

PLANNING BOARD OVERVIEW

New York State Department of State

Statutory Authority

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

Powers and duties



- Administrative body
- Powers
 - Advisory – basic/inherent
 - Regulatory – must be authorized
- Public officers
 - Qualification requirements
 - Standards of conduct
- Statutory references
 - 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, 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



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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 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 governing board if judged to be in best interest of municipality
- Training tracked locally

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

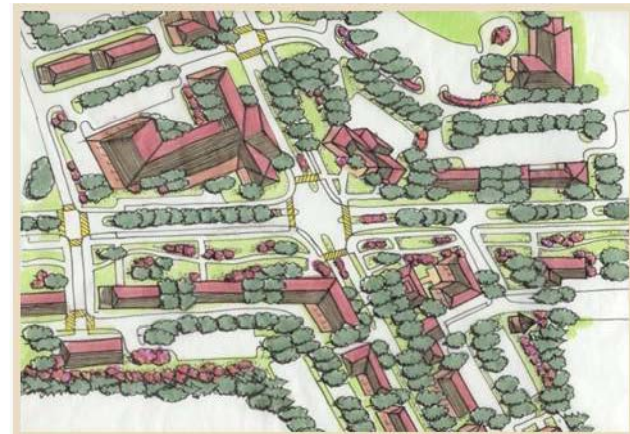
- Master plan
- Land use plan
- Comprehensive master plan

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 focusing 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



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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'



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Governing board's role – adoption

- Action by governing board is needed to **implement or to amend** 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 may delegate review authority to planning board or another board
 - Exception – delegation of **subdivision** review is limited 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



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“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 references
 - General City Law §27-a
 - Town Law §274-a
 - Village Law §7-725-a



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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 neighborhood if requirements are met

- Also known as “special exceptions” or “conditional uses”

- Statutory references
 - General City Law §27-b
 - Town Law §274-b
 - Village Law §7-725-b



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Other regulatory tools

- Sign permits
- Historic preservation
- Architectural review



Public Meetings and Hearings

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

Public meetings



- To allow public to listen and observe

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

Meeting – notice and access

- ❑ Provide access to public
- ❑ Provide notice to press
- ❑ Post notice in 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 extent practicable



Executive session

Public may be excluded if topic of discussion is for any of these eight permissible reasons:

- Public safety
- Protect identity
- Criminal investigations
- Actual litigation

- Collective negotiations
- History of person
- Exams
- Property value

Exceptions to Open Meetings Law

- “Work Session,” “Agenda Meeting” or “Site Visit” is meeting subject to OML only 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 governing board by local law or ordinance

Examples include:

- Duties of officers or committees
- Applications by non-owners
- Signature on official documents

- Agendas
- Calling meetings
- Hearings
- Minutes
- Referrals

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 purpose of receiving public comment on a particular matter

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

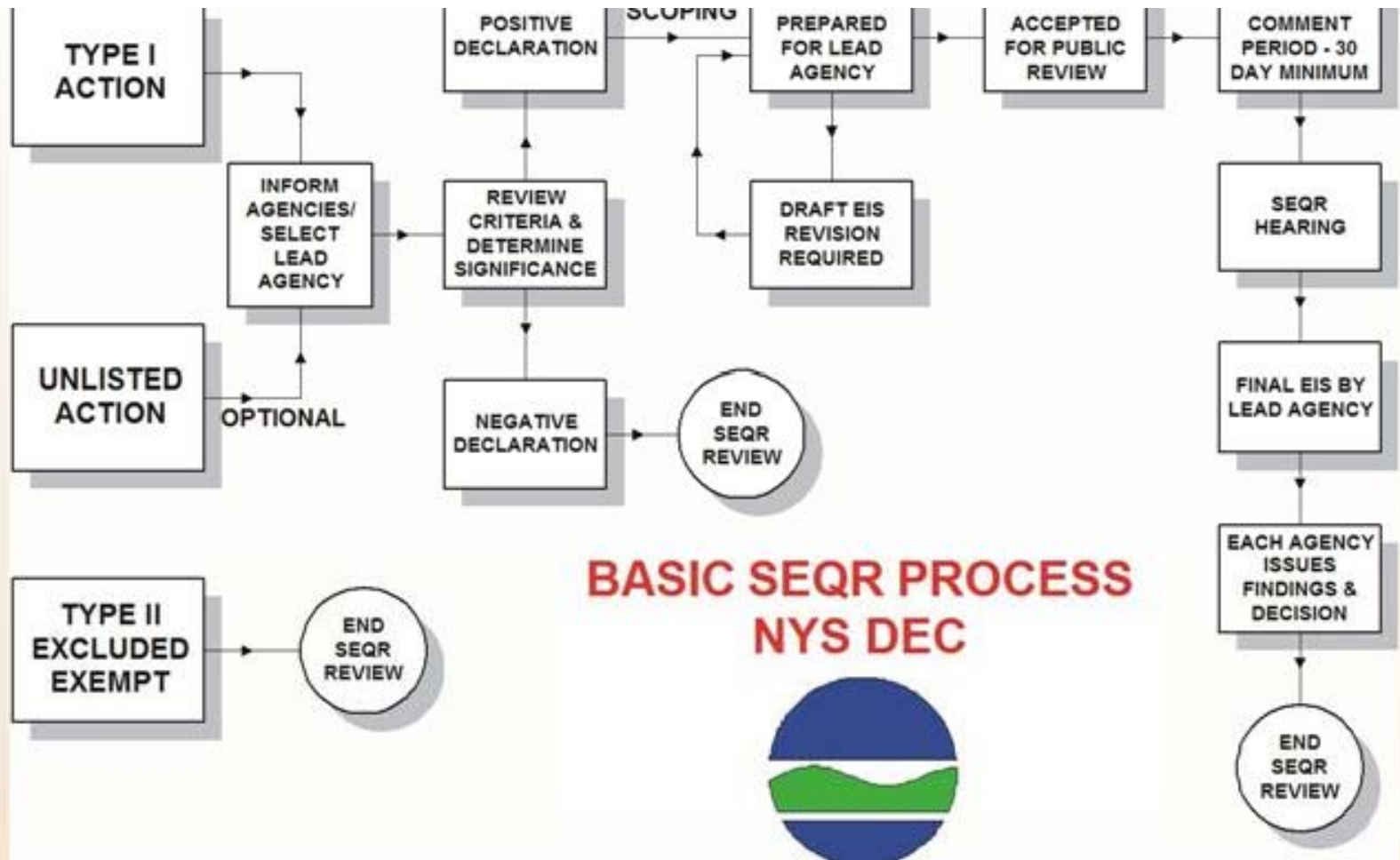
Hearings – noticing requirements

- 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

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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



- 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 county

- Two-day exception requires consideration 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

- 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 decision
- Attach findings to decision document



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