

MAKING A GOOD RECORD: MINUTES, FINDINGS & DECISION DOCUMENTS

**NYS Department of State
Division of Local Government Services**

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MAKING A GOOD RECORD: MINUTES, FINDINGS & DECISION DOCUMENTS

Thanks for joining me for this Department of State course on Making a Good Record. I've put together some information to show you what the record of a land use application should include. In it, you'll see tips about writing meeting minutes, developing findings statements, and issuing board decisions. You'll even learn a bit about recordkeeping.

Not everything you need to know is contained in this course, so additional information has been included on the course webpage, such as a glossary, contact information for the Department of State, and links to other online resources.

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COURSE CONTENTS

As I told you, this course contains information about the record, minutes, findings, decisions, and recordkeeping. I want you to take a short quiz before we look at the information so you can get an idea about what you do and don't know about the topics. There are only ten questions, so it shouldn't take long. At the end of the course you'll get a chance to answer the same ten questions again to see if you can improve your score.

The course should take about sixty minutes. Let's get started.

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PRE-TEST QUESTIONS

True or False?

- (1) It is best for board members to keep personal knowledge about property included in an application they are reviewing to themselves.
- (2) Ex parte communication is information you hear from former board members during the public hearing.
- (3) A board needs to take minutes of a meeting if there are any motions made or votes taken at the meeting.
- (4) Public testimony at a hearing must be presented word-for-word in the hearing record.
- (5) It is important for board members reviewing an application to remain neutral until a decision is required.
- (6) Minutes may not be distributed until they have been approved by the board.

(7) A conclusory statement such as 'The applicant has provided adequate screening' is sufficient for a decision statement and would be a good defense of the board's reasons for granting approval if the decision were challenged.

(8) Findings are an analysis which applies law to facts, leading to conclusions.

(9) If a large number of members of the public are opposed to an application, members must vote to deny the application.

(10) Minutes of a public meeting must be kept indefinitely.

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PRE-TEST ANSWERS

(1) It is best for board members to keep personal knowledge about property included in an application they are reviewing to themselves. False.

(2) Ex parte communication is information you hear from former board members during the public hearing. False.

(3) A board needs to take minutes of a meeting if there are any motions made or votes taken at the meeting. True.

(4) Public testimony at a hearing must be presented word-for-word in the hearing record. False.

(5) It is important for board members reviewing an application to remain neutral until a decision is required. True.

(6) Minutes may not be distributed until they have been approved by the board. False.

(7) A conclusory statement such as 'The applicant has provided adequate screening' is sufficient for a decision statement and would be a good defense of the board's reasons for granting approval if the decision were challenged. False.

(8) Findings are an analysis which applies law to facts, leading to conclusions. True.

(9) If a large number of members of the public are opposed to an application, members must vote to deny the application. False.

(10) Minutes of a public meeting must be kept indefinitely. True.

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RECORD

The title of the course begins, "Making a good record..." Just what is a record? Well, it is a bit like a puzzle. The pieces of the puzzle are different documents and facts generated by the board, the applicant, and the public. Putting the pieces together to form a complete picture is like assembling the record of an application.

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THINGS TO INCLUDE IN THE RECORD

So what should be included in a record of an application? Start with the stuff that is easy to remember, which is often generated by the board. For example, the minutes of meetings at which an application was discussed, the notice that appeared in the newspaper of a public hearing on an application, and the transcript or summary of the public hearing. Written comments might have been submitted by the public, and those should be part of the record too.

Other stuff that seems pretty obvious that it should be included in the record is materials generated by the applicant, starting with the application itself. The application often includes supporting information, such as traffic studies, archeological surveys, and wetland maps that should be included in the record.

List of Easy Things to Remember

1. Meeting minutes
2. Newspaper notices
3. Hearing testimony
4. Written public comments
5. Application
6. Supporting docs
7. SEQRA stuff

Both the applicant and the board will generate items related to the State Environmental Quality Review Act (SEQRA), such as environmental assessment forms, determinations of significance, and environmental impact statements.

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MAKE THE RECORD COMPLETE

It is best to make the record as complete as possible. Having an organized record will really come in handy for the municipal attorney if the board's decision is challenged; for future board members if further development is proposed for the same parcel; and for prospective purchasers of the property who want to know its potential opportunities and obligations. Here are several things that are sometimes forgotten.

List of items not to forget

1. Personal observations of board members
2. Expert Opinions
3. Findings of the board
4. Decision
5. Conditions placed on approval
6. Ex party parte communication

Personal observations. A member may have personal knowledge of a site under consideration for a land development. Perhaps she grew up near the site and knows of seasonal flooding or of dumping of materials on the property. These observations should be included either in the minutes, or in a personal statement offered for the record. If the board's denial or the conditions put on the approval are challenged, a judge can't read the minds of board members. If you are a board member, put what you know in writing.

Other information will be offered by experts, who could be in the employ of the applicant, the municipality, or a community group. Their opinions should be captured in the record of a public hearing if they testify, but they might also be submitted in separate written reports.

The reasons the board approved or denied the application, known as findings of the board, the board decision, and any conditions placed on the approval of the application should be made part of the record.

The record should also include any *ex parte* communication that was received. *Ex parte* communication occurs between a board member and an applicant, applicant's representative, or member of the public about a pending application outside the context of a public meeting or hearing. Board members should avoid these types of "off-the-record" discussions, and encourage the other parties to share their opinions and observations in a letter to the board or an appearance at a public meeting or hearing. If the private interaction is unavoidable, a board member should disclose *ex parte* communication at the next board meeting so it can be included in the record.

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MINUTES

Let's now examine at one aspect of the record, the minutes of board meetings. Minutes become historical records of the meetings of a public body. Depending on the level of detail, they can be an interesting account of board discussions and decisions, detailed enough to track the evolution of issues and applications. For people not present at the meeting, minutes provide information about what happened at the meeting and a sense of how the board operates.

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REQUIREMENTS FOR MINUTES

You might be wondering when minutes have to be taken and what has to be included in the minutes. Article 7 of the Public Officers Law contains the Open Meetings Law. Section 106 requires a board to take minutes of a meeting if there are any motions or proposals made or votes taken. This sounds pretty simple, but lots of questions arise about the when and where of minutes. The Committee on Open Government answers these questions and posts its opinions on the Department of State website. For example, we learn from these opinions, which are based on the Open Meetings Law and subsequent court decisions that minutes must be in writing and cannot just be maintained only on audio or video tape.

Contact information for the Committee on Open Government:

Committee on Open Government
NYS Department of State
Suite 650
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231
Telephone: (518) 474-2518
Opinions at www.dos.state.ny.us/coog/index.html

State law spells out who is responsible for taking minutes of governing board proceedings. Town Law §30 designates the town clerk as the clerk of the town board, and Village Law §4-402 designates the village clerk as responsible for recording board of trustees proceedings. While the responsibility is the clerk's, someone else, such as an assistant clerk, may also take the minutes.

ZBA's and planning boards typically employ clerks or secretaries to record the board's minutes if funding is provided by their governing boards. If no funding or other assistance is provided, a board member will need to record at least the minimum legally required minutes. This situation is one the Department of State recommends be avoided because it is difficult for the member tasked with recording the minutes to participate fully in the meeting, however, they may be aided by the use of a

tape recorder. If your board has to rely on a member to take minutes, you should be aware that they can't be employed as the secretary, which is explained in Attorney General's Opinion 2005-17.

If you ever Google "town planning board minutes" you will find a big variety in the quality of meeting minutes. Taking good minutes is a real skill, often performed by a miracle worker who somehow manages to produce concise and coherent summaries of sometimes long and disjointed discussions. The minute taker often has to have the skills of a diplomat as he or she handles suggestions for "improvements" to the minutes.

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PREPARING TO TAKE MINUTES

Good minutes are usually taken by people who prepare for the duties. Here are some ways they might prepare to take accurate minutes:

- They start with an outline based on the agenda, leaving white space for notes or numbering the sections of the outline and referring to those numbered sections in their notes.
- They have copies of background materials to refer to as the meeting progresses, so they can refer to specific page numbers or names. The materials will help them later when they are drafting the minutes.
- They make a list of people who are expected to attend the meeting, and note the comings and goings of board members on the list. It can be important to know what members were present and when they arrived, particularly if some votes are simply marked unanimous.
- Some scribes like to use a notepad and take notes longhand when recording the minutes, others prefer shorthand. Some like to use a tape recorder, others are comfortable typing directly into a laptop. Whatever method is used, they will have the tools assembled before the meeting begins. If an electronic method is chosen, they make sure the equipment is working, the laptop plugged in, and back up tapes or memory cards are handy for audio or video recording. They also back up recordings with notes to identify the voices on the tape and to serve as an alternate record in case something goes wrong with the recording.

AUDIO: Board member makes a motion to approve the minutes. Since the draft minutes were distributed, a board member notified the secretary of a mistake, which was confirmed by the tape recording. A motion was made to approve the minutes with the modifications discussed. A roll call vote was called, and all members voted in favor of the minutes as corrected.

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DETAILS, DETAILS

Minutes are a record of a public meeting. A public meeting is where a quorum of board members gather to discuss board business. To have a quorum, you would need at least a majority of the members of a fully constituted board. A board would be fully constituted if there were no members absent and no positions vacant.

Board minutes should reflect motions and resolutions made at that meeting word-for-word. To make sure a motion has been recorded accurately, the board chair should ask that it be read back to the board. This should be the practice for the conditions that are placed on approvals as well, since the conditions initially proposed are often modified during the board discussion of the motion.

There is no right or wrong way to take minutes as long as they contain motions, resolutions and votes. It is up to the planning board or zoning board of appeals to provide the board secretary with guidance on the level of detail they would like the minutes to reflect. Many boards like a more

complete record of what went on at a meeting, and adopt a style of minutes that is sometimes referred to as “Minutes of Narration.” This style includes an account of the discussion that took place at the meeting and important details of the discussion. In writing this style of minutes, the scribe could consider presenting the information logically or topically, not necessarily chronologically.

Other boards prefer a comprehensive style of minutes which contain a full account of the meeting. Those minutes include a record of discussions that includes the names of all the speakers, and the movers and seconders of motions. They may even approach a verbatim account of the discussion, although this level of detail is not usually desired or practical, and may not be a reasonable request in the instance of a town clerk recording the minutes of the town board. A good source of information on this topic is Committee on Open Government Opinions numbers 3658 and 4801. It is best to leave out offensive or inappropriate language from the minutes, even if it was used at the meeting.

Let me take a minute to talk about the record of a public hearing. A public hearing is a session at which public comment is allowed on a particular issue. That written account should contain at least a general detailing of the views expressed by the people offering public comment. While a stenographic record of a hearing is best, many boards opt instead to summarize the comments and to tape record or film public hearings so they can preserve the details if questions later arise.

Whatever style you adopt, remember that minutes will become part of the permanent record, so they should be proofread for typographical and grammatical errors.

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MINUTES OF LEGAL PROTECTION

It's time now for me to emphasize the legal aspects of minutes. They are useful for applicants or opposition groups who want to know if the board followed proper procedures in rendering a decision; for judges reviewing board decisions; and for municipal attorneys who can confirm whether the board members need to modify the way they are conducting reviews and making decisions.

Minutes usually contain statements that indicate that the board followed proper procedure. For example, they might record that a member with a conflict of interest on an application recused herself; that a member absent from the public hearing on an application reviewed the record so he could make an informed decision; that the environmental review process was followed; and that the media was notified of the board meeting.

The minutes can illustrate that board members remained neutral on an project, only declaring a position on the project once all the facts were heard when a decision was required. Rather than prejudging an application, board members should keep an open mind and realize that their initial feelings about a project may evolve after all the facts are in and possible conditions on the approval are considered.

Be sure your minutes can't be interpreted incorrectly, especially comments attributed to particular individuals. Statements that are conveyed orally don't always convey the same message in print. For example, a teasing statement made to an applicant, such as “You bet we're going to blow your permit out of the water” would carry a different meaning in the minutes.

Legal Checklist:

- Was proper procedure followed?
- Did members with conflicts recuse themselves?

- Did previously absent members review the record?
- Were SEQRA determinations made?
- Was meeting notice given?

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COMMON CONTENTS OF MEETING MINUTES

What are the common items contained in minutes? The first page of the minutes will typically contain a heading with the name of the board, the date, and the time and place of the meeting. There may be a footer on each page, containing the page number or name of the computer file to which the minutes are saved.

The minutes also list which members attended the meeting, when the meeting was called to order, and when it was adjourned. They also include when hearings held during the meeting began and adjourned. If members announced any conflicts of interest under General Municipal Law Section 803, those disclosures need to be made part of the official record.

Housekeeping items are also common elements, such as corrections and approval of previous minutes, a list of correspondence received by the board, and training announcements. As discussed before, the minutes usually include information about items discussed at the meeting, as well as the required inclusion of motions, proposals, resolutions and votes.

List of common items contained in the minutes

- Heading
- Footer
- Attendance
- Time meeting/hearing began and ended
- Approval of minutes
- Summary of reports and announcements
- Summary of discussion
- Proposals, resolutions & motions
- Results of vote

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MAKING MINUTES AVAILABLE

Now that you know what to include in minutes, let's look now at when you can share them. Board members can confuse when to distribute minutes with the practice of approving minutes. I'll first address approval of the minutes.

Many boards have a practice of correcting and approving the minutes of one meeting at the following meeting, and there may even be a local law or procedural rule that requires such approval. Corrections or additions to the minutes can be made to the original version of the minutes, or may be included in the minutes of the following month. While approval of minutes is common, there is no requirement in state law that minutes be approved. However, there is a state law requiring that they be distributed within a certain timeframe.

When minutes must be made available to the public is spelled out in the Open Meetings Law. The meeting minutes of all public bodies must be made available within two weeks from the date of the meeting. If an executive session was held, the minutes of the executive session must be made available within one week. This shorter period for disclosure of executive session minutes recognizes the value of informing citizens promptly of board decisions made behind closed doors.

So what to do about distributing minutes that haven't been approved? A good practice is for the board secretary or clerk is to mark the minutes as “unapproved”, “draft”, or “not final” prior to posting or distributing them. This puts people who read them between production and approval on notice that corrections may be made prior to final approval.

Text:

- Don't wait to approve minutes (it is not required by state law)
- Open Meetings Law says:
- Open meeting minutes make available to public within 2 weeks
- Executive session minutes make available to public within 1 week

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FINDINGS

We find ourselves now at the section on findings. A complete record includes findings of the board. Findings are an analysis which applies law to facts, leading to conclusions. They describe the reasons for the denial or approval of an application, and should be able to support why a condition was imposed, particularly if challenged in court in what is known as an Article 78 proceeding.

Sometimes boards adopt conclusory statements and call them findings. An example of a conclusory statement is, “The regulations require that adequate screening be provided between commercial and residential property. The applicant has provided adequate screening.” A conclusory statement is not a finding, and decisions based upon conclusory statements that aren't supported by factual information contained in the record will be struck down if they are challenged.

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CONTENTS OF FINDINGS

Findings, like minutes, help tell the story of the application. They should include information that would allow the reader to understand what action is being requested of the board, such as approval of a subdivision, site plan, or special use permit. Findings should identify the name of the applicant, as well as the name of the property owner, and identify the property that is included in the application. The findings should describe the property, including details necessary for the application of local regulations, such as the size of the property, environmental constraints, and conditions on the property. The findings should also cite the zoning that applies to the property, such as its use category, required setbacks, height restrictions, and parking requirements. Other applicable legal standards should be identified as well.

The findings should also provide context, including the character of the neighborhood and neighborhood conditions. Interest groups should be named, and their reasons for supporting or opposing an application should be identified.

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ANALYSIS

After the facts have been stated, the findings should relate the facts to the legal standards. This analysis forms the basis of your decision.

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APPLYING LEGAL STANDARDS

This slide contains a copy of a use variance findings and decision worksheet. The worksheet lists the applicable standards contained in state statutes. If the topic was subdivision review instead of use variances, local legal standards would be listed as well. The sheet has a place for board members to list evidence that is provided that supports compliance with the standard. This evidence might be found in the application, provided by the applicant and his or her representatives, and information offered by the public.

To make findings, board members should weigh the evidence provided for each standard as a group. They need to determine whether compliance with each standard is established by the facts, or would be established if conditions were added to the approval. For more on findings, take a look at the Department of State legal memorandum, "Role of Findings in Local Government Decisions."

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DECISIONS

Armed with information, the board needs to make a decision on an application.

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WHAT'S A DECISION?

What is a decision in the legal sense of the word? A decision is the result of a motion for final board action which passes by a majority vote of the fully constituted board. Motions proposing a decision should be clearly worded, and if appropriate, include the conditions being placed on an application.

The board can't consider a motion on a decision unless a quorum is present. If there is a quorum, a decision will only be made if a majority of the board members vote in favor of the motion. Town Law section 271, Village Law section 7-718, and General City Law section 27 contain specific provision related to this for planning board actions. General Municipal Law section 239-c has similar provisions relating to actions of a county planning board or regional planning council.

When a vote is taken, how each member voted should be indicated in the record. However, it is not necessary for a member to give the reason why he or she voted a particular way. Decisions should also include the date the action was taken.

A decision is a motion for final board action which passes by a majority vote of all the members of the board.

- Clearly word
- Include any conditions
- Record members' vote
- Include date

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GETTING READY TO MAKE A DECISION

Before voting on an application, a planning board or ZBA member or alternate member should understand the details of the matter being considered. Members who missed public hearings or other meetings at which the application was discussed should familiarize themselves with the record. That means sometime prior to the vote, even if it requires a board recess, the member should review the meeting minutes, public comments, and other pertinent details.

The record contains the facts of the application, including testimony from the public hearing. Sometimes it shows substantial community opposition to an application. Perhaps there were large

crowds at meetings where it was discussed, or the speakers at the public hearing were overwhelmingly against the application. A review of opposition comments should consider whether they are based on general dislike for the project or its developer, or whether opposition is based on failure to comply with land use regulations. Courts have found that general community opposition is not a valid basis for denial of a land use application.

Text:

- Review the record if you missed the hearing or major board discussions
- Consider public testimony
 - fact-based
 - general opposition

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COUNTY REFERRAL

No talk of land use decisions would be complete without some explanation about county referral. A lot can be said about the purposes and procedures relating to referral of certain matters to the county planning agency. I'll focus here on the timing of a local decision as it relates to the recommendations issued by a county planning agency pursuant to General Municipal Law section 239-m or 239-n. If a matter has been referred to the county, the local board which made the referral may not make a decision on the matter until the earlier of the following occurs: either, the local board receives a report from the county planning agency about the matter, or thirty days have passed since the county planning agency's receipt of a full statement of the matter from the local board.

Where a matter was referred, the local board must report its decision on the matter to the county planning agency within 30 days after final action. Where the local board overrides a county recommendation to modify or disapprove a proposed action, the board must include their reasons why in its report.

Text:

- Local decision must wait until board receives county report OR it's been 30 days since county got the referral
- If county says no, or yes with changes, locals need majority +1 vote to approve as is
- Send county copy of decision

Text :

- General Municipal Law 239-m and -n require some local matters to be referred to the county for recommendation

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DECISIONS BY ZONING BOARDS OF APPEALS

Generally, when planning boards, architectural review boards, and governing boards make a decision, the results are clear. A motion is made, it is voted on, and if a majority of members vote in favor of the motion a decision has been made. If the motion fails, a decision has not been made, and to reach a decision new motions must be made and voted on until one passes with a majority vote.

This process is the one followed by zoning boards of appeals when they are operating as a body with original jurisdiction, handling non-appellate applications like special use permits and site plan review. They review the evidence and make a decision.

However, the statutory rules surrounding decisions by zoning boards of appeals are complicated by the dual nature of the ZBA. At times, they operate as an appellate body, hearing applicants for use and area variances and zoning interpretations who have already received a determination from the enforcement officer. When acting as an appellate body, a failed motion to approve a variance request or grant a zoning interpretation in favor of the applicant is considered a denial unless a member follows up with a new motion that passes. It would be comparative to a higher court refusing to overturn a decision of a lower court. In that case, the lower court's decision stands. In the case of a variance or interpretation, the applicant has already received a determination from a municipal officer, which would stand if it is not overturned by the zoning board of appeals.

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DECISION DOCUMENT

If a record tells the story of an application, the decision of the board is the last chapter. That decision is recorded in the minutes of the meeting. According to state statute, land use decisions must be filed within five business days with the clerk. As you can imagine, this puts pressure on the boards to have their minutes prepared right away, forgoing the more leisurely two week period allowed under the Open Meetings Law.

Municipal compliance with the filing time frame is not just a matter of law, it is also good business. For people whose applications are approved, a formal confirmation of that approval may be needed for a bank loan or property closing in the days after the meeting is held. The Department of State suggests the board prepare a document that is available to the applicant shortly after the meeting. For some boards, this is accomplished by a letter sent to an applicant, for other boards a standard "decision document" stating the motion made, any conditions imposed, and the vote of each member proves useful. The course webpage provides a link to an example of a decision document.

Whatever method a board decides to use, the decision needs to be filed in the municipal clerk's office, who will note when the record was received and file it appropriately. The filing of that record of the decision begins a thirty day appeal period for people wishing to challenge the board's decision in what is known as an "Article 78." It is good practice to have legal counsel or professional staffs periodically review board decisions to see if the necessary elements are included, and that they don't appear to contradict the board's findings.

Text:

- Document should contain the motion, any conditions, and vote of each member
- Can be in the form of a letter or just recorded in the minutes
- Must be filed with the town/village/city clerk within 5 business days and sent to applicant

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RECORDKEEPING

We've arrived at the section of the course on recordkeeping. The information in the record serves as a valuable resource for the board, tax assessor, code official, current and prospective landowners, developers, planners, environmentalists, and other members of the public. But like other resources, good records are of little value if you can't locate them.

Who keeps track of all these records? The town clerk and village clerk are automatically designated the records management officer by the Arts and Cultural Affairs Law section 57.19. In a city, the records management officer is designated by city law or charter. The records management officer may be assisted by other local officials. For example, a zoning enforcement official files his or her

decisions in his or her office, unless the governing board designates the filings be made in the clerk's office.

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NUMBERING SYSTEMS

There are lots of ways of filing information about applications, such as by project number in the files of the board that is reviewing it, by the name of the applicant, or by the address of the property. However, the most reliable long-term method includes the use of tax parcel identification numbers. That means all matters relating to the parcel will be readily identifiable, such as a use variance issued in 1972, an area variance in 1983, and a subdivision in 1994. It helps the local assessor track the value of parcel improvements, and helps geographic information system personnel to maintain an accurate database.

Over time, street names change, houses are renumbered, and new parcels are created but tax parcel identification numbers rarely or never change. If a parcel is subdivided, the tax parcel ID is expanded based on the original number. Future researchers will be able to determine that several parcels were once part of a larger parcel just by looking at their tax parcel identification numbers.

Whichever method is used to organize the files, it will be helpful to maintain cross references by tax parcel ID number, applicant name, project name, location of the property, section of local code it involves, and other metrics important to the community.

Text:

- Assign a project number. Ex. Z09-1, Z09-2, P10-1, P10-2 where “z” is for the zoning board and “p” is for the planning board.
- Check with assessor and GIS staff

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RECORDS RETENTION

Many of the items contained in the record must be permanently retained by the municipality. The State Archives has developed several record retention and disposition schedules that apply to local governments. Cities, towns and villages follow the Records Retention and Disposition Schedule MU-1, which indicates the minimum length of time those officials must retain their records before they may be disposed of legally.

A few of the common items are highlighted on the slide, such as, official minutes of the board, project files, and hearing procedures - these must be retained forever. Of note is the recording of voice conversations, such as meetings of the board, and the notes used to prepare the minutes. These recordings and notes must be retained for four months after a written record is made of them or after the minutes or proceedings have been approved. Therefore, boards should have several tapes to make recordings, and not tape over the same tape month-after-month.

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POST-TEST QUESTIONS

True or False?

(1) It is best for board members to keep personal knowledge about property included in an application they are reviewing to themselves.

- (2) Ex parte communication is information you hear from former board members during the public hearing.
- (3) A board needs to take minutes of a meeting if there are any motions made or votes taken at the meeting.
- (4) Public testimony at a hearing must be presented word-for-word in the hearing record.
- (5) It is important for board members reviewing an application to remain neutral until a decision is required.
- (6) Minutes may not be distributed until they have been approved by the board.
- (7) A conclusory statement such as 'The applicant has provided adequate screening' is sufficient for a decision statement and would be a good defense of the board's reasons for granting approval if the decision were challenged.
- (8) Findings are an analysis which applies law to facts, leading to conclusions.
- (9) If a large number of members of the public are opposed to an application, members must vote to deny the application.
- (10) Minutes of a public meeting must be kept indefinitely.

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POST-TEST ANSWERS

- (1) It is best for board members to keep personal knowledge about property included in an application they are reviewing to themselves. False. Information that will be used in making a decision on an application should be made part of the record. A board member should share his or her knowledge about a site with the board.
- (2) Ex parte communication is information you hear from former board members during the public hearing. False. Ex parte communication is communication which occurs between a board member and an applicant, applicant's representative, or member of the public about a pending application outside the context of a public meeting or hearing.
- (3) A board needs to take minutes of a meeting if there are any motions made or votes taken at the meeting. True. Section 106 of the Open Meetings Law requires a board to take minutes of a meeting if there are any motions or proposals made or votes taken.
- (4) Public testimony at a hearing must be presented word-for-word in the hearing record. True. Board members should be careful not to declare a position on a project before all the facts are heard.
- (5) It is important for board members reviewing an application to remain neutral until a decision is required. False. While a stenographic record of a hearing is best, the minutes or record of a hearing don't have to be verbatim.

(6) Minutes may not be distributed until they have been approved by the board. False. The Open Meetings Law requires that minutes of an open meeting be made available within two weeks of the meeting, whether they have been approved or not.

(7) A conclusory statement such as 'The applicant has provided adequate screening' is sufficient for a decision statement and would be a good defense of the board's reasons for granting approval if the decision were challenged. False. A decision based upon conclusory statements, which is not supported by factual information contained in the record, will be struck down.

(8) Findings are an analysis which applies law to facts, leading to conclusions. True. Findings describe the reasons for the denial or approval of an application, and should be able to support why a condition was imposed.

(9) If a large number of members of the public are opposed to an application, members must vote to deny the application. False. Courts have found that general community opposition is not a valid basis for denial of a land use application.

(10) Minutes of a public meeting must be kept indefinitely. True. The records retention schedule for board minutes require that minutes be retained permanently.

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KEEP LEARNING

We've come to the end of the course on making a good record. You are encouraged to continue learning more about land use planning, regulations, and procedures by reading publications and legal memoranda from the Department of State's James A. Coon Technical Series. You can also learn more by attending training sessions conducted by the Department's planners and attorneys, and by taking the Department's other online courses. Our website contains a calendar listing training being offered by the Department of State, other state agencies, and local government and academic organizations.

Our staff is also available to provide technical assistance to local government officials during regular business hours. Our contact information is on the course webpage.