

# Greene Planning



Greene County Planning and Economic Development 411 Main St. Catskill, NY 12414

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## Toolbox for Greene County Planners

## Planning and Zoning Referrals (the “239 Review”)

### Introduction

Under New York State Law, certain local planning and zoning matters must be referred to the county planning board for review before the local government takes any final action. This referral/review activity (commonly called the “239 Review”) is required by Sections 239l and 239m of the General Municipal Law and is designed to assure that county concerns are taken into consideration in the local planning process. The county planning board review is advisory in nature and applies equally to towns and villages.

The failure of the local government to follow the procedural requirements of “239” is a jurisdictional defect which may invalidate any final municipal action. Therefore, it is very important that everyone involved in local planning and zoning, including the governing body, planning and zoning boards, municipal attorneys and enforcement officers, be aware of the state law requirements.

A review of Greene County Planning Board files indicates that localities sometimes disregard 239 Review requirements. This leaves these localities' planning and zoning decisions open to reversal by the courts, simply because the proper procedure was not followed. The following summary of the 239 review procedure has been prepared by Greene County Department of Planning and Economic Development to inform local officials about the 239 Review. We remind referring officials of the 239 review requirement periodically to help local officials understand these requirements, something that is especially important given the frequent turnover of local board members and the need for new members to become familiar with the process. A more extensive discussion of the 239 review process is contained in The Greene County Planning and Zoning Referral Guide (available on the Department's website at: [greenegovernment.com](http://greenegovernment.com)).

### Matters to be Referred

Local actions that must be referred to the Greene County Planning Board include:

1. adoption or amendment of a zoning map or regulations;
2. adoption or amendment of a comprehensive plan;
3. issuance of special use permits;
4. approval of site plans;
5. granting of use or area variance;
6. other authorizations which a referring body may issue under the provisions of any zoning or local law.

However, not all such actions require county referral; the law establishes location criteria, which determine whether or not an action comes under county jurisdiction. The General Municipal Law states that local actions must be referred only if they affect real property within five hundred feet (500') of any of the following:

1. the boundary of any municipality including the boundary of a village within a town;
2. the boundary of any existing or proposed county or state park or other recreation area;
3. the right-of-way of any existing or proposed county road;
4. the right-of-way of any existing or proposed state road;
5. the existing or proposed boundary of any county or state owned land on which a public building or institution is situated;
6. the boundary of a farm operation within an agricultural district.





## Procedure to be Followed

The Greene County Planning Board will accept referrals only from officials of the municipality involved, not from the applicant or prospective developer. The referral should be made on a county referral form (available on the department's website) and must be accompanied by "full statement" of the proposed action, which means all materials required by and submitted to the referring body as an application on the proposed action, including a completed environmental assessment form and all other materials required by the referring body to make its determination on significance pursuant to the state environmental quality review act.

Municipalities must realize how important it is to send referrals to the county. The procedure is a legal requirement to obtain county input. More importantly, the referral process allows for a regional perspective to be brought into the decision making process. The goal is encourage coordinated and quality development throughout the county. For these reasons, the points raised by the county must be seriously considered, or the referral process is ineffective.

## Effect of Review

The Greene County Planning Board has thirty (30) days from the date of receipt of a full statement and placement on the board's agenda to take action on a "239 Review". However, this 30-day period may be extended by mutual agreement. If the county fails to act on a referral in this time period, the law allows the municipality to take final action without regard to the county review. Referrals must be received at least 12 day prior to the board's monthly meeting.

In doing its review, the Board looks across geographic and political boundaries to protect the environment and economy of Greene County. The Greene County Comprehensive Economic Development Plan and Planning and Zoning Referral Guide provide an overall guide for the Board, as well as providing standards and policies by which to judge referrals. The law states nine (9) specific areas, which the county may include in its review considerations as follows:

1. compatibility of various land uses with one another;
2. traffic generating characteristics;
3. impact of proposed land uses on existing and proposed county or state institutional or other uses;
4. protection of community character;
5. community appearance;
6. drainage;
7. community facilities;
8. county official development plans and policies; and
9. municipal development plans and policies.

If the County Planning Board approves a referral, then the referring board's final decision is governed by a majority vote. If the county disapproves a referral, or approves it subject to stated conditions or modifications, the local body may override the county opinion only by a majority plus one vote and by following the procedure outlined below:

1. The local board studies the county review and identifies its reason for disagreeing.
2. The local board adopts a resolution stating its reasons for desiring to override the county.
3. The local board votes on the matter under review and passes it by a majority plus one.

Whether or not the county approves a 239 Review, the local board must inform the county of the final local decision within 7 days of the decision. In the case of a county disapproval with the local board overriding such disapproval, a copy of the resolution stating the reasons for overriding the county opinion must also be sent to the county within 7 days.



## Where can we get more information?

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