

New York Coalition



For Open Government, Inc.

Advocating for timely access to information & meaningful citizen participation

www.nyopengov.org

December 28, 2020

RE: Open Government In Berne, New York

The New York Coalition For Open Government, a non-profit, non-partisan organization dedicated to transparency in government calls upon the Berne Town Board and the Town Clerk to hear from the public and to provide more information to the public.

The Voice of Residents Should Be Heard at Every Meeting

In January of 2020, the Town Board unanimously adopted a motion, which eliminated the past practice of hearing from the public at every Town Board meeting. A new practice was implemented to allow the public to speak at every other meeting. The New York Coalition For Open Government has never seen another local government that limits the public to being heard at every other meeting.

The public should be given an opportunity to speak at every Town Board meeting. It is disappointing that the Town Board unanimously voted in support of gagging the public and that a recent motion to allow the public to speak at every meeting failed.

Meeting Agendas and Documents Should Be Archived Online

A few days before their meetings, the Town Board meeting agenda and documents are posted online for the public to see as required by the New York State Open Meetings Law. Most local governments keep their meeting agendas and documents posted online for years afterwards so that they are available for the public to see and view.

The New York Coalition For Open Government encourages the Town of Berne to maintain an online archive of meeting agendas and documents of their Town Board, Zoning Board and Planning Board meetings.

Meeting Minutes Are Not Being Timely Posted Online

The Open Meetings Law does not require that meeting minutes be posted online but it is a good practice to do so and many local governments post their meeting minutes. Meeting minutes are an important source of information for the public.

Meeting minutes for Berne Town Board meetings in mid December were two months behind. Planning Board minutes have not been posted since February and Zoning Board minutes are not posted at all.

The Town Clerk is responsible for meeting minutes and should immediately post minutes online for the Town Board, Planning Board and Zoning Board. Instead of waiting for meeting minutes to be approved, which is not required by law, draft meeting minutes should be posted within two weeks of a meeting.

Executive Session Motions Are Not Being Done Properly

A review of Town Board meeting minutes from January to November 2020 shows that the Town Board held six executive sessions. The New York State Open Meetings Law allows closed door executive sessions which exclude the public from attending to be held for very limited and specific reasons. Court decisions and opinions by the New York State Committee on Open Government have determined that executive session motions must inform the public of the reason an executive session is being held. A motion for an executive session that simply states the reason as to discuss a “personnel” or “litigation” matter is improper as being too general.

The New York Coalition For Open Government has determined that five of the six executive session motions made were improper. Motions for executive session were made as follows:

3/11/20 – To discuss “employment history”. Discussing the employment history of an individual is a proper executive session motion.

4/15/20 – To discuss “litigation”. A motion to discuss “litigation” is not a proper executive session motion. The public has a right to know what litigation matter is being discussed in executive session. As such, the motion should specify the name of the legal case being discussed.

4/22/20 & 4/29/20 – To discuss a “personnel” matter. A motion to discuss a “personnel” matter is not a proper executive session motion. The word “personnel” does not appear in the Open Meetings Law. A more specific motion is required. The public has a right to know whether the Board is discussing the hiring, firing or discipline of an employee. The name of the employee does not have to be disclosed, but the reason for the executive sessions needs to be stated with more particularity. It is our understanding that the New York State Committee on Open Government earlier this year rendered a similar opinion regarding these two executive sessions.

7/8/20 & 7/22/20 – To discuss “negotiations under the Taylor Law”. A motion to discuss “negotiations under the Taylor Law” is not a proper executive session motion. The motion made is too general, as the public should be made aware of what negotiations are being discussed by stating the name of the union.

Attached are opinions rendered by the New York State Committee on Open Government, which explain how to make a proper motion for an executive session.

Information Is Not Posted Regarding The Freedom of Information Law

The public has the right to obtain information from Berne government officials. Nothing is posted on the Town website as to how or where to file a Freedom of Information Law request. An electronic form with an explanation as to how to make a request should be provided. The Town Clerk as the official keeper of Town records should immediately take action to address this lack of information.

Conclusion

The residents of Berne have been subjected to a dysfunctional government, which has resulted in investigations, censures, lawsuits, audits, and improper executive sessions, all while being kept in the dark in many ways by the Town Board and Town Clerk. The Town Board has additionally muted the public by not allowing the public to be heard at every Town Board meeting.

The New York Coalition For Open Government calls upon the Berne Town Board and Town Clerk to immediately address the items identified above.