

## **APPENDIX A - WATERFRONT CONSISTENCY REVIEW LAW**

### **Chapter 226. WATERFRONT CONSISTENCY LAW**

[HISTORY: Adopted by the Town Board of the Town of Clay 3-15-2010 by L.L. No. 2-2010. Amendments noted where applicable.]

#### **GENERAL REFERENCES**

Building construction — See Ch. 81.

Environmental quality review — See Ch. 97.

Flood damage prevention — See Ch. 112.

Green areas — See Ch. 126.

Subdivision of land — See Ch. 200.

Zoning — See Ch. 230.

#### **§ 226-1. Title.**

This chapter is to be known as the "Waterfront Consistency Law" of the Town of Clay.

#### **§ 226-2. Legislative authority; purpose.**

- A. This chapter is adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization of Coastal Areas and Inland Waterways Act of the State of New York (Article 42 of the Executive Law).
- B. The purpose of this chapter is to provide a framework for agencies of the Town of Clay to consider the policies and purposes contained in the Local Waterfront Revitalization Program when reviewing applications for actions or direct agency actions located in the waterfront area; and to assure that such actions and direct actions are consistent with said policies and purposes.

#### **§ 226-3. Legislative intent.**

- A. It is the intention of the Town of Clay that the preservation, enhancement and utilization of the natural and man-made resources of the unique waterfront area of the Town take place in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate population growth and economic development.

Accordingly, this chapter is intended to achieve such a balance, permitting the beneficial use of waterfront resources while preventing loss of fish and wildlife; diminution of open space areas or public access to the waterfront; erosion of shoreline; losses due to flooding, erosion and sedimentation; or permanent adverse changes to ecological systems.

- B.** The substantive provisions of this chapter shall only apply while there is in existence a Local Waterfront Revitalization Program which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

#### **§ 226-4. Definitions.**

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

#### **ACTIONS**

Either Type I or unlisted actions as defined in SEQRA regulations (6 N.Y.C.R.R. 617.2) which are undertaken by an agency and which include:

- 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, that:

- (1) Are directly undertaken by an agency; or
- (2) Involve funding by an agency; or
- (3) Require one or more new or modified approvals from an agency or agencies.

- B.** Agency planning and policy-making activities that may affect the environment and commit the agency to a definite course of future decisions;

- C.** Adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; and

- D.** Any combinations of the above.

#### **AGENCY**

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

#### **CONSISTENT**

That the action will fully comply with the LWRP policy standards and conditions and, whenever practicable, will advance one or more of them.

#### **DIRECT ACTIONS**

Actions planned and proposed for implementation by an agency, such as, but not limited to, a capital project, rule making, procedure making and policy making.

#### **LOCAL WATERFRONT REVITALIZATION PROGRAM (LWRP)**

The Local Waterfront Revitalization Program of the Town of Clay, approved by the Secretary of State pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law, Article 42), a copy of which is on file in the Office of the Clerk of the Town of Clay.

#### **WATERFRONT AREA**

The Waterfront Revitalization Area delineated in the Town's Local Waterfront Revitalization Program.

#### **WATERFRONT ASSESSMENT FORM (WAF)**

The form used by an agency to assist it in determining the consistency of an action with the Local Waterfront Revitalization Program.

#### **§ 226-5. Review of actions.**

- A.** Whenever a proposed action is located in the Town's waterfront area, an agency shall, prior to approving,

funding or undertaking the action, make a determination that it is consistent with the LWRP policy standards and conditions set forth in Subsection [I](#) herein.

- B.** Whenever an agency receives an application for approval or funding of an action or as early as possible in the agency's formulation of a direct action to be located in the waterfront area, the applicant, or, in the case of a direct action, the agency, shall prepare a Waterfront Assessment Form (WAF) to assist with the consistency review.
- C.** The agency shall refer a copy of the completed WAF to the Waterfront Development Committee within 10 days of its submission and, prior to making its determination, shall consider the recommendation of the Waterfront Development Committee with reference to the consistency of the proposed action.
- D.** After referral from an agency, the Waterfront Development Committee shall consider whether the proposed action is consistent with the LWRP policy standards and conditions set forth in Subsection [I](#) herein. The Waterfront Development Committee shall require the applicant to submit all completed applications, WAFs and any other information deemed to be necessary to its consistency recommendation.
- E.** The Waterfront Development Committee shall render a written recommendation to the agency within 30 days following referral of the WAF from the agency, unless extended by mutual agreement of the Committee and the applicant or in the case of a direct action, the agency.
  - (1)** The recommendation shall indicate whether, in the opinion of the Waterfront Development Committee, the proposed action is consistent with or inconsistent with one or more of the LWRP policy standards or conditions and shall elaborate in writing the basis for the opinion. The Waterfront Development Committee shall, along with the consistency recommendation, make any suggestions to the agency concerning modification of the proposed action to make it consistent with the LWRP policy standards and conditions or to greater advance them.
  - (2)** In the event that the Waterfront Development Committee's recommendation is not forthcoming within the specified time, the referring agency shall make its decision without the benefit of the Committee's recommendation.
- F.** If the agency and the Committee concur in the consistency of the proposed action, the agency may proceed with the action. In the event that the agency, after reviewing the written recommendation of the Committee, finds that it disagrees with the consistency recommendation of the Committee, the agency shall within 15 days prepare a written finding detailing its position and transmit it to the Committee. The Committee and the agency shall meet to resolve their differences within 15 days of the Committee's receipt of the agency's finding.
- G.** If the Committee and the agency cannot reach a mutually agreeable determination of consistency, the matter will be referred to the Town Board of the Town of Clay for a finding of consistency. The agency shall take no action until the Town Board has made a determination and finding of consistency with the LWRP.
- H.** The provisions of [§ 226-5G](#) shall not apply to the Zoning Board of Appeals. Instead, where the Zoning Board of Appeals is the agency, the Zoning Board of Appeals shall consider the written consistency recommendation of the Committee when reviewing and considering an application for a variance.
- I.** Actions to be undertaken within the waterfront 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 the Town of Clay LWRP, a copy of which is on file in the Town Clerk's office and available for inspection during normal business hours. In the case of direct actions, the agency shall also consult with the LWRP in making its consistency determination. The action shall be consistent with the policy to:
  - (1)** Revitalize and redevelop deteriorated and underutilized waterfront areas for commercial, industrial, cultural, recreational, and other comparable uses.

- (2) Facilitate the siting of water-dependent uses and facilities on or adjacent to coastal waters.
  - (3) Strengthen small harbors by maintaining the mix of traditional uses, assuring safe navigation and resolving use conflicts and competition through harbor and water surface use management.
  - (4) Encourage the location of development in areas where public services and facilities essential to such development are adequate.
  - (5) Significant fish and wildlife habitats will be protected, preserved, and, where practical, restored to maintain their viability as habitats.
  - (6) In order to minimize damage to natural resources and property from flooding and erosion, development will be sited away from hazard areas wherever practical, and natural flooding and erosion protective features will not be degraded.
  - (7) Erosion protection structures shall be constructed only if they are necessary to protect human life, existing development, or new water-dependent development and will result in no measurable increase in erosion or flooding at other locations. Nonstructural measures shall be used whenever possible. Public funds shall only be used where the public benefits outweigh the long term costs.
  - (8) Maximize public access and recreational opportunities to the shoreline and to waterways.
  - (9) Protect, enhance and restore structures, districts, and sites that are of significance to the history, architecture, archeology or culture of the state, its communities, or the nation.
  - (10) Protect and improve the visual quality of the waterfront.
  - (11) Municipal, industrial, and commercial discharge of effluent and pollutants, including, but not limited to, toxic and hazardous substances, into water bodies will conform to state and national water quality standards.
  - (12) Policies and management objectives of approved local waterfront revitalization programs will be considered while reviewing water body classifications and while modifying water quality standards; however, those waters already overburdened with contaminants will be recognized as being a development constraint.
  - (13) Best management practices will be used to ensure the control of stormwater runoff, combined sewer overflows, and the nonpoint discharge of excess nutrients, organics, and eroded soils into state waterways.
  - (14) Discharge of waste materials into state waters from vessels subject to state jurisdiction will be limited so as to protect significant fish and wildlife habitats, recreational areas, and water supplies.
  - (15) Excavation, dredging, and dredge spoil disposal will be undertaken in a manner which protects fish and wildlife habitats, scenic resources, natural protective features, important agricultural land, and wetlands, and does not cause an increase in the erosion of such land.
  - (16) Preserve and protect wetlands and the benefits derived from these resources.
- J.** If the agency 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 determining agency makes a written finding with respect to the proposed action that:
- (1) 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;
  - (2) The action would be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards and conditions;

- (3) The action will advance one or more of the other LWRP policy standards and conditions; and
- (4) The action will result in an overriding Town, regional or state-wide public benefit.

Such a finding shall constitute a determination that the action is consistent with the LWRP policy standards and conditions.

- K. Each agency shall maintain a file for each action made the subject of a consistency determination, including any recommendations received from the Waterfront Development Committee. Such files shall be made available for public inspection upon request.

#### **§ 226-6. Enforcement.**

- A. A Town Code Enforcement Officer shall be responsible for enforcing this chapter. No work or activity on a project in the waterfront area which is subject to review under this chapter shall be commenced or undertaken until the Code Enforcement Officer has been presented with a written determination from an agency that the action is consistent with the Town's LWRP policy standards and conditions.
- B. In the event that an 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 the project so long as a stop-work order is in effect.

#### **§ 226-7. Penalties for offenses.**

- A. A person who violates any of the provisions of, or who fails to comply with any condition imposed by, this chapter shall have committed a violation, punishable by a fine not exceeding \$500 for a conviction of a first offense and punishable by a fine of \$1,000 for a conviction of a second or subsequent offense. For the purpose of conferring jurisdiction upon courts and judicial officers, each week of continuing violation shall constitute a separate additional violation.
- B. The Town Attorney is authorized and directed to institute any and all actions and proceedings necessary to enforce this chapter. Any civil penalty shall be in addition to and not in lieu of any criminal prosecution and penalty.

#### **§ 226-8. Severability.**

The provisions of this chapter are severable. If any provision of this chapter is found invalid, such finding shall not affect the validity of this chapter as a whole or any part or provision hereof other than the provision so found to be invalid.

#### **§ 226-9. When effective.**

This chapter shall take effect immediately upon its filing in the office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.