

# YATES COUNTY PLANNING BOARD

## PLANNING & ZONING REFERRALS

### A Guide for Local Officials



Prepared by  
Yates County Planning  
Department

Sections 239 L, M & N of the New York State General Municipal Law require municipal boards to refer certain development applications and proposed zoning changes to the County Planning Board for review before taking final action.

The purpose of the law is to encourage local decision-makers to consider the potential inter-community and county-wide impacts of local land use changes and add a regional perspective to local land use decisions. The process allows local officials to take advantage of the professional planning expertise at the county level. In addition, it helps the County Planning Board follow development trends throughout the County.

Local officials who should be aware of the law's requirements include Town Supervisors, Village Mayors, Town and Village Clerks, Zoning Enforcement Officers, local Planning Boards, Town and Village Boards and Boards of Zoning Appeals.

This guide outlines the GML 239 referral process.

#### **Proposed actions that MUST be referred:**

The following municipal actions are subject to review by the Yates County Planning Board prior to taking final action:

- ◆ Adoption or amendment of a comprehensive plan.
- ◆ Adoption or amendment of a zoning ordinance or (zoning) local law.
- ◆ Issuance of special use permits.
- ◆ Approval of site plans.
- ◆ Granting of use or area variances.
- ◆ Other authorizations which a local board may issue under the provisions of any zoning ordinance or (zoning) local law.

- ◆ Approval of preliminary or final subdivision plats or the approval of development of undeveloped plats already on file with the County Clerk.

By law, the above proposed actions MUST be referred to the Yates County Planning Board if they apply to real property within 500 feet of any of the following:

- ◆ Any municipal boundary, or
- ◆ The boundary of any existing *or proposed* county or state park or any other recreation area, or
- ◆ The right-of-way of any existing *or proposed* county or state road, or
- ◆ *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 [note: there are none in Yates County at present]*
- ◆ The existing *or proposed* boundary of any county or state owned land on which a public building or institution is situated, or
- ◆ The boundary of a farm operation located in a County Agricultural District (except for the granting of area variances).

Note: the italics above indicate items which are not applicable in Yates County. One, as noted above, there are no county-established drainage channels or channel lines. Two, GML 239 stipulates that, in order for a referral to be required in regard to 'proposed' roads, parks or other areas, the proposed feature must be shown on an 'official map' as defined by GML 239. At present, however, Yates County does not have an "official map" as defined by GML 239, therefore there are no 'proposed' features which would require municipal referral.

The municipal board that has jurisdiction over the proposed action is responsible for its referral to the Yates County Planning Board. This may be the Planning Board, the Town or Village Board, or the Zoning Board of Appeals, depending on the type of action.

#### **Referral Procedure**

For proposed actions subject to referral as noted above, the municipal board is required to submit a "full statement of such proposed action" to the Yates County Planning Board. A full statement as defined by GML 239 means "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 the such referring body in order to make its determination of significance pursuant to the state environmental quality review act." When the proposed action is the adoption or amendment of a zoning ordinance or zoning local law, the full statement shall also include the complete text of the proposed ordinance/law as well as the existing provisions to be affected if not already in the possession of the county planning board. (These requirements may be amended by prior agreement with the County Planning Board.)

In order to assist with the compilation of a full statement for referral, the Yates County Planning Board provides a cover form to be used with all referrals. In addition to basic information about the type of application, the location of the proposal, and the applicable zoning district, the form includes a checklist of items required or likely to be included with a referral.

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For each referral, the County Planning Board considers:

- ◆ Compatibility with neighboring land uses.
- ◆ Effects of additional traffic.
- ◆ Impacts on state and county infrastructure or institutions.
- ◆ Compatibility with officially adopted plans of the county or local municipality.
- ◆ Preservation of community character.

After review, the County Planning Board sends its recommendation with supporting comments back to the municipal board.

The Board's findings will be for a recommendation of approval, modification, disapproval, or a finding of no significant county-wide or inter-community impact.

A recommendation of "no significant county-wide or inter-community impact" should not be construed as an approval. There may be significant local concerns.

### **How do County referrals affect local decision-making?**

The municipal board can make its final decision on the application only after it receives the County Planning Board's recommendation.

The municipal board is not obligated to follow the County's recommendation. However, if the County Planning Board recommends *disapproval* or *modification* and the municipal board wishes to approve the application contrary to the County's recommendation, the local board must do so with a vote of "majority plus one" of its members, rather than a simple majority. In addition, the municipal board must adopt a resolution listing the reasons for its decision.

### **Time Schedule for Referrals**

The Yates County Planning Board and the Yates County Planning Department make every effort to respond to referrals promptly and to accommodate the locally required time limits. The municipal board should send the referral at least one week before the County Planning Board's regular monthly meeting on the fourth Thursday of each month at 7:00 PM. If the Board receives a referral less than one week before its regular meeting, it may be necessary to defer review until the following month.

If the County does not respond within 30 days of receipt of a complete application, the local board may proceed. However, even after 30 days, a county recommendation still may affect local decision-making if it is received at least 2 days prior to the local board's vote.

### **Legal Consequences of Neglecting Referrals**

Neglecting a "239" zoning referral to the County Planning Board may constitute a "procedural error" which could legally invalidate a local land use decision. If challenged in court, a local decision on an application may be overturned if the municipality failed to make the proper zoning referral to the County Planning Board. As on all legal matters, to clarify these legal implications, the municipal board should contact its town or village attorney.

### **Notification of Final Action**

Yates County Planning Board will send a "Notification of Final Action" form to the municipality along with its recommendation. To comply with State law, the municipal board should report on its final action within one week of making its final decision on the application by

signing and returning the form to the County Planning Department office.

### **Agreements to Exempt Certain Minor Land Use Actions from Referral to the County Planning Board**

In accordance with the GML 239, a County Planning Board is authorized to enter into agreements with municipalities to exempt certain proposed actions from referral. The purpose of such agreements would be to eliminate the need for certain actions which by their nature are likely to not have significant inter-community or county-wide impacts. On May 29, 2003, the Yates County Planning Board adopted a uniform agreement that was distributed to each Town and Village in the County. The agreement exempts the following actions from referral to the County Planning Board: most side yard variances, actions involving signs and fences, interpretations, and procedural amendments to zoning regulations, and special use permits and site plan review for projects within a County Agricultural District that would not otherwise require referral. The agreement takes effect once it is adopted by **both** the County Planning Board and a Town or Village Board.

For further information and assistance, please contact the

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