

April 29, 2020

NYS DOS Webinar: Conducting Public Meetings & Hearings Q & A

Q. How do the timelines for ZBA decisions on cases affected since all open meetings have been cancelled until further notice?

A. The cancellation or postponement of public hearings gives boards the relief of having to meet until June 1 (we don't yet know if that will be extended) unless they can hold public hearings via teleconference or videoconference.

Q. So if I have 10 people on a board but there are two vacancies, then I still need 6 people present in order to meet a quorum?

A. A quorum requires a majority of a fully constituted board, including absences and vacancies. So, if it is a board of 10, six members are needed to reach a quorum.

Q. Wait, you can't ask a question at a site walk? E.g., where do you propose to put the driveway entrance?

A. *Riverkeeper v. The Planning Board of the Town of Somers, Supreme Court, Westchester County, June 14, 2002*, the Court concluded that a site visit by a Planning Board does not constitute a meeting subject to the Open Meetings Law **so long as** its purpose is not "for anything other than to 'observe and acquire information.'" Having a discussion and deliberating and pros and cons of the application would, therefore, be a clear violation of Open Meetings Law. Gathering in less than a quorum (one or two at a time, for example) and asking questions but not deliberating the merits of the answers and later reporting the site visit at an open meeting into the record is the best means of gathering information on a site visit without having to notice an open meeting.

Q. When you say "actions", do you mean "motions taken"?

A. Actions can be motions or decisions that take place at the meeting/hearing.

Executive Session

Q. Multiple questions on executive session regarding minutes, votes:

A. The Open Meetings §106. Minutes

1. Minutes shall be taken at **all open meetings** of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.

2. Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that **such summary need not include any matter which is not required to be made public by the freedom of information law** as added by article six of this chapter.

3. Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the freedom of information law within two weeks from the date of such meeting except that minutes taken pursuant to subdivision two hereof shall **be available to the public**

within one week from the date of the executive session.

Q. Can a municipality hold a video conference or telephonic meeting that includes an executive session? This is specifically a village board meeting?

A. Yes. Certain software features allow attendees to have separate meetings. For example, someone noted to us that they “had zoom executive session last night, was a separate meeting number, after which they went back to the public one. In Zoom, you would be able to do executive session by doing breakout rooms, if anyone is using Zoom.”

Meetings/Hearings Notice

Q. #2 of slide 16 states that we should post in designated public locations. Does your website fulfill this requirement? Or does it physically have to be hung in the town hall/library, etc.?

A. Open Meetings Law §104. Public notice.

1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given or electronically transmitted to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting.
2. Public notice of the time and place of every other meeting shall be given or electronically transmitted, to the extent practicable, to the news media ***and shall be conspicuously posted in one or more designated public locations*** at a reasonable time prior thereto.
3. The public notice provided for by this section shall not be construed to require publication as a legal notice.
4. If videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations.
5. If a meeting will be streamed live over the internet, the public notice for the meeting shall inform the public of the internet address of the website streaming such meeting.
6. When a public body has the ability to do so, notice of the time and place of a meeting given in accordance with subdivision one or two of this section, ***shall also be conspicuously posted on the public body's internet website.***

Q. Does this posting requirement still apply now? Town Hall is closed to the public and there is no exterior public bulletin board.

A. A municipality should have one or more designated public locations for posting notice.

Q. We cannot restrict meetings to residents only, correct?

A. Public meetings are open to **everyone**, regardless of citizenship, residency, language, etc.

Q. Can we restrict comments during a meeting to residents only?

A. State statute is silent on if the public may speak at a meeting. The municipality may have a policy to allow public comment, but the idea is that the public is afforded the opportunity to listen and to observe the business at hand. The opportunity for the public to comment is at the public hearing.

Q. What is the basic time restriction for public comments - Is the standard 3 minutes?

A. There is no set time, but 2 to 3 minutes is common. It's also a good idea not to let people "yield the balance of their time" to a consultant or attorney, as that goes against the spirit of the time limit. People can also submit their comments if they feel they won't have enough time.

Q. Did I hear right that all video conferenced meetings must be recorded?

A. Yes, the meeting notice should indicate that the video conference will be recorded, and the transcript will be made available at a later date.

Q. Is it required that every name and vote is recorded? Or can you list number of yes and no's?

A. Yes, voting must include a record of who voted (or abstained), and how they voted. There is no anonymous voting.

Q. When is the 'legal notice in official newspaper' requirement going to be amended? Nobody reads newspapers anymore. This is 19th century communication.

A. We have that question often. The Committee on Open Government does as well, and it's possible changes are being contemplated, but this law still stands. Note that the Executive Orders discussed in the webinar will expire and the ability to meet remotely is not a permanent change to law. It's important to remember that not everyone has access to electronic media, and there are still portions of our state without broadband access.

Q. During an open meeting when should the board hold the "Public hearing" near the beginning or at the end of the meeting just before adjournment?

A. That decision is up to the board holding the meeting and hearing.

Q. Can the transcription serve as minutes?

A. Minutes should be separate from the transcription. Transcription is a verbatim account; minutes may be done verbatim, but that is not often the case. Minutes may be a general rendition of the meeting but at a bare minimum they must include who voted and how they voted.

Q. I take it that the transcription is to be as close to verbatim as possible?

A. Transcription means verbatim.

Comment: This would seem to impose a substantial burden on local governments to transcribe all public meetings.

A. If the meeting was conducted via teleconference, then it needs to be transcribed. However, there is no time limit on when the transcription must be produced, so that should ease the burden somewhat.

Q. What if the quality of the Zoom transcription is very poor?

A. If any verbatim transcription quality is poor or unintelligible, *sic* should be used in brackets after a copied or quoted word that appears odd or erroneous to show that the word is quoted exactly as it stands in the original.

Audience Comment: FYI Zoom transcription service only available if you have 10 users paying \$19.90/month each. The transcription requirement remains a SIGNIFICANT burden. Please pass this message upward in the hierarchy.

Q. Most persons on planning board are volunteers. What measures should be taken by the state to enhance their computer skills and or equipment since the burden of the cost might end up back in the laps of the municipalities not being able to conduct hearings.

A. There are many online learning classes and tutorials that could enhance board member's skills, many are free or low cost. Also, Executive Order 202.15 says that public hearings "shall be postponed, until June 1, 2020, without prejudice, however such hearing may continue if the convening public body or official is able to hold the public hearing remotely, through use of telephone conference, video conference, and/or other similar service." So if it is not feasible for your board to hold the public hearing remotely, the public hearing is postponed.

Q. Where can I access a sample of this "decision document"? Sounds helpful! / Are you able to share your decision docs?

A. https://www.dos.ny.gov/lg/onlinetraining/test_resources/planning_Board_decision_document.pdf

Q. And would this decision document be included with the minutes and/or made public or are they only used for internal purposes within the board or committee?

A. The decision document should be part of your application's file and subject to FOIL. What constitutes the decision document is up to each board: for some, it's the minutes themselves; others use a decision document like the sample to which the link above will take you; and, for others, the decision document takes the form of a letter to the applicant.

Q. 1st amendment (public assembly) in the context of current executive orders (no public gatherings/meetings/etc.). How is this constitutional, and therefor legal?

A. Our office is not authorized to provide legal advice regarding the constitutionality of any statute or executive order.

Q. Are we required to begin meetings with the Pledge of Allegiance, even if we are meeting remotely? Must a flag be present somewhere on the meeting in order for the meeting to be legitimate?

A: Neither the Open Meetings Law, nor any other statute of which we are aware, requires a meeting of a public body to start with the Pledge of Allegiance.

Q. I appreciate you answering these questions, my last question: Gov. exec order does it say we cannot meet in person in our village board room? Or we can if we chose.

A: The Executive Order [<https://www.governor.ny.gov/news/no-20210-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>] states that such gatherings shall be canceled or postponed, and Executive Order 202.15 says public hearings shall be postponed until June 1, unless they can be held by teleconference or videoconference. You can either wait, or hold the meeting/hearing remotely, as you suggest.

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law

to issue any directive during a disaster emergency necessary to cope with the disaster, I hereby issue the following directives for the period from the date of this Executive Order through April 22, 2020:

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- Non-essential gatherings of individuals of any size for any reason (e.g. parties, celebrations or other social events) are canceled or postponed at this time.

Q. Elderly members of the planning board or the public may not want to come to a public meeting until a cure is found. How long do you think we will be able to have meetings on the web instead of a public meeting at village hall?

A. We will all have to wait until the Governor updates us with further guidance.

Q. I responded to the census a month ago, I heard they paused it?

A. The US Census is not on pause and continues to take count. Take 5 minutes and respond today at: <https://my2020census.gov/>

Q. Is there a way to find out what individuals or households have not responded in our given city?

A. You cannot find response rates on the individual or household level, but you can see the response rates for your census tract, municipality, county and state at: <https://2020census.gov/en/response-rates.html>

Q. Will this webinar be saved on your website? If yes, where?

A. <https://www.dos.ny.gov/lut/recorded-webinars.html>

Q. How do we get a copy of the *Guide to Planning and Zoning*?

A. We can mail a copy, but there will be a significant delay since we are not regularly in our office at this time. Otherwise, visit the *Guide to Planning and Zoning*:

https://www.dos.ny.gov/lg/publications/Guide_to_planning_and_zoning_laws.pdf

All of our publications: <https://www.dos.ny.gov/lg/publications.html>

Q. May we have your emails if we would need to ask you a question?

A. For email, please use:

localgov@dos.ny.gov

ebony.mapp@dos.ny.gov

patricia.burke@dos.ny.gov

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END