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NEW HAMPSHIRE SCHOOL BOARDS ASSOCIATION

**Primex**<sup>3</sup>  
NH Public Risk Management Exchange

**WORKSHOP**

*The Academy for Good Governance*

**Class 6**


**How to Run an Effective Meeting  
(And Comply with the Right-to-Know Law)**

Presented by:

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October 21, 2020

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**NHSBA**

NEW HAMPSHIRE SCHOOL BOARDS ASSOCIATION

**Effective Public Meetings:  
Goals, Agendas, & Parliamentary Procedure**

**The Academy for Good Governance**

*October 21, 2020*

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## Meeting Goals, Meeting Planning, and Agenda Setting

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### Meeting Goals

Effective and productive meetings do not simply happen. They require forethought about:

- Desired objectives and required actions (translation: agenda items)
  - “Agenda” = *a list of matters which are to come before the meeting for consideration and/or decision;*
  - *Distinct from “notice” as used in RSA 91-A:2, which only requires date, time and place of meeting.*

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## Meeting Goals

- What are the board's desired – or required - outcomes for each meeting?
  
- What are the administration's desired – or required - outcomes for each meeting?

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## Meeting Goals

- Meeting goals and agenda items should clearly relate to the primary functions of the body.
  - Adopt a policy?
  - Finalize the budget?
  - Have a hearing/make a finding & decision?
  - Receive reports?
  - Ratify a contract?
  - Vote on a committee's recommendation?
- For most meetings there will be more than one desired outcome.

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## Agenda Setting

- Refer to the board's rules/policies relative to agenda setting process.
- If none, and things are at times disorganized, consider adopting.
- Who is responsible for initial draft?
  - Superintendent?
  - Board chair?
  - Town Administrator?
  - Head of Development Office?

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## Agenda Setting

- Board policies/rules sometimes include provisions to allow:
  - individual board members to have items placed on the agenda as a matter of right;
  - members of the public to request agenda items but authorizes screening of such requests as part of the ordinary agenda setting process. (*While a board's business meeting is open to the public, it is not a meeting of the public.*)

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## Meeting Planning – Agenda Setting

- When planning for a meeting and the corresponding agenda, consider:
  - required personnel for each item;
  - required space and technology;
  - appropriate amount of time for each item;
  - information board members need prior to the meeting;
  - wording of anticipated motions or resolutions; and
  - The order of business ...

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## Meeting Planning - Agenda Setting

*Order of business, continued ...*

- is the “normal order of business” appropriate?
- Consider:
  - the audience and necessary or invited participants pertinent to specific items;
  - anticipated non-public sessions;
  - reduction of transitional disruptions; and
  - issues warranting extra time or special placement.

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## Agenda Setting – Individual Items

- Ask: What is the desired outcome for the agenda item?
  - Consent items addressing the routine matters, such as minutes and monthly expenses, which can be approved together in one motion without discussion;
  - Action items on which the board is expected to reach a decision during the meeting;
  - Discussion or presentation items that require comment but do not require action; and
  - Information items that require no action or discussion.

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## Agenda Setting – Individual Items

- When setting the agenda, it can help to identify what category each agenda item falls within.
- Consider whether to include notations for each item. Examples:
  - Finance Committee report. Discussion item. *No action* needed.
  - Volunteer recruitment and philosophy: *Anticipated Action: form committee* of 3-4 board members.

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## Agenda Setting – Individual Items

- Policy Committee: Second reading of policies ABC & XYZ.  
*Anticipated action:* Review and adopt.
  - Presentation by 5<sup>th</sup> grade social studies class. *Information item.* No action required.
- Sketching out the anticipated time for items can be helpful in planning a meeting and constructing the agenda
- use only as guides or benchmarks.

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## Sticking to the Agenda Practice Tips



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## Sticking to the Agenda Practice Tips

- Start on time.
  - Stay organized and stay on task.
    - Parliamentary procedure can help as board members move through the agenda.
    - But procedure should not be the focus.
- More on this later.....*
- Stay on time.
    - Stay focused on the desired outcomes.
    - If using a timed agenda, be mindful of how/when to stray.

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## Sticking to the Agenda Practice Tips

- Have an endpoint.
  - Establish an end time in advance - and adjourn the meeting when you reach it.
  - Not hard and fast usually, but a helpful goal to keep folks on task.
- Don't ambush – no surprises.
  - Effective meetings and good decision making are dependent on good information.
  - “New business” is not the place for board members to deliberate and decide.

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## Sticking to the Agenda Practice Tips

- Resolve unnecessary debate.
  - “General consent” - The board chair asks if there is any objection to closing discussion on a particular topic. If no one objects, debate is closed.
  - “Consent agendas” - limit to non-controversial items.
    - Items can be pulled out in a meeting if one or more members request(s).

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## Parliamentary Procedure - Rules of Order



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## Parliamentary Procedure

- Parliamentary procedure, i.e. rules of order, help keep meetings efficient, and provide a clearer public record of the board's actions.
- Too much process – e.g., Roberts Rules, can lead to sluggish, unproductive meetings.
- Roberts Rules, by its own admission, does not apply to small legislative bodies.
- Simple rules of order helps maximize meeting efficiency and can engender greater participation and collaboration.

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## Rules of Order – Examples/Considerations

- Common principles:
  - Each motion may deal with only one issue or idea.
  - Debate must be limited to the motion at hand.
  - When a motion is on the floor, no new motions may be made.
  - No member can speak twice on the same issue under debate until everyone else wishing to speak as spoken to it once.
- *NHSBA sample rules BEDD-R*

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## Rules of Order – Examples/Considerations

- Limit practice of reconsidering issues that the board has already voted on and acted upon barring new information, or newly constituted boards.
- Should debate follow or precede a motion???
  - Efficiency may depend as much on the board itself as it does the specific issue.
- The late Senator from Arizona, Mo Udall, once said, “Everything has been said, but not everyone has said it.”
- Make a motion – call the question.

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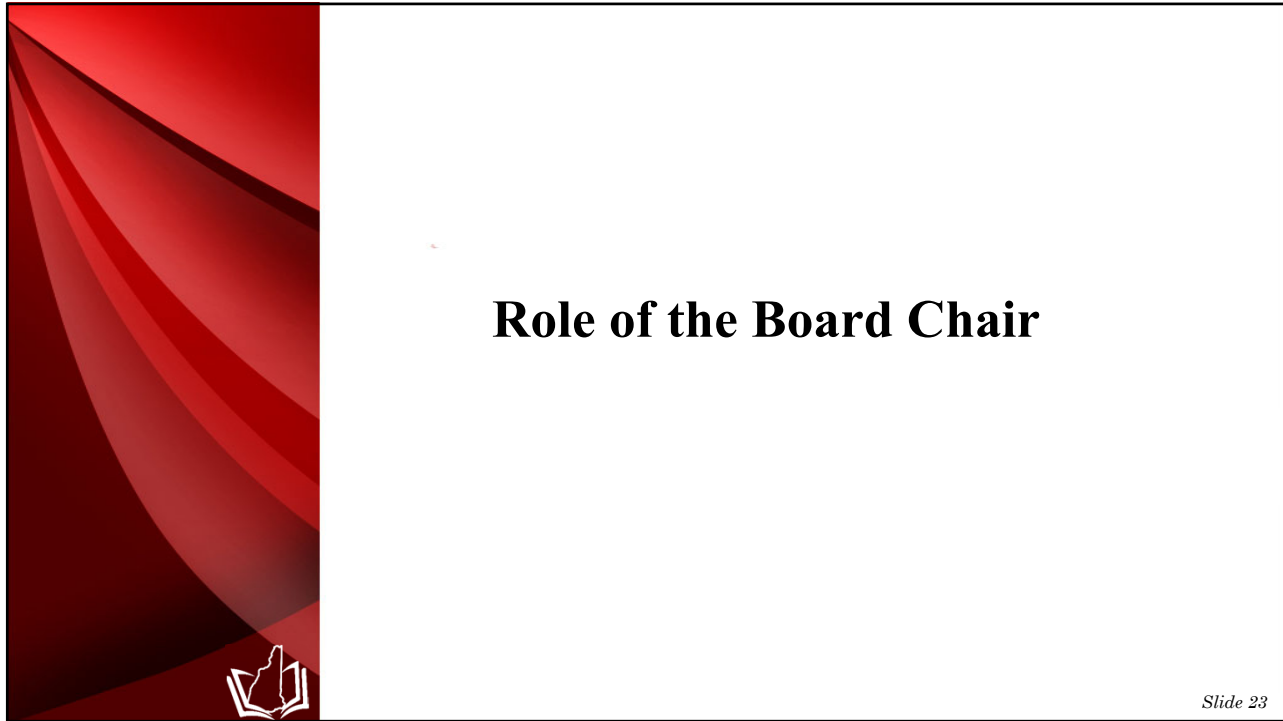
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## Abstentions & Recusals

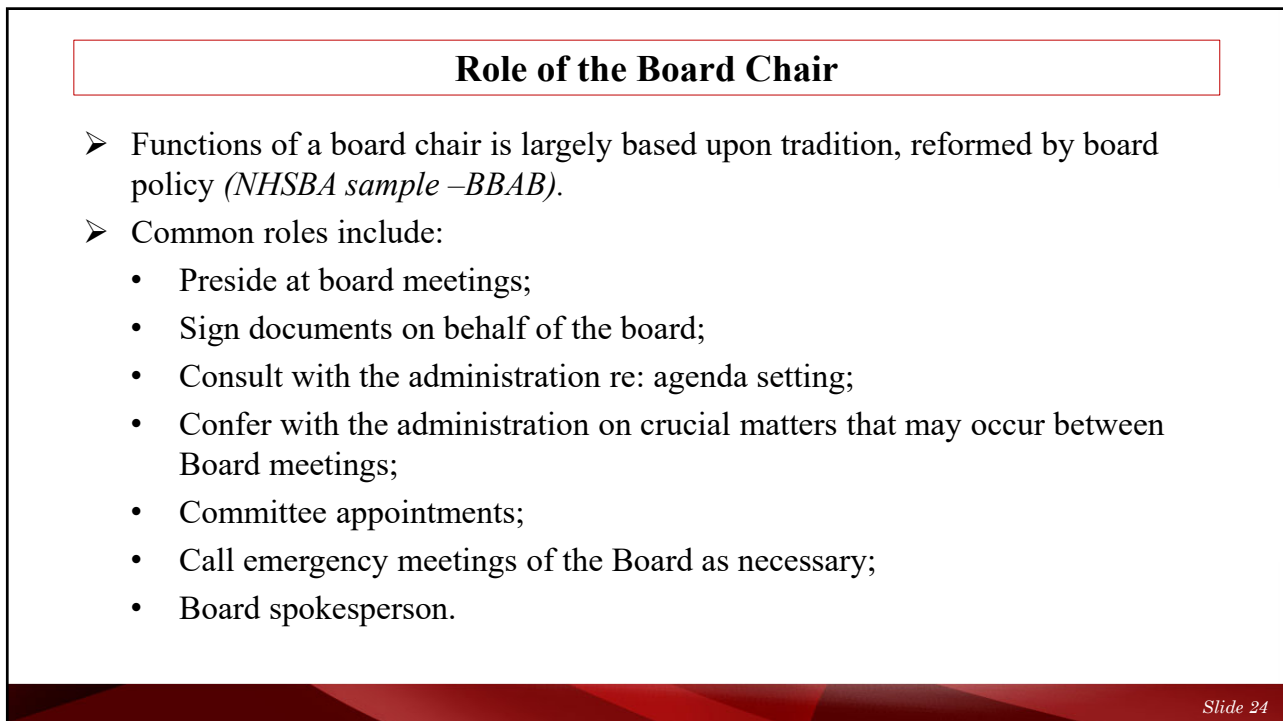
- Abstentions are not votes but count toward a quorum.
  - Present and voting
  - 3-0 w/3 abstentions passes
  - 2-2 w/2 abstentions fails
  - 2-1 w/2 abstentions passes
- Elected to decide.
- Reserve abstention for missed meetings, etc.
- Recusal - vote unless a conflict of interest or bias/prejudice issue is present.

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## Role of the Board Chair

- Functions of a board chair is largely based upon tradition, reformed by board policy (*NHSBA sample –BBAB*).
- Common roles include:
  - Preside at board meetings;
  - Sign documents on behalf of the board;
  - Consult with the administration re: agenda setting;
  - Confer with the administration on crucial matters that may occur between Board meetings;
  - Committee appointments;
  - Call emergency meetings of the Board as necessary;
  - Board spokesperson.

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## Role of the Board Chair

- Meeting responsibilities:
  - enforce board's meeting procedures, and
  - guide the flow of agenda items, discussions on the same and formal board votes.
- As the moderator of debate, the chair should consider withholding his/her position until after others have spoken.
- Recognize all who have comments or questions;
- Keep the group on the topic;

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## Role of the Board Chair

- Clarify questions;
- Practice the art of summarization;
- Restate motions to eliminate confusion and help create a clear record;
- Demonstrate and request respect for and by all speakers;
- Vote on all matters!

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## **Public Participation at Board Meetings - “Public Comment”**

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### **Public Participation** *Public Meetings v. Meetings of the Public*

- The primary purpose of school board meetings is to conduct the business of the board as it relates to school policies, programs, budget, and operations.
- A school board meeting is one that the public has a right to attend, rather than a meeting of the public where everyone might have the right to speak.

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**Public Participation**  
*Public Comment at Board Meetings*

- The United States Supreme Court has recognized that nothing in the U.S. Constitution requires public bodies to allow members of the public to speak during meetings of that body.
- Likewise, neither the State's Constitution, nor the Right-to-Know Law, RSA 91-A, create a public right to speak during or at board meetings.
- As there is not legal mandate to do so, the “power” to create the opportunity for public comment is reserved to the school board.

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**Public Participation**  
*Public Comment at Board Meetings  
and the 1<sup>st</sup> Amendment*

- Access and input to decision making by **public** bodies, including **school boards**, is an important part of our democracy, both by tradition and under the State and Federal Constitutions.
- When a board allows time at its meetings for public comment, the board creates a “forum” for speech, which in turn implicates free speech considerations under both the Federal and State Constitutions.

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## Public Comment at Board Meetings and the 1<sup>st</sup> Amendment

*Continued...*

- School boards can enact rules about public comments at their meetings, but when they do so, they must adhere to First Amendment standards.
- Board rules may include “time, place and manner” restrictions, as well as other parameters, provided that in all instances, the limitations are viewpoint neutral.

*Note: A full discussion of public comment and the 1<sup>st</sup> Amendment is beyond the scope of this presentation.*

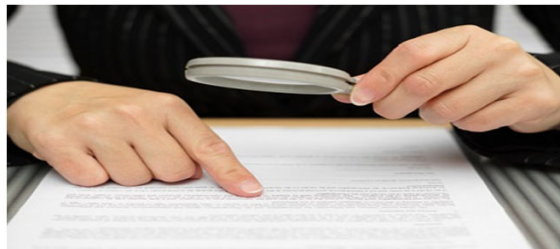
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## Public Comment

Refer to your own local policy.

*NHSBA Sample Policy BEDH.*



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## Public Participation *Practice Tips*

- Make sufficient copies available of the agenda and other items of general concern (e.g., meeting policies, outline of Right-to-Know Law regarding non-public sessions, report summaries, etc.).
- Place controversial issues early on the agenda.
- Similarly, place participation items (staff, student groups, consultants) early.
- Use language the audience can understand – avoid jargon.

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## Public Participation *Practice Tips*

- Summarize public comment rules/policy before the start of public comment period.
- Safest rule to enforce under the 1<sup>st</sup> Amendment is one limiting speakers to X minutes.
- Administer public comment rules consistently.
- *Public comment is for input, not debate* – Avoid exchanges and arguments. Keep exchanges to a minimum, and never argue.
- For highly controversial topics, consider a “public forum” (special board meeting).

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## Public Participation *Practice Tips*

- Be adept at deferring direct response –
  - no single board member can speak for the board until the board has taken a position;
  - deferring reduces the risk of overly emotional responses;
  - deferring – as with agenda setting - helps assure that the information required for meaningful and accurate deliberation is in hand;
  - develop a pattern of integrating meaningful input into future agendas or board business part of the meeting.

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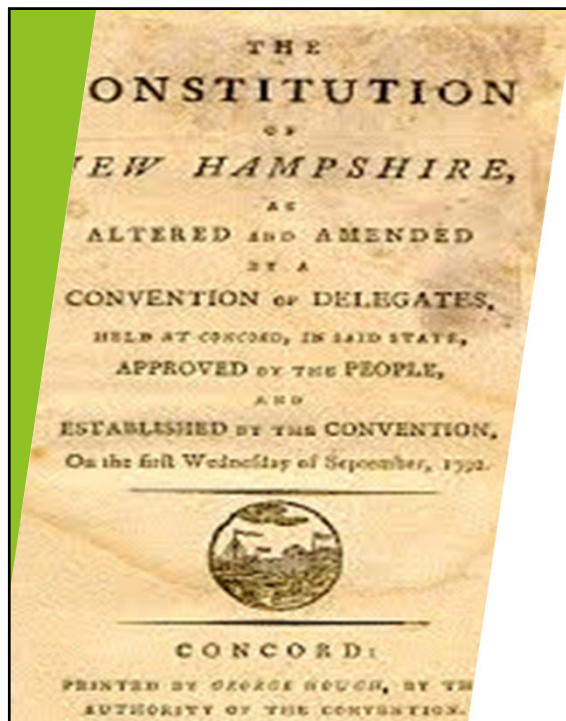
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# Effective Meetings & The Right-to-Know Law

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## The Right-to-Know Law, RSA Chapter 91-A

PART I, ARTICLE 8 OF THE NH Constitution: Government ... should be open, ....

### SECTION 1 OF RSA 91-A:

The purpose of this chapter is to ensure both the greatest possible public access to the **actions**, **discussions** and **records** of all public bodies, and their accountability to the people.

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91-A is just the floor.

RSA 91-A:2, II:

If the rules of procedure of any public body require a broader public access to official meetings or records then those provisions will govern.

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## What is a Public Meeting? RSA 91-A:2



Quorum



Public body



Convenes so that they can communicate contemporaneously



To discuss or act upon a something over which the public body has supervision, control, jurisdiction, or advisory power.

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# What is not a “Meeting”? (The so-called “non- meeting”) RSA 91-A:2, I



Social or other encounter



Collective bargaining



Consultation **with** legal counsel



Political caucuses



Circulation of draft documents

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## Meeting v. Hearing



### Meeting

To conduct body's business

RSA 91-A

Open to public

No right to speak



### Hearing

To hear public/certain people  
on issue

91-A “plus”

Open to public

Right to speak

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## What are the public meeting requirements under 91-A?



PUBLIC NOTICE

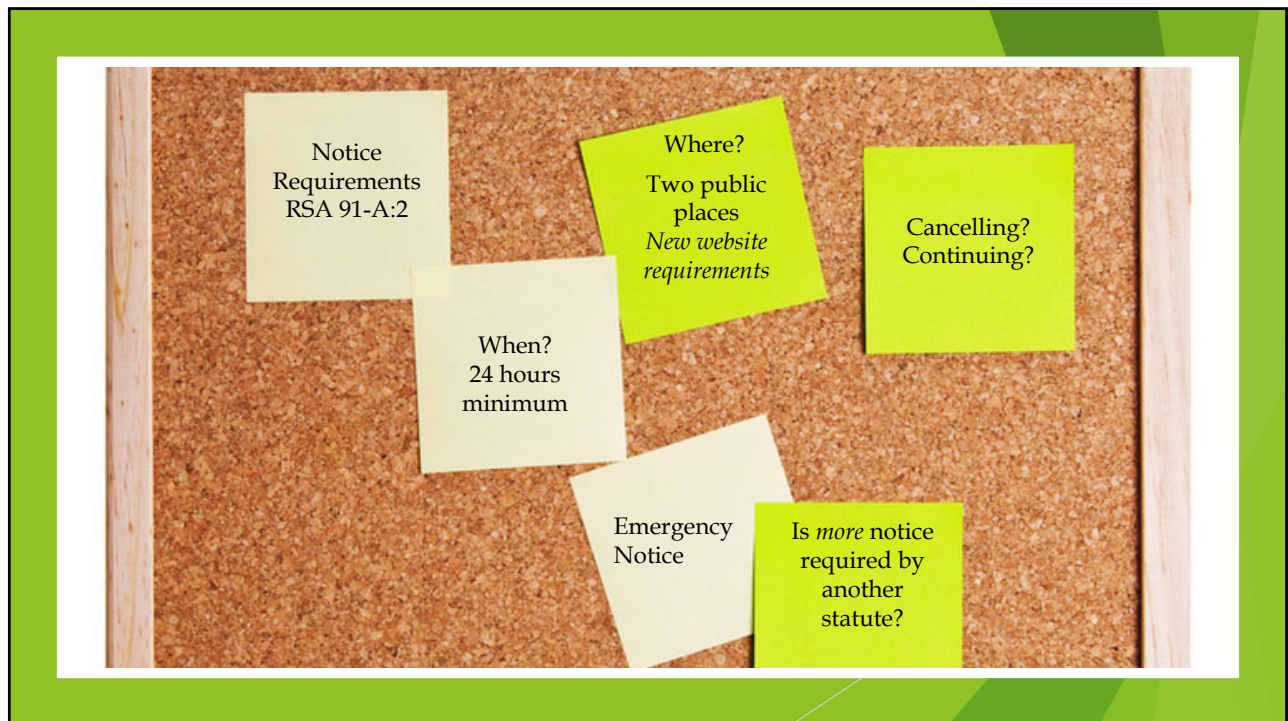


OPEN TO THE  
PUBLIC

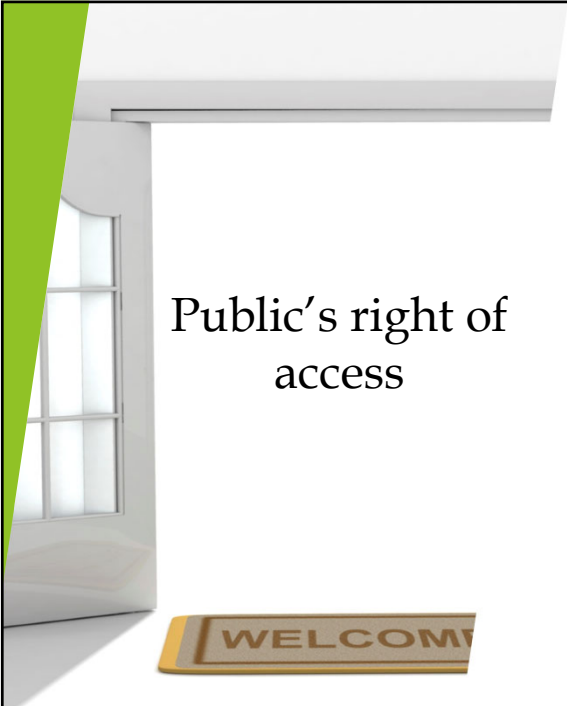


MEETING  
MINUTES

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## Public's right of access

- ▶ Open to the public, RSA 91-A:2, II
- ▶ Public's right to record, etc.
- ▶ No secret ballot voting

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## Meetings Minutes

- Minimum required contents
- Made available within 5 business days
- Posting: New website requirements
- Draft v. Approved

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## Remote (Electronic) Meeting Participation, RSA 91-A:2, III



Public body *may* allow (adopt a policy!)



Personal attendance "not practical" (in minutes)



Quorum *present*



Everyone can hear and be heard



Identify anyone else present



All votes by roll call

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## Beyond 91-A

- ▶ Preparation = more effective meetings
- ▶ Do you have rules of procedure?
- ▶ Agenda
- ▶ Circulate materials in advance
- ▶ Read packet, think about comments and questions in advance
  - ▶ No discussions prior to/outside meeting!



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## Rules of Procedure: Basic Content



Regular Meeting Day, Time & Location



Annual Election of Officers



Authority of Presiding Officer/Chair



Duties & Privileges of Board Members



Quorum & Voting



Agenda for Board Meetings

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## Rules of Procedure: Basic Content (cont'd)



Order of Business at Board Meetings



Meeting Procedure and Decorum



Procedures for Public Hearing, Public Comment



Right-to- Know Law



Committees/Liaisons/Appointments



Enactment of Ordinances, Resolutions & Motions

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## Public Comment



No right to speak in meeting, unless you give it to them (remember hearings are different)



Establish & explain rules, apply consistently



First Amendment: Many restrictions are not acceptable!



Maintain control & order

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## Conducting the Meeting



BE AND  
START ON  
TIME



CHAIR'S  
RESPONSIBILI  
TIES



APPLY RULES  
OF DECORUM  
EVENLY



ELECTRONIC  
MEDIA DURING  
MEETING



DON'T FORGET  
THE MINUTE-  
TAKER

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## Meeting Decorum



ALL EYES ARE ON YOU



PAY ATTENTION!



ELECTRONIC MEDIA  
USE DURING MEETINGS

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## Riggins' "Don't's"



Don't mingle with friends, acquaintances, unknown applicants or objectors in the audience before the meeting & during a recess period.



Don't indicate by word or action how you intend to vote during the portion of the hearing devoted to presentations.



Don't interrupt a presentation until the question period, except for very short and *necessary* clarifying remarks or queries.



Don't use first names in addressing *anyone at all* during the course of the hearing.



Don't try to make the applicant or any other person appearing before you look like a fool by the nature of your questions or remarks.

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## Riggins' "Do's"

**Do rotate the seating** in some regular manner each successive meeting to prevent a "strong" member from gradually dominating a "weak" member.

**Do sit down and have a long soul-searching session with yourself** if you find you are consistently "out in left field," that no one seems inclined to second your profound motions, and that you are quite often a minority of one.

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## Dealing with "Difficult" People

Apply rules of decorum/procedure evenly

Listen actively

Stay calm

What you say & *how* you say it

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## Roll call v. Recorded Vote



### Roll Call Vote Example



“Byrnes: yes; Buckley: yes;  
Johnston: no. Motion passes.”

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## Roll Call v. Recorded Vote



### Recorded Vote Examples



“Motion passes 2-1, with  
Johnston voting in the negative.”



“Motion passes unanimously.”

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# When do you have a conflict?

## General Standard (All officials):

Direct personal or financial interest in outcome

Immediate & definite

Atherton v. Concord

## Boards Acting in Judicial Capacity (often land use boards):

General Standard OR

Juror disqualification

RSA 673:14, I

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## ETHICAL CONSIDERATIONS

- ▶ Recusal, not abstention
  - ▶ What happens when you abstain?
- ▶ Advisory Vote
  - ▶ RSA 673:14, II, land use boards
- ▶ Alternates?
  - ▶ RSA 673:14, land use boards
- ▶ Proceeding without a full board
- ▶ Disclosure to parties

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## Case Studies - *Webster v. Candia*, 146 N.H. 430 (2001).

- ▶ Allegation made a planning board member was disqualified because:
  - ▶ His wife was a leading opponent of the project under consideration.
  - ▶ The member had prepared a document after the conclusion of the public hearing, which he brought to next meeting of the planning board where the board made its decision denying the project and that document was entitled "Reasons to Deny Project X"
- ▶ The only allegation that concerned alleged bias was that the member moved to deny the application. His motion was not evidence of "prejudgment," but of judgment exercised at the appropriate time and place. Nor was it evidence of "bias."

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## Case Studies - *W. Robert Foley, Trustee v. Enfield*

- ▶ The day before the ZBA met to consider a rehearing request, the chair e-mailed PlanLink asking, "Should the board members consider precedents when deciding their position on a case?"
- ▶ The chair received a number of responses, from municipal employees and zoning board members in other communities, which varied in content.
- ▶ The record shows that the ZBA denied the plaintiffs rehearing request the day after the chair's e-mail on the ground that granting the requested variance would violate the spirit of the ordinance by promoting overcrowding. This was the same reason the majority of the ZBA, the chair included, gave for denying the variance when it voted over one month earlier. *Thus, we would conclude that the plaintiff failed to demonstrate that he suffered any prejudice as a result of the communications.*

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## Case Studies – Z-1 Express v. Manchester

- ▶ Application pending before planning board for a conditional use permit for a gas station convenience store.
- ▶ After the final evidentiary hearing, but before board deliberated and made final decision two members voiced opposition to the project on a social media site established by residents opposing the project.
- ▶ At a subsequent meeting one of the members who voiced opposition on social media was asked to recuse himself, he refused and he voted at a later meeting to deny the application.
- ▶ The Court ruled that the member's failure to enter into and participate in deliberations with an open mind threaten the integrity of the deliberative process, and also undermined the public trust in the overall function of the planning board.
- ▶ The Court applied the *Winslow v. Holderness* rule and vacated the decision and remanded the matter back to the planning board.

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*for completing  
The Academy for Good Governance!*



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