



# Planning Board Overview

A Division of New York Department of State

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## Statutory authority

- Powers and duties
- Qualifications for membership
- Terms of office
- Removal of members
- Alternate members
- Appointment of chairperson
- State training requirements



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## Powers & duties

- Administrative body
- Public officers
  - Qualification requirements
  - Standards of conduct
- Powers
  - Advisory
    - basic/inherent
  - Regulatory
    - must be authorized

- Town Law § 271
- Village Law§ 7-718
- General City Law § 27



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**Qualifications for membership**

- Age: at least 18
- Citizenship: United States
- Residency: resident of municipality
- No governing board member may serve on PB



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**Conduct and ethics**

- Members may be removed from office for “cause”
- Municipality may specify reasons for removal in local law
  - Poor attendance
  - Continued inappropriate behavior
  - Failure to receive training
- Governing board must hold public hearing before removing member for cause

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**Terms of office**

- Appointing authority
  - Town board
  - City mayor
  - Village mayor with approval of trustees
- Number of members
  - Five or seven
  - Terms equal to number of members
  - Staggered expiration
- Oath of office must be filed



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### Appointment of alternate members

- Local governing board adopts a local law or ordinance which allows alternates
- Appointed in same manner as regular members by same appointing authority
- Terms of office are established by governing board; can be any number of years
- For alternates to serve for absent members, governing board must pass a law superseding state law




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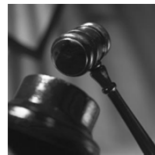
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### Appointment of chairperson

- Same appointing authority as for membership
- If no chairperson is appointed by mayor or town board, the planning board should select one
  - Vice-chairperson
- Possible duties:
  - Presides at meetings & hearings
  - Supervise agenda preparation
  - Liaison with governing board
  - Sign official documents
  - Supervise filing of documents




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### State training requirements

- Minimum of four hours annually
  - Excess hours may be carried over
  - Failure to comply does not void decisions
  - Consequence is ineligibility for reappointment
- Governing board approves training
  - Variety of sources & formats
- Requirements may be waived or modified
  - Best interest of municipality
  - Resolution of governing board
- Tracked locally




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### Advisory powers

- Development of comprehensive plan
- Land use studies
- Land use regulations
- Variance requests
- Capital budgets




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### Advisory powers

- Inherent advisory power to recommend regulations relating to subject matter of PB jurisdiction
- May make investigations, maps, reports, and recommendations in matters concerning planning and development
  - Comprehensive plan; use of municipal land; capital budgets
- Resolution may assign additional powers of advisement, such as referrals to governing board
  - May further stipulate final action dependent upon receipt of recommendation




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### Advisory - area variances

- In the case of **subdivisions**, ZBA must request written recommendation from planning board
- Applicant may make **direct appeal to ZBA for area variance** in conjunction with:
  - Subdivisions
  - Site plans
  - Special use permits




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### Comprehensive Plan

- Master plan
- Land use plan
- Comprehensive master plan




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### Comprehensive plan

- An expression of a municipality's goals and recommended action to achieve those goals
- Outline for orderly growth, providing continued guidance for decision-making
- Document focusing on immediate and long-range protection, enhancement, growth and development of the municipality

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




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### Comprehensive plan - importance

- Zoning must be in accordance with comprehensive plan
- Defense against spot zoning challenges
- May provide the basis for other actions affecting development
  - Grant applications
    - LGE – Shared Services
    - LWRP – Local Waterfront Revitalization Project
  - Capital Improvements



Milton Town Center Plan




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### Develop or update/revise your plan

Possible indications that it is time:

- Age of plan
- Periodic review provision
- Rapid growth or decline
- New infrastructure needed
- Community character at risk
- Special places disappearing
- Significant environmental or economic changes




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### Planning board's role - development

- Entire Planning Board act as 'Special Board'
- Only individual members serve on 'Special Board'
- Make recommendations on proposed plan
- Board preparing plan must have public hearing
- Adoption is the governing board's responsibility
  - Not planning board, or 'Special Board'




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### Governing board's role – adoption

- Governing board must act to **implement or to amend** plan
- **Public hearing** within 90 days of receiving draft plan
- Governing board also responsible for:
  - Amending land use regulations
  - Developing design guidelines
  - Budgeting for capital improvements
  - Applying for appropriate state, federal and privately funded programs and grants




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### Regulatory Powers

- Subdivision review
- Site plan review
- Special use permits
- Sign permits
- Historic preservation
- Architectural review




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### Regulatory Powers

- Governing board may delegate review authority to PB or another board
  - Exception: subdivision review is limited to PB by statute
- Extent of regulatory powers must also be delegated
  - What aspects of application may be reviewed
  - What may be required of applicant
  - What fees apply




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### Subdivision

The division of a parcel of land:

- Into a number of lots, blocks or sites
- with or without streets
- For the purpose of sale, transfer of ownership, or development



- General City Law §32 & §33
- Town Law §276 & §277
- Village Law §7-728 & §7-730




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### “Major” and “minor” subdivisions

- Defined and delineated by local regulation as either “major” or “minor”
- Typical thresholds used for local classification:
  - Number of proposed lots
  - Construction of new street(s)
  - Extension of municipal infrastructure
  - Configuration of proposed lots
  - Transfer of land from adjacent parcel(s)




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### Subdivision review elements

- Regulates design and improvements:
  - Lot configuration
  - Street pattern
  - Streets and roads
  - Sidewalks & curbs
  - Utility installation
  - Service access
  - Drainage
  - Landscaping




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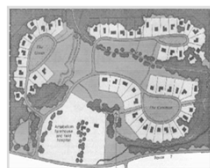
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### Cluster or “conservation” subdivisions

- Enables and encourages flexibility of design and development to preserve natural and scenic qualities of open lands
- Need specific authorization from governing board:
  - Mandate
  - Encourage
- Zoning identifies allowable:
  - Location by districts
  - Type of development




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### Subdivision review procedures

- Public hearing required
- County planning agency referral may be necessary
- State Environmental Quality Review Act (SEQRA) must be considered
- Parkland or money in lieu of parkland
- Beware of default approvals: 62 days after close of public hearing




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### Site plan review

- Drawing showing the proposed development of a single piece of property
- Zoning is not necessary to enact site plan review



- General City Law §27-a
- Town Law §274-a
- Village Law §7-725-a




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### Site plan – extent of authority

- Delegate review board
- List uses subject to review
- List elements board may review
- Specify submission requirements
- List local procedures – public hearing
- Identify enforcement authority for conditions of approval




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### Site plan – uses to be considered

Specify land uses subject to review:

- **Type:** single type of use or several types of uses municipality-wide
- **Zoning District:** all or some uses within a particular district
- **Area:** all or some uses within an overlay zone, such as historic, architectural, or waterfront district




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### Site plan – review elements

Is site plan in accordance with comprehensive plan?

Examples of review elements:

- |                                   |                            |
|-----------------------------------|----------------------------|
| • Adjacent uses                   | • Utilities                |
| • Location/dimension of buildings | • Parking, access, traffic |
| • Screening & landscaping         | • Lighting                 |
| • Architectural features          | • Signage                  |
| • Proposed grades/contours        | • Other ....               |
| • Sewage & storm drainage         |                            |




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### Special use permit

• Authorization to use land in a way permitted by zoning, subject to requirements designed to assure that proposed use:

- Is in harmony with zoning
- Will not adversely affect neighborhood if requirements are met

• AKA "special exceptions" or "conditional uses"



- General City Law §27-b
- Town Law §274-b
- Village Law §7-725-b




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### Other regulatory tools



- Sign permits
- Historic preservation
- Architectural review

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### Public Meetings and Hearings

- Quorum
- Public meeting notice and access
- Executive session
- Board procedures
- Public hearing noticing requirements

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### Quorum

- Number of members who must be present for business to be legally conducted
- Must be at least a majority of full membership of board
- Full membership includes absent members and vacant seats

NYS General Construction Law §41

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### Public meetings

- To allow public to listen and to observe
- Subject to Open Meetings Law – Planning boards must discuss applications and other board business at meetings open to public
  - Notice and access requirements
  - Executive session – no meeting behind “closed doors”




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### Meeting – access & notice

- Provide access and notice to public and the media.
  - Post notice:
    - Conspicuous place
    - Municipal website (5/12/09)
- Notice timeframes based on meeting scheduling:
  - More than one week prior: at least 72 hours (3 days)
  - Less than one week prior: to extent practicable



Public Officers Law §103.2 (e)  
 Make agenda & documents available prior to or at meeting:  
 – Online if practicable; effective: 2/12/2012  
 – [www.dos.ny.gov/copa/RecordsDiscussedatMeetings.html](http://www.dos.ny.gov/copa/RecordsDiscussedatMeetings.html)




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### Executive session

Public may be excluded if topic of discussion is for any of these eight permissible reasons:

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>• Public safety</li> <li>• Protect identity</li> <li>• Criminal investigations</li> <li>• Actual litigation</li> </ul> | <ul style="list-style-type: none"> <li>• Collective negotiations</li> <li>• History of person</li> <li>• Exams</li> <li>• Property value</li> </ul> |
|---|---|




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### No quorum? No meeting

- "Work Session," "Agenda Meeting" or "Site Visit" is meeting subject to OML only if quorum of members have planned to gather to discuss public business
  - Riverkeeper v. The Planning Board of the Town of Somers (Supreme Court, Westchester County, June 14, 2002):
    - The court concluded that a site visit by a planning board does not constitute a meeting subject to the OML so long as its purpose is not for anything other than to 'observe and acquire information'




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### Making the most of the meeting

- Establish a starting point
  - ZEO, municipal clerk, or board clerk
- Develop good forms
  - Have SEQRA Environmental Assessment Form available
- Have clear submission requirements
  - Use a check list
- If county review is required, send county copies of everything submitted
  - You can request applicant to provide extra copies
- Make sure time periods or deadlines comply with state law and are clear to all parties




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### Adoption of board procedures

To be binding, must be adopted by governing board by local law or ordinance. Examples include:

- Duties of officers or committees
- Applications by non-owners
- Signature on official documents
- Agendas
- Calling meetings
- Hearings
- Minutes
- Referrals




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### Public hearings

- Held for purpose of receiving public comment on a particular matter
- Examples pertaining to planning board include:
  - Special use permit
  - Subdivision
  - Preparation of preliminary comprehensive plan
  - Site plan only if locally required




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### Hearings – noticing requirements

- State noticing requirements:
  - Public meeting requirements
  - Legal notice in official newspaper
    - Generally 5 days prior to hearing date
  - Neighboring property owners must be notified by mail only in the case of "certain public agencies"
- Examples of local requirements:
  - Signs on application property
  - Certified Mailings
  - Municipal website or ListServ




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### Making Legally Defensible Decisions

- State Environmental Quality Review Act (SEQRA)
- Notice to adjacent municipality
- County referral
- Voting
- Findings
- Decisions




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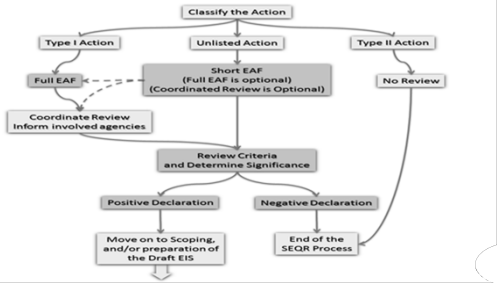
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### State Environmental Quality Review Act (SEQRA)




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### SEQRA Coordination

- Agency proposed action or receives application
  - Site plan
  - Special use permit
  - Subdivision
- Action classified\*
- Lead agency established
- Significance of action determined\*
- Environmental Impact Statement (EIS), if needed
- Findings and agency decision\*

\*SEQRA process can conclude at any of these points




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### Notice to adjacent municipality

- If property is within 500' of adjacent municipality, it must be referred to clerk
- Send notice by mail or electronic transmission (email) at least 10 days prior to any hearing on proposed:
  - Subdivision
  - Site Plan
  - Special use permit

General Municipal Law §239-nn




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**Referral to county planning agency**

- Projects requiring referral:
  - Special use permits
  - Site plan
  - Other zoning authorizations
  - Subdivisions where authorized by county legislative body

General Municipal Law §239-m




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**Referral to county planning agency**

Applications within 500' of:

- Municipal boundaries
- State or county parks or highways
- State or county streams or institutions
- Land on which state or county building is located
- Farm operations in state agricultural districts
  - (area variances exempted)




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**County referral agreements**

County planning agency and referring body may enter into agreement to exempt certain actions from county review

Examples of exempt items:

- Special use permits for accessory structures on residential lots
- Site plan review for a change in tenant where modification of building footprint is less than 10%
- Lot line adjustments




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**County referral timelines**

- Special Use Permits & Site Plan – Full statement must be sent to the county planning agency at least 10 days prior to public hearing
- Site Plan – If no public hearing is needed locally, referral must be sent before final action can be taken
- Subdivisions – Referral only required where authorized by the county legislative body

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**Waiting to grant final approval**

PB may not take final action until the earlier of the following occurs:

**Receipt of county planning agency's report**    **OR**    **30 days after full statement is received by county**

- Two-day exception requires consideration even after 30 days have passed, but at least 2 days before meeting where decision is made
- Time period may be extended if agreed to by both county and planning board
- Do not take early votes conditioned on county planning agency's positive recommendation

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**Voting**

- A motion/resolution will only pass if it gets support of majority of entire membership of board
- A member may vote even if they missed previous presentations, public hearings, or other board meetings at which the project is discussed; member must first familiarize themselves with record
- Check statutory time frames – delayed decision on subdivisions may result in default approval

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### Voting contrary to county recommendation

If county recommends disapproval or modification within timeframe allowed



...then it requires a majority plus one vote for municipality to approve application without recommended modifications




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### Findings

- Describe reasons for decision
- May also support why condition was imposed
- Based on analysis which applies law to facts, leading to conclusions
- Should be able to support decision if challenged in court
- Insert into Record/Application File




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### Decisions must be filed

- At local level, determine officially what action constitutes "filing with the municipal clerk"
- Examples of decision documents:
  - Minutes containing record of vote: takes more time, unless draft minutes
  - Document that records motion passed: can be done immediately
- PB decisions may be appealed to Supreme Court, not to ZBA or governing board




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**Tying up loose ends**

- Send copy of decision to applicant
- If referred to county, send copy of decision
- Attach findings to decision document




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**New York Department of State**

(518) 473-3355            Training Unit  
 (518) 474-6740            Counsel's Office  
 (800) 367-8488            Toll Free

Email:            [localgov@dos.ny.gov](mailto:localgov@dos.ny.gov)  
 Website:        [www.dos.ny.gov](http://www.dos.ny.gov)  
                       [www.dos.ny.gov/lq/lut/index.html](http://www.dos.ny.gov/lq/lut/index.html)




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Planning Board  
**DECISION**

OFFICE USE ONLY

Application No.: \_\_\_\_\_

Date of Vote: \_\_\_\_\_

Date filed with \_\_\_\_\_

Municipal Clerk: \_\_\_\_\_

At a meeting of the Planning Board on  
\_\_\_\_\_, 20\_\_\_\_,  
the following motion was made:

- I move that the Planning Board  deny  
 approve  
 approve with conditions (see below)

- the application for  Site Plan Review Approval  
 Preliminary Subdivision Approval  
 Final Subdivision Approval  
 Special Use Permit Approval  
 Other \_\_\_\_\_

Made by \_\_\_\_\_  
(applicant name)

for property located at \_\_\_\_\_  
(address/ tax map number)

Approval of this application is subject to the following conditions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional conditions are attached

BY \_\_\_\_\_ (Planning Board Secretary) \_\_\_\_\_ (Date)

**RECORD  
OF VOTE**

	MEMBER NAME	AYE	NAY
Chair	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____

**MODEL  
TOWN PLANNING BOARD BY-LAWS**

WHEREAS, it is desirable for the Town Planning Board to be governed by rules for the efficient and proper administration of its affairs, now therefore be it

RESOLVED, that the Town Planning Board, for the Town of \_\_\_\_\_, Otsego County, New York, created by resolution of the Town Board on the \_\_\_ day of \_\_\_\_\_, \_\_\_, does hereby adopt the following rules as the By-laws to govern its activities.

**ARTICLE I: MEETINGS**

Section 1.1 Annual Meetings

The annual meeting of the Town Planning Board shall be the first regular meeting in the month of \_\_\_\_\_ of each year hereafter. Such meeting shall be devoted to the election of officers for the ensuing year, preparation of an annual report to the Town Board, and such other business as shall be scheduled by the Town Planning Board.

Section 1.2 Regular Meeting

Regular meetings of the Planning Board shall be held in the \_\_\_\_\_ at \_\_\_\_\_ P.M., on the \_\_\_\_\_ of each month hereafter. At such meetings, any and every matter properly brought to the attention of the Planning Board shall be considered.

Section 1.3 Special Meetings

Special meetings of the Town Planning Board shall be held at a time and place designated by the Chairman. Verbal or written notice thereof shall be given to all members not less than twenty-four hours in advance thereof.

Section 1.4 Quorum

At any meeting of the Town Planning Board, a quorum shall consist of a majority of the members of the Board. No action shall be taken in the absence of a quorum, except that those members present shall be entitled to call a Special Meeting at a subsequent date.

Section 1.5 Proceedings

- a. At any regular meeting of the Planning Board, the following shall be the regular order business:
  1. Roll Call
  2. Reading and approval of minutes of the preceding meeting
  3. Privilege of the floor.
  4. Communications
  5. Reports and action on old business
  6. New business
  7. Agenda for next succeeding meeting
  8. Adjournment

- b. Each action of the Planning Board required by law, rules or regulations shall be embodied in a formal resolution duly entered in full upon the Minute Book after an affirmative vote. Each resolution so adopted shall specifically authorize, if necessary, the use and imprint of the official signature of this Planning Board as hereinafter defined.

### Section 1.6 Rules and Procedure

All meetings of the Planning Board shall be conducted in accordance with Robert's Rules of Order.

## **ARTICLE 2: OFFICERS**

### Section 2.1 Officers

The officers of the Town Planning Board shall consist of a Chairman, a Vice Chairman and a Secretary, each of whom shall serve for a term of one year.

### Section 2.2 Election of Officers

The officers of the Planning Board shall be elected for the ensuing year at the annual meeting of the Planning Board. In the event the Secretary shall be absent from any meeting, the officer presiding shall designate another member of the Planning Board to act pro tem in place of the Secretary.

### Section 2.3 Duties of Officers

The duties and powers of the officers of the Town Planning Board shall be as follows:

a. Chairman:

1. To preside as all meetings,
2. To call special meetings in accordance with these By-Laws,
3. To sign, together with the Secretary, all official documents of the Town Planning Board in accordance with the requirements of these By-Laws,
4. To see that all reports, documents, and actions of the Planning Board are properly made, executed, filed or taken, as the case may be, in accordance with law and the actions and regulations of the Planning Board,
5. To serve as liaison to Town Board at the direction of the Planning Board.

b. Vice Chairman:

1. During the absence, disability or disqualification of the Chairman, the Vice Chairman shall exercise or perform all the duties and be subject to all the responsibilities of the Chairman.

c. Secretary:

1. To keep the minutes of all meetings in an appropriate Minute Book,
2. To give or serve all notices requires by law or by the By-Laws,
3. To be custodian of records of the Town Planning Board,
4. To attend to all official correspondence,
5. To lay before the Town Planning Board at its meetings all official correspondence received by the Secretary relating to the business of the Board,
6. To affix to any official document of this Planning Board the official signature thereof whenever the same shall be required by law or the regulations of the Board, such action to be

taken, however, only after such action shall have been authorized by an affirmative vote of the Board.

### **ARTICLE 3: VOTING AND CONFLICTS OF INTEREST**

#### Section 3.1 Voting

At all meetings of the Planning Board, each member properly appointed and attending shall be entitled to cast one vote. Voting shall be by voice. A majority vote of the board shall be necessary for the adoption of any proposed action, resolution or other voting matter.

#### Section 3.2 Conflicts of Interest

Any application, petition, or request brought before the Town Planning Board for action pursuant to any rule, ordinance, or regulations, shall state the name and nature of interest of any municipal officer or employee herein, as defined in Section 809, Article 18 of the General Municipal Law, Chapter 646 of the Consolidated Laws of New York State. Any member of the Town Planning Board having any such interest in any matter brought before the Board, shall either absent or disqualify himself from any consideration, discussion or vote upon such matters. Such absence or disqualification shall be noted in the minutes of the Planning Board by the secretary, who shall also note that no vote was cast by such member on said matter.

### **ARTICLE 4: VACANCIES**

#### Section 4.1 Vacancies

Should any vacancy occur among the members of this Planning Board by reason of death, resignation, disability or otherwise, immediate notice thereof shall be given to the Town Clerk by the Secretary. Should such vacancy occur among the officers of the Planning Board, the vacancy shall be filled by election at the next regular meeting of this Planning Board, the officer so elected to serve the unexpired term of the office in which such vacancy shall occur.

#### Section 4.2 Recommendation to Town Board

The Town Planning Board may recommend persons to the Town Board for consideration for appointment to a vacancy on the Planning Board. If such recommendations are made on behalf of the Planning Board, they shall be only after an affirmative vote thereon. This section does not prohibit individual members of the Planning Board from making individual preferences to fill vacancies.

### **ARTICLE 5: APPLICATION PROCEDURES**

#### Section 5.1 Receipt of Applications

The Town Clerk is hereby authorized to receive applications, petitions, and communications on behalf of the Town Planning Board. The Town Clerk shall immediately notify the secretary of the Planning Board, and transmit to said secretary, any forms, letters or other materials. The secretary shall request the chairman of the Planning Board to call a special meeting of the Planning Board if any official action on such forms, letters or materials is required before the next regularly scheduled meeting.

#### Section 5.2 Official Date of Receipt of Applications

Any application, petition or communication shall be considered as received by the Town Planning Board as of the date of the first regular Planning Board meeting following receipt thereof by date which shall be the Official

Date of Receipt. The secretary shall note upon such documents the date of receipt from the Town Clerk, and the Official Date of Receipt, and shall notify any applicant of this official Date of Receipt.

**ARTICLE 6: OFFICIAL SIGNATURE**

Section 6.1 Official Signature

The official signature of the Town Planning Board shall be endorsed upon all papers and documents requiring the same by reason of the requirements of law or the rules and regulations of the Town Planning Board. Such signature shall be endorsed upon such papers only pursuant to the direction of the Town Planning Board embodied in a resolution so directing, and shall be personally signed by either the Chairman or Secretary. In form the official signature shall be as follows:

\_\_\_\_\_ Town Planning Board, Otsego County, New York

By \_\_\_\_\_, Chairman

\_\_\_\_\_, Secretary

Dated \_\_\_\_\_

**ARTICLE 7: AMENDING BY-LAWS**

Section 7.1 Amending By-Laws

These by-laws may be amended at any meeting of the Planning Board provided that notice of said proposed amendment is given to each member in writing at least five days prior to said meeting. Said notice shall contain a precise description of the change proposed in said by-laws.

**ARTICLE 8: FORMER BY-LAWS**

Section 8.1 Former By-Laws

These by-laws shall supersede any and all by-laws previously adopted by this board.

Upon motion duly made by \_\_\_\_\_ and seconded by \_\_\_\_\_, the resolution set forth about was duly approved by the following votes:

Aye: \_\_\_\_\_

Nay: \_\_\_\_\_

(Signed) \_\_\_\_\_  
Secretary

Dated: \_\_\_\_\_

Amendments effective through: \_\_\_\_\_