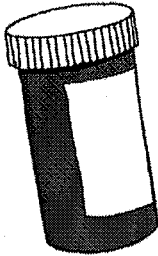


**Rx FOR YOUR ZONING LAW**



**Mark Gebo, Esq**  
*Hrabchak & Gebo, P.C*  
120 Washington Street  
Watertown, NY 13601  
(315)788-5900  
mgebo@gebolaw.com

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**Rx FOR YOUR ZONING LAW?**

- I. Symptoms**
- II. Diagnosis**
- III. Remedies**
- IV. Check-Ups**

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**Zoning Primer**

Understanding what zoning can & can't do

Zoning can...

- ...protect public health, safety & welfare
- ...regulate use, bulk & setbacks
- ...can prohibit ("can't") or prescribe ("must") design

Zoning can't...

- ...(cannot) control interior space
- ...(cannot) control outside the property lines
- ...(cannot) control ownership
- ...(cannot) control market

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**Zoning Primer**

Understanding what zoning must & must not do

**Zoning must...**

- ...be in accordance with a comprehensive plan
- ...implement the community policy & vision
- ...be consistent in application
- ...be predictable
- ...protect the status quo where desired
- ...facilitate change where needed

**Zoning must not...**

- ...(must not) further social inequity
- ...(must not) be so rigid it stifles creativity
- ...(must not) be overly restrictive & unenforceable
- ...(must not) spot zone

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**Zoning Primer**

The goals of a good zoning law are three-fold:

1. Implement goals & policies of the community's comprehensive plan
2. Address development needs in line with those goals & policies
3. Present standards & procedures that are clear, understandable, predictable & effective

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**SYMPTOMS**

*You may have a problem if...*

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 **SYMPTOMS**

Sometimes, you don't even know you're sick...

- ✓ Increase in one particular type of variance applications or interpretations
- ✓ Increase in patchwork text amendments
- ✓ Increase in zoning lawsuits
- ✓ By-right development out of character or undesirable uses
- ✓ New policy plans adopted or revised comp plan
- ✓ Age of the zoning law
- ✓ General provisions section = junk drawer
- ✓ Does the zoning officer enforce the zoning law
- ✓ Trouble staffing boards and getting quorums

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 **SYMPTOMS**

A sick zoning law can lead to significant legal issues...

Zoning generally is a constitutional exercise of a state's police power (Euclid v. Ambler Realty Co. - 1926)

Typically a lawsuit involving a zoning law is due to one of three issues:

- 1) Zoning law itself is a problem
- 2) Zoning law was applied unfairly/incorrectly
- 3) Proper procedure was not followed

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 **SYMPTOMS**

The existence of nonconformities can render an otherwise healthy zoning law sick...

Existence of nonconformities will not automatically invalidate an zoning law

Unfortunately, sometimes a zoning district can create so many nonconformities that the zoning law itself becomes unwieldy to administer

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 **SYMPTOMS**

The existence of nonconforming uses can render an otherwise healthy zoning law sick...

**Example:**

- ✓ *Billy Barowner* wants to open a tavern in a **B-2** District
- ✓ Taverns not allowed in a **B-2** District, but allowed in the **B-4** District
- ✓ The street on which Billy wants to open his tavern is full of business uses permitted in **B-4**, such as auto repair, taverns & grocery stores, BUT the area is zoned **B-2**, where these are not permitted
- ✓ Because of this, of the 11 uses in the area - **8** are **nonconforming!!!**
- ✓ *Billy Barowner* sues & court finds the law invalid holding that the impact of those uses upon the area involved is a matter for measurement & appraisal in each case

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 **SYMPTOMS**

A community needs to address issues related to the makeup of the boards...

1. Trouble getting quorum at meetings
2. Trouble filling vacancies
3. Trouble keeping up with timeline for approvals and public hearings

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 **SYMPTOMS**

Avoiding a sick zoning law is important because...

1. Legal challenges can be reduced or completely avoided
2. The care a community takes in planning for the future & executing that plan through a well thought out zoning law is key for defending & being successful in any zoning case
3. Easier to administer

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### DIAGNOSIS

Does your zoning law work for you?

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### DIAGNOSIS

There are a number of areas to diagnose...

1. Organization
2. Administration
3. Districts
4. Use Controls
5. Bulk Regulations
6. Planned Unit Developments
7. On-Site Development Standards
8. Landscaping, Buffering & Screening
9. Parking
10. Signs
11. Legal Concerns
12. Modern innovative development practices

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### DIAGNOSIS

#### ORGANIZATION

- ✓ Definitions must define, not regulate
  - Are all uses defined
  - Are all essential terms defined
  - Do definitions match what's in the zoning law
- ✓ Maintain compartmentalization and avoid redundancy
- ✓ Table of Contents and Index should be included
- ✓ Illustrations
- ✓ Tables & matrices
- ✓ Everything should not be dumped into general provisions

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 **DIAGNOSIS**

**ADMINISTRATION**

- ✓ Is the process for each application/approval clear and logical in the zoning law?
  - Role of the code enforcement officer/planning board/ZBA/town or village board
  - SEQR
  - County Planning Board
  - Other involved agencies
- ✓ Is the current zoning law codified into one document?
- ✓ Does your practice follow your zoning law?
- ✓ Are there standards/findings of fact for each application?
- ✓ Is there a need for flexibility, such as submission waiver?
- ✓ Are the right development review mechanisms in place, such as site plan review?
- ✓ Are board vacancies filled and meeting quorums attained?
- ✓ Are approvals and public hearings held in timely manner?

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 **DIAGNOSIS**

**DISTRICTS**

- ✓ Do the districts match the comprehensive plan & other policy documents?
- ✓ Do the districts address the range of existing development?
- ✓ Is there a logical basis for the uses listed in each district?

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 **DIAGNOSIS**

**USE CONTROLS**

- ✓ Are specific use lists in place?
- ✓ Are use lists cumulative and is this effective?
- ✓ Do they address modern uses?
- ✓ Is there too much flexibility in interpretation?
- ✓ Are there specific performance standards for special uses
- ✓ Generic use approach – too broad...too specific

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 **DIAGNOSIS**

**GENERIC USE**

**SPECIFIC USES**

- Pet Store
- Shoe Store
- Bookstore
- Record Store
- Gift Shop

**GENERAL USE**

**RETAIL GOODS ESTABLISHMENT**

**DEFINITION:**  
Retail Goods Establishment. A commercial enterprise that provides physical goods, products or merchandise directly to the consumer, where such goods are typically use liable for immediate purchase and removal from the premises by the purchaser.

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 **DIAGNOSIS**

**BULK & YARD CONTROLS**

- ✓ Are there certain variances that reoccur? Have text amendments been oriented toward one issue?
- ✓ Do the regulations create more nonconformities than conformities?
- ✓ Do bulk regulations address current development situations?
  1. *Out of scale new construction*
  2. *Flooding/stormwater issues*
  3. *Garage, driveway design*
  4. *Front yard averaging*
- ✓ Are view sheds taken into consideration?

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 **DIAGNOSIS**

**PLANNED UNIT DEVELOPMENTS (PUD)**

- ✓ If not in place, does the community need PUD regulations?

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 **DIAGNOSIS**

**ON-SITE DEVELOPMENT STANDARDS**

- ✓ Do standards address full range of accessory structures & uses?
- ✓ Is there a clear definition of all measurement methodologies, particularly in towns?
- ✓ Do environmental performance standards (noise and odor) address nuisance situations throughout the community, not just for industrial uses?

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 **DIAGNOSIS**

**PARKING**

- ✓ Permitted location of off-street parking in all districts
- ✓ Required stacking spaces for drive-through facilities
- ✓ Required number of off-street spaces per use; match national & local demand
- ✓ Storage of commercial & recreational vehicles in residential districts
- ✓ Areas designated for snow removal and/or recreational vehicles/trailers

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 **DIAGNOSIS**

**SIGNS**

- ✓ Do sign regulations work with established districts & other design concerns?
- ✓ Do any regulations violate the First Amendment?
- ✓ Are off-premise and on-premise signs addressed?
- ✓ What about electronic signs? (message & display screen)
- ✓ Are the volume of signs addressed?
- ✓ Are the full range "other" signs addressed?
  - Temporary
  - Exempt
  - Prohibited

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 **DIAGNOSIS**

**LANDSCAPING, BUFFERING, SCREENING & LIGHTING**

- ✓ Does the zoning law address all aspects of a site?
  - Interior & perimeter of parking lots
  - Buffer yards between incompatible districts & uses
  - On-lot landscaping, including foundation landscaping & "landscaped yards"
- ✓ Are there design standards for landscaping?
- ✓ Are flexibilities built into the zoning law?
- ✓ Are there standards for lighting?
  - Directional controls
  - Dark Sky compliance

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**REMEDY**

*Now what do you do?*

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 **REMEDY**

**TREATMENT OPTION 1: REORGANIZATION**

**CAUTION:**

- May not be as straightforward as anticipated

**TREATMENT OPTION 2: TARGETED REVISIONS**

**CAUTION:**

- If not careful, can lead to conflicts between old & new provisions
- Patchwork effect; create new inconsistencies

**TREATMENT OPTION 3: UPDATE STANDARDS**

**CAUTION:**

- A long process, which requires significant public input & education

**TREATMENT OPTION 4: Intermunicipal Cooperation**

**CAUTION:**

- Need to have interest from other municipalities

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### REMEDY

SEEK HELP - DON'T TRY THIS ON YOUR OWN

**RESOURCES:**

- Municipal Attorney
- Consultants
- County Planning Department
- NYS Tug Hill Commission

**BUT MAKE SURE TO INVOLVE:**

- Code Officer
- Planning Board
- Zoning Board of Appeals
- Town/Village Board

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### CHECK-UPS

It's a good idea to review your zoning law every once in a while...

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### CHECK-UPS

Assess the health of the law regularly...

- ✓ When new policy plans are adopted
- ✓ When new federal, state or local regulations come into effect
- ✓ When new development, especially "by-right," does not match community character
- ✓ Conduct a periodic "tune up"
- ✓ Do your regulations keep up with changes in technology (ie satellite dishes, cell towers, wind generating facilities, solar, facilities, drones)

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# Questions?

**THANK YOU!**

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mgebo@gebolaw.com*

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