

Approved: October 26, 2020

MINUTES OF THE PROCEEDINGS OF THE
PLANNING BOARD OF THE TOWN OF LANCASTER
Meeting conducted via ZOOM internet conferencing
Tuesday October 6, 2020

Present: Russ Williston, Chair; Roy Mirabito, Vice Chair, Carol Jackson, Clerk; Tom Christopher;

Absent: Jeanne Rich

Staff Present: Debra Dennis, Administrative Assistant

List of Documents:

- Open Meeting Law Violation- R. Williston
- Proposed Response to Open Meeting Law Complaint

Chair Russ Williston called the meeting to order at 7:00 PM.

Roll call- 4 members present, Jeanne Rich absent

Open Meeting Law Complaint received September 29th, we get 14 days to respond. Consider and respond to Jeanne Rich and Office of the Attorney General. If Ms Rich is not satisfied with the response she has 30 days to send complaint to AG's office. We are responding within 10 days, so we have the opportunity to ask Ms Rich for more information, and she will have 10 days to respond, in turn we would get 10 more days to come up with a response.

Russ Williston contacted State Ethics Office, to see who would be able to participate. Everyone on the board is able to participate.

Russ Williston stated he will read each violation and draft response he sent to the board, so board can discuss.
1st violation on 8/24/2020 -

"8/24/2020 A Planning Board meeting was held and during #5 Reorganization of the board discussion had taken place. | expressed my concern with having Russ appointed as a Chair given his demeanor toward others, his disrespectful behavior and his lack of professionalism which | found to be frightening. After the discussion a roll call vote was taken and he was appointed by a 3-2 vote. The next 2 items on the agenda pertained to the appointment of the vice chair and clerk. On both of these motions, Russ announced that he would prefer not to have any discussion on the motions. | was

never aware that discussion on any motion could be banned. My understanding of the open meeting law is that all discussions should take place and be noted in the minutes especially when there is not a unanimous vote.

The meeting you describe was held remotely via “Zoom” teleconference due to the ongoing pandemic. You were present as a member of the board that night. A reorganization of the board was conducted via motions and roll-call votes. The newly appointed chair (Williston) did not “refuse” to allow debate on nominations, he “suggested” that the board not debate nominations. He allowed for objections to this suggestion, and there were no objections from any board members.

The “Open Meeting Law” does not include any requirement that the board debate motions. No “Open Meeting Law” violations occurred on this date.

The Open Meeting Law requires that you report a violation within 30 days unless you were not immediately aware of the violation. The meeting you describe falls outside that 30-day window and as you were participating in the meeting you would have been immediately aware of any violation that occurred.

Tom Christopher questioned who made the suggestion to not to have discussion, he thought Carol Jackson or Russ Williston made a motion not to discuss. Carol Jackson pointed out hour and minute of video of meeting to look at, that was not the case. Roy Mirabito also stated that he reviewed video and agreed Russ Williston had a suggestion not to discuss and left it open if there were any objections to not discuss. No objections from members on how response to 1st violation was written.

2nd Violation- 9/14/2020

Russ Williston read response

“9/14/2020 - The Planning Board meeting of 9/14 presented the minutes of 8/24 in amended format due to the discussion being left out. The motion was made and seconded to approve the minutes as amended. During the discussion Russ, Carol and Roy all stated displeasure in the amended notes as they did not agree with having discussion in the minutes. Russ suggested to accept amended minutes thru page #5 to which Carol motioned, Roy 2nd and the vote was a 3-2 vote.

What is not in the minutes but is on the tape of the meeting is the motion to approve the minutes as amended, 2nd by Tom Christopher [sic] and during the roll call vote, Carol voted yes to the amendments. Russ immediately questioned her as to her vote and mentioned that she should be voting no on the amended minutes as presented. Carol changed her vote to no and the roll call continued.”

At the 9/14/2020 Planning Board Meeting, which was held remotely via “Zoom” teleconference due to the ongoing pandemic, you were participating as a member of the board. During the meeting the board approved draft minutes that the boards clerk had written to document the 8/24/2020 meeting. You proposed to add the following text to the minutes the board clerk had written:

“Discussion ensued with Jeanne Rich stating she could not vote for Russ as chairman due to his demeanor towards others, his disrespectful behavior and his lack of professionalism which is frightening. The town has already lost a few good individuals in part due to Russ and she fears his running of this board may caust [sic] others to walk away in frustration.”

The board approved the minutes without including that text. The “Open Meeting Law” does not require that minutes be a transcript of the meeting and does not require that every remark be included in the minutes.

The chair recommended that your complaint could be voluntarily addressed by placing a review of the 8/24/2020 Planning Board minutes on the agenda for our 10/26/2020 meeting agenda. The chair will recommend that the board revise those minutes by adding text summarizing your remarks: “In discussion Jeanne Rich shared concerns about Russ Williston’s demeanor, behavior and professionalism.” As a participating member of the board you will have the opportunity to offer a different amendment if you prefer.

No open meeting violations occurred at this meeting

Roy Mirabito stated he thinks it is more than fair, we need to come to a resolution, and give Jeanne the opportunity to rephrase comments.

Carol Jackson read Roberts Rules of Order- Minutes are a record of what was done at a meeting not a record of what was said.

Russ Williston- Open meeting law site, he did a search, about comments omitted, minutes do not have to be a transcript, you do not need to include all remarks. Also stated minutes should include a summary of discussion. Russ asked if anyone had any thought from the board, no one spoke up.

3rd Violation- 9/28/2020

Regarding the first violation that you allege occurred on 9/28/2020:

“9/28/2020- The Planning Board minutes of 9/14/2020 were presented to the Planning Board as amended. These minutes have a full discussion as to why the prior minutes discussion should not be allowed. The motion by Carol Jackson [sic] was to “approve the minutes with the amendments through page 5 without the nasty comments”. This motion passed on a 3-2 vote.”

1. This does not appear to describe a violation of any requirement of the “Open Meeting Law.”

Roy Mirabito stated he thinks we acted appropriately.

4th Violation- 9/28/2020

Regarding the second violation that you allege occurred on 9/28/2020:

“9/28/2020 The Planning Board held a meeting which had its agenda posted by the Town Clerk on Thursday, 9/24/2020 at 3:37 p.m. On Friday, 9/25/2020 at 8:23 a.m. a revised agenda was posted at the direction of Russ Williston. A new item was placed on the agenda. This new posting was not given proper notice to the public body. M.G.L. ch. 30A, Section 20.”

The September 28, 2020 Lancaster Planning Board meeting was properly noticed more than 48 hours before the meeting. That initial meeting posting included all the agenda items that the chair was aware of at that time. After the meeting was properly posted, member Roy Mirabito requested an agenda item for a brief discussion item; in accordance with the recommendation in the state’s “Open Meeting Law Guide” (Office of the Attorney General, 2018) the chair posted an updated agenda roughly 36 hours before the meeting. Per the “Open Meeting Law Guide”:

“If a discussion topic is proposed after a meeting notice is posted, and it was not reasonably anticipated by the chair more than 48 hours before the meeting, the public body should update its posting to provide the public with as much notice as possible of what subjects will be discussed during the meeting.”

To see a prior Open Meeting Law complaint decision that addresses this, see OML 2011-10 (“Nantucket Board of Selectmen”):

“...the Open Meeting Law requires a meeting notice to include a listing of topics the chairs reasonably anticipates will be discussed 48 hours before a meeting. However, topics which arise within the 48 hour period before a meeting which were not reasonably anticipated by the chair may be considered by a public body if added to the meeting notice within the 48 hours before the meeting, or added to the agenda at the meeting itself.”

No open meeting Law violations occurred on this date.

Roy Mirabito- at annual meeting of Mass Municipal Association- Lauren F. Goldberg, esq. Of KP Law - best practices -Matters not reasonably anticipated by the chair must be added to the agenda after the posting deadline to the extent feasible. The updated agenda must show time and date as well as the change to the agenda.

Matters not reasonably anticipated by the chair may be discussed and acted upon.

Tom Christopher stated this is a very slippery slope. You need to be very careful. He stated he thinks it could have been reasonably anticipated.

Roy Mirabito stated he did not anticipate Columbus Day.

Russ Williston stated it must be reasonably anticipated by the chair.

Thought to continue with the text the way it is written-

5th Violation- undated

Regarding the undated violations that you allege:

“Since July, Russell Williston has posted emails between the board members, he has placed discussions that will take place at a future meeting of the board and has made threatening comments and remarks concerning myself as a member of the board. He has created a facebook page titled, "Russ Williston, Lancaster Planning Board". This page has been created without the permission of the town. Many of the statements made by Russ on facebook imply there was communication amongst other members of the board outside of a meeting.”

Although specific violations are not provided, none of the activities listed would be “Open Meeting Law” violations:

“Russell Williston has posted emails between the board members,”

Russell Williston denies sharing anything that was not a public document.

“...placed [posted?] discussions that will take place at a future meeting of the board”

Russell Williston is unaware of placing/posting anything that would constitute an open meeting violation.

For a prior Open Meeting Law decision relevant to this topic, OML 2017-111 (Brookline Board of Selectmen) addresses communications with the public, specifically through Facebook:

“The complaint alleges that a quorum of the Board improperly communicated via Facebook when Mr. Greene posted a link on his public Facebook page to the draft policy revisions published on the Town website and invited comments or critiques regarding the draft. No Board members responded to the post. The Open Meeting Law does not restrict an individual's right to make comments to the general public. Rather, it restricts communication between or among a quorum of a public body outside of a meeting, indicating that the communicator's intent must be examined. Because Mr. Greene's post was directed to members of the public with Facebook accounts, rather than specifically to the Board, and because no Board member responded to the post, we find no violation. Additionally, even if a quorum of the Board had viewed the post, the link to the Town website could be considered the distribution of a document to be distributed in preparation for the Board's next meeting. See G.L. c. 30A, § 18 ("deliberation" shall not include the distribution of other procedural meeting [sic] or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed").”

“Russell Williston ... has made threatening comments and remarks concerning myself as a member of the board”

Russell Williston strongly rejects this assertion.

“[Russell Williston] ...has created a facebook page titled ‘Russ Williston, Lancaster Planning Board.’ This page has been created without the permission of the town.”

This is not an “Open Meeting” violation.

“Many of the statements made by Russ on facebook imply there was communication amongst other members of the board outside of a meeting.”

Russell Williston is unaware of any Open Meeting violations of this nature.

Russ Williston read

Actions taken by the Planning Board to address this complaint:

To voluntarily address your concerns about the 8/24/2020 Planning Board minutes the chair will place “Revise 8/24/2020 Planning Board minutes” on the agenda for our 10/26/2020 meeting. The chair will recommend that the board add text summarizing your remarks during the reorganization of the board: “In discussion Jeanne Rich shared concerns about Russ Williston’s demeanor, behavior and professionalism.” As a participating member of the board you will have the opportunity to offer a different amendment if you so prefer.

Russ Williston- any thoughts on the way this was written?

Tom Christopher- should Russ send his responses separately?

Russ Williston stated it doesn’t give you the option to respond individually

Response actions to be taken were read to board by Russ Williston

Roy Mirabito stated it is as fair as you can be. Gives Jeanne the opportunity to respond.

Russ Williston asked if the response sounds good, he will send copy to Jeanne and AG’s office.

Roy Mirabito made a motion to accept Russ Willistons response, as crafted, to Jeanne Rich Open Meeting Law Violation complaint. Seconded by Carol Jackson. 4-0 Roll Call vote

Adjourn

Carol Jackson moved to adjourn, Roy Mirabito seconded. The board voted by roll call, unanimously to adjourn at 7:34PM.