

Minutes of the Board of Assessor's Meeting of May 5, 2011

The meeting was called to order at 4:00 p.m. Present at the meeting were Anne Dunn, Andrew MacInniss, and Nancy Shea of the Board, and Assistant Assessor James Judge.

Chairwoman Dunn welcomed new member Andrew MacInniss to the Board. On motions made and seconded, the Board elected Anne Dunn as Chairwoman and Nancy Shea as Secretary.

Before the Board took up the agenda item entitled "Recommendations to the Board of Selectmen," Nancy Shea raised an objection to the Board's consideration of this item on the grounds that the public notice was insufficiently specific to meet the requirements of the Open Meeting Law. She distributed to the Board members a memorandum from Town Counsel dated March 9, 2011, distributing an Opinion Letter from the Attorney General's office that addresses the level of specificity required by the Law. That memorandum is attached to these minutes.

After review of the materials and discussion, the Board unanimously determined to defer consideration of the "Recommendations to the Board of Selectmen" agenda item until its next meeting. The Board rescheduled its next meeting from May 24<sup>th</sup> to May 13, 2011.

Mr. Judge then informed the Board that he wished to Board to consider settlement proposals in two real estate abatement cases that were scheduled to be heard in the Tax Court on Monday, May 9, 2011. Chairwoman Dunn referred to the agenda provided to the Board by Mr. Judge in its meeting notebooks. She noted that the agenda contained the item "New Business," which was broad enough to cover Mr. Judge's request. Nancy Shea noted that the Attorney General's opinion previously discussed provides that a Board may consider a matter that the Chair did not reasonably anticipate 48 hours before the meeting if such matter cannot be postponed to the next meeting.

Chairwoman Dunn determined that the Board would consider the settlement proposals. After discussion, the Board unanimously determined to accept the settlement proposals in the two abatement cases.

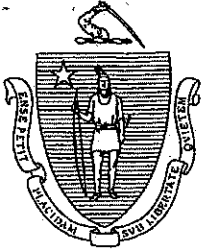
Mr. Judge informed the Board of a problem that has arisen involving property taken by the Town through Tax Title proceedings. Ms. Dunn concluded that the Board would consider this matter when and if there was a formal request for action by the Board.

The next meeting of the Board is scheduled for May 13, 2011 at 2 p.m.

The meeting was adjourned at 4:20 p.m.

Respectfully submitted,

Nancy C. Shea



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BOARD OF SELECTMEN

Lawrence Ashley  
Chairman  
Freetown Soil Conservation Board  
3 North Main St.  
Assonet, MA 02702

RE: Open Meeting Law Complaint

Dear Mr. Ashley,

This office received a complaint filed by Donna Leary dated January 26, 2011 alleging that the Freetown Soil Conservation Board (the "Board") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint specifically alleges that Board listed "Renewal of Fall Soil Permits" as a topic for its October 12, 2010 meeting, and that the topic "is not descriptive enough to reasonably show who will be coming in and for what. It also does not give the location of the project." The complaint was originally filed with the Board on or about October 12, 2010. We also received the Board's response to the original complaint on or about December 4, 2010.

We find that the Board's notice for its October 12, 2010 meeting did not meet the requirements of the Open Meeting Law. In reaching this determination we reviewed the October 12, 2010 and January 26, 2011 complaints, the Board's December 4, 2010 response, and the notice and the minutes for the October 12, 2010 meeting.

From the information provided by the complaint and the Board's response, we understand that the following occurred: the Board scheduled a meeting for October 12, 2010 to consider, among other items, applications for renewal of soil permits. In the Board's December 4, 2010 response to the complaint, the Board states, "[t]he Chair reasonably anticipated that [the Board] would act on several of the pending applications for renewal of existing Soil Permits, and therefore included an item on the agenda indicating that the Board would be discussing that topic." The meeting notice included a topic listed as "Renewal of Fall Soil Permits." It was

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posted on October 6, 2010. The minutes of the meeting reflect that the Board considered and approved 5 permits:

#496, #497, #499, #498 and #500

5 acres on the south side of the Assonet River, 53 Dr Braley Road, 5 acres on Braley Road, 4 acres on Chace Road, AA Will Quarry.

The minutes do not reflect any discussion of the permits.

The Open Meeting Law, G.L. c. 30, §§ 20(b) states in relevant part that, “[e]xcept in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays... Notice shall be printed in a legible, easily understandable format and shall 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.” Any topic discussed at a meeting, which was reasonably anticipated by the chair of the public body, must be listed in a meeting notice at least 48 hours in advance of the meeting. Public bodies are required to list topics in a meeting notice with “sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.” 940 CMR 29.03.

Here the Board makes clear in its December 4, 2010 response that the chair of the Board reasonably anticipated the specific permits to be discussed at the October 12, 2010 meeting. However, the notice for the October 12, 2010 meeting included only a broadly stated item indicating that the renewal of fall soil permits would be a subject of discussion during the meeting. The Open Meeting Law requires that the Board list those topics anticipated by the chair with sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.<sup>1</sup> A notice which states “Renewal of Fall Soil Permits” does not provide sufficient specificity. To the extent that the Board is aware which specific permits it will consider during

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<sup>1</sup> See also the section of our office’s website that includes Frequently Asked Questions pertaining to the Open Meeting Law, [www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting):

Q: How specific must the listing of topics be in the meeting notice?

A: The listing of topics must contain enough specificity to give the public an understanding of each topic that will be discussed. It is not sufficient to list broad topic categories, such as “Old Business.” For example, when the Chair of a Board of Selectmen reasonably anticipates a discussion about on-going traffic improvement projects in town at the next Board meeting, it would be appropriate for the Chair to list that topic in the notice as: “Discussion of Traffic Improvement Projects at the intersection of Main and Pleasant Streets; and at the intersection of Elm and Oak Streets.” In some instances, there may be overlap in the posting requirements of the Open Meeting Law and other statutes. In most cases, the information required by the controlling statute will satisfy the Open Meeting Law. meeting notice requirements, however for specific questions please contact the Division of Open Government.

the meeting, it should take the additional step of listing in the meeting notice the details of those specific permits, including the name of the applicant and the location under consideration. This level of detail is intended to provide members of the public with sufficient information to understand what business is being transacted by the Board and, where members of the public have an interest, to attend the relevant deliberations.

This determination is not intended to minimize the thoughtful concerns expressed by the Board in its response. Rather we are hopeful that this determination provides a roadmap to the Board for how to proceed going forward. Accordingly, we take this opportunity to address the Board's concerns as they were expressed in its response, in turn.

First, the Board raises a concern that, "imposing a requirement that the meeting notice be the equivalent of a detailed agenda would impose unreasonable administrative burdens on public bodies." We do not believe that providing detail of the specific permits and the specific locations under consideration by the Board will result in an unreasonable administrative burden to the Board. Listing the full details contained in the permit applications in the meeting notice is not necessary. For instance, an adequate topic for the October 12 meeting notice could have appeared as:

#### Renewal of Fall Soil Permits

- #496 [Name of Applicant], 5 acres on the south side of the Assonet River
- #497 [Name of Applicant], 53 Dr Braley Road
- #499 [Name of Applicant], 5 acres on Braley Road
- #498, [Name of Applicant], 4 acres on Chace Road
- #500, [Name of Applicant], AA Will Quarry

Second, the Board contends that "boards would be prevented from acting upon permit renewals inadvertently omitted from the posting, resulting in adverse impacts upon business owners." Permits that were inadvertently omitted from the notice may be the topic for a subsequent, adequately posted meeting. We understand that this may require the Board to hold a special meeting outside of its normally scheduled meetings, but the Board may choose to do so. Additionally, permits that were not anticipated by the chair 48 hours in advance of the meeting and were not reflected on the notice may still be considered by the Board during the posted meeting.<sup>2</sup> However, we recommend that whenever possible the Board postpone action on items which were not listed in the meeting notice in order to provide adequate notice to the public,

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<sup>2</sup> See also the section of our office's website that includes Frequently Asked Questions pertaining to the Open Meeting Law, [www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting):

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

A: 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.

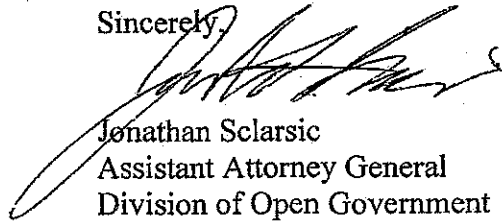
unless circumstances require immediate action.

In the future, the Board is required to comply with the Open Meeting Law, G.L. c. 30A, §§ 18-25. This includes taking the steps necessary to provide sufficient detail in meeting notices such that members of the public are able to understand specifically which issues and locations will be discussed by the Board. The requirement that meeting notices list topics with sufficient specificity is new, and here the Board complied with the requirement in part. Based on our review of the facts, we do not believe the Board acted with any intent to circumvent the requirements of the Open Meeting Law. However, we caution the Board that evidence of a similar violation in the future may be considered evidence of an intent to violate the Open Meeting Law. See 940 CMR 29.02.

Finally, we acknowledge the actions that the Board has taken in response to this complaint, including its commitment to list in future notices where, and at what times, the full permit applications will be available for review by the public. Therefore, we resolve this complaint by providing additional guidance to the Board. We decline to take the additional step requested by the complainant, which is to rescind action taken by the Board of Selectmen on this matter. We consider this matter closed.

If you have any questions regarding this letter, please do not hesitate to contact me at the number below.

Sincerely,



Jonathan Scarsic  
Assistant Attorney General  
Division of Open Government  
617-963-2045

cc: Donna Leary