NEW YORK STATE

Department of State
Local Government

HOT BUTTON LAND USES

Can a Use Be Prohibited?

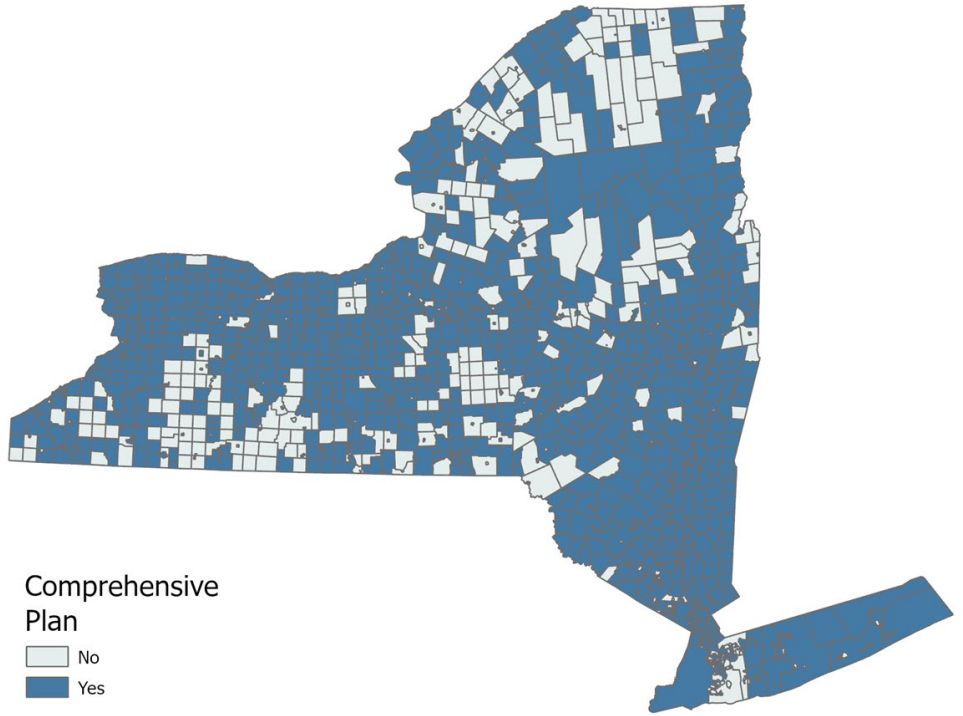
- "Exclusionary zoning" - regulations that tend to exclude low- or moderate-income housing entirely via:
  - Large lot or high minimum flood area requirement
  - Excluding multi-family dwellings or manufactured housing
  - *Berenson v. Town of New Castle (1975)*



- Most non-residential uses may be zoned out if the exclusion is supported by the comprehensive plan
  - Some exceptions include uses related to First Amendment: religious uses, adult uses, sign content

Comprehensive Planning

- Community engagement builds consensus on land use issues
- Reduces controversy
- Legal support for land use decision-making
- Infrastructure investments
  - Identifies areas for municipal & private investment



71% of Local Governments with Comprehensive Plans:

- 98% of Cities
- 64% of Villages
- 73% of Towns

Moratoria

Adopt moratorium law to:

- Update comprehensive plan to consider new uses
- Update regulations to prevent:
  - Hasty decisions
  - Unplanned & inefficient growth
  - Construction inconsistent with comprehensive plan



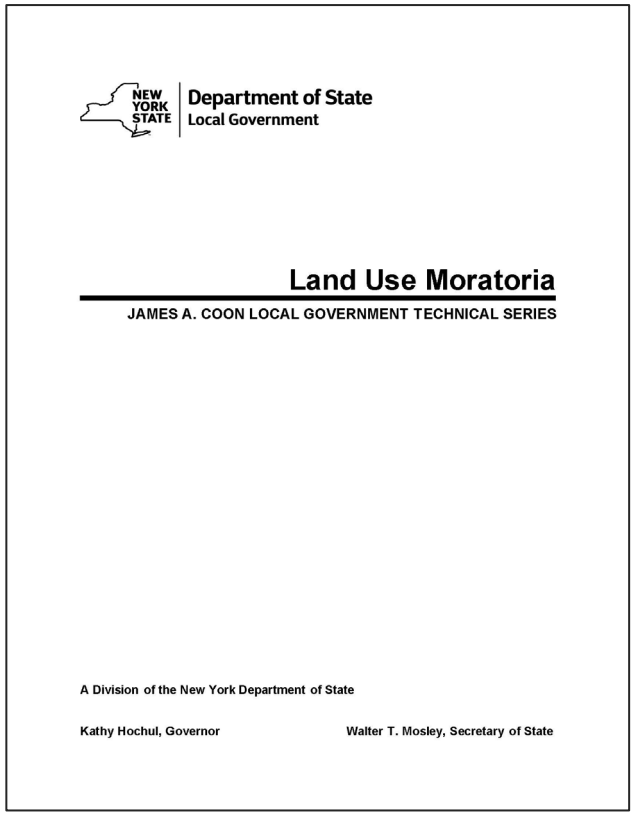
Wrong reasons for moratoria:

- Slow development hoping developer will go away
- Halt development while municipality considers buying land

Moratoria

5 Key Elements of a Moratorium

1. Reasonable time frame relative to action being addressed
2. Valid public purpose
3. Address situation where burden imposed is shared substantially by public at large
4. Strict adherence to statutory adoption procedures
5. Certain expiration time



https://dos.ny.gov/land-use-moratoria

HOT BUTTON USE EXAMPLES

Manufactured Homes

NY Ex. Law, Article 21-B, Title 2 (11/20/15) considers manufactured home equal to single family dwelling "Identical Development Specification and Standards"

Can regulate:

- Health, safety, general welfare
- Zoning (lot size, setbacks as part of regulating single-family residential)
- Skirting, as this is an optional installation



Can't regulate:

- Completely exclude as single-family dwelling
- Foundations
- Based upon age if home passes required NYS Uniform Fire Safety and Building Code inspections

Group Homes for the Disabled

- "A community residence established pursuant to this section and family care homes shall be deemed a family unit, for the purposes of local laws and ordinances."
  - Mental Hygiene Law § 41.34
- Will facility result in a concentration of similar homes to the extent that community character is altered?



Home Day Care

Enforceable: fire, building and health regulations

Not enforceable: anything beyond underlying residential use such as:

- Minimum lot size
- Minimum floor-space per child
- Off-street parking
- Off-street pickup/drop-off areas
- No outdoor play area after __ PM

Definitions are important:

- "Family home day care" and "Group family home day care" allowed by right in single-family and multi-family dwellings
- "Child day care center" and "school age childcare" are different, and fully subject to zoning

Tiny Homes and Shed "Dwellings"

- **Tiny home "dwelling":** 400 SF or less excluding a loft, meeting emergency escape/ rescue openings per Residential Code Appendix Q
  - Principal vs. accessory use
  - Permanent vs. temporary
  - Requiring a foundation, wheel removal
  - Connections to utilities (water, sanitation)
- **Shed dwellings:** pre-assembled, low-cost structure converted to tiny homes or permanent additions often without permits
  - Does not meet NYS Uniform Code
  - Not a "dwelling"





Recreational Vehicles

RVs, motorhomes, campers, house trailers or travel trailers

Common concerns:

- Storage
- Residential use on vacant or improved lots
- Sewage
- Aesthetics
- Tax Implications



Is RV Residential Use Legal in NY?

- RVs don't meet manufacturing requirements for permanent occupancy NYS Uniform Fire Prevention and Building Code
- RVs aren't capable of being well-heated; don't meet NYS Energy Conservation Construction Code
- RVs don't meet US Dept. of Housing and Urban Development (HUD) code regarding manufactured housing

Recommendation:

- Don't give certificates of occupancy to RVs as if they were permanent (like manufactured home)
- Regulate use and storage through local law/ordinance

Regulating Recreational Vehicles

Usage regulations may include:

- General prohibitions
- Usage on site – limit on # of RVs and # of calendar days, address of sewerage
- Location – only certain zones and on-site restrictions
- Storage regulations
- Registration requirements
- Flood area regulations

Storage regulations include:

- Enclosure and/or screening requirements
- Limits on parking location, time and number stored
- May vary by district (densely settled areas vs. rural lots)
  - Street vs. yard vs. driveway, setbacks, and # of calendar days

Home Occupations

- To meet **NYS Residential Code AJ102.5**:
  - Must be wholly within primary structure, not exceeding 15% floor area
  - No more than 1 person not residing there may be employed
  - Inventory/supplies not to occupy more than 50% of permitted area
  - May not involve any hazardous operation
- Activities exceeding the Residential Code must meet additional **nonresidential Uniform Code** standards



Home Occupations

Other Considerations:

- Signage
- Employees
- Customer parking and traffic
- Residential character of neighborhood
- Critical mass of business in commercial districts
- Percentage of property in zoning permitted for business
- Hours of operation
- Location of business equipment, screening
- Delivery frequency



“Barn” Event Facilities



May be protected as part of a farm operation if:

- Directly relate to sale/ promotion of products produced on farm (at least 51% on-farm produced livestock and crops including grain, hops, grapes/fruit/juice);
- Incidental and subordinate to retail sale of beverage/product on-site;
- Hosted by farm or farm customers (not outside, unrelated parties); and
- Feature beverage/product produced at the farm

“Barn” Event Facilities without Ag District Protection

- If barn is not in State Ag District or barn rental revenue exceeds that of food production, municipalities can restrict in zoning:
  - Location
  - Hours of operation
  - Number of events per month
  - Prohibit regular rentals of farm buildings for weddings



Farm Breweries, Wineries, Etc. in State Ag District

- State Alcoholic Beverage Control Laws define farm cidery, farm distillery, farm winery and farm brewery
- Although State Liquor Authority license may allow sale of alcoholic beverages not made from crops grown by farm, they are not part of a farm operation
- Production and sale not necessarily protected under AML Article 25AA § 305-a







Short-Term Rentals in NYS

- No requirement for local gov't to acknowledge use; may define, prohibit and/or regulate as they choose
- Definitions vary, but commonly a rental of less than 30 days with permanent provision for living, sleeping, eating, cooking, sanitation



Short-Term Rental Housing

Pros

- Supplemental income to owners
- Adds tourism infrastructure; often less expensive lodging easier for families/groups
- Interesting tourist experience for guests
- Potential improvement of blighted properties

Cons

- Commercial use in residential district
- Transient guests
- Excessive noise
- Increased traffic
- Unfair competition to hotels
- Lost lodging tax revenue
- Inflated costs/loss of long-term housing

NYS Short-Term Rental Law

- Established rental registry to be administered by counties; information shared with municipalities and NYS
  - Stay dates, number of guests and fees charges
- Counties can pass a local law before December 31, 2025 to opt out or collaborate with other counties on registries
- In those that don't opt out, either host or hosting service will have to register with the county
  - If they don't register, county will be able to impose fines on host and booking agency with assistance of attorney general
- Those that opt out will receive sales taxes but not occupancy taxes for STRs
- Law includes some fire safety and emergency requirement and additional insurance

Short-Term Rental Sample Restrictions

Quantitative

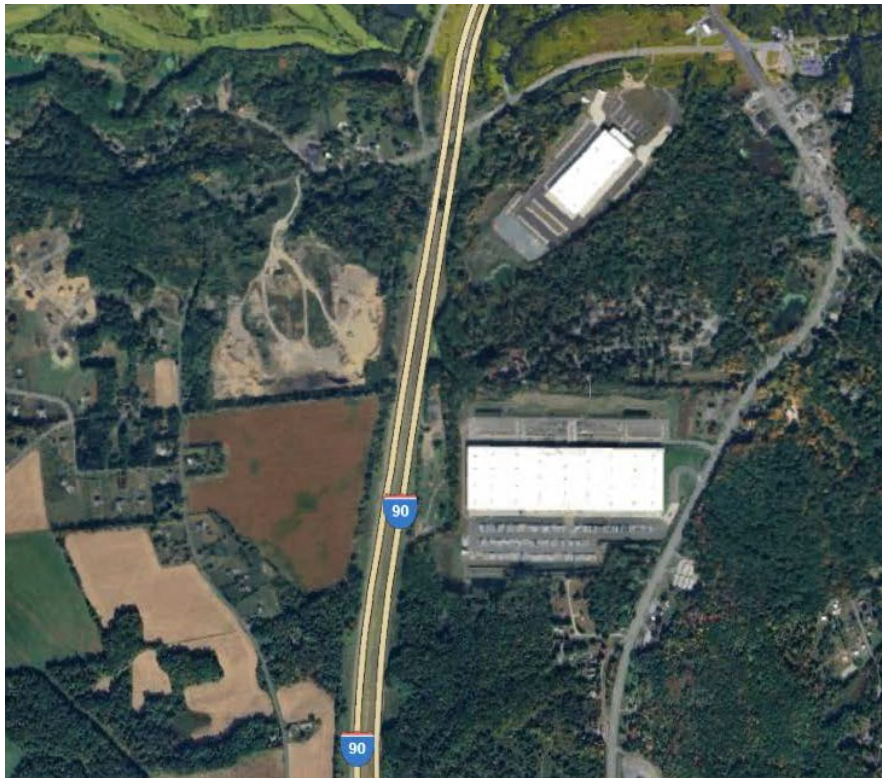
- Clearly define
- Restrict by zoning district
- Cap total annual number of rental nights
- Cap number of permits
- Restrict by proximity

Operational

- Advertisements, signage
- Rental period & frequency
- Noise, trash disposal
- Emergency access
- Mandatory designated representatives
- Occupancy Limits
- Parking

Warehouse Distribution Facilities

- Large hub facilities
  - ~500,000 SF to 1.5 million SF
  - 36-40’ minimum height needed
  - Heavy tractor trailer traffic
- “Last mile” small local area fulfillment facilities
  - 3,000 SF to 150,000 SF, more vans and smaller trucks, parking area needed, trip generation can be similar to large facilities
- Opportunity for adaptive reuse of challenging buildings (malls, big box, movie theaters)
- Warehouses not often permitted in commercial districts
- Zoning could mitigate facility impacts



Warehouse Distribution Facilities

General Regulation Considerations

- Define with associated dimensional characteristics to differentiate permitted facilities
- Require special use permit in areas where impacts may be more incompatible

Location regulations

- Allow on former brownfields, redevelopment sites, mined areas; adaptive reuse of large buildings
- For new builds, avoid areas with sewer/water infrastructure better for other uses, prime ag soils, waterbodies, scenic vistas
- Locate near highway access for tractor trailers and prohibit routes through residential and pedestrian scale neighborhoods



Warehouse Distribution Facilities

Mitigation regulations:

- **Traffic:** evaluate ingress/egress and travel routes, make sure there is on-site truck queuing capacity; encourage staggered shifts to avoid peak traffic hours
- **Air quality:** avoid locating near parks, schools, hospitals, daycare centers; prohibit vehicle idling, incentivize electric vehicles
- **Noise:** locate loading docks and doors away from property lines; use vegetative buffers and berms to absorb sound
- **Aesthetics:** consider viewsheds, setbacks, vegetative screening, architectural features for visible facades; encourage active 1st floor uses in mixed-use settings
- **Sustainability:** allow more height to reduce overall impervious footprint, stagger shifts to reduce employee and delivery vehicle parking, require/incentivize rooftop solar, green roofs, pervious pavement, bioretention areas, rain gardens

Self Storage Facilities

One or more buildings of self-contained units leased or owned for the purpose of storing commercial or household goods; no stored perishable items or animals

Considerations:

- May have a large footprint creating few jobs
- May be a suitable adaptive reuse of existing buildings that are difficult to repurpose
- Allows households and businesses to occupy smaller spaces with storage elsewhere
- May have negative aesthetic impacts: appearance, light glare



Repurposed county jail in Grand Rapids, MI

Self Storage Facilities

Zoning considerations:

- Consider building conversions with a special use permit in commercial zones; avoid occupancy on first floors in pedestrian friendly areas better suited for more active uses
- Evaluate access (avoid local, neighborhood streets) and light pollution
- Mini self storage facilities
  - Orient buildings perpendicular to street to reduce “wall” effect
  - Use increased setback requirements and landscaping to soften aesthetics from ROW





Self Storage Pods

Large container designed, rented, or leased for temporary storage of commercial or household goods, without foundation or wheels

- **Excludes:** prefab sheds not designed for transport; commercial construction trailers, shipping containers intended for other uses
- **Includes:** piggyback containers mounted on chassis; pod-type boxes transported on flatbed/truck



Consider:

- ✓ Allowing as of right for < 60 days?
- ✓ Temporary permit for more than 60 days?
- ✓ Safety on streets, curbs, alleys, or driveways?

Temporary Signs

Regulations should be content-neutral

- Regulate physical characteristics that impact:
  - Traffic safety, aesthetics, property values
  - Size, height & location:
  - Ban all signs on public property
  - Permits: apply to all signs
  - Duration: apply evenly
  - Fees: relate to administrative costs







Billboards

- A form of “off-premises” sign
- Can’t regulate content (1st Amendment protection)
- Regulate size & location:
  - State Uniform Code
  - Zoning
  - Site Plan Review
  - Local Permit
- NYS DOT regulates signs along interstate & primary highways
  - Municipality may be more restrictive than DOT



Junk

- Require junkyards to be licensed
- Limit locations through zoning
- Adopt junk storage regulations to address household debris, not just abandoned vehicles

OR ENFORCE

- NYS Motor Vehicle Junkyard Law (General Municipal Law § 136)
- NYS Uniform Fire Prevention Building Code (§ 302.8 Motor vehicles)



Cell Towers as Public Utility

- Cell towers defined as a public utility
- Compelling reasons to grant use variance:
  - Necessary to provide safe and adequate service
  - Significant gaps in coverage if placed on alternative sites



Cellular Telephone Co. v. Rosenberg (NYS Court of Appeals, 1993)

Telecommunications Act of 1996

Municipality must not:

- Prohibit personal wireless service
- Unreasonably discriminate among providers
- Regulate based on health effects from radio frequency (RF) emissions

Municipality must:

- Act on applications within “reasonable period of time”
  - 90 days for co-locations
  - 150 days for new locations

Section 6409



Middle Class Tax Relief & Job Creation Act of 2012

- Local governments must approve applications that do not substantially change physical dimensions of towers or base stations
- “Substantial” – increase of more than 10% in height or by height of additional antenna array; mounting additional antenna that would protrude more than 20 feet or width of tower structure; excavation outside current tower site
- Shot clock – Application must be approved within 60 days of application submission unless otherwise agreed to by both parties

Incomplete Application

- What happens if an application is incomplete?
- Local governments may re-set or pause shot clock when they determine application is incomplete
  - 10 days: Municipality should make a determination that an application is materially incomplete
  - Municipality must notify applicant of deficiencies
  - Shot clock resets when completed application is filed
- Incompleteness determination must be made by 30th day after application is filed, and within 10 days after resubmission if re-submitted application is still incomplete

Data Centers

- Building that houses computing infrastructure
- (a)…central housing of server racks that are used for the interconnection and operation of information technology and network telecommunications equipment for the provision of data storage, data processing, or data transport services; and (b) all related facilities and infrastructure for power distribution, environmental control, cooling….
- Corporate; colocation data centers; telecom data centers; hyperscale data centers, AI



Data Centers

	Building Area	Energy Usage	Comparable Household Energy Use	Water Use	Comparable Household Water Use
Micro / edge data centers	Up to a few 1,000 SF	100-150kW	80-120 avg. households		
Enterprise size / Colocations	50,000-600,000 SF; 150,000 SF Avg.	5-10 MW	4,000-8,000 avg. households	300,000 gallons per day	1,000 households
Hyperscale	100,000s – 1 Million SF	50-100 MW	40,500 - 81,000 avg. households	Up to 5 million gallons per day	Municipality of 10-15,000 people

Source: "The Physical Footprint of Artificial Intelligence," *Zoning Practice*, American Planning Association October 2025

Data Centers

- Challenges:
  - **High energy consumption**
  - Cooling systems often require significant amounts of water
  - Noise from operation and potential on-site energy production using fossil fuels
  - Potential air pollution
  - Heat
  - Small number of permanent jobs
- Benefits:
  - Property tax revenue
  - Reuse of brownfields and other underutilized properties and buildings
  - Limited traffic compared to some other industrial uses
  - Opportunity to negotiate host community benefits



Governor's Moratorium on Data Centers

- Executive Order 62
- NYS Dept. of Public Service to study impacts in a SEQRA Generic Environmental Impact Statement (GEIS)
- One-year moratorium on issuing NYS DEC permits for "hyperscale" data centers of 50+ megawatts
  - Facilities that use uninterruptable power supplies, and specialized cooling systems designed for high computer loads for data storage, cloud computing on a continuous cycle
- Exception: Facility used for manufacturing, research, education, or medical care for institutions not limited to accredited colleges and universities



Regulatory Considerations

- Data center infrastructure needs:
  - Land and/or buildings for adaptive reuse
  - Energy – transmission line capacity and power source
  - Water unless it's a closed-loop system
  - Fiber optic network
- Tools to off-set costs
  - Higher water rates for use of public water systems
  - Require fiber optics to be installed throughout community
  - Host community benefit agreements for other infrastructure or amenities
  - Potential to capture heat and recycle for use in nearby buildings



Possible Regulatory Approaches

- Principal use vs. ancillary
- Permit with special use permit in areas with nonproductive land or underutilized sites, compatible uses
- Consider land consumption – allowing height can reduce land need
- Setbacks and screening
- Noise limits
- Require evidence that adequate power supply exists for size of facility



- Regulate water-based cooling needs for both consumption and discharge
- Regulate battery back-up power supplies
- Require a decommissioning plan
- Incorporate host community benefit agreements

DEFENDING YOUR DECISIONS

Inform and Involve

- Unearth controversy early
  - Receptive to change
  - Before the public feels steamrolled
- Potentially controversial projects
  - Hold informational meetings with residents and stakeholders



Community Opposition

Generally not a valid basis for denying most applications if the use is already permitted by zoning (as of right or special use permit), and requirements are met



Conducting Public Hearings

- Put the rules of the road on the back of the agenda so everyone knows what to expect
  - Time limits are good! Be sure they're equal for everyone
- Be courteous and careful of your body language
- You can ask speakers to identify themselves, but you cannot force people to provide the information



Working with the Media

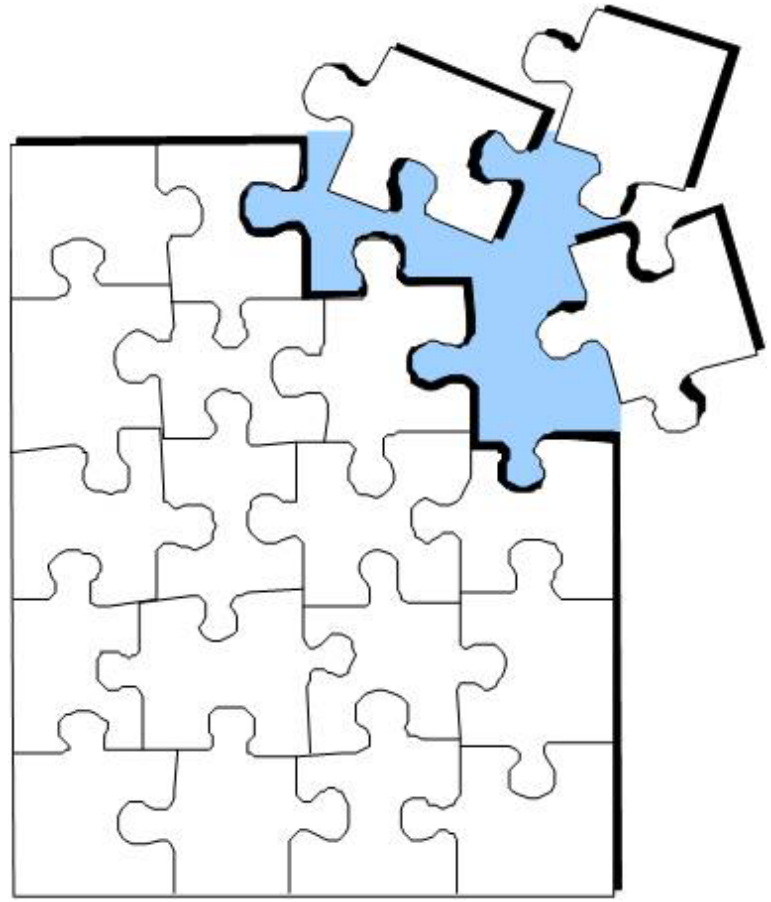
- Decide on a media response plan
  - Call
  - Press release
  - News conference
- Pick a spokesperson to be the official point of contact



The Record

Materials in the record tell the story of the application and typically include:

- Application & supporting documentation
- Newspaper notices
- Meeting minutes
- SEQR materials
- Public hearing testimony
- Written submissions from public
- Expert opinion
- Decision, conditions, findings



Findings

- Describe application's reasons for denial or approval
  - May support why conditions imposed
  - May support decision if challenged in court
- Conclusory statements (i.e., "standards were not met") aren't "findings"
- Decision based on conclusory statements not supported by factual information in record will be struck down in courts

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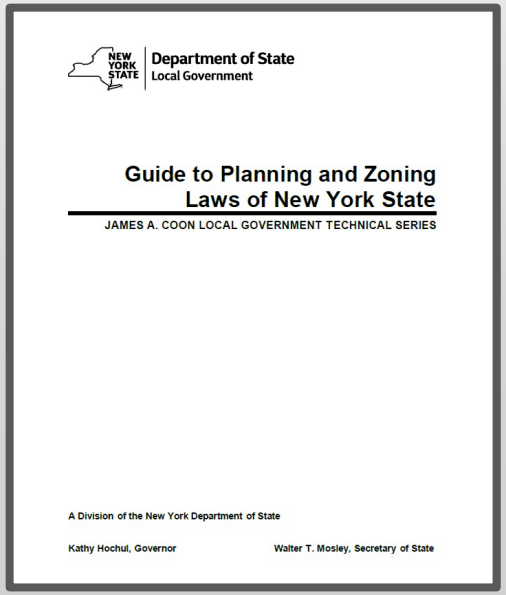
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