

PLANNING BOARD OVERVIEW

New York State Department of State
Office of Coastal, Local Government, and Community Sustainability

Statutory Authority

- Powers and duties
- Qualifications for membership
- Terms of office
- Removal of members
- Alternate members
- Appointment of chairperson
- State training requirements

Powers & duties

- Administrative body
- Powers
 - Advisory – basic/inherent
 - Regulatory – must be authorized
- Public officers
 - Qualification requirements
 - Standards of conduct
- Statutory reference
 - Town Law § 271
 - Village Law § 7-718
 - General City Law § 27

Qualifications for membership

- Age – at least 18
- Citizenship – United States
- Residency – resident of municipality
- Exception – no current member of governing board may serve



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Conduct and ethics

- Members may be removed from office for “cause”

- Municipality may specify reasons for removal in local law
 - Poor attendance
 - Continued inappropriate behavior
 - Failure to receive training

- Governing board must hold public hearing before removing member for cause

Terms of office

- Appointing authority
 - Town board
 - City mayor
 - Village mayor with approval of trustees
- Number of members
 - Five or seven
- Terms equal to number of members
 - Staggered expiration
- Oath of office
 - Must be filed



Appointment of alternate members

- Local governing board adopts a local law or ordinance which allows alternates
- Appointed in same manner as regular members by same appointing authority
- Terms of office are established by governing board; can be any number of years
- For alternates to serve for absent members, the governing board must pass a law superseding state law

Appointment of chairperson

- Same appointing authority as for membership
- If no chairperson is appointed by mayor or town board, the planning board should select one
 - Vice-chairperson
- Possible duties:
 - Presides at meetings & hearings
 - Supervise agenda preparation
 - Liaison with governing board
 - Sign official documents
 - Supervise filing of documents



State training requirements

- Minimum of 4 hours annually
- Excess of requirement may be carried over
- What constitutes training must be decided by governing board
- Training can come from a variety of sources and formats
- Failure to comply does not void decisions
- Failure to receive training results in ineligibility for reappointment
- Requirements may be waived or modified by resolution of the governing board if judged to be in the best interest of the municipality

Advisory Powers

- Development of comprehensive plan
- Land use studies
- Land use regulations
- Variance requests
- Capital budgets

Advisory powers

- Inherent power to advise in matters concerning planning & development:
 - Land use studies
 - Maps
 - Reports
 - Recommendations for land
- Additional jurisdiction from governing board:
 - May assign additional powers of advisement by resolution
 - May further stipulate recommendation before final approval is granted

Advisory - area variances

- In the case of **subdivisions**, ZBA must request written recommendation from planning board
- Applicant may make **direct appeal to ZBA for area variance** in conjunction with:
 - Subdivisions
 - Site plans
 - Special use permits



Comprehensive Plan

- Master plan
- Land use plan
- Comprehensive master plan

Comprehensive plan

- An expression of a municipality's goals and recommended action to achieve those goals
- Outline for orderly growth, providing continued guidance for decision-making
- Document which focuses on immediate and long-range protection, enhancement, growth and development of the municipality
- Now also defined in statute
 - General City Law § 28-a
 - Town Law § 272-a
 - Village Law § 7-722

Comprehensive plan - importance

- Zoning must be in accordance with comprehensive plan
- Defense against spot zoning challenges
- Can also provide the basis for other actions affecting development
 - Grant applications
 - LGE – Shared Services
 - LWRP – Local Waterfront Revitalization Project
 - Capital Improvements



Town of Milton Town Center Plan

Develop or update/revise your plan

Possible indications that it is time:

- Age of plan
- Periodic review provision
- Rapid growth or decline
- New infrastructure needed
- Community character at risk
- Special places disappearing
- Significant environmental or economic changes



Planning board's role - development

- Entire Planning Board act as 'Special Board'
- Only individual members serve on 'Special Board'
- Make recommendations on proposed plan
- Board preparing plan must have **public hearing**
- Adoption is the responsibility of governing board – not planning board or 'Special Board'



Governing board's role – adoption

- Action by the governing board is needed to **implement or amend** the plan

- **Public hearing** within 90 days of receiving draft plan

- Governing board also responsible for:
 - Amending land use regulations
 - Developing design guidelines
 - Budgeting for capital improvements
 - Applying for appropriate state, federal and privately funded programs and grants

Regulatory Powers

- Subdivision review
- Site plan review
- Special use permits
- Sign permits
- Historic preservation
- Architectural review

Regulatory powers

- Governing board must delegate review authority to planning board
 - Exception – **subdivision** review is authorized by statute to planning board

- Extent of regulatory powers must also be delegated
 - What aspects of application may be reviewed
 - What may be required of applicant
 - What fees apply

Subdivision

- The division of a parcel of land:
 - Into a number of lots, blocks or sites
(with or without streets)
 - For the purpose of sale, transfer of ownership, or
development

- Statutory authority
 - General City Law §32 & §33
 - Town Law §276 & §277
 - Village Law §7-728 & §7-730



“Major” and “minor” subdivisions

- Subdivisions may be defined and delineated by local regulation as either “major” or “minor”

- Typical thresholds used for local classification:
 - Number of proposed lots
 - Construction of new street(s)
 - Extension of municipal infrastructure
 - Configuration of proposed lots
 - Transfer of land from adjacent parcel(s)

Subdivision review elements

- Regulates design and improvements:
 - Lot configuration
 - Street pattern
 - Streets and roads
 - Sidewalks & curbs
 - Utility installation
 - Service access
 - Drainage
 - Landscaping



Cluster or “conservation” subdivisions

- Enables and encourages flexibility of design and development to preserve natural and scenic qualities of open lands

- Need specific authorization from governing board:
 - Mandate
 - Encourage

- Zoning identifies allowable:
 - Location by districts
 - Type of development



Subdivision review procedures

- Public hearing required
- County planning agency referral may be necessary
- State Environmental Quality Review Act (SEQRA) must be considered
- Parkland or money in lieu of parkland
- Beware of default approvals – 62 days after close of public hearing

Site plan review

- Drawing showing the proposed development of a single piece of property

- Zoning is not necessary to enact site plan review

- Statutory reference
 - General City Law §27-a
 - Town Law §274-a
 - Village Law §7-725-a



Site plan – extent of authority

- List uses subject to review
- Delegate review board
- List elements board may review
- Specify submission requirements
- List local procedures – public hearing
- Identify enforcement authority for conditions of approval

Site plan – uses to be considered

- Specify land uses subject to review:
 - Type – Single type of use or several types of uses municipality-wide
 - Zoning District – All or some uses within a particular district
 - Area – All or some uses within an overlay zone, such as historic, architectural, or waterfront district

Site plan – review elements

- Consider if site plan is in accordance with comprehensive plan

- Examples of review elements:
 - Adjacent uses
 - Location/dimension of buildings
 - Screening & landscaping
 - Architectural features
 - Proposed grades & contours
 - Utilities
 - Sewage & storm drainage
 - Parking, access, traffic
 - Lighting, signage
 - Other

Special use permit

- Authorization to use land in a way permitted by zoning, subject to requirements designed to assure that proposed use:
 - Is in harmony with zoning
 - Will not adversely affect the neighborhood if requirements are met
- Also known as “special exceptions” or “conditional uses”
- Statutory reference
 - General City Law §27-b
 - Town Law §274-b
 - Village Law §7-725-b



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Other regulatory tools

- Sign permits
- Regulations vs. guidelines
 - ▣ Historic preservation
 - ▣ Architectural review



Public Meetings & Hearings

- Public meeting notice and access
- Executive session
- Board procedures
- Quorum
- Public hearing noticing requirements

Public meetings

- To allow the public to listen & observe

- Subject to Open Meetings Law – Planning Boards must discuss applications and other board business at meetings open to the public
 - Notice and access requirements
 - Executive session – no meeting behind “closed doors”

Meeting – notice & access

- ❑ Provide access to the public
- ❑ Provide notice to the press
- ❑ Post notice in a conspicuous place
- ❑ Post on municipal website
- ❑ Scheduled more than 1 week in advance – provide at least 72 hours (3 days) notice
- ❑ Scheduled less than 1 week in advance – provide notice to the extent practicable



Executive session

□ Public may be excluded if topic of discussion is for 1 of these 8 permissible reasons:

□ Public safety

□ Collective negotiations

□ Protect identity

□ History of person

□ Criminal investigations

□ Exams

□ Actual litigation

□ Property value

Exceptions to Open Meetings Law

- “Work Session,” “Agenda Meeting” or “Site Visit” is a meeting subject to the OML if quorum of members have planned to gather to discuss public business
- *Riverkeeper v. The Planning Board of the Town of Somers* (Supreme Court, Westchester County, June 14, 2002):

The court concluded that a site visit by a planning board does not constitute a meeting subject to the Open Meetings Law so long as its purpose is not for anything other than to ‘observe and acquire information’

Making the most of the meeting

- Establish a starting point
 - ZEO, municipal clerk, or board clerk
- Develop good forms
 - Have SEQRA Environmental Assessment Form available
- Have clear submission requirements
 - Use a check list
- If county review is required, send county copies of everything submitted
 - You can request applicant to provide extra copies
- Make sure time periods or deadlines comply with state law and are clear to all parties

Adoption of board procedures

- ❑ To be binding, must be adopted by the governing board by local law or ordinance
- ❑ Examples Include:
 - ❑ Duties of officers, committees
 - ❑ Calling meetings, agendas, public input
 - ❑ How to handle applications by non-owners
 - ❑ Signature on official documents
 - ❑ Hearings
 - ❑ Referrals
 - ❑ Minutes

Quorum

- Number of members who must be present for business to be legally conducted
- Must be at least a majority of full membership of board
- Full membership includes absent members and vacant seats
- NYS General Construction Law §41

Public hearings

- Held for the purpose of receiving public comment on a particular matter

- Examples pertaining to the planning board include:
 - Special use permit
 - Subdivision
 - Preparation of preliminary comprehensive plan
 - Site Plan only if locally required

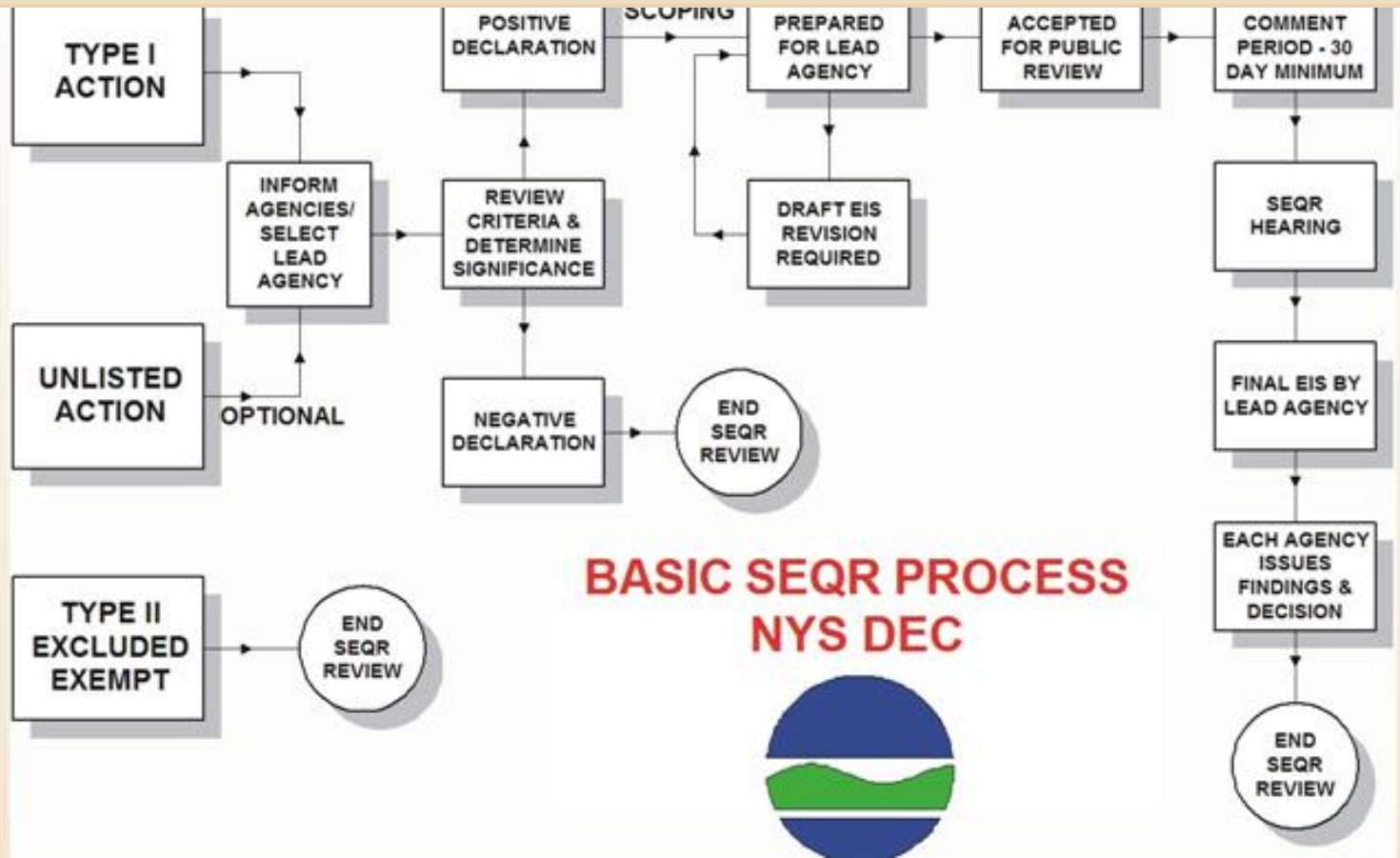
Hearings – noticing requirements

- State noticing requirements:
 - Public meeting requirements
 - Legal notice in official newspaper
 - Neighboring property owners must be notified by mail only in the case of “certain public agencies”
- Examples of local requirements:
 - Signs on application property
 - Certified Mailings
 - Municipal website or ListServ



Making Legally Defensible Decisions

- State Environmental Quality Review Act (SEQRA)
- Notice to adjacent municipality
- County referral
- Voting
- Findings
- Decisions



State Environmental Quality Review Act (SEQRA)

www.dec.ny.gov/permits/357.html

SEQRA Coordination

- Agency proposed action or receives application
 - Site plan
 - Special use permit
 - Subdivision
- Action classified*
- Lead agency established
- Significance of action determined*
- Environmental Impact Statement (EIS), if needed
- Findings and agency decision*

***SEQRA process can conclude at any of these points**

Notice to adjacent municipality

- If property is within 500' of adjacent municipality, it must be referred to clerk
- Send notice by mail or electronic transmission (email) at least 10 days prior to any hearing on proposed:
 - Subdivision
 - Site Plan
 - Special use permit
- Statutory reference
 - General Municipal Law §239-nn

Referral to county planning agency

- Projects requiring referral:
 - Special use permits
 - Site plan
 - Other zoning authorizations
 - Subdivisions where authorized by county legislative body

- Statutory reference
 - General Municipal Law §239-m

Referral to county planning agency

- Applications within 500' of:
 - Municipal boundaries
 - State or county parks or highways
 - State or county streams or institutions
 - Land on which state or county building is located
 - Farm operations in state agricultural districts



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County referral agreements

- The county planning agency and referring body may enter into agreement to exempt certain actions from county review
- Examples of exempt items:
 - Special use permits for accessory structures on residential lots
 - Site plan review for a change in tenant where modification of building footprint is less than 10%
 - Lot line adjustments

County referral timeline

- Special Use Permits & Site Plan – Full statement must be sent to the county planning agency at least 10 days prior to public hearing
- Site Plan – If no public hearing is needed locally, referral must be sent before final action can be taken
- Subdivisions – Referral only required where authorized by the county legislative body

Waiting to grant final approval

- Planning board may not take final action until the earlier of the following occurs:

Receipt of county planning agency's report; or

30 days after full statement is received by the county planning agency

- Two-day exception requires considering even after 30 days have passed, but at least 2 days before meeting where decision is made
- Time period may be extended if agreed to by both county and planning board
- Do not take early votes conditioned on county planning agency's positive recommendation

Voting

- A motion/resolution will only pass if it gets support of majority of entire membership of board
- A member may vote even if they missed previous presentations, public hearings, or other board meetings at which the project is discussed; member must first familiarize themselves with record
- Check statutory time frames – delayed decision on subdivisions may result in default approval

Voting contrary to county recommendation

If county recommends disapproval or modification within timeframe allowed....



Yes + Yes No

....then it requires a majority plus one vote for municipality to approve application without recommended modifications

Findings

- Describe reasons for decision
- May also support why condition was imposed
- Based on analysis which applies law to facts, leading to conclusions
- Should be able to support decision if challenged in court
- Insert into Record/Application File

Decisions must be filed

- At local level, determine officially what action constitutes “filing with the municipal clerk”

- Examples of decision documents:
 - Minutes containing record of vote – takes more time, unless draft minutes
 - Document that records motion passed – can be done immediately
 - Other?

- Planning board decisions may be appealed to Supreme Court, not to ZBA or governing board

Tying up loose ends

- Send copy of decision to applicant
- If referred to county, send copy of the decision
- Attach findings to decision document



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