

Subdivision Regulation: Basics – What is it?

Ontario County Planning Department
<http://www.co.ontario.ny.us/planning/training.htm>

"Subdivision" means the division of any parcel of land into a number of lots, blocks or sites as specified in a local ordinance, law, rule or regulation, with or without streets or highways, for the purpose of sale, transfer of ownership, or development. The term "subdivision" may include any alteration of lot lines or dimensions of any lots or sites shown on a plat previously approved and filed in the office of the county clerk or register of the county in which such plat is located. Subdivisions may be defined and delineated by local regulation, as either "major" or "minor", with the review procedures and criteria for each set forth in such local regulations.

- A proposal for subdivision can include the division of land with or without proposed development.
- The thresholds for the different types of local review of subdivisions are laid out in the local definition of "subdivision" (major, minor)

More Basics

- The legislative body may empower the Planning Board to review subdivisions or they may retain that authority for themselves
- Subdivision regulation can exist without zoning
- Anything defined as a subdivision must be reviewed using the procedures specifically spelled out in NYS enabling legislation.
- Subdivision review must be coordinated with SEQR.
- The legislative body may set up different types of review for different types and scales of subdivision.
- As with most other municipal actions the decision on a subdivision should be supported with findings of fact in the public record.
- Process is important!

Subdivision Regulation: Similar to Site Plan Review

The basis for review of lot line changes and subdivisions is often very similar to site plan review in that it addresses development of the land as well as lot layout.

1. Submission requirements are spelled out in local law. What issues does the reviewing agency seek to address?
2. Additional Requisites are also spelled out in NYS enabling legislation. (Town Law, Sec. 277, City Law Sec. 33 and Village Law, Sec 7-730)
3. Procedures for waiving submission requirements have to be spelled out in local law. If they are not, the planning board has no authority to grant the waiver.
4. If the applicant addresses all concerns related to review criteria spelled out in local law, the application should be approved and vice versa.
5. When proposed development is shown for the newly divided lots, a municipality should not force an applicant back for *site plan review* of that same development after subdivision approval.

INSERT PROCESS CHART HERE

Administrative Review of Minor Lot Line Changes

A much shorter process that will identify proposed minor land divisions and lot line changes that may be creating lots that are difficult to develop. Just don't call it a subdivision!

1. Submission requirements should be spelled out in local law just like any other regulated division of land. What lot line changes require administrative review?
2. The Zoning Code Enforcement Officer and other administrative officials review the submitted plat for compliance with local codes and to make sure that no local or other approvals are needed.
3. If the plat meets submission and dimensional requirements and needs no local or other approvals, it receives a stamp and signature from the CEO and Planning Board Chair.
This is not Planning Board approval.
4. If the CEO determines that an area variance or other approval is needed the plat should not be stamped and signed until such approval is obtained.

Minor and Major Subdivision

Provides different review procedures for differing types of land division.

1. Procedures for reviewing any lot line change that falls under the local definition of "Subdivision" (major or minor) are spelled out in NYS enabling legislation*.
2. Submission requirements should also be spelled out in local law just like site plan approval. What requires Subdivision review (definition)? What criteria will guide review?
3. Usually, a minor subdivision is required, in local law, to receive a one stage approval. In other words, no preliminary review is required.
4. Major subdivisions usually need both preliminary and final approval.
5. Any review of a lot line change that meets the local definition of "subdivision" must include at least one public hearing.

**NYS Town Law, Sections 276, 277, 278, & 279
NYS General City Law, Sections 32, 33, 34, & 37
NYS Village law, Sections 7-728, 7-730, 7-732, & 7-738*

Preliminary, Final and Conditional Approval

- Not every application needs both. Some may need only final.
- Preliminary approval is a very important step in that if a final plat addresses all of the conditions of preliminary approval and is in "substantial agreement" final approval should be given automatically.
- If the final is in substantial agreement with the approved preliminary, no second public hearing is needed.
- If the final is denied, the application process is concluded and the applicant must reapply from the beginning
- "Conditional Final Approval" "Conditional approval of a final plat" means approval by a planning board of a final plat subject to conditions set forth by the planning board in a resolution conditionally approving such plat. Such conditional approval does not qualify a final plat for recording nor authorize issuance of any building permits prior to the signing of the plat by a duly authorized officer of the planning board and recording of the plat in the office of the county clerk or register as herein provided.

Public Hearings

1. At least one public hearing is required for all “subdivision” applications. Usually, they must be opened and closed in 120 days.
2. No public hearing is specifically required for SEQR review. However, it is in the best interest of everyone if at least one is held for all but Type II actions.
3. Public hearings for subdivision must be coordinated with any public hearings held for SEQR review.
4. There is an inconsistency between the required review processes for SEQR and subdivision review. Public input, usually a hearing, is required before SEQR paperwork can be considered complete. However, the public hearing for subdivision cannot occur until that application contains completed SEQR paperwork. NYS Law requires coordination of the two hearings
5. One method for coordinating hearings is to open a public hearing to solicit comments on the EAF and adjourn it. The Determination of Significance is then made. The hearing can be reopened later (within 120 days) to solicit comments on the subdivision and/or the DEIS.

Additional Requisites

Enabling legislation lists several additional areas that the reviewing agency must consider:*

- a. *Sufficiency of streets and highways (width, grade and location). Must be in agreement with any official map or comprehensive plan.*
- b. *Monumentation*
- c. *Grading and paving of streets and public areas, other*
- d. *Infrastructure (water, sewer, signs, etc) must also meet local standards.*
- e. *Compliance with zoning regulations*
- f. *Reservation of parkland*
- g. *Character of Development*
- h. *Installation of fire alarm devices*

NYS Town Law, Section 277

NYS General City Law, Sections 33

NYS Village Law, Section 7-730

Conditions

- Must be reasonably related to the application and ameliorating demonstrated potential negative affects. (“nexus” and relationship to affect)
- Should also be reasonably related to subdivision review criteria.
- Generally, an applicant should not be required to make off site improvements.

Reservation of Parkland

Very often, development of large scale residential subdivisions will increase the need for recreational facilities. NYS enabling legislation provides the reviewing agency with the authority to require that suitable land or money be set aside for parkland.*

- The Planning Board must make findings that show a “proper case” exists for this requirement.

- This is usually based on the expected increase in population versus the capacity and locations of existing recreational facilities. The comprehensive plan should include a section on recreational facilities.
- If land of adequate size or suitability is not available the Planning Board may require payment of money in lieu of land.
- The amount of the payment is determined by the Town Board
- Money shall be put into a trust fund and used exclusively for acquisition of park land or development of recreational facilities.

*NYS Town Law, Section 277 Part 4
 NYS General City Law, Sections 33
 NYS Village Law, Section 7-730*

Performance Bonds or Other Security

The applicant (property owner) can provide a performance bond or other security in lieu of making the required improvements themselves.

1. The estimate of the cost of improvements is to be made by a department or agency designated by the Planning Board. The Planning Board must find the estimate acceptable.
2. The security can come in different forms
 - a) a performance bond issued by a bonding or surety company
 - b) the deposit of funds in or a certificate issued by a bank or trust company located and authorized to do business in this state
 - c) an irrevocable letter of credit from a bank located and authorized to do business in this state.
 - d) obligations of the United States of America
 - e) any obligations fully guaranteed as to interest and principal by the United States of America, having a market value at least equal to the full cost of such improvements. If not delivered to the town, such security shall be held in a town account at a bank or trust

*NYS Town Law, Section 277, Part 9
 NYS General City Law, Sections 33, Part 8
 NYS Village Law, Section 7-730, Part 9*

Performance Bonds or Other Security (Continued)

- When a subdivision is to be developed in stages, construction of buildings cannot commence until a approved plat for the section or phase has been filed in the County Clerk's office and required improvements have been installed or a suitable security has been provided.
- The terms for securities or bonds will be set by the Planning Board and should not exceed three years unless extended by mutual agreement between the board and owner.
- The Planning board may reduce the amount of the security if it becomes clear that the reduced amount is sufficient to pay for required improvements.
- If improvements are not installed within the term of the security agreement the Planning Board may declare the agreement to be in default and collect the remaining payable. After that the Town is responsible for installing the needed improvements.

*NYS Town Law, Section 277, Part 9
 NYS General City Law, Sections 33, Part 8
 NYS Village Law, Section 7-730, Part 9*

Default Approval

NYS enabling legislation provides for default approval of a proposed plat when certain time limits are not met.

- The following may constitute a default approval

1. Failure to hold a public hearing within 62 days of receipt of a complete application.
2. Failure to render a determination within 62 days after the close of the public hearing.
3. Failure to render a determination within 62 days of a final plat in substantial agreement with the preliminary plat.

- Time periods may be extended by mutual consent.

- The Planning Board has taken action even if there is a failure to muster enough votes to pass a motion for approval or to override a CPB denial.

- An application determined to be incomplete, defective or not in final form still has to be acted on within the required time periods.

- If an applicant receives default preliminary approval, they may then file for final approval. They should be issued a certificate of default approval by the Town Clerk not the Planning Board

Revocation of Preliminary Approval

A Planning Board may revoke preliminary approval if the applicant has failed to submit a final plat in substantial agreement within six months of approval of the preliminary plat, provided the following:

The Planning Board has determined that there has been material changes in the area.

OR

The applicant does little or nothing to advance the application

The applicant must also be given a chance to be heard and the decision for revocation must be fully substantiated in the public record

Reconsideration of a Decision

Although nothing in statute provides for reconsideration of a decision, the Planning Board may do so if they find that there has been a material change of circumstances or significant new evidence regarding the application has been brought to their attention.

It is hoped that a Planning board will never have to justify reconsideration of a decision. If they must, caution should be used to clearly lay out the justification (see above) to avoid a decision that is arbitrary and capricious.

Clustering

S 278. Subdivision review; approval of cluster development.

1. Definitions. As used in this section: (a) "cluster development" shall mean a subdivision plat or plats, approved pursuant to this article, in which the applicable zoning ordinance or local law is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks, and landscaping in order to preserve the natural and scenic qualities of open

lands.

If so empowered by their legislative body, the Planning Board may use some discretion to allow for higher densities of development in order to preserve features important to the community. This would limit the need for area variances for building setbacks, densities and even height.

NYS Town Law, Section 278

NYS General City Law, Section 37

NYS Village Law, Section 7-738

Clustering (continued)

- Standards for clustering should be explicitly spelled out in local law.

-The planning board determines how many lots would be allowed under current local law

-They then review a proposal that shows higher densities on a portion of the lot with the remainder to be permanently protected from development.

-The reserved land should be protected by deeding it to the Town, by easement, etc. Case law has indicated that an owner may not be compelled to deed the open space portion of a property to a municipality at no cost.

- “The planning board as a condition of plat approval may establish such conditions on the ownership, use, and maintenance of such open lands shown on the plat as it deems necessary to assure the preservation of the natural and scenic qualities of such open lands. The town board may require that such conditions shall be approved by the town board before the plat may be approved for filing.”

Clustering (continued)

- The applicant should provide a conventional plat showing how lots would be laid out under existing regulations.

- This plat should show a lot layout that, consistent with zoning regulations and other practical considerations, could be approved by the Planning Board.

- The Planning Board should be guided by local law and the comprehensive plan when deciding what features and open space may need to be set aside for permanent preservation.

Filing

State law requires that no plat shall be filed in the County Clerk’s office if it has not received needed approval at the local level.

The approved plat should contain a signature block signed by the chair of the Planning Board.

NYS Town Law, Section 279

NYS General City Law, Section 34

NYS Village Law, Section 7-732

Fees to the Applicant

- A fee schedule should be set up in local law to address the need for engineers , architects and other professionals generally helpful to site plan review.

- Different fee schedules may apply to different types and sizes of projects.

Expert Testimony & Local Knowledge

CAUTION!

- *Both are acceptable as basis for decisions*
- *Planning Board members are allowed and should incorporate their own knowledge into subdivision review.*
- *This does not mean that members become experts in all areas of subdivision review.*
- *Character of the neighborhood, potential negative affects on neighboring properties, etc. are areas where residents may have some "expertise"*
- *Input from qualified people is still needed for technical issues*
- *In either case, be careful to spell out the factual findings!*

Basis for Decisions

- *Findings, Findings, Findings, Findings, Findings*
- *The decision to approve or deny must be made by the empowered agency.*
- *The decision cannot be based solely on*
 - *the opinion of the municipal attorney*
 - *SEQR findings unrelated to subdivision review criteria*
 - *hearsay*
 - *public opposition*

Final Thoughts

The Town Board should clearly define extent and nature of subdivision review authority.

There is a reason that a reviewing agency is made up of residents from the community. They are uniquely qualified and legally empowered to balance site development issues for the good of their municipality

The reviewing agency must make the final decision.

If review criteria are general, it just means that the local board has more work to do listing findings that support a decision.

A planning board must render findings of fact to support site plan decisions. These findings must be supported by substantial evidence in the record.

Findings which merely restate the requirements of the applicable zoning regulation are not enough to substantiate a decision.

Final Thoughts (continued)

Area variances are the job of the ZBA. If the reviewing agency is not reviewing a proposal under a local clustering provision, dimensional requirements cannot be waived.

Nobody knows everything about subdivision. The local code should provide for a review process that allows for consultation with qualified people to aid in decision making.

Information Sources: Internet Sites

www.co.ontario.ny.us/planning
- info , Links, Dept of State Publications

<http://www.nymir.org/>
- New York Municipal Insurance Reciprocal
- Simple Registration Required

<http://assembly.state.ny.us/cgi-bin/claws>
- New York State Consolidated Laws
-

http://www.dec.state.ny.us/website/dcs/EP_SEQR/seqr_1.html
- NYSDEC Introduction to SEQR with links to law text

Information Sources: People

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