


TOWN OF GUILDERLAND

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MEMORANDUM

TO: Comprehensive Plan Update Committee

FROM: James Melitia, Town Attorney 

DATE: April 26, 2023

RE: Open Meetings Law

I have been asked to research whether the Comprehensive Plan Update Committee (“CPUC”) is subject to the Open Meetings Law (“OML”). In my opinion, because the CPUC is an advisory board and does not perform a governmental function, it is not governed by the OML. That said, the CPUC should, like the Town’s other advisory committees, comply with the OML’s requirements to the maximum extent possible.

The OML provides that a “public body” is required to hold properly noticed public meetings except for limited circumstances. The phrase “public body” is defined as:

any entity for which a quorum is required to conduct public businesses and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-three of the general construction law, or committee or subcommittee or other similar body of such public body.

NYS Town Law § 272-a, entitled “Town comprehensive plan,” describes the process for developing and adopting a new or updated comprehensive plan. Among the ways to prepare an updated plan is by appointing a “special board” which is defined as “a board consisting of one or more members of planning board and such other members as are appointed by the town board to prepare a proposed comprehensive plan and/or an amendment thereto.” Because the CPUC does not include a planning board member, the CPUC is not a “special board” and is not “performing a governmental function.”

It is also clear that the CPUC’s functions are only advisory, and that the Town Board has sole discretion, under NYS Town Law § 272-a(7), to adopt an updated plan. As a general rule, because advisory bodies have no power to take final action and are not “performing

a governmental function,” they are not covered by the OML. As a result, in my opinion, the OML would not apply to the CPUC.

The Town, however, has broadly applied the OML to all boards and committees, including the Traffic Safety Committee and Development Review Committee who are advisory boards with no power to take final action. Subjecting the CPUC to the OML’s requirements is consistent with the Town’s goal of transparency and the legislative intent, expressed in NYS Town Law § 272-a(1)(e), that “[t]he participation of citizens in an open, responsible and flexible planning process is essential to the designing of the optimum town comprehensive plan.”

To meet these goals, the CPUC might consider the following options:

- (1) forming subcommittees of the CPUC (less than a quorum) to discuss topics, concerns, and issues identified during the comprehensive plan process; and
- (2) holding roundtable discussions before the regularly scheduled 7pm public meetings that are noticed and the public can observe.