



THE COMMONWEALTH OF MASSACHUSETTS
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August 24, 2023

OML 2023 – 136

VIA EMAIL ONLY

Michael A. Bergeron, Esq.
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RE: Open Meeting Law Complaint

Dear Attorney Bergeron:

This office received a complaint from Attorney Margaret Sheehan on behalf of Community Land & Water Coalition on January 30, 2023, alleging that the Plymouth Select Board (the “Board”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Board on or about December 6, 2022,¹ and you responded on behalf of the Board by letter dated December 26. The complaint alleges that the Board failed to sufficiently identify the properties to be discussed in executive session on November 29 where the properties were identified collectively as “1,000 Acres.”²

¹ All dates are in 2022, unless otherwise stated.

² The request for further review raises additional allegations. Specifically, the request for further review asserts that the Board failed, in its response to the complaint, to establish that it met in executive session under G.L. c. 30A, § 21(a)(6) (“Purpose 6”) for a proper purpose. The propriety of the Board’s November 29 executive session was not raised in the original complaint, only whether the Board had sufficiently identified the properties to be discussed. Additionally, the request for further review asserts that the Board did not meet to review the complaint and delegate authority to respond prior to Attorney Bergeron responding to the complaint. Because neither allegation was raised in an original complaint filed with the Board, we decline to review them. See G.L. c. 30A, § 23(b); 940 CMR 29.05(3), see also OML 2019-99, n. 2. However, we remind the Board that although it may delegate authority to respond to a complaint, it must first meet to review the complaint and authorize such delegation. See OML 2021-198. Open Meeting Law determinations may be found at the Attorney General’s website, www.mass.gov/ago/openmeeting.

Following our review, we find that the Board did not violate the Open Meeting Law as alleged. In reaching this determination, we reviewed the Open Meeting Law complaint, the Board's response, the request for further review, and the notice and open session minutes for the Board's November 29 meeting. We also reviewed news articles referring to "1,000 Acres" or "Thousand Acres" in Plymouth as well as the Town's 2018 Annual Town Meeting warrant and the Town's 2017 Open Space and Recreation Plan.

FACTS

We find the facts to be as follows. The Board posted notice for a meeting to be held on November 29. Relevant here, the notice included the following executive session topic:

The Select Board will hold an Executive Session pursuant to Massachusetts General Laws, Chapter 30A, Section 21(a), clause 6, 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.

❖ 1,000 Acres

On November 29 the Board met as scheduled and convened in executive session for the above purpose.

DISCUSSION

The Open Meeting Law requires that "[e]xcept in an emergency, . . . a public body shall post notice of every meeting at least 48 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays." G.L. c. 30A, § 20(b). Meeting notices must include, among other things, "a listing of topics that the chair reasonably anticipates will be discussed at the meeting." *Id.* Notice topics must be listed with sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting. 940 CMR 29.03(1)(b). We generally consider a topic to be sufficiently specific when a reasonable member of the public could read the topic and understand the anticipated nature of the public body's discussion. See OML 2015-35.

The Open Meeting Law requires that all meetings of a public body be open to the public unless an executive session is lawfully convened. See G.L. c. 30A, §§ 20(a), 21. Public bodies may enter a closed, executive session for any of the ten purposes enumerated in the Open Meeting Law. G.L. c. 30A, § 21(a). One such purpose is "[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) ("Purpose 6"). Executive session topics must be described, both in the meeting notice and in an announcement prior to convening in executive session, in as much detail as possible without compromising the purpose for which the executive session was called. See G.L. c. 30A, § 21(b)(3); see also District Attorney for the N. Dist. 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 2020-146. When convening in executive session pursuant to Purpose 6, a public body must

identify the property to be discussed, if doing so will not compromise the lawful purpose for secrecy. See OML 2019-163.

The complaint alleges that the Board failed to sufficiently identify the properties to be discussed in executive session under Purpose 6 where those properties were identified collectively as “1,000 Acres.” In response, the Board does not assert that identifying the properties would have jeopardized the purpose for the executive session. Rather, the Board explains that the area discussed is comprised of approximately 7,000 small lots and that the term “1,000 Acres” is a well-known name for the area. Therefore, the Board asserts, the use of the term “1,000 Acres” sufficiently identified the properties to be discussed.

An online search revealed a few local news articles referring to the area at issue as “1,000 Acres” or “Thousand Acres.”³ Some articles also referred to the “Plymouth 1000 Committee,” a local citizens group comprised of residents from the neighborhoods around the “1,000 Acres” area, and the “1,000 Acres Citizens Advisory Committee,” which was apparently appointed by the Board.⁴ Finally, Article 32 of the Town’s 2018 Annual Town Meeting warrant referred to the area as “the so-called Thousand Acres located in south Plymouth,” and a 2017 update to the Town’s Open Space and Recreation Plan also referred to the area as “the so-called ‘thousand acres.’”

The complaint before us presents a close question. We have said that when discussing a specific piece of property, it is preferable to identify that property by address on the meeting notice. See OML 2010-2; OML 2015-43; OML 2016-5. However, we have also said that if a public body is unable to list a specific address, then it may list bordering streets, intersections, landmarks, or other identifying information. See OML 2010-2. Here, we find, based on the totality of the information before us, including the fact that the Complainant does not allege that any individual, including herself, was in fact confused by the notice topic, that the term “1,000 Acres” sufficiently identified the properties the Board anticipated discussing during its November 29 executive session. Although we do not find a violation of the Open Meeting Law in this instance, we note that this was a close question and we encourage the Board to include additional identifying information, such as the boundaries of the area, in the future.

CONCLUSION

For the reasons stated above, we find that the Board did not violate the Open Meeting Law as alleged. 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 the Board or

³ See Emily Clark, Thousand acres – 7,000 headaches, WickedLocal.com, (June 23, 2010, 12:01 AM), <https://www.wickedlocal.com/story/old-colony-memorial/2010/06/23/thousand-acres-7-000-headaches/40872837007/>; Frank Mand, 1,000 Acres stays put, WickedLocal.com, (June 12, 2018, 1:00 PM), <https://www.wickedlocal.com/story/old-colony-memorial/2018/04/12/1-000-acres-stays-put/12719031007/>.

⁴ See Kathryn Koch, MassDevelopment to offer more help investigating 1,000 acres, The Columbus Dispatch, (Nov. 15, 2007, 11:01PM), <https://www.dispatch.com/story/old-colony-memorial/2007/11/16/massdevelopment-to-offer-more-help/40982587007/>; Casey Meserve, 10 Questions for...Helen Hapgood, chairman of the Plymouth 1000 Committee, WickedLocal.com, (Mar. 5, 2008, 5:10 AM), <https://www.wickedlocal.com/story/old-colony-memorial/2008/03/06/10-questions-for-helen-hapgood/40971674007/>.

with our office. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Elizabeth Carnes Flynn
Assistant Attorney General
Division of Open Government

cc: Plymouth Select Board (via email: selectmen@plymouth-ma.gov)
Kelly McElreath, Plymouth Town Clerk (via email: clerk@plymouth-ma.gov)
Attorney Margaret Sheehan (via email: environmentwatchesoutheasternma@gmail.com)

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.