



**Division of Local
Government Services**

Planning Board Overview

A Division of New York Department of State

Course outline

- Statutory authority
- Subdivision
- Site plan review
- Special use permits
- Procedure and SEQR
- Meetings and hearings
- Decisions



Powers and duties

- Administrative body
- Public officers
 - Qualification requirements
 - Standards of conduct
- Functions
 - Advisory (basic/inherent)
 - Regulatory (must be authorized)

Town Law § 271
Village Law § 7-718
General City Law § 27



Qualifications for membership

- At least 18 years old
- United States citizen
- Resident of local municipality
- Governing board members may not serve on the planning board



Composition of Board

- Appointing authority
 - Town board
 - City mayor
 - Village mayor with approval of trustees
- Number of members
 - Five or seven
 - Terms equal to number of members
 - Staggered expiration
- Oath of office must be filed



Quorum

- Number of members who must be present for business to be legally conducted
- Must be at least a majority of a fully constituted board (including absent members and vacant seats)

Alternate member appointment

- NY statute allows for alternates to serve for conflicts of interest only
- For any other reason (i.e. quorum), local law or ordinance needed to supersede state law
- Local Governing board sets appointments:
 - Can set number of alternates
 - Can set terms of office for any time length



Appointment of chairperson

- Same appointing authority as for membership
- If no chairperson is appointed by mayor or town board, the planning board should select one vice-chairperson
- Possible duties:
 - Presides at meetings & hearings
 - Supervise agenda preparation
 - Liaison with governing board
 - Sign official documents
 - Supervise filing of documents



Conduct and ethics

- Members may be removed from office for “cause”
- Municipality may specify reasons for removal in local law
 - Poor attendance
 - Continued inappropriate behavior
 - Failure to receive training
- Governing board must hold public hearing before removing member for cause



State training requirements

- Minimum four hours annually
 - Excess hours may be carried over without limit
 - Failure to comply does not void decisions
 - Consequence is ineligibility for reappointment
- Governing board approves and tracks training
 - Variety of sources and formats
- Requirements may be waived or modified
 - Best interest of municipality
 - Resolution of governing board
- Applies to alternates



Advisory roles

- Inherent advisory power to recommend regulations relating to subject matter of PB jurisdiction
- May make investigations, maps, reports, and recommendations in matters concerning planning and development
 - Comprehensive plan; use of municipal land; capital budgets
- Resolution may assign additional powers of advisement, such as referrals to governing board
 - May further stipulate final action dependent upon receipt of recommendation



Direct appeal

- ZBA hears “direct appeal” for variance in connection with application for subdivision, site plan, or special use permit
- Applicant applies to ZBA for variance without having to first get decision from ZEO

Remember:
For **subdivisions**, ZBA must request written recommendation from planning board



Regulatory authority

- Governing board may delegate review authority to Planning Board or another board (exception: subdivision review is limited to planning board or governing board by statute)
- Once delegated, Governing board no longer concerned
- Extent of regulatory powers must also be identified
 - What aspects of application may be reviewed
 - What may be required of applicant
 - What fees apply



Boundary or lot line adjustment

- Alteration of lot lines or dimensions of any lots in which no additional lots are proposed
- Often afforded expedited review or considered minor subdivisions

Examples:

- Correct physical encroachment
- Legal settlement of dispute requires transfer of property
- Enlarge or improve substandard lot to meet minimum standards for buildable lots



Subdivision

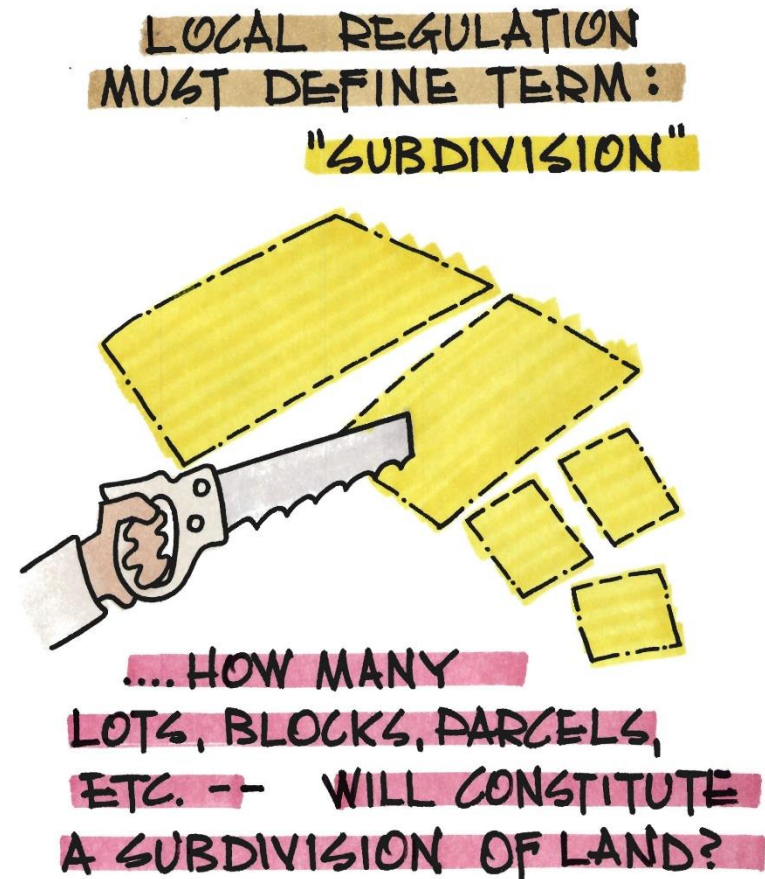
The division of a parcel of land:

- Into a number of lots, blocks or sites
- With or without streets
- For the purpose of sale, transfer of ownership, or development

General City Law § 32 & § 33

Town Law § 276 & § 277

Village Law § 7-728 & § 7-730



“Major” and “minor” subdivisions

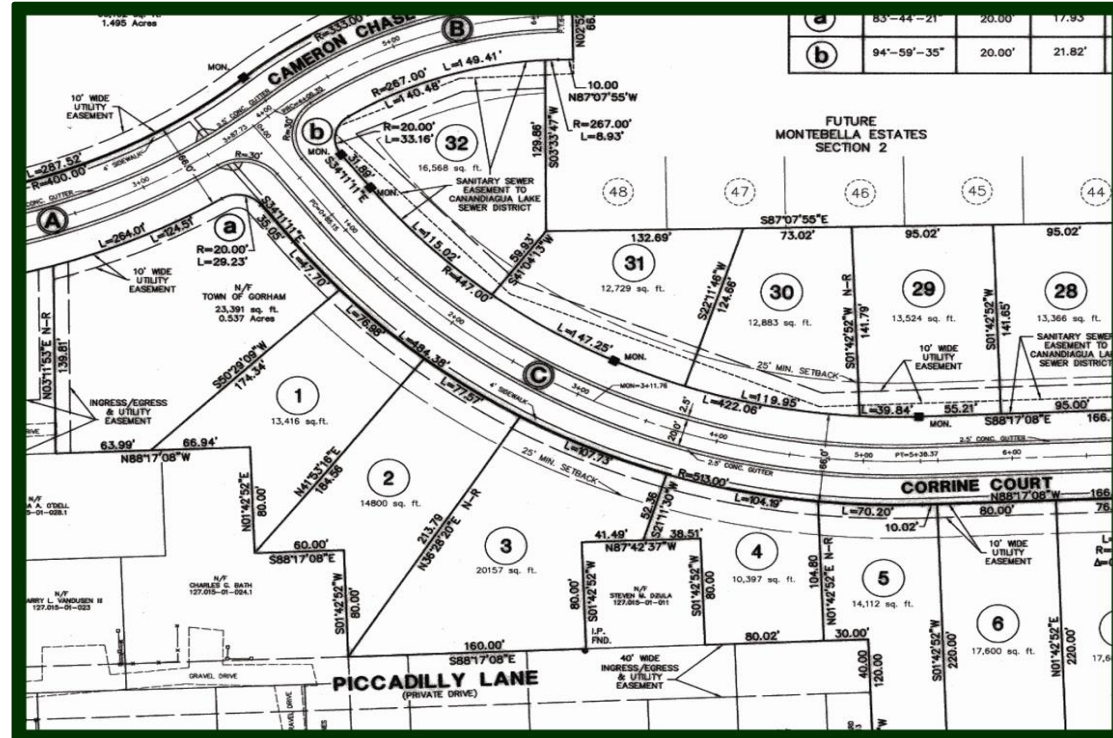
- Defined and delineated by local regulation as either “major” or “minor”
- Typical thresholds used for local classification:
 - Number of proposed lots
 - Construction of new street(s)
 - Extension of municipal infrastructure
 - Configuration of proposed lots
 - Transfer of land from adjacent parcel(s)



Subdivision review elements

Regulates design and improvements:

- Lot configuration
- Street pattern
- Streets and roads
- Sidewalks & curbs
- Utility installation
- Service access
- Drainage
- Landscaping



Subdivision review procedures

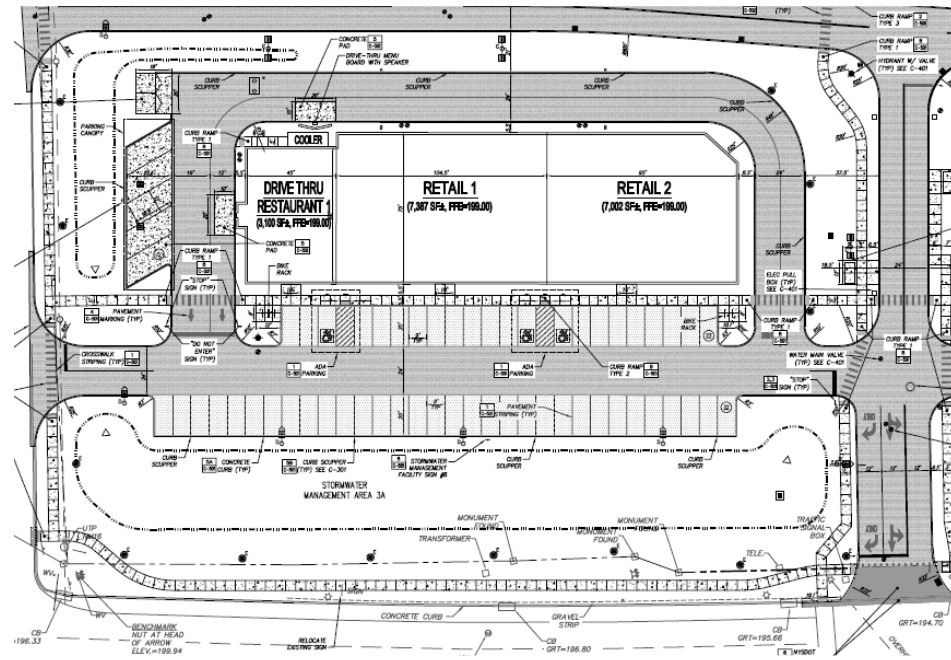
- Public hearing required
- County planning agency referral may be necessary
- State Environmental Quality Review Act (SEQRA) must be considered
- Parkland or money in lieu of parkland
- Beware of default approval:
If decision not made after 62 days after close of public hearing, application is approved.



Site plan review

- Drawing showing the proposed development of a **single** piece of property
- Zoning not necessary
- Local governing board may keep this authority in whole or in part, or delegate to another board

General City Law § 27-a
Town Law § 274-a
Village Law § 7-725-a



Site plan review – Components of local law

- Review board
- Uses subject to review
- Elements to review
- Specific submission requirements
- Local procedures (public hearing required?)
- Enforcement authority (CEO) for conditions of approval



Site plan – review elements

Is site plan in accordance with comprehensive plan?

Examples of review elements:

- Adjacent uses
- Location/dimension of buildings
- Screening & landscaping
- Architectural features
- Proposed grades/contours
- Sewage & storm drainage
- Utilities
- Parking, access, traffic
- Lighting
- Signage
- Other



Local Case Study – Dollar General

- Village of Hammond
- 9,100 sq. ft. retail store
- South Main Street across from Hammond Central School
- Sidewalk connecting the front of the store and the sidewalk is shown on the site plan
- No zoning





Staff Analysis

- Surrounding Land Uses: residential uses to the south, Hammond Central School to the west, the Post Office to the north
- Off-Site Impacts: concerns with lighting from vehicles shining into an adjacent residence
- On-Site Circulation: no need for an on-site stop sign
- Lighting: the applicant should provide a lighting diagram
- Other: 31 van accessible parking spaces, free standing sign, propane storage tank, fenced stormwater management area, municipal sewer, well water



LAND USE / ZONING INFORMATION & NOTES

1. **UNLAWFUL**
FRONT PORCHES/DECK
TOTAL PORCHING STREET
COURTYARD, ETC.
2. **UNLAWFUL**
OVER MOBILE HOME
REAR PORCH
REAR DECK
3. **UNLAWFUL**
REAR PORCH/DECK
BLIND SPOTS FROM
VIEWING CORNER, VIEWING

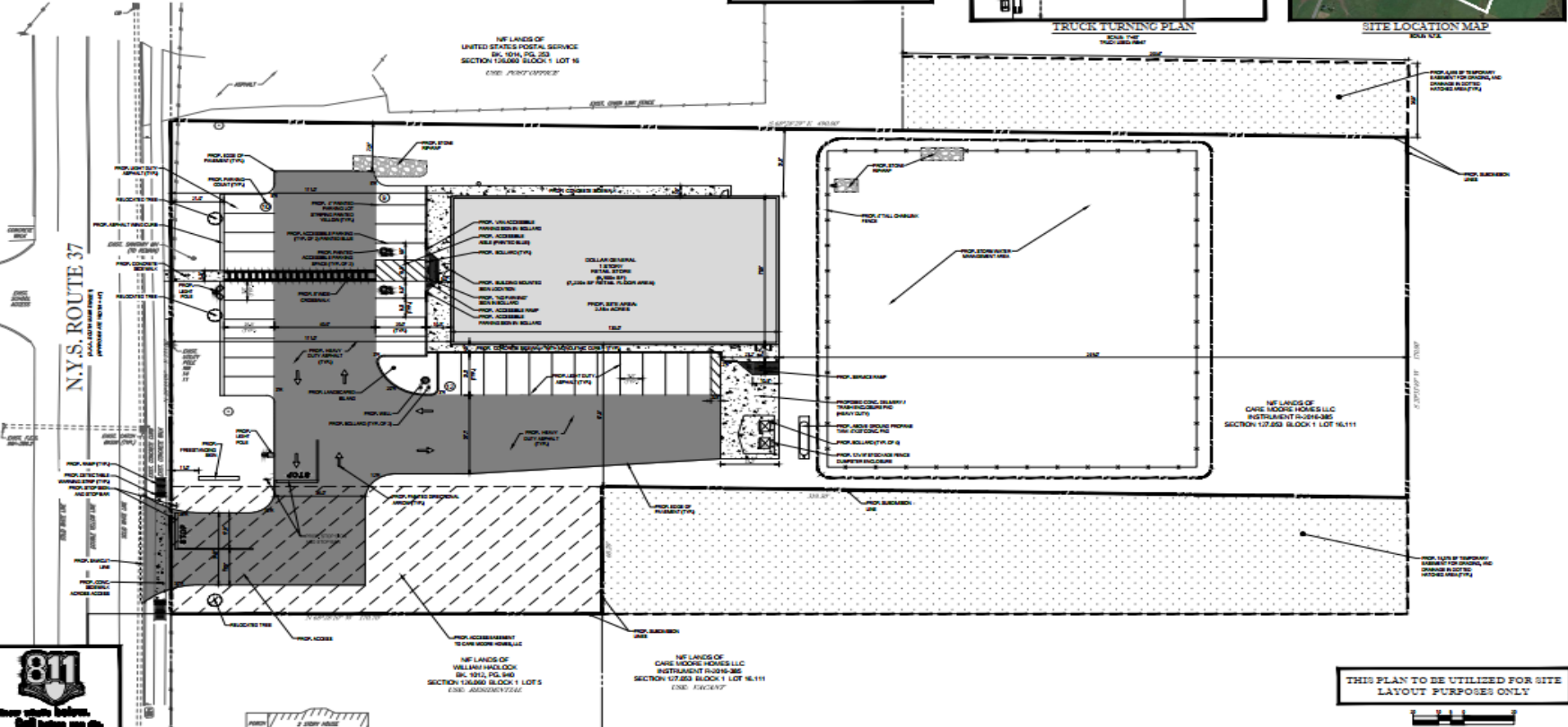
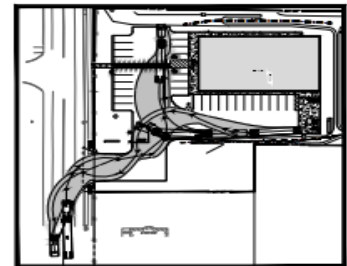
BULK REQUIREMENTS

MINIMUM LOT SIZE	REQUIREMENT	PROPOSED
MINIMUM LOT SIZE	1 ACRE	2.86 ACRES
MINIMUM ROAD FRONTAGE	200'	200'
MINIMUM DRIVE	FOR SECTION 16.1.1(a) OF THE ZONING SUBDIVISION LAW: "LOTS THAT HAVE ACCESS TO PUBLIC HIGHWAYS MUST HAVE A MINIMUM ROAD FRONTAGE OF 100'."	21 SPACES (20)

100 FEET FROM THE PLAYING SCENE REQUESTED

PROPOSED SIGN TABLE

SIGN	QUANTITY	SIZE	HEIGHT
PRELIMINARY	1	60" W BY 24" H	21 FT
WARNING	1	60" W BY 24" H	21 FT



BOHLER ENGINEERING
 1700 PARKWAY WEST
 ALBANY, NY 12203
 TEL: 518 486-8800
 FAX: 518 486-8801
 WWW.BOHLENGINEERING.COM

REVISIONS

NO.	DATE	COMMENT
1	08/11/2011	NUMBER OF LOTS
2	08/11/2011	PRELIMINARY PLANS
3	08/11/2011	CONTRACT
4	08/11/2011	
5	08/11/2011	
6	08/11/2011	
7	08/11/2011	
8	08/11/2011	
9	08/11/2011	
10	08/11/2011	
11	08/11/2011	
12	08/11/2011	
13	08/11/2011	
14	08/11/2011	
15	08/11/2011	
16	08/11/2011	
17	08/11/2011	
18	08/11/2011	
19	08/11/2011	
20	08/11/2011	

PRELIMINARY

SITE DEVELOPMENT PLANS FOR PRIMAX PROPERTIES, LLC
 LOCATION OF SITE
 SOUTHAM STREET
 (N.Y.S. ROUTE 37)
 VILLAGE OF HANCOCK
 ST. LAWRENCE COUNTY
 STATE OF NEW YORK

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 1700 PARKWAY WEST
 ALBANY, NY 12203
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W.D. GOEBEL
 PROFESSIONAL ENGINEER
 STATE OF NEW YORK
 LICENSE NO. 10000

SITE PLAN
 DATE: 08/11/2011
 SHEET NO. 4 OF 11



THIS PLAN TO BE UTILIZED FOR SITE LAYOUT PURPOSES ONLY



Staff Recommendation & CPB Decision

- Approval with conditions
 - Construct a privacy fence to prevent light spillage and noise from impacting adjacent residence
 - Submit a detailed lighting plan to show light spillage
 - Complete an Agricultural Data Statement
 - The Planning Board consider the necessity for the interior stop sign
 - The Planning Board consider adding a water trough and hitching post for Amish clientele
- County Decision
 - Approval with conditions and non-binding recommendations
 - First 3 conditions the same, last two changed to recommendations
- The Board also added two more recommendations
 - Consider creating a paper street to show the dedicated access to the parcel behind the site
 - If a drainage swale exists, it should be redirected with no negative impacts on surrounding properties



Special use permits

- Use permitted by zoning but subject to additional review and possible conditions
- Allows for greater variety of land uses while recognizing that some uses may present challenges to compatibility due to location or nature of use
- Criteria/conditions for SUPs must be included in zoning
- Allows mitigation of potential adverse impacts



General City Law § 27-b
Town Law § 274-b
Village Law § 7-725-b

Special use permits

- Three types: permanent, temporary and renewable
- **Permits run with the land not the landowner**
- Decisions must be tied to criteria
- If project meets special use criteria and conditions, it cannot be denied – onus is on Planning Board
- Often coordinated with Site Plan Review



Light industry screened by landscaping to improve compatibility

Other regulatory roles

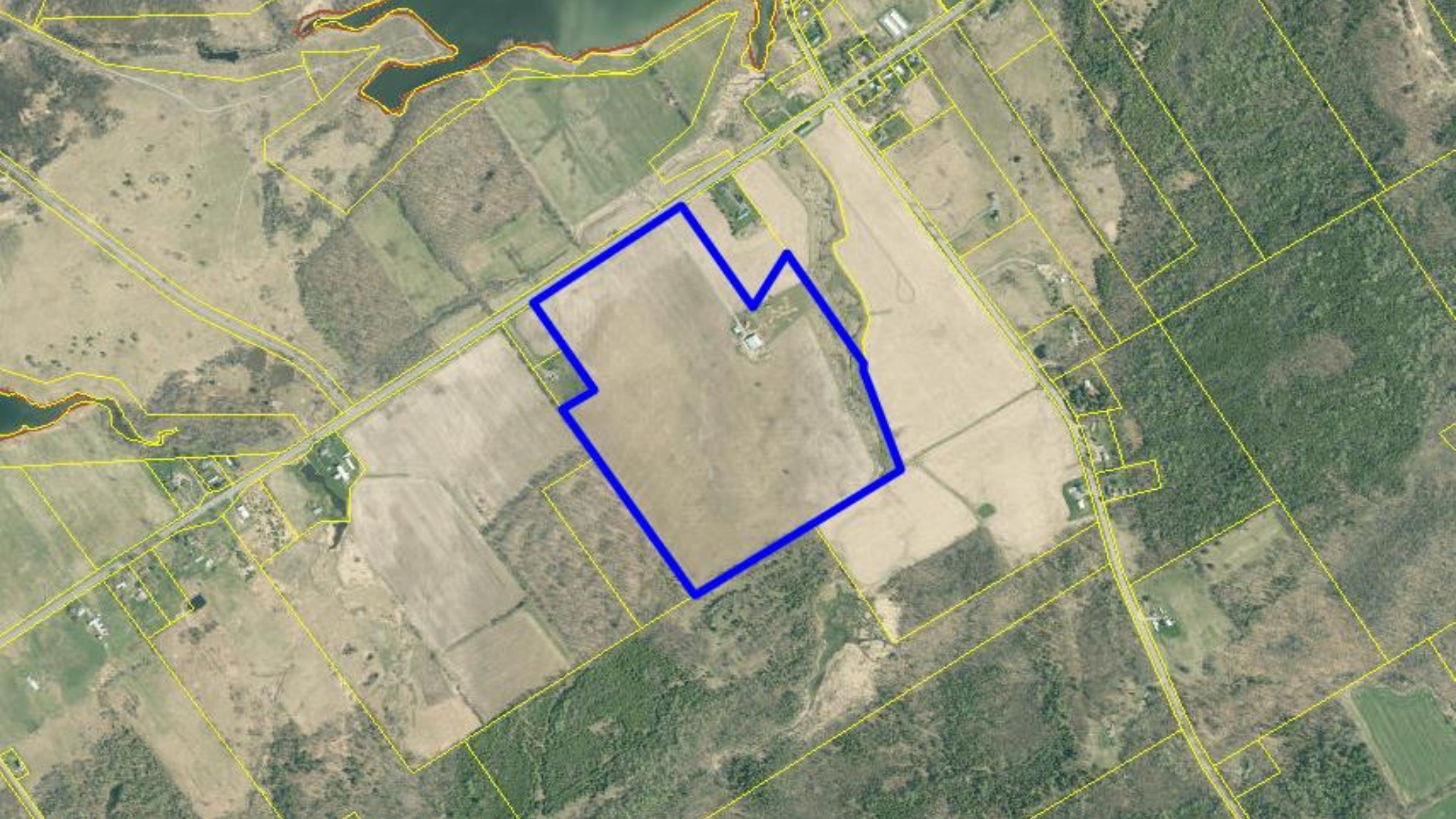
- Sign permits
- Historic preservation
- Architectural review



Local Case Study – Solar Array

- Town of Waddington
- 3.58 MW (AC)
- 24.9 acres of a 90.12 acre parcel
- Classed as a “Major Solar System”
- No Buildings or lighting proposed for the project





Staff Analysis

- Satisfies setbacks requirements (950' from the road)
- 12' at maximum tilt
- 16' wide gravel access road
- Wildlife-friendly fencing
- ~37% of the site comprised of prime agricultural soils
- Proposed vegetative screening



LEGEND:	
LAT	44.825128
LONG	-75.273295
BR	1.4
SYSTEM SIZE (DC)	5,028 kW
SYSTEM SIZE (AC)	3,580 kW
MODULE TYPE	CSI7K-60015-72 (60W)
QUANTITY	7,288 (271 95024)
MODULES PER STRING	28
INVERTER	Sungrow S6US01K
QUANTITY	16
SOLAR TRACKER TYPE	Tracker 1P
DIMENSIONS OF THE TRACKER	
(3 string & 2 string) (LxWxH)	(3x) 369'-7" x 7'-10" x 5'-7"
	(2x) 255'-3" x 7'-10" x 5'-7"
TRACKER SPECIFICATIONS	
TILT ANGLE	26°
PITCH	2°
AZIMUTH	0°
GCR	37.58%
FENCE LENGTH	3,785'
ACCESS ROAD LENGTH	1,716'
TOTAL MV LINE LENGTH	1,645'
ACRE FEET	4.52
TOTAL AREA OF DISTURBANCE	24.86 ac.
PARCEL ACREAGE	90.12 ac.
ADDRESS	11290 NY-37, Union, NY 13658

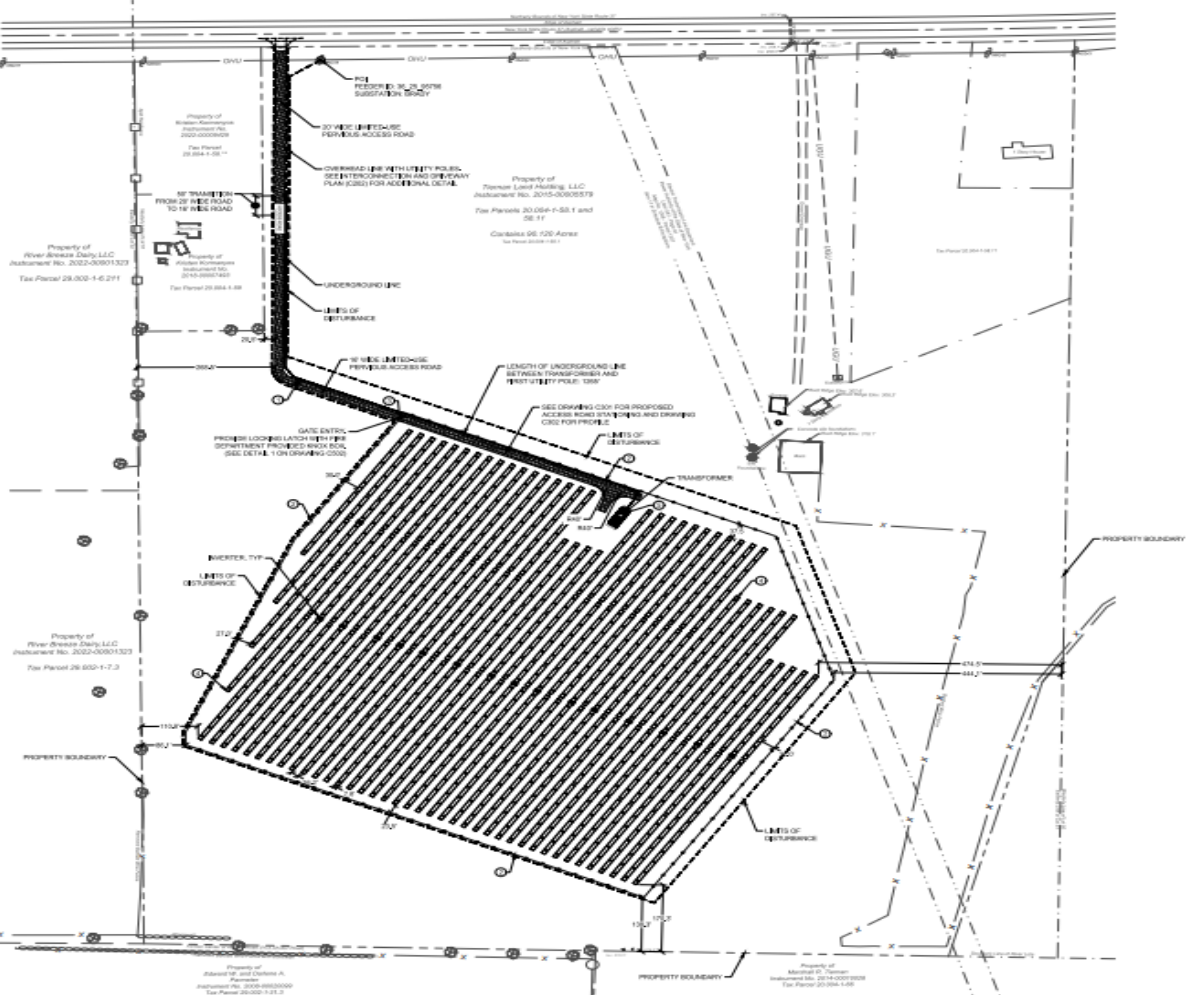


SITE IMPROVEMENT NOTES:

- LIMITED USE PERVIOUS ACCESS ROAD; RC: 1, 2, 3, 4, C80.
- WILDLIFE FRIENDLY FENCE; RC: 1, C80.
- WILDLIFE FRIENDLY GATE; RC: 1, C80.
- SOLAR ARRAY MODULE, TYP; RC: 2, C80.
- TRANSFORMER PAD; RC: 4, C80.

GENERAL NOTES:

- SEE DRAWING C301 FOR UTILITY ACCESS ROAD, INTERCONNECTION DETAILS AND LAYOUT.
- SEE DRAWING C301 FOR GRADING AND DRAINAGE IMPROVEMENTS.
- SEE DRAWING C302 FOR ACCESS ROAD PROFILES.
- ACCESS DRIVE ALIGNMENTS AND TURNAROUND LAYOUT WERE DETERMINED USING THE 2008 INTERNATIONAL FIRE CODE APPENDER D FIRE APPARATUS ACCESS ROAD GUIDELINES.
- THE LIMIT OF DISTURBANCE SHOWN ON THESE PLANS IS 4.88 ACRES AND ENCOMPASSES THE PROPOSED PERVIOUS FENCE, THE ANTICIPATED AREA OF DISTURBED LAND FOR THIS PROJECT, INCLUDING THE PERVIOUS ACCESS ROAD AND ASSOCIATED GRADING, CONCRETE TRANSFORMER PADS, UNDERGROUND COLLECTION LINES, SOLAR ARRAY POLE FOUNDATIONS, AND FENCE POST FOUNDATIONS, IS 2.82 ACRES.



SITE LAYOUT PLAN
SCALE: 1" = 100'

Staff Recommendation & CPB Decision

- Approval with Conditions
 - Obtain a State DOT permit to construct the access road
 - Remove all equipment above grade and up to 4' below grade at the end of the lease
 - If the array is sold, provide the town with contact info. of the new owner within 30 days
 - Modify the footprint of the array to minimize the disturbance of the prime and prime if drained soils to no more than 10% of the disturbed area
 - Ensure that prime soils outside of the limits of disturbance are still usable for agriculture
 - Submit a malware prevention, detection, and mitigation software or program to minimize cybersecurity threats
 - Prepare and submit a plan to accommodate dual agricultural and solar use in the leased area
- The Board added a condition and approved the project with conditions
 - Ensure a decommissioning bond is posted before final approval; ensure it does not include the salvage value of the facility's equipment and parts

Public Meetings and Hearings

Public meetings

- To allow public to listen and observe
- Subject to Open Meetings Law – Planning Boards must discuss applications and other board business at meetings open to public
 - Notice and access requirements
 - Executive session – no meeting behind “closed doors”

<https://opengovernment.ny.gov/>



Meeting – access & notice

- Provide access and notice to public and media
- Post notice in conspicuous place AND municipal website
- Notice timeframes based on meeting schedule
 - More than 1 week prior: at least 72 hours (3 days)
 - Less than 1 week prior: to extent practicable

Public Officers Law § 103.2 (e)

Make materials to be discussed available prior to or at meeting:

- 24 hours in advance and online, if practicable.



NEW YORK
STATE OF
OPPORTUNITY.

**Division of Local
Government Services**

Executive session

Public may be excluded if topic of discussion is for any of these eight permissible reasons:

- Public safety
- Protect identity
- Criminal investigations
- Actual litigation
- Collective negotiations
- History of person
- Exams
- Property value

Public Officers Law §105



**Division of Local
Government Services**

No quorum? No meeting

- “Work Session,” “Agenda Meeting” or “Site Visit” subject to OML only if quorum of members planned to gather to discuss public business
- Planning Board site visit does not constitute meeting subject to OML so long as its purpose is not for anything other than to ‘observe and acquire information’

*Riverkeeper v. The Planning Board of the Town of Somers
(Supreme Court, Westchester County, June 14, 2002)*



Remote participation

- Ability to hold remote meetings due to COVID expired on September 12th
- Section 103-a of Open Meetings Law authorizes public bodies to adopt laws allowing a board member to participate and vote in a meeting via videoconference in a non-public location under “extraordinary circumstances”
- Quorum still required in the public location(s)
- More info: <https://opengovernment.ny.gov/>



Public hearings

- Held for purpose of receiving public comment on a particular matter
- Examples pertaining to planning board include:
 - Special use permit
 - Subdivision
 - Preparation of preliminary comprehensive plan
 - Site plan only if required locally



Hearings – noticing requirements

- State noticing requirements:
 - Public meeting requirements
 - Legal notice in official newspaper
 - Generally, 5 days prior to hearing date
 - Regional park agency when 500 feet of state park or parkway
 - GML 239-m, 239-n
- Examples of local requirements:
 - Signs on application property
 - Certified Mailings
 - Municipal website or ListServ



Notice to adjacent municipality GML § 239-nn

- Applies to subdivision, site plan or special use permit applications on a property within 500' of adjacent municipality
- Notice of a public hearing related to the application must be sent to that municipal clerk
- Send notice by mail or electronic transmission (email) at least 10 days prior to the hearing

Making Legally Defensible Decisions

State Environmental Quality Review Act (SEQRA)

- Agency proposes action or receives application (site plan; special use permit; subdivision)
- Action classified* (Type II, Type I, or Unlisted)
- Lead agency established
- Significance of action determined*
- Environmental Impact Statement (EIS), if needed
- Findings and agency decision*

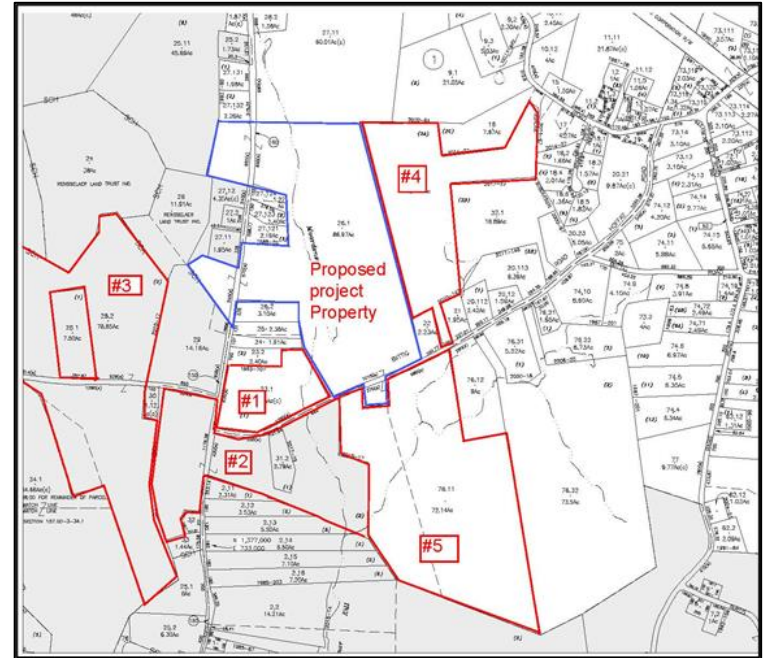
*SEQRA process can conclude at any of these points



Agricultural Data Statement

For review board to evaluate potential impacts on nearby farm operations

- Trigger: Subdivision, site plan, special use permit, use variance application within a State Agricultural district or within 500 ft. of a farm operation in an Agricultural District
- Include map showing project and farm operation(s)
- NYS Agriculture & Markets Law Article 25 AA, Section 305-a; Town Law 283a; Village Law §7-739

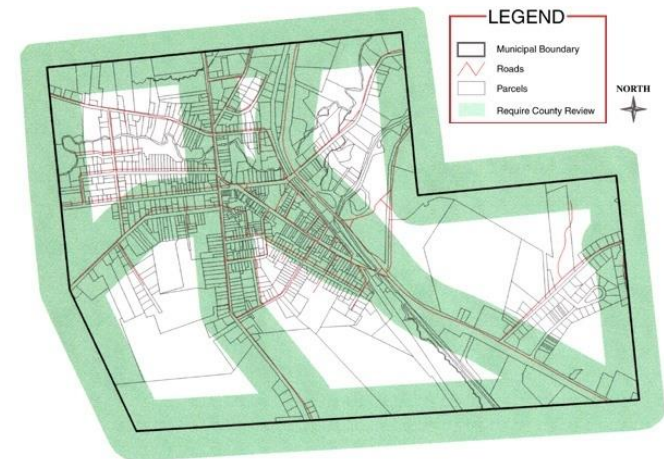


Referral to county planning agency GML § 239-m

Refer special use permits, site plan review, zoning, comp plans and subdivisions (if authorized by county legislative body) if within 500' of:

- Municipal boundaries
- State or county parks or highways
- State or county streams or institutions
- Land with state or county building
- Farm operations in state agricultural districts (area variances exempted)

Don't overlook this step.
Failure to refer could
invalidate action if
challenged in court.



Referral to county – waiting to act

PB may not take final action until the earlier of the following occurs:

Receipt of county planning agency's report

OR

30 days after **full statement** is received by county

- 2-day exception requires consideration even after 30 days have passed, but at least “2 or more days prior to final action”
- Time period may be extended if agreed to by both county and planning board
- Do not take early votes conditioned on county planning agency's positive recommendation



Voting contrary to county recommendation

If county recommends disapproval or modification within timeframe allowed...



Yes + Yes No

...then it requires a majority plus one vote for municipality to approve application without recommended modifications

Voting

- Motion/resolution will only pass if it gets support of majority of entire membership of board
- Member may vote even if they missed previous presentations, public hearings, or other board meetings where project was discussed; member must first familiarize themselves with record
- Check statutory time frames – delayed decision on subdivisions may result in default approval

- Abstaining from voting has the effect of a “NO” note 😞
- Board members should vote or recuse themselves where appropriate
- No anonymous voting



Findings

- Describe reasons for decision
- May also support why condition was imposed
- Based on analysis which applies law to facts, leading to conclusions
- Should be able to support decision if challenged in court
- Insert into Record/Application File



Decisions must be filed

- At local level, determine officially what action constitutes “filing with the municipal clerk”
- Examples of decision documents:
 - Minutes containing record of vote:
takes more time, unless draft minutes
 - Document that records motion passed:
can be done immediately
- Planning board decisions may be appealed to State Supreme Court, not to ZBA or governing board

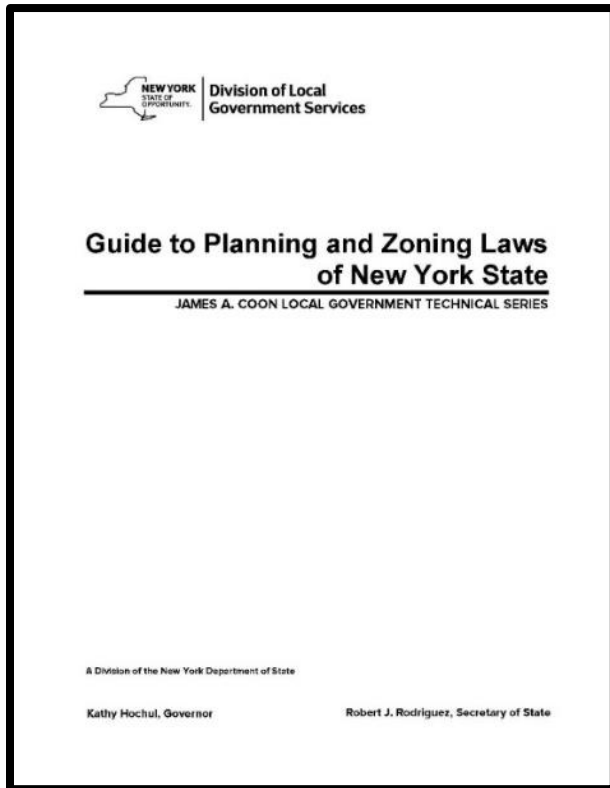


Tying up loose ends

- Send copy of decision to applicant
- If referred to county, send copy of decision
- Attach findings to decision document



Resources on New York State Laws



<https://dos.ny.gov/publications>

- Legal Memorandum LG02: Role of Findings in LG Decisions: NYS DOS
- Legal Memorandum LU15: Regulating Hours of Operation
- NYS DOS Comments – “Court of Appeals’ Decision Addresses Special Use permits, Variances and Waivers”

New York Department of State

Division of Local Government Services

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<https://dos.ny.gov/training-assistance>

