PUBLIC MEETINGS & HEARINGS

Introduction

Open Meetings Law
Meeting preparation & procedure
Public hearings
Records

Meetings & hearings defined

**Public meeting:** the official convening of a public body for the purpose of conducting public business

**Public body:** entities consisting of two or more people that conduct public business and perform a governmental function

**Public hearing:** an official proceeding of a governmental body or officer during which the public is accorded the right to be heard
Open Meetings Law

Purpose
- Executive session
- Access
- Notice

Public Officers Law, Article 7 §100-111

Purpose & intent
- Meetings allow public to listen & observe
- Subject to Open Meetings Law
  - Application review and other board business
  - "Work session" or "agenda meeting"
  - "Site visit" if a quorum has gathered to discuss application
    Riverkeeper v. The Planning Board of the Town of Somers
- Exempt from Open Meetings Law
  - Soliciting & receiving legal advice from review board’s attorney
    - Attorney-client privilege

Executive session
- Valid only for specific reasons under OML
- 1. Public safety
- 2. Protect identity
- 3. Criminal investigations
- 4. Actual litigation
- 5. Collective negotiations
- 6. History of person
- 7. Exams
- 8. Property value
Executive session procedure

- Portion of open meeting from which public may be excluded
- Pass motion to enter into executive session for stated purpose
- Close executive session and return to open meeting
- File minutes of actions taken in executive session within one week

Provide access to public

- General public
  - Not limited to citizenship or residency
- Media

Meeting notice requirements

- Provide notice to press—meeting notices need not be published
- Post notice in conspicuous place
- Post on regularly updated website materials to be discussed in the open meeting
- Scheduled more than 1 week in advance
  - provide at least 72 hours (3 days) notice
- Scheduled less than 1 week in advance
  - provide notice to the extent practicable

Review board may permit public participation but it is not required
Meeting preparation & procedure

Applications

Procedure

Audio and video recording

Applications
- Appoint an administrative official (formally or informally)
  - ZEO, municipal clerk, or board clerk
- Develop good forms
  - Include SEQR Environmental Assessment Form
- Post on website
- Have clear submission requirements
  - Use a check list or flow chart
- Ensure time periods or deadlines comply with state law and are clear to all parties
  - Submission deadlines
- Ask applicant to provide extra copies of materials
  - County review (if required): send immediately
  - Other municipal department heads for recommendations

Organizing meetings

- Prepare agenda
- Confirm that members will attend
- Invite experts and public officials
- Reserve meeting room
- Consider larger spaces for controversial applications
- Arrange for equipment
- Assemble & distribute background material
Quorum & majority

- Number of members present for business to be legally conducted
- Convening meetings & hearings
- Voting
- At least a majority of full membership of board
- Includes absent members and vacant seats
- New York General Construction Law, Article 2 - § 41

Avoid quorum troubles

- Be prepared for board member absences
- Consider appointing alternate members
  - Conflict of interest – Appoint by local law or ordinance
  - Absences – Supersede statute to appoint by local law
  - Legal Memorandum: “Alternate Members of Planning Boards and Zoning Boards of Appeals”
    - www.dos.ny.gov/cnsl/lu06.htm
- Examples available from DOS

Meeting procedures

- Make all present aware of rules
- Format for meeting or presentations
- Time limits established for agenda items
- Allowance of public questions or comments
- Additional procedures
Audio & video recording

- Board may adopt procedures for recording that does not detract from the deliberative process.
- Should not require permission or advance notice to record.
- Absolute ban on recording is not reasonable.
- Board member or public reluctance to be recorded is not appropriate reason to prohibit recording.

Public hearings

Purpose
Noticing requirements
Procedure

Public hearings

An official proceeding of a governmental body or officer during which the public is accorded the right to be heard.

- Required for all matters before a ZBA.
- Examples for planning boards include:
  - Subdivision
  - Special use permit
  - Preparation of preliminary comprehensive plan
  - Site Plan (if required locally).
When to hold hearing

- When required by state statute, local law, or ordinance
- When application or issue may be controversial
- When substantial conditions may be attached to approval
- When board chooses to do so

Hearing notice requirements

- Open Meetings Law
- Municipal Home Rule Law
- Other applicable state statutes

**Content of notice:**
- Date, time & place
- Nature of proposed action
- Location of subject property, if applicable

- Legal notice in official newspaper
  - Generally 5 days prior to hearing date, but may be longer according to other applicable state statutes
    - Example: Adoption of and amendments to village zoning regulations or comprehensive plans require 10 days advance notice

Hearing notice requirements

- Must mail notice to:
  - Applicant
  - Regional state park commission, if 500' from state park or parkway (ZBA only)
  - Other agencies, if applicable:
    - GML §239-m & GML §239-n
- No state statutes require direct mailing of notices to adjoining neighbors

**NOTICE OF PUBLIC HEARING**

Notice is hereby given that the Town of Bruson Planning Board will hold a public hearing on December 14th, 2020, at the Town Hall on Route 145, north of Livermore at 7pm.

A public hearing will be held by the Board. All interested persons shall be heard.

By Order of
George Glidden
Planning Board Chairman
Hearing notice requirements

- Municipalities may adopt additional local noticing requirements:
  - Signs on application property
    - best practice
  - Mailings to neighbors
  - Municipal ListServ
- Longer or shorter noticing requirements for adopting local laws

Hearing procedures

- Outline “Rules of Procedure” to maintain order
- Applicant’s role at hearing
- Handling questions from public
  - Registration
  - Order of speakers
  - Time allotted per speaker
- Consequences for disruptive audience members
- Recording sessions

Hearing tips

- Suggest speakers identify themselves
- Beware of rustling paper or chatter near sensitive microphones
- Clarify to whom speaker is referring
- Require visual references to be described or “read” into the record
- Let the public know what’s next
Closing the hearing

- Hearing usually over when all who wished to speak were heard
- After hearing closed, board may keep RECORD open to accept written comments

Adjournment and continuation

- If board adjourns to UNSPECIFIED TIME and PLACE, then notice must be given in same manner as original notice.
- If PRIOR to ADJOURNING, board ANNOUNCES time and place of continuing session, then public notice need not be given again.

Records
Minutes

- List of motions made
- Votes taken on those motions

If tape recording, also take notes

Meetings

Hearings

- At least a general summary of views expressed
  - Does not have to be verbatim
  - Stenographer not required
  - Names of speakers

Minutes are a record

- Make available to public
  - Regular meetings within two weeks
  - Executive sessions within one week

- NYS Archives Records Retention Schedule
  - Official minutes permanently
  - Hearing proceedings permanently
  - Recordings four months after transcription or approval of minutes/proceedings

New York Department of State

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