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Thomas Williams,
Complainant(s)
against

Chairman, Inland Wetlands Commission, Town of Litchfield; Inland Wetlands Commission, Town of Litchfield; and Town of Litchfield,
Respondent(s)

Notice of Meeting

Docket #FIC 2016-0226

November 15, 2016

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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, December 7, 2016.** 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 November 22, 2016***. 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 November 22, 2016***. **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 **fifteen (15) copies** be filed ***ON OR BEFORE November 22, 2016***, 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: Thomas Williams
Attorney Steven E. Byrne
Town of Litchfield

FIC# 2016-0226/Trans/wrbp/PSP//TAH/2016-11-15

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by — Report of Hearing Officer

Thomas Williams,

Complainant — Docket # FIC 2016-0226

against

Chairman, Inland Wetlands Commission, Town of Litchfield; Inland Wetlands Commission, Town of Litchfield; and Town of Litchfield,

Respondents — September 28, 2016

The above-captioned matter was heard as a contested case on June 16, 2016, at which time the complainant and respondents appeared, stipulated to certain facts 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 email dated March 17, 2016, the complainant appealed to this Commission, alleging that the respondents held an illegal meeting. He stated that his complaint concerned an application of the Litchfield Housing Trust ("Housing Trust") before the Litchfield Inland Wetlands Commission ("Wetlands Commission") and that he was an intervenor in such matter. He did not specify the date of the meeting at issue. In a follow-up email dated March 19, 2016, however, the complainant alleged that the respondents held an illegal executive session at a meeting on March 9, 2016.[1] He claimed that such executive session was illegal because the intervenors were not allowed to participate at such meeting as required by Section 4-61dd-10 of

[1] The Commission notes that the complainant did not specify the date of the meeting in the body of the March 19, 2016 email; rather, he referenced an executive session and provided a link to a copy of the agenda for a March 9, 2016 meeting of the Wetlands Commission that was posted on its website. *See* Litchfield Inland Wetlands Commission, March 9, 2016 Agenda (http://www.townoflitchfield.org/Pages/LitchfieldCTCalendar/S023552F7-02355DD9.0/I%20-%20W%20%20March%209,%202016.pdf).

the Connecticut Regulations of State Agencies.[2] In addition, at the June 16, 2016 hearing in this matter, the complainant repeatedly asserted that his complaint concerned his rights as an intervenor in the proceedings before the Wetlands Commission and the respondents' failure to provide him, as an intervenor, with notice and the opportunity to participate in the executive session that occurred at the March 9, 2016 meeting.

3. 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 therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission.

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

> The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public....

5. Section 1-231(a), G.S., provides, in relevant part:

> At an executive session of a public agency, attendance shall be limited to members of said body and persons invited by said body to present testimony or opinion pertinent to matters before said body provided that such persons' attendance shall be limited to the period for which their presence is necessary to present such testimony or opinion and, provided further, that the minutes of such executive session shall disclose all persons who are in

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[2] Section 4-61dd-10 of the Connecticut Regulations of State Agencies provides:

> (a) The complainant and the respondent shall be parties. Other persons may petition the presiding officer to participate as parties or intervenors. The presiding officer may grant party or intervenor status to any person meeting the standards of section 4-177a of the Connecticut General Statutes, and may limit an intervenor's participation as provided therein. Once granted such status, a party or intervenor, subject to any limitations imposed by the presiding officer, shall be treated like any other party to the proceedings, with the same rights and obligations attendant thereto.
>
> (b) Any party may object to the participation of another person as a party or intervenor by filing, at or before the commencement of a hearing, a written objection and serving a copy of the objection upon the person seeking such status and upon all other parties of record in accordance with section 4-61dd-5(c) of the Regulations of Connecticut State Agencies and section 4-177a of the Connecticut General Statutes.

attendance except job applicants who attend for the purpose of being interviewed by such agency.

6. It is found that in October 2015, the Housing Trust filed an application with the Wetlands Commission to develop a nine unit affordable housing project at a site called Gargarin Place on the westerly side of Route 202 in Litchfield. It is found that the Wetlands Commission held three hearings on the application and that the complainant, among others, had intervenor status at such hearings. It is found that the Wetlands Commission denied the application, and that such denial was appealed by the Housing Trust to the Litchfield Superior Court.

7. It is found that, by letter dated March 9, 2016, the attorney for the Housing Trust made an offer on behalf of the Housing Trust, to settle the pending appeal, described in paragraph 6, above. It is also found that the Wetlands Commission held a regular meeting on March 9, 2016. It is found that during the March 9th meeting the respondents entered into executive session to discuss pending litigation. It is further found that during such executive session, the respondents discussed the Housing Trust's offer to settle the pending litigation. It is found that only the Wetland Commission members, its legal counsel and land use agent were invited to attend the executive session. It is also found that the Wetlands Commission voted, in open session, to approve the offer to settle the pending litigation.

8. It is found that the gravamen of the complaint is that the complainant was denied the right to participate at the respondents March 9, 2016 meeting, including during the executive session.

9. However, it is concluded that although the meetings of a public agency are required to be open to the public, the Freedom of Information ("FOI") Act does not mandate that individuals have a right to participate at meetings of public agencies. Moreover, pursuant to §1-231(a), G.S., it is concluded that the complainant did not have a right to attend the March 9, 2016 executive session, unless invited to do so at the discretion of the respondents.

10. Accordingly, it is concluded that the respondents did not violate the FOI Act.

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.

Paula S. Pearlman
as Hearing Officer