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Michael Winkler,
Complainant(s)
against

Chairman, Planning and Zoning Commission,
Town of Vernon; Planning and Zoning Commission,
Town of Vernon; and Town of Vernon,
Respondent(s)

Notice of Meeting

Docket #FIC 2016-0149

September 30, 2016

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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, October 26, 2016.** 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 October 14, 2016.*** 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, an **original and fourteen (14) copies** must be filed ***ON OR BEFORE October 14, 2016.*** **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 **fifteen (15) copies** be filed ***ON OR BEFORE October 14, 2016,*** 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: Michael Winkler
Attorney Martin B. Burke

FIC# 2016-0149/Trans/wlbp/MS/TCB/TAH/2016-09-30

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by | Report of Hearing Officer

Michael Winkler,

Complainant

against | Docket #FIC 2016-0149

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

Respondents | July 13, 2016

The above-captioned matter was heard as a contested case on May 18, 2016, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The hearing was initially continued by the hearing officer at the respondents' request to take additional testimony. By letter dated May 23, 2016, however, the respondents indicated that a continued hearing would not be required and by notice dated June 7, 2016, the hearing officer ordered the hearing closed.

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. It is found that on February 18, 2016, the respondent Planning and Zoning Commission, (hereinafter "the respondent commission") adopted a policy governing the video recording of its meetings which in part required that tripods and cameras be located in a certain location but specifically prohibited cameras from being placed behind or adjacent to the table at which the respondent commission members sit.

3. By letter dated and filed on February 22, 2016, the complainant appealed to this Commission alleging that the respondent commission's policy prohibits video recording permitted and/or protected by statute and therefore, is in violation of the Freedom of Information ("FOI") Act.

4. At the hearing on this matter, the respondents moved to have the complaint dismissed contending that pursuant to §1-226(c), G.S., the Commission lacks subject matter jurisdiction to hear the complaint.

5. Section 1-226, G.S., provides in relevant part that:

> (a) At any meeting of a public agency which is open to the public, pursuant to the provisions of section 1-225, proceedings of such public agency may be recorded, photographed, broadcast or recorded for broadcast, subject to such rules as such public agency may have prescribed prior to such meeting, by any person or by any newspaper, radio broadcasting company or television broadcasting company. Any recording, radio, television or photographic equipment may be so located within the meeting room as to permit the recording, broadcasting either by radio, or by television, or by both, or the photographing of the proceedings of such public agency. The photographer or broadcaster and its personnel, or the person recording the proceedings, shall be required to handle the photographing, broadcast or recording as inconspicuously as possible and in such manner as not to disturb the proceedings of the public agency. As used herein the term television shall include the transmission of visual and audible signals by cable.
>
> (b) Any such public agency may adopt rules governing such recording, photography or the use of such broadcasting equipment for radio and television stations but, in the absence of the adoption of such rules and regulations by such public agency prior to the meeting, such recording, photography or the use of such radio and television equipment shall be permitted as provided in subsection (a) of this section.
>
> (c) Whenever there is a violation or the probability of a violation of subsections (a) and (b) of this section the superior court, or a judge thereof, for the judicial district in which such meeting is taking place shall, upon application made by affidavit that such violation is taking place or that there is reasonable probability that such violation will take place, issue a temporary injunction against any such violation without notice to the adverse party to show cause why such injunction should not be granted and without the plaintiff's giving bond. Any person or public agency so enjoined may immediately appear and be heard by the court

> or judge granting such injunction with regard to dissolving or modifying the same and, after hearing the parties and upon a determination that such meeting should not be open to the public, said court or judge may dissolve or modify the injunction. Any action taken by a judge upon any such application shall be immediately certified to the court to which such proceedings are returnable.

6. At the hearing on this matter, the respondents contended that violations of §1-226(a) and (b), G.S., are strictly under the jurisdiction of the superior court and pursuant to §1-226(c), G.S., the complainant was required to apply to the court or a judge by affidavit, stating that a violation is taking place or that there is reasonable probability that such violation will take place where upon the court or judge would have issued a temporary injunction.

7. Section 1-206(b)(1), G.S., however, provides that "[a]ny person ... denied any ... right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission.

8. It is concluded, therefore, that pursuant to §1-206(b)(1), G.S., this Commission has jurisdiction to hear and decide alleged violations of §1-226(a) and (b), G.S.

9. Further, §1-226(c), G.S., is directed to the court and clearly is a mandate that it issue a temporary injunction upon receipt of an application which states that a violation of §1-226(a) or (b), G.S., is taking place or that there is reasonable probability that such a violation will take place. In this regard, the court's power is limited to enjoining a public agency from whatever action it is undertaking or plans to undertake that may irreparably violate the public's rights under §1-226(a) or (b), G.S., and then to hear the parties with regard to dissolving or modifying the injunction. The statute provides that after hearing the parties, and then determining that the meeting at issue should not be open to the public, the court may dissolve or modify the injunction. There is nothing in the language of §1-226(c), G.S., that explicitly or implicitly limits this Commission's jurisdiction in this regard. It is clear that the court's role is in addition to, not in conflict with, the power of the FOI Commission under §1-206, G.S., to decide whether an agency has violated §1-226(a) and (b), G.S.

10. With respect to his allegation, the complainant contended at the hearing that the intent of §1-226(a), G.S., is to allow the visual and audio recording of a public meeting in such a manner that the public has full access to all that is transpiring at the meeting as though they were present, which access includes the ability to hear *and see* everything the respondent commission hears and sees during the open portions of the meeting. He explained that because of the size of the room and the location of the meeting table and the guest speaker podium, the place the policy now requires cameras to be located limits the visual recording to the backs of the guest speakers, and precludes visual recording of any written materials the respondent commission members may have,

or any materials being presented by speakers, whether it be a power point presentation or maps and drawings displayed on an easel. The complainant contended that the new policy was in violation of both the spirit and intent of §1-226(a), G.S.

11. It is found that the language of §1-226(b), G.S., authorizes a public agency to adopt rules that must be in place prior to the meeting at which they are intended to be enforced. In this regard, the legislature gave the power and right to public agencies to exercise their discretion to adopt rules and regulations governing the recording, photography or the use of audio and visual equipment during the meeting based on the varying circumstances that may affect each agency respectively.

12. It is found that the respondents' rules permit recording from the same, or the equivalent, vantage point of the public.

13. It is found that the respondent commission did not attempt to enforce the rules adopted at the February 18, 2016 meeting prior to their adoption. It is also found that while the visual recording is limited, neither the audio or visual recording of the respondent commission's meetings are precluded by the rules.

14. It is concluded that the respondents did not violate the provisions of §1-226, G.S., as alleged by the complainant.

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.

Commissioner Matthew Streeter
as Hearing Officer

FIC2016-0149/hor/teb/20160615