

**Discussion Question Answers (in *boldface, italicized red text*)**

**Question 1.** Your zoning board has received an application for a special exception under the zoning ordinance. At the hearing on the application, it becomes clear that a site visit will be necessary in order for the board to make an informed decision. Having received Right-to-Know Law training, you point out that if a majority of the board visits the site, it will need to be treated as a public meeting: notice must be posted, the public must be allowed to attend, and minutes must be kept.

The applicant objects. He says it's fine if the board wants to do a site walk, but he doesn't want the public there, especially his G@#\*&! neighbor. The board wants to accommodate the applicant's wishes, but still comply with the law. Which of the following is the best option?

- a) To avoid the public meeting requirements, send two members of the board to do a site walk with the applicant and report back to the board.
- b) Have each board member visit the site individually, as he or she is able.
- c) *Tell the applicant he doesn't have a choice. There is going to be a site walk, and it's going to be treated as a public meeting under the Right-to-Know Law. If he refuses to allow it, his application will be denied.*
- d) Treat it as a full public meeting, but don't let the neighbor attend.

**Question 2.** Your planning board is working on a zoning amendment. You have been assigned to prepare a first draft of the amendment, to be discussed at the next meeting. You finish the draft a few days before the meeting and e-mail it to the rest of the board with a simple message: "Attached is my draft of a zoning amendment for discussion at the next meeting."

The next morning you check your e-mail and see several messages from other members of the board, each copied to the entire board. The first message comments at length on your draft; the next two contain responses to those comments; and the last e-mail is a message from the chairman that says simply, "We should not be discussing this by e-mail. Please do not send any more e-mails on this subject."

- a) Has there been a violation of the Right-to-Know Law? If so, at what point? *Yes. One-way communications are OK, the replies to all are not.*
- b) Which of these e-mail communications (and attachments) would be subject to disclosure if requested under the Right-to-Know Law? *Everything after the initial email to the entire board.*

**Question 3.** Change the facts a little. Assume the discussions about the draft amendment were between only two board members.

- a) Would this still violate the Right-to-Know Law's open meeting requirements? *No.*
- b) Even if it does not violate the law, would the e-mails be subject to disclosure upon request? *No.*

**Question 4.** Change the facts again. Assume the e-mails were exchanged between the planning director and one member of the board.

- a) Would this violate the open meeting requirements? **No.**
- b) Would the e-mails be subject to disclosure? **Yes. The Planning Director is considered a "public agency" under 91-A:1-a, V.**
- c) Would the draft zoning amendment be subject to disclosure? **No. Although it is a governmental record, it is exempt from disclosure under 91-A:5, IX, which exempts "preliminary drafts, notes, and memoranda and other documents not in their final form and not disclosed, circulated, or available to a quorum or a majority of the members of a public body."**

**Question 5.** Additional facts: At the subsequent board meeting, your phone starts to vibrate. You look at it and realize one of the other members, sitting two seats down, is texting you with a private comment about the subject being discussed. You send several texts back and forth on the subject over the next few minutes.

Are you violating the law? **Yes. It is a conversation that other board members at the meeting cannot participate in, i.e., it is not "contemporaneous."**

**Question 6.** Which of the following items are "governmental records"?

- a) A letter from a citizen to one planning board member asking about the subdivision review process. Yes \_\_\_\_ No **\_X\_**
- b) An e-mail from one planning board member (on a five-person board) to two other members, relating to the subdivision review process. Yes **\_X\_** No \_\_\_\_
- c) An e-mail from one zoning board member to three others forwarding political commentary about Obamacare. Yes \_\_\_\_ No **\_X\_**
- d) A message in the planning director's voice mail asking about an upcoming hearing. Yes **\_X\_** No \_\_\_\_
- e) The zoning board clerk's handwritten notes taken during a meeting, which he will use to prepare the minutes. Yes **\_X\_** No \_\_\_\_
- f) A planning board member's handwritten notes taken during a hearing to keep track of the issues. Yes \_\_\_\_ No **\_X\_**
- g) An e-mail from one ZBA member to the other four, relating to ZBA business, but sent from his home computer and using his personal account. Yes **\_X\_** No \_\_\_\_