

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

John Carr,

Complainant

against

Docket #FIC 2017-0519

Chairman, Planning and Zoning Commission,  
Town of Bridgewater; Planning and  
Zoning Commission, Town of Bridgewater;  
and Town of Bridgewater,

Respondents

August 8, 2018

The above-captioned matter was heard as a contested case on December 20, 2017, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. A Report of Hearing Officer, dated March 9, 2018, was considered but not adopted by this Commission at its regular meeting of April 25, 2018. On the hearing officer's own motion, the hearing was reopened for the purpose of taking additional evidence. Such reopened hearing was held on May 30, 2018, at which time the complainant and the respondents appeared and presented additional testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies, within the meaning of §1-200(1), G.S.
2. By letter dated and filed September 5, 2017, the complainant appealed to this Commission, alleging that, at a special meeting held on August 7, 2017, the respondents violated the Freedom of Information ("FOI") Act by conducting "an unannounced 'executive meeting'" and failing "to issue any minutes including any actions or votes of the [planning and zoning] commission." The complainant further alleged that "it is clear that the commission...made decisions and took actions at this meeting." The complainant requested that this Commission "investigate this illegal meeting and take appropriate action."
3. The complainant is the owner of a 24 acre parcel of land in the town of Bridgewater, Connecticut. Beginning in 1997, on several occasions, the complainant sought approval from the respondent commission ("respondent commission") of a subdivision plan for an affordable housing project, called Joshua Heights, to be located on that property. The respondent commission denied each application, and in 2002, the complainant appealed such denial to the superior court, which sustained the appeal, reversed the decision of the respondent commission,

and approved the application with certain revisions and subject to certain conditions, one of which was approval of the septic system by the state Department of Energy and Environmental Protection (“DEEP”). See Carr v. Bridgewater Planning and Zoning Commission, CV-020518060-S, superior court, judicial district of New Britain (August 7, 2003). The Supreme Court upheld the trial court’s decision. See Carr v. Planning and Zoning Commission of the Town of Bridgewater, 273 Conn. 573, 610 (2005).

4. The complainant then sought the necessary approval from DEEP, and on April 3, 2017, the DEEP issued such approval.

5. Thereafter, by letter to the respondent commission, dated April 6, 2017, the complainant requested that it issue a zoning permit for Joshua Heights (“April 6<sup>th</sup> letter”), and submitted with such letter modified site plans for the project, which the complainant contended contained “court ordered modification[s] to the original plans.”

6. The respondent chairman (“chairman”), however, by letter dated May 1, 2017, informed the complainant that he considered the modified site plans to be “utterly different from the plans Judge Mottolese required the [respondent] commission to approve.” The chairman further informed the complainant that if he intended to seek approval of the plans submitted with the April 6<sup>th</sup> letter, he would need to file a “formal application for approval” with the respondent commission.

7. The complainant and the respondents communicated further concerning the meaning of the court’s order, and the respondents requested an opinion from their legal counsel. By letter dated June 13, 2017, counsel for the respondents opined that the court’s order did not obligate the respondent commission to approve the modified site plans, and that the complainant must file a new application for approval of the modified site plans, if he wished to pursue such plans.

8. It is found that the members of the respondent commission discussed the Joshua Heights proposal during their July 20, 2017 regular meeting, at which the complainant appeared with counsel. During such discussion, counsel for the complainant reiterated his position that the court’s order required the respondent commission to approve the modified site plans, and at least two members of the respondent commission expressed their disagreement with that interpretation. Counsel for the complainant suggested that he might seek a contempt order against the respondents for failure to approve the modified site plans. The respondent commission took no action with regard to the April 6<sup>th</sup> letter during the July 20<sup>th</sup> meeting, and the chairman stated that he would seek legal advice from counsel regarding the process for seeking clarification of the judge’s decision.

9. On August 7, 2017, the respondent commission held a special meeting (“special meeting”). The agenda for the special meeting listed one item of business: “Executive Session to discuss Joshua Heights.”

10. It is found that the minutes of the special meeting indicated that the meeting was called to order at 6:30 p.m., and that, immediately, the members present voted to enter into executive session. The chairman testified, and it is found, that the purpose of the executive

session was to discuss with counsel the suggestion made by the complainant's counsel during the July 20<sup>th</sup> meeting, that he was considering seeking to have the respondent commission held in contempt.

11. The chairman further testified, and it is found, that the members present did not vote or take action during the executive session on the request contained in the April 6<sup>th</sup> letter for approval of the modified site plans. It is found that the minutes of the special meeting reflect that no vote concerning the request was taken during the very brief public portions of that meeting.

12. It is found that, by letter dated August 15, 2017, in response to a request for legal advice from the respondent commission, the respondents' counsel provided to the respondents another legal opinion regarding Joshua Heights, in which counsel reiterated their earlier opinion that the court's order did not obligate the respondent commission to approve the modified site plans, and that the complainant must file a new application for approval of the modified site plans, if he wished to pursue such plans ("August 15<sup>th</sup> opinion"). The August 15<sup>th</sup> opinion also stated that it would be very "unlikely that the court would find that the commission's position warranted a finding of contempt."

13. It is found that a copy of the August 15<sup>th</sup> opinion was provided to the chairman and to all members of the respondent commission. The chairman testified, and it is found, that upon his receipt of the August 15<sup>th</sup> opinion, he contacted Attorney Zizka, one of the opinion's authors, and asked him to draft a letter to the complainant informing the complainant that if he wished to pursue the Joshua Heights project, he would need to submit a new application. It is found that the chairman alone made the decision to ask the attorney to draft such letter for consideration by the members of the respondent commission at its August 17, 2017 regular meeting ("August 17<sup>th</sup> meeting"). It is found that, from the time the August 15<sup>th</sup> opinion was issued to the time of the August 17<sup>th</sup> meeting, there was no discussion of the August 15<sup>th</sup> opinion among the members of the respondent commission.

14. It is found that Attorney Zizka drafted the letter requested by the chairman, and that, during the respondent commission's August 17<sup>th</sup> meeting, the chairman read the letter, which was addressed to the complainant from the respondent commission, into the record. In that letter, which was post-dated August 18, 2017, the complainant was informed that, with regard to his April 6<sup>th</sup> letter requesting approval of the modified site plans for Joshua Heights, "[f]ollowing consultation with our attorneys, we believe the 2003 decision does not apply to your current plans....The [respondent] commission urges you to file a proper application with the appropriate technical details...so that we can jointly begin a cooperative process to review your new proposal."

15. It is found that, during the August 17<sup>th</sup> meeting, the members of the respondent commission voted to adopt the letter, described in paragraphs 13 and 14, above, which letter was presented to the complainant at such meeting.

16. Section 1-225(a), G.S., provides:

[t]he meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. The votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours and shall also be recorded in the minutes of the session at which taken. Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection and posted on such public agency's Internet web site, if available, except that no public agency of a political subdivision of the state shall be required to post such minutes on an Internet website. Each public agency shall make, keep and maintain a record of the proceedings of its meetings.

17. The complainant argued that the respondents must have improperly voted or come to a consensus in executive session to deny his April 6<sup>th</sup> request because there had not been any public vote to do so. However, as found in paragraph 15, above, the respondent commission voted in public to adopt the August 18<sup>th</sup> letter during their August 17<sup>th</sup> meeting, which vote effectively denied the complainant's April 6<sup>th</sup> request for approval of the modified site plans. Based on all of the evidence and testimony in this case, it is found that the respondents did not vote or come to a consensus to deny the request contained in the April 6<sup>th</sup> letter during the August 7<sup>th</sup> executive session.<sup>1</sup>

18. Accordingly, it is concluded that the respondents did not violate §1-225(a), G.S., as alleged.

19. With regard to the allegation that the respondents held an "unannounced" meeting, the complainant argued that the respondents failed to file the agenda for the August 7<sup>th</sup> special meeting with the town clerk, and failed to post the agenda on the town's website, at least 24 hours in advance of the meeting.

20. Section 1-225, G.S., provides, in relevant part:

(d) Notice of each special meeting of every public agency...shall be posted not less than twenty-four hours before the meeting to which such notice refers on the public agency's Internet web site, if available, and given not less than twenty-four hours prior to the time of such meeting by filing a notice of the time and place thereof...in the office of the clerk of such subdivision for any public agency of a political subdivision of the state....The secretary or clerk

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<sup>1</sup> Based on this factual finding, the Commission need not address the complainant's additional claim that the respondents' impermissible votes were not reflected in the minutes of the August 7<sup>th</sup> meeting.

shall cause any notice received under this section to be posted in his office....

(g) In determining the time within which or by when a notice, agenda, record of votes or minutes of a special meeting or an emergency special meeting are required to be filed under this section, Saturdays, Sundays, legal holidays and any day on which the office of the agency, the Secretary of the State or the clerk of the applicable political subdivision or the clerk of each municipal member of any multitown district or agency, as the case may be, is closed, shall be excluded. (Emphasis added).

21. With respect to the 24 hour notice requirement contained in §1-225(d), G.S., the Commission generally has concluded that such provision is meant to ensure that notice of a special meeting is posted in a town clerk's office for at least a 24 hour period that includes a minimum of one full business day. See David LaPointe v. Board of Education, Winchester Public Schools, Docket #FIC 2005-042 (January 25, 2006). Moreover, the Commission has analyzed the notice provisions of §1-225(d), G.S., with the aim of ensuring a reasonable, fair and consistent result. Id.

22. The complainant argued that "one full business day" means that there must be "at least 8-9 hours of open office time for people to have the opportunity to review the meeting notice and agenda." Plaintiff's Memorandum of Law, dated April 11, 2018 at p. 6. According to the complainant, in this case, the 24 hour notice requirement was not met because the office was open for only "one hour on Friday and one hour on the following Monday."

23. It is found, in the present case, that the agenda for the August 7<sup>th</sup> special meeting was filed with the town clerk on Friday, August 4, 2017, at 11:02 a.m., and that the town hall closed at 12:30 p.m. on that Friday. The Commission takes administrative notice of the town's website which indicates that the regular business hours for the town clerk's office on Mondays are from 8:00 a.m. to 12:30 p.m. The Commission also takes administrative notice of the fact that the regular business hours for the town clerk's office on Wednesdays, Thursdays and Fridays are from 8:00 a.m. to 12:30 p.m.; and on Tuesdays from 8:00 a.m. to 3:30 p.m.<sup>2</sup>

24. Absent any evidence to the contrary, it is therefore found that the town clerk's office was open during its regular business hours (8:00 a.m. to 12:30 p.m.) on Monday, August 7, 2017.

25. Based on the particular facts of this case, it is found that a "full business day" for the town clerk's office in the town of Bridgewater on Mondays, Wednesdays, Thursdays and Fridays, is reasonably construed as beginning at 8:00 a.m., and ending at 12:30 p.m., and it is further found that the agenda in this case was posted for at least a full business day, excluding Saturday and Sunday in the calculation. If the complainant's interpretation were accepted, on the

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<sup>2</sup> Additionally, the Commission observes that the regular business hours of several other departments within the town of Bridgewater are from 8 a.m. to noon (or thereabouts) on most business days.

other hand, an agenda for a meeting of a public agency in the town of Bridgewater would be required to be filed at least two business days in advance of a meeting in order for such agenda to be posted for "one full business day." Such interpretation is contrary to the language of the statute requiring a minimum of 24 hours' notice.

26. It is therefore found that the agenda was filed at least 24 hours in advance of the special meeting and, accordingly, it is concluded that the respondents did not violate §1-225(d), G.S., as alleged.


27. It is found that the agenda was posted on the town's website on Saturday, August 5, 2017, at 2:28 pm. It is concluded that, in calculating the time by which an agency is required to post an agenda to its website, Saturdays, Sundays, and days on which the office is closed, are not excluded by the plain language of §1-225(g), G.S. Accordingly, it is concluded that the respondents posted the agenda for the special meeting on the town's website more than 24 hours in advance of such meeting, and therefore did not violate §1-225(d), G.S., as alleged.

28. At the hearing in this matter, the complainant also argued that the respondent commission entered into executive session during the special meeting for an improper purpose, and that the agenda was not specific enough to describe the business to be transacted at that meeting. It is found, however, that such allegations were not fairly raised in the complaint, and that therefore, the commission lacks jurisdiction to consider them herein.<sup>3</sup>

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 8, 2018.

  
Cynthia A. Cannata  
Acting Clerk of the Commission

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<sup>3</sup>The commission reminds the respondents, however, that, although it may be permissible under the FOI Act for a public agency to convene in executive session to discuss a written legal opinion from counsel, it is not permissible to convene in executive session to obtain oral legal advice from counsel, unless the executive session is permitted by §1-200(6). See §1-231(b), G.S.

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

**JOHN CARR**, 27 Laurel Hill Road, Bridgewater, CT 06752

**CHAIRMAN, PLANNING AND ZONING COMMISSION, TOWN OF BRIDGEWATER; PLANNING AND ZONING COMMISSION, TOWN OF BRIDGEWATER; AND TOWN OF BRIDGEWATER**, c/o Attorney Kari L. Olson, Murtha Cullina LLP, 185 Asylum Street, Cityplace I, Hartford, CT 06103

  
Cynthia A. Cannata  
Acting Clerk of the Commission

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