

MILLER, MANNIX, SCHACHNER & HAFNER, LLC

ATTORNEYS AT LAW
15 WEST NOTRE DAME STREET
GLENS FALLS, NEW YORK 12801
(518) 793-6611

Mark Schachner★
Robert H. Hafner
Michael J. Hill
Leah Everhart
Jacquelyn P. White
Justin M. Grassi

★Also Admitted in Massachusetts

John W. Miller (1908-1968)
John C. Mannix (1931-2006)

Facsimile: (518) 793-6690

Toll Free: 1-800-421-6166

Web Site: millermannix.com

NEW YORK STATE TUG HILL COMMISSION
2015 LOCAL GOVERNMENT CONFERENCE
Watertown, NY

DEALING WITH “DIFFICULT” “PLAYERS” IN THE PLANNING AND ZONING “GAME”

MARK SCHACHNER, ESQ.
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I. INTRODUCTION AND THRESHOLD QUESTIONS

- A. Is every Planning and Zoning meeting peaceful and harmonious?
- B. Do tranquility and respect rule at every Planning and Zoning meeting?
- C. Do we each tell our friends and loved ones that we need not practice yoga or meditate because our souls are rested from our once or twice per month Planning Board or Zoning Board of Appeals meetings?
- D. Finally, can we truly say that each and every one of the “players” in the Planning and Zoning “game” is “at one with the universe”?

If your answer to all of these questions is “Yes”, then you need not stay for the rest of this discussion – if you answer “No” to any or all, then we will try to address some ways to “demilitarize” Planning and Zoning meetings – don’t get too excited about our answers, as you’ll end up being disappointed – little or no magical answers

II. WHAT IS THE PLANNING AND ZONING “GAME”?

- A. Planning Board and Zoning Board of Appeals meetings
- B. Meetings of legislative bodies re: zoning issues – rezoning, Comprehensive Plan discussions, PUDs and PDDs

III. WHO ARE THE “PLAYERS”?

- A. Applicant – her/him/itself
- B. Applicants’ representatives/agents – engineer, architect, planner, surveyor, attorney, realtor
- C. The “public” – neighbors (of particular application), generally interested residents (non-neighbors), non-residents – most are respectful and congenial, but some are not
- D. The “public’s” representatives/agents – engineer, attorney, etc. - citizen “gadfly”
- E. Fellow Board Members (including Chairperson)
- F. Zoning Officer
- G. Other municipal officials (including elected ones)

IV. WHAT DO WE MEAN BY “DIFFICULT”?

- A. Slow, laborious, repetitious, redundant
- B. Obnoxious, rude, impolite, belligerent, hostile
- C. Uncooperative, lying, inciting (as in riot, not insightful)
- D. Dangerous

V. MUNICIPAL OBLIGATIONS vs. ACCEPTABLE PRACTICES

- Obligations - Minimum Legal Requirements – all that is necessary to comply with (not be breaking) the law and avoid successful legal challenge
- Acceptable Practices – sometimes go beyond minimum legal requirements to be “user friendly” and to promote public participation, support and confidence

A. Obligations

1. Allow Applicant and/or representatives to address Board
2. Allow all Board Members to discuss application
3. Allow anyone who wishes to comment on application at Public Hearing
4. No obligation to allow public comment on application if it's not a Public Hearing
5. No obligation/requirement of “Open Comment”, “Privilege of Floor”, etc. portion of meeting

B. Acceptable Practices

1. Allow public comment even before Public Hearing or even if application not subject to Public Hearing – less helpful during and after Decision
2. Privilege of Floor, Open Comment, etc. – breeds respect for integrity of planning/zoning game (hopefully) – although certainly lengthens meetings
3. No legal risk in “overcompliance” but, if that is the practice, then need to be fair and consistent

VI. VITAL ROLE OF CHAIRPERSON

- A. Run the meeting
- B. Establish (and state) basic ground rules
- C. Control the meeting and enforce compliance with ground rules
- D. Lead by example – courtesy and civility, but controlling

VII. WHAT CAN WE DO?

- A. Develop thick skin – grin and bear it
- B. Implement “Ground” Rules of Order
 - 1. Only speak if you “Have the Floor”
 - 2. Identify yourself upon speaking – name and address (at least municipality of residence)
 - 3. Address all comments to the Board (not the applicant or other members of the public)
 - 4. Speak loudly (enough) and as clearly as possible (mention that it helps lead to good Meeting Minutes)
 - 5. One person speak at a time
 - 6. Comment about the application, not unrelated issues and not the applicant
- C. Possible additional Rules (generally or for specific matters):
 - 1. Sign in on sign-up sheet of those who wish to speak
 - 2. Time limit on comments
 - 3. Limit number of times that any one person may speak
 - 4. No “donation” or aggregation of times from others
- D. Any rules/limitations are permissible so long as they are reasonable, applied consistently and enforced
- E. Enforce the Rules of Order – failure to do so results in immediate loss of credibility and control
- F. Limit “engagement” with contentious speaker – don’t “take the bait” – “thank you for your comments” vs. “you’re wrong because...”

- G. “De-Personalize” the proceeding – Board review should focus on application and property – not on identity of applicant, applicant’s plight or personal circumstances of opponents – personal circumstances legally irrelevant

VIII. IF WE HAVE SERIOUS MEETING BREAKDOWN

- A. Seek guidance from Municipal Legal Counsel
 - 1. In advance if difficulty anticipated
 - 2. Invite to meeting
 - 3. By “telephone”
- B. Recess the meeting if necessary – reconvene after break or some other day
- C. Seek Law Enforcement assistance if necessary – arrange availability or attendance in advance if possible

IX. THE RARE (BUT CRITICAL) DANGEROUS SITUATION

- A. Avoid “uncomfortable” situations outside of meetings – beware of isolation
- B. Take any threats seriously
- C. Report any threatening behavior and seek Law Enforcement assistance

X. CONSIDER APPOINTMENT OF DIFFICULT PLAYERS TO BOARDS

- A. Consider carefully – irony of “reward”
- B. May spur remarkable personality transformation
- C. But also may backfire and removal not so easy

XI. CONCLUSION

- A. Real life current events
- B. Take-home message

Mark Schachner is the senior principal attorney of MILLER, MANNIX, SCHACHNER & HAFNER, LLC in Glens Falls, New York, just south of Lake George in Warren County. While the firm maintains a general practice of law, his 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. 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. He has lectured about municipal, environmental, planning and zoning law matters at numerous conferences throughout the State. Mr. Schachner was selected as one of four Upstate New York Government/Cities/ Municipalities “Super Lawyers” in 2009; the only attorney in the area to achieve this distinction. He is a Director-at-Large of the New York Planning Federation and was the Keynote Speaker at the Federation’s 2014 Annual Conference.

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