MRB group

Enhancing Transparency in Planning Proceedings

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MRB Group

A Cynical Time for Constituents

People are more skeptical of government's motives now than at nearly any other point in history. Challenges at the national level are trickling down to state and local governments.

Now is the time to show your constituents that you have their best interests at heart.

Issues driving constituent skepticism in government:

- Lack of information on programs, projects, and services; including how decisions are made;

- Inaccessibility of key decision makers, including appointed and elected leadership;

- Complex, opaque legal and other frameworks

- Low information or inaccessible meeting times, locations for meetings, etc.

The Intensifying Microscope

Our constituents are raising the bar as it relates to openness and transparency in process—in every area of our operations.

Planning has perhaps the greatest intensity of scrutiny, as our work has the highest number of community touchpoints.

Failure to respect process can result in:

- An extended review process driven by public challenges and political intervention

- A lack of interest by developers who begin to view your community and processes as unpredictable and a challenge to earning a reasonable return

- Legal challenges resulting in extended development timeframes and expanded costs to municipalities

Regaining Trust

Local governments are in the best possible position to make meaningful change that will be quickly recognized and appreciated by residents.

This will require breaking the mold on time-honored traditions around meetings and information.

To get there, we'll need to:

- Get deeper with the information we provide to constituents on our projects and processes;

- Broadcast information in a diverse way, in plain, understandable language; using a multitude of digital and traditional media;

- Establish meeting times and locations that are tailored to the projects at hand, and that mitigate barriers to participation by those most affected by your decisions.

Open Meetings Law

It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy.

The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it."

NYS Public Officers Law Sec. 100

Meetings Must be Public

A "meeting" is defined as "the official convening of a public body for the purpose of conducting public business."

NYS Public Officers Law Sec. 102(1)

A "public body" is defined as "any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation or committee or subcommittee or other similar body of such public body."

NYS Public Officers Law Sec. 102(2)

Transparency is the Objective

Except for specific exceptions, all meetings, and all public business occurring during a meeting, are part of the public record.

The Public Record should be clear on three points:

1. Process followed.

2. Relevant facts that support the decision (findings).

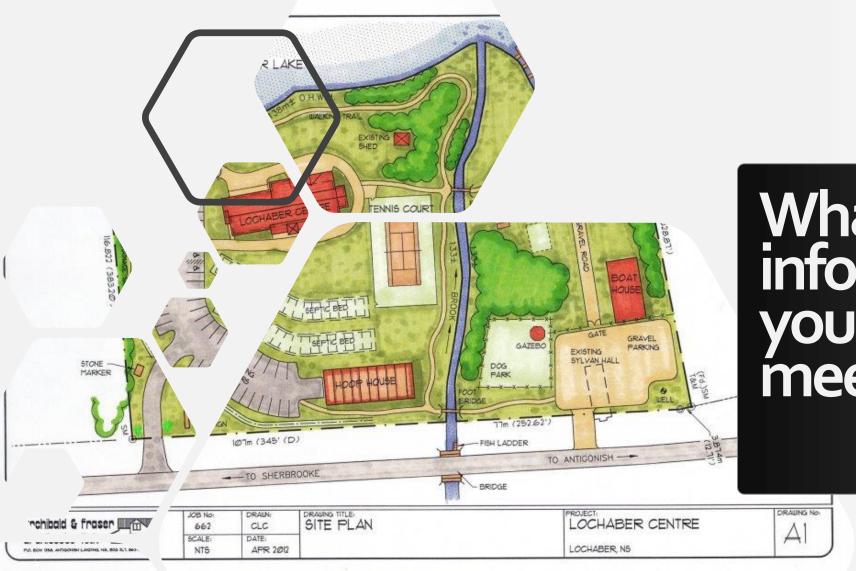3. Nature and content of the decision. Include specific conditions if made.

What tools do you use to get the word out about meetings?

Public Notice

Every effort should be made to give the public a chance to observe the proceedings.

- The date, time, and location of all regularly scheduled public meetings scheduled at least one week prior must be posted publicly and given to the news media at least 72 hours before such meeting.

  - A municipality's office(s), website, and social media are great places to post this information.

  - If said meeting will be televised or streamed over the Internet, this should be included in all postings.

  - If separate videoconferencing locations are provided, these locations need to be part of the posting.

What information do you post about meetings?

Getting the Word Out

How you deliver your message is as critical as what you say. The average American household no longer subscribes to, or even reads a local newspaper. Strictly following the letter of open meetings laws will get you the same old, same old.

A Mix of Traditional and Non-Traditional Tools is Key

- Our communication tools must be as diverse as our population;

- A strictly analog, or strictly digital strategy will not be effective in reaching a broad segment of the community

- Plain, simple, straightforward language must be the norm—avoiding jargon, legalese, etc.

Agenda Item Titles Won't Cut It

Agenda items are typically written in legal-ese, and reference arcane identifiers for locations and actions. Stakeholders need information in plain language, with a clear overview of the decision under consideration, and potential impacts.

Include as Much Information as Possible. Items Like:

- Staff analysis of projects and other Board actions— provide enough narrative to paint a picture of the matters before the board.

- Provide *actual* pictures of issues at hand. Photos provide context to the matters under discussion.

- Site plans, marketing materials, and any other documentation that can be reasonably provided, should be provided.

Diversity in Communication

We can't rely solely on the legal definition of public notice, but we also can't abandon the traditional channels that have brought residents to the table for decades. A great strategy makes consistent use of every available channel.

New School

- Expand on traditional media releases with a range of inexpensive, robust digital tools.
  - Ensure that the community's Facebook and other social media are hosting information on meetings and projects.
  - Consider interactive tools like Facebook live and polling to gain immediate feedback and provide unique access.

Old School

- Don't give up on traditional communication. A segment of the community still relies on these channels.
  - Ensure that the local press is well-advised of projects under review.
  - Follow existing laws regarding publication in the community's newspaper of record.

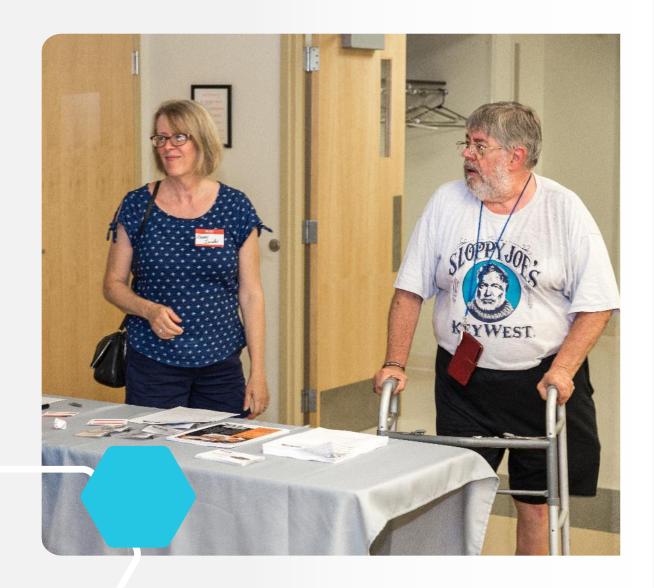What is the average attendance at your meetings?

Lowering the Barriers to Attendance

Believe it or not, an empty meeting room rarely has much to do with the subject matter at hand. All too often, we haven't created an inclusive, accessible environment where our residents and other stakeholders feel comfortable participating.

Keys to enhancing attendance at meetings include:

- Ensuring that the time and location of meetings is conducive to enabling attendance by affected populations

- Identify other potential barriers like childcare, transportation, or language, and work to address them

- Find ways for individuals to participate remotely when environmental conditions might preclude in-person attendance

Make Meeting Locations Relevant and Accessible

Reviewing complex projects from the dais never paints a complete picture of the issues at hand. The closer the public can get to the project, the smaller the window for misunderstandings.

Site Visit Opportunities Include:

- Rotating meetings to locations throughout the community to ensure access to a wide range of affected populations;

- When a particularly controversial site is being evaluate, host the meeting at that location, or close by;

- For long-range planning engagements, be sure to visit community facilities, treatment plants, parks, etc. to provide a broad picture of community assets.

Particularly Thorny Issues

The more controversial the issue, the more over-the-top you may need to be to get information out there and gain feedback and public insight. Local governments will have to consider lots of angles as it relates to lowering barriers.

To ensure maximum attendance at these sessions, consider:

- Collaborating with other departments, non-profits, etc. to schedule transportation to and from meetings for those without reliable transportation;

- Consider providing activities for children of affected stakeholders—make it engaging and relative to the topic at hand;

- If the meeting is at a meal time, find inexpensive, fun dining opportunities—food trucks, pizza, etc.

Other Barriers

Try to anticipate every possible barrier to participation in public meetings and other review processes. Stay tuned into the issues impacting affected neighborhoods and work to be flexible enough to engage a broad segment of the community.

Timing

- Meetings held at 7 p.m. (or 7 a.m.) on Wednesday night are destined to be empty.
  - Consider meetings on weekends, or in conjunction with other events in affected neighborhoods.
  - For complex issues, consider hosting multiple forums at various times to ensure that people with competing schedules can attend and participate.

Language

- Consider the demographic make-up of your community, and particularly of those impacted.
  - Work to find interpreters to be present at meetings to translate complex issues.
  - Ensure that meeting announcements, agendas, and other materials are translated into prevailing languages of impacted residents.

Open Meetings Law: Exceptions

An "executive session" is a portion of an open meeting during which the public may be excluded.

NYS Public Officers Law Sec. 102(3)

A public body's authority to conduct an exclusive Executive Session is limited to those purposes described in the OML.

"Allowable" reasons to Request an Executive Session:

1. Matters which would threaten public safety if disclosed;

2. Matters which may disclose the identity of a law enforcement agent or informant;

3. Discussion of information related to current or future criminal investigations or court cases that would hinder prosecution if disclosed;

4. Discussions regarding proposed, pending, or current litigation;

5. Collective negotiations pursuant to article fourteen of civil service law;

6. 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;

7. The preparation, grading or administration of examinations;

8. 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; and

9. Matters of Attorney-Client Privilege are not subject to public disclosure.

Lessons from the Pandemic

The most recent pandemic has engendered significant evolution in the field of public engagement and feedback. Local governments should take great care to learn the lessons of adaptability and diversity of engagement tools, and not just revert to the old way of doing business.

New Tools to Consider:

- Zoom, Facebook Live, and other low cost digital broadcast and participation tools;

- Interactive mapping from tools like ESRI, which allow residents to identify specific issues on a mapping interface and offer feedback;

- Online polling and surveying (Google Forms, Survey Monkey, etc.)

Email and Electronic Communication

Email, depending on how it is used, may or may not constitute a violation of the OML.

- Use of email to distribute application materials to a Planning Board is not a violation.

- A board member emailing information to other members, even if it relates to a specific application before the board, is unlikely to be seen as a violation. (i.e. a board member sends to other members an advisory document from a government agency providing clarification on their interpretation of the applicability of a regulation to certain types of projects)

- Use of email for social reasons is not a violation, even if such is a social event for members of a public body.

- So long as a series of emails or other communications between individuals or the group as a whole does not result in a collective decision, the use of email is generally valid.

Use of an email account for any public business could result in said email account being subject to FOIL requests.

Listening vs. Hearing

Just holding a public hearing, or even an interactive public forum isn't enough. Residents expect to be listened to—and HEARD!

It's critical for communities to have sound processes for analyzing and including resident feedback in decisions.

How to process all of this feedback and input:

- Ensure that meeting minutes are reflective of public comment on all sides of the issue

- Put time and space between feedback opportunities and decisions

- Find opportunities for feedback to be interactive—public hearings are required, and can be valuable. But they shouldn't be the only vehicle for soliciting feedback

Engagement Has Its Benefits

When a community has engaged its residents and other key stakeholders in every element of the planning process—from long-range, comprehensive planning to site plan review, a sense of pride and ownership in a unified community vision develops.

Improved engagement means:

- Built-in policy owners and project champions who trust in the process and in community leaders;

- Reinvestment by those who know the community best, and who have its best interest at heart—creating exponential new value and community assets;

- Attraction of new investors who understand the vision and align projects with community values—investors who are willing to work through whatever process the community puts in place to advance its vision.

In Summary

As community planners, we have our fingerprints on the most impactful projects our cities, towns, villages, and counties will ever realize. This carries with it a great responsibility, and requires the trust of the public.

Maintaining public confidence requires:

- An overabundance of effort as it relates to the dissemination of information about projects we're considering

- The use of new tools and technology to ensure that our message is clear and easy to understand

- Open and honest deliberation in an accessible environment that, whenever possible, is directly relevant to the projects at hand

Time for your questions...

Thank You

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