



April 22, 2020

Via Electronic Mail

Paula Mahan
Supervisor
Town of Colonie
534 New Loudon Rd.
Latham, NY 12110

Re: Board Failure to Comply with New York Law

Dear Ms. Mahan:

I am writing on behalf of SAVE Colonie, a group of taxpayers who contacted the Government Justice Center with concerns regarding the Board's recent meetings.¹ Specifically, the group raised the Board's compliance with New York's Open Meetings Law and the Governor's Executive Orders relating to public gatherings and the Open Meetings Law.

First, I note that the Town plans to proceed tomorrow night with an agenda session that violates the Open Meetings Law and the Governor's Executive Orders (assuming the April 9 date on the site is intended to be April 23). The Town's website states that "during the agenda review session (which is not recorded) there will be a display indicating that "the meeting will begin shortly." And that video will be broadcast after the meeting commences.

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

The Open Meetings Law requires the agenda session to be open to the public. The Legislature passed the law to make every step of the decision-making process open to public scrutiny. *Orange County Publications, Div. of Ottaway Newspapers, Inc. v. Council of City of Newburgh*, 60 A.D.2d 409, 415 (2d Dept. 1978), *aff'd*, 45 N.Y.2d 947 (1978).

The Open Meetings Law applies to agenda sessions specifically. “[I]nformal conferences, *agenda sessions* and work sessions do invoke the provisions of the statute when a quorum is present and when the topics for discussion and decision are such as would otherwise arise at a regular meeting.” *Matter of Goodson Todman Enterprises, Ltd. v City of Kingston Common Council*, 153 A.D.2d 103, 105 (3d Dept. 1990)(emphasis added).

“If the legislative intent was to permit public bodies to convene at gatherings that they themselves interpreted to be informal, during which they would discuss the business of the public body, then the New York State Legislature would not have provided for executive sessions.” *Orange County Publications*, 60 A.D.2d at 417. Here, an agenda session does not meet the limited reasons for an executive session enumerated by the Legislature.

Executive Order 202.1 requires the Board to make the agenda session available to the public by video or audio if in-person access is not permitted. Any such meeting must also be recorded and later transcribed. The Town’s website states the agenda session will not be recorded in direct violation of the Executive Order.

The Governor modified the Open Meetings Law to allow “any public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings ... provided that the public has the ability to view or listen to such proceeding *and* that such meetings are *recorded* and later transcribed.” EO 202.1 (emphasis added).

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Second, the Board's April 9th meeting minutes confirm that it violated the Open Meetings Law as modified by Executive Order 202.1. A power and internet outage did not excuse the Board from conducting its meeting without public video or audio access. The meeting should have been adjourned and noticed for another date. Every action taken in that meeting violated the Open Meetings Law and is subject to being ruled void by a court.

Each of the affected parties should be notified so that the Board's April 9, 2020 actions may be held to be invalid so that they may conduct themselves accordingly.

Further, the Board on April 9th violated the Town Law when it did not conduct a public hearing before approving an Open Development Area (Resolution No. 168) under Town Law § 280-a(4). As such, that resolution may be determined to be void by a court.

The Town needs to take steps to rectify its Open Meetings Law and Executive Order violations in the April 9th meeting. It also needs to ensure the public has full access to tomorrow evening's agenda session and meeting, including rescheduling if necessary and providing proper public notice of the meeting time, schedule, and means for public access.

Please contact me at your as soon as possible to discuss the Board's plan to address the issues that we have identified.

Yours truly,



Cameron Macdonald

cc: Michael C. Magguilli
Committee on Open Government