



February 28, 2020

Via Certified Mail

James Campbell, Chair
Zoning Board of Appeals
Town of Colonie
347 Old Niskayuna Road
Latham, NY 12110

Re: Board Failure to Comply with New York Law

Dear Mr. Campbell:

I am writing on behalf of SAVE Colonie, a group of taxpayers who contacted the Government Justice Center with concerns regarding the Board's practices.¹ Specifically, these individuals raised concerns about the Board's compliance with New York's Open Meetings Law and New York's legal requirements for the contents of appeals decisions.

Our review of the Board's practices shows it fails to inform Colonie taxpayers about its business consistent with the Open Meetings Law.

First, the Board does not post sufficient information on its website prior to meetings. Meeting notices reference applications subject to a hearing or deliberation at a meeting, but fail to provide any further information. Interested taxpayers, like SAVE Colonie's members, or other interested

¹ Government Justice Center is a non-profit, pro bono public interest law firm dedicated to protecting New Yorkers from improper government action.

parties must request copies of the applications prior to each meeting.

The Open Meetings Law, however, provides that an agency such as yours, with a regularly and routinely updated website, should post records subject to discussion at a meeting on its website to the extent practicable prior to the meeting. In 2020, there should be nothing limiting the Board's ability to post applications subject to appeals well before a meeting, and at least contemporaneous with distribution to Board members.

I note, for example, that nearby Towns of Bethlehem and Guilderland comply with the Open Meetings Law and post full agenda packages prior to their meetings. For example, on January 31, 2020, Guilderland counterpart posted its agenda, totaling 184 pages and including applications on appeal and supporting documents.

I further note that in addition to posting complete agenda packages ahead of meetings, the Town of Bethlehem uses the same web-based meeting management system used by Colonie's Town Board (for almost two years) and three other Colonie public bodies. Technical functionality is not a barrier for your Board.

When it passed the Open Meetings Law, the Legislature declared, "[t]he 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."²

A practice of hiding public records until meetings and forcing taxpayers to request them to be informed as your Board does violates the purpose and dictates of the Open Meetings Law, to the detriment of the people you serve. Moreover, it exposes

² Public Officers Law § 100.

your Board to legal challenges regarding the validity of actions the Board takes at its meetings.

On that note, the Board's minutes reveal that you are not complying with New York law at the risk of having your decisions invalidated by a court.

Under the law, Zoning Board of Appeals decisions must be supported by findings constituting "substantial evidence."³ Findings of fact and/or testimony that adequately support the Board's decision must be placed in the record. These findings must set forth the factual predicate for concluding that each of the requisite criteria has or has not been satisfied.⁴

Courts have excused failures to place specific findings on paper where some other form of record exists to support the Board's determination. I understand that the Board sometimes provides reasons for its decisions that a stenographic record captures. The Board, however, does not have that record transcribed. Anyone interested in knowing the Board's findings should not need to pay to have a transcript made.

On that note, the Board has no excuse for not streaming its meetings and then posting the audio and video on its website. At minimum, it should adopt rules compliant with the Open Meetings Law that make clear to members of the public their right to broadcast, webcast, or otherwise transmit the Board's meetings.

³ See *Soho Alliance v. N.Y. City Board of Standards & Appeals*, 95 N.Y.2d 437 (2000).

⁴ See *Putrino v. Zoning Board of Appeals*, 115 A.D.2d 932 (3rd Dept. 1985).

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Please contact me at your earliest convenience to discuss the Board's plan to address the issues that we have identified.

Yours truly,



Cameron Macdonald

cc: Michael J. Garry
Michael C. Magguilli
Julie Gansle
SAVE Colonie
Committee on Open Government