PRESERVING OPEN SPACE IN LAND USE DECISIONS

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Cluster subdivision purpose:
“to enable and encourage flexibility of design and development of land in such a manner as to preserve the natural and scenic qualities of open lands.”
Court of Appeals by vote of 4-3 upheld a mandatory conservation restriction intended to run with the land in perpetuity as a condition of site plan approval

- Already 4 conservation overlays
- No public access
- Supported by a comprehensive plan
Important distinction:

- Conservation of natural or cultural resources of lasting value (viewsheds, habitats, aquifers, ridgelines)
  
  or

- Preservation of open space to achieve a desired residential or commercial density (e.g. average density zoning)
An agreement between two parties limiting land use that can last in perpetuity – authorized by ECL – note amendment clause

- Donations are regulated by IRS
- Purchased easements are regulated by the purchaser – no tax deduction
- Mandated easements are required by planning boards -- no tax deduction
Limitations of Land Trusts for Mandated Easements

- Mission of the land trust
- Burden of monitoring
- Burden of enforcement

Make the land trust a partner in the development of the layout
Limitations for Municipalities for Mandated Easements

- Budgeting for ongoing expense of holding and monitoring easement in perpetuity
- Authority of local laws
- Allocation of staff
- Changing municipal budgets
- Public purpose vs. private benefit
Deed Restrictions and Restrictive Covenants

- Limitations on enforcement (estoppel, laches and waiver)
- Cannot be held by third party
- Not authorized to last in perpetuity
- Easily amended by any subsequent reviewing board
Term Easements

- Authorized by the Conservation Easement Enabling Act
- Questionable investment for a land trust
- Changing municipal attitudes and resources
- Appropriate for a world undergoing climate change?
Issues:
- Wide variety of provisions in New York zoning laws with many flaws
- 2010 Stormwater Management Design Guidance manual

To do:
- Must have basis in comprehensive plan, environmental plan or habitat study
- Designate critical environmental areas
Before subdivision or site plan is submitted, applicant must complete a Conservation Analysis:

“inventory maps, survey and topographic maps, written description of the land, and a written analysis of a conservation value of various site features.”
Town of Sand Lake Code (Joel Russell)

- Constrained acreage
- Active farmland, ag districts
- Public trail corridors
- Scenic viewsheds
- Geological features
- Aquifers and recharge areas
- Historic sites
- Parks and recreation lands
- Unfragmented forest land
- Buffer areas for screening
- Stone walls
- Erodable soils
- Trees >30” in diameter
Hudsonia Habitat Mapping Program

- Large-scale (townwide) projects to identify and map habitats of special ecological importance
- Uses variety of map and GIS resources to create a preliminary map of significant habitats
- Field assessments to verify and correct the habitats on the preliminary map
Amenia
Beekman
Fishkill and Sprout Creek
Hyde Park
Marbletown
North East
Pine Plains
Poughkeepsie
Rhinebeck
Stanford
Warwick
Washington
Woodstock
Purpose broadly stated

- Protect significant biological resources
- Avoid loss of habitat
- Avoid adverse effects on watersheds
- Facilitate biodiversity conservation
- Maintain healthy ecosystems
- Cost effective to protect natural resources
Incorporate habitat assessments in decision-making of all reviewing boards

To use Hudson River Estuary Corridor Biodiversity Assessment Manual (Hudsonia)

Significant habitat areas become primary conservation areas in existing resources and site analysis plan
Habitat assessment mandatory for all development reviews subject to SEQRA
Must be completed prior to submission of a formal application
Hudsonia’s report must be used
Board may require a site-specific habitat assessment
Site-specific habitat assessment

- Soils and geological information
- Habitat descriptions
- Acreage for each habitat to be impaired
- Identification of all special habitats
- Habitat assessment—offsite and onsite
- Assessment of habitat quality
- Identify wildlife of greatest conservation need
Site-specific habitat report

- Site overview with bedrock, geology and soils
- Habitat descriptions
- Indicators of habitat quality
- Habitat map
- Soils map
- Vegetation and wildlife list with locations
- Narrative discussion/potential impacts
- Recommendations
Conclusion

- Be sure a strong comprehensive plan or environmental survey supports the zoning
- Allow flexibility in use of conservation easements and deed restrictions
- Require conservation analysis prior to submission of development plans
- Use conservation easements to protect lands of significant conservation value
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