



**INTERIM TOWN ADMINISTRATOR
SEARCH COMMITTEE MINUTES
December 11, 2024**

FAIRHAVEN TOWN CLERK
RCUD 2024 DEC 19 AM 5:20

Present: Anne Carreiro, Andrew B. Saunders and Jeff Osuch

Mr. Osuch called the meeting to order at 2:02p.m.

MINUTES

The Committee reviewed the draft minutes and discussed amendments.

Motion: Mr. Saunders motioned to accept the executive session minutes of November 27, 2024 as amended. Ms. Carreiro seconded. Roll Call Vote. Mr. Saunders in favor, Ms. Carreiro in favor and Mr. Osuch in favor. The motion passed unanimously (3-0-0).

Motion: Ms. Carreiro motioned to accept the executive session minutes of December 9, 2024 as amended. Mr. Osuch seconded. Roll Call Vote. Ms. Carreiro in favor and Mr. Osuch in favor. The motion passed (2-0-1) Mr. Saunders abstained.

The Committee will determine the release of the executive session minutes at a later date after candidates have been presented to the Select Board.

ACTION/DISCUSSION

Discuss Response to Open Meeting Law (OML) Complaint

Mr. Saunders presented a draft to the Committee including a 2013 Attorney General's Office determination involving the Lynn Water and Sewer Commission, OML 2013-145 (*Attachment A*). Discussion ensued about the complaint, the gathering on November 21, 2024 being relative to the scheduling of a meeting with no deliberation as defined within the determination in OML 2013-145. Based on the review, the Committee did not violate OML.

Motion: Mr. Saunders motioned to embrace the draft OML response to Beth David, forward it to Ms. David and the Division of Open Meeting as required. Ms. Carreiro seconded. Roll Call Vote. Mr. Saunders in favor, Ms. Carreiro in favor, Mr. Osuch in favor. The motion passed unanimously (3-0-0).

Ms. Hart will forward the response as required.

EXECUTIVE SESSION

Motion: Ms. Carreiro motioned to enter Executive Session pursuant to G.L. c. 30A, § 21 (8) To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening (Interim Town Administrator) and not to return to open session. Osuch seconded. Roll Call Vote. Ms. Carreiro in favor and Mr. Osuch in favor. The motion passed (2-0-1) Mr. Saunders abstained.

Meeting adjourned to Executive Session at 2:10p.m. and Mr. Saunders exited Town Hall

Respectfully submitted on behalf of the Interim Town Administrator Search Committee Clerk (ah)

ATTACHMENT

A. OML 2013-145

Approved on December 19, 2024



MARTHA COAKLEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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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 Trahan 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, Trahan 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 Trahan and informed him that three members of the Commission favored scheduling a special meeting to address Commissioner Zipper's motion. Chair Trahan was reluctant to schedule a special meeting. According to Commissioner Lozzi, Commission Executive Director Daniel O'Neill then spoke with Chair Trahan and informed Commissioner Lozzi that the Chair had told him to proceed with the meeting. According to Chair Trahan, 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 Trahant arrived, he called the meeting to order. Chair Trahant 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 Trahant then moved that the meeting be declared illegal and be canceled. Following more discussion, Chair Trahant 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 Trahant, 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.

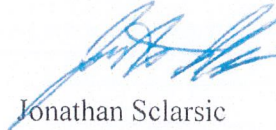
sufficiently specific, we find that the Commission did not violate the Open Meeting Law. See OML 2012-75 (no violation to omit reasonably inferable information from meeting notice).

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.