

# The Basic Components of Local Land Use Regulation

1. The Comprehensive Plan – Product & Process
2. Official Map
3. Zoning Code & Map
4. Subdivision Regulations
5. Other Local Laws
6. Review Boards
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  - Zoning Board of Appeals
7. Different Approvals
8. Communication
9. Getting Help

# The Comprehensive Plan - Definitions

- ☑ **2. Definitions. As used in this section, the term:**
- (a) "town comprehensive plan" means the materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development of the town located outside the limits of any incorporated village or city.**
- (b) "land use regulation" means an ordinance or local law enacted by the town for the regulation of any aspect of land use and community resource protection and includes any zoning, subdivision, special use permit or site plan regulation or any other regulation which prescribes the appropriate use of property or the scale, location and intensity of development.**
- (c) "special board" means a board consisting of one or more members of the planning board and such other members as are appointed by the town board to prepare a proposed comprehensive plan and/or an amendment thereto.**
- 3. Content of a town comprehensive plan. The town comprehensive plan may include the following topics at the level of detail adapted to the special requirements of the town:**

# The Comprehensive Plan - Requirements (product)

## ☑ **NYS Law dealing with Comprehensive Plans:**

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

## ☑ **Consideration of the County Ag Plan**

*Town Law, § 272-a, part (9)*

*(in part) “A newly adopted or amended town comprehensive plan shall take into consideration applicable county agricultural and farmland protection plans as created under article twenty-five-AAA of the agriculture and markets law.”*

## ☑ **Provisions for periodic review**

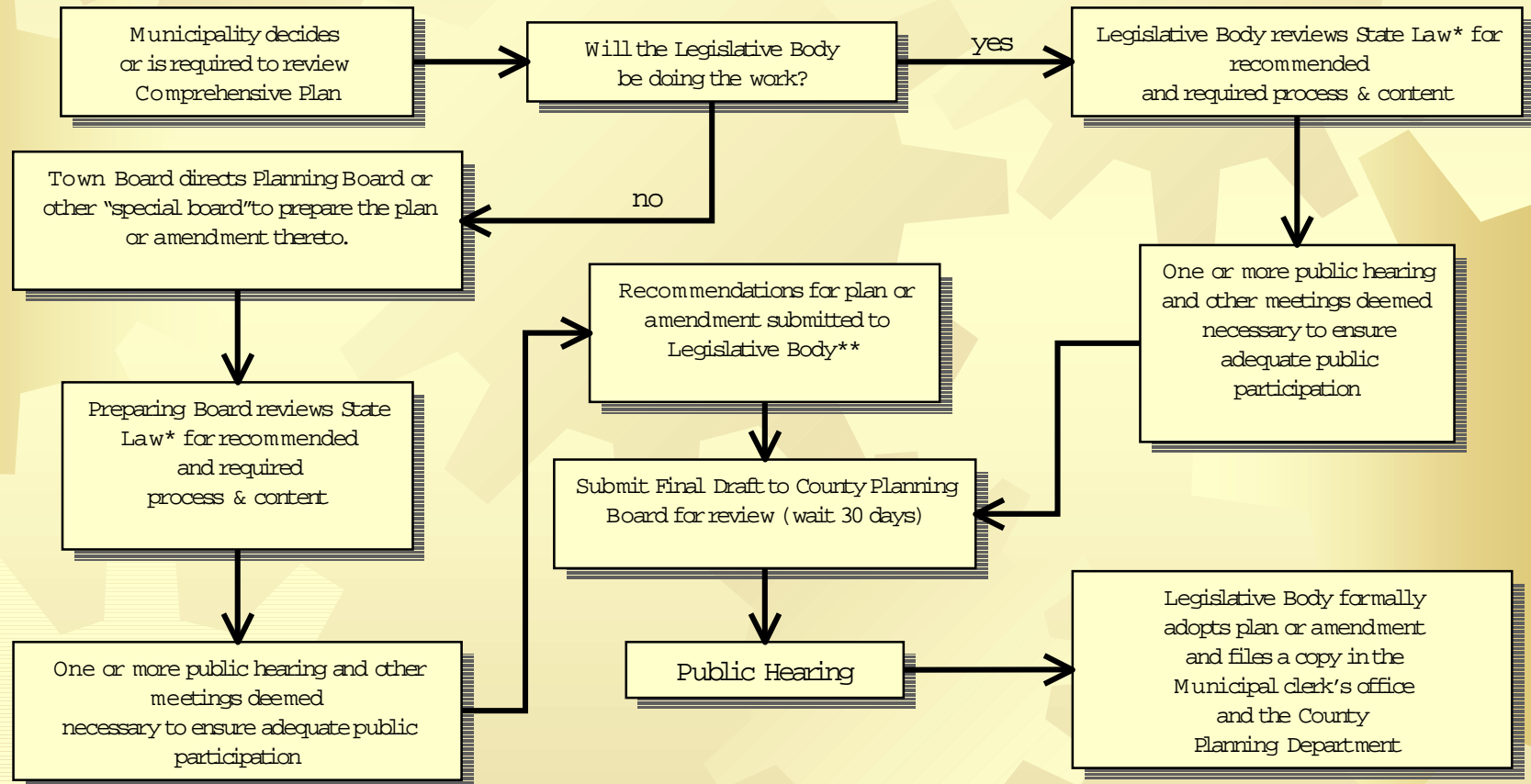
*Town Law, § 272-a, part (10)*

*“Periodic review. The town board shall provide, as a component of such proposed comprehensive plan, the maximum intervals at which the adopted plan shall be reviewed.”*

# The Comprehensive Plan - Process Requirements

## ☑ NYS Town Law, § 272-a, Part(h)\*

*" It is the intent of the legislature to encourage, but not to require, the preparation and adoption of a comprehensive plan pursuant to this section. Nothing herein shall be deemed to affect the status or validity of existing master plans, comprehensive plans, or land use plans."*



\* NYS Town Law § 272-a, NYS General City Law, § 28-a & NYS Village Law § 7-722 address comprehensive plans.

\*\* The legislative body must hold a public hearing on the draft within 90 days of receipt of recommendations.

# Official Map\*

§ 270. Official map, establishment. The town board may establish an official map of that part of the town outside the limits of any incorporated city or village showing the streets, highways and parks theretofore laid out, adopted and established by law and drainage systems may also be shown on such map. Such map shall be final and conclusive with respect to the location and width of streets and highways, drainage systems and the location of parks shown thereon. Such official map is hereby declared to be established to conserve and protect the public health, safety and general welfare. The clerk of every town which has established such an official map shall immediately file a certificate of that fact with the clerk or registrar of the county in which said town is located.

Official Maps can come into play with future public improvements and building permits for parcels with no frontage\*\*

\*NYS Town Law §270 NYS General City Law §29 and NYS Village Law §7-724

\*\* NYS Town Law §280 §280-a and §281 NYS General City Law §36 and NYS Village Law §7-736

# Z o n i n g C o d e

*§ 261. Grant of power; appropriations for certain expenses incurred under this article. For the purpose of promoting the health, safety, morals, or the general welfare of the community, the town board is hereby empowered by local law or ordinance to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes; provided that such regulations shall apply to and affect only such part of a town as is outside the limits of any incorporated village or city;*

- ☑ Local Law is officially adopted by the Municipal Board. Other boards, committees, etc may make recommendations, but the final decision rests with the legislative body.
- ☑ Other boards empowered by the Municipality should be careful that their actions follow the law and do not undermine it's stated intent.
- ☑ Should be in agreement with Comprehensive Plan!

# Zoning Code - Contents

- ☑ General Purpose and Intent
- ☑ Definitions: *A complete definitions section with cross references can be useful to the Planning Board and ZBA at decision time.*
- ☑ *General Administration and Enforcement*
- ☑ *Creation and Empowerment of Boards*
- ☑ *Laws Applicable to All Districts (parking, lighting, etc)*
- ☑ Use Districts:
  - *Intent of District*
  - *Allowed Uses*
  - *Allowed Accessory Uses*
  - *Specially Permitted Uses*
  - *What requires other approvals (site plan, etc)*

# Z o n i n g C o d e - C o n t e n t s

- ✓ Special Use Permit Criteria: *general and specific*
- ✓ Site Plan Review Criteria: *Submission requirements and areas of review.*
- ✓ *Waiver Authority for site plan and special use permits.*
- ✓ Density Schedule – Setbacks, minimum lot sizes, maximum lot coverage, etc.
- ✓ Zoning Map – *It's a legal document that must accompany any change to district boundaries.*

# Subdivision Regulations

- ☑ 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. Review standards in the regulations should provide adequate guidance for the reviewing agency and define the extent of their review authority
- ☑ 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 Regulations

☑ *"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)

# Approvals - Variances

## ☑ By Definition, Job of the ZBA

☑ **Area Variance** – *“(b) "Area variance" shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.*  
“

## *Required Criteria for Review*

- *Undesirable Change in Neighborhood*
- *Can Benefit be Achieved Some Other Way?*
- *Is the Variance Substantial?*
- *Adverse Physical or Environmental Impact*
- *Self Created*

☑ *Avoid numerous area variances that result in defacto re-zonings.*

☑ *Be careful with dimensional requirements that have public safety as their basis.*

# Approvals - Variances

☑ **Use Variances** (a) *"Use variance" shall mean the authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.*

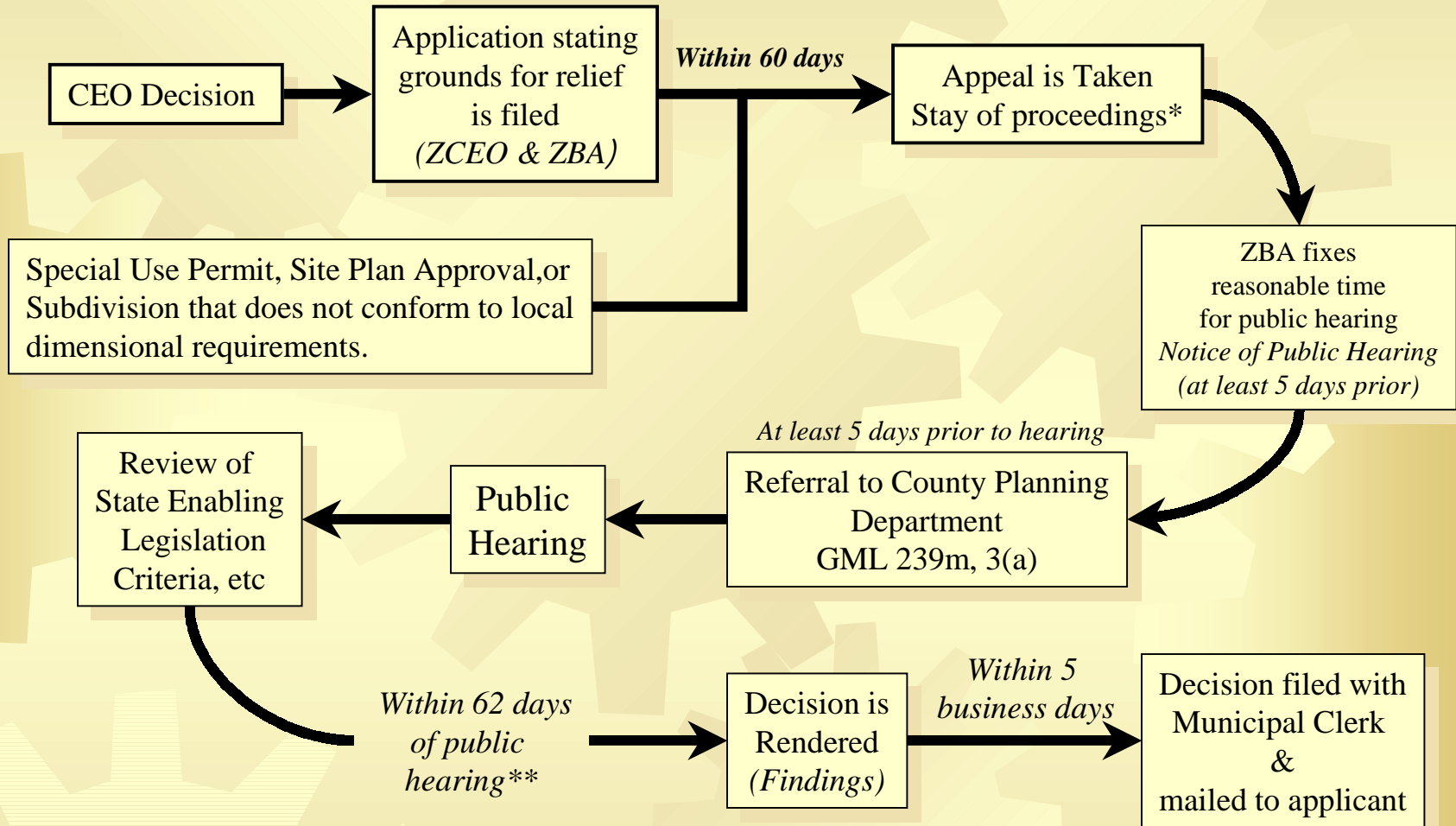
☑ **Required Criteria for Review**

- *Reasonable Return? (competent financial evidence)*
- *Uniqueness*
- *Neighborhood Character*
- *Self Created*

☑ **Minimum Variance Necessary** - *Avoid numerous variances that result in defacto re-zonings.*

☑ **Imposition of Conditions** - *Should be aimed at reduction of demonstrated negative affects.*

# Approvals - Variances



Town Law, Section 267-a  
 City Law, Section 81-a  
 Village Law Section 7-712-a

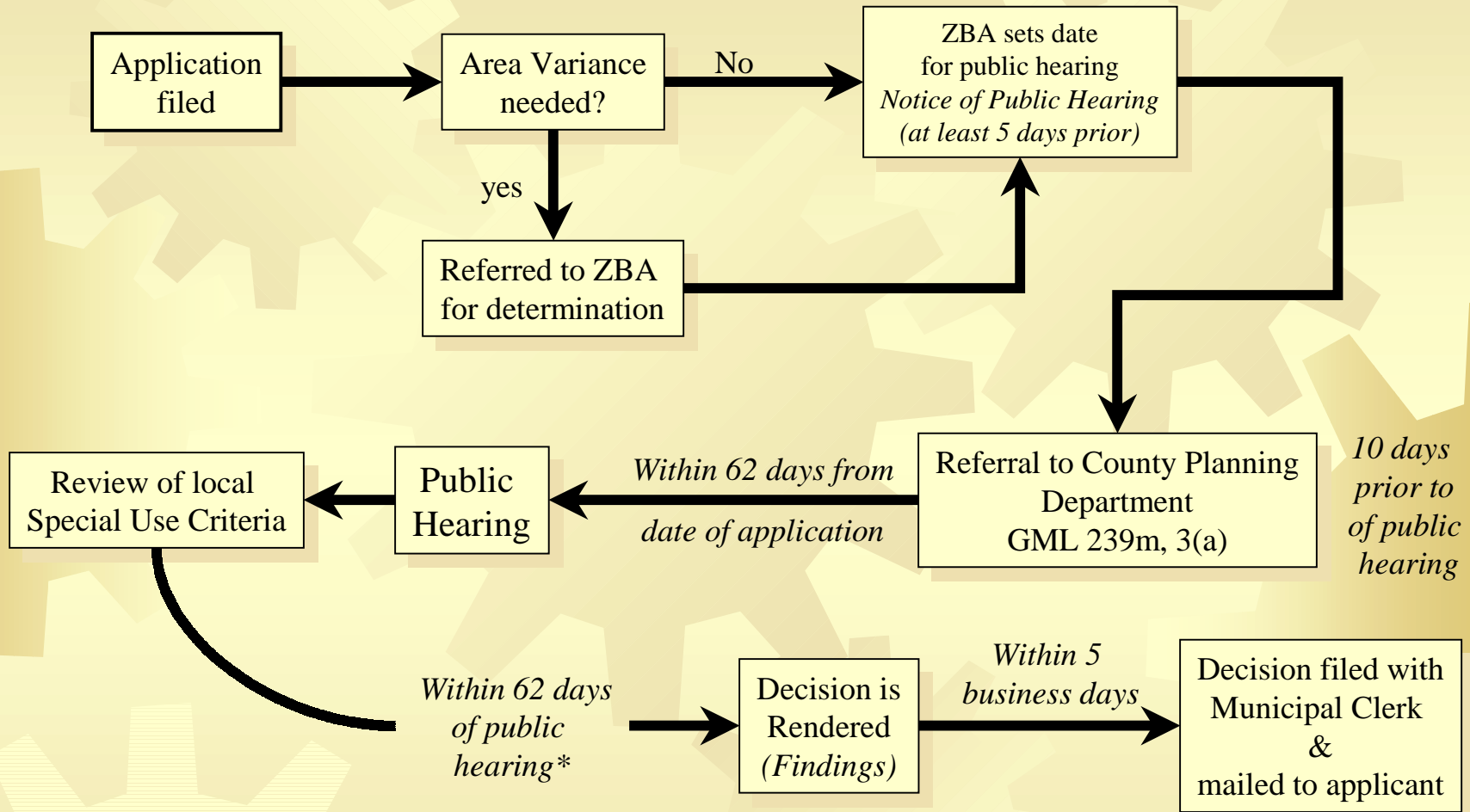
\* Unless there is "imminent peril to life or property"

\*\* Can be extended by mutual consent of applicant and ZBA

# Approvals - Special Use Permits

- ☑ “Definition of special use permit. As used in this section the term "special use permit" shall mean an authorization of a particular land use which is permitted in a zoning ordinance or local law, subject to requirements imposed by such zoning ordinance or local law to assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met.”\*
- ☑ The review should be administrative in nature. Standards in the Zoning Code should provide adequate guidance to the reviewing agency. This includes waivers of review criteria.
- ☑ If the Special Use Permit requirements are met, the application should be approved and vice versa.
- ☑ If the reviewing agency wishes to waive one or more of the review criteria, the authority to do so must be spelled out in local law. If the Town Board has not given waiver authority to the reviewing board review criteria and submission requirements may not be waived.

# Approvals - Special Use Permits



Town Law, Section 274-a  
 City Law, Section 27-b  
 Village Law Section 7-725-b

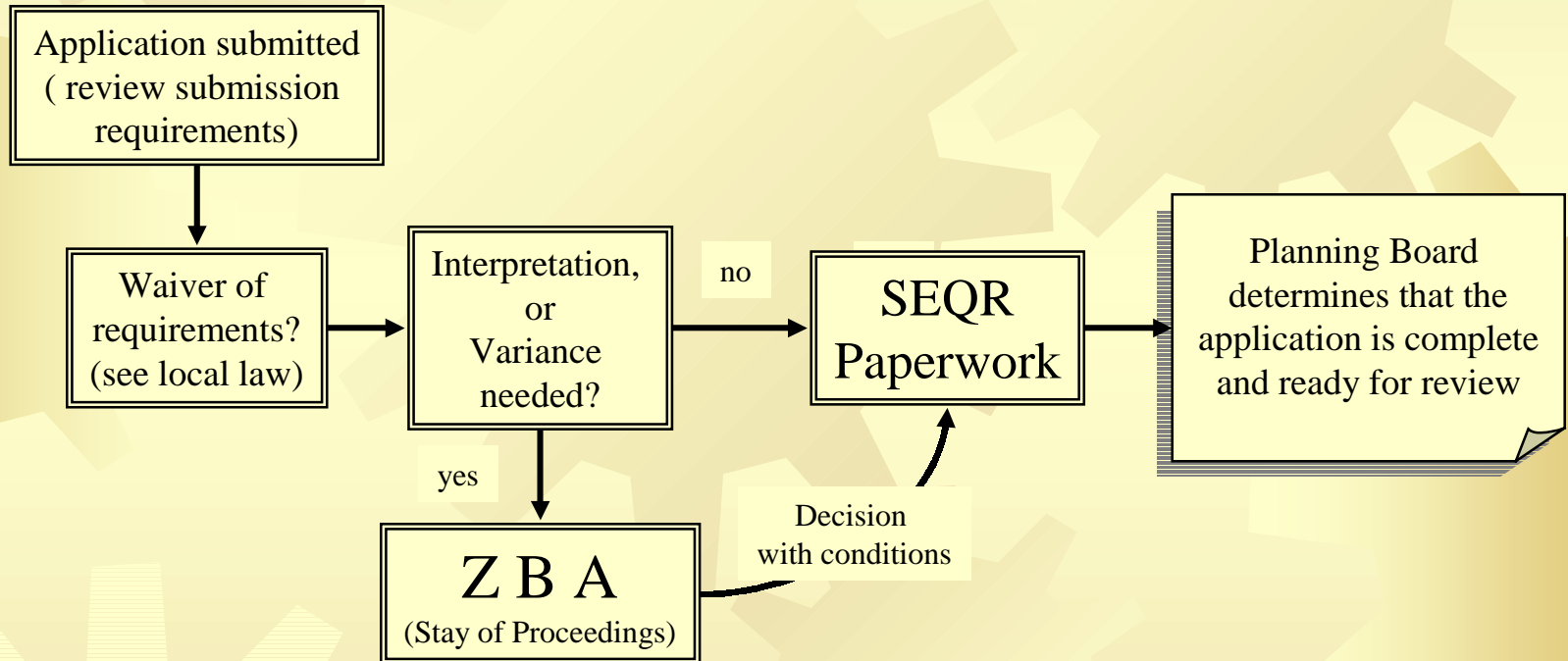
\* Can be extended by mutual consent of applicant and ZBA

## Approvals - Site Plan

- ☑ Can exist without zoning.
- ☑ Town Board may empower ZBA, or Planning Board to review site plans. Usually Planning Board.
- ☑ Town Board may retain site plan review authority for themselves.
- ☑ Submission requirements and review criteria, should clearly define the extent of authority being given to the reviewing board. This also provides guidance for a more administrative review.
- ☑ If the reviewing agency wishes to waive one or more of the review criteria, the authority to do so must be spelled out in local law. If the Town Board has not given waiver authority to the reviewing board review criteria and submission requirements may not be waived.

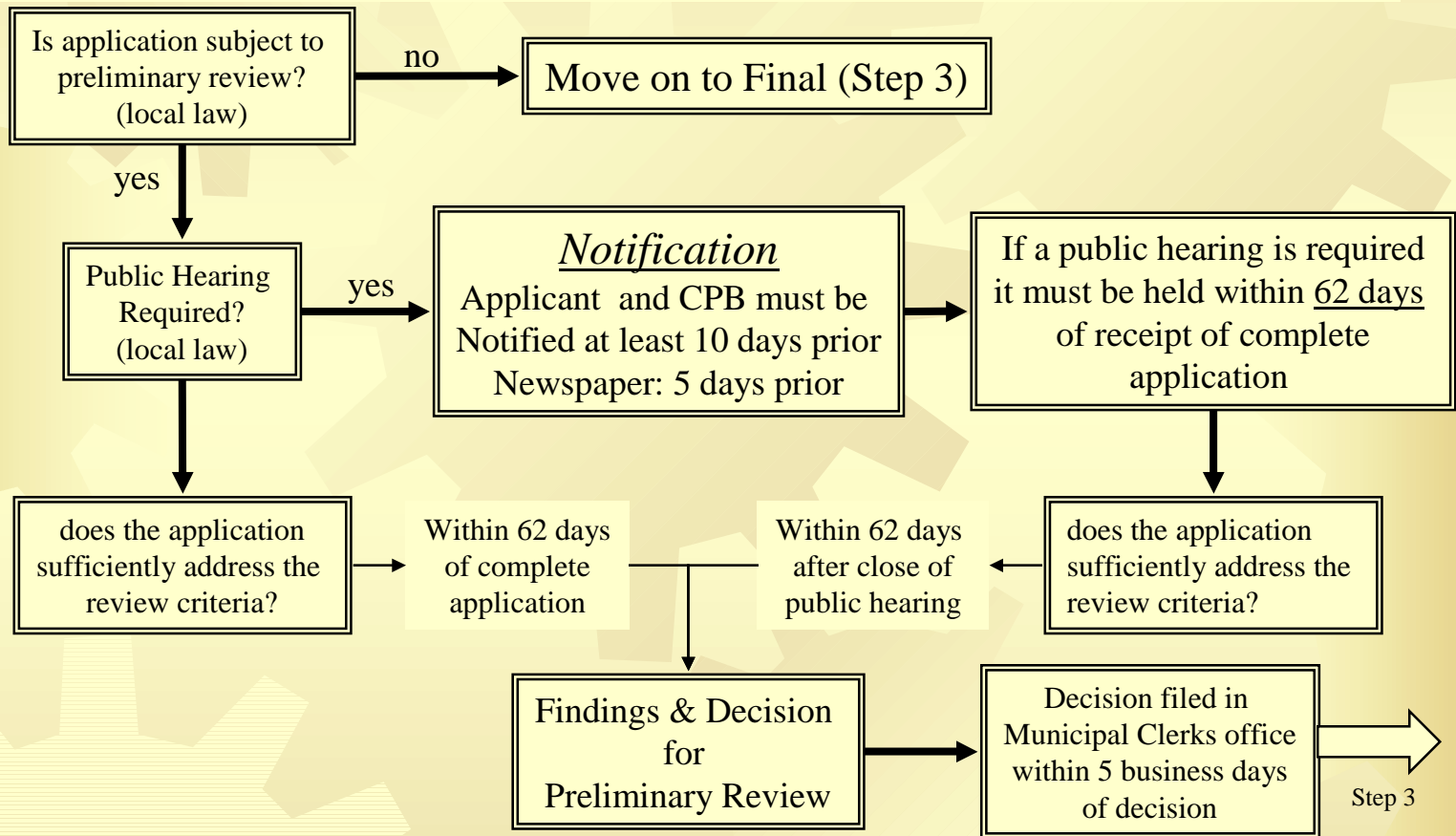
# Approvals - Site Plan

## 1 Application Ready for Review



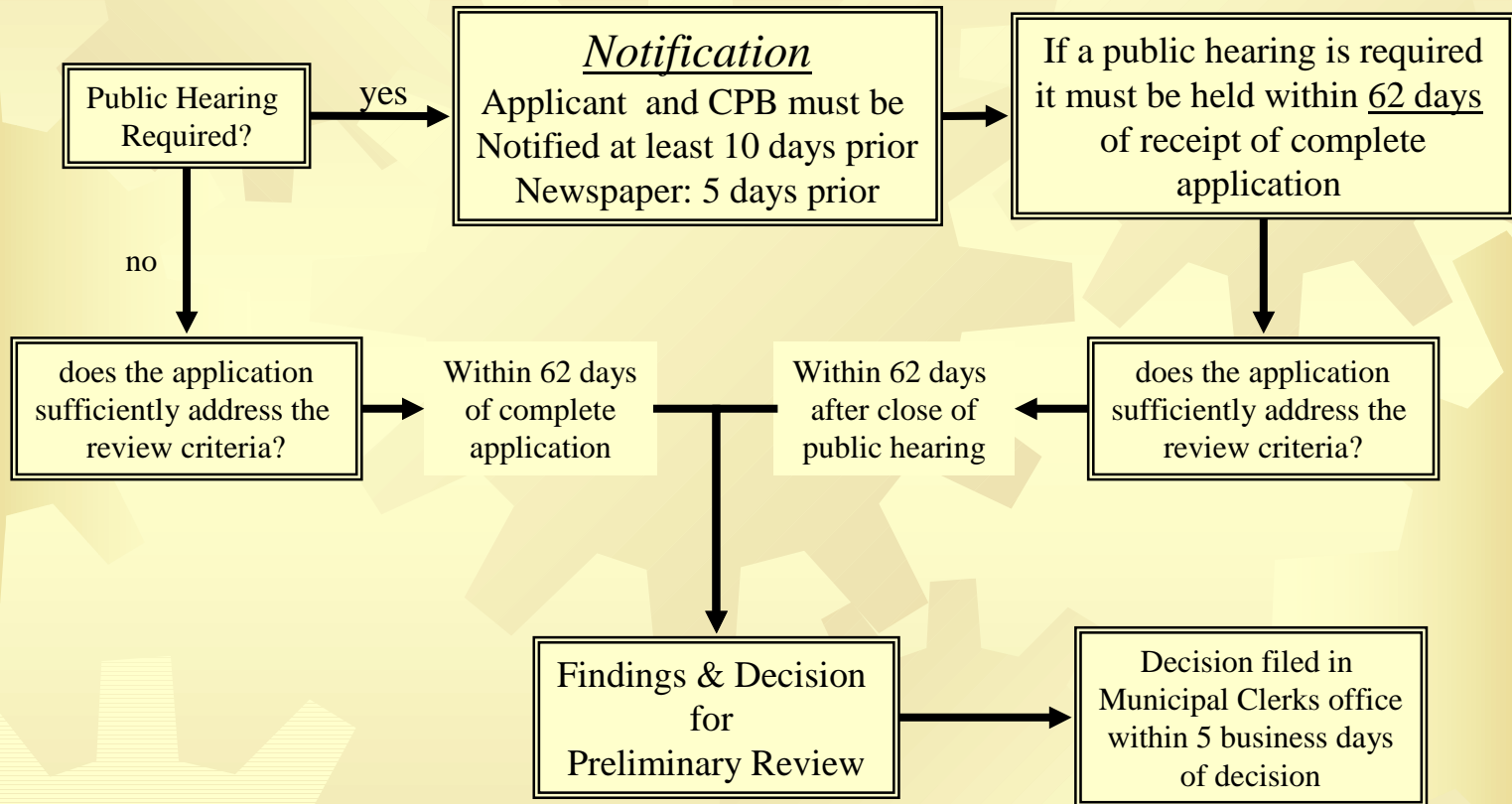
# Approvals - Site Plan

## 2 Preliminary Review – Not Provided for In State Law



# Approvals - Site Plan

## 3 Final Review

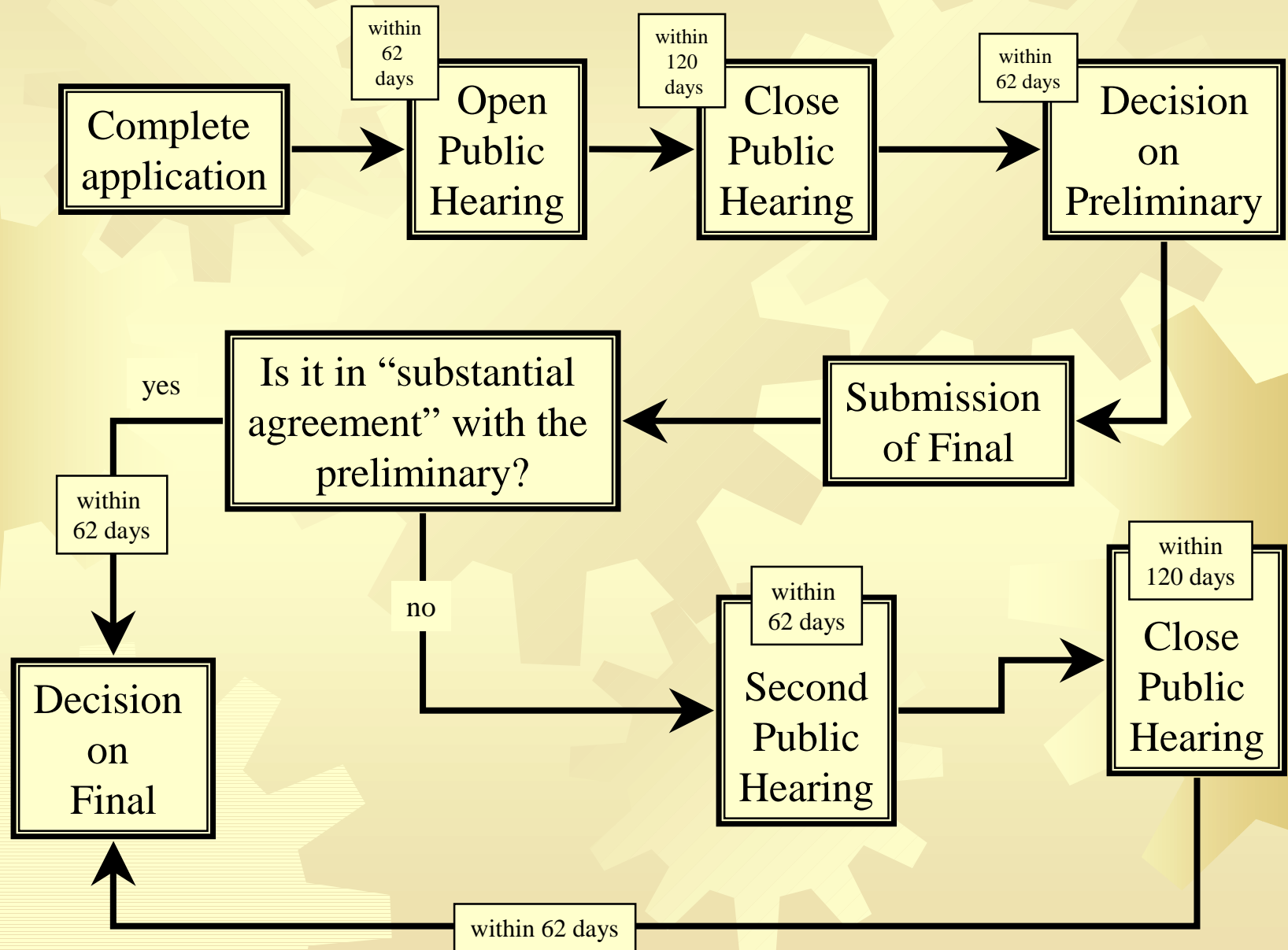


# Approvals - Subdivision

1. Similar to site plan but involving more than one lot. Often includes development of proposed lots.
2. 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\*.
3. 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?
4. Usually, a minor subdivision is required, in local law, to receive a one stage approval. In other words, no preliminary review is required.
5. Major subdivisions usually need both preliminary and final approval.
6. 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*

# Approvals - Subdivision Review: The Simple Version



# C o m m u n i c a t i o n

Very often a single project will require approvals from more than one board. It would be wise to establish some formal lines of continuing communication between the Municipal Board, Planning Board, and ZBA.

The ZBA grants approval of a use variance with several conditions, one of which is site plan approval. The Planning Board should be informed before the decision of what they will be working with.

The Planning Board refers an area variance request related to a special use permit to the ZBA. The ZBA would benefit from a complete understanding the situation.

# Getting Help

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

- ☑ 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.
- ☑ 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 review criteria
  - hearsay
  - public opposition

## Getting Help - Expert Testimony & Local Knowledge

*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.*

- ☑ Both are acceptable as basis for decisions
- ☑ Local Board members are allowed and should incorporate their own knowledge into review.
- ☑ This does not mean that members become experts in all areas of 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!

## Getting Help - Information Sources

☑ [www.co.ontario.ny.us/planning](http://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://leginfo.state.ny.us:82/nysleg/menusetf.cgi>

- New York State Consolidated Laws

☑ [http://www.dec.state.ny.us/website/dcs/EP\\_SEQR/seqr\\_1.html](http://www.dec.state.ny.us/website/dcs/EP_SEQR/seqr_1.html)

- NYSDEC Introduction to SEQR with links to law text

# Getting Help - People

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