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TUG HILL COMMISSION LOCAL GOVERNMENT CONFERENCE 2017
Watertown, NY

MOTIONS, CRITERIA AND DECISION-MAKING GUIDELINES

MARK SCHACHNER, ESQ.
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I. BASIC GOALS AND GUIDELINES

GOALS

- A. Preserve and maintain integrity of and respect for planning and zoning process
- B. Sound decision-making
- C. Avoid (or at least prevail in) legal challenge

GUIDELINES

- D. Identify type of application
- E. Consider and apply applicable criteria
- F. Remember to decide based on land/property and merits of application, regardless of identity of applicant/property owner



II. SOUND DECISION-MAKING PRACTICES SUMMARIZED

- A. Follow the process – proper notices, public hearings, SEQRA review, voting requirements
- B. Identify the proper decision-making criteria
- C. Apply the proper decision-making criteria
- D. Discuss and deliberate prior to Decision (in open public meeting)
- E. Make sure that Minutes reflect discussion of criteria
- F. Decide by formal Motion with stated reasons for Decision based on criteria

III. DECISION CRITERIA

- A. Planning Board Site Plan Review authorization and possible criteria come from NYS Town Law Section 274-a(2)(a), Village Law Section 7-725-a(2)(a), General City Law Section 27-a – implemented by Site Plan Review provisions of local Zoning Law
- B. Planning Board Subdivision review authorization and possible criteria come from NYS Town Law Sections 276 and 277, Village Law Sections 7-728 and 7-730, General City Law Sections 32 and 33 – implemented by local Subdivision Regulations
- C. ZBA Area Variance criteria come from NYS Town Law Section 267-b(3)(b), Village Law Section 7-712-b(3)(b), General City Law Section 81-b(4)(b)



- D. ZBA Use Variance criteria come from NYS Town Law Section 267-b(2)(b), Village Law Section 7-712-b(2)(b), General City Law Section 81-b(3)(b)

IV. DECISION MAKING

- A. Some level of formality – not “sounds OK to me”
- B. If Public Hearing required: first have Public Hearing – open, keep open for however long – take as many public comments as you wish and as appropriate – then close Public Hearing for Board discussion and deliberation – try to maintain clear separation between Public Hearing comments and Board discussion
- C. After Public Hearing or if Public Hearing not required: Board discussion and deliberation – more the better (within reason) – focused on Decision criteria (not irrelevant factors like applicant identity, public service and contributions)
- D. Include in discussion possible approval conditions, if appropriate
- E. Member makes actual Motion for approval, approval with conditions or denial – Motion should track relevant applicable criteria – but don’t just recite criteria – apply them to the actual facts and circumstances of the particular application – use “because”...
- F. Motion should include important details of application and specifics of any conditions
- G. Motion seconded – then Discussion by Board
- H. Motion amended if necessary and seconded



- I. Vote on Motion – Members explaining vote acceptable, but not required – if discussion was adequate, then explanations shouldn't be necessary (and may actually burden or confuse the Record)

V. THE MORE COMPLEX/CONTROVERSIAL THE APPLICATION, THE GREATER LEVEL OF FORMALITY APPROPRIATE

- A. "Easy application"/ "slam dunk" – formality may be less necessary (but you never know for sure)
- B. Be extra vigilant and wary if difficult application – especially if attorneys are involved

VI. PREPARE DECISION MOTION IN WRITING IN ADVANCE (BUT NOT TOO FAR IN ADVANCE)

- A. Before Decision meeting
- B. But not before Public Hearing and some deliberation
- C. So really applies only for applications for which review extends beyond one meeting – in other words, not the simple "slam dunk" application
- D. Can seek assistance of Municipal Legal Counsel – but Counsel can't make Decision

VII. MAKE SURE MINUTES AND DECISION DOCUMENTS ARE DETAILED AND ACCURATE

- A. Detailed Minutes not required, but incredibly helpful
- B. Document "rational basis"



VIII. DEALING WITH “PRECEDENT”

- A. Important to recognize/remember if Board has dealt with same or substantially similar situation in past
- B. General rule of precedent: treat same or substantially similar application in same manner – make same Decision
- C. Adherence to “precedent” important, but rule is not “iron-clad” or absolute
- D. Can rule differently despite/against precedent, but must explain/state reasons for different result on Record as part of Decision – must be legally valid reasons involving changes in facts and circumstances of current application – not “well, we’re a different Board”
- E. What factors might constitute appropriate change of circumstances – physical changes to property and/or nearby properties – substantial/material changes in adjacent, nearby and/or surrounding land use patterns – documented market changes (supported by competent financial evidence including “dollars and cents proof”)
- F. Factors which generally are not considered appropriate to justify deviation from precedent – new, different or change in identify of applicant – mere passage of time – change and/or “enlightenment” of ZBA membership



Mark Schachner is the Senior Principal Attorney of MILLER, MANNIX, SCHACHNER & HAFNER, LLC in Glens Falls and Round Lake. While the firm maintains a general practice of law, Mr. Schachner's efforts are concentrated in the areas of municipal, environmental, land use and planning/zoning law. Mr. Schachner and his colleagues represent numerous municipalities in Essex, Franklin, Fulton, Hamilton, Saratoga, Warren and Washington Counties. He also serves as Counsel to the Saratoga County Water Authority, the Gloversville-Johnstown Joint Sewer Board, the Adirondack Association of Towns and Villages and Glens Falls Open Door Mission. His practice includes extensive participation in regulatory proceedings before the New York State Department of Environmental Conservation, Adirondack Park Agency and Lake George Park Commission.

Mr. Schachner is a graduate of Brown University and Boston University School of Law. He is author of the chapter entitled "Environmental Law - New York State Environmental Quality Review Act ("SEQRA")" in the book Pitfalls of Practice published by the New York State Bar Association in 1993 and 2002. Mr. Schachner has lectured about municipal, environmental, planning and zoning law matters at numerous conferences throughout the State. He is a Director-at-Large of the New York Planning Federation and has been a frequent presenter at the Tug Hill Commission Local Government Conference.

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