



RUNNING AN EFFECTIVE MEETING

**New Hampshire Municipal Association
Annual Conference
Wednesday, November 13, 2019**

Stephen C. Buckley, Esq.

Legal Services Counsel

NHMA

25 Triangle Park Drive

Concord, NH 03301

603-224-7447

legalinquiries@nhmunicipal.org

Scott Myers

City Manager, City of Laconia

45 Beacon St. East

Laconia, NH 03246

603.527.1270

smyers@laconianh.gov

BIG PICTURE:

- ❖ RSA Chapter 91-A (NH's Right to Know Law) requires that municipal boards, committees, and commissions conduct their business in formal meetings.
- ❖ Most of these meetings and the records they generate must be open to the public.
- ❖ Boards must balance the right of the public to observe with the need of the board to get things accomplished
- ❖ AND – handle the same challenges that plague all boards (from the largest corporation to the smallest volunteer organization): how do we work together at these meetings?

I. Meeting v. Hearing

- Meeting: Purpose is for the board, commission, or committee to conduct its own business. Discussions, workshops, motions and voting.
 - Generally governed by RSA 91-A and the board's own rules
 - Notice required for a meeting is either minimum 24 hours, excluding Sundays and legal holidays, posted in at least 2 public places in the community, one of which may be the municipality's website (RSA 91-A:2, II), and as supplemented by the rules of the board.
 - Meetings must be open to the public, and anyone may take notes, record the meeting, take photos. However, no one has the right to speak except the board itself, unless the board grants that right.
 - Must keep minutes and have them available upon request within 5 business days.
- Hearing: Purpose is for the board, commission or committee to hear certain people on a particular topic.
 - Governed by the statute that requires or permits the hearing, *and* RSA 91-A, *and* the rules of the board. When they differ, use the provision that requires the most notice and the most due process for the parties. Examples:

- Planning Board hearing on a subdivision application (RSA 676:4)
- ZBA hearing on a variance application (RSA 676:7)
- Selectboard hearing on laying out a public road (RSA 43), changing size of Selectboard (RSA 41:8-c), acceptance of unanticipated revenue of \$10,000 or more (RSA 31:95-b)
- Budget Committee hearing on proposed budget (RSA 32:5)
- Notice period is the ***greatest*** amount of time required by those statutes and rules, and is likely to include not only posting, but also publication in the newspaper and notice mailed separately to certain parties.
- Public hearings must be open to the public just like public meetings.
- Consult the statute and rules to see who has the right to be heard.
- Minutes must be kept, and the statute may require they be filed in a particular place by a certain time.
- NOTE: it is possible to hold a public hearing during a public meeting. Just be careful to clearly note when the hearing opens and closes (for example, a planning board may hold multiple public hearings during a single meeting). Formally declare a public meeting open, hear all the parties, then close the hearing and continue with the rest of the meeting.

The rest of this information applies to public MEETINGS rather than hearings, except where specifically noted. There are additional requirements for hearings and those requirements differ depending on the type of hearing involved. Always check the applicable statute!

II. Agendas

- Yes, you need one! If there is nothing on the agenda, why are you meeting?
- Legal requirements for an agenda under RSA 91-A? Generally, no.
 - No requirement to post agenda (public notice must include name of board and time, date and place of meeting), although many boards do.
 - No requirement to follow agenda
- Practical requirements? Yes!
 - Include everything you want to accomplish, even the small things.
 - Establish ground rules. Who gets to call a meeting, and how? Who creates the agenda? How do members propose adding things to it? If the public or staff may request to add items, how do they do that?
 - Think about how much time should be planned for each item and consider including the time allotment on the agenda as a way for members to remember to stick to the topic at hand.
 - Consider a “consent agenda” consisting of noncontroversial items all members have received and reviewed ahead of time (committee reports, minutes, etc.). Any member can make a motion to remove something from the consent agenda if it needs to be discussed. Otherwise, the board takes a single vote to accept/approve the items on the consent agenda.
 - Consider placing the quicker items toward the beginning of the agenda.
 - Are there availability constraints? If a necessary person is available only at a particular time, you may need to move items around to accommodate that. If you are paying for a consultant or attorney to attend the meeting, you may want to

place them at the beginning of the agenda or give them a specific time slot to minimize paying for “wait time.”

- Consider including a provision on the agenda that no new item will be taken up after a certain time during an evening meeting (e.g., “no new item on the agenda will be taken up by the board after 10:30 p.m.”).
- Deviating from the Agenda
 - If there is a public hearing on the agenda, stick to the advertised starting time and the order on the agenda because that helps to protect the rights of those involved. If you discuss it with the parties and everyone is okay with changing it, that’s fine.
 - For the rest of the agenda – no legal requirement to follow the agenda as written, no legal prohibition against adding or removing items on the fly. HOWEVER – make a good-faith effort to stick to it unless there is a good reason. Playing games with the agenda is one way to lose public trust.
 - If you have to skip, table or delay an item, state that clearly and note it in the minutes (there are people who check minutes against agendas). Assign someone to follow up and get it on a future agenda, if appropriate.

III. Preparation (Set Your Board up for Success!)

- Circulate materials well in advance
 - Give everyone the chance to be prepared.
 - Staff or chair should prepare an agenda and a packet of whatever materials are needed for the meeting (e.g., draft minutes, reports, copies of applications, drafts of ordinances or contracts, price quotes, background materials, etc.).
 - Consider asking staff to routinely prepare a report to update the board on new and continuing items and include this in the packet.
 - If individual board members are preparing material for the meeting, encourage them to submit it to staff/chair to be included in the packet.
- Make being prepared for the meeting part of the board culture.
 - Emphasize to all board members the importance of *reading the packet* before the meeting!
 - Make this part of your orientation, mention it at the meetings.
 - Thank the members now and then for taking the time to read the material. You’d be surprised at how effectively this can guilt people into doing it for the next meeting.
- Encourage members to think about their questions/comments before the meeting.
 - Okay to send questions/comments to staff person (town administrator, board secretary) but NOT to other board members.
 - Beware the inadvertent meeting! RSA 91-A:2-a (no discussion or deliberation outside a formal meeting). **Never** have email or other conversations among a quorum of the members unless you are in a properly held meeting.
 - Circulating drafts of minutes or other documents before the meeting? Make sure all members know that they should either bring their comments or suggested edits to the meeting, or submit them ONLY to the chair or staff, never to the entire board.

- Is the meeting packet public? Assume it is. Once documents have been circulated to a quorum of the members of the board, they are “governmental records” under RSA 91-A:1-a, III. If there are documents that may be confidential, consult your town attorney.

IV. Conducting the Meeting

- Be on time and start on time!
 - Always start the meeting promptly on time (if you have a quorum). Stragglers will learn quickly.
 - End the meeting on time whenever you can. People are more likely to attend meetings they know will be run efficiently and accomplish things, because it is a lot more satisfying.
- Set ground rules
 - Rules for the board: who runs the meeting, how formal will it be, etc.
 - Rules for the public and other participants: will there be public comment? When will it occur? (See below)
 - Rules should be clear.
 - Apply rules consistently!!
 - Hand out rules of procedure at the meeting, post on website, etc., but also a good idea to repeat them at the beginning of the meeting and as often as necessary during the meeting.
- Stay on Topic
 - The chair must set a good example, both with his/her own focus and by reminding others to do so as well.
 - If off-topic issues arise, the chair should do one or more of the following:
 - ask to hold that discussion to a later point in the agenda, if it is on the agenda
 - make a note to discuss it at a future meeting and then be sure to put it on a future agenda
 - assign someone to follow up on that issue and then move on
 - gently step in to return the discussion to the issue at hand.
- Don't ignore the minute-taker.
 - RSA 91-A:2 and :3 require that minutes of all public meetings and non-public sessions be kept, including the names of the board members present, names of all other participants, a brief description of the subject matter discussed, any final decisions made and the names of members who made and seconded any motions.
 - Land use boards – the minutes are going to be part of the certified record if there is an appeal to the court. Skeletal, disorganized, unclear notes may present a problem because you rarely get to submit any extra evidence in those cases.
 - Set your minute-taker up for success! If they are in the room typing away, make sure they are comfortable interrupting you to ask how to spell something or to clarify the language of a motion that was made. If they are going to write the minutes later from a recording, be sure the sound quality is good and that board members and the public have not spoken too quickly (or over one another).
- Before you move to the next item.

Summarize any decisions that were just made, what the next steps are, who is responsible for them, and any deadlines that apply. Don't be afraid to do this again at the end of the meeting if things have changed along the way. Everyone should leave the

- meeting knowing what just happened, who will handle each task, and when things are due.
- Nonpublic Sessions.
 - Use a checklist! A good form can prompt the board to properly enter, conduct, and exit a nonpublic session, includes the legal reasons for holding a nonpublic session, prompts the board to take minutes, and consider whether or not to seal them. There is a nonpublic session checklist the on the NHMA website: https://www.nhmunicipal.org/sites/default/files/uploads/documents/appendix_f_-_nonpublic_checklist.pdf
 - Make sure that the chair and all members are familiar with the requirements and limitations under RSA 91-A:3 regarding nonpublic sessions.
 - Is the reason you want to enter nonpublic sessions on the list of exemptions? RSA 91-A:3, II.
 - Are you following the proper procedural requirements to get into and out of the nonpublic session? Confining discussion only to the reason for the session? Taking and sealing minutes?
 - Electronic participation in meetings:
 - Adopt a policy!
 - RSA 91-A:2, III permits a board to allow members to participate remotely, although this is an option and is not required.
 - Member may only participate remotely if physical attendance is “not reasonably practical,” and the reason must be stated in the minutes.
 - That member may vote.
 - Except when the chair determines there is an emergency, a quorum of the members must be physically present. (“Emergency” here means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action.”) Nature of the emergency must be included in the minutes.
 - Public must be able to “discern” remote participation at the meeting site, and members must be able to hear and speak with each other simultaneously. (speakerphone, Skype, etc.)
 - NO meetings via e-mail.

V. **Respect and Decorum**

- It all starts with you!
 - A lot of emphasis is put on managing the public at meetings, but it is just as important (if not more so!) for board members to conduct themselves properly.
 - Treat one another courteously. Even if you don’t like each other.
 - Listen to what other people are saying.
 - Don’t interrupt or talk over one another. This looks horrible, makes everyone talk loudly for no reason, and can make taking minutes very difficult.
 - Don’t have side conversations with your neighbor.
 - The chair should try to engage every member. If one member is monopolizing the discussion, it is a great idea now and then to say “I’d like to make sure we hear from everyone, do you have anything you’d like to add, [name]?”

- Resist getting defensive.
 - If someone asks you a question and you don't know the answer, "I don't know but I'll find out" is a perfectly acceptable response. Assign someone (maybe yourself) to find out and follow up later. "That's a good question", "that's an interesting point," "does anyone have thoughts on that?"
 - If someone is challenging your opinion or view, remember that this is the process. It does not need to be personal, and it takes two people to have an argument. Don't argue back.
- **PUT THE CELL PHONE AND TABLET DOWN.**
 - The chair should remind everyone at the beginning of every meeting to silence their phones.
 - If you can, leave it in your pocket/purse/bag/car.
 - If you must be on-call for emergencies (real emergencies), put it on vibrate.
 - Consider banning phones altogether during meetings.
- Remember why you are there and pay attention.
 - Do not play games, check or answer email, use snapchat, check Facebook or Twitter. If you are asked to look something up during the meeting that's okay but playing on your device is just as bad as taking out a book to read.
 - Don't pass notes to one another during the meeting that others don't get to share.
- Do not text/email/IM one another during the meeting.
 - Not only is this rude, but it may violate RSA 91-A (discussions at a public meeting must be public).
- Assume you are being recorded at all times.
 - RSA 91-A:2, II: "Any person shall be permitted to use recording devices, including but not limited to tape recorders, cameras, and videotape equipment" at public meetings.
 - No one must tell you they are recording you with their phone or any other device.
 - No one has a reasonable expectation of privacy at a public meeting.
 - Assume that what you do at this meeting will be on YouTube by the time you get home.
- Imagine your meeting from the observer's point of view.
 - What would you see if you were sitting with the public or watching it on TV or YouTube?
 - Someone rolling their eyes, checking their phone, yawning, whispering to their neighbor?

VI. The "Non-Meeting"

- "Meeting" = the convening of a quorum of the members of a public body, in person or by any other means, for the purpose of discussion or acting upon a matter or matters over which that body has supervision, control, jurisdiction or advisory power. *See RSA 91-A:2, I.*
- Social, chance or other encounters that aren't convened to discuss or act upon official matters and where no decisions are made are not "meetings."

- However, sometimes a quorum gets together for an official purpose and it's still not a "meeting" under 91-A. Two examples are:
 - Strategy or negotiations regarding collective bargaining (RSA 91-A:2, I(a)) – these don't count as a meeting, whether or not you are meeting with the other side, and whether or not lawyers are present.
 - Consultation with legal counsel (RSA 91-A:2, I(b)) – this means the lawyer is physically present or is on the telephone with the board, and the consultation is for the purpose of obtaining legal advice. (Essentially, the lawyer must be "on the clock" for it to count.)
- Non-meetings don't count under RSA 91-A. No notice, no minutes, no public access.

VII. Public Comment

- When is it required?
 - Public hearing – check the statute that governs your hearing. It may specify particular parties who get to be heard. If it doesn't, assume it means anyone is entitled to be heard.
 - Public meeting – not required! Remember – a public meeting means the public has the right to attend, watch/listen, take notes, record or photograph the meeting. However, no law or constitution gives the public the right to **SPEAK**. That only exists *if you give it to them*.
- Establish rules.
 - The board should have rules governing public comment before it occurs.
 - Explain the rules clearly to everyone at every meeting. Repeat as necessary.
 - Apply all rules fairly, equally, and consistently.
 - If you are going to accept public comment at a point in the agenda, try to be consistent from meeting to meeting if you can (although sometimes you may have to move it).
- What about the First Amendment?
 - Once you decide to allow public comment, you have triggered the First Amendment right to freedom of speech.
 - You may put reasonable "time, place and manner" restrictions on public comment.
 - You may NOT put any restrictions on the content of that speech
- What restrictions are acceptable?
 - Specific topic ("we'll accept comments from the public now on the proposal to replace the stop sign with a traffic light at the corner of Main and Spruce Streets").
 - Time limits per person (three to five minutes is common and generally legal).
 - Requiring people to speak in the order they have signed up (if you use a signup sheet) or line up behind a microphone.
 - Requiring everyone who wants to speak to have one turn before anyone gets a second turn.
 - Not permitting repetitive comments (e.g., three people get up and repeat the same speech).

- What restrictions are NOT acceptable?
 - “Only positive comments.” If you are allowing public comment, you must take the bad with the good. Be prepared to hear negative feedback. This is the essence of the First Amendment and we must all accept that.
 - No swearing or obscenity (although you can prohibit specific threats of harm and speech likely to incite violence or injury, such as yelling “fire” in a crowded room). Generally, you can encourage people to avoid swearing, but you can’t enforce it. You may just have to put up with it.
 - Preventing a particular person or a specific group of people from speaking (discrimination)
 - Preventing certain attire (shirt with a slogan, holding up a banner that isn’t disrupting the conduct of the meeting)
- Maintain order and control.
 - If comment is only being accepted on a particular topic and the speaker strays off-topic, the chair should remind them gently of the limited scope of comments.
 - Encourage people to submit comments in writing.
 - The board is not required to engage in a discussion with the speakers during a public comment period. Simply listen. You are not required to answer questions.
 - Keep your cool! If you are allowing public comment, remind yourself that you have to accept the criticism along with the compliments. Take a deep breath. Practice your “neutral face” in the mirror if you have to.
 - If someone will not obey the rules (continues talking after past the time limit, will not cede the floor, makes threats of violence, etc.), the chair should first ask them to stop, remind them of the rule, and give them a chance to come to order.
 - If they persist and are disrupting the business of the meeting (which is, after all, why you are meeting in the first place), they may in extreme cases be removed from the meeting by law enforcement (*State v. Dominic*, 117 N.H. 573 (1977)), but only if the disruptive behavior is observed by the arresting officer (RSA 644:2, *Baer v. Leach*, 2015 U.S. Dist. Lexis 158774). Use that sparingly.

