

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Donavin, Inc.

FINAL DECISION

Complainant

Docket #FIC 85-145

against

December 11, 1985

Planning and Zoning Commission
of the Town of Westport; Planning
Director of the Planning and Zoning
Commission of the Town of Westport;
and the Town of Westport

Respondents

The above captioned matter was heard as a contested case on October 4, 1985 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:

1. The respondents are public agencies within the meaning of §1-18a(a), G.S.

2. At the hearing, Greens Farms Partners applied to be admitted as a party or, in the alternative, as an intervenor, because the complaint concerned a meeting at which a site plan application by Greens Farms Partners was approved.

3. Pursuant to Commission regulation §1-21j-27, the application for party status is denied because Greens Farms Partners is not the public agency alleged to have violated the Freedom of Information Act.

4. Pursuant to Commission regulation §1-21j-28, the application for intervenor status is granted. Greens Farms Partners may examine and cross-examine witnesses and present oral and written argument in these proceedings.

5. By letter dated March 11, 1985, the complainant requested pursuant to §1-21c, G.S., that the respondent planning director provide notification of "any special meeting which is called by the Planning & Zoning Commission...regarding any zoning application or request pertaining to the property located at 1460 Post Road, Westport."

6. The complainant is a tenant at 1460 Post Road East, Westport, which property is owned by the intervenor.

7. Since 1983, the intervenor has sought approval of site plan and zoning variance applications concerning 1460 Post Road East which have been opposed by the complainant. Protracted litigation has resulted.

8. On April 24, 1985, the intervenor submitted a "Westport Planning and Zoning Commission" site plan application for 1460 Post Road East. The intervenor requested that the application be presented to the Architectural Review Board and the Administrative Review Committee (the "ARC") for their review.

9. On May 28, 1985, the ARC approved the intervenor's site plan application for 1460 Post Road East.

10. The respondents did not notify the complainant that the site plan application would be considered at the May 28, 1985 ARC meeting.

11. By letter to the Commission postmarked June 20, 1985, the complainant alleged that the respondents failed to notify the complainant of the meeting at which the Greens Farms Partners site plan application was approved.

12. The respondents claim that the ARC is a separate public agency from the Planning and Zoning Commission; that the complainant's notification request specified Planning and Zoning Commission meetings; and therefore failure to notify the complainant of the May 28, 1985 ARC meeting did not violate §1-21c, G.S.

13. The respondent planning director's office provides staff services for both the respondent Planning and Zoning Commission and for the ARC.

14. The Westport Zoning Regulations, adopted by the respondent Planning and Zoning Commission, provide in §43-15 that certain site plan application may, at the applicant's option, be submitted to either the Planning and Zoning Commission or to the ARC.

15. The Zoning Regulations in §43-15.1 provide for the composition of the ARC and state: "The ARC shall act in behalf of and have the authority of the P & Z Commisision as defined in Section 43."

16. The complainant claims that the site plan application was improperly referred to the ARC under the Zoning Regulations.

17. The Commission lacks jurisdiction over the question of

whether the site plan application was properly referred to the ARC under the Zoning Regulations.

18. Because the ARC was established by the Planning and Zoning Commission to handle minor site plan applications, and acts on behalf of the Planning and Zoning Commission, and is composed of the Commission chairman and Commission staff, it is concluded that the ARC functions as a committee of the Planning and Zoning Commission.

19. The respondent planning director was aware of the complainant's interest in 1460 Post Road East and he was aware of the complainant's March 11, 1985 request for notification of Planning and Zoning Commission meetings concerning 1460 Post Road East. The planning director was also aware that the April 24, 1985 site plan application was referred to the ARC.

20. It is concluded that the complainant's March 11, 1985 request for notification of Planning and Zoning Commission meetings concerning 1460 Post Road East included a request for notification of ARC meetings on 1460 Post Road East.

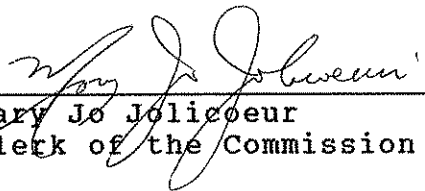
21. Therefore, the respondents violated §1-21c, G.S., by failing to notify the complainant of the May 28 ARC meeting.

22. The Commission declines to declare the actions of the ARC on May 28, 1985 null and void because the complainant failed to establish that it suffered actual harm by the lack of notification of the meeting.

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

1. Henceforth, the respondents shall comply with the requirements of §1-21c, G.S.

Approved by order of the Freedom of Information Commission at its regular meeting of December 11, 1985.



Mary Jo Jolicœur
Clerk of the Commission