



NEW YORK STATE PLANNING BOARD OPERATION

A Guidebook for Local Officials



**Environmental
Finance
Center**

Syracuse University





PREFACE

This guidebook is intended to aid local officials in understanding the organization, powers, duties, and procedures of the planning board. The guide provides an overview of the fundamental powers and duties of town, village, and city planning boards.

Administrative and regulatory roles of the planning board—including comprehensive planning, site plan review, special use permits, and subdivision review—will be discussed. The role of the planning board in making recommendations to the zoning board of appeals, the importance of board procedures, referrals to the county planning agency and the importance of making findings will also be discussed.

Content within this document is derived and summarized directly from materials produced by the NYS Department of State, Division of Local Government Services, specifically from its *Planning Boards Overview* Course. For the original, full text of this course and additional resources, visit www.dos.ny.gov/lg/onlinetraining/planning_board_overview_courseoutline.html

This guidebook was compiled by the Syracuse University Environmental Finance Center (Syracuse EFC). Located at the Syracuse University Center for Sustainable Community Solutions (CSCS), Syracuse EFC enhances the administrative and financial capacities of state and local government officials, nonprofit organizations, and private sectors to make change toward improved environmental infrastructure and quality of life.

Syracuse EFC facilitates the development of sustainable and resilient communities across US EPA Region 2 (New Jersey, New York, Puerto Rico, the US Virgin Islands, and eight tribal nations), across the US, and internationally.

More information can be found at efc.syracusecoe.org/efc



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MEMBERSHIP

To be qualified for a local planning board you must be

- at least 18 years of age,
- a United States citizen, and
- a resident within the municipality.

Members of the local government board may not serve as planning board members.

The Appointing Authority

Towns --> town board

Villages--> mayor with the consent of the village board of trustees

Cities --> mayor with the consent of the city council

Term

Each member's term of office (in years) is equal to the number of members on a board. Usually planning boards have five or seven members, so members will serve for a term of five or seven years.

Alternates

State law allows the appointment of alternates to the planning board following the adoption of a local law or ordinance. Their terms are established by local rather than state law. The local governing board determines the term of office.

Under state law, alternates may serve

- in the event of a conflict of interest, or
- in place of absent members if a local law is passed superseding state law.

Member who stay on the board past their term of office are known as "holdovers."

Oath of Office

Upon appointment each member must take and file an "Oath of Office" with the municipal clerk. This must be accomplished within 30 days of the commencement of each term of office. If the oath is not filed the member could be replaced at any time.

Removal

Governing boards have the authority to remove members for "cause," such as

- failure to attend meetings;
- reoccurring inappropriate behavior;
- failure to fulfill training requirements set by the municipality; or
- a state or local ethics violation.

The governing board must hold a public hearing before removing a member for cause.



TRAINING

State law requires that members receive at least **four hours of training each year**. Training in excess of four hours in any one year may be carried over into succeeding years.

Your governing board will determine what qualifies for credit, but will generally accept training by these institutions and organizations:

- Department of State
- Department of Environmental Conservation
- Other State agencies
- County planners
- Municipal organizations such as:
 - New York Planning Federation
 - New York Conference of Mayors
 - New York Association of Towns
- Academic institutions such as:
 - Pace University
 - Albany Law School

Training requirements may be modified or waived by the local governing board if judged to be in the municipality's best interest. One reason for a waiver could be that the members have sufficient planning credentials.

Private-sector planning, law, and engineering DVDs or online tutorials can also be approved modes for board members to receive instruction. To be eligible for reappointment to the planning board, members must have completed the training required by their prior term. Training is tracked locally, usually by a municipal clerk, board secretary, municipal planner or department head. A member's failure to comply with the training requirements cannot be the cause for their decision on an application to be voided.

Planning board members are trained in two types of powers: advisory and regulatory. Both powers come from either state statute or the local governing board, but advisory powers focus on the ability of the planning board to make recommendations and take actions of a non-compulsory nature, while regulatory powers entail the board's ability to control the behaviors of the residents and other actors within their municipality.



ADVISORY POWERS OF THE PLANNING BOARD

Land Use Regulations

The planning board may recommend regulations on subjects in which they have jurisdiction. Regulations must be adopted by the governing board through a local law or ordinance.

Studies, Maps & Reports

The planning board has the authority to make investigations, maps, reports, and recommendations relating to the planning and development of their municipality, such as a study of historic resources along the Hudson River. The governing board establishes the budget for the planning board, which may limit the number of studies it can conduct.

Additional Jurisdiction

The governing board may seek advisement from the planning board before final action is taken by an office or officer of the municipality. The office or officer of the municipality with jurisdiction can be prevented from acting until the planning board has submitted its recommendation, or until a reasonable amount of time has passed in which the planning board could have made a recommendation.

Area Variances

When features on a subdivision plat do not comply with the physical or dimensional restrictions in zoning regulations, an area variance is necessary in order for the planning board to approve the application. When reviewing the area variance request, the zoning board of appeals (ZBA) must request that the planning board provide a written recommendation concerning the proposed variance.

Subdivision plats showing cul-de-sacs or corner lots off loop roads often need area variances. The unusual shapes of the lots may not conform to traditional zoning requirements that require minimum frontage or certain width to depth ratios. The need for the variance is often identified by the local official receiving the application, who may suggest the subdivision applicant also apply to the ZBA. Review may continue on the subdivision plat pending ZBA action, but the planning board should not take final action prior to the ZBA acting on the variance request.



COMPREHENSIVE PLAN

A Comprehensive Plan is

- an expression of a municipality's goals and recommended action to achieve those goals;
- an outline for orderly growth, providing continued guidance for decision making on matters like zoning or capital improvements; and
- a document which focuses on immediate and long-term protection, enhancement, growth, and development of the municipality.

Knowing how to reference, revise or update a comprehensive plan (sometimes known as the master plan or land use plan) is important because

- zoning must be in accordance with the comprehensive plan;
- it provides a defense against spot zoning challenges and other actions affecting development;
- it is necessary for grant applications;
- it can outline a Revitalization Project; and
- it can provide a vision for capital Improvements.

Zoning regulations must be in accordance with a comprehensive plan. When zoning follows the comprehensive plan, it will provide a defense against spot zoning challenges. If a parcel may be zoned differently than neighboring parcels, if it is in accordance with the comprehensive plan, then it is not considered spot zoning.

Spot zoning is the rezoning of a parcel of land for the benefit of the owner and without any relation to a logical plan for the surrounding area.

The planning board's role in the comprehensive plan is to

- act as a 'Special Board,'
- make recommendations on the proposed plan, and
- hold public hearings while the plan is in preparation.

The governing board's role in the comprehensive plan is to

- hold a public hearing within 90 days of receiving the draft plan;
- amend land use regulations;
- develop design guidelines;
- budget for capital improvements; and
- apply for the appropriate state, federal, and privately funded programs and grants.



REGULATORY POWERS

The regulatory powers of the planning board usually include

- review of subdivision plats,
- review of site plans issuance of special use permits,
- review of signage,
- historic preservation, and
- architectural review.

With the exception of subdivision review, these powers are delegated to the planning board by the governing board. The extent of these regulatory powers are also delegated by the governing board.

Review of subdivision plats

A subdivision is 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. Review of subdivisions looks at the design and improvements to be made to the parcel.

Subdivisions may be defined by local regulations as either **major** or **minor**, with minor subdivision processes having fewer requirements and less extensive criteria than major subdivisions.

Typical thresholds for major/minor classification include

- the number of proposed lots,
- construction of new streets,
- extension of municipal infrastructure,
- configuration of proposed lots, and
- transfer of land from adjacent parcels.

Subdivision review regulates the design and improvements of the entire neighborhood. Possible review elements include

- lot configuration,
- landscaping,
- drainage,
- street pattern,
- service access,
- streets and roads, and
- utility installation.



REGULATORY POWERS CONTINUED

Subdivision review regulates the design and improvements. It cannot

- establish minimum lot sizes, dimension requirements, or control uses on the property;
- be used to regulate the style or design of buildings; or
- be a substitute for health department review of sewer and water services.

The cluster subdivision process enables and encourages flexibility of design and development of subdivisions so as to preserve natural and scenic qualities of open land. The benefits include preservation of open space, recreational opportunities, and cost savings to the municipality and developer.

Conservation subdivisions include the same number of home sites as allowed in a conventional subdivision but are designed to reduce infrastructure costs, further increase open space, and increase property values.

Site Plan Review

While the subdivision of land and the installation of improvements like sidewalks and roads have literally shaped communities, buildings and activities occurring on individual parcels of land also have a large impact. The exercise of site plan review gives cities, towns and villages the opportunity to “fine tune” development on individual parcels of land. Zoning is not necessary to enact site plan review.

The planning board may

- delegate a review board,
- list the elements up for review,
- specify submission requirements,
- list local procedures for public hearings, and
- identify enforcement authority for conditions of approval.

A site plan is a rendering, drawing, or sketch that shows the arrangement, layout, and design of the proposed use of a single parcel of land.

The planning board should specify uses to be considered:

- *Type:* Single type of use or several types of uses municipality-wide
- *Zoning District:* All or some uses within a particular district
- *Area:* Uses within an overlay zone, such as historic, architectural, or waterfront district



REGULATORY POWERS CONTINUED

Examples of site plan review elements:

- Relationship to comprehensive plan
- Environmental impact
- Location and dimension of buildings
- Screening and landscaping
- Utilities
- Sewage and storm drainage
- Parking and traffic
- Lighting and signage

Special Use Permits

A special use permit is an authorization to use land in a way which is permitted by zoning, subject to requirements designed to assure that the proposed use is in harmony with the zoning law and will not adversely affect the neighborhood if requirements are met (also known as “special exceptions” or “conditional uses”).

State law requires a public hearing before a special use permit application is approved, as well as notice to adjacent municipalities and referral to the county if distance thresholds are triggered.

A governing board may authorize the planning board to review the design of new signs for their appearance, safety, and compatibility with the neighborhood. **Review of signs** could be incorporated into site plan, subdivision, or special use permit review, or be performed as a separate process.

Municipalities that have properties or buildings listed in a State or Federal **historic district** may wish to designate those areas as local historic. Some local historic preservation laws allow the planning board to regulate exterior changes to historic structures, which if approved, will result in the issuance of a Certificate of Appropriateness.

Review of the **architectural design** of a building may be similar to those features examined in historic preservation. The difference will lie, however, in that historic significance is not the issue, but rather incorporation of design elements that promote compatibility of neighborhood design.



MEETINGS AND HEARINGS

Nearly all of the activities of a planning board will take place in public. These activities will typically be either meetings of the board or hearings to receive public input. Often, the board will have both a meeting and several hearings on the same night. The planning board may also hold more interactive sessions, such as workshops and charrettes used to solicit input on how parts of the community should be developed.

Overview

The purpose of a meeting is to allow the public to observe and listen to the deliberations of the planning board. Subject to the Open Meetings Law, planning boards must discuss applications and other board business at meetings open to the public.

This means that the planning board must

- provide access to the public,
- provide notice to the press,
- post notices in a conspicuous place,
- provide at least three days notice for a meeting scheduled one week or more in advance, and
- provide notice to the extent practical for a meeting scheduled less than one week in advance.

Executive Session

The public may be excluded from executive sessions if the discussion involves:

- matters which will imperil public safety if disclosed;
- matters which disclose the identity of a law enforcement agent or informer;
- information relating to criminal investigations;
- discussions regarding proposed, pending or, current litigation;
- collective negotiations of public employees protected under the Taylor Law;
- the medical, financial, credit, or employment history of a particular person or corporation;
- the preparation, grading, or administration of exams; or
- the proposed acquisition, sale or lease of real property, proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

Additionally, work sessions, agenda meetings, and site visits are subject to the Open Meetings Law only if a quorum of members have planned to gather to discuss public business.



MEETINGS AND HEARINGS CONTINUED

A public hearing is held for the purpose of receiving public comment on a particular matter. Examples pertaining to the planning board include

- special use permits,
- subdivisions,
- preparation of preliminary comprehensive plans, and
- site plans (if locally required).

State noticing requirements of the planning board include

- public meeting requirements, and
- legal notice in official newspaper.

Local noticing of requirements include

- signs on application property,
- certified mailings, and
- posts to a municipal website or dissemination through a ListServ.

If property is within 500 feet of an adjacent municipality, that municipality's clerk must be notified. This is true in the case of

- subdivisions,
- site plans, and
- special use permits.

If a public hearing is in regards to applications within 500 feet of an adjacent municipality, then districts, agencies, and boundary municipalities must be informed. This is true in the case of

- municipal boundaries,
- state or county parks or highways,
- land on which a state or county building is located, and
- farm operations in state agricultural districts.

The county planning agency and referring body may enter into agreement to exempt certain actions from county review.



DECISIONS

Decisions of the planning board are often subject to legal challenges, both when the planning board denies an application or approves an application. Many of the challenges are based on defects in procedures, not necessarily poor decisions. Local boards are required to refer certain types of land use actions to the county planning agency if the subject properties of the applications are within 500 feet of certain areas.

The types of applications before the planning board that must be referred to the county planning agency if they are for property within certain geographic triggers include

- special use permits,
- site plans,
- other zoning authorizations, and
- subdivisions where authorized by county legislative body under general municipal law §239-n.

The planning board is required to transmit a full statement of an action reviewable under General Municipal Law §239-m or §239-n to the county or regional planning agency.

A full statement consists of all application materials required by and submitted to the planning board, including part one of the environmental assessment form (EAF), as well as any other materials required by the planning board to make a SEQRA determination.

A full statement must be sent to the county planning agency at least ten days prior to a public hearing on the site plan or special use permit, and a subdivision plat if authorized by the county legislative body. If no public hearing is needed for a site plan, the referral must be sent before final action can be taken by the local planning board.

The county planning agency will respond to the application in one of four ways. It can

- recommend approval of the application as submitted,
- recommend approval of the application with modifications,
- recommend disapproval of the application, or
- report that the application will have no significant county-wide or intercommunity impact.

The planning board has jurisdiction to take final action when the earlier of the following occurs: it receives the recommendations of the County Planning Agency, or 30 days have passed since the county's receipt of the full statement. The time period may be extended if agreed to by both the county and local planning bodies. It is important that the local planning board does not take action prematurely. The board cannot take early votes conditioned on the county planning agency's later recommendation for approval.



SEQRA AND FINDINGS

The State Environmental Quality Review Act (SEQRA) and its regulations require an additional layer of consideration of the environment that local land use regulations may not address. The planning board must identify the project as a specific type of action. Type II actions are presumed as having no adverse environmental impact and therefore are not subject to review.

Examples of Type II actions are construction or expansion of

- a primary non-residential structure under 4000 square feet,
- garages,
- fences, or
- home swimming pools.

If a project is not on the Type II list, the SEQRA process must continue. It is highly likely the planning board will review many projects subject to further review under SEQRA, and that the planning board will designate itself as lead agency, responsible for coordinating the process with other boards and agencies that also have jurisdiction to make decisions on the project.

The lead agency must either issue

- a negative declaration, meaning the project will not result in significant adverse environmental impact; or
- a positive declaration, meaning the project may have one or more significant adverse effects on the environment.

If an agency issues a positive declaration, an environmental impact statement must be prepared. If a negative declaration of significance has been rendered, the board can proceed to hold the public hearing for the subdivision, site plan, or special use permit application. If a positive declaration of significance has been made, the public hearing on the application should not be held until after a draft environmental impact statement (DEIS) has been accepted by the planning board as complete.

Findings should describe reasons for a decision and support why a condition was imposed. While the land use enabling statutes do not require that planning boards make findings of fact or state reasons for their decisions, the courts will want to review findings if there is a challenge of a denial of an application, or of substantial condition. Findings should be approved by the board—not merely drafted by the board's attorney and inserted in the record of the application.



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