



Town of Fairhaven Massachusetts

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December 11, 2024

BY ELECTRONIC TRANSMISSION ONLY (neighbnews@comcast.net)

Beth David
166 Dogwood Street
Fairhaven, MA 02719

**RE: Response to Open Meeting Law Complaint Received 12/6/2024
to the Fairhaven Interim Town Administrator Screening Committee**

Dear Ms. David:

I am responding on behalf of the Town of Fairhaven Interim Town Administrator Search Committee (“Committee”) to the attached Open Meeting Law complaint filed by you and received on December 6, 2024 (“Complaint”). As I understand your Complaint, you allege that the Committee violated the Open Meeting Law on November 22, 2024¹ by not posting an agenda, taking minutes or recording the meeting related to the Interim Town Administrator search. Your Complaint refers to subsequent Select Board meeting discussions on November 25, 2024 and December 2, 2024 to support your allegations.

The Committee discussed your Complaint at their December 11, 2024 meeting and respond accordingly:

The communication that took place on November 21, 2024, was limited to logistical matters of scheduling a meeting and distributing documents to prepare for the Committee’s first meeting to be held on November 27, 2024. There were no deliberations, discussions of substantive matters or expression of opinions by members of the public body at the November 21, 2024 gathering. Under the Open Meeting Law, such communications, which are purely administrative to discuss scheduling a meeting and do not involve deliberations, do not constitute a meeting and as such, would not have an agenda, minutes or be recorded.

Your complaint further states, in part, that “at the 11/25/24 meeting, Mr. Saunders gave a report about the 11/22 meeting.” After reviewing the recording of the Select Board’s meeting on November 25, 2024, during the Board Member Items/Committee Liaison Report agenda item, Mr. Saunders said that his report was about the search committee which Ms. Carreiro had described earlier. Ms. Carreiro’s update is at 1:30:30 of the recording and Mr. Saunders reference is at 2:10:51 of the recording. He also commented about “questions back and forth” between Ms. Carreiro and Mr. Osuch which was an anecdotal description of a conversation unrelated to the public body's business that took place on November 21, 2024. Their discussion was personal in nature and reflective of their history as former co-workers. Personal interactions

¹ The Committee first gathered on November 21, 2024 not November 22, 2024, as claimed in your complaint.

between members of a public body that do not involve public business are not subject to Open Meeting Law requirements.

Your complaint also states, in part, that “at the 12/2/24 SB meeting, Mr. Saunders and Anne Carreiro both justified not posting the meeting.” After reviewing the recording of the Select Board’s meetings on December 2, 2024, Ms. Carreiro outlined the previous Committee meeting on November 27, 2024 and the deadline for applications for Interim Town Administrator which can be found at 8:18 of the recording. Mr. Saunders took a moment to clarify his comments from the November 25, 2024 meeting which can be found at 10:07 of the recording. Mr. Saunders referred to them as the banter of friends who have known each other for twenty to thirty years catching up and added that there was no discussion on the process whatsoever.

Please know that the Open Meeting Law itself defines the term deliberations as “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that “deliberation” shall not include the distribution of a meeting agenda, **scheduling information** or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed. See MGL Chapter 30A §18 (emphasis added). Additionally, in the Commonwealth of Massachusetts, Office of the Attorney General’s Open Meeting Law Guide and Educational Materials dated December, 2023 under “What constitutes deliberation?” on page 7 states: “Distribution of a meeting agenda, scheduling or procedural information, or reports or documents that may be discussed at a meeting is often helpful to public body members when preparing for upcoming meetings. These types of communications generally will not constitute deliberation, provided that, when these materials are distributed, no member of the public body expresses an opinion on matters within the body’s jurisdiction.” See also Determination – 10/07/2013 – OML 2013-145 – Lynn Water and Sewer Commission, (discussions regarding scheduling of a meeting is explicitly excluded from the definition of deliberation under MGL c. 30A, §18), attached here.

Based on our review, the Committee does acknowledge the perception of a meeting on November 21, 2024 may exist. However, the circumstances of the Committee’s actions on November 21, 2024 being administrative in nature with no deliberations and no sharing of opinions related to matters within the Committee’s jurisdiction prevent it from being defined as a meeting of a public body.

The Committee hopes that this response has addressed your complaint and has been helpful.

Very truly yours,

Jeff Osuch

Chair, Fairhaven Interim Town Administrator Search Committee

cc: (by electronic transmission only)
Elisabeth Horan, Town Clerk
Division of Open Government, Massachusetts Attorney General



MARIHA COAKLEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

(617) 727-2200
www.mass.gov/ago

October 7, 2013

OML 2013 – 145

Samuel A. Vitali, Esq.
Vitali Law Offices
60 Andrew Street
Lynn, MA 01901

RE: Open Meeting Law Complaint – Lynn Water & Sewer Commission

Dear Attorney Vitali:

This office received a complaint from David Ellis, dated March 18, 2013, alleging that the Lynn Water & Sewer Commission (the “Commission”), of which he is a member, violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint specifically alleges that immediately following the Commission’s December 10, 2012 meeting, three commissioners deliberated to schedule a special meeting for December 17, 2012, without consulting the Chair. The complaint further alleges that prior to the start of the Commission’s December 17, 2012 meeting, the Commission unlawfully deliberated when one member distributed a written copy of a motion and began discussing the motion. Finally, the complaint alleges that the Commission failed to provide notice of an anticipated topic that the Commission considered at its December 17, 2012 meeting. The complaint was originally filed with the Commission on or about January 16, 2013, and Commission Chair William Trahan responded by letter dated February 27, 2013.¹ It does not appear that this letter was approved by, or represented the views, of a majority of the Commission members.²

¹ We remind the Board of its obligation to respond to an Open Meeting Complaint within 14 business days of receipt. See G.L. c. 30A, § 23(b).

² In the Chair’s February 27, 2013 letter responding to the complaint, he agrees with the complaint, declares the Commission’s December 17, 2012 meeting to be illegal, and pledges to take remedial action. Mr. Ellis responded to this letter in a March 1, 2013 letter, stating “I have accepted the remedial actions outlined in your letter as addressing my complaint regarding the meeting on December 17, 2012 at the Lynn Water & Sewer Commission. I have no need to file a request for further review by [the Attorney General].” Nevertheless, Mr. Ellis did file a complaint seeking further review, writing that although he accepted the resolution offered by Chair Trahan, the Commission’s staff continues to violate the law “by accepting and implementing a vote made at the annulled meeting.”



Following our review, we find that the Board did not violate the Open Meeting Law. In reaching this determination, we reviewed the January 16, 2013 complaint filed with the Commission; the Commission Chair's February 27, 2013 response; and the March 18, 2013 complaint filed with our office. Additionally, we reviewed a January 28, 2013 letter from Commission Executive Director Daniel O'Neill, addressed to the Commission, and a March 1, 2013 letter from Mr. Ellis, addressed to the Commission. We also reviewed the notice and minutes for the Commission's December 10, 2012 and December 17, 2012 meetings. Finally, we interviewed Commissioner Wayne Lozzi by telephone on May 8, 2013; Commissioner Frank Zipper on May 9, 2013; Commissioner Walter Proodian on May 9, 2013; Chair William Trahant on May 9, 2013; and Commissioner David Ellis on May 13, 2013.

FACTS

The Commission is a five-member public body. During the Commission's December 10, 2012 meeting, Commissioner Ellis moved that the Commission provide pay raises to certain non-union employees to put them on equity with union employees. Following a discussion, the motion passed by a vote of 3-2, with Commissioners Ellis, Trahant and Zipper voting in favor and Commissioners Lozzi and Proodian voting against. Immediately following the meeting, Commissioner Lozzi approached Commissioner Zipper to discuss the vote. Following that discussion, Commissioner Zipper decided that he wished to change his vote. Commissioner Zipper then spoke to the Commission's legal counsel and drafted a motion, dated December 11, 2012, which he sent to the other Commission members in a memorandum. The motion requested that a vote be placed on the agenda for the next meeting and requested that a special meeting be scheduled to consider the vote.

After Commissioner Zipper sent his memorandum, Commissioner Lozzi telephoned Commissioner Proodian to ask if he was agreeable to scheduling a special meeting, and if so, for which date. Commissioner Lozzi also called the Commission's legal counsel to confirm that a Commission member could convene a meeting without the Chair's approval. Commissioner Lozzi states that while he discussed scheduling the meeting with other Commission members, he did not discuss the substance of Commissioner Zipper's motion. Commissioner Lozzi then telephoned Chair Trahant and informed him that three members of the Commission favored scheduling a special meeting to address Commissioner Zipper's motion. Chair Trahant was reluctant to schedule a special meeting. According to Commissioner Lozzi, Commission Executive Director Daniel O'Neill then spoke with Chair Trahant and informed Commissioner Lozzi that the Chair had told him to proceed with the meeting. According to Chair Trahant, he spoke with Executive Director O'Neill and told him that he couldn't make the proposed meeting time and that they should not go ahead with it, but Commissioner Lozzi telephoned him to explain that the Commission would meet on the proposed date.

A notice for a December 17, 2012 Commission meeting, entitled "Special Meeting Notice," was posted on December 13, 2012. The notice included four topics: "1. CALL MEETING TO ORDER; 2. ROLL CALL OF COMMISSIONERS; 3. OLD BUSINESS; 4. NEW BUSINESS." Under "OLD BUSINESS," the topic read "Notice to Rescind vote of December 10, 2012, on a motion that the Director of the Commission, Assistant Director and

Chief Engineer be put on equity with the union employees and give them a 2% raise for 2013 and a 2% raise for 2014, effective January 1, 2013.”

Prior to the start of the December 17, 2012 meeting, Commissioner Lozzi distributed to the other Commission members a motion he intended to introduce at the meeting. Although Commissioner Ellis alleges that Commissioner Lozzi subsequently spoke in support of the motion while the Commissioners waited for the Chair to arrive, Commissioner Lozzi denies that there was any discussion among the Commission members regarding the motion prior to the start of the meeting. Commissioners Zipper and Proodian confirmed Commissioner Lozzi’s account.

When Chair Trahan arrived, he called the meeting to order. Chair Trahan then questioned the validity of the meeting, and discussion ensued regarding whether the meeting was legally called and whether Commissioner Zipper’s motion was out of order. Chair Trahan then moved that the meeting be declared illegal and be canceled. Following more discussion, Chair Trahan made a ruling that the meeting was illegal. Commissioner Lozzi then moved to challenge the ruling of the Chair. Following more discussion, the Commission voted 3-2 to overrule the Chair’s declaration that the meeting was illegal. Commissioner Lozzi then made a motion similar to the motion Commissioner Zipper had proposed in his December 11, 2012 memorandum. That motion passed by a vote of 3-2. The Commission then considered new business. Commissioner Ellis then moved to approve the pay increase that had just been rescinded. Following discussion, that motion failed by a vote of 3-2. Commissioner Lozzi then made a motion to approve a differently structured pay increase for certain non-union employees. Following discussion, the Commission approved the motion by a vote of 3-2.³

DISCUSSION

1. The Commission did not Violate the Open Meeting Law by Communicating Outside of a Meeting to Schedule a Special Meeting.

The complaint alleges that immediately following the Commission’s December 10, 2012 meeting, three commissioners deliberated outside of a meeting to schedule a special meeting for December 17, 2012. The Open Meeting Law requires that deliberations occur during a noticed meeting. G. L. c. 30A, §§ 18, 20. A “deliberation” is an “oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that ‘deliberation’ shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.” G. L. c. 30A, § 18. A “quorum” is “a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.” *Id.*

Commissioner Lozzi spoke with Commissioners Zipper, Proodian, and Chair Trahan, regarding scheduling a special meeting for December 17, 2012. Although this communication reached a quorum of the Commission, the discussion was regarding scheduling a Commission

³ We express no opinion regarding the validity of the Commission’s December 17, 2012 special meeting or any action taken therein.

meeting. This type of communication is explicitly excluded from the definition of deliberation. See G. L. c. 30A, § 18. Therefore, we find that the Commission did not deliberate when scheduling the December 17, 2012 meeting.

2. We do not Find Sufficient Evidence that the Commission Deliberated Immediately Prior to its December 17, 2012 Meeting.

Commissioner Ellis alleges in his complaint that prior to the start of the Commission's December 17, 2012 meeting, the Commission unlawfully deliberated when Commissioner Lozzi distributed a written copy of a motion and began discussing the motion. Commissioner Lozzi states that he distributed a written motion, but that he did not discuss it before the meeting. Commissioners Zipper and Proodian confirmed this account. We are unable to determine which account is more credible. In the absence of other evidence, we do not find sufficient evidence that the Commission deliberated immediately prior to its December 17, 2012 meeting. See OML 2012-63.⁴ However, we remind the Board of the Open Meeting Law's requirement that all communications between a quorum of a public body on public business within the body's jurisdiction must take place during an open meeting. See G.L. c. 30A, § 18.

3. The Commission did not Violate the Open Meeting Law by Failing to Include a Topic in the Notice for its December 17, 2012 Meeting.

Finally, the complaint alleges that the Commission failed to provide notice of an anticipated topic that the Commission considered at its December 17, 2012 meeting, specifically Commissioner Lozzi's motion to approve an alternately structured pay increase for certain non-union employees. The Open Meeting Law requires a public body "post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays," and that the notice contain "the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting." G. L. c. 30A, § 20(b). While it appears that Commissioner Lozzi anticipated introducing his motion sometime prior to the December 17, 2012 meeting, it does not appear that Commissioner Lozzi distributed his motion to the Chair or informed the Chair that he planned to introduce his motion at the meeting. However, the notice was clear as to the topic the Commission would discuss, and that topic was sufficient to include any discussion or motions that could be made. The notice read:

Notice to Rescind vote of December 10, 2012, on a motion that the Director of the Commission, Assistant Director and Chief Engineer be put on equity with the union employees and give them a 2% raise for 2013 and a 2% raise for 2014, effective January 1, 2013.

This topic was sufficiently specific to inform the public that the Commission would be reconsidering its December 10, 2012 vote regarding pay equity. See G.L. c. 30A, § 20(b). Although the topic directs a specific action, it is sufficient to inform the public that the Commission would be considering the topic of pay equity generally, and thus provides sufficient notice for any other action the Commission could take on that topic. Because the notice was

⁴ Open Meeting Law determinations may be found at the Attorney General's website, www.mass.gov/ago/openmeeting.

sufficiently specific, we find that the Commission did not violate the Open Meeting Law. See OML 2012-75 (no violation to omit reasonably inferable information from meeting notice).

CONCLUSION

For the reasons stated above, we find that the Commission did not violate the Open Meeting Law.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints which may be pending with our office or the Commission. Please feel free to contact our office at (617) 963-2540 if you any questions regarding this determination.

Sincerely,



Jonathan Scarsic
Assistant Attorney General
Division of Open Government

cc: Lynn Water & Sewer Commission
David Ellis

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by this order may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of this order.



The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108

OPEN MEETING LAW COMPLAINT FORM

Instructions for completing the Open Meeting Law Complaint Form

The Attorney General's Division of Open Government interprets and enforces the Open Meeting Law, Chapter 30A of the Massachusetts General Laws, Sections 18-25. Below is the procedure for filing and responding to an Open Meeting Law complaint.

Instructions for filing a complaint:

- o Fill out the attached two-page form completely and sign it. File the complaint with the public body within 30 days of the alleged violation. If the violation was not reasonably discoverable at the time it occurred, you must file the complaint within 30 days of the date the violation was reasonably discoverable. A violation that occurs during an open session of a meeting is reasonably discoverable on the date of the meeting.
- o To file the complaint:
 - o For a local or municipal public body, you must submit a copy of the complaint to the chair of the public body AND to the municipal clerk.
 - o For all other public bodies, you must submit a copy of the complaint to the chair of the public body.
 - o Complaints may be filed by mail, email, or by hand. Please retain a copy for your records.
- o If the public body does not respond within 14 business days and does not request an extension to respond, contact the Division for further assistance.

Instructions for a public body that receives a complaint:

- o The chair must disseminate the complaint to the members of the public body.
- o The public body must meet to review the complaint within 14 business days (usually 20-22 calendar days).
- o After review, but within 14 business days, the public body must respond to the complaint in writing and must send the complainant a response and a description of any action the public body has taken to address it. At the same time, the body must send the Attorney General a copy of the response. The public body may delegate this responsibility to its counsel or a staff member, but only after it has met to review the complaint.
- o If a public body requires more time to review the complaint and respond, it may request an extension of time for good cause by contacting the Division of Open Government.

Once the public body has responded to the complaint:

- o If you are not satisfied with that the public body's response to your complaint, you may file a copy of the complaint with the Division by mail, e-mail, or by hand, but only once you have waited for 30 days after filing the complaint with the public body.
- o When you file your complaint with the Division, please include the complaint form and all documentation relevant to the alleged violation. You may wish to attach a cover letter explaining why the public body's response does not adequately address your complaint.
- o The Division will not review complaints filed with us more than 90 days after the violation, unless we granted an extension to the public body or you can demonstrate good cause for the delay.

If you have questions concerning the Open Meeting Law complaint process, we encourage you to contact the Division of Open Government by phone at (617) 963-2540 or by e-mail at openmeeting@state.ma.us.



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: Beth Last Name: David

Address: 166 Dogwood Street

City: Fairhaven State: MA Zip Code: 02719

Phone Number: +1 (508) 979-5593 Ext. _____

Email: neighbnews@comcast.net

Organization or Media Affiliation (if any): Fairhaven Neighborhood News, LLC

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual Organization Media

Public Body that is the subject of this complaint:

City/Town County Regional/District State

Name of Public Body (including city/town, county or region, if applicable): Fairhaven Interim Town Administrator Screening Committee

Specific person(s), if any, you allege committed the violation: Jeff Osuch, Andrew Saunders, Anne Carreiro

Date of alleged violation: Nov 22, 2024

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

On 11/22/24, the Fairhaven Interim Town Administrator Screening Committee (TA Committee) met for the first time. The meeting was not posted, there was no agenda, there were no minutes taken, and the meeting was not recorded by Fairhaven Cable TV, which is required by Fairhaven bylaws.

At the 11/25/24 Select Board (SB) meeting, Andrew Saunders, the SB representative on the TA Committee, gave a report about the 11/22 meeting. When I tried to find the meeting to report on it for my readers, there was no record of it having taken place.

At the 12/2/24 SB meeting, Mr. Saunders and Anne Carreiro, who is the Interim TA and a member of the TA Committee, both justified not posting the meeting by saying that no "substantive discussion" took place; that the meeting was for scheduling only; and that the "banter" Mr. Saunders described at the 11/25 meeting was only about the budget process, not the screening of applicants.

This explanation is not sufficient. They are expecting the public to take their word for it and are not allowing the scrutiny of the public or the press so they can come to their own conclusions, a key element of a healthy democracy.

The public has a right to know if a quorum of committee members is meeting, no matter what they discuss (this also brings into question the SB meetings, when 2 of the 3 members are present). We have a right to watch the meetings and judge for ourselves. If they only open the meeting, hold an executive session, and then reopen the meeting only to adjourn, the public has a right to know they did that, and why they held an executive session.

This was egregious, and was done by two seasoned professionals who should know better; and one new person who is, however, an attorney. The idea that it was inadvertent rings hollow.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

Create an agenda and minutes for the missing meeting to create an official record of it

Educate themselves on the OML, including this article at https://www.mma.org/wp-content/uploads/2018/07/mma_advocate_29-1_law_hires.pdf

Publicly acknowledge in the SB & TA Comm meetings that they should have posted the meeting

Commit to adhering to OML regulations, and, when in doubt, to consider the spirit of the law and the perception by the public when public bodies shut them out and meet in secret

Review, sign, and submit your complaint

I. Disclosure of Your Complaint.

Public Record. Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

Publication to Website. As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

II. Consulting With a Private Attorney

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to openmeeting@state.ma.us.

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: _____



Date: _____

