

## Comprehensive Plan Committee

As a result of a number of public discussions over several years on matters relating to comprehensive community planning and the impacts of the rapid growth our community is experiencing, the Gardiner Town Board acknowledges a shared community goal to "protect and preserve Gardiner's rural character, economy and community."

Notwithstanding that Gardiner's Master Plan (March 1992) is a fine document with many worthy goal statements, the Town Board seeks to further the afore stated goal by updating and enhancing the master plan and aligning zoning laws and administrative practices with the master plan. In accordance with NYS Town Law, Section 272a, the Town Board hereby establishes a Comprehensive Plan Committee to act on its behalf and charges the CPC to undertake the following:

1. Develop and prioritize a comprehensive list of planning and zoning issues to be reviewed. *- hamlet only*
2. Undertake research and assemble a resource library useful to the work of the committee.
3. Solicit and document community input essential to informed planning and zoning debate and decision making.
4. Review the 1992 master plan to identify aspects that warrant update and/or enhancement.
5. Review current zoning code for aspects that are contrary to or inadequate to realize the guidance of the master plan.
6. Review current administrative practices to identify any that might warrant update and/or enhancement to better support the goals of the master plan.
7. Prepare an implementation plan for addressing any identified deficiencies or proposed improvements to the master plan, zoning code and/or municipal practices.

Implementation plan should include a time line, budgetary requirements and any other recommendations necessary for Town Board evaluation and approval.

Implementation plan may include recommendations for additional committees to undertake specific tasks (ie. Hamlet Development).

8. Present a report of findings and an implementation plan to the Town Board no later than the July Town Board Workshop Meeting and seek Town Board authorization to proceed with the implementation plan.

## MEMBERSHIP

The CPC shall be comprised of 10 individuals representing a cross section of the Gardiner community:

- 1 Chairperson
- 1 Planning Board representative
- 1 Zoning Board of Appeals representative
- 1 Zoning Enforcement Officer
- 1 Town Supervisor
- 1 representative of commercial or industrial business
- 1 representative of tourism-related business
- 1 representative of agriculture
- 1 representative of homeowner/taxpayer
- 1 representative of community/volunteer service organizations

Members shall be appointed by the Town Board and shall serve for the duration of the project not to exceed the time line established in an approved implementation plan.

Committee members who miss three or more consecutive meetings will have vacated their seat and the Town Board shall appoint a replacement.

## ADMINISTRATION

The Town Board will appoint a chairperson for the CPC. The chairperson shall preside at all meetings, appoint a vice chairperson and sub-committees.

The CPC shall operate on a consensus basis reserving a majority rule vote to resolve issues on which consensus cannot be achieved. All decisions of the CPC will indicate if it was reached by consensus or by vote.

The CPC will hold meetings at least monthly at a regularly scheduled time and may meet more often if necessary, after 48 hours advance notice to the Town Clerk and local newspapers. All meetings of the CPC must comply with the Open Meetings Law. The CPC and its sub-committees may employ the services of community volunteers to conduct research, tabulate results and other administrative supports.

Minutes to meetings will be kept, promptly typed, and disseminated.

## BUDGET

The Town Board will allocate \$2,500 to cover expenses related to minute taking and production, copy and mail costs, research and acquisitions, and other related expenses necessary to achieving the above stated tasks #1 - #8.

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## Laurie Willow

33 Gibbons Lane  
New Paltz, NY 12561  
Email: LWILLOW@AOL.COM

Bus. (845) 255-7666  
Res. (845) 255-7827  
Fax (845) 255-7815

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Jack Hayes, Supervisor  
Members of the Town Board  
Gardiner, NY 12525

July 27, 2002

Dear Supervisor Hayes and Members of the Town Board,

This letter concerns the proposed law sponsored by Bill Richards that requires a developer to show how he or she has taken the Comprehensive Master Plan of the Town of Gardiner into consideration in the design of a major subdivision.

This proposed legislation is an important step in the development of Gardiner's policy towards future growth. I do feel however, that in order for this legislation to have any effect at all, it must include all proposals that come before the Town Board, the Planning Board and the Zoning Board of Appeals. This would include not just major subdivisions, but minor subdivisions, special use permits and variances. I would ask why any of these applications would be exempt from the same process.

The Master Plan was developed at considerable expense of time and money. It is a document that is still very current, a wheel that may not need re-inventing. It is time to bring the zoning laws of Gardiner into compliance with its Master Plan.

Thank you for your consideration.

Sincerely,



Laurie Willow

## **Jack Hayes**

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**From:** <Erenzo@aol.com>  
**To:** <pngs1@hvi.net>; <MBTBCBSBMB@aol.com>; <PEC4LJW@aol.com>; <logtsupv@hvc.rr.com>; <MRBIG136@aol.com>; <tantillo@pbis.net>  
**Sent:** Monday, October 28, 2002 9:14 AM  
**Subject:** MULTIPLE BOARDS MEETING

Board Members:

I haven't everyone's email address, so I'm sending this along to those whose addresses I have.

The agenda for tonight's meeting indicates the topic to be the MASTER PLAN. I urge Boards members to focus on the ZONING LAW. The Master Plan is strong and appears to reflect what all parties express regularly is their shared goal for the future of the Town.

The stumbling block is a Zoning Law that does not reflect the Development Criteria set out in the Zoning Law. New York State law requires Towns which accept and implement a Comprehensive Master Plan to bring their zoning into conformance with that Plan. I strongly urge the Boards to take action to resolve the contradictions between the two by:

- 1) Agreeing the zoning must be completely revised;
- 2) Selecting a Chair-person with the authority to organize a Zoning Rewrite Committee to produce a revised Zoning Law in conformance with the Master Plan;
- 3) Set a deadline for the submission of a Draft Zoning Law to the Planning Board for review;
- 4) Provide a reasonable budget to the Zoning Rewrite Committee for the retention of professional services to review the Draft;
- 5) Set a goal for the final deadline for a vote to accept or decline the revised Zoning Law, ideally to coincide with the Nov 2003 election.

Ralph Erenzo  
Tuthilltown  
Gardiner, NY

10/28/02

# FAX TRANSMISSION

**YOUNG, SOMMER . . . LLC**

Young, Sommer, Ward, Ritzenberg, Baker & Moore, LLC

Executive Woods Office

5 Palisades Drive

Albany, New York 12205

(518) 438-9907

Fax: (518) 438-9914

e-mail: [kyoung@youngsommer.com](mailto:kyoung@youngsommer.com)

[www.youngsommer.com](http://www.youngsommer.com)

TO: *Jack Hayes* FAX: *845-255-9146*  
*Town Board Members*  
*James Freiband* *845-928-7317*

FROM: Kevin M. Young, Esq.  
Ext. 225

DATE: *6/9/03*

PAGE(S): *14*, including this cover sheet.

COMMENTS:

COPY TO FOLLOW BY MAIL: YES \_\_\_\_\_ NO X

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KAREN WADE CAVANAGH  
MICHAEL J. MOORE  
KENNETH S. RITZENBERG  
DEAN S. SOMMER  
DOUGLAS H. WARD  
KEVIN M. YOUNG

DAVID C. BRENNAN  
W. ANDREW HAZELTON  
JAMES A. MUSCATO, II  
ROBERT A. PANASCI

YOUNG, SOMMER, WARD, RITZENBERG, BAKER & MOORE, LLC

COUNSELORS AT LAW

ALL WRITTEN CORRESPONDENCE TO:  
EXECUTIVE WOODS, FIVE PALISADES DRIVE, ALBANY, NY 12205  
PHONE: 518-438-9907 • FAX: 518-438-9914

SARATOGA OFFICE:  
P.O. BOX 763, 468 BROADWAY, SARATOGA SPRINGS, NY 12866  
PHONE: 518-580-0163

WWW.YOUNGSOMMER.COM

OF COUNSEL  
SONYA K. DEL PERAL  
ELIZABETH M. MORSS  
THOMAS J. NEIDL  
WILLARD H. PECK  
KRISTIN CARTER ROWE  
LAWRENCE R. SCHILLINGER  
DAVID R. WOOLEY

*Nicole A. Banagan, Paralegal*  
*Laura K. Ross, Paralegal*  
*Vicki G. Schlierer, Paralegal*

WRITER'S TELEPHONE EXTENSION: 224  
DBRENNAN@YOUNGSOMMER.COM

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*Via E-Mail and fax*

MEMORANDUM

TO: Jack Hayes, Supervisor  
Town Board Members  
James Freiband, Principal Planner

FROM: Kevin Young, Esq.

RE: Town of Gardiner - Moratorium on Subdivision Approval

DATE: June 9, 2003

Attached is a memorandum prepared by this firm on the procedural and substantive requirements that the Town of Gardiner must follow in order to adopt a moratorium on subdivision approvals. The memorandum was prepared at the town's request in March, 2003 and is being resubmitted due to the recent petition submitted to the Town Board requesting a moratorium. Before the town Board can adopt a moratorium, the Town Board must comply with a variety of procedural soaps of requirements including, but not limited to the following:

- (1) Adopt a moratorium in the form of a local law amending the zoning ordinance in accordance with the Municipal Home Rule Procedures. The procedure for adopting a local law is attached hereto as Exhibit B.
- (2) The town should submit the proposed local law under Section 239-m of the General Municipal

(3) Pursuant to Municipal Home Rule Law section 22, the moratorium should reference the specific provisions of the Town Law that it will supersede including the default approval provisions contained in Town Law Sections 276 (5), (6), (7), (8), (9), (10) and (11).

(4) A town may not invoke a moratorium solely as a pretext to address community opposition. The town must establish that (1) it has acted in response to dire necessity; (2) that action is reasonably calculated to alleviate or prevent the crisis condition; and (3) that it is presently taking steps to rectify the problem. Matter of Charles vs Diamond, 41 N.Y.2d 318, at 234 (1977).

Before proceeding to adopt a moratorium, I recommend that the town Board refer the proposed law to the Planning Board for recommendations and justification relating to the proposed law. Once the Town Board has a draft for public comment, the Town Board should also refer the proposed moratorium to the Ulster County Planning Board for comment. Finally, the Town Board should request that the Town Attorney prepare a proposed ordinance that addresses vested rights, provides a variance procedure, references the sections of the New York State Town Law being superseded and provides appropriate justification.

Enclosure

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**EXHIBIT A**



# YOUNG, SOMMER ... LLC

YOUNG, SOMMER, WARD, RITZENBERG, WOOLEY, BAKER & MOORE, LLC

COUNSELORS AT LAW

ALL WRITTEN CORRESPONDENCE TO:  
EXECUTIVE WOODS, FIVE PALIBADES DRIVE, ALBANY, NY 12205  
PHONE: 518-438-9907 • FAX: 518-438-9914

SARATOGA OFFICE:

P.O. BOX 763, 488 BRADWAY, SARATOGA SPRINGS, NY 12866  
PHONE: 518-580-0183

WWW.YOUNGSOMMER.COM

WRITER'S TELEPHONE EXTENSION: 225  
KYOUNG@YOUNGSOMMER.COM

OF COUNSEL:  
SONYA K. DEL PERAL  
ELIZABETH M. MORSE  
THOMAS J. NEIDL  
WILLARD H. PECK  
KRISTIN CARTER ROWE  
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KEVIN M. YOUNG

DAVID C. BRENNAN  
W. ANDREW HAZELTON  
JAMES A. MUSCATO, II  
ROBERT A. PANASCI

## MEMORANDUM

TO: Kevin M. Young; David C. Brennan  
FROM: Robert A. Panasci  
RE: Town of Gardiner - Possibility of Moratorium on Subdivision Approvals  
DATE: March 3, 2003

The issue is to address the procedural and substantive requirements that the Town of Gardiner must follow in order to adopt a moratorium on subdivision approvals. First, the Town must have a valid reason for issuing the moratorium. After the Town creates a very thorough record for its reasons for a moratorium, there are specific procedural requirements that the Town must follow in adopting the moratorium.

The Town does not have to comply with the requirements of SEQRA because a moratorium is listed as an "action" that is exempt from SEQRA review. Another issue that may arise after the adoption of the moratorium is whether a landowner acquired some vested rights before the moratorium. As discussed below, the landowner has to demonstrate that he has undertaken substantial construction and made substantial expenditures prior to the effective date of the moratorium.

### REASONS FOR ISSUING A MORATORIUM

Land use moratoria are appropriate mechanisms for addressing long-range community planning and zoning objectives. The courts will look carefully to see that the terms of a moratorium express a relatively short, but specific duration, and that such a duration is closely related to the municipal actions necessary to address the underlying issues.

A town can impose moratoria or other temporary measures in order to deal with a problem plaguing the town. The Court of Appeals has stated that:

[h]owever, the crucial factor, perhaps even the decisive one, is whether the ultimate economic cost of the benefit is being shared by the members of the community at large, or rather, is being hidden from the public by the placement of the entire burden upon particular property owners.

Matter of Charles v. Diamond, 41 N.Y.2d 318, 325 (1977). Temporary restraints necessary to promote the overall public interest are permissible. Id.

A municipality may not invoke its police powers solely as a pretext to ease strident community opposition. To justify interference with the beneficial enjoyment of property the municipality must establish that (1) it has acted in response to a dire necessity; (2) that its action is reasonably calculated to alleviate or prevent the crisis condition; and (3) that it is presently taking steps to rectify the problem. Matter of Charles v. Diamond, 41 N.Y.2d at 324. While the case law does not define what may constitute a "dire necessity," it can be inferred that an emergency situation must exist in order to be a "dire necessity." Some examples of a "dire necessity" are:

1) with consultation of State and Federal agencies undertook the adoption of a master plan for the town preparatory to a comprehensive change in its zoning ordinance. Rubin v. McAlevey, 54 Misc.2d 338, 341 (Sup. Ct. Rockland Co. 1967)(court allowed 90-day moratorium to freeze all improvements in areas where the master plan may have made zoning classification changes); McDonald's Corp. v. Village of Elmsford, 156 A.D.2d 687, 689 (2<sup>nd</sup> Dept. 1989)(court held that two consecutive six month moratorium on the construction of fast food restaurants was valid because town was responding to problems with traffic congestion and littering); West Lane Properties v. Lombard, 139 A.D.2d 748, 748-49 (2<sup>nd</sup> Dept. 1988)(court held that 90-day moratorium for special permits, use permits, building permits and site plan approvals in order to permit town to consider rezoning was valid);

2) village was recently incorporated and had an annual budget of \$135,000, and was being asked to absorb the costs of widening one of its roads at a cost of \$540,000, four times its annual budget after county backed out of funding. Creates a condition dangerous to public health and welfare. Board of Trustees Village of Lansing v. Pyramid Companies, 51 A.D.2d 414, 417 (3<sup>rd</sup> Dept. 1976);

3) city sewer system was grossly inadequate for present use and new connections to old system was not advisable. Belle Harbor Realty Corp. v. Kerr, 35 N.Y.2d 507 (1974)

When the general police power is invoked under such circumstances it must be considered an emergency measure and is circumscribed by the exigencies of that emergency. Belle Harbor Realty

Corp. v. Kerr, 35 N.Y.2d 511-12. One reason a court may hold that a law is valid is because the law is in effect for an expressly certain, not an indefinite, time period, and because that time period was reasonably short. Rubin v. McAlevey, 54 Misc.2d at 341.

A moratorium resolution may be a reasonable measure designed to temporarily halt development while the town considered comprehensive zoning changes. Matter of Charles v. Diamond, 41 N.Y.2d at 325; West Lane Properties v. Lombard, 139 A.D.2d at 748-49.

### PROCEDURES FOR ADOPTING MORATORIUM

The courts will invalidate a moratorium unless the municipality strictly adheres to the procedural rules of the state zoning enabling legislation. These rules are found in Town Law §§ 264 and 265.

There is an issue whether a moratorium on building constitutes zoning. The specific question whether a building moratorium is zoning has not been directly answered in published opinions. However, there are indications that moratoria are zoning measures. B & L Development Corp. v. Town of Greenfield, 146 Misc.2d 638, 639 (Sup. Ct. Saratoga Co. 1990)(striking down moratorium for failing to follow the zoning procedures). The clear implication is that a moratorium is either zoning, or, if not zoning per se, it is so similar to zoning in quality that zoning procedures must be followed prior to enactment. Id. A moratorium can not be regarded in a vacuum, but must be considered as an integral part of the total zoning plan. A moratorium is usually used in conjunction with the establishment of a comprehensive zoning plan. Id.

The law is well settled that failure to comply with the referral requirements of Section 239-m of the General Municipal Law is a jurisdictional defect which renders the enactment invalid. Caruso v. Town of Oyster Bay, 172 Misc.2d 93, 97 (Sup. Ct. Nassau Co. 1997)(invalidating moratorium for failing to refer the proposed enactment to the county planning commission). General Municipal Law 239-m provides that:

2. Referral of proposed planning and zoning actions. In any town... which is located in a county which has a county planning agency..., each referring body shall, before taken final action on proposed actions included in subdivision three of this section, refer the same to such county planning agency.

3. Proposed actions subject to referral. (a) The following actions shall be subject to the referral requirements of this section.

(ii) adoption or amendment of a zoning ordinance or local law.

General Municipal Law § 239-m.

The language of General Municipal Law indicates that the proposed enactment of a moratorium must be referred to the County Planning Commission before final action is taken. Caruso v. Town of Oyster Bay, 172 Misc.2d at 97; B & L Development Corp. v. Town of Greenfield, 146 Misc.2d at 639. Failure to refer the moratorium prior to adoption renders the moratorium invalid as jurisdictionally defective.

The Court of Appeals has dealt with a moratorium on subdivision approvals. Turnpike Woods, Inc. v. Town of Stony Point, 70 N.Y.2d 735 (1987). The town had adopted a local law temporarily suspending the authority of the town planning board to approve subdivision application. Following refusal by the planning board to consider the application, the developer sued for a default approval under Town Law § 276. This section provides that default approvals may be secured if the planning board fails to make a decision on a subdivision application within a time period required by the statute. In Turnpike Woods, the developer alleged that the town had not acted properly under the Municipal Home Rule Law, to properly supersede the default-approval provision. Turnpike Woods, Inc. v. Town of Stony Point, 70 N.Y.2d at 737.

The Court struck down the moratorium law because the town failed to comply with the Municipal Home Rule Law. If the moratorium acts in any way to supersede a state statute (or its operation), the Town must make certain that (1) that it in fact has the power under the Municipal Home Rule to supersede or amend the state statute in question; and (2) that the local law expressly mentions the section or sections of the statute being superseded, as well as the manner in which they are being superseded.

If the Town determines that it meets the requirements to enact a moratorium on subdivision approvals (see above), then it must follow the procedures set forth below. Applying the law set forth in Turnpike Woods, Inc. to the Town's situation:

- (1) Pursuant to Municipal Home Rule § 10(1)(d)(3), the Town may amend or supersede, any provision of town law relating to the property, affairs or government of the town. Kamhi v. Town of Yorktown, 74 N.Y.2d 423, 439 (1989); Matter of Sherman v. Frazier, 84 A.D.2d 401 (2<sup>nd</sup> Dept. 1982).
- (2) Pursuant to Municipal Home Rule § 22, the Town's moratorium law should contain the specific provisions of the Town Law that it wishes to supersede. The provisions include the default approval provision contained in Town Law § 276(5), (6), (7), (8), (9), (10) and (11).

## APPLICATION OF SEQRA

The State Environmental Quality Review Act (SEQRA) does not apply to moratoria. The proposed adoption of moratorium does not require a determination of significance or the preparation of any other SEQRA documents. Moratoria are "Type II Actions" under the SEQRA regulations. The regulations state that the adoption of a moratorium on land development or construction are not subject to review under the SEQRA regulations. 6 N.Y.C.C.R. § 617.5(c)(30).

## VESTED RIGHTS

There are certain circumstances where a landowner can claim that they have acquired a right to build or to use the property according to the law as it existed prior to the effective date of the moratorium. The Court of Appeals has established a rule regarding the obtaining of vested rights.

The doctrine of vested rights has generally been described as an application of the constitutionally based common-law rule protecting non-conforming uses. Ellington Construction Corp. v. Zoning Board of Appeals of the Inc. Village of New Hempstead, 77 N.Y.2d 114, 122 (1990). The Court defined the two-pronged test for determining whether a landowner had vested rights by stating that:

the New York rule has been that where a more restrictive zoning ordinance is enacted, an owner will be permitted to complete a structure or a development which an amendment has been rendered nonconforming only where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of the amendment.

Ellington Construction Corp. v. Zoning Board of Appeals of the Inc. Village of New Hempstead, 77 N.Y.2d at 122.

The application of the test is dependent upon the facts of the situation. In Pete Drown, Inc. v. Town Board of the Town of Ellenburg, 229 A.D.2d 877 (3<sup>rd</sup> Dept. 1996), the court ruled that the landowner did not have any vested rights because there had been no construction or change on the land itself, and that there was no showing that the owner could not recoup its expenditures. Id. at 229 A.D. at 878.

In New York, a vested right can be acquired when, pursuant to a legally issued permit, the landowner demonstrates a commitment to the purpose for which the permit was granted by effecting substantial changes and incurring substantial expenses to further the development. Town of Orangetown v. Magee, 88 N.Y.2d 41, 47 (1996) (citations omitted). In Lombardi v. Habicht, 293 A.D.2d 474, 476 (2<sup>nd</sup> Dept. 2002), the court determined that the landowners had acquired vested

rights by virtue of their major expenditures and the completion of 80% of the construction of the home pursuant to a validly issued permit.

In the Town's case, the issue of whether a landowner has any vested rights depends on the facts of that situation. It appears that if the landowner has not commenced construction on the project, then he may not be able to argue that he has acquired vested rights.

### DRAFTING THE MORATORIUM LAW

Based on our research, if the Town decides to adopt a moratorium, it should follow the procedures set forth below:

- (1) Adopt the moratorium in the form of a local law.
- (2) If there is an existing zoning ordinance or law, the moratorium should be treated as an amendment to that ordinance or law. The Town is required to follow the procedural requirements of notice and hearing and possible county referral. As demonstrated above, the procedural requirements must be strictly followed.
- (3) The moratorium should clearly define the activity affected, and the manner in which it is affected. The Town should consider the following questions: Does the moratorium affect construction? Issuance of permits? Actions by boards or commissions? May project review continue or must it be stopped?
- (4) If the moratorium supersedes Town Law (it appears the Town's does), then the moratorium must be adopted by local law, using Municipal Home Rule procedures, and must state, with specificity, the section of Town Law being superseded. In particular, where the moratorium suspends subdivision approvals, it must be made clear in the moratorium law that the default-approval provisions of the subdivision statutes of the Town Law are superseded.
- (5) Create a good written record to establish the valid basis for the moratorium. In the preamble, recite the nature of the particular land use issue, as well as the need for further development of the issue in the community's comprehensive plan and/or in its current land use regulations. Refer to the fact that time is needed for community officials to comprehensively address the issue, without having to allow further development during that time. Such a statement will make it clear that the benefits to the community outweigh the potential burden to the landowners.

(6) The Moratorium must state that it is to be effect for a definite period of time. The moratorium should be no longer than absolutely necessary for the municipality to place permanent regulations in affect.

~~(7) The Moratorium should include a mechanism allowing affected landowners to apply to a board for relief from the moratorium, or it should contain a clear reference to the fact that an owner may make use of the existing variance procedures under the current zoning regulations.~~

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**EXHIBIT B**



JEFFREY S. BAKER  
KAREN WADE CAVANAGH  
MICHAEL J. MOORE  
KENNETH S. RITZENBERG  
DEAN S. SOMMER  
DOUGLAS H. WARD  
KEVIN M. YOUNG

DAVID C. BRENNAN  
W. ANDREW HAZELTON  
JAMES A. MUSCATO, II  
ROBERT A. PANASCI

**YOUNG, SOMMER ... LLC**  
YOUNG, SOMMER, WARD, RITZENBERG, BAKER & MOORE, LLC

COUNSELORS AT LAW

ALL WRITTEN CORRESPONDENCE TO:  
EXECUTIVE WOODS, FIVE PALISADES DRIVE, ALBANY, NY 12205  
PHONE: 518-438-9907 \* FAX: 518-438-9914

SARATOGA OFFICE  
P.O. Box 769, 468 BROADWAY, SARATOGA SPRINGS, NY 12866  
PHONE: 518-580-0163

OF COUNSEL  
SONYA K. DEL PERAL  
ELIZABETH M. MORSE  
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WILLARD H. PECK  
KRISTIN CARTER ROWE  
LAWRENCE R. SCHILLINGER  
DAVID R. WOOLEY

Nicole A. Banagan, Paralegal  
Laura K. Ross, Paralegal  
Vicki G. Schlierer, Paralegal

WWW.YOUNGSOMMER.COM

WRITER'S TELEPHONE EXTENSION: 225  
KYOUNG@YOUNGSOMMER.COM

### MEMORANDUM

TO: Jack Hayes  
FROM: Kevin M. Young  
RE: Gardiner Re: Procedure to Adopt Local Law  
DATE: June 9, 2003

The issue to determine the procedure for adopting a local law.

No local law shall be passed except by at least the majority affirmative vote of the total voting power of the Town of Gardiner. Pursuant to Municipal Home Rule Law (hereinafter "MHR") § 20(1), on the final passage of the local law the question shall be taken by "ayes" and "noes", and the names of the members present and their votes shall be entered in the record, journal or minutes of the proceedings. It should be noted that the style of the local law shall be "Be it enacted by the Town Board (name of legislative body) of the Town of Gardiner as follows:" MHR § 20(2).

A proposed local law may be introduced only by a member of the legislative body at a meeting of such body or as may be otherwise prescribed by the rules of procedure adopted by the legislative body. No local law may be passed until it is in its final form and either (a) each member has a copy of the law at least 7 calendar days, exclusive of Sunday, prior to its final passage, or (b) mailed to each of them at least 10 calendar days, exclusive of Sunday, prior to its final passage. MHR § 20(4). However, where the town supervisor certifies as to the necessity for its immediate passage and such local law is passed by the affirmative vote of two-thirds of the total voting power of the legislative body. MHR § 20(4).

A local law can not be approved by the town supervisor until a public hearing thereon has been had before him. A public hearing held before the town supervisor shall be on such public notice

of at least 3 days as has been or hereafter may be prescribed by a local law on which a hearing shall have been held as prescribed by this section (HMR §20(5) upon 5 days notice or, in the event such a local law is prescribing the length of notice is not adopted, upon 5 days notice. Where the public hearing is before the town supervisor, such notice shall be given by him within 10 days after the local law was presented to him and the hearing shall be held within 20 after being presented with the local law. HMR § 20(5).

Within 20 days after the local law is adopted, the clerk shall file one certified copy in the clerk's office and one certified copy in the office of the Secretary of State. HMR § 27(1). Notwithstanding the effective date of any local law, a local law shall not become effective before it is filed in the office of the Secretary of State. HMR § 27(3). Subject to subdivision 3, every local law shall take effect on the twentieth day after it shall finally have been adopted. HMR § 27(4). The certified copy of the law needs to be filed with the Department of State, Bureau of State Records and Law, Albany, New York. 19 NYCRR § 130.1. Each local law shall be file on a form provided by the department. If additional pages are required, they must be the same size as the form. 19 NYCRR § 130.2. The filing form shall contain entries for the title and number of each local law. Numbering shall be consecutive, beginning with the number one for the first local law filed in each calendar year. The next number in sequence shall be applied to each local law when it is filed, regardless of its date of introduction or adoption. 19 NYCRR § 130.3. The date of filing of a local law shall be the date on which the local law is placed on file by the Department. 19 NYCRR § 130.4.