



# Record Keeping

A Division of New York Department of State

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## Course overview

- Record keeping
- Minutes
- Voting
- Findings
- Decisions



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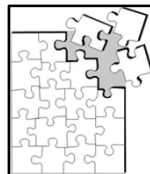
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## The record

- Application & 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



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### Archiving

- Records management officer
  - Municipal clerk
    - Arts & Cultural Affairs Law Article 57-A
  - Maintains custody of all archived records
- Common practice for municipal planner or board secretary to maintain records before archiving required




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### NYS 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](http://www.archives.nysed.gov/a/records/mr_pub_mu1_sections_accessible.html)

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### Grants for records management

NYS Education Department,  
 State Archives & Records Administration  
 (518) 474-6926  
[www.archives.nysed.gov/a/grants/grants\\_lgrmif.shtml](http://www.archives.nysed.gov/a/grants/grants_lgrmif.shtml)

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### Filing systems

- Assign a project number
  - Example: Z06-1, Z06-2, P05-1, P05-2
- Cross reference projects
  - Applicant name
  - Project name
  - Address
  - Section-Block-Lot (S-B-L) number or tax parcel ID

Why use SBLs?

- 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 Geographic Information System




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### Minutes

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### Minutes are part of record

- Official record of public meeting
  - Public Officers Law, Article 7 (OML)
- Summary of all motions, proposals, resolutions, and any other matter formally voted upon
  - Open Meetings Law (OML) §106
  - Committee on Open Government (COOG) Opinion 3154
- Record members' votes
- Written document regardless of recordings




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### Legal protection

- Informs those not present what transpired
  - Public, municipal officials, absent members, NYS courts
- Tracks evolution of issues and applications where precedent has been set
- Often indicates that proper procedure was followed
  - Media and public were notified
  - Quorum and majority vote
  - SEQRA was considered
- Record of member recusal
  - Cite reason (conflict of interest, etc.)




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### Approval & availability

- Approval is common practice, but not required by statute
  - Vote to approve may be required in local rules of procedure
- 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)




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### Content and 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




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### 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
- Approval and/or corrections of previous minutes
- Summary of reports & announcements
- Summary of discussions, proposals, resolutions, & motions
- Results of vote




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### Good 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




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### Note taking and transcription

- Designate responsibility to secretary or clerk
  - Board member not recommended
    - Paid secretary may not serve on the board (Attorney General Informal Opinion 2005-17)
  - Not the chairperson
- Recording is no easy task
  - Produce concise and coherent summaries of sometimes long and disjointed discussions
  - Be diplomatic when dealing with suggested "improvements" to minutes




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### Discussion summary

| Do not include   | Include   |
|--|---|
| <ul style="list-style-type: none"> <li>• Offensive or inappropriate language, even if used</li> <li>• Subjective interpretations of speakers' mood or tone</li> <li>• Items not discussed</li> <li>• Typographical &amp; grammatical errors</li> </ul> | <ul style="list-style-type: none"> <li>• Key points</li> <li>• Separate fact from opinion               <ul style="list-style-type: none"> <li>– Facts are objective &amp; indisputable</li> <li>– Opinions are personal views</li> </ul> </li> </ul> |




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### Testimonies

- Transcripts or summaries of comments from public at hearing(s)
- Written comments submitted during public comment period
- Expert opinions (written or oral)
- Board members' personal observations & knowledge




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### Communication with applicant

- Ex parte communication should not be concealed or disregarded
- Example: phone call or letter from applicant



Don't make statements you wouldn't want to see in print or that could be interpreted incorrectly when intonation or nonverbal cues are missing

Example: "You bet we're going to deny your application..."

Don't declare your position before all facts are heard




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### Hearing minutes

- Open Meetings Law does not address hearing minutes
- Other statutes require hearings and minutes of hearings be made public
- Board might want more detailed minutes of hearing




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### Public hearing good practices

- Provide microphones
- Suggest that speakers identify themselves
- Clarify to whom speaker is referring ("they," "he," etc.)
- Describe or "read" visual references into record




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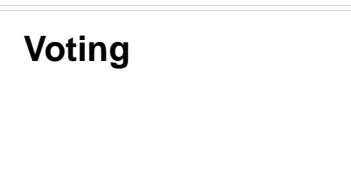
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### Voting




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### ZBA appeals

- A motion or resolution of passes if it gets majority vote of all members of fully constituted board
- Request is denied, if motion fails to get majority vote
  - Variance approval
  - Decision in favor of applicant's interpretation request
- Additional votes may be taken within the statutory time frame without triggering the rehearing process
  - 62 calendar days to make a decision once public hearing closed




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### Site plans and special use permits

- Generally planning boards and ZBAs granted non-appellate duties by governing board
- Motion or resolution for final action passed by majority vote of fully constituted board
- If motion fails to get majority vote of all members of full 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




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### County planning board or agency

- Certain planning & zoning actions require referral
  - General Municipal Law §239-m or §239-n
- Adoption of motion or resolution requires affirmative vote of majority of all members of board
  - General Municipal Law §239-c & §239-h



Genesee County Planning Board




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### Voting affected by county referral

- Referring body cannot make a decision (vote) until
  - Receipt of county planning agency's report, OR
  - 30 day county planning agency's review period ends
    - Clock begins when county receives "full statement" from referring body (includes Part I EAF)
    - Two-day rule
- To act contrary to county's recommendation for disapproval or approval with modification
  - Requires supermajority or extraordinary vote
    - Majority plus one vote




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### Voting after absence

- In the case of member absence
  - Applicant's project presentation
  - Public hearing
  - Other meetings where application was discussed
- Record when member indicates they reviewed record after an absence & before voting
  - Minutes
  - Application
  - Public hearing comments




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### Findings




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### Drafting findings

- Analysis applying law to facts, leading to conclusions
- Describe reasons for decision
  - May also support why condition(s) was imposed
  - Not applicable to legislative acts
- Should be able to support decision, if challenged
- Possible content
  - Applicant's requested action
  - Property information
  - Board's analysis

Role of Findings in LG Decisions: [www.dos.state.ny.us/cnsl/lg02.htm](http://www.dos.state.ny.us/cnsl/lg02.htm)

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### Base findings on facts

- Conclusory statements
  - Lack underlying facts or information needed to support conclusion
  - Decisions based on conclusory statements will be struck down
- General community opposition is not valid basis to deny application



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### Apply legal standards

- List all applicable standards contained in statute and local laws or ordinances
- List and weigh evidence to support or refute each standard
- Determine if compliance with each standard is established by facts
  - If not, determine if standards can be met by imposing conditions of approval

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# Decisions

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## Decision document

- Decision
  - Date action taken
  - Motion
  - Vote cast by each board member
  - Any conditions imposed
- Locally establish what constitutes "decision document"
  - Resolution
  - Findings statement which includes decision
  - Copy of applicant's decision letter
  - Minutes which indicate vote on relevant motion

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## Notice and 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

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**New York Department of State**

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[www.dos.ny.gov/lq/index.html](http://www.dos.ny.gov/lq/index.html)



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