

New Jersey's Municipal Zoning and Planning Boards and The Status of Public Hearings During the COVID-19 Pandemic

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As a result of the pandemic, current municipal and zoning matters have been significantly impacted by Federal and State Orders for residents to stay home and, consequently, municipal meetings have been cancelled or postponed. This has had a serious impact not only on the residents who volunteer on municipal planning and zoning boards and elected officials on municipal governing bodies, but also on residents and applicants that have zoning applications or similar matters pending in a municipality. Absent public meetings, any pending land use applications, filed building permit applications or other pending governmental approvals, were not being heard at public hearings, or being timely processed, because the laws forbid public meetings or hearings to be held by electronic means.

New Legislation Allows NJ Public Bodies to Conduct Meetings Electronically

In light of the pandemic, the New Jersey legislature amended state law to now allow municipal meetings to be held, even during events such as “shelter in place”, by electronic channels, for example telephone, Skype, Zoom, and Facetime, to enable voting and business transactions.

As of March 20, 2020, Governor Murphy signed Assembly No. 3850 (the “recent Act”) which supplements N.J.S.A. 10:4-6 et seq., being commonly known as the “Senator Byron M. Baer Open Public Meetings Act” (referred to as the “Open Public Meeting Act”). The recent Act signed by Governor Murphy provides that, during any period declared as a state of emergency, public health emergency, or state of local disaster emergency, all New Jersey public bodies may elect to conduct a meeting and any public business to be conducted thereat, cause a meeting to be open to the public, vote, or receive public comment by means of communication *or other electronic equipment*.

How is “Public Body” Defined?

A “public body” under the Open Public Meetings Act is defined as including a commission, authority, board, council, committee or any other group of two or more persons organized under the laws of this State, and collectively empowered as a voting body to perform a public governmental function affecting the rights, duties, obligations, privileges, benefits, or other legal relations of any person, or collectively authorized to spend public funds including the Legislature. As provided in the recent Act, a public body has the permission to perform any function by means of communication or other electronic equipment, without violating any provision of the Open Public Meetings Act. Under the definition of “public body”, the recent Act applies to planning and zoning boards of adjustment.

“Electronic Notice” in the Recent Act Limits the Agenda

A significant provision in the recent Act permits a public body to provide electronic notice of any meeting of the public body through the Internet, and a public body is not otherwise required to provide adequate public notice by any other means, such as newspaper or posting written notice at the municipal building. “Electronic notice” means advance notice available to the public via electronic transmission of at least 48 hours, giving the time, date, location and, to the extent known, the agenda of any regular, special or rescheduled meeting, which notice shall accurately state whether formal action may or may not be taken at such meeting. It is important to note, however, that under the recent Act, a public body providing only electronic notice of a meeting shall limit public business discussed or effectuated at the meeting *to matters necessary for the continuing operation of government and which relate to the applicable emergency declaration*.

If you have questions regarding land use and zoning and would like to connect with Jason Rittie, Esq. please call or email [Jason R. Rittie, Esq.](mailto:jrittie@einhornlawyers.com), at (973) 586-4944, or jrittie@einhornlawyers.com.