

BASICS FOR PB AND ZBA MEMBERS

NH OEP Annual Planning & Zoning Conference

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RIGHT-TO-KNOW

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RIGHT-TO-KNOW
Access to Public Records and Meetings
(RSA Chapter 91-A)

Main purpose of this chapter is based upon theory that public knowledge of the consideration upon which government action is based and of the decisions taken is essential to the democratic process. *Carter v. City of Nashua*, 113 N.H. 407 (1973).

All power residing originally in, and being derived from the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted. *New Hampshire Constitution*, Part 1, Article 8.

1. Public Proceedings.

- Transaction of any functions affecting any and all citizens by [municipal]:

| | | | |
|-------------|-------------|---------------|---------------------------------|
| Boards | Agencies | Committees | Subordinate Bodies |
| Commissions | Authorities | Subcommittees | Charter school committees, etc. |
- Applies to citizen advisory groups of local government.
- Also, subcommittees of land use boards.
- Public info meeting where quorum is present. AG Opinion 93-01.

2. "Meetings" (must be open to public).

- A meeting is the convening of a quorum of the membership of a public body to discuss or act on matters within its supervision, control, jurisdiction or advisory power.
- What's not a meeting?
 - Chance social gatherings.
 - Collective bargaining.
 - Consultation with legal counsel.
- Site walks are meetings.
- Plan review sessions. Depends on how many attend.

3. Rules for Meetings.

- Open to public.
- No secret ballots. (Election of officers?)
- Public may record the proceedings in any manner.
- Minutes must be kept and made available within 5 business days. See RSA 91-A, II, re: content of minutes.
- Must post meeting notice 24 hours in advance in 2 public places (which may include town's website) or publish in a newspaper of general circulation. Do not count Sundays or holidays. Exception for emergency sessions.

3a. Electronic Participation. (RSA 91-A:2, III).

- Optional (apparently on a per meeting basis).
- Attendance "not reasonably practical."
- Quorum must be physically present, except in emergency.
- Audible or discernable to public (and to each participant).
- Roll call vote on everything.

3b. Sequential Communications. (RSA 91-A:2-a).

Sequential communications may not be used to circumvent the spirit and purpose of the right-to-know statutes.

- Chain e-mails.
- Other sequential communications?

4. Non-Public Sessions. (RSA 91-A:3).

- In the municipal government context, nonpublic sessions are allowed only for six reasons. (Consult statute for the precise language). Except for litigation, these rarely arise with a local land use board.
 - Hiring public employees.
 - So called "personnel matters."
 - Matters which, if discussed in public, would likely adversely affect reputation of someone, other than a member of the board.
 - Acquisition of property.

- Pending claims or litigation filed or threatened in writing. (But not property tax exemption applications).
- Preparation for and carrying out emergency functions.

5. Rules for Nonpublic Sessions.

- Motion to go into nonpublic session.
- Motion must state which of the exemptions applies.
- Vote must be a roll call vote.
- Discussions in nonpublic session must be confined to matters stated in motion.
- Minutes and record of all actions taken must be kept and available to public within 72 hours.
- However, by 2/3 vote, minutes can be sealed.
 - Matters adversely affecting reputation.
 - If action taken would be rendered ineffective.
 - Pertain to terrorism, anti-terrorism planning, etc.
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6. Public Records.

- Citizens have a right to inspect public records and copy them.
- Boards must maintain records at town offices.
- Municipality must respond immediately if record is immediately available, or within 5 business days it must.
 - Make the record available, or
 - Deny the request in writing with a reason, or
 - Acknowledge request in writing and state amount of time necessary to grant the request or deny it.
- Public records requirements include electronic records.

- Exceptions:
 - Personnel records (but not retirement/severance payments).
 - Confidential records: for local land use boards this will be pretty much limited to attorney-client privilege and certain litigation-related material.

The test is a balancing of benefits to public of disclosure vs. benefit to government of nondisclosure.

 - Preliminary drafts, personal notes.
- When does a document become a public record?

7. Relief for Violations.

- Attorney's fees (if lawsuit necessary and official should have known there was a violation).
- Bad faith can result in award against individuals personally.
- Invalidation of action if circumstances apply.
- Misdemeanor for destroying information to prevent inspection.

SAMPLE MOTIONS

1. To Go "Nonpublic."

Mr. Chairman, I move that we go into nonpublic session pursuant to RSA 91-A:3, Subparagraph II(e), for the specific purpose of discussing the superior court appeal which has been filed relative to our denial of the Acme Site Plan.

- Motion must be duly seconded.
- Roll call vote then required.

2. To Meet with Legal Counsel.

Madam Chairman, I move that we recess this meeting until 8:30 p.m. so that the board may consult with legal counsel. Under RSA 91-A:2, this consultation is not a meeting, and the public may not attend.

- Motion must be duly seconded.
- Majority voice vote is OK.