

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Barbara J. Masters,

FINAL DECISION

Complainant

Docket #FIC84-46

against

July 25, 1984

Lebanon Planning and
Zoning Commission,

Respondent

The above captioned matter was heard as a contested case on May 14, 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. The respondent is a public agency within the meaning of §1-18a(a), G.S.
2. On February 23, 1984 the respondent held a special meeting during which it convened in executive session for the "discussion of litigation of alleged zoning violations."
3. Also present at the above-mentioned executive session were the zoning enforcement officer, the clerk of the respondent town council, the first selectman, the chairman of the zoning board of appeals and six members of the board of finance of Lebanon.
4. Upon reconvening in public session the respondent voted to request town counsel to proceed with civil prosecution of alleged violators of the seasonal occupancy regulations.
5. By letter of complaint filed with the Commission on March 22, 1984 the complainant alleged that she, an alternate member of the board of finance of Lebanon, had been denied access to the February 23, 1984 executive session of the respondent and that the respondent was not, in fact, discussing pending claims or litigation while convened in executive session. An allegation regarding the respondent's failure to post notice of the February 23, 1984 meeting was not pursued at hearing, upon evidence that notice had been posted.

6. It is found that while convened in executive session the respondent discussed Johnson v. Murzyn, 1 Conn. App. 176 (January 17, 1984). In that case the court granted the respondent the right to injunctive relief in the enforcement of its seasonal zoning regulations, but remanded the matter to the trial court for further proceedings on the issue of the scope of the injunction.

7. The respondent claims that it convened in executive session on February 23, 1984 to discuss both strategy with respect to further proceedings in Johnson v. Murzyn and strategy with respect to future proceedings against other zoning violators, including those against whom cease and desist orders had been issued.

8. It is found that the respondent's discussion regarding proceedings against zoning violators involved the comparison of the relative merits of civil and criminal proceedings in terms of cost, likelihood of success and deterrence value.

9. The respondent claims that the attendance of the members of the finance board was necessary to make available to the respondent information regarding the financial ability of the town to proceed with the costlier alternative, civil litigation, and the presence of the first selectman, zoning enforcement officer and chairman of the zoning board of appeals was necessary to make available information regarding the nature and extent of zoning violations. The clerk was present to take minutes and the town counsel was present to offer her legal advice regarding the respondent's proposed actions with respect to both Johnson v. Murzyn and the cease and desist orders.

10. The first selectman is an ex-officio member of the respondent.

11. It is found that to the extent that while convened in executive session the respondent discussed strategy with respect to Johnson v. Murzyn, such executive session was held for a proper purpose within the meaning of §1-18a(e)(2), G.S.

12. It is found, however, that the respondent failed to prove that the attendance of persons other than members of the respondent, including ex officio members, and town counsel was necessary for the presentation of testimony or opinion.

13. It is concluded that attendance at the February 23, 1984 executive session of persons other than members of the respondent and town counsel violated §1-21g, G.S.

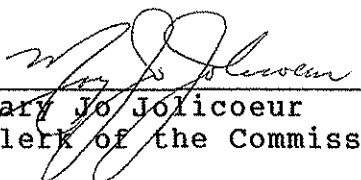
14. It is found that the respondent's discussion of the pros and cons of alternative methods of proceeding against zoning violators, against whom no action other than the issuance of a cease and desist order had yet been taken, did not constitute strategy with respect to pending claims and litigation within the meaning of §1-18a(e)(2), G.S.

15. It is concluded that to the extent that discussion in executive session involved the relative merits of criminal versus civil proceedings against zoning violators, such executive session was held in violation of §1-21, G.S.

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

1. The respondent shall henceforth act in strict compliance with the requirements of §§1-21 and 1-21g, G.S. and shall convene in executive session only for one or more of the purposes listed at §1-18a(e)(1)-(5), G.S.

Approved by order of the Freedom of Information Commission at its regular meeting of July 25, 1984.



Mary Jo Jolicoeur
Clerk of the Commission