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FREEDOM OF INFORMATION



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Joe Wotjas and the New London Day,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-689

Board of Selectmen, Town of Stonington; and
Town of Stonington,
Respondent(s)

June 25, 2013

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, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, July 24, 2013**. 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 July 12, 2013**. 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 July 12, 2013**. **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 **fourteen (14) copies** be filed **ON OR BEFORE July 12, 2013**, 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: Joe Wotjas
Thomas J. Londregan, Esq.

6/25/13/FIC# 2012-689/Trans/wrbp/LFS/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Joe Wotjas and the New London Day,

Complainants

against

Docket #FIC 2012-689

Board of Selectmen, Town of Stonington;
and Town of Stonington,

Respondents

June 18, 2012

The above-captioned matter was heard as a contested case on May 28, 2013, at which time the complainants and the 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 letter filed December 11, 2012, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by holding an improper emergency meeting on December 3, 2012. The complainants asked the Commission to declare null and void the action taken at such meeting.
3. Section 1-225(d), G.S., provides in relevant part:

Notice of each special meeting of every public agency...shall be given not less than twenty-four hours prior to the time of such meeting by filing a notice of the time and place thereof in the office of the...clerk of such subdivision for any public agency of a political subdivision of the state...Such notice shall be given not less than twenty-four hours prior to the time of the special meeting; provided, in case of emergency...any such special meeting may be held without complying with the foregoing requirement for the filing of notice but a copy of the minutes of every such emergency special meeting adequately setting forth the nature of the emergency and the proceedings occurring at such meeting shall be filed with the...clerk of such political subdivision...not later than seventy-two hours following the holding of such meeting...
(Emphasis added.)

4. It is found that in November 2011, the Stonington Planning and Zoning Commission approved a subdivision and special use permit for eight lots in the Town of Stonington.

5. It is found that the approval was appealed to the Superior Court, resulting in a stipulated judgment approved by the Court in March 2012.

6. It is found that the stipulated judgment required the private developer to convey three open space areas to the Town of Stonington, the Town of Stonington Municipal Land Trust, or a recognized charitable conservation organization for its perpetual preservation as open space.

7. It is found that the Land Trust accepted all but two acres of open space, and that the two acres were to be conveyed to the Town of Stonington.

8. It is found that state statute (§8-25, G.S.) requires that subdivision plans be approved by the local planning and zoning commission and filed with the office of the town clerk not later than 90 days after the termination of an appeal by stipulated judgment.

9. It is found that the §8-25, G.S., permits two 90-day extensions for a total extension of 270 days.

10. It is found that through either a misreading of the statute or a miscalculation of the days remaining in the extension, the respondents did not realize until the morning of December 3, 2012 that the 270th day was on December 3, 2012, and that the time for filing would expire at the end of that day.

11. It is found that the town planning and zoning commission had not yet approved the subdivision plans.

12. It is found that the developer could not file the plans in the office of the town clerk without the signed approval of the chairman of the planning and zoning commission, but the chairman of the commission refused to sign the plans until the respondents formally accepted the open space.

13. It is found that, to avoid the expiration of the stipulated judgment for failure to file the plans in a timely manner, the respondents decided to hold an emergency meeting.

14. It is found that the respondents held a special meeting at noon, at which they accepted the open space as the stipulated judgment required. It is found that the respondents did not provide proper notice of such special meeting because they considered it to be an emergency meeting.

15. It is found that the respondents timely prepared minutes of such meeting.

16. In Ridgefield v. FOIC, 294 Conn. 438, 450 (2010), the Connecticut Supreme Court ruled that the FOI Commission's time-tested interpretation of the word "emergency" was

reasonable, concluding that “for a situation to comprise an emergency, it must be unexpected or unforeseen, and it must necessitate immediate action.”

17. It is found that in this case, the respondents’ predicament was not unforeseen. It is found that the need to dispense with standard notice of a special meeting was avoidable, had the respondents not made a mistake in their calculations.

18. The Commission has previously addressed this issue with the respondents, albeit some time ago, in Stonington Education Association v. Stonington Board of Selectmen; Docket #FIC 1994-012 (July 27, 1994). In that case, the respondents needed to hold a special meeting within a 25-day period to vote on whether to reject an arbitration award. However, when a worsening snow storm required the duly-noticed special meeting’s cancellation, the respondents were faced with either letting the 25-day period expire by the time they could hold a properly-noticed meeting or advancing the time of the meeting without timely notice. The respondent’s “lack of foresight” in neglecting to account for the possibility of inclement weather “[did] not constitute an emergency as provided for in [§1-225(d)], G.S.,” the Commission ruled.

19. See also, Foran and Dunnack v. Board of Selectmen, Town of Andover, FIC Docket #2008-470 (April 22, 2008) (misunderstanding about printer’s deadline to receive mill rate from town in order to avoid sending adjusted tax bills did not justify emergency meeting); Eggen v. New Milford Planning Commission; Docket #FIC1998-113 (August 26, 1998) (special meeting to make certain recommendations and approvals regarding road construction project before town meeting to approve bonding of such project not emergency, because respondent had at least two month notice of project and two week notice of town meeting); Gries v. Woodstock Board of Selectmen; Docket #FIC 1994-221 (April 26, 1995) (need for meeting to make proposed budget cuts so that bond payments could be made and tax bills be sent timely not emergency because respondent should have foreseen need to make budget cut recommendations); Burns v. Stafford Board of Education; Docket #FIC 1994-199 (March 23, 1994) (neither ignorance of fifteen day deadline nor difficulty in assembling quorum justified emergency meeting).

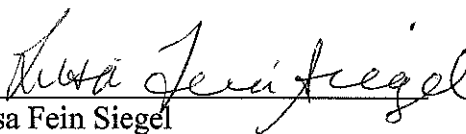
20. It is found that the respondents’ need to hold a special meeting on December 3, 2012 to accept the open space according to the stipulated judgment was not an emergency within the meaning of §1-225(d), G.S.

21. It is concluded that the respondents violated the FOI Act by holding such meeting without providing proper notice for a special meeting.

22. Notwithstanding the conclusion in paragraph 21, above, the Commission notes that the respondents’ only action at the December 3, 2012 meeting was to accept the open space as mandated by the stipulated judgment. Because such action was essentially ministerial in nature, and because the respondents did not act in bad faith to avoid the notice requirements of the FOI Act, the Commission, in its discretion, declines to declare null and void the action taken at the respondent’s December 3, 2012 meeting.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint.

1. Henceforth, the respondents shall strictly comply with the notice provision of §1-225(d), G.S.



Lisa Fein Siegel
as Hearing Officer

FIC#2012-689/HOR/LFS/06182013