

Lessons Learned by Facilitating Protection Laws



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Over the past 12 years, I have helped many communities to pass drinking water protection local laws. Most of these have involved the use of a protection overlay district. This technique creates a “layer” of restrictions over existing zoning in the area that supplies a drinking water source. This is highly effective in the 70% of towns in New York that have zoning. In facilitating the passage of these drinking water protection laws, I have learned many things. I want to share these with you in this article.

Lesson Learned #1: Try to Balance Competing Interests

The first lesson that I want to share with you regarding local drinking water protection laws is that it is critical to try to balance competing interests that exist in the community. You know who I mean. The typical community has groups like developers, businesses, farmers, and environmental activists who seemingly compete with one another. When I work with a community to plan the protection of their drinking water source, I immediately look to identify such groups and bring them together. As a neutral party representing the community at large, I try very hard to not take sides. This fosters a sense of trust and respect among the various parties. Next, you must inform, involve and educate these competing parties. Do not try to “sneak” something past. Instead, let them be a part of the process. Let the same people know why drinking water protection is important to them. Finally, I always look for areas of common ground where people might actually agree (believe or not, they usually do exist).

Lesson Learned #2: One Size Does Not Fit All

Many people call me and ask me to send them a protection law for them to use. I always say no. The reason is that no generic local protection law fits all communities. Each drinking water supply protection area is different. Each community has different existing land use regulations, potential contaminant threats, and competing interests. It is critical that existing zoning and land use laws are reviewed, the principal threats to the water supply are understood, and the various competing interests are addressed. Only then should the language of a local law be crafted that best fits the local conditions.

Lesson Learned #3: Beware of Preemption

As I discussed in a previous *Aquafacts* article, preemption is the ability of one level of government to negate laws passed at a lower level. In a number of instances, New York State has struck down local protection statutes passed by local governments. To avoid your local law being preempted, make sure that the law does not contradict any state law and have legal council carefully review any proposed local law.

Lesson Learned #4: Make Sure There Is Sufficient Political Will

There must be sufficient political support for passing and enforcing local water supply protection legislation. Before going to the time and effort of crafting a local law, I always make sure that local officials will eventually support it. With sufficient political will, the process of passing a local law can take months. Without strong political will, the process can take years, or not happen at all.

Lesson Learned #5: Follow Proper Procedures

Nothing will kill a local law sooner than if proper procedures are not followed in the adoption process of the law. A legal proceeding under Article 78 of NYS Civil Practice Law and Rules can be brought against the municipality. In order to avoid problems, communities must ensure that they: follow the legal requirements for public notices, public hearings, etc.; have the county planning board review proposed land use laws; conduct a SEQR review, and meet all filing and publication requirements.

Final Lesson Learned: Are Local Drinking Water Protection Laws Worth It?

Local officials and citizens have the most to gain from drinking water protection. Alternately, they have the most to lose from a lack of protection. Many threats to drinking water protection can be most effectively addressed at the local level. Furthermore, local laws can fill “regulatory gaps” where potential contaminant sources are not currently regulated or adequately enforced by the state or Federal government. My answer is a resounding yes! Local drinking water protection laws are worth it. 💧