

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Richard Holleran,

FINAL DECISION

Complainant

Docket #FIC84-28

against

August 8, 1984

Planning and Zoning Commission
of the Town of Greenwich.

Respondent

The above captioned matter was heard as a contested case on April 24, 1984 at which time the complainant and the respondent appeared and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record the following facts are found:

1. A notice published in Greenwich Time, a newspaper, on December 20, 1983 indicated that at a regular meeting held on December 15, 1983 the respondent had adopted certain resolutions.

2. By letter of complaint dated January 17, 1984 and filed with the Commission on January 18, 1984 the complainant alleged that actions taken by the respondent on November 1, 1983 and December 15, 1983 were improper.

3. By letter dated January 25, 1984 the complainant was advised by the Commission that his complaint had not been docketed because it had not been filed within 30 days of the alleged violations.

4. By letter dated February 14, 1984 the complainant advised the Commission that his complaint had been filed within 30 days of his having become aware of illegal actions taken by the respondent on or about November 1, 1983, that the December 15, 1983 action of the respondent were based upon the November 1, 1983 actions and that the December 15, 1983 actions should therefore be declared null and void. The complainant asked that his complaint be heard on the basis of his having become aware of the alleged illegal actions on December 20, 1983.

5. §1-2li(b), G.S. at all times relevant to the complainant's complaint provided that "[a]ny person . . . wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by [the FOIA] may appeal therefrom, within thirty days, to the Freedom of Information Commission.

6. §1-2li(b) has, since the filing of the complainant's complaint, been amended to read as follows:

notice of [an] appeal shall be filed within thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed within thirty days after the person filing the appeal receives notice in fact that such meeting was held.

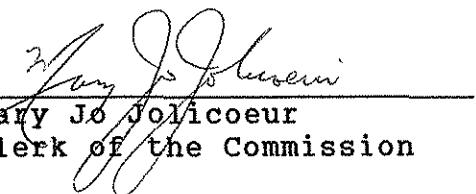
7. The Commission finds unpersuasive the complainant's claim that the time frame in §1-2li(b), as written at the time of this complaint, should begin with the discovery on December 20, 1984 of the respondent's November 1, 1983 and December 15, 1983 acts.

8. It is therefore concluded that the Commission lacks jurisdiction to consider the allegations contained in the complainant's complaint letters of January 17, 1984 and February 14, 1984.

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

1. The complaint is hereby dismissed for lack of jurisdiction.

Approved by order of the Freedom of Information Commission at its regular meeting of August 8, 1984.



Mary Jo Jolicoeur
Clerk of the Commission

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by FINAL DECISION

Richard Holleran,

Complainant

against

Docket #FIC 84-28

Planning and Zoning Commission
of the Town of Greenwich,

Respondent

October 22, 1986

This case was originally heard on April 24, 1984 and was dismissed for lack of jurisdiction upon a finding that the complainant failed to file his complaint within 30 days of an alleged violation of the Freedom of Information Act. Upon appeal to Superior Court in Richard Holleran v. Freedom of Information Commission, et al., Docket No. 297957, Super. Ct., J.D. Hartford-New Britain at Hartford (Memorandum of Decision dated October 18, 1985), Judge Mary Hennessey ordered the Freedom of Information Commission to rehear the case in light of P.A. 84-136, "in order that the FOIC may determine whether the facts (and dates) indicate sufficient jurisdiction under this court's interpretation of Conn. Gen. Stat. §1-21i(b)." The matter was again heard as a contested case on August 5, 1986 pursuant to the Appellate Court's June 19, 1986 decision dismissing for lack of jurisdiction the Town of Greenwich's appeal of Judge Hennessey's decision, which appeal was designated as Docket No. A.C. 4661.

1. The first six paragraphs of the Final Decision in FIC Docket #84-28, dated August 8, 1984, are hereby incorporated as if more fully set forth herein.

2. The respondent is a public agency within the meaning of §1-18a(a), G.S.

3. At a regular meeting held on October 4, 1983 the respondent considered "site plan #917," a preliminary plan for retail/office/church uses of "St. Mary's" at 200 Greenwich Avenue. The respondent voted to advise the applicant to proceed to final plan subject to certain conditions, including the obtaining of a variance from the planning and zoning board of appeals [PZBA] for church use above 12,000 sq. ft.

4. In a memorandum dated November 1, 1983, the zoning enforcement officer [ZEO] for the Town of Greenwich notified the respondent that "[a]fter reviewing the testimony of the St. Mary's Appeal No. 6177 and discussing its use with Mr. Paul Lynch, Chairman of the Planning and Zoning Board of Appeals and other Board members, we are of the opinion that the granting of the variance for the parish hall use is incidental to the other uses, . . . [and that] the additional 2,000 square feet will not require another hearing before the Planning and Zoning Board of Appeals." The memorandum was also signed by the chairman of the PZBA.

5. At a regular meeting held on December 15, 1983 the respondent approved the site plan for St. Mary's Church/Trafalgar House Real Estate, Inc. and granted a special permit authorizing the construction of a commercial building at 200 Greenwich Avenue.

6. The complainant alleges that the November 1, 1983 memorandum was the result of an illegal, secret or unnoticed meeting of the PZBA and that the December 15, 1983 action of the respondent taken in reliance upon such memorandum must, therefore, be declared null and void.

7. It is found that among the responsibilities of the ZEO is the responsibility of offering interpretations of and opinions on zoning regulations. The ZEO, who is not a member of the PZBA, discussed the "St. Mary's" application with the chairman of the board of appeals and issued a memorandum which reflected his interpretation, in consultation with the chairman of the PZBA, of applicable zoning regulations. Although the memorandum referred to other members of the PZBA, in fact only the ZEO and the chairman of the PZBA were involved in the discussion.

8. It is further found that the discussion between the ZEO and the chairman of the PZBA was not a "meeting" within the meaning of §1-18a(b), G.S. and did not violate §1-21(a), G.S. as alleged by the complainant.

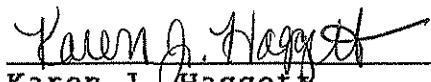
9. The complainant did not allege that the December 15, 1983 meeting of the respondent was secret, unnoticed or otherwise procedurally defective except to the extent that the respondent relied upon the November 1, 1983 memorandum in reaching its decision on the "St. Mary's" application.

10. The complainant's request for relief with respect to the respondent's December 15, 1983 action on the "St. Mary's" application is, therefore, denied.

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

1. The complaint is hereby dismissed.

Approved by order of the Freedom of Information Commission at its regular meeting of October 22, 1986.



Karen J. Haggett
Clerk of the Commission