

ZBA Basics

- Open Meetings and Public Hearings
- Quorum and Voting
- Important Reading (Homework)
- Decision Making & A Complete Public Record
- Code Breakdown
- Variance Procedures
- Special Use Permits
- Other Approvals
- SEQR
- General Philosophy
- Information Sources and Contacts



ZBA Basics - Open Meetings

NYS Public Officers Law (Section 100) requires that whenever a quorum of a public body is gathered to conduct business the public be allowed to observe.

“S 103. Open meetings and executive sessions. (a) Every meeting of a public body shall be open to the general public, except that an executive session of such body may be called and business transacted thereat in accordance with section ninety-five (105) of this article.”

This does not mean that the public is allowed to speak or otherwise interact with members of the public body at a public meeting. Every effort should be made to give the public a chance to observe the proceedings.

Executive sessions are typically reserved for personnel issues, sensitive legal and financial matters or safety.



ZBA Basics - Public Hearings

Each variance proceeding includes a public hearing. The purpose of a public hearing is to allow the ZBA or other board to gather information from the public.

Each hearing should begin with a brief summary of how the hearing will proceed and a synopsis of the issues at hand.

Because this is an information gathering exercise, provisions should be made for properly recording everything that is offered.

Members of the board do not have to answer questions or otherwise engage the public.



ZBA Basics - Quorum & Majority

“**S 41. Quorum and majority.** Whenever three or more public officers are given any power or authority, or three or more persons are charged with any public duty to be performed or exercised by them jointly or as a board or similar body, a majority of the whole number of such persons or officers, gathered together in the presence of each other or through the use of videoconferencing, at a meeting duly held at a time fixed by law, or by any by-law duly adopted by such board or body, or at any duly adjourned meeting of such meeting, or at any meeting duly held upon reasonable notice to all of them, shall constitute a quorum and not less than a majority of the whole number may perform and exercise such power, authority or duty. For the purpose of this provision the words "whole number" shall be construed to mean the total number which the board, commission, body or other group of persons or officers would have were there no vacancies and were none of the persons or officers disqualified from acting.”*

* NYS General Construction Law, Article 2, Section 41



ZBA Basics – Important Reading

NYS Town Law, Sections 267, 267-a, 267-b, 267-c

NYS Village Law, Sections 7-712, 7-712-a, 7-712-b, 7-712-c

NYS General City Law, Sections 81, 81-a, 81-b, 81-c

NYS Public Officers Law Section 100 “*Open Meetings Law*”

NYS General Municipal Law Article 12-b Section 239-m

County Planning Board Referrals

Comprehensive Plan

Zoning Code

Subdivision Regulations



ZBA Basics – Decision Making & A Complete Public Record

- Difficult decisions can be made easier with an objective approach.
- Try divesting yourself from the desired or anticipated outcome.
- Focus on the legally required process and compilation of an informative and complete public record.
- Findings are the answer. They are the relevant facts that support and explain any decision



ZBA Basics – Zoning Code Breakdown

- General Purpose and Intent
- Definitions
 - A complete definitions section with cross references can be invaluable to the ZBA at decision time.*
- Laws Applicable to All Districts
 - (parking, lighting, etc)*
- Creation and Empowerment of Boards
 - It's where your authority comes from.*
- Use Districts:
 - Intent of District*
 - Allowed Uses*
 - Allowed Accessory Uses*
 - Specially Permitted Uses*
 - What requires other approvals (site plan, etc)*

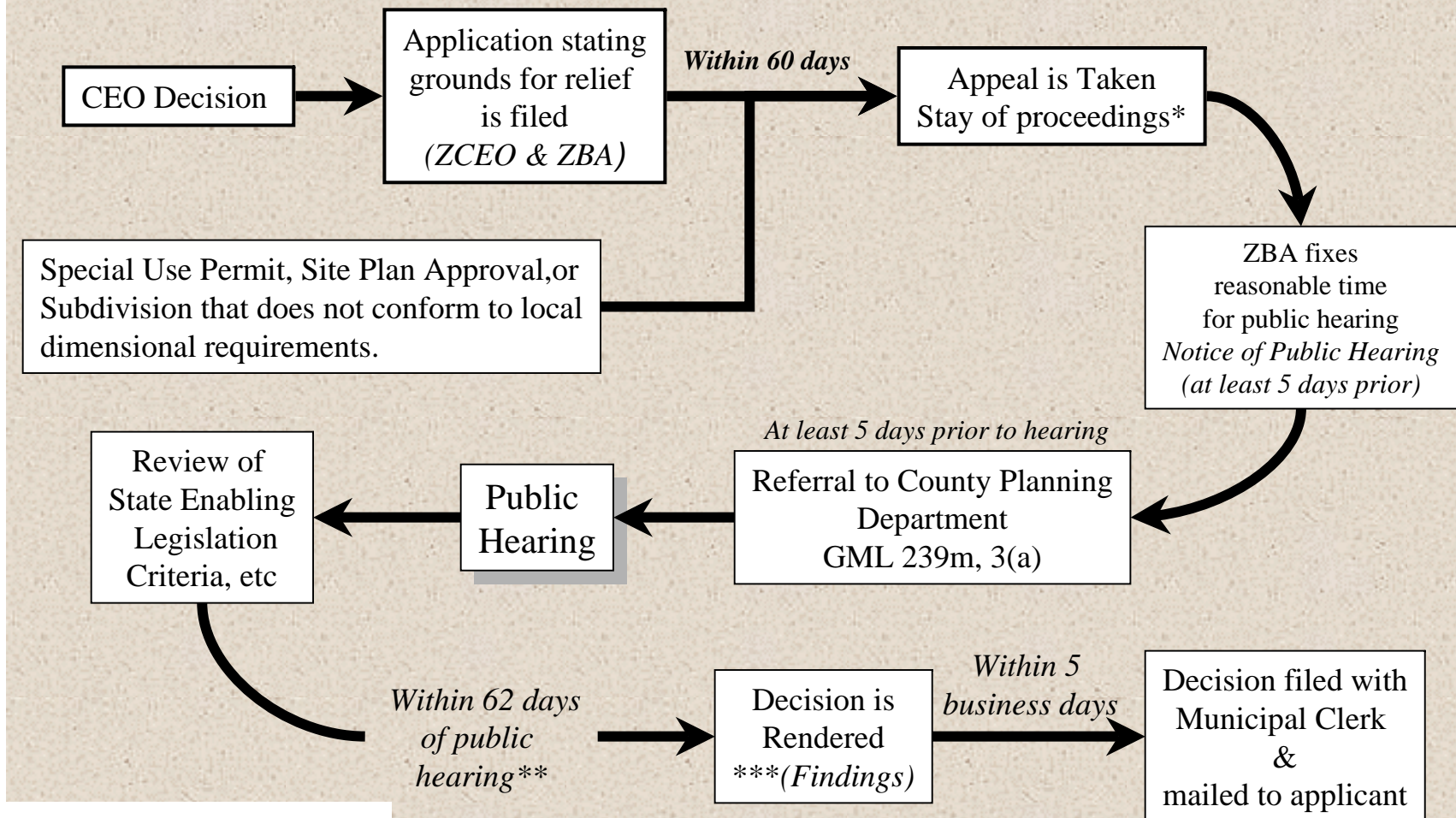


ZBA Basics – Zoning Code Breakdown

- 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.
- Site Plan Review Criteria:
Submission requirements and areas of review.
- Special Use Permit Criteria



ZBA Basics – Variance Procedures



This presentation was created in the Ontario County Planning Department 4/08

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

ZBA Basics – Variance Procedures

13. Voting requirements.*

- (a) **Decision of the board.** Except as otherwise provided in subdivision twelve of this section, every motion or resolution of a board of appeals shall require for its adoption the affirmative vote of a majority of all the members of the board of appeals as fully constituted regardless of vacancies or absences. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of section two hundred thirty-nine-m of the general municipal law shall apply.
- (b) **Default denial of appeal.** In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement official within the time allowed by subdivision eight of this section, the appeal is denied. The board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in subdivision twelve of this section.

*Town Law §267-a, Part 13 Village Law §7-712-a, Part 13 City Law, §81-a Part 13



ZBA Basics – Area Variances

- Variances are by definition, the 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*
- This is a balancing test not a hardship test
- Avoid *numerous area variances that result in defacto re-zonings.*
- Be careful *with dimensional requirements that have public safety their basis.*

* NYS Town Law 267-b, NYS Village Law 7-712-b, NYS General City Law 81-b



ZBA Basics - Use 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*
- This is a hardship test. If the public record does not show that the proposed variance meets all of the criteria the ZBA is acting outside of its authority to grant the variance.



* NYS Town Law 267-b, NYS Village Law 7-712-b, NYS General City Law 81-b

ZBA Basics - Variances, Etc

- The ZBA should grant the minimum variance needed, not necessarily the exact number requested by the applicant. This means the ZBA should be very clear and exact about how the variance will benefit the applicant (lake view, better access, buffering, etc). This will allow them to decide what is really needed and what might qualify as a reasonable alternative.
- Conditions – must be related to mitigating potential negative affects associated with the use and variance. A condition of approval might be to require site plan approval by the planning board.



ZBA Basics - What to Avoid

- The ZBA is not a legislative body. Use variances for large areas or more than one lot should not be given in lieu of a proper change to the zoning code or map by the legislative body.
- Numerous area variances may constitute de-facto rezonings by allowing an overall density of development not intended by the zoning code.
- In no instance should the ZBA grant a variance or variances that undermine the basis for a zoning requirement, especially when public safety is the primary intent. Distance between gas stations, fall distances for towers, etc.



ZBA Basics - 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.

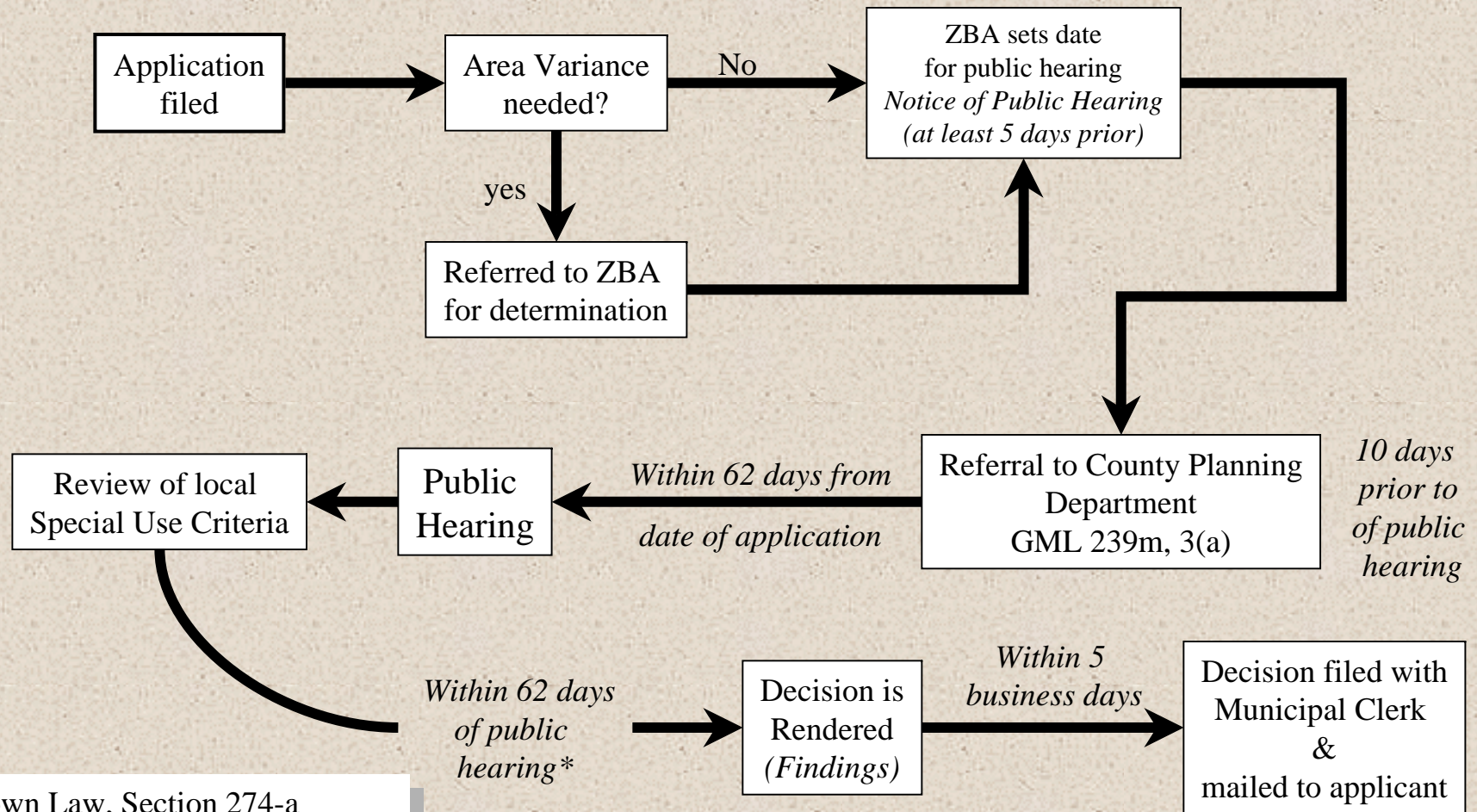
* Town Law Section 274-b,1

Village Law Section 7-725-b, 1

City Law Section 27-b, 1



ZBA Basics - 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



ZBA Basics - Other Reviews and Approvals

- Interpretations – *ZBA*
- Site Plan Approval – *Usually Planning Board*
- Subdivision – *Usually Planning Board*
- Local laws - *Legislative Body and no one else*



ZBA Basics - SEQR

State Environmental Quality Review

- Implemented by regulations* which were fully effective on November 1, 1978.
- Intended to incorporate environmental considerations into local decision making.
- What is “environment”?
- Local reviews should be coordinated with SEQR
- The SEQR process affects when an application is complete and ready for review.
- Process driven. Know the basic players and procedures.
- Avoid Segmentation!

* New York Codes Rules & Regulations (NYCRR), Part 617



ZBA Basics - SEQR

Typically, review time clocks do not start until required SEQR paperwork has been completed.

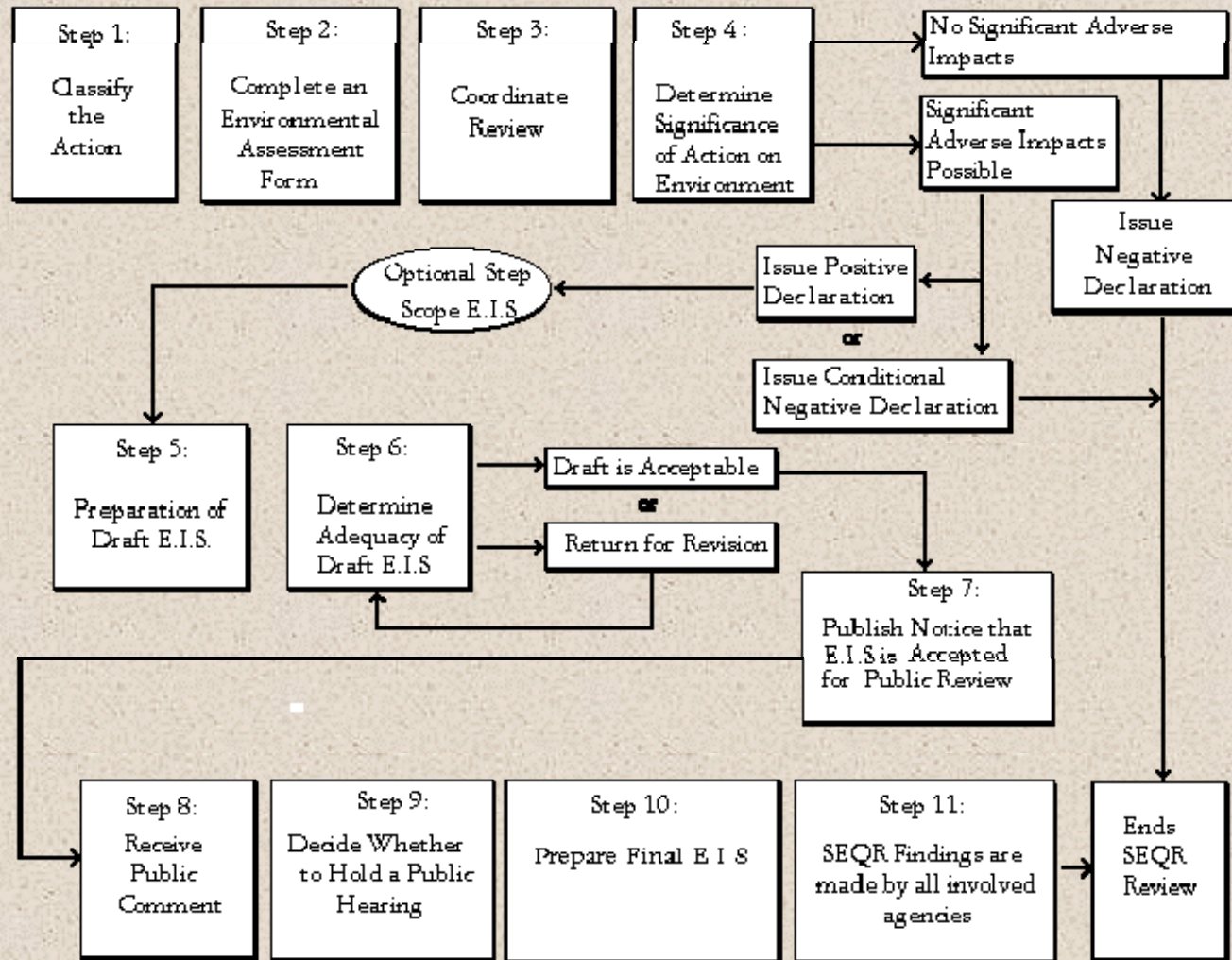
6 NYCRR PART 617 - STATE ENVIRONMENTAL QUALITY REVIEW 617.3 GENERAL RULES .

(c) An application for agency funding or approval of a Type I or Unlisted action will not be complete until:

- (1) a negative declaration has been issued; or
- (2) until a draft EIS has been accepted by the lead agency as satisfactory with respect to scope, content and adequacy. When the draft EIS is accepted, the SEQR process will run concurrently with other procedures relating to the review and approval of the action, if reasonable time is provided for preparation, review and public hearings with respect to the draft EIS.



ZBA Basics - SEQR



This presentation was created in the Ontario County Planning Department 4/08

<http://www.dec.state.ny.us/website/dcs/seqr/1seqrmap.html>



ZBA Basic Philosophy

- Open and consistent communication with other boards, municipal officials, the public and other information sources is essential.
- No one knows everything about planning.
- Understanding how to find out is an essential part of a thorough review.
- As much as possible divest yourself from a specific outcome.
- Process is important!
- Create a complete and accurate public record.
- Support any decision with factual findings.



ZBA Basics – Information Sources & Contacts

- **Ontario County Online Resources (ONCOR)** - a robust web based mapping system integrated with databases that show assessment information surveys, tax maps, etc.
<http://oncor.co.ontario.ny.us/Oncor>
- **Ontario County Planning Department Website** – Minutes, referrals lists, training modules etc. <http://www.co.ontario.ny.us/planning/>
- **New York Municipal Insurance Reciprocal (NYMIR)** – “The educational program is written for volunteers who may be experienced with aspects of land use practice but who are not experts or practitioners. Each component describes the basics of the subject covered and summarizes the requirements of applicable statutes and the lessons learned from important court cases. The emphasis is on understanding the fundamental rules and avoiding common mistakes.” (from the website) http://www.nymir.org/zoning_reg.shtml
- **New York Planning Federation** – Various resources including links to interesting sites, model ordinances, grant and training opportunities etc. <http://www.nypf.org/>
- **NYS Department of State, Division of Local Government** – Mostly helpful publications (James Coon Series) <http://www.dos.state.ny.us/lgss/index.htm>
- **NYS DEC, State Environmental Quality Review (SEQR)** - Everything you could ever want to know about SEQR including, step by step procedural guidance, forms, schedules, complete regulations, etc

Link to Main Site: <http://www.dec.ny.gov/public/357.html>

Link to Part 617 (Regulations): <http://www.dec.ny.gov/regs/4490.html>



ZBA Basics – Information Sources & Contacts

Ontario County Planning Department

20 Ontario Street, Suite 323

Canandaigua, NY 14424

Ph: (585) 396-4455

Fax: (585) 393-2960

www.co.ontario.ny.us/planning

Staff:

Kristen Hughes, Director

Thomas P Harvey, Associate Planner

Angela Ellis, Senior Planner

Maria Rudzinski, Senior Planner

Kevin Schultz, Senior Planner

Tim Jensen, Senior Planner

