



**Division of Local
Government Services**

Planning Board Overview

A Division of New York Department of State

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



Composition of board

- 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



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)

Alternate member appointment

- NY statute allows for alternates to serve for conflicts of interest only
- 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



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



State training requirements

- Minimum four hours annually
 - Excess hours may be carried over without limit
 - Failure to comply does not void decisions
 - Consequence is ineligibility for reappointment
- Governing board approves and tracks training
 - Variety of sources and formats
- Requirements may be waived or modified
 - Best interest of municipality
 - Resolution of governing board
- Applies to alternates



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 – Direct appeal

- ZBA hears a “direct appeal” for variance in connection with application for subdivision, site plan, or special use permit
- Applicant may apply to ZBA for variance without having to first get decision from ZEO

Remember:

For **subdivisions**, ZBA must request written recommendation from planning board



Advisory – Comprehensive plan

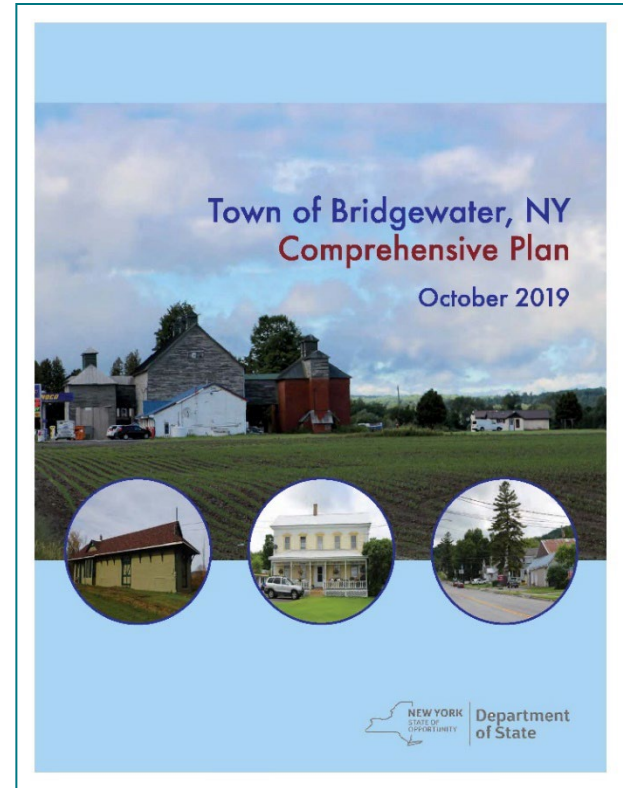
- Statement of community vision: An expression of a municipality's goals and recommended action to achieve those goals
- Provides strategies for achieving expressed goals, often in the form of new or revised land use regulations
- Serves as a framework and defense for land use regulations which focuses on immediate and long-term protection, enhancement, growth and development of the municipality
- An outline for orderly growth and priority community investments; providing continued guidance for decision-making

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

Comprehensive plan – Updating

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



Comprehensive plan – Drafting

- Entire Planning Board may act as ‘Special Board’ or
- At least one Planning Board member on ‘Special Board’
- Make recommendations on proposed plan
- Community engagement – Board preparing plan must have public hearing
- Adoption is governing board’s responsibility (not Planning Board or ‘Special Board’)



Comprehensive plan – Importance

- Zoning must be in accordance with comprehensive plan
- Defense against spot zoning challenges
- May provide basis for other actions affecting development, like capital improvements
- NYS DOS planning and zoning funding opportunities:
 - Smart Growth Grants, CFA
 - Local Waterfront Revitalization Program (LWRP), CFA
 - Local Government Efficiency (LGE) – Shared Services
- NYS DEC Climate Smart Communities Grants
- NYS AG MKTS Farmland Protection Planning Grants



Regulatory authority

- Governing board may delegate review authority to Planning Board or another board (exception: subdivision review is limited to planning board or governing board by statute)
- Once delegated, Governing board no longer concerned
- Extent of regulatory powers must also be identified
 - What aspects of application may be reviewed
 - What may be required of applicant
 - What fees apply



Subdivision

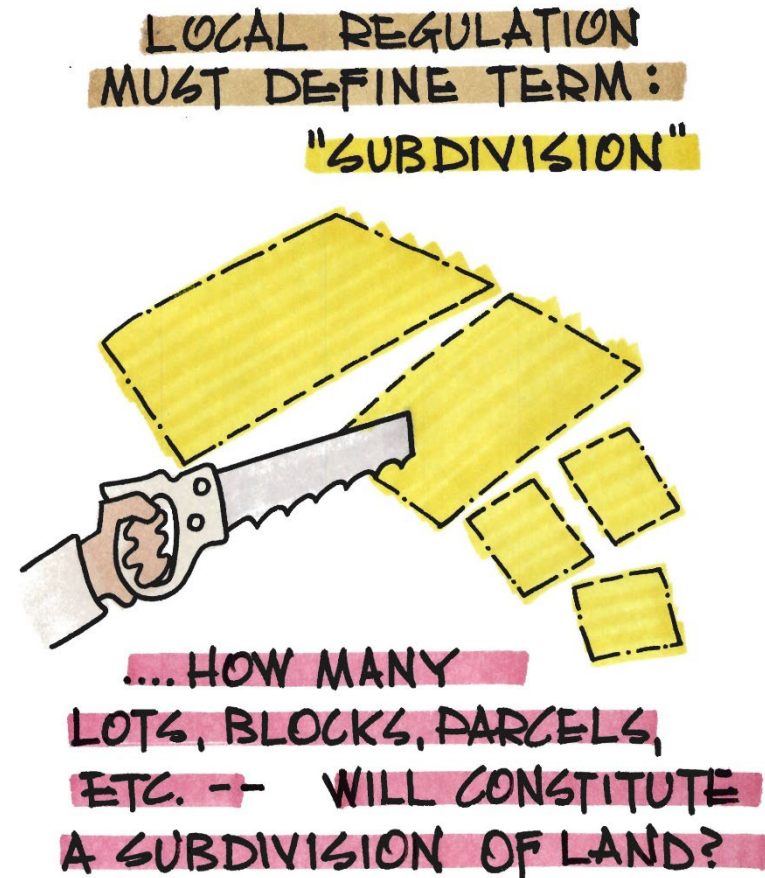
The division of a parcel of land:

- 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

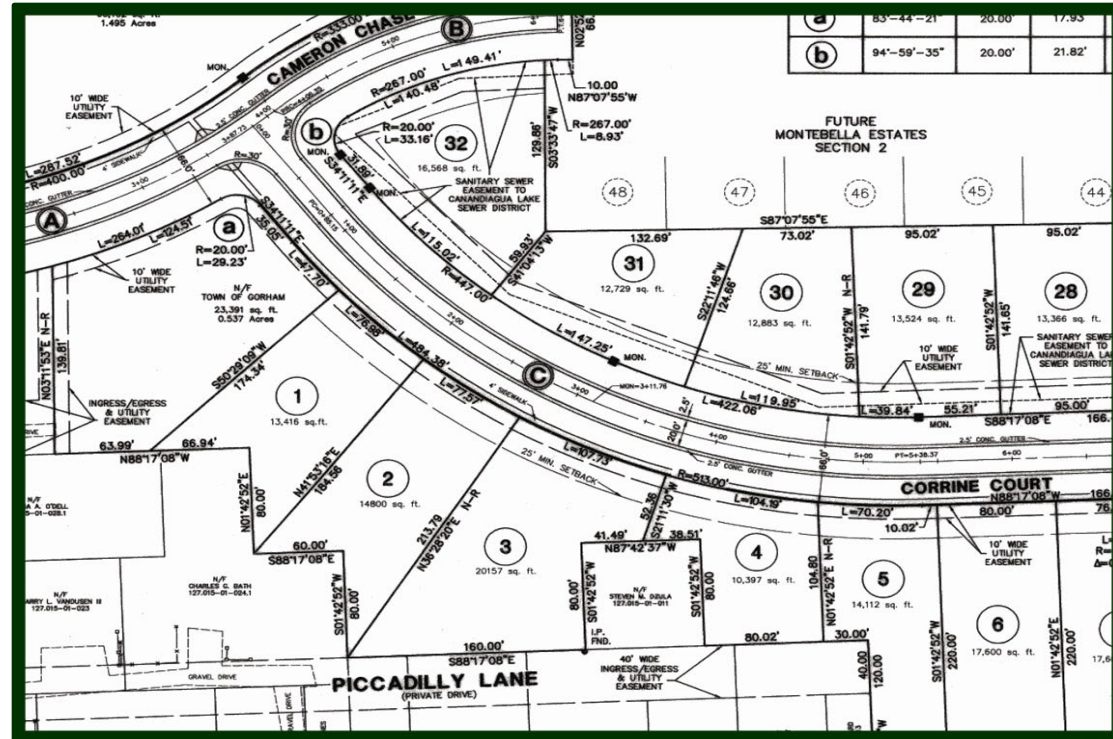
- Defined and delineated by local regulation as either “major” or “minor”
- Typical thresholds used for local classification:
 - Number of proposed lots
 - Construction of new street(s)
 - Extension of municipal infrastructure
 - Configuration of proposed lots
 - Transfer of land from adjacent parcel(s)



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 to mandate or to encourage
- Zoning identifies allowable location by districts and types of development
- Density neutral

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 approval:
If decision not made after 62 days after close of public hearing, application is approved.



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

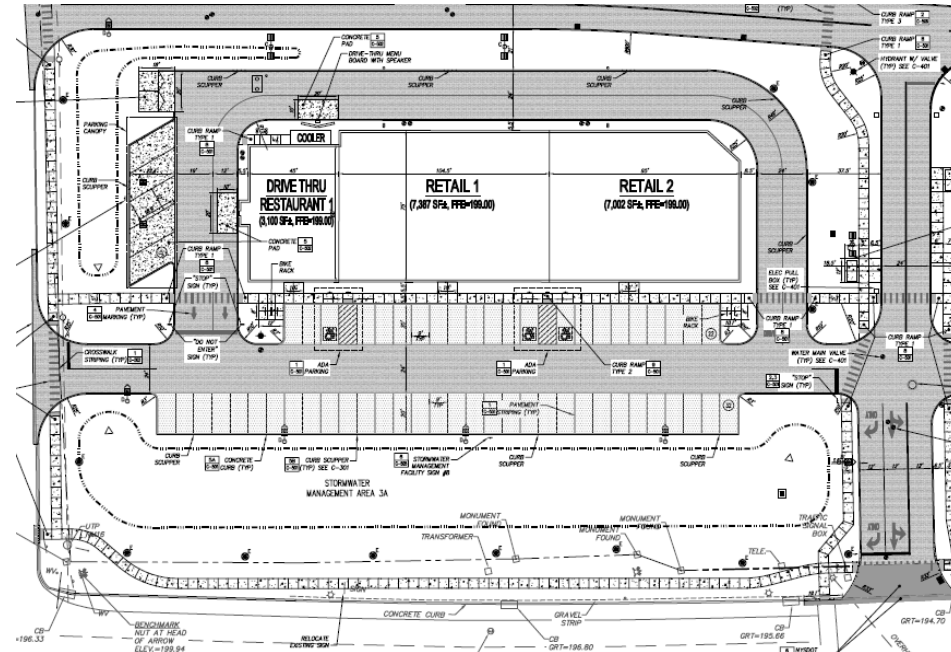
Examples:

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

Site plan review

- Drawing showing the proposed development of property
- Zoning not necessary
- Local governing board may keep this authority in whole or in part, or delegate to another board

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



Site plan review – Components of local law

- Review board
- Uses subject to review
- Elements to review
- Specific submission requirements
- Local procedures (public hearing required?)
- Enforcement authority (CEO) for conditions of approval



Site plan – Review elements

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 permits

- Use permitted by zoning but subject to additional review and possible conditions
- Allows for greater variety of land uses while recognizing that some uses may present challenges to compatibility due to location or nature of use
- Criteria/conditions for SUPs must be included in zoning
- Allows mitigation of potential adverse impacts



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

Special use permits

- Three types: permanent, temporary and renewable
- **Permits run with the land not the landowner**
- Decisions must be tied to criteria
- If project meets special use criteria and conditions, it cannot be denied – onus is on Planning Board
- Often coordinated with Site Plan Review



Light industry screened by landscaping to improve compatibility

Other regulatory roles

- Sign permits
- Historic preservation
- Architectural review



Public Meetings and Hearings

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”

<https://opengovernment.ny.gov/>



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Meetings – 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 1 week prior: at least 72 hours (3 days)
 - Less than 1 week prior: to extent practicable



Public Officers Law § 103.2 (e)

Make materials to be discussed available prior to or at meeting:

- 24 hours in advance and online, if practicable.



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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 planned to gather to discuss public business
- Planning Board site visit does not constitute meeting subject to 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)*



Get organized with a clear process

For applicants

- Be clear who is first point of contact (ZEO, municipal clerk, or board clerk)
- Post application materials, forms and FAQs **on municipal website**. Use revision dates on forms, include SEQR Environmental Assessment Form
- Have clear submission requirements; offer checklist
 - Identify application due dates (ex: 2 weeks before meeting)
 - How many copies are needed
 - Application fees

For reviewers

- Have clear submission deadlines. Review applications before meeting for completeness and come to meeting prepared to work
- Post application materials on municipal website; redact necessary financial info
- Use checklist to track submissions; incorporate timelines
- 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
- Planning Board public hearing examples include:
 - Special use permit
 - Subdivision
 - Preparation of preliminary comprehensive plan
 - Site plan (only if required locally)



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



Notice to adjacent municipality – GML § 239-nn

- Applies to subdivision, site plan or special use permit applications on a property within 500' of adjacent municipality
- Notice of a public hearing related to the application must be sent to that municipal clerk
- Send notice by mail or electronic transmission (email) at least 10 days prior to the hearing

Making Legally Defensible Decisions

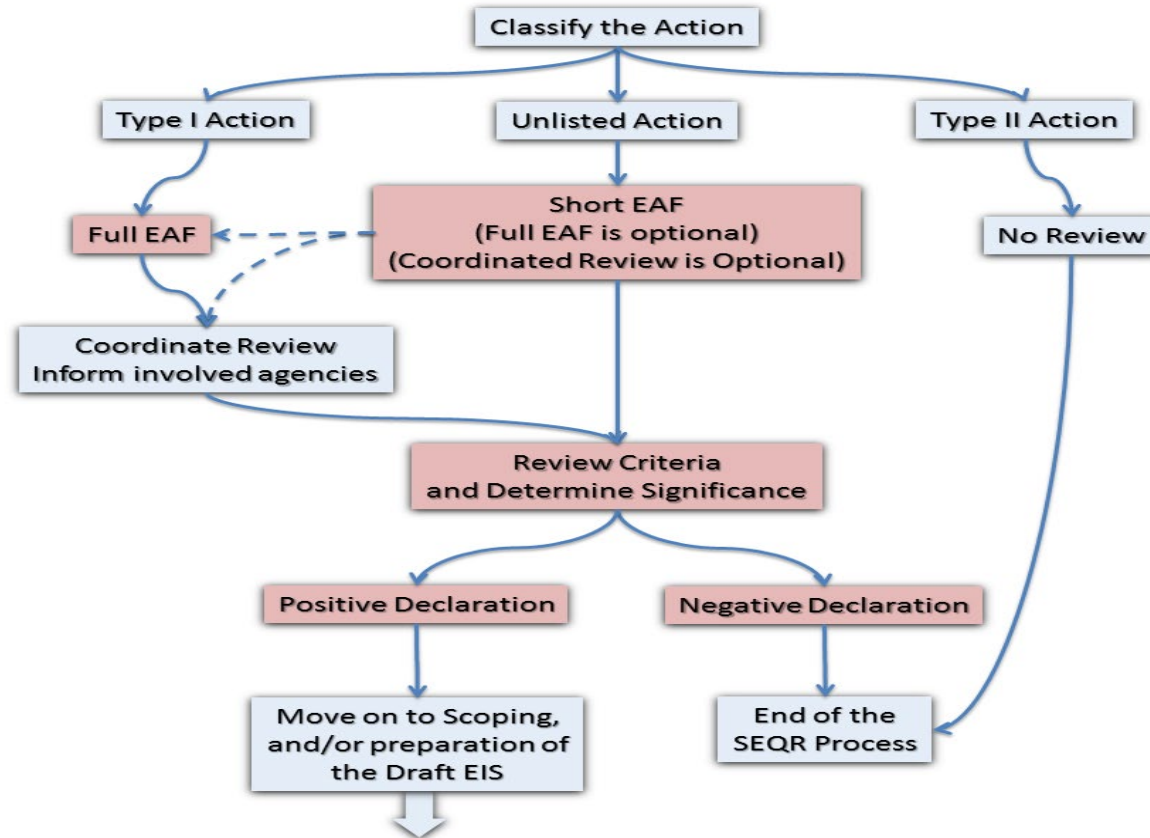
State Environmental Quality Review Act (SEQRA)

- 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)



Referral to county planning agency – GML § 239-m

Refer special use permits, site plan review, zoning, comp plans and subdivisions (if authorized by county legislative body) if 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)

Don't overlook this step. Failure to refer could invalidate action if challenged in court.



Referral to county – Waiting to act

PB may not take final action until the earlier of the following occurs:

Receipt of county planning agency's report

OR

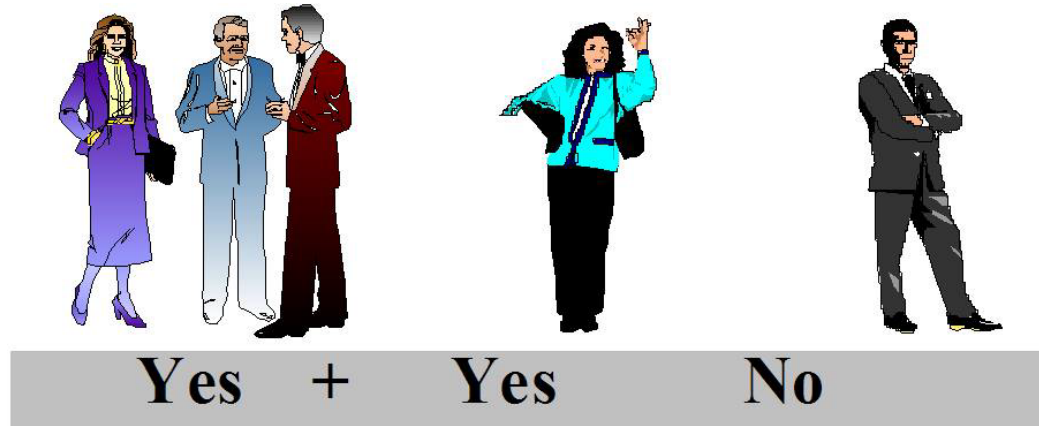
30 days after **full statement** is received by county

- 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 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

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
- Abstaining from voting could have an effect on the outcome of the vote
 - Board members should vote or recuse themselves where appropriate
 - No anonymous voting



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 include: resolutions, forms and meeting minutes
- Planning board decisions may be appealed to State Supreme Court, not to ZBA or governing board



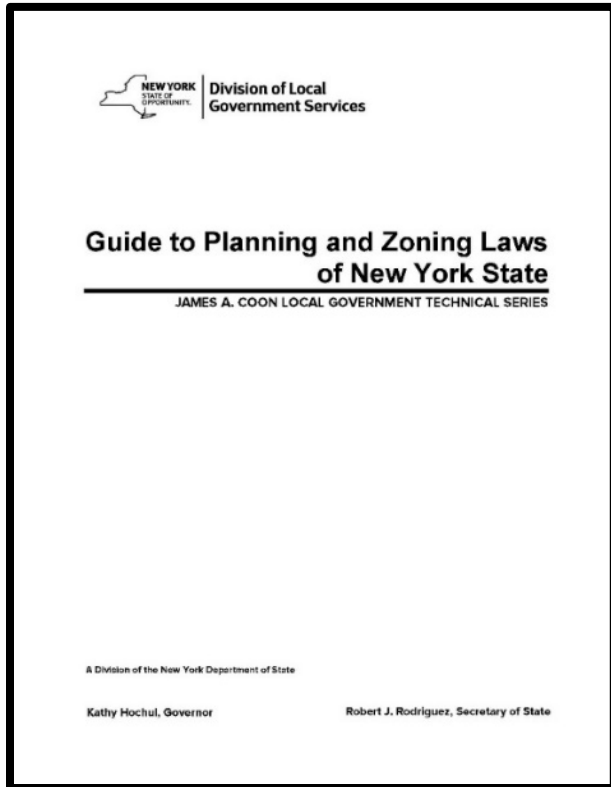
Tying up loose ends

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



Resources on New York State Laws

<https://dos.ny.gov/publications>



- Legal Memorandum LG02: Role of Findings in LG Decisions: NYS DOS
- Legal Memorandum LU15: Regulating Hours of Operation
- NYS DOS Comments – “Court of Appeals’ Decision Addresses Special Use Permits, Variances and Waivers”

New York Department of State

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<https://dos.ny.gov/training-assistance>



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