



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

January 23, 2014  
OM 14-03

Mr. Paul E. Vadenais

**RE: Vadenais v. North Smithfield Town Council**

Dear Mr. Vadenais:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the North Smithfield Town Council (“Town Council”) is complete. By correspondence dated September 19, 2013, you allege the Town Council violated the OMA when it held a meeting on August 31, 2013 to review a parcel of land without notice to the public.

In response to your complaint, we received a substantive response from the Solicitor for the Town of North Smithfield James Lombardi, Esquire, along with affidavits from the Town Council members who viewed the parcel of land. Attorney Lombardi states, in pertinent part:

“[T]here was no discussion about the purchase or lease of the property and no action was taken. We contend that this is a routine site visit that is permissible under Rhode Island General Law. Specifically the [Attorney General’s] Guide to Open [Government] states ‘The convening of a subcommittee for a ‘site visit’ was not a ‘meeting’ provided that the subcommittee did not engage in a collective discussion and/or take other action. *Richard v. Richmond Town Council*, OM 99-05; *Lamb v. Tiverton Budget Committee*, OM 98-31.”<sup>1</sup>

Town Council member, Mr. Paul Zwolenski states, in pertinent part:

“On August 31, 2013, I attended the site visit of the parcel of land in the complainant’s letter.

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<sup>1</sup> According to Attorney Lombardi’s response and the affidavits submitted by Town Council members, four out of five Town Council members viewed the parcel of land.

The site visit was to tour the property located behind 'Dowling Village' and the property is on the agenda for the town council to buy.

The Councilmen who attended were [Mr.] John Flaherty, [Mr.] Ed Yazbak, [Mr.] Paul Zwolenski, and [Mr.] Thomas McGee. The Town Administrator was not present for the site visit.

There was no discussion about the purchase or lease of the land between councilmen who attended the site visit and no action was taken.

The purpose of the site visit was to view the land and not to have any discussion on the purchase or lease of the property."

Mr. McGee states, in pertinent part:

"On August 31, 2013 I attended the site visit at the parcel of land located behind Dowling Village with Council members [Mr.] John Flaherty, [Mr.] Edward Yazbak and [Mr.] Paul Zwolenski.

There was no discussion among us regarding the purchase of the property."

Mr. Flaherty states, in pertinent part:

"On August 31, 2013, I attended the site visit of the parcel of land in the complainant's letter.

The site visit was to tour the property located behind 'Dowling Village' and the property is on the agenda for the town council to buy.

The councilmen who attended were [Mr.] John Flaherty, [Mr.] Edward Yazbak, [Mr.] Paul Zwolenski, and [Mr.] Thomas McGee. The Town Administrator was not present for the site visit.

There was no discussion about the purchase or lease of the land between councilmen who attended the site visit and no action was taken.

The purpose of the site visit was to view the land and not to have any discussion on the purchase or lease of the property.

As Council President, I made a statement at the start of the site walk that this was not a posted meeting, that the purpose was to inspect the property, its boundaries, etc. and that there was to be no discussion among Council members of the proposed purchase or lease of the property." (Emphasis in original).

Mr. Yazbak states, in pertinent part:

“I am a member of the North Smithfield Town Council and I did attend the site walk of land located behind Dowling Village on Saturday morning August 31, 2013.

To the best of my knowledge, there were two (2) partners of RAM Investments present. One of the partners, Mr. Albert Brien is known to me. The second partner, I met that day but do not remember his name.

RAM Investments professional advisor from DiPrete Engineering was also in attendance. I believe his name was [Mr.] Len Bradley.

Besides myself, the Town Council President John Flaherty, Councilor Thomas McGee and Councilor Paul Zwolenski were in attendance. (Mr. McGee arriving at least 30 or 45 minutes later than the rest of us).

Also in attendance [were] Dr. Carol Shumway and Mr. Brian VanHowe known to me as members of the North Smithfield Land Trust, an organization who has ‘partnered’ with the Town of North Smithfield on this Land purchase.

The meeting started in the parking lot of Lowe’s Home Improvement where Mr. Albert Brien provided a full scale map of the property in question and answered a number of questions posed by various people in attendance. This activity lasted 45 minutes to one hour in duration.

The group then proceeded to walk the property with all parties listed above, except Mr. Albert Brien, who left prior to walking the subject property.

We walked the property for a significant amount of time, I would estimate at least one hour or one and a half hours to walk.

I asked one or two questions as to property boundry (sic) locations during the walk as well as the access to the property, which was a major concern of mine. Otherwise I listened to questions posed by other participants and the answers given.

I raised concerns prior to the meeting as to the need to advertise under the requirements of the RI Open Meetings Act, and I was assured by the Town Solicitor, for various reasons, that such advertising was not required.

I have not conversed with any other Town Council member or the Town Administrator, in private, by email, telephone or otherwise on this land purchase transaction.

I have been vocal in my opposition to this land purchase, but I communicated that opposition at regularly scheduled (and advertised) Town Council Meetings in open session and on the official record.”

We acknowledge your reply dated November 18, 2013.

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 this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Town Council violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

The OMA requires that “[e]very meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5.” R.I. Gen. Laws § 42-46-3. Consistent with this Department’s previous findings and with applicable case law, the OMA is implicated whenever a quorum of a public body has a meeting. See R.I. Gen. Laws § 42-46-3; Fischer v. Zoning Board for the Town of Charlestown, 723 A.2d 294 (R.I. 1999). For purposes of the OMA, a “meeting” is defined 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(a). A “quorum” is defined as “a simple majority of the membership of a public body.” R.I. Gen. Laws § 42-46-2(d).

This Department previously held that a “site visit” by a public body would constitute a “meeting” under the OMA if, during the viewing the members discussed and/or acted upon matters over which they had “supervision, control [, jurisdiction] and advisory power.” Lamb v. Tiverton Budget Committee, OM 98-31. If the members of the public body only viewed the site and did not discuss their observations or findings during the site visit, however, such action would not rise to the level of a “meeting” under the OMA. Id.

It appears, based upon the evidence presented, that there was no discussion among members of the Town Council regarding matters over which the Town Council has supervision, control, jurisdiction, or advisory power. Rather, it appears there were questions presented by unknown individuals and answers provided by unknown individuals, which may or may not have included Town Council members. While in the proper circumstances these questions and answers could implicate the OMA, in light of the affidavits submitted by the other three (3) Town Council members, the evidence falls short of any collective discussion by a quorum of the Town Council. Your reply suggests that the Town Council members’ collective presence, as well as the asking and answering of questions, is sufficient to trigger the OMA, but our findings indicate and require more. As such, we find no violation.

Although this Department has found no violations, 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. See R.I. Gen. Laws § 42-46-8(c). The OMA allows the

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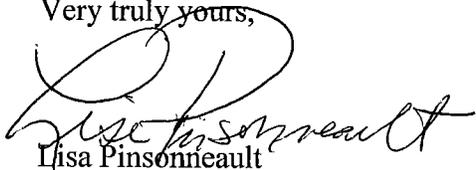
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complainant to file a complaint within ninety (90) days from the date of the Attorney General's closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later. See id. Please be advised that we are closing this file as of the date of this letter.

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

Very truly yours,



Lisa Pinsonneault

Special Assistant Attorney General

Extension 2297

LP/pl

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