

Report from Counsel's Corner



COUNTY REFERRALS UNDER GENERAL MUNICIPAL LAW §239-M: A PRACTICAL APPROACH

Under §239-m of the General Municipal Law, certain matters which come before municipal boards must be referred to the county planning agency for review before a municipality can take final action on the matter. Strict adherence to GML §239-m is critically important because failure to refer matters to the county as required by this section of law is a procedural defect rendering any subsequent approval or enactment by the local board null and void.¹ Although this section of law seems complicated at first glance, it can be readily simplified by breaking it down into three component parts: (1) the types of proposed actions which must be referred, (2) the instances when they must be referred, and (3) the procedure involved.

TYPES OF PROPOSED ACTIONS WHICH MUST BE REFERRED

Actions which must be referred include:

1. Adoption or amendment of a comprehensive plan,
2. Adoption or amendment of a zoning ordinance or local law,
3. Issuance of a special use permit,
5. Granting of use or area variances,
6. Any other approvals which are granted pursuant to the local zoning code, and
7. Preliminary or final subdivision approval or proposal to develop certain undeveloped plats already on file with county clerk.²

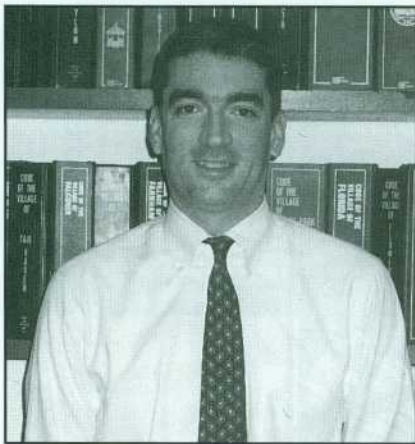
WHEN A PROPOSED ACTION MUST BE REFERRED

Any of the above types of actions must be referred whenever they involve real property located within 500 feet of:

1. The boundary of any city, village or town,
2. The boundary of any existing or proposed county or state park or any other recreation area,
3. The right of way of any existing or proposed county or state parkway, thruway, expressway, road or highway,
4. 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,
5. The existing or proposed boundary of any county or state owned land on which a public building is situated, or
6. The boundary of any farm operation located in an agricultural district, as defined by Article 25-AA of the Agriculture and Markets Law.³

PROCEDURE FOR REFERRAL

If a proposed action meets the above criteria, the local board considering the proposed action must send to the county planning agency⁴ a full statement of the proposed action which includes all the materials required by



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the local board to be submitted by the applicant as well as any materials required by the State Environmental Quality Review Act including completed environmental assessment forms. If the proposed action is the adoption or amendment of a local law or ordinance, a complete text of the proposed enactment as well as existing provisions of local law which will be affected must also be included. Local boards may enter into agreements with the county to define what constitutes a full statement.⁵

The county has 30 days from receipt of a full statement to report its recommendations on the matter to the local board. If the county recommends modification or disapproval of the proposed action, the local board cannot act contrary to the recommendation except by a super majority vote. This means that if the county recommends that the local board either modify or disapprove the action, the local board can still approve the action, but only if the vote to approve consists of a majority plus one vote of the total membership of the local board. In other words, a simple majority vote to approve an application is insufficient if the county has recommended modification or disapproval of the action. A majority vote would still be sufficient, however, whenever the county recommends approval or finds that the action has no county-wide or inter-community impact.

If the county fails to report its recommendations within 30 days of receiving a full statement, the local board can take action on the matter without the county's report. In this instance no super majority vote would be required. If the local board receives a county report more than 30 days after the submission of the full statement but 2 or more days before the local board meets to take final action, the county report must be considered and a super majority vote would be required to overcome a recommendation of disapproval or modification. These time frames may be altered by agreement of the county and the local board.

A local board must file with the county a report of its final action within thirty days of taking the action. If the final action of the local board was contrary to a county recommendation of modification or disapproval, the local board must set forth in the report reasons why it acted in such manner.⁶

SUMMARY

To meet the requirements of GML §239-m, follow these steps.

1st – Ask whether the proposed action is of the type that has to be referred.

2nd – If the answer is no, no county referral is required. If the answer is yes, ask whether it involves property within 500 feet of the listed boundaries.

3rd – If the answer is yes to both questions 1 and 2, you must refer the matter to the county for review by submitting a full statement of the proposed action (If the answer is no to either question, no county referral is required).

4th – If you've referred it to the county and receive no response within 30 days, you can act on the matter by majority vote (unless you receive recommendation from county after 30 days but at least 2 days prior to acting on the matter), or

-- If you receive a response from the county within 30 days or at least 2 days before the local board is scheduled to take action and the response recommends approval or determines that the action has no county wide or inter-community impact, you can act on the matter by majority vote, or

-- If you receive a response from the county within 30 days or at least 2 days before the local board is scheduled to take action and the response recommends disapproval or modification, you can act on the matter but you will have to obtain a majority plus one vote to act in a manner contrary to the county's recommendation.

5th – Within thirty days of taking final action you must file a report with the county as to what action was taken. If you acted contrary to the county's recommendations, you must provide the reasons for doing so.

Endnotes

1. *Ferrari v. Penfield*, 181 A.D.2d 149, 585 N.Y.S.2d 925 (4th Dept. 1992); *Burchetta v. Town of Carmel*, 167 A.D.2d 339, 561 N.Y.S.2d 305 (2d Dept. 1990).

2. Subdivision review referrals are actually governed by GML §239-n, not §239-m, but the procedure involved is the same. For the type of proposal to develop an already filed undeveloped plat which requires referral, see GML §239-n(1)(b).

3. This section related to farms does not apply to area variances.

4. In counties without county planning agency, but within the jurisdiction of a regional planning council, referral is to the regional planning council.

5. Matters which have been previously referred, but have been substantially revised must also be referred. See *Ferrari v. Penfield* at 152, 927.

6. GML 239-m(6).