

CONDUCTING MEETINGS AND HEARINGS

NYS Department of State Division of Local Government Services

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CONDUCTING MEETINGS AND HEARINGS

Welcome to the New York State Department of State's self-study course "Conducting Meetings and Hearings."

This course will address the goals and requirements associated with holding meetings, in contrast to the purposes and legal requirements surrounding a public hearing. It will address aspects of the Open Meetings Law, including executive sessions, quorums, minutes, public notices and video recording. It will also address why hearings are held, how to properly notice a hearing, and who can speak at a public hearing.

Additional resources are included on the course webpage, including links to additional information, a glossary, and contact.

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MEETINGS AND HEARINGS PRE-QUIZ

I want you to take a short true-false quiz so you can get an idea about what you do and don't know about the topics. The answers are presented on the following page. There are only ten questions, so it shouldn't take long. At the end of the course you'll get a chance to answer the same ten questions to see if you can improve your score. It should take about sixty minutes to go through the whole course. Let's get started on the quiz. Answer each question true or false.

- (1) The purpose of a meeting is for the public to hear what the board has to say about community affairs.
- (2) If a seven member board has two people out sick, the quorum for that meeting would be 3 out of the 5 members attending.
- (3) Meeting with the board attorney to receive legal advice is a proper reason for going into executive session.
- (4) Boards are required to give notice of their meetings to the media.
- (5) If a board is expecting a crowd larger than the capacity of the room in which meetings are usually held, municipal officials should keep the same location and use a sound system to broadcast to overflow rooms.
- (6) A board may not hold an executive session until it has first opened a meeting.
- (7) Minutes must be approved before being distributed to the public.
- (8) State law requires boards to notify next door neighbors about an upcoming hearing.
- (9) Roberts Rules of Order must be followed when conducting board meetings.
- (10) After a hearing is closed the record may be kept open for the acceptance of written comments.

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MEETINGS AND HEARINGS PRETEST ANSWERS

- (1) The purpose of a meeting is for the public to hear what the board has to say about community affairs. TRUE
- (2) If a seven member board has two people out sick, the quorum for that meeting would be 3 out of the 5 members attending. FALSE
- (3) Meeting with the board attorney to receive legal advice is a proper reason for going into executive session. FALSE
- (4) Boards are required to give notice of their meetings to the media. TRUE
- (5) If a board is expecting a crowd larger than the capacity of the room in which meetings are usually held, municipal officials should keep the same location and use a sound system to broadcast to overflow rooms. FALSE
- (6) A board may not hold an executive session until it has first opened a meeting. TRUE
- (7) Minutes must be approved before being distributed to the public. FALSE
- (8) State law requires boards to notify next door neighbors about an upcoming hearing. FALSE
- (9) Roberts Rules of Order must be followed when conducting board meetings. FALSE
- (10) After a hearing is closed the record may be kept open for the acceptance of written comments. TRUE

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COURSE OVERVIEW

Two main topics will be addressed in this course – meetings and hearings. A hearing is a session at which public comment must be allowed on a particular issue. The focus of the public body is on hearing what the public thinks about a local law, a zoning ordinance, school budget, comprehensive plan amendment, or other governmental issues.

In contrast, a meeting is held to allow the board to discuss issues among themselves, or to call on experts to answer board questions.

Three figures will be used to present commentary at certain points in the course: Bennie Boardman, Patty Public, and Larry the Lawyer.

We'll begin with a discussion about meetings.

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WHAT IS A MEETING?

We generally think about a meeting as an event that occurs when several people get together to talk about certain issues. But that general description of a meeting could apply to a group of parents at a little league game, a book club discussion that includes several planning board members, or a chance encounter in the grocery store by three board members. For that reason, there is a definition of "meeting" provided in the New York State Open Meetings Law.

A meeting is the convening of a public body for the purpose of conducting public business. Let's break that down.

First, it must involve a public body. Are a group of little league parents a public body? No, but a planning board, zoning board, town board, village board of trustees, city council, board of fire commissioners, and school board are public bodies. In fact, there are many other government-sponsored groups that are public bodies.

Second, the convening of the body must be for the purpose of conducting public business. Thus, several planning board members present at the same book club discussion would not be discussing public business, so that event would not constitute a meeting. However, if a group of members agreed to meet for breakfast at a local diner to discuss a subdivision application, they would be gathering for the purpose – or intent – of conducting public business. Whether that constituted a meeting would depend on whether a quorum was present.

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QUORUM REQUIREMENTS

BENNIE BOARDMAN: Larry, our lawyer, explained that we need a quorum to conduct business.

That's right. In order to conduct business, a "quorum" of members must be present either physically or by video conference. A quorum is at least a majority of the full membership of the board, including any absences or vacancies.

For instance, if a planning board or a ZBA has seven members, to achieve a quorum it should have at least four members, which accounts for a majority of its total membership. If a subcommittee is formed with a total number of five members that would also constitute a public body which will require its own quorum of three members. All public bodies including subcommittees are subject to quorum requirements as well and the same obligations in terms of providing notice, or preparing minutes, and the ability to hold an executive session.

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QUORUM ISSUES

PATTY PUBLIC: I hate it when I show up and find the meeting has been canceled because of quorum problems!!

BENNIE BOARDMAN: Me too.

The ability of a board to meet or to take action on matters depends on board participation. If enough members don't show up for a meeting, and you don't have a quorum of your board, the meeting may not be held. For this reason, a board may want to have members confirm whether they will be attending the scheduled meeting. This saves the other members who plan on attending from an unnecessary trip to the municipal hall if there are not enough members expected to constitute a quorum. If this happens, good practice is to notify the media and post notice in a conspicuous place so the media and public may also be aware of the meeting cancellation.

Even where enough members participate in a meeting to constitute a quorum, the absence of some members may affect the ability of the board to take action on a matter. An application

before a planning board or zoning board of appeals may be stopped in its tracks if a member (or two or three) have a conflict of interest and need to recuse themselves.

Quorum and participation issues can be addressed through the use of alternate members where planning boards and zoning boards of appeals are involved. Under state law, a governing board may adopt a local law or ordinance establishing the positions of alternate members to the planning board or ZBA to serve in the event that a regular board member has a conflict of interest. Through the use of Home Rule powers, an alternate may be authorized to serve in the event a regular board member is absent.

A sample local law providing for alternate members of planning boards and zoning boards of appeals can be found in the attachment folder of this course.

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WHAT ARE THE RULES FOR MEETINGS?

What are the rules for meetings?

Public bodies are guided by New York State's Open Meetings Law, one of the first in the nation known as a "sunshine" law. This law requires most public business to be conducted out in the open, rather than behind closed doors. The law is contained in Article 7 of the Public Officers Law. The Freedom of Information Law is contained in Article 6.

BENNIE BOARDMAN: We are guided by the Open Meetings Law and board procedures.

PATTY PUBLIC: I've got the number for the Committee on Open Government. It's 518-474-2518. Many public bodies also adopt rules of procedures to promote consistency in how meetings are conducted. While Robert's Rules of Order is a well-known procedural guidebook, there is no obligation on the part of a public body to follow the complex Robert's Rules.

LARRY THE LAWYER: Rules of procedure are binding on the board if adopted by local law.

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IS THIS A MEETING?

Which of the following gatherings of a board would be considered a meeting under the Open Meetings Law?

What is considered a meeting under the Open Meetings Law: When a majority of any public body's board members meet to conduct public business, regardless of the intention of taking any action, that gathering is a public meeting and is subject to the Open Meetings Law in the state of New York. However, if board members meet at a social gathering with no purpose of conducting public business, that gathering will not fall under the purview of the Open Meetings Law.

Make your selections from the examples listed and click the submit button. Your choices are:
An agenda session, which includes the board's discussion of what they should talk about at the meeting.

A budget work session, where the board goes through recommendations from department heads and decides what should be presented as part of the budget.

A high school football game encounter, where a majority of the board members run into each other at the concession stand.

A concept review meeting, where the board meets with a developer to give him feedback on his ideas for developing a particular site before an application is made to the board.

The holiday potluck, where board members gather with their significant others to get to know each other better.

Answer

The following gatherings of board members would be considered a meeting under the Open Meetings Law because a quorum of the board planned to meet to discuss public business. It does not matter whether they are taking any actions: an agenda session; a budget work session; and a concept review meeting.

The gatherings below would not be considered meetings because there was no intent to gather to discuss public business: a high school football game encounter at the concession stand and a holiday potluck.

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IS A SITE VISIT A MEETING?

Another type of gathering that might be considered a meeting is a site visit. Many boards go as a group to review a site where development is proposed, which looks a lot like a meeting. Is a site visit a meeting under the Open Meetings Law?

PATTY PUBLIC: Yes, the board discusses the application and potential problems with the site plan while they are on the site visit.

BENNIE BOARDMAN: No, we just look around and gather information.

LARRY THE LAWYER: Both are right. A site visit by a board is not a meeting subject to the Open Meetings Law so long as its purpose is not for anything other than to "observe and acquire information." The leading case is *Matter of Riverkeeper, Inc. v. Planning Board of the Town of Somers*.

It is difficult for many people to participate in a site visit without talking about what they see, how it relates to the site plan, and how the plan might be modified. The Department of State advises boards to avoid this Open Meetings pitfall by either visiting the site with less than a quorum of the board, or by treating it as a public meeting and complying with the requirements of the Open Meetings Law.

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HOW DO YOU COMPLY WITH THE OPEN MEETINGS LAW?

How do you comply with the Open Meetings Law? There are three simple requirements:

- Provide notice to the media. This can be a phone call, fax, e-mail or even a letter.
- Post notice in conspicuous place. This is typically the municipal bulletin board.

- Provide access to the public and the media. This means they must be able to see and hear the public body as it holds its public meeting.

If the meeting is scheduled more than one week in advance, the public body must provide at least three days (72 hours) notice to the news media and post a notice in a conspicuous place. That notice could even cover an entire year's worth of meetings, so long as the meeting times aren't later changed.

If the meeting is scheduled less than one week in advance, notice must be given to the media to the extent practicable, and notice must be posted in a conspicuous place. For these meetings with short notice, the easiest way to comply is to notify the media at the same time the members are being notified of the meeting.

PATTY PUBLIC: I don't see a meeting notice in the newspaper...

LARRY THE LAWYER: Meeting notices must be provided to the press but don't have to be published.

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INTERNET MEETING NOTICES

The Internet is another way of providing notices of meetings. The Open Meetings Law was amended in 2009 to require that when a public body has the ability to do so, notice of the time and place of a meeting should also be posted on the public body's website. The time frames are the same as for other meeting notices. Keep in mind that this is not a substitution for the other posting requirements of the Open Meetings Law.

Municipalities may also take the extra step of providing notices of meetings, hearings, and other events to people who register their e-mail addresses.

PATTY PUBLIC: Community members really appreciate the email notices.

The course webpage includes links to subscription websites for Town of Niskayuna, Schoharie County, and the Village of Tarrytown.

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ORGANIZING FOR THE MEETING

When a meeting is held, it uses up the time of board members, applicants, engineers, attorneys, planners, or other experts, and members of the public. Therefore, a meeting should be well-planned to make the most of everyone's time. The presiding officer of the meeting should supervise the preparation of a meeting agenda, which should indicate the topics of conversation and the order in which they will occur. An agenda is simply a tool, and is not required by law. Therefore, items on it may be added, deleted, or rearranged. The one caveat is that if one of the items on the agenda is a public hearing, it may not be moved to a spot earlier on the agenda if that move would result in it starting prior to the time stated in the legal notice.

Make sure to reserve a room for the meeting, one big enough to handle the expected audience. A change to section 103 of the Open Meetings Law now requires the board to meet in a room

large enough for anticipated attendance. You may read the statutory changes by clicking on the link on the course webpage.

If you need to change the location of the meeting to accommodate a larger crowd, be sure to issue new notice of the meeting location.

Arrange for the necessary equipment to be in the room in working condition. For example, if a large crowd is expected, a public address system may be needed. You may also want a tape recorder, screen, or computer projector.

Invite experts and public officials to the meeting. For example, if the town engineer will be needed to explain concerns about drainage plans, or if a code enforcement officer will be needed to provide information in a variance hearing, be sure to invite them to the meeting. Confirm that members will attend the meeting. Notify planning board or zoning board of appeals alternates if appropriate.

Finally, provide board members with background material prior to the meeting. This is much easier now with e-mail, but it can be hard to e-mail a subdivision plat. Develop a policy whether hard copies of the materials will be provided, and what materials will be distributed to the public at the meeting.

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CONDUCT OF MEETINGS

PATTY PUBLIC: When is it my turn to speak?

BENNIE BOARDMAN: You may speak if the board invites public comment.

Once the meeting begins, it is good practice for the chairman to let all who are present know about the ground rules for the meeting, the general format of the meeting and whether there are any changes to the agenda. They should announce whether any public hearings will be conducted during the meeting. The chair should clarify the role of the public. Will the public be able to ask questions, or offer general comments at some point during the meeting? If they will, when will that opportunity occur, and is there a time limit to their remarks?

If a public body, such as the city council, does not want to answer questions or permit the public to speak or otherwise participate at its meetings, it is not obliged to do so. On the other hand, a public body may choose to answer questions and permit public participation based upon reasonable rules that treat members of the public equally.

Other items may also be announced as specified by board procedure or custom. For example: many boards announce the location of the fire exits or the date of the next meeting

EXAMPLE OF BOARD ANNOUNCEMENTS: I'd like to say a few things before we start this. The police study committee is here. The study is being presented. It's not a public hearing. We will have public input. As far as people coming up and speaking for or against, really try not to be repetitive because tonight is nothing more than a discussion. We are seeing this in full for the first time like the rest of you. If you do come up to speak I ask that you keep it to three minutes. And, as far as asking questions, the committee is not prepared fully to answer them, so we would welcome any of your statements. But as far as having open discussions, I don't believe its not going to be a debate this evening. So I would appreciate your cooperation.

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WHAT IS AN EXECUTIVE SESSION?

What is an executive session?

An executive session is defined by the Open Meetings Law as a portion of an open meeting during which the public may be excluded from taking any part in it. Thus, an executive session is not separate from a meeting, it is a part of a meeting.

The board may meet behind closed doors to discuss eight permissible subjects under the Open Meetings Law. These subjects include:

- matters which will imperil the public safety if disclosed;
- any matter which may disclose the identity of a law enforcement agency or informer;
- information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
- discussions regarding proposed, pending or current litigation;
- collective negotiations pursuant to Article 14 of the Civil Service Law (the Taylor Law);
- the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
- the preparation, grading or administration of examinations; and
- the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

BENNIE BOARDMAN: I move we go into Executive Session . . .

Now that you know WHEN the board may go into executive session, learn how.

There are three steps involved in conducting an executive session. First, somebody on the board must introduce a motion in public to close the doors. Second, the motion must clearly mention what is the objective of the executive session and the topic of discussion. Third, the motion should be put in place by a majority of the board members in support of the executive session, notwithstanding absences or vacancies.

Once in executive session, the topic of discussion should be limited to the announced topic, such as the appointment of a board secretary. Contrary to popular belief, a board may vote on matters discussed in executive session while they remain behind closed doors. However, the law prohibits them from voting to appropriate public monies during a closed session.

When the board is done discussing a permissible topic, it must close the executive session and go back into open meeting.

Listen to the two examples of board members moving their board go into executive session. Which board member entered into executive session correctly? Click on the correct answer. Board B correctly entered into executive session. They started in an open meeting; a motion was made to go into executive session; the topic of discussion was state; and the motion passed. Click on the video player to hear the board come out of executive session.

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SEEKING LEGAL ADVICE

When a municipal board seeks legal advice from an attorney and the attorney renders legal advice to the board, they establish an attorney-client relationship based on which communications are privileged and confidential; therefore, the Open Meetings Law would not apply in such a situation.

The attorney-client exemption is considered confidential under §4503 of the Civil Practice Law and Rules. Such a legal session is exempt, so there is no need for a board to enter into an open meeting before meeting in private with its attorney. And since it is not a meeting, there is no need for meeting minutes. If the board is in an open meeting and decides it needs legal advice, it should recess or adjourn the meeting. This is different than entering into executive session, where receiving legal advice is not one of the permissible reasons listed in the law.

Additional details on the attorney-client relationship as it relates to the Open Meetings Law can be found in the Opinions of the Committee on Open Government, which are posted on the Department of State website. Click on the envelope to read one of the opinion letters, or use the link in the attachments section of this course.

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AUDIO & VIDEO RECORDING AT OPEN MEETINGS

While the audio or video recording of a public meeting can be a useful tool for informing the public, many members of the board and audience are uncomfortable having their images or voices recorded.

A public body may adopt reasonable procedures governing audio and video recording devices at meetings, whether those devices are being used by the media or the general public. However, they may not enact a blanket ban on recording, or require permission or advance notice to record the meeting or public hearing.

Video and audio taping procedures may be included in the board's rules of procedures with a goal of preventing the recording devices from being obtrusive or disruptive of the deliberative process. For example, the board could require that cameras on stands be set up on the side of the room, instead of the center aisle. They could also require that all cords leading to the recording device be secured to prevent tripping hazards.

What is a reasonable limitation will vary from location to location? What might be reasonable in one physical setting - a village board restricting video recording to the rear area of its meeting room - might not be in another – like the larger chambers of a county legislature.

With respect to recording members of the public, the court in *Mitchell v. Board of Education of Garden City School District*, a 1985 case, held that fear of public airing of one's comments at a public meeting is insufficient to sustain a ban on audio recording. The staff of the Committee on Open Government has issued an advisory opinion applying that decision to video recording as well. Click on the letter to see the opinion or follow the link in the attachments section.

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MEETING MINUTES

The Open Meetings Law requires that minutes of open meetings be made available within two weeks of the meeting, and minutes of executive sessions be made available within one week of the executive session.

Minutes need not consist of a verbatim account of what was said at a meeting. Although a public body may choose to prepare expansive minutes, at a minimum, minutes of open meetings must include reference to all motions, proposals, resolutions and any other matters upon which votes are taken. Minutes of executive sessions must include any action that is taken by a formal vote, the date of the vote, and the vote thereon.

There is nothing in the Open Meetings Law that requires that minutes be approved. Nevertheless, as a matter of practice or policy, many public bodies approve minutes of their meetings.

LARRY THE LAWYER: Here's a tip: If the minutes have not been approved, mark them "draft," "unapproved," or "non-final" and make them available.

By so doing within the requisite time limitations, the public can generally know what transpired at a meeting; concurrently, the public is effectively notified that the minutes are subject to change.

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WHEN DO YOU HOLD A HEARING?

When do you hold a hearing? We are switching gears a bit now to talk about public hearings. A hearing is a session at which public comment is allowed on a particular issue.

Public bodies hold hearings when required to by state law. For example, a zoning board of appeals must hold a public hearing on every use variance application that comes before it, and a town board must hold a public hearing on every local law proposal prior to enactment.

Public bodies also hold hearings when required to by local law. For example, state law does not require that a public hearing be held on a proposed site plan, but local law may require a public hearing.

A public hearing is especially important when substantial conditions may be attached to a land use approval, to help put the reasons for the need to impose mitigation measures on the record. Public bodies also hold hearings when they simply want to get the pulse of the public on a particular issue. The issue may be a controversial matter, such as whether to build a new municipal building, or a new topic for the community, such as whether to start a tree planting program.

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HEARING NOTICES

Because the purpose of a public hearing is to gather public comment, the board needs to make the public aware of the scheduled hearing. Notices of public hearings must be published in a newspaper, and must contain the following elements:

- The date, time and place of the hearing,
- The nature of the proposed action, and if applicable,
- The location of the subject property.

The public body should use the statutes as a guide to determine which newspaper they must publish the notice in, whether it is the “official” newspaper of the municipality, or simply one in general circulation in the community. The statutes will also indicate how far in advance of a hearing the notice must appear in the paper. It is not yet enough to publish the hearing notice on the municipal website. That being said, a municipality can go above and beyond the legal requirements for publishing.

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NOTIFYING NEIGHBORS OF HEARING

Must neighboring property owners be notified of a hearing? In general, state law does not require that neighboring property owners be notified by mail when a public hearing is scheduled. Some exceptions exist requiring notifications of certain public housing agencies and regional state park commissions prior to adopting or amending zoning regulations. There is also a requirement that when a local board will be holding a hearing on a special use permit, use variance, site plan, or subdivision that involves property within 500 feet of an adjacent municipality, the board must send notice of the public hearing at least ten days prior to the hearing to that municipality.

A municipality may adopt a local law or ordinance that requires notification procedures above and beyond the state requirements. For example, the municipality may require that all property owners within a certain distance of property for which a use variance has been applied for be notified in advance of the public hearing.

Another approach is to require the posting of a sign on property indicating that a hearing will be held regarding the property, and the type of municipal review it is undergoing, such as site plan or subdivision review.

PATTY PUBLIC: This is a great way to make more people aware of a project.

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OPENING A PUBLIC HEARING

The following is an example of a public hearing. Did the board act correctly?

AUDIO:

Mayor: Thank you, Clerk Mitchell, for an excellent job on the minutes. I would like to move now to the public hearing on our proposed Noise Control Law. The newspaper has covered

this issue pretty well, and several people have stopped me on the street to tell me they'd be at the hearing. We've got a lot of people waiting to speak. Do any board members have comments before I open the hearing? Ms. Smith?

Ms. Smith: I saw the legal notice in the paper last Thursday. The notice was for 8 o'clock and it's only 7:30. We have to wait awhile before we open the hearing.

Mayor: Oh for heaven's sake! The big ballgame is on TV tonight, and I want to see who will make the playoffs. Everyone that cares about this is already here. We may as well start so we can all go home early. Who wants to speak first?

Do you know the correct procedure for a board to follow? Answer the following as true or false.

- It is alright to start a public hearing before the time put in the public notice if people are there and ready to testify.
- There is nothing wrong with starting a hearing later than the time put in the public notice.
- Notice of the hearing must be given to the press and posted on a community bulletin board.
- People who are against a proposal should be given more time to speak than people for a proposal.
- The board does not have to answer questions that are posed by people who are testifying.

ANSWERS

- FALSE. A board may not start a public hearing prior to the time stated in the legal notice..
- TRUE. A board may start the hearing later than the noticed time.
- TRUE. Notice of a hearing must be published in the newspaper in advance of the hearing, however there is no requirement that it be posted. However, if it is being held during a public meeting, the meeting notice must be posted.
- FALSE. The board may adopt reasonable rules that limit the time of speakers. It would be unreasonable for persons with one point of view be allowed to speak longer than persons with a different point of view.
- TRUE. A hearing is held for the purpose of hearing from the public.

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BOARD HEARING PROCEDURES

PATTY PUBLIC: When is it my turn to speak? How much time do I get?

Like a meeting, it is good to have some structure established for public hearings. The Department of State recommends that public bodies adopt rules of procedures to help maintain order and that a public body provides a brief overview of those rules at the beginning of a hearing. For example, the rules could address the applicant's role at the hearing. Will he or she be allowed to make a presentation to the public in attendance at the hearing? Is there an expectation that the applicant or his or her representative be present at the hearing?

The rules of procedures could also address how questions from the public will be handled. Will the board answer questions during the hearing, or just receive the questions? Will the public be allowed to question an applicant?

What are the procedures by which the board will accept public comment? Will speakers need to register or to identify themselves for the written or recorded record? Boards should be aware that speakers cannot be required to give their name or address for the record. However, the board can also consider what weight they want to give an anonymous speaker when the board is unable to verify how the speaker came by the information. Will the length of their remarks be limited, at least initially? One approach is to give each speaker an initial amount of time to speak the first time, then allow them to speak again after all who wish to speak have had a chance to be heard. This round-robin process could go on until the members of the public with information related to the project are finished.

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HEARING RECORD

In this course we have discussed both meetings of the public body, and hearings held to receive public comment. The public body should insure that a proper record is made of both of these public events. There is no requirement that the written record be presented word-for-word, but the record of a hearing should contain at least a general detailing of the views expressed by the people offering public comment.

While a stenographic record is best, many boards opt to tape record or film public hearings. In that case, it is a good idea to take notes to help explain who was speaking during the hearing, and as a backup in case the recording technology fails.

BENNIE BOARDMAN: If I miss the hearing, I listen to the tapes. But ... it can sure be hard to tell who's speaking.

Here are some tips to help improve the usefulness of the recordings:

- Ask speakers to identify themselves for the recording, even if you know them.
- Ask for clarification when it is unclear to whom the speaker is referring ("they", "he", etc.).
- Ask speakers to clarify visual references - you can't see where he or she is pointing on an audio recording.
- Beware of papers rustling near sensitive microphones.
- Board members shouldn't compete with the speaker - tapping fingers, and whispered conversations can obscure the testimony on the recording.

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WHO MAY SPEAK AT A PUBLIC HEARING?

Who may speak at a public hearing? Read the following example of a public hearing and answer the question that follows.

AUDIO:

Mayor: It is 8:00 and I now open the public hearing on the proposed noise law. Who from the public would like to address the board? I'd like to call on the gentleman in the back row. Please state your name and address.

Jake Daniels: I'm Jake Daniels. I own JD's Bar over on the east side of town. I am opposed to this law. It seems to be driven by a few people who think everyone should be home and in bed by 10:00 instead of having a good time with friends. A good part of my business is in the summer. It's out on the patio with music playing or a band. This law will ...

Mayor: Hold on Mr. Daniels. Before you say anything else, you need to state, for the record, where you live.

Jake Daniels: I live at number 3517 Route 172. About 6 miles outside the village in Otisville.

Mayor: I recognize Trustee Smith...

Smith: I believe our practice is only to hear testimony from village residents. I move the hearing be closed.....

Was the village board correct in cutting off Jake Daniels's testimony because he didn't live in the community? Your choices are:

- Yes, their procedure was to only hear from residents.
- No, anyone should be able to testify, even a long-haul trucker passing through on his way to Montreal.

ANSWER

B is the correct answer. The village board should not have cut off Jake Daniels's testimony because he didn't live in the community. Any member of the public may testify. Nonresidents may have a substantial interest in attending and expressing their views.

The board may limit the amount of time allotted to people who wish to speak, so long as the limitation is reasonable. The board cannot require that those who attend a hearing identify themselves by name, residence or interest.

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CLOSING THE HEARING

A public hearing is usually closed when all who wish to speak have been heard by the public body. If more public comment is anticipated, a hearing may also be adjourned and continued at a later date.

If, when adjourning the hearing, the board does not indicate when or where the hearing will resume, then notice must be given to the public in the same manner as the original notice. However, if prior to adjourning the board announces the time and place of the continuing hearing, and then public notice need not be given again.

In the area of land use regulation, the close of a public hearing triggers decision time frames. Therefore, it is important that the board records indicate when hearings are closed. For example, if a planning board does not make a decision within 62 days of the close of a public

hearing on a subdivision plat not needing an environmental impact statement, the applicant may request a certificate of default approval of the subdivision plat.

Testimony at hearings may include questions that require research before they can be answered, and news accounts and other testimony may trigger written responses after the board has closed the hearing. A board may keep the hearing record open for the acceptance of written comments.

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MEETINGS AND HEARINGS POST-TEST

Answer the following ten questions to see if you improved your score on the quiz.

True or false?

- (1) Minutes must be approved before being distributed to the public.
- (2) The purpose of a meeting is for the public to hear what the board has to say about community affairs.
- (3) Meeting with the board attorney to receive legal advice is a proper reason for going into executive session.
- (4) If a board is expecting a crowd larger than the capacity of the room in which meetings are usually held, municipal officials should keep the same location and use a sound system to broadcast to overflow rooms.
- (5) Boards are required to give notice of their meetings to the media.
- (6) A board may not hold an executive session until it has first opened a meeting.
- (7) After a hearing is closed the record may be kept open for the acceptance of written comments.
- (8) Roberts Rules of Order must be followed when conducting board meetings.
- (9) If a seven member board has two people out sick, the quorum for that meeting would be 3 out of the 5 members attending.
- (10) State law requires boards to notify next door neighbors about an upcoming hearing.

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MEETINGS AND HEARINGS POST-TEST ANSWERS

- (1) Minutes must be approved before being distributed to the public.
FALSE. State law does not require that minutes be approved. Minutes whether approved or not, must be made available to the public in accordance with the Open Meetings Law.
- (2) The purpose of a meeting is for the public to hear what the board has to say about community affairs.
TRUE. The purpose of a meeting is for the public to hear the board discuss community affairs. The purpose of the hearing is for the board to hear from the public.
- (3) Meeting with the board attorney to receive legal advice is a proper reason for going into executive session.
FALSE. An exception to the Open Meetings Law allows a board to meet with its attorney to receive legal advice at anytime, so a board may simply adjourn from a meeting, or not even

hold an open meeting. Receiving legal advice is not one of the reasons to go into executive session.

- (4) If a board is expecting a crowd larger than the capacity of the room in which meetings are usually held, municipal officials should keep the same location and use a sound system to broadcast to overflow rooms.
FALSE. Recent changes to the Open Meetings Law require the board to provide a meeting room large enough to accommodate the anticipated attendance.
- (5) Boards are required to give notice of their meetings to the media.
TRUE. Boards are required to give notice of meetings to the media and to post it in a conspicuous place. Unlike hearing notices, there is no requirement that meeting notices be published.
- (6) A board may not hold an executive session until it has first opened a meeting.
TRUE. A motion must be passed in an open meeting, the executive session held, and the board returns to an open meeting when the executive session ends.
- (7) After a hearing is closed the record may be kept open for the acceptance of written comments.
TRUE. The board may continue to accept written testimony after the oral testimony is closed.
- (8) Robert's Rules of Order must be followed when conducting board meetings.
FALSE. Robert's Rules of Order are not law in New York State. They are intended for use by large parliamentary bodies.
- (9) If a seven member board has two people out sick, the quorum for that meeting would be 3 out of the 5 members attending.
FALSE. A quorum is based on the board at full strength, notwithstanding absences or vacancies. The quorum for a 7 member board would be 4.
- (10) State law requires boards to notify next door neighbors about an upcoming hearing.
FALSE. While there are some notification requirements relating to certain state or county agencies and adjacent municipalities, there are no notification requirements for next door neighbors within a certain radius.

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NEW YORK STATE DEPARTMENT OF STATE

You have completed the Department of State's Conducting Meetings and Hearings course. Local officials are encouraged to continue learning more about land use planning, regulations, and procedures by reading publications and legal memoranda from the Department of State's James A. Coon Technical Series. Links to these resources can be found on the course webpage.

You can also learn more by attending training sessions conducted by the Department's planners and attorneys, and by taking the Department's other online courses. Our website contains a calendar listing training being offered by the Department of State, other state agencies, and local government and academic organizations.

Our staff is also available to provide technical assistance to local government officials during regular business hours. Our contact information and links to more information about conducting meetings and hearings can be found on the course webpage.

Thank you for your interest in the conduct of meetings and hearings.