

## **Planning Board Informational Addendum [Best Practices and Procedures] Prepared by Washington County NY Planning Department**

<https://washingtoncountyny.gov/316/Planning>

The following guidance relates to practices and procedures of local municipal Boards. Please refer to available Planning references provided through the NYS DOS Local Government Training (LGt) to access comprehensive land use information and training. [dos.ny.gov/training-assistance](https://dos.ny.gov/training-assistance)

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1. Town Board assigns powers to and establishes Planning and Zoning Boards.
2. Planning Board members must know the differences between Planning Board powers and Zoning Board powers. Planning Boards are non-jurisdictional unless the Governing Board assigns. Zoning Board have two powers – semi-jurisdictional and appellate where projects come to the ZBA from the ZEO on appeal. [Planning Board Overview Training](#) [Zoning Board of Appeals Overview Training](#)
3. Communities which currently have no zoning controls should therefore give careful consideration to postponing the enactment of site development review regulations until they can be integrated within the comprehensive control scheme that zoning regulations provide.
4. Several problems are inherent in the use of site development review without zoning regulations:
  - A. this approach has not been tested in any litigation and a court would carefully scrutinize such a local law to assess whether adequate constraints could be placed upon the exercise of this power without zoning regulations
  - B. the planning board would be required to assess the desirability of a particular site development plan without any commitment by the municipality as to the character of the surrounding property
  - C. the employment of site development plan review should be considered a safety mechanism within the context of applying the community's comprehensive land use regulation  
([Ref - DOS Site Plan Review Paper, Reprint 2021, p.3](#))
5. Important to understand difference between Building Code Officer and ZBA Officer. The Building Code Officer is highly trained and whose primary concern is to enforce the Uniform Fire Prevention and Building Code (Uniform Code). The ZBO is not required by statute to achieve four hours of annual training unless required by local law and “is the municipality's representative in land use regulation and enforcement and should be the primary contact for all applicants.” ([Ref - DOS Zoning Enforcement Paper, Reprint 2021, p.2](#)) [Uniform Code](#)
6. Important that Planning Board understands that a ZEO should not come to the Planning Board with questions. ZEO directs questions to the Municipal Attorney, NYS DOS LGt or County Planning. The ZEO does not serve on the Governing Board or the ZBA.
7. New Planning Board members must sign an oath of office within thirty (30) calendar days of appointment. [Calendar days are counted as follows – If appointment Day is a Monday then the 1<sup>st</sup> calendar day is Tuesday 12am. Weekend days are included in the count. The final calendar day ends at 11:59pm (12am) ] If appointment within the required timeframe is missed the new Board members will need to be officially reappointed to secure their positions.
8. Establish Board rules, know standards and what documents are expected from applicants and what is needed for GML 239. Be consistent. Create a checklist to share with applicants. Keep form requirements up-to-date and publicly available e.g., published online.
9. Quorums are defined as a fully constituted board, including any vacancies and absences. A fully constituted Board includes vacancies and absences. For example, a 5-person Board requires 3 Board Members in person to achieve a Quorum. Decisions cannot be made without a Quorum.
10. Alternates may be appointed to serve in the event of a conflict of interest only. For any other reason, such as the need to establish a quorum, you need to have a law. (It's best practice to note on the record that the alternate is familiar with the application before them.)

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11. Have a copy of the latest adopted Comprehensive Plan in front of you. Board decisions and findings need to be in harmony with the Comprehensive Plan or something is wrong.
12. Board members need to understand SEQR. (SEQR may not apply to every action, but it is best practice to note that it did not apply so that it will be obvious that you did not overlook this step.) The Planning Board may take the lead agency role in a project. Be very aware of timeline for public hearings.

[DEC SEQR training](#) [LGt SEQR Overview Training](#) [SEQR Handbook](#)

**[Note: Legal challenges tend to be about procedure and less often about content and decisions. Be cognizant about procedural time limits and be consistent as a Board.]**

### Examples of Adherence to Prescribed Time Limits

The board must approve, approve with modifications or disapprove the proposal within a specified time.

A. The board's decision must be filed with the municipal clerk within 5 business days, and a copy mailed to the applicant.

B. If the board fails to act within the prescribed time, or where any person is aggrieved by the board's decision, the aggrieved party may apply to the State Supreme Court for review under Article 78 of the Civil Practice Law and Rules. ([Ref - DOS Site Plan Review Paper, Reprint 2021, p.7](#))

13. Public meetings (including "agenda setting" meetings) must be noticed to the media and to the public; post in conspicuous place and on municipal website. If scheduled 1 week or more ahead, then provide 72 hours' notice. If scheduled one week or less ahead, then provide notice "to the extent practicable." Records scheduled to be reviewed must be available online 24 hours in advance. (<https://www.governor.ny.gov/news/governor-hochul-signs-two-pieces-legislation-boosting-transparency-state-and-local-government>)
14. Public hearings noticing requirement include all public meeting requirements, in addition to publishing legal notice in official newspaper (a paid/subscription newspaper of general circulation, not a freebie) generally 5 days prior to hearing date.
15. Meeting minutes need to be available within two weeks; they need not be approved (unless you have a local regulation) so mark them "draft" and make them available, including online. The same holds for Executive Meeting minutes, but they need to be available within one week.
16. Regarding NYS Governor extending the law to allow for Virtual meetings during the pandemic.

### **Watch for Open Meeting Policy announcements about amendments/changes to this law.**

On April 9, 2022, Governor Hochul signed Chapter 56 of the Laws of 2022 relating to the New York State budget for the 2022-2023 state fiscal year. Included in the bill is an amendment to the Open Meetings Law (OML) to make permanent (until July 1, 2024) the expanded use of videoconferencing by public bodies to conduct open meetings, under extraordinary circumstances, regardless of a declaration of emergency.

As a threshold matter, it is our understanding that the new law is not meant to change or curtail what has always been required of public bodies complying with the Open Meetings Law. Public bodies may continue to operate now as they did before the onset of the pandemic in early 2020 when the "in person" aspects of the Open Meetings Law were first suspended. In other words, we believe that if a public body was permitted to do it before the pandemic, this law does not change that. As noted above, this law is intended to expand, *in extraordinary circumstances only*, the ability of public bodies to meet using remote access technology.

Here is a link to the Committee on Open Government's Q&A and also Model Procedures for Member Videoconferencing Pursuant to Public Officers Law § 103-a:

<https://opengovernment.ny.gov/system/files/documents/2022/05/chapter-56-of-the-laws-of-2022-guidance-document-05-20-22.pdf>

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17. Executive sessions are for eight narrow reasons (<https://opengovernment.ny.gov/system/files/documents/2022/04/oml-text-041222.pdf>) and rarely apply to planning boards, and even less so to the ZBA. However, you can use attorney client privilege, but be careful not to abuse this.
18. “Ex parte communication” Public Comments outside of Board Meeting or during Public Hearings. It is important that the Chairperson is designated as the one who delivers a uniform message. It is best practice for individual Board Members to respond if approached outside in public outside a meeting, that the inquiry or comment needs to be referred to the Board. The Board member must record the interchange on record as, “I approached with this question (in public, via email, or personal communication). This avoids accusations of conducting business without a quorum. Remember Board members are not to email each other regarding business of the Board. [Open Meeting Law Information](#)
19. Public Participation at Public Hearings [Public Meetings and Hearings Training](#)

The Board can determine ahead of time what is and is not permitted at public meeting forums (establishing a formal procedure).

Examples:

- Apply a time standard (2 minutes is typical)
- Set aside a space for media
- Print guidelines and meeting expectations at the back of each agenda

It is permissible to remove someone who is disruptive to the meeting and not abiding by established procedure. Board cannot control individual, private phones.

Public hearings are forums for public participation.

Public meetings are for the public to watch and listen. However, the Board can open the meeting for comments. Keep in mind that once you open public participation in a public meeting or public hearing you cannot close it until everyone who wishes to speak can.

20. Subdivision Law divides Board Review into two steps 1. A pre-meeting and 2. Submission of a formal application. Planning Boards most often adopt a 2-step meeting with a Phase 1 pre-submission review. Adding Phase 2 review can be cumbersome and there could be tensions with meeting mandatory time requirements.
21. Local municipal Subdivision Law should say what constitutes subdivision and mandate a 2-part review – a pre-plat & final-plat review. [Subdivision in NYS](#) . Generally, the planning board handles lot line adjustments (this is not really a subdivision because it is not creating any new lots, but merely changing the lot sizes.)
22. Site Plan Review regulates the design of a single parcel. It does not regulate a use. Site Plan Review Process can be a 1-, 2- or 3-step process. ([Descriptive diagram Ref - DOS Site Plan Review Reprint 2021, p.5](#)) It cannot mandate anything of the applicant not in the Site Plan Review law. You can ask but you cannot mandate. Establishing a checklist is important. The checklist should parallel the local municipal Site Plan Review Regulation. [For examples of checklists look at [T Ballston Spa](#), [Town of Jackson](#), [Saratoga Springs](#)] [Site Plan Review \(Ref - Application & Checklist Sample pp 19-20\)](#)

Site Plan Review considerations. Be aware that setbacks are a type of zoning and are reviewed through the ZBA. If setbacks are considered by the Planning Board when doing site plan review the Board must provide a path of relief to the applicant.

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23. Special Use Permits (SUP), also known as “conditional uses”, are not the same as Use Variance. These uses are allowed on a case-by-case basis but with conditions to ensure that it is in harmony with the neighborhood. (Do not try out a proposed use under a SUP unless zoning regulation ~~states~~ specifically allows use “by SUP” If the applicant meets all of the conditions, then the SUP cannot be denied. Important to document well to be able to show a rational basis for all decisions. SUPs stay with the land until the conditions are not longer and may be removed after a public hearing. [The Unique Attributes of a Special Use Permit](#) Ref: Betensky Law Blog
24. Planning Boards typically do special use permits unless the local governing Board assigns this function to the ZBA.
25. County Referral. If ZBA sends a referral to the County for GML-239 review and the project – scope of project undergoes substantial change the Planning Board will also resubmit the application to the Planning Agency. [If in doubt, send.] Failure to send an application subject to 239m could invalidate the action if challenged in court.  
[County Referral Training https://washingtoncountyny.gov/537/General-Municipal-Law-Referrals](https://washingtoncountyny.gov/537/General-Municipal-Law-Referrals)
26. Notice to the adjacent municipality GML 239nn. If property is within 500’ of adjacent municipality, it must be referred to that municipality’s 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. You only have to provide notice; you do not need any formal response. It’s best practice to note 239nn compliance in meeting notes/application so you know this was not overlooked.