DOCKET NO. HHB-CV-15-6030425-S	:	SUPERIOR COURT
	:	
MARISSA LOWTHERT	:	JUDICIAL DISTRICT
	:	OF NEW BRITAIN
VS.	:	
	:	
FREEDOM OF INFORMATION COMMISSION	:	
AND BRUCE HAMPSON, CHAIRMAN OF	:	
MILLER DRISCOLL BUILDING COMMITTEE	:	JANUARY 17, 2017

MEMORANDUM OF DECISION

Connecticut's Freedom of Information Act (act) generally requires a person who has been denied a right conferred by the act to appeal to the Freedom of Information Commission (commission) within thirty days after the denial. General Statutes § 1-206 (b) (1). There is an exception to the limitation period, however, in the case of an "unnoticed or secret meeting." An appeal concerning such a meeting must be filed "not later than thirty days after the person filing the appeal receives notice in fact that such meeting was held." Id. This appeal requires the court to construe, as a matter of first impression, the meaning of "notice in fact" as it is used in § 1-206 (b) (1).

The plaintiff, Marissa Lowthert, appeals from the final decision of the commission dismissing as untimely her appeal regarding a vote taken by e-mail by the defendant Miller Driscoll Building Committee (committee). The plaintiff construes "notice in fact" to mean "actual notice" and argues that her appeal to the commission was timely because it was filed within thirty days of the date on which she actually learned that the e-mail vote had been

conducted. The commission construes "notice in fact" to include "implied notice" and argues that the plaintiff's appeal was untimely because it was filed more than thirty days after the committee approved and filed minutes which disclosed that it had conducted a vote by e-mail. For the reasons stated herein, the court concludes that "notice in fact" means "actual notice," and accordingly, the plaintiff's appeal is sustained.

FACTS AND PROCEDURAL HISTORY

The defendant Miller Driscoll Building Committee (committee) was appointed by the board of selectmen of the town of Wilton (board) in 2013 to make recommendations about conceptual designs and costs for the renovation of the Miller Driscoll elementary school. Return of Record (ROR), p. 183. The committee consists of thirteen volunteer members drawn from school leaders, municipal leaders, and community members. ROR, p. 32.

On February 11, 2014, an impending snowstorm caused the committee to cancel a meeting scheduled for February 13, 2014. ROR, pp.72-73. The meeting that was canceled was one in which the committee had intended to finalize its recommendation to the board, which was to be presented at the board's scheduled meeting on February 18, 2014. ROR, pp. 33-34. Although the committee's role was advisory and its recommendation was not binding on the board, the committee's chairman and vice chairman believed that the committee had developed a consensus and that it would be helpful if they could present that to the board as a unanimous position. Id. After canceling the February 13 meeting, they sent an e-mail to the

committee members, asking them to vote on the two proposals to be presented to the board the following week. ROR, pp. 34, 72. At the board's meeting on February 18, 2014, the committee's chairman, defendant Bruce Hampson, presented the details of two proposals the committee had considered and indicated that the committee unanimously recommended one of them. ROR, pp. 37, 74-75, 96-123. The board did not vote on the proposals at that meeting but continued the discussion to a subsequent meeting. ROR, pp.41, 75-76. On March 13, 2014, at the committee's next public meeting, Hampson reported that the committee had voted unanimously by e-mail to recommend "Option 1" to the board at its February 18 meeting. ROR, p. 73.

The plaintiff alleges that she first learned of the e-mail vote on June 17, 2014, when she was reviewing 445 pages of e-mails given to her in response to an unrelated records request on June 13, 2014. ROR, pp. 1-2, 26. At that time, she came across an e-mail string that included the February 11 request for a vote and a responsive vote sent on February 12 by a committee member. ROR, p. 26. The plaintiff filed a complaint to the commission on July 14, 2014, alleging that the e-mail vote constituted a violation of the "open meeting" requirements of the Freedom of Information Act (act). ROR, p. 1. She sought civil penalties against the committee and asked the commission to nullify the committee's vote.

A contested hearing was held on April 24, 2015. ROR, pp. 14-71. At that hearing, the committee's counsel argued that the commission lacked jurisdiction because information

about the e-mail vote had been public since March 13, 2014, when Hampson reported the vote at the committee's next public meeting. ROR, pp. 27-30. The minutes of that meeting were submitted as an exhibit. ROR, p. 73. The minutes reported: "Chairman Hampson stated that while the February 13, 2013 meeting of the building committee was cancelled because of snow, the building committee voted unanimously by e-mail to recommend Option 1 to the Board of Selectmen on February 18, 2014." ROR, p. 73. The exhibit, however, did not indicate either the date on which the minutes were approved or when the minutes were filed with the town clerk. The hearing officer asked the defendants to file a post-hearing exhibit evidencing when the draft minutes were posted, when the draft minutes were approved, and when they were made available to the public. ROR, pp. 47-48. The defendants thereafter submitted affidavits attesting that the draft minutes were e-mailed to the board's executive secretary on March 20, 2014, were approved without alteration on March 27, 2014, and were available to the public in the office of the board's executive secretary after she received them. ROR, pp. 132-142. The plaintiff objected to the late submission. ROR, p. 144-147.

The hearing officer issued a proposed final decision on May 13, 2015, in which he recommended dismissing the appeal for lack of jurisdiction because the plaintiff "received notice in fact that the respondents may have conducted an unnoticed or secret meeting on March 27, 2014, which is the date that the respondents approved, in public, the minutes for the March 13th meeting." ROR, pp. 172-174. The plaintiff's appeal was filed with the

commission more than thirty days after March 27. ROR, p. 173. Over the plaintiff's objection, the commission approved the proposed decision at its meeting of June 10, 2015. ROR, pp. 187-197. The plaintiff filed a request for reconsideration (ROR, p. 203), which was denied by the commission on July 8, 2015. ROR, p. 216. This appeal followed.

On appeal, the plaintiff contends that the commission applied the wrong legal standard, requiring only constructive notice when the statute requires actual notice to the individual, and that the commission incorrectly found that the committee properly filed its minutes in the office of the board's executive assistant, rather than with the town clerk. The commission argues that the court should defer to its "time-tested" construction of the statute and its findings of fact.

APPLICABLE LAW

The appeal is brought and must be reviewed pursuant to the Uniform Administrative Procedure Act (UAPA), General Statutes §§ 4-166 et seq. "Under the UAPA, it is [not] the function . . . of this court to retry the case or to substitute its judgment for that of the administrative agency. . . . Even for conclusions of law, [t]he court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion." (Citation omitted; internal quotation marks omitted.) *Chairperson, Connecticut Medical Examining Board* v. *Freedom of Information Commission*, 310 Conn. 276, 281, 77 A.3d 121 (2013). "[C]onclusions of law reached by the administrative

agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . . [Similarly], this court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes." (Internal quotation marks omitted.) Id.

"On the other hand, it is the function of the courts to expound and apply governing principles of law." *State Medical Society* v. *Board of Examiners in Podiatry*, 208 Conn. 709, 717, 546 A.2d 830 (1988). "This case presents a question of law turning upon the interpretation of a statute." Id., 715. While our Supreme Court has held that a time-tested agency interpretation of a statute will be afforded deference, it has also held that such deference is appropriate "only when the agency has consistently followed its construction over a long period of time, the statutory language is ambiguous, and the agency's construction is reasonable." Id., 719. The reasonableness of an agency's construction is determined by applying "our established rules of statutory construction." (Internal quotation marks omitted.) *McCullough* v. *Swan Engraving, Inc.*, 320 Conn. 299, 305, 130 A.3d 231 (2016). If a statute is not ambiguous, or if the agency's construction of the statute is not consistent, time-tested, and reasonable, the court's review of the agency's construction of the statute is de novo.

In this case, the statutory provision in dispute is found in § 1-206 (b) (1). In relevant part, it provides as follows: "Any person . . . wrongfully denied the right to attend any meeting

of a public agency . . . may appeal 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 the denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives notice in fact that such meeting was held." If the commission finds that a meeting was held without the notice required under the act, it may declare any action taken at that meeting to be "null and void." General Statutes § 1-206 (b) (2);[1] see also § 1-206 (c).[2] It may also, under appropriate circumstances and with appropriate procedural safeguards, impose civil penalties

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[1] General Statutes § 1-206 (b) (2) provides in relevant part: "In any appeal to the Freedom of Information Commission under subdivision (1) of this subsection or subsection (c) of this section, the commission may confirm the action of the agency or order the agency to provide relief that the commission, in its discretion, believes appropriate to rectify the denial of any right conferred by the Freedom of Information Act. The commission may declare null and void any action taken at any meeting which a person was denied the right to attend and may require the production or copying of any public record. In addition, upon a finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars. . . ."

[2] General Statutes § 1-206 (c) provides in relevant part: "Any person who does not receive proper notice of any meeting of a public agency in accordance with the provisions of the Freedom of Information Act may appeal under the provisions of subsection (b) of this section. . . . A public agency of a political subdivision shall be presumed to have given proper notice of any meeting, if a notice is timely sent under the provisions of said Freedom of Information Act by first-class mail to the address indicated in the request of the person requesting the same. If such commission determines that notice was improper, it may, in its sound discretion, declare any or all actions take at such meeting null and void."

on any public official for the denial of any right under the act without reasonable grounds. General Statutes § 1-206 (b) (2).

It is undisputed that the committee, which was created by a town board of selectmen, is a "public agency" under the act. General Statutes § 1-200 (1) (A) defines "public agency," for the purposes of the act, in relevant part as "any . . . board . . . of any . . . town, . . . including any committee of, or created by, any such . . . board . . . ." It is also undisputed that a vote by e-mail constitutes a "meeting" under the act. General Statutes § 1-200 (2) defines "meeting" in relevant part as "any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power." Finally, the commission has previously construed "unnoticed," as used in the act, to mean a meeting of a public agency for which the agency failed to satisfy the specific notice requirements of the act, including both General Statutes § 1-225 and General Statutes § 1-227. See, e.g., *Smith* v. *Connecticut Department of Housing*, FIC 86-168, paragraphs 3 and 6-10 (concluding that a meeting was "unnoticed," even though notice had been published in local newspapers, because the agency failed to file a notice with the Secretary of State, as required by § 1-21 (a) [now 1-225]); *Selner* v. *Berlin Inland Wetlands and Watercourses Commission*, FIC 94-403 (considering whether a public agency had failed to given written notice of special meeting to complainant, who had filed request for notice of agency's meetings pursuant to

§ 1-21c [now 1-227]).

The court must determine first whether the phrase "notice in fact" in § 1-206 is ambiguous, and then whether the commission's interpretation is time-tested, consistent, and reasonable. "Reasonableness," as noted above, is determined by applying our usual principles of statutory construction.

"When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of the case . . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement and to its relationship to existing legislation and common law principles governing the same general subject matter." (Internal quotation marks omitted.) *Commissioner of Public Safety* v. *Freedom of Information Commission*, 301 Conn. 323, 338, 21 A.3d 737 (2011).

A statute is not ambiguous merely because it fails to define a term. See *Mayfield* v. *Goshen Volunteer Fire Co., Inc.*, 301 Conn. 739, 745, 22 A.3d 1251 (2011). Nor is a statute ambiguous merely because parties disagree as to its meaning. *Commissioner, Department of Public Safety* v. *Freedom of Information Commission*, 204 Conn. 609, 620, 529 A.2d 692, (1987). "Where statutory language is clearly expressed . . . courts must apply the legislative enactment according to the plain terms and cannot read into the terms of the statute something which manifestly is not there in order to reach what the court thinks would be a just result." (Internal quotation marks omitted.) Id.

The plaintiff argues that "notice in fact" is synonymous with "actual notice." "Actual notice" is defined as "[n]otice given directly to, or received personally by, a party." Black's Law Dictionary (8th ed. 2004). According to the plaintiff, a person receives "notice in fact," and her thirty-day clock for appeal to the commission begins to run, when that person first becomes actually aware that an unnoticed or secret meeting has occurred.

The commission concedes that the term "notice in fact" is generally understood to mean "actual notice." It argues, however, that the term "actual notice" can be divided into two categories: "express notice," which indicates a direct communication, and "implied notice." See 58 Am. Jur. 2d Notice, § 5. "Implied notice" is defined as "[n]otice that is inferred from facts that a person had a means of knowing and that is thus imputed to that person; actual notice of facts or circumstances that, if properly followed up, would have led to

a knowledge of the particular fact in question." Black's Law Dictionary (8th ed. 2004). At oral argument in this court, the commission's counsel argued that the Freedom of Information Act is intended to protect the "public's right to know." Once the "veil of secrecy" concealing an unnoticed meeting is lifted by an agency's public admission that such a meeting occurred, the public's right to know is protected, and the thirty-day clock begins to run for everyone.

There is much to be said for the commission's argument, which attempts to balance the public's right to know against a public agency's need for finality with respect to its decisions. The difficulty with the commission's argument is that it cannot be squared with the text of the statute. Section 1-206 (b) (1) does not use the phrase "notice in fact" in a vacuum. Rather, it starts the limitation period from the date when "*the person filing the appeal* receives notice in fact that such a meeting was held." (Emphasis added.) The statutory focus is on the particular person filing the appeal, not on the public at large. This context supports the plaintiff's argument that personal notice to the person appealing is required. The text of the statute is not reasonably susceptible to the construction urged by the commissioner.

Nor is the court persuaded that the commissioner has consistently applied the construction it urges. To be sure, the commission has sometimes applied this construction. See, e.g., *Fama* v. *Defreitas,* FIC 2000-235 (finding that minutes of allegedly secret meetings in 1997 were contemporaneously filed and made available to public in 1997, thereby giving contemporaneous "notice in fact" to complainant; complaint, filed in 2000, was untimely);

Emerick v. *Glastonbury Ethics Commission*, FIC 2004-386 (finding that allegedly "secret" subcommittee meetings were regularly discussed in public meetings and reflected in the minutes of those public meetings, thereby giving the complainant "notice in fact" more than thirty days before her complaint was filed); cf. *Emerick* v. *Glastonbury Ethics Commission*, FIC 2004-406 (finding no prior "notice in fact" of telephonic and e-mail meetings by full commission because such meetings were not mentioned in public meetings or minutes). Nevertheless, the commission has sometimes implicitly applied an "actual notice" standard when minutes have previously been published. See, e.g., *Selner* v. *Berlin Inland Wetlands and Watercourses Commission*, supra, FIC 94-403 (finding "notice in fact" on date complainant *reviewed* agency's minutes at town hall, without reference to date on which minutes were *filed*). More recently, in *Benicewicz* v. *Walker*, FIC 2014-087, the commission found that a complainant did not have notice in fact of a November 7, 2013 telephonic meeting of the directors of a tax district before January 18, 2014, when he reviewed the online minutes of the tax district's October 17, 2013 meeting. The tax district had amended the minutes of its October 17 meeting to include a reference to a November 8 telephonic meeting (although the telephonic meeting was later determined to have occurred on November 7). The commission argued, in this appeal, that *Benicewicz* is distinguishable because the agency in that case amended the minutes of a meeting that predated the November telephonic meeting, rather than including a reference to the November telephonic meeting in the minutes of a

subsequent meeting, as was done here. But that distinction is not persuasive; the information became available to the public, and the "veil of secrecy" was thereby lifted, on whatever date the tax district made public its admission that it had conducted an improper telephonic meeting in November. In *Benicewicz*, the commission did not consider when the October 17 minutes were amended or how long they had been available online.

In *Benicewicz*, moreover, the commission criticized the tax district for implanting the de facto minutes of the improper November telephonic meeting into the minutes of its October meeting. It concluded that the insertion of the minutes of an unnoticed or secret meeting into the minutes of a public meeting was insufficient to satisfy the requirements of General Statutes § 1-225 (a),[3] which requires an agency to make available the minutes of *each* meeting within seven days. Had the commission applied that principle here, it would have concluded that the mention of the February 11-12 e-mail vote in the minutes of the March 7, 2014 regular meeting was insufficient to satisfy the requirements of § 1-225 (a).

Where an agency's construction of a statute is not consistent over a substantial period

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[3] General Statutes § 1-225 (a) provides: "The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. The votes of each member of any such public agency upon any issue before 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 web site. Each public agency shall make, keep and maintain a record of the proceedings of its meetings."

of time, and where the statute is not, on its face, ambiguous, the court's review is de novo. This court, therefore, must apply the usual principles of statutory construction. The court looks first to the text of the statute, then to its statutory context, and then to the policies the statute is intended to advance, to ascertain the legislature's intention.

The text of § 1-206 (b) (1), as discussed above, commences the thirty-day limitation period when "the person filing the appeal receives notice in fact that such a meeting was held." Its reference to "the person filing the appeal" supports an interpretation that direct personal notice is required to commence the limitation period. Its statutory context supports this interpretation. The act's enforcement structure as a whole allows "any person" to challenge the sufficiency of an agency's action under the act. Section 1-206 (b) (1) provides that "[a]ny 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" may appeal to the commission for relief. Section 1-206 (c) reiterates that "[a]ny person who does not receive proper notice of any meeting of a public agency . . . may appeal under the provisions of subsection (b) of this section." Thus, although the act is broadly intended to open the workings of government to public scrutiny, it is plainly intended to be enforced through the complaints of individuals.

The court must also consider the legislative policy that the act is meant to serve. "[T]he overarching legislative policy of [the act] is one that favors the open conduct of

government and free public access to government records. . . . The sponsors of the [act] understood the legislation to express the people's sovereignty over the agencies which serve them . . . and [the Supreme Court] consistently has interpreted that expression to require diligent protection of the public's right of access to agency proceedings. Our construction of the [act] must be guided by the policy favoring [access] and exceptions to [access] must be narrowly construed." (Internal quotation marks omitted.) *Board of Selectmen* v. *Freedom of Information Commission*, 294 Conn. 438, 450, 984 A.2d 748 (2010). In this case, the commission's interpretation of "notice in fact" limits its ability to enforce the open meetings provisions of the act more than the text of the act appears to warrant.

The commission argues that a construction of "notice in fact" requiring direct personal notice to the complainant is unworkable and, in effect, unfair to public agencies. The purpose of a limitation period, it argues, is to give finality. The commission has broad authority to nullify actions taken at an unnoticed or secret meeting. A notice provision allowing "any person" to appeal whenever that individual person actually becomes aware of some past unnoticed or secret meeting therefore exposes public agencies to uncertainty for an indefinite period of time. The commission argues that the legislature could not have intended such a result.

Because the commission argues that applying the plain language of the statute may lead to an unworkable result, the court has considered the legislative history of the "notice in

fact" provision to ascertain whether the legislature considered the implications of a limitation period based on the personal knowledge of a complainant. When the act was originally enacted in 1975, the limitation period for all appeals to the commission was thirty days. In 1984, the legislature amended the act to add the exception at issue here. See Public Acts 1984, No. 84-136. The history of the amendment is sparse; it was passed on the consent calendar in both the House of Representatives and the Senate. In the public committee hearing before the bill went to the House and Senate, however, two speakers provided commentary of relevance to this question. One was a Killingworth resident, Don Frattini, who testified that he had asked his state representative to raise the bill based on his experience. The other was Mitchell Pearlman, then the executive director and general counsel of the commission.

Frattini testified that he appeared before the board of tax review to present a petition on February 9. The board inspected his property on February 20. On March 19, he received a notice that his petition had been denied at a meeting on February 9. He filed a complaint with the commission on April 7, asserting that the board could not have voted on February 9 because it had visited his property on February 20, and apparently asserting that the board must have held a subsequent meeting without proper notice to him. The commission concluded that the meeting had occurred on February 20 and that Frattini's appeal on April 7 was therefore untimely under the thirty-day limitation period then applicable to all appeals.

Arguing in support of the amendment to the legislative committee, Frattini argued that he had had only one business day after receipt of the notice of denial to research his rights and file his appeal. See Conn. Joint Standing Committee Hearings, Government Administration and Elections, Pt. 2, 1984 Sess., pp. 502-04.

Pearlman also spoke in support of the amendment. In relevant part, he testified that "[t]his bill would permit the Freedom of Information Commission to hear cases alleging an unnoticed or illegal secret meeting if a notice of appeal is filed within 30 days after the person who files the appeal receives a notice of the fact of the meeting. Presently there's a 30-day time limit from the date of the denial, or the violation of the right under the Freedom of Information Act. Beyond that point, the commission does not have jurisdiction to entertain a complaint. So, if there is a secret meeting, for example, a person doesn't know about it and 30 days pass, the commission can no longer take jurisdiction and hear the case. There have been a number of instances where this has not allowed the commission to look at cases that seem to be very important violations of the act. Understand that there's a difference here with respect to records and meetings. If somebody is turned down for a record, he can always ask again and then bring a complaint within 30 days. With a meeting, it's over and done with. . . . in all fairness, I should mention there's a [countervailing] argument and that is that if action was taken at a secret meeting and not brought to a person's attention for years and years, conceivably the commission could take action such as [declaring] null and void that action,

years and years later on." Conn. Joint Committee Hearings, supra, pp. 475-76.

Pearlman's testimony indicates that (1) the commission recognized that it might be asked to nullify an action even years after the action was taken, but (2) the commission supported the raised bill despite that possibility because it would allow the commission to address very serious violations of the act if they were discovered more than thirty days after they occurred. The legislature was therefore advised that the amendment would expose public agencies to potentially drastic remedial actions years after an unnoticed or secret meeting occurred. In choosing to enact the amendment despite this possibility, the legislature necessarily relied upon the commission to exercise discretion when asked to nullify the actions of other state and municipal agencies.

In fact, the commission has exercised restraint in nullifying actions. One example is a decision rendered by the commission in 1986. In *Smith* v. *Connecticut Department of Housing*, supra, FIC 86-168, the commission was asked to nullify an action taken at an improperly noticed meeting held in 1984 to decide the suitability of a proposed location for a housing project in New Haven. Although the Department of Housing had published notice of the meeting seven days in advance, in English and in Spanish, in local newspapers, it had not filed notice of the meeting in the office of the Secretary of State, as required by § 1-21 (a) [now § 1-225 (a)]. The commission concluded that the meeting was "unnoticed" because the statutory notice requirements had not been satisfied. It found that it had jurisdiction to hear

the appeal of the complainant, who learned of the 1984 meeting no earlier than May 9, 1986, when information about the meeting was published in a pamphlet distributed to residents of the housing project. The commission declined to nullify the decision made at that meeting despite the improper notice and the fact that the meeting was held in a privately owned building largely inaccessible to the public. It observed that the site had been acquired, housing had been built there, and families with moderate incomes had already been placed there. Under those circumstances, it exercised its discretion to award only prospective relief, requiring the agency to mail a copy of the commission's decision to every unit in the housing complex.

Based on the plain language of the statute, its statutory context, the policy it is meant to serve, and confirmed by consideration of its legislative history, the court concludes that the legislature intended to allow "any person" to appeal an unnoticed or secret meeting within thirty days after the person filing the appeal received notice in fact that the meeting had occurred. Notice in fact, used in such context, means actual notice to the person filing the appeal. The commission did not apply this interpretation in considering the plaintiff's appeal and, as a consequence, erroneously dismissed it. The court finds that a substantial right of the plaintiff was adversely affected and it accordingly remands the case to the commission, pursuant to General Statutes § 4-183 (j), for further consideration. In light of this remand, it is unnecessary to consider the plaintiff's further contention that the commission erred in finding

that the committee's minutes were properly filed in the board's office, rather than in the town clerk's office.

The plaintiff asks the court to sustain her appeal, find a violation of the act, impose civil penalties on the committee and the board, admonish the commission for failing to grant the plaintiff a fair and impartial hearing, and award her costs. The court concludes that any relief beyond a remand to the commission for further proceedings is unnecessary. The commission is the agency charged, in the first instance, with determining whether a violation of the act occurred and, if so, what remedy is appropriate. The commission has broad discretion with respect to the relief to be ordered if a violation is found. In prior cases, the relief awarded by the commission for an unnoticed meeting has ranged widely, as might be expected where such broad discretion is conferred. In some cases it has considered the relevant circumstances and determined that no order should enter against the offending agency. See, e.g., *Fuchs* v. *Griswold*, FIC 2007-547. In some, it has ordered the agency to create minutes of an unnoticed meetings and to comply with the act in the future. See *Emerick* v. *Glastonbury Ethics Commission*, FIC 84-406. In more extreme cases, it has entered orders nullifying all actions taken at a secret meeting and imposing a civil penalty on an official involved in the meeting. See *Madigan* v. *Keating*, FIC 2008-281. The commission should be afforded an opportunity to exercise its discretion in this case to determine what remedy, if any, is appropriate for any violation it may find here. It may consider any circumstances it

determines to be relevant, including but not limited to the circumstances that caused the noticed meeting for February 13 to be canceled and the committee's subsequent public admission that it had voted by e-mail.

The court, in the exercise of its discretion, declines to award costs.

CONCLUSION

The plaintiff's appeal is sustained and the case is remanded to the commission for further proceedings consistent with this decision.

BY THE COURT,

Sheila A. Huddleston

Sheila A. Huddleston, Judge