Record Keeping
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

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

<table>
<thead>
<tr>
<th>Do not include</th>
<th>Include</th>
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<tbody>
<tr>
<td>• Offensive or inappropriate language, even if used</td>
<td>• Key points</td>
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<td>• Subjective interpretations of speakers’ mood or</td>
<td>• Separate fact from opinion</td>
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<td>tone</td>
<td>– Facts are objective and indisputable</td>
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<tr>
<td>• Items not discussed</td>
<td>– Opinions are personal views</td>
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<td>• Typographical and grammatical errors</td>
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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
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
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

Role of Findings in LG Decisions:  www.dos.state.ny.us/cnsI/lg02.htm
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
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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