

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Kirk Carr; John Tartaglia; and John Noonan,

Complainants

against

Docket # FIC 2022-0373

Chair, Planning and Zoning Commission,  
Town of Ridgefield; Planning and Zoning  
Commission, Town of Ridgefield; and Town  
of Ridgefield,

Respondents

June 28, 2023

The above-captioned matter was heard as a contested case on May 10, 2023, at which time the complainants 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), G.S.

2. By letter of complaint filed August 23, 2022, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act because (1) the revised agenda for the July 26, 2022 regular meeting of the Planning and Zoning Commission for the Town of Ridgefield (“PZC”) failed to provide adequate notice that the PZC would be discussing the complainants’ regulation amendment application filed with the PZC at such meeting; and (2) the PZC discussed such application at its July 26, 2022 regular meeting, without first voting to add such discussion to the agenda.

3. Section 1-225(c), G.S., provides, in relevant part:

The agenda of the regular meetings of every public agency . . . shall be available to the public and shall be filed, not less than twenty-four hours before the meeting to which they refer, (1) in such agency’s regular office or place of business, and (2) . . . in the office of the clerk of such subdivision for any public agency of a political subdivision of the state . . . . Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business

not included in such filed agendas may be considered and acted upon at such meetings.

4. The Commission takes administrative notice that on, June 22, 2021, the Governor of the State of Connecticut signed Public Act No. 21-1, An Act Concerning Responsible and Equitable Regulation of Adult-Use Cannabis, which legalized cannabis use for adults in the state of Connecticut, but allows municipalities to prohibit cannabis establishments from opening within their jurisdiction.

5. It is found that, in light of Public Act No. 21-1, on September 24, 2021, the PZC approved a one-year moratorium on cannabis establishments in the Town of Ridgefield.

6. It is found that, on May 18, 2022, the Board of Selectmen for the Town of Ridgefield announced that it was in the process of drafting an ordinance to prohibit cannabis establishments and cultivation in the town.

7. It is found that, subsequently, a Special Town Meeting was scheduled to be held on September 7, 2022 for the town residents to vote on the Board of Selectmen's proposed ordinance.<sup>1</sup>

8. It is found that, on June 9, 2022, the complainants filed a regulation amendment application with the Planning and Zoning Department for the Town of Ridgefield ("Application A-22-1"), requesting the PZC to amend the Town of Ridgefield's zoning regulations to prohibit all types of cannabis establishments within the town.

9. It is found that the agenda for the PZC's June 14, 2022 regular meeting specifically included Application A-22-1 as an item of discussion and that, at such meeting, the PZC officially accepted and acknowledged Application A-22-1.

10. It is found that the agenda for the PZC's June 28, 2022 regular meeting also included Application A-22-1 as an item of discussion and that, at such meeting, the PZC discussed Application A-22-1.

11. It is found that that the agenda for the PZC's July 12, 2022 regular meeting similarly included Application A-22-1 as an item of discussion and that, at such meeting, the PZC scheduled a special meeting for August 16, 2022 to conduct the public hearing on Application A-22-1.

12. It is found that the PZC's next regular meeting was held on July 26, 2022, which Complainant Carr and Complainant Tartaglia attended.

13. It is further found that the revised agenda for the PZC's July 26, 2022 regular meeting did not include "Application A-22-1" as an item of discussion.

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<sup>1</sup> The Commission notes that, at the hearing in this matter, the parties confirmed that, on September 7, 2022, the residents voted to approve the ordinance proposed by the Board of Selectmen, banning cannabis establishments within the Town of Ridgefield.

14. It is found that, subsequent to the filing of Application A-22-1, the PZC initiated its own regulation amendment application (“Application A-22-2”), to extend the existing moratorium on cannabis establishments in the town.

15. It is found that the revised agenda for the PZC’s July 26, 2022 regular meeting specifically included, as item 4.1, a discussion of Application A-22-2.

16. It is found that the revised agenda for the PZC’s July 26, 2022 regular meeting also listed as an item for discussion “3.4. **PA 21-1 (Recreational cannabis establishments).**<sup>2</sup> Update on ordinance proposed by Board of Selectmen. Discussion on next steps for PZC. c/o Chair.” (Emphasis in original.)

17. It is found that, when the PZC discussed item 3.4. of the revised agenda at the July 26, 2022 regular meeting, the PZC focused the discussion on Application A-22-1, which included a deliberation on: the officials, boards, or commissions to which the PZC would be referring Application A-22-1 for comment;<sup>3</sup> the scheduling and processing of Application A-22-1, with certain commissioners expressing their preference to postpone acting on Application A-22-1 until after the vote on the Board of Selectman’s proposed ordinance to ban cannabis establishments; and the status of the search for outside consultants to review Application A-22-1.<sup>4</sup>

18. It is found, and it is undisputed, that no member of the PZC made a motion to amend the PZC’s July 26, 2022 revised meeting agenda to add a discussion of Application A-22-1.

19. At the contested case hearing, the complainants contended that the revised agenda for the PZC’s July 26, 2022 regular meeting did not fairly and sufficiently apprise the public that the PZC would be discussing Application A-22-1 at such meeting because the revised agenda did not include any mention of Application A-22-1. The complainants also contended that, at its July 26, 2022 regular meeting, the PZC primarily discussed Application A-22-1, and took action on Application A-22-1 by adding commission and board referrals based upon input from commissioners.

20. At the hearing, the respondents contended that agenda item 3.4 of the PZC’s July 26, 2022 regular meeting constitutes a very broad discussion topic, which included the three “legislative items” pending in the town concerning cannabis establishments, namely: the Board

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<sup>2</sup> At the contested case hearing, the respondents explained that, with respect to agenda item 3.4 of the revised agenda for the July 26, 2022 regular meeting, “PA 21-1 (Recreational cannabis establishments)” referred to Public Act No. 21-1, referenced in paragraph 4, above.

<sup>3</sup> The Commission takes administrative notice of §9.3.C.2 of the PZC Zoning Regulations, which provides that, “[o]n any application, the Commission may seek the advice and opinion of other officials, boards, or Commissions to assist it in evaluating applications.”

<sup>4</sup> The Commission takes administrative notice of §9.3.C.3 of the PZC Zoning Regulations, which provides:

[o]n any application, the [PZC] may retain outside consultants to review applications when it finds the size, complexity or potential impact of the proposed use or activity requires specialized assistance and expertise and:  
a. the fees charged by such outside consultants shall be paid for by the applicant ...

of Selectman's proposed ordinance, discussed in paragraphs 6 and 7, above; Application A-22-1 (the complainants' application); and Application A-22-2 (the PZC's application). The respondents contended, further, that the discussion of agenda item 3.4 related to the PZC's next steps on these three legislative items, which all related to cannabis establishments. The respondents also claimed that the discussion of Application A-22-1 was limited to procedural and administrative matters.

21. At the hearing, the respondents' witness, the chair of the PZC, testified that the discussion of agenda item 3.4 at the July 26, 2022 regular meeting was an overall update on the PZC's response to Public Act 21-1, which included a discussion of Application A-22-1. He also testified that the discussion concerning the commission and board referrals and third-party consultants applied not only to Application A-22-1, but also to Application A-22-2.

22. In Zoning Board of Appeals of the Town of Plainfield, et al. v. FOIC, et al., Superior Court, Docket No. 99-0497917-S, Judicial District of New Britain, Memorandum of Decision dated May 3, 2000 (Satter, J.), reversed on other grounds, 66 Conn. App. 279 (2001), the court observed that one purpose of a meeting agenda "is that the public and interested parties be apprised of matters to be taken up at the meeting in order to properly prepare and be present to express their views," and that "[a] notice is proper only if it fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participation in the hearing."

23. In addition, the plain language of §1-225(c), G.S., "requires that a new agenda item, not previously published, may be added to the agenda only after an affirmative vote of two-thirds of the members present and voting to add that item." Zoning Bd. of Appeals of Town of Plainfield v. Freedom of Info. Comm'n, 66 Conn. App. 279, 286 (2001).

24. The respondents' contention that agenda item 3.4 for the PZC's July 26, 2022 regular meeting included *all three* "legislative items," described in paragraph 20, above, is unavailing. It is found that item 3.4 only references Public Act No. 21-1, the ordinance proposed by the Board of Selectmen, and PZC's next steps; it mentions neither Application A-22-1, nor Application A-22-2. It is further found that the July 26, 2022 revised meeting agenda listed discussion of Application A-22-2 separately at agenda item 4.1 and that the agendas for the PZC's regular meetings held on June 14, 2022, June 28, 2022, and July 12, 2022 all included Application A-22-1 as a separate item of discussion.

25. It is, therefore, found that item 3.4 of the revised agenda for the July 26, 2022 regular meeting did not fairly identify Application A-22-1 as a matter to be discussed.

26. It is found that, contrary to the respondents' contention, the discussion of item 3.4 at the July 26, 2022 regular meeting did not relate to a general update on the PZC's response to Public Act No. 21-1; rather, it is found, that the discussion of agenda item 3.4 centered on Application A-22-1.<sup>5</sup>

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<sup>5</sup> The video of the PZC's July 26, 2022 regular meeting, which supports this finding, was submitted into evidence, without objection.

27. With respect to the respondents' contention that the discussion of referrals and consultants related to both Application A-22-1 and Application A-22-2, it is found that, at the July 26, 2022 regular meeting, the chair specifically clarified that the discussion related to Application A-22-1. It is further found that, at such meeting, the chair shared a spreadsheet of officials, boards, and commissions for such referrals, which was entitled "A-22-1 Referrals and Timeline."<sup>6</sup>

28. Based upon the foregoing findings, it is concluded that the agenda item "3.4. PA 21-1 (Recreational cannabis establishments). Update on ordinance proposed by Board of Selectmen. Discussion on next steps for PZC. c/o Chair" was not itself sufficient to apprise interested parties or the public that the PZC was going to discuss Application A-22-1 at its July 26, 2022 regular meeting, especially given that the agendas for the June 14, 2022, June 28, 2022, and July 12, 2022 meetings all included Application A-22-1, but the Agenda for the July 26, 2022 meeting omitted any reference to it.

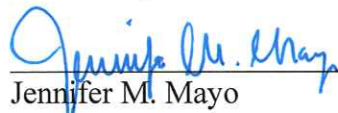
29. It is therefore concluded that the respondents violated §1-225(c), G.S., by failing to sufficiently and fairly apprise the public of all matters to be discussed and considered at the meeting in question.

30. It is further concluded that the respondents violated §1-225(c), G.S., when the PZC discussed Application A-22-1 at its July 26, 2022 regular meeting, without two-thirds of the commissioners present voting to add this item to the agenda.

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

1. Henceforth, the respondent PZC shall ensure that all items on the agendas of its regular meetings are sufficiently specific as to fairly apprise the public of the matters to be considered at the meetings to which the agendas refer, and any subsequent business not included in such an agenda is considered only upon the affirmative vote of two-thirds of the agency members present and voting, in accordance with §1-225(c), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 28, 2023.



Jennifer M. Mayo  
Acting Clerk of the Commission

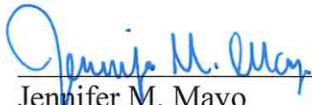
<sup>6</sup> As to the respondents' contention that the matters discussed under agenda item 3.4 merely involved procedural and administrative matters, the Commission notes that the FOI Act does not specifically exclude such items from its meeting notice requirements and finds that the PZC had included discussion of the scheduling of the public hearing on Application A-22-1 on its agenda for the July 12, 2022 regular meeting. Additionally, it is found that the issue of whether to require paid consultants was a significant issue, at least, to Complainant Carr who had specifically stated, in a July 25, 2022 email to the Director of the Planning and Zoning Department of the Town of Ridgefield, that he thought such a requirement would be punitive. It is further found that, at the July 26, 2022 regular meeting, the PZC chair asked the other commissioners whether they had any additional referrals or objections to the referrals he had proposed. Based on the foregoing, it is found that, such discussions were not merely procedural.

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:

**KIRK CARR**, 62 Prospect Ridge D4, Ridgefield, CT 06877; **JOHN TARTAGLIA**, 638 Danbury Road, #64, Ridgefield, CT 06877; **AND JOHN NOONAN**, 77 Sunset Lane, #321, Ridgefield, CT 06877

**CHAIR, PLANNING AND ZONING COMMISSION, TOWN OF RIDGEFIELD; PLANNING AND ZONING COMMISSION, TOWN OF RIDGEFIELD; AND TOWN OF RIDGEFIELD**, c/o Attorney Thomas W. Beecher, Collins Hannafin, P.C., 148 Deer Hill Avenue, Danbury, CT 06810

  
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Jennifer M. Mayo  
Acting Clerk of the Commission