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# Planning Board Overview


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## Course outline

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



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## 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




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## 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

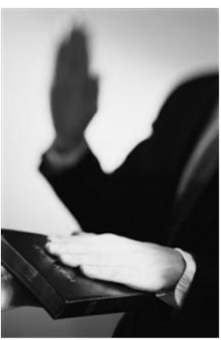


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## Terms of office

- 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




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## 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)

NYS General Construction Law § 41



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### 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

- <sup>12</sup> • 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



### Advisory – Comprehensive plan

- Statement of community vision: An expression of a municipality's goals and recommended action to achieve those goals
- Provides strategies for achieving expressed goals, often in the form of new or revised land use regulations
- Serves as a framework and defense for land use regulations which focuses on immediate and long-term protection, enhancement, growth and development of the municipality
- An outline for orderly growth and priority community investments; providing continued guidance for decision-making

Town Law § 272-a  
 General City Law § 28-a  
 Village Law § 7-722

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### Comprehensive plan – Drafting

- Entire Planning Board may act as 'Special Board' or
- At least one Planning Board member on 'Special Board'
- Make recommendations on proposed plan
- Community engagement - Board preparing plan must have public hearing
- Adoption is governing board's responsibility (not Planning Board or 'Special Board')



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### Comprehensive plan – importance

- Zoning must be in accordance with comprehensive plan
- Defense against spot zoning challenges
- May provide basis for other actions affecting development, like capital improvements
- NYS DOS planning and zoning funding opportunities:
  - Smart Growth Grants, CFA
  - Local Waterfront Revitalization Program (LWRP), CFA
  - Local Government Efficiency (LGE) – Shared Services
- NYS DEC Climate Smart Communities Grants
- NYS AG MKTS Farmland Protection Planning Grants



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### Comprehensive plan – Updating

Possible indications that it is time:

- Age of plan
- Periodic review provision
- Rapid growth or decline
- New infrastructure needed
- Community character at risk
- Special places disappearing
- Significant environmental or economic changes



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### 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



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### 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



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### 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

LOCAL REGULATION  
MUST DEFINE TERM:  
"SUBDIVISION"

... HOW MANY  
LOTS, BLOCKS, PARCELS,  
ETC. -- WILL CONSTITUTE  
A SUBDIVISION OF LAND?

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### "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)

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### Subdivision review elements

Regulates design and improvements:

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

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### Cluster or "conservation" subdivisions

- Enables and encourages flexibility of design and development to preserve natural and scenic qualities of open lands
- Need specific authorization from governing board to mandate or to encourage
- Zoning identifies allowable location by districts and types of development
- Density neutral

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### 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.

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### 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

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### 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

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### 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




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### 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




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### 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*






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### Other regulatory roles

- Sign permits
- Historic preservation
- Architectural review







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## Public Meetings and Hearings

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### Public meetings

- To allow public to listen and observe <https://opengovernment.ny.gov/>
- 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”





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### 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.


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### Executive session

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

|                                                                                                                                                       |                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>Public safety</li> <li>Protect identity</li> <li>Criminal investigations</li> <li>Actual litigation</li> </ul> | <ul style="list-style-type: none"> <li>Collective negotiations</li> <li>History of person</li> <li>Exams</li> <li>Property value</li> </ul> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|

Public Officers Law §105


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### 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)*



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### 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/>



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### Get organized with a clear process

| For applicants                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | For reviewers                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>Be clear who is first point of contact (ZEO, municipal clerk, or board clerk)</li> <li>Post application materials, forms and FAQs on <b>municipal website</b>. Use revision dates on forms, include SEQR Environmental Assessment Form</li> <li>Have clear submission requirements; offer checklist               <ul style="list-style-type: none"> <li>Identify application due dates (ex: 2 weeks before meeting)</li> <li>How many copies are needed</li> <li>Application fees</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>Have clear submission deadlines. <u>Review applications before meeting for completeness and come to meeting prepared to work</u></li> <li>Post application materials on municipal website; redact necessary financial info</li> <li>Use checklist to track submissions; incorporate timelines</li> <li>If county review is required, send county copies of everything submitted (you can request applicant to provide extra copies)</li> </ul> |


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### Adoption of board procedures

To be binding, must be adopted by governing board by local law or ordinance. Examples include:

- Duties of officers or committees
- Applications by non-owners
- Signature on official documents
- Agendas
- Calling meetings
- Hearings
- Minutes
- Referrals


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### 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


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### 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




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### Making Legally Defensible Decisions

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### 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\*

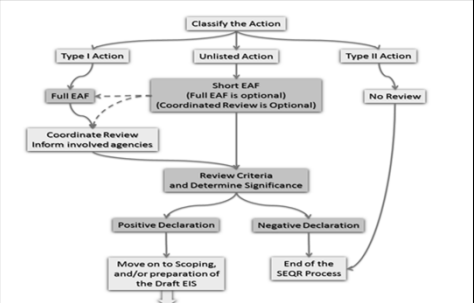
\*SEQRA process can conclude at any of these points

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### State Environmental Quality Review Act (SEQRA)



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### 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



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### County referral timelines

- Special Use Permits & Site Plan – Full statement must be sent to the county planning agency at least 10 days prior to public hearing
- Site Plan – If no public hearing is needed locally, referral must be sent before final action can be taken
- Subdivisions – Referral only required where authorized by the county legislative body

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### Notice to adjacent municipality GML § 239-nn

- If property is within 500' of adjacent municipality, it must be referred to that municipal clerk
- Send notice by mail or electronic transmission (email) at least 10 days prior to any hearing on proposed:
  - Subdivision; Site Plan; or Special Use Permit

General Municipal Law § 239-nn

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### Waiting to grant final approval

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

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### 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


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### 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

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### 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




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### 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





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### Tying up loose ends

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

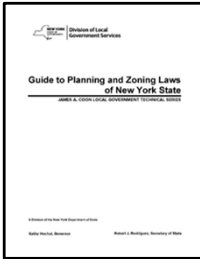

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### Resources on New York State Laws

<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”

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### New York Department of State

#### Division of Local Government Services

518-473-3355

[localgov@dos.ny.gov](mailto:localgov@dos.ny.gov)

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



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Planning Board  
**DECISION**

OFFICE USE ONLY

Application No.: \_\_\_\_\_

Date of Vote: \_\_\_\_\_

Date filed with \_\_\_\_\_

Municipal Clerk: \_\_\_\_\_

At a meeting of the Planning Board on  
\_\_\_\_\_, 20\_\_\_\_,  
the following motion was made:

- I move that the Planning Board  deny  
 approve  
 approve with conditions (see below)

- the application for  Site Plan Review Approval  
 Preliminary Subdivision Approval  
 Final Subdivision Approval  
 Special Use Permit Approval  
 Other \_\_\_\_\_

Made by \_\_\_\_\_  
(applicant name)

for property located at \_\_\_\_\_  
(address/ tax map number)

Approval of this application is subject to the following conditions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional conditions are attached

BY \_\_\_\_\_ (Planning Board Secretary) \_\_\_\_\_ (Date)

**RECORD  
OF VOTE**

|        | MEMBER NAME | AYE   | NAY   |
|--------|-------------|-------|-------|
| Chair  | _____       | _____ | _____ |
| Member | _____       | _____ | _____ |
| Member | _____       | _____ | _____ |
| Member | _____       | _____ | _____ |
| Member | _____       | _____ | _____ |

**MODEL  
TOWN PLANNING BOARD BY-LAWS**

WHEREAS, it is desirable for the Town Planning Board to be governed by rules for the efficient and proper administration of its affairs, now therefore be it

RESOLVED, that the Town Planning Board, for the Town of \_\_\_\_\_, Otsego County, New York, created by resolution of the Town Board on the \_\_\_ day of \_\_\_\_\_, \_\_\_, does hereby adopt the following rules as the By-laws to govern its activities.

**ARTICLE I: MEETINGS**

Section 1.1 Annual Meetings

The annual meeting of the Town Planning Board shall be the first regular meeting in the month of \_\_\_\_\_ of each year hereafter. Such meeting shall be devoted to the election of officers for the ensuing year, preparation of an annual report to the Town Board, and such other business as shall be scheduled by the Town Planning Board.

Section 1.2 Regular Meeting

Regular meetings of the Planning Board shall be held in the \_\_\_\_\_ at \_\_\_\_\_ P.M., on the \_\_\_\_\_ of each month hereafter. At such meetings, any and every matter properly brought to the attention of the Planning Board shall be considered.

Section 1.3 Special Meetings

Special meetings of the Town Planning Board shall be held at a time and place designated by the Chairman. Verbal or written notice thereof shall be given to all members not less than twenty-four hours in advance thereof.

Section 1.4 Quorum

At any meeting of the Town Planning Board, a quorum shall consist of a majority of the members of the Board. No action shall be taken in the absence of a quorum, except that those members present shall be entitled to call a Special Meeting at a subsequent date.

Section 1.5 Proceedings

- a. At any regular meeting of the Planning Board, the following shall be the regular order business:
  1. Roll Call
  2. Reading and approval of minutes of the preceding meeting
  3. Privilege of the floor.
  4. Communications
  5. Reports and action on old business
  6. New business
  7. Agenda for next succeeding meeting
  8. Adjournment

- b. Each action of the Planning Board required by law, rules or regulations shall be embodied in a formal resolution duly entered in full upon the Minute Book after an affirmative vote. Each resolution so adopted shall specifically authorize, if necessary, the use and imprint of the official signature of this Planning Board as hereinafter defined.

### Section 1.6 Rules and Procedure

All meetings of the Planning Board shall be conducted in accordance with Robert's Rules of Order.

## **ARTICLE 2: OFFICERS**

### Section 2.1 Officers

The officers of the Town Planning Board shall consist of a Chairman, a Vice Chairman and a Secretary, each of whom shall serve for a term of one year.

### Section 2.2 Election of Officers

The officers of the Planning Board shall be elected for the ensuing year at the annual meeting of the Planning Board. In the event the Secretary shall be absent from any meeting, the officer presiding shall designate another member of the Planning Board to act pro tem in place of the Secretary.

### Section 2.3 Duties of Officers

The duties and powers of the officers of the Town Planning Board shall be as follows:

a. Chairman:

1. To preside as all meetings,
2. To call special meetings in accordance with these By-Laws,
3. To sign, together with the Secretary, all official documents of the Town Planning Board in accordance with the requirements of these By-Laws,
4. To see that all reports, documents, and actions of the Planning Board are properly made, executed, filed or taken, as the case may be, in accordance with law and the actions and regulations of the Planning Board,
5. To serve as liaison to Town Board at the direction of the Planning Board.

b. Vice Chairman:

1. During the absence, disability or disqualification of the Chairman, the Vice Chairman shall exercise or perform all the duties and be subject to all the responsibilities of the Chairman.

c. Secretary:

1. To keep the minutes of all meetings in an appropriate Minute Book,
2. To give or serve all notices requires by law or by the By-Laws,
3. To be custodian of records of the Town Planning Board,
4. To attend to all official correspondence,
5. To lay before the Town Planning Board at its meetings all official correspondence received by the Secretary relating to the business of the Board,
6. To affix to any official document of this Planning Board the official signature thereof whenever the same shall be required by law or the regulations of the Board, such action to be

taken, however, only after such action shall have been authorized by an affirmative vote of the Board.

### **ARTICLE 3: VOTING AND CONFLICTS OF INTEREST**

#### Section 3.1 Voting

At all meetings of the Planning Board, each member properly appointed and attending shall be entitled to cast one vote. Voting shall be by voice. A majority vote of the board shall be necessary for the adoption of any proposed action, resolution or other voting matter.

#### Section 3.2 Conflicts of Interest

Any application, petition, or request brought before the Town Planning Board for action pursuant to any rule, ordinance, or regulations, shall state the name and nature of interest of any municipal officer or employee herein, as defined in Section 809, Article 18 of the General Municipal Law, Chapter 646 of the Consolidated Laws of New York State. Any member of the Town Planning Board having any such interest in any matter brought before the Board, shall either absent or disqualify himself from any consideration, discussion or vote upon such matters. Such absence or disqualification shall be noted in the minutes of the Planning Board by the secretary, who shall also note that no vote was cast by such member on said matter.

### **ARTICLE 4: VACANCIES**

#### Section 4.1 Vacancies

Should any vacancy occur among the members of this Planning Board by reason of death, resignation, disability or otherwise, immediate notice thereof shall be given to the Town Clerk by the Secretary. Should such vacancy occur among the officers of the Planning Board, the vacancy shall be filled by election at the next regular meeting of this Planning Board, the officer so elected to serve the unexpired term of the office in which such vacancy shall occur.

#### Section 4.2 Recommendation to Town Board

The Town Planning Board may recommend persons to the Town Board for consideration for appointment to a vacancy on the Planning Board. If such recommendations are made on behalf of the Planning Board, they shall be only after an affirmative vote thereon. This section does not prohibit individual members of the Planning Board from making individual preferences to fill vacancies.

### **ARTICLE 5: APPLICATION PROCEDURES**

#### Section 5.1 Receipt of Applications

The Town Clerk is hereby authorized to receive applications, petitions, and communications on behalf of the Town Planning Board. The Town Clerk shall immediately notify the secretary of the Planning Board, and transmit to said secretary, any forms, letters or other materials. The secretary shall request the chairman of the Planning Board to call a special meeting of the Planning Board if any official action on such forms, letters or materials is required before the next regularly scheduled meeting.

#### Section 5.2 Official Date of Receipt of Applications

Any application, petition or communication shall be considered as received by the Town Planning Board as of the date of the first regular Planning Board meeting following receipt thereof by date which shall be the Official

Date of Receipt. The secretary shall note upon such documents the date of receipt from the Town Clerk, and the Official Date of Receipt, and shall notify any applicant of this official Date of Receipt.

**ARTICLE 6: OFFICIAL SIGNATURE**

Section 6.1 Official Signature

The official signature of the Town Planning Board shall be endorsed upon all papers and documents requiring the same by reason of the requirements of law or the rules and regulations of the Town Planning Board. Such signature shall be endorsed upon such papers only pursuant to the direction of the Town Planning Board embodied in a resolution so directing, and shall be personally signed by either the Chairman or Secretary. In form the official signature shall be as follows:

\_\_\_\_\_ Town Planning Board, Otsego County, New York

By \_\_\_\_\_, Chairman

\_\_\_\_\_, Secretary

Dated \_\_\_\_\_

**ARTICLE 7: AMENDING BY-LAWS**

Section 7.1 Amending By-Laws

These by-laws may be amended at any meeting of the Planning Board provided that notice of said proposed amendment is given to each member in writing at least five days prior to said meeting. Said notice shall contain a precise description of the change proposed in said by-laws.

**ARTICLE 8: FORMER BY-LAWS**

Section 8.1 Former By-Laws

These by-laws shall supersede any and all by-laws previously adopted by this board.

Upon motion duly made by \_\_\_\_\_ and seconded by \_\_\_\_\_, the resolution set forth about was duly approved by the following votes:

Aye: \_\_\_\_\_

Nay: \_\_\_\_\_

(Signed) \_\_\_\_\_  
Secretary

Dated: \_\_\_\_\_

Amendments effective through: \_\_\_\_\_

## NEW YORK STATE COMMITTEE ON OPEN GOVERNMENT

### QUESTIONS AND ANSWERS CHAPTER 56 OF THE LAWS OF 2022

On April 9, 2022, Governor Hochul signed Chapter 56 of the Laws of 2022 relating to the New York State budget for the 2022-2023 state fiscal year. Included in the bill is an amendment to the Open Meetings Law (OML) to make permanent (until July 1, 2024) the expanded use of videoconferencing by public bodies to conduct open meetings, *under extraordinary circumstances*, regardless of a declaration of emergency.

As a threshold matter, it is our understanding that the new law is not meant to change or curtail what has always been required of public bodies complying with the Open Meetings Law. Public bodies may continue to operate now as they did *before* the onset of the pandemic in early 2020 when the “in person” aspects of the Open Meetings Law were first suspended. In other words, we believe that if a public body was permitted to do it before the pandemic, this law does not change that. As noted above, this law is intended to expand, in extraordinary circumstances only, the ability of public bodies to meet using remote access technology.

Below we have identified areas of the law that may require clarification.

**Q. Are public bodies required to comply with the new videoconferencing requirements right away?**

A. No. For sixty days after the effective date of Chapter 56 (April 9, 2022; accordingly through June 8, 2022), public bodies are authorized to meet and take such action authorized by law without permitting in public-in-person access to meetings and authorize such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed. This language closely models the language of Chapter 417 of the Laws of 2021 and [Chapter 1 of the Laws of 2022](#), the requirements of which have been in effect since September 2021.

**Q. What is considered an “extraordinary circumstance” under which a public body may permit a member to participate remotely by videoconference from a location not open to the public?**

A. Each public body that wishes to allow for remote attendance by its members at locations that do not allow for in-person physical attendance by the public is required to adopt a local law (governing bodies of counties, cities, towns and villages), adopt a joint resolution (New York State Senate and Assembly), or adopt a resolution (any other public body) authorizing such remote attendance, and must establish written procedures that set forth what they determine to be “extraordinary circumstances.” The Law includes a non-exhaustive list of examples of such circumstances, “including disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member’s physical attendance at such meeting.”

**Q. Are public bodies permitted to conduct its meetings at multiple physical locations from which members of the body may participate if those locations are open to in-person public attendance, regardless of extraordinary circumstances?**

A. Yes. We understand that the intent of the amendments to the OML was to *expand* the authority of a public body to allow its members to participate in a meeting using videoconferencing under limited circumstances when the member’s location is not open to in-person public attendance. Before the onset of the pandemic in 2020, public bodies routinely held proper open meetings by videoconference from

multiple physical locations identified in the meeting notice that were open to the public, connected virtually together by videoconference. This remains proper. It was not the intent to limit the existing authority to virtually connect multiple public locations from which members and the public may attend through the use of videoconferencing technology.

**Q. Which members of the public body may count toward a quorum?**

A. Any member who participates at a physical location that is open to in-person physical attendance by the public (and which location has been included in the meeting notice) may count toward a quorum and may fully participate and vote in the meeting. If there is a quorum of members at a physical location open to the public, the public body may properly convene a meeting; a member who is participating from a remote location that is *not* open to in-person physical attendance by the public may not be counted toward a quorum of the public body (but may participate and vote if there is a quorum of members at a physical location open to the public).

**Q. Can members of a public body participate remotely in a meeting, for any reason, without convening at least a quorum of members at a physical location (or locations) open to the public?**

A. No. Chapter 56 states that members of the public body “shall be physically present at any such meeting unless such member is unable to be physically present at any such meeting location due to extraordinary circumstances.”

**Q. Are public bodies *required* to allow their members to participate remotely, under extraordinary circumstances, at locations that do not allow for in-person physical attendance by the public?**

A. No. Chapter 56 states that a public body “may, in its discretion” allow its members to participate remotely, under extraordinary circumstances and so long as there is a quorum of members gathered at a physical location or locations open to the public, at locations that do not allow for in-person physical attendance by the public.

**Q. If a public body allows its members to participate remotely, under extraordinary circumstances, at locations that do not allow for in-person physical attendance by the public, must it afford members of the public the opportunity to view the meeting by videoconference as well?**

A. Yes. If a public body uses videoconferencing to conduct a meeting, the public notice for the meeting must inform the public that videoconferencing will be used and must include directions for how the public can view and/or participate (if participation is permitted) in such meeting. The public body must provide the opportunity for members of the public to view the meeting, using remote technology or in person, in real time.

**Q. If a public body allows for public comment or public participation by members of the public who attend its meetings in-person, must it allow the same for members who attend remotely?**

A. Yes. The law requires public bodies to allow members of the public to participate in proceedings by videoconference in real time where public comment or participation is authorized and shall ensure that videoconferencing authorizes the same public participation or testimony as in person participation or testimony.



**Q. Is participation by a member of a public body by teleconferencing (audio only) authorized by Chapter 56?**

A. No. The Law requires that except in the case of executive sessions, a “public body shall ensure that members of the public body can be heard, seen and identified, while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon.” (Note that an executive session may only be properly convened after a successful motion made during an open session, and that but for the requirement to permit the public to attend and view the session, all other requirements of the Law continue to apply to executive sessions.)

**Q. Must the meeting minutes reflect which members of the public body participated remotely?**

A. Yes. The Law requires that “minutes of the meetings involving videoconferencing shall include which, if any, members participated remotely.”

**Q. Are public bodies required to record and/or transcribe open meetings conducted using videoconferencing?**

A. Yes. The Law requires that “each meeting conducted using videoconferencing shall be recorded and such recordings posted or linked on the public website of the public body within five business days following the meeting and shall remain so available for a minimum of five years thereafter. Such recordings shall be transcribed upon request.”

**Q. Are public bodies required to record and/or transcribe the executive session portions of meetings conducted using videoconferencing?**

A. No. In our view the obligation to record and transcribe upon request only applies to the open portions of the meeting that the public is entitled to attend.

**Q. What if a local public body does not maintain an official website for purposes of posting the recording of its meetings?**

A. Any local public body electing to utilize the “extraordinary circumstances” videoconferencing described in the Law to conduct its meetings *must* maintain an official website.

**Q. Does the Law address the ability of a public body to hold fully remote meetings during a state of emergency?**

A. Yes. The Law states that the “in person” participation requirements of the Law shall not apply during a state disaster emergency declared by the governor pursuant to section twenty-eight of the executive law, or a local state of emergency proclaimed by the chief executive of a county, city, village or town pursuant to section twenty-four of the executive law, if the public body determines that the circumstances necessitating the emergency declaration would affect or impair the ability of the public body to hold an in person meeting.

Resolution No. \_\_\_\_\_

[PUBLIC BODY]

**WHEREAS**, by passing Chapter 56 of the Laws of 2022 (“Chapter 56”), the New York State Legislature amended Section 103 of the Open Meetings Law; and

**WHEREAS**, Chapter 56 adds Section 103-a of the Open Meetings Law, permitting the [PUBLIC BODY] to authorize its members to attend meetings by videoconferencing under extraordinary circumstances; and

**WHEREAS**, Section 103-a(2)(a) requires the [PUBLIC BODY] to adopt a resolution following a public hearing authorizing the limited use of videoconferencing under such circumstances; and

**WHEREAS**, Section 103-a(2) allows for hybrid meetings by requiring “that a minimum number of members are present to fulfill the public body’s quorum requirement in the same physical location or locations where the public can attend”; and

**WHEREAS**, Section 103-a(2)(c) requires that members be physically present at any such meeting “unless such member is unable to be physically present at any such meeting location due to extraordinary circumstances . . . including disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member’s physical attendance at such meeting”; and

**WHEREAS**, in accordance with Section 103-a(2)(d), any members attending by videoconference must, except during executive session, be “heard, seen and identified, while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon”; and

**WHEREAS**, Section 103-a(2)(g) requires that any meeting where a member attends by videoconference be recorded, posted to the [PUBLIC BODY] webpage within five business days, and transcribed upon request; and

**WHEREAS**, Section 103-a(2)(h) requires that members of the public be permitted to attend and participate, if authorized, in any meeting by videoconference when a member attends by videoconference.

**BE IT RESOLVED**, that the [PUBLIC BODY] authorizes its members who experience an extraordinary circumstance, as described above and further defined by any rules or written procedures later adopted, to attend meetings by videoconference: (i) as long as a quorum of the members attend in-person at one or more locations open to the public; (ii) as long as the member can be seen, heard, and identified while the open portion of the meeting is being conducted; and (iii) as otherwise permitted under Chapter 56 of the Laws of 2022; and be it further

**RESOLVED**, that the [PUBLIC BODY] shall create written procedures further governing its use of videoconferencing by its members in compliance with Chapter 56 of the Laws of 2022.

**MODEL Procedures for Member Videoconferencing**  
**Pursuant to Public Officers Law § 103-a**

In compliance with Public Officers Law (POL) § 103-a(2)(a), the [PUBLIC BODY], following a public hearing, authorized by resolution on [insert date] the use of videoconferencing as described in POL § 103-a.

The following procedures are hereby established to satisfy the requirement of POL § 103-a(2)(b) that any public body which in its discretion wishes to permit its members to participate in meetings by videoconferencing from private locations – under extraordinary circumstances – must establish written procedures governing member and public attendance.

1. [PUBLIC BODY] members shall be physically present at any meeting of the [PUBLIC BODY] unless such member is unable to be physically present at one of the designated public meeting locations due to extraordinary circumstances.
2. For purposes of these procedures, the term “extraordinary circumstances” includes disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member’s physical attendance at such meeting.
3. If a member is unable to be physically present at one of the designated public meeting locations and wishes to participate by videoconferencing from a private location due to extraordinary circumstances, the member must notify [REPRESENTATIVE OR CHAIR OF PUBLIC BODY] no later than four business days prior to the scheduled meeting in order for proper notice to the public to be given. If extraordinary circumstances present themselves on an emergent basis within four days of a meeting, the [PUBLIC BODY] shall update its notice as soon as practicable to include that information. If it is not practicable for the [PUBLIC BODY] to update its notice, the [PUBLIC BODY] may reschedule its meeting.
4. If there is a quorum of members participating at a physical location(s) open to the public, the [PUBLIC BODY] may properly convene a meeting. A member who is participating from a remote location that is not open to in-person physical attendance by the public *shall not* count toward a quorum of the [PUBLIC BODY] but may participate and vote if there is a quorum of members at a physical location(s) open to the public.
5. Except in the case of executive sessions conducted pursuant to POL § 105, the [PUBLIC BODY] shall ensure that its members can be heard, seen, and identified while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon. This shall include the use of first and last name placards physically placed in front of the members or, for members participating by videoconferencing from private locations due to extraordinary circumstances, such members must ensure that their full first and last name appears on their videoconferencing screen.
6. The minutes of the meetings involving videoconferencing based on extraordinary circumstances pursuant to POL § 103-a shall include which, if any, members participated by videoconferencing from a private location due to such extraordinary circumstances.

**MODEL Procedures for Member Videoconferencing  
Pursuant to Public Officers Law § 103-a**

7. The public notice for the meeting shall inform the public: (i) that extraordinary circumstances videoconferencing will (or may) be used, (ii) where the public can view and/or participate in such meeting, (iii) where required documents and records will be posted or available, and (iv) the physical location(s) for the meeting where the public can attend.
8. The [PUBLIC BODY] shall provide that each open portion of any meeting conducted using extraordinary circumstances videoconferencing shall be recorded and such recordings posted or linked on the [PUBLIC BODY] website within five business days following the meeting, and shall remain so available for a minimum of five years thereafter. Such recordings shall be transcribed upon request.
9. If members of the [PUBLIC BODY] are authorized to participate by videoconferencing from a private location due to extraordinary circumstances, the [PUBLIC BODY] shall provide the opportunity for members of the public to view such meeting by video, and to participate in proceedings by videoconference in real time where public comment or participation is authorized. The [PUBLIC BODY] shall ensure that where extraordinary circumstances videoconferencing is used, it authorizes the same public participation or testimony as in person participation or testimony.
10. Choice 1:

Open meetings of the [STATE PUBLIC BODY OR AUTHORITY] conducted using extraordinary circumstances videoconferencing pursuant to the provisions of POL § 103-a shall be broadcast pursuant to the requirements of POL § 103(f) and shall utilize technology to permit access by members of the public with disabilities consistent with the 1990 Americans with Disabilities Act (ADA), as amended, and corresponding guidelines. For the purposes of this guideline, “disability” shall have the meaning defined in Executive Law § 292.

Choice 2:

Open meetings of the [ALL OTHER PUBLIC BODIES] conducted using extraordinary circumstances videoconferencing pursuant to the provisions of POL § 103-a shall utilize technology to permit access by members of the public with disabilities consistent with the 1990 Americans with Disabilities Act (ADA), as amended, and corresponding guidelines. For the purposes of this guideline, “disability” shall have the meaning defined in Executive Law § 292.
11. The in-person participation requirements of POL § 103-a(2)(c) shall not apply during a [state disaster emergency declared by the governor pursuant to Executive Law § 28 or a local state of emergency proclaimed by the chief executive of a county, city, village or town pursuant to § 24 of the Executive Law] if the [PUBLIC BODY] determines that the circumstances necessitating the emergency declaration would affect or impair the ability of the [PUBLIC BODY] to hold an in-person meeting.
12. These procedures shall be conspicuously posted on the [PUBLIC BODY] website.