



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

August 25, 2017

OM 17-27

Mr. Philip de Vries

**RE: de Vries v. Scituate Planning Commission**

Dear Mr. de Vries:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Scituate Planning Commission (“Commission”) is complete.

Your complaint alleges, in pertinent part:

“On March 21, 2017, the Scituate Plan Commission held a scheduled meeting. During that meeting the Commission deliberated on the Hope Mill project and voted on actions to remedy errors that the Commission had made in granting Paramount Development Group Master Plan and Preliminary Plan approval for the Hope Mill project. One of the votes, I believe, was to grant Master Plan approval for the Hope Mill project and to order that the approval be recorded.

The Agenda for the March 21, 2017 Plan Commission meeting, filed with the RI SOS and posted on the Town web site prior to the March 21, 2017 [meeting], does **not** mention the Hope Mill Project[.]” (Emphasis in original).<sup>1</sup>

Your complaint reveals that you did not attend the March 21, 2017 meeting, yet you learned what transpired at this meeting from “two reliable sources.” As you relate in your complaint, these sources are:

“[a]n engineer from Diprete Engineering appeared before the Hope Village Overlay Committee meeting on March 22, 201[7], which I attended, and publicly recounted what actions and votes the Scituate Plan Commission had taken at the March 21, 2017 meeting concerning the Hope Mill Project. On March 23, 2017, I spoke by telephone with Calista McDermott,

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<sup>1</sup> You also allege that Attorney Peter Ruggiero violated the OMA. As explained in our acknowledgment letter dated April 7, 2017, since Attorney Ruggiero is not a “public body,” he is not subject to the OMA and, accordingly, these allegations will not be addressed.

secretary for the Scituate Plan Commission. Ms. McDermott, confirmed that on March 21, 2007 [sic] the Plan Commission had discussed and voted on Approvals of the Hope Mill project.”

The Commission submitted a substantive response through the Town of Scituate Solicitor, Peter D. Ruggiero, Esquire. Solicitor Ruggiero’s response states, in relevant part:

“At the end of the [March 21, 2017] Meeting [Commission Chair] Mr. Hanson passed out copies of the Master Plan Approval Decision Letter to the members of the Commission. [] Mr. Hanson stated that he was providing the Commission members copies of the Master Plan Approval Decision Letter (previously voted on at the Commission’s January 2016 meeting \*\*\*) in a now formalized corrected version. [] Mr. Hanson specifically stated that no action needed to be taken or is being requested of the Commission members and that all future decisions of the Commission would be formalized and recorded in the Land Evidence Records of the Town in a similar fashion based on the advice of the Town’s new legal counsel.  
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No Commission member or member of the public present at the Meeting responded to Mr. Hanson’s statements or made any comments on the matter. [] The next utterance to occur was a motion to adjourn from Commission member Nicholas Piampiano.  
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Here, the Commission did not engage in, act or employ a process of discussing, deciding or making a determination with regard to the Master Plan Approval Decision Letter. [] To the Contrary, Mr. Hanson simply stated he would sign the corrected decision letter[.] \*\*\*

Furthermore, no discussion, consideration or consensus was reached by the Commission at the Meeting on the Master Plan Approval Decision Letter or Hope Mills Project. [] The only person to speak on this matter was Mr. Hanson.  
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Here, like in Waltonen [v. West Greenwich Town Council], OM 12-02], an informational announcement was made to the Commission of the existence of the Master Plan Approval Decision Letter and that future application decisions would be formalized in a similar manner. As such, no quorum of the Commission ‘discussed and/or act[ed] upon a matter which the [Commission] has supervision, control, jurisdiction or advisory power.’”

The substantive response also included the affidavit of Jeffrey C. Hanson, Chair of the Commission, which corroborated the facts set forth in the substantive response. The substantive response also included, inter alia, the March 21, 2017 meeting minutes.

You provided a rebuttal which states, in pertinent part:

“I was not present at the March 21, 2016 [sic] Plan Commission meeting, so I don’t know exactly what happened at that meeting. My contention is that the testimony

provided by Jeffrey Hanson is not accurate and not truthful and the minutes cited by the Plan Commission in their response are not reliable.”<sup>2</sup>

You also related that you would have attended the meeting had the item been listed on the March 21, 2017 meeting agenda.

At the outset, we note that in examining whether a violation of the OMA has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the OMA as the General Assembly has written the law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Commission violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

Here, the Commission admits that the agenda for its March 21, 2017 meeting did not include an item regarding the Hope Mills Project. The sole question for our consideration, therefore, is whether Mr. Hanson's announcement regarding the Hope Mills Project was permissible under the OMA notwithstanding its omission from the meeting agenda.

Although you take issue with the veracity of the March 21, 2017 meeting minutes and Mr. Hanson's affidavit, respectfully you provide no evidence to the contrary.<sup>3</sup> Indeed, you concede that you did not attend the March 21, 2017 meeting and thus cannot furnish any first-hand account that refutes the Commission's account, the Commission's minutes, and/or Mr. Hanson's sworn affidavit. Because you do not provide – nor do we find – any concrete indication that the March 21, 2017 meeting minutes or Mr. Hanson's affidavit are inaccurate, we deem both credible accounts of what transpired at the March 21, 2017 meeting.

The March 21, 2017 meeting minutes provide, in relevant part:

“At this time, Chairman Hanson passed out copies of the Hope Mill Master Plan Decision Letter. Chairman Hanson explained that this is for Informational Purposes only. No action is being requested or taken, nor needed. The Decision Letter reflects the action that the Plan Commission took regarding the Master Plan Approval at

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<sup>2</sup> To the extent that your rebuttal alleges any additional violations of the OMA not already raised in your initial complaint, such new allegations will not be addressed. As stated in this Department's acknowledgment letter to you, “Your rebuttal . . . should not raise new issues that were not presented in your complaint[.]” See also Save the Bay v. Department of Environmental Management, PR 15-19.

<sup>3</sup> You take issue with the fact that you were not permitted to engage in discovery, but our practice permits a complainant to submit whatever evidence and argument they deem appropriate for our review. Typically, discovery or other fact gathering is unnecessary for a complainant to perform because the complainant has actual knowledge of the allegations that form the basis of the complaint. In pursuit of our investigation, this Department has obtained the information it believes is necessary to resolve this complaint.

the January 2016 Plan Commission meeting. Legal Counsel has advised that all decisions made by the Plan Commission will be documented and recorded in a similar fashion going forward.”

Mr. Hanson’s affidavit provides, in pertinent part, an accordant narrative of these events:

“6. At the close of the [March 21, 2017] Meeting, just prior to adjournment, I passed out copies of the Master Plan Approval Decision Letter to the other members of the Commission.

7. I stated that I was giving them copies of the Commission’s decision that [was] previously voted on at the Commission’s January 2016 meeting that was now in a formalized letter format.

8. I further stated that no action needed to be taken or is being requested and that I was merely giving them copies for informational purposes.

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10. No other Commission member or any member of the public present at the Meeting responded or had any comments on the matter.”

These facts are analogous to those in Waltonen v. West Greenwich Town Council, OM 12-02. In Waltonen, we found no violation when, during a Town Council meeting, the Town Council President made remarks on a few ancillary items not on the agenda. We noted that:

“These announcements lasted approximately 2½ minutes. It appears these announcements were statements about things that were happening or going to happen involving the Town of West Greenwich. A ‘meeting’ is defined under the OMA as ‘the convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.’ R.I. Gen. Laws § 42-46-2[1]. Since there were no discussions or actions among a quorum of the Town Council on these items, and considering the nature of these announcements, we find no violation.” Waltonen, OM 12-02.

Here, Mr. Hanson distributed a document that was the subject of a prior meeting and expressed to the Commission the nature of the document distributed. This dissemination did not provoke any discussion or action among members of the Commission and is indistinguishable from the dissemination of documents that typically occurs by a clerk or member of a public body to other members of the public body prior to a meeting. Although the topic of the announcement or comment indisputably concerns a matter over which the Commission “has supervision, control, jurisdiction, or advisory power[,]” there is no indication that any collective discussion took place or that any further action was taken. See R.I. Gen. Laws § 42-46-2(1). Because a quorum of the Commission did not collectively discuss or take action with respect to this item, we find no violation.

We recognize your rebuttal where you claim that the document distributed at the March 21, 2017 meeting was an inaccurate description of the Commission’s prior actions. You contend that:

“[t]o the extent that the Plan Commission tacitly accepted [Mr.] Hanson’s actions without comment or objection, they are complicit in the transgression. I believe those actions and [Mr.] Hanson’s failure to provide notice of his amended action at the March 21, 2017 Plan Commission meeting is a significant violation of the OMA.”

With respect to this rebuttal argument, it bears noting that as identified in our acknowledgment letter, your complaint concerned the allegation that the Commission “violated the OMA when it discussed and/or took action on the Hope Mill project during its March 21, 2017 meeting but failed to include the topic on the meeting agenda.” The issue that the distributed document was not an accurate representation of the Commission’s prior action – even if such an allegation fell within the ambit of the OMA – was never part of your complaint and therefore is not properly before this Department. See Save the Bay v. Department of Environmental Management, PR 15-19. Moreover, as we have noted on many prior occasions, the OMA governs a “public body” and that without a “quorum” of a “public body,” the OMA is not implicated. Even assuming the accuracy of your rebuttal argument, Mr. Hanson’s actions do not implicate the OMA because he alone is not a “quorum” of a “public body.” Lastly, the Commission did not violate the OMA by accepting the distributed document, “without comment or objection.” Indeed, the entire focus of your OMA complaint was that the Commission violated the OMA when it did discuss and/or act upon the document distributed at its March 21, 2017 meeting. Your rebuttal argument that the Commission violated the OMA when it did not comment or object to the distribution of this document is plainly at odds with your complaint and further supports our conclusion that no discussion of this document occurred by the Commission during its March 21, 2017 meeting. While we clearly do not condone the creation and distribution of a document that mischaracterizes prior Commission action – assuming such activity occurred – you make no allegation that such action was taken by a quorum of Commission outside the public purview. Under these circumstances, your rebuttal allegation does not implicate the OMA.

Although the Attorney General will not file suit in this matter, nothing within the OMA prohibits an individual or entity from obtaining legal counsel for the purpose of instituting injunctive or declaratory relief in Superior Court. The complainant may do so within ninety (90) days from the date of the Attorney General’s closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later. R.I. Gen. Laws § 42-46-8(c). We are closing this file as of the date of this correspondence.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,



Sean Lyness  
Special Assistant Attorney General

Cc: Peter D. Ruggiero, Esq.