

Draft Meeting Minutes – Practical Considerations

- A. A meeting is held, and the Right to Know Law (RSA 91-A) requires “minutes” to be prepared and be made available to the public upon request within 5 business days after the meeting. RSA 91-A:2, II. The board which met probably does not meet again to approve the minutes within this time frame, so the minutes will always be the output of the single staff person or board member tasked to create the document. This version, whether approved or not, becomes a “governmental record” under RSA 91-A:1-a, III and must be made available upon request. Minutes must be retained as a governmental record forever under RSA Chapter 33-A, so they must be reduced to a paper format and may not be kept solely as electronic records. RSA 33-A:5-a. Thus, a permanent paper record will come into existence within 5 business days of the meeting and is subject to disclosure under the Right to Know Law, even if the board regards it as a draft document.
- B. There is no requirement in the Right to Know Law that any board act to “approve” its minutes. However, it is a near universal practice for all boards to review the minutes that were created within the 5-day time frame. During this review, members often suggest additions, deletions and corrections. If a board wishes to amend the minutes, it may do so, but the discussion and vote must take place at a duly-noticed public meeting of a quorum of the board. This point is now made clear by the 2008 revisions to the statute prohibiting communications among a quorum of the members of a board outside of a properly held meeting. Therefore, the actual discussion to amend and approve the minutes must be documented in the minutes of that subsequent meeting as an item of business the board considered.
- C. Given the system set up by the law, we suggest that whenever minutes are created, they are marked as “not yet reviewed” or “draft.” This will warn anyone who reads them that the board, as of the date the minutes were created, has not approved them. If the board does amend them at its next meeting, the minutes of that next meeting should refer to the old minutes and detail the changes made. The board may also wish to produce a new document of the amended minutes labeled “as amended and approved by board” or something of that nature.
- D. However, we do not recommend that “draft” minutes be destroyed or altered when they are stored. If these so-called draft documents are destroyed, there is a risk that some member of the public or a different town official actually received the draft and has already used it. Between the time when the draft was created and the time it was amended and approved by the board, the draft was the minutes and thus exists as a governmental record. The possibility of reliance on a preliminary document is greatly increased if the board immediately posts the document on its internet website, or distributes it to members of other local boards for informational purposes. Also, if the draft document is altered to reflect changes made in a subsequent meeting, any discussion and debate about why the

change was made could be lost forever if no document preserving the original text is allowed to survive.

- E. Some clerks have adopted the following practice. The draft minutes document is created as noted above. If changes are made at a subsequent meeting, the changes are detailed in the minutes of that second meeting. As the minutes are being prepared for permanent storage in paper format, the clerk will add a notation to the permanent record of the first meeting that corrections were made, and give an exact reference to the page where the changes appear in the minutes of the subsequent meeting. This seems to be an excellent way to serve all interests, in that it preserves the draft document as originally created and made available to the public, allows the board to review the record and make any needed changes, and allows the users of the documents to see the text as originally prepared, the changes that were made, and the reasons why the changes were made.
- F. We have also heard that some clerks will destroy draft minutes and only keep the “perfect” record that reflects the amendments made. We do not endorse this method because there is a large risk that a member of the public, the board, or another board will be misled by using the earlier document, and then later be unable to determine when, how, or why the changes were made. This could be very important in a planning board or zoning board of adjustment case that is litigated when the “certified record” is prepared for filing with the court.