

## TOWN PREVAILS IN ZONING CODE LAWSUITS

The Town of Sand Lake prevailed in three lawsuits challenging our 2017 Zoning Code. The Appellate Division, Third Department **affirmed** the lower court's decision upholding the 2017 Zoning Law. In its 15-page Decision, the 5-judge panel unanimously found that:

- The Town's Comprehensive Plan was **not** outdated, and the 2017 Zoning Law was properly enacted in accordance with that Plan.
- The 2017 Zoning Law was adopted in compliance with the procedural and substantive requirements of the State Environmental Quality Review Act.
- The 2017 Zoning Law does **not** improperly regulate business operations and/or the local mining industry.
- Nothing in the 2017 Zoning Law improperly delegates legislative functions to the Planning Board.
- The 2017 Zoning Law and the Zoning Map, as corrected, provide clear regulatory standards for properties, and provides clear regulation regarding commercial extraction uses.

The Appellate Division also found that the 2017 Zoning Law was adopted in compliance with the procedural and substantive requirements of the State Environmental Quality Review Act.

The Third Department used the severability clause found §250-201 of the 2017 Zoning Law to strike two provisions.

**First**, the Third Department struck §250-99(C) which provides that "[t]he creation of a Natural Resource Extraction PDD shall be considered a Type I Action and shall require a full Environmental Impact Statement." The Third Department found that this provision was facially invalid since it usurps the authority provided to the Lead Agency under SEQRA.

**Second**, the Third Department struck §250-99(G) which provides that provides, "Access. Ingress and egress and transport of minerals shall only be permitted on County roads or State roads. No Town Roads shall be utilized for the transport of minerals or other commercial excavation activities." The Third Department found that this provision was facially invalid since it fails to set forth exceptions for the delivery and pick-up of merchandise and other property.

At this point, all parties have the right to file a motion seeking permission to appeal the attached Decision to the Court of Appeals (New York's highest Court). This is all parties' last legal option in State court. Motions to the Court of Appeals are rarely granted in civil cases. With respect to the Petitioners/Appellants, they all have the right to challenge the Appellate Divisions Decision to affirm the lower court, as set forth above, by making the motion to the Court of Appeals. They likewise have 30-days after service of the Decision to make their motion(s).