

April 13, 2012

Chairman Fred. J. McLaughlin &
Members of the Zoning Board of Appeals
c/o Riverhead Town Clerk
Riverhead Town Hall
200 Howell Avenue
Riverhead, NY 11901

Re: Zoning Board of Appeals Work Sessions and Open Meetings Law

Dear Chairman McLaughlin & Members of the Zoning Board of Appeals,

We, the undersigned, would like to call attention to the Zoning Board of Appeals (ZBA) regularly scheduled work sessions and formally request that the work sessions beginning at 6:45 p.m. be held open to the public as required by New York State law.

The ZBA has tremendous authority to interpret and grant variances to the Town's zoning code. As such, the ZBA's decisions may have an equally tremendous impact on our communities as well as the strength and integrity of the Town's zoning laws. As a result of these impacts, there is significant public interest in how the ZBA conducts its business and arrives at decisions.

According to New York State Public Officers Law, Article 7, also known as the Open Meetings Law, we find the following to be true:

- A work session of the ZBA falls under the definition of "meeting," defined as, "the official convening of a public body for the purpose of conducting public business" (Section 102 1.) and
- the ZBA is itself a "public body" as described in the Open Meetings Law (Section 102.2).

Since, the ZBA is a "public body" and a work session of the ZBA is most certainly conveyed to conduct public business and is defined as a "meeting," then these sessions must be held open to the public according to Section 103 a. which states, "Every meeting of a public body shall be open to the general public...".

Further, the Open Meetings Law also explicitly precludes zoning boards of appeals from Section 108 Exemptions. The attached State of New York Department of State Committee on Open Government Advisory Opinion clarifies this exemption and states, "zoning boards of appeals are required to conduct their meetings pursuant to the same

requirements as other bodies subject to Open Meetings Law.” It goes on to add, “Stated differently, due to the amendment, a zoning board of appeals must deliberate in public, except to the extent that a topic may justifiably be considered during an executive session...”

Although several other East End towns choose to hold ZBA work sessions, they do so within a public forum with scheduled agenda items. We find no reason that Riverhead Town should be exempted from conforming to State law and suggest that you follow the same practice as your neighbors or that you merely incorporate all discussions and deliberations into the public hearings.

Thank you for taking the time to review this request. We look forward to the ZBA more fully conforming to the standards of the Open Meetings Law.

Sincerely,



Dominique Mendez
Riverhead Neighborhood Preservation
Coalition



Robert S. DeLuca
Group for the East End

Sid Bail
Wading River Civic Association

Eric Biegler
Sound Park Heights, Inc

Georgette Keller
Jamesport-S. Jamesport Civic Association

Cecile Wren
Olde Vine Estates Civic Association

Reginald Farr
Greater Calverton Civic Association

Bill Toedter
North Fork Environmental Council

Cc: Supervisor Sean Walter
Councilman Jim Wooten
Councilman John Dunleavy
Councilwoman Jodi Giglio
Councilman George Gabrielsen
Robert Kozakiewicz, Town Attorney



**State of New York
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December 28, 1998

Mr. Daniel J. Kress
Zoning and Building Coordinator
City of Geneva
P.O. Box 273
Geneva, NY 14456

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the information presented in your correspondence.

Dear Mr. Kress:

I have received your memorandum of December 10. In your capacity as Zoning and Building Coordinator for the City of Geneva, you indicated that the Zoning Board of Appeals asked you to seek an opinion concerning "whether or not a Zoning Board of Appeals can go into executive session in the course of a public meeting to discuss pending litigation." Apparently the attorney for an applicant for a zoning variance contended that the Zoning Board has no right to enter into executive session.

In this regard, I offer the following comments.

First, I would conjecture that the attorney may recall an amendment to the Open Meetings Law that precludes zoning boards of appeal from deliberating toward a decision in private. By way of background, numerous problems and conflicting interpretations arose under the Open Meetings Law as originally enacted with respect to the deliberations of zoning boards of appeals. In §108(1), the Law had exempted from its coverage "quasi-judicial proceedings". When a zoning board of appeals deliberated toward a decision, its deliberations were often considered "quasi-judicial" and, therefore, outside the requirements of the Open Meetings Law. As such, those deliberations could be conducted in private. Nevertheless, in 1983, the Open Meetings Law was amended. In brief, the amendment to the Law indicates that the exemption regarding quasi-judicial proceedings may not be asserted by a zoning board of appeals. As a consequence, zoning boards of appeals are required to conduct their meetings pursuant to the same requirements as other public bodies subject to the Open Meetings Law. Stated differently, due to the amendment, a zoning board of appeals must deliberate in public, except to the extent that a topic may justifiably be considered during an executive session or in conjunction with an exemption other than §108(1).

Second, under the circumstances that you described, I believe that the Zoning Board could validly have conducted an executive session. Paragraphs (a) through (h) of §105(1) of the Open Meetings Law specify and limit the grounds for entry into an executive session. Unless one or more of those topics arises, a zoning board of appeals must deliberate in public. Pertinent to the matter is §105(1)(d), which permits a public body to enter into executive session to discuss "proposed, pending or current litigation." Since the Board discussed an Article 78 proceeding in which its action was challenged, I believe that it could validly have conducted an executive session.

I hope that the foregoing serves to clarify your understanding of the Open Meetings Law and that I have been of assistance.

Sincerely,

Robert J. Freeman
Executive Director

RJF:jm

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