

PUBLIC MEETINGS  
& HEARINGS

New York State Department of State

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Introduction

- Open Meetings Law
- Meeting preparation & procedure
- Public hearings
- Records



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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

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**Open Meetings Law**

- Purpose
- Executive session
- Access
- Notice

Public Officers Law, Article 7 §100-111

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**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

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**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

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## 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



Public Officers Law  
Article 7 §105-106

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## Provide access to public

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



Review board may permit public participation but it is not required

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## 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- Provide notice to press—*meeting notices* need not be published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



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**Meeting preparation & procedure**

- Applications
- Procedure
- Audio and video recording

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**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

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**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



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## 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

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## 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](http://www.dos.ny.gov/cnsl/lu06.htm)
- Examples available from DOS

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## 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



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## 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



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## Public hearings

- Purpose
- Noticing requirements
- Procedure

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## 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)

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## 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

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## 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

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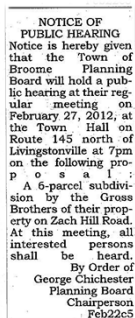
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## Hearing notice requirements

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




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## 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



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## 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



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## 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



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## Closing the hearing

THE R.C. HAS A HENRY AND RESOLVE PROCESS (SUPPORT AN OFF-SITE SOLID WASTE DISPOSAL OPTION), THE MOST ECONOMICALLY OPTION SHOULD BE CHOSEN.

THE PROCESS HAS ISSUES AND PAINSTAKINGLY THROUGH, BUT FINAL FUNDAMENTAL SHOULD BE A "SIGNIFICANT AND POSITIVE" IMPROVEMENT FOR STUDENTS AND THE COMMUNITY.



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

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## 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.

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## Records

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## Minutes

### Meetings

- List of motions made
- Votes taken on those motions

### Hearings

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

If tape recording, also take notes

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## 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

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## New York Department of State

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Website: [www.dos.ny.gov](http://www.dos.ny.gov)

[www.dos.ny.gov/lg/lut/index.html](http://www.dos.ny.gov/lg/lut/index.html)



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