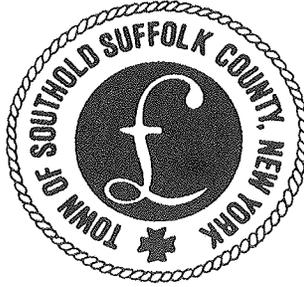


**ELIZABETH A. NEVILLE, MMC
TOWN CLERK**

REGISTRAR OF VITAL STATISTICS
MARRIAGE OFFICER
RECORDS MANAGEMENT OFFICER
FREEDOM OF INFORMATION OFFICER



Town Hall, 53095 Main Road
P.O. Box 1179
Southold, New York 11971
Fax (631) 765-6145
Telephone (631) 765-1800
www.southoldtownny.gov

**OFFICE OF THE TOWN CLERK
TOWN OF SOUTHOLD**

APPLICATION REQUIREMENTS FOR CHANGE OF ZONE

Four (4) complete copies of petition with Town Clerk with original signatures. Each set **MUST** be ordered as follows:

Fee of \$1,000.00 (\$500.00 for AHD)

Written notice to all property owners within 200' of property; mailed within 5 days Preceding filing of petition.

File proof of mailing of notices to adjacent property owners in a sworn statement with Clerk's office and submit all original certified mail postal receipts

NOTICE MUST CONTAIN:

- Statement Of Proposal (as presented in zoning petition)
- Description Of Property
- Present Zone And Proposed Zone
- Petition Will Be Filed Within 5 Days
- Petition Can Be Reviewed In Clerk's Office
- Public Hearing Must Be Held
- Adjacent Owners Right To Be Heard @ Hearing
- 10 Days Before Hearing Notice Published

Meet all requirements for submitting zoning action pursuant to section 239 L & M of General Municipal Law attached hereto

If applicable, file waiver of notice from property owner w/the clerk's office

Written Metes and Bounds Description of Property

All Maps as required on Survey & Map Checklist

Six (6) maps drawn at the 1" = 100' scale in accordance with attached Survey & Map Checklist

Six (6) sketch plan maps at the 1" = 100' scale or the 1" = 20' scale in accordance with attached Survey & Map Checklist

Please contact Southold Town Clerk's Office with any questions for further information.

Chapter 55

PUBLIC HEARINGS, NOTICE OF

§ 55-1. Providing notice of public hearings.

[HISTORY: Adopted by the Town Board of the Town of Southold 12-27-1995 by L.L. No. 25-1995. Amendments noted where applicable.]

§ 55-1. Providing notice of public hearings. [Amended 6-3-2003 by L.L. No. 12-2003]

Whenever the Code calls for a public hearing this section shall apply. Upon determining that an application or petition is complete, the board or commission reviewing the same shall fix a time and place for a public hearing thereon. Notice relating to a public hearing on an application or petition shall be provided as follows:

- A. Town responsibility for publication of notice. The reviewing board or commission shall cause a notice giving the time, date, place and nature of the hearing to be published in the official newspaper within the period prescribed by law.
- B. Applicant or petitioner responsibility for posting and mailing notice. An application or petition, initiated, proposed or requested by an applicant or petitioner, other than a Town board or commission, shall also be subject to additional notice requirements set forth below:
 - (1) The applicant or petitioner is required to erect the sign provided by the Town, which shall be prominently displayed on the premises facing each public or private street which the property involved in the application or petition abuts, giving notice of the application or petition, the nature of the approval sought thereby and the time and place of the public hearing thereon. The sign shall be set back not more than 10 feet from the property line. The sign shall be displayed for a period of not less than seven days immediately preceding the date of the public hearing. The applicant, petitioner or his/her agent shall file an affidavit that s/he has complied with this provision prior to commencement of the public hearing.
 - (2) The applicant or petitioner is required to send notice to the owners of record of every property which abuts and every property which is across from any public or private street from the property included in the application or petition. Such notice shall be made by certified mail, return receipt requested, posted at least seven days prior to the date of the initial public hearing on the application or petition and addressed to the owners at the addresses listed for them on the local assessment roll. The notice shall include description of the street location and area of the subject property, nature of relief or approval involved, and date, time and place of hearing. The applicant, petitioner or agent shall file an affidavit that s/he has complied with this provision prior to commencement of the public hearing.

any appropriate action or proceeding, whether by local process or otherwise, may be instituted or taken to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use or to restrain, correct or abate such violation or to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

ARTICLE XXVIII

Amendments

[Amended 5-30-1975 by L.L. No. 3-1975; 11-15-1983 by L.L. No. 13-1983; 1-8-1985 by L.L. No. 1-1985; 1-10-1989 by L.L. No. 1-1989; 11-13-1990 by L.L. No. 26-1990; 12-27-1995 by L.L. No. 25-1995; 6-3-2003 by L.L. No. 12-2003]

§ 280-157. Procedures.

The Town Board, upon its own motion or by petition, may, from time to time, amend, supplement, change, or modify this chapter, including the Zoning Map, by proceeding in the manner provided in this article. For the purposes of this article, an amendment also includes, but is not necessarily limited to, a supplement, change, or modification.

- A. The Town Board, by resolution adopted at a stated meeting, shall fix the time and place of a public hearing on the proposed amendment and cause notice thereof to be given pursuant to the provisions of the Town Law. At least 10 days' notice of the time and place of such hearing shall be published in the official newspaper.
- B. The Town Board, before publishing notice for a public hearing, shall, in a written request, instruct the Town Planning Board to prepare an official report regarding the proposed amendment, including the Planning Board recommendations.
- C. An amendment initiated, proposed or requested by a petitioner, other than the Town Board or other Town agency, shall also be subject to the additional procedural requirements set forth in subsequent sections of this article.

§ 280-158. Fees for petitions for proposed amendments.

Every petition for an amendment to this chapter or the Zoning Map shall be filed with the Town Clerk and shall be accompanied by a fee for administrative processing as established by a resolution of the Town Board. The fee for a petition for a change of zone to the Affordable Housing District is set forth in § 280-29A. The petitioner shall also be responsible for reasonable and customary professional review fees relating to environmental review of the petition.

§ 280-159. Additional notice requirements relating to petitions for proposed amendments.

- A. In the case of a petition requesting an amendment in zoning district classification or the Zoning Map, in addition to the notice required by law, a written notice containing the following information shall be sent by the petitioner, or his agent, by either certified or registered mail, to every owner of property immediately adjacent thereto. In the event

that any petitioner owns or has any interest in any property immediately adjacent to the property proposed to be changed in zoning district classification, then written notice shall also be given to the owners of the property adjacent to such other property of the petitioner. For the purpose of this section, the words "owner" or "property owner" mean the owner as shown on the current Southold Town assessment roll. The notice required by this section shall be mailed by the petitioner, or his/her agent, within five days preceding the filing of the petition in the Town Clerk's office. Proof of mailing of such notice in the form of a statement sworn to by petitioner or his/her agent shall be filed with the Town Clerk at the time of filing the petition. Such notice shall contain the following information:

- (1) A statement that the petitioner proposes to file a petition with the Southold Town Clerk requesting a change of zone classification.
 - (2) A description of the street location and the area of the property which is the subject of such petition.
 - (3) The present zone district classification of the property and the proposed zone district classification.
 - (4) A statement that within five days of the notice the petition requesting such change in zone district classification will be filed in the Southold Town Clerk's office, Main Road, Southold, New York, and may then be examined during regular office hours.
 - (5) A statement that a public hearing with respect to such petition must be held by the Southold Town Board before such change of zone can become effective; that the person to whom the notice is addressed, or his representative, has the right to appear and be heard at such hearing; and that a notice of such hearing will be published in the official Town newspaper not less than 10 days prior to such public hearing.
- B. In lieu of complying with the provisions of this section, written verified waivers of notice executed by the persons entitled to receive such notice may be filed with the Town Clerk at the time of filing the petition.
- C. Failure to comply with the provisions of this section shall not affect the validity of any action with respect to such petition.
- D. In addition to the above notice requirement, prior to holding a public hearing on the petition, notice shall be provided pursuant to Chapter 55, Notice of Public Hearings.

Library References

American Digest System

Zoning and Planning ⇐353.

WL WESTLAW Topic No. 414.

C.J.S. Zoning and Land Planning § 10:178-179, 183.

WESTLAW Research

In a caselaw database, run TO(414) or 414k[add key number] to retrieve cases related to Zoning and Planning.

[§§ 239-j, 239-k. Repealed. L.1998, c. 451, § 2, eff. July 1, 1998].

Historical and Statutory Notes

Section 239-j, relating to permits for buildings in rights-of-way or sites pre-served by the official map, was added by L.1958, c. 740, § 1 and amended by L.1968, c. 961, § 1. See, now, General Municipal Law § 239-e.

Section 239-k, relating to regulations for control of development, was added by L.1958, c. 740, § 1 and amended by L.1968, c. 961, § 1 and L.1980, c. 371, § 1. See, now, General Municipal Law § 239-f.

§ 239-l. Coordination of certain municipal zoning and planning actions; legislative intent and policy

1. Definitions. For the purposes of this section and sections two hundred thirty-nine-m and two hundred thirty-nine-n of this article, the following terms shall apply:

(a) "County planning agency" means a county planning board, commission or other agency authorized by the county legislative body to review proposed actions referenced for inter-community or county-wide considerations subject to the provisions of this section, and sections two hundred thirty-nine-m and two hundred thirty-nine-n of this article.

(b) "Regional planning council" means a regional planning board or agency established pursuant to the provisions of this chapter.

2. Intent. The purposes of this section, sections two hundred thirty-nine-m and two hundred thirty-nine-n of this article shall be to bring pertinent inter-community and county-wide planning, zoning, site plan and subdivision considerations to the attention of neighboring municipalities and agencies having jurisdiction. Such review may include inter-community and county-wide considerations in respect to the following:

(a) compatibility of various land uses with one another;

(b) traffic generating characteristics of various land uses in relation to the effect of such traffic on other land uses and to the adequacy of existing and proposed thoroughfare facilities;

(c) impact of proposed land uses on existing and proposed county or state institutional or other uses;

(d) protection of community character as regards predominant land uses, population density, and the relation between residential and nonresidential areas;

(e) drainage;

(f) community facilities;

(g) official municipal and county development policies, as may be expressed through comprehensive plans, capital programs or regulatory measures; and

(h) such other matters as may relate to the public convenience, to governmental efficiency, and to the achieving and maintaining of a satisfactory community environment.

3. Review considerations. In no way shall the review of inter-community and county-wide considerations pursuant to the provisions of this section, or pursuant to sections two hundred thirty-nine-m and two hundred thirty-nine-n of this article, preclude a county planning agency or a regional planning council from making informal comments, or supplying such technical assistance as may be requested by a municipality.

(Added L.1997, c. 459, § 1, eff. July 1, 1998.)

Historical and Statutory Notes

L.1997, c. 459 legislation

L.1997, c. 459, § 4 provides:

"This act shall take effect on the same date as a chapter of the laws of 1997 [L.1997, c. 451, eff. July 1, 1998], amending the general municipal law relating to county planning boards and regional planning councils and to repeal certain provisions of such law relating to metropolitan, regional and county planning boards and to amend the general city law, the town law and the village law relating to the recording of subdivision plats, as proposed in Legislative Bill numbers S. 780-A - A. 1478-A, takes effect."

Derivation

General Municipal Law § 239-l. Added L.1960, c. 1041, § 1; amended L.1961, c. 835, § 1; L.1968, c. 962, § 1.

Former Sections

A former § 239-l, relating to legislative policy and intent as to coordination of certain municipal zoning and planning actions, was added by L.1960, c. 1041, § 1; amended by L.1961, c. 835, § 1 and L.1968, c. 962, § 1 and repealed by L.1997, c. 459, § 1, eff. July 1, 1998. See, now, this section.

Another former § 239-l, relating to intergovernmental relations councils, was renumbered General Municipal Law § 239-n by L.1961, c. 728, § 1.

Legislative Histories

L.1997, c. 459: For Legislative, Executive or Judicial memorandum relating to this law, see the Table of Contents in McKinney's 1997 Session Laws of New York.

American Law Reports

- Standing of municipal corporation or other governmental body to attack zoning of land lying outside its borders. 49 ALR3d 1126.
- Validity and construction of zoning ordinance requiring developer to devote specified part of development to low and moderate income housing. 62 ALR3d 880.
- Validity of zoning ordinance deferring residential development until establishment of public services in area. 63 ALR3d 1184.

Library References

- American Digest System
Zoning and Planning 353.
- Encyclopedias
C.J.S. Zoning and Land Planning §§ 10, 178, 179, 183.
- Texts and Treatises
12 NY Jur 2d, Buildings, Zoning, and Land § 54, 111.
Anderson, New York Zoning Law and Practice (3d Ed). Ch. 11-16. Zoning for Particular Uses.
- WESTLAW Research
In a caselaw database, run TO(414) or 414k[add key number] to retrieve cases related to Zoning and Planning.

Notes of Decisions

Due process 1
Review considerations, generally 2

1. Due process

Where county charter provided for appeal to county planning board from decisions by planning director relating to land use within one mile of airport, city whose application to construct replacement swimming pool in park located

within one mile of airport was not deprived of due process. City of Rochester v. Monroe County, 1974, 81 Misc.2d 462, 364 N.Y.S.2d 678.

2. Review considerations, generally

There was no want of proper standards or criteria set up by this section for decisions by Monroe County Planning Council. McEvoy Dodge West Ridge, Inc. v. Zoning Bd. of Appeals of Town of Greece, 1972, 69 Misc.2d 55, 329 N.Y.S.2d 171.

§ 239-m. Referral of certain proposed city, town and village planning and zoning actions to the county planning agency or regional planning council; report thereon; final action.

1. Definitions. As used herein:

(a) The term "proposed" as used in subparagraphs (ii) and (iii) of paragraph (b) of subdivision three of this section shall be deemed to include only those recreation areas, parkways, thruways, expressways, roads or highways which are shown on a county comprehensive plan adopted pursuant to section two hundred thirty-nine-d of this article or adopted on an official map pursuant to section two hundred thirty-nine-e of this article.

(b) The term "referring body" shall mean the city, town or village body responsible for final action on proposed actions subject to this section.

(c) The term "full statement of such proposed action" shall mean all materials required by and submitted to the referring body as an application on a proposed action, including a completed environmental assessment form and all other materials required by such referring body in order to make its determination of significance pursuant to the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations. When the proposed action referred is the adoption or amendment of a zoning ordinance or local law, "full statement of such proposed action" shall also include the complete text of the proposed ordinance or local law as well as all existing provisions to be affected thereby, if any, if not already in the possession of the county planning agency or regional planning council. Notwithstanding the foregoing provisions of this paragraph, any referring body may agree with the county planning agency or regional planning council as to what shall constitute a "full statement" for any or all of those proposed actions which said referring body is authorized to act upon.

(d) The term "receipt" shall mean delivery of a full statement of such proposed action, as defined in this section, in accordance with the rules and regulations of the county planning agency or regional planning council with respect to person, place and period of time for submission. In no event shall such rule or regulation define delivery so as to require in hand delivery or delivery more than twelve calendar days prior to the county planning agency's or regional planning council's meeting date. In the absence of any such rules or regulations, "receipt" shall mean delivery in hand or by mail to the clerk of the county planning agency or regional planning council. Where delivery is made in hand, the date of receipt shall be the date of delivery. Where delivery is made by mail, the date as postmarked shall be the date of delivery. The provisions of this section shall not preclude the rules and regulations of the county planning agency or regional planning council from providing that the delivery may be a period greater than twelve days provided the referring body and the county planning agency or regional planning council agree in writing to such longer period.

2. Referral of proposed planning and zoning actions. In any city, town or village which is located in a county which has a county planning agency, or, in the absence of a county planning agency, which is located within the jurisdiction of a regional planning council duly created pursuant to the provisions of law, each referring body

shall, before taking final action on proposed actions included in subdivision three of this section, refer the same to such county planning agency or regional planning council.

3. Proposed actions subject to referral. (a) The following proposed actions shall be subject to the referral requirements of this section, if they apply to real property set forth in paragraph (b) of this subdivision:

- (i) adoption or amendment of a comprehensive plan pursuant to section two hundred seventy-two-a of the town law, section 7-722 of the village law or section twenty-eight-a of the general city law;
- (ii) adoption or amendment of a zoning ordinance or local law;
- (iii) issuance of special use permits;
- (iv) approval of site plans;
- (v) granting of use or area variances;
- (vi) other authorizations which a referring body may issue under the provisions of any zoning ordinance or local law.

(b) The proposed actions set forth in paragraph (a) of this subdivision shall be subject to the referral requirements of this section if they apply to real property within five hundred feet of the following:

- (i) the boundary of any city, village or town; or
- (ii) the boundary of any existing or proposed county or state park or any other recreation area; or
- (iii) the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or
- (iv) the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines; or
- (v) the existing or proposed boundary of any county or state owned land on which a public building or institution is situated; or
- (vi) the boundary of a farm operation located in an agricultural district, as defined by article twenty-five-AA of the agriculture and markets law, except this subparagraph shall not apply to the granting of area variances.

(c) The county planning agency or regional planning council may enter into an agreement with the referring body or other duly authorized body of a city, town or village to provide that certain proposed actions set forth in this subdivision are of local, rather than inter-community or county-wide concern, and are not subject to referral under this section.

4. County planning agency or regional planning council review of proposed actions; recommendation, report. (a) The county planning agency or regional planning council shall review any proposed action referred for inter-community or county-wide considerations, including but not limited to those considerations identified in section two hundred thirty-nine-l of this article. Such county planning agency or regional planning council shall recommend approval, modification, or disapproval, of the proposed action, or report that the proposed action has no significant county-wide or inter-community impact.

(b) Such county planning agency or regional planning council, or an authorized agent of said agency or council, shall have thirty days after receipt of a full statement of such proposed action, or such longer period as may have been agreed upon by the county planning agency or regional planning council and the referring body, to report its recommendations to the referring body, accompanied by a statement of the reasons for such recommendations. If such county planning agency or regional planning council fails to report within such period, the referring body may take final action on the proposed action without such report. However, any county planning agency or regional planning council report received after thirty days or such longer period as may have been agreed upon, but two or more days prior to final action by the referring body, shall be subject to the provisions of subdivision five of this section.

5. Extraordinary vote upon recommendation of modification or disapproval. If such county planning agency or regional planning council recommends modification or disapproval of a proposed action, the referring body shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof.

6. Report of final action. Within thirty days after final action, the referring body shall file a report of the final action it has taken with the county planning agency or regional planning council. A referring body which acts contrary to a recommendation of modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report.

(Added L.1993, c. 544, § 1; amended L.1994, c. 486, §§ 3, 4; L.1995, c. 418, § 11; L.1996, c. 235, § 20; L.1997, c. 451, § 3, eff. July 1, 1998; L.1997, c. 459, § 2, eff. July 1, 1998.)

Historical and Statutory Notes

L.1997, c. 459 legislation

L.1997, c. 459, § 4 provides:

"This act shall take effect on the same date as a chapter of the laws of 1997 [L.1997, c. 451, eff. July 1, 1998], amending the general municipal law relating to county planning boards and regional planning councils and to repeal certain provisions of such law relating to metropolitan, regional and county planning boards and to amend the general city law, the town law and the village law relating to the recording of subdivision plats, as proposed in Legislative Bill numbers S. 780-A - A. 1478-A, takes effect."

Derivation

General Municipal Law § 239-m. Added L.1960, c. 1041, § 1; amended

L.1969, c. 835, § 2; L.1967, c. 296, § 1; L.1968, c. 962, § 1; L.1969, c. 1068, § 1; L.1983, c. 324, § 1; L.1984, c. 814, § 1; L.1991, c. 413, § 57; L.1992, c. 534, § 7; and repealed; L.1993, c. 544, § 1.

Former Sections

A former § 239-m, requiring notice of certain proposed municipal zoning actions to be submitted to planning agencies, was added by L.1960, c. 1041, § 1, amended by L.1969, c. 835, § 2; L.1967, c. 296, § 1; L.1968, c. 962, § 1; L.1969, c. 1068, § 1; L.1983, c. 324, § 1; L.1984, c. 814, § 1; L.1991, c. 413, § 57; L.1992, c. 534, § 7 and repealed by L.1993, c. 544, § 1. See, now, this section.

Legislative Histories

L.1997, c. 451: For Legislative, Executive or Judicial memorandum relating to this law, see the Table of Contents in McKinney's 1997 Session Laws of New York.

L.1997, c. 459: For Legislative, Executive or Judicial memorandum relating to this law, see the Table of Contents in McKinney's 1997 Session Laws of New York.

West's McKinney's Forms

The following forms appear in Local Government Laws under General Municipal Law § 239-m:

Order to show cause for preliminary injunction and temporary restraining order in action to declare zoning ordinance amendment invalid where county planning board failed to approve proposal, see LG, GEN MUN § 239-m, Form 1.

Affidavit in support of motion for preliminary injunction and temporary restraining order in action to declare zoning ordinance amendment invalid where county planning board failed to approve proposal, see LG, GEN MUN § 239-m, Form 2.

Complaint in action to declare zoning ordinance amendment invalid where county planning board failed to approve proposal, see LG, GEN MUN § 239-m, Form 3.

Judgment declaring zoning ordinance amendment invalid where county planning board failed to approve proposal, see LG, GEN MUN § 239-m, Form 4.

American Law Reports

Zoning: construction and effect of statute requiring that zoning application be treated as approved if not acted on within specified period of time. 66 ALR4th 1012.

Library References

American Digest System
Zoning and Planning 353.

Encyclopedias

C.J.S.: Zoning and Land Planning §§ 10, 178, 179, 183.

Texts and Treatises

42 NY Jur 2d, Buildings, Zoning, and Land §§ 48, 54, 111, 117, 125, 323, 327.
43 NY Jur 2d, Declaratory Judgments and Agreed Case § 55.

WESTLAW Research

In a caselaw database, run TO(414), or 414k[add key number] to retrieve cases related to Zoning and Planning.

Notes of Decisions

- Arbitrary and capricious determinations, recommendations 13
- Construction with other laws 1
- Disapproval or modification, recommendations 12
- Highways 7
- Modification of application, recommendations 12
- Necessity of referral, generally 2
- Overriding of recommendation 16, 17
 - In general 16
 - Reasons 17
- Parks or recreation areas 6
- Presumption of approval, recommendations 11
- Reasons, overriding of recommendation 17
- Recommendations 10-13
 - In general 10
 - Arbitrary and capricious determinations 13
 - Disapproval or modification 12
 - Presumption of approval 11
- Referral necessity 2
- Report by planning agency 14, 15
 - In general 14
 - Time of report 15
- Review 18
- Roads and highways 7
- Site plan approval 4
- Statement of proposed action 8
- Time of referral 9
- Time of report, report by planning agency 15
- Use or area variances 5
- Zoning regulations 3

this section may be superseded by subsequent charter amendment and such amendment authorized Suffolk County planning commission to disapprove and in effect veto change. *Town of Smithtown v. Howell*, 1972, 31 N.Y.2d 365, 339 N.Y.S.2d 949, 292 N.E.2d 10.

Section of the Westchester County Administrative Code providing that town board may act contrary to recommendation of county planning board by simple majority vote as long as the action is accompanied by a resolution of the board, which was a special statute enacted subsequent to this section requiring vote of majority plus one in order for town board to act contrary to recommendations of county planning board, was controlling over this section. *208 East 30th Street Corp. v. Town of North Salem* (2 Dept. 1982) 88 A.D.2d 281, 452 N.Y.S.2d 902.

Westchester County Administrative Code, L.1948, c. 852, § 451 dealing with zoning amendments is a special law not affected by subsequent amendments to this section dealing with zoning amendments. *Bloom v. Town Bd. of Town of Yorktown* (2 Dept. 1981) 80 A.D.2d 823, 436 N.Y.S.2d 355.

Westchester County Administrative Code, L.1948, c. 852, § 451 dealing with amendments to zoning plan and this section of General Municipal Law dealing with amendments and the role of the county planning board are in conflict and the Administrative Code, as a special law, is controlling. *Bloom v. Town Bd. of Town of Yorktown* (2 Dept. 1981) 80 A.D.2d 823, 436 N.Y.S.2d 355.

1. Construction with other laws

Procedure for county commission review of town zoning changes set forth in

Compliance with this section relating to the submission of notice to a county, metropolitan or regional planning agency of certain proposed municipal zoning actions supersedes county charter provisions. *Town of Smithtown v. Howell* (2 Dept. 1972) 38 A.D.2d 857, 330 N.Y.S.2d 164, affirmed 31 N.Y.2d 365, 339 N.Y.S.2d 949, 292 N.E.2d 10.

Specific provision of Westchester County Administrative Code requiring an overriding of county planning board in a zoning matter by a mere adoption of "a resolution of such (municipal) agency, which action shall be subject to judicial review" is inconsistent with and, hence, takes precedence over more general provision of this section requiring an overriding of board by "the adoption of a resolution fully setting forth the reason for such contrary action." *Bloom v. Town Bd. of Town of Yorktown*, 1980, 102 Misc.2d 938, 424 N.Y.S.2d 983, modified on other grounds 80 A.D.2d 823, 436 N.Y.S.2d 355.

This section supersedes Administrative Code of the County of Westchester § 451 regarding the number of votes required by a local planning board to overrule a disapproval or recommendation of the Westchester County Planning Board on matters pertaining to zoning referred to it. 1973, Op. Atty. Gen. (Inf.) Dec. 14.

An ordinance of a city may not supersede this section. 1970, Op. Atty. Gen. (Inf.) 123.

1968 amendment of this section in the interest of uniformity and coordination of zoning and planning actions among the municipalities of the State supersedes a special act of the Legislature relating to zoning changes in Nassau County. 24 Op. State Compt. 884, 1968.

2. Necessity of referral, generally

In property owners' proceeding to challenge town's rezoning of adjoining property, record did not support owners' contentions that town board failed to take the requisite "hard look" at potential environmental impacts of the rezoning and that town board failed to follow certain statutory procedures in enacting pertinent amendment to zoning code and local law. *Duke & Benedict, Inc. v. Town of Southeast* (2 Dept. 1998) — A.D.2d —, 678 N.Y.S.2d 343.

Severability clause found in law effecting change in town zoning regulation did not provide basis for invalidating portions of law for noncompliance with statutory requirement that it be referred to county planning commission for a view, given fact that entire law was enacted without jurisdiction. *Burchetta Town Bd. of Town of Carmel* (2 Dept. 1990) 167 A.D.2d 339, 561 N.Y.S.2d 30.

Annulment of decision of town zoning board of appeals was not required because of failure of board to obtain preliminary recommendation from county planning board, since determinations relating solely to a specific violation claimed have been taking place and there was showing that location of the property made that requirement applicable. *Frampton v. Zoning Bd. of Appeals of Town of Lloyd, Ulster County* (3 Dept. 1985) 114 A.D.2d 670, 494 N.Y.S.2d 47.

In property owner's petition challenging validity of zoning board of appeal amendment and renewal of special use permit to mine gravel and soil, proper owners failed to establish which site object was within 500 feet from subject realty so as to require that application for amendment and renewal of permit be given to county planning department. *Clark v. Sheridan* (2 Dept. 1984) 9 A.D.2d 211, 472 N.Y.S.2d 410.

Evidence did not permit a finding as to whether town referred zoning ordinance to county planning commission in accordance with this section governing notice requirements between town and county. *Town of Lima v. Robert Slocum Enterprises, Inc.* (4 Dept. 1972) 38 A.D.2d 50, 331 N.Y.S.2d 51.

Failure to comply with referral requirements of statute governing proposed planning and zoning actions is jurisdictional defect which renders any such enactment invalid. *Caruso v. Town of Oyster Bay*, 1997, 172 Misc.2d 93, 65 N.Y.S.2d 809, affirmed as modified 67 N.Y.S.2d 418.

Legislative mandate imposed upon municipal bodies to refer specified zoning matters to county planning agency prior to taking final action on such matters is jurisdictional; referral to planning agency is condition precedent to final action by municipality on zoning matters speci-

ficd. *Leisure Time Sales, Inc. v. Waring*, 1977, 91 Misc.2d 633, 398 N.Y.S.2d 493.

Legislative mandate imposed on municipal bodies that they, before taking final action on zoning regulations, refer same to county planning agency, is a condition precedent to "final action" by municipalities on zoning proposal following which municipality may, if planning agency fails to act within applicable time period or approves proposal, adopt proposal by bare majority vote, or if planning agency disapproves proposal, adopt proposal by vote of majority plus one. *Schaus v. Town Bd. of Town of Clifton Park, Saratoga County*, 1975, 83 Misc.2d 726, 372 N.Y.S.2d 952.

The provisions of this section, requiring a town board of zoning appeals to refer an application for a variance affecting real property located within 500 feet of certain boundaries to the county planning agency, are mandatory and failure to do so is jurisdictional, and any action by such board without such referral is nugatory, even though the vote thereon is unanimous. 1967, Op. Atty. Gen. (Inf.) 127.

Under this section an amendment to a zoning ordinance, providing that the right to establish a gasoline station must be conditioned on the issuance of a special permit of the common council of the city of Utica, does not dispense with the requirement that such proposed permit shall first be referred to the county planning agency, if such gasoline station is to be located within 500 feet of certain boundaries. 1967, Op. Atty. Gen. (Inf.) 119.

3. Zoning regulations

Town's passage of local law prohibiting operation of commercial incinerator within town was valid exercise of its police power and was not required to comply with General Municipal Law provision requiring certain zoning laws to be referred to county planning commission for review. *Pete Drown Inc. v. Town Bd. of Town of Ellenburg* (3 Dept. 1992) 188 A.D.2d 850, 591 N.Y.S.2d 584.

County planning commission's recommendation and findings were properly rendered and taken under advisement by town board in determining application for change of zone, where proposed zone

change would affect property located within 500 feet of state road. *Donovan v. Town Bd. of Town of Oyster Bay* (2 Dept. 1988) 137 A.D.2d 652, 524 N.Y.S.2d 744, appeal denied 72 N.Y.2d 804, 532 N.Y.S.2d 369, 528 N.E.2d 521.

Moratorium on issuance of building permits or construction approvals for one-year period was form of zoning, and thus zoning procedures were required to be followed prior to its enactment. *B & L Development Corp. v. Town of Greenfield*, 1990, 146 Misc.2d 638, 551 N.Y.S.2d 734.

Town sign ordinance was improperly adopted since proposed law was not reviewed by county planning commission as required by this section relating to review of municipal zoning regulations. *Friendly Hillside Motel, Inc. v. Town of Brunswick*, 1973, 74 Misc.2d 1001, 347 N.Y.S.2d 112.

This section applies to original zoning ordinances as well as to amendments thereto. 1970, Op. Atty. Gen. (Inf.) 50.

Notice of all proposed zoning changes in matters enumerated in this section must be given to existing county, metropolitan or regional planning agencies. 1965, Op. Atty. Gen. (Inf.) 121.

4. Site plan approval

It was incumbent upon town planning board to refer site plan to county planning commission before it took final action to approve it; failure to comply with that mandate, which was jurisdictional in nature, resulted in the approval being of no effect. *Old Dock Associates v. Sullivan* (2 Dept. 1989) 150 A.D.2d 695, 541 N.Y.S.2d 569.

When city, town, and village planning boards are empowered to review site plans, such site plans are not reviewable by county planning agencies under this section, even though such site plans are located within the distance provided by such section. 1977, Op. Atty. Gen. (Inf.) 200.

5. Use or area variances

Monroe County Planning Council properly took jurisdiction of application for approval of business signs; whether application was one for special permit or for variance. *McEvoy Dodge West Ridge,*

Inc. v. Zoning Bd. of Appeals of Town of Greece, 1972, 69 Misc.2d 55, 329 N.Y.S.2d 171.

A town zoning board of appeals shall defer taking final action on an area variance until after referral to a county, metropolitan or regional planning agency. 1978, Op. Atty. Gen. (Inf.) Jan. 19.

A county planning board may review an application for a variance requested pursuant to Town Law § 280-a. 24 Op. State Compt. 664, 1968.

6. Parks or recreation areas

In view of fact that section of General Municipal Law providing that certain proposed zoning actions be submitted to county, metropolitan or regional agency prior to taking final action did not define "state park or other recreation area" and was ambiguous as to whether it encompassed state-owned land within a forest preserve; ambiguity would be resolved in favor of property owner and therefore location of land in State forest preserve did not trigger application of the statute to proceeding seeking authorization to construct television transmission tower in a residence-agriculture zone. Friends of Woodstock, Inc. v. Town of Woodstock Planning Bd. (3 Dept. 1989) 152 A.D.2d 876, 543 N.Y.S.2d 1007.

A county planning board is required to review zoning regulations which affect land within 500 feet of state-owned land within the Catskill Park. 23 Op. State Compt. 558, 1967.

7. Roads and highways

If property for which special permit was sought was situated within 500 feet of state highway, zoning board of appeals should refer application to regional planning board for its report and recommendations. Asma v. Curcione (4 Dept. 1969) 31 A.D.2d 883, 298 N.Y.S.2d 286.

City streets, designated as "touring routes" are not state highways within the meaning of this section. Op. State Compt. 74-317.

It is not necessary that all zone changes involving real property lying within a distance of five hundred feet from a county highway be referred to the county planning board. 17 Op. State Compt. 75, 1961.

8. Statement of proposed action

Referrals to county board and to county planning board of proposed amendments to town zoning ordinance, indicating that town intended to repeal those provisions which authorize mining as permitted use throughout town and to enact new provision which authorized mining as specially permitted use only in those areas where it was currently conducted, adequately informed boards of contemplated action to permit their review and recommendation and to satisfy statutory referral requirements; though as result of town's decision to enact only the repealer provisions, mining was conducted as nonconforming rather than as specially permitted use at existing mining sites; difference between amendments as proposed and as enacted related only to legal status of use of currently operating mining sites and was of little relevance to county board or to town planning board. Gernatt Asphalt Products, Inc. v. Town of Sardinia, 1996, 87 N.Y.2d 668, 642 N.Y.S.2d 164, 664 N.E.2d 1226.

Applicable statutes contemplate that county or regional board review and make recommendations on site plan application in substantially the same form and content which is before municipal agency for final action, and thus, though municipal agency should not be obligated to make multiple references on application each time a revision is made, county or regional board should have opportunity to review and make recommendations on new and revised plans which are substantially different from the original proposal. Ferrari v. Town of Penfield Planning Bd. (4 Dept. 1992) 181 A.D.2d 149, 585 N.Y.S.2d 925.

9. Time of referral

Failure to refer application for special permit to erect garden-type apartment residences to county planning board prior to submission of the matter to city planning board was not ground for denial of the application; all that was required was reference to the county planning board prior to action by the zoning board of appeals. Shepard v. Zoning Bd. of Appeals of City of Johnstown, 1982, 113 Misc.2d 413, 448 N.Y.S.2d 1011, affirmed 92 A.D.2d 993, 461 N.Y.S.2d 479.

10. Recommendations—In general

Monroe County Planning Council is merely advisory board, though law in effect to coordinate and improve county-wide planning has changed common-law voting rule in order to make it more difficult for municipality to disregard recommendations of planning council. McEvoy Dodge West Ridge, Inc. v. Zoning Bd. of Appeals of Town of Greece, 1972, 69 Misc.2d 55, 329 N.Y.S.2d 171.

11. Presumption of approval; recommendations

Absent valid disapproval by county planning commission within specified time limit, town zoning change was deemed approved. Town of Smithtown v. Howell, 1972, 31 N.Y.2d 365, 339 N.Y.S.2d 949, 292 N.E.2d 10.

12. Disapproval or modification, recommendations

County planning commission disapproval of town zoning change was ineffective for lack of two-thirds majority of entire commission where commission was to be composed of 15 members, there were two vacancies, and eight of nine members present at meeting voted; ten votes were necessary to two-thirds majority. Town of Smithtown v. Howell, 1972, 31 N.Y.2d 365, 339 N.Y.S.2d 949, 292 N.E.2d 10.

Town planning board acted rationally, not on basis of conjecture, when it denied application for specific permit to operate dog kennel on owners' property; right-of-way proposed as access from kennel to county road did not meet applicable sight distance requirements for intersecting road, justifying no additional usage of right-of-way until speed limit was lowered on county road. Beck v. Gravellding (4 Dept. 1998) 247 A.D.2d 831, 669 N.Y.S.2d 108, leave to appeal denied.

Application for final subdivision plat approval was properly treated as having been turned down by seven-member town planning board, even though four members of board voted in favor of approval, one member voted against, one member abstained, and one member was not present; concurrence of four of seven board members made resolution valid action of board, and failure of board to muster five votes in favor as required by General

Municipal Law constituted disapproval of application. Aloya v. Planning Bd. of the Town of Stony Point (2 Dept. 1996) 230 A.D.2d 790, 646 N.Y.S.2d 375.

Where it had been resolved by village that land "hereby is rezoned", characterization by village of its resolution as one made prior to taking final action was erroneous, and hence County Planning Commission properly deemed resolution to be one filed under Nassau County charter, and disapproval having been registered by vote in excess of required two-thirds, subsequent supplemental hearing when Commission decided to adhere to determination was effective notwithstanding only three commissioners voted for such subsequent resolution of adherence. Incorporated Village of Farmingdale v. Inglis (2 Dept. 1962) 17 A.D.2d 655, 230 N.Y.S.2d 863.

Action of town's principal planner in disapproving the rezoning of tract was not equivalent to the planning board's disapproval of application which would require a town board vote of a majority plus one to override, since power to pass on zoning applications was vested solely in board which must act as a board. Weinberg v. Town of Clarkstown, 1973, 78 Misc.2d 464, 357 N.Y.S.2d 332.

Business owner who had been afforded proper hearing with due notice and opportunity to present all of his evidence to local zoning board with respect to its application for approval of business signs was not deprived of any of his constitutional procedural safeguards by this section creating Monroe County Planning Council whose adverse decision was binding in absence of affirmative vote of majority plus one of zoning board members. McEvoy Dodge West Ridge, Inc. v. Zoning Bd. of Appeals of Town of Greece, 1972, 69 Misc.2d 55, 329 N.Y.S.2d 171.

13. Arbitrary and capricious determinations, recommendations

Fact that city's application for construction of replacement of swimming pool on land located within one mile of airport was denied by county planning director and planning board while applications made by others were granted did not establish that denial was arbitrary and capricious where facts warranted finding that decision was made reason-

ably. City of Rochester v. Monroe County, 1974, 81 Misc.2d 462, 364 N.Y.S.2d 678.

14. Report by planning agency—In general

Both recommendations of regional planning board with respect to proposed change of zoning and statement of reasons therefor must be transmitted to the referring municipal agency in written form, and where county planning board rejected application for rezoning by written summary report but failed to put statement of reasons in writing the disapproval was not effective and did not activate provision that to override planning board's recommendation a majority plus one vote of the local agency is required. Voelckers v. Guelli, 1983, 58 N.Y.2d 170, 460 N.Y.S.2d 8, 446 N.E.2d 764.

Zoning board of appeals' original vote on grant of use variance to electric utility was a nullity, where utility had been deprived of an opportunity to appear at that proceeding, and where board lacked jurisdiction to determine the matter until it had received recommendation and statement of reasons from county planning board or 30 days had passed without response from that body. Zagoreos v. Conklin (2 Dept. 1985) 109 A.D.2d 281, 491 N.Y.S.2d 358.

Town board's failure to wait for 30 days to receive report from county planning commission, as required by applicable zoning statute, before taking final action on proposed local law establishing moratorium on issuance of new building permits rendered moratorium invalid as jurisdictionally defective, absent any indication that moratorium was established pursuant to exercise of town's police power. Caruso v. Town of Oyster Bay, 1997, 172 Misc.2d 93, 656 N.Y.S.2d 809, affirmed as modified 672 N.Y.S.2d 418.

Where report of county planning agency with respect to application for zoning variance referred to it by municipal zoning board of appeals was made on printed form and did not, on its face, indicate decision disapproving proposal or one approving same with modification, bare majority vote by municipal zoning board of appeals was sufficient to authorize granting of variance. Leisure Time

Sales, Inc. v. Waring, 1977, 91 Misc.2d 633, 398 N.Y.S.2d 493.

15. — Time of report, report by planning agency

Town board's approval of rezoning resolution by simple majority vote did not violate General Municipal Law provision precluding municipal agency from acting contrary to planning agency's recommendation except by vote of majority plus one of its members if agency disapproves proposal or recommends modification, where planning agency had reported disapproval of landowner's proposal more than 30 days after referral, and board gave sufficient consideration to reasonable alternatives to landowner's proposal. Committee to Preserve Character of Skaneateles v. Major (4 Dept. 1992) 187 A.D.2d 940, 591 N.Y.S.2d 648, leave to appeal denied 82 N.Y.2d 652, 601 N.Y.S.2d 582, 619 N.E.2d 660.

In view of this section providing that if county planning board failed to report within 30 days "or such longer period as may have been agreed upon by it and the referring agency," city planning board could act without such report, granting of extension of time to county planning department was a discretionary function, as opposed to a mere ministerial act, so that any agreement to extension of time for filing of report by county planning board could only have been made by county planning department and city planning board, and actions of employees of city planning department and county planning department in extending 30-day limitation were not binding upon city planning board. Vanderveer v. Vanrouwendaal, 1977, 89 Misc.2d 604, 392 N.Y.S.2d 216.

16. Overriding of recommendation—In general

Where town board overrode county planning commission's disapproval of change in zoning of property situated within 300 feet of town boundary, change of zone became final and binding and planning commission thereafter had neither right nor power to veto change. We're Associates Co. v. Bear (2 Dept. 1970) 35 A.D.2d 846, 317 N.Y.S.2d 59, affirmed 28 N.Y.2d 981, 323 N.Y.S.2d 838, 272 N.E.2d 338.

Where county planning agency approves zoning matter referred to it by municipal zoning body, or fails to act within applicable time period, bare majority vote by municipal body is sufficient to take final action on proposal without report by planning agency; it is only when planning agency disapproves proposal or recommends modification thereof that this section requires vote of majority plus one of municipal body in order to take final action contrary to planning agency report. Leisure Time Sales, Inc. v. Waring, 1977, 91 Misc.2d 633, 398 N.Y.S.2d 493.

Where actions of employees of city planning department and county planning department in extending 30-day limitation for filing of report by county planning department were not binding upon city planning board and where city planning board repudiated late filing of such report, city planning board's simple majority vote was sufficient to override report of county planning department which disapproved of developer's request for special permit to build apartment house. Vanderveer v. Vanrouwendaal, 1977, 89 Misc.2d 604, 392 N.Y.S.2d 216.

Term "county planning agency," within this section providing that each municipal body having jurisdiction to issue special building permits shall before taking final action refer them to county planning agency and, if planning agency disapproves proposal or recommends modification thereof, municipal body having jurisdiction shall not act contrary to such disapproval of recommendation except by a vote of a majority plus one of all the members, included commissioner of county department of planning, and once commissioner recommended disapproval of permit, city planning board should not have acted contrary to disapproval without a vote of a majority plus one of all members of board. Vanderveer v. Van Rouwendaal, 1973, 75 Misc.2d 593, 348 N.Y.S.2d 55.

Where a city has a zoning ordinance providing that both the common council and the planning commission must approve the issuance of special permits and the county planning board disapproves the permit application or approves it with modifications, then both the council and the planning commission must approve the application by the one vote margin

specified in this section and must state in the approval resolution the reasons for such action. 1980 Op.Atty.Gen. (Inf.) June 11.

A town board of zoning appeals consisting of five members may hold a meeting at which three members are present to consider the overruling of a recommendation of the Rockland county planning board and thereafter at a later or adjourned meeting legally provided for and properly assembled vote on such measure or through proper procedures reconsider a previous vote and if four votes are cast at such meeting on a proper resolution in the affirmative for overruling the recommendation of the Rockland county planning board, such action is valid. 1972, Op.Atty.Gen. (Inf.) Mar. 20.

In a city having a zoning ordinance providing that both the common council and the planning commission must approve the issuance of a special permit, if the county planning board disapproves the application or approves it with modifications, both those bodies must approve by the extra vote specified in this section and must state in the approval resolution the reasons for such action. 1980, Op. Atty.Gen. (Inf.) June 11.

17. — Reasons, overriding of recommendation

It was unnecessary for town board to include statement of reasons for acting contrary to recommendation of county division of planning and development where the memorandum sent by the division purported to approve proposed zoning law "with modifications" but did not suggest specific modifications or clearly and unequivocally prescribe a course of action for the town to follow prior to enactment of the zoning law. Weinstein Enterprises, Inc. v. Town of Kent (2 Dept. 1987) 135 A.D.2d 625, 522 N.Y.S.2d 204, appeal denied 72 N.Y.2d 801, 530 N.Y.S.2d 553, 526 N.E.2d 44.

Requirement of this section that reasons for overriding modifications of county planning board be set forth in adoptive resolution is jurisdictional in nature and, hence, strict compliance is not compulsory and noncompliance will not invalidate rezoning. Bloom v. Town Bd. of Town of

Yorktown (2 Dept. 1981) 80 A.D.2d 823, 436 N.Y.S.2d 355.

Ordinance which rezoned appellants' 11-acre parcel of land from residential to planned development extraordinary was void, where the proposed amendment was not approved by the county planning department, where the city planning board failed to state the reasons for its approval, and where the amendment was not supported by any evidence that it accorded with the city's existing or evolving plans for development of the area. *Hale v. City of Utica* (4 Dept. 1978) 61 A.D.2d 885, 403 N.Y.S.2d 374.

Where county planning commission made certain recommendations in report filed with town board, board violated this section by adopting resolutions of intent to rezone and rezoning without stating reasons for its failure to incorporate these recommendations. *Blik v. Town of Webster*, 1980, 104 Misc.2d 852, 429 N.Y.S.2d 811.

Rezoning of property from C-1 Planned Business District to CRS Regional Shopping Center District was not invalid for failure of town to comply with this section by setting forth reasons in adoptive resolution for overriding modifications made by county planning board where governing statute was not this section, but Westchester County Administrative Code, L.1948, c. 852, § 451 merely requiring town to adopt a resolution in order to override modifications made by county planning board. *Bloom v. Town Bd. of Town of Yorktown*, 1980, 102 Misc.2d 938, 424 N.Y.S.2d 983, modified on other grounds 80 A.D.2d 823, 436 N.Y.S.2d 355.

County planning board, having chosen to respond to referral made by town in respect to proposed zoning change pursuant to Westchester County Administrative Code rather than pursuant to this section, could not thereafter impose sanction of illegality of rezoning upon town for failure to comply with requirement of this section that reasons for action of town in overriding board be set forth in adoptive resolution. *Bloom v. Town Bd. of Town of Yorktown*, 1980, 102 Misc.2d 938, 424 N.Y.S.2d 983, modified on other grounds 80 A.D.2d 823, 436 N.Y.S.2d 355.

Once county planning board opted to respond to referral by town in respect to

zoning matter pursuant to Westchester County Administrative Code, claimed necessity for town to comply with requirement of this section by setting forth reasons for its action in overriding board in adoptive resolution was obviated. *Bloom v. Town Bd. of Town of Yorktown*, 1980, 102 Misc.2d 938, 424 N.Y.S.2d 983, modified on other grounds 80 A.D.2d 823, 436 N.Y.S.2d 355.

18. Review

Direction by the court that town supervisor and town board rezone premises in accordance with majority vote did not constitute an encroachment on legislative functions as following determination that county planning board recommendation against rezoning was ineffective to trigger the majority plus one vote requirement for a contrary decision, all that remained was ministerial conduct. *Voelckers v. Guelli*, 1983, 58 N.Y.2d 170, 460 N.Y.S.2d 8, 446 N.E.2d 764.

There was no judicial usurpation of legislative function of town board concerning rezoning where Article 78 proceeding brought up for review only supervisor's ruling to effect that majority plus one vote was required in view of recommendation of county planning agency against zoning change and the courts did not pass on propriety of the proposed change but only determined that county board's recommendation was not effective, thus requiring only majority vote for approval. *Voelckers v. Guelli*, 1983, 58 N.Y.2d 170, 460 N.Y.S.2d 8, 446 N.E.2d 764.

Objectors' claim could have been resolved in Article 78 proceeding and, thus, 30-day statutory limitations period for Article 78 proceeding seeking judicial review of town approval of special use permits applied to claim, in which objectors sought to annul special use permits for construction of cellular telephone tower and utility building on ground that town planning board lacked jurisdiction to issue permits due to its failure to comply with statute requiring referral of zoning actions to county, metropolitan, or regional planning agency. *Stankavich v. Town of Duanesburg Planning Bd.* (3 Dept. 1998) 246 A.D.2d 891, 667 N.Y.S.2d 997.

Statute of limitations did not preclude Article 78 proceeding to review deter-

minations of Board of Zoning Appeals, granting variances contrary to recommendation of County Planning Commission based upon Board's failure to comply with majority plus one vote requirement; Board's failure to comply with majority plus one vote requirement constituted jurisdictional defect. *South Shore Audubon Soc., Inc. v. Board of Zoning Appeals of Town of Hempstead* (2 Dept. 1992) 185 A.D.2d 984, 587 N.Y.S.2d 29.

County planning board's recommendation on proposed domed stadium was not binding nor final but could be overridden by vote of city planning commission and thus such determination, since advisory only and not final, could not be reviewed in Article 78 proceeding. *Rickett v. Hackbarth*, 1979, 98 Misc.2d 790, 414 N.Y.S.2d 988, affirmed in part, modified in part on other grounds 69 A.D.2d 222, 418 N.Y.S.2d 827.

§ 239-n. Referral of certain proposed subdivision plats to the county planning agency or regional planning council; report thereon; final action

[As added by L.1968, c. 962. See, also, *General Municipal Law § 239-n*, in *Article 12-c, Intergovernmental Relations Councils*, post]

1. Definitions. As used herein:

(a) The term "proposed" as used in subparagraphs (ii) and (iii) of paragraph (a) of subdivision three of this section shall be deemed to include only those recreation areas, parkways, thruways, expressways, roads or highways which are shown on a county comprehensive plan, adopted pursuant to subdivision seven of section two hundred thirty-nine-d of this article, or shown on an official map adopted pursuant to section two hundred thirty-nine-e of this article.

(b) The term "undeveloped plat" shall mean those plats already filed in the office of the clerk of the county in which such plat is located where twenty percent or more of the lots within the plat are unimproved unless existing conditions, such as poor drainage, have prevented their development.

(c) The term "referring body" shall mean the city, town or village body authorized by a municipal legislative body to approve preliminary or final plats or to approve the development of undeveloped plats and/or plats already filed in the office of the county clerk.

2. Referral of proposed plats. In any city, town or village which is located in a county which has a county planning agency authorized by the county legislative body to review preliminary or final plats or to approve the development of undeveloped plats, the clerk of the municipal planning agency, upon receipt of application for preliminary and/or final approval of a subdivision plat or proposal to develop an undeveloped plat and/or plats already filed in the office of the county clerk, shall refer certain of such plats to the county planning agency. In the absence of a county planning agency, the

McKINNEY'S
CONSOLIDATED LAWS
OF NEW YORK ANNOTATED

Book 23
General Municipal Law
§§ 210 to 699

2009
Cumulative Pocket Part

Replacing prior pocket part supplementing
1999 main volume

Current Through the Laws of 2008, chapter 638
of the 231st Legislative Session

RECEIVED

DEC 23 2008

Southold Town Clerk

THOMSON
WEST

NY Jur. 2d, Counties, Towns, & Municipal Corp. § 714, Powers, Functions, and Duties—Regional Planning Councils.

Treatises and Practice Aids

New York Zoning Law and Practice, Fourth Edition § 9:08, Regional Planning Councils—Comprehensive Plan; Preparation and Adoption.
New York Zoning Law and Practice, Fourth Edition § 9:12, Official County Map; Establishment and Purpose—Change in County Map.
New York Zoning Law and Practice, Fourth Edition § 39:03, Ordinances Establishing Amendment Procedures; Cities—Towns.

§ 239-l. Coordination of certain municipal zoning and planning actions; legislative intent and policy

Research References

Encyclopedias

NY Jur. 2d, Buildings, Zoning, & Land Controls § 84, Coordination of Certain Municipal Zoning and Planning Actions; Referral of Certain Proposed Planning and Zoning Actions.

Forms

McKinney's Forms, Selected Consol. Law, Env'tl Conservation Laws § 8-0101 et. seq. Form 14, et seq. Form 14. Petition in Article 78 Proceeding to Nullify Action of Town Board in Rezoning Vacant Land.

Treatises and Practice Aids

Anderson's American Law of Zoning § 24:13, Review of Municipal Planning Decisions.
New York Zoning Law and Practice, Fourth Edition § 9:09, Regional Planning Councils—Zoning; Legislative Policy.
New York Zoning Law and Practice, Fourth Edition § 25:09, Referral.

Notes of Decisions

2. Review considerations, generally involving validity of legislative act which City's alleged failure to comply with General Municipal Law requirement of referring municipal zoning ordinance to county planning agency before enacting the ordinance was not mere procedural irregularity but was jurisdictional defect was reviewable in a declaratory judgment action. *Ernalex Const. Realty Corp. v. City of Glen Cove* (2 Dept. 1998) 256 A.D.2d 336, 681 N.Y.S.2d 296. Declaratory Judgment ⇨ 129

§ 239-m. Referral of certain proposed city, town and village planning and zoning actions to the county planning agency or regional planning council; report thereon; final action

Law Review and Journal Commentaries

Zoning and Land Use. Terry Rice, 55 Syracuse L.Rev. 1395 (2005).

Research References

ALR Library

66 ALR 4th 1012, Zoning: Construction and Effect of Statute Requiring that Zoning Application be Treated as Approved If Not Acted on Within Specified Period of Time.

Encyclopedias

NY Jur. 2d, Article 78 & Related Proceedings § 149, Effect of Special Statutory Provisions; Provision Requiring Commencement of Proceeding Within Shorter Period of Time.
NY Jur. 2d, Article 78 & Related Proceedings § 243; Counties; County Boards and Officers.

NY Jur. 2d, Buildings, Zoning, & Land Controls § 84, Coordination of Certain Municipal Zoning and Planning Actions; Referral of Certain Proposed Planning and Zoning Actions.

NY Jur. 2d, Buildings, Zoning, & Land Controls § 182, by County Planning Agency or Regional Planning Council.

NY Jur. 2d, Buildings, Zoning, & Land Controls § 197, Role of Planning Agencies.

NY Jur. 2d, Buildings, Zoning, & Land Controls § 434, Generally; Statutory Requirements.

NY Jur. 2d, Buildings, Zoning, & Land Controls § 436, Who Must be Notified.

NY Jur. 2d, Buildings, Zoning, & Land Controls § 437, Content and Sufficiency of Notice.

NY Jur. 2d, Buildings, Zoning, & Land Controls § 444, Referral Before Taking Final Action.

NY Jur. 2d, Buildings, Zoning, & Land Controls § 446, Voting Requirements—Where Matter Has Been Referred to Planning Agency.

NY Jur. 2d, Counties, Towns, & Municipal Corp. § 91, Adoption of Local Laws Affecting Prior Legislation.

NY Jur. 2d, Counties, Towns, & Municipal Corp. § 250, Health and Sanitation.

NY Jur. 2d, Counties, Towns, & Municipal Corp. § 306, Power and Duty of Courts.

NY Jur. 2d, Counties, Towns, & Municipal Corp. § 637, Judicial Review of Acts of Municipal Departments, Boards, and Commissions.

NY Jur. 2d, Counties, Towns, & Municipal Corp. § 713, Powers, Functions, and Duties—County Planning Boards.

NY Jur. 2d, Counties, Towns, & Municipal Corp. § 724, Powers and Duties.

NY Jur. 2d, Counties, Towns, & Municipal Corp. § 734, Generally; Creation.

NY Jur. 2d, Counties, Towns, & Municipal Corp. § 755, Members.

NY Jur. 2d, Parties § 106, Proceedings Involving Governmental Agencies and Officials.

NY Jur. 2d, Water § 255, Generally; Reservation of Local Jurisdiction.

Forms

Carmody-Wait, 2d § 19:63, Necessity of Primary Responsibility for Challenged Policy.

Carmody-Wait, 2d § 145:262, Parties Who Are Not Necessary.

Carmody-Wait, 2d § 145:1458, Defects in Zoning-Board Proceedings.

Carmody-Wait, 2d § 145:1479, Review of Legislative Action.

Carmody-Wait, 2d § 145:1488, Special Use and Building Permits.

McKinney's Forms, Local Gov't, General Municipal Law § 239-L Form 1, Form for Actions Subject to Review.

McKinney's Forms, Local Gov't, General Municipal Law § 239-M Form 3, Complaint in Action to Declare Zoning Ordinance Amendment Invalid Where County Planning Board Failed to Approve Proposal.

McKinney's Forms, Local Gov't, Village Law § 7-718 Form 1, Resolution Acting on Village Planning Board Recommendations.

McKinney's Forms, Local Gov't, Village Law § 7-725-B Form 1, Resolution, Calling for Public Hearing to Consider Adding Installation of Telecommunications Towers to Category of Special Use Permits to Village Zoning Law.

McKinney's Forms, Selected Consol. Law, Env't'l Conservation Laws § 8-0101 et. seq. Form 10, et seq. Form 10, Complaint in Action Challenging Rezoning of Area of Land from Residential to Light Industrial.

McKinney's Forms, Selected Consol. Law, Env't'l Conservation Laws § 8-0101 et. seq. Form 14, et seq. Form 14, Petition in Article 78 Proceeding to Nullify Action of Town Board in Rezoning Vacant Land.

McKinney's Forms, Selected Consol. Law, Env't'l Conservation Laws § 8-0101 et. seq. Form 15, et seq. Form 15, Affidavit in Support of Petition in Article 78 Proceeding to Nullify Action of Town Board in Rezoning Vacant Land.

Treatises and Practice Aids

Anderson's American Law of Zoning § 32:4, Statute Requiring Referral to Regional Planning Board.

Anderson's American Law of Zoning § 24:14, Zoning Decisions.

New York Zoning Law and Practice, Fourth Edition § 3:12, County Planning Agency or Regional Planning Council.

New York Zoning Law and Practice, Fourth Edition § 3:22, Voting Requirements; Towns.

New York Zoning Law and Practice, Fourth Edition § 3:23, Voting Requirements; Towns—Villages.

New York Zoning Law and Practice, Fourth Edition § 3:24, Voting Requirements; Towns—Cities.

New York Zoning Law and Practice, Fourth Edition § 3:31, Power to Amend—Planning Boards.

New York Zoning Law and Practice, Fourth Edition § 3:32, Amendment Procedure.

New York Zoning Law and Practice, Fourth Edition § 4:07, Coordinating Preparation of the Plan.

New York Zoning Law and Practice, Fourth Edition § 4:17, Interim or Stop-Gap Zoning.

New York Zoning Law and Practice, Fourth Edition § 4:22, Conflict With State Law.

New York Zoning Law and Practice, Fourth Edition § 41:2, Town Ordinance Concerning Zoning Board of Appeals.

New York Zoning Law and Practice, Fourth Edition § 8:11, Powers and Duties of Planning Boards.

New York Zoning Law and Practice, Fourth Edition § 8:15, Voting.

New York Zoning Law and Practice, Fourth Edition § 8:16, Other Referrals.

New York Zoning Law and Practice, Fourth Edition § 9:06, Powers of County Planning Boards, Regional Planning Councils; Collection and Distribution of Information.

New York Zoning Law and Practice, Fourth Edition § 9:09, Regional Planning Councils—Zoning; Legislative Policy.

New York Zoning Law and Practice, Fourth Edition § 9:10, Regional Planning Councils—Zoning; Review of Municipal Action.

New York Zoning Law and Practice, Fourth Edition § 12:02, Zoning and Telecommunications Regulation.

New York Zoning Law and Practice, Fourth Edition § 14:03, Agricultural Districts.

New York Zoning Law and Practice, Fourth Edition § 19:02, Subdivision Defined.

New York Zoning Law and Practice, Fourth Edition § 19:24, Approval and Certification of Final Plats—Referral to County or Regional Planning Agency.

New York Zoning Law and Practice, Fourth Edition § 20:10, Federal Development; Arlington Heights.

New York Zoning Law and Practice, Fourth Edition § 25:09, Referral.

New York Zoning Law and Practice, Fourth Edition § 28:09, Parties Who Must be Notified.

New York Zoning Law and Practice, Fourth Edition § 28:11, Content of Notice.

New York Zoning Law and Practice, Fourth Edition § 28:26, Required Majorities.

New York Zoning Law and Practice, Fourth Edition § 28:37, Referral to County Planning Agency or Regional Planning Council.

New York Zoning Law and Practice, Fourth Edition § 30:11, Notice to the Public, Applicant, and Regional Planning Council.

New York Zoning Law and Practice, Fourth Edition § 30:12, Notice to the Public, Applicant and Regional Planning Council—Notice to Adjacent Municipality.

New York Zoning Law and Practice, Fourth Edition § 30:14, Compliance With SEQRA—Decision.

New York Zoning Law and Practice, Fourth Edition § 33:13, Indispensable Parties.

New York Zoning Law and Practice, Fourth Edition § 33:14, Time Within Which Article 78 Proceedings Must be Initiated.

New York Zoning Law and Practice, Fourth Edition § 35:01, Declaratory Judgments; Availability of Remedy.

New York Zoning Law and Practice, Fourth Edition § 39:03, Ordinances Establishing Amendment Procedures; Cities—Towns.

jurisdiction 19
 moratoriums 21
 required materials 25
 tending to challenge 17.5
 sufficiency of evidence 20
 void determinations 13.5

Construction with other laws

Validity of moratorium on issuance of building permits for multiple unit dwellings was not dispositive of which zoning law applied to particular application. *Consville v. Totman* (3 Dept. 2008) 303 A.D.2d 897, 757 N.Y.S.2d 134. Zoning And Planning ⇨ 376

Necessity of referral, generally

Caruso v. Town of Oyster Bay, 1997, 72 Misc.2d 93, 656 N.Y.S.2d 809, [main volume] affirmed as modified 250 A.D.2d 339, 672 N.Y.S.2d 418.

General ordinance eliminating requirement prohibiting city council from acting contrary to recommendations of county planning board and substituting a simple majority vote for approval of a project contrary to board's recommendations squarely fell within General Municipal Law requiring that all zoning actions and amendments affecting real property within 500 feet from the boundary of any city, village, town, or existing or proposed county or state park or road, be referred to the county planning board for review, and therefore city defendants' failure to refer ordinance to county planning board was a jurisdictional defect rendering its enactment invalid; by its very terms, ordinance affected a change in the regulations applying to all real property with the city, and necessarily included real property situated within 500 feet of boundaries, areas, and roadways. *Annabi v. City Council of City of Yonkers* (2 Dept. 2008) 47 A.D.3d 856, 850 N.Y.S.2d 625. Zoning And Planning ⇨ 133

Town planning board was not required to submit Parts 2 and 3 of full environmental assessment form (EAF) to county planning board as part of "full statement of [the] proposed action"; county planning board had in its possession the same material that town planning board was considering in making its determination of significance. *Batavia First ex rel. Wilkes v. Town of Batavia*. (4 Dept. 2006) 26 A.D.3d 840, 811 N.Y.S.2d 236, reargument denied 28 A.D.3d 1257, 813 N.Y.S.2d 690, leave to appeal denied 7 N.Y.3d 709, 822 N.Y.S.2d 757, 855 N.E.2d 1172, reargu-

ment denied 7 N.Y.3d 922, 827 N.Y.S.2d 691, 860 N.E.2d 993. Zoning And Planning ⇨ 431

Village zoning board of appeals' failure to comply with statutory requirement that it refer to county planning agency or regional planning council a proposed area variance which would affect real property within 500 feet of boundary of adjacent town was not mere procedural irregularity, but was jurisdictional defect involving validity of a legislative act, and thus annulment of board's denial of area variance was warranted. *Lamar Advertising of Penn, LLC v. Village of Marathon* (3 Dept. 2005) 24 A.D.3d 1011, 805 N.Y.S.2d 495. Zoning And Planning ⇨ 531

Proper notice of proposed amendment to town law prohibiting new mining activities was not given to all municipalities within 500 feet of property affected by amendment, and thus law was invalid; local zoning code provided that town board had to provide such notice at least 10 days prior to date of public hearing. *Dalrymple Gravel and Contracting Co. v. Town of Erwin* (4 Dept. 2003) 305 A.D.2d 1036, 758 N.Y.S.2d 755. Zoning And Planning ⇨ 195

Town zoning board of appeals' alleged failure to comply with the statutory requirement that it refer to the county planning agency or regional planning council a proposed action which would affect real property within 500 feet of the boundary of an adjacent town was not a mere procedural irregularity, but was a jurisdictional defect involving the validity of a legislative act. *Zelnick v. Small* (2 Dept. 2000) 268 A.D.2d 527, 702 N.Y.S.2d 105. Zoning And Planning ⇨ 353.1

City's alleged failure to comply with General Municipal Law requirement of referring municipal zoning ordinance to county planning agency before enacting the ordinance was not mere procedural irregularity but was jurisdictional defect involving validity of legislative act which was reviewable in a declaratory judgment action. *Ernalex Const. Realty Corp. v. City of Glen Cove* (2 Dept. 1998) 256 A.D.2d 336, 681 N.Y.S.2d 296. Declaratory Judgment ⇨ 129

2.5. Required materials

Town planning board, in referring to county planning agency a manufacturer's application for site plan approval and a special use permit in connection with its plans to build a mushroom production and processing facility on a 48-acre parcel in

town, did not fail to provide the agency with all statutorily required materials, where, at time of its recommendation, agency had before it all the studies and documentation that the board considered in issuing its resolution. *Basha Kill Area Ass'n v. Planning Bd. of Town of Mamaroneck* (3 Dept. 2007) 46 A.D.3d 1309, 849 N.Y.S.2d 112. Zoning And Planning ⇨ 438

3. Zoning regulations

City zoning ordinances, which did not list school as allowable principal, accessory, or special permit use in commercial districts, denied educational institutions opportunity to apply for special use permits, and thus were unauthorized and unconstitutional. *Albany Preparatory Charter School v. City of Albany*, 2005, 10 Misc.3d 870, 805 N.Y.S.2d 818, affirmed as modified 31 A.D.3d 870, 818 N.Y.S.2d 651. Zoning And Planning ⇨ 76

City law regulating height and location of telecommunications towers was zoning ordinance, that city was required, under General Municipal Law, to refer to appropriate county planning agency or regional planning council for review prior to its enactment, rather than a lawful exercise of municipality's police power. *Independent Wireless One Corp. v. Town of Maryland Planning Bd.*, 2002, 191 Misc.2d 168, 738 N.Y.S.2d 829. Zoning And Planning ⇨ 133

4. Site plan approval

Town planning board's measurement of 500-foot distance from boundary of state-owned recreation area, used in determining whether corporation's proposed use was subject to review by the county planning board, was not irrational or unreasonable, where measurement was taken from a road-side truck turnaround, which was the closest of the proposed uses, along an existing, nearly straight roadway leading directly to the recreation area entrance. *Woodland Community Ass'n v. Planning Bd. of Town of Shandaken* (3 Dept. 2008) 52 A.D.3d 991, 860 N.Y.S.2d 653. Zoning And Planning ⇨ 431

Water collection and transport proposed by corporation applying for site plan approval was not a special permit use, and therefore town zoning board of appeals (ZBA), rather than town planning board, was required to determine whether use could be permitted as a "similar use" under town zoning code; town zoning code identified relevant special permit use as "water bottling and related uses," and the use proposed by corporation involved the

sale of spring water for non-potable purposes, and did not involve the bottling of water at any location. *Woodland Community Ass'n v. Planning Bd. of Town of Shandaken* (3 Dept. 2008) 52 A.D.3d 991, 860 N.Y.S.2d 653. Zoning And Planning ⇨ 431

Town board's submission to county planning board of proposed zoning changes, along with draft generic environmental impact statement (DGEIS) prepared by waste facility that requested rezoning of 75 acres of its property to construct new hazardous waste treatment facility, contained requisite full statement of proposed zoning action so as to comply with applicable general municipal law; DGEIS was adequate substitute for completed environmental assessment form that was required. *Fleckenstein v. Town Of Porter And Chemical Waste Management, LLC*. (4 Dept. 2003) 309 A.D.2d 1188, 765 N.Y.S.2d 123, leave to appeal denied 1 N.Y.3d 509, 777 N.Y.S.2d 18, 808 N.E.2d 1277. Environmental Law ⇨ 606; Zoning And Planning ⇨ 193

5. Use or area variances

City planning board, in considering site plan and parking plan in connection with application for permission to construct house of worship, was not required to take account of potential growth in applicant's membership, or possibility that applicant might re-use its existing nearby facility for religious purposes, where board was not lead agency, only involved agency. *Turkewitz v. Planning Bd. of City of New Rochelle* (2 Dept. 2005) 24 A.D.3d 790, 809 N.Y.S.2d 113, leave to appeal denied 6 N.Y.3d 713, 816 N.Y.S.2d 749, 849 N.E.2d 972. Zoning And Planning ⇨ 388

While religious institutions are not exempt from local zoning laws, greater flexibility is required in evaluating application for religious use than application for another use and every effort to accommodate religious use must be made. *Richmond v. City of New Rochelle Bd. of Appeals on Zoning* (2 Dept. 2005) 24 A.D.3d 782, 809 N.Y.S.2d 110. Zoning And Planning ⇨ 288

Determination of city's zoning board of appeals granting several area variances to congregation seeking to construct synagogue was rational and not arbitrary and capricious, where synagogue was permitted as of right in relevant zoning district. *Richmond v. City of New Rochelle Bd. of Appeals on Zoning* (2 Dept. 2005) 24 A.D.3d 782, 809 N.Y.S.2d 110. Zoning

And Planning ⇨ 503; Zoning And Planning ⇨ 508

6. Parks or recreation areas

State-owned lake was not a "recreation area" within meaning of section of General Municipal Law requiring referral of variance request to county planning board where the property is located within 500 feet of recreation area. *Sacandaga Park Civic Ass'n Inc. v. Zoning Bd. of Appeals of Town of Northampton* (3 Dept. 2002) 296 A.D.2d 807, 745 N.Y.S.2d 338. Zoning And Planning ⇨ 278.1; Zoning And Planning ⇨ 531

12. — Disapproval or modification, recommendations

Beck v. Graveling (4 Dept. 1998) 247 A.D.2d 831, 669 N.Y.S.2d 108, [main volume] leave to appeal denied 92 N.Y.2d 801, 677 N.Y.S.2d 71, 699 N.E.2d 431.

Aloya v. Planning Bd. of the Town of Stony Point (2 Dept. 1996) 230 A.D.2d 790, 646 N.Y.S.2d 375, [main volume] leave to appeal granted 92 N.Y.2d 813, 681 N.Y.S.2d 474, 704 N.E.2d 227, affirmed 93 N.Y.2d 334, 690 N.Y.S.2d 475, 712 N.E.2d 644.

Town planning board, in granting manufacturer's application for site plan approval and a special use permit in connection with its plans to build a mushroom production and processing facility on a 48-acre parcel in town, did not act contrary to modifications recommended by county planning agency, where board incorporated the recommendations into its resolution, including landscaping provisions to mitigate visual impact of the proposed factory, the submission of a water conservation plan and an odor mitigation plan, and the inclusion of benchmarks for monitoring progress. *Basha Kill Area Ass'n v. Planning Bd. of Town of Mamaroneck* (3 Dept. 2007) 46 A.D.3d 1309, 849 N.Y.S.2d 112. Zoning And Planning ⇨ 382.6; Zoning And Planning ⇨ 384.1

13.5. Void determinations

Village's failure to provide county planning commission with all of the materials which village needed to pass a new zoning resolution, including the final version and complete text of proposed new zoning law to rezone area of village from commercial to residential, and the final generic environmental impact statement, for the requisite 30-day period before village acted and adopted zoning law, rendered zoning law and comprehensive master plan void. *LCS Realty Co., Inc. v. Incorporated Village of Roslyn* (2 Dept. 2000) 273 A.D.2d

474, 710 N.Y.S.2d 605, leave to appeal denied 96 N.Y.2d 705, 723 N.Y.S.2d 131, 746 N.E.2d 186. Zoning And Planning ⇨ 193

14. Report by planning agency—In general

Caruso v. Town of Oyster Bay, 1997, 172 Misc.2d 93, 656 N.Y.S.2d 809, [main volume] affirmed as modified 250 A.D.2d 639, 672 N.Y.S.2d 418.

15. — Time of report, report by planning agency

City planning board improperly delayed review of telecommunications petitioner's application for site plan approval for proposed telecommunications tower site; petitioners submitted application, including copies of site plan, as required by local zoning ordinance, information provided by petitioners was sufficient to satisfy requirements, and even if it were reasonable for planning board to delay consideration of application until all board members had adequate time to review application, it was unreasonable for board to fail to address application prior to public hearing. *Independent Wireless One Corp. v. Town of Maryland Planning Bd.*, 2002, 191 Misc.2d 163, 738 N.Y.S.2d 829. Zoning And Planning ⇨ 439.5

17.5. Standing to challenge

Adjoining landowners who were affected by land use determination that was subject to review under General Municipal Law, and adjoining municipalities that necessarily had same interest in regional review that General Municipal Law required, had standing to assert that enacting municipality failed to comply with procedural requirements of that statute with respect to adoption of adult student housing law and revised comprehensive zoning law. *Village of Chestnut Ridge v. Town of Ramapo* (2 Dept. 2007) 45 A.D.3d 74, 841 N.Y.S.2d 321. Zoning And Planning ⇨ 571

18. Review

County planning commission was not a necessary party to article 78 proceeding brought by contract vendee for parcel of real property, which challenged town board's denial of special use permit, although town board was required to refer application to commission, and commission recommended that permit be denied, since board, through super-majority, could have voted to override commission's decision, but did not, and town's action was thus the final agency action reviewable in such a proceeding. *Headriver, LLC v. Town Bd.*

of Town of Riverhead, 2004, 2 N.Y.3d 766, 780 N.Y.S.2d 505, 813 N.E.2d 585. Zoning And Planning ⇨ 570; Zoning And Planning ⇨ 582.1

The determination of a local zoning board is entitled to great deference, and will be sustained as long as it has a rational basis, is not arbitrary and capricious, and is supported by substantial evidence. *North Shore F.C.P., Inc. v. Mammina* (2 Dept. 2005) 22 A.D.3d 759, 804 N.Y.S.2d 383. Zoning And Planning ⇨ 605; Zoning And Planning ⇨ 610; Zoning And Planning ⇨ 703

Under a zoning ordinance which authorizes interpretation of its requirements by the town's zoning board of appeals, specific application of a term of the ordinance to a particular property is governed by the board's interpretation, unless unreasonable or irrational. *Hampton Hill Villas Condominium Bd. of Managers v. Town of Amherst Zoning Bd. of Appeals* (4 Dept. 2004) 13 A.D.3d 1079, 787 N.Y.S.2d 557, leave to appeal denied 16 A.D.3d 1181, 792 N.Y.S.2d 367. Zoning And Planning ⇨ 231

Town Zoning Board of Appeals (ZBA) exceeded its power when it treated amendment to town's zoning ordinance made by local law as invalid, and consequently approved off-road motorcycle racetrack in R-40 residential district which was neither permitted nor special use in such district under ordinance as amended; although town's attorney advised ZBA that local law was invalid due to jurisdictional defect in its enactment, law was never judicially or legislatively invalidated. *Smith v. Town of Plattekill* (3 Dept. 2004) 13 A.D.3d 695, 787 N.Y.S.2d 406. Zoning And Planning ⇨ 387

Failure to join indispensable party in Article 78 proceeding, i.e., a limited liability company (LLC) intended to be formed by developers to own and operate 32-unit senior apartment complex and community center in residential one and two family dwelling unit district after it was constructed, was a minor irregularity and not a jurisdictional defect that tolled 30-day statute of limitations for seeking review of a determination by city planning commission and zoning board of appeals (ZBA) to grant special use permit and use variance, although LLC did not yet exist at time it applied for special use permit and use variance, where petitioners knew who were the applicants for the zoning changes, who were the owners of the property, who were the developers, and who was their authorized representative.

Fiume v. Chadwick, 2007, 16 Misc.3d 906, 840 N.Y.S.2d 278. Zoning And Planning ⇨ 584.1

19. Jurisdiction

Town planning board lacked jurisdiction to approve builders' site plan and grant special wetland permit to builders, where board failed to refer such matters to the county planning commission, and county administrative code required such referral. *Eastport Alliance v. Lofaro* (2 Dept. 2004) 13 A.D.3d 527, 787 N.Y.S.2d 346, leave to appeal dismissed 5 N.Y.3d 846, 805 N.Y.S.2d 546, 839 N.E.2d 900, leave to appeal dismissed 5 N.Y.3d 847, 805 N.Y.S.2d 547, 839 N.E.2d 901. Environmental Law ⇨ 143; Zoning And Planning ⇨ 438

20. Sufficiency of evidence

Determination of town board of zoning appeals denying property owner's application for conditional use permit to operate a sandwich shop at subject location had rational basis, was not arbitrary and capricious, and was supported by substantial evidence; board determined that proposal would negatively impact traffic, parking, and safety conditions on adjacent dead-end residential street that provided the only means of vehicular access to parking area of proposed establishment, relying upon owner's own evidence as well as specific, particularized concerns raised by area residents and common-sense judgments and personal familiarity with area possessed by members of board. *North Shore F.C.P., Inc. v. Mammina* (2 Dept. 2005) 22 A.D.3d 759, 804 N.Y.S.2d 383. Zoning And Planning ⇨ 387

21. Moratoriums

In action challenging town planning board's moratorium on grant of site plan applications, town, rather than applicant, has burden of demonstrating that moratorium serves valid purpose and is of reasonable duration. *Roanoke Sand & Gravel Corp. v. Town of Brookhaven* (2 Dept. 2005) 24 A.D.3d 783, 809 N.Y.S.2d 95. Zoning And Planning ⇨ 685

Property owner could not raise for first time in its reply papers challenge to town planning board's moratorium on new projects on ground that it had not submitted moratorium to county board for review and recommendation, and thus matter would be remanded to provide board opportunity to respond. *Roanoke Sand & Gravel Corp. v. Town of Brookhaven* (2 Dept. 2005) 24 A.D.3d 783, 809 N.Y.S.2d

Zoning And Planning ☞ 744; Zoning
and Planning ☞ 749

239-n. Referral of certain proposed subdivision plats to the county planning agency or regional planning council; report thereon; final action

Cross References.

Local planning co-ordination, see General Municipal Law § 119-x.
Plans and recommendations, see General Municipal Law § 237.
Powers of local agencies with respect to comprehensive studies and reports, see General Municipal Law § 119-w.

Law Review and Journal Commentaries

Intermunicipal agreements: The metamorphosis of home rule. Mary E. Mohnach, 17 Pace Environmental L.Rev. 161 (1999).

Notes of Decisions

Special facts exception 3

2. Overriding of agency recommendation

Town planning board, by failing to secure the supermajority vote needed to override the recommendation of county planning authorities to disapprove a final subdivision application, satisfied the Town Law's mandate to "take action" on such applications in a timely manner. *Aloya v. Planning Bd. of Town of Stony Point*, 1999, 93 N.Y.2d 334, 690 N.Y.S.2d 475, 712 N.E.2d 644. Zoning And Planning ☞ 439.5

3. Special facts exception

Cumulative effect of action and inaction by town planning board and its advisors, which engaged in discernable pattern of delay of progression of developer's subdivision application, created substantial delay that denied developer a fair opportunity to at least attempt to obtain timely final subdivision approval and file its subdivision map before local zoning laws were amended to up-zone area encompassing proposed development from one to two acres for single family residences, warranting declaration that, due to board's improper delaying actions, developer obtained vested rights, prior to amendment, to proceed with its subdivision application under provisions of local code as it existed before amendment. *Downey Farms Development Corp. v. Town of Cornwall*

Planning Bd., 2008, ___ Misc.3d ___, 858 N.Y.S.2d 542. Zoning And Planning ☞ 376

Cases involving "special facts" exceptions to general rule that zoning application must be judged upon the law as it exists at the time of zoning board's decision inherently involve concepts of vested rights, and therefore each matter must be determined according to its own unique circumstances. *Downey Farms Development Corp. v. Town of Cornwall Planning Bd.*, 2008, ___ Misc.3d ___, 858 N.Y.S.2d 542. Zoning And Planning ☞ 376

Dilatory actions by town planning board and its consultants throughout approval process for developer's subdivision application supported "special facts exception" finding in developer's Article 78 action seeking determination that, due to board's bad-faith delays, it had vested rights to continue under prior version of local zoning law, after amendment to zoning law up-zoned area encompassing proposed development from one to two acres for single family residences; some actions precipitating otherwise avoidable delays were not explained, and others, though seeming to be part of thorough and rigorous review process, appeared upon closer scrutiny to have been designed to delay without justifiable causes. *Downey Farms Development Corp. v. Town of Cornwall Planning Bd.*, 2008, ___ Misc.3d ___, 858 N.Y.S.2d 542. Zoning And Planning ☞ 376