



**Division of Local  
Government Services**

# Record Keeping

A Division of New York Department of State

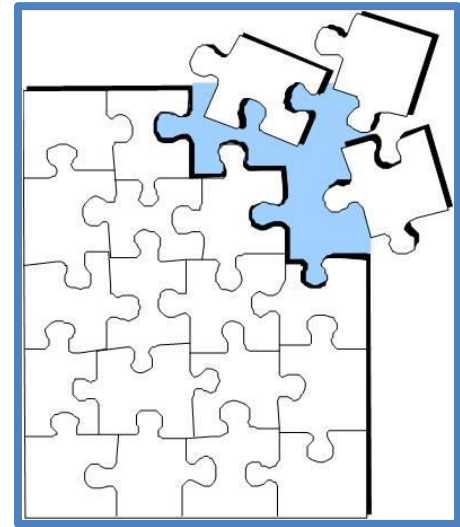
# Course overview

- Record keeping
- Minutes
- Voting
- Findings
- Decisions



# 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



# 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



# 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

# Grants for records management

NYS Education Department,  
State Archives & Records Administration  
(518) 474-6926



# Filing systems

- Assign a project number
  - Example: Z2018-1, P2018-2
- 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



# Minutes



# 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
  - OML §106
  - Committee on Open Government (COOG) Opinion 3154
- Record members' votes
- Written document regardless of recordings



# 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
- Records member recusal; cites reason (conflict of interest)



# Approval & availability

- Approval is common practice, but not required by statute
  - 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))



# 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



# Common contents

- Heading: board name, date, time, & place of meeting
- Footer: computer file name
- List of members in attendance, absent
- Time 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



# Good practices

- Motions & resolutions
  - Record verbatim
  - Read back during meeting for accuracy
  - Review list of conditions with board prior to vote
- Make minutes available within two weeks
- Make first order of business to review
- State any corrections or additions



# Note taking and transcription

- Designate responsibility to secretary or clerk
  - Paid secretary may not serve on the board (Attorney General Informal Opinion 2005-17)
  - Board member not recommended
  - 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



# Discussion summary

## Do not include

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

## Include

- Key points
- Separate fact from opinion
  - Facts are objective and indisputable
  - Opinions are personal views





# 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



# 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

# 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



# 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



# Voting

# ZBA appeals

- A motion or resolution passes if it gets an affirmative vote of the majority of the 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



# 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



# County planning board or agency

- Certain planning and 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 and §239-h



Genesse County Planning Board



# 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 (majority plus one vote)



# 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



# Findings

# 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

# 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



# 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

## USE VARIANCE FINDINGS & DECISION

Applicant: \_\_\_\_\_

Appeal Concerns Property at the following address:  
 County Tax Map Section: \_\_\_\_\_ Block: \_\_\_\_\_ Lot \_\_\_\_\_  
 Zoning District Classification: \_\_\_\_\_

Use for which Variance is Requested: \_\_\_\_\_  
 \_\_\_\_\_

Applicable Section of Zoning Code: \_\_\_\_\_  
 Permitted Uses of Property: \_\_\_\_\_

TEST: No use variance will be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. The following tests must be met for each and every use allowed by zoning on the property, including uses allowed by special use permit.

1. The Applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial.: Yes \_\_\_ No \_\_\_

Proof: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

2. The alleged hardship relating to the property is unique. (The hardship may not apply to a substantial portion of the zoning district or neighborhood.): Yes \_\_\_ No \_\_\_

Proofs: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**OFFICE USE ONLY**

Application No. UV- \_\_\_\_\_  
 Date of Application: \_\_\_\_\_  
 (Postmarked or Hand Delivered)  
 Date of Public Hearing: \_\_\_\_\_  
 Date Notice Published: \_\_\_\_\_  
 Date of County Referral: \_\_\_\_\_  
 Date of Final Action: \_\_\_\_\_  
 Date of Filing of Decision with the Municipal Clerk: \_\_\_\_\_

**ILLUSTRATIONS OF FINANCIAL EVIDENCE**

- Bill of sale for the property, present value of property, expenses for maintenance
- Leases, rental agreements
- Tax bills
- Conversion costs (for a permitted use)
- Realtor's statement of inability to rent/sell

**ILLUSTRATIONS OF UNIQUENESS**

- Topographic or physical features preventing development for a permitted use
- Why would it be possible to construct the applicant's proposal and not any of the permitted uses?
- Board member observations of the property and surrounding area.

# Decisions

# 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





# 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

# New York Department of State

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