision making that is often politically and emotionally charged. It's at times like these when a well thought out, and logical process can provide a safe way forward. The intent of this primer is to describe such a process.

1. Problem Statement

To start off, there needs to be general agreement regarding what the issues are. Is it one specific type or a category of uses? Is it the land use or some specific aspect thereof? Development of a formal problem statement is a helpful way to start the process. As you move forward, this is something you can refer back to and refine. At the outset, it sends a clear signal that the process is to be structured and objective.

2. Establish an Agreed Upon Process

Speaking of process, some thought should be given to scoping out the entire process, including a timeline and who is involved:

Committee or Working Group – Be sure that it is a group that can be balanced in its approach and get the work done. It can include people on different sides of the issue. Healthy disagreement can be helpful and result in a more balanced and thoughtful response. Planning Boards and other advisory boards are a great resource for people who have already proven they have the time, experience and an interest in helping the community. Depending on the issue, interests based groups and knowledgeable residents may be able to play a role as well. Requiring regular Town Board updates from the group helps keep things moving and on track and helps build Town Board consensus by keeping them involved throughout the process.

Support Staff - They are not necessarily the foremost expert in the subject at hand. That's not why they are there. However, support staff performs an absolutely critical function by keeping people organized and on task and ensuring the process moves forward. In addition they are usually not personally invested in a specific outcome and so can contribute a needed measure of objectivity to deliberations.

Consultation with Outside Experts – Very often at the heart of the issue is a land use or activity the Town hasn't dealt with or even thought about before. The Town should decide whether or not they want to consult with outside experts. Asking an attorney or consultant to actually facilitate the entire process can get expensive but their guidance at specific points can be invaluable. Always research to see what government or not-for profits might offer guidance and knowledge for minimal cost. The Town Attorney should be kept informed throughout the process.

Schedule for Completion – This is a must and should include time to complete the background work, drafting and revision of the law, and all of the procedural requirements such as; a possible update to the comp plan, county referral, one or more public hearings, SEQR, etc. If the Town chooses to adopt a moratorium, this will provide a logical basis for the specified time period and possible extensions.

Regular updates at Town board meetings will also help the Town anticipate issues which might require an extension.

3. Moratorium

These are temporary bans on land uses and activities and are put in place specifically to allow a municipality the time it needs to do some research and devise a permanent regulatory solution to an issue, whether it's a ban or something else entirely. The NYS Department of State has a helpful guidance document that outlines the basic requirements to properly adopt a moratorium.

http://www.dos.ny.gov/lg/publications/Land_Use_Moratoria.pdf

4. Comp Plan Analysis/Recommendations/update

A ban, like any other change to local law, has to comply with the municipality's adopted plans. Determining compliance and the need for updates to plans in support the anticipated ban should be done first. A formal analysis should be completed and given to the Town Board for review and acceptance. The degree to which a planned ban has to "comply" or be in agreement with the plan is dependent on the issue at hand. If the ban applies to a use that no one has really thought about before chances are you won't have a specific statement in your plan that addresses that use. Short of that, the formal analysis can look at the overarching goals and objectives in the plan and describe how they may or may not support the anticipated ban.

To make sure the analysis is balanced, statements that could be construed as contrary to the ban should also be identified and reconciled against language that supports it. For example, almost all plans call for supporting economic development, but this has to be weighed against the other goals and objectives to protect the community character, natural resources, infrastructure etc.

The plan analysis should describe where updates are needed. This piece will provide a strong foundation for the subsequent local law.

5. Local Code Analysis/Recommendations

The partner piece to the comp plan analysis is a document that points out potential issues with existing Town Code. Even if the ban you're anticipating will pre-empt of existing regulations it helps to know how Town Code addresses the subject use(s). Do they allow them? Is there a clear indication of legislative intent that contradicts the Town's current position? It's helpful to acknowledge when this occurs and offer a logical explanation as to why the Town's position on the matter may have changed. Code changes may also be needed for clarification especially if the specific use to be banned is part of a larger category of uses that will continue to be allowed.

6. Comp Plan Update

Using the problem statement and the plan analysis completed in Step 4 as a guide, you can now update your plan. Again, the update does not necessarily need to address the specific use but should strengthen language within the overall goals and objectives that would apply to the issue.

The process for updating a comprehensive plan is described in NYS law and yet another very helpful NYSDOS publication called "Zoning and The Comprehensive Plan":

http://www.dos.ny.gov/lg/publications/Zoning_and_the_Comprehensive_Plan.pdf

7. Drafting the Local Law

This is where all the previously completed work comes together. At this point you've defined the problem, you know that the Comprehensive Plan supports action to address it and you've got a good handle on what in Town Code needs to be amended. In addition to technical language that will most likely come from your legal counsel, a local law to ban a land use is going to have:

Statement of intent: This where the Town Board lays out their position and explains why the use should be banned. This would include language from the comprehensive plan analysis.

Definition of What is to be Banned - This is where things can get technical. Your Town Attorney and/or other outside assistance will likely be needed to make sure your language is clear and exact.

The Actual Ban – This is where you simply state that the use as defined is not allowed in your Town.

Other Language –

- ✓ Do you want to allow for exemptions from the law?
- ✓ If the use is in existence anywhere in your Town now, some verbiage that addresses how to handle “pre-existing nonconformities” will likely be needed.
- ✓ Does this local law supersede existing Town or State Law?

Summary: Depending on the issues, drafting a ban can be complicated and made more difficult when dealing with heavily invested landowners, and residents with much more than money at stake.

Following a structured decision making process focuses attention on the facts and provides a much needed framework within which the Town Board, consultants, and others can do their work.