

RECORD KEEPING

New York Department of State, Division of Local Government

Course overview

- Record keeping
- Minutes
- Voting
- Findings
- Decisions



Record Keeping

Grants for records management
NYS Education Department,
State Archives & Records Administration
(518) 474-6926
www.archives.nysed.gov/a/grants/grants_lgrmif.shtml

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



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

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

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
 - Open Meetings Law (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
- Record of member recusal
 - ▣ Cite reason (conflict of interest, etc.)

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)

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
- 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

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



Note taking and transcription

- Designate responsibility to secretary or clerk
 - ▣ Board member not recommended
 - May not be employed by board (Attorney General Informal Opinion 2005-17)
 - ▣ Never 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 & grammatical errors

Include

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

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

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

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 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

Site plans & 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 & 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

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

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
 - ▣ Legal standards and related facts

Base findings upon facts

- Conclusive statements
 - ▣ Lack underlying facts or information needed to support conclusion
 - ▣ Decisions based on conclusive 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: _____	Address: _____
Appeal Concerns Property at the following address: _____	City: _____
County: _____	State: _____
Appeal Number: _____	Project Name: _____
Use for which Variance is Requested: _____	Applicable Zoning Ordinance: _____
Applicable Number of Zoning Code: _____	Applicable Use of Property: _____
<p>NOTE: The use variance will be granted unless a showing to the applicant that application meets applicable and established legal standards is established. The following information is required to be submitted:</p> <p>1. The applicant must submit a persuasive report, or other supporting evidence, to establish the lack of other legal standards. This lack of other legal standards must be established. (Yes/No) _____</p> <p>Proof: _____</p> <p>2. The applicant must submit to the project or project (This includes the use of the project or project) a persuasive report or other supporting evidence to establish the lack of other legal standards. This lack of other legal standards must be established. (Yes/No) _____</p> <p>Proof: _____</p>	

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 & 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

Contacting the NYSDOS

(518) 473-3355 Training Unit

(518) 474-6740 Legal Department

(800) 367-8488 Toll Free

Email: localgov@dos.ny.gov

Website: www.dos.ny.gov

www.dos.ny.gov/lg/



NOTE: For citizen complaints and requests for services, not covered by items in this section, see item no. 29 in the General section. For sanitary code violations, see item no. 213 in the Environmental Health section.

NOTE: Municipalities should **consider** longer retention of the basic data elements of this complaints/violations data for all parcels of property in the municipality, **unless** that data is preserved by the building/property history system overall summary data file (see item no. 657, above.) This information may be useful for long-range planning purposes in conjunction with building permit issuance and building inspection data. Contact SARA for additional advice.

PLANNING

1.[397] **Comprehensive plan development file**, including but not limited to official copy of comprehensive plan and all background surveys, studies, reports, and draft versions of plan:

RETENTION: PERMANENT

◆2.[663] **Planning action data file** contained in building/property history system, and related records, created for informational and reference purposes, containing information on mandatory or discretionary planning review, planning projects, and other relevant detailed information:

RETENTION: 0 after no longer needed

NOTE: Municipalities should **consider** permanent retention of the basic data elements of this planning action data for all parcels of property in the municipality, **unless** that data is preserved by the building/property history system overall summary data file (see item no. 657, above.) This information may be useful for long-range planning purposes, and for community and land use history research. More importantly, this data provides for ease of access to summary building permit data on individual parcels of real property and the structures located on them. In addition, this data file may be used to access more detailed building permit records in electronic data output or maps, plans, permits and other paper records in inactive storage. Contact SARA for additional advice.

3.[398] **Planning project or program file** for project or program developed by or for planning agency

a. Final report and essential supporting information used to develop report, including but not limited to maps, plans, technical memoranda and environmental impact studies:

RETENTION: PERMANENT

- b. Background material, including but not limited to notes, memos, worksheets and correspondence:
RETENTION: 6 years
- 4.[399] **Master summary record** (log or register) maintained by planning agency to record receipt of planning or zoning reviews and projects, and to record subsequent action taken:
RETENTION: PERMANENT
- 5.[400] **Geographic reference file** maintained by planning agency for internal reference purposes, usually arranged by name of government agency or other service organization:
RETENTION: 0 after obsolete
- ◆6.[401] **Mandatory planning review case file** for required review of site plan, zoning variance, special permit, change of zoning, subdivision creation or enlargement, municipal planning action, or other required review, including but not limited to maps, plans, sketches, photographs, engineering reports, environmental impact statements and studies, copies of zoning records, project narrative, correspondence, and record of final determination
- a. Subdivision, historic structure, major commercial or industrial development, or capital construction, where application is approved or denied (**except** records covered by part "d"):
RETENTION: PERMANENT
- b. Subdivision, historic structure, major commercial or industrial development, or capital construction, where application is withdrawn or abandoned (**except** records covered by part "d"):
RETENTION: 10 years after last entry
- c. Any other mandatory review:
RETENTION: 6 years after last entry
- d. Detailed construction specifications, receipts and transmittal documents, lists of abutting properties, superseded versions of plans and drawings, routine correspondence and internal notes and memoranda from all files:
RETENTION: 6 years after last entry
- e. Informal consultation records, created as a result of informal meeting with prospective applicant, prior to actual submission of application:
RETENTION: 1 year after last entry
- NOTE:** "Subdivision," as used in this item, means the division of one parcel of land into two or more lots, blocks, plots or sites.

- 7.[402] **Discretionary planning review case file**, including review of planning review cases, Federal or other aid projects, environmental impact or similar studies, or other reviews, including but not limited to application, correspondence, copies of local planning or zoning records, maps, plans, sketches, and other supporting materials
- a. When review is carried out, and comments are forwarded by planning agency:
RETENTION: 3 years after last entry
- b. When **no** comments are forwarded by planning agency:
RETENTION: 1 year after receipt of request to review

ZONING

NOTE: For additional records dealing with historic preservation, see item no. 336 in the Miscellaneous section.

- ◆ 1.[664] **Master summary record** (log or register) maintained by zoning agency to record receipt of zoning variance and special use permit applications, change of zoning applications for individual parcels, and other zoning activity, and to record subsequent action taken:
RETENTION: **PERMANENT**
- 2.[648] **Zoning maps**, and all updates:
RETENTION: **PERMANENT**
- ◆ 3.[665] **Zoning action data file** contained in building/property history system, and related records, created for informational and reference purposes, containing information on zoning variances, special use permits, and other relevant detailed information:
RETENTION: 0 after no longer needed

NOTE: Municipalities should **consider** permanent retention of the basic data elements of this zoning action data for all parcels of property in the municipality, **unless** that data is preserved by the building/property history system overall summary data file (see item no. [657], above.) This information may be useful for long-range planning purposes, and for community and land use history research. More importantly, this data provides for ease of access to summary building permit data on individual parcels of real property and the structures located on them. In addition, this data file may be used to access more detailed building permit records in electronic data output or maps, plans, permits and other paper records in inactive storage. Contact SARA for additional advice.

- ◆4.[649] **Change of zoning records**, including application, petition, protest, hearing minutes, preliminary and final reports and correspondence, relating to changes proposed in zoning boundaries or regulations:

RETENTION: PERMANENT

NOTE: Change of zoning records relating to changes in zoning classification for individual parcels of property, not affecting other parcels or larger areas, are covered by item no. 650, below, as if these were zoning variance applications.

- ◆5.[650] **Zoning variance or special permit file**, including application and supporting materials, hearing results, decision and appeal records

- a. For commercial, industrial, historic structure or multi-unit residential variance or permit (**except** records covered by part "c"):

RETENTION: PERMANENT

- b. For single-unit residential variance or permit:

RETENTION: 25 years after date of last entry

NOTE: Certain single-unit residential variance and permit files may be significant because they set legal precedents and should be retained permanently. Those involving the definition of what constitutes a "family" may be particularly important.

- c. Detailed construction specifications, receipts and transmittal documents, lists of abutting properties, superseded versions of plans and drawings, routine correspondence and internal notes and memoranda from all files:

RETENTION: 6 years after last entry

- d. Informal consultation records, created as a result of informal meeting with prospective applicant, prior to actual submission of application:

RETENTION: 1 year after last entry

- 6.[651] **Notification of proposed zoning change**, received from adjacent town:

RETENTION: 1 year

- 7.[652] **Zoning ordinance violation records**, not related to zoning variance or special permit application

- a. For alleged but unfounded violation:

RETENTION: 1 year

- b. Violation files:

RETENTION: 6 years after date of last entry in record

- c. Master summary record of violations:
RETENTION: PERMANENT