



THE COMMONWEALTH OF MASSACHUSETTS
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July 26, 2024

OML 2024 – 142

VIA EMAIL

Jeffrey T. Blake, Esq.
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RE: Open Meeting Law Complaint

Dear Attorney Blake:

This office received a complaint from Catherine Foster on February 18, 2024, alleging that the Adams Board of Selectmen (the “Board”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Board on or around November 28, 2023, and former Town Counsel Edmund St. John responded on behalf of the Board by email on January 22, 2024, after the Complainant followed up regarding the lack of response from the Board.¹ The complaint alleges that the Board convened in executive session for an improper purpose on November 20, 2023.

Following our review, we find that the Board violated the Open Meeting Law. In reaching this determination, we reviewed the complaint, the Board’s response, and the Complainant’s request for further review filed with our office. In addition, we reviewed the notice and the minutes of the Board’s November 20, 2023, meeting.

FACTS

We find the facts as follows. The Board posted notice for a meeting to take place on November 20, 2023. The notice included one substantive topic for discussion:

¹ We remind the Board that the Open Meeting Law requires that within 14 business days of receipt of an Open Meeting Law complaint, a public body must meet to review the complaint’s allegations; take remedial action, if appropriate; and send to the complainant and to the Attorney General a response and a description of any remedial action taken. 940 CMR 29.05(5). Upon the filing of an Open Meeting Law complaint with a public body, the chair “shall disseminate copies of the complaint to the members of the public body,” and “the public body shall review the complaint’s allegations.” 940 CMR 29.05(3), (5). The public body must meet to review the complaint and formulate a response, or meet to delegate that authority, and respond to the complaint within 14 business days. See G.L. c. 30A, § 23(b).

EXECUTIVE SESSION: Per Open Meeting Law MGL c. 30A, 21, reason number six to consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body.

A. Corrective Lien Discharge on property at 39 Victory Street

B. Release of Lien on property at 39 Victory Terrace.

The Board convened the meeting as scheduled, and the Chair announced the purpose for the executive session as listed on the meeting notice and also declared that an open meeting may have a detrimental effect on the Board's negotiating position. According to the meeting minutes, during the executive session, the Board discussed two lien discharge matters involving separate properties. During the first matter discussed (which was the second matter as listed on the notice), the property owner attended and participated in the executive session discussion. The Board voted "to release the lien holder on the property." The property owner then left the room; the Board discussed the other lien discharge matter; and the Board voted to "do a corrective discharge to release of the lien on the property."²

DISCUSSION

Open Meeting Law requires that all meetings of a public body be open to the public, except when convening in executive session. A public body may enter executive session for any of ten enumerated purposes. See G.L. c. 30A, § 21(a). Prior to convening in executive session, "the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called." G.L. c. 30A, § 21(b)(3); see also District Attorney for the Northern District v. Sch. Comm. of Wayland, 455 Mass. 561, 567 (2009) ("[a] precise statement of the reason for convening in executive session is necessary . . . because that is the only notification given the public that [a public body] would conduct business in private, and the only way the public would know if the reason for doing so was proper or improper."); OML 2011-30.³ The same level of detail regarding the executive session topic must also be included on the meeting notice. See OML 2023-207; OML 2019-85; OML 2017-43.

One permissible purpose for convening in executive session is Purpose 6, "[t]o consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body." G.L. c. 30A, § 21(a)(6). We have explained that a public body may discuss the discharge of a lien in executive session under Purpose 6, as a lien is an interest in real property and a public discussion of the value of the property and potential terms of a lien release could adversely impact the public

² We remind the Board that the Open Meeting Law requires meeting minutes to include a record of all votes. Furthermore, when meeting in executive session, all votes must be taken by roll call and recorded in the minutes accordingly. The minutes of the Board's November 20, 2023, meeting indicate that one of the lien discharge motions "passed unanimously" and do not specify the outcome of the other motion; the minutes do not record a roll call for either motion.

³ Open Meeting Law determinations may be found at the Attorney General's website, www.mass.gov/ago/openmeeting.

body's negotiating position regarding the lien release. See OML 2014-136; see also OML 2012-114.

Nonetheless, we have consistently explained that the proper application of Purpose 6 is to protect a public body's negotiating position vis-à-vis other parties to a transaction. See, e.g., OML 2023- 241; OML 2023-81; OML 2022-119; OML 2020-158; OML 2018-73. Therefore, it generally is improper to convene in executive session to negotiate with the opposing party to a transaction. See, e.g., OML 2020-2. Indeed, the Massachusetts Appeals Court has held that "the purpose of the real property exception—the need for confidentiality in considering the value of property to be purchased, exchanged or leased in order to avoid impairment to the negotiating position of a governmental body—was not met" when representatives of the opposing party to a real estate transaction were present at the executive session. Allen v. Board of Selectmen of Belmont, 58 Mass. App. Ct. 715, 719-20 (2003).

Another permissible purpose for convening in executive session is "to comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements." G.L. c. 30A, § 21(a)(7) ("Purpose 7"). When a public body enters executive session under Purpose 7, it must cite, both on the meeting notice and in the announcement prior to convening in executive session, the specific general or special law, or federal grant-in-aid requirement, that requires confidentiality or requires the public body to meet behind closed doors. See OML 2011-34 ("Because the Board did not provide any law or grant-in-aid requirement to justify their executive session under Purpose 7, it was not appropriate for the Board to employ Purpose 7."); OML 2023-207; OML 2015-55.

The complaint alleges that the Board violated the Open Meeting Law when it discussed the lien discharge matters in executive session on November 20, 2023, purportedly pursuant to the Open Meeting Law's executive session Purpose 6. We agree, in part. A discussion of whether to discharge liens on real property held by the Town may generally be a permissible topic for discussion in executive session under Purpose 6. However, the Board undermined the claimed need for secrecy to protect the Board's negotiating position when it included the property owner in the executive session discussion regarding the first matter. Indeed, in its response to the complaint, in arguing for the applicability of executive session Purpose 6, the Board acknowledged that when discussing the Town's interest as a lien holder, "[i]f this information were made public, it could well negatively impact the Town's negotiating position since the adverse party would be privy to it." The Board's actions, however, were inconsistent with this statement as it included the property owner in its executive session discussion on the first lien release matter. Therefore, we find that the Board has failed to demonstrate that the discussion of the first matter was appropriate for discussion in executive session under Purpose 6. We find that the second matter was permissibly discussed in executive session.

In its response to the complaint, the Board also asserted that the discussion of the two lien release matters was appropriate for executive session because the liens stemmed from Community Development Block Grant loans that originated from the United States Department of Housing and Urban Development ("HUD"), which, the Board asserted, imposes certain privacy requirements. Such an argument suggests that the executive session discussion was permissible under Purpose 7, "to comply with, or act under the authority of, any general or

special law or federal grant-in-aid requirements.” G.L. c. 30A, § 21(a)(7). Regardless of whether HUD rules require such confidentiality, the Board did not cite to executive session Purpose 7 nor to any applicable HUD rule either on the meeting notice or in the Chair’s announcement before convening in executive session.

CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law when it discussed one matter in executive session on November 20, 2023, without a lawful purpose or without adequately conveying the purpose for the executive session to the public. We order the Board’s immediate and future compliance with the Open Meeting Law and caution the Board that a determination by our office of a similar violation in the future may be considered evidence of intent to violate the Open Meeting Law. Because the Board has released the minutes of the November 20, 2023, executive session to the public, we order no further remedial action.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office or the Board. Please feel free to contact the Division at (617) 963-2540 if you have any questions.

Sincerely,



Carrie Benedon
Assistant Attorney General
Division of Open Government

cc: Catherine Foster (via e-mail: galcath@gmail.com)
John Duval, Chair, Adams Board of Selectmen (via e-mail: jduval@town.adams.ma.us)
Jay Green, Adams Town Administrator (via email: jgreen@town.adams.ma.us)
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This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.