



Department of State

Local Government

RECORD KEEPING

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Course overview

- Record keeping
- Minutes
- Voting
- Findings
- Decisions



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The record

- Application & supporting documentation
 - SEQRA materials (EAF)
- Evidence of compliance
 - Meetings: Open Meetings Law
 - Hearings: Legal notices
- Minutes
- Testimony
- County report, if referred and report of final action
- Findings
- Decision document and any conditions of approval

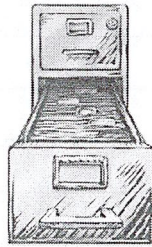
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Archiving

- Records management officer
 - Municipal clerk
 - Arts & Cultural Affairs Law Article 57-A
 - Maintains custody of all archived records
- Zoning administrative official retains record of zoning determination
- Common practice for municipal planner or board secretary to maintain records before archiving required



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NYS Archives records retention schedule

- Permanently archive
 - Official minutes
 - Hearing proceedings
 - Project files
 - Exception: single-family home variances kept 25 years
- Temporarily retain
 - Voice recordings four months after transcription and/or approval of minutes or proceedings
 - Handwritten meeting notes until draft transcribed
- Local Government Retention Schedule (LGS-1):
<https://www.archives.nysed.gov/records/retention-schedules-local-government>

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Grants for records management

- NYS Archives Local Government Records Management Improvement Fund
- 518-474-6926
- archgrants@nysed.gov
- <https://www.archives.nysed.gov/grants/lgrmif-grants>

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Filing systems

- Assign a project number
 - Example: Z2018-1, P2018-2
- Cross reference projects
 - Applicant name
 - Project name
 - Address
 - Section-Block-Lot (S-B-L) number or tax parcel ID

Why use SBLs?

- Over time, street names change, houses are renumbered, & new parcels are created
- System is infinitely expandable
- Parcel history can be traced
- Assessor reviews improvements on parcel being reassessed
- Allows information to be cross-referenced in Geographic Information Systems

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MINUTES

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Minutes are part of record

- Official record of public meeting
 - Public Officers Law, Article 7 (OML)
- Summary of all motions, proposals, resolutions, and any other matter formally voted upon
 - OML § 106
 - Committee on Open Government (COOG) Opinion 3154
- Record members' votes
- Written document regardless of recordings

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Legal protection

- Informs those not present what transpired: public, municipal officials, absent members, NYS courts
- Tracks evolution of issues and applications where precedent has been set
- Often indicates that proper procedure was followed
 - Media and public were notified
 - Quorum and majority vote
 - SEQRA was considered
- Records member recusal; cites reason (conflict of interest)

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Approval & availability

- Approval is common practice, but not required by statute
 - May be required in local rules of procedure
- Make draft available to public within two weeks
 - Executive session minutes within one week (OML § 106 (3))
- Recording is optional, but could be subject to public request for duration of retention minimum (Public Officers Law, Article 6 (FOIL))

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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

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Common contents

- Heading: board name, date, time, & place of meeting
- Footer: computer file name
- List of members in attendance, absent
- Time meeting called to order & adjourned
- Approval and/or corrections of previous minutes
- Summary of reports & announcements
- Summary of discussions, proposals, resolutions, & motions
- Results of vote

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Good practices

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



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Note taking and transcription

- Designate responsibility to secretary or clerk
 - Paid secretary may not serve on the board (Attorney General Informal Opinion 2005-17)
 - Board member not recommended
 - Not the chairperson
- Recording is no easy task
 - Produce concise and coherent summaries of sometimes long and disjointed discussions
 - Be diplomatic when dealing with suggested "improvements" to minutes

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Discussion summary

Include:	Do not include:
• Key points • Separate fact from opinion ◦ Facts are objective and indisputable ◦ Opinions are personal views	• Offensive or inappropriate language, even if used • Subjective interpretations of speakers' mood or tone • Items not discussed • Typographical and grammatical errors

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Testimonies

- Transcripts or summaries of comments from public at hearing(s)
- Written comments submitted during public comment period
- Expert opinions (written or oral)
- Board members' personal observations & knowledge

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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!

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Hearing minutes

- Open Meetings Law does not address hearing minutes
- Many applications require hearings and minutes of hearings be made public
- Board might want more detailed minutes of hearing



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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



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VOTING

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ZBA appeals

- A motion or resolution passes if it gets an affirmative vote of the majority of the fully constituted board
- Request is denied, if motion fails to get majority vote
 - Variance approval
 - Decision in favor of applicant's interpretation request
- Additional votes may be taken within the statutory time frame without triggering the rehearing process
 - 62 calendar days to make a decision once public hearing closed

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Site plans and special use permits

- Generally planning boards and ZBAs granted non-appellate duties by governing board
- Motion or resolution for final action passed by majority vote of fully constituted board
- If motion fails to get majority vote of all members of full board, no action has been taken

Subdivision plats only:

- Default approval may occur if planning board does not make decision within 62 days of public hearing closing

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County planning board or agency

- Certain planning and zoning actions require referral
 - General Municipal Law § 239-m or § 239-n
- Adoption of motion or resolution requires affirmative vote of majority of all members of board
 - General Municipal Law § 239-c and § 239-h



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Voting affected by county referral

- Referring body cannot make a decision (vote) until:
 - Receipt of county planning agency's report, OR
 - 30-day county planning agency's review period ends
 - Clock begins when county receives "full statement" from referring body (includes Part I EAF)
 - Two-day rule
- To act contrary to county's recommendation for disapproval or approval with modification requires supermajority (majority plus one vote)

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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



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FINDINGS

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Drafting findings

- Analysis applying law to facts, leading to conclusions
- Describe reasons for decision
 - May also support why condition(s) was imposed
 - Not applicable to legislative acts
- Should be able to support decision, if challenged
- Possible content:
 - Applicant's requested action
 - Property information
 - Board's analysis

Role of Findings in Local Government Decisions:
<https://dos.ny.gov/legal-memorandum-lg02-role-findings-local-government-decisions>

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Base findings on facts

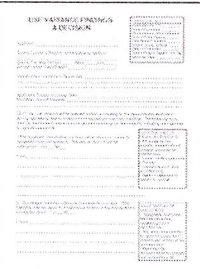
- Conclusory statements
 - Lack underlying facts or information needed to support conclusion
 - Decisions based on conclusory statements will be struck down
- General community opposition is not valid basis to deny application



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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

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DECISIONS

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Decision document

- Decision
 - Date action taken
 - Motion
 - Votes 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

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Notice and filing decisions

- Attach findings to decision
- Notify applicant by mail
- Send county "report of final action," if referred
- File with municipal clerk within 5 business days
 - Clerk should date stamp all records
- Filing establishes start of 30-day period for appeal to NYS Supreme Court under Article 78 of NY Civil Practice Law & Rules

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Division of Local Government Services
 (518) 473-3355
localgov@dos.ny.gov
<https://dos.ny.gov/training-assistance>

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