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How To Determine Best Format For Annual Building Meetings

By *Robert Braverman*

Over the next several weeks, hundreds of New York City co-ops and condominiums will be conducting their annual meetings. Like many other facets of our daily lives, the COVID-19 pandemic has left an indelible mark on how annual meetings are conducted.

Indeed, since March 2020, crowded lobbies — or even worse, basements and middle school gyms without air conditioning — have been much less frequently turned into makeshift meeting centers.

An equally endangered species, though, is the cordial gathering of neighbors getting together to be updated on the state of their common-interest community and to elect a group of brave volunteers to the board to govern the community.

At supposedly old-fashioned in-person annual meetings, people sometimes accuse the board of trying to stifle unit owner participation by not conducting the meeting in a virtual format.

On the other hand, some attendees who attend annual meetings held via Zoom flood the chat with protests that the meeting should have been held using an in-person format, which they claim would have lent itself to a higher level of owner participation.

Although vocal minorities exist in many New York City co-ops and condominiums, both the pro-Zoom and anti-Zoom factions in each of these buildings raised valid points that deserve attention.

Thanks to recent amendments to the Business Corporation Law, which governs co-ops, and the Condominium Act, which governs condominiums, there is no longer any question that both co-ops and condominiums can have virtual meetings for shareholders and unit owners, even if their governing documents do not contemplate having meetings in a virtual format. But just because you can, doesn't mean you should.

Keeping it Old School

Owner meetings in co-ops and condominiums can be viewed as remnants of mid-17th century New England town meetings where the townspeople assembled to discuss all matters that affected the community.[1]

While the topics of discussion at a 21st-century owner meeting may not be as weighty as whether to break away from an overseas monarch, people tend to get very invested in and want to have a say in what's happening in their co-op or condominium building. It's likely the place where they live and consists of their most significant asset.

It is fair to say that a healthy dialogue on issues such as the financial health of the building, the need for future capital improvement projects and changes in a neighborhood would likely be more productive in a meeting that was conducted in person rather than through the use of a chat feature, the raising of a virtual hand or by way of a written question submitted in advance of the meeting.

And, when it comes to the voting process, which is arguably the cornerstone of any annual meeting, there really is little doubt that an in-person format — where proxies are collected at a sign-in desk before the meeting is called to order, candidates make a short speech, last-minute candidates are given an opportunity to run from the floor, and votes are cast on a paper ballot and returned for tallying before the end of the meeting — works better than some of the more cumbersome workarounds to the voting process that have evolved over the past three years.

It's true that co-op and condominium annual meetings are historically fertile ground for outrageous and offensive behavior, which is much more easily controlled by a simple press of a mute button.

However, some owners view their annual meeting as a rare opportunity to take a pause in their busy schedules and get together with neighbors whom they may not otherwise have had an opportunity to frequently see and collectively discuss and exchange ideas about their building — often with a glass of wine in hand.

This type of healthy and rewarding interaction is lost in a virtual format.

Getting With the Times

On the other hand, pro-Zoom attendees argue that they can simply get together with their neighbors at the annual holiday party instead. They cite the advantages of having an accountant share their screen when presenting the last year's audited financials, and linking to any documents that are to be reviewed during a meeting.

Additionally, the occasional negative incident — like when a single neighbor takes over the meeting with rants about board members, causing a meeting to last until 10 p.m. — can discourage owners from attending in-person meetings.

Those would be all fair points borne out by the fact that there is an industrywide sentiment that virtual meetings are better attended than in-person meetings due to the convenience factor.

Owners who don't live near the building, owners who work late or are on vacation, and owners who might otherwise need to find child care may be able to simply log in and join a virtual meeting.

This is particularly true with condominiums, where there is typically a lower percentage of owner-occupants. Since the onset of the pandemic, some buildings have been able to achieve quorum for the first time in many years, almost certainly due to the virtual format.

So, yes, a board is more likely to obtain a higher level of attendance at a virtual meeting than at an in-person one. And, yes, the virtual format's mute feature provides a method to prevent grumpy neighbors from taking over the meeting. But there should be a way to achieve those objectives while having some semblance of a town meeting, which after all is a bedrock of American democracy.

The Hybrid Meeting

A logical compromise that would satisfy both the pro-Zoom and anti-Zoom factions would take the form of having an in-person meeting with the ability to log into the meeting from a Zoom or other virtual platform link.

Unfortunately, in the absence of the utilization of a professional production team with higher-end audio and visual equipment, a hybrid format typically doesn't work well.

The people attending in person cannot hear or have trouble hearing and cannot see which of their neighbors are attending virtually, and those attending virtually have the same issues as those attending in person.

While future advances in the virtual meeting arena may result in hybrid meetings becoming more user-friendly, right now, that format would only make sense for a larger building where the per-owner cost for the production team would be nominal.

A Modern Approach With an Old-School Twist

There is no doubt that virtual owner meetings for co-ops and condominiums are here to stay. However, it is also inescapable that, like the natural sound of a vinyl record, there are features of in-person meetings that cannot be replicated by a virtual platform.

Accordingly, co-op and condominium boards are well advised to consider when and under what circumstances to have a virtual meeting and when to have an in-person one.

In most instances, a virtual meeting where information, such as the prior year's audited financial statement, is disseminated in advance of the meeting, and participants are afforded an opportunity to verbally communicate — i.e., at a designated point during the course of the meeting, they are unmuted — will work best because it will likely attain the highest amount of participation without owners feeling like they are attending a webinar and are being prevented from asking questions and presenting their point of view.

In other words, the board's goal should be to conduct a virtual meeting that feels as close to an in-person meeting as possible.

The opportunity for interaction best presents itself at the end of the meeting after the agenda has been completed, and the election has been conducted.

Alternatively, a set period of time for an initial Q&A limited to the agenda item just completed can be designated between agenda presentations, with time reserved at the end of the meeting for additional Q&A.

Where there is a possibility of one or more angry neighbors attending the meeting, a premeeting admonition can and should be made that bad behavior will result in the utilization of the mute feature. Boards should also allow for the submission of premeeting questions that can be read and answered by a designated panelist.

If a board's objective is to have a virtual meeting that has an in-person feel, consideration should be given to disabling the chat feature on the virtual platform.

First, this feature can be used to distract attendees from the business at hand.

Second, in an in-person setting, there wouldn't be side chats between attendees conversing about several different topics while the board is trying to get through the meeting agenda. Assuming people are going to have an opportunity to speak, there is no reason to also have a live chat feature available during the course of the meeting.

While somewhat more challenging than the ability to have a controlled dialogue, the election and voting process should also be as close to what would transpire at an in-person meeting as possible, including, but not limited to, attendees casting their vote and the vote for anyone they are holding a proxy for, during the course of the meeting, not before the meeting and not after the meeting is closed.

Almost all governing documents for New York City co-ops and condominiums require votes to be cast in person or by proxy at the meeting. Putting a ballot in a box in the lobby several days before or even after the meeting or other forms of absentee voting would likely be found to be invalid in connection with an election challenge.

Similarly, if an owner gives a proxy to a third party, that individual cannot just submit the proxy to the managing agent without signing in to the meeting. Rather, the proxy holder must attend the virtual meeting just as they would have to attend an in-person meeting.

The process for submitting votes should also be clearly explained in written materials disseminated with a save-the-date notice, the official notice of meeting and any reminder communications.

In 2021, the Supreme Court of the State of New York, New York County, confirmed in *Roberts v. WWH Housing Corp.* that under New York Business Corporation Law Section 619, no ballot, proxies or consents, nor any revocation thereof or changes thereto, shall be accepted by the inspectors after the closing of polls, and that the polls shall close at the end of the meeting.^[2]

Thus, while the concept of holding a meeting open is sometimes utilized to get a vote over the top, and, since the advent of virtual meetings, a procedure used to extend the time to transmit votes, the enforceability of the mechanism is questionable.

While an owner or shareholder meeting can certainly be adjourned to a specific date, leaving the meeting open is not statutorily contemplated by either the BCL or the Condominium Act, and could be found to run afoul of BCL Section 619.

With the implementation of these measures, absent special circumstances where there is a strong need for the owners' physical presence, such as presentations of fabric, wood or other material samples for new finishes for the lobby, hallways or elevators, boards should be able to have an appropriately interactive and productive annual meeting in a virtual format.

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[1] New Hampshire Municipal Association Resources and Publications. www.nhmunicipal.org/town-city-article/evolution-town-meeting#:~:text=Town%20Meeting%20in%20History,matters%20that%20impacted%20the%20community.

[2] Roberts vs. WWH Housing Corp., et. al., 2021 WL 5707438 (N.Y. Sup. 2021).