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TUG HILL COMMISSION LOCAL GOVERNMENT CONFERENCE 2017
Watertown, NY

PROPER USE OF ALTERNATE MEMBERS OF
PLANNING BOARDS AND ZONING BOARDS OF APPEALS

MARK SCHACHNER, ESQ.
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INTRODUCTION – Problem: Too Few Members at Some Meetings

Solution: Allow for Alternate Members

- I. STATE ENABLING LEGISLATION** – allows for Alternates, but for Conflicts only (Town Law Sections 267(11) and 271(15), Village Law Section 7-712(11) and 7-718(16) and General City Law Sections 27(16) and 81(11))
- II. MUNICIPAL HOME RULE LAW** – allows municipalities to “supersede” State legislation in order to best govern themselves so long as the subject of such legislation is not exclusively occupied or “pre-empted” by State statute (Municipal Home Rule Law Sections 10(1)(ii)(d)(3) and (e)(3))
- III. LOCAL IMPLEMENTING LEGISLATION** – can allow for broader reasons and most/all do



IV. USE OF ALTERNATES IN PLACE OF REGULAR MEMBERS

- A. CHOOSING ALTERNATES – 1ST Alternate/2ND Alternate or “alternate Alternates”
- B. SERVICE DURATION – if application not decided in one meeting – Alternates continue or Regulars jump in
- C. WHO DESIGNATES AND DECIDES

V. ROLE OF ALTERNATES WHEN NOT “SITTING”/SERVING

- A. ALTERNATES STAY HOME
- B. ALTERNATES OBSERVE FROM AUDIENCE (but don’t speak)
- C. ALTERNATES OBSERVE WHILE SITTING WITH BOARD (but don’t speak)
- D. ALTERNATES ATTEND, SIT WITH BOARD AND PARTICIPATE “VIGOROUSLY” – creates substantial “Uber-Board” concern
 - 1. 5 Member Board acting as 6 or 7 or
7 Member Board acting as 8 or 9
 - 2. Risk of successful legal challenge
- E. PARTICIPATION FROM AUDIENCE AS “MEMBER OF PUBLIC”
 - 1. Not unlawful, but fraught with peril
 - 2. May create “Uber-Board” concern
 - 3. Too much weight afforded
 - 4. Taint future participation



VI. “PROMOTION” OF ALTERNATE MEMBERS – to become Regular Member when vacancy occurs – no entitlement

VII. REAPPOINTMENT – when term expires – no entitlement

CONCLUSION

Minimize Alternate Member participation when not “seated”/serving – Alternate Member role even more thankless than Regular Member

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.



