

McGREGOR & LEGERE

ATTORNEYS AT LAW, P.C.

15 COURT SQUARE – SUITE 500
BOSTON, MASSACHUSETTS 02108
(617) 338-6464
FAX (617) 338-0737

NATHANIEL STEVENS, ESQ.
E-mail: nstevens@mcgregorlaw.com
(617) 338-6464 ext. 120

October 2, 2019

VIA E-MAIL

Sarah Stanton
Town Manager
Town of Bedford
10 Mudge Way
Bedford, MA 01730

**RE: Steven Hagan – Allegations of Open Meeting Law Violation
Our File No. 2883**

Dear Ms. Stanton:

We represent Steven Hagan, individually, who, as a long-time member of the Bedford Conservation Commission, has been wrongfully accused by you of violating the state's Open Meeting Law on August 2, 2019 and on unspecified prior occasions. Mr. Hagan denies the allegations in your August 12, 2019 e-mail (copy attached)¹ and takes great exception to its tone.

Furthermore, by scheduling and holding the August 2, 2019 meeting, he and his fellow three Commission members, like you, were trying to prevent the Town from being subject to litigation and embarrassment - in this case, being sued by a developer for an important permit to develop real estate.

Mr. Hagan Has Generously Volunteered To Serve His Community

As a Bedford resident and Vice President of an established high-tech company who has generously donated his time to serve the Town and numerous charitable causes, Mr. Hagan does not take your allegations lightly.

Since 2010, Mr. Hagan has been an active member of the Conservation Commission, serving at various times as clerk, vice chair, and chair. He also recently helped revise the Town's Wetlands Bylaw and get Town Meeting to approve it. Beginning in 2016, he has been the

¹ While the name of Michael Rosenberg, Chair, Board of Selectmen, appears above Town Manager Stanton's name at the end of the e-mail, it was sent from the Town Manager's e-mail address and refers in first person to actions apparently taken only by the Town Manager. Therefore, we consider the e-mail to be from the Town Manager.

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Commission's representative on the Community Preservation Committee. Mr. Hagan also is serving on the Depot Park Advisory Committee. Previously, he served on the Charter & Bylaw Review Committee. He tells us that until your e-mail, he has never received any complaints about his service to the Town, and certainly no accusations of violation the Open Meeting Law.

Mr. Hagan's volunteer work is not limited to Town of Bedford government. As a member of the First Parish Church, he was Chairman of the Stewardship Committee and served on the Physical Plant Committee. He is a lifetime member of the Bedford Historical Society and is helping to run a small goat micro-dairy farm in town.

Beyond Bedford, Mr. Hagan serves as a Trustee of the Massachusetts 4-H Foundation, which, according to its website, "is a youth development organization reaching out to children from urban, suburban and rural communities to teach vital skills to help youth become independent and active members of society." Mr. Hagan is a Lifetime Member of the Appalachian Mountain Club. Previously, Mr. Hagan served for almost ten years on the Board of Directors for the Red Cross in New Hampshire.

The Good Reason for the August 2, 2019 Meeting of Four Commission Members and Any Possible Defects Were Cured at a Later Meeting

Your August 12, 2019 e-mail does not reflect any knowledge or appreciation of the laudable reason for the August 2, 2019 meeting.

At its April 24, 2019 meeting, the Conservation Commission opened its hearing on a Notice of Intent filed by Wayne Foster for work at 22 Jeffrey Circle. The four members of the Commission present² heard from the Applicant and discussed the matter and then closed the hearing. Under state and local wetlands laws, the Commission must issue its Order of Conditions (written decision) within 21 days of closing its hearing. M.G.L. c. 131, § 40; Town of Bedford Wetlands Protection Bylaw, § 54.10. If it fails to do so, the Commission would lose its authority under the Town of Bedford Wetlands Bylaw. *Oyster Creek Preservation, Inc. v. Conservation Commission of Harwich*, 449 Mass. 859, 865-66 (2007).

Mr. Hagan tells us that the usual practice for the Commission is that after the close of the hearing on an application, the staff prepares the Order of Conditions for consideration and signature at a subsequent regular meeting of the Commission within 21 days. For reasons not clear to him, the Order of Conditions for 22 Jeffrey Circle was not prepared in time for the regular meetings on May 8, May 22, June 26, July 10, or July 24, 2019. The quorum for this project was not present at any of those meetings.

At the July 24, 2019 meeting, the Applicant, Mr. Foster, appeared and essentially waived the 21-day time period for failing to issue the Order of Conditions within 21 days of the April 24, 2019 meeting. The minutes reflect his desire to have the Commission issue its Order of Conditions rather than him having to appeal to MassDEP. At that meeting, the three of the four

² Steven Hagan, John Britton, Art Smith, and Joseph Guardino.

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members of the quorum needed to vote agreed to a special meeting scheduled for July 30, 2019 at 6:30 p.m.

The draft Order of Conditions was sent to the quorum on July 26, 2019.

Three of the four members of the quorum arrived as did the Conservation Administrator for the special July 30, 2019, but the fourth member, Art Smith, was absent.

Knowing of the need and also being reminded by the Conservation Administrator of the urgency to act on the Order of Conditions before the 21 days (from July 24, 2019) ran again, the August 2, 2019 meeting was scheduled and then held by the four members who constitute the necessary quorum for the 22 Jeffrey Circle project. Acting under this reasonable sense of urgency, the four members briefly met at the appointed time and location to vote and then sign the Order of Conditions.

The following week, Stephanie Ide, Conservation Department Assistance, informed the four Commission members that the Conservation Administrator (who was on vacation) believed that their August 2, 2019 meeting was illegal because it was not properly posted, so the matter would be included on the agenda of the next regular meeting on August 14, 2019.

At the regular meeting on August 14, 2019, the quorum for 22 Jeffrey Circle was present and repeated their vote to approve the project and signed another Order of Conditions, which we understand was issued shortly thereafter. This revote and re-signing of the Order of Conditions cured any purported invalidity of the actions taken on August 2, 2019 on account of any alleged noncompliance with the Open Meeting Law.

The August 12, 2019 E-Mail Is Not a Valid Open Meeting Law Complaint

Your August 12, 2019 e-mail did not follow the required procedure for complaints about compliance with the Open Meeting law. Under the Open Meeting Law, a written complaint must be filed with the governmental body, "setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation". G.L. c. 30A, § 23(b). Such a complaint must be filed within 30 days of the date of the alleged violation. Id.

Furthermore, the written complaint must be on a form approved by the Office of the Attorney General. 940 CMR 29.05(1). To our knowledge, no such form was used. "A public body need not address a complaint that is not filed using the Attorney General's complaint form." 940 CMR 29.05(1). Therefore, your August 12, 2019 e-mail, to the extent it purports to seek enforcement of the Open Meeting Law, is invalid and the Commission need not address it. Even so, Mr. Hagan is taking your complaint seriously.

Within 14 business days of receiving the written complaint, the public body must meet to review the complaint and then send a response, including any remedial action taken, to the

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complainant, with a copy of the complaint and response sent to the Attorney General's Office. G.L. c. 30A, § 23(b); 940 CMR 29.05(5).

At any rate, any violation(s) of the Open Meeting Law, regardless of who caused them, that might have occurred by the Commission meeting on August 2, 2019 was cured at the Commission's August 14, 2019 meeting. At that August 14, 2019 "regular" meeting, the quorum of Commissioners for the 22 Jeffrey Circle matter were present and voted again to approve the project. Mr. Hagan tells us that the Order of Conditions was issued, the applicant is happy to have it, and there have been no appeals.

As an aside, we are unaware of any authority that gives a Town Manager the authority to enforce the Open Meeting Law, let alone any authority to remove a meeting notice posted by a board or commission. Such a unilateral action would cause a violation of the Open Meeting Law. The law is clear that it is up to the Attorney General's Office to enforce the Open Meeting Law.

Mr. Hagan Is Unaware of Any Policy to Not Hold Meetings on Friday, Saturday, or Sunday When Town Hall Is Closed

The basis of your August 12, 2019 e-mail is a "Town policy . . . not to hold meetings or public hearings on Friday, Saturday, or Sunday, as the Town Hall is not open to the public at that time." According to the Town Website some offices in Town Hall are open Friday morning, so we think you mean Friday afternoons and evenings, as well as all day Saturday and Sunday.

Mr. Hagan was unaware of any such Town policy. After receiving your e-mail and learning of it for the first time, he has searched the Town Bylaws, Town Charter, and Town website and not been able to find such a policy. He tells us that the other three members of the Conservation Commission also are unaware of such a policy.

To avoid further misunderstandings, we respectfully recommend that this policy be sent (even if again) to the members and staff of the Conservation Commission and other boards or commissions with volunteers who cannot always meet when Town Hall is open.

The Unsubstantiated Allegation of Prior Conservation Commission Violations of the Open Meeting Law

Your August 12, 2019 e-mail states, based on hearsay, that the Conservation Commission allegedly has "actively violated" the Open Meeting Law multiple times in the past but you do not provide specific dates. Mr. Hagan is unaware of any past complaints during his tenure on the Commission over the past eight or nine years. Please bring any such alleged violations to the Conservation Commission at its next meeting.

While he does not object to Town Counsel attending an upcoming Conservation Commission meeting to review the Open Meeting Law, he does not think it is necessary.

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Mr. Hagan Takes Great Exception to the Tone of the August 12, 2019 E-Mail

Especially because he was unaware of the Town's meeting policy and any prior Open Meeting Law violations or allegations against the Conservation Commission, Mr. Hagan does not believe the tone and approach of the August 12, 2019 e-mail, that of a school principal yelling at young misbehaving school children, is warranted.

He hopes that future communications to him and his fellow volunteers to the Town would be more respectful, professional, and cognizant of the fact that, as volunteers, they are not full-time paid employees who work daily in Town Hall.

Conclusion

Having now stated his reason for the August 2, 2019 meeting and his exceptions to the August 12, 2019 e-mail, Mr. Hagan hopes that he can continue with his volunteer work for the Town without further incident.

Thank you for your attention to this matter.

Very truly yours,



Nathaniel Stevens

cc: Board of Selectmen
client