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December 4, 2023

VIA EMAIL: agilchrist@gilchristtingley.com; Fax: 518-426-5067; USPS First Class Mail

Andrew W. Gilchrist, Esq.
Counsel to the Town of Hoosick Zoning Board of Appeals
Gilchrist Tingley, PLLC
251 River Street, Suite 201
Troy, NY 12180

RE: Application of Hawthorne Solar


Dear Mr. Gilchrist:

Thank you for speaking with me regarding the above referenced application. As I stated, this firm is in the process of being retained by multiple Town residents who have significant concerns regarding this pending project.

On Friday, December 1, 2023, one of our clients contacted Hoosick Town Hall to request copies of all documents pertaining to the above application that would be discussed by the Zoning Board of Appeals at their December 4, 2023. She was informed that she would have to file a Freedom of Information Request to obtain such documents.

As you know, the NYS Open Meetings Law (NYS Public Officers Law Article 7) requires that:

"Agency records available to the public pursuant to article six of this chapter, as well as any proposed resolution, law, rule, regulation, policy or any amendment thereto, that is scheduled to be the subject of discussion by a public body during an open meeting shall be made available, upon request therefor, to the extent practicable at least twenty-four hours prior to the meeting during which the records will be discussed. Copies of such records may be made available for a reasonable fee, determined in the same manner as provided therefor in article six of this chapter. If the agency in which a public body functions maintains a regularly and routinely updated website and utilizes a high speed internet connection, such records shall be posted on the website to the extent practicable

*at least twenty-four hours prior to the meeting. An agency may, but shall not be required to, expend additional moneys to implement the provisions of this subdivision." **NYS Public Officer's Law §103(2)(e).***

Clearly, our client should not have to file a Freedom of Information Request in order to obtain documents that are subject to the explicit requirements of this section. In addition, to the extent that there are documents that fall within the parameters of this section, it would be a clear violation of the NYS Open Meetings Law for the Board to discuss or deliberate upon the Hawthorne Solar Application in any way this evening. Furthermore, a review of the Town website reveals that no recent documents pertaining to this application have been uploaded to the website and made available to the public through that medium. This also constitutes a clear violation of the NYS Open Meetings Law if additional project review documents exist beyond what has been previously posted on the Town's website.

It is urged that the Board adjourn any discussion or deliberation upon the subject application until such time that they are in full compliance with the requirements of NYS Public Officers Law §103(2)(e) and that all documents subject to this section are made available to the public upon request and posted upon the Town's website.

Thank you in advance for your consideration of this information. Please do not hesitate to contact me if you have questions or require any additional information.

Sincerely,


BRICK LAW FIRM, P.C.

BY: 

Andrew Brick, Esq.

AB:tlc
Enclosure

cc: Marianne Zwicklbauer
ZBA Members

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Public Officers Law (Refs & Annos)
Chapter 47. Of the Consolidated Laws
Article 7. Open Meetings Law (Refs & Annos)

McKinney's Public Officers Law § 103

§ 103. Open meetings and executive sessions

Effective: April 9, 2022

[Currentness](#)

(a) Every meeting of a public body shall be open to the general public, except that an executive session of such body may be called and business transacted thereat in accordance with [section ninety-five](#)¹ of this article.

(b) Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in [subdivision five of section fifty of the public buildings law](#).

(c) [Eff. until July 1, 2024, pursuant to [L.2022, c. 56, pt. WW, § 4](#). See, also, subd. (c) below.] A public body shall provide an opportunity for the public to attend, listen and observe meetings in at least one physical location at which a member participates.

(c) [Eff. July 1, 2024, pursuant to [L.2022, c. 56, pt. WW, § 4](#). See, also, subd. (c) above.] A public body that uses videoconferencing to conduct its meetings shall provide an opportunity for the public to attend, listen and observe at any site at which a member participates.

(d) [As added by [L.2010, c. 40](#). See, also, subd. (d) below.] Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in an appropriate facility which can adequately accommodate members of the public who wish to attend such meetings.

(d) [As added by L.2010, c. 43. See, also, subd. (d) above.] 1. Any meeting of a public body that is open to the public shall be open to being photographed, broadcast, webcast, or otherwise recorded and/or transmitted by audio or video means. As used herein the term “broadcast” shall also include the transmission of signals by cable.

2. A public body may adopt rules, consistent with recommendations from the committee on open government, reasonably governing the location of equipment and personnel used to photograph, broadcast, webcast, or otherwise record a meeting so as to conduct its proceedings in an orderly manner. Such rules shall be conspicuously posted during meetings and written copies shall be provided upon request to those in attendance.

(e) Agency records available to the public pursuant to article six of this chapter, as well as any proposed resolution, law, rule, regulation, policy or any amendment thereto, that is scheduled to be the subject of discussion by a public body during an open meeting shall be made available, upon request therefor, to the extent practicable at least twenty-four hours prior to the meeting during which the records will be discussed. Copies of such records may be made available for a reasonable fee, determined in the same manner as provided therefor in article six of this chapter. If the agency in which a public body functions maintains a regularly and routinely updated website and utilizes a high speed internet connection, such records shall be posted on the website to the extent practicable at least twenty-four hours prior to the meeting. An agency may, but shall not be required to, expend additional moneys to implement the provisions of this subdivision.

(f) Open meetings of an agency or authority shall be, to the extent practicable and within available funds, broadcast to the public and maintained as records of the agency or authority. If the agency or authority maintains a website and utilizes a high speed internet connection, such open meeting shall be, to the extent practicable and within available funds, streamed on such website in real-time, and posted on such website within and for a reasonable time after the meeting. For the purposes of this subdivision, the term “agency” shall mean only a state department, board, bureau, division, council or office and any public corporation the majority of whose members are appointed by the governor. For purposes of this subdivision, the term “authority” shall mean a public authority or public benefit corporation created by or existing under any state law, at least one of whose members is appointed by the governor (including any subsidiaries of such public authority or public benefit corporation), other than an interstate or international authority or public benefit corporation.

Credits

(Formerly § 93, added L.1976, c. 511, § 1. Amended L.1977, c. 368, § 1. Renumbered § 98, L.1977, c. 933, § 2. Renumbered § 103, L.1983, c. 652, § 1. Amended L.2000, c. 289, § 3, eff. Aug. 23, 2000; L.2010, c. 40, § 1, eff. April 14, 2010; L.2010, c. 43, § 2, eff. April 1, 2011; L.2011, c. 603, § 1, eff. Feb. 2, 2012; L.2015, c. 519, § 1, eff. Jan. 10, 2016; L.2016, c. 319, § 1, eff. March 8, 2017; L.2021, c. 481, § 1, eff. Nov. 18, 2021; L.2022, c. 56, pt. WW, § 1, eff. April 9, 2022.)

Notes of Decisions (82)

Footnotes

¹ See [Public Officers Law § 105](#).

McKinney's Public Officers Law § 103, NY PUB OFF § 103

Current through L.2023, chapters 1 to 682. Some statute sections may be more current, see credits for details.¹ANY: Current with amendments through Nov. 15, 2023 1BNY: Current with amendments through Nov. 15, 2023 9NYZ: For currency, see individual documents at the link.