

GML 239 & County Referrals

*Based on materials from
New York Department of State*

What is a “239”?

- Section of New York State General Municipal Law, Section 239 - l, - m, and – n.
- GML 239 l, m and n requires that if a municipality has adopted zoning or subdivision regulations, any such non-ministerial zoning or subdivision action must be referred to the county planning agency if it meets certain criteria.

Types of Actions

- GML §239-m (mandatory referral):
 - Area and use variances
 - Site plans
 - Conditional/special use permits
 - Comprehensive plans
 - Adoption or Amendment of Zoning including moratoria
 - Other authorizations under zoning ordinance or local law
- ZBA interpretations are not subject to review

Subdivisions

Counties have the option of requiring referral of subdivisions under General Municipal Law §239-n

Referral Criteria

Actions involving real property within 500 ft of:

- A municipal boundary
- Boundary of an existing or proposed county or state park or recreation area
- The ROW of an existing or proposed county or state road
- The ROW of a county-owned stream or drainage channel
- An existing or proposed county or state-owned property on which a public building or institution is located
- The boundary of a farm operation located in an agricultural district (excluding area variances) as defined by NYS Ag & Markets Law

Note

The property is measured from the tax parcel boundary, not the location of the action on the lot.

What is the purpose of county planning agency review?

- “ ... to bring pertinent inter-community and county-wide planning, zoning, site plan and subdivision considerations to the attention of neighboring municipalities and agencies having jurisdiction.”





1	...	...	...	...
2	...	...	...	...
3	...	...	...	...
4	...	...	...	...
5	...	...	...	...
6	...	...	...	...
7	...	...	...	...
8	...	...	...	...
9	...	...	...	...
10	...	...	...	...
11	...	...	...	...
12	...	...	...	...
13	...	...	...	...
14	...	...	...	...
15	...	...	...	...
16	...	...	...	...
17	...	...	...	...
18	...	...	...	...
19	...	...	...	...
20	...	...	...	...
21	...	...	...	...
22	...	...	...	...
23	...	...	...	...
24	...	...	...	...
25	...	...	...	...
26	...	...	...	...
27	...	...	...	...
28	...	...	...	...
29	...	...	...	...
30	...	...	...	...
31	...	...	...	...
32	...	...	...	...
33	...	...	...	...
34	...	...	...	...
35	...	...	...	...
36	...	...	...	...
37	...	...	...	...
38	...	...	...	...
39	...	...	...	...
40	...	...	...	...
41	...	...	...	...
42	...	...	...	...
43	...	...	...	...
44	...	...	...	...
45	...	...	...	...
46	...	...	...	...
47	...	...	...	...
48	...	...	...	...
49	...	...	...	...
50	...	...	...	...
51	...	...	...	...
52	...	...	...	...
53	...	...	...	...
54	...	...	...	...
55	...	...	...	...
56	...	...	...	...
57	...	...	...	...
58	...	...	...	...
59	...	...	...	...
60	...	...	...	...
61	...	...	...	...
62	...	...	...	...
63	...	...	...	...
64	...	...	...	...
65	...	...	...	...
66	...	...	...	...
67	...	...	...	...
68	...	...	...	...
69	...	...	...	...
70	...	...	...	...
71	...	...	...	...
72	...	...	...	...
73	...	...	...	...
74	...	...	...	...
75	...	...	...	...
76	...	...	...	...
77	...	...	...	...
78	...	...	...	...
79	...	...	...	...
80	...	...	...	...
81	...	...	...	...
82	...	...	...	...
83	...	...	...	...
84	...	...	...	...
85	...	...	...	...
86	...	...	...	...
87	...	...	...	...
88	...	...	...	...
89	...	...	...	...
90	...	...	...	...
91	...	...	...	...
92	...	...	...	...
93	...	...	...	...
94	...	...	...	...
95	...	...	...	...
96	...	...	...	...
97	...	...	...	...
98	...	...	...	...
99	...	...	...	...
100	...	...	...	...

The Referral Process

Obtaining county recommendations on local land use actions

County Planning Agency

The County Legislative Body determines who the “county planning agency” is for purposes of General Municipal Law 239-m and 239-n review.

Oneida →

- County Planning Board or Commission
- County Planning Department
- County Planning Director or Commissioner
- Others as designated by the County Legislative Body

← Herkimer



A County Planning Board is a Public Body

- May not conduct business without a quorum present
- Subject to the Open Meetings Law
 - New regulations on remote participation
- Notice to the media
- Notice to the public



Quorum

Must be at least a majority of the full membership of the board, including any absences or vacancies.

Remote participation in public meetings

- Ability to hold remote meetings due to COVID expired in 2024
- Section 103-a of Open Meetings Law authorizes public bodies to adopt laws allowing a board member to participate and vote in a meeting via videoconference in a non-public location under “extraordinary circumstances”
- Quorum still required in the public location(s)
- More info: <https://opengovernment.ny.gov/>

Municipal Benefits of Referral

- Brings regional planning, zoning, site plan and subdivision matters to the attention of municipal officials and regulatory agencies
- Provides professional assistance to local boards, encouraging best practices
- Helps identify intermunicipal impacts, protecting the environment and economy of the county
- County planning can recommend needed - but possibly controversial - modifications or disapprovals
- Ensures correct legal procedure is followed

County Consideration of Transportation Impacts

- Access Points
- Location
- Number
- Topography
- Drainage
- Community Character
- Signage



Referral Exceptions

- ZBA Interpretations
- Referral Agreements
 - Items exempted by agreement between the county planning agency and the referring body



LOCAL



COUNTY

Referral Agreement Examples

- Setback variance for accessory structures
- Zoning amendments intended to clarify definitions
- Dimensional variances for fences
- Site Plan Review for a change in tenant where modification of the building footprint is less than 10%
- Sign variances where the sign is not located on a state or county road.

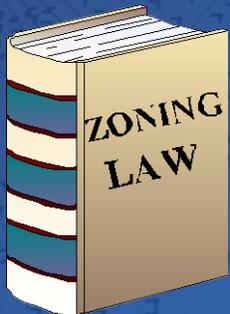


Referral of the Full Statement

Full Statement includes all local requirements :

- All materials required by and submitted to the referring municipal body as an application on a proposed action.

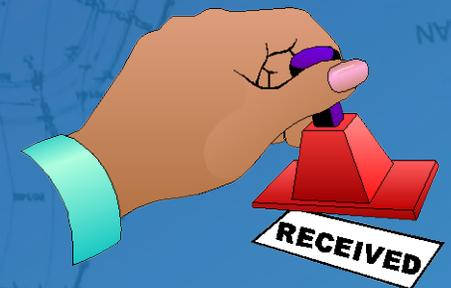
- **Environmental Information (EAF)**
- **Agricultural Information (Ag Data Statement)**
- **Stormwater Information (SWPP)**



Full statement includes text of zoning being amended or adopted

Full Statement

- A Full Statement is “received” by the county in accordance with the rules and regulations of the county planning agency
- “Receipt" shall mean delivery in hand, by mail or digital portal an application to the county planning agency or regional planning council.
- Where delivery is made in hand, the date of receipt shall be the date of delivery.
- Where delivery is made by mail, the date as postmarked shall be the date of delivery.
- Online portals is the date submitted into a portal.



Common Submission Materials

- Local applications
- Brief descriptive narratives
- Site plans, location maps, sketches of the site or project area
- Preliminary or final subdivision plats
- Full text of ordinance or local law
- Zoning map updates
- SEQR Environmental Assessment Form (EAF) and related materials
- Stormwater Prevention Plan (SWPP)/drainage study
- Wind or solar decommissioning plans
- Traffic study or analysis
- Landscaping plans
- Architectural renderings
- Photographs or visual simulations
- Agricultural data statements

Full Statement: Environmental Information

- Include the completed environmental assessment form (EAF)
- Include any other materials required by the referring body to make a determination of significance under the State Environmental Quality Review Act (SEQRA)
- Determination of significance is not required for GML 239

Short Environmental Assessment Form
Part 1 - Project Information

Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information		
Name of Action or Project:		
Project Location (describe, and attach a location map):		
Brief Description of Proposed Action:		
Name of Applicant or Sponsor:	Telephone:	
	E-Mail:	
Address:		
City/PO:	State:	Zip Code:
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?		NO YES
If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.	<input type="checkbox"/>	<input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency?		NO YES
If Yes, list agency(s) name and permit or approval:	<input type="checkbox"/>	<input type="checkbox"/>
3. a. Total acreage of the site of the proposed action?	_____ acres	
b. Total acreage to be physically disturbed?	_____ acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?	_____ acres	
4. Check all land uses that occur on, are adjoining or near the proposed action:		
<input type="checkbox"/> Urban	<input type="checkbox"/> Rural (non-agriculture)	<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban)
<input type="checkbox"/> Forest	<input type="checkbox"/> Agriculture	<input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify): _____
<input type="checkbox"/> Parkland		

Page 1 of 3 SEAF 2019

Full Statement: Agricultural Data Statement

If the property involved in the application is:

- within a state agricultural district containing a farm operation
- on property within 500' of a farm operation located in a state ag district

Submit for these applications:

- Site plan
- Use variance
- Special use permit
- Subdivision

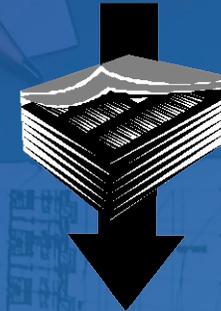
Town Law §283-a
Village Law §7-739

When to Refer

- Special use permits:
 - at least 10 days prior to public hearing on the application
- Site plans:
 - at least 10 days prior to public hearing on the application. If no public hearing is needed, referral must be sent before final action can be taken
- Variances:
 - at least 5 days prior to public hearing on the application



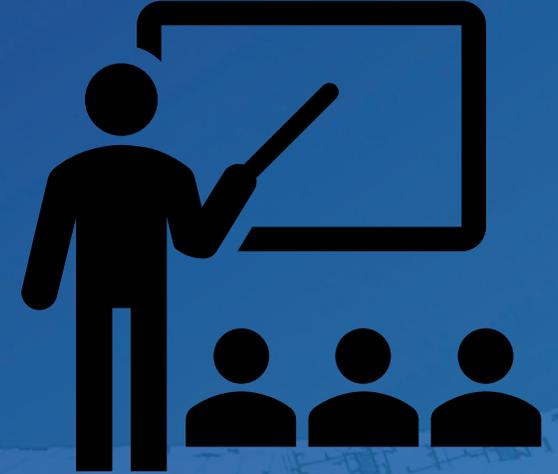
LOCAL



COUNTY

Evaluation Criteria

- Countywide or intermunicipal impacts relate to:
 - Land use compatibility
 - Traffic generation
 - Drainage
 - Community facilities
 - Impact on community appearance and character
 - Impacts on County or State institutions
 - Official county development policies



County Planning Agencies
may also offer helpful
advice!

Limitations on Participation by County Board Members

- County Planning Board Members who are also members of a local referring body (planning board, ZBA, governing board) may NOT participate in County Planning Board deliberations and votes if the matter has been the subject of a proposal, application or vote before the local board on which they serve (July 1, 2004)

**General
Municipal
Law**

§239-c

County Recommendation

Outcomes:

- Approval
- No significant county-wide or inter-community impact
- Recommended Modifications
- Disapproval
- No Jurisdiction/No Authority



COUNTY



LOCAL

Supermajority Rule

- In cases of:
 - Disapproval
 - Recommended modifications

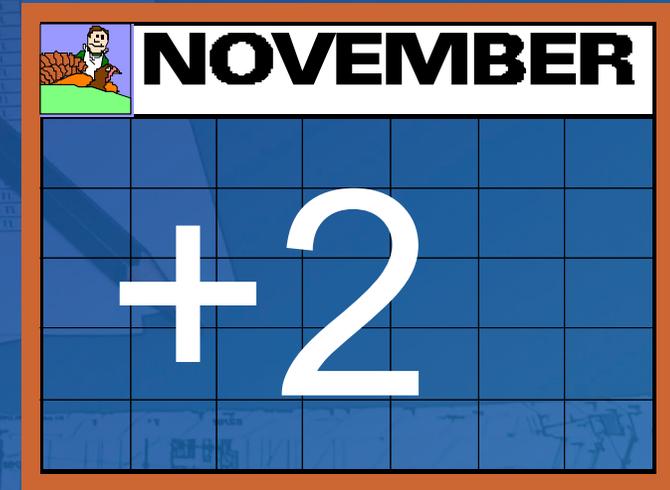
Referring body may only act contrary to that recommendation by a majority plus one vote



Two Day Rule

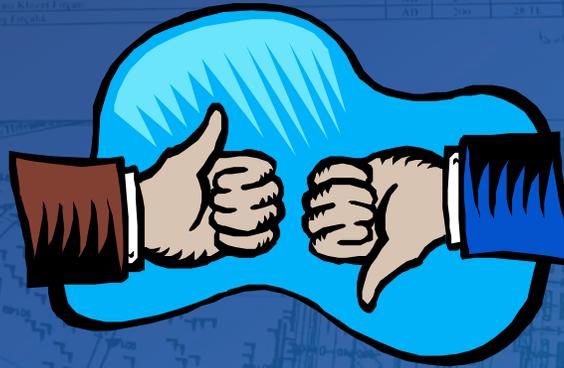
After 30 days, but before final decision:

- Recommendation received 2 days before meeting
 - Recommendation has the same effect as one made within the original 30 day review period
- Recommendation not received 2 days before meeting
 - Referring body may act by a simple majority vote without recommendation



Timing of Final Approval

May a referring body condition its final approval on the county's positive recommendation?



No!

A referring body may not take an early vote on an action and condition it on the county planning agency's subsequent positive recommendation.

Notice of Final Action

- Referring body must file a Notice of Final Action (NOFA) with the county planning agency
- Include resolutions, findings, minutes
- If referring body acts contrary to recommendation of modification or disapproval, it must include the reasons in the report



LOCAL



COUNTY

Notice of Final Action

NOTICE OF LOCAL MUNICIPAL BODY FINAL ACTION

Zoning and Subdivision Referrals

Pursuant to Sections 239-l, -m, or -n of Article 12B, General Municipal Law

Date of Final Action: _____

Reference: Referral Number: _____
Applicant: _____
Location: _____

- Approval
 Approval with conditions (attached conditions)
 Disapproval

Copy of resolution attached Yes No

If not, substance of resolution listed below
(use reverse side if additional space is required):

Sections of 239-l, 239-m and 239-n of the General Municipal Law of the State of New York require that said municipal body shall not act contrary to any disapproval or recommendation herein, except by a vote of a majority plus one of the total voting power of said municipal body and after the adoption of a resolution fully setting forth the reasons for such contrary action; and, within thirty (30) days after final action by said municipal body, such body shall file a report of such final action to this agency.

Signature of Referring Officer Title

Please return within thirty (30) days of final action to:

Herkimer-Oneida Counties Comprehensive Planning Program
at Union Station
321 Main Street
Utica, New York 13501

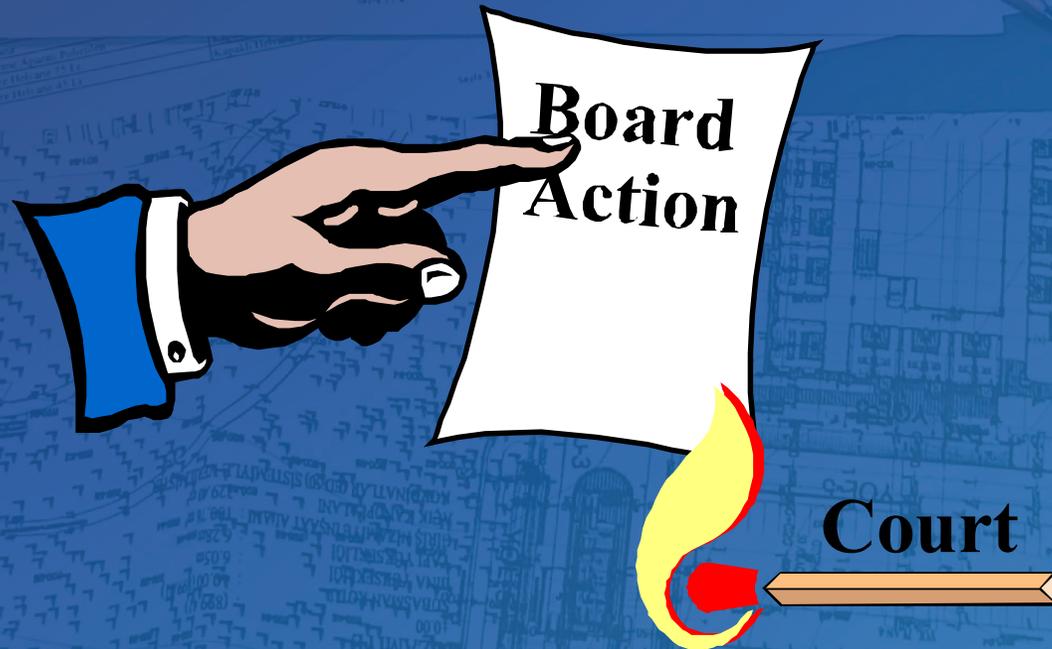
Changes After Referral

- Minor changes do not require additional referrals
- Substantial changes:
If the changes are substantial, it should be referred again to the county planning agency.



Consequences of Non-Referral

Failure to refer an action subject to §239-m or §239-n review may invalidate the municipal action.



Referral Requirement to Adjacent Municipalities

If application property is within **500 feet** of an adjacent municipality:

- Send notice by mail or electronic transmission to the **clerk of the adjacent municipality** at least **10 days** prior to hearing on proposed:
 - Special Use Permit
 - Use Variance
 - Site Plan
 - Subdivision

General Municipal Law
§239-nn

Helpful Tips

- The GML 239 referral process is not the same as SEQR (New York State Environmental Quality Review).
- If there are two different local boards reviewing the action, submit two separate referrals.
- Initiating a referral with incomplete information will not speed up the review.
 - Do not submit partial applications to “save a spot in the queue” or “get a head start”

Helpful Tips

- The county's documentation requirements are the same as those of local boards.
- The county's response is not a stamp of approval that an action is locally appropriate.
 - County review focuses on addressing potential intermunicipal or countywide impacts.
- Applications can be submitted for county planning agency review before holding public hearings or a SEQRA determination is completed.
- The process is not complete when the county issues a recommendation.
 - Local municipalities are required inform the county of their decision by submitting a NOFA.

Ways Counties Can Encourage Referrals

- Provide forms or guidance documents on website
- Create checklists of items to include in an application
- Communicate clear deadlines for applications and upcoming meeting dates
- Upon receipt of the application, perform administrative review and immediately notify the referring board if the application is not complete
- Consider holding “special meetings” to accommodate urgent local matters
- Distribute copies of General Municipal Law §239-l, -m, -n

Department of State Contacts

localgov@dos.ny.us

New York Department of State
Division of Local Government Services

(518) 473-3355

<https://dos.ny.gov>



Local Contacts (HOCCPP)

Kristin Campbell, Chief Planner
kcampbell@oneidacountyny.gov

321 Main Street, Union Station

Utica, NY 13501

(315) 798-5710

www.oneidacountyny.gov



