



Public Hearings

9 | Public Hearings

9.1 | Member Participation

No member or alternate member of the Agency may participate in any hearing or decision of the Agency upon any matter in which he is directly or indirectly interested in a personal or financial sense. In the event of disqualification, the fact must be entered on the records of the Agency and an alternate replacement made.

9.2 | Public Inspection

Under the Freedom of Information Act, CGS § 1-19(a), “all records maintained or kept on file by any public agency... shall be public records and every person shall have the right to inspect such records promptly during regular office or business hours or to receive a copy of such records.” There are exceptions to this rule (see CGS §§ 1-19(b)), but they would seldom apply in the context of aquifer protection applications.

In addition to the general inspection requirements under the Freedom of Information Act, CGS § 22a-354p specifically requires Aquifer Protection Agencies to make application materials available to the public. In some towns, the aquifer protection regulations mandate that material that must be submitted in connection with an application be available for public inspection at least 10 days before any public hearing. This gives the public an opportunity to inspect such materials and gives Agency members enough time to familiarize themselves with the proposal. We encourage all Aquifer Protection Agencies to follow this procedure.

9.3 | The Hearing Record

The official “hearing record” consists of all information submitted to the Aquifer Protection Agency from all sources in connection with an application. This includes information submitted with the application, during meetings and hearings, and at any other time.

It is essential that the Aquifer Protection Agency establish a comprehensive hearing record for each hearing. Written reports, correspondence, and other material the Agency receives should be incorporated into the hearing record by reading them aloud at the hearing. They may also be incorporated by specific reference to an exhibit (reference number, title, author, date, revision dates, or any other pertinent information).

9.4 | Recording the Hearing

A court stenographer or recorder should record all aquifer protection hearings. If a party appeals the Agency’s decision, the court can review the complete record without the need for it to be reconstructed. We strongly recommend that Aquifer Protection Agencies record all of their hearings.

9.5 | Opportunity to Examine Witnesses

The Aquifer Protection Agency is not required to institute courtroom-like proceedings at the public hearing. The hearing can be run informally and yet protect the rights of all parties. However, the Aquifer Protection Agency may wish to conduct a more formal hearing, especially if attorneys are involved. For all hearings, the Agency should consider requiring sworn testimony from all expert witnesses. Also, every party to the hearing should be allowed to cross-examine witnesses and/or respond to all evidence entered into the record.

9.6 | Continuation of Hearings

If the Agency recesses or continues a hearing, it must give adequate public notice of its reconvening. If the Agency, at the time of recess, was unable to set the next hearing date, it must notify all parties of the new date, in writing, as soon as possible.

Any Aquifer Protection Agency hearing may be continued to any subsequent regular meeting. The Agency must provide notice of the continuance to all parties. Under the Freedom of Information Act, if the hearing is to convene less than 24 hours after it was adjourned, the Agency must post written notice on or near the door of the place the hearing was held immediately following the meeting at which the continuance was ordered. If the Agency plans to recommence the hearing more than 24 hours after the adjournment, it must post written notice in the town clerk’s office at least 24 hours before the commencement. It must also post notice on or near the hearing room within 24 hours after the adjournment.

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9.7 | Receipt of Information After the Hearing

In order to ensure due process, any additional information submitted must be provided to all parties prior to the proceeding. The parties must be allowed to comment on such information for the record. It is often preferable to reconvene the hearing for presentation or discussion of such additional information.

9.8 | Ex Parte Communications

The Agency members may not discuss information with anyone, except at the public hearing or the next meeting when they convene to discuss and decide upon the application. This way, all parties can participate. Discussions involving Agency members or any interested parties held outside of the public hearing are known as “ex parte communications” and they endanger Agency decision. Such discussions have sometimes caused an Agency’s decision to be reversed upon appeal. Discussions with municipal personnel (such as a town engineer or planner) or consultants employed by the Agency, regarding a pending application, should take place only at regularly scheduled meetings when the matter appears on the published agenda, or at public hearings.

9.9 | Making the Decision/Completing the Record

In making a decision, the Aquifer Protection Agency should make sure that all information it receives is maintained in the official application record. Since future court challenges will be based mostly or entirely on the record, a complete record is necessary to accurately reflect the Agency’s position. All information that a statute or regulation requires the Agency to receive and review must be included in the public record.