

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

John and Anita Lucas,

Complainants

against

Docket #FIC 2021-0281

Chair, Planning Commission,
Town of Marlborough; Director,
Planning and Development, Town
of Marlborough; and First Selectman,
Town of Marlborough,

Respondents

February 8, 2023

The above-captioned matter was heard as a contested case on April 22, 2022, at which time the complainants and the respondents appeared. No evidence was taken at such time. A continued hearing was held on June 2, 2022, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearings were conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session), as amended by §1 of Public Act 22-3.

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

1. It is found that the respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that by letter dated March 22, 2021, and addressed to the respondent Chair of the Planning Commission, the complainants made a request for "a copy of the Public Hearing to [be] held at 7:00PM on March 23, 2021" ("March 22nd request"). It is found that such request concerned a subdivision application by Erik S. Young for 351 South Main Street, Marlborough, CT ("subdivision application"). It is found that a copy of such request was also sent to the respondent First Selectman.
3. It is found that by letter dated April 21, 2021, and addressed to the respondent First Selectman, the complainants made a request for copies of:

[a] the transcript[s] of...all...hearings that led to the approval of the [subdivision application];

[b] the required Site Development Sheet; and

[c] all factors used in consideration in issuing the approval.

(“April 21st request”). It is found that a copy of such request was also sent to the respondent Chair of the Planning Commission, among others.

4. It is found that by letter dated April 26, 2021, and addressed to the respondent Planning and Development Director (“Director”), the complainants requested copies of “the new Site Development Sheet and copies of your findings on the new attempt to subdivide [the] property [at 351 South Main Street, Marlborough, CT] into two lots.”

5. It is found that on or about April 27, 2021, the respondent Director, who handles records requests to both the Marlborough Conservation Commission and the respondent Planning Commission, responded to the requests, described in paragraphs 2, 3 and 4, above, and hand-delivered responsive records to the complainants’ house.

6. By letter of complaint received May 24, 2021,¹ the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with the March 22nd and April 21st requests described in paragraphs 2 and 3, above.

7. At the time of the request, §1-200(5), G.S., provided:

‘[p]ublic 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.²

8. Section 1-210(a), G.S., provides in relevant part that:

¹ On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which required the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M, which was extended by Executive Order 12B, applied to any appeal pending with the Commission on the issuance date and to any appeal filed prior to July 1, 2021. Consequently, the Commission retains subject matter jurisdiction.

² Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “[p]ublic records or files” to also include data or information that is “videotaped”.

[e]xcept 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 . . . (3) receive a copy of such records in accordance with section 1-212.

9. Section 1-212(a), G.S., provides, in relevant part, that “any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

10. It is found that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

11. It is found that by letter dated May 4, 2022, the respondent Director provided to the complainants copies of additional responsive records. It is also found that the respondents informed the complainants that there are no transcripts of the meetings, and that the minutes and audio recordings of the meetings are available on the Town of Marlborough website.

12. At the June 2, 2022 hearing, the complainants claimed that the minutes of the Planning Commission’s meetings at which the subdivision application was considered were inaccurate and incomplete, and stated that this was the sole remaining issue in this case.

13. It is found that the complainants’ records requests on their face did not include a request for meeting minutes. It is also found that the issue of whether meeting minutes were accurate and complete was not fairly raised in the complaint filed with the Commission. Further, it is well settled that the FOI Act does not require verbatim minutes. Rather, the Commission has long held that minutes must contain, at a minimum, the date, time and place of the meeting, members present, action taken, and the votes of members with respect to such action.

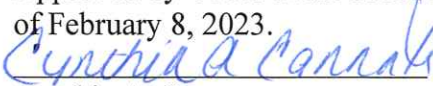
14. It is also found that the respondents provided the complainants with all responsive records.

15. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S.

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 February 8, 2023.



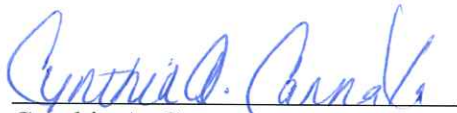
Cynthia A. Cannata
Acting Clerk of the Commission

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 & ANITA LUCAS, 357 South Main Street, PO Box 267, Marlborough, CT 06447

CHAIR, PLANNING COMMISSION, TOWN OF MARLBOROUGH; DIRECTOR, PLANNING AND DEVELOPMENT, TOWN OF MARLBOROUGH; AND FIRST SELECTMAN, TOWN OF MARLBOROUGH, c/o Attorney Kenneth R. Slater, Jr., Halloran Sage LLP, 225 Asylum Street, Hartford, CT 06103



Cynthia A. Cannata
Acting Clerk of the Commission