

# GML 239 REFERRALS

## HERKIMER & ONEIDA COUNTIES

### A Resource for Local Municipalities

New York State General Municipal Law, Sections 239 l, m & n requires referral of certain local planning and zoning matters for county review before the local government takes final action. County recommendations are advisory in nature, but failure of a local government to follow the procedural requirements of GML 239 is a jurisdictional defect which may invalidate any final municipal action.

#### PURPOSE

- Brings pertinent inter-community and countywide planning, zoning, site plan and subdivision considerations to the attention of municipal boards, neighboring municipalities, county planners, and agencies having jurisdiction
- Provides professional assistance to local boards and encourages current best practices in regional land use decision making
- Helps identify intermunicipal impacts, protecting the environment and economy of the county
- County planning can recommend needed - but possibly controversial - modifications or disapprovals

#### QUALIFYING ACTIONS

##### ***What types of planning actions should be referred?***

- Area and use variances
- Site plan reviews
- Conditional/special use permits
- Subdivision proposals
- Adoption or amendment of a comprehensive plan
- Adoption or amendment of a zoning ordinance or local law, including moratoria
- Other authorization which a referring body may issue under the provisions of any zoning ordinance or local law

##### ***What are the jurisdictional criteria requiring referral to the county planning agency?***

Actions listed above must be sent to the county for review if they involve real property within 500 feet of any of the following:

- A municipal boundary
- An existing or proposed county or state park or recreation area
- The right-of-way of an existing or proposed county or state road
- The right-of-way of a county-owned stream or drainage channel
- An existing or proposed county or state-owned property on which a public building or institution is located
- The boundary of a farm operation located in an agricultural district (excluding area variances)

*Note: The property is measured from the tax parcel boundary, not the location of the action on the lot.*

#### PROCESS

##### ***Submitting a referral***

- ➊ Referrals must be submitted by the municipality, not from the applicant or prospective developer. New referrals are submitted using the county's online referral form available at: <https://ocgov.net/departments/planning/municipal-services/gml-239-referrals/>.
- ➋ Using the attachment feature, municipalities can upload supporting documents to provide a full statement of the proposed action. Municipal Boards may want to request that an applicant provide materials in digital format for ease of submission.
- ➌ The county's 30-day application review period will not begin until a full statement is submitted by the municipality. A full statement contains all the information required by the municipality's zoning code and other local law. A full statement includes all materials submitted to the referring municipality as an application for the proposed action. To conduct an informed review, the county requires the same materials that will be available during local board review.

## **Common Submission Materials**

- Local applications
- Brief descriptive narratives
- Preliminary or final subdivision plats
- Traffic study or analysis
- Agricultural data statements
- Landscaping plans
- Architectural renderings
- Photographs or visual simulations
- Wind or solar decommissioning plans
- Full text of ordinance or local law as proposed for adoption or amendment
- Stormwater Prevention Plan (SWPP)/drainage study
- Site plans, location maps, sketches of the site or project area
- SEQR Environmental Assessment Form (EAF) and all materials used to make a determination of significance

## **Evaluation Criteria**

- Land use compatibility
- Impact on traffic generation
- Impact on drainage and watershed
- Impact on community facilities
- Protection of community character
- Impact on community appearance
- Impact on county or state institutions
- Consideration of official county development policies
- Effect on public convenience, governmental efficiency, community environment

## **Outcomes**

### **① No Jurisdiction/No Authority**

The county cannot officially review requests which do not fall under New York State General Municipal Law, Sections 239 l, m & n. A "No Jurisdiction" response means an application does not fall within any of the designated geographic areas previously listed.

### **② Incomplete**

The county cannot conduct an informed review of the project because the necessary information was not included with the referral. The municipality must send us copies of all materials required for local board review (typically specified in the municipality's zoning code). In instances of insufficient information, a request will be sent to the municipality informing them the application is incomplete and requesting additional documentation. Review will not start until all supporting materials are provided to the county planning agency.

### **③ Disapproval**

The project will have an adverse countywide or intermunicipal impact. The county recommends that the board not grant approval.

### **④ Recommended Modifications**

The county finds the matter is of significant concern, namely that some aspect of a proposal will have a substantial adverse effect. The county details conditions that must be met before the request can be granted.

### **⑤ No Recommendation as to Final Action**

There are no significant countywide or intermunicipal impacts. Sometimes the county will have comments that should be taken into consideration when making its decision. This does not mean that there are no local impacts.

### **⑥ Approval**

The county determines the project will not have any adverse countywide or inter-municipal impacts and the county encourages local approval of the project.

A GML 239 Recommendation Letter and a Notice of Final Action (NOFA) form will be emailed to the municipal contact listed on the application.

If the county disapproves or recommends modifications, the local body may override the county opinion only by a majority plus one vote. For example, a minimum 5-2 supermajority vote is required instead of a typical 4-3 majority (on a board with 7 members). The local body should clearly document the rationale for any such decisions.

## TIMELINE

### County Review

The county has **30-days** from the time a full statement is received to make a recommendation. If it is determined that the referral requires more review time, the 30-day period may be extended upon mutual consent of the referring body and the county. The county conducts an initial review of the referral form and submitted materials to determine completeness. If the statement of proposed action is deemed incomplete, the department will notify the referring body. The 30-day period will begin once the referring body has submitted a full statement. If the county does not respond within 30-days, then the municipality may proceed to take final action (unless recommendation is received 2 or more days prior to final action).

For site plan review and special use permit actions requiring a public hearing, a full statement must be sent to county at least 10 days prior to the scheduled hearing.

*Note: Plan ahead by considering your local calendar of board meetings, applicant project timelines, etc. The county strives to accommodate, but cannot guarantee, requests for completing reviews by certain dates in advance of the 30-day period.*

### Record of Decision

The local board is required to send to the county a record of its decision within 30 days of final action. This can be done by sending a copy of the NOFA, meeting minutes, and resolutions. If the board chooses to rule against the recommendations of the county, the reasons for this ruling must also be sent to the county in the format of a resolution stating the rationale for the decision. It is important to provide this information so the county has access to the most up-to-date local regulations and is aware of development trends happening across the region.

## HELPFUL TIPS

The following are helpful tips to clarify some common referral issues:

- The GML 239 referral process is not the same as SEQR (New York State Environmental Quality Review).
  - These are two separate processes. GML 239s are submitted using the online portal and may require attaching an EAF. The portal is not designed to initiate the SEQR process or Lead Agency Requests, these should be sent separately to the county planning agency by mail or email. Clearly indicate the type of review being requested so that we may route the requests to appropriate staff.
- If there are two different local boards reviewing the action, submit two separate referrals.
  - If the application is for multiple reviews from the same board, one referral is sufficient. Be sure to check the appropriate boxes for all requested review types on the referral form.
- Initiating a referral with incomplete information will not speed up the review.
  - Please do not submit partial applications to save a spot in the queue or in hopes to get a head start on the review. The county's 30-day review clock does not start until a COMPLETE referral with all supporting documentation is received.
- Emailing, mailing, or faxing GML 239 documents **does not** initiate the review.
  - Since 2016, the county requires digital submission of all referrals and supporting documentation: <https://ocgov.net/departments/planning/municipal-services/gml-239-referrals/>
- The county's documentation requirements are the same as those of local boards.
  - The county reviews applications using the same basic documentation required by the municipality's local code and provided to its boards. The planning agency may request missing information or suggest the local board requires additional information of the applicant before making a final local decision.
- The county's response is not a stamp of approval that an action is locally appropriate.
  - County review focuses on addressing potential intermunicipal or countywide impacts. There may be potential significant local impacts or controversy. County review does not indicate compliance with all applicable local regulations; or with any other county, state, or federal requirements, including the provisions of the New York State Environmental Quality Review Act (SEQRA).
- Applications can be submitted for county planning agency review before holding public hearings or a SEQRA determination is completed.
  - Public hearings, the SEQR process, other agency reviews, etc. can all occur at the same time as the county's GML 239 review. This helps with scheduling the public hearing requirements and notifications.
- The process is not complete when the county issues a recommendation.
  - Local municipalities are required inform the county of their decision. Submit meeting minutes, resolution, and a notice of final action form to: [239apps@ocgov.net](mailto:239apps@ocgov.net)

## SHORTCUTS

Ways to ensure a timely review:

- All referrals must be uploaded via the county's online referral form:

<https://ocgov.net/departments/planning/municipal-services/gml-239-referrals/>

- Carefully consider the type of action and jurisdictional criteria that makes the action reviewable under GML 239 and indicate each. This informs the county as to why the referral has been submitted.
  - Provide a brief summary. As a starting point to describing the action, include the type of action (subdivision, site plan review, etc.) and relevant zoning in the summary.
    - Ex. Area variance for side yard setback in a residential district.
  - Check the box(es) for all involved agencies that may have an interest in reviewing the application. The county's final GML 239 referral letter will be emailed to them as a courtesy. You must still apply separately for any permits from other agencies.
  - Upload attachments separately by type/category into the correct sections. Please do not upload multiple documents as one file or each page of a document separately.
- If you forgot an attachment or the county has requested additional information, additional documentation can be sent to: [239apps@ocgov.net](mailto:239apps@ocgov.net)
  - Review helpful tips, access links to the latest SEQR forms, and obtain Agricultural Data Statement forms at: <https://ocgov.net/departments/planning/municipal-services/gml-239-referrals/>

You can always call our office at 315-798-5710 or email [239apps@ocgov.net](mailto:239apps@ocgov.net) with any questions. We are here to help the referral process run smoothly!

