

Meeting Conduct & Conflict Resolution

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Rules of Procedure

Required by RSA 676:1

676:1 Method of Adopting Rules of Procedure. – Every local land use board shall adopt rules of procedure concerning the method of conducting its business. Rules of procedure shall be adopted at a regular meeting of the board and shall be placed on file with city, town, village district clerk, or clerk for the county commissioners for public inspection. The rules of procedure shall include when and how an alternate may participate in meetings of the land use board.

What Should Be Addressed in Rules?

- Participation of alternates
- Attendance Expectations
- Role of Officers
- How to Call Special Meetings
- Public Request Vote on Disqualification
- Order of Business
- How Votes Cast
- Result of Tie/Failed Vote
- Days to Submit Appeal to ZBA of Admin Decision

Attendance Expectations

What happens if member never shows up? Removed?

673:13 Removal of Members. –

I. After public hearing, appointed members and alternate members of an appointed local land use board may be removed by the appointing authority upon written findings of inefficiency, neglect of duty, or malfeasance in office.

II. The board of selectmen may, for any cause enumerated in paragraph I, remove an elected member or alternate member after a public hearing.

III. The appointing authority or the planning board shall file with the city or town clerk, the village district clerk, or the clerk for the county commissioners, whichever is appropriate, a written statement of reasons for removal under this section.

IV. The council, selectmen, county commissioners with the approval of the county delegation, or district commissioners may for any cause enumerated in this section remove the members selected by them.

ZBA: Less than Full Board? Offer to Postpone?

674:33 Powers of Zoning Board of Adjustment. –

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III. The concurring vote of any 3 members of the board shall be necessary to take any action on any matter on which it is required to pass.

Can the Public Ask for Vote on Disqualification?

673:14 Disqualification of Member. –

I. No member of a zoning board of adjustment, building code board of appeals, planning board, heritage commission, historic district commission, agricultural commission, or housing commission shall participate in deciding or shall sit upon the hearing of any question which the board is to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law...

II. When uncertainty arises as to the application of paragraph I to a board member in particular circumstances, the board shall, upon the request of that member or another member of the board, vote on the question of whether that member should be disqualified. Any such request and vote shall be made prior to or at the commencement of any required public hearing. *Such a vote shall be advisory and non-binding, and may not be requested by persons other than board members, except as provided by local ordinance or by a procedural rule adopted under RSA 676:1.*

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How to Cast Votes? Roll Call, voice, show of hands...

Doing Remote Meeting During COVID State of Emergency? Must do roll call votes.

91-A:2 Meetings Open to Public. –

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III. A public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body, subject to the provisions of this paragraph.

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(e) A member participating in a meeting by the means described in this paragraph is deemed to be present at the meeting for purposes of voting. *All votes taken during such a meeting shall be by roll call vote.*

Tie Vote or Failed Motion?

For ZBA

674:33 Powers of Zoning Board of Adjustment. –

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III. The concurring vote of any 3 members of the board shall be necessary to take any action on any matter on which it is required to pass.

How Many Days to File Appeal with ZBA of Admin Decision?

676:5 Appeals to Board of Adjustment. –

I. Appeals to the board of adjustment concerning any matter within the board's powers as set forth in RSA 674:33 may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. *Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof.* The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

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Right to Know Compliance

- Ex Parte Communications
- Email/Phone Conversations Among/Between Board Members

Written Communications Between Less Than Quorum -Proceed Cautiously...

91-A:1-a Definitions. –

In this chapter:

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III. "Governmental records" means *any information created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function.* Without limiting the foregoing, the term "governmental records" includes any written communication ... received by a quorum or majority of a public body in furtherance of its official function, whether at a meeting or outside a meeting of the body.

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VI. "Public body" means any of the following:

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(d) Any legislative body, governing body, board, commission, committee, agency, or authority of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision, or any committee, subcommittee, or subordinate body thereof, or advisory committee thereto.

But Wait...

-Cannot Hide Behind Less Than Quorum to Avoid 91-A Requirements

91-A:2-a Communications Outside Meetings. –

I. Unless exempted from the definition of "meeting" under RSA 91-A:2, I, public bodies shall deliberate on matters over which they have supervision, control, jurisdiction, or advisory power only in meetings held pursuant to and in compliance with the provisions of RSA 91-A:2, II or III.

II. Communications outside a meeting, including, but not limited to, sequential communications among members of a public body, shall not be used to circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

Conflicts of Interest

- When to Decide?
- Tips to Avoid

Decision to Disqualify or Recuse Up to Member in Question

673:14 Disqualification of Member. –

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II. When uncertainty arises as to the application of paragraph I to a board member in particular circumstances, the board shall, upon the request of that member or another member of the board, vote on the question of whether that member should be disqualified. Any such request and vote shall be made prior to or at the commencement of any required public hearing. *Such a vote shall be advisory and non-binding*, and may not be requested by persons other than board members, except as provided by local ordinance or by a procedural rule adopted under RSA 676:1.

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Social Media Issues

- ZBA/PB Social Media Pages
- Posting as a Board Member
- Posting as Individual on Community or Municipal Page
- Case Study: *Z1 v. Manchester*

Z1 Express v. City of Manchester (part of materials)

- Z1 wanted to construct convenience store/gas station; requires CUP from PB
- “Vigorous opposition” at public hearings
- During PB hearings, Alderman Levasseur sat as primary member of PB
- Prior to PB deliberation/vote, Ald. Moreau (alt. member of PB, did not even attend the public hearings) posted message of FB group:
...Both myself and Alderman Levasseur are in agreement that it does not fit that neighborhood and should not go through. As we are on the planning board as primary and alternate we will vote against this proposal

Z1 v. Manchester

- Z1 aware of FB post; asks for both Ald.'s Levasseur and Moreau to recuse because had prejudged application
- Next PB meeting, during deliberation, Ald. Levasseur refused to recuse, arguing
 - FB posting made after public hearings, no prejudgment
 - Only confided in Ald. Moreau because he would be out of town and going to miss vote, so wanted to be sure Moreau voted no
 - Ended up returning early to vote himself because concerned Ald. Moreau would not be able to vote because of FB post
- Voting: 3-3 tie first attempt; next meeting; 4-3 to deny, Levasseur voting in majority to deny

Z1 Appeals Because Levasseur Should Have Recused; **Court Agreed**

- Ald. Levasseur did more than state opinion on general principles
- FB post was BEFORE deliberations; stated “will vote”
- Clear made up mind BEFORE deliberations
- Deliberative process key to quasi-judicial function
- Levasseur threatened integrity of deliberative process
- Mere membership in FB group creates appearance of impropriety
- Court vacated PB denial, sent back to PB
- Back to PB WITHOUT Levasseur or Moreau participating
- Court also not impressed with Moreau’s actions