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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Michael Zarick,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-490

Board of Assessment Appeals, Town of North
Branford,

Respondent(s)

May 31, 2012

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, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, June 27, 2012**. 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 June 15, 2012**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE June 15, 2012**. 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 **fourteen (14) copies** be filed **ON OR BEFORE June 15, 2012**, 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 Zarick
John M. Gesmonde, Esq.

5/31/12/FIC# 2011-490/Trans/wrbp/SDL/PSP/KKR

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Michael Zarick,

Complainant

against

Docket # FIC 2011-490

Board of Assessment Appeals,
Town of North Branford,

Respondent

May 30, 2012

The above-captioned matter was heard as a contested case on February 1, 2012, at which time the complainant and respondent appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

On February 6, 2012, the complainant filed with the Commission a motion to reopen the hearing for the purpose of admitting additional evidence. Such motion is hereby denied because the proffered evidence is deemed immaterial and irrelevant.

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

1. The respondent is a public agency within the meaning of §1-200(1), G.S.
2. It is found that the respondent board held a regular meeting on September 7, 2011, to hear motor vehicle tax assessment appeals, including an appeal filed by the complainant.
3. By letter of complaint received and filed on September 16, 2011, the complainant appealed to the Commission, alleging that the respondent board violated the Freedom of Information ("FOI") Act because its September 7, 2011 meeting was not held in public. Specifically, the complainant alleged that:

[a] "the meeting took place in a private office rather than the larger outer office area"; and

[b] "[a]fter I stated my reason for appeal and submitted evidence to support my case, I was told that I could not stay for the deliberations and had to leave the office."

4. Section 1-225(a), G.S., provides, in relevant part that “[t]he meetings of all public agencies... shall be open to the public.”

5. At the hearing in this matter, the complainant claimed that the public, including himself, was excluded from attending the September 7th meeting described in paragraph 2, above. His testimony focused on the size and location of the hearing room and certain statements allegedly made to the complainant by the chairman of the respondent board. With respect to the size and location of the room, the complainant testified that the respondent board excluded the public by holding the meeting in a small private inner office, rather than in a larger outer office area. In addition, the complainant testified that, after he stated the reason for his appeal and handed over supporting documentation to the respondent board, the chairman informed him that the respondent board would “take a look” at the documentation and would let the complainant know of the board’s decision after they deliberated. According to the complainant, he then inquired “so you don’t debate this in public?” and was told by the chairman that “no, we have to take time to review these things” and “we’ll get a letter out to you.” The complainant testified that he understood the chairman’s statements to mean that the deliberations were not held in public and that he was not welcome to stay. According to the complainant, if the chairman had intended to permit the complainant to stay, he could have specifically informed him that he was welcome to stay.

6. The complainant also alleged possible fire code violations and raised concerns regarding the recording and specificity of the September 7th meeting minutes. With respect to any alleged fire code violations, this Commission has no jurisdiction to enforce municipal or state fire code requirements. If the complainant believes that the respondent board is not in compliance with such requirements, the complainant is free to seek recourse in the appropriate forum. Further, with respect to any alleged violations of the FOI Act pertaining to meeting minutes, such allegations were not fairly raised in the complainant’s September 16th appeal to the Commission, and therefore, will not be further addressed herein.

7. The respondent board contended that the complainant was not excluded from attending any part of the September 7th meeting. The chairman for the respondent board testified that the complainant was never told by any board member that he could not be present and/or could not stay for the deliberations on the appeals, including his own appeal, scheduled for hearings on September 7th.

8. It is found that the chairman advised the complainant that he would receive the respondent board’s written decision of the complainant’s assessment appeal in the mail. It is found, however, that no member of the respondent board, including the chairman, ever told the complainant that he could not stay for the deliberations and/or that he had to leave the September 7th meeting.

9. It is further found that there was no intent on the part of the respondent board to limit attendance to the meeting by purposely selecting the small, private inner room, described in paragraphs 5 and 7, above.

10. It is found that, based on credible testimony provided by the members of the respondent board, the respondent did not deny the public, including the complainant, access to the September 7th meeting.

11. It is therefore concluded that the meeting was "open to the public" within the meaning of §1-225(a), G.S., and therefore, the respondent board did not violate such provision.

12. Although it is concluded that the respondents did not violate the FOI Act, it is understandable that, due to the size and location of the room, the complainant felt as if he was being denied access. Therefore, the Commission urges the respondent board to consider holding their meetings in a different location to address the appearance or perception that the agency is denying access to public meetings. In addition, the Commission recommends that the respondent board make it clear to the public that its meetings and hearings are open to the public.

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 Sherman D. London
as Hearing Officer