

# The 239 Review Process in Oswego County, NY

*An overview of GMU Article 12-B, Section 239  
for the Municipalities of Oswego County*

**Department of Community Development, Tourism, & Planning**

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# **I. Introduction**

## **Intent**

The Oswego County Department of Community Development, Tourism, and Planning has prepared this document to clarify the 239 Review process. This document is meant to give a general overview of Article 12-B, Section 239 of the General Municipal Law and the process required to maintain compliance with these regulations. It is the Department's intent that the 239 Review process is as simple as possible for all involved parties.

## **What is 239 Review?**

In short, 239 Review is the legally required process by which the County Planning Board reviews certain local land use actions. The specific actions that trigger review are outlined in Section II, submission requirements are outlined in Section III, and Section IV outlines the County's review process.

## **Who Reviews 239 Review Applications?**

The staff of the Department of Community Development, Tourism, and Planning (hereafter referred to as 'the Department' or simply 'department') is responsible for review of all 239 Review applications. Department staff is responsible for initial review and analysis of the application. Staff will then draft comments for the Director's review, who then conducts their own review. Ultimately, the Director will issue an official response to the designated point-of-contact as noted on the *239 Review Submission Form*.

## **Who is this Guide For?**

This guide is intended principally for municipal staff and board members who are charged with review of area and use variances, site plan reviews, special use permits (a.k.a. special permits or conditional use permits), rezoning, and adoption of municipal land use laws and planning documents (e.g., zoning ordinances and comprehensive plans). This guide may also be useful for applicants and the public wishing to understand the 239 Review process.

## **What is the Intent of 239 Review?**

The County is aware that not all municipalities have land use professionals on staff or appointed to their review boards, so it is beneficial to have the Department take a close look at these proposed actions as an interested party. The Department offers a regional perspective in reviewing these proposals, which aims to consider the county and region as an interrelated system. Additionally, this review process helps to keep local, county, state, and federal agencies "in-the-know."

## II. Actions Subject to 239 Review

Article 12-B, Section 239-L, -M, -N, and -NN of the General Municipal Law prescribe the requirements for municipalities to refer certain actions to the County Planning Department for review and comment, which is generally referred to as 239 Review. The 239 Review law was established to identify those actions that have potential to cause inter-community or countywide impacts and to require an additional level of scrutiny over those potentially impactful actions.

### **The following actions subject to 239 Review:**

- adoption or amendment of a comprehensive plan;
- adoption or amendment of a zoning ordinance or local law;
- issuance of special use permits;
- approval of site plans;
- granting of use or area variances; and
- other authorizations which a referring body may issue under the provisions of any zoning ordinance or local law.

### **Actions are only subject to 239 Review when they affect real property within 500 feet of:**

- the boundary of any city, village or town; 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 parkway, thruway, expressway, road or highway; 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
- 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 an agricultural district.

*Use our 239 Review Mapper to check if the project site is subject to review: <https://arcg.is/1Dnuv1> .*

### **Exceptions**

The issuance of building permits and zoning interpretations are not subject to 239 Review. The issuance of area variances within 500 feet of a farm operation located in an agricultural district are also exempt from 239 Review.

### **Requirement to Notify Neighboring Municipalities**

Section 239-NN requires that if any of the actions noted above affect real property within 500 feet of a municipal border, then written notice must be given to the clerk of the neighboring municipality. Such notice must be delivered, via mail or email, at least 10 days prior to any scheduled hearing; the neighboring municipality may appear and be heard at any scheduled hearing regarding the action.

### **Subdivision Plats**

The Oswego County Legislature has not granted the Department the ability to review subdivision plats. Section 239-N *would* require 239 Review for preliminary, final, or undeveloped subdivision plats, pursuant to the same regulations as noted above. Regardless, municipalities are encouraged to request technical assistance with the review of such actions. The Department will offer whatever technical support is requested and appropriate.

### **Failure to Comply**

If a municipality neglects to satisfy the requirements of these statutes, such as by not submitting to the County for comments, any decision rendered by the agency would likely be null and void under the law.

## **III. 239 Review Submission Requirements**

In order to process applications for 239 Review in a timely manner, it is imperative that the referring body submit all of the required documents as noted within this section. Generally, the Department requires all documentation that the municipality would require in order to process the application, plus a few additional documents unique to the 239 Review process. If a submission is deemed incomplete, then the Department will not proceed with full review of the application until the referring agency has supplied the requested documentation and the 30-day review window (as explained in Section IV, below) will not begin.

**The required documentation is as follows:**

#### **1. “Full Statement”**

A “Full Statement” is effectively all documentation that the municipality would require prior to acting on an application. As defined in Section 239-M, a full statement, “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...”

As noted above, in order to comply with the *State Environmental Quality Review Act* (SEQRA), the referring municipality should require either a *Short Environmental Assessment Form* for “unlisted” actions or a *Long Environmental Assessment Form* for Type I actions. Parts **1** and **2** of the appropriate EAF should be considered part of the “Full Statement” and be included with every 239 Review submission.

## **2. 239 Review Submission Form**

The Department has created a *239 Review Submission Form*, which is available on the County website or in the Department’s office at the Legislative Office Building (46 East Bridge Street, Oswego). This form includes general and specific questions that will aid County Staff in review of the application. The form requires that the referring agency designate a point-of-contact that is knowledgeable about the action. Staff may contact this individual with questions and will return the official response to this individual or agency.

## **3. Agricultural Data Statement**

This document is only required when an action would affect real property within 500 feet of a farm operation in an agricultural district. This brief document requests information regarding proximity to agricultural operations. The Department also hosts a series of agricultural lands maps on the Department’s website, which are valuable tools to help identify potential farm operations.

## **4. Other Documents**

The referring agency may submit additional documentation that it deems relevant to review of the application. Additionally, the Department reserves the right to request any additional information necessary to make an informed review of the action.

### **How to Submit**

Applying for 239 Review is easier than ever! You can now access all required forms on the Department’s website (noted on the last page of this document) and email digital documents (PDF preferred) to the designated staff member, which is noted on the 239 Review webpage. Electronic submission is preferred, especially for long documents, but it is always permissible to submit via hand-delivery or postal delivery.

## **IV. The County Review Process**

### **Review Timeframe**

The County has thirty (30) days from receipt of a complete 239 Review submission to issue official comments. The 30-day review period will not start until all required documentation are submitted and the Department has deemed the application as complete.

### **Modification of Review Deadlines**

The 30-day review period can be extended upon mutual agreement of the interested parties; this is only pursued for uniquely complex projects. Additionally, if the 30-day review period would cause an undue adverse impact on the project or project timeline, then the referring agency can request expedited review. Such requests must be made in writing to the Department. The Department cannot guarantee that review can be completed within the requested timeframe, but the Department will attempt to do so or give their reasons for being unable to do so.

### **Factors of Review**

Pursuant to Section 239-L, the following factors are within the purview of 239 Review by the County:

- compatibility of various land uses with one another;
- 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;
- impact of proposed land uses on existing and proposed county or state institutional or other uses;
- protection of community character in regard to predominant land uses, population density, and the relation between residential and nonresidential areas;
- drainage;
- community facilities;
- official municipal and county development policies, as may be expressed through comprehensive plans, capital programs or regulatory measures; and
- such other matters as may relate to the public convenience, to governmental efficiency, and to the achieving and maintaining of a satisfactory community environment.

### **Referral to Interested Agencies**

In specific circumstances, the Department may find it necessary to solicit comments from other interested agencies. The department most often requests comments from the Health Department and Highway

Department, but others may be relevant in specific cases. State agencies, such as the Department of Environmental Conservation and the Department of Transportation, are often consulted when state property or environmentally-sensitive areas could be affected. Federal agencies are almost never contacted, but the Army Corps of Engineers may be contacted when jurisdictional wetlands or waterbodies are involved.

### **Categories of Response**

As demonstrated above, the County has broadly defined duties in 239 Review. In some cases, an action is clearly a local issue with only localized effects. In other cases, it is less clear what the regional effects of an action may be. The County takes their responsibility in 239 Review seriously and, as such, offers comments and recommended modifications that are necessary to mitigate the potentially adverse effects of an action.

The Department will offer one of the following categories of response:

- **Approval.** If all applicable local land use standards are met, the proposed action is consistent with local land use plans and regulations, and no other issues that are of County concern (as noted above) are involved, then approval shall be recommended.
- **Approval with Modification.** If all applicable local land use standards are met, the proposed action is consistent with local land use plans or regulations, and any other issues that are of County concern (as noted above) are involved but can be easily addressed by mitigation measures, then a recommendation for approval with modifications will generally be issued.
- **Disapproval.** If applicable local land use standards are not met, the proposed action is inconsistent with or contrary to local land use plans or regulations, or other issues are present that are of County concern (as noted above) and cannot be readily mitigated, then a recommendation for disapproval will generally be issued.
- **No Significant Inter-Community or Countywide Effect.** If the County has determined that the action is consistent with local land use standards, and that there are no effects that will cross municipal boundaries, then the County may issue a finding of No Significant Inter-Community or Countywide Effect. This is the preferred option for those projects that could be recommended for approval, but where it is determined that local factors may be at play which the County is not aware of. In other words, the referring body is given complete control over review of the action as if 239 Review was never initiated. In some cases, the County will also

offer non-binding, advisory comments for the referring body to consider. In these cases, the County will return comments as soon as possible.

### **Supermajority Required**

The recommendation of the County for disapproval or modification can only be overruled when the referring agency votes in supermajority (majority, plus 1). If the referring agency acts contrary to the County's recommendations, then they must supply a written explanation of the decision-making rationale. The County does not take offense in these cases, but it is not only legally required but also greatly helpful for the County to understand the reasoning for why the referring agency acted contrary to the recommendations.

### **Filing of Final Action**

The referring agency must file a report with the County within 30 days of taking final action. The *Report of Final Action* form is available on our 239 Review website. Such a report must clearly state the final decision and the process by which the decision was rendered. Furthermore, as noted above, if the referring agency acts contrary to a recommended disapproval or modification, then the referring agency must explain why they acted in this way. The report often includes the official decision letter, final approved site plan (if relevant), and the official meeting minutes. The report should be returned to the Department to be retained in the case file.

## **V. Additional Resources**

Please call the Department of Community Development, Tourism, & Planning at (315) 349-8292 with any questions. Some additional resources are noted below.

### **County Resources:**

- 239 Review Mapper Tool: <https://arcg.is/1Dnuv1>
- GIS Tax Parcel Mapper: <https://rptsgisweb.oswegocounty.com/>
- Planning & Community Development Office: <https://www.oswegocounty.com/planning>

### **State Resources:**

- Article 12-B Law: [https://newyork.public.law/laws/n.y.\\_general\\_municipal\\_law\\_article\\_12-b](https://newyork.public.law/laws/n.y._general_municipal_law_article_12-b)
- NYS DOS Local Government Services: <https://www.dos.ny.gov/lg/publications.html>
- State Environmental Quality Review Act (SEQRA): <https://www.dec.ny.gov/permits/357.html>
- NYS Department of Transportation: <https://www.dot.ny.gov/index>
- NYS Department of Environmental Conservation: <https://www.dec.ny.gov/>