



Behind the Scenes: Roles and Responsibilities of Planning Board and ZBA Secretaries

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Gatekeeper

One who assists applicants, takes minutes, and keeps the record

Possible gatekeepers:

- Board clerk or secretary
- Board chair
- Zoning or building official
- Municipal planner
- Municipal clerk



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First municipal contact

Among the roles of the board clerk is to assist the public

- Provide forms
- Provide general information
- Provide access to regulations and studies
- Direct people to appropriate expert
- Distribute applicant packets
- May include a checklist of all materials needed in a complete application



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Additional duties



- Record keeping
- Notices
- Referrals
- Voting
- Decisions
- Minutes
- Filing, retrieval and access

The record

- Applications & supporting documentation
 - SEQRA materials (EAF)
- Evidence of compliance
 - Meetings: Open Meetings Law
 - Hearings: Legal notices
- Minutes
- Testimony
- County report, if referred
- Findings
- Decision & any conditions of approval



Application Materials

- Know what is required as specified in the local regulations
- Who determines when there's sufficient material to consider the application?
 - Gatekeeper? Municipal Planner? Secretary of the board?
 - Board chair?
 - Board by consensus?
- Due date for application materials: At least 2 weeks before meeting

Application deadlines

- Establish a deadline for submitting applications (2 weeks or so) prior to meetings.
- Application materials can then be distributed to board members to give them time to review prior to meeting—and to discover if there's more information needed to consider the application at the meeting.
- Application forms, board procedures, and even zoning regulations should reflect the application deadline.

Does the applicant know...

- What to bring to the meeting?
- What to expect at the meeting?
- Can you provide the applicant with a check list of all items/materials needed?
- James A. Coon Technical Series publications include checklists and instructions for board members as well as guidelines for applicants
 - Record Keeping Tips for Zoning Administration
 - Zoning Enforcement
 - Zoning Board of Appeals
 - Guide to Applicants to the Zoning Board of Appeals

Notice



Communication with applicant

- Board members should avoid ex parte communication (i.e., phone call or letter from applicant)
- If it happens:
 - disclose to the board, and note in the record
 - if written communications occurred, include copies



Public meetings vs. hearings

Meeting: Public may listen and observe, and board may permit public question and comment
Hearing: for public to comment

- Subject to Open Meetings Law: Boards must discuss applications and other board business at meetings open to the public
- Quorum of full membership to conduct business
- Post notice, meeting schedule to media



Meeting notice requirements

- Post notice in a conspicuous place
- Provide notice to the press (need not be published)
- If scheduled more than 1 week in advance, provide at least 72 hours (3 days) notice
- If scheduled less than 1 week in advance: provide notice to the extent practicable
- When feasible, post notice on municipal website if regularly updated with high speed internet connection
- Provide access to the public



Hearing notice requirements

- No state statutes require direct mailing of notices to adjoining neighbors
- Municipalities may adopt additional local noticing requirements:
 - Signs on application property
 - best practice
 - Mailings to neighbors
 - Municipal ListServ



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Disclosure of records

- Make available online records scheduled to be discussed during open meetings
 - Agenda
 - Applications
- Local governments without ability to post materials online so frequently, hard copies of agendas and applications should be available at meetings

Committee on Open Government
www.dos.ny.gov/coog/index.html
 (518) 474-2518

Public Officers Law Article 7 §103(e)



State Environmental Quality Review Act

Incorporate consideration of environmental factors into an agency's decision making process at earliest possible time



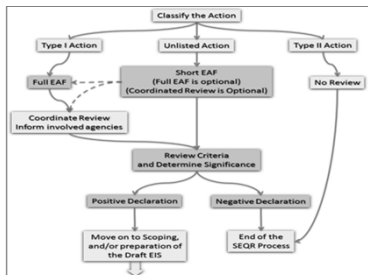
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How SEQRA works

- Agency proposes action or receives application
- Action classified*
- 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



Public Hearings under SEQRA

- Optional under SEQRA (6 NYCRR Part 617.9 (4))
- If held, should be held concurrently with any other required hearing on same action
- Public notice published in newspaper at least 14 days prior to hearing
- Hearing must start between 15 and 60 days after DEIS notice of completion
- Public comment period continues for at least 10 days after close of hearing

SEQR distribution, filing & publishing

- Distribute EAF Part I
 - County planning if referral required
 - Involved agencies to establish lead agency (Unlisted optional)
- Incorporate Negative Declaration into any subsequent legal notices required by law
- "File" means provide a copy to involved agencies, etc.
 - Positive declaration; CND; Negative declaration (Type I only); EIS; Notice of completion of EIS; Notice of hearing (if applicable); Findings
- Publish in Environmental Notice bulletin
 - Positive declaration; CND; Negative declaration (Type I only); EIS Notice of completion

Environmental Notice Bulletin (ENB)

- Official online publication of the NYSDEC
- For Type 1 Actions, publish negative and positive declarations
 - For Unlisted Actions, publish conditional negative declaration and positive declaration
 - For both Type 1 and Unlisted, publish notice of completion of EIS

Published weekly: 6 pm Wednesday submission deadline for publishing following Wednesday

- Email: enb@gw.dec.state.ny.us
- Mail: ENB, NYS Department of Environmental Conservation
625 Broadway, 4th Floor, Albany, NY 12233

Referrals

County Referral

General Municipal Law 239-m

Refer applications within 500 feet of:

- Municipal boundaries
- State or county parks, highways, streams, or institutions
- Land on which state or county building is located
- Farm operations in state agricultural districts



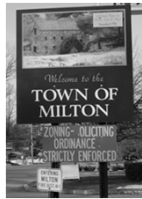
Agreements to exempt certain actions from county review:
 minor area variances; site plan review for single- and two-family homes, for example.

General Municipal Law §239-nn

Applications within 500' of adjacent municipality:

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

Must be referred to clerk of the adjacent municipality at least 10 days prior to the hearing



Voting

Voting affected by county referral

- Referring body cannot make a decision until:
 - County planning agency's report has been received, OR
 - 30 days have elapsed since the county received the full statement
 - And the local board has not received the report more than 2 days prior to its meeting
 - Clock begins when county receives "full statement" from referring body (including Part 1 of the Environmental Assessment Form)
- To act contrary to county's recommendation for disapproval or approval with modification requires supermajority vote (majority plus one). The local board must explain in the record the reason for overriding the county's recommendation

If a member is absent

- And missed
 - An applicant's presentation
 - A public hearing
 - Board discussion of the application
- That member is not precluded from voting but should indicate for the record that he or she reviewed the application, minutes, and other materials pertaining to the proposal.



Voting: Appellate Jurisdiction

- A motion or resolution passes (only) if it gets majority vote of all members of fully constituted board
- If motion fails to get majority vote, request is denied.
 - Variance approval
 - Decision in favor of applicant's interpretation request

Additional votes may be taken within the statutory time frame (62 calendar days after close of hearing without triggering the rehearing process).

Voting: Original Jurisdiction

Review of site plan, special use permit, and subdivision applications.

- Motion or resolution for final action passed by majority vote of fully constituted board
- If motion fails to get majority vote of the fully constituted board, no action has been taken

Subdivision plats only: default approval may occur if planning board does not make decision within 62 days of public hearing closing

Minutes

Minutes (Public Officers Law, Article 7, §106)

1. Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.

2. Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the freedom of information law as added by article six of this chapter.

Minutes

- Record of the actions taken at a meeting and who voted how
- Information about the discussion that occurred to reach the decision
- To inform those not present of what happened at the meeting
- And give future board members a sense of how the board operates



Who takes minutes?

- Usually the secretary or clerk
- Could be a board member (not recommended)
- Should not be the chair

Minutes must produce concise and coherent summaries of sometimes long and disjointed discussions

Taking them requires diplomacy and fortitude to deal with suggested "improvements" to the minutes

Common contents

- Heading: Board name, date, time, & place of meeting
- Footer: Computer file name
- List of members in attendance
- Times meeting called to order & adjourned
- Date notice provided to media and public
- Approval and/or corrections of previous minutes
- Summary of reports & announcements
- Summary of discussions, proposals, resolutions, motions
- Results of vote

Minutes: level of detail

- Minimum: Open Meetings Law (OML)
 - Record of motions, resolutions & votes
 - Verbatim minutes are not usually practical
- Middle ground: Narration
 - An accounting of discussions & important details
 - Consider presenting information logically, not necessarily chronologically
- Full account: Report
 - Full record of discussions including speakers' names
 - Who moved & who seconded motions

Minutes: organization

- Use consistent heading
- Lay out minutes according to agenda
- Record information logically, not necessarily chronologically
 - If a discussion item occurs at several points, consolidate in one section
- Consider replacing long paragraphs with bullet points
- Standardize computer file names

Best practices

- Motions & resolutions
 - Record verbatim
 - Read back during meeting to ensure accuracy
 - Review list of conditions with board prior to vote
- Distribute minutes before next meeting and make first order of business to review
 - State any corrections or additions



Discussion summary

Include:

- Key points
- Facts separated from opinion
 - Facts are objective & indisputable
 - Opinions are personal views

Do not include:

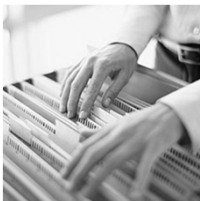
- Offensive or inappropriate language, even if used
- Subjective interpretations of speakers' mood or tone
- Items not discussed
- Typographical & grammatical errors

Approval & availability

- Approval is common practice, but not required
 - May be required in local rules of procedure
 - Mark as "draft".
- Make draft available to public within two weeks
 - Executive session minutes within one week
 - OML §106 (3)
- Tape or video is optional, but could be subject to public request for duration of retention minimum
 - Public Officers Law, Article 6 (FOIL)

Notice & filing decisions

- Attach findings to decision
- Notify applicant by mail
- Send county "report of final action," if referred
- File with municipal clerk within 5 business days
- Clerk should date stamp all records
- Filing establishes start of 30 day period for appeal to NYS Supreme Court under Article 78 of NY Civil Practice Law & Rules



Archives Retention

Filing systems

- Assign project number
 - Example: Z16-1, P98-2
- Cross reference projects
 - Applicant name
 - Project name
 - Address
 - Section-Block-Lot (S-B-L) number or tax parcel ID

Why use Section-Block-Lot?

- Over time, street names change, houses are renumbered, & new parcels are created
- System is infinitely expandable
- Parcel history can be traced
- Assessor reviews improvements on parcel being reassessed
- Allows information to be cross-referenced in GIS

Finding records related to a current application

- How can one easily check previous granted variances, prior subdivision of land and other land use decisions?
- Cross reference decisions of the planning board and zoning board of appeals in building files. Board decisions pertaining to a particular address should be filed with records of building permits that resulted from those board decisions.



Archiving

- Records management officer
 - Municipal clerk (Arts & Cultural Affairs Law Article 57-A)
 - Maintains custody of all archived records, including a set of minutes of meetings of planning boards and zoning boards of appeals
- Board secretary or municipal planner usually maintains planning board and zoning board of appeals minutes

Records Management Grants:
 NYS Department of Education State Archives & Records Administration
 (518) 474-6926

State Archives records retention schedule

- Permanently archive
 - Official minutes
 - Hearing proceedings
 - Project files
 - Exception: single-family home variances kept 25 years
- Temporarily retain
 - Voice recordings four months after transcription and/or approval of minutes or proceedings (MU-1 General *2.2)
 - Hand written meeting notes until draft transcribed

www.archives.nysed.gov/a/records/mr_pub_mu1_sections_accessible.html

New York Department of State

Training Unit: (518) 473-3355
Counsel's Office: (518) 474-6740
Toll Free: (800) 367-8488
www.dos.ny.gov/lq/
localgov@dos.ny.gov





TOWN OF RED HOOK

7340 SOUTH BROADWAY ~ RED HOOK, NY 12571

Building & Zoning Department

- Zoning Enforcement Officer
- Building Code Inspector
- Fire Code Inspector

Office: 845.758.4623 or 845.758.4603 ~ Fax: 845.758.9018

Email: bfennell@redhook.org ~ scoble@redhook.org ~ Web: www.redhook.org

Land Use and Zoning Approval Process

1. Visit Town of Red Hook Building & Zoning Department.

- a. Approvals. Work with Staff to determine applicable and required permits and approvals.

Permits/Approvals:

- Building Permit
- Certificate of Occupancy
- Site Plan
- Subdivision
- Special Permit
- Variances (use or area)
- Interpretations
- Zoning Amendment or Rezoning

Approving Agency:

- Building & Zoning Department
Building & Zoning Department
Planning Board
Planning Board
Planning Board, Town Board
Zoning Board of Appeals
Zoning Board of Appeals
Town Board

- b. Application Forms. Obtain and complete relevant application forms and instructions.
- c. Pay Fees. Pay applicable application fees and establish escrow account for reimbursement of professional review fees.
- d. Make Submittal. Make submittal by submission deadline to get on the next agenda of the Approving Agency (Planning Board, Zoning Board, Town Board).
- Applicant Form
 - Owner Consent Form, if different from applicant
 - Fees
 - Environmental Assessment Form (Short or Full)
 - Plans, maps, survey, etc.
 - Documentation of past permits and approvals, where applicable.
 - Cover letter and description of project (optional, but strongly encouraged)

2. Approving Agency Review and Decision.

- a. Pre-Application conceptual presentations by applicant to approving board are optional, but encouraged.
- b. Application reviewed in writing by Town staff (Zoning Administrator, Fire Inspector, Highway Superintendent, etc.) for conformance with:

- i. Town Comprehensive Plan, Greenway Connections and other relevant guides and studies;
 - ii. Applicable laws and regulations;
 - iii. Town policies, practice and concerns.
- c. Application reviewed in writing by Town's professional consultants (Engineer, Planner and Attorney).
- d. Application referred to involved and interested agencies for review and comment (e.g. Highway Department, Conservation Board, DC Planning & Development, DC Health Department, DC DPW, NYSDOT, NYSDEC, Army Corps of Engineers, etc.).
- e. Applicant revises application to respond to review comments.
- f. Public Hearing.
- g. State Environmental Quality Review (SEQR) Determination (no impact or requirement to prepare an Environmental Impact Statement (EIS)).
- h. Board Decision in writing:
 - i. Approval
 - ii. Approval with modifications (conditional approval)
 - iii. Denial

3. Post Approval/Pre-Construction

- a. Applicant addresses all conditions of approval (revise plans, pay fees, obtain and submit evidence of necessary permits and approvals from other agencies, post financial surety, bonds, etc.).
- b. Plans reviewed for compliance with conditions of approval.
- c. Plans and resolution of approval endorsed by Board Chairman confirming compliance with all conditions of approval, authorizing issuance of relevant permits. Copies provided to Applicant.
- d. Building Permit issued.

4. Construction Process

- a. Erosion and sedimentation controls installed, inspected, maintained.
- b. Inspections by Town staff.
- c. Interim Plot Plan foundation as-built submitted and reviewed.
- d. Construction completed.
- e. As-built survey prepared and reviewed.
- f. Final Inspections of buildings.
- g. If site plan, C.O. for site is issued.
- h. Certificate of Occupancy issued.
- i. End of Process.

Records Retention and Disposition Schedule MU-1

First issued in 1988; revised 2003 (http://www.archives.nysed.gov/a/records/mr_pub_mu1.shtml)

Official minutes and hearing proceedings of governing body or board, commission or committee thereof including all records accepted as part of minutes:

RETENTION: PERMANENT

2.[2] Recording of voice conversations, including audio tape, videotape, stenotype or stenographer's notebook and also including verbatim minutes used to produce official minutes and hearing proceedings, report, or other record

A. Recording of public meeting of governing body or board, committee or commission thereof:

RETENTION: 4 months after transcription and/or approval of minutes or proceedings

NOTE: Videotapes of public hearings and meetings which have been broadcast on local government public access television as covered by item no. 33, below.

NOTE: Appraise these records for historical significance prior to disposition. Audio and videotapes of public hearings and meetings at which significant matters are discussed may have continuing value for historical or other research and should be retained permanently. Contact the State Archives for additional advice on the long-term maintenance of these records.

B. Recording other than of public meeting:

RETENTION: after no longer needed

3.[3] Meeting files for meeting of governing body or board or agency, commission or committee thereof, including agendas, background materials and other records used at meetings:

RETENTION: 1 year

NOTE: Appraise these records for continuing administrative or historical value prior to disposition. Agendas may have continuing administrative value and may be useful for accessing information in unindexed minutes and for indexing those minutes. Other records prepared for or used at meetings may have administrative or historical value for documenting issues discussed at the meetings and referenced in the minutes. See item no. 1, above, for records which are accepted as part of the minutes.

4.[4] Legal opinion or legal directive rendered by government agency:

RETENTION: PERMANENT

5.[5] Local law (including certification that law was properly enacted), rule, regulation, ordinance, resolution, proclamation or court order:

RETENTION: PERMANENT