



Tiny House, Big Questions: Regulating Tiny Homes in Your Jurisdiction

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Topics to Discuss

- Introduction of tiny homes in New York and the tiny home movement
- The many definitions of tiny homes
- What building codes are applicable to tiny homes?
- Regulating tiny homes at the local level
- Tiny homes, taxation and affordable housing
- Any other questions!

Tiny Homes and the Tiny Home Movement

- Not a new concept; however – popularity has skyrocketed over the last decade
- Estimated that 10,000 tiny homes exist across the US
 - Does not take into account unpermitted or unknown tiny homes
- “Tiny home movement” – trend where individuals seek minimalist lifestyle through smaller homes / downsizing / increasing sustainability / going off the grid / leaving a smaller economic footprint
- True accelerator – 2008 recession, when nearly three million homes were foreclosed upon between 2008-2010

Tiny Homes and the Tiny Home Movement

- Average size of typical American house- 2,600 square feet
- Tiny homes- generally 400 square feet or less
- Pop culture: Tiny house, big living... Tiny House Hunters



Tiny Homes in New York

- Often found on short-term rental platforms:

6. CONTAINER HOUSE CABIN IN THE CATSKILLS - SAUGERTIES, NY -
\$204+/NIGHT



Tiny Homes in New York

- Often found on short-term rental platforms:

8. "THE WALLER" TINY HOUSE ON WHEELS - BEAVER DAMS, NY -
\$298+ / NIGHT



Tiny Homes in New York

- Often found on short-term rental platforms:

10. RUSTIC TINY CABIN NEAR THE HUDSON RIVER - NORTH CREEK,
NY - \$113+/NIGHT



Tiny Homes- What Are They?

- (Alternate heading – definitions are important!)
- What IS a tiny home? They can take many forms and because of that, regulating them can be difficult to navigate
- Tiny homes are defined at the state level and can and should also be defined at the local level

Tiny Homes- What Are They?

- NYS Uniform Fire Prevention and Building Code (Uniform Code) and local zoning apply to tiny homes
 - Regardless of whether the tiny home owner wants to “go off of the grid”
 - Building permits required even if locality does not define tiny homes
- Local definitions help ensure that tiny homes are regulated at the local level

Tiny Homes- What Are They?

Are these tiny homes?



Tiny Homes- What Are They?

Are these tiny homes?



Answer: It depends on your locality's definition within the code!

Tiny Homes- What Are They?

- NYS definition – can be found in Appendix Q of the 2020 Residential Code of New York State
- Formally adopted in 2020 from Appendix Q of the 2018 International Residence Code
 - First code to address tiny homes specifically
- “A dwelling unit that is 400 square feet or less in floor area excluding lofts”
 - Appendix Q applies to site-built tiny homes

Tiny Homes- What Are They?

- Local definitions:

“A dwelling unit that is built as a structure and not on a trailer or chassis that is intended to be used as a stationary, continuously occupied dwelling unit that is less than or equal to 400 square feet in total floor area, but not less than 150 square feet of total floor area” – Village of Alfred

Tiny Homes- What Are They?

- Village acknowledges that other forms of tiny homes may exist but only allows those as a detached structure on a foundation
- Code goes on to require compliance with setback and minimum lot size requirements
- *Using zoning authority to limit tiny homes to fixed structures on foundation, essentially prohibiting tiny homes as moveable structures in their permitting structure

Tiny Homes- What Are They?

- Local definitions:
- In contrast, the town of “name withheld” defines tiny homes as:

“Recreational camping vehicle: Any enclosed motor vehicle or trailer used or designed to be used for recreational travel and temporary living and / or sleeping purposes including . . . Tiny homes . . .”
- Town requires a zoning permit for “recreational camping vehicles” that are sited for occupancy for more than 30 days

Tiny Homes- What Are They?

- What if a tiny home in this jurisdiction is affixed to a permanent foundation and does not have wheels or a trailer – does it fall within the definition of a recreational camping vehicle and therefore need a zoning permit?
 - No! The definition encompasses tiny homes but then describes them as enclosed motor vehicles or trailers
 - Definitions are important – in this scenario, a tiny home that is affixed to a permanent foundation would not need the zoning permit or special permit (although it would need a building permit)

Tiny Homes- What Are They?

- This type of tiny home would not be captured by definition and thus not subject to permitting structure:



Tiny Homes- What Are They?

- Definitions matter! Increase in tiny home popularity = locality should include or modify its definition of tiny homes to include all forms
 - This way they are captured by the zoning code and required to obtain the land use or other regulatory permits before siting
 - If it does not fall cleanly within town's definition, owner will likely not have to comply with code requirements

Tiny Homes- What Are They?

- Tiny homes can also meet more than one definition in a code
- Town of Queensbury case- “custom recreational vehicle” on top of a boat trailer was sited on residence without permit
- Owner argued that it was not required to obtain a building permit because the structure met the definition of a “travel trailer” within the town’s code

Tiny Homes- What Are They?

- Town asserted that it was still a “structure” requiring a building permit
- Court agreed- even though it met the code’s definition of “travel trailer,” could still be a structure subject to the code and in this instance, met the definition of a “mobile home,” thereby requiring a permit

Tiny Homes- What Are They?

- Moral of the story- definitions matter and locality can define tiny homes to suit the unique needs of the jurisdiction
- Another local example: “dwellings that could be built on a foundation OR a mobile structure, that would be subject to all mobile home requirements, with a minimum of 500 square feet required
 - If this definition is adopted, zoning out tiny homes that are subject to Appendix Q (400 square feet or less)

Tiny Homes- What Are They?

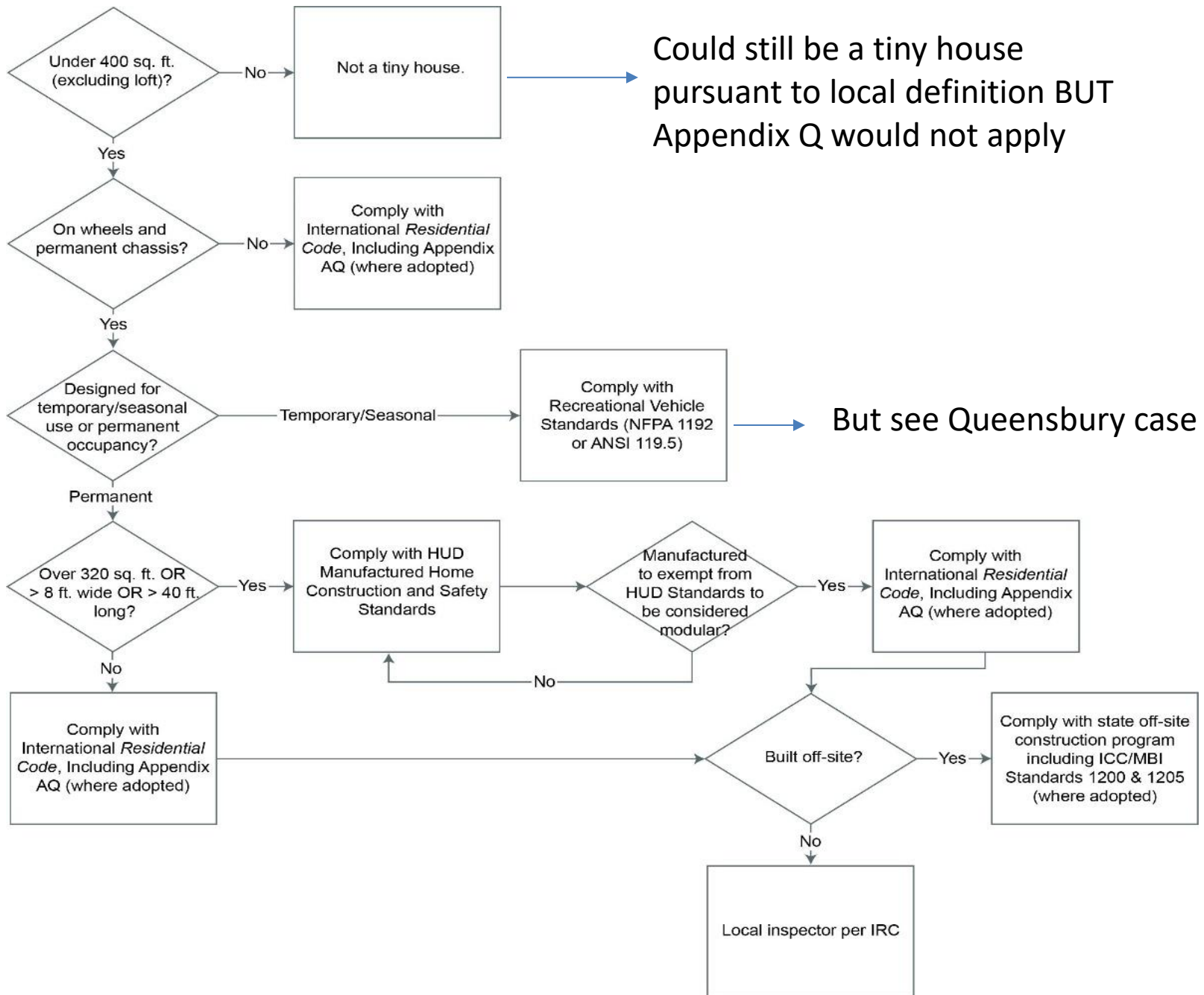
- What other forms can tiny homes take?
- **Manufactured (mobile) home:** traditional mobile home that is at least 320 square feet and built on permanent chassis and designed to be used as a dwelling without or without a permanent foundation (Executive Law section 601 [7])
 - Minimum size specs and have a permanent chassis
 - A tiny home code be a mobile home if the mobile home is less than 400 square feet
 - Appendix Q does not apply (not site-built)
 - Locality ensures homes are installed properly per federal standards

Tiny Homes- What Are They?

- What other forms can tiny homes take?
- **Modular (factory manufactured) homes:**
 - No dimensional restrictions and not built on a chassis
 - Structures designed primarily for residential occupancy where components are manufactured in a facility and installed permanently at the building site
 - Considered buildings in the same way site-built homes are under the Uniform Code
 - Building permit required
 - An Appendix Q tiny home could be a modular home if the modular home is less than 400 square feet and site built

Addressing Tiny Homes at the Local Level

Structure	Is it a tiny home?	Building permit standards to apply
Site-built, less than 400 sq ft	Yes	Uniform code & Appendix Q standards
Site-built, greater than 400 sq ft	No for Appendix Q purposes	Uniform code
Modular home, less than 400 sq ft	Depends – definition in local code	Uniform code
Modular home, greater than 400 sq ft	Depends	Uniform code
Mobile home, 320-400 sq ft	Depends – definition in local code	Compliance with HUD code
Mobile home, greater than 400 sq ft	Depends	Compliance with HUD code
Recreational vehicle or structure less than 400 sq feet on a chassis with wheels	Depends – definition in local code	Depends upon code – it could be both a trailer and a building (Queensbury case)



Could still be a tiny house pursuant to local definition BUT Appendix Q would not apply

But see Queensbury case

Tiny Homes- Appendix Q Requirements

- Appendix Q applies to all site-built tiny homes on foundations that are 400 square feet or less
- Provides building safety standards that address minimum requirements for ceiling height, loft areas, loft access, and emergency escape and rescue openings
- Allows for ingress and egress to the loft area by stairs or ladders and sets the standards for same
- *In addition to building in accordance with Appendix Q, tiny home owners are *required to comply with zoning and permitting requirements set forth in the code*

Tiny Homes- Appendix Q Requirements

- Minimum ceiling height:
 - Habitable spaces and hallways: 6 feet 8 inches
 - Bathrooms, toilet rooms and kitchens: 6 feet 4 inches
 - Lofts: can be less than 6 feet 8 inches
- Lofts:
 - Must have at least 35 square feet and be at least 5 feet in any horizontal dimension
 - Loft guards located along open side of lofts
 - Loft accessed via stairways, ladders, alternating tread devices or ships ladders
- Emergency escapes:
 - Comply with 2020 Residential Code, with carve outs for egress roof access windows in sleeping room lofts

Tiny Homes- Code and Permit Questions

- Can the locality require a building permit for a tiny home?
 - Yes, building permits are required for tiny homes, as they are required for all dwellings in NYS
 - Exception –one story detached structures less than 144 square feet for tool and storage sheds, playhouses, or other similar uses
 - If tiny home is less than 144 square feet, **building permit is still required!** A tiny home can take the form of a converted storage shed (if the local code allows) but a permit is still required because it is being used as a *dwelling*

Tiny Homes- Code and Permit Questions

- Can a tiny home be constructed on a chassis with wheels?
 - Yes, there is nothing at the state level that prohibits this
 - Locality should ensure that this type of tiny home is encompassed within code definitions if it wants these structures included within regulatory framework
 - Queensbury case- can still be considered a structure subject to a permit even if “custom RV” – look to structure itself and intent of owner
 - If tiny home is mobile and relocated after siting at an approved site, subject to Appendix J of the 2020 Residential Code – Relocated or Moved Buildings

Tiny Homes- Code and Permit Questions

- Do the occupancy restrictions in the Property Maintenance Code of NYS apply to tiny homes?
 - No – Section 404.9 provides that the occupancy restrictions set forth in section 404 do NOT apply to tiny houses *constructed in accordance with the Residential Code of NYS and Appendix Q*
 - So long as Appendix Q / Residential Code is followed, occupancy requirements do not apply
 - *More than 400 sq feet- not a tiny home pursuant to Appendix Q and exception would not apply

Tiny Homes- Code and Permit Questions

- What about heating facilities, potable water, electric service, and kitchen and toilet facilities in tiny homes?
- Governed by 2020 Residential Code – allows for exceptions subject to approval of code enforcement or zoning officer
- Locality can impose requirements – should be rational (eg, needs of 350 sq foot home may not align with 2000 sq foot home)
- All plumbing fixtures have to comply with Residential Code

Why Regulate Tiny Homes?

“Well, you know, you have to have zoning codes or else the whole thing could be chaos”

-Leslie Knope, Parks & Recreation



Why Regulate Tiny Homes?

- No regulation = no say and chaos abounds
- Zoning is not a four letter word (literally and figuratively)
- Can also regulate through other methods
- Tiny home movement is increasing in popularity as affordable housing stock continues to dwindle and some shifts towards minimalism
- Positives?
 - Affordable housing
 - Can tax as real property
 - “Infill development” – weave tiny homes into vacant, underutilized spaces

Why Regulate Tiny Homes?

- Building permits are required if the home is a dwelling – regardless of local code
- However, local code that explicitly defines tiny homes and imposes permitting requirements will ensure that tiny homes are sited pursuant to locality's plan
 - Can address nuisances for neighbors (light, noise, trash)
 - Parking issues
 - Safety concerns
 - Ensure that highway and water infrastructure is sufficient

Options for Local Regulation

Local governments have many tools at their disposal to regulate tiny homes!

- Comprehensive plan
- General zoning authority
- Building permits
- Special use permits
- Site plan requirements
- Broader, outside the box (aka non-land use) authority

Options for Local Regulation- Comprehensive Plan

- Comprehensive Plan:
 - Town Law section 272-a
 - Village Law section 7-722
 - General City Law section 28-a
- The comprehensive plan is important! Provides the framework and backbone for zoning code
- Should be “well-considered”
- Necessary to adopt zoning legislation
- Does not need to be in one “comprehensive” document or even written at all (?), so long as a court can ascertain that the plan exists and locality acting in furtherance of plan and public interest (Matter of Skenesborough Stone, Inc. v Village of Whitehall, 254 AD2d 664 [1998])

Options for Local Regulation- Comprehensive Plan

- Why address tiny homes in comprehensive plan? Locals are empowered to adopt regulations that align with the comprehensive plan
- Comprehensive plan should address, among other things, “existing housing resources and future housing needs, including affordable housing”
- If tiny homes are covered in plan and zoning regulations are aligned in furtherance of the plan – solid legal ground if challenged

Options for Local Regulation- Comprehensive Plan

- Do tiny homes have to be explicitly addressed in comprehensive plan in order to adopt local laws regulating tiny homes?
- No, not exactly
- To ensure the locality is on solid legal ground, the best scenario is to adopt a local law that is in alignment with the comprehensive plan

Local Regulation Options – General Zoning Authority

- General zoning authority
 - Town Law sections 261, 264
 - Village Law section 7-700
 - General City Law section 20 (24), (25)
- These statutes give localities broad authority to adopt zoning regulations that suit the municipality's unique needs
- Adopt zoning regulations consistent with comprehensive plan

Local Regulation Options – General Zoning Authority

- General zoning considerations:
 - Adopt a local law as opposed to ordinance (villages have no authority to adopt ordinances)
 - Local laws enjoy the presumption of validity in court if challenges
- Owner occupancy required?
 - Generally regulates the owner as opposed to the land and is not a valid exercise of zoning authority
 - Recent case law on owner-occupancy requirements of short-term rentals indicates the dormant Commerce Clause of the United States Constitution (cannot discriminate against interstate commerce at the local level)

Local Regulation Options – General Zoning Authority

- General zoning considerations:
 - Where are tiny homes allowed to be sited within the locality?
Certain residential areas?
 - Are they considered accessory dwelling units?
 - What *forms* of tiny homes are allowed within the locality?
 - Many forms of tiny homes – traditional site-built, converted shed, custom recreational vehicle intended for permanent residency, mobile home, modular home
 - If it is on wheels does it still have to comply with the code?
That will depend upon the code's definitions (Queensbury case)
 - Note that if the tiny home takes the form of a mobile home, a locality cannot prohibit or essentially zone out this form of housing

Local Regulation Options – General Zoning Authority

- General zoning considerations:
 - Dimensional requirements: are there minimum and maximum square footage requirements for tiny homes?
 - Can a homeowner seek a permit to convert a 144 square foot storage shed to a tiny home dwellings?
 - Are there setback requirements to comply with?
 - Are there minimum lot size requirements?
 - *Keep in mind that high minimum lot size requirements could zone tiny homes out of the jurisdiction
 - Are they only allowed as an ADU?

Local Regulation Options – General Zoning Authority

- General zoning considerations:
 - Capacity requirements – limit the number of occupants?
 - Occupancy restrictions in property maintenance code do not apply to Appendix Q Tiny Homes (site-built, less than 400 square feet)
 - Certain number of parking spaces to be available?
 - Design requirements – are there certain standards tiny home owners have to comply with? Any landscaping requirements?

Local Regulation Options – General Zoning Authority

- General zoning considerations:
 - What about variances?
 - Use variance- use not permitted
 - As it relates to tiny homes – allowing multiple dwellings in a single-family zoning
 - Applicant has to demonstrate unnecessary hardship
 - Area variance: use is permitted but not allowable by physical aspects / dimensions
 - As it relates to tiny homes – setbacks, frontage requirements, density, etc
 - Board applies a balancing test
 - Variance runs with the land* and board can impose reasonable restrictions

Local Regulation Options – General Zoning Authority

- Building Permits: required for all dwellings
 - Site-built: Uniform code and Appendix Q
 - Modular home: Uniform code and compliance with manufacturer's installation instructions
 - Mobile home: Compliance with Department of Housing and Urban Development (HUD) code for all mobile homes manufactured after 1976 – must bear “HUD” seal
 - Recreational vehicles / tiny homes on chassis: Depends upon what locality requires in code
 - Could provide that any recreational vehicles used as a dwelling for more than “x” days a year must comply with mobile home requirements

Local Regulation Options – General Zoning Authority

- General permitting authority pursuant to Town Law section 261:
 - Does not run with the land as a variance necessarily does- is tied to the applicant / owner
 - Is the structure considered an ADU in the locality and if so, what requirements should be complied with?
 - Can require tiny home owner to register in permitting system to ensure compliance with aforementioned general zoning authority

Options for Local Regulation – Special Use Permits

- Special use permits are a powerful tool to regulate tiny homes
 - Town Law section 274-b
 - Village Law section 7-725-b
 - General City Law section 27-b
- Allows localities to require authorization of a particular use that is otherwise permitted in zoning code subject to requirements imposed by special use permit
- Can / should place conditions on special use permit

Options for Local Regulation – Special Use Permits

- Can require annual / biennial renewal (etc)
- Can provide that special use permit expires after certain amount of time of non-use
- Can provide that special use permit is temporary or authorized for a certain period of time – so long as zoning code provides for the time limitation
 - *Note that this is problematic for tiny home structures affixed to the land
 - Type of tiny home should be considered when placing any durational requirements
- Does *not* necessarily run with the land- depends upon local code (case law supports this)

Options for Local Regulation – Special Use Permits

- Board designates authority to review permits (zoning board / planning board)
- County referral – GML 239-m
- Public hearing conducted within 62 days (if using 274-b authority); can be extended by mutual consent
- 10 days before hearing notice sent to applicant and county planning board
- Decision filed with clerk within five days of decision
- Aggrieved applicants can commence an Article 78 proceeding within 30 days of decision

Options for Local Regulation – Site Plan Review

- The site plan review process is another tool:
 - Town Law section 274-a, Village Law section 7-725-a, General City Law section 27-a
 - Applies to parcels where a property owner wants to maintain ultimate ownership and rent parcels to tiny home owners (as opposed to subdivisions)

Options for Local Regulation – Site Plan Review

- Site plan reviews are subject to State Environmental Quality Review Act (SEQRA) (as are most land use actions)
 - Planning board or board charged with reviewing site plans must ensure SEQRA process was conducted before approving site plan
- Governing board should include required elements of site plans
 - Developed in conjunction with and in consideration of comprehensive plan

Options for Local Regulation – Site Plan Review

- Governing board should include required elements of site plans
 - Subject to referral to county- GML 239-m
 - Board can impose reasonable conditions and restrictions that are directly or incidentally related to the proposed site plan
 - For tiny homes – minimum lot sizes, minimum or maximum square footage requirements, etc

Options for Local Regulation – Site Plan Review

- Public hearings: required if the ZBA is the reviewing authority
- Locality can require public hearings even if ZBA is not the reviewing authority
- Must be conducted within 62 days of receiving application
- Applicant and county planning board receive notice of hearing ten days in advance
- Notice of public hearing published in newspaper of general circulation at least five days in advance (Town Law section 274-a [8], [9])
- Decision rendered within 62 days of public hearing – can be extended by mutual consent

Options for Local Regulation – Creative Methods

- **No Zoning? No problem!** Additional authority to regulate tiny homes outside of the land use arena
- Town Law section 130 – adopt ordinances (local laws) that:
 - Promote the public welfare (section 15)
 - Address health and safety regulations (various sections)
 - Adopt a housing code that establishes minimum standards governing one and two family dwellings (section 3-a); and
 - Regulate house trailers and house trailer camps (section 21)
 - If tiny home is a trailer, can use this section to require local registration and impose durational time limits
- Impose conditions not related to land use

Options for Local Regulation – Creative Methods

- Village Law section 4-412 – general authority of the Board of Trustees:
 - “Good government of the village, its management and business, the protection of its property, the safety, health, comfort, and general welfare of its inhabitants, the protection of their property, the preservation of peace and good order, the suppression of vice. . .”
- General grant of authority for villages to regulate tiny homes as it relates to promoting the safety, health, comfort and general welfare of its residents

Options for Local Regulation – Creative Methods

- Municipal Home Rule Law section 10 – applies to all local governments and allows localities to adopt local laws that advance government, protection, order, conduct, safety, healthy and the well-being of persons and property therein
- Broad authority to exercise home rule

Tiny Homes- Taxation

Taxation of Tiny Homes

Tiny Homes - Taxation

- Taxation of the tiny home will depend upon the actual structure
- Real Property Tax Law section 300 provides that all real property within the state shall be subject to taxation unless exempt
- Site-built or modular on foundation – fairly straight forward – affixed to the land and value of tiny home should be considered in assessment

Tiny Homes - Taxation

- What about trailers and mobile homes?
- Real Property Tax Law section 102 (12) (g) – the value of any trailer or mobile home used for residential, business, commercial or office purposes should be included in the assessment of the land on which it is located
- Exceptions – trailers or mobile homes that are:
 1. Located within the locality for less than 60 days;
 2. Unoccupied or for sale; or
 3. Recreational vehicles that are 400 square feet or less, self-propelled or towable *and used as temporary living quarters for recreational, camping, travel or seasonal use* (emphasis added)

Tiny Homes - Taxation

- Site-built, mobile or modular – value would be included in assessment of land it is affixed to
- Recreational vehicles – temporary living quarters?
As of taxable status date, assessor should inquire as to whether permanently residing there
 - What happens if the owner of the recreational vehicle moves locations ten months later?
 - Not an ideal situation

Tiny Homes- Affordable Housing

Tiny Homes and Affordable Housing

Tiny Homes- Affordable Housing

- What constitutes affordability?
- Conventional approach – no more than 30 percent of household income is spent on housing
 - Simple approach that does not take other nuanced factors into account, such as transportation costs, public safety, quality of housing
 - One full time worker earning minimum wage cannot afford to rent a two-bedroom apartment anywhere in the United States (see *The Affordable Housing Crisis: Tiny Homes and Single-Family Zoning*, 72 Hastings LJ 919 [2021])
- High minimum square footage and lot size requirements – increase in housing prices

Tiny Homes- Affordable Housing

- Average tiny home can cost less than \$23k to construct
- Professionally built tiny home – averages around \$60k
- Average cost to built traditional 2000 square foot home in NY – 200-310k

Tiny Homes – Affordable Housing

- Tiny homes and affordable housing: Saratoga edition



Tiny House Marketplace Facebook page-Deborah MacDonald

Saratoga Tiny House For Sale

It's built on top of a trailer and ready for travel.

This tiny home listed for \$76,000 – on wheels and ready to go!

Tiny Homes – Affordable Housing

- Tiny homes and affordable housing: Saratoga edition



Tiny House Marketplace Facebook page-Deborah MacDonald

Saratoga Tiny House For Sale

It's 208 square feet on the bottom floor.

This tiny home listed for \$76,000 – on wheels and ready to go!

Tiny Homes and Affordable Housing

- Executive Budget Proposals Addressing Affordable Housing – Directly and Tiny Homes (Indirectly – Affordable and ADUs)
- 2022- Provision that mandated ADUs in all localities ultimately stricken from final budget
- 2023-2024 Executive Budget proposal affordable housing initiative - “New York Housing Compact” creates a three-year new housing target for municipalities
- Was ultimately stricken from final budget
- Newest proposal – Executive Order 30 – “Pro-Housing Communities” receive priority in funding

Tiny Homes and Affordable Housing

- How do these proposals impact tiny houses?
 - Tiny homes are generally more affordable than traditional single-family homes
- Are tiny homes ADUs?
 - Depends on the local zoning code
 - Tiny homes can take many forms- structure could be principal building, even if the lot size is significant

How Do We Regulate?

- How do we know if someone is even has a tiny home? How can we regulate them if we don't know?
 - Neighbor complaints
 - Tiny home / STR websites- presumption of operation (include in code) if property is listed
 - Google search
 - County registry if county has VCA with short-term rental platform – should have a list of properties, which might incorporate some tiny homes

Addressing Tiny Homes at the Local Level:

Final Thoughts

- Definitions matter! How does the locality want to define tiny homes?
 - All forms authorized? Site-built, chassis, mobile, RV style?
 - A broad definition could encompass all forms of tiny homes
 - Keep in mind that different types may be subject to different requirements (e.g., site-built versus mobile home versus recreational vehicle)
- Consider the comprehensive plan and ensure housing options for the community are taken into account
- Look to land use toolkit and creative methods outside of zoning and land use to regulate



Questions?

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