

Comprehensive Plans

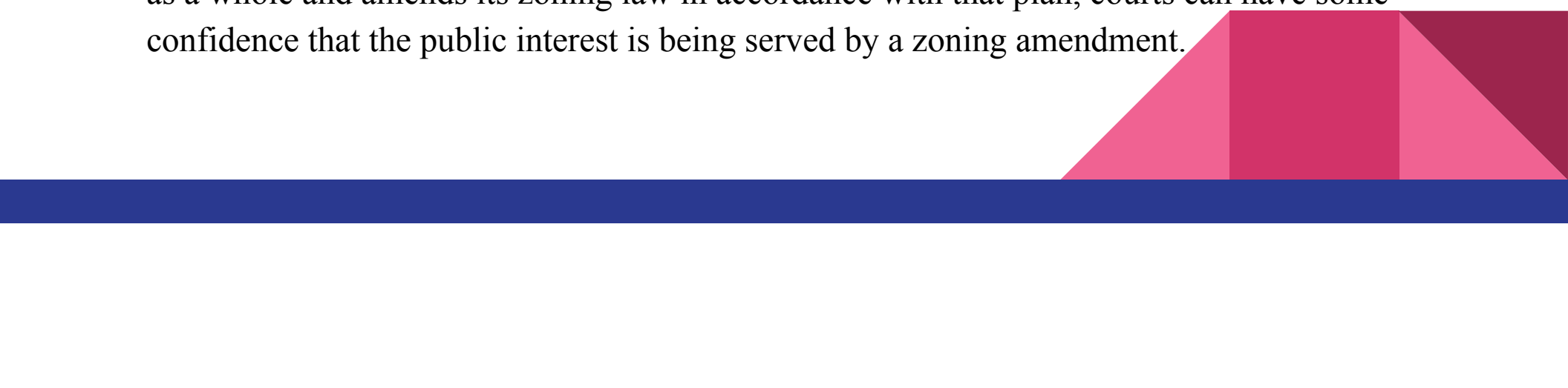
A Legal Perspective

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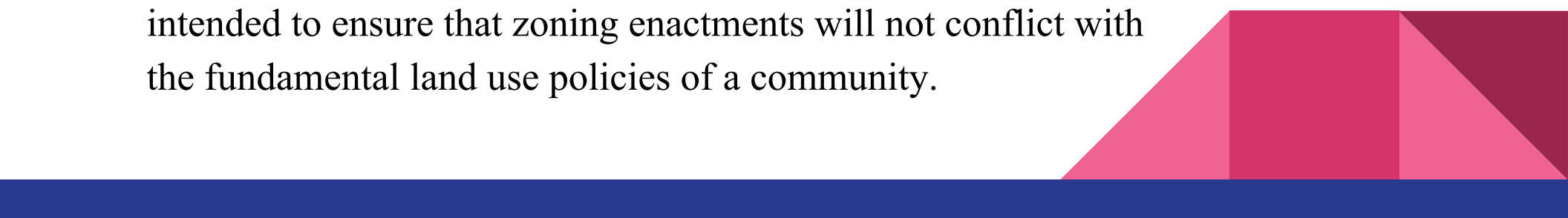
Historical Basis For Comprehensive Plans

- A zoning ordinance is illegal, under traditional police power and due process analysis, if it encroaches on the exercise of private property rights without substantial relation to a legitimate governmental purpose. A legitimate governmental purpose is one which furthers the public health, safety, morals or general welfare. *Fred F. French Investing Co. v. City of New York*, 39 N.Y.2d 587, 596 (1976).
- In order to demonstrate that zoning furthers the public health, safety, morals or general welfare, zoning regulations shall be made in accordance with a “well-considered plan” or a “comprehensive plan.” (New York General City Law § 20[25]; New York Town Law § 263; New York Village Law § 7-704).


UDELL v. HAAS, 21 N.Y.2d 463, 288 N.Y.S.2d 888 (1968).

- There is an “almost universal statutory requirement that zoning conform to a well-considered plan...”
 - The thought behind the requirement is that consideration must be given to the needs of the community as a whole. In exercising their zoning powers, the local authorities must act for the benefit of the community as a whole following a calm and deliberate consideration of the alternatives, and not because of the whims of either an articulate minority or even majority of the community.
 - Where a community, after a careful and deliberate review of ‘the present and reasonably foreseeable needs of the community’, adopts a general developmental policy for the community as a whole and amends its zoning law in accordance with that plan, courts can have some confidence that the public interest is being served by a zoning amendment.
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Purpose of The Comprehensive Plan

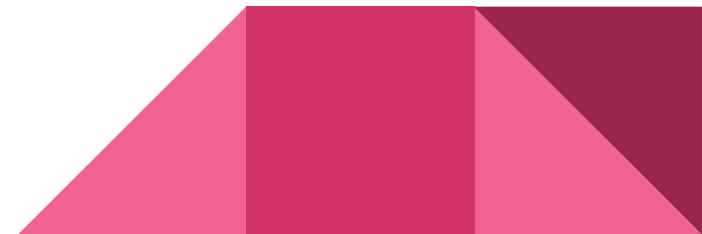
- “A comprehensive plan has as its underlying purpose the control of land uses for the benefit of the whole community based upon consideration of its problems and applying the enactment or a general policy to obtain a uniform result not enacted in a haphazard or piecemeal fashion.” *Kravetz v. Plenge*, 84 A.D.2d 422, 429 (4th Dept. 1982).
 - Consistency and rationality are the key points of a comprehensive plan. *See Udell v. Haas*, 21 N.Y.2d 463, 471 (1968). Mandating compliance to a comprehensive plan is intended to ensure that zoning enactments will not conflict with the fundamental land use policies of a community.
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What Is A Comprehensive Plan?

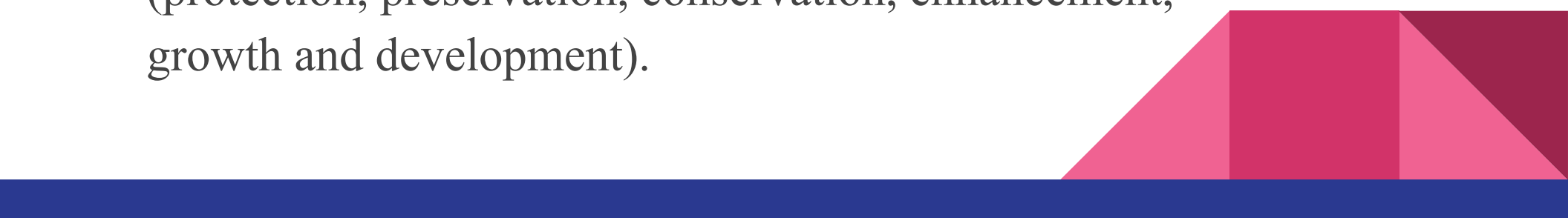
- “Comprehensive plan” need not be a single document. It can be determined by examining “all relevant evidence” and can come from “any available source, most especially the master plan of the community, if any has been adopted, the zoning law itself and the zoning map.
 - *Town of Bedford v. Village of Mt. Kisco*, 33 N.Y.2d 178 (1973).
 - Rejects argument that 1968 rezoning must fail because it did not comply with 1958 Comprehensive Plan because it failed to recognize “that the proper standard was current comprehensive planning.”
 - Courts will review any planning documents, minutes of legislative meetings and the text or findings section of the local zoning law to determine whether zoning is in the public interest, or conversely, in favor of special interests. *Asian Americans for Equality v. Koch*, 72 N.Y.2d 121, 131 (1988).
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Statutory Development Of Comprehensive Plans


- Beginning in 1993, the New York State Legislature enacted statutes which, for the first time, defined the “comprehensive plan”, detailed components for inclusion in a comprehensive plan and outlined the procedures for local adoption.
- Local legislative bodies have the authority to adopt the comprehensive plan and use it as a guide for developing zoning and other land use regulations.
- The comprehensive plan would also serve as a guide for local and state agency decision-making and allows a locality to define its community and establish binding long-term goals for development.




The Written Comprehensive Plan

- Sets forth what the community looks like now.
 - What the community should look like in the future (goals, objectives, principles).
 - How are the goals, objectives and principles to be achieved (regulatory standards, devices and legal instruments).
 - The purpose of achieving the goals, objectives and principles (protection, preservation, conservation, enhancement, growth and development).
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General City Law § 28-a Town Law § 272-a Village Law § 7-722


- In 1995, amendments were adopted to set forth specific requirements with respect to the preparation of a comprehensive plan.
 - City Council, Town Board or Village Board may prepare the comprehensive plan, or may authorize the Planning Board or a Special Board to prepare the comprehensive plan or an amendment to the plan. (General City Law § 5 Town Law § 272-a (4); Village Law § 7-722(4))
 - Planning Board or Special Board (when authorized) must by resolution recommend the plan to the appropriate legislative authority.
(General City Law § 5; Town Law § 272-a (4); Village Law § 7-722(4))
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PREPARING THE COMPREHENSIVE PLAN


- If the legislative authority prepares the comprehensive plan, they may refer it for “review and recommendation” to the Planning Board.
 - The comprehensive plan must be referred to the County Planning Board pursuant to GML § 239-m.
 - Planning Board or Special Board may request comments from a County Planning Board.
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CONTENTS OF THE COMPREHENSIVE PLAN

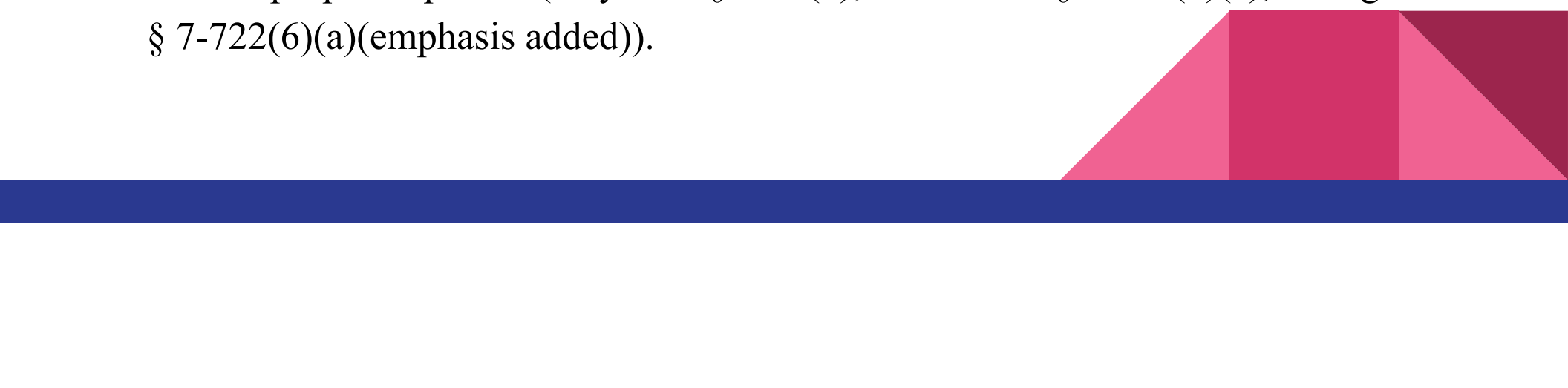
City Law § 28-a(4); Town Law §272-a(3); Village Law § 7-722(3)

- (a) General statements of goals, objectives, principles, policies, and standards upon which proposals for the immediate and long-range enhancement, growth and development of the village are based.
 - (b) Consideration of regional needs and the official plans of other government units and agencies within the region.
 - (c) The existing and proposed location and intensity of land uses.
 - (d) Consideration of agricultural uses, historic and cultural resources, coastal and natural resources and sensitive environmental areas.
 - (e) Consideration of population, demographic and socio-economic trends and future projections.
 - (f) The location and types of transportation facilities.
 - (g) Existing and proposed general location of public and private utilities and infrastructure.
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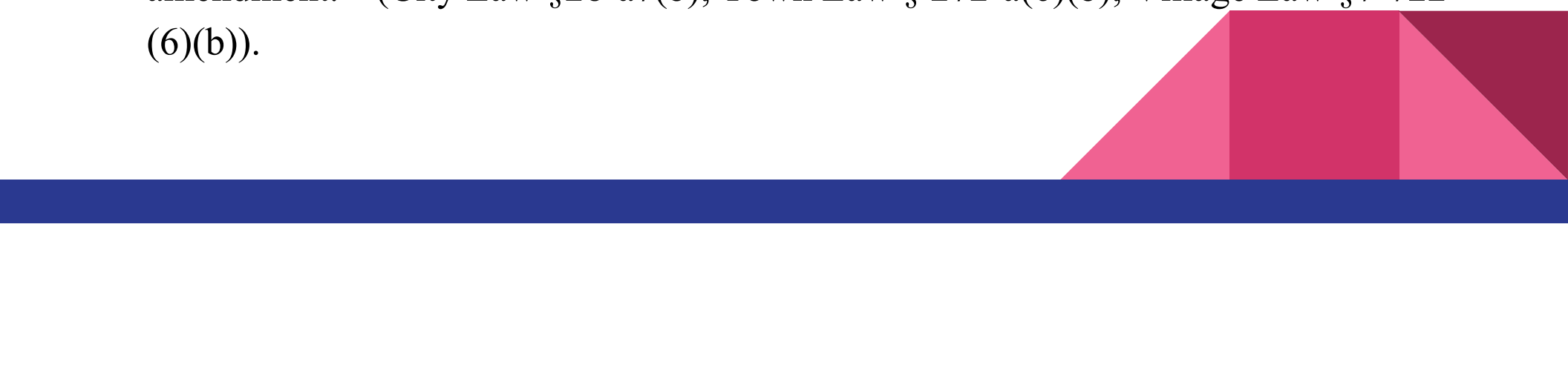
CONTENT OF COMPREHENSIVE PLAN (CONT.)

- (h) Existing housing resources and future housing needs, including affordable housing.
 - (i) The present and future general location of educational and cultural facilities, historic sites, health facilities and facilities for emergency services.
 - (j) Existing and proposed recreation facilities and parkland.
 - (k) The present and potential future general location of commercial and industrial facilities.
 - (l) Specific policies and strategies for improving the local economy in coordination with other plan topics.
 - (m) Proposed measures, programs, devices, and instruments to implement the goals and objectives of the various topics within the comprehensive plan.
 - (n) All or part of the plan of another public agency.
 - (o) Any and all other items which are consistent with the orderly growth and development of the village.
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PUBLIC HEARINGS

- Where the legislative body prepares a proposed comprehensive plan, such legislative board “shall hold one or more public hearings” and such “other meeting as it deems necessary to assure full opportunity for citizen participation in the preparation” of the proposed Plan as it deems necessary to ensure full opportunity for citizen participation in the the preparation of the plan.
 - In addition, the Town Board “shall hold one or more public hearing prior to adoption of such proposed plan.” (City Law § 28-a(7); Town Law § 272-a(6)(a); Village Law § 7-722(6)(a)(emphasis added)).
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PUBLIC HEARINGS (Continued)

- Where a Planning Board or Special Board has been directed to prepare the comprehensive plan, such board “shall hold one or more public hearings” and such “other meeting as it deems necessary to assure full opportunity for citizen participation in the preparation” of the proposed plan as it deems necessary to assure full opportunity for citizen participation in the the preparation of the plan.
 - In addition, the legislative board “shall, within ninety days of receiving the planning board’s or special board’s recommendations ... and prior to adoption of such proposed plan or amendment”, hold a public hearing on such proposed plan or amendment.” (City Law §28-a7(b); Town Law § 272-a(6)(b); Village Law §7-722 (6)(b)).
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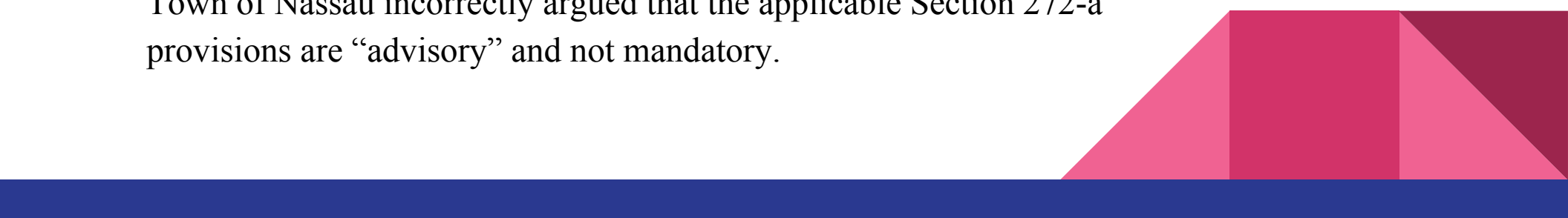
NOTICE OF A PUBLIC HEARING

- Notice of a public hearing must be published in a newspaper at least ten (10) calendar days in advance of the public hearing.
- During this time the proposed plan/amendment must also be available for public review at Town Clerk.
- *Troy Sand & Gravel Co. v. Town of Nassau*, 82 A.D.3d 1377 (3d Dep't 2011).


Town Board failed to make proposed comprehensive plan available public for ten (10) days prior to the public hearing before the special board considering it.

Special Board failed to adopt a resolution recommending the proposed plan to the Town Board.


Town of Nassau incorrectly argued that the applicable Section 272-a provisions are “advisory” and not mandatory.



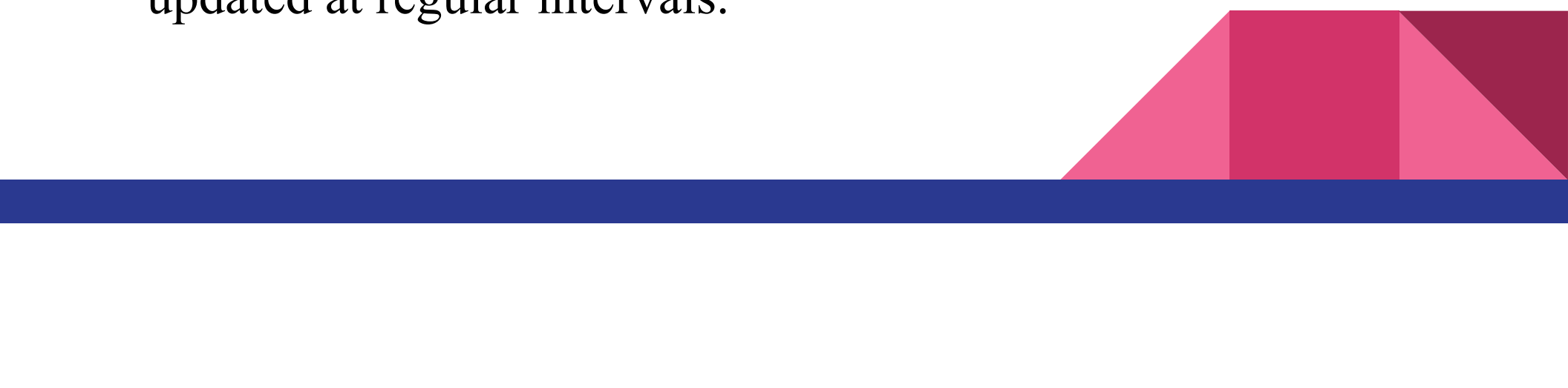
REVIEW OF THE COMPREHENSIVE PLAN UNDER SEQRA

- Comprehensive plans are “Type I actions” under SEQRA. (6 NYCRR 617.4(b)(1)).
 - Comprehensive plan may be reviewed using a Generic Environmental Impact Statement (“GEIS”)(City Law §28-a(9); Town Law § 272-a (8)); Village Law §272-a(8).
 - GEIS is not required, but is generally more appropriate for review of a comprehensive plan than a Long Form EAF.
 - The SEQRA handbook states that “[t]he generic EIS is the most appropriate way to analyze the environmental impacts of a comprehensive plan. The generic EIS is specifically designed to analyze actions that call for a series of subsequent actions such as a comprehensive plan.” (SEQR Handbook p 180).
 - “If a municipality chooses to prepare a generic EIS for a comprehensive plan, the comprehensive plan and generic EIS should be made available for public review as a joint document.” (SEQR Handbook p. 181).
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Benefits of Preparing Generic EIS

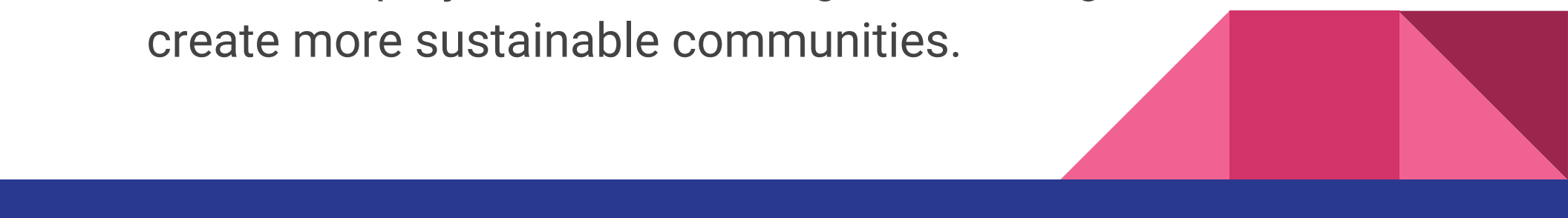
- Preparation of a GEIS allows for a more searching review of the range of possible land use actions proposed in a comprehensive plan.
 - GEIS sets forth specific conditions/criteria under which future actions will be undertaken/approved (6 NYCRR § 617.10)).
 - No further SEQR compliance is required if a subsequent proposed action is carried out in conformance with the conditions and thresholds established for such actions in the GEIS or its findings statement, e.g. re-drafting of zoning laws.
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PERIODIC REVIEW OF COMPREHENSIVE PLAN

- Town Board must provide in the Comprehensive Plan the “maximum intervals at which the adopted plan shall be review.” (City Law § 28-a(11); Town Law § 272-a (10); Village Law § 7-722(10)).
 - Once Comprehensive Plan is adopted, should be reviewed and updated at regular intervals.
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Implementation of Comprehensive Plan

Municipalities should be prepared to implement the plan by:

- Amending land use regulations.
 - Developing design guidelines.
 - Budgeting for capital improvements.
 - Applying for appropriate federal, state and privately funded programs (e.g. NYSERDA funding for implementation of innovative projects that reduce greenhouse-gas emissions and create more sustainable communities.
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Effect of Adoption of Comprehensive Plan

- Once the Comprehensive Plan is adopted all city, town or village “land use regulations must be in accordance with the Plan.” (City Law § 28-a(12); Town Law § 272-a(11); Village Law § 7-722(11)).
- Future development must be in compliance with Comprehensive Plan, including SEQRA review. (*See* Long EAF Part (C)(2)(A)(Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located?))



EFFECT OF ADOPTION CONTINUED


- Helps prevent illegal “spot zoning”.

Collard v. Inc. Vill. of Flower Hill, 52 N.Y.2d 594 (1981)

Illegal spot zoning occurs whenever the change is other than part of a well-considered and comprehensive plan calculated to serve the general welfare of the community.

- Allows for deviation based on special circumstances. *Infinity Consulting Group v. Town of Huntington*, 49 A.D.3d 813, 854 N.Y.S.2d 524 (2d Dep’t 2008).

Subject property located at the entrance to a residential neighborhood from a commercial roadway. Town deviated from the Comprehensive Plan and decided not to rezone the property for commercial use.

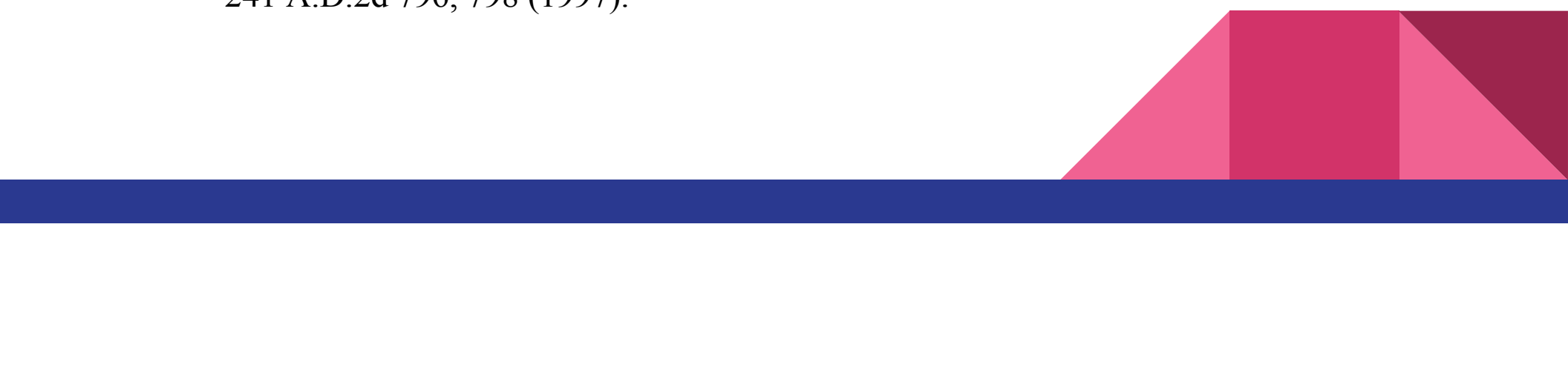


Effect Of Adoption (Cont.)

Town Board had legitimate concerns that rezoning the property for commercial use would adversely affect traffic congestion and the residential character of the neighborhood.

- Amendments to Zoning

When there is a claimed violation of the statute requiring an amendment to zoning code to be in accord with the comprehensive plan, the court must determine whether the original comprehensive plan required amendment because of the community's change and growth and whether the amendment is calculated to benefit the community as a whole as opposed to benefiting individuals or a group of individuals. *Daniels v. Van Voris*, 241 A.D.2d 796, 798 (1997).



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