



Jeff Landry
Attorney General

State of Louisiana
DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
BATON ROUGE
70804-9005

January 24, 2018
OPINION 17-0026

90-B-4 PUBLIC MEETINGS – State & Local Governing Bodies

La. R.S. 42.11–28

La. Const. art. XII, § 3

Edward J. Deano Jr., Esq.
Mandeville City Attorney
895 Park Ave.
Mandeville, LA 70448

A meeting of a public body occurs when the Planning Director and/or Building Inspector of the City of Mandeville and design consultants meet to (1) consider architectural reviews of applications for building permits in the City's Town Center Zoning District or in its Gateway Overlay Zoning District, or (2) consider applications for certificates of appropriateness for non-substantive changes to a building in the City's historic preservation district.

Dear Mr. Deano:

At the direction of the Mayor of the City of Mandeville (the "City"), you have requested an opinion from this office concerning the City, its Comprehensive Land Use Regulations Ordinance (the "CLURO"), and the consultants who make up the City's design review committee (the "DRC").¹ You question whether a meeting of the DRC and City officials at City Hall to discuss the DRC's architectural reviews of proposed construction projects constitutes a meeting of a public body under Louisiana's open meetings law and, if so, whether minutes of those meetings must be taken and published. As discussed below, a meeting of a public body does occur when the City and its design consultants meet to (1) consider architectural reviews of applications for building permits in the City's Town Center Zoning District or in its Gateway Overlay Zoning District, or (2) consider applications for certificates of appropriateness for non-substantive changes to a building in the City's historic preservation district. Because those meetings are tantamount to a meeting of a public body under Louisiana's open meetings law (the "Open Meetings Law"), minutes of the meetings should be taken and published (and the other requirements of the Open Meetings Law should be followed).

BACKGROUND

Prior to June 2015 the CLURO required that the City review construction designs for projects for which building permits were sought in certain zoning districts. The ordinance required that the review "shall be performed by Tulane University Regional

¹ See CLURO, Art. 7. The CLURO can be found at:
https://library.municode.com/la/mandeville/codes/code_of_ordinances?nodeId=APXACOLAUSREOR.

Urban Design Center or alternative successor review body designated by the Mayor which shall make recommendations to the Building Inspector prior to permits being issued.” Design guidelines initially were adopted in 1999 when the City adopted a Town Center Overlay Zoning District which consisted of an area of approximately 2 square blocks in which review of proposed architectural designs was required.

In 2000, the City adopted a Gateway Overlay Zoning District which included a set of design guidelines applicable to properties fronting on major thoroughfares. In 2002, an ordinance was adopted that expanded those guidelines to non-residential zoning districts. Projects in those districts were subject to the same architectural review process outlined above. The process involved architects reviewing construction plans as they related to the adopted design guidelines as part of the permitting process. The architects/consultants would make recommendations to the Building Inspector before building permits were issued.

In 2013, the City created an historic preservation district and an historic preservation district commission for the purpose of regulating historic districts and landmarks within the City. CLURO § 7.6.4. No private “building, structure, or edifice . . . shall be erected, altered, restored, moved, or demolished within an historic preservation district until after an application for a certificate of appropriateness as to exterior architectural features has been submitted to and approved by an historic preservation district commission, except as otherwise provided by the governing body in the ordinance establishing such commission. . . .” La. R.S. 25:737(A). The CLURO requires that the “Administrator . . . shall consult with any design professionals provided by the City for consulting services” when deciding to grant applications for certificates of appropriateness for non-substantive changes to a building in the historic preservation district “after the review of the standard for a Certificate of Appropriateness listed below [in CLURO § 7.6.4.13].” CLURO § 7.6.4.10. The Administrator is the Director of the City’s Department of Planning and Development. CLURO § 7.6.4.8.1.

In 2015 the CLURO was amended.² The amendments deleted all references to the review of construction designs by Tulane University Regional Design Center or its successor. Because of the amendments, architectural review within the Gateway Overlay Zoning District “shall be performed by the City’s design consultants, which shall be designated by the Mayor, and which shall make recommendations to the Building Inspector prior to permits being issued.” CLURO § 7.6.2.7. Similarly, in the Town Center Overlay Zoning District architectural review “shall be performed by the City’s design consultants designated by the City of Mandeville.” CLURO § 7.5.18.7. The City’s design consultants constitute the DRC; they are paid consultants with professional services contracts with the City.

² The 2015 amendments did not change the language quoted above concerning review of applications for certificates of appropriateness within the historic preservation district.

To summarize, for the three districts identified in your request the following architectural review standards apply:

Town Center Overlay Zoning District

Architectural review "shall be performed by the City's design consultants designated by the City of Mandeville." CLURO § 7.5.18.7.

Gateway Overlay Zoning District

Architectural review "shall be performed by the City's design consultants, which shall be designated by the Mayor, and which shall make recommendations to the Building Inspector prior to permits being issued." CLURO § 7.6.2.7

Historic District

The Administrator (the Director of the City's Department of Planning and Development) "shall consult with any design professionals provided by the City for consulting services" when deciding to grant applications for certificates of appropriateness for non-substantive changes to buildings "after the review of the standard for a Certificate of Appropriateness listed below [in CLURO § 7.6.4.13]." CLURO § 7.6.4.10.

You advised that the City uses printed material predating the 2015 amendments to the CLURO that refers to Tulane University Regional Design Center or its successor. Practically speaking, the design review process contemplated by the 2015 amendments to the CLURO and the process before the amendments have been informally integrated and now generally are referred to as the architectural review process that the City performs. The City's Planning Director and its Building Inspector call on various consultants, including those with specialized expertise, if needed, in the review process. Tulane University Regional Urban Design Center still participates in the architectural review process along with local architects, including those who participated in architectural reviews before the 2015 amendments to the CLURO.

Generally, the DRC meets with City officials at City Hall to perform the reviews and discuss the consultants' recommendations. There is no required quorum for such meetings. There is no vote taken at such meetings. Applicants are notified that the review meetings will occur and are invited to attend.

DISCUSSION

The right of access to public information is guaranteed by La. Const. art. XII, § 3, which provides, "[n]o person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law." See La. Atty. Gen. Op. No. 10-0121. The Open Meetings Law is found at La. R.S. 42:11 – 28. It regulates meetings of public bodies and provides that such meetings "shall be open to the public unless closed pursuant to R.S. 42:16 [executive sessions], R.S. 42:17 [other

reasons for executive session], or R.S. 42:18 [executive or closed meetings of legislative houses or committees].” La. R.S. 42:14.

For purposes of the open meetings law, “public body” means

village, town, and city governing authorities; parish governing authorities; school boards and boards of levee and port commissioners; boards of publicly operated utilities; planning, zoning, and airport commissions; and any other state, parish, municipal, or special district boards, commissions, or authorities, and those of any political subdivision thereof, where such body possesses policy making, advisory, or administrative functions, including any committee or subcommittee of any of these bodies enumerated in this paragraph.

La. R.S. 42:13A(3) (emphasis added). “Meeting” means

the convening of a quorum of a public body to deliberate or act on a matter over which the public body has supervision, control, jurisdiction, or advisory power. It shall also mean the convening of a quorum of a public body by the public body or by another public official to receive information regarding a matter over which the public body has supervision, control, jurisdiction, or advisory power.

La. R.S. 42:13A(2).

The foregoing provisions of the Open Meetings Law are to be liberally construed:

It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that citizens be advised of and are aware of the performance of public officials and the deliberations that go into the making of public policy. Toward this end, the provisions of this Chapter shall be construed liberally.

La. R.S. 42:12(A).

The sections of the CLURO at issue are beautification and preservation ordinances. Each relevant section makes architectural features and the appearance of buildings and land within each district central to the regulation and restriction on the use of property. In fact, the appropriateness of architectural features and appearance of lands, buildings, and structures are the only determinations made by the City under the relevant sections of the CLURO.

The land use provisions at issue serve the public interest by the following: promoting the health, safety, welfare and aesthetics of the community, CLURO §§ 1.2.3, 1.2.4; defining a sense of community and promoting the culture, history, and environment for the betterment of the City, CLURO § 7.5.18(1); creating a sense of place as identified

by the citizenry, CLURO § 7.6.2.2(2); and promoting the educational, cultural, economic, and general welfare of the City by protecting architecturally worthy buildings, structures, streetscapes, etc. CLURO § 7.6.4.1. Thus, according to the terms of the CLURO, its regulations are of paramount public interest and essential to the public good.

To carry out the objective of the CLURO, the ordinance assigns the responsibility to review, advise, administer, and, at times, legislate with respect to land use in the districts to an appointed group composed of the Planning Director and consultants who hold contracts with the City designated either through the City Council or by the Mayor.³ Based upon information provided in the opinion request, the meetings of the advisory review group are not casual or informal. Rather, the group apparently meets regularly, consistently, and routinely at City Hall.

That the ordinance does not refer to a "quorum" of the appointed advisory review group does not necessarily negate the character of the group as a public body. While the ordinance is silent on the requirement of a quorum for the meetings, it expressly provides that the Planning Director in consultation with certain designated consultants shall review applications for development and may act on the applications if satisfied that the ordinal criteria are met. This suggests that the full body of consultants together with the Planning Director function as a *de facto* review committee that "possesses policy making, advisory, and administrative functions" and in many instances pass on applications for development in the subject districts. A quorum of that group, inescapably a committee, would simply be a majority of the total membership of the group by operation of statute. See La. R.S. 42:13(A)(4).

Louisiana courts often have stated that the purpose of the Open Meetings Law is to allow the public to observe and evaluate public officials, public conduct, and public institutions. The law "is meant to protect citizens from secret decisions made without any opportunity for public input." *Courvelle v. Louisiana Recreational & Used Motor Vehicle Comm'n*, 2008-0952, pp. 5-6 (La. App. 1 Cir. 06/19/09), 21 So. 3d 340, 344-45.

Accordingly, "every meeting of a public body shall be open to the public unless closed pursuant to R.S. 42:16 [executive sessions], R.S. 42:17 [other reasons for executive session], or R.S. 42:18 [executive or closed meetings of legislative houses or committees]." La. R.S. 42:14(A). A public body is not permitted to circumvent the open meetings law by deliberating informally to make decisions. Such deliberations must be open to the public. See La. Atty. Gen. Op. Nos. 04-0128, 14-0140.

³ For instance, the Planning Director is authorized to, *inter alia*, interpret the CLURO, review and approve all administration and building permit applications, and ensure that architectural features and appearances of each zone satisfy the CLURO. In the historic district, the Planning Director, in consultation with the designated advisory review consultants, is empowered to exercise discretion to approve certain changes to buildings or structures. CLURO § 7.6.4.10.

The DRC is similar to the trust fund advisory group discussed in *In Re Edward Wisner Donation*, 2014-0027 (La. App. 4 Cir. 09/18/14), 150 So. 3d 391. The New Orleans City Council created an advisory committee to consult with and advise the Mayor relative to the administration of a trust funded by a donation from a citizen, Edward Wisner. The advisory committee's function was the supervision, direction, and administration of "lands, funds, and avails" of the trust. *Id.* at 14, 150 So. 3d at 399. Finding the advisory committee a public body, the court observed:

The City Council, an indisputable public body, formed the Advisory Committee, and referred to it the authority to control all matters relating to said trust. Among the functions granted to the Advisory Committee by the City Council were supervision, direction, and administration. Given the plain language in [the] Open Meetings Law and the LHSAA decision, it is glaringly obvious that the Advisory Committee meets the definition of a public body.

Id. at 18, 150 So. 3d at 401-02 (internal punctuation omitted).

The review group consisting of the Planning Director and consultants was created by the CLURO. The group's function is to interpret, advise about, and administer the relevant sections of the CLURO. The members of the group, designated by the Mayor or City Council, meet to make determinations on development applications; apply the architectural and beautification provisions of the ordinance; advise other city committees; and interpret, administer, and render decisions on land use applications. The group meets regularly and with a degree of formality at Mandeville City Hall. In many instances, the group is the sole arbiter in deciding whether the proposed use of land in Mandeville fulfills the objectives of the beautification and preservation provisions of the CLURO. To leave the public out of the DRC's deliberations gives Mandeville's citizens no say in what happens in the affected areas of the City and would defeat the purpose of the Open Meetings Law. The review group, undoubtedly a committee of City government, meets the definition of a public body and thus is constrained to comply with the Open Meetings Law.

We hope this sufficiently answers your inquiry; however, if we may be of further assistance please do not hesitate to contact our office.

Sincerely yours,

JEFF LANDRY
ATTORNEY GENERAL

By: 

RICHARD L. TRAINA
Assistant Attorney General

JL/RLT/mj