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The value of virtual public meetings for land-use matters: Now and post-COVID-19

There may be some things we want to remain virtual after things return to normal.

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The answer to the question, "Can we and should we keep doing these public meetings and hearings virtually after the pandemic is over," hinges largely upon the purpose of the meeting itself.

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Over the past few months, the question: "Who's wearing pants?" has become a favored icebreaker, or in some cases the banter during virtual meetings that's causing some to groan because they've heard it 30 times this month. For those who routinely attend public meetings, it's not uncommon to receive a photo of a friend or colleague preparing for a virtual meeting wearing the equivalent of a mullet for work attire - business on top with, most often, gym shorts or sweat pants on bottom.

But as we approach the 180-day mark of doing business in a global pandemic, we may want to consider whether there are some aspects to conducting business in a mostly virtual setting that are worth preserving, even after COVID-19 has ceased to be an ever-present factor in our daily lives. Aside from comfortable clothing, there are a handful of reasons to preserve virtual public meetings and hearings, at least in part, moving forward.

First, a clarification: there are public "meetings," also known as community meetings, stakeholder meetings, working groups, etc., referred to here as meetings that include some form of public engagement, at which a final, binding decision will not be made by a governing body. These meetings should be distinguished from public "hearings," where an applicant is requesting approval of some land use matter and the governing body makes a binding decision, or even a recommendation, on the record. The answer to the question, "Can we and should we keep doing these public meetings and hearings virtually after the pandemic is over," hinges largely upon whether we are talking about a meeting or a hearing.

Greater public engagement

One clear benefit to virtual public events is that they allow for more engagement from the public. It's a lot easier to log on to a computer at night and keep yourself on mute until called on, than it is to commit yourself to spending at least a couple of hours in chambers during dinnertime on a weeknight. Of course, there are challenges to both sides. Not everyone may have reliable internet access, and family life may make either option more difficult. But overall, it's easier for most people to hop online. In our experience, this benefit shakes out to be a bit of a wash for most applicants.

In an online setting, an applicant should be able to persuade more supporters to attend and speak in favor of the project. However, people will also come out of the woodwork, whether local or not, to talk about whatever is bothering them at the moment, which may or may not be relevant to the project. While this onslaught of public comment may end up being excess noise for a governing body charged with making a decision about a particular application based on the now-extensive record, the real value of increased public engagement applies in the public meeting setting. Here, the larger purpose is to introduce the project to the community at large and get as much feedback as possible on the front end of the project, ideally before the applicant has sunk too much time and money into the application. In these meetings, the more feedback, the better, and increased access only helps the community feel involved and invested in the project from the beginning.

Decorum and ongoing discussions

The virtual platforms used for these types of meetings are well-suited to a presentation style of public meeting, where the applicant can proudly present the project while public comment and questions are being safely managed through the chat function. Allowing for public comment through chat often results in more decorum throughout the meeting, with fewer interruptions and a more open opportunity for questions and answers after the presentation is complete. This approach also gives the applicant a relatively easy way to follow up with any particularly passionate individuals "off-line." Finally, a virtual setting allows for easy recording of these meetings to make them available to those who were unable to attend.

However, while all of those are generally good things for public meetings, most of them do more harm than good in the public hearing setting. Decorum, of course, is always a good thing, but in a public hearing, the applicant should have the opportunity to read the room, respond to nonverbal cues, and cater the presentation accordingly. Because a decision will be made at the end of the hearing, there's no added benefit to clearly identifying dissenters for follow-up or to provide a recorded version for those who missed it. Actually, many of these types of hearings have been recorded for years to preserve an accurate record in case of an appeal; it's only a new development for public meetings, which are typically more informal and much less likely to be recorded.

Potential legal issues

Legally, our procedural due process rights require that appropriate parties receive adequate notice, including the time and location of the hearing and, if virtual, how to access it, together with an opportunity to appear and be heard on the issue. This standard may be met in either a virtual or in-person public hearing. There may be circumstances where virtual public hearings are more susceptible to violations of the Open Meetings Law, such as when two commissioners are present in person with the third attending via video conferencing. If the record is made based on what is said on the virtual platform, there may be exchanges between the two in-person commissioners that don't make it into the record. Depending on what those exchanges entail, and who else is in the room, there may or may not be a material legal issue. Worth noting, however, is that sidebar conversations are equally problematic, and may be equally likely in a wholly in-person setting.

Business as usual versus lasting change

Taking everything into account, it's clear that virtual meeting platforms are an excellent tool to play a part in the land use and entitlement toolkit, especially when it comes to soliciting and managing public engagement. However, like any tool, a virtual platform is best when used for its intended purposes. We hope to see local governments continue to employ this particular tool to obtain more robust and complete public comment, particularly during the early stages of a project, but consider using it only as a supplement to in-person public hearings.

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