

RUNNING EFFECTIVE MEETINGS
(and complying with the Right to Know Law)
New Hampshire Library Trustees' Annual Conference
Tuesday, May 10, 2022 1:00 p.m.

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The Challenge:

- ❖ RSA Chapter 91-A (New Hampshire's Right to Know Law) requires that municipal boards, committees and commissions conduct their business in formal meetings.
- ❖ RSA 202-A:3-a: *a public library is a "public agency" and a board of library trustees is a "public body" subject to the requirements of RSA 91-A.*
- ❖ 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 and listen to public proceedings (and sometimes to participate) with the need of the board to get things accomplished.
- ❖ AND – still handle the same challenges that affect all boards (from the largest corporations to the smallest volunteer organizations): how do we work together at these meetings?

I. A preliminary note – “meeting” v. “hearing”:

- **“Meeting”:** Purpose is for the board, committee or commission to conduct its own business. This includes discussions, workshops, motions and voting.
 - Generally governed by RSA 91-A and the board's own rules
 - Notice required for a meeting is generally 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), plus any other notice required by that board's rules
 - Meetings must be open to the public, and anyone may take notes, record the meeting, take video/photos, etc. However, no one has the right to speak except the boards 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, committee or commission to hear certain people on a specific topic.
 - A public hearing always occurs *during* a properly held public meeting of that board (although it could be the only item of business for that particular meeting).
 - Therefore, a public hearing is governed by RSA 91-A, *and* the specific statute that requires or allows that hearing to be held, *and* any rules of the board. When they differ, follow the provision that requires the most notice and the most due process for the parties. Examples:

- Library Trustees holding a hearing before accepting \$5,000 or more in unanticipated money under RSA 202-A:4-c, requires at least 7 days' notice published in the newspaper (plus ordinary posting)
 - Library Trustees holding a public hearing under RSA 202-A:17 prior to terminating a library employee if such employee requests the hearing
- Notice period is the greatest amount of time required by the applicable statutes/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 a right to be heard.
- Minutes must be kept, and the statute may require that they be filed in a particular place by a particular time, in addition to ordinary RSA 91-A requirements.
- **Note:** A public hearing is usually held *during* a public meeting; therefore, the chair should clearly state when the hearing opens and closes. Formally declare a public hearing open, then hear all the parties, then close the hearing and continue with the rest of the agenda (if any).

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

- Agendas are optional:
 - No requirement to post an agenda, although many boards do.
 - No requirement to follow agenda (but be careful with that).
- Agenda Guidelines:
 - 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? Put this in your rules of procedure.
 - Estimate the time required for each item.
 - Consider a “consent agenda:” noncontroversial items all members have received and reviewed before the meeting (committee reports, minutes, correspondence received, etc.). Any member can request an item be removed from the consent agenda to be addressed and discussed separately. Otherwise, the board takes a single vote to accept/approve items on the consent agenda.
 - Put quicker items toward the beginning of the agenda to build momentum.
 - Are there availability constraints? Are you paying for someone’s time?
 - Rules may provide that no new item will be taken up after a certain time during an evening meeting (but this may mean items get bumped to the next meeting, or an additional meeting will be needed to meet deadlines).
- Deviating from the Agenda:
 - If there is a public hearing on the agenda, try to stick to the advertised starting time and the order of the agenda (unless you’ve discussed it with the parties and all agree).

- For the rest of the agenda: legally, no requirement to follow the agenda as written or posted, no legal prohibition on adding or skipping items. However – make a good faith effort to follow the agenda unless there is a good reason. And if your rules of procedure address this issue, follow whatever your rules require! Playing games with the agenda is a way to lose public trust.
- If you must skip, delay or table an item, state that clearly and note it in the minutes. Assign someone to follow up and get it on a future agenda, as appropriate.

III. Preparation – Set Your Board up for Success!

- Circulate materials well in advance
- Make being prepared for the meeting part of the board culture.
 - Expect that all board members will *read 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.
- 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 are available to a quorum of the members, they are “governmental records” under RSA 91-A:1-a, III. If there are documents that may be confidential (such as legal opinions), consult your municipal attorney.

IV. Conducting the Meeting

- Be on time and start on time!
 - Always start the meeting promptly on time (if you have a quorum).
 - 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 clear ground rules
 - For the board: who runs the meeting, how formal will it be, etc.
 - For the public and other participants: will there be public comment? When will it occur? (See below)
 - 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:
 - ask to hold off-topic 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 minutes of all public meetings and non-public sessions, including names of the members present and all other participants, a brief description of the subject matter discussed, any decisions made and the names of members who made and seconded any motions.
 - Set your minute-taker up for success! Pay attention to sound quality for recordings (if used), allow minute-taker to interrupt to ask for spelling, clarification, etc., don't speak over one another.
- It is not necessary to "read everything into the record."

Say that correspondence or comments were received, summarize important points if appropriate, and may ask that the document be attached to the minutes of the meeting (and do include it with the minutes wherever they are stored and posted).
- 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.
- Nonpublic Sessions.
 - Use a checklist! A good form is available on the NHMA website
 - Make sure that the 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.
 - Motion to go into nonpublic session, state specific reason (citing to statute), roll call vote, majority required.
 - Discussion in nonpublic session may **ONLY** cover the reason stated in the motion to go into nonpublic session.
 - Minutes must reflect how each member voted on any votes taken during nonpublic session.
 - Back in public, 2/3 vote needed to seal minutes, only for certain reasons.
 - **NEW:** As of 1/1/2022, for all nonpublic sessions going forward, board must maintain a list of any nonpublic minutes which have been sealed (date/time of that session, specific reason for nonpublic session, date of vote to seal minutes, date of any vote to unseal (if any)).
 - **NEW:** As of 1/1/2022, any minutes sealed regarding acquisition, sale, lease of property must be unsealed as soon as possible after transaction has closed or body decides not to proceed with it.

V. Virtual and Remote Meetings

- Electronic participation of board members in meetings:
 - Adopt a policy!
 - RSA 91-A:2, III gives a board the option to allow members to participate remotely, but it 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, Zoom, MS Teams, etc.)
 - NO meetings via e-mail.
- BOARDS MAY NOT MEET ENTIRELY VIRTUALLY:
 - End of pandemic state of emergency in mid-2021 also ended the temporary authority for municipal boards to meet virtually.
 - There must be a physical meeting place, open to the public to attend, and a quorum of board members must be in the room except in qualifying emergency.
 - Boards may (but are not required to) allow the public to follow the meeting by any virtual, electronic means they like, but it is not a substitute for having the meeting room open to the public.
 - Zoom, Microsoft Teams, streaming on Facebook, YouTube, local cable channel, telephone line to call in and listen, etc.
 - No requirement to allow public to talk via a remote method

VI. Respect and Decorum

- It all starts with you!
 - It is not just about managing the public at meetings; 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.
 - Don’t have side conversations with your neighbor.
- The chair should try to engage every member.
 - If one member is monopolizing the discussion, chair can say “I’d like to make sure we hear from everyone, do you have anything you’d like to add, [name]?”
 - When deliberating, the chair might consider waiting to express their opinion until other members have spoken (encourage all to contribute to discussion).
- Resist getting defensive.

- “I don’t know but I’ll find out” is a perfectly acceptable response when you don’t know the answer to a question. 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.
 - Remind everyone at the beginning of every meeting to silence their phones.
 - If you can, leave it in your pocket/purse/bag.
 - 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 or texts, use snapchat, check Facebook or Instagram or the news. 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/DM 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 and/or livestreamed 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 is being streamed live on Facebook or that it will be on YouTube by the time you get home.
- Imagine your meeting from the observer’s point of view.

VII. Public Comment

- When is it required?
 - As a 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.
 - At a public meeting – not required! 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 in advance for public comment.
 - 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.

- Sign-up sheet for speakers - useful if you anticipate crowd.
- 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 impose reasonable “time, place and manner” restrictions.
 - You may NOT put any restrictions on the content of that speech (mostly).
- What restrictions are acceptable?
 - Specific topic (particular proposal, or any items on agenda, etc.)
 - 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 sign-up sheet) or line up behind a microphone
 - Requiring everyone who wants to speak to have one turn before anyone gets a second turn
 - No repetitive comments (e.g., three people get up and repeat the same speech)
- What restrictions are NOT acceptable?
 - “Only positive comments.” You must take the bad with the good. Be prepared to hear negative feedback. This is the essence of the 1st Amendment.
 - 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). You can encourage people to avoid swearing, but you can’t enforce it.
 - Preventing a particular person or a specific group of people from speaking (discrimination)
 - Preventing certain attire (shirt or hat with a slogan, holding up a banner that isn’t disrupting the conduct of the meeting)
- Maintain order and control.
 - If comment is 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 comments in writing (assure that all board members will read it).
 - 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.
 - Take a 5-10 minute recess to let everyone calm down. You can do this at ANY time.
 - If someone persists and is 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)). Use that sparingly.
 - If necessary, board can vote to continue the meeting at another time. If the chair announces the date and time (i.e., tomorrow night, 7pm) of continued session, no new public notice is necessary...but post notice anyway.
 - Role play ahead of time for known difficult situations, write notes or a script to use when you know someone is likely to push the boundaries. Talk with your lawyer, talk with your peers on other boards and in other communities.