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## To the primacy of an approved Comprehensive Plan as driving document...

1 message

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....to any Zoning Code amendment.

From the Introduction to the Comprehensive Plan:

### A. Legislative Authority

The authority to conduct comprehensive planning and to adopt a comprehensive plan is granted to towns by the State Legislature. Adoption of a comprehensive plan by a town board requires that all town land use be in accordance with the plan. Furthermore, other governmental agencies must take the plan into consideration whenever their capital projects occur on land included in the town comprehensive plan. This provides a town with the appropriate guidance to review future projects and provides the essential background information and justification for amending or creating a zoning ordinance. The plan also provides developers/project sponsors with up-front guidance on where and how their projects can be developed, facilitating the site plan review process and providing early detection of potential land use conflicts.

Section 272-A section 10 and 11. of the New York State Town Law relating to Comprehensive Plans once adopted read:

10. Periodic review. The town board shall provide, as a component of such proposed comprehensive plan, the maximum intervals at which the adopted plan shall be reviewed.
11. Effect of adoption of the town comprehensive plan. (a) All town land use regulations must be in accordance with a comprehensive plan adopted pursuant to this section.

<http://lawoftheland.wordpress.com/2010/02/13/rezoning-invalidated-for-failure-to-comply-with-comprehensive-plan-and-failure-to-make-required-referral/>

The court ruled in: EMB Enterprises, LLC v. Town of Riverhead, 2010 WL 377314 (N.Y.A.D. 2 Dept. 2/2/2010).

"Further, the appellants do not contest the Supreme Court's holding that the proposed change to the zoning ordinance conflicts with the provision of the Comprehensive Plan of the Town of Riverhead that "the existing commercial zoning should be retained" in the subject area and, thus, that the resolution violates Town Law §§ 263 and 272-a(11)(a). In light of the invalidity of the proposed change under Town Law §§ 263 and 272-a(11)(a), the appellants' contention that the Supreme Court erred in holding that the resolution also violates the mandate for environmental review under the State Environmental Quality Review Act (ECL art 8; hereinafter SEQRA) has been rendered academic."

The court ruled in In Osiecki v. Town of Huntington, IBB a regulation that departed from the comprehensive plan was invalidated for failure to articulate planning reasons for the deviation. Otherwise, "[t]o accept the Town's contention that it is free to determine that the master plan should no longer be followed, without articulating a reason for that determination, would invite the kind of ad hoc and arbitrary application of zoning power that the comprehensive planning requirement was designed to avoid."

The court ruled in Udell v. Haas, the failure of the regulation to conform to the comprehensive plan was sufficient to show that it was not within the scope of the municipality's delegated powers.

The court ruled in Infinity Consulting Group, Inc. v Town of Huntington  
Town Law § 272-a(11) provides that where, as here, a town has adopted a formal comprehensive plan, the town's zoning decisions must be consistent with that plan. Compliance with the statutory requirement is measured, however, in light of the long-standing principle that one who challenges such a legislative act bears a heavy burden (see Matter of Town of Bedford v Village of Mount Kisco, 33 NY2d 178, 186, 306 N.E.2d 155, 351 N.Y.S.2d 129). "If the validity of the legislative classification for

zoning purposes be fairly debatable, the legislative judgment must be allowed to control' " (Shepard v Village of Skaneateles, 300 NY 115, 118, 89 N.E.2d 619, quoting Village of Euclid v Ambler Realty Co., 272 U.S. 365, 388, 47 S. Ct. 114, 71 L. Ed. 303, 4 Ohio Law Abs. 816; see De Sena v Gulde, 24 AD2d 165, 169, 265 N.Y.S.2d 239). Thus, when a plaintiff fails to establish a clear conflict with the comprehensive plan, the zoning classification must be upheld (see Taylor v Incorporated Vil. of Head of Harbor, 104 AD2d 642, 644-645, 480 N.Y.S.2d 21; [\*4] Blumberg v City of Yonkers, 41 AD2d 300, 306-308, 341 N.Y.S.2d 977). Zoning decisions must be consonant with a total planning strategy, reflecting consideration of the needs of the community (see Udell v Haas, 21 NY2d 463, 469, 235 N.E.2d 897, 288 N.Y.S.2d 888). "What is mandated is that there be comprehensiveness of planning, rather than special interest, irrational ad hocery. The obligation is support of comprehensive planning, not slavish servitude to any particular comprehensive plan" (Matter of Town of Bedford v Village of Mount Kisco, 33 NY2d at 188).

In this case, the subject property is bordered to the north by a one-acre residential lot, and to its immediate west is a series of 13 residential properties along Gwynne Road. In effect, the property is situated at the entrance to a residential neighborhood from a commercial roadway, and more importantly, the only access to the property is at the corner of a residential street. There is no entrance to the property from the Route 110 commercial roadway. Viewed in this light, the Town Board's decision to deviate from the comprehensive plan and not to rezone the entire property for commercial use was justified and had a rational basis (cf. Osiecki v Town of Huntington, 170 AD2d 490, 565 N.Y.S.2d 564). [\*5] The Board's determination tends to promote the public interest in that there are legitimate concerns that rezoning the property for commercial use will have a negative effect on traffic congestion and the residential character of Gwynne Road (see Tilles Inv. Co. v Huntington, 74 NY2d 885, 888, 547 N.E.2d 90, 547 N.Y.S.2d 835, affg 137 AD2d 118, 528 N.Y.S.2d 386; Stevens v Town of Huntington, 20 NY2d 352, 355, 229 N.E.2d 591, 283 N.Y.S.2d 16).