

ASK THE LEAGUE, JUNE 2015

A member of our PC/ZBA/DRB missed the first hearing for an application for development review. The hearing was continued. Can that absent member participate in the second part of the hearing?

The answer depends on whether this issue is addressed in the rules of procedure for that Appropriate Municipal Panel (AMP, or planning commission, zoning board of adjustment, or development review board performing development review), whether an alternate has already been assigned to the pending case, and/or whether the town has adopted the Municipal Administrative Procedures Act (MAPA).

If an alternate has already been utilized, then that alternate will serve in that member's stead for the duration of the hearing including the conclusion of the hearing, its deliberative session, and issuance of the decision as a full voting member. If the town has adopted MAPA, then "(m)embers who have not attended every session of the board in a contested hearing may participate in the decision if they have listened to the recording of the testimony they have missed (or read transcripts of this testimony) and reviewed all exhibits and other evidence, prior to deliberation." 24 V.S.A § 1208(b). If an alternate has not been assigned, the town has not adopted MAPA and the rules of procedure do not address the situation, then the AMP could contact the applicant, explain the situation, and ask if he or she would agree to have the absent member listen to any audiotapes, if available, and review the minutes and written evidence submitted during the course of the proceedings in order for that member to participate in the future. Because the due process rights of interested persons are also implicated, we would also recommend that the AMP have the interested persons assent in writing before it moves forward.

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