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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Lisa Lind-Larsen,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-042

Planning Commission, Town of Redding; and
Town of Redding,
Respondent(s)

September 7, 2012

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Thursday, September 27, 2012**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE September 14, 2012**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE September 14, 2012**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fourteen (14) copies** be filed **ON OR BEFORE September 14, 2012**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: Lisa Lind-Larsen
Matthew L. Stone, Esq.

9/7/2012/FIC# 2012-042/Trans/wrbp/CAL/GFD

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Lisa Lind-Larsen,

Complainant

against

Docket # FIC 2012-042

Planning Commission, Town of
Redding; and Town of Redding,

Respondents

September 6, 2012

The above captioned matter was heard as a contested case on June 14, 2012, at which time the complainant and the respondents appeared and presented 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)(A), G.S.
2. It is found that by letter dated December 29, 2011, the complainant made a request to the respondents for "a copy of a report with notes submitted by Mr. John Hayes earlier this month with respect to title issues pertaining to [complainant's] property at 6 Packer Brook Road" (the "requested records").
3. It is found that by letter dated January 10, 2012, Jo-an Brooks, Land Use Coordinator for the respondent Commission, in effect, denied the complainant's request, stating that: a) there was no report by Mr. Hayes; b) she had returned his undated handwritten notes regarding 6 Packer Brook Road to Mr. Hayes "because they did not supply the chronological outline...that I thought might be helpful"; and c) there was an exception to mandatory disclosure for preliminary notes.
4. It is found that, by letter dated January 24, 2012 and filed with the Commission on January 25, 2012, the complainant appealed to the Commission, alleging that the failure of the respondents to provide the requested records violated the Freedom of Information Act ("FOIA").

5. Section 1-200(5), G.S., provides:

"Public records or files" means any recorded data or information relating to the conduct of the public's business

prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method. (emphasis added)

6. Sections 1-210(a) and 1-212(a), G.S., state, respectively, in relevant parts:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

...

Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

7. It is found that this case originated out of a protracted real estate and property tax dispute between the complainant and the Town of Redding. However, most of the long factual history of this dispute is not relevant to this case, which addresses only the records submitted by Mr. Hayes to the respondents in December 2011.

8. It is found that on October 19, 2011 a meeting was held at the respondent Commission's offices between the complainant, Jo-an Brooks, and John Hayes, a land use and planning consultant for the respondents. Mr. Hayes took detailed notes of the discussion at the meeting.

9. It is found that, following the meeting, Ms. Brooks asked Mr. Hayes to prepare a summary concerning the issue of whether the 8.4 acre lot at 6 Packer Brook Road included a separate two acre building lot or not. Mr. Hayes submitted handwritten records to Ms. Brooks, but she returned these records to Mr. Hayes. At the hearing, Ms. Brooks testified that the records Mr. Hayes submitted were not what she asked for and that she returned them to him shortly after receiving them because they seemed "useless". The complainant testified that Mr. Hayes told her during a telephone conversation on December 28, 2011 that the requested records had been returned to him.

10. It is found that at the time of the hearing Mr. Hayes was undergoing intensive radiation therapy on a daily basis at the Smilow Cancer Center of Yale/New Haven Hospital. In lieu of providing sworn testimony, counsel for the respondents submitted an affidavit from Mr. Hayes which includes the statement that the requested records "have been discarded". It is, therefore, found that the requested records do not exist.

11. It is concluded that the requested records, if they existed, would be "public records" within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S. The records related to the public's business and were received and used by a public agency. Moreover, the definition of "public records" at §1-200(5), G.S., includes records that are "handwritten".

12. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by failing to provide copies of records which their consultant, Mr. Hayes, had destroyed.

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.



Clifton A. Leonhardt
as Hearing Officer