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CAPITAL DISTRICT REGIONAL PLANNING COMMISSION

Troy, NY

RUNNING PLANNING AND ZONING MEETINGS, DECISION-MAKING GUIDELINES AND PUBLIC PARTICIPATION

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PART 1 – RUNNING PLANNING AND ZONING MEETINGS

I. MUNICIPAL OBLIGATIONS vs. ACCEPTABLE PRACTICES

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



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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 for general discussion

D. Acceptable Practices

1. Allow public comment even before Public Hearing or even if application not subject to Public Hearing – not very 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

II. MEETING RULES

A. Establish "Ground" Rules of Order such as:

1. Only speak if you "Have the Floor" – stand at podium or designated separate place
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 slowly, loudly (enough) and as clearly as possible (mention that it helps lead to good Meeting Minutes)
5. One person speak at a time – includes Board Members
6. Comment about the application, not unrelated issues and not the



applicant(s)

- B. 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
- C. State and/or “Publish” the Rules
 - 1. Read them aloud
 - 2. Have them written on Agenda
- D. Any rules/limitations are permissible so long as they are reasonable, applied consistently and enforced – not necessarily for every application
- E. Limit “engagement” with contentious speaker – don’t “take the bait” – “thank you for your comments” vs. “you’re wrong because...”
- F. Enforce the Rules of Order – failure to do so results in immediate loss of credibility and control
- 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
- H. Limit/Eliminate public participation during Board deliberation and decision

III. 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



PART 2 – PLANNING AND ZONING DECISION-MAKING GUIDELINES

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 – actual criteria in local legislation
- B. Planning Board Subdivision review authorization comes from NYS City Law, Town Law and Village Law – specific 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
- E. Special Use Permits – Board designation and criteria in local legislation



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. 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 Motion must explain/state reasons for different result on Record as part of Decision – must be legally valid reasons – not just passage of time – not “different Board”

PART 3 – PUBLIC PARTICIPATION IN THE PLANNING AND ZONING PROCESS

I. BASIC GOALS AND GUIDELINES

- A. Public participation enhances application review process
- B. Makes for better more informed decision-making
- C. Promotes integrity and accountability of Land-Use Boards and Planning and Zoning decision-making process
- D. Instills public confidence in Boards and Members
- E. So, should we maximize opportunities for public participation every step of the way with no limits or controls whatsoever?



II. PUBLIC PARTICIPATION IN APPLICATION REVIEW

- A. Participation if application not subject to Public Hearing
- B. Pre-Hearing participation if application subject to Public Hearing
- C. Participation at/during Public Hearing
- D. Participation after close of Public Hearing (during Board discussion/deliberation/decision)
- E. Participation after Decision

III. OPEN MEETINGS LAW (OML)

- A. Any meeting of a public body to conduct business must be properly noticed and open to the public – includes “workshop” and “agenda” meetings
- B. Open to the public does not mean that the public must be allowed to speak

IV. FREEDOM OF INFORMATION LAW (FOIL)

- A. Requires public records to be available for inspection and/or copying – all records regardless of form
- B. Does not require creation of new records or answers to questions – watch out for “why” and “how”

V. FIRST AMENDMENT AUDITS

- A. Public has the right to access and/or record in public areas of public property
- B. Key access variable is where/what is reasonable expectation of privacy – what can be recorded and where - posting
- C. Don't get “egged on”

VI. PUBLIC PARTICIPATION LEADING TO POTENTIAL DANGER

- A. Very rare, but take any threats seriously



Mark Schachner is the Senior Principal Attorney of MILLER, MANNIX, SCHACHNER & HAFNER, LLC in Glens Falls. 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 Saratoga County Water Authority, the Gloversville-Johnstown Joint Sewer Board, Fonda-Fultonville Joint Sewer Board, Glens Falls Open Door Mission and LifeWorks Community Action (formerly 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.

