FILED IN EAST LYME
CONNECTICUT
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Lesley A Beaus
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EAST LYME WATER & SEWER COMMISSION
REGULAR MEETING
Tuesday, JANUARY 26th, 2016
MINUTES

The East Lyme Water & Sewer Commission held a Regular Meeting on Tuesday, January 26, 2016 at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson called the Regular Meeting to order at 7:45 PM following the previously scheduled Information Meeting on the Cardinal Road Water Main Extension.

PRESENT: Mark Nickerson, Chairman, Steve DiGiovanna, David Jacques, Dave Murphy, Carol Russell, Roger Spencer, Dave Bond

ALSO PRESENT: Joe Bragaw, Public Works Director
Brad Kargl, Municipal Utility Engineer
Anna Johnson, Finance Director
Jim Levandoski, Flanders Fire Chief
Attorney Edward O'Connell, Town Counsel

ABSENT: Dave Zoller, Joe Mingo

1. Call to Order

Chairman Nickerson called the Regular Meeting of the East Lyme Water & Sewer Commission to order at 7:45 PM, noting that the Pledge had been previously observed.

2. Approval of Minutes

- **Regular Meeting Minutes – December 8, 2015**

Mr. Nickerson called for a motion or any discussion or corrections to the Regular Meeting Minutes of December 8, 2015.

****MOTION (1)**
Mr. DiGiovanna moved to approve the Regular Meeting Minutes of December 8, 2015 as presented.
Mr. Spencer seconded the motion.
Vote: 5 – 0 – 2. Motion passed.
Abstained: Mr. Nickerson, Mr. Jacques

3. Delegations

Mr. Nickerson called for delegations.
Dave Godbout, 15 Cardinal Road said that there was a January 15, 2016 court decision (copy submitted and attached) regarding agendas indicating that an agency should provide some information on agenda items. He cited Item 9.b. – Proposed Capital Expenditures – Various Projects and 10.a. See Correspondence Log as items that needed further information and suggested that they be pushed off for another agenda as they are probably not in compliance. He also said that a Public Works person was discussing some water quality issues and that he has also spoken on it but the agency really does not have any records on it. Our water also comes from New London and he said that he filed for information on their water (letter submitter and attached). He cited the Flint Michigan issue and suggested auditing the labs that are used to test the water. He said that he is a chemist himself and has been involved in water testing. The law requires that records with reference to Water & Sewer should be stored with the Town Clerk and he said that he has looked for them and they don't have them. He

also asked that if two or more members of the Commission have met that they take minutes and not hold secret meetings as he feels that it violates the fourteenth amendment due process rights. Regarding the water issues on Cardinal Road, he said that he has tasted the New London and East Lyme water and prefers the well water that they have on Cardinal Road to the others due to the taste and quality. He said that he would be against the water main extension on this basis.

Mr. Nickerson said that there were two items that were up for addition to the agenda – the first would be Item 8.a. – Discussion – Service Leak Repair – 22 Village Drive. He asked if they would make a motion on this.

****MOTION (2)**
Mr. DiGiovanna moved to add Item 8.a. – Discussion – Service Leak Repair – 22 Village Drive to the agenda.
Mr. Murphy seconded the motion.
Vote: 6 – 0 – 1. Motion passed.
Abstained: Mr. Jacques

Mr. Nickerson said that Ms. Russell has requested that an item be added to the agenda.

****MOTION (3)**
Ms. Russell to add to the agenda – Commission approval to forward a listing of documents to the DPH for review on fluoride levels as the DPH further discusses it.
Mr. Bond seconded the motion.
Vote: 3 – 3 – 1. Motion failed.
For: Ms. Russell, Mr. Bond, Mr. Nickerson
Against: Mr. DiGiovanna, Mr. Murphy, Mr. Spencer
Abstained: Mr. Jacques

4. Cardinal Road Water Main Extension
Mr. Nickerson recapped that they had heard from Mr. Kargl and Mr. Bragaw on the history of this and from Jim Levandoski, the Flanders Fire Chief. He called for discussion on how they wished to proceed.

Mr. Murphy said that his opinion is to go back out with the information that they have from the Fire Chief Levandoski and do the survey again as they have spent a lot of time and money on this and it was on the request of the people on Cardinal Road. Fire safety was the issue that they came here with and then it became water quality. He would like to see the survey done as he does not want to spend any more time or money on this at this time.

Mr. Jacques said that he agreed that they should do a final survey but asked how they would get it to everyone so that everyone responds.
Attorney O'Connell said that certified mail creates more problems than it solves with the green cards that people refuse to sign and that you have to wait to get back. There is a certificate of mailing from the Post Office that certifies that it has been sent and he suggested that they utilize that to send out the surveys.

Mr. Bond said that his opinion is that they have spent hours and hours on this as well as money and that they have a lot of other things that they need to be addressing that are part of their plan. This item is not on the current plan and it seems to be spinning into different issues from where they first started.

Ms. Russell said that she thinks that they should do another survey as water quality is now more important to the residents there than fire safety which was the original issue. She suggested that they ask about any water treatment that the residents are using in the survey.

Mr. Bragaw suggested that he and Mr. Kargl work on a draft survey and they can review it and then it will be sent out and they will have the results for the March meeting.

****MOTION (4)**
Mr. Bond moved that a final survey be sent to the Cardinal Road residents.
Mr. DiGiovanna seconded the motion.
Vote: 6 – 0 – 1. Motion passed.
Abstained: Mr. Jacques

5. Finance Director Report
Ms. Johnson reviewed her report noting that 6/30/2018 would be the last debt service payment.

Ms. Russell asked if the audit was available.
Ms. Johnson said that they had granted an extension on completing it due to the serious computer crash that they had.

6. Billing Adjustment Requests – Attachment A
Mr. Kargl said that there were no adjustments.

7. Approval of Bills – Attachment B
Mr. Nickerson called for a motion on the Regional Interconnection bill.

****MOTION (5)**
Mr. DiGiovanna moved to approve payment of the following Regional Interconnection bill: Tighe & Bond Inv. #121596214 in the amount of $2,669.06
Mr. Spencer seconded the motion.
Vote: 6 – 0 – 1. Motion passed.
Abstained: Mr. Jacques

Mr. Nickerson called for a motion on the Well Improvements bills.
****MOTION (6)**
Mr. DiGiovanna moved to approve payment of the following Well Improvements bills: Integrated Control Systems, Inv. #2868 in the amount of $1900.00 and Integrated Control Systems, Inv. #2875 in the amount of $1490.00.
Mr. Spencer seconded the motion.
Vote: 6 – 0 – 1. Motion passed.
Abstained: Mr. Jacques

Mr. Nickerson called for a motion on the Bridebrook Pump Station Relocation bill.
****MOTION (7)**
Mr. DiGiovanna moved to approve payment of the following Bridebrook Pump Station Relocation bill: Pfanner Assoc. Inv. #15040-1 in the amount of $4000.00.
Mr. Spencer seconded the motion.
Vote: 6 – 0 – 1. Motion passed.
Abstained: Mr. Jacques

Mr. Nickerson called for a motion on the Well 5 Roof Replacement bill.
****MOTION (8)**
Mr. DiGiovanna moved to approve payment of the following Well 5 Roof Replacement bill: Pete Silveira, LLC, Inv. #1111 in the amount of $6800.00.
Mr. Spencer seconded the motion.
Vote: 6 – 0 – 1. Motion passed.
Abstained: Mr. Jacques

Mr. Nickerson called for a motion on the Water Main Improvements bills.
****MOTION (9)**
Mr. DiGiovanna moved to approve payment of the following Water Main Improvements bills: Tilcon, Inv. #1335776 in the amount of $1,032.56 and Tilcon, Inv. #1340194 in the amount of $651.28.

Mr. Spencer seconded the motion.
Vote: 6 – 0 – 1. Motion passed.
Abstained: Mr. Jacques

8. Saunders Point Sewer Study Update
Mr. Kargl noted that they had the Weston & Sampson 'Report of Meeting' which listed the various deadlines for this. July should have some costs associated with it and it is expected that they will have a sewer plan by the end of the year.

Mr. DiGiovanna asked if there was any order of magnitude, cost for the project.
Mr. Kargl said no, but noted that Pine Grove was $3M and this would be more difficult and complex so he would guess that it would be over the $3M.

- **Discussion – Service Leak Repair at 22 Village Drive**

Mr. Bragaw explained that there is a leak in a service line between the curb box and the house at this property. While it is the responsibility of the property owners, there is about 28,000 gpd leaking out and the owners said that they do not have the approx. $4000 to fix and replace the whole line. They have reviewed a number of options here and letting the water continue to leak out is not one that they can continue to allow. They suggested that they contract Spencer Beers to fix the leak and if the owners cannot pay for the work then they lien their property. While the water department is in rough shape now and really cannot incur this cost, it is the best option with regard to the continued loss of water.

Mr. Bond asked if it is plastic pipe that is there now.
Mr. Kargl said that it is copper.

Mr. Murphy agreed with the option suggested and also suggested looking for what would cause the problem – perhaps stray currents.
Mr. Kargl said that they would replace it with plastic HDPE pipe.
Mr. Bragaw cautioned that there is no extra money in the water budget for this and that Attorney O'Connell would be involved in how this is set up.

9. Water Project Updates
- **Well 1A & 2A Treatment Study – Professional Services Agreement**

Mr. Kargl reported that they have gone through the process and have the agreement and scope of work for Tighe & bond to conduct the treatment study. The DPH has followed this process and the money is available in the capital fund for this work.

****MOTION (10)**
Mr. Murphy moved to authorize the Chair of the Water & Sewer Commission to execute and deliver an agreement with Tighe & Bond in the amount of $75,000 for the Well 1A and 2A Treatment Study, subject to the approval of the Town Attorney.
Mr. DiGiovanna seconded the motion.
Vote: 6 – 0 – 1. Motion passed.
Abstained: Mr. Jacques

- **Proposed Capital Expenditures – Various Projects**

Mr. Kargl explained the sheet of updates and revised projects (attached to minutes).

Mr. Nickerson asked if they could wait until the February meeting for approvals on expenditures. He suggested that they could hold a special meeting just for this purpose.
Mr. Kargl said that he would be comfortable with that.

10. Communications
- **See Correspondence Log**

The correspondence log was available for review.
Mr. Kargl noted that they had received a nice note from the retired Water Superintendent.

11. Chairman's Report

Mr. Nickerson asked that they schedule the Special Meeting in February.
After discussion the consensus of the Commissioners was that they would schedule a Special Meeting for Thursday February 11, 2016 commencing at 6:30 PM.

12. Staff Updates

a. Water Department Monthly Report

Mr. Kargl noted that the water flows are trending up.

b. Sewer Department Monthly Report

Mr. Kargl noted that the sewer flows are trending down.

c. Operating Budget Review

Mr. Bragaw reported that the sewer side is doing fairly well however the water side is stressed. He noted that they had $21,000 in road repairs, booster station repairs and more service leaks and they never know from year to year what will happen.

Mr. Murphy asked about pumping water to New London and if we are stressing our wells.
Mr. Kargl said that they were fine there and were not stressing the wells as the amount being pumped is manageable.

13. ADJOURNMENT

Mr. Nickerson called for a motion to adjourn.

****MOTION (11)**
Mr. DiGiovanna moved to adjourn the January 26, 2016 Regular Meeting of the East Lyme Water & Sewer Commission at 9:02 PM.
Mr. Murphy seconded the motion.
Vote: 7 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

Freedom of Information Commission
18-20 Trinity St.
Hartford, CT 06106

27 OCT 15

Ref: Record Denial
Town of New London/Public Works Dept.

On 26 OCT 15 I sought to inspect records from the Town of New London's Public Works Department. The Public Works Dept. is located at 111 Union St., New London, CT 06320. I was transferred to a person named Ben North who works in a building on 20 Broad St., New London, CT 06320. The town hall is located at 181 State St., New London, CT 06320. I talked with Ben North on 26 OCT 15 of the town of New London.

I was seeking to inspect test results of water quality testing of the laboratories of the drinking water for the town of New London via this verbal FOI request. After some back and forth in a single conversation with Mr. North on 26 OCT 15 it was agreed that the last quarter's testing results would be made available for inspection and at the facility that housed the records, a building located at 1185 Hartford Turnpike, New London, CT. Mr. North requested some time to gather the records and he would contact me back when this was accomplished.

Of course water quality testing results would show information related to the health and safety of those served by the town of New London. Allowing the public to inspect these public records of laboratory test results is required by our FOI Act for obvious reasons.

I was contacted on 26 OCT 15 late in the afternoon and was informed that I would not be granted access to the records requested. I was therefore denied the right to inspect public records afforded to such a requester of records under our FOI Act and this complaint is ripe for filing.

There I seek a hearing and a finding that the agency(s) violated the Act and to provide me with free copies of the all test results obtained in either the time period originally requested or the last full quarter that are available upon the commission's decision as the commission sees appropriate.

Submitted W&S Mtg. 1/26/2016

Submitted by:

David Godbout
15 Cardinal Rd.
East Lyme, CT 06333
860-691-8053

NO. HHB CV15-6028902S	:	STATE OF CONNECTICUT
MARISSA LOWTHERT	:	SUPERIOR COURT
v.	:	JUDICIAL DISTRICT OF NEW BRITAIN
FREEDOM OF INFORMATION COMMISSION, ET AL.	:	JANUARY 15, 2016

2016 JAN 15 AM 10 34
OFFICE OF THE CLERK SUPERIOR
JUDICIAL DISTRICT OF NEW BRITAIN

Memorandum of Decision

Plaintiff Melissa Lowthert appeals from three final decisions of defendant freedom of information commission (commission) dismissing her complaints against defendant Wilton Board of Education and its Chairman (collectively board of education) in which the plaintiff claimed that the board of education did not adequately describe the reasons for convening in executive session at three meetings. For the reasons that follow, the court sustains the appeal, reverses the commission's decision, and remands the case for further proceedings.

I

The commission found the following historical facts. The board of education convened a special meeting on February 27, 2014 and regular meetings on April 10, 2014 and June 26, 2014. The agenda for the February and April meetings stated: "Discussion of Confidential Attorney-Client privileged material. Proposed to be held in Executive Session." The agenda for the June 26 meeting stated: "Executive Session anticipated: Administrator Compensation; Administrative Appointment; Discussion of Confidential Attorney-Client Memorandum." At each meeting, the board of education voted to go into executive session in order to discuss a memorandum prepared by its attorneys. (Return of Record (ROR), pp. 34, 63, 93.)

The plaintiff filed complaints with the commission alleging that the board of education

1/15/16 Mailed to Attys. Hubicki, Brown, Murphy & Smith and Reporter of Judicial Decisions.
Submitted
KL&S Mtg. 1/20/2016
123.00

violated the Freedom of Information Act (act) by 1) failing to adequately describe, on the agenda for each meeting, the reason for convening in executive session and 2) by failing to identify in the minutes of the meetings all persons who attended the executive sessions.[1] The commission held a consolidated hearing on all three complaints. Towards the end of the hearing, the plaintiff requested that the hearing officer examine the attorney-client memorandum in camera. The hearing officer declined to do so. (ROR, pp. 191-92, 217.)

Based on the hearing, the commission found that the memorandum that the board of education discussed in its executive session contained legal advice previously sought from its counsel and that the board of education did not disclose the subject matter of the memorandum because to do so would reveal the substance of its confidential communications with its attorney. The commission concluded that, in light of these facts and circumstances, the agenda adequately described the business to be transacted to the extent required by the act. Accordingly, the commission dismissed all three complaints. (Return of Record, pp. 33-36, 62-65, 92-95.)[2]

The plaintiff has filed a consolidated appeal to this court of all three decisions.

II

Under the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-166 et seq., judicial review of an agency decision is "very restricted." (Internal quotation marks omitted.) *MacDermid, Inc. v. Dept. of Environmental Protection*, 257 Conn. 128, 136-37, 778

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[1]On appeal, the plaintiff pursues only the first claim.

[2]The commission did advise the board of education that it was "encouraged to cite the attorney client privilege exception only when there is a good faith basis that disclosure of the subject matter of the communication would itself violate the attorney client privilege." (ROR, pp. 36, 65, 95.)

A.2d 7 (2001). Section 4-183 (j) of the General Statutes provides as follows: "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

Stated differently, "[r]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Neither [the appellate] court nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion." (Internal quotation marks omitted.) *Okeke v. Commissioner of Public Health*, 304 Conn. 317, 324, 39 A.3d 1095 (2012). "It is fundamental that a plaintiff has the burden of proving that the [agency], on the facts before [it], acted contrary to law and in abuse of [its] discretion." (Internal quotation marks omitted.) *Murphy v. Commissioner of Motor Vehicles*, 254 Conn. 333, 343, 757 A.2d 561 (2000).

Our Supreme Court has stated that "[a]n agency's factual and discretionary determinations

are to be accorded considerable weight by the courts. . . ." (Internal quotation marks omitted.) *Longley v. State Employees Retirement Commission*, 284 Conn. 149, 163, 938 A.2d 890 (2007). "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 if its discretion. . . . [Thus] [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. . . . Cases that present pure questions of law, however, invoke a broader standard of review than is . . . involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion. . . . Furthermore, when a state agency's determination of a question of law has not previously been subject to judicial scrutiny . . . the agency is not entitled to special deference. . . . We have determined, therefore, that the traditional deference accorded to an agency's interpretation of a statutory term is unwarranted when the construction of a statute . . . has not previously been subjected to judicial scrutiny [or to] . . . a governmental agency's time-tested interpretation. . . . [When the agency's] interpretation has not been subjected to judicial scrutiny or consistently applied by the agency over a long period of time, our review is de novo." (Citation omitted; internal quotation marks omitted.) *Chairperson, Connecticut Medical Examining Board v. Freedom of Information Commission*, 310 Conn. 276, 281-83, 77 A.3d 121 (2013).

III

A

As our Supreme Court has recently stated, "[t]he act requires that '[t]he meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public.' General Statutes § 1-225 (a). Section 1-200 (6) defines an executive session as 'a meeting of a public agency at which the public is excluded' for one of five specified purposes.[fn6][3] This court has narrowly construed these purposes because 'the general rule under the . . . [a]ct is disclosure. . . .' *New Haven v. Freedom of Information Commission*, 205 Conn. 767, 775, 535 A.2d 1297 (1988); see also *Stamford v. Freedom of Information Commission*, 241 Conn. 310, 314, 696 A.2d 321 (1997) ('[t]he overarching legislative policy of the [act] is one that favors the open conduct of government and free public access to government records' [internal quotation marks omitted])." *Chairperson, Connecticut Medical Examining Board v. Freedom of Information Commission,* supra, 310 Conn. 283-84.

The executive sessions in this case took place under section 1-225 (6) (E), which

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[3]Footnote 6 quotes § 1-200 (6), which provides: "'Executive sessions' means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (A) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting; (B) strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof, because of the member's conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled; (C) matters concerning security strategy or the deployment of security personnel, or devices affecting public security; (D) discussion of the selection of a site or the lease, sale or purchase of real estate by a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would cause a likelihood of increased price until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; and (E) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210."

authorizes exclusion of the public from any public agency meeting that involves "discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210." Section 1-210 (b), in turn, provides in relevant part that "[n]othing in the Freedom of Information Act shall be construed to require disclosure of . . . (10) Records, tax returns, reports and statements exempted by federal law or the general statutes or communications privileged by the attorney-client relationship . . . ." General Statutes § 1-210 (b) (10).

The act contains brief requirements for the agenda for both a regular meeting, such as the April 10 and June 26, 2014 meetings of the board of education, and the notice for a special meeting, such as the February 27 meeting. With respect to a regular meeting, § 1-225 (c) provides that "[t]he agenda of the regular meetings of every public agency . . . shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer . . . ."[4] For a special meeting, § 1-225 (d) states that the notice "shall be posted not less than twenty-four hours before the meeting . . . [and] shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings

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[4]In full, § 1-225 (c) states: "The agenda of the regular meetings of every public agency, except for the General Assembly, shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer, (1) in such agency's regular office or place of business, and (2) in the office of the Secretary of the State for any such public agency of the state, in the office of the clerk of such subdivision for any public agency of a political subdivision of the state or in the office of the clerk of each municipal member of any multitown district or agency. For any such public agency of the state, such agenda shall be posted on the public agency's and the Secretary of the State's web sites. Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings."

by such public agency."[5]

Our appellate courts have not had occasion to interpret these provisions. Although the parties marshal an array of decisions of the commission and the Superior Court that they claim are persuasive, none of them is binding on the court. Further, there is no court case or pattern of commission cases on the precise issue here of the adequacy of the agenda in describing a meeting concerning attorney-client communications that would require deferential review based on the issue having been "subjected to judicial scrutiny [or to] . . . a governmental agency's time-tested interpretation. . . ." *Chairperson, Connecticut Medical Examining Board v. Freedom of*

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[5]In full, § 1-225 (d) provides: "Notice of each special meeting of every public agency, except for the General Assembly, either house thereof or any committee thereof, shall be posted not less than twenty-four hours before the meeting to which such notice refers on the public agency's Internet web site, if available, and 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 Secretary of the State for any such public agency of the state, in the office of the clerk of such subdivision for any public agency of a political subdivision of the state and in the office of the clerk of each municipal member for any multitown district or agency. The secretary or clerk shall cause any notice received under this section to be posted in his office. Such notice shall be given not less than twenty-four hours prior to the time of the special meeting; provided, in case of emergency, except for the General Assembly, either house thereof or any committee thereof, 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 Secretary of the State, the clerk of such political subdivision, or the clerk of each municipal member of such multitown district or agency, as the case may be, not later than seventy-two hours following the holding of such meeting. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by such public agency. In addition, such written notice shall be delivered to the usual place of abode of each member of the public agency so that the same is received prior to such special meeting. The requirement of delivery of such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the public agency a written waiver of delivery of such notice. Such waiver may be given by telegram. The requirement of delivery of such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Nothing in this section shall be construed to prohibit any agency from adopting more stringent notice requirements."

Information Commission, supra, 310 Conn. 282. On the other hand, the issue here is not a pure question of law but rather one of whether the commission correctly applied the relevant statutory provisions to the specific facts here. Therefore, the court must look to see "whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse if its discretion. . . ." (Internal quotation marks omitted.) Id., *Chairperson, Connecticut Medical Examining Board v. Freedom of Information Commission,* supra, 310 Conn. 281-82.

B

The commission's brief claims that there was "credible testimony provided by the Wilton Defendants that any additional details regarding those legal memoranda, including the subject matter of such memoranda, would have revealed 'the substance of the [Wilton Defendants'] confidential communications with their attorney.'" (Commission brief, pp. 16-17, 19.) However, the brief fails to cite to any such testimony or even the identify the witness or witnesses in question. Similarly, the board of education's brief asserts that "[b]ased on extensive testimony from Board representatives, the FOIC correctly found that the Board's agendas for all three meetings adequately described the business to be transacted . . . and that the Board appropriately did not disclose the subject matter of the attorney-client privileged memoranda that were the subject of discussion in the executive sessions convened during each meeting because to do so would have been to disclose confidential communications between the Board and its attorneys within the meaning of [General Statutes] § 52-146r (2)." (Board of Education brief, pp. 1-2.)[6]

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[6]Section 52-146r (a) (2) defines "confidential communications" for purposes of subsection (b), which makes such communications privileged in any proceeding, as follows: '"Confidential communications" means all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating

The board of education brief also fails to identify the "Board representatives" who provided "extensive testimony" or to provide any citations to any of their testimony.

These briefs do a disservice to the court. A thorough search of the record reveals that only one witness testified for the board of education. That witness, Christine Finkelstein, stated only that the memorandum in question pertained to legal advice on a pending matter, that its nature and contents were confidential, and that its contents were not to be discussed outside of the boardroom. (ROR, pp. 171-72, 177-78, 182.) At no point did the witness state that identifying the subject matter of the memorandum would disclose confidential attorney-client communications.[7] Although the commission claimed at oral argument that it was a "reasonable inference" from this testimony that disclosure of the subject matter would also reveal the communications, it is entirely possible to describe the subject matter of a communication – e.g., "legal claim of John Smith" – without disclosing the communication itself. In any event, because the commission refused to examine the memoranda in camera, the commission could not have known for a fact whether disclosure of its subject matter would have revealed confidential communications. Hence, the commission's finding that disclosure of the subject matter of the memorandum would reveal its contents lacked evidentiary support and was thus unreasonable.

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to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . ."

[7]Ironically, at the conclusion of the testimony, the hearing officer did ask Finkelstein the following critical questions: "[C]an you address why on the agenda it's limited to attorney-client memorandum and did it discuss any further the subject matter? Did it get into the detail of the subject matter? Did you feel that would betray the privilege if you identified exactly the topic that you were talking about?" Unfortunately, after further colloquy, the hearing officer withdrew her questions. (ROR, pp. 214-16.)

The finding was also unreasonable because it misconstrued the law. "Courts have consistently held that the general subject matters of clients' representations are not privileged. See, e.g., *In re Grand Jury Subpoena*, 204 F.3d 516, 520 (4th Cir.2000). Nor does the general purpose of a client's representation necessarily divulge a confidential professional communication, and therefore that data is not generally privileged. To be sure, there are exceptions, but as always the burden of demonstrating the applicability of the privilege lies with those asserting it. See *In re Lindsey*, 158 F.3d 1263, 1270 (D.C. Cir.1998) (per curiam); cf. *In re Sealed Case*, 877 F.2d 976, 979–80 (D.C. Cir.1989)." *United States v. Legal Services for New York City*, 249 F.3d 1077, 1081-82 (D.C. Cir. 2001).

In the present case, the statute governing regular meetings merely states that the "agenda of the regular meetings of every public agency . . . shall be available to the public . . ." General Statutes § 1- 225 (c). For special meetings, the statute provides with only slightly more elaboration that "[t]he notice shall specify the time and place of the special meeting and the business to be transacted." General Statutes § 1-225 (d). Although the statutes do not further define the terms "agenda" and "notice . . . of business to be transacted," there are at least two rules of construction that should guide the analysis. First, "[e]very word and phrase [of a statute] is presumed to have meaning . . . [and a statute] must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant." (Internal quotation marks omitted.) *Lopa v. Brinker International, Inc.*, 296 Conn. 426, 433, 994 A.2d 1265 (2010). Second, "the general rule under the . . . [a]ct is disclosure. . . ." (Internal quotation marks omitted.) *Chairperson, Connecticut Medical Examining Board v. Freedom of Information Commission*, supra, 310 Conn. 284. Applying these rules, an agency should provide an agenda

and notice that, absent some overriding concern, has at least some significance to the public and that provides at least some level of meaningful disclosure about the subject matter of a public agency meeting.

Merely stating that an executive session will involve "Discussion of Confidential Attorney-Client Memorandum," as did the board of education here, does not meet this standard. As discussed, there is neither an evidentiary foundation nor a legal basis for concluding in this case that disclosure of the general subject matter of the attorney-client memorandum would reveal its contents. Thus, there is no reason on this record why the board of education could not have described the business to be transacted as something such as "discussion of confidential attorney-client memorandum re legal claim of John Smith" or "attorney-client memorandum re settlement with Mary Jones." Such a description would have fairly and more adequately appraised the public of the business to be transacted without in any way disclosing any confidential attorney-client communications.

IV

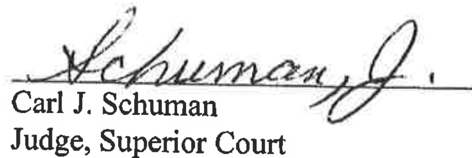
The remaining question is whether there was substantial prejudice to the plaintiff from the lack of notice concerning the subject matter of the meetings in question. General Statutes § 4-183 (j). Neither defendant argued to the contrary in its brief. It seems self-evident that some harm occurs whenever the public is denied information to which it has a right. See *Chairperson, Connecticut Medical Examining Board v. Freedom of Information Commission,* supra, 310 Conn. 284. ("[T]he overarching legislative policy of the [act] is one that favors the open conduct of government and free public access to government records.") [Internal quotation marks omitted.] In this case, the plaintiff could have used more specific information about the subject

matter of the executive session to decide whether to attempt to attend any public portion of the meetings, to object to the executive session, or to follow up in some way. Therefore, the court finds substantial prejudice.

IV

The court sustains the plaintiff's appeal, reverses the commission's dismissal of the complaints, and, pursuant to General Statutes § 4- 183 (j), remands the case to the commission with directions to examine the memoranda in question in camera and, unless inappropriate in view of this opinion, order the board of education to disclose the general subject matter of the memoranda.

It is so ordered.



Carl J. Schuman
Judge, Superior Court

Proposed Capital Expenditures - Various Projects

Proposed and/or Ongoing Projects/Expenditures - Revised

1	Well 1A & 2A Treatment Study	$	75,000.00
2	Bride Lake Filter Refurbishment (Filters 2 & 5) - Installation	$	32,000.00
3	Clarks Hollow Blow-off Installation *already approved*	$	8,000.00
4	Society Road Bridge	$	35,000.00
5	Route 1 Bridge over Pattagansett River	$	18,000.00
6	Route 1 Bridge over Pattagansett River (State Reimbursement)	$	36,350.00
7	MacKinnon Place Booster Station Upgrade *more imp.*	$	36,000.00
8	Jean Drive Booster Station Upgrade	$	36,000.00
9	Meter Reading Equipment	$	11,000.00
10	Well 5 Column Pipe and Line Shaft	$	6,000.00
11	SCADA Control Improvements for Chemical Feed Lockouts	$	11,400.00
12	Bride Lake Filter Refurbishment (Filters 1 & 6)	$	90,000.00
	Subtotal	$	394,750.00

Margin notes: installation aspec (item 2); CT DOT project — they will pay fo but we need to pay for the materia up front & then will be reimbursed (items 5–6); Spring (items 6–8); some vulnerabilities (item 11)

Handwritten notes:

✓ BK sees as imp. items to move forward in some fashion —

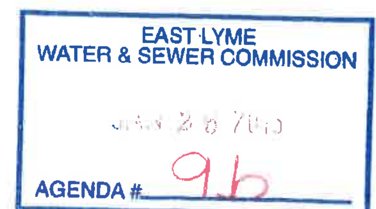
4. – BK – noted would be between $15,000 - $25,000 for knockouts & sleeves. Quotes from contractor came in around $35,000. — have expended $6,000. — 50 yr — can wait — noted info from DOT

5. – Is 'betterment' work for us — while bridge work is being done

7 & 8 Booster Station upgrades are oldest — due for upgrades

9. new meter reading gun & handheld device need for meter reading about to start again

10. for repairs — need authorization



Attachment 1/26/16 WS Item 9.b.