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**Buffalo Commons Workshop March 5, 2020:
Local Land Use, Green Code & Zoning**

[Note: The following is the opinion of Art Giacalone; it is not intended as legal advice.]

A. Art's Outline from June 2007 Continued Legal Education seminar.

“ZONING CHALLENGES: OVERCOMING OBSTACLES”

I. The "Uneven Playing Field" for Residents:

Residents face political, legal, bureaucratic, financial disadvantages:

- A. "Sophisticated developers and compliant officials".
- B. Inadequate notice/time to prepare for hearings; opportunity to be heard.
- C. Difficulties accessing information, despite FOIL and Open Meetings Law.
- D. Legal principles favoring the applicant/municipality.
- E. Short statute-of-limitations periods (often only 30 days).
- F. Economic disparity (developers have “little to lose, much to gain”).

II. Efforts To Further Tilt The Playing Field -

Increasingly hostile legal system, political climate and media =
protection of the interests of residents becomes a more challenging task each year.

- A. The erosion of SEQRA's effectiveness.
- B. The State DEC: Adoption of consistently weaker regulations.
- C. The Judiciary: All-too-frequent disregard of the "Strict Compliance" Rule.
NYCA's prediction has come true: *“Anything less than strict compliance offers an incentive to cut corners and then cure defects only after protracted litigation, all at the ultimate expense of the environment.”*
King v. Saratoga Co. Bd. of Supervisors, 89 NY2d 341 (1996).
- D. Lead agencies: Allowing project sponsors to draft FEIS, Findings Statement.

III. The Creation of an Atmosphere of Intimidation.

- 1. Developers vs. Government Officials: Increased Threats to Sue for Damages.
 - 2. Labeling of Residents as "NIMBYs", "Un-American", "Obstructionists", etc.
- [Note: limited protection in Anti-SLAPP Suit legislation: NYS Civil Rights Law, § 70-a et seq. (actions involving public petition and participation).]*

B. Art's January 31, 2020 posting at <http://WithAllDueRespect.com>.

“BUFFALO’S ZONING ADMINISTRATOR AS FACILITATOR-IN-CHIEF”

Listed “Objective” of the City of Buffalo Planning Division:

“Ensure fair and equitable administration of land use policies and regulatory boards.”

Observation: Developers projects are given advantageous treatment at each step in the zoning/planning process:

I. Prior to Public Announcement of a Zoning Matter

– “Pre-application conferences” serve as strategy sessions where staff and developers’ representatives discuss ways to get around UDO restrictions; there appears to be little effort to encourage developers to conform proposals to UDO/Green Code..

* E.g., QCL’s proposed PUD to circumvent 6-story, 90’ height limits .

* E.g., 983 Michigan Ave. apt. complex (“The Lawrence”), which requires “11” categories of variances – many of which are substantial – in 2 zoning districts.

– *Determining “Complete” application* - Zoning Administrator prematurely deems applications “complete,” then prematurely schedules hearings and meetings – despite errors and omissions in the developers’ submitted papers.

– Zoning Adminr. manipulates the order project’s applications are considered.

* E.g., Planning Bd.’s consideration of QCL’s PUD/rezoning application, SEQRA determination & LWRP consistency review separate from the Pl. Bd.’s public hearing on major site plan review, eliminating public’s opportunity to address three critical topics.

II. Scheduling and Noticing of Public Hearings/Meetings

– Scheduling back-to-back public meetings/hearings, which places a large burden on the public, and eliminates the likelihood that the Common Council and/or the public will receive the Planning Bd.’s written recommendations prior to the next public hearing.

* E.g., 1/13/20, 4pm, Pl. Bd. public meeting (not “public hearing”) on QCL’s PUD + SEQRA + LWRP consistency reviews; the following day, at 1pm, the Common Council Legislation Committee’s public hearing on the proposed PUD.

– Scheduling of Pl. Bd. site plan public hearings despite ZBA’s tabling variance.

* E.g., on 1/27/20, Pl. Bd. conducts public hearing on 943 Michigan Ave. project (“The Lawrence”) despite ZBA’s tabling of variance application 1/15/20. As a result, site plan under consideration violates more than a dozen UDO standards.

[Note: UDO requires Pl. Bd. to make a written finding on “approval standards,” 1st of which is: “The project complies with all applicable standards” of UDO.]

– Publishing and mailing of inadequate notices for public hearings.

* E.g., no indication “943 Michigan Ave. – Construct multiple-unit residential building” application involved 129 units, needed 11 categories of substantial variances, and included 9 parcels on Maple St.

[Note: Under UDO, absentee landlords, not tenants, receive mailed notices.]

– Voluminous and technical on-line material in Pl. Bd., ZBA, Common Council “Journal” often not available until 3-5 days prior to scheduled public hearing; “Journals” frequently modified shortly before hearing w/o public’s knowledge of added material.

C. Last-minute “support” provided by OSP staff to Pl. Bd., ZBA members (but, not available to the public).

– Staff Reports provided to members of Pl. Bd. and ZBA are markedly one-sided, disregarding perspective of neighbors, and community organizations.

* E.g., see my 01-20-20 blog post with annotated critique of Pl. Bd.’s staff report re QCL PUD application at <https://withallduerespectblog.com/2020/01/20/buffalos-planning-board-and-public-are-owed-a-balanced-staff-report-on-buchheits-qcl-project/>

– OSP staff, without instructions from the “lead agency,” draft SEQRA Determinations of Significance, nearly 100% of the time providing a “Negative Declaration.”

– Neither the Staff Reports, nor Negative Declarations, are informed by the public’s comments, concerns.

D. Public hearings fail to provide the public with an adequate opportunity to address projects.

– Due to the disadvantages noted above, the public is greatly handicapped at public hearings.

– Virtually all public hearings involve a 3-minute limit for each individual opposing a project.

* E.g., Residents and activists were given 3 minutes at the 1/14/20 Legislation Committee’s public hearing on the QCL PUD to address approximately 600 pages of documents. The public was not given an opportunity to rebut the “reply” statements made by the applicant’s representatives (but, reluctantly, Chair left public hearing open).

– Public hearings are closed despite board’s request for additional information, modifications from developers. *[Note: Request by board to have project sponsor meet with residents often ploy that ends up being used against residents.]*

E. Etc., Etc. Add your own examples.