FREQUENTLY ASKED QUESTIONS FROM MUNICIPAL BOARDS AND OFFICIALS

FULTON COUNTY PLANNING DEPARTMENT

 This slide presentation was put together due to questions that the Fulton County Planning Department has received from municipal employees and officials over the past several years. The Montgomery County Planning Department and the New York State Department of State Division of Local Government Services provided input.

AGENDA

- Board Membership
- Alternates
- Training for PB and ZBA membership
- County Planning Board Review
- Agricultural Data Statement (NYS Ag. and Markets Law Section 305-a)
- Quorums
- Recusals
- Executive Sessions (Open Meetings Law Section 105)
- State Environmental Quality Review Act (SEQRA)
- Video Conferencing / Zoom
- Public Hearings
- Questions

MEMBERSHIP

- Can an elected City, Village, or Town member serve on a ZBA or PB?
 - No. An elected official cannot serve on a Zoning Board of Appeals or Planning Board.
- Can someone from one community serve on another PB/ZBA?
 - A Village resident can serve on a municipal Town Board with no conflict because a Village resident is also a Town resident.
 - A Town resident cannot serve on a Village Board
- Can one (1) board serve as a ZBA & PB?
 - Yes. There is no case law invalidating the combined boards. However, a member can only vote on a matter once.
 - For example, the project needs a Variance from ZBA and Site Plan Approval from the PB. The same members cannot vote for the same project.

ALTERNATES

• A City, Town, or Village may, by local law or ordinance, establish alternate member positions to substitute for a member who is unable to participate due to a conflict of interest.

Alternate members of the board shall be appointed by resolution.

• The Chairperson of the board may designate an alternate member to substitute when a member is unable to participate due to a conflict of interest on an application or matter before the board. When designated, the alternate may have all the responsibilities of the board member.

Alternate board members may serve when regular members are not present.

TRAININGS

- How many hours are needed for PB or ZBA members?
 - 4 hours per year.
- Is it only the Chairman who needs the 4 hours?
 - No. The Full Board, including Alternates, needs 4 hours of training per year.
- Can a newly appointed member participate even without training?
 - Yes. They can begin their service on the board as soon as they are appointed.

- What happens if a member fails to get their four (4) hours of training?
 - Cannot be reappointed when their term is up.
 - Does not invalidate their votes or actions.

COUNTY REFERALS

- Who:
 - Town Board/Village Board of Trustees/City Common Council
 - Zoning Amendment (Code/Map), Comprehensive Plan, Land Use Moratoria, Other authorizations that the board may issue under zoning provisions
 - Zoning Board of Appeals
 - Area and Use Variances
 - Planning Board
 - Site Plan, Special Use Permit, Subdivision
- What projects are referred to the County Planning Board?
 - Any projects that involve property within 500' of a Municipal boundary, a Farm operation located in a designated agricultural district, County or state-owned property, a park, or a roadway:
 - Roadway even within a City:
 - Johnstown East & West Main Street/NY-67, Comrie Avenue (NY-30A), West State Street/NY-29
 - Gloversville Bleecker Street/NY-309, East and West Fulton Street/29A
- The County Planning Board has 30 days to review the project and offer a recommendation.
- To override the recommendation, the local board must have a super-majority vote (majority + 1)

AGRICULTURAL DATA STATEMENT (ADS) NYS AG. & MARKETS LAW SECTION 305-A

- For projects requiring approval of a SUP, SPR, Use Variance, or Subdivision that is within 500 feet of a property within an Agricultural District.
- Agricultural Districts follow parcel boundaries in-county, not municipal boundaries.
 - A City or Village Planning Board may need to review an ADS of property outside its jurisdiction. (e.g., City of Johnstown along Johnson Avenue)
- The applicant is responsible for filling out the ADS. The county can provide information on the Agricultural District.
- During the review process, the municipal board may ask for more information on the current agricultural operation. The applicant bears the burden of the review's impact.
- The municipality's clerk sends the ADS to property owners enrolled in the Agricultural District within 500 feet to address adverse impacts to their farming operation.

QUORUMS

- If there is no quorum, can you open up the meeting?
 - No, you cannot open up a meeting.
- What if the applicant is traveling from out of the area or out of state and only on the agenda for a Pre-submission/Concept Review?
 - While it is an inconvenience to the applicant, the municipal board cannot review or answer questions.
 - The board may comment informally but cannot act.

RECUSALS

- Does the PB/ZBA have the authority to force one of its board members to recuse?
 - It is up to the member to recognize if they have a conflict.
 - Conflicts are mostly family and business transactional:
 - Doing business with an applicant
 - Child coming before the board
 - If there is a quorum and they feel better recusing, it's up to the board member to make that decision.
 - It gets murky when it's other situations, like a competing business owner.
 - An applicant looking to open a pizza shop and requesting a member to recuse themselves because their family owns a pizza shop in another municipality

EXECUTIVE SESSIONS OPEN MEETINGS LAW, SECTION 105

- Executive Sessions are very rare for the Zoning Board of Appeals and Planning Boards.
- Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only, provided, however, that no action by formal vote shall be taken to appropriate public moneys:
 - matters which will imperil the public safety if disclosed;
 - any matter which may disclose the identity of a law enforcement agent or informer;
 - Information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
 - Discussions regarding proposed, pending, or current litigation;
 - Collective negotiations pursuant to Article 14 of the civil service law;
 - The medical, financial, credit, or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal, or removal of a particular person or corporation;
 - The preparation, grading, or administration of examinations; and
 - The proposed acquisition, sale, lease, or exchange of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)

- Does a Zoning Board of Appeals, Town Board/Common Council, Town Board,
 Village Board of Trustees have to conduct SEQR?
 - Yes. A ZBA has to conduct SEQR on Variances.
 - Sometimes, the project will be deferred to a Planning Board, especially if it will eventually need to receive Planning Board approval.
 - If a City, Town, or Village is reviewing something related to land use, then yes, SEQR will need to be conducted.
 - Comprehensive Plan, Zoning Ordinance, and Rezoning of a property
- The board that has the greatest jurisdiction over the project is generally the lead agency.

VIDEO CONFERENCING / ZOOM

From non public locations:

- OML §103-a authorizes public bodies to adopt local law for Boards to participate & vote via videoconference in non-public location under "extraordinary circumstances" (undefined)
- Quorum required in public location(s)
- Public location(s) notice and access required

From public locations:

- Boards may participate via
 videoconferencing where they are
 seen, heard, AND their remote
 location is open to public (i.e.;
 member participates via
 videoconference in another state in
 public location)
- Remote public location(s) notice and access required
- No local law needed for this option

PUBLIC HEARINGS

- It is up to the board to set a time limit for speakers. Typically, 3-5 minutes is the standard procedure as it encourages statements to be focused, direct, and permits more to testify.
 - An attendee may not "Yield their time" to a speaker to go over the agreed-upon time.
- A board may want to ask a question to clarify a statement. However, the board should be careful not to turn the public hearing into a debate, which may diminish the board's control over the hearing.
- Should the board realize they may not reach a determination within that time frame, it is recommended to "Pause," NOT "Close," the Public Hearing. This way, the board can continue to review the project and request more information from the applicant.
- After the Public Hearing is closed, they have 62 days to make a final determination.

QUESTIONS?



