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NEW YORK STATE TUG HILL COMMISSION
2022 LOCAL GOVERNMENT CONFERENCE
Verona, New York

MOTIONS, CRITERIA AND DECISION-MAKING GUIDELINES

MARK SCHACHNER, ESQ.
April 19, 2022

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I. BASIC GOALS AND GUIDELINES

- A. Preserve and maintain integrity of and respect for planning and zoning process
- B. Remember to decide based on land/property and merits of application, regardless of identity of applicant/property owner
- C. Identify type of application
- D. Consider and apply relevant criteria
- E. Avoid (or at least prevail in) legal challenge

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. Possible Planning Board Site Plan Review criteria come from NYS City Law, Town Law and Village Law – criteria in local legislation
- B. Planning Board Subdivision review authorization comes from NYS City Law, Town Law and Village Law – criteria in local legislation
- C. ZBA Area Variance criteria come from NYS City Law, Town Law and Village Law
- D. ZBA Use Variance criteria come from NYS City Law, Town Law and Village Law

IV. MOTION MAKING

- A. Some level of formality – not “sounds ok to me”
- B. 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
- C. 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 ok, 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 extremely 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

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, Herkimer, Saratoga, Warren and Washington Counties. He also serves as Counsel to the Adirondack Association of Towns and Villages, Adirondack Park Local Government Review Board, Saratoga County Water Authority, Gloversville-Johnstown Joint Sewer Board, Fonda-Fultonville Joint Sewer Board, Glens Falls Open Door Mission and Saratoga County Economic Opportunity Council. 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 Vice President of the New York Planning Federation.