



TOWN OF AMHERST

ERIE COUNTY, NEW YORK

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Open Government Advisory Board Agenda

Council Chambers, Amherst Town Hall

November 9, 2017 @ 5:30 p.m.

1. Open Meeting
2. Review and Approve Meeting Minutes from 7/20/17 and 9/21/17
3. Zoning Board Agendas
4. Candidate Forum
5. Executive Session Report by Buffalo Niagara Coalition for Open Government
6. New Business
7. Adjourn

Amherst Open Government Advisory Board Meeting Minutes July 20, 2017

Present at the meeting were: Paul Wolf, Jim Tricoli, Roy DeFrancis, Michael Brown, Ronald Shubert, Marc Cohen (via Skype), Phil Meyer

June 8, 2017 Meeting Minutes

A motion was made by Roy De Francis and seconded by Jim Tricoli to approve the June 8, 2017, meeting minutes. The motion was passed with Cohen and Shubert abstaining.

Planning Board Taping of Work Sessions

Councilmember Bucki introduced a resolution at a recent Town Board meeting requesting that the Planning Board be mandated to hold all of their meetings in the Board meeting room. The motion was not seconded by another Town Board member.

Paul Wolf expressed his disappointment that the resolution did not receive a second to even discuss the item.

Hopefully technology can be implemented so that the Planning Board pre-meetings held in the back room can taped and posted online.

Zoning Board Agendas

Paul Wolf expressed his frustration that John Raddens the Zoning Board Chair and the Building Commissioner have not responded to his emails inviting them to attend an Open Government Advisory Board meeting.

Fran Spoth has spoken with Mr. Raddens and advised that he could not attend today's meeting and she will see if he can attend our September meeting.

Paul Wolf mentioned that the Clarence Zoning Board posts applications and other documents online for their Zoning Board meetings. Clarence could be a model for Amherst to replicate.

Candidate Forum

A candidate forum giving the public the opportunity to ask candidates for Town Supervisor and Town Board questions will be held on October 12, 2017 at 5:30 pm in Town Hall. Paul Wolf reported on the format that was decided upon by committee members. A copy of the committee report is attached to these minutes.

Retention of Elected Official Calendars

Paul Wolf advised that he forwarded the resolution passed by the Advisory Board in June, recommending the passage of a local law requiring the Supervisor to file his/her calendar with

the Town Clerk yearly, to the Town Board. Our recommendation was received and filed without any discussion.

Mr. Shubert expressed frustration that it appears we are not getting much support from the Town Board regarding our recommendations.

Citizen Don Smith spoke about how the Town Supervisor sought to eliminate the Open Government Advisory Board. In January after the election there will be three new Town Board members and hopefully new supportive relationships can be established.

Mr. Cohen made a motion to adjourn which was seconded by Mr. Shubert and approved unanimously.

Amherst Open Government Advisory Board Meeting Minutes September 21, 2017

Present at the meeting were: Paul Wolf, Jim Tricoli, Marc Cohen and Fran Spoth.

July 20, 2017 Meeting Minutes

As a quorum was not present, the meeting minutes from July 20, 2017 were not voted on.

Zoning Board Agendas

Zoning Board Chair John Raddens spoke. Mr. Raddens stated that he does not have an objection to scanning and posting online Zoning Board agenda items. Mr. Raddens did speak to the Building Commissioner about posting documents online and the Commissioner expressed concern about how thick the meeting packets are.

Paul Wolf pointed out that for a recent Town Board meeting 1,900 pages were scanned and posted online. Paul Wolf mentioned that the Town of Clarence Zoning Board posts their Zoning Board applications online.

Paul Wolf asked Mr. Raddens if he could inquire about putting the issue of scanning and posting zoning board documents online as an agenda topic for a future Zoning Board meeting. Mr. Raddens stated that he would look into whether it was possible to place this issue on a Zoning Board agenda for discussion.

Candidate Forum

A candidate forum giving the public the opportunity to ask candidates for Town Supervisor and Town Board questions will be held on October 12, 2017 at 5:30 pm in Town Hall. Paul Wolf reported on the format that was decided upon by committee members.

New Business

Kathy Marando, spoke about the Muir Woods project and expressed frustration and confusion as to how the Planning Board vote occurred.

Mr. & Mrs. Grafasi also spoke about the Muir Woods project and traffic concerns.

Jane Cox spoke about the Planning Board and the process used for the Westwood SEQR public hearing.



Paul Wolf <paulwolf2@gmail.com>

Amherst Open Government Advisory Board Candidate Forum

Paul Wolf <paulwolf2@gmail.com>
To: Paul Wolf <paulwolf2@gmail.com>

Fri, Nov 3, 2017 at 1:59 PM

----- Forwarded message -----

From: Paul Wolf <paulwolf2@gmail.com>
Date: Sat, Oct 28, 2017 at 4:11 PM
Subject: Amherst Open Government Advisory Board Candidate Forum
To:

On October 12, 2017, the Amherst Open Government Advisory Board held a candidate forum. The forum was planned months in advance and all candidates for Town Board were invited.

The agenda for the forum was originally posted on the Town website but was removed by Mr. Willer the Director of the Information Technology Department. Mr. Willer also refused to videotape the forum even though every other Open Government Board meeting has been videotaped and posted online.

The goal of holding the candidate forum was to educate the public regarding the Town Board candidates, to encourage transparency in government by allowing the public to ask questions and to encourage participation in the election. Holding the forum in the Town Board meeting room so that the event could be taped and viewed online was an important part of the event as well.

In Mr. Willer's opinion the Town could not post the Candidate Forum online or tape it as it was campaign material and not allowed per the Town's website policy. The website policy also contains an exception for educating the public about elections and encouraging public participation in elections. In my opinion the Candidate Forum could be posted online and taped, as the purpose of the forum was to educate and encourage citizen participation. Mr. Willer never consulted with me as the Open Government Chair or the Town Attorney. Mr. Willer did consult with the Town Supervisor, prior to removing the Forum from the Town website.

Attached is a legal opinion from the Town Attorney, which states that the Candidate Forum information should not have been removed from the Town website and that the Forum should have been taped and posted online for the public to see. Approximately 70 people attended the Forum and asked excellent questions of the candidates that participated. Having the opportunity to ask candidates questions is an important part of transparency in government and an important part of encouraging citizen participation in government.

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As we now have a legal opinion stating that this event can be properly held on Town property, video taped and posted on the Town website, this Forum should become an annual election event for Town Board and Town Clerk elections.

Paul Wolf, Esq.
Chair
Amherst Open Government Advisory Board



Town Attorney Opinion.pdf

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Town of Amherst Website Content and Submission Policy

Intent

It is the Town's intent to provide electronic access to its information through a logical single point of entry. For the Internet, this logical point of entry is the Town's officially registered domain name (www.amherst.ny.us). For the purposes of this document, "website" will refer to the Town of Amherst's official Internet domain: www.amherst.ny.us.

The Town of Amherst has developed an external (Internet) website as a service to residents and the community at large for the purposes of disseminating useful, accurate and timely information. Residents with a connection to the Internet or those who use public facilities (public libraries, schools, etc.) may find information 24 hours a day; 365 days a year.

Each town department will be defined as a subweb within the official domain. The registration of an individual domain name for any town department is not recommended because each separate domain name fragments the single logical point of entry, may lead to public confusion and email delivery problems, and would contribute to increased costs as well as administrative and maintenance issues. In addition, usage statistics would be more difficult to compile.

The Town's website is for "official use" only. All information disseminated through the Town's website must be related to the official duties and responsibilities of employees and departments.

Content

Information found on the website includes, but is not limited to, the following areas:

- Town services
- Town government
- Contact information
- Amherst statistics and related information
- News and events calendar
- Site search
- Online geographic information and mapping data
- Special announcements

Design and Functionality

The overall design of the website will follow accepted standards for government based websites. Site design will include elements to enhance ease of use. A navigation system will include global, local and contextual menus and icons relating to specific topic areas or locations on the website. A search engine

will be included for overall site searches. Information will be presented using available web based technologies (e.g., hypertext markup language [HTML], active server pages [ASP], etc.).

Roles and Responsibilities

The website will be administered and maintained by Office of Information Technology personnel (website coordinator). The website coordinator will be responsible for overall site design, page layout standards and implementing available and appropriate technologies on the website.

Because of the increasing need to coordinate departmental interests through a single point of contact, department heads (and other officials) will formally name a website liaison for their department. While website liaisons may not be involved with website publishing, they must have authority to:

- Identify and commit department resources to support website content for the department.
- Oversee website development projects in the department.
- Determine the appropriateness of potentially "sensitive" material.
- Approve final designs of website information and services prepared for the department.
- Resolve support issues relating to the currency and accuracy of departmental information.
- Represent the department in setting and reviewing website policies and standards.
- Serve as website "representative" to encourage the use of the website for resident and staff services and disseminate website-related information to department staff.

The last item is important, as staff must be aware of website services as they begin to respond to questions by users of the website and direct individuals to online information. Website liaisons must have an understanding of the services delivered throughout their department; technical expertise is not necessary.

Additionally, the website coordinator will communicate issues that may impact or be of interest to website liaisons and departments.

Elected Officials

No part of the website may be used for campaign related purposes. Such campaign-related purposes include, but are not limited to, the following: statements in support or opposition to any candidate or ballot measure; requests for campaign funds or references to any solicitations of campaign funds; and references to the campaign schedule or activities of any candidate. No elected official's website content may directly link to any private website related to a candidate's campaign for elective office, but it may link directly to the Town Clerk's election-related pages where general election and candidate information may be found.

To encourage participation in and heighten voter interest regarding elections, the Town Clerk will be responsible for providing candidate, ballot and voter information on its website and will seek ways to provide similar election-related information via that site.

Submission Standards

Website liaisons will submit all content for their department/function in an acceptable electronic format outlined below. The website coordinator will provide guidance to liaisons with software or hardware options necessary to comply with the submission standards.

Textual information will be submitted in a standard word processing format such as Notepad, Wordpad or MS Word. Website liaisons will be responsible for text layout (headings, paragraphing, bulleted lists, etc.), spelling, and grammar. The website coordinator will not be responsible for any editorial changes to submitted content.

Graphics and Photos will be submitted in a standard graphic file format such as JPEG, GIF, BMP or other freely distributable digital format. The website coordinator will provide technical assistance to liaisons unfamiliar with graphic publishing. At the discretion of the Office of Information Technology, limited digital scanning may be available.

Vendor related materials will follow the guidelines above for textual and graphic/photo information. The website coordinator will be available to advise vendors on available technologies and acceptable submissions.

Encapsulated documents will be submitted in Adobe Acrobat format (PDF). The website coordinator and website liaisons will work closely on developing efficient and cost effective methods for producing encapsulated documents containing one or more of the following elements: textual documents, graphics, photos, maps, etc.

Information that is not covered in one of the elements above will require consultation with the Office of Information Technology and/or the website coordinator.

Information and content will be posted to the website on a first come, first serve basis. In most circumstances, updates will occur within 48 hours of submission. More complex submissions or design elements may require more time to complete.

Public Comments and Questions

Public comments or questions submitted via email, telephone, fax or traditional mail will be referred to the department head or website liaison for review. Actions resulting from comments or questions will follow applicable website content and submission policies. Additionally, an alias email account will be available to any department head or website liaison for public feedback.

**Buffalo Niagara Coalition
for
Open Government**

BEHIND CLOSED DOORS

EXECUTIVE SESSIONS

&

THE PUBLIC'S RIGHT TO KNOW

October 25, 2017

The Buffalo Niagara Coalition for Open Government is a nonpartisan charitable organization comprised of journalists, activists, attorneys, educators, news media organizations, and other concerned citizens who value open government and freedom of information.

Mission Statement:

Through education and civic engagement, the Buffalo Niagara Coalition for Open Government advocates for open, transparent government and defends citizens' right to access information from public institutions at the city, county, and state levels.

Statement of Purpose:

We believe that, if government is of the people, by the people and for the people, then it should also be open *to* the people. Government exists to serve its citizens, so access to public information should be simple. Freedom of Information Laws and the New York Open Meetings Law make access to public records a right.

When government operates openly and honestly, we, the people, can hold our elected officials accountable, fulfilling our duties as an informed citizenry. The Buffalo Niagara Coalition for Open Government works to ensure that all people have full access to government records and proceedings on the city, county, and state levels. Such access fosters responsive, accountable government, stimulates civic involvement and builds trust in government.

Buffalo Niagara Coalition for Open Government

Board of Directors

Paul Wolf, Esq.	President
Brian Hellner	Vice President
James Tricoli	Vice President
Edward McKee	Treasurer
Joseph Kissel	Secretary
Jonathan Manes, Esq.	Director
Michael Kless	Director

The following members also contributed to the completion of this report: **Nancy Correa, and Ken Foit, Esq.**

Our meetings are held at 5:30 p.m. the first Thursday of the month, at the Williamsville Library on Main Street. Board President Paul Wolf, Esq. can be contacted at (716) 435-4976, or by email at paulwolf2@gmail.com. Our website is www.nyopengov.org and we have a Facebook page.

New York's Open Meetings Law

Every meeting of a public body under the New York State Open Meeting Law must be open to the public. There are two ways that a public body can legally discuss public business in private. Under Section 102(3) of the Open Meetings Law an executive session can be held. Another way that the public can be excluded involves exemptions under Section 108, where the Open Meetings Law does not apply.

Executive sessions under the law are limited to certain subjects. A motion to conduct an executive session must be made in an open meeting, with the subject matter sufficiently described, and upon a majority vote of the members.

Section 108 of the Open Meetings Law contains exemptions where the Open Meetings Law does not apply. The most common exemption is attorney-client privilege. Communication between a public body and their attorney are confidential. A public body can consult with their attorney and when doing so an executive session is not required.

This report focuses on the holding of executive sessions by local governments. Members of the Buffalo Niagara Coalition for Open Government reviewed the meeting minutes of sixteen local governments in Erie and Niagara County. The purpose of this study was to determine the following:

- How often executive sessions are being held;
- The basis for holding executive sessions;
- Whether motions for executive sessions are being done properly;
- How much time is spent in executive sessions.

The Open Meetings Law sets forth the following reasons that an executive session can be held:

§ 105. Conduct of executive sessions.

1. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only, provided, however, that no action by formal vote shall be taken to appropriate public moneys:

Our Study

The Buffalo Niagara Coalition for Open Government reviewed the executive sessions that took place during work sessions and board meeting of sixteen municipalities in Erie and Niagara County from January 1, 2017 to July 1, 2017.

During this six-month period, seventy-eight executive sessions were held, for an average of five per municipality.

Number of Executive Sessions Held by Municipality:

Town of Lewiston	11
Cheektowaga	10
Town of Tonawanda	9
Town of Lockport	9
Town of Hamburg	8
West Seneca	7
Amherst	7
Town of Lancaster	7
Wheatfield	6
Niagara County	2
Village of Lewiston	2* (minutes from 1/17 to 4/17, were not online)
Erie County Legislature	0
Buffalo Common Council	0
North Tonawanda	0
Niagara Falls	0
City of Lockport	0

Kudos to the Erie County Legislature, Buffalo Common Council, North Tonawanda City Council, Niagara Falls City Council and the Lockport City Council, for not holding any executive sessions!

Hours Spent in Executive Session (Avg. 6.7 hours)

(.1 equals six minutes)

West Seneca	12.5
Town of Tonawanda	9.1
Town of Lewiston	8.7
Town of Hamburg	7.6

Town of Lancaster	5.3
Town of Lockport	4.5
Amherst	4.2
Wheatfield	2.1
Village of Lewiston	?*
Cheektowaga	?*
Niagara County Leg.	?*

*Cheektowaga, the Niagara County Legislature and the Village of Lewiston do not document the time an executive session starts or ends in their meeting minutes. Meeting minutes for the Village of Lewiston from January 2017 to May 2017, were not available online because they were sent to a document management firm for the purpose of making them available electronically.

Attached as Appendix A, listed in alphabetical order are the executive session motions that were made for each municipality, as documented in their meeting minutes.

In five out of seven sessions held in West Seneca, the executive session lasted longer than the public portion of their meeting.

In seven out of nine sessions held in the town of Tonawanda, the executive session lasted longer than the public portion of their meeting.

The Three Most Common Reasons Given for Holding an Executive Session

- 1) To discuss litigation
- 2) To discuss a personnel matter
- 3) To discuss a contract

Compliance with the Open Meetings Law

The Open Meetings Law requires that when a motion is made to hold an executive session the subject matter being discussed must be described with some particularity. **Only two of the seventy-eight executive session motions reviewed described the subject being discussed with particularity.**

The two motions done correctly were by the Town of Amherst and the Niagara County Legislature.

In seventy-six other instances, when a motion for executive session was made, the subject of the litigation or contract being discussed was not stated with specificity. Time after time the motion for executive session stated the reasons being discussed as:

- litigation
- pending litigation
- contract negotiations
- proposed litigation
- personnel matters
- legal matter
- contractual matter
- employee issue

The general reasons stated above do not in any way inform the public as to what particular legal matter or contract is being discussed behind closed doors. The word "personnel" is actually not stated at all in the Open Meetings Law, as a reason for holding an executive session, yet it is cited by municipal boards all the time.

While litigation is the most common reason for holding an executive session it is important to note that Court decisions have held that the purpose of discussing pending litigation privately is so that litigation strategy can be discussed without disclosing it to an adversary.

The belief that a decision may lead to litigation does not justify conducting the public's business in an executive session.

An update on the status of a legal proceeding does not rise to the level of a discussion regarding strategy and therefore would not be an appropriate basis for an executive session.

The New York State Committee on Open Government has provided the following examples of correctly moving to hold an executive session:

"I move to enter into executive session to discuss our litigation strategy in the case of the XYZ Company v. the Town of Tonawanda."

“I move to enter into executive session to discuss the collective bargaining negotiations involving the police union.”

“I move to enter into an executive session to discuss the employment history of a particular person (or persons).” The identity of the particular person(s) does not have to be stated.

Attached to this report as **Appendix B**, are copies of four opinions of the New York State Committee on Open Government regarding executive sessions, which may be of assistance to elected officials and municipal attorneys. The reference numbers for the attached opinions are: July 23, 2001- #3339; April 29, 2008- #4616; September 9, 2009-#4809; September 16, 2009-#4813.

Conclusion

During the six-month period studied, 97% of the time a motion for an executive session was made incorrectly (76 out of 78). 97% of the time the public is being left in the dark as to what is being discussed behind closed doors by motions that do not describe the legal matter, personnel matter or contractual matter being discussed.

New York State Committee on Open Government opinions and several State Court decisions have made it clear that motions reiterating general terms like litigation, personnel and a contractual matter are not sufficient when seeking to hold an executive session.

The New York State Legislature has amended the Open Meetings Law twice to create sanctions for public bodies that violate the law. In 2008, the Legislature allowed courts to award attorney fees to citizens who successfully challenge a board action for violating the Open Meetings Law. In 2010, Courts were granted the authority to require the members of a public body to receive Open Meetings Law training by the New York State Committee on Open Government.

The goal of this report is to educate local government officials and municipal attorneys that changes need to be made in how executive sessions are conducted.

Over the year's incorrect customs and traditions regarding executive session motions have taken hold. Executive session motions are made the way they are because that is how they have been done for years. New elected officials come on board and the improper procedures get passed on.

The Buffalo Niagara Coalition for Open Government looks forward to working with elected officials and municipal attorneys to ensure that the public is made aware of what matters are being discussed behind closed doors in executive sessions. We hope that changes can be made without having to resort to litigation or mandated training.