

## **[Plan-link] Email policy – ZBA**

Fri 11/20/2015 5:00 PM

I was wondering, does anybody have an email policy they would be willing to share,

Stuff like:

- what sort of stuff can go in an email -- or what shouldn't.
- audience: board vs. chair vs. clerk
- avoiding group discussions via email
- retention policy

We don't have any problem we are just trying to avoid any future ones.

I'll gladly look at any land use board but I would be particularly interested in a ZBA policy both because of specific content and also perhaps frequency or infrequency of meetings.

The reason I mention meeting frequency is we have a policy that another board in town is happy with. But they had an issue years ago that caused them to forbid almost all emails without specific advance permission from the board for an individual to send a particular email to a particular person for a particular purpose. It works for them because they meet twice a month, whereas we are more irregular and sometimes stuff comes up with deadlines impending for hearings.

Any suggestions would be appreciated.

Curtis H. Springer  
Danville

## **Re: [Plan-link] Email policy – ZBA**

Fri 11/20/2015 6:26 PM

Dear Mr. Springer:

I developed one for a land use board, and have pasted it in below - obviously it needs to be tailored to your needs and reviewed by your own town attorney, but it is intended to be consistent with what the Right-to-Know Law now requires.

Sincerely,  
Bernie Waugh

Gardner Fulton & Waugh PLLC  
78 Bank Street  
Lebanon, NH 03766  
603-448-2221

## E-MAIL AND OTHER BETWEEN-MEETING COMMUNICATIONS (Sample Policy).

### A. Purpose. The aims of this policy are:

- To ensure compliance with the letter and spirit of the Right-to-Know Law, RSA 91-A, and with the Due Process rights of parties before the Board;
- To clarify Board members' ability, between meetings, to research issues and prepare motions or other potential Board actions, thus promoting efficient use of meeting time, but only to the extent allowed by law; and
- To clarify the role of electronic media such as E-mail in achieving these goals, consistent with the statute.

### B. Definitions. In this policy:

- "Communication" means a transfer of information, objective or subjective, from one person to another. It includes face-to-face or phone conversations, letters, memos, E-mails, web sites, or any other medium, regardless of the location or ownership of any device or equipment used.
- Any between-meeting communication involving more than one Board member shall be considered either a "Distribution" or an "Exchange."
- A "Distribution" is a one-way communication, where no between-meeting response (except acknowledgment of receipt) occurs or is expected.
- An "Exchange" is a between-meeting communication, or series of them, which involves a between-meeting response, or expectation of response.
- "Ex Parte communication" is communication, other than at a legally-noticed meeting, between a Board member and a person with an interest in, or affected by, a pending or future case, or other matter within the Board's jurisdiction.

C. Between-Meeting Activities of Individual Members. Individual Board members may, between meetings, prepare drafts of motions or other potential Board actions. They may also research or investigate general or specific factual issues. However, if the research pertains to a case, the member shall, at the public hearing, report all findings to the Board, and parties to the case shall be given a meaningful opportunity to respond.

D. Distributions. A Distribution may be made to any number of Board members, so long as it does not become an Exchange. Whenever a member makes a Distribution concerning a pending or future case, and it involves a quorum of the Board (counting all senders and recipients):

- A copy shall be forwarded to the Town Planner, who shall determine, under RSA 91-A or other applicable law, whether the Distribution is subject to public disclosure, and shall place the copy in the appropriate file;
- Unless the information is exempt from disclosure under RSA 91-A, the member making the Distribution shall report on it, and its contents, at the public hearing on the case; and
- Parties to the case shall be given a meaningful opportunity to respond to the information in the Distribution.

E. Exchanges. Exchanges involving a quorum or more of the Board, or of any subcommittee as defined below, are prohibited. Such Exchanges shall be considered deliberations, and shall occur only at public meetings noticed in accordance with RSA 91-A. An Exchange pertaining to any activity allowed under paragraph C is permitted if the number of Board or subcommittee members involved is less than a quorum; however:

- Each member involved shall be responsible for preventing the number of members involved from reaching a quorum;
- Information discussed in, or generated by, an Exchange shall not be subject to further Distribution; and
- No Exchange shall include any vote or straw vote, or any Ex Parte communication.

F. Ex-Parte Communications. Board members shall not initiate Ex Parte communications. If an Ex Parte communication is initiated by another person, the Board member contacted shall:

- Refrain from discussing the substance or merits of a case;
- Inform the person, if necessary, that such a discussion could lead to disqualification;
- Refer the person to the Planning Office or to a Board meeting, as appropriate; and
- Report on the conversation to the Board at a public meeting.

G. Scheduling and Agenda. Notwithstanding paragraphs D, E and F, nothing in this policy prevents any Distributions, Exchanges or Ex Parte communications which pertain solely to:

- Scheduling of meetings or hearings;
- The determination or ordering of agenda items or topics to be taken up at meetings or hearings; or
- General procedural requirements pertaining to such scheduling and agenda matters.

H. Subcommittees. A subcommittee is any group of two or more persons, including at least one Board member, to which the Board has assigned a specific task related to Board business. A subcommittee shall be considered a public body, and all provisions of RSA 91-A and this policy, applicable to a quorum of the Board, shall also apply to a quorum of a subcommittee.

## **[Plan-link] email policy**

Sun 11/22/2015 7:15 PM

Bernie's draft policy is very useful and could easily be adapted for small communities without staff.

Not mentioned in this outline is the suggestion that any between meeting emails (other than for scheduling/agenda) be reported on & attached to the next meeting's minutes.

Like the original inquirer, I am on a ZBA with infrequent meetings. However, the best approach might be to adopt the same policy for all town boards and committees.

Honey Hastings  
Temple ZBA

## **Re: [Plan-link] email policy**

Sun 11/22/2015 8:25 PM

Thanks for the suggestion about attaching emails to the minutes, which I will include in our discussion.

It is unlikely you could adopt the same policy for all town boards and committees since the statutory

committees can adopt their own procedures. In our town the other committee had a sound reason for doing what they did, particular to them. I think the reason is no longer there, but now it is part of their culture and they do a good job of bringing new members into it.

-- Curt