



THE COMMONWEALTH OF MASSACHUSETTS
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April 17, 2024

OML 2024 – 67

VIA EMAIL

Michael A. Bergeron, Esq.
Reservitz Bergeron & Associates
25 Rockwood Road, 2nd Floor
Marshfield, MA 02050

michael@rblawma.com

RE: Open Meeting Law Complaints

Dear Attorney Bergeron:

This office received four complaints from Attorney Margaret Sheehan on behalf of Community Land and Water Coalition / Save the Pine Barrens on October 5, 2023, alleging that the Plymouth Selectboard (the “Board”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. Two of the complaints originally were filed with the Board on August 2, 2023.¹ You responded to these complaints on behalf of the Board by letter dated August 23.² The remaining complaints originally were filed with the Board on May 15 and August 25. You responded to these complaints on behalf of the Board by letters dated October 16 and September 13, respectively. The complaints allege that the Board violated the Open Meeting Law when it failed to create and approve minutes in a timely manner; failed to review executive session minutes at reasonable intervals; improperly relied on Purpose 6 to convene in executive session; and posted insufficient meeting notices.

We appreciate the patience of the parties while we reviewed this matter. Following our review, we find that the Board violated the Open Meeting Law when it failed to approve minutes in a timely manner, failed to review executive session minutes at reasonable intervals, improperly relied on Purpose 6 to convene in executive session, and posted an insufficiently specific notice of its August 8 meeting. In reaching this determination, we reviewed the

¹ One of these complaints is unsigned and undated. However, the complainant and the Board have referenced an August 2 filing date. A public body may choose not to address an Open Meeting Law complaint that is not signed. See 940 CMR 29.05(1). Nonetheless, the Attorney General may review such a complaint if filed with our office. See OML 2023-128. Open Meeting Law determinations may be found at the Attorney General’s website, www.mass.gov/ago/openmeeting.

² Unless otherwise indicated, all dates in this letter refer to the year 2023.

complaints, the Board’s responses to the complaints, and the complainant’s requests for further review. We also reviewed the notices for the meetings of May 16, May 22, June 6, June 13, June 20, June 27, July 11, July 25, August 8, August 22 and September 5. We reviewed the minutes of the open sessions of all Board meetings held in 2023 that are available on the Town’s website.³ We also reviewed, *in camera*, minutes of executive sessions the Board held on May 16, June 6, June 13, June 20, June 27, July 11, July 25, and August 8. We viewed the video recordings of the meetings of August 22 and September 5.⁴ Lastly, we spoke with Town Counsel, Attorney Kate McKay, on March 8, 2024.

FACTS

Executive Sessions

At each of its meetings held on May 16, June 6, June 13, June 20, June 27, July 11, July 25, and August 8, the Board convened in executive session “[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” See G.L. 30A, §21(a)(6) (“Purpose 6”).⁵ In the notices for those meetings, the Board invoked Purpose 6 with reference to the following topics:

- May 16: “30 Town Wharf (Lease)”
- June 6: “16 Town Wharf (Lease)” and “29 Manomet Point Road (Lease)”
- June 13: “30 Town Wharf (Lease)”
- June 20: “16 Town Wharf (Lease)” and “Cedar Bushes HOA License Agreement – Seal Cove Road (Lease)”⁶
- June 27: “158 Center Hill Road (Lease)”
- July 11: “Holtec”
- July 25: “158 Center Hill Road (Lease)” and “0 Spooner Street (Value of Real Property)”
- August 8: “Holtec (Value of Real Property)”⁷

The complainant alleges that the Board improperly invoked Purpose 6 when entering executive session on the above dates. Based upon the allegations of the complaints, we address

³ As of February 27, 2024, minutes of the open sessions of Board meetings through November 21 were available online, with the exception of meetings held September 26; October 13 through October 25; and November 16.

⁴ Recordings of the August 22 and September 5 meetings can be viewed at <https://www.plymouthotr.com/august-22-2023-select-board-meeting/>, and <https://www.plymouthotr.com/september-5-2023-select-board-meeting/>, respectively.

⁵ When entering into executive session on May 16, the Board also invoked Purpose 3 relative to a sewer interceptor project. The complainant does not allege that the Board improperly invoked Purpose 3 and we do not review the Board’s invocation of Purpose 3.

⁶ In her complaint, Attorney Sheehan truncates the second topic to “Cedar Bushes HOA License Agreement,” omitting “Seal Cover Road (Lease).” Additionally, the Notice for the June 20 meeting also references “One Thousand Acres (Purchase and Exchange)” as property to be discussed in executive session under Purpose 6. See OML 2023-136 (finding that reference to “1,000 Acres” in notice sufficiently identified properties to be discussed in executive session).

⁷ In her complaint, Attorney Sheehan truncates the topic to “Holtec,” omitting “(Value of Real Property).”

the sufficiency of notice of Purpose 6 executive sessions, as well as whether deliberations held during these executive sessions fell within the scope of Purpose 6.

Minutes of the above executive sessions have not been released to the public and were reviewed *in camera*.⁸ Therefore, we only summarize relevant content as necessary. On May 16, the Board discussed an extension of the lease at 30 Town Wharf. On June 6, the Board discussed leasing 29 Manomet Point Road. Also on June 6, the Board discussed ongoing negotiations with the owner of 16 Town Wharf. On June 13, the Board again discussed extension of the lease of 30 Town Wharf, and the terms of the possible extension. On June 20, the Board discussed a land swap with the state at the property known as “1,000 acres.” Representatives of state agencies also attended the executive session. The Board also discussed whether a sign on certain town owned property should be paid for by the town or a homeowners association. Lastly, the Board further discussed the amount of rent for 16 Town Wharf. On June 27 and July 25, the Board discussed terms of the lease of 158 Center Hill Road and voted to approve a five-year lease extension. (The property located at 158 Center Hill Rd. also is the subject of another Open Meeting Law complaint. See OML 2024-37). Also on July 25, the Board discussed the terms of sale of property at 0 Spooner Street, the site of a closed fire station. At executive sessions held on July 11 and August 8, the Board discussed ongoing negotiations with Holtec relative to the site of the Pilgrim nuclear power plant.

Minutes

At its August 22 meeting, the Board approved 22 sets of open meeting minutes, dating back to September 13, 2022, and including the minutes of meetings held between May 16 and June 27, which are the subject of Attorney Sheehan’s unsigned complaint. At that meeting, the Board also approved five sets of executive session minutes from meetings held between May 16 and June 27. Some of the minutes were approved by one member, with the other two members in attendance abstaining.⁹ According to minutes available on the Town’s website, the Board did not announce the results of a periodic review of executive session minutes at any open session held during the calendar year 2023. In its response to the August 2, 2023 complaint, the Board noted that it was making a concerted effort to update past practices and that review of 2022 executive session minutes was ongoing.

In the May 15 and August 2 complaints, Attorney Sheehan alleges that the following minutes were not approved in a timely manner:

| <u>Date of Complaint</u> | <u>Date of Meeting</u> | <u>Open / executive session</u> | <u>Date of Approval of Minutes</u> |
|--------------------------|------------------------|---------------------------------|------------------------------------|
| May 15, 2023 | November 1, 2022 | Open | February 21, 2023 |

⁸ Minutes of executive sessions held on May 16, June 6, June 13, and June 20 were made available for our review on January 8, 2024. Minutes of executive sessions held on June 27 were forwarded to our office on January 12, 2024. Minutes of executive sessions held on July 11, July 25 and August 8 were made available for our review on February 17, 2024.

⁹ One member in attendance abstained because the minutes in question predated his tenure on the Board. The other abstaining member had not had an opportunity to review all of the minutes.

| | | | |
|-------------------------------|-------------------|----------------------|------------------------|
| Not referenced by complainant | November 15, 2022 | Open and executive | February 21, 2023 |
| May 15, 2023 | November 25, 2022 | No meeting scheduled | Not applicable |
| May 15, 2023 | November 29, 2022 | Open | February 21, 2023 |
| May 15, 2023 | December 6, 2022 | Open | August 22, 2023 |
| May 15, 2023 | December 13, 2022 | Open | August 22, 2023 |
| May 15, 2023 | December 21, 2022 | Open | August 22, 2023 |
| May 15, 2023 | January 3, 2023 | Open | August 22, 2023 |
| May 15, 2023 | January 10, 2023 | Open | August 22, 2023 |
| May 15, 2023 | January 24, 2023 | Open | August 22, 2023 |
| May 15, 2023 | January 31, 2023 | Open | August 22, 2023 |
| May 15, 2023 | February 7, 2023 | Open | August 22, 2023 |
| May 15, 2023 | February 21, 2023 | Open | September 5, 2023 |
| May 15, 2023 | February 28, 2023 | Open | September 5, 2023 |
| May 15, 2023 | March 14, 2023 | Open | August 22, 2023 |
| May 15, 2023 | April 15, 2023 | No meeting scheduled | Not applicable |
| May 15, 2023 | April 25, 2023 | Open and executive | August 22, 2023 |
| May 15, 2023 | May 2, 2023 | Open and executive | August 22, 2023 |
| May 15, 2023 | May 5, 2023 | Cancelled | Not applicable |
| May 15, 2023 | May 9, 2023 | Open | September 5, 2023 |
| August 2, 2023 | May 16, 2023 | Open and executive | August 22, 2023 (both) |
| August 2, 2023 | May 22, 2023 | Open | August 22, 2023 |
| August 2, 2023 | June 6, 2023 | Open and executive | August 22, 2023 (both) |
| August 2, 2023 | June 13, 2023 | Open and executive | August 22, 2023 (both) |
| August 2, 2023 | June 20, 2023 | Open and executive | August 22, 2023 (both) |
| August 2, 2023 | June 27, 2023 | Open and executive | August 22, 2023 (both) |

DISCUSSION

I. The Board failed to create and approve minutes in a timely manner.

The Open Meeting Law was enacted “to eliminate much of the secrecy surrounding deliberations and decisions on which public policy is based.” Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). The Open Meeting Law requires that “[m]inutes of all open sessions shall be created and approved in a timely manner,” while requiring that minutes of executive sessions be “review[ed]” “at reasonable intervals” to determine whether continued nondisclosure is warranted. G.L. c. 30A, § 22(c); G.L. c. 30A, § 22(g)(1). “Timely manner,” for purposes of approval of open session meeting minutes, means “within the next three public body meetings or within 30 days, whichever is later, unless the public body can show good cause for further delay.” 940 CMR 29.11; see OML 2023-179; OML 2018-48. Whenever possible, we recommend that minutes of a meeting be approved at the next meeting. See OML 2023-179; OML 2018-67; OML 2017-133.

To the extent that the complainant alleges that minutes of executive sessions were not approved in a timely manner, we note that we do not require that a public body approve

executive session minutes within three meetings or 30 days, only that they be “review[ed]” “at reasonable intervals” to determine whether continued nondisclosure is warranted. See OML 2024-29; Swansea Board of Selectmen v. Attorney General, Civil Action No. 2173CV00906 (Bristol Sup. Ct. December 27, 2023).

Minutes of three open session meetings held in November, 2022, were not approved until February, 2023. Minutes of open session meetings held between December 6, 2022, and June 27, 2023, were not approved until August 22, 2023, at the earliest. More than 30 days and more than three meetings passed between the dates of these meetings and approval of the minutes. Therefore, minutes of approximately 19 meetings held between November 1, 2022, and June 27, 2023, were not timely approved.¹⁰ Seizing on language of the complaint, the Board responds that the minutes were “created and maintained.” However, the Board does not say when they were created. Moreover, open session minutes must not only be created, but must also be approved in a timely manner, i.e., within 30 days or three meetings. G.L. c. 30A, § 22(c); 940 CMR 29.11. The timeliness of minutes is not a procedural nicety untethered to the other requirements of the Open Meeting Law. When minutes are created and approved in a timely manner, they are more likely to accurately memorialize the discussions held, the decisions made, and the actions taken at the meeting, as required by the Open Meeting Law. See G.L. c. 30A, § 22(a). Over time, memories fade, notes are lost and the composition of a public body changes. Not surprisingly, when the Board placed over 20 sets of minutes to review at its August 22 meeting, at least one member did not have time to review them all prior to the meeting. Another member abstained from voting because he was not on the Board at the time of the meetings in question. In failing to timely approve 19 sets of minutes of open sessions, the Board violated the Open Meeting Law.

II. The Board failed to review executive session minutes at reasonable intervals.

Pursuant to the Open Meeting Law, a public body must create and maintain accurate minutes of all meetings, including executive sessions. G.L. c. 30A, § 22(a). A public body or its chair or designee must, at reasonable intervals, review the minutes of executive sessions to determine if continued nondisclosure of those minutes is warranted. G.L. c. 30A, § 22(g)(1). Although “reasonable interval” is not defined by the Law, our office has found a quarterly review or a review every six months to be appropriate. See OML 2019-45; OML 2017-104; OML 2015-166. At the meeting following each periodic review, the public body must announce which executive session minutes will be released and which will continue to be withheld, and the announcement must be included in the minutes. G.L. c. 30A, § 22(g)(1); see also OML 2020-101; 2019-3; OML 2015-94. A public body’s obligation to review executive session minutes for possible release is ongoing. If a public body reviews executive session minutes and determines that the purpose for the executive session remains such that the minutes should continue to be withheld from the public, it must continue to review those executive session minutes at reasonable intervals until it determines that the reason for secrecy has expired. See OML 2020-

¹⁰ We do not find that the Board violated the Open Meeting Law by failing to timely approve the minutes of meetings held on April 25, May 2, May 9 and June 27 because at the time the complaints were filed 30 days or three meetings had not yet passed since the dates of those meetings. We note, however, that when the Board ultimately approved these minutes, more than 30 days and three meetings had passed.

101.

The procedural requirements surrounding executive session, including periodic review of executive session minutes, are critical to advancing the transparency aims of the Open Meeting Law, because the public has no other way to know what happened at these closed-door sessions. See OML 2020-109; OML 2020-15; OML 2019-133. Similarly, announcing the outcome of the review of executive session minutes advances the goal of transparency by informing the public that such records are available. See OML 2012-2.

The Board convened in executive sessions on over 25 occasions during the 2023 calendar year but minutes do not reflect any periodic review of executive session minutes that year. As the Board did not review executive session minutes at regular intervals, it violated the Open Meeting Law.

III. The Board improperly relied on Purpose 6 to convene in executive session on June 20.

All meetings of a public body must be conducted in an open session unless a closed-door executive session is convened for one of ten permissible purposes. G.L. c. 30A, §§ 20(a), 21(a). When meeting in executive session, a public body may only address subjects related to the narrow executive session purpose the public body cited when entering executive session. See Dist. Att’y for N.W. Dist. v. Selectmen of Sunderland, 11 Mass. App. Ct. 663, 666 (1981). Pursuant to the Open Meeting Law, a public body may meet in executive session “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;” (“Purpose 6”). G.L. c. 30A, § 21(a).

Executive session purposes are narrowly construed. The public body bears the burden of demonstrating applicability of the claimed executive session purpose. See District Attorney for the N. Dist. v. School Comm. of Wayland, 455 Mass. 561, 566 (2009). Discussions under Purpose 6 must relate directly to the purchase, lease, exchange, or value of real property where confidentiality is necessary to protect a public body’s negotiating position. See OML 2022-119; OML 2021-62. The proper application of Purpose 6 is to protect a public body’s negotiating position vis-a-vis other parties to a transaction, not to escape the inconvenience of public scrutiny or opposition. See OML 2023-241; OML 2023-81. General discussions regarding real property or the use of real property, where there is no negotiating position to protect, do not fall within Purpose 6. See OML 2023-81; OML 2019-59 (discussion of conservation restrictions do not fall within Purpose 6 where there is no negotiating position to protect and the discussion does not relate to the purchase, exchange, lease or value of property); OML 2012-98 (“Potential uses for land and whether or not to go ahead with a project are not proper discussions under Purpose 6.”). In addition, Purpose 6 is generally inappropriate when the party with whom the public body is negotiating attends the executive session. See OML 2020-2 (“When representatives of the party the public body will be negotiating with . . . are present, Purpose 6 is defeated because there is no need to enter executive session to establish a confidential negotiating position”); Allen v. Board of Selectmen of Belmont, 58 Mass. App. Ct. 715, 719-20 (2003) (lawful reason

for Purpose 6 executive session compromised where opposing party in real estate transaction is privy to public body's discussions).

June 20

The Board improperly relied on Purpose 6 on June 20. Discussion of an exchange of Town property for property owned by the Commonwealth may implicate valuation of the land to be exchanged. However, Purpose 6 was defeated where representatives of state agencies also attended the executive session. See OML 2020-2. If the Board believed it had grounds to meet in executive session with the state agencies that were parties to the land exchange, the Board bore the burden of showing that Purpose 6 applied. However, the Board made no such argument in response to the complaint. Additionally, a discussion of who would pay for the installation of a sign on town owned property did not concern the "purchase, exchange, lease or value of real property." See, e.g., OML 2019-89 (discussion of monetary terms of community host agreement with cannabis cultivator improper for Purpose 6 as it did not concern purchase, exchange, lease or value of real property). Therefore, it was improper to discuss the sign in executive session.

July 25

The Plymouth Fire Department vacated the fire house located at 0 Spooner Street in 2019. In 2023, the Town, as the owner of the Spooner Street property, began negotiations to sell the property. At the July 25 meeting, the Board took a vote relative to terms concerning a possible sale. Based upon the information that has been provided to us concerning the July 25 executive session, we are satisfied that it was appropriate for the Board to enter executive session under Purpose 6 on July 25 to discuss sale of the property on Spooner Street.

Remaining discussions under Purpose 6

The complainant also alleges that the Board improperly invoked Purpose 6 on May 16 and June 13 to discuss the lease of 30 Town Wharf; on June 6 to discuss a lease of 29 Manomet Point Road; on June 6 and June 13 to discuss the lease of 16 Town Wharf; on June 27 and July 25 to discuss the lease of 158 Center Hill Road; and on July 11 and August 8 to discuss ongoing negotiations with Holtec relative to the site of the Pilgrim nuclear power plant. Having reviewed the minutes of these executive sessions and having spoken with Town Counsel, we are satisfied that these discussions were proper under Purpose 6.

IV. Notice of the August 8 meeting was not sufficiently specific.

A public body must post notice of every meeting at least 48 hours in advance, not including Saturdays, Sundays, and legal holidays. G.L. c. 30A, § 20(b). Notices must include "a listing of topics that the chair reasonably anticipates will be discussed at the meeting." Id. The list of topics must have 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 2023-3; OML 2019-134; OML 2015- 35. The Open Meeting Law requires that the notice describe topics with sufficient specificity so that the public can make an informed decision whether to attend the meeting to observe the discussion regarding a topic of interest. See OML 2023-86; OML 2019-95; OML 2018-22.

When posting notice of an anticipated Purpose 6 discussion, the executive session topic should include a sufficient description of the anticipated executive session, such as the statutory citation to the specific executive session purpose relied on and/or the language used in the statute, along with information about the specific property to be discussed, if such disclosure does not compromise the Board’s negotiating position. See OML 2016-96; OML 2016-94; OML 2016-5. A public body must disclose some descriptive information about the real property to be discussed unless disclosure of this information would compromise the purpose for the executive session. See OML 2018-73.

As an initial matter, the Open Meeting Law requires that a complaint be filed with the public body within 30 days of the alleged violation. G.L. c. 30A, § 23(b). If the alleged violation could not have been known at the time it occurred, then the complaint must be filed with the public body within 30 days of the date on which the alleged violation could reasonably have been discovered. 940 CMR 29.05(4). Deficiencies in notice are reasonably discoverable at the time the notice is posted or, at the latest, at the time of the meeting. See OML 2020-14; OML 2019-92; OML 2014-124; OML Declination 10-9-2012 (Templeton Municipal Light and Water Plant Board of Commissioners). In her complaint dated August 25, the complainant alleges deficiencies in the notices of several meetings held between May 16 and August 8. The alleged insufficiency of the notices of meetings held May 16 through July 25 was reasonably discoverable more than 30 days prior to filing of the August 25 complaint. Therefore, the complaint is untimely as to allegations concerning the notices of those meetings. Notice of the August 8 meeting was posted, and the meeting went forward, less than 30 days prior to the filing of the complaint. Therefore, the allegation that the August 8 notice was insufficiently specific is timely and appropriate for review.

The notice of the August 8 meeting listed the reason for entering executive session under Purpose 6 as “Holtec (Value of Real Property).” The Board argues that no resident other than the complainant voiced concern about the posting and that the complainant undoubtedly understood the notice. Indeed, the complainant acknowledges that Holtec is “the owner of the defunct nuclear power station and nuclear waste storage facility in Plymouth.” Nonetheless, the notice description “Holtec (Value of Real Property)” fell short of the requirements of the Open Meeting Law. That topic description neither divulged the location of the real property nor described the matters to be discussed. See OML 2023-128 (notice topic of Plymouth Selectboard “Executive Session pursuant to [Purpose 6], to consider the purchase, exchange, lease, or value of real property . . . 174 Colony Place, Lot 26-26 and 26-30 on Plat 104” insufficient for failure to describe matters to be discussed). Notice of the August 8 meeting is distinguishable from the notice at issue in another determination we issued to the Plymouth Selectboard. See OML 2023-136. In that matter, although a “close question,” we found that “1000 acres” sufficiently identified the properties to be discussed, based upon the totality of the information. Here, by contrast, notice of the August 8 meeting did not attempt to identify the property but simply referenced the purported owner of the property. We appreciate that “the

town will be providing additional information to be included in any future executive session regarding Holtec.” However, the Board’s promise of prospective compliance does not cure the violation relative to notice of the August 8 meeting.

V. The insufficient notice of the August 8 meeting did not constitute an intentional violation.

Finally, we must decide whether the Board’s violations were, as the complainant urges, intentional. See G.L. c. 30A, § 23(c). An intentional violation is an “act or omission by a public body or a member thereof, in knowing violation of [the Open Meeting Law].” 940 CMR 29.02. The complainant alleges a “pattern or practice” of violations on the part of the Board. However, the Open Meeting Law does not recognize pattern or practice as grounds for a finding of intent. Rather, an intentional violation may be found where the public body acted with deliberate ignorance of the law’s requirement or has previously been advised that certain conduct violates the Open Meeting Law. Id. Where a public body repeatedly violates the Open Meeting Law through similar conduct but was not placed on notice through a prior determination or otherwise that its action was noncompliant, the recurrence will not be grounds for a finding of intent. See OML 2022-63; OML 2017-43.

On August 4, our office issued a determination, finding that the Board violated the Open Meeting Law with respect to its November 15, 2022, meeting.¹¹ We found that 1) the Board and the Zoning Board of Appeals held a joint executive session for an improper purpose; 2) the Board’s meeting notice was insufficiently specific; and 3) the Board’s minutes of the executive session were insufficient. See OML 2023-128. In light of the number and breadth of Open Meeting Law violations found in that determination, we ordered, among other things, that all Board members attend an Open Meeting Law webinar training. At the Board’s August 22 meeting, Vice Chair Kevin Canty read a statement on behalf of the Board regarding the violations, noting that “we heard what the Attorney General’s office said and we will be mindful of their determination and the reasons for it going forward.” He emphasized that the violations were found to be unintentional and that no fine was issued.¹² The Board’s statement that no intentional violation was found in OML 2023-128 is factually correct. However, in stressing that no intent was found, the Board implicitly discounts the need to comply with the Open Meeting Law in the first instance. That a second violation might give rise to a finding of intent does not mean that public bodies are given a free pass on the first violation.

Nonetheless, we do not find an intentional violation in this instance. As explained in determination OML 2023-128, an executive session topic such as “Holtec (Value of Real Property)” is insufficiently specific under Purpose 6. However, given that OML 2023-128 was issued only two business days prior to the August 8 meeting, we cannot say that the Board was on notice prior to the August 8 meeting that “Holtec (Value of Real Property)” was insufficiently

¹¹ The Zoning Board of Appeals also was found in violation of the Open Meeting Law for actions it took relative to the meeting held on November 15, 2022.

¹² The statement commences at approximately 18:54 at <https://www.plymouthotr.com/august-22-2023-select-board-meeting/>

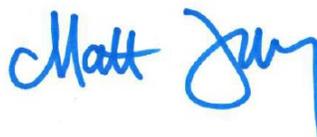
specific. Therefore, we decline to find that the Board intentionally violated the Open Meeting Law.¹³

CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law by failing to create minutes in a timely manner, failing to review executive session minutes at reasonable intervals, improperly relying on Purpose 6 to convene in executive session on June 20, and posting an insufficiently specific notice of its August 8 meeting. Due to the insufficiency of the August 8 notice topic, and the improper reliance on Purpose 6 on June 20, the Board may not rely on the Open Meeting Law to withhold the minutes of the executive sessions held on those dates. See G.L. c. 30A, § 22(f). Therefore, we order release of the minutes of the August 8 executive session and of the portions of the June 20 executive session which relate to those subjects that were not appropriate for executive session under Purpose 6. In addition, we order the Board's immediate and future compliance with the Open Meeting Law. We caution that a future finding of an intentional violation of the Open Meeting Law on any of the grounds cited herein may result in a civil penalty of up to \$1,000 per violation.

We now consider the complaints 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,



Matthew Lindberg
Assistant Attorney General
Division of Open Government

cc: Community Land & Water Coalition/Save the Pine Barrens (via email: environmentwatchesoutheasternma@gmail.com)
Plymouth Town Manager (via email: dbrindisi@plymouth-ma.gov)
Plymouth Town Clerk (via e-mail: kmcelreath@plymouth-ma.gov)
Plymouth Select Board (via email: selectmen@plymouth-ma.gov)

¹³ Notice of the August 8 meeting initially was posted on August 4, the same day that we issued determination OML 2023-128. An amended notice of the August 8 meeting was posted on August 7. The original notice and the amended notice both included the executive session topic "Holtec (Value of Real Property)." The notice was amended to remove a notation that the Board would not return to open session at the conclusion of executive session.

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.