

TOWN OF ESSEX

LOCAL LAW NO. 2 OF THE YEAR 1998

A LOCAL LAW ENTITLED "A LOCAL LAW ENACTING A MORATORIUM UPON THE ISSUANCE OF PERMITS AND APPROVALS FOR SPECIAL USES AND FOR CERTAIN LARGE SCALE AGRICULTURAL USES AND STRUCTURES IN CERTAIN AREAS OF THE TOWN OF ESSEX"

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF ESSEX AS FOLLOWS:

SECTION 1 - FINDINGS AND PURPOSE

The Town Board finds that:

There is development pressure in the shoreline portion of the "Essex Hamlet," as defined in Section 3.205 of the "Ordinance for the Regulation of Land Use and Development in the Town of Essex, New York" enacted by the Town Board in 1974, due to the Lake Champlain ferry landing, the attractive historic character of the Essex Hamlet, and other factors. The development pressure threatens the unique character of the Essex Hamlet.

A 1989 planning study undertaken for the Town entitled "Essex Hamlet: Plan for the Future" contains valuable suggestions for preserving and enhancing the Essex Hamlet, but left important issues concerning reconciling development pressure with preservation and enhancement of the *area unresolved*.

The Town Board has agreed that additional studies of the Essex Hamlet shoreline will be performed, and that adoption of provisions for a separate shoreline district therefor will be considered. To that end, the Town has been awarded a grant for further study of the shoreline area pursuant to the Local Waterfront Revitalization Program administered by the New York State Department of State. The further study will assist in determining the best way to resolve the issues not addressed in the 1989 study and in determining the need for a shoreline district.

There are also development pressures in the rural portions of the Town which have led to loss of residential and agricultural structures, the displacement of residents, and the destruction of significant elements of the Town's rural landscape.

The Ordinance for the Regulation of Land Use and Development in the Town of Essex, New York has been amended only in minor respects since its enactment, and is in need of review in the context of comprehensive planning requirements, and for the purpose of determining if further amendments are needed as a result of amended New York State legislation and changing conditions.

The Town of Essex Planning Board has begun to review the Ordinance, and further review will be aided by the shoreline area study grant.

It is already apparent that the Ordinance needs review in two particular respects: the provisions for projects requiring special use permits and those for projects meeting the definition of "Agricultural Use and Structure."

The public health, safety and welfare of the Town of Essex will be adversely affected, and the objectives and purposes of the Ordinance will be compromised if certain special uses and certain Agricultural Uses and Structures are allowed to be constructed or otherwise created during the Planning Board review.

A moratorium on construction or creation of (a) special uses in the shoreline area of the Essex Hamlet, and elsewhere in the Town of Essex outside the Hamlet, and (b) certain Agricultural Uses and Structures throughout the Town of Essex will secure the public health, safety and welfare, and further the objectives of the Ordinance.

SECTION 2 - DEFINITIONS

As used in this Local Law, the following terms have the meanings ascribed to them below:

Essex Hamlet - the area defined as such in section 3.205 of the Land Use Ordinance and shown as an area labeled "H" in the Zoning Map referred to in section 3.1 thereof.

Land Use Ordinance, or Ordinance - the "Ordinance for the Regulation of Land Use and Development in the Town of Essex, New York," as enacted by the Town Board in 1974 and as thereafter amended.

Large Scale Agricultural Use - any Agricultural Use and Structure, as defined in Article II of the Land Use Ordinance, (a) of a greater scale or intensity than that now customarily found in the Town, (b) which is characterized by the intensive use of land and/or concentration of pigs, poultry or other livestock in one area, and (c) which has the potential for non-point source pollution, odor, or other noxious or undesirable emission or pollution on a greater scale or intensity than that now customarily associated with agricultural uses in the Town.

Large Scale Agricultural Structure - any Agricultural Use and Structure, as defined in Article II of the Land Use Ordinance, which exceeds 40 (forty) feet in height, measured from natural or finished grade, whichever results in the greater height, or which exceeds 15,000 (fifteen thousand) square feet in interior size, measured by cumulating all usable space on all floors, lofts, or other interior areas.

Moratorium Area - the Shoreline Area and all other portions of the Town of Essex outside the Essex Hamlet.

Moratorium Term - a period of one year (365 days) from the date this Local Law is filed with the Secretary of State of the State of New York, and any additional period thereafter as the Town Board may determine by resolution adopted prior to the expiration of the original period or of any additional period.

Person - any individual, corporation, partnership, association, trustee, municipality or other legal entity.

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Shoreline Area - that portion of the Essex Hamlet labelled "Shoreline District" on the Shoreline District Map adopted in Section Three (3) of this Local Law.

Special Permit Use - any use of land or a structure denominated as a Special Permit, Special Use or Special Permit Use in the Land Use Ordinance.

Undertake - (a) commencement of a material disturbance of land, including the commencement of road construction, grading, installation of utilities, clearing of building sites, excavation (including excavation for the installation of foundations or footings or sewage disposal systems), or commencement of landscaping or any other material disturbance of land preparatory or incidental to a proposed land use or development, and (b) commencement of construction of a new structure, or any material alteration of an existing structure, excepting only interior alterations, or ordinary repairs or maintenance.

SECTION 3 - ADOPTION OF SHORELINE DISTRICT MAP

The map entitled "Hamlet Plan - Essex Hamlet," at a scale of one inch (1") equals one hundred feet (100'), is hereby adopted as a part of this Local Law, and shall be filed with, and certified by, the Town Clerk of the Town of Essex, and made available for public inspection during regular business hours.

SECTION 4 - MORATORIUM UPON CERTAIN USES

In the Moratorium Area and during the Moratorium Term:

No Special Permit Use, and no Large Scale Agricultural Use or Large Scale Agricultural Structure shall be undertaken, and no existing use or structure which is not now a Special Permit Use, Large Scale Agricultural Use, or Large Scale Agricultural Structure shall be converted, altered or expanded so as to become a Special Permit Use, Large Scale Agricultural Use, or Large Scale Agricultural Structure, and no existing Special Permit Use, Large Scale Agricultural Use, or Large Scale Agricultural Structure may be enlarged, extended, or expanded, and no preliminary or final permit, variance, or approval of any kind shall be issued for such undertaking, conversion, alteration, enlargement, extension or expansion by the Town of Essex Planning Board, Zoning Board of Appeals, or Zoning Officer.

This section shall not apply to any Special Permit Use, Large Scale Agricultural Use, or Large Scale Agricultural Structure (a) for which all required permits or other approvals have been issued and are legally valid and in effect prior to the Moratorium Term, and (b) which has been substantially commenced and which is actually and lawfully under construction prior to the Moratorium Term.

SECTION 5 - INTERPRETATION AND CONSTRUCTION

The Zoning Board of Appeals of the Town of Essex created by Article VII of the Land Use Ordinance may interpret and/or construe this Local Law, including the Shoreline District Map (a) upon referral of the Zoning Officer referred to in such Article, or (b) upon appeal to it by any person having a legal interest in land in the Moratorium Area who can demonstrate to the satisfaction of the Zoning Board that he or she has expended substantial sums for the creation of plans for a use subject to the moratorium imposed

by Section Four (4) of this Local Law, of a determination of the Zoning Officer pursuant to this Local Law, or (c) upon appeal to it by any person having a legal interest in land adjoining, abutting, adjacent or contiguous to any land in the Moratorium Area upon which any use subject to the moratorium imposed by Section Four (4) of this Local Law is being undertaken or otherwise created.

The Zoning Board of Appeals shall have no other power with respect to this Local Law.

SECTION 5 - ENFORCEMENT AND PENALTIES

This Local Law shall be enforced and applied by the Zoning Officer referred to in Article VII of the Land Use Ordinance. Complaints alleging possible violation of this Local Law shall be in writing, and may be filed by any person with the Zoning Officer, the Chairperson of the Zoning Board of Appeals or of the Planning Board, or the Town Supervisor. A copy of any complaints filed with either Chairperson or with the Town Supervisor shall be furnished to the Zoning Officer. The Zoning Officer shall promptly investigate any complaint and provide both Chairpersons and the Town Supervisor with a report of his or her findings with respect thereto.

Any person violating this Local Law shall be subject to the penalties authorized by section 268 of the Town Law for each week the violation continues, and to such additional civil proceedings, fines and/or prison terms as are authorized by the Town Law, Civil Practice Law and Rules, Criminal Procedure Law, Penal Law or any other law of the State of New York.

SECTION 6 - STATE LAWS SUPERSEDED

The following provisions of the Town Law of the State of New York are hereby superseded pursuant to sections 10(1)(ii)(a)(14), 10(1)(ii)(d)(3), and 22 of the Municipal Home Rule Law and section 10(6) of the Statute of Local Governments:

Subdivisions 4 and 8 of section 267-a, added by chapter 692 of the Laws of 1991, which confer appellate jurisdiction upon the Zoning Board of Appeals in situations other than review of an interpretation of the zoning officer, and impose a time limit in which to exercise that jurisdiction;

Paragraph a of subdivision 2 and paragraph a of subdivision 3 of section 267-b, added by chapter 692 of the Laws of 1991, which confer authority upon the Zoning Board of Appeals to grant area variances and use variances;

Subdivision 3 of section 274-b, added by chapter 694 of the Laws of 1994, which confers jurisdiction upon the Zoning Board of Appeals to grant area variances without an action of the zoning officer before it;

Paragraphs d, e, f, and g of subdivision 5, and subdivisions 6, 7, 8, and 9 of section 276, added by chapter 727 of the Laws of 1992, which confer jurisdiction upon the Planning Board and impose certain duties upon other town officers with regard to approval of preliminary and final plats;

Subdivision 6 of section 277, added by chapter 727 of the Laws of 1992, which confers jurisdiction upon the Zoning Board of Appeals to grant area variances in the course of

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plat approval, and Section 280-a, formerly section 280 in part, added by chapter 634 of the Laws of 1932 and renumbered and amended by chapter 750 of the Laws of 1949, which confers authority upon the Zoning Officer to issue building permits in mapped streets and confers appellate jurisdiction upon the Zoning Board of Appeals with regard thereto.

SECTION 7 - SEVERABILITY

The provisions of this Local Law are declared to be severable. Any order or judgment of the invalidity of any provision of this Local Law by a court of competent jurisdiction shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate any other provision or the application of any provision to any other person or circumstance.

SECTION 8 - EFFECTIVE DATE

This Local Law shall become effective upon its filing by the Secretary of State of the State of New York.

WHO WILL CONTROL THE FUTURE OF ESSEX?

To the Residents of Essex: On Thursday, November 5th, there will be a very important opportunity for Essex residents to speak up for a one-year ban on development, to give the Town time to improve its local zoning controls. The moratorium was prepared by an attorney hired by the Essex Town Board, specifically for that purpose.

This effort is not in support of or opposed to the possible Daytop drug addiction treatment center. Instead, the Daytop project and several others have demonstrated that Essex's current zoning laws must be updated to meet the many new challenges the Town is facing. The moratorium will give the Town and its residents time to review and improve its zoning laws so that those laws are fair to all applicants and that they reflect the desires of Essex residents for future of their Town. The moratorium will not affect new single family residences. It only applies to new business, commercial and large scale agricultural uses.

Don't just worry about the future of your community. Come to this public hearing and ask the Town Board to promptly enact the moratorium. The meeting will be at 7:00 p.m. at the Town Offices. This meeting replaces the one originally scheduled for October 22.

For further information call Scot Hurlburt at 963-8973 or Bob Hammerslag at 963-7886