



**Division of Local
Government Services**

Public Meetings & Hearings

A Division of New York Department of State

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Introduction



Meetings and 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

Public Officers Law
Article 7 §100-111

Purpose and 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



Public Officers Law,
Article 7 §105-106

Provide access to public

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



Review board may permit public participation but it is not required

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- Provide notice to press—**meeting notices** need not be published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



Disclosure of records

- Make available records scheduled to be discussed during open meetings
 - Application materials
 - Other agenda items (i.e., proposed resolutions)
- Reasonable fee for copies prior to or at meeting, and/or post online prior to meeting
- Committee on Open Government: (518) 474-2518
- Q&A: www.dos.ny.gov/coog/QA-2-12.html

Public Officers Law Article 7 §103(e)

Meeting preparation and procedure

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
 - Institute 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: Adopt provision by local law or ordinance; appoint members by resolution
 - 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

- Format for meeting or presentations
- Time limits established for agenda items
- Allowance of public questions or comments
- Additional procedures



Make all present aware of rules

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

Hearing notice requirements

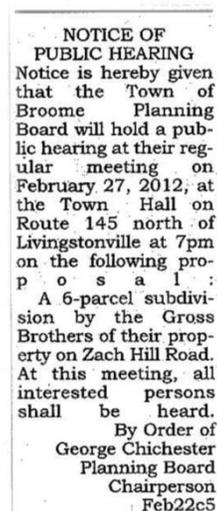
- Open Meetings Law
- Municipal Home Rule Law
- Other applicable state statutes
- Legal notice in official newspaper
 - Generally 5 days prior to hearing date, but may be longer according to other applicable state statutes
 - Example: Adoption of and amendments to village zoning regulations or comprehensive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

Content of notice:

- Date, time & place
- Nature of proposed action
- Location of subject property, if applicable

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



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

- Applicant's role at hearing
- Handling questions from public
 - Registration
 - Order of speakers
 - Time allotted per speaker
- Consequences for disruptive audience members
- Recording sessions



Outline "Rules of Procedure" to maintain order

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

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THE PROCESS HAS TEDIOUS AND PAINSTAKINGLY THOROUGH, BUT FINAL REMEDIATION SHOULD BE A SIGNIFICANT AND POSITIVE IMPROVEMENT FOR THE CAMPUS, STUDENTS, AND THE ENTIRE RE...



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 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

Minutes

Meetings	Hearings
<ul style="list-style-type: none"> • List of motions made • Votes taken on those motions 	<ul style="list-style-type: none"> • At least a general summary of views expressed <ul style="list-style-type: none"> – Does not have to be verbatim – Stenographer not required • Names of speakers

If tape recording, also take notes

Decision document

- Decision
 - Date action taken
 - Motion
 - Vote cast by each board member
 - Any conditions imposed
- Locally establish what constitutes “decision document”
 - Resolution
 - Findings statement which includes decision
 - Copy of applicant’s decision letter
 - Minutes which indicate vote on relevant motion



Noticing and filing decisions

- Attach findings to decision
- Notify applicant by mail
- Send county “report of final action,” if referred
- File with municipal clerk within 5 business days
 - Clerk should date stamp all records
 - Filing establishes start of 30 day period for appeal to NYS Supreme Court under Article 78 of NY Civil Practice Law & Rules



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