



**Division of Local
Government Services**

Planning Board Overview

A Division of New York Department of State

Welcome! Rules of the Road

- You should hear us speaking. If not, check your audio settings in the dropdown at the top of the program window. If still not working, log out and log back in but try not to log in and out too many times
- We are not IT professionals and we're off site, which means we cannot assist with technical issues on your end
- To ask questions, please use the chat feature and choose **Host, Panelists and Presenters** (4th option down in the chat box) or **All Panelists**. We will try to answer as many questions as time permits. If we cannot, you can always email us for technical assistance at localgov@dos.ny.gov
- Certificates will be emailed to participants in the next week. Beware: WebEx is watching! **Those who log in late, leave early or don't pay attention may only receive partial credit!**



Course outline

- Statutory authority
- Comprehensive plan
- Subdivision
- Site plan review
- Special use permits
- Procedure and SEQR
- Meetings and hearings
- Decisions



Powers and duties

- Administrative body
- Public officers
 - Qualification requirements
 - Standards of conduct
- Functions
 - Advisory (basic/inherent)
 - Regulatory (must be authorized)

Town Law § 271
Village Law § 7-718
General City Law § 27



Qualifications for membership

- At least 18 years old
- United States citizen
- Resident of local municipality
- Governing board members may not serve on the planning board



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



Alternate member appointment

- NY statute allows for alternates to serve for conflicts of interest
- For any other reason (i.e. quorum), local law or ordinance needed to supersede state law
- Local Governing board sets appointments:
 - Can set number of alternates
 - Can set terms of office for any time length



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 four hours annually
 - Excess hours may be carried over
 - Failure to comply does not void decisions
 - Consequence is ineligibility for reappointment
- Governing board approves training
 - Variety of sources & formats
- Requirements may be waived or modified
 - Best interest of municipality
 - Resolution of governing board
- Tracked locally



Advisory roles

- Inherent advisory power to recommend regulations relating to subject matter of PB jurisdiction
- May make investigations, maps, reports, and recommendations in matters concerning planning and development
 - Comprehensive plan; use of municipal land; capital budgets
- Resolution may assign additional powers of advisement, such as referrals to governing board
 - May further stipulate final action dependent upon receipt of recommendation



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

- 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
- Sometimes called “master plan”

Town Law § 272-a
General City Law § 28-a
Village Law § 7-722

Comprehensive plan – importance

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



Draft 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

Town of Sand Lake Comprehensive Plan



Submittal Date: June 14, 2006

Prepared By:



112 Spring Street
Saratoga Springs, NY 12866



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Planning board's role: drafting

- Entire Planning Board acts as 'Special Board'
- Only individual members serve on 'Special Board'
- Make recommendations on proposed plan
- Board preparing plan must have public hearing
- Adoption is governing board's responsibility (not Planning Board or 'Special Board')



Governing board's role: adoption

- Governing board must act **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 authority

- Governing board may delegate review authority to planning board or another board
 - Exception: subdivision review is limited to planning board by statute
- 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

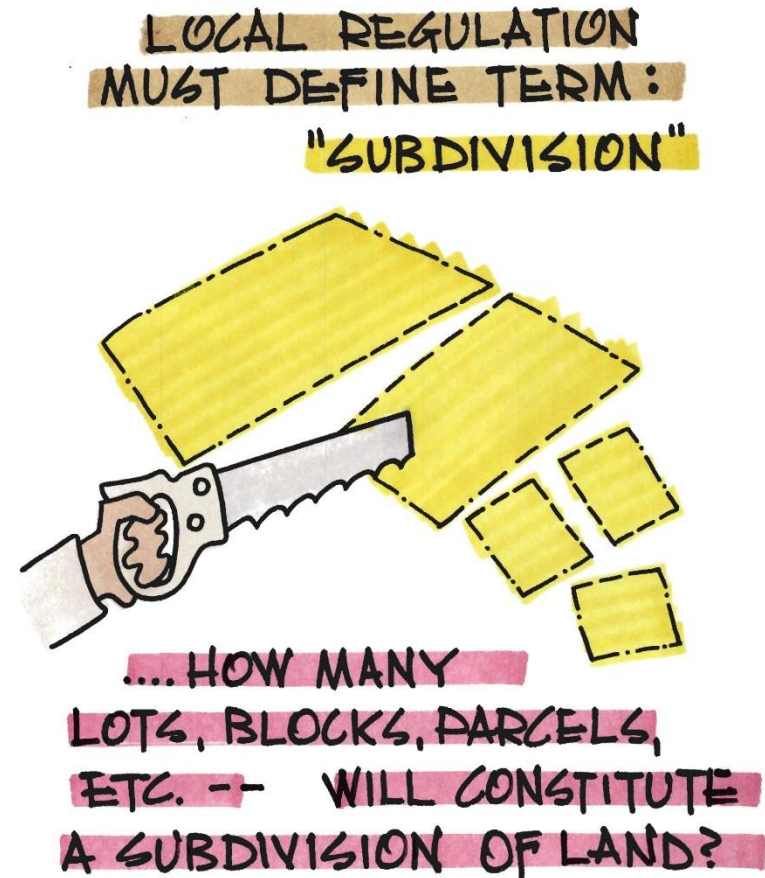
The division of a parcel of land:

- Into a number of lots, blocks or sites
- With or without streets
- For the purpose of sale, transfer of ownership, or development

General City Law § 32 & § 33

Town Law § 276 & § 277

Village Law § 7-728 & § 7-730



“Major” and “minor” subdivisions

- 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)



Boundary or lot line adjustment

- Alteration of lot lines or dimensions of any lots in which no additional lots are proposed
- Often afforded expedited review or considered minor subdivisions

Examples:

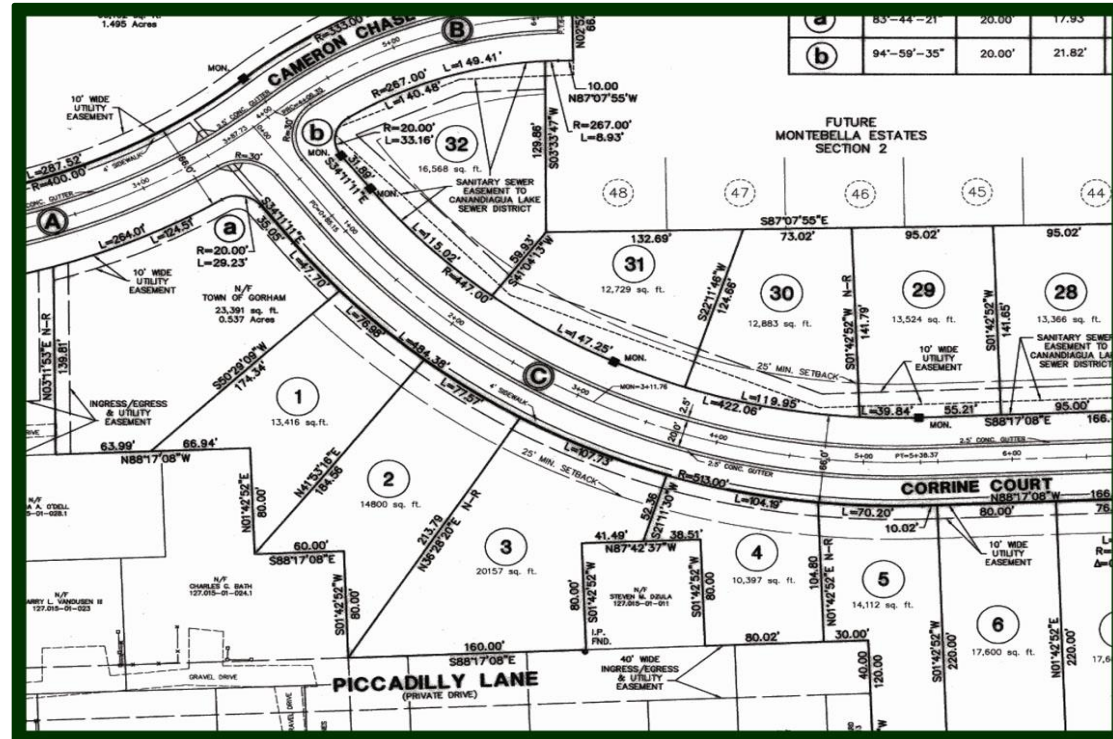
- Correct physical encroachment
- Legal settlement of dispute requires transfer of property
- Enlarge or improve substandard lot to meet minimum standards for buildable lots



Subdivision review elements

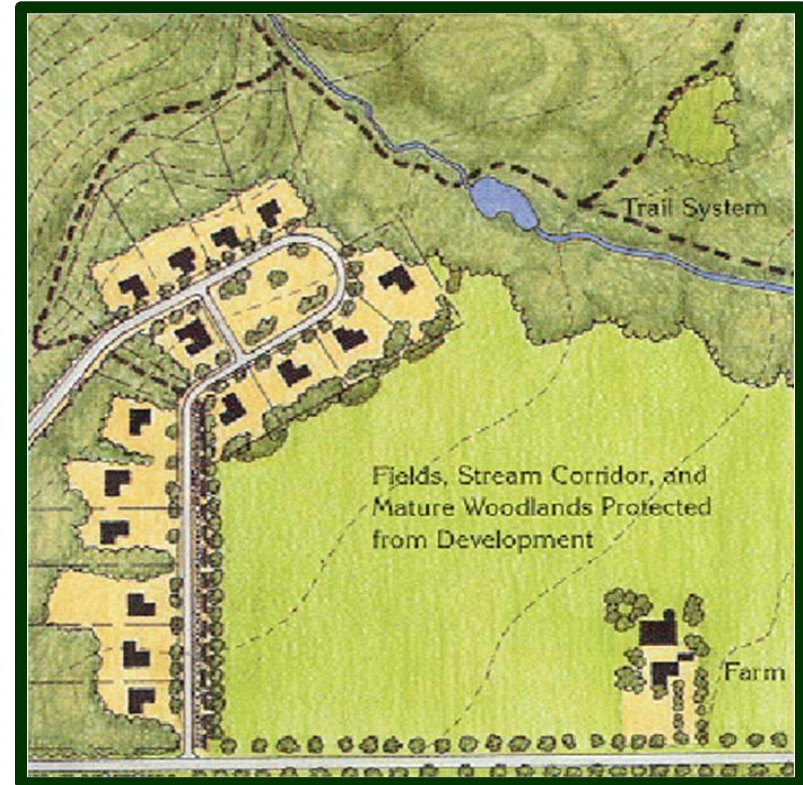
- Regulates design and improvements:

- 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

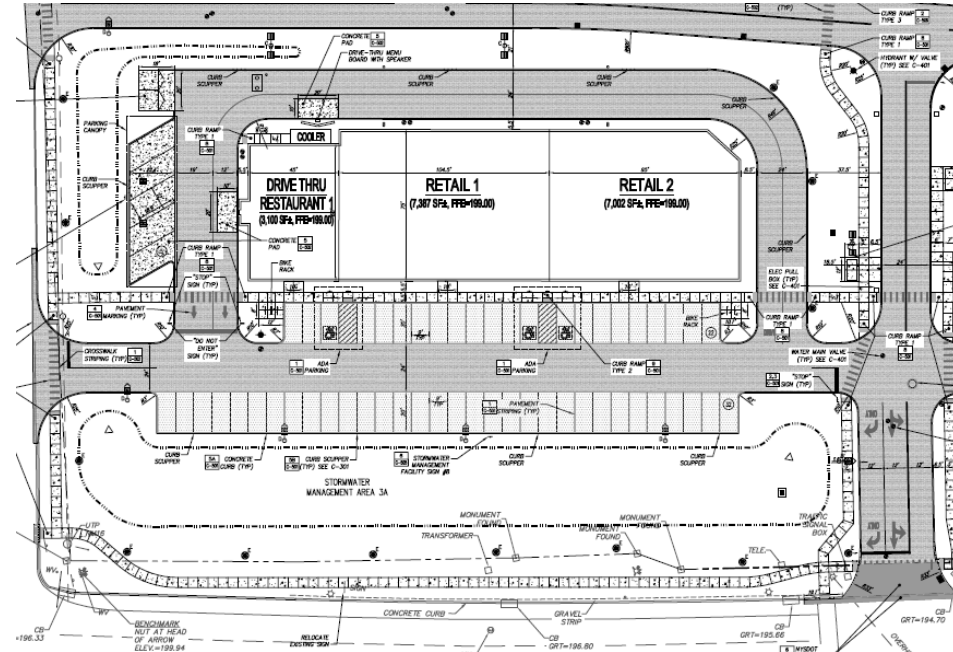
- Public hearing required
- County planning agency referral may be necessary
- State Environmental Quality Review Act (SEQRA) must be considered
- Parkland or money in lieu of parkland
- Beware of default approvals: 62 days after close of public hearing



Site plan review

- Drawing showing the proposed development of a **single** piece of property
- Zoning is not necessary to enact site plan review

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



Site plan – extent of authority

- Delegate review board
- List uses subject to review
- List elements board may review
- Specify submission requirements
- List local procedures (public hearing required?)
- Enforcement authority for conditions of approval



Site plan – review elements

Is 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
- Sewage & storm drainage
- Utilities
- Parking, access, traffic
- Lighting
- Signage
- Other



Special use permit

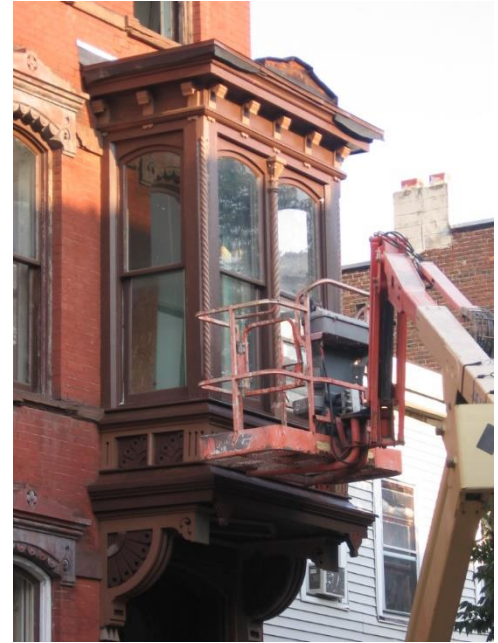
- AKA “special exceptions” or “conditional uses”
- Authorization to use land as allowed by zoning, but approval is tied to conditions:
 - To be in harmony with zoning
 - Will not adversely affect neighborhood if conditions are met
 - If conditions no longer met, may be revoked by public hearing



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

Other regulatory tools

- Sign permits
- Historic preservation
- Architectural review



Public Meetings and Hearings

Quorum

- Number of members who must be present for business to be legally conducted
- Must be at least a majority of a fully constituted board (including absent members and vacant seats)

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”

DEPARTMENT OF STATE
COMMITTEE ON OPEN GOVERNMENT
ANDREW M. CUOMO, GOVERNOR ROSSANA ROSADO, SECRETARY OF STATE



www.dos.ny.gov/coog/



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Meeting – access & notice

- Provide access and notice to public and media
- Post notice in conspicuous place AND municipal website
- Notice timeframes based on meeting schedule
 - More than one week prior: at least 72 hours (3 days)
 - Less than one week prior: to extent practicable

Public Officers Law § 103.2 (e)

Make agenda & documents available prior to or at meeting:

- Online if practicable; effective: 2/12/2012
- www.dos.ny.gov/coog/RecordsDiscussedatMeetings.html



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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



No quorum? No meeting

- “Work Session,” “Agenda Meeting” or “Site Visit” subject to OML only if quorum of members have planned to gather to discuss public business
- Planning board site visit does not constitute a meeting subject to the OML so long as its purpose is not for anything other than to ‘observe and acquire information’

*Riverkeeper v. The Planning Board of the Town of Somers
(Supreme Court, Westchester County, June 14, 2002)*



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
- Make sure time periods/deadlines comply with state law and are clear to all parties
- If county review is required, send county copies of everything submitted
 - You can request applicant to provide extra copies



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



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
 - Generally 5 days prior to hearing date
 - Regional park agency when 500 feet of state park or parkway
 - GML 239-m, 239-n
- Examples of local requirements:
 - Signs on application property
 - Certified Mailings
 - Municipal website or ListServ



Making Legally Defensible Decisions

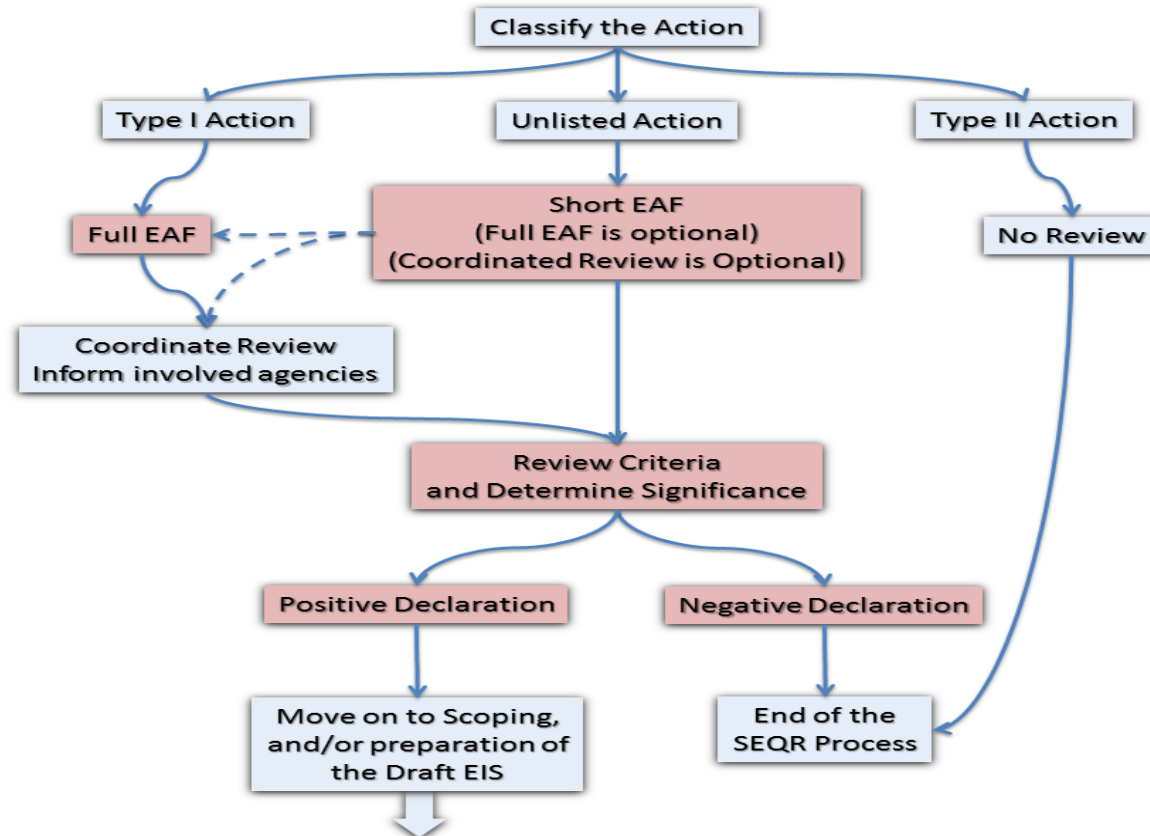
State Environmental Quality Review Act (SEQRA)

- Agency proposes action or receives application (site plan; special use permit; subdivision)
- Action classified* (Type II, Type I, or Unlisted)
- 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



State Environmental Quality Review Act (SEQRA)



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; or Special Use Permit

General Municipal Law § 239-nn



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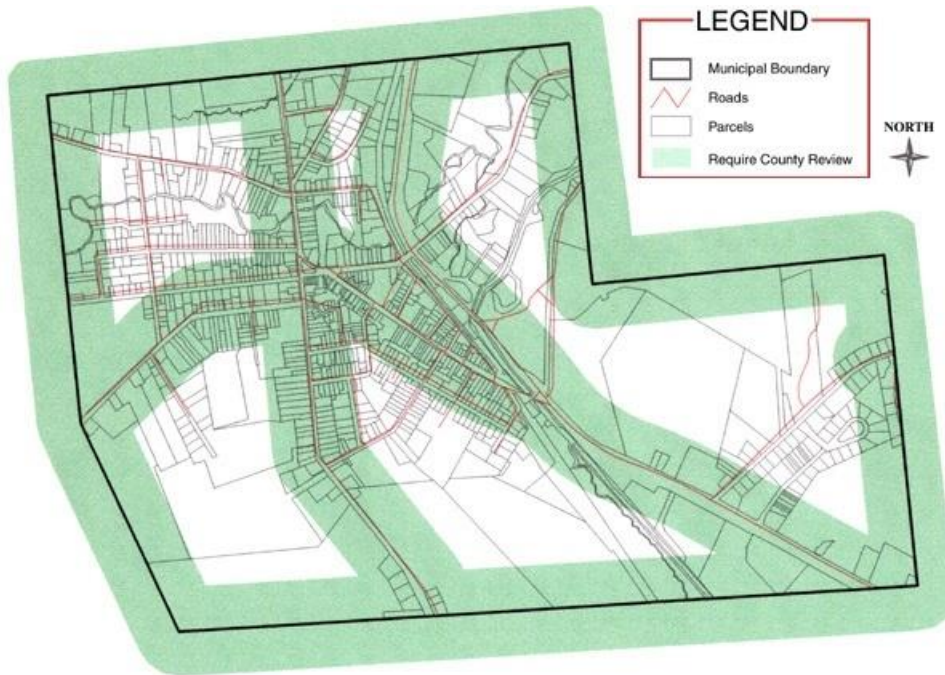
Referral to county planning agency

- Projects requiring referral:
 - Special use permits
 - Site plan
 - Other zoning authorizations
 - Subdivisions where authorized by county legislative body
- Don't overlook this step. Failure to refer could invalidate an action if challenged in court.

Referral to county planning agency

Applications within 500' of:

- Municipal boundaries
- State or county parks or highways
- State or county streams or institutions
- Land with state or county building
- Farm operations in state agricultural districts (area variances exempted)



County referral agreements

- County planning agency and referring body may enter into agreement to exempt certain actions from county review
- Examples of exempt items:
 - SUPs for accessory structures on residential lots
 - SPR for a change in tenant if change of building footprint is less than 10%
 - Lot line adjustments



County referral timelines

- 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

PB 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

- 2-day exception requires consideration even after 30 days have passed, but at least “2 or more days prior to final action”
- 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

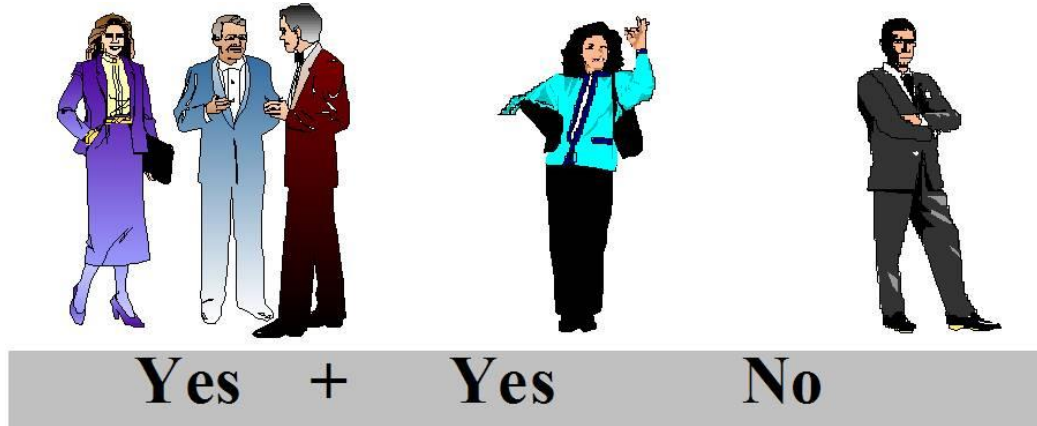
Voting

- Motion/resolution will only pass if it gets support of majority of entire membership of board
- Member may vote even if they missed previous presentations, public hearings, or other board meetings where project was 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...



...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 State 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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www.dos.ny.gov/lg/index.html



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