



Town of Green Mountain Falls
Board of Trustee,
Planning Commission, Parks Recreation and Trails Advisory Board,
Fire Mitigation Advisory Committee, Board of Adjustment
Special Meeting Agenda
10615 Green Mountain Falls Road
Tuesday, September 10, 2020 at 6:00 p.m.

Online Meeting ONLY*. Join the Zoom Meeting by clicking on the following link:
<https://us02web.zoom.us/j/83416776417?pwd=Qlova3oyd3FqMnV4VTVzM3kvSUV0QT09>
Meeting ID: 834 1677 6417 Passcode: 266223

SPECIAL MEETING:

1. Mayor's Welcome
2. CIRSA Annual Board & Advisory Board Training Workshop



Suggestions for Success (and Avoiding the Risks of Liability) for Municipal Officials

Presented by Sam Light, CIRSA General Counsel



Town Of
GREEN MOUNTAIN FALLS
Colorado

Elected and Appointed Officials Training September 10, 2020

Introduction

Presentation Overview

• Suggestions for best practices as a Town official – which in turn will reduce risk for the Town and you individually. Topics we will touch on include:

- The role of public official
- Transparency rules
- Running good meetings
- Ethical obligations
- The Town's structure & liability
- Due process requirements

• Presentation is a training resource only; is not intended to address or provide legal advice on any specific, pending issues.

Suggestion One: Recognize the Change in Roles

- Being a public official means your role has changed:
 - Citizen-government official (24/7!)
 - Outsider-insider
 - Critic/proponent-representative

Suggestion One: Recognize the Change in Roles

- When you became a Town official, you agreed to uphold and follow applicable laws, including the Town's ordinances, etc. What does that commitment embody?
 - A commitment to respect your role/responsibility in the Town structure.
 - A commitment to lawful conduct, including following the Town's rules, procedures and criteria in making decisions.
 - A commitment to ethical practices.
 - A commitment to professional courtesy and respect for one another's divergent viewpoints and styles.

Suggestion One: Recognize the Change in Roles

- You may have sought your office or appointment because you were dissatisfied with the status quo or had a certain view of the Town as a citizen.
- But, recognize, when you were elected or appointed, you became an insider, and an “outsider” perspective no longer fits.
- Hanging on to an “outsider” perspective can be destructive to your board or commission and its ability to get things done.
- And, misunderstanding your role can increase the risk of liability for the Town and you.

Suggestion One: Recognize the Change in Roles

- “Outsider” perspective can also greatly reduce your own effectiveness:
 - You are now part of a collective decision-making body.
 - Each individual has a fraction of the power of the body, but that power can’t be exercised alone. Under law, the power and authority belongs to the board or commission itself.
 - Success in your position can’t happen without collaboration and consensus-building: Think and act as “We” not “I”.

Suggestion One: Recognize the Change in Roles

- As local government officials, part of your “job duties” is delivering good governance which, at root, is based both practically and legally on a few core concepts:
- Openness & Transparency** (open meetings/records laws);
- Fundamental Fairness** (due process);
- Predictability** (following applicable laws, ordinances, and implementing regulations and policies); and
- Mutuality of Respect**

Suggestion Two: Honor Transparency

- Transparency is a basic expectation for public entities.
- Citizens take interest in the goings-on of the Town, how/when those goings-on are discussed, and the opportunities afforded to them to listen in on/participate in the discussion.
- A lack of transparency can cause massive trust and credibility issues, and potential claims/disputes over compliance.

Suggestion Two: Honor Transparency

- The Open Meetings Law (OML) applies to all meetings of the Town Board and other boards, commissions, etc. Does not matter whether the body is “advisory.”
- Applies to 3 or more or a quorum, whichever is less.
- Requires discussion/action on public business to take place at a meeting open to the public.
- And, if action will be taken or a quorum will be present, there must be timely notice—agenda posted at least 24 hours in advance.

Suggestion Two: Honor Transparency

- A “meeting” includes any gathering to discuss public business, in person, by phone, or electronically.
- The OML permits executive sessions only for limited and specified purposes and following specified procedures. Use of executive sessions may be further limited by your local rules.
- The OML does not apply to a one-on-one discussion (but also does not authorize “serial meetings”!).
 - **And a note of caution:** Your rules state “a majority of the appointed non-vacant seats shall constitute a quorum;” thus, be further attentive to OML issues if your body has vacant seats!

Suggestion Two: Honor Transparency

- How can you break faith with the OML? Let's count some ways...
 - Three or more members of your board hold “meetings before the meetings” or “impromptu” meetings to sort things out.
 - Three members of your board have a lengthy e-mail exchange about the merits of a policy question that is on the next meeting agenda.
- Keep in mind: The policy of the OML is that “the formation of public policy is public business and may not be conducted in secret.”
- Thus, don't subscribe to any parallel process (e.g., e-mail, social media, etc.) or leave folks feeling like they are walking into the middle of a conversation at your meetings.

Suggestion Two: Honor Transparency

- Are e-mails you send or receive in your capacity as a public official considered Town records?
- Generally, yes, if the e-mail concerns your job as a Town official and/or discussion of public funds.
- For meetings and records purposes, the ownership of the device used for e-mail is not dispositive. Rather, the rules are content-driven.
- Takeaways on e-mail:
 - E-mail discussion can be subject to OML.
 - Whether an e-mail is a public record doesn't turn on who owns the device used for the e-mail.
 - E-mails can be public records independent of any meeting issue.
 - Be circumspect in your use of e-mail as a Town official!

Suggestion Three: Run Good Meetings

- Plan for...and lay the groundwork for...orderly & productive public meetings! Great meetings don't usually happen by happenstance.
- Give the agenda the time and attention it deserves.
 - Do you have common understandings of how potential agenda items are identified and put on the agenda?
 - Do members follow...and stay on...the agenda during the meeting?
- Effective agenda-setting and effective use of the agenda ensures OML compliance, helps members & staff focus effort and resources, and builds community trust.

Suggestion Three: Run Good Meetings

- Use and expect civility in your meetings.
 - Remember, a culture of civility flows from the top down – if members practice incivility towards one another or towards staff/citizens, then....
- Maintain a degree of formality at meetings – use titles, insist speakers be recognized, use podium, etc.
- Develop process rules or guidelines:
 - Time limits for speakers, and be consistent in enforcing them.
 - Have a consistent sequence for proceeding –don't be ad hoc.
 - Have a plan for handling disruptions.

Suggestion Three: Run Good Meetings

- The presiding officer is crucial in maintaining order & ensuring participation:
 - Is role model.
 - Acts affirmatively to control behavior.
 - Focuses discussion and keeps everyone on topic/on task.
 - Manages time and moves discussion and action along. Knows when to suggest the time is right to act.
 - But, does not steer outcomes; instead, ensures collaboration.
- As a participant in meeting rather than as the chair, you have the opportunity to exercise some of the same leadership roles.

Suggestion Three: Run Good Meetings

- Find time for self-examination if meetings aren't going well:
 - Are our “public comment” periods turning into “public inquisition” periods or “public argument” periods?
 - Do we “suffer” from lack of focus or excessive informality?
 - Are parties speaking on/over/across/for each other?
 - Or are we frustratingly distracted (side meetings, texting, etc.)?
 - What are the dynamics that are allowing this to happen?

Suggestion Three: Run Good Meetings

- As a body, discuss and develop “norms” around the handling of common meeting issues, such as:
 - How do we handle public comment periods?
 - How/when do we identify future agenda items?
 - How do we give direction?
 - How do we handle pre-meetings questions and requests?
- Use simple rules of procedure to facilitate, not debilitate.

Suggestion Four: Put Ethics First

- In Colorado, ethics scandals are rare – but happen from time to time.
- Ethical misjudgments greatly undermine public confidence in public bodies, and appearances of conflicts can be just as damaging as actual conflicts.
- Can result in personal criminal and civil liability.
- There is often a “personal benefit” exclusion from public officials liability coverage.

Suggestion Four: Put Ethics First

- The theme that runs through codes of ethics is: It is not permissible to gain a personal benefit by virtue of holding public office.
- Main rule – Conflicts of Interest: Disclose, recuse, don't vote, and don't influence other members.
 - See this CIRSA video: <https://www.cirsa.org/wp-content/uploads/2020/06/How-To-Deal-With-Conflicts-Of-Interest-Final.mp4>
- Don't have a financial interest in Town contracts or purchases, and if you will have such interest follow all rules.
- Don't disclose or use any confidential information for personal benefit.
- Decline any gifts that seem to be connected to your service (and abide by gift rules).

Suggestion Five: Support the Town Structure

- Everyone within the organization has a “job description”—it is important that you understand and honor your “job description,” both to help ensure the organization functions at a high level, and to avoid risks of liability, including the risk of personal liability!
 - You have protection from personal liability if you are “within the scope of employment” and not acting “willfully and wantonly.”
 - Means everyone needs to know and respect their “job description.”
 - Conduct that is “outside the scope” or “willful and wanton” can result in a loss of governmental immunity and create liability, including the potential of personal liability for you.

Suggestion Five: Support the Town Structure

- Tips to support the structure and avoid concerns of conduct “outside the scope”:
 - Understand “job description” and stay within it. Look to your structural documents; in particular, review:
 - The “Powers and duties” provisions of Ordinance 2020-03.
 - The “Authority and responsibility” provisions of Ordinance No. 2020-03: E.g., “Boards, committees, and commissions shall exercise their authority and shall be accountable to comply with the board, committee or commission's approved work plan, the Board of Trustees’ goals, and with other Board of Trustees adopted rules or regulations. Unless otherwise provided by law, no board, committee, or commission, and no member of any board, committees, or commission shall have authority to act on behalf of the Town, including without limitation approving contracts, negotiating deals, spending or allocating Town funds, and negotiating transactions involving real or personal property.”

Suggestion Five: Support the Town Structure

- More tips to support the structure and avoid concerns of conduct “outside the scope”:
 - Excepting the Town Board, recognize the advisory nature of the board’s role—don’t predict Board action and don’t make comments that could be construed as promises.
 - Your role is a group role; if you are thinking of acting individually, ask whether you have authority to act (and if you don’t, don’t do it).
 - Recognize that elected and appointed officials act primarily as a BODY, and exercise responsibilities mainly by VOTING in a PUBLIC MEETING.
 - Therefore, think “We” ... not “I”! If you find yourself about to act in terms of “I” rather than “we” ...that’s a red flag.

Suggestion Five: Support the Town Structure

- Adherence to the Town's organizational structure is also important in the area of employee relations: Remember:
 - Except for the Town Board's few direct reports, elected and appointed officials are not employee supervisors. Therefore:
 - Don't get individually and improperly involved in personnel issues.
 - Don't engage in or facilitate activities that bypass the Town's chain of command or personnel rules.
 - Similarly, avoid getting individually involved in permit or other administrative matters assigned to staff.

Suggestion Five: Support the Town Structure

- Recognize that while your board or commission is made up of individuals, each with different goals and priorities; it is a single body.
- Therefore, resolve to speak with one voice to your support staff, and follow established channels; e.g.: “The chair or his or her designee shall serve as the conduit of communication between the board, committee, or commission and the staff liaison and Board of Trustees.” (Ord. 2020-03).
- The board or commission is responsible for sorting out and reconciling the views and priorities of its members, so that it can speak with one voice. Do not conscript staff into issues at the member level; similarly, staff must honor the board’s or commission’s prerogatives.
- Lastly, recognize the role of an advisory board is primarily to take a long/wide view in developing recommendations. Keep a broad perspective of Town interests. Consider issues on merits alone.

Suggestion Six: Honor Due Process

- While most board and commissions are advisory, or policy boards, a few boards and commissions—the Town Board, Planning Commission and Board of Adjustment—have a “quasi-judicial” role.
- This is when you are deciding specific “cases,” or “applications” and for these “quasi-judicial” matters—including most land use applications—the members are essentially acting as judges and therefore must behave like judges.
- In this role you are required by law to provide “due process” and a failure to provide due process exposes you and the Town to liability.

Suggestion Six: Honor Due Process

- A quasi-judicial decision is one that:
 - Determines the rights of a specific person/entity for a specific property (or protected property interest).
 - Is based on facts developed at a hearing to resolve the particular interests in question. In this process, you are called upon to apply existing legal standards to a specific case.
- The key characteristics of a quasi-judicial process are notice, a hearing, and a decision based on the record and set criteria, by a fair and impartial decision-maker—that's you!
- Quasi-Judges—familiarize yourself with the QJ rules of engagement!. See this CIRSA video: <https://www.cirsa.org/wp-content/uploads/2020/05/Quasi-Judicial-Proceedings.mp4>

Honor Due Process - Tips for Quasi-Judges

- Limit your involvement to just your participation at the public hearing.
- Don't engage with one side or the other, or with your fellow commission members, before or outside the hearing (ex parte contacts).
- Remain neutral; don't make up your mind before the hearing and don't make prejudicial pre-hearing statements.
- Don't participate if you have a prohibited conflict of interest in the matter (code of ethics).
- Don't make your decision on the basis of irrelevant or non-existent standards. Base your decision only on the applicable criteria.

Honor Due Process - Tips for Quasi-Judges

Avoid Ex Parte Communications

- A critical duty of the quasi-judge is to avoid “ex-parte” contacts, meaning any “outside the hearing” discussion with an interested party about the subject matter of the hearing.
- A proceeding loaded with “ex-parte” contacts is a path to having your decision challenged and, as important, having the integrity of your process eroded.
- When we advise against ex-parte contacts, we are protecting your ability to participate, and your ultimate decision. So, don’t engage in pre-hearing “buzz”—remember, you get to make the recommendation or decision but with that power goes the obligation to remain fair and unbiased.

Honor Due Process - Tips for Quasi-Judges

- Deliberations Matter - Whether you're in "policy" mode or "quasi-judicial" mode, group deliberation is important. Your board's or commission's discussions are where:
 - Your group formulates the bases of its impending decision.
 - The applicant (if any), the public, and others obtain an understanding of your position.
 - If the matter is QJ, your discussions are what a reviewing judge will look at to understand why you decided the matter as you did (and whether you followed your own rules).
 - So Discuss and Deliberate – Talk Amongst Yourselves!!

Suggestion Seven: Use Your Power Wisely & Humanely

- You set the tone for the whole organization in terms of the treatment of employees, citizens, and the business community.
- Understand that you are perceived as holding the most powerful positions in your local government.
- Use courtesy, tact, and diplomacy in interactions, especially in public settings. Recognize that certain liability risks—in particular civil rights claims—can be exacerbated by “bad facts” that suggest (or are perceived to be based upon) retaliatory or reactive conduct.

Suggestion Seven: Use Your Power Wisely & Humanely

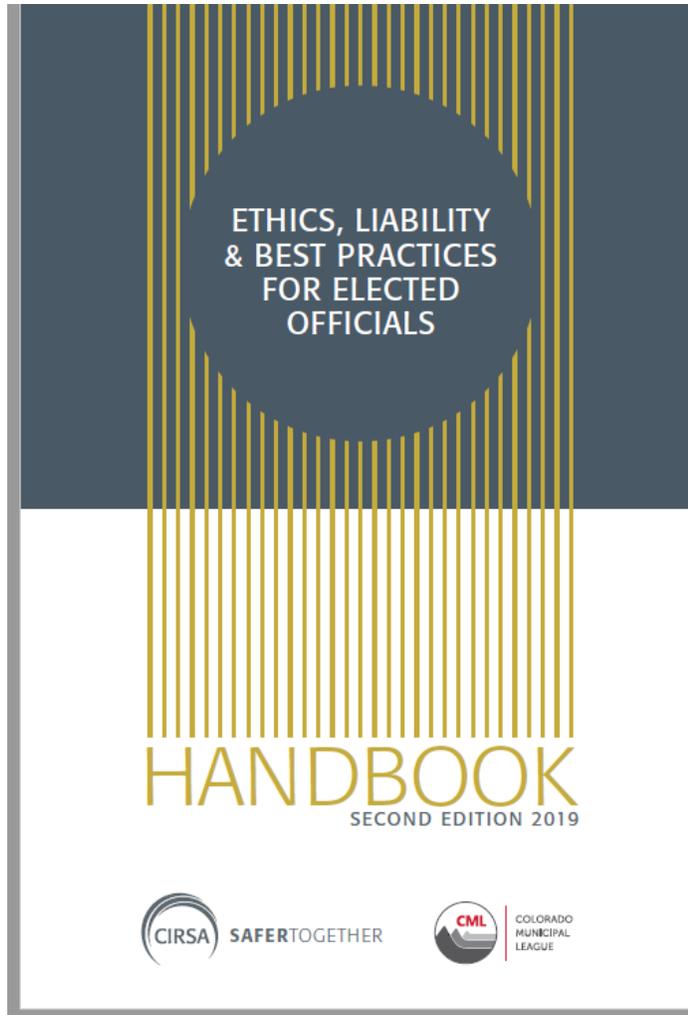
- As a body, commit to a “no surprises” approach at your meetings and while dealing with one another and staff, and commit to speaking with one voice.
- Use your staff liaison as a resource to help you do well, and look good while doing it.
- Commit to act as “we” and not as “I,” to build strong relationship between your board or commission and staff.
- Commit yourself to the service of your board or commission, and its role in furthering the overall good of the Town.

Conclusion

Thank you for your public service!

And for the opportunity to present.

Resources



CIRSA Elected Officials Handbook:
<https://www.cirsa.org/wp-content/uploads/2019/06/EthicsLiabilityBestPracticesHandbookForElectedOfficials.pdf>

CIRSA Executive Director Tami Tanoue's
Webinar on Ethics, Liability, and Best Practices
for Elected Officials:
<https://www.cirsa.org/wp-content/uploads/2020/05/Ethics-Liability-and-Best-Practices-Webinar-2020.mp4>

CIRSA Webinar on Quasi-Judicial Proceedings
Basic Training & Best Practices:
<https://www.cirsa.org/wp-content/uploads/2020/05/Quasi-Judicial-Proceedings.mp4>

Conclusion

Colorado Intergovernmental Risk Sharing Agency

- Not a commercial insurance company; CIRSA is a Colorado public entity self-insurance pool for property, liability, and workers' compensation coverages.
- Formed in 1982 by an intergovernmental agreement of 18 municipalities pursuant to CML study committee recommendations.
- Total membership today stands at 281 member municipalities & affiliated entities:
 - 278 are members of the PC pool
 - 141 are members of WC pool
- CIRSA views proactive approaches to risk management as critical member services – is a win-win.
- More information at www.cirsa.org; CIRSA elected and appointed officials' resources: <https://www.cirsa.org/safety-training/elected-officials/>.

Conclusion

Speaker Bio

Sam Light is General Counsel for the Colorado Intergovernmental Risk Sharing Agency (CIRSA). Previously Mr. Light was a partner with the Denver law firm of Light | Kelly, P.C., specializing in municipal and other public entity law, insurance law and defense of public entities and elected officials. Sam is a frequent speaker on municipal law and has practiced in Colorado since 1993.