Navigating Meetings and Hearings

If you are a citizen of a democracy, you participate by voting, which means not only registering and appearing at the polls, but attending and voting in referenda or town meetings (refer to essay on Democracy and Elections for more information). In order to make your vote a responsible one, you should be attentive to the issues and make informed choices by following reliable sources (refer to essay On Being and Informed Citizen). While some information in your community may be available from information posted to the Town's website, you may find it helpful to attend meetings or hearings associated with the particular issue.

Concerning municipal budgets or votes on special expenditures, you may find the information presented on the same night as the vote, which may take place after the discussion. (Town meetings are a hybrid; like a hearing, but with a referendum built in; it's like a raffle that you can't win unless you are present.). What's important to remember is that any activity engaged in by an agency of the town, whether the Board of Selectmen or an appointed board such as the Zoning Board of Appeals, requires that the authority clearly inform the public beforehand of the proposed activity, as well as when the board or commission will meet, and keep accurate record of what took place. Notices of these activities are required to be posted; you can find them displayed at the Town Hall but are also conveniently listed on the Town's website, along with activities from previous meetings.

In order to participate more effectively and fully in democracy, you should be familiar with how the municipal machinery of notices, meetings and hearings works, and that includes both sides of the table. Boards and commissions all work publicly and on a legal timetable. This allows the public to observe the actions of their representatives on boards, and it helps an applicant to understand that his petition will be completed in a timely manner and not languish.

Public business in which the citizenry participates can generally be divided into two categories: hearings and meetings. As a rule, hearings allow for the public to actively participate, either by attending and speaking, or by submitting documents or evidence in the hearing record. Decisions are not made at hearings. Meetings are generally open to the public, but only to observe, not participate, unless invited to participate by the board or commission. In doing so, however, the board or commission must be careful to do so fairly; if one person is allowed to speak, it is hard to deny another that right. Some boards allow time specifically for public comment.

There are different types of meetings. Regular meetings of boards are scheduled according to a calendar, and typically held on a certain day of the week or month at a time designated. Special meetings are meetings for a specific reason, but even these meetings require public notice. Emergency meetings, as one might expect, are meetings held when some critical decision must be made quickly, and there are guidelines even for these meetings so that the public is aware of the activity. The record of these meetings is available to the public under the Freedom of Information Act (FOIA).

But there are times when meetings are held that exclude public examination. These actions are referred to as "executive session," and may be brought about in the middle of any meeting, provided that the authority calling for the action goes on the record beforehand to explain the reason. There are specific reasons for holding executive session, usually involving personnel issues or pending litigation or negotiations. Boards and commissions are usually cautioned not to use executive session without good cause.

Hearings follow a precise set of instructions and require notices sufficiently in advance of the hearing to allow for the public to prepare and participate. The hearing is typically moderated by the chairman of the board or commission, though not always, and the chairman acts as a director of the activity.

Typically the chairman opens the hearing, and applicant or his representative speaks before the board and presents the application or petition, which may include expert witnesses, followed by questions from the board or commission. The chairman then allows the public to speak. With a large group, he may have persons speaking in favor of the application first, followed by persons opposed, as well as those who simply want to offer information into evidence or ask questions of the applicant. The prepared chairman will be wise to notify those in attendance of those ground rules beforehand. He may also advise those speaking to direct questions to the chairman. In doing so, it will avoid an argument between the questioner and the applicant or witness, resulting in loss of control of the hearing by the chairman. The chairman may also recommend to individuals that they not repeat information already provided by others; after all, the hearing is to gather information, and is not a filibuster. If you wish, you may state that you agree with the previous speaker; that should be sufficient. The board or commission may also set a limit on how long each speaker may speak, within reason, and advise those speaking to stay on topic. The board or commission may also set a time at which they will suspend the hearing to have it continued on another date if the hour runs late. Again, they must post this information for the public notice. You should be aware that you can submit your concerns or questions in writing; you do not have to attend the hearing. The chairman would then either read the information into the record or read the question asked. You do, of course, have to sign the documents when you submit it as part of the hearing record. Hearings are often audio recorded so that anyone can listen to the record of the hearing.

Because hearings are part of a legal chain, referred to as "due process of law"(Refer to essay "On the American Judiciary"), information provided to the board at a hearing asks speakers to be identified, as evidence may be examined after the close of the hearing, and though rarely required, it may be necessary to further inquire of the speaker (or writer) concerning the statement. Additionally, in the event of conflicts of interest, members of boards may be asked to "recuse" themselves; that is, they may wish to not participate because of a personal interest which could allow for a denied applicant to appeal the decision because of prejudice by a board member. The applicant may even ask a member to recuse himself if he believes the member has a conflict of interest or has made statements that are prejudicial to the applicant. It is ultimately the board member's decision.

If you are attending a hearing, and the hearing is held open because, let's say, additional information is required, then from the point at which the hearing is continued until the hearing is re-opened, board members should not speak about the matter. Such conversations outside the hearing are called *ex parte communications*, and would ordinarily be held during the hearing to allow all to hear the matter under discussion. So don't try to corner a member with a concern that you'd rather not have the public hear about; all the board members need to hear it, or none at all. *Ex parte* discussions, if found out, could be grounds for appeal by the applicant.

If you wish to have your comments seriously considered, you should be prepared to speak clearly and articulate them as best you can. Think about what you might want to say, or how best to phrase your question (See Essay "Democracy and You Part 5"). Speak directly to the chairman ("Mr. or Madam Chairman" will do) and state your case. Clarity and civility will go a long way to making your point better received, and making the evening a pleasant one for all. The board is usually looking more for factual information than opinion, but if you have one, you can offer it.

It is important to remember that the above described procedures used for meeting and hearing are intended to make the process orderly, fair and open for all involved. Democracy is, after all, for the people and by the people. That means all of us and we all want to be treated equally and fairly under the law.

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For more detailed information on meeting and hearing procedures, you might like to refer to What's Legally Required (8th Edition), *by Michael A. Ziska. This book was written principally for Land Use Commissions*

but is very helpful for more detailed understanding of most municipal meetings and hearings. It is written for the layman, and so is easy to follow, but offers legal citations for those who wish to explore more in depth.