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August 14, 2015

OML 2015 – 115

Tim D. Norris, Esq.
Collins, Loughran & Peloquin, P.C.
320 Norwood Park South
Norwood, MA 02062

RE: Open Meeting Law Complaint

Dear Attorney Norris:

This office received a complaint from Ms. Desiree Aselbekian, dated April 21, alleging that the Southborough Board of Selectmen (the "Board") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ The complaint was originally filed with the Board on February 25, and the Board responded to the original complaint by letter dated March 19. In her complaint, Ms. Aselbekian alleges that the Board: (i) posted an insufficiently specific meeting notice; and (ii) discussed a topic during a meeting that was not listed on the notice.

We appreciate the patience and cooperation of the parties while we reviewed this matter. Following our review, we find that the Board did not violate the Open Meeting Law. In reaching this determination, we reviewed the original complaint; the Board's response; and the request for further review filed with our office. We also reviewed two notices for a joint meeting of the Board and the Southborough Planning Board (the "Planning Board") that took place on February 17, as well as the minutes of this meeting.

FACTS

We find the facts as follows. The Planning Board held a meeting on February 17 that was partially a joint meeting with the Board. Each public body posted its own notice of the meeting. The Planning Board notice indicated that its meeting would begin at 5:50 p.m. The Board posted a notice for this meeting that listed three topics: "Presentation- Affordable Housing Plan Update;" "Other Business Properly Before the Board;" and "Adjournment." The Board notice indicated that the meeting would begin at 7:00 p.m.

On February 17, the Planning Board convened its meeting at 5:50 p.m., as planned. At approximately 7:00 p.m., the Board members arrived and the joint meeting commenced. At this

¹ Unless otherwise indicated, all dates in this letter refer to the year 2015.

time, the Planning Board presented an “Affordable Housing Plan Update” to the Board. Following this update, the Board chair discussed real property located at 84 Main Street. This topic was not listed on the meeting notice. The chair stated that negotiations with the owner of the 84 Main Street property had fallen through earlier that same day. At approximately 8:12 p.m., the joint portion of the meeting ended, and the Board members adjourned. The Planning Board continued its meeting.

DISCUSSION

The Open Meeting Law requires that public bodies post notice of each meeting “at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays” and that every notice include “the date, time and place of such meeting and listings of topics that the chair reasonably anticipates will be discussed at the meeting.” G.L. c. 30A, § 20(b). Public bodies must list topics for discussion with “sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.” 940 CMR 29.03(1)(b). We generally consider a topic to include sufficient specificity when a reasonable member of the public could read the topic and understand the anticipated nature of the public body’s discussion. See OML 2012-71; OML 2011-44.

The complaint alleges that the Board’s meeting notice was insufficiently specific. Here, the Board listed “Other Business Properly Before the Board” on its meeting notice to discuss matters not anticipated by the chair at the time the meeting notice was posted. We find that the Board’s use of this language on the meeting notice did not violate the law’s requirements. See OML 2013-13. While a public body may include this type of item on a meeting agenda, as a best practice we recommend that, when including such a topic, public bodies indicate explicitly that the time is being reserved for topics not anticipated by the chair. See id.

The complaint also alleges that the Board violated the Open Meeting Law by discussing the property located at 84 Main Street, even though this topic was not listed on the meeting notice. Because negotiations with the property owner had fallen through earlier that same day, we find that the chair could not have foreseen the need to discuss this topic when the meeting notice was created. A public body need only list topics that were reasonably anticipated by the chair 48 hours in advance of the meeting. G.L. c. 30A, § 20(b). Therefore, the Board did not violate the Open Meeting Law by discussing the 84 Main Street property during the February 17 meeting. We note, however, that as a best practice our office recommends that, whenever possible, public bodies update their meeting notices or postpone discussion of topics that arise fewer than 48 hours before a meeting, so that members of the public may be given advance notice of agenda items.²

² See Open Meeting Law Frequently Asked Questions:

May a public body consider a topic at a meeting that was not listed in the meeting notice?

Yes, if it is a topic that the chair did not reasonably anticipate 48 hours before the meeting. If a meeting topic is proposed after the meeting notice is posted, the public body is encouraged to update its posting to provide the public with as much notice as possible of what subjects will be discussed during a meeting. Although a public body may consider a topic that was not listed in the meeting notice if unanticipated, the Attorney General strongly encourages public bodies to postpone discussion and action on topics that are controversial or may be of particular interest to the public if those topics were not listed in the meeting notice.

CONCLUSION

For the reasons stated above, we find that the Board 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 that may be pending with our office or the Board. Please feel free to contact the Division at (617) 963 - 2540 if you have any questions.

Sincerely,



Kevin W. Manganaro
Assistant Attorney General
Division of Open Government

cc: Desiree Aselbekian
Southborough Board of Selectmen

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General 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 a final order.