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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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Richard Saluga,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-221

Chairman, Board of Assessment Appeals,
Town of Brookfield; and Board of Assessment
Appeals, Town of Brookfield,
Respondent(s)

December 3, 2013

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, January 8, 2014**. 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 December 13, 2013**. 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, an **original and fourteen (14) copies** must be filed **ON OR BEFORE December 13, 2013**. **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 December 13, 2013**, 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: Richard Saluga
Nathan Zezula, Esq.

12/3/13/FIC# 2013-221/Trans/wrbp/MS/KKR/CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Richard Saluga,

Complainant

against

Docket #FIC 2013-221

Chairman, Board of Assessment
Appeals, Town of Brookfield; and
Board of Assessment Appeals, Town
of Brookfield,

Respondents

November 21, 2013

The above-captioned matter was heard as a contested case on October 15, 2013, 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 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, dated April 11, 2013 and filed April 15, 2013, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by engaging in "secretive" conduct during their meetings held in the month of March, in that they:
 - (a) failed to post on their website the agendas and minutes for the meetings that occurred on March 4, 7, 9, 12, and 18, 2013;
 - (b) with regard to the March 18, 2013 meeting, intentionally failed to speak loudly enough during their deliberations so that the public could hear what was being said, thereby effectively excluding the public from the meeting.¹

¹ In his complaint, the complainant also stated, in the context of allegations of open meetings violations, that "a listing of whose hearing was scheduled when was produced but refused access to the public when requested." At the hearing in this matter, the complainant claimed that this statement alleged a records violation. The respondents objected to any evidence pertaining to

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

[t]he meetings of all public agencies...shall be open to the public. The votes of each member of any such public agency...shall be reduced to writing and made available for public inspection within forty-eight hours and shall also be recorded in the minutes of the session at which taken. Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection and posted on such public agency's Internet web site, if available, except that no public agency of a political subdivision of the state shall be required to post such minutes on an Internet website. Each public agency shall make, keep and maintain a record of the proceedings of its meetings. [Emphasis added].

4. Section 1-225(d), G.S., provides, in relevant part:

Notice of each special meeting of every public agency...shall be posted not less than twenty-four hours before the meeting to which such notice refers on the public agency's Internet web site, if available, and given not less than twenty-four hours prior to the time of such meeting by filing a notice of the time and place thereof...in the office of the clerk of such subdivision for any public agency of a political subdivision of the state....The...clerk shall cause any notice received under this section to be posted in his office....The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by such public agency....

5. Section 1-206(b)(1), G.S., provides, in relevant part:

Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal

this "allegation" on the ground that the complaint can only reasonably be interpreted as alleging a meetings violation and that they did not have proper notice of an alleged records violation. After careful review of the complaint, the hearing officer ruled that the complaint did not provide the respondents with sufficient notice of a records violation, and stated that any such allegation would not be further addressed at the hearing. The Commission notes that the complainant in this matter has another complaint against these same respondents pending before the FOIC pertaining to records violations.

therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial... [Emphasis added].

6. With regard to the allegations described in paragraph 2(a), above, it is found that the complaint, with respect to the March 4, 7, and 9, 2013, meetings, was not filed within thirty days of such alleged violations, and that therefore, the Commission lacks jurisdiction to consider such allegations.

7. The Commission takes administrative notice of the fact that the respondent board's website indicates, with regard to its' meeting schedule, that "[t]he Board of Assessment Appeals hold [sic] meetings in March to hear Real Estate, Personal Property and Supplemental Motor Vehicle appeals. They [sic] hold meetings in September for Motor Vehicle appeals." As such, it is found that the respondents' meetings held on March 12 and 18, 2013, were special meetings.

8. The complainant testified, with regard to the allegations described in paragraph 2(a), above, that he believed the respondents are required to post both their meeting agendas and minutes on their website. The complainant further testified, and it is found, that he did not make a request to the respondents for copies of, or to inspect, such agendas or minutes, but rather, only searched the respondents' website for such agendas and minutes. It is further found that the complainant did not go to the town clerk's or tax assessor's office to determine whether the agendas were posted there, or whether the minutes were on file there.

9. With regard to the allegations described in paragraph 2(a), above, pertaining to the failure to post minutes, it is found that the requirement that minutes be posted on the websites of municipal public agencies, which would include the respondent board, was repealed, effective October 1, 2010, by Public Act 10-171. See §1-225(a), G.S., referenced in paragraph 3, above.

10. It is therefore concluded that the respondents did not violate the FOI Act, as alleged in paragraph 2(a), above, with respect to the minutes of the March 12 and March 18, 2013 meetings.

11. However, with regard to the allegation described in paragraph 2(a), above, pertaining to the failure to post agendas, it is found that the respondents failed to post the agendas for the March 12 and 18, 2013 special meetings, as required by §1-225(d), G.S.

12. Accordingly, it is concluded that the respondents violated §1-225(d), G.S.

13. With regard to the allegation described in paragraph 2(b), above, it is found that the respondent board consists of three members. The complainant testified at the hearing in this matter, and it is found, that during the March 18, 2013 meeting, at which he was present, the respondent board discussed among themselves the assessment appeals they had heard during the March 12, 2013 meeting, including the complainant's assessment appeal. The complainant further testified that the respondents "huddled in the corner of the room" and deliberately kept their voices low in volume, such that the members of the public who were present, including the complainant, could not hear, specifically, what was being discussed.

14. John Hooker, who is a member of the respondent board, and who was present and participated in the March 18, 2013 meeting, testified that “no one has ever been excluded from a meeting of the BAA.” However, Mr. Hooker acknowledged that “it was possible” that they huddled in the corner of the room and that they kept their voices lower than normal during the March 18th meeting, but that if they did so, it was not intentional.

15. It is found that, in an email dated February 26, 2013, the chairman of the respondent board, in response to an inquiry regarding whether board meetings are open to the public, stated “[B]y law, our meetings are open to the public. However, in practice, only those affected by the cases have tended to attend.”

16. Based upon the evidence and testimony provided, and, after an assessment of the credibility of the witnesses in this matter, it is found that the respondents intentionally lowered their voices during their discussion of the assessment appeals during the March 18th meeting so that members of the public in attendance could not hear, specifically, what was being discussed.

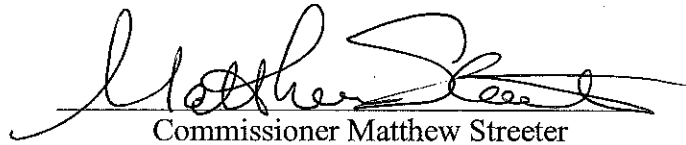
17. It is concluded, therefore, that the March 18, 2013 meeting was not “open to the public” within the meaning of §1-225, G.S. See Robert Noiseux, et al, v. Board of Directors, Connecticut Clean Energy Fund, Docket #FIC 2009-254, January 13, 2010 (board violated open meetings provisions when members of public seated in “overflow room” during public meeting were unable to hear what was being discussed due to inadequate audio system and failure of board members to identify themselves when speaking); Advisory Opinion #41, In the Matter of a Request for Advisory Opinion, Town Counsel, Town of Seymour (1980) (a “minimum condition” that must be met is that “all those in attendance at the meeting...must be able to hear and identify adequately all participants in the proceedings, including their individual remarks and votes.”)

18. It is concluded that the respondents violated the FOI Act, as alleged in paragraph 2(b), above.

19. The Commission notes that an FOI workshop was conducted by the Commission’s Public Information Officer, at the respondents’ request, after the filing of the complaint in this matter. The respondents are commended for their efforts to educate themselves regarding the requirements of the FOI Act.

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 strictly comply with the requirements of §§1-225(a) and (d), G.S.

A handwritten signature in black ink, appearing to read "Matthew Streeter", written over a horizontal line.

Commissioner Matthew Streeter
as Hearing Officer

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