

**EAST LYME WATER & SEWER COMMISSION
REGULAR MEETING
Tuesday, MARCH 22nd, 2016
MINUTES**

The East Lyme Water & Sewer Commission held a Regular Meeting on Tuesday, March 22, 2016 at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Acting Chairman Seery called the Regular Meeting to order at 7:00 PM.

PRESENT: Kevin Seery, Acting Chairman, Dave Bond, David Jacques, Dave Murphy, Carol Russell, Roger Spencer

ALSO PRESENT: Joe Bragaw, Public Works Director
Brad Kargl, Municipal Utility Engineer
Anna Johnson, Finance Director

FILED IN EAST LYME
CONNECTICUT
Mar 29 2016 AT 11:10 AM PM
Caen Sulko ar
EAST LYME TOWN CLERK

ABSENT: Mark Nickerson, Chairman, Steve DiGiovanna, Dave Zoller,
Joe Mingo

1. Call to Order

Acting chairman Seery called the Regular Meeting of the East Lyme Water & Sewer Commission to order at 7:00 PM, and led the assembly in the Pledge of Allegiance.

2. Approval of Minutes

▪ **Informational Meeting Minutes – January 26, 2016**

Mr. Seery called for a motion or any discussion or corrections to the Informational Meeting Minutes of January 26, 2016.

****MOTION (1)**

Mr. Jacques moved to approve the Informational Meeting Minutes of January 26, 2016 as presented.

Mr. Bond seconded the motion.

Vote: 5 – 0 – 1. Motion passed.

Abstained: Mr. Seery

▪ **Regular Meeting Minutes – January 26, 2016**

Mr. Seery called for a motion or any discussion or corrections to the Regular Meeting Minutes of January 26, 2016.

****MOTION (2)**

Mr. Jacques moved to approve the Regular Meeting Minutes of January 26, 2016 as presented.

Mr. Bond seconded the motion.

Vote: 5 – 0 – 1. Motion passed.

Abstained: Mr. Seery

▪ **Special Meeting Minutes – February 11, 2016**

Mr. Seery called for a motion or any discussion or corrections to the Special Meeting Minutes of February 11, 2016.

****MOTION (3)**

Mr. Jacques moved to approve the Special Meeting Minutes of February 11, 2016 as presented.

Mr. Murphy seconded the motion.

Vote: 5 – 0 – 1. Motion passed.
Abstained: Mr. Seery

3. Delegations

Mr. Seery called for delegations.

Dave Godbout, 15 Cardinal Road said that in reading over the draft survey that he would like a couple of items added. The current homeowner must pay and cannot pass on the burden should they sell their home. The yearly cost was not given – he noted that other Towns have a monthly/yearly rate that must be paid. The current water rates should be added as people do not read the website. People should be told that they will be subject to the water restrictions when they are put into place. He also wanted to know if another well could be drilled if their well goes dry and if the next homeowner would be able to re-connect to the well if they wanted to. He submitted the information that he was requesting as well as his 'Town Obstruction to Access to Public Records and Meetings and Other Improper Activities of Water & Sewer Commission – March 2016' for inclusion. (Copies attached to minutes)

Mark Hill, 7 Cardinal Road suggested that they change what the main issue of having the water is – namely that of water quality and not for fire safety as the Fire Chief had stated that with the new hydrant on their side of the road that they can address fire safety with that. Therefore, the main issue has now become one of water quality. He thinks that should be stated so that they will know what they are voting on. Also, the costs are estimates and they could go up considerably as when he built his home there was a lot of ledge and it cost more due to that problem. He asked that they be clear on what they are voting on as from what he has seen with all of the emails flying around their area the issue is not clear and a lot of misinformation is being floated around. He would like to see it re-written and reviewed again.

4. Cardinal Road Water Main Extension – Draft Survey

Mr. Seery asked Mr. Kargl to go back over the draft survey and see if it could be modified with some of the comments that they had received.

Mr. Bragaw said that in the first eight items that he does not think that they have missed anything. They could take Mr. Hill's comment and put it in the first paragraph but he thought that it would be better if the Fire Chief provided them with a statement.

Mr. Murphy asked the policy on water service and a well. He said that he knew that he kept his well however it could only work on the outside faucets.

Mr. Kargl said that they could keep the well but it has to be independent of the house system – meaning it could be used for irrigation.

Mr. Jacques asked if this means that there has to be physical separation.

Mr. Kargl said yes.

Ms. Russell asked if they could drill another well or if they would have to hook into the water system if available.

Mr. Kargl said that this would not operate like the sewer system does.

Mr. Bond asked how many houses there are.

Mr. Kargl said 39.

Mr. Bond asked if the majority would have to connect.

Mr. Seery said that has not been determined yet but thought that they would also want a legal opinion on if it should be a simple or super majority. They would need to let the people know this before they vote.

Mr. Bragaw said that it is an important decision as once it is voted on, that's it – as it is the neighborhood that is driving this and costing all the time and man hours that have been spent on this.

Mr. Bond said that he thinks that there is too much information and it is being changed around and that they should send everyone a post card and ask for a yes or no answer on this as it is getting old and they have many things to do and this is wasting a lot of time.

Mr. Kargl said that they could make some changes and bring this back.

Mr. Seery said that perhaps they could start a bit earlier next time and go over the survey again before it goes out.

5. Finance Director Report

Ms. Johnson said that she had provided them with her report.

Mr. Bond asked what delinquent interest was.

Ms. Johnson said that people who do not pay on time have to pay interest for being late. It is considered revenue.

6. Set Meeting Date for Budget Workshop

Mr. Seery said that he was given dates of April 11 or April 14.
April 11, 2016 was chosen.

7. Appropriation of Funds for Purchase of Mini-Excavator

Mr. Bragaw explained that this piece of equipment could be used and shared by the Highway, Water and Parks & Rec departments. The water portion – from a FEMA Storm Juno reimbursement is \$2,225.63. They would need to make a motion to utilize that towards this purchase.

****MOTION (4)**

Mr. Jacques moved to appropriate the \$2,225.63 received by the Water Department from FEMA for Storm Juno to assist with the purchase of a mini-excavator; mini-excavator to be shared with other Town departments.

Mr. Bond seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

8. Approval of Bills – Attachment B – February 23, 2016 & March 22, 2016

Mr. Seery called for a motion on the Well Improvement bills.

****MOTION (5)**

Mr. Murphy moved to approve payment of the following Well Improvement bills: Integrated Control Systems, Inv. #2876-1 in the amount of \$890.00 and Integrated Control Systems, Inv. #2876-2 in the amount of \$2100.00.

Mr. Jacques seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Seery called for a motion on the Saunders Point Sewer Study bill.

****MOTION (6)**

Mr. Murphy moved to approve payment of the following Saunders Point Sewer Study bill: Weston & Sampson, Inv. #454012REV in the amount of \$2,952.94.

Ms. Russell seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Seery called for a motion on the Water Main Improvement bill.

****MOTION (7)**

Mr. Jacques moved to approve payment of the following Water Main Improvement bill: Machnik Bros., Inc., Inv. #006728 in the amount of \$11,303.70.

Mr. Murphy seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Seery called for a motion on the Treatment Plant Filter Upgrade bill.

****MOTION (8)**

Mr. Jacques moved to approve payment of the following Treatment Plant Filter Upgrade bill: Hungerford & Terry, Inc., Inv. #RS04575-IN in the amount of \$55,235.00.

Mr. Bond seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Seery called for a motion on the Well Improvement bill.

****MOTION (9)**

Mr. Jacques moved to approve payment of the following Well Improvement bill: Integrated Control Systems, Inv. #2885 in the amount of \$820.00.

Mr. Spencer seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Seery called for a motion on the Water Main Improvement bill.

****MOTION (10)**

Mr. Bond moved to approve payment of the following Water Main Improvement bill: State of Connecticut, Inv. #TN200976 in the amount of \$10,500.00.

Ms. Russell seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

9. Water Project Updates

▪ **Well 1A & 2A Treatment Study**

Mr. Kargl reported that this is moving along well and should be completed by the beginning of May and has been projected out for the DPH to get it in for DWSRF funding. He noted that they have received notice from the State that due to the State fiscal condition that they will not be seeing subsidies anytime soon. He suggested that they take Well 1A and pump to Well 6 and refurbish the building.

10. Sewer Project Updates

▪ **Bridebrook Pump Station Relocation**

Mr. Kargl noted that he had provided them with a timeline on the relocation.

Mr. Bond asked if he had any idea of the expense for this project.

Mr. Kargl said that they have not gone that far yet – a rough guesstimate would be \$1.5M or more.

▪ **Saunders Point Wastewater Planning Study**

Mr. Kargl reported that Weston & Sampson is working on this and that the report could possibly come before the Commission as early as June.

11. Proposed Sewer Odor Control Measures/Strategy

Mr. Bragaw recalled that they were trying to pool their chemical costs. Waterford will be checking odor levels with data for treatment. This treatment comes at a cost as this needs to be treated year round. They are considering installing odor links to catch the issue before it gets to Waterford.

Mr. Bond asked what kind of dollars they are talking about here.

Mr. Bragaw said that it is currently costing \$103,000 and this could be another \$52,000. He said that they are working on it now and he would know more as more details are worked out.

12. Correspondence Log

Mr. Seery noted that they have a copy of this.

Ms. Russell said that one of the items was from her and that she had received information from Karen Rak on fluoride and wanted to speak on it.

Mr. Seery asked that she be very brief.

Ms. Russell said that it refers to issues with sodium fluoride which is what we use and silicon fluorides. She said that she thinks that they should send this to the Public Health department. She also said that she thinks that they should test for lead in the schools.

Mr. Kargl said that the schools are under their own compliance programs. He said that he could forward the information to the DPH.

13. Chairman's Report

Mr. Seery said that he did not have anything further to report.

14. Staff Updates

a. Water Department Monthly Report

Mr. Bragaw noted that they had 210 customers who had not paid and they sent a letter to them that they would be shut off. That number came down to 21 customers that were going to be shut-off for lack of payment and that all but two have come in to pay. The rest have agreements or a 1 in 10. There is a \$75 shut-off fee that they also collect.

Mr. Kargl noted that the February usage was high this year compared to last year and that three issues contributed to this: There was an extra day in February this year; they found a water main break that was running for two months and fixed it and there was one cold snap over a weekend in February that had 25 issues as a result of it. This cost some 1.2M gallons of water.

b. Sewer Department Monthly Report

There were no comments.

15. ADJOURNMENT

Mr. Seery called for a motion to adjourn.

****MOTION (11)**

Mr. Murphy moved to adjourn the March 22, 2016 Regular Meeting of the East Lyme Water & Sewer Commission at 8:39 PM.

Mr. Jacques seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary



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

Ref Meeting testimony, supporting documents related to testimony
22 MAR 16 - 1900hr Regular Meeting of Water & Sewer Commission

Changes to draft survey produced in FEB 2016 desired (Draft attached for reference)

To include additional information within the current survey's engineered plan discussion

- 1) Notice that the current homeowner will bear 100% of the property assessment/costs of his/her share; that the burden cannot be shifted to a new buyer or owner. If you sell the property you must pay the remaining bond that is owed and assigned to the property.
- 2) What the actual yearly/monthly costs would be to the homeowner. According to the figures noted in a different town's water extension project (2% interest rate assumed there) the cost could be at least \$200/mo or more. Or \$2400/yr or more in cost just to pay off the bond. This does not include usage usage fees.
- 3) Put in the water rates into the survey ... instead of making people go to another place where they may or may not find usage fees; or attach another record that provides this information.
- 4) Notice that people who hook-up to town water will be subjected to water restrictions (like "no lawn watering", "no car washing", etc.) as the town deems needed and as the town has done in the past.
- 5) Notice of the state of our current wells. If one hooks up to town water and their well goes dry, can they drill a new well? Or if the well pump goes bad, can one put in another pump? And that the town can change these things at will. And for people who don't want town water, the fact that the town may, at its discretion force people to discontinue using their wells.
- 6) Detail overall timeline for project – town process to completion.
- 7) The fact that the actual cost may be higher than the figures noted in the survey.
- 8) That the bond issued may be higher than the costs noted in the survey and that the BOS has full discretion as to what the bonding will be.
- 9) The fact that a lien on the property will remain with the property until a) the lien is paid off or b) the town forecloses on the property.
- 10) How long will the project take if it moves forward?

Submitted Was Reg. Mtg. 3/22/16

- 11) If it moves forward, how would people get compensated for any property damage. With the last extension project, property damage to homeowners was realized by the property owners.
- 12) If a person selects to go with the town water system and disconnects their well .. would the next owner be able to re-connect?
- 13) Note that the installation of hydrants and access to town water will not increase the property value of the property.

To include new information within different engineering plans

With other town's feasibility studies related to water and sewer type extensions examined the towns discuss options beyond that of just one idea.

This commission has noted some change in people's minds about the need for hydrants; this somewhat noted in the current draft survey.

And given that the people will pay 100% and the town zero, what does the commission care of other proposals be included in the next survey?

So I would like the next survey to include the following options that are deviations from the current proposed engineering plans.

Option #1 - plan to only supply water w/o hydrant service

I have asked the commission if they considered this and the answer was no. Yet I think that this option needs serious consideration and that it should be included, together with costs analysis etc., as an option for the people who would be footing the bill. It is clear that the current plan and its associated costs are too high a financial burden of some of the town's Cardinal Rd. residents. And the fact that the fire chief and deputy chief and other fire protection experts have noted to the residents that hydrants are not needed that this needs to be considered as a luxury rather than necessity and accordingly provide a plan without the luxury item that makes up the vast majority of the costs associated with the current and only engineering plan being made as an option.

Option #2 - plan to only hydrant service

Conversely, having a plan for just hydrants v. either hydrant/water v. just water.

Option #3 – residents install their own private fire suppression sprinkler system,

This is also a viable option for residents as it would cost less than the current engineered and proposed plan as it relates to fire protection. An, according to Deputy Chief Taylor, affords the homeowner the best fire suppression system available, even better than hydrants.

Town of

P.O. Drawer 519

Niantic, Connecticut 06357

*Mark Nickerson
First Selectman*



East Lyme

108 Pennsylvania Ave.

Niantic, Connecticut 06357

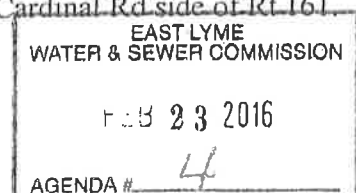
860-739-6931, Ext. 110
Fax 860-739-6930

March __, 2016

Dear Cardinal Road Resident:

Back in October of 2015, the Water and Sewer Commission sent the Cardinal Rd property owners a survey to gauge interest expressed by the residents to have a water main extended into the neighborhood for improved water supply and fire protection. Some information has come out since our last survey that we feel warrants an additional survey to make sure that the property owners are fully aware of the facts and have an opportunity for input before a recommendation is made by the Water and Sewer Commission. We want the residents of Cardinal Road to realize that the reason we are even discussing this potential water main extension is at the request of property owners in your neighborhood. We also want to make sure that you are all fully informed of everything that has transpired since we first started discussing this project. Therefore, I wanted to give a brief chronology of the events to date;

1. Following a house fire that occurred on Cardinal Road on July 1, 2015, some property owners from the neighborhood attended the July Water and Sewer (W&S) Commission meeting (on 7/28/15) and expressed interest in having municipal water extended to the neighborhood to better serve the area with fire protection and help improve water quality. The Commission directed staff to conduct some preliminary engineering to evaluate the feasibility of extending a water main into Cardinal Road.
2. At the August W&S Commission meeting on 8/25/15, the findings of the preliminary engineering study were reported by the Utility Engineer, Mr. Brad Kargl. The project estimate was \$809,813, and would result in an approximate assessment cost of \$20,764 per property based on 39 benefited properties on Cardinal Rd. In this meeting the Town Attorney stated that with a water main extension, the Commission would need to recommend an extension but the Board of Selectman would be the ones to approve the project going forward and to levy the assessments. The Commission requested staff put together a draft survey to the Cardinal Road residents that would poll them on whether they would be in favor or not of a water main extension. They also requested consulting with the Flanders Fire Department to better understand their capabilities in fighting fires on Cardinal Rd.
3. At the September W&S Commission meeting on 9/22/15, Mr. Kargl presented a draft survey and received comments from the Commission so that it would be ready to get sent out to the Cardinal Rd residents. The Director of Public Works, Mr. Joe Bragaw also stated that he would investigate the cost of installing a fire hydrant on the Cardinal Rd side of Rt 161.



4. At the October W&S Commission meeting on 10/27/15, Mr. Kargl presented the results of the survey; 26 residents were in favor (although some qualified their response), 7 were not in favor, and 5 did not reply. It was later determined that one residence did not receive a survey because the location has an address of 2 Hummingbird Lane and was not on the Cardinal Road mailing list. Additionally, Mr. Bragaw stated that he met with the Flanders Fire Chief Mr. James Levandowski and that the Chief was very much in favor of having a fire hydrant installed on the Cardinal Road side of Rt. 161. The Chief said that this would eliminate the need to extend fire hose across Rt. 161 to the nearest hydrant and alleviate the obstruction of traffic flow on busy state road during a fire fighting event. The Commission authorized staff to spend up to \$8,000 to install a fire hydrant as soon as possible on the Cardinal Rd side of Rt. 161. In addition to the hydrant installation, staff was instructed to get the conceptual design to a 20% completion point so that they could fine tune the construction estimate.
5. There was no discussion of the potential Cardinal Rd water main extension at the November W&S Commission meeting on 11/7/15.
6. The Water Department went forward and had the new hydrant installed on the Cardinal Rd side of Rt. 161 in November and it was operational in the beginning of December 2015.
7. At the December Water and Sewer Commission meeting on 12/8/15, Chief Levandoski explained the capabilities of the fire department to fight a fire in the neighborhood, especially with access to the new hydrant. He explained that with the new hydrant on Cardinal Road, sufficient response times could be achieved to affectively fight a fire. The 20% design was also reviewed with the Commission at this meeting. The design included approximately 3,100 feet of 8-inch water main, 4 hydrants in addition to the one already installed, water services for each property terminating at the property lines and a combination air valve structure at the high point. As a result of the additional design work, the preliminary cost estimate was adjusted downward slightly from the original estimate of \$810,813 to \$798,000, a difference of approximately \$12,000. At this point, staff has taken the design as far as they can go without expending additional resources that are required to get the plans acceptable for bidding and construction. Commission members directed staff to set up an information meeting for Cardinal Rd residents to be held before the regular scheduled meeting in January 2016 based on all of the information that has now come up.
8. There was an Informational meeting held on 1/26/16 before the regularly scheduled Water and Sewer Commission January meeting to provide an opportunity for residents to hear the facts to date, to hear from the Fire Chief in person and to be able to ask any questions that they had. There are minutes of the informational meeting along with all of the other referenced meetings that can be found on the Town website at www.eltownhall.com, click on Government, then click on Boards and Commissions, then click on the Water and Sewer Commission. We encourage you to go to the website to read all of the minutes to update you on all the information that the W&S Commission discussed.

Based on the chronology of events up to this point, I am also including the facts that we know to date. They are as follows;

1. To go forward with a water main extension on Cardinal Rd, the Water & Sewer Commission would have to vote to recommend the project to the Board of Selectman (BOS). The BOS would then be the governing Board to vote to move the project forward and to levy assessments.
2. Based on our most recent estimates, if approved, each property would be levied a benefit assessment of between \$15-21k. This price would cover the all the costs to install the water main in the road, new hydrants spaced approximately ____ feet apart, new service lines going perpendicular from the water main to the edge of the property line, along with all of the road repairs.
3. All property owners would be required to pay the benefit assessment (they do not have a choice to opt out). The property owners do not have to actually hook up to the service line, but if they do, the typical range for this cost would be between \$2,500-\$4,500 based on the distance of the end of the service line to where the line would need to enter the house along with the digging conditions on that lot.
4. The assessments are not required to be paid all at once and could be spread out over a number of years (typically between 10 and 20 years) based on the recommendation of the W&S Commission and the approval of the Board of Selectman.
5. The assessments would be charged interest based on the recommendation of ____ but typically slightly more than the Town's borrowing rate for the project which right now would be about %__.
9. If the property owner hooked up to the Town water, they would have a water meter inside their house, which at this time are read approximately every six months. East Lyme Water customers are billed semi-annually in May and November based on their meter readings. The rates include a base charge for the first 3,500 gallons used followed by a three-tiered rate structure that increases with the amount of water used.
10. Our current water rates along with our most recent Water Quality report are posted on our Town website.

Based on all of this information, we are including a new survey to provide you with an opportunity to give us your feedback on whether you would like us to go forward with this project. If you have any technical questions with regards to this project, please call our Utility Engineer, Mr. Brad Kargl at 860-691-4139. If you would like to speak to me about this, please do not hesitate to call me at 860-691-_____.

Sincerely,

Mark Nickerson
Chairman - Water & Sewer Commission

Cc: Anna Johnson, Director of Finance
Joe Bragaw, Director of Public Works
Brad Kargl, Utility Engineer

**Cardinal Road Water Main Extension Survey
March 2016**

_____ I am in favor of municipal water being extended to Cardinal Road based on the facts provided in the letter dated March __, 2016

_____ I am not in favor of municipal water being extended to Cardinal Road based on the facts provided in the letter dated March __, 2016

(Please check one)

Comments

Signature: _____

Date: _____

Print Name: _____

Property Address: _____

Mailing Address: _____

(If different than the property address)

TOWN NOT ALLOWING ACCESS TO PUBLIC RECORDS AND PUBLIC MEETINGS AS THE LAW REQUIRES AND OTHER IMPROPER ACTIONS

The author has been trying to examining the water extension project by looking at various public record of water quality test results, prior water extension projects to examine the costs and cost estimates of prior water extension projects and other records related to the Cardinal Rd. water extension project.

However, some agencies have not been complying with our open records laws and are willfully denying access to public records as our state's Freedom of Information Act requires.

Open Meetings Laws Ignored by Water and Sewer And Selectman

And its clear that the first selectman, Nickerson, has been engaging in meetings that should be done in public but in which he think that the laws relating to open meetings do not apply to him

The courts have, for ten years determined that the open meeting requirements of our open meetings law activate upon any meeting of a member of a multi-member agency meeting to discuss the business of the agency.

One would have expected what the most recent survey's contents was to have contained within it to have been discussed at an open meeting. The Water and Sewer Commission clearly made it known that a new survey was needed during their January 2016 meeting. However, its clear from the survey produced, file stamped with the date 23 FEB 16, meant to be brought forth on the canceled meeting of the water and sewer commission on 23 FEB 16, was created behind closed doors without any public meeting being performed to allow the residents to view the decision making process of what was to be included in the survey. There clearly was no public meeting in which what should be included in the survey should contain so this discussion and deliberations were clearly done behind closed doors. The survey is included in the end pages of this paper.

The courts have been very clear on this matter. Three court decisions are included at the end of this paper: Freedom of Information Case Docket #s: 2006-652, 2008-164, and 2012-113 clearly note that a quorum of members of an agency is not required to activate the open meeting requirements of the Act. There are many other such court cases wherein government agencies ignore the open meeting requirements of our FOIA laws.

Instead the water and sewer commission members, including selectmen Nickerson and Seery, as evidenced by records obtained, clearly highlight that the members of the water and sewer commission (and likely other agencies of the town) wish to hold secret meetings in respect to the business of the town. This is important because our due process rights and our rights under our open meeting laws

demand transparency. Its not just a notion, its vital to insure that citizens get treated with the respect that the law requires.

Another example, the 8 DEC 15 minutes noted that members of the commission have been meeting behind closed doors, as shown in the minutes shown below:

Mr. Seery said that he has spoken with Mr. Kargl and Mr. Nickerson about this and if there is continued interest they would hold an informational session with more detailed information and dollar costs. Mr. Bragaw said that in the survey that they sent out that they had provided information on the costs which came from a contractor who does this work.

In the 8 DEC 15 meeting minutes it is discovered that members of the commission (including at least Mr. Nickerson and Mr. Seery who are both commission members) have been having meetings behind closed doors. These activities are expressly prohibited by law as all deliberations and discussions and meetings of the commission are required to be held in a public meeting.

What was exactly discussed in the meeting noted in the 8 DEC 15 minutes is unknown because this meeting was not noticed, the public was not allowed to attend, and meeting minutes were not produced.

Prior Meetings of the Water and Sewer Commission's

And again in January 2016, the Water and Sewer Commission held another meeting that the commission did not notice in accordance with our open meetings law as shown here:



January 22, 2016

Re: **Informational Meeting Notice - Cardinal Road Water Main Extension**

Dear Resident:

This is to notify you of an informational meeting to be held Tuesday night, January 26, 2016, 6:30 p.m. at the East Lyme Town Hall, upstairs meeting room, to continue discussion on the Cardinal Road Water Main Extension. The Water and Sewer Commission will further review the information obtained to date in regard to the proposed extension and answer questions from the public.

Sincerely yours,



Mark C. Nickerson, Chairman
Water and Sewer Commission

MCN/mw

The on-goings that occurred at this "Informational Meeting" included discussion and debate of the plan that is part of work of the commission yet the commission did not provide any proper notice of this meeting to town residents.

Instead, the commission wished to side-step the open meeting requirements of our state and simply call it an "Informational Meeting".

Prior Meetings of the Water and Sewer Commission's

However our state statutes, CGS Sec. 1-200 clearly note what a "meeting" is as defined by our FOIA Act...that requires all meetings to be noticed by an agency. The law notes:

"Meeting" means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and 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. |

The purpose of the commission not noticing the January meeting to the public was to exclude members of the public from attending. So the meeting that the commission held in January 2016 was not proper.

This is nothing new for this agency of the Water and Sewer Commission. In a prior lawsuit filed in respect to the agency not following the open meetings laws of this state (contained in CGS Sec. 1-225) the commission had this judgment and order made against it in the Freedom of Information Case, Docket # 2003-280:

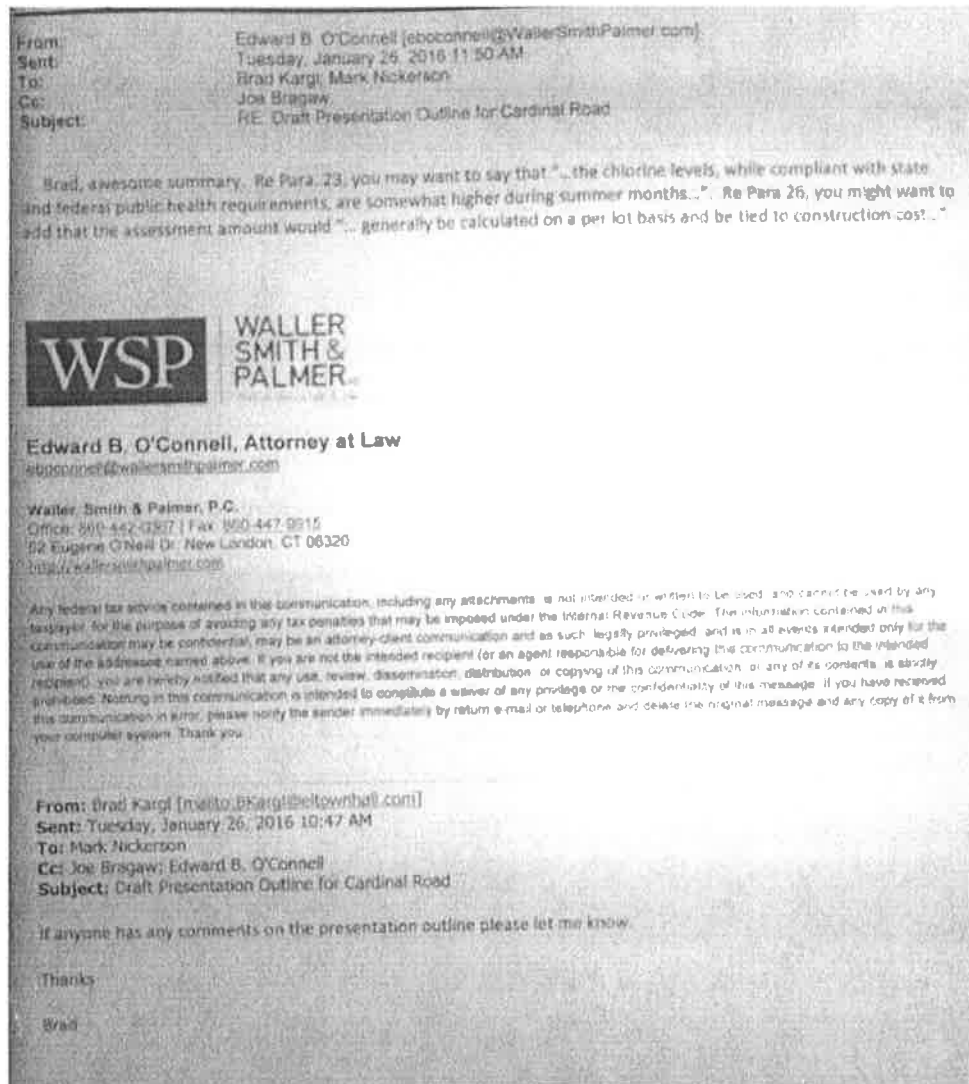
1. Henceforth, the respondent commission shall strictly comply with the provisions of §1-225(c), G.S.

Clearly, the commission continues to ignore our open meetings laws.

Testimony of Public Works Dept. Employees Directly Controlled by Water and Sewer Commission Wherein the Employees are Just a Sounding Board for What the Commission Wishes Us to Hear

One would expect employees of the town to give testimony that would make their employer or masters happy. However one does not expect that the testimony given by a town employee to be dictated by the agency to which he is giving testimony to.

However this is exactly what we see in this email:



Ed O'Connell is the corporate consul for the Water and Sewer Commission. It appears from the January email shown above that the testimony of Mr. Kargl is actually something of a Water and Sewer Commission created and approved testimony.

Its quite clear that the attorney for the commission is telling Mr. Kargl to change what he wanted to originally say and to say something else.

So Mr. Kargl appears to be just a sounding board for what the commission has already decided that the public should hear.

When Mr. Kargl went "off the reservation" and noted that the Cardinal Rd. private wells generally produce better quality water than the East Lyme water system provides and indicated that people not switch to East Lyme water this author saw some "rays of disapproval" coming from some commissioners.

The law requires that the business of the Water and Sewer Commission be done IN PUBLIC. If members of the commission are having meetings related to the business of the agency, it must be done in public so that the meetings between multiple members of the commission or even a single member of the commission meeting with town employees to discuss the business of the agency with those employees of the town must be done in public.

Its clear that the Water and Sewer Commission has been conducting its business behind closed doors out of the public's gaze when it should not and wherein the law requires for this work to be done in public.

Agencies will call a meeting a "staff meeting" or "informational meeting" or "coffee meet and greet" etc. They'll call meetings all types of things to distract people from the truth: that they are holding meetings that should be noticed, all the public should be invited to attend (not just select members of the public but all), and that accurate minutes need to be produced. The public should demand the commission hold meetings in public.

In this case, relating to the hydrant and drinking water project, the residents should still let the Water and Sewer Commission know their opinions.

**TOWN AND FIRST SELECTMAN MAKING IT UNDULY BURDENSOME TO
THE PUBLIC GAINING ACCESS TO PUBLIC RECORDS IN ACCORDANCE
WITH OUR OPEN RECORDS LAW**

The first selectman and other officials at the town have made it near impossible to gain access to public records related to the water extension project in accordance with the requirements that the legislature put down in respect to gaining access to public records.

The first selectman has hid records in his office in violation of the Act of records of another town agency, the Public Works Dept.

The first selectman and other town officials have wanted to collect excessive fees related to gaining copies of public records, seeking up to twenty dollars a page for a copy of a public record. Of course, the attempted charges related to excessive fees is seen to be a denial to access to public records. One such demand was twenty dollars for a single regular page copy of a town public record.

The first selectman's now has taken efforts to "take charge" and being the point of contact to inspect public records of other agencies of the town [the first selectman's office is not the place to store and maintain records of the public works department; it would be the same as the governor saying you must come to his office to inspect all of the various agencies of the state]. Such actions violate our open records law as records must be maintained and accessible at the agency that has them, not at another agency. And courts have ruled this behavior to violate our open meetings law.

While some might say "so what if the first selectman pulls records, one can still see them" then one has to consider that the first selectman now requires an appointment to view and inspect public records. Of course our FOIA law has been ruled by the courts that such requirements violate our open records law. And the appointment times are to his convenience and are limited in choices.

The first selectman and other selectman has taken it upon themselves to limit how, when, and where a request to inspect records can be requested although our FOIA Act does not place any of the limitations that the public officials now wish to place upon citizens. It's clear that the town officials are closing the door on the public gaining access to public records.

The law in our state is very clear...one asks (through whatever method convenient to the citizen) to inspect records from the agency that has them, the agency collects the records and makes them available. Demands to go to another place to inspect and demands to make appointments and other per-conditions to access of members of the public have all been deemed inappropriate by the courts.

Even recently, the officials in town will not allow a person to audio or video record the taking of notes during a record inspection process even when done in a public place; this not only violates our state's open record laws but also our first amendment rights and also places conditions upon lawful activities.

And upon requesting records I have been peppered with questions and, of course, one does not have to answer questions not related to an understanding of the records requested. One asks for records and they should provide it without making it conditional upon answering a set of interrogatories.

I have filed several complaints which I shall include at the end of this paper.

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Court Decision (FOI Commission) Case 2008-164 – paragraphs 14-17 show quorum is not needed for open meeting requirements	A6 – A9
Court Decision (FOI Commission) Case 2012-113 – paragraph 11 show quorum is not needed for open meeting requirements	A10-A12
Court Decision (FOI Commission) Case 1997-114 - paragraph 13 discusses cost for copies (ie cost of paper and ink) see FIC Advisory Opinion #59 for more details (labor to make not recoverable in CT) (and this author has looked at copy cost via examination of stationary invoices of toner and paper purchased from town and this calculates out to be 3.6 cents per page for a regular copy which is the type requested relating to the Cardinal Rd. extension) - paragraph 11 discusses the need to keep records at a town location (not stored in an officials' at home computers) - paragraph 18 discusses the need for an appointment violates the Act	A13-A16
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**FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT**

In the Matter of a Complaint by

FINAL DECISION

Daniel E. Lilly,

Complainants

against

Docket #FIC 2006-652

Metropolitan District Commission,

Respondents

June 13, 2007

The above-captioned matter was heard as a contested case on March 30, 2007, at which time the complainant and the respondent appeared 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 respondent is a public agency within the meaning of §1-200(1)(A), G.S.

2. By letter dated December 5, 2006 and filed with the Freedom of Information Commission ("Commission") on December 8, 2006, the complainant appealed to the Commission, alleging that the respondent violated the Freedom of Information Act ("FOIA") by conducting "an [i]llegal [m]eeting", without notice to the public, with attendance closed to the public, and without minutes. The complainant further alleged that eight enumerated individuals, including commissioners of the respondent from both parties, attended the illegal meeting in the Chairman's office at the respondent's headquarters on November 8, 2006.

3. Section 1-200, G.S., states in relevant parts:

(1) "Public agency" or "agency" means: (A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official....
(emphasis added)

(2) "Meeting" means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in

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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...
(emphasis added)

(3) "Caucus" means (A) a convening or assembly of the enrolled members of a single political party who are members of a public agency within the state or a political subdivision...

4. It is found that the respondent has committees specifically provided for in its charter, the Compiled Charter of The Metropolitan District (the "Charter"), as well as standing and special committees created by the Board of Commissioners (the "District Board"), which governs the respondent. On January 9, 2006, the District Board constituted a Strategic Planning Committee (the "Committee") as a special committee, initially with nine members. On March 6, 2006, the District Board increased the membership of the Committee to thirteen, which number of members it continued to have on November 8, 2006.

5. It is also found that the District Board has twenty-nine electors (also known as commissioners). Pursuant to the Charter, a quorum of the District Board is a majority, or fifteen, of the members. It is further found that the quorum of each specific committee is determined either by the Charter, or in the absence of such determination, by the By-Laws of the District Board of the respondent (the "By-Laws"). The By-Laws state that with respect to standing committees: "[t]he quorum of each standing committee shall be established by the respective committee." For example, the Charter establishes that five members of the Board of Finance, which has eight members in all, shall constitute a quorum.

6. It is also found that, during the four noticed meetings of the Committee prior to November 8, 2006, the Committee did not take any action to determine the definition of a quorum for its meetings. It is further found that, in the absence of guidance based upon the Charter and the By-Laws, the respondent has relied upon Robert's Rules of Order. Robert's Rules of Order state that, unless a different quorum is fixed by the by-laws or by action of the parent body, "the quorum is a majority of the members of the board or committee".

7. It is also found that the agendas for the Committee for special meetings that occurred on March 21, 2006, October 23, 2006 and March 8, 2007, all included notations indicating that a quorum of the Committee was five members. However, based on the findings at paragraphs 4 and 6, above, it is also found that these notations were the result of ministerial error that failed to account for the increase in the membership of the Committee from nine to thirteen members.

8. It is also found that the Committee did not file any notice or minutes for any meeting held on November 8, 2006.

9. It is further found that at around 4 p.m. on November 8, 2006 there was a gathering of five members of the Committee (William A. DiBella, Dale A. Ryan, Pasquale J. Salemi, Martin B. Courneen, and Alvin E. Taylor), plus another commissioner of the respondent, Allen Hoffman, who was not a member of the Committee (the "gathering"). Mr. Hoffman was asked to attend by a clerk of the respondent in place of another member of the Strategic Planning Committee (Kevin M. Deneen) who could not attend the meeting. In addition, the chief executive officer of the respondent (Charles P. Sheehan) and a counsel for the respondent (R. Bartley Halloran) were in attendance at the gathering. The six commissioners in attendance included members enrolled in more than a single political party: William DiBella, Allen Hoffman, Pasquale Salemi, and Alvin Taylor are enrolled in the Democratic Party, while Dale Ryan and Martin Courneen are

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enrolled in the Republican Party. The gathering took place in the office of the Chairman of the respondent, with the door closed.

10. It is also found that the 4 p.m. gathering on November 8, 2006 included the Chairman of the District Board, the Vice Chairman of the District Board, the chairman of the Bureau of Public Works committee, the chairman of the Water Bureau committee, and the chairman of the Personnel, Pension and Insurance committee.

11. It is found that Commissioner Hoffman referred to the gathering as a "Strategic Planning Committee" meeting when he excused himself from a Republican caucus that was being conducted concurrently; that the gathering lasted about one hour; and that the gathering preceded a meeting of the full membership of the District Board, which was noticed to convene at 5:30 p.m. on the same day, November 8, 2006. It is further found that at the gathering the six commissioners, the chief executive officer of the respondent, and the counsel to the respondent discussed matters over which the Committee had supervision, control, jurisdiction or advisory power.

12. It is found that the clerk who called commissioner Hoffman to invite him to attend in place of commissioner Deneen stated to commissioner Hoffman that the gathering would be to discuss items on the agenda of the meeting of the District Board that was noticed to convene ninety minutes later, at 5:30 p.m. Moreover, a counsel for the respondent, R. Bartley Halloran, who attended the gathering, also attended an executive session at the meeting of the District Board that immediately followed in order to discuss "legal strategies." It is therefore found that the gathering almost certainly included discussion of items on the agenda for the meeting of the District Board that convened at 5:30 p.m.

13. Finally, it is found that the meetings of the District Board were generally characterized by a "lack of probing, detailed discussions." There was also testimony that there had been other unnoticed gatherings of some commissioners on at least two occasions in the previous year.

14. Given these findings of fact, the question of law presented by this case is whether the gathering was a "meeting" of a public agency as defined in §1-200(2), G.S. Given the definition of "meeting" set forth at paragraph 3, above, the more specific question of law is whether the gathering was a "proceeding" of a public agency as that term is used in §1-200(2), G.S.

15. Based on the findings of fact in paragraph 4, above, it is concluded that the Committee is a "committee" of the respondent, as that term is used in §1-200(1)(A), G.S. Therefore, the Committee, like the respondent, is a "public agency".

16. Based on the findings of fact in paragraph 9, above, it is concluded that the gathering was not a "caucus", as that term is defined at §1-200(3)(A), G.S.

17. Based upon the findings of fact in paragraphs 4, 5, 6, 7, and 9, above, it is also concluded that the gathering did not constitute a "quorum" of the Committee, as that term is utilized in §1-200(2), G.S. A majority of the membership of the Committee was seven members and only six members (including Commissioner Hoffman serving as an alternate) were in attendance.

18. The Connecticut Supreme Court has stated, as an application of the general FOIA principle that exceptions to disclosure are narrowly construed, that: "the statutory definition of public meetings contained in §1-18a(b) [re-codified as §1-200(2), G.S.] must be read to limit rather than to expand the opportunities for

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public agencies to hold closed hearings.” Glastonbury Education Association v. Freedom of Information Commission, 234 Conn. 704, 713-714 (1995). It is also specifically concluded that it is not necessary to have a quorum in order to have a “proceeding”, and therefore a “meeting” pursuant to §1-200(2), G.S. As the Appellate Court stated in Emergency Medical Services Commission of the Town of East Hartford v. Freedom of Information Commission, 19 Conn. App. 352, 355 (1989):

The plain language of General Statutes §1-18a(b) [re-codified as §1-200(2), G.S.] does not require a quorum as a necessary precondition to “any hearing or other proceeding of a public agency....” The word “quorum” does not appear in the clause dealing with “any hearing or other proceeding of a public agency....” The legislature did not define a meeting as any hearing or proceeding of a quorum of a public agency, as it might have done.

But see Town of Windham v. Freedom of Information Commission, 48 Conn. App. 529, (1998), appeal dismissed, 249 Conn. 291 (1999), where the Supreme Court declined to clarify the conflict between these two Appellate Court decisions; *See also* Meriden Board of Education v. Freedom of Information Commission, 27 Conn. L. Rptr. 298 (2000); Common Council of the City of Middletown v. Freedom of Information Commission, 16 Conn. L. Rptr. 163 (1996); East Hartford Town Council v. Freedom of Information Commission, 16 Conn. L. Rptr. 121 (1996); Ansonia Library Board of Directors v. Freedom of Information Commission, 42 Conn. Sup. 84 (1991); Bristol v. Freedom of Information Commission, Docket No. 254667, Superior Court, Judicial District of Hartford-New Britain at Hartford, Memorandum of Decision dated April 13, 1983 (Ripley, J.)

19. Based upon the findings of fact in paragraphs 6, 9, 10, 11, and 12, above, especially the fact that the gathering included a number of members only one less than a quorum, that the gathering included those in leadership positions of the respondent, that the gathering lasted for about one hour and took place immediately before a noticed meeting of the District Board, and that the gathering discussed matters over which the Committee had supervision, control, jurisdiction or advisory power, including almost certainly items on the agenda for the meeting of the District Board that immediately followed, it is concluded that the gathering was a “proceeding” and therefore a “meeting” of the Committee pursuant to §1-200(2), G.S.

20. Because the gathering was a meeting of the Committee, it is finally concluded that all the FOIA requirements for meetings were applicable (notice, openness and minutes). Based upon the findings of fact in paragraphs 8 and 9, above, the November 8, 2006 meeting of the Committee therefore violated the requirements of §1-225, G.S., as alleged in the complaint.

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

1. Henceforth, the respondent shall require the Committee and all of its other committees, when convening a meeting, to comply with all the requirements of §1-225, G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 13, 2007.

Petrea A. Jones
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

Daniel E. Lilly
98 Babcock Street
Hartford, CT 06106

Metropolitan District Commission
c/o Brendan M. Fox, Jr., Esq.
Law Offices of Jay F. Malczynski, P.C.
One Liberty Square
New Britain, CT 06051

Petrea A. Jones
Acting Clerk of the Commission

FIC/2006-652FD/paj/6/25/2007

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**FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT**

In the Matter of a Complaint by

FINAL DECISION

Rick Guinness and the
New Britain Herald,

Complainants

against

Docket #FIC 2008-164

Board of Finance,
City of New Britain,

Respondent

January 29, 2009

The above-captioned matter was heard as a contested case on July 25, 2008, at which time the complainants and the respondent appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The matter was consolidated for hearing with docket #FIC 2008-162, Rick Guinness and the New Britain Herald v. Fire and Police Pension Trustees, City of New Britain; and docket #FIC 2008-172, Rick Guinness and the New Britain Herald v. Mayor's Downtown Steering Committee, City of New Britain.

1. The respondent is a public agency within the meaning of §1-200(1), G.S.

2. By letter dated March 12, 2008, and filed with the Commission on March 13, 2008, the complainants alleged that the respondent violated the Freedom of Information (hereinafter "FOI") Act by conducting an illegal meeting and denying them access to a portion of a meeting held by the respondent on March 11, 2008. In such complaint, the complainants requested the imposition of a civil penalty against the members of the respondent.

3. It is found that, on March 11, 2008, the Director of Finance for the Town of New Britain conducted a gathering to discuss the budget of New Britain's Board of Education. Two members of the seven-member respondent board were present, as well as several officials from the New Britain Board of Education.

4. It is found that the Director of Finance scheduled the March 11, 2008 gathering to discuss budget recommendations in preparation for a regular meeting of the respondent scheduled to take place on March 24, 2008.

5. It is also found that the respondent did not file any notice or minutes for the gathering held on March 11, 2008.

6. It is found that the complainants were at the March 11, 2008 gathering and were asked to leave at the point where the two members of the respondent were going to discuss the recommended budget.

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7. At the hearing on this matter and in its brief to the Commission, the respondent claimed that the May 11, 2008 gathering was a workshop and was not a meeting of the respondent, since a quorum of its members were not present. The complainants assert that the gathering was a meeting.

8. Section 1-225(a), G.S., provides in relevant part 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.”

9. Section 1-200(2), G.S., further provides that:

. . . ‘meeting’ means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency . . . to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power. (Emphasis added.)

10. It is found that the respondent is a multimember public agency, consisting of seven members, and that two members of the respondent, not comprising a quorum, convened or assembled on March 11, 2008 for a gathering to discuss the New Britain Board of Education’s budget.

11. It is also found that the discussions that took place at the March 11, 2008 gathering did not constitute communication to a quorum of the respondent, but they did concern substantive issues over which the respondent has “supervision and advisory power”, within the meaning of §1-200(2), G.S.

12. It is found that Article X of the Charter of the City of New Britain requires officers of various departments of the City of New Britain to submit budget estimates “using the forms, systems, and/or methods prescribed by the Mayor or his designee.” In this matter, the Director of Finance is such designee.

13. It is found that the method prescribed by the Director of Finance involved submissions of budget recommendations from various New Britain town departments followed by scheduled “budget hearings with individual departments.” It is also found that, although the respondent refers to such budget hearings as “workshops,” Article X of the New Britain City Charter describes the gatherings as “hearings.”

14. The Connecticut Supreme Court has stated, as an application of the general FOIA principle that exceptions to disclosure are narrowly construed, that: “the statutory definition of public meetings contained in §1-18a(b) [re-codified as §1-200(2), G.S.] must be read to limit rather than to expand the opportunities for public agencies to hold closed hearings.” Glastonbury Education Association v. Freedom of Information Commission, 234 Conn. 704, 713-714 (1995). It is also specifically concluded that it is not necessary to have a quorum in order to have a “hearing” or “proceeding”, and therefore a “meeting” pursuant to §1-200(2), G.S. As the Appellate Court stated in Emergency Medical Services Commission of the Town of East Hartford v. Freedom of Information Commission, 19 Conn. App. 352, 355 (1989):

The plain language of General Statutes §1-18a(b) [re-codified as §1-200(2), G.S.] does not require a quorum as a necessary precondition to “any hearing or other proceeding of a public agency . . .” The word ‘quorum’ does not appear in the clause dealing with “any hearing or other proceeding of a public agency . . .” The legislature did not define a meeting as any hearing or proceeding of a quorum of a public agency, as it might have done.

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But see Town of Windham v. Freedom of Information Commission, 48 Conn. App. 529, (1998), appeal dismissed, 249 Conn. 291 (1999), where the Supreme Court declined to clarify the conflict between these two Appellate Court decisions; *See also* Meriden Board of Education v. Freedom of Information Commission, 27 Conn. L. Rptr. 298 (2000); Common Council of the City of Middletown v. Freedom of Information Commission, 16 Conn. L. Rptr. 163 (1996); East Hartford Town Council v. Freedom of Information Commission, 16 Conn. L. Rptr. 121 (1996); Ansonia Library Board of Directors v. Freedom of Information Commission, 42 Conn. Sup. 84 (1991); Bristol v. Freedom of Information Commission, Docket No. 254667, Superior Court, Judicial District of Hartford-New Britain at Hartford, Memorandum of Decision dated April 13, 1983 (Ripley, J.)

15. It is concluded that the March 11, 2008 “budget hearing” or “workshop” was a “hearing” or “proceeding” within the meaning of §1-200(2).

16. It is therefore concluded that the gathering described in paragraphs 3 and 10, above, was a “meeting” of the respondent within the meaning of §1-200(2), G.S.

17. Because the budget hearing was a meeting of the respondent, it is finally concluded that all the FOIA requirements for meetings were applicable (notice, openness and minutes). It is also concluded that the March 11, 2008 meeting of the respondent therefore violated the requirements of §1-225, G.S., as alleged in the complaint.

18. The Commission declines to consider the imposition of a civil penalty in this matter.

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

1. Henceforth, the respondent shall require the budget hearings to comply with all of the requirements of §1-225, G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 29, 20

S. Wilson
Acting Clerk of the Commission

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PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

Rick Guinness and the New Britain Herald
One Herald Square
New Britain, CT 06051

Board of Finance,
City of New Britain
c/o Joseph E. Skelly, Jr., Esq.
New Britain Corporation Counsel
27 West Main Street
New Britain, CT 06051

S. Wilson
Acting Clerk of the Commission

FIC/2008-164FD/sw/2/4/2009



Freedom of Information Commission

Final Decision FIC2012-113

In the Matter of a Complaint by

FINAL DECISION

Sheila McCreven,
Complainant

against

Docket #FIC 2012-113

Conservation Commission, Town of
Woodbridge; and Town of Woodbridge,
Respondents

February 21, 2013

The above-captioned matter was heard as a contested case on November 30, 2012, at which time the complainant 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. It is found that by letter dated and filed on February 24, 2012, the complainant appealed to this Commission alleging that the respondents violated the FOI Act by failing to file minutes for its February 10, 2012 special meeting. At the hearing on this matter, the complainant requested the imposition of civil penalties.
3. It is found that the respondent Conservation Commission (hereinafter "respondent commission") posted a notice and agenda for a February 10, 2012 special meeting with the sole item of business as "Proposed preservation of portion of the Hubbell Farm" [sic].
4. It is found that the respondent commission filed minutes of the February 10, 2012 special meeting on July 19, 2012, well after the complaint in this matter was filed.
5. It is found that the minutes described in paragraph 4, above, state that an informal discussion spontaneously began and that the meeting adjourned after 15 minutes because there was no quorum.
6. It is found, however, that the meeting was called to order by the chairperson of the respondent commission and pursuant to the notice and agenda, a discussion of the preservation of the Hubbell Farm began thereafter. It is found that, after approximately fifteen minutes, the chairperson announced that the respondent commission did not have a quorum and that the meeting could not continue. However, it is found that, with the consent of the chairperson, one member of the respondent commission stayed and the discussion continued for approximately forty more minutes.
7. At the hearing on this matter, the respondent commission claimed that the discussion at the February 10, 2012 special meeting was simply an informal informational session and was not a meeting of the respondent commission because a quorum of its members were not present. The complainant asserted that the discussion was a meeting, with the meaning of §1-200(2), G.S.
8. Section 1-200(2), G.S., provides in relevant part that:

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'Meeting' means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency... to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power... [emphasis added]

9. It is found that the respondent commission is a multimember public agency, consisting of seven members, and that less than a quorum of its members attended the February 10, 2012 special meeting.

10. It is also found that the discussions that took place at the February 10, 2012 special meeting did not constitute communication to a quorum of the respondent commission, but they did concern substantive issues over which the respondent commission has "supervision, control, jurisdiction or advisory power" within the meaning of §1-200(2), G.S.

11. The Connecticut Supreme Court has stated, as an application of the general FOIA principle that exceptions to disclosure are narrowly construed, that: "the statutory definition of public meetings contained in §1-18a(b) [re-codified as §1-200(2), G.S.] must be read to limit rather than to expand the opportunities for public agencies to hold closed hearings." Glastonbury Education Association v. Freedom of Information Commission, 234 Conn. 704, 713-714 (1995). It is also specifically concluded that it is not necessary to have a quorum in order to have a "hearing" or "proceeding", and therefore a "meeting" pursuant to §1-200(2), G.S. As the Appellate Court stated in Emergency Medical Services Commission of the Town of East Hartford v. Freedom of Information Commission, 19 Conn. App. 352, 355 (1989):

The plain language of General Statutes §1-18a(b) [re-codified as §1-200(2), G.S.] does not require a quorum as a necessary precondition to "any hearing or other proceeding of a public agency...." The word "quorum" does not appear in the clause dealing with "any hearing or other proceeding of a public agency...." The legislature did not define a meeting as any hearing or proceeding of a quorum of a public agency, as it might have done.

But see Town of Windham v. Freedom of Information Commission, 48 Conn. App. 529, (1998), appeal dismissed, 249 Conn. 291 (1999), where the Supreme Court declined to clarify the conflict between these two Appellate Court decisions; *See also* Meriden Board of Education v. Freedom of Information Commission, 27 Conn. L. Rptr. 298 (2000); Common Council of the City of Middletown v. Freedom of Information Commission, 16 Conn. L. Rptr. 163 (1996); East Hartford Town Council v. Freedom of Information Commission, 16 Conn. L. Rptr. 121 (1996); Ansonia Library Board of Directors v. Freedom of Information Commission, 42 Conn. Sup. 84 (1991); Bristol v. Freedom of Information Commission, Docket No. 254667, Superior Court, Judicial District of Hartford-New Britain at Hartford, Memorandum of Decision dated April 13, 1983 (Ripley, J.)

12. It is concluded that the "informal informational session" held during the respondent commission's February 10, 2012 special meeting was a "hearing" or "proceeding" within the meaning of §1-200(2), G.S.

13. It is therefore concluded that the discussion described in paragraph 6, above, was a "meeting" of the respondent commission within the meaning of §1-200(2), G.S.

14. Furthermore, §1-210(a), G.S., provides in relevant part that "each . . . [public] agency shall make, keep and maintain a record of the proceedings of its meetings."

15. In addition, this Commission has stated that minutes should accurately reflect the business that transpired at a public meeting.

16. It is found that the minutes of the respondent commission's February 10, 2012 special meeting do not accurately reflect the business that transpired at that meeting.

17. Consequently, it is concluded that the respondent commission violated §1-210(a), G.S., by failing to make available to the public the minutes of its February 10, 2012 special meeting within seven days after the meeting and further failed to maintain minutes of the February 10, 2012 special meeting that accurately reflect the business that transpired at that meeting.

18. With respect to the complainant's request for a civil penalty, the Commission declines to consider the imposition of a civil penalty in this matter.

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

1. The respondent commission shall henceforth comply with the minutes provisions found in §1-210(a), G.S.

Approved by Order of the Freedom of Information Commission at its special meeting of February 21, 2013.

Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

Sheila McCreven
63 Center Road
Woodbridge, CT 06525

Conservation Commission, Town of
Woodbridge; and Town of Woodbridge
c/o Gerald T. Weiner, Esq.
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**FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT**

In the Matter of a Complaint by

FINAL DECISION

Christina Berger,

Complainants

against

Docket #FIC 1997-314

Chairman, The Kensington Fire District, Borough of Kensington; and
The Kensington Fire District, Borough of Kensington,

Respondents

April 8, 1998

The above-captioned matter was heard as a contested case on January 7, 1998, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, this case was consolidated with Docket # FIC1997-337, Christina Berger against Chairman, Kensington Fire District Commission, Borough of Kensington; and Kensington Fire District Commission, Borough of Kensington.

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 § 1-18a(1), G.S. (prior to October 1, 1997, § 1-18a(a), G.S.).
2. It is found that, on August 29, 1997, the complainant visited the offices of the respondent district, seeking access to the plans for a proposed sewer project that had been presented at the respondent district's annual meeting in May, 1997 ("plans"), as well as the minutes of such meeting ("minutes"), and that neither the plans nor the minutes were at such office. It is also found that, in order to inspect the plans, the complainant was referred to the office of an engineer who was under contract to the Kensington Fire District ("engineer"), but who was unavailable at such time. It is further found that the complainant was referred to the home of the respondent district's recording secretary for the requested minutes.
3. It is found that, on September 15, 1997, the complainant again contacted the office of the respondent district regarding access to the plans and was again referred to the office of the engineer. It is further found that on such date the complainant met with the engineer and requested access to the plans. It is found that the complainant was informed that such plans had been discarded. It is further found that the engineer offered to provide the complainant with a copy of the then current version of the plans at no charge and that the complainant ultimately received such copy from the engineer on September 25, 1997.
4. By letter dated September 16, 1997, the complainant requested that the respondent chairman provide her with a copy of the plans and an opportunity to review the records of the respondent district, including the minutes and other information pertaining to the sewer project described in paragraph 2, above.

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5. By letter dated September 25, 1997 and filed on September 29, 1997, the complainant appealed to the Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by denying her access to the records described in paragraph 4, above. The complainant requested that civil penalties be imposed.

6. It is found that, at the October 20, 1997 meeting of the respondent district, the respondent chairman informed the complainant that her requests for records would be honored, excepting the plans, which had been discarded.

7. It is found that, on November 24, 1997, the requested minutes were mailed to the complainant. It is further found that at the hearing in this matter, the complainant acknowledged that she is now in receipt of all records which she requested and which are more fully described in paragraph 4, above, with the exception of the plans.

8. It is found that, at the hearing on this matter, the engineer testified that the plans could be reproduced from his computer and would be made available to the complainant upon her payment of the appropriate fee. It is further found that such information was not made available to the complainant at the meeting described in paragraph 3, above, because of a misunderstanding.

9. Section 1-18a(5), G.S., (prior to October 1, 1997, § 1-18a(d), G.S.), in relevant part defines "public records" to mean:

...any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

10. It is found that the requested records, including the plans, are public records within the meaning of § 1-18a(5) and 1-19(a), G.S.

11. Section 1-19(a), G.S., in relevant part states:

[e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to inspect such records promptly during regular office or business hours or to receive a copy of such records in accordance with the provisions of section 1-15...Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of the political subdivision in which such public agency is located... [Emphasis added.]

12. Section 1-15(a), G.S., in relevant part provides that "[a]ny person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record...."

13. Section 1-15(b), G.S., in relevant part provides that:

[t]he fee for any copy provided in accordance with subsection (a) of section 1-19a shall not

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