

## Local Law No. 5 of 2014

### **Local Law Establishing a Moratorium on the Processing of Certain Land Use Applications and on the Issuance of Certain Land Use Approvals and Zoning Permits Exclusive of PUD Approvals, For Multi-Family Residential, Commercial or Industrial Developments in the Town of Tyre**

#### Section 1. Title

This Local Law shall be referred to as the "Local Law Imposing a Temporary Moratorium on the Processing of Certain Land Use Applications and on the Issuance of Certain Land Use Approvals and Zoning Permits, Exclusive of PUD Approvals, For Multi-Family Residential, Commercial or Industrial Developments in the Town of Tyre."

#### Section 2. Purpose, Intent and Findings

The Town recently adopted a Comprehensive Plan for the purpose of adopting a general development policy for the community and amending the zoning law in accordance with that plan.

Land use is a focal point for the Town, which is primarily agricultural, but which has seen some commercial development pressure in the area of New York State Routes 414 and 318. Residents have expressed a preference to maintain the rural characteristics of the Town, but the lack of subdivision and site plan regulations in the Town leave the Town without any influence over subdivision or development projects. In the absence of both subdivision and site plan regulations, the Town has no official way to address the potential impacts associated with land use developments such as surface water runoff, lighting, water usage, sewage disposal, conversion of farmland, traffic, noise, etc. As a result, the Comprehensive Plan specifically recommends the adoption of both subdivision and site plan regulations.

The Town also lacks adequate water and sewer services. Ninety percent of the Town's residents rely on individual wells or cisterns for their water supply. Many of these wells provide inadequate amounts of water and/or poor water quality. Extending municipal water service throughout the Town is prohibitively expensive. Similarly, ninety-eight percent of Town residents rely on individual septic tanks or holding tanks. The potential to provide municipal sanitary sewer to the Town is extremely limited and prohibitively expensive. The lack of adequate water and sewer services impact the potential for both commercial and residential development.

Recently, the Town has received an application for a multi-family residential development and it anticipates other applications for commercial and residential development being filed in the near future. The uses proposed by such applications have the potential to impact the character of the Town and its residents. Because of the

potential impacts associated with future development projects that fall outside of the scope of the recently enacted Planned Unit Development Law, the Town Board wishes to ensure that any new developments do not result in negative and/or irreversible impacts to the Town or its residents. Rather, the Town wishes to ensure that it has the opportunity to adequately plan and prepare for such development by adopting subdivision and site plan regulations that will promote the sound development of the Town consistent with its Comprehensive Plan.

The Board anticipates the adoption of a local law entitled Subdivision Regulations and the adoption of a second local law that will amend the existing zoning law to add a section related to site plan regulation. However, the Town will require a period of time to consider the appropriate regulatory language and procedures for both site plan and subdivision review. It therefore finds it necessary to adopt the moratorium imposed by this Local Law in order to preserve the status quo while the terms of such local laws are being studied and until the laws can be drafted and adopted pursuant to procedures set forth in the Municipal Home Rule Law.

### Section 3. Definition

For the purpose of this local law, unless specified below, the following definitions will apply.

“Code Enforcement Officer” is the person authorized and empowered to issue zoning permits on behalf of the Town.

“Land Use Approvals” means zoning permits, variances, and/or special use permits, but shall not include any approvals associated with the establishment of a Planned Unit Development District.

Any term not defined above will have the same meaning it has in the Town of Tyre Zoning Law

### Section 4. Affected Area

This Local Law is applicable to all parcels within the Town.

### Section 5. Scope of Controls

#### A. Zoning Permits

- i. During the effective period of this Local Law, the code enforcement officer will not issue a zoning permit for any multi-family residential, commercial or industrial use and/or structure in the affected area unless a variance to

this Local Law is granted by the Town Board and the zoning permit application otherwise demonstrates entitlement to a zoning permit pursuant to the Town of Tyre Zoning Law.

- ii. Upon the receipt of an application for a zoning permit in the affected area, the code enforcement officer will promptly inform the applicant of the terms of this Local Law and provide a copy to him or her.

B. Land Use Approvals

- i. During the effective period of this Local Law, no board, officer, employee or other person acting on behalf of the Town will issue any other land use approval, with the exception of any approvals associated with the creation of a Planned Unit Development District, involving a multi-family residential, commercial or industrial use in the affected area unless a variance to this Local Law is granted by the Town Board and the zoning permit application otherwise demonstrates entitlement to a zoning permit pursuant to the Town of Tyre Zoning Law.
- ii. Upon the receipt of an application for any land use approval in the affected area, the code enforcement officer will promptly inform the applicant of the terms of this Local Law and provide a copy to him or her.

C. Processing of Applications

- i. During the effective period of this Local Law, no board, officer, code enforcement officer, employee or other person acting on behalf of the Town will process any applications for a zoning permit or other land use approval, with the exception of any approvals associated with the creation of a Planned Unit Development District, involving a multi-family residential, commercial or industrial use in the affected area unless a variance to this Local Law is granted by the Town Board and the zoning permit application otherwise demonstrates entitlement to a zoning permit or other land use approval pursuant to the Town of Tyre Zoning Law.
- ii. During the effective period of this Local Law, the review of any zoning permit applications or other land use approval applications that were submitted prior to the effective date of this Local Law shall be suspended unless a variance to this Local Law is granted by the Town Board and the zoning permit application otherwise demonstrates entitlement to a zoning permit or other land use approval pursuant to the Town of Tyre Zoning Law.
- iii. Upon the receipt of an application for a zoning permit or any land use approval in the affected area, the code enforcement officer will promptly

inform the applicant of the terms of this Local Law and provide a copy to him or her.

## Section 6. Exceptions

The provisions of this moratorium do not apply to any zoning permits or any land use approvals necessary for any agricultural use or agricultural establishment.

As stated in Section 5.B.i. and 5.C.i. above, the provisions of this moratorium do not apply to any approvals associated with the creation of a Planned Unit Development District.

## Section 7. Variances

A person who has made application for a zoning permit during the period this Local Law is effective may apply to the Town Board for a variance. An application for variance will include a complete zoning permit application, a statement of need and justification that addresses all of the criteria for granting a variance set forth below and a processing fee of \$500. To the extent that the Town Board requires outside support to review any such application, it may require the applicant to pay the reasonable costs of such support, which shall be selected in the sole discretion of the Town Board, in addition to the processing fee. No application for a variance under this section will be entertained by the Board where any other land use approval is required.

Upon receipt of an application for a variance that contains all of the required components, the Town Board will publicly notice the application for the next board meeting that is at least ten days after the date of publication. At such meeting, the Board will receive comments from the public (including the applicant) regarding the variance application.

The Board will base its decision to grant or deny the variance based on the following factors:

1. whether the applicant would suffer unnecessary hardship if the issuance of the zoning permit would be delayed until the end of this moratorium;
2. whether such hardship was self-created;
3. whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created if the zoning permit was issued prior to the end of this moratorium;
4. whether the issuance of the zoning permit is substantial;

5. whether granting the zoning permit prior to the end of this moratorium would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Based on the application and any additional information submitted as part of the hearing, the Town Board may grant the variance, grant the variance with conditions, deny the variance or direct the applicant to provide such other information as is necessary to render a decision. No application may be granted unless the Town Board finds that each of the five criteria set forth above weigh in favor of granting the variance or unless the Town Board determines that the approval of the application would promote a use for which there is a demonstrated public need in the Town.

Any decision will be issued within 30 days of the receipt of all necessary information and will be accompanied by a short statement of findings regarding the criteria to grant or deny the variance.

If the Board grants the variance, the application for the zoning permit will be returned to the code enforcement officer with direction to process the application according to all applicable rules, except those arising out of this Local Law, in the ordinary course of business.

#### Section 8. Enforcement

Construction of a structure without a properly issued zoning permit pursuant to the procedures set forth in this Local Law shall be a violation of the zoning law and will be subject to all enforcement remedies set forth in Article X of the zoning law.

#### Section 9. Supersession

This local law supersedes any inconsistent provisions in the Town Zoning Law and in any Local Laws of the Town of Tyre more broadly.

#### Section 10. Validity

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

#### Section 11. Effective Date and Term

This Local Law shall take effect immediately when it is filed in the Office of the Secretary of State in accordance with §27 of the Municipal Home Rule Law. It shall remain in effect for a period of six months from the effective date of this Local Law.